



NSW Civil and Administrative Tribunal
New South Wales

Case Name: CZC
Medium Neutral Citation: [2020] NSWCATGD 7
Hearing Date(s): 6 March 2020
Date of Orders: 11 March 2020
Decision Date: 5 May 2020
Jurisdiction: Guardianship Division
Before: M D Schyvens, Deputy President
Decision: Set Aside Applications

The application to set aside the guardianship order is dismissed after hearing.

The application to set aside the financial management order is dismissed after hearing.

Review or Revoke Financial Management Order

The application is dismissed because OBM has withdrawn the application and the Tribunal consents.

Guardianship Order

The guardianship order for CZC made on 23 October 2018 has been reviewed. The order now is as follows:

1. The Public Guardian is appointed as the guardian.
2. This is a continuing guardianship order for a period of two years from 11 March 2020.
3. This is a limited guardianship order giving the

guardian(s) custody of CZC to the extent necessary to carry out the functions below.

FUNCTIONS:

4. The guardian has the following functions:

a) Accommodation

To decide where CZC may reside.

b) Health care

To decide what health care CZC may receive.

c) Medical/Dental consent

To make substitute decisions about proposed minor or major medical or dental treatment, where CZC is not capable of giving a valid consent.

d) Services

To make decisions about services to be provided to CZC.

e) Travel

To make decisions about whether or not CZC can travel to any place outside Australia.

f) Passport

To make a decision about whether or not the passport of CZC should be surrendered to the guardian or some other authority the guardian nominates pending a decision by the guardian concerning travel.

CONDITION:

5. The condition of this order is:

a) Standard Condition

In exercising this role the guardian shall take all reasonable steps to bring CZC to an understanding of the issues and to obtain and consider their views before making significant decisions.

Financial Management Order

The Financial Management order for CZC made on 26 February 2018 has been reviewed. The order now is as follows:

1. The estate of CZC is subject to management under the NSW Trustee and Guardian Act 2009 (NSW).
2. The management of the estate of CZC is committed to the NSW Trustee and Guardian.
3. This order be reviewed by the Tribunal within two years.

Catchwords:

GUARDIANSHIP – review of guardianship order – end-of-term review of guardianship order – whether a guardianship order needs to be made – subject person finding stability in current accommodation – need for ongoing health care and treatment decisions — consideration of cultural and linguistic background– suitability to be appointed guardian – proposed person unsuitable to be appointed guardian – Public Guardian appointed – order made.

FINANCIAL MANAGEMENT – review of reviewable financial management order – subject person not capable of managing their own affairs – subject person unable to prioritise necessities – subject person prone to impulsivity – no private person available to appoint – NSW Trustee and Guardian appointed – order made.

INTERLOCUTORY – application to set aside guardianship order – application to set aside financial management order – notice of hearing – whether person a “carer” – discretion to set aside – not in subject person’s welfare and interests to set aside

orders – application to set aside refused.

Legislation Cited:	Civil and Administrative Tribunal Act 2013 (NSW), s 41 Civil and Administrative Tribunal Regulations 2013 (NSW), cls, 9, 9(1)(b), 9(3) Guardianship Act 1987 (NSW), ss 3(1)-(2), 3D(1), 3F(2), 3F(5), 4, 4(a), 4(e), 4(g), 14, 14(2), 14(2)(a), 15(3), 17(1), 17(1)(a)-(b), 25P(1)(a)-(b), 25P(2)
Cases Cited:	C S and M Y v the Guardianship Tribunal and the Public Guardian (Supreme Court (NSW), Windeyer J, 29 November 1999, unrep DTX [2019] NSWCATGD 11 Hammond v Ozzy's Cheapest Cars Pty Ltd t/as Ozzy Car Sales [2015] NSWCATAP 65 IF v IG [2004] NSWADTAP 3 P v D1 & Ors [2011] NSWSC 257 P v NSW Trustee and Guardian [2015] NSWSC 579 Re B (No 1) [2011] NSWSC 1075 W v G [2003] NSWSC 1170 ZGV v ZGT [2018] NSWCATAP 55
Texts Cited:	Nil
Category:	Principal judgment
Parties:	002: Review of Reviewable Financial Management Order CZC (the person) NSW Trustee and Guardian (appointed financial manager) 004: Review of Guardianship Order CZC (the person) Public Guardian (appointed guardian) 005: Requested Review of Guardianship Order CZC (the person) OBM (applicant, proposed guardian) Public Guardian (appointed guardian)
Representation:	H Udagama, Separate Representative for CZC

File Number(s): NCAT 2017/00356037

Publication Restriction: Decisions of the Guardianship Division of the Civil and Administrative Tribunal have been anonymised to remove any information that may identify any person involved in the Tribunal's proceedings: Civil and Administrative Tribunal Act 2013 (NSW), s 65.

REASONS FOR DECISION

Background

- 1 CZC is a 29-year-old man of [African] descent, who migrated to Australia in 2009 with the support of his Uncle, OBM. He recently transitioned into a semi-independent, 24-hour supported group home in South West Sydney, operated by a disability service provider. CZC enjoys browsing YouTube, shopping, and using his computer and phone. He has extended family in Australia and also in Africa.
- 2 Since his arrival in Australia, CZC has been diagnosed with Schizophrenia, which is described in the medical evidence as severe and fluctuating.
- 3 CZC's estate has been the subject of a reviewable financial management order since 26 February 2018 at which time the Tribunal appointed the NSW Trustee and Guardian (TAG) as CZC's financial manager. A guardianship order was also made for CZC on 23 October 2018, at which time the Public Guardian was appointed for a period of 16 months with the authority to make substitute decisions for CZC as to his accommodation, health care, medical and dental consent, provision of services, travel and retention of his passport.
- 4 Both of those previous orders are due for their end-of-term reviews, which are accordingly dealt with in these reasons.
- 5 In addition to the end-of-term reviews, on 12 June 2019 the Tribunal also received requests from OBM to review each of those orders. All proceedings were listed for hearing on 27 September 2019. The Tribunal adjourned the proceedings on that date due to the non-participation of significant witnesses. The Tribunal did, however, make an order that CZC be separately represented in the proceedings and the Tribunal was subsequently advised by the Mental

Health Advocacy Service that Ms Harshani Udagama, solicitor, had been appointed to the role.

