



1.0 Introduction

Aged Care Justice (ACJ) supports older Australians receiving aged care services, in residential care and home care, by providing information about legal rights, legal referral services, and promoting reform.

The use of restrictive practices is a significant issue in aged care. ACJ is creating Fact Sheets on restrictive practices with the aim of reducing serious incidences of restrictive practices in aged care settings through legal education and access to legal support. This project received funding through the Victorian Legal Services Board Grants Program. The collection of Fact Sheets are designed to support the aged care community and include dedicated Fact Sheets for the legal community. The collection contains information on chemical, mechanical, physical and environmental restraint, and seclusion.

Restrictive practices restrict rights or freedom of movement and are regulated by the laws of the Commonwealth and the State and Territories. The information in this fact sheet applies to registered providers that deliver funded aged care services in a private home or community setting (**home care providers**), under the *Aged Care Act 2024 (Cth)* (**the Act**).¹ The legislation referred to in this fact sheet will come into effect on 1 November 2025.

2.0 Background

The Royal Commission into Aged Care Quality and Safety warned that ‘unsafe and inhumane restrictive practices’ can result in ‘serious physical and psychological harm and, in some cases, death’ and required ‘immediate attention’.² In response, the Commonwealth Government made significant amendments to the *Aged Care Act 1997* and the *Quality of Care Principles 2014*³ (**the Principles**). In residential aged care, the Principles require that restrictive practices are only to be used as a last resort to prevent harm, after alternative strategies are explored, and require informed consent, with exceptions for emergency situations.

Under the Act and the proposed *Aged Care Rules 2025* (currently in draft form) (**Draft Rules**), the requirements relating to the use of restrictive practices previously set out in the *Aged Care Act 1997* (Cth) and the *Quality of Care Principles 2014* (as amended) have been retained. The detailed requirements set out in the Draft Rules⁴ apply to registered providers in the registration category ‘residential care’.⁵ Some rules will apply to all ‘registered providers’ delivering funded aged care, including in a ‘home or community setting’, with less obligations for home care providers in relation to the use of restrictive practices.

¹ *The Aged Care Act 2024* (Cth) will come into force on 1 November 2025 and replace the 1997 Act.

² The Aged Care Royal Commission Final Report ‘Care, Dignity and Respect’ March 2021, Vol 2, 68.

³ *Quality of Care Amendment (Restrictive Practices) Principles 2022*, sched 3 as amended by *Quality of Care Amendment (Restrictive Practices)*.

⁴ *Aged Care Rules 2025* cl 162-15 to 162-75.

⁵ *Ibid* cl 162-5.

3.0 Definition of home care provider

A registered provider is defined as ‘an entity currently registered to deliver funded aged care’.⁶ The term ‘home or community setting’ is defined as ‘a place in a home, or in the community, where funded aged care services are delivered’,⁷ subject to some exceptions such as a hospital; a psychiatric facility; or a hospice or facility that primarily provides palliative care.⁸

4.0 Definition of a restrictive practice

The term ‘restrictive practices’ is defined as any practice or intervention that has the effect of restricting the rights or freedom of movement of the care recipient.⁹ The Draft Rules provide that certain practices are restrictive practices, and they are:

- chemical restraint;
- environmental restraint;
- mechanical restraint;
- physical restraint; and,
- seclusion.¹⁰

Each of these terms is also defined:

1. **Chemical Restraint** is the use of medication for the primary purpose of controlling a person's behaviour, rather than for medical treatment.¹¹ Medications that are considered chemical restraint do not include medication for diagnosed mental or physical conditions and illnesses, or end of life care. Chemical restraint is where medication is used in response to a change in the behaviour of the person who has been assessed as posing a risk of harm to themselves or someone else.

2. **Physical Restraint** is the use of physical force to prevent, restrict or subdue movement of a person's body, or part of a person's body for the primary purpose of controlling a person's behaviour.¹² It does not include the use of a hands-on technique in a reflexive way to guide or redirect the person away from potential harm or injury if it could reasonably be considered to be the exercise of care towards the person.¹³

3. **Mechanical Restraint** is the use of a device to prevent, restrict or subdue a care recipient's movement for the primary purpose of controlling a person's behaviour.¹⁴ Mechanical devices primarily used for approved medical, therapeutic or non-behavioural purposes, such as wheelchairs to increase mobility, or splints or casts for injuries, are not restraints.¹⁵ Examples of mechanical restraints include belts or harnesses.

⁶ *Aged Care Act 2024* s 11.

⁷ *Ibid* s 10(6).

⁸ *Ibid* s 10(7).

⁹ *Aged Care Act 2024* (Cth) s 17(1).

¹⁰ *Aged Care Rules 2025* cl 17-5.

¹¹ *Ibid* cl 17-5(2) def'n of ‘chemical restraint’.

¹² *Ibid* cl 17-5(5) def'n of ‘physical restraint’.

¹³ *Ibid* cl 17-5(5)(b).

