



Regulatory Bulletin

Reconsideration of reviewable decisions

RB 2021-12

This Regulatory Bulletin outlines how an affected or interested person can apply for reconsideration of certain decisions made by the Aged Care Quality and Safety Commission (Commission). It details the Commission's process and responsibilities relating to its reconsideration of reviewable decisions under Part 8B of the *Aged Care Quality and Safety Commission Act 2018* (Commission Act), and complaints reviewable decisions and regulatory reviewable decisions under Part 7 of the *Aged Care Quality and Safety Commission Rules 2018* (Commission Rules).

Key points

- A person can request reconsideration of certain decisions made by the Commission.
- The reconsideration request must be made within a specified timeframe of the person being notified of the reviewable decision.
- The decision-maker 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 including all relevant information or evidence up to the time of the reconsideration decision.
- The Commission publishes information relating to certain reconsideration decisions on the [Commission website](#).



Reconsideration of reviewable decisions

Bulletin number: RB 2021-12

Version number: 2.1

Document number: FRM-ACC-0677

Publication date: 1 June 2023

Replaces: 2021-12 v2.0 published 9 March 2022

Information in this bulletin applies to:

- Reconsideration of reviewable decisions under Part 8B of the *Aged Care Quality and Safety Commission Act 2018*
- Reconsideration of complaints reviewable decisions and regulatory reviewable decisions under Part 7 of the *Aged Care Quality and Safety Commission Rules 2018*

Attachment: N/A

Notes: Update to Table A to include reconsideration of decisions in relation to national aged care reforms under the *Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022*.

To be reviewed: 1 June 2024



Reconsideration of reviewable decisions

An affected or interested person is able to request reconsideration of certain decisions if they are dissatisfied with the decision. The Commission may also reconsider a decision on its own initiative. Reconsideration of a decision must be made by a Commission decision-maker who was not involved in making the original decision, and who occupies a position that is at least the same level as that occupied by the person who made the decision.

In this Bulletin:

- **Decision-maker** is a reference to the Aged Care Quality and Safety Commissioner (Commissioner) or their delegate.
- **Person** is a reference to an affected or interested person specified in Table A, B and C of this bulletin.
- **Reviewable decision** is a reference to a reviewable decision under section 74J of the Commission Act, or a complaints reviewable decision or regulatory reviewable decision under section 98 of the Commission Rules (as applicable).
- **Reconsideration decision** means a decision of the Commissioner or a delegate of the Commissioner (delegate) under section 74L or section 74M of the Commission Act or section 100, section 101 or section 102 of the Commission Rules.

Refer to the [Commission's glossary](#) for definitions of key terms.



Aged Care Quality and Safety Commission Act 2018 and Aged Care Quality and Safety Commission Rules 2018

The Commission Act (Part 8B, Division 2) requires that if a person requests reconsideration of a reviewable decision, the Commissioner must personally reconsider the decision or have it reconsidered by a delegate.

The Commission Rules (Part 7, Division 2) require that if a person requests reconsideration of a complaints reviewable decision or a regulatory reviewable decision, 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 Commission Act and Commission Rules.

The decision-maker is also able to reconsider, on their own initiative, reviewable decisions under the Commission Act and regulatory reviewable decisions under the Commission Rules, if the decision-maker is satisfied there is sufficient reason to do so.

When the decision-maker makes a reconsideration decision, the Commission Act or Commission Rules requires the Commission to give to the person written notice of the decision and the reasons for the decision. For a reviewable decision under the Commission Act or a regulatory reviewable decision under the Commission Rules, the Commissioner or the delegate must also give written notice to the Secretary of the Department of Health and Aged Care (Secretary).

Reconsideration decisions made in relation to regulatory reviewable decisions under the Commission Rules must be published on the Commission website. Reconsideration decisions made in relation to reviewable decisions under the Commission Act may be published on the Commission website under sections 59(1)(h) and 59A(1)(g) of the Commission Act.



Reviewable decisions under the Commission Act

The Commission Act allows a person referred to in column 2 of Table A to request the Commissioner to reconsider a reviewable decision of the type referred to in the corresponding row at column 1.

