

## Chemical Restraint



### Introduction

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

The use and application of restrictive practices is a significant issue in aged care. ACJ has created 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. They contain information on chemical, environmental, physical and mechanical restraint and seclusion, in residential care and home care.

Restrictive practices are regulated both by the laws of the Commonwealth and the State and Territories. The Fact Sheets apply to Victorian residential aged care services, delivered under the Commonwealth [Aged Care Act 2024 \(Cth\)](#). The use of restrictive practices in aged care settings is complex, involving issues of decision-making capacity, substitute decision making and restriction of freedom.

### Background

The Royal Commission into Aged Care Quality and Safety in their Final Report released in March 2021, warned ‘inappropriate use of unsafe and inhumane restrictive practices can result in serious physical and psychological harm and, in some cases, death’ and required ‘immediate attention’. In response, the Commonwealth Government made significant amendments to the *Quality of Care Principles 2014*<sup>1</sup> (**the Principles**), including that restrictive practices are only to be used as a last resort to prevent harm, after alternative strategies are explored, and requiring informed consent from the Resident or a substitute decision maker, with exceptions for emergency situations. Since the commencement of the *Aged Care Act 2024* (Cth) on 1 November 2025, the Principles have been replaced by the [Aged Care Rules 2025 \(Cth\)](#).

The use of a restrictive practice relies not only Commonwealth legislation, but State and Territory laws, with respect to defining a resident’s capacity to consent to a restrictive practice and the appointment of a substitute decision maker, if it is determined that the Resident does not have decision making capacity.

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<sup>1</sup> *Quality of Care Amendment (Restrictive Practices) Principles 2022*, sched 3.



The Victorian Government introduced the [\*Aged Care Restrictive Practices \(Substitute Decision-maker\) Act 2024 \(Vic\)\*](#) which came into force on 1 July 2025, which provides a restrictive practices substitute decision maker hierarchy applicable to Victoria.<sup>2</sup>

## CHEMICAL RESTRAINT

This fact sheet applies to residential aged care services delivered by Victorian aged care providers (**Providers**) under the Commonwealth *Aged Care Act 2024* (Cth).<sup>3</sup>

### 1.0 What is chemical restraint?

Chemical restraint is defined, as a ‘practice or intervention that involves the use of medication or a ‘chemical substance’ for the primary purpose of influencing a care recipient’s behaviour.<sup>4</sup> It is categorised as a ‘restrictive practice’ because its use restricts a person’s rights or freedom of movement.<sup>5</sup> 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 Resident who has been assessed as posing a risk of harm to themselves or someone else.

### 2.0 Chemical restraint and provider obligations

Providers considering using chemical restraint must abide by the requirements set out in the *Aged Care Rules 2025* (Cth), which include that chemical restraint;

- a) is used as a last resort to prevent harm to the Resident or other persons, and after consideration of the likely impact on the Resident;<sup>6</sup>
- b) cannot be used unless alternative strategies are considered and used to the extent possible, and documented in the Resident’s Behaviour Support Plan;<sup>7</sup>
- c) is used to the extent that it is necessary and in proportion to the risk of harm to the Resident or other persons; is in the least restrictive form, and for the shortest time necessary to prevent harm;<sup>8</sup> and
- d) complies with the Resident’s Behaviour Support Plan, the Aged Care Quality Standards, and is not inconsistent with the Statement of Rights.<sup>9</sup>

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<sup>2</sup> *Aged Care Restrictive Practices (Substitute Decision-maker) Act 2024* (Vic).

<sup>3</sup> *Aged Care Act 2024* (Cth).

<sup>4</sup> *Aged Care Rules 2025* (Cth) r17-5(2).

<sup>5</sup> *Aged Care Act 2024* (Cth) s 17(1).

<sup>6</sup> *Aged Care Rules 2025* (Cth) r 162-15(1)(a).

<sup>7</sup> Ibid rr 162-15(1)(b)-(c).

<sup>8</sup> Ibid rr162-15(1)(d)-(e).

<sup>9</sup> Ibid rr 162-15(1)(h)-(j).

To use chemical restraint the Provider must be satisfied that a medical practitioner<sup>10</sup> or nurse practitioner<sup>11</sup> has:

- a) assessed the Resident as posing a risk of harm to themselves or any other person;<sup>12</sup>
- b) assessed that the use of the chemical restraint is necessary;<sup>13</sup>
- c) prescribed medication for the purpose of restraint;<sup>14</sup> and
- d) obtained informed consent for the prescribed medication.<sup>15</sup>

### 3.0 Informed consent for chemical restraint

A decision to use chemical restraint requires informed consent by the individual receiving the restraint, or if they lack capacity, by a substitute decision-maker.<sup>16</sup>

#### 3.1 How is capacity determined?

Capacity is determined by State and Territory law. All persons over 18 years are presumed to have capacity. Anyone alleging incapacity has the onus of proving it. At common law, the test is whether the person understands the 'nature and effect' of the transaction.<sup>17</sup>

Courts have accepted that capacity (or incapacity) may not be absolute and may not be permanent. The Law Council of Australia (LCA) describes the task of determining capacity as 'task, time and content specific'. This indicates that in the early stages of mental decline, it may be difficult to identify with precision whether a Resident has capacity to consent to the use of restrictive practices.