¹⁴ *Ibid* cl 17-5(4) def'n of ‘mechanical restraint’.

¹⁵ *Ibid*.

4. **Environmental Restraint** involves using a person's environment to limit their movement, access to objects, or participation in activities, for the primary purpose of controlling a person's behaviour.¹⁶ Environmental restraint may involve restricting a person from accessing an area within their environment or an item or activity,¹⁷ such as locking away a mobile phone, or preventing a person from watching TV or attending an outing.

3. **Seclusion** involves the solitary confinement of a person in a room or a physical space where voluntary exit is prevented or not facilitated for the primary purpose of controlling a person's behaviour.¹⁸ Seclusion may involve locking a person in their room or other part of the home, directing a person to a specific area with the person believing they are not allowed to leave, or when people leave an area but the person is unable to leave and is left on their own.¹⁹

5.0 Requirements of home care providers when considering the use of restrictive practices

The Draft Rules provide the requirements for the use of restrictive practices in a home or community setting.²⁰

A home care provider may only use a restrictive practice if,

- 1) its use is included in the person's Care and Services Plan; and
- 2) its use is in accordance with the information provided in the Care and Services Plan.²¹

Care and Services Plan

A Care and Services Plan is a written document that must be prepared by the home care provider in consultation with the individual, the individual's supporters (if any), and any other persons involved in the care of the individual.²² It outlines the person's personal and clinical care requirements, including:

- a) the circumstances in which the restrictive practice may be used in relation to the individual, including the behaviours of concern that are relevant to the need for the use, and,
- b) the manner in which the restrictive practice is to be used, including its duration, frequency and intended outcome.²³

Home care providers must document details about the use of the restrictive practice in the Care and Services Plan as soon as practicable.²⁴

¹⁶ Ibid cl 17-5(3) def'n of 'environmental restraint'

¹⁷ Ibid.

¹⁸ Ibid cl 17-5(6) def'n of 'seclusion'.

¹⁹ Department of Health, Fact Sheet, Types of restrictive practices, 1 December 2022:

<https://www.health.gov.au/resources/publications/types-of-restrictive-practices>

²⁰ *Aged Care Rules 2025* cl 16-15.

²¹ Ibid.

²² Ibid cl 15-20(1).

²³ Ibid.

²⁴ Ibid cl 16-15(d).

A home care provider that uses a restrictive practice that is not in accordance with the Care and Services Plan and is not documented, must report the incident to the Aged Care Quality and Safety Commission.²⁵

A reportable incident is defined in the Act to include the use of a restrictive practice in relation to the individual (other than in accordance with any requirements prescribed by the Rules).²⁶ Other reportable incidents include:

- Unreasonable use of force
- Unlawful sexual contact, or inappropriate sexual conduct
- Psychological or emotional abuse
- Unexpected death
- Stealing or financial coercion
- Neglect
- Unexplained absence.²⁷

6.0 Restrictive practices safeguards that do not apply to home care

There are a number of safeguards in the legislation that apply to Providers in the use of restrictive practices in residential aged care that do not apply in home care and community settings, these include:

- No consideration that a restrictive practice should only be applied as a last resort;
- No requirement of informed consent by the care recipient or a restrictive practices substitute decision maker;
- No requirement for authorisation by a health or medical practitioner;
- Modified documentation requirements. Although there must be a ‘care and services plan’ which is a general plan about delivery of services, there is no requirement for a Behaviour Support Plan;²⁸
- No explicit requirements regarding monitoring the use of restrictive practices;
- No references to use of restrictive practices in emergencies; and
- Unlike the situation in relation to residential care, there is no express immunity from prosecution if the requirements are complied with, although it is possible that a defence of necessity may be available.

²⁵ Ibid cl 16-15.

²⁶ *Aged Care Act 2024* s 16(1)(g).

²⁷ Ibid s 16(1)(a), (b), (c), (d), (e), (f) and (h).

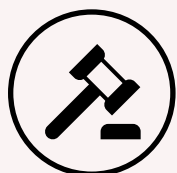
²⁸ *Aged Care Rules 2025* cl 162-45. Although note that the care and services plan needs to set out the circumstances in which the restrictive practice may be used in relation to the individual, including the individual’s behaviours of concern that are relevant to the need for the use; and the manner in which the restrictive practice is to be used, including its duration, frequency and intended outcome: Draft Rules cl 16-15(b)(i) and (ii).

7.0 Unlawful use of a restrictive practice

The misuse of a restrictive practice in a home or community setting may give rise to civil or criminal actions for assault or false imprisonment in severe cases. The affected person may seek an injunction from the courts to prevent the restraint from happening or continuing.

8.0 If a restrictive practice has been applied unlawfully, what can a person do?

- Make a complaint to the Provider
- Make a complaint to the [ACQSC](#).
- Contact [ACJ](#) for a free legal consultation.



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

Email: info@agedcarejustice.org.au

[Fill out our Get Help Form](#)

Website: www.agedcarejustice.org.au

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 will be in force from 01/07/2025.