INDEPENDENCE AND INFORMED CHOICE POLICY AND PROCEDURE

PURPOSE

The United Nations Convention on the Rights of Persons with Disabilities establishes that *"persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them".* This policy is underpinned by this principle, including all federal and state or territory legislation.

HAPPY TO HELP CARE SERVICES acknowledges the right of participants to make informed choices and take calculated risks. Each person should have the opportunity to experience life, take advantage of opportunities, and develop skills and independence, even if those opportunities may pose a risk to their well-being.

HAPPY TO HELP CARE SERVICES understands that our organisation has a responsibility to prevent or minimise any harm to the participants and staff. Safety for participants and staff is taken into consideration alongside risk-taking, and if necessary, safety takes precedence over risk-taking, privacy, and confidentiality.

The purpose of this policy is to set out how HAPPY TO HELP CARE SERVICES staff should promote participants' active participation in decision-making to safeguard their human rights and well-being and maximise their independence.

This policy aims to ensure that staff understand and implement the principles of Duty of Care and Dignity of Risk, recognising the rights of the people HAPPY TO HELP CARE SERVICES supports to make informed choices and take calculated risks.

SCOPE

This policy applies to:

- All HAPPY TO HELP CARE SERVICES staff, including permanent or casual employees, contractors, consultants, and people otherwise engaged by HAPPY TO HELP CARE SERVICES (e.g., volunteers).
- All participants receiving NDIS services and support, including their families and support network.

DEFINITIONS

Term	Definition
Advocate	A person who acts, speaks or writes to promote, protect and defend the human rights of people with disability. The Australian

	Government, and some state and territory governments, fund independent advocacy to help people with disability who face complex challenges or are unable to advocate for themselves and do not have family, friends or peers who can support them as informal advocates, to access advocacy support. An independent advocate, in relation to a person with disability, means a person who: • is independent of the organisations providing supports or services to the person with disability; • provides independent advocacy for the person with disability, to assist the person with disability to exercise choice and control and to have their voice heard in matters that affect them; • acts at the direction of the person with disability, reflecting the person with disability's expressed wishes, will, preferences and rights; and • is free of relevant conflicts of interest.
Decision-making	Process of identifying and choosing alternatives based on the values, preferences, and beliefs of the decision-maker.
Dignity of Risk	Participants' right to make an informed choice to experience life and take advantage of opportunities for learning, developing competencies and independence, and, in doing so, take a calculated risk.
Duty of Care	It means the legal responsibility to take reasonable care to avoid injury that can be reasonably foreseen to a person who might be injured by an act or omission.
Informed choice	When an individual chooses a service or product after gaining knowledge about the specific details, benefits, potential risks, and anticipated results of their decision.
Supported decision-making	Supported decision-making is a model for supporting people with disability to make decisions. The person with disability weighs options and makes a decision, with the support of an individual or a network of people who they choose to involve because they trust them to provide reliable, unbiased support for decision-making.

POLICY

Participants have the right to make choices and should always be assumed to have the capacity to make those choices. This is central to their individual rights to freedom of expression and self-determination.

HAPPY TO HELP CARE SERVICES is committed to supporting each participant to make informed choices and exercise control to maximise their independence and involvement relating to the supports provided, achieve their goals and enhance their outcomes.

To comply with this commitment, HAPPY TO HELP CARE SERVICES will ensure that:

- Active decision-making and individual choice are supported for each participant, including the timely provision of information using the language, mode of communication and terms that the participant is most likely to understand.
- Each participant's right to the dignity of risk in decision-making is supported. When needed, each participant is supported to make informed choices about the benefits and risks of the options under consideration.
- Each participant's autonomy is respected, including their right to intimacy and sexual expression.
- Each participant has sufficient time to consider and review their options and seek advice, if required, at any stage of support provision, including assessment, planning, provision, review and exit.
- Each participant's right to access an advocate (including an independent advocate) of their choosing is supported, as is their right to have the advocate present.

Adult participants will receive the support they need to make any decision. Adult participants have the right to choose who does and who does not help them to make any given decision. Partners, families of choice, families of origin, friends, carers, advocates, support persons and others can play an important role in a person's life. But not all participants need or want support in decision-making.