- 6 Subsequent to lodging the applications to review the orders in place for his nephew, and before such applications had been determined, OBM proceeded by letter received by the Tribunal on 29 October 2019 to request that the Tribunal exercise its discretion to set aside both the decision of 26 February 2018 to make a financial management order for CZC and the decision of 23 October 2018 to appoint a guardian for him (“the set aside applications”).
- 7 All proceedings were again listed for hearing before the Tribunal on 5 December 2019. Unfortunately, once again all matters were adjourned. The Tribunal’s reasons for that event indicate that they primarily decided to adjourn the proceedings due to the non-attendance of CZC and difficulties with the provision of interpreting services. Certain interlocutory orders were made, however, including an order extending time in relation to OBM’s set aside applications.

The hearing of 6 March 2020

- 8 All parties to the proceedings were issued with a Notice of Hearing on 24 January 2019 advising that the proceedings would be heard on 6 March 2020 at NCAT Liverpool. The hearing proceeded on that day before me and these reasons provide the explanation for each of the orders made.
- 9 At the hearing, I first dealt with OBM’s set aside applications. Having taken the parties submissions, I announced my decision to dismiss both applications and then proceeded with the hearing into the remaining matters. During the course of the hearing OBM withdrew his application seeking a review of the financial management order. As any issues arising could be dealt with through the Tribunal sanctioned review of such order, I consented to OBM’s request. Upon concluding the hearing I advised the parties that I had reserved my determinations. Final orders were issued on 11 March 2020 and my reasons were issued today, 5 May 2020.
- 10 CZC, OBM, and a representative from the TAG, Mr Scott Beale, all attended the hearing in person. A representative of the Public Guardian, Ms Nicola Shirley, participated by phone. Other health workers and social workers, who

provide services to CZC, as well as members of CZC's family, also attended the hearing in person. A full list of hearing attendees is annexed to these reasons [annexure removed for publication].

- 11 CZC attended with his appointed separate representative, Ms Udagama. He was also assisted by a [language] interpreter. OBM elected to be assisted by another [language] interpreter on an "as needed" basis, however, he participated in most of the hearing in English without needing the interpreter's assistance.
- 12 Ms Udagama told the Tribunal that she had an opportunity to speak with CZC about the hearing the day before the hearing, but without an interpreter. Ms Udagama said that she was nevertheless confident CZC understood their conversation, and broadly the nature of the proceedings. Nevertheless, given the availability of the interpreter at the hearing, the Tribunal stood the matter down for a short time to allow Ms Udagama to meet privately with CZC with the assistance of the interpreter.
- 13 CZC spoke for himself through the [language] interpreter on a number of occasions at the hearing. The views he gave were informative and valuable for the Tribunal's consideration, and are referred to later in these reasons.
- 14 The broad majority of the hearing was conducted in a constructive and civil manner. Unfortunately, as the hearing was concluding, OBM engaged in conduct which, in my view, caused safety and well-being concerns for those in the hearing room.
- 15 OBM first appeared to order both CZC and the [language] interpreter to stand up, which they did. OBM then proceeded to grab the arms of both men, raising their arms into the air, saying "these are [African] people, these are [African] people" at which time I directed OBM to unhand both men and sit down.
- 16 Shortly after this incident and in the course of me asking OBM if he had any final submissions, OBM turned towards the rear of the hearing room where those who provide professional services to CZC, including Ms Z, Ms Y and Mr X were seated, got down on his knees, waved what appeared to be a Bible at the group, and then in an aggressive tone, called one or more of the group

“racist”, and yelled – among other things – “my god will punish you”. During this outburst, OBM was unresponsive to my repeated directions to immediately desist. The reactions of the group the target of OBM’s actions made it apparent that they were shocked if not threatened by his conduct. I concluded the hearing shortly thereafter as I was satisfied there were no further submissions.

- 17 My purpose in putting on the record OBM’s actions in the hearing is twofold. First, I wish to acknowledge the impact OBM’s threatening and disruptive conduct most probably had upon all hearing participants and apologise on behalf of the Tribunal. No participant in proceedings before the Tribunal should be subjected to intimidating conduct. Second, OBM’s conduct goes to his character and his attitude towards those who provide services to CZC, and as such, is a relevant consideration in the assessment of his suitability to be appointed as his nephew’s guardian which I will refer to later in these reasons.

APPLICATIONS TO SET ASIDE

Extension of Time

- 18 As previously noted, on 29 October 2019, the Tribunal received applications from OBM to set aside both the guardianship and financial management orders, both of which were made over 12 months prior. His applications to set aside those orders raised many issues which were more suitable as grounds of appeal rather than a set aside application. I construed from his submissions that his primary arguments in support of his applications were that: he was not given notice of those proceedings; he was CZC’s carer at the time and therefore entitled to notice; and due to the failure to be issued with a notice, he did not participate in the relevant hearings and his views were not taken account of.
- 19 Unless an extension is granted, an application for an order to be set aside must be made within seven (7) days after the decision subject to the application was made: cl 9(3) of the Civil and Administrative Tribunal Regulations 2013 (NSW) (“the NCAT Regulations”).
- 20 Clearly, the applications to set aside were made well outside of that 7-day window. In fact, the application to set aside the financial management order was made some 20 months after the order was made. Similarly, the application

to set aside the guardianship order was made some 12 months after the order was made.

- 21 The granting of an extension of time is a discretionary power under s 41 of the *Civil and Administrative Tribunal Act 2013* (NSW). That section provides as follows:

41 Extensions of time

(1) The Tribunal may, of its own motion or on application by any person, extend the period of time for the doing of anything under any legislation in respect of which the Tribunal has jurisdiction despite anything to the contrary under that legislation.

(2) Such an application may be made even though the relevant period of time has expired.

- 22 The applications to extend time were heard together on 5 December 2019 by a differently constituted panel.
- 23 A key issue for that panel of the Tribunal in determining whether to grant the extension sought by OBM was whether OBM was a party to the proceedings. The Tribunal found he may well have been a party to the proceedings, saying, at [19] of its reasons:

[OBM]'s evidence certainly suggests that he should have been included in the guardianship and financial management hearings as a carer party. There is some support for this proposition in the evidence recited in the October 2018 reasons. It may be that the original applicants have arguments to the contrary and, if so, they can be considered by the Tribunal. However, we were clear that we should extend the time for [OBM] to make his clause 9 set aside applications.

- 24 The Tribunal extended time for OBM to make his set aside applications. Notwithstanding the granting of an extension of time to apply to set aside the earlier orders, it is a separate determination as to whether those orders should be set aside.

What did the Tribunal have to decide?

- 25 I have power to either grant the set aside application, and set aside the guardianship and financial management orders, or refuse the application.
- 26 As previously noted, the application was made pursuant to cl 9(1)(b) of the NCAT Regulations, which states:

In addition to any power that is expressly conferred on the Tribunal by the Act or enabling legislation to set aside or vary its decisions, the Tribunal may order that a decision it has made that determines proceedings be set aside or varied in either of the following circumstances:

...

