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| **Tier 2: Temporary Restrictive Practices Substitute Decision-makers** |
| **OFFICIAL**  This factsheet is about Tier 2: Temporary Restrictive Practices Substitute Decision-makers 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 second level of the hierarchy, a temporary restrictive practices substitute decision-maker. |

## 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 is a Temporary Restrictive Practices Substitute Decision-maker appointed
* who can be a Temporary Restrictive Practices Substitute Decision-maker and how long are they appointed for
* what is the meaning of ‘close and continuing’ relationship and ‘available, willing and able’
* what if a Temporary Restrictive Practices Decision-maker is not available

## How are Temporary Restrictive Practices Substitute Decision-makers appointed?

If there is no Restrictive Practices Substitute Decision-maker appointed via a nomination, the aged care provider can identify a Temporary Restrictive Practices Substitute Decision-maker. Once identified, the person is automatically ‘appointed’ as the Restrictive Practices Substitute Decision-maker.

A temporary decision-maker will be the **first** **eligible** adult identified from the list below who is in a close and continuing relationship with the aged care resident and who is reasonably available, willing and able to act:

* the **spouse domestic partner** of the aged care resident; or
* the **primary carer** of the aged care resident; or
* the **oldest child** of the aged care resident, followed by the other children in descending order of age; or
* the **older parent** of the aged care resident, followed by the younger parent; or
* the **oldest sibling** of the aged care resident, followed by the other siblings in descending order of age.

## How long are Temporary Restrictive Practices Substitute Decision-makers appointed for?

A Temporary Restrictive Practices Substitute Decision-maker is only used until the particular decision to be made regarding the consent to a proposed use of a restrictive practice (i.e., a new or revised Behavioural Support Plan) has been made. Once the decision is made by the Temporary Restrictive Practices Substitute Decision-maker, their function has been completed, and the temporary appointment will cease.

If the relevant decision has not yet been made, the Temporary Restrictive Practices Substitute Decision-maker’s appointment will also cease when:

* a Restrictive Practices Substitute Decision-maker is appointed, or
* a Restrictive Practices Substitute Decision-maker previously appointed becomes reasonably available, willing and able to make restrictive practices decisions, or
* another person higher in the Temporary Restrictive Practices Substitute Decision-maker list becomes reasonably available, willing and able to make a restrictive practices decision, or
* the Temporary Restrictive Practices Substitute Decision-maker ceases to be reasonably available, willing and able to make the restrictive practices decision.

Providers will have to go through the overarching hierarchy again to identify a substitute decision-maker for any subsequent decisions, such as to consent to a new or changed use of restrictive practices. While in some cases the same person will be appointed as the Temporary Restrictive Practices Decision-maker each time, providers must consider the overarching hierarchy from the beginning to ensure that consent is sought from the appropriate person each time.

## What is meant by ‘close and continuing’ relationship?

When considering whether someone has a ‘close and continuing’ relationship with the aged care resident, Aged Care providers should rely on their own assessment of the facts, and could consider aspects such as regular contact, or whether they are known to have a positive relationship with the aged care resident.

Providers are not expected to scrutinise relationships but should approach this requirement on a case-by-case basis to ensure the Temporary Restrictive Practices Substitute Decision-maker is someone that has sufficient connection to the aged care resident and is in a position to make decisions on their behalf.

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

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

## Who is a ‘primary carer’?

The primary carer of a person is defined as an adult who has principal responsibility for the care of the person and is in a care relationship with the person (rather than, for example, a commercial relationship).

## What if there is a dispute over appointments?

Disputes amongst potential Temporary Restrictive Practices Substitute Decision-makers should first aim to be resolved informally. If these issues cannot be resolved in this way, an application can be made to the Victorian Civil and Administrative Tribunal (VCAT) to resolve issues such as:

* the appointment of a Temporary Restrictive Practices Substitute Decision-maker
* seeking an appointment of another a Restrictive Practices Substitute Decision-maker
* seeking VCAT to act as a decision-maker, as a last resort.

[**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)

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* Factsheet 5: Tier 3 – VCAT-Appointed Restrictive Practices Substitute Decision-makers
* Factsheet 6: Tier 4 – VCAT as a Restrictive Practices Substitute Decision-maker of last resort

## What if there are no Temporary Restrictive Practices Substitute Decision-makers available?

If a potential Temporary Restrictive Practices Substitute Decision-maker cannot be identified, the provider should proceed to **Tier 3: VCAT - Appointee** – **Restrictive Practices Substitute Decision-maker.**

## 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/>

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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>