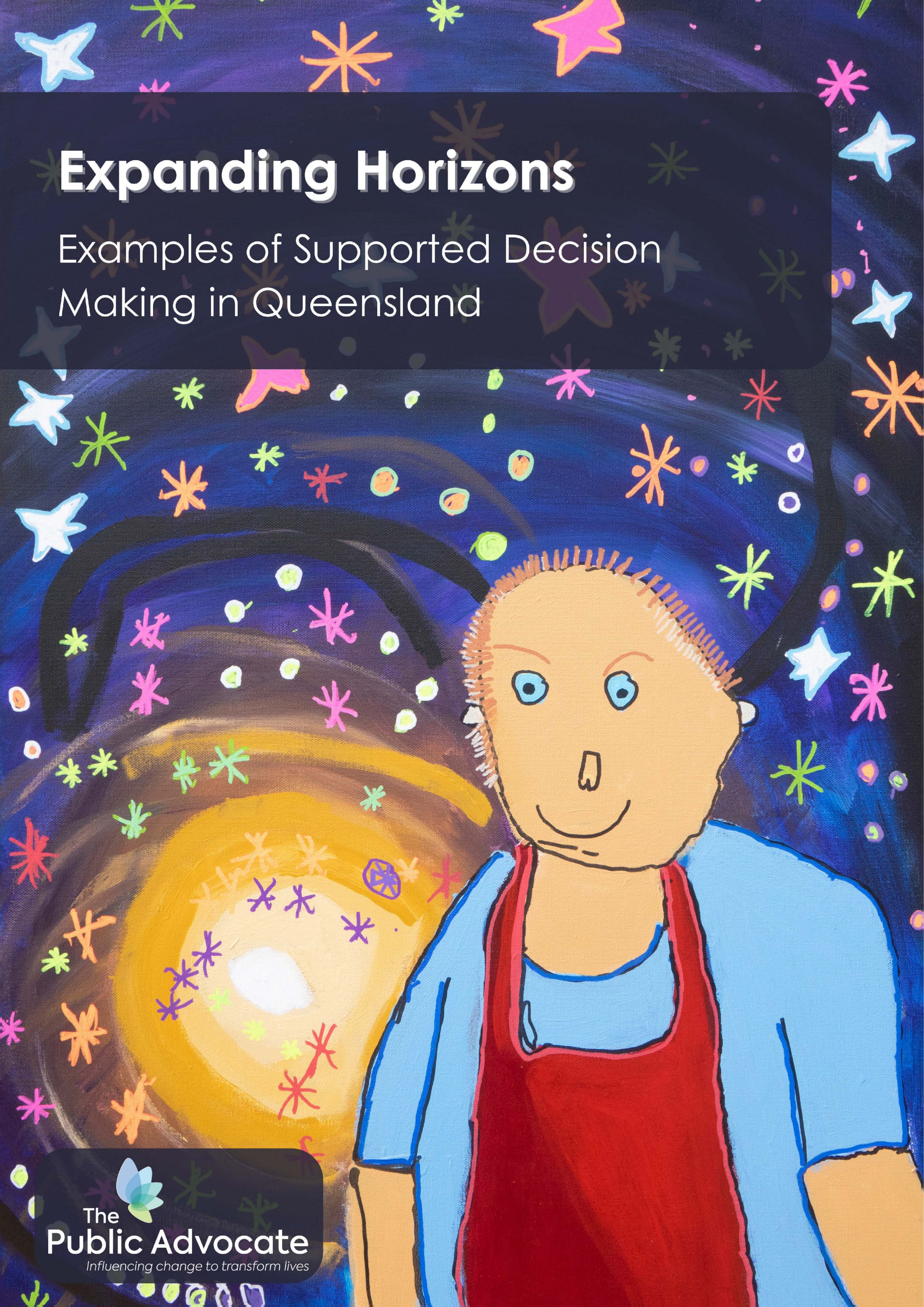
Expanding Horizons

Examples of Supported Decision Making in Queensland



The Public Advocate

Influencing change to transform lives

Andrew Pemberton

SELF-PORTRAIT WITH STARS

Mixed media on canvas

"This is a painting of me surrounded by big, colourful stars in space and the centre of the galaxy."

Andrew Pemberton is a painter working in the greater Brisbane region. He has recently been focusing on colourful landscape paintings; often incorporating buildings and animals. As a keen science fiction fan, his earlier works incorporated motifs from well-known TV series and films.

Currently Andrew prefers to build up background layers of his artworks using acrylic paint, before adding finer details using acrylic posca pens.

In *Self-Portrait with Stars* Andrew has painted himself at the centre of the galaxy, surrounded by big, colourful stars in space.

Andrew has recently exhibited in a series of exhibitions curated by Access Arts at St Andrew's War Memorial Hospital including *Time* (2019), *Dreams* (2020), *Earth Footprint* (2021), *Dancing Colours* (2022) and *Self-Portrait* (2023). He has also exhibited in a series of exhibitions curated by Access Arts at KPMG and the Brisbane Powerhouse including *Celebrating Difference* (2019), *Journey to the other side* (2020), *Visitors* (2021), *Looking Back, Looking Forward* (2022) and *Relaxed Frame of Mind* (2023).

