



This factsheet provides an overview of the key differences between the 1986 and 2019 Guardianship and Administration Acts. The 2019 Act commenced on 1 March 2020 and repealed the 1986 Act. Save for transitional situations, all guardianship and administration matters should be conducted according to the 2019 Act.

Orders VCAT can make

1986 Act	2019 Act
<ul style="list-style-type: none">• Plenary guardianship order• Limited guardianship order• Alternative guardianship order• Administration order• Administration order for the estate of a missing person• Temporary guardianship/administration order• Consent to special medical procedure	<ul style="list-style-type: none">• Guardianship order• Administration order• Urgent guardianship/administration order• Supportive guardianship/administration order• Administration (missing person) order• Consent to special medical procedure



Principles of the Act

1986 Act

Every function, power, authority, discretion, jurisdiction and duty is to be exercised or performed so that:

- the means adopted is the least restrictive of a person's freedom of decision and action as is possible in the circumstances
- the best interests of a person with disability are promoted
- the wishes of a person with disability are given effect to wherever possible.¹

2019 Act

General principles

A person (including VCAT) exercising a power, carrying out a function or performing a duty under the 2019 Act must regard these principles:

- a person with a disability should be provided with **practicable and appropriate support** to enable the person to **make and participate in decisions affecting them, express their will and preferences, and develop their decision-making capacity**
- the **will and preferences** of a person with disability should **direct** decisions made for that person (as far as practicable)
- powers, functions and duties under the 2019 Act should be performed in a way which is **least restrictive** of a person with disability's ability to decide and act as is possible in the circumstances.²

Decision-making principles

Any person making a decision for a represented person must regard these principles:

- give all **practicable and appropriate effect to the represented person's will and preferences** (if known)
- if the represented person's will and preferences are unable to be known, give effect as far as practicable in the circumstances to what the person **believes the represented person's will and preferences are likely to be**, based on all available information
- if the represented person's likely will and preferences are unable to be known, act in a manner which **promotes the personal and social wellbeing** of the represented person
- if the represented person has a companion animal, act in a way that recognises the **importance and benefits of the companion animal** to the represented person
- the represented person's will and preferences should only be overridden if it is **necessary to prevent serious harm** to the represented person.³

¹ *Guardianship and Administration Act 1986* (Vic) ('1986 Act') s 4(2).

² *Guardianship and Administration Act 2019* (Vic) ('2019 Act') s 8(1).

³ *2019 Act* s 9(1).



Appointing a guardian or administrator

1986 Act

VCAT may appoint a guardian or administrator if it is satisfied that:

- the person subject to the order is a **person with disability**, and
- by reason of the disability, is **unable to make reasonable judgments** about their person or circumstances, and
- is in **need** of a guardian or administrator, and⁴
- it is in the **best interests** of the represented person to appoint a guardian/administrator.⁵

2019 Act

VCAT may only make a guardianship or administration order if it is satisfied that:

- because of the person's disability, the proposed represented person **does not have decision-making capacity**⁶ in relation to:
 - the personal matter for which the guardianship order is sought, and/or
 - the financial matter for which the administration order is sought
- the proposed represented person **is in need** of a guardian or administrator as the case requires
- the guardianship or administration order **will promote the personal and social wellbeing** of the proposed represented person.⁷

4 1986 Act ss 22(1), 46(1).

5 Ibid ss 22(4), 46(3).

6 "decision-making capacity" is defined in s 5(1) of the 2019 Act.

7 2019 Act s 30(2).



