May 2018

Securing Their Future

Planning for the future when you care for a person with disability

VICTORIA State Government

state trustees

Office of the Public Advocate

Acknowledgments

Securing Their Future was first published as *Thinking Ahead* in 1990.

Many individuals and organisations since then have contributed to the development of the advice for those caring for a person with a decision-making disability.

The following have provided invaluable advice:

- Moores Legal provided pro bono expertise
- Victoria Legal Aid (VLA)
- State Trustees
- Carers Victoria
- Tandem (formerly Victorian Mental Health Carers Network).

Disclaimer

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About the Cover Image

The cover image is a reproduction of an artwork painted by Rosa Bartone called ‘Dare’. It won first place in the State Trustees 2015 art exhibition—‘Connected’. The exhibition was a celebration of artists participating with disability or mental health illness. Rosa says of her work that: “My dream one day is to walk again, freely, as if on air.”

Elements from her work have been stylised and used throughout the booklet, designed by Nicholas Hopkins.

Dare
by Rosa Bartone

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About OPA and State Trustees

Office of the Public Advocate

The Office of the Public Advocate (OPA) is an independent statutory body established by the Victorian State Government.

It has responsibility for guardianship services in Victoria and supports a number of volunteer programs which promote the interests, rights and dignity of Victorians with disability or mental illness.

OPA provides advice and information on the rights of people with disability or mental illness, their treatment and care.

This may include:

- applications to the Guardianship List of VCAT
- administration and guardianship
- powers of attorney
- medical treatment decisions
- referral to OPA's Community Visitors Program.

The OPA Advice Service is available Monday to Friday, 9am–4.45pm, and can be contacted on: **Phone:** 1300 309 337 **TTY:** 1300 305 612

State Trustees

State Trustees provides a broad range of legal and financial services to provide security and peace of mind in difficult times. Below is a snapshot of just some of the services State Trustees provides:

Trustee Services: State Trustees can act as the long-term trustee of trusts established by instruments such as Wills, Deeds and Court Orders. We can be the impartial, available professional for the long-term commitments and obligations required of a trustee.

Powers of Attorney: A Power of Attorney lets someone else make important decisions on your behalf when you need it most. This can be a trusted relative, a friend or an organisation like State Trustees.

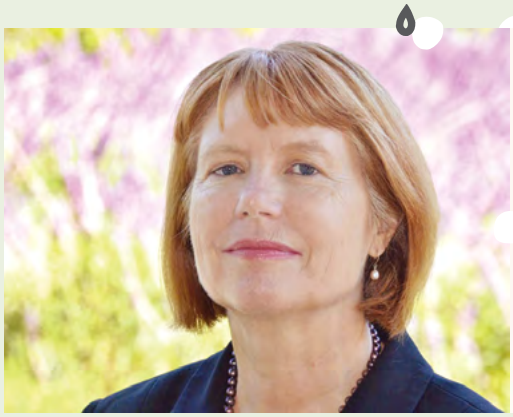
Wills: A Will helps ensure those you love will be looked after when you're no longer here. State Trustees can help with the writing and storing of your Will.

Personal Financial Administration: State Trustees provide personal and tailored support to help people who, due to disability, illness or injury, are unable to manage their financial and legal affairs.

Executor Services: State Trustees can be the impartial voice at an emotional time. When you appoint us as the executor of an estate, we'll manage everything so you can be sure the estate is handled professionally and with a minimum of fuss.

For more information, visit **www.statetrustees.com.au** or call: **Melbourne:** (03) 9667 6444 **Outside Melbourne:** 1300 138 672

From the Public Advocate and State Trustees



Caring for a person who has a decision-making disability can be both challenging and rewarding, however, you may be naturally concerned about what will happen, once you are no longer able to care for them.

We understand the anguish carers feel about this.

This guide has been created to help you put in place some safeguards to ensure the person with disability you care for is properly provided for, if something were to happen to you.

The Victorian Civil and Administrative Tribunal (VCAT) can appoint a guardian or administrator and this is one way of making sure the person is cared for. Information is included in this guide about how to do this.

It is also a good idea to make a Will and plan your estate so that your assets are passed on in a way that benefits the person who relies on you for financial support.

This guide is not a do-it-yourself kit, you should get legal advice. Make sure that your lawyer knows about planning for when you are deceased (known as 'estate planning'), as well as any specific issues relevant to the person with disability.

If you have questions about any of the information included in this guide, you can contact the OPA Advice Service on 1300 309 337.

Any feedback you have is also welcomed.

Colleen Pearce
Public Advocate

Craig Dent
CEO, State Trustees

About this booklet

This booklet is written for parents, relatives or significant others in the lives of Victorians with a decision-making disability.

A decision-making disability means that the person cannot make everyday decisions for himself or herself. This can be as a result of:

- an intellectual or cognitive disability
- a mental or emotional illness
- an acquired brain injury
- an inability to communicate decisions.

If you need to help the person you care for make daily decisions, and something happens to you, you may be concerned about their care. However, you can take action to ensure that safeguards are put in place, in the event of this.

This booklet gives you information about how to:

- apply for an administrator to make financial decisions for the person if they are at least 18 years of age or over
- appoint someone as your power of attorney so that decisions can be made for you if you cannot do this yourself
- make a Will or superannuation pension so your assets are passed on in the way you have chosen
- plan your personal estate and superannuation so that your assets are passed on in the most financially efficient way.

However, this guide is not a do-it-yourself kit.

You should get legal advice. Make sure that your lawyer knows about planning for when you are deceased (known as 'estate planning'), as well as any specific issues relevant to the person with disability.

Accountants, investment advisers and the organisations listed at the back of this booklet can also help you.

The law changes all the time. To make sure you are getting accurate information you can:

- call or visit the Office of the Public Advocate
- call the Legal Help phone line at Victoria Legal Aid.

To help you, we have explained some words in 'What do these words mean' on page 36.

Applying for an administrator or a guardian

If the person you care for is over 18 years of age and has difficulty making everyday lifestyle, legal or financial decisions for themselves, they may need an administrator or guardian.

Anyone with an interest in the person can ask the Victorian Civil and Administrative Tribunal (VCAT) to appoint an administrator or a guardian.

Guardians and administrators are only required as a last resort usually when there is no other person that can make a decision for the person or to resolve a dispute. Sometimes a person with disability is at the centre of conflict between family members or other people.

Such conflicts can include:

- disagreements about a person's accommodation
- conflicts about the person's care
- disagreements about who can access and visit the person
- disputes about a person's financial and legal affairs, including use of an enduring power of attorney.

Occasionally, separate or unrelated disputes between family, friends and carers can prevent them cooperating to solve problems for the person with disability.

In most situations, however, family, friends and carers are able to support the person with disability to make decisions on an informal basis.

VCAT will only appoint a guardian or administrator if there is a current dispute or presenting issue. They will not appoint a guardian or administrator 'just in case' such a situation arises.

What is an administrator?

