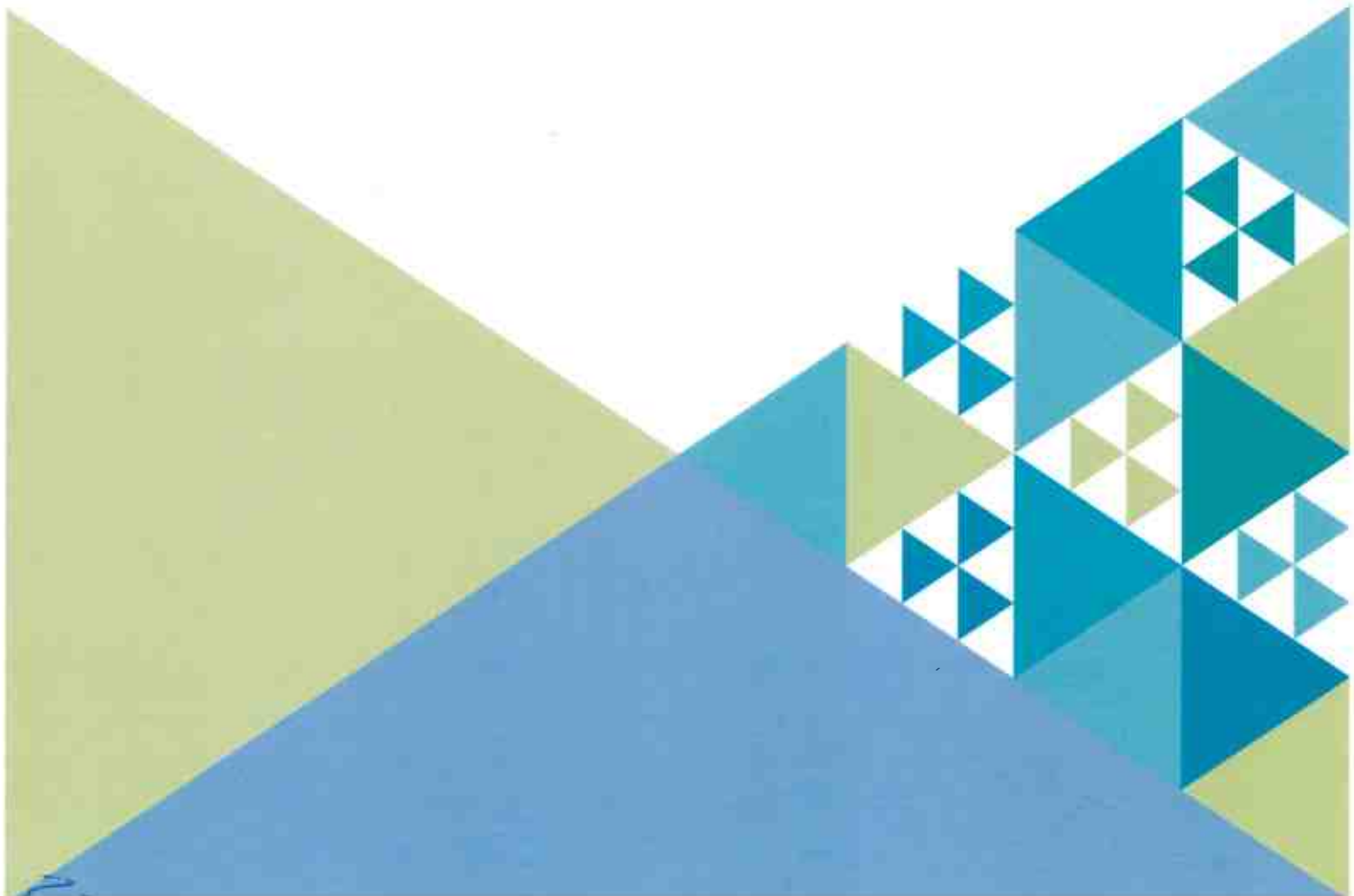




Office of the
Public Advocate

Good guardianship

A guide for guardians
appointed under the
*Guardianship and
Administration Act 1986*





Office of the Public Advocate

The Office of the Public Advocate (OPA) is an independent statutory body established by the Victorian State Government. It promotes the interests, rights and dignity of Victorians with a disability. It provides advice about advocacy, guardianship, powers of attorney, and medical treatment decisions.

