Victorian
Law Reform
Commission

GUARDIANSHIP

Information Paper - Summary

Introduction and Background

ABOUT THIS SUMMARY

Victoria has had guardianship laws since 1986. These laws affect people with disabilities who are unable to make decisions for themselves. The law explains when and how another person can make decisions for the person with the disability.

The Attorney-General has asked the Victorian Law Reform Commission (the commission) to look at these laws, and to decide if they need to be changed.

Victorian guardianship laws are complex. There are three pieces of legislation and seven different arrangements for appointing one person to make decisions on behalf of another. The laws often overlap, and people using the laws can find this confusing. The commission has published a detailed **Information Paper**, explaining these laws.

This is a summary of that paper. It provides only an outline of those areas of guardianship law of most interest to people. You should consult the Information Paper for more detail about any specific areas of law.

This summary also explains the particular issues the government has asked the commission to consider.

Finally, it outlines the ways you can contribute your thoughts about what the commission needs to look at. This will help us prepare some options for law reform which we will publish in a Consultation Paper for further community consultation later this year.

HISTORICAL CONTEXT

Victoria's guardianship laws are located in several pieces of legislation. The most important is the *Guardianship and Administration Act 1986* (G&A Act).

Guardianship laws aim to assist and protect people who, because of disability, are unable to make their own decisions, while also safeguarding their rights and autonomy.

The G&A Act was introduced at a time when there was an increasing need for people to make decisions for people with intellectual disabilities because many were moving from institutions into the community. The G&A Act replaced older legislation that focussed on a medical response to these issues. A much broader group of people now fall within the scope of the G&A Act, including people with age-related dementia and people with acquired brain injuries.

Other changes have taken place since the introduction of the G&A Act. For example, Victoria's *Charter of Human Rights and Responsibilities* (the Charter) has given human rights a prominent place in our domestic policy agenda, and the United Nations *Convention on the Rights of Persons with Disabilities* (the Convention) has strengthened Australia's international human rights responsibilities to people with disabilities.

It is in this context of changing demographic, legal and policy dynamics that the commission has been asked to review Victoria's guardianship laws.

Further background to the G & A Act is contained in Chapter 2 of the Information Paper (paragraphs 2.1 – 2.20)

TERMS OF REFERENCE

As well as these broad issues, the government's terms of reference ask the commission to consider:

- the role and effectiveness of guardians and administrators in advancing rights and assisting decision-making
- the need to balance the protection of the 'best interests' of an adult with impaired capacity with other human rights such as the rights to freedom of choice, movement and association
- the feasibility of different, less formal, decision-making models
- whether the G&A Act should be extended to apply to people who are 17 years of age
- the functions, powers and duties of the Public Advocate
- the role and powers of the Victorian Civil and Administrative Tribunal (VCAT) and whether the tribunal process for appointing guardians and administrators works well
- whether there should be more ways to review decisions made by guardians and administrators and whether there should be a way to address inappropriate conduct by guardians and administrators
- whether laws regarding medical treatment and research decisions, including the 'person responsible' model, are appropriate
- whether 'disability' should continue to be a threshold requirement for the G&A Act, or whether the law should focus on other concepts such as 'capacity' or 'vulnerability'
- whether the confidentiality provisions in the G &A Act adequately balance privacy protections and the need for transparency of decisions.

The commission must also consider how the G&A Act interacts with other laws that deal with substituted decision-making, or circumstances in which substituted decision-making might be needed, including:

- *Instruments Act 1958* (Vic) (Instruments Act)
- *Mental Health Act 1986* (Vic) (MH Act)
- *Disability Act 2006* (Vic) (Disability Act)
- *Children, Youth and Families Act 2005* (Vic) (Children, Youth and Families Act)
- *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) (CMIUT Act)
- *Medical Treatment Act 1988* (Vic) (MT Act).

The terms of reference specifically exclude consideration of end-of-life decisions beyond those currently dealt with by the MT Act.

