

## **Australian Guardianship Administration Council AGAC**

### **Participation of Proposed Represented Person – Draft Best Practice Guidelines**

#### **Submission Seniors Rights Service**

*Draft Guideline 1: Pre hearing case management and support for the person provides an opportunity to maximize participation by the person.*

We support the case manager at the Tribunal contacting the subject person to explain the application and we support the Tribunal continuing to provide the subject person with a copy of the application documents. The applicant should also retain the responsibility of doing this to ensure the subject person is informed at the earliest opportunity and advised of their right to seek independent legal advice.

*Draft Guideline 2: The person and other parties should be promptly notified of an application being made.*

We support the Tribunal should also have responsibility of letting all parties know once the initial application has been lodged.

We support the Tribunal serving the documents on the parties. We have encountered matters where the applicant does not serve documents on certain parties because of their belief that those parties should not be involved in the matter (and indeed where a motivating factor in starting the proceedings is to exclude those parties from the subject person's life). This is particularly an issue where, for example, an adult child making an application refuses to acknowledge that their parent's de-facto or same sex partner is, in fact, their partner and is entitled to participate in the proceedings. This is also a factor where disputes between children disintegrate to the point where they do not wish to give the other child the opportunity to have adequate notice of the issues in dispute before the hearing.

*Draft Guideline 3: Written notice of hearing should be given to the person and other parties well in advance of the hearing. Registry staff may need to consider whether any additional steps need to be taken to ensure that the person is informed of the hearing details.*

We agree that this procedure should be followed by the Tribunal.

*Draft Guideline 4: Pre-hearing processes should seek to ensure that:*

- *The person is made aware of the application*
- *Information is provided to assist the person to understand what the application is about*
- *The person's participation is encouraged (unless to do so would be detrimental to the person)*
- *Any further information that may assist the tribunal is obtained from the person*

- *The person is provided with information as required about representation including advocacy*
- *Information is given to the person about tribunal practice and procedure and to assist in addressing any confusion or anxiety where possible*
- *The person has an opportunity to ask questions about any of these matters*
- *Information is sought as to whether any communication supports are required, for example, interpreting services, visual or auditory aids, or communication aids.*

We agree with the above guidelines. We highlight the importance of the Tribunal members beforehand and at the hearing speaking to the older person on their own to obtain information as to their understanding of their affairs and what their wishes are in relation to their affairs and what they would like to have happen to them. We understand that this may be relayed to all parties upon their return to the room at the hearing.

We also highlight the importance of having a representative or support person (McKenzie Friend) or advocate as an independent person to assist the older person. Such a support person should have spoken to the older person beforehand, and be able to assist the older person to participate fully in the hearing. SRS also proposes that every endeavor is made to inform close relatives and especially spouses (estranged or not) of the application. We are aware of applications for older people being made for the parent by children of the first marriage without the second spouse being aware of this.

*Draft Guideline 5: Optimally, the listing of a hearing should take into account:*

- *Whether any particular needs of the person require a hearing at certain times of the day (for example a morning hearing rather than the afternoon or taking into account effects of medication)*
- *An estimate of the length of time the person may need to give their views to the tribunal, having regard to their communication needs*
- *Any need for breaks during the hearing*
- *Any additional time required for the use of an interpreter.*

We support these recommendations. From our experience, time of the day is important. For example earlier in the morning might be the optimal part of the day for an older person and they may prefer to have the matter dealt with early to avoid the stress associated with waiting for a later hearing (as these hearings can be stressful to the older person where their family is in conflict). Breaks are also important for these reasons. We also highlight the importance of availability of interpreters who can translate correctly for subject persons due to the large number of CALD older clients in the community.

*Draft Guideline 6: Information about various aspects of the tribunal's practice and procedure (both in hard copy and online) should be made available to the person who is the subject of proceedings in formats that are accessible to people:*

- *From culturally and linguistically diverse backgrounds*
- *With a vision or hearing impairment*
- *With cognitive disabilities*

We agree with these guidelines and support the use of Easy Read publications and other publications to assist explain the procedure to the older person. There are also advocacy services and legal services such as the Seniors Rights Service which can explain these procedures to older persons over the telephone.

