

AUSTRALIA / JUDGMENT

YWK v YVN

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Civil and Administrative Tribunal New South Wales Medium Neutral Citation: YWK v YVN [2026] NSWCATAP 305 Hearing dates: 30 July 2026 21 August 2026 (final submissions) Date of orders: 25 September 2026 Decision date: 25 September 2026 Jurisdiction: Appeal Panel Before: A Britton, Deputy President J Toohey, Senior Member M Bain, Senior Member Decision:

- (1) The appeal is allowed.
- (2) The decision under appeal is set aside.
- (3) Within 7 days of this decision the parties are to give to the Registrar gd@ncat.nsw.gov.au any unavailable dates for a hearing between 26 October 2026 and 23 December 2026.
Catchwords: ADMINISTRATIVE LAW — Jurisdictional error — constitution of Tribunal — whether Tribunal was properly constituted in accordance with ss 27 and 52 of the Civil and Administrative Tribunal Act 1987 (NSW) STATUTORY INTERPRETATION — principles — meaning of phrase “the consideration of a matter by the Tribunal has commenced” in s 52 of the Civil and Administrative Tribunal Act 1987 (NSW) WORDS AND PHRASES — “consideration of a matter by the Tribunal has commenced”, “proceedings”, “matter”, “consideration” Legislation Cited: Administrative Decision Tribunal Act 1997 (NSW), s 79 (repealed) Civil and Administrative Tribunal Act 2013 (NSW), ss 4(1), 27(2), 29, 29(3), 32(4), 36(1), 38, 38(1)-(2), 39, 49(2), 52, 52(1), 52(2)(a), 52(2B), 52(3), 80(2)(b); Sch 2, cl 12; Sch 6, Pt 4; Sch 6, cll 1(1), 3(1), 4(1), 5(1), 6, 10 Civil and Administrative Tribunal Amendment Bill 2023 (NSW), Sch 1, Items 4-5 Guardianship Act 1987 (NSW), s 4(a) Interpretation Act 1987 (NSW), s 34(1)(b) Cases Cited: Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (Northern Territory) (2009) 239 CLR 27; [2009] HCA 41 Allen v TriCare (Hastings) Ltd [2017] NSWCATAP 25 Board of Bendigo Regional Institute of Technical and Further Education v Barclay (2012) 248 CLR 500; [2012] HCA 32 Cameron v Cole (1944) 68 CLR 571; [1944] HCA 5 Certain Lloyd’s Underwriters Subscribing to Contract No IH00AAQS v Cross (2012) 248 CLR 378; [2012] HCA 56 Citta Hobart Pty Ltd v Cawthorn (2022) 276 CLR 216; [2022] HCA 16 Clarence v Electricity Commission of New South Wales (1990) 20 NSWLR Clyne v Deputy Commissioner of Taxation (Cth) (1981) 150 CLR 1; [1981] HCA 40 Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation (1981) 147 CLR 297; [1981] HCA 26 Da Costa v The Queen (1968) 118 CLR 186; [1968] HCA 51 Davis v NSW Land and Housing Corporation [2016] NSWCA 325; (2016) 18 BPR 36,459 2 Elizabeth Bay Road Pty Ltd v Owners – Strata Plan No 73943 (2014) 88 NSWLR 488; [2014] NSWCA 409 Federal Commissioner of Taxation v Australian Building Systems Pty Ltd (in liq) (2015) 257 CLR 544; [2015] HCA 48 Federal Commissioner of Taxation v Consolidated Media Holdings Ltd (2012) 250 CLR 503;

[2012] HCA 55 *Ferella & Anor v Chief Commissioner of State Revenue* [2014] NSWCA 378 *Health Care Complaints Commission v Kirby* [2026] NSWCA 168 *Lloyd v Veterinary Surgeons Investigating Committee* [2001] NSWADTAP 26 *Lloyd v Veterinary Surgeons Investigating Committee* [2002] NSWCA 224 *M P Metals Pty Ltd v Commissioner of Taxation* (1968) 117 CLR 631; [1968] HCA 89 *Osland v Secretary to the Department of Justice (No 2)* (2010) 241 CLR 320; [2010] HCA 24 *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355; [1998] HCA 28 *Provincial Insurance Australia Pty Ltd v Consolidated Wood Products Pty Ltd* (1991) 25 NSWLR 541 *Reysson Pty Ltd v Minister Administering the Environmental Planning and Assessment Act 1979* [2020] NSWCA 281; (2020) 247 LGERA 277 *Schwartz Family Co Pty Ltd v Capitol Carpets Pty Ltd* [2017] NSWCA 223 *Thomaz and Naaz Pty Ltd v Chief Commissioner of State Revenue* [2023] NSWCA 40 *Tu v University of Sydney* [2003] NSWCA 170 *Veterinary Surgeons Investigating Committee v Lloyd* [2000] NSWADT 98 *Will v Brighton* (2020) 104 NSWLR 170; [2020] NSWCA 355 *Wrigley v Owners Corporation SP 53413* [2017] NSWCATAP 100 Texts Cited: Explanatory Note to the Civil and Administrative Tribunal Amendment Bill 2023 (NSW) *Macquarie Dictionary*, <https://www.macquariedictionary.com.au/> *Oxford English Dictionary*, <https://www.oed.com/?tl=true> P Herzfeld and T Prince, *Interpretation* (P Herzfeld and T Prince, *Interpretation* (3rd ed, 2024, Lawbook Co) Category: Principal judgment Parties: YWK (Appellant) YVN (1st Respondent) YTY (2nd Respondent) NSW Trustee and Guardian (3rd Respondent) Representation: Solicitors: Mr J Iyer (YWK) YVN (Self-represented) YTY (Self-represented) NSW Trustee and Guardian (No appearance) File Number(s): 2026/00154732 Publication restriction: Pursuant to s 65(1) of the Civil and Administrative Tribunal Act 2013 (NSW), the publication of the name of any of the parties or other people referred to in this decision including the publication of any information, picture or other material that identifies them or is likely to lead to their identification is prohibited. Decision under appeal Court or tribunal: Civil and Administrative Tribunal Jurisdiction: Guardianship Division Citation: N/A Date of Decision: 19 March 2026 Before: R Hamilton, Senior Member (Legal) Dr C Woolf, Senior Member (Professional) J V Le Breton, General Member (Community) File Number(s): 2025/00165620 reasons for decision This appeal is about 84-year-old Mona who has been diagnosed with Parkinson's disease and impaired cognitive function. In November 2021, Mona executed an instrument appointing her daughters Salma and Carmen as her attorneys. In September 2023, in separate instruments, Mona appointed her son, Samir, as her enduring guardian and attorney (the 2023 EPoA). On 30 April 2025, Carmen lodged with the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT): an application requesting the Tribunal to make a guardianship order in respect of Mona (the guardianship application), and an application requesting the Tribunal to review the making of and the operation and effect of the power of attorney appointing Samir as Mona's attorney in 2023 (the EPoA application). Each application was listed for hearing before the Tribunal on 23 December 2025. At that hearing, the Tribunal made a guardianship order in respect of Mona and appointed the NSW Public Guardian as her guardian. Because of insufficient time, the Tribunal adjourned the EPoA application. On 19 March 2026, a differently constituted Tribunal reviewed the 2023 EPoA and decided to make a financial management order in

