

Supported Decision-making Guidelines

Table of Contents

PART 1: INTRODUCTION	4
1. PURPOSE AND SCOPE	4
2. OBJECTIVES	5
3. ROLE AND RESPONSIBILITIES OF AN ADMINISTRATOR	6
4. KEY DEFINITIONS	8
5. PRINCIPLES	12
PART 2: GUIDELINES FOR SUPPORTED DECISION-MAKING	14
6. KEY ELEMENTS OF SUPPORTED DECISION-MAKING	14
6.1 <i>Supported decision making is a process tailored to the person's needs</i>	14
6.2 <i>Being an effective supporter</i>	15
6.3 <i>Getting to know the person and building a trusting relationship</i>	17
6.4 <i>Understanding and responding to the person's communication needs</i>	18
Tips for improving your communication and enhancing understanding:	19
6.5 <i>Engaging with support networks</i>	21
Steps to coordinate engagement with the person's support network:.....	22
6.6 <i>Preserving a person's cultural and linguistic environment</i>	22
Aboriginal and Torres Strait Islander people	23
People from refugee and migrant backgrounds.....	23
6.7 <i>Building capability</i>	24
Steps to building the person's financial capacity	25
6.8 <i>Safeguarding</i>	26
Responding to a safeguarding concern.....	27
7. THE SUPPORTED DECISION-MAKING PROCESS	28
7.1 <i>Limitations on supported decision-making under an administration order</i>	28
7.2 <i>Enabling positive risk</i>	29
Steps for enabling positive risk	29
7.3 <i>Types of decisions</i>	30
7.4 <i>The 7 steps of Supported Decision-Making</i>	32
7.5 <i>Documenting SDM processes</i>	34
7.6 <i>Reflecting on the process</i>	34
8. <i>Substitute decision-making</i>	35
'Will and preferences' substitute decision	35
'Personal and social wellbeing' substitute decision	35
Making a substitute decision	36
9. <i>Creating a supportive organisational culture</i>	38

10. Resources.....	39
APPENDIX A	40
<i>Guardianship and Administration Amendment Act 2023: Sections referred to in the Framework</i>	<i>40</i>
s3. Interpretation close family member	40
s5. Meaning of promoting a person's personal and social well-being	40
s8. Principles to be observed	41
s9. Decision making process	41
s11. Decision-making ability	42
s12. Limits on finding of impaired decision-making ability	42
s51. Administration orders	43
s56. Powers and duties of administrator	43
s57. Exercise of power by administrator	43
s86. Confidentiality of information.....	44

PART 1: INTRODUCTION

1. PURPOSE AND SCOPE

The purpose of the Guidelines is to inform family, friends, and the support workers and networks of people on administration orders, and the community generally, about the principles, key elements and process of supported decision-making.

The Guidelines have been developed as part of the Public Trustee's Supported Decision-Making Framework. The Framework provides guidance for our staff to support people on administration orders to participate in decisions relating to their financial affairs and to give effect to their rights, views, will and preferences. It includes principles, practice guidelines and procedures to support our staff to deliver services with reasonable care, consistency and accountability in compliance with legislative requirements.

The Framework draws on evidence-based best practice and was developed in consultation with Public Trustee staff, people who are, or have been, on an administration order and key stakeholders, including the Public Trustee Stakeholder Reference Group. It will be reviewed regularly to ensure it is consistent with the Act and best practice standards.

The Public Trustee acknowledges the increased investment in time, resources and skills required to undertake supported decision-making (SDM) well. We commit to investing in our staff and our systems to operationalise SDM best practice across our organisation.

Understanding the organisational and legislative context

In line with other Australian jurisdictions and international practice, Tasmania is changing from a 'best interests' approach to supporting people with disability to participate in decisions that affect them. The [Guardianship and Administration Amendment Act 2023](#) passed the Tasmanian Parliament in September 2023 and comes into effect in September 2024. The framework incorporates the best practice in supported decision making and reflects the transition embodied in the Act.

A key purpose of the Act is to:

protect and promote the rights and dignity of persons who have impaired decision-making ability by applying the principles of the Convention on the Rights of Persons with Disabilities, including support persons with impaired decision-making ability to make, participate in and implement decisions that affect their lives.

At the same time, the Public Trustee is undertaking significant change across our organisation in response to the 2021 Independent Review. We have

adopted a client-centric, rights-based approach in our service delivery, with particular focus on the way we work with people on administration orders. This approach, as reflected in these Guidelines, is best practice and is consistent with our legislative obligations under the current Act.

Under the [Guardianship and Administration Act 1995](#), the Public Trustee is required to 'carry into effect the wishes, directions, preferences and values of a person with a disability or impaired decision-making ability' and to 'adopt the means that is least restrictive of a person's freedom and action'. The Act also requires us to consult with the person and take their wishes into account as much as possible, and to encourage and assist them to become capable of administering their own financial affairs.

2. OBJECTIVES

The objectives of the framework are to support Public Trustee staff to:

- a. uphold the rights and dignity of people on an administration order and support them to make, participate in and implement decisions that affect their lives;
- b. advocate and practice supported decision-making in a consistent and structured way with reasonable care and accountability;
- c. regularly assess administration orders to ensure they are varied or revoked as appropriate;
- d. only make 'will and preference' substitute decisions when it has been assessed that despite decision-making support, the person is unable to retain, weigh and communicate their decision; and
- e. only over-ride a person's will and preference and make a 'personal and social wellbeing' substitute decision after supported decision-making strategies have been exhausted and in compliance with the Act¹.

¹ 'The Act' refers to the *Guardianship and Administration Amendment Act 2023*

3. ROLE AND RESPONSIBILITIES OF AN ADMINISTRATOR

The Public Trustee is appointed as an administrator for a person if the Tasmanian Civil and Administration Tribunal (TASCAT) determines that the person has a disability and as a result of their disability they have impaired decision-making ability in relation to their financial matters, and that an administration order will promote the person's personal and social well-being. (*s51 of the Act*)

The administrator is responsible for the general care and management of the person's financial matters, subject to the relevant administration order. This includes the duty to:

- take possession and care of, recover, collect and administer their financial matters and generally manage their affairs, with the exercise of all rights, statutory or otherwise, in respect of their financial matters and
- act in respect of financial matters for the person with the same effect and in the same manner as the person would themselves if they were not subject to an administration order. (*s56 of the Act*)

Under the legislation, an administrator must:

- act honestly, diligently and in good faith
- treat the person with respect and dignity
- communicate with the person by means that they will be able to understand best
- keep the person informed about decisions made, information obtained, and steps taken
- consult regularly with the person's guardian and keep them informed about substantial decisions
- act as an advocate for the person where possible
- encourage and support the person to develop decision-making ability where possible
- protect the person from violence, neglect, abuse and exploitation. (*s57 of the Act*)

With respect to supported decision-making (s8 & 9 of the Act) the Public Trustee must:

1. respect and promote the person's decision-making ability
2. provide the person with support to enable them, as far as practicable in the circumstances, to:
 - i. make and participate in decisions that affect them
 - ii. express their will and preferences and
 - iii. develop their decision-making ability
3. ensure that the views, wishes and preferences of the person are respected and inform all decisions

4. recognise the role of the person's close family members, carers, and other significant people (the person's support network) *(s3 of the Act)* in supporting the person's decision-making
5. preserve the person's cultural and linguistic environment
6. promote the person's personal and social well-being *(s5 of the Act)*
7. support or make decisions which are the least restrictive of the person's freedom and action.
8. implement substitute-decision making, only:
 - in circumstances where the person is unable to weigh, retain and communicate a decision, even with support, or is unconscious or unable to meaningfully express themselves *(s11 & s12 of the Act)*; and
 - if the person's will and preferences would result in serious harm to themselves or others; or
 - the implementation of the decision would be unlawful and after supported decision-making processes have been exhausted. *(s9 of the Act)*

(See Appendix A for relevant sections of the Act referred to in the framework.)

