

## Supported Decision-Making and Dignity of Risk

The People Project acknowledges that all participants have a right to make decisions about their own life and to have those decisions respected. The People Project understands and affirms that there is no reason for a person to be excluded from the decision-making process about their own life.

The People Project is committed to supporting participants with communication needs to make their own decisions regarding their life and will provide them with the support necessary to make and communicate their own decisions regarding their life.

### Definitions

**Advance Health Directive** refers to discussions between a participant, their family and/or Representative and health care professionals, enabling the participant's preferences for future health care to be known should they become unable to participate in the decision-making process. This is a process completed outside of the NDIS.

**Capacity** can refer to either legal or mental capacity. **Legal capacity** is the ability to hold rights under the law and to exercise those rights. **Mental capacity** is the ability to make decisions.

**Decision-Making Ability** is an understanding of the participant's support needs when making a decision. A participant must be assumed to have Decision-Making Ability unless all practical steps have been taken to assist them to make the decision and they remain unable to, or they have clearly indicated that they do not want to make the decision.

**Dignity of risk** is the recognition that every individual should be able to do something that has a level of risk involved, whether real or perceived.

**Financial Decisions** include but are not limited to:

- Investment decisions;
- Sale or gifts of property or valuable possessions; and
- Use of money.

**Healthcare Decisions** include, but are not limited to, decisions relating to:

- Seeking or obtaining a diagnosis;
- Accessing (or refusing) care services;
- Responding to crisis (e.g., falls, incidents);
- Agreeing to or refusing medical treatment; and
- Advance care planning.

**Lifestyle Decisions** include, but are not limited to, decisions relating to:

- Living arrangements;
- Relationships;
- Employment;
- Civic participation;
- Holidays and outings; and
- Pets and possessions.

**Representative** is a person or organisation who assists the participant requiring support in the decision-making process. As a last resort to prevent harm, the Representative may make decisions on behalf of the participant which reflect their will and preferences. A Representative is designated by a participant, or by appointment from another body if the participant cannot nominate a Representative and includes a Substitute Decision Maker.

**Substituted Decision** is a decision made by a Representative regarding a participant who is unable to communicate their will and preferences, or when a participant's will and preferences infringe on their rights or the rights of others. A Substituted Decision is based on the participant's previously expressed will and preferences or, if this is unknown, a Representative's best interpretation of 'what the participant would have wanted' based on the information available to them, such as documents for advance care planning.

**Substitute Decision Maker (guardian)** is a legally appointed person such as a guardian to make decisions on behalf of a participant in certain areas, for example Healthcare Decisions and Lifestyle Decisions, or a financial manager to make Financial Decisions. A Substitute Decision Maker should work with a participant's informal support networks to support a participant to build their decision-making capacity.

**Nominee** A nominee is a person who can make NDIS decisions for a participant aged 18 or older. A nominee can do things on behalf of the participant when working with the NDIS however it is expected that they will usually work in line with the participant's wishes. We call this representative decision making.

**Supporter** is a person or organisation who is designated by the participant or organisation to aid in the communication and development of the participant's wishes regarding their care. Supporters may be required to aid in the decision-making process; however the ultimate decision-making power lies with the participant.

## Procedures

### Decision-Making Ability

The People Project will assume that adult participants have the ability to make decisions directed by their will and preferences unless there is evidence otherwise. All people need varying levels of support for decision-making and the organisation will seek to understand these needs and ensure that people with disability, and their families are actively involved in all decisions.

A person's ability to make decisions is influenced by different personal, environmental and contextual circumstances, and may change depending on the decision to be made. Each decision is an opportunity for a participant to learn or develop their decision-making skills. The level of support that the participant needs to make a decision which reflects their will and preferences will be determined independently for each decision. This can range from low levels of support to significant guidance.

Representatives, Supporters or Nominees and staff will work closely with the participant to understand their decision support needs. They will consider the potential for decision-making ability to change, depending on the context of the decision, and other factors such as cognitive improvement or decline. All practical steps must be taken to provide the participant with the appropriate support to make and communicate a decision before they are determined to need more significant support. Embedding a human rights approach is fundamental to day-to-day decision making, and actions which limit the human rights of a participant should only be employed as a last resort to prevent harm.

