



Good Guardianship

A guide for guardians appointed under the Guardianship and Administration Act



Office of the Public Advocate

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

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

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

For more information visit www.publicadvocate.vic.gov.au or call the OPA Advice Service on 1300 309 337 (for the cost of a local call).

Good Guardianship: a guide for guardians appointed under the Guardianship and Administration Act 1986

Produced by:

Office of the Public Advocate

5/436 Lonsdale Street

Melbourne VIC 3000

PO Box 13175, Law Courts VIC 8010

Tel: 1300 309 337 (for the cost of a local call)

Fax: 1300 787 510 (for the cost of a local call)

www.publicadvocate.vic.gov.au

© 2011 Office of the Public Advocate

ISBN0-7311-8114-X

First published: July 2000

This edition: February 2011

Reproduction without express written permission is prohibited. Permission may be granted to community organisations to reproduce, free of any charge, part or all of this publication. Requests should be directed to the Communications Coordinator, Office of the Public Advocate.

Contents

Foreword	2	Health care and medical treatment	13
From the Public Advocate	3	The person responsible.....	13
Introduction to guardianship	4	Making health care decisions.....	14
What is a guardian?.....	4	What happens if I am not available to make decisions?.....	14
When is guardianship needed?.....	4	Restrictions on the power of the 'person responsible' to give consent.....	14
Who appoints a guardian?.....	4	Where the person is an involuntary patient under the <i>Mental Health Act 1986</i>	15
Who can be a guardian?.....	4	What if I withhold consent to treatment?.....	15
Understanding the order	5	Refusal of medical treatment.....	15
Limited orders.....	5	Refusal of Treatment Certificate.....	15
Plenary orders.....	5	Cancelling a Refusal of Treatment Certificate.....	15
Working as a joint guardian.....	5	Relationships and networks	16
The person's best interests	8	Contacts	17
Legal responsibility.....	8	OPA.....	17
Guardianship standards.....	8	VCAT.....	17
Provide information.....	8	Glossary of Terms	18
Seek views.....	9	Appendix	19
Make decisions.....	9		
Record information.....	9		
Participate in guardianship reassessments.....	10		
Ensure privacy and confidentiality.....	10		
Acting as a guardian	11		
Signing documents.....	11		
Enforcing a decision.....	11		
Notifying VCAT of significant events.....	11		
Safeguards.....	11		
What if I want to resign?.....	11		
Reassessment of the order.....	11		
Alternative guardians.....	12		

Foreword

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

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

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

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

Disclaimer: The information contained within this document is intended as a guide only. The Office of the Public Advocate does not accept any responsibility for any errors or omissions.

From the Public Advocate



Office of the Public Advocate



Dear Guardian,

It is my pleasure to write to you in your capacity as a newly appointed guardian. You have taken on an important role, and I would like to thank you for your time and services.

You may be wondering where to start and how to proceed in your role. You may not have had any previous contact with either the legal system or the health and community service providers who are involved with the person for whom you are guardian. This guide is designed to assist you and contains information and advice about your powers and responsibilities.

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

The value of the commitment of family members and friends who are willing to accept the role of guardian for someone they care about cannot be overstated. It is the best possible guardianship appointment. To assist you with what, at times, may seem a daunting and challenging role, I encourage you to contact OPA's Advice Service on 1300 309 337 (for the cost of a local call) with any questions you may have, or to discuss any issues of concern to you.

Yours sincerely

Colleen Pearce
Public Advocate

Office of the Public Advocate
Level 5, 436 Lonsdale Street, Melbourne, Victoria 3000
PO Box 13175 Law Courts, Victoria 8010. DX 210293
Toll Free: 1300 309 337 TTY: 9603 9529 Fax: (03) 9603 9501
www.publicadvocate.vic.gov.au



Introduction to guardianship

What is a guardian?

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

‘The represented person’ refers to the person for whom you are the guardian. The represented person is someone aged 18 years or older who, due to a disability, cannot make decisions for themselves.

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

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

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

The objectives of good guardianship are:

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

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

When is guardianship needed?

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

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

Who appoints a guardian?

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

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

Who can be a guardian?

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

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

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

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

Understanding the order

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

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

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

There are two types of orders:

- limited orders*
- plenary orders**

Limited orders

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

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

- **accommodation** – deciding where the represented person will live, either on a temporary or permanent basis, and whom they will live with
- **health care and medical treatment** – making decisions regarding medical treatment, dental treatment or other health care issues
- **access to the represented person** – restricting or prohibiting access to the person as necessary
- **access to services** – ensuring that the represented person has access to necessary services
- **employment** – consenting to employment arrangements.