Table A: Reviewable decisions

Reviewable decision under the Commission Act	Affected person
A decision under section 63D not to approve a person or body as a provider of aged care	The person or body
A decision under section 63H not to revoke the approval of an approved provider	The approved provider
A decision under section 63J to revoke the approval of a person or body as a provider of aged care	A person whose interests are affected by the decision
A decision under section 63N to impose a sanction on a person or body	A person whose interests are affected by the decision
A decision under section 63X not to lift a sanction imposed on an approved provider under section 63N	A person whose interests are affected by the decision
A decision under section 74EE to give a compliance notice to an approved provider	A person whose interests are affected by the decision
A decision under section 74GB to make a banning order against an individual	The individual
A decision under section 74GF to vary a banning order made against an individual	The individual
A decision under section 74GG not to vary or revoke a banning order made against an individual	The individual
A decision under section 74GH not to vary or revoke a condition to which a banning order against an individual is subject	The individual
A decision under section 74GH to specify one or more new conditions to which a banning order against an individual is subject	The individual
A decision to make a determination under subsection 10A-2(1) of the Aged Care Act in relation to an individual who is one of the key personnel of an approved provider	The individual or approved provider



Reviewable decision under the Commission Act	Affected person
A decision not to make a determination under subsection 63-1E(3) of the Aged Care Act in relation to an approved provider	The approved provider
A decision under subsection 63-1F(1) of the Aged Care Act to vary or revoke a determination made under subsection 63-1E(3) in relation to an approved provider	The approved provider

Requesting reconsideration of a reviewable decision

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

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

Providers should attach a copy of all the information they want considered by the decision-maker.

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

Email:

reconsideration@agedcarequality.gov.au

Please use 'Director Reviews and Reconsiderations – Urgent request for reconsideration' in the email subject line.

Mail:

Attn: Director Reviews and Reconsideration
Urgent Request for Reconsideration
Aged Care Quality and Safety Commission
GPO Box 9819, Brisbane QLD 4001



Complaints reviewable decision under the Commission Rules

The Commission Rules allows a person referred to in column 2 of Table B to request the Commissioner to reconsider a complaints reviewable decision of the type referred to in the corresponding row at column 1.

Table B: Complaints reviewable decisions

Complaints reviewable decision under the Commission Rules	Interested person
A decision under section 14 to take no further action in relation to an issue raised in a complaint (other than a complaint that has been withdrawn under section 12)	The complainant
A decision under section 17 to end a resolution process in relation to an issue raised in a complaint (other than a complaint that has been withdrawn under section 12)	Both of the following: (a) the complainant; (b) the relevant provider for the issue.

Requesting reconsideration of a complaints reviewable decision

A request for reconsideration of a complaints reviewable decision must be made within **42 days** of receiving notification of the decision.

The request may be **made in writing or orally** and must include the reasons for the request.

Applicants should provide as part of their application all the information they want considered by the decision-maker and specify the complaint issue/s related to the decision/s they are seeking to be reconsidered.

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

Email:

complaintsreviews@agedcarequality.gov.au

Please use 'Director Reviews and Reconsiderations – Urgent request for reconsideration' in the email subject line.

Mail:

Attn: Director Reviews and Reconsideration
Urgent Request for Reconsideration
Aged Care Quality and Safety Commission
GPO Box 9819, Brisbane QLD 4001

Phone:

1800 500 294



Regulatory reviewable decision under the Commission Rules

The Commission Rules allows a person referred to in column 2 of Table C to request the Commissioner to reconsider a reviewable decision of the type referred to in the corresponding row at column 1.

Table C: Regulatory reviewable decisions

Regulatory reviewable decision under the Commission Rules	Interested person
A decision under section 29 not to accredit a commencing service	The approved provider of the service
A decision under section 29 not to re-accredit a recommencing service	The approved provider of the service
A decision under subsection 41(1) not to re-accredit a residential service	The approved provider of the service
A decision under subsection 41(3) on the further period for which a residential service is to be accredited	The approved provider of the service
A decision under subsection 44(1) or 77(1) to revoke the accreditation of an accredited service	The approved provider of the service
A decision under subsection 44(2) or 77(3) regarding the day revocation of accreditation is to take effect	The approved provider of the service
A decision under subsection 77(4) to vary an accredited service's period of accreditation	The approved provider of the service
A decision under subsection 90(3) to refuse to register a person as a quality assessor	The person
A decision under subsection 92(3) to refuse to register a person as a quality assessor for a further period	The person
A decision under subsection 94(3) to cancel a person's registration as a quality assessor	The person



Requesting reconsideration of a regulatory reviewable decision

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

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

Providers/relevant persons should attach a copy of all the information they want considered by the decision-maker.

