

**Practice Note – PNG1
Guardianship List – General Procedures**

Application	Guardianship List
Effective date	1 April 2020
Special note	Please ensure that you are using an up-to-date version of this practice note. Other practice notes may also apply.
Further information	Many procedures common to the Guardianship List and to other VCAT Lists are described in the Practice Note called PNVCAT1 – Common Procedures. A complete set of current practice notes are available on the Tribunal website at www.vcat.vic.gov.au .

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Introduction

1. This practice note applies to the practice of VCAT in exercising a function allocated by the *Victorian Civil and Administrative Tribunal Rules 2008* (Vic) (VCAT Rules) to the Guardianship List of the Human Rights Division.
2. In any proceeding, the Tribunal may at its discretion vary the operation of a practice note by direction or order.
3. This practice note has been issued by the Rules Committee pursuant to s 158 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) (VCAT Act).
4. In the Guardianship List, VCAT hears cases under the *Guardianship and Administration Act 2019* (GA Act), the *Powers of Attorney Act 2014* (POA Act) and the *Medical Treatment Planning and Decisions Act 2016* (MTPD Act).

Definitions

Word	Definition
List	A Tribunal list established under the VCAT Rules through which the functions of the Tribunal for certain types of proceedings are allocated or exercised (e.g. Building and Property List, Guardianship List, Planning and Environment List).
GA Act	<i>The Guardianship and Administration Act 2019</i> (Vic)
Primary carer	The person who is in a care relationship and has responsibility for a person's care.
Represented person/proposed represented person	A represented person is someone who has a guardian or administrator appointed under the GA Act. A proposed represented person is someone about whom an application has been made for the appointment of a guardian or administrator.
Supported person/proposed supported person	A supported person is someone who has a supportive guardian or administrator appointed under the GA Act. A proposed supported person is someone about whom an application has been made for the appointment of a guardian or administrator.
Guardianship order	An order made under Part 3 of the GA Act appointing someone to make decisions for the represented person about personal matters. The categories of personal matters to be decided by the guardian are set out in the order. For example, a guardian may have power to decide where the represented person lives or what services they receive.
Administration order	An order made under Part 3 of the GA Act appointing someone to make decisions for the represented person about financial and legal matters. This may be limited to particular kinds of matters, or even extend to the whole of the represented person's estate, as set out in the order.

Reassessment	Once a guardianship or administration order or a supportive guardianship or administration order is made, it will be reassessed regularly, if it has not been revoked. VCAT usually reassesses guardianship orders at least every 12 months and administration orders at least every three years. Supportive orders are reassessed at similar intervals. The represented or supported person or anyone else may apply for a reassessment of a guardianship or administration order (or supportive order) at any time. VCAT will then decide whether a reassessment hearing is required.
Rehearing	Up to 28 days after a final order has been made under the GA Act, the POA Act or the MTPD Act, a party may apply for a rehearing at which the whole matter will be heard again by a more senior member of VCAT than the one who heard it first. A non-party who was entitled to notice of the hearing may be able to apply for a rehearing if VCAT gives leave.
Party	The people most closely concerned in a proceeding are the parties. The following persons are parties to a proceeding: the person who makes an application, the (proposed) represented or supported person, the principal who has given an enduring or supportive power of attorney and the attorney under such a power and the person about whom medical treatment decisions are to be made. Other people may also be parties or may be joined by an order.
Decision-making capacity	This term is defined very carefully in each of the GA Act, the POA Act and the MTPD Act. There are some differences in the definitions but all three say that a person is presumed to have decision-making capacity unless there is evidence to the contrary.
Will and preferences	This term is used in the GA Act and the will and preferences of a represented person or proposed represented person are central to the operation of that Act. This term does not refer to a person's final will and testament, but rather to what is most important to the person in their life.

