



# Regulatory Bulletin

## Regulatory decision-making

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**This Regulatory Bulletin outlines the principles and practices that form the Commission’s framework for making decisions relating to its regulatory functions. It outlines how the Commission will ensure high quality and consistent decision-making under the *Aged Care Quality and Safety Commission Act 2018* (the *Commission Act*), and *Aged Care Quality and Safety Commission Rules 2018* (Rules).**

### Key points

- The Commission’s framework for decision-making is underpinned by the legislative purpose and objectives of the Commission Act.
- In making decisions, decision-makers will interpret the Rules consistently with the Commission Act.
- Commission decision-makers are subject to requirements and limitations established by the Commission Act, Rules and general administrative law when making regulatory decisions.
- The Rules impose specific time limits within which a decision must be made for most regulatory decisions. Commission decision-makers may also be subject to an obligation to provide notification of a decision within a specified timeframe.
- The types of evidence that Commission decision-makers are required to consider when making decisions varies, depending on the decision being made. The starting point will always be what the legislation requires the Commission to consider.
- Commission decision-makers consider relevant information and evidence in making a decision, in good faith. They provide written reasons for their decision.
- Commission decision-makers provide procedural fairness to a provider that may be adversely affected by the decision.
- Providers may request reconsideration of certain regulatory decisions or seek review when a decision is made that has adversely affected them.



## In this Bulletin:

- Regulatory decision refers to a decision required to be made under the Commission Act and Rules which relates to the performance of the Commissioner's regulatory functions;
- Regulatory functions in relation to aged care services refers to accreditation, quality review and monitoring the quality of care and services provided by aged care providers;
- Aged care provider means the provider of a commencing or accredited residential aged care service, home care service, flexible care service through which short-term restorative care is provided in a residential care setting, home care setting or a combination of both and the provider of other Commonwealth-funded aged care services;
- Commission decision-maker means either the Commissioner or delegate responsible for making the decision;
- Decisions relating to the registration of Quality Assessors are not covered by this Bulletin. You can find out more about the Commission's Quality Assessor registration processes on the Commission's website; and
- Decisions relating to the Commissioner's complaints functions are not covered by this Bulletin. You can find out more about the Commission's complaints resolution functions on the Commission's website.

## Aged Care Quality and Safety Commission Rules 2018

**The Aged Care Quality and Safety Commissioner may delegate to a member of the staff of the Commission the Commissioner's functions or powers under the Commission Act and Rules.**

**Delegated decision-makers of the Commission make a range of statutory decisions under the Rules and general administrative law requirements.**

**The starting point for Commission regulatory decision-making will always be the legislation, which generally sets out requirements and guidance for exercising the power. For example, the Rules impose requirements to which Commission decision-makers must adhere, including consideration of certain matters, specific time limits for making decisions and the exercise of discretion in deciding whether to make a decision in some cases.**



## Frequently asked questions

### 1. Who has authority to make Commission decisions?

The Commissioner is expressly authorised by the Commission Act to exercise certain powers and functions. The sources of power for regulatory decisions relating to aged care services are found in the Commission Act and Rules.

To assist the Commissioner to fulfil the Commission's functions, the Commission Act provides that the Commissioner may delegate, in writing, all or any of the Commissioner's regulatory functions and powers to staff of the Commission. A written instrument of delegation is maintained by the Commission that authorises officers or positions to make decisions and the related category of decisions.

The document that records a decision will identify who made that decision and their authority to make the decision.

### 2. What types of regulatory decisions are made by the Commission?

There are different types of decisions made by the Commission. These include:

- Decisions to accredit/not to accredit a commencing service (Section 29);
- Decision to re-accredit /not to re-accredit a service following a site audit (Section 41);
- Decision on a service's further period of accreditation following a site audit (Section 41 (3)(a));

- Decision to revoke/not to revoke a service's accreditation following a site audit (Section 44);
- Decision following a quality review of a home service (Section 56 and 57);
- Decision following an assessment contact (Section 68);
- Decision to arrange a review audit of an accredited service (Section 70);
- Decision to revoke/not revoke a service's accreditation following a review audit (Section 77);
- Decision of failure to comply with the Quality Standards (Section 81, 84);
- Decision as to whether a failure to meet one or more of the Requirements of the Quality Standards has placed, or may place, the safety, health or well-being of a consumer or consumers at serious risk (Section 85 (2)); and
- Decision on the areas for improvement and setting a timetable for improvement (Sections 30, 42, 68, or 79).

