

What is a separate representative?

This fact sheet explains the role of a separate representative in NCAT Guardianship Division hearings.

Role of a separate representative

A separate representative is an independent person, usually a lawyer, appointed by the Guardianship Division of NCAT to represent the interests of the Person. We use the term “the Person” to mean “the person the application/review is about”.

The role of the separate representative is to:

- get the views of the person, if possible, and to inform the Tribunal of those views
- give to the Tribunal, any other relevant information in relation to the Person.

The separate representative is not bound by the views of the Person. In this way they are different from a legal representative because they do not act on the instructions given by the Person.

The separate representative is not an advocate for the interests of the other parties in the proceedings.

Before the hearing

To prepare for the hearing, it is expected that the separate representative will:

- **Meet with the Person** and attempt to elicit their views
- **Review the evidence** and obtain any further evidence relevant to the application to be heard by NCAT, which is likely to assist the Tribunal
- **Explain the role of separate representation**, when appropriate, to the Person and the other parties to the application/review.

At the hearing

At the hearing the separate representative should:

- act in accordance with the principles of the *Guardianship Act 1987* and the *Civil and Administrative Tribunal Act 2013*, which include the welfare and interests of the Person are to be given paramount consideration
- advise NCAT of the views of the Person.

At the hearing the separate representative may:

- call witnesses and give evidence
- test evidence and cross-examine witnesses
- make submissions as to whether the evidence supports the legal tests or requirements for an order to be made
- make submissions as to the best interests of the Person.

If the Person has capacity to give instructions

If the appointed separate representative considers that the Person is capable of providing instructions, they should inform NCAT.

In these circumstances, the separate representative may seek leave to act as the legal representative for the Person.

Contact NCAT

1300 006 228 | www.ncat.nsw.gov.au

Interpreter Service (TIS) 13 14 50

National Relay Service for TTY users 13 36 77

For more information and assistance visit the NCAT website www.ncat.nsw.gov.au or contact NCAT's Guardianship Division on (02) 9556 7600 or 1300 006 228.