### Dignity of risk

The People Project will respect an individual's right to the dignity of risk and will not dissuade them from making a decision based on the associated risks alone, whether real or perceived.

If a participant's decision involves some level of risk, staff should ensure that the participant can foresee and understand the risks associated with the decision. Staff will attempt to manage the risks associated with significant decisions, while not attempting to change the participant's mind regarding a decision.

## Supported Decision-Making Approach

The participant will be supported in a manner which maximises their decision-making autonomy, as decisions are based on their current or previously expressed will and preferences of the participant. Where a participant is unable to adequately communicate their will and preferences, the representative(s) must decide based on the best interpretation of what the participant's desires are.

In the process of supporting a participant's decision The People Project will apply the following principles:

- **Uphold a participant's equal right to make decisions and their right to the dignity of risk**

All adults have an equal right to make decisions that impact their lives, and these decisions will be respected, including where these choices may involve risk to them.

- **Take an individual approach for each participant**

Support mechanisms will be available when participants require assistance in communicating and participating in decisions. The supported decision-making approach will be appropriate for and tailored to the requirements of the participant.

- **Presume the participant has decision-making ability directed by their own will and preference**

All participants are presumed to have the ability to make decisions that affect their lives. The will, preferences and rights of the participant who may require decision-making support must direct decisions. Staff will support and assist participants to understand the context and consequences of their decisions where appropriate.

- **Ensure access to support necessary to communicate and participate in decisions**

Persons who require support in decision-making must be provided with access to the support necessary for them to make, communicate and participate in decisions that affect their lives. Where participants require assistance in the communication of their will and preference, the organisation will provide the appropriate tools and strategies for the participant to participate in decisions. This may include use of pictures, assistive technology, or language services.

- **Create safeguards against violence, abuse, neglect or exploitation**

The People Project will comply with laws and regulatory frameworks which contain appropriate and effective safeguards for participants who may require decision-making support, including to prevent abuse and undue influence. The People Project will review internal policies annually to ensure they are effective safeguards against risks of harm for participants.

## **Designating the role of Supporters and Representatives**

The People Project will support participants to remain in control of their own decisions and take all practical steps to assist them in the decision-making process, even if they do not want to make the decision.

Supporters and Representatives should be designated by or with the consent of the participant, and their roles can be formalised into a written supported decision-making agreement. The appointment of a Representative is outside the scope of The People Project and will be determined by an external official body such as the Office of Public Guardians or the NDIS. In such instances the will and preferences of the participant must be considered.

To avoid conflicts of interest, Supporters and Representatives should preferably not be in a position where they have interests in The People Project or any other service provider delivering services to the participant, as this may compromise their role. Where this is unavoidable, the written supported decision-making agreement should include a declaration of any conflicts of interest if they exist and specify how actual or potential conflicts will be managed.

Supported decision-making should occur in collaboration with informal support networks such as friends, family, peer support and independent advocates who know the participant well. This will help to create a natural safeguard for the participant and prevent Supporters from making decisions which are not aligned with the participant's will and preferences.

The organisation will work proactively with participants to record relevant information which might assist in future decision-making scenarios, such as their goals and objectives. This will enable Supporters and Representatives to give effect to the will and preferences of the participant.

The People Project will recognise the role of the Supporter and their relationship to the participant. They will record specific consents given to each Supporter, knowing different Supporters can have different roles.

The People Project will improve practices of supported decision-making through training staff in supported decision making in order to build capacity for participants and decrease the prevalence of Substituted Decisions.

## Child representatives

Participants who are children or young people will be supported to make their own decisions in conjunction with their Child Representative or guardian. If the child or young person has a guardian, it will usually be the guardian acting on their behalf.