Acknowledgement of Country
The Public Advocate and staff acknowledge Aboriginal and Torres Strait Islander peoples as Australia's first peoples and as the Traditional Owners and custodians of the land on which we live. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to Elders past, present and emerging.

Acknowledgement of Lived Experience
We acknowledge the experiential expertise of adults with impaired decision-making ability, whose rights we seek through our work to promote and protect.

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Forward

I am very pleased to present this publication, which tells the story of the way a number of Queensland agencies are seeking to bring to life the important obligation we all share to support people, including people with cognitive disability, to make their own decisions.

'Supported decision making' is a term now well-known in the disability field. It points to perhaps the most important human right of people with cognitive disability; the right for people to be the authors of their own lives.

Supported decision making is the subject of important legislative, policy and practice reforms, and there are calls for these reforms to go further.

You can read in this publication about the way that agencies in Queensland are embracing supported decision-making requirements and principles, including case study examples to demonstrate how principles are being put into practice.

You will find information that can guide and inspire us all to do more, and to do better, in supporting people to make their own decisions.

John Chesterman (Dr)
Public Advocate

Introduction

What is this booklet about?

This booklet explains how nine organisations that help people with impaired decision-making ability are putting supported decision making into practice.

The organisations are:

- Aged and Disability Advocacy Australia (ADA Australia)
- Caxton Legal Centre
- Endeavour Foundation
- Queensland Advocacy for Inclusion (QAI)
- Queenslanders with Disability Network (QDN)
- Multicap
- Office of the Public Guardian (OPG)
- Public Trustee (PT)
- Mamre

The concept of supporting people to make their own decisions is not new. We all need assistance at times to make decisions, whether those decisions are about our health, where we live, or what we buy.

But there is now much greater focus on the need to do more to support people, particularly people with cognitive disability, to make their own decisions. There is also an ever-stronger call for substitute decision making to be used only in situations of absolute necessity.

Substitute decision making occurs when someone makes a decision for another person.

This can happen informally, when a person simply makes decisions for another person without being appointed to that role. Or, it can happen through a formal legal process, when, for instance:

- a person is appointed to make decisions for another person under an adult guardianship or administration order; or
- a compulsory mental health treatment order is made; or
- an enduring power of attorney is activated; or
- a statutory health attorney makes a medical treatment decision for a patient.

While there have always been people with cognitive disability who have been supported by family members or friends to make their own decisions, over the last fifteen years Australia has implemented a range of legal, policy and practice developments and initiatives to see this happen more often.

It is fair to say that the right to be supported to make your own decisions has become one of the most important human rights of people with cognitive disability.

A key moment in this regard was the adoption of the United Nations *Convention on the Rights of Persons with Disabilities*, which Australia ratified in 2008.

The Convention (Article 12) requires signatories to 'take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity'.

This important step has seen foundational shifts in laws and policies throughout the world.

In Australia, key reform agencies have been clear in their proposals for change.

In 2014 the Australian Law Reform Commission, in its report on Equality, Capacity and Disability in Commonwealth Laws, recommended the adoption of its proposed 'National decision-making principles', among which (Rec. 3-1, p. 11) was the principle that:

> 'Persons who require support in decision-making must be provided with access to the support necessary for them to make, communicate and participate in decisions that affect their lives'.

In 2023, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability made a number of recommendations in its final report about the ways people with disability should be supported to make their own decisions. This included the recommendation for a 'new supported decision-making framework' (Rec. 6.4) and the proposed adoption of 10 'Supported decision-making principles' (Rec. 6.6) that should guide adult guardianship reform.

The language of supported decision making is now appearing more frequently in Australian legislation.

For instance, in 2013 the *National Disability Insurance Scheme Act* (Cth) contained a number of broad principles pointing to the need for people to be supported to make their own decisions. As an example, this legislation (section 5) incorporates a requirement that 'people with disability should be involved in decision making processes that affect them, and where possible make decisions for themselves'.

Amendments to Queensland's guardianship and powers of attorney legislation put in place a system of 'structured decision-making' (*Guardianship and Administration Act 2000*, section 11B; *Powers of Attorney Act 1998*, section 6C). This obliges anyone involved in making decisions for a person to:

- 'recognise and preserve, to the greatest extent practicable, the adult’s right to make the adult’s own decision'; and
- 'if possible, support the adult to make a decision'.

In addition to legislative reforms, there is an increasing array of supported decision-making policy requirements and guidance.

A recent example of a policy requirement comes from the National Disability Insurance Agency, which in 2023 released its 'NDIS supported decision making policy'. This policy outlines a number of key principles, including that: 'Persons who require support in decision-making must be provided with access to the support necessary for them to make, communicate and participate in decisions that affect their lives'.

The subsequent 2023 Independent Review of the National Disability Insurance Scheme recommended (Action 5.3) that the scheme should 'ensure participants can use their NDIS budgets to access independent decision-making supports'.

A recent and impressive example of supported decision-making guidance in Queensland comes from ADA Law and QAI (which are both contributors to this publication).

Their 2023 guide, 'Supported decision making: Helping people to make their own decisions (a guide for adults and those supporting them)', provides detailed service and legal information to assist people to make decisions in a range of fields, including the aged care, NDIS, health, financial and legal arenas.

Against the backdrop of all of this activity, the pages that follow show how agencies in Queensland are putting supported decision-making principles and requirements into practice.

