

Supported Decision Making

Supported decision making is a human rights concept that promotes freedom of choice for people using public mental health services.

This information sheet aims to provide a clear overview to help people know what they should expect from services, and to help clinicians know what they should provide.

What is supported decision making?



Supported decision making means that people are provided with the support they need in order to be able to make their own decisions. In the context of mental health services, this usually means making mental health treatment decisions, but it may include other types of decisions too.

*'The central principle underlying supported decision making is autonomy, that no person should have another person appointed to make a decision on their behalf, if they could make the decision themselves with assistance and support.'*¹

Supported decision-making can take the form of a person choosing trusted others to help with decision-making.

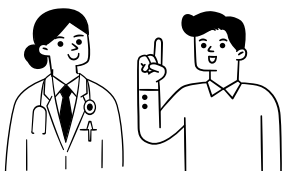
Where does supported decision making come from?

Supported decision making has a long history in the disability field. Activists and their allies have fought for the legal right to be able to access support to make decisions on an equal basis with others. The United Nations Convention on the Rights of Persons with Disability (CRPD, 2006) clearly sets out the right for people with disabilities to make their own decisions, with support if needed.

Supported decision making is now enshrined in the Mental Health and Wellbeing

Act 2022 (Vic) as one of the principles, which states:

*'Supported decision making practices are to be promoted. Persons receiving mental health and wellbeing services are to be supported to make decisions and to be involved in decisions about their assessment, treatment and recovery including when they are receiving compulsory treatment. The views and preferences of the person receiving mental health and wellbeing services are to be given priority.'*²



Shared / Collaborative Decision Making

The Doctor and Person Make Decision Together



Substitute Decision Making

The Doctor Makes the Decision

Supported decision making prevents the emotional harm of losing control over decision-making.

Making our own decisions about treatment is a human right and is important for recovery.

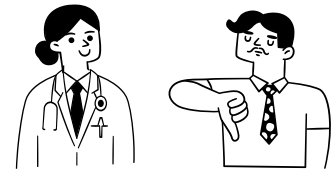
¹ Chartres, D. and Brayley, J. (2010). Submission to the Productivity Commission Inquiry into Disability Care and Support. Office of the Public Advocate, South Australia.

² Mental Health and Wellbeing Act 2022 (Vic) s 19.

What are the other types of decision making?

What is shared decision making?

Shared decision making (also called collaborative decision making) describes decision making in a voluntary relationship, such as between a person and their GP.



It does not realistically apply to relationships between people and their psychiatrists in public mental health services. This is because a psychiatrist is able to make final decisions that might go against what the person wants.

What is substitute decision-making?



The Mental Health and Wellbeing Act 2022 (Vic) allows substitute decision making. Substitute decision making means that people lose the freedom to make their own choices about mental health treatment. In certain circumstances, a psychiatrist is authorised to make decisions on behalf of a person diagnosed with mental illness.

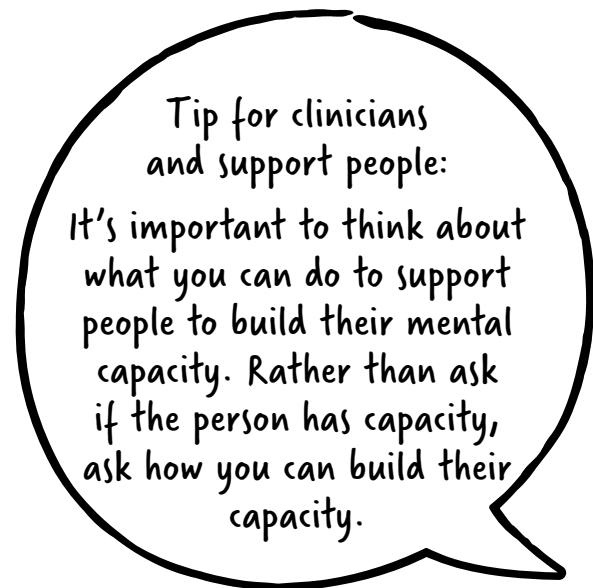
What about capacity?

Legal capacity refers to people's legal right (as set out in the CRPD) to make their own decisions about their own lives, on an equal basis with others. Supported decision making means that people can keep their right to legal capacity, regardless of how much support is needed.