For children and young people, families also have an important role. In the early years, staff must work with families to understand a child's strengths, interests and needs and support them in their caring role. As a child grows up, they will be more involved in decision-making. Staff must involve children and young people in decisions that affect them in ways appropriate to their age and stage of development. In the case of very young children, this will involve ensuring staff pay attention to the signs children give that communicate their feelings, ideas and wishes, including non-verbal indications.

When a participant has a legal guardian, staff need to be clear on the decisions in which they need to involve the legal guardian. However, staff still have an obligation to ensure they have the capacity to listen to and support the participant in making decisions. Staff can use supported decision-making to do this.

Staff must work directly with the participants wherever possible to support them to make any decision regarding the supports they receive and consult participants about who, if anyone, they want to involve in decisions and discussions about their services and supports.

Supervisors or line managers must encourage staff to engage directly with people on any choices or decisions that affect them and train them on how to support participants in making their own decisions, including everyday decisions.

DETERMINING DECISION-MAKING CAPACITY

A participant is presumed to have decision-making capacity unless proven otherwise. If it has not already been predetermined that a participant has impaired decision-making capacity, they should have all decisions referred directly to them.

HAPPY TO HELP CARE SERVICES will make sure that, in the first instance, the participant is the one making decisions about themselves and the supports they receive.

HAPPY TO HELP CARE SERVICES acknowledges that some participants may have reduced decision-making abilities or be children and may therefore require support to make decisions that are in their own and others' best interests. In a situation where a participant has been assessed as not having the capacity to make their own decision, a decision will need to be made on the participant's behalf. This is known as substitute decision-making and can be either informal or formal.

Informal decision-making is where a person making a decision on behalf of a participant has not been legally appointed. People who can make informal decisions include the participant's family, friends, carer or nominated support. Most decisions can be made informally, including decisions about who a person wishes to see, their work, leisure, recreation, holidays or accessing services. However, there are certain situations where formal consent is required.

HAPPY TO HELP CARE SERVICES will ensure all informal decision-making arrangements are clearly recorded and communicated to relevant staff members. Decisions can then be pursued through the agreed informal arrangements.

In situations where informal decision-making arrangements are considered to be insufficient, formal arrangements will need to be activated. Informal arrangements can be considered insufficient, for example, when:

- There is conflict over decisions being made about the participant.
- The participant's safety or the safety of others may be at risk, and an order may be required.
- Where specific legislative requirements exist (e.g., consent to medical treatment).

Formal arrangements should take a rights-based approach and consider the participant's individual wishes as much as possible, regardless of their impaired decision-making capacity.

HAPPY TO HELP CARE SERVICES staff are required to record and maintain any formal decision-making arrangements for a participant. Any amendments to participants' decision-making arrangements must be clearly recorded and communicated as soon as practicably possible.

If there are doubts about a participant's ability to make a particular decision, staff must facilitate access to appropriate support and information to enable the person to make the decision for themselves as far as is practicable.

HAPPY TO HELP CARE SERVICES recognises that a participant's views may be expressed through body language, behaviour, and/or through a variety of verbal or non-verbal signs. Where needed, augmentative communication aids should be used to assist communication.

Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds are to be supported to make decisions in the context of their culture and heritage.

HAPPY TO HELP CARE SERVICES also acknowledges that capacity is decision specific. That is, a participant may have the capacity to make decisions in some circumstances or about some matters but not others. In addition;

- a participant will not be taken to be incapable of understanding information merely because the person is not able to understand matters of a technical or trivial nature
- a participant will not be taken to be incapable of retaining information merely because the person can only retain the information for a limited time
- a participant may fluctuate between having impaired decision-making capacity and full decision-making capacity
- a participant's decision-making capacity will not be taken to be impaired merely because a decision made by the person results or may result in an adverse outcome for the person.

DIGNITY OF RISK AND DUTY OF CARE

Participants have the right to make informed choices to experience life and take advantage of opportunities for learning, developing competencies and independence, and, in doing so, taking calculated risks. This means that all participants have the dignity of risk to make their own decisions.

HAPPY TO HELP CARE SERVICES will respect and support all participants' decisions. However, HAPPY TO HELP CARE SERVICES has a duty of care to ensure participants are not exposed to unreasonable risk and will work with them to help them strike a balance between achieving their life inspirations and goals and protecting themselves from unreasonable risk and harm.

HAPPY TO HELP CARE SERVICES will ensure that all participants have objective, accurate, and appropriate information in a format that they genuinely understand in order to make the best decisions for themselves.

