Guardianship Submissions
ACT Law Advisory Council
C/O ANU College of Law
ANU Canberra ACT 0200

31 July 2015

ADACAS commends the ACT Government for commissioning this inquiry into the reform of Guardianship arrangements for adult people with disabilities. The right to equality before the law and to enjoy self-determination through decision making is a significant issue for many of our clients. ADACAS appreciates the opportunity to respond on behalf of those people with whom we work, including people who are older, those with a disability or mental health issue, and their carers.

Please find enclosed our submission and attachments exploring matters relevant to this inquiry. If we can be of further assistance please don’t hesitate to contact me at manager@adacas.org.au or on the numbers below.

Yours sincerely,

Fiona May
Chief Executive Officer
Introduction

ACT Disability, Aged and Carer Advocacy Service (ADACAS) asserts, promotes and protects the rights and responsibilities of people with disabilities, people who are older and people who are caregivers. We vigorously advocate for and with our clients so that they may exercise their rights as citizens, live valued and dignified lives in the community and pursue their dreams. ADACAS acknowledges the Ngunnawal people as the traditional owners of the land on which we work.

ADACAS commends the ACT Government for commissioning this inquiry into the Guardianship and Management of Property Act 1991 (ACT). Maintaining and exercising the right to equality before the law and to enjoy self-determination through decision making is a significant issue for many of those with whom we work. ADACAS appreciates the opportunity to respond on their behalf.

ADACAS has been delivering advocacy through a freely given, human rights framework for 25 years. Our expressed wish model advocates for the will, preference and rights of vulnerable individuals. Over the past three years ADACAS has also developed a body of work in supported decision making (SDM). This includes Spectrums of Support, which recognizes the need to develop a suite of individualized support responses to effectively meet the decision support needs of people with a cognitive disability1. Self-Determination and Cultural Change, supported socially isolated people with psychosocial and cognitive disability. Learnings recognized that access to decision making is influenced by deeply embedded cultural values, reinforced by Guardianship laws, about the ‘inability’ of people with disability to be decision makers. This highlighted the necessity of cultural as well as legal change in ensuring people with disability can be engaged in decision making. As an NDIS capacity building project ADACAS developed the web site, www.support-my-decision.org.au. A forthcoming discussion paper exploring supported decision making and the NDIS has been developed for Mental Health Australia. ADACAS has developed and delivered SDM training for a very diverse range of audiences including, NSW Public Guardian, Disability ACT, ACT Health, families, carers and individuals.

Through both supported decision making and advocacy work ADACAS recognizes the need for mechanisms that protect and preserve the rights of vulnerable people. The protection of vulnerable people under the current guardianship system needs to be balanced against the costs of discrimination and the loss of human rights, experienced by people under guardianship, as recognized by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Through our work we observe the way in which active decision making is essential to accessing and


enjoying a suite of rights, not only in terms of equal access before the law, but in relation to parenting, health care, service delivery, freedom of movement and from abuse, participation in community life and independent living. We understand SDM to be an access tool for people with disability, as tangible but less visible, than Braille on an ATM machine. Supported decision making is a means to ensure equal access and participation in all aspects of our community. Where there is appropriate decision support, so too is there participation by people with a decision making disability. ADACAS supports the introduction of a supported decision making (SDM framework) to safeguard vulnerable individuals while supporting them to enjoy their right to full citizenship and equal rights.

While reform of the law is the focus of the LRAC work, and was the focus of the ALRC work on this topic, it is not possible to consider reform of the law for supported decision making without also considering the implementation issues which will be introduced through the law reform. ADACAS urges LRAC to consider and make recommendations on the full suite of issues, in addition to law reform, which must be addressed for successful implementation of supported decision making. Accordingly, this submission canvasses a broad range of issues relevant to SDM.
Summary of recommendations

ADACAS recommends:

1. The existing Guardianship and Management of Property Act should be replaced with a supported decision making framework that supports people to retain and use their rights on an equal basis with others.

2. The SDM framework should articulate precise principles to describe the rights of vulnerable people, and the responsibilities and limitations of representative decision makers/decision supporters.

3. The new framework should not adopt the broad decision making domains used in the existing G&MP ACT. The central function of the new framework should be to articulate the specific decision at hand, provide advice and support to identify the level and types of supports required for that decision and, where needed, to ensure supports are made available so that the person can exercise decision making.

