Mental Health Foundation OF NEW ZEALAND
*mauri tū, mauri ora*

# *Embedding supported decision-making across Aotearoa's mental health system*

## Position statement

September 2023

Phone: 09 623 4810 | www.mentalhealth.org.nz

Eden 3, Ground floor, 16 Normanby Road, Mount Eden, Auckland
PO Box 10051, Dominion Road, Auckland 1446

Mental Health Foundation OF NEW ZEALAND
*mauri tū, mauri ora*

# Supported decision-making should be embedded across the mental health system to reduce coercion.

Policy & Advocacy Team
September 2023

The Mental Health Foundation (MHF) recommends:

1. All services and supports (including whānau support) should enable tāngata whaiora to make their own decisions about their mental health care, treatment and recovery.
2. Aotearoa New Zealand's legal frameworks should embed supported decision-making within our mental health system.
3. Legal reform must be supported by clear national policy and adequate resourcing and guidance to support service and practice changes over time.

## Purpose

This paper sets out the MHF position on supported decision-making as it relates to the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act) and the ongoing reform of the Mental Health Act.

For further detail, please refer to our submission to the Law Commission on their review into adult decision-making.

## What is supported decision-making?

Supported decision-making is an approach that employs different tools to help people make their own decisions based on their will and preferences. It seeks to empower people to have control over decisions about their life.

Examples of supported decision-making approaches/tools include advance directives, nominated support person(s), personal advocate(s) and peer support. Wellness and recovery plans, health passports, and communication support plans


Phone: 09 623 4810 | www.mentalhealth.org.nz
Eden 3, Ground floor, 16 Normanby Road, Mount Eden, Auckland
PO Box 10051, Dominion Road, Auckland 1446

can also be made in advance of an acute or crisis situation to support future decision-making.

Supported decision-making acknowledges that every person has the right and ability to make informed choices and autonomous decisions about their personal life, health care or legal matters. Where someone's ability to make informed choices appears to be temporarily compromised, for example if they are experiencing significant mental distress, or if they a learning disability, supported decision-making approaches provide practical ways to enable them to make their own decisions. It is different to substituted decision-making (making decisions for someone) and shared decision-making (where clinicians make decisions with input from the person concerned).

The aim of supported decision-making is to provide different levels of support, depending on the need. Even with the most intensive types of support, the presumption is always in favour of the will and preferences of the person who will be affected by the decision. Even where an individual requires full and intensive support, any support person(s) should enable the individual to exercise their legal capacity to the greatest extent possible, according to the wishes of the individual (OHCHR, 2007).

## MHF position

The MHF recommends:

1. **All services and supports (including whānau support) should enable tāngata whaiora[1] to make their own decisions about their mental health care, treatment and recovery.** This means providing all forms of support, including the most intensive, so the will and preferences of the persons concerned can be upheld. These supports should also allow for and promote collective decision-making approaches (such as decision-making with whānau) informed by tikanga Māori and grounded in te ao Māori.

[1] *Tangata whaiora/tāngata whaiora* means person(s) seeking wellness and its use in this kaupapa is to refer to people with lived and living experience of the Mental Health Act.


Phone: 09 623 4810 | www.mentalhealth.org.nz
Eden 3, Ground floor, 16 Normanby Road, Mount Eden, Auckland
PO Box 10051, Dominion Road, Auckland 1446

2. **Aotearoa New Zealand's legal frameworks should embed supported decision-making within our mental health system.** The current legal framework predominantly supports substituted decision-making as the standard. It is important that supported decision-making becomes the default approach in our laws, because without that guarantee, substituted decision-making may still prevail, as is the case in many European countries (European Network of National Human Rights Institutions and Mental Health Europe, 2020).

3. **Legal reform must be supported by clear national policy and adequate resourcing and guidance to support service and practice change over time.** *He Ara Oranga* states that "Legislative change on its own will not drive systemic change… it needs to be supported by clear guidance and clinical best practice that promotes supported decision-making...." (He Ara Oranga, page 194). Any legal reform therefore needs to be backed up by strong implementation in government policy, guidance and service procedures and systems, and strict and comprehensive checks and balances to monitor effective implementation and to ensure substituted decision-making does not become the default.

**3a. To facilitate supported decision-making, our mental health system should:**

- Enable services and whānau to support tāngata whaiora to exercise tino rangatiratanga, and promote manaakitanga, wairuatanga and whanaungatanga.
- Prioritise and promote safety, wellbeing and healing.
- Recognise that people can make decisions without support and should have the opportunity to do so before support is provided, and at every stage in the support process, in order to maximise autonomy.
- Recognise that all people are different with different values, beliefs, cultures and languages. Different supports should be available to respond to this diversity.


Phone: 09 623 4810 | www.mentalhealth.org.nz
Eden 3, Ground floor, 16 Normanby Road, Mount Eden, Auckland
PO Box 10051, Dominion Road, Auckland 1446

- Recognise a person has the right to make decisions, even when their support person or clinical services disagree with that decision, to enable people to exercise tino rangatiratanga/maximise autonomy.[2]

**3b. We support the following tools to facilitate supported decision-making:**

- **Support people/advocates,** whether that be whānau or family, partners, friends, peer support/advocates or others who can advocate on behalf of tāngata whaiora and support them through their interactions with the mental health system.

- **Advance directives** that are legally binding, accessible and have appropriate flexibility to be changed to reflect the will and preference of the person concerned.

