

# Now you are a guardian

A manual for private guardians in South Australia



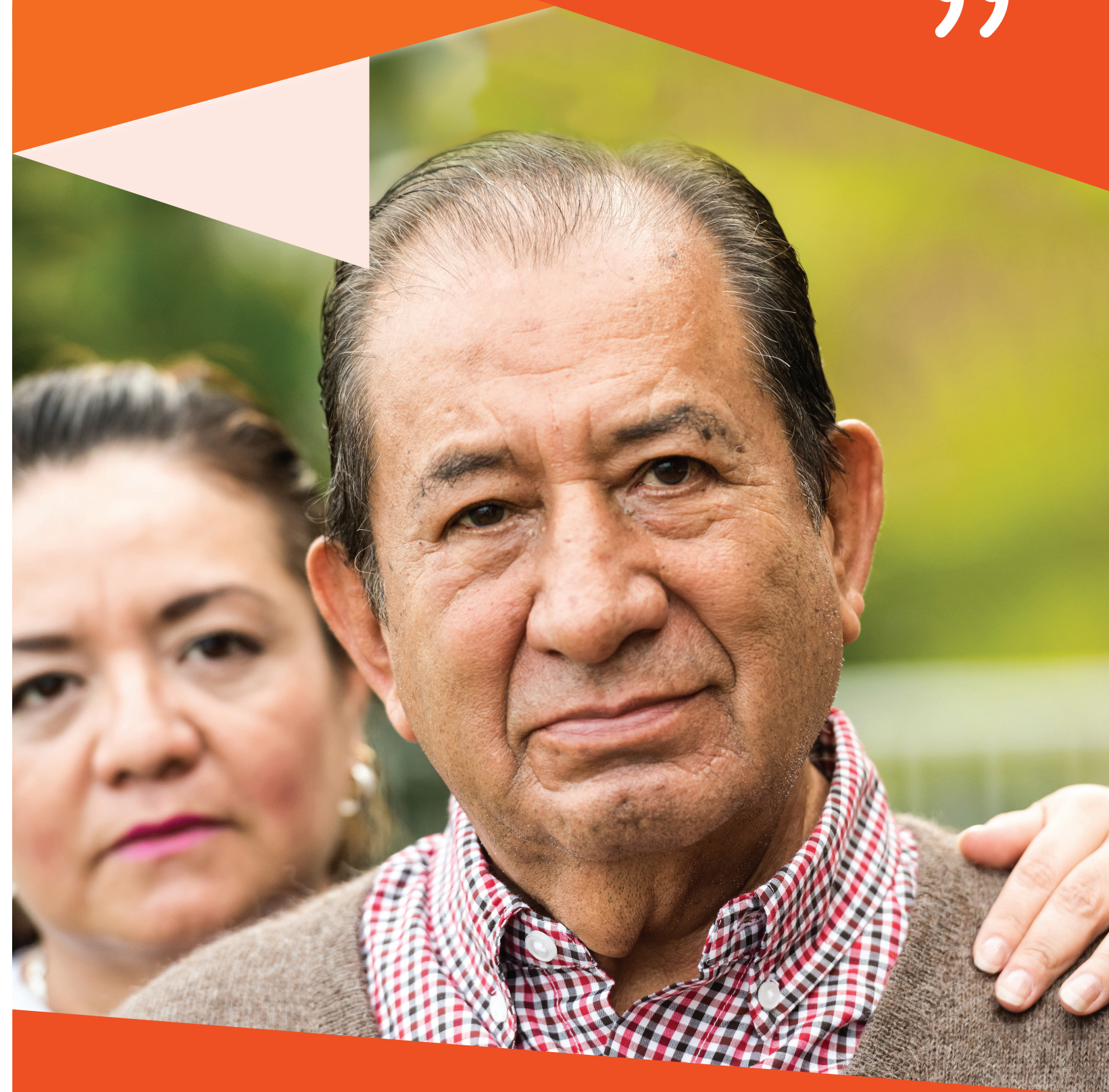
Produced by  
Office of the Public Advocate South Australia



“

You can make decisions that  
shape the life of the person  
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”



# Introduction

This manual is to support private guardians appointed by the South Australian Civil and Administrative Tribunal (SACAT).

Being a guardian can be both rewarding and challenging. Making decisions for another person who has a mental incapacity places a lot of responsibility on your shoulders. It will not always be easy. However, the fact that you have been appointed shows that you are trusted to make those decisions based on your special knowledge of the person that you will be guardian for.

One of the challenges for all guardians is the need to put aside your own values and views about life so that you can make decisions that shape the life of the person you are guardian for in ways they would want.

In many situations you can support people with mental incapacity to make a decision or to be involved by expressing their views on what they want. Guardians must use these views, wherever possible and practical, to guide their guardianship decisions. Guardians also need to consider the person's rights and freedoms. This includes reducing interruptions to their day-to-day lives while making sure they have the right level of care and protection. It is this balancing act that you will probably spend the most time thinking about in your role as a guardian.

*Now you are a guardian* includes information and guidelines designed to help you in your role. We hope you find it useful. Your feedback will be helpful in the design of future updates to the manual.

We'd like to acknowledge OPA staff and SACAT staff for their dedication in preparing and reviewing this manual.

We wish you well on your journey together with the person that you have been appointed guardian for.

## Public Advocate



# Using this manual

*Now you are a guardian* helps to explain your role as a guardian. It has been designed to be 'user friendly' and to avoid jargon where possible.

Some words and phrases may be unfamiliar to you. There are a lot of important legal terms that you will need to understand. The words in bold are explained in a full glossary of terms at the end of the manual on page 49. On page 5 below is a list of technical terms used most often throughout the manual.

The **Office of the Public Advocate** (OPA) wrote this manual. OPA is an independent office of the South Australian Government. We support people who may need help making decisions and understanding their rights. Our services include providing information and general advice, education, speaking up for people with mental incapacity, running investigations if directed to by SACAT, finding different options to guardianship and acting as a guardian as a last resort.

## The role of the South Australian Civil and Administrative Tribunal

The South Australian Civil and Administrative Tribunal (SACAT) helps people in South Australia to resolve issues under specific areas of law including guardianship. They appoint guardians, under a guardianship order, to make decisions about accommodation, health and lifestyle for a person who has mental incapacity.

SACAT can also:

- cancel the appointment of a guardian
- provide advice or directions to a guardian
- agree to prescribed medical treatment
- grant special powers that allow the use of force to make sure a person gets proper treatment and care; restrict a person's movement; or detain them
- change or cancel a guardianship order.



## Useful terms

There is a full glossary of terms on page 49.

**advance care directive:** a legally binding document that explains a person's wishes or directions before he or she loses their mental capacity. Advance care directives are covered by the *Advance Care Directives Act 2013*.

**guardian:** a person appointed as a guardian under a guardianship order

***Guardianship and Administration Act 1993 (SA)*:** the law that was passed by the South Australian Parliament in 1993 establishing the Office of the Public Advocate. This law explains the role of a guardian, including:

- when a guardian can be appointed
- what a guardian must consider when making decisions
- when special powers of detention and restraint can be granted.

**guardianship order:** an order made by SACAT under the law. It can place a person under either full or limited guardianship, and appoint one or more guardians.

**informal arrangements:** arrangements for the care of a person with a mental incapacity, or the management of his or her financial affairs, that are not under an advance care directive or an order made by the SACAT.

**least restrictive alternative:** a decision that is the least restrictive or intrusive of a person's freedom and rights that still makes sure the person is properly cared for and protected.

**mental incapacity:** when a person is not able to look after his or her own health, safety or welfare or to manage his or her own affairs, because of:

- any damage to, or any illness, disorder, development issues, impairment or deterioration of, the brain or mind
- any physical illness or condition that means the person is not able to communicate his or her intentions or wishes.

This definition is from the *Guardianship and Administration Act 1993 (SA)*.

**private guardian:** a guardian appointed through a guardianship order to make substitute decisions for someone and who is not the Public Advocate.

**person under guardianship:** the person who the guardian makes decisions for. Under the law, this person is called a 'protected person'.

**South Australian Civil and Administrative Tribunal, (SACAT):** a tribunal that has legal powers to help people in South Australia to resolve issues under specific areas of law including guardianship. They appoint guardians, under a guardianship order, to make decisions about accommodation, health and lifestyle on behalf of a person who has mental incapacity.

