

ABOUT VCAT

The Victorian Civil and Administrative Tribunal (VCAT) hears and decides civil and administrative legal cases in Victoria.

We make legal orders for matters about medical treatment, advance care directives, guardianship, administration and powers of attorney. For more information, go to www.vcat.vic.gov.au/guardianship.

We rely on evidence, reports from experts and other supporting documents to help us reach a decision about a case. This includes reports from medical practitioners.

WHAT VCAT CAN DO

We can give advice or make orders about medical treatment

VCAT can give advice or make orders about advance care directives, medical treatment decisions, appointed medical treatment decision makers, appointed support persons and medical research procedures.

If a person made an advance care directive, appointed a medical treatment decision maker or appointed a support person, VCAT can decide whether their decision is valid or otherwise cancel, change or suspend the advance care directive or the appointment. VCAT can do this only if we confirm whether the person's decision-making capacity is affected.

We can appoint a guardian or administrator

VCAT can make orders to protect and promote the human rights and dignity of adults who have a disability affecting their decision making capacity. The disability may be a neurological impairment, intellectual impairment, mental disorder, brain injury, physical disability or dementia.

If necessary, VCAT may appoint a guardian for a person who, because of that person's disability, does not have decision-making capacity in relation to their general living circumstances such as where they live, or what services they require. VCAT may appoint an administrator for a person who, because of that person's disability, does not have decision-making capacity in relation to their financial and property affairs.

How we assess if a person has decision-making capacity

A person has decision-making capacity when they can do all of the following:

- understand and remember information relevant to making a decision
- retain that information to the extent necessary to make the decision
- use or weigh that information as part of their decision-making process
- use and communicate the information to make a decision, express their views and needs.

Under changes that came into effect in March 2020, VCAT now has the option of making a **supportive** guardianship or administration order. These types of orders enable a supported person to retain decision-making control whilst empowering another person to assist the supported person to make and give effect to their decisions, such as by communicating with an organisation on the supported person's behalf. In deciding whether to make a supportive guardianship or administration order, VCAT needs to

consider whether the proposed supported person will have decision-making capacity if given practicable and appropriate support.

We can make an order about an enduring power of attorney

VCAT also has power to make orders about an enduring power of attorney. An enduring power of attorney is a document allowing a person to appoint someone as their attorney to make decisions on their behalf or support them in making decisions. The attorney can manage specific financial and legal matters on behalf of the person. This arrangement stays in place even if the person who made the appointment loses their decision-making capacity.

If a person has given an enduring power of attorney, VCAT has the power to revoke, vary or suspend the appointment of an attorney if it considers it necessary to do so. VCAT does not have the power to appoint an individual as an attorney.

How we assess if a person is capable of giving an enduring power of attorney

A person is considered capable of giving an enduring power of attorney to someone if, at the time they give it, they understand:

- they can set the conditions, instructions or limitations on the power of attorney
- when this power can be used
- the attorney can use their power even when the person who gave it temporarily or permanently loses the ability to fully understand or make reasoned decisions
- they may revoke the enduring power of attorney at any time while they still understand the nature and effect of this power
- the attorney's power continues even if the person who gave it later loses their legal capacity
- they are unable to oversee the use of the power, if they do not have capacity to revoke the enduring power of attorney

WHY WE NEED A MEDICAL REPORT

To give advice or make an order about medical treatment

Before making an order about a person, VCAT must be satisfied about the person's capacity to make medical treatment decisions.

As the person's medical practitioner, the information you provide is vital.

As their medical practitioner, you must consider the appropriate time and setting for assessing accurately your patient's decision-making capacity.

To appoint a guardian, administrator or make an order about an enduring power of attorney

Before making an order about a person, VCAT must be satisfied:

- the person has a disability (neurological impairment, intellectual impairment, mental disorder, brain injury, physical disability or dementia), and
- because of their disability, the person does not have decision-making capacity to make decisions about their general living circumstances or financial matters,
- there is a need for a guardian or administrator, usually decided if a less restrictive option would not meet the person's needs.

Your medical report will ensure VCAT is aware of your patient's decision-making capacity about their personal and financial matters and we promote the persons personal and social wellbeing.

PATIENT DETAILS

1. Enter the details of the patient you are completing a medical report about.

Patient name

Date of birth (DD/MM/YYYY)

Address

VCAT reference number (if known)

G

BACKGROUND INFORMATION

2. In what capacity do you know the patient?

General practitioner

Specialist, please specify:

Other, please specify:

3. Are you the patient's regular medical practitioner?

Yes, skip to Question 5

No

4. Provide contact details of the patient's regular medical practitioner (if known):

5. How long have you been the patient's medical practitioner?

6. When did you last see the patient?

7. Is the patient usually accompanied by someone else when you see them?

Yes

No

If yes, provide details:

DETAILS ABOUT THE PATIENT'S DISABILITY

8. Does the patient have a disability (neurological impairment, intellectual impairment, mental disorder, brain injury, physical disability or dementia)?

