

Supported decision-making in NSW

Submission to the NSW Committee on Ageing
and Disability

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Australian Human Rights Commission www.humanrights.gov.au

ABN 47 996 232 602

Level 3, 175 Pitt Street, Sydney NSW 2000

GPO Box 5218 Sydney NSW 2001

For general enquiries, call us on 1300 369 711.

For complaints, call us on 1300 656 419.

For TTY, call 1800 620 241.

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Overview

1. Equal recognition before the law is a human right that enhances autonomy, dignity and protects from harm.¹ Supported decision-making is a fundamental aspect of the universal standard of legal capacity. While supported decision-making practices are implicitly embedded in the NSW Ageing and Disability Commission's work, this submission investigates the importance of clarifying and strengthening the role of the Ageing and Disability Commission.

Introduction

2. Supported decision-making enables people to express their will and preferences and understand the choices that impact their lives. In NSW, supported decision-making is not yet consistently recognised or implemented, leaving many people with disability and older people without the support they need to participate in decisions about their lives.
3. Strengthening supported decision-making practices improves people's ability to stay safe, engage with services, and maintain control over key decisions. It also supports more responsive service systems across disability, aged care, health and justice. As other jurisdictions progress supported decision-making reforms, NSW now has an opportunity to build on the many tools and resources available² to ensure people are empowered, not excluded, to make the decisions that shape their wellbeing.

Recommendations

4. The following are the Australian Human Rights Commission's recommendations for the inquiry on supported decision-making in NSW.

Recommendations

1. The NSW Government amend s12 of the *Ageing and Disability Commissioner Act 2019* (NSW) to introduce a new function of the Ageing and Disability Commissioner 'to raise awareness and educate the public about supported decision-making principles and practice as a proactive strategy, and to guide sectors across NSW on: (i) the equal right to make decisions, (ii) support in decision-making, (iii) will, preferences and rights and (iv) safeguards.'
2. The Ageing and Disability Commission develop public-facing guidance and education to build understanding of supported decision-making among families, communities and informal supporters.
3. The Ageing and Disability Commission develop context specific, cross-sector supported decision-making guidance to support consistent

implementation of supported decision-making across key service systems and frontline practice.

4. The NSW Government provide the Ageing and Disability Commission the appropriate and ongoing resources needed to deliver expanded supported decision-making functions, including training, guidance, community education and cross-sector engagement.
5. The Ageing and Disability Commission adopt the Australian Law Reform Commission's National Decision-Making Principle #3, which requires that decisions be directed by the will, preferences and rights of people who require decision-making support.

1 Supported decision-making

This section explains key principles of supported decision-making and its current presence in NSW system, including that:

- supported decision-making is required under Australia’s international human rights obligations
- the Ageing and Disability Commission’s work is closely connected to supported decision-making
- case examples show people face serious risks, including neglect and coercive control, when supported decision-making support is absent
- NSW is behind other jurisdictions in legislating and resourcing supported decision-making across service systems
- existing laws and NDIS structures often default to substitute decision-making.

5. Supported decision-making refers to providing a person with support to exercise their legal capacity. This assistance ensures they understand information, can express their will and preferences, and can make decisions that reflect their choices. Supported decision-making is a continuum of supports to aid in decision-making from low level aids through to the formal appointment of specific persons as supporters. Supported decision-making is protected in the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD).³ Australia’s obligations under Article 12 of the CRPD, and General Comment No. 14, requires that States Parties provide access to supports required for people to make their own decisions, rather than having decisions made for them.⁵
6. The Australian Law Reform Commission (ALRC) and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) have each recommended the development of national decision-making frameworks, covering both supported and substitute decision-making in limited circumstances, to strengthen Australia’s compliance with Article 12 of the CRPD. The recommendations in this submission align with the ALRC’s 4 National Decision-Making Principles⁶ as well as the Disability Royal Commission’s 9 principles under Recommendation 6.6.⁷ However, one point of difference should be noted, which is further explored in the sub-section titled [‘Appropriate and limited use of substitute decision-making’](#) of this submission.

