

## Disability Services

# Supporting decision making

A guide to supporting people with a disability to make their own decisions

## Acknowledgements

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- The Victorian Office of the Public Advocate

References used in the development of this resource include:

- NSW Attorney General's Department *Capacity Toolkit*
- *Supported Decision Making: A Guide for Supporters*, Paradigm UK
- Victorian Charter of Human Rights and Responsibilities (2006)
- United Nations Convention on the Rights of Persons with Disabilities (2006)
- Inclusive Consultation and Communication with People with a Disability: Guide for Victorian government departments and agencies (2004)
- Supported Decision Making Project : South Australian Office of the Public Advocate

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# Introduction

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## Overview

The freedom to make decisions which affect our lives is a fundamental right that each of us should enjoy.

The decisions and choices that we make are a reflection of who we are as individuals. They allow us to express our views, our personalities, our desires and goals as well as to reflect what we think is important in life. Through these choices and decisions we can pursue the lifestyles that we want.

Outcomes of decisions – good and bad – help us learn and grow as individuals. Through involvement in decision making we can gain experience, confidence and knowledge which enrich our lives.

Making and being involved in decisions also allows us to participate in our communities and broader society. Through this active participation we feel greater connection to and responsibility for our communities. A sense of control in home life and at work is also linked to better health and wellbeing outcomes.

Where people are denied the right to make decisions, or are restricted by others as to the type of decisions they can make, they are potentially being denied their human rights.

We all make decisions based on the best information that is available to us. This includes advice and support from friends, partners, family members and other significant people in our lives as well as past experiences.

People with a disability are no different in this regard. However some people may require some additional assistance in order to be able to make and express choices. Such assistance might include access to communication aids or translators, information in different formats, longer timeframes or different environments in which to make decisions.

Some people may require more specific support to make decisions, including reminders of previous decisions and more explanation of the implications of their decisions.

People with a disability may also be excluded from decision making processes that affect them because others make incorrect assumptions they don't have capacity to understand issues or consequences, or others believe they know what is best for them.

Where assistance is required but not provided people with a disability are not fully involved in decision making.

## Self-directed support

This guide recognises and supports a human rights-based approach to services for people with a disability. It has been developed as part of the Victorian Government's reorientation of disability services to self-directed approaches and to make it easier for people with a disability to pursue individual lifestyles.

This reorientation changes the roles of service users and providers. Rather than being service 'recipients', people become active participants in planning and obtaining the supports they feel will best meet their needs and goals.

Whilst service providers retain a responsibility for service quality and outcomes, their role is more in enabling; providing advice and support to help people with a disability exercise as much choice and control as possible over their life.

These changing roles will require adjustment by people with a disability, and support workers and service providers. This guide is intended to assist in this process for service providers, people with a disability and their supporters by providing approaches to decision making which underpin lifestyle choices.

The guide offers a principles-based approach to supporting decision making by people with a disability for use by the disability sector as a whole. It represents one step in communicating and facilitating the change that needs to occur in disability services to ensure that people with a disability can, to the greatest extent that they are able, exercise the basic right to make choices and decisions.

## Why do we need a guide?

The majority of people with a disability are able to make and act on their own decisions in life. However there are situations, particularly where people have a cognitive disability, complex support needs and/or communication difficulties, where people may need some assistance.

The amount of assistance someone might need will depend on their personal circumstances. Support and involvement should be provided in such a way as to ensure that the person with a disability is still making the decision.

People with complex needs, cognitive and/or communication requirements can sometimes present challenges for support workers and supporters in meeting duty of care obligations, managing risk and ensuring that the person is in control.

With these factors in mind, this guide has been developed to:

- maximise opportunities for people with a disability to make decisions in all aspects of their lives and specifically related to their self-directed supports
- provide those who support people with a disability with better understanding of issues relating to decision making, including factors that may affect a person's ability to make decisions and tools that might assist
- outline the rights and responsibilities of people with a disability, service providers and support workers around decision making
- provide an overview of how support providers and workers should respond if there are concerns about a person's capacity to make decisions involving an element of risk
- give guidance to supporters of people with a disability on how to provide appropriate decision making support based on a person's individual needs
- assist support providers and workers to manage duty of care and occupational health and safety obligations in a human rights context
- provide the first step in the development of a range of tools and resources that will maximise decision making opportunities for people with a disability.

## Who is this guide for?

This guide has been developed to assist support workers and supporters of people with a disability to understand rights and responsibilities with regard to decision making.

It is also intended to give people with a disability a platform from which to understand and reinforce their right to make decisions.

## Using this guide

This guide uses a principles-based approach for the disability sector as a whole to supporting decision making by people with a disability.

The guide and principles have a purposefully broad approach to ensure consistency of terminology and a platform from which more tailored resources can be developed. **Some themes and concepts are repeated in different sections and as such the guide is not meant to be read from cover to cover.**

A section outlining the legal and policy basis for supporting decision making is included.

Detailed discussion of each of the decision making principles is provided with suggestions for approaches by service providers, support workers and supporters.

## Key definitions

Some of the terms associated with decision making have different meanings in other contexts. This is especially true when a person's ability to make decisions is being called into question. The following definitions are provided to explain the terms used in the guide.

### Capacity

When we talk about a person's decision-making capacity we mean their ability to make decisions about things that affect their daily life.

It means a person can understand a decision, the choices involved, the consequences to themselves and others and can communicate their choice.

Some people may need help with some of these elements. This does not affect their capacity to make a decision. A person's capacity can also change over time.

**Note:** This definition is broader than the definition of 'legal capacity'. Legal capacity relates specifically to making legal decisions such as giving permission or signing contracts.

### Decision making

In this guide, decision making is the act of expressing choice and preference and being able to act upon that choice. For people with a disability this particularly relates to being able to choose the supports they need to enable them to lead a lifestyle of their choice.

The types of choices people have are not limitless. A person's individual circumstances will influence the choices open to them. This includes factors such as environment, budget, skills, preparation and time. People should be provided with the opportunities required to address these factors including information and appropriate supports.

### Disability supports

Disability supports are the supports used by people with a disability to meet their individual needs and enhance their participation in community life. Supports may include accommodation, assistance with communication, mobility and/or personal care amongst others.

### Dignity of risk

Dignity of risk recognises that people should be able to do something that has a level of risk involved, whether real or perceived.

Sometimes people with a disability are prevented from making certain decisions or participating in activities because other people think they are too risky. How risk is perceived is unique to us as individuals and management of risk should be tailored to a person's individual circumstances.

The department's risk management framework offers a way to assess risk and develop strategies to reduce the impact of any identified risk.

### Duty of care

A duty of care is a duty to ensure that reasonable action is taken to minimise the risk of harm to anyone who is reasonably likely to be affected by the department's activities. This may include people receiving supports it funds; people receiving support it delivers; employees and contractors.

Support staff must consider the rights of the people they support and should not restrict choices or actions unnecessarily. They should support people to make decisions by offering information about options and risks. The department's risk management framework offers a way to assess risk and develop strategies to reduce the impact of any identified risk.

### Person/people with a disability

References to disability in this guide are aligned with the definitions of disability in the *Disability Act 2006*.

### Self-directed approaches

*Self-directed approaches* enable people with a disability to identify, design and oversee the support and resources they require. They aim to ensure supports and resources are provided based on people's needs, goals, lifestyle choices and aspirations. Self-directed approaches comprise three distinct but connected elements: self-directed planning, self-directed funding and self-directed supports.

### **Substituted decision making**

Substituted decision making occurs when a person is officially appointed by law to make certain decisions on behalf of another person. In Victoria this person will either be a guardian or an administrator depending upon the decision.

### **Supporters of people with a disability**

The term 'supporters' refers to family members, friends, carers and informal advocates who support people with a disability in their lives. The term excludes paid carers and service providers

### **Supporting decision making**

In this guide, *supporting decision making* refers to when people with a disability, notably those with complex needs, cognitive and/or communication requirements are assisted to understand, consider and communicate their choices.

With supporting decision making the choice ultimately remains the decision of the person with a disability.

### **Service provider**

In this document *service provider* refers to the Department of Human Services Disability Services and organisations it funds to provide disability supports.