(b) if the decision was made in the absence of a party and the Tribunal is satisfied that the party's absence has resulted in the party's case not being adequately put to the Tribunal.

27 In *Hammond v Ozzy's Cheapest Cars Pty Ltd t/as Ozzy Car Sales* [2015] NSWCATAP 65, at [63]-[65], Wright J outlined the test to be applied in determining a set aside application under cl 9 of the NCAT Regulations:

...

Accordingly, before the Tribunal's power to set aside a decision that determines proceedings arises, the Tribunal must be satisfied that:

- (1) The decision was made in the absence of a party; and
- (2) That absence resulted in the party's case not being adequately put to the Tribunal.

If those two requirements are satisfied, the Tribunal then has discretion to set aside or vary the decision. This follows from:

- (1) The use of the word "may" in the chapeau to cl 9(1);
 - (2) The terms of s 53(3) of the Act, having regard to the reasoning of Basten JA in *Atkinson v Crowley* [2011] NSWCA 194 at [12]-[13] in relation to a similar provision in the legislation which applied to the Consumer Trader and Tenancy Tribunal, before it was abolished; and
 - (3) The fact that cl 9(1)(b) applies in situations extending beyond those in which it might be held that the proceedings are a nullity (see, for example, *Hoskins v Van Den-Braak* (1998) 43 NSWLR 290 at 294 and the authorities there cited).

28 It follows that in order to set aside the previous orders, I must first be satisfied that OBM was a party to the proceedings, and his absence resulted in his case not being adequately put to the Tribunal. I must then decide whether or not to exercise my discretion to set aside the previous decisions.

Was OBM a party to proceedings?

29 OBM submitted that at the time of each of the hearings which appointed a financial manager and a guardian for CZC he was "the legal responsible (sic), guardian and carer" for his nephew. The documentation before me indicated that OBM has certainly been an important family member and figure of authority for OBM for many years and that it was quite probable that at the time the applications to the Tribunal were made, OBM was either providing

domestic services and support to his nephew or arranging for others to do so: s 3D(1) of the *Guardianship Act 1987* (NSW) ("the Act").

- 30 There were no submissions before me from any party to the original applications suggesting that I should not find that OBM was a party to those proceedings by virtue of being someone who provided care to CZC at the time the applications were made: ss 3F(2) and 3F(5) of the Act. I was satisfied that OBM was a party to the applications for the appointment of a financial manager and guardian for his nephew.

Did OBM's absence result in his case not being adequately put before the Tribunal?

- 31 I am satisfied that OBM was not provided with a Notice of Hearing in either the guardianship or financial management proceedings and accordingly was deprived of the ability to put his views on the applications before the Tribunal. On its face, the test has been satisfied to set aside both the guardianship and financial management orders made as requested by OBM. However, as outlined earlier, it is still a matter at my discretion as to whether I should make such orders.

Should the Tribunal exercise its discretion to set aside the guardianship order and financial management order?

- 32 CZC's appointed substitute decision-makers, the TAG and the Public Guardian, offered no submissions in relation to OBM's set aside applications.
- 33 Ms Z, occupational therapist and representative of the South Western Local Health District, made submissions on behalf of the original applicants in the proceedings. She submitted that she did not believe that setting aside the orders was in the best interests of CZC.
- 34 CZC did not provide any views to me on his Uncle's set aside applications. His separate representative, however, Ms Udagama, noted that CZC, in her view, had made significant improvements in his life since the previous hearings when she first met him. The arrangements now in place for him are supportive and she saw no benefit in the original decisions being set aside.

35 In deciding whether to exercise the discretion to set aside the guardianship and financial management orders, I am under a duty to observe under the principles provided in s 4 of the Act:

4 General principles

It is the duty of everyone exercising functions under this Act with respect to persons who have disabilities to observe the following principles:

- (a) the welfare and interests of such persons should be given paramount consideration,
- (b) the freedom of decision and freedom of action of such persons should be restricted as little as possible,
- (c) such persons should be encouraged, as far as possible, to live a normal life in the community,
- (d) the views of such persons in relation to the exercise of those functions should be taken into consideration,
- (e) the importance of preserving the family relationships and the cultural and linguistic environments of such persons should be recognised,
- (f) such persons should be encouraged, as far as possible, to be self-reliant in matters relating to their personal, domestic and financial affairs,
- (g) such persons should be protected from neglect, abuse and exploitation,
- (h) the community should be encouraged to apply and promote these principles.

36 I have concluded that to grant OBM's request would not further the principles of the Act, and in particular, would not promote the welfare and interests of CZC which must be my paramount consideration: s 4(a) of the Act.

37 The circumstances of CZC's lifestyle and financial affairs are dynamic, not static. Much has changed in CZC's life over the last one to two years since the respective orders were made. A decision to set one or both of the orders aside, given how much time has elapsed, would not change any of the decisions that have been made during the course of the order on his behalf by either the Public Guardian or the TAG.

38 The primacy of my attention should be the examination of CZC's current decision-making capacity and life circumstances to determine whether a continuation of the orders, and if so, on what terms, would best promote his welfare and interests together with the other principles enunciated in s 4 of the Act. All of this could be achieved through the vehicle of the reviews of both

orders which are required to be conducted. This includes what I understood OBM to be seeking, that is, to be appointed as his nephew's guardian.

39 For these reasons, I refused to set aside the financial management order of 26 February 2018 and the guardianship order of 23 October 2018.

REVIEW OF THE GUARDIANSHIP ORDER

What did the Tribunal have to decide?

40 On reviewing the current guardianship order the Tribunal may renew, renew and vary the order or determine that the order is to lapse.

41 The questions to be considered by the Tribunal are:

- Is CZC someone for whom the Tribunal could make an order because he continues to have a disability which prevents him from being able to make important life decisions?
- Should the Tribunal make a further guardianship order and if so, what order should be made?
- Who should be the guardian?
- How long should the order last?

Is CZC someone for whom the Tribunal could make an order because he continues to have a disability which prevents him from being able to make important life decisions?

42 Section 14 of the Act provides that the Tribunal may make a guardianship order for a person if it is satisfied that he or she is "a person in need of a guardian". A person in need of a guardian is "a person who because of a disability is totally or partially incapable of managing his or her person: s 3(1) of the Act. A person with a disability is a person who is:

- (a) intellectually, physically, psychologically or sensorily disabled;
- (b) of advanced age;
- (c) a mentally ill person within the meaning of the *Mental Health Act 2007* (NSW); or
- (d) otherwise disabled;

and 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: s 3(2) of the Act.