Role and functions of the NSW Ageing and Disability Commission

7. The Ageing and Disability Commission is the independent statutory body responsible for protecting adults with disability and older people from abuse, neglect and exploitation. Its core functions include responding to reports, conducting investigations, providing advice and referrals, raising awareness, and

examining systemic issues.⁸ Although supported decision-making is not named in the *Ageing and Disability Commissioner Act 2019* (the Act), this submission recognises that the Ageing and Disability Commission's casework is deeply connected to supported decision-making principles.

8. The Ageing and Disability Commission's own strategic position now explicitly advocates for supported decision-making consistent practice:
 - In its 2022-23 Annual Report, the Commissioner called for placing 'greater emphasis on the will and preference' of vulnerable people.⁹
 - In its submission to the *Aged Care Bill 2023*, it expressed how to operationalise supported decision-making in aged care reforms by recommending a person have a 'supporter' to help make decisions and a 'representative,' where necessary.¹⁰
 - In NDIS safeguarding, the Ageing and Disability Commission argues that support safeguards should enable decision-making, not displace it, particularly where coercion or system gaps are present.¹¹

Experiences of people seeking decision-making support

9. Experiences reported to the Ageing and Disability Commission reveal that without support to make decisions, people face greater risks and fewer real opportunities to exercise their will and preferences.¹² Among the many risks identified in the Ageing and Disability Commission's case material, two stand out as particularly significant and deeply concerning.
10. The first risk is how the absence of decision-making support can leave people unable to take action or change their situation.¹³ In half of serious neglect cases, the Ageing and Disability Commission recorded concerns about individuals having to navigate high-risk situations without structured supported decision-making.¹⁴ For example, some older people with no support, lived in homes where basic needs were not met, including unmanaged health issues or limited access to hygiene facilities.¹⁵
11. The second risk relates to the use of coercive control, where a carer or support person disregards an individual's will and preferences.¹⁶ The Ageing and Disability Commission has detailed cases of individuals who are socially isolated and heavily reliant on a single carer, with limited practical ability to act on their own preferences or change their situation.¹⁷ Research from the Victorian Office of the Public Advocate also shows that targeted manipulation and coercive control can also be used by some funded disability support organisations and workers to undermine personal autonomy.¹⁸
12. First Nations peoples face distinct challenges. Cultural, linguistic and kinship practices can shape how decisions are made, however, decision-making systems often misinterpret or dismiss collective or culturally-embedded

decision-making.¹⁹ The Ageing and Disability Commission noted incomplete recording of First Nations status was common in their casework, and can hinder culturally safe engagement and limit the identification of appropriate support pathway.²⁰

Supported decision-making in NSW

13. Alongside isolated federal initiatives, several states and territories have also introduced formal supported decision-making measures:
 - As of November 2025, the *Aged Care Act 2024* (Cth) allows older people to nominate 'registered supporters' to help them understand information and communicate their own decisions.²¹ The Department of Health, Disability and Aging provides several resources to guide supported decision-making in aged care.²²
 - Victoria's *Guardianship and Administration Act 2019* (Vic) reflects the ALRC's National Decision-Making Principles and now incorporates will and preferences decision-making and formal supportive roles.²³
 - Tasmania's *Guardianship and Administration Amendment Bill 2023* (Tas) replaced 'best interests' with will and preferences decision-making.²⁴
 - The ACT embeds supported decision-making as an alternative at tribunal hearings, with government actively developing supported decision-making resources and training.²⁵
14. NSW is behind other jurisdictions. The NSW Government has not yet enacted the same level of legislative or structural reform as other states and territories. Stakeholders such as the Council for Intellectual Disability note that NSW guardianship law still relies heavily on substitute decision-making and lacks statutory obligations to demonstrate that supported decision-making strategies have been tried before guardianship is imposed.²⁶
15. With increased recognition of supported decision-making across Australia, NSW has a clear responsibility to progress supported decision-making policy that strengthens autonomy and rights in compliance with CRPD obligations.