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

Email:

reconsideration@agedcarequality.gov.au

Please use 'Director Reviews and Reconsiderations – Urgent request for reconsideration' in the email subject line.

Mail:

Attn: Director Reviews and Reconsideration
Urgent Request for Reconsideration
Aged Care Quality and Safety Commission
GPO Box 9819, Brisbane QLD 4001

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

Reconsideration on own initiative

The decision-maker may reconsider certain reviewable decisions 'on their own initiative' if satisfied there is sufficient reason to do so.

The following decisions may be reconsidered on own initiative:

- reviewable decisions under the Commission Act specified in Table A
- regulatory reviewable decisions under the Commission Rules specified in Table C.

The decision-maker must decide that there is a sufficient reason to reconsider a reviewable decision. Whether there will be a sufficient reason will depend on the specific facts and circumstances of the case and may not be the same in all cases.

The decision-maker has considerable discretion in reaching the necessary threshold of "satisfaction" of a sufficient reason.

Examples of what may constitute a sufficient reason include:

- the availability of fresh evidence not available to the original decision-maker
- a change to the relevant legislative framework shortly after the decision was made
- a new court or tribunal decision on a provision relevant to reconsideration in the Commission Act or Commission Rules
- a misapplication or misinterpretation of the law by the original decision-maker.



A sufficient reason may also exist in circumstances where the Commission Act or Commission Rules have resulted in a decision that unexpectedly adversely affects a person.

Reconsideration on own initiative can occur at any time after the original decision is made.

If the decision-maker decides to reconsider a decision on their own initiative, the person to whom the decision relates to will be notified in writing.

Complaints reviewable decisions are not open to reconsideration on 'own initiative'.

Relevant considerations

Reconsideration enables the decision-maker to engage in merits review of the original decision. Put simply, merits review is where the decision-maker steps into the shoes of the original decision-maker, using the same law and policy to come to their own decision. They are not influenced by the original decision and review all evidence anew including all relevant information or evidence up to the time of the reconsideration decision.

This is to determine whether the decision under review is the correct or preferable decision.

In making the reconsideration decision, the decision-maker takes into account evidence the original decision-maker was required to consider under the Commission Act or Commission Rules. For example, if a request has been received to reconsider a decision made under section 63D of the Commission Act not to approve a person or body as a provider of aged care, the decision-maker must consider the matters set out in section 63D of the Commission Act.

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:

- relevant material or information that was not available to or considered by the original decision-maker, for example, information provided to the Commissioner by the Secretary
- information about facts and circumstances that occurred before the original decision, where evidence has only become available since the decision, for example, an email from a consumer about care they received
- evidence of facts and circumstances as they exist at the time of making the reconsideration decision, for example conduct or improvement activity engaged in by an approved provider after the reviewable decision was made
- information from another regulatory activity carried out after the reviewable decision was originally made.

In applying for reconsideration, a provider or a person should include in their application all the information they want considered by the decision-maker including any information that may address the relevant considerations mentioned above.



Decision on review

For reviewable decisions under the Commission Act or a regulatory reviewable decision under the Commission Rules, the decision-maker can:

- **Affirm the decision** – this may be for different reasons from those applying to the original decision.
- **Vary the decision** – for example, 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 to revoke the approval of a person or body as a provider of aged care, this decision can be set aside and a substitute decision made to not revoke the approval of the person or body as a provider of aged care.

For complaints reviewable decision under the Commission Rules, the decision-maker can:

- **Affirm the decision** – this may be for different reasons from those applying to the original decision.
- **Set aside the decision and decide to undertake a resolution process (the new resolution process)** – the decision to undertake the new resolution process is made under Part 2 of the Commission Rules and must be in relation to an issue defined in the complaint to which the complaints reviewable decision relates.

The reconsideration decision is treated as though it were the original decision, except it cannot be further reconsidered by the Commission.

In making the reconsideration decision, the decision-maker 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 decision-maker must also decide as part of the reconsideration a further period of accreditation.

Reconsideration decision timeframe

Reviewable decision under the Commission Act

If the decision-maker does not give written notice of the reconsideration decision to the affected person within **90 days after receiving the person's request**, the Commissioner or the delegate is taken to have affirmed the reviewable decision under section 74L(4) of the Commission Act.

Complaints reviewable decision under the Commission Rules

The decision-maker must make a reconsideration decision and give the interested person written notice of that decision and the reasons for the decision within **56 days after receiving the request for reconsideration**.

