



NCAT
NSW Civil &
Administrative Tribunal



Participation of the proposed represented person – Draft Best Practice Guidelines

**Australian
Guardianship and Administration
Council (AGAC)**

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- ▼ Draft Guideline 1: Pre-hearing case management and support for the person provides an opportunity to maximise participation by the person.
- ▼ Draft Guideline 2: The person and other parties should be promptly notified of an application being made.
- ▼ Draft Guideline 3: Written notice of hearing should be given to the person and other parties well in advance of the hearing. Registry staff may need to consider whether any additional steps need to be taken to ensure that the person is informed of the hearing details.

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▼ Draft Guideline 4: Pre-hearing processes should seek to ensure that:

- the person is made aware of the application
- information is provided to assist the person to understand what the application and hearing is about
- the person's participation is encouraged (unless to do so would be detrimental to the person)
- any further information that may assist the tribunal is obtained from the person
- the person is provided with information as required about representation including advocacy
- information is given to the person about tribunal practice and procedure and to assist in addressing any confusion or anxiety where possible
- the person has an opportunity to ask questions about any of these matters
- information is sought as to whether any communication supports are required, for example, interpreting services, visual or auditory aids or communication aids

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- ▼ **Draft Guideline 5: Optimally, the listing of a hearing should take into account:**
 - whether any particular needs of the person require a hearing at certain times of the day (for example, a morning hearing rather than the afternoon, or taking into account the effects of medication)
 - an estimate of the length of time the person may need to give their views to the tribunal, having regard to their communication needs
 - any need for breaks during the hearing
 - any additional time required for the use of an interpreter.

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- ▼ Draft Guideline 6: Information about various aspects of the tribunal's practice and procedure (both in hard copy and online) should be made available to the person who is the subject of proceedings in formats that are accessible to people:
 - from culturally and linguistically diverse backgrounds
 - with a vision or hearing impairment
 - with cognitive disabilities

- ▼ Draft Guideline 7: Optimally, hearings should be listed in a location that allows the person to participate in the hearing in person.

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- ▼ Draft Guideline 8: If a face-to-face hearing is not possible or practicable, then other means by which the person can participate in the hearing should be explored. This may include:
 - measures similar to that undertaken by the South Australian Civil and Administrative Tribunal involving a “Visit to the Person” by a Tribunal member
 - the views of the person being provided by way of a representative
 - videoconferencing
 - telephone participation

- ▼ Draft Guideline 9: Tribunals should collect data and report publicly on the participation rates of persons in hearings, broken down into in-person participation, hearings by videoconference, and hearings by telephone.

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- ▼ Draft Guideline 10: Tribunals should also collect data and report publicly on the rate of appointment of representatives.

- ▼ Draft Guideline 11: Hearing venues should:
 - be wheelchair accessible
 - have drop-off zones for people with mobility restrictions
 - have easily accessible parking
 - be accessible by public transport
 - provide accessible toilets

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- ▼ Draft Guideline 12: Tribunals should give consideration to the amenity of waiting room spaces, given the impact this can have on the person’s anxiety levels, leading up to the hearing, and their ability to participate in the hearing.

- ▼ Draft Guideline 13: Tribunals should give consideration to the amenity and configuration of hearing rooms. Hearing rooms should:
 - provide the option of a more informal setting that is distinct from a traditional courtroom; for example, a meeting table, no elevated bench for Tribunal members, and flexible seating arrangements to assist in putting the person at ease;
 - provide hearing induction loop facilities; and
 - provide videoconference and teleconference facilities.

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- ▼ Draft Guideline 14: Tribunals should, wherever beneficial for the subject person, allow the person to be accompanied by a support person during the hearing. A support person could be a family member, close friend, disability advocate, or other person who is able to provide assistance and support.
- ▼ Draft Guideline 15: In those jurisdictions that require the leave of the tribunal for a party to be legally represented at the hearing, any application made by or on behalf of the person who is the subject of the application should be determined at the earliest possible opportunity. This ensures that the person and their legal representative have adequate time to prepare.

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- ▼ Draft Guideline 16: In those jurisdictions that provide for the appointment of a separate representative or guardian ad litem for the person, consideration of whether such an appointment should be made should occur at the earliest opportunity.
- ▼ Draft Guideline 17: Tribunal members need to be trained in the use of communication supports that a person may require in order to participate in the hearing including interpreting services, visual and auditory aids and other communication aids including different forms of augmentative and alternative communication tools.

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- ▼ Draft Guideline 18: Given the centrality of the person who is the subject of guardianship and/or administration proceedings, the person should have a genuine opportunity to participate in an oral hearing before a determination is made.
- ▼ Draft Guideline 19: As a matter of good practice, original applications should be determined after an oral hearing.

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- ▼ Draft Guideline 20: As a matter of good practice, reviews of existing orders should ordinarily be determined after an oral hearing. Given, however, the practical constraints (both in terms of legislation and resources) that exist for each of the jurisdictions, in the event that reviews of orders are determined without an oral hearing, tribunals should consider their respective statutory obligations about considering the views of the person before making a determination.
- ▼ Draft Guideline 21: Acknowledging that some jurisdictions are constrained regarding composition of panels (such as WA), consideration should be given to the composition of tribunal panels that hear guardianship and administration matters.

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- ▼ Draft Guideline 22: Multi-disciplinary panels, constituted by members with relevant and different areas of expertise, are optimal in appropriate circumstances.
- ▼ Draft Guideline 23: Given, however, the practical constraints that exist for each of the jurisdictions, multi-disciplinary panels should at least be utilised in matters assessed as being complex, or that would otherwise benefit from particular professional expertise or community based experience.

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- ▼ Draft Guideline 24: Tribunals should have available to them members from a diversity of backgrounds with particular expertise in relation to communicating with people with disabilities.
- ▼ Draft Guideline 25: Training for members and registry staff about strategies to involve persons who are the subject of applications is critical. Such training would allow members and registry staff to be better informed about the communication needs of persons with particular disabilities and the characteristics associated with different disabilities.

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- ▼ Draft Guideline 26: Tribunals should seek to increase their staffing and membership of Aboriginal and Torres Strait Islander people as well as non-Indigenous members and staff with an understanding of the culture, values and beliefs held by Aboriginal and Torres Strait Islander people.
- ▼ Draft Guideline 27: Members and registry staff should have access to training which promotes awareness of specific cultural considerations relevant to Aboriginal and Torres Strait Islander people.