

Policy: Decision-Making

Purpose

The Estate Management Decision-Making Policy establishes a consistent, transparent and objective approach to decision-making. This policy should be read in conjunction with the [Decision-Making Procedures](#).

Decision-making is a core responsibility of NSW Trustee & Guardian (NSWTG). NSWTG's role is governed by legislation to assist and support the decision-making process. Decision-making must be centred around the principles set out in s39 *NSW Trustee and Guardian Act 2009*.

Throughout this document 'NSWTG' will be used when referring to the whole agency including the Public Guardian and 'NSW Trustee' will be used when referring only to Estate Management not including the Public Guardian.

Estate management decision-making must be based on sound estate management practice, be transparent, and occur within the legislative framework and agreed service standards. It is critical that customers are informed of and involved in the decision-making process (where possible) and their review rights. There may be instances where it is also appropriate to consult with stakeholders.

The decision-making process will consider several issues, including:

- whether NSW Trustee has authority to make decisions
- how NSW Trustee can support the best interests and [s39](#) principles for the customer, subject to affordability and individual circumstances, ensuring no undue influence.

Keeping accurate records of decisions is imperative and once a decision is made, the decision and reasons for the decision must be recorded. The decision is to be communicated to the customer as soon as the decision has been made. The communication to the customer should be recorded.

Policy statement

Decision-Making Policy

The Decision-Making Policy guides and supports employees in decision-making. In relation to those customers under a financial management order, the Decision-Making Policy is how NSW Trustee can support the application of the s39 principles.

NSW Trustee's Decision-Making Policy assists and empowers employees to:

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- Consider what decision needs to be made.
- Consider customer requests and respond in a timely manner.
- Consider its fiduciary duty and be proactive in dealing with issues to prevent breach of this duty.
- To give effect to the s39 principles.
- Make decisions within the legislative framework that it operates under.

Purpose and principles underpinning Decision-Making Policy

The Decision-Making Policy is underpinned by NSW Trustee's purpose, the *NSW Trustee and Guardian Act 2009*, and the Customer Excellence principles.

NSWTG's purpose is to protect, promote and support the rights, dignity, choices and wishes of our customers. When acting as an independent and impartial manager, NSW Trustee does this by providing support and making decisions at critical moments in customer's lives. The Decision-Making Policy is underpinned by the principles of the *NSW Trustee and Guardian Act 2009*, s39:

It is the duty of everyone exercising functions under this chapter with respect to protected persons or patients to observe the following principles:

- (a) The welfare and interests of such persons should be given paramount consideration.
- (b) The freedom of decision and freedom of action of such persons should be restricted as little as possible.
- (c) Such persons should be encouraged, as far as possible, to live a normal life in the community.
- (d) The views of such persons in relation to the exercise of those functions should be taken into consideration
- (e) The importance of preserving the family relationships and the cultural and linguistic environments of such persons should be recognised
- (f) Such persons should be encouraged, as far as possible, to be self-reliant in matters relating to their personal, domestic and financial affairs
- (g) Such persons should be protected from neglect, abuse and exploitation.

The Decision-Making Policy is also underpinned by NSWTG's Customer Excellence Principles:

Insightful: Customers receive expert, clear and helpful advice informed by best practice.

Empathy: Customers are treated with respect and courtesy. Their feelings and situations are acknowledged and considered.

Personalised: Customers receive individualised service tailored to their needs.

Convenient and timely: Customers receive efficient advice and service at a place and time convenient for them.

Value: Customers are confident that they receive good value, service is effective, efficient and appropriate for their needs.

Overall satisfaction: Customers are highly satisfied with the service they receive.

The Decision-Making Policy supports NSW TG's implementation of the [UN Convention on the Rights of Persons with Disabilities](#) and other initiatives that promote equal and active participation of all people with disability. The convention recognises that peoples with disability have the right to enjoy legal capability on an equal basis in all aspects of life.

When are reasons for substitute decisions provided in relation to estate management?

NSW Trustee makes thousands of decisions each year as an estate manager and it is not possible to provide a formal document for each decision. It is for this reason that we define certain decisions as 'significant'. We provide reasons for significant decisions and inform the customer, their family, close friends, or guardian, of the significant decision in writing. Significant decisions examples are outlined in the Estate Management Decision-Making Procedures.

Decision-making process

To assist the process of decision-making, a structured approach is taken. The structured approach has six elements:

1. Ensure common understanding of the decision to be made and timeframes.
2. Confirm NSW Trustee can make the decision.
3. Gather information and analyse.
4. Make the decision.
5. Record the decision and the reason for the decision.
6. Communicate the decision to the customer and where appropriate communicate the decision to the appropriate stakeholders.

The six elements provide building blocks in making a decision. Each element pieces together the process. Decision makers can use a linear or fragmented approach to the elements, if all the elements have been considered in making the decision. This will provide a consistent, fair, and transparent approach to decision-making.

Confidentiality and privacy

NSW TG complies with the requirements of the [Privacy and Personal Information Protection Act 1998](#). Employees must ensure privacy and confidentiality when discussing a customer's affairs with other people in their lives. Seeking the customer's consent where possible about parties being consulted is critical. It is also important that employees understand the vulnerability of many customers. Revealing personal information, such as financial information, to some people in a customer's life may place the customer at increased risk of exploitation. Refer to NSW TG's [Privacy Policy](#), [Access to Information, Privacy and Confidentiality Policy](#), [Privacy Management Plan](#) and [Responding to Client Financial Abuse Policy](#).

Scope

All NSW Trustee employees who manage estates of customers under an order and who provide support services to these customers. For Public Guardian, refer to [Public Guardian Decision-making Procedures](#).

Legislative context

- [NSW Trustee and Guardian Act 2009](#)
- [Civil and Administrative Tribunal Act 2013](#)
- [Guardianship Act 1987](#)
- [Administrative Decisions Review Act 1997](#)
- [State Records Act 1998](#)

Related resources

Policies/Procedures

- [Decision-making Procedures](#)
- [Internal Review of Decision Policy and Procedures](#)
- [NSW Trustee & Guardian Privacy Policy](#)
- [Authorities and Delegations Summary Chart](#)
- [Complex Case Reviews Procedures](#)

Fact Sheets

- [Fact Sheet – Self Management Section 71](#)
- [Fact Sheet – Review of Decisions](#)
- [Fact Sheet – Substitute Decisions](#)

Letters and Forms

- [Decision letter to customer](#)
- [Internal review of decision letter](#)
- [Decision-making submission template](#)

Definitions

NSWTG uses the term 'customer' broadly to include:

- Person under an estate management order (includes a person who has NSW Trustee as direct manager and a person who has a private manager appointed).
- Person who makes a Will, Power of Attorney or trust deed appointing NSW Trustee to act in the appropriate capacity.
- Beneficiaries of estates and trusts: where the customer is a beneficiary of an estate or trust.

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- Private managers: where the customer is the private manager this extends to the customer under a private management order.
- Stakeholders such as key contacts, family, social workers, support persons or organisations.

In relation to this Policy the term 'customer' refers to the person subject to an estate management order.

The term 'decision-maker' refers to NSWTC employees who are required to make the decision on behalf of a customer.

Document information

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