Our terms of reference also ask us to consider other relevant reviews in Victoria and elsewhere in Australia. These are:

- The Victorian Parliamentary Law Reform Committee's inquiry into powers of attorney
- The Victorian Department of Health review of the MH Act
- The Queensland Law Reform Commission's review of guardianship laws
- The New South Wales Legislative Council Standing Committee on Social Issues' inquiry into substitute decision-making for people lacking capacity.

The Terms of Reference are set out on page 5 of the Information Paper and on the commission's web site at www.lawreform.vic.gov.au

A Summary of the Law

PROVISIONS FOR SUBSTITUTE DECISION-MAKERS

'Guardianship laws' is used throughout both the Information Paper and this summary to mean:

- the G&A Act
- those parts of the Instruments Act that deal with powers of attorney
- those parts of the MT Act that deal with decisions by agents.

These laws contain processes for appointing one person to make decisions for another. These appointments have different names, depending on how the appointment is made, what law it is made under, and what powers the decision-maker has. In brief, these appointments are:

- A **guardian**, meaning a person appointed by VCAT under the G&A Act, to make personal and lifestyle decisions for someone with a disability who is not able to make those decisions themself

See the discussion in Chapter 2 of the Information Paper (paragraphs 2.21 – 2.22)

- An **administrator**, meaning a person appointed by VCAT, under the G&A Act, to make financial and legal decisions for someone with a disability who is not able to make those decisions themself

See the discussion in Chapter 2 of the Information Paper (paragraphs 2.82 – 2.87)

- An **enduring guardian**, meaning a person appointed by an individual, under the G&A Act, to make personal and lifestyle decisions for that individual when they are no longer able to make those decisions themself

See the discussion in Chapter 2 of the Information Paper (paragraphs 2.70 – 2.72)

- An **attorney** (general), meaning a person appointed by an individual, under the Instruments Act, to make financial and legal decisions for them, but while they still have decision-making capacity

See the discussion in Chapter 3 of the Information Paper (paragraph 3.23)

- An **enduring attorney** (financial), meaning a person appointed by an individual, under the Instruments Act, to make financial and legal decisions for them, continuing beyond any future loss of decision-making capacity

See the discussion in Chapter 3 of the Information Paper (paragraphs 3.24 - 3.26)

- An **agent**, meaning a person appointed by an individual, under the MT Act, to make medical treatment decisions for them when they are no longer able to make those decisions themself

See the discussion in Chapter 3 of the Information Paper (paragraphs 3.13 – 3.17)

- A **person responsible**, meaning an 'automatic appointment', determined according to a hierarchical list set out in the G&A Act, for medical treatment decisions for a patient with a disability who is unable to make those decisions themself

See the discussion in the Information Paper Chapter 2 (paragraphs 2.135 – 2.136)

DETERMINING THE NEED FOR A GUARDIAN OR ADMINISTRATOR

Any adult may apply to VCAT asking for a guardian or administrator to be appointed for another adult.

Before appointing a guardian or administrator VCAT must be satisfied about all of the following things:

- the person has a disability
- because of their disability, the person is unable to make reasonable judgements
- the person is in need of a guardian or administrator.

In deciding whether the person is in need of a guardian or administrator, VCAT must consider:

- if there is a less restrictive way of meeting the person's needs
- the wishes of the person with the disability
- the wishes of the family of the person with the disability
- the desirability of preserving existing family relationships.

This is discussed in more detail in Chapter 2 of the Information Paper (paragraphs 2.26 – 2.32; 2.88-2.89)

These matters will be determined at a VCAT hearing that may involve evidence from a range of witnesses, including medical and other professionals, as well as families and friends of the person.

Hearings are generally open to the public.

DECISION-MAKING POWERS OF GUARDIANS AND ADMINISTRATORS

When appointing a guardian or administrator VCAT decides the extent of that person's decision-making powers.

VCAT is required to give the guardian or administrator decision-making powers only to the extent necessary to safeguard the rights and interests of the person with the disability.

A guardian who is given authority to make decisions only in particular areas, such as housing or health care, is known as a 'limited guardian'. A 'plenary guardian' is a guardian who is defined in the G&A Act as having the same powers that a parent has in relation to their child.

