



Shared Management

A guide for Support Organisations exploring Shared Management

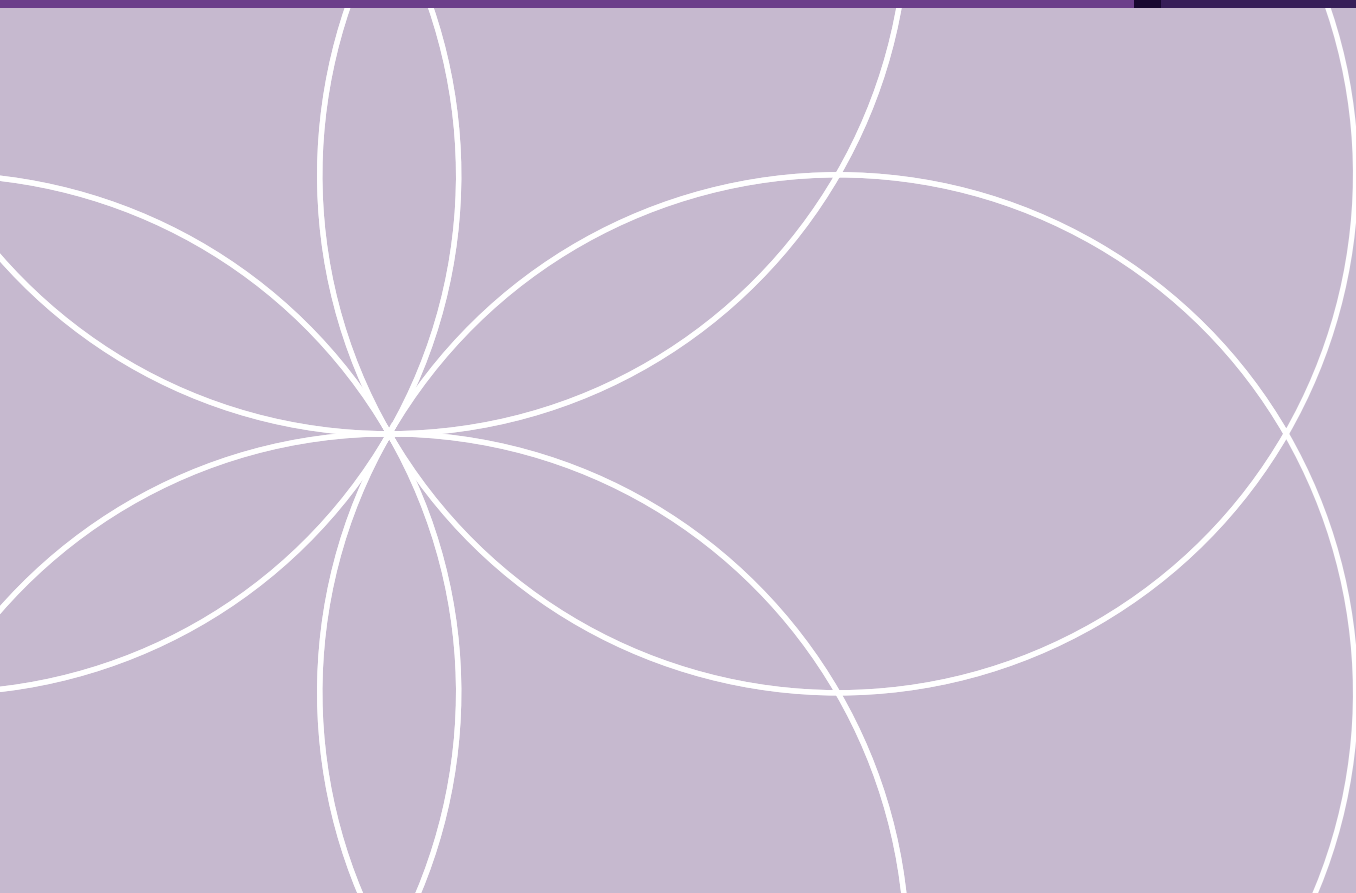
“ Shared Management honours my freedom to be a part of the thinking, designing, developing and problem solving – to be recognised as having a **big** part to play, after all no one (no agency or manager) knows me, like me!

”
Justin

October 2012

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Please ensure you check the WAIS website www.waindividualisedservices.org.au for the most up to date version as this is intended as a living document regularly updated and improved.



Contents

Foreword	2
Glossary of Terms.....	3
Introduction and Context	4
The Principles of Shared Management	7
Understanding Shared Management.....	9
Choosing Shared Management.....	13
Benefits of Shared Management.....	15
Components of Shared Management.....	17
Exploring Shared Management.....	18
Develop a Plan and Outcomes.....	20
Understand the Budget.....	23
Develop a Shared Management Agreement	26
Legal and Regulatory Considerations	29
Organise Supports.....	31
Reflect and Learn	33
Resources	35
Appendices.....	36
Appendix 1 - Taxation	37
Appendix 2 - Superannuation	49
Appendix 3 - Industrial Relations.....	51
Appendix 4 - Insurances.....	56
Appendix 5 - Health and Safety.....	60
Appendix 6 – Goods & Services Tax (GST) & Other Considerations...	69

Foreword

This resource is the result of significant contribution, guidance and support from a dedicated Steering Group comprising Rosie Lawn (Perth Home Care Services), Darren Ginnelly (My Place), Kwame Selormey (Baptistcare), Steve Robinson (Enable SW), Nicola Weinman (Disability Services Commission) and Scott Fraser (Disability Services Commission). Coordination and oversight was provided by Western Australia's Individualised Services (WAIS) and Su-Hsien Lee, its Executive Officer.

Appreciation is extended to the Disability Services Commission (DSC) for its financial support to develop this resource for the benefit of the community sector, individuals and families.

A wider Reference Group providing additional context and feedback is gratefully acknowledged. Many thanks must be made to Justin Mountain, Brian Pepper and Jenny Jay for sharing their experiences with us. Finally, Kate Fulton from Kate Fulton Consultancy is to be thanked for her significant contribution in drafting this resource.

This resource is not intended to be a static document and will continually be updated as Shared Management evolves or as any relevant legal or regulatory implications change. Please always ensure you have the most current version by checking in at www.waindividualisedservices.org.au. Please register your interest in being a part of the Shared Management network to ensure you are notified of updates.

Finally, we are grateful to DSC who have committed further funding to WAIS to support the sector to further develop its capacity to provide Shared Management. This includes the services of a dedicated Shared and Self Management Advisor who will assist the sector to understand and provide this approach. Opportunities for the sector to come together to share information and support each other on this journey will also be provided.

Glossary of Terms

Funder – A Government body or statutory authority that provides funding for people seeking supports and services.

Self Directed Support – Based on the premise that people are in the best position to define their support arrangements whereby the individual is in the centre of decision-making and in control of their supports and services.

Support Organisation - An organisation that has been approved by and meets a funder's eligibility requirements to provide supports and services to individuals.

Individual Funding – Funding assigned to a person for supports and services.

Shared Management - An agreed sharing of supports / funding management responsibilities between the individual and/or their family and a Support Organisation. Please go to the Understanding Shared Management section for a diagrammatical overview of the Shared Management spectrum.

Introduction and Context

The foundation of all modern societies is the acknowledgment of everyone's right to exercise their citizenship by leading and directing their own lives. It is essentially one of the most basic and fundamental elements of being human. This basic right matters to **everyone** regardless of ability, age, health or experience. The ability to decide how you want your life to be, who you want to be connected to and how you are supported are essential factors that we all understand and expect in our own lives.

Across Australia and internationally, there is a significant shift in how supports are provided to people, who require assistance and support to live a full life as active citizens. This is being captured in the term Self Directed Support.

Western Australia has a strong history of exploring and supporting innovations that promote peoples' choice, control and ability to determine and direct their own lives. Self Directed Support aims to ensure that people can direct their support and decide how to best use the resources available to them.

The Disability Services Commission has outlined the fundamental characteristics of Self Directed Support as:

- personalised approaches to planning, design and implementation, with the person (and their families and carers) at the centre of decision-making;
- genuine choice and decision-making by the people about the supports and services they use; and
- the option for people using services to determine the level of information and control they have over resources and funding.

Conversations that Matter, DSC, 2011

[http://www.disability.wa.gov.au/disability_reform/self_direction.html]

This approach requires a significant change in the way that we all, including the Funders and Support Organisations work alongside people and families as equal partners.

Shared Management is one way of achieving Self Directed Support. It is where a person and/or their family work with a Support Organisation, sharing the management of their support arrangements. It provides a mechanism for people to direct, control, manage and monitor their support, in way that makes sense to the person, their family and their communities. It is an approach that works to increase people's control and support them to achieve their outcomes, enabling people to live their lives in a way that they choose, with the right support.

Shared Management is not about people 'having to' manage all aspects of their funding and supports. It's about people being able to take on the level of responsibility and control that they want for each aspect of their support. Shared Management offers the potential of self direction for all people supported by Support Organisations whether they manage their own funding or not. This guide provides an overview of Shared Management and how people, families and Support Organisations can make it work for them in Western Australia. This guide is aimed at Support Organisations considering or exploring Shared Management as well as those already providing Shared Management.

Supporting people to have real choice in their lives and control over the resources available for their support, is a fundamental shift in the way that we have historically organised support for people.

It is this change that many people who use services have wanted to see for a long time.

The ultimate success of Shared Management will rest on the commitment to the principles underpinning this approach. This commitment leads, in turn, to Support Organisations developing knowledge and skills that are different from the past - to work as enablers and advisors working with people to improve their access to information, knowledge and skills. In this there is a challenge for us to support people to understand and navigate the technical and legal aspects of managing their own services.

People and families tell us that one of the biggest factors in making Shared Management work well is a belief that people and families are the experts on their own lives and the relationship between themselves and the Support Organisation is based on this.

“ Shared Management honours my freedom to be a part of the thinking, designing, developing and problem solving – to be recognised as having a big part to play, after all no one (no agency or manager) knows me, like me!

