

# Can you be banned from visiting an aged care resident?

## Fact Sheet: Elder Rights in Residential Aged Care

South Australia (SA)

*“My brother is preventing me from seeing my Dad who lives in aged care. What can I do?” Ian, SA.*



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 South Australia (SA), 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.
- To make decisions on behalf of a Resident on personal affairs, including who can visit them, you are required to be named in a document previously prepared by the Resident called an Advance Care Directive (**ACD**).
- 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 a Resident in South Australia?

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. When it has been determined that a Resident cannot make their own decisions, this is legally known as ‘impaired decision-making capacity’. Determining a person’s capacity can be difficult, it may be appropriate to obtain an assessment by a suitably qualified medical practitioner.
3. If a Resident cannot make their own decisions, the person(s) that can make decisions on ‘personal affairs’, which may include who can visit, must be named in a document called an Advance Care Directive (**ACD**). These persons are known as Substitute Decision Makers(s) (**SDM**).
4. The SDM must abide by the express wishes of the Resident as set out in the ACD, and consider their current or previous views on who can visit. Although not mandatory, they may consult with other persons who have information on the wishes of the Resident.
5. If the ACD does not contain express terms on restricting visitors, the SDM must have regard to the wishes of the Resident, including previously expressed views, and support the Resident’s preferences. The SDM may make decisions regarding restricting access to the Resident, especially if the visits are known to upset the Resident.
6. The capacity to make decisions may be fluid, that is, a Resident diagnosed by a medical practitioner with ‘impaired capacity’ may have periods where they can make their own decisions. When a Resident appears to have capacity to make a decision regarding visitations, their preferences are of prime importance.
7. If a Resident has not appointed an SDM and cannot make their own decisions, a Guardian may be appointed by application to the [South Australian 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 1993 \(SA\)](#).

## 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 the 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 [Advance Care Directives Act 2013 \(SA\)](#).
- You can also apply to the [Tribunal](#) to challenge decisions of an SDM or a Tribunal-appointed Guardian.
- Disputes can be referred to the [SA Office of the Public Advocate](#).
- If a Resident has capacity, they can revoke the appointment of the SDM.
- 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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**DISCLAIMER:** This fact sheet is for general information purposes only and does not represent legal advice. As it is not intended to be comprehensive in relation to the topic, other inclusions or exemptions may apply. The law and policy referred to in this document was in force on the 01/07/24. Quotation is fictional.