

What is Guardianship and Administration?

Guardianship is about a person's personal life. A Guardian may make decisions about a number of issues relating to a person's health and lifestyle. For example, decisions about:

- accommodation - where the person should live, and who they should live with;
- medical and dental treatment;
- care services;
- who the person should have contact with; and
- whether the person should travel interstate or overseas.

Administration is about a person's financial affairs and property. An administrator may be needed if the person can no longer make reasonable judgments about their estate because of a mental disability.

Most applications under the *Guardianship and Administration Act 1990* concern the elderly and people suffering from dementia. However, SAT also receives applications regarding people with intellectual disabilities, acquired brain injuries and other decision-making disabilities.

Guardians and administrators are appointed by SAT and are given either plenary (full) powers or limited powers. A limited appointment specifies the functions of the guardian or administrator.

Principles to be observed by SAT

The *Guardianship and Administration Act 1990* states that SAT must observe the following principles:

Best Interests

SAT's primary concern is the best interests of the person who is the subject of the application.

Capacity is presumed

Until it is proven otherwise, every person is presumed to be capable of:

- looking after their health and safety;
- making reasonable judgments about their person;
- managing their own affairs; and
- making reasonable judgments about their estate.

Least restrictive orders

A guardianship or administration order will not be made if there is a less restrictive way of meeting the person's needs:

- A plenary guardian will not be appointed if a limited guardian would meet the person's needs.
- A limited guardian or administrator must be appointed with terms that impose the least restrictions possible.

Seek the views of the subject person

SAT must seek the views and wishes of the person who is the subject of the application whenever possible.

How do I apply?

Applications should be made via the eCourts Portal of Western Australia. Please visit <https://eCourts.justice.wa.gov.au/eCourtsPortal>.

What do I include in the application?

Professional applicants should submit an application accompanied by medical or service provider reports.

If you do not have any up to date reports readily available, you should send the SAT Medical Report and Service Provider Report to the relevant health professionals (these may include the treating doctor and hospital social worker) with a request that they complete the guides and return them to you or to SAT directly.

SAT needs to be provided with all relevant information before an application can be listed for hearing. Tribunal staff may contact you for further information about your application.

So that the application can be processed as quickly as possible please:

- complete all relevant questions on the application form;
- give as much detail as possible;
- say why a guardian or administrator is needed;
- if applicable, state why you believe the application is urgent or should be given priority;
- attach all relevant documents including medical and other reports; and
- if necessary, attach additional documents with more information, such as discharge summaries or other reports.

Medical reports

A guardian and administrator can only be appointed if SAT is satisfied that the person needs an appointment to be made. SAT needs information about the person's current health and circumstances before it can determine the application.

This information is generally provided by medical practitioners, allied health professionals, and carers. This information must be included with the application.

There are different requirements to be met for the appointment of a guardian or an administrator.

Guardian

For a guardian to be appointed, the person the subject of the application must be:

- unable to make reasonable judgments about their lifestyle;
- unable to look after their own health and safety; or
- in need of oversight, care, and control in the interests of their own health and safety or for the protection of others.

Administrator

An administrator can make decisions for a person who is unable to make reasonable judgments about their estate because of a decision-making disability.

Safety and security

You should advise SAT of any safety or security issues arising from the behaviour of the person the subject of the application, family members, or any other person interested in the proceedings.

This will enable security arrangements to be put in place for the hearing. Include information in your application or contact SAT.

Urgent applications

SAT can arrange an urgent hearing if it is satisfied that exceptional circumstances justify shortening the standard 14 day notice period.

If you think an application is urgent, you should tell SAT why it is urgent as soon as possible

Circumstances justifying an urgent hearing could include needing to:

- consent to urgent medical treatment;
- prevent the person being removed from their current accommodation or from the State.

All of the normal information will still be necessary for the application to be determined.

Remember that many people want their applications dealt with quickly. You will need to explain clearly why you think it is in the best interests of the proposed represented person for the application to be heard urgently.

If you need to arrange an urgent hearing out of normal business hours, you must contact the Office of the Public Advocate after hours paging service on 1300 859 955. The Public Advocate will contact SAT. Hearings will be arranged out of normal business hours when necessary.

The hearing

SAT will list the application for hearing as soon as possible.

Hearings are usually held at the SAT premises at 565 Hay St, Perth.

