

**SOUTH AUSTRALIAN  
LAW REFORM  
INSTITUTE**

# **Supported Decision-Making in South Australia**

**Our report**

Easy Read version

June 2025



# How to use this document

South Australian  
**Law Reform**  
Institute

The South Australian Law Reform Institute wrote this document.

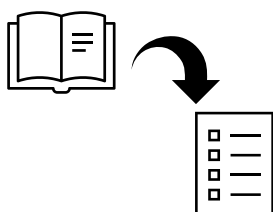
**We**

When you see the word 'we', it means the South Australian Law Reform Institute.

**Bold**

not bold

We wrote some important words in **bold**. We explain what these words mean. These words are in a list on page 23.



This Easy Read document is a summary of our full report. This means it only includes the most important ideas.



You can ask a friend or family member or support person to help you read this document.



You can find the full report here:  
<<https://law.adelaide.edu.au/south-australian-law-reform-institute#supported-decision-making>>.

# What is in this document?

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## About us

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We are the South Australian Law Reform Institute. We are sometimes also called 'SALRI'. We are based at the University of Adelaide.



We were formed under an agreement between the University, the South Australian Government and the Law Society of South Australia.

We work with these bodies and many others, but we are independent. This means we make our own decisions.



We look at how the law works:

- In Australia
- And in other countries.



We speak to many people and organisations to hear what they think about the law.

Then, we tell the Government how we think the law should change and why. The Government decides if it wants to change the law.

This report talks about the changes we would like the Government to make.

The full report was written by Sylvia Villios, David Plater, Emily Conroy, Mark Giancaspro, Beth Nosworthy, Peta Spyrou, John Williams, Simon Headland and Brooke Washusen.

# About this project

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Sometimes people might not be able to make a decision. This may be because they have:



- An intellectual disability. This means a disability that affects the way a person thinks
- Dementia. This is an illness that affects



- what people can remember
- how people can concentrate
- how people can communicate and
- how people can solve problems



- A brain injury
- Mental illness.

When a person cannot make a decision, someone might be able to make a decision **for** that person. We call this **substitute decision-making**.

In South Australia, there are laws that say how and when this can happen.

These laws can make a big difference in people's lives.

Decisions can be made about small and big things, like



- Where to live



- Medical care, and



- How a person uses their money.



Some of these laws are over 40 years old.

Since then, there have been lots of changes in how we think about people with disability.



We want to make sure that the law is fair and right for the community today.



There is a document called the United Nations Convention on the Rights of Persons with Disabilities. We call this the **UN Convention**.

It says that people with disability have the same human rights as everybody else.



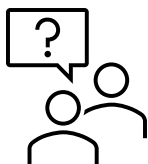
Now it's more about helping people so that they can make **their own** decisions. This is called **supported decision-making**.

We think supported decision making is very important. We decided to look at the law in South Australia to make sure it keeps up with changes in society.

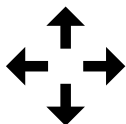
In this project, we looked at how **supported decision-making** ideas could be included more in:

- **Powers of Attorney** law
- **Advance Care Directives** law
- **Guardianship** and **Administration** law.

These are normally **substitute decision-making** laws.



We asked questions and found out what people thought about these laws and how they are working.



This report is about some changes that we want to make to these laws.



We also looked at new ways for **supported decision-making** like **incorporated support structures**.



# Important ideas

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We want all of the laws about decision-making to have the same principles.

Principles are ideas or rules that explain or tell us how something happens or works.

First, it should be assumed that every adult is able to make decisions.

A person can make their own decision if they can:

- Understand the decision
- Remember information about it
- Use that information to make the decision
- Understand what the results of this decision will be
- Communicate what that decision is.

It is important that people who need help to make decisions can be included in decision-making that impacts them as much as possible.



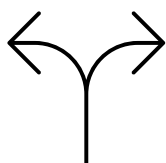
Someone should try to communicate in different ways because what may not work for one person may work for another.

But sometimes even when a person has good support, a person may not be able to make their own decision.

