

# Making decisions when those you love cannot



By **MELISA SLOAN**

WE ARE ALL LIVING longer, which is fantastic.

But for some of us, this means living with Dementia, Alzheimer's or some other condition or disease that may impact our ability to make decisions and care for ourselves.

If this happens, we need to ensure processes are in place to ensure the people we want are making decisions on our behalf.

## Don't leave it too late

We are often contacted by family members whose parents or loved ones would like to put in place Power of Attorney documents, but there is an increasing trend where the family has left it too late, and we are unable to assist as their loved ones no longer have the legal capacity to put these documents in place.

Invariably, this leads to frustration for all involved and complications when dealing with nursing homes or bank accounts, as the Power of Attorney needed to allow them to act on their loved one's behalf is not in place.

## What happens if no Power of Attorney is in place?

If your loved one no longer has decision-making capacity and does not have an Enduring Power of Attorney in place, an application needs to be made to VCAT to appoint someone to act as their Administrator and Guardian.

Usually, the person appointed as Administrator and Guardian is a relative or close friend of the person

who no longer has the capacity.

However, it can also be a trustee company if there is no suitable person or if VCAT deems that a trustee company would be the best option, particularly if there is strong conflict between family members who wish to be appointed Administrators or Guardians.

One aspect of the application process of appointing an Administrator or Guardian is that sufficient medical evidence needs to be provided to VCAT by those making the application, supporting that your loved one does not have decision-making capacity.

## The role of an Administrator

The VCAT order pertaining to your loved one will stipulate precisely what powers their Administrator has, together with any restrictive powers, so this must be carefully read and adhered to by the Administrator.

Generally, the Administrator may make financial and legal decisions for your loved one, including buying everyday items they require, paying bills, selling property, signing contracts, managing their investments, and paying financial support to dependants, including children.

If your loved one needs to go into nursing home care, the Administrator may sell their residence or other investments and use the sale proceeds to pay for a refundable accommodation bond in a nursing home facility, and ensure they receive the best possible care.

The Administrator must account for all assets, liabilities, income, and expenditures of your loved one, lodge an Account by Administrator annually with VCAT, and pay an annual administration fee.

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There are strict guidelines regarding the Administrator providing gifts and loans on behalf of your loved ones.

Gifts can be made from a loved one's funds if it was normal practice that they previously did so for occasions such as birthdays and Christmas.

However, approval is required from VCAT for gifts that exceed \$100.

If the Administrator wishes to lend any of your loved one's funds to another party, approval must be sought from VCAT.

## The role of the Guardian

A guardianship order is a legal document that allows the person appointed as the Guardian to make personal lifestyle decisions for your

loved one if they no longer have the capacity.

Such decisions may include where they live, the medical treatment that they receive, and arranging access to services they require.

In some instances, the guardianship order may specify where your loved one is to live, or this decision may be left to the Guardian to decide in the best interests of your loved one.

A Guardian and Administrator must always act honestly, diligently, and in good faith.

They should always advocate for your loved one and make decisions in their best interests.

Ultimately, the person who VCAT appoints to act as your Administrator

or Guardian may not be the person you would have chosen to undertake these roles, but it provides an option of appointing someone to take care of you.

It is highly recommended that everyone who can establish a Power of Attorney do so while they have the decision-making capacity.

This allows them to appoint the person who they would like to make decisions for them in the event that they are no longer able to.

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