



DECISION MAKING and CONSENT POLICY

Policy number		Version	1
Drafted by	Stacey Bayliss	Approved by MC on	19.01.2018
Responsible person	Management Team	Scheduled review date	Jan 2019

Applies to: All Staff	
Policy context:	
Standards or other external requirements	New South Wales Disability Service Standards United Nations Convention on the Rights of Persons with Disabilities United Nations Convention on the Rights of the Child
Legislation or other requirements	NSW Disability Inclusion Act 2014
Contractual obligations	Service Agreements

POLICY STATEMENT

The Decision Making and Consent Policy affirms the rights of people to make decisions that affect them and to receive support when they want it to make decisions. A set of Guiding Principles provides a framework for decision making in the context of capacity and consent.

Early Connections – Coffs Coast generally supports families with children aged 0-6 years of age, therefore it is understood that parents, carers and guardians will be making the decisions for their children when working with us. This Policy will guide this process to ensure decisions being made for children are made with the rights of the child in mind at all times.

BACKGROUND

This Policy is based on the principles of human rights found in the United Nations Convention on the Rights of Persons with Disabilities, United Nations Convention on the Rights of the Child, the NSW Disability Inclusion Act 2014 and the New South Wales Disability Service Standards.

Decision Making is contained in Article 12 of the UN Convention, which states that “*parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects*”



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of life” and “parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity”.

This Policy is also based on the Organisations commitment to deliver culturally responsive services to Aboriginal and Torres Strait Islander people, as well as people from culturally and linguistically diverse backgrounds, women and children.

PURPOSE

The Policy principles are a requirement in Family and Community Services (FACS), Ageing, Disability and Home Care (ADHC) operated and ADHC funded non-government disability support services. The Policy provides a framework for supporting people with a disability to exercise their rights to self-determination as defined in the Act and the UN Convention.

The Policy highlights the person centred approach to supporting people to make decisions that affect them, and to give informed consent. The Policy recognises the vital role of family and others, and legally appointed decision makers, in ensuring the rights of the person with disability are protected.

GUIDING PRINCIPLES

1. People have the right to make decisions about things that affect their lives.
2. People are presumed to have the capacity to make their own decisions and give consent when it is required, unless there is evidence otherwise.
3. People are supported to make informed decisions when their consent is required.
4. Consent is obtained from the person, or a legally appointed guardian, for life decisions such as NDIS Planning, development and signing of Service Agreements , accommodation, medical and dental treatment, and behaviour support.
5. Consent for financial matters is obtained from the person, or a legally appointed financial manager or person appointed under a Power of Attorney.
6. People are supported to identify opportunities to make decisions about their own lives and to build their decision making confidence and skills.
7. When support to make decisions is wanted or needed by the person, it is provided in ways preferred by the person and by a supporter of their choice.
8. Support with decision making respects the person’s cultural, religious and other beliefs.
9. Support is provided in ways that uphold the person’s right to self-determination, privacy, and freedom from abuse and neglect.



10. Decision making and self-determination are not limited by the interests, beliefs or values of those providing the decision making support.
11. The amount or type of support required by people to make decisions will depend on the specific decision or the situation.
12. People are supported to make decisions that affect their own lives even if other people don't agree with them, or regard the decisions as risky.
13. People are supported to access opportunities for meaningful participation and active inclusion in their community where they want this.
14. Information is provided in formats that everyone can understand, and enables the person, their supporters and other relevant people, such as legally appointed guardians, to communicate effectively with each other.

APPLICATION OF THE PRINCIPLES

The Guiding Principles of the Policy are the basic mandatory requirements for ADHC operated and ADHC funded non-government disability support services to follow when supporting people in their decision making and when seeking consent.

- The child's own role in the process of problem solving and decision making will be supported and respected.

CHILDREN

In the context of this Policy, a child is any person under 16 years of age and a young person is anyone 16 years or older and under the age of 18 years. (This Policy especially relates to children under 7 years of age)

Children and young people have a right to be involved in decisions that affect them, in ways appropriate to their age and stage of development under the UN Convention on the Rights of the Child.

Even very young children can make choices and communicate their feelings, ideas and wishes in numerous ways before they are able to communicate through spoken or written language. Children should be involved in decisions that affect them, in an age appropriate way. This provides opportunities for children to develop decision making skills and confidence to prepare them for adulthood, and allows parents and guardians to see them as decision makers.

Parents and guardians of people under 16 years have the right to make certain decisions for them. Parents or legal guardians also have a role in decision making concerning their children because they have primary responsibility for children's upbringing and development.

The *Interactions with Children Policy* also provides guidance for our Team to support decision making in a child and family centred way, recognising the important roles and responsibilities of parents of children, and the shift to a person centred approach to decision making as children develop and mature.



The Disability Inclusion Act 2014 requires service providers to consider the particular needs of children with a disability so that supports and services are provided in a way that:

- Recognises the child’s right to live a life with full and active participation in family, cultural and social life, with dignity and conditions that promote self-reliance.
- Recognises that children are more vulnerable to the risk of abuse and exploitation.
- Respects the views of the child (with respect to their age and maturity).

Support with decision making will be provided to children and their families, within these frameworks.

ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

The Act provides that Aboriginal and Torres Strait Islander people with disability are to be provided with services that recognise their particular needs.

To make a difference, our Organisation strives to be culturally competent, responsive and sensitive to the needs of Aboriginal and Torres Strait Islander people. The Aboriginal Cultural Inclusion Framework provides a mode of accountability for monitoring programs and services to ensure real improvements are delivered to Aboriginal Torres Strait Islander people with a disability, their families, carers and communities.

