



Procedural fairness and worker regulation

A fact sheet for aged care workers and governing persons

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agedcarequality.gov.au

The [Code of Conduct for Aged Care](#) (the Code) describes the behaviours expected of people who provide aged care.

The Code applies to approved providers of residential aged care, home care and flexible care, their aged care workers and governing persons who are employed or volunteer with them, including contractors or subcontractors.

The Code includes [8 elements which cover a range of behaviours](#). The aim of the Code is to ensure that older Australians receive high-quality and safe aged care.

The provider you work or volunteer for should have education and training options available for you to learn more about your responsibilities under the Code. If you have not received education and training on the Code, speak to your employer. You can also contact the Aged Care Quality and Safety Commission or your union for information on the Code.

What is procedural fairness?

As the national aged care regulator, the Aged Care Quality and Safety Commission can take action when behaviour is not consistent with the Code. We can also make decisions about whether a person is suitable to provide aged care.

When we do take action, our processes and decisions need to be fair and appropriate. This is called procedural fairness.

How is procedural fairness applied?

To ensure our procedures are fair, we follow 3 main rules when making regulatory decisions:

- 1. The hearing rule** means we'll give someone affected by our decision the chance to respond to any negative information. The person will have a reasonable time to respond before we make a final decision.
- 2. The bias rule** means we must be independent. Our staff should have no personal interest or bias in cases they are making decisions about.
- 3. The evidence rule** means we will make logical decisions based on evidence.

As well as following these rules, we adapt our procedures to the specific circumstances of each decision we need to make.

The circumstances we may consider include:

- the nature of the issue
- our options for resolving or responding to the issue

- the timeframe we have to make and share our decisions
- any disagreement about the facts
- the nature and possible consequences of our decision
- the relevant laws.

We will apply procedural fairness from beginning to end for any regulatory decisions we make. You can also expect your employer to be fair when they investigate or document any Code-related matters in their service. You have a right to representation of your choosing if you are involved in or subject to an investigation under the Code.

How does procedural fairness apply to decisions related to worker regulation?

We can take action where people don't behave in a way that is consistent with the Code.

We can take action against approved providers or people, including a worker or governing person.

In severe cases that breach the Code, we can ban people from working in aged care. When we take action, we provide procedural fairness. This means we will:

- take reasonable steps to ensure the person is aware of, and understands the concerns
- give the person a chance to ask us questions and provide us with information
- give the person the opportunity to respond to any negative information about them within a specified timeframe. We will consider their response when making our decision
- request information or discuss issues with affected people to establish the facts.

If you would like to have an interpreter with you at any stage of this process, speak to your employer or union representative to assist you in arranging an interpreter.

Are there times when safety comes before procedural fairness?

Our role is to protect and improve the safety, health, wellbeing and quality of life of people who receive aged care.

This means we must balance our need to be fair with the risk to care recipients. If we believe there is an immediate and severe risk, we can take action without giving notice or an opportunity to respond.

However, certain decisions we make are reviewable. This means that the person receiving that decision can ask for the decision to be reviewed.

What if you think appropriate procedural fairness hasn't been applied?

If you believe that you haven't been given appropriate procedural fairness, you can raise this with us.

For example, our decision to apply a banning order is a reviewable decision. This means that if you're banned and you disagree with that decision, you can ask for the decision to be reviewed.

For more information about the review process, read the [Regulatory Bulletin: Reconsideration of reviewable decisions \(RB 2021-12\)](#).

More information

For more information about procedural fairness, please read our [Regulatory Bulletin on Procedural Fairness \(RB 2023-21\)](#).

Example of appropriate procedural fairness – the evidence rule

The Commission received a complaint from a care recipient's daughter about her father's home care worker. The daughter alleged the worker's conduct was not in line with Element E of the Code (act with integrity, honesty and transparency).

The information provided by the daughter was concerning so we decided to investigate.

We spoke with the worker to let them know about the allegations and let them know they could provide a response to us. We also investigated the worker's conduct. This included speaking to:

- the provider about their worker's compliance with the Code
- the care recipient and his daughter.

The evidence we collected informed our response.

We found that while the worker hadn't complied with the Code, the risk to care recipients was not severe.

We spoke with the worker and issued them with a caution letter, telling them that they had breached the Code and that they needed to take action to change their behaviour.

Example of appropriate procedural fairness – the hearing rule

The Commission investigated the conduct of a residential aged care worker and formed a belief that they had not been complying with Element D of the Code (provide care, supports and services in a safe and competent manner, with care and skill).

Based on the level and nature of risk, we considered banning this worker from providing aged care.

Before making a final decision, we spoke with the worker and told them in writing:

- why we were considering banning them and the information we had about their conduct
- that they were invited to tell us their side of the story within 14 days, which we would consider before making a decision.

After considering all of the information including what the worker told us, we decided to make a banning order against the worker.



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