4. KEY DEFINITIONS

The Act	The <i>Guardianship and Administration Amendment Act 2023</i> is the legislation that governs the appointment and function and duties of guardians and administrators, including the Public Trustee and the Office of the Public Guardian, by TASCAT, when it comes into effect in September 2024.
Administration order	The Public Trustee is appointed by TASCAT to administer a person's financial matters if it determines the person has impaired decision-making ability in respect to financial matters. The order must be the least restrictive of the person's freedom and action possible in the circumstances. The order has effect for 3 years or a shorter time as the Tribunal determines unless, after a review, it is continued.
Client Account Manager (CAM)	Public Trustee staff member with responsibility to support the person on an order.
Guardianship order	When a person lacks the ability to make decisions, in some circumstances TASCAT will appoint a guardian to make decisions on their behalf. A guardian has legal authority to make important health and lifestyle decisions on behalf of a person who has a disability and impaired decision-making ability. TASCAT will consider whether it is appropriate to appoint a private guardian, or the Public Guardian. The appointment of the Public Guardian is considered a last resort.
Impaired decision-making ability (or people who need support with decision-making)	People with cognitive disability, particularly those with intellectual disability and acquired brain injury, are likely to need support to make decisions about their lives. People with mental illness and neurodegenerative diseases like dementia may also need decision-making support, although their decision-making ability may fluctuate due to the episodic nature of their illness. Under the Act (see <i>Appendix A Part 2 Decision-making ability</i>), this refers to an adult who, in respect of a specific decision is unable to understand or retain relevant information for a sufficient time to make and consistently communicate the decision or use or

	weigh relevant information or communicate the decision, including with the provision of support.
Limitations of an administration order	In the context of supported decision making, in general within the terms of the order, and to be the least restrictive of the person's freedom and action, the administrator is required to manage the person's financial affairs to ensure that their essential needs- housing, utilities, food and clothing, medicines and phone - are met. Along with any specific conditions stated in the order, these are the only limitations to the person's participation in the SDM process.
Person	For the purpose of this framework, a person on an administration order who requires support for decision-making or substitute decision-making; also called a 'represented person' under the Act.
Responsible Officer	The Senior Manager, Trustee Services is responsible for the implementation of the SDM framework, compliance, reporting, monitoring and evaluation, training and policy reviews.
Rights	The Universal Declaration of Human Rights , developed by the United Nations, sets out 30 Articles for the recognition and respect for every person's inherent dignity and worth and their equal right to freedoms, opportunities, and access in all areas of life. The Convention on the Rights of Persons with Disabilities (CRPD) outlines the human rights, safeguards and protections of the rights for people with disability, including the fundamental right to make decisions about their life and to have those decisions respected.
Safeguarding	Refers to the legislation, administrative, social, educational and other measures to protect people with disabilities for all forms of exploitation, violence and abuse as set out in Article 16 of the CRPD .
Serious harm (See Appendix A Section 9 Decision-making process)	Any harm that has a significant impact on the health, welfare, property or financial situation of the person, including as a consequence of abuse, exploitation, neglect or self-neglect. To assist in assessing 'significant impact', it may be interpreted as having lasting consequences and causing

	<p>irreversible harm to themselves, including incurring civil or criminal liability, and/ or would result in an outcome that is completely inconsistent with the person's will and preferences in the past.</p>
<p>Substitute decision-making</p> <p><i>(See Appendix A Section 9 Decision-making process)</i></p>	<p>A person with authority under the Act can make decisions for or on behalf of a person with impaired decision-making ability.</p> <p>1) A 'will and preferences' substitute decision can be made if:</p> <ul style="list-style-type: none"> - despite support, the person is unable to retain, weigh and communicate information relating to a decision; or - the person is unconscious, or if their condition is so severe that meaningful views cannot be expressed (including through nonverbal means). <p>Where possible, a 'will and preferences' substitute decision should give effect to a person's will and preference. If the person's current views and wishes cannot be obtained, the best interpretation of the person's likely will and preference should be made by reviewing their previous decisions, views or actions and consulting close family members and others who the person would want to be consulted.</p> <p>2) A 'personal and social wellbeing' substitute decision occurs when there is a conflict between a person's right to autonomy and their right to be safe. The substitute decision can be made:</p> <ul style="list-style-type: none"> - to prevent serious harm or the risk of serious harm, to the person or another person as a result of a decision; or - if the decision would be unlawful; or - the decision is not consistent with the order. <p>A 'personal and social wellbeing' substitute decision should made only after other support strategies have been exhausted.</p>
<p>Supported decision-making</p>	<p>Providing the appropriate and effective support a person needs to enable them to participate in and make a decision that affects their life. The process</p>

<p>(See Appendix A Section 8 Principles to be observed)</p>	<p>of supporting a person who needs support to make decisions by:</p> <ul style="list-style-type: none"> - putting the person's rights, will and preferences at the centre of the decision making, - providing the support and safeguarding mechanisms (such as identifying and discussing risks) they need, - recognising and collaborating with support network (family, friends, formal support providers); and - promoting the least restrictive options and enhancing the person's autonomy.
<p>TASCAT</p>	<p>Tasmanian Civil and Administration Tribunal (the Tribunal)</p>
<p>Supporter</p>	<p>People supporting the person making the decision including close family members, (including adults of Aboriginal and Torres Strait Islander descent related by kinship rules), trusted friends and formal support service providers and Public Trustee staff.</p>
<p>Will and preferences</p>	<p><i>Will</i> refers to larger, longer-term life goals, political perspectives, emotional and spiritual development and views, gender, and sexuality identity, for example.</p> <p><i>Preferences</i> refers to what is important to a person in terms of their day to day choices about activities, aesthetics, types of food and clothing, for example.</p>

5. PRINCIPLES

These principles underpin the Public Trustee's policies and procedures in relation to supported decision-making, substitute decision-making and service delivery.

Principle 1: The equal right to make decisions

All adults have an equal right to make decisions that affect their lives and to have those decisions respected. When the Public Trustee has been appointed by the Tasmanian Civil and Administration Tribunal to manage a person's financial affairs, we are required to apply this principle within the parameters of the person's order. This includes supporting the person to participate in all decisions about their financial affairs, developing their financial decision-making abilities, assisting them to get their order varied or revoked by providing supporting evidence, and informing them about their rights and access to advocacy, legal advice, and representation in the TASCAT process.

Principle 2: Support

All people who require support in decision making must be provided with access to the support necessary for them to make, communicate and participate in decisions that affect their lives. This means ensuring the person making a decision has information in a format tailored to their particular needs including using plain English or easy English, interpreters and culturally safe resources, and appropriate technology; assistance to consult about and communicate their decision and sufficient time as required to make the decision. Support may be provided by delaying a decision to a time when the person is better able to participate or inform the decision. Additional supports should be made available to people experiencing disadvantages in accessing supported decision-making, for example people with no support network.

Principle 3: Will, preferences and rights

The will, preferences and rights of people who may require decision making support must direct decisions that affect their lives. In instances, where a person is unable to express their will and preferences even with support, a principled approach should be adopted that keeps the person's stated or perceived 'will and preferences' at the centre of decision-making. In the limited circumstances where it has not been possible to elicit a person's will and preferences, a decision should be made based on the best interpretation of what the person's will and preferences would be, with family members and supporters who the person would want to be consulted.

Principle 4: Safeguards

Laws, legal and policy frameworks must contain appropriate and effective safeguards in relation to interventions for people with disability to make supported decisions. The safeguards are in place to ensure the person's human

rights are upheld, and in circumstances where a substitute decision is made that over-rides a person's rights, will and preferences, that the decision is the least restrictive. Safeguards should be considered in the context of the other Principles, including the person's will and preferences and their right to the dignity of risk. The prevention of abuse and undue influence is a key responsibility of the Public Trustee. The Public Trustee will work with the Office of the Public Guardian and other stakeholders to promote and enhance oversight of supported decision making, and to increase protections from exploitation, abuse and undue influence.

Principle 5: Dignity of risk

The dignity and importance of taking risks is acknowledged and supported. In very limited circumstances, where a person's stated or inferred will and preferences involve risk of serious, imminent physical, psychological or financial harm with lasting consequences to themselves (including incurring civil or criminal liability), and that person is unable to understand that risk even with support, a 'personal and social wellbeing' substitute decision can be made.

Principle 6: Co-design with people with cognitive disability

People with cognitive disability and supporters of people with cognitive disability must co-design supported decision-making materials and processes, where appropriate, to ensure information, training and supports are relevant and accessible.

