

# INDEPENDENCE, INFORMED CHOICE, AND SUPPORTED DECISION-MAKING OPERATIONAL POLICY



<b>POLICY TITLE:</b>	<b>INDEPENDENCE, INFORMED CHOICE, AND SUPPORTED DECISION-MAKING</b>		
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<b>AUTHORISED BY:</b>	Chief Executive Officer	<b>DATE REVIEWED:</b>	13/02/2024

## SUMMARY

This policy empowers you to make your own decisions with confidence, ensuring you're supported every step of the way to live independently and choose what's best for you.

## PURPOSE

ARC Disability Services Inc. (ARC) commits to empowering participants by fostering independence and informed choice in their decision-making processes. Our policy, grounded in the human rights framework, particularly Article 12 of the United Nations Convention on the Rights of Persons with Disabilities, aims to enhance participant autonomy and provide support for those facing decision-making challenges.

By prioritising informed choice and independence, ARC strives to create an environment where participants can exercise control over their lives, leading to improved outcomes and greater involvement.

## SCOPE

This policy applies to all ARC staff and participants accessing our services.

ARC will provide information in an Easy Read format for participants who require this communication style.

## DEFINITIONS

**Decision-making:** The process of evaluating and selecting among alternatives, guided by the decision-maker's values, preferences, and beliefs, to reach a conclusion or course of action.

**Supported Decision-Making:** The process that assists Participants' in making their own decisions by providing them with the necessary support and information. It recognises the Participants' right to participate in decision-making about their lives and ensures they have access to a range of supports to make informed choices.

**Informed choice:** The act of deciding about services, such as diagnostic tests or treatments, with a comprehensive understanding of the details, benefits, risks, and potential outcomes involved.

**Capacity:** The ability to make decisions is specific to each situation, varying according to the complexity and nature of the decision at hand. Everyone has the inherent right to make their own decisions or to receive support in making them. However, this right must be balanced with protective measures for those who may be vulnerable to harm or exploitation due to an inability to make certain decisions.

**Dignity of Risk:** The dignity of risk is the right to take risks when engaging in life experiences and the right to fail in taking these.

**Advocate:** An advocate is someone who represents and argues in support of another person's interests, particularly in contexts where the latter may not be able to do so for themselves.

**Autonomy:** The capacity to decide for oneself and pursue a course of action in one's life, often regardless of moral content.

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## IMPLEMENTATION

### DECISION MAKING

At ARC, our approach to decision-making emphasises three main principles: respecting each Participants' right to make their own choices, providing the necessary support for them to do so, and ensuring the decision-making process is conducted in a manner that respects their autonomy and personal preferences.

**1. Right to make decisions:**

- Every person has the right to make decisions about their own lives, including people with a disability.

**2. Supported Decision making:**

- Support should be provided to a person who has difficulty making one or more decisions.

**3. When support is not enough:**

- There are circumstances when another person can lawfully decide on behalf of a persons with a disability.

### RIGHT TO MAKE DECISIONS

Australia has historically agreed to implement and abide by several international conventions on human rights. Most recent and relevant to the provision of NDIS Supports is the United Nations Convention on the Rights of Persons with Disability. In ratifying these conventions, Australia has agreed to make laws which upheld these rights in all areas of Australian life.

The right to make decisions about your own life is afforded to every person in Australia, including people with a disability, and is based on the presumption that every person has the legal capacity to make their own decisions.

It is acknowledged that there is a difference in meaning between a person's 'legal capacity' to make decisions and their 'decision-making ability'. The difference is often determined based on personal opinion and can present as real risk that the rights of the person with a disability will be disrespected or breached.

To manage this risk, supported decision-making is internationally recognised as best-practice in enabling people with disability to exercise and enjoy their rights. This policy assumes that each participant has decision-making capacity, unless proven otherwise, and acknowledges that each participant's capacity varies for each decision and situation. All participants have the dignity of risk to make their own decisions.

### SUPPORTED DECISION MAKING

Empowering Participants through support in decision-making involves providing the necessary tools, information, and guidance to navigate their choices effectively. This approach adopts a collaborative stance, engaging support persons, family members, or professionals to work closely with the Participant. The aim is to respect the Participant's preferences and enable their full participation in the decision-making process. By doing so, we not only enhance the Participant's autonomy but also ensure they comprehend the ramifications of their decisions, paving the way for informed choices.

### INFORMED DECISION MAKING

Informed decision-making directly builds on the principles of supported decision-making, emphasising the need for clear and relevant information tailored to individual needs, values, and preferences. This process involves providing information in accessible formats, thus ensuring that each Participant is well-prepared and confident in their decision-making. Informed decision-making empowers Participants, fostering a sense of independence and control over their lives.