4. The new decision making framework must recognise the necessity of community education about the rights and responsibilities of decision makers and decision supporters as a safeguard for vulnerable individuals and supported decision making.

5. New framework should include provisions to ensure that the person requiring decision support is at the centre of all communication relating to them and their decision. Any third party engaged to consider decision making supports, (eg a tribunal or NGO) must have responsibly to ensure that any decisions made about them should be clearly communicated to them, with support if necessary, as far as they are able to understand.

6. That any Tribunal or NGO with a role in SDM, produce materials, resources and principles and correspondence in Easy English.

7. That a suite of possible support options be explored that match the unique values, circumstances and preferences of each individual.

8. That decision support relationships are sustained and safeguarded through the provision of training and mentoring.

9. That the role of NDIS in SDM, through both individualised and ILC responses be explored.

10. That responsibility for provision of decision support be clearly established within the new framework.

11. That the new framework be consistent with the UNCRPD in acknowledging the responsibility of state’s parties make available as much support as is needed for each individual to be engaged in decision making.

12. The framework assess a person’s decision making ability in relation to supports required.

13. That the new framework give effect to the principle that a representative decision can only be made when there is evidence that all decision support options have been tried and exhausted. This must be subject to third party oversight.
14. Documentation of a supported decision should be subject to auditing or oversight by an independent third party.

15. Documentation of a supported decision must demonstrate the principle that the person has been support to approach decision making with the same rights and opportunities as a person that does not have a disability.

16. Representative decisions must only be made where it can be established that all decision support options have been exhausted.

17. Independent advocacy must be available to those subject to representative decisions to ensure a representative decision follows principles of least restrictive impact.

18. Representative decision making must be subject to third party oversight.

19. Outcomes to challenges of a representative decision should follow the principle of maintaining and preserving the rights of the individual as far as possible.

20. The SDM framework must include safeguards for the decision maker, the decision supporter, and the SDM process.

21. That the framework recognise a breadth of approaches to supported decision making including formal and informal supports.

22. Available supports are relevant in the contexts of declining, fluctuating and developing decision making capacity.

23. That the need to access decision support does not place unnecessary burden on people with a decision making disability.

24. That the ACT adopt a universal approach to supported decision making that ensures decision support is available where and whenever it is needed.
1. Experiences of Guardianship

Supporting clients subject to guardianship and financial management is a significant area of ADACAS work. This includes supporting clients to prepare and appear at ACAT, and, more informally, to ensure the expressed wishes and rights of our clients are recognised by guardians, families, service providers and carers. This work takes in a broad range of rights and decision making domains. Our work spans Centrelink, Care and Protection, public housing, healthcare, financial transactions, the support sector, education, transport and employment. A number of key themes emerge from this work that could inform a new decision making framework.

Under the current Guardianship and Management of Property ACT (GMPA), ADACAS advocates for clients where an appointed guardian has overreached guardianship orders, or is not acting in accordance with the concepts and principles under the current Act. Overreach may take a number of forms. Clients may seek support where a guardian is attempting to make decisions in a domain that they do not have authority over, or where a guardian does not limit their power to ensure they interfere with the person to the smallest extent possible. Disability support and age care workers, for example, regularly report that they recognise the right and ability of their clients to make many decisions, but, fearing backlash, will defer to the wishes of a guardian, even in matters which might be considered day-to-day decisions. In both supported decision making and NDIS capacity building projects ADACAS has experienced having to seek permission from guardians for an individual to learn about decision making, or build their capacity to exercise choice and control in the NDIS; including having guardians refuse to allow the protected person to participate in these skill building activities.

Decision making domains identified in the GMPA, (education, lifestyle, accommodation, healthcare, legal and financial), while falling short of plenary orders, are broad categories. This lack of specificity does not encourage guardians to fulfil the least restrictive/least intrusive practice principles of the existing Act. Currently there are limited resources to educate family and private guardians about the principles of the GMPA, the limitations and responsibilities of their roles, or the rights of those who are subject to guardianship. Evident from ADACAS experience of the GMPA is importance adopting clear language and concise definitions to describe principles, the rights of people with disability and the responsibilities and limitations of guardians/ decision making representatives, in any future legislation.