An administrator is a person appointed by VCAT to make financial and legal decisions for an adult with disability who cannot make decisions for themselves. This is different from an administrator appointed by the Supreme Court to deal with an estate where the person has died without a Will.

An administrator appointed by VCAT can:

- make decisions about managing the person's banking, investments or property and paying their bills
- sign legal documents and make other legal decisions about the person's property
- exercise the person's right to privacy in relation to estate matters.

They must also keep accurate records of all income and expenditure, and lodge annual accounts to VCAT for examination or auditing.

An administrator's financial interests must not conflict with those of the person. They must also act in the person's best interests.

This means they must:

- consult with the person about what the person wants and to give effect to the person's wishes wherever possible
- encourage and assist the person to make their own decisions, look after their money and be independent.

VCAT orders are made for a fixed period of time. The maximum time for an order is three years. VCAT will hold a review hearing before the order expires and ask the administrator a range of questions.

Such questions could include:

- How well are you managing?
- Are you investing wisely?
- Are you too strict or not strict enough in making money available to the person with a decision-making disability?
- Are you checking up on how well the person is being looked after?
- Can VCAT help you in any way?

Anyone can make an application to VCAT if they are concerned that a person is not making reasonable judgements because of disability, and there is a need for an administrator to be appointed.

The person you care for does not usually need an administrator if they have a valid enduring power of attorney (financial) made before 1 September 2015, or an enduring power of attorney made on or after 1 September 2015, in which they have appointed an attorney for financial matters. The person you care for would need to have had decision-making capacity to make the enduring power at the time they made it. Otherwise, the power of attorney is not valid.

What is a guardian?

A guardian is a person appointed by VCAT to make personal and lifestyle decisions for an adult with disability who cannot make reasonable decisions for themselves, and there are concerns about their wellbeing. A guardian may be authorised to make decisions about the person's medical treatment, where they live, and what services they get. They do not take over the role of care-givers.

In some circumstances, VCAT can decide to make a 'plenary order'. This means the guardian can make decisions about all personal and lifestyle matters. This does not include financial matters.

However, usually VCAT will make a 'limited order'. This means the guardian can only make decisions about specific areas.

These could include:

- accommodation - where and with whom the person should live
- medical treatment decisions
- access to people - who might visit the person
- access to services - what services they get and activities they are involved in.

A guardian must act in the best interests of the person when making a decision.

This means they must:

- advocate for the person
- encourage the person to participate as much as possible in the community
- encourage and assist the person to care for themselves and to make decisions for themselves
- protect the person from neglect, abuse or exploitation
- consult with the person, taking into account, as far as possible, the person's wishes and to give effect to those wishes wherever possible.

The person you care for does not usually need a guardian if they have a valid enduring power of guardianship made before 1 September 2015, or an enduring power of attorney made on or after 1 September 2015 in which they have appointed an attorney for personal matters. The person you care for would need to have had decision-making capacity to make the enduring power at the time they made it, otherwise, the power of attorney is not valid.

Can anyone else make medical treatment decisions?

Yes.

A person's 'medical treatment decision maker' can make most medical treatment decisions for a person who does not have capacity to make the medical treatment decision.

A person's medical treatment decision maker is the first person from the list below who is reasonably available and willing and able to make the decision.

1. A medical treatment decision maker appointed by the person
2. A guardian appointed by VCAT to make decisions about medical treatment
3. The first of the following people who is in a close and continuing relationship with the person:
   a. the person's spouse or domestic partner
   b. the person's primary carer (not a paid service provider)
   c. an adult child of the person
   d. a parent of the person
   e. an adult sibling of the person.

If more than one relative is first on this list, it is the eldest.

If there is no medical treatment decision maker for a person who does not have capacity to make the medical treatment decision, Victoria's Public Advocate has authority to make significant medical treatment decisions for the person. The Public Advocate has this authority under the *Medical Treatment Planning and Decisions Act 2016*.

If you are unsure about who is the medical treatment decision maker, or if a guardian is required, contact the OPA Advice Service.

See 'Where to get help'.

Are there any medical decisions a medical treatment decision maker cannot make?

Yes.

A medical treatment decision maker (including a guardian with healthcare powers) does not have the authority to consent to the following medical procedures:

- treatment that causes permanent infertility
- termination of pregnancy
- removal of tissue for transplants.

How do I apply for an administrator or guardian for the person with disability?

You need to fill in the VCAT application forms to apply for an administrator or guardian for the person with disability. You can apply online via VCAT's website or you can download the forms to complete them and send them to VCAT by post.

See 'Where to get help'.

The forms ask you to nominate a preferred administrator and/or guardian. However, it is VCAT's decision who to appoint.

When you apply, you also need to attach reports from:

- medical, psychological or other experts to show the person with disability has a decision-making disability
- any social workers, case managers, or other government department or service providers who have worked with the person.

After getting your application, VCAT sets a hearing date. Most applications are heard within 30 days. VCAT is not as formal as a court. Hearings are usually open to the public and generally take less than an hour. If VCAT agrees, a lawyer may speak for you at the hearing, however, legal representation is not necessarily required.

Urgent applications are heard as soon as possible.

OPA and VCAT have a 24-hour emergency service. If VCAT thinks that a matter is urgent, a temporary guardianship and/or administration order can be made for up to 21 days. The order can be extended a further 21 days.

How does VCAT decide whether to appoint an administrator or guardian?

VCAT will only appoint an administrator or a guardian (usually for a limited time) if all the following criteria are met:

- the person has a disability
- the person cannot make reasonable decisions because of that disability
- decisions need to be made now or in the near future
- there is no other way of making the decisions that would have less impact on the person's rights to make such decisions for themselves
- it will help promote the person's best interests.

VCAT must be assured that the administrator or guardian will act in the person's best interests. For this reason, VCAT prefers to appoint someone who is familiar with the person's values, beliefs, likes and dislikes, such as a parent, relative or friend. VCAT will look at the wishes of the person and family members in deciding who to appoint.

If a suitable administrator and/or guardian cannot be found, VCAT can appoint:

- the Public Advocate as a guardian for the person
- an independent organisation like State Trustees Limited or a professional trustee company as administrator.

What if I do not agree with VCAT's decision?

If you believe VCAT made a wrong decision, you can ask for a rehearing based on the facts or merits of the application. For example, you may believe VCAT focussed too much on some evidence or ignored other evidence.

You need to apply for a rehearing within 28 days. A rehearing is heard by a more senior member of VCAT.

They can:

- agree with (affirm) the decision
- change (vary) the decision
- make a new order.

Anyone, including the person with a decision-making disability, can:

- ask for a reassessment of an order made by VCAT if there are new facts or things change
- appeal VCAT's decision to the Supreme Court if there is an 'error of law'. Anyone thinking about an appeal or rehearing should get legal advice.

See 'Where to get help'.

How long does an administration or guardianship order last?

An order may last for up to three years, although it is usually for a shorter period. All orders are reassessed by VCAT within three years. The order can be cancelled if it is no longer needed.

If the person appointed no longer wants, or is able, to be the administrator or guardian, they can also ask VCAT to reassess the order. Another person can be appointed, if necessary.

