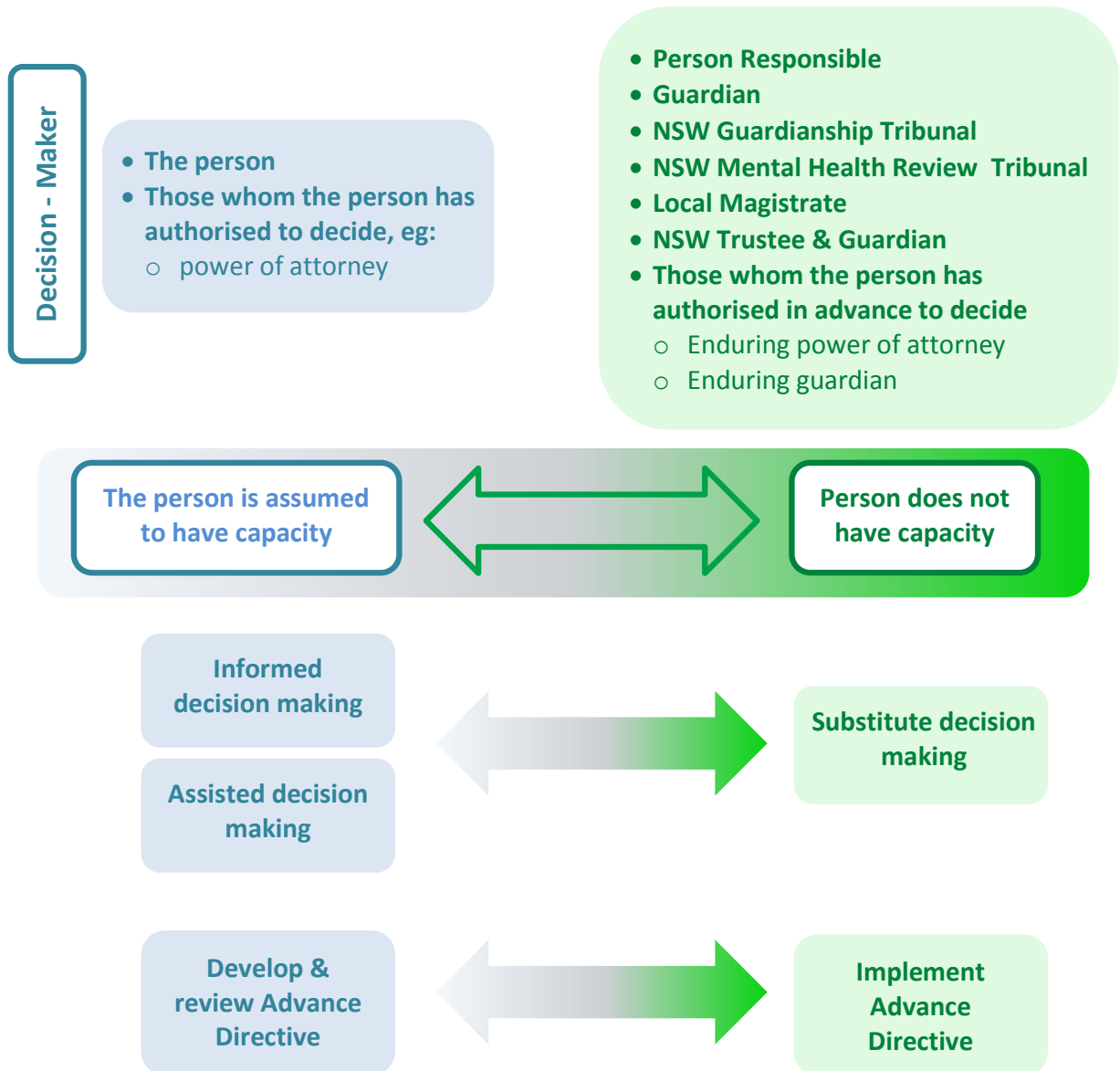


Decision Making Capacity Continuum¹



¹ Hughes, K. (2011). *Decision Making Capacity Continuum*.

Glossary²:

Capacity describes a person's ability to make his/her own decisions.

Informed decision making occurs when a person with decision-making capacity makes a decision after gathering and considering relevant facts.

Assisted decision-making occurs when someone the person trusts helps them in the decision-making process, even though the person has decision-making capacity.

Substitute decision-making occurs when decisions are made on another person's behalf by an individual or body who has been given legal power to do so.

The Mental Health Review Tribunal and local magistrate have authority to make a Community Treatment Order - the compulsory care and treatment (usually including the regular administration of medication) of a person with mental illness living in the community.

A guardian is someone legally appointed to make decisions for a person who lacks capacity. In NSW, a private guardian is a family member or friend appointed as a person's guardian by the Guardianship Tribunal. The Public Guardian may be appointed if there is no-one else suitable.

A guardianship order is made by the Guardianship Tribunal that spells out the guardian's authority (what decisions the guardian can make on a person's behalf) and for how long they are appointed as the person's guardian.

The Guardianship Tribunal makes guardianship and financial management orders, and may decide whether or not someone can have a medical or dental procedure. The financial management role is conducted by the NSW Trustee and Guardian (until recently carried out by the Protective Commissioner).

An advance directive is a document which expresses the wishes of someone who experiences mental and/or physical illness about the type of support and treatment to be provided if they become unwell.

People can appoint an enduring guardian at a time when they have capacity (fearing that they may lose capacity at some time in the future). An enduring guardian has the same legal authority as guardians appointed by the Guardianship Tribunal, but cannot make financial decisions.

A Power of Attorney is a legal document in which a person appoints someone or a trustee organisation to make financial or legal decisions on his/her behalf. An Enduring Power of Attorney continues after the person has lost capacity to make these decisions. The person appointed to make these decisions is called the 'Attorney'.

² FROM Mental Health Coordinating Council NSW Inc & the Public Interest Advocacy Centre Ltd. (2011). *The NSW Mental Health Rights Manual: A Consumer Guide to the Legal and Human Rights of People with Mental Illness in NSW (3rd edition)*. <http://mhrc.mhcc.org.au/home/default.aspx> . Accessed 18th May 2011.