The need for any agency or NGO having responsibility for SDM functions to be proactive in disseminating this information as a safeguard to the SDM process and the vulnerable individual is also indicated by both Advocacy and SDM work. Community education will be necessary to ensure that established values and practices from the existing framework do not translate into the new. In *Spectrums of Support*, ADACAS determined that some decision supporters needed training and mentoring to recognise the person as an active decision maker and create new patterns in established relationships. Informal following up with decision makers and decision supporters, following the conclusion of both SDM projects, indicate the importance of ongoing support and training to embed patterns and skills that protect decision making. This was particularly true where the decision supporter had had a past role as a guardian, or the decision maker was subject to guardianship. There are a number of domestic and overseas examples that recognize education and ongoing support for guardians or

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2 May, F., Rea, K., op.cit., pp. 43 – 44

3 Ibid. p.47
representatives as a safeguard to decision making and other rights of people with disability. This includes the South Australian office of the Public Advocate, and Beratung (Custodian) programs.

It is evident from our work that many people who are subject to guardianship have not experienced the necessary support to understand what that order will mean in their lives. While there is a spectrum of awareness, clients have reported having never seen their order, lack support to understand the content of an order, or uncertainty about which decisions a guardian could make on their behalf. This significantly reduces the ability of individuals to self-advocate, and increases the likelihood that a guardianship will have a more significant impact than either the principles, or the order itself intended. Both now and in the future frameworks, more needs to be done to safeguard the rights of people with disability by ensuring they have as much support as is needed to understand the principles of representative / supported decision making, their rights, and how any orders/supports made, impact their lives.

Recommendations:

1. The existing Guardianship and Management of Property Act should be replaced with a supported decision making framework that supports people to retain and use their rights on an equal basis with others.

2. The SDM framework should articulate precise principles to describe the rights of vulnerable people, and the responsibilities and limitations of representative decision makers/decision supporters.

3. The new framework should not adopt the broad decision making domains used in the existing G&MP ACT. The central function of the new framework should be to articulate the specific decision at hand, provide advice and support to identify the level and types of supports required for that decision and, where needed, to ensure as much support as is needed is made available so that the person can exercise decision making.

4. The new decision making framework recognise the necessity of community education about the rights and responsibilities of decision makers and decision supporters as a safeguard for vulnerable individuals and supported decision making.

5. SDM framework should include provisions to ensure that the person requiring decision support is at the centre of all communication relating to them and their decision. Any third party engaged to consider decision making supports, (eg a tribunal or NGO) must have responsibly to ensure that any decisions made about them should be clearly communicated to them, with support if necessary, as far as they are able to understand.

6. That any Tribunal or NGO with a role in SDM produce materials, resources and principles and correspondence in Easy English.

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2. Challenges for the National Decision Making Principles

ADACAS commends the ALRC on the development of National Decision Making Principles. The ACT implementation of the ALRC principles could take a number of forms. Following the UK model through use of a single piece of ‘capacity’ legislation has some attraction. It would replace all existing legislation that involves determination of capacity including the GMPA and Mental Health Treatment and Care Act. However evaluations of the UK capacity model have indicated that unless responsibility for the legislation is vested clearly in a single part of Government, responsibility for implementation is unclear and the intended outcomes of the legislation may not be met. ‘One reason for the Act’s patchy implementation is that there is no central ownership of the Act. There are many bodies involved in its implementation but no single body has responsibility for it. It is the priority of none. This is in part due to the scope of the Act—it applies very widely and is not restricted to a specific setting or defined group of people. However, the failure to provide a focal point for ownership and oversight has allowed it to be largely unimplemented.’

In relation to Principle 3 “people who require support in decision-making must be provided with access to the support necessary,” ADACAS recognizes the need for further exploration of how support will be provided. The CRPD recognises the obligation of the State to “facilitate the creation of support, particularly for people who are socially isolated.” The dominant support paradigm emerging in SDM practice is freely given decision support provided by a person who is known to the decision maker. This is consistent with the UNCRPD, (article 19) which articulates the right to live independently and enjoy full community participation. The OHCR has also stated that social isolation must not be a barrier to decision support. Should the new framework be consistent with the UNCRPD then more work will need to be done to understand how these two principles can be aligned.

ADACAS project work demonstrates that social and personal cost of family guardianship in some cases. Guardianship has a significant impact on the parent-child relationship, particularly when guardianship is viewed as an extension of parental responsibilities which are appropriate when a person is under 18 but which may no longer be appropriate when the person becomes an adult. Siblings too have vested interests and different values from the person and may not welcome the responsibility of guardianship. Where joint guardians are appointed this potentially protects a person from narrow best interest decision making but also provides opportunity for conflict between guardians which eclipses the principle of keeping the protected persons wishes in the centre of decision making. ADACAS recognises difficulty of safeguarding boundaries and roles within private homes and relationships in current system, and the importance of ensuring that these issues are transparently addressed in any new system that relies on freely given relationships.

