

PO Box 666

Strawberry Hills

NSW 2012

+61 2 8365 0400

Toll free 1800 422 015

[pwd@pwd.org.au](mailto:pwd@pwd.org.au)

[www.pwd.org.au](http://www.pwd.org.au)

**13 March 2026**

Parliament of New South Wales  
Committee on Ageing and Disability  
Parliament House  
6 Macquarie Street  
SYDNEY NSW 2000

Submitted through inquiry webpage: <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=3161#tab-submissions>

Dear Committee on Ageing and Disability

**Inquiry into the role and functions of the NSW Ageing and Disability Commission in relation to supported decision-making for adults with disability and older people in NSW.**

People with Disability Australia (PWDA) is pleased to provide comment on and **recommendations** for the above inquiry into supported decision-making for adults with disability and older people in NSW.

## About PWDA

PWDA is a leading national disability rights and advocacy peak organisation made up of, and led by, people with disability. We have a vision of a socially just, accessible and inclusive community in which the contribution, potential and diversity of all people with disability is not only recognised and respected but also celebrated.

Our work is grounded in a human rights framework that recognises the United Nations [Convention on the Rights of Persons with Disabilities](#) (CRPD) and related mechanisms as fundamental tools for advancing the rights of people with disability.

PWDA receives funding under the Australian Government Department of Health, Disability and Ageing Disability Representative Organisation (DRO) program to communicate the views of its members to the Australian Government.

## A right to supported decision-making

A key foundation of human rights and legal frameworks is a recognition that all adult persons have a right to full equal recognition before the law.

This right contains two core elements: **autonomy** (a right to make decisions about the kind of life they want), and **'legal capacity.'** Legal capacity is made up of two sub categories: the ability to hold rights and duties (legal standing) and a right to exercise those rights and duties (legal agency).<sup>1</sup> PWDA believes that the exercise of legal capacity means that decisions made *by* an adult person with disability including with support tools such as supported decision-making, are respected and treated as a legal decision made by that

person.\* Decisions made *for* a person with disability through *substitute* decision-making based on a decision makers view of the ‘best interests’ of the person with disability are not consistent with the exercise of autonomy and legal capacity.

The United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) (which came into effect for Australia on 16 August 2008 after ratification in July 2008), explicitly directs this right (and other fundamental rights to work, education, social security, political and community participation etc) towards people with disability. The CRPD was necessary because people with disability had continued to have their right to equal recognition before the law (and other rights) ignored despite previous human rights instruments implicitly applying to them.† In this context, the CRPD does not grant *new* fundamental rights to people with disability – we always had them. However, as we outline below, in ‘a significant human rights development for people with disability’ a ‘new’ right to supported decision-making was recognised to assist in giving effect to those rights.<sup>2</sup>

The right to equal recognition before the law for people with disability is outlined in article 12(1) and 12(2) of the CRPD. It recognises clearly that people with disability have the same inherent *legal capacity* as people without disability, and a right to the expression of their autonomy. The expression of autonomy (expressed through decision-making) and the exercise of legal capacity is critical to the development of personal identity and hence what it means to be a person and exercise our right to participate fully in the community.

---

\* PWDA believes rights to autonomy and legal capacity also exist for young people with disability under 18 (in line with Australian domestic legal understandings for all young people under 18, including relevant application of evolving capacity considerations). This includes a right to supported decision-making for children and young people with disability. Indeed, providing supported decision-making at an early age consistently with the evolving capacity of the child, helps build decision making ability in that child, supporting them into adulthood. This letter uses the language of adults, consistent with the term of reference.

† In this letter while acknowledging older people with cognitive impairment, we focus on the human rights instrument that relate specifically to people with disability, the CRPD. In this context an older person with a cognitive impairment has a disability. The CRPD incorporates rights from previous instruments including the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* which do apply to all people, including older people with and without cognitive impairment.

Because of this, CRPD article 12(3) states further, that support *must* be provided to people with disability (and in the context of the current inquiry, we add older persons who may be experiencing cognitive impairment), to assist them to make decisions about their life that reflects their ‘will, preferences, and rights.’ Governments have an obligation to promote the realisation of all rights, and one way to do this is by giving effect to article 12(3) and what is regarded as a *right* to receive support for decision making.