How are the best interests of the person with the disability protected?

To ensure that administrators and guardians act in the best interests of the person with disability:

- they can ask VCAT for advice at any time
- private administrators must regularly send VCAT an account of the person's finances
- there are limits on how an administrator may invest a person's estate
- anyone who believes that an administrator or a guardian is not acting in the best interests of the person can apply to VCAT for a reassessment.

Administrators and guardians are also accountable to VCAT for the decisions they make on behalf of the person.

Making powers of attorney

Powers of attorney are legal documents that allow you to appoint someone else who can make decisions for you, or support you to make and act on your own decisions.

If you make a **supportive attorney** appointment, you appoint someone to support you to make and act on your decisions.

If you make an **enduring power of attorney** appointment, you appoint a substitute decision maker with authority to make decisions for you when you do not have capacity to make decisions.

You can make a power of attorney appointment if you are 18 years of age or older and have decision-making capacity to make the appointment. No one else can make a power of attorney on your behalf.

You have capacity to make a power of attorney appointment if you are able to:

- understand the information relevant to this decision and the effect of this decision
- retain that information to the extent necessary to make the decision
- use or weigh that information as part of the process of making the decision
- communicate the decision and your views and needs as to the decision in some way, including by speech, gestures or other means.

Supportive attorney appointments

Making decisions is an important part of exercising rights. Supportive attorney appointments are a way you can be supported to make and act on decisions. You retain decision-making authority.

Supportive attorney appointments are designed to promote the rights of people with disability. The person you care for may want to consider making a supportive attorney appointment if they are 18 years of age or older and have the decision-making capacity to make the appointment. While they can be supported informally, making a supportive attorney appointment can be helpful as organisations must recognise the authority of the person in the support role.

The person you care for may also want to consider appointing a **support person** who can support them to make medical treatment decisions. A medical support person appointment can be helpful if the person you care for is able to make their own medical treatment decisions but wants the support of another person in matters such as accessing health information and communicating their decisions about medical treatment.

For more information for carers about these appointments see OPA's publication *Supported Decision-Making in Victoria: A guide for families and carers* that is available to download from the OPA website.

You do not need to have a disability to make a supportive attorney appointment or appoint a medical support person. There may be reasons you would consider doing this for yourself. These appointments, however, are not for planning for the future. For example, your supportive attorney appointment would not have effect if you later became unable to make your own decisions. This means if you wish to have someone make decisions for you, if you become unable to make your own decisions, you should consider making an enduring power of attorney.

Enduring power of attorney

Making an enduring power of attorney is a way you can plan for the future. The power endures (continues) if you become unable to make decisions about particular matters.

By making an enduring power of attorney, you can choose who will make decisions for you, if you are unable to do so in the future.

This can help you plan for:

- your personal and lifestyle matters
- the management of your financial affairs into the future.

If you make an enduring power of attorney, you choose another person (or people), known as your attorney(s), to make decisions for you.

These decisions could be about:

- financial matters, including any legal matter that relates to your financial or property affairs, and/or
- personal matters, such as where you live, and support services you might need, but not including decisions about your medical treatment.

If you take care of a person with decision-making disability and you make an enduring power of attorney, you can authorise your attorney(s) for financial matters to use your property (including your money) to provide for your dependant(s). Importantly, you need to authorise this in the enduring power of attorney. OPA's guide to making enduring powers of attorney, *Take Control*, has an example of how to do this, or you can contact OPA for advice.

Medical treatment decisions

If you appoint someone as your attorney under an enduring power of attorney, this person **cannot** make medical treatment decisions for you unless they are also your **medical treatment decision maker**.

To identify who your medical treatment decision maker is, see page 9.

You can choose who your medical treatment decision maker is by appointing someone to this role. You appoint your medical treatment decision maker under the Medical Treatment Planning and Decisions Act.

The Medical Treatment Planning and Decisions Act commenced on 12 March 2018. Valid appointments made before this Act commenced are recognised. For example, this means if you made a medical enduring power of attorney before this date, the person you appointed is recognised as your medical treatment decision maker without the need for you to make a new appointment.

Your medical treatment decision maker only makes decisions for you if you do not have capacity to make the medical treatment decision. They must make the decision that they reasonably believe you would make if you were able to make the decision. If you talk to them about what is important to you, this will help them in their role. You may also choose to complete an **advance care directive** which is a form where you can write down what is important to you. You can also make some decisions for the future. For example, if you have a serious illness you may already know what medical treatment you want or do not want in the future.

How do I make a power of attorney or appoint a medical treatment decision maker?

You can make these appointments yourself. To help you do this, OPA produces two self-help kits that include the forms. There are witnessing requirements that must be met to make valid appointments. If your legal affairs are complex, you should seek legal advice.

These publications are:

- *Take Control*

  Your self-help guide to making an enduring power of attorney, appointing a medical treatment decision maker, and making an advance care directive.

- *Side by Side*

  A guide for people wanting support to make decisions.

You can order a copy of either publication by calling OPA on **1300 309 337**.

For bulk, free orders of *Take Control* go to Victoria Legal Aid's website at **www.legalaid.vic.gov.au**

Alternatively, you can purchase a Powers of Attorney kit for Victoria from State Trustees. Go to **www.statetrustees.com.au**

Making a Will

Making a valid Will is very important if you care for a person with disability. It is the only way to ensure your personal estate is passed on in the way you would have wanted.

If you die without a Will, your personal estate is usually passed on to your surviving spouse or partner and your children first, and then other next-of-kin. These rules do not take into account how you want the person with disability to be looked after. Think about how you would feel if people you never wanted to benefit, ended up with part of your personal estate.

What is a Will?

A Will is a legal document that states what you want to happen to your estate after you die.

In your Will you can nominate who gets:

- assets, such as houses, cars, money and shares
- rights and powers, such as the right to appoint the trustee of a family trust (if the terms of the family trust allow for that to happen)
- specific belongings such as a musical instrument, heirlooms, books and photos.

A person you name in your Will to receive all or part of your assets or other benefits, such as income, is called a 'beneficiary'.

Some assets, such as superannuation and life insurance, cannot be passed on in a Will unless they are paid into the personal estate of the Will-maker. Instead, these benefits will usually go directly to the person you nominated when you filled in the application forms. If you want to change the person you nominated, you will need to contact the superannuation fund trustee or life insurance company.

Who can make a Will?

To make a Will, you must be 18 years of age or older.

The only exceptions are if:

- you are married or are about to marry
- the Supreme Court authorises you to make a Will.

You must have testamentary capacity. This means that you must understand:

- the nature of the Will and the effect it has
- what assets you have and how much they are worth. You do not have to know their exact value, just enough to be able to decide who gets them.

If a person does not have testamentary capacity, it is still possible for a Will to be made. To do this, you need to apply to the Supreme Court. The court will look at a number of issues.

Issues might include:

- the size of the personal estate
- a draft of the proposed Will
- evidence about the person's wishes.

A court-made Will is a complex process. You will need to seek legal advice.

