

Attendance and what to expect at Hearings in the Community Stream

HEARINGS FOR GUARDIANSHIP, ADMINISTRATION, CONSENT TO MEDICAL TREATMENT, AND ADVANCE CARE DIRECTIVES

Who is expected to attend the Hearing?

1. **The parties:** The applicant(s), the person that the application is about.
2. **Any 'interested person':** a person having an interest in the welfare of the subject person including the Public Advocate, people appointed under an advance care directive or an enduring power of attorney, the people who are being proposed as the guardians/administrators, or people who have been involved in the care of the person, case workers, key workers and accommodation providers or the like. These people may attend to make submissions or to give evidence.
3. **Other persons** may attend such as: legal representatives, recognized advocates, and support persons for the subject person, and other people with a proper interest in the application, such as family, friends, witnesses or observers, (i.e. the partner or friend of a family member).
4. **An interpreter:** please advise SACAT ahead of time so an appropriate interpreter can attend the hearing.

Does the person who is the subject of the application have to attend?

The person who is the subject of the application has a right to attend because orders may be made that will affect their rights to make decisions about their life. It is the applicant's responsibility to discuss the application with the subject person and make the necessary arrangements to bring the person to the hearing, or to arrange for them to appear by video conference.

What if the person does not want to attend or participate in the hearing?

The person who is the subject of the application has the right to refuse to attend the hearing. In such

circumstances, if the Tribunal is satisfied that the person was given notice of the hearing and chose not to attend, the Tribunal may proceed to hear and determine the application in their absence.

Other attendance options

If the applicant, the person who is the subject of the application, and any other party or interested person cannot attend a hearing in person (e.g. is in a regional area) the Tribunal may allow them, with prior approval, to attend by video conference or, in exceptional cases, by telephone.

If the person is physically or medically unable to attend the hearing, or poses an absconding risk, the Tribunal should be informed of this on the application form. The relevant medical information about this should be detailed in the medical report, or in supporting medical evidence provided with the application.

In these instances a video conference can be arranged where facilities exist.

Attendance by telephone for the applicant or the subject person, or proposed guardians or administrators, will not be considered unless exceptional circumstances exist. This must be requested well in advance of the hearing. Requests on the day will likely result in the matter being adjourned.

If an applicant does not bring the person to the hearing, and has not made prior arrangements for a video conference or visit to the person prior to the hearing, the hearing will be adjourned to enable the applicant to make arrangements for the person to attend a future hearing date.

When can the subject person be excused from attending? (Arranging a visit to the person.)

If the person is physically or medically unable to attend, but is able to communicate their wishes and

a video conference cannot be conducted (due to valid reasons), then consideration will be given to a Tribunal member visiting the person prior to the hearing in a hospital, an aged care facility or in their home, to discuss the application and to seek their views.

However, if the person cannot understand the basic issues about the application or cannot communicate their wishes due to the extent of their illness, then this should be clearly indicated on the application form and detailed in the medical report, or in the supporting medical evidence provided. In such instances the Tribunal will consider proceeding in the person's absence.

What to expect at a hearing?

The Tribunal will consist of either two members or a member sitting alone, depending on the nature of the application. Tribunal member/s will sit at the front of the hearing room at a desk facing the parties. Parties sit on chairs facing the member/s.

The hearing is less formal than a Court hearing and evidence is normally not given under oath. Tribunal member/s are not bound by the rules of evidence or procedure. However, SACAT must conduct an unbiased hearing and give each party and interested persons a fair opportunity to make relevant submissions or to give evidence. There is a requirement for each party to show courtesy and respect for the process.

You can address the member/s simply by calling them "Dr", "Mr" or "Ms" and then using their surname (which will be on a name plate on the member/s' desk). Each of the parties and any witnesses will be addressed in the same way by the member, or less formally if participants are comfortable with this.

Barring unforeseen circumstances, hearings will start on time. The average time for a hearing is approximately 60 minutes. Complex matters will take considerably longer.

In most cases parties will be advised of the Tribunal's decision and given brief reasons at the end of the hearing, with the Tribunal reserving the right to give more detailed reasons for its decision at a later time.

Hearings are recorded so that there is an accurate record of what is said and a transcript will be available (at a cost) should any party or interested person choose to lodge an application for an internal review (an appeal).

Presenting your case

The tribunal member/s will explain at the outset what happens at a hearing. (You may be asked to make an oath or an affirmation before giving evidence to the Tribunal. This is simply a promise to tell the truth).

The applicant will usually be asked to speak first and the subject person and interested persons will then be given the opportunity to respond. Witnesses may be called, or witness statements and medical reports read out for people to comment on.

It is important for the member/s to speak first, then the applicant, and then the person, witnesses and interested persons. In some hearings there will be many people present. The tribunal member/s will let you know when you can speak.

Sometimes the tribunal member/s will ask other people to leave the hearing room so that they can speak to the subject person by themselves, or with their advocate, lawyer or the public advocate present.

The member/s will ask questions to clarify issues or obtain all of the information necessary so that they can make a fully informed decision. Try to limit what you have to say to the issues outlined in the application. The tribunal member/s may impose limits on your submissions, as only relevant issues are discussed at these hearings.

You do not have to use special language. You do not have to stand up when you are speaking to the tribunal member/s.

If you disagree with something someone else has said, do not interrupt them, but wait until they have finished speaking and then ask the member for an opportunity to comment.

Address your comments to the tribunal member/s and not to other people – remember that you are there for the tribunal member to make a decision about the matter.

If you feel uncomfortable about presenting your case orally in a hearing, please notify the Tribunal beforehand and request that you can make a written submission for the tribunal member to read out in the hearing.

Hearing Checklist

✓	Be concise and talk only about the facts relevant to the hearing in response to questions
✓	Think about what orders you want SACAT to make and be prepared to tell the SACAT member the reasons why
✓	Listen carefully to the SACAT member and do not interrupt.
✓	Be polite and respectful to the SACAT member, the person, interested persons and any witnesses. Don't make personal comments about other persons or the SACAT member, no matter how strongly you feel.
✓	Tell the truth and be accurate. If you are giving evidence you may be asked to take an oath or affirmation.
✓	Ask questions if you don't understand something or if you are unsure.
✓	Bring relevant documents (see separate fact sheet).

How is the decision made?

The tribunal member/s will make a decision taking into account all of the relevant evidence and in accordance with the law. You may hear the decision and receive the order on the day of the hearing, or at some time after the hearing.

The SACAT member will tell you whether or not the order will be ready for you on the day of the hearing or whether it will be sent to you (by email, post or some other means).

You may request a written decision.

Further information

If you require any further information in relation to what to expect at a hearing you can contact the Community Access Officer assigned to the matter on 1800 723 767.

A range of comprehensive brochures and fact sheets can be obtained from the Office of Public Advocate and the Public Trustee.

SACAT does not guarantee the accuracy or completeness of this Information Sheet and does not accept any responsibility if you rely on it.

You should always seek your own legal advice.