- 43 When the previous order was made, the Tribunal found that CZC had a disability, being schizophrenia, and was unable to make important life decisions.
- 44 There was broad agreement from the parties at the hearing, including OBM, that CZC continues to have a disability which prevents him from being able to make important life decisions.
- 45 CZC's only comment on this aspect of the hearing was to repeat on multiple occasions that his mental illness "all began in Australia, not when I was in [Africa]". Ms Udagama, his separate representative, submitted that all of the available evidence indicated that CZC "has a mental health issue that impacts upon his decision making ability".
- 46 When asked for his views as to whether his nephew had a disability, OBM stated to me "I do understand that he ([CZC]) is sick mentally." Whilst OBM questioned the accuracy of capacity assessments performed on his nephew if they had been conducted in the English language, on the issue of whether he believed his nephew's decision-making capacity was impacted, he advised me that "he needs help".
- 47 In evidence before me was a report authored by Ms Z, occupational therapist, dated 2 March 2020 ("Ms Z's report"), which stated, in part:

[CZC] is a 29 year old male with a diagnosis of Schizophrenia. He was born in [Africa] and migrated to Australia in 2009 with family. [CZC] presents with cognitive, as well as both positive and negative psychotic symptoms of Schizophrenia. This is including auditory hallucinations, paranoid and somatic delusional thoughts, difficulties with maintaining attention, recalling information, and managing executive functions e.g. planning, organisation, decision-making and problem solving. [CZC] is also limited in insight and judgement. As a result, [CZC] has significant difficulty performing functional tasks including self-care and medication management, household maintenance, financial management, shopping, travel and social/leisure activities.

.....

Functional assessment and general observations during routine performance of functional tasks indicate that [CZC] is performing in the mid 3's.

This range of scores indicate that [CZC]'s global cognition is severely to moderately impaired. He is more likely to require close supervision and moderate assistance with functional tasks to provide relevant materials for activities of daily living, provide reminders to complete necessary steps check results and remove access to dangerous objects. He may live with someone

who does more general daily checks on the environment and assist with solving problems.

- 48 I note that I drew attention to these extracts of Ms Z's report during the course of the hearing and there was no challenge to this evidence from any party to the proceedings.
- 49 I accepted the evidence included in Ms Z's report as to CZC's ongoing diagnosis and the impact of such a condition on his functioning. I also took account of the submissions of OBM and Ms Udagama. In doing so, I was satisfied that CZC continues to have a disability, primarily schizophrenia, which impacts upon his decision-making capacity and his capacity to make important life decisions. He remains a person for whom a guardianship order could be renewed if the other legislative criteria are met.

Should the Tribunal make a further guardianship order and if so, what order should be made?

- 50 When considering whether to renew the guardianship order, I am required to have regard to: CZC's views, if his views can be obtained, as well as the views of any person who "has the care of" CZC: s 14(2)(a) of the Act. I must also consider the importance of preserving CZC's existing family relationships and particular cultural and linguistic environments; as well as the practicability of services being provided to him without the need for an order: s 14(2) of the Act.
- 51 These matters have no hierarchy or weighting and each is a mandatory consideration. However, the Tribunal must undertake a balancing exercise for its consideration of these matters and when undertaking this task the Tribunal may be guided by the principles that are set out in s 4 of the Act (see *IF v IG* [2004] NSWADTAP 3).

CZC's Views

- 52 CZC did not express a clear view as to whether the order continues to be required. He indicated on numerous occasions that it was time that he travelled to [Africa] and that he needed his Uncle (OBM) to assist him with this travel.

OBM's views

- 53 OBM made it clear that his main argument was that he could not accept someone outside of his nephew's family making any decisions on his behalf.

On the issue of whether a further order was required, he supported the continuation of the current order and the functions of guardianship so long as the order would be in CZC's best interests. OBM indicated that by "best interests", he meant that he did not want to see CZC's family excluded from his life.

What order should be made?

- 54 The current guardianship order was for a period of 16 months, and appointed the Public Guardian with functions of accommodation, health care, medical and dental consent, services, travel, and passport decisions.
- 55 Whilst noting that CZC's views on the issue of a need for a further order were unclear, there was no party suggesting to me that the order did not need to continue, nor did any party to the proceedings seek to have any further functions added to the order. I did raise with the parties at the hearing the possibility of adding a legal services function to the existing authorities granted to CZC's guardian, given the documents before me described CZC's recent history in some minor criminal proceedings. However, the parties were in agreement that Legal Aid NSW was currently obtaining adequate instructions from CZC in that regard, and there was no need for a legal services function to be added.
- 56 I also note that there were no submissions before me suggesting that CZC's existing family relationships and particular cultural and linguistic environments would be negatively impacted if I were to renew the existing order. These matters were live issues as to who should be appointed as CZC's guardian, not whether or not the order should be made.
- 57 I will now turn to each of the functions of guardianship which I ultimately determined should form part of a renewed guardianship order for CZC.

Accommodation

- 58 CZC's appointed guardian, the Public Guardian, made the following submissions as to accommodation decisions:

At the time of the initial hearing, [CZC] was living in a temporary transitional property, managed by [a community housing service provider] in conjunction with [a residential support services provider]. It was reported that [CZC] was not managing living independently and required a greater level of support than

what he was receiving. A home inspection completed by [the residential support services provider] and [the community housing service provider] revealed that [CZC]'s home was in squalor and there were additional family members residing there, which was putting him in breach of his tenancy.

[CZC] agreed that he required alternative accommodation with a greater level of support. [CZC] has been supported to source and view accommodation options that would meet his needs. [CZC]'s preference was a supported independent living property that is managed by [a disability service provider]. The Public Guardian provided consent for [CZC] to transition to the property.

The Public Guardian is of the view that [CZC] requires a guardian to support him to maintain his accommodation and recommends the Order continue with the Accommodation function.

- 59 The previously mentioned report from Ms Z provided the following statements regarding CZC's accommodation:

Whilst in [the residential support services provider], [CZC] demonstrated significant difficulty with maintaining cleanliness of his property. He required daily home visits to assist him to engage in a cleaning routine. The state of the unit was highly contributed by CZC's eating habits (walking whilst eating and spilling food).

It was noted however, that the state of the property declined significantly when [CZC]'s two cousins moved into his [residential support services provider] unit. The unit was in squalor and subsequently became a health risk for [CZC]. Due to this illegal living arrangement, staff were unable to enter the unit and complete sessions due to risk of unknown tenants.

...