The kinds of cases heard in the Guardianship List

5. The Guardianship List conducts hearings about the following matters:
 - Applications for appointment of a guardian or administrator
 - Applications for appointment of a supportive guardian or supportive administrator
 - Reassessments of appointment of a guardian or administrator or supportive guardian or administrator (both regular reassessments and otherwise when a new hearing is required, such as a change of relevant circumstances)
 - Applications for advice to a guardian or administrator, person with an interest in the estate of a represented person, supportive guardian or administrator, attorney, medical treatment decision-maker or health practitioner
 - Other applications under the GA Act such as medical treatment and special medical procedures for people who are unable to make medical treatment decisions
 - Applications for orders about enduring powers of attorney
 - Applications for orders about supportive powers of attorney
 - Rehearing of cases decided under the GA Act, the POA Act and the MTPD Act
 - Applications for orders under the MTPD Act

How to begin a proceeding

6. Application forms are available on the [VCAT website](#).
7. The applicant may attach supporting documents to the application, such as a medical report or reports from someone providing services to the person the application is about.
8. Every application should include sufficient information for the other parties to know what issues will be discussed at the hearing.
9. A person applying for the appointment of a guardian or administrator or supportive guardian or administrator for someone (the proposed represented person) must provide (or arrange for) a medical report about the disability of the proposed represented person and their capacity to make decisions. VCAT provides a [form](#) for a medical report to be completed by a medical practitioner.
10. A person applying for reassessment or revocation of a guardianship order or an administration order on the grounds that the represented person has capacity to make their own decisions is expected to provide with the application a medical report about the represented person's capacity to make decisions.
11. A person applying for orders about an enduring power of attorney must provide a copy

- of the signed power of attorney with the application.
12. A person applying for revocation of an enduring power of attorney must provide a medical report about the current capacity of the principal (that is, the person who made the power of attorney) to make an enduring power of attorney.
 13. A person applying for revocation of the appointment of a medical treatment decision-maker must provide a report about the decision-making capacity of the person who made the appointment.
 14. The applicant must immediately copy the application to all of the following people:
 15. The applicant must immediately copy the application to all of the following people:¹
 - The proposed represented person
 - Any primary carer
 - Any current guardian or administrator
 - Any person the applicant proposes as guardian or administrator or supportive guardian or administrator
 - The person appointed as the attorney if the application is about a power of attorney (enduring or supportive)
 - The person who appointed the attorney or supportive attorney (the principal) if the application is about a power of attorney
 - Any appointed medical treatment decision maker or support person if the application is about that kind of appointment or is about the medical treatment of the person who made the appointment
 - Any other person who has been joined as a party by order of VCAT
 16. In addition, if the applicant is aware of a person who is likely to be affected by the application (such as someone who lives with the person who is the subject of the application) then the applicant should send that person a copy of the application and include their contact details in the application so VCAT can notify them of the hearing. This helps to avoid the need for adjournments or further hearings which may arise if a person likely to have evidence or a legitimate interest has been excluded from the hearing.

How VCAT deals with applications

17. When an application is filed, the registry may contact the applicant about any material which is missing. Applications are listed for hearing as soon as possible and usually within 30 days.
18. In applications for the appointment of guardian or administrator or a supportive administrator or guardian, the VCAT registry may also contact the applicant, the

represented person or other parties to seek information about the known or likely will and preferences of a proposed represented or supported person.

The parties

19. In a hearing of an application for appointment of a guardian or administrator or supportive guardian or administrator, or a reassessment of an appointment already made, the following people are parties:
 - the person making the application
 - the person the application is about (proposed represented person, represented person, supported person or proposed supported person)
 - any person joined by VCAT as a party.
20. In a hearing of an application for orders about an enduring power of attorney or supportive power of attorney, the following people are parties:
 - the person making the application
 - the person who gave the power of attorney
 - the attorney (or supportive attorney)
 - any person joined by VCAT as a party.
21. In the hearing of an application for VCAT's consent to a special procedure, the following people are parties:
 - the person who made the application
 - the patient
 - any person joined by VCAT as a party.

Joining or removing parties

22. A person who is not a party in a proceeding in the Guardianship List may apply in writing to be joined as a party. VCAT has power to join any person as a party if satisfied it is desirable to do so. Orders joining a person as a party may be made before the first hearing, at a subsequent hearing or on the papers, depending on the circumstances.
23. A person may be removed as a party either on written application by a party or if VCAT decides to do so. A party may be removed if VCAT considers they are not a proper or necessary party in the proceeding. Again, such orders may be made at a hearing or on the papers, as appropriate.

