



Community Guardianship Manual



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.



From the Public Advocate

The Community Guardianship Program has been an integral part of the Office of the Public Advocate since 1989.

The program provides members of the community with the opportunity to become involved on a volunteer basis in the lives of fellow citizens with a disability, particularly those who may be isolated and vulnerable.

As a community guardian, you have the responsibility to make decisions in the best interests of the represented person and to choose the least restrictive option. Your task as guardian is demanding, challenging and at times frustrating. It is also immensely rewarding.

This manual will guide you in your role as guardian and assist you to make the best possible decisions.

OPA and the community of Victoria acknowledge and thank you for the enormous contribution you make in supporting people with a decision-making disability.

I encourage you to use this manual in your daily decision-making and know that you will act with integrity and honour in your role as guardian.

OPA is here to support and guide you, should you have any further questions or concerns.

Thank-you for your contribution to enhancing the human rights of people with a disability in Victoria.



Colleen Pearce
Public Advocate



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1. Introduction

Welcome to the Community Guardianship Program

The Community Guardianship Program provides members of the community with the opportunity to become involved in the lives of fellow citizens with a disability, particularly those who may be isolated and vulnerable.

What is a community guardian?

A community guardian is a volunteer guardian appointed by The Office of the Public Advocate (OPA) through its Community Guardianship Program. OPA is an independent statutory body within the Victorian State Government. A community guardian assists a person with a disability to make reasonable decisions about some aspects of their lifestyle.

The core role of a community guardian is to safeguard the interests and rights of vulnerable people who have a disability, particularly those who would otherwise be at risk.

Community guardians are more than concerned citizens – they have official authority, delegated from the Public Advocate under the *Guardianship and Administration Act 1986*, to make decisions for the person they represent. As a community guardian you are part of a statewide network of volunteers from a variety of backgrounds, with a range of experience. You and your fellow guardians make a significant contribution to ensuring that the rights and dignity of people with disabilities are protected so that they can live fuller and more satisfying lives.

Community guardianship is unlike other volunteer roles in the community because community guardians – through their delegated powers – have the right to make lifestyle decisions for the person they represent. These decisions may include where they live and who

has access to them. A community guardian, while ‘standing in the shoes of the represented person’, can make decisions that have a significant, positive, effect on the wellbeing and circumstances of the person.

The community guardian’s role can be complex, demanding, and at times challenging. Through the Community Guardianship Program, the Community Guardianship Program Coordinator, staff, and management of OPA are available to support and assist you in carrying out this role in the most effective way.

In this manual

This manual is a useful guide for community guardians appointed by OPA. It is a handy resource for both newly appointed community guardians and people who have been community guardians for some time.

This information will also be helpful for those who are considering becoming community guardians and want to know more about the role.

The manual is a basic reference of key things you need to know. It also includes a range of standard forms you may need to use, a series of fact sheets on important aspects of community guardianship, and a list of contacts for help on particular matters.

The manual is divided into a number of sections. This is Section 1, an introduction to the manual. Section 2 provides an overview of guardianship, including community guardianship, and brief information about OPA and the Guardianship List of the Victorian Civil and Administrative Tribunal (VCAT). It also includes a summary of the main legislation relating to guardianship and disability.

Section 3 describes the role and responsibilities of the community guardian, discusses the principles governing this role, and explains the



key determinant of your decisions – that is, the best interests of the represented person. It also outlines what support is available to you, and what complaints procedures should be followed.

Section 4 covers the main activities of community guardians, including meetings with the represented person. It also outlines the processes community guardians need to know to prepare for dealings and appearances before the VCAT.

Section 5 outlines how the Community Guardianship Program operates, explains the role of the program coordinator, and the main administrative procedures you will need to know about or use in this role.

Section 6 provides information about a range of government and non-government organisations that you may need to deal with as a community guardian.

The manual also includes a glossary to explain any terms or abbreviations that may be unfamiliar to you, plus a list of useful contacts and resources.

Finally, there is a selection of sample forms that you will use in your role as a community guardian, and a range of helpful fact sheets that give quick summaries of important areas.

Information in the manual is updated as needed. From time to time you will receive replacement pages with new information where there has been a change to procedures or legislation.

This manual does not cover every aspect of being a community guardian. It aims to provide you with guidance on how to carry out the duties of a community guardian, and to show you where to go for more information if you need it. You will receive further training and assistance through the Community Guardianship Program to help you fulfil the role of a community guardian in the best possible way.

What are my rights and responsibilities as a volunteer with the OPA?

As a volunteer with OPA you have the right to:

- be provided with sufficient training and support for you to do your job
- be treated with dignity and respect as a valued member of the organisation
- work in a healthy and safe environment
- undertake voluntary work that is worthwhile and/or challenging
- be interviewed and employed in accordance with equal opportunity and anti-discrimination legislation
- be adequately reimbursed for out-of-pocket expenses
- be given a copy of OPA guidelines and policies relevant to your role
- have access to a grievance procedure
- have your confidential and personal information dealt with in accordance with the principles of the *Information Privacy Act 2000*
- discontinue your involvement at any time.

Your responsibilities as a volunteer with OPA are to:

- act with respect for the rights and dignity of people with disability at all times
- act in accordance with OPA's guidelines and policies while fulfilling your responsibilities
- respect the rights and opinions of others you have contact with in your role
- be accountable to OPA for your actions as a volunteer
- respect the confidentiality of sensitive and personal information accessed in undertaking your role
- seek support and advice from OPA when required
- maintain the commitment you make to the program
- provide adequate notice of your resignation or suspension of involvement to ensure that service users are not disadvantaged.

2. Overview of guardianship

The information in this section covers general aspects of guardianship, and relates to community guardians as well as the other types of guardians described below.

What is guardianship?

A guardian is someone appointed by the VCAT Guardianship List under the Guardianship and Administration Act to make personal and lifestyle decisions for an adult with a disability, where that disability prevents them from making reasonable decisions for themselves. A person who has a guardian appointed for them is called a represented person.

A guardianship order is put in place when there are definite decisions to be made in an area of the represented person's life. This should be considered a task that guardians are entrusted with, rather than an authority, to look after the best interests of another person.

The types of lifestyle matters that a guardian may have to deal with include decisions about accommodation, access to services, access to the person, healthcare and employment.

A guardianship order is often made where the person with a disability is unable to agree to, or acknowledge, their need for assistance. It is a serious intervention, a protective jurisdiction that removes some of the person's legal rights to make decisions for themselves.

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

- the person has a disability
- the disability interferes with their capacity to make decisions

- there is no other less restrictive means to resolve the situation.

Guardianship orders are made for a limited time only, and must be reassessed by VCAT within set time limits. Typically, guardianship orders are made for no more than 12 months.

Who can be a guardian?

To be a guardian you must be over 18 years of age, and VCAT must be satisfied that you:

- will act in the best interests of the proposed represented person
- do not have interests that are or may be in conflict with those of the represented person
- are suitable to act as a guardian.

When deciding the suitability of a guardian, VCAT takes into consideration the wishes of the proposed represented person, the importance of maintaining family relationships and the accessibility and availability of the guardian¹.

Wherever possible, guardianship is given to a relative or close friend. This person is called a private guardian.

If a relative or friend is not available, or has a conflict of interest that means they may not always act in the represented person's best interests, VCAT may appoint the Public Advocate as guardian. The Public Advocate may then delegate the power of guardianship to a stipendiary (paid) guardian within the office, or to a volunteer community guardian.

The Public Advocate may also be appointed as a temporary guardian if there is an urgent need for a guardian to make decisions².

1. See accompanying Fact sheet on Guardianship.

2. See further information on the Office of the Public Advocate below.

Do the different kinds of guardians have the same powers?

Each type of guardian has the same rights, responsibilities and delegated powers, and may have either plenary or limited powers of guardianship. A stipendiary guardian is a salaried employee under the *Public Administration Act 2004* and may have responsibility for up to 40 cases, depending on whether they work full-time or part-time. Community guardians are volunteers, and generally only represent one person at a time.

What are the guiding principles for guardians?

All types of guardians, including community guardians, are required to act in the best interests of the represented person when making decisions for that person. A guardian essentially has to ‘stand in the shoes’ of the represented person – if the guardian makes a decision, it has the same effect as it would if the person made that decision themselves.

A guardian must act in a way that:

- promotes the best interests of the person
- least restricts the person’s freedom
- takes into account the wishes of the person, and where possible, puts them into effect.

Are there different types of guardianship orders?

The guardianship order is a legal document made by VCAT, which sets out the powers of the guardian. Guardians can only make decisions about matters referred to in the order. When VCAT makes an order appointing a guardian, the order must be the least restrictive of the represented person’s freedom of decision and action as soon as possible in the circumstances.

There are two types of guardianship orders: plenary orders or limited orders.

Plenary guardianship

A plenary guardian has the power to make decisions in any or all areas of a person’s life. This power is similar to the responsibility a parent has for their own child.

Under a plenary order, the guardian’s powers include:

- deciding where the person will live (permanently or temporarily)
- deciding who they will live with
- agreeing to employment arrangements
- restricting or preventing access to the person, as necessary
- consenting to healthcare.

Although the plenary guardian has power to act in all these areas, they are also expected to encourage the independence of the represented person, involve them in decision-making, and only make decisions on their behalf when necessary.

Limited guardianship

Most guardianship orders are limited orders that allow the guardian to make decisions about particular areas of a person’s life. The most common areas are accommodation and healthcare, but other areas, including those listed above, can also be specified.

The limited guardian can act as guardian only in the area or areas specified in the guardianship order.

How are guardians appointed?

The application

Any person may apply to VCAT for an order to appoint a plenary or limited guardian (and/or an administrator) for a person with a disability who is 18 years of age or more, or about to turn 18 years.

The application form³ must set out the nature of the disability and the reasons for the application.

Supporting evidence of the nature and extent of the disability must be provided, including medical or allied health reports.

The application must also include the names of any interested parties such as family members, carers and professionals providing services to the person with a disability.

If a particular person is proposed as guardian and/or administrator, that person must give consent to act in that role.

Relevant parties, including the proposed represented person, will be notified of the application.

The hearing and appointment

After an application is received, VCAT will set a date to hear the application. Generally at least seven days notice is given to all parties involved, but in an emergency the case can be heard immediately, in any location. VCAT must hear the application within 30 days, unless there are factors that require the hearing to be delayed for up to a month. These factors may include an investigation⁴.

VCAT will generally sit with one member, although there may be up to three if the case is complex. Most hearings are at 55 King Street, Melbourne, but VCAT members also hear applications elsewhere in Victoria.

When appointing a guardian, VCAT must be satisfied that:

- the proposed represented person has a disability
- due to the disability they are unable to make reasonable judgments about part or all of their life

- there is a current need for a guardian, i.e. there are particular decisions that need to be made at that point.

VCAT will not appoint a guardian to ‘look after’ someone in case something goes wrong. VCAT is not permitted to make speculative orders on the basis that something might happen that requires a guardian to make a decision.

If there is no disagreement between the represented person, their family and their carers about the right decision, a guardian is not usually required. A guardian is usually only appointed to make a decision when particular authority needs to be given or there is disagreement between those involved.

If VCAT decides a guardian needs to be appointed, it will make a guardianship order setting out the matters to be decided by the guardian. Where possible, VCAT will appoint a family member or friend to act as a private guardian. The Public Advocate will be appointed as ‘guardian of last resort’ if no other suitable person is available.

How long does guardianship last?

When the guardianship order is made, VCAT will specify when the order is to be reviewed. The order remains in effect until it is reviewed – even if the date specified by VCAT has passed before the review takes place. At the review hearing, VCAT may revoke, extend or amend the order.

All guardianship orders must be reassessed within three years. Most will be reassessed within 12 months. VCAT may conduct a reassessment on its own initiative. Any person (including the guardian, the represented person or any other person) may apply for early reassessment of the order. They must provide reasons for their request, and VCAT decides whether or not to grant early reassessment.

4. See the Public Advocate and guardianship section.

3. See form provided with this manual.

If the decisions required under the guardianship order have been made and the issues are resolved, guardianship is no longer required. VCAT will revoke the guardianship order at a review hearing.

VCAT may also revoke guardianship if it believes that nothing further can be achieved by keeping the order in place. When VCAT revokes the order, it will notify the represented person and all other interested parties.

If new issues arise requiring decisions, another application for guardianship can be made.

If the represented person dies, the authority of the guardian comes to an end. The guardian must report the death to VCAT.

The Public Advocate and guardianship

OPA is an independent statutory body of 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 including the Community Guardianship Program⁵.

Investigation

OPA may investigate applications for guardianship and administration made to the Guardianship List of VCAT. These investigations arise either at the request of the List or through OPA's own screening procedures. These investigations provide valuable additional information to VCAT to assist its decision-making and to ensure

that applications being heard by the List are appropriate to guardianship or administration. Often investigations by OPA find that matters can be dealt with by less restrictive means. Emergency applications to VCAT are also investigated to determine whether they do need to be heard immediately.

Guardianship

Guardianship orders are made after a hearing in the Guardianship List of VCAT. If no other suitable guardian is available, VCAT may appoint the Public Advocate as guardian. Approximately 60 per cent of all guardianship matters are delegated to the Public Advocate.

