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# Decision Making and Consent Policy

Summary: The Decision Making and Consent Policy affirms the rights of people to make decisions that affect them and to receive support when they want it to make decisions. A set of Guiding Principles provides a framework for decision making in the context of capacity and consent.





# Decision Making and Consent Policy

Document name	Decision Making and Consent Policy
Policy	Decision Making and Consent Policy
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Approval date	January 2016
Policy manual	Lifestyle Policy and Practice Manual
Approved by	Deputy Secretary ADHC, FACS
Summary	The Decision Making and Consent Policy affirms the rights of people to make decisions that affect them and to receive support when they want it to make decisions. A set of Guiding Principles provides a framework for decision making in the context of capacity and consent.
Replaces document	Decision Making and Consent Policy and Procedures 2011
Authoring unit	Contemporary Residential Options Directorate
Applies to	People who are being supported in ADHC operated and funded non-government disability support services.
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## Version control

The first and final version of a document is version 1.0.

The subsequent final version of the first revision of a document becomes version 1.1.

Each subsequent revision of the final document increases by 0.1, for example version 1.2, version 1.3 etc.

## Revision history

Version	Amendment date	Amendment notes
V1.0	January 2016	Replaces Decision Making and Consent Policy 2011

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# 1 Decision Making and Consent Policy

## 1.1 Background

The ADHC Decision Making and Consent Policy (the Policy) and associated resources are based on the principles of human rights found in the United Nations Convention on the Rights of Persons with Disabilities (the UN Convention)<sup>1</sup>, the *Disability Inclusion Act 2014* (NSW), (the Act) and the New South Wales Disability Service Standards (the Standards).

Decision Making is contained in Article 12 of the UN Convention, which states that “parties shall recognise that persons with disabilities enjoy legal capacity<sup>2</sup> on an equal basis with others in all aspects of life” and “parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity”.

The Policy is also based on the commitment to deliver culturally responsive services to Aboriginal and Torres Strait Islander people under the Aboriginal Policy Statement (the Statement), as well as people from culturally and linguistically diverse backgrounds, women and children, as recognised in the Act.<sup>3</sup>

## 1.2 Purpose

The Policy principles are a requirement in Family and Community Services (FACS), Ageing, Disability and Home Care (ADHC), operated and ADHC funded non-government disability support services. The Policy provides a framework for supporting people with disability to exercise their rights to self determination as defined in the Act and the UN Convention.

The Policy highlights the person centred approach to supporting people to make decisions that affect them, and to give informed consent. The Policy recognises the vital role of family and others, and legally appointed decision makers, in ensuring the rights of the person with disability are protected.

Decision making and consent issues addressed in the Policy apply to people who need and want support to make decisions in all areas of their lives, who are 16 years and older, and reside in or access ADHC operated and ADHC funded non-government disability support services.

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<sup>1</sup> United Nations Convention on the Rights of Persons with Disabilities 2006, ratified in 2008: <http://www.un.org/disabilities/convention/conventionfull.shtml>

<sup>2</sup> Legal capacity means a person’s authority under law to engage in a particular undertaking or maintain a particular status.

<sup>3</sup> The *Disability Inclusion Act 2014* recognises that people from Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse backgrounds as well as Women and Children require particular consideration in the design and delivery of disability services.

The Guidelines are a requirement for ADHC operated disability support services to follow when they are applying the Principles of the Policy. ADHC funded non-government disability support services may adopt the Guidelines, or develop their own.

