

Policy: Internal Review of Decision

Purpose

This policy and procedures sets out the approach for managing requests for internal reviews of financial management decisions for NSW Trustee & Guardian in accordance with the [Administrative Decision Review Act 1997](#).

Internal Reviews of Decision

NSW Trustee & Guardian decisions reviewable by NSW Civil and Administrative Tribunal, Administrative and Equal Opportunity Division (NCAT) are outlined in [Section 62](#) and [Section 71 of the NSW Trustee and Guardian Act 2009](#) for directly management customers and [Section 70 of the NSW Trustee and Guardian Act 2009](#) for privately managed customers.

The internal review of decision (IROD) process provides an avenue of appeal for customers, family members and other relevant stakeholders who may disagree with a decision made by NSW Trustee & Guardian.

The purpose of an internal review is to:-

- provide those who are unhappy with a decision with an independent review of the decision
- consider whether all relevant views were sought, information and facts obtained,
- whether the general principles under [Section 39 of the NSW Trustee and Guardian Act 2009](#) were considered in making the decision.
- ensure that all relevant aspects of the decision have been considered by NSW Trustee & Guardian and addressed in the reasons for decision.

Reviewable Decisions

Not all decisions made by NSW Trustee & Guardian on behalf of its customers are reviewable under the provisions of the [Administrative Decision Review Act 1997](#).

In accordance with [Section 62 of the NSW Trustee and Guardian Act 2009](#), NCAT can review decisions made pursuant to [Section 56](#), [Section 57](#), [Section 58](#), [Section 59](#) and [Section 60](#) with respect to directly managed customers. Decisions made under [Section 71](#) are also reviewable by NCAT.

In accordance with [Section 70 of the NSW Trustee and Guardian Act 2009](#), NCAT can review decisions made pursuant to [Section 64](#), [Section 65](#), [Section 66](#), [Section 67](#) and [Section 68](#) of the [NSW Trustee and Guardian Act 2009](#) with respect to privately managed customers.

The above does not apply if the decision was made in accordance with a direction given by the Supreme Court to NSW Trustee & Guardian.

Who can apply to have a decision internally reviewed

In the case of customers whose financial affairs are directly managed by NSW Trustee & Guardian, an application for an internal review can be made by:-

- the managed person in respect of whose financial affairs the decision was made;
- the spouse of the managed person, or any other person whose interests are, in the opinion of NCAT, adversely affected by the decision.

Where NSW Trustee & Guardian directs and authorises a private manager of the financial affairs of a managed person, an application for an internal review may be made by:-

- the person under management;
- the person appointed as private manager; or
- any other person who, in the opinion of NCAT has a genuine interest in the matter to which the NSW Trustee & Guardian decision relates.

Who can carry out an internal review?

In accordance with [**Section 53\(3\) of the Administrative Decisions Review Act 1997**](#):

- An IROD must be carried out by an officer from NSW Trustee & Guardian who was not substantially involved in the process of making the decision under review.
- The internal reviewer must be an employee of NSW Trustee & Guardian.
- The internal reviewer must be suitably qualified to carry out the review.

Process for requesting an Internal Review

The person seeking an IROD is required to write to the Customer Resolutions Coordinator (CRC) to request a review of decision. It is preferable for the person requesting the review to provide reasons why they believe the decision made by NSW Trustee & Guardian is unfair or not in the best interests of the managed person.

A request must be received by NSW Trustee & Guardian within 28 days of the decision being advised to the customer, family members or relevant stakeholders.

Timeframe for completion of an Internal Review of Decision

NSW Trustee & Guardian has 21 days to complete the review from the date the request for an IROD was received.

If NSW Trustee & Guardian is not able to meet this timeframe, the person seeking the review has the right to make application directly to NCAT if they wish to do so.

Internal Reviewer's Responsibility

The Internal Reviewer in reviewing a decision must consider any relevant material submitted by the applicant. This may include considering:-

- the grounds provided for seeking an internal review;
- the rationale behind the original decision;
- assessing any new evidence.

The internal reviewer has the delegated authority to affirm, vary or set aside the decision under review.

The person asked to carry out the internal review will be impartial in the review process.

The Internal Review may either:-

- affirm the decision;
- vary the decision; or
- set aside the decision and make a new decision.

The Internal Reviewer must provide written reasons for the decision within 21 days.

NSW Civil and Administrative Tribunal (NCAT)

Following the internal review of decision process, if the person seeking a review of the decision is not satisfied with the outcome, they can make application to NCAT to review the decision. This must be done within 28 days from the date the person received the internal review.

Policy statement

NSW Trustee & Guardian provides financial management services to people who have disabilities, which affect their capacity to make financial decisions. NSW Trustee & Guardian receives its authority to make substitute decisions on behalf of its customers through Financial Management Orders made by a Court or Tribunal.

In making substitute decisions for customers, NSW Trustee & Guardian staff must adhere to the principles set out in [Section 39 of the NSW Trustee and Guardian Act 2009](#).

Substitute financial decision making is one of NSW Trustee & Guardian's core responsibilities. Decisions are made in accordance with our functions/authority pursuant to the [NSW Trustee and Guardian Act 2009](#). It is important that customers and family members are informed of the decision making process, the decision made, and of their right to seek a review of the decision. All significant decisions must be communicated in writing to the customer, and family/stakeholders impacted by the decision, setting out the reasons for the decision and must include timeframes for seeking a review.

In accordance with the [NSW Trustee and Guardian Act 2009](#) if a person disagrees with a decision made by NSW Trustee & Guardian they may have a right to seek a review of the decision. (See [reviewable decisions](#) and [Who can apply to have a decision internally reviewed](#).) The [Administrative Decision Review Act 1997](#) requires that a written request is made to NSW Trustee & Guardian within 28 days of being told of NSW Trustee & Guardian's decision. NSW Trustee & Guardian will then conduct an internal review of decision (IROD).

If a person remains unhappy with the outcome of the IROD, they are entitled to seek a further review of decision by the NSW Civil and Administrative Tribunal, Administrative and Equal Opportunity Division (NCAT). The [Administrative Decision Review Act 1997](#) usually requires that prior to a review being undertaken by NCAT an internal review of the decision is carried out by NSW Trustee & Guardian.

Pursuant to [Section 55 \(4\) of the Administrative Decisions Review Act 1997](#), NCAT has a discretion to deal with an application even though the applicant has not applied for an internal review. [Section 55 \(4\) \(a\) and \(b\)](#) sets out the circumstances.

Scope

Financial Management and Private Management Staff.

Legislative context

- [NSW Trustee and Guardian Act 2009](#)
- [Administrative Decision Review Act 1997](#)

Definitions

NCAT means NSW Civil and Administrative Tribunal
CRC means Customer Resolution Co-ordinator
IROD means Internal Review of Decision

Document information

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