# Enhancing Financial and Legal Decision-Making

## Integrating Supported Decision-Making into Victoria's Adult Guardianship and Administration Framework

Presentation Prepared by Craig Dent & Professor Erin Wilson, Centre for Social Impact, Swinburne University

Presented by Craig Dent, MBA

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# Acknowledgement of Country

We respectfully acknowledge the Wurundjeri People of the Kulin Nation, who are the Traditional Owners of the land on which Swinburne's Australian campuses are located in Melbourne's east and outer-east, and pay our respect to their Elders past, present and emerging.

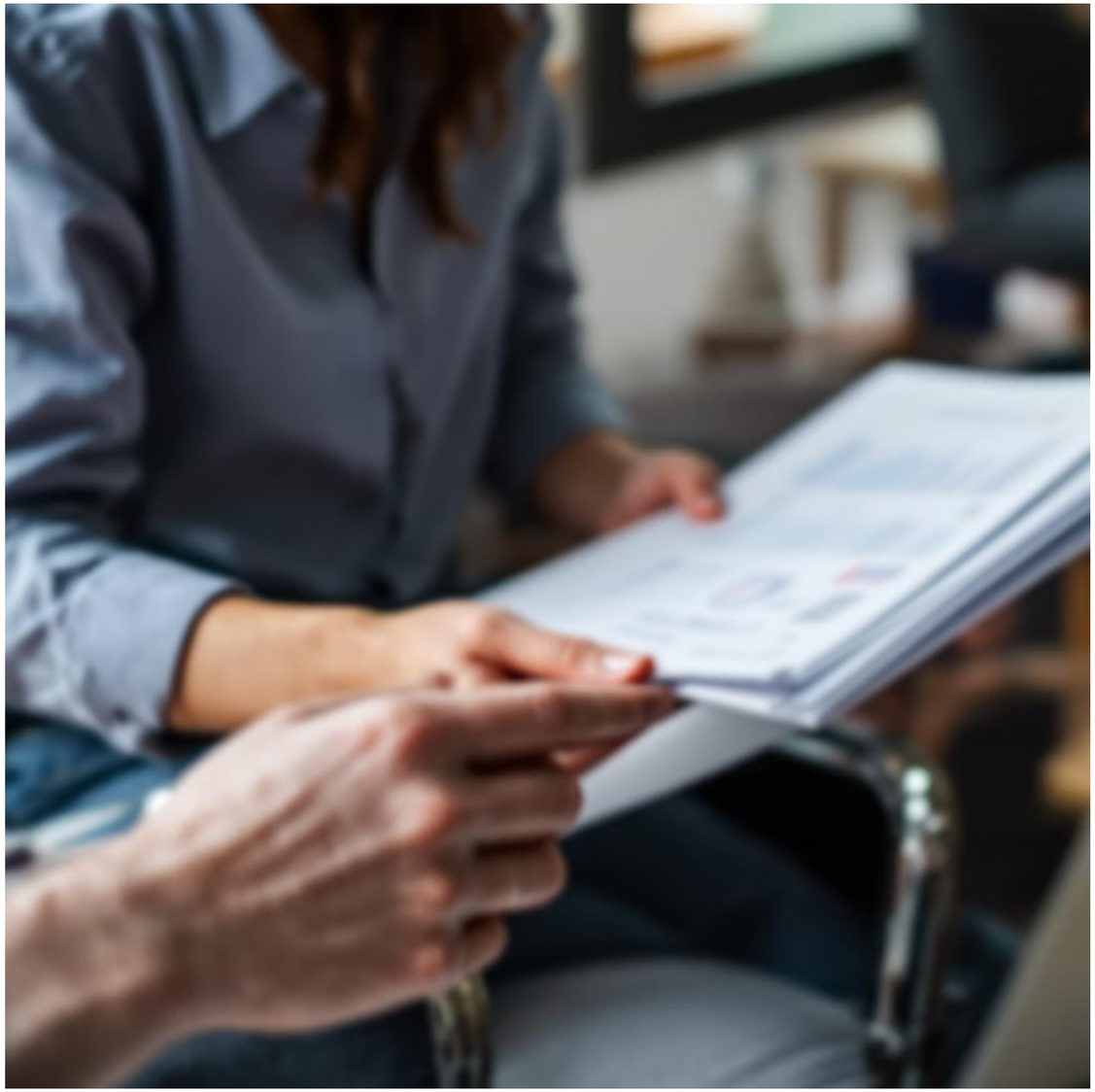
We are honoured to recognise our connection to Wurundjeri Country, history, culture, and spirituality through these locations, and strive to ensure that we operate in a manner that respects and honours the Elders and Ancestors of these lands.

