



Regulatory Bulletin

Regulatory decision-making

RB 2019-06:

This Regulatory Bulletin outlines the principles and practices that form the Aged Care Quality and Safety Commission's (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 Act 1997* (Aged Care Act), *Aged Care Quality and Safety Commission Act 2018* (Commission Act) and *Aged Care Quality and Safety Commission Rules 2018* (Commission Rules).

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

Key points

- The Commission's framework for decision-making is underpinned by the legislative purpose and objectives of the Aged Care Act and Commission Act. In making decisions, decision-makers will interpret the Commission Rules consistently with the Aged Care Act and Commission Act.
- Commission decision-makers are subject to requirements and limitations established by legislation and general administrative law when making regulatory decisions.
- The legislation impose specific time limits within which the Commission must make certain 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 parties (including providers or individuals) whose rights or interests (e.g. status, reputation, liberty, confidentiality, livelihood and financial interests) may be negatively affected by the decision. However, if there is an immediate and severe risk to consumers, then parties may not be given an opportunity to respond to a Commission decision that will adversely affect them.
- Providers and individuals may request reconsideration of certain regulatory decisions or seek review when a decision is made that has adversely affected them.



Regulatory decision-making

Bulletin number: RB 2019-06

Version number: 3.2

Document number: FRM-ACC-0606

Publication date: 19 June 2023

Replaces: 2019-06 v3.1 published on 27 July 2020

Information in this bulletin applies to:

- Approved providers of residential, home care and flexible care under the *Aged Care Act 1997*
 - Service providers that deliver care under funding agreements, such as the Commonwealth Home Support Programme (**CHSP**) and National Aboriginal and Torres Strait Islander Flexible Aged Care Program (**NATSIFACP**)
 - Aged care workers and governing persons of approved providers, including individuals who are no longer employed or otherwise engaged (including on a voluntary basis) by the approved provider
 - Individuals who have not previously been an aged care worker or governing person of an approved provider
-

Attachment: N/A

Notes: This Regulatory Bulletin has been updated to:

- provide clarity on legislative references
 - include reference to regulatory decisions relating to individuals
 - include reference to the impact of provider non-compliance on Star Ratings
 - include additional frequently asked questions relating to submissions to the Commission, the Commission's obligation to provide reasons for decisions, and personal information considerations for published decisions.
-

To be reviewed: 19 June 2024



Regulatory decision-making

Legislative authority

The Aged Care Quality and Safety Commissioner (**Commissioner**) may delegate their regulatory functions or powers under the Aged Care Act, Commission Act and Commission Rules, to a member of the staff of the Commission.

Commission decision-makers make a range of statutory decisions under the Aged Care Act, Commission Act, Commission Rules and general administrative law requirements.

The legislation generally sets out requirements and matters that Commission decision-makers must take into account when making a decision.

Authority to make Commission decisions

The Commissioner is expressly authorised by the legislation to exercise certain functions and powers.

To assist the Commissioner to fulfil their functions, the Commission Act provides that the Commissioner may delegate, in writing, all or any of their regulatory functions and powers to a member of the 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.

Types of decisions made by the Commission

The Commission makes different types of decisions in relation to its role as the national regulator of aged care and the primary point of contact for consumers and providers in relation to quality and safety. This includes regulatory decisions relating to:

- approving persons as a provider of aged care
- accrediting residential aged care services
- handling complaints and information about provider responsibilities
- assessing the performance of providers, in relation to a service, against the Aged Care Quality Standards (**Quality Standards**)
- taking compliance and enforcement action to address non-compliance of providers, aged care workers or governing persons with legislative responsibilities
- making a determination in relation to a key personnel of an approved provider.

See [Attachment A](#) for a list of Commission regulatory decisions under the Aged Care Act, Commission Act and Commission Rules.

The Commission also makes a range of other administrative decisions that affect providers of aged care services and individuals such as aged care workers and governing persons of approved providers. 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.

