

WHAT IS SUPPORTED DECISION-MAKING?



The move towards a personal recovery and human rights focus in the mental health sector has contributed to policies and laws aimed at ensuring individuals with lived experience as consumers, some of whom may receive compulsory treatment, have their voices heard and their preferences upheld. For example, one of the “mental health principles” in the Victorian *Mental Health Act 2014* sets out that:

persons receiving mental health services should be involved in all decisions about their assessment, treatment and recovery and be supported to make, or participate in, those decisions, and their views and preferences should be respected. (section 11(1)(c))

Supported decision-making may be defined as the process whereby individuals are provided with support to make decisions. [1] It recognises that the person supported is at the centre of the decision-making process.

Supported decision-making aligns with personal recovery principles and practices that promote self-determination.

Types of Supported Decision-Making

Supports for decision-making can range from the informal to the formal. Trusted persons may, for example, informally support a person with experience of mental health challenges in the following ways:

People can support decision-making through actions such as listening and clarifying alternatives, helping to find information on options, encouraging the person supported to think about what might result from choosing particular options, assisting the person to clarify what matters to them most and help communicating the decision to others once it is made.

On a formal basis, legislation can set out procedures to ensure persons are supported. For example, the Victorian *Mental Health Act 2014* enables people to make advance statements about their treatment preferences (section 20) and/or nominate a person to provide them with support and represent their interests (section 23).

Mental health practitioners play an important role in ensuring that people have all the supports they require in order to make a decision, including access to trusted persons and advocates, access to decision-making aids, and provision of accessible information about all relevant matters.

Australia's Obligations to Develop Supported Decision-Making Mechanisms

The United Nations Convention on the Rights of Persons with Disabilities (CRPD), [2] which Australia has ratified, sets out as its first guiding principle, “[r]espect for inherent dignity, individual autonomy including the freedom to make one’s own choices” (Article 3). The CRPD applies to those with “mental impairments” as well as intellectual, sensory and physical impairments (Article 1).

This notion of supporting people to make or participate in decision-making stems from one interpretation of Article 12 of the CRPD which deals with equal recognition before the law. Article 12(3) declares:

States Parties [that is, countries that have ratified the CRPD] shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

Legal capacity is the ability to hold rights and duties (for example being able to have a birth certificate, being registered to vote, owning property or seeking medical assistance) as well as to exercise those rights and duties. [3] By ratifying the CRPD, Australia has agreed to ensuring people experiencing mental health challenges are supported to exercise their legal capacity. This includes being supported to make decisions about their treatment and care.

People's Experiences of Supported Decision-Making

People's experiences in relation to being supported to make decisions about mental health treatment and what supports they would like available to them can be found on this online resource:

<http://research.healthtalkaustralia.org/supported-decision-making/support-in-treatment-decisions>

Families and other supporters can support decision-making in a range of ways. More information may be found on this online resource: <http://research.healthtalkaustralia.org/carers/carers-and-supported-decision-making-mechanisms>

This Fact Sheet is part of a series of resources designed to improve supported decision-making practices for people experiencing mental health challenges and to assist families and other supporters' participation in supported decision-making. These resources can be used individually, as an aid to policy development, and as a training tool.

See also:

- Supported Decision-Making Legal Mechanisms Fact Sheet
- Practices To Improve Supported Decision-Making In Mental Health Services Fact Sheet
- Resources To Assist With Supported Decision-Making Fact Sheet
- Guidelines For Supported Decision-Making For Mental Health Services
- Introduction To Supported Decision-Making For People Experiencing Mental Health Challenges And Their Families And Other Supporters
- Report – Options For Supported Decision-Making To Enhance The Recovery Of People Experiencing Severe Mental Health Problems
- Online Resources – <http://research.healthtalkaustralia.org/supported-decision-making/support-in-treatment-decisions>

References

1. Hale R, McSherry B, Paterson J, Brophy L and Arstein-Kerslake A, (2017) *Consumer Transactions: Equitable Support Models for Individuals with Decision-Making Impairments* Melbourne: Melbourne Social Equity Institute, University of Melbourne.
2. United Nations, *Convention on the Rights of Persons with Disabilities*, adopted 13 December 2006, GA Res 51/106, UN Doc A/Res/61/106 (entered into force 3 May 2008).
3. Committee on the Rights of Persons with Disabilities, *General Comment No. 1, Equal Recognition Before the Law*, UN Doc. CRPD/C/GC/1, 11 April 2014.

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