

Information for Applicants

Application for **appointment of a financial manager and/or appointment of a guardian**

The Guardianship Tribunal

Under the *Guardianship Act, 1987*, the Guardianship Tribunal has the authority to appoint financial managers and guardians for people with decision-making disabilities.

Before it makes any order in relation to financial management or guardianship the Tribunal will conduct a hearing. The hearing is an opportunity for the person who is the subject of the application as well as other interested people, including the person making the application, to present their views.

In making its decision the Tribunal will consider reports from health professionals and others.

Making an application to the Tribunal

1.

Consider carefully whether you need to apply

2.

Think about whether the person needs a financial manager or a guardian or in some cases, both

3.

Think about who should be appointed as financial manager or guardian

4.

Be aware that other people are entitled to see a copy of the application.

5.

Be clear about your role and responsibilities as applicant

6.

Complete and lodge the application

Terms in the *Information for Applicants* which have special meaning are shown in italics and defined under Key Terms (see below).

1. Do you need to apply?

Adults with disabilities are usually assisted with decision-making by family members, friends and service providers. In most cases this *informal decision-making* is appropriate and meets the person's needs.

However, sometimes informal arrangements break down or there is a legal barrier to decision-making. When this happens the Tribunal can serve as an avenue of last resort by making formal arrangements (orders) for decision-making.

To help you to decide whether an application is necessary it is useful to understand what the Tribunal must establish before it can make orders.

To make a *financial management order* the Tribunal must be satisfied that:

- the person is incapable of managing their finances
- there is a current need for someone else to manage the person's finances
- it is in the person's best interests for an order to be made.

To make a *guardianship order* the Tribunal must be satisfied that:

- the person has a disability that affects their decision-making
- there is a current need for someone else to make personal decisions for them.

If you are unsure whether the person you are concerned about needs a financial manager or a guardian, or both, please contact the Tribunal's enquiry service on 9556 7600. An enquiry officer will discuss the person's situation with you and help you decide whether you need to apply.

2. The difference between financial management and guardianship

Financial management and guardianship are different and separate applications. It is important to understand the difference so that your application addresses the person's real need.

A **financial manager** is someone who is legally authorised to make financial and legal decisions on behalf of a person who is not capable of managing their affairs.

A financial manager can make decisions about any aspect of the person's financial affairs unless the Tribunal specifies that a part of the person's estate is excluded from management. A financial manager does not make personal or lifestyle decisions.

The Tribunal can only consider financial management applications about people who have assets in NSW.

A **guardian** is someone who is legally authorised to make personal or lifestyle decisions on behalf of a person with a decision-making disability. A guardian is not authorised to make financial decisions, though it is possible for someone to be appointed as a guardian and financial manager for the same person.

The kinds of decisions a guardian can be authorised to make include:

- where the person should live
- what support services the person should use
- what healthcare and medical treatment the person should receive
- whether *restrictive practices* are appropriate in the management of the person's behaviour.

A guardian is a substitute decision-maker not a case manager or carer.

The Tribunal can only consider guardianship applications about people who are resident in NSW and over the age of 16.

3. Suggesting a financial manager or guardian

If you are applying for financial management

The application form allows you to suggest a financial manager. The Tribunal will consider your suggestion but is not bound by it.

The person you suggest must be over 18 and suitable for the role. To determine their suitability the Tribunal may ask them about their experience managing money, their own financial history and any *conflict of interest* that exists between them and the person. If there is no-one suitable or willing to take on the role, the Tribunal can appoint the *Protective Commissioner* as financial manager.

If you suggest someone other than yourself or the Protective Commissioner, you must discuss it with them first.

If you are applying for guardianship

The application form allows you to suggest a guardian. The Tribunal will consider your suggestion but is not bound by it.

You can suggest yourself, another person or more than one person as guardian.

The Tribunal must be satisfied that the person you suggest is over 18, is willing and able to take on the role, and is generally compatible with the person. The Tribunal also needs to consider whether there is a conflict (particularly a financial conflict) between the interests of the suggested guardian and those of the person. If there is no-one suitable or willing to take on the role, the Tribunal can appoint the *Public Guardian*.

If you suggest someone other than yourself or the Public Guardian, you must discuss it with them first.

If you are applying for financial management and guardianship, follow the guidelines above. You can suggest the same person(s) for both roles.

4. Who will see your application?

Anyone who is a *party* to your application is entitled under *the Guardianship Act 1987* to receive a copy of it. The Act sets out who the parties are to financial management and guardianship applications.

For guardianship applications the parties are:

- you, the applicant
- the person
- the person's spouse, de facto spouse or partner, if any
- the person's unpaid carer, if any
- the Public Guardian.

