

Now you are a guardian

A manual for private guardians in South Australia

Easy Read version



Produced by
Office of the Public Advocate South Australia



How to use this document



This information is written in an easy to read way. We use pictures to explain some ideas.



This manual has been written by The Office of the Public Advocate (OPA). When you see the word 'we', it means OPA.

OPA is part of the South Australian Government.



We support people who need help:

- making decisions
- understanding their rights.



This manual helps to explain the role of a guardian.



You can ask for help to read this manual. A friend, family member or support person may be able to help you.



The law related to guardianship is the *Guardianship and Administration Act 1993 (SA)*.



You might read some words or groups of words in this manual that you haven't seen before.



These words are written in **bold**. We explain what these words mean. There is a list of these words on page 43.



This Easy Read document is a summary of a manual for guardians in South Australia.



You can find the manual on our website at www.opa.sa.gov.au

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The South Australian Civil and Administrative Tribunal

The South Australian Civil and Administrative Tribunal (SACAT) is a group of people who work together. They can:



- appoint guardians



- change or cancel guardianship orders – we explain these in more detail on page 16.



- give guardians advice or directions



- make decisions about health care treatments people need



- help people solve problems under guardianship law.

What is a guardian?



Guardianship is when someone makes decisions for another person.

The decisions might be about:



- accommodation – where you live



- health



- lifestyle – how you spend your time.



The person who makes decisions for another person is called a **guardian**.



It is the guardian's role to make decisions, not provide care.



A guardian does not make decisions about someone's money or how it is spent.



A person who makes decisions about someone's money or how it is spent is called an **administrator**.

When do you need a guardian?



If a person can't make decisions about their own life, they have **mental incapacity**.

People might have mental incapacity because of disability, illness or injury that:



- affects their brain or mind



- stops them from communicating in any way, even with help.



The person a guardian makes decisions for must be unable to make decisions:

- on their own
- without support.

There are 3 levels of decision-making:



- **independent** – you make decisions on your own



- **supported** – you need support or advice to make a decision



- **substitute** – you need someone to make decisions for you.



A guardian is appointed when you need someone to make decisions for you.

We call this **substitute decision-making**.

Mary's story



Mary is 37 and she has an intellectual disability.



She has always lived at home with her mother.



Mary and her mother made decisions together.



Sadly, Mary's mother died quite suddenly.



Mary wanted to keep living at home after her mother died.



Mary's support workers thought it would be better if she lived in a group home.



Mary's brother, Andrew, felt she should stay at home if that's what she wanted.



Andrew applied to be Mary's guardian. He was appointed.



Andrew decided Mary would continue living at home.



Mary is visited by:

- support services she needs
- family members.



If Mary's needs change, Andrew can make a decision to change her living arrangements.

Who can be a guardian?



SACAT can appoint any of these people to be your guardian, your:

- husband, wife or partner
- parent
- adult child
- close relative
- friend.

18+

Your guardian must be over 18 years old.



In some cases, the Public Advocate will be appointed as guardian.



This only happens:

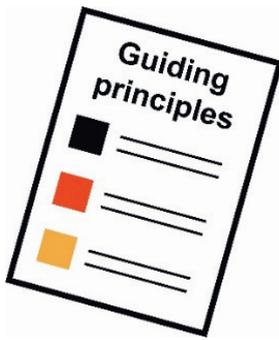
- as a last option
- when there is nobody else who will do it.



There are some people who can't be your guardian:

- paid carers
- service providers
- case managers
- health care workers.

Guiding principles for guardians



Guardians must follow a set of **guiding principles** – important things to remember when they are making decisions.



The guiding principles support someone's:

- wishes



- rights



- independence.



They also make sure the person is:

- cared for
- protected.

The guiding principles say that a guardian must:



- think about what the person would want if they didn't have mental incapacity



- think about what the person has wanted in the past



- find out what the person wants now, if they can



- make a decision that supports the person's:
 - rights
 - freedoms
 - care
 - safety.

Guardianship orders



A **guardianship order** is a legal document from SACAT.



It is written after a **guardianship hearing**.

This is a meeting where people talk about appointing a guardian.



The guardianship order is made when SACAT agrees that someone needs a guardian.



SACAT sends copies of the guardianship order via email or post to:

- the person who needs a guardian
- the guardian.



You need to keep the guardianship order in a safe place.



You might need it as proof of your decision-making power.



A guardian's powers start as soon as the order is made.



Once an order is made, it stays in place until:

- it is cancelled
- it is changed
- the person who needs the guardian dies.



Guardianship orders are not all the same.



SACAT makes each order based on the person and their situation.

It is a good idea to let everyone who supports or cares for a person know that you are their guardian, including their:



- doctor
- dentist
- case manager
- service providers.

Can a guardianship order be changed?



In some situations, you can ask SACAT to make changes to a guardianship order.

A guardianship order can be:



- **varied** – it will be changed



- **revoked** – it will be cancelled.

