

Action on supported decision making in NSW

In a nutshell – where things stand

There is a widespread and inaccurate assumption that people with intellectual disability cannot make their own decisions. This leads to decisions being made for people in a paternalistic way and far too many people going through the costly, formal guardianship system. Leadership that guides good practice in supported decision making can turn this situation around.

What needs to happen in the next term of parliament

We seek a commitment to give the Ageing and Disability Commissioner statutory responsibility for:

1. Developing a NSW Government framework for supported decision making.
2. Promoting implementation of the framework across government agencies and the community, both as part of the everyday lives of people with disability and as an alternative to guardianship and financial management.

Why it needs to happen

Most of us enjoy the freedom to make our own decisions, including decisions that are risky or made on an idiosyncratic rather than objective basis.

This is commonly not the case for a person with intellectual or other disabilities. The historical focus has been on control and paternalism, rather than on maximising the autonomy and independence of people with disability.

In recent decades, there has been a paradigm shift towards supported decision making (SDM), which aims to provide a person with the support they need to make their own decisions. This paradigm shift is reflected in the United Nations Convention on the Rights of Persons with Disabilities and reports of the NSW and Australian Law Reform Commissions and the Disability Royal Commission. However, there is currently very

limited understanding and practice of SDM in government agencies and across the community.

For most people, supported decision making involves assisting the person to understand and think through a decision. For some people with pronounced cognitive and communication impairments, SDM involves a person who knows them well, like a close family member, interpreting the person's decision from knowledge of the person's history, culture and reactions to situations.

SDM needs to be complemented by a fallback substitute decision making system if a person's choices will involve major risk.

There will always be a need for guardianship and financial management as a last resort, but strong practice in SDM can markedly reduce the number of people who need it.

Current NDIS reforms will likely result in less funding for professional disability support and an increased need to equip people to be independent. Family and informal supporters will need guidance on *how* to provide good support, how to minimise harm and ensure they are not exerting any undue influence.

In 2018, the NSW Law Reform Commission recommended wholesale reform of the Guardianship Act 1987, including the implementation of SDM. Successive governments have been nervous to act partly out of concern about the potential financial cost of full reform. This has led to inconsistency in practicing and promoting SDM across various sectors. Since 2018 the number of those under NSW Guardianship has almost doubled

People with intellectual and cognitive disability need options for support with decision making beyond the NSW Trustee and Guardian. This innovative proposal positions supported decision making early in the process to help take pressure off our substitute system and give control back to the individual and their informal supports.

Action now on supported decision making can provide a foundation on which to build cost effective reform of the Guardianship Act in the future. The NSW Ageing and Disability Commissioner already promotes supported decision making and is well placed to take on a leadership role with a specialist SDM team to develop resources and embed best practice.

When we recognise support as a logical and legal part of decision making, we can free individuals from the fear of being appointed a government substitute decision maker and ensure our NSW last resort system can focus on the people who need them the most.