



## Guardianship Division Guideline August 2017

# Confidentiality, privacy and publication

## What does this Guideline explain?

1. This Guideline explains the rules about confidentiality, privacy and publication in the Guardianship Division of the Tribunal. It explains:
  - a) what information the Guardianship Division publishes about cases
  - b) who can go to Guardianship Division hearings
  - c) who can see documents filed in the case
  - d) what information other people, including the media, can publish and broadcast about Guardianship Division cases
  - e) how to ask for a private hearing or confidentiality order.

**Detailed information about matters in this Guideline may be found in the Tribunal's Policy documents (Publishing Reasons for Decision NCAT Policy No 2 and Access to, and publication of, Information Derived from Proceedings in the Tribunal Policy No 4.)**

The Policy documents may be found on the [NCAT website](#).

## Definitions

2. Definitions that explain words or concepts used in this Guideline are at the back of the Guideline.

## What does the Guardianship Division publish about cases?

3. The Guardianship Division publishes some of its decisions on the NSW Caselaw website.
4. The practice of the Guardianship Division is to publish decisions without including the name of any party (except a statutory party such as the NSW Trustee and Guardian), witness or any other person mentioned or otherwise involved in the proceedings. Detailed information about published decisions is set out in [NCAT Policy No 2 Publishing Reasons for Decision](#) (paragraphs 8-11 and 21-24).
5. Because of confidentiality issues, the Guardianship Division does not publish hearing lists on its website. Nor does it display hearing lists at the Tribunal.

## Who can go to hearings?

6. Hearings are generally open to the public, including media representatives.

7. On occasion, the Guardianship Division orders that a hearing, or part of a hearing, must be closed to the public because of the confidential nature of the evidence or case, or for any other reason. For how to ask for all or part of a hearing to be private – see paragraphs 19 to 21.
8. The “Protocol Applicable to Attending a Public Hearing” is in [NCAT Policy No 4 Access to and Publication of, Information Derived from Proceedings in the Tribunal](#) (paragraph 15)

### Who can see the documents filed in the case?

9. In general, all the *parties* have the right to see documents the Guardianship Division holds about the case in which they are involved. A fee may need to be paid if the request is made after the case has finished. Rule 62(5) of the Rules lists some exceptions to the documents parties are usually allowed to see.
10. Detailed information about access to documents by anyone who is *not a party* is in [NCAT Policy No 4 Access to, and publication of, Information Derived from Proceedings in the Tribunal](#) (paragraphs 23-28). See also rule 42 of the Rules.
11. The Registrar must take into account sections 4 and 101 of the Guardianship Act when making a decision about whether or not to allow a person who is not a party to a case to see the documents.

### What information can people publish or broadcast about a case?

12. No-one is allowed to publish or broadcast information about a case if:
  - a) it could, or is likely to, identify anyone involved in a case in the Guardianship Division<sup>1</sup>
  - b) the Tribunal has made a confidentiality order about the information. For more about this - refer to paragraphs 15 to 18, or
  - c) the Act or another law says the information must *not* be published or broadcast.<sup>2</sup>
13. Subject to the restrictions set out in paragraph 12, information about a Guardianship Division case can be published or broadcast.
14. For more information about this see [NCAT Policy No 4 Access to, and Publication of, Information Derived from Proceedings in the Tribunal](#). (paragraphs 5-9)

### What is a confidentiality order?

15. The Tribunal can make a confidentiality order<sup>3</sup> to ban or restrict the disclosure of information relating to a case if:
  - a) it is satisfied that it is too confidential or private to be published, seen or heard by others, or
  - b) for any other reason.

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<sup>1</sup> See section 65 of the Act and section 101 of the Guardianship Act.

<sup>2</sup> See section 67 and section 69 of the Act.

<sup>3</sup> See section 64 of the Act.

16. For more detailed information read [NCAT Policy No 4 Access to, and Publication of, Information Derived from Proceedings in the Tribunal](#). (paragraphs 2-9)
17. A confidentiality order or non-publication order can ban or restrict:
  - a) disclosure of the name of, and any identifying material about, any party, witness or other person
  - b) the publication or broadcast of any report of any type of hearing in the Guardianship Division
  - c) the publication of:
    - evidence given before the Tribunal (whether given in public or in private)
    - information in documents lodged with the Tribunal or received in evidence
  - d) the disclosure to some or all of the parties of:
    - evidence given before the Tribunal
    - the contents of a document lodged with the Tribunal or received in evidence.
18. If one of the parties makes a request, the Tribunal can make a confidentiality order. The Tribunal can also make a confidentiality order even where a party has not applied for one. The Tribunal can also change or cancel a confidentiality order.

### How can a party or witness ask for a private hearing or for a confidentiality order?

19. A party or witness can ask the Guardianship Division for:
  - a) all or part of a hearing to happen in private, or
  - b) anything else to be kept confidential.
20. A party or witness who wants the Guardianship Division to ban or restrict the disclosure of the contents of a document to some or all of the other *parties* must apply at the time they lodge the document. They must write to the Tribunal and explain which document or part of a document they want to be confidential, from whom, and why. This is explained in [NCAT Policy No 2 "Publishing Reasons for Decision"](#) (paragraphs 36 -38)
21. A party or witness who wants to ask for a private hearing or any other type of order restricting disclosure of information should write to the Tribunal *before* the hearing starts. They must explain what they want to be confidential and why.
22. A party may also request during a hearing that all or part of the hearing be in private, or for a confidentiality order, to be made.

### What do some of the words in this Guideline mean?

- **Act:** *Civil and Administrative Tribunal Act 2013 (NSW)*
- **Adjournment:** A postponement or delay, by order of the Tribunal, of any hearing, directions hearing or interlocutory hearing.
- **Guardianship Act:** *Guardianship Act 1987(NSW)*
- **Hearing:** A hearing, interlocutory hearing or directions hearing.

- **Party or parties:** A person is a party to proceedings in the Guardianship Division if they are:
  - Identified as a party in section 3F of the *Guardianship Act*
  - Identified as a party in section 35(2) of the *Powers of Attorney Act 2003* (NSW)
  - Identified as a party in rule 27 of the Rules
  - Joined by the Tribunal as a party under section 44 of the Act

For more information refer to the fact sheet - [Who is a party to proceedings in the Guardianship Division \[PDF, 88kB\]](#)

- **Registrar:** The Principal Registrar or any other person employed as a Registrar of the Tribunal
- **Rules:** Civil and Administrative Tribunal Rules 2014.

### **This Guideline applies to:**

Proceedings in the Guardianship Division of the Tribunal.

### **Effective Date:**

1 August 2017

### **Notes:**

You must use the latest version of this Guideline. The latest version of this Guideline is on the [NCAT website](#).

The law about the information in this Guideline is mainly in:

- Sections 49, 62, 64, 65, 67, 69 and 70 of the *Civil and Administrative Tribunal Act 2013*
- Rule 42 of the Civil and Administrative Tribunal Rules 2014
- Sections 4 and 101 of the *Guardianship Act 1987*.

There is a copy of this Act on the [NSW Legislation website](#).

### **Malcolm Schyvens**

Deputy President

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