# Supported decision making principle

## 1. What do **the Act** and relevant guidance say?

Supported decision making practices are to be promoted. Persons receiving mental health and wellbeing services are to be supported to make decisions and to be involved in decisions about their assessment, treatment and recovery including when they are receiving compulsory treatment. The views and preferences of the person receiving mental health and wellbeing services are to be given priority (s 19).

This principle is intended to reinforce the primacy and priority of a person's views and preferences when they are receiving mental health and wellbeing services and creates obligations on service providers with a view to achieving this (Explanatory memorandum to the Mental Health and Wellbeing Bill 2022, p 20).

Implementing this principle involves finding ways to maximise a person's choice and control including when they are receiving compulsory treatment. This requires services to presume and support capacity to make decisions about treatment (for example, by providing appropriate supports, revisiting capacity at different points, assessing capacity in ways that will result in an accurate assessment), seek informed consent to all treatment decisions and promote the supported decision making mechanisms of the Act. Maximising a person's choice and control will, at times, include supporting decisions that are not preferred by the service - see the dignity of risk principle for further exploration of what this may look like in practice.

The supported decision making principle, along with the dignity and autonomy principle, underpins all other principles. The actions outlined in this principle are always required.

## 2. How do **human rights** relate to this principle?

The principle of supported decision making is fundamental to upholding the human rights of people receiving mental health care, treatment and support. It is about ensuring that people who receive mental health care have their inherent dignity and autonomy respected and their right to participate on an equal basis is protected and upheld.

Highlighted by the Royal Commission into Victoria's Mental Health System, mental health laws have developed over time from being based on a 'best interests model' where the focus was on whether a person was 'mentally ill and requires care or treatment' to laws that include frameworks of supported decision making and recovery-oriented practice, in addition to human rights protections, while continuing to permit compulsory treatment' (State of Victoria, 2021, Vol 4, page 36).

The concept of supported decision making is also reflected in international human rights instruments, including Article 12 of the Convention on the Rights of Persons with Disabilities, which states that people with disability have a right to be supported to make their own decisions.

When the supported decision making principle applies, several rights and/or freedoms will be engaged under the Charter. These may include rights and/or freedoms such as: the right to recognition and equality before the law; the right to protection from torture and cruel, inhuman or degrading treatment (which includes the right to be free from medical treatment without full, free and informed consent), freedom of movement; privacy; freedom of thought, conscience, religion and belief; freedom of expression; and the right to take part in public life.

| Related mental health and wellbeing principles include: | Related decision making principles include: |
|---|---|
| Dignity and autonomy<br>Dignity of risk<br>Family and carers<br>Supported decision making<br>Cultural safety<br>Lived experience<br>Wellbeing of young people | Autonomy |

## 3. How might a **consumer** experience this principle?

When supported decision making is promoted in my care and treatment:

- I am supported to make as many decisions as I can about my care, treatment and recovery, including when I am receiving compulsory treatment.
- My preferences and views are heard and prioritised, even if others have different opinions.
- I can take my time to make decisions, ask questions, and change my mind if needed.
- I am offered options to support me to make and express decisions in a way that suits me, for example: written information, visual tools, extra time, or help from a peer, IMHA advocate, carer or interpreter.
- I am supported to make an advance statement of preferences, which is taken seriously and followed wherever possible. I know that if my preferences can't be followed, I will be given clear and respectful reasons why.
- I can choose someone I trust to help me to express my decisions.
- I am supported to build my confidence and skills to make decisions over time.
- Information about me will not be shared - even with my consent - if doing so would place anyone at risk of family violence.

## 4. How might **carers, families and supporters** experience this principle?

When supported decision making practices are promoted:

- I am involved in the person's assessment, treatment and recovery in ways that reflect their wishes, and the treating team works with us both to make that involvement meaningful and respectful.
- If the person I support chooses not to involve me in decision making, the service will still share the information I need to continue providing safe and effective care, in line with privacy and consent requirements.
- When I am a nominated person, carer, guardian or parent of a child under 16, I am notified and consulted at key points of care and treatment as required by the Act.
- I can see that the service actively supports the person I care for to understand their options and make their own decisions, including through supported decision making tools and communication aids.
- My knowledge of the person and what helps them feel safe and understood is respected, and I feel like a valued partner in their recovery journey - in line with their wishes.
- Information will not be shared - even if I agree it can be shared - if doing so would place anyone at risk of family violence.