**service provider:** a worker or organisation who provides a service to a person with disability.

**substitute decision-maker under an advance care directive:** a person appointed as a decision-maker in an advance care directive. The substitute decision-maker is authorised to make decisions about things such as health care, end of life, living arrangements and other personal matters when the person who made the advance care directive is no longer able to do so themselves.





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# 1

## What is a guardian?

A **guardian** is a person who has been given the legal authority to make decisions for another person. The person they make decisions for must be unable to make decisions on their own, or without support, due to **mental incapacity**. We explain more about mental capacity below.

The **South Australian Civil and Administrative Tribunal, (SACAT)** appoints guardians to make decisions about another person's accommodation, lifestyle and health.

A guardian is not responsible for providing accommodation, day-to-day care, transport or other services for the person. A guardian can be a close family member or friend. They can choose to provide practical care and support, however, their main role is to make decisions for the person with a mental incapacity.

When making a decision, guardians must:

- most importantly, think about what the person's wishes would be if they didn't have a mental incapacity. This is the most important thing to do.
- find out what the person's wishes are or, if this is not possible, think about what the person would want
- make a decision that is the **least restrictive alternative**. This is a decision which puts minimum restrictions on and supports the person's rights and personal freedom as much as possible while still making sure they are properly cared for and protected.

A guardian cannot make financial decisions for the **person under guardianship**. This is the role of an **administrator** appointed by SACAT or another person acting under an **enduring power of attorney**.

There is more detailed information about making decisions as a guardian on page 22.

You can apply to be a guardian on the [SACAT website](#).

### What is mental capacity and incapacity?

Mental capacity is a person's ability to make decisions. If an adult has mental capacity, then they can make decisions about their own life.

Under an important legal agreement called the *United Nations Convention on the Rights of Persons with Disability*, people with disability have the right to make their own decisions and have access to help with making decisions if they need it.

Some people are not able to make some decisions on their own. Under the law, mental incapacity is when a person is not able to look after his or her own health, safety or welfare, or to manage his or her own affairs because of:

- any damage to, or any illness, disorder, development issues, impairment or deterioration of, the brain or mind
- any physical illness or condition that means the person is not able to communicate his or her intentions or wishes.



This definition of mental incapacity is from the *Guardianship and Administration Act 1993 (SA)*.

In recent times, with more understanding and recognition of the rights of people with disability, there has been a change in how capacity is understood and dealt with under the law. It is now understood that capacity can vary depending on the person's disabilities, personal circumstances and the type of decision being made.

Not all decisions are the same. Some decisions can be simple – such as deciding to arrange for disability support services to meet a clear need for such services, while some can be very complicated – such as whether to agree to or refuse medical treatment. Just because a person has a mental incapacity to make some decisions does not mean that they should not have the right to make, or to be supported to make, other decisions.

## When is a guardian needed?

There are three levels of decision-making:

- independent
- supported
- substitute decision-making.

All adults have the right to make decisions about how they live their own lives. Most people with disabilities, including those with conditions that affect the brain or mind, are able to make at least some independent decisions.

Some people need a bit more help to make important health, accommodation and lifestyle decisions but can make them with support and advice from their family and friends. This is called supported decision-making. If supported decision-making arrangements are working and the person with disability is able to make the decisions that need to be made, with some help, then there is no need for a guardian.

A guardian is appointed when a person needs someone to make substitute decisions for them and they don't already have people who do this in an informal way. This is called substitute decision-making.

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## Informal arrangements

Sometimes, people with mental incapacity can't make decisions themselves and they have family or friends who make decisions for them. These are often called **informal arrangements**. If the informal arrangements are working, there is no need for a guardian to be appointed.

You can read more about informal arrangements in the fact sheet, [\*\*Informal Arrangements for People with Mental Incapacity on our website\*\*](#).

Sometimes informal arrangements don't work. Sometimes, a person's family and friends (or others involved in their care, such as doctors or carers) can't agree about how and what type of decisions should be made. Sometimes informal arrangements break down because family and friends want to make a decision on behalf of a person with mental incapacity which goes against that person's wishes and would force them to do something. Other people may not have a support network to help them with or make decisions for them.

In these situations, SACAT can appoint a guardian to act as a substitute decision-maker.

SACAT only appoints a guardian when:

- the person has a mental incapacity

and

- there are decisions that need to be made and there is not a **less restrictive** way of making these decisions.

## Mary's story

Mary is a 37-year-old woman with a moderate intellectual disability.

Mary has always lived at home with her mother and together they made decisions about her accommodation, health care and general lifestyle. While she had some support with personal care, Mary did not receive a lot of formal support services. These informal arrangements were working well and Mary's mother didn't think that she needed to apply to be a guardian.

However, earlier this year Mary's mother died suddenly. Mary was very clear that she wanted to continue living in the family home. Her personal care workers were concerned about Mary staying at home and felt that she should go into supported accommodation. However, Mary's brother, Andrew, felt that Mary could be supported to stay at home if that's what she wanted.

Andrew made an application to SACAT to be appointed as a guardian. SACAT agreed that he could be a guardian for decisions about accommodation. Andrew then made the substitute-decision, based on Mary's wishes, that she could remain at home with some additional support services and regular visits from her family members.

If Mary's needs change in the future and she cannot safely remain living in the family home, Andrew can make a decision to change her accommodation.

## Who can be a guardian?

A guardian must be over 18 years old.

A guardian can be a spouse, parent, adult child, relative or friend. Paid carers or **service providers**, such as **coordinators of support**, carers working in an aged care home or health care professionals, who are currently providing a service to the person, can't be appointed as their guardian. A guardian must be a 'natural person', which means that they cannot be a legal entity like a trust or body corporate.

In some cases, the **Public Advocate** can be appointed guardian, or one of the guardians together with another person. SACAT will do this if a person needs someone to make decisions for them yet has no one who is willing or able to take on that role.



The Public Advocate will sometimes be appointed as a person's guardian where there is conflict between family members and other supporters.

The Public Advocate is the guardian of 'last resort' and SACAT must be satisfied that there is no other appropriate **private guardian** before they make this decision.

## Joint guardianship

SACAT has the authority to appoint more than one person to act as guardians together. Joint guardians must agree on the decisions they make. In some situations, the Public Advocate can be appointed to act as a joint guardian with one or more private guardians.

If joint guardians can't agree on a decision, the decision may need to go back to SACAT. Before taking this step, joint guardians can seek advice from the OPA or SACAT about their powers under the law and what their options are.

Joint guardians can also consider mediation. Community mediation services are available, but there may be a fee for these services. You can find useful contacts on page 44.

If one of the guardians dies or cannot continue as a guardian, SACAT will need to:

- review the **guardianship order**
- make a new order if a guardian is still needed.

The remaining guardian should advise SACAT of the death of a joint guardian and ask for a review or a change to the guardianship order.

You can find a list of further information about guardianship and the laws that guardians must work under on page 16.

## Why would you want to be a guardian?

While the role of guardian can be challenging, making decisions that create a positive difference to someone's life can be very satisfying and rewarding.

## Advance care directive

Some people with mental incapacity have already formally appointed a substitute decision-maker themselves by making an **advance care directive**. A person makes an advance care directive when they still have the mental capacity to do so. They are thinking about the future and making a plan for a potential time in the future when they may not have the capacity to make decisions.

Substitute decision-makers appointed under an advance care directive don't need to apply to SACAT to be appointed as a guardian. Their appointment is already recognised by the law and they have the same authority as a guardian to make decisions.

Substitute-decision makers under an advance care directive have to obey the relevant laws that cover these directives. This manual does not cover responsibilities under an advance care directive. For more information, please see our fact sheet about **advance care directives**.

# 2

## Understanding guardianship orders

### What is a guardianship order?

A guardianship order is a legal document from SACAT. It is made after a hearing. A hearing is conducted by a tribunal member who asks each party to present their case. The tribunal member will sit at the front of the hearing room and face the parties. The person who has made the guardianship application will be asked to state their case first, and other parties will be able to respond. Each party will get a fair opportunity to state their case. The tribunal member will then make a decision. The tribunal member's decision is binding on the parties. SACAT will run a hearing with as little formality and technicality as possible. For more information about SACAT hearings see [SACAT's website](#).

The guardianship order is made when SACAT agrees that a person with a mental incapacity needs a guardian to make substitute decisions.

As the guardian, SACAT will send you a copy of the guardianship order and they will also send one to the person under guardianship. SACAT may also give copies of the order to any other people involved.

