

## Applying for and revoking Financial Management Orders

Information to help you apply and prepare for a Tribunal hearing

### Background Information

Note: Sections in brackets refer to the *NSW Trustee and Guardian Act 2009*.

### What is a Financial Management Order?

Sometimes a person with a disability such as mental illness is unable to manage his or her financial affairs. The Supreme Court, the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT) and the Mental Health Review Tribunal (MHRT) may make orders for the management of the person's finances. These orders are commonly referred to as financial management orders.

The relevant law and procedures depend on whether the Supreme Court, NCAT or the MHRT is considering the matter.

This Guide gives information about the Mental Health Review Tribunal's authority to make, and to revoke, Financial Management Orders. You might also wish to seek information directly from NCAT about its functions concerning financial management orders.

The Mental Health Review Tribunal may make Financial Management Orders for persons who are patients in a mental health facility.

If after conducting a mental health inquiry the Tribunal orders that a person is to be detained in a mental health facility as an involuntary patient, it must (s44):

- consider whether the person is capable of managing his or her own affairs; and
- if satisfied that the person is not capable of managing his or her own affairs, make a Financial Management Order.

The Tribunal may also hear an application for a person who is a voluntary patient, an involuntary patient or who is detained (as an assessable person) in hospital and who has not yet had a mental health inquiry (s46).

It is also possible for any person with a sufficient interest, such as staff of a mental health facility, case manager, family members or a person who might be affected by the decision, to apply to the Tribunal, seeking a consideration of a person's ability to manage his or her financial affairs.

## What does the Tribunal consider at the hearing?

The Tribunal considers whether or not the patient is capable of managing his or her financial affairs. If the Tribunal is satisfied that the patient is not capable of managing his or her own affairs, the Tribunal will make an order appointing the NSW Trustee (a public official) as the patient's financial manager. The order can apply to part or the whole of the person's estate.

## How long do the Tribunal's orders last?

The Tribunal may make either:

- An interim order for a specific period of up to six months until the Tribunal can reconvene to determine on a final basis the patient's capability to manage his or her affairs. An interim order may be appropriate, for example, where there is an urgent need to make an order because a patient's estate is being dissipated, or there is a risk of financial exploitation. In such cases, the Tribunal must make directions to re-list or review the matter to consider the patient's capability to manage his or her affairs. The Tribunal may only make a further order if the person remains a patient. The Tribunal can review an interim order on its own motion at any time. The parties to the proceedings must be given notice of the review date. If the order is not reviewed, or the review commenced, prior to the expiry date it is revoked. Once a review is commenced, the interim order is taken to be extended until the review is completed.

**Applicants need to be aware that an interim order is not a short order and cannot be used to make a time limited order. The purpose of an interim order is to protect the patient's financial position pending the relisting of the case, at which time, the parties may be in a position to present all the necessary evidence in relation to the application.**

- An order without a time limit. This order provides long-term support and remains in place indefinitely or until it is formally revoked.

## What does the NSW Trustee do?

The NSW Trustee handles the day-to-day management of the person's affairs. It is the manager's responsibility to:

- protect the person's assets;
- pay bills;
- invest money;
- prepare tax returns; and
- protect the person from financial abuse and neglect.

The NSW Trustee usually does these things in consultation with the person and, where appropriate, family members. The NSW Trustee does charge the person a fee, which varies depending on the person's income. More information about the fees charged can be obtained directly from the NSW Trustee.

## How to apply to the Tribunal

As soon as you are aware that you need to apply to the Tribunal for a Financial Management Order, you should start making the necessary arrangements. The Tribunal often hears such applications at the same time as applications to extend a patient's stay in hospital, or before considering an application for a Community Treatment Order. The Tribunal may also hear the applications separately.

The NSW Trustee and Guardian Act 2009 provides for a right of appeal to the NSW Civil and Administrative Decisions Tribunal (NCAT) by the person to whom an order relates or any other person who was a party to the proceedings in which the order was made. You are therefore required to notify the parties to the proceedings of the application (see Attachment 1 - Notice of Hearing).

