

# Introduction to Administration

If the Victorian Civil and Administrative Tribunal (VCAT) has appointed you as an administrator on or after 1 March 2020, your authority comes from the *Guardianship and Administration Act 2019*. The Act sets out your powers and duties as administrator.

An administrator's main role is to make financial decisions on behalf of a represented person. For VCAT to be able to appoint an administrator for a person with a disability, there are a number of things about which it must be satisfied. VCAT needs to determine that, because of the person's disability, they do not have decision-making capacity about one or more aspects of their financial affairs. VCAT also needs to determine that the person needs an administrator, and that the appointment of an administrator will promote the person's personal and social wellbeing.

When you make decisions, they must be made in accordance with the Act. In broad terms this means that you make decisions that give effect to the represented person's will and preferences, unless this would cause them serious harm.

The Office of the Public Advocate (OPA) and State Trustees have developed a guide to help you understand your powers and duties as administrator.

The full guide is available on the State Trustees website [statetrustees.com.au/adminguide](https://statetrustees.com.au/adminguide) or the OPA website [publicadvocate.vic.gov.au](https://publicadvocate.vic.gov.au). You may also wish to obtain a copy of the Act, which can be accessed via the Victoria Law Today section of the Victorian Legislation and Parliamentary Documents website [legislation.vic.gov.au](https://legislation.vic.gov.au) or contact the OPA Advice Service on 1300 309 337.



## Administration order

The administration order is a legal document that sets out your powers as administrator and may include restrictions or limitations on your power. Administration orders cover financial and property matters.

### Administrators' powers

The administration order will set out the financial matters you have power to make decisions about and will specify the powers you have when making those decisions. When the order is made, you are given powers under section 46(1) of the Act. These include the power to:

- make investments on behalf of the represented person and make some types of gifts
- read the Will of the represented person if it is in your possession
- sign and do anything necessary to give effect to a power that you have been given in the order or a duty that you have.

VCAT may also give you specific powers under section 52 of the Act. VCAT can also grant you power to bring or defend legal proceedings under section 51 of the Act. It is important to check what, if any, powers you have been granted under section 51 or 52.

## Administrators' duties

Under section 55 of the Act you must, amongst other things:

- act as an advocate for the represented person
- encourage and assist the represented person to develop their decision-making capacity in relation to financial matters
- act in a way that protects the represented person from neglect, abuse or exploitation
- act honestly, diligently and in good faith
- exercise reasonable skill and care.

As administrator, you must also:

- take possession and care of, recover, collect, preserve and administer, the property and estate of the represented person
- generally manage the property and financial affairs of the represented person.

You must carry out your duties, and use your powers, consistently with the Act and the order.

## Decision-making

An administrator may be required to make many financial decisions on behalf of the represented person through managing day-to-day financial obligations or making bigger decisions relating to the sale of property or determining how much money is available for holidays. The Act guides administrators about how they should make decisions and sets out decision-making principles in section 9. In broad terms, it says an administrator should:

- give all practicable and appropriate effect to the represented person's will and preferences if these are known and, if not, to what you believe these are likely to be
- only override the represented person's will and preferences if it is necessary to do so to prevent serious harm to them.

In some circumstances, you may not be able to identify the represented person's likely will and preferences. If this is the case, your decision should promote the represented person's personal and social wellbeing. This term is defined in the Act.

Decision-making steps are explained in detail in the full Administration Guide on the State Trustees website. Broadly, these include:

- determining whether you have the authority to make the required decision
- determining whether the represented person can be supported to make the decision themselves
- if necessary, making the decision for the represented person according to their will and preferences.

## Will and preferences

The term 'will and preferences' is not defined in the Act. It could be thought of as what is important to the represented person.

A person's will may be thought of as what drives them; a person's preferences reflect the things they like.

It may be necessary to try to reconcile evidence of a person's will and preferences that appears to be inconsistent. For example, a person with dementia might say they want something that contradicts how they are behaving.

## Administrators' obligations to VCAT

In the order VCAT will generally require that you lodge a Financial Statement and Plan (FSP) by a specified date (you usually have six weeks to do this). The FSP indicates to VCAT how you will manage the financial affairs of the represented person. You should keep a copy of the FSP once completed. The FSP template is available on the Financial Statement and Plan page of the VCAT website [vcat.vic.gov.au](http://vcat.vic.gov.au).

An administrator must lodge an annual Account by Administrator (ABA) with VCAT for examination or auditing by a person appointed by VCAT. The ABA is an account of all dealings and transactions relating to the financial matter(s) specified in the administration order, and a statement of assets and liabilities. ABAs are now lodged online via the Guardianship and Powers of Attorney page of the VCAT website [vcat.vic.gov.au](http://vcat.vic.gov.au).