Plenary orders

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

Working as a joint guardian

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

**See page 6 for an example of a limited order.*

***See page 7 for an example of a plenary/joint order.*

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



Limited Orders

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL GUARDIANSHIP LIST

Your name as the appointed guardian

Name of represented person

Guardianship reference number

Proceeding in relation to John Smith under:

Ref no: G99999/00

Guardianship and Administrative Act 1986 Section 19 guardianship order.

The Tribunal is satisfied that the proposed represented person has a disability; is unable by reason of that disability to make reasonable judgments about their person or circumstances; and needs a guardian.

The Tribunal orders that:

1. Mary Smith, 1 Rodger Street, BLOCKLAND VIC 3456 be appointed limited guardian of the represented person with powers and duties:

Description of your limited guardianship decision-making powers

to make decisions concerning accommodation

to make decisions concerning medical or dental treatment or other health care

to make decisions concerning access to medical records

Date by which order must be reassessed

2. This guardianship order be reassessed no later than 29 December 2008.

Responsibility to write report for reassessment hearing

3. The guardian shall, no later than 3 business days prior to the date on which this order is to be reassessed, provide to the Tribunal a written report concerning the represented person and decisions made by the guardian on behalf of the represented person.

4. This order shall continue to have effect until further order of the Tribunal.

5. The guardian shall immediately notify the principal registrar in writing of any change of address of the represented person or the guardian.

The represented person, the applicants, or any other person, may apply to the Tribunal for a reassessment at

