

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

April 2015

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

Key principles

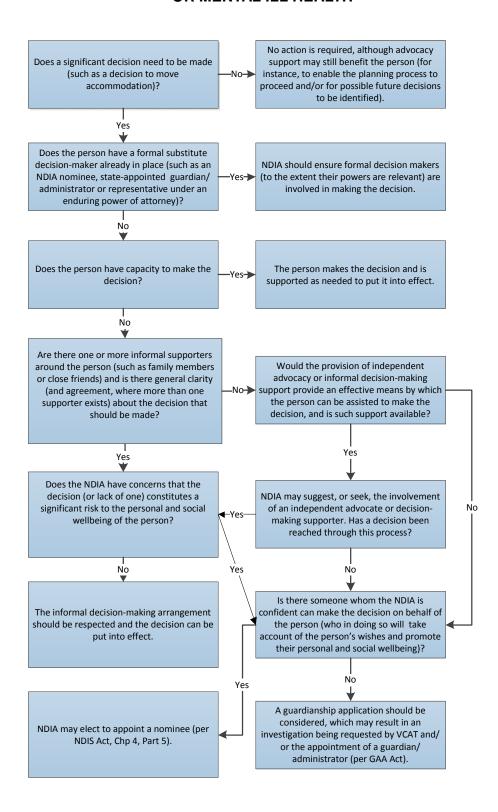
- 1. Decision-making capacity should be assumed and this assumption should only be displaced on the basis of evidence.
- 2. Capacity is decision-specific. A person can be said to have capacity to make a decision where they can:
 - understand relevant information,
 - retain or remember relevant information,
 - 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)).

April 2015 2

NDIA DECISION-MAKING GUIDE FOR ADULTS WITH COGNITIVE IMPAIRMENTS OR MENTAL ILL HEALTH



April 2015 3