Principle 7: System-wide adoption of principles and best practice

Supported decision making principles and practice must be adopted across the community, at a societal, systems, organisational and individual level to support the rights of people with disability. The Public Trustee will work with our stakeholders and the community through advocacy and education to ensure people who need support to make decisions have a holistic, consistent and positive experience of supported decision-making across the guardianship and administration system and beyond.

PART 2: GUIDELINES FOR SUPPORTED DECISION-MAKING

6. KEY ELEMENTS OF SUPPORTED DECISION-MAKING

Supported decision-making (SDM) is a fundamental shift in approach to people under guardianship or administration. In the past, the Public Trustee, as administrator, made decisions based on their assessment of the person's 'best interests'. Consistent with the Convention of the Rights of Persons with Disabilities, supported decision-making requires the administrator to respect and promote the rights, will and preferences of the person, and support them to make decisions that affect their life.

As the appointed administrator, the Public Trustee is required to support the person on an administration order to participate in decisions that have financial implications for them, ranging from everyday matters to major life decisions. Participation in decision-making has significant benefits, including a sense of autonomy and control, psychological wellbeing and new skills and confidence to make financial decisions. It is an important way of demonstrating respect for the person which is a key principle of the Act.

The Guidelines detail the principles, practice standards and procedures for Personal Services staff to engage with people on orders who require support to make decisions about their life and to apply safeguards when a substitute decision is necessary. They are based on evidence-based Australian research including: the La Trobe Support for Decision Making Practice Framework², Good Practice in Supported Decision-making for People with Disability³ and Diversity, Dignity, Equity and Best Practice: A Framework for Supported Decision-Making⁴.

Section 6 outlines the key elements of good practice that underpin the SDM process, focusing on getting to know the person (Step 1); building their financial decision-making capabilities and safeguarding. Section 7 sets out the guidelines to conduct an SDM process.

6.1 Supported decision making is a process tailored to the person's needs

SDM must be tailored to the individual person and each decision they are making. The administrator must be responsive to the needs of the person

² Bigby, C., Douglas, J., & Vassallo, S. (2019). [The La Trobe Support for Decision Making Practice Framework. An online learning resource.](#)

³ Laurens J, Bates S, Kayess R, & Fisher KR (2021) Good Practice in Supported Decision-making for People with Disability: Final Report The Social Policy Research Centre, UNSW

⁴ Bigby, C., Carney, T., Then, S-N., Wiesel, I., Sinclair, C., Douglas, J., & Duffy, J., (2023). [Diversity, dignity, equity and best practice: a framework for supported decision-making.](#) Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

making the decision and take the time required to reach a decision. It should be viewed as a dynamic and non-linear process rather than a type of decision or outcome.

For example, with people with mental illness whose views and preferences may change due to the episodic nature of their illness, consideration should be given to postponing a decision while the person is unwell, particularly if it is a significant decision. For people with cognitive disability, acquired brain injury or dementia, who may face challenges related to comprehension and retention, it will be important to provide information in an appropriate format, to carefully document any decisions made in the SDM process, and allow sufficient time to revisit and review to assess for understanding.

Most often, the administrator will not act in isolation when supporting the person to make a decision. The person's support network should be included as appropriate to each decision, with the person's consent (see 6.5. *Engaging with support networks*). This means engaging with their guardian, key family members or friends and service providers depending on the scope and type of the decision being made. This will help to build a full picture of the person's will and preferences, and to identify how to best support the person to make future decisions, for example, the format and content of information, the time required and the appropriate supporters.

6.2 Being an effective supporter

Supported decision-making works well when the person making the decision feels safe, respected, and listened to.⁵ It is important for the Client Account Manager (CAM) to build a trusting relationship and create a safe environment for the person on an order to be able to engage in the SDM process.

Some key characteristics of an effective supporter include:

- being reliable
- believing in the person
- being patient and taking the time the person needs
- giving advice and not telling the person what to do
- being encouraging and positive
- following through and not making promises that can't be kept
- being a good problem solver: think of solutions rather than focus on obstacles
- being self-aware about your own feelings, reactions and motives and not allowing them to influence the decision making process.

⁵ IHC (2019) Research Report: What does helpful supported decision-making look like to people with intellectual disabilities?

Suspend personal judgements

It is essential to suspend personal judgement and avoid conscious and unconscious influence (bias) when supporting a person on an order to participate in financial decision-making. Our values and unconscious biases inform our ideas about what is 'right' and 'wrong.' This can lead to assumptions about a particular situation, the person, their abilities and their decision and can limit the options and opportunities presented to them. In this context, being aware of our ideas, values and beliefs about people with disability and about financial management and security is particularly important. Views about different socio-cultural groups such as older people, young people, Aboriginal and Torres Strait Islander people, LGBTIQ+ people, or those from refugee and migrant backgrounds, can also affect the supporter's impact on the decision-making process and outcome. (See 9. *Creating a supportive organisational culture*).

Understand the concept of dignity of risk and adopt a positive attitude to risk

Supporting a person's will and preferences may mean supporting them to do something that you personally consider to be 'risky' such as a physical or financial risk. Or it may seem dangerous or inappropriate to you because of their disability. The principle of 'the dignity of risk' promotes everyone's right to take risks and to potentially make mistakes in the process of expressing their choices. This means suspending personal judgements about risk and being encouraging and positive unless the decision could result in serious harm. (See 7.2. *Enabling positive risk*).

Understand a rights-based approach and the importance of choice and control

The starting point for the SDM process is respect and promotion of the inherent dignity of the person and their equal and inalienable human rights, including their right to make decisions that affect their life. Believing that the person is able to make decisions about their own life and being positive and encouraging is essential for the SDM process to work. Your understanding of the person's ability to retain, weigh and communicate about particular decisions will increase as you get to know them, and, where possible, the person will build their decision-making abilities. (See 6.7. *Building capability*)

Be conscious of the unequal power dynamics

There are many factors that contribute to the inequality in the relationship you have with the person on an order, apart from your role as their financial administrator. You can address the power imbalance to some extent by not using complicated, technical language or jargon, providing information in an appropriate format and explaining it carefully, making sure the person feels safe and comfortable where you meet, taking the person's lack of experience in decision-making into account and being conscious that they may be

inclined to agree with you (and other supporters present) if they don't understand. Getting to know the person and building a trusting relationship is the most important step in this process.

6.3 Getting to know the person and building a trusting relationship

Getting to know the person and building a relationship with them is the first step in the supported decision-making process. This occurs over time and should be a priority in every interaction the CAM has. A good connection allows you to develop a full understanding of the person and their will and preferences and ensures that you can support them in the least restrictive way. This applies to people who are already on orders as well as those you are meeting for the first time.

As part of the general care and management of a person's financial affairs, the administrator must promote the person's personal and social well-being, keep them informed, help them build their decision-making capabilities, and act as their advocate. To do this the CAM must be proactive in establishing and maintaining regular ongoing contact with the person throughout the period of their order. In addition to regular scheduled meetings, the CAM will meet with the person about specific decisions, as needed.

There are challenges in getting to know and building a positive relationship with a person on an order. Being placed on an order, particularly if it is involuntary, can make the person feel powerless and frustrated. This is compounded by a lack of understanding of the associated processes and procedures, and can manifest in, or exacerbate, emotional responses such as anxiety, stress and anger. Often the person will need regular reassurance or reinforcement of decisions, including from other professionals and supporters in their networks. *(See 6.5 Engaging with support networks).*

These challenges can be mitigated by establishing a relationship based on timely, regular, and meaningful contact and providing supported decision-making about their finances, rather than limiting access. It is also important to respond promptly when the person on an order contacts the CAM. Often a brief conversation to reiterate information or previous decision is enough to reassure the person and alleviate their anxiety. Where possible, quickly fulfilling the person's request reinforces that their CAM is there to support them to implement their decisions.