### **Support worker**

In this document, *support worker* refers to a person employed by Disability Services, or an organisation funded by Disability Services



# Policy and legislation context

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## Summary of rights & responsibilities

### People with a disability should:

- have the same freedoms, choices and life experiences as people without a disability
- have individual autonomy and freedom to make their own choices
- receive adequate, accessible and accurate information about their legislated rights and responsibilities with regard to decision making
- receive support, education and resources to understand their rights and responsibilities
- be treated with dignity, respect, consideration and sensitivity

The Victorian Government believes that people with a disability have the same rights and responsibilities as all other Victorian citizens.

This is in line with a range of overarching international and national policy statements, Commonwealth legislation and specific requirements within Victoria outlined in the *Disability Act 2006*.

### People with a disability should:

- respect the rights and responsibilities of other people

### Support providers and workers should:

- act in accordance with the rights of people with a disability
- understand and keep up to date with all relevant legislation and policies
- assist people with a disability to be aware of and understand their rights and responsibilities

The Victorian Government's obligations under the Convention were recognised in 2008 with the release of *A United Step Forward: a Guide to the United Nations Convention on the Rights of Persons with Disabilities*.

## **Victorian Charter of Human Rights and Responsibilities Act 2006**

The Charter is a commitment by the Victorian Government to set policy and provide services in a way that is compatible with human rights. It protects the human rights of all people in Victoria.

The Charter has four principles; **Freedom, Respect, Equality and Dignity**. In a decision making context for people with a disability, this means:

### Having the **freedom** to:

- make decisions and choices that affect them
- make decisions at a time and place that is convenient to them
- make choices other people disagree with

### Being **respected** for:

- the decisions that are made
- the requirements and information needed to make a decision
- the way that decisions are communicated
- the fact that a person can change their mind

## Policy context

### **United Nations Convention on the Rights of Persons with Disabilities**

The Convention puts responsibility on societies to provide people with a disability opportunity to reach their potential, regardless of ability. It highlights the importance of individual decision making and the need to respect people's dignity and freedom to make their own choices.

The Convention affirms that people with disabilities have equality of legal rights and states the actions that participating governments must take to ensure people with a disability can properly exercise their legal rights.

It means that Governments need to ensure that there are support and safeguards in place to empower and protect people with a disability in exercising their legal capacity.

The Australian Government ratified the Convention in July 2008.



(continued)

Being treated **equally** by being able to:

- make decisions no matter who they are, where they live or whatever their ability

Being afforded the **dignity** to:

- make decisions without having to ask permission from anyone else
- make decisions without having to tell other people about personal business
- participate fully in decisions that affect them

The Charter reinforces equality for all, including people with a disability:

People have the right to:

- recognition before the law.
- enjoy their human rights without discrimination.
- equality before the law and equal protection of the law without discrimination.

### Limiting Charter rights

In most cases, when people act according to the law and according to the policies and procedures that apply to their work they will also be acting compatibly with the Charter.

However, there are times when staff must limit a Charter right.

In these situations staff should:

- be clear about what the limitation is and why it is needed
- be clear about the law and the policy and what actions/decisions require judgement
- be able to identify what human right(s) is impacted
- identify whether there are any other options that might be less restrictive on rights
- remember the Charter permits limitations on Charter rights only if it can be demonstrated that the limitations are lawful, reasonable, necessary, proportionate, logical and less restrictive of rights

Decisions to limit a Charter right(s) must be recorded in the person's file. This should include a description of the decision making process along with any evidence on which the decision was based.

## National Standards for Disability Services

The National Standards for Disability Services aim to guide practices in service provision to ensure quality in the delivery of all disability services provided under the National Disability Agreement.

The Standards relate to eight areas of disability service delivery, of which Standard 3 is *Decision Making and Choice*. Under this standard:

*Each person with a disability has the opportunity to participate as fully as possible in making decisions about the events and activities of his or her daily life in relation to the services he or she receives.*

For more information on the National Disability Standards, including the review of the standards and development of the *National Quality Framework* please refer to the [Department of Human Services website](#).

## Legislative Framework

### Disability Act 2006

The Disability Act provides the legislative context for the delivery of services to people with a disability in Victoria.

The Disability Act contains seven objectives, including to:

- advance the inclusion and participation in the community of persons with a disability; and
- promote and protect the rights of persons accessing disability services.

A set of principles for the provision of disability services is laid out in the *Disability Act*. They reinforce that people with a disability have the same rights and responsibilities as other Victorians as individuals.

With regard to choice and decision making the principles are explicit that people with a disability have a right to:

- exercise control over their own lives
- participate actively in the decisions that affect their lives and have information and be supported where necessary, to enable this to occur

- access information and communicate in a manner appropriate to their communication and cultural needs

The Disability Act further outlines that disability services should:

- maximise the choice and independence of persons with a disability
- be provided in a way which reasonably balances safety with the right of persons with a disability to choose to participate in activities involving a degree of risk

If a restriction on the rights or opportunities of a person with a disability is necessary, the option chosen should be the least restrictive of the person as is possible in the circumstances.

### ***Guardianship and Administration Act (1986)***

The Guardianship and Administration Act provides the framework to enable adults with a disability to have a guardian or administrator dependent on their circumstances.

Although only used as a last resort, anyone in Victoria can apply for a guardian or an administrator through the Victorian Civil and Administrative Tribunal (VCAT). This is the first step towards formal substitute decision making.

All actions undertaken under the authority of the Guardianship and Administration Act must be undertaken so that:

- the means which is the least restrictive of a person's freedom of decision and action as is possible in the circumstances is adopted
- the best interests of a person are promoted
- the wishes of a person are wherever possible given effect to.

In June 2009 the Attorney General of Victoria [announced a major review](#) of Victoria's guardianship laws including the Guardianship and Administration Act. The Victorian Law Reform Commission must hand a final report to the Attorney-General by December 2011.

### ***Children Youth and Families Act (2005)***

The Children Youth and Families Act provides a framework for support to vulnerable children and their families to promote children's safety, wellbeing and development.

Parents are usually the guardians for people under 18 years, unless there is a court order specifying otherwise. Guardians will ultimately make decisions for people less than 18 years in their charge regardless of any disability.

This act describes best interest principles to guide decisions by Community Services, Child Protection and the Children's Court. These best-interest principles include consideration, where relevant, to the child's views and wishes, if they can be reasonably ascertained, and they should be given such weight as is appropriate in the circumstances.

The Children Youth and Families Act also prescribes decision-making principles for family services, out-of-home care services and Child Protection services.

These include consideration that:

- the views of all persons who are directly involved in the decision should be taken into account
- the child and all relevant family members (except if their participation would be detrimental to the safety or wellbeing of the child) should be encouraged and given adequate opportunity to participate fully in the decision making process.

Other principles in the Children Youth and Families Act relate to methods of appropriate communication and have great relevance to where people with a disability have a communication impairment or are from a different cultural or linguistic background.

- the decision making process should be conducted in such a way that the persons involved are able to participate in and understand the process
- persons involved in the decision making process should be provided with sufficient information, in a language and by a method they can understand, and through an interpreter if necessary, to allow them to participate fully in the process.

## ***Disability Discrimination Act (1992) and Equal Opportunity Act (1995)***

Discrimination of any kind - including that related to decision making - can impact significantly on the lives of people with a disability. Not only can it restrict a person's participation in activities open to other members of the community, it can have a negative impact on a person's self esteem.

The Disability Discrimination Act is a part of Federal Government legislation which provides protection for all Australians from discrimination based on disability. Under this Act, discrimination can be direct and indirect. It defines discrimination as when people with a disability are treated less favourably than people without a disability.

Similarly indirect discrimination is defined as discrimination which disadvantages or is likely to disadvantage people with a disability. Complaints under this Act are handled through the Australian Human Rights and Equal Opportunity Commission.

The *Equal Opportunity Act* is a piece of Victorian legislation that was enacted to protect all Victorians from discrimination of any kind, including that related to disability.

