

Office of the Public Advocate

The Office of the Public Advocate (OPA) is an independent statutory body established by the Victorian State Government, working to promote the interests, rights and dignity of people with a disability.

It manages an advocacy and guardianship program (including private guardian support); provides an advice service for enquiries about matters such as powers of attorney, guardianship, and consent to medical and dental treatment; and supports three volunteer programs.

The Advocate/Guardian Program provides statutory guardianship to Victorians who cannot make decisions for themselves, and advocates for the human rights for people with a disability.

The Advice Service provides information to people about the rights of people with a disability, their treatment and care; VCAT applications; administration and guardianship; enduring powers of attorney and enduring guardianship; and consent to medical and dental treatment.

OPA supports three volunteer programs: the Community Visitors Program, the Independent Third Person Program, and the Community Guardianship Program.

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

OPA also undertakes systemic advocacy through the development of policy and research, as well as through targeted communications to stakeholders including media.

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From the Public Advocate



You have been appointed by the Victorian Civil and Administrative Tribunal (VCAT) as an administrator to make financial decisions for a person with a disability. This person is usually referred to as ‘the represented person’.

This guide has been written to provide you with information about an administrator’s powers and responsibilities.

It is important that you read it carefully and refer to it whenever you have a question about your duties.

However, this information is only a guide. You may wish to obtain an up-to-date copy of the *Guardianship and Administration Act 1986* (‘the Act’) which is the legislation that governs your role.

The Act is available from Information Victoria or accessible at www.dms.dpc.vic.gov.au

Also, you should always ask for advice when this is suggested. Remember to quote the represented person’s VCAT reference number (G ...) if you are writing to VCAT for advice.

I wish you all the best in executing your important duties as an administrator.

Colleen Pearce

Colleen Pearce

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Important points

- You must act in the best interests of the represented person.
- In the first weeks of your appointment you should identify all the income and assets that belong to the represented person, and establish a clear management plan for them.
- You must comply with the order of the Victorian Civil and Administrative Tribunal (VCAT) and Part 5, Division 3, of the Guardianship and Administration Act.
- You are accountable for the decisions you make and the management of the affairs of the represented person.
- All investments and bank accounts must be held in the name of the represented person, unless VCAT decides that this is not required.
- If a guardian is appointed to make decisions about personal matters, such as accommodation, medical treatment or employment, you must consult and work closely with the guardian.
- You may be legally liable for your actions as administrator.

Your checklist

1. VCAT will give you a copy of the administration order after the hearing at which you are appointed or send you the order by mail soon afterwards.

Read the order carefully and note any special conditions contained in the order. Keep a copy of the order in a safe place. If necessary, you can obtain further copies of the order from VCAT.

You should give a copy of the order to the bank or other organisations where the represented person holds investments, such as the Titles Office, insurance companies, gas, electricity and water providers, local authorities, lenders and debtors. If the represented person receives a government benefit, you should also tell the relevant department (Centrelink or Department of Veterans' Affairs).

2. If the order directs you to prepare a Financial Statement and Plan (FSP) then, unless the order otherwise provides, you have six weeks to prepare the FSP.

You must include details of the represented person's income and assets (i.e. property such as land and houses, personal property such as bank, building society and credit union accounts, investments such as debentures, mortgages and shares, furniture, jewellery, paintings, motor vehicles, boats, caravans or other movable items), expenditure and any liabilities.

You must also indicate in the FSP how you plan to manage the income and assets of the represented person. (See the green sample FSP provided at the end of this booklet). VCAT will send you the FSP form, but it is also available via the VCAT website at www.vcat.vic.gov.au

You must ensure that the plan:

- meets the needs of the represented person
- takes care of everything they own
- is the best way of managing their property.

3. If the order also requires you to lodge an Account by Administrator (ABA) at the end of every financial year, VCAT will send you a blank ABA at about that time. (See the purple sample ABA provided at the end of this booklet).

You must send VCAT the completed ABA and accompanying financial documents as soon as possible, but within the time directed in the order. The time for lodging the ABA is usually no later than 30 September. The ABA form is also available via the VCAT website.

To recap you need to:

- keep a copy of the administration order in a safe place
- send VCAT a completed FSP, if directed
- send VCAT a completed ABA each year, if directed.



1. Best interests, consultation and advocacy

As administrator, you must act in the best interests of the represented person.

Depending on the nature of the represented person's disability, and the impact of the disability on the person's cognitive capacity, it may be possible for you to consult with the person, take into account their wishes and to encourage and assist the person to become capable of managing his or her affairs. Some of the statements made in this guide assume that this will be possible but, of course, you may find that it is not possible in the circumstances of the person whose affairs you are managing.

1.1 How do I know if I am acting in the best interests of the represented person?

- You must make sure that your own interests do not conflict with the interests of the represented person. For example, if you are a beneficiary under the represented person's will, you cannot limit their spending in order to increase their estate for your benefit.
- You must consider what the represented person wants. Involve them in making decisions as much as you can. You must balance the wishes of the represented person with any immediate and long-term financial needs. For example, the represented person wants to take a holiday and has asked to go to Queensland. You do not think they can afford this. You could suggest a less

expensive alternative or discuss options with the person's family or friends.

- You make financial decisions that will allow and encourage the represented person to participate in the community. For instance, you may pay for the represented person to join a community recreation group.
- Wherever possible, you assist the represented person to develop the skills to manage their own financial affairs.
- You help to maintain the represented person's dignity and self esteem and, where possible, help them to achieve independence in the future.
- You keep your finances and those of the represented person separate.
- You keep accurate records of all income and expenditure.
- You keep accurate accounts for later examination. See 5.1 Do I have to keep accounts?

Remember, although you must consult with the represented person you must always use your own judgment and make decisions in the person's best interests, even if it conflicts with the represented person's wishes.

1.2 How can I be an advocate for the rights of the represented person?

You are responsible for monitoring any goods and services provided to the represented person that you have agreed to pay for. You should also investigate any complaints about financial exploitation and be aware of any indication that the represented person has been defrauded, or in any way deprived of their rights as a consumer of goods and services.

“ ...you must always... make decisions in the person's best interests, even if it conflicts with the represented person's wishes. ”



2. Powers and duties of an administrator

2.1 What are my responsibilities?

As an administrator appointed by VCAT you are obliged to comply with the Act and the *Trustee Act 1958* (the Trustee Act).

In essence, your responsibilities as administrator may be summarised in this way:

- always act in the best interests of the represented person
- consult with the represented person as much as is possible in any given situation
- avoid any transaction that may present a conflict, or even a perception of a conflict, between your interests and the interests of the represented person
- ensure that the represented person's investments, if any, are reviewed periodically to ensure that such investments continue to be appropriate in all the circumstances.

You have authority to make decisions and act on behalf of the represented person. You should find that you need VCAT's approval only if there is some uncertainty or conflict surrounding a major decision to be made. If you need VCAT's advice, write to VCAT giving details and indicating whether you know of any person who opposes the action you propose, and their reasons.

2.2 What should I consider when investing for the represented person?

You must consider the administration order, the Act and matters including the following, which are summarised from section 8 of the Trustee Act:

- the purposes of the order and the needs and circumstances of the represented person
- the desirability of diversifying investments

- the nature of, and risk associated with, existing investments and other property
- the need to maintain the real value of the capital or income
- the risk of capital or income loss or depreciation
- the potential for capital appreciation
- the likely income return and the timing of income return
- the term of the proposed investment
- the probable duration of the administration order
- the liquidity and marketability of the proposed investment during, and at the end of, the term of the proposed investment
- the total value of the estate
- the effect of the proposed investment in relation to the tax liability of the estate
- the likelihood of inflation affecting the value of the proposed investment or other property
- the costs (including commissions, fees, charges and duties payable) of making the proposed investment
- the results of a review of existing trust investments.

Generally, when investing for the represented person, you must use the care, diligence and skill that a prudent person in your position would use.

2.3 Can I be liable for financial losses?

You can be liable for financial loss under section 12C of the Trustee Act. You may also be liable if:

- you conceal or misrepresent facts to VCAT or
- you carry out your responsibilities negligently or illegally.

To protect yourself, you should always follow any advice given by VCAT and any directions contained in any order made by VCAT.

You should always get proper advice for any financial dealings and, if you are unsure about what to do in a particular situation, write to VCAT for advice. If you cannot continue to act as an administrator, contact VCAT immediately. See chapter 14, Changing circumstances.

Where you have formally sought VCAT's advice, section 55(5) of the Guardianship and Administration Act protects you from legal action, unless you willfully conceal or misrepresent facts to VCAT.

“ ...you should always follow any advice given by VCAT and any directions contained in any order made by VCAT. ”

2.4 What should I know about the financial affairs of the represented person?

You should know about the represented person's:

Assets

These include property such as land and houses, and personal property such as bank, building society and credit union accounts; investments such as debentures; mortgages and shares; furniture; jewellery; paintings; motor vehicles; boats and caravans.

Liabilities

Any outstanding debts, or potential liabilities.

Legal claims

Any pending legal action that could involve liabilities or other concerns.

Income

This includes any income the represented person has or may be entitled to, and includes any wages, pensions, interest, dividends, superannuation benefits or rental income.