OPA manages three volunteer programs: the Community Visitors Program, the Independent Third Persons Program and the Community Guardianship Program.

Community Visitors monitor the quality of disability services in order to safeguard the rights of vulnerable people. Independent Third Persons support people with a cognitive disability or mental illness who have contact with the police. Community Guardians are appointed guardians for Victorians with a cognitive disability who are unable to make decisions for themselves.

For more information visit www.publicadvocate.vic.gov.au or call the OPA Advice Service on 1300 309 337.

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Foreword

This guide outlines your authority and responsibilities as guardian. It gives you information to help you comply with the terms of the guardianship order issued by the Victorian Civil and Administrative Tribunal (VCAT).

As a guardian, there may be occasions when you feel pressured into taking on the role of a case manager or other professional service provider. Keep in mind that your role is to be a **decision-maker** for the person you are representing.

Your decisions ought to make a positive difference to someone's life. Being a guardian can sometimes be challenging, but we hope you find the overall experience satisfying and rewarding.

As you take on this role, please be assured that you have the full support of the Office of the Public Advocate, and do not hesitate to contact us if you need any information or want to discuss any of your concerns. We wish you well.

From the Public Advocate



As a newly appointed guardian, you have taken on an important role, and I would like to thank you for your time and services.

You may be wondering where to start and how to proceed in your role.

You may not have had any previous contact with either the legal system or the health and community service providers who are involved with the person for whom you are guardian.

This guide is designed to assist you and contains information and advice about your powers and duties.

Your authority comes from the *Guardianship and Administration Act 1986*, which sets out your powers and duties as guardian. The language used in the Act describes the person for whom you are the guardian as 'the represented person', and uses the terms 'best interests' and 'least restrictive' in relation to your decisions. These terms also appear throughout this guide, as they are fundamental principles of both the legislation and, very importantly, our involvement in the lives of people with disability.

The value of the commitment of family members and friends who are willing to accept the role of guardian for someone they care about cannot be overstated. It is the best possible guardianship appointment.



To assist you with what, at times, may seem a daunting and challenging role, I encourage you to contact OPA's Advice Service on 1300 309 337 with any questions you may have, or to discuss any issues of concern to you.

Colleen Pearce

Colleen Pearce
Public Advocate

Introduction to guardianship

What is a guardian?

A guardian is someone appointed by the Guardianship List of VCAT to make personal and lifestyle decisions for a represented person aged 18 years or over.

'The represented person' refers to the person for whom you are the guardian. The represented person is an adult who, due to a disability, cannot make decisions for themselves.

Guardians may need to make decisions about issues concerning the represented person, including those related to:

- **accommodation**, including the type of housing they need, and where that is located
- **employment**
- **access to services**
- **access to the person**, including restricting and allowing particular people to have contact with the represented person
- **medical treatment.**

Guardianship is a serious intervention. It removes the right of the represented person to make decisions for themselves about their own life and gives this responsibility to another person, the guardian.

Objectives of good guardianship

The objectives of good guardianship are:

- to make decisions that are in the best interests of the represented person
- to take into account the represented person's wishes when making those decisions
- to enable the represented person, as far as possible, to make decisions and act for themselves.

A guardian is appointed only where there is no other less restrictive means of achieving a result that is in the best interests of the person.

Medical treatment decisions

If VCAT appoints the guardian to make decisions about medical treatment, they must follow the process set out in the *Medical Treatment Planning and Decisions Act 2016* and make the decision that they reasonably believe the person would have made. (See page 14 for more information about this.)

"A guardian is appointed only where there is no other less restrictive means of achieving a result that is in the best interests of the person."

When is guardianship needed?

Guardianship is needed when a person with a disability is at risk because:

- the person cannot make decisions about their own personal and lifestyle affairs
- a decision needs to be made on their behalf
- there is unresolved conflict between a person with a disability and a service provider, family and/or friends
- the person is at risk from neglect, abuse or exploitation from others
- the person is at risk of neglecting themselves.

Who appoints a guardian?

VCAT appoints the guardian, after it has been satisfied that the represented person:

- has a disability
- cannot make reasonable personal and lifestyle decisions because of that disability
- needs a decision made for them or about them, and there are no alternate, less restrictive methods of making the decision other than to appoint a guardian
- needs someone to act in their best interests.

Who can be a guardian?

