



DECISION MAKING AND CONSENT

Policy Code: 1105	DECISION MAKING AND CONSENT
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1. Purpose

The policy is to support each participant to make informed choices, exercise control and maximise their independence relating to the supports provided.

2. Policy statement

- In the first instance participants are presumed to have the capacity to make their own choices.
- A presumption of capacity applies each time a participant is required to make a decision about a new issue or in a new situation.
- Participants may expect to be supported to make decisions that affect them if support is required.
- Decisions about day to day issues are made by participants and if support is required, families, close friends and staff provide it informally.
- When a participant is unable to make a critical decision without assistance, the family, with regard to the best interests of the participant, may provide informal support to make the decision.
- In the cases of any disagreement about what constitutes the best interest of the participant or particularly critical decisions, a legally appointed guardian with the specific decision making function may be required to give or withhold consent.
- Parents and guardians of participants under 16 years have the right to make decisions for them.

3. Principles

- Where lifestyle and other decisions are identified as goals in a participant's individual plan, the participant is supported to the fullest extent possible to make or participate in the decisions.
- Participants who require support to make decisions, are assisted to make those that arise on a day to day basis, including critical decisions or less important decisions such as what to wear.
- Participants are encouraged to develop their decision making skills and assisted to access support from an external service, such as a self-advocacy group if it is required.
- Aboriginal and Torres Strait Islander people are encouraged and supported to make decisions in the context of their culture and heritage.
- Aboriginal and Torres Strait Islander people who require assistance to make decisions receive it from support services that espouse their cultural identity.
- People from a culturally and linguistically diverse (CALD) background are encouraged and supported to make decisions that are relevant to their culture and heritage.
- People from a CALD background who require support to make decisions receive it from services that reflect their culture and beliefs.



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- Participants' views are taken into account whether they are the ones making decisions or are having decisions made by a legally appointed guardian.
- Where there is conflict, dispute or disagreement about what is best for the participant, and the participant cannot make the decision, the issue must first attempt to be resolved informally.
- When a dispute cannot be resolved informally, an application is made to the Guardianship Tribunal to appoint a guardian or financial manager for the participant.
- Participants who are unable to make decisions with or without support, and who have a legally appointed guardian with a specific function, or a financial manager, are to be represented by that person whenever this is required.
- When a participant has a legally appointed guardian, decisions are to be made only about the issue or issues on which the participant is unable to decide.
- A legally appointed guardian with a specific function may only decide for a participant on the function defined by the Guardianship Order.
- When a decision has been made by a participant or legally appointed guardian about a specific matter, e.g. to receive a service or intervention, the decision is specific to that matter.
- Within available resources, services provide information about all reasonable options to assist a participant and legally appointed guardian to make decisions that are in the best interests of a participant.
- Information is provided in a language or communication format that the participant and legally appointed guardian understand.

4. Capacity and consent

- **Capacity**

A participant's capacity to make a particular decision should only be doubted if there is a factual basis to doubt it. It should not be assumed that a participant lacks capacity because she or he has a particular disability.

Capacity is unique to each individual and should not generally be assessed simply on the basis of a type of disability. A participant has capacity to consent if she or he is able to understand the general nature and effect of a particular decision or action, and can communicate an intention to consent (or refuse consent) to the decision or action.

- **Consent**

Consent in this policy refers to the permission given by a participant or legally appointed guardian. When the participant has a legally appointed guardian with a specific function to make decisions, for example, about a participant receiving services or accepting an accommodation placement, consent is sought directly from the guardian.

For consent to be valid it must be voluntary, informed, specific and current. A participant must be free to exercise genuine choice about whether to give or withhold consent but it is only genuine if the participant has the capacity to give or withhold consent. Consent has a 'use-by' date. It cannot be assumed to endure indefinitely with the passage of time and changes of circumstances. Participants and guardians are entitled to change their minds and revoke consent later on.



It is important to remember that a participant's capacity to make decisions will vary depending on the type of decision or its complexity, or how the participant is feeling on the day. The way information is provided to a participant will also affect his or her capacity to make decisions. Choices must be offered in a way that the participant understands, for example by using comics or signing.

There are a number of decisions made every day that affect participants, such as what to eat and what to wear. These decisions should be made by the participant, with support if necessary, and they may take into account the views of the family or cultural factors.

5. Procedures

Making decisions about services and interventions

- Coordinators and support workers are to actively encourage and support participants, where possible, to develop their decision making skills or to access external services that assist with this, such as self-advocacy.
- Staff will encourage and assist participants to participate in all decisions that affect them by providing participants with the information they need to make decisions in a form and language they understand.
- When a participant has capacity to make decisions, and wants the family or other support person to be involved, staff will encourage the family to take a central role in supporting the participant to make decisions. With the participant's permission, staff will regularly discuss with the family decisions that are being faced by the participant, and share information that is relevant to these decisions.
- Where a participant has difficulty making decisions, the emphasis will be on the participant, or where one has been appointed with the specific function, the guardian, to make decisions on specific issues.
- The family's involvement around decision making issues is at the Individual Planning meetings as applicable, or through regular informal consultation.
- A participant who has the capacity to make critical decisions may resist or object to a proposed major service, such as an accommodation placement. The coordinator or support worker will refer the matter to the manager for resolution with the participant. In the event that agreement cannot be reached with the participant the placement will not proceed.
- If the manager believes that the participant's best interests are not being met as a result of the participant's refusal to accept the placement, staff must fully discuss the issues with the participant. The manager must be able to provide documentary evidence that staff have addressed the participant's concerns, consulted the participant's family where appropriate and undertaken a risk assessment.
- If the participant is unable to make critical decisions, and does not have a legally appointed guardian with the specific decision making function, staff will encourage the family or other support person to make a decision that is in the best interests of the participant. In the case of a dispute about what is in the best interests of the participant, staff should contact the Guardianship Tribunal for advice about the need to appoint a guardian.



