

# Residential Aged Care and Community Care Arrangements:

common legal problems older people can avoid

factsheet 6

## COMMON SCENARIOS

### Making the decision to move to residential aged care

Enid is 87 and in good physical and mental health, apart from being a little off balance at times. She slipped in the shower last month and was taken to hospital with a broken wrist.

After consultation with Enid's medical and allied health treatment team, the hospital's social worker discussed with Enid the risks of her returning home.

### When things go wrong in residential aged care

Hans has dementia and lives in an aged care facility. Beatrix, his wife, visits him daily. Lately she has been asked not to visit at certain times and when she does visit, Hans appears hungry, disoriented and unwashed. On one recent visit, there was a bruise on Hans's upper arm and he was visibly shaken.

Hans said that the nurse is neglecting him and being rough. The nurse says that Hans's age and dementia is causing him to make up stories, bruise easily and look dishevelled. Beatrix doesn't know who to believe or what to do.

If you have any concerns or complaints regarding the provision of aged care services, you can contact the Aged Care Complaints Scheme (see [Useful contacts](#)).

## SOME LEGAL CONSIDERATIONS FOR PEOPLE IN RESIDENTIAL AGED CARE

There are two types of aged care arrangements for older people who are unable to care for themselves and who cannot (or do not want to) live with family or friends:

- residential aged care in a residential aged care home
- home care package, which allows people to remain in their own home whilst receiving in-home care.

There are four different levels of home care, each catering for a different level of home care needs:

- home care level 1: basic-level care needs
- home care level 2: low-level care needs
- home care level 3: intermediate care needs
- home care level 4: high-level care needs.

Some home care packages give you the flexibility to choose the types of services you want and how you want them delivered.

An Aged Care Assessment Team (ACAT) from the [Department of Social Services](#) can give free advice on what options an older person has. The ACAT can help work out a person's needs and make a referral to the appropriate services. A doctor or hospital can make a referral to an ACAT, as can the person themselves. Approval from an ACAT is required if a person plans to move into a residential aged care facility or is seeking a home care

package. To make an appointment with the aged care assessment service please contact Aged Care Information (see [Useful contacts](#)).

In Enid's case, she expressed her wish to remain in her home despite those risks and made it clear that she fully expected to be discharged.

In order to meet 'duty of care' obligations, Enid's discharge was delayed until further assessments of her needs and alternative care arrangements (e.g. home care and residential aged care) were adequately discussed with her.

The decision to enter an aged care facility and to remain there is made by the older person, unless the person has impaired decision-making capacity. If a person has impaired decision-making capacity then it is possible for a substitute decision maker to decide to place the older person in a facility.

People can appoint their own substitute decision maker in an enduring power of attorney document (provided they have capacity at the time of the appointment), or a substitute decision maker can be appointed by the [Queensland Civil and Administrative Tribunal \(QCAT\)](#) (see [factsheet 3](#)).

A capacity assessment (of the older person) by a specialist doctor will be undertaken prior to an appointment by QCAT. The hospital (or family member, social worker or any other person) cannot make Enid go into an aged care facility unless this process has been followed, or she decides to go.

There is legislation that protects people in aged care facilities and imposes obligations on service providers. If the service provider breaches their obligations to an older person then the person or their representative may complain. There must be an internal process within the facility for dealing with complaints. If the internal complaint resolution is not appropriate or the complaint is not dealt with favourably, you can contact the Aged care Complaints Scheme (see [Useful contacts](#)).

People being treated badly by informal carers and who need protection from abuse and neglect may need to consider applying for a protection order.

## QUESTIONS TO ASK YOURSELF IF YOU HAVE PROBLEMS WITH RESIDENTIAL AGED CARE

- Can I stay in my home or do I need to leave?
- Do I feel that my decision to move into residential aged care is being influenced?
- Has there been an ACAT assessment?
- What choices do I have?
- If I am required to sign a contract, have I had independent legal advice about the contract?
- What will happen if my needs change?
- Am I receiving respectful and dignified care?
- Is there something wrong with my treatment or the treatment of someone I care about?
- Should I make a complaint about that treatment?
- Do I need to seek help in speaking out or asking for better care?

## CENTRELINK MATTERS

Age Pension entitlements can be affected any time property is bought or sold. If selling the family home to move into residential aged care, it is important to check that pension entitlements will not be affected by the extra money remaining in a bank account.

## WHAT TO DO IF THINGS GO WRONG

Legal advice can be obtained from a community legal centre or a seniors legal and support service.

Advocacy can be sought from the Aged and Disability Advocacy Australia (ADA Australia), which assists people in aged care facilities by advocating for them. Seniors legal and support services and many community legal centres also have social workers who can help.

## USEFUL RESOURCES

Australian Human Rights Commission (2013) *Your Rights at Retirement: A Guide to Making Decisions and Navigating Your Entitlements in Later Life*, Australian Human Rights Commission, Sydney.

## USEFUL CONTACTS

### SENIORS LEGAL AND SUPPORT SERVICE

Brisbane	(07) 3214 6333
Cairns	1800 062 608
Hervey Bay	(07) 4124 6863
Toowoomba	(07) 4616 9700
Townsville	(07) 4721 5511

### GENERAL ADVICE

Caxton Legal Centre	(07) 3214 6333
Aged Care Complaints Scheme (Department of Social Services)	1800 550 552
Aged Care Information	1800 200 422
Legal Aid Queensland	1300 651 188
Aged and Disability Advocacy Australia	1800 700 600

If you do not live in Brisbane and need to find a community legal centre or a seniors legal and support service near you, look in the White Pages or search the internet, or telephone Legal Aid Queensland, a seniors legal and support service or Caxton Legal Centre for a referral.

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This information is current at February 2015.

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