

What do you think?

What proposed represented persons had to say about participation in hearings .

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Background

*Nothing about us
without us*

- Five agencies were identified as potentially being able to assist us interview people who had been subject to hearings.
- Three agencies responded, each providing space for us to run focus groups
 - Residential Aged Care Facility
 - Intellectual Disability Service
 - Drop in Centre

Who participated

- In total 16 people participated
- 12 males and 4 females
- Age range: between 20 – 71 years
- 3=20-30 yrs, 7=31-54 yrs, 6=55-71 yrs
- Place of residence: Great Sydney =14 Regional Centres =2
- CALD =2 participants ATSI =1 p. (all spoke English)
- Disability = Mental Illness, intellectual disability, Acquired brain injury, dementia
- All were currently subject to financial management orders (and under the NSW Trustee) , 7 had P.G.
- 1 had private guardian
- 2 participants brought support workers to support them.

About the groups

What we wanted to discuss versus what they wanted to tell us?

- The purpose of the focus group was to discuss participation in hearings.
- Many participants had very vivid recall of their hearings
- All participants were very keen to express their views and some were highly articulate.
- Wanted to speak about the impact of orders
 - Decisions panels make have profound impact on subject person
 - For persons under orders who did not know of the order or its impact or were opposed to the order being made in the first place were more likely to express frustration.

Pre-hearing

how & what they were told about the hearing

- **Feeling ambushed**
- *"They just came and said this is happening. I had no say in it. I just had to go along with it."*
- **Feeling hoodwinked and not told the full story**
- *Participant: 'I was just told we had to go a meeting about my money. She said it would be good for me... Looking back that was a bad thing. I didn't need a guardian and "the Trustee". Because of all this, I am now on two tablets [for anxiety] and I tried to commit suicide.'*
- *Participant: 'He [his case manager] kept me in the dark about the details and implications... it was not the first time he has a history of keeping secrets.'*

Need to be
given
accurate and
independent
information

- **Given a sugar-coated explanation**
- Many participants said they were not given honest information and this greatly impacted their ongoing ability to trust their formal and informal supports. They wanted the tribunal be more diligent in ensuring persons who are subject to application have been fully informed.
- *'The tribunal need to do more to explain things beforehand. Family and workers can't be relied on to explain things because they explain it to suit them... they are often dishonest.'*

What was it like going to the hearing?

- *What hearing?*
- Some participants, said they never got to participate in a hearing and complained bitterly about the infringement on their autonomy – it was hard to verify this, e.g.:
 - It may be due to disability and poor recall?
 - perhaps unwell at the time of the hearing?
 - attended by phone and didn't comprehend?

Hearings are scary

- *Hearings are scary*
- Participants who attended the face-to-face hearings spoke about how the process was anxiety provoking and intimidating. This impacted their participation.
- Many felt scrutinised and being under surveillance.
- *'It's like they have Hawkeyes on you. It's very intimidating ...they look serious.'* P: (attended several hearings) *'It's kind of like going for an exam at school. Even though I have been a lot, it never gets any easier.'*

To participate or not to participate – who should decide?

- Some said people should not be compelled to attend; it needs to be a choice:
- *'It should be a person's choice...it shouldn't be something you are forced to do'*
- Unwillingness or inability to attend is fluid:
- *"I went to the hearing but it was very overwhelming for me. I just wasn't well enough to participate. By the third time, I was much better. I attended that hearing at [named place] and I was okay, I could do it.'*

Tribunal to consider

- The participation of the persons in a hearing should be their choice and they should not be forced to attend.

Having a support person can help a subject person speak up

- Several participants valued having a support person e.g. teacher, relatives, paid support workers or case managers to help them speak up.
- *'people with disabilities are not always brave enough to speak up.' particularly when they don't understand everything that is being said or they are in unfamiliar settings where 'everyone is watching them'.*

But a support person can also have you say what *they* want

- Some participants were told what to say by their support person without understanding the consequences.
- Young P: *'At the first hearing I was scared to speak up. I didn't understand what they were saying. So, I just said what my teacher told me to say. I didn't like to go against her because she was my teacher and I was brought up to show respect. So, I agreed to stuff that now I see was a bad thing.'*
- A participant noted that she had to agree with her support person, as she was her only relative: *'She is the only family I've got so I didn't feel I could go against her.'*
- Several participants agreed with this point made by P: *'the tribunal panel should ask us if we want to speak with them alone.'*

Tribunal to consider

- whether the support person may have a conflict of interest in terms of the outcome of the hearing. In such cases the subject person should be offered the support of an independent support persons and/or the opportunity to speak to the tribunal 'in camera' during the course of the hearing.

