

## The Guardianship Application Process for Adult Inpatients of NSW Health Facilities

**Summary** This Guideline will assist relevant professionals including medical, allied health, nursing and midwifery staff in NSW Health facilities to understand their roles and responsibilities in regards to preparing and recording applications to the Guardianship Division of NCAT.

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**Audience** Nursing, Medical, Allied Health, LHDs/SHNs, NSW MoH, Primary Health Networks, Affiliated Health Organisations

## **THE GUARDIANSHIP APPLICATION PROCESS FOR ADULT INPATIENTS OF NSW HEALTH FACILITIES**

### **PURPOSE**

This Guideline will assist relevant professionals, including medical, allied health, nursing and midwifery staff in NSW Health facilities to understand their roles and responsibilities when making an application to the Guardianship Division of NCAT.

### **KEY PRINCIPLES**

The Guideline aims to standardise practice across NSW Health facilities to improve the process for adult inpatients waiting for a guardianship hearing by ensuring that NSW Health facilities are aware of:

1. When an application to the Guardianship Division of NCAT is necessary and appropriate.
2. Who is responsible for coordinating the application.
3. Who to consult for advice when considering making a guardianship/financial management application.
4. Making applications and providing reports to the Guardianship Division of NCAT within seven days.
5. What assessments and evidence is required when submitting an application to the Guardianship Division of NCAT.
6. How to record data for patients waiting for guardianship on the patient flow portal.

### **USE OF THE GUIDELINE**

This document provides guidance to NSW Health inpatient facilities and their relevant staff when considering whether an application to the Guardianship division of NCAT is necessary. This document should be used as a practice guideline rather than a mandatory directive.

### **REVISION HISTORY**

<b>Version</b>	<b>Approved by</b>	<b>Amendment notes</b>
June 2017 (GL2017_013)	Deputy Secretary, System Purchasing and Performance	Revised Guideline following changes with NCAT processes.
November 2016 (GL2016_026)	Deputy Secretary, System Purchasing and Performance	New Guideline

### **ATTACHMENTS**

1. The Guardianship Application Process for Adult Inpatients of NSW Health Facilities: Guideline

**The Guardianship Application Process for Adult  
Inpatients of NSW Health Facilities**



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**Issue date:** June 2017

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## 1 BACKGROUND

### 1.1 About this document

The Guardianship Division of the New South Wales Civil and Administrative Tribunal (NCAT) hears applications about people who require assistance to make decisions regarding certain aspects of their lives, including where they are living, what medical treatment they will receive and managing their finances. The role of NCAT is to determine whether a person requires a legally appointed substitute decision maker and who that should be.

NCAT deal with the following types of applications which are most relevant to NSW Health:

1. Guardianship
2. Financial management
3. Review of existing power of attorney and/or enduring guardianship orders
4. Consent to medical and dental treatment
5. Approval of a clinical trial.

In NSW Health facilities there are approximately 80 inpatients per month waiting for the outcome of a guardianship hearing. The impact this has on the health system and patient outcomes is significant. This practice guideline has been developed to standardise practice across NSW Health facilities to improve the process for adult inpatients waiting for the outcome of a guardianship hearing.

This practice guideline will assist relevant professionals, including medical, allied health, nursing and midwifery staff in NSW Health facilities to understand their roles and responsibilities in respect to determining:

1. When an application to the NCAT are necessary and appropriate?
2. Who is responsible for coordinating the application?
3. Who to consult for advice when considering making an application to NCAT?
4. Assessments and what evidence is required when submitting an application to NCAT?
5. How to record data for patients waiting for the outcomes of guardianship applications on the patient flow portal?

#### Exclusions

This document does not address guardianship applications for patients who are under 16 years of age. For more information visit the [Family and Community Services Website](#) and the [Children and Young Persons \(Care and Protection\) Act 1998](#) (NSW).

Whilst this document does not include outpatients who are in the community, it can be used to assist all NSW Health staff to make applications to NCAT.

## 1.2 Key definitions

<p>Capacity</p>	<p>Capacity refers to a person’s ability to make decisions about things that affect their daily lives. For example, where they are going to live, what medical treatment they receive and how they will spend their money.</p> <p>It is always presumed that a person has capacity until proven otherwise.</p> <p>Capacity is decision specific. A person’s capacity can vary depending on the decisions to be made, in different circumstances and at different times.</p> <p>Broadly speaking, when a person has capacity to make a particular decision, they are able to do the following:</p> <ul style="list-style-type: none"> <li>• understand the facts and the choices involved</li> <li>• weigh up the consequences of the choices</li> <li>• understand how the consequences affect them, and</li> <li>• communicate the decision</li> </ul> <p>(Capacity Toolkit, NSW Attorney General’s Department. 2009).</p> <p>For further information on conducting capacity assessments refer to:</p> <ol style="list-style-type: none"> <li>1. <a href="#">Capacity Toolkit</a></li> <li>2. <a href="#">Decision-making capacity &amp; dementia. A guide for Health Care Professionals in NSW. Mini-legal kit Series 1.7</a></li> <li>3. <a href="#">Capacity and the Law (O’Neill &amp; Peisah, 2011)</a></li> </ol>
<p>Coercive functions  (Sometimes known as coercive orders)</p>	<p>Coercive functions authorise a guardian to implement decisions even when the person subject to the guardianship order objects. The coercive function allows the guardian to request assistance from others to enforce the decision, e.g. Police, Ambulance. Only NCAT or the Supreme Court can approve a coercive function. For example, a coercive accommodation function may give a guardian the authority to enforce the decision that a person must enter residential aged care, even if that person disagrees. The guardian with a coercive function is able to request assistance from police and ambulance to enforce the decision.</p>
<p>Deaf interpreter</p>	<p>A Deaf Interpreter (or ‘Relay Interpreter’) is recognised by the National Accreditation Authority for Translators and Interpreters as having the necessary skills to provide a unique language or communication bridge for deaf individuals whose communication mode cannot be adequately accessed by a standard Auslan-English interpreter. (adapted from <a href="https://www.naati.com.au">https://www.naati.com.au</a>)</p>

Disability	<p>The <a href="#">Guardianship Act 1987 Part 1 Section 3 (2)</a> refers to a person with a disability as someone:</p> <ul style="list-style-type: none"> <li>(a) Who is intellectually, physically, psychologically or sensorily disabled</li> <li>(b) Who is of advanced age</li> <li>(c) Who is a mentally ill person within the meaning of the <a href="#">Mental Health Act 2007</a>, or</li> <li>(d) Who is otherwise disabled, and who, by virtue of that fact, is restricted in one or more major life activities to such an extent that he or she requires supervision or social habilitation.</li> </ul>
Financial Manager	<p>A financial manager is a person with the legal authority to make financial decisions on a person’s behalf. NCAT or the Supreme Court can appoint a family member or friend (private person) or the NSW Trustee and Guardian (NSW TAG) as a financial manager.</p> <p>NCAT can appoint a financial manager if it is satisfied that:</p> <ul style="list-style-type: none"> <li>(a) The person is not capable of managing their affairs and</li> <li>(b) There is a need for another person to manage those affairs and</li> <li>(c) It is in the persons best interests to have a financial manager appointed</li> <li>(d) The person has assets in NSW.</li> </ul> <p>An appointment of a financial manager suspends enduring powers of attorney arrangements that were in place (if any) unless the order indicates otherwise.</p>
Guardian	<p>A guardian is a substitute decision-maker appointed by NCAT or the Supreme Court with authority to make health and lifestyle decisions about the person under guardianship. A guardian is appointed for a specified period of time and is given specific functions (e.g. the power to decide where the person should live, what services they should receive and what medical treatment they should be given). Wherever possible a private guardian - a family member or friend - will be appointed/ If no such person is available, NCAT will appoint the <a href="#">NSW Public Guardian</a>.</p>
<i>Guardianship Act 1987</i>	<p>The <a href="#">Guardianship Act 1987</a> is the key legislation in NSW which protects the rights of people with impaired decision making capacity. It sets out the responsibilities and functions of the appointed guardian, the role of NCAT and the principles to be applied when working with people with decision making disabilities.</p>



Guardianship Division of NSW Civil and Administrative Tribunal (NCAT)	The NSW Civil and Administrative Tribunal (NCAT) is the one-stop-shop for specialist tribunal services in NSW. The <a href="#">Guardianship Division</a> of the NSW Civil and Administrative Tribunal exercises a protective jurisdiction under the <i>Guardianship Act 1987</i> . Its purpose is to protect and promote the rights and welfare of adults with impaired decision making capacity.
Enduring Guardian	<p>An enduring guardian is appointed by the person (not NCAT) to make lifestyle, health and medical decisions for them when they are no longer capable of doing this for themselves. An enduring guardian can make decisions such as to where the person lives, what services are provided to them at home and what medical treatment they receive. An enduring guardian, like all guardians, is appointed with specific authority that is listed in the Enduring Guardianship appointment form.</p> <p>An enduring guardian is appointed whilst the person still has capacity however enduring guardianship only comes into effect if or when capacity to make decisions is lost and will only be effective during the period of incapacity.</p> <p>If the person disagrees with the decisions being made for them by the enduring guardian then an application can be made to NCAT or the Supreme Court.</p>
Power of Attorney	A power of attorney is an individual person or trustee organisation appointed by the person (not NCAT) to manage their assets and financial affairs whilst they are still alive and have capacity. If the person appoints a power of attorney this does not mean that they will lose control over their financial affairs. It simply gives their attorney formal authority to manage their financial affairs according to their instructions. The power of attorney can be revoked at any time provided the person has the capacity to do so. A power of attorney stops operating when a person loses capacity. At this point an enduring power of attorney can take over if they were appointed prior to the person losing capacity.
Enduring Power of Attorney	<p>An enduring power of attorney is an individual person/s or trustee organisation which is appointed by the person (not NCAT) to take control of their financial affairs and make financial and legal decisions on their behalf, for example selling their house or operating their bank account. An enduring power of attorney has the authority to make financial decisions on the person's behalf when they no longer have capacity. An enduring power of attorney ceases once a person dies.</p> <p>If an enduring power of attorney is required but the person no longer has the capacity to understand the implications of appointing such a person, then an application will need to be made to NCAT or the Supreme Court for appointment of a financial manager.</p>

<p>NSW Public Guardian</p>	<p>The NSW Public Guardian is an independent statutory official who may be appointed by NCAT to make guardianship decisions for people with a disability, incapacity and need for a decision to be made. The Public Guardian makes health and lifestyle decisions. The Public Guardian runs the Private Guardian Support Unit to assist private and enduring guardians and a community information service. The NSW Public Guardian does not make financial decisions and is a separate office to NSW TAG.</p>
<p>New South Wales Trustee and Guardian (NSW TAG)</p>	<p><a href="#">The NSW Trustee and Guardian</a> is an independent statutory authority that protects and administers the financial affairs and property of people and are unable to make financial decisions. They also oversee the functions of private managers. NSW TAG may be appointed by NCAT to act as financial manager if there is no other suitable person who can act in the role for the person (<a href="#">About Us - The NSW Trustee and Guardian</a>). NSW TAG does not make health or lifestyle decisions and is a separate office to the NSW Public Guardian.</p>
<p>Party to Proceedings</p>	<p>Party to proceedings refers to a person who has a right to participate in matters heard before NCAT. These people may include:</p> <ul style="list-style-type: none"> <li>• The person who is the subject of the application or review</li> <li>• The spouse or de facto spouse with whom the person has a close, continuing relationship. (includes same sex partners) if any</li> <li>• The carer of the person who is the subject of the order or application (excluding paid carers) if any</li> <li>• A person appointed under an enduring guardianship or enduring power of attorney if any</li> <li>• The person who made the application for an order or review of an order</li> <li>• Any person that NCAT joins as a party.</li> </ul> <p>(NSW Civil and Administrative Tribunal, 2016) Refer to the <a href="#">NCAT Factsheet – Who is party to proceedings in the Guardianship Division</a> for more information</p>

<p>Person Responsible</p>	<p>When a patient lacks capacity and it is not an emergency, all health care practitioners are required under law to consult and seek consent for medical and dental treatment from the patient's 'person responsible'.</p> <p>For patients 16 years and older, the 'person responsible' is determined according to the hierarchy within the Guardianship Act 1987 (NSW):</p> <ul style="list-style-type: none"> <li>• An appointed guardian (including enduring guardian) with the function of consenting to medical and dental treatment. If there is no-one in this category:</li> <li>• A spouse or de facto spouse (including same sex partner) who has a close and continuing relationship with the person. If there is no-one in this category:</li> <li>• The carer or person who arranges care regularly or did so before the person went into residential care, and who is unpaid (note: the carer's pension does not count as payment). If there is no-one in this category:</li> <li>• A close friend or relative.</li> </ul> <p>A person responsible cannot consent to treatment where the patient objects, or where the treatment is "special medical treatment".</p> <p>Note: terms used such as 'next of kin', 'contact person' or 'family' on patient records does not necessarily correspond with the legally defined 'person responsible' and you should follow the hierarchy above to ensure consent is obtained from the correct person.</p>
<p>Restrictive Practices</p>	<p>A restrictive practice generally involves physically restraining a person or limiting their freedom of movement or access to objects. Restrictive practices usually arise in the context of managing challenging behaviour.</p> <p>Restrictive practices should only be used in the context of a holistic response to the person's needs, and in particular, to the factors that may be causing the behaviour. The restrictive practice aims to control or contribute towards changing the behaviour.</p> <p><a href="#">NCAT Fact Sheet, Restrictive Practices and Guardianship</a> (August 2016)</p>