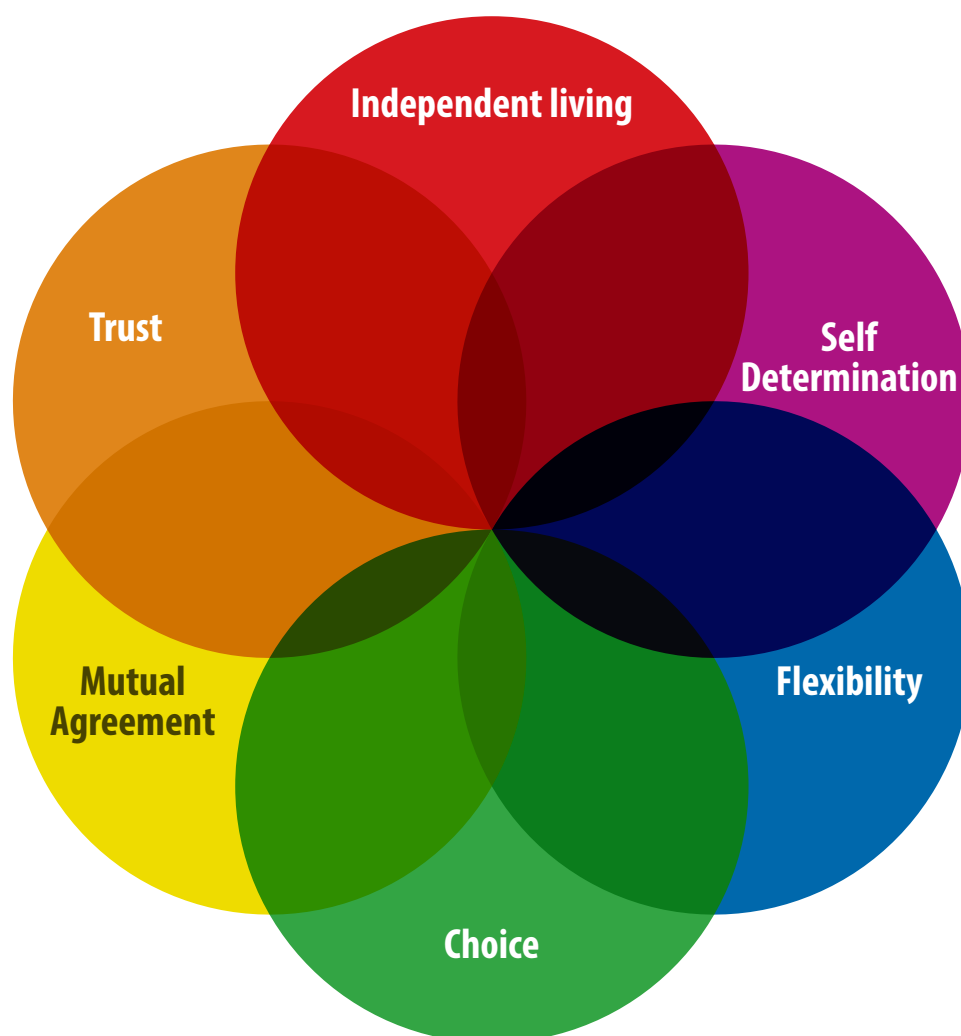
Justin ”

Shared Management is a Western Australian initiative that has been developing since the early 1990s. Its growing success is based on people, families and Support Organisations working hard at imagining better and overcoming today's technical challenges to create new and empowering approaches for tomorrow.

Historically, Shared Management has been undertaken in the disability sector, however, due to its success it is now emerging in Aged Care and Mental Health.

Support Organisations making a commitment to the following fundamental principles that underpin Shared Management will ensure their approach to Shared Management truly supports self direction.

The Principles of Shared Management



Independent Living – the right to be a citizen with full access to an ordinary life

Self Determination – The right to be in control of your own life and be acknowledged as the expert in 'you' and for your views and preferences to be acknowledged and reflected in your support arrangement

Flexibility – the right to decide how to use your resources and how they will be managed to best suit you and your lifestyle

Choice – the right to choose how much responsibility you have within a Shared Management arrangement based on your choice, preference and ability

Mutual Agreement – the right to be treated fairly and honestly in how agreement is reached

Trust – the right to be trusted as an equal partner in the Shared Management arrangement regardless of level of responsibility chosen

In considering Shared Management, Support Organisations can build on the experience of other organisations and develop their own approach in partnership with people and families.

It is clear that Shared Management opens up so many new possibilities to people, families and communities. People have developed and retained excellent support systems around themselves, and have also developed their own confidence and self belief in their abilities to direct, manage or employ people. Shared Management offers Support Organisations the ability to really share power with individuals and their families, so that they can grow and develop in their own lives, living well and achieving their own personal outcomes.

Understanding Shared Management

Shared Management is an approach to organising and managing support in a way that is led by individuals and families, in partnership with a Support Organisation. Like all good effective partnerships Shared Management requires a respectful trusting relationship.

Currently in Western Australia, government funding to a person for support is predominantly paid directly to a Support Organisation, whose role traditionally has been to plan, organise, implement and monitor support for that person on their behalf. In carrying out this role Support Organisations can offer a range of options for people to have a say in how their own support is organised.

In offering Shared Management, Support Organisations are clearly acknowledging people's right and expertise to design, implement and manage their own support service. Any Shared Managed arrangement should suit that individual and family and is based on an agreement of how the support system will work and be managed.

Shared Management essentially offers an honest and transparent mechanism to:

- Understand and participate in the range of tasks involved in designing, planning, setting up and managing a support approach.

and

- Define an agreement between people, families and the Support Organisation about who is responsible for each task in the short and long term.

It is important that we understand the subtle yet significant difference between directing your support and being responsible for the tasks involved in organising your support. There is often confusion around what constitutes control. To be in control, or to direct your own support, does not mean having to manage and be responsible for all tasks and funding – it means being heard and respected as a unique individual with preferences about how and who should offer your support. It means having a say in designing your support. It does not mean having to be responsible for all of the tasks if this doesn't suit you or your lifestyle.

“ We have the freedom of recruiting, employing and training my son’s staff without having to also process time sheets, manage annual leave forms and pay taxation.

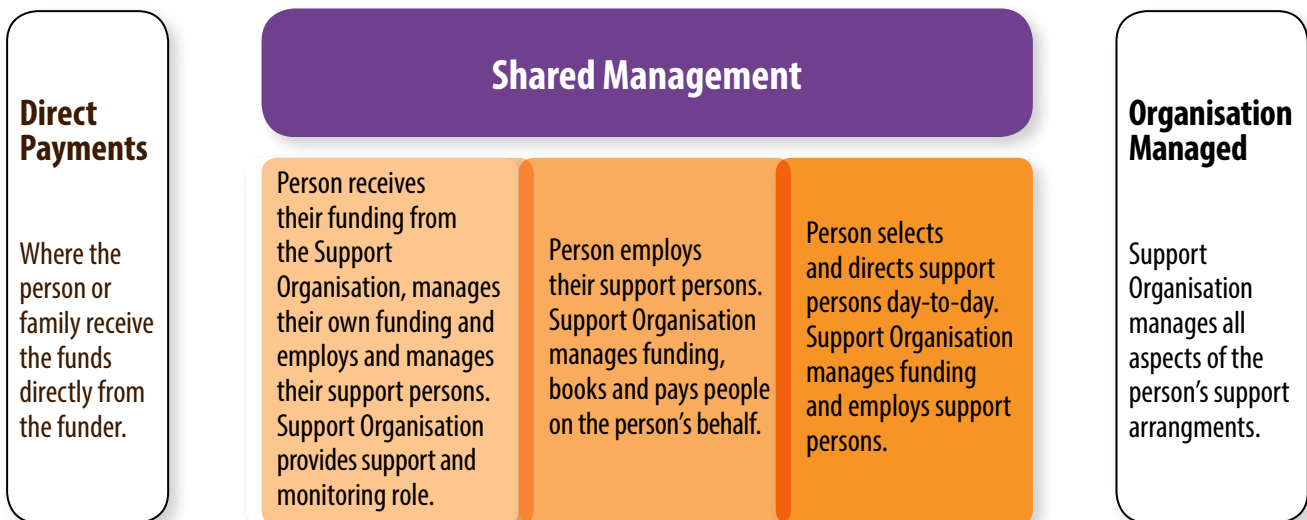
Parent ”

Shared Management can be so flexible that it is possible to have lots of control and say over your support with little responsibility to manage the tasks required.

“ I am in full control of my support including who supports me, how they do it, and what they offer. However thankfully I don’t have all of the hassle of the paper work, training and governance stuff, my Provider does all of that – I’ve done all of that before and I choose to have it this way – this is control – it’s just right for me!

Justin ”

One way to understand the level of control and responsibility involved in Shared Management is outlined in the following graph: Options in Shared Management.



Successful Shared Management offers a range of choices to support people to be in control from as little as having a say in how you want things to happen, to managing all tasks.

“ I manage everything, I manage my budget and manage my team – I set the rate of pay, I am their employer – I have kept my support team for years – it works well for all of us

Brian ”

It is important that the support options offered by the Support Organisation to an individual seeking a Shared Management approach are aligned to the Support Organisation's internal capacity and systems. For example, if the Support Organisation is to transfer funds to the individual or their family to manage their supports directly, then an appropriate internal financial system to support this approach is required. If the Support Organisation is to offer a book keeping service to manage the funds on behalf of the individual or their family then having a process that informs individuals on the use of their funding is important. Involving people in recruitment requires an investment in exploring accessible processes for people to really be part of. All of the options also require organisational consideration to ensure they are sustainable options for people and their families.

It is essential that Support Organisations understand the need to align the Support Organisation's vision, mission and principles with those required to offer Shared Management. This requires a commitment at all levels of the Support Organisation.

It is the principles at the heart of Shared Management that make this option work so well for many people.

Choosing Shared Management

If Shared Management is implemented well with a range of flexible approaches to support self determination, it should be a viable option for all people regardless of ability, age, health and circumstance. All people can influence the direction of their support if respected, acknowledged and heard.

It is important that as we work to increase people's control and potential responsibilities we do this in a respectful and honest way. Shared Management is not about burdening people with responsibilities that they either do not wish to have or are unable to complete due to lack of capacity or circumstances to manage the actual tasks.

Shared Management is for **people and their families** who want some or all of the following:

- more choice and control over their support and life;
- to be respected as an expert on their own life;
- to determine their own personal outcomes and arrange supports accordingly and based on their preferences and what's important to them
- to have a say or a role in managing their support;
- to take on some of the tasks and responsibilities;
- willing to work in partnership with their Support Organisation of choice; and
- willing to fulfil their part in the Shared Management Agreement.

