



Office of the Public Advocate

NDIA decision-making guide for adults with cognitive impairments or mental ill health

Guide to assist the National Disability Insurance Agency (NDIA) to determine when decision-making support, advocacy, and substitute decision making is needed for current and potential adult NDIS participants who have significant cognitive impairments or mental ill health

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Developed by the Office of the Public Advocate (Vic) in consultation with the NDIA Victoria Launch Site



Key principles

1. Decision-making capacity should be assumed and this assumption should only be displaced on the basis of evidence.

2. Capacity is decision-specific. A person can be said to have capacity to make a decision where they can:
 - understand relevant information,
 - retain or remember relevant information,
 - use or weigh up relevant information, and
 - communicate the decision in words, gestures or other means.

(See, for example, *Powers of Attorney Act 2014* (Vic) section 4; *Mental Health Act 2014* (Vic) section 68.)

3. People should wherever possible be provided with the support to make and implement their own decisions (see United Nations *Convention on the Rights of Persons with Disabilities*, Article 12(3); *National Disability Insurance Scheme Act 2013* (Cth) sections 4 and 5).

4. Substitute decision making should only be used as a last resort, where no less restrictive alternative exists (see United Nations *Convention on the Rights of Persons with Disabilities*, Article 12 (4), *Guardianship and Administration Act 1986* (Vic) section 22(2), *Charter of Human Rights and Responsibilities Act 2006* (Vic) section 7 (2)).



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