- **Full and accessible information** for tāngata whaiora and their whānau on their rights and treatment options, to empower and enable them to make their own decisions.

## Rationale

### *The MHF's position is supported by the following three arguments:*

1. The United Nations' Convention of the Rights of Persons with Disabilities (CRPD) General Committee's established view that legal capacity – the right to make decisions about oneself – is a fundamental human right and serious mental distress should not be able to infringe on this right.

2. The CRPD General Committee's clarification that signatory States[3] must ensure supported decision-making is enabled, and substituted decision-making regimes are abolished, as the latter is in breach of the CRPD.

3. Evidence suggests that supported decision-making can reduce the use of coercive practices within mental health services. When done well, there is reasonable evidence that supported decision-making tools (particularly

[2] This relates to the 'dignity of risk' which is the idea that everyone has the right to live the life they choose, even if their choices may involve some risk.
[3] Aotearoa New Zealand ratified the CRPD in 2008 and therefore should reflect its recommendations.


Phone: 09 623 4810 | www.mentalhealth.org.nz
Eden 3, Ground floor, 16 Normanby Road, Mount Eden, Auckland
PO Box 10051, Dominion Road, Auckland 1446

advance directives) are an effective means to reduce compulsory treatment and solitary confinement practices, and reduce the fear and anxiety associated with certain medications and treatments (Tinland et al., 2022; Dawson et al., 2021; Barbui, et al., 2020; Brophy et al., 2019; Tinland et al., 2019; Lai et al., 2019; De Jong et al., 2016; Premski et al., 2010).


Phone: 09 623 4810 | www.mentalhealth.org.nz

Eden 3, Ground floor, 16 Normanby Road, Mount Eden, Auckland
PO Box 10051, Dominion Road, Auckland 1446

# References

Barbui, C., Purgato, M., Abdulmalik, J., Caldase Almeida, J., Eaton, J., Gureje, O., . . . Saraceno, B. (2020). Efficacy of interventions to reduce coercive treatment in mental health services: umbrella review of randomised evidence. *The British Journal of Psychiatry*, 1-11. doi:10.1192/bjp.2020.144

Brophy et al. (n.d.). *Guidelines for supported decision-making in mental health services.* Retrieved from Health Direct: http://media.healthdirect.org.au/publications/Guidelines-for-Supported-Decision-Making-in-Mental-Health-Services.pdf

Brophy et al. (2019). Community treatment orders and supported decision making. *Frontiers in Psychiatry, 10*(414).

Committee on the Rights of Persons with Disabilities. (2014). Article 12: Equal recognition before the law. *General Comment No. 1(11th Session)*. United Nations.

Committee on the Rights of Persons with Disabilities. (2022, September 26). Concluding observations on the combined second and third periodic reports of New Zealand. *CRPD/C/NZL/CO/2-3*. United Nations.

Dawson et al. (2021). Community treatment orders and care planning: How is engagement and decision-making enacted? *Health Expectations*.

De Jong, M., Kamperman, A., Oorschot, M., Priebe, S., Bramer, W., Van de Sande, R., . . . Mulder, C. (2016). Interventions to reduce compulsory psychiatric admissions. *JAMA Psychiatry, 73*(7), 657-664.

Delman et al. (2015). Facilitators and barriers to the active participation of clients with serious mental illnesses in medication decision-making: the perceptions of young adult clients. *Journal of Behavioural Health Services and Research*.

European Network of National Human Rights Institutions and Mental Health Europe. (2020). *Implementing supported decision-making: Developments across Europe and the role of National Human Rights Institutions.* European Network of National Human Rights Institutions. Retrieved from https://www.mhe-


Phone: 09 623 4810 | www.mentalhealth.org.nz

Eden 3, Ground floor, 16 Normanby Road, Mount Eden, Auckland
PO Box 10051, Dominion Road, Auckland 1446

sme.org/wp-content/uploads/2020/06/Report-ENNHRI-and-MHE-Implementing-supported-decision-making.pdf

Gooding, P. M., & Simmons, M. B. (2017). Spot the difference: shared decision-making and supported decision-making in mental health. *Cambridge University Press*.

Lai, J., Jury, A., Fergusson, D., Smith, M., Baxendine, S., & Gruar, A. (2019). Variation in seclusion rates across New Zealand's specialist mental health services: Are sociodemographic and clinical factors influencing this? *International Journal of Mental Health Nurses, 28*(1), 288-296. doi:10.1111/inm.12532

Premski, D., Alexander, M., Fang, T., Ong, S., Su, A., Fung, D., & Chua, H. (2010). Psychiatric Advanced Directives and their relevance to improving psychiatric care in Asian Countries. *Asia-Pacific Psychiatry, 12*(1).

Tinland et al. (2022). Effect of Psychiatric Advance Directives Facilitated by Peer Workers on Compulsory Admission Among People with Mental Illness: A Randomised Clinical Trial. *JAMA Psychiatry* .

Tinland, A., Leclerc, L., Loubiere, S., Mougeot, F., & Greacen, T. (2019). Psychiatric advanced directives for people with schizophrenia, bipolar 1 disorders or schizoaffective disorders. *BMC Psychiatry; BioMed Central, 19*(1).

United Nations. (2006). *Convention on the Rights of Persons with Disabilities Article 12*. Treaty Series 2515.


Phone: 09 623 4810 | www.mentalhealth.org.nz

Eden 3, Ground floor, 16 Normanby Road, Mount Eden, Auckland
PO Box 10051, Dominion Road, Auckland 1446