Shared Management is for **Support Organisations** who are willing and ready:

- to genuinely hand over control to people and families;
- to develop a range of strategies to enable people to have more say and control over their support;
- to work in genuine partnership with people and families – aiming to develop a relationship based on mutual respect, shared understanding and honest communication;
- to develop a range of options where people can take on some or all of the responsibilities and tasks required in employing supports;
- to be open, honest and transparent regarding costs for all aspects of managing the person's funding;
- to observe and fulfil their mutual responsibilities; and
- to safeguard all parties respectfully.

“ I don't want people coming around and organising my life. I manage myself and my life. If ever I need any help or advice I can always ring the office. That's all I need.

Brian ”

Benefits of Shared Management

Shared Management offers such a unique and personalised approach that it can offer benefits to many people and their families. Shared Management offers such fluidity in how much responsibility people and their families want to take in managing their support, that it is possible to suit many people's preferences and circumstances. Another significant benefit is the responsiveness and ability, of the approach, to tailor and adapt the level of responsibility chosen by the person at different times in their lives. Having more responsibility when life and circumstances permit or having more support, if and when needed.

Ultimately, Shared Management is a "living" process.

Shared Management offers potential benefits to:

- People and families;
- Support Organisations; and
- Communities.

“ Best thing I ever did was to come out of the... Centre and manage my own supports. Life is as normal as possible. I was always a person that did my best and managed by own life.

Brian ”

People and families have the chance to direct, control and actively contribute to their own support system. To be respected and valued as an expert in your own life and as an equal citizen.

“ We think it is a fantastic way of giving us and our son choice and control without being overwhelmed by the bits we have no skills for.

Parent ”

Support Organisations learn from the people they support by having the opportunity to work in a partnership with each person and family which, in turn, benefits their whole organisation as they learn from each shared managed arrangement about what it takes to offer good support, shared safe-guarding and delivering real person-centred outcomes.

“ Shared Management teaches us how to stay on our toes and work WITH people – this is the way for the future for everyone.

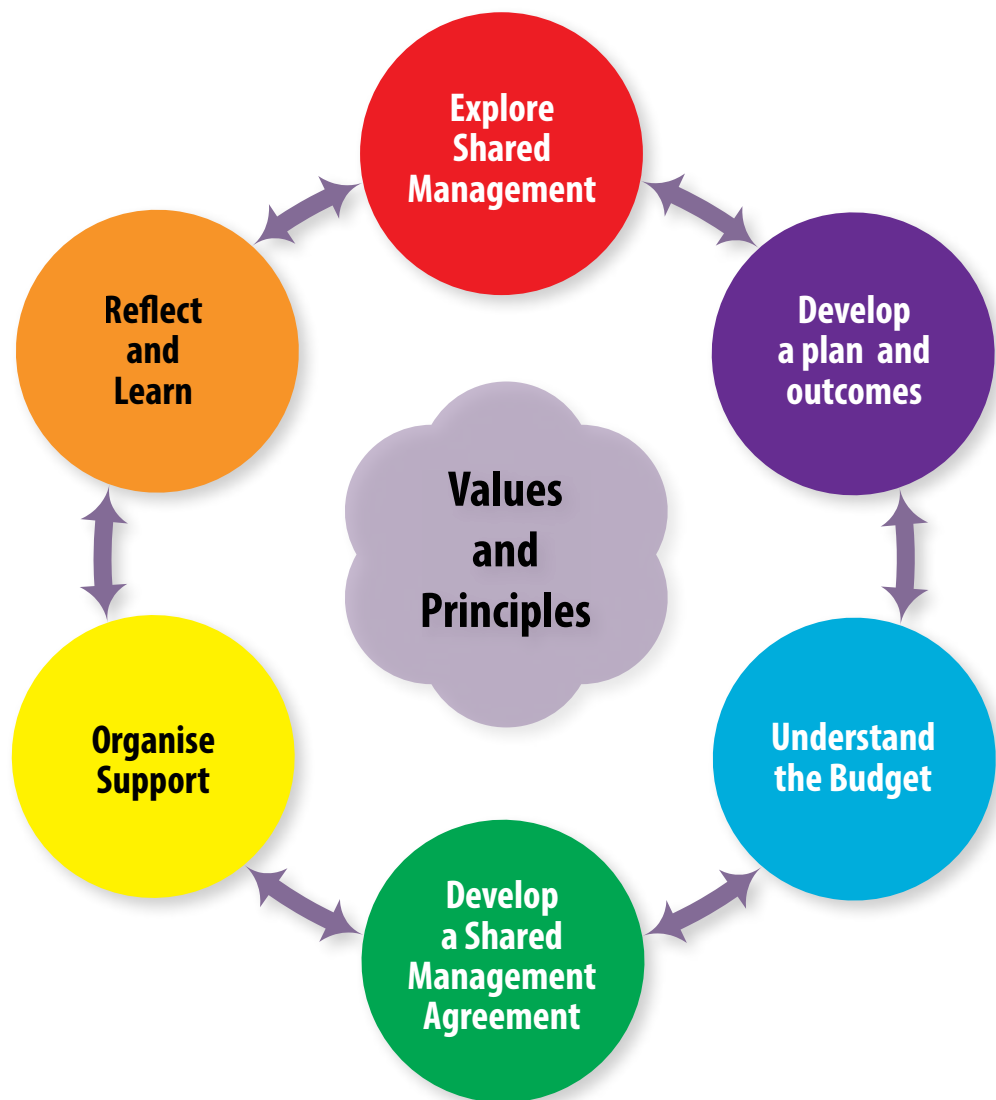
Support Organisation ”

Communities strengthen and grow with the participation of people who have often been excluded (in valuable and socially valued roles as an employer, a manager and a director).

“ ‘Justin is a brilliant capable manager who teaches me about what it takes to really support and manage people’

Friend of a man who manages his support ”

Components of Shared Management



“ Just do it! Start at a level where you are comfortable and take on more as you are able. ”
Parent

Exploring Shared Management

For people and families approaching a Support Organisation for the first time it can be a daunting prospect. The Support Organisation's ability to respond in a person centred, clear and transparent way can make a significant difference to people and families' initial experience and how they direct their future support. Exploring life from the person's perspective is crucial in understanding what they may be looking for in future support.

Most people have experience of using their own resources to meet their needs – adapting their homes to best suit their mobility, purchasing aids that make life easier or managing their personal monies to best suit their lifestyle – these are all things that people will have experience in. Therefore it is important that we don't confuse new human service terminology and people's everyday experiences. People and families tell us that Support Organisations explanations and confidence in the process is essential.

Initial conversations need to establish the basis of a partnership between the person, their family and the Support Organisation and should cover:

- Understanding the person's needs, goals and support requirements.
- The Support Organisation, its purpose, values and way of working.
- The range of options for Shared Management.
- The responsibilities that the person or their family have the resource, capacity and interest in doing.
- What the Support Organisation has the capacity to do to support the person and their family.
- How the Support Organisation can help the person and/or their family develop their skills and confidence in aspects of Shared Management.
- The ability to form a partnership and what this might look like.

Things to consider:

- Have a range of real examples of how people have approached Shared Management is vital – we all learn by understanding real life experiences.
- Have a conversation about all of the options within Shared Management is important and support the person and their family to decide which arrangement will best suit them and their lifestyle is a key area for the Support Organisation to assist with.
- Be open about what the Support Organisation has a reputation at being good at, to make sure people have the right information to choose the Support Organisation that will suit them.

It is vital that internal mechanisms to support the different approaches to Shared Management are in place, such as the ability to offer a book keeping service or the necessary policies and procedures for people to be a genuine partner in recruitment.

“ being real and honest – we know when people are telling us rubbish, we can see it straight away – people don’t need all the theory, you have to be practical and personable – that’s what matters

Justin ”

Develop a Plan and Outcomes

People and families tell us that having the time, space and support to plan how they want their life to be and how best to use their budget is an essential component of Shared Management. This planning is not simply thinking about support options, this is about understanding who the person is, what matters to them and how they want their life to be.

Some people and families will have clear ideas about their future and what that will involve, whilst others may find thinking about the future difficult and frightening. Using a person centred approach ensures that the planning stage is personalised to that person and not a generic Organisational assessment.

Planning for the future and then developing support to suit the person's lifestyle is a significantly different to what most people and families are used to. It is the essential first step to being in control and directing support – defining right from the beginning how the person wants things to be.

It is important to remember that support is not only about buying staff time and hours – many people use other creative approaches and strategies including assistive technology as part of their support system and within their budget, and according to the Funders' guidelines. For example using technology to control your environment makes a person less dependent on paid formal staff.

“ I am excited about the new Push Technology that works with my Ipad. I can control everything from the Ipad – even the blinds! You can make a decision about putting some of the money towards other things that improve the quality of your life – like technology

Brian ”

Person centred planning¹ is one approach that may be appropriate to help people explore their life and develop possibilities. There are a range of planning approaches that can help people including PATH, MAP, Essential Lifestyle Planning, Personal Futures Planning and Individual Service Design.

The detail of a plan and the nature of the planning process needs to be determined by the person and their circumstances, and for some people a more simple approach may best suit as they have a clear idea about what they want to achieve, whilst for others it may involve a more detailed exploration of what's possible given who they are and what's important to them.

Good planning should aim to:

- Explore who the person is, what matters to them and what they want their life to be like;
- Identify what good support is for the person. If this means engaging support people – who are the right kind of people for this person;
- Understand what helps keep the person healthy, safe and well;
- Consider what the person wants to achieve in the future – their own personal outcomes;
- Examine what may be the best way for the person to use their funding to achieve their outcomes; and
- Decide on the best way to manage the budget and the tasks involved in the support– shared management being but one approach.

Planning helps people determine what the right kind of support is for them and how this support system could enable them to live their lives as they choose and support them achieve their own personal outcomes.

1. A little book about person centred planning, J,O'Brien and C,L O'Brien. Inclusion Press

Things to consider:

Planning will form the basis of the Shared Management Agreement between the Support Organisation and the person and their family. Therefore it provides some time and space to think about what is involved in managing support and thinking through the tasks.

