



Substitute Decision Makers and Duty of Care for Participants with Reduced Decision-Making Capacity Policy

Policy

Find Wellbeing will ensure that, in the first instance, the participant is the person who makes decisions in regard to themselves and the support they receive.

Find Wellbeing recognises some participants have reduced decision making ability or are children and may therefore require support to make decisions which are in their own and others best interests.

Find Wellbeing will have knowledge of the participant's substitute decision makers.

At no time will **Find Wellbeing** staff at any level including contractors, volunteers and Board of Directors members be appointed or act as a substitute decision maker for any **Find Wellbeing's** participant.

Outcome

Participants with reduced decision-making capacity are identified and assisted in acquiring support to make appropriate decisions.

Find Wellbeing communicates with the appropriate person with regards to decision making.

Procedures

Find Wellbeing fulfils their Duty of Care to participants with reduced decision-making capacity by:

- identifying participants who may have reduced decision-making capacity
- referring such participants to professionals who are qualified to determine decision making capacity
- supporting and facilitating the appointment of a 'substitute decision maker' for participants (see below) who are deemed not capable of making their own decisions in one or more areas of their life, including listing the areas of respective decision making (e.g. a person may require a financial manager but be deemed capable of making own lifestyle decisions)
- respecting and supporting the nominated substitute decision maker's role
- reporting any decisions which involve the possibility of unlawful acts, or which have the potential to endanger or harm the participant or others to relevant authorities in consultation with the Director.

Find Wellbeing will ensure participants who have reduced decision making ability have one of the following:



A Person Responsible

- A Guardian (including an enduring guardian who has the function of consenting to medical, dental and health care treatments);
- If there is no Guardian: The most recent spouse or de facto spouse with whom the person has a close, continuing relationship. De facto spouse includes same sex partners;
- If there is no spouse or De facto spouse: An unpaid carer who is now providing support to the person;
- If there is no carer: A close relative or friend may act as the person responsible as long as they are not receiving remuneration for any services from the person.

Guardianship Tribunal

If there is no 'person responsible' it may be appropriate to make an application to the Guardianship Tribunal for the appointment of a formal substitute decision maker. The Guardianship Tribunal's purpose is to keep paramount the person's interests and welfare through facilitating decisions on their behalf. The Guardianship Tribunal has specific and limited powers. It can –

- Make guardianship orders to appoint a private guardian (family member or friend) and/or the Public Guardian
- Make financial management orders to appoint a private financial manager and/or the Public Trustee
- Provide consent for treatment by a doctor or dentist
- Review enduring powers of attorney
- Review an enduring guardianship appointment
- Approve the person's participation in a clinical trial
- Liaise with appointed decision makers as required to ensure effective service provision
- Provide Case Management support within program scope.

Should **Find Wellbeing** have concerns about the conduct of any appointed substitute decision maker than these should be conveyed to relevant authorities in consultation with the **Find Wellbeing's** Director.

The Substitute Decision Maker name and contact details will be recorded on the participant's Contact record.

Advocates

Find Wellbeing recognises and facilitates the right of participants to have access to an advocate if this is desired by the participant.

The role of an advocate is to assist a participant to express their needs or to speak on behalf of a participant. Advocates are however, not regarded as substitute decision makers.

Refer to **Find Wellbeing's** Advocacy Policy and Procedures.



Children and young people

Children and young people who are participants of **Find Wellbeing** should be involved in making decisions and choices about things that affect them to a level which is appropriate for their capacity to understand and their decision-making skills. Families, including parents and carers of children should be involved and considered in decision making processes. Legal age limits vary for specific decisions requiring young people giving consent. If need arises **Find Wellbeing** will seek advice to clarify legality of choice and decision-making ability for young people.

Consent

In no instance are **Find Wellbeing** staff able to sign any form or documentation on behalf of a participant. If a participant is competent to give consent but is physically unable to sign consent on a **Find Wellbeing** document, and clearly indicates a desire to do so, the **Find Wellbeing** staff will write on the form that the participant was unable to sign but has used an alternative method (e.g. verbal, signing) to consent or not consent.

If the participant has been assessed by a qualified professional as unable to give consent, then the participant's substitute decision maker should sign on their behalf within their authority to do so.