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Maximising the participation of the person in guardianship proceedings – Draft guidelines for Australian tribunals

The Mental Health Coordinating Council (MHCC) is the peak body representing mental health community managed organisations (CMOs) in NSW. The MHCC is also a founding member of Community Mental Health Australia (CMHA) the alliance of eight state and territory community sector mental health peak bodies. Together we represent more than 800 CMOs delivering mental health and related services nationally.

MHCC thanks the Australian Guardianship and Administrative Council for inviting us to comment on the Review of the Draft Best Practice Guidelines in order to maximise participation of the represented person.

In general MHCC supports the draft Guidelines as presented. However, whilst we understand that the Guidelines are written for Tribunal Members, it needs to be clear to participants and their support persons what the Guidelines actually mean from more than just a legal perspective, but what are the sources of information, education and training provided to the Tribunal concerning the Guidelines under which they conduct hearings.

MHCC suggests that:

- An information sheet sits behind the Guidelines that explains how (where relevant) they will operate in real time. For example Guideline 1, states that “pre-hearing case management and support for the person provides an opportunity to maximise participation by the person.” Tribunal Members will need to know who will or can provide case management and support to the participant prior to a hearing, and whose role it is to ensure this is offered prior to the hearing; and what are the options if this has not been provided.
- Re Guideline 3 - many participants do not routinely open their mail. Where possible phone SMS alerts to participants and their support persons should advise them of hearing dates.

- Guideline 4 states that "the person is provided with information as required about representation including advocacy". Registries must have access to information as to the range of advocacy services available in the community across the state and the diversity of roles undertaken, i.e., legal, culturally and linguistically diverse, communication focused, community and peer support as well as natural supports. They must also be in a position to assist participants unable to access such supports as to what their options might be.
- Terms such as "ad litem" should be defined in English.
- Draft Guideline 24 states that "tribunals should have available to them members from a diversity of backgrounds with particular expertise in relation to communicating with people with disabilities". This should include mixed gender panels where possible.
- Draft Guideline 24 (above) and Draft Guideline 25 states that "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". It is important that Tribunal Members are aware of the prevalence of trauma among people living with mental health, developmental and other co-existing difficulties, and that their communications take the power dynamic of the process of hearings into consideration. They also need to be aware of the behavioural issues that may present as a consequence of the impact of trauma.
- MHCC generally suggest that an easy read and or plain English version of the Guidelines is made available for people wanting to understand the Guidelines under which Tribunal Member work, but who may have some difficulties of the language used in the Members' version.
- MHCC also suggest that a questions template be designed to assist people bring their questions to the hearing. In this way pre-hearing discussions with peer and natural supporters and advocates can be made easier before and during hearings.

We express our willingness to be further consulted on any matters related to this review and this submission.

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