



Disability Services Commission

Position Paper

Individual safeguarding

1. Objective

This position paper promotes understanding and best practice in safeguarding for individuals with a disability ('individuals'), who are using Disability Services Commission WA ('Commission') provided individualised funding and/or Commission provided disability services and/or Commission contracted disability services.

A framework is provided to guide individuals, their supporters and disability services in the consideration of individual safeguarding. Components of the framework include:

- What are safeguards? (Section 2)
- Actions involved in individual safeguarding (Section 3)
- Principles underpinning safeguarding (Section 4)
- Considering and determining individual safeguards (Section 5)
- The spectrum of individual safeguards (Section 6)

Please refer to the Glossary at the end of the paper for definitions of common terms.

2. What are safeguards?

Safeguards refer to supports and mechanisms that promote, enhance and protect an individual's:

- Human rights
- Decision making, choice and control
- Safety and wellbeing
- Citizenship and quality of life

The human rights and individual outcomes that safeguards aim to uphold are described further in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), Disability Services Act WA 1993 (Act) Principles, and the National Standards for Disability Services (Standards).

When individuals are vulnerable, and at risk of experiencing compromised human rights and outcomes, safeguards provide preventative and/or reactive responses to minimise individuals' vulnerability and risk. Examples of compromised human rights and individual

outcomes are described in Section 5.

Safeguards include a range of informal and formal supports and mechanisms operating at the level of the individual, the community, their disability services and overarching government systems and legislation. These are described further in section 6.

3. Actions involved in individual safeguarding

The actions involved in individual safeguarding may include:

- getting to know an individual to understand their unique:
 - life history, circumstances, strengths, preferences, choices and aspirations
 - preferred 'communication mode/s'
 - support needs and preferences
- building a relationship of trust with the individual
- witnessing an individual's circumstances in their day to day lives to identify potential or actual compromised human rights and individual outcomes
- facilitating individual empowerment (explained in section 6.1)
- representing an individual's interests and providing advocacy support
- facilitating or providing interventions to minimise individuals' experience/ risk of compromised human rights and outcomes
- facilitating individuals' access to various other safeguards as appropriate.

4. Principles underpinning safeguarding

Self-determination - As far as possible, individuals are fully involved in the consideration and determination of their own safeguards, to the extent of their capacity.

Individualised – The consideration and determination of safeguards is relevant to an individual's circumstances and proportionate to their level of vulnerability and risk.

Responsive – Safeguards should be responsive to the circumstances of an individual at a particular time, and may need to change over time as individuals' circumstances change.

Assume capacity – The starting assumption is that all individuals have capacity to make decisions and exercise choice, regardless of their disability, unless proven otherwise for a specific decision. Capacity is decision-specific. Individuals who require support to make decisions and exercise choice should have access to the support they need.

Minimum restriction – Safeguarding enhances an individual's and other community members' safety and wellbeing, while imposing the least possible restrictions on an individual and their choices.

5. Considering and determining individual safeguards

Individuals should be involved as far as is possible, to the extent of their capacity, in the consideration and determination of their own safeguards, as an authority of their own lives.



An individual's family, friends, carers and advocates should also be involved in the consideration and determination of an individual's safeguards, as determined by:

- the individual, when an individual is an adult with capacity to make this decision
- their family, friends, carers (refer Glossary for definition of carer), advocates when an adult individual does not have capacity to make this decision (unless someone else is legally appointed with substitute decision-making authority for this decision)
- their parents (or legal guardian where appointed) when the individual is a child.

Note: substitute decision-makers should be in accordance with the WA Guardianship and Administration Act 1990. Legally appointed representatives for the individual should be involved according to their statutory role.

People supporting individuals in the consideration and determination of safeguards should, as far as possible, be free from conflict of interest, or manage any conflict of interest to objectively focus on the individual's interests in these considerations.

The consideration and determination of individual safeguards may be required in relation to:

- the ongoing everyday life of an individual
- a particular decision, choice or situation.

The consideration and determination of individual safeguards is not a cursory exercise- it requires an in-depth knowledge and understanding of an individual and their circumstances.

5.1 When are individual safeguards required?

The extent to which safeguards need to be intentionally considered is determined by an individual's level of **vulnerability**, and their **risk of experiencing compromised human rights and outcomes**. Thus a necessary prerequisite in determining individual safeguards is to first understand an individual's level of vulnerability and risk of experiencing compromised rights and outcomes.