An important element in planning is the understanding that no matter the size of people's budgets, money isn't the only answer for getting a life – it's only one part of the solution. For many people looking beyond paid support is an important way for the person to have a rich and meaningful life which involves family, friends and local community resources.

Support Organisations need to consider their approach to supporting people to plan, both by investing in planning resources and expertise and making sure there is sufficient capacity to do this well.

Many people benefit from hearing about other people's experiences and ideas – peer support can be a significant resource to people and families. Investing in peer support as an additional option to assist people to plan is not only a useful approach but also a respectful one – respecting people and families as experts and as valuable to others with similar experiences.

“ All the staff are my son's age and have similar interests to him as well as friendship networks that seamlessly include my son in their lives (with invisible and highly skilled support from his staff)

Parent ”

Understand the Budget

Shared Management's success is based on an **honest and open partnership** with people and families, where they know their allocation of funding and how it can be used. This is not the same as being informed of an allocation of support hours.

It is important for people to understand that the overall individual funding allocation from a funder may include both an individual support funding allocation (sometimes referred to as the direct care component) to pay for the individual's supports and a program support funding allocation for the Support Organisation (similar to a management / administration fee).

The program support allocation is to cover costs incurred by the Support Organisation in relation to activities such as administration, program management and any safeguarding activities as required by the Funder. It is an amount determined by negotiation between the Support Organisation and the Funder. It is provided as an additional amount, on top of the individual support allocation, and it does not impact upon the individual support allocation.

All people, regardless of whether they manage their own funding or not, are entitled to know their individual support (or direct care) funding allocation. This is the component of the individual funding allocation that is made available to people to self-manage under Shared Management.

An annual budget reflecting the income and expenditure related to individual support funding component should be developed and implemented each year, and be readily accessible by the person.

The Individual's Budget includes the following elements:

Individual Support (direct care) Component – the component of the individual's funding allocation that is provided to purchase support. This may include payments related to engaging their support workers, taxation, workers compensation, superannuation, advertising and recruitment. It may also include the provision for purchasing supports such as equipment or transport, depending on the Funder's guidelines.

Organisation Support Component - the component of the funding that is allocated for the Organisation to cover all non-direct support costs such as general administration, program management and reporting. The Funder includes the Organisation Support component in the individual funding allocation as an additional amount to their direct support allocation - it is not intended to be used for direct support.

Regular budget updates - the Support Organisation and the individual should agree on the timing and amount of information to be included in budget updates. This way both parties can track income and expenditure.

Annual budget review – the Support Organisation and the individual should review the individual's budget and expenditure at least annually.

Things to Consider:

- Understand and ensure the individual support funding allocation enables people to get the most out of planning their budget.
- Have a responsibilities agreement between the individual and the Support Organisation outlining who will be responsible for what tasks will help people to plan well, make good decisions and helps keep a clear agreement between the Support Organisation and the person or their family.
- Have suitable and appropriate accounting systems to help people to stay in control. To make it as easy as possible, it is advisable to consider the following:

For all people:

- Support Organisations to provide regular budget reports to individuals and families so they can keep track of their budget.

For people managing their own funding and supports:

- Person and / or family member to have a separate bank account for the funding.
- People and families need processes to keep a track of payments made to supports (an Acquittal Book would be useful for most people).
- The Support Organisation needs a financial system that records payments made and acquittals received to and from people managing their own funds.
- People and families and their Support Organisation to agree on an acquittal process between the person/family and their Support Organisation.
- If the person and/or family are the employer they need to know and understand their responsibilities as an employer.

In Shared Management a number of specific support and safeguarding roles are assigned to the Support Organisation by the funder's policies. The DSC policy on Shared Management can be found on the DSC and WAIS websites.

“ It is clear to me that we find and manage staff and our Organisation manages the paperwork and administrative bits. They negotiate very generously with us to work the whole thing to suit us. E.g. When we purchase things or services for our son we just send the receipt or bill to our Organisation who ensures it is dealt with appropriately. ”

Parent – Shared Manager

Develop a Shared Management Agreement

A Shared Management Agreement is a signed document between the person or their family and the Support Organisation outlining both the Support Organisations and person's agreed responsibilities in relation to the shared management arrangement. This would include how the person is going to spend their budget and how this will be managed and monitored.

A Shared Management Agreement is developed in the context of the person's plan and their desired outcomes. The agreement focuses on the person or their family's capacity and interest in undertaking particular management and co-ordination tasks, as well as the Support Organisation's capability to undertake their agreed responsibilities. It documents the agreed responsibilities of the person and/or their family and the Support Organisation such as:

- How and who will make decisions and how will differences of views be worked through?
- Who will be the employer of any support people?
- Who and how will any contractors or goods be purchased?
- How the employees will be paid and who is responsible for making the payments and managing the taxation and any other employment related requirements?
- How and who will be involved in recruiting and selecting support people?
- How and who will train support people in their work?
- Who will coordinate rosters?
- Who will direct people of what is required on a day to day basis?
- What are the emergency and back up arrangements and who is responsible for these?
- How will staff be supervised and supported and by whom?

- What safeguarding and accountability measures will be in place? For example, the level of contact between the person and the Support Organisation.
- How will problems with support people be resolved and who will assist with this?
- Who and how will person and/or their family be supported by the Support Organisation to undertake the things they agree to?
- How will the agreement be monitored?
- How the person or the Support Organisation will terminate the agreement
- When will the agreement be reviewed?

The above list is not exhaustive and it is important for each Support Organisation to check this against their Funder's policies.

Where the person chooses to employ their own support workers directly, it is important that they know and understand that they too have a responsibility to comply with the Funders' policies and the legal responsibilities associated to employing people. It is key for Support Organisations to help make this as easy and accessible as possible.

Things to consider:

Some Funders may not support a Shared Management Agreement without the completion of an Individualised Support Plan or Person Centred Plan.

Keeping the Shared Management Agreement simple and straightforward is vital to show clearly what the person is responsible for, what the Support Organisation is responsible for and how they will work together in the future.

Developing approaches to supporting decision making i.e. being clear about who makes certain decisions and how people are supported to be part of decision making is important. This helps to lay foundations for any times of disagreement in the future.

It is important that the Support Organisation assists the person and their family to record their spending against their budget to ensure they have adequate records if and when required by the Funder.

It is important that the Support Organisation supports and informs the person and their family on relevant legal and regulatory responsibilities associated with engaging their own support persons.

The Shared Management Agreement may be shared with the Funder during an audit process.

“ The shared management person in the organisation knows what I have to do and what they have to do – I have a good relationship with them and will call them if I have any problems – this is what we worked out together - it works. ”

Justin

Legal and Regulatory Considerations

There are a number of legal and regulatory implications that need to be taken into consideration when developing and maintaining a Shared Management arrangement.

There are five main areas of consideration:

1. Taxation
2. Superannuation
3. Industrial Relations
4. Insurances
5. Health and Safety

Overview

If a support person is **employed** then there are generally obligations on the employer to:

- Withhold tax;
- Make superannuation contributions;
- Comply with minimum conditions of employment;
- Hold Workers Compensation insurance; and
- Ensure a safe work environment.

If a support person is engaged as an **independent contractor** then all the obligations listed above are generally the responsibility of the support person and not the individual engaging them.

However, there is the possibility of an exemption to some of these obligations if the support arrangement is deemed private and domestic in nature. These exemptions could apply to taxation, superannuation and minimum conditions of employment obligations. The applicability of the exemption within each regulatory area may differ; therefore, consideration must be given to the application of the exemption in each regulatory area separately. For further information, please see the appendices.

Further Information

Detailed information on each of these areas of consideration can be found in the appendices to this resource and support is available through the WAIS Shared and Self Management Advisor. One to one support as well as information and education workshops will be provided. If you are still unsure of an individual situation, it is advisable to seek legal advice, where required. As WAIS is attempting to undertake a co-ordination role for the benefit of the sector, you are encouraged to please contact WAIS to share any legal advice sought.

The information in the appendices references the current state of play and refers to current legislation, regulations and Australian Taxation Office (ATO) rulings and determinations. There are a number of identified uncertainties such as the application of the private and domestic exemption and the scope of care reimbursement. Importantly, WAIS is working, with and on behalf of the sector, to coordinate efforts to seek clarity on these issues, to act as a safeguard and facilitate the capacity of the sector to work within the Shared Management framework. This resource will be updated as work progresses.

In the immediate, WAIS is coordinating a suite of private rulings through the ATO to clarify taxation and superannuation implications of the spectrum of Shared Management arrangements. These are significant efforts being undertaken and you are encouraged to please contact WAIS for further information or share any information you may have that may assist in its efforts.

Any relevant legislation, regulations, rulings and determinations will be housed on the WAIS website for easy access and referencing, a list of which can be found at the end of this resource.

A key determination in assessing whether there are any compliance implications is the nature of the relationship between the support person and the individual or their family member who are engaging them to provide support. Detailed information can be found in the appendices in relation to these relationships that include volunteer, employee or independent contractor.

Organise Supports

People and their families with their Support Organisations begin their agreed tasks and responsibilities and the supports organised to live their life, their way.

It is important that Support Organisations consider this as their most intense time, maybe offering additional help to people and families to help them get going on their tasks. Obviously this is not the case for all people, however most people learn by doing, so a guiding hand initially can assist people in the long term.

It is at this time that **building a good relationship** is essential. We know that people and families value openness, flexibility and a willingness by Support Organisations to help should things not go entirely to plan.

A key role at this stage for Support Organisations is to assist people to implement and enrich their support plan. This may include being available to act as a sounding board, providing resources, information and advice, and working through challenges and problems that may arise.

If the Support Organisation is employing support persons directly then involving the person and their family in recruitment, will undoubtedly pay off in the long term by making sure that regardless of who is managing, the individual has a say. Person centred recruitment² is one way of recruiting people, based around the persons interests and dreams for their future.

If the person or their family are employing support persons directly then the Support Organisation could support them by providing information and advice on best practice principles in the recruitment, selection, engagement, training and management of support persons. Associated financial and monitoring systems may also need to be set up with the support of the Support Organisation with information provided as to what the applicable legislative and regulatory requirements and processes (see Legal and Regulatory Considerations section)

2. Individual Service Design, Fulton and Kinsella, Paradigm

Things to Consider:

Peer support can be hugely valued at this stage as people with experience of directing their support pass on their advice and tips to others. Support Organisations facilitating and supporting peer networks, can further assist people to get the most out of their arrangement.

