



INTRODUCTION TO THE GUARDIANSHIP & ADMINISTRATION ACT

Guardianship & Administration Act 1993

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INTRODUCTION

The *Guardianship and Administration Act 1993* ('the Act') recognises that an adult person not able to make decisions for themselves may need someone else to make decisions on their behalf. It also contains a number of provisions to protect vulnerable people from neglect, abuse and exploitation. The Act authorises the South Australian Civil and Administrative Tribunal (the Tribunal) to make certain orders in relation to a person with a mental incapacity.

WHAT IS MENTAL INCAPACITY?

Mental incapacity is defined in the *Guardianship and Administration Act 1993*:

mental incapacity 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, as a result of—

- (a) any damage to, or any illness, disorder, imperfect or delayed development, impairment or deterioration, of the brain or mind; or
- (b) any physical illness or condition that renders the person unable to communicate his or her intentions or wishes in any manner whatsoever;

The causes of mental incapacity can include dementia, intellectual disability, brain damage, mental illness, coma or being near death. The effect on a person's ability to make his or her own decisions may be that the person:

- May not be able to understand information relevant to the decision;
- May not be able to retain relevant information; or
- May not fully appreciate all of the consequences of a particular consequence
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WHAT ARE THE LEGISLATIVE PRINCIPLES?

The Act contains legislative principles to guide decision making for a person with a mental incapacity. The legislative principles, in section 5, state that the decision maker must take into account:

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

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WHAT IS THE SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL (SACAT)?

The Tribunal is established under the *South Australian Civil and Administrative Tribunal Act 2014*. It is a court-like tribunal that has the power to make important decisions affecting the lives and financial and legal affairs of people over whom it has jurisdiction. The 'Community Stream' of SACAT makes orders under the *Guardianship and Administration Act 1993*. These decisions were made by the Guardianship Board until 30 March 2015.

WHAT ORDERS CAN THE TRIBUNAL MAKE?

Under the Act, the two main orders that the Tribunal can make in relation to a person with a mental incapacity are:

Guardianship Orders

If the person with a mental incapacity has not appointed a substitute decision maker under an Advanced Care Directiveⁱ, the Tribunal can appoint a guardian to make accommodation, lifestyle, healthcare and medical treatment decisions for a person. The guardian could be a family member or close friend. If there is nobody else suitable to become guardian, the Public Advocate may be appointed as guardian of last resort. *For more information see Information Sheet 4 Guardianship Orders*

Administration Orders

The Tribunal can appoint an administrator to manage the financial, property and legal affairs of a person with a mental incapacity who has not appointed an Enduring Power of Attorney to do this on their behalf. It can appoint a family member, a friend, solicitor or an organisation such as the Public Trustee or a private trustee company. A person under a guardianship or administration order is called a protected person. *See Information Sheet 5 Administration Orders.*

WHEN MIGHT GUARDIANSHIP BOARD ORDERS BE APPLIED FOR?

An application does not need to be made just because a person has a mental incapacity. There is no need to apply for the appointment of a guardian or administrator if:

- the person with a mental incapacity is managing okay in their life;
- the person is being adequately supported or cared for by family members and/or other people;
- there are no personal or financial problems affecting the person's wellbeing; or
- there is no conflict about accommodation, health care or lifestyle choices.

An application for guardianship should only be made after careful consideration of other options, and only as a last resort.

WHAT ARE SECTION 32 ORDERS?

Section 32 orders are additional orders that can be applied for by an *appropriate authority* (a guardian of the person appointed by the Tribunal, or a substitute decision maker of the person appointed under an Advance Care Directive). These orders can be made if they will address a serious risk to the health and safety of the person or the safety of others.

Section 32(1)(a) provides that the Tribunal can direct the person to live or stay:

- in a particular place, or
- with a particular person, or,
- where the *appropriate authority* says they should live or stay.

Further orders can be made by the Tribunal :

- authorising detention of the person at the place they have been directed to live or stay
- authorising the use of such force as may be reasonably necessary to ensure the proper medical treatment, day to day care and well-being of the protected person.

All orders are made as a last resort, with least restrictive conditions and in the best interest of the protected person.

WHAT IS PRESCRIBED MEDICAL TREATMENT?

Prescribed medical treatment is defined in the Act to be sterilisation and termination of pregnancy. If a person cannot consent to prescribed medical treatment because they have a mental incapacity, the treatment can only be authorised by the Tribunal. *For more Information see Information Sheet 10: Prescribed Medical treatment.*

CAN GUARDIANSHIP ORDERS BE APPEALED?

If a person disagrees with a SACAT decision or order they can apply to the Tribunal for a review of that decision. The review will be undertaken by senior members of the Tribunal who were not involved in the original decision. The review will be a fresh look at the decision, using the information provided when the order was made and any other relevant information accepted by the Tribunal.

ⁱ Advance Care Directives include what were known as an Enduring Power of Guardianship and Medical Power of Attorney, for more information see Information sheets *8 Advance Directives*, and *9 Consent to Medical and Dental Treatment*