Special Medical Treatment	<p>Special medical treatment means:</p> <p>(a) Any treatment that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out, or</p> <p>(b) Any new treatment that has not yet gained the support of a substantial number of medical practitioners or dentists specialising in the area of practice concerned, or</p> <p>(c) Any other kind of treatment declared by the regulations to be special treatment for the purposes of this Part,</p> <p>(d) But does not include treatment in the course of a clinical trial.</p> <p><i>(Guardianship Act 1987 Part 5 Division 1 Section 33)</i>  <a href="#">NCAT Fact Sheet, Special Medical Treatment Guidelines</a> (April 2016)</p>
Substitute Decision Making	<p>Substitute Decision Making occurs where there is a formal legal arrangement in place for someone to make substitute decisions by using an advance care directive, an enduring guardianship, a power of attorney or a guardianship or financial management order by NCAT.</p>

### 1.3 Abbreviations

IDT	Interdisciplinary Teams
LHD	Local Health District. Also used throughout this document to include and refer to other public health organisations
NCAT	The Guardianship Division of the NSW Civil and Administrative Tribunal
NSW	New South Wales
NSW TAG	New South Wales Trustee and Guardian
OPG	Office of the Public Guardian
SHN	Specialty Health Network

### 1.4 Legal and legislative framework

#### 1.4.1 Capacity

In order for NCAT to consider an application, it must have evidence of diminished capacity. In Australia there are a number of legal tests which determine a person’s capacity, depending on the type of decision to be made (NSW Attorney General’s Department, 2015).

The [Capacity Toolkit](#) expands on this and reports that when a person has capacity to make a particular decision, they are able to do all of the following:

- Understand the facts involved
- Understand the main choices
- Weigh up the consequences of the choices
- Understand how the consequences affect them
- Communicate their decision.

(NSW Attorney General’s Department 2009, Capacity Toolkit, p18)

The *Guardianship Act 1987* notes that a person is incapable of giving consent to the carrying out of medical or dental treatment if the person:

- Is incapable of understanding the general nature and effect of the proposed treatment, or
- Is incapable of indicating whether or not he or she consents or does not consent to the treatment being carried out.

#### **1.4.2 Principles of the *Guardianship Act 1987***

All applications to NCAT must be made in accordance with the *Guardianship Act 1987* and its associated principles.

All NSW Health employees must observe the principles of the *Guardianship Act 1987*. The *Guardianship Act 1987 principles* state that everyone who works with people with disabilities under the Act has a duty to:

- Give the person's welfare and interests paramount consideration
- Ensure the person's freedom of decision and freedom of action is restricted as little as possible
- Encourage the person to live a normal life in the community
- Take the person's views into consideration
- Recognise the importance of preserving family relationships and cultural and linguistic environments
- Encourage the person to be self-reliant in matters relating to their personal, domestic and financial affairs
- Protect the person from neglect, abuse and exploitation
- Encourage the community to apply and promote these principles.

(Guardianship Act 1987).

## 2 RESPONSIBILITIES

### 2.1 Chief Executives of Local Health Districts (LHD) and Specialist Health Networks (SHNs) are responsible for:

- Recognising that as applications will be made to NCAT in the name of the LHD (and not in the name of an individual clinician), there may be potential for legal and financial implications for the LHD in the event that a decision is appealed
- Ensure appropriate Delegations are in place so that staff are able to lodge applications in the name of the LHD. Ensure that the staff member lodging the application has the appropriate Delegation to do so
- Ensuring that the staff responsible for lodging applications to NCAT on behalf of the LHD are appropriately supported and resourced
- Supporting the interdisciplinary team in accessing specialists' assessments in a timely manner to aid in the application process as detailed in this practice guideline.

### 2.2 All NSW Health facility clinicians are responsible for:

- Working in accordance with:
  - the [Guardianship Act 1987](#) and its associated principles
  - the [Disability Discrimination Act 1992](#) and its associated principles
  - the [Disability Inclusion Act 2014 \(Cth\)](#) and its associated principles
- Identifying patients at risk (see section 5.1) discussing at risk patients with the interdisciplinary team and incorporating all the team members views when making a decision regarding the need for an application to NCAT
- Referring at risk patients (see section 5.1) to a social worker if possible
- Supporting an at risk patient or a patient with an identified disability to make informed decisions where needed
- Using professional interpreters to communicate with patients and/or carers, in accordance with [Policy Directive PD2006\\_053 : Standard Procedures for Working with Health Care Interpreters](#)
- Undertaking assessments to validate capacity concerns
- Making applications to NCAT on behalf of the organisation or LHD not as an individual clinician
- Preparing and submitting applications (on behalf of the LHD) and reports within 7 (seven) days of the decision being made by the interdisciplinary team that an application to NCAT is required
- Following the procedure set out in [Section 5](#) of this practice guideline
- Being available to participate as a witness to the guardianship hearing either in person via video link or by phone.

### 2.3 Medical teams are responsible for:

- Submitting applications in relation to consent for medical and dental treatment to NCAT
- Conducting assessments to assist in determining capacity and risk

- Informing the patient and their carer/family (if appropriate) of the concerns regarding the patient's decision making ability and plan for further assessments
- Referring patients for review to expert clinicians (e.g. geriatrician and/or psychiatrist, rehabilitation, psychologists, clinical neuropsychologist, neurology specialists and allied health) if further assessment is required to determine capacity
- If a patient has an intellectual disability consider consulting with an [Intellectual Disability Service](#)
- Documenting in the patient's health care record when they are medically stable (or not suffering from any irreversible cause of infection e.g. delirium, UTI etc.) prior to any formal capacity testing taking place
- Acting on the recommendations of other clinicians and health professionals
- Preparing and submitting a medical report within 7 (seven) days of the decision being made that an application to NCAT is required
- Continuing to coordinate and review management plans to address ongoing risks to the patient during their admission and whilst waiting for a guardianship hearing
- Being available to participate as a witness to the guardianship hearing either in person, via video link or by phone.

#### 2.4 Social workers are responsible for:

- Assessing the risk to the patient (see section 5.1) regarding the decision/s in question
- Assessing the need for a substitute decision maker
- Exploring whether there are any appropriate decision making arrangements already in place
- Considering conflict of interest issues that may arise with current substitute decision making arrangements and the capacity of substitute decision makers to fulfil the role
- Conducting or requesting assessments to assist in determining capacity
- Coordinating the guardianship/financial management application and process to appoint an applicant if appropriate
- Where the social worker is making the application on behalf of the LHD:
  - Entering the process of recording patients waiting for guardianship on the Patient Flow Portal as per the Data Capture – Recording Patients Waiting for Guardianship Guideline (see [Appendix E](#))
  - Prompting colleagues to complete and submit all reports to NCAT within 7 (seven) days from the time the decision was made that an application to NCAT was necessary. (Application and reports should be submitted together in order for NCAT to consider it lodged and proceed to hearing).
  - Completing the Social Work Report Template (where required) and submitting this to NCAT within 7 days from the time the decision was made that an application to NCAT was necessary (see [Appendix B](#))
  - Ensuring that the NCAT application and reports have been served to the parties and subject person (see [Information for Applicants - Guardianship and financial management applications factsheet](#))



- Ensuring the patient subject to the NCAT application has been provided with all reports and served with the notice of hearing. The patient should be given the opportunity to ask any questions regarding the reports or discuss any concerns they have
- Advising NCAT of any special needs that the patient has e.g. interpreter and/or hearing or vision needs, confirming patient's transport arrangements to the hearing and/or advising NCAT of suitability of alternate venue for the hearing
- Updating the Nursing Unit Manager (NUM) and Interdisciplinary team on a regular basis regarding the progress of the application to NCAT
- Attend the hearing in person but if this is not possible via video link or teleconference
- Where the social worker has not made an application on behalf of the LHD, they should assist the appointed applicant (e.g. family member) to minimise any delay
- Liaising with the appointed guardian and/or financial manager following the hearing
- Coordinating the relevant information required by the substitute decision maker, for example an accommodation proposal for a residential aged care facility needs to include background information and the suitability of available residential aged care facility beds.

## **2.5 All other allied health professionals are responsible for:**

- Making applications (on behalf of the LHD) within 7 (seven) days of the decision being made by the interdisciplinary team that an application to NCAT is required if it has been identified that they are the most suitable clinician to do so
- Conducting assessments to assist in determining function, capacity and risk
- Preparing and submitting a [Health Professionals Report](#) (when required) within 7 (seven) days of the decision being made that an application to NCAT is required. For Occupational Therapists an alternate report template has been provided as [Appendix C](#)
- Providing recommendations to manage risk to the interdisciplinary team
- Being available to participate as a witness to the guardianship hearing either in person, via video link or by phone
- Assisting with discharge planning.

## **2.6 Nurses and midwives are responsible for:**

- Making applications (on behalf of the LHD) within 7 (seven) days of the decision being made by the interdisciplinary team that an application to NCAT is required if it has been identified that they are the most suitable clinician to do so
- Conducting assessments to assist in determining capacity and risk
- Documenting patient's ability to self-care and, manage medication etc. in the patient's health care record
- Preparing and submitting a [Health Professionals Report](#) (when required) within 7 (seven) days of the decision being made that an application to NCAT is required



- Alerting the medical team to any concerns or increased risk to the patient immediately, for example: patient absconding, becoming aggressive or other immediate concerns for their safety/welfare
- Assisting with organising transport for the patient to and from an NCAT hearing
- Arranging an appropriate nursing escort for the patient to and during the NCAT hearing if required
- Discharge planning.

## **2.7 Rural and remote areas**

In rural areas where there is no access to social workers or clinical neuropsychologists, it is suggested there is a discussion with the medical team around who is the most suitable person to complete the application and reports to NCAT. It is important that the applicant is someone who can have ongoing contact with the patient and has an interest in the patient's wellbeing, for example, the nursing unit manager.

## **3 ALTERNATIVES TO GUARDIANSHIP**

If the patient lacks capacity and there are appropriate informal arrangements in place that are working or the patient is not disagreeing with the decisions that are currently being made, then there is no need to make an application to NCAT.

NCAT can only make orders appointing a substitute decision maker where there are no appropriate decision making arrangements already in place, or the arrangements in place are not working in the best interests of the person, and all other avenues have been exhausted, for example:

- Multiple discussions with the patient have taken place
- Family conferences have been conducted
- All reversible causes of cognitive impairment have been excluded and/or treated in addition to the patient being back to baseline or at their optimum level of function
- A trial of discharge with maximum community services or
- Supported/assisted decision making.

### **3.1 Supported/Assisted Decision Making**

Assisting or supporting someone to make a decision means giving them the tools they need to make the decision for themselves. For a person with decision making impairment it is about supporting the person to make their own decision, and in doing so, safeguarding their autonomy. It does not mean making the decision for them. A person's right to make decisions is fundamental to their independence and dignity.

Capacity principle 6 in the [Capacity Toolkit](#) states that before you assess someone as not being capable of making a certain decision themselves, you need to do everything you can to support them through the decision-making process. This involves providing them with all the options including pros and cons and ensuring family and carers are involved (where appropriate). The support you will be able to give varies, depending on the following:

- What decision is being made? For example, a significant one-off decision will require different support from day-to-day decisions
- What are the circumstances of the person making the decision? For example: communication techniques and language may change dependant on the type of disability.

It is always important to find the most effective way to communicate with the person. Speech pathologists are a key service in identifying ways to communicate with people with complex communication needs.

- How much time does the person have to make the decision? The person will need time to discuss and consider and ideally experience the options and reflect on their preferences and dislikes.
- For example: a deaf person may sometimes or always require a Deaf interpreter as well as an Auslan interpreter (see definition p4) or if the person has a cognitive disability a speech pathologist might be able to provide alternate appropriate tools for communication.

If there are concerns that those supporting the person are unduly and negatively influencing the person and that there are no other available sources of support for the person an application to NCAT may be triggered.

For further information on how to support a patient to make their own decision refer to the [Capacity Toolkit](#) (Section 6).

## 4 TYPES OF APPLICATIONS TO NCAT

NCAT deal with the following types of applications which are most relevant to NSW Health:

- Guardianship
- Financial management
- Review of enduring power of attorney and/or enduring guardianship appointments
- Consent to medical and dental treatment
- Consent to clinical trials.

