

Do Guardianship laws need to change?

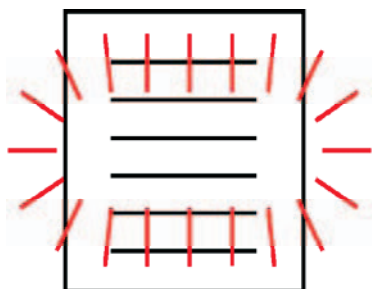
Information booklet

Easy English

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Some words we use in this booklet



There are some words we use in this paper that might be new to you.

We will try to use these words only when another easier word doesn't work.

Here is a list of some of the words you will need to learn to be able to understand this booklet.



The commission – this is the Victorian Law Reform **Commission**. It is an independent organisation set up by the Victorian Government. The **commission's** job is to look at different laws and decide whether or not the law needs to be changed. The **commission** does not change the law. Instead, it makes suggestions to the Government about what changes need to be made. The Government then decides whether or not to do what the **commission** suggests.



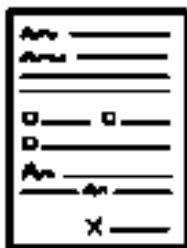
Guardian – this is a person who the law says can make decisions for someone with a disability who can't make their own decisions. A **guardian** can make decisions about things like where a person will live, what health care they should have, whether they should go to work, or what people they can mix with. These are just some of the decisions a **guardian** might make for a person with a disability who cannot make their own decisions.



Administrator – this is a person who the law says can make decisions about money for someone with a disability who can't make their own decisions. An **administrator** can make decisions about how much money the person should save, how much they can spend, and what they can spend it on.



VCAT – this is the name of a Tribunal. A Tribunal is a little bit like a Court. **VCAT** is the group that decides if someone with a disability needs a **guardian**. It also decides if someone with a disability needs an **administrator**. If a person needs a **guardian** or an **administrator**, **VCAT** decides who that person should be.



Application – this is a form that has to be filled out if someone thinks someone else needs a **guardian** or an **administrator**. The form then goes to **VCAT**, and **VCAT** decides what needs to be done next.



Hearing – this is a meeting where **VCAT** decides whether or not someone with a disability needs a **guardian** or an **administrator**.



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Public advocate – this is a government person who **advocates** for people with disabilities. This means her job is to speak up for people with disabilities. The **Public advocate** employs staff who help her do her job.

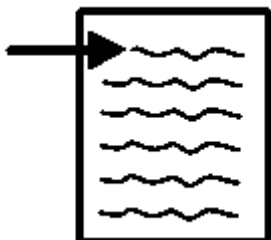


State trustees – this is a government company that manages money for some people with disabilities who are not able to manage their own money



Advocate – this is a person who tries to make sure that other people respect your rights. Usually an **advocate** will do this by speaking up for you.

Whenever we use these words in the booklet, we will write them **in bold, like this**. When you see a word in bold, you know you can find out what it means by looking it up here.



Introduction



Victoria has had guardianship laws since 1986. These laws affect people with disabilities who cannot make their own decisions. The law explains when another person can make decisions for the person with the disability.



The Government has asked the Victorian Law Reform **Commission** to look at these laws, and to decide if they need to be changed.



This booklet will explain to you how the guardianship laws work in Victoria.



It will also explain to you the things that the Government wants the **commission** to think about while we are looking at the laws.



We wrote this booklet to get people talking about guardianship laws. After you have read the booklet we would like to know what you think about guardianship.



At the end of the booklet we will ask some questions and explain how you can have your say.



What does the guardianship law say?



When we talk about Victoria's guardianship laws in this booklet, we are mainly talking about the laws that protect people with disabilities who are not able to make their own decisions.

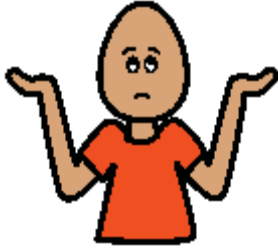
Most of these laws are written in a piece of law called the *Guardianship and Administration Act*.