For financial management applications the parties are:

- you, the applicant
- the person
- the person's spouse, de facto spouse or partner, if any
- the person's unpaid carer, if any
- the attorney under a power of attorney, if any
- the Protective Commissioner.

Other people involved may apply to the Tribunal to be given the same legal rights ('joined') as a party. The Tribunal has the authority to join a person for an appropriate reason, such as their concern for the welfare of the person.

Please note that if you answer a question in the form by referring to an attached document, that document becomes a part of the application and may be distributed to the parties.

5. Your responsibilities as applicant

As the person making this application you have a role and responsibilities beyond completing and lodging this form.

As applicant you must:

- provide your details to the Tribunal (the Tribunal cannot accept anonymous applications)
- advise the person that you are making an application about them
- provide details of all the people who have an interest in the application even if they disagree with it
- obtain evidence to support your application and supply it to the Tribunal (Section 6 of the form provides more detail about what is required)
- keep the Tribunal informed of any changes to the person's circumstances while your application is being considered
- if the application proceeds to a hearing, give the person a copy of the application and notice of hearing (both will be sent to you by the Tribunal)
- attend the hearing and arrange for the person to attend.

If for any reason you cannot continue in the role, you need to arrange for someone to take your place then inform the Tribunal.

6. How to lodge your application

You can lodge your application by:

- **faxing** the form and attachments to:
9555 9049
- **mailing** the form and attachments to:
The Guardianship Tribunal
Locked Bag 9
Balmain NSW 2041
- **delivering** the form and attachments in person to:
Level 3
2a Rowntree Street
Balmain NSW 2041

When lodging your application, please return all 12 pages of the form. Do not include the *Information for Applicants*.

There is no fee for lodgement.

Key terms

Attorney

A person appointed under a general or enduring power of attorney.

Centrelink nominee

A person authorised by the recipient of a Centrelink payment to receive the payment and deal with Centrelink and on their behalf.

Conflict of interest

A situation in which a proposed guardian or financial manager may be personally affected by decisions or actions they may take on behalf of the person.

Enduring Guardian

Someone you legally appoint when you have capacity, to make personal decisions for you if you lose capacity.

Enduring Power of Attorney

A legal document to appoint an attorney or attorneys who can act on your behalf in financial matters under your instruction while you have capacity or without your instruction if you lose capacity.

Financial management order

A legal document that commits the management of a person's estate to someone other than themselves.

General Power of Attorney

A legal document to appoint an attorney or attorneys who can act on your behalf in financial matters under your instruction. If you lose capacity a general power of attorney ceases to have effect.

Guardianship order

A legal document authorising a guardian to make personal decisions on behalf of a person with a disability in specified areas such as accommodation, healthcare, services and medical and dental consent. These areas are referred to as 'functions'.

Informal decision-making

Decision-making (by service providers, family members or friends of a person with a disability) that promotes their best interests, but is not formally sanctioned or recognised.

Party

A person who has certain rights in relation to an application, such as the right to a copy of the application, the right to request legal representation or the right to appeal a decision.

Protective Commissioner

A statutory official empowered to make substitute financial decisions for people who are incapable of managing their finances when appointed to do so by the Tribunal, the Supreme Court, the Mental Health Review Tribunal or a magistrate under the Mental Health Act 1990. **The Office of the Protective Commissioner is a separate organisation from the Guardianship Tribunal.**

Public Guardian

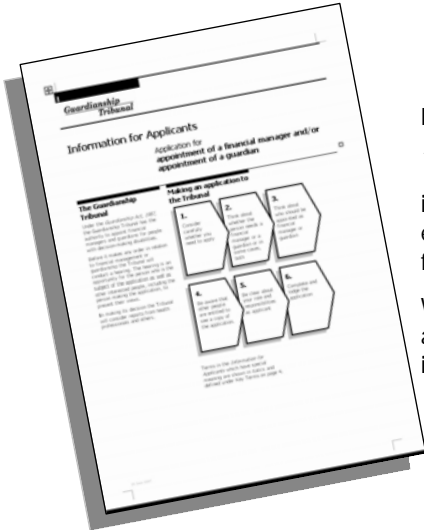
A statutory official empowered to make substitute personal and lifestyle decisions for people with disabilities when appointed to do so by the Tribunal or the Supreme Court. **The Office of the Public Guardian is a separate organisation from the Guardianship Tribunal.**

Restrictive Practices

Strategies used in the management of a person's behaviour that restrict their freedom in a way that would be unlawful unless consented to by a legally appointed guardian.