Notice about applications, hearings and orders

24. Being entitled to receive notice of the hearing is not the same as being a party.
25. A number of people are entitled to notice of an application in the Guardianship List, even if they are not parties. Those people are also entitled to be notified of the hearings and of any orders made VCAT. They are as follows:
- Anyone who is a party (see above)
 - The spouse or domestic partner of the proposed represented person or proposed supported person
 - The primary carer of the proposed represented person or proposed supported person
 - Any person referred to in the application as having a direct interest in the application
 - In an application for guardianship where no other guardian is proposed, the Public Advocate
 - Any person who VCAT decides should be notified.
26. In a hearing of an application for an order about a power of attorney or supportive power of attorney, the following people are entitled to notice of the application, the hearing and any orders made by VCAT:
- The applicant
 - The person who made the power of attorney
 - The attorney under the power of attorney
 - The supportive attorney under a supportive power of attorney
 - The principal's domestic partner, if they have one
 - The principal's nearest relative
 - Any person who VCAT decides should be notified.

Communicating with other parties

27. Parties and others attending a hearing are free to discuss the case before a hearing. Confidential information should only be discussed in general terms. There is no need to discuss matters before the hearing if that is likely to lead to further dispute.

The nature of hearings in the Guardianship List

28. The legislation which applies to the Guardianship List protects people who have or need a substitute decision-maker or supportive decision-maker. Accordingly, hearings are not usually adversarial. Parties should be prepared to participate in a hearing conducted with a view to protect or fulfil the needs of the person who has or may need an administrator, a guardian, an attorney or a supportive attorney, administrator

- or guardian, and to focus on what is important to that person.
29. The registry may contact a medical practitioner directly to obtain a medical report about a person who may need a guardian or administrator appointed if there is insufficient evidence on the file.
 30. Sometimes, in appropriate circumstances as determined by the presiding member, the member will arrange to speak privately with the person who has or may need a substitute decision-maker (guardian, administrator, attorney) or supportive decision-maker (guardian, administrator or attorney). The proposed (or actual) represented or supported person or principal is the one whose rights will be affected by VCAT's orders and what they want (their views, their wishes or will and preferences) and wishes are highly relevant. There is no risk of unfairness in speaking privately to the person at the centre of the proceeding given that no other person's rights are in competition with theirs.
 31. Parties and their legal representatives (if any) should be prepared for hearings to be conducted with a level of formality appropriate to the particular circumstances of the case. In many cases this will be a minimal level of formality.
 32. If there is a dispute at a hearing about relevant facts or about matters of law, a further hearing may be listed for a longer time. In those cases, the parties should be prepared for a more formal procedure and the presiding member may give directions about preparation for the next hearing.
 33. Hearings are open to the public, as are all VCAT hearings, unless an order is made to the contrary. However, because many hearings concern sensitive health information or family issues, it is normal for the Tribunal to ask each person present to explain why they are there.
 34. In the Guardianship list, the VCAT frequently gives its decision and reasons for decision orally at the end of the hearing. The Tribunal is not obliged to give written reasons, unless a party requests them within 14 days after the order, or the decision is reserved.

Who should attend the hearing

35. The person who made the application must attend the hearing.
36. For the appointment of a guardian or administrator or supportive guardian or administrator, the proposed represented person or proposed supported person must attend, unless VCAT is satisfied the person does not wish to attend or that their attendance is unreasonable or impracticable. Applicants and other parties should try to arrange for the person to attend or to produce evidence about the person's opposition to attending or the reasons it is impracticable or unreasonable for them to

attend.

37. In other cases, the person who is the subject of the application – whether they are the person who needs a medical treatment decision to be made, or the person who gave an enduring or supportive power of attorney – should also attend if possible. If that person does not attend, the applicant should be prepared to give evidence about why that is not possible.
38. A party who wishes to give evidence must attend. Also, any other person who wishes to be joined as a party or who wishes to give evidence for one of the parties should attend.

