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**To:** [NCAT GD AGAC Participation](#)  
**Cc:** [Derek Schild](#); [Romola Davenport](#)  
**Subject:** Legal Aid ACT submission on AGAC Draft guidelines for Australian tribunals  
**Date:** Thursday, 10 January 2019 4:16:59 PM

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Guardianship Division  
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Legal Aid ACT welcomes the opportunity to provide comments on the Draft Guidelines on maximising the participation of protected persons.

Legal Aid ACT assists individuals to understand the *Guardianship and Management of Property Act 1991 (the Act)* and the processes of the ACT Civil and Administrative Tribunal (ACAT). Specifically, Legal Aid ACT provides protected persons (those who are subject to orders or are the subject of an application for orders under the Act) with both duty advice and assistance and ongoing representation (subject to our eligibility criteria for a grant of legal aid). Legal Aid ACT also provides duty advice to those who may be considering applying for an order (prospective guardians or managers) under the Act. This advice is often limited in nature. Legal Aid ACT will provide duty advice to protected persons in regards to applying for a review of an order, and if appropriate Legal Aid ACT will provide ongoing representation if our eligibility criteria is met.

Legal Aid ACT has recently established an Older Persons (ACT) Legal Service to provide information, advice and representation to vulnerable older persons including in relation to Elder Abuse and Guardianship matters.

We support the work undertaken in the development of these Guidelines and provide some brief comments on the draft guidelines and related issues as outlined below:

Legal Representation (Draft Guideline 6 and 15)

- Those who are subject to orders under the Act or are the subject of an application for orders under the Act should be made aware of their right to have legal advice and, with or without leave, legal representation and the availability of Legal Aid.
- It is important that those who are involved in the protected persons daily life/the application process e.g. the PTG, Public Advocate and hospital staff notify the protected person of this right.
- Article 12 of the UNCRPD highlights that people with disabilities must enjoy legal capacity on an equal basis with others in all aspects of life. Specifically, that appropriate measures should be taken to ensure that people with disabilities have access to the support they may require in exercising their legal capacity.
- If the protected person is unable to understand that they have a right to legal representation or communicate that they wish to have legal representation then Legal Aid ACT is able to appear in a hearing without instructions on an Amicus Curiae (friend of the Tribunal) basis. This allows the protected person to have an independent legal representative present to ensure that all

elements of the Act and guidelines are considered, in particular, that Section 9, 10 and 11 of the Act are considered when ordering who is to be the guardian/financial manager and what powers that individual should have.

#### Alternatives to orders

- Guardianship/financial management is not only relevant to those suffering from cognitive decline and permanent disabilities that impact decision making ability but is also relevant to those suffering from mental illness.
- Capacity and decision making ability can be fluid for those suffering from mental illness and therefore an individual can regain decision making ability when appropriately managed with medication and therapy.
- A protected person may regain decision making ability either prior to or at the time of the review of orders. It is important that alternatives to orders under the Act are explored and encouraged if appropriate.
- For example, if the protected person has regained decision making ability then they may not be able to be treated under the Act but may be able to consider an Advanced Agreement/Advanced Consent Direction or a Power of Attorney (for when the individual has capacity) and an Enduring Power of Attorney (for when they lose decision making capacity).
- Orders should not be continued on the basis that it may make it easier for the protected person and their family if they do not meet the elements of the Act and an appropriate alternative is present.
- Legal Aid ACT has assisted, where appropriate to clarify the need for applications and whether in certain circumstances there are steps that a protected person can undertake to avoid any guardianship proceedings i.e. by supporting engagement with health and support services or undertaking certain tasks. This often involves discussions and negotiations with the Tribunal, the applicant, the protected persons, other family members and service providers.

#### Role of PTG/guardians and financial managers

- Where appropriate the PTG or the individual appointed as guardian/financial manager should implement processes/training that may allow the protected person to become independent (either with or without orders under the Act) in the future.
- For example, the protected person may be able to engage in training to learn how to manage their own money and regain control or work with a financial counsellor to establish a budget to assist them to manage or partially manage their own finances.
- A protected person may be given access to a portion of their own money to manage with Centrepay debits to be set up for rent and utilities etc. allowing the individual to regain an appropriate amount of independence without being at risk of financial misadventure.

Thankyou for the opportunity to provide this submission on the Draft Guidelines.

Yours sincerely

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