

Submission

To	South Australian Law Reform Institute
Topic	Review of Supported Decision-Making in South Australia
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Acknowledgement of Country

Uniting Communities respects the enduring spiritual relationship First Nations people have with land and sea and the importance of this relationship to the wellbeing of First Nations people, including their languages and customs.

By seeking reconciliation and working in partnership with Aboriginal communities, Uniting Communities will move towards healing, justice, self-determination, and empowerment for Aboriginal people.

About Uniting Communities

We are an inclusive not-for-profit organisation working alongside more than 80,000 South Australians each year and have been creating positive change for South Australian communities for more than 120 years. We advocate for systems change across diverse social justice issues to shape public and social policy that delivers better outcomes for marginalised communities.

Across Uniting Communities more than 80 services and programs are being delivered to South Australians we highlight the services which are of specific relevance to the review's terms of reference below.

Chrysalis Forensic Mental Health Service

Chrysalis is a transitional accommodation and case management service for clients moving from adult mental health services (such as James Nash House) and inpatient wards into the community.

The aim of this 9-bedroom program is to support residents with sourcing long term accommodation, build independent living skills, support with maintaining good mental health and to make connections in their community.

All residents of the Chrysalis service:

- Live with a mental illness
- Have ongoing psychosocial support needs
- Display low risk behaviour
- Have no alternate safe housing options
- Are able to reside independently
- Are medically stable
- Have no acute care needs

Psychosocial disability services (NDIS)

We provide recovery support services for people experiencing long-term mental health issues who would like support to live the best life they can.

Services include:

- skills development
- help to participate in the community and in areas of interest
- feedback and coaching
- support with daily tasks.

Law Centre

We understand that dealing with the legal system can be confusing and daunting and staff in the Uniting Communities Law Centre assist people to work through these challenges. The qualified team provides support with information, advice, representation, referrals, or community legal education and these services are free.

Our Law Centre includes a specialised Elder Abuse Unit which provides legal and social work support to people over the age of 65 impacted by elder abuse. We also have a Disability Advocacy Service which helps clients to navigate the NDIS, understand their rights and resolve issues including through case management and representation.

Response to SALRI supported decision making

Uniting Communities welcomes the opportunity to provide input to the South Australian Law Reform Institute's (SALRI) review of Supported Decision-Making in South Australia.

A move towards supported instead of substitute decision making is crucial to a rights-based model of care and support.

We believe it is important that any frameworks for Supported Decision-Making are tailored to the various needs of consumers in our state due to the unique complexities between the different demographics (mental health, older people and disability). There may be some overlap within frameworks but there are additional considerations that must be made for mental health consumers and they may not be relevant to others living with a disability.

Consumers with severe mental health issues have' decision-making capacity that may fluctuate over time and with support. The recovery journey process requires a different approach to permanent impaired decision-making such as those with Dementia.

For this submission we have focused on mental health, drawing on the experiences of our mental health services. Uniting Communities also provided a [submission](#) to SALRI review of the *Mental Health Act 2009* and believe it is important to draw on this consultation when considering supported decision making in the mental health system.

Our Chrysalis service has experience supporting vulnerable people who have severe mental health issues that are navigating systems and legal processes such as Treatment Orders, Guardianship orders and SACAT hearings.

Unfortunately, the mental health system is primarily set up to favour substitute over supported decision-making. A variety of changes are required to support consumers to be a part of the decisions impacting their lives. This will ultimately lead to better health outcomes for consumers and reduce the impact on a system that is already exhausted.

Key recommendations (mental health)

1. Throughout every maintenance and administrative process in the mental health system (e.g. meeting with practitioner, SAPOL officer, psychiatrist and SACAT hearings) consumers have a legislative right to a peer support worker
2. That any legislative framework acknowledges cultural and language differences for consumers by ensuring information is provided in a culturally appropriate and accessible way (including with access to independent interpreters)
3. Regular reviews are conducted of legally enforceable orders (including Community Treatment Orders, Guardianship Orders and Aged Care Directives) to ensure that decisions remain relevant and reflective of the individual's current needs, decision making capacity and preferences. It is important that consumers are consulted with as part of the review (with the support of a peer support worker)
4. Consumers have a legislative right to independent free legal representation at SACAT hearings
5. Decision making capacity assessments are thorough and support the consumer to make the highest-level possible decisions for themselves

Additional comments

The importance of a Peer Support Worker

A peer support worker can play a vital role in ensuring consumers have informed consent throughout maintenance and administrative processes in the mental health system. A peer support worker can provide vital education and support to consumers to ensure they are well informed, their voice is adequately represented in decisions, and they understand the implications of decisions made on their behalf. A peer support worker also provides a unique type of support as they are able to demonstrate empathy and provide relatable guidance that assists in empowering the consumer to make decisions.

Growing research is highlighting the benefits of peer support workers within the mental health system. [Australia's National Mental Health Commission](#) and the [World Health Organization \(WHO\)](#) underscores the value of peer-led support in enhancing the quality of care for individuals with mental health conditions.