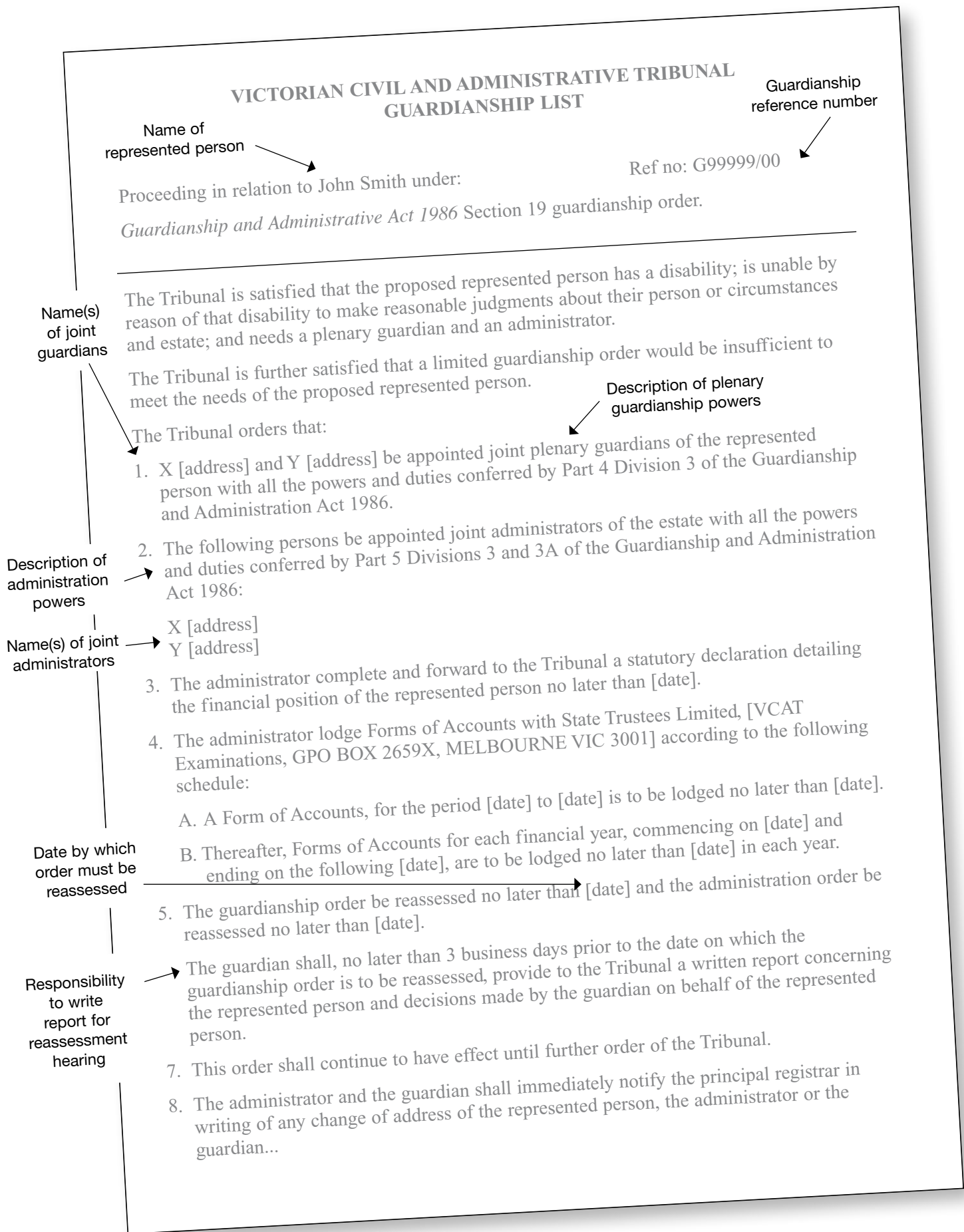


S. Bloggs, Member
29 June 2008



Name of the Tribunal member making the appointment

Plenary and Joint Orders



The person's best interests

Section 28 (2) of the *Guardianship and Administration Act 1986* (the Act) describes how you can act in the best interests of a represented person.

You are acting in their best interests if you:

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

Legal responsibility

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

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

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

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

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

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

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

Guardianship standards

The Office of the Public Advocate has developed a set of Guardianship Standards, which outline the roles and responsibilities of guardians and details how they are expected to act. These standards conform to the National Guardianship Standards.

The Guardianship Standards inform represented persons and other interested parties what to expect from guardians.

As guardian, you are expected to meet the following minimum standards:

Provide information

In providing information, guardians will meet the following standards:

1. provide information to the represented person (where appropriate), the original applicant and the primary carer about:
 - the guardian's role and authority regarding the represented person
 - guardianship service standards.
2. where appropriate, guardians will ensure that information about substitute decision-making is provided to primary health care practitioners, such as the represented person's treating doctor, Royal District Nursing Service or Community Nurse.

Seek views

In seeking views, guardians will meet a number of standards:

1. Guardians will seek and consider the views of the represented person when making guardianship decisions. This will happen through personal contact wherever possible, subject to the urgency of the matter and the geographical location of both the represented person and the guardian.
2. Where possible, the guardian will give effect to the wishes of the represented person.
3. Visits and contact will continue as needed, to assist the guardian in supporting and promoting the represented person's welfare and interests through guardianship and advocacy.
4. Guardians will seek and consider the views of (other) family and people involved with the represented person about any significant decisions.
5. Guardians will take into consideration the recommendations of health care professionals and other service providers involved with the represented person, as the decision requires.
6. Guardians will consider the views of anyone genuinely involved with the represented person, where these views are put to the guardian and are about issues that the guardian can make decisions about.
7. Guardians will seek the reasons for, and take account of, the objections of the represented person or interested party, to a proposed course of action. The guardian will consider ways to achieve their wishes or resolve dispute, if possible.
8. Guardians will consider and advocate for the least restrictive alternative that meets the needs of the represented person.

Make decisions

In making guardianship decisions, guardians will meet the following standards:

1. make decisions according to the legislative provisions and principles and the authority of the current order
2. provide written reasons for decisions at the request of the represented person or interested parties.

Record information

In recording information, guardians will:

1. record decisions, including any periods or conditions
2. record the significant details of all contacts made and decisions taken in relation to the guardianship of the person
3. record the reasons for all guardianship decisions, including the key facts of the matter, relevant views of the represented person and other parties, and the reasoning of the guardian.

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

Participate in guardianship reassessments

Guardians participating in guardianship reassessments will meet the following standards:

1. request a reassessment of the current guardianship order by VCAT, if the guardian believes a cancellation (revocation) of the order or a change in the order will help promote or safeguard the welfare and interests of the represented person.

Prior to the reassessment hearing, guardians will:

2. provide a report to VCAT detailing the decisions made and a recommendation regarding the continuing need for a guardianship order. Where possible, the guardian's report should be in writing.

In preparing the report, guardians will:

3. consult with the represented person, as far as possible, to determine their views
4. consult with relevant key parties and include their views in the report
5. recommend the continuation of the guardianship order only where there is evidence that the represented person currently needs decisions to be made on their behalf, and where guardianship can help achieve outcomes for the represented person.