Expenditure

This includes expenditure on accommodation, food, clothing and entertainment.

2.5 Do I need VCAT's approval for investments?

You do not need to get VCAT's approval for an investment on behalf of the represented person, unless VCAT's order requires such an approval. You can invest their estate in the same way as any trustee, including buying and selling a house. The represented person's name must be on the contract or any legal document, such as a certificate of title.

It is your duty to act in a prudent manner. This means you cannot invest the represented person's monies in a speculative investment, that is, any investment involving a financial risk to the represented person's estate. It is important that you get proper investment advice. This is not available from VCAT. Financial advisers, banks and stockbrokers provide information about a range of appropriate trustee investments. See chapter 4, Choosing a financial adviser.

2.6 Can I buy a house for the represented person to live in?

Yes, you can buy a house for the represented person to live in as long as it is not speculative and is appropriate for their needs. You may seek VCAT's approval. Where the represented person also has a guardian to decide on matters including 'accommodation' you must consult with that person.

Note, as with all investments, the represented person's name must be on the contract or on any legal documents, such as the certificate of title.

2.7 Should the represented person have control of money?

Unless specified in the order, it is up to you whether the represented person should have control of money. If the represented person cannot make reasonable decisions about spending money, you should not allow them to have unlimited access to their funds. Remember, you can make any arrangement with the bank that is reasonable. For example, the represented person may have restricted access to an automatic teller.

It is important to allow the represented person to have the maximum level of independence according to their level of ability. This solution (or a similar one) may allow them to have limited control of their money.

2.8 Should other people control some of the represented person's money?

It might be sensible to allow other authorised people to control some funds if this is easier. For example, you could authorise the manager of a supported accommodation service to withdraw funds from a float to pay for everyday items like toiletries. You might provide another family member with an allowance to pay for other everyday needs.

Where there is more than one administrator, you are both equally responsible for managing the affairs of the represented person. One administrator must not exclude the other - this defeats the purpose of appointing joint administrators.

However, this does not mean that one administrator cannot make minor decisions, such as operating a bank account. In this situation, both administrators should monitor bank statements and both of you should tell the banks about your appointment.

Remember, the control of funds is in your hands. You are responsible for financial decision-making. You should do whatever is necessary to give the represented person the best lifestyle possible.

2.9 What can I spend money on?

You should spend money on any reasonable needs that are within the represented person's budget, for example:

- all accommodation expenses, including rent, supported accommodation fees, rates, maintenance costs, electricity, telephone and other utilities and insurance
- all medical, optical, dental, and pharmaceutical needs
- all reasonable clothing needs
- recreation, education and transport.

If appropriate, you should budget for holidays. It may be appropriate to save for, or pre-pay, funeral expenses. If there is extra money, you should ask the represented person what they want to do with the money. You could also talk to their primary carer(s), family and friends, social workers and other professionals who may be involved with their daily needs.

2.10 What can I do if the represented person is involved in legal action?

You can initiate or defend legal proceedings in the name of the represented person. These may include:

- compensation for injuries caused in a motor vehicle accident
- claims for divorce, property settlement, spouse maintenance and child support in the Family Court
- recovery of property that has been illegally or unfairly obtained from the represented person

- claims, where you believe the represented person has been wrongly excluded as a beneficiary under a will, or where you believe the represented person was entitled to a greater share of the estate because of their disability and special needs.

Note, you cannot defend criminal charges in the name of the represented person but you should make sure that they have proper legal representation. In all of the above cases, you should contact a solicitor. (The Law Institute of Victoria at www.liv.asn.au has a list of specialists. Alternatively, you can inquire at Victoria Legal Aid at www.vla.vic.gov.au)

2.11 Who is responsible for paying tax?

A represented person must still pay tax, even if an administrator is appointed. It is your responsibility to ensure that this is done.

If you are satisfied with the represented person's accountant, you may continue to use their services.

Tax returns are lodged in the name of the represented person, with their tax file number.

Note, you must sign the tax return form.

2.12 Is it my job to collect Centrelink payments for the represented person?

It is your job to ensure that the represented person receives any social security benefit they are entitled to receive.

As well as the basic pension, Centrelink may provide supplementary assistance for rent, pensioner health benefits and other benefits. If the person is involved in work training, they may be entitled to mobility allowance if they cannot use public transport because of their disability. Rebates on council and water rates, electricity and phone bills can also be obtained, and a full-time carer may be entitled to a Carer Payment or Carer Allowance. It is important to remember that these entitlements may be affected by an income test and an assets test. Further information is available at www.centrelink.gov.au

“ It is important to allow the represented person to have the maximum level of independence according to their level of ability. ”



3. Developing the Financial Statement and Plan (FSP)

You must indicate to VCAT how you will manage the financial affairs of the represented person. The plan will list all the person's income, assets, expenditure and any liabilities, and show how they will be managed to maximise the benefit to the represented person. The plan should cover the following matters:

- income and source of income
- details of the assets and where they are situated
- debts and when they are due
- bank accounts used to record income and expenditure
- proposed expenditure, e.g. board and lodging, clothing, money for the person's personal needs, pharmaceutical needs, optical expenses, medical expenses, hospital fees, supported accommodation fees, dental expenses, taxes, gas,

electricity, rates, holidays, insurance premiums, repairs, and private health cover

- what will happen to assets such the person's house or car, if there is one
- investments you need to make, and investments you need to keep track of.

“ ...indicate to VCAT how you will manage the financial affairs of the represented person. ”



4. Choosing a financial adviser

4.1 Should I consult a financial adviser?

It is your responsibility to make informed decisions about the financial affairs of the represented person. VCAT cannot make these decisions for you. However, depending on the size and nature of the estate, it may be wise to consult a professional financial adviser. Remember, a financial adviser is just that, an adviser. However, a good adviser will have accurate, up-to-date knowledge of a variety of investments.

The adviser should also be able to match the needs of the represented person with appropriate investments and advise you about other relevant issues, such as how

particular investments affect social security payments and any tax issues that may arise from investment decisions.

Whether or not you decide to appoint a financial adviser, you should consider:

- the best quality of life possible for the represented person
- security of investment
- meeting everyday expenses
- flexibility, to take account of unforeseen events
- entitlement (if any) to social security benefits
- capital growth for future needs
- taxation implications.

4.2 How do I find the right adviser?

It may take time to find a financial adviser you are happy with. This is not a decision that should be made quickly. To make an informed decision, you should ask the following questions:

Are you authorised to give advice?

A person advising on securities must hold an Australian Financial Services Licence issued by the Australian Securities and Investments Commission. Securities include shares, debentures, bonds (government and company) or a managed fund (e.g. property, equity or cash management trusts). It is not necessary for the adviser to be personally licensed if an employer corporation holds the licence. In this case, the adviser will hold a letter of authority to provide advice from their employer. The employer is responsible for any advice given by the adviser.

Can I see the licence?

An adviser may be self-employed under contract to the licence holder. In this case, the adviser is called an ‘authorised representative’ and they should have a letter of authorisation to provide advice from the licensee. In the case of an adviser employed by a licensee, the adviser is called a ‘personal advice representative’ and they will also hold a letter of authorisation to provide advice. Always ask to see these letters of authorisation or be sent a copy (or both).

You may also request to see a copy of the licence that the adviser operates under. Note, a licence is not a guarantee of good advice.

Are there any restrictions on your ability to give financial advice? What is your area of expertise? What services are you authorised to provide?

At the earliest possible time before advice is given, the law requires an adviser to provide you with a Financial Services Guide (FSG). Often a licence will be restricted to certain types of investments. These restrictions will be detailed in the FSG. If you need advice on a type of investment that the financial adviser is not qualified to give, ask for a referral. Check first if there is a referral fee.

“ If you need advice on a type of investment that the financial adviser is not qualified to give, ask for a referral. ”

How will you be paid for your services? Will you receive any benefit from my investment?

This information will also be included in the FSG. Additionally, written advice must be given by an adviser. Detailed in this advice, is how the adviser is paid for their services. This written advice is called a Statement of Advice.

Advisers can be paid by:

- a fee that covers the interview, research and production of a written financial plan (and, if needed, supervision of the investment). Advisers who work for a set fee are often the most reputable, because their fees are transparent: they provide advice and charge for the service
- commission or ‘brokerage’ paid by the investment institution. Advisers must tell you about any commission they receive from your investment. You can also ask whether the adviser receives any other commission, such as holidays, gifts or low interest mortgages. All of these commissions must be included in your written advice. (Be wary of this type of payment. It may provide an incentive for the adviser to steer you in the direction of a product that pays a higher commission.)
- a percentage of the total amount you invest, or
- a combination of fee and commission.

Do you have any employment links to a financial institution, such as a bank or insurance company?

An adviser’s employment link to a financial institution may affect the adviser’s investment product recommendations.

How do you conduct your research?

Financial planning requires up-to-date research on available products and market conditions. Ask the adviser about the kind of research they use.

Are you a member of the Financial Planning Association?

Your adviser should be a member of a professional association, such as the Financial Planning Association (FPA). Members of these associations are bound by a code of ethics and association rules.

What are your qualifications?

