



SPECIAL POWERS

Guardianship & Administration Act 1993
Advance Care Directives Act 2013

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WHAT ARE SPECIAL POWERS?

Special Powers are exceptional orders made by the South Australian Civil and Administrative Tribunal (the Tribunal) under section 32 of the *Guardianship and Administration Act 1993* (the Act). They can be applied for by an *appropriate authority*. An *appropriate authority* is

- a substitute decision maker appointed under an Advance Care Directive (which includes what was known as an Enduring Power of Guardianship) or,
- a guardian of the person appointed by the Tribunal (or, before 30 March 2015, by the Guardianship Board).

Special Powers can include:

- a) a direction of the Tribunal that a person lives, or stays temporarily,
 - in a particular place, or
 - with a particular person, or
 - where the *appropriate authority* says they should live or stay
- b) authorisation to detain the person at the place they have been directed to live or stay under (a),
- c) authorisation by the Tribunal for the persons involved in the care of the person to use such force as may be reasonably necessary to ensure the proper medical treatment, day to day care and wellbeing of the person.

WHEN SHOULD SPECIAL POWERS BE USED?

Special Powers can only be applied for to address a **serious risk** to the health and safety of the person or the safety of others. Special powers are a last resort, to be applied where other approaches, reasonable discussion and persuasion have been ineffective. For example, the protected person may be refusing to move to safer accommodation, or to have necessary medical or dental treatment, and this is creating a serious risk to his or her health or safety, or to the safety of others. In all cases the least restrictive option should be used. *For information about our restrictive practices policy see our website.*

WHAT DO SPECIAL POWERS AUTHORISE?

Special powers can authorise the police or the appropriate authority to take such action as is reasonably necessary to prevent the protected person from leaving premises in which he or she is detained, or for bringing the person back to premises from which he or she has left without lawful authority or excuse. Special Powers can also provide the authority for the use of reasonable force to administer medical treatment.

Special Powers are very different from compulsory detention and treatment orders of persons with a mental illness. *See Information Sheets 12: Inpatient Treatment Orders and 13: Community Treatment Orders.*

Office of the Public Advocate

The Public Advocate is an independent statutory officer accountable to the South Australian Parliament.

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HOW ARE SPECIAL POWERS OBTAINED?

An *appropriate authority* applies to the Tribunal for an order under section 32 of the *Guardianship and Administration Act 1993*. An application will need to outline the reasons such a restrictive order is required, including:

- the serious risks to health and safety if the order is not made
- how it is proposed that the order will address that risk
- why making a special powers order is the least restrictive option

If the order is needed quickly, explain clearly what the urgency is, what alternatives have been tried and why they have failed or are likely to fail.

The Tribunal will require substitute decision makers appointed under an Advance Care Directive to provide evidence of a person's decision-making incapacity in relation to the situation creating risk. An appointed guardian may need to provide a recent medical report about the person's mental capacity.

WHAT HAPPENS ONCE THE TRIBUNAL RECEIVES AN APPLICATION?

The Tribunal will schedule a hearing to consider the application. At the hearing, the Tribunal will either make, or refuse to make, the special power. The Tribunal cannot make an order unless it is satisfied that, if such an order were not made and carried out, the health or safety of the protected person or the safety of others would be seriously at risk.

CAN A SECTION 32 ORDER 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. *See Fact Sheet 18: Reviews and Appeals*