

Offender Services & Programs Corrective Services NSW

Policy for Making Guardianship Applications

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Policy for Making Guardianship Applications

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1 Policy statement and purpose

Corrective Services NSW (CSNSW) is committed to supporting inmates or offenders who have a disability (including mental illness) and are incapable of making their own decisions.

With the assistance of CSNSW staff, the Guardianship Division of the New South Wales Civil and Administrative Tribunal (NCAT) hears applications regarding people who need assistance to make informed decisions regarding aspects of their lives, including where they live; what medical treatment they will receive; and the management of their finances.

The purpose of this policy is to provide a consistent process across all Correctional Centres for deciding to make Guardianship applications and to provide procedures for undertaking the application process.

2 Application

The policy applies to CSNSW OS&P staff including SAPOs and Psychologists working with offenders, allowing them to make the decision to commence and complete the Guardianship Application. It is the responsibility of the individual staff member who identifies the inmate has a confirmed intellectual disability, cognitive impairment or mental health issue which hinders their capacity to make informed decisions and give consent and to apply for and lodge the Guardianship application.

There may be times when Statewide Disability Services (SDS) identifies that the person requires a Guardian and will require a staff member working directly with the person to undertake the application.

All applications to NCAT must be made in accordance with the [Guardianship Act 1987 \(NSW\)](#) (*Guardianship Act*).

All CSNSW staff must observe the principles of the *Guardianship Act*, which state that everyone who works with people with disabilities under the *Guardianship Act* has a duty to:

- prioritise consideration of the person's welfare and interests
- ensure that the person's freedom of decision and freedom of action is restricted as little as possible
- encourage the person to live a least restrictive and autonomous life
- take the person's view into consideration
- recognise the importance of preserving family relationships and cultural and linguistic environments
- encourage the person to be as self-reliant as possible in matters relating to their personal, domestic and financial affairs
- protect the person from neglect, abuse and exploitation
- encourage all CSNSW staff to apply and promote these principles.

Those NSW Correctional Centres that are subject to Operating / Management Service Agreements (a 'contract') and operated or managed either by the State or a private service provider will be required to meet the Service Specifications and Key Performance Indicators as detailed in respective contracts.

The Assistant Commissioner, Offender Management and Programs (OMP) has oversight for

implementing this policy. The Group Director, Offender Services and Programs (OSP) through the Director State-wide Services and Director State-wide Programs is responsible for monitoring compliance with the policy.

Governance and Continuous Improvement has responsibility for performance monitoring and reporting against associated Service Specifications and Key Performance Indicators.

3 Procedures

3.1 Procedures Flowchart

Determine the inmate is not currently a client of NSW Trustee and Guardian (NSW TAG) (via OIMS and SDS). Determine if the inmate does not currently have support. Determine whether the inmate requires a guardian, financial manager or both.

OS&P or Psychology staff member identifies the inmate or offender has a confirmed intellectual disability/cognitive impairment or mental health issue. See Justice Capacity Toolkit. Staff member must provide evidence on disability, incapacity and need. When there is no confirmed disability on the OIMS disability screen, a disability referral should be made to SDS. SDS will arrange for the inmate to be assessed. If the inmate has a disability confirmed from the assessment, SDS will review the data and notify the MOSP or delegate in the centre the inmate is housed to consider a TAG notification.

Complete the Guardianship application form, obtain and provide supporting documentation. Forward completed application to NSW Civil and Administrative Tribunal.

Update OIMS on the process. Scan and save the completed application to the inmate's EDRMS Case Management file.

Note: If an inmate is unable to consent to medical or dental treatment due to a lack of capacity, an application for medical treatment may be completed and referred directly to NCAT.

3.2 Guardianship Applications

3.2.1 Information

NCAT's Guardianship Division reviews applications for people who have been considered as having a decision making disability. If there is a concern about an inmate or offender's capacity to make personal or financial decisions independently, submit an application to NCAT outlining the need for guardianship and/or financial management. The Guardianship Division will review the application and determine the need for a legally appointed substitute decision maker.

What is a Guardian?

