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ESTATE PLANNING AND TRUST LAW

Can you tie old people to the bed if they cause trouble in Victoria?

Contributed by



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Victoria has often led the charge on end-of-life issues, becoming the first Australian state to legalise voluntary assisted dying in 2019. That law aimed to empower the terminally ill but was undermined by strict rules, excluding dementia patients and hampered by telehealth restrictions under Commonwealth law. Now, the Victorian *Aged Care Restrictive Practices Substitute Decision-Maker Act 2024* (the Act), effective 1 July 2025, addresses restrictive practices in aged care facilities. While presented as a safeguard for vulnerable residents, it poses serious challenges for estate planning.

The legislation: control over care

The Act regulates restrictive practices, including physical or chemical restraints, seclusion, or environmental restrictions, used to manage behaviours in aged care residents lacking decision-making capacity. It allows those over 18 with capacity to appoint a Restrictive Practices Substitute Decision-Maker (RPSDM) to approve or refuse such measures if mental capacity is lost. Without an RPSDM, a default hierarchy (Appointing Medical Treatment Decision Maker, spouse, children, parents, siblings) or the Victorian Civil and Administrative Tribunal (VCAT) steps in. Aged care providers must use restrictive practices as a last resort, supported by a Behaviour Support Plan, aligning with the Commonwealth's Aged Care Act 2024.

The problems: a bureaucratic mess

The law's implementation is flawed. Understaffed facilities often resort to restrictive practices due to inadequate training in alternatives, risking overuse of measures like restraints. The RPSDM role, separate from existing powers of attorney, does not automatically recognise powers of attorney. It requires a separate appointment that may exclude loved ones unless they are named the RPSDM. Requiring a distinct RPSDM appointment adds bureaucratic complexity, burdening families, especially if capacity fades before arrangements are made.

Relying on the default hierarchy or VCAT risks decisions that conflict with an individual's values, particularly if decision-makers are unfamiliar with their preferences. This complicates estate planning, forcing families to navigate a convoluted new layer of legal obligations.

The Aged Care Restrictive Practices Substitute Decision-Maker Act 2024 looks to be merely adding further complexity to estate planning. I urge Victorians to speak with their accountant, financial planner, lawyer and loved ones. Decide now whether this new law truly protects you, or just adds more red tape.

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COMPETITION AND CONSUMER LAW

AFCA consults on Rules changes: investigating “receiving banks” in scams

The Australian Financial Complaints Authority is consulting on proposed changes to its Rules. Key changes include:

- **“Receiving banks” in scams:** AFCA’s jurisdiction will be expanded to include the conduct of receiving banks when assessing complaints about scams. “This change enables AFCA to investigate the actions of financial institutions that receive funds from scam victims, including the use of mule accounts.” This change will allow AFCA to meet its new authorisation condition that was issued by the government.
- **Naming non-compliant financial firms:** AFCA will be able to publish the name of financial firms who do not comply with a determination that has been accepted by a complainant.
- **Paid representatives**
 - **Communication channels:** Paid representatives will be required to use the communication channels set by AFCA, including its consumer portal, when submitting complaints and communicating with AFCA about complaints.
 - **Non-AFCA-members:** AFCA will be allowed to stop dealing with a complaint where a paid representative is required to be an AFCA member but is not.
- **Legacy Rules:** The outdated section on legacy complaints will be removed from the Rules. AFCA’s legacy jurisdiction closed at the end of June 2020. Any open legacy complaints will not be impacted.

The consultation ends on 13 June 2025. The changes were drafted by an external consultant. AFCA reviews its Rules annually.

Source:

- Australian Financial Complaints Authority (AFCA), [AFCA opens consultation on Rules changes to expand jurisdiction over receiving banks in scams](#), 19 May 2025
- [Consultation Paper](#)
- [Marked-up copy of the Rules](#).

Delve into the Scams Prevention Framework at [¶26-990](#).

Keep track of the flood of changes to competition law and consumer law using our progress tables at [¶12-150](#) and [¶125-350](#).

COMPANY LAW

ATO additional support for small businesses

Contributed by



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On 26 May 2025, the Australian Taxation Office (ATO) announced that it is providing additional support for new small business owners.

The ATO’s **“ready for business” campaign** is aimed at ensuring that small business owners understand and **comply with their tax, superannuation and registry obligations** from the start. Statistics show that approximately 50% of small businesses fail within their first 3 years; this is often because they fail to understand their obligations to the ATO from the outset.