



# ADVICE TO APPLICANTS

(Mental Health Act 2009)

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The orders that can be made under the *Mental Health Act 2009* by the SA Civil and Administrative Tribunal (the Tribunal) include level 3 Inpatient Treatment Orders and level 2 Community Treatment Orders. For more information about these orders, see *Information Sheets 12: Inpatient Treatment Orders* and *13: Community Treatment Orders*. This information sheet is a guide for people considering applying for either of these orders.

## WHO CAN APPLY FOR LEVEL 3 INPATIENT TREATMENT ORDERS (ITO)?

A director of an approved treatment centre, an employee (authorised by the director) of an approved treatment centre or the Public Advocate can apply for a level 3 ITO.

## WHO CAN APPLY FOR LEVEL 2 COMMUNITY TREATMENT ORDER (CTO)?

Applications for a level 2 CTO can be made by a medical practitioner, mental health clinician, the Public Advocate, guardian, medical agent, relative, carer, friend or anyone who satisfies the Tribunal that they have a proper interest in the welfare of the person.

## BEFORE LODGING AN APPLICATION TO THE TRIBUNAL

There are certain criteria in law that must be met before the Tribunal can make a level 3 Inpatient Treatment Order or a level 2 Community Treatment Order. An applicant for either of these orders needs to be sure that these criteria can be met. The evidence presented to the Tribunal in relation to the criteria should be current, specific, and relevant, and must address the following points:

- (a) *the person has a mental illness; and*
- (b) *because of the mental illness, the person requires treatment for the person's own protection from harm (including harm involved in the continuation or deterioration of the person's condition) or for the protection of others from harm; and*

in the case of Community Treatment Orders

- (c) *there are facilities and services available for appropriate treatment of the illness; and*
- (d) *there is no less restrictive means than a community treatment order of ensuring appropriate treatment of the person's illness.*

in the case of Inpatient Treatment orders

- (c) *there is no less restrictive means than an inpatient treatment order of ensuring appropriate treatment of the person's illness*

The applicant must also consider, amongst other things, *the prospects of the person receiving all treatment of the illness necessary for the protection of the person and others on a voluntary basis or (in considering inpatient treatment orders) on a community treatment order.*

## Office of the Public Advocate

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

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### WHO CAN BE APPOINTED AS GUARDIAN?

The Tribunal can appoint a sole guardian or joint guardians. A guardian must be a natural person, that is: not a company or statutory body. Any person who cares for, or works with, the person on a professional basis cannot be appointed as his or her guardian. A guardian is preferably a family member or friend who knows the person well, and has an interest in and contact with that person. In situations where there is no family member or friend who can act as the person's guardian, the Tribunal can appoint the Public Advocate, as guardian of last resort.

In deciding whether to make an order, the Tribunal must consider:

- what the wishes of the person would have been if he or she had not become mentally incapacitated (where this can be determined);
- the present wishes of the person, if these can be expressed;
- whether or not existing informal arrangements 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.

### WHAT DOES A GUARDIAN DO?

A guardian is legally responsible for making all, or some, of the person's lifestyle, accommodation, and healthcare decisions (the order sets out the extent of the guardian's responsibilities). When doing so, a guardian will:

- respect the person's wishes, and balance this with ensuring his or her proper care and protection;
- respect the person's cultural background,
- maintain confidentiality as far as possible;
- consider family relationships and consult with anyone who has a real interest in the person's wellbeing when making decisions.

### WHAT ARE SECTION 32 POWERS?

A guardian can apply to the Tribunal for an additional order (a 'section 32' or 'special powers' order) if there is a serious risk to the person or to others which can be addressed using additional authority. A special powers order can authorise directing where the person is to live; detaining the person to that place, and/ or using force to administer treatment. [See Information Sheet 11: Section 32 powers](#)

### CAN A GUARDIANSHIP ORDER BE REVIEWED OR APPEALED?

If a person disagrees with a decision or order of the Tribunal, they can apply to the Tribunal for a review of the 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. [For more information see Information Sheet 18: Reviews and Appeals](#)