Steps to getting to know the person

The CAM will need to have a conversation, or communicate with the person if non-verbal, and make observations to understand the person's:

1. Level of comprehension, the nature of their disability or illness, and their communication needs. (See 6.4. *Understanding and responding to the person's communication needs*).
2. Personal characteristics and style, experiences, general will and preferences, (including how they like to spend their time, their interests and hobbies and short and long-term goals) and attitude to risk. (See 7.2. *Enabling positive risk*).
3. Emotional responses to a range of factors including how they respond to stress and anxiety, and to being on an order, for example if they're feeling disempowered, upset and angry, anxious, confused, uncertain, relieved.
4. Social connections and key people in their support network, including their guardian, key family members, friends, support workers and key service providers. (See 6.5. *Engaging with support networks*). If the person doesn't have a support network, the CAM should offer to provide them with information about support services in their area or contact services on their behalf, with the person's consent.
5. Cultural, social and geographical environment and its impact on the ways and types of decisions they make. The CAM should ask questions in a culturally sensitive way to get an understanding of the person's cultural and religious needs and connections. (See 6.6. *Preserving a person's cultural and linguistic environment*).

6.4 Understanding and responding to the person's communication needs

The CAM will need to develop their understanding of the person's communication style and level of comprehension to properly support their decision-making and to ensure that their interpersonal communication and information is provided at an appropriate level and format.

People with cognitive disability and acquired brain injuries may communicate their preferences in different ways including words, signs, gestures, facial expressions, behaviour and actions or lack of actions. The person on an order may use aids, including audio-visual technologies or communication cards. Connecting with the person's support network (See 6.5. *Engaging with support networks*) will help you to understand their preferred way of communicating, including seeking advice from other key professionals who support the person.

Understanding of the person's communication style will develop over time. For instance, until you get to know the person, their first response might be because they didn't understand you, or they might say what they think you want to hear. Some people with cognitive disabilities may not be used to making decisions and not know how to respond.

Tips for improving your communication and enhancing understanding:

- ✓ ask the person about their communication preferences, and then attempt to communicate in their preferred way
- ✓ speak slowly, and generally slow down the pace of the conversation
- ✓ speak in clear, short sentences
- ✓ simplify, reorganise or rephrase information to clarify your meaning
- ✓ break down complex information into small pieces
- ✓ revisit or repeat key information
- ✓ ask one question at a time
- ✓ avoid slang, jargon and technical terms
- ✓ use the person's own words if useful
- ✓ avoid abstract concepts (like time or money), or explain them clearly when you need to use them
- ✓ go through written material together
- ✓ write down key points if the client says this will be useful
- ✓ use photos, charts or diagrams if they are available
- ✓ offer to take a break
- ✓ move to an area with less noise or distractions
- ✓ test understanding by asking questions, asking the person to repeat things in their own words, or other tactics described above; never simply ask 'do you understand?' – people might automatically say 'yes' to this question

- ✓ don't ever pretend to understand if you don't; if you can't understand what the person tells you, ask them to repeat or say it in a different way, then (if appropriate) ask for someone to interpret.⁶

Providing information suited to the person's needs

To support the person on an order to make a range of finance-related decisions and build their capability to manage their financial affairs, the CAM will need to communicate relatively complex concepts in an accessible way.

The CAM must always provide information in a simple and easily understood format, talk it through with the person and regularly check that they understand (See 6.4 *Tips for improving your communication and enhancing understanding*). The *Guide to Financial Administration* booklet and videos cover a range of topics, including:

- administration orders and the Guardianship and Administration system
- the role and function of the Public Trustee
- the role of their CAM
- information about advocacy and legal services and the complaint process
- the personal information required for the first meeting.

The person on an order should also have financial information in an accessible format:

- annual financial statements
- the costs of being on an order (fees and charges)
- budget planning documents.

⁶ Adapted from Maker Y, Callahan A, McSherry B, Paterson JM, Brophy & Arstein-Kerslake A (2019) *Improving Access and Support for Consumers with Cognitive Disabilities: A Guide for Retailers*, Melbourne Social Equity Institute, University of Melbourne

6.5 Engaging with support networks

The social network around a person supports their lifestyle in formal and informal ways on a daily basis. Engaging with the guardian, family members, friends, support workers and independent advocates who interact with the person on an order regularly helps you to get to know them and to provide more informed support for their decision making. Recognition of the role of the person's key supports and regular consultation with their guardian are also legislated duties of the administrator.

Importantly, you become a member of the person's support team and are able to understand the full context of the person's life rather than administering their financial affairs in isolation. When you are not seen as part of the support team, other people in the person's life may expect the administrator to restrict or deny a person money as a way of over-riding their decisions and choices. This collaborative model means that you work with other key people to support the person to express their rights, will and preferences. It is a key part of the SDM process.

NOTE: Wherever possible, the CAM must seek the verbal consent of the person on an administration order to contact their supporters. You should check in with the person regularly to ensure they understand their consent is ongoing. You should inform them that you are not sharing details of their financial situation other than the availability of funds for specific decisions.

If it is not possible to get the person's consent because they are unable to communicate even non-verbally or they refuse to communicate, the CAM should engage with their key supporters to ascertain the best interpretation of the person's will and preferences. Wherever possible the CAM should adopt strategies to build trust and establish a relationship with the person over time.

Working collaboratively with a person's support network enables you to:

- get to know the client's personal, cultural, and social environment. The people in a person's network will know them in a different way and engaging with them will help you get a full understanding of the person's will and preferences.
- build understanding about the role of the administrator, the guardianship and administration system and the supported decision-making process
- identify options and associated decisions to support the person's decision-making

- leverage funding opportunities to support the person's decisions in a timely and streamlined way
- make a best interpretation of a person's will and preference, if the person is unable to express these themselves
- support safeguarding by identifying and responding to risks of exploitation, abuse or undue influence
- connect with the person's key supporters, if you have difficulty establishing contact with the client. This helps you to develop an understanding of their needs and explore ways to build a relationship with the person over time
- be a more effective advocate and identify gaps and system failures.

Steps to coordinate engagement with the person's support network:

1. Get the person's verbal consent to communicate with their key supporters.
2. If the person is on a guardianship order, contact the person's guardian (they will be a key contact).
3. Meet with the key supporters - family members, friends, support workers and service providers.
4. Provide information about your role and responsibilities, the role of the Public Trustee and guardianship and administration system process to the person and their support network. [*The Guide to Financial Administration booklet and video*].
5. Join the person's support network by liaising with the person's NDIS team leader or plan co-ordinator.
6. Participate in the person's support team case management meetings as required (for example if a decision with financial implications is being discussed).

6.6 Preserving a person's cultural and linguistic environment

Our cultural environment informs all aspects of our identity, including our attitudes about financial matters and how we spend our money. To get a full picture of a person and their will and preferences, it is important to understand their cultural environment, which includes language barriers, cultural practices and beliefs and the impact of discrimination and intergenerational trauma. This is the foundation for a culturally safe relationship needed for supported decision-making.

Aboriginal and Torres Strait Islander people

To support an Aboriginal and Torres Strait Islander person on an order to express their rights, will, preferences, it is important to acknowledge the significant institutional, cultural and systemic barriers they face. For some people, this results in mistrust and suspicion of institutions, including the guardianship and administration system, which can affect their willingness to share information and engage with you. Aboriginal and Torres Strait Islander people can feel disempowered and reluctant to express their views and preferences as a result of structural discrimination and institutional racism. It is recommended that all Public Trustee staff read the Victorian Office of the Public Advocate practice guide for working with First Nations people.⁷

A key cultural consideration for Aboriginal or Torres Strait Islander people is the importance of community and family and kinship responsibilities, which informs their financial decisions. Tasmanian Aboriginal people often have a large, extended family and a person may make urgent requests for additional money for groceries if they have family visiting or are caring for someone who is part of their extended family. Other funding requests might relate to connecting with family, for example for air fares to Truwana/Cape Barren Island or Flinders Island. For Aboriginal people separated from their children who are in kinship care with family members on the islands, this can be priority financial need. Or a person might need extra funds to purchase equipment or clothing to enable them to participate in a program to build their connection with their cultural heritage, language and country. These are important activities to promote their personal and social wellbeing.

Because of the collaborative and communal approach to decision-making of Aboriginal and Torres Strait Islander communities, the person's family and community are very important in the SDM process. Aboriginal organisations such as the Tasmanian Aboriginal Centre (TAC) deliver a range of services to support the health and social and emotional wellbeing of their community members. It is important that you are familiar with the types of services provided and key staff members to build your cultural understanding and assist you to support Aboriginal people with decision making.

