

Can you be banned from visiting an aged care resident?

Fact Sheet: Elder Rights in Residential Aged Care

New South Wales (NSW)

“My sister has banned me from visiting our Dad at his aged care home, I’m shocked that she is able to do this. What can I do?” Jodie, NSW.



Aged Care Justice (ACJ) has received enquiries from relatives and friends who have been banned or restricted from visiting an aged care resident (**Resident**) in an aged care facility (**Facility**), usually by a family member.

This fact sheet will provide information on whether you can lawfully be restricted from visiting a Resident, the role of the Facility, and what you can do about it.

Key Points:

- In Australia, a Resident can make their own decisions including who can visit them, unless it has been determined that they cannot make their own decisions.
- If a Resident cannot make their own decisions, each State and Territory has a legal process that must be followed for another person to make decisions on their behalf.
- In NSW, if you are a spouse, a close family member or a person who only holds an Enduring Power of Attorney (**EPOA**), you cannot make decisions regarding who can visit a Resident in a Facility.
- To make personal decisions on behalf of a Resident, you must be authorised by an Enduring Guardianship document previously prepared by the Resident.
- If you have been restricted from visiting a Resident you can make a complaint to the Facility or make an application to the [Tribunal](#) to challenge the decision.

Can you be restricted from visiting an aged care resident in NSW?

1. Residents are presumed to have capacity to make their own decisions, including on personal matters such as limiting or excluding visitors. The genuine personal wishes of the Resident should be followed by the Facility and the family.
2. In NSW, the person(s) that can make personal decisions for a Resident must be named as an Enduring Guardian (EG) in an Enduring Guardianship document. An EG has authority to make decisions on ‘personal’ matters, this may include who can contact and visit the Resident.
3. The EG can only make decisions on behalf of the Resident when the Resident ‘is in need of a Guardian’, that is, when they cannot make their own decisions. Determining a person’s decision-making capacity can be difficult. In NSW, a [Capacity Toolkit](#) provides guidelines on determining capacity.
4. When making decisions for the Resident, the EG must abide by the express wishes of the Resident as set out in the Enduring Guardian document, and in the document titled Advance Directive (AD), if one is in place. If there are no express wishes, the EG’s decisions should consider the importance of preserving family relationships, and reflect the decision the Resident would have made in the circumstances.
5. The capacity to make decisions may be fluid, that is, a Resident may have periods where they can make their own decisions. When a Resident appears to have capacity they should be encouraged to make their own decisions.
6. If there is no EG and a Resident does not have capacity to make their own decisions, a Guardian may be appointed by application to the [NSW Civil and Administrative Tribunal \(Tribunal\)](#). A Guardian can make decisions to restrict access to the Resident if they consider it necessary for their protection, subject to the [Guardianship and Administration Act 1987 \(NSW\)](#).

What is the role of the Facility when a person is banned from visiting ?

1. The Facility has a duty of care to consider the wishes and views of the Resident. Consideration should be given to the protections provided to Residents under the [Charter of Aged Care Rights](#).
2. When a person makes a decision to ban a visitor, the Facility should consider if that person has legal authority to make that decision. This may include evidence of the Resident's impaired decision-making capacity and authority to ban visitors.
3. If a Resident has not appointed an authorised decision maker and has impaired decision-making capacity, the Facility must consider the wishes and views of the Resident when restricting visitors. This may require speaking to family or friends. The Facility or a concerned person may apply to the [Tribunal](#) to appoint a Guardian to make decisions for the Resident.
4. The Facility has the right to determine who may enter its premises and may set rules and conditions as to standards of conduct. The agreement between the Facility and the Resident may also refer to restrictions in entering the Facility.
5. The Facility may be empowered by other laws, such as health legislation, to restrict visitations.

Questions to ask if you have been banned

- Why was the decision to restrict access made, and by whom?
- Does the person have power to make decisions relating to the 'personal affairs' of the Resident, including who they can associate with?
- Has anyone read the legal document that gives a person authority to ban visitors?
- Does the Resident lack decision-making capacity, and is there supporting documentation?
- Does the decision to ban or restrict you from visiting reflect the decision the Resident would have made?

What can you do if you have been banned from visiting a Resident?

- You can make a complaint to the Facility, referencing the Charter of Aged Care Rights, and/or the principles in the [Guardianship Act 1987 \(NSW\)](#).
- You can also apply to the [Tribunal](#) to challenge decisions of an EG or a Tribunal-appointed Guardian.
- If the Resident has capacity, they can revoke the appointment of the EG.
- Contact [ACJ](#) if you are unsure of your rights for a free consultation with an aged care lawyer.



Contact Aged Care Justice if you would like a free legal consultation:

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