respect of Mona and to commit the management of her estate to the NSW Trustee and Guardian (the 2026 Decision). This is the decision under appeal. Samir appeals from the 2026 decision. He asserts the Tribunal which made that decision was not properly constituted and, therefore, the decision was invalid. In addition, he asserts that the Tribunal “erred in law” by failing to afford him procedural fairness, departing from “reasonably expected principles of process and law”, failing to take into account relevant evidence, and giving significant weight to irrelevant evidence. Because of the sensitive and personal nature of the matters discussed, in these reasons we have not used the real names of the parties or the participants in the proceedings. Rather the names used in these reasons are fictitious names. Annexure A to these reasons sets out the pseudonyms assigned to the parties in this appeal and the corresponding fictitious names used in these reasons. Grounds of appeal The 2026 decision is an “internally appealable decision”: Civil and Administrative Tribunal Act 2013 (NSW) (NCAT Act), s 32(4). As a party to the proceedings in which that decision was made, Samir has a right to appeal from that decision on a “question of law” or, with the leave of the Appeal Panel, on any other ground: NCAT Act, s 80(2)(b). The existence of a question of law is not merely a qualifying condition to the right of appeal conferred by s 80(2) of the NCAT Act. Rather, the question of law is the subject matter of the appeal: *Osland v Secretary to the Department of Justice (No 2)* (2010) 241 CLR 320; [2010] HCA 24 at [21]; *Davis v NSW Land and Housing Corporation* [2016] NSWCA 325 at [77]; (2016) 18 BPR 36,459. An appeal is not on a question of law merely because it is asserted that the Tribunal made an error of law: *Thomaz and Naaz Pty Ltd v Chief Commissioner of State Revenue* [2023] NSWCA 40 at [32]. What constitutes a question of law is “vexed and context dependent” and must be approached as a matter of substance and not form: *Thomas and Naaz* at [52]-[53]; *Da Costa v The Queen* (1968) 118 CLR 186 at 194; [1968] HCA 51. An appellant is required to identify with precision the question of law said to be raised by the appeal: *Ferella & Anor v Chief Commissioner of State Revenue* [2014] NSWCA 378 at [6], [22]; *Schwartz Family Co Pty Ltd v Capitol Carpets Pty Ltd* [2017] NSWCA 223 at [13]. In submissions in support of the appeal filed on 1 July 2026, Samir set out the following grounds of appeal: “The Tribunal erred in law by denying the Appellant procedural fairness. The Tribunal failed to take into account relevant evidence. The Tribunal gave significant weight to irrelevant evidence. The findings of fact are not supported by the proper reading of the evidence. The Tribunal departed from reasonably expected principles of process and law. In all circumstances, the decision is an abdication of the Tribunal’s obligations under the enabling legislation and the Guardianship Act NSW 1987.” As is apparent, the grounds stated above are defective because they fail to identify a question of law or to do so with sufficient particularity. After pointing out our concerns about the stated grounds, the solicitor for the appellant reformulated those grounds. Because the first is determinative of this appeal, we have not listed the remaining reformulated grounds. Whether Tribunal 3 was properly constituted in accordance with the requirements of s 52 of the NCAT Act. Procedural history to the decision under appeal The guardianship application and the EPoA application were listed together for hearing on 2 September 2025. Following an application by Samir, the Tribunal (Tribunal 1, constituted by S C Boyd-Boland, Senior Member (Legal), A M Matheson, Senior Member (Professional), D R

Sword, General Member (Community)) adjourned both applications and made directions for the filing and serving of further material. The Tribunal decided to adjourn that hearing because Carmen had failed to serve Samir with a copy of the EPoA application and the material in support: Reasons for the 2026 Decision (2026 Reasons) at [8]. Both applications were re-listed for hearing on 23 December 2025. At that hearing, the Tribunal (Tribunal 2, constituted by N Geikie Senior Member (Legal), Dr Martin Senior Member (Professional), P Rutledge, General Member (Community)) determined the guardianship application and made a guardianship order in respect of Mona. In addition, the Tribunal adjourned the EPoA application. The EPoA application was re-listed for hearing on 19 March 2026. At that hearing, the Tribunal (Tribunal 3, constituted by R Hamilton Senior Member (Legal), C Woolf Senior Member (Professional), J Le Breton, General Member (Community)) determined that application and decided to treat it as an application for a financial management order made under the Guardianship Act, to make a financial management order in respect of Mona and to commit the management of her estate to the NSW Trustee and Guardian. This is the decision under appeal. Ground 1: Was Tribunal 3 properly constituted? The appellant contends that Tribunal 3 was not properly constituted because Tribunal 2 had commenced consideration of the EPoA application. He contends that in those circumstances s 52 of the NCAT Act required Tribunal 2 to determine that application. Carmen disagrees. She contends that contrary to Samir's claim, Tribunal 2 did not commence consideration of the EPoA application. Before considering the submissions made by the parties, we will consider the statutory provisions which govern the constitution of the Tribunal in proceedings commenced in the Guardianship Division, and the meaning of the phrase "consideration of the matter has commenced" in s 52 of the NCAT Act. Statutory provisions governing the constitution of the Tribunal Contained in Division 6 (Constitution of Tribunal) of Part 2 (Establishment of the Tribunal), s 27 of the NCAT Act provides for the constitution of the Tribunal for particular proceedings: 27 Constitution of Tribunal