### 1.3 Guiding Principles

1. People have the right to make decisions about things that affect their lives.
2. People are presumed to have the capacity to make their own decisions and give consent when it is required, unless there is evidence otherwise.
3. People are supported to make informed decisions when their consent is required.
4. Consent is obtained from the person, or a legally appointed guardian, for life decisions such as accommodation, medical and dental treatment, forensic procedures, and behaviour support.
5. Consent for financial matters is obtained from the person, or a legally appointed financial manager or person appointed under a Power of Attorney.
6. People are supported to identify opportunities to make decisions about their own lives and to build their decision making confidence and skills.
7. When support to make decisions is wanted or needed by the person, it is provided in ways preferred by the person and by a supporter of their choice.
8. Support with decision making respects the person's cultural, religious and other beliefs.
9. If the person wants to be supported by natural supporters, such as family and friends, this is encouraged and facilitated.
10. Support is provided in ways that uphold the person's right to self determination, privacy, and freedom from abuse and neglect.
11. Decision making and self determination are not limited by the interests, beliefs or values of those providing the decision making support.
12. The amount or type of support required by people to make decisions will depend on the specific decision or the situation.
13. People are supported to make decisions that affect their own lives even if other people don't agree with them, or regard the decisions as risky.
14. People are supported to access opportunities for meaningful participation and active inclusion in their community where they want this.
15. Information is provided in formats that everyone can understand, and enables the person, their supporters and other relevant people, such as legally appointed guardians, to communicate effectively with each other.

## 1.4 Application of the Principles

The Guiding Principles of the Policy are the basic mandatory requirements for ADHC operated and ADHC funded non-government disability support services to follow when supporting people in their decision making and when seeking consent.

Refer to the decision making and consent flowchart when determining the person's decision making and consent requirements (Tool and templates).

## 2 Legislation

The Decision Making and Consent Policy (The Policy) is consistent with the objects and principles of the *Disability Inclusion Act 2014 (NSW)*, (the Act). The objects and principles of the Act require service providers to acknowledge and uphold the rights of people with disability to participate in social, civic and economic life in their community.

In particular:

Object in Section 3(c) of the Act is “to enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports and services”.
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Principle in Section 4(5) of the Act states “People with disability have the same rights as other members of the community to make decisions that affect their lives (including decisions involving risk) to the full extent of their capacity to do so and to be supported in making those decisions if they want or require support”.
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Principle Section 4(9) of the Act states “People with disability have the right to access information in a way that is appropriate for their disability and cultural background and enables them to make informed choices”.
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The Policy embodies the objects and principles of the Act by obligating and enabling services to support people in making decisions about the things that affect their lives.

The Policy's Guiding Principles recognise the role of legally appointed decision makers under the *Guardianship Act 1987 (NSW)*, and the Decision Making and Consent guidelines provide more information on this topic.



### 3 Aboriginal and Torres Strait Islander people

The Act provides that Aboriginal and Torres Strait Islander people with disability are to be provided with services that recognise their particular needs<sup>4</sup>.

To make a difference, services need to be culturally competent, responsive and sensitive to the needs of Aboriginal and Torres Strait Islander people. The Aboriginal Policy Statement underpins ADHC's strategic direction for Aboriginal Torres Strait Islander people<sup>5</sup>.

The Aboriginal Cultural Inclusion Framework provides a mode of accountability for monitoring programs and services to ensure real improvements are delivered to older Aboriginal Torres Strait Islander people, Aboriginal Torres Strait Islander people with disability, their families, carers and communities<sup>6</sup>.

Aboriginal Torres Strait Islander people have higher rates of disability and support needs compared to non-Aboriginal people and access relatively fewer services. For many Aboriginal Torres Strait Islander people this is compounded by broad socio-economic disadvantage and geographical isolation.

This information guides staff with an opportunity to provide supports and services that are culturally competent, responsive and sensitive for Aboriginal Torres Strait Islander people, their families and carers. If an Aboriginal Torres Strait Islander person who receives accommodation services requires decision making support, they have the right to receive it.

See Other Resources for more information on working with people from Aboriginal and Torres Strait Islander communities.

### 4 Cultural and Linguistic Diversity

The Act provides that services and supports are to be provided to people with disability of a Culturally and Linguistically Diverse background in a way that addresses the barriers that may be created due to cultural, language and other differences<sup>7</sup>.

The behaviour of the person and their family, attitudes, preferences and decisions about decision making and consent, are influenced by culture and religious practices.

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<sup>4</sup> See Section 5(2) of the *Disability Inclusion Act 2014*

<sup>5</sup> Aboriginal Policy Statement: <http://www.adhc.nsw.gov.au/publications/aboriginal>

<sup>6</sup> Aboriginal Inclusion Framework: <http://www.adhc.nsw.gov.au/publications/aboriginal>

<sup>7</sup> See Section 5(3) of the *Disability Inclusion Act 2014*

A person's cultural and religious preferences for supported decision making should be determined early in support planning. Demonstrate respect and cultural sensitivity by considering:

- The person and the family's perspective on decision making and consent.
- The person and the family's perspective on alternate decision making and advocacy.
- The role of spiritual and religious beliefs and practices in decision making.
- How the person and their family communicate, for instance, through an interpreter.
- The person's own role in the process of problem solving and decision making.

