

Guardianship Applications

A resource for people accessing NCAT's Guardianship tribunal services in NSW

Fact Sheet

*This fact sheet answers some common questions about the role of a guardian and applying to the New South Wales Civil and Administrative Tribunal (**NCAT**) to appoint a guardian for someone.*

What is a Guardian?

Guardians can make decisions for people who can't make decisions on their own

A guardian is usually a family member or a close friend who can make decisions for someone who can't make decisions on their own because they are suffering from a mental illness, dementia, intellectual disability or a brain injury. This is called a 'decision-making disability'.

A guardian can make decisions for a person with a decision-making disability about:

- medical or dental treatments;
- where they live;
- the services they use; and
- other lifestyle matters.

A guardian can't make decisions about someone's financial matters. If the person with a decision-making disability isn't able to make financial decisions on their own, they might need a financial manager. The same person can be the financial manager and guardian for a person with a decision-making disability.

Guardians must:

- ✓ make decisions in the represented person's best interests;
- ✓ consult the represented person when making decisions if possible;
- ✓ protect the represented person from abuse, exploitation and neglect;
- ✓ advocate on the represented person's behalf;
- ✓ encourage the represented person to make their own decisions where possible.

NCAT can make guardianship orders

NCAT is a tribunal that deals with different legal matters including guardianship applications.

If you're worried an adult isn't making reasonable judgments because of a disability and you think they need a guardian or administrator, you can make an application to NCAT for someone to be appointed to this role.

At NCAT a person called a 'member' decides the case and can make guardianship orders.

Differences between a guardian and financial manager

Guardian

Makes lifestyle and personal decisions for a person with a decision-making disability, including:

- medical or dental treatments;
- where they live;
- the services they use; and
- other lifestyle matters.

Financial manager

- Makes financial and legal decisions on behalf of a person who cannot manage their own affairs;
- Does **not** make personal or lifestyle decisions such as where the person should live.

When is a guardian appointed?

Guardianship orders can be made when arrangements with friends and family aren't working.

People with disabilities usually get help making decisions from friends, family members and/or social workers. If this isn't working, NCAT can make a guardianship order that sets up a formal arrangement for help making decisions. If a guardianship order is made, the person appointed as guardian can make lifestyle and personal decisions for the represented person. If there are already informal arrangements in place that are working, NCAT may not make a guardianship order.

All adults have the right to make their own decisions and people with a disability should be encouraged and supported to make decisions for themselves. Before appointing a guardian or administrator, NCAT must be satisfied that the needs of the person cannot be met in a less formal way.

There are certain factors NCAT looks at when making an order

- Whether the potential guardian is over 18 (if the application is not asking that the guardian be the Public Guardian);
- Whether the person the application is about is able to make their own decisions;
- Whether it's in the best interests of the person that a guardianship order be made;
- The wishes of the person the application is about;
- The areas of the person's life that need a guardian's decisions;
- The length of the guardianship order;
- The impact of the guardianship order on family relationships;
- Whether there are existing Supreme Court of NSW orders about the person's guardianship. If the court makes a guardianship order after an order is made at NCAT, the NCAT order won't have any effect.

What you need to include in the application form

If you want to make an application to NCAT, you'll need to complete the [Guardianship Application Form](#) on the NCAT website.

On the form you'll need to include:

- Evidence about the person's disability and capacity to make decisions. This can be a report, letter or a statutory declaration from a doctor, nurse, social worker, lawyer, accountant or aged-care provider. Health professionals can use the NCAT template [Health Professional Report Form](#) for their report.
- A statement from the person (if possible) about their inability to make decisions for themselves and what they think about having a guardian.
- Why you think the person needs a guardian.
- Any details about attempts to informally resolve issues.
- If the person already has a guardian appointed under an appointment of enduring guardian, a copy of any appointment of enduring guardian.

It may also help to provide statements from family members or friends that support the application for a financial manager and/or a statement from the potential financial manager about their willingness and capacity to be a financial manager.

Lodging the application

Once you've completed the form, you will need to lodge it with NCAT by sending it in the post, delivering it in person, or via email with any medical reports or other documents you want to include.

By post:

NCAT Guardianship Division
PO Box K1026, Haymarket NSW 1240

In person:

Level 6, John Maddison Tower
86-90 Goulburn Street
Sydney NSW 2000

By Email

gd@ncat.nsw.gov.au

You'll also need to send or deliver a copy of the application and any documents you're including to:

- the **Public Guardian**:
Postal Address: Locked Bag 5116, Parramatta NSW 2124
Fax: 02 8688 9797
Email: PGRegistry@opg.nsw.gov.au;
- the person the application is about; and
- their wife/husband or partner, carer, current attorney appointed under a power of attorney and enduring guardian appointed under an appointment of enduring guardian.

Before lodging your application with NCAT you must make a copy of your application for your own records.

The NCAT hearing

At the hearing, NCAT will hear from the person who made the application, the person who the application is about and any other people who have provided statements/given reports as part of the application.

NCAT may also want to hear from the potential guardian and family members of the person who the application is about. NCAT might also ask any of these people questions during the hearing to help them make a decision. NCAT might contact people by phone if they can't come to the hearing.

What happens after the hearing?

Usually the NCAT member will tell you the decision at the end of the hearing. The decision may be an order that a guardian be appointed, or that the person the application is about doesn't have a disability or doesn't need a guardian. NCAT will also decide how long the guardianship order will last for – this is usually between 1-3 years.

NCAT will also send the written orders and reasons for the decision to everyone at a later date.

If you disagree with the guardianship orders, you can appeal to the NCAT Appeal Panel or the Supreme Court of NSW. Appeals can only be lodged within a certain period of time from

the date of the decision. Further information on appeals can be found on the NCAT website (see below).

Useful resources

- NCAT website: www.ncat.nsw.gov.au
- NCAT factsheet on appointment of financial manager and/or guardian:
http://www.ncat.nsw.gov.au/Documents/gd_information_appointment_financial_manager_and_or_guardian.pdf
- Information on appealing a decision of NCAT:
https://www.ncat.nsw.gov.au/Pages/ncat_decisions/appeals.aspx
- Public Guardian NSW: www.publicguardian.justice.nsw.gov.au
- Guardianship Application Form:
www.ncat.nsw.gov.au/Documents/gd_form_guardianship_application.pdf
- Health Professional Report Form:
http://www.ncat.nsw.gov.au/Documents/gd_form_health_professional_report_form.pdf