ADACAS project work illustrates that access to freely given support is a significant challenge for SDM. This reflects high rates of social isolation among people with disability, stigma around mental health, and estrangement from family for people with psychosocial disability. In the SA SDM project the inability to find a supporter was the primary reason people discontinued in the program. A forthcoming project report from the Victorian Office of the Public Advocate will describe a recently completed project which sought to match

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8 Ibid. para 45.

9 Ibid, para 24.
decision makers with an existing pool of volunteers should be thoroughly reviewed in considering resources for the provision of introduced decision support. ADACAS Self-Determination and Cultural Change project found identifying, introducing and mentoring volunteers a time and resource intensive process that did not necessarily create sustained results.

Additionally, there is little practical work exploring either cohort or cultural diversity within decision support responses. That the body of SDM practice models has been developed almost exclusively through the experiences of people with cognitive disability needs to be considered so that the new framework does not adopt a one-size-fits-all approach to decision support. There is limited information about what people with psychosocial disability may need or want from decision support relationships. Recent research shows a preference among people with psychosocial disability to purchase expert decision support, particularly in relation to complex decisions. These findings are consistent with ADACAS project work indicating some people with fluctuating capacity did not want to make the ongoing commitment needed to sustain a freely giving support relationship, and expressed a preference for the boundaries and expertise created by using paid or professional decision support.

In relation to the supply of freely given decision support, volunteers, particularly introduced volunteers, were reluctant to take on decision support roles involving complex decisions that have serious outcomes or competing rights issues, for example, where a mental health issue may have impacted on parenting and housing. There may be benefit with complex decisions and those that need to balance competing rights, in exploring paid or professional supports. While frail older people are a common group of protected persons under existing guardianship regimes, no known project to date has explored decision support for older people. More needs to be understood about the specifics of support in the context of fluctuating and declining decision making capacity and how supporters will be identified, screened, mentored and sustained to ensure appropriate support options are available to all who need them.

For SDM to be established as an alternative to guardianship in the ACT, significant consideration will need to be given to the provision of appropriate decision support. Based on project work, ADACAS has made a case for a spectrum of SDM options to be available. This includes freely given support options such as Circles of Support, Microboards or individual supporters, through to professional or paid supports. The preference for freely given decision support needs further exploration.

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13 Self-Determination and Cultural Change op.cit., pp. 25

14 Ibid, p.15

15 Brophy et. al, op.cit.
Resourcing of decision support options will be vital to safeguard against substitute decisions being made in the name of supported decisions. This might take the form of capacity building, for both decision makers and decision supporters to engage in SDM. The German decision support model allows for supported decisions to be audited by appointed NGOs, who also provide advice, resources and oversight. The ideal of freely given should not undermine the need for appropriate resourcing of decision support relationships to ensure sustainability and provide safeguards. More needs to be understood about the role of the NDIS in the resourcing of decision support. For people with disability qualifying for a tier 3 package decision support might be made available. More broadly there is a case for SDM within the Information, Linkages and Capacity Building (formerly known as Tier 2) to build the capacity of the community as whole as both decision makers and decision supporters. The availability of decision support will have to be resourced for all who need it. It is evident then that for people who are older, are ineligible for support under the NDIS, or have fluctuating support needs additional resourcing would need to be secured.

The question of who will be responsible for ensuring all the support needed is made available remains unanswered.

**Recommendations:**

7. That a suite of flexible support options be explored that match the individual values, circumstances and preferences of each individual.

8. That decision support relationships are sustained and safeguarded through the provision of training and mentoring.

9. That the role of NDIS in SDM, through both individualised and ILC responses be explored.

10. That responsibility for provision of decision support be clearly established within the new framework.

**3. Proposed guidelines for decision making support needs**

ADACAS gives in principle support to the guidelines for decision making support identified by the ALRC. The guidelines, however, need to go further to express the qualities of a supported decision. The current guardianship system is premised on the idea that people with disability or those who are older are incapable of decision making and must be protected from risk and harm. Supported decision making challenges these strongly held cultural views, underpinned by current guardianship laws and duty of care frameworks. Embedding this framework involves significant cultural change. Delivering SDM training, for example, ADACAS recognizes that the right to experience dignity of risk is not well recognized by families, the service sector, or the health sector. The principles for decision support need to acknowledge right to dignity of risk. A person using decision making support must include support to anticipate, assess and safeguard risk. Qualities of a supported decision might include support to:

- be informed,
- consider personally relevant options,
- experience dignity of risk, and
• ensure recognition of decision by third parties.