HAPPY TO HELP CARE SERVICES staff are required to support participants in articulating their decision-making arrangements and record these in their individual support plans. This should include consideration of strategies that seek to support participants in identifying and managing risks and living their lives in a way that best suits them. Where appropriate, staff will maintain ongoing liaison with a participant's family, nominated support and/or legally appointed guardian to ensure this.

Where a dignity of risk issue is in conflict with a Work Health and Safety (WHS) issue, the WHS legislation overrides dignity of risk, and where a privacy issue is in conflict with HAPPY TO HELP CARE SERVICES's duty of care, the duty of care responsibility will take priority, e.g., mandatory reporting.

In situations where the duty of care obligations outweighs the dignity of risk, the participant should be informed of the decision and why the decision was made.

PROCEDURE

The following procedures are implemented to ensure that HAPPY TO HELP CARE SERVICES meets its policy objective of ensuring that each participant is supported to make informed choices, exercise control and maximise their independence relating to the supports provided.

SUPPORTED DECISION-MAKING

HAPPY TO HELP CARE SERVICES adopts the supported decision-making (SDM) approach to enhance the ability of participants to make their own decisions. This means, in practice, staff are required to routinely ask participants about their wishes, preferences, and decisions – for all types of decisions, large and small.

There are some groups of participants that are more likely to need support than others. It does not mean they cannot make their own decisions, but they may, at least, need help accessing and analysing information and communicating their decisions. For example –

- People who are non-verbal or use specific communication devices or methods.
- People from culturally and linguistically diverse (CALD) communities, who have different languages or cultural needs.
- Aboriginal and Torres Strait Island people, who may have different cultural and language needs
- People with cognitive impairments, who may sometimes have difficulty understanding some concepts.

If a participant is able to make their own decisions and can do so, then support is not needed. Still, staff could offer the availability of support if the participant would like assistance sometime in the future.

Staff who are supporting a participant to make their own decisions need to understand their specific context, identify what kind of support is needed to make decisions and support the participant to make a decision, taking into consideration their own communication methods and styles (e.g., sign language, body movements, or technology to communicate).

Staff must also respect the participant's right to take risks, even if there is the potential to make a mistake. However, as part of providing support, staff should point out potential risks and assist the participant to explore how they could avoid or handle some of the predictable risks.

To ensure effective supported decision-making in the context of service delivery, HAPPY TO HELP CARE SERVICES will have the following systems and practices in place:

- Policies and procedures that describe participants' rights to make their own decisions and a *Participant Charter of Rights and Responsibilities*, which is provided to each participant at the beginning of service delivery as part of their Welcome Pack.
- Recruitment, training and supervision systems for all personnel that focus on respecting participants' rights.
- Staff is trained in the necessary skills to support participants in making their own decisions.
- Staff have access to resources and tools to support participants' own decision-making.
- Staff must know, for each participant, who to approach for a specific decision if the participant is unable to make it themselves. This information is recorded in the *Participant Assessment and Support Plan*.
- Systems to ensure that all decisions made on behalf of participants occur lawfully. This includes ensuring that the decision maker has appropriate or legal authorisation to make any decision.

Staff should be able to understand what difficulties the participant is having with the decision to decide the type of support required by them. Support could include one or more of the following approaches:

- Providing information about the range of available options, through one-on-one discussion, access to training and skill development.
- Talking with a peer who has already made a similar decision.
- Describing the benefits and disadvantages of each option, assisting them in weighing up the pros and cons.
- Trying out some of the options before making a decision.
- Using tools to help in the decision-making process, such as charts, diagrams, etc.

Staff are required to assist participants to make all day-to-day decisions, so that they develop skills, ability, confidence and experience when important or complex decisions are needed.

There is a wide variety of supported decision-making tools and resources, many of which have been developed by experts using evidence-based research. Staff will be trained to become familiar with the range of tools and resources so that they can offer relevant support to participants.

Staff will be trained on how to support decision-making, the indicators that a person is having difficulty making a decision, and how to build the participants' skills to make decisions for themselves.