- (1) The Tribunal is to be constituted as follows— ...
- (d) in the case of any other proceedings—by one or more Division members of the Division to which the function of dealing with the proceedings is allocated.
- (2) The President may give or revoke a direction as to the members who are to constitute the Tribunal for the purposes of any particular proceedings. Note. The President may delegate the function of constituting the Tribunal for particular proceedings to a Division Head for a Division of the Tribunal or another member. See clause 12 of Schedule 2. ... Pursuant to cl 12 of Sch 2 to the NCAT Act, the President has delegated to the Division Head of the Guardianship Division the function of constituting the Tribunal for proceedings in that Division. Part 4 (Special constitution requirements for exercise of substantive Division functions) of Schedule 6 (Guardianship Division) to the NCAT Act contains special provisions for the constitution of the Tribunal when exercising functions allocated to the Guardianship Division. When exercising its "substantive Division functions", the Tribunal is to be constituted by three Division members, one member who is an Australian lawyer, one

member with a professional qualification and one member with a community-based qualification: NCAT Act, Sch 6, cl 4(1). The determination of an application made under the Guardianship Act 1987 (NSW) and the Powers of Attorney Act 2003 (NSW) is a substantive Division function: NCAT Act, Sch 6, cl 1(1), cl 3 (1). Section 52 of the NCAT Act is central to this appeal. Contained in Division 4 (Conduct of Proceedings) of Part 4 (Practice and Procedure), s 52 provides: 52 Reconstitution of Tribunal during proceedings

- (1) The President may replace the member, or one of the members, constituting the Tribunal after the consideration of a matter by the Tribunal has commenced if, before the matter is determined, the member—
 - (a) becomes unavailable for any reason, or
 - (b) ceases to be a member, or
 - (c) ceases to have a qualification required for participation in the proceedings, or
 - (d) is directed by the President not to take part in the proceedings.
- (2) The President may not replace a member unless the President has first—
 - (a) afforded the parties an opportunity to make submissions about the proposed replacement, and
 - (b) taken any such submissions into account. (2A) The President must not make a direction under subsection (1)(d) in relation to a member unless the President—
 - (a) has consulted the member, if it is reasonably practicable to do so, and
 - (b) is satisfied that making the direction is—
 - (i) in the interests of justice, and (ii) in the interests of achieving the expeditious and efficient conduct of the proceedings, and (iii) otherwise appropriate having regard to the objects of this Act. (2B) The President may give directions as to the member or members who are to constitute the Tribunal after the consideration of a matter by the Tribunal has commenced.
- (3) The Tribunal as reconstituted under this section is to have regard to the evidence, submissions and decisions in relation to the matter that were given or made before the Tribunal was reconstituted. (Our emphasis) Relevant principles of statutory construction Key to the determination of this ground is the meaning of the phrase “the consideration of a matter by the Tribunal has commenced”, contained in ss 52(1) and 52(2B) of the NCAT Act. In determining the meaning of this phrase, we are guided by the following principles: The task of statutory construction must begin with a consideration of the text itself and, while the language employed is the surest guide, its meaning may require consideration of the context, which includes the general purpose and policy of the provision, in particular the mischief it is seeking to remedy: *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (Northern Territory)* (2009) 239 CLR 27; [2009] HCA 41 at [47]; *Board of Bendigo Regional Institute of Technical and Further Education v Barclay* (2012) 248 CLR 500; [2012]

HCA 32 at [41]; *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* (2012) 250 CLR 503; [2012] HCA 55 at [39]. In determining the purpose of a statute, or of a particular provision within a statute, regard may be given not only to an express statement of purpose in the statute itself but also by inference from its text and structure and, where appropriate, by reference to extrinsic materials: *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355; [1998] HCA 28 at [78]; *Certain Lloyd's Underwriters Subscribing to Contract No IH00AAQS v Cross* (2012) 248 CLR 378; [2012] HCA 56 at [23]-[26]. In determining the meaning of words used in a statute, it is permissible to have regard to legislative history and extrinsic materials (*Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* [2012] HCA 55; (2012) 87 ALJR 98 at 107 [39]) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision (*Interpretation Act 1987* (NSW), s 34(1)(b)). However, it is first necessary to determine the ordinary or natural meaning of the words used because it is primarily from them that the intention of the legislator is to be ascertained: *M P Metals Pty Ltd v Commissioner of Taxation* (1968) 117 CLR 631 at 634; [1968] HCA 89; *Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation* (1981) 147 CLR 297 at 304-305; [1981] HCA 26; *Provincial Insurance Australia Pty Ltd v Consolidated Wood Products Pty Ltd* (1991) 25 NSWLR 541 at 560. In determining the ordinary meaning of a word, it is permissible to consult well-known and authoritative dictionaries. However, the meaning of a term in its proper legislative context will rarely be determined by a dictionary definition. While not irrelevant, dictionary definitions are not determinative of the construction of a term in its relevant statutory context: *Will v Brighton* (2020) 104 NSWLR 170; [2020] NSWCA 355 at [52]-[57]; *Reyson Pty Ltd v Minister Administering the Environmental Planning and Assessment Act 1979* [2020] NSWCA 281; (2020) 247 LGERA 277 at [83]. It is presumed that a word or phrase has the same meaning throughout an Act. That presumption applies both to the meaning of a word or a phrase within the one section and more generally. That presumption is “of the mildest kind” and “readily yields to the context”: see P Herzfeld and T Prince, *Interpretation* ((3rd ed, 2024, Lawbook Co)) at [5.180] citing, *Clyne v Deputy Commissioner of Taxation (Cth)* (1981) 150 CLR 1 at 15; [1981] HCA 40; *Federal Commissioner of Taxation v Australian Building Systems Pty Ltd (in liq)* (2015) 257 CLR 544 at 27, 120; [2015] HCA 48. It is presumed that different words used within an Act have different meanings. However, that presumption is of limited force if the words themselves are sufficiently clear. Like the presumption that a word or phrase has the same meaning throughout an Act, the strength of that presumption depends heavily on context: see P Herzfeld and T Prince, *Interpretation* at [5.190]. Meaning of “consideration of a matter by the Tribunal has commenced” Text In considering the meaning of this phrase, we first consider the meaning of the words, “proceedings”, “matter”, “consideration” and “commenced”. None are defined by the NCAT Act or the Interpretation Act 1987 (NSW). Each is an ordinary English word. In considering their meaning, we commence by considering the dictionary definition of these words, bearing in mind that such definitions are not determinative. Leeming JA (Basten and Barrett JJA agreeing) explained in *2 Elizabeth Bay Road Pty Ltd v Owners – Strata Plan No 73943* (2014) 88 NSWLR 488; [2014] NSWCA 409 at [82]: “It is axiomatic that (a) the words in a sentence are not

