



## NCAT Guideline 3 November 2021

# Adjournments

## When can hearings be postponed or delayed?

This Guideline operates generally across all NCAT proceedings. Specific matters relating to the Guardianship Division of NCAT are dealt with at the end of this Guideline.

### What does this Guideline explain?

1. This Guideline explains:
  - the general principles the Tribunal will apply to any adjournment request
  - when and how a party should ask for an adjournment
  - what grounds might convince the Tribunal to allow an adjournment
  - what happens if an adjournment is granted
  - what happens if an adjournment is refused
  - the alternatives to asking for an adjournment
  - any costs consequences for a party who asks for, or causes, an adjournment
  - specific issues relating to proceedings in the Guardianship Division.

**It is very important to make any adjournment request as soon as you realise an adjournment is necessary. You cannot assume the Tribunal will allow an adjournment even if all the parties agree.**

### Definitions

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

### What are the general principles which the Tribunal will apply to any adjournment request?

3. The overriding principle is that when a date and time has been set for a hearing it will go ahead on that date and at that time, unless the Tribunal allows what is called an 'adjournment'. An adjournment means the Tribunal moves the set hearing date or dates to a later set date or dates.
4. In considering whether to allow an adjournment, the Tribunal will:
  - take into account the need to manage cases and hearings fairly and efficiently. This includes making sure cases are heard as soon as possible, and
  - allow an adjournment only if the party requesting it has a good reason and it is fair in all the circumstances to adjourn the hearing.

## When and how should a party ask for an adjournment?

5. A party requesting an adjournment must:
  - make that request in writing to the Registrar of the relevant Division or Appeals as soon as that party realises that an adjournment is necessary and preferably at least 7 days before the hearing date
  - in the written request for an adjournment, identify the NCAT file number of the matter and set out the reason(s) for requesting the adjournment
  - attach to that request:
    - a copy of any supporting documents, e.g. medical certificate, and
    - if the other parties agree to that request, written confirmation of their agreement to the adjournment.

See the Specific Guideline for the Guardianship Division later below.

6. A party requesting an adjournment must notify each other party of the intention to request an adjournment. Each other party should tell the party requesting the adjournment and the Tribunal whether or not they agree with the adjournment request. Even if all parties agree with the adjournment request that does not mean the Tribunal will allow the adjournment.
7. A party can also request an adjournment at the start of or during a hearing. The party must explain why the party did not make that request earlier. If an earlier request for an adjournment was made and it was refused, the person can make a further request but only if there is new information which supports that request.
8. Before a party requests an adjournment, the party should consider whether there is an alternative to an adjournment. It is also important to understand that if the Tribunal grants an adjournment there may be costs or other consequences.

## What reasons might convince the Tribunal to allow an adjournment?

9. A party making an adjournment request must give clear grounds for that request. Grounds given in support of an adjournment request include, but are not confined to:
  - one of the parties is too ill to prepare the case or to participate in the hearing
  - where the matter is listed for an 'in-person' (face-to-face) hearing and a party or witness is unavoidably away from home and giving evidence by telephone or video link is not possible or would be unfair to one or more parties
  - information needed for the case is not yet available, and this is not the fault of the party making the adjournment request
  - another party has not followed the Tribunal's directions to prepare the case for hearing
  - a party has not had a reasonable chance to respond to information provided by another party.
10. If available, evidence should be provided to support the adjournment request. For example, if a party is ill, the party should provide detailed medical evidence if it is available. Ordinarily, the medical certificate must be specific and clearly state that the person is unable to attend the hearing and indicate the nature of the illness and why that illness prevents the person from participating in the hearing. If the person considers the information in the medical certificate

confidential, the person should advise the Tribunal as supporting documents including medical certificates are provided to the other party/parties as a matter of procedural fairness. The confidential documents should be clearly identified and the Tribunal asked to make a [confidentiality order](#).

If a party has made travel arrangements, that party should provide a copy of the travel itinerary, any airline or other travel bookings and information about when the bookings were made.

11. The Tribunal will take into account all relevant matters in favour of and against an adjournment. These include, but are not confined to:
  - the grounds for requesting an adjournment
  - whether the need for an adjournment is the fault of one of the parties
  - any disadvantage to the parties if an adjournment is allowed or refused
  - the impact of any delay on the principle that the Tribunal must facilitate the just, quick and cheap resolution of the issues in the proceedings.

