

## What is a separate representative?

This fact sheet explains the role of a separate representative who is appointed to advocate for a person's best interests during NCAT proceedings.

### Role of a separate representative

A separate representative is an independent person, usually a lawyer, appointed to represent the interests of an individual (called 'the Person') during NCAT proceedings.

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.

If NCAT makes an order appointing a separate representative, NCAT will ask Legal Aid NSW to arrange a lawyer to act as separate representative for the Person.

### Guardianship Division

In NCAT's Guardianship Division, a separate representative may be appointed for the person that application or review is about.

The separate representative must also follow the principles of the *Guardianship Act 1987* and make sure the Person's welfare and interests are to be given paramount consideration.

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

### Administrative and Equal Opportunity Division

In NCAT's Administrative and Equal Opportunity Division, a separate representative may be appointed for:

- A party to the proceedings
- A child (person under 18 years) who is not a party to the proceedings, where the proceedings directly or significantly affect that child.

### How is a separate representative different to a legal representative?

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.

### Before the hearing

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

- **Meet with the Person** and attempt to get their views about the application.
- **Review the evidence** and gather any additional evidence which is relevant to the application and likely to assist NCAT.
- **Explain the role of a separate representative** to the Person and other parties to the application (where appropriate).

### At the hearing

At the hearing, the separate representative should:

- Act in accordance with the *Civil and Administrative Tribunal Act 2013* and any other relevant legislation.
- Inform NCAT about the views of the Person.

During the hearing, the separate representative may:

- Call witnesses and give evidence
- Test evidence and cross-examine witnesses
- Make submissions about whether the evidence supports the legal tests or requirements for an order to be made
- Make submissions about 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, the separate representative should inform NCAT of this.

In these circumstances, and where the Person is a party to proceedings, 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](http://www.ncat.nsw.gov.au)

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