

Aged Care Justice Education Project

Reducing Serious Incidences of Restrictive Practices in Aged Care Settings through Legal Education and Access to Legal Services



This education project received funding through the Victorian Legal Services Board Grants Program

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Executive Summary

Aged Care Justice Inc. (ACJ) is a Community Legal Centre supporting recipients of aged care services, including residential and home care, by providing access to legal services, educational material on aged care rights, and lobbying for sector reform.

Over the last two years (November 2023 to October 2025), ACJ has delivered a Victorian education project - 'Reducing Serious Incidences of Restrictive Practices in Aged Care Settings through Legal Education and Access to Professional Legal Services'. The misuse of restrictive practices is a human rights issue because their use limits a person's freedom. The aim of this project is to reduce unlawful or inappropriate restrictive practices, such as the misuse of physical or chemical restraint, by enabling aged care recipients, their families, and advocates to access legal rights information and pathways to justice. This project was made possible through the Victorian Legal Services Board Grants Program, and we would like to thank the VLSB for their support.

Through this project, ACJ has distributed a collection of 19 fact sheets and 5 educational videos tailored for both the public and legal community. The fact sheets cover all five types of restrictive practices, the restrictive practice obligations of aged care providers, and the recently introduced restrictive practice substitute decision maker hierarchy in Victoria. A dedicated Fact Sheet for the LGBTQIA+ community was created to increase awareness of legal protections against discrimination. The Fact Sheets include reader-accessible and printed formats, and three different language translations to ensure inclusion and reach.

ACJ sought to strengthen the community's capacity to understand the evolving restrictive practices legislation, make informed decisions about care, and access free legal consultations to resolve issues with their aged care provider.

We have reached thousands of people across Victoria, with our fact sheets and videos accessed over 17,000 times, shared 230 times by public, advocacy, and government networks, and generating over 600 public comments reflecting keen community engagement.

This report provides a brief background on restrictive practices, an overview of the current legal framework, a summary of the project outputs and community response, and lastly, reform perspectives by legal and medical professionals.

We would like to especially thank ACJ Consultant, Professor Ann O'Connell, for her substantive research contribution to this project.

ACJ is committed to empowering older Australians, their families, and representatives to understand their rights and address their aged care issues. Through legal education and support, ACJ seeks to promote the appropriate and safe responses to the use of restrictive practices to reduce their misuse.



Background

The project was developed in response to the Royal Commission into Aged Care Quality and Safety (2021), which identified the 'widespread use of restrictive practices' as a key area requiring reform. Following the Commission's recommendations, the Australian Government amended the *Aged Care Act 1997* (Cth) to introduce a national **consent framework** governing the lawful use of restrictive practices. This framework set out rules on when restrictive practices may be used and established the requirement for informed consent.

The legislative environment continues to evolve. The *Aged Care Act 2024* (Cth), which commenced on 1 November 2025, has replaced the 1997 Act and consolidated existing restrictive practice provisions. The *Aged Care Act 2024* regulates the use of restrictive practices across residential, home, and community care settings.

At the state level, the *Aged Care Restrictive Practices Substitute Decision-Maker Act 2024* (Vic) commenced on 1 July 2025, establishing who may lawfully provide consent to the use of a restrictive practice in Victoria when an aged care resident lacks decision-making capacity.

The education material is designed to help aged care recipients, families, and practitioners understand the restrictive practice legal obligations of aged care providers under Commonwealth law and the consent requirements under Victorian law.





Overview of Restrictive Practices Legislation

1. Legislative Framework

Following the Royal Commission into Aged Care Quality and Safety (2021), the Commonwealth and State Governments introduced major reforms to clarify the lawful use of restrictive practices. The *Aged Care Act 2024* (Cth) and the *Aged Care Rules 2025* (Cth), which commenced on 1 November 2025, cover the national regulations for the use of restrictive practices across residential, home, and community care. *The Aged Care Restrictive Practices Substitute Decision-Maker Act 2024* (Vic) (the RPSDM Act), which commenced on 1 July 2025, establishes who may consent to a restrictive practice when a person lacks decision-making capacity.

