

Guardianship

Review of guardianship orders

The following information explains how NCAT's Guardianship Division conducts hearings for the review of guardianship orders.

About NCAT's Guardianship Division

The NSW Civil and Administrative Tribunal appoints Tribunal Members on the basis of their expertise. In NCAT's Guardianship Division there are three types of Tribunal Members.

- **Senior Members (Legal)** who are Australian lawyers of at least 7 years.
- **Senior Members (Professional)** who are persons with special knowledge, skill or expertise and have experience in assessing or treating persons with disabilities.
- **General Members (Community)** who are persons with special knowledge, skill or expertise and have professional or personal experience with people.

An application to review a guardianship order may be heard by one, two or three Tribunal Members.

What is a review?

NCAT's Guardianship Division can conduct three types of review of guardianship orders.

Statutory reviews

When NCAT makes a guardianship order, it must specify the length of the order. Initial orders are usually made for a maximum of one year but in some circumstances can be made for up to three years. A hearing to review the order is automatically held close to the end of the order unless NCAT decided at the original hearing that no review was needed.

Requested reviews

Under the *Guardianship Act 1987* someone with a genuine concern for the welfare of the person under guardianship can request NCAT to review the order.

An application can be made for review of a guardianship order if there has been a change in circumstances that affects the operation of the order. A review can be requested to replace the guardian, change the guardian's decision making functions, or

end the order. The application form can be downloaded from the NCAT website www.ncat.nsw.gov.au

NCAT can refuse a request to review a guardianship order. This may happen if the application does not disclose grounds that warrant a review or if NCAT has previously reviewed the order.

A requested review is not the same as an appeal. A requested review can only be held when there is new information for NCAT to consider. The original decision cannot be examined in a review. To appeal the original decision you need to apply to the NCAT Appeal Panel or the NSW Supreme Court.

'Own motion' reviews

NCAT can initiate a review of any order at any time if it considers this would be in the best interests of the person who has a guardian.

When is a review held?

Most reviews of guardianship orders are by way of statutory review. In some cases NCAT can decide at the initial hearing that the order does not need to be reviewed. In these cases there will usually be no review hearing.

The purpose of a statutory review is to decide whether guardianship is still necessary and, if so, what functions the guardian should have.

At requested and 'own motion' reviews, the reasons for the review will be considered and the order varied if necessary in the best interests of the person who has a guardian.

What will happen at the review?

Whenever possible, NCAT will hold the review by telephone. In some cases the review will need to be held with everyone involved present.

Although the review is conducted in a similar way to the original hearing, different information may be sought.

At the review, NCAT will consider the following matters that are relevant:



- Is the person the order is about still a person with a disability?
- Is the person totally or partially incapable of making their own decisions because of this disability?
- Does the person need to have a guardian at this stage?
- Should the same guardian be re-appointed?
- 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?

Whenever possible, NCAT will take into account the views of the person the order is about. It will also consider the principles of the *Guardianship Act 1987* to ensure that the person the order is about is given paramount consideration by NCAT.

Parties to a guardianship review

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

- The person the application is about
- The person, if any, who requested the review
- The most recent spouse or de facto spouse with whom the person has a close, continuing relationship (includes same sex partner)
- The carer, if any, of the person the order is about (excluding paid carers)
- The appointed guardian
- NSW Public Guardian
- The enduring guardian (if any)
- Any person the Tribunal 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 the Tribunal make?

In a statutory review, NCAT can renew the order with the same terms as the previous order. NCAT can also renew the order with different terms, such as appointing a different guardian or adding or removing the guardian's functions to reflect any change in circumstances.

Orders can be renewed for up to 3 years at a review or, in some circumstances, for up to 5 years.

NCAT can also let the order lapse if a guardian is no longer needed, either because there is no role for the guardian or because the person is now capable of making their own decisions.

At an 'own motion' or requested review when the order still has time to run, NCAT may decide to leave the order as it is, alter it to reflect a change in circumstances or revoke (cancel) the order if there is no further need for a 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.

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 read 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.