

Supporting decision making

Under law, everyone, including people with an intellectual disability, are presumed to be able to make their own decisions, unless it is proven otherwise.

The existence of an intellectual disability does not mean individuals are not able to learn about their rights and responsibilities and make their own choices.

It is natural to want to protect adults with an intellectual disability from making poor decisions, but such protection, however well-intentioned, may put pressure on their right to personal autonomy. If appropriate and sensitive assistance is provided, an individual's ability to make their own decisions is improved.

A person-centred approach

A person-centred approach, means moving from a protective approach to encouraging the individual to become more independent.

An important part of this is the belief that the individual can be a participant in making choices that affect them. Disability aside, decision-making ability is an evolving process that has to be worked at, both by the individual and their support network.

The aim is to empower people to have control of decisions that affect them. The approach may vary according to the individual and the nature of the decision. Each situation should be treated independently and uniquely.

To enable informed decision making, people with intellectual disabilities must have all the information in ways they can understand. It is also important to have the information explained and to have the time needed to do this. Being able to make decisions is the basis of being able to speak up and control your own life.

Decision-making strategies

The following strategies are good ways to maximise a person's capability to make their own decisions:

- Identify all the information to be considered and understood, including all possible consequences of the decision.
- Provide information in a form appropriate to the person's disability and cultural background e.g. using pictures, plain language.
- Identify and describe the different options. Don't make it harder by adding unnecessary information or choices that may not be appropriate for that person.
- Present the information in stages that follow logically. Put each stage to the person and assess whether he or she understands each stage before adding more information.
- Allow the person plenty of time to take in and respond to each piece of information.
- Encourage questions and discussion.
- Things are often better explained by using pictures, examples and, better still, personal experience. Be creative! For example, the best way to explain going to hospital may be to visit or talk to another patient. To explain work options, a trial period at the workplace may be a good idea.
- Be aware of non-verbal messages you may be sending.
- Be careful not to ask questions in such a way that suggests an answer. For example, 'You're happier working here, aren't you?'
- To check whether the person has understood, go back over the information, ask the question in another way or have the person explain their decision to you. Be sure to reassure the person that you are checking this so that you are clear about their wishes and not because their previous answer was wrong.

There are ways to support disabled people while allowing as much autonomy as possible.

Having a team of people

One approach is to support the individual and their family with a team of people committed to ensuring that the disabled person has broad-based support. This is sometimes called family governance, support circles or circles of support.

Ideally, the team includes people who have similar values and beliefs, are strategic thinkers, are passionate and committed and have a strong personal philosophy towards full inclusion of all disabled people in the community.

They must also be prepared to make a long term commitment to the individual and their family.

Teams offer support to the individual and their family by providing additional skills and varying perspectives. Teams assist by discussing options, identifying consequences and providing support on decisions that need to be made. Issues may arise from time to time that require advocacy on behalf of the individual. In such instances a person from the team may act as the advocate.

Appointed person

Any person can request another person to act on their behalf on any particular matter and with any particular agency. The agency involved must respect the person's request and deal with the appointed person in a cooperative and meaningful way.

Examples of agencies where an appointed person can be useful are:

- Work and Income (W & I).
- Department of Inland Revenue (IRD).
- Workbridge.

It is important to remember that for a person to appoint another person to act on their behalf they must fully understand what that means. While there is an assumption that any person who makes any decision knows what the consequences of the decision are, it is still necessary to ensure that the person does in fact fully understand. If after utilising all decision making strategies and the person still does not understand what appointing another person to act means, then an appointment can not be said to have occurred.

For further advice about decision making and informed consent

Contact: IHC Advocacy on 0800 442 442

Family Court processes

The Protection of Personal and Property Rights Act 1988 provides a mechanism for the Family Court to make a decision about an issue or to appoint a person to act on behalf of another. See www.justice.govt.nz or your local Community Law Centre for advice on personal orders, welfare guardians, property managers or enduring powers of attorney.

International obligations

The United Nations Convention on the Rights of Persons with Disabilities (2007) was signed by New Zealand on 30 March 2007.

Article 12: Equal recognition before the law

This article relates to legal capacity and decision making. It states that parties to the convention must ensure that persons with disabilities:

- have the right to recognition as persons before the law
- enjoy legal capacity on an equal basis to others
- have access to support to exercise legal capacity
- have safeguards provided to prevent abuse
- have equal rights to own property, have control over their own finances and equal access to financial credit.

The full text of the convention is available at www.odi.govt.nz