



# Procedural fairness and the Aged Care Code of Conduct

A fact sheet for registered providers, aged care workers and responsible persons



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

The Aged Care Quality and Safety Commission (the Commission) is responsible for monitoring compliance with the Code under the *Aged Care Act 2024* (the Act).

The Code describes 8 behaviour statements (requirements) that registered providers, aged care workers and responsible persons must act in line with. The aim of the Code is to make sure that older people accessing funded aged care services receive safe and quality care.

Your registered provider should have education and training options available for you to learn more about your obligations under the Code. If you have not received education and training on the Code, speak to your registered provider. You can also contact the Commission or your union for information on the Code.

## What is procedural fairness?

As the national aged care regulator, the Commission can take action when registered providers, aged care workers or responsible persons do not act in line with the Code. We can also make decisions about whether a person is suitable to provide aged care.

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

- the timeframe we have to make and share our decisions
- any disagreement about the facts
- the nature and possible consequences of our decisions or determinations
- reconsiderations and reviews of reviewable decisions.

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

## How does procedural fairness apply to decisions about the Aged Care Code of Conduct?

We can take action when registered providers, aged care workers or responsible persons behave in a way that is not in line with the Code.

In severe cases that breach the Code, we can ban a registered provider, aged care worker or responsible person from delivering certain types of funded aged care or funded aged care in general. We will notify a registered provider, responsible person, or aged care worker and invite their response before deciding to make a banning order. Unless the Act authorises us not to apply procedural fairness, we will:

- take reasonable steps to make sure they are aware of and understand the concerns
- give them a chance to ask us questions and provide us with information
- give them the opportunity to respond to any negative information within a specified timeframe. We will consider this 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 registered provider or union representative to assist you in arranging an interpreter.

## Are there times when safety comes before procedural fairness?

Our role is to make sure older people get safe, quality care that is delivered in a way that upholds their rights. This means we must balance our need to be fair with the risk to older people accessing funded aged care services. If we believe there is an immediate and severe risk, we can take action before giving notice or an opportunity to respond.

## What is a reviewable decision?

As part of our legislative requirement to provide procedural fairness, many decisions we make as part of our functions under the Act are reviewable. This means that the person receiving that decision can ask for the decision to be reconsidered by us.

If you request reconsideration of a decision and you are still not satisfied with the outcome, you may be able to seek an external review of the decision with the Administrative Review Tribunal.

## What can you do 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 make a banning order is a reviewable decision under the Act. This means that if you have a banning order made against you and you disagree with that decision, you may request for the decision to be reconsidered. You may also apply to have the banning order varied or revoked at any time.

However, the banning order will remain in force unless a decision to change the banning order is made.

## Example of procedural fairness – Element E

The Commission received a complaint from an older person's daughter about her father's Support at Home 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 look into the matter further.

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 looked into the worker's conduct. This included speaking to:

- the registered provider about the worker's compliance with the Code and to assess the provider's role and obligations in relation to the worker.
- the older person 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 older people accessing aged care was not severe.

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

## Example of procedural fairness – Element D

The Commission received information about the conduct of an aged care worker. After considering the information, we found that they had not complied with Element D of the Code (deliver funded aged care 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 delivering funded aged care services. 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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### Write

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