If the decision-maker decides to undertake the new resolution process, that process **must be completed within 126 days** after the request was received; that period may be **extended by a further 14 days**.



Regulatory reviewable decision under the Commission Rules

The decision-maker must make a reconsideration decision and give the interested person written notice of that decision and the reasons for the decision within **56 days after receiving a request for reconsideration** where the reviewable decision is a decision:

- not to accredit a commencing service
- not to re-accredit a recommencing service, if a request is made under section 99 of the Commission Rules
- not to re-accredit a residential service
- to revoke an accredited service's accreditation under subsection 44(1).

The decision-maker must make a reconsideration decision and give the interested person written notice of that decision and the reasons for the decision within **28 days after receiving a request for reconsideration** where the reviewable decision is a decision:

- not to re-accredit a recommencing service, if an internal reviewer decides to reconsider the decision under section 102 of the Commission Rules
- on the further period for which a residential service is to be accredited
- on the day revocation of accreditation is to take effect under subsection 44(2) of the Commission Rules
- to revoke the accreditation of an accredited service under subsection 77(1) of the Commission Rules
- on the day revocation of accreditation is to take effect under subsection 77(3) of the Commission Rules

- to vary an accredited service's period of accreditation
- to refuse to register a person as a quality assessor
- to refuse to register a person as a quality assessor for a further period
- to cancel a person's registration as a quality assessor.

Frequently asked questions

1. Which Commission decisions cannot be reconsidered?

Only the regulatory decisions specified under section 74J of the Commission Act and section 98 of the Commission Rules can be reconsidered; these are the decisions outlined in Tables A, B and C above.

The Commission is unable to 'go behind' the reviewable decision and reconsider earlier, preliminary findings on which the reviewable decision was based. However, the reconsideration decision-maker can consider evidence relevant to the preliminary findings that is also relevant to the reviewable decision.

An example of preliminary findings that are not reviewable decisions are the Commission's findings in a performance report about compliance with the Aged Care Quality Standards (Quality Standards) following a review audit. While information or evidence supporting the findings might be relevant to the reconsideration of a decision to revoke accreditation which is a reviewable decision, the Commission is unable to reconsider the compliance findings.



2. Who makes the reconsideration decision?

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

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

In making the reconsideration decision, the decision-maker 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.

3. When does a reconsideration decision take effect?

Reviewable decision under the Commission Act

In making a reconsideration decision under sections 74L or 74M of the Commission Act, the decision-maker must also give written notice of the date that the decision takes effect.

Regulatory reviewable decision under the Commission Rules

If the decision-maker varies or substitutes the reviewable decision, the reconsideration decision will, for all purposes other than the purposes of section 98 of the Commission Rules and the relevant definition¹, be taken to have been made under the provision under which the reviewable decision was made.

This means that the reconsideration decision will be treated as though it was the original decision, except it will not be a reviewable decision that can be reconsidered again.

In being treated in the same way as the original decision, the reconsideration decision may also give rise to a need to exercise further powers or functions, including making further decisions, under the Commission Rules. For example, if the decision-maker:

- decides to set aside an original decision not to accredit a commencing service and decides to accredit the service, the decision-maker must:
 - accredit the service for one year
 - decide whether there are any areas in which improvements must be made to ensure that the Quality Standards are complied with.
- decides to set aside an original decision not to re-accredit a service and decides to re-accredit the service, the decision-maker must also decide:
 - the further period of accreditation
 - whether there are any areas in which improvements must be made to ensure that the Quality Standards are complied with.
- decides to vary a decision regarding a service's period of re-accreditation, the decision-maker would then also be required to give the approved provider a certificate of accreditation that states the further period of accreditation in accordance with section 42(2) of the Commission Rules.

The reconsideration decision will include the decision effective date and also the date that the reviewable decision was made.

¹ *Regulatory reviewable decision*
in section 4 of the Commission Rules.



4. What other review options are available?

The reconsideration of reviewable decisions by the decision-maker is the first-tier within a multi-tiered review system.

If a person is not satisfied with the internal review of a decision made by the decision-maker in relation to a reviewable decision under the Commission Act, or a regulatory reviewable decision under the Commission Rules outlined in Tables A or C, they are able to apply to the AAT for review of the reconsideration decision. The AAT may then undertake a second-tier review.

A decision following a reconsideration of a complaints reviewable decision, outlined in Table B, is not reviewable by the AAT.