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- Sometimes there are disputes between families, legally appointed guardians and service providers in relation to what is in the best interests of participants who lack the capacity to make decisions. If these cannot be resolved through discussion, and a decision is required, it will be made by the legally appointed guardian with the specific function.
- All major decisions affecting the participant will be documented. Documentation of decisions and the decision-making process will vary according to the actual issue and the service provided. For instance, household routines, day placement programs and recreational activities, may be documented on a general file, or in the minutes of participant meetings. Individual Planning goals and specific program interventions, such as therapy services, must be documented on the participant's individual file.

6. Medical and dental treatment

- Participants should be encouraged and supported to make decisions about who provides their medical and dental treatment. When participants have the capacity to consent to receiving treatment they must be supported to do so.
- Where a participant is 16 years or older, and does not have the requisite capacity to provide consent for medical or dental treatment, a person responsible can give or withhold consent.
- The person responsible is not necessarily the participant's next of kin. There is a hierarchy of people who can be the person responsible. They are:
 1. A guardian (including an enduring guardian) who has the function of consenting to medical and dental treatments.
 2. If no-one as specified in Item 1, a spouse or de facto spouse or partner (including same sex partner) where there is a close, continuing relationship.
 3. If no-one as specified in Item 1 and 2, a carer who provides or arranges for domestic support on a regular basis and is unpaid.
 4. If no-one as specified in Item 1, 2 and 3, a close personal friend or close relative where there is both a close personal relationship, frequent personal contact and a personal interest in the participant's welfare, on an unpaid basis.The person next in the hierarchy may become the person responsible if:
 1. A person responsible declines in writing to exercise the function, or
 2. A medical practitioner or other qualified person certifies in writing that the person responsible is not capable of carrying out the function.
- The medical or dental practitioner assesses a participant's capacity to consent to treatment every time a new treatment is proposed. If the participant is unable to make a decision about receiving treatment, the support worker may assist the practitioner by providing contact details of the person responsible, or the legally appointed guardian with the medical or dental consent function.
- The doctor or dentist has responsibility to assess a participant's capacity to consent to medical or dental treatment, and to obtain consent before the treatment is performed or medication is administered. It is not the responsibility of the support worker to make the assessment. However, the support worker may assist the doctor or dentist by providing information about the participant that can help the practitioner in making his or her assessment. If the Public Guardian is appointed, the practitioner must complete the OPG consent application form to apply for consent.



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- Alternatively, the support worker may arrange for the person responsible to attend medical or dental appointments or to be available to discuss the decision about treatment with the practitioner.
- Consent is not required for the following:
 1. Non-intrusive examinations for the purpose of making a diagnosis
 2. First Aid
 3. Urgent treatment to save life or alleviate pain or distress. Notwithstanding any of the above, the support worker should keep the participant's person responsible informed about appointments or examinations and any health issues facing the participant.
- If the participant does not have a person responsible or a guardian, then an application should be made to the Guardianship Tribunal for consent to treat the participant using the Tribunal's application form.
- Consent must be obtained before the treatment is given.
- If a participant is objecting to either Minor or Major treatment, and does not have a person responsible, a guardian may be appointed with the authority to override the participant's objection if:
 1. The participant lacks understanding of what the treatment involves, and why it is being proposed; and
 2. The treatment is clearly in the best interests of the participant.

Support workers should attempt to address the participant's concerns about taking a tablet or receiving a flu vaccination when the participant has no understanding of the purpose of the treatment, before applying for guardianship. If this is not successful and the Participant continues to express or show objection to receiving the treatment, the support worker may contact the participant's doctor to prescribe an alternative administration method. If non-compliance persists, and the doctor advises that taking the medication is in the best interest of the participant, the support worker will attempt to identify a strategy for administering the medication that does not entail threatening or harming the participant.

- Requests for consent to treatment that override a person's objections must be in writing. The consent to such treatment must also be in writing.

7. Behaviour support and intervention

- When the following 'restricted practices' are proposed as part of a Behaviour Support Plan (BSP) they require authorisation from the Restricted Practice Authorisation (RPA) Panel and consent from a legally appointed guardian:
 1. Physical restraint and unwanted physical contact;
 2. Exclusionary time out and seclusion procedures; or
 3. Any other practice that seeks to restrict the freedom of a participant.
- Only a legally appointed guardian who has been given the appropriate function can consent to a BSP that includes these 'restricted practices'.
- Each participant is only subject to a regulated restrictive practice that meets the requirement of NSW Restrictive Practices Authorisation Procedural Guide and National Disability Insurance Scheme (Restrictive Practice and Behaviour Support) Rules 2018.



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Restrictive Practices are only used in accordance with a behaviours support plan and authorised by restrictive practice authorisation panel.

8. Legislation

Disability Inclusion Act 2014

Guardianship Act 1987 (NSW)

NDIS Practice Standards

Documents related to this policy	
Related Policies	Person Centred Practice
Forms, record keeping or other organisational documents	<ul style="list-style-type: none"> • Consent Form • Meeting Minutes

Reviewing and approving this policy		
Frequency	Person responsible	Approval
3 years	Unit Head	HAS & DS Committee

Policy review and version tracking			
Review	Date Approved	Approved by	Next Review due
Version 1	1 June 2014	HAS & DS Committee	31 May 2017
Version 2	29 May 2017	HAS & DS Committee	28 May 2020
Version 3	November 2020	HAS & DS Committee	November 2023