This *right* to decision making support tools and processes – what we call ‘supported decision-making’ – is therefore considered a critical enabler of other rights, being described as ‘a fundamental strategy for putting rights into practice.’<sup>3</sup> Similarly, supported decision-making (SDM) can be regarded as a practical process to give expression and legal recognition to the inherent legal capacity and autonomy that all people with disability have.<sup>4</sup> Relevantly for the current inquiry, SDM has a significant *safeguarding* dimension. Supporting people to understand and express their rights, will and preferences can reduce abuse, violence, neglect and exploitation.<sup>5</sup>

## PWDA position on supported decision-making

The United Nations Committee on the Rights of Persons with Disabilities (Committee) has been clear that substitute decision-making regimes based on what a decision maker thinks is in the ‘best interests’ of the person with disability (or older person with cognitive impairment in the context of the current inquiry) are incompatible with promoting autonomy and legal capacity, and are incompatible with the CRPD.<sup>6</sup>

The ‘best interests’ framework is paternalistic, infantilising, and devaluing – it can restrict autonomy and deny dignity of risk (we note it continues to apply for children and young people under the age of 18).<sup>7</sup> Adults with disability under guardianship and administration

orders based on 'best interests' continue to be at risk of abuse, neglect, violence, and a lack of cultural safety.<sup>8</sup>

PWDA is opposed to substitute decision-making processes and frameworks which ignore the will, preferences and *rights* of people with disability and older people and imposes decisions on them based on what is considered in their 'best interests.' Substitute decision-making legislative schemes such as found in traditional guardianship in NSW must be reformed and amended with supported decision-making frameworks which affirm rights and dignity.

As noted above, people with disability have a *right* to receive support for decision making. A significant barrier to the advancement of SDM in Australia is the ongoing maintenance of an interpretative declaration on CRPD article 12 by the Australian Government, which posits that CRPD article 12 allows for supported *or* substitute decision-making arrangements, albeit in that later case, as a last resort and with 'safeguards.'<sup>9</sup>

As noted, the Committee has said this is not the case. Article 12 requires the dismantling of substitute systems. The Committee has been critical of the continued existence of substitute decision-making systems in Australia and has called on the Australian Government to abolish those and adopt a nationally consistent supported decision-making framework.<sup>10</sup> Disability Royal Commission (DRC) Commissioners Bennett, Galbally, Mason and McEwin recommended the Australian Government withdraw the interpretative declaration to article 12 (DRC Recommendation 6.20). PWDA has also consistently called on the Australian Government to end the interpretative declaration.<sup>11</sup>

For PWDA, the will, preferences and rights of the person with disability must always be central to any decision that must be made. In cases where it is not possible to determine will and preferences after supports have been provided, then a decision may be made by a

*representative* based on a best interpretation of will and preferences identified through a rigorous documented examination of contexts. This representative decision must be consistent with upholding the persons rights and recognising them as an individual.<sup>12</sup>

This has been referred to broadly as the '**principled approach**' to SDM which sees SDM as a continuum of decision support, with a person's will, preferences and rights at the centre of all decisions.<sup>13</sup> It recognises that decision-making ability can fluctuate over time and be context specific. The goal is to maximise autonomy and respect dignity of risk. Giving direct effect to will and preferences may not extend to *all* decisions in limited situations where a consequence of a decision is a real risk of serious harm to a person or others and this may not be understood *after* receiving support.<sup>14</sup> However, any decision made by a representative must still be framed and consistent with upholding *rights* and promoting 'personal and social wellbeing.'<sup>15</sup>

There is an inherent tension in the right to make decisions and upholding the 'dignity of risk' versus a situation where there is a real risk of serious harm. Developing community and supporter capacity to navigate and balance that tension in a consistent, rights affirming way requires independent, sensitive, respected, and expert leadership. We state below that such leadership should be provided through the NSW Ageing and Disability Commission who must ensure that the direct lived experience of people with disability is embedded in leadership and decision-making roles to promote SDM.