Yes

No

9. Provide details of the diagnosis and history of the patient's disability:

10. How long has the disability been evident?

years months

11. What is the current status of the disability?

Static Progressive Fluctuating Improving

PAST DIRECTIVES AND APPOINTMENTS MADE BY THE PATIENT

Advance care directive

12. Has the patient made an advance care directive?

Yes No, skip to Question 17 Don't know, skip to Question 17

13. When was the advance care directive made?

Date (DD/MM/YYYY) Don't know

14. Did you know the patient at this time?

Yes No Don't know

15. Were you involved in the process when the patient made the advance care directive?

Yes No Don't know

16. Give your opinion on the patient's ability to understand the impact of making an advance care directive at that time:

Medical treatment decision maker or support person

17. Has the patient appointed a medical treatment decision maker or support person?

Yes No, skip to Question 22 Don't know, skip to Question 22

18. When was the medical treatment decision maker or support person appointed?

Date (DD/MM/YYYY) Don't know

19. Did you know the patient at this time?

Yes No Don't know

20. Were you involved in the process when the patient appointed a medical treatment decision maker or support person?

Yes No Don't know

21. Give your opinion on the patient's ability to understand the impact of appointing a medical treatment decision maker or support person at that time:

Enduring power of attorney

22. Has the patient given an enduring power of attorney?

- Yes No, skip to Question 27 Don't know, skip to Question 27

23. When was the enduring power of attorney given?

Date (DD/MM/YYYY)

- Don't know

24. Did you know the patient at this time?

- Yes No Don't know

25. Were you involved when the patient made the enduring power of attorney?

- Yes No Don't know

26. Give your opinion on the patient's ability to understand the impact of making an enduring power of attorney at that time.

Refer to section 'How we assess if a person is capable of giving an enduring power of attorney' on page 2.

CURRENT DECISION-MAKING CAPACITY OF THE PATIENT

Note: When considering the decision-making capacity of the patient, refer to section 'How we assess if a person has decision-making capacity' on page 1.

Medical treatment

27. Does the patient have decision-making capacity to appoint a medical treatment decision maker or support person?

- Yes No Don't know

28. Does the patient have decision-making capacity to make all or some medical treatment decisions?

Full decision-making capacity

Some decision-making capacity

No decision-making capacity

If you stated above that the patient has only some decision-making capacity, explain the types of decisions about medical treatment they are unable to make on their own:

29. Can the patient make decisions about their medical treatment if they have support and they can access that support?

Yes

No

If yes, describe what support the patient would require:

General living circumstances

30. Does the patient have decision-making capacity about their general living circumstances?

E.g. about accommodation and/or accessing services

Full decision-making capacity

Some decision-making capacity

No decision-making capacity

If you stated above that the patient has only some decision-making capacity, explain the types of decisions about their general living circumstances they are unable to make on their own:

31. Can the patient make decisions about their general living circumstances if they have support and they can access that support?

Yes No

If yes, describe what support the patient would require:

Financial and property affairs

32. Does the patient have decision-making capacity about their financial and property affairs?

Eg. about legal matters, assets and liabilities, expenses and taxes

Full decision-making capacity Some decision-making capacity
 No decision-making capacity

If you stated above that the patient has only some decision-making capacity, explain the types of decisions about their financial and property affairs they are unable to make on their own:

33. Can the patient make decisions about their financial and property affairs if they have support and they can access that support?

Yes No

If yes, describe what support the patient would require:

REASONS FOR YOUR OPINION

- 34. Explain how you formed your opinion about the patient's decision-making capacity:**
Include details and dates of any tests, examinations or assessments.

OTHER FACTORS THAT MAY AFFECT DECISION-MAKING

- 35. In your opinion, are there any other factors that could potentially be impacting on this patient's decision-making capacity?**

- 36. Do you have any other comments about the patient's prognosis?**

- 37. Do you have any other observations or comments that may be relevant?**

PATIENT PARTICIPATION IN THE HEARING

38. Having regard to the patient's condition, would they be able to attend a VCAT hearing in person?

- Yes No Don't know

If no, state your reasons for this opinion:

39. Having regard to the patient's condition, would they be able to participate in a VCAT hearing via telephone?

- Yes No Don't know

If no, state your reasons for this opinion:

40. Does the patient require an interpreter?

- Yes No Don't know

If yes, specify language or dialect

41. Does the patient have difficulty communicating?

- Yes No Don't know

If yes, explain:

42. Are there any other barriers to the patient's participation in a VCAT hearing?

- Yes No Don't know

If yes, explain:

DETAILS OF MEDICAL PRACTITIONER

43. Enter your details below.

Title Prof Dr Mr Ms Mx

Name

Qualifications

Provider number:

Street address

Suburb

State

Postcode

Provide a contact number in case a VCAT representative needs to contact you during the patient's VCAT hearing for further information.

Contact number

44. Would you like to receive a Notice of Hearing about this matter?

Yes

No

ACKNOWLEDGMENT

By completing this application, I understand and acknowledge that:

- to the best of my knowledge, all information provided in this application is true and correct
- it is an offence under section 136 of the *Victorian Civil and Administrative Tribunal Act 1998* to knowingly give false or misleading information to VCAT

Full name of person completing this report:

Date:

SUBMITTING THIS REPORT

Thank you for your time in completing this document, VCAT appreciates this community service.

Please submit this completed report to VCAT either by email or by post.

By email

Email humanrights@vcat.vic.gov.au

By post

Send this report to:

The Registrar
Guardianship List
Victorian Civil and Administrative Tribunal
GPO Box 5408 Melbourne VIC 3001