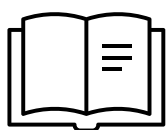
**Substitute decision-making** should only be:

- After someone has tried using support and it did not work
- Where it really **must** be done
- In a way that the person would want (as much as possible).

If a person can make a decision, they should be able to make that decision.

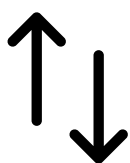


It does not matter if someone thinks it is a 'bad' decision. Everyone should be able to take risks.



People need to be educated to make this happen. There should be money for easy read information and training.

It is also important to make sure people are kept safe. To do this, we need:



1. Clear rules to stop people from using their power in the wrong way



2. A place where people can complain if something goes wrong



3. Punishments if someone breaks the rules in a serious way – but not too many rules that scare people from helping.

# Powers of Attorney and Advance Care Directives

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## Powers of Attorney



Right now, there are old rules in a law called the Powers of Attorney and Agency Act 1984. The law allows an adult who is able to make decisions to make a document, and say who they trust to help them with things like:



- Paying bills



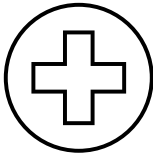
- Looking after money
- Making decisions about a home or property.

That person they choose is called an attorney. There can also be an enduring attorney. Enduring means that this help continues even if a person is not able to make decisions anymore.

## Advance Care Directives



There is another law called the Advance Care Directives Act 2013. It allows adults who are able to make decisions, to make an **advance care directive**. This is a legal document which says:



- What kind of health care or treatment someone does or doesn't want
- Who they want to make decisions if they can't.



People can also write other things that are important to them. This means doctors or nurses or family can know what matters to a person, especially when or if they are not able to explain it.



We reviewed these laws and think they both need to be changed to include **supported decision-making** ideas more.

## New Ways to Help

We think that people should be allowed to choose:

- A supportive attorney, to support them with financial decisions
- A **supporter**, to support them with healthcare and lifestyle decisions.

These **supporters**:

- Do not make decisions for the person
- Only help while the person is still able to make their own decisions.

A person should be able to decide to:

- Have a **supporter**
- Appoint someone to make choices if they ever can't
- Do both
- Or do nothing at all.

**Supporters** should be able to:

- Find and share information to help with decisions
- Help the person say what they want
- Help carry out the person's decision.

But **supporters** can't do big money tasks, like selling a house.

**Supporters** must:

- Be honest and careful
- Avoid doing anything unfair
- Only do what they're allowed to do
- Respect what the person wants and believes
- Not be paid, except for small costs like travel.

The laws should say:

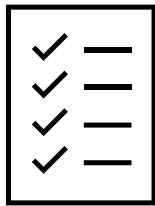
- People might need help sometimes, but that doesn't mean they can't decide
- What someone can do may change day to day
- All kinds of support must be tried before saying someone can't decide
- Making a 'bad' decision doesn't mean someone is not allowed to decide.

## Clear Rules for Everyone

Anyone helping with decisions should:

- Encourage the person to be involved
- Do only what is needed
- Try to follow what the person wants.

## Making It Work



There should be clear forms to make **supporters** official. **Supporters** should agree to follow the rules. The person and the **supporter** must both sign papers.



We also think there should be:

- Easy-to-understand guides and training
- A way to check who is a real **supporter**
- Penalties if someone misuses their power.



# Guardianship and Administration

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There's a law in South Australia called the Guardianship and Administration Act 1993. The law says that if a person can't make a decision on their own, a **Tribunal** can choose to:



- make a person a **guardian**, who can then make personal decisions **for** another person, like where they live



- make a person an **administrator**, who can then make decisions **for** another person about money or other legal things.

This is **substitute decision-making**.

People told us that sometimes there are problems with this law and how it works.

We think these laws should be changed and should include more **supported decision-making** ideas.

Here we talk about some important things that we found in our research already. When we do the next review, some of this may change.



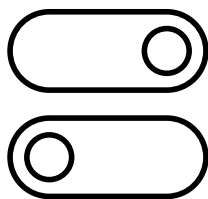
## Helping People Make Their Own Choices First

Before anyone makes a decision **for** someone else, we should first try to help them make the decision themselves.