Academic qualifications in accounting or commerce are not necessary, but they may show that the adviser has sound financial knowledge. However, all advisers must have the minimum qualification in financial planning of at least a Diploma of Financial Services – Financial Planning (DFS-FP).

What experience do you have?

A person with reasonable experience is preferable. Alternatively, consider an adviser who is employed by an experienced firm. A good guide here is an adviser who holds the designation of Certified Financial Planner (CFP). This is the highest designation of a practising financial adviser and is internationally recognised. These advisers will generally have significant experience and have attained the highest educational standards in financial planning.

“ An adviser’s link to a financial institution may affect... recommendations. ”

Do you have experience in advising on represented persons’ affairs?

Any adviser who has experience in the field of advising on represented persons’ affairs will be aware of the many issues faced by administrators and the represented person

and can add significant value to the process. State Trustees has significant experience in this area.

Do you have professional indemnity insurance?

Professional indemnity insurance is essential for the adviser. The insurance covers you if the adviser gives negligent advice. However, it will not compensate the represented person for losses that are not due to negligence.

Note, not all investment advisers carry indemnity insurance. Make sure you get a written report that describes any investment analysis and the reasons that the particular investment is recommended.

4.3 What information should I give to the adviser?

You should prepare the following information before your first meeting:

- the age of the represented person and the nature of the disability
- any income
- any further entitlements, such as settlement for an accident, inheritance, superannuation and insurance
- all assets and liabilities
- current living expenses
- future expenses, for example, accommodation, travel and renovations
- health problems and the approximate financial cost they represent, including any forecasts by health professionals
- your aims for the standard of living of the represented person
- the need to invest safely, especially if the disability is permanent.

You should take to the meeting a copy of VCAT's order appointing you, and a copy of this publication.

Remember that any proposed investment needs VCAT's prior approval if it is an unauthorised trustee investment, or if a VCAT order contains any restriction on investments of the nature proposed.

You should also emphasise the following considerations:

- best possible quality of life for the represented person
- security of investment
- ability to meet everyday expenses
- flexibility for unforeseen events
- adjustment of investments, to take social security entitlements into account
- capital growth for future needs
- taxation needs and implications.

If the adviser does not seem interested in these details, you should look for another adviser.

4.4 Should the advice be in writing?

The law requires that advisers provide written advice. You should read it carefully, and ensure you understand what it means and how it will affect the represented person. Remember, it is not your money. You have been trusted to provide the represented person with the best possible standard of living and the greatest long-term security for their assets.

4.5 What else should I be aware of?

Beware of a suggestion to place all the funds in one investment or with one investment company. However, some investment companies will manage investments of other companies on your behalf. Discuss how this works with your adviser.

Consider the length of time you may be committed to any one investment. For example, it is unwise to invest in a ten-year bond if you know the represented person will need a substantial lump sum in three years, or their medical condition is unstable.

Beware of a suggestion that money be borrowed for further investment, or that the represented person's assets are used as security for borrowing for the purpose of investing. If this is suggested, look for another adviser.

4.6 Can an accountant or solicitor invest funds for the represented person?

An accountant must be a certified practising accountant or a chartered accountant and a member of CPA Australia or the Institute of Chartered Accountants in Australia. A solicitor must be a lawyer who holds a current practising certificate within the meaning of the *Legal Profession Act 2004*.

Regardless of their standing as a professional accountant or solicitor they must be authorised representatives, or personal advice representatives. See Are you authorised to give advice?.

“ Remember, it is not your money. You have been trusted to provide ...the best possible standard of living and the greatest long-term security... ”

5. Accounts and fees

5.1 Do I have to keep accounts?

Unless VCAT exempts you, you must lodge an Account by Administrator (ABA) with VCAT for examination by State Trustees or another examiner.

The ABA is a summary of the total income and expenditure for the accounting period and a statement of assets and liabilities. VCAT will send you the ABA form for you to complete. The form can also be completed at the VCAT website at www.vcat.vic.gov.au

You must lodge the ABA within the time specified in the administration order. This is usually 30 September each year but you should lodge the ABA as soon as you can after the end of the financial year on 30 June.

It is very important that you lodge the ABA in time. If you fail to do so, VCAT may require you to attend a hearing so that VCAT can decide whether there should be a reassessment of the administration order.

5.2 How do I prepare the accounts?

The ABA form contains information about how to complete the form and what documents you need to send VCAT with the completed ABA. These documents include bank statements or other financial statements that show the starting and closing balances for each of the represented person's bank accounts and receipts for major expenses.

5.3 Do State Trustees and other examiners charge a fee to examine the Accounts by Administrator?

If VCAT appoints State Trustees or another examiner to examine the ABA then, if approved by VCAT, the examiner may charge an examination fee. The fee is based on the time it takes to complete the examination. Information about the fees charged by State Trustees can be obtained from that company.

The fee is paid out of the estate of the represented person.

The examiner notifies VCAT after examining the ABA.

Usually, there is nothing you need to do after lodging the ABA. However, VCAT may request that you respond to the examiner's report. If you do not lodge a satisfactory ABA or respond satisfactorily to any inquiries made by VCAT, VCAT may schedule a reassessment hearing. This can result in a change of administrator.

5.4 Can the fee be reduced or waived?

You can apply to VCAT for the waiver of all or part of the examination fee. Fee reductions or waivers are granted only if payment of the fee would cause financial hardship for the represented person, and if the examiner agrees.

5.5 Can I be exempted from having to submit the ABA?

In exceptional circumstances VCAT may decide that you should be exempted from lodging accounts. For example, this may be because your powers as administrator are limited in such a way that you do not control the represented person's income and expenditure. VCAT usually considers at the hearing whether or not to require an administrator to lodge accounts. If you want to apply for an exemption after the hearing, you can write to VCAT giving reasons why you believe you should be exempted from lodging accounts. If VCAT exempts you from lodging an ABA, VCAT may still require you to provide other financial information so that it can properly protect the represented person's best interests.

“ If you do not lodge a satisfactory ABA or respond satisfactorily to any inquiries made by VCAT, VCAT may schedule a reassessment hearing. ”



6. Accommodation issues

6.1 What are my powers in relation to accommodation?

It is your responsibility to see that any accommodation expenses are paid. This includes rent, supported accommodation fees, rates, maintenance costs, electricity, telephone and other utilities and insurance.

Remember, as administrator, you do not have the authority to make personal or lifestyle decisions for the represented person. However, if you think that the represented person needs specialised care, or a change in accommodation, you can be involved in that decision. You should consult with the represented person, their family, friends, and other relevant professionals such as the Aged Care Assessment Service or Disability Client Services in the State Department of Human Services.

It is important to know what the represented person wants, so talk to them about their preferred type of accommodation. But again, you must always use your best judgment and make decisions in the person's best interests even if it goes against the wishes of the represented person.

If there is any conflict or disagreement about the decision that cannot be resolved you should consult with the Office of the Public Advocate about applying to VCAT for a guardian to be appointed to make accommodation decisions for the represented person.

6.2 What should I know about accommodation needs?

The following questions can help you decide if the accommodation is suitable for the represented person:

- What are the different types of accommodation that are available?
- If the represented person can live independently but is on a limited income, are they eligible for Office of Housing assistance?
- Will the accommodation suit the represented person in the long-term?
- Can the represented person afford all the costs involved?
- Can the accommodation provider deal with changing individual needs?
- Is there reasonable privacy?
- If the accommodation is shared, can the represented person choose who they live with?
- Does the accommodation provider cater for any special needs?
- Are there any unnecessary restrictions on the freedom of the represented person?
- Is the quality of accommodation and service what you would expect, given the fees paid and including extra charges or costs?
- Does the represented person have their own phone, or reasonable access to a phone?
- Is the accommodation close to family, friends, public transport, shopping facilities, and community services such as library and health centre?
- Can the represented person have their own possessions? Is there adequate security for these possessions?
- Can the represented person keep pets in the accommodation?
- Is the food well prepared and nutritious?
- Are there recreational facilities?
- Is there an interesting and varied program of activities, for example, outings, movies and exercise groups?

“ ...if you think that the represented person needs specialised care, or a change in accommodation, you can be involved in that decision. ”



7. Contracts and other legal agreements

7.1 Can the represented person sign a contract?

To the extent that the administration order places the represented person's estate under your control, the represented person is deemed by law to be incapable of becoming liable under any contract without a VCAT order or your written consent. See section 52 of the Act.

7.2 What if the represented person enters an agreement without my knowledge?

You are entitled to recover any money spent, or have the contract declared invalid by a court if the represented person signs:

- a contract
- a credit agreement (e.g. hire purchase agreement or lay-by)

- any document that requires payment for any goods or service or creates a future financial liability (e.g. a loan, insurance contract or tenancy agreement).

If you explain the situation, the merchant/tradesperson may refund any money paid and cancel the contract. If this does not happen, write to VCAT for advice.

Note, if the represented person has bought goods or made a contract with someone who could not reasonably have known that they had an administration order, the transaction may be valid and enforceable. In this situation, if the merchant/tradesperson refuses to refund the money, you should obtain legal advice or write to VCAT for advice.

Remember, you are generally responsible for making sure that the represented person does not have access to more money than is appropriate to their circumstances.

