

Guardianship as a last resort: Exploring alternatives

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Office of the
Public Advocate

Acknowledgement of Country



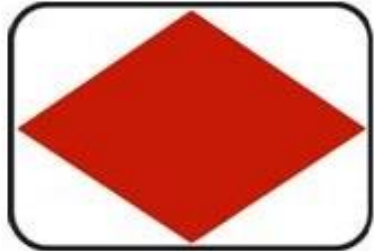
We acknowledge Victoria's Aboriginal communities and their rich culture.

We pay our respects to Elders, past and present.

We acknowledge their sovereignty was never ceded.



Acknowledgment of Self-Advocates



The Office of the Public Advocate acknowledges the efforts of people with disability, their supporters, families, friends, and caregivers in striving for rights.



We honour the strength of self-advocates in overcoming discrimination and neglect to achieve inclusion and empowerment.

We acknowledge ongoing work towards these goals and recognise the work of self-advocacy organisations and others in the disability sector.

The Office of the Public Advocate (OPA)



The Public Advocate is a statutory officer independent of government and government services.



The Office of the Public Advocate (OPA) works to protect and promote the interests, rights and dignity of people with a disability.

OPA services



OPA's services include:

- Advice and Education
- Medical Treatment team
- Investigations
- Community Visitors
- Independent Third Person
- Systemic Advocacy
- Advocate Guardianship program
- 121 employees
- 652 volunteers



We are doing this together



Housekeeping: Online



- If you have questions or comments – use chat box
- We will answer questions towards the end
- There will be a survey to get your feedback at the end of the session (in your browser)





*We want the
person to be
independent and to
have a voice*



Empowerment of the participant



Stand Before – Speaking on behalf of the person



Stand Beside – Speaking side by side with person



Stand Behind – The person speaks on their own behalf and has your support there if needed



Disability Royal Commission found



People with disability:

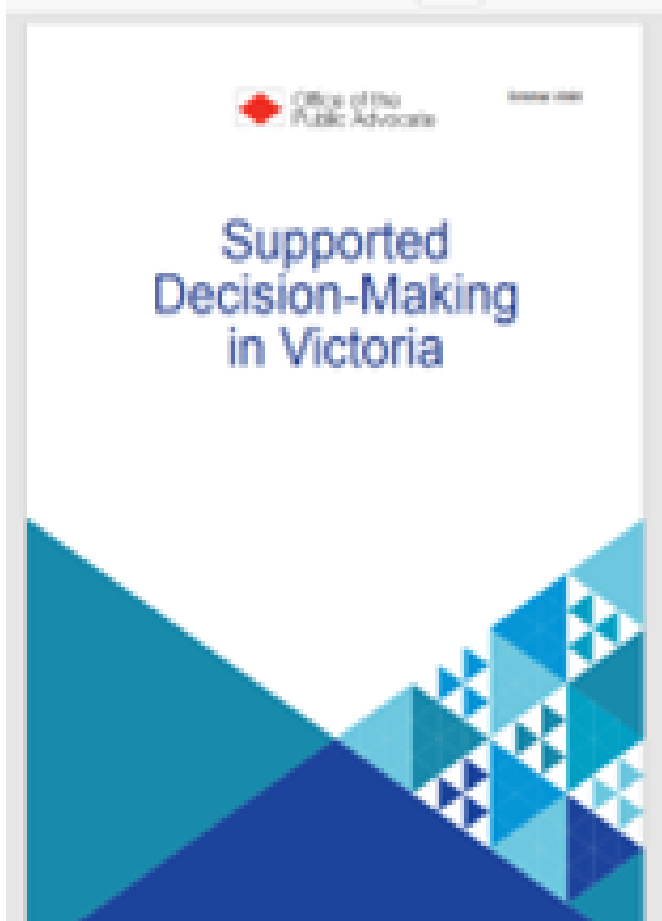
need to be supported to make their own decisions

currently they are not heard

they want greater control over their own lives.



Supported decision making in Victoria



- Five laws operate in Victoria which allow for supported decision making in many areas including:
 - guardianship and administration
 - powers of attorney
 - mental health
 - medical treatment
 - National Disability Insurance Scheme.
- Under the Guardianship and Administration Act 2019, a supportive guardian can be appointed by VCAT to support the person to make, communicate and/or give effect to decisions about the personal matters set out in the order.



