These are standards for managing the substitute decision making in relation to financial management for clients falling within the responsibility of Client Services (Protected) Division. The policy outlines the guiding principles to be considered when making substitute decisions on behalf of directly managed clients.

Compliance with this policy will ensure effective financial management with accountability and transparency.

**Essential Summary**

Substitute Decisions are made with the following provisions:

- Decisions are made in accordance with the *NSW Trustee and Guardian Act 2009*
- Decisions are made wherever possible with input from clients and/or stakeholders in the client's life
- Decisions will be made to allow for the least restrictive alternative
- Decisions will be made in accordance with the principles under section 39 of the *NSW Trustee and Guardian Act 2009*
- Decisions are made with input and advice from appropriate specialist units or external specialists, as required
- Clients/Stakeholders are advised of the right to have decisions reviewed and the right to appeal decisions to the Administrative Decisions Tribunal

Printed copies of this document may not be up to date.
Ensure you have the latest version before using this document.
### Table of Contents

1  Scope 3  
2  Purpose 3  
3  Definitions 3  
4  Decision Making 4  
   4.1  Client / Stakeholder Involvement 4  
   4.2  Client Services (Support) 5  
   4.3  External Specialists 5  
   4.4  Guardianship 5  
   4.5  Confidentiality and Privacy 5  
   4.6  Records Management 5  
5  Best Interest Decisions 6  
6  Reasons for Decisions 6  
7  Administrative Decisions Tribunal 7  
8  Document Information 8  
9  Document History 8
1 Scope

This policy applies to all staff employed in NSW Trustee and Guardian involved in information gathering and decision making for clients subject to direct management through a Financial Management Order.

2 Purpose

Substitute decision making is one of NSW Trustee and Guardian’s core responsibilities. It is important that such decision making is based on a clear process, relevant facts and occurs within what the law allows and agreed service standards. It is also important that clients, their friends, family members and service providers are informed of the decision making process, the decision made and their review rights.

Complying with the policy is mandatory for all operational areas of NSW Trustee and Guardian responsible for financial management aspects for clients within the Client Services (Protected) Division. The risks of non-compliance with these standards are significant. The risks include ineffective financial management and risks to the credibility of the organisation.

3 Definitions

For simplicity, these standards use the following generic definitions:

- **Back Office** means the specialist and administrative units of NSW Trustee and Guardian that provide specialist support
- **CEO** means the Chief Executive Officer of the NSW Trustee and Guardian.
- **CIS** means the Client Information System utilised by the NSW Trustee and Guardian for financial management in the Client Services (Protected) Division.
- **Client** means a client of the NSW Trustee and Guardian within the responsibility of the Client Services (Protected) Division
- **DJAG** means the Department of Justice and Attorney General
- **Financial Management Order (FMO)** means an Order issued by a court or tribunal that subjects a person to financial management by the NSW Trustee and Guardian
- **Front Office** means the client service branches within the Client Services (Protected Division)
- **NSWTG** means the NSW Trustee and Guardian
- **Substitute Decision** means decisions made on behalf of a client
4 Decision Making

When making decisions consideration is to be given to the following principles under s.39 of the *NSW Trustee & Guardian Act 2009*:

- the welfare and interests of such persons should be given paramount consideration
- the freedom of decision and freedom of action of such persons should be restricted as little as possible
- such persons should be encouraged, as far as possible, to live a normal life in the community
- the views of such persons in relation to the exercise of those functions should be taken into consideration
- the importance of preserving the family relationships and the cultural and linguistic environments of such persons should be recognised
- such persons should be encouraged, as far as possible, to be self-reliant in matters relating to their personal, domestic and financial affairs
- such persons should be protected from neglect, abuse and exploitation.

In addition to these principles the following issues are also to be considered:

- the client’s own views
- the client’s immediate and long term needs
- the financial resources available
- requests, plans and objectives of any Guardian appointed for the client
- the client’s current, previous and “hoped-for” lifestyle
- the client’s family commitments or obligations
- arrangements put in place by the client when they had the capacity to manage their own affairs
- views of the client’s family and the rights and views of probable beneficiaries after the client’s death
- any other factors deemed relevant.

4.1 Client/Stakeholder Involvement

Wherever possible Client Service Officers are to work with the client, their family, friends and service providers to bring the client to an understanding of the decision to be made and help them to make the decision. NSWTG’s role in these situations is to ensure the facilitation of the decision making and, where necessary, formally approving the decision and its implementation. This requires close work with the client and their support people, the provision of information in ways in which the client can understand and, in some cases, time. Respect for a client’s individuality and independence dictates that this be the first consideration when a decision is proposed.
Many clients may not be able to make decisions even with assistance. The fundamental approach to substitute decision making is based on the principle of substituted judgement. This means that the decision to be made should be that which the person would have made but for their incapacity. To assist in identifying the decision that would have been made Client Service Officers should seek information about the person's previous decision making in relation to the financial affairs, gathering whatever documentation (such as written instructions, powers of attorney, wills) is available. It is also important that Client Service Officers communicate with the client (where possible), their family, friends and service providers seeking to develop a picture of the person and their previous decision making preferences.