In relation to point (c) Guidelines for assessing support needs, “A person’s decision-making ability must be considered in the context of available supports.” It is true that the quality of support given will impact the person’s ability to make a particular decision, at a particular time. It is also true, however, that the CRPD (12 c) clearly makes it the responsibility of the State to make available as much support as is necessary for a person to decide. If decision making ability is assessed on the ‘availability’ of support there is a danger that some people will not make decisions because support is not available. The state has responsibly to assess what supports might be necessary and be proactive in making sure the necessary supports are available. The word ‘available’ should be removed.

In relation to point (f) this should acknowledge that, for older people, decision making ability may decline over time, and this too, can be supported.

The proposed guidelines for giving effect to will, preferences and rights must acknowledge that a representative decision can only take place when all decision support options have been tried and exhausted. As a safeguard to both individuals and the SDM framework, all representative decisions must be subject to third party oversight. ADACAS acknowledges that representative decision making is not consistent with the UNCRPD.

**Recommendations:**

11. That the new framework be consistent with the UNCRPD in acknowledging the responsibility of state’s parties make available as much support as is needed for each individual to be engaged in decision making.

12. The framework assess a person’s decision making ability in relation to supports required.

13. That the new framework give effect to the principle that a representative decision can only be made when there is evidence that all decision support options have been tried and exhausted. This must be subject to third party oversight.

**4. Evidence of supported decision making**

Different types of decisions will require different evidence. In principle, evidence should demonstrate that the person has had effective support that has enabled them to be as active as possible, across all aspects of the decision. Evidence must demonstrate equality and participation. Evidence should show that the person has been supported to approach decision making in the same way as those who do not have a impaired decision making capacity. Broadly, this could include evidence that the person has been supported to:

- Express how they would like to be supported to make this decision and how this was achieved,
- Understand their rights and role in making decisions that affect them,
- Recognize the roles and responsibilities within a decision support relationship,
- Identify and establish and decision support relationship,
- Articulate the decision being made: - this should recognize that decision making is an iterative process. The decision may change as options, risks, responsibilities and outcomes are considered,
- Express hopes, goals and values that are relevant to this decision,
Consider the circumstances of the decision to ensure the individual’s right to self-determination is preserved. For example did the decision maker generate the decision at hand, or is this a decision being brought about by a family member, service provider or other external party? Is there a different decision that the person themselves would like to consider,

Timing: - how the person has been supported to consider the timing of this decision will impact the outcome,

Identify and explore personally relevant options and information,

Think about responsibilities,

Recognize potential risks, consider the likelihood that the risk will occur, understand the impact that a risk could have, establish safeguards and weigh the potential for risk against the desirability of the outcome,

Recognize and manage vested interests, including those that the decision supporter may have,

Consider who else may be impacted by this decision,

How long the decision took to make,

Communicate the decision to others to be respected and recognized,

Establish an achievable plan to ensure the decision is fulfilled, and

Who should know about this decision and how both privacy and communication can be balanced.

Decision supporters have responsibility to demonstrate that the support is least intrusive and is proportional to the significance that decision has for the individual and their experience as a decision maker. Documentation of a supported decision should also include opportunity for the decision maker to describe that they have been supported according to their wishes. Documentation of supported decisions should be subject to third party oversight.

The expectation of third parties, such as financial or health institutions, to have evidence of decision making rights will take time to change. Currently documentary evidence of guardianship arrangements is used as a risk management strategy by such organisations. However, this expectation essentially discriminates against a person with disability as it differs from the expectation placed on others. Legislating for documentation of SDM arrangements or representation processes, would address concerns about evidence, but could be discriminatory.

ADACAS’ Principles for Supported Decision Making maybe a useful resource in developing documentation guidelines. Attachment 1.

Recommendations:

14. Documentation of a supported decision should be subject to auditing or oversight by an independent third party.

15. Documentation of a supported decision must demonstrate the principle that the person has been support to approach decision making with the same rights and opportunities as a person that does not have a disability.