7.3 Legal representation for the represented person

In some circumstances, it may be appropriate for you to engage legal representation for the represented person.

In doing so, you should consider the following:

- does the represented person already have a relationship with a lawyer?
- if so, is that lawyer appropriately skilled to represent the person in this matter?
- whether there is any real or potential conflict of interest in the lawyer acting for the represented person
- the costs and fees payable.

If you are unsure about the appropriateness of appointing a lawyer to act for the represented person, write to VCAT for advice.

“ ...the represented person is deemed by law to be incapable of becoming liable under any contract without a VCAT order or your written consent. ”



8. Claiming expenses and paying fees

8.1 Can I be reimbursed for out-of-pocket expenses?

You may incur expenses while carrying out your duties as administrator, for example, for car-parking or petrol expenses when visiting an accountant to discuss the financial affairs of the represented person. You can deduct these expenses (if there are enough funds in the estate) in the same way that you withdraw funds for other expenses, that is, by noting the details in the accounts.

Note, normal visiting expenses are not allowed.

8.2 Can I claim a fee?

Generally, only a professional administrator will be entitled to a fee. If there is no remuneration specified in the administration

order, you can apply to VCAT. Explain your reasons and the basis on which the fee should be calculated, for example, an hourly rate or a percentage of the estate or its income.

8.3 Are there any other fees associated with the administration of the estate?

Depending on the amount of income received by the represented person, a fee may be payable to VCAT from the person's estate. The fee is provided for in regulations, entitled the Guardianship and Administration (Fees) Regulations 2008, that have been made under section 58A of the Act.

VCAT will send you information about the fee each year. This will help you calculate whether any fee is payable and, if a fee is payable, how much you have to pay.

VCAT may waive or reduce the fee if it is of the opinion that the fee would cause undue hardship to the represented person. (See guidelines that appear on the VCAT website).

When you receive a notice from VCAT about the fee, you may ask VCAT to waive or reduce the fee if you believe the fee would cause undue hardship to the represented person. You should write to VCAT giving reasons for asking to have the fee waived, and attach any documentation that you believe would assist VCAT in making a decision.

Note, no fee is payable where a temporary administration order has been made under section 60 of the Act.

“ You may incur expenses while carrying out your duties as administrator ...You can deduct these expenses in the same way that you withdraw funds for other expenses. ”



9. Gifts and charitable donations

9.1 Can the represented person make gifts or charitable donations?

Section 50A of the Act governs gifts and charitable donations made on behalf of represented persons.

In summary, you may give the person's property (including money) to a relative or close friend (which may include you) or to a charity (which may include a charity that you are connected with).

The gift must be reasonable in the circumstances - especially the person's financial circumstances. If the gift is to a relative or close friend, it must also be of a seasonal nature or for a special event (for example, birth or marriage). If the gift is a donation, it must be a type of donation

which the person made when they had capacity, or might reasonably be expected to make.

You do not need to obtain VCAT's prior approval but you may wish to do so to be sure that it is permissible.

If you or a charity with which you are connected benefits, and the gift or total value of gifts is \$100 or more, you must notify VCAT in writing.

9.2 Can the represented person make loans?

If there is no restriction in any VCAT order, you may make loans on behalf of the represented person if it would be in the person's best interests. You should write to VCAT to seek approval. Include information about the terms of the proposed loan – the name of the borrower and that person's relationship to the represented person, the amount of the loan, the repayment date, interest payable, and any security for the loan.



10. Wills and enduring powers of attorney

A will is a legal document that describes how a person's property will be distributed after their death.

If a person dies without a will, their property is distributed according to a formula established by the *Administration and Probate Act 1958*. (For more information, contact the Probate Office on (03) 9603 9296 or visit www.supremecourt.vic.gov.au.)

An enduring power is a power given by one person (the donor) to another that endures after the donor has lost capacity to make their own decisions.

In Victoria, there are three types of enduring power. An enduring power of attorney (sometimes called a financial enduring

power of attorney) allows the donor to appoint another person (the attorney) to manage the person's financial affairs.

An enduring power of attorney (medical treatment) allows the donor to appoint an agent to make decisions about medical treatment.

An enduring power of guardianship allows the donor to appoint an enduring guardian to make decisions about personal matters such as where the donor will live or the services they receive.

10.1 Should I know the contents of the represented person's will?

A will is a confidential document and its confidentiality must be respected.

You should always know where an existing will is kept and ensure that it is safe and secure.

There may be circumstances in which the contents of a will should be known.

As administrator, you may, either before or after the death of a represented person, open and read any document deposited with you that is, or may be, the will of the represented person. VCAT also has power to open and read a will.

10.2 Can the represented person make a will?

To make a valid will, the represented person must be able to:

- be aware of and appreciate the significance of the act of making a will
- be aware, in general terms, of the character, extent and value of his or her estate
- be aware of the people who might reasonably be thought to have claims on his or her estate
- have the ability to evaluate and discriminate between the respective strengths of those claims.

It is always best to ask a solicitor or State Trustees to prepare the will to ensure it is valid. It is also wise to have a doctor present when the will is signed. Alternatively, the doctor can prepare a report that certifies that the represented person has capacity to make the will. This helps to safeguard against any future dispute about the cognitive capacity of the represented person.

You should notify VCAT if the represented person makes a will while you are administrator.

10.3 Can the represented person change a will?

Often a will is made many years before a person dies. In that time, circumstances can change. For example, the represented person may have bought or sold property or beneficiaries may have died.

A represented person can change a will if they have sufficient cognitive capacity, see 10.2, Can the represented person make a will?

10.4 Can I make a will for the person or instruct a solicitor about making a will?

No. You do not have the power to make a will for the represented person or instruct a solicitor about a will for them. However, you can approach the Supreme Court and enquire about court or judge-made wills.

10.5 Can the person I represent sign an enduring power of attorney?

No. If the represented person wants to sign an enduring power of attorney, you should write to VCAT for advice. VCAT may reassess the administration order and revoke the order if VCAT is satisfied on the basis of current medical or other expert evidence that the person has capacity to make an enduring power of attorney. The represented person will then be able to make an enduring power of attorney.



11. Delegation and signing documents

11.1 Can I delegate my powers?

No, you cannot delegate your powers.

11.2 Can I sign a document for the represented person?

Yes, you can sign a document for the represented person if it is necessary to fulfill your responsibilities under the terms of the administration order.

“ You can sign a document for the represented person ”

You should sign the document in the following manner:

Signed by [name or represented person] by his/her administrator, [name of administrator], appointed by order of the Victorian Civil and Administrative Tribunal made on [date of order] (VCAT file number: G...)

..... (Signed)
.....(Dated)

If there is a joint administrator, their signature must appear on the document with your signature.



12. Working with a joint administrator

12.1 Can a joint administrator be appointed?

VCAT can appoint two or more people as joint administrators. If you are unsure whether a joint administrator has been appointed, check the administration order or contact VCAT.

12.2 Do I have to consult with a joint administrator?

If you share the responsibilities of administrator equally with a joint administrator, you must make decisions together. You can divide minor responsibilities if it is convenient and you both agree. For example, if frequent withdrawals have to be made from the

bank and it is more convenient, and you both agree, one of you can deal with minor withdrawals from a working account.

Note, you must jointly write to the bank to tell them what you are doing. Any significant division of decision-making responsibility must be specifically approved in a VCAT order. Both administrators must agree to this arrangement.

It is important to remember that any action by one administrator is considered to have been taken jointly.

12.3 What if I disagree with the joint administrator?

If you have a disagreement with your joint administrator, you should try to resolve the matter yourselves. If the disagreement cannot be resolved and this is harmful to the correct management of the represented person's financial affairs, write to VCAT for advice.



13. Effective administration

You should:

- be aware of the expenditure needs of the represented person and regularly review those needs
- ensure that all of the represented person's income and assets are secure, maintained in the most efficient manner, and held in their name
- ensure that you have complied with VCAT's order
- prepare accounts as directed, and pay all relevant fees.

Although you may sometimes feel challenged by the competing interests of your role, remember that you are performing a vital function that allows the represented person to have the best lifestyle available in difficult circumstances.

There may be no easy solutions to the problems faced by the represented person and there may be limits to what you can

achieve. There may especially be tension between the need for you to support the represented person's independence and to protect the represented person's welfare.

“ ...you are performing a vital function that allows the represented person to have the best lifestyle available. ”



14. Changing circumstances

14.1 What if there is a change of address?

Write to VCAT if you or the represented person change address.

14.2 What if the represented person's condition improves?

Write to VCAT if the represented person's condition improves and you believe they can administer their own affairs. VCAT will then consider reassessing the order. VCAT will need medical or psychological reports or both to support revoking the administration order.

14.3 Can I stop being an administrator?

If you are unable or are unwilling to continue as administrator, write to VCAT immediately. A hearing will be scheduled to appoint a new administrator. You will remain the administrator until any new order is made.

14.4 What are my responsibilities if the represented person dies?

Your authority to administer the legal and financial affairs of the represented person ceases immediately on the death of the represented person. The law relating to the administration of a deceased person's estate then applies.

