

|  |
| --- |
| **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, using the National Relay Service 13 36 77 if required, or email Aged Care Policy team < vic\_agedcare@health.vic.gov.au >.

Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.

© State of Victoria, Australia, Department of Health, July, 2025

Except where otherwise indicated, the images in this document show models and illustrative settings only, and do not necessarily depict actual services, facilities or recipients of services.

ISBN/ISSN 978-1-76131-782-8 (online/PDF/Word)

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>