### Mrs Williams and her daughter Freda

Mrs Williams is a 93-year-old woman who has dementia and lives alone.

Three years ago, she developed a serious physical illness yet she was refusing treatment. Her daughter, Freda, was appointed as her guardian to make health care decisions.

Mrs William's dementia has now deteriorated to the extent that Freda believes she needs to be cared for in an aged care home. Mrs Williams is unwilling to move from the family home and some members of the family think she should remain living there.

Freda applied to SACAT to have the guardianship order changed and asked that the additional role of accommodation be added to the order so that she could make decisions about where her mother should live, including whether she should move to an aged care home. SACAT changed the guardianship order so that Freda can now also make accommodation decisions.

Freda arranged for an aged care assessment to work out what was best for her mother. The assessment team said that Mrs Williams was not able to be cared for safely at home and recommended that she be moved into a nursing home.

Freda made the decision to move her mother. She looked at the aged care homes that were available and chose one that was close to the family home. She made sure that her mother's room at the aged care home was decorated with her personal items to try and make her feel as comfortable as possible.



## How long will the guardianship order last?

A guardian's powers start when the order is made. Once an order is made, it remains in place until:

- it is revoked (which means cancelled)
- it is varied (which means changed) by SACAT
- the person who needs the guardian dies.

SACAT reviews guardianship orders at set times. It must review guardianship orders at least every three years but can review them more often if they want to. We explain SACAT reviews in more detail on page 40.

## Are all guardianship orders the same?

Guardianship orders are not all the same. There are different types of orders giving guardians a range of roles and responsibilities. As individual people and their situations are so unique, SACAT makes each order based on each person and each situation. As a newly appointed guardian it is important that you understand the powers that you have been given.

## Full guardianship orders

A full guardianship order gives the guardian the authority to make decisions in most areas of the person's life. This includes decisions about accommodation, health care and their lifestyle.

Guardians **don't** have the authority to:

- Agree to an operation that means a person can't have a baby, or an operation to end a person's pregnancy. Doctors can only perform these medical treatments with the consent of SACAT.
- Manage the person's financial affairs. This is the role of an administrator (for example a Public Trustee) or a person appointed through an enduring power of attorney.
- Make decisions about the person's marriage, children, voting, sex or making a will.


There is more information about the decisions that guardians are not able to make on page 35.

## Limited guardianship orders

A limited guardianship order means that the guardian can only make decisions in specific areas such as health, lifestyle and accommodation. The guardian's duties will be clearly listed on the guardianship order. The guardian can only make decisions about the things listed.

## What is on the order appointing you as guardian?

The guardianship order you receive from SACAT contains important information and should be read carefully. Below is an example of an order, with an explanation of the important sections.



South Australian  
Civil and Administrative Tribunal

Order of the Tribunal

Case number 2017/SC000394

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CASE  
INFO

Applicant

John Smith

The person who asked for the order to be made

Concerning

John Peter Brown  
DOB: 11/01/1924

The name of the person who is the subject of the order

Regarding

Guardianship Order

---

Hearing held on:

20 June 2017

Before Tribunal Member:

Mr E Payton

The reasons for SACAT's decision

Guardianship order (Full)

Made under the *Guardianship and Administration Act 1993 section 29*

Findings of the Tribunal

Where a guardian has powers in 1–2 areas of lifestyle, accommodation and health

1. John Peter Brown has a mental incapacity.

2. A guardianship order should be made.

What the guardian, applicant and/or subject of the order need to do and when it needs to be done

3. A limited guardianship order is not appropriate.

The type of guardianship order – full or limited.  
A full guardianship order is where a guardian has powers to make decisions about lifestyle, accommodation and health

Orders of the Tribunal

1. Jenny Adams, 21 Apple Crescent NORTH ADELAIDE SA 5006 Australia is appointed full guardian of John Peter Brown.

2. This order continues to have effect until further order of the Tribunal.

3. The Tribunal recommends the order is reviewed on or before Friday 19 June 2020.

4. John Peter Brown, the applicant and any other person entitled to apply to the Tribunal can apply to have this order varied or revoked at any time.

E Payton

Tribunal Member

22 June 2017

The guardianship order does not expire until SACAT makes another order which cancels the guardianship order


This is the length of time before the order is due to be reviewed by SACAT

Who can apply to have the guardianship order changed (varied) or cancelled (revoked)

1

South Australian  
Civil and Administrative Tribunal

GPO Box 2361 Adelaide SA 5001 T 1800 723 767 DX 167 E [sacat@sacat.sa.gov.au](mailto:sacat@sacat.sa.gov.au)

 [sacat.sa.gov.au](http://sacat.sa.gov.au)

## Receiving and keeping documents

SACAT will email you the guardianship order shortly after the hearing and will post it to you if you have asked them to.

It is important that you keep the guardianship order in a safe place once you have it, as it is proof that you have the legal authority to make certain decisions on behalf of the person under guardianship.

## Who needs to know that you are the person's guardian?

Depending on the powers you have been given (either full or limited guardianship), it is a good idea to let everyone who supports or cares for the person know about this. This might include the person's doctor, dentist, accommodation provider or other service provider.

It is also helpful to photocopy the order and give copies to the relevant people. You may sometimes be asked to provide a certified copy. A Justice of the Peace or legal practitioner can certify a copy for you. They will need to see the original document and then sign the photocopy to say that it is a true copy.

## Can the guardianship order be changed?

In some situations, you can ask for the guardianship order to be:

- varied (changed)
- revoked (cancelled).

You can ask for the order to be changed if you think that:

- the guardianship order is not working out
- extra decision-making authority is needed from someone else
- you are not able to fulfil your role as guardian any longer.

You need to apply to SACAT to have the order changed or cancelled.

If you are having problems in your role as guardian it may be a good idea to discuss this with us, or another organisation, before asking SACAT for a review. There is a list of useful contacts on page 44. There are plenty of people who can help you and provide advice.

# 3

## Guiding principles for guardians

Every day each of us makes decisions for ourselves. It is not often that we are responsible for making decisions for another adult. Most new guardians have questions about what being a substitute decision-maker means and how to make sure that they do the 'right' thing.

### A guardian's principles under the law

Guardians must follow a set of principles when making decisions for the person they are guardian for. These principles are included in the *Guardianship and Administration Act 1993 (SA)*. The principles support people under guardianship's wishes, rights and independence. They also make sure these people are cared for and protected. SACAT, the Public Advocate, administrators and anyone else who makes a decision for a person who doesn't have mental capacity has to follow these principles.

The principles say that guardians must:

- Consider what you think the person's wishes about a decision would be if they didn't have a mental incapacity. This can be based on:
  - what the person has said in the past about the same thing
  - information about their history or cultural background
  - knowledge of what they like and dislike.
- This is the most important part of how a guardian makes their decisions. And this information must have the most 'weight' when you are making a decision for them.
- Find out, if you can, what the current wishes of the person are and consider these when making a decision.
- Make a decision that is least restrictive of the person's rights and freedoms, while still making sure they are properly cared for and kept safe. If you think that certain restrictive practices are needed – force needs to be used to ensure that the person receives proper care or medical or dental treatment, or that a person needs to be detained in the place where they live - then you will need to apply to SACAT for a special powers order. We explain special powers in more detail on page 32.

It is not always easy to make decisions under these principles and sometimes it can seem that some principles disagree with others. For example, it can sometimes be hard to do what you know a person wants at the same time as making sure that they are properly cared for and safe from abuse and other types of harm. It is not always possible to make a decision that the person you are guardian for is happy with and at the same time make sure they are cared for and safe.

The challenge of being a good guardian is finding a balance between care and safety and encouraging the person to be independent and make their own choices.



## Steps to making a decision

The following steps can help you to find a balance between the different things that you need to think about when making a decision.

### **Step 1. Think about the person's capacity for the specific decision you are making.**

What is the person's mental capacity for the specific decision that needs to be made? Mental capacity, or someone's ability to make a decision, should be thought of as 'decision-specific' – meaning it can vary depending on the type, and importance, of the decision that needs to be made. A person may be able to make some decisions even if they can't make more complex ones. Understanding when a person can make their own decision is important. It makes the person more independent and can help you to work out their wishes and feelings when you do need to make a decision for them about something more complex.

### **Step 2. Can you support the person to help make the decision?**

Think about whether or not you can support the person to make, or take part in making, a decision. You can do this by helping them to understand and weigh up the issues around the decision. Again this can make the person more independent and improve your understanding of what they want so that you can make the best decision for them.

