

**Guide to assist you in completing the
Application to Appoint an Administrator, Guardian or to make
orders regarding Enduring Powers of Attorney/Guardianship**

Before you make an application

Before you make this application to the Guardianship List at VCAT, please consider whether you need to apply.

Most people with a decision-making disability manage in the community with help from their family, friends and service providers without the need for a guardian or administrator to be appointed for them.

Working out an alternative arrangement, as long as it is in the best interest of the person concerned, may be better than having to go through the legal process of appointing a guardian or administrator.

If you need to apply, please carefully consider the following information about making an application to VCAT:

Appointing a Guardian or Administrator

A **guardian** is a person appointed by VCAT, following an application made under section 19 of the *Guardianship and Administration Act 1986*, to make personal lifestyle decisions, such as decisions about where a person will live, for an adult who is unable to make those decisions for themselves.

An **administrator** is a person or organisation appointed by VCAT, following an application made under section 43 of the *Guardianship and Administration Act 1986*, to make financial and legal decisions for someone with a disability who is unable to make those decisions for themselves.

VCAT can make an order appointing a Guardian or Administrator only if:

- the person is 18 or over;
- the person has a disability (intellectual impairment, mental disorder, brain injury, physical disability, or dementia);
- the person is unable to make reasonable decisions about themselves or their circumstances, or their financial or legal affairs;
- there is no less restrictive way to meet that person's needs; and
- the person needs a guardian or administrator.

You can nominate one or more persons as Guardian or Administrator (or both).

A guardian and/or administrator can be a family member or friend. A guardian and/or administrator may also be a professional organisation. Where no suitable person is available VCAT may appoint a professional organisation such as the Office of the Public Advocate and State Trustees Limited. In deciding who should be appointed, VCAT must consider the following:

- what are the present wishes of the person you are applying about if they can be expressed or what the wishes of the person would have been, if they had not become incapacitated;
- whether the appointment made by VCAT would be the least restrictive option; and
- whether the appointment made by VCAT would be in the best interests of the person you are applying about

Orders about Enduring Power of Attorney / Enduring Power of Guardianship

VCAT can make orders under the *Instruments Act 1958* about enduring powers of attorney (financial). It can make orders under the *Medical Treatment Act 1988* about an enduring powers of attorney (medical treatment) and can make orders under the *Guardianship and Administration Act 1986* about enduring powers of guardianship.

An Enduring Power of Attorney / Guardianship is a legal document in which one person gives another the legal authority to make financial, legal and lifestyle decisions on their behalf. An Enduring Power of Attorney / Guardianship can only be made by a person whilst they are still capable of making those legal, financial and lifestyle decisions for themselves.

An Enduring Power of Attorney / Guardianship must be made while a person still has legal capacity. It will remain effective even though they may subsequently suffer loss of capacity due to disability or illness. Once capacity is lost through disability or illness, an Enduring Power of Attorney / Guardianship cannot be made or revoked by the person. VCAT, however, can make these types of order if the person has lost capacity.

Fees

There is no fee required to lodge this application.

What happens next?

If your application proceeds to hearing, notices of hearing will be sent to all parties advising them of the date, time and place of the hearing.

At the hearing VCAT will consider your request for an appointment of a guardian and / or administrator.

Help and assistance

If you need further assistance to complete this application, please contact our customer service centre ☎9628 9911 ☎1800 135 055 (Country callers toll free) or visit our website at www.vcat.vic.gov.au

The Office of the Public Advocate (OPA) can also provide advice and support about guardianship and enduring powers of attorney. You may contact OPA on ☎9603 9500 ☎1300 309 337 (toll free) or visit their website at www.publicadvocate.vic.gov.au.

Applicant's Details

An applicant can be anyone who has a genuine interest in the welfare of an adult with a disability who no longer has capacity to make reasonable decisions. For example, an applicant could be a parent, spouse, friend, neighbour, child, social worker or doctor. Adults can also apply on their own behalf.

In this section, please provide your current contact details. If you do not provide this information, the processing of your application may be delayed.

Should your details change, you must notify VCAT in writing as soon as possible.

Details of the person you are applying about

In this section, you must complete as many details as possible about the person you are applying about.

It is important to include the age of the person you are applying about and their date of birth if known, as VCAT can only make orders about a person who is 18 or over.

You must send a copy of the completed application to the person you are applying about.

Disability details

In this section, please describe the nature of the disability of the person you are applying about.