Most cases that the Tribunal considers are following the application of an Authorised Medical Officer at the mental health facility in which the person is a patient. The Authorised Medical Officer of the mental health facility should always be included as a party to the proceedings. The class of person who might also be considered to be a party to the proceedings is based on persons who may have a sufficient (current or future) interest in the patient's estate and may include family members or carers. Where a family member or carer brings the application they will be considered as parties to the proceedings.

Notice of the hearing should be given at least one week before the hearing. The relevant mental health facility official should contact the Tribunal at least two weeks before the proposed hearing date, indicating a preference for a date, which would enable the Authorised Medical Officer to issue the Notice of Hearing. The Notice of Hearing should be issued in writing by fax, email or by post and a copy should be kept on the patient's file to ensure that a proper record is kept.

The Authorised Medical Officer will be required to provide the Tribunal with a copy of the completed Confirmation of Service of Notice (see Attachment 2).

Some of the larger mental health facilities have a Tribunal Clerk, or someone who is responsible for organising applications to the Tribunal. If this is the case you should contact them directly and they will apply to the Tribunal on your behalf.

If there is no Tribunal clerk at your site, you will need to contact the Tribunal directly. To book a hearing for an individual patient you will need to fax an application form to the Tribunal (fax number 9817 4543). Application forms are available on the MHRT website ([www.mhrt.nsw.gov.au](http://www.mhrt.nsw.gov.au)) or by phoning 9816 5955.

If your application is urgent you should phone the Tribunal after faxing the application form and ask to speak to a Senior Registry Officer to confirm receipt of the fax.

## What to do before the hearing

### Preparation for the hearing

The appropriate clinician involved with the patient should:

- Inform the person of the application and your reasons for making it.
- Explain the hearing process to the person.
- Inform the person of the hearing date and time.
- Issue Notices of hearing to the parties (**see Attachment 1**).
- Organise and prepare reports and documentation.
- Ensure that copies of outstanding accounts, bank statements, letters from creditors, and other financial papers are available before the hearing.
- Inform the patient's designated carer(s) and principal care provider, relatives and other key people of the hearing and encourage them to attend (unless the person objects).
- If family or carers are unable to attend, facilitate alternative means for them to participate in the hearing, if necessary.
- Organise legal representation and make the mental health facility file available to the legal representative.
- Organise an interpreter for the person, carers or family members where necessary.
- Ensure that an appropriate level of security is arranged, if necessary.

## Who should come to the hearing

- The person concerned (wearing street clothes if possible).
- The person's designated carer(s) and principal care provider, family, friends and support persons who can provide relevant information about the person's financial affairs.
- Persons who are considered to have a current or future interest in the subject person's estate and are parties to the proceedings and have been issued with a notice of hearing.
- Everyone who has prepared a written report for the Tribunal.
- The treating psychiatrist/doctor.
- Other involved professionals, for example the case manager, social worker or other professionals with knowledge of the person's current financial management capability.

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If carers, family or friends are unable to come to the hearing, they may still make their views known by writing to the Tribunal before the hearing. It might also be practicable for the Tribunal to hear their views by telephone or video.

## Reports and documents required

The Tribunal needs to see the following reports and documents before the hearing:

- A completed application form.
- A copy of the current involuntary patient or adjournment order (where appropriate).
- Report from treating psychiatrist or registrar.
- Reports from social worker and other involved professionals.
- Copy of recent progress notes or other relevant documents from person's mental health facility file.
- Other relevant documents including copies of outstanding accounts, bank statements, letters from creditors, and other financial papers.
- Completed Confirmation of Service of Notice form (see Attachment 2).

Reports in relation to applications for Financial Management Orders must address the question as to whether or not the patient is capable of managing his or her financial affairs.

If the hearing is not being held in person at the mental health facility, all reports should be faxed to the Tribunal **at least three working days before** the hearing date.