Some jurisdictions provide a 'Capacity Toolkit' or guidelines for assessing capacity. In Victoria, a guide is available for legal practitioners to purchase. The LCA, offers a 'Best Practice Guide for Legal Practitioners on Assessing Mental Capacity, 2023'. If determining capacity is an issue in relation to chemical restraint, either an appropriately qualified medical practitioner or a determination by VCAT can determine if the Resident has capacity to make their own decisions.

#### 3.2 Who can be a restrictive practices substitute decision maker?

Victoria has introduced the *Aged Care Restrictive Practices (Substitute Decisionmaker) Act 2024* (Vic), providing a hierarchy of who is legally permitted to be a substitute decision maker for the use of restrictive practices in the event a Resident does not have decision making capacity.

Aged Care Justice has developed a dedicated legal fact sheet on this legislation which can be found [here](#).

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<sup>10</sup> *Health Practitioner Regulation National Law (Victoria) Act 2009* s 5.

<sup>11</sup> *Ibid* s 95.

<sup>12</sup> *Aged Care Rules 2025* (Cth) r 162-20(1)(a)(i).

<sup>13</sup> *Ibid* r 162-20(1)(a)(ii).

<sup>14</sup> *Ibid* r 162-25(1)(a)(iii).

<sup>15</sup> *Ibid* r 162-25(1)(a)(iv).

<sup>16</sup> *Aged Care Act 2024* (Cth) s 18(f).

<sup>17</sup> *Gibbons v Wright* (1954) 91 CLR 423.

### 3.3 What is informed consent for chemical restraint?

Informed consent is required for each authorised restrictive practice, by the resident or their restrictive practices substitute decision maker (RPSDM). Informed consent requires the RPSDM to be provided information on the reasons for the medication, the alternative options available, the type of medication, and the risk and benefits of the restrictive practice.<sup>18</sup>

As a matter of general law, consent to the restrictive practice must be informed, voluntary, current and specific in relation to each proposed use of a chemical restraint.

### 4.0 How is chemical restraint used in an emergency?

Chemical restraint can be used in an emergency as necessary, such as in a dangerous event that is unanticipated and requires immediate action. It does not require informed consent. The chemical restraint must be in the least restrictive form, for the shortest period possible and documented. The Provider must inform the restrictive practices substitute decision maker as soon as practicable after the event, and document the Resident's behaviour, information on alternatives considered or used, why the restraint was necessary, and the care provided.<sup>19</sup>

### 5.0 Chemical restraint and provider documentation

The Provider must document the following in the Resident's Behaviour Support Plan:<sup>20</sup>

- a) The Resident's behaviour and assessments relevant to the use of chemical restraint, and the alternative strategies that have been considered or used.
- b) The practitioner's decision to use the chemical restraint and their reasons.
- c) Information provided to the practitioner that informed the decision to prescribe the medication.
- d) That the practitioner obtained informed consent.
- e) Details of the prescribed medication, including its name, dosage and when it may be used.
- f) Details of any engagement with persons other than the practitioner in relation to the use or assessment of the chemical restraint (for example, dementia support specialists).

### 6.0 Provider duties when using chemical restraint

- a) The Provider is required to monitor and review the use, effectiveness and impact of the medication on the Resident, and document reviews in the Resident's Behaviour Support Plan.<sup>21</sup>
- b) Observe the Resident for signs of distress or harm, side effects, changes in mood or behaviour, such as ability to engage in activities of daily living, and changes in the ability to maintain independent function (to the extent possible).

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<sup>18</sup> Aged Care Quality and Safety Commission, 'Restrictive Practices Consent: Frequently Asked Questions' <<https://www.health.gov.au/sites/default/files/2023-06/consent-for-restrictive-practices-frequently-asked-questions.pdf>>

<sup>19</sup> r 162-35.

<sup>20</sup> *Aged Care Rules 2025* (Cth) rr 162-50 – 162-55.

<sup>21</sup> *Ibid* rr 162-60 – 162-65.

- b) Consider whether an alternative strategy can be used, and restrictive practice reduced or stopped.
- c) Provide information about the effects and use of chemical restraint to the prescribing practitioner.

## 7.0 Health Legislation

In Victoria, the *Health Practitioner Regulation National Law (Victoria) Act 2009*, s 15FA(1)(j), may also apply with respect to the regulation of health professionals.

## 8.0 Unlawful Use of Chemical Restraint

Inappropriate use of a restrictive practice is a reportable incident, which the Provider is required to report.<sup>22</sup> Unauthorised use of chemical restraint 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. The Aged Care Quality and Safety Commission (ACQSC) has powers to deal with unauthorised use of restrictive practices including suspension and cancelling of registration<sup>23</sup> and banning orders against Providers and staff members.<sup>24</sup>

## 9.0 Unlawful use of Chemical Restraint

If a chemical restraint 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.

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<sup>22</sup> *Aged Care Act 2024* (Cth) s 16.

<sup>23</sup> *Ibid* div 5.

<sup>24</sup> *Ibid* pt 11.



**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 01/11/2025. Scenarios are fictional.