

# When a parent is not a parent any more!

*If you are the legal parent/s of a child (under 18) who is unable by reason of their disability to make reasonable judgements in respect of all or any matters concerning their personal circumstances and/or estate - You need to continue to be so! Whereas the law says, once your family member becomes an adult by law, your parental powers cease!*

Parental rights and powers, in general, cease by common law for all persons over 18 years. For most young adults in the general population, this is fine - They need to use and build their ability to find their own way in the world.

Those with limited intellectual capacity, dependent on level, do not have the intellectual foundation necessary to find their way in the world safely and responsibly. Yet, at the stroke of midnight they are 18 years old and their long-standing lifestyle foundation is legally removed. In the blink of an eye, they have no legal parents!

They are in a complex world with little or no ability to understand this, but are legally expected to, as they are now legally adults. Until this legal moment in time, they had legal parents to support and guide them!

Just like that, a person with little or no ability to do things for themselves, is legally cut off from the people who are generally the most caring and responsible people they will ever have - Parents! Naturally, this includes other family members! But parents are the ones who had the legal right to act, prior to their family member becoming an adult legally.

Parents are frustrated and upset by a legal process which has instantly removes their legal right to support their vulnerable adult family member - who is now in limbo because the law treats everyone equally. You are an adult at 18 years, irrespective of your ability to be so!

At present there is but one answer to this equal opportunity for those with little or no intellectual capacity to realise they are legally an adult - This is for parents/families to seek legal "Guardianship and Administration Orders" - continue to be legal parent/s. The process helps to ensure a vulnerable adult person has a legal, credible and accountable support base.

The other intention of "Guardianship and Administration" is to help ensure vulnerable people are not at risk of their lifestyle and assets being improperly and irresponsibly managed. We have to accept that not all parents/families do right by their vulnerable family member - although most are very caring in every way.

There are basically two groups affected by "no longer being a legal parent". Parents caring for their adult family member at home, and those with their adult family member living away from them in a supported accommodation group home or similar.

Where their adult family member is living in a group home, parents with Plenary Guardianship and Administration, under the Guardianship & Administration Act (The Act), are better positioned to monitor the level and quality of care their family member is

receiving. Although, at present, the Department of Human Services in Victoria do not insist parents/families be formal administrators, they can be informal administrators so long as the accommodation accounts are paid. If parents/families do not wish to do either, then the State Trustees can be appointed formal administrators of their family member.

As an administrator, formal or informal, parents/families receive financial statements from the service provider which indicate how much is being spent on this and that. Especially what is being spent to ensure their family member is receiving quality of life care rather than minder care. Plenary Guardianship gives parents/families official access to records which illustrate the level and quality of care being provided for their family member - interaction, developmental and social activities

Where their adult family member is living at home, there is no legal requirement to keep any financial records, but most do. They are generally termed "Informal Administrators".

Given the movement towards increased privacy, parents/families are under increasing pressure to prove to Banks, Health Funds, Hospitals, CAPS/CAAS, etc they legally represent their adult family member, the need for Plenary Guardianship is increasing.

Some more effects of not being a legal parent is that you find you have no right to access your family member's medical/health reports, Day Centre and Group Home activity reports, for example.

Regaining the right to legally act (continue to be a parent) on behalf of your family member who is, "unable by reason of their disability to make reasonable judgements in respect of all or any matters concerning their personal circumstances and/or estate", is to obtain Plenary Guardianship from VCAT (the "Victorian Civil and Administrative Tribunal").

There are two levels of Guardianship, "Limited" and "Plenary". "Limited" is generally for short term special events. "Plenary" is "Whole of Life" Guardianship"..... Like, continuing to be a full parent!

Where our family member is unable by reason of their disability to make reasonable judgements in respect of all or any matters concerning their personal circumstances and/or estate, we need "Plenary Guardianship". "Responsible Person" legislation is not good enough for a family member with the said level of intellectual capacity.