2. Definition of Restrictive Practices

Under section 17(1) of the Aged Care Act 2024 (Cth), a restrictive practice is defined as any practice or intervention that restricts the rights or freedom of movement of a care recipient. The *Aged Care Rules 2025* (Cth) specify five types of restrictive practices:

- 1. Chemical restraint use of medication primarily to control behaviour.
- 2. Physical restraint use of physical force to limit movement.
- 3. Mechanical restraint use of devices such as belts or harnesses to restrict movement.
- 4. Environmental restraint restriction of a person's access to spaces, activities, or objects.
- 5. Seclusion solitary confinement of a person in a space where exit is prevented or not facilitated.²

3. Informed Consent

Informed consent is a key safeguard under both Commonwealth and Victorian law. Except in emergencies, restrictive practices may only be used with the informed consent of the care recipient or their Restrictive Practices Substitute Decision-Maker (**RPSDM**) under the RPSDM Act.

To be valid, informed consent must be:

- **voluntary** given freely without coercion;
- **informed** based on full understanding of the nature, purpose, and consequences of the practice;
- **specific** given for the particular restrictive practice proposed;
- current relevant to the situation at the time of use.³

¹ Royal Commission into Aged Care Quality and Safety, Final Report: Care, Dignity and Respect (2021).

² Aged Care Rules 2025 (Cth) r 17-5(2)-(6).

³ Department of Health, 'Consent for Restrictive Practices: Frequently Asked Questions' (2023).



4. Decision-Making Capacity

Under the RPSDM Act, an individual is presumed to have decision-making capacity unless proven otherwise. Capacity refers to the ability to understand, retain, use, and communicate information necessary to make a decision about restrictive practices.

A person has decision-making capacity if they can:

- understand the information relevant to the decision and its effect;
- retain that information to the extent necessary;
- use or weigh that information to make a decision;
- communicate the decision in any form, including speech, gestures, or other means.⁴

5. Provider Obligations under the Aged Care Act 2024

Registered aged care providers have clear legal responsibilities when considering or applying restrictive practices.

Residential aged care providers must ensure:

- restrictive practices are used only as a last resort to prevent harm;
- alternative strategies are explored and documented;
- practices are proportionate, time-limited, and least restrictive;
- informed consent has been obtained from the person or their RPSDM;
- all uses are documented in the Behaviour Support Plan;
- the use of the restraint is monitored; and
- any inappropriate use is reported to the Aged Care Quality and Safety Commission as a reportable incident.⁵

A Home Care Provider can only use a restrictive practice if:

- the practice is a part of the older person's Care and Services Plan; and
- the use of the practice follows the Care and Services Plan.

⁴ Aged Care Restrictive Practices Substitute Decision-Maker Act 2024 (Vic) s 4.

⁵ Aged Care Act 2024 (Cth) ss 16(1)(g), 18(2); Aged Care Rules 2025 (Cth) cl 16-15.



6. Restrictive Practices Substitute Decision Making in Victoria

When a person lacks decision-making capacity in Victoria, consent for restrictive practices in residential aged care must be obtained from the first available and eligible RPSDM from the following hierarchy under the RPSDM Act.

- Restrictive Practices Nominee (nominated when the Resident had capacity);
- spouse or domestic partner;
- primary carer;
- adult child;
- other eligible relative or person in a close and continuing relationship;
- if none of the above are available, the Victorian Civil and Administrative Tribunal (VCAT) may appoint or act as the RPSDM.⁶

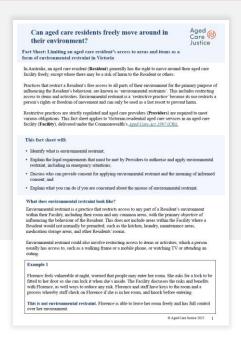
The Aged Care Act 2024 (Cth) and the RPSDM Act 2024 (Vic) impose strict requirements on providers to obtain informed consent, ensure documentation, and use restrictive practices only as a last resort for the shortest time necessary.



