

APPLICATION FOR GUARDIANSHIP – VCAT

Guardianship is the appointment of a person (**a guardian**) to make decisions for an adult with a disability when they are unable to do so.

When is guardianship needed?

Guardianship is needed when:

- a person with a disability is at risk because they cannot make decisions about their own personal and lifestyle affairs
- a decision needs to be made on their behalf.

An application may be made to VCAT to appoint a guardian using the prescribed Form. There are no fees for making such an application.

We set out below the requirements necessary to make an application through VCAT:

Appointing a Guardian or Administrator

VCAT can make an order appointing a guardian or administrator only if

- The person is 18 or over;
- The person has a disability (intellectual impairment, mental disorder, brain injury, physical disability or dementia)
- The person is unable to make reasonable decisions about themselves or legal or financial affairs
- There is no other less restrictive way to meet those needs

What type of order can be made?

Plenary Guardianship – confers on the plenary guardian all the powers and duties that a person would have if he or she was a parent and the represented person were a child.

Limited Guardianship – confers limited guardian powers and duties as specified by the order. Generally a VCAT guardianship order will be a limited guardianship order.

Who can be a Guardian?

VCAT can appoint a relative, friend or the Public Advocate.

A Guardian must be a person

- Willing to act in the person's best interests;
- Interests do not conflict with the person's interests;
- Willing to encourage the person to make their own decisions and willing to take their wishes into account;
- Who has sufficient expertise as a Guardian;
- Willing to encourage the person to participate in the life of the community;
- Willing to attend VCAT hearing and satisfy VCAT that they should be appointed

What does the Tribunal consider when appointing a guardian?

When considering who is a suitable person to act as a guardian the Tribunal must consider:

- Wishes of the person
- Desirability of preserving existing family relationships
- Compatibility of the proposed guardian
- Whether the proposed guardian will be available and accessible to the person

Where a parent or nearest relative is proposed as guardian that person as a nearest relative or parent this person must not be believed to be in a position to conflict with the person's best interests or the proposed guardian.

The Tribunal may appoint the Public Advocate where it believes that no other person can fulfil the requirements of a guardian.

Who is entitled to notice of an application?

Each of the following is entitled to notice of making an application for a guardianship order, notice of the hearing of the application and notice of any order made by the tribunal

- the nearest relative (spouse or domestic partner or where no spouse or partner the person's relative who is 18, the eldest of two or more relatives)
- son or daughter
- father or mother
- brother or sister
- grandson or granddaughter
- uncle or aunt
- nephew or niece
- primary carer
- Public Advocate
- Any administrator of the person's estate

The Applicant is responsible for notifying the above people including the person for whom the application is made by sending each a copy of the application.

VCAT will give notice of the hearing to those included in the application and serve any orders made by VCAT.

What to do for the hearing

The applicant must attend the hearing.

It is also appropriate that the person applied for attends the hearing to give VCAT their views about the application (if possible and appropriate)

Access to documents

VCAT may permit a party or other person to have access to documents held by VCAT if approved by them. Unless a request is made at a hearing any request should be made as soon as possible (in writing and must specify the document requested).

What documents should be brought to the hearing

If VCAT doesn't already have the following documents they should be brought to the hearing:

- A copy of any medical or other expert reports;
- A copy of enduring power of attorney, enduring power of guardianship or enduring power of attorney medical treatment
- A copy of any will made by the person (not to be made part of the application)

The hearing

Hearings are conducted informally and everyone is encouraged to express their views to the tribunal member at the hearing:

- Witnesses can give evidence orally, in writing or both
- Persons attending the hearing may hear the evidence, ask questions and make comments
- The Tribunal member can ask questions of anyone in attendance at the hearing or call people who are not present

What must the Tribunal consider before appointing a Guardian?

- If the needs of the person can be met by less restrictive means
- Any wishes of nearest relatives or other family
- Desirability of preserving existing family relationships
- The Tribunal must be satisfied that the appointment of an administrator is in the person's best interests
- The Tribunal cannot make an order appointing a plenary guardian unless satisfied that a limited guardianship would be insufficient
- Where the Tribunal appoints a limited guardian the order must be made in a way that is least restrictive on the person

Reasons for decision

VCAT will give oral reasons for a decision at the hearing on the evidence presented. If oral reasons are given a party may within 14 days request written reasons.

If someone believes the Tribunal has made a wrong decision, they may apply for a rehearing within 28 days.

Reassessment of order

VCAT will normally reassess a Guardianship order within 3 years. An order may be cancelled if no longer required..

For further details please contact Adrian Riccioni at Lilydale on 9739 7377 and Frank Lamari at Carlton on 9344 1700.

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