

106_org_Capricorn Community Deveopment Association Inc.

Name of organisation: Capricorn Community Deveopment Association Inc.

Proposal 2–1:

Article 12 seems to codify that all people are equal, including equality before the law.

Proposal 3–1:

Yes, subject to consideration of comments made.

Proposal 3–2 National Decision-Making Principle 1:

Yes, provided they are of capacity and risk is assessed as low likelihood or low impact and managed accordingly.

Proposal 3–3 National Decision-Making Principle 2:

Supports should only be provided by people who have a respectful and trusting relationship with the person with a disability.

Assisted decision making is a process where advice and suggestions make it possible for people to make a decision, and take ownership and responsibility, where they are not sufficiently knowlegable or competent to make this decision by themselves. It is a process normally practiced in community where people take ownership and responsibility over decisions based on advice by their mechanic, or doctor, butcher, baker or candstick maker.

Proposal 3–4 Support Guidelines:

Relationships must be equal, trusting and respectful, not be controlling or patronising rather than facilitating. Without this evironment of trust decisions may become tokenistic and there is a danger of intimidation, and conflict of interest.

Proposal 3–5 National Decision-Making Principle 3:

Having choices, real choices, gives people with disabilities ownership over their lives which up till now has been denied them.

Proposal 3–6 Will, Preferences and Rights Guidelines:

The rules for appointed representatives are to be exactly the same as for the volunteers, friends, family and carers: see 3.3

Proposal 3–7 Representative Decision-Making Guidelines:

This is a very long winded way of rephrasing the response in 3.3

Proposal 3–8 National Decision-Making Principle 4:

Yes

Proposal 3–9 Safeguards Guidelines:

A critical issue is that there is recognition of risk and that risk is managed through formal and informal processes. Innovation relies on accepting risk and the cost of innovation is occasional failure. Failure should not be punished, but be a key to a learning process: What happened? Why did it happen? How can we contain the damage? How can we prevent it from happening again?

Proposal 4–1:

Yes, subject to considerations of comments made in this section

Question 4–1:

As indicated in 3.3 assisted decision making is in common use in the community. It is debatable if another protective system should be required in addition to existing safe guards.

Question 4–2:

All the terms in present use denote inequality. If a trusting and respectful relationship has been established 'friend' seems to be the most appropriate term. Personal and professional relationships can co-exist without conflict of interest, provided certain boundaries are observed.

Proposal 4–2:

Yes

Proposal 4–3:

Two provisions:

1] The relationship is respectful, trusting and credible.

2] Where a person of reduced capacity is involved tokenism becomes a real risk which may lead to decisions not in the best interest of the person, and conflict of interest.

Proposal 4–4:

Yes, provided the person is involved in all these matters to the maximum of his capacity, but not beyond as this leads to tokenism.

Proposal 4–5:

Yes

Question 4–3:

No. The selection of the supporter should also be focused on the potential of developing a personal relationship.

Question 4–4:

The integrity of the selection system is the biggest safeguard. It should involve the person with a disability, family, and other stakeholders. Regular informal meetings of supporters and stakeholders are most useful to keep the system honest, are helpful in resolving difficulties, planning, and celebrating successes.

Proposal 4–6:

Yes, provided its application is appropriate and decided on a case by case basis, and subject to regular review.

Question 4–5:

In Queensland the Adult Guardian and Office of the Trustee have a role to play in this.

Proposal 4–7:

see 4.3 and 4.4

Proposal 4–8:

see 4.3 and 4.4

Proposal 4–9:

Yes

Question 4–6:

In a respectful and collaborative, non controlling manner

Proposal 4–10:

Yes

Proposal 4–11:

Yes

Proposal 4–12:

Yes

Proposal 5–1:

Yes

Proposal 5–2:

Yes provided it is also consistent with the Productivity Commission's report on Disability Care and Support.

Proposal 5–3:

See 5.2

Question 5–1:

see 5.2

Question 5–2:

Persons with a disability should be able to choose between the two options.

Proposal 6–1:

Yes

Proposal 6–2:

Yes

Proposal 6–3:

Yes

Proposal 6–4:

Yes

Proposal 6–5:

Tokenism and conflict of interest are risks

Proposal 7–1:

In cases of misuse of power where the person with a disability is the vulnerable party, his safety, and protection from further neglect and abuse should be the most critical priority, determining guilt secondary.