Once appointed, the Public Advocate can delegate guardianship authority to either a stipendiary (paid) guardian within the office, or to a community guardian. In either case, the powers and responsibilities are the same.

If VCAT considers there is an urgent need for a guardian to make decisions it will appoint the Public Advocate as a temporary guardian. Temporary orders for guardianship usually relate to medical matters or cases of abuse or exploitation, and the orders must be reviewed within 21 days.

Community Guardianship Program

The Community Guardianship Program recruits suitable people in the community to take on the role of guardian for represented persons. Community guardians are volunteers appointed by the Public Advocate, and derive their powers directly from that office. The program coordinator provides training, support and advice for people who want to act as community guardians.

The Community Guardianship Program is one of three volunteer programs run by OPA. The other two are the Independent Third Person Program and Community Visitors Program⁶.

5. Discussed in detail in section 6, Relevant agencies and organisations.

6. For more details of these programs, see Office of the Public Advocate in section 6, Relevant agencies and organisations.

The programs operate separately, but support each other in assisting people with disabilities to lead fuller and more independent lives.

The Guardianship List of VCAT

The Guardianship List (the List) is part of the Human Rights Division of VCAT⁷. VCAT has several Lists that deal with particular areas of law, such as residential tenancy, domestic building, consumer claims and discrimination.

The role of the Guardianship List is to protect people aged 18 years and over who are unable to make reasonable decisions about their lifestyle or their financial or legal affairs due to their disability. Disability can include physical disability, intellectual impairment, mental disorder, brain injury or dementia. The List has the power to appoint a guardian to make these personal or lifestyle decisions for a person with a disability. Decisions made by the guardian can include those related to health, accommodation or access to support services. The List can also appoint an administrator with the power to manage the financial or legal affairs of a person with a disability. The person who has a guardian or administrator appointed to act for them is called a represented person.

Other applications heard by the Guardianship List may involve enduring powers of attorney for medical treatment or financial decisions, or consent to a special medical procedure (such as termination of pregnancy, a procedure likely to cause infertility, removal of tissue for transplant or a procedure carried out for the purposes of medical research) for a person with a disability.

Laws governing guardianship and disability

Guardianship and Administration Act 1986

The Guardianship and Administration Act is the principal legislation that affects guardianship in Victoria. It was originally called the Guardianship and Administration Board Act, and resulted from concerns that people with disability were being denied the rights and dignity given to other people in democratic communities.

The Act created two new bodies to oversee and protect the rights of people with disability: the Guardianship and Administration Board (whose powers were later taken over by the Guardianship List of VCAT); and the Office of the Public Advocate.

Since then, the Act has been amended to provide greater protection of the rights of people with disability. An enduring power of guardianship was created, and a new section added to the Act regarding medical and dental treatment for people with permanent or long-term disability. This was later extended to cover all people with disabilities.

Victorian Civil and Administrative Tribunal Act 1998.

The Guardianship List of VCAT operates under the provisions of the *Victorian Civil and Administrative Tribunal Act 1998*.

Disability Act 2006

The *Disability Act 2006* replaces the *Intellectually Disabled Persons' Services Act 1986* and the *Disability Services Act 1991*. It provides a comprehensive framework for services and support for people with a disability.

7. For more information about VCAT, see The Victorian Civil and Administrative Tribunal in section 6, Relevant organisations and agencies.

The Disability Act sets out principles in relation to the rights of people with a disability and guidelines for agencies that provide services to them.

Under the Disability Act, people with a disability have the right to:

- be respected for their human worth and dignity
- live free from abuse, neglect or exploitation
- realise their potential in every area of their life
- have control over their own lives
- take part in decisions that affect their lives, with support where necessary
- be given information and to communicate in a way that suits their needs
- receive services that support their quality of life.

The principles for disability services include that they should:

- assist people with a disability to be included and take part in activities in the community
- maximise choice and independence for people with a disability
- recognise that people with different types of disability may need different sorts of support
- consider and respect the role of families and other people who are important to a person with a disability
- where possible, strengthen and build the capacity of families who are supporting people with a disability
- be aware of the needs of children with a disability
- be aware of any extra disadvantage a person may have because of their culture, language or where they live
- ensure that people with a disability have support, if they need it, to make decisions
- be of high quality and protect the rights of people using the service
- choose the least restrictive option possible, if a person's rights or opportunities need to be restricted.

Victorian Charter of Human Rights and Responsibilities Act 2006

Human rights are the basic rights that belong to everyone as human beings. They are about recognising and respecting the dignity and equality of all people.

The *Victorian Charter of Human Rights and Responsibilities Act 2006* (the charter) is an agreed set of human rights, freedoms and responsibilities protected by law for all Victorians. Government departments and public bodies must observe these rights when creating laws, setting policies and providing services. They must comply with the Charter and take human rights into account in their day-to-day operations.

The charter does not provide compensation for any breach of human rights, but it does allow for human rights to be considered in court and VCAT decisions. Complaints or concerns about human rights can be taken to the Victorian Equal Opportunity and Human Rights Commission (VEOHRC).

Human rights protected under the charter are not absolute but may be limited in certain circumstances. Rights may only be limited where justified under the law, and consideration must be given to the importance of the right being limited and whether there is a less restrictive means to achieve the purpose.

Rights protected by the charter can be grouped under the four key principles of freedom, respect, equality and dignity.

Freedom includes the right of all people to:

- travel within or outside the state and to choose where to live
- hold opinions and receive or pass on information or ideas
- meet peacefully with others and form or join trade unions

- not be detained or deprived of freedom except according to procedures set out by law, and the right to obtain a prompt decision by a court on whether the detention is lawful
- receive a fair hearing in criminal or civil proceedings
- choose and practise a religion or belief
- not be deprived of their property except in accordance with law.

Respect includes the right of all people to:

- life, and protection from being arbitrarily deprived of life:
- protection of families and children
- enjoyment of their own culture, practice of their religion and use of their languages, with special recognition of the importance to Aboriginal people of cultural identity, kinship ties, traditional laws and relationship to the land.

Equality includes the right of all people to:

- equal recognition under the law and protection against discrimination - programs targeting disadvantage or discrimination for groups such as people with a disability will not be unlawful under the charter
- equal participation in public life.

Dignity includes the right of all people to:

- protection from cruel or degrading treatment, medical or scientific experimentation or treatment without consent
- protection of privacy and reputation
- humane treatment when lawfully deprived of liberty.

Other relevant legislation

The *Mental Health Act 1986* provides for the care, treatment and protection of people with a mental illness.

The *Health Services Act 1988* and the *Medical Treatment Act 1988* may be relevant for guardians whose powers relate to healthcare. Privacy issues are covered by the Information Privacy Act and the *Health Records Act 2001*. The *Equal Opportunity Act 1995* prohibits discrimination on the basis of disability.

Federal legislation relating to people with disability includes the *Disability Services Act 1986* and the *Disability Discrimination Act 1992*. The Federal government also regulates standards of aged care.

Depending on the matters specified in the guardianship order, you may also need to be aware of other laws, such as those relating to employment, tenancy or access rights. Consult the program coordinator if you are unsure what laws are relevant.

3. The role and responsibilities of a community guardian

Community guardians have the same powers and responsibilities as other types of guardians. These powers are delegated from the Public Advocate, who has been appointed as guardian by VCAT, and may consist of either plenary (full) or limited powers of guardianship.

Guiding principle of guardianship

The overriding principle of guardianship, including community guardianship, is that you must act in the best interests of the represented person.

The Guardianship and Administration Act provides guidelines to help ensure that the best interests of the represented person are considered. Section 28(2) of the Act says that you will be acting in the person's best interests if you:

- consider their wishes
- advocate for them
- protect them from abuse, neglect or exploitation
- encourage them to participate as much as possible in the community
- encourage and help them to care for themselves.

Important features of the community guardian role

What duties does a community guardian have?

Under delegation from the Public Advocate, you have been appointed to make personal and lifestyle decisions for a person with a disability.

Your duties as a community guardian are to:

- act as the guardian for a person with a disability and make decisions about lifestyle and healthcare according to the requirements and principles of the Act, sometimes in situations that may involve significant conflict
- provide individual advocacy for a person with a disability where they are at risk or are experiencing exploitation, abuse or neglect
- appear before, and prepare and present written or oral reports to, VCAT and other courts or tribunals as required.

To carry out these duties effectively, you will need to be able to:

- make significant decisions about complex family and individual issues
- communicate clearly, deal effectively with people faced with difficult and sensitive issues, and negotiate to resolve conflict
- write clear, concise and accurate reports
- represent the person in legal proceedings in courts and tribunals
- demonstrate that you have experience in advocacy, and a commitment to the rights and interests of people with disability
- understand and deal with the various government and non-government agencies providing services to people with disability, and the laws that relate to guardianship and disability.

What should I not do as a community guardian?

Your powers as a guardian are set out in the guardianship order. You must always be careful not to act outside the powers delegated to you from the Public Advocate. You have authority to make decisions affecting one or more key areas of the represented person's life, but this does not mean you need to be involved in routine operational decisions or the person's personal practices or beliefs.

Part of your role is to encourage the person to be as independent as possible.

In your role as guardian, you should not:

- intrude unnecessarily into the represented person's life
- promise outcomes or resources that cannot be delivered
- support the agendas of any service providers, carers or family members that are not in the best interests of the represented person
- disclose confidential information or breach privacy
- claim to represent OPA on matters outside your prescribed authority
- contact or respond to the media without first getting approval from the program coordinator
- accept gifts or benefits.

Who am I accountable to?

Ultimately all guardians, whether they are private, community or stipendiary guardians, are accountable to VCAT. Any person can apply to VCAT for a review of a guardianship order. VCAT may then confirm, vary or revoke the order.

Less formally, as a community guardian you should also consider yourself accountable to OPA through accurate record keeping and reports to the program coordinator⁸.

Community guardianship powers are delegated from the Public Advocate – what does this actually mean?

Your powers as a community guardian are delegated from the Public Advocate, who passes onto you the powers, duties and functions given to him or her under the Guardianship and Administration Act. This means that you have the same accountability for your decisions as if you were the Public Advocate. When the Public Advocate is appointed as a guardian, all the powers and responsibilities in the guardianship

order can be passed on to you or another community guardian.

How do I know what decisions I can make?

The guardianship order under which you are appointed will specify the areas in which you are authorised to make decisions. It will list any limitations to your power and set out the conditions under which you must comply.

Community guardians can only make decisions about issues referred to in the guardianship order.

Limited guardianship is where you may be able to make decisions in just one area, such as accommodation, healthcare, access to services or to the person, or employment. For example, if you are a guardian for accommodation, you cannot make employment arrangements or give consent to contraception on behalf of the represented person.

Plenary (full) guardianship is where you have power to make decisions about all aspects of the person's lifestyle.

Whether you are a limited or a plenary guardian, your decisions and actions have the same effect as if they had been made by the represented person.

You have the power to sign documents, provided they directly relate to the areas of responsibility specified in the guardianship order. For example, if your guardianship relates to accommodation you can sign admission papers for a nursing home, but you cannot sign financial documents; these are the responsibility of the administrator. If you have responsibility for healthcare decisions you can sign a consent form for a medical procedure.

If you are uncertain about your powers or duties, contact the program coordinator for information and assistance before you commit to a decision.

8. Record-keeping and reporting requirements are discussed under Records and reports in section 4.

Who else might I be working with or consulting?

As a community guardian, you will be only one of many people who may be involved with, or working to support, the represented person. Others may include an administrator, the person's family, service providers or members of the community⁹.

The guardianship role is that of legal decision-maker. You will make decisions about lifestyle matters and take responsibility for those decisions. In order to make good decisions as a guardian, you will need to liaise closely and effectively with the other important people in the represented person's life.

Because some of these people have responsibilities under other state and federal Acts, there may be times when it is not clear who has the power to make a particular decision on behalf of the represented person. When in doubt, talk to the program coordinator.

Administrator

A represented person may have both a guardian and an administrator appointed under the Guardianship and Administration Act. The administrator looks after financial affairs and the guardian makes decisions about areas of the person's life specified in the guardianship order¹⁰.

If an administrator has been appointed, you will need to liaise with them on particular issues. For example, if your guardianship powers cover accommodation, your decisions may depend on how much the represented person can afford to pay. You would need to work with the administrator to decide what is in the best interests of the person.

If you are the appointed guardian and your area of responsibility is healthcare, you would need to consult with the administrator before deciding, for example, whether to employ

an attendant carer on behalf of the person. In some cases, this could require property to be mortgaged to meet the cost of the care.

In cases where the guardian and the administrator cannot reach agreement, the matter will need to be taken to VCAT for a decision to be made.

Family, carers and service providers

Family members play a very important role in a represented person's life – even if there is conflict between different members of the family. They have an established history of long-term involvement with the person, are familiar with them, and can provide information about their likes and dislikes, and what was important to them before they lost capacity to make decisions for themselves. Sometimes a family member may have been the 'person responsible' for giving consent to medical treatment on behalf of the person before your appointment as guardian¹¹.

A primary carer will take responsibility for day-to-day care of the represented person. Usually, a family member will be the primary carer, but sometimes a doctor, nurse or attendant carer performs this role.

