Mrs Lynette Croll
P O Box 114
GARFIELD VIC 3814

# ORDER

Ref no: G40703/00

## VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
## GUARDIANSHIP LIST

Proceeding in relation to Lynette Croll under:

*Guardianship and Administration Act 1986* Section 19 guardianship order; Section 43 administration order.
*Instruments Act 1958* Section 125V,125X application for revocation of appointment of attorney under EPA.

1.      Mrs Lynette Croll suffered a stroke on 11 November 2003. She was hospitalised at the Dandenong Hospital for two months. Concern was expressed by her three daughters about her competence to manage her affairs which culminated in an application being lodged with the Tribunal on 03 February 2004 by Mr Leigh Norton, a social worker at the hospital, to have the Public Advocate appointed to determine the "level of risk" and to assist Mrs Croll. That application was followed by an application lodged on 03 March 2004 by Mrs Croll's three daughters to have VCAT appoint a guardian and an administrator. The applications were supported by reports from Dr Mona Sherif and Ms Patricia Sheridan (Senior Neuropsychologist) that indicated that Mrs Croll was suffering from a level of cognitive impairment and that her condition had not stabilised. A rather inconclusive medical report from Dr D.S. Dhillon dated 05 April 2004 was later submitted to the Tribunal.

2.      Mrs Croll chose to consult Dr Lindsay M. Vowels on 19 February 2004 and Dr Vowels expressed the opinion that although Mrs Croll had reduced efficiency of some executive functions, these were "not to the point when it could be considered that she has a disability or that the problems are unable to be managed or would constitute an impediment to safe independent functioning." The degree of conflict between the family and allegations of manipulation and undue influence caused the Tribunal considerable concern and the Tribunal requested further medical evidence to clarify the level of impairment having regard to the conflicting opinions. A medical report was obtained from Dr Craig Clarke dated 19 May 2004. Dr Clarke expressed the opinion that Mrs Croll was competent to make reasonable decisions in relation to lifestyle and financial issues. Dr Dhillon expressed a similar opinion in his report to the Tribunal dated 07 July 2004.

3.      Dr Vowels indicated to the Tribunal that she would like the opportunity to reassess Mrs Croll and the reassessment took place on 19 November 2004. Dr Vowels confirmed her previous opinion that Mrs Croll is competent to make decisions in relation to her personal circumstances and her financial affairs. The Tribunal has received four comprehensive reports that indicate that Mrs Croll is competent.

4.      The requirements of Sections 22(1)(a) and (b) and 46(1)(a)(i) and (ii) of the *Guardianship and Administration Act* 1986 have not been satisfied and accordingly the application for the appointment of a guardian and an administrator is dismissed for the following reasons:

>      The Tribunal is not satisfied that the proposed represented person has a disability; is unable by reason of that disability to make reasonable judgments about her person or circumstances or her estate; and needs an administrator.

5.      Mrs Croll by letter to the Tribunal received on 29 November 2004 has sought an order that her daughters pay the costs she has incurred as a result of the application made by her daughters. The Tribunal is satisfied that the circumstances then pertaining justified applications being made to the Tribunal and it

rejects the grounds referred to in the said letter as justification for the Tribunal to make an order for costs. This is a protective jurisdiction and the allegations contained in the very considerable volume of documents lodged by the parties required careful consideration. The Tribunal declines to exercise its discretion under section 109 of the *Victorian Civil and Administrative Act* 1998 as it is not satisfied that it would be fair to do so having regard to the circumstances of this matter.

R Scott,   Senior Member
29 December 2004

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