VCAT can appoint an individual(s) as guardian, usually a relative or friend of the represented person.

VCAT must be assured that the guardian will act in the represented person's best interests.

VCAT will also consider the wishes of the represented person and family members when deciding who to appoint as guardian.

When there is no suitable or willing person to accept the role, the Public Advocate can be appointed as a guardian, as a last resort. The Public Advocate can then delegate the role to either an Advocate Guardian from the Office of the Public Advocate, or to a Community Guardian.

Understanding the order

The guardianship order is a legal document that lists your powers and duties and determines the conditions with which you, as a guardian, must comply.

To find out what powers you have been given as guardian, read the terms of your order. If you are uncertain about anything, contact the Office of the Public Advocate for assistance. You can also formally seek advice, in writing, from VCAT.

Each order will state a date for reassessment. The duration of the order will vary, depending on the circumstances relevant to each particular situation. The maximum duration of an order is three years.

There are two types of orders:

- limited orders
- plenary orders.

Limited orders

The order lists the areas of the represented person's life for which you are responsible for making decisions.

For example, you could have authority to make decisions in one or more areas such as:

- **accommodation** — deciding where the represented person will live, either on a temporary or permanent basis, and whom they will live with
- **access to the represented person** — restricting or prohibiting access to the person as necessary
- **access to services** — ensuring that the represented person has access to necessary services

- **employment** — consenting to employment arrangements
- **medical treatment** — making decisions regarding medical treatment.

Plenary orders

If you are appointed plenary guardian, the plenary order states that you are appointed all the powers and duties that would be your responsibility if you were the parent of the represented person. This is rare.

Working as a joint guardian

Two or more people can be appointed joint guardians, depending on the circumstances. In this case, both or all the guardians must agree when making a decision in order for the decision to be valid.

“To find out what powers you have been given as guardian, read the terms of your order.”

The person's best interests

Section 28 (2) of the Guardianship and Administration Act describes how you can act in the best interests of a represented person.

You are acting in their best interests if you:

- advocate for the represented person
- encourage the represented person to participate in the community as much as possible
- encourage and help the represented person to care for him/herself
- protect the represented person from neglect, abuse or exploitation
- consider the wishes of the represented person whenever you make a decision for them.

Legal responsibility

It is important to be aware of your legal responsibilities as a guardian.

You are unlikely to be held liable for any decision you make as guardian if the decision is:

- made in good faith
- reasonable
- in the best interests of the person.

However, like anyone who has legal responsibility over the affairs of a vulnerable person, you have a legal duty to act carefully, and to comply with the Act. If you act negligently or illegally, you may be legally liable for your actions.

A person may claim you have acted negligently if it can be established that:

- you owe a duty of care to that person, and

- that person was harmed, and
- you could have reasonably foreseen the harm, but
- you did not take reasonable care to prevent that harm.

If you are unsure about what to do in a certain situation, you can ask VCAT for advice. Approval by VCAT protects guardians from legal action, unless the guardian fraudulently misrepresents facts to VCAT.

Medical treatment decisions

If you have authority under the VCAT order to make medical treatment decisions, you may be the person's 'medical treatment decision maker'. (See page 14 to find out if you are the person's medical treatment decision maker.)

In addition to acting in the best interests of the represented person as their guardian, a person's medical treatment decision maker must follow the process set out in the Medical Treatment Planning and Decisions Act.

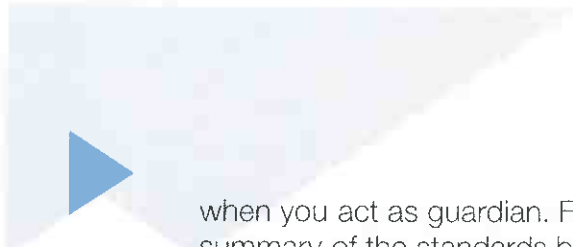
Under this Act you must make the decision you reasonably believe is the decision the person would have made, if they had decision-making capacity to make the decision.

Guardianship standards

National Standards of Public Guardianship provide minimum expectations of staff of Offices of the Public Advocate when acting as guardian.

They were developed by the Australian Guardianship and Administration Council

These standards can help guide you



when you act as guardian. Find a summary of the standards below.

Provide information

Guardians should provide information to the represented person and, (where appropriate) the original applicant to VCAT and the primary carer, about:

- the guardian's role and authority as guardian for the represented person
- the decision(s) the guardian has authority to make and the principles they will follow when making these decisions.

