



# **CIVIL AVIATION AUTHORITY OF FIJI**

## **FIT AND PROPER PERSON POLICY AND GUIDANCE MANUAL**

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RECORD OF AMENDMENT SHEET

Section 0.1

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Record of Amendments

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## Introduction to this Manual

### 1. Purpose

The purpose of this manual is to provide guidance to CAAF Authorised Persons and the CAAF ECC (ECC) in making fit and proper person (FPP) assessments for purposes under the Fiji Civil Aviation Authority Act, the Civil Aviation Authority of Fiji Act (the Acts) and the Fiji Air Navigation Regulations (the ANR)

This manual reflects CAAFs organisational desire for fair, consistent and proportional FPP assessments through the application of standardised entry, maintenance and exit control across all aviation operational fields in Fiji.

This manual records the overarching principles that must be applied in respect of every FPP assessment undertaken by the CAAF.

This manual outlines policy decisions which affect the conduct of the FPP assessment by CAAF Authorised Persons and the CAAF ECC. This manual contains instructions to CAAF Authorised Persons and the CAAF ECC about how FPP assessment activities are to be conducted, and details procedures to support the assessment process. This manual details the procedure that is to apply across the CAAF operational groups.

The procedure decisions captured in this document apply to all CAAF Authorised Persons and the CAAF ECC performing an assessment function or acting as a decision maker.

### 2. Key Objectives

The objective of this manual is to ensure that CAAF Authorised Persons and the CAAF ECC are aware of the CAAF's expectations of them when involved in the FPP assessment and decision making process.

It is also the objective of this document to give practical guidance to CAAF Authorised Persons and the CAAF ECC by:

- describing the matters that may be taken into account when considering whether a person is fit and proper to exercise the privileges of an aviation document;
- providing a method, through easy-to-follow steps, to consistently, and in a principled way, approach determination of fitness and propriety;
- providing clear guidance and expectations for CAAF Authorised Persons to make a robust and objective assessment, approaching that task in a manner that will stand up to scrutiny.

This manual cannot prescribe what outcome must be reached in any particular scenario. It does, however, provide a framework that enables a decision maker to consider each application on its own merits.

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### 3. Application

This manual is intended to apply to any entry decisions relating to any individual and/or organisation at the time of one of the following events:

- upon applying to enter the system for the first time;
- upon application to increase the level of participation in the system (e.g. upgrading from a private to commercial pilot licence)
- upon application to continue existing participation in the system (e.g. renewal of a time limited document).

This manual is intended to also apply to:

- nominated postholder positions for organisation certification (initial issues, amendment, and renewal) and personnel licensing; and
- the entry (including initial registration and any change of ownership/transfer) of aircraft into the Fiji civil aviation system under the Fiji ANR.

CAAF Authorised Persons and the CAAF ECC should also have regard to this manual in respect of FPP decisions that are made during the life of an aviation document, for example where there is cause to believe a person may not meet the ongoing condition to remain a FPP. Any such assessments must be made with reference to other CAAF policies, including the regulatory operating model and policies.

### 4. Intended Audience

This manual is intended to be used by Authority CAAF Authorised Persons in their day to day assessment activities and the CAAF ECC when deliberating and making adverse decisions.

### 5. Structure of this Document

This manual is structured as a procedural guide.

### 6. Why does this Manual Exist?

The Act and the ANR 15, 16, 34, 54, 145A, 145B, 145C, 145D, 145E requires CAAF exercise control over entry into the civil aviation system through the granting of aviation documents and being satisfied of “fit and proper” and “competence”.

Before a person or organisation may be issued with an aviation document, the CAAF must be satisfied that the applicant and any person who is to have, or is likely to have, control over the exercise of the privileges under the document is a FPP to have such control or

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hold the document.

Whether a person is fit and proper is determined through assessment of criteria prescribed in this manual. That assessment must be made having regard to the degree and nature of the person's proposed involvement in the Fiji civil aviation system.

It is the condition of any aviation document that is granted that the person continues to be fit and proper.

The intention of the FPP test is to provide public assurance around the safety of participants operating within the system. This manual provides criteria against which to assess an applicant's competency and honesty, to protect the public from the risk of aviation activities being carried out incompetently or recklessly. It is designed to provide confidence that a person has undergone an appropriate and robust assessment of their attitude, character and competence.

The FPP test incorporates considerations of honesty, knowledge, skills and ability, as well as requiring assessment of an individual's behaviour, attitude, credibility and past conduct to assist in determining an individual's likely future conduct. Any evidence of previous non-compliance with the law, such as criminal conduct and transport related offending, is highly relevant to the assessment.

The focus of the test is always forward-looking. A decision maker is to focus on the likely future conduct of the individual. In making that assessment a decision maker may be informed by previous conduct to predict future behaviour or assess a person's attitude towards compliance. The assessment cannot however be used in a punitive way or be applied to hold someone to account for past conduct.

At entry the onus of proving fit and proper is on the applicant. At exit the onus of proving not fit and proper is on CAAF.

## General Instructions & Administration

### 1. Owner of this document

The CAAF, through its ECC will ensure regular review and maintenance of this manual is to be conducted at least every 2 years.

The CAAF ECC will also be responsible for ensuring that this document meets the responsibility, application, accountability, monitoring, approval/amendments and availability criteria described in other CAAF publications including the CAAF Quality Manual and the CAAF Policies and Procedures Administration Manual.

### 2. Legal Compliance

When undertaking assessment activities CAAF Authorised Persons and the CAAF ECC must ensure that they are familiar with, and apply, principles of natural justice and

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requirements of administrative law.

CAAF Authorised Persons and the CAAF ECC must not undertake any assessment activities unless they are familiar with the operation of the Acts, ANRs, AICs, and this manual specifically the functions, duties and powers of the CAAF to conduct entry certification. CAAF Authorised Persons must, at a minimum, be aware of:

- Section 7 Requirement for aviation document;
- Section 9 Grant or renewal of aviation document;
- Section 10 Criteria for FPP test; and
- Section 12 General requirements for participants in civil aviation system

CAAF Authorised Persons and the CAAF ECC must also have regard to and act consistently with other relevant national legislation including the Fiji Crimes Act and Fiji Good Governance Act. Legal advice should be obtained where appropriate.

