

Reviews and appeals

This fact sheet explains the differences between a review and appeal of a decision made by the NSW Civil and Administrative Tribunal's Guardianship Division.

Introduction

Decisions made in the NSW Civil and Administrative Tribunal (NCAT) Guardianship Division can be:

- reviewed (some decisions only) and/or
- appealed (all decisions)

Appeals and reviews are different. A review is heard in NCAT's Guardianship Division. An appeal is heard by either NCAT's Appeal Panel or the NSW Supreme Court.

More information about the differences between reviews and appeals is set out below.

Reviews

NCAT's Guardianship Division can review certain kinds of orders made under the *Guardianship Act 1987*. It can review:

- Guardianship orders
- Financial management orders
- The appointment of a particular financial manager rather than the financial management order itself.

A review is not the same as an appeal. When a review is heard, NCAT does not re-examine the original decision.

When hearing a review matter, NCAT considers the current circumstances of the person who is the subject of the order and decides whether the order should continue or whether it needs to be changed.

Review of a guardianship order

There are three types of review of a guardianship order:

1. Statutory reviews

NCAT will automatically review a guardianship order near the end of the period of the order.

2. Requesting a review

NCAT may also review a guardianship order if it receives an application requesting a review. The application must be made by a person who has a genuine concern for the person under guardianship.

NCAT may refuse to deal with the application to review the order if:

- There are no grounds in the application to warrant a review; or
- The order has been reviewed before.

NCAT may review an order it has made if:

- There is new and relevant information which was not reasonably available at the original hearing; or
- There is a need for new functions to be given to the appointed guardian; or
- The guardianship order is not working in the best interests of the person under guardianship; or
- The circumstances of the person under guardianship have substantially changed since the guardianship order was made; or
- There is no further need for a guardian.

3. 'Own motion' reviews

NCAT can decide at any time that a review of a guardianship order is needed if it considers that this would be in the best interests of the person under the guardianship order.

The review hearing

At the review hearing, NCAT will consider evidence from those who are involved in the life of the person under guardianship, including family members and professionals.



Review of a financial management order

There are three types of review of a financial management order:

1. Statutory reviews

NCAT can state in a financial management order that the order will be reviewed in a specified period of time.

2. Requesting a review

Anyone with a genuine concern for the welfare of a person under financial management can apply for a review to revoke or vary the order, including the replacement of the financial manager.

NCAT may refuse to deal with the application to revoke or vary the order if:

- There are no grounds in the application to warrant a review; or
- The order has been reviewed before.

3. 'Own motion' reviews

NCAT decides on its own motion that a review should be conducted.

The review hearing

At the review hearing, the Tribunal will consider evidence from professionals and others involved in the life of the person whose finances are under financial management.

NCAT may only revoke a person's financial management order if it is satisfied that:

- The person is now able to manage their own finances; or
- It would be in the best interests of the person to have the order revoked.

NCAT may vary the person's financial management order including by replacing the financial manager if it is satisfied that it would be in the best interests of the person.

Appeals

Appeals to the NCAT Appeal Panel

Who can appeal?

A party to proceedings can make an appeal to the NCAT Appeal Panel against any decision of the Tribunal. This right to appeal can be found in the *Civil and Administrative Tribunal Act 2013* [Schedule 6, Part 6, clause 12.]

What can the appeal be about?

An appeal may be made on:

- A question of law or
- Any other grounds, if the Appeal Panel grants leave for the appeal to be made on those grounds.

If the appeal is against an interlocutory decision then it can only be made with the leave of the Appeal Panel. Some examples of an interlocutory decision are:

- Decision about joining a party to proceedings
- Decision about granting leave for legal representation
- Decision about the adjournment of proceedings

When must the appeal be lodged?

An appeal must be lodged within 28 days from either the day on which the appellant was notified of the decision appealed against or the day on which reasons for the decision were first given (either orally or in writing) whichever is later.

More information

For more information about appeals to the Appeal Panel, visit the NCAT website or telephone 1300 006 228.



Appeals to the NSW Supreme Court

Who can appeal?

A party to proceedings of NCAT's Guardianship Division can appeal against any decision to the NSW Supreme Court. This right to appeal can be found in the *Civil and Administrative Tribunal Act 2013* [Schedule 6, Part 6, clause 14.]

What can the appeal be about?

Appeals may be made on:

- A question of law or
- Any other grounds, if the Supreme Court grants leave for the appeal to be made on those grounds.

If the appeal is against an interlocutory decision, then it can only be made with the leave of the Court.

When must the appeal be lodged?

Appeals must be lodged:

- Within 28 days after the Tribunal provides the person who is appealing with the written reasons for the decision; or
- For appeals against interlocutory or ancillary decisions - within 28 days of the decision being made.

The Supreme Court may allow further time to appeal.

More information

For more information about appeals to the NSW Supreme Court:

- **NSW Supreme Court**
www.supremecourt.justice.nsw.gov.au
Tel: 1300 679 272
- **LawAccess NSW**
www.legalaid.nsw.gov.au
Tel: 1300 888 529

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