You must inform VCAT that the represented person has died, and provide to VCAT:

- death certificate, or extract of death certificate, or
- death or funeral notice published in a newspaper, or
- notification of death by a professional such as a doctor or director of nursing who was involved in care of the deceased, and
- the name, address and telephone number of the executor(s) of any will made by the deceased.

You will be responsible for the estate to the date of death. Therefore, you should complete and keep an Account by Administrator for the period to the date of death, in the event that an executor, or other authorised person, requires it.

You may consider it prudent to lodge the final Account by Administrator with the examiner appointed by VCAT.

After the represented person's death, the executor or other authorised person will take over your duties. If you promised to do certain things (for example, handle the funeral arrangements), you should speak to the executor. You should tell the executor if there is anything which it is important for the executor to know, especially the location of the will or any changes to the will. If the person dies without a will, you should consult a solicitor.

If you intend to prepare a final Account by Administrator, you should tell the executor about that, advising the executor that the examiner may charge an examination fee.

14.5 What if the represented person dies intestate – that is, without having made a valid will?

If the represented person has passed away without leaving a will you may seek independent legal advice as to who is best placed to seek to administer the estate under a grant of administration by the Supreme Court.

“ Your authority ...ceases immediately on the death of the represented person... You will be responsible for the estate to the date of death. ”



15. Duration of the administration order

Sometimes the administration order made by VCAT is for a short time only, to allow a single transaction such as the sale of property.

Continuing orders mean that the represented person has an ongoing need for financial administration. The order usually takes effect from the date of the hearing. You do not necessarily have to wait to receive a copy of the order in the mail. The order must be reassessed by VCAT within the time specified in the order, but no later than three years after the order is made.

“ The order usually takes effect from the date of the hearing. ”



16. Further information and support

You can ask VCAT for advice:

- if there is a potential conflict of interest
- if you have a dispute with a guardian or joint administrator that cannot be resolved, or
- if circumstances have made it impossible for you to continue to administer the estate under the terms of the order.

You can ask for advice on any other relevant matter, but remember, you are the administrator. Rely on your own judgment and skill.

VCAT regularly runs information sessions for newly appointed administrators and guardians.

This gives you an opportunity to learn more about your role and to ask questions. If you have not been given details about the sessions, you can contact VCAT or visit the VCAT website.

“ Rely on your own judgment and skill. ”

17. Contacts

Aged Care Assessment Service

Phone: (03) 9096 7389
www.health.vic.gov.au

Centrelink

Phone: 13 27 17
TTY: 1800 555 677
www.centrelink.gov.au

Department of Human Services

(Office of Housing or Disability Client Services)
Phone: 1300 650 172 (cost of a local call)
www.dhs.vic.gov.au

Information Victoria

Phone: 1300 366 356 (cost of a local call)
TTY: 9603 8806
www.information.vic.gov.au

Office of the Public Advocate

Level 5, 436 Lonsdale Street
Melbourne VIC 3000
Phone: 1300 309 337
Fax: 1300 787 510
TTY(03) 9603 9529
www.publicadvocate.vic.gov.au

Probate Office

Level 2, 436 Lonsdale Street
Melbourne VIC 3000
Phone: (03) 9603 9296
www.supremecourt.vic.gov.au

State Trustees

168 Exhibition Street
Melbourne VIC 3000
Phone: (03) 9667 6444 or 1300 138 672
(cost of a local call)
www.statetrustees.com.au

Law Institute of Victoria

470 Bourke Street
Melbourne VIC 3000
Phone: (03) 9607 9311
www.liv.asn.au

Victorian Civil and Administrative Tribunal (VCAT)

55 King Street
Melbourne VIC 3000
Phone: (03) 9628 9911
Toll free: 1800 133 055 (outside Melbourne metropolitan area only)
Fax: (03) 9628 9932
www.vcat.vic.gov.au

Victoria Legal Aid

350 Queen Street
Melbourne VIC 3000
Phone: (03) 9269 0120
Toll free: 1800 677 402 (outside Melbourne metropolitan area only)
www.legalaid.vic.gov.au



Glossary and acronyms

Below you will find some terms that you may come across in the course of your duties as an administrator:

Administrator:

a person appointed by VCAT Guardianship List to make financial and legal decisions on behalf of someone with a disability who is unable to make those decisions for themselves.

Best interest decisions:

decisions that promote the best interests of the represented person.

Capacity (legal capacity):

an ability to understand the main consequences of a decision, to take responsibility for making a choice and to make a choice based on the risks and benefits that are important.

Certified copy:

a copy of an enduring power or of another document on which an authorised person has certified: 'This is a true and complete copy of the original.' See *Do I need to make certified copies?*

Deed:

a document that is required to be signed, sealed and delivered.

Enduring power:

the power continues (endures) even if the person giving it loses the capacity to make decisions in relation to their legal, financial or personal affairs, or medical treatment.

Guardian:

a person appointed either by a person or the Guardianship List to make personal lifestyle decisions, such as decisions about where the person will live. A guardian only makes decisions for someone who is unable to make those decisions themselves.

Guardianship List:

a section of the Victorian Civil and Administrative Tribunal that has the power to protect vulnerable adults, including power to appoint administrators and guardians, and make orders about enduring powers.

Jointly appointed:

when two people are appointed as administrators or attorneys and both must agree on a decision for that decision to be valid.

Order:

a legally binding decision by VCAT.

Revoke:

to cancel an enduring power or an order such as an administration order or a guardianship order.

Statutory declaration:

a document in which a person makes a statement and acknowledges that it is made in the belief that, if the statement is false, the person is liable to penalties for perjury. The statement is witnessed by a person authorised to do so under section 107A of the *Evidence Act 1958*. See Who can witness a statutory declaration?.

Victorian Civil and Administrative Tribunal (VCAT):

a statutory body established by the Victorian State Government which deals with disputes, including matters relating to guardianship and administration.

Witness:

a person who is present when someone signs a document who confirms that the signature is genuine by adding their own signature.

ABA:

Account by Administrator

CFP:

Certified Financial Planner

FSP:

Financial Statement and Plan

FSG:

Financial Services Guide

OPA:

Office of the Public Advocate

VCAT:

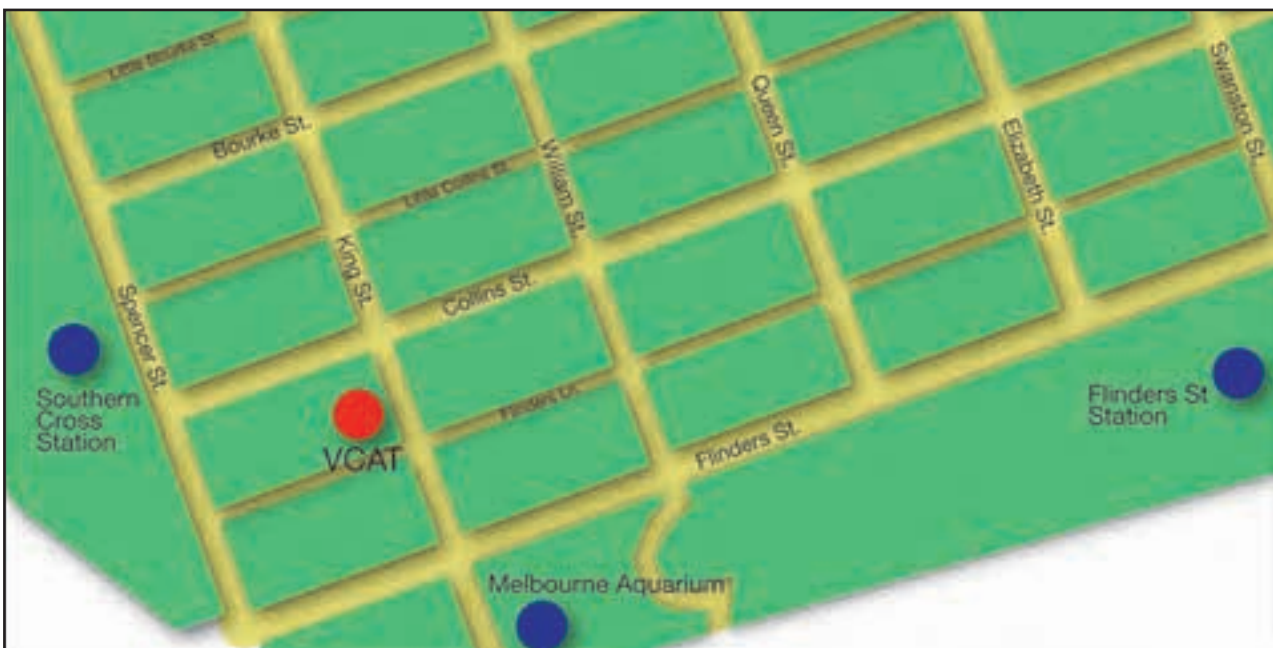
Victorian Civil and Administrative Tribunal



How to find VCAT

Hearings of the VCAT Guardianship List can take place in suburban and regional Victoria as well as the city office at 55 King Street, Melbourne.

VCAT is a 10-minute walk from Southern Cross Station or a five-minute tram ride from Flinders Street Station. Get off at King Street (Melbourne Aquarium) and then take a two-minute walk north along King Street. VCAT is located on the north-west corner of King Street and Flinders Lane. There are some commercial car parks close by.





