



Guardianship hearings

The following information explains what to expect during the hearing of a guardianship application in NCAT's Guardianship Division.

About NCAT's Guardianship Division

The NSW Civil and Administrative Tribunal (NCAT) conducts hearings to determine if guardians or financial managers should be appointed as substitute decision makers for people with a decision making disability.

Hearings are conducted by Tribunal Members appointed on the basis of their particular expertise.

In NCAT's Guardianship Division, an application for guardianship is heard by a panel of three Members.

- **Senior Members (Legal)** must be an Australian lawyer of at least seven years standing.
- **Senior Members (Professional)** are persons who have special knowledge, skill or expertise and have experience in assessing or treating persons with disabilities.
- **General Members (Community)** are persons who have special knowledge, skill or expertise and have professional or personal experience with people with disabilities.

What happens at the hearing?

NCAT will listen to the evidence given and consider the written evidence provided. People attending the hearing will be asked questions about the application. Other people may be contacted by phone during the hearing, such as doctors or other relevant people who have not been able to attend the hearing.

NCAT tries to make sure that the person the application is about participates in the hearing to the best of their ability and will take into account the views of the person. It will also consider the principles of the *Guardianship Act 1987* to ensure that the person the application is about is given paramount consideration.

Questions and issues

During the hearing, NCAT will consider the following questions:

- Does the person the application is about have a disability?

- If so, is this person totally or partially incapable of making their own decisions because of this disability?
- If so, does the person need a guardian appointed to make decisions on their behalf?
- If so, who should that guardian be?
- What areas of the person's life should the guardian make decisions about?
- Should the order be subject to any conditions?
- How long should the order last?
- Is it in the best interests of the person to make an order?

Parties to a guardianship hearing

The *Guardianship Act 1987* defines the parties to a guardianship application as:

- The applicant
- The person the application is about
- The person's spouse, if any
- The person's carer, if any (excluding paid carers)
- The Public Guardian
- An enduring guardian, if any
- Any person NCAT has joined as a party.

Representation

Can I have someone represent me?

NCAT will conduct the hearing with as little formality as possible. Parties to the application can be represented by a lawyer or other person but usually this is not necessary. If you would like to have a legal or other representative you must get NCAT's approval.

How do I request representation?

You should make this request in writing to NCAT as soon as possible – at least 5 working days before the hearing. The request should include the reasons why you want to be represented.

NCAT will make its decision about whether or not to grant leave for legal representation before the hearing date or at the beginning of the hearing.



Tribunal decisions

What decisions can NCAT make?

At the end of the hearing, NCAT may decide that the person does not have a disability or that, although the person has a disability, they do not need a guardian. NCAT cannot make a guardianship order in either of these cases.

If NCAT is satisfied that the person needs a guardian, it will then decide what areas of the person's life the guardian can make decisions about. These areas may be accommodation, access to services, health care and the authority to consent to medical and dental treatment or others. These are referred to as 'functions' in the order.

NCAT can appoint one or more people to be a guardian. If more than one person is appointed, they may share the functions jointly or they each may have responsibility for separate functions.

NCAT can appoint the NSW Public Guardian – a government agency which is the 'guardian of last resort'. NCAT might do this if there is no one else suitable or prepared to be guardian.

When will I know the outcome?

NCAT will usually tell you its decision at the end of the hearing. A written order and reasons for decision will be sent to the parties at a later date. Not all people who attend the hearing are parties, so not everyone will be given a copy of the order and reasons for decision.

How long does a guardianship order last?

NCAT will decide how long the order should last. An order can be made for one year, but in some circumstances can be made for up to 3 years.

Most guardianship orders will be reviewed by NCAT at a hearing before the end of the order. In some cases NCAT may decide at the initial hearing that the order does not need to be reviewed.

What if I disagree with the decision?

If you are a party to the hearing and you disagree with the decision, you may be able to appeal to the NCAT Appeal Panel or the NSW Supreme Court.

For more information refer to the Guardianship Division's *Reviews and Appeals* fact sheet.

Contact NCAT

1300 006 228 | www.ncat.nsw.gov.au

Interpreter Service (TIS) 13 14 50

National Relay Service for TTY users 13 36 77

For more information and assistance visit the NCAT website or contact NCAT's Guardianship Division on (02) 9556 7600 or 1300 006 228.