

Information for separate representative

Separate representation

The following information is provided to assist someone who:

- is a party to a matter in which a separate representative has been appointed; or
- 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 the Guardianship Tribunal to represent the interests of a person who is the subject of an application to the Tribunal.

The role of the separate representative is to present the views of the person wherever possible, and also other relevant information and submissions to assist the Tribunal in making decisions under the *Guardianship Act 1987*.

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 of a client.

The separate representative is not an advocate for the interests of 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 hearing is about and obtain their views, if the person is able to express views;
- review the evidence available and obtain any further evidence that is relevant to the matters to be determined and is likely to assist the Tribunal in its deliberations (e.g. obtain independent assessments of the person's capacity). In most cases, the separate representative would liaise with the investigation officer handling the matter at the Tribunal about the appropriate assessments; and
- when appropriate, explain the role of the separate representative to the person 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*, which include that the welfare and interests of the person with a disability are the paramount consideration;
- should advise the Tribunal of any views of the person who is the subject of the application;
- may call witnesses and produce evidence;
- may test evidence and cross-examine witnesses;
- may make submissions as to whether the evidence supports the legal tests or requirements for an order to be made; and
- may make submissions as to the best interests of the person who is the subject of the application.

If the person has capacity to give instructions

If a solicitor or advocate who has been appointed as the separate representative considers that the person the hearing is about is capable of providing instructions, they should inform the Tribunal. In these circumstances, the separate representative may seek leave to act as the legal representative for the person.

For more information contact

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