In some cases a case manager is appointed, sometimes from the Department of Human Services (DHS) or from one of the local council services, to coordinate the range of community services, activities and health services that the represented person may use. Recommendations from the case manager will assist you in making decisions about areas covered by the guardianship order, such as health, access or accommodation.

A wide range of other service providers may be involved in the care and/or support of the represented person. Local councils provide services including home help, meals on wheels, literacy services, and outings. There are organisations offering services to people with a

9. See accompanying fact sheets on powers of attorney and consent to medical treatment for further information.

10. See accompanying fact sheet: Administration.

11. See fact sheet: Medical/Dental Treatment for Patients Who Cannot Consent.

particular type of disability such as head injury, alcohol-related brain damage, schizophrenia or intellectual disability. Non-government organisations may also provide services, activities or companionship.

As guardian, you will need to liaise with these important people or organisations in order to better understand the represented person, so that you can make decisions that are in their best interests.

Differing legal responsibilities

Your powers and responsibilities as guardian are determined, via the Public Advocate, from the Guardianship and Administration Act. Other service providers you deal with may have legal responsibilities to the represented person under one or more other Acts. Most often, these responsibilities will relate to either psychiatric disability (under the Mental Health Act) or intellectual disability (under the Disability Act).¹²

In most instances, this will not affect your guardianship, but occasionally disputes do arise over who has power to make a decision on behalf of the represented person. It is important to liaise with the program coordinator in such cases, so that you are clear about the extent of your responsibilities as guardian.

How long will my guardianship last?

Your role as community guardian lasts until:

- VCAT decides guardianship is no longer required, and revokes the order at a review hearing
- the represented person dies
- you are no longer able to continue in the role.

When the guardianship order is made, VCAT will specify the date on which it will be reviewed. This review must be within three

years, and is usually within 12 months. At the review hearing, VCAT may revoke the order if guardianship is no longer needed, or extend or amend it, as required.

If you, or anyone else including the represented person, believe that guardianship is no longer necessary, an early review of the order can be requested. The application for review must give reasons to support the request – for example, the guardian may no longer consider their role relevant if the decisions for which guardianship was required have been made and the disputed issues resolved¹³.

If the represented person dies, your responsibilities as a guardian come to an end¹⁴.

Community guardians have the right to decide when they no longer wish to continue in the role. In certain circumstances, OPA also has the power to terminate their appointment¹⁵.

Legal issues

What are my legal liabilities as a guardian?

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

- made in good faith
- reasonable in the circumstances
- in the best interests of the represented 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 Guardianship and Administration Act. If you are unsure about what to do in a particular situation, you should ask the program coordinator for advice. If necessary, the coordinator will seek legal advice on the matter or, in some situations, will refer it to VCAT.

12. See Other relevant legislation in section 2 for more information.

13. See 'What and when do I need to report?' in section 4.

14. See 'What and when do I need to report?' in section 4.

15. See 'Ceasing to be a community guardian' in section 5.



Immunity

If you have acted in ‘good faith’, you will generally be protected from civil and sometimes criminal liability under immunity provisions in the legislation.

Indemnity

The Department of Justice’s Indemnity Policy covers you in your role as a community guardian. You will be indemnified by the department for legal representation, damages and costs in legal proceedings, provided you have:

- acted in good faith
- have not been guilty of misconduct or acted in a grossly negligent manner
- have not been convicted of an offence in relation to such conduct arising from the discharge of your duties.

Defamation

While carrying out your responsibilities as a community guardian, you may sometimes feel the need to criticise a service or one of its employees. The legislation gives guardians extensive powers and protection, but you need to be careful about how you express criticism. A person may have the right to take legal action against you if they believe you have defamed them.

A defamatory statement is one that tends to lower a person in the estimation of members of the community. To be defamatory, the statement has to be communicated to others – this is often referred to as ‘publication’. Publication can be spoken or in writing.

There is some protection against liability for defamation (qualified privilege) where a statement is made in the discharge of public duty and communicated to someone who has a reciprocal interest in receiving it. This means that your reports as a community guardian to the Public Advocate should be protected by qualified privilege. However, you would lose this protection if your report was made maliciously, for an improper purpose, or ulterior motive.

Conflict of Interest

In the public sector context, a conflict of interest involves a conflict between duty as a public officer and personal or private interests.

Conflicts of interest can also be perceived or potential.

The perception that a public officer’s private interests could improperly influence their public duty can be as important to identify as an actual conflict of interest. This is because **public confidence in the integrity of the organisation is vital**.

A potential conflict of interest arises where a public officer has private interests that could conflict with their official duties in the future. Another type of conflict of interest can exist where a public officer has competing interests through more than one official role, or public duty.

Conflicts of interest can occur quite frequently and are not necessarily unethical or wrong. However, it is how they are identified and managed that is important. If conflict of interest situations are not properly identified and managed, they can endanger the integrity of organisations and can result in corruption in the public service.

What other legal responsibilities do I have?

You also need to be aware of the legal requirements of confidentiality and privacy, and how they affect your work as a community guardian.

Confidentiality

Guardians are entitled to receive, on behalf of the represented person, any information that would normally go to them – provided that the information relates to the areas covered by the guardianship order.

In general, the law requires that information given to you in confidence should remain confidential.

In certain circumstances, you may disclose confidential information:

- with the consent of the person the information relates to (if they have capacity to give consent)
- where the law requires disclosure in certain court proceedings (mandatory disclosure)
- where it is in the public interest, for example, where there is a real threat of serious injury to another person, where the information relates to perpetration of a crime or where disclosure is necessary for the proper care and treatment of the person.

You may be able to give general information without breaching confidentiality.

You may have to exchange information about the represented person with family members, carers and service providers. You will need to be sensitive to the possibility that some of those involved may not know all the information that you do, so that you do not disclose confidential information without intending to do so. The guiding principle should always be to promote the best interests of the represented person¹⁶.

To maintain the privacy and confidentiality of information entrusted to you in your role, you should:

- follow policies and procedures that protect the privacy and confidentiality of the represented person and the key people in their lives
- only release information that is relevant to carrying out the decision
- consult with the program coordinator if you have any doubt about matters of confidentiality.

Freedom of information

Freedom of information (FOI) legislation gives people certain rights to access to information held by government departments and agencies, but there are restrictions on what sorts of information can be obtained.

Information you collect under guardianship powers delegated from the Public Advocate is not subject to Victorian FOI law. However, information in reports you provide to VCAT can be accessed under FOI law.

If you include sensitive information in a report to VCAT, you may request that VCAT not disclose the report, or sections of the report. The decision whether or not to disclose the information is at the discretion of VCAT.

Procedural fairness

The main elements of procedural fairness are:

- the right to a fair hearing
- unbiased decision-making.

As a guardian, you will be expected to make decisions in the best interests of the represented person, without bias towards one or other person or group involved with care and support of the person. You will need to consult widely to make sure you have a balanced view of the situation, and thoroughly document your decisions to show how you arrived at them.

Any reports you write for VCAT will need to be carefully worded to ensure that they are fair and do not misrepresent the views of any of the parties involved. You should always give valid reasons for your decisions.

Training and support

What training will I receive as a community guardian?

OPA provides initial and ongoing training for community guardians through the Community Guardianship Program.

Initial training

Before becoming a community guardian, you will receive background information about OPA and guardianship. This may be provided at an information session for people interested

16. For further information about confidentiality issues in healthcare, see Healthcare guardians - special issues in section 4.

in becoming community guardians, or sent or given to you individually by the program coordinator.

You may have been recruited as a potential guardian because you already have some experience and skills in a particular area of disability. If so, you may have a preference for working in that area, and this will be taken into account when allocating cases.

Preliminary training takes about eight hours, and may be conducted individually by the program coordinator, as part of group training at OPA, or in a regional centre.

The initial training program will focus on:

- the way OPA and VCAT operate
- the role of the guardian
- the skills necessary to be an effective guardian.

The program coordinator will also talk to you separately, to discuss whether you are prepared to make a commitment to the work, to answer any questions you have about the role and to assess whether you are suitable for appointment as a community guardian.

Ongoing training

Once you have joined the program, you will be asked to attend a minimum of two in-service training sessions each year. At least one training session a year will also be offered in regional areas. You will also have the opportunity to attend other volunteer training programs run by OPA, which may be relevant to community guardianship, and you may receive information about training programs run by other agencies.

The program coordinator will provide you with updated information to ensure that your skills and knowledge remain current when changes are made to legislation or procedures relating to guardianship, or when a new issue arises.

Other resources

Apart from training materials, OPA can provide a range of other resources to support your work as a community guardian, including information directories, fact sheets, and forms. Other programs and services may be able to assist you with information, services or contacts with other relevant organisations. OPA can also provide access to legal advice if required. Check with the program coordinator to find out what is available¹⁷.

How are community guardians supported?

The program coordinator provides the first line of support for community guardians. Guardians have the opportunity to discuss particular cases with them, talk through issues that have come up and get advice on where to go next. If needed, particularly if you are new to the work, the coordinator will help you work out a suitable case plan for the represented person. The program coordinator is generally available to attend case conferences and reviews, accompany you on visits, talk to relatives and other professionals and help you to find out information relating to the person you are representing. They may also act as your contact person at OPA if, for any reason, you want to keep your address or telephone number private from some or all of the people involved in a guardianship matter.

Occasional community guardian meetings provide an opportunity for guardians to meet, discuss cases and exchange ideas with each other.

How will I know whether I'm doing my job properly?

The program will support and assist you in your role as a community guardian, to make sure it is as satisfying and enjoyable as possible. Part of this support process includes a performance management and review for each community guardian.

17. See Office of the Public Advocate, in section 6, Relevant agencies and organisations, for information about other OPA programs and services.

At least once every two years, and annually for the first five years, guardians have the opportunity to discuss individual performance and skills development with the program coordinator. These discussions are separate from, and in addition to, regular case management discussions.

Your performance management discussion will look at your overall case experience, and focus on:

- application of OPA's guardianship standards
- decision-making in accordance with legislation
- case management and your ongoing availability
- development of further skills and knowledge.

If you and the coordinator decide you will benefit from further development in skills and knowledge, training can be organised to cover those areas.

What happens if someone makes a complaint about me?

Your actions as a community guardian may sometimes be questioned by a service provider or someone else involved in care of the represented person. This may occasionally result in a complaint being lodged against you.

If this happens, the program coordinator will investigate the complaint. You have the right to expect that the investigation will be carried out in an independent and transparent manner.

During the investigation, the coordinator will:

- inform you that a complaint has been made against you
- seek full details of the circumstances of the complaint
- discuss the circumstances confidentially with you
- provide a right of reply to the allegations if appropriate
- act as a mediator where necessary to resolve a dispute.

If the complaint is found to be upheld, the coordinator will then decide whether to withdraw you from the case, and will take any other action necessary to maintain the integrity of the program and OPA.

If the complaint is not substantiated by the investigation, the coordinator will take any action necessary to ensure that your good standing as a community guardian is maintained and recorded. This may include making file notes, and writing letters to complainants.

What can I do if I believe I have been treated unfairly?

If you believe that you have been unfairly treated while fulfilling your role as a community guardian, you have a number of options for dealing with the grievance. Depending on the circumstances, you can:

- lodge a complaint with the program coordinator
- lodge a complaint with the manager from OPA who is currently overseeing the program
- lodge a complaint directly with the Public Advocate.

If you believe you have been discriminated against or vilified in any way, you can take any other legal action that is normally available to you, such as under equal opportunity or anti-discrimination laws.

Every effort will be made to resolve the dispute in-house, but this will in no way limit your other rights to take action about the grievance.

Guardianship standards

The objective of the program is to provide substitute decision-making that is in the best interest of represented people, represents the least restrictive outcome, and takes into account the wishes of the represented person as far as possible. Guardians act in accordance with the

requirements and principles of the Guardianship and Administration Act and are guided by the policies and procedures established by OPA.

OPA has developed a set of minimum guardianship standards to inform people under guardianship and other interested parties about what they can expect of guardianship staff in the performance of their duties. Guardians are expected to meet the following minimum standards:

Provide information

In providing information, OPA will meet the following standards:

1. OPA will ensure that information about its vision, mission and values, its services and the legislative and ethical principles and policies underlying its service, is accessible to all clients, key parties and staff.
2. Delegated guardians will ensure that contact is made with the represented person, the applicant and the primary carer, by telephone or in writing, within five working days of the delegation of the order, to advise them of the appointed guardian and the guardian's role and authority regarding the represented person.
3. The represented person, the applicant and the primary carer will be provided with an information brochure which summarises the more detailed information that is available, on request of the guardian, about:
 - a. the role of OPA
 - b. the principles of the governing legislation
 - c. guardianship service standards
 - d. complaint processes
 - e. how to apply for a re-hearing or reassessment (formerly known as reviews)
 - f. freedom of information provisions.

This information will also be available to other interested parties.

4. Where appropriate, guardians will ensure that information about the guardian's authority and health consent procedures is provided to primary healthcare practitioners who provide services to the represented person.