building blocks whose meaning is unaffected by the rest of the sentence, (b) the sentence is the unit of communication by which language works, and (c) the significance of individual words is affected by other words and the syntax of the whole sentence.” Of the several definitions given by the Macquarie Dictionary and Oxford English Dictionary, the following appear to be relevant: “Proceedings Macquarie Dictionary

5. Law
 - a. the instituting or carrying on of an action at law.
 - b. a legal step or measure: to institute proceedings against a person. Oxford English Dictionary
2. Law
 - c. A legal action or process; any act done by authority of a court of law; a step taken by either party in a legal case. Matter Macquarie Dictionary
8. a thing, affair, or business... Oxford English Dictionary (OED) A thing, affair, concern. Consider Macquarie Dictionary
8. to view attentively, or scrutinise.
9. to think deliberately or carefully; reflect. Oxford English Dictionary 3.b. To look attentively or thoughtfully at. Consideration Macquarie Dictionary 1.the act of considering; meditation or deliberation. Oxford English Dictionary 1 The action of giving careful thought to something; careful thought or reflection. Commenced Macquarie Dictionary –verb (t) 1. to begin; start. Oxford English Dictionary To begin (an action);” “Proceedings” The word “proceedings” is used extensively in the NCAT Act. In *Allen v TriCare (Hastings) Ltd* [2017] NSWCATAP 25 (Allen), an NCAT Appeal Panel considered its meaning in the context of determining the applicable cost provision in proceedings in the Consumer and Commercial Division of NCAT where “the amount claimed or in dispute in the proceedings is more than \$30,000”. At [33], the Appeal Panel said proceedings is a word of “great generality” and “takes its precise meaning from the context in which it appears”, citing *Clarence v Electricity Commission of New South Wales* (1990) 20 NSWLR 1 at 4. After referring to several examples in the NCAT Act and the Civil and Administrative Tribunal Rules 2014 (NSW) where the word proceedings was used, at [37] the Appeal Panel said it adopted the following meaning: “[P]roceedings’ refers to the process set in motion, or commenced, by lodging an application or notice of appeal. That process includes the steps taken by the Tribunal to hear and determine whether to grant the relief sought in the application or notice of appeal, as well as any interlocutory or ancillary steps. Proceedings are defined by the subject matter raised in the application or notice of appeal.” NCAT Appeal Panels have consistently adopted that meaning; see, for example, *Wrigley v Owners Corporation SP 53413* [2017] NSWCATAP 100 at [79]-[80]. In *Allen*, the Appeal Panel considered the meaning of the word “proceedings” in provisions in the NCAT Act and the Rules unrelated to s 52. Nonetheless, in our view, it applies equally to the word “proceedings” contained in s 52. “Matter” Like “proceedings”, the word “matter” is used extensively in the NCAT Act. For example, it is used

in: The definition of “ancillary decision: a decision made by the Tribunal under legislation ... that is preliminary to, or consequential on, a decision determining proceedings, including (a) a decision concerning whether the Tribunal has jurisdiction to deal with a matter...”: NCAT Act, s 4(1) Section 29 (General jurisdiction) which states the Tribunal has general jurisdiction over a matter if (a) legislation (other than this Act or the procedural rules) enables the Tribunal to make decisions or exercise other functions, whether on application or of its own motion, of a kind specified by the legislation in respect of that matter, and (b) the matter does not otherwise fall within the administrative review jurisdiction, appeal jurisdiction or enforcement jurisdiction of the Tribunal: s 29(1). See also s 29(3). Section 38 (Procedure of Tribunal generally) which states the Tribunal: “may determine its own procedure in relation to any matter for which this Act or the procedural rules do not otherwise make provision” (s 38(1)) and, “is not bound by the rules of evidence and may inquire into and inform itself on any matter in such manner as it thinks fit, subject to the rules of natural justice”: s 38(2). Section 39 (What constitutes an application) which states “an application to the Tribunal includes a complaint, referral or other mechanism (however expressed) by means of which enabling legislation provides for a matter to be brought to the attention of the Tribunal for a decision.” Section 49(2), which states that “[t]he Tribunal may (of its own motion or on the application of a party) order that a hearing be conducted wholly or partly in private if it is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter...” As is apparent from the above, the word “matter” is not used consistently in the NCAT Act. In s 38(2) for example, it has a broad meaning and connotes any “issue or thing”. On the other hand, in the definition of ancillary decision in s 4(1) and in s 39, it has a narrower meaning and connotes an application (see, NCAT Act, s 39) and any jurisdictional, procedural, legal or other issue required to be resolved to determine the subject application. In our view, the word “matter” is used in the latter sense in s 52. The word “matter” is used four times in s 52. Neither the text, context nor purpose suggest that it is not used consistently throughout s 52. Purpose and context Section 27 gives the President power to give or to revoke a direction as to the members who are to constitute the Tribunal for the purposes of any particular proceedings. On the other hand, s 52 gives the President discretion to replace the member(s) constituting the Tribunal, following the making of a direction under s 27 “as to the members who are to constitute the Tribunal for the purpose of any particular proceedings”. That discretion is enlivened where, after the consideration of a matter by the Tribunal has commenced, but before the matter is determined, one of the events in s 52(1) occurs. By the combined operation of ss 27(2) and 52, once a direction is made under s 27 as to the members who are to constitute the Tribunal for the particular proceedings, that member or those members are to determine those proceedings, unless: Before the hearing in the particular proceedings commences, the President revokes that direction, or After the consideration of a matter by the Tribunal has commenced but before that matter is determined, one of the events in s 52(1) occurs and the President exercises the discretion to replace the member(s). The evident purpose of s 52 is to provide a mechanism which enables a Tribunal to be reconstituted where it has commenced considering, but has not determined, the matter and one of the events in 52(1) occurs. This mechanism obviates