⁶ Aged Care Restrictive Practices Substitute Decision-Maker Act 2024 (Vic) ss 5–10.

Educational Resources produced by Aged Care Justice



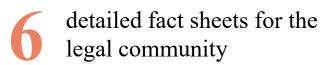


- fact sheets for the public
- accessible versions for screen readers

1.0 Introduction

2.0 Background

Fact Sheet: Information for the legal community on restrictive practices in home care settings



Translated fact sheet available in Greek (Ελληνικά), Italian (Italiano), and Traditional Chinese (繁體中文)







A dedicated legal resource for the LGBTQIA+ community





Explainer Videos



ACJ developed a <u>suite of educational materials</u> to help older Australians, their families, carers, and professionals understand the laws that regulate the use of restrictive practices in aged care. In developing these resources, we consulted with aged care providers and members of the public with lived aged care experience. The resources were created to make complex legal concepts accessible, promote informed decision-making, and support the rights and dignity of people receiving care.

1. Restrictive Practices in Residential Care Fact Sheets

Covers the 5 types of restrictive practices - chemical, physical, mechanical, environmental restraint, and seclusion.

- PDF fact sheets for the public
- Reader-accessible Word versions for screen readers and large text.
- Printed fact sheets distributed to postcodes of non-compliant aged care providers.
- Detailed legal community fact sheets with legislative references.

2. Home Care Obligations Fact Sheets

Explains the difference in provider responsibilities between residential and home care.

- PDF and accessible versions for the public
- Printed version distributed to home care service areas.
- Detailed legal fact sheet outlining documentation and reporting duties.

3. Victorian Substitute Decision-Maker Act Fact Sheets

Clarifies consent and substitute decision-making under the Aged Care Restrictive Practices Substitute Decision-Maker Act 2024 (Vic).

- PDF fact sheet in plain language for the public.
- Reader-accessible version for the public.
- Detailed legal community version.

4. Summary Fact Sheet on Restrictive Practices Across Care Settings

• Public and accessible formats outlining the application of restrictive practice laws across residential and home care.



5. LGBTQIA+ Community Fact Sheet

- Standard and accessible versions outlining restrictive practice laws and broader antidiscrimination protections for the LGBTQIA+ Community.
- Developed with input from older LGBTQIA+ community members. The consultations were facilitated by LGBTIQ+ Health Australia.

6. Translated Fact Sheets - 3 Languages

- Summary fact sheets translated into Greek, Italian, and Traditional Chinese.
- Sylaba provided NAATI-certified translations with community checking for clarity and cultural accuracy.

7. Five Animated Explainer Videos

- Short animated videos showing appropriate and inappropriate use of chemical, physical, mechanical, environmental restraint, and seclusion in residential care.
- Designed for visual accessibility and used widely on social media to increase awareness of lawful and unlawful use of restrictive practices.

Distribution Impact

17,187

Our Fact Sheets and Videos have been downloaded and viewed

230 times

Our restrictive practice social media campaigns on Facebook have been shared by members of the public, advocacy and health organisations, and government.

612

comments have been posted on our social media campaigns discussing the use of restrictive practices and personal experiences in aged care



Community Feedback on the use of Restrictive Practices

Feedback from ACJ's social media campaigns and community engagement reflected a wide range of experiences and emotions surrounding restrictive practices in aged care.

