



ADVICE TO APPLICANTS

Guardianship & Administration Act 1993

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The two main orders that can be made by the South Australian Civil and Administrative Tribunal (the Tribunal) under the *Guardianship and Administration Act 1993* (the Act) are Guardianship Orders and Administration Orders. For more information about these orders, see [Information Sheets 4: Guardianship Orders](#) and [5: Administration Orders](#). This fact sheet is a guide for people considering applying for either of these orders.

BEFORE MAKING AN APPLICATION

A person considering making an application to the Tribunal for guardianship or administration should bear in mind that the Tribunal will need to be satisfied firstly, that:

- the person who is the subject of the application has a mental incapacity as defined in section 3 of the Act:
'...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,

An applicant is expected to ensure the Tribunal is provided with medical evidence about the person's mental in/capacity.

The Tribunal will also need to be satisfied that:

- there is a need for the order, meaning there must be specific decisions to be made about particular issues or problems, (e.g. where the person lives,) and reasons why these decisions cannot be made informally, and
- the orders and/or decisions will benefit the person with the mental incapacity and that there is no less restrictive alternative to making an order.

The applicant will be expected to have taken into account whether existing informal arrangements are adequate and the desirability of not disturbing those arrangements.

MAKING AN APPLICATION

An application for guardianship or administration should be well thought out and well prepared. Applicants are advised to remember that they are asking the Tribunal to take away a person's rights to self-determination and autonomy, and to appoint another person (or body) to take on the responsibility of making serious decisions on the person's behalf. Orders sought:

- must respect, and be congruent with, the wishes of the person, unless this would be inconsistent with ensuring his or her proper care and protection
- should be part of an overall plan designed to assist the client
- should be viewed as a last resort to achieve outcomes
- must be the least restrictive alternative available in terms of client autonomy and self-determination, and
- should not disturb existing informal arrangements that are working well.

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Applicants for orders have a number of other responsibilities:

- arranging for the person who is the subject of the application to attend the hearing
- informing the Tribunal of all the interested parties who should receive notification of the hearing
- advising the Tribunal of any special arrangements needed, including an interpreter or any security considerations.
- If the application is for an order that requires the commitment of some other person or organisation, providing evidence of this willingness in the application. The relevant organisational representative or medical practitioner may be required to attend the hearing to verify this commitment and outline their proposed plan.
- Where the application is for additional orders under section 32 of the Act, providing evidence that, if such an order were not made, the health and safety of the protected person or the safety of others would be seriously at risk. *See Information Sheet 11: Section 32 orders*

PRESENTING AN APPLICATION TO THE TRIBUNAL

- The Tribunal is similar to but less formal than a Court. Decisions are made based on written evidence (e.g. medical reports) and information provided by those at a hearing. It is not a meeting or case conference where ideas can be debated and refined; clear information and plans are expected. The Tribunal will ask for information from the applicant, the person who the application is about (unless they are unable to attend), and key carers, friends or relatives of the person.
- The applicant must attend the hearing and is expected to present a coherent argument for the orders and/or decisions sought.
- The applicant should state the type, duration, and any limitations on the order they are seeking. A brief history should be given, including any changes that have led to an order being sought now (rather than earlier or in the future), examples of any behaviours that are causing concern, previous interventions attempted and their outcomes, etc.
- It is important that the applicant understands the difference between guardianship orders and administration orders, as the Tribunal will ask for specific information about the need for each separate order.
- Applicants must be aware that information provided to the Tribunal can be made available to all in attendance at the hearing. It is an essential principle of natural justice that any person who may be subject to an order or decision of the Tribunal be given the opportunity to respond to any submissions made.

See the Tribunal's website for applications forms and further information:

<http://www.sacat.sa.gov.au/>