### 4.1 Guardianship

Before appointing a guardian, NCAT must have evidence of the following:

1. **Disability** – The person 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 and
2. **Incapacity** – The person has been formally assessed as lacking capacity to make their own informed decisions in one or more areas of decision making and
3. **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.

NCAT can appoint a guardian to make health and lifestyle decisions on behalf of a person aged 16 years and over with decision making impairment. This may include, but is not limited to decisions regarding:

- Where the person should live
- What support services the person should use
- What ongoing healthcare and medical treatment the person should receive
- If restrictive practices are appropriate in the management of the person's behaviour.

## **4.2 Financial Management & Reviewing an Enduring Power of Attorney**

NCAT can appoint a financial manager or review an enduring power of attorney on behalf of a person who has a decision making impairment. This may be considered in circumstances such as:

- There is evidence of undue influence
- There are concerns that enduring power of attorney forms were completed when the patient lacked capacity to make these decisions
- There is evidence of abuse or significant risk of financial exploitation occurring
- A person has income and assets that need management and
- There are pending financial contracts to be signed e.g. entering Residential Aged Care Facilities or payments need to be arranged for essential care services.

NCAT will only make a financial management order if:

- The person is not capable of managing their affairs
- There is a need for someone else to manage their affairs for them
- It is in the person's best interests to have a financial management order
- The person has assets in NSW and/or regularly resides in NSW.

(Civil and Administrative Tribunal, 2014)

## **4.3 Consent to Medical or Dental Treatment**

Refer to Section [1.4.1](#) for information on capacity to consent to medical and dental treatment.

For most medical and dental treatment, the patient's 'person responsible' can give consent, or refuse consent to the carrying out of treatment on behalf of the patient.

However, the 'person responsible' cannot give consent for special treatment or if the patient is objecting to the treatment. An objection includes:

- If the person indicates that he or she does not want the treatment to be carried out or
- If the person has previously indicated in similar circumstances that he or she did not want the treatment and has not subsequently indicated to the contrary and

- The 'person responsible' is aware, or ought reasonably to be aware, that the patient objects to the treatment.

In this situation, or in circumstances where there is no 'person responsible', an application can be made to NCAT for NCAT to provide consent for the treatment. If treatment decisions are ongoing, the medical officer may need to consider making an application to NCAT for the appointment of a guardian with health care and medical and dental consent functions to provide ongoing substitute consent for the patient.

Applications which are primarily for consent to medical or dental treatment should be submitted by the relevant medical teams. It may not be necessary to refer to other disciplines if the matter is urgent and there is clear evidence of incapacity. There is a separate application form which will need to be completed. This form can be found on the [NCAT website](#). If the matter is urgent please refer to section [5.10.3](#) and [5.12](#) of this guideline.

There is no need to obtain consent from the person responsible (or NCAT) where:

1. The treatment is required, as a matter of urgency, to save the person's life, prevent serious injury to health, or alleviate significant pain and distress (the emergency exception) or
2. The proposed treatment is minor treatment, the patient is not objecting, consent cannot be obtained from the person responsible and the treatment is necessary to promote the patient's health and wellbeing.

(NCAT Factsheet - [Consent to Medical and Dental Treatment](#), 2014).

For further information on decision making and consent refer to the NSW Ministry of Health Policy Directive, [Consent to Medical treatment – Patient Information PD2005\\_406](#).

## **5 PROCEDURE**

Refer to [Appendix D](#). Flow Chart - Making applications for guardianship and financial management orders.

### **5.1 Is the patient at risk?**

Patients who are vulnerable and at risk of poor health and safety are often in circumstances where:

- There are concerns of neglect
- They are living in squalor
- They are homeless
- There are allegations of domestic violence
- Abuse or financial exploitation may have occurred or there is significant risk of this occurring
- Threats to safety have been identified or
- Where conditions of impaired physical function, cognitive impairment, mental health issues and developmental disabilities exist.

A patient who presents in one of these circumstances above along with other key markers may trigger a health professional to question the need to further assess. These other key markers may include:

- Frequent presentations to the Emergency Department with relevant risk factors such as unkempt appearance, cognitive impairment, poor functional status, insufficient social supports or
- Evidence of neglect, assaults, abuse, conflict between carer, family members or 'person responsible'
- Non-compliance with medications and other health-care interventions.

## **5.2 What referrals/consultations will I require to help identify level of risk?**

Where a person has been identified as having relevant risk factors to their health and safety the following should occur:

- Appropriate allied health referrals should be made for completion of allied health assessments for example, clinical neuropsychology, psychology, physiotherapy, occupational therapy, social work, dietician and speech pathology
- Referrals to clinical nurse consultants (CNC) e.g. CNCs who specialise in dementia and delirium (if appropriate)
- The social worker should conduct a psychosocial assessment, identify risks, and if possible the patient's wishes and preferences
- The social worker should where possible liaise with the 'person responsible', family, carers and community members and/or community health personnel to gather evidence regarding any discharge, social or safety concerns, patient's previous wishes and whether there is already a suitable substitute decision maker available
- All assessments should be documented in the patient's healthcare record
- An inter-disciplinary meeting should take place (case conference) to discuss the level of risk identified and appropriate response.

## **5.3 Does the patient need a capacity assessment?**

Always start with the assumption that a person has capacity. Each individual has the right to make their own decisions if they are able to even when you don't necessarily agree with the decision a person makes. Always assess the person's decision making ability and not the decision they make.

A health professional would only consider challenging the presumption of capacity if there were concerns that the patient has a disability that could impact on their decision making ability and there were significant risks with the decisions that the patient was currently making (or were made by others on their behalf).

All options should be provided to the patient in order to support their independent decision making ability (see section 3.1). If there are still concerns regarding the patient's decision making ability the following should occur:

1. The social worker should consult with the interdisciplinary team regarding the risks identified, whether there is a need for a substitute decision maker to be appointed and which specific decisions need to be made for the person
2. A family conference should be considered to explore any other informal arrangements or options that may be available to determine the least restrictive decision
3. The medical team must inform the patient and their carer and family about why they think the patient is at risk and that they suspect the patient is not making a sound decision. The medical team must also inform the patient and their carer and family that they will be conducting further assessments and making a referral for a capacity assessment to be completed (if they are not conducting this themselves). It must be documented in the patient's health care record when they were informed (date/time) and who informed them
4. The patient needs to be informed that the outcome of the assessment may result in an application being submitted to NCAT. This must be done in an appropriate language for the patient to understand and needs to be recorded in the patient's health care record. It is important to book professional interpreters if the patient does not use English as their first language
5. The medical team may need to consult with a geriatrician, clinical neuropsychologist and/or psychiatrist regarding complex cases
6. A capacity assessment needs to be completed and must be documented in the patient's health care record.

A person must be assessed as incapable of making informed decisions in one or more of the areas of accommodation, medical/dental treatment, services or other functions of decision making before an application for guardianship is made.

A person must be assessed as incapable of managing their financial or legal affairs before an application for financial management is made.

#### **5.4 How do I determine capacity?**

Comprehensive, interdisciplinary assessments need to be completed to assist in establishing the person's capacity.

Interdisciplinary assessments may include:

- Medical assessments including impact of diagnoses and/or disability and prognosis
- Completed cognitive screening tools e.g. Mini-Mental State Exam (MMSE), Rowland Universal Dementia Assessment Scale (RUDAS), Adenbrook's Cognitive Examination (ACE-R) or the Montreal Cognitive Assessment (MoCA)
- A psychologist or clinical neuropsychologist assessment to determine cognitive impairment or type of dementia.
- Allied health assessments (occupational therapy, physiotherapy, dietitian, social work and speech pathology if appropriate)
- Functional assessments including premorbid status and ongoing care needs.



An interdisciplinary team decision needs to be made regarding who is the most suitable person to conduct the formal capacity assessment. In these discussions it would be useful to consider:

- Whether the decision is complex
- Who has knowledge regarding the type of decision and might be best to explore the pros and cons with the patient
- Whether a referral to a clinical neuropsychologist is required or
- If there is another health professional who has sufficient knowledge regarding the nature of the disability or impairment and the decision to be made and can conduct the assessment.

A valid capacity assessment cannot be completed unless:

1. The patient has been informed first that the assessment is occurring
2. All other options for supported decision making have been exhausted
3. The patient is medically stable as determined by the treating medical team.

Capacity assessments should be conducted in an appropriate environment and at a time which would be optimal for the patient. For instance you may consider conducting a capacity assessment for a patient who suffers from dementia in the morning if you knew they became more agitated in the afternoon. The capacity assessment should only be assessing the specific decision that needs to be made at this time. **Capacity assessments should not generally assess global capacity.**

Capacity assessments should address the following:

- Diagnosis/disability
- The decision making capacity of a person in respect to their physical, cognitive, social, cultural and environmental functional ability and how these impact on the decision that needs to be made e.g. consider the types of questions being asked. Is this appropriate? Can the person hear you? Are they aware that you are conducting a capacity assessment?
- Consider the person's personality, previous wishes and evidence from family/friends and/or carers
- The nature of the decision required e.g. accommodation, medical care, lifestyle or financial
- You must inform the patient that you are conducting a capacity assessment
- In your report summarise the questions asked and the responses given
- Always provide the reasons for your decisions
- Always use an interpreter where necessary including a Deaf Interpreter – see definition p4.

Capacity assessments should demonstrate whether or not the person can:

- Understand the facts and the choices involved
- Weigh up the consequences, and how these might affect them
- Retain the information regarding the decision
- Communicate a stable decision.

All assessments must be documented in the patient's healthcare record.

For more detailed information regarding conducting Capacity Assessments please refer to the [NSW Capacity toolkit](#).

## **5.5 When do I need to make an application to NCAT?**

As discussed in [Section 4](#) you may need to submit an application to NCAT if there is evidence of:

1. Disability
2. Incapacity
3. Need.

Disability alone is not sufficient ground for making an application to NCAT. Neither is disability and incapacity. There must also be a current need for the decision to be made at this time.

In many circumstances where a person has a disability, they will have a suitable 'person responsible' (for medical and dental decisions) or informal decision maker who can assist them to make appropriate decisions regarding their care. However, if there is a disagreement about what is in the patient's best interest or the person themselves is objecting to a decision, and there was a current need to make the decision it would be appropriate to submit an application to NCAT.

When a patient is objecting to a decision regarding their care and treatment (or discharge arrangements) they will be consistently and strongly refusing or resisting.

It is important to note that in circumstances where a patient is considered to lack capacity and is objecting to either medical treatment, accommodation decisions, or other services, a 'person responsible' or informal decision maker cannot provide the substitute consent, unless they have been appointed by NCAT and granted a coercive function. A guardianship order is therefore required if no such provisions exist. If required a coercive function will need to be requested at the time of making the application or at the hearing.

If health professionals are not clear as to what constitutes an objection they can contact the Office of the Public Guardian Information and Support Team during business hours on (02) 8688 6070 or 1800 451 510 or email [informationsupport@opg.nsw.gov.au](mailto:informationsupport@opg.nsw.gov.au).

Referral to NCAT is usually appropriate only when:

- All other informal decision making options have been exhausted and
- All discharge options have failed or are deemed too unsafe.

An application can be made by anyone with a genuine concern for the welfare of the person. This may include a health professional on behalf of the organisation or LHD, Specialist Health Network (SHN) or a family member, 'person responsible', informal decision maker, carer or friend. The interdisciplinary team with consultation from the family, 'person responsible' or carer (if available) should determine the most appropriate person to submit the application.



## 5.6 Submitting the application

Once it is decided who should submit the application, he or she should lodge an application to NCAT within 7 (seven) days from the date a decision was made that an application was needed in order to prevent any procedural delay to the application process. Application forms for the appointment of a financial manager, a guardian, or for consent to medical or dental treatment can be found on the [NCAT website](#).

If it is agreed that the LHD is not the applicant, the LHD should support an appropriate person willing to become the applicant. The applicant is responsible for providing the relevant evidence to support the application. The information required to support the application includes the medical and professional evidence about the person's capacity to make his or her own decisions and information about any risk to the person. The information provided to NCAT is not confidential and will be provided to the parties to the application unless NCAT orders otherwise. If there are concerns regarding the sharing of information the health professional should seek advice from their supervisor.

Where there is a risk to the patient's emotional wellbeing and/or physical condition whilst remaining in hospital this should be highlighted in the application to support a hearing of the application before NCAT as soon as possible.

Any application to NCAT should always be discussed with the patient who is the subject of the application and their views sought.

Data is to be entered on the Patient Flow Portal as Waiting for What Guardianship 1 – Application to be submitted as per the Data Capture – Recording Patients Waiting for Guardianship Guideline (see [Appendix E](#)).

## 5.7 What reports should be provided to NCAT?

All health professionals involved with the assessment process should submit a written report. This report is to be completed within seven (7) days of the decision for an application so as to prevent any unnecessary delays with the hearing. All applications and reports should be submitted together if they are to progress to hearing without delay.

The information required to support the application includes the medical and professional evidence about the person's capacity to make his/her decision in regards to the decision in question.