People from refugee and migrant backgrounds

People from different cultural backgrounds may have cultural practices, beliefs and views about disability and mental illness. This influences the person's response and the responses of their family members and supporters to the

⁷ Victorian Office of the Public Advocate (2019) [Walk with Me, Talk with Me: A practice guide for OPA staff](#)

guardianship and administration system and to the supported decision-making process.

The person's history is another important consideration. If the person is a refugee, they are likely to have experienced trauma, conflict and separation and loss of family. They may have experienced or witnessed torture and traumatic situations, and they have lost their homeland. You should be responsive to the effect of these experiences and take into account how trauma experience and response may be reflected in the person's decisions, and their relationships with their family and support network. This will also influence how they respond to being on an administration order, their attitude to financial matters, safety and security and risk. Similarly, migrants face significant challenges living in a different culture and being separated from family and friends.

Many people from refugee and migrant background do not speak English as their first language. Often when this is the case, family members, friends or members of their community will translate for them. It is generally considered to be best practice to use a professional interpreter to ensure communication with the person is accurate, impartial and confidential.

You may need to use a professional interpreter to support the person who is making the decision to express their will and preferences. You should ascertain if the person requires an interpreter at your initial contact and arrange for a professional interpreter to attend your first meeting. You may also be able to use visual cues and communication cards to ascertain the person's views.

The Tasmanian Department of Health website [Culture, language and health supports and services](#), has useful information for working with people from refugee and migrant backgrounds, including working with interpreters, online training and support services.

6.7 Building capability

A key part of the role of the administrator is to encourage and support the person on an order to develop their decision-making ability, with the goal of managing their financial affairs independently where possible. In addition to supporting the person to participate in decisions about their financial affairs, this involves developing their budgeting and planning abilities, assisting them get their order varied or revoked, and informing them about their rights and supporting them to access legal advice and representation in the Tribunal process.

It will not be possible for everyone to have their order revoked, despite support to develop their decision-making abilities. For example, the continuing serious risk of exploitation or lack of independent decision-making ability may be

barriers to full financial autonomy. However, participating in supported decision-making will help to build the person's skills and confidence in decision-making as they consider the outcomes, different options, and consequences for their choices.

The six monthly (or more often) budget review meetings with every person on an order should focus on developing the person's understanding of their financial affairs and the budget planning process. The CAM should use the Financial Independence Pathway (FIP) to guide their budget review and planning meetings with the person on an order, if appropriate. The FIP provides a structured 12 month pathway to support the person to have their order reviewed and revoked.

Steps to building the person's financial capacity

When meeting with the person on an order, the CAM should:

1. Assume that the person has the ability to develop (or regain) the required skills to manage their financial affairs, as part of an ongoing assessment of their ability of retain, weigh and communicate decisions.
2. Review their financial situation and adjust their budget plan, six-monthly and in response to a change of circumstances as required.
3. Review and adjust their budget with the person if they experience a significant change or life event that impacts on their financial situation, such as getting or changing a job, receiving an inheritance or compensation payment, hospitalisation, transition to aged care or new accommodation or the death of a family member
4. Support the person to have their order reviewed to vary or revoke it by:
 - supporting the development of the person's financial skills
 - identifying opportunities to demonstrate their financial ability
 - regularly assessing the person's abilities to make financial decisions and
 - a) referring them to the Financial Independence Pathway, if appropriate
 - or
 - b) arranging a review of their order if they are making decisions independently
 - documenting supporting evidence, and
 - referral to Tasmania Legal Aid or private lawyer for advice and representation at their review hearing
 - Refer the person to financial support services such as Anglicare's financial counselling service for ongoing support after their administration order is revoked.

6.8 Safeguarding

People with cognitive disabilities can be at increased risk of exploitation, manipulation, undue influence and abuse by others including people who are close to them. This includes actions that will relate directly and indirectly to the person's financial affairs. Safeguarding against these risks is an important principle underpinning the SDM process and should be a key consideration when engaging with a person on an order.

Challenging safeguarding situations that might arise in relation to financial decisions include but are not limited to:

- the person's living arrangements where they are sharing with a friend or family member and paying their share of the rent and groceries
- the person wants to respond to requests from friends or family members to buy gifts or pay for activities
- a family member strongly opposes the person's choice to make a significant purchase, such as a house or go on a holiday, when the person can afford it, and
- a family member or service provider asks the CAM to restrict or deny the person funds to enable them to act on their decision about a specific action or purchase.

When considering if a person has a safeguarding risk, you should:

- respect the person's right to dignity of risk while upholding obligations to safety.
- recognise the importance of supporting the person to have a voice and to be heard. In doing so, create an environment where the person feels comfortable and have the means to communicate their personal safety concerns.
- recognise the rights of person in identifying the risks and determining the risk and types of safeguards in their own lives.
- acknowledge the person's right to make their own decisions. If needed, support the person to make informed decisions about their safety, with or without their support networks.
- value and respect the relationship of the person and their support network, acknowledging these informal supports are not always available to or chosen by everyone.
- acknowledge risk and safety is unique to each person, their circumstances and environment. Identifying risks includes consideration of their personal context including their identity, life stage and developmental milestones, and life transitions.

- understand and consider the importance of relationships and social connections when working with the person to identify risks and develop safeguards.
- be sensitive to, and respectful of, the demographic factors that may influence the person's experience of safety and choices about safeguarding including trauma and the intersection of gender, First Nations identity, cultural and linguistic background, and LGBTIQ+ identity
- acknowledge that safety is a shared responsibility, and everyone has a role to play in ensuring the safety of the person, although not everyone in the person's network will agree about the risks of a decision. (Adapted from [NDIS Participant Safeguarding Policy April 2023](#))

Responding to a safeguarding concern

If there is a potential safeguarding concern, the CAM should:

1. Discuss the situation with your Team Leader, who will escalate the matter to the Manager or the Senior Manager, if necessary.
2. Create opportunities in the SDM process for the person to raise any concerns they may have
3. Ensure all relevant documentation, including file notes (titled Client Safeguarding), SDM Forms record details of potential risks of undue influence or exploitation
4. The Senior Manager will investigate the concerns and advise the CEO and Office of the Public Guardian if the person is experiencing abuse or serious harm from exploitation or undue influence.

7. THE SUPPORTED DECISION-MAKING PROCESS

This section sets out the steps to guide the supported decision-making process. A person on an order will not need extensive support for every decision they want or need to make regarding their finances. There will also be circumstances where a person will not be able to make a specific decision, even with support, and a 'will and preferences' substitute decision will be required. In some situations, a 'personal and social well-being' substitute decision will be made after the supported decision-making process has been exhausted. This is explained in *Section 8 Substitute decision-making*. The different types of decisions and key considerations in supported decision-making are set out below.

7.1 Limitations on supported decision-making under an administration order

The Public Trustee, as administrator, is responsible for the general care and management of the person's financial matters, subject to their administration order. Under the Act, this includes supporting the person to participate in financial decisions and ensuring their will and preferences are given effect. Public Trustee staff, acting as administrator, must apply the principles outlined in this framework when engaging with a person on an order. (See 5. *Principles*).

In general, within the terms of the order, and to place the least restrictive limitations on the person's human rights, the administrator must manage the person's financial affairs to ensure that their essential needs - accommodation, utilities, food and clothing, medicines and phones - can be met. Along with any specific conditions stated in the order, essential needs must be taken into account when preparing the person's budget.

The nature and type of essential needs are decided by each person's will and preferences and may vary on a fortnightly basis or more often. For example, the person may express a preference to live in a particular location or type of accommodation or to have a transient lifestyle. They may choose to spend more on groceries one fortnight and to buy clothes infrequently.

The SDM process assists the person to think about their wishes about a particular matter, consider the options, opportunities or constraints (including risks) and reach a decision that reflects their will and preferences. The person's will and preference about different issues might change regularly or over a period time. There will be circumstances where the person's will and preferences pose a risk of serious harm when a substitute decision will have to be made. (See 8. *Substitute decision-making*)

7.2 Enabling positive risk

'Dignity of risk' is defined as 'the principle of allowing a person the dignity afforded by risk-taking, with subsequent enhancement of personal growth and quality of life'.⁸ It is a key principle under the Convention of the Rights of Persons with Disabilities, and it underpins supported decision-making.