### **Step 3. Find out what the person thought about the issue in the past.**

Try and find out what the person's wishes were about the particular issue or decision in the past and think about how this effects the decision now.

### **Step 4. Think about what the person would want if they could make the decision themselves.**

Use what you know about the person to work out what you think their wishes would be if they were able to make the decision themselves.

### **Step 5. Can you find out what their wishes are now?**

Find a way, if possible, to work out what the person's wishes are now about the issue or decision.

### **Step 6. Think about the risks related to the decision.**

Work out what risks there are around the decision. How big are the risks? Can the risks be managed to make them smaller? Are the risks acceptable, remembering that some risk in life is unavoidable and that risk needs to be balanced against the benefits and the person's freedoms.

## Step 7. Think about the person's needs.

Their needs might include:

- physical and care needs
- protection from harm
- the chance to take part in the community and to have a social life
- things that can help them reach their potential and give them a sense of personal satisfaction.

## Step 8. Find the option that will give the person the most freedom and independence.

Think about which of the options will give the person the most personal freedom and independence while still making sure they are safe and well cared for.

He has lived in a range of different types of accommodation but has trouble getting along with other people. He has been evicted from a number of supported residential facilities.

Darren's mother, Gilly, is his guardian for accommodation and health care decisions. Darren has lived with Gilly a number of times but they both agree that living together doesn't work for either of them in the long term.

Darren wants to live in a flat in the community but Gilly is worried that he won't be able to manage living on his own. Before he was under a guardianship order, Darren rented a flat but did not cope well. He was not cooking for himself and lost a lot of weight, the flat was never cleaned and there were always 'friends' living with Darren without giving him any money for the rent or household bills. Gilly felt that Darren was 'better off' and safer living in a supported residential facility, even though this wasn't what Darren wanted.

Darren's case worker checked what supports and services Darren could use if he lived on his own. He gave Gilly a **case plan** that included cleaning and shopping support and weekly outings with a care worker.

Gilly was still worried about Darren's ability to cook meals for himself so after talking about it further with Darren and his case worker, they organised for meals to be delivered to Darren's flat four times a week.

Gilly knew that there would be some risks with Darren living on his own, but she knew that this was what Darren wanted. Gilly agreed that Darren could move into a flat. She felt the new case plan lowered the risks to Darren's health and safety and that he would have the help he needed.

## Darren's story

Darren is a 23-year-old man who suffers from chronic schizophrenia.

To make a decision you will need to think carefully about each option, what the risks are and what sorts of things could happen in each situation. You will need to weigh up the different options and risks and ask questions.

### More useful questions:

- What options have been tried before? What happened last time?
- Are there other options?
- Will the decision improve the wellbeing of the person?
- Will the decision help the person to take part in the community more, give them more control over their lives and help them to be able to do things that they enjoy?
- Do you think the decision will give the person the best result?

The Australian Guardianship and Administration Council have a document called the *National Standards of Public Guardianship*. Not all of the information will be relevant to you but some of the standards and principles might help you to work out your role as a guardian. You can find the document on their [website](#).

## How can you use supported decision-making as a guardian?

Supported decision-making is about helping someone with cognitive impairment, someone who has trouble remembering, concentrating or making decisions, to make their own decisions and tell you what they want.

The main aim of supported decision-making is helping the person to make their own decision wherever possible. Where this is not possible, you support the person to tell you what their wishes are and you make the decision in line with those wishes.

To support someone to make a decision you can:

- help the person to find out information, attend appointments with them and ask questions with and for them
- help the person to find information in a way that is easier for them to understand (such as in an easy to read document or an audio format)
- make sure that the person's needs are looked after while they are making the decision (such as being flexible with timeframes, making sure they are comfortable physically and emotionally and making sure they have help with communication if they need it)
- work out for the person what the different options are and what each option means for them and talk to them about that where possible.

As a guardian you can make substitute decisions for the person you are guardian of. You can make decisions for that person. However, you still may be able to use some supported decision-making. Remember that capacity can vary depending on the decision that you are making and how complicated it is. There might be less complex decisions that, with the right amount of help and information, the person could make themselves. Working with the person to help them make decisions, or tell you what they want, can help them to be more independent and feel good about themselves. You may even come up with a way they can make decisions without a guardian.

But guardians are responsible for making decisions for a person under the law, so if you are supporting the person to make decisions themselves make sure you write down how you made the decision and keep a copy of it.

You can find more information about supported decision-making on our [website](#).

## **Making the tough decisions**

A guardian often needs to make decisions that are difficult or sensitive. After considering all of the options and questions above, you may have to make a decision that isn't what the person wants or what service providers have recommended.

It is important to be clear with the person, and with any other people involved, about your reasons for making a decision. Your relationship with the person will help you to work out the best way to talk about the decision. The person may be angry and upset and need the chance to tell you how they feel. They may also need some time to get used to a decision that is making a change to their life.

While it can be difficult dealing with people who are upset and angry, as long as you are following the guardianship principles, then you are doing the best job you can as guardian and are doing what you need to do legally.

Being a guardian can be a tough job and you need to make sure that you take care of yourself. There are some helpful 'survival tips' for guardians on page 42.

## **Who can you talk to if you need help?**

If you need to talk to someone about an issue or problem then you can contact us and talk to our Information Officer. The Information Officer will do whatever she can to help you in your role as guardian.

You can also talk with service providers who have specialist knowledge about the situation you are dealing with. There is a list of useful contacts on page 44.

## **Asking SACAT for advice**

If you have thought about what the person wants, the advice professionals and service providers have given you, and independent advice from someone like us, and you still can't make a decision, you can ask SACAT for advice.

You can apply to SACAT for a specific direction or advice. But you should only apply for advice for major decisions. SACAT doesn't have to give a direction but if it does then it is binding. This means you must follow SACAT's decision.



Being a guardian can be a tough job and you need to make sure that you take care of yourself

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# 4

## Roles and duties of a guardian

Your guardianship order from SACAT will explain which areas you can make decisions about. SACAT can make a full guardianship order, which means you can make decisions in all of the areas below, or it can make a limited order that lists the areas you can make decisions about.

The areas that guardians can make substitute decisions in are:

- accommodation
- health care
- lifestyle.

### Accommodation

If SACAT gives you the authority to make decisions about accommodation, you can decide where the person lives and with whom. You may need to make decisions about temporary and long-term accommodation. This can include decisions about:

- permanent care in an aged care home
- short-term respite care in an aged care home
- accommodation in a group home
- accommodation in a supported residential facility, which offers accommodation and care for people with disabilities, mental illness and older people.

You may also need to make decisions about when or where the person can go for overnight visits. This can include overnight visits to family and friends.

You must talk to the person you are guardian for, as much as you can, about where and how they'd prefer to live. Wherever you can, you should respect the person's wishes when making your decision. But, as a guardian, you can go against those wishes if you believe that the person would not get the care and protection that they need.

### Moving From Home into Care or Supported Accommodation

Sometimes SACAT appoints a guardian for when a person will need to be moved out of their home. They may need to be moved to an aged care or supported residential facility where there are staff to help look after them.

Moving home can be stressful and upsetting. Older people may have lived in their home for many years. They can be very upset if they have to move because of their health, safety, or because they can't be looked after at home any more. It can be a difficult decision for a guardian to move someone from their own home, particularly if this is not what they want. It is a good idea to get professionals to assess the situation.

An Aged Care Assessment Team (ACAT) can give you an assessment and recommend what services and support the person needs to be able to stay in their home. ACAT will also tell you if it is not safe for the person to stay in their home and suggest the best type of accommodation for them. A person can also be assessed if they are in hospital, usually with the help of a social worker or a health professional attached to the ward they are in. It is always a good idea to ask lots of questions.

Once you have made a decision, you can also organise for other people, such as service providers, to move the person to the new accommodation.

### Things to think about when making a decision

The following list has a range of possibilities and accommodation options, not all of them will apply to the decision you need to make. Take from the list whatever you think will help you to make your decision.

