

Victorian Law Reform Commission

Summary of Spotlight

'I Want to Tell My Story': The Guardianship and Administration Confidentiality Law



This is an Easy Read paper

The first time we write a hard word we will write:

- the word in **bold**
- what the hard word means.



What this paper is about

The paper has been done by the Victorian Law Reform Commission.



In this paper the Victorian Law Reform Commission can also be called we and the Commission.

The job of the Commission is to look at laws to make sure they are good and fair for everyone.



This paper is about a research project called a Spotlight.

A Spotlight is when the Commission looks at a law that people tell us is not working well to get people talking about it.



We think you should know about this Spotlight project. This paper is looking at a law that can stop people from telling their story of **guardianship** or **administration** in public if the story says who they are.



We were told this law is not a good law by:

- VALID
- Uli Cartwright
- Other people

What is guardianship and administration

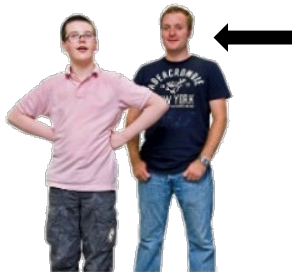
Some adults with disability find it hard to make decisions about their lives and money. They might need help from a guardian or an administrator.

A **guardian** is someone who makes decisions for a person about:

- where the person lives
- where the person works
- the person's medical supports
- the services the person uses
- people the person can see.

An **administrator** is someone who makes decisions for a person about their money, like:

- how much money a person can spend
- what a person can buy
- paying bills.





In this paper the Victorian Civil and Administrative Tribunal will be called VCAT.

VCAT is:

- like a court but not as formal as a court
- where decisions are made about the law
- can decide if someone needs a guardian or administrator to support them when there is no other choice.

Only VCAT can say if someone has to have a guardian or administrator.



A **represented person** is what a person who has a guardian or administrator is called.

Most of the time VCAT will choose a family member, carer, or friend to be the guardian or administrator.

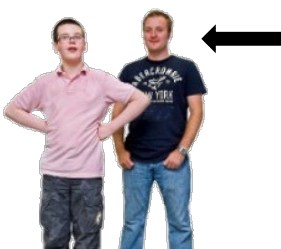
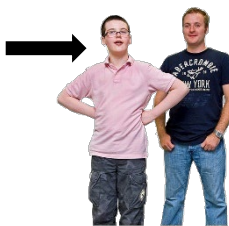
The guardian or administrator must be an adult and say yes to do this work.

These people are called:

- private guardians
- private administrators.

If there is no one who can be the guardian or administrator, VCAT can say:

- the **Public Advocate** who works for the Office of the Public Advocate or OPA will be the guardian
- the **State Trustees** will be the administrator





The Public Advocate and State Trustees are both part of the Victorian Government.

VCAT makes an **order** that says how guardianship and administration will work. The order says what decisions a guardian or administrator can make and how long they will make decisions for.



Before VCAT makes an order they might have a **hearing**.

A hearing is the meeting that VCAT has when they are talking to groups of people that make decisions.

Other states around Australia also have tribunals like VCAT.



The law the Commission is looking at

There is a law in Victoria called the VCAT Act. It has rules that say how VCAT works.

In the VCAT Act there is a **confidentiality** rule that people we spoke to are worried about because they think it stops:

- people telling their guardianship or administration story in **public**
- other people telling the story of the represented person in public.



Confidentiality means keeping information about a person private.

Public means:

- putting information on social media like
 - Facebook
 - Instagram
 - LinkedIn
- writing your story down for other people to read
- talking at a conference
- talking to the media
- recording your story in a **documentary**. A documentary is a true story and can be about things like:
 - what happened to you
 - people
 - places
 - lots of other things.



About the confidentiality rule

The confidentiality rule is called clause 37.

Clause 37 says that VCAT needs to say it is okay before you or someone else can name you in a public story about your guardianship or administration case.

A person can ask VCAT to say it is okay for their guardianship or administration stories to be told in public.



VCAT can only say yes to this if they think telling the story is in the **public interest**.

This means VCAT thinks it is important for the public to know about the story.

Why do we have the clause 37?

The law was made to keep information about the represented person private and safe.

This was done to make sure people could not talk about the person on an order or share the person's private information that was talked about in VCAT hearings.



Why people want to talk about guardianship and administration

Sometimes represented persons, their family or friends might want to tell the represented person's story about guardianship or administration.

They might want to talk about:

- bad things that happened
- good things that happened
- what they think of guardianship and administration and how it works.





There have been reports in newspapers and on television about people with disability being treated badly by their:

- guardians
- administrators
- service providers.



Reporters can only tell a represented person's story if VCAT says it is okay first. Even if the person who the story is about said it is okay.

