**SUPPORTED DECISION MAKING IN AUSTRALIA – JOHN BRAYLEY**

**SOUTH AUSTRALIA**

A stepped approached to supported decision making and substituted decision making

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| **Approach** | **Autonomous** – does not mean individual decision making, most people will choose to seek advice & support from others when making an important decision  **Assisted decision making**-person is regarded as having legal capacity but might need assistance to collect information to make a decision  **A non-statutory supported decision making agreement** – Person must want to have support, have a trusting relationship with the supporter & are able to cancel the agreement at any time if they are unhappy. Agreements can also specify a third person a ‘monitor’ who can check to ensure the agreement is operating as it should without a specific law, it does not give the supporter any additional standing & the supported person is not obliged to use the agreement  **A statutory supported decision making agreement** – most of the same features as a non-statutory agreement but in jurisdictions that have supported decision making laws, this legal recognition has advantages in safeguarding the supported person and giving a special status to the supporters. The person is expected to use the agreement – if they want to make decisions outside the agreement they need to cancel it, which they have the power to do. The agreement is a significant document which cannot be ignored.  **A tribunal appointed SDM arrangement** – the person would not have the option of ending an arrangement, only the tribunal has the power to do this, and they need to seek support in making decisions while the arrangement is in place.  **Representational agreement** – also has supported decision making agreement functions but permits the supporter to make a substitute decision if the person is unable to make a decision themselves  **A tribunal appointed Co-decision maker** – usually family or close friend appointed by the court, they need to make major decisions together and if they disagree the decision of the person (not the co-decision maker) takes precedence. If it’s not working it may be followed up by the Public Guardian to determine if another person should be appointed or another form of supported decision making support is required. |
| **Considerations** | There are two key differences in types of agreements 1) the presence or absence of recognition in legislation and 2) who makes the appointment – the person themselves or a tribunal.  Project should provide professional advice, education & resources in a variety of formats. This is input that the participants should find useful, that will assist them decide whether or not to proceed with a SDM agreement, and if they do proceed, help make the SDM arrangement a success.  The different approach to mental incapacity needed to facilitate supported decision making – a broader definition such as ‘personhood’ the wishes and desires of the individual, and the trusting relationship they have with people in their network.  Supported decision making can apply to the decisions themselves but also to the way people make decision.  Types of decisions covered include accommodation, lifestyle and health. Specifically excluded are financial decisions & decisions to take legal action.  Develop practice guidelines. |
| **Challenges** | The legislation we work under and the allocation of resources (eg housing and support services).  If there are gaps in a stepped model, it’s more likely the system will move people towards increased care, protection & control.  Very likely that context for many people lives has been unnecessarily constrained. Some may have never been encouraged to make decisions for themselves.  ‘Personhood’ is not the conventional legal definition of capacity. The use of such definitions to declare a person incapable may not meaningfully reduce risk for that person, but instead may address the risk management needs of provider organisations.  Concern that the supporter may take over decision making and act as a substitute without authority.  Supporters need to be clear about their role, they will have other roles in people’s lives and need to be able to separate themselves from the decision and just provide support.  Relationship between personality and risk assessment, and personality and impulsivity.  Duty of care versus person has a right to make a decision that others think is wrong or risky.  Family conflict. |
| **Legislation** | The need for supported decision making Act?  A legislated form of agreement can create obligations on the supporter to act in the interests of the supported person, and also give their role legal recognition so that health services and community agencies can share information directly with supporters. Legislation can also include protections from liability for supporters and other parties assisting a person to make decisions provided that such actions are not in breach of the supporter’s duty to the supported person. |
|  | The need to have designated adult protection functions in Australia – emphasis is on vulnerability rather than incapacity – avoids the need to take away decision making rights from the victims of abuse or neglect. |
| **What does this teach us?** | Be clear about roles and expectations (education, information & resources).  Supported person, Supporter, Monitor and Facilitator (advice, education, & resources, coaching role after agreement is made, does an assessment not for eligibility or to screen but to support self-selection. The facilitator is under no obligation to facilitate an agreement if doing so will put the person at risk).  Self-selection of suitability for all involved.  Supporters need to know the person and have a trusting relationship.  People haven’t had the opportunity to make decisions. Being given the opportunity to make more decisions builds capacity; it might take time to learn how to do this.  Assume capacity.  Use of circles and networks may be required.  The benefit will derive from what is behind the agreement, the support being offered, the relationship being built, not the piece of paper itself.  A supporter will need some insight into how their way of thinking may vary from the person they support.  Agreements can be cancelled, and agreements end informal arrangements  Slow down decision making and give time for consideration and reflection about different options.  Consider police clearances for non-family supporters, informed consent forms for research and evaluation. |