

Physical 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 physical, physical, physical and physical 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 \(Cth\)](#).¹ 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’.² In response, the Commonwealth Government made significant amendments to the *Quality of Care Principles 2014*³ (**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 Since the commencement of the *Aged Care Act 2024 (Cth)* on 1 November 2025, the Principles have been replaced by the [Aged Care Rules 2025 \(Cth\)](#).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 is regulated by Commonwealth legislation, but State and Territory laws apply with respect to defining a person’s capacity to consent to a restrictive practice and the appointment of a substitute decision-maker if it is determined that the resident (**Resident**) of an aged care facility (**Facility**) does not have decision-making capacity.

¹ The *Aged Care Act 2024 (Cth)* came into force on 1 November 2025 replacing the to the *Aged Care Act 1997 (Cth)*.

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)*.

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.⁴

PHYSICAL 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).

1.0 What is physical restraint?

Physical restraint is any practice or intervention that is, or involves the use of, physical force to prevent, restrict or subdue movement of a Resident's body, or part of a Resident's body, for the primary purpose of influencing the Resident's behaviour.⁵

Physical restraint is a 'restrictive practice' because its use restricts a person's rights or freedom of movement.⁶

It does not include the use of a hands-on technique in a reflexive way to guide or redirect the Resident away from potential harm or injury, if it could reasonably be considered to be the exercise of care towards the Resident.⁷

2.0 Physical restraint and provider obligations

Providers considering using physical restraint must abide by the requirements set out in the *Aged Care Rules 2025*, which include that physical 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;⁸
- b) cannot be used unless alternative strategies are considered and used to the extent possible, and documented in the Resident's Behaviour Support Plan;⁹
- 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;¹⁰ and
- d) complies with the Resident's Behaviour Support Plan, the Aged Care Quality Standards, and is not inconsistent with the Statement of Rights.¹¹
- e) Informed consent to the use of the restraint has been obtained¹², except in an emergency.¹³

⁴ *Aged Care Restrictive Practices (Substitute Decision-maker) Act 2024* (Vic).

⁵ *Aged Care Rules 2025* (Cth) r 17-5(5)(a).

⁶ *Aged Care Act 2024* (Cth) s 17(1) def'n of 'restrictive practice'.

⁷ *Aged Care Rules 2025* (Cth) r 17-5(5)(b).

⁸ Ibid r 162-15(1)(a).

⁹ Ibid rr 162-15(1)(b)-(c).

¹⁰ Ibid rr 162-15(1)(d)-(e).

¹¹ Ibid rr 162-15(1)(h)-(j).

¹² Ibid r 162-15(1)(f).

¹³ Ibid r 162-15(2).

To use physical restraint the Provider must be satisfied that an approved health practitioner,¹⁴ with day-to-day knowledge of the Resident has:

- a) assessed the Resident as posing a risk of harm to themselves or any other person; and,
- b) assessed that the use of the physical restraint is necessary.¹⁵

3.0 Physical restraint and provider documentation

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

- a) The Resident's behaviour and assessments relevant to the use of physical restraint.¹⁶
- b) The alternative strategies that must be used before applying the physical restraint.¹⁷
- c) Details of the physical restraint, including duration, frequency and intended outcome, and how it is to be monitored, including the escalation process.¹⁸
- d) Any engagement with persons other than the health practitioner in relation to the use or assessment of the physical restraint (for example, dementia support specialists).¹⁹
- e) A record of the informed consent obtained by the Provider from the Resident or their substitute decision maker, for the use of the physical restraint.²⁰

4.0 Provider duties when using physical restraint

- a) The Provider is required to monitor and review the use, effectiveness and impact of the restraint on the Resident, and document the reviews in the Resident's Behaviour Support Plan.²¹
- 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).²²
- c) Consider whether an alternative strategy can be used, and restrictive practice reduced or stopped.²³

¹⁴An 'approved health practitioner' is defined as a medical practitioner, nurse practitioner or registered nurse: *Aged Care Rules 2025* s 5-5 def'n of 'approved health practitioner'.