In the context of a person on an administration order, risks relate to the impact on the person's health, welfare, property and financial situation, including as a consequence of abuse, exploitation, neglect or self-neglect. In most cases, the benefits of supporting the person to take reasonable risks, including building their sense of identity and autonomy, outweighs the potential negative outcomes. Most commonly, the risks involved in the exercise of a person's will and preferences will not fall into the category of serious harm. (See 4. Key definitions).

There are situations where the interpretation of serious harm is not clear cut. For example, balancing a person's rights to make decisions about their life and their psychological health with the associated risks, where a person has an addiction related to nicotine, alcohol or gambling, or gives money to others.

Steps for enabling positive risk

1. Adopt a positive attitude to enabling risk - be aware of your own ideas, values and beliefs about risk and make a conscious effort not to allow these to influence the process.
2. Prioritise the rights, dignity, personal and social well-being and quality of life of the person making the decision.
3. Support the person's right to take risks as an expression of their will and preferences. You will need to understand the person's attitude to risk.
4. Remember that over-riding a person's will and preferences must only occur after the SDM process has been attempted and exhausted and there is serious risk.
5. Identify all the risks associated with the decision. It may be helpful to involve the person's key supporters (with the person's consent).
6. Assess the risks using the following questions:
 - a. Is this decision about a significant or complex matter eg Category B or Category C? (See 7.3 Types of decisions)
 - b. Would a person who doesn't have a disability or perceived impaired decision-making ability have the right to take this risk?

⁸ Ibrahim & Davis (2013) cited in Marsh P & Kelly I (2018) Dignity of risk in the community: a review of and reflections on the literature. *Health, Risk & Society* Vol 20(5-6) 297-311, p298

- c. Is this decision consistent with what you and the person's key supporters know about them and their will and preferences?
 - d. Are there options that minimise the risks and still reflect the person's will and preference?
 - e. Will the risk(s) have irreversible significant impacts on this person's health, welfare, property and financial situation? *[Significant impact is the definition of 'serious harm' under the Act. See 4. Key definitions, 8. Substitute decision-making and Appendix A s9]*
 - f. Are your own risk values and beliefs influencing your assessment of the risks in this decision?
 - g. How are the risk values and beliefs of other supporters or other considerations influencing your view on the decision?
7. Notify the Team Leader If you think the level of risks associated with the decision to be high and constitute serious harm or result in unlawful conduct. *(See 5. Key definitions and Appendix A s9).*

If the risk associated with a decision is also assessed by the Team Leader and Manager as constituting serious harm or resulting in unlawful conduct, a substitute decision may be required, and the Senior Manager should be notified. *(See 8. Substitute decision-making).*

7.3 Types of decisions

The CAM is required to support a person's decisions in relation to their financial affairs across a range of different issues and situations. In most circumstances, supporting a person's wishes and acting on their will and preferences will be straightforward. Whether the decision is a simple everyday decision or a more complex life decision, the CAM will engage the person in a supported decision-making process, as far as possible, to achieve the outcome that reflects their will and preferences. As described in section 6.5, engaging the person's support network can help to support the person to realise their decision.

This involves helping the person to be clear about what their decision is, identifying risks and barriers, and working through any implications and associated decisions that may arise. If there are risks, the CAM can present other options to achieve the person's desired outcome that minimise or avoid the potential risks. For example, where the barrier is lack of sufficient funds, the CAM can work with the person to develop a payment plan. If the decision relates to a major life decision and/or has a significant impact on their financial, personal or social wellbeing, the CAM will work through a guided SDM process with the person, and involve others in the person's support network, with the person's agreement.

It may be necessary to remind supporters involved in the SDM process that the role of the administrator is to use their powers to support the person's will and preferences and reach a decision that is the least restrictive of the person's rights.

The CAM works closely with their Team Leader and Manager for advice and review in the SDM process. If a satisfactory outcome cannot be reached or if the decision is complex and/or relates to a major life event, it will be escalated to the Senior Manager for resolution.

The Senior Manager will review the decision-making process and make a decision to initiate another SDM process with the person, relevant Personal Services staff and key supporters to reach a decision that is the least restrictive of the person's rights or if a decision cannot be reached and the person's will and preference constitute a serious harm, the Senior Manager will initiate a substitute decision-making process. *(See 8. Substitute decision-making)*

7.4 The 7 steps of Supported Decision-Making

The Public Trustee has adapted the La Trobe Support for Decision Making Practice Framework's 7 step guide to supported decision-making. These steps guide the SDM process for all types of decisions. For more information see the [La Trobe Support for Decision Making Practice Framework Learning Resource](#).

7 Steps of Supported Decision Making	Questions to be considered
Step 1: Getting to know the person	<ul style="list-style-type: none"> - What do you know about the person's disability or illness and how it affects their level of functioning? For example, if the person has a mental illness or dementia are they experiencing a period of being unwell. - Do they have the information they need to make the decision in a format that they can understand? - Have you taken their cultural and linguistic environment into account? - Do any of their key family and supporters need to be involved?
Step 2: Identify and describe the decision	<p>This helps to clarify the decision and focus on the core issues:</p> <ul style="list-style-type: none"> - What is the scope of the decision? - What impact will it have on the person's life? - Who is involved? - What is the timeframe? Is it dependent on external factors or deadlines? Is it a major decision requiring more time? - What are the factors that influence or constrain the decision - financial, support availability etc? - Does the person making the decision understand the financial implications?
Step 3: Understanding the person's will and preferences for the decision	<ul style="list-style-type: none"> - Why is this decision important for the person? - What are the options to be considered around this decision? - How does this decision fit with what you know about the person and their will and preferences? - How will it affect their life in the short and long term?

	<ul style="list-style-type: none"> - Can the person's support network help you to get a better understanding of this? - Does the person's will and preference about the decision change over time? Is this related to their disability eg do they forget their previous view or wishes? - Would it help to postpone the decision if the person is traumatised, temporarily unwell, upset or experiences an episodic illness?
Step 4: Refining the decision and taking account of constraints	<ul style="list-style-type: none"> - What are the financial constraints? - Are there other constraints such as time, impact on others, supporter attitudes, geographical or policy constraints? - Are there other options available within existing constraints, eg more affordable alternatives if cost is a constraint? - Do the risks associated with the decision constitute 'serious harm'? - Are there options that minimise risks and are the least restrictive on the person's rights, will and preferences?
Step 5: Consider if a formal process is needed	<ul style="list-style-type: none"> - Do you need to discuss this with the Team Leader? - Are there serious risks or safeguarding concerns? - if you can't reach an outcome that the person is happy with? - Is this a major decision? <p>[Note: CAMs are encouraged to seek advice from their Team Leader about any decision if they need to.]</p>
Step 6: Reaching the decision and associated decisions	<ul style="list-style-type: none"> - Is the outcome an expression of the person's will and preferences? - What are the financial implications for the decision? - What are the financial implications for the associated decisions? - Will this require a budget review and saving plan?
Step 7: Implementing the decision and seeking	<ul style="list-style-type: none"> - Meet with the person to develop a new budget, if required - Arrange financial transactions, in a timely and responsive way.

advocates if necessary	<ul style="list-style-type: none"> - Ensure the person's key supporters are aware of the decision so they can support the person to enact it.
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7.5 Documenting SDM processes

The Public Trustee is required to maintain accurate and detailed records of the general care and management it provides for a person under an administration order. This includes documentation of the person's financial affairs, reporting on any interventions and actions taken by the Public Trustee, and reports on decisions made and the process and rationale to support them.

7.6 Reflecting on the process

Every supported decision making process is different because it is tailored to the needs of the individual person and decision. It is important to reflect on the process to learn from the experience and improve practice.

Consider the following questions when reflecting on a supported decision:

- Have my personal values influenced or created an obstacle for the person's decision?
- Have I presented the information or option in a biased way?
- Are my opinions influencing or changing the decision the person wants?
- Am I being judgemental?
- Have I put aside my own preferences?
- At all times, have I focused on the will and preferences of the person I am supporting?
- Have I enabled the person to take reasonable risks, or have I taken a protective stance?

