

Guardianship & Administration

IS THERE A DECISION THAT NEEDS TO BE MADE?

YES

TYPES OF DECISIONS

- Guardian**
- living arrangements
 - health care
 - access to services
 - access to persons
- Administrator** - financial and legal

Does the person have CAPACITY to make the particular decision?

YES

UNSURE

NO

CAPACITY

To have capacity means to know what you are doing, to understand the consequences of your actions, to understand choices exist and to make a decision based on your knowledge and understanding. Sometimes a qualified person may be required to make a capacity assessment (e.g. neuropsychological, psychiatric, gerontological). Capacity may be impaired by, for example mental illness, dementia, an acquired brain injury or an intellectual disability.

PERSON MAKES DECISION

ASSESSMENT

SUBSTITUTE DECISION MAKERS

Power of attorney - general

You give someone authority to make financial decisions for you only while you have capacity.

Enduring powers

You appoint someone to make decisions specified below for you in the event of your losing, at some time in the future, the capacity to make these decisions yourself.

Enduring power of attorney (medical treatment)

- medical treatment decisions

Enduring power of attorney (financial)

- financial and legal decisions

Enduring power of guardianship

- lifestyle decisions (such as where you live)

A **guardian** is appointed by VCAT. The order will state the areas in which the guardian has authority to make decisions.

An **administrator** is appointed by VCAT and may be given legal authority to make financial and legal decisions.

Always ask to see the document appointing those above.

Person responsible

If a patient cannot consent to their own medical treatment the practitioner can obtain consent from the *person responsible*. Refer to www.publicadvocate.vic.gov.au.

PERSON HAS CAPACITY AND MAKES DECISION

PERSON LACKS CAPACITY AND CANNOT MAKE DECISION

Does the person have an appropriate substitute decision-maker?

YES

Are you satisfied the substitute decision-maker is authorised and will act in the best interests of the person?

NO

Can the issues be resolved by informal decision-making through discussion with agencies, negotiation between conflicting parties or arranging for services? Is the person agreeable to the services?

BEST INTERESTS

Best interests involves discerning the decision this person would make having regard to who they are, their values, circumstances and the risks and benefits of various courses of action.

Where VCAT is satisfied that a decision-maker such as an Enduring Power of Attorney is not acting in a person's best interests, it can suspend or remove that authority and appoint a guardian or administrator.

ISSUES TO CONSIDER

Some issues to consider include assessment of risk, level of conflict, safeguards and the person's willingness to accept assistance.

NO

APPLY TO VCAT FOR A GUARDIAN AND/OR ADMINISTRATOR

APPLYING FOR A GUARDIAN OR ADMINISTRATOR

Some of the key determinants of when a guardian or administrator is appointed include:

- irresolvable conflicts about what is in a person's best interests
- the risk that the person may be subject to neglect, abuse or exploitation.



OFFICE OF THE PUBLIC ADVOCATE

For more information on medical consent, refusal of medical treatment, powers of attorney and guardianship see our website: www.publicadvocate.vic.gov.au or contact our advice service 1300 309 337.