Plenary guardianship can be difficult to obtain, as the guardianship legislation (the "Guardianship and Administration Act 1986) attempts to protect the vulnerable person from over regulation by parents/families and others. The legislation directs the "Tribunal" (VCAT) to ask basic questions.... The Tribunal has to satisfy itself that, (a) the person has a disability, (b) the person is unable by reason of the disability to make reasonable judgements in respect of all or any matters relating to her or his person or circumstances and, **(c) the person needs a guardian**

It is the third question which is the stumbling block to obtaining plenary guardianship. The legislation attempts to protect the vulnerable person from over regulation by a guardian. This is through a section of the legislation which directs the Tribunal to ask if the person's needs can be met by other means less restrictive than guardianship.

Plenary guardianship is not restrictive in the hands of caring parents/families. Caring parents/families use plenary guardianship as a support to help ensure quality of life care is provided for their vulnerable family member.

Those who have an adult family member who is unable by reason of their disability to make reasonable judgements in respect of all or any matters concerning their personal circumstances and/or estate, know very well that they really do need caring parents or other family members who have the legal power to provide the degree of care, provision and monitoring of their family member's needs in a world where the vulnerable are easily exploited.

Rather than concentrating on question (c), Section 22(c) of the legislation, in relation to protecting the vulnerable person from over regulation, the Tribunal should place more emphasis on the on-going eligibility and credibility of those seeking guardianship of a vulnerable person. Of course, a person with the said degree of intellectual disability needs a plenary guardian, but they need one with very high moral and ethical standards.

If you feel you need to continue to be a legal parent when your family member becomes an adult, go for "Plenary Guardianship"!

### **What the Gippsland Carers Association said about Guardianship & Administration at their May Forum**

*"Carers were very vocal in their condemnation of the current legislation. Some of the issues for legislative change were" -*

1. Participants said that the current system is not geared towards families and carers. The government strongly encourages family members to fulfil the role of carers but does not provide them with legal standing or adequate support.
2. The G&A does not pay enough attention to what carers do. Provision should be made in the Act to recognise the carers role.
3. Families are being treated as guilty and must prove they are innocent this must be changed, carers should be treated as 'innocent till proven guilty.'
4. There is a strong need for carer support and advocacy with many local examples of how Guardianship can be lost to outsiders without direct support to families being given.
5. It was believed by some that it is better to remain informal than to be caught up in G&A law and regulations that do not support families well enough.
6. It was suggested that to deny plenary guardianship orders conflicts with the 'least restrictive option.' i.e. if a person with a disability has some capacity they can appoint a family member as an enduring power of attorney!
7. Some participants said that guardianship should be made ongoing where full-time

- care was needed and the person had limited capacity.
8. It was suggested that guardianship is used as a weapon when carers have a conflict with service providers. Some carers have been threatened with orders if they did not comply with the wishes of service providers.
  9. Carers said that they felt pressured to take on the role of administrator when they do not want the role, some felt compelled under threat of appointing 'state trustees'
  10. In practical terms carers do act as administrators and they should not be required to undertake such matters as accounting as this is extra burden on over-burdened families.
  11. It was suggested that if a person with a disability lacks capacity and is cared for by family full time and their only income is a pension, family should be given an EPA and be exempt from annual returns because other pensioners do not have to account for their pension spending i.e. aged and others with capacity.
  12. Administration should only apply where large sums of money are involved.
  13. Carers stated that the alternative to full time family care was a group home that costs in excess of \$125,000 per person per annum to taxpayers.
  14. Carers noted that there was a conflict within VCAT itself over the necessity for formal orders/ hearings are too formal and intimidate country people not to have enough regional access.
  15. The OPA needs to be more accountable and respect the role of family in a disabled | person's life. It was suggested that the OPA sides with services too much where conflict arises.
  16. Services have a tendency to want to put people with disabilities into the community, but they take no responsibility for the associated risks. It was asked 'who are the people making decisions about dignity of risk?'

**LISA Comment:** Not only do parents need the full power of Plenary Guardianship, but they need to live forever as well, given the present questionable and inconsistent services throughout most of Australia.

**Note 1:** Respite - [KPMG Discussion Paper](#): Submissions Close: **5 August 2010**

**Note 2:** NDIS - [The BIG Questions](#)

**Note 3:** [Carers Card Launched.....](#) [In Victoria](#)

**Note 4:** [Whittlesea Care Lobby bullied by the DHS!](#)

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