## 5. How do **treating teams** put this principle into practice?

This section outlines actions treating teams can take to put the supported decision making principle into practice, as well as good practice suggestions. Upholding people's views and preferences goes hand in hand with upholding their dignity and autonomy. See the dignity and autonomy principle for actions about providing appropriate supports, sharing and explaining accessible rights information and upholding people's rights under the Act.

Explore the key topics covered in this section:

- Ask about preferences including in an advance statement of preferences
- Promote and involve nominated support persons
- Involve carers, families, supporters and kin
- Presume capacity
- Support people to give and refuse informed consent to treatment
- Promote advocacy and support advocates in their role

### Ask about preferences including in an advance statement of preferences

**Requirements include:**

- Ask about people's preferences, views and priorities. For example, ask if they have a recovery or other treatment plan, what is important to them and what they need to feel and be safe.
- Give people information and options - for example, explore their preferences about different types of treatment and support (such as medication, peer support or peer-led community groups, psychological support) - and support their choices to the greatest extent possible.
- 📖 Take all reasonable steps to find out if a patient has an advance statement of preferences. **Reasonable steps** may include asking the person, checking the clinical file, asking any known family, carer, or supporter including any nominated support person and asking at multiple points in treatment, not just at the earliest point of contact with a service.
- 📖 Make all reasonable efforts to give effect to the statement. **Reasonable efforts** may include maximising what can be offered within the service including from other parts of the service, or researching services or supports that may be available from another service and making referrals. Consider every opportunity to meet the person's preferences, including preferences that involve reasonable risks.
- 📖 Follow a person's advance statement of preferences unless their preferences are not clinically appropriate or not able to be provided by the service, despite all reasonable efforts (as described above) having been made (s 90(1)). Mental health and wellbeing service providers should not assume that preferences expressed in an advance statement of preferences are not clinically appropriate or cannot reasonably be provided purely on the basis that they are different from treatment that is usually provided or is considered preferable.

  If preferred treatment cannot be provided, talk with the person, their nominated support person and (with consent) their family, carer or supporters to seek an outcome that is acceptable to the person.

  📖 If the advance statement of preferences can't be followed, explain the reasons why to the patient and their support people verbally (s 90(3)), and give written reasons (s 90(2)).
- With consent, involve the consumer's family, carer, supporters and kin to better understand the person's preferences.
- Document how the person's preferences have informed decisions including the steps taken to try to meet their preferences.

**Good practices may include:**

- Take a recovery-oriented, trauma-informed approach to discussions about treatment preferences. Support the person's own recovery goals and give as much information and choice as possible. A person's preferences and priorities may focus less on reducing symptoms and more on other factors that affect their life and wellbeing.
- Ask all consumers including voluntary consumers, and their family, carers and supporters, if the consumer has an advance statement of preferences.
- Explain the benefits of having an advance statement of preferences and offer support to prepare an advance statement of preferences.
- Make information about advance statements of preferences available in multiple ways. For example, hardcopies, QR codes, sharing IMHA resources, bookmark IMHA or Department of Health information on public access computers.
- Ensure advance statements of preferences are easily accessible to all relevant staff and are integrated into key documents like treatment and recovery plans, crisis/service response plans, and any other planning tools used to guide the person's treatment, care and support.
- Ask a person whether their advance statement of preferences remains accurate, at key points in care or if you are aware of changes to the person's life or experiences that may mean they may wish to make a new advance statement of preferences. For example, new information about treatments the person finds helpful or unhelpful, relationship changes.
- Use a simple, standardised form to capture people's views, preferences, and goals early in their engagement with the service. This 'living document' can help inform treatment and support and, if the person chooses, be used later to assist in developing a formal advance statement of preferences.