A minimum of two professional reports are required for each application. The following types of reports could be submitted:

- **Medical and/or Neuropsychology Report** - An example to follow for a medical report is in [Appendix A](#). Alternatively you can use the [health professional's report template](#) on the [NCAT website](#). Additional supporting documentation may also be required

*Please note that a Neuropsychology report can be used where available but is not mandatory*

- **Social Work Report** - Social Workers are recommended to use the Social Work Report Template ([Appendix B](#)) as it contains the information that NCAT requires. In essence this report brings together the all the information in a holistic way and therefore an additional/separate psychosocial assessment is not required
- **Occupational Therapist** – an example of an Occupational Therapy assessment can be found in [Appendix C](#). The Occupational Therapy report provides vital information regarding a patient’s functional ability. It is important that this report shows clear evidence of how the patient’s functional ability is at risk due to the patient’s cognitive impairment, disability or mental illness and ability to make informed decisions (if appropriate)
- **Other Allied Health Professionals, Nursing and Midwifery reports.** Other allied health professionals e.g. physiotherapist, speech pathology, dietitians, nurses and midwives can use the [health professional's report template](#) on the [NCAT website](#) which is suitable for all health professionals’ reports.

Reports must be evidence based, relevant to the type of application being submitted and should include:

- Your assessment of the patient and findings
- Summary of your interventions and prognosis
- Summary of all the options trialled and failed, to assist with decision making and managing risk for the patient
- Evidence of incapacity
- Recommendations and reasons for your recommendation
- Whether you support/don’t support the application to NCAT.

It is recommended that reports are reviewed by a senior clinician (such as your supervisor) prior to being sent to NCAT.

Reports will form part of the proceedings and should be informative, factual and avoid adversarial language.

Applications and reports should be either posted to NCAT or emailed to [gd@ncat.nsw.gov.au](mailto:gd@ncat.nsw.gov.au) or faxed on 02 9556 7777.

Data is to be entered on the Patient Flow Portal as Waiting for What Guardianship 2 – Reports to be submitted as per the Data Capture – Recording Patients Waiting for Guardianship Guideline (see [Appendix E](#), page 41).

## 5.8 Waiting for the outcome of the application to NCAT

Once an application has been submitted to NCAT, the person managing the application on behalf of the LHD will receive a letter with a reference number. You will need to use this reference number for all future communication with NCAT regarding the patient’s application.

The matter will be allocated to an NCAT registry officer who will prepare the application for hearing and provide a summary report. The registry officer will contact the applicant to organise the hearing date and venue. The NCAT registry officer will also contact the

person the application is about to try to seek their views. The applicant may need to assist in facilitating this conversation.

The person managing the application on behalf of the LHD must continue to liaise with the health team, family, carer and the patient as to the progress of the application, update on any changes and ensure a coordinated discharge plan is in place well in advance of the hearing. If there are any changes NCAT must be notified. If the person managing the application has not received confirmation from NCAT that they have received the application after 7 days they should contact NCAT.

It is the responsibility of the person submitting and managing an application on behalf of the LHD to serve the application and reports to all parties to the application. If you do not do this then the matter is unlikely to proceed. It is appropriate to serve these papers via post. It is recommended that you record in the patient's healthcare record when this has been completed. The NCAT application form gives guidance on who the parties are, and further information is available on the NCAT website.

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
- NSW Trustee and Guardian (NSW TAG).

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.

[\(NCAT Factsheet - Information for Applicants - Guardianship and financial management applications, 2016\)](#).

If the application to NCAT is requesting a Public Guardian be appointed, it is recommended that the person managing the application liaise with the Public Guardian. The Public Guardian will be able to provide education as to what evidence would be required to assist them to make appropriate decisions in the best interest of the patient if they are appointed by NCAT at the hearing.

The interdisciplinary team should also continue to investigate if the patient can be safely moved to a sub-acute facility or discharged from hospital to a suitable place prior to the hearing e.g. respite at an aged care facility. This must be considered the least restrictive option and can only occur if the patient does not object.

If appropriate a patient can proceed to have an ACAT assessment completed whilst they are waiting for the outcome of the application to NCAT. This assessment determines

eligibility for Commonwealth funded aged care services. Transfer to a residential aged care facility can only occur if ACAT has approved the patient for the level of care required and the patient does not object.

For guidelines on the required consent for an ACAT assessment, please refer to the [Aged Care Assessment Programme Guidelines](#).

It must be noted that if the patient is continuing to object to being transferred to an alternative facility then they cannot be moved against their will without a guardianship order that includes appropriate authority (coercive order). The patient in this circumstance will need to wait for the NCAT hearing to proceed before any discharge decisions can be made by the appointed guardian, if NCAT appoints a guardian. A coercive order will need to be requested if the person is likely to object to being moved. (See key definitions p2).

However, it is important that whilst the application to NCAT is pending that discharge planning continues. This will minimise any delays once a decision has been made by NCAT (if the application is successful and relevant) and ensures that options for discharge are ready to present to the appointed guardian.

Data is to be entered on the Patient Flow Portal as Waiting for What Guardianship 3 – Hearing date as per the Data Capture – Recording Patients Waiting for Guardianship Guideline (see [Appendix E](#)).

#### **5.8.1 What to do if the person managing the application on behalf of the LHD cannot continue with their role**

If the person submitting and managing an application on behalf of the LHD cannot continue in this role they must ensure that they handover their responsibilities to another suitable staff member.

If the application is in the name of that person, there is a need to complete a 'request to transfer applicant details. The form can be obtained by contacting NCAT on tel: 02 9556 7600. If the application is in the name of the LHD this form will not be required but you must notify NCAT providing the new details of the contact person.

### **5.9 Preparing for the hearing**

A risk assessment needs to be carried out in advance of the hearing by the person submitting and managing an application on behalf of the LHD to determine safety issues for patient's and applicant's attendance at the hearing. Important factors to consider include: whether the patient would be medically compromised if they were to leave the ward area or attend the hearing in person; any concerns regarding transporting the patient to the hearing or access for the patient to use the amenities (see [Appendix F. Guardianship Risk Assessment Resource](#)).

Where it is not appropriate for the patient/applicant to attend the hearing in person, the applicant should contact the NCAT registry officer and make alternative arrangements for a hearing venue such as on the hospital grounds or via teleconference/video link.

It is important to remember that the information you provide to NCAT is not confidential. If there are genuine concerns that the release of certain information will place yourself or the patient at risk you must discuss this first with your supervisor and then with the NCAT registry officer. NCAT can in exceptional circumstances make non publication or suppression orders.

A Notice of Hearing and copy of the NCAT hearing report, application, and health professional's reports and other relevant documentation will be sent to the person submitting and managing an application on behalf of the LHD. A Notice of Hearing and copy of the application will also be sent to the patient who is subject to the hearing. It is the responsibility of the person submitting and managing an application on behalf of the LHD to serve the papers to the patient and explain the process.

It is also important that the health professionals who provided a report to NCAT are available to attend the hearing or be available by video link or telephone during the hearing if necessary.

## **5.10 The hearing**

### **5.10.1 Guardianship and financial management hearings**

One of the key responsibilities of the person submitting and managing an application on behalf of the LHD is to attend and participate in the hearing. It is also a responsibility of the applicant to organise for the patient who is subject to the hearing to attend and participate (if determined to be safe to do so as per section 5.9).

An NCAT hearing held for a guardianship or financial management application must be conducted by a panel of three Tribunal members. The panel must be made up of:

1. Senior Member – Legal
2. Senior Member – Professional
3. General Member – Community.

The Tribunal panel will consider the relevant written evidence that has been provided. The panel will ask the person submitting and managing an application on behalf of the LHD to verbally report on the reasons for the application and any further information that needs to be provided. The panel may also take evidence from those attending the hearing, most importantly from the person the application is about. Whilst attendance in person is preferred, parties and witnesses may request to participate in the hearing or give evidence over the telephone or by videoconference, if necessary ([NCAT Factsheet – What to expect at the Hearing - Guardianship Division, 2016](#)).

After considering the evidence, and if the Tribunal panel is satisfied that the person does not have the capacity to make informed decisions, the panel decides if a guardian and/or financial manager is required and who should be appointed.

### 5.10.2 Consent to medical and dental treatment hearings

Applications for consent to medical or dental treatment may be heard by a panel consisting of less than three Tribunal members. NCAT may consent to medical/dental treatment if the treatment is minor or major and there is no 'person responsible' or the patient is objecting to the proposed treatment. NCAT considers the written evidence that has been provided and takes evidence from the parties and witnesses.

Only the Supreme Court or NCAT may consent to special medical treatment. For example this may include terminations of pregnancy, administration of androgen-reducing medications for behavioural control or use of medication affecting the central nervous system where dosage, duration or combination is outside accepted norms. A panel consisting of three Tribunal members must hear an application for special medical treatment. A 'person responsible' or guardian cannot consent to special medical treatment. If a patient does not have capacity to make these decisions an application must be lodged with NCAT.

The application process and evidence required in support of applications for consent to special medical treatment are different from those for minor or major medical treatment. See [NCAT Special Medical Treatment Guidelines](#) (NCAT Guardianship Division, April 2016).

### 5.10.3 Emergency hearings

Emergency hearings are normally requested when there is a high risk to the patient's immediate health or welfare.

When the need arises for an emergency hearing there are generally two types:

- An emergency hearing for a person who is already awaiting the outcome of an application to NCAT, for which you are awaiting a date, and/or a date has been set, but the situation becomes more urgent e.g. person has absconded
- An emergency hearing for a person who has previously not been identified as needing guardianship and/or financial management or consent to medical treatment.

Where possible NCAT endeavours to conduct emergency hearings during business hours. However, in the most urgent of matters, NCAT is able to conduct hearings after hours if the matter cannot wait until the next business day. The process involves contacting the NSW Civil and Administrative Tribunal (NCAT) as soon as the need is identified:

- **During working hours 9am to 5pm** on 9556 7600. An urgent written application needs to be submitted (if not already done), to NCAT.
- **Outside usual working hours:** The main NSW Civil and Administrative Tribunal (NCAT) number of **9556 7600** has a paging service, you need to write down the number then call that service, and leave a message and a member of the after-hours NSW Civil and Administrative Tribunal (NCAT) will contact you. They then determine from the information given if an emergency hearing is needed and/or organise the hearing. **This number is only to be used for requesting an urgent**



**hearing if you believe this is required before the next business day. It is not to be used as a general inquiry line.**

If an emergency NCAT hearing occurs, these are usually phone hearings.

### **5.11 After the hearing**

In most cases the tribunal will make a decision at the end of the hearing. The decision will be effective immediately. A written order and reason for the decision will be sent to all parties (NCAT Factsheet – After the hearing - Guardianship Division, 2015).

In some circumstances the hearing may need to be adjourned. This can occur when NCAT believes it requires further or better evidence to decide the application, a party requests an adjournment, or a party or witness was not available for the hearing that NCAT believes is required, or some other matter. When a matter is adjourned, it is then listed for a further hearing on another date.

If a private guardian is appointed then they are authorised to make decisions for the patient according to the functions they have been given in the order from the time the order is made. If the private guardian needs help understanding their role they can contact the Public Guardian's " Private Guardian Support Unit " on 8688 6060 or 1800 451 510 or email [informationsupport@opg.nsw.gov.au](mailto:informationsupport@opg.nsw.gov.au).

If a private financial manager is appointed then they are authorised to make decisions for the patient according to the functions they have been given once they receive authorities and directions for NSW Trustee and Guardian (TAG).

If the NSW Public Guardian or NSW Trustee and Guardian (TAG) has been appointed, then a copy of the hearing report and decisions will be sent to them. The Public Guardian can only make decisions for the patient according to the functions they have been given in the order, and can only do this once they have received the written order from NCAT. If the NSW Trustee and Guardian are appointed as the financial manager, they will begin to take over the management of the patient's finances once they have received the written orders from NCAT.

The person submitting and managing an application on behalf of the LHD is to inform the relevant health care team immediately of the outcome of the NCAT hearing. He/she should then work closely with the guardian/financial manager to furnish that person with any information to assist him/her with decision making so as to prevent any unnecessary delay.

The outcome of the NCAT hearing, who is appointed as the guardian and/or financial manager and what functions they have been given should be clearly documented in the patient's healthcare record.

Upon receipt of the written order and decisions, a copy must be placed in the patients' healthcare record.

Data is to be entered on the Patient Flow Portal as Waiting for What Guardianship 4 - Public Guardian to be appointed and/or Guardianship 5 - NSW TAG financial manager to be appointed as per the Data Capture – Recording Patients Waiting for Guardianship Guideline, if relevant (see [Appendix E](#)).

It is important to note that NCAT's role is to make a decision if a guardian or financial manager is required and who this should be. NCAT cannot consent to discharge arrangements. This is the role of the guardian if appointed. The guardian will need time following the hearing to assess the options available and discharge will not occur immediately.