In remembering the principles surrounding Shared Management, it is important that the Support Organisation doesn't take over, but be the safety net so people know they can come back to it should they need it. Support should be managed as close to the person as possible (even if directly managed by the Support Organisation) as we know that high quality support is about being able to respond quickly to problems, change, new risks/or opportunities. Ultimately this is better managed working with people and families to find the right solution

Training can play a pivotal role in developing and maintaining quality support workers. Support Organisations providing a range of training options can be valuable, as can resources that help with managing, supervising and learning from team members directly.

“ Now that we have done this for a while, we even think that full management may be in our grasp in the future. At the moment we have all the freedom to be creative.

Parent ”

Reflect and Learn

Good Shared Management arrangements work to keep each party up to date as the person lives their life with their own support system – learning and evolving as ‘we’ go. However taking time to create a space to reflect on what the person and Support Organisation have achieved is crucial – not only to acknowledge progress but to also learn about what is possible in the future.

Support Organisations can play a crucial role of a critical friend in assisting the person and their family to reflect on what’s worked well and what needs to change. This is a very different approach to the traditional review process.

Reflecting on people’s original personal outcomes are a useful measure to explore how the support system has worked for the person and can generate ideas for future outcomes and strategies.

Whilst it is critical to mindfully maintain on-going dialogue that helps people reflect on their support it is also useful to create a real space in time to reflect and learn.

Where things are not working - they can be changed, in partnership with the Support Organisation and the relevant Funder.

Things to Consider:

Assistance to continually explore new opportunities can play an important role for people as their support develops and evolves.

Regardless of how the support system is developing it is vital that people and families are acknowledged as the experts and partners in finding solutions.

People and families value useful, simple tools or processes that ask appropriate questions to assist in their thinking about what's possible. Additionally being kept up to date with new and evolving community resources can also help to build new ideas. Support Organisations developing useful processes and conversations that help people to reflect on the success, understand the failures and build upon the possibilities are useful and valued resources.

It is common for people and families to increase their responsibilities and decrease the Support Organisations responsibilities, as they learn about what's involved in Shared Management and their confidence increases. The reflection stage is an ideal opportunity to explore this.

“ Best thing I ever did was to manage my own supports.

Brian ”

Resources

The following resources are an example of what can be found on the WAIS website (www.waindividualisedservices.org.au), for your reference:

Private Rulings and Determinations:

Perth Home Care Services Private Ruling on Managing Your Own Support manual

My Place Private & Domestic determination by WA Ombudsman, Department of Commerce

Policy, Legislation and Awards:

Shared Management Policy, Disability Services Commission, November 2011

Industrial Relations Act 1979 (WA)

Minimum Conditions of Employment Act 1993 (WA)

Fair Work Act 2009 (Cth)

Taxation Administration Act 1953 (Cth)

Superannuation Guarantee (Administration) Act 1992(Cth)

Social Community Home Care Disability Services Industry Award 2010

Tax Ruling 2005/16

Superannuation Guarantee Determination 2005/1

Australian Taxation Office (ATO) forms and other documents:

Registering for Pay As You Go (PAYG) withholding form (NAT 3377)

Tax File Number Declaration form - sample (NAT 3092)

Statement by Supplier form (NAT 3346)

Fact sheet for householders regarding PAYG withholding (BUS18937 NAT3901102011)

Please note that as additional resources come to our attention, they will be uploaded to the WAIS website.

Appendices

To follow is detailed information on each of the highlighted legal and regulatory areas of consideration. Please refer to the Legal and Regulatory Considerations section in the body of the Shared Management resource for an overview of their applicability and relationship with each other.

Taxation	Appendix 1
Superannuation	Appendix 2
Industrial Relations	Appendix 3
Insurances	Appendix 4
Health & Safety.....	Appendix 5
Goods and Services Tax (GST) & Other considerations	Appendix 6

Appendix 1 - Taxation

Taxation implications depend on the status of the working relationship between the support person and the individual, their family or their supporting organisation. There are three main working relationships:

- 1.1 Employee (contract of service);
- 1.2 Independent Contractor (contract for service); or
- 1.3 Volunteer

The ATO has information in its Pay As You Go (PAYG) Withholding Guide No. 2 on *How to determine if workers are employees or independent contractors* (see NAT 2780 available on www.ato.gov.au)

Determining which working relationship applies is on a case by case basis. However, there are a number of factors that influence which working relationship applies that can assist. Where there is doubt, consideration should be given to obtaining independent taxation advice. *In the spirit of sector support and development, it would be appreciated if WAIS is informed of any advice sought.*

1.1 Employee

Section 12-35 Schedule 1 of the Taxation Administration Act (Cth) 1953 [TAA] states that³:

An entity must withhold an amount from salary, wages, commission, bonuses or allowances it pays to an individual as an employee (whether of that or another entity).

There are three key elements highlighted in this section that are required for there to be tax and superannuation responsibilities on the person engaging the support person:

- I. An employee;
- II. An 'entity' who makes the payment; and
- III. A payment to the employee as a consequence of employment.

3. This is subject to general exceptions in section 12-1 TAA.

(I) An employee

This term is not explicitly defined in the TAA and according to Taxation Ruling (TR) 2005/16, for the purposes of Section 12-35 the term 'employee' has its ordinary meaning (that used in common law). In order to determine if someone is an employee requires an examination of the terms and circumstances of the relationship between the support person and the person who has engaged them to work.

The ordinary meaning of 'employee' has been the subject of extensive judicial consideration as it can be difficult to discern the true character of the working relationship if the intentions of the parties are ambiguous or unclear. The cases have highlighted a number of key factors that may be considered in determining if an individual is a common law employee.

Key indicators to take into consideration

Control

This is the most important indicator and assesses the degree of control a person who engages another to work has over the person who is working. An employee, at common law, is "told not only what work is to be done, but how and where it is to be done"⁴. This element of control is not just about its actual exercise but more about the right of the employer to exercise it⁵.

Integration or Organisation

This indicator queries whether the support person is operating independently, on their own account, or operating in the business of the person engaging them.

4. TR 2005/16

5. TR 2005/16, paragraph 26

'Results' contract

When the agreement is for the support person to produce a specified result and they are free to employ their own means to achieve that outcome, this is an indicator of the support person being an independent contractor as opposed to an employee. In this case, the most common method of payment is at completion of the job rather than payment for hours as they are worked. The contractual relationship as a whole, not just method of payment, must still be considered in order to determine the true character of the relationship between the parties.

Delegation or subcontracting

If the support person is required to personally perform the work, this is an indication that the support person is an employee. In contrast, if the support person has unlimited power to delegate to others, this is a strong indication that the support person is an independent contractor⁶.

Other factors

Some other factors considered in assessing whether someone is an employee or not include⁷:

- Who bears the risk of the costs arising out of injury or defect in carrying out the work
- Who is responsible for the provision and costs of equipment and tools required to carry out the work
- Whether there is the right to suspend or dismiss the support person who is engaged
- Whether there is the right to the exclusive services of the support person who is engaged
- Whether the support person is provided leave benefits

6. TR 2005/16, paragraph 42

7. TR 2005/16, paragraph 51

Generally, an individual is considered to be an employee if they meet the following requirements:

- are paid for time worked
- receive paid leave - for example, sick, annual, recreation or long service leave
- are not responsible for providing the materials or equipment needed to do their job
- must perform the duties of their position
- agree to provide their personal services
- work hours set by an agreement or award
- are recognised as part and parcel of the payer's business
- do not take commercial risks and cannot make a profit or loss from the work performed.

(II) & (III) An 'entity' and a payment

Once it is determined that the support person is an employee, for taxation and superannuation implications to arise, a payment must have also been made to the employee (the support person). In order for a payment to be made to an employee, the payment need not necessarily be made directly between the employer and the employee. A payment to a third party can be treated as a constructive payment of salary or wages to the employee in circumstances where the payment to the third party is attributable to salary or wages for services rendered by the employee in the course of that employment. Further, the employment relationship does not necessarily have to be between the entity making the payment and the individual. Section 12-35 still applies if an individual (or their family) is the employer but where their supporting organisation makes the payment to the employee⁸.

8. TR 2005/16, paragraphs 57-68

Pay As You Go (PAYG)

When section 12-35 TAA applies and the arrangement is an employee relationship, the 'entity' making payments to the employee must withhold an amount from the payment for tax purposes. This withholding amount is called Pay As You Go (PAYG) income tax.

The individual (or their family), as the employer, will need to register for PAYG withholding (this is regardless of whether they are the 'entity' that makes the payments or not). Once registered, the individual or their family will need to withhold amounts from payments of salary and wages for tax purposes.

- The amounts withheld need to be reported and remitted on a form of activity /acquittal statement to be completed on a regular basis.
- The support person needs to be provided a payment summary regarding the amount paid to them and the amount withheld.
- The support person will need to complete a signed Tax File Number (TFN) Declaration Form⁹ (NAT 3092) and provide this to the individual or their family member and this be presented to the ATO.

A number of self-help publications in relation to the PAYG system. The ATO publications are available on the ATO website. The ATO publications ordering service number is: 1300 720 092, their website: www.ato.gov.au or go to a shopfront.

1.2 Independent Contractor

Independent Contractor' Relationship

An independent contractor is an entity (such as an individual, partnership, trust or company) that agrees to produce a designated result for an agreed price. In most cases an independent contractor meets the following requirements:

- is paid for results achieved
- provides all or most of the necessary materials and equipment to complete the work

9. Referred to as form NAT 3092 by the ATO

- is free to delegate work to other entities
- has freedom in the way the work is done
- provides services to the general public and other businesses
- is free to accept or refuse work
- is in a position to make a profit or loss.

The support person is generally responsible for their own tax obligations. However, the 'entity' responsible for the payments may be required to withhold tax from payments if the support person does not quote their Australian Business Number (ABN) – in this case tax must be withheld at the top marginal rate – or, if the entity responsible for the payments and the support person entered into a “voluntary agreement” to withhold tax from their payments¹⁰. In this case, the support person is responsible for their own taxation obligations.