Seek views

Guardians will meet the following standards:

1. Seek and consider the views of the represented person when making guardianship decisions. Wherever possible this will happen through personal contact subject to urgency and geographical location.
2. Where possible, guardians will give effect to the wishes of the represented person.
3. Make personal contact with the represented person a minimum of once a year. For longer-term guardianship orders, further visits and contact will occur, as necessary, to assist the guardian in supporting and promoting the person's welfare and interests through guardianship or advocacy.
4. Seek and consider the views of family and key people involved with the represented person about any significant decisions.
5. Take into consideration the recommendations of healthcare professionals and other service providers involved with the represented person, as the decision requires.
6. Consider the views of anyone genuinely involved with the represented person, where these views are put to the Public Advocate and concern guardianship issues.
7. Seek the reasons for, and take account of, the objections of a represented person or key person, to a proposed course of action. The guardian will consider ways to achieve their wishes or resolve the dispute, if possible. The guardian will consider and advocate for the least restrictive alternative that meets the needs of the represented person.

8. Establish the preferred means of communication for the represented person, whether it be interpreter, electronically assisted communication, or other means.

Record information

In recording information, guardians will:

1. Record decisions, including any time frames or conditions
2. Record the significant details of all contacts made and decisions taken, in relation to the guardianship of the represented person, in a timely manner
3. Record the reasons for all major guardianship decisions, including the key facts of the matter, relevant views and the guardian's reasoning.

Make decisions

In making decisions relating to a guardianship order, guardians will meet the following standards:

1. Make decisions according to the legislative provisions and principles and the authority of the current guardianship order.
2. Make decisions with reference to policy and procedures of OPA.
3. Provide written reasons for major decisions on request of the represented person or key parties.
4. Review their decision-making on a regular basis with colleagues and/or line manager.

Guardians will be available on a duty roster basis to ensure that emergency decisions can be made after hours.

Participate in guardianship reassessments

Guardians participating in guardianship reassessments will meet the following standards:

1. Request a reassessment of the current guardianship order by the Guardianship List of VCAT, if the guardian believes a revocation of the order or a change in the order will assist in better promoting or safeguarding the welfare and interests of the represented person.

2. Recommend the continuation of the guardianship order only where there is evidence that the person currently needs decisions to be made in those areas and where guardianship can realistically achieve outcomes for the represented person.

3. Consult with the represented person, as far as possible, to determine their views.

4. Consult with relevant key people and include their views in the report.

5. Provide a report to VCAT detailing the decisions made and making a recommendation regarding the continuing need for a guardianship order. Wherever possible, the guardian's report will be in a written format.

6. Where appropriate, facilitate legal representation for the represented person for the reassessment.

Privacy and confidentiality

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

1. Follow policies and procedures that protect the privacy and confidentiality of represented persons and the key people in their lives.

2. Ensure that only information relevant to the carrying out of the decision is released by the guardian.

4. The activities of a community guardian

Initial tasks

How do I get started?

The program coordinator will contact you when they find an appropriate client for you. Where possible, they will try to match you with a person who has a similar cultural background and language, who is reasonably accessible to you, and who has needs that match your skills and experience.

If you are available to take on the role of guardian at that time, basic information about the client will be sent to you. You do not have to accept any client that is offered to you. The length of time you can take to make a decision will depend on how urgent the matter is, and whether you want to request more information from OPA before you make up your mind.

When you agree to take a client, you will receive two documents that confirm your authority as a community guardian:

1. the original guardianship order made by VCAT, appointing the Public Advocate as guardian
2. the delegation order advising the Public Advocate's delegation of that power to you as a community guardian.

Once you have been appointed as a guardian for a represented person, you will need to make contact with the person, as well as the applicant for the guardianship order and the primary carer. This should be done by telephone or in writing within five working days of receiving the guardianship documents from the program coordinator.

The coordinator may decide to advise the represented person and other parties about your appointment and the terms of the guardianship order themselves, and may accompany you on your first visit.

When you introduce yourself to the represented person, the applicant and the primary carer, you should give them a brochure from the program, which provides them with information about guardianship and tells them how they can find out more.

You, and the other interested parties, will also be given detailed information about OPA including:

- the role of OPA
- the principles of the governing legislation
- guardianship service standards
- complaint procedures
- how to apply for a rehearing or reassessment of the guardianship order
- freedom of information provisions¹⁸.

If your guardianship relates to healthcare, you will also need to make sure that any primary healthcare practitioners who are treating the represented person know about your role and powers under the guardianship order.

If an administrator has been appointed, you will need to introduce yourself to them, preferably before visiting the represented person.

What should I do on my first visit?

Your first visit to the represented person is an important step. Remember to take your photo identification and business cards with you, as well as a copy of your delegation from OPA, and the VCAT order. It will also be useful to have a folder for recording case notes about the discussion and the people involved.

18. See Freedom of information, section 3.

Before visiting the represented person, make sure you are clear about:

- the purpose of the visit
- the decisions, if any, that you expect to make
- the information you need, or expect to obtain from the visit
- the role you will take on this visit, taking into account such matters as the person's level of capacity and where the visit will take place
- what arrangements, such as an appointment, need to be made before the visit
- who else may need to be present, for example, a carer or interpreter
- what you expect to happen as a result of the visit.

You may find it helpful to discuss plans for your first visit with the program coordinator. You should also consider what discussions or reports will be needed as a follow-up to the visit.

Each time you make a visit, you should produce your identification and inform all responsible and concerned parties, including the represented person, of your arrival. This applies whenever you are visiting the represented person, whether at home or at a care facility.

Making decisions

How do I get the information I need to make a decision?

The guardianship power delegated to community guardians from the Public Advocate entrusts them to make significant and possibly life-changing decisions on behalf of the represented person.

To ensure the decisions you make are in the best interests of the person, you need to actively seek information from people with direct knowledge of the person's needs.

It is important to try to find out the represented person's wishes about the matter you need to make a decision about. The best way to do this is by personal contact, provided that the person's location and the urgency of the matter allow time for this. If you need an interpreter or some form of electronic device to help you communicate with the represented person, make sure these aids are available when you visit. Where possible, your decision should be made in accordance with the wishes of the represented person.

You will probably contact the represented person and primary carer at least once every three months, and perhaps more often for longer-term guardianship orders. How often you visit or make contact usually depends on what support and advocacy is needed to promote the person's best interests.

Other people you will need to consult include family members and other key people involved with the represented person. Some decisions may require you to consider recommendations from healthcare professionals and other service providers, as well as the views of anyone else genuinely involved with the represented person (and has contacted the Public Advocate about the matter).

The people you are consulting may have their own agenda, and may at times give you a biased view of the situation. For example, you may be told by one family member that another has a history of making poor decisions or acting in a way that puts the represented person at risk. It is important for you to be impartial, so you will need to consult as widely as possible to ensure that you get a balanced overall picture¹⁹.

If you need to clarify a point, it may be helpful to write to the person involved, setting out what you believe their position is and inviting them to correct you. You may need to clarify that if one person gives you information that is critical of another, you can ask that other person to respond to the criticism.

19. See Procedural fairness in section 3.

There may be times when the represented person or another key person objects to the action you are proposing to take. It may be appropriate for you to tell all interested parties what decision you are considering, and ask them to give you their reasons for or against the proposal. Take into account any reasons for their objections and, where possible, try to find a way of achieving their wishes or resolving the dispute.

As well as being in the best interests of the represented person, your decision should always aim for the least restrictive alternative that meets the person's needs. If you choose a more restrictive option, you need to show that you have considered less restrictive alternatives, and be able to give reasons for rejecting them as unsuitable.

What guidelines should I follow when making guardianship decisions?

When you are making decisions in relation to a guardianship order, there are several things to keep in mind:

- your decision must be allowable under the provisions and the guiding principles of the law, and must be within the authority of the specific guardianship order
- the decision must be in accordance with OPA policy and procedures – the program coordinator can provide advice and information on policy if needed
- you must be able to provide written reasons for any major decisions if requested by the represented person or other key parties. If you are unsure about how to deal with such a request, consult the program coordinator.

You and the program coordinator will regularly review your decision-making. These reviews will take place at least once a year, and also whenever a complex, difficult or potentially contested decision needs to be made.

Reassessment of the guardianship order will also involve a review of decision-making²⁰.

What do I do if I need advice urgently?

If the program coordinator is unavailable and the matter is urgent, you should contact OPA and ask to speak with the manager overseeing the program. There are also four team leaders within the office, if the manager is unavailable. There should never be a time when you are unable to get suitable advice about guardianship. If you need advice outside normal business hours and the coordinator is not available, the duty worker from OPA can be contacted via OPA's telephone advice service number, 1300 309 337.

Can I ask VCAT for help?

If you are faced with a very difficult decision, you may ask VCAT for advice. VCAT may then:

- approve or disapprove of what you are proposing
- give you advice
- make an order about the matter.

To a certain degree, this removes some of the responsibility for the decision from you as guardian, and gives extra weight to the decision that is made.

If you feel that you need help to make a difficult decision, you should discuss the matter with the program coordinator before going to VCAT for advice.

Healthcare guardians – special issues

When your guardianship includes the power to make decisions about healthcare for the represented person, you need to make sure that the relevant healthcare providers are aware of your role and authority. As guardian, you should

20. This is discussed further under How will I know whether I'm doing my job properly? in section 3.

ask them the same questions about the medical treatment they propose for the represented person as you would if the treatment was for you.

Consent to medical treatment

Where possible, you should speak to the represented person and try to find out their views and possible concerns about the treatment being proposed for them. If that is not possible, you may need to discuss the treatment with family and friends of the person to try to find out what views the person may have on the matter.

Asking the following questions will help you to make an informed decision about the proposed treatment:

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

Remember, if you are unsure about any issues, you should always seek assistance from the program coordinator, who is available to support you in making decisions.

Relationship to other Acts of Parliament

Other service providers may have different legal responsibilities for the represented person²¹. The two most likely areas where this might occur are in mental health (Mental Health Act) and intellectual disability (Disability Act).

Under the Mental Health Act, only the patient is able to consent to admission to a mental health facility; even as a guardian with healthcare powers you cannot consent to admission on their behalf.

If the represented person needs treatment as an inpatient but is unable to give consent to their admission they will, in most instances, be admitted as an involuntary patient.

However, guardians can consent to non-psychiatric treatment for the person when guardianship powers cover healthcare.

Under the Disability Act, services can only be provided to an intellectually disabled person with their consent. If you are unsure whether you have authority to consent to services on behalf of the person, particularly where they have refused to consent, consult the program coordinator for advice.

Health law confidentiality

Communications between a person and their doctor or other health professional usually remain private. Confidentiality in public and private hospitals, nursing homes and other relevant health services is covered by section 141 of the Health Services Act.

Exceptions to this general rule are based on consent, legal issues and the medical needs of the patient. There are also specific sections of the Act dealing with areas of special sensitivity such as HIV/AIDS.

Patients can generally access their own public medical records under FOI laws. If your guardianship covers healthcare, you have the right to access the represented person's records as if they were your own.

Occasionally, guardians may require medical information to assist with another area of guardianship, for example, information on the person's medical needs may be needed to assist

21. See Differing legal responsibilities in section 3.

in an accommodation placement decision. Healthcare professionals can release this information at their discretion.

Treatment without the guardian's consent

In some limited circumstances medical treatment can be given to a represented person without the consent of the healthcare guardian.

This may apply:

- in the event of an emergency - then no consent is needed for treatment
- where other legislation, such as the Medical Treatment Act or the Mental Health Act, may apply to the treatment
- when the guardian cannot be contacted and treatment is required.

Are there special issues for accommodation guardians?

Guardians who have the authority to make accommodation decisions can decide where the represented person will live, either permanently or temporarily, and who they will live with. Guardians with general accommodation powers need to consider all accommodation options. This may include consenting to appropriate support services to safely maintain the person at home.

As with all your decisions as guardian, you should consider and respect the wishes expressed by the person about where and with whom they live. However, you may have to make a decision against their wishes if it would clearly be in their best interests.

Before consenting to placement in supported accommodation such as a hostel or nursing home, consider:

- Does the person prefer any particular facility?
- How does their preference fit with their budget?
- Is the accommodation accessible to family and friends?
- What personal possessions can the person

take with them and how will they be managed or cared for?

- Is a regular program of suitable outings and activities provided?
- Is the owner/manager aware of your role and authority as guardian?
- Does the facility take into account cultural and religious considerations?

It is important to ensure that the standard of care offered at any facility you are considering is satisfactory. You may check that that it complies with industry standards or codes of practice, and has the necessary government accreditation. Talk to a professional involved in this area - such as a case manager, social worker or member of the Aged Care Assessment Service - about any facilities you are considering. For further information to ensure you make an informed decision, current reports on the facility from the Aged Care Standards and Accreditation Agency can be accessed at www.accreditation.aust.com

There are a range of federal government standards in the area of aged care, and federal legislation generally covers residents in aged-care facilities. Residential Care Rights is an agency funded by the federal government to investigate and advocate on aged-care issues. At times, the legal powers of other service providers or agencies working with or advocating for the represented person may differ from your powers as guardian.

If you need assistance with any of these issues, consult the program coordinator.

What can I do if my decision is not accepted?

Generally your powers as guardian will be recognised by the represented person and others involved with them, and your decisions will be accepted as being in the best interests of the person. However, there could be times when the represented person refuses to comply with a decision you have made on their behalf.

