



Application to Vary (Change) or Revoke (Cancel) Orders

COMMUNITY STREAM

When can you apply?

In some circumstances SACAT may consider an application to vary (change) or revoke (cancel) an order. This may occur sometime after the hearing when circumstances change. This is different to an internal review (appeal).

The person who is the subject of the order and the appointed guardian or administrator: can apply (after the internal review/appeal period has expired). The applicant will need to provide written reasons with the application setting out why they want the order changed. If the reason is that the subject person has regained capacity a medical / psychological report will need to be filed to support this. The report will need to address the person's ability to make the specific decisions that the order relates to.

Other persons with a proper interest: can apply (after the internal review/appeal period has expired). To apply to vary or revoke an administration or guardianship order any interested person who is the applicant must first be able to demonstrate that there has been a *change in circumstances* of the protected person or of the private guardian or private administrator before an application will be listed for hearing.

What is a change in circumstances?

Being unhappy with, or disagreeing with, the decision is not a proper ground to bring this application. In this case you would file an internal review/appeal (see below).

Examples of a change in circumstances include:

- ▶ The private administrator or private guardian no longer has mental capacity or is deceased. A medical report advising of the mental incapacity of the administrator or guardian is needed or, if applicable, a death certificate.

- ▶ The private administrator or guardian is no longer willing to continue in their role. A written statement from the administrator or guardian is required confirming they wish to give up their role.
- ▶ The subject person has regained mental capacity or their capacity has deteriorated further. A medical report about mental capacity is required. The report will need to address the person's ability to make specific decisions. To revoke an administration order, evidence is also required about the subject person's ability to manage their finances, such as attendance at a course relating to budgeting, and what if any supported decision makers are available to assist the person.
- ▶ The administrator has misappropriated or mismanaged the funds/estate of the subject person. Supporting evidence of the misappropriation or mismanagement of the funds/estate is required.
- ▶ The guardian or administrator is not making decisions which reflect the person's wishes, past or present, or ensure the proper care and protection of the person; A submission in writing from the applicant is required with any evidence in support.
- ▶ A pre-existing Enduring Power of Attorney or Guardianship or an Advanced Care Directive has been located which was not available at the time of the hearing. A certified copy of the document(s) is required.

If you cannot establish a change of circumstances in your application the Tribunal will not list the matter for hearing and it will be dismissed without a hearing.



Information sheet

What if I don't agree with the order?

If you disagree with a decision made by SACAT (e.g. you consider the decision is “unjust” or “unfair” or “wrong”), it is not appropriate to make an application to vary or revoke an order. In this case you should consider lodging an application for internal review (an appeal) of a SACAT decision. An application for an internal review must be made within 1 month of the order. However, the Tribunal may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the application must be instituted within that period. Please note, an internal review application may require the payment of a fee.

For more information regarding internal reviews please see: <http://www.sacat.sa.gov.au/decisions-reviews/review-of-sacat-decisions-internal-review>

Who can apply?

The following people can apply to vary or revoke an order:

- ▶ The person who the order is about.
- ▶ Any person who can satisfy SACAT that they have a proper interest in the welfare of the person who the order is about.
- ▶ The Public Advocate on his or her own initiative or at the request of the person who the order is about.
- ▶ The guardian.
- ▶ The administrator of the person's estate (including the Public Trustee).
- ▶ A substitute decision-maker for the person under an Advance Care Directive.
- ▶ A 'person responsible' for the person who the order is about.

Other Options/Automatic Review

All guardianship and administration orders must be automatically reviewed. The review date is in the order.

If you are a person in the above category of persons you can wait until the review date and state in writing why you consider the order should be varied or revoked at that time. SACAT will consider your submissions at the automatic review hearing (on the papers or in the hearing if one is listed).

SACAT does not guarantee the accuracy or completeness of this Information Sheet and does not accept any responsibility if you rely on it.

You should always seek your own legal advice.