the need for the matter to be heard afresh. That mechanism is consistent with the guiding principle of the NCAT Act, “to facilitate the just, quick and cheap resolution of the real issues in the proceedings”: NCAT Act, s 36(1). Legislative history The legislative history of the NCAT Act provides little assistance in determining the meaning of the phrase “after the consideration of a matter by the Tribunal has commenced” in s 52. The only amendment made to s 52 since the commencement on the NCAT Act was made by the Civil and Administrative Tribunal Amendment Bill 2023 (the 2023 Bill). That Bill amended s 52 by inserting: s 52(1)(d), which adds to the events which enliven the discretion conferred by s 52, “is directed by the President not to take part in the proceedings”: the 2023 Bill, Sch 1, Item 4 s 52A, which prescribes the process to be followed by the President before making a direction under s 52(1)(d): 2023 Bill, Sch 1, Item 4 s 52(2B), which gives the President power to give directions as to the member or members who are to constitute the Tribunal after the consideration of a matter by the Tribunal has commenced: 2023 Bill, Sch 1, Item 5. The Explanatory Note to the 2023 Bill makes no reference to the meaning of the phrase “after the consideration of a matter by the Tribunal has commenced”. *Lloyd v Veterinary Surgeons Investigating Committee* In *Lloyd v Veterinary Surgeons Investigating Committee* [2002] NSWCA 224 (CA Lloyd), the NSW Court of Appeal considered an appeal from a decision made by the President of one of NCAT’s predecessors, the NSW Administrative Decision Tribunal, to give directions under s 79 of the ADT’s establishing Act, the Administrative Decision Tribunal Act 1997 (NSW) (ADT Act), about the procedure to be followed by a Tribunal reconstituted under s 79 of the ADT Act. Like s 52 of the NCAT Act, s 79 of the ADT Act gave the ADT President a discretionary power to reconstitute a Tribunal in certain circumstances. There are several material differences between the two provisions, however, in both the discretion to reconstitute the Tribunal is only enlivened “after the consideration of a matter by the Tribunal has commenced”. Section 79 of the ADT Act stated:

Reconstitution of Tribunal during hearing

- (1) The President may replace the member, or one of the members, constituting the Tribunal after the consideration of a matter by the Tribunal has commenced if:
 - (a) the member becomes unavailable for any reason, or ceases to be a member, before the matter is determined, and
 - (b) the parties consent.
- (2) The Tribunal as so reconstituted is to have regard to the evidence and decisions in relation to the matter that were given or made before the Tribunal was reconstituted.
- (3) If one or more of the parties do not consent to the reconstitution of the Tribunal under this section, the proceedings are to be reconsidered by the Tribunal constituted in accordance with this Act.
- (4) If proceedings are reconsidered by the Tribunal, the Tribunal may, for the purposes of the proceedings, have regard to any record of the proceedings before the Tribunal as previously constituted including a record of any evidence taken in the proceedings. (Our emphasis) In

Lloyd, the ADT President made directions under s 22 of the ADT Act as to the members who were to constitute the Tribunal to determine a complaint brought by the Veterinary Surgeons Investigating Committee about veterinary surgeon, Dr Lloyd. After 19 days of hearings, but before the hearing was completed, the term of appointment to the ADT of one of the members of the Tribunal constituted to determine the complaint about Dr Lloyd expired. The ADT President reconstituted the Tribunal and made directions about the procedure to be followed by the reconstituted Tribunal. An ADT Appeal Panel dismissed an appeal challenging the decision of the ADT President to make those directions: *Lloyd v Veterinary Surgeons Investigating Committee* [2001] NSWADTAP 26 (AP Lloyd). The Court of Appeal allowed an appeal from the Appeal Panel's decision and held that the directions made by the President about the procedure to be followed by the reconstituted Tribunal were beyond power. The Appeal Panel said the word "consideration" in the phrase "consideration of a matter by the Tribunal has commenced" cannot be equated with the word "hearing" and that the ADT President was correct to ascribe to the word "consideration" a broader connotation than "hearing": AP Lloyd at [20]. The Appeal Panel appears to have endorsed the comment made by the ADT President that the word "consideration" describes the "process of deliberation utilised by the Tribunal": *Veterinary Surgeons Investigating Committee v Lloyd* [2000] NSWADT 98 at [9]. The Court of Appeal did not consider the meaning of the word "consideration" in the phrase "consideration of a matter by the Tribunal has commenced" and made no comment about the interpretation adopted by the Appeal Panel.

