



November 2021

Guardianship Toolkit for Victorian Hospitals

Frequently Asked Questions

What happens after the Victorian Civil and Administrative Tribunal (VCAT) has appointed the Public Advocate as guardian for the patient?

After VCAT has appointed the Public Advocate as guardian for a patient, the formal guardianship order, the notice of appointment and accompanying material is sent to OPA electronically. OPA cannot start the process of appointing a guardian until it has received these materials. This, however, can take several days or, in some circumstances, weeks. If there are any urgent issues or decisions required, and OPA has not received the materials from VCAT, you may be directed to contact VCAT in the first instance requesting this be prioritised.

If you have not heard from the Intake Team after two to three weeks since the order was made, you can contact it on 1300 309 337.

Why can't OPA make decisions for the patient on the day the order is made?

It is not unusual for the hospital to receive a copy of its patient's guardianship order from VCAT on the day of the VCAT hearing, however, to meet its legal obligations, OPA needs to receive the order, notice of appointment and accompanying material, such as the application, to be provided directly from VCAT. OPA is not able to sign any documents, such as Aged Care Assessments (ACAS) or Transitional Care Program (TCP) consent forms, otherwise.

What happens when OPA receives the necessary guardianship materials from VCAT?

The Intake Team will create an electronic record for the represented person (patient) on OPA's client management system which will record the order details and any information provided in the VCAT Member's referring notes. The Intake Team will contact the applicant for information to assist with the triage process.

How long will it take for a guardian to be allocated?

The VCAT Member's notes may provide information to OPA regarding whether they consider the matter to be urgent. While this information is important, OPA will triage the matter and determine priority and risk rating in accordance with its risk matrix and other guardianship matters awaiting allocation.

If there are changes to the circumstances or issues making the matter more urgent, the applicant or other parties are encouraged to contact the Intake Team so that it can update its records accordingly and consider prioritising allocation where needed. OPA cannot provide any specific timeframes for assigning a guardian, as OPA needs to consider the matter among all its guardianship matters. At any one time, OPA is guardian to 1,000 Victorians.

What decisions can the Intake Team consider?

The Intake Team can make interim decisions while the matter is awaiting allocation of a guardian, such as consent for ACAS, TCP referrals and NDIS (National Disability Insurance Scheme) access requests, subject to the represented person's will and preferences. There are some circumstances where respite or short-term accommodation decisions may be considered, however, any ongoing or permanent accommodation decision must be made by the allocated guardian.

What information does the Intake Team need to consider making a decision for the represented person, while they are awaiting a guardian?

The *Guardianship and Administration Act 2019* sets out the relevant duties and decision-making principles, which includes considering the person's will and preferences prior to making a decision.

If you are requesting a decision by an Intake guardian, you will need to provide the relevant information including the person's will and preferences in relation to the decision and the outcome of discussions about those (such as whether the person is agreeable to the proposed plan). The Intake Team may request further information to consider the decision, such as recent reports and other options that have been explored. If the person is opposed to the proposed decision, the Intake Team generally cannot make a decision against the person's will and preferences and this will need to be considered by the guardian when allocated.

OPA understands that the treating team will have developed a discharge plan with recommendations for the guardian to consider and that this will have been a complex process in considering all less-restrictive alternatives, where possible. The guardian will consider the treating team's recommendations, as well as the person's will and preferences, in line with the relevant laws prior to making a decision.

What can I do to assist the delegated guardian to make their decision/s?

The information used by VCAT to determine the need for guardianship, in terms of the impact of the person's disability on their decision-making, is usually different than the information used by a guardian to determine personal or lifestyle decisions such as accommodation, access to services and medical treatment. In some cases, it may have been many months since the application was made to VCAT with the relevant medical report, and so the person's circumstances may have changed.

The guardian will require up-to-date information regarding the person's functional capacity and recommendations from the treating team. They will liaise with the treating team and, in most cases, will rely on the hospital social worker to collect and provide information to the guardian to assist with decision-making.

The social worker should speak to the person regularly regarding their will and preferences in relation to a proposed decision(s). By regularly checking in with the person and recording this information, the guardian will have information to assist them in determining whether the person is able to consistently express their will and preferences. If the person is unable to consistently express their will and preferences, the guardian is required to determine if they can gather enough information to form a belief as to what the person's will and preferences would be if they were able to express them. The information collected will help to understand the person better.

