



 1800 066 969

 www.opa.sa.gov.au

 opamailbox@sa.gov.au

22 January 2026

Senate Community Affairs Legislation Committee

Parliament of Australia

PO Box 6100, Parliament House, Canberra ACT 2600

Via email: community.affairs.sen@aph.gov.au

Submission – Review of Aged Care Rules

Thank you for the opportunity to provide a submission in response to the review of the Aged Care Rules by the Senate Community Affairs Legislation Committee.

I provide this response in my capacity as the South Australian Public Advocate.

In South Australia, the South Australian Civil and Administrative Tribunal can make an order appointing the Public Advocate to make decisions in relation to accommodation, lifestyle, services, access and/or health matters for an adult with impaired decision-making ability. Currently, this applies to over 2,400 people and includes more than 500 clients residing in residential aged care facilities.

Decisions made by the Public Advocate, or staff delegated decision-making powers and responsibilities, must consider clients' wishes, and must also ensure their proper care and protection.

OFFICIAL

I make the following observations in relation to particular clauses in the Rules:

Section 15 – Aged Care Quality Standards

The Aged Care Quality and Safety Commission has produced a “Better Practice Guide” to complaints handling¹, which points to the benefits of mediation for resolving disputes. It would be useful to reinforce this expectation in the Aged Care Rules. It is good practice to encourage individuals, providers, supporters, and others involved in aged care provision to seek a qualified mediator when disputes arise. This would help to manage conflict and reduce its cost in time, energy, staff turnover and resources.

Successful dispute resolution requires understanding of decision-making capacity, conflict, neuro-degenerative conditions, family and systems dynamics, mental health, and state and territory laws around decision-making. Providers, individuals and supporters should have access to dispute resolution assistance and be encouraged to seek this help prior to escalating a complaint to the Aged Care Quality and Safety Commission.

Section 154 – Personal information and record keeping

In s154-1000(1), the Rules list the kinds of records which providers must keep for an individual. It would be appropriate for the list to include a copy of any advance planning documents an individual has made and any applicable orders of a Tribunal. This would include advance care/health directives and powers of attorney, guardianship orders, and authorisations for the individual.

Section 162 – Restrictive practices – approved residential care homes

My office has previously submitted that a Senior Practitioner model for restrictive practices in aged care should be implemented nationally. I also note that the Queensland Public Advocate Dr John Chesterman has made a submission supporting a Senior Practitioner Model.

Since the establishment of a Restrictive Practices Unit in the state Department of Human Services in South Australia for participants in the National Disability Insurance Scheme (NDIS), an alternative to a national model in South Australia is for restrictive practices in aged care facilities to be overseen by this unit and authorised by the Senior Authorising Officer.

¹ Better practice guide to complaints handling in aged care services – Aged Care Quality and Safety Commission, July 2025.

https://www.agedcarequality.gov.au/sites/default/files/media/better_practice_guide_to_complaints_handling_in_aged_care_services_v4.pdf

OFFICIAL

The Rules regarding restrictive practices (s162) cite specific administrative and technical requirements for staff to make nuanced distinctions between specific scenarios, to follow complex directions around restrictive practices, while being alert to coercion and duress. While an ‘approved health practitioner’ as referred in s162-45 to -75, will have adequate health-care training and may be qualified to manage chemical restraint, they may have limited training in the provision of restrictive practices, use of behaviour support plans, or assessment of abuse or conflict that may produce coercion.

It is not good practice to disperse the responsibility for restrictive practice management across aged care workers, family, friends, or guardians of individuals. A preferable approach is centralising the authorisation of restrictive practices with a specialised unit, operated by skilled and qualified staff, with the proper supervision of a Senior Practitioner, as occurs for people with disabilities who are participants of the National Disability Insurance Scheme.

As currently proposed, sector-wide training would be needed to ensure a sufficiently high standard of decision-making to preserve the rights and freedoms of aged care residents. Ongoing education would be required due to high staff turnover in the aged care sector, and further challenges would be encountered given the general naivety of the community in these matters.

Where a substitute decision-maker under an Advance Care Directive, or a person responsible under the *Consent to Medical Treatment and Palliative Care Act (SA) 1995*, or a guardian appointed under the *Guardianship and Administration Act (SA) 1993*, is called on to provide restrictive practice consent, they must understand the restrictive practice, behaviours of concern, behavioural support plans, alternative strategies, reviews, revisions and consultation requirements.

Because of the average substitute decision-maker’s lack of knowledge in this area, there is a risk of reducing the authorisation to an administrative exercise, rather than the considered oversight needed when restricting a person’s rights and freedoms.

The creation of a dedicated “Restrictive Practices Authorisation Unit” prior to 1 December 2026, when the interim legislative arrangements lapse, would avoid the expected increase in guardianship appointments in order to provide consent to the use of restrictive practices. More importantly, it will ensure that restrictive practices are authorised by skilled officers with the specialised knowledge and experience to expertly apply the legislation.

The cost of pursuing inadequate oversight and authorisation of restrictive practices could lead to their over-use and the reversal of progress in advocating for the rights of older people in Australia.

OFFICIAL

Thank you for your attention to these issues.

Yours sincerely

Anne Gale

Public Advocate