SUPPORTING DECISION-MAKING DURING THE DEVELOPMENT OF THE SERVICE AGREEMENT

Throughout the process of developing the *Service Agreement*, staff must:

- Keep the participant and their substitute decision-maker/advocate informed of their options for supports and any potential risks associated with those options.
- Collaborate and consult with the participant and their substitute decision-maker/advocate by providing current, relevant information to enable informed decision-making.
- Provide information in an Easy Read format and/or using the language, mode of communication and terms that the participant is most likely to understand.
- Allow the participant sufficient time to understand all information provided before and during the decision-making process.
- Support participants to make informed choices and decisions about the supports they receive and activities they may wish to undertake. This may require the support of others, such as their family, carers, or advocates, with the participant's consent.
- Respect participants' autonomy to make their individual choices.

SUPPORTING DECISION-MAKING DURING THE INITIAL ASSESSMENT AND SERVICE DELIVERY

When conducting the initial assessment and all subsequent interactions with each participant, staff are required to:

- Evaluate the participant's service requirements against their NDIS plan to ensure proper support and design strategies in partnership with the participant, family, and advocate.
- Schedule review meetings in which the participant, family, and advocate can provide input.
- Assess risks and their potential consequences and balance their duty of care with the dignity of risk.

- Ensure participants have enough time to consider and review their options and have access to advice at any time. Staff must not rush participants at any stage during the decision-making process.
- Allow the participant their right to intimacy and sexual expression (in the context of lawful behaviour).

Regular communications with participants will be planned and performed in a way that is identified during the initial assessment process and documented in the *Participant Assessment and Support Plan*. HAPPY TO HELP CARE SERVICES will engage an interpreter if required for communication with the participant to support informed decision-making.

Children and young people who are participants at HAPPY TO HELP CARE SERVICES are encouraged to be involved in decision-making to an appropriate level based on their understanding, age, stage of development and decision-making skills. Families and carers are also involved in the decision-making process. In cases where the legal age limit for consent applies, staff must contact their supervisor or line manager to seek advice to clarify the legality of choice and decision-making ability of young people.

DIGNITY OF RISK AND DUTY OF CARE

HAPPY TO HELP CARE SERVICES acknowledges the right of participants to make decisions that involve a degree of risk. In decision-making, staff must inform participants of the following:

- The various options available to them align with their needs.
- The benefits of each option presented.
- Any associated risks for each of the options.

Participants will be given sufficient time to consider the information provided and make informed decisions regarding the associated risks. Should a participant wish to engage in an activity deemed risky by HAPPY TO HELP CARE SERVICES, staff will:

- inform the participant of their choice to proceed with the activity;
- create a plan to identify and mitigate potential risks; and
- document in the participant's file that they were made aware of the risks and potential dangers.

When considering the balance between duty of care and the dignity of risk, staff will work with the participant to:

- Clearly outline the issues surrounding the duty of care and the dignity of risk that pertain to the specific situation at hand.
- Identify the potential consequences, including risks and likelihood of harm, of a particular action for the participant or others.
- Evaluate the type and severity of harm that could occur.
- Identify ways to minimise any identified risks or harm.

- Assess the participant's capacity to make informed decisions.
- Weigh the benefits of the activity to the participant against any negative consequences.
- Develop solutions that allow the participant to experience the benefits while minimising potential harm.

Staff can decline a request or activity where they have good reason to believe the participant's choice may cause harm or pose a threat to the safety of HAPPY TO HELP CARE SERVICES staff or other people. In the event of a disagreement and resolution is not possible, the participant will be made aware of HAPPY TO HELP CARE SERVICES's complaints management process.

Where the participant has chosen to proceed with the activity that may involve risk, and HAPPY TO HELP CARE SERVICES has not declined, staff is required to provide sufficient evidence that indicates the participant has been informed about the risks. Staff must document the discussion and outcomes, including mitigation strategies, in the *Participant Assessment and Support Plan* and *Progress Notes*.

HAPPY TO HELP CARE SERVICES fulfils its duty of care towards participants with limited decision-making abilities by:

- identifying participants who may have limited decision-making abilities;
- referring these participants to qualified professionals who can assess their decision-making capacity;
- assisting and facilitating the appointment of a substitute decision-maker for participants who are unable to make their own decisions in one or more areas of their lives. This includes specifying the areas of decision-making for which the substitute decision-maker is responsible;
- respecting and supporting the substitute decision-maker role; and
- reporting any decisions that may involve unlawful acts or that have the potential to harm the participant or others to the relevant authorities in consultation with the Managing Director.

If the participant has been assessed by a qualified professional as unable to give consent, then the participant's substitute decision-maker must sign on their behalf within their authority to do so. The substitute decision maker's name and contact details will be recorded in the participant's file.