Filing and serving documents

39. If a person provides a document to VCAT in relation to an upcoming hearing, the person must immediately provide a copy of the document to all parties.
40. VCAT accepts that many self-represented parties do not understand the importance of this and sometimes documents are filed with VCAT and not served on the other parties. The presiding member at the hearing can make orders to rectify this (for example, by allowing time for people to read the documents or adjourning the hearing to another day if necessary).

Confidentiality of information

41. No person may publish or broadcast a report identifying any party in a proceeding in the Guardianship List unless VCAT makes an order permitting it. See Schedule 1 to the VCAT Act clauses 37, 50, 51AJ.
42. Section 146 of the VCAT Act allows both parties and non-parties access to VCAT files. VCAT has power to give directions preventing access to files or particular documents. That power is used where needed in the Guardianship List to protect information about a proposed represented person or represented person, or proposed supported person or supported person, which is confidential or sensitive.
43. All requests for access to documents on a proceeding file are referred to a member of VCAT to consider whether access should be granted and on what conditions. A document which has been filed may contain sensitive personal information which should not lightly be disclosed to all parties. This includes information given in confidence (for example, by a medical practitioner) and information about a person's health, finances or other personal affairs or family or domestic issues. These documents are referred to in this practice note as 'sensitive documents'.
44. A person who files a document can ask the registry not to disclose it to other persons

and the registry can act on that request where appropriate. However, there will be occasions at a hearing where even those documents must be disclosed to the other parties, depending on what the presiding member decides.

45. Documents on a VCAT file may be subject to obligations under the common law which prevent a person using them for purposes other than the purpose of the VCAT hearing for which they were submitted, particularly if the documents have not been used in evidence for the case. These are known as the 'Harman obligations'. A person who wants to use such documents for a purpose outside hearings in the Guardianship List should seek an order from VCAT permitting that use.

Access to documents before a hearing

46. Persons filing documents should be aware that VCAT (if the presiding member considers it necessary) may reveal the contents of the document to other parties in the proceeding even if the person filing them seeks confidentiality.
47. A party to a proceeding who seeks access to documents before a hearing will usually be given access to them. In some cases, (such as following a request from the party who filed the document), a person may be refused access to sensitive documents before the hearing. The application for access can then be renewed at the hearing.
48. A person can apply to the principal registrar asking that documents lodged in relation to a GA Act proceeding not be disclosed to a specified person or class or persons.
49. A person who considers that they are disadvantaged by only seeing documents at the time of the hearing may seek an adjournment to prepare a response to the information. The presiding member will decide whether an adjournment should be granted on those grounds.

Access to documents at a hearing

50. At a hearing, the presiding member will check whether all parties have copies of relevant documents upon which another party relies.
51. Where the information in a sensitive document is relevant to the issues being decided at the hearing, the information will be made available to all parties, but not necessarily to persons present who are not parties. The form in which information is made available is at the discretion of the presiding member. For example, if copies of sensitive documents or confidential documents have been distributed to the parties at the hearing, they may be collected again at the end of the hearing.

Access to documents when there is no further hearing planned

52. While section 146 of the VCAT Act allows access to VCAT files for both parties and

non-parties, VCAT has power under section 146(4)(b) to give directions preventing access to some files or documents to some (or all) persons.