Factors for deciding whether a person needs a guardian or administrator

1986 Act	2019 Act
<p>VCAT must consider the following factors for whether a person needs a guardian or administrator:⁸</p> <ul style="list-style-type: none">• whether the needs of the person subject to the application can be met by other means that are less restrictive of the person's freedom of decision and action• the wishes of the proposed represented person (as far as they can be ascertained)• VCAT is satisfied that the order is in the best interests of the proposed represented person. <p>For a guardianship order only:</p> <ul style="list-style-type: none">• the wishes of any nearest relatives or family members of the proposed represented person• the desirability of preserving existing family relationships• in appointing a plenary guardian, a limited guardianship order would be unable to meet the needs of the proposed represented person• if a limited guardianship order is made, the order is the least restrictive of that person's freedom of decision and action as is possible. <p>For an administration order only:</p> <ul style="list-style-type: none">• the administration order made must be the least restrictive of that person's freedom of decision and action as is possible	<p>VCAT must consider the following factors for whether a person needs a guardian or administrator:</p> <ul style="list-style-type: none">• the will and preferences of the proposed represented person (as far as they can be ascertained)• whether the personal or financial decision under the order may be made by informal means or made through negotiation, mediation or similar means• the wishes of any primary carer or relative of the proposed represented person (or other person with a direct interest in the application)• the desirability of preserving existing relationships important to the proposed represented person.⁹

8 1986 Act ss 22(2), 36(2).

9 2019 Act s 31.



Extent of powers of a guardian and administrator

1986 Act	2019 Act
<p>A plenary guardian has powers and duties over the represented person as if they were a parent and the represented person was their child.¹⁰ Without limitation, this includes the power to decide where the person lives, whom they live with, whether they can work and the type of work they can do; consent to any health care in the person's best interests, and restrict or prohibit visits by others if they would have an adverse effect on the person.¹¹</p> <p>A limited guardian has the powers specified in the guardianship order.¹²</p>	<p>A guardian only has powers to: make decisions about personal matters specified in the guardianship order</p> <ul style="list-style-type: none">• sign and do anything necessary to give effect to any power vested in them, and• undertake legal proceedings if it is specified in the order.¹³
<p>An administrator has the power:</p> <ul style="list-style-type: none">• specified in the administration order¹⁴• to make gifts• of investments• sign and do all things necessary to give effect to any power or duty	<p>An administrator has the power:</p> <ul style="list-style-type: none">• specified in the administration order¹⁵• to make gifts¹⁶• of investments¹⁷• to open the will of the represented person¹⁸• to undertake legal proceedings for a financial matter specified in the administration order¹⁹• to sign and do anything necessary to give effect to any power or duty• to do all matters necessary or incidental to performing the power conferred as an administrator

¹⁰ 1986 Act s 24(1).

¹¹ Ibid s 24(2).

¹² Ibid s 25(1).

¹³ 2019 Act s 38(1).

¹⁴ 1986 Act s 48.

¹⁵ 2019 Act s 52 sets out the powers that may be specified in an administration order.

¹⁶ Ibid s 47.

¹⁷ Ibid s 48.

¹⁸ Ibid s 49.

¹⁹ Ibid s 51.



Duties of a guardian and administrator

1986 Act

A guardian and administrator must act in the **best interests** of the represented person.²⁰

‘Best interests’ for a guardian mean:

being an **advocate** for the represented person

- encourage the represented person to **participate in the life of the community** as much as possible
- encourage and assist the person to **become capable of caring for themselves** and **make reasonable judgments** for their own person
- **protect** the person from neglect, abuse or exploitation, and
- consult with the represented person and **take their wishes into account as far as possible.**

‘Best interests’ for an administrator mean:

- acts as far as possible to assist the represented person to **become capable of administering their estate**
- consult with the represented person and take their wishes into account as far as possible.²¹

2019 Act

A guardian and administrator must:

- act in accordance with the **general principles and decision-making principles** set out in the *2019 Act*
- act as an **advocate** for the represented person
- encourage and assist the represented person to **develop their decision-making capacity** in relation to personal (guardian) and financial (administrator) matters
- **protect** the represented person from neglect, abuse or exploitation
- act **honestly, diligently and in good faith**
- exercise **reasonable skill and care**
- **not use the position for profit** (in the case of an administrator, unless authorised by law)
- avoid acting if there is or may be a **conflict of interest** (in the case of an administrator, unless authorised by the *2019 Act*, VCAT or law)
- **not disclose confidential information** gained as a guardian or administrator unless authorised by the order or by law.²²

²⁰ 1986 Act ss 28(1), 49(1).

²¹ *Ibid* s 49(2).

²² 2019 Act ss 41(1), 55.