This is discussed in more detail in Chapter 2 of the Information Paper (paragraphs 2.38 – 2.43)

In practice, VCAT does not usually limit the powers of administrators. The powers of administrators are quite broad and may include:

- collecting and investing income
- managing, renting, mortgaging and selling property
- managing the financial affairs in general
- conducting litigation.

These powers are discussed in more detail in Chapter 2 of the Information Paper (paragraphs 2.97 – 2.102)

Both guardians and administrators are expected to help the person with the disability to develop independence. They are also required to take the wishes of the person with the disability into account when making decisions.

This is discussed in more detail in Chapter 2 of the Information Paper (paragraphs 2.44 – 2.47; 2.103 – 2.104)

Administrators are also required to lodge annual accounts with VCAT.

See the discussion in Chapter 2 of the Information Paper (paragraph 2.105)

WHO CAN BE APPOINTED AS A GUARDIAN OR ADMINISTRATOR?

In deciding who to appoint as guardian or administrator, VCAT is required to appoint someone who will:

- act in the best interests of the person with the disability
- not have a conflict of interest
- be suitable to act as guardian or administrator
- in the case of administrator, have sufficient expertise to carry out the role, or have a special relationship or another special reason for being appointed the person's administrator.

In deciding if a person is suitable to act as guardian or administrator, VCAT must consider:

- the wishes of the person with the disability
- the desirability of preserving existing family relationships
- compatibility with the person with the disability (as well as with the person's administrator or guardian, if there is one)
- the availability and accessibility of any proposed guardian.

VCAT can appoint the Public Advocate as guardian if it considers there is no one else suitable for the role. This is a 'last resort' option.

The G&A Act does not have a formal 'last resort' option for appointment of an administrator. In practice, State Trustees are commonly appointed as administrators, but family members, trustees and other professional administrators are also appointed.

This is discussed in further detail in Chapter 2 of the Information Paper (paragraphs 2.33 – 2.37; 2.90 – 2.94)

RESPONSIBILITIES OF GUARDIANS AND ADMINISTRATORS WHEN MAKING DECISIONS

The G&A Act places requirements on guardians and administrators in relation to the decisions they make on behalf of the person with the disability. These include:

- acting in the best interests of the person
- encouraging the person with the disability to take as much control as possible in making their decisions
- taking the wishes of the person with the disability into account as much as possible.

Guardians are also required to:

- act as an advocate for the person with the disability
- act in ways that will encourage the person with the disability to participate in the life of the community.

This is discussed in further detail in Chapter 2 of the Information Paper (paragraphs 2.44 – 2.47; 2.103 – 2.104)

DURATION AND REVIEW OF GUARDIANSHIP AND ADMINISTRATION ORDERS

Guardianship orders are usually made for twelve months and administration orders for three years before they are reassessed by VCAT.

The G&A Act has provisions for both reassessments and re-hearings, both of which are conducted by VCAT. Appeals can also be made to the Supreme Court of Victoria, but only on points of law.

There are no provisions for the review of the actual decisions that guardians or administrators make.

This is discussed in more detail in Chapter 2 of the Information Paper (paragraphs 2.106 – 2.117)

ENDURING GUARDIANS

The G&A Act permits a person to appoint another person to make decisions on their behalf if, at some stage in the future, they are unable to make decisions for themself. A person appointed in this way is called an 'enduring guardian'.

A person must have 'capacity' to appoint an enduring guardian. Usually this is understood to mean the person must have a reasonable understanding of what the appointment means. The powers of an enduring guardian only come into effect when, and to the extent that, the person making the appointment later loses capacity.

The sorts of decisions an enduring guardian can be appointed for are essentially the same sorts of decisions for a guardian can be appointed for by VCAT. These include lifestyle and personal decisions about matters like living arrangements, housing, healthcare and employment.

This is discussed in more detail in Chapter 2 of the Information Paper (paragraphs 2.70 – 2.81)

ENDURING POWER OF ATTORNEY (FINANCIAL)

The Instruments Act permits a person to appoint another person to make financial and legal decisions for them. If the person making the appointment wants these powers to continue after they lose the capacity to make their own decisions, the appointment is called an 'enduring power of attorney'.