- **Appreciation for staff:** Many praised aged care workers as "caring and overworked," saying most "go beyond their duties" despite heavy workloads.
- Concerns about restrictions: Several criticised residents being told to "just sit down," saying lack of movement leads to decline "No movement means no life."
- **Anger over chemical restraints:** Strong reactions to overmedication, with one commenter describing it as "drugging people for convenience."
- **Disillusionment with the system:** Many felt care had "gone downhill since privatisation," citing reduced staff and profit-driven models.
- **Regional differences:** Some praised improvements in Victoria, while others said "SA aged care is worse now than ever."
- **Human rights vs. safety:** Heated debate between those opposing all restraints and those emphasising duty of care "It's not black and white."
- **Staffing and funding concerns:** Frequent calls for more staff and better pay "You can't give quality care when you're running on empty."
- **Personal stories:** Many shared distressing accounts of loved ones' decline, expressing frustration, sadness, and a desire for change so residents can receive more personalised care. Others expressed that restrictive practices are necessary and the alternative could result in injury to the resident or others.

Legal Complaints received by the Public

In response to the release of our education resources, ACJ's Legal Referral Service was contacted by members of the public requesting legal support in relation to issues with the application of restrictive practices.

The matters raised by these complainants included:

- Use of chemical restraint without consent from the resident's restrictive practices substitute decision maker
- Use of chemical restraint for an extended period without consent, the complainant was only advised after the death of her mother
- Continued use of chemical restraint despite the restrictive practices substitute decision maker asking for it to be ceased due to harsh side effects
- Use of seclusion without consent for an extended period of time, causing the resident distress
- Lack of monitoring the resident after obtaining consent to the use of the restraint



Trends in the Application of Restrictive Practices in Aged Care

Serious Incident Response Scheme

The inappropriate use of a restrictive practice is a reportable incident under the Serious Incident Response Scheme.

In Victoria, the number of notifications of an inappropriate use of a restrictive practice declined from 226 in 2022–23 to 160 in 2023–24, a reduction of around 29%, compared with only a minor decrease nationally (7%). The decline suggests a possible improvement in compliance or understanding of the consent and reporting requirements for restrictive practices.

Inappropriate Use of Restrictive Practices – Victoria (2021–22 to 2023–24)



Data source: Aged Care Quality and Safety Commission – Table 14A.62 (RoGS 2025)

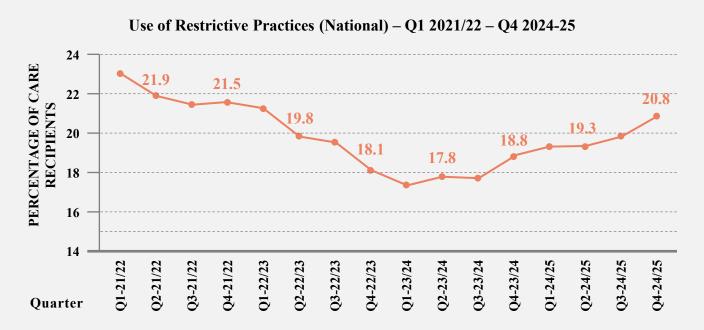


National Aged Care Mandatory Quality Indicator

The below contains data points from the National Aged Care Mandatory Quality Indicator Program, which shows important trends in aged care practices, including the use of restrictive practices. The percentages represent the number of residents subject to a restrictive practice.

- The use of physical restraint continues to rise and has increased by 2.1% in the last 2 quarters to 19.8% for the latest quarter, Q4 2024-25. This is the highest it has been since Q4 2022-23.
- Since the Quality Indicator Program began in 2021, the use of restrictive practices has moved from 23% in Q1 2021-22 to a low of 17.4% in Q1 2023-24 and is currently at 20.8% for the last reporting period, Q4 2024-25.
- The use of a restrictive practice exclusively through the use of a secure area was its lowest in Q2 of 2023-24 at 14% and is currently at 15.7% for Q4 2024-25.
- The use of anti-psychotic medication has decreased from 21.6% in Q1 2021-22 to 17.8% for Q4 2024-25. This data point does not draw distinction between the use of antipsychotics to treat an underlying condition (e.g., psychosis) and using them to manage behaviour (chemical restraint).