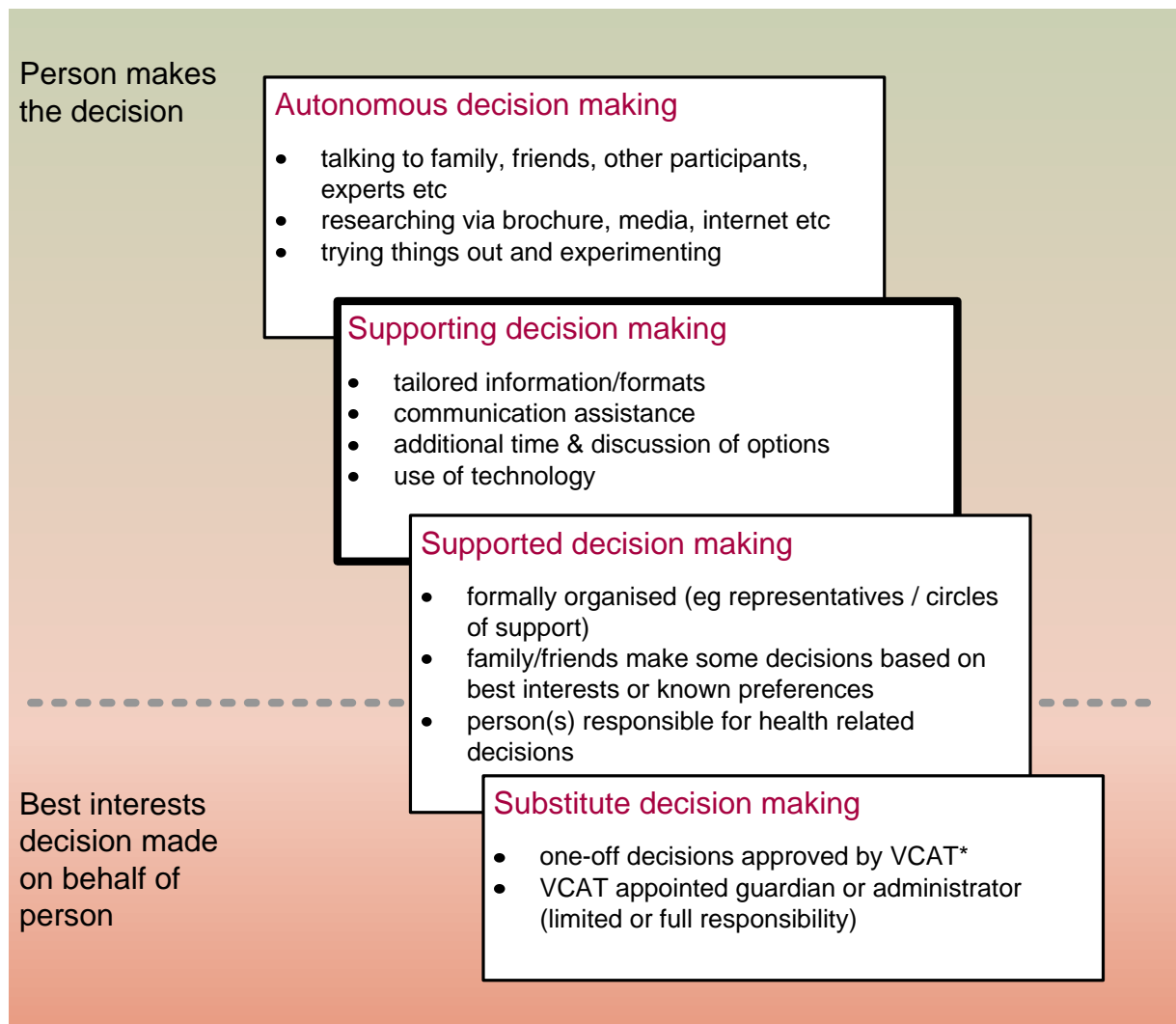
Complaints under the Equal Opportunity Act are managed by the Victorian Human Rights and Equal Opportunity Commission.

# Decision making spectrum

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The following diagram represents the levels of supports required by people to make decisions, from advice, supports, informal arrangements through to more formal arrangements and ultimately substituted decision making.

The information in this guide is principally focused on supports above the dotted line.

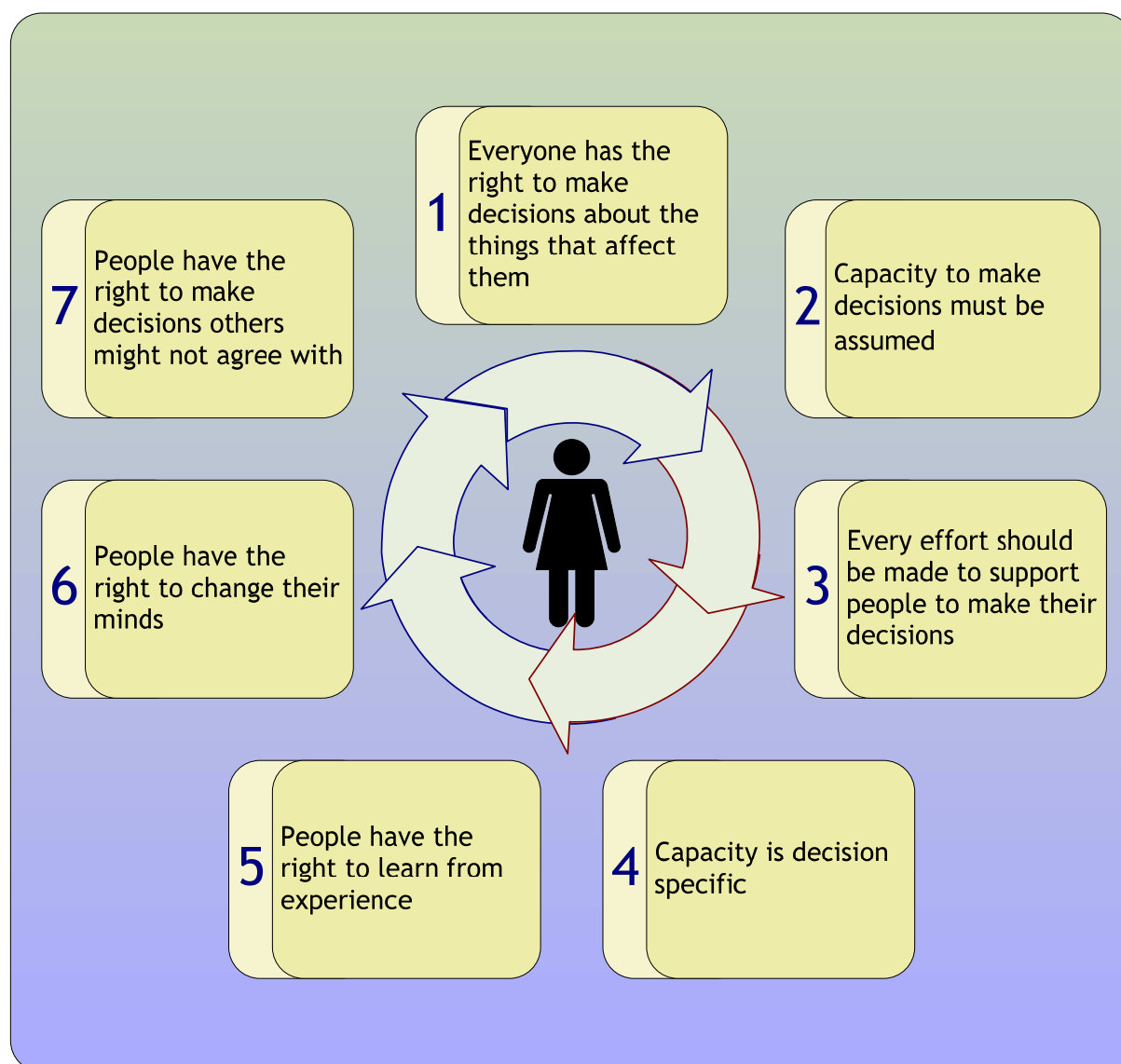


\* VCAT = Victorian Civil and Administrative Tribunal

# Decision making principles

This guide is built around seven *decision making principles* which provide a basis from which to consider the diverse range of decisions and circumstances of **each** person with a disability. This chapter provides detailed discussion about each principle.

## The seven decision making principles



## Decision making principle 1—Everyone has the right to make decisions about the things that affect them

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### People with a disability should:

- be able to make decisions about things that affect them
- be able to explore, express and act on their values through decision making
- receive information and support that helps them make decisions
- have their attitudes and values heard and respected

### People with a disability should:

- respect the right of other people to make their own decisions

### Disability support providers should:

- ensure workers understand the legislation and policy supporting the right of people with a disability to make decisions

- ensure familiarity with self-directed approaches
- provide leadership to staff on expected behaviours and organisational values with regard to decision making
- foster environments where workers are comfortable supporting decision making by people with a disability

### Disability support workers should:

- encourage people with a disability to make decisions
- facilitate situations where people with a disability can make decisions
- assist people with a disability to find the information they need to make decisions as required

## Overview

Most people take it for granted that they can make their own decisions about their own life. It is an integral part of being able to explore, express and act upon values to the outside world.