The Tribunal will refer to the reports during the hearing. For this reason, the authors of reports should be available to come to the hearing to answer any questions arising from the reports. Sometimes the Tribunal arranges for the authors of reports to talk with Tribunal members by telephone or over a video link.

The Tribunal may make reports available to the patient and his or her legal representative. See note below.

### Medical records

The law allows patients and their representatives to inspect or have access to the patient's medical records (s156). However, it is possible to ask the Tribunal to order that medical records not be disclosed for some good cause. This might happen, for example, if the treating medical practitioner believes that disclosure of the information may be harmful.

If you consider that there is a need for a preliminary hearing to discuss the disclosure of medical records, you should phone the Tribunal to arrange this well before the scheduled hearing.

## Report style

Reports should:

- Be written in plain and simple English and avoid where possible the use of medical or technical jargon.
- Provide, as appropriate, a full and frank description of the patient's circumstances (see note above).
- Avoid comments that could be interpreted as judgmental.
- Address the question as to whether or not the patient is capable of managing his or her financial affairs.
- Identify clearly the sources of the author's information. These sources may be direct personal observations of the author of the report, or may be information obtained from file notes or other professionals involved in the person's care.

The treating psychiatrist and social worker should provide reports addressing the following issues.

## Psychiatrist Report

- The details of the person with an interest in the matter who has made the application.
- Person's legal status in the mental health facility as detained, involuntary or voluntary patient.
- Person's history and details in relation to current admission to the mental health facility including diagnosis, treatment plan and current medications.
- Supporting documentation such as copies of outstanding accounts, bank statements, letters from creditors, and other financial papers.
- Information as to whether relevant carers, relatives or friends would be available to give evidence to the Tribunal.
- Patient's viewpoint about the proposed order.
- Evidence as to patient's capability to manage financial affairs, including history before hospitalisation, and evidence of any incapability of managing finances.

This evidence might include:

- Details of the person's assets and liabilities.
- Contact made with friends and carers and their viewpoint concerning the person's ability to manage all financial affairs.
- Evidence of test results or assessments regarding capacity to manage their financial affairs, including cognitive tests and mental state examinations. .
- Patient's viewpoint about the proposed order.
- Specific examples of any incapability of managing finances, with reference to any outstanding accounts, letters from creditors, bank statements.

## Social Worker's Report

The report should address these issues if not covered in the doctor's report:

- Supporting documentation such as copies of outstanding accounts, bank statements, letters from creditors, and other financial papers.
- Information as to whether relevant carers, relatives or friends would be available to give evidence to the Tribunal.
- Person's legal status in the mental health facility as detained, involuntary or voluntary patient.
- Person's history and details in relation to current admission to the mental health facility including diagnosis, treatment plan and current medications.
- Opinion as to patient's capability to manage financial affairs, including history before hospitalisation, and evidence of any incapability of managing finances.
- Details of the person's assets and liabilities.
- Contact made with friends and carers and their viewpoint concerning the person's ability to manage his or her financial affairs.
- Specific examples of any incapacity to manage finances, for example, any outstanding accounts, letters from creditors or bank statements.

## What to do after the hearing

If the Tribunal makes a Financial Management Order, it will:

- give the applicant and the client a copy of the order; and
- send a copy of the order and relevant reports to the NSW Trustee.

The applicant should:

- explain to the patient the nature and effect of the order;
- explain to the patient and family members the role of the NSW Trustee in the management of the person's financial affairs;
- advise the patient of his or her appeal rights (see Appeals and Revocation below); and
- make contact directly with the NSW Trustee to discuss the management of the person's affairs, and give the NSW Trustee relevant documents about the person's financial affairs.

## Appeals against the making of Financial Management Orders

It is possible to appeal to either the Supreme Court or to the NSW Civil and Administrative Decisions Tribunal (NCAT) against the making of a Financial Management Order. You should refer the person to the Mental Health Advocacy Service (MHAS) for advice on how to lodge an appeal, and the issues that are likely to be involved.