Vulnerability

Determining an individual's level of vulnerability requires understanding any limitations they experience in their:

- intrinsic cognitive capacity to:
 - make reasoned judgements
 - understand their rights and what constitutes a violation of their rights
- capacity to protect themselves in situations where they are exposed to risk
- capacity to make themselves understood by others
- likelihood, when their rights are compromised, of:
 - speaking up
 - telling people who will help them
 - self-referring to advocacy services, complaints processes, statutory authorities
- dependency on others to have their basic needs met (such as food, personal care, communication, clothing, housing, mobility, financial management)
- **personal power**, which in this framework refers to an individual's ability to effectively:
 - assert themselves, including their rights, opinions, preferences and choices
 - ensure their rights, preferences, decisions and choices are enacted
 - self-direct and control their lives.

There are a number of foundations that contribute to an individual's personal power. The strength of these foundations needs to be considered in determining an individual's vulnerability. Refer to section 6.1 for the range of foundations of personal power that need to be considered. Examples include: knowledge, communication, self-advocacy skills, decision-making skills, physical independence, health and wellbeing, financial independence, security of home, sense of personal identity and self-worth, solid network of family and friends.

- effectiveness and comprehensiveness of existing safeguards (section 6).

If an individual is vulnerable to any extent, safeguarding needs to be considered. Safeguards should as far as is possible be proportionate and responsive to the individual's level of vulnerability.

Risk of experiencing compromised human rights and outcomes

If an individual is vulnerable, it is also important to understand their level of risk of experiencing compromised human rights and outcomes, to assist in the determination of appropriate safeguards.

This requires understanding and identifying potential and actual situations where an individual could experience compromised human rights and outcomes, and the likelihood of this occurring. The level of risk to other individuals, staff and other community members resulting from an individual's choices and/or actions also needs to be considered.

To identify the risk of compromised rights and outcomes, a deep and objective understanding of what compromised rights and outcomes could look like in the lives of individuals is required.

The risk of experiencing compromised human rights and outcomes needs to be considered across the range of human rights and outcomes promoted by the UNCRPD, Act and Standards. This includes, but is not restricted to, the risk of an individual experiencing:

- abuse, harm, neglect, restriction, violence, exploitation, discrimination
- compromised health and wellbeing
- lack of respect for their dignity, worth, independence, autonomy, privacy, difference
- limitations in opportunities/support for their freedom of expression - seeking, receiving and imparting information/ideas/opinions/feelings using their preferred communication mode and accessible information
- limitations in opportunities /support to make decisions and choices to the full extent of their capacity
- limited opportunities for relationships with family and friends
- limitations in access to the physical environment, services, facilities, information
- limitations in opportunities/support for independent community living and security of home
- limitations in opportunities/support for full participation and inclusion in community life
- limitations in opportunities for education, learning, personal growth, work
- compromised standard of living.

Safeguards should as far as is possible minimise identified risks, with due consideration for an individual's dignity of risk.



Dignity of risk and duty of care

All people have freedom to make decisions and choices that expose their own self to a level of risk. All people also have freedom to make mistakes, and learn and grow from trial and error. This is referred to as **dignity of risk**.

Duty of care refers to:

- responsibility under the common law for people to take reasonable care to ensure their actions, or inactions, do not cause injury or harm others
- responsibility of the Commission, Commission provided services, and Commission contracted services, to ensure the safety and wellbeing of individuals to whom they provide funding or services, under the banner of the Act and the Standards.

Duty of care requires understanding of both the risk to the individual and the potential exposure of other people to risk. The greater an individual's vulnerability and risk, the greater the consideration that needs to be given to duty of care.

Careful consideration needs to be given to balancing dignity of risk with duty of care.

When required to demonstrate duty of care, records should be kept of an individual's capacity to make the decision, the decision making process, any support for their decision making and any risk mitigation strategies.

For individuals who are vulnerable, safeguarding should aim to enhance an individual's and other community members' safety and wellbeing, while respecting their dignity of risk, and imposing the least possible restrictions on an individual and their choices.

Ongoing consideration

Individual safeguards are an ongoing consideration, requiring regular review to ensure they remain responsive to an individual's circumstances which may change over time.

5.2 Which safeguards?

Once a requirement for individual safeguards has been determined, a number of factors need to be considered in determining and facilitating the most appropriate safeguards:

- extent of an individual's vulnerability
- risk of compromised human rights and outcomes
- the context where safeguarding is required (everyday life, situation specific)
- range of safeguarding actions (section 3) required to respond effectively to an individual's vulnerability and minimise identified risks
- the extent to which the 'witnessing' (section 3) action of safeguarding is required
- safeguard, or combination of safeguards, which can effectively provide the required safeguarding
- the safeguard's freedom from conflict of interest and independence
- extent to which the safeguard maximises individual empowerment (section 6.1) and informal relationships (section 6.2)
- least restrictive option.