We also respectfully acknowledge Swinburne's Aboriginal and Torres Strait Islander staff, students, alumni, partners and visitors.

We also acknowledge and respect the Traditional Owners of lands across Australia, their Elders, Ancestors, cultures, and heritage, and recognise the continuing sovereignties of all Aboriginal and Torres Strait Islander Nations.

# Context and Background

- There are about 450,000 people with intellectual disability in Australia (Department of Health, Disability and Ageing, 2025).
- 18% of Australians (approximately 4.4 million people) live with a disability.
- Many require support with financial and legal decision-making.
- In 2020, Victoria was uniquely placed to make up ground and reform, what many see as a paternalistic and coercive framework, which is service provider orientated and inconsistent with human rights obligations. This study is primarily concerned with the exploration of the concept of ‘administration’, or financial and legal decision-making, within less restrictive paradigms of guardianship and administration, and specifically the context of the reform agenda in the jurisdiction of Victoria, Australia.
- Victoria's Guardianship and Administration Act 2019, implemented on 1 March 2020, aimed to shift from a paternalistic model to a human rights-aligned approach.



# Key Terminology: Guardianship and Administration

## Guardianship

Legal authority granted to make personal, lifestyle and healthcare decisions on behalf of an adult who lacks decision-making capacity due to disability, illness, or injury.

## Administration

Legal authority to make financial and legal decisions on behalf of an adult who lacks decision-making capacity due to disability, illness, or injury.

Both mechanisms are intended to be last-resort interventions when no less restrictive options are available and should be applied in ways that maximise the person's autonomy and participation.

Victorian law aims to move from substitute to supported decision-making models.