People with a disability are no different when it comes to making decisions about their own lives.

## Things to consider

### What kinds of decisions do we mean?

People with a disability have the right to make choices about decisions that have an effect on their life, as far as they are able to.

This includes:

- any decision that a person without a disability would expect to make
- any decision specific to a person's disability and their required supports

Types of decisions people with a disability might need to make include, but are not limited to:

**Day to Day:** what to wear, when and what to eat, when to get up or go to bed

**Lifestyle and Recreation:** family and friendships, relationships and sexuality, involvement in cultural and religious events, keeping fit, shopping, using the internet, smoking/drinking, going to the pub / club / cinema, holidays and days out

**Employment and Education:** choosing a field of work, applying for jobs, attending tertiary education, changing jobs/courses

**Living Arrangements:** who to live with and where, type of accommodation, leaving home, moving home, decorating or making changes

**Access to Services:** choosing service providers, choosing day services and times to attend, choosing support workers

**Healthcare and Medical:** routine medical and dental, emergency care, speech therapy, physiotherapy, hospital visits and surgery, right to refuse care

**Financial:** banking, buying everyday items, paying for expensive items, getting a loan, paying bills

**Legal:** signing contracts, providing consent, giving power of attorney, getting married/divorced, wills and estate management



## Choice is not unlimited

Few people have unlimited choices in life. A person's individual circumstances will restrict the choices open to them. Factors such as budget, training and skills, preparation, environment and time may limit a person's options.

People respond to limitations in different ways. For example, overseas travel is expensive and some people will be prepared to save up to be able to make the trip. Others will decide that they can't or don't want to save the money and will decide to do something else.

People with a disability have the same limitations on decisions and lifestyle as others in society. However some people may need assistance to help address any factors limiting their activities and decisions, for example advice on saving money.

Ways to address these limitations should be considered as part of all decisions in order to ensure greater choice.

## Assistance should be provided where required

Sometimes people may need additional assistance to understand and communicate their choices. This might include information in different formats, communication aids, translators or longer timeframes.

The methods that people need to both understand and communicate their decisions do not affect their right to make decisions. People have the right to any information or supports they need to help them make and express their decisions.

## Suggested actions to comply with this principle

### Service providers can:

- ensure their workers have ready access to the legislation and relevant policy documents
- discuss the legislation and policy at team meetings
- consider including this topic in workplans and performance management programs
- engage staff and service users in discussions around a human rights approach within the organisation

### Support workers can:

- remind people with a disability (and their supporters) that they have a right to make decisions
- remind co-workers that people with a disability have a right to make decisions
- help to set up situations where people have real choices
- help people to get information as required to help them make decisions
- refer a person to experts if they require specific help or assistance
- allow time for people to explore their thoughts and feelings
- understand that it's difficult to make decisions about some issues, and that it's normal not to have an answer straight away
- encourage people to make up their own mind about what they think
- take the time to ask people their opinions and not assume what they want
- speak up and take action if required where people are being denied the right to make decisions
- help people to lodge a complaint if they are denied the right to make decisions

### Supporters can:

- remind people that they have a right to make decisions, even if other people say otherwise
- actively encourage people to decide for themselves as often as possible
- help to set up situations where people with a disability can make decisions
- help people to get information that will help them make their decision
- take the time to ask people their opinion and not assume what they might want
- provide people with opportunities to discuss choices in an informal way

## Decision making principle 2—Capacity to make decisions must be assumed

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### **People with a disability should:**

- have their capacity to make their own decisions assumed
- be advised of any assessments regarding their capacity to make decisions
- have access to reports and documents relating to their decision making capacity

### **Disability support providers should:**

- ensure workers are open and non-judgemental when considering a person's capacity to make decisions.
- embed the principles of self-directed approaches in workplaces

### **Disability support workers should:**

- assume that a person has capacity to make decisions
- understand the concepts of decision making capacity
- take a considered view of a person's decision making capacity based on documented evidence

## Overview

While the right of people with a disability to make decisions is increasingly acknowledged, many are still denied opportunities to fully participate in decision making.

One reason for this may be that people with a disability are assumed not to have decision making capacity.

This assumption is often the result of a lack of understanding about capacity and what it means for people. It may also be because there are different views about what constitutes capacity.

## Things to consider

### **What is decision making capacity?**

A person's decision making capacity is their ability to make decisions about things that affect their daily lives. This usually means that they are able to:

- understand the situation and the decision required
- understand what the choices are
- weigh up the consequences of the choices
- understand how the consequences affect them
- communicate their decision

A person's decision making capacity is not related to whether they may:

- need help to do some or all of the above
- take longer to think about things
- require more explanation of the issues
- have difficulty in communicating their decision

### **Why should we assume capacity?**

When people are denied the assumption of decision making capacity they are being:

- denied the right to make decisions about the things that affect them
- discriminated against

By assuming capacity we are treating people with respect and recognising the right of people with a disability to the same opportunities as other members of society.

### **Decisions are rarely made in isolation**

It is important to remember that decisions are rarely made in isolation. All people make decisions using available information, including advice and support from friends, partners, family and significant people in their lives.

Even people who lead very independent lives will use trusted friends, the internet, television and other media to inform their choices and decisions.

People with a disability should not be assumed to lack decision making capacity because they require assistance from other people to make decisions.

### **Capacity can change**

Capacity can be lost – temporarily or permanently – or regained depending upon a number of factors including:

- a person's current health condition - including mental health or the effects of drugs and alcohol
- levels of stress or recent traumatic events
- the timing of the decision
- a person's familiarity with the subject matter and appropriateness of any information they have been given
- the physical environment and any distractions

Assuming capacity as a starting point ensures respect for a person's individual circumstances and provides a starting point to address the factors above should they be relevant.

### **Legal capacity is a different issue**

Legal capacity is the ability to make binding legal arrangements, sue and make other decisions of a legal nature. It is linked to whether a person understands the significance of their actions. Legal capacity is assessed for every situation separately, and a person may have capacity to make some legal arrangements and not others.

Whilst people with a disability will occasionally need to make decisions that demand demonstration of legal capacity, such as signing contracts, most decisions do not involve or require legal capacity.

### **When a person is considered not to have capacity**

If, having considered and applied the decision making principles and associated actions in this guide, you still feel there is reason to question a person's capacity to make a specific decision a substitute decision process may be required.

All supported decision making options should be exhausted first before engaging in the stepped approaches towards substitute decision making as administered through the Victorian Civil and Administrative Council (VCAT). Substitute decision making is further covered on page 26.

Even if a person is shown to lack capacity with regard to some decisions, this does not mean that they lack decision making ability in all situations.

### **Suggested actions to comply with this principle**

#### **Service providers can:**

- talk to staff and service users about ways to develop and maintain an environment in which people with a disability are assumed to have decision making capacity in the first instance
- ensure service users can contribute to the development of organisational policies and practice advice
- ensure staff use the principles of self-directed approaches in workplace environments
- ensure that managers and staff have explored all avenues of support before seeking substitute decision making.

#### **Support workers can:**

- assume a person has capacity to make decisions in the first instance
- consider the factors which might affect a person's decision making ability before making further assumptions about a person's capacity
- take action to appropriately support the person to make their decision
- remind other workers that capacity to make decisions should always be assumed
- document, and be able to justify, reasons for thinking that the person does not have capacity
- discuss the matter with their line manager before taking any action to seek substituted decision making

#### **Supporters can:**

- advocate, if required, on behalf of the person for their capacity to be assumed
- help workers understand how the person makes and communicates decision

## Decision making principle 3—Every effort should be made to support people to make their decisions

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### People with a disability should:

- be supported in every way possible and appropriate to make their own decisions

### Disability support providers should:

- provide workers with the time and resources required to identify and make available the supports required to allow people with a disability to make their own decisions
- facilitate and encourage access to advocacy services including self-advocacy as appropriate

### Disability support workers should:

- identify, seek out and make available any supports required to assist people with a disability to make their own decisions and act upon them
- identify and address factors that might affect a person's capacity to make decisions
- support the person to involve the important people in a their life to support them in their decision making where required
- facilitate access to advocacy services including self-advocacy as appropriate

## Overview

A significant barrier to choice for people with a disability is the perception from others that too much time and effort might be required to involve them in decision making processes.

