



Administration

Making financial and legal decisions for an adult with a decision-making disability

What is administration, and how does it operate?

Administration is the appointment of a person (an ‘administrator’) to make financial and legal decisions for an adult with a disability (the ‘represented person’) when they are unable to do so.

All adults over the age of 18 years, regardless of disability, are entitled to make their own decisions. This is the case unless, when they were competent, they appointed a person to manage their legal and financial affairs under an enduring power of attorney (financial) and have now lost capacity.

Alternatively, an administration order can be obtained through the legal system commencing with an application for administration submitted to the Guardianship List of the Victorian Civil and Administrative Tribunal (VCAT).

VCAT hears the matter and, if necessary, appoints an administrator to make decisions about the represented person’s financial and legal affairs.

The administrator’s decisions have the same legal force as if the person had made them themselves.

When is administration needed?

Administration is needed when:

- a person who has a disability is at risk because they cannot manage their own financial and legal affairs

- a decision needs to be made on their behalf.

What decisions can an administrator make?

An administrator can only make financial and legal decisions for the represented person, such as managing their banking, paying bills or selling property.

An administrator cannot make personal and lifestyle decisions such as where a person lives, or what health care they may need. An administrator’s role is to ensure the represented person lives within their means.

Who appoints an administrator?

VCAT appoints an administrator. It must be satisfied that the represented person:

- has a disability
- cannot make reasonable financial and legal decisions because of that disability
- needs to make a decision and there is no less restrictive way of making the decision other than appointing an administrator
- needs someone to act in their best interests.

Who can be an administrator?

VCAT can appoint an individual such as a relative, friend, solicitor, or accountant; or an organisation

such as State Trustees Limited or a private trustee company. VCAT is required to appoint an administrator who can competently manage the represented person’s affairs, and will act in their best interests.

When deciding who to appoint, VCAT must take into account the wishes of the represented person, so far as they can be ascertained, as well as family members and interested parties.

If there is no one available or there is a disagreement between family or friends about what is best for the represented person, an independent administrator can be appointed.

What are the responsibilities of an administrator?

An administrator must make decisions that:

- protect the represented person from abuse, exploitation and neglect
- are in the best interests of the represented person
- take into account the represented person’s wishes
- encourage the represented person to make their own decisions, where possible.

Office of the Public Advocate

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Local Call: 1300 309 337 TTY: 9603 9529 Fax: 1300 787 510

www.publicadvocate.vic.gov.au

Victorian Civil and Administrative Tribunal,
Guardianship List

55 King Street, Melbourne, Victoria 3000

Tel: (03) 9628 9911 Fax: (03) 9628 9932

Toll Free: 1800 133 055

www.vcat.vic.gov.au



An administrator's financial interests must not conflict with those of the represented person.

What is the application process?

To apply for an administrator, an application form is available from VCAT. This can be requested via telephone, mail, or downloaded from the VCAT website at www.vcat.vic.gov.au. A link to the form is also available from OPA's website at www.publicadvocate.vic.gov.au

It is suggested that you call OPA's Advice Service on 1300 309 337 to discuss whether administration is necessary, and what supporting material is required for the application.

After receiving the application, VCAT will set a hearing date. Urgent applications will be heard as soon as possible. Most other applications will be heard within 30 days.

VCAT hearings

VCAT is less formal than a court, and tries to help people feel comfortable and relaxed.

If a person cannot travel to a hearing, VCAT may agree to accept evidence over the phone.

VCAT is not bound by legal rules of evidence and does not have to use formal legal processes. However, hearings must comply with the principles of natural justice (i.e. be fair and unbiased).

Legal representation at VCAT is not necessary, although people

attending hearings may ask VCAT to allow them to use a lawyer.

Emergency orders

OPA and VCAT have a 24-hour emergency service. If VCAT considers that a matter is urgent, a temporary administration order can be made for up to 21 days. The order can be extended a further 21 days.

Before the end of the order, VCAT must hold a hearing to determine whether administration is needed.

Duration of an order

An order may last for a maximum of three years. All orders are reassessed by VCAT within three years and can be cancelled if no longer needed.

If the represented person dies, the order ends.

Rehearings

If someone believes VCAT has made a wrong decision, they may apply for a rehearing within 28 days of the decision being made.

Interstate orders

It is possible to register Victorian administration orders in other states, and for interstate orders to be registered in Victoria.

For further information, contact OPA.

Safeguards

The following safeguards help to ensure that administrators act in the best interests of the represented person:

- administrators can ask VCAT for advice at any time
- private administrators must regularly lodge an account of the represented person's finances for examination, as directed by VCAT
- administrators cannot invest money in real estate or securities, apart from authorised trustee investments, without the approval of VCAT
- any person who believes that an administrator is not acting in the best interests of a represented person can apply to VCAT for a reassessment.