VCAT is unable to make orders in the absence of supporting medical evidence. The medical evidence must be current. The report must also describe the person's disability and address their capacity to make decisions. Please note that an assessment by the Aged Care Assessment Service (ACAS) is not sufficient as a medical report but can be submitted as additional information.

You are required to provide a medical report when submitting this application. If you are unable to supply the report when lodging your application, you must have requested it from a medical practitioner. In this section of the application, please provide the details of the practitioner who will be completing the report.

A proforma medical report can be obtained from VCAT's website at www.vcat.vic.gov.au

If you are having difficulty in obtaining a current medical report, please contact our customer service centre ☎9628 9911 ☎1800 135 055 (Country callers toll free).

Primary carer's details

In this section, please provide the details of any person and/or organisation who is responsible for providing support or care to the person you are applying about.

You must send a copy of the completed application to the primary carer.

Details of any known relatives and/or interested parties

Please complete this section to the best of your knowledge.

You should include details of all known relatives and any person who plays a significant role in the life or care of the person, you are applying about. You may attach additional pages of information if needed.

You must send a copy of the completed application to all relatives and interested parties.

Enduring Powers of Attorney / Enduring Powers of Guardianship

In this section, please provide details of any known Enduring Powers of Attorney and/or Enduring Power of Guardianship made by the person you are applying about.

Please provide a copy of the Enduring Power/s to VCAT if available. If you are not applying for orders relating to an Enduring Power, you still must complete this section. You may attach additional pages of information if needed.

If you are applying for an order regarding an Enduring Power, please note that VCAT can make orders to:

- revoke the attorney's appointment;
- declare the enduring power invalid;
- vary the enduring power;
- suspend the enduring power; or
- make other necessary orders in relation to the enduring power.

Please specify in this section which order/s you want, if any.

You must send a copy of the completed application to the holder/s of an enduring power/s.

Appointing an administrator

An **administrator** is a person or organisation appointed by VCAT to make financial and legal decisions on behalf of someone with a disability who is unable to make those decisions. An administrator generally has authority to make decisions about matters such as the purchase or sale of assets, payment of debts and investment of money. The administrator's decisions have the same legal force as if the person made the decision for themselves.

This section of the application allows you to nominate an administrator or administrators. Please include all details of the person/s you are nominating. You can suggest yourself, an organisation, or another person/s.

If you nominate someone other than yourself or State Trustees Limited, you must first discuss this application with them. VCAT will consider your suggestion but is not bound by it.

To be considered for appointment by VCAT, a proposed administrator must be suitable and willing to be appointed and should attend the hearing.

The proposed administrator must also:

- be at least 18 years of age;
- be prepared to act in the person's best interests at all times and encourage the person's independence and personal decision-making;
- consider the person's wishes as so far as they can be ascertained; and
- not be in a position where their own interests conflict with the best interests of the person.

In situations where there is no one available, suitable or willing to take on the role of administrator, VCAT may appoint State Trustees Limited or another organisation.

The responsibilities of an Administrator

An administrator appointed by VCAT manages the person's financial and legal affairs and is accountable for the decisions they make. A private administrator appointed by VCAT is required to provide annual accounts to VCAT.

Please carefully consider the following before nominating yourself or another person or organisation to be appointed as administrator:

Reports

- Administrators are accountable for the decisions they make and must keep accurate and complete records of all transactions.
- The administrator will usually be required to complete a financial statement and plan (FSP) within 60 days of the order being made by VCAT.
- The administrator will usually be required to prepare an account by administrator (ABA) annually. The ABA is to be submitted to VCAT by 30 September every year and is examined by State Trustees Limited.

- Administrators may use the services of an accountant or other organisation to assist with the preparation of the FSP and/or ABA.

Receipts

- An administrator must keep all receipts for all financial transactions made on behalf of the person. VCAT will require a copy of receipts for transactions over \$1000.

Approvals

- Some expenditure, such as certain gifts, will require an order from VCAT.

Fees & charges

- State Trustees Limited charge for the examination of the ABA at an hourly rate dependent on the value of the estate (billed to the estate).
- Depending on the amount of income received by the person, a fee is payable to VCAT from the person's estate. The fee is provided for by regulation - *Guardianship and Administration (Fees) Regulations*. VCAT will send the administrator information about the fee each year. This will help the administrator calculate whether any fee is payable and, if a fee is payable, how much is to be paid. The fee may be waived or reduced, on application, if VCAT believes that payment would cause undue hardship to the person.

