

Can you be banned from visiting an aged care resident?

Fact Sheet: Elder Rights in Residential Aged Care

TASMANIA

“My Mum has banned me from visiting my Dad at his aged care home. I know my Dad wants to see me. It’s devastating for Dad and me, what can I do?” – Melissa, Tasmania.



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 Tasmania, if you are a spouse, a close family member or a person who holds an Enduring Power of Attorney (**EPOA**), you cannot make decisions regarding who can visit a Resident.
- To make decisions on behalf of a Resident on who can have access to them, you are required to be authorised by being named in an Enduring Guardianship document previously prepared by the Resident.
- If you have been restricted from visiting a Resident you can make a complaint to the Facility or make an application to the [Tribunal](#).

Can you be restricted from visiting a Resident in Tasmania?

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. When it has been determined that a Resident cannot make ‘reasonable judgements’, this is referred to as ‘impaired decision-making capacity’. Determining a person’s capacity can be difficult, it may be appropriate to obtain an assessment by a suitably qualified medical practitioner. In Tasmania, a [Capacity Toolkit](#) provides guidelines on determining capacity.
3. If a Resident cannot make their own decisions, the person(s) appointed in an Enduring Guardianship document for health personal matters can make decisions on who can contact or visit the Resident. The Enduring Guardianship document is only effective if it is registered with the [Tasmanian Civil and Administrative Tribunal \(Tribunal\)](#).
4. When making decisions for the Resident, an EG must abide by the express wishes in the Enduring Guardian document, and in the Advance Care Directive, if one is in place. The EG must consider the Resident’s preferences, and may consult with other persons who have information on the Resident's wishes. Visitors may be restricted by the EG only to such extent as may be necessary, including if they reasonably believe it would have an adverse effect on the Resident.
5. The capacity to make decisions may be fluid, and a person unable to make ‘reasonable judgments’ may have periods where they can make their own decisions. When a Resident appears to have capacity to make a decision regarding visitations, their preferences are of prime importance.
6. If there is no EG and a Resident does not have capacity to make their own decisions, a Guardian may be appointed by application to the [Tribunal](#). 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 1995 \(Tas\)](#).

What is the role of the Facility when a person is banned from visiting?

1. 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](#).
2. When a person makes a decision to ban a visitor, the Facility should consider if the 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.
3. 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.
4. 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.
5. 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 [Guardianship and Administration Act 1995 \(Tas\)](#).
- You can also apply to the [Tribunal](#) to challenge decisions of an EG or a Tribunal-appointed Guardian.
- If a Resident has capacity, they can revoke the appointment of the EG.
- Contact [ACI](#) 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:

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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 01/07/24. Quotation is fictional.