In order to assist the guardian to make an informed decision the following information should be prepared:

- The options available to the patient and why the recommended option is the most suitable
- The patient's views about the options
- Evidence of full exploration of the patient's preferred option and rationale for suitability or non-suitability.
- Any relevant functional, cognitive or medical assessments
- Any changes to the patient's medical condition, function, care requirements or other situation since the application was made.

### **5.12 Emergency situations - what should I do?**

Often an urgent and difficult situation arises when the patient (although sometimes family or friends) does not believe that he or she needs to remain in hospital whilst the treating medical and allied health team do.

When this occurs the following courses of action could be considered:

1. Re-direct the person and try to encourage the patient to remain in hospital
2. Consider whether a consult with the mental health team is appropriate
3. Lodge an application for an emergency NCAT hearing.

### **5.13 Withdrawing an application**

In some circumstances, an applicant may wish to withdraw their application before it goes to a hearing. Applications can only be withdrawn with the permission of the Tribunal.

The Tribunal must be satisfied that there is no longer a need for an order to be made for the person who is the subject of the application.

The applicant must complete a [Request to withdraw a Guardianship Division application form](#) and provide evidence about how the issues that prompted the application have been resolved.

(NSW Civil and Administrative Tribunal, 2015)



## 6 APPENDICES

### 6.1 Appendix A. Medical Report Outline for a Guardianship Application

Guardianship Division of NCAT  
PO Box K1026,  
Haymarket  
NSW 1240

[Click here to enter a date.](#)

To Whom It May Concern:

**Re:** Insert patient's full name, DOB and address

#### Introduction

My name is Insert name and I am a Insert current position and title at Insert facility.

Insert professional qualifications and experience.

#### Relationship with the patient

Include:

- Duration of doctor-patient relationship.
- Under what circumstances that you have known the patient e.g. Inpatient, outpatient, community etc.

#### Medical and social history

Include:

- Known medical background and treatments required.
- Diagnosis that had affected their ability to make executive decisions, such as dementia, brain injury, alcohol related brain damage etc.
- Personal history if known.
- Social circumstances e.g. live alone, with a carer (brief description, refer to social work report).
- Support network or the lack of support e.g. spouse, children, friends, and relatives.
- Examples of such executive function impairment preferably if available e.g. ability to manage ADLs, administering (or compliance with) medications, meal preparations, bill payments etc. (brief description, refer to occupational therapy, registered nursing reports).
- Evidence of hazardous or harmful behaviour eg; fire, speeding fines, car accidents, overdosing or under dosing causing adverse medical outcomes, aggression/abuse, over/under spending, unpaid bills, risk of being exploited financially etc. (Can consult with general practitioner).
- Assessments or supporting statements from other specialties e.g. allied health, clinical neuropsychologist, and their conclusions.

## Physical and cognitive assessment

Include:

- General appearance, mental state assessment and cognitive screen such as MMSE and/or RUDAS, and/or other assessment batteries used. Include details of specific areas of deficit e.g. memory, planning, problem solving.
- Examples in impairments of executive function, especially frontal lobe functions e.g. abstracting, programming, disinhibiting (loss of inhibition due to brain impairment).

## Capacity assessment

Include:

- Time specific and task specific ability to identify or recognise alternative options, and their pros and cons before making decisions, especially in regards to accommodation and medical needs.
- This can also be done by summarizing and/or including reports from clinical neuropsychologist and occupational therapist etc.

If financial manager is required provide:

- Evidence of patient's inability to manage his or her own finances eg; unsure of their own asset/cash, bank statements, unsure of the bills they need to pay, unreasonable spending etc.
- This can be done by summarizing the social worker's and psychologist's assessments and reports.

## Other medical signs

Include information on other aspects:

- Which affect the persons function e.g. cardio respiratory failure, functional impairment, exercise tolerance, tissue or organ damage etc.
- This could also include a summary of nursing Assessment and Reports regarding health management issues i.e. diabetes, COPD/Asthma, continence management and wound care etc.

## Previous management plans

Include what plans have been previously attempted to assist in decision making and minimising risk, for example:

- Home with services
- Medications
- Respite
- Carer distress
- Recurrent hospital admissions.

## Conclusion

I believe that Insert patient's name Choose an item capacity to make executive decisions on issues such as:

- Accommodation
- Medical treatments
- Services received
- Financial management
- Other (please specify) - Choose an item.

Therefore I support a guardian and/or financial manager Choose an item be appointed to make decisions regarding

- Accommodation
- Medical treatments
- Services received
- Financial management
- Other (please specify) - Choose an item.

Yours sincerely

Insert Name

Insert position

Insert facility details

Insert address

Insert email address

Insert phone number.

## 6.2 Appendix B. Social Work Report Template

Insert Social Worker's name  
 Insert Social Worker's contact details

The Guardianship Division of NCAT  
 PO Box K1026  
 Haymarket  
 NSW 1240  
 Email: gd@ncat.nsw.gov.au

### SOCIAL WORK REPORT

<b>Name of Patient</b>
<b>Date of Birth</b>
<b>Home Address</b>
<b>Current place of residence</b>

<b>GENERAL</b>	<b>Use for reports for both Guardianship and Financial Management applications</b>
<p><i>Your name</i></p> <p><i>Are you the applicant? If not, do you support the application?</i></p> <p><i>Qualifications</i></p> <p><i>Current position and period in this position</i></p> <p><i>Experience/Professional background</i></p> <p><i>Extent of contact with the client.</i></p>	
<p><b>Client's social history:</b></p> <p><i>Background prior to this contact (cite all sources of information)</i></p>	

<p><i>Current circumstances, including: Family and other informal support Living Arrangements</i></p> <p><i>Other support, both formal and informal</i></p> <p><i>Other factors relevant to the application.</i></p>	
<p><b>Other relevant matters:</b></p> <p><i>For example: hearing, vision, or speech impairment which may affect how a person communicates their decision. Any other factors such as bereavement which effects current decision-making but may improve with time or treatment.</i></p>	
<p><b>Physical Diagnoses and their likely impact</b></p>	<p><i>Refer to medical report if available</i></p>
<p><b>Medications and their impact on decision making ability, (if any).</b></p>	<p><i>Refer to medical or nursing reports if available</i></p>
<p><b>Documented mental health issues and their likely impact, (if any).</b></p>	<p><i>Refer to medical or nursing reports if available</i></p>
<p><b>Documented drug and alcohol issues, (if any).</b></p>	<p><i>Refer to medical or other reports if available</i></p>
<p><b>Cognitive and Emotional Functioning</b></p> <p><i>Alertness/Level of</i></p>	<p><i>Refer to other reports if available e.g. neuropsychology, occupational therapy, medical, psychology</i></p>

<p><i>Consciousness</i></p> <p><i>Memory and Cognitive Functioning</i></p> <p><i>Emotional Functioning</i></p> <p><i>Fluctuation</i></p>	
<b>GUARDIANSHIP ORDER</b>	<b>If the application is for a Guardianship Order please give the following information:</b>
<p><b>Nature and extent of person’s decision-making disability</b></p> <ul style="list-style-type: none"> <li>• <i>Ability to make decisions</i></li> <li>• <i>Ability to Plan</i></li> <li>• <i>Ability to understand implications of decisions</i></li> </ul>	
<b>Functional Status</b>	<i>Refer to OT or neuropsychology report if available</i>
<p><b>Informal supports</b></p> <p><i>What informal supports are/have been used that has previously negated the need for a formal decision-maker?</i></p>	
<p><b>Current Decision Making Arrangements</b></p> <p><i>How are decisions usually made by/for the client?</i></p> <p><i>Can this be maintained?</i></p>	
<b>Why is an Order the only solution?</b>	

<p><b>What decisions need to be made now?</b></p> <ul style="list-style-type: none"> <li>• <i>Accommodation issues</i></li> <li>• <i>Health care issues</i></li> <li>• <i>Issues around consent to medical and dental care</i></li> <li>• <i>Provision of appropriate services</i></li> <li>• <i>other, (e.g. access)</i></li> </ul>	
<p><b>What has been previously trialled?</b></p> <ul style="list-style-type: none"> <li>• Describe what alternatives have been considered and why they are not appropriate</li> </ul>	
<p><b>What is being proposed?</b></p> <ul style="list-style-type: none"> <li>• e.g Discharge to RACF (describe type and suitability if possible)</li> </ul>	
<p><b>Risk of Harm and Level of Supervision Needed</b></p> <ul style="list-style-type: none"> <li>• Nature of risk</li> <li>• Severity of the risk</li> <li>• Social factors involved</li> </ul>	
<p>Describe any conflict, objection, or evidence of abuse, exploitation or neglect (<i>cite sources of this information</i>)</p>	

<p><b>Values and preferences</b></p> <ul style="list-style-type: none"> <li>• goals and quality of life</li> <li>• person's understanding and expressed view of this application</li> <li>• family/carer's understanding of this application and wishes</li> </ul>	
<p><b>Degree of urgency</b></p>	
<p><i>(If supporting the application for Guardianship)</i> If a guardian is appointed who should that be? Give reasons</p>	

<b>FINANCIAL MANAGEMENT</b>	<b>If the application is for a Financial Management Order please give the following details:</b>
Client's source/s of income	
Known assets (approximation)	
Client's financial obligations: dependents, debts, bills, financial commitments, etc.	
Formal assessment of financial decision-making ability	<i>Refer to OT or neuropsychology report if available</i>
<p>Nature and extent of person's incapacity to:</p> <ul style="list-style-type: none"> <li>• understand financial matters</li> <li>• appreciate or recognise financial risk or exploitation</li> <li>• plan/budget/save money/live within his or her current means</li> </ul>	



What financial decisions need to be made and when?	
Risk of financial harm: <ul style="list-style-type: none"> <li>• nature of risk</li> <li>• immediacy of risk</li> </ul>	
Action needed to protect the client from risk	
Has the client appointed an enduring power of attorney? <i>(If yes, give details)</i>	
What informal supports are/have been used that have negated the need for an Order to date?	
Can these be maintained?	
Is an Order the only solution?	
Is there any conflict, objection, or evidence of abuse/exploitation? <i>(Cite sources of this information)</i>	
Values and preferences <ul style="list-style-type: none"> <li>• goals and quality of life</li> <li>• what does the person think about financial management?</li> <li>• person's understanding and expressed view of this application</li> <li>• family/carer's understanding of this application and wishes</li> </ul>	
<i>(If supporting the application for Financial Management)</i>	

If a Financial Manager is appointed who should that be? <i>Give reasons</i>	
---	--

**Concluding comments and recommendations:**

On the basis of this report, and following discussions with member of the multi-disciplinary team and other stakeholders, I Choose an item this application.

I would be pleased to discuss any element of this Social Work Report with the Guardianship Division of NCAT. My contact details are provided above.

Yours sincerely

Name  
Position

[Click here to enter a date.](#)

## 6.3 Appendix C. Occupational Therapy Report Template

Guardianship Division of NCAT  
PO Box K1026,  
Haymarket  
NSW 1240

[Click here to enter a date.](#)

### Occupational therapy report for [Choose an item](#)

**Re:**  
**Name -** [Click here to enter text](#)

**Address -** [Click here to enter text](#)

**Date of birth -** [Click here to enter text](#)

The multi-disciplinary team involved with [Insert patient's name](#) have agreed that [Choose an item](#) would be beneficial for [Choose an item](#). This report summarises why the Occupational Therapist involved [Choose an item](#) the application.

---

#### Introduction

My name is [Click here to enter text](#) and I am a [Insert qualifications/role](#) at [Insert facility](#). [Insert patient's name](#) is a [Insert patient's age year old](#) [Choose an item](#) who was admitted to [Choose an item](#) on [Click here to enter a date](#) following [Enter reason for admission](#).

[Insert patient's name](#) became involved with the occupational therapy service at [insert facility name](#). on [Click here to enter a date](#).

Add details regarding OT involvement, how often seen etc

#### Assessments

[\(Delete after reading: include both functional and paper based assessments & dates completed.\)](#)

[Click here to enter text.](#)

#### Background

Current Diagnoses / Medical History

[Click here to enter text.](#)

#### Social Situation

[Click here to enter text.](#)

**Mobility and Transfers** [\(Delete after reading - Sit to stand transfers, bed transfers, mobility \[indoors vs outdoors/community\], aides used, assistance or supervision requirements, steps, etc.\)](#)

Pre-admission Function:

[Click here to enter text.](#)

Current Function:

Click here to enter text.

**Self-care** (Delete after reading – Showering/bathing, toileting/continence [day and night], aides used, assistance or supervision requirements, medication management, etc.)

Pre-admission Function:

Click here to enter text.

Current Function:

Click here to enter text.

**Productivity** (Delete after reading – Financial management, meal preparation, cleaning / laundry, groceries, yard maintenance, etc.)

Pre-admission Function:

Click here to enter text.

Current Function:

Click here to enter text.

**Cognition** (Delete after reading – SMMSE, MoCA, ACE-III, Cognistat, RUDAS, Functional cognition [e.g. meal preparation assessment result], etc.)