A guardian is authorised to make specific personal and lifestyle decisions on behalf of the person under guardianship. These may include decisions about where to live, what services to use and

consenting to medical and dental treatment. A guardian is not authorised to make financial decisions, although a person can be appointed as both guardian and [financial manager](#). The [Information for Applicants](#) fact sheet provides more information.

What is Financial Management?

A financial manager is appointed to make decisions on behalf of an inmate or offender not capable of making decisions about their finances. This refers to decisions around operating bank accounts, paying bills, investing money, selling or buying property and includes legal affairs such as instructing a solicitor to act in legal proceedings. NCAT may decide to appoint a private financial manager in the form of a family member or friend, otherwise the [NSW Trustee and Guardian](#) (NSW TAG) will be appointed to provide direct financial management services. TAG can be appointed in two ways, to provide:

- direct financial management services for an individual, or
- authorisation and direction to private financial managers.

The *Guardianship Act* sets out the limits of its responsibilities and functions and the principles to be applied when making decisions.

3.2.2 Intake Screening

If an inmate responds 'yes' to being a client of TAG during screening, the screener must create an electronic SDS notification completed on the OIMS Disability Screen. The screener must send an email to SDS@justice.nsw.gov.au and tagmail@tag.nsw.gov.au

On receipt of this information, SDS will determine:

- if the inmate was previously identified, and if so, will provide relevant advice regarding management and support.
- if the inmate is unknown to SDS, and if so, will liaise directly with relevant centre staff to organise assessment and provide intervention as required.

3.2.3 What should you consider before making an application?

Prior to commencing a Guardianship application, the staff member dealing with the inmate should first check the OIMS disability screen and alert screen to determine if the inmate is currently under the care of NSW TAG. If there is no information in OIMS relating to Guardianship and the inmate indicates he/she is a current client of NSW TAG, staff should:

- create a referral on the OIMS disability screen, noting the inmate claims to be a TAG client
- provide inmate details to tagmail@tag.nsw.gov.au and SDS@justice.nsw.gov.au

If the inmate is not under the care of NSW TAG, and has a confirmed disability, a staff member should consider a guardianship application. When there is no confirmed disability on the disability screen, a disability referral should be made to SDS. SDS will arrange for the inmate to be assessed. If the inmate has a disability confirmed from the assessment, SDS will review the data and notify the MOSP or delegate in the centre in which the inmate is housed to consider a TAG notification.

In both circumstances staff should consider the following prior to applying for guardianship:

- Does the person need a financial manager and/or guardian?
- Does the person lack the capacity to manage their financial affairs?

- Do they need someone to assist them in managing their lifestyle affairs?
- Are there any decisions that need to be made now that cannot be made by someone informally?

If you have answered yes to one or more of the below questions, the person you are applying for may **not** need a guardian.

- Is there already an enduring guardian in place making decisions for them?
- Is an attorney appointed under enduring power of attorney to assist them with financial decisions?
- Are friends, family or carers already assisting the person?

3.2.4 Capacity

The starting point in considering capacity must always be that the inmate or offender does have capacity. Everyone has the right to make decisions affecting their lives and to have those decisions respected, even when others do not agree with the decision an inmate or offender makes. An OS&P staff member should only consider challenging the presumption of capacity if there are concerns that the inmates disability could impact on their decision-making ability and there are significant risks with the decisions that the inmate or offender was making (or were made by others on their behalf).

Please refer to the [Justice Capacity toolkit](#) for more information regarding capacity and how to decide whether an inmate or offender has the capacity to make their own decisions.

Once the OS&P or Psychology staff member identifies the inmate has a confirmed intellectual disability/cognitive impairment or mental health issue, the following evidence must be provided:

- **Disability:** The inmate has some form of impairment or disability that impacts on their ability to make informed decisions e.g. dementia, brain injury, mental illness or cognitive impairment
- **Incapacity:** The inmate has been formally assessed as lacking capacity to make their own informed decisions in one or more areas of decision making
- **Need:** There is a need for a decision to be made or current concerns which would warrant the person having a guardian appointed at this point in time. There are no informal means by which the decision can be made.

A disability can be confirmed by reviewing the OIMS disability screen, case notes and psychology screens.