Conclusion

In s 52, the words "matter" and "proceedings" are not synonymous. As discussed above, consistent with the Appeal Panel in *Allen* we take the word "proceedings" to mean the process commenced by the lodging of the application and concluding with the determination of that application, and to include any interlocutory steps. We take the word "matter" in s 52 to mean the initiating application (NCAT Act, s 39), and any jurisdictional, procedural, factual, legal issue required to be resolved to determine that application. Those meanings are consistent with the ordinary meaning of each word and their use throughout s 52. Of the possible dictionary definitions of the word consideration, "the act of consideration, deliberation; to think deliberately or carefully; reflect" (Macquarie Dictionary); "the action of giving careful thought to something; careful thought or reflection" (Oxford English Dictionary) are most apt. It broadly accords with the interpretation favoured by the Appeal Panel in AP Lloyd, the "process of deliberation utilised by the Tribunal". There is nothing in the text, context or purpose of s 52 to suggest that in that provision, "consideration" carries a different meaning. Applying those meanings in the context of this appeal, the phrase "consideration of a matter by the Tribunal has commenced" means the process employed by Tribunal 2 of giving careful thought or deliberation to the EPoA application has commenced or started. What occurred in the hearing The EPoA application and the guardianship application were listed for hearing on 23 December 2025 before Tribunal 2. The hearing ran for about one and a half hours. Shortly after the commencement of

the hearing, the Tribunal asked Mona a series of questions about the 2021 and 2023 EPoA:

SENIOR MEMBER GEIKIE: Yes. So [Mona], we want to make sure that you understand why we're here today. Clearly you have a lot of family who really care for you. And do you know why we're here today having this hearing? MONA: (INTERPRETER) Because of the matter between myself and the children. SENIOR MEMBER GEIKIE: Yes. So [Mona], you might recall that you did appoint two of your children as your attorneys in 2021. MONA: (INTERPRETER) Yes. SENIOR MEMBER GEIKIE: Do you remember who those children were? MONA: (INTERPRETER) [Samir] and [Elias]. SENIOR MEMBER GEIKIE: Right. And you made an appointment in 2023 of an attorney as well. Do you remember who that was? MONA: (INTERPRETER) I forgot the name. SENIOR MEMBER GEIKIE: Okay. Well, just to let everyone know, in 2021, [Mona] appointed [Carmen] and [Salma] as her enduring attorneys. And in 2023, she appointed – Transcript of hearing, 12 December 2025, NCAT 2025/00165620 (Tcpt), p 6(215)-7(230) (Our emphasis) Samir then interrupted the presiding member, claiming he had not received the “2021 documents” by which we understand him to mean the instrument appointing Carmen and her sister as Mona’s attorney. A discussion then ensued about the documents that had been filed in answer to the directions made by Tribunal 1. That discussion continued for about 10 minutes. The following exchange then occurred: SENIOR MEMBER GEIKIE: So we’ll just cut to the chase, meaning we’ll just go straight into what the problem really is. We understand that where we were up to was that we’ve dealt with the power of attorney in terms of what was done but on 6 September 2023, [Mona] appointed [Samir] as her enduring guardian. And so at this stage we understand [Samir] has been operating under the enduring power of attorney. Is that correct, [Samir]? SAMIR: Yes. SENIOR MEMBER GEIKIE: Yes. And you’re wanting that document to be reviewed. CARMEN: Yes, please. Tcpt, p 13(472)-13(483) (Our emphasis) The Tribunal spent much of the allocated hearing time endeavouring to obtain an accurate picture about Mona’s current living and care arrangements and the timeline surrounding the decision made by Samir to move Mona to residential aged care and Carmen’s subsequent decision to remove Mona from residential aged care. That task was made difficult because neither Carmen and Samir were reliable historians and repeatedly interrupted each other and the members of the Tribunal. About 70 minutes into the hearing, in answer to a question by Carmen about whether if the Public Guardian were to be appointed as guardian for Mona there would be a cost, the Presiding Member said: “Well, hang on. We’re just not talking about money at the moment”. Tcpt p 44 (2358) The Tribunal went on to elicit the views of Mona and the other parties about who should be appointed as Mona’s guardian if a guardianship order were to be made. The Tribunal then announced it intended to take a short adjournment. When the hearing recommenced, the presiding member said the Tribunal did not have time to hear the EPoA application, and the following exchange took place. SENIOR MEMBER GEIKIE: ... Look, we had more to talk about than we thought we would. [Carmen], we don’t really have time to hear your application to review the appointment of an enduring – appointment – power of attorney appointment. We don’t really have time to hear that. CARMEN: That’s fine. SENIOR MEMBER GEIKIE: And we don’t see there’s any urgency in it. CARMEN: No, there isn’t. SENIOR MEMBER GEIKIE: So we’re going to adjourn that application. SENIOR MEMBER MARTIN: Unless you want to withdraw it. I mean, that’s up to you. Tcpt, p 60(2521) -p 61(2533) The Tribunal then proceeded to ask Samir, Carmen, and Mona’s son, Jayan, a series of questions about the nature of Mona’s

