

Can you be banned from visiting an aged care resident?

Fact Sheet: Elder Rights in Residential Aged Care

VICTORIA

“A friend of mine is in aged care and is being isolated from her friends by her son. He says he can decide who can visit. Now I’ve been banned from visiting. What can I do?” - Judith, Victoria.



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 Victoria, if you hold an Enduring Power of Attorney (**EPOA**) for financial matters only, you cannot make decisions regarding who can visit a Resident.
- A person who holds an EPOA that includes authority to deal with ‘personal matters’, may be able to make decisions on who can visit a Resident.
- If a person is unfairly prevented from visiting a Resident, they can make a complaint to the Facility, or apply to the [Tribunal](#) to challenge the EPOA.

Can you be restricted from visiting a Resident in Victoria?

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. The person(s) that can make personal decisions on the Resident's behalf are persons appointed by the Resident in the EPOA document with authority to deal with 'personal matters', which may include who can visit. (Note: in Victoria, an EPOA document takes effect from the date it is made).
3. When making decisions for the Resident, an EPOA must abide by the Resident's express wishes as set out in the EPOA document and in the document titled Advance Care Directive (**ACD**), if one is in place.
4. When it has been determined that a Resident cannot make their own decisions, this is referred to 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.
5. In Victoria, the EPOA should 'take any steps that are reasonably available to encourage' the Resident to 'participate in decision-making', and consider the importance of 'maintaining existing supportive relationships'. The current and past views and wishes of the Resident should be considered. Although not mandatory, the EPOA may consult with other persons who have information on the wishes of the Resident.
6. If there is no EPOA and the Resident has impaired decision-making capacity, an application may be made to the [Victorian Civil and Administrative Tribunal](#) (**Tribunal**) to appoint a Guardian. 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 \(Vic\)](#).

What is the role of the Facility in these situations?

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 their 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 matters' 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 [Powers of Attorney Act 2014 \(Vic\)](#).
- You can also apply to the [Tribunal](#) to challenge decisions of the EPOA or a Tribunal-appointed Guardian.
- If a Resident has capacity, they can revoke the appointment of the EPOA.
- 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.