Timeframe for making a regulatory decision

The legislation impose specific time limits for a decision to be made for most regulatory decisions. In some instances, the legislation 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, or other time limits.

Considerations in making a regulatory decision

The legislation that authorises a decision will usually define (and limit) the considerations that can be considered, 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 Commission decision-makers consider a 'relevant matter' will depend on the facts and circumstances of the specific case.

Example

When considering whether to re-accredit a residential service, the Commission decision-maker is required to consider a range of matters that include:

- the performance report
- 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 and Aged Care
- whether the Commissioner is satisfied that the provider will undertake continuous improvement in relation to the service
- any other relevant matter.

Where the legislation does not specify matters that must be considered, Commission decision-makers will review all 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.

General administrative law 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.



Frequently asked questions

1. How will procedural fairness be provided?

Commission decision-makers apply fair procedures when making regulatory decisions that are appropriate to the circumstances of each decision and in accordance with legislative requirements.

Commission decision-makers will be impartial and make decisions based on sufficient and relevant evidence. Unless there is an immediate and severe risk to the safety, health or well-being of consumers, Commission decision-makers will notify providers and individuals who may be adversely affected by a decision, before making and setting out the decision.

2. Will the Commission always consider my submission in response to a matter that adversely impacts me?

Prior to making decisions, the Commission will generally invite and consider submissions from a provider or individual who may be adversely affected by that decision. In some cases, the legislation would specifically require the Commission to invite and consider submissions.

The Commission may not consider late submissions, particularly if the delay is lengthy, there is no reasonable explanation for the delay and the Commission had no prior knowledge that there would be a delay.

If there is an immediate and severe risk to the health, safety or well-being of consumers, the Commission is not required to give a provider or individual an opportunity to make submissions and provide relevant information or evidence in response to adverse material before a decision is made.

3. Is the Commission required to provide reasons for its decisions?

The Aged Care Act, Commission Act and Commission Rules require that decision-makers provide reasons for certain decisions, including all of its regulatory decisions.

The legislation does not always require Commission decision-makers to provide reasons for other types of decisions. However, following the principles of good administration, a Commission decision-maker will give reasons for decisions where it will have an adverse impact on a provider or individual and where it may be reviewed or appealed.

Providing a reason for Commission decisions enables the affected provider or individual to:

- understand the reasons, evidence and facts that the decision-maker relied on when making the decision
- decide if they want to ask for a reconsideration or seek review of the decision, where applicable.



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

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

If you would like to make a complaint about a service provided by the Commission you can lodge a complaint about us by phone, email or post. Information about how to make a complaint about us can be found on the [Commission's website](#).

5. What decisions are made public?

A range of decisions about the performance of services is published on the Commission's website, in a [Non-compliance register](#) and in a [Banning orders register](#). Non-compliance decisions are also published on [My Aged Care website](#) and inform a provider's Star Ratings.

The Commission has obligations under the Commission Act to not include personal information in published decisions about an aged care service. However, the Commission Rules states that the Commission may publish personal information of individuals who have been given a banning order, in the [Banning orders register](#).

At all times, the Commission has obligations under the Commission Act to not make a record of, use, or disclose 'protected information' (which includes personal information) to another person where the disclosure is prohibited. The [Privacy Act 1988](#) and Australian Privacy Principles set out further obligations around the handling of personal information.

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

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](#).



Attachment A

Tables A, B and C set out the Commission regulatory decisions under the Aged Care Act, Commission Act and Commission Rules respectively.

