

Information for Applicants

Appointment of a financial manager and/or guardian

The following information explains how to apply to the NSW Civil and Administrative Tribunal (NCAT) Guardianship Division for the appointment of a financial manager and/or the appointment of a guardian.

NCAT Guardianship Division

Under the *Guardianship Act 1987*, NCAT can appoint financial managers and guardians for people with decision-making disabilities.

Before making any orders about financial management or guardianship, NCAT will conduct a hearing.

The hearing is an opportunity for the person who is the subject of the application as well as other interested people, including the person making the application, to present their views.

NCAT will consider reports from health professionals and others before making its decision.

Making an application to NCAT

Terms in this information sheet which have special meaning are shown in *italics* and defined under 'Key Terms'.

1. Do you need to apply?

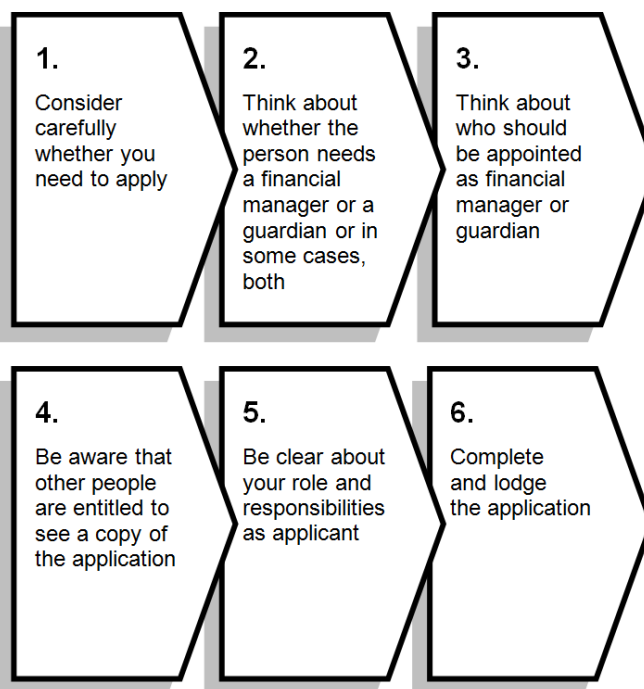
Adults with disabilities are usually assisted with decision-making by family members, friends and service providers. In most cases this *informal decision-making* is appropriate and meets the person's needs.

However, sometimes informal arrangements break down or there is a legal barrier to decision-making. When this happens NCAT can serve as an avenue of last resort by making formal arrangements (orders) for decision-making.

To help you decide whether an application is necessary it is useful to understand what NCAT must establish before it can make orders.

To make a *financial management order* NCAT must be satisfied that:

- The person is incapable of managing their finances
- There is a current need to someone else to manage the person's finances
- It is in the person's best interests for an order to be made.



To make a *guardianship order* the Tribunal must be satisfied that:

- The person has a disability that affects their decision-making
- There is a current need for someone else to make personal decisions for them.

If you are unsure whether the person you are concerned about needs a financial manager or a guardian, or both, please contact the Guardianship Division on (02) 9556 7600 or 1300 006 228.

An NCAT officer will discuss the person's situation with you and help you decide whether you need to apply.

2. Difference between financial management and guardianship

Financial management and guardianship are different and separate applications. It is important to understand the difference so that your application addresses the person's real need.



Financial management

A **financial manager** is someone who is legally authorised to make financial and legal decisions on behalf of a person who is not capable of managing their affairs.

A financial manager can make decisions about any aspect of the person's financial affairs unless the Tribunal specifies that a part of the person's estate is excluded from management. A financial manager does not make personal or lifestyle decisions.

NCAT can only consider financial management applications about people who have assets in NSW.

Guardianship

A **guardian** is someone who is legally authorised to make personal or lifestyle decisions on behalf of a person with a decision-making disability.

A guardian is not authorised to make financial decisions, although it is possible for someone to be appointed as both guardian and financial manager.

The guardian can be authorised to make decisions such as:

- Where the person should live
- What support services the person should use
- What healthcare and medical treatment the person should receive
- Whether *restrictive practices* are appropriate in the management of the person's behaviour.

A guardian is a *substitute decision-maker* not a case manager or carer.

NCAT can only consider guardianship applications about people who live in NSW and over the age of 16.

3. Suggesting a financial manager or guardian

If you are applying for financial management

You can suggest a financial manager on the application form. NCAT will consider your suggestion but is not bound by it.

The person must be over 18 and suitable for the role. NCAT may ask the person about their experience managing money, their own financial history and any *conflict of interest* that exists between them and the person.

If there is no-one suitable or willing to take on the role, NCAT can appoint the NSW Trustee and Guardian as financial manager.

If you suggest someone other than yourself or the NSW Trustee and Guardian you must discuss it with them first.

Financial managers should generally act gratuitously. They may not be reimbursed for costs nor seek remuneration without the approval of the NSW Trustee and Guardian or the Supreme Court. NCAT cannot authorise payment of costs or remuneration to a financial manager.

If you are applying for guardianship

The application form allows you to suggest a guardian. NCAT will consider your suggestion but is not bound by it. You can suggest yourself, another person or more than one person as guardian.