CAAF Authorised Persons and the CAAF ECC are obliged to ensure that they act in a manner that is consistent with key CAAF policies including those published in the:

- a) CAAF Personnel Policies and Administration Manual
- b) CAAF Finance Manual
- c) CAAF Risk Management Manual
- d) CAAF Manual of Occurrence Reporting & Investigation
- e) CAAF Quality Manual (5th edition)
- f) CAAF Aviation Security & Facilitation Department Manual [ASFDM]
- g) CAAF Personnel Licensing Procedures Manual
- h) CAAF Ground Safety Department Manual (GSDM)
- i) CAAF Air Safety Inspecting CAAF Authorised Persons Manual
- j) CAAF Airworthiness Technical Procedures Manual
- k) CAAF State's Safety Programme Fiji
- l) Any other CAAF associated publications

### 3. Information Management

CAAF Authorised Persons and the CAAF ECC are required to follow all information management policies and procedures in respect of their FPP assessment activities.

All information will be recorded on the relevant CAAF forms.

CAAF fit and proper application forms and checklists must be completed and entered into the appropriate CAAF Department records, including applications for nominated post holder positions in an organisation.

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#### 4. Delegations

Within certain restrictions, the CAAF CE’s powers to grant aviation documents are granted to relevant CAAF Authorised Persons and the CAAF ECC. CAAF Authorised Persons holding such delegations and the CAAF ECC are effectively acting as the CAAF CE when they exercise their delegated powers.

In practice, while CAAF Authorised Persons and the CAAF ECC will be acting as the CAAF CE when conducting assessments and making decisions, the following decision making hierarchy will typically apply:

<b>CAAF Authorised Person</b>	Will typically conduct assessment and make recommendation to Section Head. May be delegated to undertake both the assessment and make the FPP decision
<b>Section Head</b>	Where the position exists, Decision Maker, or may escalate to Controller
<b>Controller</b>	May be decision maker if escalated from Section Head, or escalate to CAAF Enforcement and Compliance Committee
<b>Enforcement and Compliance Committee</b>	May be decision maker if escalated from Controller.

#### 5. Independence

The ANR requires CAAF, when issuing aviation documents, to act independently and not be influenced from any other source internally or externally in individual cases. Any Authorised Person exercising a delegation is similarly required to act independently of external influence, and in accordance with the limitations and conditions of the delegation.

#### 6. Responsibility and Discretion

The Act and ANR places the onus on the CAAF, to be satisfied that all relevant requirements have been met before issuing an aviation document. This manual is designed to ensure that any person exercising the CAAF powers under a delegation, does so in a manner consistent with the principles and guidelines described within this document. In particular, CAAF Authorised Persons and the CAAF ECC need to be mindful of the Act requirement that ‘all things in respect of which the document is sought meet the relevant prescribed requirements.

However, not all certification matters are expressly covered by the Act, the ANR and CAAF policy and procedure. CAAF Authorised Persons and the CAAF ECC are permitted to exercise proper discretion within the boundaries of established procedure and their delegation. In doing so it is incumbent upon CAAF Authorised Persons t and





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the CAAF ECC to make necessary inquiries as required, and to seek assistance from CAAF Section Head or Department Heads.

## Starting the Process

### Introduction

Under the CAAF Act, ANR and SD, every time an applicant applies for an aviation document, e.g. initial issue, or additional rating or to increase their level of participation in the system they are effectively applying for a new aviation document. This means that CAAF is required to assess the applicant as fit and proper every time this occurs.

The CAAF obtains information relevant to the FPP test via the use of forms.

The method by which CAAF Authorised Persons and the CAAF ECC must make fit and proper assessments will be influenced by whether an applicant is:

- applying for an aviation document for the first time;
- applying to increase the level of their participation (e.g. by upgrading from a Private Pilot Licence to a Commercial Pilot Licence);
- nominated to become a nominated postholder or changing roles or adding responsibilities within a certificated organisation.

The category the person falls into above will also determine the form that they must complete and submit to the CAAF.

### Required Application Forms

CAAF has developed a number of application forms for persons seeking the grant or renewal of an aviation document. The CAAF forms solicit information from the applicant for the FPP assessment via questions and a requirement to supply information held by third parties, including the Fiji Ministry of Justice and Fiji Land Transport Authority (LTA).

These forms are available to participants via the CAAF website. An applicant must not be subject to an FPP assessment process unless the required form is completed and all supporting documents have been supplied.

CAAF Authorised Persons, may, with the approval of the Controller, waive any requirement to supply information that would ordinarily be required to be supplied by the applicant. The reason for not requiring certain information must be recorded and the risk assessed. This may occur where it is not possible for the applicant to provide an overseas conviction history or time constraints are such that it is impracticable to await the supply of required information.

If there is a time delay in information being provided, an applicant can be required to complete a Statutory Declaration in accordance with the **Oaths and Declarations Act**. As soon as the outstanding information is received it should be recorded as having being

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received, be reviewed and added to the assessment documentation. In the event that any information received is inconsistent with the statutory declaration this should be escalated to the relevant Controller for assessment.

### First Time Applicants

All first time applicants must complete the appropriate CAAF forms.

### Existing Document Holders and Nominated postholder

A person holding any aviation document has already had an assessment completed on them. That assessment is however made on the basis of the nature and degree of participation at a particular point in time. It does not therefore follow that just because someone is fit and proper to hold one type of document that they are automatically fit and proper to hold another type. An assessment is still required.

The CAAF has decided that a person will however be entitled to complete a 'declaration' in lieu of completing the standard FPP assessment form. The person is able to complete a declaration to the effect that there has been no change in their circumstances since their last FPP form was completed. The CAAF has also decided that while the declaration option will be a default position, CAAF Authorised Persons may, if there is cause to do so in a particular case, still require an applicant to complete the appropriate CAAF form.

This option is also available to eligible nominated postholder position holders. If the FPP assessment is being conducted as part of an organisation recertification CAAF Authorised Persons may require a nominee to complete the standard form depending on the time elapsed since the last assessment.

An applicant may only use the declaration option if:

- they have undergone a FPP assessment within the last 2 years; and
- there has been no change in their FPP status (they must review the standard form questions to check that none of the criteria now apply).

