

General advice for administrators

The Tribunal recognises the work of administrators in their management of the financial and legal affairs of represented persons. This fact sheet will assist administrators appointed by VCAT to manage the financial and legal affairs of represented persons.

Administrators must comply with the VCAT Order and Part 5, Divisions 3 and 3A of the Guardianship and Administration Act 1986

As an administrator, you must:

- act and make decisions as if the represented person was making them
- be accountable for the decisions you make and for the management of the represented person's affairs
- ensure that all investments and bank accounts are held in the name of the represented person, unless VCAT decides this is not required
- avoid any conflict or perceived conflict of interest, between your affairs and those of the represented person
- take a copy of the VCAT administration order to the represented person's bank, and provide a copy to other investment entities, insurance companies, utilities, lenders, Centrelink, etc.
- if a guardian is appointed to make decisions about personal matters (i.e. decisions about accommodation, medical treatment, etc.), consult and work closely with the guardian
- regularly review the represented person's investments, seek advice if needed and reduce any financial risk

- upon the death of the represented person, notify VCAT in writing (either via email or letter) and provide proof of the represented person's death, such as a funeral notice or death certificate.

Note: Any order appointing an administrator ceases upon the death of the represented person.

Acting in the best interests of the represented person

As administrator, you must act in the best interests of the represented person.

You may be able to consult with them and take into account their wishes, depending on the nature of the disability and its impact on the represented person's cognitive capacity.

To act in the represented person's best interests, you must:

- consider what the represented person's wishes are
- balance the wishes of the represented person with any short-term and long-term financial needs
- make financial decisions that will encourage the represented person to participate in the community
- help to maintain the represented person's dignity, independence and self-esteem
- ensure your interests do not conflict with the interests of the represented person

- keep accurate records of all income and expenditure of the represented person.

The administration order

Please read the **VCAT order** carefully.

The order sets out:

- the terms of your appointment
- your powers as administrator
- the duration of the appointment
- any restrictions on your powers
- any requirements to lodge documents, such as a **Financial Statement and Plan (FSP)** and an annual online **Account by Administrator (ABA)**.

Administrators acting jointly

If two or more administrators are appointed by VCAT, they must make decisions and always act together.

If administrators are to act jointly and severally, so that each can deal with day-to-day matters alone, VCAT must make an order permitting them to do so.

If administrators are appointed to act jointly and severally, they must still act jointly when:

- submitting the Financial Statement and Plan (FSP) and the annual online Account by Administrator (ABA)
- acquiring or disposing of land or other substantial assets of the estate of the represented person.

Administrators need to reasonably consult with each other about decisions they make severally.

Lodging a Financial Statement and Plan (FSP)

When you are appointed as an administrator, VCAT will generally make an order requiring you to complete and lodge a FSP within a set time (usually 6 weeks from the date of the order).

You will need to provide all relevant information on the FSP from the date of your appointment.

When you complete the FSP, you must think carefully about how you are going to manage the represented person's income and expenses, their day-to-day needs and investments, and how commitments are to be met in the short and longer term.

Remember to include the person's own home in the FSP as an asset.

Lodging an annual online Account by Administrator (ABA)

As administrator, you must account for all income, expenditure, assets and liabilities of the represented person.

Unless exempted by order of VCAT, administrators must lodge an online ABA with VCAT by **30 September** annually.

Each year in mid-July, VCAT:

- provides a link on the VCAT website that allows administrators to lodge the ABA online
- posts a detailed letter to all private administrators, outlining the lodgment and annual fee process, together with the administrator's **administrator reference number**.

Please refer to *Account by Administrator Frequently Asked Questions* on the VCAT website. Go to www.vcat.vic.gov.au/aba.

Annual Administration Fee

An Annual Administration Fee must be paid from the represented person's estate to VCAT, if the represented person's fortnightly income from all sources is above the threshold set by government regulations.

The threshold and the fee payable changes every year. The current fee and threshold amount can be found on the VCAT website, go to www.vcat.vic.gov.au/aba.

On application to VCAT, the Annual Administration Fee can be waived or reduced, but only if VCAT is satisfied payment would cause the represented person undue hardship.