Guardians should provide information about their decision-making authority to relevant service providers.

Support decision-making capacity

When acting as guardian, the guardian should:

- make all reasonable efforts to support the represented person to exercise their own decision-making capacity to the extent possible
- respect the role of people who provide decision-making support to the represented person.

Ascertain will and preferences

When making decisions guardians should:

- endeavour to ascertain the will and preferences of the represented person
- ascertain what the person would likely want where it is not possible to determine the represented person's current will and preferences, and will do this by having regard to all available information and by consulting with significant people in the person's life
- make decisions that accord with the represented person's will and preferences wherever possible

- only override the person's will and preferences where necessary to protect the person from significant risk to their personal or social wellbeing.

“Where possible, the guardian will give effect to the wishes of the represented person.”

Advocate

The person has the right to access housing, health care, support services, and to participate in the community, including through education, employment, recreation, and membership of groups.

Guardians should advocate for the best option(s) for the person that improve both the quality of life and opportunity for the represented person.

Protect

Guardians should:

- consider whether the represented person is safe, and whether they have experienced abuse, exploitation or neglect
- take action, including the referral of the represented person to an appropriate authority where there is any reasonable suspicion that a represented person has experienced abuse, exploitation or neglect — taking into account the person's wishes.

Make decisions

Guardians must:

- be aware of their legal responsibilities and the principles in the Guardianship and Administration Act when making decisions

- only make decisions that they have authority to make under the guardianship order.

Guardians should:

- communicate decisions to the person and key parties in a meaningful way
- provide written reasons for a decision if requested by the represented person or a key party
- review their decision making on a regular basis.

Record information

Guardians should:

- record guardianship decisions in a way that also notes the views of the person and other relevant parties, as well as time frames, conditions and the reasons for decisions
- record significant information that has been obtained.

Participate in guardianship reviews

Guardians should:

- think about whether the order should be reviewed and request reviews where appropriate, including where the order is not working in the way that is least restrictive of the rights of the person
- consult with the person as far as possible to ascertain their views, and with relevant key parties and professionals.

Professional development

Guardians should:

- learn new things to undertake their role well.

Observe privacy and confidentiality requirements

Guardians should:

- develop policies and procedures that protect the privacy and confidentiality of the person and the key people in the person's life
- comply with relevant government privacy and confidentiality requirements.

“It is important to be aware of your legal responsibilities as a guardian.”



Acting as a guardian

Signing documents

As guardian you can sign documents, when necessary, to carry out your duties as specified in the order, for example, signing a medical consent form.

Enforcing a decision

As a last resort, under section 26 (1) of the Act, VCAT can make orders that give you or another person the power to make sure that the represented person complies with your decision.

This authority is mainly used in situations where the person is at significant risk, needs to be moved to accommodation or a health care service that is more appropriate, and is refusing to agree.

If you are confronted with such a situation, you should contact the Office of the Public Advocate for advice and assistance in applying to VCAT for a section 26 order.

If VCAT makes such an order, it must be reassessed within 42 days.

Notifying VCAT of significant events

VCAT must be notified of all significant events or changes to the details of guardians and represented persons.

If you or the represented person change address, or if you cannot continue to act as guardian, notify VCAT immediately in writing.

All orders cease on the death of a represented person. If the represented person dies during the term of your order, you must notify VCAT in writing.

Safeguards

All guardians must act in accordance with the legislative principles of the Act.

You are accountable to:

- the represented person
- VCAT.

Any person can apply to VCAT to seek a reassessment of the guardianship order. At a reassessment, VCAT can continue, vary or revoke its order.

If you are unsure of your duties and responsibilities as a guardian, or would like some guidance regarding a particular decision, you can write to VCAT and request advice. You may also phone OPA's Advice Service for assistance.

What if I want to resign?

Your role as guardian is voluntary. Should you become unable or unwilling to continue in the role for any reason, and choose to resign, you must inform VCAT in writing. VCAT can then hold another hearing to determine if the represented person still requires a guardian, and appoint one, if necessary.

Reassessment of the order

All VCAT guardianship orders must be reassessed within three years, and the date for reassessment is usually written into the order.

You can request an early reassessment from VCAT if you think guardianship is no longer necessary.

