

Who can make decisions on the use of restrictive practices in residential aged care in Victoria

This Fact Sheet outlines the requirements on who can consent to the use of a restrictive practice in Victoria, in accordance with the *Aged Care Restrictive Practices Substitute Decision-maker Act 2024* (Vic) (**SDM Act**), effective from 1 July 2025.

What is a restrictive practice?

A restrictive practice is a practice or intervention that restricts a person's rights or freedom of movement, which include chemical, physical, mechanical, environmental restraints, and seclusion. An aged care provider delivering services in an aged care facility (**Residential Provider**) can only use a restrictive practice in Victoria if they meet all the criteria contained within Commonwealth and State legislation.

What is a restrictive practices substitute decision maker? (RPSDM)

A Residential Provider is required to obtain informed consent to a restrictive practice from the aged care resident (**Resident**). If it has been determined that the Resident does not have decision-making capacity, consent must be obtained by an alternative decision maker, referred to in the SDM Act as a 'Restrictive Practices Substitute Decision Maker' (**RPSDM**).

The Resident or RPSDM may consent or refuse to consent to the use of a restrictive practice. A Resident's next of kin or Enduring Power of Attorney cannot make decisions on restrictive practices on behalf of an aged care resident in Victoria, unless they have been nominated or appointed as a RPSDM in accordance with the SDM Act. For more information on restrictive practices, [please see our other Fact Sheets](#).

What is decision-making capacity?

Decision-making capacity means understanding, remembering, weighing, and communicating decisions. Adults are assumed to have capacity unless proven otherwise. Capacity can change over time, and Residents should be supported to make their own decisions. Determining a person's capacity can be difficult, it may be appropriate to obtain an assessment by a suitably qualified medical practitioner.

Identifying who can be a RPSDM

When it has been determined that a Resident does not have decision-making capacity, the SDM Act provides an **order** of RPSDMs. **The Order of RPSDMs is as follows:**

1. Nominations by the Resident

The first person who can be a RPSDM is a person nominated in writing by the Resident while the Resident had decision-making capacity, and the nomination must be witnessed. This person is known as a Restrictive Practices Nominee (**RP Nominee**). While not essential, a Resident may provide their thoughts on the use of the restrictive practices as a guide.

A person appointed in writing (under the *Aged Care Act 1997*) prior to 1 July 2025 will be acknowledged as an RP Nominee.

A Resident can choose to revoke their appointment of a RP Nominee in writing at any time, while they have decision-making capacity. The Victorian Civil and Administrative Tribunal (VCAT) can make an order declaring that a nomination was validly or invalidly made. The Victorian Health Department provides [optional nomination and revocation forms](#).

If the Resident has not appointed an RP Nominee, or the appointed person is unwilling or unable to act, a Temporary Decision Maker can be appointed to act as a RPSDM.

2. Temporary RPSDMs

The SDM Act provides an order of temporary decision-makers that can be RPSDMs (**Temporary RPSDMs**) who can provide informed consent to the use of a restrictive practice. The person must be an eligible adult in a close and continuing relationship with the Resident and be reasonably available, willing, and able to consent or not agree to the use of a restrictive practices.

The Temporary RPSDM order is as follows:

1. the spouse or domestic partner of the Resident;
2. the primary carer of the Resident;
3. the oldest child of the Resident, followed by the other children in descending order of age if there are two or more adult children;
4. the older parent of the Resident;
5. the younger parent of the Resident;
6. the oldest sibling of the Resident, followed by the other siblings of the Resident in descending order of age if there are two or more adult siblings.

The appointment of a Temporary RPSDM ends when the restrictive practices decision is made. This means that a consideration of who can provide consent will need to be made each time the use of a restrictive practice is proposed. The appointment of a Temporary RPSDM may also end if:

- a Resident regains decision-making capacity and nominates a RPSDM, or
- a person who was previously nominated by the Resident is now able and willing to become the substitute decision maker, or
- a person who is higher in the hierarchy of temporary RPSDMs becomes able and willing, or
- they are unable or unwilling to act as a RPSDM.

