

# Submission to the NDIA Consultation on Supported Decision Making

September 2021



**Allied Health  
Professions  
Australia**

**This submission has been developed in consultation  
with AHPA's allied health association members.**

**Allied Health Professions Australia  
Level 1, 530 Little Collins Street  
Melbourne VIC 3000  
[www.ahpa.com.au](http://www.ahpa.com.au)  
[office@ahpa.com.au](mailto:office@ahpa.com.au)**



## About AHPA and the allied health sector

AHPA is the recognised national peak association representing Australia's allied health professions. AHPA's membership collectively represents some 130,000 allied health professionals and AHPA works on behalf of all Australian allied health practitioners, including the largest rural and remote allied health workforce numbering some 14,000 professionals. AHPA is the only organisation with representation across all disciplines and settings.

With over 200,000 allied health professionals, allied health is Australia's second largest health workforce. Allied health professionals work across a diverse range of settings and sectors, providing services including diagnostic and first-contact services, preventive and maintenance-focused interventions for people with chronic and complex physical and mental illnesses, supporting pre- and post-surgical rehabilitation, and enabling participation and independence for people experiencing temporary or long-term functional limitations. Allied health also provides an essential bridge between the medical sector and social support systems such as aged care and disability, where it can represent the key formal health support in a person's life.

AHPA provides representation for the allied health sector and supports all Australian governments in the development of policies and programs relating to allied health. AHPA works with a wide range of working groups and experts across the individual allied health professions to consult, gather knowledge and expertise, and to support the implementation of key government initiatives.

## Response to the Consultation Papers

AHPA supports the intention of the NDIA to develop a supported decision making policy for NDIS participants, and notes that this is consistent with the expressed wishes of participants and disability advocates.

Our comments relate primarily to the 'Supporting You to make Your Own Decisions' paper ('the paper').<sup>1</sup>

### The role of the paper in the consultation process

As outlined below, the paper is not a policy document. As a professional peak body regularly engaging in national policy development and implementation, we do not see it as an efficient use of our time and expertise to try to engage in depth with a paper that does not provide clear, even if necessarily open-ended, policy options for analysis and comment.

We suggest that in future consultations it may be more useful to provide a separate and distinct paper squarely aimed at providers, DROs and those participants who wish to engage with the issues at a detailed and technical level, rather than 'trying to be all things' to all audiences. Even then however, as with the recent Home and Living consultation, this paper has been disseminated on the basis that providers should comment, but the questions are aimed at NDIS participants only.

---

<sup>1</sup> Unless otherwise specified, all page references are to this document.

## The paper does not present a policy

The paper appears to have been produced in haste and is not clearly structured. It is also unclear how it relates to the Companion Paper, even though the latter is described as ‘complementary’.

The paper claims to set out a supported decision making policy, stating, for example, ‘We would like to know what you, your families, advocates and carers think about the suggested Support for Decision Making policy’ (p3; see also pp8-9) and on the same page referring to it as a policy framework.

However, no clear policy is identifiable. The paper outlines Key Principles and Goals, but only in a brief fashion. We note that a more fully developed set of principles has been published as part of work commissioned by the Commonwealth Department of Social Services,<sup>2</sup> but this is not referenced in the paper.

Similarly, the Decision Making Capability Framework is more of a general discussion. The paper makes reference to ‘refining the policy’ (p18) and developing a ‘decision making Operational Guideline’ (p23), but it is not clear where or what the platform is for these future elaborations.

A lack of specificity in the paper also makes it difficult for policy advisors to provide meaningful comment. For example, the role of the NDIA includes ‘To avoid reliance on substitute decision making wherever possible’ (Appendix B, p21). How will ‘wherever possible’ be assessed, and by whom?

Similarly, roles of decision making supporters encompass:

‘To include the participant in decision making. To consider the will and preference of the participant’ (Appendix B, p21)

and the role of service providers includes:

‘To include the participant in decisions. To include their decision supporters in decisions to the extent the participant wants. To consider the participant's preferences in the delivery of their services and supports’ (Appendix B, p22).

The devil is in the detail here: what do 'include' and 'consider' mean?

## Developing a supported decision making policy

The paper refers to an intention to review the current research on support for decision making best practice (p26). Surely this is required as the standard first step in developing any policy on supported decision making. Moreover, reviews have already been undertaken by others, including most recently, as previously noted, for the Commonwealth Department of Social Services.

The NDIA should rely more heavily on existing extensive work, such as the Australian Law Reform Commission (ALRC) report *Equality, Capacity and Disability in Commonwealth Laws*<sup>3</sup> and on the research and knowledge of subject matter experts. The NDIA can also learn from the experience of those state and territory jurisdictions that have proceeded further down the track of recognising a continuum of approaches that includes supported decision making, such as the outcome of

---

<sup>2</sup> UNSW Social Policy Research Centre, *Good Practice in Supported Decision-making for People with Disability – Final Report*, Prepared for Australian Government, Department of Social Services (2021), 29-36.

<sup>3</sup> ALRC Final Report 124, *Equality, Capacity and Disability in Commonwealth Laws* (August 2014).

reforms to the guardianship and administration system in Victoria, which also incorporated extensive public consultation.

An NDIS supported decision making policy also needs to clarify how in some circumstances, for many participants, participant decision making might necessarily interface with other systems of supported or substitute decision making, such as medical and financial decisions. It is therefore not sufficient to simply dismiss potential insights from state and territory approaches on the basis that they are not uniformly consistent (Companion Paper, p8).

Similarly, with respect to Goal 2: Support development of participant capability (Appendix C, p23) and Goal 3: Build capacity of decision supporters (Appendix C, p25), rather than attempting to reinvent the wheel, the NDIA should draw upon the resources of entities such as state and territory Public Advocates or their equivalents.

### **Other comments**

The proposed role of the participant includes

‘To work with NDIA staff and partners, who will be able to help identify if they have the support they need to make a decisions about things that affect them’ (Appendix B, p21).

It is essential that participants have access to an independent source who can assess whether they have the support they need.

AHPA also notes the paper’s reference to using

‘business intelligence to predict when support for decision making is potentially needed. There will be a specific focus on life stage transitions, i.e. through data driven system alerts’ (Appendix C, p24).

This is alarming, because it appears to reiterate the reliance on algorithms recently abandoned as a key element in budget planning associated with the now jettisoned independent assessments model. Real life decision making is also not simply focused on life stage transitions.

For all other aspects of the Supporting You to make Your Own Decisions paper and the Companion paper, AHPA refers to and endorses the submission by Inclusion Australia to this consultation.