Providing people with the supports they need to understand decisions and express choices can take considerable time and effort, particularly in the short term. However, for some people it is only through provision of these supports that they can fully engage in decision making.

People have a right to be supported in ways specific to them that helps them make their own decisions.

## Things to consider

### Factors that can affect decision making capacity

There are some common factors which can affect the ability to make good decisions. However, most can be addressed with some thought about how they affect each individual.

Some of these include:

- **the type of decision being made** - this can range from the everyday – such as what to wear or eat to more important decisions such as choosing where to live.
- **timing** – most people have a time of day when they are at their best. Find out when a person likes to do their thinking. If a decision isn't urgent, wait for a time which is good for everyone.
- **the complexity of the decision** - decisions about complex issues decisions may require more information and take longer to consider. People should be given the time they require to understand what is being asked of them.
- **the urgency of the decision** - some decisions can be more urgent than others, for example when there is an important deadline. It is important to explain the timeframe and what will happen if they don't make a decision.
- **currency of the decision** – some people like to plan their lives well ahead, others like to be more spontaneous and deal with things as they happen. Consider if decisions are required for something now or in the future and how a person likes to approach planning.
- **the availability of information** - this includes advice and support from others, information that is read or seen on television or details remembered from past experiences. Consider what information someone has already and what else might help them to make their decision. Ask if they have any questions or would like any specific information and be creative in thinking what information might help.
- **the physical environment** - being in a noisy or busy place can affect a person's concentration. A person may feel anxious or pressured in certain environments. Look for signs if a person is bothered or unhappy. If possible offer an option to go somewhere else or try later on.

- **the sensitivity of the decision** - personal issues may affect a person's wish to obtain help or advice from others. It is important to respect a person's privacy. If a decision involves a private issue, ask if there is a specific person they would like to help with the decision.
- **personal issues faced by the person** – ill health (including mental health), medication or stress can impede clear decision-making. A person may need help to manage other issues before they are ready to make a decision or leave the decision until later.

### **The type and amount of support people need will vary**

The support that a person needs to make a decision will vary depending on a wide range of issues. The need for support may decrease over time as people gain experience and/or confidence. It may increase as the type of decisions become more important.

Providing people with the right supports can take some effort and time. It may require some trial and error or building slowly until everything is in place.

### **Get to know the person**

Getting to know someone can help with understanding the things that are important to them. Supporting someone with their decisions then becomes more about being ready and available to provide people with the supports they need to make decisions.

Through an understanding of a person's context, it is easier to understand the logic of a person's decisions and what is 'usual' for them. This does not mean that someone cannot make 'unusual' decisions but it does mean their support person might understand better.

### **Communication styles vary**

All people have the ability to communicate, but not everyone communicates the same way. Communication is more than just words.

It is a mistake to assume that people cannot communicate because they are non-verbal. People may be able to communicate through a range of methods.

It is important for staff in particular to get to know what the preferred communication method and, if necessary, learn to understand what the person is trying to say.

### **Get to know the important people**

Part of getting to know someone better is also about getting to know the important people in their lives. A person may wish to discuss decisions with friends, family or housemates to help them make up their mind.

Facilitating such discussions with people who understand a person and their needs can help with decision making, and provide a better insight for supporting them in the future.

### **Suggested actions to comply with this principle**

#### **Service providers can:**

- develop a shared understanding of what *every effort* means
- document the organisation's expectations in relation to providing support to people to make decisions
- ensure staff actively seek the person's opinions rather than making assumptions about their choices
- allow staff the time and resources to identify, seek out and make available the tools and supports people with a disability need to make their own decisions
- discuss the *decision making factors* and methods of addressing them in orientation for new staff

#### **Support workers can:**

- take the time to get to know the person and other important people in their life
- find out how the person communicates best and understand what they are trying to communicate
- find out what supports (such as advocacy services) might be available and suitable for the person
- assist the person to receive information in relevant formats to help with their decisions

#### **Supporters can:**

- share knowledge about a person's support requirements and preferences
- help the person get the information they need to make decisions



## Decision making principle 4—Capacity is decision specific

### People with a disability should:

- be able to make different types of decisions
- have choices and decisions stand on their own merits

### Disability support providers should:

- ensure staff are open and non-judgemental with regard to decisions made by people with a disability
- ensure staff document the supports people require to make choices specific to the nature of the decision

### Disability support workers should:

- understand the facts and circumstances behind individual decisions as they arise
- focus on factors relevant to specific decisions when considering a person's decision making capacity
- document the supports that assist people to make different types of decisions

## Overview

If a person has encountered issues or difficulty making some decisions, this does not mean that they will have difficulty with *all* decisions. As in all aspects of life, people are more skilled at some tasks than others.

Capacity and skills can also be lost and/or regained. How a person makes a decision one day might be different the next. Some people get better at decision making, whilst others might be experiencing situations that limits capacity.

It is therefore important to consider capacity as *decision specific*. This means that all decisions should be considered on their own basis and without undue reference to other decisions a person has made – whether related or not.

## Things to consider

### Understand the context of the decision

No decision is made in isolation. All choices have a context for the person and for those around them.

For example, some people get nervous when faced with new experiences and may require additional time or information in order to make their decision.

Equally, if someone is making decisions that are the same or similar to ones they've made before, it can be helpful to remind them of what happened last time. This does not mean that they must do the same again but it may help with their new decision.

Not all decisions are the same. For example, a person may have difficulty making decisions about budgeting and saving but know what makes them happy or what they want to do with their money.

### Capacity can change

Capacity and skills can be lost or regained depending on a person's circumstances. Some people can get better at decision making, whilst others may experience situations that limit their capacity – either temporarily or permanently.

Consider any changes in a person's circumstances and how they might apply to how a person manages their current situation.

If there are some important decisions needed in the near future, start planning ahead. Work together with the person to document views, opinions and ideas that might be important to them.

### Changed circumstances can result in a different decision

Some decisions may appear to be the same as ones previously made. However the smallest change in circumstances can lead to different outcomes and decisions.

### Strengths and weaknesses

Understanding and documenting decision making strengths and weaknesses can be useful in determining whether support is required.



It is important, however, to recognise that what happened last time might not be an indicator of what will happen this time.

A number of factors can change how a person makes choices from one decision to another. These reinforce the need to approach individual decisions on their own merits.

### **Suggested actions to comply with this principle**

#### **Service providers can:**

- ensure staff are open and non-judgemental with regard to decisions made by people with a disability
- ensure staff document the supports people require to make choices specific to the nature of the decision

#### **Support workers can:**

- find out information about the person and the decision, particularly so assistance can be arranged if needed. This can include asking things like:
  - has the person made this type of decision before?
  - what are the person's strengths and weaknesses?
  - has anything changed for the person or their circumstances that you are aware of?
- work with people to document their experiences as they happen - it might be useful for them if they have similar experiences in the future

#### **Supporters can:**

- advocate, if required, on behalf of the person for their capacity to be assessed on a decision by decision basis
- help workers understand how the person makes and communicates each decision

## Decision making principle 5—People have the right to learn from experience

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### **People with a disability should:**

- be able to explore, express and act on their values and attitudes through activities of their choice
- receive information and support that facilitates their participation in activities to explore their interests
- be able to try out and experiment to help them make decisions
- be able to participate in activities with an element of risk, whether perceived or actual

### **Disability support providers should:**

- facilitate the development opportunities for people with a disability to participate in as full a range of activities as possible
- encourage opportunity and experimentation cultures in the workplace, including flexibility in service provision and emphasis on self-directed approaches

- meet duty of care responsibilities as appropriate

### **Disability support workers should:**

- facilitate and encourage opportunities for people with a disability to learn from experience
- facilitate and encourage self-directed approaches to ensure supports and activities are linked to a person's stated goals and aspirations
- challenge barriers which restrict, prevent access or discourage participation by people with a disability
- be innovative and creative to maximise opportunities for people with a disability to achieve life goals

## Overview

Personal experience can be a significant factor when making decisions. People are likely to be better equipped to make decisions if they have already experienced something similar first hand.

