



# GUARDIANSHIP ORDERS

*Guardianship & Administration Act 1993*

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## WHAT IS A GUARDIANSHIP ORDER?

A guardianship order is an order made by the South Australian Civil and Administrative Tribunal (the Tribunal), that appoints a guardian to make accommodation, health care and/ or lifestyle decisions on behalf of a person with a mental incapacity.

## WHAT IS A LIMITED GUARDIANSHIP ORDER?

A limited Guardianship Order is where the Tribunal limits responsibility of the guardian to particular aspects of the person's care or welfare (such as accommodation only).

## WHEN MIGHT A GUARDIANSHIP ORDER BE MADE?

Many people with mental incapacity do not need a guardian. They may be able to make their own decisions with support from those around them who may include family and friends. A guardian is only needed if these arrangements are ineffective, or non-existent, or where conflict is affecting the person's well-being.. The Tribunal will only make a guardianship order when:

- the person has a 'mental incapacity' (damage, illness, disorder or impairment of the mind or brain, or inability to communicate), and
- the person cannot make reasonable decisions because of the incapacity, and
- there are decisions that need to be made and there is not a less restrictive way of these decisions being made .

In general, a family member or friend with a close and continuing relationship with the person, or a person responsible for the care of a person can consent to medical treatment if the person cannot consent themselves. A guardian for healthcare decisions will only be appointed where there is no other appropriate person who can make these decisions.

*See Information Sheet 9: Consent to medical and dental treatment for people with impaired decision making capacity.*

## HOW LONG IS A GUARDIANSHIP ORDER MADE FOR?

Once a guardianship order is made, it remains in force until it is revoked or varied by the Tribunal. The Tribunal reviews guardianship orders at set periods, with a maximum of three years before review. An application can be made to the Tribunal to vary or to revoke the guardianship order sooner than the review date if there is a change in circumstances.

## WHAT IF THERE IS AN ENDURING POWER OF GUARDIANSHIP OR ADVANCED CARE DIRECTIVE OR MEDICAL POWER OF ATTORNEY?

If a person with a mental incapacity has previously made an Advance Care Directive, Enduring Power of Guardianship, or Medical Power of Attorney, appointing someone to make decisions on their behalf, and there are no problems or conflict, there is no need for the Tribunal to appoint a guardian.

*For further information see Information Sheet 8: Advance Directives in SA*

## Office of the Public Advocate

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### WHO CAN BE APPOINTED AS GUARDIAN?

The Tribunal can appoint a sole guardian or joint guardians. A guardian must be a natural person, that is: not a company or statutory body. Any person who cares for, or works with, the person on a professional basis cannot be appointed as his or her guardian. A guardian is preferably a family member or friend who knows the person well, and has an interest in and contact with that person. In situations where there is no family member or friend who can act as the person's guardian, the Tribunal can appoint the Public Advocate, as guardian of last resort.

In deciding whether to make an order, the Tribunal must consider:

- what the wishes of the person would have been if he or she had not become mentally incapacitated (where this can be determined);
- the present wishes of the person, if these can be expressed;
- whether or not existing informal arrangements are adequate, and should not be disturbed;
- which decision or order would be the least restrictive of the person's rights and personal autonomy, whilst still ensuring his or her proper care and protection.

### WHAT DOES A GUARDIAN DO?

A guardian is legally responsible to act in accordance with the terms of the order to make all or some accommodation, health or lifestyle decisions in the interests of a protected person, after consultation with the protected person (if possible) and other relevant professionals or support agencies.

The guardian will only make a substitute decision on behalf of a protected person if they are not able to make the particular decision for themselves.

When doing so, a guardian will:

- respect the person's wishes, and balance this with ensuring his or her proper care and protection;
- respect the person's cultural background,
- maintain confidentiality as far as possible;
- consider family relationships and consult with anyone who has a real interest in the person's wellbeing when making decisions.

### WHAT ARE SPECIAL POWERS?

Enables decisions to be forcibly brought into effect. A guardian can apply to the Tribunal for an additional order (a 'section 32' or 'special powers' order) if there is a serious risk to the person or to others which can be addressed using additional authority. A special powers order can authorise; directing where the person is to live; detaining the person to that place, and/ or using force to administer treatment. *See Information Sheet 11: Special powers*

### CAN A GUARDIANSHIP ORDER BE REVIEWED OR APPEALED?

If a person disagrees with a decision or order of the Tribunal, they can apply to the Tribunal for a review of the decision. The review will be undertaken by senior members of the Tribunal who were not involved in the original decision. The review will be a fresh look at the decision, using the information provided when the order was made and any other relevant information accepted by the Tribunal. *For more information see Information Sheet 18: Reviews and Appeals*

A legal representation scheme is provided free of charge to the person under guardianship when the order is under review. The person is entitled to be represented by a lawyer and can

be provided with a lawyer or arrange their own representation. Other parties to a review will need to make their own arrangements and payment for legal representation. Where the Public Advocate is guardian, and a person is unhappy with the guardian's decision, there are grievance procedures that can be followed. *See Information Sheet 20: Office of the Public Advocate Complaints Policy*