



Regulatory Bulletin

Reconsideration of regulatory decisions

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This Regulatory Bulletin outlines how a provider can apply for reconsideration of a regulatory decision. It details the Commission’s process and responsibilities relating to its reconsideration of reviewable regulatory decisions.

Key points

- Specified regulatory decisions relating to accreditation of residential aged care services are reviewable.
- A provider can request reconsideration of a reviewable regulatory decision.
- The reconsideration request must be made in writing within 14 days of the provider being notified of the reviewable regulatory decision.
- The Commissioner or delegate reconsiders the original decision on its merits based on administrative law principles.
- The reconsideration decision-maker can take into account relevant information following the original decision. This could include evidence of improvements made, serious risk decisions or outcomes of an assessment activity at a service.
- The Commissioner or delegate does not have authority to reconsider regulatory decisions about:
 - non-compliance
 - serious risk
 - home services
 - National Aboriginal and Torres Strait Islander Flexible Aged Care Program services.
- The Commission publishes information relating to reconsideration decisions on the Commission’s website.



A provider is able to request reconsideration of certain regulatory decisions if dissatisfied with the decision. The Aged Care Quality and Safety Commission (Commission) may also reconsider a decision on its own initiative. Reconsideration of a decision must be made by a different Commission decision-maker than the one who made the original decision.

In this Bulletin:

- Provider refers to an approved provider of residential services;
- Residential service means both residential aged care services and flexible care services through which short-term restorative care is provided in a residential care setting;
- Reviewable regulatory decision means a regulatory decision about a residential service that can be reconsidered, namely a decision:
 - not to accredit a commencing service
 - not to re-accredit or revoke a service's accreditation, or
 - regarding a service's period of accreditation; and
- Decisions relating to the Commissioner's complaints functions are not addressed by this Bulletin. You can find out more about the Commission's complaints functions and review processes on the Commission's website.

Aged Care Quality and Safety Commission Rules 2018

The Aged Care Quality and Safety Commission Rules 2018 (Rules) require that if a provider requests reconsideration of a reviewable decision under section 99, the Commissioner must personally reconsider the decision or have it reconsidered by a delegate.

The reconsideration decision-maker must take into account certain relevant considerations as were required of the original decision-maker. These are set out under the Rules. They may also take into account other relevant considerations, such as new evidence about an approved provider's performance.

When the Commissioner or delegate makes a reconsideration decision, the Rules require the Commission to give the provider of the service written notice of the decision and reasons for the decision. The Commission is also required to notify the Department of Health about the decision and to publish the decision on the Commission's website.



Frequently asked questions

1. Which Commission decisions can be reconsidered?

Under section 99 of the Rules, the following regulatory decisions relating to residential services can be reconsidered:

Decision type	Rules section
Decision not to accredit a commencing service	29
Decision not to re-accredit a service following a site audit	41
Decision regarding a service's further period of accreditation following a site audit	41(3)(a)
Decision to revoke a service's accreditation following a site audit or a review audit	44 or 77
Decision to vary a service's period of accreditation following a review audit	77(4)(a)

2. Which Commission decisions cannot be reconsidered?

Only the regulatory decisions specified under section 99 of the Rules can be reconsidered.

An earlier preliminary decision leading to a reviewable regulatory decision cannot be reconsidered. For example, findings of non-compliance are not able to be revisited in making a reconsideration decision about a service's further period of accreditation. However, the reconsideration decision-maker can consider evidence relevant to the preliminary decision that is also relevant to the reviewable decision.

The Commissioner has no authority to reconsider decisions about serious risk to the safety, health or well-being of an aged care consumer.



3. When and how should a provider request reconsideration?

A provider must make a request for reconsideration of a regulatory decision within **14 days** of receiving notification of the decision.

The request must be in writing and include reasons for the request.

Applications for reconsideration are to be submitted using one of the following:

Email:

reconsideration@agedcarequality.gov.au

Please use 'Director Regulatory Policy – Urgent request for reconsideration' in the email subject line.

Mail:

Attn: Director Regulatory Policy
Urgent Request for Reconsideration
Aged Care Quality and Safety Commission
PO Box 773
PARRAMATTA NSW 2124

The Commission has developed an application form to assist providers with the reconsideration application process. Download the application for reconsideration form [here](#).

4. Are there other circumstances when a decision can be reconsidered?

The Commissioner or delegate may reconsider a reviewable regulatory decision 'on their own initiative' if satisfied there is sufficient reason to do so.

If the Commissioner or delegate decides to reconsider a decision on their own initiative, the approved provider will be notified in writing.

