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| **Tier 4: VCAT as a Restrictive Practices Substitute Decision-maker of last resort** |
| **OFFICIAL**This factsheet is about Tier 4: Victorian Civil and Administrative Tribunal (VCAT) as a Restrictive Practices Substitute Decision-maker under the *Aged Care Restrictive Practices Substitute Decision-maker Act 2024 (Vic).* The diagram indicates the stages of the hierarchy for restrictive practices substitute decision making in residential aged care. This document is concerned with the fourth level of the hierarchy, the Victorian Civil and Administrative Tribunal as a Restrictive Practices Substitute Decision-maker of last resort. |

## Who should read this factsheet and why?

Aged care providers should read this factsheet to understand the following:

* the role of the VCAT as the last resort Restrictive Practices Substitute Decision-maker
* applying to VCAT
* the powers of VCAT.

## What is the role of the VCAT as the decision-maker of last resort?

As a last resort, VCAT can act as a Restrictive Practices Substitute Decision-maker and consent to the use of a restrictive practice.

For VCAT to make such an order, an application **must be made by the aged care provider**. This application must include sufficient information:

* to satisfy VCAT that there are no other potential Restrictive Practices Substitute Decision-makers (nominees, or possible temporary or VCAT appointed decision-makers); **and**
* the proposed use of restrictive practices is appropriate and consistent with requirements of the *Aged Care Act 2024* (Cth), including that the restrictive practice is used only as a last resort to prevent harm to the aged care resident themselves or other residents.

## How does a provider apply to VCAT?

Aged care providers can apply to VCAT if they require someone to give informed consent for the proposed use of a restrictive practice as documented in an aged care resident’s Behaviour Support Plan.

Aged care providers must have a decision that needs to be made at the time of the application. This means providers cannot pre-emptively apply to VCAT for a future decision.

VCAT is the decision-maker of last resort and can only consent to the use of a restrictive practice on an aged care resident if there no other Restrictive Practices Substitute Decision-makers reasonably available, willing and able to act. Aged care providers cannot apply to VCAT because:

* a Restrictive Practices Substitute Decision-maker has withheld or withdrawn consent, or
* they do not want to work through the hierarchy to find an appropriate Restrictive Practices Substitute Decision-maker.

**Providers can apply to VCAT through its website:**

[**Victorian Civil and Administrative Tribunal (VCAT)**](https://www.vcat.vic.gov.au/)

< https://www.vcat.vic.gov.au/>

## How will VCAT consider applications?

All applications regarding the Aged Care Restrictive Practices Substitute Decision-maker Act 2024 (Vic) will be considered by VCAT’s Guardianship List.

When considering an application for VCAT to provide consent, VCAT must have regard to any statement of preferences or values of the aged care resident. This may be those stated in a valid nomination or otherwise expressed by the aged care resident or inferred from their life.

VCAT will manage its cases with careful consideration of urgency and complexity. When considering matters related to acting as the Restrictive Practices Substitute Decision-maker of last resort, VCAT can:

* 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 at a later date.

## What powers does VCAT have?

On an aged care provider’s application, VCAT has the power to consent, or not to consent, to the use of restrictive practices as a Restrictive Practices Substitute Decision-maker of last resort.

In giving consent to the use of restrictive practices, VCAT may provide for this consent to only be in place for a specific period. VCAT can also give consent that is subject to any conditions it deems appropriate.

VCAT can only consent to a restrictive practice if satisfied that there is no other Restrictive Practices Substitute Decision-maker and the use of the restrictive practice is appropriate.

## What powers does VCAT not have?

VCAT is not able to intervene on any issues related to:

* the use of restrictive practices, including their clinical appropriateness, or
* how a Restrictive Practices Substitute Decision-maker makes a decision, or to intervene if an aged care provider does not agree with that decision.

## 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-car> >

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>