Like an enduring guardian appointment, the person making the appointment must have the capacity to do so. Unlike the enduring guardian appointment, the powers of the attorney come into effect as soon as the appointment is made, unless otherwise indicated by the person making the appointment.

The sorts of decisions an enduring attorney might make are generally similar to those an administrator appointed by VCAT might make.

This is discussed in more detail in Chapter 3 of the Information Paper (paragraphs 3.24 – 3.36)

ENDURING POWER OF ATTORNEY (MEDICAL TREATMENT)

The MT Act permits a person to appoint someone else to make medical treatment decisions on their behalf. An appointment made in this way is called an 'enduring power of attorney (medical treatment)', and the person appointed is known as an 'agent'.

Like enduring guardians, agents can only use their powers when the person who appointed them loses capacity.

Agents have the power to make a range of medical treatment decisions, including both the refusal of treatment and consent to medical procedures.

This is discussed in more detail in Chapter 3 of the Information Paper (paragraphs 3.13 – 3.17)

OTHER PROVISIONS RELATING TO MEDICAL DECISIONS

The G&A Act and the MT Act establish a complex regime for medical treatment decisions. The regime has the following main components.

If a person has made an Enduring Power of Attorney (Medical Treatment) appointment, their agent has the primary authority to consent to, and refuse, medical treatment.

If the person has not made an Enduring Power of Attorney (Medical Treatment) appointment, the G&A Act sets out a hierarchy of other people who may consent to medical treatment. This hierarchy includes persons appointed by VCAT, by the patient themselves (through an enduring guardianship appointment) and relatives and carers of the person. The person at the top of this hierarchy becomes the 'person responsible' for consenting to medical treatment.

No consent is required if the medical procedure is an emergency.

A medical practitioner may provide non-emergency treatment without the consent of the person responsible in certain circumstances, and subject to procedural safeguards.

Consent to permanent sterilisations and abortions can only be given by VCAT.

There are also separate provisions for consent to medical research set out in the G&A Act.

This is discussed in more detail in Chapter 2 of the Information Paper (paragraphs 2.127 – 2.153)

OTHER LEGISLATION

The commission has been asked to look at the interaction the between the G&A Act and both the MH Act and the Disability Act.

The MH Act and the Disability Act are discussed in more detail in Chapter 3 of the Information Paper (paragraphs 3.41 and 3.71)

Both of these Acts include provisions relating to the involuntary treatment and detention of people with mental illness or intellectual disability respectively.

The commission has also been asked to look at the G&A Act's interaction with the CMIUT Act. This Act deals with a range of matters relating to people who are charged with a criminal offence but are unable to stand trial, or who are found not guilty because of mental impairment.

The CMIUT Act is discussed in more detail in Chapter 3 of the Information Paper (paragraphs 3.75 - 3.83)

The commission has also been asked to look at the question of guardianship for people who are 17 years of age, who are too old to have a guardian appointed under the Children, Youth and Families Act , but too young to have one appointed under the G&A Act.

This Act is discussed in more detail in Chapter 3 of the Information Paper (paragraphs 3.72 – 3.74)

Questions

The commission is keen to receive your thoughts about the current state of Victoria's guardianship laws and whether there is any need for reform. We have developed a number of questions about specific features of those laws. You can answer as many or as few questions as you wish.

Later in the year we will publish a Consultation Paper containing proposals for law reform. There will be another opportunity for the community to provide responses to that paper.

GENERAL QUESTIONS

1. We would like to hear your views about:
    - what parts of the law work well?
    - what parts of the law don't work well and why?
    - your ideas to improve the law
2. Is a system of guardianship and administration the best way to ensure the needs of people with impaired decision-making ability are met and their rights are protected? What other approaches might better achieve these goals?
3. Is there an adequate understanding of guardianship laws in the community? What could be done to improve this?
4. How should developments in policies and practices for people with disabilities be reflected in guardianship and administration laws?
5. People with age related disabilities and acquired brain injuries are now the main users of guardianship and administration. Do you think the system needs to change to reflect this situation and prepare for the future? If so how should it change?

