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| **Acting as a Restrictive Practices Substitute Decision-maker in residential aged care** |
| General information factsheet  |
| OFFICIAL |
| This factsheet is about the role of a Restrictive Practices Substitute Decision-maker in residential aged care under the *Aged Care Restrictive Practices Substitute Decision-maker Act 2024 (Vic).*  |

## Who should read this factsheet and why?

Aged care providers and Restrictive Practices Substitute Decision-makers appointed under the *Aged Care Restrictive Practices Substitute Decision-maker Act* (Vic) should read this factsheet to understand the following:

* what does a Restrictive Practices Substitute Decision-maker do
* why restrictive practices are used in residential aged care and when can they be used
* what is the role of a Restrictive Practices Substitute Decision-maker
* when does an aged care resident not have capacity to decide for themselves
* how to raise disputes and complaints.

## What is a restrictive practice?

The Commonwealth Government defines a restrictive practice as any action that restricts the rights or freedom of movement of an aged care resident. There are five types of restrictive practices:

* chemical restraint
* environmental restraint
* mechanical restraint
* physical restraint
* seclusion.

## Who is a Restrictive Practices Substitute Decision-maker?

The Aged Care Act 2024 (Cth) defers to state and territory legislation to **identify** who can be appointed to act as a Restrictive Practices Substitute Decision-maker. In Victoria, this is the Aged Care Restrictive Practices Substitute Decision-maker Act 2024 (Vic).

A Restrictive Practices Substitute Decision-maker is a person appointed to this role under the Aged Care Restrictive Practices Substitute Decision-maker Act 2024 (Vic). This person can give informed consent to the use of restrictive practices in relation to an aged care resident under the *Aged Care Act 2024 (Cth).* This person may not necessarily also be appointed to be the aged care resident’s enduring power of attorney, guardian, or medical treatment decision-maker.

**For more information see:**

* [Factsheet: Identifying a Restrictive Practices Substitute Decision-maker in residential 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>

## What does a Restrictive Practices Substitute Decision-maker do?

A Restrictive Practices Substitute Decision-maker can only make a decision to consent, or not to consent, to the use of a restrictive practice in relation to an aged care resident in a residential aged care setting as per the *Aged Care Act 2024* (Cth).

This role does not include decisions related to medical treatment, financial matters, or lifestyle matters (such as where people live). A Restrictive Practices Substitute Decision-maker must be appointed in accordance with the Aged Care Act 2024 (Cth) and the Restrictive Practices Substitute Decision-maker Act 2024 (Vic).

The Aged Care Restrictive Practices Substitute Decision-maker Act 2024 (Vic) does not apply to the use of restrictive practices in any place beyond residential aged care settings, such as disability services, treatment in hospitals or mental health settings.

## Why are restrictive practices used in residential aged care?

Restrictive practices are used as a form of behavioural support. They must be used as a last resort to prevent harm to an aged care resident or to others, and after considering likely impacts on the aged care resident. This means a restrictive practice can only be used after an aged care provider has trialled and documented alternative strategies first.

The restrictive practice must be used only to the extent necessary and in proportion to the risk of harm to the aged care resident or others and must be used in its least restrictive form.

Except in emergencies, the informed consent of the resident or their Restrictive Practice Substitute Decision-maker must be obtained before use of a restrictive practice.

Restrictive practices are not a type of medical treatment, and they are not intended to be used as a punishment or a threat to control someone’s behaviour.

## When can restrictive practices be used?

Restrictive practices must only be used in accordance with requirements set out in the Aged Care Act 2024 (Cth) and *Quality of Care Principles 2014 (Cth)*. Chemical restraint also requires a medical practitioner to assess the aged care resident and to prescribe the medication.