Pre-admission Function:

Click here to enter text.

Current Function:

Include outcome of current cognitive assessments completed.

**Other** (Delete after reading – Transport/driving, community access, etc.)

Pre-admission Function

Click here to enter text.

Current Function

Click here to enter text.

Home Environment

Click here to enter text.

**Does the person's disability affect their ability to make informed decisions about the following?** (Delete after reading: only complete the relevant sections below. If not relevant to the decision needing to be made then delete the inappropriate section.)

Accommodation, care and services: Yes No

If yes, in what ways?

Click here to enter text.

Health and medical care:  Yes  No

If yes, in what ways?

[Click here to enter text.](#)

Financial affairs:  Yes  No

If yes, in what ways?

[Click here to enter text.](#)

Other:  Yes  No

If yes, in what ways?

[Click here to enter text.](#)

#### Recommendations:

Summarise concerns and clinical reasoning for these here.

Based on this, I support guardianship for the following:

- Accommodation
- Medical treatments
- Services received
- Other (please specify) - [Click here to enter text.](#)

In addition, I support:

- Financial management

Please feel welcome to contact me on [Insert contact details](#) if you would like to discuss this report further.

[Insert Name](#)

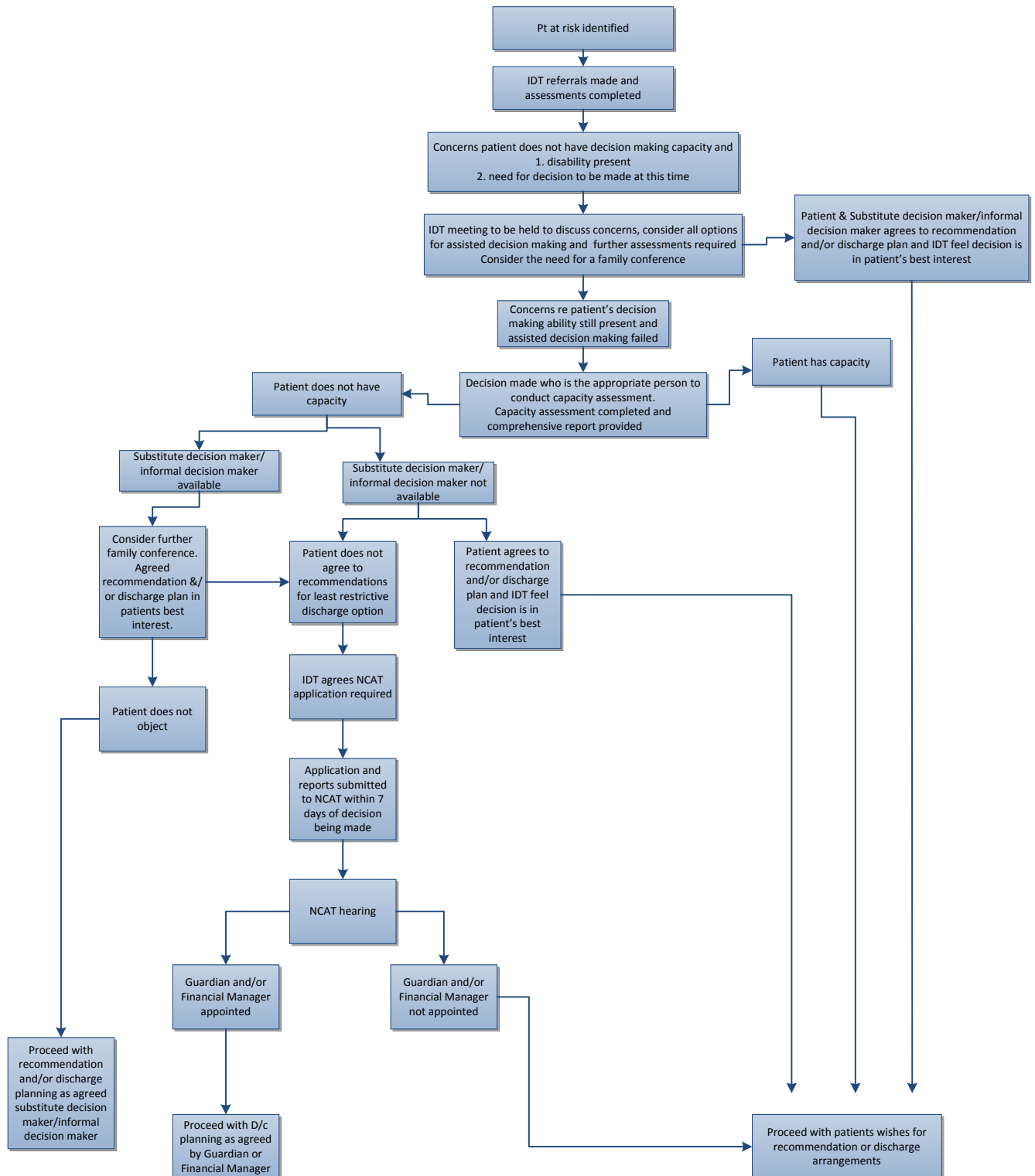
**Occupational therapist**

[Insert facility details](#)

[Insert address](#)

[Insert email address.](#)

## 6.4 Appendix D. Flowchart – Making applications for guardianship and financial management orders



## 6.5 Appendix E. Patient Flow Portal – Data Capture - Recording Patients Waiting for Guardianship Guideline

### Background

The NSW Ministry of Health Whole of Health Program has initiated a project in collaboration with **LHDs/Specialty Health Networks** to build capacity within facilities and to minimise the impact on patients who are waiting for a guardianship hearing. The project aims to improve processes within facilities and reduce the wait time for guardianship hearings so that patients who do not need to be in hospital will be in the most suitable care setting.

The objectives of the project are to:

- Minimise unnecessary lengths of stay for patients who are waiting for a guardianship hearing.
- Work with LHDs to capture accurate data.
- Develop an education package for NSW Health staff to assist in making application to NCAT on behalf of patients.
- Develop a state-wide NSW Health practice guideline for making a guardianship application for patients who are inpatients of an acute health facility.
- Develop relationships with NCAT to review guardianship applications from NSW Health inpatient facilities within 21 days.

### Waiting for What – Recording Patients Waiting for Guardianship

One of the objectives of the project is to capture accurate data across the state which reflects the number of patients waiting for guardianship, the length of time it takes for guardianship matters to be resolved and areas to improve in order to minimise length of stay for these patients.

The Patient Flow Portal is a NSW state-wide database that is currently in place in every hospital across the state and can be used to capture data for patients waiting for guardianship.

**This Guideline will show you how to record this data in a consistent way.**

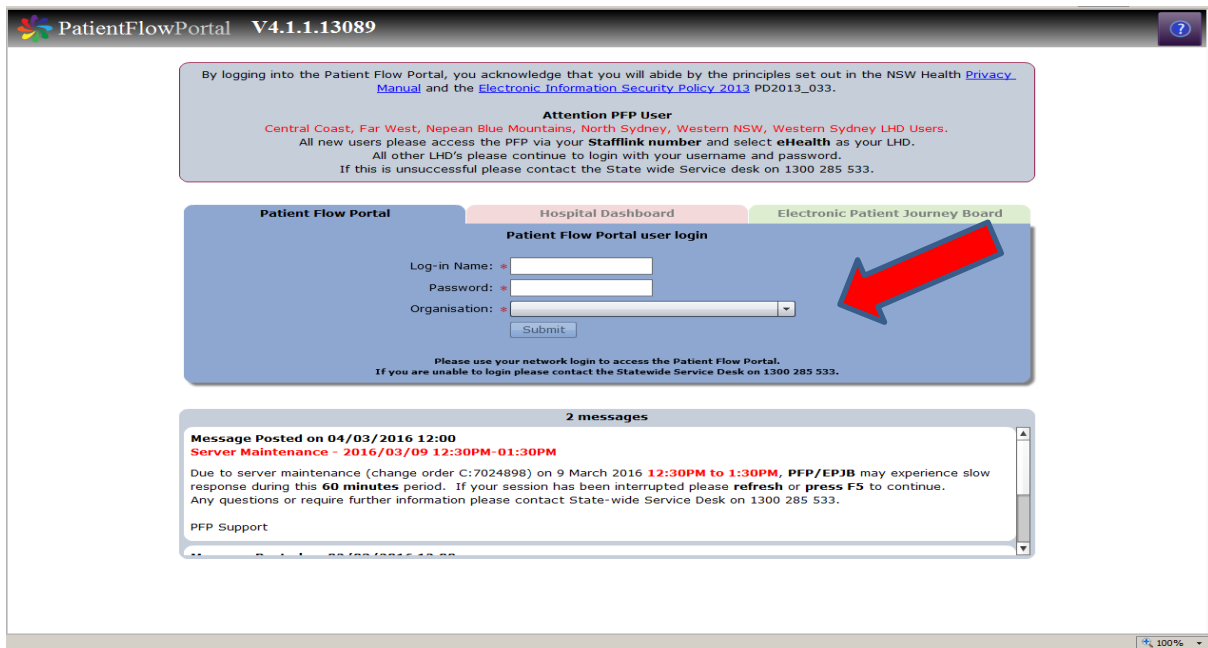
Please ensure that you have access to the **Patient Flow Portal (PFP)**. If you do not have PFP access please click on this link: <http://www.health.nsw.gov.au/pfs/Pages/bedboard.aspx#bookmark2>. Alternatively

contact your Patient Flow Manager or line manager.

In order to log onto the Patient Flow Portal click on the following link: <http://pfp.healthtech.nswhealth.net/pfp/> or access this through your LHD intranet.

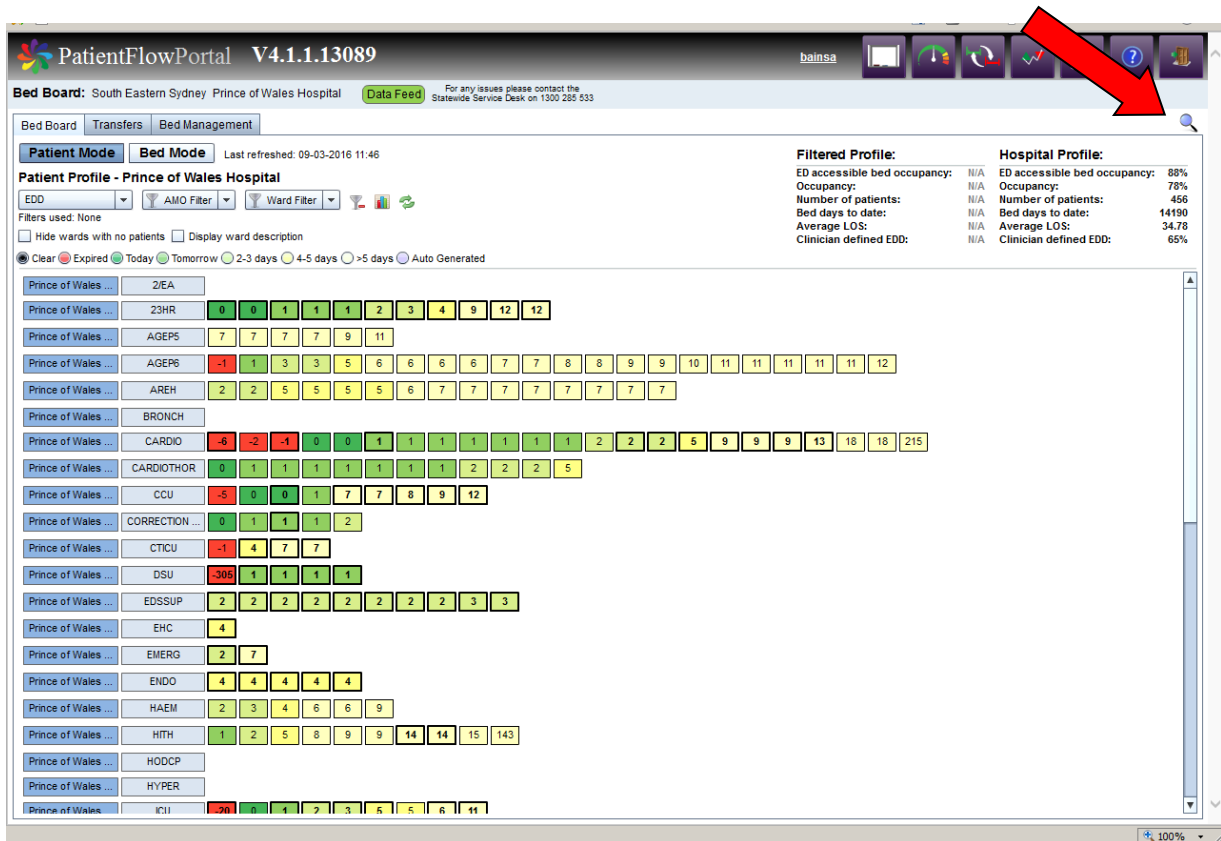


Log in using your Staff link ID and password.  
 In organisation select your relevant LHD that you work for.



