



Council for Intellectual Disability

Position Statement on Support for Decision Making

May 2022

Our goal

People with intellectual disability get the support they need and want to make their own decisions or, for people who rely on others to interpret their views, to be involved in decision making to the greatest extent possible.

Where things stand

“Supporting decision making is being able to make your decisions but getting support while doing it.” CID

Under international law, people with intellectual disability have the same right as everyone else to make their own decisions. This includes the right to have support to make decisions if a person needs and wants it. These human rights are part of the United Nations Convention on the Rights of Persons with Disabilities (UN Convention), which Australia has agreed to implement.

Supported decision making is the process used to enable a person to move through the steps of decision making, including to implement their decision. Part of this process is figuring out, and giving, the appropriate support a decision maker needs and wants to make the many different decisions that affect their life, including risk.

There is a lot of research about supported decision making. The challenge is to put the research into consistent practice across service systems and the community, and have this backed by policy and law.

In NSW

There is no NSW law which clearly states a person with intellectual disability has the right to supported decision making or that this support must be provided before a guardian or financial manager is appointed to make decisions for the person.

Providing the support a person needs for decision making may prevent a substitute decision maker being appointed. This is because support can enhance a person's ability to make their own decisions.

The NSW Government has taken some steps to promote supported decision making, including funding a number of short term projects. These workshops have finished without any long term policies or procedures being put into place, and some resources are no longer available.

The Government also asked the NSW Law Reform Commission to review NSW guardianship law. In 2018, the Commission recommended NSW law be changed so people with disability have the right to support to make their own decisions before the appointment of a substitute decision maker is considered. It also recommended a framework for this process. To date, guardianship laws remain unchanged.

See CID's Position Statement on Guardianship Law Reform
www.cid.org.au/resource/our-position-statement-on-guardianship-law-reform

Nationally

The Commonwealth Government asked the Australian Law Reform Commission to look at changes to decision making laws in Australia to make them more equal.

In 2014, the Commission recommended National Decision Making Principles (<https://www.alrc.gov.au/publication/equality-capacity-and-disability-in-commonwealth-laws-alrc-report-124>).

Principle Two is that people who need decision making support must be provided with support to make their own decisions. These principles have not been included in national or NSW law or practice.

The National Disability Insurance Scheme (NDIS) allows for nominees to be appointed for participants. Nominees are substitute decision makers. Supported decision making processes are not yet included in NDIS structures or packages.

What's the solution?

CID's advocacy is aimed at:

1. Enabling people with intellectual disability to have their say and make decisions in all areas of their lives.
2. Changing societal attitudes so people with intellectual disability are seen as respected decision makers.
3. Intervening early, so that children with intellectual disability begin making decisions from a young age and are supported by education to make decisions.
4. Commonwealth and NSW Governments taking advice from people with intellectual disability about the way forward on supported decision making.
5. The NSW Government legislating the right to supported decision making and reforming guardianship laws.
6. The NSW Government putting in place a supported decision making framework that embeds supported decision making in the day to day practice of government and non-government agencies.
7. Governments and the community seeing support for decision making as a reasonable adjustment under anti-discrimination laws.
8. The Commonwealth Government including specific funding to enhance support for decision making capability across the NDIS Information, Linkages and Capacity Building (ILC) Framework (tier 2).
9. The Commonwealth Government reviewing NDIS nominee rules and processes to ensure appropriate limits and safeguards.

Any new law or framework should include strategies on:

- the inclusion of people with complex communication needs
- supporting people who do not have anyone suitable or available to support them with decisions
- culturally appropriate support, including for First Nations' People
- advice, education and training that reaches across sectors, and
- evaluation and learning from successes and failures in practice.

What CID has done

Some of our key activities have included:

- CID has secured significant funding for the My Rights Matter program, taking a systemic approach to achieving sustainable change in supported directly impact individuals, families and services across sectors.
- My Rights Matter will build on CID's other supported decision making projects, funded through Commonwealth government grants. All CID projects are co-designed with people with intellectual disability.
- CID practises supported decision making in the way we work, including through a Board Participation Officer and supplying board papers in Easy Read format to support decision making by our board members.
- CID's previous My Choice Matters project assisted people with disability to be ready to exercise choice and control in the NDIS.