[CZC] is unable to reside with his Uncle. Prior to [the residential support services provider], [CZC] was residing in the garage on his Uncle's property and reportedly sleeping on the floor. [CZC]'s physical and mental health was at risk and this was reported to the Adult [Sydney suburb] Community Team.

...

[CZC] has recently moved into supported independent living facility. The villa is a 2x bedroom property with 24 hours support staff. Currently, [CZC]'s mental state has been stable and he has been presenting in clean clothing and attending to self-cares on a daily basis. [CZC] has reported that he likes his current accommodation. He continues to be supported by [a service provider] 2x weekly and [another service provider] 1x weekly. [CZC] has reported that he does not wish for his family members to know the address of this property.

- 60 On more than one occasion during the hearing, CZC spoke up in the proceedings either to address the Tribunal, or OBM directly, by saying he did not want to live with his Uncle in the current circumstances. Through the [language] interpreter, he said multiple times, "I don't want to live in the garage". This was confirmed also by Ms Udagama, who said CZC told her that he liked living in spacious accommodation, with his own room, and access to the internet.

61 On the evidence before me it was clear there had been issues around CZC's accommodation throughout the term of the current order. These issues include the condition of the accommodation in which CZC was living and who was living with him. He has only very recently moved into new accommodation which he seems very pleased with. I was satisfied that there remains an ongoing need for a guardian to be appointed with the authority to make decisions for CZC as to his accommodation to ensure that he retains possession of secure and appropriate accommodation for the foreseeable future.

Health Care / Medical / Dental Consents

62 The Public Guardian argued that the functions of health care and consent to medical and dental treatment were no longer required:

The Public Guardian understands that [CZC]'s physical and mental health has remained stable during the course of the Order. [CZC] continues to be under the care of [a community mental health service] and receives a three monthly Paliperidone depot and psychiatrist reviews. The Public Guardian understands that [CZC] does not take any other medication.

The Public Guardian has not received any applications for medical consent during this Order. The Public Guardian is satisfied that [CZC] is well supported and not being deprived of medical treatment and recommends the Health Care, Medical/Dental Consents function be allowed to lapse and that if medical consents are required, [CZC]'s doctors use the least restrictive alternative for consent.

63 CZC questioned whether the injections he receives every few months for his mental health were doing him good or in fact making him worse.

64 Ms Udagama expressed the view that she did not have any issue if it was decided that these functions of guardianship should lapse.

65 Ms Z argued that the functions should continue. She submitted that CZC has only a limited level of insight into his condition and that ongoing management of his health care needs were required.

66 I was satisfied that the functions should continue. It was clear that CZC does in fact have a limited understanding of his mental health issues and the impact this has on his cognition. In those circumstances, it is appropriate that he have a substitute decision-maker who has general responsibility for decision making

for his health care management and to provide substitute consent to treatment in the event he is deemed unable to do so.

- 67 I reject the submission of the Public Guardian that to allow the order to lapse would promote the “least restrictive” alternative. I understood this argument to be that if these functions were to be permitted to lapse and CZC was deemed unable to give his own consent to treatment on a particular occasion, then individual, discrete applications to the Tribunal to provide consent would be preferable to continuing the current functions in question. The Tribunal has previously rejected this stated position of the Public Guardian in like circumstances: see *ZGV v ZGT* [2018] NSWCATAP 55 at [22]- to [23] and *DTX* [2019] NSWCATGD 11 at [30] to [36].

Services

- 68 The only submissions put to me as to the need to continue the services function of guardianship was derived from the following statement from the Public Guardian:

[CZC] is a participant within the NDIS and has an approved plan. The Public Guardian has consented to a number of services on [CZC]'s behalf, including: support coordination, group-based program, drop in support and supported independent living.

The Public Guardian is of the view that [CZC] requires a guardian to support him to maintain his services and recommends the Order continue with the Services function.

- 69 I accepted the uncontested submissions of the Public Guardian on this issue and was satisfied that CZC continues to need an appointed guardian to make decisions as to the services he receives, particularly in relation to his entitlement to services through the National Disability Insurance Scheme (NDIS) and to ensure he is linked with necessary services given his new accommodation arrangements.

Travel and Passport

- 70 The Public Guardian’s report noted the following:

During the course of the Order, concerns have been raised about [CZC]'s welfare if he was to travel outside of Australia. The Public Guardian made a decision for [CZC] not to travel to [Africa] and requested a General Border Alert on behalf of [CZC] to prevent him from leaving the country. [CZC] did agree at that time that he did not wish to travel but may consider visiting his family in the future. The Public Guardian is of the view that [CZC] continues to

need a guardian to consider Travel and Passport decisions in his welfare and interests and that the Order should continue with these functions.

- 71 The report and information provided by the Public Guardian indicated that OBM had requested that the Public Guardian allow for CZC to travel to [Africa] and this was refused. OBM challenged this decision through the Public Guardian's internal review mechanisms and the Public Guardian upheld its earlier decision.
- 72 CZC indicated on numerous occasions during the hearing of his desire to travel to [Africa].
- 73 It is understandable that CZC wishes to visit [Africa] and it is undoubtedly appropriate for him to do so if he has appropriate supports to ensure his mental health is well treated during the course of such travel. I was satisfied that CZC continues to require a guardian appointed to decide if it is safe and appropriate for him to travel overseas. The evidence indicates he is unable to engage in the necessary planning and evaluation of the risks of overseas travel of his own accord.

Who should be appointed as CZC's guardian?

- 74 It was clear from his applications and submissions that OBM sought appointment as his nephew's guardian. The Tribunal has to be satisfied that any person appointed as a private guardian meets the following requirements in accordance with s 17(1) of the Act. He or she must:
- (a) have a personality generally compatible with the personality of the person under guardianship;
 - (b) have no undue conflict of interest (particularly financial) with those of the person; and
 - (c) be able and willing to exercise the functions of the order.
- 75 In deciding whether a person is able to undertake the role of guardian, the Tribunal must consider whether the proposed guardian is able, having regard to the circumstances, to exercise the functions in accordance with the principles set out in s 4 of the Act (*C S and M Y v the Guardianship Tribunal and the Public Guardian* (Supreme Court (NSW), Windeyer J, 29 November 1999, unrep and *Re B (No 1)* [2011] NSWSC 1075, [66])).

76 In *P v D1 & Ors* [2011] NSWSC 257, Slattery J noted the importance of a proposed guardian being able to demonstrate insight and explain plans for how to act as guardian objectively and without conflict of interest.

77 The Tribunal is not able to appoint the Public Guardian as a person's guardian if there is a private person who can be appointed: s 15(3) of the Act.