The importance of Independent safeguards

'Independent safeguards' refers to safeguards that are independent of an individual's disability services. Disability services strive to support the best possible outcomes for

individuals and can themselves provide important safeguarding activities (section 6.4). However, disability services consider both organisational interests and individuals' interests, which at times can create a conflict of interest. Disability legislation highlights the importance of individuals having access to independent information, advice, support, representation and advocacy for this reason (Standards, Act). Priority needs to be given to ensure individuals who are vulnerable have access to independent safeguards. These include an individual's informal relationships (section 6.2) and independent community services (section 6.3).

The importance of relationship-based independent safeguards

People who are independent of an individual's disability services, who have a relationship with an individual involving ongoing regular personal contact, have opportunity to have a level of scrutiny of individuals' circumstances in their day to day lives. This enables them to witness and recognise incidences of compromised human rights and outcomes that individuals may not otherwise identify or report themselves. This 'witnessing' activity of safeguarding is not possible with those safeguards involving more limited contact.

Relationship-based independent safeguards, and the 'witnessing' activity of safeguarding they provide, are particularly critical for individuals who:

- may not understand or recognise when their rights are compromised and/or
- are unable or unlikely of their own accord, to notify people who can help them and/or self-refer to an independent advocacy service/complaints process/statutory authority.

Relationships also allow for the time and level of contact needed for:

- the individual to feel comfortable and to trust someone
- the person providing safeguarding to get to know the individual and their life history, strengths, aspirations, choices, circumstances, communication mode, support needs and preferences.

Relationship-based independent safeguards could include family, friends, carers (refer section 6.2.1- natural relationships), advocates (informal and formal), and Community Guardians (section 6.3.2), when these have ongoing regular personal contact with an individual. It does not include people who do not have regular personal contact with the individual, including Public Advocate guardians who have limited contact with individuals.

An individual's safeguards should as far as possible:

- be **proportionate and responsive** to an individual's level of vulnerability and risks
- **minimise identified risks** of compromised human rights and outcomes
- maximise **individual empowerment** (section 6.1)
- include and maximise **informal relationship-based** independent safeguards (section 6.2)
- include safeguards that are **independent** of the individual's disability services
- place **least possible restriction** on the individual.

Section 6 below provides a range of safeguards that can be considered. A combination of safeguards may need to be considered to effectively respond to an individual's safeguarding requirements and minimise identified risks.

6. The spectrum of individual safeguards

There is a range of safeguards to consider:

6.1 Individual empowerment

6.2 Informal relationships

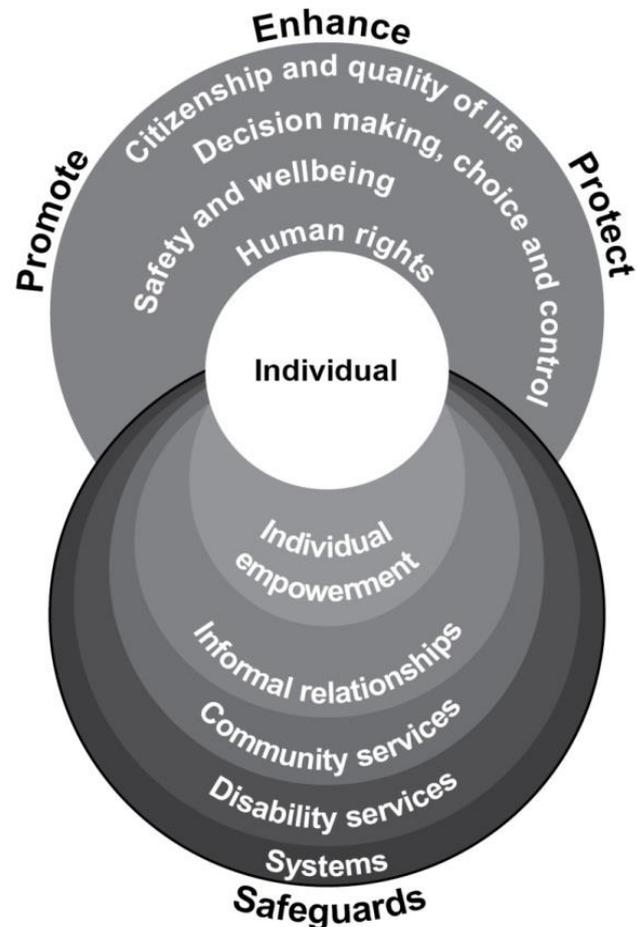
6.3 Independent community services

6.4 Disability services safeguards

6.5 Systems level safeguards

In practice, these safeguards may not be so clearly delineated, and they can have varied and changing levels of importance, dependent on the individual's circumstances at a particular time.

Following is an overview of these different safeguards.



6.1 Individual empowerment

The first and foremost consideration in individual safeguarding should be reducing individuals' vulnerability through enhancing individuals' ability to safeguard themselves.