About this form

- This form is designed for administrators appointed by VCAT.
- The form enables administrators to give financial information about the represented person and inform VCAT about how administrators propose to manage the person's financial and legal affairs.

What do I have to do?

- As soon as possible after VCAT has appointed you as administrator, you should read this form, beginning with the general information for administrators on the back of this form, so that you can obtain all the information required to enable you to act as administrator and to complete the form.
- If the VCAT administration order directs you to lodge a Financial Statement and Plan you must complete this form and send it to VCAT no later than the date specified in the order – (usually six weeks after the date of the order).
- All administrators must sign and date the declaration at the end of the form before sending it to VCAT.
- If you need extra space to give details requested, please attach separate sheets and number your answers with reference to the question number.
- Please use a **black pen** to complete this form and write in BLOCK letters.
- Where there are 'yes' or 'no' questions, please tick the appropriate box
- If you have any questions about the form or about the administration order you may contact VCAT on toll free 1800 133 055 or (03) 9628 9911.

1. What is the VCAT reference number specified in the administration order?

G Date of order / / 200

2. Who is the person you are making financial decisions for (the represented person)?

Family name (surname) of represented person Given names Date of birth / /

Current residential address of represented person (PO Boxes are not accepted) Postcode

Is this the represented person's own home or rented accommodation or supported accommodation (eg nursing home)?

3. Who are the administrators for this represented person?

This will also be the person we will contact if we need to about this Financial Statement and Plan form

1.	Family name (surname)	Given names
	Current residential address	
	Postcode	
	Postal address (if different from residential)	
Relationship to represented person		Daytime telephone number

Is there more than one administrator?

No Go to question 4. on the next page

Yes Please list the details of the other administrators here (attach a separate sheet if more than 2 other administrators)

2.	Family name (surname)	Given names
	Current residential address	
	Postcode	
Relationship to represented person		

3.	Family name (surname)	Given names
	Current residential address	
	Postcode	
Relationship to represented person		

This series of questions is about the represented person's current financial position.

4. What is the represented person's income and expenditure per fortnight?

Income

Type of income	Total fortnightly amount
Pension (including any overseas pension calculated in \$A)	\$
Employment	\$
Superannuation	\$
Trust income	\$
Interest on investments	\$
Rent received	\$
Other (please specify)	\$

Total income (add all income and write the amount here) \$ **A**

Expenditure (or estimated expenditure) on personal maintenance and housing

Type of personal maintenance	Total fortnightly amount
Food	\$
Clothing	\$
Medical (including medical insurance & pharmacy)	\$
Holidays	\$
Other (please specify)	\$

Rent or accommodation fees paid to:	\$
Utilities (gas, electricity, water, etc)	\$
Council rates	\$
Home maintenance (include repair costs and insurance)	\$
Accommodation bond	\$

Total expenditure (add all expenditure and write the amount here) \$ **B**

5. As at the date you were appointed administrator, what were the represented person's assets?

Assets

Please give details of the represented person's current bank account details including term deposit accounts

BSB and account number	Balance at date of administration order
Bank account 1.	\$
Bank account 2.	\$
Bank account 3.	\$
Bank account 4.	\$

Add up all the amounts in bank accounts and write the total here.

Total \$ **C**

Please give details of any other assets held by the represented person

Investments (*shares, bonds etc*)

Type of investment and account reference number	Value
	\$
	\$

Real estate

Address of property	Value
Property A	\$
Property B	\$

Personal property (*all items valued at \$1000 or more for car, jewellery, furniture and other*)

Type of item	Value
	\$
	\$
	\$

Other assets (*include any trust account, prepaid funeral or accommodation bond*)

Type of asset	Value
	\$
	\$

Add up all investments, real estate, personal property and other assets and write the total here.

Total \$ **D**

Total value of assets (add amounts in C + D) and write the amount here \$ **E**

6. As at the date you were appointed administrator, what were the represented person's liabilities (if any)?

Liabilities

Mortgages

Name of lender	Amount owing
Property A	\$
Property B	\$

Loans outstanding (personal loans, car loans etc)

Name of lender	Amount owing
	\$
	\$

Credit cards

Type of card	Amount owing
	\$
	\$

Other liabilities or debts

Type of liability	Amount owing
	\$
	\$

Add up all liabilities and write the total here.

Total liabilities (add all liabilities and write the amount here) \$ F

The next series of questions is about what measures are in place to ensure the represented person's daily needs are being met, the legal affairs of the represented person and what has happened since VCAT appointed you as administrator.

7. What steps have you taken and will you take to make sure you know that the represented person's day-to-day needs are being met? (eg you or other family members visit regularly)

8. Has the represented person made a will?

No Go to question 9. Don't know Go to question 9.

Yes Do you hold the will?

Yes No Name and address of person who holds will (if known)

9. Has the person made any claim for compensation (eg TAC claim) or are there any other outstanding legal issues you know about?

No Go to question 10.

Yes Give details

10. Since VCAT appointed you, have you disposed of any assets valued at \$1000 or more or settled or paid any debts of \$1000 or more?

No Go to question 11.

Yes Please give details

Type of asset/payment	Paid to	Amount/Value	Reason for disposal/payment
		\$	
		\$	
		\$	

11. Simple Plan

- If
- A. you believe that the represented person has sufficient savings and income to meet expenses for as long as needed, AND
 - B. you do not expect to have to make significant changes to the person's investments (by selling the person's house, car, shares etc), AND
 - C. you plan simply to make sure that all due income is received, all expenses are paid, and any surplus is invested in a bank or similar account

tick this box and then go to question 19.

In all other cases you must answer the remaining questions on this form

If you could not tick question 11 (eg because you expect you will have to sell assets) please answer the remaining questions on this form.

The next series of questions asks you about your plan for managing the represented person's financial affairs. We understand there may be unforeseen circumstances but ask that you do your best in answering these questions, taking into account the represented person's needs.

12. How long do you estimate that the person's savings and income will last for?

Less than a year or specify the number of years here

13. Does the person own any real estate, shares or other investments or a car?

No Go to question 17.

Yes Go to question 14.

14. Do you plan to sell any real estate?

No Go to question 15.

Yes What is the address of the property to be sold?

Is this property the represented person's home?..... No Yes

Have you obtained or do you intend to obtain independent valuations of the property?.. No Yes

Do you propose to offer the property for sale to the public?..... No Yes

(If yes, please specify how eg public auction, private sale)

Do you intend to use the services of a real estate agent?..... No Yes

How do you intend to deal with any net proceeds of sale?

What do you intend to do with the represented person's household contents (if any) (please give details)?

15. Do you plan to sell any shares or cash in any investments?

No Go to question 16.

Yes Give details of the shares or investments to be sold or cashed in and their approximate value

16. Does the represented person own a car?

No Go to question 17.

Yes What do you plan to do with the car?

Sell it..... Go to question 17.

Keep it Detail below if someone other than the represented person will have use of the car, give the name of the person and say what the car will be used for

Give it away as a gift Write below who will receive the car, their relationship to the represented person and the purpose or occasion for the gift

Other..... Describe below what you plan to do with the car

Give details of the car and its value or approximate value

17. Are there any other steps you intend to take to make sure that there are sufficient savings and income to meet expenses, pay off any debts and met liabilities (including an accommodation bond, if required)?

No Go to question 18.

Yes Give details of the steps you intend to take

--

18. Have you got or do you intend to get professional financial advice about how best to handle the represented person's finances?

No Go to question 19.

Yes Go to question 19.

19. Do you plan to:

- give away the represented person's property (other than the household contents or car if previously mentioned in this form)?
- make any gifts, charitable donations or loans from the represented person's estate?
- let out any of the represented person's real estate property for a reduced rent or no rent?

No Go to question 20.

Yes Give details below

Gifts/Donations

Name(s) of person/organisation receiving	Relationship to represented person	Purpose or occasion for gift	Amount (\$)

Loans

Name(s) of borrower	Amount (\$)	Repayment terms (eg \$ per month)	Interest payable	How will the loan be secured?	Will there be a written loan agreement? (If no, say why not)

Rental details

Name(s) of person to occupy property	Relationship to represented person	Amount of rent or other payment to represented person (per fortnight)	If below market rental value state reason why	Who will be responsible for rates/utilities etc?

20. Declaration and signature of all administrators

- I/We solemnly and sincerely declare that all information given in this form is true and correct; and
- I/We have read and understood the general information for administrators contained in this form; and
- I/We have not been convicted or found guilty of an offence involving fraud or dishonesty. I/We am/are not bankrupt and have not applied to take the benefit of a law for the relief of bankruptcy or insolvent debtors. I/We have not settled debts for a smaller amount with creditors or assigned income for their benefit; and
- I/We understand and acknowledge that it is an offence under section 136 of the Victorian Civil and Administrative Tribunal Act 1998 to knowingly give false or misleading information to VCAT.

	Signature	Printed name	Date
1.	X		/ /200
2.	X		/ /200
3.	X		/ /200

21. How to lodge this form

Send the completed form to:
 VCAT, Guardianship List
 GPO Box 5408
 Melbourne VIC 3001

22. What happens then

VCAT will notify you if your Financial Statement and Plan is approved. Otherwise, VCAT may write to you requesting further information.

