

30th June 2014



The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

To whom it may concern,

Thank you for the opportunity to respond to *the Equality, Capacity and Disability in Commonwealth laws Discussion paper*.

We have made comment as it relates to our area of expertise and interest.

We believe the Discussion Paper provides a comprehensive and valuable contribution to progressing the rights of people with disability to make their own decisions and be appropriately supported to do so.

The development of National Decision Making Principles will inform a framework for laws, policies and procedures that can have an influence at both Commonwealth and State levels.

It is hoped that this framework will support State and Territory Governments to review laws and policies to make them consistent with these principles and we would certainly encourage the ALRC to provide guidance and strong encouragement to the NSW Government in particular to replicate the work undertaken by the ALRC.

Our comments are as follows:

1. We support the statement that an assessment of mental capacity is not an assessment of legal capacity for the reasons given in the Discussion Paper. We also support a change in language from 'capacity' to 'ability'. Therefore, in response to Q11-2, we agree that the Marriage Act 1961 (Cth) be amended to provide that, instead of a test of mental incapacity being applied, there is consideration around a person's ability to make a decision in relation to that marriage.

If this approach is accepted in Commonwealth laws we advocate that associated State laws be reviewed accordingly.

2. The model includes provision for Supporters and Representatives and demonstrates a step toward people with disability having more control (agency) in their lives. While it is understood that the ALRC does not want to be overly prescriptive in describing aspects of these functions, we would recommend that the Supporter Guidelines [Proposal 3-4] are strengthened. These are significant roles in the decision making process decision that can potentially be misunderstood or abused (intentionally or unintentionally).

For example in our area of work around reproductive and sexual health, it can often be the case that parents or paid staff bring their own values and views to decisions around sexuality and relationships.

We believe the guidelines could be strengthened to include mention of resources and tools to assist supported decision making. Family Planning NSW has developed a range of resources in Easy English and with easy to understand illustrations to assist a person with disability in the decision making process. These resources have been developed so they can also be utilised by the Supporter. We are also completing a decision making tool for clinicians around reproductive and sexual health issues such as cervical cancer screening, STI testing and contraception.

It is important alternative strategies for communication are used to build the ability of the person to make a decision including the provision of information in appropriate formats and seeking education where available. For instance, Family Planning NSW provides education and training to parents and carers and to disability workers and teachers to assist them around reproductive and sexual health issues and better understanding issues such as consent and decision making.

The guidelines described for a Representative [Proposal 3-7] would apply equally to a Supporter.

3. The requirement that a person with disability continues to be assisted to build their ability to make a decision is very important and we support the recommendation for guidance and training of not just people with disability but also Supporters and Representatives.
4. We support proposal 5-1 that the NDIS Act should be amended to be consistent with the National Decision Making Principles. In particular we support proposals 5-2 and 5-3 that amendments include Supporter provisions and Representative provisions consistent with the Commonwealth decision making model.

Again, we congratulate the ALRC on this important piece of work however we believe it is imperative that this work flows through to State and Territory Government, given the importance of State law in the issues identified by the ALRC.

For further information, please contact Jodi McKay, Director Communications, Government and Community Affairs on jodim@fpnsw.gov.au or 0287524356.

Yours sincerely



Ann Brassil
CEO