- If the person wants to stay in their own home, can extra, or different, care services and support make this possible?
- Have all the options for home support been fully looked into?
- If the person has to move to other accommodation:
  - What choices of accommodation are there?
  - Does the person prefer any particular accommodation or facility?
  - What is the physical layout of the accommodation and how suitable is it for the needs of the person?
  - Is there any privacy?
  - Is the accommodation close to family and friends and will the person be able to keep up their links with the community – such as clubs or groups they belong to?
  - What belongings can the person take with them?
  - Are there any locked areas or security doors? How do you think the person will feel about these restrictions? Is the security necessary and will it help to keep the person safe? For example, if there is a risk that the person might wander off and get lost, secure gates and doors could keep them safe.
  - Are there regular outings and other lifestyle activities that would interest the person?



To help you make your decision you can:

- organise an aged care assessment by ACAT or another organisation
- set up a visit to the suggested accommodation
- organise for the person to have a trial of the accommodation
- ask for a meeting, or **case conference**, with service providers who work with the person to talk about what options are available and any concerns.

## Betty's story

Betty is an 87-year-old woman who has lived alone in the family home since the death of her husband five years ago.

Betty was diagnosed with dementia but has been managing at home with support from some home care services and family members.

Over the past six months Betty has not been looking after herself as well as she was. Neighbours have reported that she wanders in the street late at night and is confused about how to get home.

Betty has also had to go to hospital after a number of falls. The service providers who come to her home often find electrical appliances, such as the kitchen stove, left on. Betty doesn't think that there is a problem and has refused to move into other accommodation.

Betty's daughters, Susan and Jenny, were appointed joint guardians to make decisions about accommodation for Betty. After talking to Betty's doctor and service providers, they asked the ACAT to assess Betty to see what type of care she needed. Their assessment was that Betty needed low level residential care.

Susan and Jenny talked about the assessment with Betty and explained why they felt she needed more support than she had at home. In the end Betty was moved to an aged care home in her local area where she received an appropriate amount of care for her needs.

## What if you are not happy with the accommodation?

As guardian, you don't have to agree to any accommodation that you don't think is suitable for the person. If you are not happy with the accommodation options you can:

- talk about your concerns with the support or accommodation provider
- suggest other accommodation options
- agree to short-term, or respite, accommodation until you can find a better accommodation option.

If you are still not happy, you can make a formal complaint in writing to the service providers.



### Did you know?

A person with mental incapacity can be moved from home or hospital, without a guardian to make the decision, if everyone involved agrees and the person with mental incapacity does not object.



## Health care

If SACAT gives you the authority to make decisions about a person's health care, you will be making decisions about what health care services and treatments they need.

You can make decisions about:

- what health related procedures and treatments the person has including:
  - health checks, examinations and assessments
  - diagnostic procedures
  - health care monitoring
  - some minor and major procedures
  - most operations or surgical procedures
- what medications the person can be given, in most cases
- what medical, and other health care, appointments the person goes to
- which health care services and medical professionals, the person will go to including:
  - general practitioner (GP)
  - dentist
  - psychologist
  - psychiatrist
- asking for information about the person's health care or medical history from doctors, health care facilities, accommodation providers and other services
- what health care and medical information is shared with others
- the person being admitted to or discharged from a short stay at a general hospital
- agreeing to the person being given **palliative care** if needed.

There is information about the decisions you can't make as guardian on page 35.

## Important background information

To help you get ready to make any decisions about a person's health care you should:

- understand the person's disability and mental incapacity and how it affects them
- find out as much medical history as you can about the person
- contact the person's GP and any other health care providers to make sure they know that you are the person's guardian and what your legal responsibilities are
- find out what health care services the person is getting and from whom and whether these are enough
- find out whether the person is taking any medications and if these have any harmful side effects
- make appointments for a regular medical check-up (including dental) if this is needed
- check the person's diet and nutrition and decide if it needs to be improved
- work out if there are any health issues because of person's sexual lifestyle
- ask for a **treatment plan**, or case plan, from the health care service providers who work with the person
- discuss whether current care or treatments are the least restrictive or invasive options available for that person.

## Things to think about when making a decision about medical treatment

If you need to make a decision about medical treatment on behalf of the person you are guardian for, this is a useful list of questions you can ask the doctor or health care professional:

- What is the person's diagnosis or health problem?
- What does it mean?
- What is the doctor suggesting to do about it – for example, are they suggesting treatment, tests or other investigations?
- What will the procedure or treatment do – cure, improve symptoms or give the doctor more information?
- What will the likely result of the procedure be?
- Will the procedure give the person any pain or discomfort?
- Are there any side effects or risks and how likely are they?
- Are there any other options?
- What would happen if the person didn't have the procedure or treatment?

## Things to think about when making a decision about medication

If you need to make a decision about medication for the person you are guardian for, this is a useful list of questions you can ask the doctor or health care professional:

- What is the name of the medication?
- How does it work?
- Why would the person take the medication (for example: to relieve symptoms, to treat an illness or to manage behaviour)?
- What happens if the person doesn't take it?
- How long does the person need to take the medication for?
- Is it habit forming or addictive?
- When and how should it be taken?
- How long will it take to work?
- What will happen if it doesn't work?
- Are there any side effects and how likely are they?

If you have concerns about the type, or amount of, medication the person is taking you can ask for a review of the medication or a second opinion.

## Helping the person to understand any health care decisions

Your role is to make decisions that support the person's health and wellbeing. Encourage the person to take responsibility for his or her own health care if they can. Work out if the person is able to understand the medical procedure and what its effect or consequences might be, as well as the different treatment options that are available. Find out:

- if you can support them to make their own decision
- what their current wishes are about the procedure or treatment.

Once you have made a decision, talk about the reasons for the decision with the person and their health care providers.

Anna has a mild intellectual disability and has had a guardian for accommodation and health care decisions for the past year. The Public Advocate was appointed joint guardian with Anna's sister.

### Anna's story

Anna is a 42-year-old woman who was diagnosed with HIV in 1993.

Anna was prescribed anti-retroviral drugs as part of her treatment and has been taking this medication for the past ten years. She has not always taken her medication and told her doctor that she didn't want to take the medication any longer.

To make a decision about Anna's health care her guardians met with her so that she could tell them what she wanted. Anna said that she was tired of taking the medication and that she didn't feel that she was getting any better.

The guardians then met with Anna's doctor and the Clinic Nurse Consultant from the team of people that look after her treatment. They gave the guardians information about the benefits, or lack of benefits, if Anna kept taking the anti-retroviral medication. This information told them that Anna had a highly resistant form of infection and that she was not really improving.

After talking through the information and options, Anna's guardians agreed that Anna would stop taking the anti-retroviral medication.

## Palliative care and end of life decisions

A guardian with a health care role can refuse treatment for the person they are guardian for.

If the person is dying, the guardian may be asked to make a decision about whether the person should have active or passive treatment. Passive treatment is when the person is given palliative care. This focuses on relieving any pain and distress and keeping the person as comfortable as possible. Decisions about palliative care should be made after talking with the person's doctor and then, if possible, with the person and their family and friends. If the person is not able to let you know what they want, you should think about any wishes they have made in the past about palliative care and what they want at the end of their life.



### Did you know?

Under the law a 'person responsible' can make decisions about the medical treatment for a person with mental incapacity without a guardianship order or advance care directive. A 'person responsible' can be a husband, wife or partner, an adult relative or friend. You can find more information about this on the [SA Health website](#) and OPA's Information Sheet No. 9.

## Lifestyle

Most people with mental incapacity are able to make decisions about their lifestyle without a guardian. Sometimes however, SACAT appoints a guardian to make lifestyle decisions for another person. This role covers a range of things and can include you making decisions about a person's support through to the work they do and things that they do for fun.

You can make decisions about:

- who the person has contact with – who they spend time with and who they communicate with
- the services the person receives – such as disability services under the National Disability Insurance Scheme (**NDIS**)
- what work or training the person does
- any recreational activity the person does
- if and where the person can go on holidays.



## Sally's story

Sally is a 43-year-old woman with a moderate intellectual disability.

For the past three years she has lived at Seaview House, a supported residential facility. Her brother, Jim, is her full guardian.

Jim is happy with the care that Sally gets at Seaview House but was worried that she didn't have enough to do during the day. He spoke to Sally's NDIS coordinator of support, Kevin, about what activities Sally might be able to access with her NDIS budget.

Jim met with Kevin and discussed a range of activities, including horse riding for people with disabilities and volunteer work at a local wildlife sanctuary. Jim knew that Sally's was interested in animals and their care and agreed to Sally going riding once a fortnight and doing volunteer work at the sanctuary.

