

# Frequently asked questions about Guardianship & Administration hearings

## What happens at a full hearing?

A hearing is relatively informal and will be conducted in the manner determined by the Tribunal Member(s) depending on the issues raised. The Tribunal considers the reports and documents provided by the parties and witnesses, listens to information provided by the parties and witnesses at the hearing, considers the evidence presented and then makes a decision about the application.

Most applications for guardianship and administration orders are listed for a 60 minute hearing if the matter is not contentious or complex. Where a matter is contentious or complex then it may be listed for between 2-4 hours in duration. Some very contentious or complex matters may be listed for longer or for multiple hearings.

Find out more about what happens at a hearing in SACAT's factsheet, 'Attending a Community Hearing', available on our website: [Fact sheets and guides](#).

## What is a Directions Hearing?

A directions hearing is a preliminary hearing held prior to the full hearing of an application.

It is a procedural hearing only. No evidence is taken and no final orders are made at a directions hearing.

The purpose of the directions hearing is to identify the issues and interested persons and to ensure that all relevant information, documentation and evidence is presented to the Tribunal (and the parties) in advance of the full hearing. The Tribunal will direct by order that one or more of the parties to the application do certain things (such as provide the Tribunal with documents) by a certain time.

Usually only complex matters are listed for directions hearings in advance of the full hearing in order to avoid any unnecessary adjournments and to ensure that the parties and all interested persons are aware of the contents of such documents and have a proper opportunity to respond.

## What happens at a Directions Hearing?

A directions hearing is usually listed before a legal member of the Tribunal.

The person who is the subject of an application is often not required to attend (but may be required in some instances).

The applicant, any party and any other person required to attend a directions hearing will be notified of the hearing. Not all interested persons will be notified of a directions hearing depending on the complexity of the matter and the directions likely to be made.

Directions hearings are often conducted over the telephone (via a conference call) but in certain cases (usually the most complex matters) they will be conducted in person. A directions hearing may also be conducted via an audio visual link in some instances.

The Tribunal Member conducting the directions hearing will make enquiries of the parties (and any other person present) to identify the issues, any person with a proper interest in the matter, and any information and/or documentation and evidence of relevance. The Tribunal Member will then issue directions requiring the parties to do certain things (such as produce documents or written submissions setting out the reason for the application) within a specified timeframe.

The Tribunal may also request the parties to provide copies of documents and submissions to each other before the full hearing.

Directions hearings usually take between 30-60 minutes depending on the complexity of the matter and the issues at hand.

### **Can I have someone represent me?**

The Tribunal is not a court and you do not need a lawyer to represent you. The Tribunal will conduct the hearing with as little formality and cost to the participants as possible.

However, parties to the application (the applicant and the subject person) have the right to representation and may be represented by a lawyer or advocate at their own cost, but usually this is not necessary.

Other persons attending may also have a lawyer present but only with the permission of the member(s) who will hear the matter.

If you would like to have a legal or other representative present you must arrange for the lawyer to file a Notice of Acting with the Tribunal.

Proceedings in the Community Stream of the Tribunal are generally cost free so the Tribunal will rarely award costs to anyone at the end of a hearing.

### **Who is on the Tribunal panel in the Community stream?**

Hearings in the Community Stream are conducted by Tribunal Members appointed on the basis of their particular expertise.

Members include lawyers, doctors, accountants, nurses, social workers and disability care workers.

For the majority of matters there will be either 1 or 2 members sitting.

A psychiatrist member of the Tribunal will sometimes sit on the panel where there is a dispute about the protected person's capacity or complex medical evidence.

### **Do I have to bring anything to the hearing?**

Generally it is not necessary to bring anything to hearings. If you want the Tribunal to consider a document and you are the applicant, you can lodge it with the application itself or no later than 14 days after the application has been submitted and at least one week before the full hearing. The Tribunal will give a copy of those documents to the person and to any other interested person that the Tribunal considers should have them,

Documents that are filed late (i.e. within a week of the full hearing or handed up on the day) may not be considered by the Tribunal Member(s) before or at the hearing. Or this may result in the hearing being adjourned so that the Tribunal Member(s) and the other interested persons attending the hearing having an opportunity to consider the contents.

You should avoid filing lengthy documents or submissions, as much of this may not be relevant to the application. Try to keep your written submission to one to two pages only.

To avoid an adjournment and/or your relevant written evidence not being considered, it is better to give your evidence orally at the hearing. You can bring notes with you and refer to them during the hearing.

The Tribunal cannot accept submissions of video or audio recordings.

### **When will I know the outcome of the hearing?**

The Tribunal will generally verbally inform those attending the hearing of its decision and the reasons for the decisions at the end of the hearing.