Exceptions

Exceptions to this obligation to withhold tax (if an ABN is not provided) include where:

1. The payment is made otherwise in the course or furtherance of an enterprise carried on in Australia by the payer.¹¹ This means where the payer is an individual and the supply is for personal (non-business) use, the payer does not have to withhold if the supplier does not quote their ABN; or
2. The sum total of the payment does not exceed \$50¹²; or
3. The work undertaken by the support person, as an individual, is in the course or furtherance of an activity, or series of activities, done as a private recreational pursuit or hobby¹³; or
4. The work undertaken is, for the support person (an individual), wholly of a private or domestic nature.¹⁴

10. Section 12-190(4)(a) Schedule 1 TAA

11. Section 12-190(4)(a) Schedule 1 TAA

12. Section 12-190(4) Schedule 1 TAA

13. Section 12-190(6)(a)(i) Schedule 1 TAA

14. Section 12-190(6)(a)(ii) Schedule 1 TAA

‘Private & Domestic’

Exceptions 3 and 4 relating to private and domestic arrangements is more likely to apply where the support person is a family member, relative or friend of the individual, although potentially could also apply where the support person is a volunteer. This is because whether the work is of a private or domestic nature under these exceptions must be determined from the point of view of the support person. Under these exceptions, the person undertaking the work must have given a written statement to that effect¹⁵. This statement can be made on a Statement by Supplier (NAT 3346) form, although use of this specific form is not necessary.

The terms ‘private’ and ‘domestic’ are not defined so the ordinary meanings of the words are relied upon. Superannuation Guarantee Ruling 2005/1 refers to the Macquarie Dictionary’s (Third edition) definition of ‘domestic’ to mean ‘of or relating to the home, household or household affairs’ and ‘private’ to mean ‘belonging to oneself’, ‘being ones’ own’, ‘individual or personal’. This same ordinary meaning of the words are relied upon for taxation purposes.

Perth Home Care Services Private Ruling

The Australian Taxation Office (ATO) issues private rulings providing determinations on taxation or superannuation implications in specified scenarios. These private rulings are only legally applicable to the recipient of the ruling.

The most relevant current ruling applicable to Shared Management and, particularly, the private and domestic exception, is Perth Home Care Service’s (PHCS) private ruling dated 28 July 2010. This ruling can be used by other Organisations to inform their work in Shared Management.

PHCS’ ruling is in relation to their booklet titled *Handbook for Managing Your Own Support*. The ATO ruled that the administrative procedures contained in the booklet are correct and compliant with taxation laws as at the time of the ruling and that the ruling stands until 30 June 2015. *PHCS ruling and booklet can be found on the WAIS website as an associated resource.*

15. Section 12-190(6)(a)Schedule 1 TAA

The ruling focuses on Chapter 5 of PHCS' booklet that deals with payments to support persons. The most notable sections are 5.1 Flexible Support and 5.3 Ongoing Regular and Substantive Support.

In terms of support work that is **flexible** and provided in **limited periods of time**, PHCS' booklet advises that support persons must either:

- complete the ATO **Statement by a Supplier** form **if this work is of a private or domestic nature and the worker is not operating an 'enterprise' or business venture with a view to making a profit.**

Or

- where the worker is providing a service in the nature of a sole trader or view to making a profit (earning an income) then the worker must provide an Australian Business Number (ABN) (especially **if this work is their main source of income**).
- in this case the support person is responsible for their taxation obligations.

The ATO referred to section 12-190 of Schedule 1 to the Tax Administration Act which states that where a person providing the service (support person) provides a service or supply to the payer (individual or family), the payer must withhold at the top marginal rate unless the person providing the service supplies the payer with their Australian Business Number (ABN). An exception to this obligation, however, is when the person providing the service supplies the payer with a signed statement declaring that they are either involved in the activity as a hobby or recreational pursuit or that their involvement in the activity is purely private in nature. This declaration can be made on the *Statement by Supplier* form (NAT 3346). The payer in this circumstance can accept the validity of the statement providing they have no reasonable grounds to believe that the statement is false or misleading.

The ATO further confirmed that when the person providing the service is conducting a business as a sole trader and the service they are providing relates to that business, then the payer must obtain an ABN or be required to withhold at the top marginal rate. As such, the ATO confirms that when an ABN is provided, it is the person providing the service that is responsible for their own taxation obligations.

In terms of support work that is regular, on-going and for substantial lengths of time, the PHCS booklet advises that the support person is considered an employee and the ATO requires the individual or family to register for Pay As You Go (PAYG) and withhold tax. In this case, the individual or family are responsible for taxation and superannuation payments.

The ATO in its reasons for decision also affirmed this information contained in PHCS booklet stating that where a worker is employed in relation to the provision of services on a regular and continual basis, the individual or family employing the worker would indeed need to register for PAYG withholding. The individual or family would then need to withhold amounts from payments of salary or wages. These amounts would need to be reported and remitted on an activity statement that would be sent to the individual or family and completed on a monthly or quarterly basis. The individual or family would also need to obtain a signed *Tax File Number (TFN) Declaration form* (NAT 3092) from the employee, at the commencement of employment, and provide a copy to the tax office.

1.3 Volunteer

There is no legal definition of ‘volunteer’ for tax purposes. A dictionary definition of a volunteer is someone who enters into any service of their own free will, or who offers to perform a service or undertaking. Volunteers do not receive a salary or a wage but can be paid in cash or given non-cash benefits (or both), which can take the form of a variety of descriptions including:

- (I) Honoraria;
- (II) Allowances; and
- (III) Reimbursement for expenses.¹⁶

How an amount is described does not determine its treatment for tax purposes. Whether a payment is assessable income in the hands of a volunteer depends on the nature of the payment and recipients circumstances.

16. This specifically includes volunteer respite care on a regular basis – Taxation Determination (TD) 2004/75. Key facts were that volunteer respite care was provided for a child with disability one weekend every month and the respite carer was paid \$350 for the weekend as reimbursement of expenses. This was not considered assessable income.

Generally, receipts which are earned, expected, relied upon and have an element of periodicity, recurrence or regularity are treated as assessable income.

Where a person's activities are a pastime or hobby rather than income – producing, money and other benefits received from those activities are not assessable income.

A payment to a volunteer that is not assessable will have many of the following characteristics:

- The payment is to meet incurred or anticipated expenses.
- The payment has no connection to the recipient's income-producing activities or services.
- The payment is not received as remuneration or as a consequence of employment.
- The payment is not relied upon or expected by the recipient for day-to-day living.
- The payment is not legally required or expected.
- There is no obligation on the part of the payer to make the payment.
- The payment is a token amount compared to the services provided or expenses incurred by the recipient. Whether the payment is token depends on the full facts surrounding the payment and the recipient's circumstances.

(I) Honoraria

An “**honorarium**” can describe:

- an honorary reward for voluntary services; or
- a fee for professional services voluntarily rendered.

An honorarium may be paid in money or as property.

Whether an honorarium is assessable income in the hands of a volunteer depends on the nature of the payment and the recipient's circumstances. Honorary rewards for voluntary services are not assessable as income and related expenses are not deductible.

Fees received for professional services voluntarily rendered are assessable income. In this situation the volunteer may be entitled to a deduction for expenses incurred in performing these professional services.

The amount of an honorarium is not a conclusive factor in deciding whether it is assessable income. To determine how a particular honorarium is treated for income tax purposes, the full facts surrounding both the payment and the recipient must be considered.

(II) Allowance

A payment is an “**allowance**” when it is a definite, pre-determined amount to cover an estimated expense. It is paid even if the recipient does not spend the full amount.

Whether an allowance is an assessable income of a volunteer depends on the facts surrounding the payment and the relationship between the volunteer and the individual or organisation engaging them.

If a volunteer receives an allowance with no regard to actual expenses and there is no requirement to repay unspent monies, the allowance may be treated as assessable income.

(III) Reimbursement

A payment is a “**reimbursement**” for tax purposes where it is a precise compensation, in part or full, for an expense already incurred, even if the expense has not yet been paid. A payment is more likely to be a reimbursement where the recipient is required to substantiate expenses and/or refund unexpended amounts.

In general, the payer considers the expense to be their own and the recipient incurs the expenditure on behalf of the payer. The recipient may be reimbursed for all or part of the expense.

If a volunteer is reimbursed for using a personal asset or incurring expenses on its behalf, the reimbursement will not be assessable income of the volunteer, provided:

- the payment does no more than reimburse the volunteer for expenses actually incurred; and
- the payment is not for a supply made in the course of an enterprise of the volunteer.

In most cases where a one-off support arrangement is required, this may be considered a volunteer arrangement and the support person provided reimbursement for their costs and efforts through a gift of cash or a voucher. These one-off gifts are most likely not regarded as assessable income as they would usually not meet the definition of ordinary income as provided in section 6-5 of the Income Tax Assessment Act 1997 (Cth).

Appendix 2 - Superannuation

Superannuation implications again depend on the status of the working relationship between the support person and the individual, their family or their supporting organisation. Superannuation responsibilities arise if the support person is deemed an 'employee'.

Employee relationship

Section 12 of the Superannuation Guarantee Administration Act (SGAA) clarifies and extends the scope of what is deemed an employment relationship for superannuation purposes. Under section 12(1), if a person is an employee at common law, that person will also be an employee under the SGAA.

There are a number of statutory extensions of who will be an employee under the SGAA. Most relevantly, if a support person works under a contract where the work is wholly or principally for their labour the support person will be an employee under the SGAA. 'Labour' includes mental and artistic effort as well as physical toil¹⁷.

Therefore, where the working relationship indicates that:

- The support person is remunerated (either wholly or principally) for their personal labour and skills;
- The support person must perform the contractual work personally (there is no right of delegation); and
- The support person is not paid to achieve a given result,

the arrangement is considered to be wholly or principally for the labour of the individual engaged and deemed an employee for superannuation purposes¹⁸(SGR 2005/1).

17. Superannuation Guarantee Ruling (SGR) 2005/1

18. SGR 2005/1

Exceptions

The SGAA exempts the following salaries or wages to an employee from being taken into account when calculating superannuation:

1. Where the payment for service is less than \$450 (gross) in a month¹⁹;
2. Where the support person is engaged for no more than 30 hours per week in work that is principally or wholly private and domestic in nature²⁰;
3. Where the support person is under 18 years old²¹;
4. Where the support person is 70 years or over²².