**When participants are signing any CAAF form that requires a declaration this is a legally binding statement and that their signature on these forms confirms that all details provided are true and accurate.**

Example of when the declaration form can be used:

#### Scenario 1

Pilot A applied for his PPL on 1 January 2015. Six months later he applies for his CPL. Nothing has changed in Pilot A's circumstances. Pilot A does not need to complete the standard form because he meets the criteria to complete the declaration.

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Examples of when the standard form must be used:

### Scenario 2

Pilot B holds a CPL, issued in January 2014. Pilot B applies for an ATPL in November 2015. Pilot B was convicted of three driving offences including a demerit points suspension between March 2014 and May 2015. While it has been less than 2 years since the last declaration was completed, Pilot B's circumstances have changed and the standard form must be completed.

### Scenario 3

Pilot C holds a CPL. He was first issued his PPL in February 2010. In November 2011, Pilot C applied for and was issued with his CPL, completing a declaration. In November 2016 Pilot C applies for an ATPL. Because it has been more than 2 years since the standard form was completed Pilot C must complete the standard form.

### Information Required for an Assessment

Information for an assessment is sourced from:

- Information already held by the CAAF (if held), including:
  - on the applicant's personnel file;
  - on the applicant's medical certification file;
  - in the CAAF business systems;
  - publicly available sources, including the internet;
  - the relevant CAAF form, via:
    - answers to questions;
    - the information required to be supplied by applicants from other agencies.

All readily available sources of information within the CAAF should be accessed.

### Key Principles & Guidance

#### 1. What is the fit and proper person test?

##### 1.1 Introduction

The FPP test is not unique to aviation. It applies in various other occupational and licensing fields. The test is also required under other transport legislation, however, every piece of legislation differs in their prescribed requirements for meeting the test. Some specify criteria, while others do not. These differences account for the fact that the test must be applied in the context of the activity being proposed. In other words, a FPP test under the Land Transport Authority Act is not identical to the test under the Civil Aviation Act and the determination for each must be made independently of the other. This is why CAAF considers the degree and nature of the person's proposed involvement in the Fiji civil aviation system.

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Anyone holding or applying for an aviation document, or anyone who has control over the exercise of the privileges of an aviation document, must satisfy the CAAF that they are a FPP to do so. Aviation documents include, for example, a licence, a rating, an air operator certificate of competency or an air traffic service provider certificate.

## 1.2 The Civil Aviation Act, Air Navigation Regulations and Standards Documents

Under the Act, ANR and SD, the CAAF and the CAAF Authorised Person must be satisfied that an applicant and any person likely to have control over the privileges of an aviation document is fit and proper to hold and exercise the privileges of the document.

Once an applicant is assessed as fit and proper they must continue to remain so as a condition of continuing to exercise the privileges of their document.

FPP assessments are always to be made on a case-by-case basis. There is no 'one size fits all' universal standard to be deemed fit and proper.

The criteria by which CAAF assesses whether a person is fit and proper, takes into consideration the person's degree and nature of involvement in the aviation system:

- the person's compliance history with transport safety regulatory requirements:
- the person's related experience (if any) within the transport industry:
- the person's knowledge of the applicable civil aviation system regulatory requirements:
- any history of physical or mental health or serious behavioural problems:
- any conviction for any transport safety offence, whether or not—
  - the conviction was in a Fiji court; or
  - the offence was committed before the commencement of this Act:
- any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any rule made under the Act, ANR or SD:
- in the case where a Fiji Aviation Document, the person's compliance with the conditions specified in the document

The CAAF shall not be confined to consideration of the matters specified above and may take into account such other matters and evidence as may be relevant.

The provisions are broad and must be applied on a case-by-case basis. The CAAF must consider the evidence in terms of its credibility, its relevance, its significance and its source, all of which should be weighed against the degree and nature of the person's proposed involvement in the civil aviation system.

CAAF can use discretion when deciding what weight should be given to each matter when applying the FPP test.

While the application of the FPP test requires a case-by-case approach, where each case is considered on its own merits, this manual can be used to guide the assessment.

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While this manual provides specific criteria that must be considered when making a FPP assessment, it is necessary to understand what the words “fit” and “proper” mean within that context.

### 1.3 What it means to be ‘fit’

Fitness is about ensuring the applicant:

- is physically and mentally fit to perform the privilege being sought;
- is competent and able;
- has the appropriate qualification, training, experience, and skills needed to perform the responsibilities, functions and duties of the aviation document they want to hold.

**The FPP process is directly focused upon the fitness and the propriety of the applicant to exercise the responsibilities and perform the functions and duties of the aviation document they have applied for or the nominated postholder position they have been nominated to hold. It is not simply a question of assessing competence to fly an aircraft or do a particular activity; it requires consideration of the applicant’s conduct and attitude measured against the responsibilities, functions and duties of the holder of an aviation document required under civil aviation legislation.**

Generally a person will be ‘fit’ if they:

- can demonstrate that they have the appropriate competence and ability to perform the privilege applied for; and
- have the necessary skills, knowledge, competence, diligence and soundness of judgment to undertake and fulfil the obligations and responsibilities associated with the privilege being conferred.

### 1.3 What it means to be ‘proper’

Propriety is about a person’s character and personal attributes. It involves an assessment of a person’s behaviour to consider things such as their:

- attitude;
- integrity, credibility and honesty;
- judgment;
- propensity or willingness to disregard the law.

Past behaviour is used as an indicator of future behaviour, and matters of propriety. Recidivist conduct or patterns of behaviour are particularly relevant to any assessment, because it can aid in assessing whether an applicant has learned from past mistakes, and can provide an insight into the applicant’s likely future conduct.

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Behaviour also provides insight in to a person's attitude and character. In assessing attitude, it is important to identify any hazardous attitudes or character attributes that may lead to an unsafe situation. These may present as:

- a cavalier or uncaring attitude towards the law and/or compliance;
- a willingness to disregard the law;
- an anti-authority approach;
- impulsiveness;
- invulnerability, over-confidence or arrogance;
- resignation or a lack of confidence.

