Can a resident be confined on their own in their aged care facility?

Fact Sheet: Fact Sheet: Isolating an aged care resident as a form of seclusion in Victoria

In Australia, an aged care resident (**Resident**) generally has the right to move around their aged care facility (**Facility**) freely, except where there may be a risk of harm to the Resident or others.

The solitary confinement of a Resident, for example, if a Resident is left on their own in any area of their Facility where they cannot exit or it is implied that they cannot exit, for the primary purpose of influencing a Resident's behaviour, it is known as 'seclusion'. Seclusion is a 'restrictive practice' because its use restricts a person's rights or freedom and can only be used as a last resort to prevent harm.

Restrictive practices are strictly regulated and aged care providers (**Providers**) are required to meet various obligations. This fact sheet applies to Victorian residential aged care services in an aged care facility, delivered under the Commonwealth's *Aged Care Act 1997* (Cth).

This fact sheet will:

- Identify what is seclusion;
- Explain the legal requirements that must be met by Providers to authorise and apply seclusion, including in emergency situations;
- Discuss who can provide consent for applying seclusion and the meaning of informed consent; and
- Explain what you can do if you are concerned about the misuse of seclusion.

What does seclusion look like?

Seclusion is a practice or intervention that is, or involves, the solitary confinement of a Resident in a room or a physical space, at any hour of the day or night, where voluntary exit is prevented or not facilitated, or it is implied they cannot exit, in order to influence the Resident's behaviour.

Seclusion may involve locking a Resident in their room or other part of the Facility, directing a Resident to a specific area within the Facility with the Resident believing they are not allowed to leave, or when Residents and staff all leave an area but the Resident is unable to leave and is left on their own.

Example 1
David is an aged care resident who does not like to participate in group activities. David chooses to be in his room on his own for extended periods of time, despite being invited to events that are happening in the facility. He has no mobility issues and can freely join the activities if he wishes to.

This is not seclusion. David is choosing to be on his own in his room, and requires no assistance to join the events in the Facility if he chooses, so he is not being prevented from attending.

Example 2

Jim has dementia and likes to sing loudly. A staff member becomes annoyed with Jim's continuous singing and leaves him in an area of the Facility on his own. Jim is confused and cannot walk back to where other Residents and staff are located, as he has mobility issues and requires assistance.

This is an inappropriate use of seclusion, as Jim has been left in an area on his own where he cannot leave without assistance. Secluding Jim was not to prevent harm and is therefore inappropriate.

Appropriate use of seclusion. If Jim's behaviour was harmful and involved aggression or violence towards others, secluding Jim to prevent harm for a short period of time may be appropriate, if all obligations are followed by the Provider.

What are the Provider's obligations in the use of seclusion?

The Provider must be satisfied that:

- Seclusion is only used as a last resort to prevent harm to the Resident or other persons, and after consideration of the likely impact on the Resident;
- Alternative strategies are considered and used to the extent possible, and documented in the Resident's Behaviour Support Plan;
- The seclusion is used only to the extent that it is necessary and in proportion to the risk of harm to the Resident or other persons, in the least restrictive form, and for the shortest time necessary to prevent harm;
- The seclusion complies with the Resident's Behaviour Support Plan (and other relevant care plans), the Aged Care Quality Standards, and is consistent with the Charter of Aged Care Rights;
- Informed consent to the use of the seclusion has been obtained, except in an emergency (see below).
- An approved health practitioner with day-to-day knowledge of the Resident has assessed the Resident as posing a risk of harm to themselves or any other person and assessed that the seclusion is necessary.

The Provider must document the following in the Resident's Behaviour Support Plan:

- The Resident's behaviour and assessments relevant to the use of seclusion.
- The alternative strategies that have been considered or used, including a record of any consultations with the Resident or their substitute decision maker discussing such strategies.
- Details of the seclusion, including duration, frequency and intended outcome, and how it is to be monitored, including the escalation process.
- Any engagement with persons other than the approved health practitioner in relation to the use or assessment of the seclusion (for example, dementia support specialists).
- A record of the informed consent obtained by the Provider from the Resident or their substitute decision maker, for the use of the seclusion.

Responsibilities of the Provider while seclusion is being used:

- The use of the seclusion is monitored, reviewed and documented in the Resident's Behaviour Support Plan.
- The Resident is monitored for signs of distress or harm, side effects, changes in mood or behaviour, including ability to engage in activities and to maintain independent function (to the extent possible).
- Consider if appropriate alternative strategies can be used, or changes to the environment could be made, for the restraint to be reduced or stopped.

Who can consent to seclusion on behalf of a Resident?

- A decision to use seclusion requires informed consent by the Resident, or if they lack capacity, a substitute decision-maker.
- Determining a person's capacity can be difficult, it may be appropriate to obtain an assessment by a medical practitioner, but importantly Residents are presumed to have capacity to make their own decisions.

Who can be a substitute decision maker for seclusion?

The Commonwealth of Australia has a hierarchy of Restrictive Practices Substitute Decision Makers (**RPSDMs**) who can provide informed consent for the use of seclusion on behalf of a Resident.

There is a new hierarchy of RPSDMs in Victoria that comes into effect on the 1 July 2025. RPSDMs appointed under the Commonwealth hierarchy prior to 1 July 2025 will not be impacted by this new legislation. The Commonwealth hierarchy can be found here.

The order of the hierarchy will be:

- A person nominated in writing, and the nomination is witnessed by an authorised affidavit taker (for example a lawyer);
- The spouse or domestic partner of the Resident;
- The primary carer of the Resident;
- The oldest child of the Resident, followed by the other children in descending order of age if there are two or more adult children;
- The oldest sibling of the Resident, followed by the other siblings of the Resident in descending order of age if there are two or more adult siblings.

Applications may also be made to the Victorian Civil and Administrative Tribunal (**VCAT**) to appoint a RPSDM. If no person is available, VCAT may provide consent to the use of a restrictive practice.

What is 'informed consent'?

A Resident or RPSDM must provide informed consent to the use of seclusion. This requires the Provider to explain the reason for the use of the seclusion, the risks and benefits, the timeframe and intended outcomes, and any alternative options. In addition, consent should be provided independently, free from duress, and involve the opportunity to review and ask questions.

Consent can be refused or withdrawn and is required each time a seclusion is proposed.

How is seclusion used in an emergency?

Seclusion can be used in an emergency as necessary, such as in a dangerous situation that is unanticipated and requires immediate action. It does not require informed consent or the need to ensure compliance with the Resident's Behaviour Support Plan.

The seclusion used in the emergency must be in the least restrictive form, for the shortest period possible, and documented. The Provider must inform the RPSDM as soon as practicable after the event, and document the Resident's behaviour, the alternatives considered or used, why the restraint was necessary, and the care provided.

Legal remedies for unlawful seclusion

Unauthorised use of seclusion may be considered assault or false imprisonment and may give rise to civil or criminal actions in severe cases.

A person may seek an injunction from the courts to prevent the restraint from happening or continuing.

What can you do if you or your loved one is being environmentally restrained unlawfully?

- Make a complaint to the Provider, referencing the Quality of Care Principles which outline the requirements of applying restrictive practices.
- Make a complaint to the Aged Care Quality and Safety Commission (ACQSC).
- Contact ACJ if you are unsure of your rights for a free legal consultation.

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

Email: info@agedcarejustice.org.au

Complete Get Help Form

Website: **www.agedcarejustice.org.au**

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