Barriers to implementation across systems

16. Several barriers restrain the consistent use of supported decision-making across NSW service systems.

Limited guidance and operational challenges

17. The practical application of supported decision-making requires time, training and flexibility in service responses.²⁷ NSW has not yet committed to implementing a supported decision-making framework, resulting in inconsistent understanding across sectors and limited practical guidance for workers.²⁸

Without clear expectations, workers often rely on substitute decision-making even when support could be provided.²⁹

18. Further to this, NSW lacks a resourced body to lead supported decision-making policy, training and monitoring.

Legal requirements that default to substitute decision-making

19. NSW guardianship law does not require evidence that supported decision-making strategies have been tried before a guardianship order is made, contributing to premature reliance on substitute decision-making.³⁰

NDIS structures that increase substitute decision-making

20. Current plan management and representative arrangements (i.e. plan nominees) can place decision making authority with people other than the participant, even when support, not substitution, is required.³¹

Barriers linked to family dynamics and help seeking

21. Barriers linked to family dynamics and help-seeking are particularly significant for many people, especially older people. Decision-making is often shaped by long-standing, complex family relationships, where dependence on familial support can influence how an older person seeks support. Because a substantial proportion of elder abuse is perpetrated by family members, older people may feel pressure to defer to relatives or may fear damaging important relationships if they seek help. Lack of access to rights-based information or independent assistance can further compound these challenges. For example, in the context of power of attorney and guardianship arrangements, limited understanding of the distinct roles and responsibilities of the principal and appointed decision-maker can increase the risk of misuse of authority and abuse.³²

Federal inaction on a national supported decision-making framework

22. Despite the introduction of 'registered supporters' in the *Aged Care Act 2024 (Cth)*, the Australian Government has not yet implemented a coordinated approach that aligns with the ALRC or the Disability Royal Commission's recommendation for a national supported decision-making framework and workforce development plan. As a result, NSW services operate without nationally consistent guidance or obligations.³³

2 Embedding supported decision-making in NSW systems

This section explains how supported decision-making can be embedded across NSW systems, noting that:

- supported decision-making should be practised as a core safeguarding approach, rather than simply treated as a procedural step
- a legislative amendment would strengthen the Ageing and Disability Commission's mandate to guide the sector on supported decision-making
- public facing education, rights literacy, and practical resources are needed to help carers and communities understand supported decision-making
- consistent practice requires sector specific toolkits and cross system guidance codesigned with people with lived experience
- the Ageing and Disability Commission would require sustained, dedicated resourcing to lead NSW on supported decision-making
- substitute decision-making should remain a last resort, guided by the ALRC's Principle 3 (will, preferences and rights).

23. Expanding the safeguarding role of the Ageing and Disability Commission in promoting and guiding supported decision-making would shift practice beyond compliance checklists toward genuine, day-to-day implementation. As the Older Persons Advocacy Network (OPAN) notes: supported decision-making must be embedded across aged care and related systems, not treated as a procedural step, to ensure workers have the skills, time and confidence to support people's will and preferences in real world contexts.³⁴

Changes to the Ageing and Disability Commission's functions or Act

24. At present, the Ageing and Disability Commission's statutory functions relate to safeguarding, education, systemic inquiry and coordinating the Official Community Visitor scheme.³⁵ These functions support the prevention of abuse but do not clearly position the Ageing and Disability Commission as a body responsible for supported decision-making guidance or capacity -building. Explicitly recognising supported decision-making as a safeguard would build on the Ageing and Disability Commission's existing work and help ensure supported decision-making is understood as a core part of rights based practice across NSW.

Recommendation 1: The NSW Government amend s12 of the *Ageing and Disability Commissioner Act 2019* (NSW) to introduce a new function of the Ageing and Disability Commissioner 'to raise awareness and educate the public about

supported decision-making principles and practice as a proactive strategy, and to guide sectors across NSW on: (i) the equal right to make decisions, (ii) support in decision-making, (iii) will, preferences and rights and (iv) safeguards.'