A note on terminology
Two different terms are used in this publication: adults with impaired decision-making capacity, and adults with impaired decision-making ability. Some organisations use the term 'impaired decision-making capacity' as this is the wording used in the legislation under which they perform their functions. Both terms refer to people who may need support in making decisions for themselves.

***All names in the case studies have been changed to protect the privacy of the individuals concerned.*

What do we do?

ADA provides information, advocacy and education services to assist, support, represent, and advocate for older people and persons with disability in Queensland.

ADA also offers legal advocacy through ADA Law, which provides specialised legal advice to older people, people living with mental illness, persons with disability, people living with cognitive impairments or questioned capacity on issues associated with human rights, elder abuse and decision-making.

Case study – "Jun-Jie"

Jun-Jie** is an older man with dual Australian and Chinese citizenship.

Jun-Jie wishes to leave Australia and live in China. He was not permitted to board a flight to China after appearing confused at the airport. An ambulance was called, and Jun-Jie was admitted to a secure unit in a hospital.

Jun-Jie told hospital staff about his strong relationship with family members who live in China and provided their contact details.

The hospital held concerns that Jun-Jie could not independently fly to China.

They believed that he would need family to support him in making the trip. They also considered that he needed to enter respite care in a residential aged care facility until his family could fly in from China to provide this support.

Hospital staff also felt that Jun-Jie did not have capacity to make these decisions independently, and although they were able to regularly speak with his family in China, considered that a formal decision-maker was necessary.

The hospital made an application to the Queensland Civil and Administrative Tribunal (QCAT) seeking the appointment of the Public Guardian for accommodation decisions, and the Public Trustee for financial decisions. A hospital social worker contacted an ADA Law advocate to assist Jun-Jie with the QCAT hearing.

An ADA Law advocate met with Jun-Jie and heard his views and wishes. With Jun-Jie's consent, the advocate met with the hospital social worker and explained that both the hospital and Jun-Jie wanted the same thing – for Jun-Jie to be able to return to his family in China.

At the hearing, the ADA Law advocate reported Jun-Jie's preference to return to China, and that the hospital did not oppose this decision. The advocate submitted that the main reason for the application was that the hospital felt that Jun-Jie could only be discharged to respite accommodation until his family arrived, and that Jun-Jie could not make that decision.

The advocate submitted that Jun-Jie was open to entering short term respite accommodation so that he could be discharged from hospital, that he would be informally supported by family members in China to do this, and that the hospital was in regular contact with those persons.

The hospital provided specialist reports that indicated that Jun-Jie would have difficulty providing informed consent to enter into an accommodation agreement.

The advocate submitted that any appointment should be limited to that decision, and that a supported decision-making approach would see Jun-Jie rely on trusted family members to assist him in navigating other decisions, such as choosing the accommodation and purchasing a new flight to China.

QCAT consequently decided on a limited appointment of the Public Trustee as Jun-Jie's administrator, only for the purpose of entering into a respite accommodation contract, with the appointment to expire as soon as the contract was signed.

Jun-Jie felt frustrated by the process but was glad to have been listened to and to have received assistance during the hearing. He was happy that the Public Guardian was not appointed and looked forward to making plans to return to his family in China.

Case study – “Mark”

Mark** is an older man and an inpatient in an Acute Mental Health Service. Mark was unhappy with his treatment and care in the ward.

An ADA solicitor attended the ward and spoke with Mark, explaining her role and how she could assist him.

Mark explained that he did not agree with his diagnosis, that he wanted a second opinion, and that he wanted to go home.

Mark had not been provided with any paperwork about his Treatment Authority, which is required under the *Mental Health Act 2016.*

Mark had a hearing with the Mental Health Review Tribunal (MHRT) coming up and wanted the solicitor to represent him.

The solicitor explained that if Mark had not received paperwork, then the treating team were not following procedural fairness rules and that meant that the hearing could be adjourned, providing Mark with some time to seek a second opinion on his diagnosis.

The solicitor attended the first hearing and successfully argued that the paperwork was not provided within the time frames included in the *Mental Health Act*. Consequently, the hearing was adjourned. Before the next hearing, Mark was released from the inpatient unit and had time to obtain a second opinion on his diagnosis.

Mark’s community care team had received test results from when Mark was an inpatient, and these results changed his diagnosis. Mark was told to attend an appointment to discuss this, however Mark did not trust doctors and said that he would not attend because they did not listen to him. Mark contacted the solicitor and asked if they could attend. The solicitor contacted the doctor and explained Mark’s apprehension regarding his attendance at the appointment.

The doctor advised that he was concerned and would look to make a health care guardian application.

To avoid this type of appointment, the solicitor advocated for a joint meeting between the solicitor, Mark and the doctor before the doctor completed and filed the paperwork. The doctor agreed and set a time with the solicitor. The solicitor advised Mark to attend the meeting and that they would be there.

At the meeting, the solicitor advocated for Mark's concerns and wishes regarding treatment. Mark was able to explain his mistrust of doctors and the second opinion report.

During the appointment the doctor agreed that Mark had capacity to make his own decisions and consequently would not proceed with an application for the appointment of a health care guardian.

Mark was happy that his concerns were heard and consequently felt more comfortable with his treating doctor.