4.2 Client Services (Support)

Client Services (Support) Division includes specialist branches that are to provide input on related decisions. The input and advice from a specialist area is to be recorded and considered in any decision making process to determine the best outcome for the client. All specialist units providing input are to be listed in the reason for decision document.

4.3 External Specialists

Specialists external to the NSWTG may be engaged to provide specialist advice in certain matters. Where an external specialist has been engaged this is to be recorded in the reasons for decision and weight given to the advice provided.

4.4 Guardianship

A Guardian appointed for a client is to be invited to provide input in substitute decision making for financial management. This includes the Public Guardian or any Private Guardian that may have been appointed for a client.

4.5 Confidentiality and Privacy

Staff are to keep in mind the need for privacy and confidentiality when discussing a client's financial affairs with other people in their lives. It is also important that staff understand the vulnerability of many clients. Revealing specific financial information to some people in a client's life may place the client at increased risk of manipulation and misappropriation.

4.6 Records Management

Staff are to create an electronic file note (EFN) detailing any communication with a client/stakeholder. EFN's are also to be created for all forms of information received about a client. This information provides assistance in appropriate decision making. It also assists in building up a picture of client needs, expectations and lifestyle to afford better financial management.
All decisions made are to be recorded in an EFN outlining the decision made, internal and external people that provided input into the decision, aspects of the decision that were considered, alternative options considered, application of the s.39 principles and the reason for the final decision made.

Staff are to create tasks for any activity to be undertaken or decision to be made in relation to the client. Information related to tasks are to be recorded in EFN’s and linked to the task.

5 Best Interest Decisions

Where it is not possible to obtain input from a client and they have no identified stakeholders to assist, decisions should be made in the “client’s best interest”. This approach is less favoured as it opens the decision making process to intrusion of other people’s values and beliefs, however they are well acknowledged and kept in check.

Staff cannot make substitute decisions that favour any activity that is illegal or threatens the well being of the client. It is decisions that have some “moral” aspect that staff need to be most aware of their own prejudice and bias. Where “best interest” decisions are made, Client Service Officers will seek the endorsement of their Manager. The risk of value judgements in the decision making process is lessened where a second person (Manager) is also involved in the process.

6 Reasons for Decisions

The reasons for significant decisions must be communicated in writing. Significant decisions are defined as:

- real property – sales, purchases and leasing decisions
- change in status of an asset – selling shares, collecting bank accounts
- matters involving a degree of conflict or dispute
- matters where a client has diminished capacity to comprehend or retain information
- group expenditure from nursing homes, group homes or other large residential centres
- matters requiring approval from someone with higher authority than the allocated officer.

A written communication detailing the reasons for the substitute decision will include reference to all parties that provided input and advice, both internal and external to the NSWTG, an overview of the decision to be made, the client’s current financial situation and a broad outline for the alternative chosen.
In addition to the communication with client/stakeholders, a formal “Reasons For Decision” document is to be prepared and recorded on the client’s file for reference under any review of that decision. This document should clearly detail all actions taken to collect information, the information received and considered, the decision made and why.

7 Administrative Decisions Tribunal

Most decisions made on behalf of clients of the Client Services (Protected) Division are reviewable under the provisions of the Administrative Decisions Tribunal Act 1997. Clients/Stakeholders are to be informed of their options to have a decision reviewed. An electronic file note is to be created in CIS identifying that a client/stakeholder has been advised of the right to have a decision reviewed.

Decisions are reviewed by a staff member with delegation at Assistant Director or above. Any decision made by a staff member at this level must be reviewed by somebody else. No staff member can formally review their own decision.
8 Document Information

Title: Substitute Decision Making Policy

Business Centre: NSW Trustee and Guardian

Author: Manager of Quality Control & Audit

Approver: CEO NSWTG

Date of Effect: 30 September 2009

Next Review Date: 31 December 2009

File Reference:

Key Words: policy, procedure, substitute decision making, financial management, order, guardianship

9 Document History

<table>
<thead>
<tr>
<th>Version</th>
<th>Date</th>
<th>Reason for Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>29-06-06</td>
<td>Approved by OPC Executive</td>
</tr>
<tr>
<td>2.0</td>
<td>07-04-08</td>
<td>New OPC structure</td>
</tr>
<tr>
<td>3.0</td>
<td>22/09/09</td>
<td>Merger with PT &amp; changed legislation</td>
</tr>
</tbody>
</table>