

## **Information applications for leave to be represented at hearings by a legal representative or agent**

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### **The following information is provided for people:**

- who are parties to hearings before the Tribunal who want to be represented by a lawyer or other advocate at the hearing
- who are seeking to represent a party to a hearing before the Tribunal.

The Guardianship Tribunal is established under the *Guardianship Act 1987*. Under section 58 of the *Guardianship Act*, a person who is a party may be represented by a lawyer or other agent at hearings if the Tribunal allows by formally granting leave.

The Tribunal must act fairly and give people who are parties to hearings every opportunity and assistance to present their case and respond, where appropriate, to matters put by any other party or witness. You are a party to the hearing if you are:

- the person the hearing is about
- the applicant
- the spouse of the person the hearing is about
- an unpaid carer of the person the hearing is about who is providing support to the person or provided this support before the person entered residential care
- the Public Guardian if an application is for guardianship
- an appointed or enduring guardian in a review of a guardianship order or review of an enduring guardianship appointment
- the NSW Trustee or any person appointed under a power of attorney if an application is for financial management
- the NSW Trustee or any appointed financial manager in the review of a financial management order or review of the appointment of a financial manager

- any other person who has been joined as a party.

The Tribunal prefers to get information and opinions from people in their own words. This generally means that people do not need to be represented at hearings.

A party who wants to be represented at a Tribunal hearing is required to have their solicitor or advocate provide a written submission detailing the reasons why the party should be granted leave to be represented. The written submission should be received by the Tribunal at least **five** working days before the hearing.

The *Guardianship Act 1987* provides that the Registrar or a Tribunal of less than three members can grant leave for a party to be represented at a hearing. Submissions received five or more working days before the hearing will usually be decided by a Tribunal before the hearing date.

Submissions received less than five working days before the hearing will usually be decided at the beginning of the hearing.

If there are special reasons why the request to have representation needs to be dealt with before the hearing, these reasons should be clearly stated in your written request.

Whenever possible, all parties will be given the opportunity to say whether they agree or disagree to a particular party being represented. Nevertheless, the Tribunal can determine requests for leave to be represented on the basis of written submissions only.

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## **Guidelines for submissions for leave to represent a party**

Your submission must address the following issues:

- the disability, if any, that the party wanting representation has.
- the effect of the disability on the party's ability to protect their own interests and argue their own case. The person who is the subject of the hearing is likely to have their personal rights affected to a greater degree than any other party. A request to be represented from that person is more likely to succeed than a request from any other party.
- the possible effect of the Tribunal's proceedings on the party's rights and interests.
- whether a party to the hearing will be disadvantaged if leave to be represented is refused.
- whether parties to the hearing who are not represented will be disadvantaged if another party is allowed to be represented.
- whether there are complex facts and legal questions involved in the case.
- fairness to all parties and their ability to make their views known to the Tribunal.
- whether there is a dispute between parties.

Parties are usually liable for their own costs associated with representation.

## **Alternatives to representation**

- The Tribunal is generally prepared to have a family solicitor, familiar with the person the subject of the hearing, attend the hearing to give evidence as a witness as an alternative to representation.
- Anyone can get legal advice or assistance to lodge an application and/or prepare for a hearing before the Tribunal. You do not need the Tribunal's permission to do this.
- If your solicitor or agent is not granted leave to represent you, the Tribunal may allow them to remain throughout the hearing on an informal basis to provide assistance and advice to you, without speaking on your behalf.

## **Need more information?**

You can speak to the Tribunal staff member who is handling your matter or the Tribunal's Legal Officer on (02) 9556 7600 or toll free 1800 463 928.

You can also get information from the Legal Aid Commission on (02) 9219 5000, telephone typewriter (02) 9219 5700.

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## **For more information contact**

### ***Guardianship Tribunal***

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