Power differential between the parties distorts the balance, and tends to favour the more powerful. Also, the higher the standard of evidence required, the higher the chance of the guilty party being found not guilty. This disadvantages the vulnerable party. To address this imbalance a case may be made to adjust the standard of

evidence to be proportional to the power differential between the parties.

This is a valid adjustment in both criminal and common law cases.

Proposal 7-2:

see 7.1

Both criminal and common law proceedings should be conducted in an environment that is non-threatening to the person with a disability. It also should be conducted as much as possible in a collaborative rather than adversarial manner. This would be contrary to present practice where winning appears to be more important than arriving at the right outcome.

Question 7-1:

Yes

Proposal 7-3:

With people with disabilities, particularly with mental issues and intellectual impairment, the value of punishment must not be over-rated. Programmes that will rehabilitate the person in a non-threatening environment have proved to be more effective in reducing reoffending.

This approach may positively address the over-representation of people with disabilities in the penal system.

Proposal 7-4:

Yes. As remarked before the relationship between the parties is important.

As observed in 7.3 the process needs to be similar to a mediation process as practiced in the family justice system. Harassment and intimidation do not necessarily uncover the truth but can inflict serious psychological and emotional damage.

Proposal 7-5:

When uncertain the answer should be yes, belts and braces to avoid a miscarriage of justice

Proposal 7-6:

The rules that apply to the 'assisted decision' making, as described in 3.3, should apply.

Proposal 7-7:

Yes

Question 7-2:

Yes. Not to do so would put the person with a disability at a distinct disadvantage.

Proposal 7-8:

Yes.

Proposal 7-9:

Yes, Again it is a small step in leveling the playing field.

Proposal 7-10:

Yes. see 7.9

Proposal 7-11:

Yes. Education is a wonderful thing!

Question 7-3:

Where a person's capacity is insufficient to give considered consent this responsibility should be delegated to the person's guardian. This may be an appointed person, or an informal, natural guardian like a parent or other close family member.

Proposal 7-12:

Yes, however it is important that the person can cope with the psychological and emotional impact of the process This particularly concerns people with mental issues and those itellectually impaired.

Proposal 7-13:

First the person needs to be briefed so he can make a considered decsion if he wants to be a juror. If yes, then this person should be involved in making decisions about support.

Proposal 7-14:

Yes, but subject to dscussion with the person with a disability.

Proposal 7-15:

The rules of accuracy, impartiality and confidentiality that apply to interpreters should apply

Proposal 8-1:

Yes

Proposal 9–1:

Saying the same thing with different words. Incapacity in this case should not be assumed. It should be tested in an informal process.

Proposal 9–2:

The tip of an iceberg of people of 'sound' mind who also don't understand the issues described.

Proposal 9–3:

No. Voters take advice from all sorts of people before they cast their vote.

Proposal 9–4:

It needs to be based on an assessment rather than an opinion.

Question 9–1:

Yes

Proposal 9–5:

No. It is discriminating and may cause distress. Also it is not useful except as a statistic which by its nature omits personal details,

Proposal 9–6:

Yes Its main application will be with people who have mobility issues who may not necessarily be disabled in other ways.

Question 9–2:

Proposal 9–7:

Yes

Proposal 10–1:

Presumably all states and territories have systems in place. Tidying them up and creating a national system will be useful, and in line with the NDIS which is also national

Question 11–1:

It will be more useful if the law relating to financial planners, that they must always act in the interest of their clients, was included in consumer protection legislation.

Question 11–2:

Proposal 11–1:

Yes

Question 11-3:

Question 11-4:

Proposal 11-2:

Yes, if based on an assessment, rather than an opinion

Other comments?:

Many things have changed over the years in the world of disability. What has not changed is that people with disabilities have ever been able to own their own lives. They have had things done for them, at them and to them but only rarely with them.

The Productivity Commission report and NDIS are initiating a major paradigm shift, in which people with disabilities will be equal citizens, rather than mere spectators in their own lives.

Research, empirical and anecdotal evidence demonstrate that community attitudes are a bigger barrier to acceptance than the actual disability. Hence changing community attitude from stigma to welcoming will require a long, slow process.

The legal system protects and promotes shared community values. In this case it should not just respond to legal issues affecting people with disabilities, but also be their champion in promoting and supporting community attitude and perception.

File 1:

File 2: