

Policy: Internal Review of Decision

Purpose

This policy sets out the approach for managing requests for internal reviews of guardianship and financial management decisions for NSW Trustee and Guardian (NSWTG) in accordance with the [Administrative Decisions Review Act 1997\(NSW\)](#).

Policy statement

The internal review of decisions policy provides an avenue of appeal for customers, family members and other relevant stakeholders who may disagree with a decision made by NSW Trustee and/or the Public Guardian.

Scope

The policy applies to all NSWTG staff when responding to an Internal Review of Decision, including Public Guardian, Estate Management, Legal Services and Ministerial & External Relations.

Legislative context

This policy supports adherence to the:

[NSW Trustee and Guardian Act 2009](#)

[Guardianship Act 1987](#)

[Administrative Decisions Review Act 1997](#)

Definitions

Customer means a person under an estate management order (includes a person who has NSW Trustee as direct manager and a person who has a private manager appointed).

Decision The scope of what constitutes a 'decision' is defined by [Section 6 of the Administrative Decisions Review Act](#)

Estate Management means financial management functions, including private management

Guardianship means Public Guardian functions

NCAT means NSW Civil and Administrative Tribunal

NSW Trustee and Guardian means entire agency or across delivery areas

Public Guardian means referring to specific functions or actions taken by the Public Guardian as authorised by the person's guardianship order.

Reviewable decisions

The [Administrative Decisions Review Act 1997](#) usually requires that prior to a review being undertaken by NCAT an internal review of the decision is carried out by NSW Trustee and Guardian. However, pursuant to [Section 55 \(4\) of the Administrative Decisions Review Act 1997](#), NCAT has a discretion to deal with an application even though the applicant has not applied for an internal review. [Section 55 \(4\) \(a\) and \(b\)](#) sets out the circumstances.

Not all Public Guardian and Estate Management decisions made by the Public Guardian and the NSW Trustee on behalf of its customers are reviewable under the provisions of the [Administrative Decisions Review Act 1997](#). The decisions that are reviewable are those made in relation to part 4.5 Division 1 and Division 2 of the *NSW Trustee and Guardian Act* and Section [80A\(1\) of the Guardianship Act 1987 \(NSW\)](#).

Who can apply to have a decision internally reviewed

In the case of Estate Management customers, an application for an internal review can be made by:

- the person in respect of whose financial affairs the decision was made,
- the spouse of the person whose financial affairs we manage,
- a person appointed as private manager, or
- any other person that NSW Trustee and Guardian considers whose interests are adversely affected by the decision.

In the case of Public Guardian customers, as per Section [80A\(2\) of the Guardianship Act 1987 \(NSW\)](#) an application for an internal review can be made by:

- the person in respect of who the decision was made,
- the person who has the care of the person to whom the decision relates,
- the spouse of the person, or
- any other person that the NSW Civil and Administrative Tribunal considers whose interests are adversely affected by the decision.

Requesting an Internal Review

In accordance with Section 53 (2) (a) of the [Administrative Decisions Review Act 1997](#), requests for an internal review must be received in writing.

Who can carry out an Internal Review

For both Estate Management and Public Guardian reviews are carried out in accordance with [Section 53\(3\) of the Administrative Decisions Review Act 1997](#):

- an internal review of decision must be carried out by an officer who was not substantially involved in the process of making the decision under review,
- the reviewer must be an employee of NSW Trustee and Guardian,
- the reviewer must be suitably qualified to carry out the internal review and have the appropriate delegation to make the decision,

Timeframe for completion of an Internal Review

NSW Trustee and Guardian has 21 calendar days to complete the review from the date the request for an internal review of decision was received.

If unable to meet this timeframe, the reviewer must inform the person seeking the review of the delay. The person seeking the review has the right to make application directly to NCAT for a review of the decision if they do not accept the delay. This information must be provided to the person when notifying them of the delay.

If an extension is required, the reviewer must seek the approval of the relevant Director.

Internal Reviewer's responsibility

In reviewing a decision, the reviewer must consider any relevant material submitted by the applicant. This may include:

- the grounds provided for seeking an internal review,
- the rationale and all supporting evidence behind the original decision,
- assess any new evidence submitted

The internal reviewer has the delegated authority to:

- affirm the decision,
- vary the decision, or
- set aside the decision and make a new decision.

The Internal Reviewer must provide written/documented reasons for the outcome of the internal review to interested parties within 21 days or such other timeframe that the internal reviewer and the applicant agree on.

Administrative and Equal Opportunity Division of NSW Civil and Administrative Tribunal (AEOD of NCAT)

Following the internal review of decision process, if the person seeking a review of the decision disagrees with the outcome, they can make application to the AEOD of NCAT to review the decision. This must be done within 28 days from the date the person received the internal review.

For Estate Management matters, in accordance with [Section 62 of the NSW Trustee and Guardian Act 2009](#), NCAT can review decisions made pursuant to [Section 56](#), [Section 57](#), [Section 58](#), [Section 59](#) and [Section 60](#) with respect to directly managed customers. Decisions made under [Section 71](#) are also reviewable by NCAT. [Section 70 of the NSW Trustee and Guardian Act 2009](#) outlines reviewable decisions with respect to privately managed customers. However, this does not apply if the decision was made in accordance with a direction given by the Supreme Court to NSW Trustee and Guardian.

For Public Guardian matters, in accordance with [Part 7, Section 80A\(1\) of the Guardianship Act 1987](#), AEOD of NCAT can review any decision made in connection with the exercise of its functions under the [Guardianship Act 1987 \(NSW\)](#).

Document information

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