78 In the matter of *W v G* [2003] NSWSC 1170 at [25], Windeyer J held that:

the proper meaning to be given to the section is to read it as saying that the Public Guardian should not be appointed in circumstances in which an order can properly be made in favour of another person. That requires not only that the person be willing, reliable and responsible, but that the appointment will result in the policy considerations and principles set forth in the Act being given effect.

79 In his application to review the guardianship order OBM explained why he believed the order should be reviewed and the Public Guardian replaced as his nephew's guardian as follows:

I am [CZC]'s biological Uncle and legal responsible (sic) since [Africa]. I cannot tolerate to have a Public Guardian appointed to make decisions about [CZC] while I am the one taking care of him and making decisions for his interests. [CZC] has a big and responsible family here in Australia. I cannot accept to have someone else decides about my nephew [CZC]. I am responsible and well educated.

.....

I am legal responsible and carer of [CZC] since [Africa]. No Public Guardian is to be appointed because I am [CZC] legal guardian since [Africa].

80 OBM submitted extensive written submissions for the purposes of the hearing. Much of the content of these submissions either related to his set aside applications or could be characterised as submissions that may have been relevant on an appeal of the Tribunal's original decision to appoint the Public Guardian. On the issue of who should be appointed going forward, in his submissions dated 20 October 2019, OBM opined:

48. The appointment of public guardian was not, is not and will not be in [CZC]'s best interests.

49. The appointment of public Guardian as Substitute Decision making with specific functions to explicitly make decision on [CZC] and not to consider his views is a disguised form of slavery.

50. This existing public guardianship order is against the word of God, against our Christian values and against our [African] tradition.

...

59. The appointment of public Guardian as substitute decision making is not consistent with The Universal Declaration of Human Right.

...

61. The appointment of public Guardian is causing [CZC] more mental illness, more stress, more depression, more anxiety and more psychological Trauma.

62. The appointment of public Guardian is causing me, legal responsible and carer of [CZC] more stress, loss of sleep and loss of appetite. It is also causing distress and trauma to [CZC]'s family members in Australia and in [Africa]. Unless proven contrary, I do not believe that the public Guardian is more educated, more qualified, more instructed, more responsible, more competent, more family oriented person, more suitable, more caring than me.

63. No one has to take advantage of [CZC] on the basis of mental illness and lack of English language.

81 In oral submissions, OBM said that if he were to be appointed guardian he would discuss any decisions to be made with CZC and would not impose his views on him.

82 OBM said that the appointment of the Public Guardian was an insult to his community and to his education and had affected the entire family, stating to me:

To appoint the Public Guardian says that [OBM] is uneducated, is irresponsible, is nobody.

83 CZC himself did not express a clear view to me on the topic of who should be appointed as his guardian. At one point he stated (with reference to Mr W, who was in attendance):

I don't care who is appointed so long as I can choose to live with [Mr W] if I want to and travel to [Africa] if I want to.

84 Whilst taking evidence and submissions on who should be appointed as his guardian, CZC interjected several times stating that he did not wish to return to live in OBM's garage:

My Uncle's house is not big enough. I will end up in the garage...I must have my own room. I am not sharing with my cousins, I cannot be living in the garage.

85 Ms Z submitted that the appointment of the Public Guardian should continue as this would be in CZC's best interests. Ms Z said that she and her colleagues had sought on numerous occasions to engage with OBM on planning involving his nephew's care. She said many of these attempts "failed" for one reason or

another and referred us to a five-page table that had been lodged in the proceedings on 27 February 2020 documenting contacts between South Western Sydney Local Health District and OBM between February 2017 and February 2020.

86 Ms Shirley, on behalf of the Public Guardian, recommended that the appointment of the Public Guardian should continue as this would best support CZC's needs in relation to accommodation and services. She indicated that all decisions made by the Public Guardian to date had been made in consultation with CZC and had accorded with his will and preferences. Ms Shirley went on to provide evidence on particular matters that went against the appointment of OBM and I will turn to these matters shortly.

87 Ms Udagama submitted that ensuring general stability at this point in time was the most important thing for CZC. She said that she has witnessed for herself significant improvements in CZC's well-being since she had first engaged with him and it was clear that his current accommodation and services were working well for him. She said that "family" should not be appointed as CZC's guardian and that the Public Guardian should continue in their current role to promote stability of decision making. Any disruption of his current circumstances would impact upon CZC's mental health in her view. As to the appointment of a family member specifically, she said:

The family has a lot of past issues with support services. They do not seem to trust support services. I don't think they could work cooperatively with service (providers) if appointed.

88 Taking account of all of the evidence and submissions before me, I concluded that I should not appoint OBM as CZC's guardian, and as there was no other private person seeking appointment, I continued the appointment of the Public Guardian.

89 In applying the suitability test to be appointed as guardian, as provided in s 17(1) of the Act, there was no evidence or submissions before me suggesting that OBM's personality was not generally compatible with CZC's (s 17(1)(a) of the Act) or that his interests were in conflict with his nephew's (s 17(1)(b) of the Act). However, whilst he was clearly willing to perform the role of guardian, I was not satisfied, to the requisite standard, that OBM would be able to perform

the role of guardian for his nephew in compliance with the principles of s 4 of the Act.

90 It is notable that CZC's current guardian, current service providers (through Ms Z), and separate representative, all argued against the appointment of OBM as guardian and each provided examples of incidents to support their position and I will turn to two such examples now.

91 Ms Shirley cited a conversation between herself and OBM on 17 July 2019 during which she stated that she had sought to obtain OBM's views on accommodation options for CZC, a conversation which she described as progressing as follows:

[OBM] simply shut me down and said he would not agree with any decision made by the Public Guardian...he ended the conversation indicating that he was the legal decision maker for [CZC] - he said he will make him homeless before he would let him move to supported accommodation.

92 In reply to this evidence from Ms Shirley, OBM said he had never spoken to Ms Shirley about CZC's accommodation. However, he went on to state:

What I did say to her was that because he ([CZC]) is sick, I do not want him living alone or with others who are mentally sick.

93 On this point, I found OBM's evidence to be inconsistent. On the one hand he told me he had not spoken to Ms Shirley regarding CZC's accommodation, but on the other, told me what he said in the course of a conversation on that very topic with Ms Shirley. Accordingly, I preferred the evidence of Ms Shirley as to the content of the conversation in question.

94 Another example raised with me as to why the appointment of OBM would be of concern related to CZC's previous accommodation. This centred upon how two of CZC's cousins came to be living with him, and how the property became practically inhabitable due to squalor.