For further information, refer to the Commonwealth Department of Health, Disability and Ageing website:

[**Minimising inappropriate use of restraint**](https://www.health.gov.au/topics/aged-care/providing-aged-care-services/training-and-guidance/restrictive-practices-in-aged-care-a-last-resort)

[**Chemical restraint and medical practitioners**](https://www.health.gov.au/topics/aged-care/providing-aged-care-services/training-and-guidance/restrictive-practices-in-aged-care-a-last-resort)

< https://www.health.gov.au/topics/aged-care/providing-aged-care-services/training-and-guidance/restrictive-practices-in-aged-care-a-last-resort >

## When is a Restrictive Practice Substitute Decision-maker required?

A Restrictive Practices Substitute Decision-maker is only required when:

* A residential aged care provider proposes to use restrictive practice on a resident, in-line with Commonwealth aged care legislation and regulations; **and**
* The aged care resident does not have capacity to provide **informed consent** themselves.

## When does someone not have capacity to decide for themselves?

A person has decision-making capacity to make a decision under the Aged Care Restrictive Practices Substitute Decision-maker Act 2024 if they can:

* understand the information relevant to the decision and the effect of the decision,
* retain the information to the extent necessary to make the decision,
* use or weigh that information as part of the decision-making process,
* communicate the decision and the person’s views and needs to as to the decision in some way, including by speech, gestures or other means.

All adults are presumed to have capacity to make decisions and to give informed consent, including regarding the use of restrictive practices.

Determining whether a person has capacity can be difficult as decision-making capacity can vary over time.

Generally, if an individual is not able to understand, make or communicate a decision, even with appropriate support, then they do not have capacity to provide informed consent for themselves. If capacity to make decision is in doubt, there may be a need to request a formal mental capacity assessment from a medical professional with experience in assessment of cognitive capacity.

## How should a decision be made?

Restrictive Practices Substitute Decision-makers should consult with the aged care provider to understand why the restrictive practice is proposed, the proposed risks and benefits, and whether there are any alternative approaches available. The Restrictive Practices Substitute Decision-maker may also consider the wishes of the aged care resident, where they have previously expressed these preferences.

Aged care providers must allow Restrictive Practices Substitute Decision-makers to consider giving informed consent without being subject to coercion or duress.

**For further information,** refer to the Aged Care Quality and Safety Commission’s website:

[Frequently Asked Questions about Consent](https://www.agedcarequality.gov.au/resource-library/frequently-asked-questions-about-consent)

< https://www.agedcarequality.gov.au/resource-library/frequently-asked-questions-about-consent >

## Where can substitute decision-makers seek advice?

Restrictive Practices Substitute Decision-makers can seek advice and support from organisations such as Senior Right’s Victoria, and the Older Persons Advocacy Network, as well as discussing arrangements with the aged care provider, and appropriate clinicians.

For any advice on the use of restrictive practices, decision makers can contact the Aged Care Quality and Safety Commission.

## What if consent is not given?

If consent is not given, then the proposed restrictive practice **cannot** be used. This may mean the provider must consider alternative approaches to ensure appropriate care is given to the aged care resident.

Providers are not able to find an alternative Restrictive Practices Substitute Decision-maker just because consent has not been given.

## Can providers use restraint without consent?

Aged care providers can use restrictive practices in emergencies, such as in cases of immediate threat to life or injury. This does not include the planned or regular use of restrictive practices. Emergency use of restrictive practices is subject to documentation and reporting requirements as per Commonwealth’s aged care legislation and regulations.

## Can consent be withdrawn?

The Restrictive Practices Substitute Decision-maker can withdraw or alter their consent at any time. Aged care providers must respect the decision of the Restrictive Practices Substitute Decision-maker, even if it changes.

## Dispute resolution and complaints

Attempts should first be made for parties to resolve disputes amongst themselves.

If the issue cannot be resolved, the Victorian Civil and Administrative Tribunal (VCAT) has jurisdiction to uphold, set aside or appoint Restrictive Practices Substitute Decision-makers.

Complaints related to aged care providers, including concerns about care or inappropriate use of restrictive practices, can be made to the aged care provider, or to the Aged Care Quality and Safety Commission:

* Free call between 9am and 5pm, Monday to Friday: 1800 951 822
* Email: info@agedcarequality.gov.au
* Website: [agedcarequality.gov.au/](https://www.agedcarequality.gov.au/)

## Further 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/ >

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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>