¹⁵ *Aged Care Rules 2025* (Cth) r 162-20(1)(a).

¹⁶ *Ibid* r 162-55(a).

¹⁷ *Ibid* r 162-55(c).

¹⁸ *Ibid* r 162-55(b).

¹⁹ *Ibid* r 162-20(b)(i)-(iii).

²⁰ *Ibid* r 162-55(h).

²¹ *Ibid* r 162-30(a)-(b).

²² *Ibid* r 162-30(b)-(d).

²³ *Ibid* r 162-30(d).

5.0 Informed consent for physical restraint

A decision to use physical restraint requires informed consent by the individual receiving the restraint, or if they lack capacity, by a substitute decision-maker.²⁴ Informed consent is required for each authorised restrictive practice by the Resident or the substituted decision-maker. 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 physical restraint. Informed consent requires the decision-maker to be provided information on the reasons for the use of the physical restraint, the risks and benefits, the timeframe and intended outcomes, and any alternative options.²⁵

5.1 How is capacity determined?

Capacity is determined under State and Territory law. All persons over 18 years are presumed to have capacity and 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.²⁶

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’.²⁷

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.²⁸ The LCA Guide is available online.²⁹

If determining capacity is an issue in relation to physical restraint, either an appropriately qualified medical practitioner or a determination by the Victorian Civil and Administration Tribunal (VCAT) can determine if the Resident has capacity to make their own decisions.

5.2 Who can be a restrictive practices substitute decision-maker?

In Victoria, the *Aged Care Restrictive Practices (Substitute Decisionmaker) Act 2024* (Vic), provides a hierarchy of decision-makers, which came into effect on 1 July 2025.

Aged Care Justice has developed a dedicated legal fact sheet on this legislation which provides for a hierarchy of restrictive practices substitute decision makers (RPSDMs) and the process for their appointment.

The Fact Sheet can be found [here](#).

²⁴ Ibid r 162-15(f).

²⁵ Department of Health, Fact Sheet Restrictive Practices Consent: Frequently Asked Questions 1 June 2023: <https://www.health.gov.au/resources/publications/consent-for-restrictive-practices-frequently-asked-questions>

²⁶ *Gibbons v Wright* (1954) 91 CLR 423.

²⁷ Law Council of Australia, Best Practice Guide for Legal Practitioners on Assessing Mental Capacity (2023) 4: <https://lawcouncil.au/resources/policies-and-guidelines/best-practice-guides-for-legal-practitioners-in-relation-to-elder-financial-abuse-and-assessing-mental-capacity>.

²⁸ Law Institute of Victoria, Capacity Guidelines and Toolkit (2020): https://www.liv.asn.au/itemdetail?iProductCode=9780980556261&srsId=AfmBOopEP6j3pbOFEm8U_PhZAJSO5kF95HIIKm2odohvM3P9ZE8NFCr0

²⁹ See fn 27.

6.0 How is physical restraint used in an emergency?

Physical restraint 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 compliance with the Resident's Behaviour Support Plan.³⁰ The physical restraint 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, information on alternatives considered or used, why the restraint was necessary, and the care provided.³¹

7.0 Unlawful use of physical restraint

The 'inappropriate' use of a restrictive practice is a reportable incident under the Serious Incident Reporting Scheme, which requires the Provider to self-report.³²

Unauthorised use of physical 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 registration³³ and banning orders against Providers and staff members.³⁴

8.0 If physical restraint has been applied inappropriately, what can you do?

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

³⁰ *Aged Care Rules 2025* (Cth) r 162-15(2)-(3).

³¹ *Ibid* r 162-35.

³² *Aged Care Act 2024* (Cth) s 16.

³³ *Ibid* div 5.

³⁴ *Ibid* pt 11.



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

Email: info@agedcarejustice.org.au

Phone: 0417 234 415

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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 01/11/2025. Scenarios are fictional.