95 Ms Z made mention of this issue in her report (see [59] above) and advised that her understanding of OBM's role as follows:

Medical records and handover provided by [service provider] staff indicate complicated dynamics within [CZC]'s family. [CZC]'s Uncle ([OBM]; also known as '[OBM]') is his next of kin and has in the past played a dominant role in [CZC]'s treatment plan. OBM has often disagreed with the fact that [CZC] has mental illness despite provision of psychoeducation. He has some

awareness of [CZC]'s support needs: he has previously requested that a cousin live with [CZC] to act as a 'caregiver'.

- 96 At the hearing Ms Z stated that OBM had arranged for two of CZC's cousins to live with CZC, and that this caused CZC to be in breach of his tenancy agreement. Further, Ms Z said that once the cousins had moved into the property the condition of the property and CZC's living conditions decreased dramatically. Ms Z supplied photos of the property at the end of the tenancy which illustrated that the use of the word "squalor" was appropriate.
- 97 OBM told me that he had indeed arranged for the two cousins to live with CZC as he is a "sick person" so "we were concerned about him living on his own".
- 98 OBM disputed that the property fell into squalor after the cousins moved in saying that CZC would most likely have caused the squalor, but he could not be sure.
- 99 Ms Udagama informed me that in meeting with CZC prior to the hearing, CZC had advised her that his cousins had been sent to live with him because they had previously been living with OBM but they were too noisy. She questioned the validity of the position put by OBM that the cousins were sent to live with CZC to provide him with support.
- 100 I am satisfied that OBM caused for CZC's cousins to reside with him causing his accommodation to be threatened due to the terms of the residency. I also find that it is most probable that the squalor at the property occurred after CZC's cousins moved in and that there was a mixed motive on OBM's part for having the move occur, both to support CZC, but also for the convenience of OBM. In any event, these matters illustrate to me that OBM has imposed decision making upon his nephew, decisions which have not promoted his welfare and interests, and seemingly have not been in accordance with CZC's stated wishes.
- 101 My decision not to appoint OBM as guardian was reinforced by OBM's conduct towards the end stages of the hearing (see [14] to [16] above). The manner in which OBM demanded CZC to comply with his directions, and CZC so readily complied, indicated to me that OBM lacks sufficient insight into his nephew's cognitive impairment and would not give sufficient weight to CZC's views when

formulating substitute decisions on his behalf. Further, his conduct towards the service providers who provide regular and essential services to CZC (see [16] above), indicated to me that it was highly unlikely that he would be able to work collaboratively and objectively with service providers if appointed guardian.

- 102 In deciding not to appoint OBM in place of the Public Guardian as CZC's guardian, I was cognisant of the duty upon me to recognise the importance of preserving CZC's family relationships as well as his cultural and linguistic environments: s 4(e) of the Act.
- 103 Upon requesting that he address me on this issue, OBM told me that in their [African] culture "we live together". He also advised me that his cultural role within the family was as a patriarch, that he is the one responsible for the whole family, explaining that he has more power in his relationship with CZC than CZC's own biological mother or father. He went on to explain, by way of example, that if CZC wished to get married, he would first need to seek permission from OBM.
- 104 I similarly sought the views of Ms Shirley. She said that in terms of CZC's linguistic and cultural environments, the Public Guardian had no authority, nor had taken any steps, to restrict CZC's access to his family or his cultural practices. She indicated that the Public Guardian had always been mindful of CZC's cultural heritage and cultural needs, adding that there had been instances where this had impacted upon their decision making. By way of example, Ms Shirley informed me that the Public Guardian had taken steps to replace a support worker for CZC after CZC had expressed concern that an allocated support worker was not cultural appropriate and that "they had nothing in common" with each other.
- 105 Ms Udagama agreed that CZC's cultural linkages should be promoted, but also noted that the current appointment of the Public Guardian had in no way placed any restriction on CZC maintaining his relationship with his family or his culture. She said that it was essentially a matter for him.
- 106 There is no doubt that for a young man in CZC's position, maintaining family and cultural connection is, and should be, of great importance to him. I have no

reason to doubt the important role that OBM has to play with this connection given his role as patriarch of CZC's family.

107 I am not satisfied, however, that the duty imposed upon me by s 4(g) of the Act demands the appointment of OBM, particularly in light of my earlier findings as to OBM's ability to perform the role of guardian, having regard to the other duties upon me in s 4 of that Act, such as the requirement to give paramount consideration to CZC's welfare and interests, and to ensure that his views are taken in to account.

108 Much of the written and oral submissions put to me by OBM primarily focused on how an appointment of the Public Guardian, instead of him, reflected negatively upon him and his standing within his community. He did not provide any persuasive argument to me that an appointment of the Public Guardian had a particular negative cultural impact upon his nephew to whom I owe the applicable duty pursuant to s 4 of the Act.

109 I concurred with the submissions of both Ms Shirley and Ms Udagama that an appointment of the Public Guardian instead of OBM in no way restricted CZC's access to his family or his cultural norms.

How long should the order last?

110 On review, a guardianship order can be renewed for a period of up to three years from the date on which it is made.

111 Whilst CZC's life circumstances are seemingly improving, I was mindful that his current accommodation and associated services are relatively new. It is likely that he will continue to need a substitute decision-maker for significant lifestyle decisions for the immediate future. I considered that two years was an appropriate period for the Tribunal to review the order.

REVIEW OF THE FINANCIAL MANAGEMENT ORDER

112 I commenced the hearing with two live matters before me as to the existing financial management order over CZC's estate – a requirement to review the order at the direction of the Tribunal that made the original order on 26 February 2018 and a request to review the order lodged by OBM with the Tribunal on 12 June 2019.

113 Turning first to OBM's review application, the contents of that application indicated that OBM wished to be responsible for managing his nephew's affairs rather than the TAG:

I am asking to be appointed [CZC] financial manager. I am close family member to [CZC] and always act for his best interests.

114 However, upon seeking submissions from OBM as to his application in the hearing, he made it clear to me that he no longer sought to be appointed as his nephew's financial manager and that he wished to withdraw his application. As any matters relating to the existing order could be ventilated through the process of review previously ordered by the Tribunal, I consented to the withdrawal of OBM's application and his associated submissions.

What did the Tribunal have to decide?

115 This review was ordered by the Tribunal when it made the financial management order on 26 February 2018 in relation to CZC.

116 On reviewing a financial management order the Tribunal must confirm, confirm and vary or revoke the financial management order: s 25P(1)(a) of the Act.

117 Pursuant to s 25P(2) of the Act, the Tribunal may revoke the financial management order only if:

- (a) it is satisfied that CZC is capable of managing his affairs; or
- (b) it considers that it is in the best interests of CZC that the order be revoked.