In more complex matters, the Tribunal may reserve its decision to carefully consider the evidence and submissions. In such cases a decision is likely to be made within three weeks.

A written statement of reasons for the decision can be requested but may take up to three weeks to produce (sometimes longer depending on the complexity of the proceedings).

If a guardianship or administration order is made, the order will take effect immediately. An electronic written order will be sent to the parties as soon as practicable after the hearing.

### **How long does an order last for?**

The Tribunal's orders are mostly ongoing. In some limited cases they have a fixed end date.

In most cases, the Tribunal will fix a date for the Tribunal to review or reassess the order. This can be up to 3 years from the date of the order. However, most initial guardianship and administration orders are reviewed after a period of 12 months (sometimes less). This is referred to as an 'automatic review' under section 57 of the *Guardianship and Administration Act 1993*.

### **What happens when there is an automatic review under s 57 of the Act?**

If you are a party or a person with a proper interest in the matter, you will be sent a questionnaire/response form seeking your views about whether the order is still necessary during the automatic review. You should complete the form as soon as you receive it and send it back to the Tribunal.

A Tribunal Member will consider the response forms and the other evidence on file and may confirm, vary or revoke (cancel) the order on the papers (that is, without there being any hearing). If the Tribunal Member considers that a further hearing is needed then the matter will be referred for a full hearing and the parties and interested persons will be notified.

More information about automatic reviews is available on SACAT's website: [Reviewing, cancelling or changing guardianship orders \(sacat.sa.gov.au\)](https://www.sacat.sa.gov.au/reviewing-cancelling-or-changing-guardianship-orders).

### **Can I apply for an order to be changed or cancelled before the automatic review date?**

The following people can apply at any time for the order to be varied or revoked (cancelled) if they have sufficient grounds for doing so:

- the person to whom the proceedings relate;
- the Public Advocate;
- a guardian or substitute-decision maker for the person;
- an administrator of the person's estate; or
- a person responsible for the person; or
- any other person who satisfies the Tribunal that they have a proper interest in the welfare of the person.

However, if you are not the person, administrator or guardian, you will need to establish that there has been a "change in circumstances" of the person, or the appointed guardian or administrator.

The fact that you do not agree with the order is not a proper basis to lodge an application to vary or revoke the order.

### **If I am under an administration order, what do I need to do to get the order revoked (cancelled)?**

The Tribunal can revoke an administration order if satisfied that there is a change in the circumstances of the person who is the subject of the order.

The Tribunal will need to be satisfied that the person is now capable of managing his/her financial affairs due to an improvement in mental capacity. New medical and other relevant evidence will be required to establish a person has regained capacity in most circumstances.

The Tribunal may also revoke an order if satisfied that it is in the person's interests that the order be revoked. The Tribunal would need to be satisfied that there is evidence that suitable informal financial management arrangements can be put in place that will not leave the person at risk of financial abuse.

If you are the person or the administrator, you may apply at any time. If you are another person you will need to provide good evidence to support either of these grounds before you can lodge an application to revoke the order.

**If the Office of the Public Advocate or Public Trustee is appointed, will they keep me informed and can I contact them about the person?**

One of the principles of the *Guardianship and Administration Act 1993* is to recognise the importance of preserving the person's significant relationships.

If you are close to the person and have a genuine interest in his/her welfare, your views will be taken into account.

If you have any concerns about the person's welfare, contact the Office of the Public Advocate to discuss it with them.

If you have any concerns about the person's financial welfare, contact the Public Trustee to discuss it with them. But the Public Trustee will not release information to you about the person's finances unless you have been appointed under the administration order as the communications person or receiver of financial information.

The Office of the Public Advocate or the Public Trustee are separate organisations to the Tribunal and you will need to contact them directly.

**I am not happy with a decision made by the Tribunal. What can I do?**

At the conclusion of the hearing a party to proceedings or any other person who satisfies the Tribunal that he/she has a proper interest in the matter may lodge an internal review application (appeal) with the permission of the Tribunal. There is a time limit of one month to lodge an internal review.

For the person who is the subject of an order there is no charge for lodging such an application. For other persons there may be a fee charged before an application is processed.

The person who is the subject of the order is entitled to free legal representation on the internal review.

For more information about internal reviews, please see our factsheet: <https://www.sacat.sa.gov.au/about-sacat/publications-and-resources/forms,-fact-sheets-and-guides>.

**Contact the Tribunal**

For further information and assistance about applying to SACAT for an administration or guardianship order, please telephone SACAT on 1800 723 767 (select option 4 and then option 2).

This information sheet does not constitute legal advice and does not relate to the circumstances of any individual matter. If you wish to have legal advice you should seek that independently.