# Research Methodology

## Social Constructivist Approach

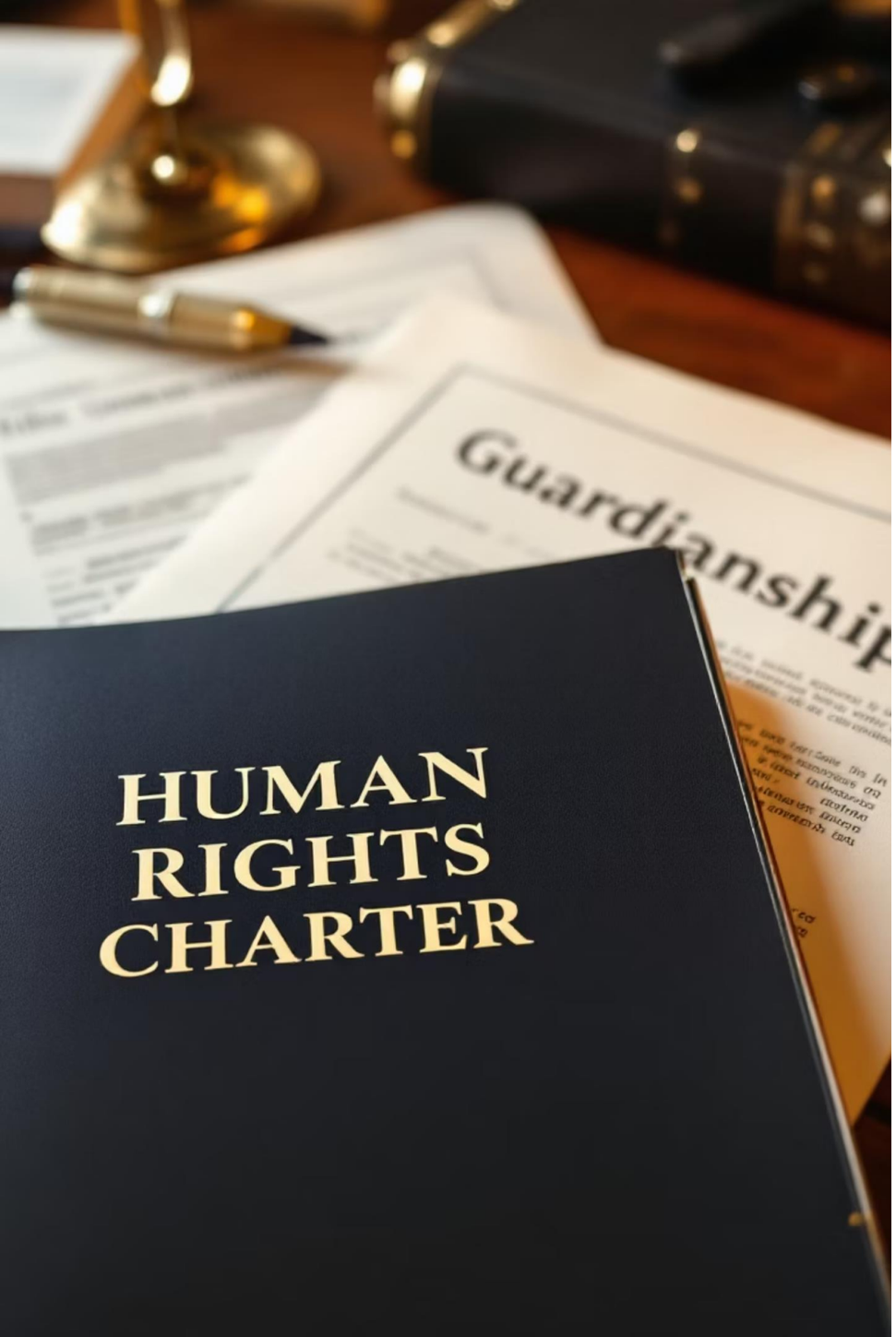
Examining how social context policy implementation and practical outcomes

## Data Sources

- Policy and legislative documents
- 109 VCAT (post decision) case data (2020-2024)
- 48 (Vic) invited interviewees resulted in five (5) Vic qualitative interviews with legal professionals, administrators, disability advocates
- Comparative interviews in British Columbia, Canada. 17 invited, six six (6) conducted

## Analysis Method

Thematic analysis to identify barriers to implementing supportive administration




# Victoria's 2020 Guardianship and Administration Reforms

1

## Pre-2020

Traditional substitute decision-making model with paternalistic approach

2

## 2020 Reform

Introduction of Guardianship and Administration Act 2019

Aimed to align with UN Convention on Rights of Persons with Disabilities

3

## Post-Reform Reality

Limited practical change in administration practices

Minimal adoption of supportive administration principles

# Key Finding: The Implementation Gap

Despite legislative reform such as the creation of a supportive administrator, financial and legal administration practices remain largely unchanged in Victoria