For example, you may seek a reassessment because:

- you do not think there are any further decisions that need to be made
- you believe that matters could be resolved without guardianship
- you do not think guardianship continues to be in the person's best interests
- there is medical evidence to suggest the person is now capable of making their own decisions.

VCAT may take the initiative to conduct a reassessment, or may do so on the application of any person including the represented person.

You are required to prepare a written report for the reassessment. This report should be sent to VCAT at least three business days before the hearing.

The report should include:

- any decisions you have made as guardian
- any change in the represented person's capacity to make reasonable judgments
- current needs and arrangements
- future plans
- your relationship with other significant people involved with the represented person including family and professionals

- any difficulties or conflict you have faced
- facts in support of your case that guardianship should continue, end or be changed
- your availability and willingness to continue as guardian
- any other matters that you believe VCAT should be aware of before making a decision.

OPA can send you an outline of a report to use as a guide. If you need further assistance in preparing your report, please contact the Advice Service.

Alternative guardians

VCAT can appoint an alternative guardian at any time. The alternative guardian can act when the guardian is unavailable, for example, when the guardian is away overseas, is unwell, or has died.

To request that an alternative guardian be appointed, you must write to VCAT.

"If unsure, you can contact the Office of the Public Advocate for advice."

Medical treatment decisions

The following information is intended to assist you to gain an understanding of your role if you are the medical treatment decision maker for the represented person.

An important principle of our law is that each individual has autonomy over their own bodies. Health practitioners cannot treat us unless we consent to that treatment.

The represented person may not have decision-making capacity to make medical treatment decisions. You, as guardian, may have to make decisions about medical treatment for them.

There are some instances where consent is not required, such as:

- when there is a medical emergency, that is, when treatment is necessary in order to save life, prevent serious damage to the patient's health, or prevent the patient from suffering significant pain or distress
- for palliative care.

The medical treatment decision maker

Under the Medical Treatment Planning and Decisions Act, a person called the 'medical treatment decision maker' can make a medical treatment decision if the person does not have decision-making capacity for the decision.

A person's medical treatment decision maker is the first person in the following list who is reasonably available, and willing and able, to make the medical treatment decision on their behalf.

1. The person's appointed medical treatment decision maker
2. A guardian appointed by VCAT with authority to make decisions about medical treatment for the person
3. The first of the following people who is in a close and continuing relationship with the person:
 - a. the person's spouse or domestic partner
 - b. the person's primary carer (not a paid service provider)
 - c. an adult child of the person
 - d. a parent of the person
 - e. an adult sibling of the person.

Where there are two or more relatives who are first on this list, the eldest is the medical treatment decision maker.

Note: If there is no medical treatment decision maker appointed by the patient, it will be a guardian appointed by VCAT, who has authority to make decisions concerning medical treatment, who will be considered the person's 'medical treatment decision maker'.

If the guardian is not reasonably available and willing and able to make the decision, the treating health practitioner will refer to the above list to identify the medical treatment decision maker for the person.

If a person does not have a medical treatment decision maker, the Public Advocate has authority to make significant medical treatment decisions for the person.

When medical treatment decision makers act

Health practitioners need their patient's consent before providing medical treatment.

If the health practitioner assesses that the patient does not have decision-making capacity to make a decision about whether to consent to, or refuse, the treatment offered, they follow these steps.

- If the patient has made an instructional directive (in an advance care directive) in which they have consented to or refused the treatment, the health practitioner will follow this.*
- If not, the health practitioner will ask the patient's medical treatment decision maker, to make the medical treatment decision for the patient.

* Note: The patient may also have completed a refusal of treatment certificate prior to the commencement of the Medical Treatment Planning and Decisions Act on 12 March 2018.

Medical treatment

Medical treatment is any of the following treatments by a health practitioner:

- treatment with physical or surgical therapy (such as dressing a wound or an operation)
- treatment for mental illness
- treatment with
 - prescription pharmaceuticals
 - an approved medicinal cannabis product
- dental treatment.

Making decisions

The Medical Treatment Planning and Decisions Act sets out how the medical treatment decision maker for a patient must make decisions.

If you are the patient's medical treatment decision maker, you must make the medical treatment decision that you reasonably believe is the decision the patient would have made, if they had decision-making capacity to make the decision. This may be a decision to consent to, or refuse, the treatment.