- You should as soon as possible give a copy of the administration order to Centrelink or Department of Veterans Affairs (if applicable) and to any relevant bank or other financial institution.
- You should also obtain and keep bank and other statements necessary to support your statement about the represented person's income and assets, and to support your accounts in future.
- You must act in the best interests of the represented person. This includes encouraging and assisting the person to become capable of managing their affairs, if possible.
- You must also act in consultation with the person, taking into account as far as possible their wishes. You should consult the person and ascertain their wishes about the plans you are setting out in this form.
- You should consider whether the represented person is receiving all the income they are entitled to and that they have sufficient income to cover their expenses. You should also develop a plan to ensure that in future they will have sufficient income and that you generally manage their estate in their best interests. To the degree possible you should manage the estate to enable the person to live in the way they are accustomed or would prefer to live.
- If the person has substantial or varied assets you may decide to get independent financial advice, ideally from more than one financial adviser.

How should I manage the represented person's money?

It is usually undesirable to keep more than a small amount of money in a cheque account or low interest-bearing account. You must make decisions in the represented person's best interests. Especially if the person's estate is substantial or unusually complex, you may wish to consult a professional financial adviser. You may be protected from liability if you get VCAT's formal advice or approval before making investments.

Can I make loans on behalf of the represented person?

If there is no restriction in any VCAT order, you may make loans on behalf of the represented person if it would be in the represented person's best interests. You should write to VCAT to seek approval. Include information about the terms of the proposed loan - the name of borrower and that person's relationship to the represented person, the amount of the loan, the repayment date, interest payable and any security for the loan.

Can I make gifts or charitable donations on behalf of the represented person?

You may give the represented person's property (including money) to a relative or close friend (which may include you) or to a charity (which may include a charity with which you are connected). The gift must be reasonable in all circumstances - especially given the represented person's financial circumstances. If the gift is to a relative or close friend the gift must also be of a seasonal nature or for a special event (such as a birth or marriage). If the gift is a donation, it must be a type of donation which the represented person made when they had capacity or might reasonably be expected to make. You do not need to get VCAT's prior approval but you may wish to do so to be sure that it is permissible. If you or a charity with which you are connected benefits, and the gift or total value of gifts is \$100 or more, you must notify VCAT in writing.

Can I sell the represented person's home?

If the VCAT order says that you may not sell the represented person's property without VCAT's prior approval, you must write to VCAT to seek approval before commencing with any sale. Otherwise, you do not need to get VCAT's prior approval but may decide that it is best to do so - especially if any person may oppose the sale. You may write to VCAT to seek approval.

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Can I claim a fee or other expenses for acting as administrator?

Unless you are a professional administrator whose remuneration has been approved by VCAT, you are generally not entitled to remuneration but you may reimburse yourself for reasonable out-of-pocket expenses. If you seek any remuneration or reimbursement of any extraordinary expenses incurred in managing the estate you may write to VCAT for approval giving details of the amount you seek and how this is calculated.

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What must I do if the represented person dies?

If the represented person dies, the administration order lapses and the law relating to the administration of a deceased estate person's estate applies. You must inform VCAT in writing that the represented person has died and provide to VCAT:

- a death certificate; OR
- a death or funeral notice published in a newspaper; OR
- notification of death by a professional such as a doctor or Director of Nursing who was involved in care of the deceased; AND
- the name, address and telephone number of the executor(s) of any Will made by the deceased

You are responsible for the estate to the date of death.

Therefore you should complete and keep accounts for the period to the date of death, in case an executor or other authorised person needs it. You may consider it best to lodge the final accounts with the examiner appointed by VCAT.

Where can I get more information?

Refer to the Guide for people appointed as administrators published by the Office of the Public Advocate which may have been handed to you at a VCAT hearing. The Guide is available via VCAT's website - www.vcat.vic.gov.au

How do I contact VCAT?

The Registrar, Guardianship List, VCAT
GPO Box 5408, Melbourne, 3001

Telephone (03) 9628 9911 Toll free 1800 133 055

Fax (03) 9628 9932 Website www.vcat.vic.gov.au

Remember to quote VCAT's reference number and the name of the represented person when phoning or writing to VCAT.



About this form

- The ABA is the standard form for all administrators to complete each year when lodging financial accounts.

What do I have to do?

- The letter accompanying this ABA form shows the VCAT reference number and the accounting period for the ABA and explains what you need to do to lodge the ABA. Please lodge the ABA as soon as possible but the letter shows the date by which you must lodge the ABA.
- All administrators need to provide copies of bank statements to verify the opening and closing bank balances specified in this form as well as other relevant documents listed at question 24.
- If you need extra space to give any details requested (for example, if there is more than one investment property), please attach separate sheets, number your answers with reference to the question number and break down the information under the same headings given in the section. Then write the totals for each section in the relevant total box on this form.
- Please use a **black pen** to complete this form and write in **BLOCK** letters.
- Where there are 'yes' or 'no' questions, please tick the appropriate box
- Further general information for administrators is provided on the back page of this form.

1. What is the VCAT reference number specified in the letter that came with this form?

G 1 2 3 4

2. What is the accounting period specified in the letter that came with this form?

From 1 / 07 /2008 To 30 / 06 /2009

3. Who is the person you are making financial decisions for (the represented person)?

Family name (surname) of represented person Smith Given names Terry Date of birth 1 / 12 / 1956

Current residential address of represented person (PO Boxes are not accepted) 4 Green Street, Collingwood VIC Postcode 3066

Has the represented person changed their address in the last 12 months? No Yes

4. Who are the administrators for this represented person?

This will also be the person we will contact if we need to about this ABA form

Family name (surname)	Smith	Given names	Joan Mary
Current residential address	4 White Street, Wodonga Vic		
		Postcode	3690
1. Postal address (if different from residential)	As above		
		Postcode	
Relationship to represented person	Sister	Daytime telephone number	03 6057 2439
Has this person changed their residential address in the last 12 months?	No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>		

Is there more than one administrator?

No Go to question 5. on the next page

Yes Please list the details of the other administrators here (attach a separate sheet if more than 2 other administrators)

Family name (surname)	Smith	Given names	Bruce
2. Current residential address	18 Black Street, Wodonga Vic		
		Postcode	3690
Relationship to represented person	Brother	Has this person changed their residential address in the last 12 months?	No <input checked="" type="checkbox"/> Yes <input type="checkbox"/>

Family name (surname)		Given names	
3. Current residential address			
		Postcode	
Relationship to represented person		Has this person changed their residential address in the last 12 months?	No <input type="checkbox"/> Yes <input type="checkbox"/>

5. Bank accounts What are the represented person's bank account details for this accounting period? You must give details of all bank accounts. Attach a separate sheet and specify the information under the same headings given below. Then write the totals for each section in the relevant boxes.

What were the bank account balances at the start of this accounting period?	
BSB and account number	Opening balance
Bank account 1. 633000 2937639	\$ 9900
Bank account 2.	\$
Bank account 3.	\$
Bank account 4.	\$
Total of all starting bank balances	\$ 9900 A

What bank interest was received during this accounting period?	
For bank account 1.	\$ 6
For bank account 2.	\$
For bank account 3.	\$
For bank account 4.	\$
Total of all bank interest received	\$ 6 B

Income

6. For this accounting period, what income was received from pensions including allowances, mobility allowance, rent assistance, social security, employment, superannuation and trusts?

Name of organisation or trust providing income	Total amount received
Social Security Disability Pension	\$ 14700
Social Security Mobility Allowance	\$ 1790
	\$
	\$

Add up all the amounts in question 6 and write the total here.

Total \$ **16490** **E**

7. During this accounting period, did the represented person's estate receive any income from:
 • interest (besides bank interest) • someone repaying a loan made by the represented person • benefits from a deceased estate
 • lump sum payments or • monetary contributions from family?

No Go to question 8. below
 Yes Specify which types of income below

Interest received besides bank interest

Type of interest	Total amount received
	\$

Income received from someone repaying a loan made by the represented person

Name of person repaying loan	Total amount received
	\$

Benefits received from deceased estates

Name of estate	Total amount received
	\$

Lump sums or family contributions received

Type of lump sum/contribution and name of payer	Total amount received
	\$
	\$

Add up all the amounts in question 7 and write the total here.

Total \$ **F**

8. During this accounting period, did the represented person's estate:
 • cash in or sell any investments (including shares & bonds)
 • receive any dividends from shares or bonds • sell any real estate or • receive any rent from a rental property (including family home)?

No Go to question 9. below
 Yes Specify which types of income below

Cashing in or selling investments (shares, bonds etc)

Type of investment and account reference number	Total amount received
Bank Term Deposit No. 12349876	\$ 1000
Global Invest Managed Fund No. 9372846	1000
Dividends from shares/bonds	\$

Selling real estate

Address of property	Amount property sold for
	\$

Rent received from rental property (including family home)

Address of property	Total amount received
	\$

Add up all the amounts in question 8 and write the total here.

Total \$ **2000** **G**

9. During this accounting period, did the represented person's estate receive any other type of income not already specified above?

No Go to question 10. below
 Yes Specify which types of income below

Type of income	Total amount received
	\$
	\$

Add up all the amounts in question 9 and write the total here.