NCAT must be satisfied that the person is over 18, is willing and able to take on the role, and is generally compatible with the person.

NCAT also needs to consider whether there is a conflict (particularly a financial conflict) between the interests of the suggested guardian and those of the person.

If there is no-one suitable or willing to take on the role, NCAT can appoint the NSW Public Guardian.

If you suggest someone other than yourself or the NSW Public Guardian you must discuss it with them first.

If you are applying for financial management and guardianship

You should follow the guidelines above. You can suggest the same person(s) for both roles.

4. Parties' rights

Anyone who is a **party** to your application is entitled under the *Guardianship Act 1987* to receive a copy of the application and all documents sent to NCAT.

For financial management applications, the parties are:

- You, the applicant
- The person
- The person's spouse, de facto spouse or partner, if any
- The person's unpaid *carer*, if any
- The *attorney* under a power of attorney, if any
- NSW Trustee and Guardian.

For guardianship applications, the parties are:

- You, the applicant
- The person



- The person's spouse, de facto spouse or partner, if any
- The person's unpaid carer, if any
- NSW Public Guardian.

Other people may apply to NCAT to be given the same legal rights ('joined') as a party. NCAT can join a person for an appropriate reason, such as their concern for the welfare of the person.

Parties to an application or review are entitled to:

- Receive a copy of the application form and any other documents sent to NCAT.
- Be represented by a lawyer or an agent if that person is given leave to do so by NCAT.
- Give oral evidence as a witness to NCAT.
- Call and cross-examine witnesses at the hearing.
- Appeal the decision to NCAT's Appeal Panel or the NSW Supreme Court.

Please note that if you answer a question in the form by referring to an attachment document, that document becomes part of the application and may be distributed to the parties.

Refer to the fact sheet 'Providing information to the Guardianship Division' for more information.

5. Your responsibilities as applicant

As the person making the application you have a role and responsibilities beyond completing and lodging the form.

As applicant you must:

- Provide your details to NCAT (anonymous applications are not accepted)
- Tell the person that you are making an application about them
- Provide details of all the people who have an interest in the application even if they disagree with it
- Obtain evidence to support your application and supply to NCAT (see **Section 6** of the form for details of what is required)
- Keep NCAT informed of any changes to the person's circumstances while your application is being considered
- If the application proceeds to a hearing, give the person a copy of the application and notice of hearing (both will be sent to you by NCAT)

- Attend the hearing and arrange for the person to attend.

If for any reason you cannot continue in the role, you need to arrange for someone to take your place and then inform NCAT.

6. How to lodge your application

To lodge your application and attachments:

- **Post**
NSW Civil and Administrative Tribunal
Guardianship Division
PO Box K1026, Haymarket NSW 1240
- **Deliver in person**
Level 6 John Maddison Tower, 86-90 Goulburn Street, Sydney NSW 2000

When lodging your application, please return all pages of the form.

There is no fee for lodging a Guardianship Division application.

7. What happens next?

NCAT will send you and other parties a notice of hearing with the date, time and place of hearing.

If you need further information about making an application, contact NCAT's Guardianship Division.

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.



Key terms

Attorney

A person appointed under a general or enduring power of attorney.

Carer

A carer is someone who provides domestic services and support to the person, or arranges services and support for the person.

A carer does not include professional carers who are paid for their services.

If the person lives at a facility (such as a nursing home or group home), the carer is the last person to have cared for the person before they became a resident of the facility.

Conflict of interest

A situation in which a proposed guardian or financial manager may be personally affected by decisions or actions they may take on behalf of the person.

Enduring guardian

Someone you legally appoint when you have capacity, to make personal decision for you if you lose capacity.

Enduring power of attorney

A legal document to appoint an attorney or attorneys who can act on your behalf in financial matters under your instruction while you have capacity or without your instruction if you lose capacity.

Financial management order

A legal document that gives the management of a person's estate to someone other than themselves.

General power of attorney

A legal document to appoint an attorney or attorneys who can act on your behalf in financial matters under your instruction. If you lose capacity, a general power of attorney ceases to have effect.

Guardianship order

A legal document authorising a guardian to make personal decisions on behalf of a person with a disability in specified areas such as accommodation, health care, services, and medical and dental consent. These areas are referred to as 'functions'.

Informal decision making

Decision making (by service providers, family members or friends of a person with a disability) that promotes their best interests, but is not formally sanctioned or recognised.

NSW Public Guardian

A statutory official empowered to make substitute personal and lifestyle decisions for people with disabilities when appointed to do so by NCAT or the Supreme Court. **NSW Public Guardian is a separate organisation from NCAT.**

NSW Trustee and Guardian

A statutory official empowered to make substitute financial decisions for people who are incapable of managing their finances when appointed to do so by NCAT, the Supreme Court or the Mental Health Review Tribunal. **NSW Trustee and Guardian is a separate organisation from NCAT.**

Party

A person who has certain rights in relation to an application, such as the right to a copy of the application or the right to appeal a decision.

Spouse

Spouse means a husband, wife or de facto partner and includes same sex relationships. The relationship must be close and continuing.

Restrictive practices

Strategies used in the management of a person's behaviour that restrict their freedom in a way that would be unlawful unless consent was given by a legally appointed guardian.