Consider the preferences and values of the patient

To make the decision that you reasonably believe is the decision that the patient would have made, you must:

- First, consider any valid and relevant values directive in an advance care directive that the patient made, if any. A values directive records the patient's values and preferences for their medical treatment, and it guides you when you make a decision on the patient's behalf.
- Next, consider any other relevant preferences that the patient has expressed, and the circumstances in which those preferences were expressed.
For example, the patient may have written down their wishes, or may have told close family members.
- If you cannot identify any relevant preferences of the patient, you must give consideration to the patient's values.
The patient may have expressed their values, or you may be able to infer their values from their life.

Consider the proposed medical treatment

As a person's medical treatment decision maker, you must also consider:

- the likely effects and consequences of the medical treatment, including the effectiveness of the medical treatment
- whether the likely effects and consequences are consistent with the person's preferences or values
- whether there are any alternatives, that would be more consistent with the person's preferences or values. (An alternative can include refusing medical treatment).

Consult

In the process of making the decision for the person, you must consult with anyone that you reasonably believe the person would want you to.

Act in good faith and with due diligence

You must act in good faith and with due diligence.

If you cannot find out the person's preferences or values

If you cannot find out the person's preferences or values, you need to make a decision that promotes their personal and social wellbeing.

In doing this, you need to consider the person's individuality.

You need to consider the proposed treatment, in the same way as described above. The one difference is that you consider whether the proposed treatment or any alternatives would be better in promoting the personal and social wellbeing of the person, rather than whether it would be more consistent with the person's preferences or values.

Palliative care

It is important to note that, while you can consent to or refuse medical treatment, you cannot refuse palliative care.

In the Medical Treatment Planning and Decisions Act, palliative care includes:

- the provision of reasonable medical treatment for the relief of pain, suffering and discomfort
- the reasonable provision of food and water.

Relationships and networks

It is important to recognise the value of the represented person's existing relationships and networks and try to work as closely as possible with them.

There are a number of people involved with the represented person, and maintaining positive relationships with them will assist you in ensuring the best possible outcomes for the person.

These networks can include family and friends, professionals, service providers, community groups, legal advisors, and people who have been appointed as powers of attorney by the represented person while they were still able to do so.

VCAT may have appointed you as guardian for the represented person, but the person may have previously given powers of attorney for financial matters and/or authority to make medical treatment decisions to someone else.

As a guardian, you need to ensure that you have an effective working relationship with whoever is responsible for managing the represented person's financial arrangements.

This could be an administrator appointed by VCAT, an individual appointed by the represented person as their attorney under a enduring power of attorney for financial matters, or a family member or friend who is assisting the represented person on an informal basis.

Situations may arise where you need to consult with the person who has responsibility for financial arrangements about questions and potential decisions affecting the represented person's lifestyle

and finances. For example, can the represented person afford a certain type of accommodation, or is money available to increase the represented person's choices and quality of life?

If you and the person who manages the represented person's financial arrangements are unable to agree on a decision, then you should contact the Office of the Public Advocate for advice, or apply directly to VCAT.

Further information about the powers and duties of an administrator is available from the Office of the Public Advocate and VCAT.

You may also need to establish a good relationship with the represented person's medical treatment decision maker.

If you have been appointed guardian with responsibilities for making decisions related to access to services, it is important that you are aware that this may include decisions about accessing health care services. The medical treatment decision maker only makes decisions about whether to consent to or refuse a treatment that is offered by a health practitioner.

Therefore, if you work together you will be able to make decisions that are in the best interests of the represented person. If you are unable to agree on a decision, or resolve any conflict, then you should seek the advice of VCAT.



Contacts

Office of the Public Advocate

Level 1, 204 Lygon St
Carlton VIC 3053
OPA Advice Service: 1300 309 337
TTY: 1300 305 612
Fax: 1300 787 510

www.publicadvocate.vic.gov.au

Victorian Civil and Administrative Tribunal

Human Rights Division
Level 5, William Cooper Justice Centre
223 William Street,
Melbourne Victoria 3000
Email:
humanrights@vcat.vic.gov.au
Tel: 1300 01 8228

www.vcat.vic.gov.au

Glossary of terms



Advance care directive

A document made under the Medical Treatment Planning and Decisions Act that sets out a person's binding instructions, or preferences and values, in relation to medical treatment, in the event that in the future they do not have decision-making capacity for that treatment.