'Private & Domestic'

The terms 'domestic' and 'private' are not defined in the SGAA so the ordinary meaning of the words are relied upon. SGR 2005/1 refers to the *Macquarie Dictionary's (Third edition)* definition of 'domestic' to mean 'of or relating to the home, household or household affairs' and 'private' to mean 'belonging to oneself', 'being ones' own', 'individual or personal'.

Where the support person performs work for another party through an entity such as an organisation, company or trust, there is no employer-employee relationship between the support person and the other party for the purposes of the SGAA, either at common law or under the extended definition of employee. However, the support person may be the employee of the intermediary (e.g. the support organisation), depending on the terms of the arrangement.²³

19. Section 27(2) SGAA

20. Section 11(2) SGAA

21. Section 28 SGAA

22. Section 27(1)(a) SGAA

23. SGR 2005/1, paragraph 13

Appendix 3 - Industrial Relations

There are two separate industrial relations systems operating in the state of Western Australia, each with different employment laws, awards and minimum conditions – the Western Australian and National systems.

The not-for-profit sector is generally covered by the Western Australian legislative system (as opposed to the National system). However, there are a number of exceptions.

The minimum rates of pay in the Western Australian system are governed by the State Wage Case General Order. Minimum employment entitlements are governed by the *Minimum Conditions of Employment Act 1993 (WA)*.

Some employment relationships, however, may be covered by Awards or Agreements.

In this appendix we will address:

- 3.1 Western Australian Legislative system;
- 3.2 Awards (Western Australian and National);
- 3.3 Other Employment Conditions; and
- 3.4 Unfair Dismissals.

3.1 Western Australian Legislative System

The *Minimum Conditions of Employment Act WA 1993* generally applies to employees employed by Non-Constitutional Corporations (i.e. sole trader and some partnership and trust). The *Industrial Relations Act WA 1979* also applies and determines who employees are.

Exemption

Section 7(1) of the *Industrial Relations Act*, states that people are generally exempt from being deemed an 'employee' when they are engaged in domestic service in a private home. In this case, the *State Wage Case, Minimum Conditions of Employment Act and the Industrial Relations Act* will generally not apply to a support person.

However, this exemption does not apply if the person is being employed by someone else, other than the owner or occupier of the private home, in which the service is provided. For example, this exemption may not apply if a family engages a support person:

- via a family business entity (for example, a trust); or
- via a third party; or
- to work in the home of their son or daughter.

3.2 Awards Western Australian & National

The *Social and Community Services Interim Award 2011* (that sits within the Western Australian system) and the *Social, Community, Home Care and Disability Services Industry Award 2010* (that sits within the National (Fair Work) system) are awards to be mindful of.

It is very likely that these awards will not be applicable to a person engaged by an individual to support them in their private home.

Generally, the *Social and Community Services Interim Award 2011* sets employment conditions for a support person employed by sole traders, partnerships and some trust arrangements. It would not apply to a person engaged in domestic service in a private home.

The *Social, Community, Home Care and Disability Services Industry Award 2010*, sets employment conditions for a support person employed by a Proprietary Limited [Pty Ltd] or Limited [Ltd] company in the:

- (a) crisis assistance and supported housing sector;
- (b) social and community services sector;
- (c) home care sector; and
- (d) family day care scheme sector.

3.3 Other employment conditions

Although support persons employment conditions are not generally set by the Western Australian system or the National system there are some exceptions and legislative coverage of some specific employment conditions including parental leave and notice of termination periods.

Parental Leave

A support person may be entitled to unpaid parental leave and notice (or in lieu thereof) on termination. This is because different Constitutional Powers underpin these areas and apply to all employees regardless of who they are employed by.

A part-time or full-time (or a long term casual) support person is likely to be entitled to unpaid parental leave of 52 weeks after 12 months continuous service.

The *Paid Parental Leave Act 2010*

From 1 January 2011 the Commonwealth Government introduced a paid parental leave pay scheme which provides eligible working parents with up to 18 weeks' pay for the birth or adoption of a child. This is a welfare payment funded by the Commonwealth Government, and is not related to an employer's decision to provide paid parental leave.

In certain circumstances, an employer (including a family hiring a support person) may be required to administer payment of the paid parental leave pay. Persons wanting further information can contact Centrelink.

Notice on Termination

The entitlement to notice is set out in the table below, and is increased by an additional week when a support person is over the age of 45 and has more than two years continuous service.

Period of continuous service with the employer at the end of the day the notice is given	Period
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 year but not more than 5 years	3 weeks
More than 5 years	4 weeks

In these cases the definition of employee under the *Industrial Relations Act* is irrelevant, and all that is required is that the parties intended to enter into an employment contract (which is a question of fact and law).

3.4 Unfair dismissal

National system

To make an unfair dismissal remedy application to Fair Work Australia an employee must be covered by the national unfair dismissal laws and eligible to make an application (for example, true casuals and employees on probation are likely to be exempt).

Only employees covered by the national system are covered by the national unfair dismissal laws. The national system covers those employed by a Constitutional Corporation in Western Australia (including, incorporated associations and Pty Ltd companies)—this may include some local governments, state government entities or not-for-profit entities, depending on the activities of the relevant organisation.

The laws do not cover:

- those employed by a Non-Constitutional Corporation in Western Australia (including a sole trader, some partnerships and some trust arrangements); and
- sub-contractors.

As such, support persons employed by individuals or their family members are not eligible to access the national unfair dismissal laws.

State system

A state unfair dismissal claim to the Western Australian Industrial Commission, that an employee has been harshly, oppressively or unfairly dismissed, is open to anyone deemed an 'employee' as long as they are not employed by a Constitutional Corporation.

A support person engaged by an individual to work in their private home in domestic service (and is not an 'employee' for the purposes of the *Industrial Relations Act*) will not have recourse under the State unfair dismissal system.

Further information

For specific information on the wages and conditions contact:

- Wageline on 1300 655 266; or
- the Fair Work Info Line on 131 394.

Appendix 4 - Insurances

The need for the following insurances should be taken into consideration:

- 4.1 Workers Compensation;
- 4.2 Public Liability;
- 4.3 Vehicle insurance; and
- 4.4 Home & Contents.

4.1 Workers compensation

Under the [Workers' Compensation and Injury Management Act 1981](#) (the Act), legal obligations as an employer include:

- having workers' compensation (including common law damages) insurance cover for all 'support persons' (penalties apply for failing to do so);
- providing the worker's completed claim form and medical certificates to their (their) insurer within five working days;
- making weekly payments to the injured worker within 14 days of the claim being accepted or an order or direction being made to do so from WorkCover WA's [Conciliation and Arbitration Services](#). Thereafter, a worker is to be paid on their regular pay day;
- having an injury management system; and
- developing and implementing a return to work program if a treating medical practitioner indicates that one should be established for an injured worker, or if the worker's treating medical practitioner signs a medical certificate indicating that the worker has a total or partial capacity to return to work.

A key consideration is that workers' compensation insurance **must** be obtained to cover a 'worker' (as defined pursuant to the Act), including cover for claims for damages at common law.

The definition of a 'worker' covers:

- full-time workers on a wage or salary;
- part-time, casual and seasonal workers;
- workers on commission;
- piece workers;
- working directors;
- contractors and sub-contractors (in some cases); and
- family members.

The definition of 'worker' is broad and can be broken up into two parts: primary and extended.

1.1 Primary Definition

This covers any person who works under a **contract of service or apprenticeship**. The contract may be expressed or implied, oral or written. A large part of the workforce is covered under this part of the 'worker' definition, including:

- full-time and part-time workers;
- casual workers;
- seasonal and piece workers;
- workers on salary or wages;
- workers supervised and controlled by an employer;
- workers who may be fired by an employer;
- workers who work for only one employer; and
- workers with set hours of work.

1.2 Extended Definition

This covers any person who works under a **contract for service whereby that person is remunerated for their personal manual labour or service**. Many people who work as [contractors or sub-contractors](#) may be covered under this part of the definition, and it may cover workers who:

- are paid on piece rates, hourly rates or per job;
- work for the employer on a 'one-off' or per job basis;
- do not have set hours of work;
- work for more than one employer;
- work unsupervised;
- pay 20% prescribed payments (sub-contractor's tax); and
- are covered by an industrial award or agreement.

Generally, individual workers cannot cover themselves for workers' compensation, even if they are self-employed and have an ABN. If certain conditions are met, a working director may be covered under companies insurance.

Workers' Compensation insurance is obligatory if a support person is engaged as an employee to support an individual. Penalties apply if the insurance is not obtained.

4.2 Public Liability

Public Liability insurance covers individuals and businesses against the financial risk or being found liable to a third party for death or injury, loss or damage of property or economic loss resulting from the individual's or businesses' negligence. This type of insurance covers incidents that occur not only in the home, but also in external locations.

Cover is generally also granted in respect of costs and expenses.

This type of insurance will only cover claims made by external parties, such as friends or a neighbour, and not those made by employees.

A case by case risk evaluation will need to be made as to whether it is necessary for public liability insurance to be taken out and with which provider of public liability insurance cover. One of the best ways to choose a provider and a suitable policy is to seek the advice of an insurance broker.

*Personal legal liability insurance is often an option that can be obtained as part of Home & Contents insurance. It is to be noted, however, that there are general limitations to this cover. This ordinarily covers claims arising out of actions as a householder but generally excludes claims arising from acts of a business or by an employee. *Individuals or their family members could always specifically ask their preferred insurer if the insurer would be willing to cover an employment arrangement in their home under a personal legal liability.*

4.3 Vehicle

Compulsory Third Party insurance covers against injury or death for people in an accident. However, it does not cover against other people's property. Motor vehicle insurance that cover third party property damage (including another person's car or property) are optional.

If a support person is allowed to drive an individual or their family's car, it would be advisable to consider whether motor vehicle insurance covering third party damage is necessary and whether the support person ought to be listed as an insured driver.

4.4 Home & contents

These insurances are to cover building or contents against theft or damage. There are no legal obligations to have such insurance although many people opt to take out this type of insurance regardless of whether they have support persons within their home or not for peace of mind.

Appendix 5 - Health and Safety

Currently, the *Occupational Safety and Health Act (WA) 1984* (OSH Act) and the *Occupational Safety and Health Regulations (WA) 1996* (OSH Regulations) regulates occupational safety in Western Australia.

