



Review of Supported Decision-Making in South Australia

Fact Sheet 6 – Microboards

What is a Microboard?

A microboard is an incorporated association¹ set up to support and care for a person with decision-making support needs.² A microboard is comprised of a small group of people who are usually the friends and family of the person with decision-making support needs.³ It is different to ‘circles of support’ which, though valuable, are informal structures that are not incorporated and are limited in what they can do.

Microboards facilitate supported decision-making, rather than substituted decision-making, meaning the person with decision-making support needs retains their autonomy and has an active role in making decisions that affect their care and wellbeing.

Microboards are designed to be flexible and can be adapted or tailored to suit the particular needs of the person with decision-making support needs. They are a collaborative and community-driven form of decision-making which benefit from incorporation (including having legal personality).⁴ A microboard may make decisions relating to the health, lifestyle or finances of the individual with decision-making support needs. The collaborative nature of a microboard means that no one person is responsible for making decisions or keeping records, like a sole donee (of an Enduring Power of Attorney), substitute decision-maker (of an Advance Care Directive), guardian or administrator may have to.

Current Issues

Microboards originated in Canada and are now emerging in Australia in response to concerns with other options.⁵ There is currently no specific law that applies to, or even contemplates the existence of, microboards in Australia. It is awkward to establish and operate a microboard through current South Australian laws, although the *Associations Incorporation Act 1985* (SA) has recently been used to incorporate a microboard in South Australia.⁶ There is also no specific agency to regulate microboards, meaning there is no specialist oversight and no clear, uniform method of dispute resolution, should it be needed. As such, an effective supportive legal framework is required to facilitate the incorporation of microboards and ensure they are appropriately used.

SALRI welcomes views on the role and utility of a microboard to provide support for someone with decision-making support needs. One issue is a microboard may have value for someone in receipt of NDIS funding, but the intersection of the NDIS and microboards is presently unclear.

SALRI additionally welcomes views on the utility of any other alternative formal or informal structures. One common example of an informal structure is known as a ‘circle of support’, which considers the need to promote autonomy, accessibility, inclusivity and flexibility. Such a model may be suitable for an individual with decision-making support needs who does not require the

¹ See Fact Sheet 5 for further information on incorporated associations.

² Lukas Price et al, ‘Better Together: Microboards and Supported Decision-Making in South Australia’ (2022) 43(1) *Adelaide Law Review* 131, 131.

³ *Ibid.*

⁴ *Ibid.*, 137 citing Leighton Jay and Michael Schaper, ‘Microboards: What Are They and How Do They Work?’ (2012) 26(4) *Training and Management Development Methods* 4.05.

⁵ Sylvia Villios et al, *Valuable Instrument or the Single Most Abused Legal Document in our Judicial System? A Review of the Role and Operation of Powers of Attorney in South Australia* (Report No 15, December 2020, SALRI) 405 [10.1.1]–[10.1.2].

⁶ *Sands v Commissioner for Corporate Affairs* [2021] SACAT 103.



formality of a microboard or who simply does not want to create a formal microboard but still wants to be helped by their networks to make decisions and achieve their goals. Technology may also be of assistance to people with decision-making support needs.

Consultation Questions

1. What are the key advantages and disadvantages of microboards in promoting supported decision-making for people with supported decision-making needs?
2. How should legislation relating to microboards deal with:
 - a. Powers of microboards and their members;
 - b. Management of internal affairs (including the committee, management, disqualified persons, duties of officers/board members, records);
 - c. Transactions;
 - d. Disputes; or
 - e. Any other matters.
3. What challenges might arise with the use of microboards for supported decision-making? How can we address these challenges to improve the effectiveness of microboards for individuals needing decision-making support?
4. How do you see microboards interacting with the NDIS? What are the implications of this?
5. Who should be able to be appointed to a microboard? Should people be financially compensated for sitting on microboards and, if so, where should these payments come from?
6. How can a microboard better incorporate checks and balances to prevent potential abuses of power?
7. How can issues of capacity be dealt with in a microboard (for example, fluctuating capacity, decision-specific capacity, activation of microboard, assessment of capacity)?
8. From your experience, are there specific models or approaches to supported decision-making (other than microboards) that have shown promise in enhancing the autonomy and decision-making capacity of individuals with supported decision-making needs?
9. How can the legal framework be designed to accommodate a variety of alternative options for supported decision-making, ensuring that individuals have the flexibility to choose the approach that best aligns with their needs and preferences?
10. Is there anything else incidental that you would like to share with SALRI?

SALRI's consultation process will open in July 2024 and close on 30 September 2024.

Please note: SALRI does not, and cannot, provide legal advice to individuals. If you are in need of legal advice, we encourage you to speak to a lawyer and/or contact a community legal service.