### Decisions about access and contact

It is a serious decision to refuse or cut back contact between the person you are guardian for and other people. The person has the right to see, or have contact with, whoever he or she wants. But the person also has the right to be protected from pressure from others, abuse and harmful situations.

### Things to think about when making a decision about contact

If you need to make a decision about whom the person you are guardian for can spend time with and how long they can spend with someone, the questions below may help:

- Does the person you are guardian for want to have contact with a particular person?
- Does spending time with the contact have a negative effect on the person?
- What, if any, are the benefits of the person you are guardian for having contact with a particular person?
- If there are benefits, what arrangements for contact be set up to make sure the person you are guardian for is not put at risk, such as having another person present during contact periods?

He lives in a group home with three other people with mental impairment. John has a friend, Mick, who he has known for many years. Mick takes John out to places that he doesn't know and regularly gets drunk and takes other drugs while he is with John. Afterwards, John has told staff members at the home that sometimes Mick leaves him alone in hotels and he gets frightened. He also has had money taken from him by strangers when Mick was supposed to be with him.

Andrew, John's brother, was appointed as his guardian to make decisions about access. Andrew would like John and Mick to keep having contact as they had a close friendship before John's accident and John says that he enjoys seeing Mick. However, Andrew was worried about John's safety. He made the decision that Mick can visit John but visits have to be at John's home.

## John's story

John is a 35-year-old man who has a severe acquired brain injury following a car accident.

# 5

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

If you, the person you are guardian for, or someone else who is involved in decisions, think that SACAT has made the wrong decision you have a number of options.

### Asking SACAT to explain their reasons

You may be able to ask SACAT to give you a written statement of their reasons for making a decision. You have the right to ask SACAT for their reasons if you are:

- the person who made the application for a guardianship order
- a person that is effected by the guardianship order or decision
- someone who gave evidence or information, or made submissions, to SACAT
- a person who SACAT agrees has a 'proper interest' in the decision.

As a private guardian you should fit into at least one of these categories. Having SACAT's reasons for making a particular a decision might help you to better understand the decision.

### Appeal to SACAT – Internal review

If you have the right to ask for written reasons you also have a right to apply to SACAT for an appeal of the guardianship order or decision made by SACAT. This is called an internal review. In most cases, SACAT must first say that you can apply for an internal review for it to go ahead. You automatically have the right to an internal review of any decision to detain the person you are guardian for or any decisions about sterilisation or termination of a pregnancy.

In most cases, you will have one calendar month from the date of the decision to ask SACAT for their reasons for making a decision or to apply for an internal review. But in the case of a decision to terminate a pregnancy, you will only have two working days from the date of the decision to ask for a review.

There is a fee to apply for an internal review, unless you are the person who the guardianship application was about. For current information about application fees, please see [SACAT's website](#).

### Appeal to the Supreme Court

If you have the right to ask for written reasons and an internal review you also have a right to apply to the Supreme Court to appeal SACAT's decision, if the Supreme Court gives you permission. Usually, a person can only ask for an appeal after first applying for an internal review. It isn't possible to appeal a decision to terminate a pregnancy in the Supreme Court. There may be a fee for applying for an appeal.





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If you think that SACAT has made the wrong decision you have a number of options

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# 6

## Granting 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, like a residential or aged care facility, or using **restrictive practices** to make sure they are properly cared for and kept safe.

Restrictive practices can include:

- detaining a person in the place where they live or in a care facility or hospital
- using physical restraints to control their movement
- administer chemical restraints, or medication, to sedate them or control their behaviour.

If you want to make the person you are guardian for live somewhere they don't want to, or you think that certain restrictive practices need to be used, you will have to ask SACAT to make a special powers order.

These special powers are included in the *Guardianship and Administration Act 1993 (SA)*.

### What are the special powers

SACAT can make an order for special powers which:

- says that the person must live with a particular person or in a particular place
- allows the guardian or substitute decision maker under an advance care directive to say that the person must live with a particular person or in a particular place
- authorises that the person can be detained in the place where they live or in hospital to have medical care or treatment
- authorises those providing treatment or care to use force (e.g. physical restraint) to make sure the person has the medical or dental treatment or day-to-day care that they need. This can include forcing someone to take medication to settle them down or control their behaviour against their will.

Only a guardian or a substitute decision maker under an advance care directive can apply to SACAT for a special powers order.

SACAT will only make a special powers order if the health or safety of the person, or the safety of others, is at risk. As these powers seriously affect the person's rights and freedom, they should only be used as a last resort.

Before applying for special powers you must make sure that you have tried all other options to get the person to go along with the decision that has been made.

Fact Sheet 11, *Special Powers*, available on our [website](#) and has more information about special powers and restrictive practices.

You can also find more information on restrictive practices on the Office of the Senior Practitioner's [website](#).

**Please note** special powers are different to detention powers for treating mental illness. Only a doctor can authorise for someone to be detained to treat mental illness. You can find more information on mental health detention orders by talking to a doctor or mental health worker or on our [website](#).

### How can you apply for special powers?

You can ask for a special powers order when the guardianship order is made, if consider that the person needs to be detained or forced to go along with particular decisions. In many cases you won't need special powers when the order is made.

- If things change, you need to apply to SACAT for a special powers order. You will need:
- details of why the powers are needed to protect the health or safety of the person, or the safety of others, for example, an order authorising detention is applied for because a person with advanced dementia has a history of wandering and leaving their aged care home alone. This has placed them at risk due to road safety issues, getting lost and dehydration
- what will be done, such as using restraints or detaining the person
- details of the risks to the person, or others, if the special powers order is not made
- information about the other options that have already been tried to provide the person with the care or medical treatment they need and/or to keep them safe.

If you are applying for special powers to move the person into a residential facility against their will, you will need to give SACAT evidence that shows the person can't stay in their home. This evidence can include an aged care assessment from ACAT or an assessment from a service or healthcare provider.

SACAT will set a date for a hearing. The date will depend on how urgent the application is. SACAT will either grant or refuse the special powers at the hearing.

In an emergency, SACAT can grant special powers, for up to 21 days, in a few hours after speaking to you and any other people involved. A full hearing must be set though for special powers to be made for a longer period of time.

If SACAT doesn't grant special powers then the plans to make the person to live in a particular place, detain them or use force to give them care or treatment cannot go ahead.



# 7

## Managing behaviour

You may be asked to make decisions about a positive behaviour management plan for the person you are guardian for. You might need to do this if the person is agitated, upset or aggressive and this puts them or others at risk.

A positive behaviour management plan is a set of strategies that help the person to communicate what they want and need. The plan should create a positive place that works with what person needs and improves their quality of life. A good plan might mean that you won't need special powers to force the person to do something that they don't want to do. Plans should be reviewed regularly.

You can:

- ask for a copy of any positive behaviour management plan
- ask for a meeting to talk about the plan
- agree or disagree with the plan, or particular parts of the plan that you feel won't help the person
- ask for a review of the plan from a specialist, such as a behavioural psychologist.

Any positive behaviour management plan should give the person as much personal freedom and independence as possible.

If the plan includes using restraints to control the person SACAT must grant you special powers for you to be able to agree to this.

You can find more information on positive behaviour management plans on the Office of the Senior Practitioner's [website](#)

# 8

## What decisions can't you make?

As a guardian you can only make decisions in the areas included in the guardianship order. There are also some decisions that the law does not allow any guardian to make for someone else.

You can't give consent for the person you are guardian for to:

- have a pregnancy terminated
- be sterilised (permanently stopped from being able to have children)
- have **neurosurgery for mental illness**.

Only SACAT can agree to these treatments.

You can apply to SACAT to terminate a pregnancy or for sterilisation, but you will need supporting medical evidence. Only medical practitioners and mental health practitioners can apply to SACAT for neurosurgery for mental illness.

You also can't:

- Force the person you are guardian for to be admitted to a psychiatric facility or hospital against their wishes or make a person stay in a psychiatric facility against their wishes. Only a doctor can do this.
- Agree to the person being treated with psychotropic drugs for a mental illness against their will. A person must be under either an Inpatient Treatment Order or a Community Treatment Order to be forced to take these drugs. More information is available on our [website](#).
- Ask that the person be held in police cells or prison. The police or the courts must decide if a crime has been committed and if a person should be held in custody.
- Vote in an election for the person.
- Make decisions about the person's marriage.
- Make decisions about the person's children.
- Make decisions about the person's finances – this is the role of an administrator or an enduring power of attorney if there is one.
- Make a will for the person.