See 'Where to get help'.

How do I make a Will?

To be valid, your Will must be:

- in writing
- signed and dated by you in the presence of two adult independent witnesses who are not mentioned in your Will and do not have a relationship to anyone who is named in the Will as a beneficiary
- signed and dated by the two witnesses at the same time and in your presence
- signed by all people using the same pen.

If the points above are not followed, your Will is not valid. The Supreme Court can still confirm your Will but this can take time.

If there is a question about your testamentary capacity to make a Will, ask a doctor or psychologist to make a written assessment of your capacity. Attach this to the Will. Make sure you choose a doctor or psychologist who is experienced in making these assessments.

You could also get:

- the witnesses to make a written note of their reasons for believing you have the capacity
- one of the witnesses to be your treating doctor.

Once the Will is signed and witnessed, it should not be written on or typed over. Take care to ensure that nothing is pinned, stapled or attached to the Will.

Keep the Will in a safe place, for example, with a lawyer, in a bank or in a safe. Tell your executor where the Will is kept. You can give them a copy in a sealed envelope.

A Will can be written in a language other than English.

A certified translation is needed at the time of death. If it is written in English but the Will-maker cannot understand English, it will be important to get legal advice to make sure there is no dispute about what the deceased person wanted.

Do I need an executor?

Every Will must have an executor. An executor is someone who deals with your personal estate after you die. The executor carries out the instructions in your Will, including passing on your assets to beneficiaries.

The executor may have to:

- collect all the assets and have them valued, if needed
- find out what debts you owe and pay them from the money made by selling your assets
- pass on the assets to beneficiaries
- arrange tax returns
- claim life insurance
- arrange the funeral
- take or defend legal action on behalf of the personal estate.

If the estate or family dynamics are complex, you may want an independent executor. Get advice about who might be the most suitable person. It can be a lawyer, accountant or professional trustee company.

Think about having an alternative executor. They can step in if the executor is not available or decides they do not want to do the job. You can also choose joint executors but make sure they can work together. Whoever you choose, make sure they understand the job and can do it.

Can I change my Will?

You can change your Will as often as you like. As a general rule, you should review your Will at least every five years. Many things can change over that time.

You may want to change your Will if:

- you change your mind
- a proposed beneficiary, executor or trustee dies
- you take on new responsibilities
- you want to include new beneficiaries
- you have new assets, for example, receive an inheritance.

You should make a new Will if you:

- buy a significant asset or investment
- get involved in a new business, company, trust or superannuation fund
- marry (or remarry) or commence a domestic relationship
- separate from your partner
- divorce.

Marriage revokes (cancels) any pre-existing Will, unless the Will states that it was made because you thought you would get married. Divorce usually cancels any entitlement that your ex-partner has in your Will. If your ex-partner was named as an executor, trustee or guardian for children, divorce also cancels this appointment. You should make a new Will by the time your divorce is final.

It is best to make a new Will, especially if the changes are big. However, if the changes are small, you can use a codicil. A codicil is an addition to a Will that is legally valid. If you choose a codicil, it is a good idea to get a lawyer to handle it.

Can my Will be challenged?

Your Will can be challenged after you die if:

- you did not have the testamentary capacity to make a Will at the time it was signed
- you did not make the Will freely or your decisions were pressured by others
- a person who you had a responsibility to provide for believes you have not left them a fair share of your assets, for example, a spouse, children or domestic partner.

The court can look at whether adequate provision was made for the person with disability. If it will improve the person's lifestyle, the court may order that a substantial share of the personal estate be given to them.

An application to challenge a Will must usually be made within six months of the grant of probate.

The Supreme Court can change your Will if it is satisfied that:

- it does not carry out what you wanted
- a clerical error was made.

To make it less likely for your Will to be challenged, make sure:

- your Will is properly prepared
- you give your partner and all your children a fair share of your assets, especially if they depend on you for support.

Do I need a lawyer?

If you care for a person with disability, it is best to use a lawyer or a professional trustee company to make your Will.

You should also think about getting a lawyer if you:

- want to leave your assets to a lot of people
- have young children
- own assets with another person, such as a house or joint bank accounts
- have a family business
- have assets that are interstate or overseas
- get income from a trust or a family company, or you are involved in a trust or a family company.

Most lawyers do Wills, but some offer other services, such as estate planning. Costs vary depending on what you need, for example, a complex Will that uses a trust will be more expensive. It is a good idea to obtain quotes first.

The Law Institute of Victoria has a free legal referral service. It can provide the contact details for three legal firms that practice in the area of law you need.

See 'Where to get help'.

Planning your personal estate

Planning your estate lets you make sure you have provided for the person with disability you care for. It can reduce the risk of arguments about who gets what after you are gone.

What is estate planning?

Estate planning is a way of making sure your assets and belongings are passed onto your beneficiaries in the best way possible.

An estate plan should:

- make good financial sense
- be simple to manage
- be inexpensive to maintain
- get reviewed regularly.

Estate planning laws are complex. Get legal and financial advice to make sure you get the most benefit for the person with disability and any other beneficiaries.

Most people working in this area will undertake tax and means-tested pension planning as a part of your estate plan. They will also look at how you can get the most use and enjoyment of your assets while you are alive, while still providing for your beneficiaries after you die.

What do I need to consider when planning my estate?

Here is a list of things to think about before you start planning your estate:

- How much will it cost me to set up? Are there any ongoing costs?
- What is the best option that will take care of the needs of the person with disability?
- How am I going to protect the best interests of the person?
- Is there enough flexibility in case the person's situation changes?
- If the person cannot look after their financial affairs, who can help them and what kind of powers do I want that person to have? Do I want to choose them? How will I make sure they do their job?
- Am I concerned about who will inherit my assets after the death of the person I am leaving my assets to?

If you have other beneficiaries, you may also need to think about:

- their age and needs
- whether they have any independent income or assets
- the relationship between the person with disability and any of your other beneficiaries without disabilities.

If all your beneficiaries are young, for example, under 14 years of age, each will need support. However, if your other beneficiaries are adults and financially independent, you may want to leave more of your estate to the person with disability. Make sure you talk to all your beneficiaries about what you want to do.

Thinking about these issues will help you decide how you want to leave your estate to the person with disability.

Some options are to leave your estate:

- directly to the person
- to the person and to nominate an administrator to manage their financial affairs in a trust
- to a friend, relative or service provider in return for appropriate care of the person.

Leaving your assets to the person with disability

You can leave your assets directly to the person with disability in your Will. You can also nominate an administrator if you are worried about the person's ability to look after their financial affairs.

Leaving assets directly to the person with disability

You can leave assets directly to the person if they are 18 years of age or over. This gives the person a chance to act as an independent member of the community. Community organisations can still give support, if needed.

If the person cannot look after their inheritance, a family member or other concerned person can apply to VCAT to appoint an administrator to make financial decisions on their behalf. You can nominate your preferred administrator in your Will. (The appointment of an administrator by VCAT is different from an administrator appointed by the County or Supreme Courts to deal with a personal estate where the person has died without a Will).

You will also need to direct the executor of your Will to apply to VCAT for an administrator.

The good reasons for using an administrator include:

VCAT has safeguards to protect the person's best interests. An administrator must lodge an annual account of the person's finances, unless there are rules that mean they do not have to. The account will be looked at by an examiner appointed by VCAT. VCAT will also regularly check the administrator is acting in the best interests of the person.

Administrators can ask VCAT for advice at any time. Getting advice is free.

Any concerned person can act to protect the person's best interests. It is easy and inexpensive for a person who is worried about an administrator's actions to ask VCAT to reassess the situation.

The inheritance could have disappeared before an administrator has been appointed. It may be impossible to get the inheritance back, for example, it may have been gambled away.

Other reasons for not leaving your assets directly to the person with disability include:

You may not be able to control what happens to your assets on the death of the person with disability. If the person does not have a Will, their assets may be automatically passed on according to intestacy rules. These rules say how the assets are passed on to surviving relatives. If the person has a Will, they may be influenced to lend, give away or leave their money to someone. If this is not what you want, speak to a lawyer and consider a trust.

See 'Leaving your assets in a trust or superannuation pension'.

The reasons you may not want to use an administrator include:

VCAT chooses who will be the administrator. Although you can nominate an administrator in your Will, there is no guarantee that VCAT will appoint them. VCAT will listen to other interested parties before it makes a final decision.

It may affect the person's Centrelink pensions and benefits because the assets you left are owned by the person, not by the administrator. It may also affect the person getting a job or a home to live in. Talk to a financial planner if this is a concern.

What happens to Centrelink payments and other benefits?

If you leave assets directly to the person with disability, it may affect their social security pension or benefit, including health, pharmaceutical and gas/electricity benefits. A lump-sum inheritance, or income from investments, can reduce or stop their pension. This is not the case, however, with special disability trusts.

More information about eligibility for special disability trusts starts on page 26.

Being cut off a benefit may make life very hard for the person with disability. Entitlements to a pension or benefit can mean more than regular income. They might also give the person the chance to be involved in an employment program, day program, recreational activities or live-in supported accommodation. You can get information about pension entitlements from Centrelink.

If your wealth is likely to impact on the person's means-tested pension eligibility when you die, it is worth thinking about using a special disability trust, superannuation death benefits pension or other protective option. It is a good idea to seek professional advice.

See 'Where to get help'.

What happens to the assets when the person with disability dies?

If the person with disability has testamentary capacity, they can make a Will to pass on their assets. Even if the person is not capable of looking after their own finances, they may be able to decide who they want to leave their assets to.

If they lack capacity to make a Will, the Supreme Court can authorise a Will to be made for them.

If the person dies without a Will, assets will be passed on according to intestacy rules. This might mean that assets may be passed on differently from what you may want. For example, if the person with disability is your child or adult child, their other biological parent can inherit assets, even if you are separated and they have not had much contact with the person.

The situation is quite different with special disability trusts which are a form of protective trust. A person funding such a trust (a donor) is able to nominate who benefits from what is left of the money in the trust when the person with disability dies.

Leaving assets to relatives or friends

You may be thinking about leaving your wealth to your children without disability, a relative or a friend and asking them to look after the person with disability.

This is not the best way to proceed because:

- you have no control over the decisions the relative or friend makes
- a request, even if it is written in the Will, is not legally binding on the relative or friend
- it may mean that the needs of the person with disability will not be thought about or may get completely overlooked.

Also, if you make little or no provision for the person with disability, the estate, subject to your Will, can be challenged in the Supreme Court, as can superannuation in retail, industry and other externally managed superannuation funds in the Superannuation Complaints Tribunal. The court or tribunal can order that the person with disability gets maintenance and support.

If you want to make a relative or friend responsible for looking after your assets, the safest options are to:

- nominate a person in your Will who you want to be appointed as administrator
- create a protective trust and appoint the relative or friend as one of the trustees.

Leaving your assets in a trust or superannuation pension

Another way to look after the person with disability is to create a special disability trust or other protective trust in your Will or ensure that the person receives a death benefits pension from your superannuation fund.

This allows you to:

- plan how your assets will be used and looked after
- protect your assets from the creditors (if any) of the person
- (in the case of superannuation) qualify for the lower tax treatment for superannuation pensions
- (in the case of a protective trust) have greater control over what happens to your assets
- (in the case of a protective trust) choose the trustees or professional trustee company that you want to look after the trust.

Establishing a protective trust costs more than making a standard Will, as a trust is more complex. It is strongly advised to get help from a lawyer or a professional trustee company if you are going to include a protective trust in your Will.

Establishing a death benefits pension requires the cooperation of the trustee of your superannuation fund. To be eligible for a death benefits pension that can continue through the person's adult years, the person will also need to have disability that has a significant impact on their mobility, communication or decision-making.

What is a protective trust?

A protective trust is where trustees are chosen to manage assets for the benefit of another person (the beneficiary). The trustee can be individuals or even a professional trustee company, such as State Trustees Limited. A trust can be set up before you die or can be set up in your Will.

Where a protective trust is established in your Will, the trustees' responsibilities are set out in the Will. You can set out specific directions to the trustees. For example,

you could ask the trustees to give the person a certain amount of money each year and set aside some money to pay for unexpected things.

You can also instruct trustees as to what to do with the unspent income from the trust.

They could:

- add the extra income to the trust each year
- give the extra income to your other beneficiaries
- give the extra income to a nominated charity.

You can also limit the trustees' powers by setting specific options they can choose from. It is usually better to be flexible.

What are the different types of trusts?

Protective trusts, such as a special disability trust, are the most relevant trusts for a person with disability who you care for. The terms of protective trusts don't allow the trustees to disregard the needs of the person in favour of other beneficiaries.

A protective trust has either a single lifetime beneficiary or, may also include the lifetime beneficiary's children as beneficiaries as well. A protective trust allows the trustees to earn income or to spend income and some or all of the capital in the trust, but it must be for the benefit of the person with disability. The trustees do not have to give the money directly to the person and can instead directly pay expenses on their behalf.

What is a special disability trust?

A special disability trust is a type of protective trust for a person who is 16 years or older who has severe disability (check with Centrelink if the person is eligible).

Anyone can donate to the trust. Immediate family members of the beneficiary with disability who donated funds or assets to the special disability trust and who are also eligible for Centrelink benefits, will reduce their personal assets by the amount donated but not be treated as having exceeded the normal 'gifting' rules (these are subject to Centrelink regulations).

This means the person who has donated funds or assets to the special disability trust may be able to receive a higher pension themselves as well as enabling their family member with disability to benefit from the donated funds or assets,

Immediate living family members can donate up to a total of $500,000. Any more than this will not reduce their income and assets for the purposes of getting a pension.

A special disability trust has conditions:

- the trust and income earned from it must primarily be used to pay for the care and housing of a person 16 years of age or older with severe disability. (At time of print, this amount was $11,250 a year, CPI indexed, which can be spent on their other needs)
- the trustees must lodge financial reports with Centrelink each year
- the trustees may have to do an audit if Centrelink asks for one (the trustees must use independent, qualified auditors)
- trustees, other than professional trustee companies and lawyers, are not allowed to charge fees for being a trustee.

The person with disability may have a decision-making disability but they may not be considered to have severe disability. Centrelink's definition of severe disability is that a person over 16 years of age will most likely be unable to work in regular paid employment for more than seven hours each week.

A special disability trust can be set up on behalf of anyone who is an approved beneficiary. It can be a part of the Will, as either an option for the executor or as a direction to the executor. The Federal Government Department of Social Security provides a Model Trust Deed for Special Disability Trusts which can be modified to suit your purposes. (See **www.dss.gov.au** or Google 'model trust deed disability'). This makes it possible for someone caring for a person with disability to properly create a special disability trust without the need of a lawyer. However, it may be helpful to seek the services of a lawyer experienced in such matters to make sure the deed is free of errors and no requirements have been overlooked.

You can only get Centrelink's exemptions/special benefits if the special disability trust fits in with their strict requirements.

It is important to check with Centrelink about their eligibility requirements for special disability trusts. Contact Centrelink's Financial Information Service.

See 'Where to get help'.

What do the trustees do?

The trustees' duties and obligations must be clearly set out in the terms of trust. An important part of a trustees' obligations is investment. They must invest using care and skill to make sure the assets are earning an income, for example, they should not leave a property vacant for too long without looking for someone to rent it. If they did do something like this, it could be seen as a breach of the trustees' obligation. The trustees may have to pay for any of the trust's losses.

Trustees must keep proper accounts. In the document creating the trust, you can ask for the accounts to be regularly checked. The beneficiary (or person authorised by them) can ask to see all information about the trust and investments. The trustees must provide this information.

It is important to give your trustees the power to use both the assets and the income for the person's needs. Remember, in a protective trust, the trust is set up for the sole, lifetime benefit of the person with disability.

How do I choose trustees?

Think carefully before you choose trustees. You are giving them a lot of responsibility. As well as being able to look after finances, trustees must understand the needs and wishes of the person with disability.

You can choose:

- an individual, such as a relative or friend
- a professional trustee company
- a service provider.

Before you choose, get legal advice.

See 'Where to get help'.

Appointing individuals

You can appoint between two and four individuals to be the trustees of a special disability trust and between one and four individuals for other protective trusts. You can also appoint particular trustees to help get a balanced outcome, for example, you could choose someone who knows the person, such as a relative or friend but does not have investment skills. You could choose a second trustee who is a financial expert, such as a lawyer or an accountant. If co-trustees are appointed, the signatures of both trustees are needed to authorise the investment and spending of any trust money. It is also important that the trustees be compatible.

There are two main advantages in appointing individuals, rather than a professional trustee company.

These are:

- people you know are more likely to know how you would want the estate to be looked after; even if the individual wants money for their services, their fee is usually lower than that charged by professional trustee companies (note that only lawyers and professional trustee companies can charge to be a trustee of a special disability trust).
- if you want to appoint an individual as trustee, think about their age. There is no use appointing only trustees who are 20 or 30 years older than the person with disability. You should appoint at least one person who is likely to outlive them. Get advice about how to appoint alternative trustees who can take over if the initial trustees cannot continue their duties.

The disadvantages are:

- potential for conflict between individuals or dominance of one individual trustee over another
- lack of availability of individual trustees
- lack of skills and commitment or diligence to trustee duties.

If the person with disability is your child or adult child, you may want to appoint one or more of your children without disability to act as a trustee. However, if you also want them to be residuary beneficiaries in your Will, this may be a conflict of interest which may or may not be a concern to you.

If this is a concern, you should think about:

- appointing a person who is not a residuary beneficiary to act as co-trustee, if you think they can work well together to benefit the person with disability
- only appointing trustees who are not residuary beneficiaries under your Will.

Appointing a professional trustee company

There are Victorian laws to regulate the activities of professional trustee companies.

There are benefits associated with using a professional trustee company.

Some of these are:

- it is completely independent, so you do not have to worry about any conflict of interest
- it will administer the estate for as long as needed, which means you do not have to worry about appointing an alternative trustee

Companies offering these services are also required to have a level of professionalism associated with providing their services, high standards of record keeping, compliance requirements, are subject to audit and also have insurance coverage. However, you do not get the same personal touch you would get from a relative or friend. If this is a concern, you can ask a trusted relative or friend to be a co-trustee.

This may give a balanced personal touch with professional services. Professional trustee companies will charge for their services. Professional trustees have different rates and types of charges. You should review the fees and charges of any professional trustee in detail – which may include fees for consulting with a relative or friend acting as a co-trustee – and ask any questions before deciding to engage an organisation.

See 'Where to get help'.

Appointing a service provider

Service providers, such as day training centres or residential-service committees, may be able to act as a trustee, although such arrangements are uncommon. Check with the service provider first.

Supported Residential Services may not be able to act as a trustee, as they cannot look after a resident's money above a certain amount. Other organisations may not want the responsibility of a trust because they cannot promise lifelong care, or do not have the time or staff available.

Consider whether the organisation is likely to be around for long. If an organisation is new or their funding is not certain, it is risky to appoint them as a trustee.

Also, investigate whether the organisation is likely to get any benefits under the trust, such as use of the family home or income. If so, appoint a second trustee that is not associated with the organisation to make sure that there is no conflict of interest.

In general, a company or organisation providing services for a fee to the person you care for with disability, may have an intrinsic conflict acting as the trustee for a trust for one of its residents or clients: they may need to charge the trust to fund care or services provided by it.

How can I protect the trust?

To help protect the trust against poor management by a trustee, it is a good idea to put in place ways of checking that the trustees are doing a good job.

Trustees are regulated by legislation but monitoring tends to be retrospective. This means it can be hard to tell in the short-term, at least, if the trust is being looked after well. You can check if the trustees are doing a good job by leaving a direction in your Will that the trustees are monitored.

You can include:

- who you want to review the trust accounts, such as a family member, friend or an administrator
- how often the trustees have to give the accounts to the person.

Alternatively, you can appoint an 'Appointer' for the trust who can monitor trustees and, if necessary, remove trustees and appoint new ones.

How can the trustees' decision be challenged?

If the person with disability is not happy with the trustees' decision, they can challenge it. The person can do this themselves (if the person has the capacity and is over 18 years of age) or the challenge can be through an administrator appointed by VCAT. If the person is under 18 years of age, a litigation guardian would make the challenge on the person's behalf.

They need to apply to the Supreme Court to:

- ask the court to decide if the trustees' action is within their power
- ask the court for a restraining order if there has been a breach of trust
- have a trustee removed from office.

If the trustees' actions are not monitored, a breach of trust is difficult to detect.

Trustees can be removed if:

- they live too far away from the beneficiary, for example, in another state or overseas
- they will not act or cannot carry out their duties
- they have acted in a way which is unethical or illegal.

Trustees cannot be removed because:

- the trustees did not want to exercise a discretionary power and there has been a disagreement
- the trustees and the person with disability are not getting along
- the trustees are being uncaring.

Challenging the actions of trustees can be a very expensive process. Even if an application is successful, the trust fund may have to pay for the application. It is advisable to obtain legal advice before going to court.

See 'Where to get help'.

What happens to Centrelink payments or other benefits?

If you set up a trust other than a special disability trust or the assets in the special disability trust exceed the current asset limits, the person's entitlement to Centrelink payments or other benefits may be reduced. The laws about trusts and Centrelink payments change regularly and are complex, for example, Centrelink can include income and assets from the trust when working out the person's entitlements. (This is not the case for special disability trusts.)

It is advisable to obtain legal advice about how your trust may affect the person's Centrelink payments.

See 'Where to get help'.

Establishing a death benefits pension for the person with disability

A person with disability qualifies for special treatment under Australian superannuation laws if they have disability that, while not necessarily severe for special disability trust purposes, has a need for support services and the disability has a significant impact on any one or more of the person's:

- communication
- learning
- mobility.

Such a person, regardless of age, is eligible to receive a death benefits pension from a parent's superannuation. If the parent was over 60 years of age at death, the pension can be income-tax free for the person.

The cooperation of the superannuation fund trustee is needed before such a pension is a possibility.

It is strongly recommended that financial and legal advice be sought before such a pension is put in place or even contemplated.

For Centrelink means-testing, such a pension has a similar impact to a personal inheritance and there are similar risks that the person could be persuaded to cash in the pension and lend or give the proceeds to unscrupulous people.

Deciding what to do with the family home

If the family home is only registered in your name or you are the surviving joint tenant, you can distribute it in your Will. When making your decision, you will need to think about what is best for the person with disability, if they are living with you.

Think about the following questions:

- What are the wishes of the person? If they are living in the house, it may be traumatic if they have to leave.
- Is my house suitable for the person and their level of disability? Can they live there on their own or do they need assistance?
- Is my estate large enough to provide for all beneficiaries without selling it?
- What kind of financial support will the person need?

Then you need to decide if you want to:

- leave the family home to the person with disability
- include the family home as part of the assets of a trust for your family member with disability (**See** 'Leaving your assets in a trust or superannuation pension')
- leave the family home to a service provider
- ask for the family home to be sold.

It is a good idea to talk to support services before you make a decision. You can also talk to your accountant, financial advisor or lawyer.

See 'Where to get help'.

Should I leave the house to the person with disability?

If you are thinking about leaving your family home to the person with disability, talk with workers who know about the person's needs. They can give you advice about what support services may help the person stay in the house.

Make your Will flexible enough to meet situations you may not have thought about. For example, the person may want someone to live in the house with them for support or extra income, their health may decline as the years go by and they may need additional assistance, or the house may become unsuitable.

Should I leave the house to a service provider?

You may want to leave your family home to a service provider. A service provider does not have to look after the interests of the person, even if it is written in your Will. This option is usually not recommended. Before you contemplate doing this, it is advisable to obtain legal advice.

If you want the service provider to guarantee somewhere for the person to live in return for your home, you need to use a trust.

Under a trust, the service provider is allowed to use and occupy the house during the person's lifetime. In order to get the house, the service provider must show the trustees that they are looking after the housing needs of the person. Give the trustees absolute discretion so they can do something if the service provider is not usually meeting the person's needs. For example, the trustees can act if the service provider places the person in a supported residential service instead of a smaller home with personalised care.

To avoid any conflict of interest, the service provider should not also be one of the trustees.

See 'Leaving your assets in a trust or superannuation pension'.

Should I get the executor to sell the house?

You may want an executor or the trustees to sell your family home if:

- the person cannot live in the house or does not want to live there
- they need to meet the financial needs of the person
- they need to provide for all beneficiaries of your wealth.

The money from the sale can be invested or used to buy another property.

Capital gains tax is usually only an issue with a family home if the home is not sold within two years of you last living there or two years from the date of your death. The capital gains tax exemption for your family home can also be extended where a family member is given the right to live in your property by a trust established by your Will.

Both a capital gains tax exemption and a duty exemption apply when a residential property is transferred to a special disability trust for the lifetime beneficiary to live in.

You should talk to your accountant, financial advisor or lawyer about these issues.

What to do next

Here is a checklist that may help you decide where to go from here.

- [ ] decide if you need to make an enduring power of attorney for financial, personal or lifestyle decisions, or if you wish to appoint a medical treatment decision maker, as a way of planning for when you do not have capacity to make these types of decisions
- [ ] decide if you need to apply for an administrator or a guardian for the person with disability
- [ ] ascertain whether Centrelink considers the person to have severe disability
- [ ] make a Will that takes care of the needs of the person with disability
- [ ] decide how you want your personal estate and superannuation to be shared among beneficiaries
- [ ] make sure your Will and superannuation nomination is flexible so the person with disability can benefit from your personal estate or superannuation if the person's situation changes
- [ ] decide if you want to leave assets directly to the person with disability in the form of a superannuation death benefits pension or a protective trust such as a special disability trust
- [ ] if you set up a trust, choose suitable trustees (or a succession of trustees) who will outlive the beneficiary
- [ ] get the people involved in dealing with your estate to meet each other so they feel more comfortable working together
- [ ] if you leave assets directly to the person with disability, decide who to nominate as an administrator
- [ ] decide who to appoint as executor for your Will
- [ ] decide who to nominate as residuary beneficiary if the main beneficiaries die, and who are to be the residuary beneficiaries of any special disability or protective trust
- [ ] consider capital gains tax implications
- [ ] decide where to leave your Will and other estate-planning documents and tell the relevant people, such as the executor or attorney
- [ ] decide if you want to arrange and pay for your funeral in advance
- [ ] decide if you want to use experts such as a lawyer, investment adviser or disability support organisation to help you make your Will.

What do these words mean

administrator (of a deceased person's estate)
a person appointed by either the County or the Supreme Court of Victoria, to distribute and deal with a deceased person's estate if there is no Will or where the Will does not name a suitable executor

administrator (for person with disability)
a person appointed by the Victorian Civil and Administrative Tribunal (VCAT) to make financial and legal decisions on behalf of a person with disability who is unable to make those decisions for themselves

assets
things owned, such as property, land, shares, bank deposits, jewellery and clothes

attorney
a person appointed before 1 September 2015 under an enduring power of attorney (financial) to make financial decisions for another person, or a person appointed on or after 1 September 2015 under an enduring power of attorney to make decisions about financial and/or personal matters

beneficiary (of a Will)
a person who receives something from a deceased person's estate

beneficiary (of a trust)
a person who receives the benefit from a trust (see also 'lifetime beneficiary')

breach of trust
a decision or action of trustees that is inappropriate or outside the trustees' power

capacity (legal capacity)
having the ability to reason things out. A person with legal capacity can understand, retain, use and weigh up relevant information in order to make a decision, a Will, enduring power of attorney, or to revoke these documents.