5. Who makes the reconsideration decision?

It is Commission policy that a delegate of the Commissioner generally makes the reconsideration decision. An Instrument of Delegations specifies the level of responsible decision-maker.

There may be times when the Commissioner makes the reconsideration decision.

In making the reconsideration decision, the Commissioner or delegate must not have been involved in making the original decision, and must occupy a position that is at least the same level as that occupied by the original decision-maker.



6. How long will the Commission take to reconsider the decision?

Decision type under reconsideration	Maximum time for reconsideration (after receiving the request for reconsideration)
Decision not to accredit a commencing service	56 days
Decision not to re-accredit a service following a site audit	56 days
Decision to revoke a service's accreditation following a site audit or a review audit.	56 days
Decision regarding a service's further period of accreditation following a site audit.	14 days
Decision to vary a service's accreditation following a review audit	14 days

7. What does the Commission take into account in making the reconsideration decision?

The Commissioner or delegate undertakes a merits review of the original decision. This is to determine the correct or preferable decision. They approach the decision-making process and relevant evidence with 'fresh eyes'. This means they are not influenced by the original decision and review all evidence anew.

In making the reconsideration decision, the Commissioner or delegate takes into account evidence the original decision-maker was required to consider under the Rules. For example, if a request has been received to reconsider a decision made under section 29 of the Rules not to accredit a commencing service, the Commissioner or delegate must consider the matters set out in section 29 of the Rules.

They may also take into account other relevant matters. This is not limited to the evidence available to the original decision-maker and could include:

- More recent relevant information since the time of the original decision, such as:
 - evidence of improvements made
 - the outcome of an assessment activity at the service, such as an assessment contact
 - information about facts or circumstances that occurred before the original decision where evidence has only become available since the decision
 - serious risk decisions, and
- Evidence about a provider's performance more generally, such as findings of non-compliance in relating to other services operated by the provider.

The reconsideration decision-maker may decide to arrange for a review audit of a service in response to a request for a reconsideration. This may occur:

- Following a request from the provider for a review audit;
- If the Commissioner or delegate considers they require further information to make the reconsideration decision; or
- Even where the original decision followed a review audit.



8. What are the outcomes of the reconsideration?

The Commissioner or delegate can:

Affirm the decision

This may be for different reasons from those applying to the original decision.

Vary the decision

This may be a different period of accreditation following a request to reconsider an accreditation period, or a later revocation date in relation to revocation of accreditation.

Set aside the decision and make a substitute decision

For example, If there has been a decision not to re-accredit a service, this decision can be set aside, and a substitute decision made to re-accredit the service.

The reconsideration decision is treated as though it were the original decision, except it cannot be further reconsidered by the Commission. The provider may apply to the Administrative Appeals Tribunal (see below).

In making the reconsideration decision, the Commissioner or delegate may need to exercise further functions or powers. For example, if a decision to not re-accredit a service is substituted on reconsideration with a decision to re-accredit it, the Commissioner or delegate must also decide as part of the reconsideration a further period of accreditation, any areas for improvement, and assessment contact arrangements.

9. What other review options are available to a provider?

A provider can apply to the Administrative Appeals Tribunal (AAT) under section 103 of the Rules for review of the reconsideration decision.

There is a time limit in which to apply for an AAT review. Application fees are payable in the AAT. More information about the AAT, timeframes and fees can be found on its website.

There is also scope to seek judicial review of the decision under the *Administrative Decisions (Judicial Review) Act 1977*.

Providers should obtain separate advice about their review options.

10. Can home services request reconsideration of regulatory decisions?

No. There are no reconsiderations for regulatory decisions relating to home services and National Aboriginal and Torres Strait Islander Flexible Aged Care Program services.



11. Why does the Commission publish information regarding reconsideration decisions?

The Commission is required under the Rules to publish on its website the reconsideration decision, and any site audit report or review audit report considered in making the decision. This is to be published within **28 days** of the reconsideration decision being made.

If a provider applies to the AAT for review of the reconsideration decision, the Commissioner is required to publish on the Commission's website a notice stating that the reconsideration decision is subject to review by the AAT.

Once the AAT makes a decision on the review application, the Commissioner must publish the AAT decision on the Commission's website within **28 days**.

The Commission does not publish personal information such as consumer details, that relate to the reconsideration decision.

12. Is the Department of Health notified of the reconsideration decision?

The Commissioner is required to notify the Department of Health when a reconsideration decision is made.

Need to know more?

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

Regulatorypolicy@agedcarequality.gov.au

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