Case study – "Siron"

Siron** is a First Nations woman who lives with a mild intellectual disability. Growing up in care, Siron was abused, which affects the way she engages with systems and government.

As a victim of systemic abuse, Siron received a compensation payment, however there were concerns that she might not manage the payment well, so QCAT appointed the Public Trustee for her.

This appointment has caused her significant ongoing distress as she identifies that systems are harmful and abusive, and she does not feel heard.

Siron wants her partner, Harry, to help her with decisions, which he does regularly.

However, Siron believes that the administrator does not allow her to demonstrate her decision-making abilities.

Siron, Harry and their children lived in motels while requesting that the administrator use Siron's compensation payment to assist with the purchase of a family home.

This took a great deal of time, during which the former Department of Child Safety intervened and removed their school-aged child from their care.

Siron now works with ADA's Side-by-Side First Nations advocate and an ADA Law solicitor to engage with her administrator.

She expresses her preferences, and the advocates ensure the Trust Officer hears and understands what she is wanting to achieve.

Using this process, Siron has managed to negotiate the purchase of a family home, which meets the requirements of the former Department of Child Safety, meaning that the family could be reunited.

Siron also has the goal of revoking her administration order. Her advocate is now assisting her to enter the financial independence pathway program operated by the Public Trustee.

Caxton Legal Centre

What do we do?

Caxton Legal Centre provides free legal assistance and social supports to Queenslanders who experience disadvantage, trauma and marginalisation. This can include people with impaired decision-making ability.

Caxton's Seniors Legal and Support Service (SLASS) team advocates for older persons who are at risk of, or are experiencing, elder abuse.

Through a psychosocial intake, the SLASS team assesses decision-making capacity and the supports required to maximise an older client's rights to autonomy, independence, risk-taking, voice, views and wishes in addressing the abuse they are experiencing.

Case study – "Bruno"

Bruno** was referred to Caxton's SLASS Health Justice Partnership after a staff member of a service provider persuaded him into giving him his car.

Bruno had been in and out of hospital six times over the past six months due to falls. The hospital, faced with 'bed stay' pressures, was planning to apply to QCAT for guardianship and administration orders and for the appointed substitute decision-maker to place Bruno into a residential aged care facility.

Bruno was vehemently against moving into aged care. He conceded that he was no longer physically strong but asserted that he was still mentally capable of making his own decisions.

Bruno expressed feeling upset that the hospital did not consult him when making his discharge plan, or involve him in the decision-making process.

SLASS assessed that Bruno required decision-making supports rather than a substitute decision-maker.

Consequently, the lawyer negotiated with various hospital staff and attended a hospital stakeholder meeting with Bruno's treating medical staff.

During these meetings, the advocate discussed alternative options to residential aged care, including discharging Bruno to his home with extensive in-home supports aligned with his preferences and wishes.

The legal advocate also alerted hospital staff that, due to Bruno's reluctance to trust new people quickly, he needed those supporting him to repeat information in different ways to ensure he was able to comprehend any information he received and to make decisions.

Bruno also indicated that he was very cold at the hospital which initially made it difficult for him to concentrate when speaking with relevant staff members.

The SLASS social worker purchased a jacket for Bruno which made him feel warm and comfortable enough to engage.

At times, Bruno would also revert to speaking in his first language. When this occurred, SLASS engaged the services of an interpreter so that they could continue to communicate with him.

In line with Bruno's wishes and preferences, the SLASS social worker advocated with My Aged Care for him to receive increased home supports, home modifications, a medical alarm device and transport assistance to reduce his falls risk.

With these additional supports in place, the hospital agreed to trial discharging Bruno back home.

Sometime later, Bruno again suffered a fall and was re-admitted to hospital. From that point onwards, Bruno agreed he was ready to move into residential aged care.

By advocating for Bruno under a supported decision-making framework, Caxton's SLASS team ensured that Bruno was able to remain in his own home for as long as possible, avoid a QCAT process to appoint a substitute decision-maker, and make sure he was afforded dignity of risk to the greatest extent possible.

Endeavour Foundation

What do we do?

Endeavour Foundation is an independent, for purpose organisation with a vision to support people with disability to live their best life.

Endeavour Foundation supports people living with disability, through:

- **Work**: creating and supporting employment opportunities, collaborating with corporate partners and mainstream employers to provide employment opportunities and career pathways for people living with disability.
- **Home and community**: providing access to safe, secure, accessible homes and support for people living with disability.

Along with valuable learning and lifestyle programs, Endeavour provides supported independent living services, in home support and community access.

Case study – "Peter"

An Endeavour Foundation support worker provided support to Peter**, a client who had expressed that he wanted to build a go-kart.

Peter has communication difficulties, so the support worker used visual aids such as pictures and other forms of communication to help Peter choose a design.

Together, they created a list of what was needed and set a three-month timeframe for completion.

With the support to buy the necessary tools and materials and attend basic carpentry lessons, Peter gained the skills and confidence to achieve his goal and build the go-kart.

After three months of effort and collaboration the go-kart was completed and operational.

The visible pride felt by Peter was testament to his accomplishment.

Case study – “Anna”

Endeavour Foundation support workers put supported decision making into practice when assisting a client, Anna**, to obtain legal support after she had been charged with assault.