## Legislative Intent

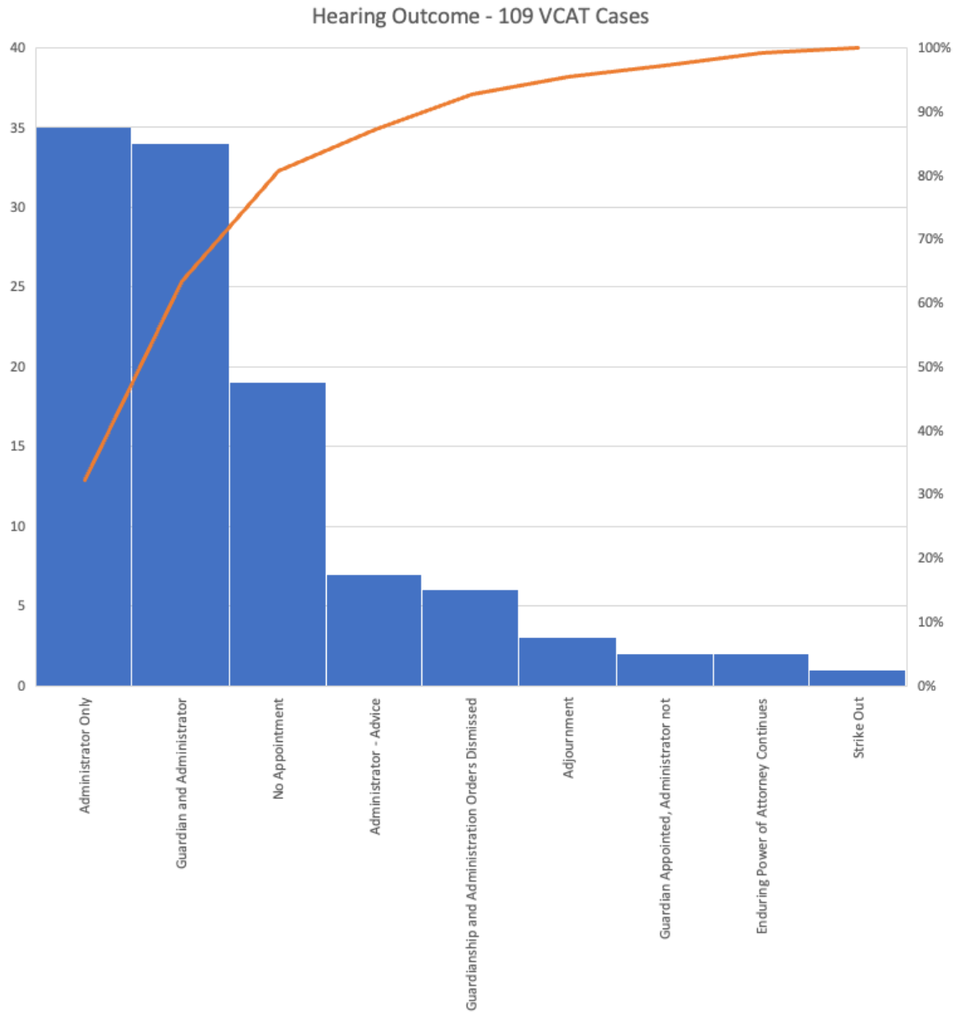
Human rights-based approach codified in law, i.e. Supportive Administrator

## Systemic Barriers

Institutional resistance and procedural obstacles, i.e. absence of training and education

## Practical Reality

Continued reliance on substitute decision-making, i.e. Section 87 & 93 of the Act