Advance care plan

A range of documents that people may use to express their values for care and medical treatment. (While these documents are not made under the Medical Treatment Planning and Decisions Act, they record the values and/or preferences of the person and should be considered by the person's medical treatment decision maker.)

Applicant

The person who makes the application for a guardian to be appointed. The application is made to the Guardianship List of the Victorian Civil and Administrative Tribunal (VCAT).

Appointed medical treatment decision maker

A person appointed under the Medical Treatment Planning and Decisions Act. Legal appointments made prior to the start of the Act are recognised as appointed medical treatment decision makers.

These are an:

- enduring **power of attorney** (medical treatment) **made before 12 March**

2018

- enduring power of attorney appointing an attorney for personal matters made between 1 September 2015 and 11 March 2018
- enduring power of guardianship appointing an enduring guardian with health care powers made before 1 September 2015.

(Valid appointments made in other Australian states and territories are also recognised).

Decisions

These decisions include those made by a guardian that determine where a person should live; their access to family, friends and other contacts; and decisions to consent to or refuse medical treatment.

Guardian

The person appointed and named as guardian in a guardianship order.


Guardianship List of the Victorian Civil and Administrative Tribunal (VCAT)

The Guardianship List is the part of VCAT that appoints guardians to make decisions for people who have disability and who cannot make these decisions themselves.

Guardianship order

The guardianship order is the decision made by the Guardianship List when it appoints a guardian for a person with a disability.

The Guardianship List provides a written copy of the order that indicates who the



guardian is, for how long they will be guardian, and the limits of their decision making authority.

Interested persons

People who play a significant role in the life or care of the represented person.

Legislative principles

These are the principles that underpin the Guardianship and Administration Act, set out in section 4(2) of the Act. There are further principles set out in section 28 of the Act that direct the use of authority by a guardian. (See the Appendix for details.)

Medical treatment decision

A decision to consent to, or refuse the commencement or continuation of, medical treatment or a medical research procedure.

Medical treatment decision maker

A person authorised under the Medical Treatment Planning and Decisions Act to make a medical treatment decision on behalf of a patient who does not have decision-making capacity to make that decision.

Palliative care

Includes the provision of reasonable medical treatment for the relief of pain, suffering and discomfort, and the reasonable provision of food and water.

Primary carer

Any person who is primarily responsible for providing support or care to the represented person.

Professionals

Persons with tertiary or other qualifications, or expertise including medical, legal or financial, who may provide opinions that a guardian takes into account in their decision-making and support to the represented person.

Public Advocate (Office of the)

An independent office of the Victorian State Government, established to promote the rights of, and advocate for, Victorians with a disability.

The Public Advocate can act as guardian of last resort on appointment by VCAT.

Under the Medical Treatment Planning and Decisions Act, the Public Advocate has authority to make a significant treatment decision for a person who does not have capacity to make the decision if the person:

- has not completed a relevant instructional directive and
- does not have a medical treatment decision maker.

Reassessment

The hearing at which VCAT considers if there is an on-going need for a guardianship order.

Rehearing

The hearing at which VCAT considers an objection to the original order. This is similar to an appeal.

Represented Person

The person who is the subject of the guardianship order.

Revocation

The cancellation of guardianship by an order of VCAT. The decision to revoke the order is made at a reassessment hearing where VCAT is satisfied there is no longer a need for guardianship or that the guardianship order should be changed.

Victorian Civil and Administrative Tribunal (VCAT)

See Guardianship List of the Victorian Civil and Administrative Tribunal (VCAT).

Appendix

The Guardianship and Administration Act 1986

Section 4(2) and Section 28

Section 4(2)

It is the intention of Parliament that the provisions of this Act be interpreted and that every function, power, authority, discretion, jurisdiction and duty conferred or imposed by this Act is to be exercised or performed so that –

- a) The means which is the least restrictive of a person's freedom of decision and action as is possible in the circumstance is adopted; and
- b) the best interests of a person with a disability are promoted; and
- c) the wishes of a person with a disability are wherever possible given effect to.

Section 28

Exercise of authority by guardian

(1) A guardian must act in the best interests of the represented person.