Individuals can experience vulnerability as a result of an imbalance of personal power (defined in section 5.1) between them and another person, which can result in another person having power over an individual.

The term 'individual empowerment safeguards' is used in this paper to describe strategies that facilitate opportunities for individuals to strengthen their personal power and ability to safeguard themselves. There are a range of elements contributing to personal power—referred to as foundations of personal power in this paper. Examples of foundations, and corresponding safeguards when a foundation is limited, are presented below.

Foundation of personal power	Strategies to enhance personal power (Individual empowerment safeguards)
Knowledge – Includes understanding rights and choices, general knowledge	‘Accessible information’ and support to enhance understanding of : <ul style="list-style-type: none"> • rights • choices • what best practice support looks like, support options • safeguards Opportunities for continued learning and increasing general knowledge
Strong communication	Access to preferred ‘communication mode’, person to person support to engage in communication
Well-developed self-advocacy skills	Individualised support, peer support groups, leadership development opportunities, to enhance self-advocacy confidence and skill
Good decision making skills	Supported decision making (see Note 1 below)
Physical independence	Environmental access improvements, contemporary assistive aides and equipment, person to person support, opportunities to enhance physical fitness and strength
Health and well being	Continued opportunities to enhance health, physical, emotional and spiritual wellbeing
Financial security and independence	Having access to own money, managing own money, support for financial planning/management, continued opportunities for increasing income
Security of home	Home lease in own name, secure tenure, home ownership, choice in house-mates and support staff
Strong sense of personal identity and self-worth	Continued opportunities and support to: <ul style="list-style-type: none"> • exercise choice • learn and grow through experience • pursue interests and passions • self-expression through lifestyle, sexuality, personal attire, possessions, home environment etc. • participate in activities of daily living • contribute and have valued roles in: <ul style="list-style-type: none"> • natural relationships (see Note 2 below) • work and employment • community interests • partake in ongoing education and learning, obtain qualifications • experience ongoing personal, emotional and spiritual development • feel a sense of achievement in the above • reach their potential
Solid network of family and friends, providing affirmation and support	Opportunities and/or support to develop, and participate in, natural relationships (see Note 2 below), facilitated networks

Note 1: Supported decision making - refers to the process of assisting individuals to make their own decisions. This can involve people trusted by the individual, who know the individual well, supporting individuals with: accessible information on their options; to understand their options and potential consequences/benefits/risks/ responsibilities; to compare the pros and cons associated with each option; and communicate their choices using their preferred communication mode.

Note 2: Natural relationships - refer to section 6.2.1 definition - while an individuals’ natural relationships can be considered as a foundation of personal power, where individuals are



vulnerable, they can also provide a number of further safeguarding actions as appropriate, and are accordingly considered in more detail in section 6.2.1.

For individuals who are vulnerable, individual empowerment strategies may not be sufficient on their own, and other safeguards need to be considered.

It is important to ensure that other safeguards (sections 6.2-6.5) do not diminish an individual's personal power in any way. All other safeguards cascading below should aim as far as possible to enhance individuals' personal power.

6.2 Informal relationships

'Informal relationships' refers to individuals' relationships that are freely given and not provided by or through a service. Informal relationships include an individual's natural relationships, informal advocates and community connections as defined below.

People paid or reimbursed for their involvement with the individual, and unpaid volunteers provided through a service, are not included in informal relationships.

6.2.1 Natural relationships

'Natural relationships' is used in this framework to describe an individual's family, friends and carers (refer Glossary) who:

- are committed to be part of an individual's life long term
- know the individual well
- have regular contact with the individual
- desire the best possible outcomes for the individual.

People who are involved in an individual's life because of their love and enduring commitment to the individual can be the most effective, comprehensive, and enduring safeguard.

The ongoing and involved nature of these relationships enables a deeper understanding of individuals' unique strengths, preferences, decisions, choices, aspirations, communication modes and support needs than is possible with safeguarding options involving more limited or superficial contact. Natural relationships' level of involvement can also increase opportunities for the 'witnessing' activity of safeguarding (refer section 5.2 Relationship-based independent safeguards).

Family and friends who do not have regular contact with an individual may still provide a level of safeguarding, but it is unlikely this will be as effective or comprehensive as the safeguarding provided through regular contact.

All other safeguards cascading below should aim to maximise and enhance an individual's natural relationships, and their capacity to provide safeguarding for the individual, as appropriate.

Enhancement strategies that can be considered, as appropriate include:

- **Maximising individuals' existing natural relationships'** capacity to provide safeguarding by facilitating and supporting their:
 - engagement with the individual and involvement in the individual's life
 - access to support they need to be strong and resilient in their safeguarding role

- **Facilitating and supporting the development of new friendships** from an individual's community connections
- **Facilitating networks of support** which connect an individual's natural relationships into a more formalised network of support around the individual. A network can provide robust safeguarding due to the involvement of several people and their connection to each other through the network.