If assistance is required confirming a disability, SDS may be contacted for assistance at SDS@justice.nsw.gov.au

3.2.5 Consent

The purpose of undertaking these applications (Guardianship, Financial Management or Consent to Medical or Dental Treatment) is for an alternate decision maker to act on behalf of the inmate because we have deemed this inmate isn't able to make decisions. It is a requirement that the applicant informs the person an application is being made, but consent is not required.

3.2.6 Guardianship Applications

A Guardianship Application will request for a legally appointed decision maker to be responsible for making decisions regarding the inmate when he/she returns to the community, and not necessarily around Correctional Centre processes, for example classification and placement, cell placement, or program involvement. The decision maker's role will focus more on post release planning with the inmate in such areas as accommodation, NDIS and reintegration needs.

To proceed with a Guardianship Application, the SAPO will complete the [Guardianship Application Form](#).

As the applicant, the SAPO must:

- provide their details to NCAT (anonymous applications are not accepted)
- tell the person that they 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 the application and supply it to NCAT (see [Section 3.2.9](#) for supporting documentation)
- keep NCAT 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 NCAT)
- attend the hearing and arrange for the person to attend. Attendance may be in person or via telephone.

Note: If for any reason a SAPO cannot continue in the role, arrangements must be made, then inform NCAT via email at GD@ncat.nsw.gov.au. If advice is required during the process contact can be made with the NCAT Guardianship Division on **1300 006 228** and **press 2** for Guardianship Division matters.

3.2.7 Financial Management Applications

NCAT can appoint a financial manager or review an enduring power of attorney on behalf of an inmate or offender who is 16 years of age or over with decision-making impairment. This may be considered in the following circumstances:

- there is evidence of undue influence
- there are concerns that enduring power of attorney forms or other documents were completed when the person lacked capacity
- there is evidence of abuse or significant risk of financial exploitation
- the person has significant income and assets in NSW that need management
- there are pending financial contracts or payments to be arranged for essential services.

Please refer to the [Justice Capacity toolkit](#) for more information regarding capacity and how to decide whether an inmate or offender has the capacity to make their own decisions:

Refer to the [Information for Applicants - Application for appointment of a financial manager and/or appointment of a guardian](#).

3.2.8 *Medical or Dental Treatment Hearings*

If a medical or dental practitioner believes that a patient is not capable of informed consent, they must seek consent from a substitute decision maker. NCAT can provide consent to medical and dental treatment for patients who are unable to provide consent for themselves.

A substitute decision maker can be:

- their 'person responsible' under the *Guardianship Act*, or
- NCAT.

NCAT can determine applications for consent to medical and dental treatment in certain circumstances where an inmate is:

- unable to consent for themselves
- they are objecting to necessary proposed treatment
- where there is no responsible person available to consent on their behalf
- the person responsible cannot be located or is unwilling or unable to provide consent
- applications for [medical treatment](#) are referred directly to NCAT for hearing.

If an inmate refuses necessary medical treatment, an application can be made to NCAT for one off medical treatment, requesting the 'override objection function'.

If this is determined to be an ongoing concern, a review of the current order can be made seeking ongoing Guardianship authority to override refusal to consent to medical treatment.

3.2.9 *Supporting Documentation*

The applicant must provide NCAT with relevant evidence to support the application. Ensure that the parties are aware of the application and copies of the application are provided. The supporting evidence must include at least two reports from professional parties involved including one from the applicant (usually a SAPO and Psychologist), and General Practitioner and/or Psychiatrist if applicable. See [Annexure 1](#) for the *SAPO Pro Forma Guardianship Report* and [Annexure 2](#) for the *Psychology Pro Forma Guardianship report*.

NCAT will consider all evidence provided in their decision making process in order to determine the person's decision making capacity and identify any possible risks experienced by the person.

It is important to include all relevant information that supports the case for Guardianship application and financial management.

The information required by NCAT includes:

- contact details for the applicant (e.g. SAPO)
- an indication of the orders applied for: guardian or manager, or both
- contact details of the inmate or offender for whom the order is sought
- details of the proposed guardian (complete if applying for a guardianship order)
- report/s from SAPO, psychologist, doctor or other professional involved
- full contact details of relatives and friends
- detail why you believe the person is incapable of managing their finances (financial management)
- explain why there is a current need for someone else to make decisions on their behalf

(Guardianship application)

- it is in the person's best interests for an order to be made
- if there is a history of poor decision making
- if they have an intellectual disability/cognitive impairment
- history of mental health issues, current mental health status
- ability to make informed decisions and provide informed consent.

