

Frequently asked questions about Guardianship & Administration applications

What is the difference between guardianship and administration?

Guardianship is where someone is appointed to make decisions for a person who lacks the mental capacity to make decisions about where the person lives, who they should have contact with, what in-home services they receive, and what medical and dental treatment they receive.

Administration is where someone is appointed to make decisions for a person who lacks the mental capacity to manage his/her financial affairs, property or money, or to make legal decisions or enter into contracts.

How do I make an application?

All applications to SACAT are completed through our online application form which you can find at our website: www.sacat.sa.gov.au.

All the information you are required to provide will be contained in the online application form.

If you are unable to complete the form online, you can contact the Tribunal for assistance on 1800 723 767. You can also visit SACAT's offices at Level 4 or 7, 100 Pirie Street, and use a computer at one of SACAT's public kiosks.

How long before a hearing will be held?

Applications for guardianship and administration are generally listed for a full hearing within 3-4 weeks of lodgement. If an application is more complex, it may be listed for a preliminary hearing (a directions hearing) in advance of the full hearing. In some cases it will take longer to list the application for full hearing.

What evidence do I need to provide as an applicant?

As the applicant you are responsible for providing the relevant evidence to support your application.

The Tribunal Member needs to decide:

- does the person have a 'mental incapacity'?
- if so, is there a need for an order? (what, if any decisions need to be made about the person's finances, health, in home services or support, accommodation, access, personal decisions)
- who should be appointed?

The information required to support your application should include:

- medical and professional evidence (in the form of a report) about the person's mental impairment/illness and capacity to make his or her own decisions
- any information or documentation about any risks to the person
- any ACAT assessment report
- any documents already in existence: for example, an Enduring Power of Attorney, Enduring Power of Guardianship or Advance Care Directive
- occupational therapy reports about the person's daily living skills and financial management skills
- the applicant may also file a brief written submission (limited to 2 A4 pages maximum) to support the application and why the orders are necessary and who should be appointed

What happens after the application is lodged?

Applicants are required to notify the Tribunal in their application about the details, phone numbers and address of the person who is the subject of the application and any person with “a proper interest in the matter”.

The Tribunal will give the application and supporting medical evidence and submissions to the person before the hearing with a notice of hearing setting out their legal rights.

The Tribunal will notify all other ‘persons with a proper interest in the matter’ and the relevant witnesses about the hearing date and the nature of the application.

Who are persons with a proper interest in the matter?

Persons who may have a proper interest in the matter include:

- the person’s primary in-home non-professional carer (partner/spouse or family member)
- joint property owners with the person
- any appointed attorneys under an Enduring Power of Attorney
- any appointed substitute decision makers under an Enduring Power of Guardianship/Advance Care Directive
- other persons who will likely be considered to have a proper interest in the matter are the protected person’s adult children, siblings or adult grand-children (for a younger person – their parents and siblings) and any relevant witnesses

Can “persons with an interest” have access to any documents before a hearing?

Usually no other persons apart from the person who is the subject of the application will receive any documents prior to the hearing apart from the notice of hearing, which will set out the details of the application including the date and time and place of the hearing. This is because guardianship or administration proceedings are not a dispute between parties but involve an inquiry by the Tribunal into the circumstances of the person and it is important for the Tribunal to protect the sensitive personal information (medical and financial) of the person.

However, in some cases the Tribunal will send a copy of the application, any medical reports and other information (such as financial) to the persons who the Tribunal considers should have access to that information prior to the hearing (such as the partner of the person, or an appointed Attorney under an Enduring Power of Attorney, or a substitute decision maker under an Advance Care Directive).

Does the person who is the subject of the application have to come to the hearing?

Yes. It is important for the person who is the subject of the application to attend and participate in the hearing unless it is not possible for him/her to attend due to ill health or some other special circumstance. This is because the Tribunal’s decision may impact significantly on the rights of the person. For this reason, every effort is made to involve the person in the process to the greatest extent possible.

The applicant is responsible for making the arrangements for the person to attend the hearing.

If the person can communicate and contribute his/her views but cannot attend due to ill health or some other special circumstances, you can apply for a Tribunal Member to visit the person wherever he/she is residing at the time to take evidence from them prior to the hearing.

If the extent of the person's incapacity means that they are unable to communicate or express their wishes then the Tribunal can process in their absence.

Do I as the applicant have to attend the hearing?

Yes, all applicants, whether they are a health professional, lawyer, doctor or family member, must attend the hearing.

Does the proposed guardian or administrator have to attend the hearing?

Yes, because the Tribunal will need to assess the suitability of the person for appointment. Arrangements can be made for attendance by phone or video in some cases but generally personal attendance is required.

Do I have to tell the person and others involved that I am making the application and what it is about?

Yes. That is one of the key responsibilities of the applicant.

If I am not the applicant and I want to propose myself as a guardian or administrator, do I have to lodge a separate application?

No. An applicant generally indicates who they are proposing as guardian and/or administrator in their application. But if you are a person with a proper interest in the matter and you wish to propose yourself or someone else as the guardian or administrator, you should put this in writing to the Tribunal prior to the hearing. A separate application is not required.

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.