

Representation at the hearing

The following information is for people who are a party to proceedings in NCAT's Guardianship Division, and who want to be represented by a lawyer or other advocate at the hearing.

Right to representation

The NSW Civil and Administrative Tribunal (NCAT) was established under the *Civil and Administrative Tribunal Act 2013*. Under section 45 of the Act, a person who is a party may be represented by another person at the hearing if NCAT grants leave for this to happen.

NCAT must act fairly and give people who are parties to hearings every opportunity and assistance to present their evidence and views and respond, where appropriate, to questions put by another party or witness.

How to request representation

A party who wants to be represented by another person at the hearing should provide a written submission detailing the reasons why NCAT should 'grant leave' to that person. The written submission should be received at least five working days (5 days) before the hearing.

Submissions received five or more working days before the hearing will usually be decided by NCAT before the hearing date.

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

Whenever possible, parties will be given the opportunity to say whether they agree or disagree to a particular party being represented.

Guidelines for submission

The submission for leave to represent a party must address the following issues:

- The disability, if any, that the party requesting the representation has.
- The effect of the disability on the party's ability to protect their own interests. 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.

- The possible effect of the 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.
- Fairness to parties and their ability to make their views known.
- Whether there is a dispute between parties.

Parties are liable for their costs associated with representation.

Who is a party?

The people who are a party vary depending on the type of application that is being considered.

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 an application for guardianship, a review of a guardianship order or review of an enduring guardian appointment
- The NSW Trustee and a person appointed under a power of attorney if an application is for financial management



- The NSW Trustee or appointed financial manager and a person appointed under a power of attorney in the review of a financial management order or application to replace the financial manager
- Any other person who has been joined as a party.

For more information, read the fact sheet *Who is a party to proceedings in the Guardianship Division?*

Alternatives to representation

Anyone can get legal advice or assistance to lodge an application and/or prepare for a hearing. You do not need to be granted leave from the Tribunal 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.

NCAT may hear the application requesting to be joined as a party at a procedural directions hearing or at the beginning of the application for the person.

Need more information?

Legal Aid NSW is able to provide further information about representation and may be contacted on (02) 9219 5000 or contact NCAT's Guardianship Division.

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.