Ensure privacy and confidentiality

To ensure appropriate standards of privacy and confidentiality guardians will meet the following standards:

1. protect the privacy and confidentiality of the represented person and the key people in their lives
2. ensure that the guardian releases only information relevant to the carrying out of the decision.

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

Acting as a guardian

Signing documents

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

Enforcing a decision

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

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

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

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

Notifying VCAT of significant events

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

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

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

Safeguards

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

You are accountable to:

- the represented person
- VCAT.

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

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

What if I want to resign?

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

Reassessment of the order

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

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

For example, you may seek a reassessment because:

- you do not think there are any further decisions that need to be made
- you believe that matters could be resolved without guardianship

- you do not think guardianship continues to be in the person’s best interests
- there is medical evidence to suggest the person is now capable of making their own decisions.

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

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

The report should include:

- any decisions you have made as guardian
- any change in the represented person’s capacity to make reasonable judgments
- current needs and arrangements
- future plans
- your relationship with other significant people involved with the represented person, including family and professionals
- any difficulties or conflict you have faced
- facts in support of your case that guardianship should continue, end or be changed
- your availability and willingness to continue as guardian
- any other matters that you believe VCAT should be aware of before making a decision.

OPA can send you an outline of a report to use as a guide. If you need further assistance in preparing your report, please contact the Advice Service. Contact details can be found on page 17 of this guide under ‘Contacts’.

Alternative guardians

VCAT can appoint an alternative guardian at any time. The alternative guardian can act when the guardian is unavailable, for example, away overseas; is unwell; or has died. To request that an alternative guardian be appointed, you must write to VCAT. The address can be found on page 17 of this guide under ‘Contacts’.

“If unsure, you can contact VCAT or the Office of the Public Advocate for advice.”

Proposed treatment

Making decisions about proposed treatment can be particularly complicated. The following information is intended to assist you in gaining a better understanding of your role.

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

The represented person may not be able to make reasonable judgements about their health care. You, as guardian, may have to make decisions about medical and dental treatment for them.

For more information on this topic, see the fact sheet *Medical/dental treatment for patients who cannot consent* available from Victoria Legal Aid. The fact sheet can be ordered from www.legalaid.vic.gov.au Alternately, it can be downloaded from www.publicadvocate.vic.gov.au or call the Advice Service on 1300 309 337.

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

- when there is a medical or dental emergency, that is, when treatment is necessary in order to save life, serious damage to the patient's health, or suffering from significant pain or distress
- when the treatment is minor, for example, when providing first aid, administering a prescribed drug within recommended dosages, or performing a visual examination of the patient's mouth.

The person responsible

The Act provides that a person called 'the person responsible' can make decisions if a patient cannot consent to his or her own treatment. The person responsible is the first person listed below who is reasonably available and willing to make medical and dental treatment decisions on behalf of the patient. Note that, if there is no agent appointed by the patient under an enduring power of attorney

(medical treatment) or no person appointed by VCAT to make decisions about the proposed treatment that it will be a guardian appointed by VCAT with powers to make decisions concerning medical or dental treatment who will be considered the 'person responsible'. If the guardian is not reasonably available and willing to make the decision then the treating doctor will look further down the list to find someone who can be the person responsible.

1. an agent appointed by the patient under enduring power of attorney (medical treatment)
2. a person appointed by VCAT to make decisions about the proposed treatment
3. a guardian appointed by VCAT to make decisions about medical/dental treatment
4. an enduring guardian appointed by the patient to make decisions about medical/dental treatment
5. a person appointed by the patient, in writing, to make decisions about medical/dental treatment including the proposed treatment
6. the patient's spouse or domestic partner
7. the person's primary carer, including carers in receipt of a Centrelink Carer's payment but excluding paid carers or service providers
8. the patient's nearest relative over the age of 18 years, in the following order listed:
 - a. son or daughter
 - b. father or mother
 - c. brother or sister (including adopted and half siblings)
 - d. grandfather or grandmother
 - e. grandson or granddaughter
 - f. uncle or aunt
 - g. nephew or niece

Note: Where there are two relatives in the same position (for example, a brother and sister) the elder will be the person responsible.



Making health care decisions

There are two overriding principles when a guardian makes a treatment decision pursuant to a guardianship order:

- decisions need to be made in the person's best interests
- decisions have to be the least restrictive in those circumstances.

As guardian or person responsible, you must ensure that the relevant health care provider is aware of your role and authority when treatment is proposed.

When making treatment decisions, you should ask the same questions about the person's treatment that you would ask if the treatment was being proposed for you.

