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| **Tier 3: VCAT - Appointed Restrictive Practices Substitute Decision-makers** |
| **OFFICIAL**This factsheet is about the Tier 3: VCAT - Appointed Restrictive Practices Substitute Decision-maker under the *Aged Care Restrictive Practices (Substitute Decision-maker) Act 2024* (Vic) |



## Who should read this factsheet and why?

Aged care residents, their supporters and aged care providers should read this factsheet to understand the following:

* when someone can make an application to the Victorian Civil and Administrative Tribunal (VCAT) to be appointed as a Restrictive Practices Substitute Decision-maker
* who is eligible to be appointed by VCAT as a Restrictive Practices Substitute Decision-maker
* how does someone make an application to VCAT.

## Who are VCAT - Appointed Restrictive Practices Substitute Decision-makers?

Under section 9 of the Aged Care Restrictive Practices Substitute Decision-maker Act 2024 (Vic), VCAT may appoint someone to be a Restrictive Practices Substitute Decision-maker.

A VCAT appointed Restrictive Practices Substitute Decision-maker should only be sought if:

* there is no Restrictive Practices Nominee or Temporary Restrictive Practices Substitute Decision-makers appointed; or
* if there is a dispute about a Restrictive Practices Nominee or Temporary Restrictive Practices Substitute Decision-makers that requires VCAT’s intervention.

The prospective VCAT - appointed Restrictive Practices Substitute Decision-maker will need to make the application to VCAT seeking their own appointment.

**For more information see the** [**Department of Health website**](https://www.health.vic.gov.au/residential-aged-care/substitute-decision-making-and-restrictive-practices-in-aged-care)<https://www.health.vic.gov.au/residential-aged-care/substitute-decision-making-and-restrictive-practices-in-aged-care>:

* Factsheet 3: Tier 1 – Nomination of a Restrictive Practices Substitute Decision-makers
* Factsheet 4: Tier 2 – Temporary Restrictive Practices Substitute Decision-makers

## Who can apply to VCAT to be appointed?

The prospective appointee applies to VCAT to be the appointed Restrictive Practices Substitute Decision-maker, not the aged care provider.

## Who can be a VCAT - appointed Restrictive Practices Substitute Decision-maker?

A VCAT appointed Restrictive Practices Substitute Decision-maker must be an adult who has an **ongoing** **personal or professional relationship** with the aged care resident and is reasonably available, willing and able to act as the restrictive practices substitute decision-maker.

For example, a prospective VCAT-appointee might be the aged care resident’s:

* extended family member,
* close personal friend,
* former carer,
* general practitioner who is not employed by the aged care facility,
* allied health professional,
* lawyer or accountant acting on behalf of the aged care resident, or a trustee company or director of a trust in which the aged care resident is a beneficiary, or
* anyone else considered to have an ongoing personal or professional relationship with the aged care resident.

## Who cannot be a VCAT appointed Restrictive Practices Substitute Decision-maker?

The appointee **cannot** be:

* an employee or agent of the aged care resident’s aged care provider,
* a person who was, is or will be involved in the preparation of the aged care resident’s behaviour support plan,
* a person who is subject to a current family violence intervention order where the aged care resident is the affected family member, or
* a person who has a conviction, other than a spent conviction, for committing a crime against the aged care resident.

## What is the meaning of ‘available, willing and able’?

To be appointed by VCAT, the applicant must be ‘reasonably available, willing and able’ to act as a restrictive practices substitute decision-maker on behalf of the aged care resident.

Therefore, they must be ‘willing’ to make a restrictive practices decision, i.e., whether to consent or to not consent to the use of restrictive practices. If a decision-maker does not wish to make a decision one way or the other, then they are not ‘willing’.

For a decision-maker to be ‘able’ to make a decision, they must have decision-making capacity.

To be ‘available’, the person must be reasonably able to be identified and contacted.

## How long are appointees in place for?

A VCAT- appointment may be indefinite or time limited. An appointment by VCAT can also be amended or revoked by a subsequent VCAT decision.

A VCAT- appointee will be taken to be the Restrictive Practices Substitute Decision-maker until either a Restrictive Practices Substitute Nominee is subsequently appointed by the aged care recipient, a term specified in the VCAT order ends, or VCAT makes an order revoking the appointment.

VCAT may only appoint someone under section 9 of the *Aged Care* Restrictive Practices Substitute Decision-maker Act 2024 (Vic) if a restrictive practices nominee or Temporary Restrictive Practices Substitute Decision-maker has not been appointed.

## How will VCAT ensure urgent matters are addressed in a timely manner?

VCAT is provided flexibility and discretion in how it manages cases regarding substitute decision-making and the use of restrictive practices. VCAT will be able to:

* prioritise emergency or time-critical cases
* exercise discretion in how it will convene a Tribunal; and
* make time-limited orders that can address immediate issues and deal with more complex cases (but less time critical) cases at a later date.

## What if there is no VCAT-appointee?

If there is no appointee, and no one is able to be appointed by VCAT, aged care providers should progress to **Tier 4: VCAT as a Restrictive Practices Substitute Decision-maker of last resort**

## Additional information

[**Overview of Restrictive Practices**](https://www.agedcarequality.gov.au/resource-library/overview-restrictive-practices) **– Aged Care Quality and Safety Commission**

< https://www.agedcarequality.gov.au/resource-library/overview-restrictive-practices >

[**Minimising Restrictive Practices**](https://www.agedcarequality.gov.au/older-australians/safety-care/minimising-restrictive-practices) **– Aged Care Quality and Safety Commission**

< https://www.agedcarequality.gov.au/older-australians/safety-care/minimising-restrictive-practices >

[**Consent for Restrictive Practices – FAQs**](https://www.health.gov.au/resources/publications/consent-for-restrictive-practices-frequently-asked-questions) **– Commonwealth Department of Health, Disability and Ageing**

< https://www.health.gov.au/resources/publications/consent-for-restrictive-practices-frequently-asked-questions >

[**Restrictive Practices in Aged Care**](https://opan.org.au/toolkit/restrictive-practices-in-aged-care/) **– Older Persons Advocacy Network**

< https://opan.org.au/toolkit/restrictive-practices-in-aged-care/ >

To receive this document in another format email Aged Care Policy team < vic\_agedcare@health.vic.gov.au >.

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Available at [Department of Health – Substitute decision making and restrictive practice aged care](https://www.health.vic.gov.au/residential-aged-care/substitute-decision-making-and-restrictive-practices-in-aged-care)  <https://www.health.vic.gov.au/residential-aged-care/substitute-decision-making-and-restrictive-practices-in-aged-care>