SPECIFIC QUESTIONS FROM OUR TERMS OF REFERENCE

DISABILITY

6. Should it be necessary for a person to have a 'disability' before a guardian or administrator is appointed or is it preferable to rely on concepts such as lack of 'capacity' or 'vulnerability'?
7. What are the best ways of assessing whether a person's decision-making capacity is impaired?

BEST INTERESTS

8. Is 'best interests' a useful or appropriate guide for substitute decision-makers? Are there better approaches?
9. Does the notion of 'best interests' decision-making allow for the right of a person to take risks and make bad decisions? Should it?
10. To what extent should a guardian or administrator be required to try to identify the represented person's wishes and follow them wherever possible?

SUBSTITUTE DECISION-MAKING

11. Is there a continuing need for substitute decision-making laws?
12. Do we need to have two types of substitute decision-makers (administrators and guardians) for financial and personal decisions? Would it be preferable for VCAT to have a range of different financial, medical and lifestyle powers it could provide to one decision-maker?

13. Should plenary guardianship and administration orders be retained? Or, should VCAT be required to identify in each case the range of decisions which can be made on a person's behalf?
14. Are there any decisions substituted decision-makers cannot make at the moment that you think they should be able to? Are there some decisions that substituted decision-makers should not be able to make?
15. Is there a need for new laws that formally recognise supported decision-making? How should any supported decision-making laws operate?

REVIEW

16. Should VCAT have the power to review individual decisions made by guardians and administrators? If so, who should be able to ask for a review of a decision?
17. What powers, if any, should VCAT have to deal with substitute decision-makers who abuse their power?

PUBLIC ADVOCATE

18. Should there be any changes to the functions and powers of the Public Advocate?

VCAT

19. Should there be any changes to the functions, procedures or powers of VCAT?

AGE

20. Should VCAT have the power to appoint a guardian or administrator for a person under 18 years old?

CONFIDENTIALITY

21. Should there be any changes to the way the law operates to ensure the right balance is struck between privacy and transparency?

TERMINOLOGY

22. Should the terms 'guardian' and 'administrator' be retained? If not, what term or terms should replace them?

MEDICAL TREATMENT

23. Do the 'medical treatment' provisions in the G&A Act work effectively?

INTERACTION OF LAWS

MEDICAL TREATMENT

24. Do the medical treatment provisions in the G&A Act and the MT Act work together effectively? If not, how could the law be improved?

ENDURING POWERS

25. Do the laws concerning enduring powers of guardianship, enduring powers of attorney (financial) and enduring powers of attorney (medical

treatment) work effectively? Do these powers operate in harmony with VCAT appointments of guardians and administrators?

26. Directions provided by people in enduring powers or other documents are generally not legally binding. Should 'advance directives' about personal, medical or financial matters have more authority?

CRIMES (MENAL IMPAIRMENT AND UNFITNESS TO BE TRIED) ACT

27. What role should guardians have for people who may be affected by this Act?

MENTAL HEALTH ACT

28. Should there be separate mental health and guardianship laws?

29. How should mental health and guardianship laws overlap?

30. Should guardians be able to consent to some psychiatric treatment in some circumstances?

DISABILITY ACT

31. Is the law clear about when to seek a Supervised Treatment Order and when to seek a guardianship order?

32. What do you think is the best legislative approach for people who are a serious risk to themselves or others but are not covered by the involuntary treatment provisions of the *Mental Health Act 1986*, or the compulsory treatment provisions of the *Disability Act 2006*?

Call for submissions

The Victorian Law Reform Commission invites your comments on this paper. Please provide your submission by **14 May, 2010**.

What is a submission?

Submissions are your ideas or opinions about the law being reviewed. Submissions can be anything from a personal story about how the law has affected you, to a research paper complete with footnotes and bibliography. The commission wants to hear from anyone who has experience with a law under review. It does not matter if you only have one or two points to make; we still want to hear from you.