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

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

During the hearing, the member will:

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

It is your responsibility to attend the hearing. If you cannot attend for any reason, you must advise SAT and arrange for someone who is familiar with the application to attend in your place.

Most applications to SAT are resolved at the first hearing. Occasionally, the hearing may be adjourned if SAT decides it needs more information.

In exceptional cases, SAT may arrange for the hearing to take place where the proposed represented person or other interested parties live. SAT staff will arrange for the hearing to take place at a suitable venue in the area. These vary depending on the locality and the nature of the issues to be considered at the hearing, but may include a hospital or care facility.

Notice of the hearing

The *Guardianship and Administration Act 1990* requires SAT to give parties 14 days' notice of a hearing unless there are exceptional circumstances. Urgent hearings may have the time for service of notices shortened or dispensed with.

Notices state the date, time, and location of the hearing.

Does the proposed represented person attend the hearing?

As the applicant, it is your responsibility to arrange for the proposed represented person to attend the hearing.

The decision has important consequences for the person who is the subject of the hearing, so SAT encourages attendance unless the person would have no meaningful contribution to make, or attending would otherwise not be in their best interests.

You should advise SAT if the person who is the subject of the hearing should not, in your opinion, attend the hearing. You should also advise SAT if the person has a lawyer or advocate.

Can I attend by phone?

Attendance by telephone or video link may be arranged with the prior approval of SAT. Requests to attend the hearing by telephone or video link should be made as soon as possible.

Is the hearing private?

Hearings are open to the public unless SAT orders the hearing is closed. However, no person may disclose any information discussed at the hearing with any person outside the proceedings. There are penalties for disclosing information that might identify the person who is the subject of the application.

What if someone needs an interpreter or other assistance at the hearing?

SAT can arrange an interpreter and other assistance such as a hearing loop. Contact SAT on 9219 3111.

Can parties see the documents and material on the SAT file?

The person who is the subject of the application is entitled to access all documents held by SAT for the purpose of the proceedings.

Other parties can apply to access documents. The access will only be approved if it is in the best interests of the person who is the subject of the application.

If the application is granted, Tribunal staff will make arrangements for the information to be viewed or provided prior to the hearing.

The role of the Public Advocate

SAT may ask the Public Advocate to investigate the application and report to SAT. If this happens, an officer from the Office of the Public Advocate may contact you and other parties to discuss the application.

In cases where there is no other suitable and willing person, SAT may appoint the Public Advocate as guardian.

The Office of the Public Advocate is a State Government body that is independent of SAT.

The decision

When will the decision be made?

Decisions and reasons are usually given orally at the end of a hearing.

Sometimes SAT will reserve its decision. That is, it will take time after the hearing to make its decision, in which case it will give written reasons for its decision within 90 days or such longer period as the President allows.

Written reasons

If a decision and reasons are given orally, any party may ask for written reasons. A request must be made within 28 days after the decision is given. SAT must give written reasons within 90 days of the request or such longer period as the President allows.

If SAT considers that a transcript of the hearing is sufficient, it may provide a copy of the transcript instead of formal written reasons.

Review of SAT decisions

There are several different ways SAT Guardianship and Administration decisions can be reviewed.

Statutory reviews: *Guardianship and Administration Act 1990, section 84*

If SAT appoints a guardian or administrator, it must specify how long, up to a maximum of 5 years, the order will last. SAT must review the order at the end of that time.

SAT will contact parties when the order is due for review. These reviews occur because of section 84 of the *Guardianship and Administration Act 1990*.

If you are contacted about a represented person who is no longer your patient or client, please tell SAT as soon as possible. Please give SAT details of any health or other professional who you think is concerned currently with the represented person's health treatment or care.

Application for review

The following persons can apply for an order to be reviewed at any time:

- The Public Advocate.
- A represented person or a guardian or administrator.
- Anyone else must apply for permission to have an order reviewed, and must give clear reasons why a review of the order is in the best interests of the represented person.

Review by a Full Tribunal

Where a decision is made by a single member, any person aggrieved by the decision may ask for it to be reviewed by a Full Tribunal. A full Tribunal consists of a Judge (the President or a Deputy President) and two other members. The application must be made within 28 days or such further period as SAT allows. These reviews occur under section 17A of the *Guardianship and Administration Act 1990*.