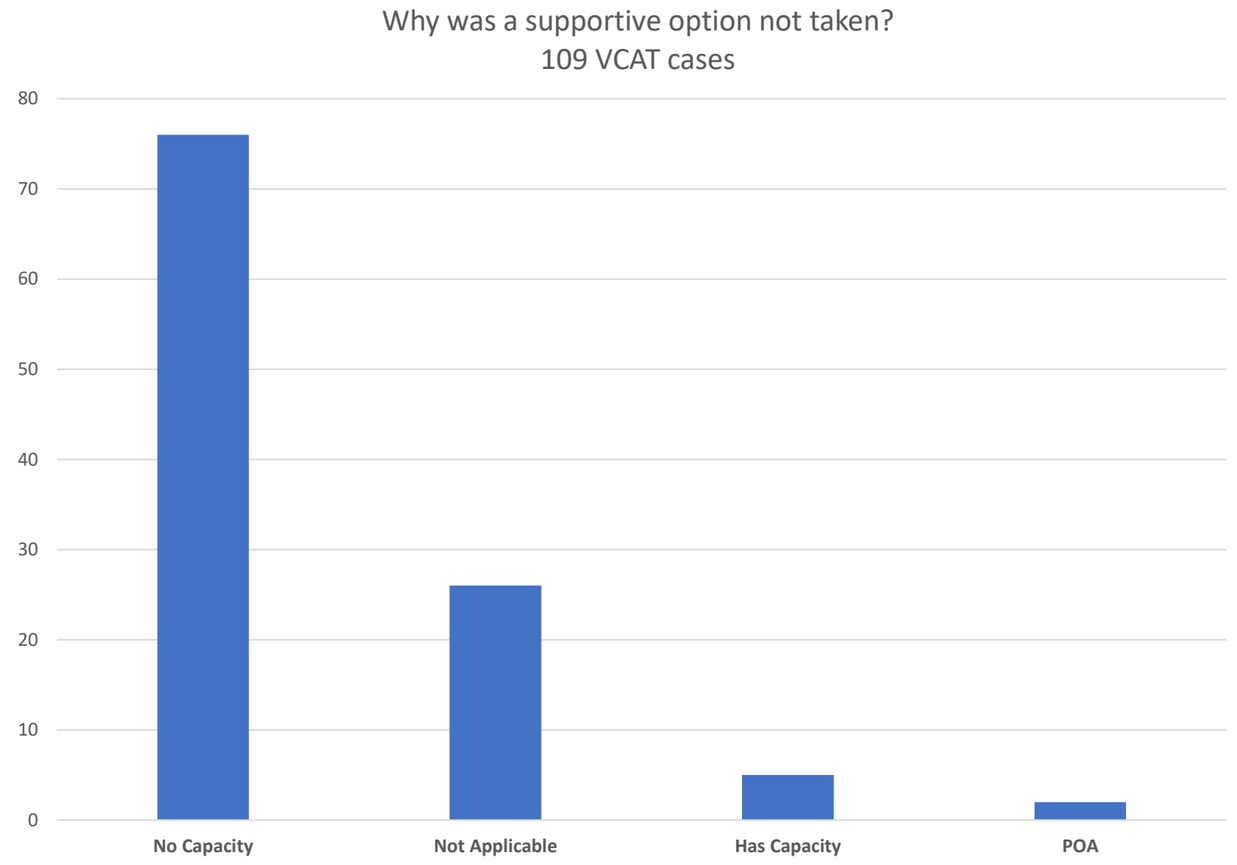

# VCAT Data Analysis

- Analysis of 109 Victorian Civil and Administrative Tribunal (VCAT) post-decision cases reveals a significant disparity in the implementation of supported decision-making orders.
- Of the 109 cases there were **no** supportive Administrator roles appointed.
- This data clearly demonstrates that despite the 2020 reforms, the vast majority (71) of VCAT orders continue to favour substitute decision-making, highlighting the persistent implementation gap for supported administration in practice.

# VCAT Case Data: Decision Breakdown

A closer look at the 109 VCAT post-decision cases reveals the predominant use of substitute decision-making orders, underscoring the gap between legislative intent and practical application.

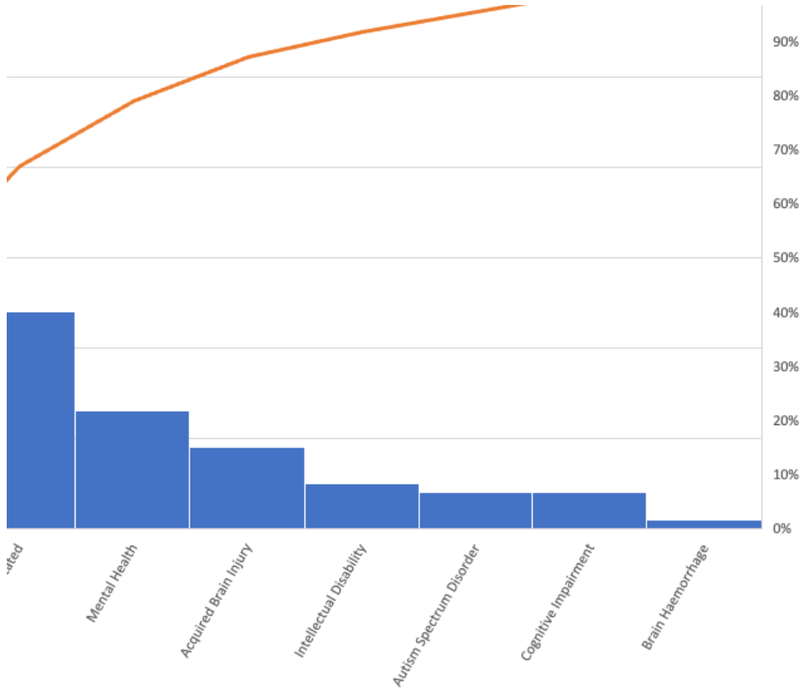
This distribution highlights the impact of Section 87 which prevents the appointment of a supportive administrator if the proposed represented person at the time of the hearing lacks capacity.