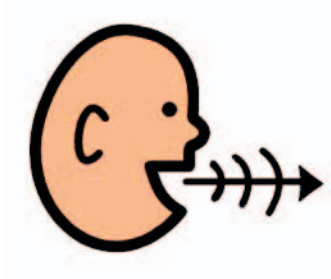
In Victoria, the guardianship law says what happens when a person with a disability cannot make their own decisions. The law says that someone else might need to make decisions for that person. **VCAT** appoints a person to make their decisions for them.

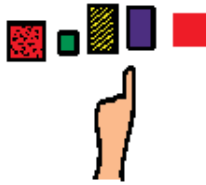


This person is called an **administrator** if they make decisions about money. If they make other decisions, they are called a **guardian**.



The law about guardians and administrators is sometimes very confusing. We will try to explain it in this booklet. You might also like to talk with someone who knows the law really well, like a lawyer, an **advocate** or someone from the **commission**. They might be able to explain things to you in more detail than we can do in this booklet.





How does VCAT decide if someone needs a guardian?



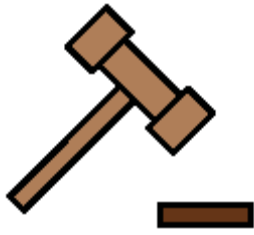
VCAT is similar to a court. It decides whether or not someone needs a **guardian** or **administrator**.



Anyone is allowed to send an **application** to **VCAT**, telling **VCAT** that someone with a disability needs a **guardian** or an **administrator**.



VCAT have to read the **application** and then decide what to do next.



To help **VCAT** decide what to do next, the law says that **VCAT** have to think about a few things.



First, **VCAT** have to make sure that the person really has a disability.



Then **VCAT** have to make sure that the person cannot make their own decisions.



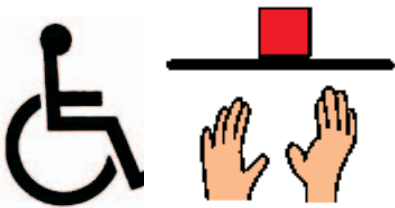
Then **VCAT** have to see if the person really needs someone to make decisions for them



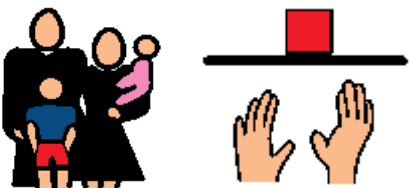
When they think about these things **VCAT** must try to answer some questions. These questions are:



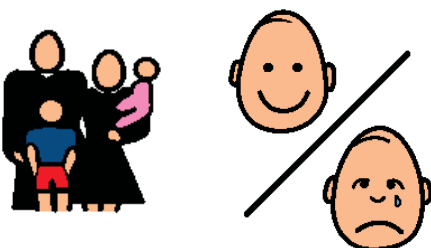
- Is there an easier way to help the person instead of appointing a **guardian** or **administrator**?



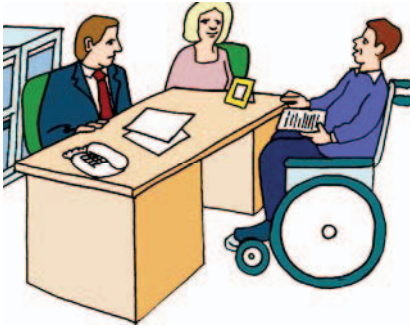
- What does the person with the disability want?



- What does the family of the person with the disability want?



- What will be the effect on the family if a **guardian** is appointed?



All of this is discussed at a meeting. The meeting is called a **hearing**.

The law says that the person with the disability has to be invited to come to the **hearing**. They can also bring an **advocate** with them if they want to.



The person who put in the **application** is also allowed to come to the **hearing**.

Other people who must be invited to the meeting are:



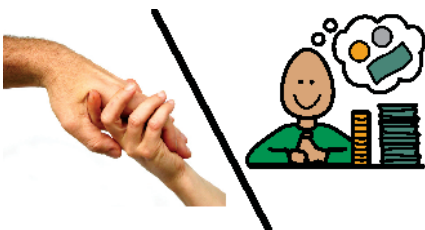
- a family member of the person with the disability, if there is one.



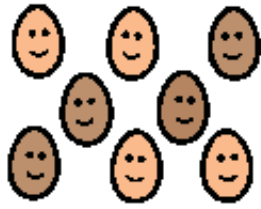
- a carer for the person with the disability, if there is one



- the **Public advocate**



- any **guardian** or **administrator** if the person already has one.



Sometimes other people will be asked to come to the meeting too. This can be other people who know the person with the disability. They can sometimes talk to **VCAT** about the person with the disability. This might help **VCAT** make a better decision on what to do.



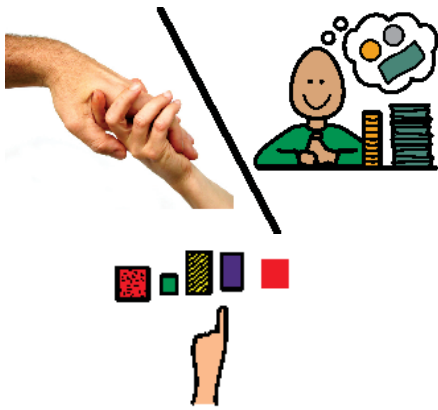
Sometimes doctors and social workers and other staff might be asked to come to the **hearing** too. They can sometimes talk to **VCAT** about what the person with the disability needs. This also might help **VCAT** make a better decision on what to do.



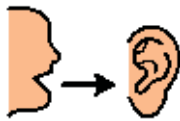
Members of the public are usually allowed to come and watch the **hearing**, but they are not allowed to say anything and they don't usually come.



After the **hearing**, **VCAT** will decide whether or not the person with the disability needs someone else to make decisions for them.



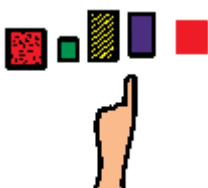
What decisions is the guardian or administrator allowed to make?



If **VCAT** decides someone needs a **guardian** or an **administrator**, they will also decide exactly what decisions the **guardian** or **administrator** will be allowed to make.



The law says the **guardian** should not have more power than the person with the disability needs them to have. They should not be able to make decisions about things the person with the disability can decide for themselves.



So, for example, a person with a disability might need someone else to make decisions about their health care, but they might be able to make their own decisions about where to live.



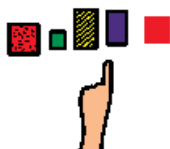
In that case, the law says the **guardian** is only allowed to make decisions about health care. The **guardian** would not be allowed to make decisions about where the person lives.



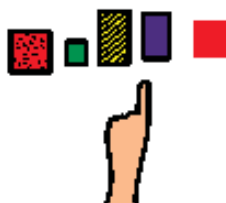
If **VCAT** decides someone needs an **administrator**, the **administrator** will then usually be allowed to make most decisions about what to do with the person's money.



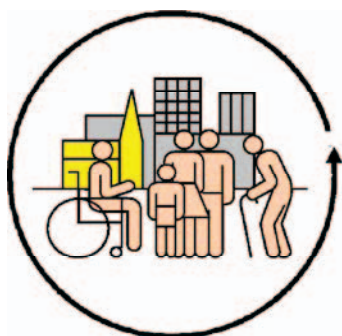
Who should be the guardian or administrator?



If **VCAT** decides someone needs a **guardian** or an **administrator**, they will also decide who that person should be.



The law says that **VCAT** should choose someone who will be a good **advocate** for the person with the disability and will stop the person being harmed or hurt in any way.



The law also says that **VCAT** should choose someone who will help the person with the disability become more independent and involved in the community and help the person to care for themselves.



The law also says that **VCAT** should choose someone from the person's family, but only if that's going to be good for the person with the disability.



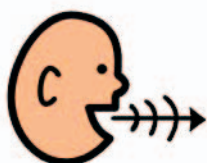
The law also says that **VCAT** should choose someone who is well suited to the person with the disability.



The law also says that **VCAT** should choose someone who can put the person with the disability first.



The law also says that when **VCAT** are choosing an **administrator** for a person with a disability, they should choose someone who knows how to manage money well.



The law also says **VCAT** should ask the person with the disability who they would like to be their **guardian** or **administrator**. But the law does not say that **VCAT** has to pick the person who the person with the disability wants – just that they have to think about who the person wants when they make the decision.

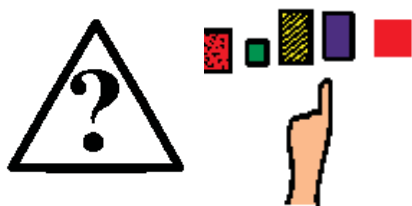


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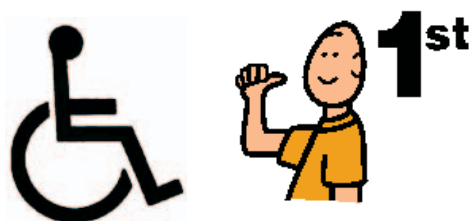
If **VCAT** doesn't think that a family member or a friend of the person with the disability is right person to be the **guardian**, they can ask the **Public advocate** to be the **guardian**.



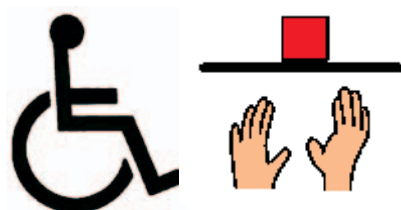
VCAT can ask **State trustees**, or another company, or family member or friend of the person with the disability, to be the **administrator**.



How should guardians and administrators make their decisions?



The law says that guardians and administrators should make decisions that are in the best interests of the person with a disability. Best interests means that the **guardian** should try do a number of things when they make decisions.



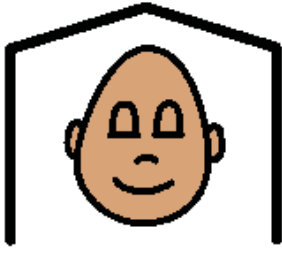
One of these is to try to find out what the person with the disability wants.



A **guardian** should also be an **advocate** for the person with a disability.



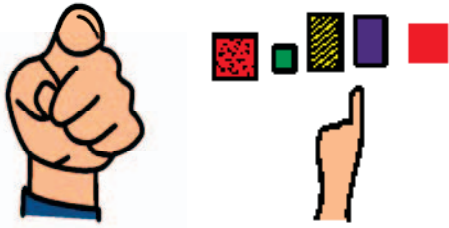
A **guardian** should try to help the person with a disability to become more independent and involved in the community and should encourage the person to care for themselves.



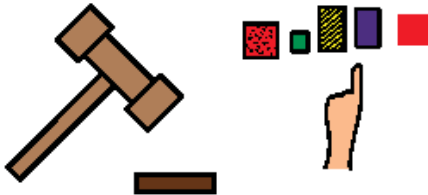
A **guardian** should also try to make decisions that will protect the person with the disability from being harmed or hurt in any way.



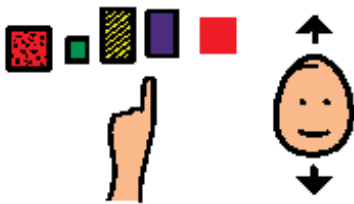
Guardian's decisions should not take away any more of the person's rights than is absolutely necessary



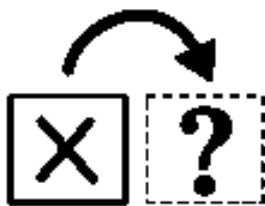
Can you choose your own guardian or administrator?



The law also allows people to choose their own **guardian** or **administrator** in some situations.



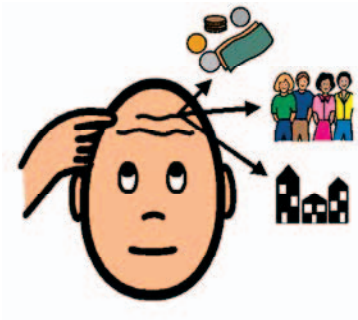
This law applies only to people who are able to make their own decisions.



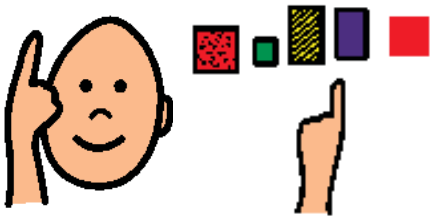
Even if you can make your own decisions now, maybe something will happen in the future that will mean you can no longer make your own decisions.



This can happen, for example, if a person gets a brain injury in the future. Or it might happen if a person grows old and gets dementia.



This can happen to anyone. Because of this, some people like to prepare for the future by making decisions ahead of time about who their **guardian** or **administrator** will be.



The law says you can do this, as long as you understand what it means to choose your own **guardian** or **administrator**.

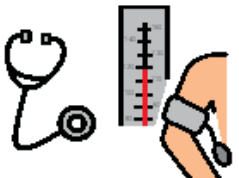
There are a few different terms used to describe someone who is chosen to make decisions for someone else in this way. Some of the terms used are:



- enduring **guardian**



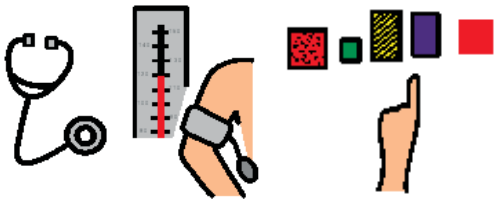
- enduring power of attorney (financial)



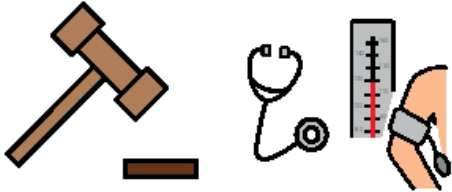
- enduring power of attorney (medical treatment).



Each one of these has a slightly different role to the others. But all of them are used to describe situations where you appoint someone to make decisions for you, if you are unable to make your own decisions at some stage in the future.



How do medical decisions work?



There are extra laws about making medical decisions for someone with a disability who cannot make those decisions themselves.

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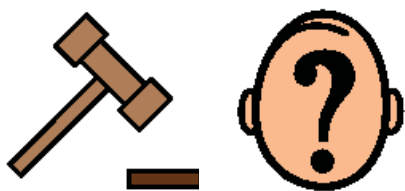
If someone needs medical treatment in an emergency, the doctor does not need anyone's consent.

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If it is not an emergency, the doctor has to get consent.

If the person has a disability and cannot consent themselves, the doctor has to get consent from someone else before the doctor is allowed to do any medical work on the person.



The law sets out a list of the types of people who are allowed to give consent to medical treatment for a person with a disability who cannot consent themselves. The law also says which of these people should be asked first.



If the person with the disability has already appointed someone to make medical decisions for them, this will be the first person who the doctor must ask consent to the treatment.



The list also includes the person's **guardian**, if they have one.

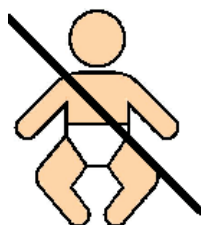


But if the person has not appointed someone themselves, and they do not have a **guardian**, the doctor is allowed to get consent from someone close to the person, such as their husband or wife, their carer, or someone from their family.



There are some medical decisions that only **VCAT** is allowed to make for a person with a disability who is not able to make their own decision. This means that a **guardian** cannot consent to these things on their own.

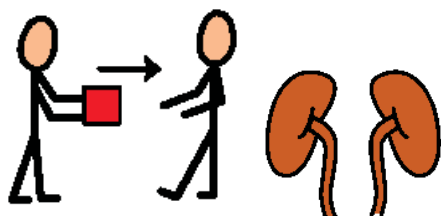
These decisions are:



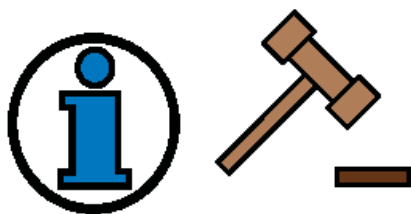
- if a person should be sterilised, so they can't have children



- if a woman should have an abortion is she is pregnant

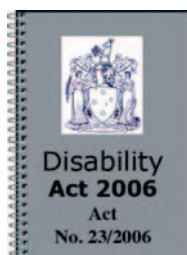


- if a person should be able to give some part of their body to another person, such as one of their kidneys.



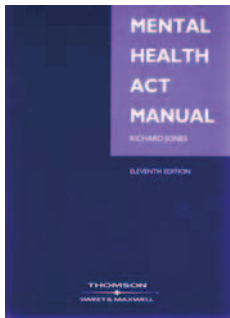
Other laws you need to know about

There are a few other laws that can affect people with disabilities and the decisions they make. It will sometimes be helpful to know about these laws, too, when deciding what to do with our guardianship laws



Two of the most important laws to know about are the Mental Health Act and the Disability Act.

Both of these laws are very complicated. Here we will just tell you a little bit about these laws, and why they are important when thinking about guardianship.



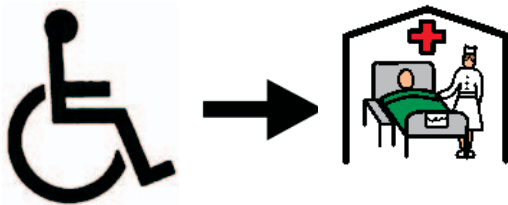
The Mental Health Act



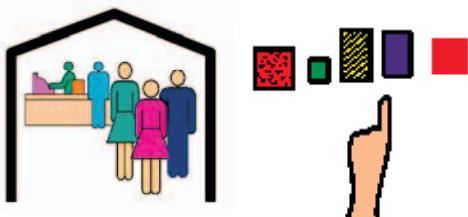
The Mental Health Act describes the different ways of supporting people with a mental illness.



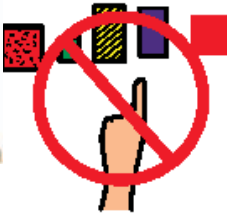
The Mental Health Act has some parts that describe what needs to happen if someone with a mental illness is likely to harm themselves or other people.



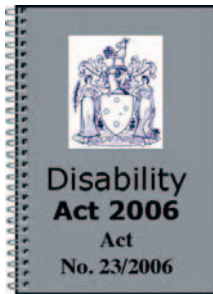
The Mental Health Act says that in these situations a person with a mental illness can be forced to have treatment, or forced to live in a psychiatric hospital, even if they don't want to.



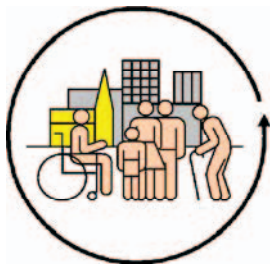
These decisions have to be agreed to by the Mental Health Review Board, which is a little bit like **VCAT**. The Mental Health Review Board only deals with issues for people with mental illness.



The law says that guardians are not allowed to make decisions about psychiatric treatment.



The Disability Act



One of the main things the Disability Act does is describe the ways in which people with disabilities should be supported to live in the community.



But the Disability Act also has some parts that describe what needs to happen if a person with an intellectual disability is likely to harm themselves or other people.



The Disability Act says a few different things can happen if someone with an intellectual disability is likely to harm themselves or other people, even if the person with the intellectual disability does not consent.



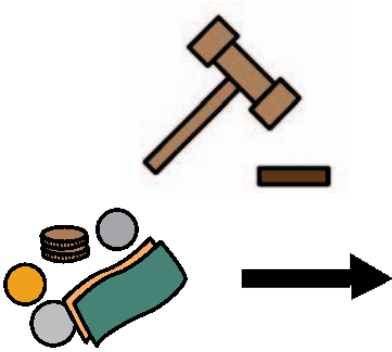
One of the most important of these is that the person with the intellectual disability can be forced to live in a special service, and be forced to have treatment to stop them harming others.



The Disability Act explains that this can only happen in very special situations, and **VCAT** have to agree that it needs to be done.

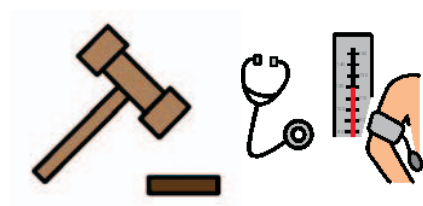


In these situations, the law says that a **guardian** does not need to be appointed, even though the person with the intellectual disability might not be able to make their own decisions about the treatment they are getting.



The Instruments Act

This is law that describes how an Enduring Power of Attorney (Financial) works. This is when you ask someone else to make decisions for you about your finances.



The Medical Treatment Act

This is the law that describes how Enduring Powers of Attorney (Medical Treatment) works. This is when you ask someone else to make decisions for you about your medical treatment.



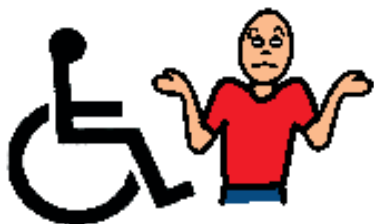
Crimes (Mental Impairment and Unfitness to be Tried) Act



This is the law that describes what sometimes happens when a person with a disability commits a crime.

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There are two main situations where this law says what has to happen.



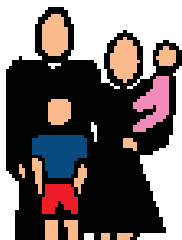
The first is when a person's disability means they cannot understand what happens in court and so would not be able to get a fair trial.



The second is when a person's disability means they cannot understand that what they did was wrong.

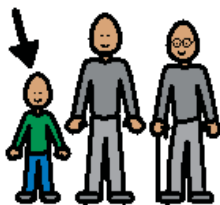


In both these situations the court decides what should happen with the person. A **guardian** does not make these decisions.



Children, Youth and Families Act

This is the law that says what should happen with children and young people in different situations.



It says that if a child or young person needs a **guardian**, the **guardian** must be appointed before the person turns 17.

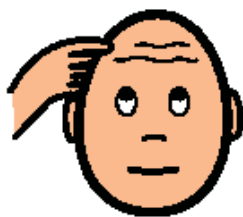
The Guardianship Act says that for a person with a disability to have a **guardian**, they must be at least 18 years old.

This means that if a 17 year old has a disability and needs someone to make decisions for them, there is no law to cover them at the moment.



What the Commission has been asked to do

The Government has asked the **commission** to look at how well all these guardianship laws are working, and whether anything needs to change.



There are a few things that the Government especially wants the **commission** to think about.



One is to make sure that the law supports people's human rights. There are some laws about human rights that were not around when the guardianship laws were first written. The **commission** has been asked to think about how these new human rights laws might affect the way guardianship works.



Also, services for people with disabilities are different now to what they used to be. The **commission** has been asked to think about whether that makes any difference to what guardianship laws are needed.

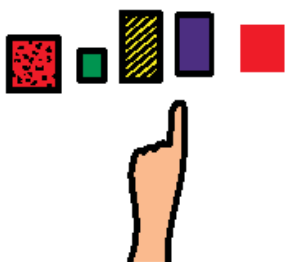


Another thing the **commission** needs to think about is that different people need guardians and administrators now than before. When the guardianship laws first started, most of the people who had guardians were people with intellectual disabilities. Now most of the people who have guardians are older people with dementia. The **Commission** has been asked to think about whether that makes any difference to what guardianship laws are needed.

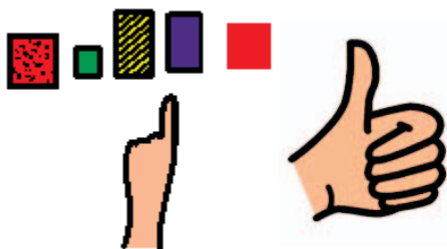


Also, there are new ideas now about the best way of helping people with disabilities who are unable to make their own decisions.

For example, there may be ways of helping people make their own decisions instead of appointing someone else to make the decision for them. Or there may be ways of making decisions with the person, instead of appointing someone else to make the decision for them. The **commission** has been asked to look at these sorts of ideas and see if they need to be part of guardianship laws.



The **commission** has also been asked to think about whether or not it matters if the person has a disability or not. Maybe the only thing that really matters is whether or not the person is able to make their own decisions. The **commission** has been asked to think about this question too.



The **commission** has been asked to think about whether someone who is not happy with a decision made by a **guardian** or **administrator** should be able to get a second opinion on that decision. At the moment, the guardianship law does not allow a person to do this.

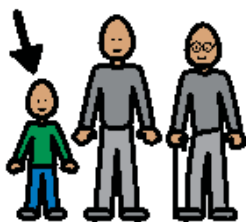


OFFICE OF THE
PUBLIC ADVOCATE

The **commission** has also been asked to think about how the **Public advocate** works, and whether or not there needs to be any changes to what the **Public advocate** does.



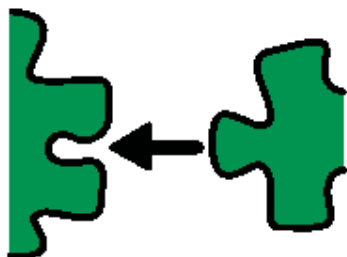
The **commission** has also been asked to think about how **VCAT** works, and whether or not there needs to be any changes to what **VCAT** does.



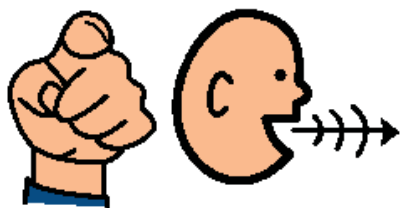
At present, guardians and administrators cannot be appointed for anyone under the age of 18. The **commission** has been asked to think about whether this should be changed to 17.



The **commission** has also been asked to think about whether the guardianship laws protect people's privacy enough, while still making sure that there is a way of checking that the right decisions about guardianship are made.



The **commission** has also been asked to think about how all of the different pieces of law fit together.



You can have your say

This booklet is the first step in the **commission's** job of looking at the guardianship laws.

We would like to hear from you about your experiences of guardianship laws.

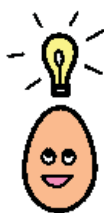
We would also like to hear your views about:



- what parts of the law work well?

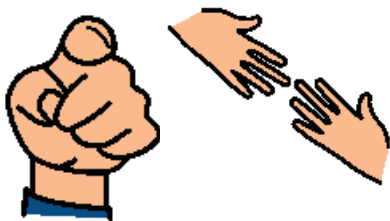


- what parts of the law don't work well and why?



- your ideas to improve the law.

We are also keen to hear your views about any other issues we have about in this booklet.



Your responses will help us to think about what changes might need to be made to the guardianship laws.

You can have your say in whatever way works best for you:



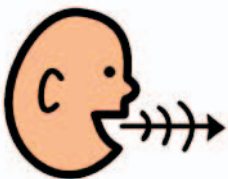
- You can write down your views and post them to us.



- You can write down your views in an email and send it to us.



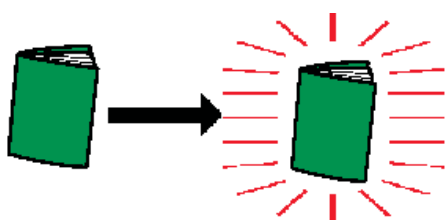
- You can ring us up and talk to us.



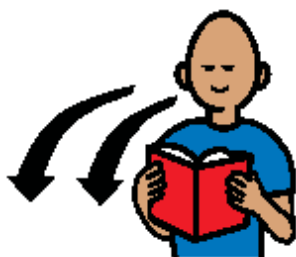
- You can come into our office and talk to us about what you think.



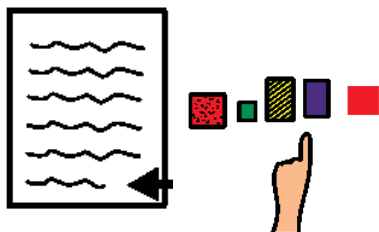
- You can come to one of the meetings we will be organising throughout Victoria, and talk with us about what you think.



After we have listened to people's thoughts on the issues in this booklet, we will then write another booklet where we will tell you about some of our ideas for changing the law.



We will then want to hear from you again about your thoughts on those ideas.



After we have heard your thoughts on those ideas, we will make our final decisions about what we think needs to change in the guardianship laws.



We will then write to the Government and tell them what we think needs to change.

June 2011						
Mon	Tues	Wed	Thur	Fri	Sat	Sun
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

The Government has asked us to write to them with our ideas by 30 June 2011.



Contacting the commission



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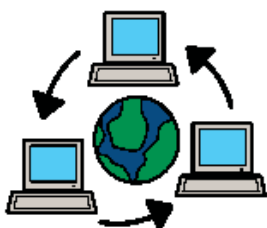
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