



# **Safeguarding the rights of people with disability who have no guardian**

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# Principles of Individual safeguarding

- Self-determination
- Individualised
- Responsive
- Assume Capacity
- Minimum restrictions
- Ongoing consideration



## Case study

Jane has an ID. She has lived in her group home for nearly 20 years.

Since 2015 CVs have reported ongoing resident-to-resident and resident-to-staff violent incidents at the house. In one case Jane needed eight stitches for a wound to her leg. In many of these incidents Jane was the victim of repeated physical and verbal abuse.

Staff at the group home feel that the best way to protect Jane from violence and abuse is for her to move to a new house.

**Who should make this decision?**



## Case study

Does Jane have the capacity to make the decision to move to a new group home?

Can Jane be supported to make a decision about where she might live?

Does Jane need a guardian to make this decision on her behalf?



# Obligations & Principles

UNCRPD

Article 12 – Equal Recognition before the law

ALRC

National Decision making principles



# Capacity

A person has capacity to make a particular decision, if they are able to do all of the following:

- understand the relevant information
- retain or remember relevant information
- weigh up the relevant information
- communicate the decision in words gestures or other means



# A framework for Capacity

The PEACE Framework around capacity:

**P**eople have the right to make their own decisions

**E**veryone at times needs support when making important decisions

**A** person's capacity to make their own decisions should be assumed

**C**apacity is decision specific and can vary over time

**E**very reasonable effort should be made to support a person to make their own decisions



# Case Study

Max is a young man with dual disability.

He is quite independent, but at times exhibits at risk behaviours such as:

- » self-harm and suicidal behaviours
- » dodgy financial transactions
- » suspected gambling

There is a constant risk that Max will become involved with the criminal justice system because of his dodgy financial undertakings

**Does Max need a guardian?**





# Guardianship

A guardian appointed when VCAT is satisfied the person:

- Is 18 years or over and has a disability
- Cannot make reasonable judgments because of the disability
- Needs to make a decision and there is no less restrictive alternative than appointing a guardian/administrator
- Needs someone to act in their best interests