Mental capacity is different from legal capacity. Mental capacity is also known as decision-making capacity, or just 'capacity'. Many laws including the Mental Health Act include a test for mental capacity which is used to decide if a person is allowed to make a decision for themselves or not. To demonstrate mental capacity you must be able to show that you can:

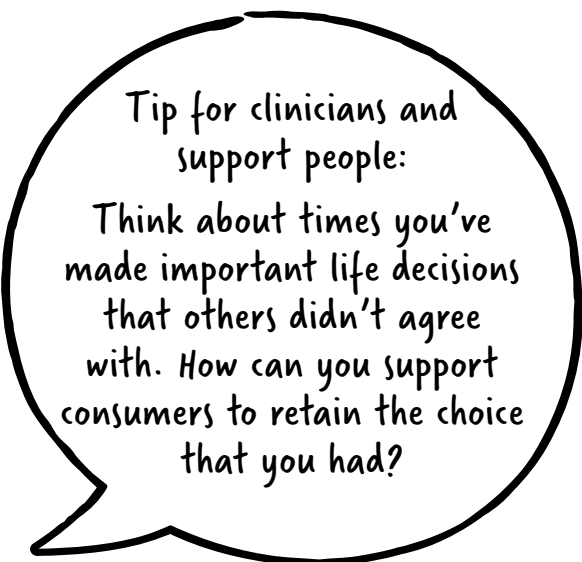
- Understand the information given to you
- Use or weigh the information to make a decision
- Remember the information
- Communicate your decision

Throughout your contact with mental health services, you can remind clinicians of your right to supports you might need to retain legal capacity, to make your own decisions, to avoid substitute decision-making in the first place, or to resume making your own decisions.



Tip for clinicians and support people:

It's important to think about what you can do to support people to build their mental capacity. Rather than ask if the person has capacity, ask how you can build their capacity.



Tip for clinicians and support people:

Think about times you've made important life decisions that others didn't agree with. How can you support consumers to retain the choice that you had?

Underpinning principles of supported decision making³

- Everyone has the right to make decisions about the things that affect them
- Every effort should be made to support people to make their own decisions
- People have the right to learn from experience and to take risks
- People have the right to change their mind
- People have the right to make decisions others might not agree with

Just because a decision-maker has been given legal authority to make a substitute decision, it doesn't mean they have to use it. And equally, just because a consumer has been placed on a compulsory treatment order, it doesn't mean they cannot understand or make decisions about their treatment.

³ WHO. (2017). Realising supported decision making and advance planning - WHO QualityRights training to act, unite and empower for mental health (pilot version). Geneva: World Health Organization.

Changing our thinking³

From

A presumption that people with mental health diagnoses don't have mental capacity to make their own decisions.

Assessing deficits in mental capacity (ability to make decisions without support).

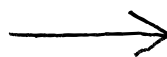
Detention in mental health and related services.

To

A presumption that people with mental health diagnoses can make decisions by themselves and for themselves, with the assistance of supporters if needed.

Exploring the type and level of supports that may be required to make decisions.

Exploration of support alternatives in the community.