Some people with a disability may not have had as many opportunities to take part in experiences and actively explore their interests. This might be due to access and mobility issues or limited opportunity to meet people with similar interests.

Equally, some people might have had limited experiences because of other people's concerns about their safety. Whilst some activities might involve a degree of risk, opportunities for new experiences can be supported by exploring ways to manage risks and the possible consequences.

## Things to consider

### **It is okay to try things out**

In some cases a person may want to try something new but will not necessarily have all the information about it. The best way to find out whether it is suitable might be to simply try it out.

Trying new things can be challenging – with new environments and new people – particularly for people who have not spent much time in different environments in their community.

It is important to give people the information and time they need to feel comfortable in new situations. This could be through people sharing their experiences or researching information via the internet or other resources.

For bigger and more significant decisions, more preparation might be required. Someone moving house may need several visits to potential locations, meetings with potential housemates and spending time in new places.

Whatever the outcome of trying things out, people can learn from experiences and decide for themselves whether to do things again or not.

### **People may need help in identifying things to do**

Some people are very clear about what they want to do in life, while others might explore their goals and ambitions as part of planning processes.

Some people, however, are unaware of the choices and opportunities that might be open

to them. In these circumstances it is important that supporters and workers work with the person to develop interesting, creative and appropriate ways to identify and meet their goals. Discuss activities, including:

- what types of things they like to do
- whether they do enough of the things they like
- whether they still enjoy the activities they do
- if there are new things they'd like to try
- any worries about trying new things
- any information you can provide
- any activities linked to long term goals and ambitions

### Expanding social networks

A valuable outcome from supporting someone to try new activities is meeting people with common views and interests. By meeting people through shared interests, people can make friends and naturally develop social networks. People with similar views and experiences might be better placed to understand their point of view and may be able to help them with their decision making as peers.

### Assessing and managing risks in a proportionate way

Risk is a common issue that arises around decision making for people with a disability.

People with a disability should be able to do things that have a level of risk involved. This is sometimes referred to as *dignity of risk*. It assumes that a person has explored and understands the pros and cons of a decision or experience, including possibility of personal loss or injury, and still wants to go ahead.

It is important to remember that risk can be an experience in itself. Exploring, understanding and finding ways to address risk can be challenging but also highly rewarding.

Approaches to risk should be undertaken positively and in partnership with the person and, where relevant, their supporters. This means working together to understand the nature of potential risks, consider creative measures to minimise any risks and determine the agreed action. Any measures taken should be appropriate to the size of the risk and the activity. The department's risk management framework offers a way to assess risk and develop strategies to reduce the impact of any identified risk.

Workers and supporters need to be thoughtful about their own fears and anxieties and whether they are in perspective.

### Duty of care

All support workers have a duty of care to ensure that reasonable action is taken to minimise the risk of harm to anyone they are supporting. Reasonable action is to follow lawful work direction in line with the duties and obligations of the work position, qualifications held and the capacity of the people being supported to make decisions.

Most organisations also have duty of care policies which articulate day-to-day responsibilities of staff. Organisations also have a duty of care towards their staff to ensure they are able to work safely.

Support staff must consider the rights of the people they support and should not restrict choices or actions unnecessarily. Staff are responsible for taking an active, imaginative and flexible approach to managing potential dangers. They should support people to make decisions by offering information about options and risks.

The department's risk management framework offers a way to assess risk and develop strategies to reduce the impact of identified risk.

If a person is denied access to an activity subject to restriction based on the level of risk being unacceptable, the reason must be documented, including any assessment used to determine the suitability of restrictive options. Documentation of the restriction must include evidence of all strategies considered and tried in attempting to reduce or manage the risks.

### Suggested actions to comply with this principle

#### Service providers can:

- reward and/or encourage support workers who assist people to try new experiences
- ensure that workers understand and document a person's preferences, goals and ambitions
- create an environment in which risk management is tailored to each person
- ensure the person and their supporters are engaged in developing plans to manage any risks

**Service providers can (continued):**

- obtain independent legal advice (if required) about the organisation's duty of care responsibilities in relation to people's decision-making
- clearly articulate the organisation's approach to duty of care
- be explicit about worker safety and offering methods to address concerns workers may have about their own safety

**Support workers can:**

- follow up requests by people to try new things, even if they aren't clear what they want to try
- offer people information, including risks and their mitigation, about a range of options
- work at creating an environment in which risk is tailored to each person
- allow people time to explore and/or try new activities

**Supporters can:**

- advocate, if required, to enable people to try things out and learn from their experiences
- support the person to consider information about different activities
- make suggestions about possible new activities based on well developed understanding of the person's likes and dislikes
- attend new activities with person if required to provide support

## Decision making principle 6—People have the right to change their minds

### People with a disability should:

- be able to change their minds about decisions for any reason that is important to them
- give reasonable notice and explanation for changed decisions, particularly where contracts or long term commitments are involved

### Disability support providers should:

- encourage flexibility in service provision to respond to the changing needs and demands of people with a disability

### Disability support workers should:

- respond to any changed views and decisions by people with a disability with respect and without prejudice on future supports
- ensure any potential legal or contractual impacts of changed decisions are communicated in a manner appropriate to a person's communication style

## Overview

As people have the right to make decisions about their own lives, they also have the right to change their minds about their decisions. This might happen because new information is available or simply because the decision hasn't worked out as expected or hoped.

There will be instances where it is difficult to change decisions or start over. There may be consequences - for example, where contracts are involved. However, people with a disability should still be able to change decisions without fear that the change will work against other decisions that they will make in future.

## Things to consider

### There are no right or wrong decisions

Decision making is a highly personal process and definitions of right and wrong are not universal; a 'wrong' decision is not just one that has obvious negative consequences. A decision can also be 'wrong' because it does not *feel* right for the person who made it. In this case it is natural that someone might want to change their mind.

While people always hope for positive outcomes from decisions, influencing factors can also lead to decisions that might regretted later. It is only in hindsight that a judgement can be made if it was the 'right' decision.

### People change their minds for different reasons

When someone changes their mind it is not necessarily a sign that they are indecisive or not capable of making decisions.

There are many reasons why a person might change their mind about a decision. These include:

- **the outcome wasn't as hoped:** sometimes the outcome expected from a decision doesn't happen. Some decisions may have a negative impact on a person's circumstances such as affecting their health or their ability to live independently or adding pressure to friends and their family. Even well planned decisions can still result in different outcomes to what was hoped. This does not make the original decision wrong – it just means life doesn't always go to plan.
- **second thoughts:** People often have second thoughts about their choices. This is often related to the circumstances when decisions are made. If people are rushed, not thinking clearly or even just carried away in the moment they can make snap decisions they later regret.
- **new information** - decisions are usually based on information that is available at the time. However, sometimes new information becomes available after the event which might lead to a wish to change the original decision.

## People may need assistance to fully understand the consequences

There may be instances where it is problematic to change a decision or to start over. There may be consequences or – in the case of contracts – associated costs. In these circumstances it is important that people have as much information as possible and are appropriately supported to understand and act on any consequences for them or for others.

### It's never too late

Sometimes people worry about admitting they have changed their mind. Maybe something took a lot of organising or the consequences of changing seem large and scary.

Some people are unassertive or shy and don't like to speak up or make a fuss. Alternatively, some people might not realise or understand that they can change their minds.

One way that supporters and workers can make sure a person is happy with their decision is to check in after a couple of days and talk about the decision whilst it is fresh in everyone's mind.

Recognising how someone feels about decisions should be part of your day-to-day relationship.

