



## Consumer and Commercial Division Guideline August 2019

# Representation

### What does this Guideline explain?

1. This Guideline explains the circumstances under which a party in proceedings in the Consumer and Commercial Division may be represented by another person.

### Definitions

2. Definitions that explain words or concepts used in this guideline are at the back of the guideline.

### What are the general principles about representation in the Consumer and Commercial Division?

3. Generally, a party in proceedings in the Consumer and Commercial Division of the Tribunal is responsible for presenting the party's own case.
4. However, parties may have representatives to present their cases if the Tribunal gives permission, or "grants leave", for this to occur. In granting leave, the Tribunal can impose such conditions as it thinks fit.
5. If the Tribunal has given leave for a party to be represented, it can also revoke that leave.
6. In a limited number of cases, a party is entitled to be represented without leave.

### How can a party ask to be represented?

7. An application for representation can be made orally or in writing at any stage in the proceedings.

### Can a party can be represented by a non-Australian legal practitioner?

8. When dealing with an application for leave to be represented by a person other than an Australian legal practitioner, the Tribunal has regard to the following circumstances to the extent they are relevant:
  - a) whether the proposed representative has sufficient knowledge of the issues in dispute so as to be able to represent the party effectively before the Tribunal;
  - b) whether the proposed representative is able to deal fairly and honestly with the Tribunal and other persons involved in the proceedings;
  - c) whether the proposed representative has authority to bind the party; and

- d) any other circumstances that the Tribunal considers relevant.
9. A person applying for leave to appear as a representative may need to provide evidence of the circumstances referred to in the preceding paragraph to support the application.

### **In what circumstances would the Tribunal permit a party to be represented?**

10. The Tribunal will usually grant leave to a person to represent a party in the following circumstances:
- a) if the party is an owners corporation under the *Strata Schemes Management Act 2015* (NSW) and the proposed representative is a member of the Strata Committee or the strata managing agent;
  - b) if the party is the operator of a retirement village which is the subject of the proceedings and the proposed representative is an employee or agent of the operator;
  - c) if the party is a community association under the *Community Land Development Act 1989* (NSW) and the proposed representative is a proprietor of a development lot who is a member of the association or the managing agent;
  - d) if the party is a body registered under the *Co-operatives Act 1992* (NSW) and the proposed representative is one of its officers;
  - e) if the partners in a firm are parties and the proposed representative is one of the partners;
  - f) if the party is an incorporated association registered under the *Associations Incorporation Act 1984* (NSW) and the proposed representative is one of its officers;
  - g) if the parties are an unincorporated body of persons and the proposed representative is:
    - (i) a secretary or treasurer of the body; or
    - (ii) a member of the executive or management committee of the body who was duly elected at a general meeting of members of the body;
  - h) if the party has a trustee for the management of the party's estate and the proposed representative is the trustee;
  - i) if the party is a government agency and the proposed representative is an officer of that or another appropriate government agency;
  - j) if the party is a landlord of residential premises which is the subject of the proceedings and the proposed representative is the managing agent of the property;
  - k) if the party is the owner of a residential park which is the subject of the proceedings and the proposed representative is the park manager.

## In what circumstances would the Tribunal permit a party to be represented by an Australian legal practitioner?

11. The Tribunal will usually permit a party to be represented, especially by an Australian legal practitioner, in circumstances such as the following:
  - a) if the proceedings involve a claim or dispute for more than \$30,000;
  - b) if another party in the proceedings is, or is to be represented by, an Australian legal practitioner;
  - c) if the application is for a penalty to be imposed under the *Strata Schemes Management Act 2015* or the *Community Land Management Act 1989*;
  - d) if another party in the proceedings is a government agency;
  - e) if the Tribunal is of the opinion that the party would be placed at a disadvantage if not represented at the hearing; and
  - f) if the Tribunal is of the opinion that representation should be permitted due to the likelihood that complex issues of law or fact will arise in the proceedings.

## In what type of application is leave for representation not required?

12. In some cases, leave of the Tribunal is not required before a party can be represented. These include:
  - a) if the party has been granted legal assistance under Div 2 of Pt 2 of the *Fair Trading Act 1987 (NSW)* and the representative is an Australian legal practitioner;
  - b) if the party is a party to proceedings under the *Retail Leases Act 1994 (NSW)* and the representative is an Australian lawyer or other agent;
  - c) if the party is a resident of a retirement village which is the subject of the proceedings and the representative is:
    - (i) a resident of the retirement village nominated in accordance with s 122 of the *Retirement Villages Act 1999 (NSW)*; or
    - (ii) the Residents Committee of the retirement village in accordance with cl 39 of the *Retirement Villages Regulation 2009*; and
  - d) if the person is a representative appointed under legislation allowing such a representative to make an application to the Tribunal on behalf of others.

## What do some of the words in this Guideline mean?

- **Act:** *Civil and Administrative Tribunal Act 2013 (NSW)*
- **Australian lawyer:** a person who is admitted to the legal profession under *Legal Profession Act 2004 (NSW)* or a corresponding law
- **Australian legal practitioner:** An Australian lawyer who holds a current NSW practising certificate or a current interstate practising certificate
- **Party or parties:** A person or entity involved in a particular case or joined to the proceedings under section 44 of the Act. The Tribunal calls the person or entity that

brings an application 'the applicant' and the person or entity they seek orders against 'the respondent'.

- **Registrar:** The Principal Registrar or any other person employed as a Registrar of the Tribunal
- **Rules:** Civil and Administrative Tribunal Rules 2014.

### **This Guideline applies to:**

Proceedings in the Consumer and Commercial Division of the Tribunal.

### **Effective Date**

20 August 2019

### **Notes**

You must use the latest version of this Guideline. The latest version of this Guideline is on the [NCAT website](#).

The law about the information in this Guideline is mainly in:

- section 45 of the *Civil and Administrative Tribunal Act 2013*
- clause 7 of Sch 4 to the *Civil and Administrative Tribunal Act 2013*
- rules 31 to 33 of the Civil and Administrative Tribunal Rules 2014 (the Rules).

There is a copy of this Act on the [NSW Legislation website](#).

### **Stuart Westgarth**

Deputy President

August 2019