



COVID-19 restrictions in residential aged care – your rights

A fact sheet for aged care residents, their families and representatives

During the COVID-19 pandemic, individual state and territory governments will decide at times of heightened risk to issue a public health order restricting access for visitors to residential aged care services in that state or territory. This fact sheet helps you and your family understand your rights and the responsibilities of your service provider in this and other situations.

Why are visitor restrictions used?

Where there is increased community transmission of COVID-19, a state or territory government may issue a public health order which will typically require residential aged care services located in a defined geographical area to restrict access. These restrictions are likely to require the service to reduce the number of visitors or even exclude visitors. Such restrictions are important to reduce the risk of transmission to residents who may be particularly vulnerable to infection and illness from COVID-19. This is currently the case even where many or most residents have been vaccinated against COVID-19.

When the risk of COVID-19 transmission is low and there is no public health order or official advice restricting visitor access, **services should not limit the length of visits or restrict visiting times in a way that prevents residents**

from having visitors (for example, people who are working may be unable to visit during business hours and need to be able to visit after hours).

You can find out whether there is a public health order in place in your state by searching online for '[include name of STATE] COVID public health order'. (They are also called public health directions and state of emergency declarations in different states.)

What are my rights when visitor restrictions are in place in my service?

At all times, including when public health orders and visitor restrictions are in place, **aged care services are legally required to ensure that the rights of residents are respected, including those under the [Charter of Aged Care Rights](#). They are also required to provide care that meets the Aged Care Quality Standards. This includes making sure that residents have the opportunity and assistance to stay connected with their loved ones, even and especially when visitor restrictions are in place. Supported use of technology such as phones and other portable electronic devices to allow a resident to video-conference with family is the minimum reasonable expectation** **1.** in these circumstances.

1. It is confusing and wrong to refer to technology in this context. The right to physical visits is the only relevant one here. This will make ACFs think they can restrict physical visits when they cannot. Most aged care residents can't receive care via technology alone.

2. What is meant by official advice? This phrase should be removed. Is the Commission going to bow down to individual public servants' whim when it goes against the law? It should be made clear that a public servant issuing personal recommendations is not authoritative and does not provide a legal basis to restrict visitors when it conflicts with or is inconsistent with public health orders..

If a service has restricted visiting arrangements in place, you could ask the service: 3.

- Are your visitor access restrictions based on a public health order or official advice? 2.
- What advice have you followed in setting your visitor access arrangements?
- Is access allowed for compassionate reasons or for essential care visitors/partners in care?
- What arrangements are in place for residents to maintain contact with loved ones?
- How are you ensuring the rights of your residents under the Charter of Aged Care Rights?

Are there any exemptions to visitor restrictions?

When a public health order requires residential aged care services to exclude visitors, there are usually exemptions

from these requirements for specific sorts of visitors. Typical exemptions include for a visitor seeking to visit a resident on compassionate grounds (for example, the imminent death of their loved one)

or to provide 'essential care'. An essential care visitor, or partner in care, is someone who has frequently and regularly visited a resident to provide essential aspects of care and companionship to that person. It does not include a casual visitor, or visitor not providing an aspect of care, or visitor who the resident does not want to have assisting with their care. The Commission fact sheet [Partnerships in Care](#) provides more information.

3. This is still not the right approach. Residents and their families are not in a position to inquire about these things. ACFs won't answer them properly and will take weeks to respond. ACFs don't understand the law. Instead, the residents/families should be told by the Commission: "you could ask the service: Your restrictions are not consistent with public health orders or the Charter of Aged Care Rights. Therefore you have no right to restrict visits from us (essential carers). We will report you to the Commission and they will take swift action." By issuing this fact sheet & putting the onus on residents to assert their rights, the Commission is still avoiding regulating unlawful restrictions in this space.

What do I need to do to visit if I am exempt from the restrictions?

If you are a visitor who is exempted from the exclusion requirements of a public health order and have confirmed with the residential service that you are eligible to enter the facility to be with a resident, you will have to comply with certain conditions of entry. 4. (PTO) These will include where you can go inside the building, wearing a mask and possibly other personal protective equipment, and observing hand hygiene requirements. There will also be a screening process prior to and/or on arrival at the service. This could involve signing in and out, a temperature check, making a declaration about whether you have had contact with a COVID-positive person, whether you have any COVID-19 symptoms, and where you have been in the past 14 days. Screening processes are important to ensure that residents are kept safe from the risk of COVID-19 infection. This is currently the case even where the visitor(s) and the resident they are visiting have had one or both doses of a COVID-19 vaccine.

Are there any restrictions on residents leaving an aged care service?

Where there is a public health order in place and there are restrictions to movement outside of home for the general community, the same restrictions will apply to aged care residents. In this situation, aged care residents can only leave their service for one of the reasons specified in the public health order.

5. In these circumstances, each residential aged care facility should undertake its own risk assessment for residents who have left the service for a permitted reason (such as attending a medical appointment or undertaking exercise) and then returned. In general, there should be no requirement for a resident to isolate in their room after having left the service for a permitted reason, unless this is required under a public health order.

Where there is no public health order in place, an aged care service that restricts a resident's movements within or outside the service may be acting in a way that is inconsistent with the resident's rights, including their rights under the [Charter of Aged Care Rights](#).

If a service is preventing you from leaving the service or is requiring you to isolate on your return, you could ask the service:

- Are these restrictions based on a public health order?
- What is your authority for restricting my freedom of movement?
- How are you ensuring my rights under the Charter of Aged Care Rights? **3. ditto.**

4. It is not correct to give the impression that ACFs can determine eligibility. This has been a problem since early 2020. ACFs quickly decide that carers are not carers, because it suits the ACF to exclude as many visitors as possible. It should be enough for a visitor to declare that they are an essential carer ie 'a visitor who provides essential care whether mental, emotional or physical, including companionship, and including monitoring the care provided by the ACF'. (Frequent and regular needn't be in the definition - it would exclude carers who can't manage to be frequent/regular.)

5. This is a poor requirement and should be removed. It is not up to ACFs to determine 'risk' "as a general rule", because they are not qualified to do so. This is extremely dangerous and unclear. Further, it is not correct to say that 'in general there should be no requirement for a resident to isolate in their room". Rather, the Commission should say that solitary confinement is illegal unless required under a public health order.

Overall, while this fact sheet is an improvement on previous documents issued by the Commission, it is still wrong and heavily weighted in favour of ACFs, keeps them in power, and encourages ACFs to breach the rights of residents. It also fails by refusing to regulate ACFs who breach the rights of residents and their families. it won't be enough because the ACFs do what they like, and the Commission has known this since at least early 2020. Therefore the Commission is continuing to condone breaches of human rights by ACFs and illegal detention.

What can I do if I have concerns?

You have the right to raise concerns with your service about any COVID-19 restrictions.

If you are not able to resolve your concerns directly with the service, you can seek support from an advocate through the Older Persons Advocacy Network (OPAN) by phoning **1800 700 600**.

You can also make a complaint to the Aged Care Quality and Safety Commission by:

- calling us on **1800 951 822** (free call) between 9:00 am to 5:00 pm (AEST) Monday to Friday or you can leave a message outside these hours
- visiting our website at **www.agedcarequality.gov.au** and lodging a complaint online at any time.

If you lodge a complaint with us, you can decide if you'd like to raise your complaint openly or confidentially. You can also lodge a complaint anonymously, although this means we cannot provide you with feedback on the action taken in response to your complaint.