



# The Assisted Decision- Making (Capacity) Act 2015

Reflections, Challenges and  
Opportunities

**Session 1:**

**The story so far- reflections and critical analysis**

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# STOCK TAKE

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## KEY QUESTIONS

1. What has happened?
2. Where are the gaps?
3. What needs to change?





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*Number 64 of 2015*

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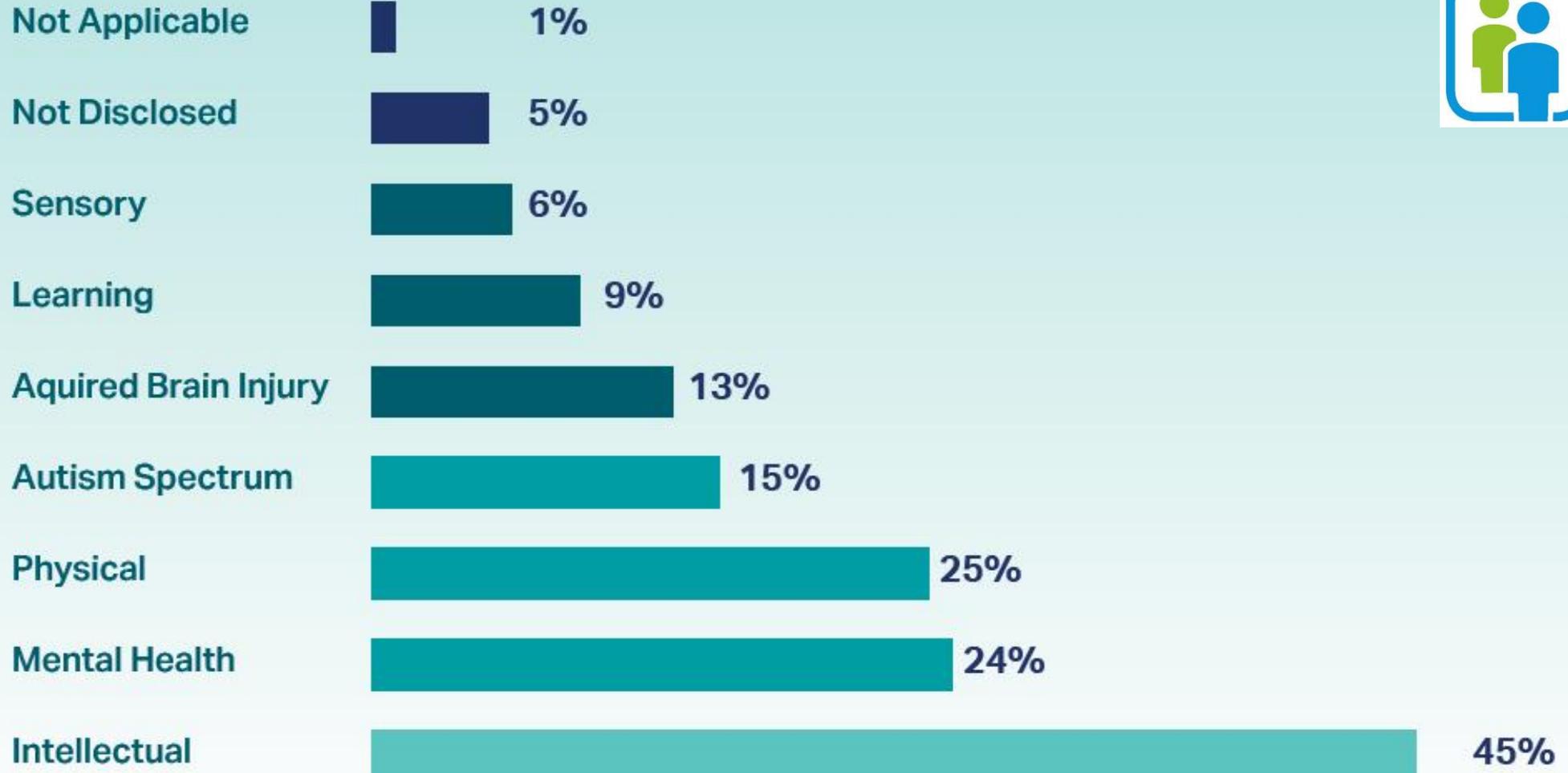
**Assisted Decision-Making (Capacity) Act 2015**

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**ADVOCACY  
LENS**



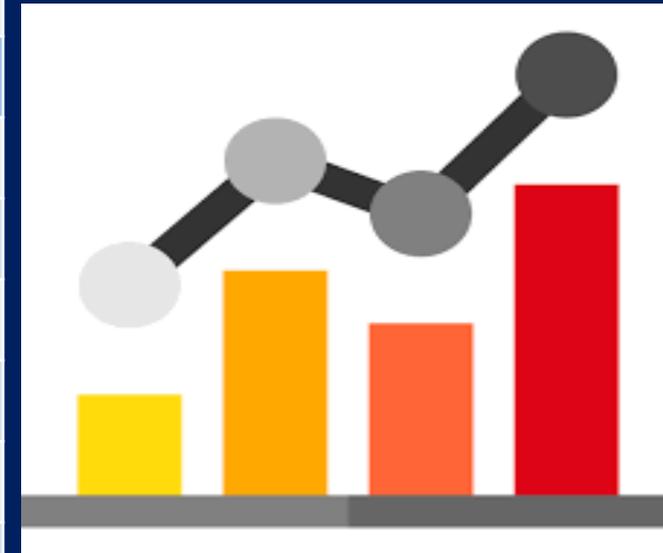
# THOSE SUPPORTED BY THE NATIONAL ADVOCACY SERVICE