53. VCAT receives confidential and sensitive documents for the purpose of making decisions about appointing guardians or administrators or supportive guardians or administrators or making orders about medical treatment or powers of attorney. Possible reasons for VCAT to prevent a person having access to a file or to a document on a file are:
- access would or may cause serious harm to the health or safety of a person
 - access would be unreasonable disclosure of a person's personal affairs
 - access would be a breach of confidence
 - the document sought is not relevant to the proceedings at VCAT.
54. In the Guardianship List, if a VCAT member considering an application for access to documents is considering refusing access, the person seeking access will be told the reasons why access might be refused and given an opportunity to make submissions in response. If they make no submissions, VCAT will consider the request withdrawn. If they make submissions, VCAT will consider the request further and may then inform the parties to the proceeding in case they wish to make submissions about the proposed access. Submissions may be in writing or made at a directions hearing, depending on VCAT's discretion in each case.
55. When the person seeking access and the parties to a proceeding have made submissions, and had a hearing if necessary, the member considering the application for access will decide whether to disclose the documents or give a direction under section 146(4)(b) of the VCAT Act preventing access.
56. If a person who is the subject of a VCAT proceeding does not have capacity to express their wishes or make submissions about access to documents concerning them, their administrator or financial enduring power of attorney can do so instead.
57. When the person who was the subject of a VCAT proceeding has died, their legal personal representative (eg their executor) will be able to give consent or make submissions about access to documents concerning them.

Directions hearings

58. Most matters in the Guardianship List proceed to hearing without a preliminary directions hearing. If an additional hearing is needed, the member at the first hearing will make orders and directions about preparation for the next hearing. Applications for compensation based on a breach of the POA Act or GA Act usually require a preliminary directions hearing and also will usually be referred for a compulsory conference before hearing.

Settlement between the parties

59. Apart from procedural matters, VCAT rarely makes consent orders in the Guardianship List. Most of the substantive orders sought in the Guardianship List can only be made if VCAT is satisfied of particular matters (such as that the order being made is the least restrictive possible). Accordingly, parties who have reached agreement about some issues should still be prepared to attend a hearing – though it will be shorter if some practical matters are already resolved.

Rehearing

60. Under the GA Act, the POA Act and the MTPD Act, a person who is entitled to notice of the hearing may apply for a rehearing order. This does not apply to urgent or interim orders. If the order was made at a routine reassessment, a person may only seek a rehearing if the VCAT gives leave (permission).
61. If the person seeking a rehearing was not a party or has not been joined as a party, they must first seek VCAT's leave to apply for a rehearing.
62. An application for rehearing (or for leave to seek a rehearing) must be made within 28 days after the order (or after the giving of written reasons if those have been requested).
63. A rehearing deals with the same issues as were the subject of the first hearing. It should not be confused with a reassessment. Reassessments are held regularly to consider whether the order is still required. Reassessments may also be held because of a change of circumstances.
64. For a rehearing, all persons who were entitled to notice of the original application, hearing and order are entitled to notice of the application for rehearing, hearing and order.
65. For a rehearing, the following people are parties:
- The applicant for the hearing
 - The parties to the original application
 - Any joined parties.

Withdrawal of an application

66. Withdrawal of an application requires VCAT's leave (permission). Applicants seeking to withdraw their application should do so in writing, explaining why orders are no longer needed. VCAT will consider whether there are any remaining protective concerns before allowing the applicant to withdraw. That is because the legislation relevant to the Guardianship List is intended to protect persons who have or may need

a substitute decision-maker such as an administrator, guardian or attorney.

67. In the Guardianship List, even if an application has been withdrawn, the Applicant or anyone else is able to make a further application about the same circumstances at any later time.

Venue for hearings

68. Most hearings in the Guardianship List are conducted at the William Cooper Justice Centre at 223 William Street Melbourne.
69. VCAT also hears Guardianship List matters in suburban and regional courts.
70. If there is a suburban or regional VCAT venue close to the represented person, VCAT will conduct the hearing there, where possible.
71. In some cases, it is acceptable for one or more people to attend a hearing by telephone. A person who wants to attend by telephone must notify VCAT in writing and their request will be accommodated if possible and suitable in the particular circumstances.
72. If the proposed represented or supported person is unable to leave their hospital or care facility, VCAT may be able to arrange a hearing at the hospital or care facility, in limited circumstances.

Adjournment and change of venue

73. Notes about adjournments and change of venue appear in Practice Note – PNVCAT 1 Common Procedures.
74. In the Guardianship List, the interests of the person with a disability will be of the greatest importance. Thus, for example, even if all the parties agree to an adjournment, VCAT may decide not to grant an adjournment if that is more in the interests of the represented person (or proposed represented person, or of the principal who has given a power of attorney, or of the patient requiring a medical treatment decision).
75. As to seeking a change of venue, the most important factor will be to conduct the hearing at a venue which is easiest to attend for the person who is the subject of the proposed orders (that is, the represented person, proposed represented person or principal who has given a power of attorney, or of the patient requiring a medical treatment decision).