Acknowledging that natural relationships can be the most effective and comprehensive safeguards, **when an individual who is vulnerable does not have natural relationships or their natural relationships do not provide effective safeguarding, they are considered particularly vulnerable.** It becomes especially critical to consider how to enhance their safeguards.

If an individual has natural relationships, but there is concern that these relationships are not acting in the individual's best interests, and/or are themselves placing the individual at risk, further safeguards need to be considered as appropriate (sections 6.3-6.5).

6.2.2 Informal advocates

This refers to people who have a relationship with the individual, further to their family/friends/carers, whose support is not provided in a paid or unpaid capacity through a service, who are concerned for the individual's interests and rights, desire the best possible outcomes for the individual, and can provide advocacy support.

6.2.3 Community connections

This refers to community members who have interaction with an individual through the individual's community participation, but have not formed a friendship involving contact outside this situational interaction (eg connections at a particular community club or activity). An individual's community connections, particularly when they form a regular part of the person's life, can be enriching and contribute to their sense of belonging in the community. However, they are generally not likely to provide safeguarding for the individual other than in the immediate environment in which the interaction occurs. Thus community connections are not considered a comprehensive safeguard of their own accord.

Community connections do however have the potential to develop into more committed friendships (section 6.2.1). Opportunities for individuals to develop friendships from their community connections should be facilitated and supported according to an individual's preferences, as appropriate and with due consideration for safeguarding as required.

6.3 Independent community services

This refers to community services that are independent of an individual's disability services.

It is important to consider that access to referral based services may be restricted for individuals who:

- may not be aware when their rights are compromised and/or are not able or likely to self-refer to these services and
- don't have people around them who can recognise when individuals rights are compromised and/or facilitate their referral.



6.3.1 Non-statutory independent community services

This refers to non-government community services that are independent of an individual's disability services, which can provide safeguarding.

Community volunteer advocacy services

There are a number of non-government services that provide unpaid volunteer community advocates to support individuals, including citizen advocacy programs. The level of safeguarding provided needs to be considered on a volunteer by volunteer basis, and may be dependent on:

- the extent to which safeguarding is an explicit function of the volunteer role
- the nature of the relationship (frequency of contact, longevity)
- rigor of the service's policies and procedures; recruitment, training and support for volunteers; duty of care and safeguarding around the relationship
- level of alignment of the service with the UNCRPD and Standards
- personal attributes and commitment of individual volunteers.

Individual advocacy services

Individual advocacy services employ individual advocates to provide one to one advocacy support to individuals. This includes supporting self-advocacy, and advocating with or on behalf of individuals. Individual advocates provide advocacy to address an identified issue on a time-limited basis. Individual advocates do not have the scope to form ongoing relationships with individuals and additional safeguards need to be considered for ongoing relationship-based safeguarding. A number of individual advocacy organisations are funded by the Commission www.disability.wa.gov.au and/or Australian Government Department of Social Services www.dss.gov.au.

Network facilitation services

While not well established in WA, there are a few organisations that are trying to build sustainable services to provide independent facilitation of networks of support on a fee for service basis (refer 6.2.1 - enhancement strategies).

National disability abuse and neglect hotline

www.jobaccess.gov.au/complaints

Telephone referral service for reporting neglect and abuse of individuals.

Systemic advocacy services

Systemic advocacy represents the collective rights and interests of individuals, promoting and facilitating positive change in legislation, policy, disability services, and the community. It does not provide one to one support to individuals. There are a number of advocacy organisations funded by the Australian Government's Department of Social Services which provide systemic advocacy www.disability.wa.gov.au.

Complaints Resolution and Referral Service

Assists individuals with complaints about disability employment services, advocacy services or Australian disability enterprises.

6.3.2 Statutory independent community services

This refers to independent community services that provide safeguards that are enforced or enacted by law.

The Health and Disability Services Complaints Office (HaDSCO)

www.hadSCO.wa.gov.au HaDSCO is an independent statutory authority providing an impartial resolution service for complaints relating to health or disability services. HaDSCO reviews and reports on causes of complaints, suggests service improvements and educates service providers about effective complaint resolution.

State Administrative Tribunal appointments

This is a summary only- please refer to www.publicadvocate.wa.gov.au for further information, including information on when the following safeguards may be appropriate, and the process for applying for such safeguards.