Establishing and maintaining an amicable relationship with the represented person is very important to your role as guardian. In the process of understanding the represented person's situation and gathering information to help make decisions, guardians should gain some level of understanding of their point of view. Where possible, you must try to respect their wishes when making a decision that is in their best interests.

If it is not possible to act according to the represented person's wishes, and you are unsuccessful in your efforts to gain their agreement, you may need to call on family members, carers and other professionals to help you convince the person to accept your decision.

As a last resort, under section 26(1) of the Guardianship and Administration Act, VCAT can authorise you or another specified person, such as a case manager, sometimes assisted by police or ambulance officers, to force the represented person to comply with your decision. This is a very intrusive intervention in the person's life, and is only to be considered where other approaches have failed and you believe that the risks to the person justify such an action.

If a situation arises where you believe a section 26(1) order is necessary, first contact the program coordinator for advice and assistance. If the coordinator agrees that the order is required, they will apply to VCAT for the order and take responsibility for ensuring that it is carried out.

Once a section 26(1) order is made, it must be reviewed within 42 days.

Records and reports

What records do I need to keep?

It is important for community guardians to keep good records of guardianship, as they are accountable to both OPA and VCAT. Carefully documenting your actions, as a community guardian, also protects you against accusations or complaints from any other party involved with the represented person, and provides a good basis for preparing reports for VCAT.

When you are allocated a case, you will be given a case file with basic information about the represented person.

The records of guardianship that need to be kept include:

- any notes you make about your work
- the time and date of all visits and telephone contacts made to the represented person and other interested parties, and details of any matters discussed
- any decisions made, including any time frames and conditions
- the reasons for all major decisions made in relation to guardianship of the represented person, including key facts of the matter, relevant views and your own reasoning.

What and when do I need to report?

A summary of your guardianship activities must be sent to the program coordinator at least every three months, even if there has been no further action on the case during that time. Case notes and summaries may be sent by email, if preferred.

The program coordinator must be advised, in writing, when you make a major guardianship decision, when conflict occurs with the represented person or an interested party, or at any other time when you consider it necessary. You should discuss a decision with the coordinator if it is likely to be contentious, or if a case plan has been developed for the represented person but you decide that another

course of action is preferable²². OPA will provide you with standard forms to simplify these reporting requirements.

Death of the represented person

If the represented person dies, you will need to report the death to VCAT. Your responsibility as guardian ends when the represented person dies.

What do I need to do when the guardianship is reassessed by VCAT?

Guardianship orders are reassessed regularly (usually annually) by VCAT²³.

You can also ask VCAT to reassess the order if you believe guardianship is no longer necessary. Discuss the situation with the program coordinator before asking VCAT for reassessment.

When the guardianship order is being reassessed, you will be required to provide a report for VCAT to consider as part of the decision-making process. Generally, the report will need to be provided to VCAT at least three days before the review hearing.

In preparing your report, it is important to:

- keep in mind the terms of the guardianship order, and only report on matters covered by the order
- list the decisions you have made since the guardianship order was made, or last reviewed
- explain the reasons for those decisions, and why they were in the best interests of the represented person
- indicate whether there has been any change in the capacity of the represented person to make reasonable decisions
- consult with the represented person and other key people, and include their views in your report

- if you have received opposing or contradictory views, you will need to explain why you have given more weight to one view over another
- explain to VCAT why you think that either:
 - guardianship is no longer needed
 - the represented person still currently needs lifestyle decisions to be made and guardianship can realistically achieve good outcomes for them.

Make sure you allow enough time to discuss your report with the program coordinator before submitting it to VCAT.

You should seek advice from the coordinator as soon as possible if you think you need a report from a healthcare or other professional to support the decisions or recommendations presented in your report. This may be particularly relevant if there has been a change in capacity, or if capacity is disputed by the represented person or a family member.

Can other people see my report to VCAT?

Other key people involved with the represented person may want to know what is in your report to VCAT. It is appropriate to advise others of the decisions you have made or intend to make, so that they have an opportunity to prepare a response before the hearing. However, it is not appropriate to give them your report. If someone asks you for a copy, refer the request to VCAT, who will decide what information to release, and to whom.

VCAT will generally give a copy of your report to people it believes have a right to know how you have made your decisions. Information will be released provided that it does not:

- cause serious harm to the health of the represented person or someone else
- unreasonably disclose information about anyone's personal affairs
- breach confidentiality conditions set by the person who provided the information (e.g. a medical report).

22. For information on reporting to VCAT, see What do I need to do when the guardianship is reassessed by VCAT? below.

23. See How long does guardianship last? in section 2.

If your report contains very sensitive information that you think should not be disclosed, advise VCAT of this in a separate letter with the report. VCAT will weigh the need to protect this information against the right of the person to know what is said.

Can I, or someone else, see the VCAT file?

The Victorian Civil and Administrative Tribunal Act, sections 144 and 146, cover the circumstances in which a person may have access to VCAT's register and proceeding file, including documents provided to VCAT.

As guardian, you may ask to see documents at the hearing, but it will usually be more convenient to put your request in writing to the Registrar, Guardianship List, VCAT. Allow sufficient time before the hearing.

The letter should include:

- the VCAT file number (G...)
- the name of the person about whom the application is made
- your relationship to that person, i.e. guardian
- the scheduled hearing date, if known
- which documents you wish to see
- your reasons for asking for those documents.

VCAT will consider your request and may approve the release of documents to you unless there are reasons not to do so²⁴.

If VCAT proposes to deny you access to the file, you will receive a letter inviting you to give the reasons as to why you should be given access. VCAT will then consider your request further, and may allow other parties to the proceeding to make written submissions about access to documents. Instead of asking for written submissions, VCAT may instead hold a hearing (called a directions hearing) to hear verbal submissions from interested parties regarding access to documents.

VCAT hearings

What do I need to do before a reassessment hearing?

There may be times when you are required to attend hearings of the Guardianship List at VCAT. The program coordinator should be able to advise you if it is necessary for you to be at the hearing, and whether the represented person is required to attend.

You may need to make special arrangements if the represented person will be attending the assessment hearing. Seek advice from the coordinator if you think the represented person may need legal representation for the hearing. If an interpreter is needed to assist the person, notify the Registrar of the Guardianship List in writing well before the hearing, giving the hearing date and the language (and dialect, if necessary) involved.

You will also need to notify the Registrar beforehand if you believe additional security arrangements will be required (for example, if there is a risk of assault by one of the parties involved in the hearing). Security is not available in some venues, so it may be necessary for the hearing to be moved to another venue that does provide security.

What happens at a VCAT hearing?

The VCAT member will usually introduce themselves at the start of the hearing, and may also have a nameplate in front of them.

You should be respectful, courteous, and acknowledge the independence of both VCAT and OPA. In practice, this means that you should address the VCAT member using their title (e.g. Mr, Mrs/Ms) and surname.

24. See Can other people see my report to VCAT? above.

Respect should also be shown to the represented person. They may have asked you to call them by their first name, but in your written and verbal reports to VCAT you should refer to them as Mr or Mrs/Ms [surname].

If the hearing is less formal – perhaps with only you and the VCAT member present – you may refer to the represented person by their first name if this is your usual practice, and if it is consistent with the way you are referring to other people.

It is important to make sure that you don't treat the represented person with less respect and formality than the other people involved.

The VCAT member will explain how they intend to conduct the hearing. Generally, they will record details of all those attending the hearing, and then ask you to give a summary of your report. The summary should include:

- the situation that led VCAT to make the guardianship order
- the decisions you have made, and the reasons you believe these decisions were in the best interests of the represented person
- details of any less restrictive alternatives that you considered, and why they were inappropriate
- any matters that still require decision-making by a guardian, for example, a recent decision to accept long-term accommodation for the represented person may need to be monitored to ensure that it is in the best interests of the person.

The VCAT member may interrupt you at some points to allow other people to ask questions about your decisions. They may also choose to summarise your report themselves, rather than asking you to do so.

If this happens, you need to listen carefully so that when the member finishes speaking, you can indicate whether it was an accurate summary of your report. You may want to clarify or add to some points that you feel have not been fully covered in the summary.

Ask the VCAT member if you are not sure when you should speak, by asking for clarification, such as: 'I would like to address VCAT on that matter. Would you please tell me when it is appropriate for me to do this?'

What should I do if I am threatened or abused during a hearing?

Guardianship decisions can be about sensitive or complex personal matters, and sometimes evoke strong emotions in people who have been closely involved with the represented person. This increased tension can occasionally result in threats or abuse being directed at you as the guardian.

If you are threatened or abused during a VCAT hearing, you may need to ask the member to direct or control the conduct of the hearing to prevent this from happening again. The threat may not be obvious to the member until you bring it to their attention.

If the threats or abuse continue and you feel unsafe, you have the right to tell VCAT that you will be leaving the hearing. Let them know that you will wait at the front desk so that you will be available if the hearing resumes.

5. Management of the Community Guardianship Program

The program coordinator is responsible for the maintenance and support of the program. The coordinator is in turn responsible to the Manager, Community Guardianship Program. The authority for guardianship arises from the delegation of the guardianship powers of the Public Advocate to individual community guardians.

Role of the program coordinator

The program coordinator is your main point of contact with the program and OPA. The coordinator allocates new guardianship cases to suitable community guardians, is responsible for ongoing support, training and performance review, and manages the investigation of complaints involving community guardians.

Case allocation

Individual cases are referred to the program by managers at OPA. The program coordinator then attempts to match the request with a suitable community guardian, according to factors such as:

- cultural background and language
- location
- the specific needs of the represented person
- the skills and experience of the proposed guardian.

Generally, the program will not accept referrals of matters involving sexual abuse or previous incidents of physical violence. These criteria may occasionally be varied, depending on the particular skills of individual community guardians.

Once a matter is assessed as suitable for community guardianship, the coordinator will approach an appropriate community guardian to see if they are available to take on the matter. You are not obliged to accept any guardianship matter offered to you.

As the prospective guardian, you can request that the coordinator forward copies of the documents relating to the matter for you to consider before deciding to take on the matter. In urgent matters, some material may be faxed to you, or provided to you in the quickest possible way, and the remainder sent by post. The coordinator will keep the original documents on file at OPA.

When you have agreed to act as guardian in a matter, the coordinator will send you the documents confirming the delegation of guardianship, and may accompany you on your first visit to the represented person²⁵.

Ongoing support

Reporting and consultation

The program coordinator receives and monitors your quarterly reports, as well as those you provide in special circumstances, such as when you have made a major decision or are experiencing conflict with the represented person or someone else²⁶. The program coordinator will also provide assistance when you are preparing reports for VCAT or need to organise reports by healthcare professionals²⁷.

25. See How do I get started? in section 4.

26. See What and when do I need to report? in section 4.

27. See What do I need to do when the guardianship is reassessed by VCAT? in section 4.

If you have a problem with guardianship, are uncertain about your powers or need to discuss a complex issue before making a decision, you should always contact the program coordinator for assistance. They will be able to discuss the issue with you, and may either offer advice or refer you to other appropriate sections of OPA or external authorities for further help. In some situations, such as an application to VCAT for an enforcement order²⁸, the coordinator may be able to act on your behalf²⁹.

Training

The program coordinator is responsible for organising both initial and ongoing training for community guardians³⁰. If you feel that training in a particular area would assist you in your role as guardian, discuss this with the coordinator.

Performance review

The program coordinator will meet with you at least once every two years (annually for the first five years) to discuss your performance as a community guardian and consider further development of your skills and knowledge³¹.

Complaints and grievances

If a complaint is made against you as a community guardian – perhaps by the represented person, their family or another service provider – the program coordinator will investigate and take appropriate action³². If you have a grievance about the way you have been treated as a community guardian you have the option of taking the complaint to the coordinator or elsewhere³³.

Administrative procedures

Appointment as a community guardian

Your appointment as a community guardian is for an indefinite period and entitles you to an honorarium and reimbursement of relevant expenses. You are appointed by the Public Advocate, and are accountable to the program coordinator. Your duties will be as set out in the role description and protocols³⁴.

You cannot be appointed as a community guardian if you have a criminal record that would raise concerns about your suitability to make decisions for a person who lacks capacity and is vulnerable to exploitation. You will be required to undergo a police check before your appointment can be confirmed, and will be expected to notify the program coordinator if your circumstances change after you are appointed.

Ceasing to be a community guardian

Your role as a community guardian can be ended in a number of ways:

1. You may wish to resign your appointment for personal reasons. This can be done by sending a signed letter of resignation to the program coordinator.
2. You may wish to take a temporary leave of absence. Your letter to the coordinator requesting leave should set out the reasons for your request, and the expected period of absence.

28. See What can I do if my decision is not accepted? in section 4.

29. See also How are community guardians supported? in section 3 and What do I do if I need advice urgently? in section 4.