If there is no RP Nominee or Temporary RPSDM, an application can be made to VCAT for the appointment of a RPSDM.

3. VCAT Appointment of a RPSDM

An application can be made to VCAT to appoint a RPSDM when there is no RP Nominee, or no person in the hierarchy of Temporary RPSDMs who is willing and able to act.

The application to VCAT can only be made by an eligible adult who has an ongoing personal or professional relationship with the Resident. Examples include a member of the Resident's extended family, a treating general practitioner, or a lawyer or accountant who acts on behalf of the Resident.

VCAT may not make decisions on the use of a restrictive practice, including whether they are clinically required, or how a RPSDM made their decision on the use of a restrictive practice

4. VCAT as a RPSDM

If there is no RP Nominee or Temporary RPSDM who is willing and able to act, and no VCAT appointed RPSDM, then an application can be made to VCAT to act as a RPSDM.

The application can be made by an aged care provider for VCAT to provide consent to the use of a restrictive practice if the restrictive practice is set out in the Resident's Behaviour Support Plan. A consent operates for the period of time expressed in the consent and may be subject to any conditions VCAT considers appropriate.

When determining whether to consent to the use of the restrictive practice, VCAT must have regard to any statement of preferences and values prepared by the Resident in a previous nomination of a RPSDM, or any preferences and values expressed by the Resident or inferred from the Resident's life.

A person is not eligible to be a RPSDM if they are an employee or agent of the Residential Provider delivering care; involved in the preparation of the Resident's Behaviour Support Plan; currently subject to a family violence intervention order in which the Resident is an affected family member; or have a current conviction for an offence against the Resident.

Safeguards for Residents

There are safeguards to ensure RPSDMs are genuinely appointed, and restrictive practices are applied in accordance with the regulations, including:

- Criminal penalties apply for dishonestly influencing nominations or making false statements in the appointment of RPSDMs.
- Corporate officers can be held responsible for failing to prevent offences related to restrictive practices nominations.
- Unauthorised use of restrictive practices may be considered assault or false imprisonment and may give rise to civil or criminal actions in severe cases. A person may seek an injunction from the courts to prevent the restraint from happening or continuing.

What you can do if a Resident is being unlawfully restrained

- Make a complaint to the Residential Provider
- Make a complaint to the [Aged Care Quality and Safety Commission](#)
- Contact [ACJ](#) if you are unsure of the Resident's rights and would like a free legal consultation

1

NOMINATIONS BY THE RESIDENT

- The Resident can nominate someone to make decisions about restrictive practices if the Resident has decision-making capacity (**RP Nominee**).
- The Resident can revoke their appointment of a RP Nominee in writing at any time, if they have decision making capacity.

2

TEMPORARY RPSDM

- Temporary RPSDMs may be appointed if there is no RP Nominee.
- There is a specific order of Temporary RPSDMs, with the Resident's spouse or domestic partner being number one.
- Each time a restrictive practice is proposed a Temporary RPSDM is required.

3

VCAT APPOINTMENT OF a RPSDM

- If there is no RP Nominee or Temporary RPSDM, an eligible adult may apply to VCAT to be appointed as a RPSDM.
- The applicant must have an ongoing relationship with the Resident and meet certain requirements.

4

VCAT AS a RPSDM

- If there is no nominated or appointed RPSDM, VCAT may consent to the use of restrictive practices, subject to any conditions considered appropriate by VCAT.
- When deciding on consenting to a restrictive practice, VCAT must consider any preferences of the Resident.



Contact Aged Care Justice if you would like a free legal consultation:

Email: info@agedcarejustice.org.au

Phone: 0417 234 415

Website: www.agedcarejustice.org.au

DISCLAIMER: This fact sheet is for general information purposes only and does not represent legal advice. As it is not intended to be comprehensive in relation to the topic, other inclusions or exemptions may apply. The law and policy referred to in this document was in force on the 01/07/25.