In addition to submitting an urgent QCAT application for the appointment of a legal guardian for Anna, support workers also assisted with an urgent referral to a legal advocate. An external solicitor was also involved in providing support.

The advocate, solicitor and guardian worked closely with Anna during numerous court hearings and assisted with the process (including the provision of psychological assessment and support) so that these matters could be heard in the Mental Health Court rather than the mainstream criminal justice court.

Engagement of these legal specialists was critical to ensuring that Anna’s matters were considered by the courts in an appropriate manner due to her intellectual disability and mental health support needs.

This support also achieved some behavioural change, with Anna demonstrating insight that what she did was wrong, while not necessarily knowing why it was wrong.

Queensland Advocacy for Inclusion

What do we do?

Queensland Advocacy for Inclusion (QAI) is an independent, community-based advocacy organisation and community legal service. QAI provides individual and systems advocacy for people with disability, including people with impaired decision-making ability.

QAI's vision is for inclusive communities where all people are equally valued and enjoy human rights. One of QAI's core values is the self determination of people with disability. The right to equality before the law is also critical to the deinstitutionalisation of people with disability. Deinstitutionalisation is an overarching theme of QAI's individual and systems advocacy and lies at the core of its organisational identity.

Case study – "Tom"

Tom** lives alone in a small town in regional New South Wales. Tom recently gained access to the NDIS and sought advocacy from QAI's Decision Support Program for assistance to prepare for his first planning meeting. Tom lives with psychosocial disability and some physical conditions that affect his cognition and communication from time to time. Tom has limited informal support.

Tom and his advocate had face-to-face meetings at Tom's preferred location (his local community centre) prior to the planning meeting.

This allowed Tom and his advocate to get to know each other and for his advocate to begin developing an understanding of Tom's goals and the kind of supports he may require from the NDIS to achieve them.

Following each meeting, the advocate provided Tom with written notes from their discussion.

With Tom's consent, the advocate shared the written information with the planner ahead of the planning meeting, enabling the planner to better relate to and understand Tom, and to improve the efficiency of the meeting.

After receiving his first plan, Tom worked with his advocate to identify suitable service providers.

As Tom lived in a small town, there were few registered NDIS providers available, and Tom did not wish to engage the single registered service provider in his area that had capacity to take on new clients.

As a result, the advocate assisted Tom to explore the option of engaging independent contractors and the risks involved in this process.

The advocate supported Tom to do this by:

- Providing up to date and accurate written information about the difference between registered and unregistered providers.
- Discussing the benefits and risks associated with engaging unregistered providers, as well as the differences between engaging a provider as an independent contractor versus as an employer.
- Having multiple conversations to support Tom to develop and check his understanding of these concepts over time.
- Supporting Tom to enact his decision to engage his chosen unregistered provider.
- Providing Tom with information about his rights and discussing what he is entitled to expect from his service provider, including adherence to the NDIS Code of Conduct.

As a result of QAI's approach, Tom was able to engage successfully in his planning meeting.

He received information in his chosen format to enhance his understanding and was able to meet in a place where he felt comfortable. Both Tom and the planner were prepared for the meeting which led to more effective discussions.

Consequently, Tom was able to receive NDIS funding which supported him to access supports that facilitated his social and economic participation in the community.

Tom engaged a provider of his choice and had his will and preferences with regard to service provision upheld.

Case study – "Sam"

Sam** is a young person who, at the time of his engagement with QAI, was under the care of the former Department of Child Safety. Sam has diagnoses of Autism Spectrum Disorder and Generalised Anxiety Disorder.

A few months before Sam's 18th birthday, Sam became the subject of a guardianship and administration application initiated by the Department of Child Safety, as part of its transition planning for Sam.

Sam contacted QAI's Young People's Program for assistance to navigate the QCAT process.

Sam and his advocate had multiple conversations about the QCAT process, including discussing the roles of a guardian and administrator and explaining what Sam's rights were in the process. Sam often brought his support worker along to his advocacy appointments as Sam told his advocate that he found it helpful to talk to his support worker afterwards about what had been discussed.

Leading up to the QCAT hearing, Sam's advocate assisted him to access a budgeting course which helped demonstrate his ability to manage his finances independently.

Despite Sam's success with the budgeting course, Sam became increasingly anxious about his upcoming QCAT hearing. Sam's advocate spent many hours with Sam preparing him for the hearing, including holding a mock hearing so that Sam could practice delivering his statement and answering questions he might be asked by the QCAT member.

Sam's advocate attended the QCAT hearing with him and sat beside him to provide support and encouragement.

Sam's advocate also assisted by clarifying the QCAT member's questions for Sam when required. This allowed Sam to remain calm and to participate more effectively throughout the hearing, which ultimately led to the QCAT member dismissing the application for both guardianship and administration appointments.

Consequently, Sam retained his legal capacity and the right to make his own decisions.

Queenslanders with Disability Network

What do we do?

Queenslanders with Disability Network (QDN) is the peak Queensland organisation of, for, and by people with disability, comprised of a state-wide network of members whose insights, views, and experiences inform QDN's systemic advocacy activities.

QDN's work is focused on issues important to people with disability and encourages and empowers people with disability to use their voices.

QDN also provides opportunities for people with disability to co-design the planning, design, implementation and evaluation of services, policy, legislation, and products.