A NCAT Tribunal officer will contact the applicant, the person who is the subject of the application and anyone else that is significantly involved in the matter.

3.2.10 Lodging the Application

To lodge an application and attachments, the completed application with attachments should be sent via post to:

NSW Civil and Administrative Tribunal Guardianship Division
PO Box K1026,
Haymarket NSW 1240

Note: A copy of the NSW TAG application with all supporting documents is to be saved in the inmates EDRMS Case Management File.

Once NCAT receive the application, they require time to process it and will notify the applicant of the allocated date and time for hearing. A notice of the hearing and a copy of the application will be sent to all the parties listed on the application.

The applicant will be required to participate in the hearing and provide evidence as to why the application was submitted.

If there are any changes to the person's situation and increased risk to their wellbeing, NCAT should be notified.

3.2.11 Contacting NCAT

If assistance or information is required with the application process, NCAT can be contacted by:

Phone: 1300 006 228

Interpreter Service (TIS): 13 14 50

National Relay Service for TTY users: 13 36 77

Website: www.ncat.nsw.gov.au

For more information and assistance visit the NCAT website or contact NCAT's Guardianship Division on (02) 9556 7600 or 1300 006 228.

3.2.12 Contacting NSW Trustee and Guardian

Contact NSW TAG by:

Phone: 1300 360 466 or (02) 8688 2600

Fax: (02) 8688 9783

Email: tagmail@tag.nsw.gov.au

Website: <http://www.tag.nsw.gov.au>

3.2.13 *Withdrawing an Application*

If an applicant wishes to withdraw their application before it goes to a hearing, they are required to submit an [Application to withdraw](#). This can only be done with the permission of NCAT. Evidence needs to be provided to the tribunal outlining how the person's circumstances have changed. The Tribunal must be satisfied that there is no longer a need for the order for the withdrawal to be approved.

3.2.14 *OIMS Recording*

All Guardianship Applications are to be recorded under: *01OSP: Trustee and Guardian Processes*.

See [Annexure 4.3](#) for a list of the OIMS recording modules.

The SAPO must continue updating the OIMS service line during the progress of the application and hearing.

3.2.15 *EDRMS and Naming convention*

A copy of the NSW TAG application with all supporting documents is to be saved in the inmates EDRMS Case Management File.

The completed application should be saved in EDRMS with the following naming convention:

- *Description of document – document date - 0000MIN - SURNAME, First Name – DOB*

See EDRMS Document Naming Convention for SAPO and SSAPO roles [D17/713095](#).

3.3 Standards

This table outlines the standards for CSNSW's involvement in the NSW TAG process.

Task	Relevant paragraph within the policy	Average Time
Notification to SDS (disability referral and email) and TAG (email)	3.2.2	20 mins
Guardianship application	3.2.4	1 hour
Financial Management application	3.2.5	1 hour
Medical or Dental Treatment application	3.2.6	1 hour
SAPO Guardianship report	4.1	4.5 hours
Psychology Guardianship report	4.2	5.5 hours
Attending the NCAT Guardianship hearing in person or via telephone	3.2.9	3 hours

4 Annexures and forms

4.1 Annexure 1: SAPO Pro Forma Guardianship Report

***** SAMPLE ONLY- Please print the full form from EDRMS D19/0019890 *****

Communities
& Justice

Guardianship Division
NSW Civil and Administrative Tribunal,
John Maddison Tower,
86-90 Goulburn St
Sydney NSW 2000
DATE:

Services and Programs Officer Report

Name:
MIN:
Date of Birth:
Earliest Possible Release Date:
Latest Release Date:
Date of Report:

Purpose of Report
The current report was prepared to provide information to the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT) to support an application for guardianship for [name of offender].