Asking the following questions will assist you in making an informed decision:

- What is the purpose of the procedure: to cure, relieve symptoms, or to investigate further?
- What are the benefits of the proposed treatment or procedure?
- What are the risks?
- What, if any, are the alternatives?
- What are the long or short-term side effects?
- Does the represented person's disability present any particular difficulties or risks?
- What are the wishes of the represented person, and his or her family?

Before making a decision, discuss the proposed treatment with the represented person, if possible, and consider their views.

What happens if I am not available to make decisions?

You should always inform the represented person's treating doctor or main health service providers of your whereabouts if you are going away or likely to be unavailable.

Alternately, you may want to consider writing to VCAT to request an alternative guardian.

If there is no person responsible and the practitioner believes the treatment is in the best interests of the patient, the practitioner can proceed to treat the patient. The practitioner must first submit a form under Section 42K of the Act to OPA. Refer to OPA's fact on medical consent for further information.

Restrictions on the power of the 'person responsible' to give consent

Neither the guardian nor the person responsible can consent to the following special procedures:

- those intended, or likely to lead to, permanent infertility
- termination of pregnancy
- removal of tissue for transplant.

If a medical practitioner or health care professional proposes a special procedure, an application must be made to VCAT.

Previously, medical research was also defined as a special procedure, but the Act has been changed and it is now possible in some circumstances for a person responsible (including a guardian) to consent to medical research.

If you are asked to consent to a medical research procedure, it is recommended that you read the fact sheet *Medical research for patients who cannot consent: the person responsible* available from Victoria Legal Aid. The fact sheet can be ordered from www.legalaid.vic.gov.au Alternately, it can be downloaded from www.publicadvocate.vic.gov.au or call the Advice Service on 1300 309 337.

Where the person is an involuntary patient under the *Mental Health Act 1986*

If the represented person has a mental illness and is an involuntary patient, provisions under the *Mental Health Act 1986* state that the authorised psychiatrist may consent to treatment for the mental illness. Where non-psychiatric medical or dental treatment is required and the person cannot consent, the first listed in the following can provide consent:

1. an agent with enduring power of attorney (medical treatment), appointed by the patient
2. a person appointed by VCAT to make decisions about the proposed treatment
3. a guardian with health care powers, appointed by VCAT
4. an enduring guardian with health care powers, appointed by the patient
5. the authorised psychiatrist.

In this situation, you may wish to call the Office of the Public Advocate for advice.

What if I withhold consent to treatment?

If you withhold consent to treatment and the doctor or dentist thinks you are not making the right decision, they can provide you with a notice. You will then have seven days to bring the matter to VCAT if you want to prevent the treatment from proceeding.

Refusal of medical treatment

The law views refusal of medical treatment as different to withholding consent to medical treatment. A plenary guardian will have the power to refuse medical treatment, but not all guardians are authorised to refuse medical treatment. You should check your order to see exactly what authority you have. If you are unsure, contact the Office of the Public Advocate. You may also find the fact sheet *Refusal of medical treatment* useful. Order it from www.legalaid.vic.gov.au, download it at www.publicadvocate.vic.gov.au or call 1300 309 337.

If you are authorised to refuse treatment, you can only do so under section 5B of the

Medical Treatment Act 1988. To do this you must sign a Refusal of Treatment Certificate.

Before taking this step you should consult with the represented person (to the extent that this is possible), health care professionals and family members. You may also wish to call the Office of the Public Advocate for further advice.

Refusal of Treatment Certificate

You can sign a Refusal of Treatment Certificate only if:

- it is related to a current condition
- the medical treatment would cause unreasonable distress to the person
- serious consideration has been given to the health and wellbeing of the person
- there are reasonable grounds for believing that if the person was competent, they would consider the medical treatment unwarranted.

It is important to note that, while you can be authorised to refuse medical treatment, you cannot refuse palliative care. The terms ‘medical treatment’ and ‘palliative care’ are defined under the *Medical Treatment Act 1988*.

‘Medical treatment’ is defined as:

- an operation
- an administration of a drug or similar substance
- any other medical procedure.

‘Palliative care’ is defined as:

- providing reasonable medical procedures to relieve pain, suffering and discomfort
- the reasonable provision of food and water taken orally.

Cancelling a Refusal of Treatment Certificate

A Refusal of Treatment Certificate can be cancelled:

- by you as guardian
- if your guardianship order is revoked by VCAT
- where the person’s medical condition changes so much that the condition referred to in the certificate is no longer current.