QDN's members lead and influence change in their own lives, in their communities, and in the systems that deliver essential services and supports. QDN's members engage with other services, advocacy organisations and statutory bodies that support people with decision-making.

Case study – Emerging Leaders Program

QDN's Emerging Leaders program is a formal and structured leadership program. Each year a group of approximately 20-25 people with disability engage in a ten-month long program which involves monthly workshops, community activities, training sessions and mentorship.

2023 QDN Emerging Leaders workshop

The program provides participants with opportunities to develop critical thinking, explore leadership theory practice and techniques, learn to hold inquiring conversations, build relationships, and connect with established leaders.

The program focuses on both the inner work of leadership and the active work of leading and influencing change at individual, community and systems levels. Workshops include engagement around personal development, practice, and inquiry necessary for effective leadership.

The program connects people with disability with industry and disability leaders from across Australia who share their experiences, knowledge, and leadership journeys and engage with program participants who can ask questions and dig deeper in a safe environment.

2023 QDN Emerging Leaders workshop

The connections formed by participants remain strong, with many ongoing friendships formed. QDN Emerging Leaders often go on to become QDN members, are involved in peer support groups, work as QDeNgage consultants, and become Peer Leaders.

2023 QDN Emerging Leaders Program graduation

Case study – Peer support groups, group convenors/peer leaders

QDN's Peer Support Groups have operated across Queensland for the past 25 years. They are an avenue for people with disability to have a voice on issues such as housing, health, transport, education, employment and human rights.

Groups are led by local Group Convenors, who are people with disability. Group Convenors support group members to stay informed, connected and lead and influence change in their own communities.

Group Convenors form part of QDN's broader Peer Leader network, which includes Person-Centred Emergency Preparedness (P-CEP), Disability Inclusive Disaster Risk Reduction (DIDRR), and Building Inclusive and Disaster Resilient Communities (BIDRC) Peer Leaders.

Through meeting monthly with the QDN Chairperson and senior management, Peer Leaders continuously develop their leadership skills, strengthen their connections, and grow their knowledge.

These engagements also provide an opportunity for Peer Leaders to share issues they hear from members and their communities with QDN's Board and management.

QDN's Peer Support Groups and Peer Leadership programs are increasing the knowledge, skills, confidence, and leadership capacity of Queenslanders with disability. These programs and frameworks empower people with disability with the skills and confidence to be advocates for themselves and their communities, through leading, shaping and influencing change.

Multicap

What do we do?

Multicap has been supporting people with disabilities for more than 60 years. The centrepiece of Multicap's advocacy efforts is the Have A Voice Education Network (HAVEN). This program aims to guide people with mental illness or disability to gain access to information and participate in skill building activities related to self-advocacy.

By doing so, they can offer their voice to Multicap's governance, make unique contributions to their community, and ultimately demonstrate choice and control over their own lives.

Multicap's HAVEN program consists of two parts. The first is the hub program where customers join the HAVEN weekly groups to gain basic knowledge and self-advocacy skills. The second is the HAVEN meeting, which is facilitated once a month for further exploration and discussion of what has been learnt.

Case study – "Loretta"

Loretta** is a 34-year-old woman with intellectual impairment and Autism Spectrum Disorder. She started attending Multicap day services when she was young and is a member of the HAVEN program.

Loretta was keen to engage with HAVEN to learn about how to get the most out of her daily activities. She wanted to understand what her rights were, and then be able to advocate for her own choices with confidence.

She now chooses her meals and activities with the assistance of her support workers. She said that the outcomes of HAVEN for her are "I speak up for myself more" and "I feel like a successful person."

Another outcome of HAVEN for Loretta is that, with her new understanding of human rights, she says she is now more aware of the rights of other customers and is more mindful of these when they are speaking.

Case study – “Rudy”

Rudy** is a 25-year-old with intellectual impairment and cerebral palsy. He has been with Multicap since he was very young. He attends dancing group and creative art groups at Multicap’s hub and is a member of the HAVEN program.

When joining the HAVEN program, Rudy wanted to learn about self-advocacy in order to express his needs more effectively both at home and while attending Multicap services.

He has identified that he feels calmer and more relaxed when he is given the chance to reflect on his needs and can speak up about them.

At home, his primary support for decision-making is his older brother, and he also consults his support workers while attending activities within Multicap.

One of the decisions he has made that he is proud of is his decision to join an art group.

When asked how he felt about HAVEN he said, “I can control my life.”

Case study – “Colin”

Colin** is 23 years old with intellectual impairment and Autism Spectrum Disorder.

He has attended Multicap hub services for more than 15 years and is a member of the HAVEN program.

Colin is interested in disability advocacy, not just for himself, but for the wider community.

He has used HAVEN to develop a support network of staff and family members and says the main thing he has learned is, “I need to speak up for myself and make my own decisions.”

He has used his involvement with the HAVEN program to join baking groups, and to pursue music therapy. He also developed an interest in local road safety issues and has participated in writing letters to the council about the accessibility of nearby pedestrian crossings for people with disability.

Note: The persons pictured are not those referenced in the above case studies

Office of the Public Guardian

What do we do?

The Office of the Public Guardian (OPG) is an independent statutory office that promotes and protects the rights, interests, and wellbeing of some of the most vulnerable Queenslanders.