For further information, please contact our customer service centre ☎9628 9911 ☎1800 135 055 (Country callers toll free) or visit our website at www.vcat.vic.gov.au.

Appointing a guardian

A **guardian** is a person appointed by VCAT to make personal lifestyle decisions, such as decisions about where a person will live, for an adult who is unable to make those decisions.

A guardian may be authorised to make decisions relating to living arrangements, work, medical treatment and access to persons and services. The decision-making authority of a guardianship order is usually limited to a specific area, such as living arrangements (limited order) but may apply to all aspects of the person's life (plenary order).

This section of the application allows you to nominate a guardian or guardians. Please include all details of the person you are nominating. You can nominate yourself and / or another person/s.

If you nominate someone other than yourself or the Public Advocate, you must first discuss this application with them. VCAT will consider your suggestion but is not bound by it.

To be considered for appointment by VCAT, a proposed guardian must be suitable and willing to be appointed and should attend the hearing.

The proposed guardian must also:

- be at least 18 years of age;
- be prepared to act in the person's best interests at all times and encourage and assist the person to care for themselves and to make decisions about their own life;
- consider the person's wishes as so far as they can be ascertained; and
- not be in a position where their own interests conflict with the best interests of the person.

In situations where there is no one available, suitable or willing to take on the role of guardian, VCAT may appoint the Public Advocate.

Reasons for the application

In this section you are required to briefly explain why you are applying to VCAT for an order.

Unless there is a valid EPA, adults with disabilities are usually assisted with decision-making by family members, friends and service providers. In most cases, this informal decision-making is appropriate and meets the person's needs. Sometimes, these arrangements break down or there is a legal barrier to decision-making.

To help you to decide whether an application is necessary in these circumstances, it is useful to understand what VCAT must establish before it can make orders.

To make an **administration order** VCAT must be satisfied that:

- the person has a disability;
- the person by reason of the disability is unable to make reasonable judgements about their financial and legal affairs;
- there is a current need for someone else to make decisions about the person's financial and legal affairs and there is no less restrictive way of making those decisions; and
- it is in the person's best interests for an order to be made.

To make a **guardianship order** VCAT must be satisfied that:

- the person has a disability;
- the person by reason of the disability is unable to make reasonable judgements relating to their person or circumstances;
- there is a current need for someone else to make lifestyle decisions for the person and there is no less restrictive way of making those decisions; and
- it is in the person's best interests for an order to be made.

If you are applying for orders in relation to an Enduring Power, please ensure that you explain why you want that order. For example:

- attorney not acting in the best interests of the person;
- attorney cannot be contacted and a decision needs to be made;
- attorney is not able or willing to continue in the role; or
- the Enduring Power was made a time when the person did not have capacity to make that appointment.

Hearing Arrangements

Attendance at hearing

The person you are applying about has the right to attend the hearing and have their say about the application.

As the applicant, you should make any necessary arrangements to enable the person to participate in the hearing. In some circumstances and with approval from VCAT, it may be appropriate that the person attend the hearing via telephone or video-link.

If you believe exceptional circumstances exist that prevent the person from attending the hearing, you must state those reasons in this section.

Security

If you are concerned about this, you may wish to contact VCAT to discuss your concerns.

For further information, please contact our customer service centre ☎9628 9911 ☎1800 135 055
(Country callers toll free)

Interpreter

Please use this section to advise VCAT if the person you are applying about needs an interpreter. Be sure to include the language or dialect required. VCAT will provide an interpreter for the person free of charge.

Special assistance

Please use this section to advise VCAT if any person attending the hearing requires any special assistance, for example, hearing loops, wheelchair access and speech assistance.

VCAT will list your application at the venue closest to the location of the person you are applying about. Please use this section if you wish to nominate an alternative venue. You must explain why you have nominated that venue. VCAT will attempt to accommodate your requests, where appropriate.

VCAT hearings are usually completed in less than an hour. Please use this section to advise VCAT if you think more time will be required at the hearing.

VCAT must begin to hear applications within 30 days. Please use this section to advise VCAT of any dates you would be unavailable to attend the hearing. VCAT will attempt to accommodate your request, where appropriate.

For further information, please contact our customer service centre ☎9628 9911 ☎1800 135 055
(Country callers toll free).

Supporting Documents

VCAT is unable to make orders in the absence of supporting medical evidence. The medical evidence must be current and describe the person's disability and address their capacity to make decisions.