30. See What training will I receive as a community guardian? in section 3.

31. See How will I know whether I'm doing my job properly? in section 3.

32. See What happens if someone makes a complaint about me? in section 3.

33. See What can I do if I believe I have been treated unfairly? in section 3.

34. See section 3, The role and responsibilities of a community guardian.

3. OPA may terminate your appointment. On the recommendation of the program coordinator, the Public Advocate may discontinue your appointment if:

- a. you become bankrupt
- b. you are convicted of an indictable offence (or, if the offence is committed elsewhere, an offence that would be an indictable offence if committed in Victoria)
- c. you become incapable of performing, or unwilling to perform, the duties of a community guardian
- d. you fail to complete the required training or to demonstrate the necessary skills and knowledge
- e. you seriously breach the standards for community guardianship.

Reimbursement of community guardians

Honorarium

The honorarium community guardians receive is based on your relative contribution to the program. It is decided by the Public Advocate on the recommendation of the program coordinator, and is paid annually.

Guidelines for claiming expenses

You should not have to bear any financial costs for your volunteering. If you incur any legitimate expenses in your guardianship work, such as for postage, photocopying, and public transport, you will be reimbursed for the full amount.

It is not possible to give a complete definition of what is a legitimate expense, but the following guidelines help explain what constitutes a reasonable claim:

- the item is primarily for use in your role as a community guardian
- the expense is necessary
- the item is not available through OPA.

If you incur costs that meet these guidelines:

- the expense claim form should be submitted to OPA within six months of the money being spent
- you must try and obtain receipts for all expenditure
- you must obtain a receipt if the item costs more than \$10
- you must get prior approval if the item you are proposing to buy costs more than \$20.

If you are not sure whether an expense is claimable, check with the program coordinator.

Travel costs

Community guardians are entitled to claim the cost of travel undertaken in their role. You can be reimbursed for train, tram or bus fares, or for motor vehicle kilometres according to the rates published each year by the Australian Tax Office (ATO).

Travel costs make up a very significant part of the program's budget, so you will be expected to use public transport wherever possible. Where it is not possible, or not appropriate, for you to travel by public transport, you will be reimbursed at the ATO motor-vehicle rates.

You will be reimbursed for the cost of travelling to attend training sessions and meetings associated with your role as a community guardian. Your travel costs will also be covered if you attend training sessions or meetings, or make visits, before you become a community guardian.

You should submit your travel expense claims in the same way as for general expenses as detailed below. Check with the program coordinator if you have any queries.

Postage and telephone

Community guardians can be reimbursed for the costs of postage and telephone calls related to their role. Since mobile phone calls generally cost more than landline calls, you should only use a mobile phone where it is necessary, or not practical to use a landline. Submit claims as outlined below.

Other expenses

Occasionally, an expense may not fit into one of the general categories of travel, postage and telephone described above – for example, you may need to buy a diary or notebook in connection with your guardianship duties. Any expense that does not fit into one of these categories should be discussed with the program coordinator before incurring any costs.

Making a claim

The procedure for claiming reimbursement of any expenses you have incurred is:

1. Complete a claim form with details of the expense/s and submit it to OPA with receipt/s attached.
2. The program coordinator must then sign the form to verify that the expense was incurred in the course of your duties as a community guardian.

OPA aims to reimburse you for the expense within a week of receiving the claim. Payments will generally be made by direct debit, as it is faster and more secure.

If you have any queries about the claims procedure you should discuss them with the coordinator.

Insurance cover

Personal insurance

You are covered by personal accident insurance through the Victorian Managed Insurance Authority while you are carrying out your duties as a community guardian, and during

travel to and from those duties. Ask the program coordinator if you require a copy of the insurance benefits.

If you are involved in an accident related to your role, you must notify the coordinator as soon as possible.

Vehicle insurance

If you use your own vehicle for travel associated with your guardianship duties, you must have a current driver's licence. The vehicle must be registered and covered by third party and comprehensive insurance. Any claims for damage to your vehicle should be made to the private insurer.

6. Relevant organisations and agencies

As a community guardian you will come into contact with various areas within OPA, as well as a range of other government and non-government agencies. Contact details for some of these organisations have been listed at the back of this manual. You will also meet people who want to know more about what OPA does.

Office of the Public Advocate

OPA is an independent statutory office set up under the Guardianship and Administration Act to promote the interests, rights and dignity of Victorians with disability.

OPA believes that people with a disability are entitled to have:

- their individual needs taken seriously and acted on
- the opportunity to be fully involved in a supportive community
- the opportunity to be recognised as valued and contributing members of society.

Under the Act, the Public Advocate is given a wide range of powers and duties to act for people with a disability. The Act allows the Public Advocate to intervene where a person with a disability is being abused, maltreated or exploited. The usual means of intervention involve advocacy, investigation and guardianship.

Advocacy

The first responsibility of OPA is to represent the interests of people with disability in circumstances of abuse, neglect or exploitation,

where they are dissatisfied with the response or attitude of a private or public agency, which affects their rights or dignity.

The person, or another person representing their interests, can complain to OPA and, if there are strong indications that the complaint is justified, OPA can take up the matter on their behalf.

OPA is an advocate of last resort; its advocacy services are targeted at people or areas of greatest need. It will only become involved if advocacy from families, friends, community-based programs or service providers has been unsuccessful.

Wherever possible, OPA will use existing complaints agencies such as the Ombudsman, the Victorian Equal Opportunity and Human Rights Commission, the Health Services Commissioner, the Internal Investigations Unit of Victoria Police, or the courts. OPA may also directly approach managers of organisations or, if the complaint is about a public service agency, may contact the government Minister responsible for that agency.

Investigation

OPA investigates applications for guardianship and administration made to the VCAT Guardianship List. These investigations arise either at the request of the List or through OPA's own screening procedures. These investigations provide valuable additional information to VCAT to assist its decision-making process, and to ensure that applications heard by the List are appropriate to guardianship or administration. Often, investigations by OPA demonstrate that matters can be dealt with by less restrictive means. Emergency applications to VCAT are also investigated to see whether they do need to be heard immediately.

Guardianship

Guardianship orders are made after a hearing in the Guardianship List of VCAT. If no other suitable guardian is available, VCAT may appoint the Public Advocate as guardian. Approximately 60 per cent of all guardianship matters are delegated to the Public Advocate.

Once appointed, the Public Advocate can delegate guardianship authority to either a stipendiary (paid) guardian within OPA or to a community guardian. In either case, the powers and responsibilities of the guardian are the same.

If VCAT believes there is an urgent need for a guardian to make decisions it will appoint the Public Advocate as a temporary guardian. Temporary orders for guardianship usually relate to medical matters or cases of abuse or exploitation, and the orders must be reviewed within 21 days.

Systemic advocacy

Part of OPA's role is to identify and take action on issues relating to disability, to increase public awareness of these issues, and promote change in laws and community perceptions that may restrict the opportunities and life choices of people with disabilities.

Community education

The Community Education Unit provides talks on disability issues for the disability community and service providers. Audiences include parents and carers, consumers and workers, allied health professionals, lawyers, students and the wider community.

Communications

The Communications Unit manages the OPA website, produces publications on disability-related issues and other information which is utilised across OPA, including the Community Guardianship Program. It also manages media issues.

Advice Service

The Advice Service offers advice to all members of the public on guardianship, administration, powers of attorney and disability-related issues. The service is available during working hours Monday to Friday on the local call 1300 307 337 number.

Key objectives of the Advice Service are to:

- provide information, referrals and advocacy service for inquiries that are within OPA's area of activity
- provide relevant information within 24 hours, by telephone, mail, fax, email or face-to-face
- link callers with the most appropriate agency or service, if not OPA
- assist callers to find the most appropriate and least restrictive means of resolving their problems
- offer callers with disabilities links to community organisations and community advocacy services
- offer carers links to carer organisations and community advocacy services.

The majority of work undertaken by the Advice Service involves:

- providing information about OPA and the VCAT Guardianship List
- providing general information about guardianship and powers of attorney
- screening potential applications to VCAT
- referring callers to other services and agencies as appropriate
- providing advice and initial management of emergency situations and temporary applications to VCAT.

24-hour emergency service

Guardians and advocates working for OPA are rostered to carry a pager so that they can respond to emergency matters, both existing cases and urgent after-hours applications to VCAT.

Private Guardians Support

OPA provides support and advice on guardianship matters to private guardians appointed by VCAT.

Volunteer programs

OPA has three volunteer programs: the Community Guardianship Program; the Community Visitors Program; and the Independent Third Person Program. These programs provide separate but complementary services, and often a person with a disability may be involved in more than one program.

Community Visitors

Community Visitors are volunteer community representatives appointed by the Governor in Council. Under the authority of the Mental Health Act, the Health Services Act and the Disability Act, they are authorised to visit and report on facilities providing residential services to people with a disability or a mental illness. These facilities include supported residential services (SRSs), disability accommodation and mental health residential services. Community Visitors have wide powers to visit any section of an institution or service, inspect any report or consult with any person in that facility. If a complaint cannot be resolved at a local level the Community Visitor is able to take the complaint to the relevant Minister.

Independent Third Person Program

Police must arrange for an Independent Third Person (ITP) to be present when they are interviewing someone they believe may have a cognitive disability or mental illness. Under this program, co-ordinated by OPA and funded by the DHS, community volunteers are recruited and trained to act as Independent Third Persons.

Victorian Government

If you are not sure which state government department or agency to contact, call Information Victoria on 1300 366 356, 8:30am – 5:00pm Monday to Friday, or go to Victoria Online: www.vic.gov.au

Victorian Civil and Administrative Tribunal (VCAT)

VCAT was created in 1998 through the amalgamation of 15 separate boards and tribunals. The aim was to provide a modern, accessible, efficient and cost-effective civil justice system.

Through its various lists, VCAT deals with disputes about:

- purchase and supply of goods
- credit
- discrimination
- domestic building works
- guardianship and administration
- legal professional services
- residential tenancies
- retail tenancies.

VCAT also deals with disputes between people and either state or local government, in areas such as land valuation, planning and environment, business licences, state taxation and other government decisions, including transport accident compensation and freedom of information.

The main Act governing VCAT operations is the Victorian Civil and Administrative Tribunal Act (the VCAT Act), and associated regulations and rules. The VCAT Act governs the general operation of each list, but other Acts may affect the way individual lists decide cases.

How VCAT resolves cases

The process begins when a user of VCAT's services files an application with the relevant list. Before the hearing, there may be a mediation to try to resolve the dispute, a



directions hearing to decide how the case will proceed and/or a compulsory conference to clarify the matters in dispute. Some cases are settled before a hearing is held; many others proceed to a hearing.

At the hearing, each party has the opportunity to present evidence themselves or through other witnesses, to question witnesses and to make submissions to the VCAT member who is hearing the case. At the end of the hearing, the member will either give an oral decision on the spot, or write a decision and deliver it to the parties as soon as possible after the hearing. VCAT decisions can be appealed to the Supreme Court, but only on questions of law, not on questions of fact³⁵.

State Trustees Ltd

State Trustees Ltd (originally the Public Trust Office of Victoria, then the Public Trustee) is a state-owned company that provides financial and legal services to people who are unable to manage their own affairs. This may be because of mental illness, injury or disability. VCAT often appoints State Trustees as financial and legal administrator for represented persons.

State Trustees also assists people who are looking after the affairs of a relative or friend. It provides a range of trustee, executor and administrator services, on a fee-for-service basis, including:

- will making
- enduring powers of attorney
- trusts administration
- management of deceased estates
- investment and taxation services
- funds management.

State Trustees runs a number of specialised programs to help people regain control of their own affairs, including the Financial Independence Program and the Intensive Support Program.

Financial Independence Program

This program, developed in conjunction with the DHS and carers, is designed to gradually give back to clients of State Trustees the responsibility for managing their own lives. The level of responsibility returned to each person is carefully assessed and monitored over several months, and may eventually result in them no longer requiring an administration order.

Intensive Support Program

This program, introduced in conjunction with DHS, helps the most vulnerable clients of State Trustees, those whose situation is extreme because they are homeless or have no family or social support, face financial or other exploitation or abuse, and are isolated from community contact. The program provides an additional consultant who is experienced in the issues these clients face and assists them to reconnect with the community through regular personal contact and support, and referral to other appropriate agencies or networks.

Department of Human Services (DHS)

DHS is Victoria's largest state government department. As well as directly funding hospitals, aged-care facilities, ambulance services and community service agencies, it provides services in the following key areas.

Disability services

Disability Services funds providers across the non-government sector to provide direct support and care for people with intellectual, physical, sensory and neurological disability, and acquired brain injury, and provides some care and support services to people with a range of disabilities.

35. For more information about the Guardianship List, see The Guardianship List of VCAT in section 2.

The Division works with people with disabilities, their families, carers and support providers to improve quality of life by increasing opportunities for independence, choice and community participation, and promoting the rights of people with a disability.

These services and supports are governed by the Disability Act, and include:

- case management – aims to assist people with disabilities to become more independent and active in community life by establishing a positive, collaborative relationship with the person and their support network including family members, and assisting the person to access the individual supports they need to deal with problems and achieve their goals
- living at home – covers individualised support packages, aids and equipment, outreach support, a range of allied health therapies, and short-term HomeFirst support to assist people to remain in their own home
- families and carers – flexible and personalised support packages, respite care and assistance to maintain independence
- community integration – personalised support, assistance for young school leavers with disabilities, day programs to develop new skills, recreational programs
- specialist disability services – flexible individual support, specialist behavioural intervention services, support for people with intellectual disability involved in the criminal justice system
- accommodation – individual support, appropriate and affordable housing through the Disability Housing Trust, supported housing
- Regional Disability Intake and Response Service – provides information about the supports and services offered by Disability Client Services, and can assist with planning and local support to people with disabilities, families and carers.