capital
the original assets in a trust, additional gifts made to the trust and financial appreciation of those assets and gifts

capital gains tax
tax on the profit made when selling assets bought after 19 September 1985

codicil
a legal document used to change part of a Will

enduring power of attorney
a legal document made on or after 1 September 2015 in which a person appoints another person to make decisions for them about financial and/or personal matters. The power endures (continues) even if the person giving it loses the capacity to make decisions about matters.

estate
the property a person owns outright or has an interest in

estate planning
planning what should happen to a person's estate on their death

executor
a person named in a Will to execute its instructions and deal with the estate including how to distribute any assets

grant of probate
a court order proving that the Will is that of the deceased person and allowing the executor of a Will to execute its instructions including how to distribute any assets and deal with the estate

guardian
a person appointed by VCAT to make personal and lifestyle decisions for someone who is unable to make those decisions for themselves

hearing
when a case is presented at court or a tribunal

intestacy rules
laws that state how assets are passed on if a person dies without a Will

joint tenants
a form of co-ownership where, on the death of one owner, the survivor automatically takes over full ownership of the property, regardless of the terms of the Will of the deceased

lifetime beneficiary
a beneficiary of a trust where the benefit ceases on their death

medical treatment decision maker
a person authorised under the Medical Treatment Planning and Decisions Act to make medical treatment decisions on behalf of a patient who does not have decision-making capacity to make that decision

personal estate
any property that is not real estate

principal
a person who makes an enduring power of attorney or a supportive attorney appointment

probate
the process of proving that a Will is the valid last Will of the deceased person

protective trust
a protective trust established for the whole of a lifetime beneficiary's needs and the needs of that person's children, but which does not qualify for means-testing concessions

real estate
land and interests in land (such as an interest in a right of way over another's property)

residuary beneficiary
a person named in a Will who gets everything left from the deceased person's estate, after distributing all the assets that have been specifically named in the Will

revoke
cancel

special disability trust
a trust that allows living family members to donate up to $500,000 in assets without affecting the donor's mean-testing for a Centrelink means-tested pension or the beneficiary's own mean-testing for the Disability Support Pension

supportive attorney
a person appointed under a supportive attorney appointment to support another person to make and give effect to decisions about financial and/or personal matters

support person
a person appointed under the Medical Treatment Planning and Decisions Act to support another person to make and give effect to decisions about their medical treatment

testamentary capacity
the legal capacity to make a valid Will

Trust
a legal obligation that makes the trustees responsible for managing property for the benefit of another person

Trustees
individuals who manage, or a company (such as a professional trustee company) which manages, a trust

Will
a legal document that states who will get part or all of a person's estate after that person dies

Will-maker
a person who makes the Will (also called a testator if they are male or testatrix, if female)

Where to get help

Office of the Public Advocate (OPA)
Safeguards the rights and interests of people with disability.
Advice Service, Monday to Friday, 9am to 4.45pm
Level 1, 204 Lygon Street, Carlton, Victoria 3053
Ph: 1300 309 337
TTY: 1300 305 612 or National Relay Service 133 677
Fax: 1300 787 510
www.publicadvocate.vic.gov.au

Action for More Independence and Dignity in Accommodation (AMIDA)
Level 1, Ross House, 247 Flinders Lane, Melbourne, Victoria 3000
Ph: 03 9650 2722
www.amida.org.au

Carers Victoria
Level 1, 37 Albert Street, Footscray 3011
Monday to Friday, 9am to 5pm (closed public holidays)
Freecall 1800 242 636
www.carersvictoria.org.au

Centrelink—Disability, Sickness and Carers line
Centrelink—People with disability and carers
Answers enquiries about disability support pension, mobility allowance, sickness allowance, carer payment and carer allowance.
Monday to Friday, 8am to 5pm
Ph: 13 27 17

Centrelink—Older Australians
Answers enquiries about the age pension, Commonwealth Seniors Health Card and Pensioner concession cards.
Monday to Friday, 8am to 5pm
Ph: 13 23 00

Department of Health & Human Services, Disability Services Division
50 Lonsdale Street, Melbourne, Victoria 3000
Ph: 1800 783 783 TTY: 13 36 77 then ask for 1300 650 172
(for people who have a hearing, speech or communication impairment)
www.dhs.vic.gov.au/for-individuals/disability

Law Institute of Victoria—Legal Referral Service
470 Bourke Street, Melbourne, Victoria 3000
Ph: 03 9607 9550
Email: referrals@liv.asn.au
www.liv.asn.au/Referral

Probate Office
Supreme Court of Victoria
Level 2, 436 Lonsdale Street, Melbourne, Victoria 3000
Ph: 03 9603 9300 (option 1 for probate and wills)
www.supremecourt.vic.gov.au

State Trustees Limited
1 McNab Avenue, Footscray, Victoria 3011
Ph: 03 9667 6444 or 1300 138 672 (country callers)
www.statetrustees.com.au

Tandem
Representing Victorian mental health carers
Level 1, 37 Mollison Street, Abbotsford, Victoria 3067
Ph: 03 8803 5555
www.tandemcarers.org.au

Victorian Advocacy League for Individuals with Disability Inc (VALID)
An advocacy group for adults with intellectual disabilities and their families.
235 Napier Street, Fitzroy, Victoria, 3065
Ph: 03 9416 4003 or 1800 655 570 (country callers)
www.valid.org.au

Victoria Legal Aid (VLA)
Free legal help by telephone and information about Victoria Legal Aid services.
Legal Help Monday to Friday, 8.45am to 5.15pm
350 Queen Street, Melbourne, Victoria 3000
Ph: 1300 792 387
www.legalaid.vic.gov.au

Victorian Civil and Administrative Tribunal (VCAT)—Guardianship List
Part of the Human Rights Division of VCAT. The list protects people 18 years of age or over who, as a result of disability, cannot make decisions for themselves.
Level 5, 223 William Street, Melbourne, Victoria 3000
Monday to Friday, 9am to 5pm
Ph: 1300 01 8228
www.vcat.vic.gov.au

Villamanta Disability Rights Legal Service Inc
Deakin University, Waurn Ponds Campus
Building IB, Level 3, 75 Pigdons Road
Waurn Ponds, Victoria, 3216
Monday to Friday, 9am to 5pm
(closed Wednesday mornings between 9am and 1pm).
Telephone legal advice line 1pm to 3pm Monday to Friday.
Ph: 03 5229 2925 or 1800 014 111 (freecall Legal Advice Line)
www.villamanta.org.au

Notes:

Office of the Public Advocate

Office of the Public Advocate
Level 1, 204 Lygon Street, Carlton, Victoria 3053
DX 210293 Phone: 1300 309 337
TTY: 1300 305 612 NRS: 133 677 Fax: 1300 787 510

www.publicadvocate.vic.gov.au

state trustees

State Trustees Ltd
1 McNab Avenue, Footscray, Victoria 3011
Phone: 03 9667 6444 or 1300 138 672
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www.statetrustees.com.au