**The FPP process is directly focused upon the fitness and the propriety of the applicant to exercise the responsibilities and perform the functions and duties of the aviation document they have applied for or the nominated postholder position they have been nominated to hold. It is not simply a question of assessing competence to fly an aircraft or do a particular activity; it requires consideration of the applicant's conduct and attitude measured against the responsibilities, functions and duties of the holder of an aviation document required under civil aviation legislation.**

Aviation is inherently unforgiving. Aviation safety depends on participants complying with the rules and the Act. Failure to comply in any sense increases the level of risk to the document holder and to third parties.

### 1.5 Assessing Relevance and Weight

A critical part of conducting a FPP assessment is determining what relevance each piece of information has to the assessment, and how much weight should be placed on that information in making a decision. The relevance and weighting steps are addressed later in this manual.

## Principles that must be applied to every decision

### Natural Justice and Fairness

CAAF Authorised Persons and the CAAF ECC must ensure an applicant is afforded natural justice<sup>3</sup> and procedural fairness when making a decision. Decision makers must act in good faith and decisions should have regard to both substantive and procedural fairness. Substantive fairness is the idea that an outcome is proportionate to what one deserves. According to these principles:

- the applicant must be allowed the right to know the case to meet;
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- the applicant must be allowed an opportunity to make representations; and
- only relevant factors should be considered.

Therefore, in practice CAAF Authorised Persons and the CAAF ECC must avoid:

- consideration of irrelevant factors;
- actual or perceived bias;
- predetermination; or
- unreasonableness.

<sup>3</sup> **natural justice** has been said to be “fairness writ large” and “fair play in action”.

## PROCEDURE

### 1. Assessing whether a participant is fit and proper

#### 1.1 Practical Steps to Follow

A useful way of approaching a FPP assessment is apply the following steps:

1. Establish and identify the context in which the test is to be applied;
2. Identify all facts or evidence relevant to that context – with particular emphasis on the criteria set out in this manual;
3. Identify what those facts say about the behaviour, character and attitude of the applicant (both good and bad) to aid an assessment about whether that information is relevant to the assessment;
4. Deduce by weighing those facts against one another what they may indicate about the applicant’s likely involvement in the aviation system in future.

These steps are intended to provide a consistent, principled approach to the assessment of applicants. They are not intended to be a check box exercise, rather to guide a critical and objective assessment.

The steps are also not intended to be applied in isolation, but should be applied in a whole of person context.

**There is no algorithm or formula that can be applied when making FPP assessments. There is also no particular magic to doing an assessment; just follow the key steps and remember the overarching principles outlined in this document.**

### 2. Assessing whether a participant is fit and proper

#### Step 1 – Establish the Context

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### ***Determine the Nature and Degree of Proposed Involvement***

The starting point in assessing whether a person is, or continues to be, fit and proper is to consider the person's nature and degree of participation in the civil aviation system.

This is because the relevance and weight given to any particular matter (or information) may vary, depending on the document that has been applied for and the level of involvement in the aviation system. It is entirely possible that a person may be fit and proper for one level of involvement in the civil aviation system, for example to hold a private pilot licence, but not fit and proper for a higher level of involvement in the system, such as holding a commercial pilot licence or a nominated postholder position.

### ***In Practice***

In practice determining the context involves considering:

- The type of aviation document being applied for;
- What the aviation document will allow the applicant to do – i.e. identify the privileges that would be conferred.

The holder of an aviation document is obliged to carry out their activities safely and in accordance with relevant prescribed safety standards and practices. Beyond this underlying obligation, you should consider:

- The responsibilities, duties, and functions applying to the document;
- The attitudes, attributes, or characteristics needed to perform the privileges and responsibilities appropriately, that is safely and lawfully;
- The skills, training and competence required;
- The applicant's current role or level of participation and their level of experience or familiarity with the civil aviation system.

**The term “fit and proper person” takes its meaning from its context, from the activities which the person is or will be engaged in and the ends to be served by those activities. Identifying the context within which an individual is to be assessed as fit and proper is therefore the first and primary step in undertaking the assessment.**

### ***Pre-Application FPP Determinations or Indication***

CAAF may be approached by individuals or organisations seeking a pre-application indication of whether they would be assessed as FPP.

CAAF Authorised Persons may provide general advice about the nature of information that the CAAF would take into account in making FPP decisions, but must not provide any personalised or individualised assessment in the absence of an application for an aviation document.

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### 3. Step 2 – Information Gathering & Assessing for Relevance

CAAF should consider the factors set out in this manual. CAAF Authorised Persons and the CAAF ECC conducting a FPP assessment must ensure that all criteria are addressed.

It is essential that all the information available to the CAAF is considered in the assessment, and that the recommendation is clearly and logically supported by the information that is used.

The primary pool of information for the assessment process will be obtained through the form completed by the applicant and any information arising from an interview (if one is required).

The CAAF is not limited to the factors set out in this manual but may consider any other relevant matters. It is unreasonable to attempt to establish a comprehensive list of all the items that could be considered. Case law does provide some insight into factors that may be relevant. Other factors that may be considered are the conduct and attitude of the person under review.

All assessments should be informed by:

- routine information, that the CAAF seeks in every case via the relevant CAAF form or interview process;
- additional information that may be sought from the applicant or a third party where there is cause to do so.

#### 3.0 Routine Information

The table below sets out the information that is routinely sought from an applicant:

<b>ASSESSMENT CRITERIA</b>	<b>INFORMATION SOURCE</b>
The person's compliance history with transport regulatory requirements.	CAAF internal business systems. Fiji Land Transport Authority Report. Ministry of Justice Report. Any other external source of information to assist the assessment.
The persons related experience (if any) within the transport industry.	Any known experience in the aviation, road, rail or marine industries.
The person's knowledge of the applicable civil aviation system regulatory requirements.	In addition to this FPP Test refer to the additional requirement for Nominated postholder Assessments in this manual.