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*, however in regards to reconsideration decisions relating to complaints which are submitted by individual complainants, the Commission encourages complainants to first raise their concerns with the Commission then with the Commonwealth Ombudsman prior to seeking judicial review.

The Commonwealth Ombudsman can investigate the administrative actions of Commonwealth Government officials or agencies. If the Ombudsman finds that a complaint is justified, conclusions will be reported to the Commission and the complainant.

If the Ombudsman considers that there has been defective administration, the Ombudsman can recommend that corrective action be taken. For example, it might be recommended that a particular decision be reconsidered, an apology be provided, or compensation be paid to the complainant.

The Ombudsman cannot override the decisions of agencies or compel agencies to comply with their recommendations. The Commission is therefore not bound to adopt an Ombudsman recommendation, but such recommendations are regarded with respect. Where adequate and appropriate action is not taken within a reasonable time in response to a recommendation, the Ombudsman may make a formal report to the relevant minister, the Prime Minister or a special report to Parliament.

Separate advice about review options should be obtained.



5. Can home services request reconsideration of decisions?

Yes. Home service providers are able to request reconsideration of certain reviewable decisions.

If a home service provider of a home service has been approved to deliver home care packages through the service, the provider may request reconsideration of the following reviewable decisions:

Reviewable decision under the Commission Act

A decision under section 63D not to approve a person or body as a provider of aged care

A decision under section 63H not to revoke the approval of an approved provider

A decision under section 63J to revoke the approval of a person or body as a provider of aged care

A decision under section 63N to impose a sanction on a person or body

A decision under section 63X not to lift a sanction imposed on an approved provider under section 63N

Complaints reviewable decision under the Commission Rules

A decision under section 17 to end a resolution process in relation to an issue raised in a complaint (other than a complaint that has been withdrawn under section 12)

If a home service provider of a home service has a Commonwealth-funded agreement to deliver Commonwealth Home Support Programme services through the service, the provider may request reconsideration of the following reviewable decision:

Complaints reviewable decision under the Commission Rules

A decision under section 17 to end a resolution process in relation to an issue raised in a complaint (other than a complaint that has been withdrawn under section 12)

6. Can National Aboriginal and Torres Strait Islander Flexible Care Program Services request reconsideration of decisions?

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

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

The Commission is required under the Commission Rules to publish on its website certain reconsideration decisions relating to regulatory reviewable decisions within **28 days** of the reconsideration decision being made.

If an application to the AAT for review of the reconsideration decision is made, 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.

Under the Commission Act under sections 59(1)(h) and 59A(1)(g) the Commission may also publish reconsideration decisions in relation to reviewable decisions under the Commission Act or complaints reviewable decisions of the Commission Act.

For more information about the types of information the Commission publishes about provider performance refer to the [Commission's Regulatory Bulletin on Publication of provider performance information](#).

8. Will reconsideration of a non-compliance decision impact my Star Rating?

The Star Ratings system delivers a Compliance Rating to residential aged care services that is displayed out of 5 stars and based on any current non-compliance decisions about the service. The Commission publishes the details of non-compliance decisions on the [My Aged Care](#) website to assist consumers to understand the compliance status of that service.

If the reconsideration decision is to affirm or vary the non-compliance decision, it will not impact a service's Star Rating. If the reconsideration decision is to set aside

the non-compliance decision or make a substitute decision, the reconsideration may impact on the Star Rating, and it would be adjusted accordingly. If a decision is set aside, the decision will be removed from My Aged Care and the set aside decision will not be reflected in the compliance history. Any new decision, where applicable, will be published on My Aged Care.

The original decision will not be removed from My Aged Care while the reconsideration process is underway.

Refer to [My Aged Care](#) for further information about [Star Ratings](#).

9. Is the Department of Health and Aged Care notified of the reconsideration decision?

For a reviewable decision under the Commission Act or a regulatory reviewable decision under the Commission Rules, the Commissioner or the delegate must give written notice of the reconsideration decision and the reasons for the decision to the Secretary of the Department of Health and Aged Care.

Need to know more?

If you have any questions or feedback on this Bulletin, send an email to: info@agedcarequality.gov.au

Stay up to date with Regulatory Bulletin releases by [subscribing to the Commission's newsletter](#).



The Aged Care Quality and Safety Commission acknowledges the Traditional Owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to Elders both past and present.



Phone
1800 951 822



Web
agedcarequality.gov.au



Write
Aged Care Quality and Safety Commission
GPO Box 9819, in your capital city