

Separate representation

The following information is provided to assist someone who is a party to proceedings in which a separate representative has been appointed, or someone who has been appointed as a separate representative for the person the application is about.

What is a separate representative?

A separate representative is an independent person, usually a lawyer, appointed by NCAT to represent the interests of a person who the application is about.

The role of the separate representative is to present the views of the person wherever possible, and also other relevant information and evidence to assist NCAT in making a decision.

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 from the person.

The separate representative is not an advocate for the interests of the other parties to the application.

Before the hearing

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

- **Meet with the person** the application is about and obtain their views, if the person is able to express views;
- **Review the evidence** available and obtain any further evidence relevant to the application to be heard by NCAT, which is likely to assist the Tribunal. (e.g. obtain independent assessments of the person's capacity). In most cases, the separate representative would liaise with an officer from NCAT's Guardianship Division about the appropriate assessments; and
- **Explain the role of separate representation**, when appropriate, to the person the application is about and the other parties to the application.

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 Act 2013*, which include the welfare and interests of the person the application is about are to be given paramount consideration
- Advise NCAT of the views of the person the application is about.

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 the application is about.

If the person has capacity to give instructions

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

In these circumstances, some separate representative may seek leave to act as the legal representative for the person the application is about.

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 or contact NCAT's Guardianship Division on (02) 9556 7600 or 1300 006 228.