

## Information financial management hearings

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### **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 financial management 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:

- Is the person the application is about incapable of managing their financial affairs?
- If so, does the person need to have a financial manager appointed because there is a risk of loss or disadvantage?
- If so, who should that financial manager be?

- Is it in the best interests of the person the application is about to make the order?
- Should the order be reviewed or continue without review?
- Should the order include all of the person's estate or should part of the estate be excluded?

### **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 out 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 financial management application as:

- the applicant
- the person the application is about
- the spouse, if any, of the person the application is about
- the person, if any, who cares for the person the application is about (excluding paid carers)
- the NSW Trustee
- the person, if any, appointed under a power of attorney
- any person the Tribunal has joined as a party.

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### **What decisions can the Tribunal make?**

At the end of the hearing the Tribunal may not be satisfied that the person is incapable of managing their financial affairs. Even if the Tribunal is satisfied the person is incapable of managing their affairs, it may decide there is no need for a financial manager. The Tribunal cannot make a financial management order in either of these cases.

If the Tribunal is satisfied that the person is incapable of managing their affairs, needs a financial manager and it is in their best interests that an order is made, the Tribunal can appoint a private manager or the NSW Trustee to manage the person's financial affairs.

The Office of the NSW Trustee is a separate government agency. The Tribunal will appoint the NSW Trustee if this is in the best interests of the person or there is no-one else suitable or prepared to be financial manager. The Office of the NSW Trustee charges fees for its services.

If appointed, the NSW Trustee will have responsibility for managing the person's finances.

If a private financial manager is appointed, the NSW Trustee will supervise the private manager.

This supervision occurs in four main ways:

1. The NSW Trustee decides what powers the manager has. These are set out in an estate management plan (called 'directions').  
If the manager wants to deal with the person's finances in ways not authorised by the directions, they must get approval from the NSW Trustee.
2. The manager is usually required to lodge security with the NSW Trustee, for example the title deed to the house of the protected person.
3. The manager is usually required to lodge accounts each year with the NSW Trustee to show that the person's finances are being properly managed.
4. The NSW Trustee may arrange for a professional, called a court visitor, to visit the protected person. The court visitor can make suggestions about spending that would benefit the person.

If the Tribunal thinks that there is not enough information about the person's ability to manage their own estate, the Tribunal can adjourn the hearing and ask the parties for more information. The Tribunal may make an interim financial management order that operates until another hearing can be held.

Interim financial management orders can be made for 6 months.

Most financial management orders made by the Tribunal operate indefinitely and cover all of the person's affairs. In some circumstances the Tribunal can determine to review an order after a specified period of time. This order will be reviewed at a further hearing at which the Tribunal will determine whether the order should continue. The Tribunal is also able to exclude part of a person's estate from management in certain limited circumstances.

If requested to do so, the Tribunal is able to revoke a financial management order but only if evidence is provided to show that the person who has a financial manager has regained the ability to manage their finances, or that it would be in the person's best interests to have the order revoked.

If a financial manager is no longer willing or able to be manager or is not acting in the best interests of the person whose affairs are being managed, an application to replace the manager can be made to the Tribunal. In this case the person's affairs would continue being managed but an alternative manager may be appointed.

### **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. If you want to appeal the decision, you should seek independent legal advice. You must appeal within 28 days of receiving the order and reasons for decision.

The Supreme Court or the Administrative Decisions Tribunal may accept an appeal outside this time in some circumstances.

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### **For more information contact**

#### ***Guardianship Tribunal***

Telephone (02) 9556 7600  
Toll free 1800 463 928  
Facsimile (02) 9555 9049  
Telephone typewriter  
(02) 9556 7634  
Email [gt@gt.nsw.gov.au](mailto:gt@gt.nsw.gov.au)  
Website [www.gt.nsw.gov.au](http://www.gt.nsw.gov.au)

Level 3, 2a Rowntree Street, Balmain NSW 2041  
Postal address Locked Bag 9, Balmain NSW 2041