# VCAT Case Data: Cause of Hearing

Of the 109 VCAT post-decision cases reveals the predominant cause for a hearing was;

- Dementia
- Unknown/Not Stated
- Mental Health
- Acquired Brain Injury
- Intellectual Disability
- Autism Spectrum Disorder
- Cognitive Impairment
- Brain Hemorrhage



# Section 87 & 93 of the Guardianship and Administration Act 2019

## Section 87: Capacity Assessment

This section prevents the appointment of a supportive administrator if the proposed represented person is deemed to lack capacity at the time of the hearing. This legislative clause significantly limits the application of supported decision-making, reinforcing reliance on substitute models.

## Section 93: Administration Orders

Section 93 prohibits the supportive administrator making or indeed implementing a significant financial decision such as the disposal of an asset like a house. This is in contradiction with Section 87 (2b) p.73 where a Supportive decision-maker such as as a Supportive Administrator can only be appointed if by giving support the person will have capacity to make that decision.

It is contradictory to say that the Supportive Administrator will give support, the person will then have capacity but then can’t make significant financial decisions.

# Supported vs Substitute Decision-Making

Our research highlights a crucial distinction in approaches to financial and legal decision-making for persons with disabilities.

## Supported Decision-Making

Individuals are empowered to make their own decisions, with assistance provided as needed. This approach upholds autonomy and human rights.

- Respects an individual's will and preferences
- Focuses on capacity building and assistance
- Aims for maximum independence in decision-making

## Substitute Decision-Making

Another person or body makes decisions on behalf of an individual, often based on a "best interests" principle. This can limit self-determination.

- Decisions made by a guardian or administrator
- Can override an individual's expressed wishes
- Historically more paternalistic in nature

Integrating supported decision-making into financial administration is essential for autonomy and rights protection. Our study proposes a shift, emphasising the need for policy and practice development to bridge the gap between reform goals and real-world implementation.

# The Imperative for Change

Current financial administration systems in Victoria struggle to provide the necessary support for people with disabilities and long-term illnesses, often failing to preserve their autonomy.

This highlights an urgent need for a more effective and rights-based based approach to decision-making, moving beyond outdated models to truly empower individuals.

# Lessons from British Columbia, Canada

## Representation Agreements

Legal framework allowing individuals to appoint trusted supporters without court intervention