5. Evidence of Representative Decision Making

ADACAS acknowledges that representative decision making is inconsistent with the CRPD, however it also recognises that Australia has reserved the right to continue representative decision making in limited circumstances.
In the case of declining or fluctuating decision making ability, advance planning documents such as advance agreements, could have a central role in preserving and protecting rights. Advocacy work indicates that more support and recognition are needed for people with cognitive impairment to access and use advance planning tools.

Should representative decision making be included in the framework then, evidence must demonstrate that all decision support options have been tried and exhausted prior to the representative decision being made. The inability to identify decision support must not be justification for a representative decision. SDM project work has demonstrated that the process of giving decision support can be an effective way to explore the will, preference and rights. The evidence collected while exhausting all decision supports should be central in establishing will and preference, and must be in evidence. In addition a representative agreement should also evidence:

- Why the representative decision is needed over a supported decision,
- The decision supports tried,
- The specific decision being made,
- The specific time frame for the representative decision and when this should be reviewed,
- Who has generated the decision,
- Vested interests of all parties,
- The values, hopes and goals of the decision maker and how these were established
- If the person could make a supported or autonomous decision at a different time. If so, why the decision needs to be made now.

Advocacy and third party oversight by tribunal or NGO must proactively ensure that people representative decisions follow principles of least restriction and impact.

**Recommendations:**

16. Representative decisions must only be made where it can be established that all decision support options have been exhausted.

17. Independent advocacy must be available to those subject to representative decisions to ensure a representative decision follows principles of least restrictive impact.

18. Representative decision making must be subject to third party oversight.

**Challenging representative decisions**

Representative decision making should maintain and preserve the rights of the individual as far as possible. This principle should be paramount where a representative decision is being challenged. The vested interests of any person challenging a representative decision should be thoroughly examined. ADACAS has advocated for a number of people who have had restrictive practices placed on them, through formal or informal substitute decision making, justified on a best interest argument. It is evident from this work however, that best interest is often used when what is actually been managed is the perceived duty of care of an organisation. For example,

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where a person’s freedom of movement is restricted to ‘keep them safe’, without consideration for how that restriction may impact their emotional and psychological wellbeing.

Recommendation:

19. Outcomes to challenges of a representative decision should follow the principle of maintaining and preserving the rights of the individual as far as possible.

6. Safeguards

There are several perspectives on safeguards which must be addressed for effective delivery of a supported decision making framework.

Safeguarding the individual – it is crucial that the individual’s right to participate in decision making is safeguarded by the process, and that they can exercise dignity of risk on an equal basis with others. Safeguards have traditionally focused on ‘safety precautions’ and ensuring the physical safety of individuals. In a SDM context however this is not sufficient or appropriate. The individual’s right to make decisions must be at the centre of all safeguarding actions.

Safeguarding the supporters – considerable anxiety has been expressed about potential liability or duty of care obligations which may vest in decision supporters, particularly for those who interact with the person in a paid capacity, such as clinicians, but also by people who might volunteer as decision supporters. Any SDM framework will need to clearly safeguard supporters from liability for the decisions which are made by the supported person or it will be impossible to find people who are willing to take the decision support role.

Safeguarding the SDM process – there are a series of principles and practices which underpin supported decision making and it will be essential that any SDM process is safeguarded from drift towards a substitute decision making regime or other modifications which undermine the intent of the CRPD and the SDM model. Oversight and mentoring of SDM participants will be an important feature which provides safeguards to the SDM process itself but also to the decision maker and supporter. These elements of the scheme need to be part of SDM framework design and appropriately funded.

Supported decision making frameworks cannot be seen as a cost saving measure for governments. Recognising that significant expenditure already exist, particularly that associated with existing guardianship regimes, some redirection of expenditure may be possible, however investment will be essential to successful implementation of an SDM framework.

Recommendation:

20. The SDM framework must include safeguards for the decision maker, the decision supporter, and the SDM process.

7. Approaches to Supported Decision Making

ADACAS commends LRAC for recognising that SDM can occur in many forms, and this includes informal support. Informal support is an essential element of SDM because it will ensure that people with disability do not face an unfair burden to experience decision making only within the public arena of ACAT.
Approaches to supported decision making should include a spectrum of decision support options that can be tailored to suit the circumstances of an individual and the decision at hand.

People should not become locked into one method of support or a single supporter. All people access different kinds of supports for different decisions. This includes support through naturally occurring networks, through to paid professional supports. People with a decision making disability should also have freedom to access the same range of supports as those who do not have a disability.