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<p>Any history of physical or mental health or serious behavioural problems.</p>	<p>Current valid medical certificate. In submitted form; if yes to any questions refer to Controller and seek advice from the CAAF Medical Board of Assessors. The applicant should have provide all relevant supporting information. The advice from the CAAF Medical Board of Assessors may include seeking additional information from the applicant.</p>
<p>Conviction for any transport safety offence whether or not – (1) The conviction was in a Fiji court; or (2) The offence was committed before the commencement of the Act; Any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any rule made under this act.</p>	<p>CAAF internal business systems. Fiji Land Transport Authority Report. Ministry of Justice Report criminal history record. Transport offence history from all countries of residence for six consecutive months in the past 2 years. When this history cannot be obtained or may take a very long time to obtain, a Statuary Declaration may be required; in some cases a conditional FPP may be granted. Any other external source of information to assist the assessment including overseas information available. This provides wide scope for any type of information relevant to the FPP assessment to be used CAAF information (database) – including any enforcement records.</p>
<p>Any other relevant matter</p>	<p>Any other information that the CAAF sees as relevant, examples include;</p> <ul style="list-style-type: none"> <li>• Criminal records [in addition to transport regulatory requirements)], Ministry of Justice Reports, and</li> <li>• the person’s availability to discharge the obligations that relate to the assessment, especially if they hold multiple roles.</li> </ul>

Other information that is sought on a routine basis is whether the applicant, within the last 6 months to 5 years, has been charged with a criminal, traffic or other regulatory offence. The question is framed in this way so as to require the applicant to disclose any matter that they have been charged with, irrespective of the outcome (i.e. diversion, acquitted, withdrawn, discharged, convicted etc). The purpose of this is to enable CAAF Authorised Persons to explore a particular matter to determine relevance. The outcome of a particular matter will be relevant to the weighting of the information.

**3.2 Additional Information**

Even if the applicant is a first time applicant, CAAF Authorised Persons will check whether the applicant has under gone the FPP process.

CAAF records must be checked for all existing document holders and nominated postholder positions.

The purpose of checking the records is to ascertain the presence of any actions, participant notes or enforcement notes, which may be relevant to the detail sought via the



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CAAF FPP application form.

### 3.3 In Practice

#### *Review*

CAAF Authorised Persons will review the completed form and application to identify any issues. If the form has been completed and all necessary information supplied, CAAF Authorised Persons may proceed to determine if additional information is necessary and commence the assessment steps.

### 3.4 Gather Additional Information

Where the routine information indicates something that may be of concern, additional information can be sought from the applicant, or from a third party (including open source), either via the applicant, or relying on an authorisation from the applicant.

### 3.5 Assessment

Where **negative (no)** responses have been given to all questions on CAAF FPP form, and no relevant actions, participant notes or enforcement notes appear on the data base, CAAF Authorised Persons will continue the assessment. For the majority of applicants, the absence of any 'yes' answers at this stage is taken to mean that there is sufficient information on which to conduct the assessment.

Where any **positive (yes)** responses have been made to any of the questions on the CAAF FPP, or details obtained from CAAF records indicates that further processing is appropriate, CAAF Authorised Persons will apply an appropriate intervention e.g. request for further information, and refer the issue to the Controller.

### 3.6 Past suspension or revocation of an aviation document

If the CAAF has previously refused to issue or renew an aviation document, or any suspension or revocation is indicated in the CAAF form, the applicant's personal file will be referred to the relevant Controller. Each such application will be considered on its merits in accordance with these procedures and a decision made as to the appropriate action to follow, which may include a further referral to the CAAF ECC if no terms of reference is available. More Information about this is detailed in section 3.8.

### 3.7 Assessing Physical or Mental Health

Where an applicant discloses a history of physical or mental health or serious behavioural problems which are likely to affect their application, the case will be referred to the CAAF Medical Board of Assessors for appropriate investigation and decision. The applicant may be advised if the application is likely to be delayed while the investigation is carried out.

### 3.8 Traffic or Other Offence History or Details of Prosecution

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If the applicant discloses that they have previously been charged or convicted of an offence, additional information may be required from the Police (or the relevant prosecuting agency if it is not a Police matter). Such information may include the Summary of Facts for the charge(s), charge sheet(s), or other relevant documents produced by a court. The and the CAAF ECC and the CAAF Legal and Enforcement Manager (LEM) should be consulted before any request is made.

In some cases additional information can be sought from third party agencies if there is concern about an applicant's propensity to commit traffic or other offences that may not be disclosed on the routine information provided by the applicant. This includes information about unpaid court-imposed fines and traffic offences that do not attract demerit points.

Additional information can be sought, if it is necessary in a particular case:

**Fine Summary** - A Fine Summary shows all unpaid traffic fines older than eight weeks, and may demonstrate a poor attitude toward compliance or the law, and/or give an indication around the applicant's external financial commitments and pressures. A Fine Summary can be obtained via the Ministry of Justice.

**Traffic History Report** – a traffic history report will show all enforcement activities connected to a particular individual. For example, a traffic history will show all infringement notices issued to a person irrespective of whether they attract demerit points or not (unlike the Fiji LTA report). This report can be obtained via Police.



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### 3.9 Confidential Sources

The CAAF may receive information from confidential sources. This will be managed carefully. Two different scenarios exist:

- the information is received from an unknown source; or
- the information is received from a known source who has requested confidentiality or anonymity.

An assessor is entitled to consider and rely on information received from a confidential or anonymous source. If the identity of the submitter is known, the CAAF will use best endeavours to ensure the provided information is credible and, where possible, corroborated. If the CAAF considers information from a confidential source, the anonymity or confidentiality of the information may affect the weighting that he can place on the information. If it is proposed that confidential information be taken into account in making any decision the CAAF LEM and 3<sup>rd</sup> party legal advisor where appropriate, will be consulted.

### 3.10 Hearsay Statements

FPP assessments may receive and consider hearsay information; generally viewed as having been received from other people and which cannot be substantiated, or is in the nature of rumour. Hearsay information is best thought of as one person's report of another person's words, which is usually disallowed as evidence in a court of law. While this information may still be relevant to an assessment, the hearsay nature of the information will influence the weight that can be assigned to that information. The CAAF LEM and 3<sup>rd</sup> party legal advisor where appropriate, will be consulted.

### 3.11 Previous Non-Actioned Information

If information is identified that indicates a concern or problem, it does not matter that the CAAF has not previously acted on that information or evidence. In such a case the CAAF is not stopped from relying on that information at a later date, or as part of a fresh assessment. Any such information is likely to be relevant; a previous decision or omission to take action may, however, influence the weight to be attached to the information. CAAF Authorised Persons who identify information falling within this category will report the matter to their Controller and consult the CAAF LEM and 3<sup>rd</sup> party legal advisor where appropriate to identify any legal risks in relying on the information.