If a participant has concerns about the conduct of an appointed substitute decision maker, they should be conveyed to relevant authorities in consultation with the Managing Director.

HAPPY TO HELP CARE SERVICES staff must not sign any form or documentation on behalf of a participant or act as a substitute decision-maker under any circumstances. If a participant is able to give consent but is physically unable to sign, staff will note that the participant

consented through an alternative method (e.g., verbal or signing) on the specific form or document.

SUBSTITUTE DECISION-MAKING

In practice, many lawful decisions can be made informally for a participant who cannot do so without needing a formal decision-maker. This could be the person's family or carer or a friend in their life with a close and continuing relationship. Ideally, informal decisions can be made when:

- The decision reflects the participant's wishes and preferences, where known; and
- The participant seems willing to go along with a proposed decision; and
- There is a shared view among the significant people in the participant's life about what should happen; and
- It is not a decision that requires a formally appointed decision-maker.

Staff cannot lawfully make important NDIS, lifestyle, health/medical and financial decisions on behalf of participants. However, staff can support and encourage informal decision-makers to respect the rights of the participant.

There are some circumstances when a necessary decision cannot be made informally for a participant who is unable to make that decision themselves, and a formal decision-maker will be needed, including:

- There are people in the participant's life who could make the decision, but there are different views or conflicts about what option is best for the person with a disability.
- When the person is objecting (verbally or by their actions) to the proposed decision
- When an organisation's rules prevent someone else from making informal decisions, such as banks, utility companies and government agencies.
- For specific types of decisions described in legislation, such as restrictive practices, sterilisation, overriding a person's objections to medication or treatment, certain medical treatments, etc.

When staff are looking for another person to make any decision on behalf of a participant, they must check if that person has the specific authority to make the decision that is needed.

When a decision needs to be obtained on behalf of a participant, staff are required to assist the decision-maker in making good decisions, including providing information that the decision-maker will need to consider, such as:

- The available options to be considered, the necessary decision, the recommended option and why it is preferred.
- Details about the efforts made to assist the person to make the decision themselves, and their wishes and preferences, where known.

- The timeframe for the decision, when the decision needs to be made so that it can be implemented effectively.
- The likely impact of that decision on the participant, where known.
- Assessments and professional reports that are relevant to that decision, where available, and where there is consent to share these.

ADVOCACY

Upon initial contact with HAPPY TO HELP CARE SERVICES, staff will inform participants of their right to access an advocate, including an independent advocate, of their choosing. They will also be advised that they have the right to have this advocate present during any interactions with HAPPY TO HELP CARE SERVICES.

Staff will assist participants in accessing and finding an advocate using the Disability Advocacy Finder or through the National Disability Advocacy Program, where required.

All staff must cooperate with and facilitate arrangements for advocates (including independent advocates) and other representatives of participants who need assistance to exercise choice and control and have their voices heard in matters that affect them.

The *Authority to Act as an Advocate Form* will be completed and signed by the participant to authorise the nominated advocate to speak, act or write on the participant's behalf to promote and protect their rights and assist the participant in exercising choice and control and having their voice heard in matters that affect them.

INDUCTION AND TRAINING

Staff are trained in the necessary skills to seek participants' wishes and preferences and in providing and/or arranging support to assist participants to make their own decisions, during induction and then annually or as needed.

Supervisors and line managers are responsible for ensuring staff have access to and experience using a range of resources and tools to support participants in making their own decisions.

RELATED DOCUMENTS

- Rights and Responsibilities Policy and Procedure
- Participant Handbook
- Staff Handbook
- Service Agreement
- Participant Assessment and Support Plan
- Authority to Act as an Advocate Form

- Participant Charter of Rights and Responsibilities
- Progress Notes
- Participant Consent Form
- Easy Read documents

REFERENCES

- National Disability Insurance Scheme Act 2013 (Cth)
- NDIS Practice Standards and Quality Indicators – November 2021
- National Disability Insurance Scheme (Code of Conduct) Rules 2018
- NDIS Quality and Safeguards Commission. The NDIS Code of Conduct – Guidance for Workers – March 2019
- National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018
- United Nations Convention on the Rights of Persons with Disabilities
- National Disability Services. People with Disability and Supported Decision-Making and the NDIS. National SDM Guide.

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