Please use this section to upload the medical report and any other material that supports your application, such as:

- neuropsychological report;
- social work report;
- ACAS assessment report;
- copies of Enduring Powers;
- additional information about any interested parties; and
- a letter in support of your application.

If you are having difficulty uploading the medical report or any other document at the time of lodgement, you can send the documents to VCAT by the following means:

Mailing it to:

Guardianship List
Victorian Civil and Administrative
Tribunal
GPO Box 5408 Melbourne
Vic 3001

Delivering it in person to:

Victorian Civil and Administrative Tribunal
Guardianship List
Ground Floor 55 King Street
Melbourne Vic 3000

Office hours: 9am-4.30pm Monday to
Friday
(closed public holidays)

Faxing it to:

61 03 8685 1404

Telephone: 03 9628 9911

Email:

vcat-hrd@justice.vic.gov.au

Website:

www.vcat.vic.gov.au

Please ensure that your supporting documents are received at VCAT no later than 3 business days prior to the hearing.

If you are supplying copies of documents electronically, please ensure the files are uploaded in the following formats: BMP, DOCX, DOC, PDF, XLS, PPT.

Failure to lodge supporting medical evidence may result in the hearing being adjourned or your application being dismissed.

Acknowledgement

Please ensure you sign and date your application in this section.

Privacy Statement

The information collected in this application will be used to assess the application and determine eligibility to initiate a proceeding at the Victorian Civil and Administrative Tribunal (VCAT).

The *Victorian Civil and Administrative Tribunal Act 1998* governs what information is available to the public.

The *Information Privacy Act 2000* (the Act) and the Victorian Privacy Principles set out the requirements that persons must abide by. Section 10 of the Act refers to Courts and Tribunals and the exemptions that apply to them.

For further information regarding VCAT's privacy policy, please visit www.vcat.vic.gov.au

Additional Information

This section contains a glossary of words commonly used in the Guardianship list at VCAT.

Lodgement

As the person, making this application you have responsibilities beyond completing and lodging the application.

As the applicant you must:

- provide your details to VCAT;
- advise the person that you are making an application about them;
- provide details of all the people who have an interest in the application even if they disagree with it;
- obtain medical evidence to support your application and supply it to VCAT;

- keep VCAT informed of any changes to the person's circumstances while the application is being considered;
- attend the hearing and arrange for the person to attend; and
- if, for any reason, you cannot continue in the role of applicant or cannot attend a hearing, you need to arrange for someone to take your place and then inform VCAT.

You can lodge your application by:

Mailing it to:

Guardianship List
Victorian Civil and
Administrative Tribunal
GPO Box 5408 Melbourne
Vic 3001

Delivering it in person to:

Victorian Civil and Administrative
Tribunal
Guardianship List
Ground Floor 55 King Street
Melbourne Vic 3000

Office hours: 9am-4.30pm Monday to
Friday
(closed public holidays)

Faxing it to:

61 03 8685 1404

Telephone: 03 9628 9911

Email:

vcat-
hrd@justice.vic.gov.au

Website:

www.vcat.vic.gov.au

Checklist and Signature

Important Information You Must Provide At The Hearing

This checklist is provided to remind you of the important information and documents you must remember to bring to the hearing (if you have not already provided this information to VCAT).

For further information about the hearing, please contact our customer service centre ☎9628 9911 or ☎1800 135 055 (Country callers toll free).

Please remember that as the applicant, you must attend the hearing. The person you are applying about should also attend the hearing, unless there are exceptional circumstances preventing them from attending.

Medical Report

Have you provided VCAT with the medical report? If not, you must remember to bring this to the hearing or check that the doctor has sent it to VCAT.

Enduring Powers of Attorney and/or Enduring Power of Guardianship

If the person you are applying about has signed Enduring Powers of Attorney and/or Enduring Power of Guardianship, you must bring a copy or provide details of the attorney to the hearing.

Will Details

Has the person you are applying about made a will? Do you know who holds the will? You must bring a copy of the will or the details of who is holding the will to the hearing.

Estate Details

If known, please provide details of the person's fortnightly income (including the source, e.g. Disability pension) and expenditure and also their assets and liabilities.

You can use the table below to assist you. Please attach separate sheets to your application if necessary.

Pension Number (<i>if applicable</i>)	
Fortnightly income	
Fortnightly expenditure	
Assets (<i>including home, bank accounts and other investments</i>)	
Liabilities / Debts	