



## Guardianship Division Guideline August 2017

# Adjournments

## When can hearings be postponed or delayed?

### What does this Guideline explain?

1. This Guideline explains:
  - a) the general principles the Tribunal applies when a party asks it to postpone or delay (that is to “adjourn”) a hearing
  - b) when and how a party should ask for an adjournment
  - c) how the Tribunal deals with adjournment requests
  - d) what the Tribunal will consider in deciding whether or not to allow an adjournment
  - e) what happens if the Tribunal decides to adjourn the hearing
  - f) what happens if the adjournment request is refused
  - g) the alternatives to requesting an adjournment.

**It is very important to make any adjournment request as soon as you realise an adjournment is necessary.**

**You cannot assume the Tribunal will allow an adjournment even if all the parties agree.**

### Definitions

2. Definitions that explain words or concepts used in this guideline are at the back of the guideline.

### What are the general principles which the Tribunal will apply to any adjournment request?

3. The overriding principle is that when a date and time has been set for a hearing it will go ahead on that date and at that time, unless the Tribunal allows an adjournment.
4. The Guardianship Division of the Tribunal exercises a protective jurisdiction in relation to people with decision making disabilities. This means that when exercising functions under the Act or the *Guardianship Act*, it must consider the principles in section 4 of the *Guardianship Act*. Section 4 requires the Tribunal to give paramount consideration to the welfare and interests of persons who have disabilities.
5. This means the Tribunal must consider how postponing or delaying the hearing might affect the person who is the subject of the application to the Tribunal.
6. In considering whether to allow an adjournment, the Tribunal will also:

- a) take into account the need to manage cases and hearings fairly and efficiently. This includes making sure cases are heard as soon as possible, and
- b) consider allowing an adjournment only if the party requesting it has a good reason and it is fair in all the circumstances to adjourn.

## When and how should a party ask for an adjournment?

7. Wherever there is time to do so, a party who wants to request an adjournment must write to the Registrar to ask for an adjournment and that should be done as soon as they realise that an adjournment is necessary and preferably at least 5 five working days before the set hearing date. Their written request must identify the file number and set out the reason for requesting the adjournment – *see paragraph 14*. They must attach a copy of the documents that support the adjournment request – *see paragraph 15*. If the other parties agree to the adjournment, some clear confirmation by them must be attached.
8. A party who requests an adjournment must notify each other party of their intention to do so. Each other party should tell the party requesting the adjournment and the Tribunal whether or not they agree with the adjournment request. Even if all parties agree with the adjournment request, that does not mean the Tribunal will allow the adjournment.
9. A party can also request an adjournment at the start of a hearing or during a hearing. The party must explain why they did not make that request earlier. If they did make an earlier request for an adjournment and it was refused, they can make their further request but only if there is new information which supports the request.
10. Before a party requests an adjournment it is important to consider whether there is any alternative to an adjournment. For more about this – *see paragraphs 19 and 20*.

## How does the Tribunal deal with adjournment requests?

11. If the Tribunal receives a written adjournment request more than 5 working days before the hearing -
  - a) a single Tribunal member will usually hold a separate hearing before the main hearing to consider the adjournment request. This separate hearing is called an ‘interlocutory hearing’. It usually happens by telephone. All parties will get an opportunity to say whether they agree or disagree with the adjournment request. Parties may also make written submissions about the adjournment request.
12. If the Tribunal receives a request for an adjournment less than 5 working days before the hearing -
  - b) the Tribunal will usually consider it at the start time of the date set for the main hearing.

## What reasons might convince the Tribunal to allow an adjournment?

13. A party making an adjournment request must give clear reasons for that request. Depending on the facts and circumstances, reasons that are commonly given include that:
  - a) one of the parties is too ill to prepare the case for hearing or to participate in the hearing

- b) a party or witness is unavoidably away and giving evidence by telephone is not possible or would be unfair to one or more parties
  - c) information needed for the case is not yet available, and this is *not* the fault of the party who needs the information
  - d) a party has not had a reasonable chance to respond to information provided by another party
  - e) a party wishes to get a lawyer but they will not be able to do so in time for the hearing. The party will need to provide evidence of the steps they have taken to get a lawyer in time for the hearing.
14. If available, evidence should be provided to support the reasons. For example, if a party is ill, they should provide detailed medical evidence if it is available. Medical evidence that is vague or does not specify that the party is unable to attend the hearing may not be sufficient. A medical certificate does not give the Tribunal enough information to decide whether to adjourn the hearing. If a party has made travel arrangements, they should provide a copy of their itinerary, any airline or other travel bookings and information about when the booking was made.
15. The Tribunal will take into account all relevant matters in favour of and against an adjournment. The Tribunal must always consider the factors set out in section 4 of the *Guardianship Act* and how the person who is the subject of the application would be affected if the hearing was delayed.
16. The other matters that the Tribunal will take into account include:
- a) the reasons for requesting an adjournment
  - b) whether the need for an adjournment is the fault of one of the parties
  - c) any disadvantage to the parties if an adjournment is allowed or refused
  - d) the impact of any delay on the principle that the Tribunal must facilitate the just, quick and cheap resolution of the issues in the proceedings.

### **What happens if the adjournment request is granted?**

17. If the Tribunal decides to grant an adjournment it will set another date for the hearing. It will notify all parties of the new date by sending them another Notice of Hearing.

### **What happens if the adjournment request is refused?**

18. If the adjournment request is refused the hearing may go ahead and the Tribunal may make its decision even if a party is not present.

### **Are there any alternatives to asking for an adjournment?**

19. Yes. Before asking for an adjournment, a party should consider if there are any other ways the hearing could still go ahead on the set date or dates – as long as this can happen without being unfair to any party.

20. For example, it might be possible to:

- a) hear some of the evidence by telephone or video conference. A party who wants to do this must apply to the Registrar as soon as possible and no later than 5 working days before the hearing date to see if this is possible;
- b) present evidence in written form only;
- c) apply to the Tribunal for someone else to present the relevant part of the case (a party who wants to do this must explain why it is not possible for them to be at the hearing and why it is necessary to have someone else present their part of the case).

### What do some of the words in this Guideline mean?

- **Act:** *Civil and Administrative Tribunal Act 2013 (NSW)*
- **Adjournment:** A postponement or delay, by order of the Tribunal, of any hearing, directions hearing or interlocutory hearing.
- **Guardianship Act:** *Guardianship Act 1987(NSW)*
- **Hearing:** A hearing, interlocutory hearing or directions hearing.
- **Party or parties:** A person is a party to proceedings in the Guardianship Division if they are:
  - Identified as a party in section 3F of the *Guardianship Act*
  - Identified as a party in section 35(2) of the *Powers of Attorney Act 2003 (NSW)*
  - Identified as a party in rule 27 of the Rules
  - Joined by the Tribunal as a party under section 44 of the Act

For more information refer to the fact sheet - [Who is a party to proceedings in the Guardianship Division \[PDF, 88kB\]](#)

- **Registrar:** The Principal Registrar or any other person employed as a Registrar of the Tribunal
- **Rules:** Civil and Administrative Tribunal Rules 2014.

### This Guideline applies to:

Proceedings in the Guardianship Division of the Tribunal.

### Effective Date

1 August 2017

### Notes

You must use the latest version of this Guideline. The latest version of this Guideline is on the [NCAT website](#).

The law about the information in this Guideline is mainly in:

- Sections 36, 38 and 51 of the *Civil and Administrative Tribunal Act 2013*

There is a copy of this Act on the [NSW Legislation website](#).

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