This **principled approach** to SDM was reviewed favourably by the DRC. It informed its development of recommendations to advance SDM and reform current substitute decision-making regimes to better align such administrative frameworks with the CRPD.<sup>16</sup> These recommendations build upon previous work undertaken by the Australian Law Reform Commission (ALRC) to develop and advance national consistent supported decision-making principles centred on 'will, preferences and rights.'<sup>17</sup>

This principled approach is also consistent with the work of the NSW Ageing and Disability Commission, for example in its work around reforming enduring powers of attorney.

PWDA has called for a **national supported decision-making framework** to give effect to the rights articulated in CRPD article 12.<sup>18</sup> PWDA supports in principle the implementation of DRC recommendations 6.5, 6.6 (national supported decision-making principles), 6.7 (a presumption of decision making ability), 6.8 (legislation to recognise formal supporters), 6.9 (the process to ensure representatives as a last resort), and 6.10 (decision-making process to reflect will and preferences and develop decision-making ability) as a basis for reforming guardianship, financial administration, and relevant health, mental health and restrictive practices legislation in NSW.

PWDA is concerned that there has been little movement in NSW on the advancement of *legislative* reform across relevant settings in line with the DRC recommendations (and indeed previous recommendations made by the ALRC and NSW Law Reform Commission for example).<sup>19</sup> There is no roadmap for change. It remains that in NSW the law does not require a person to be provided with support to exercise legal capacity, and their 'will and preferences' do not legally need to be accorded any special weight in a decision being made.<sup>20</sup>

Relatedly, PWDA notes the concerns of the emergence of a possible 'disjunct' between policy and law identified by Professor Cameron Stewart.<sup>21</sup> There are increasing positive examples of private corporations and government agencies, including Courts and Tribunals developing and 'implementing' SDM policies and procedures acknowledging a person's 'will, preferences and rights' as important, and seeking to maximise the participation of a person with disability in processes. However, as noted, there remains no legal basis for, and recognition of, SDM and SDM supporters in NSW. Professor Stewart questions whether someone acting in accordance with CRPD compliant policies and

procedures may in fact not be complying with the law as it relates to the exercise of their decision making. Agencies, including Public Trustees and Guardians, Courts and Tribunals recognise the value of SDM and need the legislative, financial and professional support to get it right. Consistency between law and policy is urgently needed.

## The role of the Ageing and Disability Commission

The NSW Ageing and Disability Commission (ADC) plays a vital role in promoting, supporting and protecting the rights of some of the most vulnerable members of the community. It is a crucial hub of resources and advice for government, professionals, individuals, families and carers, supporters, and service providers. It benefits from being seen by many in the disability community as independent.

The ADC has identified that SDM for adults with disability and older people who need support is a priority for them.<sup>22</sup> Recent research notes that '[r]espect for the autonomy of older people and adults with disability to make decisions about their own lives is fundamental at the ADC.'<sup>23</sup>

The ADC recognises that SDM promotes autonomy and decision-making ability and is thus an important safeguarding tool. They have identified that the risk of abuse and neglect can increase during the transition from childhood to adulthood for example, with transition planning with young adults to enable greater autonomy, choice, and control, with appropriate support by safeguards often inadequate.<sup>24</sup> SDM is one tool that can, when provided, assist a young person to better understand and express their will, preferences and rights. In providing opportunities for self-determination, SDM can assist in mitigating incidents of abuse and neglect of people with disability as they transition into adulthood and continue their life path.

The unique experience of the ADC in applying rights-based solutions to addressing and preventing abuse, neglect and violence towards people with disability and older people is acknowledged. Recent research notes their recognition of the tension inherent in a right to autonomy, and a person's decision-making ability.<sup>25</sup> This research identifies that the ADC has particular skills and experience in navigating cases where a person appears to be making decisions detrimental to their own wellbeing.<sup>26</sup> The ADC is recognised as bringing a 'sensitive and careful' approach to, for example, balancing a person's right to autonomy and making their own decisions, with the right to live free from abuse.<sup>27</sup>

The evidence is clear – SDM empowers and changes lives. It builds identity, trust, gives confidence, and promotes inclusive communities. NSW needs a strong trusted source to provide specific leadership and capacity building on embedding supported decision-making throughout NSW policy, practice and legislative frameworks. The ADC is well placed to bring community and sector stakeholders together in a co-design process to embed the lived experience of people with disability in change.