### 3.12 Nominated postholder Applicants

Special procedures apply to nominated postholder assessments.

The Certification Team Leader, or their delegate, will assess each nominated postholder against the FPP criteria using the evaluation tools available. This process includes:

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- checking the FPP application form for completeness, including required supporting documentation (CV, Police report, Fiji LTA reports etc.);
- checking nominated postholder for “Fit and Proper” status with CAAF Regulatory Enforcement and Compliance Committee as appropriate (for knowledge of any current CAAF regulatory actions);
- checking for appropriate qualifications and experience against the supplied CV;
- checking with the referees that the CV is accurate;
- interviewing the nominated postholder to ensure that they understand the requirements of their organisations, Exposition, their role in the organisation, and the Civil Aviation Act, ANRs, and Standards Documents applicable to the nominated postholder position being sought.

### 3.12 Nominated postholder Interview

A nominated postholder interview is recorded and should cover the following areas:

- the applicant’s qualification and experience for the role; and
- the applicant’s knowledge of their organisation, its activities, and its exposition; and
- the applicants knowledge of the duties and responsibilities of the role for which they have been nominated; and
- the applicant’s knowledge of applicable Acts, ANR and SD requirements; and
- the applicant’s knowledge of applicable standards and best practices; and
- the amount of time the applicant will be dedicating to their nominated postholder role, and discussions of any other commitments that might interfere in exercising their responsibilities; and
- where the applicant lives in relation to the location of the organisation’s operation, and any impact this may have on the applicant’s ability to fulfil their role effectively; and
- any issues raised during the review of the Nominated postholder application and associated documentation, including offence history; and
- the applicant’s attitude towards safety and compliance; and
- who will perform the duties of the role in times of absence; and
- where an applicant is nominated for multiple nominated postholder roles, the time resource available and any potential conflicts of interest (e.g. holding a QA role and a nominated post holder role), and
- what other commitments the nominated postholder has that may impact on their ability to fulfil their roles effectively with a particular focus on their aviation related commitments including the requirements of any other nominated postholder roles they hold in other organisations.

Where the person has been nominated as Accountable Manager, the following should also be addressed:

- the extent of their authority to make decisions for the organisation; and
  - the level of resources available to the organisation to conduct operations under the certificate, and their assessment of their adequacy.
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**Note:** Nominated postholder interviews are considered part of the “Assessment” Phase but may be conducted during the “Inspection and Demonstration” phase for convenience.

Interviews must be conducted in a structured manner with the objective of providing the applicant with the best opportunity to demonstrate that they are suitable for the role. The PEACE (Planning/Preparation, Engage/Explain, Account, Closure, and Evaluation) model (a structured interviewing technique) will be applied to achieve this objective and obtain sufficient information on which to base a decision. The interview will be digitally recorded and the applicant will be entitled to a copy of the recording.

### 3.14 Nominated postholder Assessment (Recertification)

The recertification of an organisation also includes a requirement for reassessment of nominated postholders’ FPP status and their continuing suitability to hold a nominated postholder position.

The FPP assessments must be conducted as if the applicant is entering the system for the first time. That is, the onus is on the applicant to satisfy the CAAF they are fit and proper. The fact that an applicant is already operating within the civil aviation system is relevant to the assessment process, but the assessment process must not assume that the person is fit and proper simply because they already hold a nominated postholder position.

The nominated postholder interviews for recertification should test the candidate’s knowledge of any rule and organisational changes since initial certification, their awareness of risk, and their attitude towards safety and compliance. Nominated postholders are required to submit appropriate forms on application for renewal.

### 3.15 Deputy Nominated postholder

An applicant who is seeking to be approved as a deputy nominated postholder – to step in to the shoes of a nominated postholder during times of absence or personnel change – must be subject of the regular nominated postholder assessment process.

#### ***Temporary/acting approval to hold a nominated postholder role***

CAAF Authorised Persons may approve a person to hold a nominated postholder role for a short term period to address situations such as absence of a previously approved nominated postholder for such reasons of leave, vacancy or temporary absence from Fiji. In general, this period should not exceed 4 weeks, but it is at the discretion of the appropriate operational manager to approve a longer period.

A person nominated to hold a nominated postholder role on a temporary basis must complete a standard FPP form. However, CAAF Authorised Persons may determine that they are not required to supply the Ministry of Justice report or LTA traffic history report. CAAF Authorised Persons may also determine that a full nominated postholder interview is not required; the temporary nature of the appointment will be part of the consideration when determining the depth and breadth of the assessment to demonstrate whether an

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individual can pass the fit and proper person test.

### 3.16 Referee Checks

A nominated postholder nominee may be asked to supply referees whom the CAAF may contact as part of the process of assessing their nomination.

Before any contact is made with a referee CAAF Authorised Persons should be satisfied that the referee's informed consent has been obtained from the applicant.

Where a referee is contacted CAAF Authorised Persons must advise the referee at the outset that anything that is said will be recorded and may be disclosed to the applicant. It may be appropriate to disclose to the referee information or answers provided to questions asked of the applicant in order to prompt the supply of information or to verify information given. CAAF Authorised Persons should exercise care in doing so.

All comments and information provided by a referee should be recorded, and are subject to disclosure. No representations should be made as to the confidentiality of statements or comments made by a referee. If a referee does not wish to provide information except on a confidential basis, advice should be sought from the CAAF Legal Services Unit before proceeding.

## 4. Interpreting the Information

There is no magic or mystery to interpreting information obtained for the purposes of an assessment.

Ultimately, this simply involves asking what the information means. While this overlaps both the relevance assessment and the weighting, it is about establishing what the information says about the person's likely conduct in future.

Interpreting the information is directed at establishing whether an applicant is likely to comply with the minimum requirements and standards of the civil aviation regulatory system and their legal, regulatory and professional obligations.

### 4.1 Nominated postholders

Nominated postholders play a critical role in the aviation safety system. In aviation, the failure of a key system during aircraft operation is likely to lead to catastrophic results.

Nominated postholders need to demonstrate an appropriate attitude to safety and compliance such that the CAAF can rely upon them to set, promote and model the high standards of safety expected from a nominated postholder in a certificated organisation.

