

Financial management hearings

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

About NCAT's Guardianship Division

The NSW Civil and Administrative Tribunal (NCAT) conducts hearings to decide whether a guardian or financial manager should be appointed for a person 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 financial management is heard by a panel of three Tribunal Members:

- **Senior Member (Legal)** - an Australian lawyer of at least seven years standing.
- **Senior Member (Professional)** - a person with special knowledge, skills and experience in assessing or treating persons with disabilities.
- **General Member (Community)** – a person who has special knowledge, skills, and professional or personal experience with people with disabilities.

What happens at the hearing?

NCAT listens to the evidence given and considers the written evidence provided.

People attending the hearing will be asked questions about the application. People may be contacted by phone during the hearing, such as doctors or other relevant people who have not been able to attend.

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:

- Is the person the application is about incapable of managing their finances?

- If so, does the person need to have a financial manager appointed because there is a risk of loss or disadvantage?
- If so, who should that financial manager be?
- Is it in the best interests of the person the application is about to make the order?
- Should the order be reviewed or continue without review?
- Should the order include all of the person's finances or should part of their finances be excluded?

Parties to a financial management hearing

The *Guardianship Act 1987* defines parties to a financial manager 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 NSW Trustee
- A person appointed under a power of attorney (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 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 decision

What decisions can NCAT make?

At the end of the hearing NCAT may not be satisfied that the person is incapable of managing their finances. Even if NCAT is satisfied the person is incapable of managing their finances, it may decide there is no need for a financial manager. NCAT cannot make a financial management order in either of these cases.

If NCAT is satisfied that the person is incapable of managing their finances, needs a financial manager and it is in their best interests that a financial management order is made, NCAT can appoint a private manager or the NSW Trustee to manage the person's finances.

When will I know the outcome?

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

NSW Trustee appointed as financial manager

The NSW Trustee is a separate government agency. NCAT will appoint the NSW Trustee if this is in the best interests of the person or there is no-one else suitable or prepared to be the financial manager.

If appointed, the NSW Trustee will have responsibility for managing the person's finances.

Private person appointed as financial manager

NCAT can appoint a private person as a private financial manager instead of the NSW Trustee. The NSW Trustee still has a role to play when a private manager is appointed.

The NSW Trustee decides what powers the manager has. These are set out in an estate management plan (called 'directions'). If the manager wants to deal with the person's finances in ways not authorised by the directions, they must get approval from the NSW Trustee.

The NSW Trustee will usually require a private manager to:

- lodge security with the NSW Trustee, for example the title deed to the house of the person whose estate they are managing.

- lodge accounts each year with the NSW Trustee to show that the person's finances are being properly managed.

The NSW Trustee may arrange for a professional called a 'court visitor' to visit the person. The court visitor can make suggestions about spending that would benefit the person.

For more information about the role of a private financial manager, you can call the NSW Trustee and Guardian on **1300 320 320**. Or you can visit the *Private Managers* section of their website at www.tag.nsw.gov.au.

Fees for financial management

The NSW Trustee will usually charge fees to the person's estate for their financial management services. It will also charge fees when a private manager is appointed.

For more information about fees, you can call the NSW Trustee and Guardian on **1300 320 320**. Or you can visit the *Fees* section of their website at www.tag.nsw.gov.au.

How long does a financial management order last?

Most financial management orders operate indefinitely and cover all of the person's finances. In some cases, NCAT will decide to review the order after a specified period of time. This order will be reviewed at a further hearing at which NCAT will determine whether the order should continue. NCAT is also able to exclude part of a person's finances from management in certain limited circumstances.

If requested to do so, NCAT is able to revoke a financial management order but only if evidence is provided to show that the person who has a financial manager has regained the ability to manage their finances, or that it would be in the person's best interests to have the order revoked.

If a financial manager is no longer willing or able to be manager or is not acting in the best interests of the person whose finances are being managed, an application to replace the manager can be made to NCAT. In this case the person's finances would continue being managed but an alternative financial manager may be appointed.

Interim financial management orders

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Interim financial management orders

If NCAT thinks that there is not enough information about the person's ability to manage their own finances, it can adjourn the hearing and ask the parties for more information. NCAT may make an interim financial management order that operates until another hearing can be held. Interim financial management orders can be made for 6 months.

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.