25. The Ageing and Disability Commission is well placed to take a stronger public advocacy role on supported decision-making and to build rights literacy among affected persons and their families. This could include producing practical, plain-English resources for families, communities and carers, and supporting people to understand their rights to make decisions, consistent with OPAN's view that supported decision-making must be embedded across care settings rather than treated as a checklist requirement.³⁶

Recommendation 2: The Ageing and Disability Commission develop public-facing guidance and education to build understanding of supported decision-making among families, communities and informal supporters.

26. There is a need for consistent direction on how supported decision-making should be applied in practice. The Ageing and Disability Commission should be authorised to develop site-specific toolkits and frameworks, co-designed with people with lived experience and sector partners, to guide supported decision-making practice across frontline services, health, aged care, disability, justice, education and financial services. For example, collaborating with banks on referral pathways would improve how financial institutions recognise and act on an older person's will and preferences.³⁷ Developing tailored guidance would help address current fragmentation and support a more coordinated approach to supported decision-making across NSW.³⁸

Recommendation 3: The Ageing and Disability Commission develop context specific, cross-sector supported decision-making guidance to support consistent implementation of supported decision-making across key service systems and frontline practice.

27. The Ageing and Disability Commission's existing safeguarding and systemic inquiry functions position it well to play a future role in overseeing supported decision-making in NSW. While not a formal recommendation, consideration could be given to expanding the Ageing and Disability Commission's remit to include oversight of supported decision-making practices as part of broader regulatory settings. This would support continuous improvement, encourage sector accountability, and complement the Commission's existing data, education and monitoring functions.
28. The Ageing and Disability Commission would require appropriate and sustained resourcing to carry out the expanded functions recommended in this submission. Additional responsibilities cannot be absorbed into existing operational capacity without additional investment. Adequate funding is

essential for the Ageing and Disability Commission to deliver high-quality training, guidance, community education and cross-sector engagement, and to support consistent supported decision-making implementation across NSW.

Recommendation 4: The NSW Government provide the Ageing and Disability Commission the appropriate and ongoing resources needed to deliver expanded supported decision-making functions, including training, guidance, community education and cross-sector engagement.

Appropriate and limited use of substitute decision-making

29. The ALRC's National Disability Making Principle #3 emphasises that all decision-making must be guided by a person's will, preferences and rights. The 'rights' component is a critical element, particularly in jurisdictions that do not have human rights legislative frameworks, because it ensures that decision-makers are required to consider and uphold a person's fundamental human rights when supporting them or acting on their behalf. Consistent with Article 12(4) of the CRPD, the ALRC is clear that substitute decision-making should only occur in rare circumstances, and only after all reasonable efforts have been made to support a person to express their will and preferences.
30. The ALRC's 'best interpretation of will and preferences' standard requires decisionmakers to actively consider a person's values, relationships, identity- and previously expressed views before making decisions on their behalf.³⁹ This approach shifts practice away from 'best interests' reasoning and ensures the person remains at the centre of the decision-making process.
31. The Disability Royal Commission's Recommendation 6.6⁴⁰ expands on the ALRC's National Decision Making Principles and draws on La Trobe University report *Diversity, dignity, equity and best practice: a framework for supported decision-making*.⁴¹ The recommendation includes 9 principles, including a proposal that where a person's stated or inferred will and preferences involve a serious and imminent risk of physical or financial harm, and the person is unable to understand the risk even with support, a substitute decision may be made as a last resort on the basis of the person's wellbeing.⁴²
32. The Australian Human Rights Commission does not adopt that particular aspect. Allowing substitute decisions to be made based on risks to a person's wellbeing is akin to re-introducing a 'best interests' standard, which is inconsistent with contemporary rights-based decision-making and with Article 12 of the CRPD. Applying the ALRC principle of 'will, preferences and rights' in NSW would result in greater compliance with international human rights law.

Recommendation 5: The Ageing and Disability Commission adopt the Australian Law Reform Commission's National Decision-Making Principle #3,

which requires that decisions be directed by the will, preferences and rights of people who require decision-making support.