Relationships and networks

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

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

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

The represented person may have appointed you as their guardian, but given powers of attorney for financial issues and/or medical treatment to someone else.

As a guardian, you need to ensure that you have an effective working relationship with whoever is responsible for managing the represented person's financial arrangements. This could be an administrator appointed by VCAT; an individual appointed by the represented person as their attorney under a financial enduring power of attorney; or a family member or friend who is assisting the represented person on an informal basis.

Situations may arise where you need to consult with the person who has responsibility for financial arrangements about questions and potential decisions affecting the represented person's lifestyle and finances. For example, can the represented person afford a certain type of accommodation, or is money available to increase the represented person's choices and quality of life?

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

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

You may also need to establish a good relationship with the person who holds a valid enduring power of attorney (medical treatment). The attorney (called an agent) has the power to make decisions regarding health care and medical treatment, including refusal of treatment decisions.

If you have been appointed guardian with responsibilities for making decisions related to access to services, it is important that you are aware that this may include decisions about allied health services such as podiatry, occupational therapy or physiotherapy. The agent for medical treatment makes decisions that are directly related to medical treatment. Therefore, if you work together you will be able to make decisions that are in the best interests of the represented person. If you are unable to agree on a decision, or resolve any conflict, then you should seek the advice of VCAT.

“Recognise the value of the represented person's existing relationships and networks.”

Contacts

OPA

If the first instance, please contact the Advice Service.

If the Advice Service is unable to resolve your query it may refer you to the Manager of Advocacy and Guardianship.

Office of the Public Advocate
5/436 Lonsdale Street
Melbourne
Victoria 3000

Tel: 1300 309 337 (the cost of a local call)
Fax: 1300 787 510 (the cost of a local call)
TTY: (03) 9603 9529
www.publicadvocate.vic.gov.au

VCAT

The Registrar Guardianship List
Victorian Civil and Administrative Tribunal
55 King Street
Melbourne
Victoria 3000

Toll Free: 1800 133 055
Tel: (03) 9628 9911
Fax: (03) 9628 9932
Email: vcat@vcat.vic.gov.au
www.vcat.vic.gov.au



Glossary of Terms

Act (The)

The Act refers to the *Guardianship and Administration Act 1986*, which is a law passed by the Victorian Parliament.

Applicant

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

Decisions/significant decisions

These decisions include those made by a guardian that determine where a person should live; their access to family, friends and other contacts; and authorise the provision of, or withholding of, medical treatment or services.

Guardian

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

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

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

Guardianship Order

The Guardianship Order is the decision made by the Guardianship List when it appoints a guardian for a person with a disability. The Guardianship List provides a written copy of the order that indicates who the guardian is, for how long they will be guardian, and the limits of their decision-making authority.

Interested parties

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

Legislative principles

These are the principles that underpin the *Guardianship and Administration Act 1986*, set out in section 4(2) of the Act. There are further principles set out in section 28 of the Act that direct the use of authority by a guardian. (See Appendix 1 for details.)

Primary carer

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

Professionals

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

Public Advocate (Office of the)

An independent office of the Victorian State Government, established to promote the rights of, and advocate for, Victorians with a disability. The Public Advocate can act as guardian of last resort on appointment by VCAT.

Reassessment

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

Rehearing

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

Represented Person

The person who is the subject of the guardianship order.

Revocation

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

Victorian Civil and Administrative Tribunal (VCAT)

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

Appendix

The *Guardianship and Administration Act 1986*, Section 4(2) and Section 28

Section 4(2)

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

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

Section 28. Exercise of authority by guardian

- (1) A guardian must act in the best interests of the represented person.
- (2) Without limiting sub-section (1), a guardian acts in the best interests of a represented person if the guardian acts as far as possible –
 - a) As an advocate for the represented person; and
 - b) In such a way as to encourage the represented person to participate as much as possible in the life of the community; and
 - c) In such a way as to encourage and assist the represented person to become capable of caring for herself or himself and of making reasonable judgments in respect of matters relating to her or his person; and
 - d) In such a way as to protect the represented person from neglect, abuse or exploitation; and
 - e) In consultation with the represented person, taking into account, as far as possible, the wishes of the represented person.

Office of the Public Advocate

Level 5, 436 Lonsdale Street, Melbourne, Victoria 3000

PO Box 13175 Law Courts, Victoria 8010. DX 210293

Tel: 1300 309 337 TTY: 9603 9529 Fax: 1300 787 510

www.publicadvocate.vic.gov.au