



Applying procedural fairness to regulatory decisions

A fact sheet for aged care providers

1800 951 822
agedcarequality.gov.au

What is procedural fairness?

As the national aged care regulator, part of the Aged Care Quality and Safety Commission's role is to:

- assess the performance of providers against the Aged Care Quality Standards (Quality Standards)
- take action if a provider isn't complying with their legal responsibilities or if there are concerns about risk to consumers
- resolve complaints about services.

We must ensure that our procedures and decisions are fair and appropriate.

Procedural fairness means that Commission decision-makers must act in certain ways:

- when making regulatory decisions
- towards a person or provider whose rights or interests (such as their status, reputation, freedom, privacy, livelihood or finances) may be negatively affected by a Commission decision.

How is procedural fairness applied?

We follow 3 main rules of procedural fairness when making regulatory decisions:

- 1. The hearing rule** means we will give providers and individuals directly affected by a decision an opportunity to respond to any negative information. We will do this before making a decision that negatively affects their rights or interests.
- 2. The bias rule** means Commission decision-makers must be impartial. They should have no personal stake, actual bias or potential bias in cases they are deciding on.
- 3. The evidence rule** means we will make logical decisions based on the available evidence.

Our procedures are based on these rules. Observing these rules, we adapt the procedures to the specific circumstances of each decision we need to make, such as:

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

- the timeframe for making and sharing decisions
- any disagreement about the facts
- the nature and possible consequences of the decision to be made
- any specific legislative requirements.

Our primary role is to protect and improve the safety, health, wellbeing and quality of life of people receiving aged care services. The need for procedural fairness is acted on in this larger context. That means that where there is immediate and severe risk to people receiving aged care services, we may take action against a provider or an individual without giving them notice or an opportunity to respond.

How does procedural fairness apply to performance assessments?

We assess the performance of providers against the Quality Standards. Performance assessments include:

- site audits
- review audits
- quality audits (as part of a quality review)
- assessment contacts.

When undertaking a performance assessment of your service, appropriate procedural fairness means that our Assessment Team will:

- explain the assessment process. This is done during the entry meeting if the assessment is undertaken on-site
- keep you informed throughout the assessment, answer your questions and hold daily meetings if the assessment is on-site
- highlight any significant concerns with you promptly so there are no surprises at the end of the assessment

- hold an exit meeting with you on the last day of an assessment process to discuss the key issues identified
- give you the opportunity to provide any relevant information and evidence about key issues.

All providers receive a copy of the preliminary Assessment Report to respond to before a final decision is made.

We will also give you the Assessment Team's report (called the Assessment Report) to read. We'll do this before making a final decision about your performance against the Quality Standards (called the Performance Report). This gives you an opportunity to:

- understand the reasons and evidence that the Commission decision-maker will use to make a decision
- respond to us within a specified timeframe about any issues identified in the report. The decision-maker must consider your response when making a decision.

For more information about performance assessment processes, read the [Regulatory Bulletin: Aged Care Quality Standards performance assessment methodology \(RB 2019-05\)](#).

How does procedural fairness apply to compliance and enforcement decisions?

Where there is non-compliance with legislated responsibilities, or where the Commission has concerns about the suitability of an individual to provide aged care, we can decide to take compliance and enforcement action against a provider, its workers or governing persons.

We have access to a range of compliance and enforcement actions to respond to different situations. For providers, in cases of high or severe risks we may apply a sanction or revoke their approved provider status. In the case of aged care workers and governing persons of providers, our action may include banning them from working in aged care where they pose high or severe risks to older Australians receiving aged care.

We will apply appropriate procedural fairness when considering and taking compliance and enforcement action. This means we will:

- explain to you why we are taking action or are considering taking action
- give you a specified timeframe so you can provide a written response to the issues, and evidence we have which may lead us to take action. The Commission decision-maker must consider your response when making a decision
- advise you that information about any action against you may be published on the Commission's website and the [My Aged Care website](#).

Are there times when safety comes before procedural fairness?

Ensuring the safety and wellbeing of people receiving aged care must be the top priority. If we believe there is an immediate and severe risk to older Australians, we may take action against a provider without giving them notice or the opportunity to respond. However, the provider or individual may still ask for certain decisions made by the Commission to be reviewed.

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

If you believe that you have been denied appropriate procedural fairness, you can raise this with us.

Some of the Commission's decisions are reviewable under the legislation. This means that if you disagree with that decision, you can ask for a review of that decision through the Commission's reconsideration process.

For example:

- Following a **performance assessment**, we make a decision to accredit the residential service for a period of 2 years. The Commission's decision on the period of accreditation of a service is a reviewable decision. This means that if you disagree with that decision – including if you disagree because you believe you've been denied appropriate procedural fairness – you can ask for it to be reviewed through our reconsideration process.
- Following our assessment of a **SIRS reportable incident notification**, we conclude that you, as a provider, are not complying with your incident management responsibilities. We issue you with an Incident Management Compliance Notice. The Commission's decision to give a Compliance Notice is a reviewable decision. This means that if you disagree with that decision – including if you disagree because you believe you've been denied appropriate procedural fairness – you can ask for it to be reviewed through our reconsideration process.

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

Will the Commission notify you of any negative issues or potential decisions against you?

Unless there is an immediate and severe risk to people receiving aged care services, the Commission will notify you of any negative information that we have or decision that we may make about you.

The Commission will also give you the opportunity to comment on any negative information before we make a final decision. The procedural fairness given to you will be in accordance with the legislation, and proportional to the seriousness of the decision and the impact it will have on you.

What happens if the Commission receives conflicting information?

A Commission decision-maker can receive conflicting information. This can happen in situations where, for example, the content of submissions is different from an observation that an Assessment Team makes during a site audit.

To consider conflicting information, the decision-maker will:

- review all the relevant information
- weigh the information according to its credibility, relevance and significance.

Where the decision-maker gives greater weight to one piece of information over another, they will explain the reasons for this in their decision.

More information

For more information about procedural fairness, read the [Regulatory Bulletin: Procedural fairness \(RB 2023-21\)](#).

August 2023



Phone

1800 951 822



Web

agedcarequality.gov.au



Write

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