8. Substitute decision-making

'Will and preferences' substitute decision

Substitute decision-making may also be necessary in circumstances when there is a significant decision to be made that requires legal authority and the person is:

- unable to retain, weigh and communicate a decision due to their disability or decision-making impairment, even with support, or
- unconscious, or their condition is so severe that they are unable to express meaningful views, including through non-verbal means).

Where possible, a 'will and preferences' substitute decisions should give effect to a person's will and preferences. If the person's current views and wishes cannot be obtained, the best interpretation of the person's likely will and preferences should be made by reviewing their previous decisions, views or actions and consulting close family members and others who the person would want to be consulted.

Specific circumstances where an administrator might be required to over-ride a person's will and preferences include:

- If the person's advanced care directive states that they want to be cared for at home, but they don't have sufficient funds to afford it.
- if, over an extended period of time, the person continually changes their mind and/or forgets their previous decision to sell their home to finance a move to another location or residential facility
- if they have assessed a person's decision is the result of exploitation, abuse or negative influences (*See 6.8 Safeguarding*).

'Personal and social wellbeing' substitute decision

A 'personal and social wellbeing' substitute decision occurs when there is a conflict between a person's right to autonomy and their right to be safe. A person's views, will and preferences about a decision should be only over-riden after SDM strategies have been exhausted. A 'personal and social wellbeing' substitute decision must only be taken by the Senior Manager if:

- the decision places the person at risk of serious harm or at risk of unlawful conduct and the person cannot understand the potential serious risk or safeguarding concern and will not change their decision or
- the person or another person is at risk of imminent and serious harm as a result of the decision. 'Serious harm' to a person is defined in the *Guardianship and Administration Amendment Act 2023 (s9)* as 'any harm that has a significant impact on the health, welfare, property or financial

situation of the person, including as a consequence of abuse, exploitation, neglect or self-neglect.'

To assist in assessing 'significant impact', it may be interpreted as having lasting consequences and causing irreversible harm to the person, including incurring civil or criminal liability. Another measure of 'significant impact' is that it will result in an outcome that is completely inconsistent with the person's will and preferences in the past. (See 7.2 *Enabling positive risk*).

Making a substitute decision

A 'personal and social wellbeing' substitute decision should only be taken by the Senior Manager.

A substitute decision must only occur if:

- it is necessary to prevent serious harm, or the risk of serious harm, to the person or another person;
- the implementation of the decision would be unlawful ('a personal and social wellbeing' decision); or
- despite the person being provided with support, they are unable to retain, weigh and communicate a decision due to their disability or decision-making impairment (a 'will and preferences' decision); or
- the person is unconscious, or their condition is so severe that they are unable to express meaningful views, including through non-verbal means (a 'will and preferences' decision); and
- the implementation of the decision would be inconsistent with the terms of any determinations made by the Tribunal under this Act. (See *Appendix A s9 Decision making process*)

The Senior Manager must consider:

- the person's views, will and preferences and give effect to them, as far as practicable
- what they reasonably believe the person's views, will and preferences to be based on all the available information, if the person cannot express them, including information from the person's close family members, carers and other significant people who they believe the person would want to be consulted
- the person's personal and social well-being and act in manner that promotes this
- acting in way that is the least restrictive of the person's human rights
- whether the person has made an advanced care directive in respect of the decision

- whether the person is likely to regain decision making ability, and if so whether the decision can be postponed.

The Senior Manager must provide the person with information as to why they have over-ridden the person's views, wishes and preferences in a way that is appropriate to the person's circumstances.

9. Creating a supportive organisational culture

Skills, time and appropriate resourcing are essential elements for effective supported decision-making. This requires organisational support and significant investment. The Public Trustee will support our staff to implement SDM in a consistent, continuous and effective way by ensuring they have manageable caseloads, resourcing and ongoing professional development to enable the important work they do.

Our senior leaders will be supported to develop management and supervision practices to assist staff. This includes individual supervision, regular team case reflection sessions and formal debriefing opportunities. Staff are always encouraged to raise questions and discuss concerns with their Team Leader. External counselling support is available to all staff through the Employee Assistance (EAP) Program.

As outlined in this framework, the skills required for SDM in this setting are diverse. Ongoing professional training and development will be embedded for all staff from the induction process, with regular refreshers part of the staff training schedule. The training should be delivered by professionals with expertise in the identified areas. It is recommended that people with disability are involved in the design and delivery of the training, where possible. Training should include:

- disability awareness
- human rights
- trauma informed practice
- SDM practice
- family violence awareness
- elder abuse
- cultural awareness.

10. Resources

Online training

- [La Trobe Support for Decision Making Practice Framework Learning Resource](#)
- [Enabling risk: Putting positives first. An online learning resource for disability support](#)
- Bigby, C., Douglas, J., & Vassallo, S. (2018).
- [Flinders University - Deciding with Support](#)
- [NDIS Quality and Safeguards Commission eLearning Worker Orientation Module](#)

Further reading

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ENNHRI (2020) Implementing supported decision-making: Developments across Europe and the role of National Human Rights Institutions, European Network of National Human Rights Institutions

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Laurens J, Bates S, Kayess R, & Fisher KR (2021) Good Practice in Supported Decision-making for People with Disability: Final Report The Social Policy Research Centre, UNSW

National Disability Services (2019) People with Disability and Supported Decision-Making: A Guide for NDIS providers in NSW

NDIS (2023) Supported Decision Making Policy, April

Office of the Public Advocate (2020) Supported Decision-Making in Victoria

People with Disability Australia (2023) [A Voice of Our Own: A Human Rights Act](#) for All Submission to the Parliamentary Joint Committee on Human Rights' Inquiry into Australia's Human Rights Framework

United Nations (2006) [Convention on the Rights of Persons with Disabilities](#)

Victorian Office of the Public Advocate (2019) [Walk with Me, Talk with Me: A practice guide for OPA staff](#)

APPENDIX A

Guardianship and Administration Amendment Act 2023: Sections referred to in the Framework

s3. Interpretation close family member

in relation to a person, means any of the following persons who is in a close and continuing relationship with that person:

- a) a spouse of the person;
- b) a parent of the person;
- c) a person who has one or both parents in common with the person;
- d) a child of the person;
- e) a child of, or a parent of, the spouse of the person;
- f) a grandparent of the person;
- g) an aunt or uncle of the person;
- h) an adult of Aboriginal or Torres Strait Islander descent who is related to the person according to Aboriginal kinship rules or Torres Strait Islander kinship rules (as the case requires);
- i) any other carer or close friend who provides ongoing personal support to the person, whether or not the other person is biologically related to the person;

close friend, in relation to a person, means another person who has a close personal relationship with the person and a personal interest in the person's welfare;

s5. Meaning of promoting a person's personal and social well-being

For the purposes of this Act, and without limiting the ways in which this may occur, the personal and social well-being of a person is promoted by –

- a) respecting the inherent dignity of the person and the person's individual autonomy, including the freedom to make their own choices and their right to independence; and
- b) respecting and promoting the person's own decision-making ability; and
- c) ensuring that the person is free from neglect, abuse, exploitation and other forms of harm; and
- d) the importance of preserving the dignity of risk of a person with impaired decision-making ability in respect of decisions is to be recognised and to inform those decisions;
- e) respecting the right of the person to be treated without discrimination; and
- f) respecting the person's individuality, including personal or lifestyle activities that provide pleasure, purpose and fulfilment to the person; and
- g) having regard to the person's existing supportive relationships, religion, values, gender identity, gender expression, sexual orientation and cultural and linguistic environment; and
- h) respecting the right of Aboriginal and Torres Strait Islander people to enjoy their culture, including with other people who share that culture; and
- i) respecting the person's right to privacy and to have contact with and correspond privately with others; and
- j) recognising the importance of, and facilitating access to, the provision of supports that enable the person to exercise the person's autonomy; and
- k) recognising the importance to the person of any companion animal that the person has and having regard to the benefits that may be obtained from the person having a companion animal.

