

# Can you be banned from visiting an aged care resident?

## Fact Sheet: Elder Rights in Residential Aged Care

Queensland

*“My brother and I are estranged, and he is preventing me from visiting my parents in their aged care home. It’s very distressing. Does he have the power to do that?” Tony, Queensland.*



Aged Care Justice (ACJ) has received enquiries from relatives and friends who have been banned or restricted from visiting an aged care resident (**Resident**) in an aged care facility (**Facility**), usually by a family member.

This fact sheet will provide information on whether you can lawfully be restricted from visiting a Resident, the role of the Facility, and what you can do about it.

### **Key Points:**

- In Australia, a Resident can make their own decisions including who can visit them, unless it has been determined that they cannot make their own decisions.
- If a Resident cannot make their own decisions, each State and Territory has a legal process that must be followed for another person to make decisions on their behalf.
- In Queensland, if you hold an Enduring Power of Attorney (**EPOA**) for financial matters only, you cannot make decisions on who can visit a Resident.
- A person who holds an EPOA that includes authority to deal with ‘personal matters’, may be able to make decisions on who can visit a Resident.
- If a person is unfairly prevented from visiting a family member, they can make a complaint to the Facility, or apply to the [Tribunal](#) to challenge the EPOA.

## Can you be restricted from visiting an aged care resident in Queensland?

1. Residents are presumed to have capacity to make their own decisions, including on personal matters such as limiting or excluding visitors. The genuine personal wishes of the Resident should be followed by the Facility and the family.
2. A Resident who has been assessed as unable to make their own decisions is legally referred to as having ‘impaired capacity’. In Queensland, a medical certificate is evidence that the Resident has impaired capacity, and [Capacity Assessment Guidelines](#) are provided by the Queensland Government.
3. The person(s) that can make personal decisions for a Resident are appointed by the Resident in an EPOA document which provides authority to deal with ‘personal matters’, including who can visit and contact the Resident.
4. When making decisions for the Resident, an EPOA must abide by the express wishes set out in the EPOA document, and any wishes expressed in the document titled Advance Care Directive (**ACD**), if one is in place. The EPOA must seek the Resident’s current or previous views regarding visitors and support the maintenance of existing supportive relationships.
5. An EPOA may only exercise decision-making power ‘during any and every period’ the Resident ‘has impaired capacity, and not otherwise’. Capacity to make decisions may be fluid, that is, a person diagnosed by a medical practitioner with ‘impaired capacity’ may have periods where they can make their own decisions. When a Resident appears to have capacity to make a decision regarding visitors, their preferences are of prime importance.
6. If there is no EPOA and the Resident has impaired decision-making capacity, an application may be made to the [Queensland Civil and Administrative Tribunal](#) (**Tribunal**) to appoint a Guardian. A Guardian can make decisions to restrict access to the Resident if they consider it necessary for their protection, subject to the [Guardianship and Administration Act \(Old\)](#).

## What is the role of the Facility in these situations?

- The Facility has a duty of care to consider the wishes and views of the Resident. Consideration should be given to the protections provided to Residents under the [Charter of Aged Care Rights](#).
- When a person makes a decision to ban a visitor, the Facility should consider if that person has legal authority to make that decision. This may include evidence of the Resident's impaired decision-making capacity and authority to ban visitors.
- If a Resident has not appointed an authorised decision maker and has impaired decision-making capacity, the Facility must consider the wishes and views of the Resident when restricting visitors. This may require speaking to family or friends. The Facility or a concerned person may apply to the [Tribunal](#) to appoint a Guardian to make decisions for the Resident.
- The Facility has the right to determine who may enter its premises and may set rules and conditions as to standards of conduct. The agreement between the Facility and the Resident may also refer to restrictions in entering the Facility.
- The Facility may be empowered by other laws, such as health legislation, to restrict visitations.

## Questions to ask if you have been banned

- Why was the decision to restrict access made, and by whom?
- Does the person have power to make decisions relating to the 'personal matters' of the Resident, including who they can associate with?
- Has anyone read the legal document that gives a person authority to ban visitors?
- Does the Resident lack decision-making capacity, and is there supporting documentation?
- Does the decision to ban or restrict you from visiting reflect the decision the Resident would have made?

## What can you do if you have been banned from visiting a Resident?

- You can make a complaint to the Facility, referencing the Charter of Aged Care Rights, and/or the principles in the [Powers of Attorney Act 1998 \(Old\)](#).
- You can also apply to the [Tribunal](#) to challenge decisions of an EPOA or a Tribunal-appointed Guardian.
- If the Resident has capacity, they can revoke the appointment of the EPOA.
- Contact [ACJ](#) if you are unsure of your rights for a free consultation with an aged care lawyer.



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

Email: [info@agedcarejustice.org.au](mailto:info@agedcarejustice.org.au)

Phone: (03) 9016 3248

Website: [www.agedcarejustice.org.au](http://www.agedcarejustice.org.au)

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