**Look out for signals** Is the person happy? Do they *seem* happy? Do you know what to look out for?

**Ask** Encourage the person to describe how they feel about recent events

**Make Time** Providing opportunities to speak candidly about how they feel. Make sure the person understands they can talk freely

**Reinforce Rights** Remind people that they are allowed to make changes (if appropriate) and that have a right to do so

## Suggested actions to comply with this principle

### Service providers can:

- ensure staff are open and non-judgemental with regard to people changing their mind
- ensure information is available to service users about their right to make 'new choices', that is, change their mind
- ensure staff assist people to be aware of the potential consequences of a change of mind and to take action as required

### Support workers can:

- adopt a culture of there being no 'right' or 'wrong' decisions and that it is okay for people to change their mind
- create opportunities for people to explore their thoughts and feelings before, during and after decisions
- assist people to obtain information that will explain any consequences of changing a decision with the person, including any financial or legal obligations

### Supporters can:

- advocate, if required, to enable people to change their mind
- support the person to understand and respond to dealing with any consequences of changing their mind



## Decision making principle 7—People have the right to make decisions other people might not agree with

### People with a disability should:

- be able to make decisions and act upon them according to their own values and attitudes
- have their attitudes and values heard and their decisions respected
- be able to determine their own views on any risk, perceived or actual, associated with their choices and decisions
- consider the impact of their choices and actions on others as part of their decision making
- take responsibility for their choices and decisions

### Service providers should:

- provide leadership and training to staff on self-directed approaches and expected staff behaviours

- provide staff with appropriate training to mediate differences of opinion involving significant people in the lives of people with a disability

### Disability support workers should:

- ensure they do not impose any values that restrict, deny or unduly influence the choices of people with a disability
- support people to implement their decisions, even those they don't agree with – including making arrangements for alternative supports if required
- manage differences of opinion between people with a disability and their supporters respectfully and in a way that recognises the person's view as the most important

## Overview

Whilst everyone has the right to make decisions about the things that affect them, sometimes support workers and/or supporters may not agree with particular decisions.

However, they must respect the opinions, values and choices of the person and not unduly impose their own values or attitudes on the person.

Where there is disagreement about a decision based on a different view of the risk involved or the potential for harm, the emphasis should be on assisting the person to understand and obtain information about the risks and any mitigation.

Important decisions where firm disagreement exists (between, for example, the person and their parents) may need independent mediation.

## Things to consider

### All people have different values and attitudes

When people make decisions and choices they use the values developed throughout their lives as a guide. Some people have a strong sense of their values, while others need time to talk and think to clarify their values and attitudes.

Decision making often comes down to what *feels right* for someone according to their values and attitudes. Confidence to make decisions comes from understanding what feels is right or wrong to each individual.

When supporting a person it is important to:

- make efforts to understand their values and attitudes
- respect their values and attitudes even if they are different from your own

Any worker who believes that they cannot agree with a person's decision because of their own values should refer the matter to their manager. The worker may need to withdraw from supporting the person in the particular activity. The manager may make arrangements for alternative support for the person to be provided.

### Values and attitudes of supporters

Whilst supporters of people with a disability have the best interests of their friends/family members in mind, this does not mean they share all the same values. Differences of opinion can still occur between the wishes of a person with a disability and their supporters.

It is important to recognise the opinions of those who are important in the lives of people with a disability. However, this should not compromise the right of the person with a disability to have the final say in their decision.

### **Duty of care**

Support providers and their staff must ensure that reasonable action is taken to minimise the risk of harm to anyone who is reasonably likely to be affected by supports they fund or deliver.

Employers have a duty to ensure, as far as reasonably practicable, a safe and healthy work place for their employees, people they support and visitors. Some choices by people with a disability may potentially expose support workers to risk, particularly with regard to *Occupational Health and Safety*.

Some disagreements about decisions may arise because of concerns about the safety of the person, staff or other people involved. Support workers must consider the risks and benefits and any strategies to reduce the impact of any risk. Any restriction of choices or actions based on an unacceptable level of risk to support workers must be documented, including the reasons and strategies considered to reduce or manage the risk.

## **Suggested actions to comply with this principle**

### **Service providers can:**

- consider issuing an explicit statement of the organisation's values
- develop and implement, in consultation with service users, a process for managing disagreements about decisions
- consider providing specific training, incorporating the themes and principles in this guide to encourage grass-roots understanding of all principles
- provide support and/or training as required for staff who may be involved in mediating disagreements with people and their supporters

### **Support workers can:**

- make efforts to understand a person's values and attitudes
- respect the values of the person and any decisions or actions based on these
- consider their own values and their motives for questioning a person's decisions
- respectfully consider concerns raised by a person's supporters with regard to their decision making
- consider and manage risks at a level that is commensurate to the issue
- take time to understand their organisation's values and expected behaviours
- raise any concerns with their manager about any decisions they disagree with

### **Supporters can:**

- raise and discuss any concerns with the person in a considerate way to support them to make the best decision for them
- consider risk and develop approaches to risk management in a manner that does not unnecessarily limit a person's human rights
- remember that people have the right to make decisions, even ones that they might not agree with

# Substitute decision making

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This guide is presented on the basis of organisations, workers and supporters creating an environment where people with a disability are able to make their own decisions.

Some people with a disability are not able to make some or all of their decisions. In these situations a person may require some degree of substitute decision making.

This is when a person is officially appointed by law to make certain decisions on behalf of a person. In Victoria this person will either be a guardian or an administrator depending upon the type of decision.

All applications are for a substitute decision maker are managed by the Victorian Civil and Administrative Tribunal (VCAT).

## When is a substitute decision maker needed?

Most people with a disability will never need a substitute decision maker. Other less restrictive options should be explored first, including approaches in this guide.

A substitute decision maker is needed when:

- a person is at risk because they cannot make decisions about their own personal and lifestyle affairs; and/or
- a person is at risk because they cannot manage their own financial and legal affairs;  
**and**
- a decision needs to be made on their behalf.

When making appointments, VCAT must be satisfied that the person being represented:

- has a disability
- cannot make reasonable decisions because of that disability
- needs to make a decision and there is no less restrictive way of making the decision
- needs someone to act in their best interests

## Applying for a substitute decision maker

If a person or their supporter(s) feel it is in the person's best interests to seek a substitute decision maker, the steps include:

- an application is made to the VCAT Guardianship List
- VCAT hears the matter and, if required, appoints a guardian or administrator
- the guardian / administrator makes decisions on behalf of the represented person as per order by VCAT
- the guardian / administrator's decisions have the same legal force as if the person had made it themselves

## Substitute decision maker responsibilities

Guardians and administrators have a responsibility to make decisions that:

- protect the person from abuse, exploitation and neglect
- are in the best interests of the person
- consider the represented person's wishes  
**and**
- encourage the person to make their own decisions where possible

## Power of Attorney

A power of attorney is a legal document that allows someone to give another person the legal right to make decisions in the event they lose capacity. Further information about powers of attorney in Victoria can be found via the Public Advocate website (see below).

## What if things change?

VCAT will make a decision at the hearing about the length and nature of the appointment of a substituted decision maker. However, a person's guardianship or administration order can be referred back to VCAT at any point to check if it is still the most appropriate way to support a person.

## For more information

Office for the Public Advocate  
[www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

Victorian Civil and Administrative Tribunal  
[www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

# Principles in action

## Lucy's decisions

Lucy is 19 years old. She lives with her mum, dad and her 17 year old sister, Rachel who is also her best friend. Lucy has an intellectual disability and limited verbal communication. She finished school last year but decided to take some time off before starting a foundation course at TAFE.

### Principle 1—Everyone has the right to make decisions about things that affect them

Lucy told mum and dad that she wanted to earn some money before studying and that she would like to get a part time job. Over dinner the family talked about things that Lucy liked to do. Rachel joked that Lucy liked shopping more than working. Lucy said how much she had enjoyed working in the school garden and Dad suggested maybe Lucy could get a job in a local nursery. Lucy loved this idea and told her family that was what she wanted to do. Everyone agreed that they would all help Lucy to find out more to make her ideas a reality.

Dad had a friend, Pete, who was a landscape gardener. He said he would ask him about the possibility of Lucy working with him. Unfortunately, Pete wasn't very helpful. He said he didn't think Lucy understood what was involved in working in a garden and that she wouldn't really want to work outside, especially in winter. Pete said Dad should tell her to get an easier job instead, maybe in a shop. Dad told Pete that Lucy had already thought about it and made up her mind to try it out. Pete still wasn't convinced and said he couldn't help. Lucy was upset, but everyone told her that they knew it was what she wanted to do and would keep helping her.

### Principle 2—Capacity to make decisions must be assumed

### Principle 3—Every effort should be made to support people make their decisions

Rachel worked with Lucy to look up job advertisements on the internet and in the local newspaper. Mum and Lucy went to visit two nurseries that were close to home. Mum helped explain to the nursery managers how Lucy communicates and one of them invited her for an interview for a few hours work a week. Lucy was very excited when they called the house to tell her that she had been successful.