financial affairs and their management: GENERAL MEMBER RUTLEDGE: [cross-talk 00:00:39] urgency. SENIOR MEMBER GEIKIE: Did you say there is urgency? CARMEN: No. GENERAL MEMBER RUTLEDGE: Oh, I'm sorry. SENIOR MEMBER GEIKIE: No, I didn't think so. GENERAL MEMBER RUTLEDGE: I'm sorry. CARMEN: Well, there could be on one side where paying for medications, paying for what she needs – SENIOR MEMBER GEIKIE: Who's "we"? CARMEN: All of us. SENIOR MEMBER GEIKIE: Right, okay. CARMEN: Because none of us have access to that. I have asked [Jayan], like I said, he's the person I speak to. I've asked [Jayan] on many times to ask – Mum actually has also asked [Jayan] on many times to ask [Samir] for money for things she wants. SENIOR MEMBER GEIKIE: Right. CARMEN: And he's always – sometimes he's given, but a lot of times he's refused. SENIOR MEMBER GEIKIE: Okay. [Jayan], you're the power of attorney. You can access your mother's – GENERAL MEMBER RUTLEDGE: [Samir]. SENIOR MEMBER GEIKIE: [Samir], [Samir]. Your mother's bank account. It's her money. Do you not give your mother the money? SAMIR: Always. SENIOR MEMBER GEIKIE: Right. SAMIR: It's not true what they're saying. SENIOR MEMBER GEIKIE: So are these additional items you're talking about that she – CARMEN: Yes. SENIOR MEMBER GEIKIE: Right. CARMEN: Yes, she likes to go shopping. She likes to spend – SENIOR MEMBER GEIKIE: Right. Hang on. So is there – does [Mona] have savings, [Samir]? SAMIR: No. SENIOR MEMBER GEIKIE: No. So it's only the pension? SAMIR: Yes. SENIOR MEMBER GEIKIE: So if it's over and above the pension, you haven't got the money to give her, you all – all of you take it – SAMIR: I've been paying for the house since my dad died. SENIOR MEMBER GEIKIE: Right. SAMIR: From 1982 until now. Even seven years I didn't live at the house, you can ask my brothers. SENIOR MEMBER GEIKIE: No, it's all right. SAMIR: They want to say it, I don't know. Seven years I didn't live at the house, I was paying all the bills, shopping. SENIOR MEMBER GEIKIE: Okay. No, you needn't enumerate them. It's all right. So [Carmen], there's only a pension. So what money can he give that's her money if – what's your concern? CARMEN: From her pension. Even when I take her to doctor's – SENIOR MEMBER GEIKIE: He said he gives all the pension. CARMEN: – appointments sometimes, he says to me, "Oh, how much do you need?" and "Why do you need that much?" Because it's a specialist. Specialists take anything between 250 to 380. SENIOR MEMBER GEIKIE: And does he not pay it? CARMEN: Sometimes he does, sometimes he's refused. We took her to the neurologist on 9 December and I don't know for how it happened, he actually – Mum went to him and he did give her the money to give me. But usually he gives her grief. He says, "They take you, let them pay for you." But my mum doesn't like that. SENIOR MEMBER GEIKIE: What do you say about that, [Samir]? SAMIR: Not true. Ask [Jayan]. Don't ask me. Ask [Jayan]. SENIOR MEMBER GEIKIE: [Jayan], can we just ask you how the medical appointments are paid for? Is [Samir] cooperative in spending your mother's money on her medical and pharmacy needs? JAYAN: Yes, he always does. SENIOR MEMBER GEIKIE: Yes. JAYAN: No problem. Sometimes he [unintelligible 00:03:29] because [Carmen], you know what I mean, she – SENIOR MEMBER GEIKIE: Right. JAYAN: Yes, but always he does, he always looks after Mum. SENIOR MEMBER GEIKIE: Right. Thank you. All right. So we're going to adjourn the application to review the appointment of enduring guardian. We just don't have time to hear it. And with the – sorry, not appointment of enduring guardian, appointment of enduring power of attorney, I'm sorry, and we're going to adjourn that application. Tcpt, p 61(2537) - p 63(2650) Submissions about whether Tribunal had commenced consideration of the EPoA application

Samir contends that the statement made by the presiding member at the start of the 23 December 2025 hearing that the Tribunal had “read all the papers” (Tcpt p 13(459), p 14(463-464)), demonstrates that, before the hearing, the Tribunal had commenced considering the EPoA application. He contends that, by the end of that hearing, the Tribunal was “part-heard” and had engaged in an “evaluative, deliberative process”, consistent with the proper consideration of the EPoA application. He argues that the invitation extended to Carmen to withdraw the EPoA application, coupled with the finding made by the Tribunal, that there was “no urgent need” to determine that application (2025 Reasons at [43]), demonstrates that the Tribunal had started to consider and formed a preliminary view about the merits of that application. Samir asserts that the evidence in both applications was “substantially identical”, and Tribunal 2 made material findings relevant to each application, including in relation to Carmen’s decision to remove Mona from residential aged care, which he characterises as “adverse to Carmen’s credit”: 2025 Reasons at [17]. Samir contends that in contravention of ss 52(2)(a) and s 52(3), he was not invited to make submissions about the proposed replacement of the members constituting Tribunal 2, and that Tribunal 3 did not have regard to the evidence before and the decisions made by Tribunal 2, as required. The 2025 Reasons were issued after Tribunal 3 made the decision under appeal. Carmen disagrees. She says it is significant that in the 2025 Reasons the only reference to the EPoA application is in the recitation of the procedural history to the proceedings, and in the final paragraph where the Tribunal states it had decided to adjourn that application. In addition, she says it is significant it was not until the last 10 or so minutes of the hearing, after the Tribunal had announced its decision to adjourn the EPoA application, that that application was discussed.

Conclusion

If Samir is correct and Tribunal 2 commenced consideration of the EPoA application, by the combined effect of ss 52 and 27, that application was required to be determined by the members constituting Tribunal 2, unless: a member(s) became unavailable for any reason, ceased to be a member or have a qualification required for participation in those proceedings or was directed by the President not to take part in the proceedings: s 52(1), and if so, after first giving the parties the opportunity to make submissions about the proposed replacement and taking those submissions into account, the President decided to exercise the discretion to replace the member(s): ss 52(1), 52(2). If Tribunal 2 had commenced consideration of the EPoA application, it follows, as was contended by Samir, that Tribunal 3 was not properly constituted and the decision under appeal is “wholly lacking in legal force”: *Cameron v Cole* (1944) 68 CLR 571 at 590-591; [1944] HCA 5; *Citta Hobart Pty Ltd v Cawthorn* (2022) 276 CLR 216 at [27]; [2022] HCA 16; *Health Care Complaints Commission v Kirby* [2026] NSWCA 168 at [15]. By the direction made by the President’s delegate under s 27(2), the “particular proceedings” Tribunal 2 was constituted to determine were the proceedings in respect of Carmen’s application to review the making and operation and effect of the 2023 EPoA (the EPoA proceedings), and the proceedings in respect of Carmen’s application for a guardianship order to be made in respect of Mona (the guardianship proceedings). Because they were separate and distinct proceedings, that the Tribunal not only commenced considering but determined the guardianship proceedings and made a guardianship

