

Guardianship and administration

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Explanatory notes

1. Types of decisions

Financial matters: including paying expenses, making investments, a real estate transaction

Personal matters: decisions such as where and with whom a person lives, access to services, restricting visits to a person

Medical treatment: medical treatment is defined by the *Medical Treatment Planning and Decisions Act 2016* and includes surgery, physical treatment, prescription pharmaceuticals, treatment for mental illness and dental treatment by a registered health practitioner or paramedic

2. Decision-making capacity

A person has decision-making capacity if they are able to understand the information relevant to the decision, retain that information to the extent necessary to make the decision, use or weigh that information as part of the process of making the decision, and able to communicate their decision in some way. Sometimes a specialist assessment may be required.

Supported decision-making

The person may have decision-making capacity to make the decision if they have practicable and appropriate support. For example, this may be a worker explaining information in a way the person can understand or with visual aids, or may be the support of another person (such as a supportive attorney appointed by the person, or supportive guardian/supportive administrator appointed by the Victorian Civil and Administrative Tribunal (VCAT)).

3. Substitute decision-makers

Enduring power

An enduring power of attorney is a legal document made under the *Powers of Attorney Act 2014*. It lets a person appoint someone who can make decisions for them about financial and/or personal matters. The power endures (continues) if the person who made the appointment is unable to make decisions about particular matters. Valid appointments made under previous legislation remain valid.

For example, these may be:

- enduring power of attorney (financial)
- enduring power of guardianship
- medical enduring power of attorney.

Medical treatment decision makers

See OPA's ['Can your adult patient consent?'](#) flowchart for the medical treatment decision maker hierarchy.

Guardians and administrators

Guardians and administrators are appointed by VCAT. Administrators can only make decisions about the financial matter(s) specified in the order. Guardians can only make decisions about the personal matter(s) specified in the order.

Those appointed under the *Guardianship and Administration Act 2019* must make decisions that give effect to the person's will* and preferences, unless this would cause serious harm to the person.

* For example, a person may express, through words or actions, their will to live independently and be well.

4. Applications to VCAT

Anyone can apply to VCAT if they are concerned a person with disability does not have capacity to make a decision that needs to be made and an order is needed (e.g. they think it is needed because of concerns about decisions the person is making, or others are making for them). An **urgent application** may be needed if there is an immediate risk of harm to the health, welfare or property of the person.

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