

What can I expect to happen at the Hearing?

This fact sheet gives information on the Tribunal in relation to the Guardianship Stream and the conduct of its hearings. For more information on hearing processes, please see Schedule 3, Part 4 of the *Tasmanian Civil and Administration Act 2020*.

The Tribunal

Tribunal Members are independent statutory officers who hear and determine Applications under the *Guardianship and Administration Act 1995*, or the *Power of Attorneys Act 2000*, *Disability Services Act 2011* and *Wills Act 2008* in accordance with the law and evidence presented by parties.

At hearing you address the Tribunal member by calling them Mr, Ms or Dr and then using their surname (which will be on a name plate on the member's desk), or by referring to them as 'Member' and where applicable President and Deputy President. Each of the parties and witnesses will be addressed in the same way by the members, as will the Person who is the subject of the Application.

Pre – hearing

An application is received by the Tribunal Registry and is listed for hearing. Notice of hearing is sent to the applicant, the person subject to the application, parties, and if known persons with a proper interest in the matter. Parties must be given no less than 10 days' notice of hearing.

Documentation (not including bank statements or the person's will) submitted as part of the proceedings before the Tribunal will be provided only to parties to the proceedings. An interested party does not receive hearing papers.

Any written submission should be lodged with the Tribunal Registry seven days prior to hearing.

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 Applications can only be withdrawn with the consent of the Tribunal.

The applicant must complete a Request to Withdraw and provide evidence about how the issues that prompted the application have been resolved.

If the Tribunal does not consent to withdrawal of the application you will be advised of this and the matter will proceed to hearing.

Hearings

The hearing will be conducted by Tribunal members who will explain what happens at the hearing and what legislative requirements need to be considered. The Tribunal members will identify the documentation they have before them by way of hearing papers.

The Tribunal will usually ask the Applicant to speak to the application. Other parties will then be invited to comment or make submissions. All comments should be addressed to the Tribunal. The Tribunal can inform itself as it thinks fit. The Tribunal may ask questions of parties to obtain clarification or to obtain further information.

The Tribunal is not bound by the rules of evidence; however, the Tribunal must apply the rules of procedural fairness, ensuring there is no bias and a fair hearing is conducted.

Parties and their legal representation (if any) should be prepared for hearings to be conducted with a level of formality appropriate to the particular circumstances of the application. The Tribunal will consider the special needs of the person subject to the application in the hearing and will adapt the communication, and processes to fit the circumstances. Any specific needs, including the use of interpreters, use of hearing loops or any access issues should be raised prior to the hearing with the Tribunal Registry.

The person (or a substitute applicant from the same organisation) who made the application must attend the hearing. The person subject to the application should also attend, given the Tribunal, where possible, will want to ascertain the views and wishes of that person. A person who wants to give evidence should also attend.

Participants at a Tribunal hearing should always endeavour to be polite and professional in both correspondence and communications with the Tribunal and Registry. Rudeness and discourtesy are not acceptable and in some circumstances may constitute an offence.

Most hearings can be held via telephone.

Hearings are open to the public unless the Tribunal orders to close proceedings. However, given the sensitivity of the information that can be discussed, it is normal for the Tribunal to require participants to indicate the capacity in which they are present or their relationship with the subject person at the commencement of the hearing.

Hearings are audio recorded so there is an accurate record of what is said.

All communication devices, including mobile phones and pagers, must be switched off at the commencement of a hearing unless the Presiding Member permits otherwise. A person attending a hearing is not permitted to make an audio or visual recording of proceedings.

Sometimes a security guard may be present, to ensure the safety of all attending the hearing.

The Decision

After considering both oral and written evidence before the Tribunal, and in accordance with the law, the Tribunal will make a decision. An oral decision, along with oral reasons, is usually given at the end of the hearing and a formal written order will be issued shortly after. Sometimes the Tribunal may reserve its decision, in which case it will advise the parties by way of order that the decision is reserved and provide a written decision to parties.

Any person who is aggrieved by a determination of the Tribunal may by notice in writing to the Tribunal and within 21 days after the making of a determination request a written statement of reasons.