For adults with impaired decision-making capacity, OPG:

- provides decision-making services for personal matters if the Public Guardian is appointed as a person's attorney or guardian of last resort, or as a statutory health attorney of last resort under the *Powers of Attorney Act 1998*;
- investigates allegations of abuse, neglect or exploitation, and inappropriate or inadequate decision-making arrangements for adults with impaired decision-making capacity;
- independently monitors visitable sites and identifies, and escalates for resolution, complaints by or on behalf of adults with impaired decision-making capacity staying at those sites (for example, authorised mental health services, the Forensic Disability Service, specified places where NDIS participants reside, residential services with level 3 accreditation (supported accommodation/hostels), and other places prescribed by regulation); and
- educates the community about Queensland's powers of attorney and guardianship systems.

Our approach and frameworks

OPG provides decision-making services to people subject to a QCAT guardianship order within a legislative framework. Section 11B of the *Guardianship and Administration Act 2000* sets out the General Principles that must be applied by persons and entities that perform a function or exercise a power under the Act, which includes OPG guardians.

General Principle 9 requires that the person or entity must act in a way that promotes and safeguards the adult's rights, interests and opportunities, and in the way that is least restrictive of them.

General Principle 10 provides a structured decision-making framework which requires that the person or entity must:

- recognise and preserve, to the greatest extent practicable, the person's right to make their own decision, and if possible, support the person to make a decision;
- recognise and take into account any views, wishes and preferences expressed or demonstrated by the person; and
- if the person's views, wishes and preferences cannot be determined, use the principle of substituted judgement so that if, from the person's views, wishes and preferences, expressed or demonstrated when the person had decision-making capacity, it is reasonably practicable to work out what they would be, we must recognise the person's views, wishes and preferences.

OPG has Structured Decision-Making and Human Rights Frameworks that place obligations on our staff to uphold human rights, and to promote and protect the rights and interests of people receiving our services. OPG's Structured Decision-Making Framework combines our guardianship responsibilities with the principles of supported decision making.

Case study – "Sarah"

Sarah** is an 88-year-old experiencing depression and cognitive decline. QCAT appointed the Public Guardian to act as the guardian of last resort for Sarah in relation to accommodation decisions.

When the OPG guardian visited Sarah at her home, a residential aged care facility, Sarah explained that she was unhappy with her living situation and that she wanted interactions with people from the Polish community and a more European diet. She also wanted to relocate to a residential aged care facility in Sydney to be closer to her family.

In line with the General Principles of the *Guardianship and Administration Act 2000*, the guardian explored ways to support Sarah's decision to relocate.

A range of options were explored, with the guardian remaining focussed on their obligation to support Sarah's participation in decision-making and uphold her views and wishes.

A placement at a Polish-speaking residential aged care facility in Sydney was consequently secured for Sarah.

The guardian coordinated a service provider to support Sarah's travel to Brisbane Airport for her flight to Sydney.

Sarah's family in Sydney then helped her relocate to her new home.

Sarah has now settled and has reconnected with her family, including other family members residing in the same aged care facility.

Case study – “Peter”

Peter** is 18 years old and lives with a mild intellectual impairment and Attention Deficit Hyperactivity Disorder.

Before Peter turned 18 and became an adult, the Department of Child Safety applied to QCAT for the appointment of a formal guardian.

QCAT appointed the Public Guardian for Peter in relation to decisions about accommodation and the provision of services when he turned 18 years of age.

OPG’s guardian initially had difficulty contacting and engaging with Peter.

Identifying this, the guardian facilitated communication with Peter through his support workers and an independent advocate.

Peter receives supports funded by the NDIS and his advocate advised the guardian that Peter wanted to change some of his NDIS providers.

The guardian recognised and preserved Peter’s right to decide to change NDIS providers and supported him to action this.

The Public Trustee

What do we do?

The Public Trustee (PT) can be appointed as a financial administrator for adults with impaired decision-making capacity under the *Guardianship and Administration Act 2000* (Qld) or as a financial attorney under the *Powers of Attorney Act 1998* (Qld).

The PT assists individuals in managing their financial needs and providing support, including; budgeting, paying bills, financial planning and buying and selling real estate.

Actively engaging with customers, the PT aims to protect their financial interests and help safeguard them from potential exploitation or neglect.

The PT uses a structured decision-making framework in everyday practice to partner with customers and support stronger customer engagement through decision-making founded on customer views, wishes and preferences in consultation with their support networks.

Case study – “Carl”

Carl** is an elderly person diagnosed with mixed dementia and various other medical conditions. His mobility is limited, and he uses a wheelchair for community access and a mobility aid to assist with indoor mobility.

For most of his adult life Carl has lived alone in the community, estranged from his sibling, without formal support, and with a limited social network. He has never married and does not have children.

Following a prolonged hospital admission and a history of multiple falls requiring hospital treatment, Carl decided to move to a residential aged-care facility on the advice of his treating medical team.

Around this time, QCAT appointed the PT as his financial administrator, as his long-term treating medical specialist determined he had lost decision-making ability for financial matters.

Following Carl's move to residential aged care, the PT obtained independent financial advice, which recommended he retain ownership of his property as a rental to obtain additional income, which would assist in funding his aged care fees.