# 9

## Working with others

It is important to understand the value of the person's relationships and networks, particularly their family and friends, and work closely with them as much as you can.

For the best possible results for the person you are guardian for, you should also try to keep good relationships going with all the professionals and service providers they deal with.

There may be a number of service providers supporting the person including a coordinator of supports (under the National Disability Insurance Scheme), medical practitioners, social workers and a variety of care or support workers. The person might also have an administrator, or an enduring power of attorney, who is responsible for managing their finances. There will be times when you will need to work together and good communication will help you to make good decisions.

For example, with a decision to place an older person in a aged care home the decision is made by the guardian. But there are also financial decisions about how fees will be paid and contracts, the administrator or power of attorney makes these decisions. The ongoing care and support of the person under guardianship is still the responsibility of service providers.

A guardian gives professionals and service providers someone they can turn to make a decision and to give them instructions. The ongoing care and support of the person under guardianship is still the responsibility of service providers.

# 10

## What are the legal responsibilities of a guardian?

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 in the area of your authority, as set out in the guardianship order
- agrees with the principles of being a guardian
- is made honestly
- is reasonable and balanced.

### **Ill treatment or neglect**

If you ill-treat or deliberately neglect the person you are guardian for you are guilty of an offence under the law.

There is a maximum penalty of \$10,000 or two years in jail.

### **Are you legally responsible for the acts of the person you are guardian for?**

You would only be legally responsible for the acts of the person if:

- you were physically and legally able to control a situation where the person you are guardian for hurt someone or 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 legally protected. Normal life involves taking reasonable risks.



# 11

## Who is a guardian accountable to?

A guardian is accountable to SACAT. They can decide whether a guardian is properly using his or her authority and can cancel the appointment of a guardian.

Someone with a real interest in the person you are guardian for can ask SACAT to review the guardianship order. They would need to apply to SACAT to change or cancel the order. Changes could include appointing a different guardian.

Guardians must obey the principles of the law. It is a criminal offence for a guardian to ill-treat or deliberately neglect the person they are guardian for.

You are not accountable to the person's family or friends but keeping them involved or aware of decisions can help avoid any problems or issues.





# 12

## Changes you need to tell SACAT about

You need to let SACAT know if:

- you change your address, or if the address of the person you are guardian for changes
- you are not able, or don't want, to continue as a guardian
- you believe the person is now able to make their own decisions
- the person you are guardian for dies.



# Review of guardianship orders

All SACAT guardianship orders must be reviewed at least every three years. An order granting special powers to detain a person where they live must be reviewed after six months from the start of the order and then at least once a year after that. How long you will be a guardian and when your guardianship will be reviewed is included in the guardianship order. A review looks at whether the order is still needed. It is different to the process of an internal review, which is a way to challenge a decision made by SACAT.

SACAT will let you, and any other important people in the person's life, know about the review beforehand and ask if you think the order is still needed and why.

## The review form

SACAT will send you a form to complete with questions like:

- Do you think the order is still needed?
- What decisions still need to be made?
- Do you think the order should be varied or revoked? Why?

If there is medical evidence that the person still has mental incapacity and everyone agrees that they still need a guardian, then SACAT may make a new guardianship order without a formal hearing.

## A review hearing

If people don't agree about the person's need for a guardian, or SACAT is not sure about the person's level of mental capacity, there may be a formal review hearing. You will need to attend the hearing. At the hearing you may be asked:

- What has happened since the last guardianship order was made?
- Has there been any change in the person's situation?
- What significant decisions have you had to make?
- What are the future plans for the person?

You will need to give SACAT the names of people who are important to, or involved in the care of, the person you are guardian for. These people may have information or evidence that will help SACAT to make a decision.



At the hearing SACAT will work out if:

- the person still has a mental incapacity
- the person is still not able to make decisions because of this incapacity
- the person still needs a guardian and if there are decisions that still need to be made
- a new guardianship order is needed and how long it should go for
- the new order needs to be different to the last guardianship order.

## **Can you ask SACAT to cancel or change a guardianship order?**

You can apply to SACAT to cancel or change a guardianship order before a planned review if:

- you think the person no longer needs a guardian
- your role and duties as a guardian are not working well
- there has been a change to the person's situation and you think you need the authority to make decisions in other areas as well
- you are not able, or don't want, to continue as a guardian.

Other people who also have an interest in the person you have guardianship for can also ask for the order to be cancelled or changed.

# Survival tips for guardians

Being a guardian can be difficult and stressful. The tips below are things that other guardians have found useful.

To help you manage your new role:

- set up a small network of people you can talk to or join a support group
- be clear about what your role is and what the roles of the 'professionals' are
- keep a copy of the guardianship order in a safe place
- set limits with the person you are guardian for about when you are available to talk with them
- make a list of what needs to be done and work your way through the list
- keep a file that contains all the documents you've sent and received about the guardianship, including letters and forms
- give yourself a break – take 'time out' and do something you enjoy
- make sure that you know whether there are other legally appointed people for the person, such as an enduring power of attorney
- be patient and persistent – sometimes your first effort may not achieve the results you want.



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– sometimes your first  
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results you want

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# Useful contacts

## Information and services

▶ **Alzheimer's Australia (SA)**

27 Conyngham Street  
Glenside SA 5065  
Telephone (08) 8372 2100

▶ **Department of Veteran's Affairs**

SA State Office  
199 Grenfell Street  
Adelaide SA 5000  
Telephone: (08) 13 3254

▶ **South Australian Civil and Administrative Tribunal SACAT**

Level 8, ABC Building  
85 North East Road  
Collinswood SA 5081  
Telephone: 1800 723 767

▶ **Carer's Association of SA**

66 Greenhill Road  
Wayville SA 5034  
Telephone: (08) 82915600  
[www.carers-sa.asn.au](http://www.carers-sa.asn.au)

▶ **My Aged Care**

Telephone: 1800 200 422  
[www.myagedcare.gov.au](http://www.myagedcare.gov.au)

▶ **Public Trustee**

211 Victoria Square  
Adelaide SA 5000  
Telephone: (08) 8226 9200  
[publictrustee.sa.gov.au](http://publictrustee.sa.gov.au)

▶ **Mental Health Services**

ACIS – 24 hour crisis service  
Telephone: 13 14 65  
or for regional offices check the White Pages



▶ **Office of the Public Advocate**

85 North East Road  
Collinswood SA 5081

Telephone: (08) 8342 8200  
Toll free: 1800 066 969

▶ **Nunkuwarrin Yunti SA Inc.**

182 – 190 Wakefield Street  
Adelaide SA 5000

Telephone: (08) 8223 5217

Services and advocacy for Aboriginal people

▶ **Disability Services and Disability SA**

PO Box 70 Rundle Mall  
Adelaide SA 5000

Telephone: 1300 786 117

[www.dcsi.sa.gov.au/services/disability-sa](http://www.dcsi.sa.gov.au/services/disability-sa)

▶ **National Disability Insurance Agency**

GPO Box 700  
Canberra ACT 2601

Telephone: 1800 800 110

[ndis.gov.au](http://ndis.gov.au)

▶ **Ethnic Link Services (Uniting Care Wesley)**

Telephone: (08) 8241 0201

[els@ucwpa.org.au](mailto:els@ucwpa.org.au)

[www.ucwpa.org.au](http://www.ucwpa.org.au)

▶ **Skylight Mental Health**

5 Cooke Terrace  
Wayville SA 5034

Telephone: (08) 8378 4100

[www.skylight.org.au](http://www.skylight.org.au)

▶ **Catalyst Foundation**

149 Currie St  
Adelaide SA 5000

Telephone: (08) 8168 8776  
Toll free: 1800 636 368

[www.catalystfoundation.com.au](http://www.catalystfoundation.com.au)

▶ **Service SA, Government Information Centre**

108 North Terrace  
Adelaide SA 5000

Telephone: 13 23 24

[service.sa.gov.au](http://service.sa.gov.au)

## Advocacy services

▶ **Aged Rights Advocacy Service Inc. (ARAS)**

Level 3, 45 Flinders Street  
16 Hutt St  
Adelaide SA 5000  
Telephone: (08) 8232 5377  
Toll free: 1800 700 600

[www.sa.agedrights.asn.au](http://www.sa.agedrights.asn.au)

▶ **Disability Rights Advocacy Service Inc**

Shop 4, 80 Henley Beach Road  
Mile End SA 5031  
Telephone: (08) 8351 9500  
Toll Free: 1800 816 720