Often consumers who are experiencing severe mental health issues are having to navigate the system without external support. This includes SACAT hearings, reviews of orders, meetings with psychiatrists and police where decisions are being made for the consumer without the consumers input or informed consent. There are many cases where a vulnerable person in these circumstances lacks the understanding about their rights, the processes and importantly, the decisions being made for them including the consequences of those decisions. This creates a significant power imbalance. It is unrealistic to expect consumers in these circumstances to understand complicated legislation and processes given they may also be experiencing severe mental health challenges, including trauma. Coupled with the fear that many consumers experience about the process (and sometimes legislation itself) this can make it challenging for practitioners to communicate with the consumer as it can be hard for them to articulate their decisions and concerns.

A peer support worker is independent and acts transparently as they only provide support to the consumer when others are present (e.g. during discussions with psychiatrist and police), aiding in the process rather than making decisions on behalf of the consumer, reducing any danger of undue influence.

Staff at Chrysalis have witnessed a noticeable difference in consumers when this type of support has been provided whereby the consumer reports feeling well-informed about the decisions that were made, as well as supported to contribute to those decisions, as opposed to leaving confused and distressed.

Cultural and language differences

There is a need for all legislation and associated policy and practice to acknowledge and understand cultural and language differences for consumers in the mental health system. When decisions are being made e.g. for treatment orders and guardianship orders many consumers do not have access to information on the orders, and their rights in their own language. As a result, consumers do not understand what their rights are or what they are agreeing to, forfeiting any prospect of shared decision making. This also means that decisions are being made based on third party information instead of engaging directly with the consumer to assist in supported decision-making. This makes consumers who are Culturally or Linguistically Diverse or an Aboriginal or Torres Strait Islander particularly vulnerable to substitute decision making practices. Unfortunately, we have seen this occur to far too many consumers in our community.

An independent interpreter, who is not necessarily a family member (as in some cases family members

can take advantage of consumer relatives) is required so the consumer has an opportunity to understand and speak for themselves. Interpreters must declare a conflict of interest if they are known to the consumer or their immediate family.

Reviewing of orders

To reduce the number of consumers within substitute decision making practices it is important that regular reviews are mandated of CTOs, guardianship orders, and ACDs, to ensure that decisions remain relevant and reflective of the individual's current decision-making capacity, needs and preferences. Without regular re-assessment, individuals are at risk of experiencing administrative abuse, where decisions made during periods of crisis continue to govern their lives without taking into account changes in their condition or preferences.

It is essential that treatment orders are reviewed on a regular basis as the consumer's situation and their decision-making capacity, can change rapidly. Regular reviews, and subsequent revocation or variation of orders, may reduce the number of consumers on orders for longer than required and provide opportunities for consumers to transition to less restrictive approaches.

Often decisions are being made during a time that the consumer is in crisis, which will significantly influence the consumer's ability to make decisions. Although we acknowledge some circumstances will require immediate action for the safety of the consumer (and others), this does not mean that the decision cannot be reviewed regularly to ensure it is still relevant instead of waiting until the end of the order (e.g. There is a 12-month order but consumer has improved capacity and mental health after 6 months).

The system currently relies on consumers to request a review. Often consumers do not understand that they can request a review or are fearful of doing so. When some reviews are conducted, they are done without consulting with the consumer, or with the consumer but without appropriate support (such as a peer support worker) to ensure the consumers voice is adequately represented. For example, the psychiatrist is doing an assessment without personally engaging with the consumer, making the decision based on third-party information instead of collaborating with the consumer.

In Aged Care residential facilities, they must conduct regular reviews for all cases of restrictive practices. Given the nature of decisions being made about consumers (which have significant impacts on consumers) the same oversight should be given to decisions for consumers in the mental health sector.

Currently SACAT is not resourced to conduct regular reviews and if given this responsibility, SACAT would need to establish a specific mental health stream with the capacity, resourcing and expertise to undertake this function. The *Mental Health Act 2009* (MHA) should be amended to provide resourcing for this function. More staff resourcing will be needed to respond to the additional reviews.

Legal representation

We are concerned about the absence of free legal representation for consumers in the first instance or primary proceedings of the SACAT hearings. We believe that the present legal representation scheme should be extended to consumers in all proceedings (or a new advocacy service is created) under the MHA in the SACAT. The current scheme creates serious challenges for consumers during SACAT hearings. The Tribunal process can be difficult to navigate for consumers generally, but for a person with a severe mental health issue this can be extremely difficult or impossible to understand, creating unrealistic and unfair expectations for the consumer.

Capacity assessments

There is an opportunity to improve how decision-making capacity assessments are conducted and managed. Currently the accuracy of these assessments can vary. Sometimes these assessments are rushed, therefore, it is possible for the assessment to be inaccurate about the person's decision-making capacity.

Where reasonable, a capacity assessment should be thorough and support the consumer to make the highest-level possible decisions for themselves. To achieve this, a standard capacity assessment guideline should be developed alongside a requirement to provide a written copy of all capacity assessments. This guideline would provide clarity on how an assessment of capacity should be made and ensure consistent criterion is applied. Providing a written copy of assessments will clarify the reasons behind the decision and will ensure accountability and oversight.

Conclusion

Uniting Communities welcomes the opportunity to provide input to the SALRI review of Supported Decision-Making in South Australia.

We believe these recommendations would improve supported decision-making practices within the mental health system and create a significant positive impact on the lives of consumers experiencing severe mental health issues in South Australia. We look forward to further consultation by SALRI in progressing any recommendations for this review.