

What to expect at a hearing

The following information explains what you can expect at a hearing conducted in the NSW Civil and Administrative Tribunal's Guardianship Division.

What is a hearing?

A hearing is conducted by the NSW Civil and Administrative Tribunal (NCAT) to examine documents, listen to evidence from the parties and make a decision about the application before it.

The applicant, the person who is the subject of the application, other parties and other people who may have relevant information about the application generally participate in the hearing.

NCAT hearings are conducted with as little formality as possible. NCAT does however make legally binding decisions.

Who conducts the hearing?

Hearings are conducted by Tribunal Members appointed on the basis of their particular expertise. In NCAT's Guardianship Division, most applications are 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.

Some matters, such as applications for medical or dental consent, or review hearings can be heard by a panel with fewer than three Members.

Where are hearings held?

The majority of hearings in NCAT's Guardianship Division are held in Sydney, although NCAT also holds hearings at outer metropolitan Sydney and regional locations across NSW. Hearings may be conducted by telephone or by videoconference.

NCAT's Guardianship Division uses hearing venues which are fully accessible.

A notice of hearing will be sent to all parties before the hearing. The notice will set out the date and time for the hearing and where the hearing will be held.

Who attends the hearing?

The applicant and the other parties to the application must attend the hearing (Refer to the fact sheet *Who is a party to proceedings in the Guardianship Division?*).

If there is a reason why a party cannot attend, such as ill health or an inability to travel, they may be able to participate by telephone or have a representative appear with leave on their behalf.

Interested persons (people who have an interest in the welfare of the person who is the subject of the application or review but who are not a party) may attend the hearing as a witness and give evidence.

There may sometimes be a need for an interpreter, a legal representative or a separate representative to attend the hearing.

Does the person who the application is about need to attend the hearing?

Decisions made by NCAT may affect the right of the person the subject of the application or review to make his or her own decisions.

It is essential that the person has the opportunity to participate in the hearing as fully as possible. It is the applicant's responsibility to arrange for the person to attend or participate in the hearing.

If the person is not able to attend the hearing because of ill health or other reasons this should be discussed with the Tribunal officer before the hearing date. If the person refuses to attend the hearing, the hearing may proceed without them.



Representation

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.

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.

NCAT can appoint a separate representative for a party. NCAT may do this if for example there is concern that the person lacks the capacity to instruct a lawyer or that the person requires a representative in proceedings before the Tribunal.

Refer to the fact sheet on legal representation and separate representation and to the Guardianship Division's Procedural Direction on legal representation for more information.

Submitting documents before the hearing date

It is important all relevant documents are submitted as soon as possible, at least seven working days (7 days) before the hearing.

Contact NCAT's Guardianship Division to discuss which documents are relevant and should be submitted. Original records and personal documents will generally be returned after the hearing.

How long is a hearing?

Hearings vary in length depending on factors such as the complexity of the issues being considered, the number of people attending and whether or not an interpreter is involved.

Some straightforward applications or reviews may be heard in 45 minutes, while in other matters the hearing may take a full day. Many applications and reviews are heard within 1 to 2 hours.

What happens at a hearing?

The majority of Guardianship Division hearings are conducted at John Maddison Tower, 86-90 Goulburn Street Sydney. The reception counter is located on Level 6.

On arrival please provide your name and the name of hearing you will be attending to the person at the reception counter. You will be asked to take a seat and wait in the reception's waiting area before being invited into the hearing.

Once invited into a hearing room, the Tribunal Members will welcome everyone and will introduce themselves. Each person attending the hearing will be asked their name and their relationship to the person who is the subject of the application.

Each hearing proceeds in its own way depending on the needs of the person who the application is about. In general, the person will be asked their views about the application. Sometimes this will be done in private, without any other parties or witnesses being present. The applicant and other parties will be given the opportunity to give their evidence and express their views about the application.

NCAT will decide when it has the evidence it needs to make a decision. The hearing may be adjourned for NCAT to consider its decision. NCAT may give its decision on the day of the hearing or may reserve the decision. If NCAT reserves the decision it means the decision will be given at a later time and generally in writing.

Are hearings recorded?

Guardianship Division hearings are sound recorded.

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.