You can search a patient 1 of 2 ways.

1. **Patient Flow Portal Bed Board** - Click on the magnifying glass on the top right hand side of the Bed Board screen when you log in. (see arrow) and then search by name or MRN or...



## 2. Patient Flow Portal Electronic Patient Journey Board (EPJB).

Click on the Patient Journey Board (blue arrow)

Then select the appropriate ward (red arrow)

Double click on the patient you want to select

Bed	I/R	ID	Surname	First Name	Age	EDD	HLOS	AMO	Mobility	Diet	PA Risk	Falls	Alerts
AGEP5_23					79 yrs	11-03-16	18	Hill, T	Supervised	FULL			2.
AGEP5_24					89 yrs	11-03-16	85	Hill, T					
AGEP5_25					89 yrs	03-03-16	18	Hill, T	Device + 1 ...	FULL			
AGEP5_26					86 yrs	11-03-16	55	Hill, T	1 Assist				
AGEP5_27					81 yrs	02-03-16	18	Hill, T	Device + 1 ...	FULL			4.
AGEP5_28					88 yrs	01-03-16	14	Hill, T	Device + 2 ...	FULL			2.

Click on the waiting for what 'add' icon

**Patient Details**  
 Bed: 09-E1-JHH | Adm. Reason: Fracture Neck of Femur | DOB: 17-01-1948  
 EDD: 12-04-2016 | Speciality: Rehabilitation | Age: 68 yrs  
 Admt Date: 28-02-2016 | Care Type: | Language: English  
 HLOS: 36 | Admission Risk: | Suburb: CARDIFF SOUTH 2285  
 WLOS: 18 | Financial Status: Public: No Charge

**EPJB Patient Information**  
 Nurse:   
 I/R:   
 PARisk: 23 (Enter a number between 1-64)  
 DCL:   
 Falls: 29 (Enter a number between 0-30)  
 Non Clinical Notes: COB

**Waiting for What**  
 Categories | Outstanding | Notes | Start Date | Close Date

Then go to Out of Hospital Referral section and click on the appropriate Guardianship delay reason.

<b>Consults</b>			
Aged Care	Cardiology	Dietician	Endocrine
Gastroenterology/Endoscopy	Haematology	Mental Health/Drug & Alcohol	Neurology
Nursing	Occupational Therapist	Oncology	Orthopaedics
Pain	Palliative Care	Physiotherapist	Rehabilitation
Renal/Nephrology	Respiratory	Social Work	Speech Therapist
Vascular	Other Allied Health	Other Medicine	Other Surgery
<b>Diagnostics/Treatment</b>			
AMO / Team Review	Angiography	Bone Scan	Cardiac Echo/TOE/TTE/Mbi
Cardiac Stress Test	Coronary Angiography/Intervention/PPM	CT	Doppler
Endoscopy - ERCP/Gast/Col/Bronch	Imaging/X-Ray	MRI	Operating Theatre
Pathology	PICC	Ultrasound	Other
<b>Discharge Process</b>			
AMO Discharge Review	Discharge Documentation/Summary	Discharge Equipment	Discharge Medications/Script
Discharge Plan	Family/Carer Conference	Home Modifications	Other
<b>Out of Hospital Referral</b>			
ACAT Assessment	Accommodation	Approval	CAR/Cs/HITH
Community Health	Community Support Service	Continuing Care	Family/Carer looking for a Private Facility
Guardianship - 1. Application to be submitted	Guardianship - 2. Reports to be submitted	Guardianship - 3. Hearing date	Guardianship - 4. Public Guardian to be appointed
Guardianship - 5. NSW TAG Financial Management	Home Modifications	Palliative Care Services	Rehabilitation Bed or Service
Residential Aged Care Service	Respite	Transitional Aged Care	Other
<b>Transfer/Transport</b>			
Aero-Medical Transfer	Ht. NSW Ambulance Transport	Ht. Waiting for Accepting Facility	Ht. Waiting for Bed @ Accepting Facility
IMT/Ward Bed	IMT/Ward Bed from Critical Care	NEPT	Transport Home Relative/Carer
Other			

There are five different delays to the guardianship process that can be recorded. This means that you will need to insert a waiting for what delay episode for each. The different areas are identified below.

### Waiting for What Guardianship Process

You will need to insert a **start date** and add **notes**

You have 200 characters to insert relevant comments in the notes section. Underneath the title you have space to record further information regarding possible reasons for length of stay.

#### 1. Application to be submitted

Start date = the date the multidisciplinary team decision was made that a guardianship application was needed to be submitted to NCAT.

The screenshot shows a patient information form with several tabs: Patient Info, Alert/Allergy, Referral/Diet, Transfers/NEPT, and Adm & Ward History. The 'Patient Info' tab is active, showing fields for Nurse, IIR, PARisk, DCL, Falls, Non Clinical Notes, and Nursing Handover Notes. Below this is a section titled 'Waiting for What' with a red close button. This section contains a 'Category' dropdown set to 'Out of Hospital Referral', a 'Reason' dropdown set to 'Guardianship - 1. Application to be submitted', a 'Notes' text area, 'Start Date' and 'Close Date' date pickers, and 'Save' and 'Cancel' buttons. A red arrow points to the 'Save' button.

Click Save.

## 2. Reports to be submitted

Only fill this section out if you have sent your application forms to NCAT before you have submitted all the reports.

Start date = date application submitted

In notes please indicate what reports you are waiting for.

If there are multiple reports, include the date they were sent and any reason for delay.

The screenshot shows the 'Waiting for What' section of the EPJIB Patient Information form. The 'Category' is 'Out of Hospital Referral', the 'Reason' is 'Guardianship - 2. Reports to be submitted', and the 'Start Date' is '17-03-2016'. A red arrow points to the 'Save' button.

Click Save.

## 3. Hearing date

Start date = date the application was submitted to NCAT if you submitted both the application and the reports together or

= date the final reports were submitted to NCAT

The screenshot shows the 'Waiting for What' section of the EPJIB Patient Information form. The 'Category' is 'Out of Hospital Referral', the 'Reason' is 'Guardianship - 3. Hearing date', and the 'Start Date' is '17-03-2016'. A red arrow points to the 'Save' button.

Click Save.

#### 4. Public guardian to be appointed

Start date = date the hearing took place

The screenshot shows a web-based patient information form. At the top, there are tabs for 'Patient Info.', 'Alert/Allergy', 'Referral/Diet', 'Transfers/NEPT', and 'Adm & Ward History'. The 'Patient Info.' tab is active. Below the tabs, there is a section for 'EPJB Patient Information' with fields for Nurse, IIR, PARisk (set to 23), DCL, Falls (set to 29), and Non Clinical Notes (set to COB). Below this is a 'Nursing Handover Notes' section with a text area and a 'Clear' button. The bottom section is titled 'Waiting for What' and contains a 'Category' dropdown (set to 'Out of Hospital Referral'), a 'Reason' text field (set to 'Guardianship - 4. Public Guardian to be appointed'), a 'Notes' text area, and 'Start Date' and 'Close Date' date pickers. The 'Start Date' is set to '17-03-2016'. There are 'Save' and 'Cancel' buttons to the right of the 'Notes' field. A red arrow points from the bottom left towards the 'Save' button.

Click Save.

#### 5. NSW TAG financial manager to be appointed

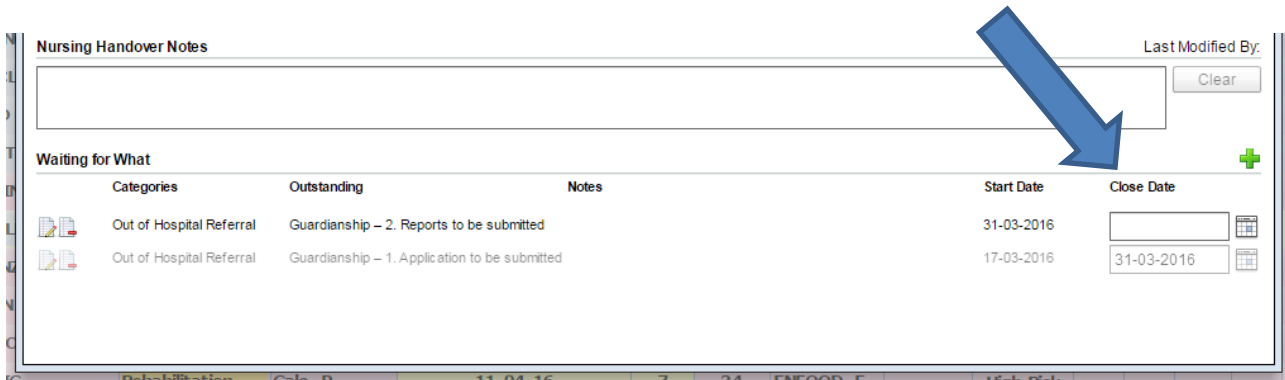
Start date = date the hearing took place

The screenshot shows the same web-based patient information form as above. The 'Waiting for What' section has been updated: the 'Reason' text field now contains 'Guardianship - 5. NSW TAG Financial Manager to be appointed'. The 'Start Date' remains '17-03-2016'. The 'Save' and 'Cancel' buttons are still present. A red arrow points from the bottom left towards the 'Save' button.

Click Save.

## Closing the episode on Waiting for What

Once you know the close date you will need to log back into the patient profile on the patient flow portal. Click on the notes page icon to get back into the waiting for what episode that is relevant.



Categories	Outstanding	Notes	Start Date	Close Date
Out of Hospital Referral	Guardianship - 2. Reports to be submitted		31-03-2016	<input type="text"/>
Out of Hospital Referral	Guardianship - 1. Application to be submitted		17-03-2016	31-03-2016

The close dates for each heading are as follows:

### 1. Application to be submitted

Close date = the date the application was sent to NCAT.

### 2. Reports to be submitted

Close date = date all relevant reports have been submitted to NCAT

### 3. Hearing date

Close date = date the hearing took place

### 4. Public guardian to be appointed

Close date = once a public guardian has been appointment and they have agreed a discharge plan.

### 5. NSW TAG financial manager to be appointed

Close date = once a NSW Trustee and Guardian (TAG) financial manager has been appointment and they have agreed a discharge plan.

If the patient was appointed a private guardian or financial manager then you can cease recording at stage 3. There would be no reason to record stage 4.

This will then cease the waiting for what guardianship data. Patients are then no longer waiting for the guardianship process. Their discharge is likely pending because of other factors e.g. waiting for residential care.

There are other appropriate 'waiting for what' categories that can be used to record these reasons for extended length of stay.

### Points to remember

1. This is a real time data base.
2. You cannot go back and insert information once the patient has discharged or the episode is closed.
3. You will need to update your patients waiting for guardianship regularly.

## 6.6 Appendix F: Guardianship Risk Assessment Resource

This table has been created to assist staff to manage possible hazards/risks that may occur during the guardianship process. It should be used in conjunction with local risk assessment or safe working practice protocols/procedures.

