



Disability Rights Advocacy Service Inc

Guardianship Order Fact Sheet

What is a guardianship order?

A person with a mental incapacity may be unable to make certain important decisions about their welfare and care, including accommodation, health or the services they receive. A **guardianship order** is a document that allows SACAT to authorise another person to make those decisions.

A guardian has no authority to make financial decisions on behalf of the person, that is the role of an administrator.

What needs to be proved?

SACAT will not make a guardianship order unless satisfied that the person:

- 1) Has a mental incapacity and
- 2) There is a need for an order to be made.

1) What is mental incapacity?

A mental incapacity can affect a person's ability to look after their own safety, health or welfare and can include:

- An intellectual disability
- Brain damage
- Mental illness
- Conditions such as dementia
- Being in a physically unwell state where a person cannot communicate their intentions, such as being in a coma.

2) What does SACAT consider when making an administration order?

SACAT will weigh up evidence to decide if there is a need for an order and will consider:

- What the person's wishes would have been had they not become mentally incapacitated
- What the person's present wishes are – if these can be expressed
- Whether existing arrangements are adequate and should not be disturbed
- What is least restrictive of the person's rights and personal autonomy, that also ensures that the person is properly protected and cared for.



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Types of guardianship orders

Full Orders

A full guardianship order gives the guardian the authority to make important decisions in most areas of the protected persons life.

This includes decisions about:

- Accommodation
- Healthcare (medical and dental treatment) and some types prescribed treatment for mental illness, but not for prescribed medical treatment
- Contact with the protected person
- Services, including NDIS

Limited Orders

If a person with mental incapacity is coping well in most areas of their life but needs a guardian to make decisions in other areas, a limited guardianship order can be made.

For example, SACAT may make a guardianship order that is limited to accommodation decisions.

The guardian cannot make any other decisions for the protected person outside of those about accommodation. The limitation will be specified in the order.

How long is a guardianship order?

A guardianship order generally starts on the day SACAT makes the order. It can be a fixed period. It is usually an ongoing order and remains in place until another order is made by SACAT. It must be automatically reviewed at least every three years to see if the orders are still appropriate or if any changes are necessary.

Other options

SACAT will only make an Administration order for a person with mental incapacity after considering their situation and current arrangements.

Informal arrangements

In many situations, a person with a mental incapacity can manage well in the community with the support of friends, family and service providers. They can make decisions about their finances, living circumstances, self-care and health. Consent to medical treatment for a person with impaired decision-making capacity can also be provided by a 'person responsible' (under the Consent to Medical Treatment and Palliative Care Act. In these cases, you do not need to apply to SACAT for an order, the person does not need a guardian or a financial administrator.



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Formal arrangements

In many situations, a person will have made plans when they still had mental capacity and are assisted with decision-making under a formal arrangement such as an enduring power of attorney (EPA) or an advanced care directive. If these formal arrangements are working well there is no need to apply to SACAT.

When to apply to SACAT

Sometimes the existing arrangements no longer work. Perhaps there are concerns about the conduct of the attorney under an Enduring Power of Attorney (EPA) or that person may no longer be able to act as the attorney. There might be disagreements within families about making decisions for the person or they may be unable to continue to provide assistance. In these cases, you should apply to SACAT for a guardianship order or an administration order. SACAT can appoint an administrator for a person with a mental incapacity in some circumstances where an EPA is already in place. The administrator can then cancel the EPA.

For further help about the services and supports available and about whether you need to apply for an order you can contact the [Office of the Public Advocate](#).

Applying to SACAT

All applications to SACAT are made online. You can use a computer, tablet, or smartphone. The application form prompts you for the information they will need.

If you are unable to complete the form online, you can contact the Tribunal for assistance on 1800 723 767 and a staff member may assist you to complete the form by phone.

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 where staff may also provide help.

Who can SACAT appoint as a guardian?

Usually, SACAT prefers to appoint a family member, friend or someone who knows the protected person well and is interested and able to take on the role. However, if there isn't a suitable family member or friend, the Public Advocate can be appointed.

SACAT will not appoint:

- A person unless they first consent to the appointment
- A company or statutory body.
- A person who cares for or works with the protected person on a professional basis.



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What is the Public Advocate?

The Public Advocate can be appointed by the South Australian Civil and Administrative Tribunal (SACAT) as a Guardian of Last Resort if:

- A person has a mental incapacity.
- There is a lifestyle, accommodation, and/or health decision to be made.
- There is no other appropriate person to be appointed.