While some national indicators, such as the use of antipsychotic medications, show encouraging declines, the overall rise in physical and environmental restraints highlights that restrictive practices remain a significant concern in aged care. These trends demonstrate the importance of ensuring that all staff, families, and substitute decision-makers understand when restrictive practices can be lawfully used, how consent must be obtained, and what rights care recipients have under the law. Strengthening awareness and education helps prevent misuse, promotes accountability, and ensures that care practices remain focused on dignity, safety, and human rights.



Data source: Residential Aged Care Quality Indicators – April to June 2025



Professional Response

We received a high level of professional engagement and support from across the aged care and legal sectors in response to our education project. Positive feedback and promotional endorsement were received nationally from organisations including Dementia Alliance, the Older Persons Advocacy Network (OPAN), Elder Abuse Action Australia (EAAA), the Queensland Elder Abuse Helpline, Aged Care Reform Now, the Combined Pensioners and Superannuants Association (CPSA), the Law Society of South Australia, and other allied aged care and community legal organisations.

ACJ delivered three presentations on restrictive practices to the Federation of Community Legal Centres' Victoria Community Development and Community Legal Education (CD-CLE) Annual Forum and its bi-monthly Working Group, which encompasses over 90 working group members from CLCs across Victoria. Committee Member Professor Ann O'Connell presented in person at the Annual Forum as one of the guest speakers.

We also collaborated with the Victorian Department of Health on restrictive practice substitute decision making in the lead up to the commencement of the *Aged Care Restrictive Practices Substitute Decision-maker Act 2024* (Vic), which came into force on 1 July 2025.

Restrictive Practice Reform Insights from Legal and Clinical Experts

There has been significant legislative progress in the regulation of restrictive practices, however many legal and medical experts maintain that further reform is necessary. Their collective insights explore the practical effectiveness of current laws, the complexity of consent and authorisation processes, and the need for systems that support clinical training and prioritise human rights. The following contributors, including legal, clinical, and policy professionals, provide direct perspectives on the continuing challenges and opportunities for improving the regulatory framework governing restrictive practices in aged care.

Dr John Chesterman, the Queensland Public Advocate

Dr John Chesterman is the Public Advocate for Queensland and an expert in human rights and supported decision-making. Dr Chesterman has lectured and researched on government, politics, adult safeguarding, elder abuse, and access to justice.

"In a discussion paper released in March 2025, <u>available here</u>, and in several articles in Australian Ageing Agenda, I have argued that the current regulation of restrictive practices in aged care settings is sub-optimal and distracts attention away from the important goal of reducing and eliminating restrictive practice usage. In place of the current consent (and more often substitute consent) authorisation process, I have advocated for the adoption of a senior practitioner authorisation model in aged care (and other) settings. This would enable us to bring clinical expertise to the forefront in seeking to reduce and eliminate restrictive practice usage. We need to regulate – not regularise – restrictive practices in aged care."



Professor Joseph E. Ibrahim MBBS, GradCHE, PhD, FAFPHM, FRACP

Professor Ibrahim is a Consultant Physician in Geriatric Medicine and Public Health Medicine Physician, an independent expert in the medico-legal aspects of health and aged care, and a clinical and academic researcher.

"My view remains that the legislation is not solving the root cause of the problem. What it is doing is 'normalising' restrictive practice and condoning suboptimal approaches to care in an effort to avoid investing the additional resources needed to manage the issue."

Professor Ann O'Connell, ACJ Committee Member

Ann was formerly a Professor of Law at the University of Melbourne and Senior Member of the Administrative Appeals Tribunal. Currently, Ann is a Committee Member of ACJ where she provides valuable legal research on elder law matters.

Despite the calls from 3 separate Royal Commissions, and reports from numerous bodies, including the Australian Law Reform Commission, and the significant amount of legislative reform, there are still a number of areas where attention is needed in relation to the use of restricted practices — the lack of consistency in dealing with restrictive practices across sectors and across jurisdictions, and problems with the consent-based model adopted for use of restrictive practices in aged care.