Guardianship Phase	Hazard/Risk	Possible Control Measures
Trigger phase	<ul style="list-style-type: none"> <li>• Patient is unable to consent or there are concerns regarding their decision making ability</li> <li>• Dispute between carer/family members or between the carer/family and health professional</li> <li>• A patient with a disability objects to a proposal for his/her care</li> <li>• A patient with a disability suffers from neglect, exploitation or abuse and there is no one to protect their interests</li> <li>• A person who is the patient's enduring power of attorney or enduring guardian allegedly is not acting in the person's best interest</li> <li>• Inappropriate or inadequate supports for communication and/or decision making.</li> </ul>	<ul style="list-style-type: none"> <li>• Consider what is needed to assist the patient to make the decision themselves</li> <li>• Consultation with interdisciplinary team regarding need for substitute decision maker</li> <li>• Consider the need for a family conference</li> <li>• Consultation with ward staff, interdisciplinary team regarding care plan</li> <li>• Viewing medical record alerts for aggression or risk factors</li> <li>• Reviewing current and old inpatient medical records</li> <li>• Consulting community staff, organisations and service providers</li> <li>• Corroborative histories and disclosures from family, friends, carers and general practitioner</li> <li>• Consultation with person, family and/or carers (in line with privacy obligations) as to need for augmentative communication, visual aids, interpreter provision etc</li> </ul>
Assessment phase	<p>Identification of risk for In-hospital Assessments</p> <ul style="list-style-type: none"> <li>• A risk of patient aggression is identified on ward</li> </ul>	<ul style="list-style-type: none"> <li>• Health professional to identify appropriate environment to conduct assessment through consultation with senior clinicians and management</li> <li>• Health professional to identify safety measures to be taken during interview with patient</li> <li>• Refer to Safe Working Practice Policy (if available) for aggression minimisation</li> <li>• Health professional is to consult directly with Management to determine appropriateness of assessment</li> <li>• Security to be called or on standby as required</li> <li>• Health professional should not isolate themselves with the patient or carer/family members and remain in a public place or semi-public place</li> </ul>



Guardianship Phase	Hazard/Risk	Possible Control Measures
Assessment phase (cont.)		<ul style="list-style-type: none"> <li>• Inform team and other staff of the interview times and details</li> <li>• Health professional to consider whether to take a second staff member to attend this meeting</li> <li>• Health professional should take care not to disclose irrelevant personal details and be mindful to protect their privacy and identity outside of their employment</li> </ul>
	<ul style="list-style-type: none"> <li>• Potential disagreement between professionals regarding a patient's decision making ability</li> </ul>	<ul style="list-style-type: none"> <li>• Health professionals should attempt to resolve any conflict regarding need for guardianship directly with the other professional</li> <li>• Workplace grievance procedures to be followed</li> <li>• Escalation of any unresolved conflict to health professional's line manager/supervisor</li> </ul>
	<p>Identification of risk for Home visit Assessments</p> <ul style="list-style-type: none"> <li>• Evidence of aggression is identified</li> <li>• Threats of fire arms or other weapons</li> <li>• Evidence of pets in the home or potential risk</li> <li>• Hoarding, structurally unsafe premises, or squalid living environment</li> </ul>	<ul style="list-style-type: none"> <li>• Health professional is to consult directly with management to determine appropriateness of visit</li> <li>• Refer to local home visiting policy if available</li> <li>• Health professional to gain a full functional history of the patient prior to admission in order to determine if patient is safe to take on home visit</li> <li>• Consider if patient's functional/cognitive status is suitable to go on home visit from hospital</li> <li>• Identify occupants and other residents of the home prior to decision of home visit to assess safety and wellbeing of staff</li> <li>• Health professional to assess the inherent risks of home visit considering environmental and structural condition of residence</li> <li>• Staff should complete home visit risk assessment form for exploratory evidence, including risk of weapons when doing a home visit</li> </ul>
Application Phase	<ul style="list-style-type: none"> <li>• Potential conflict about who will be 'the applicant'</li> </ul>	<ul style="list-style-type: none"> <li>• The individual health professional reserves the right to decide whether or not he or she will be the person submitting and managing an application on behalf of the LHD in any proceeding</li> <li>• Decision to be made as to who will be the applicant and act in the best interest and welfare of the patient</li> </ul>
	<ul style="list-style-type: none"> <li>• Potential conflict from the person and their family/carers regarding the guardianship application</li> </ul>	<ul style="list-style-type: none"> <li>• Effective communication is required with all stakeholders regarding the guardianship application and process, and all documentation needs to be current</li> <li>• Consider the need for a family conference</li> <li>• Consult with the Office of the Public Guardian</li> </ul>
	<ul style="list-style-type: none"> <li>• The patient is attempting to leave the hospital prior to the hearing date</li> </ul>	<ul style="list-style-type: none"> <li>• Attempt to redirect the person and encourage them to remain in hospital</li> <li>• Consider the need for an emergency NCAT hearing</li> </ul>

		<ul style="list-style-type: none"> <li>Consult with the mental health team</li> </ul>
Guardianship Phase	Hazard/Risk	Possible Control Measures
Application Phase (cont.)	<ul style="list-style-type: none"> <li>Potential disagreement between professionals regarding the need for a guardianship application</li> </ul>	<ul style="list-style-type: none"> <li>Health professionals should attempt to resolve any conflict regarding need for guardianship directly with the other professional</li> <li>Workplace grievance procedures to be followed</li> <li>Escalation of any unresolved conflict to health professional's line manager/supervisor</li> </ul>
	<ul style="list-style-type: none"> <li>Delays in guardianship application process, leading to increased length of stay for person of interest in application</li> </ul>	<ul style="list-style-type: none"> <li>Application to be submitted to NCAT within 7 working days of decision for guardianship being made by the interdisciplinary team</li> <li>Applicant with the support from social work to identify what orders will be requested from NCAT and what further assessments and or evidence may be necessary and important to include in the application</li> <li>The application and report should be submitted to NCAT together to minimise any unnecessary delay in processing the application</li> </ul>
	<ul style="list-style-type: none"> <li>Not identifying all key stakeholders</li> </ul>	<ul style="list-style-type: none"> <li>Identifying all stakeholders, advising them of the guardianship application and seeking their input as appropriate</li> </ul>
Serving application	<ul style="list-style-type: none"> <li>NCAT requires the applicant to serve the application and supportive documentation (reports) to the person subject to the guardianship application and all parties prior to the hearing date.</li> <li>Adverse response from person being served the application</li> <li>Adverse response from spouse or carer who is party to proceedings</li> </ul>	<ul style="list-style-type: none"> <li>The applicant should consider the possible response from the person when they are notified of the application being made to NCAT</li> <li>The application should deliver the hearing paperwork to the person subject to guardianship in a public or semi-public place whilst ensuring privacy is maintained</li> <li>The applicant can consider whether to take a second staff member to attend this meeting</li> <li>The applicant should consider carefully what information is documented in the application and reports and ensure that this is factual and non-judgmental. If there are serious concerns regarding the confidentiality of the application or reports, consideration should be given to requesting a non-publication order from NCAT</li> <li>The interdisciplinary team should be advised of the application being served to minimise the risk to other staff and patients</li> <li>The preferred method for serving the application and reports to parties is via post. The applicant must ensure that they have the correct postal details for any party to the proceedings. Evidence that the papers have been sent should be documented in the patient's healthcare record</li> </ul>
Hearing Phase	<ul style="list-style-type: none"> <li>Location of NCAT offices (in the CBD)</li> </ul>	<ul style="list-style-type: none"> <li>Person subject to the hearing should always be given every opportunity to attend the hearing</li> </ul>

	<ul style="list-style-type: none"> <li>Transporting patient to the hearing is inappropriate due to mobility, function, continence or cognition</li> </ul>	<ul style="list-style-type: none"> <li>Consider other suitable options for holding a remote hearing e.g. teleconference video conference or alternate hearing venue</li> <li>If held off site, safe working practices to be considered</li> <li>If patient is unable to attend NCAT, the hearing should be held on hospital grounds if possible to reduce risk of harm to staff/others, manual handling injuries, and infection control</li> <li>Applicant to source a suitable location that maximises safety of all participants and where necessary to have security on standby or in attendance at the hearing</li> </ul>
	<ul style="list-style-type: none"> <li>Adverse response from patient during the hearing</li> </ul>	<ul style="list-style-type: none"> <li>Co-ordination of all relevant management, staff and stakeholders to manage potential risk of hearing</li> </ul>
<b>Guardianship Phase</b>	<b>Hazard/Risk</b>	<b>Possible Control Measures</b>
Post Hearing Phase	<ul style="list-style-type: none"> <li>Person subject to the guardianship process or their family/carer do not understand or support the outcome of the hearing</li> </ul>	<ul style="list-style-type: none"> <li>Applicant to discuss outcome of the hearing with the patient at conclusion of the hearing to attempt to ensure that they understand</li> </ul>
	<ul style="list-style-type: none"> <li>Extended length of stay for patient post hearing and decisions</li> <li>Delay in Public Guardian or NSW TAG process</li> </ul>	<ul style="list-style-type: none"> <li>Applicant to notify the interdisciplinary team regarding the outcome of the hearing same day or next working day and record in medical records</li> <li>Social worker (if involved) to liaise with appointed guardian or financial manager to agree discharge plans and timeframe</li> <li>Social worker (if involved) to liaise with Public Guardian or NSW TAG if appointed</li> <li>Social worker (if involved) to escalate any delays in guardian/financial manager's decision making to interdisciplinary team and supervisor</li> </ul>

## 7 AVAILABLE RESOURCES

<b>The Capacity Toolkit</b>	Provides information about capacity, capacity assessment and the various legal tests of capacity in NSW	<a href="http://www.justice.nsw.gov.au">www.justice.nsw.gov.au</a>
<b>Guardianship Division of NCAT</b>	Guardianship Division of NCAT is a Tribunal whose panel can make orders and put formal arrangements in place for people who have a decision making disability	<a href="http://www.ncat.nsw.gov.au/guardianship">www.ncat.nsw.gov.au/guardianship</a>
<b>NSW Office of Public Guardian</b>	The Public Guardian is a legally appointed substitute decision maker if there is no one else suitable. They assist people under guardianship orders to make informed decisions regarding certain aspects of their lives	☎ 1800 451 510, <a href="http://www.publicguardian.justice.nsw.gov.au">www.publicguardian.justice.nsw.gov.au</a>
<b>NSW Trustee and Guardian (TAG)</b>	NSW Trustee and Guardian's role is to act as an independent and impartial executor, administrator, attorney and trustee for the people of NSW. It also provides direct financial management services and authorisation and direction to private financial managers	☎ 1300 320 320 <a href="http://www.tag.nsw.gov.au">www.tag.nsw.gov.au</a>
<b>Private Guardian Support Unit</b>	A free and confidential service to assist legally appointed guardians in their role. This includes enduring guardians or guardians appointed by NCAT or the Supreme Court	☎ 1800 451 510 <a href="http://www.publicguardian.justice.nsw.gov.au">www.publicguardian.justice.nsw.gov.au</a>
<b>The Office of the Public Guardian Information and Support Team</b>	Provides advice to health professionals and the general community about guardianship (enduring, private and public), medical consents and the role of the Public Guardian. The information and support team also provide community education sessions for groups of 15 or more people, in regional and metropolitan areas within NSW	☎ 8688 6070 or 1800 451 510 or email informationsupport@opg.nsw.gov.au.
<b>Health Professionals Report</b>	Standardised template for writing NCAT reports	<a href="http://www.ncat.nsw.gov.au/Pages/guardianship/gd_forms.aspx">www.ncat.nsw.gov.au/Pages/guardianship/gd_forms.aspx</a>
<b>Aged Care Assessment Programme Guidelines</b>	These guidelines provide an operation guide for the Aged Care Assessment Programme and assessment by the Aged Care Assessment Teams	<a href="https://agedcare.health.gov.au/programs-services/guidelines/aged-care-assessment-and-approval-guidelines">https://agedcare.health.gov.au/programs-services/guidelines/aged-care-assessment-and-approval-guidelines</a>
<b>Mental Health Advocacy Service</b>	A specialist service of the Legal Aid Commission which provides free legal advice and representation at Mental Health Act hearings at psychiatric hospitals and hearings at NCAT	☎ 97454277 <a href="http://www.legalaid.nsw.gov.au">www.legalaid.nsw.gov.au</a>
<b>Multicultural Disability Advocacy Association of NSW</b>	Provides an advocacy service for people with disabilities who come from a culturally and linguistically diverse background	☎ 1800 629 072 or 9891 6400 <a href="http://www.mdaa.org.au">www.mdaa.org.au</a>

<b>The NSW Multicultural Health Communication Service</b>	Funded by the <a href="#">NSW Department of Health</a> to provide information and services to help health professionals communicate with non-English speaking communities throughout NSW	<a href="http://www.mhcs.health.nsw.gov.au">www.mhcs.health.nsw.gov.au</a>
<b>Aboriginal Health Liaison Officer (AHLO)</b>	Positioned within in hospitals the AHLO plays a key role in supporting and the journey of the Indigenous patient through the hospital and health systems	Contact local hospital
<b>Centre for Aboriginal Health (CAH)</b>	Part of the Population and Public Health Department at the NSW Ministry of Health. The CAH addresses health and service delivery disparities between Aboriginal and non-Aboriginal people	<a href="http://www.health.nsw.gov.au/aboriginal/Pages/centre-for-aboriginal-health">www.health.nsw.gov.au/aboriginal/Pages/centre-for-aboriginal-health</a>
<b>Transcultural Mental Health Centre (TMHC)</b>	TMHC works in partnership with the community and mental health services to improve the mental health status of people from a Culturally and Linguistically Diverse background	☎ 1800 648 911 or 9840 3800 <a href="http://www.dhi.health.nsw.gov.au">www.dhi.health.nsw.gov.au</a>
<b>Intellectual Disability Services</b>	Intellectual Disability Services. There are a number of Health-funded services which can assist clinicians and patients	<a href="http://www.health.nsw.gov.au/disability/Pages/services-and-initiatives-for-people-with-disability.aspx">http://www.health.nsw.gov.au/disability/Pages/services-and-initiatives-for-people-with-disability.aspx</a>
<b>Deaf Society.</b>	The Deaf Society can provide support to Deaf people with cognitive disability, and can advise on the need for Deaf interpreters	<a href="http://deafsocietynsw.org.au/">http://deafsocietynsw.org.au/</a>
<b>NSW Council for Intellectual Disability</b>	An information and advocacy service for people with intellectual disability	<a href="http://www.nswcid.org.au/">http://www.nswcid.org.au/</a>
<b>Alzheimer's Australia</b>	Provides and education, information and advocacy for people living with Dementia, their families and professionals.	<a href="https://nsw.fightdementia.org.au/">https://nsw.fightdementia.org.au/</a>

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