The law needs to be more modern. It should say that:

- Everyone is able to decide, unless someone can show they can't
- Someone may have a disability or make choices that someone does not agree with – that does not mean they can't decide
- Someone should check how much support they need and see if they can decide with help
- People might be able to decide some things, but not others – and that might change over time.

Some words in the law are out of date. We think the law should use different words. We could say:



- **'supported person'** for someone who is being supported to make a decision
- **'represented person'** for someone who is having decisions made **for** them by someone else
- **'impaired decision-making capacity'** for someone who needs help deciding.

The law should have clear rules for people who support or decide for others. These should say that:

- A person's own wishes and feelings are the most important to follow when it is possible
- Everyone should try to include the person in decisions
- The person's wellbeing matters most.

More principles may be recommended but we need to look at this again more closely.

## Formal **Supporters**

One way to support decision-making is to create formal support roles in the law. A person, like a friend or family member, could be officially made:

- A 'supportive guardian' to help with personal decisions, or
- A 'supportive administrator' for money decisions.

This is what exists in Victoria. People do not agree whether this should be in South Australia because the Victorian model has had some problems. But there are lots of good parts about the law in Victoria so we think we should do more research on this.

A new law could:

- Allow the **Tribunal** to choose a supportive guardian or supportive administrator
- Make sure that the formal supporters are only allowed to do certain things, like see information, talk to others or help carry out a person's decisions
- Make sure that the formal supporters only exist if a person wants them to and if it would allow a person to make their own decision with this support
- Make sure the formal supporters stop when a person does not have the ability to make a decision, even with the support
- Stop a formal supporter from acting in a way that is not in line with what a **supported person** wants.

Some people already have others who help them make choices. This is called an informal arrangement. These new laws would not change that.

### 'Last resort'

Sometimes, even with support, a person still cannot decide. Then:

- A **guardian** or **administrator** may be chosen as a last resort. This means only if nothing else works
- The law should say exactly when this is okay
- Any help or decision-making should be:
  - Only for what is needed
  - For as short a time as possible.

We need to do more research but right now we think before choosing a **guardian** or **administrator**, the **Tribunal** should try:

- Informal help first, like talking things through or asking family and friends
- Keeping in mind the person's feelings, what they want and their relationships.

We think a **guardian** or **administrator** should only be appointed if it is needed for the **represented person's** health and wellbeing.

## What **Guardians**, **Administrators** and **Supporters** Must Do

Anyone who helps or makes decisions for someone should have duties under the law. These could be to:

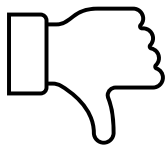
- Be honest and careful
- Respect a person's choices and values
- Only do what they are allowed to
- Avoid doing anything that helps themselves instead of the person.

## More Ideas for Improvement

We know that some people:

- Can decide at one time but not another time
- May be able to make a decision about one part of their life but not another.

The law does not currently say this but it should.



If things go wrong, it is important to help people complain or ask for changes.

The next review should look at how people can do this. Then we can recommend if the law should change or not.

It should also look at how much **guardians** and **administrators** must report what they do.

The **Tribunal** must have clear powers to check that everything is going right with **guardianship** and **administration**.

The next review should also look at whether the current law is good, or whether the **Tribunal** should have more powers.

## Talking About Experiences



Some people under **guardianship** or **administration** want to talk publicly about their experience and any problems. This is important – people should have a voice. The **Royal Commission** recommended that people should be able to talk publicly about their experiences.



But, some stories might be very private, and that could cause problems. Sometimes it is best that this information is not public.



We found that there is no need to change the rules about this in South Australia right now – they want to keep people's private information safe.

## More research



There are other parts of **guardianship** and **administration** law that need to be reviewed that we could not look at in this project. We also want to do more research on some of the parts we have already looked at. We should look more closely at:

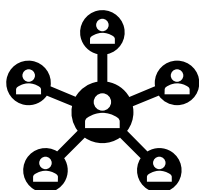


- other parts of the law that may need to change
- what law other places in Australia have (like Victoria)
- what the **Royal Commission** and other people who have reviewed the law have said.