Mrs Williams' story



Mrs Williams is 93 years old.

She has **dementia** – an illness that affects her memory – and lives alone.



3 years ago she got sick and said she didn't want treatment.



Her daughter, Freda, was appointed as her guardian to make health care decisions.



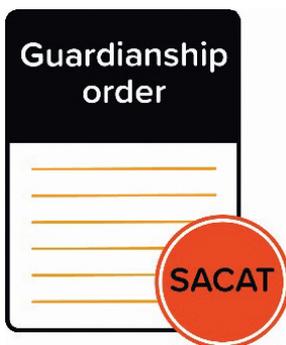
Freda makes Mrs Williams' health care decisions.



Mrs Williams' dementia has become so bad Freda thinks she needs to go into an aged care home.



Mrs Williams doesn't want to go.



Freda asked SACAT if they could change the guardianship order so it included accommodation.



SACAT changed the guardianship order.



Freda organised an aged care assessment to work out what was best for Mrs Williams.



The aged care assessment team said Mrs Williams needed to be cared for in an aged care home.



Freda made the decision to move Mrs Williams into an aged care home.

Roles and duties of a guardian

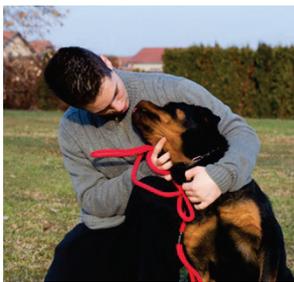
The decisions you make as a guardian might be about:



- accommodation



- health



- lifestyle.

Your guardianship order might allow you to make decisions in:



- 1 or 2 areas – this is called a limited guardianship order



- all 3 areas – this is called a full guardianship order.

Accommodation



Your guardianship order might allow you to make decisions about accommodation.



This means you can make decisions about:

- where the person lives
- who the person lives with.



You might also need to make decisions about:

- living in aged care homes
- short stays in respite care or aged care homes
- living in a group home
- living in supported accommodation
- overnight visits to the homes of family and friends.



You must talk to the person you are guardian for as much as you can about:

- what they want and need
- where they want to live.



You don't have to agree to any living arrangements that you don't think are right for the person.

Health care



Your guardianship order might allow you to make decisions about health care.

This means you can make decisions about:

- health care or treatments the person is given, including:
 - health checks and tests
 - what procedures they have – minor or major
 - surgery or operations they have





- medications the person can be given



- which medical or health care appointments they go to



- who they go to for health care, including their:

- doctor
- dentist
- psychiatrist or psychologist



- getting health care records from places they have visited before



- what health care information is shared



- checking in to and out of hospital



- **palliative care** – giving them the right care towards the end of their life.



The guardian's role is to support the person's health and wellbeing.



You can encourage them to look after their own health care if possible.



Make sure they understand:

- what will happen during a medical procedure
- what effects it might have
- the consequences – what could go wrong
- the different options they have.

Lifestyle



Your guardianship order might allow you to make decisions about lifestyle.

This means you can make decisions about:



- who the person has contact with



- the services they receive



- what work or training they do



- things they do for fun and enjoyment



- where they go for holidays.



Decisions about cutting contact with other people are serious.



The person has the right to have contact with whoever they want, unless it puts them at risk of harm.



They also have the right to be protected from:

- pressure from others
- abuse
- situations that might be harmful.



John's story



John is 35. He has a bad brain injury from a car accident.



John lives in a group home with 3 other people.



John has a friend, Mick, who he knew before his accident and injury.

John likes spending time with Mick.



When Mick is with John he:

- takes him to places he doesn't know
- gets drunk
- uses drugs.

John told staff at the group home that:



- Mick sometimes leaves him alone in hotel rooms which makes him feel scared



- strangers have taken his money when Mick is supposed to be with him.



John's brother, Andrew, was appointed as guardian to make decisions about who John could have contact with.



Andrew is worried about John's safety.



He wants John and Mick to keep in touch because they are good friends.



Andrew made the decision that Mick could visit John but only at John's home. They can't go out to hotels or other places together.

What can you do if you disagree with a SACAT decision?

You have options if you think SACAT has made the wrong decision. You can:



1. Ask SACAT to explain their reasons.



2. Apply for an appeal called an *internal review*.



3. In some cases, appeal to the Supreme Court, with permission from the Court.

Special powers



As a guardian, you may have to make the person you are guardian for do something that they don't want to do.

This might mean:



- making them live in a place that they don't want to



- using or asking SACAT to authorise some **restrictive practices** to make sure they are properly cared for and kept safe.

Restrictive practices can include:



- keeping someone in the place where they live, a care facility or a hospital



- holding someone to control their movement



- forcing someone to take medication to settle them down or control their behaviour against their will.



To be able to do these things, you will have to ask SACAT to make a special powers order.



SACAT will only make a special powers order if someone's health or safety is at risk, including:

- the person
- other people.

