



## Wills & Deceased Estates Team April 2025

### When a family member needs someone to make decisions on their behalf

Events in life – including illness and old age – can lead to family members requiring someone to make decisions on their behalf.

Ideally, the family member will have put arrangements in place before they cannot make their own decisions. This might include executing an enduring power of attorney or an enduring power of guardianship or an advance care directive. Our team of lawyers at O'Loughlins Lawyers has expertise in preparing such documents.

Unfortunately, some people do not put such arrangements into place before they become incapable of making decisions. In those circumstances, a court or tribunal will need to appoint another person to make those decisions.

In South Australia, the most common approach is to seek an administration order or a guardianship order or both from the South Australian Civil and Administrative Tribunal (**SACAT**). SACAT aims to be simple, accessible and flexible in matters it deals with. Many people bring cases to SACAT without the assistance of a lawyer but in cases that are complex, or where there is disagreement between family members, it can be beneficial to use a lawyer.

An administration order will concern the financial decisions of a person. A guardianship order will concern the health, accommodation and lifestyle decisions of a person. Where possible, SACAT prefers to see existing informal arrangements left in place rather than make any order. Otherwise, SACAT will make limited (or partial) orders where it can, under which the incapacitated person will be given as much control over their own decisions as possible whilst still protecting that person. For example, a person may be

unable to manage their investments as result of dementia, but they still might be able to manage small amounts of money to buy their weekly groceries; in that example, SACAT will let the person have the autonomy of managing their grocery monies.

For an administration order or guardianship order to be made, SACAT will need to first decide that the person has a mental incapacity. SACAT is assisted by family members, friends and health professionals in considering that issue. Another issue that needs to be considered is who should be appointed as the administrator or guardian. Ideally, this will be a close family member but sometimes that is not appropriate. Sadly, it is not uncommon for applications to be made to SACAT because of concern that a person is being abused, whether physically, emotionally or financially, by someone close to them. If there is no one else appropriate, Public Trustee and Public Advocate will take on the roles of administrator and guardian respectively.

SACAT can also make what is known as a 'special powers' order that permits a guardian (or a substitute decision maker who is appointed under an advance care directive) to make decisions about where the incapacitated person lives, whether the incapacitated person can be detained (eg if they need to reside in a section of a residential aged care facility that has locked doors to protect residents from wandering outside and coming to harm) and whether reasonably necessary force can be used for treatment and care. A special powers order can only be made if there would be a serious risk to health or safety, to the incapacitated person or to others, if an order is not made.

## How we can help you

O'Loughlins Lawyers has a team of lawyers who are highly experienced in dealing with guardian and administration issues and any associated litigation.

We can assist you by providing you with legal advice about your circumstances and represent you in any tribunal proceedings that may arise.

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### Disclaimer

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