# Incorporated Support Structures

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One way to help people make decisions about their lives is to create a **'incorporated support structure'**.



This is a small group of people (like family, friends, and others) who come together in a formal way to support someone who they care about.

They help one person to make choices about health, lifestyle, money and other decisions, like where to live, what to do with money, or how to get support.

The person being supported is part of the decision-making as much as possible.

People may already have a group of people like this who help them. We still think these groups are helpful, but we think it can sometimes be better to have it in the law.

When we say **'incorporated support structure'** we mean when this group is made using the law. There are already some **incorporated support structures** in South Australia.

## What we found

We found that **incorporated support structures** are good because they can:

- Help support the person to make their own decisions
- Focus on what the person wants
- Help keep the person safe
- Help the person's wellbeing – this may be helping them with their emotions or supporting them when things change
- Help to access funding
- Help when the person's parents or carers are unable to.

But, not everyone thinks these groups are good. These are some of the things we heard some people say:

- They are too hard to set up
- They cost too much
- They do not need to be in law
- They don't work well for **older people**
- Current laws are already tricky, so we should make those laws better before we add a new law and make things even more tricky.

Other people said they were worried the **incorporated support structure** may not really listen to the person they are helping. That is why the group must follow special rules.

An **incorporated support structure** may be a great choice for some people, but it is not for everyone. If a person does not want or need it, they do not need to use it.



## A New Law for **Incorporated Support Structures**

The current laws are not good for **incorporated support structures**. We think there should be a new law called the 'Incorporated Support Structures Act'.

The goals of the new Act should be to:

- help support decision-making
- help people have control over their own lives and be treated fairly
- follow the **UN Convention**.

The **supported person** should choose who is on their **incorporated support structure**. But we think the law should say a person can be a member if they:

- Are over 18 years old
- Understand what the role means and can do it
- Have not been in serious trouble with the law
- Are not having money problems like bankruptcy
- Are not under a court order.

The **Tribunal** should be able to let a person be a member even if they do not meet all of these rules.

These rules don't apply to the **supported person**. They can always be a part of their own **incorporated support structure**.

## How Decisions Are Made

The main goal is to help the **supported person** make their own decisions. **Supported decision-making** is always the first option. The **incorporated support structure** may be able to make a decision **for** a person, but only if:

- The **supported person** agreed to it earlier, or
- Someone who has the power to approve it, approves it (like the **Tribunal**).

**Substitute decision-making** must then:

- Only happen when really needed
- Be for the least amount of time
- Be for specific decisions
- Follow the **supported person's** wishes and values.

## Making Sure Everything is Fair and Safe



It is important that the law makes sure **incorporated support structures** keep good notes of what happens in meetings, their decisions and how money was used or made.

These should be easy to find, and easy to understand. They should say why the members made the decision and how it matches what a **supported person** wants.

One member of each **incorporated support structure** should make sure the structure follows the law.

The law should also:

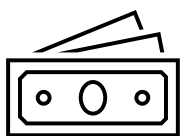
- Make sure the work can be checked if someone complains or there are problems
- Make sure members always act with honesty and respect
- Say how any problems should be fixed if members do not agree with each other
- Let the **Tribunal** step in when needed.

## The Role of Government



- Help people set up their **incorporated support structure**
- Provide training, forms and guides
- Make sure members follow the rules
- Step in if something goes wrong.

## Money and Property Rules



The **incorporated support structure** should be able to:



- Hold money and property for the **supported person**
- Only spend money to benefit the **supported person**
- Get approval before making big choices, like selling a house.

Members can be paid back for things like travel or materials – but getting paid for professional help should be rare and only done carefully to avoid problems.

## What is next?

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We have given this report to the South Australian Government.

They will decide what changes they will make to the law.

In the future, we want to do more research. We really want to do more research about **guardianship** and **administration**.

We also want to look more at **supported decision-making** in other countries, like in Ireland and Canada, to learn what works best.