Guardianship Tribunal

Application for appointment of a financial manager and/or appointment of a guardian



Before completing the form refer to *Information for Applicants* and *Key Terms*. If you need further information, contact the Tribunal enquiry service on 1800 463 928 (toll free) or 9556 7600.

When lodging your application, return all 12 pages of the form. Do not include the *Information for Applicants*.

You are required to provide documents to support your application and can refer to Section 6 of this form for details.

Note that anyone who is a party to your application under the *Guardianship Act 1987* is entitled to receive a copy of it.

Please write clearly in black pen.

Applicant name

relationship to the person this application is about

What is the purpose of the application?

- appointment of a financial manager to make decisions about the person's financial affairs.
- appointment of a guardian to make decisions about the person's personal and lifestyle matters.

Financial management and guardianship are different and separate applications. Think carefully about whether the person needs:

- a financial manager (if there is a need for a decision-maker in relation to money, assets or debts), or
- a guardian (if it is a matter of health, accommodation or services), or
- in some cases, both.

There is nothing to be gained by applying for both unless there is a real need for both.

The Tribunal can only appoint a financial manager for a person if:

- the person concerned has assets in NSW
- they are not capable of managing their own financial affairs
- there is a current need for someone to manage their affairs on their behalf
- it is in their best interests for an order to be made.

The Tribunal can only appoint a guardian for a person if:

- the person concerned is over 16
- they usually reside in NSW
- they have a disability that impairs their decision making
- there is a decision which currently needs to be made and the decision cannot be made informally.

1 The person

Who is this application about?

title Mr Mrs Miss Ms Other, specify

given names

family name

other names by which this person is known

date of birth

gender male female

What is the person's usual permanent address?

Where does the person usually live? at home, provide details below
 at the home of a family member or friend, provide details below
 at a care facility, provide details below
 no fixed address

name of family member, friend or care facility

street

suburb/town, state, postcode

phone

mobile phone

fax

email

What is the person's current location? (if different from above)

name of family member, friend or care facility

street

suburb/town, state, postcode

name of contact (if applicable)

phone

mobile phone

fax

email

What is the person's mailing address? (if different from either address above)

street / PO Box

suburb/town, state, postcode

What disabilities or other health-related factors affect the person's decision-making capacity?

- dementia
 - intellectual disability
 - brain injury
 - mental illness
 - advanced age
 - stroke
 - other, provide details
-
-

Is there anyone who disputes the person's disability or incapacity?

- No Yes

If Yes, provide details

- the person themselves
 - health professional, provide name
 - other person, provide name
-
-

Does the person regard themselves as belonging to any specific ethnic, cultural or religious group?

- No Yes
-
-

Does the person speak a language other than English at home?

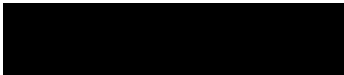
- No Yes, what other language
-
-

Have you told the person that you are making this application?

- No Yes
-
-

As far as you are aware are there any legal proceedings (current or anticipated) that involve this person?

- No Yes
-
-



2 Current decision-making arrangements

Refer to *Information for Applicants: Key terms*.

Does the person have a Power of Attorney or Enduring Guardian in place? No Yes, provide name(s) and copies of documents confirming the powers

Complete details for the type(s) of application you are making.

Application for a financial manager

Who is currently making decisions in relation to money, assets or debts for the person?

You may tick more than one box in the column.

- no one
- the person
- the person's spouse, de facto spouse or partner
- family member(s), provide name(s)

attorney(s) under a Power of Attorney, provide name(s)

a financial manager appointed by a Court or Tribunal, provide name

a Centrelink nominee, provide name

someone else, provide name(s)

Does the person object to the decisions being made for him or her? No Yes

Is there conflict about decision-making? (e.g. between family members) No Yes

Is the current decision-maker acting in the person's best interests?

The current decision-maker could be the person themselves. No Yes

Application for a guardian

Who is currently making decisions on health, accommodation or services for the person?

You may tick more than one box in the column.

- no one
- the person
- the person's spouse, de facto spouse or partner
- family member(s), provide name(s)

enduring guardian(s) under an enduring guardianship document, provide name(s)

guardian(s) appointed by a Court or Tribunal, provide name(s)

someone else, provide name(s)

Does the person object to the decisions being made for him or her? No Yes

Is there conflict about decision-making? (e.g. between family members) No Yes

Is the current decision-maker acting in the person's best interests?

The current decision-maker could be the person themselves. No Yes

4 The applicant

As the person making this application you have responsibilities that go beyond completing this form. These responsibilities are explained in the *Information for Applicants: 5. Your responsibilities as applicant*. You should be prepared to carry out these responsibilities before proceeding with this application.

title		<input type="checkbox"/> Mr	<input type="checkbox"/> Mrs	<input type="checkbox"/> Miss	<input type="checkbox"/> Ms	<input type="checkbox"/> Other, specify
given names						
family name						
street / PO Box						
suburb/town, state, postcode						
daytime phone				after hours		
mobile phone						
fax				pager		
email						
What is your relationship to the person?						
How long have you known the person?						

