

Information hearings for reviews of guardianship orders

What is the Guardianship Tribunal?

The Guardianship Tribunal is a legal tribunal. Tribunal hearings are conducted by part time 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 must be health or welfare professionals with experience assessing or treating people with disabilities. Community members must have professional or personal experience with people with disabilities. An application to review or revoke a guardianship order may be heard by a one, two or three member tribunal.

What is a review?

The Tribunal can conduct three types of review of guardianship orders.

Statutory reviews

When the Tribunal makes a guardianship order, they must specify the length of the order. Initial orders are usually made for a maximum of one year but in some circumstances can be made for up to three years. A hearing to review the order is automatically held close to the end of the order unless the Tribunal stated at the original hearing that no review was needed.

Requested reviews

The *Guardianship Act 1987* also allows the Tribunal to review an order if requested to do so by someone with a genuine concern for the welfare of the person under guardianship. An application can be made for review of a guardianship order if there has been a change in circumstances that affects the operation of the order. A review can be requested to replace the guardian, change the guardian's decision making functions, or end the order. An application form for requested review of guardianship is available from the Tribunal or can be downloaded from the Tribunal's website.

The Tribunal can refuse a request to review a guardianship order. This may happen if the application does not disclose grounds that warrant a review or the Tribunal has previously reviewed the order.

A requested review is not the same as an appeal. A requested review can only be held when there is new information for the Tribunal to consider. The original decision cannot be examined in a review. To appeal the original decision, you need to apply to the Supreme Court or the Administrative Decisions Tribunal.

'Own motion' reviews

The Tribunal can initiate a review of any order at any time if it considers this would be in the best interests of the person who has a guardian.

When is a review held?

Most reviews of guardianship orders are by way of statutory review. In some cases the Tribunal can decide at the initial hearing that the order does not need to be reviewed. In these cases there will usually be no review hearing.

The purpose of a statutory review is to decide whether guardianship is still necessary and, if so, what functions the guardian should have.

At requested and 'own motion' reviews, the reasons for the review will be considered and the order varied if necessary in the best interests of the person who has a guardian.

What will happen at the review?

Whenever possible, the Tribunal will hold the review by phone but in some cases the review will need to be held with everyone involved present. Although the review is conducted in a similar way to the original hearing, different information may be sought.

At the review, the Tribunal will consider the following matters that are relevant:

- Is the person the order is about still a person with a disability?

- Is the person totally or partially incapable of making their own decisions because of this disability?
- Does the person need to have a guardian at this stage?
- Should the same guardian be re-appointed?
- 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?

Whenever possible, the Tribunal will take into account the views of the person the order is about. It will also consider the principles of the *Guardianship Act 1987* to ensure that the person the order is about is given paramount consideration by the Tribunal.

Can I have a lawyer there?

The Tribunal will conduct the hearing with as little formality as possible. People do not usually ask to be represented by a lawyer. If you would like to have a legal or other representative attend the hearing, 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 will usually make its decision before the hearing date. Otherwise, it will make its decision at the beginning of the hearing. If you want to seek leave to be represented, phone the Tribunal for more information.

What decisions can the Tribunal make?

In a statutory review, the Tribunal can renew the order with the same terms as the previous order. The Tribunal can also renew the order with different terms, such as appointing a different guardian or adding or removing the guardian's functions to reflect any change in circumstances. Orders can be renewed for up to three years at a review or, in some circumstances, for up to five years. The Tribunal can also let the order lapse if a guardian is no longer needed, either because there is no role for the guardian or because the person is now capable of making their own decisions.

At an 'own motion' or requested review when the order still has time to run, the Tribunal may decide to leave the order as it is, alter it to reflect a change

in circumstances or revoke the order if there is no further need for a guardian.

When will I know the outcome?

The Tribunal will usually tell you its decision at the end of the hearing. Later, the Tribunal will write an order or determination and the reasons for decision. These will be sent to people who are parties to the hearing. Not all people who attend the hearing are parties, so not everyone will be given copies of the order or determination and reasons for decision.

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

- the person the application is about
- the person, if any, who requested the review
- the most recent spouse or de facto spouse with whom the person has a close, continuing relationship ('de facto spouse' includes same sex partner)
- the carer, if any, of the person the order is about (excluding paid carers)
- the appointed guardian
- any person the Tribunal has joined as a party.

What if I disagree with the decision?

If you are a party to the hearing and you disagree with the decision made by the Guardianship Tribunal, you may be able to appeal to the Supreme Court or the Administrative Decisions Tribunal on a question of law. If you want to appeal the decision, you should seek independent legal advice. You must appeal within 28 days of receiving the order or determination and reasons for decision. The Supreme Court or the Administrative Decisions Tribunal may accept an appeal outside this time in some circumstances.

For more information contact

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