# When can a device be used to restrict the movement of an aged care resident?

## Fact Sheet: Limiting the movement of an aged care resident through mechanical restraint in Victoria.

In Australia, an aged care resident (**Resident**) generally has the right to move around the aged care facility freely, except where there may be a risk of harm to themselves or others. The use of devices (e.g. straps or reclining chairs) to prevent, restrict or subdue the movement of a Resident for the primary purpose of influencing a Resident's behaviour, is known as 'mechanical restraint'. Mechanical restraint is a 'restrictive practice' because its use restricts a person's rights or freedom of movement and can only be used as a last resort to prevent harm.

This fact sheet applies to services delivered in aged care facilities (**Facility)** in Victoria, under the Commonwealth's *Aged Care Act 1997* (Cth). Restrictive practices are strictly regulated and aged care providers (**Providers**) are required to meet various obligations.

### This fact sheet will:

- Identify what is mechanical restraint;
- Explain the legal requirements that must be met by Providers to authorise and apply mechanical restraint, including in emergency situations;
- Discuss who can provide consent for applying mechanical restraint and the meaning of informed consent; and
- Explain what you can do if you are concerned about the misuse of mechanical restraint.

### What does mechanical restraint look like?

Mechanical restraint is a practice or intervention that is, or involves, the use of a device to prevent, restrict or subdue a Resident's movement with the primary objective of influencing the behaviour of the Resident.

Mechanical devices primarily used for approved medical, therapeutic or non-behavioural purposes, such as wheelchairs to increase mobility, or splints or casts for injuries, are not restraints. Examples of mechanical restraints include belts or harnesses.

**Example 1**

John recently moved into an aged care facility after having a fall at home causing a sprained ankle. John is using a cane to help him walk and the Provider suggests that he may like to use a wheelchair for longer distances to ensure no pressure is placed on his ankle. The wheelchair is a temporary measure and John can choose to use the wheelchair or the cane as he wishes.

**This is *not* mechanical restraint.** The use of the wheelchair is for therapeutic reasons to treat John's injury and he is not confined to the wheelchair.

**Example 2**
Rose has dementia and tends to wander into other Resident's rooms. It is known to staff that Rose cannot get out of the lounge chairs unassisted. A staff member seats Rose in the lounge chair and leaves her there for hours, to prevent her from wandering around the facility.

**This *is* mechanical restraint**, as leaving Rose in the chair is to control her behaviour of wandering around the facility and is not to prevent harm to herself or others. This is an inappropriate use of mechanical restraint.

Mechanical restraint may be appropriate if an approved health practitioner had determined that Rose's behaviour posed a risk to other residents or herself, and the facility followed all the criteria as required to apply a mechanical restraint.

## What are the Provider's obligations in the use of mechanical restraint?

### The Provider must be satisfied that:

- Mechanical restraint is only used as a last resort to prevent harm to the Resident or other persons, and after consideration of the likely impact on the Resident;
- Alternative strategies are considered and used to the extent possible, and documented in the Resident's Behaviour Support Plan;
- The restraint is used only to the extent that it is necessary and in proportion to the risk of harm to the Resident or other persons, in the least restrictive form, and for the shortest time necessary to prevent harm;
- The restraint complies with the Resident's Behaviour Support Plan (and other relevant care plans), the Aged Care Quality Standards, and is consistent with the Charter of Aged Care Rights;
- Informed consent to the use of the restraint has been obtained, except in an emergency (see below).
- An approved health practitioner with day-to-day knowledge of the Resident has assessed the Resident as posing a risk of harm to themselves or any other person and assessed that the use of the mechanical restraint is necessary.

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

- The Resident's behaviour and assessments relevant to the use of mechanical restraint.
- The alternative strategies that have been considered or used, including a record of any consultations with the Resident or their substitute decision maker discussing such strategies.
- Details of the mechanical restraint, including duration, frequency and intended outcome, and how it is to be monitored, including the escalation process.
- Any engagement with persons other than the approved health practitioner in relation to the use or assessment of the mechanical restraint (for example, dementia support specialists).
- A record of the informed consent obtained by the Provider from the Resident or their substitute decision maker, for the use of the mechanical restraint.

## Responsibilities of the Provider while mechanical restraint is being used:

- The use of the restraint is monitored, reviewed and documented in the Resident's Behaviour Support Plan.
- The Resident is monitored for signs of distress or harm, side effects, changes in mood or behaviour, including ability to engage in activities and to maintain independent function (to the extent possible).
- Consider if appropriate alternative strategies can be used, or changes to the environment could be made, for the restraint to be reduced or stopped.

## Who can consent to mechanical restraint on behalf of a Resident?

- A decision to use mechanical restraint requires informed consent by the Resident, or if they lack capacity, a substitute decision-maker.
- Determining a person's capacity can be difficult, it may be appropriate to obtain an assessment by a medical practitioner, but importantly Residents are presumed to have capacity to make their own decisions.

## Who can be a substitute decision maker for mechanical restraint?

The Commonwealth of Australia has a hierarchy of Restrictive Practices Substitute Decision Makers (**RPSDMs**) who can provide informed consent for the use of mechanical restraint on behalf of a Resident.

There is a new hierarchy of RPSDMs in Victoria that comes into effect on the 1 July 2025. RPSDMs appointed under the Commonwealth hierarchy prior to 1 July 2025 will not be impacted by this new legislation. The Commonwealth hierarchy can be found here.

The order of the hierarchy will be:

- A person nominated in writing, and the nomination is witnessed by an authorised affidavit taker (for example a lawyer);
- The spouse or domestic partner of the Resident;
- The primary carer of the Resident;
- The oldest child of the Resident, followed by the other children in descending order of age if there are two or more adult children;
- The oldest sibling of the Resident, followed by the other siblings of the Resident in descending order of age if there are two or more adult siblings.

Applications may also be made to the Victorian Civil and Administrative Tribunal (**VCAT**) to appoint a RPSDM. If no person is available, VCAT may provide consent to the use of a restrictive practice.

## What is 'informed consent'?

A Resident or RPSDM must provide informed consent to the use of a mechanical restraint. This requires the Provider to explain the reason for the use of the mechanical restraint, the risks and benefits, the timeframe and intended outcomes, and any alternative options. In addition, consent should be provided independently, free from duress, and involve the opportunity to review and ask questions.

Consent can be refused or withdrawn and is required each time a mechanical restraint is proposed.

## How is mechanical restraint used in an emergency?

Mechanical 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 the need to ensure compliance with the Resident's Behaviour Support Plan.

The mechanical restraint used in the emergency 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, the alternatives considered or used, why the restraint was necessary, and the care provided.

## Legal remedies for unlawful mechanical restraint

Unauthorised use of restraint may be considered assault or false imprisonment and may give rise to civil or criminal actions in severe cases.

A person may seek an injunction from the courts to prevent the restraint from happening or continuing.

## What can you do if you or your loved one is being mechanically restrained unlawfully?

- Make a complaint to the Provider, referencing the Quality of Care Principles which outline the requirements of applying restrictive practices.
- Make a complaint to the Aged Care Quality and Safety Commission (ACQSC).
- Contact ACJ if you are unsure of your rights for a free legal consultation.

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

Email: info@agedcarejustice.org.au

Phone: (03) 9016 3248

Website: **www.agedcarejustice.org.au**