Unfortunately, the ADC reports ongoing budgetary constraints (though we note and acknowledge a small funding boost in 2025), and we note a potential ambiguity in the statutory functions of the Commissioner relating to advancing SDM in NSW. Both concerns should be reviewed by the NSW Parliament Committee on Ageing and Disability for further action. These concerns provide the basis for our recommendations below.

## PWDA recommendations

### Recommendation 1

The objects and principles of the *Ageing and Disability Commissioner Act 2019* (NSW) (the *Act*) identified in section 4 of that *Act*, and the functions of the NSW Ageing and Disability Commissioner (Commissioner) under Part 3 of that *Act*, should be reviewed by the NSW Parliament Committee on Ageing and Disability, to determine whether the *Act* needs to be amended to ensure the functions of the Commissioner extend to leading the development and implementation of a NSW Supported decision-making framework. The *Act* should be amended to provide for the function if needed.

### Recommendation 2

The NSW Ageing and Disability Commission (ADC) must be appropriately resourced to undertake the development of an NSW Supported decision-making best practice framework and support its implementation. Resourcing must be provided in addition to current resourcing for the ADC and considered separate from other funding applications to support the ADC in undertaking its existing statutory duties.

### Recommendation 3

The NSW Ageing and Disability Commission must ensure that, in all projects and activities related to advancing supported decision-making in NSW, the direct lived experience of people with disability including older people with cognitive impairment is embedded in key leadership and decision-making roles and processes.

People with Disability Australia looks forward to working with the NSW Ageing and Disability Commission, the NSW Government, and other stakeholders, to progress supported decision-making for people with disability and older people in NSW.

If you have any questions about this submission, please contact at first instance Mr Julian Laurens, Senior Policy Officer on [julianl@pwd.org.au](mailto:julianl@pwd.org.au).

Yours sincerely



**Megan Spindler-Smith**  
**Acting CEO**  
**People with Disability Australia**

---

<sup>1</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Final Report, Volume 6, Enabling autonomy and access*, 121 ('*Enabling autonomy and access*'). <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%206%2C%20Enabling%20autonomy%20and%20access.pdf>

<sup>2</sup> Ibid 120.

<sup>3</sup> 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 ('*Diversity, dignity, equity*'). <https://disability.royalcommission.gov.au/policy-and-research/research-program>

---

<sup>4</sup> Robinson, S., Fisher, K. R., Laurens, J., Fisher, A., Forte, S., Reschke, K., & Kayess, R. (2025). Supported Decision-Making Rights in Behaviour Support Policies. *Australian Journal of Social Issues*. 0:1-14 ('Supported Decision-Making Rights').

<https://onlinelibrary.wiley.com/doi/pdf/10.1002/ajs4.70070>

<sup>5</sup> *Diversity, dignity, equity*, (n 3) 30. <https://disability.royalcommission.gov.au/policy-and-research/research-program>

<sup>6</sup> United Nations Committee on the Rights of Persons with Disabilities (2014). *General comment No. 1. Article 12: Equal recognition before the law*. UN CRPD/C.GC/1 (11 April 2014). <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-1-article-12-equal-recognition-1>

<sup>7</sup> *Enabling autonomy and access*, (n 1) 143-146.

<sup>8</sup> See e.g., *Enabling autonomy and access*, (n 1) 115, 143-146.

<sup>9</sup> Kayess, R., & Sands, T (2020) *Convention on the Rights of Persons with Disabilities: Shining a light on Social Transformation*. Sydney: UNSW Social Policy Research Centre. <https://disability.royalcommission.gov.au/publications/convention-rights-persons-disabilities-shining-light-social-transformation>

<sup>10</sup> See *Supported Decision-Making Rights*, (n 4) 3.