A person under guardianship is allocated a particular advocate/guardian, or a team of guardians, who will get to know their circumstances and concerns.

The guardian (or team) can then:

- Make decisions on behalf of the person.
- Advocate for access to services.
- Promote coordination of services.
- Facilitate communication and conflict resolution, if it is relevant to the person's wellbeing.

Full Guardianship is where a guardian is responsible for all major personal decisions that affect someone's health and wellbeing.

For more information on the Public Advocate, click [here](#), or visit (opa.sa.gov.au)

Joint Guardians

Some orders allow for two guardians to be appointed. In these circumstances, they must agree on the decisions they make. Some orders allow for two guardians to be appointed where one can make a decision without the other.

The Public Advocate can also be appointed as a joint guardian with a family member or friend.

An alternate guardian can be appointed who would become the guardian in the event of death, absence, or incapacity of the original guardian.

Guardian suitability

When deciding if a person is suitable to act as a guardian, SACAT will consider:

- Whether the potential guardian and the protected person are compatible
- If there are any existing family relationships
- Whether the potential guardian is available and has the skills to assist and make decisions
- Any conflict of interest.



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Automatic reviews

SACAT must review all guardianship orders at intervals of not more than three years after the order has been made.

SACAT must review orders for special powers with a power to detain a person, within 6 months of the order being made and then at intervals of not more than one year.

Special Powers

Sometimes certain decisions need to be forcibly brought into effect.

SACAT cannot make an order for special powers unless satisfied that the health or safety of the person, or others, would be seriously at risk.

A guardian can apply to SACAT for special powers to:

- Direct the protected person to reside in a particular place
- Authorise the detention of a person in a particular place
- Allow the use of reasonable force to bring into effect:
 - Medical or dental treatment decisions
 - Other decisions about care and wellbeing.

Only a guardian appointed under a guardianship order or a substitute decision maker under an advance care directive, can apply to SACAT for orders for special powers. The special powers application can be made at the same time as an application for a guardianship order or at a later date.

SACAT automatically must review an order granting:

- Special powers to detain a person within 6 months of making the order, and annually after that
- Any other special powers, every 3 years.

If you don't agree with SACAT's decision, you can apply for a review. No permission is required to seek this review. You can read more about it [here](#) or at [Guardianship decisions | South Australian Civil and Administrative Tribunal \(sacat.sa.gov.au\)](#).

Cancelling or changing an order

An application to cancel or change an order can be made to SACAT at any time before the set automatic review period if there is new information or a change to the circumstances of a protected person to justify this, or a person appointed can no longer act in their role.



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Who can apply to cancel or change an order?

An application to cancel or change an order can be made by:

- the person who the order is about
- the Public Advocate on his/her own view, or at the request of the person who the order is about
- the guardian
- other persons responsible, or persons who can satisfy SACAT that they have a proper interest, will need to establish a change of circumstances of the protected person, or the guardian before applying to SACAT to change or cancel the order.

Guardianship Decisions

Some guardianship and administration decisions made by SACAT are subject to a review within SACAT by more senior members and judges. The decision you receive from SACAT will state whether it can be reviewed.

Applying for Permission

In most cases, you will be required to seek permission to apply for an internal review of a SACAT Decision under *Guardianship and Administration Act*.

You **do not** need permission in the case of:

- an order for special powers to detain a person
- where consent to prescribe medical treatment has been given (e.g. to sterilisation or termination of pregnancy)

Who can apply?

An application can be made for an internal appeal of SACAT decisions made under the *Guardianship and Administration Act* by:

- the applicant in proceedings
- the person who the proceedings are about
- the Public Advocate
- any person who presented evidence or material, or made submissions to SACAT in the proceedings
- any other person who satisfies SACAT of having a proper interest in the matter.



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Special Time Limits and Treatments

The time limit to apply for an internal review of a SACAT decision to consent to terminate a pregnancy (prescribed medical treatment) is within **two working days** of the decision.

If SACAT provides consent to **any** prescribed medical treatment under the *Guardianship and Administration Act*, the treatment cannot be undertaken until the period for taking an internal review has expired or until the internal review has been conducted and a decision made.

Stay of Decisions

For all other decisions made by SACAT under the Act, the decision will continue to operate – even if an internal review begins.

You can seek an order from SACAT or from the Supreme Court under s73 of the SACAT Act 2013 to stay the operation of the decision until the internal review is finally decided.

A **stay of a decision** means an order which stops the decision you want reviewed from operating until the review has been undertaken.