Urgent matters and orders

76. VCAT has power to make urgent orders for a short period, without a hearing if necessary. A person seeking such an order or needing to address urgent guardianship issues (such as serious concerns about the person's safety) should contact the Public Advocate. The Public Advocate is able to contact VCAT at any time, including after hours, if an urgent order is needed.
77. Any order made without a hearing will be reviewed at a hearing as soon as possible. The maximum time for such a review is six weeks.

Missing persons

78. Administration orders can be made about a missing person. For these applications, there is no need to show that the person has a disability – it is only necessary to show that the person is missing, has contacted no friends or family for 90 days and reasonable efforts have been made to find them. An administrator can be appointed for such a person when there are decisions to be made about their finances or property.
79. An application to appoint an administrator for a missing person should be accompanied by evidence that the person is missing, in either an affidavit or a witness statement. The criteria to be addressed are in section 100 of the Act.

The role of the Public Advocate

80. Under the VCAT Act (see for example clause 35 of Schedule 1), VCAT can request the Public Advocate to investigate and report about an issue. In such cases, VCAT does not decide the issue until it receives the report, although there may be interim orders about urgent matters.
81. At the next hearing, the parties and other people affected by the report will have an opportunity to comment on it. A person who wishes to see the report before the hearing may apply in writing. Reports are not always distributed as they may contain sensitive health or other personal information.
82. The Public Advocate is available to be appointed as guardian for a person where no other suitable guardian is available.

The role of State Trustees

83. State Trustees Limited (STL) is a state government-owned company which is available to be appointed as an administrator. The order appointing STL as an administrator sets standard fees.
84. STL as an administrator reports to VCAT about the financial affairs of the represented person.

85. VCAT also arranges for STL to examine the annual accounts prepared by private administrators. Fees for this service are paid from the funds of the person under administration. If STL identifies issues in the annual examination, VCAT notifies the administrator and seeks resolution of those issues.

Other reports

86. VCAT has power to seek a report from other persons or bodies. For example, VCAT could ask a guardian or administrator who has already been appointed, or a service provider, to provide a report, which would then be treated in the same way as a report from the Public Advocate.

Other professional administrators

87. A number of trustee companies are available to be appointed as professional administrators. Parties who anticipate that an administrator will be appointed for a friend or family member may approach one of these companies for information about their fees and to obtain their consent to an appointment, before a hearing. This would then be available for VCAT to consider at the hearing. The order will set the fees.
88. Some solicitors also offer a service as professional administrators. A party who anticipates the need for appointment of a professional administrator may obtain from the solicitor information about their fees and their willingness to be appointed and present the information at the hearing.

Identifying a potential guardian or administrator before a hearing

89. The Act sets criteria for persons eligible to be appointed as a guardian or administrator (see section 32, or for supportive guardians or administrators, section 88). Applicants may wish to identify potential guardians or administrators in the application. For a supportive guardian or administrator, you need the consent of the proposed supported person. The proposed guardian, administrator, supportive guardian or supportive administrator should attend the hearing. Professional administrators are an exception: they need not attend if there is sufficient information about their consent to the appointment and their fees. Otherwise, VCAT does not appoint as a guardian or administrator a person who does not attend the hearing. For professional administrators other than STL, a letter of consent to be appointed which sets out the proposed fees is usually sufficient.

Interstate orders

90. Either the Public Advocate or a guardian or administrator of a represented person in another state or territory can apply for the guardianship or administration order to be registered in Victoria so that it can have effect in Victoria.
91. For information about interstate orders, see the website of the [Public Advocate](#) or the website of the [Australian Guardianship and Administration Council](#).

Forms

92. All forms referred to in this practice note are available on the Tribunal's website at www.vcat.vic.gov.au

- END OF PRACTICE NOTE -