Table A: Regulatory decisions within the Aged Care Act

Type of Regulatory Decision	Relevant section
A decision to make a determination in relation to an individual who is one of the key personnel of an approved provider	section 10A-2, Div 10A, Part 2.1
A decision to make or not to make a determination that certain responsibilities relating to the governing body of an approved provider do not apply	section 63-1E, Div 63, Part 4.3
A decision to vary or revoke a determination made under subsection 63-1E(3) of the Aged Care Act in relation to an approved provider	section 63-1F, Div 63, Part 4.3

Table B: Regulatory decisions within the Commission Act

Type of Regulatory Decision	Relevant section
A decision to approve or not approve a person as a provider of aged care	section 63D, Div 2, Part 7A
A decision to revoke or not to revoke the approval of an approved provider following a request from the provider	section 63H, Div 4, Part 7A
A decision to revoke approval of an approved provider if satisfied of certain matters	section 63J, Div 4, Part 7A
A decision to impose sanctions for non-compliance with aged care responsibilities	section 63N, Div 2, Part 7B
A decision to notify a provider of intention to impose sanctions on the provider in relation to non-compliance	section 63S, Div 3, Part 7B
A decision to require a provider to give an undertaking to remedy non-compliance	section 63T, Div 3, Part 7B



Type of Regulatory Decision	Relevant section
A decision to require a provider to agree to certain matters if revocation of approval is being considered	section 63U, Div 3, Part 7B
A decision to lift or not to lift a sanction imposed on an approved provider	section 63X, Div 4, Part 7B
A decision to issue, vary or revoke a compliance notice	section 74EE, Div 2A, Part 8A
A decision to make a banning order against an individual who is or was an aged care worker, or who is or was a governing person, of an approved provider	section 74GB, Div 4, Part 8A
A decision to make a banning order against an individual who has not previously been an aged care worker, or a governing person, of an approved provider	section 74GB, Div 4, Part 8A
A decision to, on own initiative, vary or revoke a banning order made against an individual	section 74GF, Div 4, Part 8A
A decision to, on an individual's application, vary or revoke a banning order made against that individual	section 74GG, Div 4, Part 8A
A decision to, on an individual's application, not to vary or revoke a banning order made against that individual	section 74GG, Div 4, Part 8A
A decision, on an individual's application, to vary or revoke a condition to which a banning order made against that individual is subject and/or to specify one or more new conditions to which the order is to be subject	section 74GH, Div 4, Part 8A
A decision, on an individual's application, not to vary or revoke a condition to which a banning order made against that individual is subject and/or not to specify one or more new conditions to which the order is to be subject	section 74GH, Div 4, Part 8A



Table C: Regulatory decisions within the Commission Rules

Type of Regulatory Decision	Relevant section
A decision to take no further action in relation to an issue raised in a complaint	section 13, Div 4, Pt 2
A decision to undertake a resolution process in relation to an issue raised in a complaint or provider responsibility information	section 15, Div 4, Pt 2
A decision to end a resolution process in relation to an issue raised in a complaint or provider responsibility information	section 17, Div 4, Pt 2
A decision to direct a provider to take specified action to meet its responsibilities in relation to an issue raised in a complaint or provider responsibility information	section 19 Div 5, Pt 2
A decision to accredit or not to accredit a commencing service	section 29, Div 3, Pt 3
A decision to re-accredit or not re-accredit a recommencing service	section 29, Div 3, Pt 3
A decision to re-accredit or not re-accredit a residential service (other than a recommencing service), including the period of accreditation	section 41, Div 3, Pt 3
A decision to revoke the accreditation of an accredited service	section 44, Div 3, Pt 3
A decision to direct a provider to revise its plan for continuous improvement.	section 63A, Div 4, Pt 5
A decision, following a review audit, to revoke or not revoke and vary the accreditation of an accredited service	section 77, Div 6, Pt 5
A decision in relation to an additional information notice under s15NE(5) of the Quality of Care Principles 2014 (SIRS)	section 95C, Div 2, Pt 6A
A decision that a specified reportable incident is not required to be notified under the SIRS	section 95D, Div 2, Pt 6A



Australian Government

Aged Care Quality and Safety Commission

Engage
Empower
Safeguard



Phone

1800 951 822



Web

agedcarequality.gov.au



Write

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