

Litigation Guardian at SACAT

What is a Litigation Guardian?

A litigation guardian is a person that legally represents a child (or a person with an intellectual disability) in the Tribunal or in court and can make decisions on their behalf.

Role of a Litigation Guardian in Child Protection Proceedings

The role of a litigation guardian is to determine what is in the best interests of the child and conduct the proceedings in the way he or she considers to be in the child's best interests rather than on the basis of the child's views or instructions.

What must a Litigation Guardian do?

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

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

Can a Litigation Guardian have 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 child:

- a parent or guardian; or
- a person who holds an enduring power of attorney authorising the person to act on behalf of the child; or
- a person who has some other lawful authority to manage or administer the affairs of the child; or
- 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 to the proceedings, outlining their name and contact details and the name of the child.

How can I become a Litigation Guardian?

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

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

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:

- appoint a litigation guardian,
- remove a litigation guardian, or
- substitute another person as litigation guardian.

Steps SACAT must 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 child whether they agree or oppose the appointment of a litigation guardian; and
- if the appointment is agreed, ask the child whether they have a suitable relative, friend or other person who can fulfil the role of a litigation guardian.

Who can make an application for Litigation Guardian?

An application for litigation guardianship can be made by:

- the child involved; or
- by another party if required.

If a child 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 child in the proceedings.

What if the Child has no one suitable to become a Litigation Guardian?

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

Assessment of Capacity

Before appointing a litigation guardian the Tribunal must first assess the capacity of the child in question.

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

What must the Tribunal provide to a Litigation Guardian?

Once the litigation guardian is appointed the Tribunal may provide the following details:

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

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.

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.