

## Information about Separate Representatives

This fact sheet answers the following questions:

- What is a separate representative?
- How do they assist before the hearing?
- How do they assist during the hearing?
- How are they appointed?

### Who should read this fact sheet?

This fact sheet provides information for a person who has an application made about them to the Tasmanian Civil and Administrative Tribunal ('the Tribunal'), their family, carers, guardians, administrators, treating teams and other support people. Orders appointing a separate representative are usually made in matters in the Guardianship stream or the Mental Health stream.

### What is a Separate Representative?

A separate representative is a legal representative who performs the role of presenting the person's views, wherever possible, and other evidence and information to assist the Tribunal to make a decision.

A separate representative:

- is independent of the Tribunal
- unlike a directly appointed legal representative, is not bound to follow any instructions given by the person they are appointed to assist
- may put evidence before the Tribunal in addition to making legal submissions
- is not an advocate for other parties to a matter before the Tribunal

### Prior to the hearing

A separate representative is expected to perform the following in preparation for a hearing:

- inform the Tribunal that they are the lawyer nominated by Tasmania Legal Aid to act as the separate representative in the matter
- review the evidence available
- meet with the person they have been appointed for, explain the role of a separate representative, and where possible, obtain their views relevant to the hearing

- obtain any further evidence relevant to the hearing which is likely to assist the Tribunal (for example, obtaining an independent assessment of a person's capacity or obtaining copies of any relevant orders made in other jurisdictions)
- where appropriate, explain the role of a separate representative to the other parties to the proceedings and canvas their views about the hearing

### At the hearing

At the hearing, the separate representative should:

- act in accordance with the objectives of the *Tasmanian Civil and Administrative Act 2020* (the Act) and the principles in any other relevant legislation (for example, the *Guardianship and Administration Act 1995* and the *Mental Health Act 2013*)
- inform the Tribunal what action they have taken as a separate representative (for example, whether they have met with any person or the investigations they have conducted)
- advise the Tribunal of the views of the person the application is about

At the hearing, the separate representative may:

- call witnesses to give evidence
- test any evidence and question witnesses
- make submissions as to whether the evidence supports the applicable legal tests or requirements for an order to be made, and what order would provide the best outcome for the person

### How are Separate Representatives appointed?

Sections 98(4)(c) and 98(5)(b) of the Act gives the Tribunal the power to make an order appointing a separate representative. An order may be made at any stage of a matter. The Act does not specify the criteria that the Tribunal must consider when appointing a separate representative so the Tribunal will exercise its discretion in deciding when to make an order based on each individual set of circumstances. For example, the Tribunal may appoint a separate representative where there is information that a person:

- may have difficulty representing themselves, their interests, and giving their views on the proceedings before the Tribunal
- may be unable to give proper instructions to a legal representative and/or under legal incapacity due to age, mental illness, disability, or other special circumstances

After the Tribunal makes the order, it will send a copy to Tasmania Legal Aid. Legal Aid will decide whether to arrange for the provision of a legal practitioner to act as the separate representative in accordance with their policies.

### More Information

For more information, please refer to:

- [TASCAT](http://www.tascat.tas.gov.au) (www.tascat.tas.gov.au)
- [TASCAT – Guardianship Stream](http://www.tascat.tas.gov.au/guardianship) (www.tascat.tas.gov.au/guardianship)
- [TASCAT – Mental Health Stream](http://www.tascat.tas.gov.au/mental-health/home) (www.tascat.tas.gov.au/mental-health/home)
- [Tasmania Legal Aid](http://www.legalaid.tas.gov.au) (www.legalaid.tas.gov.au)

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