



## Frequently asked questions about the application

### What is the difference between guardianship and administration?

**Guardianship** is about the appointment of someone 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 about the appointment of someone 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?

Application forms can be accessed and completed online at [www.sacat.sa.gov.au](http://www.sacat.sa.gov.au)

### How long before a hearing is held?

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

### What evidence do I need to provide as applicant?

As 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.
- An ACAT Assessment Report
- Any documents already in existence for example 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 they say orders are needed and who should be appointed.

**What happens after the application is lodged?**

Applicants are required to notify the Tribunal 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 the 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 the persons with a proper interest in the matter?**

The persons with a proper interest in the matter are:

- The person’s primary in-home non-professional carer (partner/spouse or family member)
- Joint property owners with the person
- The appointed Attorneys under an Enduring Power of Attorney
- The 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 older person’s adult children, siblings or adult grand-children (for a younger person – their parents and siblings) and any relevant witnesses.

**Can the “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 and 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. There is a special process that you will need to follow about this. See Fact Sheet.

If the extent of the person's incapacity means that they are unable to communicate or express their wishes then the Tribunal can proceed 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 relevant 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. This is one of the key responsibilities of the applicant.

### **If I am not the applicant and I want to propose myself as 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.

**Disclaimer** This information sheet is provided as a guide only. For further clarification please refer to the Guardianship and Administration Act 1993 (available through the SACAT website). SACAT disclaims all liability for all claims, losses, damages, costs or expenses as a result of any use or reliance upon this fact sheet.