## Promote and involve nominated support persons

**Requirements include:**

- 📖 Take all reasonable steps to find out if a patient has a nominated support person and if the nomination is current. **Reasonable steps** may include:
  - asking the patient
  - checking the clinical file
  - asking a carer/family member if they know whether the patient has a nominated support person
  - making more than one attempt to ask the consumer and their support people
  - exploring with the consumer if their views about who they would like to be their nominated support person has changed, or changes during their admission.
- If there is a nominated support person, take all reasonable steps to support them to perform their role under the Act (s 34). **Reasonable steps** include:
  - informing and consulting them as required by the Act (see the Mental Health and Wellbeing Act handbook for details)
  - allowing them to view treatment documents
  - giving information
  - giving reasonable opportunities to attend meetings with the patient and treating team.
- Services should document how the nominated support person's advice about the patient's views and preferences informs decisions.

**Good practices may include:**

- Ask all consumers including voluntary consumers, their family, carers and supporters, if the consumer has a nominated support person.
- Explain the benefits of having a nominated support person who can represent the person's views and preferences. Offer support to appoint a nominated support person.
- Share information about nominated support persons in multiple ways. For example, hardcopies, QR codes, share resources developed by organisations like IMHA and Tandem, bookmarking information on nominated support persons on public access computers.
- Ensure a nominated support person's details are clearly recorded and accessible in key documents such as treatment and recovery plans, crisis/service response plans, and any other planning tools used to guide decisions about the person's treatment, care and support.

## Involve carers, families, supporters and kin

**Requirements include:**

- Involve carers, families, supporters and kin in line with the consumer's preferences.
- Recognise that family looks different for everyone, and may include family of origin or choice, extended family, important members of a person's community, and kin.
- Where there are differences in opinion between a consumer and a carer, uphold the consumer's preferences while respecting and supporting the carer's role (for example, by listening to their views and concerns, providing the information they need to provide care and connecting them with supports).
- See also families and carers principle.

## Presume capacity

**Capacity to give informed consent: key points summarised from ss 85 and 87**

All people must be presumed to have capacity to give informed consent to treatment or medical treatment. Informed consent must be sought before giving treatment unless the person seeking consent reasonably considers that they do not have capacity.

A person has capacity if they can understand, remember, use or weigh relevant information and communicate their decision (including by speech, gestures or any other means).

Relevant information means the information needed to make a decision, not all the information that may be provided to a person.

Any assessment of capacity must be specific to the decision that needs to be made.

Capacity can change over time.

Making a decision that could be considered unwise (including declining treatment) does not mean that a person lacks capacity.

A person's age, appearance, disability, condition or behaviour does not determine whether they have capacity.

Capacity can be supported, including by providing appropriate supports. Capacity must be assessed at a time and in an environment that will support an accurate assessment.

**Requirements include:**

- Always presume capacity to give informed consent to treatment decisions including when a person is a compulsory patient and before making decisions about compulsory treatment.[12]
- Enable capacity by providing appropriate supports to help people understand relevant information, make and participate in decisions and communicate their decisions. See dignity and autonomy principle.
- Recognise that a person has the right to take reasonable risks to achieve personal growth, self-esteem and overall quality of life. See dignity of risk principle.
- Consider every decision individually and support people to make the decisions they can make, even if they do not currently have capacity to make some decisions.
- Reassess capacity regularly, recognising that it can change over time.
- Do not assume that a person lacks capacity to make decisions based only on their age, appearance, disability, condition or behaviour.
- Recognise that making a decision that could be considered unwise (including declining treatment) does not mean that a person does not have capacity.
- Conduct capacity assessments in an environment that is likely to result in an accurate assessment. For example, consider ways to make the environment calmer, move to a quieter environment, and offer the person food, drink or rest before their capacity needs to be considered.

**Good practices may include:**

- Show commitment to presuming and supporting capacity by using language that maximises choice, control and respect.
- While listening to information and concerns raised by family members and carers, share information and educate family members and carers about the presumption of capacity and steps a service must take to support a person's capacity.

---

[12] Informed consent does not have to be sought if the person seeking consent reasonably considers that the person does not have capacity to give informed consent (s 85(3)). In order to reasonably consider this, the person seeking consent would need to consider the key points in the breakout box on this page.