118 The Tribunal may also review the appointment of the manager if it considers it appropriate to do so: s 25(P)(1)(b) of the Act.

119 In this matter the issues for determination were:

- Is CZC capable of managing his affairs?
- Is it in the best interests of CZC that the order be revoked?
- Is it appropriate to review the appointment of the TAG?
- Should the order be reviewable?

Is CZC capable of managing his affairs?

120 This question of capability in this context was described succinctly by Lindsay J in *P v NSW Trustee and Guardian* [2015] NSWSC 579, at [308] as:

[W]hether the person is able to deal with (making and implementing decisions about) his or her own affairs (person and property, capital and income) in a reasonable, rational and orderly way, with due regard to his or her present and prospective wants and needs, and those of family and friends, without undue risk of neglect, abuse or exploitation.

121 The Tribunal's reasons for the original decision to appoint a financial manager over CZC's estate recorded that:

There appeared to be no dispute that due to the impact of CZC's mental illness he is presently incapable of managing his financial affairs.

122 After recording the reports before the Tribunal at that time prepared by healthcare professionals, the Tribunal's reasons go on to state:

The above documents and reports pointed to the conclusion that [CZC] is presently incapable of managing his financial affairs because of the impact of his mental illness which causes him to be generally disorganised and unable to budget for and manage his financial responsibilities.

123 The evidence of CZC's cognitive capacity as outlined earlier in these reasons in relationship to the review of the guardianship order is relevant to the issue of financial management. I note that there was no dispute that CZC continues to have a disability, specifically, mental illness (see [44] above) and there was evidence from Ms Z that CZC has difficulties with maintaining attention, recalling information, and managing executive functions (see [47] above).

124 Turning to more specific evidence, Ms Z's report made the following observations of CZC's capabilities as to managing his financial affairs:

[CZC] has poor understanding of the difference between 'needs' and 'wants' and has difficulty prioritising spending. He demonstrates significant impulsiveness with money – often purchasing designer fashion clothes and other fashion accessories.

He has limited awareness of fixed expenses or debt. He has accumulated over \$13,000 in fines (primarily from not carrying his concession card on the train). As of March 2020, his WDO has ceased and state revenue will discuss the matter with the NSW Trustee.

[CZC] is vulnerable to financial exploitation and has lost his debit card on multiple occasions. Observation of [CZC]'s financial transaction history has shown multiple transactions out (sic) his account on each pay day which he was not able to account for.

125 CZC did not address me specifically on his capability but did make it clear that he would like to look after his own money.

126 Ms Udagama, whilst acknowledging CZC's desire to be free of the current order, submitted that:

He needs a financial manager due to his mental health issues.

.....

He cannot plan rationally as to what he should spend his money on.

.....

He has told me that he would like \$500 per week to spend on clothing. This showed me that he cannot prioritise, has no idea how to pay for his accommodation and other living expenses.

127 Whilst OBM's expressed concerns with the financial management order generally, I did not understand him to be of the position that his nephew had capacity to manage his affairs, rather that he should have the right to do so.

128 On the evidence before me I determined that CZC is currently not capable of managing his financial affairs in a reasonable, rational and orderly way. I placed particular weight on the evidence of Ms Z that indicated that CZC had difficulty prioritising and remained prone to impulsivity. The financial management order should not be revoked on this basis

Is it in CZC's best interests that the financial management order be revoked?

129 Despite finding that CZC is not capable of managing his affairs, the question of whether the financial management order should be revoked needs to be considered in terms of the principles under s 4 of the Act, and whether it is nevertheless in CZC's best interests that the financial management order is revoked.

130 A report by the TAG dated 21 February 2020 provided a useful overview of CZC's financial situation which Mr Beale of the TAG outlined at the hearing. He advised that the TAG held just over \$16,000 in savings for CZC and that this level of accumulation was primarily due to many services CZC receives being covered by CZC's NDIS package which Mr Beale understood provided funding of close to \$100,000 per annum. He confirmed that CZC continued to have a debt owing to Revenue NSW of approximately \$9,000 which he understood was largely due to travel fines associated with failing to "tap on and off" when travelling on public transport. The TAG are continuing to negotiate a reduction of this liability with the relevant authority.

131 Ms Z submitted that it was in CZC's best interests that the order continue. She said that in recent times CZC had spent impulsively on discretionary items

which have left him unable to purchase food and charitable organisations have had to assist with the provision of food and essentials. She was of the view that having the TAG manage CZC's estate resulting in the accumulation of savings had had a positive impact on CZC, allowing him to purchase furniture for his new residence and a mobile phone.

132 OBM indicated he was not opposed to the order continuing appointing the TAG if CZC could have access to his funds when he wanted. To allow anything other than this he said was contrary to his nephew's human rights and amounted to discrimination.

133 I determined that continuation of the financial management order was clearly in CZC's best interests. There was uncontested evidence before me that CZC, due to the ramifications of mental illness, continues to be impulsive and unable to prioritise when it comes to his financial affairs. An ongoing order is necessary to promote and protect his welfare and interests (s 4(a) of the Act) and protect him from self-neglect (s 4(g) of the Act). Stable management of his financial affairs is essential to ensuring CZC has ongoing appropriate accommodation, something which is vital to his mental health and general well-being. An order also remains in CZC's best interests due to the fact that he has an ongoing debt of approximately \$9,000 which might hopefully be reduced or extinguished through the intervention of an ongoing appointed manager.

134 I reject OBM's submissions that any order which prevents CZC from having access to his estate as he wishes is a breach of his nephew's human rights and is discriminatory. For the reasons I have outlined, I am satisfied that the continuation of the order will be in CZC's best interests and accords with the principles enunciated in s 4 of the Act.

135 I was not satisfied that the financial management order in relation to CZC should be revoked in his best interests.

Is it appropriate to review the appointment of the TAG?

136 Although OBM initially sought to be appointed as CZC's financial manager in documents filed in the proceedings, as outlined earlier in these reasons, he indicated to the Tribunal at the hearing that he no longer sought appointment.

137 In the absence of any private person seeking to be appointed as CZC's financial manager there was no need to consider any change to the current appointee, the TAG.

Should the order be reviewable?

138 The Tribunal may determine that a financial management order should be reviewed within a specified time. At the previous hearing, the Tribunal decided that the financial management order should be reviewed.

139 I decided that the financial management order should be further reviewed within two years at the same time as the guardianship order is due to be reviewed. CZC is a young man and the evidence before me is that his life circumstances are currently stabilising. If this positive trend continues, and his current liabilities are dealt with in one way or another, it is possible that CZC may be capable of managing some or all of his estate at a future point in time.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.