



# When a loved one can't decide: Navigating SACAT Applications

When a loved one is incapacitated and cannot make decisions for themselves, family members often step in to care for them and help manage their affairs.

If the person does not have a valid Power of Attorney and/or Advance Care Directive, it can be difficult to manage their legal, financial and health affairs.

For example, banks and other entities will generally only deal with the account holder unless a Power of Attorney or other Court or Tribunal order allows someone else to manage the account.

Usually, this will require an application to SACAT for administration and guardianship orders.

## **What is Guardianship?**

A guardian is a person appointed by SACAT to make **medical** and **lifestyle** decisions for someone who cannot make decisions for themselves.

Guardians appointed by SACAT may make decisions including:

- Where the person is to live;
- What medical treatments the person should receive; and
- Other lifestyle decisions.

The role of a guardian is similar to a substitute decision maker under an Advance Care Directive. A guardian will usually be appointed when the incapacitated person has not made an Advance Care Directive, or when there is a dispute about an Advance Care Directive.

Guardians cannot make legal or financial decisions for the protected person unless the guardian is also appointed as an administrator (see below).

### **What is Administration?**

An administrator is a person appointed by SACAT to make **legal** and **financial** decisions for someone who cannot make decisions for themselves.

Administrators appointed by SACAT may make decisions such as:

- Operating bank accounts and paying bills;
- Managing properties and investments; and
- Dealing with Centrelink.

An administrator's role is similar to the role of an attorney under an Enduring Power of Attorney. Generally, an administrator is appointed when an incapacitated person has not signed a Power of Attorney, or where there is a dispute about managing the person's legal or financial affairs.

### **When are Guardianship and Administration orders made?**

SACAT may appoint a guardian and/or administrator where the protected person has a "mental incapacity" such as an intellectual disability, dementia or severe mental illness.

In deciding who to appoint as guardian or administrator, SACAT will consider the views of any "interested person", including family members of the incapacitated person.

SACAT's primary goal is to promote the best interests of the incapacitated person and prioritise their wishes.

### **What if there is no one to be appointed?**

Sometimes family members and friends are unable or unwilling to act as administrator or guardian. In other cases, there may be multiple people willing to act who do not agree about what is best for the incapacitated person.

In cases like this, SACAT may consider appointing an independent body to make decisions for the incapacitated person.

This can include the Office of the Public Advocate (as guardian) or the Public Trustee (as administrator).

### **How can Andersons help?**

Applications for administration and guardianship orders can be stressful and confusing, particularly when family members do not agree. It can be helpful to have a lawyer to assist with:

- Considering whether an administration and/or guardianship application should be made;

- Potential outcomes of a SACAT application;
- The legal responsibilities and obligations of administrators and guardians;
- Preparing and filing a SACAT application and supporting documentation;
- Representing applicants, interested parties or protected persons at SACAT hearings; and
- Resolving disputes between family members.

If you would like to discuss an administration or guardianship matter, reach out to our commercial litigation team at [enquiry@andersons.com.au](mailto:enquiry@andersons.com.au) or 8238 6666.