## Support people to give and refuse informed consent to treatment

### Requirements include:

- 📖 Seek informed consent from the person before providing any treatment, including when a person is receiving compulsory treatment - unless you reasonably consider that the person does not have capacity to give informed consent - for example, after considering the factors in ss 85 and 87.
- 📖 Engage with the person about their preferences. Identify and explore real and meaningful choices about treatment. Give priority and weight to the person's preferences including any concerns about side effects or previous trauma or negative experiences of accessing services.
- 📖 Give the person adequate information to make an informed decision including:
  - an explanation of the proposed treatment (such as purpose, type, method and likely duration)
  - an explanation of the advantages and disadvantages of having the proposed treatment, including information about discomfort, risks and common or expected side effects
  - an explanation of any beneficial alternative treatments that are reasonably available, including their advantages and disadvantages
  - an explanation of the advantages and disadvantages of not having the proposed treatment
  - answers to any relevant questions
  - any other relevant information
  - any relevant statement of rights (and explaining it in a way the person understands).
- 📖 Give a reasonable opportunity to decide whether to consent by:
  - giving the person time and supporting the person to ask questions
  - providing appropriate supports to make the decision. See dignity and autonomy principle
  - giving a reasonable opportunity to get other advice or help to make the decision. For example, from any nominated support person, carer, family or supporters, peer/lived and living experience staff, IMHA advocates, other health professionals.
- 📖 Check the person can give consent freely without undue pressure or coercion.
- 📖 Check the person has not withdrawn consent or shown that they want to withdraw consent.
- 📖 Respect the person's right to make decisions that involve reasonable risks. See dignity of risk principle.
- 📖 Document the steps taken to support a person to give informed consent. For example, what options were discussed, how the person's preferences informed the choices, what information was shared, what opportunity a person had to decide whether to consent.

### Good practices may include:

- Give information and explanations in more than one format. For example, verbal and written information, links to websites, fact sheets, videos where consumers share their experiences with specific treatments including positives and negatives.
- Give information about what to expect at your service, including choices within treatment and options for treatment by other services.
- Encourage and support consumers to participate in clinical reviews.

## Promote advocacy and support advocates in their role

IMHA is the designated non-legal mental health advocacy service provider. IMHA advocates have a role under the Act to support people receiving or at risk of compulsory mental health treatment to understand and exercise their rights, express their views and preferences about treatment and make informed decisions about their assessment, treatment and recovery.

### Requirements include:

- 📖 Give any reasonable assistance to IMHA advocates to support them to carry out their role. Reasonable assistance includes:
    - If an IMHA advocate is supporting a consumer aged at least 16, who gives their consent, enabling and supporting the IMHA advocate to:
        - access the consumer's personal or health information, including any advance statement of preferences
        - attend meetings with the treating team (for example, by letting the consumer and IMHA advocate know in advance when meetings will occur, or scheduling meetings on days the IMHA advocate attends the service if possible)
        - seek information from the service on the consumer's behalf
        - liaise with a consumer's nominated support person, family, carer or supporters and advocate for their rights if they relate to the consumer's treatment, care, support or recovery.
    - If an IMHA advocate is supporting a compulsory patient aged 16 years or older who cannot give instructions to an advocate, enabling and supporting the advocate to:
        - observe and meet the consumer
        - access the consumer's personal and health information including any advance statement of preferences and contact details of a nominated support person or other support person if the person doesn't have a nominated support person
        - liaise with a nominated support person or carer to understand the consumer's views and preferences
        - advocate for the consumer's views, preferences and rights.
    - if the consumer is a child (15 or younger), the advocate may promote the consumer's views and preferences and to work with the consumer's family, carers and supporters to protect their best interests.

### Good practice may include:

- Promote the role of IMHA advocates to compulsory patients and those at risk of compulsory treatment. For example, in addition to explaining the right to advocacy, talk about the benefits of having an IMHA advocate (see IMHA - what we can do for you), tell First Nations consumers that they can request a First Nations advocate.

