

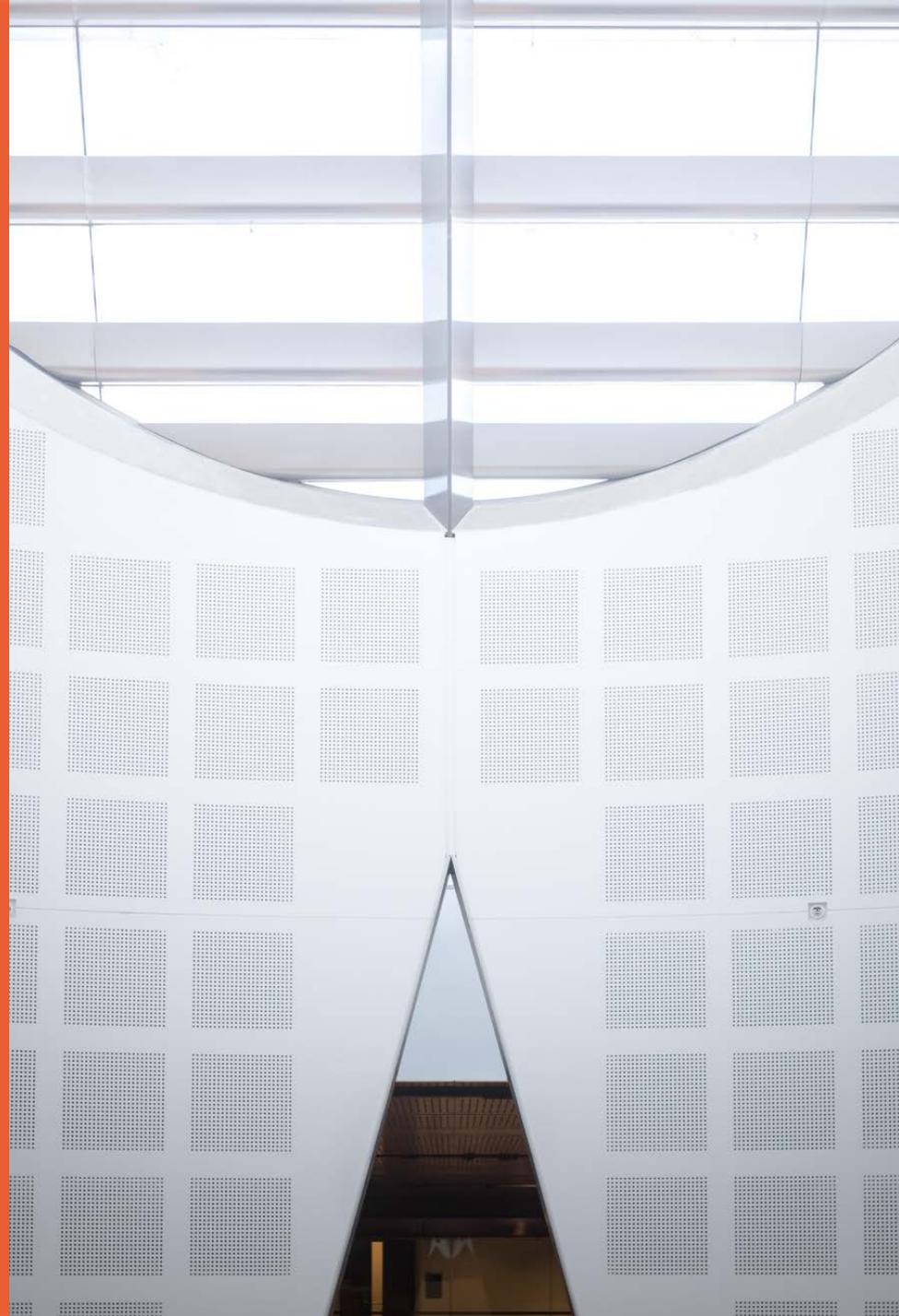
Participation of people with decision-making disabilities in decision-making processes

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What 'is' participation?

- Is participation just a 'good process' or does it involve a form of 'support' (token or authentic) or even 'interpretation'?
- Let's think about the nominee provisions in Social Security (Centrelink), especially the more popular correspondence power already closest to CRPD 'supported-decision-making' (a channel for *communication* not substituted decisions).
 1. Gold standard if good 'appointment and monitor' *process* (ie USA model in place of deficient Centrelink?);
 2. Gold standard if processes add a designated 'supporter' (eg akin to Br Columbia with its 'supporter' + 'supporter's monitor'?)
 3. Gold standard only if *authentic representation* of will of person?
 4. Gold standard only if *authentic interpretation* of will of person?

A social security example

- Disability pensioner (cognitively impaired) has steady part-time casual employment; income-tested rate therefore fluctuates;
- Usually Agency ('Centrelink') institutes fortnightly reporting. Otherwise 14 days to report 'changes of circumstances'.
- ***Centrelink writes to person (and their corro nominee 'supporter') that fortnightly reporting 'no longer required', reminding of 14 day reporting rule 'should circumstances (including earnings) change', but overlooking 'nil' earnings mistakenly entered on computer in place of (substantial) actual earnings.***
- *Data-matching picks up problem 18-24 months later.*
- **Result?**

\$30,000 debt consequence OK?

- Not sole error or 'special circs' allowing debt waiver under Australian social security law;
- A frequent problem due to lack of due diligence, training, monitoring of 'representatives';
- How can this risk be mitigated (ALRC switch of current representative/nominees→'supporter') because lacking sufficient **protections**?
- So where lies 'participation' in either the original Centrelink nominee appointment or in hearing of debt appeal?

What is 'support' in Tribunals?

- Support 'for' decision-making rather than a 'supported decision'?
- Metaphors of:
 - Standing in front of (instructed advocate)
 - Standing beside (accompanying person?)
 - Standing behind (welfare rights 'pre-hearing prep' or accompanying passive 'resource' person?)
 - The person with decision-making difficulty.
- Where do inquisitorial tribunal's and participation 'support' stand?
 - Alone
 - Hard pressed for time
 - **Responsible**

CONCLUSION

- Participation is always the decision-maker's responsibility, solely so if alone;
- Participation is not a cookie-cutter 'process' but a substantive outcome;
- Participation requires pro-active — active, flexible and adaptive, and empathatic — engagement by decision-makers
- So achieving adequate participation can (and should) involve being satisfied that there is real participation as distinct from its appearance; and
- That raises many as yet not fully resolved issues about the meaning of 'will' of 'preferences' and of 'rights'

Selected references

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