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## INFORMAL DECISION MAKERS

Informal decision makers are individuals from the Participant's personal network—family, friends, or other community members—who the Participant trusts and who understand the Participant's will and preferences. These individuals play a crucial role in supporting the Participant's decision-making in an informal capacity, often providing advice, discussing options, and helping to interpret the Participant's wishes without any legal authority. Their involvement is based on a personal relationship and mutual understanding, rather than a legal mandate.

## WHEN SUPPORT ISN'T ENOUGH

Despite the best efforts to support a Participant's decision-making, including informed decision-making and the involvement of informal decision makers, there may be situations where a Participant cannot safely or effectively make a particular decision. This could be due to various reasons, including health crises, cognitive challenges, or specific legal requirements that necessitate a higher level of decision-making authority.

In these instances, it becomes necessary to consider the appointment of a legally authorised representative, such as a guardian. This step is not taken lightly. It is initiated only after thorough assessment and when all other forms of support, including supported decision-making and informal assistance, have been explored and found insufficient.

## DETERMINING DECISION MAKING CAPACITY

Assessing a Participant's decision-making capacity is a nuanced process, essential for tailoring support and safeguarding the Participant's rights and well-being. This task involves understanding a person's ability to comprehend information, appreciate the consequences of their decisions, and communicate their choices. Given the complexity of this assessment, it's vital to clarify who is responsible for this process, how it is conducted, and the frequency of such assessments.

### Does ARC complete this assessment, and are we the appropriate person?

As a NDIS providers ARC's role primarily involves recognising when a Participant may benefit from an assessment of their decision-making capacity. However, conducting the assessment itself generally falls outside the direct scope of NDIS providers due to potential conflicts of interest and the specialised nature of these assessments. Therefore, while we can identify the need and facilitate the process, we are typically not the assessors.

### How is it assessed, and who assesses it?

The assessment of decision-making capacity should be carried out by qualified professionals with expertise in this area. This could include clinical psychologists, psychiatrists, or other healthcare professionals trained in cognitive assessment and familiar with the legal and ethical considerations of capacity assessment. These professionals use a combination of interviews, standardised assessment tools, and observations to evaluate the Participant's understanding, reasoning, and ability to make informed decisions.

### The assessment process should be comprehensive, considering:

- The Participant's ability to understand relevant information.
- The ability to appreciate the outcomes of decisions.
- The capacity to reason and weigh decision options.
- The ability to communicate a choice.

### How often is it assessed?

The frequency of decision-making capacity assessments should be determined by the Participant's changing needs, circumstances, and any relevant legal requirements. Assessments might be prompted by significant changes in the Participant's health, life circumstances, or when a decision-making situation arises that necessitates a reassessment of their capacity.

For instance, an initial assessment may be conducted when the Participant first enters the NDIS system or when a significant decision needs to be made. Subsequent assessments could be necessary if there are changes in the Participant's condition or if there are concerns about their ability to make decisions in new or different contexts.

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## LEGAL APPOINTMENT OF GUARDIAN OR REPRESENTATIVE

In Queensland, the legal appointment of a guardian or representative to make decisions on behalf of a NDIS participant typically involves a formal legal process. This process may vary depending on the circumstances and the specific needs of the participant. Generally, a guardian or representative may be appointed through:

- Guardianship Tribunal or Court Order:** In situations where a person faces challenges in making decisions due to a disability or impairment, a guardianship tribunal or court may appoint a guardian or representative. This process usually involves an application to the relevant tribunal or court, where evidence of the person's incapacity and the need for a guardian or representative is presented.
- Enduring Power of Attorney:** Alternatively, if a person has the capacity to do so, they may appoint someone to act as their enduring power of attorney. This legal document grants authority to the appointed person (the attorney) to make decisions on behalf of the person (the principal) in specified matters, including financial and personal matters, if the principal loses capacity in the future.

## DOCUMENTATION

Regardless of the method used to appoint a guardian or representative, it's essential to retain accurate documentation to demonstrate the legal authority of the appointed person to make decisions on behalf of the participant. This documentation may include:

- Guardianship or Court Order: A copy of the guardianship tribunal or court order appointing the guardian or representative, outlining the scope of their authority and responsibilities.
- Enduring Power of Attorney Document: If an enduring power of attorney is used, a copy of the executed document, properly witnessed and registered as required by law, should be retained.
- Communication and Correspondence: Any communication or correspondence regarding the appointment of the guardian or representative, including notices, letters, or emails from relevant authorities, should be documented, and retained.

By maintaining thorough documentation of the legal appointment of a guardian or representative, ARC ensures compliance with legal requirements and safeguards the rights and interests of our Participants.

## RELATED DOCUMENTS

- Duty of Care, Dignity of Risk, and the Least Restrictive Alternative Policy
- Freedom of Choice Policy
- Provision of Supports Policy

## REFERENCES

- NDIS Practice Standards and Quality Indicators 2021
- United Nations Convention on the Rights of Persons with Disabilities

## AUTHORISATION

This Policy is approved and issued by:

Chief Executive Officer

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