Supportive guardian (& administrator)



- Any person can apply to VCAT for a supportive guardian order for an adult with disability.
- The application needs to propose someone for the role, and they need to agree to take it on.
- For a supportive guardian to be appointed, the proposed supported person needs to agree.
- OPA's [Supported Decision-Making in Victoria](#) identifies the current legal arrangements in place and provides best practice advice and case studies to show how the promise of supported decision-making can be realised for people with cognitive disability.





Importance of individualised communication plans



Working with people to best support them to communicate their will and preference

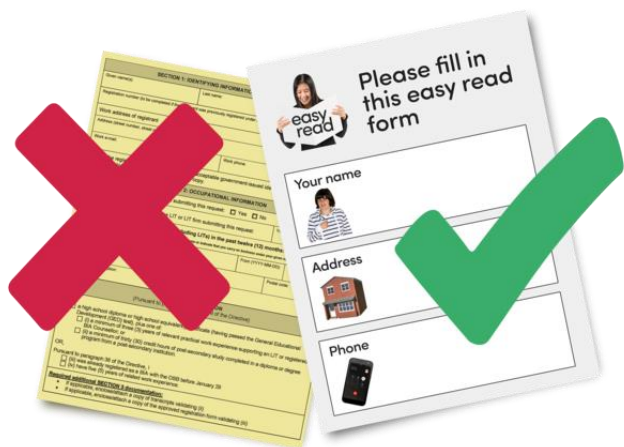


Equal Opportunity Act 2010 (Vic.)



It is against the law to discriminate based on a person's disability

All organisations that provide goods, services, accommodation or healthcare are to do so without discrimination.



Organisations need to make sure they make reasonable adjustments to address discrimination.



Disability Discrimination Act 1992 (Cth)



The Disability Discrimination Act (DDA) makes it unlawful to discriminate against people with a disability, in employment, education, receiving or using services, renting or buying a property, and accessing public places



Under the DDA, Commonwealth departments & agencies must ensure that people with disabilities can access online information and services

Consequences for organisations (e.g.: Telstra case)

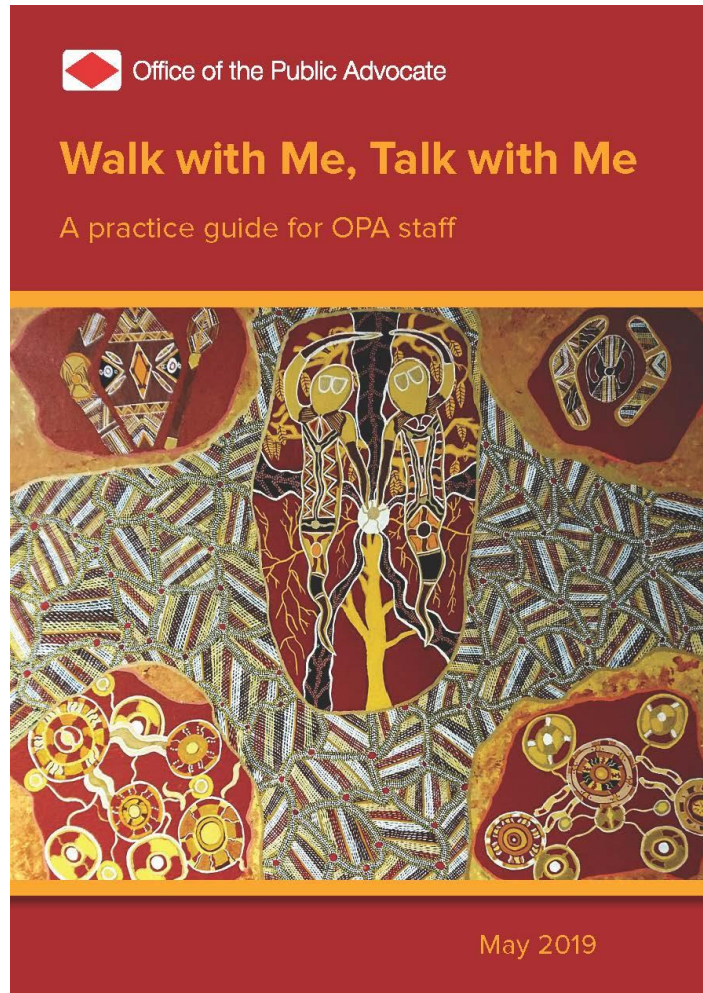




- Supporting a person to make decisions to remain in control of their lives
- Does **not** mean making the decision for them
- If no informal support network, then NDIA will fund (p.g. 14 of policy) but it is unclear what NDIA needs to justify this funding