What is my submission used for?

Submissions help the commission understand different views and experiences about the law it is researching. Information in submissions, along with other research and comments from meetings, is used to help develop recommendations. Once the commission has assessed your submission it will be made available on our website and stored at the commission where it will be publicly available.

Publication of submissions

The commission publishes public submissions it receives on our website to encourage discussion and to keep the community informed about our projects.

We attempt to try to publish as many submissions as possible. Please keep in mind that submissions containing offensive or defamatory content or that do not relate to the project will not be published and that private information of other people will be de-identified.

The views expressed in the submissions are those of the individuals or organisations who submit them and are not the views of the commission.

How do I make a submission?

Submissions can be made in writing or verbally. There is no particular format you need to follow, however, it would assist us if you address the questions listed at the end of the paper.

Submissions can be made by:

- Online form: www.lawreform.vic.gov.au
- Mail: PO Box 4637, GPO Melbourne Vic 3001
- Email: law.reform@lawreform.vic.gov.au

- Fax: (03) 8619 8600
- Phone: (03) 8619 8619, 1300 666 557 (TTY) or 1300 666 555 (freecall within Victoria)
- Face-to-face: please contact us to make an appointment with one of our
- researchers.

What happens once I make a submission?

Shortly after you make your submission you will receive a letter or email confirming it has been received. You are then asked to confirm your details by replying within seven days.

Assistance in making a submission

If you require an interpreter, need assistance to have your views heard or would like a copy of this paper in an accessible format please contact the commission.

Confidentiality

When you make a submission you must decide how you want your submission to be treated. Submissions are either public, anonymous or confidential.

- Public submissions can be referred to in our reports, uploaded to our website and made available to the public to read in our offices. The names of submitters will be listed in the final report. Addresses and contact details are removed from submissions put on our website.

- Anonymous submissions can be referred to in our reports, uploaded to our website and made available to the public to read in our offices but the identity of the author will not be revealed.

- Confidential submissions cannot be referred to in our report or made available to the public.

Please let us know your preference along with your submission. If you do not tell us you want your submission treated confidentially we will treat it as public.

More information about the submission process and this reference is available on our website***:*** www.lawreform.vic.gov.au

Glossary

This glossary is a list of terms that are used relatively frequently throughout this paper. Sometimes they are used in quite specific ways that might be different to other uses of the term. This glossary does not provide technical definitions of these terms, but instead simply describes how we use them in this Information Paper.

Administrator – a person appointed under the *Guardianship and Administration Act 1986* to make financial and some legal decisions for a person who has a disability. VCAT determines the extent of the administrator's decision-making authority when the appointment is made.

Advocate – a person who speaks or acts on behalf of someone else. There are many different types of advocates, including people working in formal advocacy organisations, lawyers and friends and family.

Agent – this term is often used to refer to someone who has been given medical power of attorney under the *Medical Treatment Act 1988*.

Attorney – a person who someone appoints to make decisions for them. There are different types of attorneys but all are appointed using a document called 'Power of Attorney'. The different types of attorneys are explained throughout the Information Paper.

Best interests – is a term often used as a guide to substitute decision-making in guardianship laws. There is no simple definition of 'best interests'. It is a term used differently by different people in different contexts. It is usually linked to the idea of promoting a person's health, welfare and safety, but sometimes also includes respecting the person's wishes, and looking out for their happiness. Throughout this paper we use the term in the same way that the G&A Act defines it, which encompasses these concepts in different ways in different parts of the Act.

Capacity – capacity is used in slightly different ways, depending on the context. Usually it is used to describe a person's ability to make their own decisions, sometimes with support. This is sometimes referred to as 'decision-making capacity' or 'cognitive capacity'. Sometimes the word is used to refer to a person's legal authority to do something. The term 'competence' is used by some people instead of capacity.

Charter – the Victorian Charter of Human Rights and Responsibilities. This was enacted by the Victorian Parliament in 2006 and aims to ensure all Victorian public authorities act in ways that are consistent with human rights, and that all new laws are consistent with those rights.