Supported decision making tools

<p>Advance Statement of Preferences</p>	<p>An advance statement of preferences is a formal, written document that sets out your treatment, care, and support preferences in the event that you are placed on a compulsory treatment order.</p> <p>An advance statement of preferences is not legally binding but needs to be considered by the psychiatrist who is making treatment decisions.</p> <p>If an authorised psychiatrist makes a treatment decision that is not in accordance with the treatment preferences set out in an advance statement of preferences, the authorised psychiatrist must inform the patient and provide reasons for that decision.</p> <p>Those reasons must be given in writing within 10 business days to the patient and the patient's nominated support person if they have one.</p> <p>For services: Advanced statements of preferences promote autonomy, dignity and respect by helping you understand how to uphold the person's will and preferences.</p>		
<p>Nominated Support Person</p>	<p>A nominated support person is someone you choose to represent your will and preferences about treatment at a time when you might be subject to compulsory treatment.</p> <p>Nominated support persons are supposed to represent what you have told them, rather than their own opinions about what you might need. It's important to choose someone you trust to respect your values and preferences.</p> <p>For services: A nominated support person has similar benefits to advance statements of preferences, with the added benefit of practical support for people to make decisions while admitted.</p>		
<p>Non-Legal Advocacy</p>	<p>An advocate can support you to make decisions about your treatment and care, and they can:</p> <ul style="list-style-type: none"> • Support you to advocate for yourself • Advocate on your behalf with clinical services <p>For services: Advocates play a critical role in helping you to hear what really matters to the person, and to find solutions that lead to better outcomes for people.</p>		
<p>Information & Resources</p>	<p>For you to provide informed consent, you need to be provided with the right information in a format that works for you. It's a human right to have accessible and relevant information about your treatment, so be confident asking for what you need.</p> <p>Accessibility note: Reading can be affected by extreme emotions and medications. Accessibility includes taking account of a wide range of disability needs and different languages.</p> <p>For services: Providing accessible information in formats that suit individuals' needs is a legal obligation under the Mental Health Act.</p> <table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top;"> <p>This includes to providing appropriate support:</p> <ul style="list-style-type: none"> • to make decisions and participate in making decisions • understand information and your rights • communicate your views, preferences, questions and decisions. </td> <td style="vertical-align: top;"> <p>For example:</p> <ul style="list-style-type: none"> • Information in a preferred language • an appropriate physical or sensory environment • having appropriate spaces for the consumer to communicate with their family members, kin, carers, supporters, or advocates. </td> </tr> </table>	<p>This includes to providing appropriate support:</p> <ul style="list-style-type: none"> • to make decisions and participate in making decisions • understand information and your rights • communicate your views, preferences, questions and decisions. 	<p>For example:</p> <ul style="list-style-type: none"> • Information in a preferred language • an appropriate physical or sensory environment • having appropriate spaces for the consumer to communicate with their family members, kin, carers, supporters, or advocates.
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other supported decision making tools:

Independent Mental Health Advocacy (IMHA):
<https://www.imha.vic.gov.au/know-your-rights>

VMAC: <https://www.vmiac.org.au/just-saying/>

Ottawa Hospital Research Institute:
<https://decisionaid.ohri.ca/odsf.html>

World Health Organisation (WHO):
<https://apps.who.int/iris/handle/10665/329647>

Convention on the Rights of Persons with Disability (CRPD):
<https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd>

Comparing supported and substitute decision making

The table below provides a comparison between supported and substitute decision making. We acknowledge that the information in this table won't represent every different experience, but these are common experiences that people have told us about over many years..

Type of decision making	Who has control?	How it may be experienced by the person	Underpinning principles	Clinical practice approaches
Supported	Consumer	<p>My dignity is upheld</p> <p>I feel respected</p> <p>I have autonomy and freedom</p> <p>My hope, confidence & self-esteem increased</p> <p>I trust my clinicians</p>	<p>People are the best experts about their own lives</p> <p>Taking risks can promote growth & recovery</p> <p>Limiting autonomy can be psychologically harmful and counter-productive for recovery</p> <p>Everyone can make decisions with the right supports</p> <p>Emotional safety and physical safety both matter</p> <p>Upholding the right to legal capacity</p>	<p>Listens deeply to what matters to the person, and why</p> <p>Spends time with the person on multiple occasions in a place where they are comfortable to talk about the decision being made</p> <p>Explores with the person what will assist them to make a decision. E.g.:</p> <ul style="list-style-type: none"> - Do they want the support of loved ones or friends to arrive at a decision? - Do they need information in different formats to retain or resume decision making? <p>Keeps re-visiting support requirements</p>
Substitute	Psychiatrist	<p>I feel useless</p> <p>I feel disrespected</p> <p>I have no rights</p> <p>I've lost a lot of hope, confidence & self-esteem</p> <p>I don't trust clinicians</p>	<p>Doctors are the experts</p> <p>Decisions are guided by what is considered in the person's 'best interests'</p> <p>Risks should always be avoided</p> <p>Autonomy is not as important as managing risk and symptoms</p> <p>Physical safety matters much more than emotional safety</p> <p>Ignores the right to legal capacity</p>	<p>Assesses the person's mental capacity based on clinical knowledge</p> <p>Makes a clinical decision about whether or not the person has mental capacity</p> <p>If mental capacity is judged to be lacking:</p> <p>makes decisions on behalf of the person considers what is believed to be in the person's 'best interests'</p> <p>must not assume that the person is not able to make any decisions</p> <p>must regularly reassess capacity looking for changes</p>

More information:

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Endorsed By: 

