

Information guardianship hearings

What is the Guardianship Tribunal?

The Guardianship Tribunal is a legal tribunal. It conducts hearings to determine if guardians or financial managers should be appointed as substitute decision makers for people with a decision making disability. Tribunal hearings are conducted by Tribunal members appointed by the Governor on the basis of their particular expertise. There are three categories of Tribunal member - legal, professional and community members. Legal members must be Australian lawyers of at least seven years standing, professional members are persons experienced in the assessment or treatment of persons with disabilities, and community members have professional or personal experience with people with disabilities. Applications for guardianship orders are heard by a panel with at least one member from each category.

What happens at the hearing?

The Tribunal will ask the people attending the hearing questions about the application. You may also be able to ask questions. The Tribunal may contact relevant people by phone during the hearing, such as doctors or other people who have not been able to attend. The Tribunal will listen to all the evidence that people present and consider all the written information that has been provided. The Tribunal will try to make sure that the person the application is about understands what is happening at the hearing and is able to participate to the best of their ability.

The Tribunal will take into account the views of the person the application is about. It will also consider the principles of the *Guardianship Act 1987* to ensure that the person

the application is about is given paramount consideration by the Tribunal.

At the hearing the Tribunal will consider the following things:

- Does the person the application is about have a disability?
- If so, is this person totally or partially incapable of making their own decisions because of this disability?
- If so, does the person need a guardian appointed to make decisions on their behalf?
- If so, who should that guardian be?
- 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?
- Is it in the best interests of the person to make an order?

Can I have a lawyer there?

The Tribunal will conduct the hearing with as little formality as possible. Parties to the application can be represented by a lawyer but usually this is not necessary. If you would like to have a legal or other representative, you must get the Tribunal's approval. Your representative should make this request in writing to the Tribunal as soon as possible – at least five working days before the hearing. The request should include the reasons you want to be represented. If this is done, the Tribunal may make its decision about whether or not to grant leave for legal representation before the hearing date. Otherwise, it will make this decision at the beginning of the hearing.

When will I know the outcome?

The Tribunal will usually tell you its decision at the end of the hearing. Later, the Tribunal will

issue a written order and reasons for its decision. These will be sent to the parties to the hearing. Not all people who attend the hearing are parties, so not everyone will be given copies of the order and reasons for decision.

Parties

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

- the applicant
- the person the application is about
- the spouse, if any, of the person the application is about
- the carer, if any, of the person the application is about (excluding paid carers)
- the Public Guardian
- any person the Tribunal has joined as a party.

What decisions can the Tribunal make?

At the end of the hearing the Tribunal may decide that the person does not have a disability or that, although the person has a disability, they do not need a guardian.

The Tribunal cannot make a guardianship order in either of these cases.

If the Tribunal is satisfied that the person needs a guardian, the Tribunal will decide what areas of the person's life the guardian can make decisions about. These areas may be accommodation, access to services, health care and the authority to consent to medical and dental treatment or others. These are referred to as 'functions' in the order.

The Tribunal can appoint one or more people to be guardian. If more than one person is appointed, they can share the functions jointly or each have responsibility for separate functions. The Tribunal can appoint the Public Guardian – a government agency which is the 'guardian of last resort'. The Tribunal might do this if there is no-one else suitable or prepared to be guardian.

The Tribunal will also decide how long the order should last. Initial orders can be made for a maximum of one year, but in

some circumstances can be made for up to three years. Most guardianship orders will be reviewed by the Tribunal at a hearing before the end of the order. In some cases the Tribunal can decide at the initial hearing that the order does not need to be reviewed.

What if I disagree with the decision?

If you are a party to the hearing and you believe the Guardianship Tribunal has made the wrong decision, you may be able to appeal to the Supreme Court or the Administrative Decisions Tribunal. You must do this within 28 days of receiving the order and reasons for decision. The Supreme Court or the Administrative Decisions Tribunal can accept an appeal outside this time if the court/tribunal thinks this is in the best interests of the person. If you want to appeal the decision, you should seek independent legal advice.

For more information contact

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