# 1. WHAT HAS HAPPENED?

## NAS ADM STATS\*

26/04/2023 – 25/11/2024	Active Advocacy Cases
Total Overall Advocacy Active Cases since ADM Commencement	2327
Of which is ADM work	23%
<b>SOME CATEGORIES</b>	
<b>EXPRESSION OF WILL &amp; PREFERENCE</b>	<b>383</b>
Decision Making Representative	66
Assessments of Capacity	48
Decision Making Agreements	28
Advance Healthcare Directives	25
Co Decision Making	16
Enduring Power of Attorneys	11
Wards of Court	53
Deprivation of Liberty issues	19



## Key Question to ask in taking stock

**ARE PEOPLE MORE EMPOWERED OR DISEMPOWERED?**



# GUIDING PRINCIPLES

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## GUIDING PRINCIPLES

1. PRESUME CAPACITY
2. SUPPORT DECISION MAKING
3. RIGHT TO MAKE AN UNWISE DECISION
4. INTERVENE ONLY WHERE NECESSARY
5. LEAST RESTRICTIVE INTERVENTION THAT RESPECTS RIGHTS OF PERSON
6. INTERVENTIONS GIVE EFFECT TO WILL AND PREFERENCE
7. CONSIDER VIEWS OF OTHERS
8. CONSIDER LIKELIHOOD OF RECOVERY/URGENCY OF DECISION
9. OBTAIN AND USE ONLY RELEVANT INFORMATION

# What is going well?

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- Training
  - resources/Information/Webinars/newsletters
- ADM Leads/Mentoring programme
- Presumption of Capacity as a vehicle for change
- Flexible facilitation of person to engage in court
- Voice of person – Court
- Good examples of Court operating in line with guiding principles and ensuring proportionality
- Move away from Best Interests to Will and Preference
- Code for Independent Advocates

# WHERE ARE THE GAPS?

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- Proportionality – rush to the most restrictive options
- Thinking everyone needs a formal decision-making arrangement!
- Capacity Hunting continues!
- Misunderstanding of the role of Independent Advocacy
- Inadequate resourcing of Independent Advocacy
- Advocacy Referrals coming too late in the process/Rubberstamping
- Lack of due process/breach of procedures for the relevant person (legal aid access/unaware of applications).
- Voice of Person getting lost in many cases – poor effort to establish will and preference meaningfully.
- Skills of supporting decision-making needs attention (especially for those who communicate differently)
- Capacity Assessments – are they all functional? Training? Out of date? Independent of conflict of interest?
- Greater understanding of the Act required in general

# Role of Independent Advocate in Court Proceedings

*Part 50 of Act: (1) In considering any application under this Part for a declaration, order or review, the court shall have all such powers as are necessary to assist it in making a decision. (c) reports from healthcare professionals, or other relevant experts, relating to the relevant person.*



## Concern

### Fundamental principles of Independent Advocacy:

- Structural independence from other services
- Person Led and Directed



## NAS CODE OF PRACTICE

*Standard 1.1: Independent, representative and empowerment advocacy is led and guided by the will, preferences and rights of the people who use the service*

*a) work exclusively for the person using the advocacy service – supporting them and their wishes, respecting their confidentiality and sharing all relevant information with them.*

*b) share only that information that is relevant to the advocacy issue(s) with relevant and appropriate third parties and with the consent of the person, where possible.*

*c) are not influenced or compromised in carrying out their independent, empowerment or representative advocacy role by any other party.*



# WHAT NEEDS TO CHANGE?

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*shift* **FOCUS**

- Guiding Principles are key
- Get focus **on Assisting** and **off (capacity)!**
- It is about supporting people to exercise their autonomy and participate in decision making to the greatest extent possible
- Focus should not be predominantly on formal arrangements
- Empowering approach V protective approach
- More Planning Ahead!

# SUBSTITUTE DECISION MAKING IN DISGUISE?



IT AIN'T WHAT  
YOU DO IT'S  
THE WAY THAT  
YOU DO IT

# ADEQUATE RESOURCING



- **Further resourcing of advocacy**  
*'Article 12.3 of the Convention provides that persons with disabilities are to have access to the supports they require for the exercise of their legal capacity. These supports are to respect the rights, will and preferences of the person.'*
- **Further Resources for Court?**

# WARDS OF COURT

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- ❑ SLOW PACE OF DISCHARGE
- ❑ STRATEGY TO PROGRESS
- ❑ INFORMATION FOR PEOPLE
- ❑ INFORMATION FOR COMMITTEES TO DISPEL FEARS



# Other relevant law and reform required

- Protection of Liberty Safeguards Legislation
- Reform Mental Health Act (2001)
- Reform Disability Act (2005)
- Review of legislation underpinning provision of NAS (Comhairle Act (2000)/Citizens Info Act 2007)