## 5 Women

The Act recognises that "women with disability may face multiple disadvantages and are potentially more vulnerable to risk of abuse or exploitation"<sup>8</sup>.

In supporting women with decision making and seeking consent, respect is shown by:

- Ensuring supporters are chosen by the person such as allowing the person to choose female or male supporters.
- Involving and encouraging contribution by natural supports where the person wants this (natural supports are a protective factor in preventing abuse and exploitation).
- Ensuring access to information and supports regarding reproductive health and sexuality that enable informed decision making and consent about general health and wellbeing, intimate relationships and self-protective strategies.

## 6 Children and young people

In the context of the Policy, a child is any person under 16 years of age and a young person is anyone 16 years or older and under the age of 18 years<sup>9</sup>.

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<sup>8</sup> See Section 5(4)(a) of the *Disability Inclusion Act 2014*

<sup>9</sup> *Children and Young Persons (Care and Protection) Act 1998*:  
[www.legislation.nsw.gov.au/fullhtml/inforce/act+157+1998+FIRST+0+N](http://www.legislation.nsw.gov.au/fullhtml/inforce/act+157+1998+FIRST+0+N)

Children and young people have a right to be involved in decisions that affect them in ways appropriate to their age and stage of development under the [UN Convention on the Rights of the Child](#)<sup>10</sup>.

Even very young children can make choices and communicate their feelings, ideas and wishes in numerous ways before they are able to communicate through spoken or written language. Children should be involved in decisions that affect them, in an age appropriate way. This provides opportunities for children to develop decision making skills and confidence to prepare them for adulthood, and allows parents and guardians to see them as decision makers.

Parents and guardians of people under 16 years have the right to make certain decisions for them. Parents or legal guardians also have a role in decision making concerning their children because they have primary responsibility for children's upbringing and development.

The Standards in Action Manual<sup>11</sup> provide guidance for workers to support decision making in a child and family centred way, recognising the important roles and responsibilities of parents of children and young people, and the shift to a person centred approach to decision making as children develop and mature.

The *Disability Inclusion Act 2014* requires service providers to consider the particular needs of children and young people with disability so that supports and services are provided in a way that:

- Recognises the child or young person's right to live a life with full and active participation in family, cultural and social life, with dignity and conditions that promote self-reliance.
- Recognises that children and young people are more vulnerable to the risk of abuse and exploitation.
- Respects the views of the child or young person (with respect to their age and maturity)<sup>12</sup>.

Support with decision making will be provided to children and young people, and their families, within these frameworks.

While all people under 18 years of age are regarded under the law as children, young people are given special consideration by the NSW Civil and Administrative Tribunal (NCAT) Guardianship Division. A young person can provide their own consent on a range of matters, or they can be assigned a Public Advocate by NCAT if they need a legally appointed decision maker (see Decision Making and Consent flowchart, Tools and templates).

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<sup>10</sup> United Nations Convention on the Rights of the Child: <http://www.unicef.org.au/Discover/What-we-do/Convention-on-the-Rights-of-the-Child.aspx>

<sup>11</sup> ADHC Standards in Action: [www.adhc.nsw.gov.au/sp/quality/standards\\_in\\_action](http://www.adhc.nsw.gov.au/sp/quality/standards_in_action)

<sup>12</sup> See Section 5(5) of the *Disability Inclusion Act 2014*

The Guidelines also provide further information about young people and consent, in the relevant sections. See Other Resources for further information about young people and the law.

## 7 Policy and Practice Unit Contact Details

You can get advice and support about this Policy from the Policy and Practice Unit, Contemporary Residential Options Directorate.

Policy and Practice, Service Improvement  
Contemporary Residential Options Directorate  
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[policyandpracticefeedback@fac.s.nsw.gov.au](mailto:policyandpracticefeedback@fac.s.nsw.gov.au)

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