We need to look more at how Aboriginal people in communities can be supported. It is very important to create ways to support decision-making that respects their culture.

## Word list

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This list explains what the **bold** words in this report mean.

<b>Advance care directive</b>	A legal document made by an adult who is able to make decisions. It says what they want or do not want about care or health decisions or treatment. It says who will make decisions if the person can't.
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<b>Administration</b>	When an <b>administrator</b> is chosen by the <b>Tribunal</b> to manage the money of another person (or anything with law or business) when that person cannot do it themselves.
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<b>Administrator</b>	Someone who makes decisions about another person's money (or anything with law or business) when that person cannot do it themselves. It can be someone a person knows (like family or a friend, or it can be the <b>Public Trustee</b> ).
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<b>Enduring Power of Attorney</b>	A legal document made by an adult who is able to make decisions. It says who they want to make financial or legal decisions for them when they are not able to themselves.
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<b>Guardian</b>	Someone who is chosen by the <b>Tribunal</b> to make some or all personal decisions <b>for</b> another person when that person cannot do it themselves.
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	Decisions may be about health, accommodation, services, relationships or other personal matters. It can be a person someone knows (like family or a friend) or it can also be the <b>Public Advocate</b> .
<b>Guardianship</b>	When a <b>guardian</b> is chosen by the <b>Tribunal</b> to make decisions about another person's personal matters when that person cannot do it themselves.
<b>Incorporated support structure</b>	A group of people supporting a person to make decisions, which has been made formal in the law.
<b>Older people</b>	People older than 65 years. For Aboriginal people, we mean people who are 50 years and over.
<b>Public Advocate</b>	A person who speaks up for people who need decision-making support. The Public Advocate may also be made a <b>guardian</b> if it is needed.
<b>Public Trustee</b>	A person who helps manage a person's finances and administration when that person cannot do it themselves. The Public Trustee can be an <b>administrator</b> if it is needed.
<b>Represented person</b>	Someone who is having decisions made for them by someone else, like a <b>guardian</b> or <b>administrator</b> .

<b>Royal Commission</b>	There was a big investigation. It was called the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.
<b>Substitute decision-making</b>	Where a person makes decisions <b>for</b> another person.
<b>Supported decision-making</b>	Where a person ( <b>supporter</b> ) helps another person ( <b>supported person</b> ) to make <b>their own</b> decision or decisions.
<b>Supported person</b>	A supported person is someone who is helped by a <b>supporter</b> to make one or more decisions.
<b>Supporter</b>	Someone who helps the <b>supported person</b> make their own decision or decisions.
<b>Tribunal</b>	The South Australian Civil and Administrative Tribunal. This means people who are appointed by the government. They can help people fix decision-making problems.
<b>UN Convention</b>	The United Nations Convention on the Rights of Persons with Disabilities. This is an agreement between different countries. It says that people with disability should have the same human rights as everybody else.

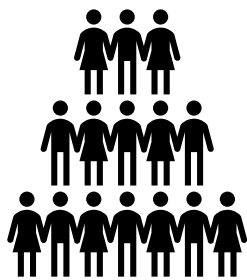
# Thank you

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We want to say thank you to everyone who helped with this report.

The Law Foundation of South Australia gave us funding to do the report.

We are very thankful for their support.



We also spoke with many people and groups who shared their thoughts and ideas with us.

Their help made the report better. Thank you!

The small images in this report were taken from Microsoft Word.





## Contact us

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If you have any questions, you can contact us.



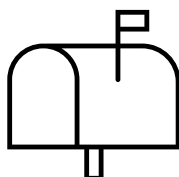
### Email

[SALRI@adelaide.edu.au](mailto:SALRI@adelaide.edu.au)



### Phone Number

+61 8 8313 5582



### Postal Address

South Australian Law Reform Institute

Adelaide Law School

University of Adelaide

Australia 5005



### Webpage

[<http://law.adelaide.edu.au/south-australian-law-reform-institute/>](http://law.adelaide.edu.au/south-australian-law-reform-institute/)