Total \$ **H**

10. Total income for this accounting period (add B + E + F + G + H) and write the total amount here \$ **18496** **I**

bank accounts held including term deposit accounts. If there are more than 4 accounts, please use the relevant total box on this form.

What bank charges/fees/taxes were paid for this accounting period?	
For bank account 1.	\$ 18
For bank account 2.	\$
For bank account 3.	\$
For bank account 4.	\$
Total of all bank charges/fees/taxes	\$ 18 C

What are the closing balances for each account at the end of this accounting period?	
For bank account 1.	\$ 12188
For bank account 2.	\$
For bank account 3.	\$
For bank account 4.	\$
Total of all closing bank balances	\$ 12188 D

Expenditure

11. During this accounting period, what was the total of the represented person's expenditure on personal maintenance and housing?

Type of personal maintenance	Total amount paid
Food/Clothing	\$ 820
Medical (including medical insurance & pharmacy)	\$ 1130
Holidays	\$ 1305
Other (please specify) Taxis	\$ 1755
	\$
	\$

Rent or accommodation fees paid to:	Total amount paid
Whitegum House	\$ 9000
Utilities (gas, electricity, water, etc)	\$
Council rates	\$
Home maintenance (include repair costs and insurance)	\$
Accommodation bond	\$
VCAT Annual Administration Fee	\$
Fee for examining ABA	\$

Add up all the amounts in question 11 and write the total here.

Total \$ 14010 **J**

12. During this accounting period, did the represented person's estate make any loans, cash gifts or donations?

No Go to question 13. below

Yes Specify all loans, cash gifts and donations and what they were for (eg Loan paid to...for car)

Add up all the amounts in question 12 and write the total here.

Type of payment, who paid to and what for	Total amount paid
	\$
	\$

Total \$ **K**

13. During this accounting period, did the represented person's estate: • buy any investments (eg shares) • buy any real estate • buy any other asset valued at \$1000 or more (eg wheelchair) or • prepay for a funeral?

No Go to question 14. below

Yes Specify all other types of expenditure below

Buying real estate or investments (shares, bonds etc)

Address of property or type of investment or asset	Total amount paid
	\$
	\$
	\$
Prepaid funeral	\$

Add up all the amounts in question 13 and write the total here.

Total \$ **L**

14. During this accounting period, did the represented person's estate pay out any other expenditure not already specified above (including the cost of selling any real estate)?

No Go to question 15. below

Yes Specify all other types of expenditure below

Type of expenditure	Total amount paid
Cost of selling any real estate	\$
Bluegum Program	\$ 1140
Spending Money	\$ 1040

Add up all the amounts in question 14 and write the total here.

Total \$ 2180 **M**

15. **Total expenditure for this accounting period (add C + J + K + L + M) and write the total amount here**

\$ 16208 **N**

16. **Total surplus or deficit for this accounting period (subtract N from I), write the amount here and then specify by ticking the box whether this amount is surplus or deficit**

See example on the back of this form

\$ 2288 **O**

Surplus or Deficit

17. **Total cash value (A + O if surplus or A - O if deficit) note: this amount should be the same as amount D**

See example on the back of this form

\$ 12188 **P**

18. Assets – What assets does the represented person have at the end of this accounting period?

Bank balances - write here the amount from D on the previous page	Total value of bank accounts	\$ 12188
Trust accounts (eg residential, solicitors, family, etc)	Total value of all trust accounts	\$
Type of account	Value	
	\$	
	\$	
Investments (shares, bonds, managed funds, etc)	Total value of all investments	\$ 40000
Type of investment and account reference number	Value	
Bank Term Deposit No, 12349876	\$ 20000	
Bank Term Deposit No, 12349876	\$ 20000	
Real estate	Total value of all real estate	\$
Address of property	Value	
	\$	
	\$	
Personal property (all items valued at \$1000 or more for jewellery, furniture and other, etc)	Total value of all personal property	\$ 5200
Type of item	Value	
Furniture	\$ 3800	
Electrical Goods	\$ 1400	
	\$	
Other assets (include any car, wheelchair, prepaid funeral or accommodation bond, etc)	Total value of all other assets	\$
Type of asset	Value	
	\$	
	\$	
Total value of all assets (add all amounts in question 18) and write the amount here		\$ 57388 Q

19. Liabilities – What liabilities/debts does the represented person have at the end of this accounting period?

Mortgages	Total owing on all mortgages	\$
Name of lender	Amount owing	
	\$	
	\$	
Loans outstanding (personal loans, car loans etc)	Total owing on all loans	\$
Name of lender	Amount owing	
	\$	
	\$	
Credit cards	Total owing on all credit cards	\$
Type of card	Amount owing	
	\$	
	\$	
Other liabilities or debts	Total of all other liabilities	\$
Type of liability	Amount owing	
	\$	
	\$	
Total of all liabilities (add all amounts in question 19) and write the amount here		\$ R

20. **Net assets (subtract R from Q) and write the amount here** \$ 57388 **S**

21. Declaration and signature of all administrators

- I/We solemnly and sincerely declare that all information given in this form is true and correct.
- I/We understand and acknowledge that it is an offence under section 136 of the Victorian Civil and Administrative Tribunal Act 1998 to knowingly give false or misleading information to VCAT.

	Signature(s)	Printed name(s)	Date
1.	X <i>Joan Smith</i>	Joan Smith	25 / 8 /2009
2.	X <i>B Smith</i>	Bruce Smith	27 / 8 /2009
3.	X		/ /2009

22. What to do next - Go to question 23. on the back of this page

23. A quick summary

Is this the first time financial accounts have been lodged for this represented person?

Yes Go to question 24. below

No In the past 12 months.....

Has there been a major change in income (eg pension, rent, investment income, etc)?.....No Yes

Has there been a major change in expenditure (eg gifts, personal maintenance etc)?No Yes

Has there been a major change in assets (eg real estate or other substantial property bought or sold)?No Yes

Has there been a major change in liabilities/debts?No Yes

Has expenditure substantially exceeded income?No Yes

Go to question 24.

24. Documents you must attach to this form

All administrators must attach a copy of these documents:

Failure to do so may result in VCAT seeking the information or scheduling a further hearing.

- For each bank account, bank statements or other financial statements that show the opening **and** closing balances
- Centrelink/Department of Veteran's Affairs PAYG - Payment Summary - Individual New Business
- Invoices/receipts for any **item of expense over \$1,000** (eg holidays, property expenses, wheelchairs)
- Purchase contract notes for any shares or other investments purchased during the accounting period
- Sale contract notes for any shares or other investments sold during the accounting period
- Dividend statements for any share or other investment dividends received during the accounting period
- Real estate property settlement statements for any properties purchased or sold during the accounting period

25. How to lodge this form

Send the completed form and attachments in the enclosed envelope addressed to:

VCAT
GPO Box 5408CC
Melbourne VIC 3001

Example of how to calculate surplus or deficit at question 16 and then get the total cash value at 17.

If the total income at **I** is \$10,000 and the total of expenditure at **N** is \$5,000 then question 16 would look like this

16. Total surplus or deficit for this accounting period (subtract N from I), write the amount here and then specify by ticking the box whether this amount is surplus or deficit	\$ 5,000 <input type="checkbox"/>
	Surplus <input checked="" type="checkbox"/> or Deficit <input type="checkbox"/>

If the total income at **I** is \$10,000 and the total of expenditure at **N** is \$12,000 then question 16 would look like this

16. Total surplus or deficit for this accounting period (subtract N from I), write the amount here and then specify by ticking the box whether this amount is surplus or deficit	\$ 2,000 <input type="checkbox"/>
	Surplus <input type="checkbox"/> or Deficit <input checked="" type="checkbox"/>

Then to get the total cash value at question 17:

if the amount at **O** is surplus, you need to add amount **O** to amount **A** to get amount **P**

if the amount at **O** is deficit, you need to subtract amount **O** from amount **A** to get amount **P**

What if the accounts do not balance?

The accounts should balance (that is, the amount P in question 17 in the ABA should be the same as amount D). If you cannot balance the accounts, attach a note to the ABA explaining why.

What documents must I send with the ABA?

Refer to item 24 in the ABA form. Please take special care to attach the required documents, for if you do not attach them VCAT may have to contact you or schedule a further hearing.

Should I keep a copy of the ABA?

You should keep a copy of the ABA and bring it to the next hearing.

Will VCAT acknowledge receipt of the ABA?

VCAT will not send you a letter to acknowledge receipt of the ABA but will advise you when the examination is completed, or if you need to do anything further.

How should I manage the represented person's money?

It is usually undesirable to keep more than a small amount of money in a cheque account or low interest-bearing account. You must make decisions in the represented person's best interests. Especially if the person's estate is substantial or unusually complex, you may wish to consult a professional financial adviser. You may be protected from liability if you get VCAT's formal advice or approval before making investments.

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Fax (03) 9628 9932
Website www.vcat.vic.gov.au

Remember to quote VCAT's reference number and the name of the represented person when phoning or writing to VCAT.

Thanks to Annette Feiner, Felipe Vanegas, Bruce Partland and Ruby Partland for use of photographs in this guide.