Not all decisions are set out in the Rules. The Commission makes a range of other administrative decisions that affect providers of aged care services. Where the legislation does not specify the decision or particular matters that must be considered, Commission decision-makers review relevant information and evidence and apply a risk-based and proportionate approach consistent with the scope and purpose of the decision. In these circumstances, Commission decision-makers adhere to general administrative law principles and practices.



### 3. Is there a timeframe for the Commission decision-makers to make a regulatory decision?

The Rules impose specific time limits for a decision to be made for most regulatory decisions. In some instances, the Rules provide that a decision must be made 'as soon as practicable.' In addition to having to make a decision by a certain time, Commission decision-makers may also be subject to an obligation to provide notification of a decision within a specific timeframe. Where the Rules do not specify a time, Commission decision-makers may still be subject to time limits imposed by other legislation.

### 4. What do Commission decision-makers need to consider in making a regulatory decision?

The legislation that authorises a decision will usually define (and limit) the considerations that can be taken into account, and the purpose for which a decision can be made.

The types of evidence that Commission decision-makers are required to consider when making decisions vary, depending on which decision is being made. The starting point is always the legislation which often sets out requirements and guidance for exercising the power. What a decision-maker considers a 'relevant matter' will depend on the facts and circumstances of the specific case.

#### For example, when considering whether to re-accredit a service

The delegate is required to consider a range of matters including:

- The site audit report;
- The provider's response to the audit report;
- Any relevant information given to the Commissioner or the Assessment Team by a consumer or former consumer of the service, or a nominated representative;
- Any relevant information about the provider given by the Secretary of the Department of Health;
- Whether the Commissioner is satisfied that the provider will undertake continuous improvement in relation to the service; and
- Any other relevant matter.

Where the legislation does not specify particular matters that must be considered, Commission decision-makers review relevant information and evidence consistent with the scope and purpose of the decision. In these circumstances, Commission decision-makers adhere to general administrative law principles and practices.

These principles require Commission decision-makers to take into account all relevant considerations and not be guided by irrelevant considerations. Decisions must be reasonable and be made in good faith without actual or perceived bias.



## 5. How will procedural fairness be provided?

Before making a decision, Commission decision-makers provide procedural fairness to a provider that may be adversely affected by the decision. Procedural fairness is an administrative law requirement that allows an affected party to respond to adverse information before a final decision is made. A Commission decision-maker may have credible evidence of which the provider may not be aware. The decision-maker will draw this to the provider's attention and offer them an opportunity to provide further information or clarification.

Where a balance of evidence and information supports it, a Commission decision-maker may still make a final decision that adversely affects an aged care provider.

Commission decision-makers provide a written statement of reasons for their decision. This enables an aged care provider to understand the reasons, evidence and facts on which the decision-maker has relied.

## 6. What if I don't agree with a regulatory decision?

Some decisions of the Commission are subject to review. If an aged care provider wishes to seek review of a decision, mechanisms available include the Commission's internal reconsideration process or external review by the Administrative Appeals Tribunal, or Federal Courts or the Commonwealth Ombudsman.

More about the reconsideration and review processes can be found in the *Regulatory Bulletin Reconsideration of regulatory decisions* on the Commission's website.



## 7. What decisions are made public?

A range of decisions about the performance of services is published on the Commission's website. These include:

- Accreditation decisions for residential services (along with the audit report that informed the decision);
- Serious risk decisions in residential services; and
- Where applicable, findings of non-compliance and notifications of the date set for a timetable for improvement.

In addition, where the decision-maker has decided that a failure to meet the Quality Standards has placed or may place the safety, health or well-being of an aged care consumer of the service at serious risk, the Commission will publish this information on its website. This applies to all services and will be maintained in a central register for serious risk decisions made for that month. The publication will be updated monthly. Retired data will be available on an archive page.

Under the Rules, the Commission may consider making other performance information public. This includes whether it is in the public interest to do so.

## Need to know more?

If you have any questions contact the Commission's Regulatory Policy Team by email on:

**[Regulatorypolicy@agedcarequality.gov.au](mailto:Regulatorypolicy@agedcarequality.gov.au)**

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