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.  

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.

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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.