### Tips for talking with consumers, families, carers and supporters about supported decision making

- Be curious, and focus on a person's experiences, rather than symptoms

  For example, *What has happened to you?* rather than *What is wrong with you?*

- Recognise that people know what works for them

  *What has helped you in the past?*

- Offer options, information and support to help people make decisions

  *Is there anyone you would like me to contact who can support you?*

  *How do you prefer to receive information - talking, in writing, or something else?*

- Give time and space for questions

  *Do you have any questions about what we're talking about today? You can ask us at any time, even if something comes to mind later.*

## 6. How might **services reflect** on practice?

- Do we consistently presume capacity at all points including for compulsory patients and before making decisions about compulsory treatment?
- How do we support and encourage people to lead decisions about their treatment? For example, by providing appropriate supports, access to supported decision making mechanisms, genuine options and alternatives, and with consumer consent, involving family, carers, supporters and kin?
- How could we improve how we identify and provide appropriate supports to help people understand their rights and information, and make and communicate decisions?
- How often do we make treatment decisions for a patient where the patient has capacity to give informed consent but does not give informed consent? Could we have made a different decision that was more consistent with the person's views and preferences?
- How do we respond if an advance statement of preferences includes a preference that we don't usually offer or aren't familiar with?
- With the consumer's agreement, how do we work with the person's supporters to help us understand the consumer's views, preferences and priorities? (for example, working with nominated support persons, IMHA advocates, carers, families and supporters).
- How do we involve the lived and living experience workforce in supporting a person to advocate for their preferences and make decisions?
- How do we work with external organisations to ensure we are complying with this principle, such as IMHA, the Commission, Victoria Legal Aid's Mental Health Legal Rights Service?

## 7. **Scenario:** Upholding an advance statement of preferences and autonomy[13]

### What happened?

Elia, a young woman, was admitted to the inpatient unit on a temporary treatment order, experiencing considerable distress. The treating team considered that antipsychotic medication would help Elia, and suggested injectable medication. This suggestion made Elia more distressed.

### What actions did the service take?

The nurse checked the system to see if Elia had an advance statement of preferences. The staff checked with Elia if her statement was still current and if Elia had a nominated support person. Elia's statement said that in the first instance, she would always prefer oral medications because of previous trauma from injectable medication. The nurse alerted the psychiatrist, who changed the treatment plan to offer oral medication.

When the nurse offered Elia oral medication she initially declined because of anxiety about swallowing medications. Another staff member spent some time speaking to Elia, listening to her concerns and exploring her options and fears. Elia agreed to take oral medication after lunch, in the privacy of her room, and with one staff member present.

### Reflections from Commission lived and living experience staff

Saying 'yes you can take it after lunch, in your room with one staff member present' was a simple solution that didn't need a lot of extra resources, and honoured Elia's preferences. She was able to start medication by her own choice. It was a good outcome for staff as well, who were able to uphold her dignity and autonomy.

### Which other principles were engaged?

Mental health and wellbeing principles: least restrictive, dignity and autonomy

Decision making principles: autonomy principle

*How would you approach this situation?*

*What might you do differently?*

---

[13] Note: The scenarios in this guidance are adapted from real examples. These simple scenarios focus on the application of one principle and are intended to show that applying the principles is not always complicated. Scenarios that address the principles in more complex situations and ways are available in implementation resources on the Commission's website.

# 8. Where can I find **more information?**

IMHA - I want to make an advance statement of preferences https://www.imha.vic.gov.au/i-want-make-advance-statement-preferences

IMHA - I want to nominate a person to support me https://www.imha.vic.gov.au/i-want-nominate-person-support-me

IMHA - What we can do for you | IMHA https://www.imha.vic.gov.au/what-we-can-do-for-you

Department of Health, *Mental Health and Wellbeing Handbook 2022* - Advance statements of preferences https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook/advance-statements-of-preferences

Department of Health, *Mental Health and Wellbeing Handbook 2022* - Nominated support persons https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook/supported-decision-making/nominated-support-persons

Tandem Information kit - Helping a person participate in decisions about their treatment and support https://www.tandemcarers.org.au/Common/Uploaded%20files/Your-Rights/250228%20Tandem%20info%20sheet%205.pdf