



Queensland Advocacy Incorporated

Our mission is to promote, protect and defend, through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

Systems and Legal Advocacy for vulnerable people with Disability

8 January 2019

AGAC Project
Guardianship Division
New South Wales Civil and Administrative Tribunal
PO Box K1026
Haymarket NSW 1240

By email only: participation@justice.nsw.gov.au

Dear Sir/Madam,

Re: Response by Queensland Advocacy Incorporated to Draft Guidelines for Australian Tribunals

Queensland Advocacy Incorporated (**QAI**) thanks you for the opportunity to comment on the Draft Guidelines for Australian Tribunals (**Guidelines**) developed by the New South Wales Civil and Administrative Tribunal (**NCAT**) on behalf of the Australian Guardianship and Administration Council (**AGAC**) in consultation with AGAC members.

About QAI

QAI is an independent, community-based systems and individual advocacy organisation and a community legal service for people with disability. Our mission is to promote, protect and defend, through systems and individual advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

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QAI congratulates NCAT and AGAC on the development of a comprehensive, informative, contemporary set of guidelines that we consider will be of significant value to Australian tribunals hearing and determining guardianship and administration matters. We are particularly pleased to see that the Guidelines reflect the human rights obligations Australia has committed to implement domestically as party to the Convention on the Rights of Persons with Disability (**CRPD**). We also support the progress made through the development of these Guidelines towards implementation of

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QAI endorses the objectives, and promotes the principles, of the Convention on the Rights of Persons with Disabilities.

Patron: His Excellency The Honorable Paul de Jersey AC

Recommendation 10-G of the *Elder Abuse – A National Legal Response* (2017).

As a disability advocacy organisation, our focus in reviewing the guidelines is on the impact that these guidelines will have for people with disability and mental illness.

Below, we provide comment on particular aspects of the Guidelines. Overall, however, we strongly approve of the Guidelines.

Points of particular support

QAI particularly approves of the following aspects of the Guidelines:

- The reference to, and consistency with key Articles of, the CRPD;
- The acknowledgement that a best practice model, which reflects the principle of maximum participation, should require the tribunal, where possible, to speak with the represented person before the tribunal appoints a guardian or administrator, and the adoption of this approach in the Guidelines;
- The focus on developing the understanding of Tribunal members of the impact disability may

Proposed amendments

We consider that the Guidelines could be strengthened, as follows:

Guideline #	Issue	Recommendation
4	This Guideline does not expressly require the provision of information in an accessible or plain English way	The Guidelines should explicitly require that all information provided to the person is accessible and appropriate to their needs, as outlined in paragraphs 4.29-4.32.
8	The Guideline proposes alternative means of hearing be explored where a face-to-face hearing is not possible	The circumstances for enlivening the exploration of an alternative means of hearing should include not only considerations of possibility and practicability, but also appropriateness.
9	Requires tribunals to collect data and report publicly on participation rates of persons in different types of hearings.	The collection of data on participation in hearings should not exclusively focus on quantitative data of participation rates and types, but should also encompass qualitative data that documents the nature and quality of participation. Further, the guideline should not limit the types of participation to be recorded

		(ie, in person, by videoconference and by telephone), but allow for more broad reporting of how people participated, including through a representative and by visiting the person, as envisaged by Guideline 8.
11, 13	The focus is on the physical accessibility of hearing venues. While Guideline 13 addresses other features of hearing venues that can be problematic for people with disability, the requirement is	Guideline 11 should be amended to Guideline 13 should be amended to require that Tribunals ± hearing rooms are designed and
14	V ambiguous and is open to interpretation benefit to the person.	This wording should be changed to read
15, 16	The requirement that applications for leave for an applicant to be legally represented, or for appointment of a separate representative or guardian ad sufficiently prescriptive. We propose the imposition of a definite maximum timeframe.	Guideline 15 and 16 should require that earliest possible opportunity, and no later than seven (7) days following the
17	This Guideline requires Tribunal members to be trained in the use of communication supports that a person may require in order to participate in the hearing and provides examples of the types of support contemplated.	This Guideline should be extended to require Tribunal members to be trained to understand the different forms of communication people may use, to ensure Tribunal members are not only proficient in using different forms of communication but also in understanding alternative forms of communication more broadly.
20	The obligation for the Tribunal to consider the views of the person before making a determination is not sufficient. This creates the potential for the voice of the person to not be heard (especially in the case of interim orders that are	Tribunals should be required to actively consult with the person concerned and their support person or advocate before making any review order. The only circumstances where a review should be

	confirmed on the papers).	circumstances where the person has specifically elected for this to occur.
24	We agree with the need for Tribunal members to be representative of a diversity of backgrounds.	Tribunal membership should include persons with lived experience of disability wherever possible.
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Limitations

We note that for the Guidelines, once finalised, to be effective, it is important that formal endorsement be sought from each of the relevant tribunals and we would support advocacy in this regard.

We also note the acknowledgement that, notwithstanding Article 12 of the CRPD, the Guidelines necessarily focus on existing legislative requirements and tribunal practices and therefore are consistent with a substituted decision-making paradigm. It is further acknowledged that the Guidelines will have relevance in the event that supported decision-making regimes are implemented by legislative reform.

Thank you for the opportunity to provide these submissions. We would be happy to provide further information or clarification upon request.

Yours Faithfully,



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