

Providing information to the Guardianship Division

The following information is about confidentiality and the disclosure of information provided to NCAT's Guardianship Division.

About NCAT's Guardianship Division

The NSW Civil and Administrative Tribunal (NCAT) hears and determines applications including those for the appointment of guardians and financial managers under the *Guardianship Act 1987*.

NCAT's Guardianship Division is guided by the principles of the *Guardianship Act* and seeks to promote the welfare and interests of the person with a disability who is the subject of an application.

Decisions are made based on information provided by family members, friends, health professionals, social workers and others. This includes information from written reports or letters or information provided verbally to the Tribunal.

NCAT is empowered to obtain and assess evidence relevant to the issues to be determined by it. Reports provided to the Tribunal are likely to be discussed by the Tribunal and other persons attending the hearing.

Providing information or a report to the Tribunal

The duty of health professionals to respect client confidentiality does not override a legal obligation to provide evidence to a court or tribunal, such as is provided for under the *Guardianship Act 1987*.

Evidence can be taken on oath and the Tribunal can retain documents for as long as it considers necessary for the hearing of the proceedings.

Summons

Under Section 48 of the *Civil and Administrative Tribunal Act 2013*, NCAT can issue a summons requiring a person to attend the hearing to give evidence and/or to produce documents to the Tribunal at a specified time, date and place.

Witnesses

Section 46 of the *Civil and Administrative Tribunal Act 2013* provides that NCAT can require a person who

appears before the Tribunal to answer questions which the Tribunal considers to be relevant in any proceedings.

False or misleading evidence

Any person who knowingly makes false or misleading statements or provides false or misleading information to NCAT can be penalised under the *Guardianship Act*.

Confidentiality

By law NCAT must protect the privacy of persons who are the subject of applications before the Tribunal.

NCAT's procedures provide safeguards to restrict access to private information, particularly medical information, about the person who is the subject of an application.

However the principles of procedural fairness will require NCAT to disclose information to all parties unless the Tribunal makes a confidentiality order.

Disclosure of information

The disclosure of information is restricted by section 101 of the *Guardianship Act 1987*.

Under this section, penalties can be imposed on persons who disclose information obtained in connection to the Guardianship Division proceedings, unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained
- (b) in connection with the administration or execution of the *Guardianship Act 1987* or the *Civil and Administrative Tribunal Act 2013*
- (c) for the purposes of any proceedings or report of proceedings arising out of the *Guardianship Act 1987* or the *Civil and Administrative Tribunal Act 2013*
- (d) in accordance with a requirement under the *Ombudsman Act 1974*
- (e) with other lawful excuse.



Information of a sensitive nature

You may request the information you provide to NCAT be treated confidentially if it is of a sensitive nature. NCAT will consider your request but it cannot guarantee that the nature of your evidence or the source of the evidence will not be disclosed during the proceedings.

Procedural fairness

NCAT is bound to provide procedural fairness to all parties involved in an application.

Parties must have an opportunity to know the case against them, and an opportunity to defend the allegations made or test the evidence before NCAT.

If NCAT needs to rely on the evidence you provide it may not be possible to keep the nature and source of that evidence confidential.

Subpoenas

There may also be circumstances when NCAT is compelled to release information from its files under subpoena issued in other proceedings.

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.