State Trustees Limited (STL) is required to independently examine ABAs lodged by private administrators. An examination fee is payable to STL for this service and must be paid from the represented person's estate. The level of the fee depends on the value of the estate examined.

This fee is separate to the VCAT Annual Administration Fee. VCAT cannot make an order to waive the STL examination fee.

When do I need to seek advice from VCAT?

You must act in the represented person's best interests. You have authority to make decisions and act on their behalf.

You need to seek VCAT's advice if there is some uncertainty or conflict surrounding a major decision to be made or if you wish to give a significant gift or make a loan from the represented person's estate.

If you do need to seek VCAT's advice, please email or write to VCAT, quoting the VCAT reference number, and provide as much information and supporting documents about the request to ensure VCAT can consider the request as quickly as possible.

Bank accounts in the name of the represented person

The represented person's assets, including bank accounts, should be held in the name of the represented person. This is to ensure the correct legal ownership of the bank account and to reflect the represented person's independence and dignity.

You should provide the bank or financial institution with a copy of the current order under which you are appointed as administrator.

The VCAT order held by the administrator is authorisation that the administrator can transact from the bank account in the name of the represented person.

If you have any issues with Commonwealth Bank, refer to the Financial Management Order procedures or CBA Customer Relations.

If you have any issues with ANZ, Westpac, Bank of Melbourne or Bendigo Bank, refer to the bank's branch manager or their legal team.

VCAT can also provide a letter for the administrator to give to the relevant bank, outlining the above information.

Gifts

As administrator, you may make gifts from the represented person's funds to relatives or close friends if they are of a seasonal nature (i.e. birthdays, weddings, Christmas, etc.). The amount must be reasonable in light of the represented person's circumstances. Seek approval from VCAT before you purchase if the amount is more than \$100 per gift.

Similarly, as administrator, you may make donations and gifts from the represented person's funds to charities that the represented person has always supported. Seek prior approval from VCAT if the single donation or gift is over \$100.

If you are in doubt about making a gift or donation, please seek prior approval from VCAT.

Loans

If you are proposing to lend any of the represented person's funds to any person, prior approval from VCAT must be sought. VCAT will decide whether to approve the loan and will consider its terms and conditions.

Wills

If you hold the represented person's will, you are obliged to make sure it is kept safe and secure.

Where an administrator does not hold the represented person's will, an application can be made to VCAT for production of a copy, if VCAT holds a copy of the will.

VCAT has the power to open and read a will, but this does not mean that VCAT will disclose its contents, even to an administrator.

A represented person can make a will, if they have 'testamentary capacity'. A report from the medical practitioner certifying that the represented person has 'testamentary capacity' should be obtained before the will is made. If a person does not have capacity, the Supreme Court can approve a statutory will.

Future hearings

Administration orders are routinely reassessed every three years, unless otherwise ordered by VCAT.

Administrators or other interested parties can request an early reassessment hearing if an issue or change in circumstances occurs.

An application to reassess an administration order can be lodged on the VCAT website, go to www.vcat.vic.gov.au.

Failure to comply with the VCAT order

VCAT may schedule an early reassessment hearing if the administrator/s does not lodge the FSP by the due date.

VCAT may reassess an administration order without further notice and appoint another administrator if the VCAT-appointed administrator fails to lodge the annual ABA and/or pay the Annual Administration Fee by the due date.

How can VCAT help me?

Information sessions for new administrators

Information sessions for newly appointed administrators are held on a regular basis by VCAT throughout the year. Please check the VCAT website for further details and dates. Bookings are not required.

Website information

Go to www.vcat.vic.gov.au/aba.

If you would like further information on your powers and responsibilities, search for 'administration guide' on the Office of the Public Advocate (OPA) website at www.publicadvocate.vic.gov.au.

Ask our Customer Service team

If you have any queries regarding your role as an administrator or require assistance to complete the FSP or ABA forms, please contact our Customer Service team, which is available to help you from 9 am to 5 pm Monday to Friday.

Call 1300 01 8228 (1300 01 VCAT)
or email humanrights@vcat.vic.gov.au

Note: VCAT cannot provide legal advice.