### **What happens if an adjournment is granted?**

12. If the Tribunal decides to grant an adjournment it will set another date for the hearing. It will notify all parties of the new date by sending them another Notice of Hearing.

### **What happens if an adjournment is refused?**

13. Even if all parties agree to an adjournment, the Tribunal may still decide not to allow the adjournment. If the adjournment request is refused the hearing may go ahead and the Tribunal may make its decision even if a party is not present.

### **Are there any alternatives to asking for an adjournment?**

14. Yes. Before requesting an adjournment a party should consider other options such as asking the Tribunal to approve:
  - participation in the hearing by a party by telephone or video link
  - participation and the giving of evidence by a witness by telephone or video link
  - the case being decided on the basis of written evidence and submissions rather than a hearing (a 'decision on the papers'), except in disciplinary proceedings in relation to a health practitioner or legal practitioner or in Guardianship Division proceedings.
15. Any proposed alternative to an adjournment must be approved by the Tribunal. The request must be made to the Registrar at least 7 days before the date of the hearing and the requesting party must supply contact telephone numbers for all people involved. Where the matter is listed for an in-person hearing, there is no automatic right to a telephone or video link hearing or other procedure and the Tribunal will decide whether this will be allowed in the particular case.

## Are there any costs consequences for a party who asks for, or causes, an adjournment?

16. Yes. The Tribunal may order the party who requested the adjournment to pay the costs incurred by another party. The Tribunal may consider making a costs order if a party has, for example:
  - been responsible for unreasonable delays
  - unnecessarily disadvantaged another party
  - failed without reasonable excuse to obey the Tribunal's orders or directions, or
  - asked for an adjournment without having a good reason.
17. For more detailed information about costs in the Tribunal read the Tribunal's Guidelines about Costs.

## Specific Guideline for Guardianship Division proceedings

18. The Guardianship Division exercises a protective jurisdiction in relation to people with decision-making disabilities. This means that when exercising functions under the Act or the *Guardianship Act*, it must consider the principles in section 4 of the *Guardianship Act*. Section 4 requires the Tribunal to give paramount consideration to the welfare and interests of persons who have disabilities.
19. The Tribunal will take into account all relevant matters in favour of and against an adjournment. The Tribunal must always consider the factors set out in section 4 of the *Guardianship Act* and how the person who is the subject of the application would be affected if the hearing was delayed.
20. If the Tribunal receives a written adjournment request more than 7 working days before the hearing a single Tribunal member will usually hold a separate hearing before the main hearing to consider the adjournment request. This separate hearing is called an 'interlocutory hearing'. It usually happens by telephone. All parties will get an opportunity to say whether they agree or disagree with the adjournment request. Parties may also make written submissions about the adjournment request.

If the Tribunal receives a request for an adjournment less than 7 working days before the hearing the Tribunal will usually consider it at the start time of the date set for the main hearing

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

- **Act:** *Civil and Administrative Tribunal Act 2013* (NSW)
- **Adjournment:** A postponement or delay, by order of the Tribunal, of any hearing, directions hearing or interlocutory hearing
- **Guardianship Act:** *Guardianship Act 1987* (NSW)
- **Hearing:** A hearing, interlocutory hearing or directions hearing
- **Party or parties:** A person or entity involved in a particular case or joined to the proceedings under section 44 of the Act. The Tribunal calls the person or entity that brings an application 'the applicant' and the person or entity they seek orders against 'the respondent'.

- A person is a party to proceedings in the Guardianship Division if the person is:
  - Identified as a party in section 3F of the *Guardianship Act*
  - Identified as a party in section 35(2) of the *Powers of Attorney Act 2003* (NSW)
  - Identified as a party in rule 27 of the Rules
  - Joined by the Tribunal as a party under section 44 of the Act.
- **Registrar:** The Principal Registrar or any other person employed as a Registrar of the Tribunal.
- **Rules:** Civil and Administrative Tribunal Rules 2014

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

All proceedings in NCAT

### **Replaces:**

Administrative and Equal Opportunity Division & Occupational Division Adjudgments Guideline (August 2017)

Consumer and Commercial Division Adjudgments Guideline (January 2018)

Guardianship Division Adjudgments Guideline (August 2017)

### **Effective Date:**

10 November 2021

### **Notes:**

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

The law about the information in this Guideline is mainly in sections 36, 38, 41, 51 and 55 of the *Civil and Administrative Tribunal Act 2013*. There is a copy of this Act on the [NSW Legislation website](#).

**Armstrong J**

**President**

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