(2) Without limiting sub-section (1), a guardian acts in the best interests of a represented person if the guardian acts as far as possible –

- a) As an advocate for the represented person; and
- b) In such a way as to encourage the represented person to participate as much as possible in the life of the community; and
- c) In such a way as to encourage and assist the represented person to become capable of caring for herself or himself and of making reasonable judgments in respect of matters relating to her or his person; and
- d) In such a way as to protect the represented person from neglect, abuse or exploitation; and
- e) In consultation with the represented person, taking into account, as far as possible, the wishes of the represented person.



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www.publicadvocate.vic.gov.au



Information for attorneys

As an attorney, you have obligations under the *Powers of Attorney Act 2014*. This fact sheet introduces your role.

Find more information in the Guide for attorneys (the guide) available on the 'Information for attorneys' page of the Office of the Public Advocate website at www.publicadvocate.vic.gov.au

Your powers as an attorney

You have been appointed by another person, called the 'principal', to have legal authority to make decisions for them.

You can only make decisions:

- about matters for which the principal has appointed you
- once your role starts.

Refer to the enduring power of attorney appointment form, to find out the types of decisions you can make and when your role starts.

Types of matters you can make decisions about

You will have been appointed to make decisions about:

- financial and personal matters
- financial matters only
- personal matters only or
- specific financial or personal matters.

A financial matter is any matter relating to the financial or property affairs of the principal. For example, paying expenses, undertaking a real estate transaction for the principal, and making money available to the principal for their personal use.

A personal matter is any matter relating to the principal's personal or lifestyle affairs. For example, services for the principal, and where and with whom the principal lives.

Things you cannot do

You cannot make decisions about medical treatment for the principal, unless you are also their medical treatment decision maker.

The Powers of Attorney Act includes a list of things you cannot do on behalf of the principal, for example, vote. Read the full list in the guide.

When your role starts

The enduring power of attorney may specify that the power starts at different times for different matters. For example, this could be immediately for financial matters and, for personal matters, when the principal ceases to have decision-making capacity for them.

If your role starts immediately, you will only need to assist the principal when they ask for your help. If your role starts when the principal ceases to have decision-making capacity for the matter(s), you may be asked to show evidence of this before you act.

Conditions and instructions

The appointment form will state whether the principal placed conditions on the exercise of your power, or gave instructions.

How you make decisions

If the power starts immediately (while the principal still has decision-making capacity for the matters), the principal oversees the use of your power, and you act at their direction.

If you make a decision on behalf of the principal when they do not have decision-making capacity to make the decision, you must:

- give all practicable and appropriate effect to the principal's wishes
- take steps (reasonably available) to encourage the principal to participate in the decision-making
- act in a way that promotes the personal and social wellbeing of the principal.

If the principal has appointed more than one attorney for any or all matters, refer to the appointment form to see how attorneys make decisions. For example, if you are appointed 'jointly', you make decisions together and must all agree.

Your duties

You must:

- Act honestly, diligently and in good faith.
- Exercise reasonable skill and care.
- Not use the position for profit (though an enduring power of attorney may authorise an attorney to be paid).
- Not disclose confidential information (unless authorised by the enduring power of attorney or by law).
- Keep accurate records and accounts of all dealings and transactions, for example, in a book or spreadsheet.
- Keep your property separate from the principal's property. This does not apply to property owned jointly by the principal and you.
- Avoid acting where there is, or may be, a conflict between your duty to the principal and your interests (or the interests of your relative, business associate or close friend), unless the principal or the Victorian Civil and Administrative Tribunal (VCAT) has authorised this.

If you act when you have a conflict and the principal has not authorised this, you may be liable to pay compensation. If you act dishonestly, you could be charged with an offence. A principal can only authorise a conflict transaction when they have the decision-making capacity to do so. If the authorisation is not in the enduring power of attorney, you may be asked to show evidence of this.

The principal's dependants

You can only provide from the principal's property for the needs of their dependant(s), if they authorised this.

Gifts

You can only give gifts from the principal's property in limited circumstances.

Compensation orders and offences

If you fail to properly undertake your duties or obligations, and this results in a loss to the principal, you may be ordered by VCAT or the Supreme Court to compensate the principal for the loss.

You can be charged with a criminal offence if you dishonestly use the enduring power of attorney to obtain financial advantage for yourself (or for another person) or cause loss to the principal (or another person).

If you want to resign

There are steps you must take to resign, or if you are no longer eligible to be the principal's attorney.

For more information, see the guide on the OPA website at www.publicadvocate.vic.gov.au

or contact OPA's Advice Service on 1300 309 337.

