

# Promoting Supported Decision Making

## Should I apply for Guardianship?

**A substitute decision maker should only be appointed as a last resort. The information below outlines what to think about before making a guardianship application.**

We all make decisions. It's a human right. Sometimes we make decisions on our own, other times we need support. Some people may need more support than others or even the appointment of a formal substitute decision maker such as the Public Guardian. Substitute decision making can be restrictive for a person and simpler solutions should be considered before a guardianship order is sought.

We can think of decision making along a continuum. The diagram below shows this range from decisions made on our own or independent decision making, through to decisions made for us by others or substitute decision making. The space between these two points is where support for decision making plays an important role. The type of decision, our experience, time, health, resources and many other factors can affect how much support we need.



Everyone has the right to make their own decisions and be supported to do so. Applying for a substitute decision maker is a formal process and should be done only as a last resort for significant decisions that impact on a person's quality of life. Before applying for guardianship, ask yourself:

### 1. Can I support the person to make their own decisions?

Many factors can influence someone's capacity to make decisions but good support is key to building ability. Just like a ramp makes a building accessible, providing information in a way that the person understands allows for greater choice and control in decision making. There are many different ways to provide good support. Visit our website to see the Public Guardian's information sheets on supported decision making for more information at [www.publicguardian.justice.nsw.gov.au](http://www.publicguardian.justice.nsw.gov.au)

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*We should start from the position that everyone has the right to make their own decisions*

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*The person's will and preferences directs decision making*

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## Can I informally represent what the person wants?

We should always try and discover who the person really is in order to provide them with the best support. For some people however, making and communicating decisions can be difficult, even with a lot of support. Sometimes it may be necessary for family, friends or carers to interpret, represent and implement what the person wants.

If this is the case, make sure that the decision making process:

- promotes the person's values and vision for their own lives
- upholds the person's rights
- follows the person's will and preferences including their likes and dislikes
- is not objected to by the person
- is not based on undue influence over the person

Traditionally, 'best interest' decision making has been done by others for the person, rather than with them. Taking a will and preferences approach puts the decision making focus back on the person and lets the person direct their own decisions to the greatest extent possible. This involves respecting the person's right to take risks. Supporters can play a role in helping the person identify and reduce risks where necessary. If it is a major decision and you are not satisfied that the above elements can be met, guardianship may need to be considered as a last resort.

## 2. Can conflict be resolved?

Sometimes a substitute decision maker is appointed due to conflict between loved ones, friends and professionals about what should happen 'for' a person. Resolving conflict through mediation may result in better outcomes and highlight what is important 'to' the person. The Community Justice Centres are a free service that can help resolve disputes; contact them on 1800 990 777.

## 3. Is there a Person Responsible identified?

If someone is unable due to accident, illness or disability to make their own medical or dental treatment decisions, their 'person responsible' may be called on to make the decision on their behalf. Health professionals must determine the person responsible from a set hierarchy. See the Public Guardian's factsheet on 'person responsible' for more information. [www.publicguardian.justice.nsw.gov.au](http://www.publicguardian.justice.nsw.gov.au)

## 4. Are there Planning Ahead documents in place?

Anyone over 18 with the capacity to make decisions can make planning ahead documents. This includes people with a disability who are able to appoint an Enduring Guardian to make health and lifestyle decisions, and an Enduring Power of Attorney to make financial decisions. Planning ahead documents clearly reflect a person's wishes for how they would like decisions to be made if they are unable to do this for themselves. For more information about planning ahead, visit [www.planningaheadtools.com.au](http://www.planningaheadtools.com.au) or call 1300 887 529.

## Court or Tribunal appointed guardian: the last resort

If all these options have been considered and a problem remains, there may be a need for guardianship. Appointed guardians can make health and lifestyle decisions for a limited period of time. Anyone with a genuine concern for a person with decision making impairment can make an application to the Guardianship Division of the NSW Civil and Administrative Tribunal; visit [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au) for more information. You can also call the Information Support Team at the Public Guardian (02 8688 6070 or 1800 451 510) for general information on supported decision making and substitute decision making.