

## **Application for Administrator – VCAT**

Administration is the appointment of a person (an **Administrator**) to make legal and financial decisions for an adult with a disability when they are unable to do so.

### **When is administration needed?**

Administration is needed when:

- a person with a disability is at risk because they cannot manage their own financial and legal affairs
- a decision needs to be made on their behalf

### **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 decisions can an administrator make?**

An administrator can make legal and financial decisions which include:

- managing banking and property
- paying bills
- making investments (in limited circumstances)

An administrator **cannot** decide personal and lifestyle decisions including accommodation and health care (These decisions are made by a guardian).

### **Who can be an administrator?**

VCAT can appoint a relative, friend or State Trustees. Alternately VCAT can appoint a trustee company, an accountant or a solicitor.

Where there is no agreement between family members or there is no one available, VCAT can appoint an independent administrator.

### **An Administrator 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;
- Is competent to manage the person's affairs;
- Is familiar with the person's values and beliefs;
- 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 an administrator?**

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

- Wishes of the person
- Compatibility of the proposed guardian
- Whether the person can be made subject of VCAT orders

**Who is entitled to notice of an application?**

Each of the following is entitled to notice of making an application for an administration order, notice of the hearing of the application and notice of any order made by VCAT:

- 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
- grandfather or grandmother
- 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);
- A completed Estate Summary form which you should receive with your application form.

**Fees**

There is no fee for applying to the VCAT Guardianship List.

Government regulations provide that when VCAT appoints an administrator an annual fee of between \$50 and \$100 is payable to VCAT for overseeing the administration order. The Administrator may ask VCAT to reduce or waive this fee in undue hardship cases.

An Administrator must prepare annual accounts (unless exempt) which are to be examined by State Trustees (or another appointed person) for which a fee is payable.

### **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

### **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**

Orders can be for a maximum period of three years. And can be cancelled if they are no longer required.

VCAT generally reassess an Administration order within 3 years.

### **What are the limits for an administrator exercising their power?**

There are safeguards for Administrators to ensure they act in the person's best interests.

- Administrators may at any time ask VCAT for advice.
- Private administrators must regularly lodge an account of the person's finance for VCAT to examine.
- Administrators must develop a plan which indicates to VCAT the way they intent to manage the assets and income of the person.
- Any person who believes that the administrator is not acting in the person's best interests can apply to VCAT for reassessment.

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

*DISCLAIMER: The above information is general in nature and believed to be correct at the time of writing. All matters should be discussed fully with your solicitor before any action is taken. No responsibility will be accepted by this firm for any loss or damage suffered by anyone as a result of the information contained above.*