To read Ann's full contribution on Reform of Restrictive Practices in Aged Care, please click here.

Melanie Scott, Legal Nurse Consultant and ACJ Consultant

Melanie is a dedicated Registered Nurse and Legal Nurse Consultant, with over 30 years' experience in aged care. Melanie provides insightful support to ACJ as a clinical consultant and is a passionate advocate for older Australians.

In today's aged care community, a conscious shift towards a more empathic and humanistic approach is gradually gaining momentum, highlighting the important role of trauma awareness, resident centred care, de-prescribing (chemical restraint medications) and reduction of restraint use. Whilst advocacy groups continue to push for reforms, we are awaiting the implementation of the new Aged Care Act and strengthened Aged Care Quality Standards. The purpose of which is to ensure people receiving aged care services receive high-quality person-centred care that meets their needs, choices and preferences in a safe and equitable environment. Whilst providing a framework for care providers to improve the safety, effectiveness and quality of care provided, and continuously upholding the rights of older Australians. For aged care staff and clinical educators, the evolution of restraint practices has led to a greater focus on skill-building and communication with a focus on empathy and respect, intentional practice, and trusting relationships with those in their care.

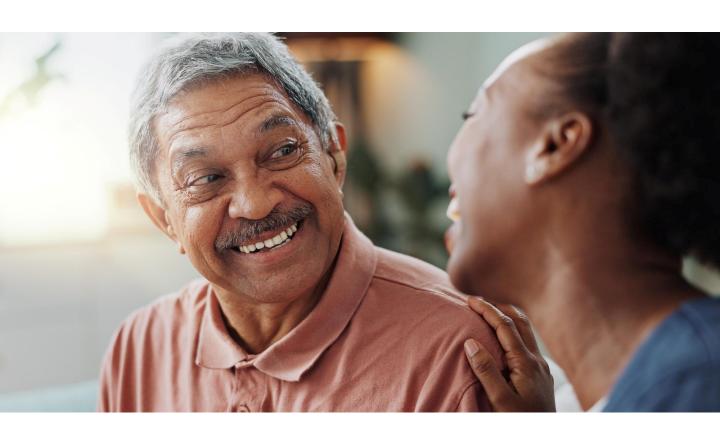
To read Melanie's full contribution on restrictive practices reform, please click here.



Teagan Howard, Lawyer, Falcone & Adams Lawyers, and former ACJ Panel Lawyer

Restrictive practices in aged care are a complicated reality of the care provided in various facilities across the country. With so many residents to care for, there is a high likelihood of one of the five restrictive practices (outlined by the Department of Health and Aged Care) being implemented during a resident's time at a facility.

There would be many issues associated with complainants or their families in seeking a remedy for alleged unlawful use of a restrictive practice. For example, if a resident has dementia or advanced Alzheimer's disease, they may not even remember the restrictive practices (physical or seclusion) that they have experienced from one week to the next. Proving the use of a restrictive practice is another issue for a potential complainant, particularly if the action was undertaken in their private room or in another part of the facility with no CCTV evidence. With residents already being in a position of reduced ability to advocate for themselves in 24/7 care, seeking a remedy for unlawful use of a restrictive practice is a part of elder-rights advocacy that requires great attention to detail.





Looking Forward

As this project concludes, ACJ remains committed to continuing its role in empowering older people, families, and care providers to understand their legal rights and responsibilities around restrictive practices. The strong community engagement and professional support received throughout the project highlight a growing awareness of the need for education, transparency, and accountability in aged care. Looking ahead, ACJ will continue to advocate for improved access to legal information and legal support pathways that help prevent misuse of restrictive practices and promote a culture of respect, dignity, and informed decision-making in aged care.



Aged Care Justice

Email: info@agedcarejustice.org.au

Phone: 0477 359 029

Website: www.agedcarejustice.org.au