

## Info Sheet 15

# Guardianship and Administration Original Application

The attached Notice of Hearing is informing you of a *Guardianship and Administration* hearing at the State Administrative Tribunal (SAT).

You are involved in this guardianship and administration matter, because:

- you applied for a guardianship or administration order for someone,
- you are the subject of an guardianship or administration application, or
- you have an interest in the outcome as a family member, caregiver, medical service provider, or other interested party.

The Notice of Hearing tells you the time, place and date of the hearing. Most hearings take place at the SAT offices, which are located at 565 Hay Street, Perth 6000.

### What is guardianship and administration?

If someone has a decision-making disability, a guardian or an administrator can be appointed to make decisions for them.

A **guardianship order** appoints a guardian to make personal, medical and lifestyle decisions.

An **administration order** appoints an administrator to make financial decisions.

**Purchasing gifts:** If an administrator wants to purchase a gift (such as birthdays or Christmas) from the person's estate, they need specific authority from the Tribunal to do so. It's important to notify the Tribunal either in writing before the hearing if gifting is required.

Many people with a decision-making disability need both types of orders.

An appointment can cover all decisions (a **plenary** appointment), or it can be limited to certain types of **decisions** (a limited appointment). The type of appointment depends on the person's best interests.

For more information on guardianship and administration, visit the Office of the Public Advocate's website at [www.publicadvocate.wa.gov.au](http://www.publicadvocate.wa.gov.au)

### What is an enduring power of guardianship or attorney?

The person who is the subject of the application may have an existing **enduring power of guardianship or attorney**. These are similar to the guardianship and administration orders discussed above, but must be put in place while someone still has their decision-making capacity.

Once someone has lost their capacity to make decisions, then a guardianship or administration order can be made. SAT can deal with an enduring power if it is incompatible with a guardianship or administration order.

### Why is there a hearing?

SAT is holding a hearing to assess whether the person who is the subject of the hearing has a decision-making disability, and whether they need a guardian or administrator.

The Tribunal's primary concern is the best interests of that person. SAT will presume the person is capable of making decisions for themselves until there is sufficient evidence otherwise.

If incapacity is established, it is then determined whether a guardian or administrator is necessary, and who is suitable for appointment.

Appointing a guardian or an administrator is a serious matter. SAT will not make an appointment if matters can be managed in a less restrictive way through informal arrangements, or an existing enduring power instrument.

The same person can be appointed as both administrator and guardian, or multiple people can be appointed as joint guardians or joint administrators. Again, the best interests, needs and wishes of the person who is the subject of the application are the Tribunal's primary concern.

### Do I have to attend?

You have received this Notice of Hearing because SAT believes your views may be important in deciding if a guardian or administrator is necessary.

Whether you should attend depends on your role in the hearing.

#### *Applicant*

The applicant must attend, and must also arrange for the subject to attend.

If the subject would be distressed by attending the hearing, or cannot make a meaningful contribution, you must advise SAT prior to the hearing.

#### *Person who is the subject of the application*

It is important that you attend so the Tribunal can obtain your views on the guardianship or administration application.

#### *Proposed guardian or administrator*

You must attend if you are the current guardian or administrator, and you cannot be appointed unless you attend.

#### *Family member/interested parties*

Attending allows SAT to hear your views on the matter.

## What happens at the hearing?

The SAT member in control of the hearing will give you an opportunity to be heard. You do not have to make formal written submissions.

During the hearing, the member will:

- discuss the application and the written information on the Tribunal file,
- ask attendees for information, and
- discuss the issues and information so that parties can comment.

Hearings commonly take about one hour, but may be longer in more complex cases.

Please note that hearings are recorded to create an official record.

## What happens at the end of the hearing?

Depending on what happens during the hearing, there are several potential outcomes.

- A decision is usually given at the end of a hearing, and issued in writing a few days after the hearing.
- If SAT needs more time to consider their decision, they may reserve their decision and issue it at a later date.
- Another hearing may be scheduled if SAT decides it needs more evidence, or if a key person was not present to provide information. The Tribunal can order parties to provide documents for the next hearing.
- Sometimes SAT will ask the independent Public Advocate to investigate the application and report to the Tribunal. If this happens, the Public Advocate will contact you to discuss the application. This usually happens before the first hearing, but can happen at any stage of the application.

You will receive a SAT order with a short description of the application outcome. It will not detail the reasons for the decision. A party can request SAT to provide reasons for the decision.

A request for written reasons must be made within 28 days of the decision. If granted, you will receive reasons written by SAT, or a transcript of the hearing where the decision was made.

## How long does a guardianship or administration order last?

A guardian or administrator can be appointed for any period, up to a maximum of five years.

When a guardianship or administration order is due for review, SAT organises a review to make sure the current situation is working well. A review process can confirm the order, revoke it, or replace it with an order on different terms.

A review can also be requested at any time by:

- a guardian or an administrator,
- the represented person,
- the Public Advocate, or
- the Public Trustee.

Other people can request a review of an order, but SAT must approve the request.

## Costs and fees

There are no fees for applying to the Tribunal for a guardianship or administration order.

Parties are required to pay their own costs associated with the hearing. These include the expense of attending the hearing, the costs of any witnesses they call, transcripts of the hearing, and any legal costs they incur. SAT generally does not award costs.

## Do I need a lawyer?

If you are the subject of the application, you can represent yourself, or be represented by a lawyer. Most guardianship and administration hearings are conducted without legal representatives.

With SAT's permission, a non-lawyer can represent you. If you are the subject of the application and SAT believes legal representation is necessary, it may apply for Legal Aid representation on your behalf.

Please note that Tribunal staff are not able to offer legal advice.

## What do I need to do now?

You can attend the hearing, send relevant information to the Tribunal before the hearing, and you can also bring information to the hearing. If there is anything in particular you are required to bring, SAT will request you to bring it.

It is particularly important that the applicant attempts to organise relevant up-to-date medical evidence. They can provide medical practitioners with the Medical Report or Service Provider Report, located on the Tribunal's website. This gives them a template to use when assessing someone's decision-making capacity.

If you are unable to attend the hearing in person, you can contact SAT and request to attend by telephone.

## Accessing SAT

SAT's offices are at 565 Hay Street, Perth, near the City of Perth Town Hall and the City of Perth Library.

There are listing display screens on the ground floor which tell you the hearing room number. You can proceed directly to the room where your hearing is taking place. Alternatively, you can make enquiries at the front counter on level 6.

The SAT offices are wheelchair accessible, and hearing assistance technology is available on request.

SAT can provide interpretation services. Contact SAT if you think yourself or another party needs this service.