



**NCAT**  
NSW Civil &  
Administrative Tribunal

**Maximising Participation in Guardianship  
Proceedings**  
**Australian Guardianship and Administration  
Council Conference – Canberra 14 March 2019**

**Christine Fougere**  
**Principal Member - Guardianship Division**  
**New South Wales Civil & Administrative Tribunal**  
**(NCAT)**  
**Sydney, Australia**



- ▼ Dignity principle
- ▼ Evidential principle
- ▼ Adversarial principle

*Series, Fennell and Doughty, The Participation of P in Welfare Cases in the Court of Protection (Cardiff University, 2017), 172*



## ALRC Report on Elder Abuse – A National Legal Response (2017)

### Recommendation 10-2:

The Australian Guardianship and Administration Council should develop best practice guidelines on how state and territory tribunals can support a person who is the subject of an application for guardianship or financial administration to participate in the determination process as far as possible.



## Key elements:

- ▶ Case management and support during the pre-hearing stage
- ▶ Composition of the tribunal for the purposes of a particular proceeding
- ▶ Ensuring an oral hearing is held for all substantive applications
- ▶ Alternative methods for participation



Preparation of the guidelines is to involve:

- ▼ analysis of current participation rates of proposed represented persons in guardianship and financial management/administration hearings in Australia's state and territory jurisdictions
- ▼ 'best practice' initiatives already in place to encourage participation
- ▼ draw, where appropriate, on practices in place in comparable jurisdictions overseas, and in other relevant judicial and quasi-judicial hearing processes that take place in Australia.



## Draft Guidelines – Key themes

- ▶ **Pre-hearing:** consultation and early engagement with persons to determine their individual needs
- ▶ **Hearing:** consideration is given to the particular needs of a person to ensure that they can participate in the hearing
- ▶ **Amenity:** the individual needs of the person are anticipated and met wherever possible
- ▶ **Support for the person:** being heard
- ▶ **Oral hearings:** original and review hearings
- ▶ **Multi-disciplinary panels:** constituted by Tribunal members with a broad range of qualifications and experience
- ▶ **Training for members and registry staff**



## Pre-hearing: Consultation and early engagement with persons to determine their individual needs

- ▶ Prompt notification of an application/s and hearing details to the person and other parties (DG 1, 2 and 3)
- ▶ Case management support for the person (DG 4)
- ▶ Time-tabling (DG 5)
- ▶ Publicly available information (in writing and online) explaining tribunal processes in accessible formats and in different languages (DG 6)



## Hearing: Consideration is given to the particular needs of a person to ensure that they can participate in the hearing

- ▼ Hearing location (DG 7 and 8)
- ▼ Physical accessibility of hearing venue (DG 11)
- ▼ Waiting areas (DG 12)
- ▼ Hearing rooms (DG13)
- ▼ Support and representation (DG 14, 15 ,16)
- ▼ Communication (DG 17)





## Oral hearings

- ▼ Original applications and reviews of existing orders (DG 18-20)



## Multi-disciplinary panels: Constituted by Tribunal members with a broad range of qualifications and experience

- ▼ Composition of tribunal panels, and multi-disciplinary panels: relevant and different areas of expertise (DG 21 and 22)
- ▼ Specific experience with people with disabilities or cognitive impairments may be able to engage better with the represented person (DG 24)



## Training for members and registry staff

- ▶ Training about strategies to involve people who are the subject of applications (DG 25)
- ▶ Increase staffing and membership of Aboriginal and Torres Strait Islander people and provide access to training which promotes awareness of specific cultural considerations (DG 26 and 27)



[agac.org.au](http://agac.org.au)