*Draft Guideline 7: Optimally hearings should be listed in a location that allows the person to participate in the hearing in person.*

We agree with this guideline. Attending in person is the best way for the older person to communicate to the Tribunal members what their wishes are in relation to their affairs and how they would like to live. Our experience has shown that it is particularly difficult for a person with even mild cognitive difficulties to follow a telephone conversation involving multiple. We support outreach Tribunal hearings that would enable older persons in more regional areas to attend hearings in person. We also support conduct of hearings in hospital, hospices and aged care facilities so that those older people who are unable to travel can participate in person.

*Draft Guideline 8: If a face to face hearing is not possible or practicable, then other means by which the person can participate in the hearing should be explored. This may include:*

- *Measures similar to that undertaken by the South Australian Civil and Administrative Tribunal involving a "Visit to the Person" by a Tribunal member*
- *The views of the person being provided by way of a representative*
- *Video conferencing*
- *Telephone participation*

SRS are of the view that attendance in person is the best option for an older person. If this is not possible then one or more of the above avenues could be adopted. We are of the view that video conferencing is a better tool than telephone attendance. We have found from experience that sometimes on the telephone if the older person has communication difficulties (a slur, mumbles, very frail) the Member can have trouble hearing them directly on the telephone and their comments need to be clarified by the independent advocate if available or a family member (and this could be problematic). In a video it can be seen by the Members how parties are interacting and reception is usually much improved. However, we would only support the use of video conferencing where it takes place at a facility where competent technical support is available, and where the equipment has been set up and tested in advance, such as at a courthouse, hotel conference room or government office. We would not currently support more informal video conferencing arrangements, such as using Skype or similar programs on a computer at home, because of the risk that technical problems may impede the participation of the older person.

*Draft Guideline 9: Tribunals should collect data and report publicly on the participation rates of persons in hearings, broken down into in-person participation, hearings by videoconference and hearings by telephone.*

SRS agrees with this guideline. It would also be useful for the Tribunal to record the outcomes of the decisions made at the hearing where a person participated by these different methods.

*Draft Guideline 10: Tribunals should also collect data and report publicly on the rate of appointment of representatives.*

We agree that there should be a record of the number of matters where legal representation and separate representation for a subject person was authorized. We also agree there should be a record where a McKenzie Friend was authorized by the tribunal. There should also be a record where a non-legal independent advocate was authorized by the Tribunal to attend in support of the person.

*Draft Guideline 11: Hearing Venues should:*

- *Be wheelchair accessible*
- *Have drop-off zones for people with mobility restrictions*
- *Have easily accessible parking*
- *Be accessible by public transport*
- *Provide accessible toilets*

We agree with this guideline. We note that accessible parking for people with mobility restrictions can be difficult in the Sydney area.

*Draft Guideline 12: Tribunals should give consideration to the amenity of waiting room spaces, given the impact this can have on the person's anxiety levels, leading up to the hearing, and their ability to participate in the hearing.*

We agree that there should be appropriate seating and rooms to separate family members before a hearing commences. The design layout of the Sydney Tribunal with the high backing on the chairs in the waiting area is a good design feature so that family members do not have to see each other before the hearing. This is an aspect of great concern to an older person caught in family conflict with other members of the family. In relation to other locations, similar design layouts or thoughts should be put into ensuring that family members have separate areas in which to wait before a hearing commences. However, given that we consider attendance in person to be of great value to the older person, we would not like to see waiting room space accorded too much weight when determining whether an off-site hearing could be conducted instead of a telephone hearing.

*Draft Guideline 13: Tribunals should give consideration to the amenity and configuration of hearing rooms. Hearing rooms should:*

- *Provide the option of a more informal setting that is distinct from a traditional court room; for example, a meeting table, no elevated bench for Tribunal members, and flexible seating arrangements to assist in putting a person at ease;*

- *Provide hearing induction loop facilities; and*
- *Provide videoconference and teleconference facilities.*

We agree with this guideline. It is important that the Tribunal have a conference like set up so that the older person is put at ease and that it is not set up like an adversarial or informal court room. The older person may be feeling a lot of stress at the possible outcomes of the hearing, and an informal atmosphere does much toward minimizing this stress. The induction loop facilities are very important for people with hearing impairments to hear the questions of the Tribunal members clearly and answer them to the best of their ability. Older people who have acquired hearing impairments late in life may not always indicate when they have not been able to hear properly, and are at significant risk of failing to follow all aspects of proceedings unless every effort is made to accommodate their disability.