Under the Guardianship and Administration Act 1990, there may be situations where an adult with a decision-making disability, requires a substitute decision-maker. The following substitute decision-makers can be appointed by the State Administrative Tribunal:

Guardians (Scope- personal, lifestyle and treatment decisions- may be limited to specific decisions or may cover all personal, lifestyle and treatment decisions)

- **Private Guardians:** An individual's family member or friend may be appointed as their guardian, with authority to make decisions specified in the Guardianship order. This appointment may or may not provide safeguarding which is broader than the scope of the Guardianship order, depending on the level of involvement the guardian has with the individual.
- **Public Advocate:** As a last resort, if a substitute decision-maker is required and there is no one else suitable, willing and available, the Tribunal may appoint the Public Advocate as guardian. Public Advocate Guardians provide safeguarding for individuals in relation to decisions that are specified in a Guardianship order. The Public Advocate does not provide more generalised safeguarding in the context of individuals' everyday lives due to their limited authority to specified decisions and limited personal contact. Additional safeguards need to be considered to facilitate broader safeguarding.
- **The Office of the Public Advocate's Community Guardianship Program** matches volunteers with people for whom the Public Advocate has been appointed guardian. Over time, a relationship can develop between the individual and the volunteer. When the volunteer is ready to formally perform the role of substitute decision-maker, an application is made to the State Administrative Tribunal, who may decide to appoint the volunteer as guardian, replacing the Public Advocate. The Community Guardian has the same authority as the Public Advocate, but also has an ongoing committed relationship with the individual involving regular contact, and thus has scope to provide a broader safeguarding role.

Administrators (Scope – managing individuals' financial affairs)

- **The Public Trustee's** scope is limited to managing individuals' financial affairs. Their relationship and degree of contact with individuals varies according to the circumstances, hence the extent of safeguarding can also vary. Additional safeguards need to be considered to facilitate broader safeguarding, further to the individual's financial affairs.
- **An individual's family or friend** appointed as Administrator may or may not provide broader safeguarding, further to the scope of the Administration order.



Other legally recognised appointments and requirements under the Guardianship and Administration Act 1990 Western Australia

- **Enduring guardian/s** appointed under an Enduring Power of Guardianship
- **Attorney/s** appointed under an Enduring Power of Attorney
- **Advance health directives**

These can only be actioned by an adult with full legal capacity.

Refer www.publicadvocate.gov.au for further information.

Informal arrangements under the Guardianship and Administration Act 1990

Hierarchy of treatment decision makers 'Treatment' refers to any medical, surgical or dental treatment or other health care, including life-sustaining measures and palliative care. A treatment decision is a decision to consent or refuse consent to providing any treatment. When seeking a treatment decision for an adult who lacks the capacity to make their own judgments, health professionals must follow a set order of decision-makers, as specified in Section 110ZJ and 110ZD of the Guardianship and Administration Act 1990. The requirement differs for urgent and non-urgent treatment decisions. Refer Appendix 1.

Discrimination complaints resolution

Equal Opportunity Commission www.eoc.wa.gov.au

Australian Human Rights Commission www.humanrights.gov.au

Department for Child Protection and Family Support www.dcp.wa.gov.au Investigates reports of harm to children, ensures children are protected and cared for, and as a last resort, can be appointed the legal guardian of a child.

Police www.police.wa.gov.au

Ombudsman www.ombudsman.wa.gov.au for complaints about administrative matters involving State Government departments and statutory authorities.

6.4 Disability services safeguards

This refers to safeguards that are implemented by, and are a component of, a particular Commission contracted or Commission provided disability service (inclusive of Local Operations and WA NDIS).

Service policies, guidelines and processes that promote:

- the individual rights and outcomes described in the UNCRPD, Standards, and Principles of the Act
- best practice service delivery in accordance with the UNCRPD, Standards and Act (see below- Service practices)
- best practice individual safeguarding (in accordance with the UNCRPD, Standards, Act, and the Commission's Individual Safeguarding Position Paper)

Service practices that:

- support the human rights and individual outcomes described in the UNCRPD, Standards and Principles of the Act
- meet the service standards described in the Standards, Act, and any other Commission designated requirements for services
- intentionally consider, determine and address vulnerability, risk, safeguarding (Section 5)

- facilitate effective safeguarding as required, including:
 - maximising opportunities for individual empowerment (as outlined in section 6.1)
 - maximising the engagement of individuals' informal relationships (section 6.2) and as appropriate, any other independent safeguards (section 6.3)
 - directly providing activities of safeguarding (section 3) as appropriate. This includes ensuring the level and nature of support, frequency of service coordinator contact with individuals and frequency of review of individual plans and safeguarding, is responsive to individuals' vulnerability and risk
- ensure safeguarding considerations/ decisions and safeguards are recorded in individual plans.

Safeguarding should be an ongoing intentional consideration embedded in all service practices. Planning processes and supported decision making processes can provide points of particular focus.