When working with a participant who is a child or young person, The People Project will take a “best interest approach” to supported decision-making which:

- Protects them from harm;
- Promotes their development; and
- Supports positive relationships between them and their parents, family members and other significant people in their life.

If a child indicates that they do not feel that their decision maker is acting in their best interests, or if there is a danger to the child then Child Protective Services will be notified; if there is no immediate danger engagement with an advocate will be sought.

## Substituted Decisions

A substituted decision will only be made by a Representative if the participant does not understand the risks, and the decision involves a risk of serious or imminent physical or financial harm with lasting consequences. If a participant with a Representative does not feel they are acting in their best interests, The People Project will seek to engage an advocate for the participant. The Representative should ensure that they have actively engaged with the participant and their support network to get to know them, enabling them to make a decision which helps realise the participant’s will and preferences. Substitute decision-making is not an alternative for supported decision-making. Rather, supported decision-making should always be applied, and substituted decision-making is only relevant when all alternative options to support the participant to make their own decisions have been explored. It is a last resort option and subject to safeguards.

In limited circumstances, a participant’s decision may put them or someone else at unreasonable risk or the participant may be unable to understand the consequences of their decision even with the assistance of a Supporter or Representative. This may include serious, imminent risk of physical, financial or other harm. In these situations, the wellbeing of the participant (and others, if relevant) will be prioritised alongside their will and preference, and an alternate decision or course of action may be implemented for the limited time required.

## Safeguards

The People Project will ensure that interventions for participants who require supported decision-making do not restrict their rights, are subject to appeal and regular independent review, free of conflict of interest, and all decision-making processes are documented in line with record keeping and audit requirements.

### Process for dealing with perceived conflict of interest

If a staff member or person from a participant's support network believes a Representative or Supporter is not acting in the best interests of a participant, they are to notify their team leader as soon as possible.

Following a complaint in relation to a supported decision, a team leader will discuss this with their manager and assess whether the Representative or Supporter has a vested interest in the decision, which influenced their actions. If it is found that the Supporter or Representative may have a vested interest in a decision and the decision made was not in the best interests of the participant, they can report this to the NDIS Quality & Safeguards Commission or the relevant body that has determined the Supporter/Representative such as the Office of the Public Guardian.

### Documentation

For Substituted Decisions, the decision-making process and outcome will be documented and will be stored in the participant's case file.

### Cultural Safety

The People Project implements culturally safe models of supported decision-making for Aboriginal and Torres Strait Islander participants, and participants from culturally and linguistically diverse backgrounds. When a participant's will and preferences are communicated, Supporters and Representatives will recognise and respect their cultural and linguistic needs. The People Project supports and maintains participants' culture, language, values and beliefs through the education and training of staff, Supporters, and Representatives on culturally safe practices.

When engaging with Aboriginal and Torres Strait Islander participants, the systemic disadvantages they experience and how this affects the supported decision-making process will be acknowledged, The People Project will ensure that participants are supported to maintain their culture and community throughout the decision-making process, including having regard to regional cultural differences within jurisdictions. The People Project recognises that relationships and kinship can be central to decision-making and will consider customary laws when defining 'relative' and 'spouse'.

The People Project will embed diversity and cultural safety into all aspects of the organisation. This includes diversity in the staff profile, policy development and service delivery through information that is in different languages and arranging translators for participants when necessary. The organisation will also consult with culturally diverse participants to ensure that processes are accessible.

<b>Record of policy development</b>		
<b>Version</b>	<b>Date approved</b>	<b>Date for review</b>
V1.0	15/11/2023	November 2024
V1.1	29/07/2025	August 2026

<b>Responsibilities and delegations</b>	
This policy applies to	The People Project NDIS staff
Policy approval	CEO

<b>Policy context</b> – this policy relates to:	
Standards	NDIS Practice Standards, specifically standards 1.4; 3.4
Organisation policies	Client Rights Code of Ethics and Conduct Providing Client Advocacy and Support Key Elements of Client Safety and Wellbeing Client Participation and Social Inclusion Safeguarding (responding to abuse)
Forms, record keeping, other documents	Careview Planability