Other related matters

33. National reform is essential to achieving consistent supported decision-making practice across Australia. A coordinated national supported decision-making framework, alongside a national safeguarding framework with dedicated safeguarding units, legislation and operational mechanisms, will provide shared principles, clearer expectations for service systems, and stronger protections for people who need decision-making support. NSW should actively support the development of both frameworks.
34. NSW cannot wait for national action alone. Given the state's existing safeguarding architecture and the pressing need for clearer supported decision-making practice, NSW is well placed to demonstrate how supported decision-making can be embedded across systems in a practical, rights-based and person-centred way, while still contributing to future national consistency.

Endnotes

- ¹ United Nations Committee on the Rights of Persons with Disabilities (2014), *General Comment No. 1: Article 12 Equal recognition before the law*, [CRPD/C/GC/1](#).
- ² Council for Intellectual Disability. (n.d.). *My Rights Matter resources: Supported decision making*. Retrieved from <https://cid.org.au/issues/my-rights-matter/my-rights-matter-resources/>; Inclusion Australia. (n.d.). *CID Supported Decision Making resources*. Retrieved from <https://www.inclusionaustralia.org.au/resource/cid-supported-decision-making-resources/>; National Disability Services (NDS). (n.d.). *Supported Decision Making e-learning module*. Retrieved from <https://nds.org.au/events-and-training/all-events-and-training/supported-decision-making-e-learning-module-3039>.
- ³ United Nations (2007), *Convention on the Rights of Persons with Disabilities*. Available at [CRPD](#).
- ⁴ United Nations Committee on the Rights of Persons with Disabilities (2014), *General Comment No. 1: Article 12 Equal recognition before the law*, [CRPD/C/GC/1](#).
- ⁵ Australia has made an interpretive declaration to Article 12 of the CRPD stating that it understands the CRPD to permit substitute decision-making arrangements in appropriate circumstances. While the Commission has called for the interpretative declaration to be withdrawn, this submission focuses on emphasising the importance of maximising supported decision-making consistent with Australia's obligations under international human rights law.
- ⁶ Australian Law Reform Commission (24 November 2014), *Equality, Capacity and Disability in Commonwealth Laws*, [ALRC Report 124](#).
- ⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023), *Final report, Volume 6: Enabling autonomy and access*, pp. 17, 165.
- ⁸ New South Wales Government. (2019). *Ageing and Disability Commissioner Act 2019 (NSW)*, s12: Functions.
- ⁹ NSW Ageing and Disability Commission (2023), *Ageing and Disability Commission Annual Report 2022-23*, pp. 3-4.
- ¹⁰ NSW Ageing and Disability Commission (2024), *Submission to the consultation on the Exposure Draft Aged Care Bill 2023*, pp. 2-3.
- ¹¹ NSW Ageing and Disability Commission (2023), *Submission to the independent review of the NDIS: NDIS participant safeguarding*, pp. 2-3.
- ¹² Blaxland, M, Thomson, C, Broady, T, Katz, I & Zhang, J. (2025), *Neglect among adults with disability and older people in NSW*, NSW Ageing and Disability Commission; NSW Ageing and Disability Commission (2024), *Submission to the consultation on the Exposure Draft Aged Care Bill 2023*; NSW Ageing and Disability Commission (2020), *Submission to the Joint Select Committee on Coercive Control*.
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- ¹⁴ Blaxland, M, Thomson, C, Broady, T, Katz, I & Zhang, J. (2025), *Neglect among adults with disability and older people in NSW*, NSW Ageing and Disability Commission, pp. 42-43.
- ¹⁵ Ibid, pp. 35, 64-71.
- ¹⁶ NSW Ageing and Disability Commission (2020), *Submission to the Joint Select Committee on Coercive Control*.
- ¹⁷ Ibid, pp. 6-10.
- ¹⁸ Office of the Public Advocate (September 2024), *Roundtable discussion paper: Manipulation and personal autonomy*, available at <https://www.publicadvocate.vic.gov.au/opa-s-work/research/745-manipulation-and-personal-autonomy>