First Nations Peoples



- Historic context
- Inter-generational trauma
- Exploring alternatives





The aim is to **protect and promote the human rights and dignity of persons with disability** by:

- having regard to the **Convention on the Rights of Persons with a Disabilities**
- Setting safeguards and limits on orders made
- recognising the need to support persons with a disability to make, participate in and implement decisions that affect their lives
- Decision making based on will and preference
- Previous legislation: *Guardianship and Administration Act 1986* (best interest framework)





A person has capacity to make a decision if they can:



- **understand** the request and the impact of the decision
- **retain** the information to make the decision
- **use or weigh** the information as part of decision-making process; and
- **communicate** the decision, their views and needs by speech, gesture or other means



Decision-making capacity GAA s 5-6



Does the person have decision-making capacity for some matters and not others?

Has the person made a decision that you don't agree with?



Has the person been provided with **practicable and appropriate** support to make a decision?

Can the person be assessed for their decision making at a time and place that is convenient for them?





Practicable and Appropriate Support:

- Make and participate in decisions affecting them.
- Express their will and preferences.
- Develop their decision-making capacity.

Will and preferences of a person with a disability should direct, as far as practicable, decisions made for that person.

Least Restrictive Support:

- Support for people with disabilities should be exercised in the least restrictive way possible.
- Actions should be carried out and performed in a manner that minimizes restrictions on their ability to decide and act.
- Consider individual circumstances when determining the level of support.



Decision-making principles GAA s 9



If a Represented Person (RP) is being spoken on behalf of, think about these things:



Has the person given all practicable and appropriate effect to the RP's known **will and preferences (W&P)**?



If the person cannot determine the RP's W&P, has the person given effect to what they believe the RP's W&P are **likely** to be?

If the person is not able to determine the RP's likely W&P, they are to act in a manner to **promote** the RP's **personal and social wellbeing**



When is a guardian needed?

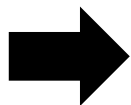


Decision making is a human right, enjoyed by all adults

Sometimes, even with support a person is not able to make decision

There is a **need** for a guardian

VCAT
Victorian Civil &
Administrative
Tribunal



VCAT may appoint a guardian or administrator if there are no less restrictive options

Investigations



The role of a guardian



Guardians can be appointed with one or a combination of the following authorities:



Access to services

Where the person lives (and with whom)

Access to persons

Commence legal proceedings

Medical treatment decisions

Whether the person undertakes education or training



Misconceptions of Guardianship



Guardians do **not**:



Attend all care team meetings

Provide case management/support coordination

Implement services and ensure a person engages with a service

Find accommodation

The RP's W&P can only be **overridden to prevent serious harm to themselves.**



What less restrictive options look like



Independent advocacy
informal supports such as

- family
- friends
- peer support
- self-advocacy
- skill building, such as via day programs



IMPORTANT

Ensure people with disability are made aware of their rights



Do I need a guardian to sign forms?



- **No** legislative requirement for a participant to physically sign administrative forms
- Guardianship **not** required when all person needs is support to explain the services or form to them
- Consider developing modified or easy read forms



Right to choose services



- Important to discuss with the person what disability supports they want
- Emma has the right to be supported to make the decision about how her funding is used





Any questions?

Share your experiences



Key takeaways



- Everyone has a role in ensuring people with disability are involved in decision-making
- Explore all other options **before** considering guardianship
- Alternatives are most positive if they ensure the person you are supporting is heard
- Legislation and Disability Royal Commission say **guardianship is a last resort**



Less Restrictive Alternatives



- Let people speak for themselves
- Use resources, mediators, specialists to determine “will and preference”
- Contact OPA Advice Line
- Speak to people with lived experience
- Join support groups



Additional resources



- Find an advocate
<https://www.daru.org.au/>
<https://www.dana.org.au>
- Find a disability support organisation
www.disabilityaustraliahub.com.au
- Self-advocacy organisations include Self-Advocacy Resource Unit (SARU): [Self-Advocacy Resource Unit – Disability Advocacy Resource Unit \(DARU\)](#)



OPA Contact details



OPA Advice Service:

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OPA website:

www.publicadvocate.vic.gov.au

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Thank you for attending



Thank you for having us today

