

Submission: AGAC Draft Guidelines on the Participation of the Proposed Represented Person in Guardianship / Administration Hearings

I am writing to express my support for the draft guidelines in relation to the maximizing participation of persons with communication disabilities within guardianship hearings.

I am currently appointed as a sessional member of the Queensland Civil and Administrative Tribunal, (QCAT) and a part-time member of Queensland's Mental Health Review Tribunal, (MHRT). I hold a Master of Business Administration (MBA) and a degree in speech pathology to support a diverse and extensive background in legislative compliance across disability, aged and child/youth sectors within the Queensland government's healthcare and justice portfolios. My area of expertise is communicating with adults and young people with complex communication disabilities (including those using augmentative and alternative communication systems), enabling them to express their views and wishes and to have their voices heard. I believe this is crucial to such individuals achieving equitable access to procedural fairness and natural justice in accordance with Article 13 of the United Nations Convention on the Rights of Persons with Disabilities.

My relevant professional experience is summarized below.

- In my QCAT role (2009 – present), I have presided on hearings and interpreted and applied human rights legislation (e.g. *Guardianship and Administration Act 2000, Powers of Attorney Act 1998*) to determine adults' decision-making capacity, appoint guardians and administrators, and determine whether appointed attorneys for adults with impaired decision-making capacity are appropriate decision-makers. I have also presided over hearings to consider applications for the tribunal to approve, or review the approval of, service providers funded by the Department of Communities, Disability Services and Seniors to contain and/or seclude adults with an intellectual disability and to subject the adults to other restrictive practices (e.g. chemical and physical restraint).
- As a member of MHRT (2011 – present), I have contributed to hearings at Queensland authorised mental health facilities and the Forensic Disability Service in relation to reviews of involuntary treatment authorities and orders (including forensic orders) and applications from psychiatrists to perform electroconvulsive therapy on adults and minors. I am aware of the complex and interrelated factors pertaining to guardianship, mental health and child protection legislation that are relevant to the wellbeing and recovery of adults and young people with a mental illness, cognitive disability and/or intellectual disability.
- As a senior clinician, I have led speech pathology delivery, in accordance with best practice models, to adult patients with communication and swallowing deficits in rehabilitation, day rehabilitation, medical, interim, oncology and palliative care wards within St Andrew's Private Hospital and Canossa Private Hospital in Brisbane from 2004 to 2012.

Background information in relation to persons with communication disabilities

Communication disabilities result from one or more conditions (for example, cerebral palsy, autism, learning disability, cognitive disability, traumatic brain injury, brain tumour, aphasia, dementia, Amyotrophic Lateral Sclerosis, Parkinson's Disease, Multiple Sclerosis). Persons with communication disabilities are challenged in the way they receive information and express their thoughts. People with communication disabilities represent a distinct disability cohort that has unique accessibility requirements that are different from the accessibility needs of people who have mobility, sensory, intellectual, mental health, or learning disabilities.

Communication methods that people with communication disabilities may use to express their messages such as gestures, pictures, symbols, letter boards, and communication devices. Devices that people use to select, type or speak out their messages or aids that help people hear what they or others are saying (i.e. voice amplification devices or hearing aids). Communication devices include tablets and smart phones as well as specialized devices that are programmed with customized vocabulary for an individual with reduced literacy and /or people who use switches or eye gaze to select items that they want to communicate.

People can also have dual and multiple disabilities that affect more than their communication skills. For example, some people may also have an intellectual disability, a physical and mobility disability, hearing loss, visual impairment or a mental health disability.

Submissions

My submissions, in relation to communication access for persons with communication disabilities follow:

1. I support consideration of the practice of multi-disciplinary panels for simple and complex guardianship and administration matters.

Guardianship and administration hearings are, in the main, in relation to persons with communication disabilities. I submit It would be beneficial for more panels to include persons with professional qualifications and experience in identifying communication barriers and facilitating engagement with persons with communication disabilities. I have found my experience and contributions effective in:

- understanding and implementing the likely requirements/accommodations to optimise communication access for the adults with communication disability (e.g. modifying the environment to facilitate open communication – i.e. close proximity for lip reading and use of augmentative and alternative communication).
- modifying my communication style (eg. Easy or Plain English, slower rate, louder volume, providing questions in written form)
- enabling the persons with communication disabilities time to communicate their views, wishes and preferences about the matters before the tribunal
- providing information to tribunal members who are not knowledgeable and experienced in the nature of persons' communication disabilities and to assist them to contribute to appropriate accommodations within the proceedings (e.g.

use of augmentative and alternative communication techniques such as multi-modal devices, picture boards).

2. I support Draft Guideline 6, however I submit there should be a fourth dot point stating 'with communication disabilities'.

3. As face-to-face communication is optimal for persons with communication disabilities, I support hearings occurring in meeting rooms within residential facilities and hospital units, for persons with communication disabilities. (Draft Guideline 7). I also support Draft Guideline 8 in relation to tribunal members with specialist skills visiting the person if the person is unable to attend the hearing in person, and if their communication disabilities render video-conferencing and telephone participation ineffective.

4. I submit that all guardianship hearings should be oral, including not only initial applications, but also hearings reviewing the appointments of guardians/administrators and appeals. I have observed within QCAT that, for example on review hearings, adults are provided with documentation (not formatted in Easy of Plain English) advising them of the impending review, and inviting written submissions prior to the matter being heard on the papers. This process places persons with communication disabilities at a disadvantage. Key issues for persons with communication disabilities in these circumstances include one or more of the following:

- difficulty reading
- difficulty understanding the language within the letter, should they be afforded the assistance of a support person reading and interpreting the letter to them
- difficulty writing a response about their personal/financial circumstances and their experience with the guardian/administrator
- difficulty returning such a response, written by themselves or with the assistance of a support person, to the tribunal.

Significantly, in such circumstances, the person may have regained capacity to manage their personal/financial matters, however the tribunal review process may prevent their opportunity to communicate their capability to the tribunal decision-makers.

5. I support education and training of registry staff and members in relation to effective communication techniques when engaging with persons with communication disabilities, and to determine appropriate time to be allocated to hearings of persons with communication disabilities. By registry staff being trained in enabling effective communication (i.e. a two-way process that involves being able to convey intended messages to another person and understanding what a person is communicating), persons with communication disabilities will be better assisted prior to their hearing in relation to:

- relaying any questions or information pertaining to their matter, and
- gaining information about their matter, along with and details of the hearing process and likely outcomes.

Education and training of tribunal members would further enable appropriate accommodations to be made for persons with communication disabilities during hearings.

6. I submit that the use of communication intermediaries would be beneficial in guardianship hearings for people with communication difficulties. Intermediaries are trained in supporting persons in legal proceedings, and work extensively within this jurisdiction in Canada. Communication intermediaries are also being introduced in NSW and South Australia for child witnesses. Such intermediaries are deemed necessary, in some elements of the literature, when 'communication is critical'.¹ I would submit that hearings where decisions are made affecting the personal and financial circumstances of vulnerable individuals are proceedings in which communication is critical.

Thank you for the opportunity to make submissions in relation to the draft guidelines for maximizing participation of adults in guardianship hearings.

Ms Julia Casey
Mob: 0401 672 895

¹ http://www.cdacanada.com/wp-content/uploads/2018/02/Final-Community_Consultation_for_Federal_Accessibility_Legislation_Digital_EN.pdf