order has no bearing on the question of whether Tribunal 2 had commenced consideration of the EPoA application. Of its own motion, Tribunal 2 considered and decided the interlocutory issue, whether to adjourn the EPoA proceedings. That issue is “a matter” for the purpose of s 52. So, too, is the application to determine the EPoA application, which we refer to as the “substantive application”. Undoubtedly, the focus of the Tribunal’s attention throughout the 2025 hearing was the guardianship application. Most of the hearing time was devoted to that application. While it was not until the last 20 or so minutes of the hearing that the Tribunal said that it was dealing with the applications in sequence, commencing with the guardianship application — “We’re just not talking about money at the moment” (Tcpt, p 44 (2358)) — it is apparent that that is what occurred. Samir’s argument that, by reading the filed material in preparation for the 2025 hearing, Tribunal 2 had commenced consideration of the EPoA application is unpersuasive. Even if it is assumed that, in doing so, the individual members constituting the Tribunal had identified the issues that, in their view, were raised by that application and formed a preliminary view about some or all those issues, in circumstances where that material had not been admitted into the proceedings, where a hearing was required to be held to determine the EPoA application (NCAT Act, Sch 6, cl 6), where the application was to be considered by a multi member Tribunal, where no oral evidence was given or submissions made, the reading of the filed material by the individual members of Tribunal 2, does not demonstrate that that Tribunal had commenced considering the substantive application. Nonetheless, Tribunal 2 did more than simply read the filed material in preparation for the hearing. We have concluded that the following factors, taken in combination, are evidence that Tribunal 2 commenced consideration of the EPoA application: Shortly after the commencement of the hearing, the Tribunal questioned Mona about the 2021 EPoA and the 2023 EPoA. Those questions included inquiries whether Mona recalled appointing two of her children as attorneys in 2021, whether she could remember their names and whether she recalled who she appointed as her attorney in 2023. While not determinative, those questions were relevant to a key issue raised by the EPoA application, namely, whether as claimed by Carmen and disputed by Samir, in 2023 Mona lacked capacity to appoint Samir as her attorney. Those questions had no bearing on the question of whether to adjourn the EPoA application. The statement made by the Presiding Member: “[W]e’ve dealt with the power of attorney in terms of what was done ... so at this stage we understand [Samir] has been operating under the enduring power of attorney. Is that correct, [Samir]?”. It tends to indicate that the Tribunal had commenced the process of identifying the agreed and disputed facts. After announcing its decision to adjourn the EPoA application, the Tribunal nonetheless proceeded to ask Carmen, Samir and Mona’s son, Jayan, a series of questions traversing a range of issues relevant to the management of Mona’s financial affairs and the operation and effect of the 2023 EPoA. These include whether Samir gave Mona any money to spend, whether Mona had any savings, whether Mona’s pension was her only source of income, what arrangements were in place for paying medical expenses incurred by Mona, and, whether Samir was cooperative in spending Mona’s “money on her medical and pharmacy needs”. Significantly, the Tribunal asked those questions after Carmen confirmed she agreed with the statement made by the Presiding Member that there was no urgency surrounding the substantive application. This tends to indicate that, despite announcing its decision to adjourn the EPoA application, for reasons unclear, the Tribunal

considered it necessary to explore some of the issues raised by that application. Immediately after the presiding member announced its decision to adjourn the substantive application, the professional member said to Carmen “Unless you want to withdraw it. I mean it’s up to you.” The circumstances where Carmen required the consent of the Tribunal to withdraw the substantive application (NCAT, sch 6, cl 10), and, in deciding whether to give consent, the Tribunal was obliged to give paramount consideration to Mona’s welfare and interests (Guardianship Act, s 4(a); NCAT Act, sch 6, cl 5(1)), tend to indicate that, when that invitation was extended, the Tribunal had formed a preliminary view of the merits of that application. The evidence referred to at (1) and (3) above was relevant to key issues raised by the EPoA application. By s 52(3), any reconstituted Tribunal would be obliged to have regard to that evidence. Even if a benign interpretation is given to the questions asked by the Tribunal listed at (1) above, and those questions were asked for the sole purpose of eliciting Mona’s understanding of the purpose of the hearing, and are relevant to that issue alone, we would reach the same conclusion. Our conclusion that the Tribunal had commenced consideration of the EPoA is not at odds with the statement made by the Presiding Member when announcing the decision to adjourn the EPoA application “We don’t really have time to hear that [application].” The Presiding Member did not say the Tribunal had not commenced considering the EPoA application, nor could that inference reasonably be drawn from that statement. Of itself, the decision to adjourn the substantive application does not demonstrate that Tribunal 2 had commenced considering that application. In considering a substantive application made under the Powers of Attorney Act, and in considering whether to adjourn that application, there will often be common or overlapping issues, such as the risk posed to the principal’s estate and welfare if the current arrangements in relation to their financial affairs were to continue. Nonetheless, here some of the questions asked by the Tribunal, such as whether Mona recalled who she appointed under the 2023 EPoA, while arguably relevant to the substantive application, went further and had no apparent relevance to the decision to adjourn that application. Section 52 is enlivened once the Tribunal commences consideration of “a matter”. It is irrelevant whether the Tribunal gave negligible or substantial consideration to the matter. That view is consistent with the decision of the Court of Appeal in *Tu v University of Sydney* [2003] NSWCA 170, which concerned the operation of s 79 of the ADT Act. On the first day of a five-day hearing listed to determine a complaint alleging race discrimination referred to the ADT by the President of the Anti-Discrimination Board, after counsel for the complainant made an opening submission outlining the general nature of the complaint, the Tribunal adjourned the proceedings: *Tu v University of Sydney* at [2]. The Court of Appeal accepted without argument that for the purpose of s 79 of the ADT Act, the Tribunal had commenced consideration of the “matter”, that is, the referred complaint. Tribunal 2 had commenced consideration of the EPoA application. It follows Tribunal 3 was not properly constituted and the decision under appeal is invalid. The EPoA is to be redetermined by Tribunal 2. The Appeal Panel notes that the term of appointment of one of the members of Tribunal 2 has expired.

Orders

The appeal is allowed. Decision under appeal is set aside. Within 7 days of this decision the parties are to give to the Registrar gd@ncat.nsw.gov.au any unavailable dates for a hearing between 26 October 2026 and 23 December 2026. Annexure A Fictitious name Pseudonym Description Mona YTY The person the subject of the appeal. Samir YWK The appellant and the son of Mona. Appointed as the enduring guardian and enduring attorney of Mona in 2023. Carmen YVN The daughter of Mona and Respondent 1. Appointed as Mona's enduring power of attorney in 2021. Salma Nil Non-party. The daughter of Mona. Appointed as Mona's enduring power of attorney in 2021. Jayan Nil Non-party. The son of Mona. Elias Nil Non-party. The son of Mona.

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. Decision last updated: 25 September 2026

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