



Injured in an aged care facility? Legal rights and compensation options in Victoria

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If someone you love has been hurt in an aged care facility, it can be an overwhelming and distressing experience. You trust the facility and its staff to provide safe, respectful care - and when that trust is broken, it is natural to want answers and accountability.

Under Australian law, aged care residents have clearly defined legal rights, and providers have real obligations when things go wrong. This article explains what those rights are, when a compensation claim may be available, and what steps to take if you have concerns about the care your loved one has received.

Research from the National Ageing Research Institute suggests that most instances of elder abuse go unreported. Even so, services like [Seniors Rights Victoria](#) continue to receive hundreds of calls each year.

What does the Aged Care Act say about residents' rights?

Australia's aged care system is governed by the [Aged Care Act 2024](#), which outlines the rights of individuals receiving care.

Section 23 of the Aged Care Act confirms a statement of rights for those receiving care:

- Right to choice and independence
 - make decisions about care, services, and daily life;
 - receive support to make those decisions where needed;

- take personal risks in pursuit of quality of life.
- Right to safe and quality care
 - be treated with dignity and respect;
 - receive safe, equitable, and non-discriminatory care;
 - have cultural identity and personal values recognised;
 - receive care from appropriately qualified staff.
- Right to be free from harm
 - protection from abuse, neglect, and exploitation;
 - freedom from degrading or inhumane treatment;
 - safeguards around restrictive practices.
- Right to privacy and information
 - have personal information protected;
 - access records about care and services;
 - be informed about rights and costs.
- Right to speak up without fear
 - make complaints without reprisal;
 - have concerns handled fairly and promptly;
 - access advocates and support persons.

Duty of care in Victorian aged care facilities

Aged care providers and their staff have a legal obligation to protect residents from foreseeable harm. This is known as a duty of care.

In Victoria, this duty is reinforced by the Wrongs Act 1958, which sets out when a person or organisation may be considered negligent.

Under the Act, a person needs to prevent harm where:

1. They knew or out to have known about the risk
2. The risk was not insignificant; and
3. A reasonable person in the same position would have taken precautions

In order to determine what a reasonable person might have done in those circumstances the following factors are considered:

- The probability of harm
- The likely seriousness of harm
- The burden imposed by taking precautions; and
- The social utility of the risk act

In addition, section 179 of the Aged Care Act 2024 imposes a statutory duty of care for providers to ensure so far as is reasonably practicable that their conduct does not cause harm to residents while delivering care.

A provider may be in breach where:

- they fail to meet their duty without a reasonable excuse;
- their conduct exposes a resident to a risk of serious injury, illness, or death;
- the failure is significant or part of a pattern of poor conduct.

Understanding dignity of risk in aged care

A key concept in aged care law is the dignity of risk. This recognises that residents have the right to make choices, even if those choices involve some level of risk. This means that providers should protect residents from harm whilst also respecting their independence and personal choices.

For example, a resident with dementia may wish to go shopping. There is a foreseeable risk they could become disoriented. Rather than restricting their freedom entirely, a reasonable approach may involve:

- supervising or accompanying the resident;
- putting safeguards in place;
- supporting their independence while reducing risk.

What counts as a breach of duty of care?

A breach of duty occurs when an aged care provider fails to take reasonable steps to prevent a foreseeable and significant risk of harm. In practical terms, this means the provider did not act as a reasonable aged care provider would in the same circumstances.

Injuries in these facilities can occur in many ways. Common examples include:

- Falls due to lack of supervision or unsafe environments
- Pressure sores from inadequate repositioning
- Medication errors such as incorrect dosage

- Physical or emotional abuse
- Malnutrition or dehydration
- Infections due to poor hygiene practice

It is important to note that not every injury occurs as a result of wrongdoing. It must be shown that the injury was caused as a result of a breach of duty of care.

Examples of breaches may include:

- Failing to implement fall prevention measures
- Inadequate staff training or staff levels
- Ignoring medical needs or care plans
- Poor monitoring of residents
- Neglect as to supervision, food and hydration and proper medical care

If a breach of duty of care leads to injury, illness or deterioration in health, then a medical negligence claim may arise.

Abuse and assault in aged care facilities

Certain forms of abuse, particularly physical and sexual abuse, may amount to assault under Australian law. In these cases, the individual responsible can be held personally liable and the facility may also be vicariously liable.

A facility may be liable where:

- it knew or ought to have known about the risk of abuse;
- it failed to properly supervise staff;
- it employed unqualified or inadequately trained workers;
- it ignored complaints or warning signs.

What compensation can you claim in Victoria?

If you or your loved one has suffered injury due to an aged care providers negligence, you may be able to claim compensation for:

- pain and suffering;
- medical and treatment expenses;
- additional care needs.

However, several factors can limit compensation:

- shorter life expectancy may reduce damages for pain and suffering;
- injuries that are not permanent may result in lower awards;
- additional care is often absorbed within the facility, reducing out-of-pocket loss.

Wrongful death claims in Victoria

If a resident passes away as a result of the abuse, or as a result of negligent care and it is shown that the aged care provider breached its duty of care and that this breach caused or contributed to the resident's death, then compensation could be sought under Section 16 of the Wrongs Act 1958 – Liability for wrongful death.

Compensation can be claimed by a family member if they have suffered a psychological injury due to their loved one's death. However, this is not automatic. The family member must demonstrate that:

- they have suffered a recognised psychiatric injury;
- the injury meets the significant injury threshold under Victorian law;
- the injury was caused by the circumstances surrounding the death.

The statute of limitations for bringing a Wrongful Death claim is three years from the date of the deceased's passing.

What to do if your loved one has been injured in an aged care facility

An injury in an aged care facility can raise serious concerns about safety, dignity, and accountability. While aged care providers have clear legal obligations under Australian law, failures in care still occur. Understanding these rights is an important step in protecting vulnerable residents and holding providers to account where standards are not met.

If your loved one is injured in an aged care facility, taking prompt and practice steps is critical:

1. Ensure your loved one receives appropriate medical attention and ensure to document the injury with photos
2. Report the incident to the facility and request a written incident report
3. Make a formal complaint to the provider
4. If there is a serious concern regarding suspected assault or criminal conduct, the incident should be reported to the police
5. Monitor your loved ones' injury as to whether it may lead to long-term or permanent issues and track changes in their mobility, cognition and overall health

Taking early action, documenting what has occurred, and obtaining legal advice can make a meaningful difference.

If your loved one has been injured in an aged care facility in Victoria, Guardian Injury Law's experienced and compassionate team can help. We can advise you on your rights and whether a compensation claim may be available. Contact us today for a confidential discussion. If your matter arises in another state, you should contact your local Law Institute for appropriate guidance and referrals.

Contacting Guardian Injury Law

[1300 700 761](tel:1300700761)

enquiries@guardianinjurylaw.com.au

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