During meetings with Carl to obtain his views, wishes and preferences about the financial advice, he indicated he was happy to proceed with the recommended approach, and the PT signed a Permanent Residential Aged Care Agreement on his behalf.

Shortly after signing the permanent aged care agreement, with the support of an independent advocate, Carl advised that he wished to return to living in his own home. To support this request, the PT needed to understand the costs involved to assist him in achieving this wish.

The PT determined that Carl had sufficient income and assets to meet his ongoing costs while investigating the option of his return to his home.

With Carl's agreement, the PT did not progress with renting his property during this time.

Representatives from the PT met with Carl and his advocate on multiple occasions over the next few months to discuss what would be required to support his preference to move home.

The PT worked with Carl and his advocate to facilitate an assessment by the Aged Care Assessment Team (ACAT), an Occupational Therapy Assessment funded by the Department of Veterans' Affairs (DVA) and a privately funded Occupational Therapy Assessment.

The assessments identified that Carl required home modifications, assistive technology, nursing care, domestic assistance and personal care to enable him to reside safely in the community.

The PT undertook further work to identify the costs associated with meeting his assessed care and support needs, including identifying the services subsidised by a Commonwealth-funded Home Care Package (HCP) and DVA, and fees and services that Carl would need to self-fund.

On confirmation of the costs to support Carl's move home, the PT reviewed Carl's budget to determine if he could afford his assessed care/support needs, considering his income and assets.

Representatives from the PT engaged in further meetings with Carl and his independent advocate to discuss the proposed budget and expenditure. Carl subsequently consented to the costs associated with home modifications, the purchase of assistive technology and the self-funding of additional care and supports, noting services subsidised by DVA and the HCP would not fully meet his assessed needs.

Upon reaching the financial decision that a return to living in the community was affordable and that Carl supported the proposed budget, the PT consulted with Carl, his independent advocate and preferred HCP Provider, to develop a plan to progress his transition from aged care.

Before the scheduled date of Carl's return home, the PT engaged with Carl, his advocate and service providers to ensure his property was ready and the new budget was agreed and actioned.

The PT undertook specific actions, including facilitating access to Carl's home to complete the required home modifications, and to enable the delivery and set up of the assistive technology he needed.

The PT also attended to the payment of invoices for approved property maintenance, modifications and assistive technology.

To ensure the formal support required would commence, the PT executed formal service agreements with Carl's chosen HCP Provider, DVA and his self-funded care provider, set up a pharmacy account, and agreed on Carl's preferred way to receive the funds required to meet his other personal expenses.

Once the necessary arrangements were made, Carl left aged care and returned home with the support he required to live in the community.

Mamre

Note:
The Mamre Association, after providing services to the Queensland community for a period of more than 40 years, ceased trading in November 2023. Prior to this closure, the Association submitted this case study to the Public Advocate. In the interests of sharing examples of good practice and positive outcomes in supported decision making the case study has been included in this publication.

Case study – "John"

John** is in his 50s and has lived with his elderly parents in the family home. John has a close family, and they are planning for the future.

While living at home, John had attended a day program most days of the week and had begun individualised support at home, going out in the community 1-2 days a week.

John was a decision maker in Mamre's Decision-Making Possibilities project (DMP), a unique three-year joint project funded by a Department of Social Services Information, Linkages, and Capacity Building Grant.

The DMP enables people with complex communication needs to increase their capacity to make their own decisions.

Through the DMP, John was linked with a Speech Therapist and Support Coordinator at Mamre.

During the project John was supported to build a network of supporters, including his parents, a sibling and an independent support worker who knew John well.

The network met regularly to confirm John's expressions of preference and will, discuss decision opportunities, and contribute to information sharing. This included a communication profile that described who John is and what is important to him.

John was then linked with a communication device, Proloquo2Go, on an iPad and a picture communication book with pictures of activities, people, travel options and other daily tasks.

John was supported to use a Talking Mat, the Proloquo2Go, and visuals to think through his preferences about moving into a home of his own.

His views were recorded through photos of the pictures on the talking mat and then written into a picture story.

A communication partner then checked with John about his preferences.

This information was used to present John’s preferences at his next NDIS re-assessment and informed the funding of his supports.

Since the project, John’s network of supporters, his Speech Therapist and Support Coordinator continue to assist his decision-making. He has moved into a home of his own and was involved in choosing this home and his flat mates. He has also decided to stop attending his day program and try something new.

John has also been making decisions about clothing and has purchased some new items which he has been showing to others. He is also making decisions on when he would like to shave – never on Mondays!

John’s family and supporters have been surprised that John has begun to use his speech more frequently and more loudly.

John is enjoying spending time with the people he lives with. He has been playing loud music, saying “no” more often, and expressing his preferences.

When John showed his parents a video of him making a decision by pointing to visuals, his father shared that they had never seen John making a decision like this before.

Public availability

This publication is also available online at www.publicadvocate.qld.gov.au.

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This booklet, Expanding Horizons: Examples of Supported Decision Making in Queensland, has been produced by the Office of the Public Advocate (Qld).

Contact Us

Mail: GPO Box 149, Brisbane QLD 4000
Telephone: (07) 3738 9513
Website: www.publicadvocate.qld.gov.au
Email: public.advocate@justice.qld.gov.au

The Public Advocate