



Supported Decision-Making publication

Submission by

Queensland Advocacy for Inclusion

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What do we do?

Queensland Advocacy for Inclusion (**QAI**) is an independent, community-based advocacy organisation and community legal service. We provide individual and systems advocacy for people with disability, including people with impaired decision-making ability.

Our Human Rights Advocacy Practice provides legal advocacy to people with disability subject to applications for guardianship and administration appointments before the Queensland Civil and Administrative Tribunal (**QCAT**). In this capacity, we act on instructions, or on appointment by QCAT as a separate representative for adults in circumstances where there is a recognised need for representation and we are unable to act on the client's instructions.

Our systems advocacy also focuses on substituted and supported decision-making and the right to equality before the law. We advocate for attitudinal, law and policy reform that removes barriers to the realisation of legal capacity for people with disability and implements the supported decision-making framework this requires.

Our vision and values – how does supported decision-making fit within our organisation?

QAI's vision is for inclusive communities where all people are equally valued and enjoy human rights. One of our core values is the self determination of people with disability. That is, the right of people with disability to be supported to make their own decisions, including decisions that other people disagree with.

The right to equality before the law is also critical to the deinstitutionalisation of people with disability, as articulated by the Committee on the Rights of Persons with Disabilities in recently published guidelines.¹ Deinstitutionalisation is an overarching theme of QAI's individual and systems advocacy and lies at the core of our organisational identity.

Supported decision-making in action

Our approach and frameworks

QAI has a number of internal policies that ensure we support active decision-making and individual choice for our clients. All staff receive regular training, including training on communicating effectively with a diverse client base and are encouraged to attend professional development opportunities that provide skills in facilitating the will and preferences of people with impaired decision-making capacity.

Our approach begins with a presumption of capacity and an exploration of the unique decision support needs of the person. We gain our understanding of a person's support needs by building a

¹ CRPD/C/5: Guidelines on deinstitutionalization, including in emergencies (2022)

respectful and professional relationship based upon trust. This understanding is often gained over time and, as such, we aim to avoid unnecessarily changing the advocate assigned to work with the client.

We use a range of strategies that are recognised to increase decision-making capacity. For example, we seek to understand the person's communication needs and assist them to receive information in accessible formats, including via relevant communication aids, interpreters and taking breaks as required. We also consider the decision-making history of the person, as well as any other expert or relevant information to the decision, such as its urgency, its sensitivity and/or whether the person is experiencing any personal issues that might impact their decision-making.

QAI takes care to ensure that the environment in which discussions with clients take place is optimal and best meets the person's support needs. The person is also given sufficient time to consider their options and is permitted to delay decision-making to seek further advice as necessary. We recognise the right of the person to change their mind and we check in again with the person after a decision has been made.

We also recognise the importance of maintaining and preserving informal supportive arrangements. QAI works collaboratively with a person's chosen informal supports in accordance with the person's wishes. This includes exploring whether the person is receiving decision-support from formal or paid support workers and liaising with them as appropriate.

In action

Case study – Tom*

Tom* lives alone in a small town in regional New South Wales. Tom recently gained access to the National Disability Insurance Scheme (**NDIS**) and sought advocacy from QAI's Decision Support Program for assistance to prepare for his first planning meeting. Tom lives with psychosocial disabilities and some physical conditions that impact his cognition and communication from time to time. Tom has limited informal support.

Tom and his advocate had face-to-face meetings at Tom's preferred location (his local community centre) prior to the planning meeting. This allowed Tom and his advocate to get to know each other and for his advocate to begin developing an understanding of Tom's goals and the kind of supports he may require from the NDIS to achieve them.

Following each meeting, the advocate provided Tom with written notes from their discussion. With Tom's consent, the advocate shared the written information with the planner ahead of the planning meeting, enabling the planner to better relate to and understand Tom and improving the efficiency of the meeting.

After receiving his first plan, Tom worked with his advocate to identify suitable service providers. As Tom lived in a small town, there were few registered NDIS providers available and Tom did not wish to engage the single registered service provider in his area that had capacity to take on new clients due to a previous incident involving the provider and someone known to Tom from his local community.

As a result, the advocate assisted Tom to explore the option of engaging independent contractors and the risks involved in this process. The advocate supported Tom to do this by:

- Providing up to date and accurate written information about the difference between registered and unregistered providers.
- Discussing the risks and advantages involved in engaging unregistered providers, as well as the differences between engaging providers as an independent contractor versus as an employer.
- Having multiple conversations to support Tom to develop and check his understanding of these concepts over time.
- Supporting Tom to enact his decision to engage his chosen unregistered provider.
- Providing Tom with information about his rights and discussing what he is entitled to expect from his service provider, including adherence to the NDIS Code of Conduct.

As a result of QAI's approach, Tom was able to engage successfully in his planning meeting. He received information in his chosen format to enhance his understanding and was able to meet with his advocate in a place where he felt comfortable. Both Tom and the planner were prepared for the meeting which led to more effective discussions. Consequently, Tom was able to receive NDIS funding which supported him to access community supports that facilitated his social and economic participation in the community. Tom engaged a provider of his choice and had his will and preferences with regards to his service provision upheld.

Case study – Sam*

Sam* is a young person living in a metropolitan area who, at the time of his engagement with QAI, was under the care of Child Safety. Sam has diagnoses of Autism Spectrum Disorder and Generalised Anxiety Disorder.

A couple of months before Sam's 18th birthday, Sam became the subject of a guardianship and administration application initiated by Child Safety, reportedly as part of their transition planning for Sam.

Sam contacted QAI's Young People's Program for assistance to navigate the QCAT process. Sam and his advocate had multiple conversations about the QCAT process, including discussing the roles of a guardian and administrator and explaining what Sam's rights were in the process. Sam often brought his support worker along to his advocacy appointments as Sam told his advocate that he found it helpful to talk to his support worker afterwards about what had been discussed.

Leading up to the QCAT hearing, Sam's advocate assisted Sam to access a budgeting course which helped demonstrate his ability to manage his finances independently. Despite Sam's success with the budgeting course, Sam became increasingly anxious about his upcoming QCAT hearing. Sam's advocate spent many hours with Sam preparing him for the hearing, including by holding a mock hearing so that Sam could practice delivering his statement and answering questions he might be asked by the QCAT member.

Sam's advocate attended the QCAT hearing with Sam and sat beside him to provide support and encouragement. Sam's advocate also assisted by clarifying the QCAT member's questions for Sam when required. This allowed Sam to remain calm and to participate more effectively throughout the hearing, which ultimately led to the QCAT member dismissing the application for both guardianship and administration appointments.

Throughout Sam's engagement with his advocate, Sam received tailored information to his decision-making needs and was assisted to access appropriate community support. Sam was also given sufficient time to understand complex concepts and has his preference for his support worker to be present, upheld. Consequently, Sam retained his legal capacity and his right to make his own decisions.

**Names have been changed to protect confidentiality.*