Assistance is available to:

- people with disabilities who meet the criteria under the Disability Act
- family members and carers of people with a disability
- service providers.

For further information on programs and services, and eligibility criteria, contact the regional Disability Intake and Response Service.

Mental health services

The Mental Health Branch of DHS plans, funds, reviews and develops specialist mental health services for children and adolescents (0–18 years), adults (16–64 years) and older people (65+ years) who have, or are at risk of developing, a serious mental illness. Non-clinical specialist mental health services provide mental health disability rehabilitation and support. Some services are offered statewide.

A range of information about mental illness, treatment options and access to services is available to people with mental illness, their family or carers and service providers through the Mental Health Services website or by telephoning the Mental Health Branch during business hours. The Telephone Information Line gives 24-hour access to recorded information, in a range of community languages, about:

- involuntary patients and involuntary treatment orders
- community treatment orders
- electroconvulsive therapy
- the Mental Health Review Board.

Office of the Chief Psychiatrist

The Chief Psychiatrist has responsibility under the Mental Health Act for the medical care and welfare of people receiving treatment or care for a mental illness. Under the Act, the Chief Psychiatrist has wide powers to investigate

complaints, stop or change treatment, or direct a mental health service to provide treatment to a person.

Housing

The role of the Office of Housing is to provide responsive and affordable housing assistance to Victorians who are most in need. Public housing assistance and tenancy management services are delivered through a network of housing offices in eight regions across Victoria. Services include crisis and transitional-housing, long-term rental housing assistance for public and private rental properties, and home ownership assistance programs.

Applicants for public housing may be a single person, a couple, a family or a group of people. To be eligible, they must:

- not have income and assets above the current limits
- live in Victoria
- not own or part-own a house, unit or flat
- be an Australian citizen or permanent resident
- repay any money still owed on a previous public housing tenancy or bond loan.

Priority for public housing will be given to people in the following order:

1. those experiencing recurring homelessness or who are at risk of long-term homelessness
2. those with high support needs or requiring major disability modifications to current housing
3. those whose current housing is unsuitable for personal, health or family reasons.

Application forms for people in these categories are available from regional Office of Housing offices.

Crisis housing

People who are homeless or at risk of homelessness, can obtain housing information and referral or transitional housing through designated agencies throughout Victoria. These agencies are open during regular business hours. Contact the regional Housing office for information about the nearest agency. For after hours service, the St Kilda Crisis Contact Centre has an information and referral service for homeless people.

Family violence

The Women's Domestic Violence Crisis Service provides crisis telephone counselling, information and support 24 hours a day. It is the central access point for women's refuge accommodation in Victoria, and can arrange referral and support for women and children experiencing family violence.

Aged care

- residential and rehabilitation care for older people
- support and assistance to enable older people to live independently in their own homes.

Children

- a wide range of community services for children and their families, such as kindergartens, early intervention and family support services
- statutory responsibilities such as child protection and juvenile justice.

Federal Government

Department of Health and Ageing

A range of services for older people, people with disabilities and those who provide care are funded by the federal government, and delivered mostly by non-government agencies.

Commonwealth Carelink Centres provide free and confidential information on community aged care, disability and other support services available locally, interstate or nationally across Australia.

The Aged and Community Care Information Line provides information and a referral service about federally funded residential aged care and community-care options.

Aged Care Assessment Services (ACAS) assess the care needs of frail older people and provide advice on what types of available care services are most appropriate to meet those needs. ACAS assessments are free and approvals are valid for 12 months. ACAS also determine eligibility for federally funded community and residential care services.

Community-care services

The Home and Community Care (HACC) program funds community-care services designed to help frail older people, and younger people with disabilities, to live independently in their own homes. Services include nursing care, allied healthcare, meals and other food services, domestic assistance, personal care, home modification and maintenance, transport, respite care, counselling, support, information and advocacy, and assessment. HACC is a joint federal-state, cost-shared program. Some services charge a small fee, depending on the user's ability to pay and the number of services used.

Community Aged Care Packages (CACPs) are designed for people whose care needs are more complex and who need assistance with bathing, meals, shopping and getting around, etc. The Extended Aged Care at Home (EACH) program provides care to people who are eligible for high-level residential care but who prefer to live at home and are able to do so. CACPs and EACH are subsidised by the federal government.

The federal government assists carers of frail older people and those with disabilities maintain their caring role. The National Respite for Carers Program (NRCP) provides information, support and respite assistance. Carer Resource Centres in state capital cities provide carers with information and advice about their role, and the services and assistance available to them. Carer Respite Centres in metropolitan, rural and remote areas can help to arrange respite care when someone needs a break from caring. Respite might be for part of the day or for longer. Carer Allowance and Carer Payment help with daily care or when a carer is unable to support themselves through full participation in the workforce.

Respite care

Respite care is provided by community-care services, such as those under a HACC program. The federal government funds respite support, for example, through the residential aged-care program. To organise respite in an aged-care home, contact the local ACAS. For further information on respite services in your area, particularly day care or emergency short-term respite, telephone your regional Commonwealth Carer Respite Centre on 1800 059 059 (free call).

Residential care

Residential aged-care fees are calculated and regulated by the government. The federal government pays about 75 per cent of the full cost for each resident. Recipients of residential aged-care also contribute to the cost of their care. To be eligible for Federal funding, aged-care homes must be accredited by the Aged Care Standards and Accreditation Agency (see below). The Aged Care Information Line has information on fees and charges for residential aged care. (See key contacts at the end of this manual).

Financial assistance

Applicants for financial hardship assistance may seek assistance with their fees and accommodation charges. Where assistance

is granted, the federal government pays an additional supplement so that the aged-care provider is not disadvantaged.

Under the *Aged Care Act 1997* there are also special arrangements in residential aged care that mean that older people have access to care, irrespective of their capacity to make accommodation payments. Concessional residents do not pay accommodation bonds or charges. The federal government gives additional supplements to aged-care providers on behalf of concessional residents.

Aged-care homes also receive an additional supplement for assisted residents, but at a lower rate than for concessional residents. The criteria for determining assisted resident status are the same as for concessional resident status, but with a higher asset limit.

Special needs

Veterans, older Aboriginal and Torres Strait Islander people, those from culturally and linguistically diverse backgrounds and people in rural and remote areas all have special needs that can be catered for by a range of flexible and quality aged-care services. To find out more about these services, contact the Aged Care Information Line.

People with disabilities

The federal government does not directly fund or plan accommodation support for people with disabilities. This is a state responsibility under the Commonwealth State/Territory Disability Agreements (CSTDA).

Younger people with disabilities are able to be assessed and approved as eligible for residential aged-care services only where there are no other appropriate care facilities or services. Younger people with disabilities who need suitable accommodation, or a family member or carer, should first approach the state disability services for access to appropriate disability supported accommodation.

Complaints

The Aged Care Complaints Resolution Scheme is available to anyone who wishes to make a complaint about a federally funded aged-care service.

Department of Veterans' Affairs (DVA)

The Department of Veterans' Affairs (DVA) assists provision of veterans' benefits through:

- the Repatriation Commission, under the *Veterans' Entitlements Act 1986*
- the Military Rehabilitation and Compensation Commission, under the *Military Rehabilitation and Compensation Act 2004*.

DVA provides subsidised loans for housing and house-related benefits to eligible veterans and their families (under the *Defence Service Homes Act 1918*), and administers compensation for current and former members of the ADF and their dependants under the *Safety, Rehabilitation and Compensation Act 1988*.

DVA aims to provide eligible veterans, spouses and dependants with access to:

- appropriate compensation and income support
- health and other care services to maintain self-sufficiency, wellbeing and quality of life
- advice and information about benefits and services
- support services jointly provided by DVA and the Department of Defence.

DVA offices in all state capitals and 26 Veterans' Affairs Network offices throughout Australia provide information, advice and advocacy services. Other agencies also provide services on behalf of DVA.

Veterans' Home Care (VHC)

This program provides a number of low-level, home-care services designed to allow veterans and war widows/widowers to stay healthy

and remain in their own homes. VHC services include domestic assistance, personal care, home and garden safety maintenance, and respite care. These are part of a range of DVA services including community nursing, allied health services (e.g. physiotherapy, podiatry), counselling, transport for healthcare, home modifications and rehabilitation appliances.

To be eligible for VHC services, a person must be a veteran of the Australian defence forces, an Australian mariner, a war or defence widow, widower of such a veteran or mariner, and have a Repatriation Health Card, either gold (all conditions) or white (specific conditions). If veterans or their partners and carers are not eligible for some VHC services, they may still qualify for equivalent HACC services.

Non-government organisations

Aged Care Standards and Accreditation Agency

The main role of the agency is to manage the accreditation of aged-care facilities according to the Accreditation Standards set by the Commonwealth government. It also provides education and training to help aged-care operators to improve service quality, assists services working towards accreditation and liaises with the Department of Health and Ageing about services that do not meet the standards.

Trained assessors visit aged-care services and speak to staff, management, residents and families to decide whether the facility is meeting all the required standards. The agency then decides how long the accreditation will last; most homes are accredited for three years. Only accredited homes are funded by the Federal government. The agency also monitors facilities to ensure they are maintaining standards and seeking feedback from staff, residents and families. It makes at least one unannounced visit to each home every year.

Note: complaints about aged-care facilities are not handled by the agency. To lodge a complaint about an aged-care service, contact the Complaints Resolution Scheme.

Benetas

Benetas operates an integrated network of specialist residential aged-care facilities in Melbourne and regional Victoria, with day and overnight respite care centres, dementia-specific and palliative care services, and an extensive community-care program supporting older people who want to remain in their own homes. It offers culturally appropriate care and an advisory placement service, and is a provider of CACPs and EACH home-care packages.

Details of Benetas services are available on its website, or by contacting the Advisory Placement Service.

Council of the Ageing (COTA) Victoria

COTA Victoria is a peak body representing the needs and interests of older Victorians, with the aim of enabling them to age well in a just society. Its role includes giving older Victorians a voice in policy development, providing activities programs and information relevant to seniors, representing the views of older people to government, community and business leaders, the media and service providers, and running programs such as:

- Living Longer Stronger – strength training programs aimed at preventing a wide range of health conditions affecting the elderly
- Older Men, New Ideas – enhancing wellbeing and improving health by providing a place where men share their knowledge and experiences
- Residents of Retirement Villages Victoria Inc – an association to give people living in retirement villages the opportunity to have their ideas heard.

Seniors Information Victoria, run by COTA with support from the Department for Victorian Communities, provides free information on issues such as:

- housing options from independent living to residential care
- home-based and community services
- general financial and legal issues
- health and wellbeing
- retirement
- new learning opportunities.

Royal District Nursing Service (RDNS)

The Royal District Nursing Service (RDNS) is the largest and oldest provider of home nursing and healthcare services in Australia. It is a not-for-profit organisation and delivers 24-hour general and specialised nursing and healthcare to homes, schools and workplaces all year round.

RDNS care is provided regardless of age, income or ethnic background. The only criterion is a need for care that can appropriately be met by RDNS. The objective is to improve clients' health and enable them to retain their independence and take an active role in their own healthcare.

RDNS nurses will assess a person's needs and, in consultation with them, develop a care plan and provide the care and/or train them or their family to provide the care needed. Referrals to RDNS can be made by the person, a family member, carer, general practitioner, hospital or other healthcare provider.