5 The other people involved

- You must include details for the person's spouse, de facto spouse, partner or unpaid carer including someone receiving the carer's pension.
- You must include details for any person you have named in section 2 of this form (e.g. current decision-makers, attorney under a power of attorney, enduring guardian, etc).
- You must tell the Tribunal about people who may have a legitimate interest in this application, including people who may oppose the application.
- Please also include other interested people (e.g. social workers, doctor, family members, etc).

relationship to the person						
title		<input type="checkbox"/> Mr	<input type="checkbox"/> Mrs	<input type="checkbox"/> Miss	<input type="checkbox"/> Ms	<input type="checkbox"/> Other, specify
given names						
family name						
organisation (if applicable)						
street / PO Box						
suburb/town, state, postcode						
daytime phone				after hours		
mobile phone						
fax				pager		
email						
Have you spoken to this person about the application? <input type="checkbox"/> No <input type="checkbox"/> Yes						
Do you believe this person will support the application? <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Don't know						

Photocopy and complete this page as many times as you need to.

relationship to the person

title Mr Mrs Miss Ms Other, specify

given names

family name

organisation (if applicable)

street / PO Box

suburb/town, state, postcode

daytime phone after hours

mobile phone

fax pager

email

Have you spoken to this person about the application? No Yes

Do you believe this person will support the application? No Yes Don't know

relationship to the person

title Mr Mrs Miss Ms Other, specify

given names

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Have you spoken to this person about the application? No Yes

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relationship to the person

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given names

family name

organisation (if applicable)

street / PO Box

suburb/town, state, postcode

daytime phone after hours

mobile phone

fax pager

email

Have you spoken to this person about the application? No Yes

Do you believe this person will support the application? No Yes Don't know

6 Supporting information

As the person completing this form, you are responsible for ensuring that the Tribunal receives one or more reports that provide professional opinions in support of the application.

The Tribunal may be unable to schedule a hearing until these reports have been received.

The report(s) must cover:

- for financial management, a professional opinion about the person's ability to manage their financial affairs
- for guardianship, a professional medical opinion about the person's disability and a professional opinion about the persons capacity for making personal and lifestyle decisions.

The report(s) may be prepared by:

- a medical, health or other professional
- a lawyer or accountant involved in the person's financial affairs
- the provider of accommodation or services
- a counsellor or financial counsellor
- a social worker.

Professional opinions

Please list the reports supporting the application. You may tick both the financial management and guardianship boxes, if you are applying for both and the report addresses both.

title of report

author & organisation

for financial management

I have attached the report to this application

for guardianship

I have arranged for the report to be sent separately

title of report

author & organisation

for financial management

I have attached the report to this application

for guardianship

I have arranged for the report to be sent separately

title of report

author & organisation

for financial management

I have attached the report to this application

for guardianship

I have arranged for the report to be sent separately

Additional support documents

Please list below any additional documents (e.g. medical report, rent invoice, Power of Attorney, ACAT Assessment) that you have attached.

title of document

author & organisation

title of document

author & organisation

title of document

author & organisation

title of document

author & organisation

title of document

author & organisation

7 The hearing

Is there any reason why the person cannot attend the hearing? No Yes, briefly explain why

The Tribunal wants the person to attend the hearing unless that is impossible due to the person's ill health or some other special circumstance.

Does anyone associated with the application require special assistance at the hearing? No Yes, provide names and indicate the type of assistance required. For language interpreter, specify the language(s) required.

For example, wheelchair/mobility access, hearing loop, signing interpreter or language interpreter.

8 The applicant's declaration

Declaration

Having read through this completed application:

- I consider that, to the best of my knowledge, all of the information is true and accurate.
- I have not intentionally left out important information or the names of people who are likely to have a legitimate interest in this application.
- I understand that it is an offence to make a false or misleading statement in an application. (Penalty up to \$500.)

Signature of applicant

Date

Check that you have completed all relevant items and signed the form.

To lodge your application, return all 12 pages of the form. Please do not include the *Information for Applicants*.

***Guardianship
Tribunal***

Street address
Level 3, 2a Rowntree St
Balmain NSW 2041

Postal address
Locked Bag 9
Balmain NSW 2041

Telephone
(02) 9556 7600
1800 463 928 (toll free)
(02) 9552 8534
(telephone typewriter)

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Website
www.gt.nsw.gov.au