▶ **Advocacy for Disability Access and Inclusion**

149 Currie Street  
Adelaide SA 5000  
Telephone: (08) 8340 4450  
Toll Free: 1800 856 464

[advocacyfordisability.org.au](http://advocacyfordisability.org.au)

▶ **Independent Advocacy SA Inc.**

99 Frome Street  
Adelaide SA 5000  
Telephone: (08) 8232 6200

[www.independentadvocacysa.org.au](http://www.independentadvocacysa.org.au)

▶ **Disability Advocacy and Complaints Services of SA Inc (DACSSA)**

29 High Street  
Kensington SA 5068  
Telephone: 7122 6030

[www.dacssa.org.au](http://www.dacssa.org.au)

▶ **The Brain Injury Network of SA Inc (BINSa)**

70 Light Square  
Adelaide SA 5000  
Telephone: (08) 8217 7600  
Country Callers: 1300 733 049

[braininjurysa.org.au](http://braininjurysa.org.au)

▶ **Citizen Advocacy SA**

20 Myers Street  
Adelaide SA 5000  
Telephone: (08) 8410 6644

[citizenadvocacysa.com.au](http://citizenadvocacysa.com.au)

## Mediation services

▶ **Relationships Australia**

55 Hutt Street  
Adelaide SA 5000  
Telephone: (08) 8223 4566  
Toll free: 1800 182 325

[www.relationships.com.au](http://www.relationships.com.au)

▶ **Uniting Communities**

Telephone: (08) 8342 1800

[www.unitingcommunities.org/financial-legal-services/mediation-services](http://www.unitingcommunities.org/financial-legal-services/mediation-services)

## Complaints

### ▶ Consumer Health Complaints Unit

State Ombudsman  
Level 9  
55 Currie Street  
Adelaide SA 5000

Telephone: (08) 8226 8699  
Toll free: 1800 182 150

[www.ombudsman.sa.gov.au](http://www.ombudsman.sa.gov.au)

### ▶ South Australian Equal Opportunity Commission

Level 17 45 Pirie St  
Adelaide SA 5000

Telephone: (08) 8207 1977  
Toll free: 1800 188 163  
TTY (08) 8207 1911

[www.eoc.sa.gov.au](http://www.eoc.sa.gov.au)

### ▶ Health and Community Services Complaints Commissioner

Telephone (08) 8226 8666  
Toll free: 1800 232 007

[www.hcsc.sa.gov.au](http://www.hcsc.sa.gov.au)

### ▶ Australian Health Practitioner Regulation Agency (AHPRA)

Telephone: 1300 419 495

[www.ahpra.gov.au](http://www.ahpra.gov.au)

### ▶ Private Health Insurance Ombudsman

Toll free: 1800 640 695

[www.phio.org.au](http://www.phio.org.au)

## Legal advice

Legal advice can be obtained from a solicitor, local community legal centres or:

### ▶ Legal Services Commission

(Offices at Adelaide, Elizabeth, Modbury, Noarlunga, Port Adelaide and Whyalla)

Telephone legal advisory service: 1300 366 424

[www.lsc.sa.gov.au](http://www.lsc.sa.gov.au)

## More information

### *Guardianship and Administration Act 1993 (SA)*

If you would like to read the Act you can download it from the Office of Parliamentary Counsel's Legislation website:

[www.legislation.sa.gov.au/LZ/C/A/GUARDIANSHIP%20AND%20ADMINISTRATION%20ACT%201993.aspx](http://www.legislation.sa.gov.au/LZ/C/A/GUARDIANSHIP%20AND%20ADMINISTRATION%20ACT%201993.aspx)

### Guardianship

The Office of the Public Advocate has a web site that contains a link to other sites containing the *Guardianship and Administration Act 1993 (SA)*:

[www.opa.sa.gov.au](http://www.opa.sa.gov.au)

### Advance care directives

You can find out more about advance care directives, obtain the kit or make an online advance care directive here: [www.advancecaredirectives.sa.gov.au](http://www.advancecaredirectives.sa.gov.au)

If you would like to read the Advance Care Directives Act 2013 you can download it from the Office of Parliamentary Counsel's legislation website:

[www.legislation.sa.gov.au/LZ/C/A/ADVANCE%20CARE%20DIRECTIVES%20ACT%202013.aspx](http://www.legislation.sa.gov.au/LZ/C/A/ADVANCE%20CARE%20DIRECTIVES%20ACT%202013.aspx)

### Aged care

The Catalyst Foundation is a great resource for information about issues concerning older people. They can provide information on residential facilities and have a vacancy register that is updated on a regular basis.

[www.catalystfoundation.com.au](http://www.catalystfoundation.com.au)



# Glossary of terms

**administrator:** a person appointed by SACAT under the *Guardianship and Administration Act 1993 (SA)* to manage the finances of another person who has a mental incapacity.

**advance care directive:** a legal document that explains a person's wishes or directions before he or she loses their mental capacity. Advance care directives are covered by the *Advance Care Directives Act 2013*.

**case conference:** a meeting of workers, and any significant others, who are involved with the person with mental incapacity, to plan current and future actions to be taken in relation to that person.

**case plan:** an agreement (sometimes made following a case conference) of the action to be taken to best meet the needs of the person with the incapacity. Sometimes the case plan will also outline who is responsible for doing what.

**coordinator of supports:** a service provider funded as part of a person's NDIS plan. The support coordinator's role is to help the person to access and implement the support services that they need and that have been identified in their plan.

**enduring power of attorney:** made under the *Powers of Attorney and Agency Act 1984 (SA)* legally appointing a person known as an attorney to make financial decisions on behalf of another person if they lose mental capacity in the future.

**guardian:** a person appointed as a guardian under a guardianship order.

***Guardianship and Administration Act 1993 (SA)*:** law passed by the South Australian Parliament in 1993 establishing the Office of the Public Advocate. This sets out the laws about guardianship.

**guardianship order:** is a legal order made by SACAT under the *Guardianship and Administration Act 1993 (SA)* placing a person under full or limited guardianship and appointing one or more guardians.

**informal arrangements:** arrangements for making decisions about the care of a person with mental incapacity that are not under a guardianship order or advance care directive.



**least restrictive alternative:** a decision that is the least restrictive or intrusive of a person's freedom and rights that still makes sure the person is properly cared for and protected.

***Mental Health Act 2009 (SA):*** legislation passed by the South Australian Parliament in 2009 setting out the compulsory treatment of people who have a mental illness and their appeal rights.

**mental incapacity:** as defined the *Guardianship and Administration Act 1993 (SA)* means the inability of a person to look after his or her own health, safety or welfare or to manage his or her own affairs, because of:

- any damage to, or any illness, disorder, imperfect or delayed development
- impairment or deterioration, of the brain or mind
- any physical illness or condition that means the person is not able to communicate his or her intentions or wishes.

**neurosurgery for mental illness:** as defined under the *Mental Health Act 2009* is leucotomy, amygdaloidotomy, hypothalamotomy, temporal lobectomy, cingulectomy, electrode implantation in the brain or any other brain surgery for the relief of mental illness by the elimination or stimulation of apparently normal brain tissues.

**NDIS:** stands for National Disability Insurance Scheme. The NDIS is the Commonwealth system to provide services to meet the needs of people who have an impairment or condition that is likely to be permanent and which substantially reduces their abilities to perform tasks or participate in activities without help.

**Office of the Public Advocate:** this office was set up to promote and protect the rights of people with mental incapacity in South Australia. It has several main responsibilities. They are investigation, advocacy, education and acting as guardian of last resort.

**palliative care:** can be provided to a person who is in the last phase of a terminal illness. It includes:

- providing reasonable medical procedures to relieve pain, suffering and discomfort
- providing adequate food or water.

**private guardian:** a guardian appointed under a guardianship order and who is not the Public Advocate.

**person under guardianship:** the person who is the subject of the guardianship order.

**restrictive practices:** can include detaining a person or using physical restraints to restrict their movement or chemical restraints, or medication, to sedate them or control their behaviour.

**service provider:** a worker or organisation who provides a service to a person with a disability.

**substitute decision-maker under an advance care directive:** is a person appointed as a decision-maker in an advance care directive. The substitute decision-maker is authorised to make decisions about things such as health care, end of life, living arrangements and other personal matters when the person who made the advance care directive is no longer able to do so themselves.

**treatment plan:** see case plan.

