

Appointment of a Litigation Guardian

What is a litigation guardian and how are they appointed?

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A litigation guardian is a person that legally represents a child, or a person who has a disability that means they are unable to manage their own affairs or make rational decisions about proceedings, in the Tribunal and can make decisions on their behalf.

Role of a litigation guardian

The role of a litigation guardian is to determine what is in the best interests of the person and conduct the proceedings in a way they consider to be in the person's best interests, rather than in accordance with the person's views or instructions.

What must a litigation guardian do?

Subject to any directions or orders of the Tribunal, a litigation guardian must, in respect of the person:

- attempt to ascertain the views of the person about the issues in dispute
- ensure that the person understands and participates in the proceedings as much as practicable in the circumstances
- assess the specific needs of the person and attempt to accommodate those needs as far as is reasonably possible and consistent with the object of promoting the best interests of the person and
- participate in any alternative dispute resolution process which they consider is in the best interests of the person

Can a litigation guardian have legal representation?

A litigation guardian may be represented by a legal practitioner, who must conduct the proceedings in accordance with the litigation guardian's instructions.

Who can become a litigation guardian?

Subject to any direction of the Tribunal, any of the following persons may be the litigation guardian of a person:

- a parent or guardian of the person
- a person who holds an enduring power of attorney authorising the person to act on behalf of a person
- a person appointed by the Tribunal

A litigation guardian who commences to act must promptly give notice in writing to the Tribunal, and to other parties in the proceedings, outlining their name and contact details and the name of the child or person with a disability.

How can I become a litigation guardian?

A person must apply in writing to the Tribunal to be appointed as a litigation guardian. A person applying to be a litigation guardian must:

- not be a person under a disability themselves
- have no interest in the proceedings adverse to the interests of the person
- have agreed to be the litigation guardian of the person

The Tribunal is solely responsible for deciding who may be appointed as a litigation guardian.

The Tribunal may, on application or its own initiative, if the interests of justice require:

- appoint a litigation guardian
- remove a litigation guardian
- substitute another person as litigation guardian

What steps does SACAT take when appointing a litigation guardian?

When an application is made for the appointment of a litigation guardian, or the Tribunal is considering appointing a litigation guardian, the Tribunal must:

- advise the parties and ask the person whether they agree or oppose the appointment of a litigation guardian
- if the appointment is agreed, ask the person whether they have a suitable relative, friend or other person who can fulfil the role of a litigation guardian

Who can make an application to appoint a litigation guardian?

An application for a litigation guardian to be appointed can be made by:

- the child involved or person under disability
- another party if required

If the child or person under disability makes an application to SACAT and is not represented by a litigation guardian, the Tribunal will need to consider whether it is appropriate to appoint a litigation guardian to represent the person in the proceedings

What if the person has no one suitable to become a litigation guardian?

If the appointment of a litigation guardian is necessary but the person has no suitable relative, friend or other person available to fulfil the role of litigation guardian, the Tribunal must seek out and appoint a suitable person as a litigation guardian for the person.

Assessment of capacity

Before appointing a litigation guardian, the Tribunal must firstly assess the capacity of the person in question.

This will be based on the individual person in the individual circumstances of the case.

What must the Tribunal provide to a litigation guardian?

Once a litigation guardian is appointed, the Tribunal must provide the following details to the person appointed:

- the name of the person for whom the litigation guardian is to be appointed and whether that person is a child or adult
- the names of the parties to the proceedings, the Tribunal's reference number for the proceedings and the nature of the proceedings
- the Tribunal's reasons for the appointment of a litigation guardian
- a copy of all the documents lodged with the Tribunal in relation to the proceedings
- the date and time the matter is next listed and whether it is listed for directions, conference, mediation or hearing
- whether the person for whom a litigation guardian is appointed is legally represented, the details of the legal representative
- any other matter relevant to the appointment of the person as a litigation guardian

Within two business days of the proposed litigation guardian confirming that they have accepted the appointment, the Tribunal must notify all parties of the litigation guardian's name and contact details.

Contact the Tribunal

If you would like to speak to a staff member about the appointment of litigation guardians of the Tribunal, please telephone SACAT on 1800 723 767.

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.