Being legally
represented
*draft guideline 15
and 16 participants*

- Some thought it was good to be able to get legal advice, with some participants sharing how they had done so before going to subsequent hearings.
- Generally, however participants were concerned about others, including support persons, legal representatives or guardian ad litem, usurping their right to be speak and be heard.

Face to face hearings preferred option

- The majority of participants preferred to attend face to face hearings.
- Only two participants could recall participating in hearings via other means, e.g. videoconference and telephone participation.
- One participant who had been subject to a number of hearings said he had participated in one of his hearings via video link from a correctional facility. When asked how he found the experience he said, *it was 'okay cos I was used to it'.*
- When asked which was better, face-to-face or via video link, he said face-to-face *'because it's easier to understand what's going on.'*
- Another participant said she attended her first hearing 'in person' and then 12 months later participated in the review hearing via a teleconference. When asked to compare the two hearing she said, *'when on the phone I felt they asked me more.'*

How they felt treated by the panel

- The issue participants focussed most strongly on was how they were treated and talked to by different panel members and many had vivid recall about this. Some recalled names of panel members and could describe members and how they made them feel.
- Several participants felt they were spoken to and treated like children and interpreted this as rudeness and wanted to be treated as adults.
- *'They were rude to me. They talked for ages to my case manager and when they did talk to me they talk to me like I was a two-year-old.'*

Talking about their disability

- Many participants found the discussion about their disability to be deficit-focused, demeaning and disempowering, e.g. a participant with mental illness,
- *'When they spoke about my disability, I felt judged. I felt [holding his fingers close together] that small. I thought I went to college and shit and that counts for nothing.'*
- *'I know I have a disability I've lived with it all my life. I didn't want them going on about it.'*
- *'because they saw me as a person with disability, they didn't take what I was saying seriously.'*

What's happening? *Language and communication protocols*

- Several participants said they should be allowed to speak immediately when they want to say something, as they may recall the point or detail later.
- *'One things I hate when I go there [the tribunal] they [the panel] tell me I have to wait to talk while they say all this stuff. They don't understand I am really anxious and just need to say what I gotta say.'*
- Several participants asserted the panel used language they didn't understand and as one participant said: *'therefore I could not go against them.'*

What's happening?

The way we do things may be clear to us but not to those on the 'other side'

- A young participant was upset because the panel kept asking her to leave the room at the hearing. When she explained the context, it was apparent she and others were being asked to leave the room so the panel could confer privately. This must not have been explained clearly enough, resulting in this participant perceiving she was being excluded from the hearing.
- Another participant was bewildered (and annoyed) because she she never got the audio recording.
- *'They said they were recording the hearing but I never got the recording'*

Tribunal should consider

- Being mindful that participants are assessing the panels – verbal & non-verbal communication.
- Allowing the subject person to speak when something comes to their mind as they may not be able to recall the detail later.
- Consider communication styles, even good intentions of being nice can be interpreted differently by subject person, they want to be treated as adults. Allow time to develop respectful rapport with the subject persons, invite the subject person to speak first, allow the subject person ample time to express themselves.

Tribunal should consider

- Using plain English language and avoiding unfamiliar terminology and anacronyms, where appropriate use visual tools to assist the person to participate in the hearing process
- Asking the subject person if they wish to speak 'in camera', ask the subject person if they need to have a break, be transparent.
- Perhaps ask the subject person at various intervals to summarise their understanding of what is being discussed.

Post Hearing

What just happened?

How did this happen to me?

- All participants were primarily concerned to talk about hearing outcomes.
- In one focus group there were a group of participants who had been subject to an application while in hospital. They all reported they were not told about the application and also reported not having participated in a hearing.
- Now in a secure aged care facility, they were at a loss to know how they were in their current position.
- When asked if they had received any mail, in the form of Orders and Reasons for Decision they claimed they had not.
- Having been transferred directly to the facility from hospital, it is possible they may not have received formal correspondence about the outcome of the hearing, unless someone redirected their mail.

Post Hearing

What are my rights?

- the majority of participants expressed high levels of frustration and had a sense of being powerless in relation to knowing their rights post hearing.
- Many participants were eager to have their orders reviewed but did not know how to initiate or execute such a process.
- For example, one participant explained a nonreviewable financial management order was made for him when he was in a coma.
- He is now living independently in the community and stated he was managing well. He said he wanted to have the order revoked but had no idea how to initiate this process.

The Tribunal to consider

In matters where a subject person is unable to be informed of an application and/or to participate in a hearing any orders made should be time limited and reviewable at least in the first instance.