- ¹⁹ Jull, J, Fairman, K, Oliver, S, Hesmer, B. and Pullattayil, AK. (2023), *Interventions for Indigenous Peoples Making Health Decisions: A Systematic Review*, Arch Public Health, DOI: 10.1186/s13690-023-01177-1, pp.18; Australian Institute of Health and Welfare (2023), Web report: [Cultural Safety in Health Care for Indigenous Australians: monitoring framework](#); Deravin, L, Bramble, M, Anderson, J. and Mahara, N. (2023), *Strategies that support Cultural Safety for First Nations people in Aged Care*, DOI: 10.1111/ajag.13230
- ²⁰ NSW Ageing and Disability Commission (2024), *Ageing and Disability Commission Annual Report 2023-24*, pp. 9-11.
- ²¹ Australian Government Department of Health, Disability and Ageing (2025), *New Aged Care Act*: <https://www.health.gov.au/resources/collections/registered-supporter-resources>
- ²² Australian Government Department of Health, Disability and Ageing (2025), *Registered supporter resources*: <https://www.health.gov.au/resources/collections/registered-supporter-resources>
- ²³ Victorian Government (2019), *Guardianship and Administration Act 2019*, Melbourne.
- ²⁴ Tasmanian Government (2023), *Guardianship and Administration Act 2023*, Hobart.
- ²⁵ Australian Government Department of Health, Disability and Ageing (2025), *Disability Royal Commission Progress Report 2025, Recommendations 6.6 to 6.11: ACT response*.
- ²⁶ Council for Intellectual Disability (November 2025), *Supported Decision Making and Guardianship Reform*. Available at https://cid.org.au/wp-content/uploads/2025/11/position-statement_sdm-guardianship-reform_2025.pdf
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- ²⁸ Australian Government Department of Health, Disability and Ageing (2025), *Disability Royal Commission Progress Report 2025, Recommendations 6.6 to 6.11: NSW response*.
- ²⁹ Higgins P, Sowry S & Ramasundara M (2023), *Supported decision-making – perceived barriers and enablers within an acute hospital*, available at <https://nahc.com.au/supported-decision-making-perceived-barriers-and-enablers-within-an-acute-hospital/>
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- ³¹ NSW Ageing and Disability Commission (2023). *Submission to the independent review of the NDIS: NDIS participant safeguarding*, pp. 2-3; Inclusion Australia, *Supported Decision-Making: Background Paper – NDIS Review Engagement Project* (2023), available at <https://www.inclusionaustralia.org.au/wp-content/uploads/2023/10/Supported-Decision-Making-NDIS-Review-Background-Paper.pdf>
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- ³³ Australian Government Department of Health, Disability and Ageing (2025). *Disability Royal Commission Progress Report 2025, Recommendations 6.6 to 6.11*.
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- ³⁵ NSW Ageing and Disability Commission (2023). *Ageing and Disability Commission Annual Report 2022-23*; NSW Ageing and Disability Commission (2024). *Ageing and Disability Commission Annual Report 2023-24*.
- ³⁶ Older Persons Advocacy Network (2022), *Supported decision-making must be embedded across aged care: Position Statement*.
- ³⁷ Australian Human Rights Commission, *Empowering futures: A national survey on the understanding and use of financial enduring powers of attorney* (2024) <https://humanrights.gov.au/our-work/age-discrimination/publications/empowering-futuresreport-enduring-powers-attorney-2024>, 45.
- ³⁸ Australian Government Department of Health, Disability and Ageing (2025). *Disability Royal Commission Progress Report 2025, Recommendation 6.12: NSW response*.
- ³⁹ Australian Law Reform Commission (24 November 2014), *Equality, Capacity and Disability in Commonwealth Laws*, [ALRC Report 124](#).
- ⁴⁰ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023), *Final report, Volume 6: Enabling autonomy and access*, pp. 17; 165.
- ⁴¹ Bigby, C., Carney, T., Then, S-N., Wiesel, I., Sinclair, C., Douglas, J., & Duffy, J., (2023). *Diversity, dignity, equity and best practice: a framework for supported decision-making*. Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.
- ⁴² *Ibid*, pp. 36, 40.