Sources of Information
Information for this report has been collated from the following sources

- Offender Integrated Management System (OIMS) case notes, CSNSW
- CSNSW Electronic Document Record Management System (EDRMS)
- Community Corrections Pre Sentencing Reports, CSNSW
- Statewide Disability Services Offender File, CSNSW
- Interview/s with Mr/Mrs/Ms on (date/s)
- [other – insert as required]

Overview
Include:

- Age
- Aboriginal or CALD status
- Location/current housing
- Sentence details, EPRD and Parole status
- Previous accommodation history – and supports/services

Disability
Include:

- State if a report is being submitted by psychology to provide evidence of disability
- Outcome of most recent cognitive functioning assessment (mild/moderate/severe range of intellectual disability)
- Any other disability (sensory, physical)

Mental Illness

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4.2 Annexure 2: Psychology Pro Forma Guardianship Report

***** SAMPLE ONLY- Please print the full form from EDRMS D19/0019909*****



Communities
& Justice

Guardianship Division
NSW Civil and Administrative Tribunal,
John Maddison Tower,
86-90 Goulburn St
Sydney NSW 2000
DATE:

Psychological Report

Name:
MIN:
Date of Birth:
Earliest Possible Release Date:
Latest Release Date:
Date of Report:

Purpose of Report

The current report was prepared to provide information to the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT) to support an application for guardianship for [name of offender].

Sources of information

- Corrective Services NSW (CSNSW) Psychology File
- CSNSW Electronic Document Record Management System (EDRMS) Offender Integrated Management System (OIMS)
- [CSNSW Statewide Disability Services (SDS) File]
- [other – insert as required]

Background information

Include:

- Age
- Aboriginal or CALD status
- Location/current housing
- Sentence details, ERD and Parole status
- Previous accommodation history – and supports/services
- Family and relationship history – brief summary only, where relevant to current capacity for decision making

Current presentation

Include:

- Summary of mental status examination information
- Participation in programs in custody
- Current service provision in custody- e.g. psychology, SAPO, case management, other. Comment on engagement/participation/capacity to provide informed consent to receive these services

Assessment of cognitive functioning

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4.3 Annexure 3: OIMS Modules – 01OSP: Trustee and Guardian Processes

01OSP: Trustee and Guardian Processes	
SDS	OSP
SDS: Notification to TG	OSP: Notification to SDS
SDS: Confirmed TG client	OSP: Disability referral completed
SDS: Further information requested (Internal)	OSP: Further information requested (Internal)
SDS: Further information received (Internal)	OSP: Further information received (Internal)
SDS: Further information requested (External)	OSP: Further information requested (External)
SDS: Further information received (External)	OSP: Further information received (External)
SDS: Guardianship Application Processes	OSP: Guardianship Application Processes
SDS: OSP Guardianship report	OSP: OSP Guardianship report
SDS: Psychology Guardianship report received	OSP: Psychology Guardianship report received
SDS: TG Contact	OSP: TG Contact
SDS: TG Application Withdrawn	OSP: TG Application Withdrawn
	OSP: Notification to TG

EDRMS Ref	Annexures and Forms
D19/0019890	Annexure 1: SAPO Pro Forma Guardianship Report
D19/0019909	Annexure 2: Psychology Pro Forma Guardianship Report
N/A	Annexure 3: OIMS Modules – 01OSP: Trustee and Guardian Processes

5 Definition of terms

Terms	Definition
CALD	Culturally and Linguistically Diverse
CSNSW	Corrective Services New South Wales
EDRMS	Electronic Document Records Management System
Justice	New South Wales Department of Communities and Justice
JH&FMHN	Justice Health & Forensic Mental Health Network
MIN	Master Index Number
MOSP	Manager of Offender Services and Programs
NCAT	NSW Civil and Administrative Tribunal
NSW	New South Wales
NSW TAG	NSW Trustee and Guardian
OIMS	Offender Integrated Management System
OMP	Offender Management and Programs

OS&P	Offender Services and Programs
SAPO	Services and Programs Officer
SDS	Statewide Disability Services
SSAPO	Senior Services and Programs Officer

Note: All references to SAPO are to be interpreted as references to Services and Programs Officer / Alcohol and Other Drugs Officer / Welfare Officer

6 Document history

Version	Date	Reason for Amendment
1.0	22/11/2019	