

RECOMMENDATIONS FOR SUPPORTED DECISION-MAKING

1. Supported decision-making should be clearly recognised as a legal principle, incorporating tikanga Māori, to provide support to people whose decision-making ability is impaired, to enable them to make their own decisions whenever possible.
2. There is a need for a legal mechanism to ensure that supported decision-making is given priority at the beginning of the decision-making process and as part of a continuum so that substitute decision-making is an option of last resort.
3. A person is not to be regarded as lacking capacity unless all practical help and support has been given to enable him or her to make a decision themselves; and steps are taken to support the person, including enlisting the help of support persons upon whom they rely for support.³⁷⁸
4. Reasonable steps are taken to ensure that those persons identified as available for support are present where a person's legal capacity is in doubt and an assessment of capacity is required
5. Consideration should be given to a supported decision-making framework that is sufficiently flexible and would allow for a person being able to appoint a "supporter" in order to assist them in circumstances where they retain capacity to understand the nature of the support offered, including:
 - a) possible models of appointment;
 - b) the nature of the relationship with the supporter and whether this could include a professional one;
 - c) how such a framework of support would interface with the appointment of substitute decision-makers under existing adult guardianship law, and the ability for ongoing support to be offered by the supporter;
 - d) the basis upon which the role of supporter could be displaced; and
 - e) the monitoring and oversight of this framework by a public agency.
6. A Code of Practice is developed to provide guidance on the implementation of supported decision-making as a culturally responsive practice that recognises diverse cultural contexts, and, for Māori, recognises the importance of whakawhanaungatanga.
7. More research is needed to examine how supported decision-making, as understood in human rights law and implemented in comparable jurisdictions, could be applied in practice within New Zealand's socio-cultural context.³⁷⁹

³⁷⁸

See for example, Northern Ireland Mental Capacity Bill (NI) Pt 1, s 5.

³⁷⁹

See for example, Assisted Decision-Making (Capacity) Act 2015 (Rep Ireland), Pt 3 s 10.