



Temporary orders

Guidelines for applying to the Victorian Civil and Administrative Tribunal Guardianship List – for health care, social and community workers

Background

In an emergency the Victorian Civil and Administrative Tribunal – Guardianship List (VCAT) can make a temporary guardianship or administration order for up to 21 days. VCAT may renew the order for a further period of up to 21 days.

The order can be made on very short notice but the requirements for providing **evidence** of disability, incapacity and need for the appointment of a guardian or administrator still apply, as with normal applications to VCAT. VCAT will assess the need for a temporary order taking into account the **best interests** of the proposed represented person and the urgency of the situation.

We encourage you to contact the **Advice Service** of the Office of the Public Advocate (OPA) on **1300 309 337 (for the cost of a local call)** to discuss the matter prior to lodging the application. The service operates between 9.00am and 5.00pm, Monday to Friday. In an emergency, a duty officer can be contacted after hours on the same number.

Applying for a temporary order

The applicant should:

- where possible and appropriate, inform the proposed represented person and their family, and any other significant people, that an application for a temporary order is proposed
- fax or deliver the application, with a covering letter seeking a temporary order, to the VCAT registrar. Application available online at: www.publicadvocate.vic.gov.au, *follow the publications link to administration and guardianship*
- be easily contactable to provide further information to support the application
- ensure, where possible, that sufficient evidence accompanies the application in relation to establishing disability, incapacity and the need for an emergency temporary order. For example: medical reports, details of the person's current financial situation, living arrangements, the views of their family and the person's own wishes
- clearly state the decisions that need to be made by a guardian or administrator.

In most cases, the VCAT registrar refers the application to the duty officer at the Office of the Public Advocate.

The duty officer will:

- assess the urgency and appropriateness of the application through liaison with the parties involved
- provide advice and support to the applicant regarding the process
- tease out the issues with the applicant and assess any opportunities for a less restrictive options
- coordinate the collection of relevant information

- consider the appropriateness of the nominated administrator and/or guardian
- provide a report to VCAT.

This detailed investigative work is essential to ensure that the VCAT has all the information necessary to deal with these often complex and traumatic emergency situations.

VCAT:

- receives and registers the application
- refers the application to the Office of the Public Advocate for investigation
- determines whether a hearing is necessary and, if so, when and where it will be held
- contacts and informs the relevant parties of the hearing
- decides on the appointment of a guardian and/or administrator
- notifies the relevant parties of the decision.

The Role of the Administrator or Guardian

The role of the administrator or guardian is to act as substitute decision-maker, taking into consideration the expressed wishes of the represented person and her/his best interests. State Trustees, as temporary **administrator**, will focus on the emergency financial issue, for example, stopping an auction or freezing a bank account.

A guardian is not a de facto case manager but can provide or withhold consent for a proposed action. A guardian will make a considered decision within a time frame dictated by the circumstances. Wherever possible the appointed guardian will meet with the represented person to ascertain their wishes and seek the views of other relevant parties so it is important not to pre-empt the decision of a guardian by taking any action which effectively closes off alternative options from which a guardian might choose.

Questions for the applicant for a temporary order:

- What is the person's disability and how does it affect their capacity to make reasonable decisions?
- Is there a medical report or opinion to support the assertion of disability?
- What is the immediate risk? (This needs to be clearly detailed *eg "If Mr X continues to remain at home immobile, incontinent and refusing services, his health will be at immediate risk due to ..."*)
- What has been considered/tried other than an application?
- What is the likely scenario in the next seven days if nothing is done?
- Would delaying the hearing for 7 to 10 days - in which time a hearing with notices could be organised - place the person in a situation of significant risk?
- Who do you recommend for appointment as temporary administrator or guardian and your reasons why?
- What decision/action do you want the guardian to take if the appointment is made? Are the arrangements already in place pending the appointment e.g. has hospital admission been set up?

Examples of less restrictive options to an application for a temporary guardianship order:

- Effective case management: In some cases guardianship is requested when in fact a case manager could effectively implement a strategy or access resources to solve the issues.
- Health care decisions by doctors and families: In situations where a procedure is not in dispute, is not controversial or contentious, a guardian may not be necessary - see fact sheet *Medical/dental treatment for patients who cannot consent – person responsible* which describes amendments to legislation which allows a “person responsible” to consent in certain situations.

Costs

There may be extra costs with a temporary administration order.

This Office has been advised that if appointed, State Trustees may charge \$140 per hour for action taken under a temporary order. State Trustees can be contacted on 9667 6444 regarding this charge and the costs associated with a standard administration order.

There are no costs involved with a temporary guardianship order.