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| Tier 1: Nomination of a Restrictive Practices Substitute Decision-maker |
| **OFFICIAL**This factsheet provides information about Tier 1: Nomination of a Restrictive Practices Substitute Decision-maker under the *Aged Care Restrictive Practices Substitute Decision-maker Act 2024.*  |
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## Who should read this factsheet and why?

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

* the first tier of the hierarchy for identifying a Restrictive Practices Substitute Decision-maker: where a nomination is in place.
* when is a Restricted Practices Nominee relevant
* creating and revoking nominations
* who can and can’t be nominated as a Restrictive Practices Substitute Decision-maker
* the role of a Restrictive Practices Substitute Decision-maker
* consent arrangements
* preferences and values.

## When is a nominated Restrictive Practices Substitute Decision-maker required?

Aged care residents who have decision-making capacity may appoint someone they trust to be their Restrictive Practices Substitute Decision-maker in writing in accordance with section 5 of the *Aged Care Restrictive Practices Substitute Decision-maker Act 2024 (Vic)* (the Nominee).

A Nominee who is reasonably available, willing and able may be asked to provide consent to the use of restrictive practices in relation to an aged care resident receiving funded aged care services in a residential aged care home.

**Consent can be provided by the Nominee when:**

* a residential aged care provider proposes to use a restrictive practice on a resident; and
* the aged care resident **does not have capacity** to provide **informed consent** to the use of restrictive practices themselves.

Under the Aged Care Restrictive Practices Substitute Decision-maker Act 2024 (Vic), aged care providers who are identifying an aged care resident’s Restrictive Practices Substitute Decision-maker must first check whether there is a restrictive practices Nominee under section 5 of the Act.

A **Nominee** may only consent to a restrictive practice where:

* the aged care resident has nominated them, in advance, to be their Restrictive Practices Substitute Decision-maker, and
* that nomination has been made in accordance with section 5 of the Aged Care Restrictive Practices Substitute Decision-maker Act 2024 (Vic) (if made after 1 July 2025); or in accordance with section 5A of the *Quality-of-Care Principles 2014 (Cth)* (if made prior to 1 July 2025), and
* the Nominee is available, willing, and able to make the restrictive practices decision.

## What if a nominee is not available?

If a nominee is not available, willing or able to make a decision around the use of restrictive practices, the aged care provider must consider the next potential Restrictive Practices Substitute Decision-maker in the overarching hierarchy– a ‘Temporary restrictive practices substitute decision-maker’.

 **For more information see the factsheet available on 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 4: Tier 2 - Temporary Restrictive Practices Substitute Decision-maker

## Creating and revoking nominations

An adult who has decision-making capacity can nominate an eligible adult to be their Restrictive Practices Substitute Decision-maker while they reside in residential aged care or before they go into residential aged care.

A **nomination form** is available to complete on the Victorian Department of Health’s website. We encourage providers to utilise this form for aged care residents.

**For further 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>

* Form – Nomination of a Restrictive Practices Substitute Decision-maker
* Form – Revocation of the nomination of a Restrictive Practices nominee

The nomination of a Restrictive Practices Substitute Decision-maker is a legal document and records an aged care residents’ restrictive practices nominee in the future event they **do not** have decision making capacity to provide **informed consent** for the use of restrictive practices.

## Who can be nominated?

An aged care resident can nominate almost anybody to be their Restrictive Practices Substitute Decision-maker, with some exceptions.

The Nominee must be someone over the age of 18, have capacity to make restrictive practice decisions, and be available, willing and able to make decisions.

## Who cannot be nominated?

The following people **cannot** act as a nominated Restrictive Practices Substitute Decision-maker:

* if they are an agent of, or employed by the aged care resident’s approved aged care provider; or
* if they have been or may be involved with the preparation or implementation of the aged care resident’s Behavioural Support Plan as an agent or employee of the aged care provider (excluding people consulted in their capacity as supporters, or as a Restrictive Practices Substitute Decision-maker); or
* if they are the subject of a current family violence intervention order against the aged care resident; or
* if they have been found guilty of committing a crime against the aged care resident (except for any crimes covered by the Spent Convictions scheme).

It is a criminal offence to induce a nomination through dishonesty, undue influence, or the use of threats, violence or abuse. VCAT can declare a nomination invalid if any of these are found to occur.

## What are the criminal offences in the Act?

The Age Care Restrictive Practices Substitute Decision-maker Act 2024 (Vic) makes it a crime for someone to:

* induce, through dishonesty, undue influence or threats, substitute decision-maker nomination, and
* knowingly make a false or misleading statement in relation to another person’s substitute decision-maker nomination, or attempted substitute decision-maker nomination.

## Can a guardian, power of attorney or medical treatment decision maker be a Nominee?

A person is not automatically appointed as a Restrictive Practices Substitute Decision-maker just because they are the aged care resident’s guardian, attorney or medical treatment decision maker. This means these types of decision-makers are not automatically empowered to provide **informed consent** to the use of restrictive practices as a substitute decision-maker in residential aged care.

However, a person can be appointed separately to act as a Restrictive Practices Substitute Decision-maker, while also being empowered to act as another type of decision-maker. For this to occur, that person must be explicitly and separately appointed under relevant Acts– for example, they may have both an enduring power of attorney under the *Powers of Attorney Act 2016* (Vic) and can be validly appointed as a Restrictive Practices Substitute Decision-maker under the Aged Care Restrictive Practices Substitute Decision-maker Act 2024 (Vic).

## What is the role of a Restrictive Practices Substitute Decision-maker?

A Restrictive Practices Substitute Decision-maker is only required when an aged care resident does not have decision-making capacity to provide informed consent and an aged care provider proposes the use of restrictive practices, in-line with the requirements of Commonwealth’s aged care legislation and regulations.

All Restrictive Practices Substitute Decision-makers should consult with the provider to understand why the restrictive practice is proposed, the risks and benefits, and whether there are any alternative approaches available.

Aged care providers must allow a Restrictive Practices Substitute Decision-maker to ask questions and review relevant clinical information to inform their decision-making, such as behavioural assessments and evidence of less-restrictive interventions that have been trialled.

Aged care providers must allow a Restrictive Practices Substitute Decision-makers to consider the giving of consent without coercion or duress. Restrictive Practices Substitute Decision-makers can decline to give their consent and can change their decision at any time.

**For further information,** **please refer to:**

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

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

## What if consent is not given?

If informed 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. It is recommended that the Restrictive Practices Substitute Decision-maker and the aged care provider discuss the behavioural support needs of the aged care resident.

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

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

To be appointed as the Restrictive Practices Substitute Decision-maker, the Nominee must be ‘reasonably available willing and able’ to make restrictive practices decisions for 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.

## Transitional provisions

Any person who has been validly nominated as a Restrictive Practices Substitute Decision-maker under the *Aged Care Act 1997* (Cth) prior to 1 July 2025 will be automatically recognised as a Nominee under the Aged Care Restrictive Practices Substitute Decision-maker Act 2024 (Vic).

Any amendments to an aged care resident’s existing nomination will require the nomination to be revoked under section 6 and a new nomination to be completed in accordance with the requirements of section 5 of the Aged Care Restrictive Practices Substitute Decision-maker Act 2024 (Vic).

## Preferences and values

A person making a nomination may state their preferences and values regarding the use of restrictive practices.

It is not mandatory for these preferences and values to be considered by the Nominee; however, it may be valuable in guiding the Nominee in making decisions.

## 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, using the National Relay Service 13 36 77 if required, or 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>