Convention – the United Nations Convention on the Rights of Persons with Disabilities. The Convention requires states, including Australia, to promote and protect the rights and dignity of people with disabilities and to ensure their equality under the law.

Donor – a person who gives a power of attorney to someone else to make decisions on their behalf. The different types of power of attorney are explained throughout the Information Paper.

Estate – throughout this paper 'estate' is used to describe the money and property a person owns, as well as their debts and living expenses. An administrator or attorney might be responsible for managing some or all of a person's estate. The term is not defined in the *Guardianship and Administration Act 1986*.

Guardian – a person appointed under the *Guardianship and Administration Act 1986* to make lifestyle decisions for a person who has a disability. This can include such things as where the person will live, their medical treatment, the services they receive, their employment and the people with whom they associate.

Throughout this paper we refer to different types of guardians. These include:

- *Private guardian:* this is usually used to describe a guardian who is appointed by VCAT but who is not the Public Advocate
- *Community guardian*: this means a volunteer from the community who is part of the Public Advocate's Community Guardian Program and who, as a delegate of the Public Advocate, acts as a guardian for someone
- *Enduring guardian*: this means a guardian appointed by a person, when they have capacity to act as their guardian when they lose capacity to make their own decisions

Guardianship laws – throughout this paper, we use the term 'guardianship laws' to refer to the G&A Act and other laws that enable a substitute decision-maker to be appointed when a person is unable to make their own decisions. The term includes laws concerning guardianship, administration and personal appointment of a substitute decision-maker under the *Guardianship and Administration Act 1986*, the *Instruments Act 1958* and the *Medical Treatment Act 1988*.

Informal decision-making – throughout this paper, the term 'informal decision-making' is generally used to describe arrangements where someone makes decisions with, or even for, another person without any formal legal authority. Examples of informal decision-making are when friends, family or neighbours assist a person to make their own decisions, or even make decisions on their behalf, even though they might not have been given formal legal authority to do so.

Medical treatment – the term medical treatment is used differently in different contexts. For example, the *Guardianship and Administration Act 1986* has a narrower definition of medical treatment than the one in the *Medical Treatment Act 1988*. Both Acts refer to treatment that is administered by a medical practitioner, but each goes into different detail about what sorts of procedures are meant to be included in, or excluded

from, their respective definitions. In most cases we use the term in the context of either one of those two Acts.

Merits review – a merits review occurs when a decision of a goverment official is reviewed because of a claim that the original decision was a poor or wrong decision, as opposed to reviewing a decision because of a claim of an error in law.

Order – a directive made by a court or tribunal. Usually it involves a directive that someone must do something, or comply with some rules. There are many different types of orders discussed throughout the Information Paper.

Person responsible – a person who has authority under the *Guardianship and Administration Act 1986* to consent to medical treatment on behalf of someone with a disability. Sometimes this will be a guardian or attorney, but it might also be a spouse, family member or carer, depending on the situation. The way that guardianship law determines who is the 'person responsible' is explained in the Information Paper.

Public Advocate – the Public Advocate is a Victorian independent statutory authority with a range of roles and functions under the *Guardianship and Administration Act 1986*. These roles and functions include acting as guardian of 'last resort', as well as various roles related to promoting the rights of people with disabilities.

Represented person – this term refers to a person who is subject to a guardianship or administration order under the *Guardianship and Administration Act 1986* (Vic).

State Trustees – State Trustees is a state owned company which, amongst other roles, is often appointed as administrator under the *Guardianship and Administration Act 1986* for people with disabilities.

Substitute decision-maker – a substitute decision-maker is a person who has legal authority to make decisions on behalf of someone else. Usually the law treats decisions of a substitute decision-maker as if they were made by the person themself. Throughout this Information Paper the sorts of substitute decision-makers discussed are guardians, administrators and attorneys.

VCAT – the Victorian Civil and Administrative Tribunal. This is a legal decision-making body, which is similar to a court but less formal. There are a number of different sections of VCAT, called 'lists' and these include the Guardianship List, which hears and decides upon applications made under the *Guardianship and Administration Act 1986*.