s8. Principles to be observed

- 1)
 - a) a person's decision-making ability is to be respected and promoted;
 - b) a person who requires support in decision-making is to be provided with access to the support necessary to enable the person, as far as is practicable in the circumstances –
 - i) to make and participate in decisions affecting the person; and
 - ii) to express the person's will and preferences; and
 - iii) to develop the person's decision-making ability;
 - c) the views, wishes and preferences of a person with impaired decision-making ability in respect of decisions are to be respected and used to inform those decisions;
 - d) the role of close family members, carers and other significant persons in the life of a person with impaired decision-making ability in respect of decisions is to be recognised;
 - e) the importance of preserving the cultural and linguistic environment of the person is to be recognised;
 - f) the personal and social well-being of a person with impaired decision-making ability in respect of decisions is to be promoted;
 - g) the means which is the least restrictive of a person's freedom of decision and action as possible in the circumstances is to be adopted.
- 2) (b)(c) refer to children
- 3) Person's providing assistance on an informal basis to a person with impaired decision-making ability in respect of a decision are encouraged to apply and promote the principles in this section in providing that assistance

s9. Decision making process

- 1) **serious harm**, to a person, means any harm that has a significant impact on the health, welfare, property or financial situation of the person, including as a consequence of abuse, exploitation, neglect or self-neglect;

substitute decision-maker means a person with authority under this Act to make decisions for or on behalf of a person with impaired decision-making ability.

- 2) A substitute decision-maker is to have regard to the following in determining whether to make a decision for or on behalf of a person with impaired decision-making ability in respect of that decision:
 - a) whether the person has made an advance care directive in respect of that decision;
 - b) whether the person is likely to regain decision-making ability in respect of that decision and, if so, whether the decision can be postponed without the delay causing harm.
- 3) If a substitute decision-maker is satisfied that there is a need to make a decision for or on behalf of another person, the substitute decision-maker –
 - a) is to give effect, as far as practicable, to the views, wishes and preferences of the person with impaired decision-making ability, if known (including those expressed in an advance care directive); and
 - b) if the substitute decision-maker is not able to determine the views, wishes and preferences of the person with impaired decision making ability, is to –
 - i) (give effect as far as practicable to what the substitute decision-maker reasonably believes those views, wishes and preferences are, based on all the information available; and
 - ii) act in a manner that promotes the personal and social well-being of the person with impaired decision-making ability and is the least restrictive of the person's human rights.
- 4) For the purposes of subsection (3)(b)(i), information available includes information obtained by consulting with close family members, carers and other significant people in the life of the person with impaired decision-making ability whom the substitute decision-

maker reasonably believes the person with impaired decision-making ability would want to be consulted.

- 5) The views, wishes and preferences of the person with impaired decision-making ability should only be overridden by a substitute-decision maker for that person to the extent that -
 - a) it is necessary to prevent serious harm, or the risk of serious harm, to the person or another person; or
 - b) the implementation of the decision would be unlawful; or
 - c) the implementation of the decision would be inconsistent with the terms of any determinations made by the Tribunal under this Act.
- 6) If a substitute decision-maker overrides the views, wishes and preferences of a person with impaired decision-making ability, the substitute decision-maker is to, as far as is reasonably practicable, provide the person with information as to why they have overridden the person's views, wishes and preferences in a way that is appropriate to the person's circumstances.

s11. Decision-making ability

- 1) For the purposes of this Act, an adult is taken to have decision-making ability in respect of a decision unless a person or body responsible for assessing that decision-making ability under this Act is satisfied that the adult has impaired decision-making ability in respect of that decision.
- 2) For the purposes of this Act, an adult has impaired decision-making ability in respect of a decision if the adult is unable, even with the provision of access to practicable and appropriate support, to -
 - a) understand information relevant to the decision; or
 - b) retain information relevant to the decision for a sufficient time to make and consistently communicate the decision; or
 - c) use or weigh information relevant to the decision; or
 - d) communicate the decision (whether by speech, gesture or other means).
- 5) For the purposes of this Act –
 - a) a person may be taken to understand information relevant to a decision if it reasonably appears, to the person assessing that person's decision-making ability, that the person is able to understand an explanation, of the nature and consequences of the decision, given in a way that is appropriate to the person's circumstances (whether by words, signs or other means); and
 - b) a person may fluctuate between having impaired decision-making ability and decision-making ability in respect of a decision.

s12. Limits on finding of impaired decision-making ability

- 1) For the purposes of this Act, a person's decision-making ability in respect of a decision is not to be assessed as impaired merely because –
 - a) the person is not able to understand matters of a technical or trivial nature; or
 - b) the person does not have a particular level of literacy or education; or
 - c) the person can only retain information relevant to the decision for a limited time; or
 - d) the person has decision-making ability to make some decisions and not others; or
 - e) a decision made by the person results, or may result, in an adverse outcome for the person; or
 - f) a decision made by the person is unwise in the opinion of other persons; or
 - g) the person makes a decision because –
 - i) of current or past cultural or religious practices or beliefs; or
 - ii) of a failure or refusal to adhere to particular cultural or religious practices or beliefs; or
 - h) subject to section 11(3), of the age of the person; or
 - i) of the person's appearance; or

- j) the person is perceived to be eccentric; or
 - k) the person has engaged in illegal or immoral conduct; or
 - l) of the person's current or past expression of, or failure or refusal to express, a particular gender identity, gender expression or sexual orientation; or
 - m) the person has a disability, illness or other medical condition (whether physical or mental).
- 2) A person is not to be assessed under this Act as having impaired decision-making ability in respect of a decision unless reasonable steps have been taken to provide that person with access to the practicable and appropriate support needed to make and communicate the decision.

s51. Administration orders

- 1) The Tribunal, after a hearing, may make an order appointing an administrator for a person in respect of the person's financial matters if –
- a) an application for an order appointing an administrator, or for an order appointing a guardian, has been made to the Tribunal in respect of the person; and
 - b) the Tribunal is satisfied that the person –
 - i) is a person with impaired decision-making ability in respect of decisions relating to those financial matters; and
 - ii) is in need of an administrator; and
 - c) the Tribunal is satisfied that the order will promote the person's personal and social well-being. (2) For the purposes of subsection (1)(b)(ii), in determining whether a person is in need of an administrator, the Tribunal must consider the following:
 - (a) the wishes and preferences of the person as far as they can be ascertained;
 - (b) whether the needs of the person could be met by other means that are less restrictive of that person's freedom of decision and action;
 - (c) the wishes and preferences of any close family members, carers and other significant persons in the life of the person who are present at the hearing and are entitled to be heard at that hearing.

s56. Powers and duties of administrator

- 1) Subject to and in accordance with this Act and the relevant administration order, a person appointed as an administrator –
- a) has general care and management in respect of financial matters for the represented person; and
 - b) has the duty to take possession and care of, recover, collect and administer financial matters for the represented person and generally to manage the represented person's affairs with the exercise of all rights, statutory or otherwise, in respect of financial matters; and
 - c) in the name of, and on behalf of, the represented person, may generally do all acts and exercise all powers that the administrator is authorised to do or exercise in respect of financial matters for the represented person with the same effect and in the same manner as the represented person could have done if that person were not subject to the administration order.

s57. Exercise of power by administrator

An administrator under this Act must –

- a) promote the personal and social well-being of the represented person; and
- b) act in accordance with the principles set out in section 8; and
- c) have regard to the decision-making process set out in section 9; and
- d) act honestly, diligently and in good faith; and
- e) treat the represented person with respect and dignity; and

- f) communicate with the represented person by means that the represented person will be able to understand best; and
- g) keep the represented person informed about decisions made, information obtained and steps taken by the administrator, as appropriate in the circumstances; and
- h) consult regularly with any guardian for the represented person and keep the guardian informed about substantial decisions or actions, subject to the terms of the administrator's appointment; and
- i) act as an advocate for the represented person where possible; and
- j) encourage and support the represented person to develop decision-making ability in respect of decisions where possible; and
- k) protect the represented person from violence, neglect, abuse and exploitation.

s86. Confidentiality of information

(2B) A person may disclose protected information relating to a protected person if that disclosure –

- a) has been consented to by, and with the full understanding of, the protected person; and
- b) the disclosure of the protected information does not involve the disclosure of information relating to another person, unless the other person has consented to the disclosure of that information.