<sup>11</sup> People with Disability Australia (2024). *Response to the Disability Royal Commission Final Report* (January 2024), 30 ('Response to the Disability Royal Commission'). [https://pwd.org.au/wp-content/uploads/2024/02/PWDA-Response-to-the-DRC-Final-Report\\_Feb-2024.pdf](https://pwd.org.au/wp-content/uploads/2024/02/PWDA-Response-to-the-DRC-Final-Report_Feb-2024.pdf)

<sup>12</sup> *Ibid* 31.

<sup>13</sup> Then, S- N., Duffy, J., Bigby, C., et al. (2024). Delivering Decision Making Support to People with Cognitive Disability – What More Has Been Learned from Pilot Programmes in Australia and Internationally From 2016 to 2021? *Australian Journal of Social Issues* 59: 532–553.

<sup>14</sup> *Diversity, dignity, equity*, (n 3).

<sup>15</sup> *Enabling autonomy and access*, (n 1) 123.

- 
- <sup>16</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Final Report. Executive summary*, 70-71.  
<https://disability.royalcommission.gov.au/system/files/2023-11/Final%20report%20-%20Executive%20Summary%2C%20Our%20vision%20for%20an%20inclusive%20Australia%20and%20Recommendations.pdf>; *Enabling autonomy*, (n 1) 122.  
<https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20%20Volume%206%2C%20Enabling%20autonomy%20and%20access.pdf>
- <sup>17</sup> Australian Law Reform Commission (2014) *Equality, Capacity and Disability in Commonwealth Laws*. Final Report. ALRC Report 124 (August 2014).  
[https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc\\_124\\_whole\\_pdf\\_file.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_124_whole_pdf_file.pdf)
- <sup>18</sup> *Response to the Disability Royal Commission*, (n 11).
- <sup>19</sup> Australian Governments: Disability Royal Commission Progress Report 2025 (Nov/Dec 2025) <https://www.health.gov.au/resources/publications/disability-royal-commission-progress-report-2025/volume-6-enabling-autonomy-and-access>
- <sup>20</sup> Stewart, S. (2025) *Supported decision-making for people living with dementia in NSW*. Research paper: 2025-26. Parliamentary Research Service, Parliament of New South Wales. <https://www.parliament.nsw.gov.au/researchpapers/Documents/Supported-decision-making-for-people-living-with-dementia-in-NSW.pdf>
- <sup>21</sup> Ibid 33.
- <sup>22</sup> NSW Ageing and Disability Commission (2022). *Annual Report 2021-22*, 61.  
[https://ageingdisabilitycommission.nsw.gov.au/documents/2021\\_22\\_NSW\\_ADC\\_Annual\\_Report.pdf](https://ageingdisabilitycommission.nsw.gov.au/documents/2021_22_NSW_ADC_Annual_Report.pdf); NSW Ageing and Disability Commission (2022). *Annual Report 2022-23*, 27.  
[https://ageingdisabilitycommission.nsw.gov.au/documents/submissions/NSW\\_Ageing\\_and\\_Disability\\_Commission\\_2022\\_2023\\_Annual\\_Report.pdf](https://ageingdisabilitycommission.nsw.gov.au/documents/submissions/NSW_Ageing_and_Disability_Commission_2022_2023_Annual_Report.pdf)
- <sup>23</sup> Blaxland, M., Thompson, C., Broady, T., Katz, I., & Zhang, Q (2025). *Neglect among Adults with Disability and Older People in New South Wales*. Sydney: UNSW Social Policy Research Centre / Centre for Social Research in Health, 65 ('*Neglect among adults*'). DOI: <http://doi.org/10.26190/unsworks/31553>

---

<sup>24</sup> NSW Ageing and Disability Commission (2022). *Annual Report 2021-22*, 48.  
[https://ageingdisabilitycommission.nsw.gov.au/documents/2021\\_22\\_NSW\\_ADC\\_Annual\\_Report.pdf](https://ageingdisabilitycommission.nsw.gov.au/documents/2021_22_NSW_ADC_Annual_Report.pdf)

<sup>25</sup> *Neglect among adults*, (n 23) 65.

<sup>26</sup> Ibid 63.

<sup>27</sup> Ibid 65.