Nominated postholders not only have to be FPPs but also must meet the requirements of the CAAF certification requirements; as such they are treated differently to other applicants for aviation documents because they play a critical role in the safety of a certificated

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organisation. Nominated post holders are a primary defence against safety failure.

When assessing whether a nominated postholder is fit and proper, in addition to the items identified above, particular focus is likely to be placed on:

- **Attitude to safety and compliance** - whether the applicant is suitable to influence, coach, mentor and manage employees and people working within the organisation.
- **Any evidence of dishonesty** – nominated postholders will be expected to accurately complete documentation and records, and maintain honesty in meeting regulatory safety requirements.

In some roles, such as the Accountable Manager, other considerations may include whether the applicant has sufficient financial literacy. This is because a Accountable Manager has an obligation to ensure that the organisation or entity is sufficiently resourced.

In practice CAAF Authorised Persons should assess whether the Accountable Manager nominee will be able to ensure that:

- a. the aviation activities carried out by the organisation can be financed; and
- b. those activities are carried out in accordance with the applicable Rule Part; and
- c. the organisation complies with the requirements of the applicable Rule Part. The applicant's past activities are likely to indicate their performance in these areas.

#### 4.2 Dealing with Charges, Convictions and Other Enforcement or Disciplinary Matters

The CAAF ECC will be interpreting information relating to convictions, charges and other enforcement activities or disciplinary matters.

##### 4.2.1 Charges

The FPP test is forward looking. Past behaviour is used as an indicator and predictor of future behaviour. Recidivist conduct and patterns of behaviour are particularly relevant to assessments as to likely future conduct.

Applicants are required to disclose the fact of being charged, irrespective of the ultimate outcome. There are a range of outcomes possible with any charge. The common outcomes are charged and withdrawn, diverted, convicted, discharged without conviction, charge dismissed, discharged, or acquitted.

Depending on the nature of the charge and the outcome of that charge, how this information will be interpreted is based on:

**The nature of the charge.** It may not always be immediately obvious as to what the nature of the charge is. For example, an assault charge may not on its face be incompatible with an applicant being granted an aviation document. However, on

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examination of the circumstances of the assault charge it might be established that the individual has an anger management problem or a problem with the use of alcohol or drugs.

**The context of the charge.** A charge in one context may be less relevant than another. For example, previous serious charges in a maritime or land transport safety setting are likely to be more relevant than a minor charge in an unrelated area. In such a case CAAF Authorised Persons are entitled to interpret information in different ways because one charge may be more likely to indicate relevant future conduct than another.

#### 4.2.2 Transport safety convictions

Previous good compliance with transport regulations are indicators of future aviation safety behaviours. The FPP criteria specifically refers to transport safety convictions.

A transport safety conviction means a conviction for an offence that is relevant to one of the various transport modes. This could include convictions for offences in a land transport setting, whether as a driver of a vehicle or a bike or in other industries such as rail. It also includes the maritime setting, and obviously the aviation sector.

Transport safety convictions may also include criminal offences with a transport component, such as endangering transport.

#### 4.2.3 Dishonesty convictions

Honesty and integrity are critical to aviation safety. The civil aviation system relies on its participants being responsible for meeting the statutory safety and security standards. The system also relies on self-reporting, particularly in the case of occurrence reporting and the disclosure of information to the CAAF that may be relevant to a person's medical certification and FPP status. The civil aviation system also relies heavily on the accurate completion and maintenance of documents and records.

Evidence of charges or convictions that involve dishonesty may disclose information that is relevant to assessing a person's credibility or propensity to dishonesty.

#### 4.3 Revocation, Suspension or Cancellation of Aviation Document

Under Regulation 151 of the Fiji ANRs If any person is convicted of a contravention under these Regulations; or fails to comply with any provision of these Regulations; or fails to comply with the conditions of any aviation document; CAAF may revoke, suspend, endorse, cancel or vary the aviation document relating to such contravention. The CAAF may only revoke, suspend, endorse, cancel or vary such aviation document if reasonable doubt exists as to the safety of the operation in question; and the aviation document holder has been given a reasonable opportunity to be heard after investigations, however notwithstanding this, CAAF may suspend any aviation document before investigations may only be utilized if suspension during investigation is necessary in the public interest. Immediately after the suspension before investigation, the Authority shall conduct an investigation into the matter and by the quickest possible time inform the aviation

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document holder of the results of such investigation. The CAAF shall inform the aviation holder in writing of the reasons for such revocation, suspension, endorsement, cancellation or variation.

## 5. Weighting the Information

In considering information that is deemed relevant to an applicant's proposed involvement in the civil aviation industry, due weight must be applied to each item of information. The weight applied to such information will apply both to its relevance and its seriousness in the context of the privileges of the aviation document sought or held.

The weight given to each factor depends on the circumstances of each case. However, certain factors have overriding importance. For example if the balance of consideration lies between public safety and the individual's right to earn a living, then public safety must override the individual interest.

A useful approach to weighting information is to consider and compare both favourable and unfavourable factors disclosed by the assessment to identify any facts that are outweighed by others. For example, while the favourable aspect of youth may diminish or excuse the severity of the past offending (due to immaturity) it may also diminish the ability of an applicant to argue that they now possesses the maturity to make informed and responsible decisions in the aviation sector.

The information that the CAAF relies upon to make the assessment must be reasonable, reliable and credible. However, the CAAF does not need to be convinced by evidence to the criminal law standard (i.e. beyond a reasonable doubt); the CAAF operates to at least "a balance of probabilities" standard, which means that he must be satisfied that something is more likely than not (i.e. the CAAF must be satisfied that there is greater than 50 percent chance that the proposition is true or that a particular matter occurred).

### 5.1 Patterns and trends

A single rule breach may carry less weight than a number of breaches. However, if the single breach is associated with a consistent pattern of inappropriate behaviour that is directly relevant to the exercise of the aviation privileges, then it should be given more prominence in the weighting of the factors.

A number of repeated incidents of misbehaviour or non-compliance carry more weight than only one such incident. However, if there is evidence of a pattern of seemingly individual, isolated and unrelated events, they may collectively carry a lot of weight.