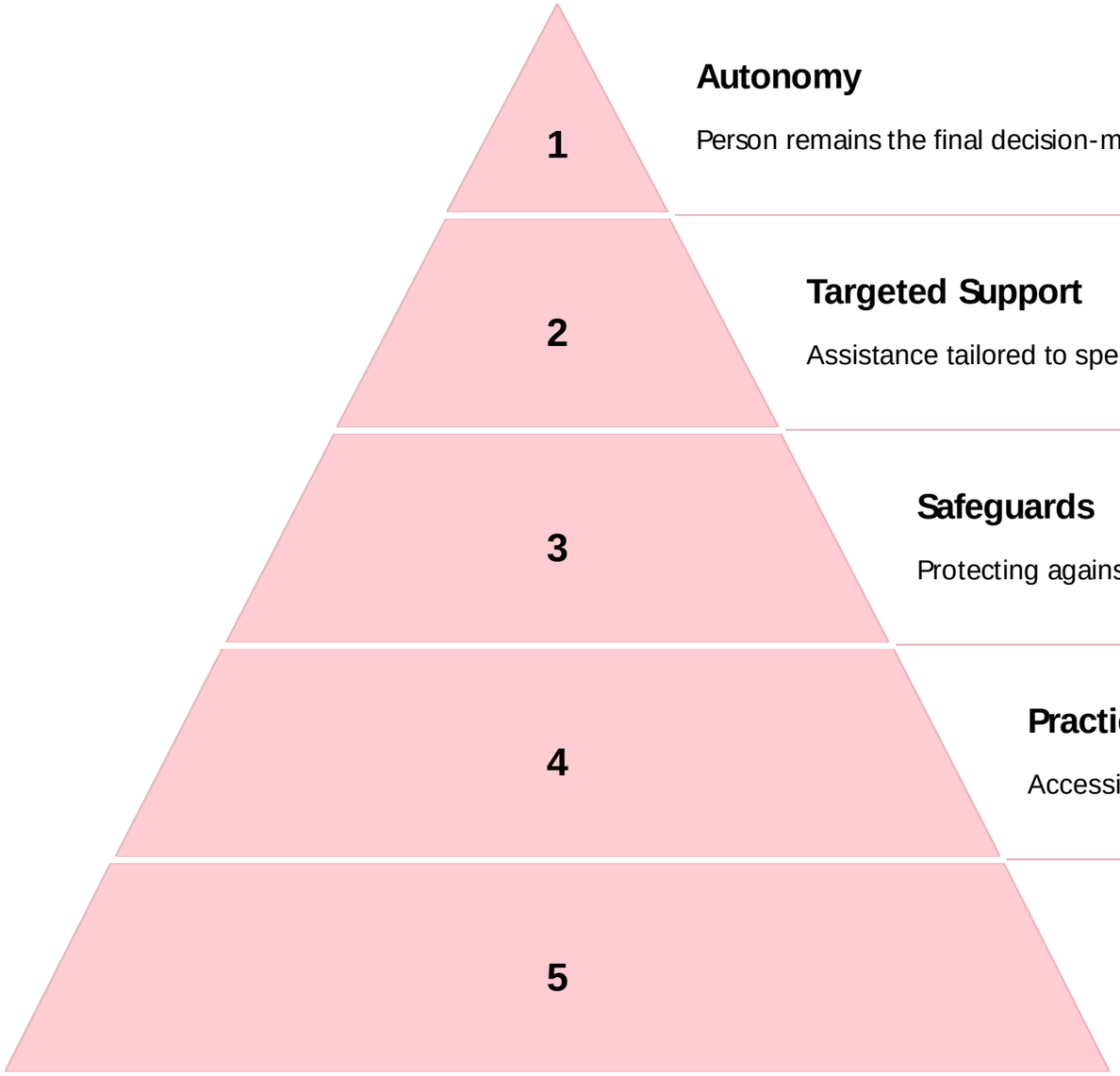
## Community Networks

Strong emphasis on community-based supports and resources for decision-making assistance

## Education Focus

Comprehensive training programmes for supporters and professionals

# Proposed Framework for Victoria




**Autonomy**

Person remains the final decision-maker

**Targeted Support**

Assistance tailored to specific decision-making needs

**Safeguards**

Protecting against undue influence whilst enabling choice

**Practical Resources**

Accessible information and decision-making tools

**Systemic Reform**

Training for professionals, funding for support services, and legislative implementation

# Implementation Recommendations

1

## VCAT Reform

Revise tribunal procedures to prioritise supported administration orders when appropriate with Section 87 retired and Section 93 amended.

2

## Professional Development

Mandatory training for all administrators (including professional providers) and tribunal members on supported decision-making. Training to include human rights, supported decision-making, financial and legal literacy

3

## Community Education

Public awareness campaigns about rights and options for financial decision-making support

4

## Policy Framework

Develop clear guidelines for implementing supported administration in practice and extend supportive administrator appointments to paid providers of administration services. Remove Section 87 preventing the appointment of a supportive decision-maker and amend Section 93 to allow significant financial transactions to be conducted by supportive decision-makers.

# Key Takeaways

The gap between Victoria's reform goals and implementation reflects a need for cultural and systemic change, not just legislative amendments.

## Current Reality

Victoria's 2020 reforms have not led to significant changes in financial & legal administration practices

## Rights-Based Approach

Supported decision-making is essential for preserving autonomy whilst providing necessary assistance

## Path Forward

Implementation requires policy development, professional training, and systemic reform

# Contact Us


## Craig Dent

Ph.D Candidate

**Email:** craigdent@swin.edu.au

**LinkedIn:** www.linkedin.com/in/craigdent/


We welcome your questions and collaborations.