Aboriginal Torres Strait Islander people have higher rates of disability and support needs compared to non-Aboriginal people and access relatively fewer services. For many Aboriginal Torres Strait Islander people this is compounded by broad socio-economic disadvantage and geographical isolation.

This information guides our Team with an opportunity to provide supports and services that are culturally competent, responsive and sensitive for Aboriginal Torres Strait Islander people, their families and carers.

CULTURAL AND LINGUISTIC DIVERSITY

The Act provides that services and supports are to be provided to people with disability of a Culturally and Linguistically Diverse background in a way that addresses the barriers that may be created due to cultural, language and other differences.

A person’s cultural and religious preferences for supported decision making should be determined early in support planning, and demonstrate respect and cultural sensitivity by considering:

- The child and family’s perspective on decision making and consent.



- The child and family’s perspective on alternate decision making and advocacy.
- The role of spiritual and religious beliefs and practices in decision making.
- How the child and family communicate, for instance, through an interpreter.

DOCUMENTATION

Documents related to this policy	
Related policies	Interactions with Children Policy Child Protection Policy Case Management – Service plan Development Policy Complaints Handling Policy
Forms, record keeping or other organisational documents	Service Agreements UN Rights of the Child (attached)

Reviewing and approving this policy		
Frequency	Person responsible	Approval
Every 2 years	Management Team	Management Committee

Management Committee:

Policy review and version tracking			
Review	Date Approved	Approved by	Next Review Due
1			
2			
3			

Signed:

Name: Jan Newland - President

Date: 19th Jan 2018

A SIMPLIFIED VERSION OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD.

- Article 1** Everyone under 18 years of age has all the rights in this Convention.
- Article 2** The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say, whatever type of family they come from.
- Article 3** All organisations concerned with children should work towards what is best for each child.
- Article 4** Governments should make these rights available to children.
- Article 5** Governments should respect the rights and responsibilities of families to guide their children so that, as they grow up, they learn to use their rights properly.
- Article 6** Children have the right to live a full life. Governments should ensure that children survive and develop healthily.
- Article 7** Children have the right to a legally registered name and nationality. Children also have the right to know their parents and, as far as possible, to be cared for by them.
- Article 8** Governments should respect a child's right to a name, a nationality and family ties.
- Article 9** Children should not be separated from their parents unless it is for their own good. For example, if a parent is mistreating or neglecting a child, the child should be separated from the parent, unless this might harm the child.
- Article 10** Families who live in different countries should be able to see their children. Countries should take care to help children and their families, or get back together as a family.
- Article 11** Governments should take steps to stop children being taken out of their own country illegally.
- Article 12** Children have the right to say what they think should happen when adults are making decisions that affect them and to have their opinions taken into account.
- Article 13** Children have the right to get and to share information, as long as the information is not damaging to them or to others.
- Article 14** Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should guide children on these matters.
- Article 15** Children have the right to meet with other children and young people and to join groups and organisations, as long as this does not stop other people from enjoying their rights.

- Article 16** Children have the right to privacy. The law should protect them from attacks against their way of life, their good names, their family and their home.
- Article 17** Children have the right to reliable information through mass media and newspapers. Should provide information that children can understand and should not promote materials that could harm children.
- Article 18** Both parents share responsibility for bringing up their children and should always consider what is best for each child. Governments should help parents by providing services to support them, especially if both parents work.
- Article 19** Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them.
- Article 20** Children who cannot be looked after by their own family must be looked after properly by people who respect their religion, culture and language.
- Article 21** When children are adopted the first concern must be what is best for them. The same rules should apply whether children are adopted in the country of their birth or if they are taken to live in another country.
- Article 22** Children who come into a country as refugees should have the same rights as children who are born in that country.
- Article 23** Children who have any kind of disability should receive special care and support so that they can live a full and independent life.
- Article 24** Children have the right to good quality health care and an environment so that they will stay healthy. Richer countries should help poorer countries achieve this.
- Article 25** Children who are looked after by their local authority rather than their parents should have their situation reviewed regularly.
- Article 26** The Government should provide extra money for the children of families in need.
- Article 27** Children have the right to a standard of living that is good enough to meet their physical and mental needs. The government should help families who cannot afford to provide this.
- Article 28** Children have the right to an education. Discipline in schools should respect children's human dignity. Primary education should be free. Wealthier countries should help poorer countries achieve this.

- Article 29** Education should develop each child's personality and talents to the full. It should encourage children to respect their parents, their cultures and other cultures.
- Article 30** Children have the right to learn and use their language and culture with their families, majority or not these are shared by the people they live, as long as this does not harm others.
- Article 31** Children have the right to relax, play and to join in a wide range of leisure activities.
- Article 32** Governments should protect children from work that is dangerous or that might harm their health or education.
- Article 33** Governments should provide ways of protecting children from dangerous drugs.
- Article 34** Governments should protect children from sexual abuse.
- Article 35** Governments should make sure that children are not abducted or sold.
- Article 36** Children should be protected from any activities that could harm their development.
- Article 37** Children who break the law should not be a prisoner with adults and should be able to keep in contact with their family.
- Article 38** Governments should not allow children under 15 to join the army. Children in war zones should receive special protection.
- Article 39** Children who have been neglected or abused should receive special help to restore their self-respect.
- Article 40** Children who are accused of breaking the law should receive legal help. Prison sentences for children should only be used for the most serious offences.
- Article 41** If the laws of a particular country protect children better than the articles of the Convention, then those laws should override the Convention.
- Article 42** Governments should make the Convention known to all parents and children.

The Convention on the Rights of the Child has 54 articles in all. Articles 48-54 are about how adults and governments should work together to make sure that all children get all their rights. Go to www.unicef.org/crc to read all the articles.



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