Evidence of a persistent pattern of poor behaviour or an attitude that suggest unsafe practices may also be sufficient to outweigh other considerations, as this may support the inference that future conduct is unlikely to improve.

The application of the principles above must be underpinned at all times by the observance of the principles of natural justice.

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## 6. Making an Adverse Decision

### 6.1 General

When CAAF Authorised Persons consider the applicant not fit and proper then a recommendation to that effect will be passed to the CAAF Enforcement and Compliance Committee for consideration.

It is important that a delegation holder who recommends an adverse decision closely follows the procedures set down in this manual and all appropriate CAAF processes. The CAAF cannot delegate the power to revoke an aviation document. Before any CAAF Authorised Persons makes a recommendation of adverse decision they will discuss it with their peers/Section Head, and have it reviewed by the Controller, before it is presented to the CAAF ECC to deliberate and make its decision.

An individual's FPP status can be reviewed at any time. Normally this occurs if circumstances arise that bring into question the individual's continued FPP status. This could be occasioned by an accident, incident or other occurrence, or a combination of circumstances. Where it is suspected that an individual no longer satisfies the FPP criteria to hold or exercise the privileges of an aviation document, the CAAF or its Authorised Person will promptly initiate an investigation to ascertain the facts.

In all cases where an adverse decision is proposed (i.e. where a person has been assessed as not being fit and proper) the CAAF ECC will be requested to review the proposed decision and any correspondence notifying the individual of the proposed decision. Legal advice should be sought at any time it is proposed that the CAAF rely on adverse information, make an adverse decision or decline an application.

## 7. The Exercise of Discretion requires the Exercise of Good Judgement

Everything in this manual and its referenced documents will be considered in decision making.

Regulatory processes require delegated officers to make decisions as part of their routine duties and the legislation generally provides the lawful authority for regulatory decisions to be made. Regulatory decisions often include the exercise of discretion. Discretion provides the decision maker the power to choose whether to, or how to act.

The exercise of discretion requires good judgement. Good judgement is about good sense, prudence and knowing the boundaries or the freedom to act. It includes consideration of the impact on others, being reasonable and impartial, and reflects the purpose and scheme of the legislation.

For CAAF, the exercise of good judgement in discretionary decision making means acting consistently with the:

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- goal of a safe and secure civil aviation system,
- defined CAAF regulatory principles and approach
- Public interest is paramount.
- Participants are responsible for good safety management.
- Attitudes and behaviour of participants and all persons carrying out activities in the civil aviation system are key to effective safety performance
- the behaviour outlined in the core CAAF value “Good Judgement”;
- Uses rigorous logic and honest analysis to solve problems
- Makes well-reasoned evidence based decisions
- Does not make hasty assumptions
- Considers the implications of decisions and actions
- always aware of the effect of his/her actions on the Authority’s reputation

**7.0 Key Components**

To ensure good judgement is exercised when using discretion to make regulatory decisions, consider these key components:

The right person exercises the power	The decision maker; has the delegation to act or make the decision has appropriate experience, qualifications, competence and training to make the decision is clearly identifiable
Timeliness and Responsiveness	The decision maker; makes decisions in a timely manner acts quickly to address issues that involve a significant risk to public safety.
Follows statutory, administrative and CAAF procedures	The decision maker; follows statutory and administrative procedures, the overarching regulatory principles and the CAAF approach defined by the CAAF Regulatory Operating Model. follows any preliminary requirements defined prior to exercising discretion such as consultation with key people, which level of the organization and at what time, uses discretionary powers in good faith and for proper, intended and authorized purpose, does not act outside of their powers. No decision maker has an unfettered discretionary decision making power. exercises discretionary powers lawfully and consistently with law
Use information and evidence to establish fact	The decision maker; gathers necessary information and evidence to support facts. Evidence may be obtained from a variety of sources including applications, inquiries or investigation. reviews documents, seeks specialist advice where necessary, identifies any relevant equivalent standards where appropriate
Analysis and evaluation	The decision maker; ensures that decision making criteria are explicit, clear and transparent, applies a systems-based approach to analysis responses. Determine key/material facts. A key fact is defined as something whereby the existence or non-existence of the fact can affect the decision, weights evidence using a risk-based, proportionate methodology (e.g. adequate weight is given to significant



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	factors and excessive weight is not given to factors of relative insignificance )
Consider the standard of proof to be applied	The decision maker; considers the standard of proof to be applied ( generally this is “on the balance of probabilities”
Act reasonably , fairly and consistently without bias	The decision maker; acts reasonably, impartially, fairly, and without bias, prejudice and improper motive, acts independently and in the public interest, acts consistently with the principles of natural justice. Before taking certain action or making some decision, the decision makers may be required to provide procedural fairness to anyone who is likely to be adversely affected by the outcome, takes a similar approach to similar circumstances to achieve similar ends. Does not handle cases posing conflict of interest. Applies the values that the legislation and organization, promotes, professional values and the values of the agency. Bias is generally defined as whether a reasonable observer, aware of all the circumstances would think that the impartiality of the decision maker might be or might have been affected.
Consider the merits of the case and make a judgement	The decision maker; considers the matter primarily on its merits, may use polices, previous organizational decisions and court/tribunal decisions to guide decision making, must make the decision on some reasonable basis so decision making is transparent and participants can easily understand how the decision was reached. Ensures discretionary decisions are subjected to peer review prior to finalizing, ensures final judgements are well reasoned, evidence-based, and consider the circumstances of the situation. Proposes appropriate and proportionate outcomes consistent with the risks and potential for harm posed in any given situation
Communication (Informing participants, advising outcomes and providing reasons for the decision)	The decision maker keeps participants informed during the decision making process, gives adversely affected participants a fair opportunity to comment before making a final decision. Appropriateness and extent of consultation will depend on the facts of the case, advises participants of the outcome, provides participants with reasons for the decision reached, works to achieve enduring safety improvements by working collaboratively with participants to identify and address safety risks. This is without compromise to the CAAF’s role of protecting the public interest for aviation safety.
Document the process and the decision	The decision maker creates and maintains records of the decision making process and the final decision (eg the issues taken into account, why, the weight given to the evidence and the reasons for the decisions made.)





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**IF IN DOUBT SEEK LEGAL ADVICE BEFORE A DECISION IS MADE**

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