The nursery was too far to walk to from their house, so at first Mum drove Lucy to and from work. However, Lucy soon decided she wanted to be more independent and she told Mum that she wanted to catch the tram to work. Dad reminded Lucy of the problems she had had on trams when she was younger. He said he didn't think it was a good idea. Lucy had once taken the wrong tram and he had had to pick her up from the end of the line. Lucy and Rachel said that dad was worrying too much. Lucy said she was older now and with her new mobile phone she would be fine, even if something did happen.

### Principle 4—Capacity is decision specific

### Principle 5—People have the right to learn from experience

Lucy started travelling by tram on her work days. She and Rachel had worked out the best route on the map and Lucy felt confident that she knew which tram to catch and where she needed to change trams. She was a bit nervous at first, but after a few days it started to become second nature to her. She particularly enjoyed being able to drop in at the shops on her own on her way home from work for late night shopping. Eventually Dad stopped worrying.

A few months went by and Lucy was really enjoying working at the nursery and felt like part of the team. However, when winter came and it started getting dark earlier in the evenings, Lucy decided that she didn't like waiting at cold and wet tram stops. She told Mum that she wanted to get a lift to and from work in her warm car. Mum rolled her eyes and Dad said 'I told you so' but Mum agreed to pick up Lucy when she could.

### Principle 6—People have the right to change their minds

### Principle 7—People have the right to make decisions that other people might not agree with

After nearly a year, it was almost time for Lucy to start TAFE. Lucy was looking forward to studying but she loved working at the nursery too. She had realised how much she loved outdoor life and working with plants. She made a decision to transfer from the foundation course and study horticulture instead. Unfortunately it was too late to enrol in horticulture for the coming semester, meaning she would have to wait until the next enrolment before starting her studies. Mum wasn't happy and wanted Lucy to go to TAFE anyway, and maybe transfer to horticulture later on. However Lucy was insistent that she only wanted to study horticulture. Dad suggested that by working at the nursery for another year she would be even better prepared for her studies and still be able to keep earning money at a job she really enjoyed. Mum was worried, but agreed that it was Lucy's choice to make.

Lucy is now saving her money to go on a holiday with Rachel, and has already asked her boss if she can change her shifts next year so she can keep working at the nursery, just to keep her thumb green while she studies.

# Principles in action

## Ash's decisions

Ash is 25 years old. He lives in a group home with three men who are all older than him. He has a brother who lives in Canada but no other family. Ash loves music and lives for Friday nights at his local pub where bands play each week. He goes to the pub with Rod, one of his support workers. A few people in the pub have come to know Ash and they say hello, but mostly he and Rod keep to themselves, watching the bands.

A new group of people Ash and Rod started coming along to the pub to hear the bands and soon became Friday night regulars. Rod noticed that one of the women in the group caught Ash's eye. One night Rod started talking to people in the group and after overcoming his initial shyness, Ash also joined in. Ash found out the woman he liked was called Claire, and that they enjoyed the same kind of music. Ash had not had many opportunities to interact with women in social situations, but by the end of the night Ash felt very comfortable with Claire who obviously enjoyed talking with him.

**Principle 1—Everyone has the right to make decisions about things that affect them**

After a few Fridays in the pub it was clear Ash and Claire were growing fond of each other. Claire suggested that they meet up outside the pub and with Rod's help they arranged to go to the cinema and afterwards to a cafe. They both enjoyed the time together. When Ash got home he was really happy. He told Rod that he'd been thinking about Claire a lot and he wanted to invite her over to the house so they could spend some time together alone.

Rod told his co-workers about Ash's decision but everyone thought it was a bad idea. One said that he didn't think Ash understood what he was asking for or how to act on his own, especially with someone he might have feelings for. Another worker said that they should stay in the living area with everyone else.

**Principle 2—Capacity to make decisions must be assumed**

**Principle 7—People have the right to make decisions that other people might not agree with**

Ash had heard the staff talking this way and became very quiet and would not participate with the rest of the household. When Rod arrived for his shift he saw how unhappy Ash was. Rod pointed this out to the other staff and reminded them that this was Ash's home and he had a right to decide if he wanted to invite a guest over. The others weren't happy, but they agreed that if Rod was going to be around then he could deal with the situation. Rod set up his mobile phone so Ash could call Claire in private and invite her over for dinner. Claire said that she would love to see where Ash

lives and spend time together. Ash was really happy and he and Rod spoke to his flatmates to let them know about Claire's visit. Ash started telling Rod about what food he wanted Rod to help him cook for everyone.

In the end the meal went very well. Claire came over and met all Ash's flatmates and the staff on shift. They all ate together and everyone said how much they liked the food that Ash had prepared. There was lots of chatter and everyone said they'd like Claire to visit again sometime. After the meal Rod said he'd do the washing up if Claire and Ash wanted to go and hang out together in his room.

**Principle 3—Every effort should be made to support people make their decisions**

**Principle 6—People have the right to change their minds**

About half an hour later Claire came out of Ash's room and told Rod that she thought she should go. She said goodbye to everyone and left. Rod went to see Ash to ask what happened. Ash was very sad and quiet and told Rod that he didn't know what to talk about with Claire when they were on their own. He said that it wasn't the same as with everyone around the table. Ash said he had been a bit embarrassed and had asked Claire to leave.

Rod told Ash not to worry too much. He told Ash that sometimes it can be difficult to find things to talk about in a one-to-one situation. He said Ash could have talked about some of the music that they both liked and shown Claire some of his music collection. Ash said he wished he had thought of that but he was shy and nervous. He said he wished he could try again. Rod said that Ash could use his mobile phone again to call Claire and try and explain.

**Principle 5—People have the right to learn from experience**

**Principle 4—Capacity is decision specific**

When the other staff heard what had happened they said they had told Rod this would happen. Rod reminded them that it was Ash's decision to invite Claire over and that he wanted to do it again. They said Rod was wrong to encourage Ash as he would just get hurt again. Ash came out of his room to give Rod his phone back and heard everyone talking. He told everyone he had said sorry to Claire and that they would talk about coming over again when they saw each other in the pub next Friday. Ash told everyone that he felt better about talking to Claire and that Rod had helped him to think how he could do things better next time.

A couple of weeks later Claire did come over again and this time everything went very well. They ordered pizza which they ate in Ash's room while listening to music and talked all evening. As Claire was leaving they went to see Rod and told him they might need help with their next decision – a weekend away at a music festival!



# For more information

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## Links

Disability Act 2006

[http://www.dhs.vic.gov.au/disability/improving\\_supports/disability\\_act\\_2006](http://www.dhs.vic.gov.au/disability/improving_supports/disability_act_2006)

Disability Accommodation Services: Residential Services Practice Manual, 2009

[http://www.dhs.vic.gov.au/\\_data/assets/pdf\\_file/0020/353513/wpi\\_RSPM\\_2ndED\\_2009.pdf](http://www.dhs.vic.gov.au/_data/assets/pdf_file/0020/353513/wpi_RSPM_2ndED_2009.pdf)

Victorian Civil and Administrative Tribunal

[www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

Office for the Public Advocate

[www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)

Victorian Equal Opportunity & Human Rights Commission

[www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au)

Victorian Charter of Human Rights and Responsibilities

[http://www.humanrightscommission.vic.gov.au/index.php?option=com\\_k2&view=item&layout=item&id=764&Itemid=515](http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&layout=item&id=764&Itemid=515)

UN Convention on the Rights of Persons with Disabilities

<http://www.un.org/disabilities/default.asp?navid=13&pid=150>

Disability Discrimination Act

[www.hreoc.gov.au/disability\\_rights/dda\\_guide/dda\\_guide.htm](http://www.hreoc.gov.au/disability_rights/dda_guide/dda_guide.htm)

## Useful Resources

*Total Communication – Person Centred Planning, Thinking and Practice*

<http://www.pcp-in-hampshire.org.uk/documents/downloads69.pdf>

A Positive Approach to Risk Requires Person Centred Thinking

<http://www.helensandersonassociates.co.uk/media/15308/a%20positive%20approach%20to%20risk%20requires%20person%20centred%20thinking.pdf>

*Supported Decision Making: A guide for supporters*

[http://www.paradigm-uk.org/Resources/9/2/9/Supported%20Decision%20Making%20\(Final%20Online%20Version\).pdf](http://www.paradigm-uk.org/Resources/9/2/9/Supported%20Decision%20Making%20(Final%20Online%20Version).pdf)