Key contacts

Office of the Public Advocate

Level 5, 436 Lonsdale St
Melbourne Victoria 3000
PO BOX 13175 Law Courts Victoria 8010
Local call: 1300 309 337
Fax: 1300 787 510
TTY: (03) 9603 9529
www.publicadvocate.vic.gov.au

Victorian Civil and Administrative Tribunal (VCAT)

55 King St, Melbourne Victoria 3000
Telephone: (03) 9628 9911
Fax: (03) 9628 9932

Other Contacts

Aged Care Complaints Resolution Scheme

Phone: 1800 550 552 (toll free)

Aged Care Information Line

Phone: 1800 500 853 (toll free)

Aged Care Standards and Accreditation Agency

Level 5, 991 Whitehorse Road,
Box Hill 3128
PO Box 398, Box Hill 3128
Phone: (03) 9897 4322 or 1800 288 025 (toll free)
Fax: 9898 7577
Email: vic_tas@accreditation.org.au
www.accreditation.org.au

Benetas Advisory Placement Service

Free Advice Line: (03) 8823 7900

Commonwealth Carer Respite Centre

Phone: 1800 059 059 (toll free)

COTA Victoria

Level 4, Block Arcade
98 Elizabeth Street
Melbourne 3000
Phone: (03) 9654 4443
Fax: (03) 9654 4456
Email: cotavic@cotavic.org.au
www.cotavic.org.au

Department of Human Services (DHS) (State)

50 Lonsdale Street
Melbourne 3000
Phone: 1300 650 172 (local call cost)
www.dhs.vic.gov.au

Disability Intake and Response Service

Phone: 1800 783 783 (toll free)
TTY 1800 008 149

Department of Veterans' Affairs (DVA) (Commonwealth)

Phone: 133 254 or 1800 555 254 (toll free from country Victoria)
www.dva.gov.au

For more information on entitlements under the MRCA or the SRCA contact DVA on 1300 550 461. Further information about the MRCA can also be found at www.mrcs.gov.au

Veterans' Home Care

Information Victoria
Phone: 1300 366 356 (local call cost)
TTY (03) 9603 8806
www.dva.gov.au/health/homecare/mainvhc.htm



Mental Health Branch (DHS)

Phone: (03) 9096 8592
Multilingual Telephone Information Line (24-hour recorded information):

English	(03) 9679 9838
Macedonian	(03) 9679 9831
Arabic	(03) 9679 9825
Mandarin	(03) 9679 9837
Cambodian	(03) 9679 9826
Serbian	(03) 9679 9834
Cantonese	(03) 9679 9827
Somali	(03) 9679 9832
Croatian	(03) 9679 9828
Spanish	(03) 9679 9833
Greek	(03) 9679 9829
Turkish	(03) 9679 9835
Italian	(03) 9679 9830
Vietnamese	(03) 9679 9836

www.health.vic.gov.au/mentalhealth/index.htm

Office of the Chief Psychiatrist

Phone: 1300 767 299 (local call cost)

Chief Psychiatrist

Level 17, 50 Lonsdale Street,
Melbourne 3000
Phone: (03) 9096 7571
Fax: (03) 9096 7697
www.health.vic.gov.au/chiefpsychiatrist

Office of Housing

Department of Human Services,
Office of Housing
50 Lonsdale Street,
Melbourne 3000
Phone: 1300 650 172 (local call cost)
www.housing.vic.gov.au

St Kilda Crisis Contact Centre

After-hours service (10am to 12 midnight,
seven days a week):
29 Grey Street
St Kilda 3182
Phone: (03) 9536 7777 or 1800 627 727 (toll free)

Royal District Nursing Service

Head Office:
31 Alma Road
St Kilda 3182
Phone: (03) 9536 5222
Fax: (03) 9536 5333
www.rdns.com.au

Seniors Information Victoria

247 Flinders Lane
Melbourne Vic 3000
Phone: 1300 13 50 90 (local call cost)
Email: askcota@cotavic.org.au

State Trustees

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

Victorian Equal Opportunity and Human Rights Commission

Level 3, 380 Lonsdale Street
Melbourne 3000
Phone: (03) 9281 7111
or toll free 1800 134 142;
TTY (03) 9281 7110
Fax: (03) 9281 7171
Email: information@veohrc.vic.gov.au
www.humanrightscommission.vic.gov.au

Women's Domestic Violence Crisis Service

Phone 24 Hours: (03) 9373 0123
1800 015 188 (toll free)

Useful websites

Office of the Public Advocate

www.publicadvocate.vic.gov.au

Victorian Civil and Administrative Tribunal

www.vcat.vic.gov.au

Department of Human Services

www.dhs.vic.gov.au

Disability Online

www.disability.vic.gov.au

SRS Information

www.health.vic.gov.au

Victorian Legislation

www.dms.dpc.vic.gov.au

State Trustees

www.statetrustees.com.au

Mental Health Branch (DHS)

www.health.vic.gov.au/mentalhealth

Department of Justice

www.justice.vic.gov.au

Volunteering Victoria

www.volunteeringvictoria.com.au

Aged Care Accreditation Agency

www.accreditation.aust.com

Australian Guardianship and Administration Committee

www.agac.org.au

State Government Call Centre

www.information.vic.gov.au



Glossary

Abuse:

An act or omission that causes physical, emotional or sexual harm and the loss of individual rights. It may also include behaviour management abuse, financial abuse or theft, verbal abuse, restriction of choice and malnutrition.

Administration order:

The legal authority given to an individual or organisation such as State Trustees by VCAT to make financial and legal decisions for an adult with a disability when they are unable to do so. VCAT provides a written copy of the order, which indicates who the administrator is, for how long they will be administrator, and when the order is due to be reviewed.

Administrator:

A person appointed to administer the financial affairs of a represented person by the VCAT Guardianship List.

Advice Service:

This service is provided by OPA during business hours for any person requiring advice on matters affecting a person with a disability.

Advocates:

Members of the staff of OPA responsible for standing up for the rights of people with a disability who are at risk of exploitation, neglect or abuse. Advocates must also act in the best interests of the person with the disability.

Aged Care Assessment Services (ACAS):

Trained professionals who assess a person's mental, physical and social situation to decide whether they are eligible for high level, low level or community aged-care packages or should be referred to supported residential services, extended care services and community services.

Applicant:

The person who makes the application for a guardian to be appointed. The application is made to the Guardianship List of the VCAT.

Chief Psychiatrist:

The person who has responsibility under the Mental Health Act for the medical care and welfare of patients receiving treatment or care for mental illness. The Chief Psychiatrist is required to ensure appropriate standards are maintained in clinical services.

Care plan:

This sets out the health, social and physical needs of a resident of a supported residential service so that the services provided will ensure their wellbeing and quality of life. The proprietor/manager must ensure that a care plan is prepared for every resident and is updated regularly.

Community Residential Unit (CRU):

A house located in the community providing shared supported accommodation to people with a disability requiring in-home support. These houses generally accommodate between four and six people. DHS has responsibility for these houses but may contract management to community service organisations (CSO).

Community Visitor (CV):

An independent volunteer appointed to visit and report on residential services for people with disabilities. Community Visitors have wide powers to visit, inspect and consult, and can take complaints to the relevant minister. Community Visitors Program (CVP), is the program auspiced and coordinated by OPA which supports Community Visitors.

Confidentiality:

The principle that private information should not be passed on to someone else except in very limited circumstances.

Delegated guardian:

The person to whom the Public Advocate delegates authority for a particular guardianship order. This may be a professional guardian from OPA or a volunteer community guardian under the supervision of the Community Guardianship Program Coordinator .

Department of Human Services (DHS):

The state government department with responsibility for all state-funded health and hospital services, aged persons services, hostels and home care, intellectual, physical and sensory disability services, maternal and child health centres, child protection and placement support, juvenile justice, mental health services, Aboriginal affairs, public housing and youth.

Department of Justice (DOJ):

The portfolio that brings together all government activities concerned with reform, administration and enforcement of the law in Victoria, including police prosecution, administration of the courts and tribunals, the prison system, emergency services, drafting of legislation and provision of legal advice to government. OPA is accountable to the Victorian Attorney-General.

Duty of care:

The duty that is required of service providers to exercise ‘reasonable’ care to avoid injury to the person in their care or another person or damage to property as a result of action or inaction.

Facility:

A place that provides a service such as residential aged care.

General Service Plan (GSP):

A plan prepared for an individual with an intellectual disability under the Disability Act which specifies priorities and goals important for all areas of an individual’s life. Service providers then develop individual program plans (IPPs) to assist the individual to achieve particular parts of this overall life plan.

Guardian:

A person appointed by the VCAT Guardianship List to make lifestyle decisions, which may cover accommodation and/or healthcare issues, on behalf of a proposed represented person.

Guardianship List:

The list is the part of the VCAT responsible for hearing, granting or reviewing applications for the appointment of administrators and/or guardians. It appoints guardians to make decisions for people who have a disability and who cannot make these decisions themselves.

Guardianship order:

The legal authority given to the Public Advocate or to a private guardian by the VCAT when appointing a guardian for a person with a disability. The written copy of the order indicates who the guardian is, how long they will be guardian and the limits of their decision-making authority.

Health Regulations:

Regulations under the Health Services Act that set out standards of service provision to be met by proprietors, including administrative and fiduciary (trusteeship) requirements, staffing and safety obligations.

Honorarium:

A fixed amount paid to community visitors and community guardians to cover out-of-pocket expenses.

House supervisor:

The staff member responsible for the day-to-day running of a Community Residential Unit or shared supported accommodation house in the disability services sector.

Individual Program Plan (IPP):

A plan prepared by a service provider for a service user that specifies activities and methods to achieve goals in areas identified. (See General Service Plan.)



Informed consent:

Refers to the capacity of an adult to make a decision (eg to receive medical treatment) that is voluntarily given. Informed consent means that the adult person has the capacity and competence to make judgements after considering the information they are given.

Key parties:

People who are important in the life or care of the represented person.

Legislative principles:

These are the principles that underpin the Guardianship and Administration Act, as set out in s.4(2) of the Act, and which govern the exercise of authority by a guardian, as set out in s.28 of the Act.

Major decisions/significant decisions:

These decisions include those made by a guardian that determine where a person should live or their access to family or friends, authorise the provision or withholding of medical treatment or services, or which involve major disagreement between the parties involved with the represented person.

Mental Health Review Board:

An independent tribunal, with members appointed under the Mental Health Act, which has the legal power to decide if involuntary patients, including people on Community Treatment Orders (CTOs), should remain as involuntary patients or be discharged. It holds review hearings and appeal hearings. Patients or guardians should receive a notice of appeal or review at least seven days before a hearing.

Mental health unit:

An in-patient unit within a mental health facility.

Neglect:

Failure to provide the necessary care, guidance and attention, resulting in physical or emotional harm or loss. Neglect may be caused by an action or by failure to act and may or may not be intentional.

Office of the Public Advocate (OPA):

OPA promotes the rights and dignity of people with a disability, and will act as an advocate for individuals and for positive changes in policies and procedures of government and community organisations. Staff help with complaints about services, care and treatment and the way decisions are made; they will investigate complaints about abuse, neglect or exploitation, and take appropriate action.

Ombudsman (statutory):

The function of the Ombudsman is to investigate complaints about administrative actions by government departments, statutory bodies, or officers and employees of municipal councils. The Ombudsman also receives and investigates complaints made by the public against the police force.

Personal information:

This is information or an opinion about an individual whose identity is apparent from the information. Much of this information is confidential.

Professionals:

People 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.

Privacy:

This is a person's right to have their personal information remain secret and to keep their physical presence free from the intrusion of others.

Protocols:

These are mutual agreements between organisations whose activities are interdependent in some way. These agreements describe the formal or informal processes for working together and describe how difficulties might be resolved.

Public Advocate:

The Public Advocate holds an independent statutory position, and is appointed by the Governor in Council for seven years. The functions of the Public Advocate are set out in s.15 of the Guardianship and Administration Act and include minimising restrictions on the rights of persons with a disability. The Public Advocate heads the Office of the Public Advocate, the organisation established to carry out the functions of the Public Advocate. The Public Advocate can act as guardian of last resort on appointment by the VCAT, and should also promote the development of the abilities and capacities of those with disabilities and protect them from abuse, neglect and exploitation.

Reassessment:

The meeting (or hearing) at which the VCAT considers whether there is on-going need for a guardianship order. This is sometimes called a review.

Rehearing:

A hearing at which the 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.

Resident:

Someone who lives in a facility that provides residential care, e.g. for older people or those with disabilities.

Residential services:

Facilities that provide residential care, including houses and institutions for people with disabilities, supported residential services (SRSs) for vulnerable people and residential services for people with a mental illness.

Respite:

A rest from the carer's responsibility for looking after someone. It may be a few hours, a day, a night or a few weeks.

Responsible person:

The person – either appointed, prescribed or identified through their relationship – who is able to consent to medical and dental treatment on behalf of someone who is unable, because of their incapacity, to consent to treatment.

Revocation:

The removal of guardianship by an order of the 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.

Standards or service standards:

A set of ideas, targets or rules to assist services to identify how they are performing and where they can make improvements in the quality of their service/s. Examples of relevant service standards are the Victorian Standards for Disability Services and the National Mental Health Standards.

State Trustees:

The State Trust Corporation of Victoria, which may be appointed as the administrator of a proposed represented person by the VCAT's Guardianship List.

Victorian Civil and Administrative Tribunal (VCAT):

The legal body that has the power to appoint a guardian.

Vision or mission:

The stated objectives and outcomes of OPA in carrying out its mandate or role.



Glossary of acronyms and abbreviations

ABI	acquired brain injury
ACAS	Aged Care Assessment Services
APAT	Aged Psychiatric Assessment Team
ATO	Australian Taxation Office
CACP	Community Aged Care Package
CLSS	Community Living Support Service
CRU	Community Residential Unit
CSO	community service organisation (formerly called non-government agency)
CV	Community Visitor
DHS	Department of Human Services
DA	Disability Act 2006
DOJ	Department of Justice
DVA	Department of Veterans' Affairs
EACH	Extended Aged Care at Home
FOI	freedom of information
GAA	Guardianship and Administration Act 1986 (Vic)
GSP	General Service Plan
HACC	Home and Community Care Program
HSA	Health Services Act 1988 (Vic)
IDRP	Intellectual Disability Review Panel
IPP	Individual Program Plan
ITP	Independent Third Person
MHA	Mental Health Act 1986 (Vic)
MHRB	Mental Health Review Board
OPA	Office of the Public Advocate
PPS	proposed represented person
RP	represented person
SRS	supported residential service
VCAT	Victorian Civil and Administrative Tribunal
VHC	Veterans' Home Care