Approaches to SDM must make accommodation for people who are socially isolated so that social isolation is not a barrier to decision support.

In developing a suite of approaches it must be recognised that SDM has largely emerged in the disability space. Currently, older people represent the largest group of people subject to guardianship. More needs to be understood about support options for older people, along with those experiencing mental health issues.

**Recommendations:**

21. That the framework recognise a breadth of approaches to supported decision making including formal and informal supports.

22. Available supports are relevant in the contexts of declining, fluctuating and developing decision making capacity.

23. That the need to access decision support does not place unnecessary burden on people with a decision making disability.

**8. When and how to give decision support**

Support given will be dependent on the decision being made and the relationship the decision maker has with the decision supporter.

Through the experience of project work ADACAS recommends that the ACT framework adopt a universal approach to supported decision making. (Attachment 2.) This would ensure that people are able to access decision support when and where it is needed, and that responsibly for support is shared across the community.

Project work has demonstrated that access to decision making is shaped not only by the decision making ability of the decision maker, but by the values and attitudes of the people around them. This is particularly true, where people are subject to gatekeeping by families and service providers, where there is risk adversity, Cultural change, which recognises the right of an individual to be a decision maker, should be understood as an essential element of SDM.

Decision making is a skill that can be learnt. Through intentional teaching of decision making skills people with perceived impaired capacity can develop their experience and skill as decision makers. The development of skill is the proactive component of SDM which needs to be recognised and resourced. Early trials have indicated that people develop skill through experience, it is unrealistic therefore to only provide decision making support for large, complex or legal decisions, since the experience that is derived from making day to day decisions will be invaluable for a person who is now facing a larger more complex decision.
Recommendation:

24. That the ACT adopt a universal approach to supported decision making that ensures decision support is available where and whenever it is needed.
ADACAS Principles for Decision Supporters

Every person and every decision will need their own supports. ADACAS has developed these principles to provide a framework for giving decision support. They protect decision supporters as well as decision makers. To be a decision supporter you must be able to agree to work to these principles.

#1. Every Person has the right to decide
You are born with this right. When you support a person to decide, you are supporting them to use this right, as far as they are able.

#2. The right to decide can be exercised with support
Regardless of their decision making capacity, all people can be supported to be involved in the decisions that affect them. The focus is on support not capacity.

#3. Equality
Decision support is about enabling a person with a disability to approach decision making with the same expectations, freedoms and responsibilities as those who do not have a disability.

#4. Respect the decision maker and their decision
To support a decision you must be able to respect the values, experiences and goals of the decision maker. You must do this even when you do not share them, or agree with the decision they are making.

#5. Give only as much support as is needed
You must only give as much support as is needed so that the decision maker remains active and engaged in their decision. Recognise that different decisions will need different supports and levels of support may change over time.

#6. Everyone has something to learn
Supported decision making is not disability specific. Everyone has a role. Everyone has something to learn. Decision making is a skill that you learn. So is supporting a decision.
ADACAS Principles for Decision Supporters

#7. The decision being made belongs to the decision maker

The decision maker is free to choose the decisions they want to make and who will support them. They are free to change their mind, learn from experience, be ambitious or creative, take a risk and make decisions that others don’t agree with. Supporters must be able to recognise that the decision belongs to the decision maker. They are supporting the decision, not the outcome.

#8. Be mindful of your vested interests

Everyone has vested interests. You must be able to recognise your own vested interest in the decision being made, and in the life of the decision maker, and then consider if you can truly support the decision according to these principles.

#9 The decision support relationship must be built on trust

If you cannot give support according to these principles then the decision support role is not the right one for you. The biggest difference you can make to the decision maker is helping them identify a person who can give support according to these principles.

Want more information about supported decision making?
Phone ADACAS on (02) 6242 5060
Or visit www.support-my-decision.org.au
Figure 1
Universal Decision Support
Includes:

- Recognition of universal legal capacity
- Education and awareness raising
- Cultural change using health prevention model
- Investment in human interdependence.

Secondary Decision Support
Focuses on those who directly interact with people with disability, including disability sector, DCA and mainstream services/sectors.

- Education and modelling,
- Coaching in assisting capacity building,
- Raising expectations of decision makers to be engaged in decision making and seek available support

Tertiary Decision Support
Features one on one work with individuals to build capacity, coaching supporters, and modelling new flexible ways of support.

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