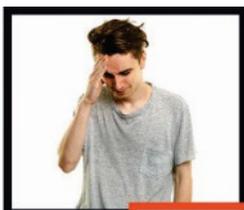


You must make sure you have tried all other options first.

Managing behaviour



You might be asked to make decisions about plans for managing the behaviour of the person you are guardian for.



You might need to do this if the person is:

- upset
- aggressive
- putting people at risk – either themselves or others.



A behaviour management plan is a way to help the person to express what they want and need.

The plan should:

- be positive
- make their life better
- give them as much personal freedom and independence as possible.



What decisions can't you make?



As a guardian, you can only make decisions about things that are in the guardianship order.

You can't make decisions about:



- ending a pregnancy



- permanently stopping a person from being able to have children



- brain surgery to treat mental illness.



Only SACAT can agree to these treatments.

There are other areas guardians can't make decisions about for the person.

They include:



- marrying someone



- voting in an election.

Working with others



It is important to understand the important relationships and networks the person has, especially with their family and friends.



You should work closely with them as much as you can.



For the best results, you should try to have good relationships with the professionals and service providers they deal with.



There will be times when you will need to work together.



Good communication will help you make good decisions.

What legal responsibilities do guardians have?



As a guardian, you have a legal duty to act carefully and responsibly in your role.

You need to make sure any decision you make as a guardian:



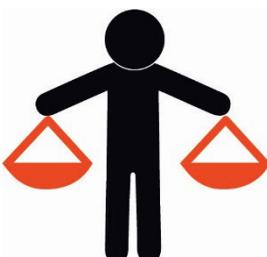
- is within the power given to you by the guardianship order



- agrees with the guiding principles of being a guardian



- is made honestly



- is reasonable and balanced.



If you treat the person you are guardian for badly, you are guilty of an offence under the law.



Are you responsible under the law for the acts of the person you are guardian for?

You would only be responsible under the law for the things the person you are guardian for does if:



- you could have controlled a situation where the person you are guardian for:
 - hurt someone
 - damaged property



- you could predict the harm or damage



- you didn't take reasonable care to stop someone from getting hurt.



If you use reasonable care you are protected under the law.

Review of guardianship orders



All SACAT guardianship orders must be reviewed at least every 3 years.



A review looks at whether the order is still needed.



Your guardianship order tells you:

- how long you will be a guardian
- when your guardianship order will be reviewed.

SACAT will:



- let you know about the review before it happens



- ask if you think the order is still needed and why



- send you a form to fill out.



You might need to go to a meeting if people don't agree about the person still needing a guardian.

You can apply to SACAT to cancel or change a guardianship order before it's time for a review if:



- you think the person doesn't need a guardian anymore



- things aren't working out



- things have changed and you need to make decisions about things that aren't in your guardianship order



- you can't, or don't want to, be guardian anymore.

Survival tips for guardians



Being a guardian can be:

- difficult
- stressful.

To make sure things go well you should:



- have someone you can talk to about how things are going



- know what your role is



- know what roles other people have



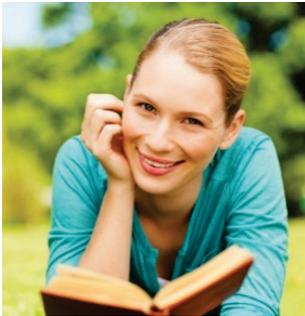
- set limits with the person you are guardian for about when they can talk to you



- make a list of things you need to do and work through it



- keep all the paperwork together in one place



- take a break when you need it



- make sure you know about other people appointed under the law



- be patient



- keep trying – you may not get what you want the first time.

Who can you talk to if you need help?



There are people you can talk to if you have issues or problems related to guardianship.



Our Information Officer will do whatever they can to help.



(08) 8342 8200

1800 066 969 (Toll free)



opa@agd.sa.gov.au



You can talk to service providers who know about the situation you are dealing with.



You can ask SACAT for advice if you:

- have thought about what the person wants
- still can't make a decision.



You can only ask SACAT for advice about major decisions.



SACAT doesn't have to give you advice.



If SACAT does give you advice, under the law, you must follow it.

Word list



Administrator

A person who makes decisions about someone's money or how it is spent.



Consequences

What could go wrong.



Dementia

An illness that affects a person's memory.



Guardian

A person who makes decisions for another person.



Guardianship

When someone makes decisions for another person.



Guardianship hearing

A meeting where people talk about appointing a guardian.



Guardianship order

A legal document from SACAT about guardianship.



Guiding principles

Important things for guardians to remember when they are making decisions.



Independent decision-making

You make decisions on your own.



Mental incapacity

A person can't make decisions about their own life.



Palliative care

Care towards the end of someone's life.



Restrictive practices

Ways of doing things to make sure someone is properly cared for and kept safe.



Revoked

A guardianship order will be cancelled.



Substitute decision-making

A guardian is appointed when you need someone to make decisions for you.



Supported decision-making

You need support or advice to make a decision.



Varied

A guardianship order will be changed.



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