Please note that Australia is currently undergoing a process of harmonising safety legislation. Western Australia has agreed in principle to introduce the new harmonised work health and safety laws but draft legislation is yet to be produced. WAIS will keep abreast of these changes and update this resource accordingly. It will be important to reconsider safety obligations when the new work health and safety laws are introduced.

5.1 Obligations under OSH Act and OSH Regulations

Under the OSH Act employers have a general duty to provide and maintain, so far as is practicable, a working environment where employees are not exposed to hazards. Employees have a responsibility to ensure their own safety and the safety of those people they are working with.

The OSH Regulations also place many additional obligations on employers relating to particular work practices and hazards. In addition, there are also Codes of Practice that employers must also comply with.

WorkSafe Western Australia is the government body responsible for administering compliance with the OSH Act and Regulations. It provides a wide variety of information and guidance material to help employers comply with their obligations under the legislation. This information and guidance material, the legislation and codes of practice can be found on WorkSafe WA's website at <http://www.commerce.wa.gov.au/WorkSafe>.

5.2 Common safety matters

Set out below are some common safety matters that may arise for your consideration. This information is provided as a guide only and you must consider all of your obligations under the OSH Act and Regulations and all related hazards.

5.2.1 General safety

A person's home is deemed a workplace: Who's responsible for OSH?

If employing a support person directly, the person's home will be considered to be a workplace for the purposes of the OSH Act and Regulations. Consequently, the individual's home must be a safe environment for support persons to work within.

Worksafe advises that individuals **employing** support persons to work in their home do have responsibilities to provide a safe workplace for support persons coming into their home, in terms of those hazards within their control.

Given the varying levels of control that the individual may have under shared management arrangements, the level of responsibility owed to support persons working in the home will vary to the extent of the individual's control and what is considered to be reasonably practicable in the actual circumstances. Please be aware that it is also possible for more than one party to have an occupational safety and health duty at the same time.

Worksafe suggests that OSH roles, responsibilities and rights should be defined in an agreement, between the individual and their support person prior to commencement of services. The agreement should also outline a reporting process and advise of possible consequences (eg suspension or termination of care services, or specific tasks within care services) should hazards be reported and (are) not resolved.

Examples of items that may be covered in an agreement include:

- restraint of pets during support visits;
- smoking policies;
- equipment provision and maintenance, eg hoists, commodes, shower chairs, mops, vacuum cleaners, washing machines;
- aggression, abuse or harassment;
- addressing identified safety issues (eg trip hazards, lighting, faulty equipment);

- emergency use of telephones; or
- leaving access doors unlocked during visit.

Questions (as an employer) to be asked include:

- Is it safe to park a vehicle on the road or on the driveway?
- Is access to the house clear and safe?
- Are any pets safe?
- Are the outdoor areas and gardens safe and maintained?
- Are accessways such as doors and gates easy to use and free from obstruction?
- Are all floor surfaces safe?
- Are electrical equipment safe?
- Are power points safe?
- Is there adequate ventilation through the house?
- Does hot water have temperature control?

The OSH Regulations place numerous obligations on employers, including that they identify every hazard at the workplace, assess the risks arising from those identified hazards and consider and implement controls to eliminate or minimise those risks. This includes identifying each hazard that is likely to arise from manual tasks and to assess the risk of injury or harm.

WorkSafe WA has an information booklet for home and community care related work and also has a Manual Tasks Code of Practice which provides practical guidance on manual tasks, including information on the risk management process, risk factors for manual tasks, ways to control risks associated with manual tasks and information on training for manual tasks.

5.2.2 Specific safety considerations

The following sections address some common safety issues that arise in the home environment that will need to be considered. Please be aware that these are provided by way of guidance only and are not an exhaustive explanation of obligations under the OSH Act and Regulations. A risk assessment of should be undertaken.

Slips, trips and falls

Slips, trips and falls are the second most common injury (after manual task injuries) for support persons in the care industry. A good understanding of the risk factors that contribute to slips, trips and falls is essential to prevent injuries. By understanding risk factors, support persons will recognise slip and trip hazards in their work, and are more likely to report these hazards to the individual. Individuals and their Support Organisation need to understand the risk factors in order to assess the risk associated with the hazard; and decide on, and implement controls to manage the risk, if required.

Slips, trips and falls risk factors can be categorised into 10 categories:

- Floor surface & condition
- Objects on the floor
- Cleaning/ spill containment
- Floor contamination
- Ability to see floor/ walkways/ hazards
- Space and design
- Stairs & stepladders
- Work activities, pace and processes
- Footwear & clothing
- Individual factors

A checklist that covers each individual risk factor under the above categories is available through the Worksafe website.

Biological hazards

Support persons providing home based support services can be at risk of contracting infectious diseases or transferring diseases from people they support to themselves and others. Exposure to biological hazards can occur through:

- direct contact with blood and other bodily fluids, for example through broken skin, splashes to mucous membranes (eyes, nose, mouth), from skin penetrating injuries and from handling soiled linen/clothing
- ingestion, for example, via contaminated hands, food and surfaces
- inhalation, for example, inhalation of infectious aerosol droplets from coughing or sneezing

Worksafe advises that support persons should be provided with training and information on universal precautions for infection control to minimise risk of disease, as well as information on the range of communicable diseases that they may be exposed to through their work, including Hepatitis A and B, HIV, Influenza, and MRSA.

All personal support persons should also be provided with appropriate gloves as personal protective equipment against biological hazards, at no cost to them.

Where support persons are specifically at risk of exposure to Hepatitis B, they should be strongly advised by the employer to have Hepatitis B vaccination, with this vaccination provided by the employer at no cost to support persons. The employer should manage support persons' appointments for the course of injections, and maintain records of vaccination.

The 9th edition of the Australian Immunisation Handbook (available at www.health.gov.au) recommends that all personal support persons (defined as all support persons directly involved in patient care or handling of human tissue) should be immunised against Hepatitis B. The National Code of Practice for Hepatitis and HIV (available at safeworkaustralia.gov.au) states that carers for people with disabilities, children, the aged and others who require self-injection (eg diabetics); as well as laundry and cleaning staff, are at risk of Hepatitis B infection and require a specific risk assessment for this hazard.

Electrical hazards

Many homes in older suburbs or rural areas may not be protected by a residual current device (RCD). Even if a person's home is protected by a RCD in the meter board, this cannot be relied upon to provide adequate protection unless the person has been diligent in having the RCD inspected and tested on a yearly basis (and can provide documents to support this).

Worksafe advises that support persons using hand held electrical devices such as vacuum cleaners, kitchen appliances and personal grooming appliances must be provided with a RCD at no cost to the employee. These RCDs must be inspected and tested by a competent person on a regular basis (recommended yearly) to ensure that they continue to provide the required level of protection.

Manual handling

If lifting and transferring assistance is required it needs to be considered if:

- There is a safe method for lifting or transferring;
- There is equipment available to assist and it is in working order; and
- There is any benefit to support persons receiving relevant manual handling training.

Worksafe advises what should be covered in manual tasks training.

Training should include information on:

- Risk Management process (empowering support persons to report hazards)
- Common hazardous manual tasks in the industry, what types of injuries may result and general information on how the body works/ responds when performing these tasks
- Risk factors for manual tasks (so that employees are able to identify when a task is hazardous)
- Available controls to manage risks
- Task specific training (specific techniques for working safely – for example manual handling; safe pushing/pulling; loading/unloading vehicles)

Training should occur as part of induction, and be refreshed on a yearly basis. Further training may be needed whenever tasks are changed or new tasks are introduced (for example, hoist training for employees who are starting work with a person using a hoist).

How to reduce the risk of injury from manual tasks

The first step, in consultation with support persons, is to identify the manual task hazards.

Next, identify trends and determine which tasks are higher risk/priority. For each task, complete a risk assessment to identify which risk factors are present for that task. Risk factors may be actions and postures; forces and loads; vibration; work environment; systems of work; and, support person characteristics – you can refer to the WA Manual Tasks Code of Practice for more information. The risk assessment should also determine what consequences/harm may result from performing that task, and how likely it is that this harm occurs.

Finally, for each hazard, determine what controls are needed to minimise risk. Controls may involve:

1. Eliminating the hazard or hazardous task
2. Re-designing, modifying, altering or substituting the hazard or hazardous task
 - Using mechanical aids/ lifting devices (eg hoists/ slide sheets; wheelchair loaders for vehicles)
 - Use of trolleys for equipment, laundry baskets, shopping • Installation of grab rails/ shower hoses for bathrooms
 - Use of long handled equipment for cleaning tasks
 - Adjusting bed heights to a higher level for transfers or bedmaking
 - Liaison with individual/ family to relocate furniture to create sufficient space for care tasks
 - Storage of frequently required objects to appropriate heights within easy reach

3. Administrative controls

- Training in safe work procedures and manual tasks
- Regular maintenance and service of equipment
- Planning of care jobs to alternate between heavier and lighter activities

1. Fire safety

Consideration should be given as to whether the home has:

- Active smoke detectors
- Safety switch (RCD) on the main power board
- Easily unlockable exits
- Fire blanket or fire hydrant.

2. First aid and emergency procedures

Consideration should be given as to whether the home has:

- A first aid kit which is stocked and not out of date
- A list of emergency contact numbers.

3. Hazardous substances

Consideration should be given as to whether the home has:

- Any hazardous substances – if so, that they are clearly labelled and kept in secure place
- Any necessary personal protective equipment available if required to work with a hazardous substance.

Appendix 6 – Goods & Services Tax (GST) & Other Considerations

6.1 GST

Individuals and families are not able to claim the input costs of GST on purchases made unless they are registered for GST.

6.2 Other considerations

Other requirements to be taken into consideration with respect to support persons include that they:

- have current first aid and CPR training, if the individual requires it.
- provide a current National Police (Clearance) Certificate.
- provide a current State Traffic Convictions/Infringements Report (Optional - only if support persons are required to drive).
- provide a Working with Children clearance (if applicable).
- keep any information about the individual and their family private and confidential.
- act lawfully.

Notes

Updated as at 24 October 2012

Please ensure you check the WAIS website www.waindividualisedservices.org.au for the most up to date version as this is intended as a living document regularly updated and improved.