*Draft Guideline 14: Tribunals should, wherever beneficial for the subject person, allow the person to be accompanied by a support person during the hearing. A support person could be a family member, close friend, disability advocate, or other person who is able to provide assistance and support.*

We support this guideline. We note, however, that it is important that the support person be briefed that they are not there to speak for the older person. They may assist the older person by gently prompting them with open questions to help them recall any thoughts they had on the matter, but at all times the views expressed should be the older person's own thoughts and decisions. A support person may also be of great assistance where an older person is diffident about bringing their needs (eg, for a break or for a remark to be repeated or clarified) to the attention of the Tribunal

*Draft Guideline 15: In those jurisdictions that require leave of the tribunal for a party to be legally represented at the hearing, any application made by or on behalf of the person who is the subject of the application should be determined at the earliest possible opportunity. This ensures that the person and their legal representative have adequate time to prepare.*

We support this Guideline.

*Draft Guideline 16: In those jurisdictions that provide for the appointment of a separate representative or guardian ad litem for the person, consideration of whether such an appointment should be made should occur at the earliest opportunity.*

We refer to our comments in Draft Guideline 15 above.

*Draft Guideline 17: Tribunal members need to be trained in the use of communication supports that a person may require in order to participate in the hearing, including interpreting services, visual and auditory aids, and other communication aids including different forms of augmentative and alternative communication tools.*

We agree with this Guideline.

*Draft Guideline 18 Given the centrality of the person who is the subject of the guardianship and or administration proceedings, the person should have a genuine opportunity to participate in an oral hearing before a determination is made.*

We refer to our comments made earlier that it is of the utmost importance that the older person has verbal communication with the Tribunal at the hearing, and that this would ideally be by way of attendance in person at the hearing. If this is not possible, videoconference would be the next best option followed by telephone conference. If the person cannot come to the Tribunal the Tribunal should come to the person (if possible).

*Draft Guideline 19: As a matter of good practice, original applications should be determined after an oral hearing.*

We support this Guideline. The older person may lose their autonomy to make decisions as a possible outcome of the original hearing and it is important that the Members get to speak to the older person face to face and assess this ability for themselves before making a final decision.

*Draft Guideline 20 : As a matter of good practice, reviews of existing orders should ordinarily be determined after an oral hearing. Given, however, the practical constraints (both in terms of legislation and resources) that exist for each of the jurisdictions, in the event that reviews are determined without an oral hearing, tribunals should consider their respective statutory obligations about considering the views of the person before making a determination.*

We support this Guideline. If it is feasible to conduct a review hearing at an oral hearing with one Member panel this should be done. If this is not feasible, then the views of the older person should be sought before making a decision; this could be done by way of a personal visit where possible.

*Draft Guideline 21: Acknowledging that some jurisdictions are constrained regarding composition of panels (such as WA), consideration should be given to the composition of tribunal panels that consider guardianship and administration matters.*

For original applications, we support the constitution of a three-member panel that includes a Community Member, a Legal Member, and a Health Care Professional.

*Draft Guideline 22: Multi-disciplinary panels, constituted by members with relevant and different areas of expertise, are optimal in appropriate circumstances.*

We refer to our comments in Guideline 21 above.

*Draft Guideline 23: Given, however, the practical constraints that exist for each of the jurisdictions, multi-disciplinary panels should at least be utilized in matters assessed as being complex, or that would otherwise benefit from particular professional expertise or community based experience.*

We support this Guideline.

*Draft Guideline 24: Tribunals should have available to them members from a diversity of backgrounds with particular expertise in relation to communicating with people with disabilities.*

We support this Guideline.

*Draft Guideline 25: Training for members and registry staff about strategies to involve persons who are the subject of applications is critical. Such training would allow members and registry staff to be better informed about the communication needs of persons with particular disabilities and the characteristics associated with different disabilities.*

We support this Guideline.

*Draft Guideline 26: Tribunals should seek to increase their staffing and membership of Aboriginal and Torres Strait Islander people as well as non-indigenous members and staff with an understanding of the culture, values and beliefs held by Aboriginal and Torres Strait Islander people.*

We support this Guideline.

*Draft Guideline 27. Members and Registry staff should have access to training which promotes awareness of specific cultural considerations relevant to Aboriginal and Torres Strait Islander People.*

We support this Guideline.

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