Education and development- resources, training and development to enhance:

- individuals', their supporters', and service provider understanding of the individual rights and outcomes described in the UNCRPD, Standards and Principles of the Act
- best practice service delivery
- best practice individual safeguarding.

Internal service quality assurance processes that are informed by feedback from individuals and their family, friends and other independent supporters as appropriate, and which facilitate continuous service improvement.

Internal complaints processes that are easily accessed and well supported.

It needs to be recognised that intentional strategies are needed to support individuals to make a complaint, when they may otherwise have limited access to complaints processes because they:

- are not aware their rights are compromised in order to make a complaint or
- need support from someone to make a complaint, and don't have independent supports around them to help them complain and/or
- feel fearful to complain, particularly when they are dependent on their service provider for some or all of their daily needs.

The involvement of more than one service provider, according to an individual's preferences, in providing different elements of an individual's supports and services may enable a level of cross- service safeguarding. This is supported by the Act, Objective 8: "Programmes and services are to be designed and administered so as to ensure that no single organisation shall exercise control over all or most aspects of an individual's life".

6.5 Systems level safeguards

This refers to overarching legislation, regulations, policy and mechanisms, applicable to Commission contracted and provided disability services, or individuals, or the broader community, that have a safeguarding function.

Exclusion: When individuals (and their supporters) manage their own individual funding and employ and/or purchase their own supports and services, unless these are a Commission contracted disability service, these supports and services may not be subject

to legislative safeguards that apply specifically to Commission provided or contracted disability services (refer to the Disability Services Act 1993 and Disability Services Amendment Act 2014) and Commission implemented systemic safeguards (Section 6.5.2).

6.5.1 Overarching legislative safeguards

Legislation that mandates and protects the rights of individuals, and/or mandates the parameters for the provision of disability services includes the Disability Services Act 1993, Carer Recognition Act 2010, Carer's Recognition Act WA 2004, Disability Discrimination Act 1992, Equal Opportunity Act WA 1984, Guardianship and Administration Act 1990, Children and Community Services Act 2004.

6.5.2 Commission implemented systemic safeguards

This refers to Commission implemented safeguarding mechanisms that are generally applicable across Commission contracted and/or Commission provided disability services, or that impact on the broader community.

Service Agreements with contracted disability service providers require service providers' continued compliance with the Act, Standards and other specified provisions with a safeguarding function.

Overarching policies and guidelines with a safeguarding function including the

- Code of Practice for the Elimination of Restrictive Practices
- Guidelines for completing a Serious Incident Form
- Shared Management Policy (Commission contracted disability services)
- People at Risk Policy (Commission provided disability services).

The Quality System, which promotes and assures disability services' compliance with the Standards and Act. The Quality System includes the following elements:

- independent third party evaluations of disability services' compliance with the requirements of the Act, Standards and other Commission specified provisions, with particular focus on service user feedback. This includes evaluation of disability services' individual safeguarding (section 6.4). Services are required to implement prescribed remedial actions in response to any identified failure to meet the Standards
- disability services' self-assessments against the Standards, including complaints handling report
- review of serious incidents
- providing or facilitating the provision of resources, training and development to promote and enhance:
 - service provider understanding of the Standards, underpinned by individual rights and outcomes described in the UNCRPD and Act
 - disability services' best practice in:
 - meeting the service standards described in the Standards and Act, and any other Commission designated requirements for services.

Community education and development to promote and enhance positive community responses to, and inclusion of, individuals.



7. Summary

This position paper provides a framework to help inform and guide individuals, their supporters and disability services in their considerations of individual safeguarding. It is hoped that this paper makes a contribution to promoting best practice individual safeguarding.

Contact

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References

Walker M, Fulton K and Bonyhardy B 2013. A Personalised Approach to Safeguards in the NDIS www.centreforwelfarereform.org/uploads/attachment/385/a-personalised-approach-to-safeguards-in-the-ndis.pdf

NDIS Operational Guideline – Planning and Assessment www.ndis.gov.au

Research conducted by the Commission on the status of independent support and safeguarding for individuals considered most vulnerable in WA (2013, unpublished report).

Glossary

Accessible information: Information provided to individuals (and their family, friends, carers, advocates):

- through sources/people they can readily identify and access
- in the individuals preferred communication mode/ modes
- with personal support to individuals as required, to help them access, and/or understand information
- in a timely manner, responsive to individuals' needs and preferences.

Advocacy: National Disability Advocacy Program definition www.dss.gov.au:

Speaking, acting or writing with minimal conflict of interest on behalf of the interests of a disadvantaged person or group, in order to promote, protect and defend the welfare of and justice for either the person or group by:

- Acting in a partisan manner (i.e. being on their side and no one else's)
- Being primarily concerned with their fundamental needs
- Remaining loyal and accountable to them in a way which is empathic and vigorous (whilst respecting the rights of others) and
- Enduring duty of care at all times.