If requested to do so, the Tribunal will give the person formal written reasons for making the order.

## Revoking Financial Management Orders

The Tribunal has the authority to revoke (that is, to end) a Financial Management Order that it made, or that a Magistrate had made. Before it may revoke the order, the Tribunal must be satisfied that the person is capable of managing his or her affairs or that it is in the person's best interests that the order is revoked.

A person who is or once was a patient under the *Mental Health Act 2007* may apply to the Tribunal to have the order revoked (patient also includes a forensic patient).

Usually, someone asking to have the Financial Management Order revoked will present evidence of new or changed circumstances, showing that the person is now capable of managing his or her financial affairs or that it is in their best interests to have the order revoked.

In summary, the Tribunal may only revoke an order if:

- the Tribunal or a Magistrate made the original order;
- the person is (or was but has ceased to be), a patient under the *Mental Health Act 2007* or a forensic patient under the *NSW Mental Health (Forensic Provisions) Act 1990*; and
- the Tribunal is satisfied that:
  - the person is now capable of managing his or her own financial affairs, or
  - it is in the person's best interests that the order is revoked.

## How to apply

Only the person who is subject to the order may apply, although he or she may receive assistance from friends, carers or professionals. The application:

- must be made on the appropriate form (**see Attachments 3 and 4**); and
- must be supported by evidence to indicate that the person is now capable of managing his or her own affairs and/or that it is in the person's best interests that the order is revoked.

The application will not proceed to a hearing until this evidence is provided. This evidence could include a report or letter from the client's case manager, or doctor, or other supporting evidence from family or friends.

## What happens after the application is received?

Once the Tribunal receives the application and supporting information, it will:

- arrange a hearing;
- write to the person and his or her case manager, advising them of the hearing; and
- write to the NSW Trustee seeking a report on the person's current financial position.

## What to do before the hearing

If you are assisting someone with his or her application, it is important to:

- emphasise that the person will need to show the Tribunal that he or she is capable of resuming financial management or that it is in his or her best interests that the order is revoked;
- help the person to gather information and reports or letters from professionals, friends or family members; and
- help the person to obtain legal representation if required.

## Documents required for hearing

The Tribunal needs to see the following reports and documents before the hearing:

- A completed application form;
- a submission or letter from the person explaining why he or she wants to have the order revoked (if not included in the application form); and
- supporting evidence from psychiatrist, medical doctor, psychologist or case manager showing that the person is now capable of managing his or her own financial affairs.

## Who should come to the hearing?

- the person concerned (wearing street clothes if possible);
- the person's family, friends and support persons who can provide relevant information about the person's financial affairs;
- everyone who has prepared a written report for the Tribunal;
- the treating psychiatrist/doctor; and
- other involved professionals, for example the case manager, social worker or other involved professionals with knowledge of the person's current financial management capability.

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If family or friends are unable to come to the hearing, they may still make their views known by writing to the Tribunal before the hearing. It might also be practicable for the Tribunal to hear their views by telephone or video.

## What happens after the hearing

### If the Tribunal revokes the Financial Management Order:

- the Tribunal will give a copy of the revocation order to the person, and send a copy to the NSW Trustee to advise of the outcome of the hearing.
- the NSW Trustee will make arrangements with the person to hand back control of his or her finances.

### If the Tribunal does not revoke the Financial Management Order:

- the Tribunal will give a copy of the order to the person, and send a copy to the NSW Trustee to advise of the outcome of the hearing.
- the order stays in place, and the NSW Trustee will continue to manage the financial affairs of the person.

## Attachments

The following attachments are available by clicking on the following links:

1. [Notice of Hearing](#)
2. [Confirmation of Notice of Hearing](#)
3. [Information Sheet for Financial Management Orders](#)
4. [Application to Revoke a Financial Management Order](#)
5. [Information Sheet for Revocation of Financial Management Orders](#)