You can also gather information that may assist the guardian by speaking to the people involved who are important to them, such as friends and family. If the guardian is not able to determine the represented person's will and preferences or form a belief as to them, they will act in a manner which promotes the represented person's personal and social wellbeing (s 9c of the GAA 2019)

If the treating team is recommending the person needs to enter residential aged care, what other information may be needed?

If the treating team have made a recommendation for the person to enter residential aged care, the social worker should seek information from the administrator (if appointed) to determine if the person is likely to be able to pay a Refundable Accommodation Deposit, (RAD) and how much this may be. VCAT may have appointed an administrator who is family member or friend, or a professional service like State Trustees or Australian Unity.

Similarly, if the treating team is looking at proposing an interim option, such as respite care in a residential aged care facility, they may need to liaise with the person's administrator, where applicable.

Suggested information which may assist the guardian

Below is a table that suggests which information you can provide if requesting a decision by the Intake Team or delegated guardian.

Decision	Examples of different circumstances	Relevant information that will assist OPA
Accommodation	<p>The person wants to return home</p> <p>The person is agreeable to supported accommodation</p> <p>The treating team is supportive of a return home with supports</p> <p>The treating team is recommending supported accommodation (residential aged care or disability accommodation)</p> <p>The treating team or family member have identified a suitable accommodation option, or several options, to present to OPA</p>	<p>Information about home arrangements eg. Are they renting or own their home? Do they live with others or alone? Do they have family or other support available/nearby?</p> <p>Information which provides details about the level of support the person would require to return home safely, and whether (and how) this could be met.</p> <p>Information about any interim options and the person's will and preferences</p> <ul style="list-style-type: none"> • Occupational Therapy assessment report eg. How many hours of support a day would the person require? What tasks can they do independently or need assistance with? Can the person be left unsupervised? Can the person manage their own medication? • Physiotherapy assessment report eg. Does the person require mobility aids? • ACAS assessment (if person is over 65 years of age) eg. Has this been completed? Does the person have an existing home care package?

		<ul style="list-style-type: none"> • NDIS eg. Is the person an NDIS participant? If not, are they eligible and has an access request form submitted? Do they have a support coordinator involved? Is there funding for accommodation? Is a change of circumstances required? Have you provided reports to the NDIS?
Services	<p>The person has existing services that are not meeting their needs (ie. not enough funding)</p> <p>The person has a history of refusing services they are funded for or need</p> <p>The treating team has recommended the person will need services in the community to return home safely</p>	<p>Information about the person's current funding and services, including any barriers to receiving services (eg. refusal and reasons for this) or any concerns regarding services not meeting the needs of the person.</p> <p>Information about the person's will and preferences regarding service decisions:</p> <ul style="list-style-type: none"> • Does the person currently receive a home care package (aged care) or NDIS funding? • Is there a provider who had been providing services prior to admission? Is there an option to increase services? • Is there a case manager or support coordinator for the person? • If no services currently, is the person agreeable to receiving services and have any referrals been made? (eg. ACAS or NDIS access request form)
Medical treatment	<p>Where there is a medical treatment decision for which the person has an OPA guardian (refer to guardianship order)</p>	<p>Information about the proposed medical treatment</p> <p>The health practitioner must provide the relevant information if requesting the OPA guardian make a medical treatment decision, in line with the <i>Medical Treatment Decisions and Planning Act 2016</i>.</p> <p>This will include information about the health practitioner's clinical assessment that the person lacks capacity for the specific medical treatment decision.</p> <ul style="list-style-type: none"> • Has the health practitioner discussed the proposed treatment with the person and determined they lack capacity for the decision (as per definition in the Act)? <p>The guardian will ask the health practitioner other relevant information to comply with their duties as the person's medical treatment decision-maker.</p>

Resources and Links

- [The role of a guardian \(and steps for decision-making flowchart\)](#)
- [Guardianship and Administration from 1 March 2020 \(under the *Guardianship and Administration Act 2019*\)](#)
- [Medical decision-making information \(and 'Can your adult patient consent?' flowchart\)](#)

Contact

Victorian Civil and Administrative Tribunal (VCAT)

Phone: 1300 018 228

Email: humanrights@vcat.vic.gov.au

Office of the Public Advocate (OPA)

Phone: 1300 309 337 (if a guardianship order has been made by VCAT, ask for the Intake duty worker)

Email: intakeresponse@justice.vic.gov.au