Carer: A person who is usually a family member, but may also be a friend or other person, who provides ongoing support and assistance to an individual for no pay (apart from a Carer Pension or Allowance). Carer does not mean paid staff or support workers, or unpaid volunteers.

Commission contracted disability service: refers to disability services that are provided by an entity through a contractual agreement with the Commission.

Commission provided disability service: includes any service the Commission provides directly to individuals, inclusive of specialist services, accommodation services, Local Operations and WA NDIS.

Communication mode: Spoken, signed and non-spoken expression (gestures, body language, facial expression, vocalisation, behaviour) written (including large print, plain language, Braille); audio; visual; animation; tactile; human-reader/interpreter; and communication aides used to transmit or receive messages (high tech devices that transmit electronic messages, including speech output; low tech aides including communication boards, communication books, symbols).

Compromised human rights and outcomes: Refers to any limitations a person experiences in the human rights and individual outcomes promoted and described by the UNCRPD, Standards and Act. Examples are provided in Section 5.1, page 4.

Decision making and choice: Decision making is the cognitive process of understanding information pertaining to the decision including the possible options, understanding the potential consequences of each option (benefits, risks, responsibilities), and making a reasoned judgement to select a choice. Choice is the selection and expression of the preferred option. It is implicit that information related to the decision is 'accessible information' and individuals have access to their preferred 'communication mode'.

Dignity of risk: refers to the freedom all people have to make decisions and choices that expose their own self to a level of risk, and to make mistakes and learn and grow from trial and error.

Disability: Disability Services Act Section 3: Disability means a disability-

- (a) which is attributable to an intellectual, psychiatric, cognitive, neurological, sensory, or physical impairment or a combination of those impairments and
- (b) which is permanent or likely to be permanent and
- (c) which may or may not be of a chronic or episodic nature and which results in-
 - (i) a substantially reduced capacity of the person for communication, social interaction, learning or mobility and
 - (ii) a need for continuing support services.

Individualised funding: A funding model through which a package of funds are allocated to a person with disability and are portable.

Personal power is used in this framework to refer to an individual's ability to effectively:

- assert themselves, including their rights, opinions, preferences and choices
- ensure their rights, preferences, decisions and choices are enacted
- self-direct and control their lives.

(Refer section 6.1 for the foundations of personal power)

Appendix 1 Hierarchy of treatment decision makers

This is a summary only - Refer www.publicadvocate.wa.gov.au for further information.

'Treatment' refers to any medical, surgical or dental treatment or other health care, including life-sustaining measures and palliative care. A treatment decision is a decision to consent or refuse consent to providing any treatment. When seeking a treatment decision for an adult who lacks the capacity to make their own judgments, health professionals must follow a set order of decision-makers, as specified in Section 110ZJ and 110ZD of the Guardianship and Administration Act 1990.

The requirements differ for urgent and non-urgent treatment decisions. Urgent treatment is treatment which is required to save a person's life, prevent serious damage to their health or to prevent them suffering continued pain or distress. All other treatment would be considered non-urgent.

Non-urgent treatment decisions

When a health professional requires a non-urgent treatment decision, for an adult who lacks capacity, they must first refer to the person's advance health directive. If the person has not made an advance health directive, or if it does not cover the treatment required, the health professional must seek a treatment decision from the first person in the hierarchy who is 18 years of age or older, has full legal capacity and is willing and available to make the decision.

Where a person higher in the list is not willing and available to make the decision, the health professional can move down the list:

- Enduring Guardian with authority
- Guardian with authority
- Spouse or de facto
- Adult son or daughter
- Parent
- Sibling
- Primary unpaid caregiver
- Other person with close personal relationship.

If the health professional is unable to find anyone on the hierarchy who is reasonably available and willing to make the treatment decision, they must make an application to the State Administrative Tribunal for the appointment of a guardian. Before doing so, it is best to seek the advice of the Office of the Public Advocate.

Urgent treatment decisions

If urgent treatment is required and the first person in the hierarchy is not immediately available, but another person in the hierarchy is available, the health professional should seek a decision from that person. If no one on the hierarchy is immediately available, and urgent treatment is required, the health professional can make the required treatment decision.

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1.0	1 July 2014	Manager, Quality and Evaluation	
1.1	1 January 2018	Manager, Quality and Evaluation	

NB:

Version 1.0 = endorsement

Version 1.1, 1.2 and so forth = minor changes, regular review

Version 2.0, 3.0 and so forth = major changes requiring Corporate Executive approval.