Uli Cartwright had to ask VCAT to say it was okay before he could share his story on TV because he talked about having had an administrator.



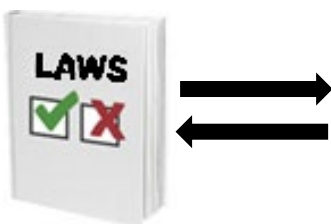
We have been told that some people might want to talk to the media because they feel they are not being heard.

We have been told that clause 37 of the VCAT Act is stopping people from talking to the media or speaking in public about their own case.

Reasons for changing the law

Reasons to change the law are to:

- make sure people get their human rights
- help people make choices about talking about their own lives





- let people talk about themselves without having to ask VCAT if it is okay
- stop people from having to change their story so no one knows who they are
- make sure people with disability can speak up
- make sure bad things can be talked about and fixed
- let people hear good stories and learn more about:
 - disability
 - guardianship
 - administration.



Reasons to keep the law the same

Reasons to keep the law or some parts of the law the same are:



- to protect the privacy of a person who has a guardian or administrator or went to a VCAT hearing
- to stop other people from doing the wrong thing with the private information of a represented person.



Most of the people we talked to think the law should be changed.

Not everyone agreed on how to do it.

People said it is important to find a good way to make changes so everyone is happy.





Most of the people we talked to said it is important to let people:

- tell their own stories
- make decisions about their information
- keep their information private and safe.



How can the law be changed?

There are some ways the law could be made better. Here are four ideas that the Commission thinks the community could talk about more.

1. Have the same law as the Australian Capital Territory.

In the Australian Capital Territory, a person can do these things unless the tribunal says they can't:

- talk publicly about being on a guardianship or administration order
- talk about what happened in the tribunal
- go to a tribunal hearing
- publish information about a represented person in the **media**, including their name.



The media is things like:

- TV
- newspaper
- radio
- social media.





The tribunal needs to be asked to keep information about a represented person safe and private in the Australian Capital Territory.



If the VCAT Act in Victoria is changed to be more like the Australian Capital Territory, it would mean:

- any person could tell a represented person's story of guardianship or administration in public
- a represented person or their family would need to ask VCAT to keep information about the represented person safe and private.

2. Have the same law as Tasmania.

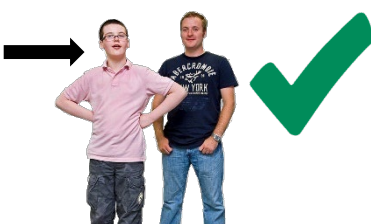
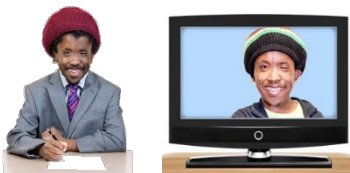
The Tasmanian law says:

- A represented person can tell their own story about guardianship and administration.

They can talk:

- to their friends
- on social media
- at conferences
- to the media

- other people, like the media or family, can tell the represented person's story about guardianship and administration only if the represented person says it is okay



- if the represented person cannot say it is okay, then the tribunal can let the story be told but only if the tribunal thinks it is right to tell the story.



Some people told us they were worried that if we copied the law in Tasmania:

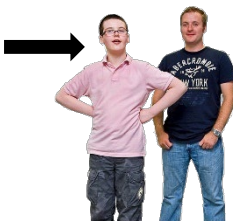
- it might be too easy for family, friends and people who work for the media to tell a story about a represented person
- some people with disability might not know what is being talked about, but would still say it is okay to tell their story
- someone might tell a lie and say a represented person had said it was okay to tell their story
- the represented person might not be able to keep themselves or their information safe.



3. Victoria could use parts of the laws from the Australian Capital Territory and Tasmania as well as other laws.

The law could say:

- a represented person could tell their own story about guardianship and administration
- other people, like the media or family can tell the story about guardianship and administration only if VCAT says it is okay
- VCAT should say yes to this unless it thinks that it would not be safe for the represented person.



4. Keep the law the same but make some small changes.



VCAT members could be made to tell people about this law at VCAT hearings and ask them if they want to tell their story.

VCAT should let the represented person tell their own story unless VCAT thinks it would be very bad for the represented person to do this.

What we will do next

Most of the people we spoke to think the confidentiality law in Victoria does not follow other guardianship laws and human rights.



There are things that could be done to make the law work better.



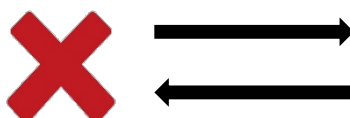
All of the ways to make things better have good and bad things about them.



The Government will need to talk to more people if it decides to change the law.



Only the Government can change the law.



The Commission cannot change the law.



This Spotlight can be used to help people to talk to their supporters and friends about:

- what is important to them
- what changes they would like to see to the law.



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