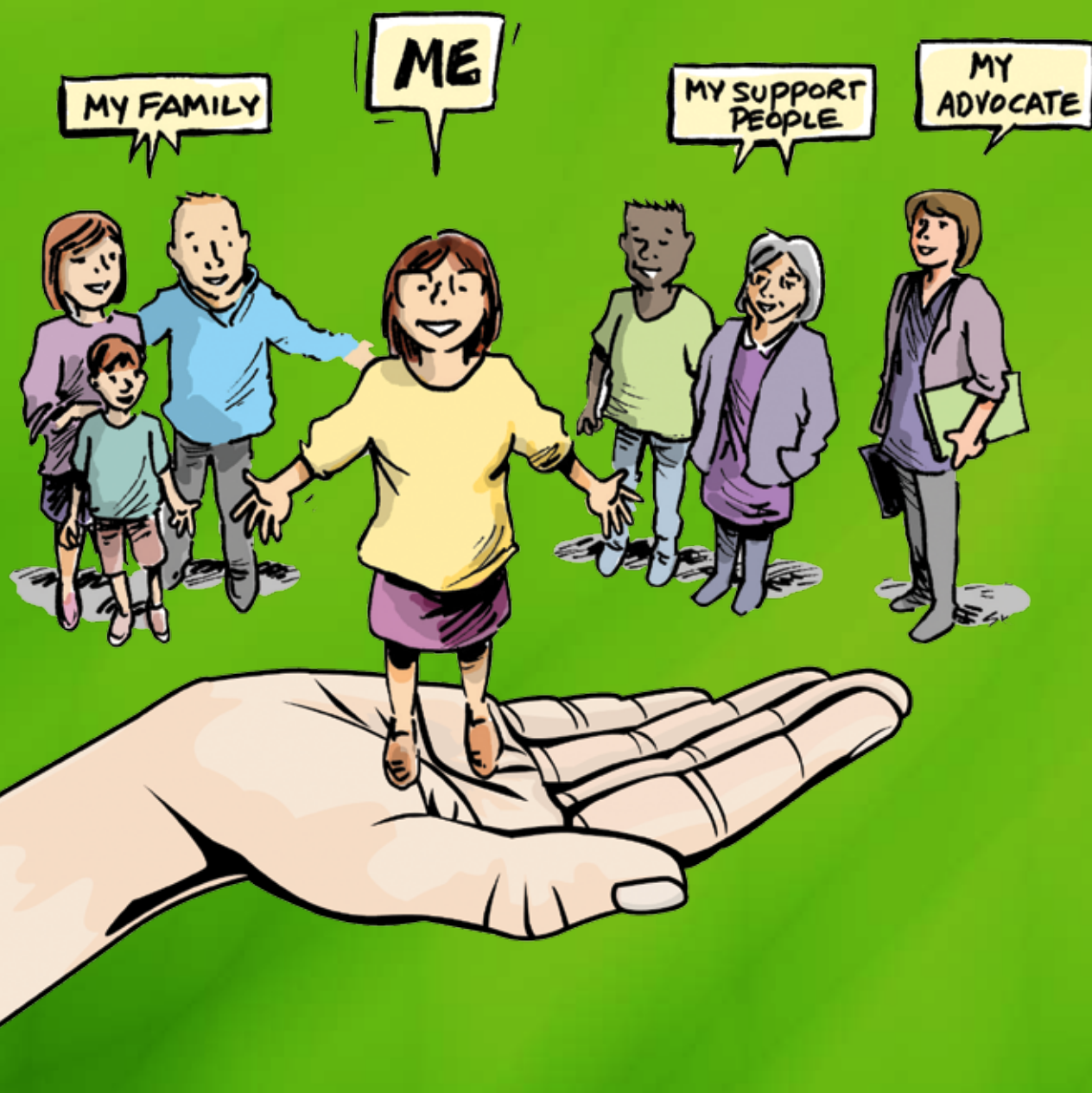


Discover

A resource for people planning for the future.

A DisabilityCare Australia, the National Disability Insurance Scheme Help Guide



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The opinions, comments and/or analysis expressed in this document are those of the author or authors and do not necessarily represent the views of the Minister for Disability Reform and cannot be taken in any way as expressions of government policy. This document contains legal information, not legal advice. Always consult a solicitor when you develop your legal planning for the future.

These fact sheets were completed in the days following the passage of the legislation, but before DisabilityCare Australia Rules were finalised. While every effort has been made to ensure that the material is up to date, it is possible that there have been changes that we could not account for. We have also compiled a comprehensive help guide called 'Discover A DisabilityCare Australia Help Guide' which provides additional information. DisabilityCare Australia also has a website www.ndis.gov.au and a hotline: 1800 800 110.

A DisabilityCare Australia – Parents and Carers Fact Sheet

1 What is DisabilityCare Australia?

What is DisabilityCare Australia?

DisabilityCare Australia (DCA) is a new planning and service system that has been developed by the Australian Government to assist Australians with disability. DisabilityCare Australia is intended to provide long-term assistance to all Australians with a significant and ongoing disability.

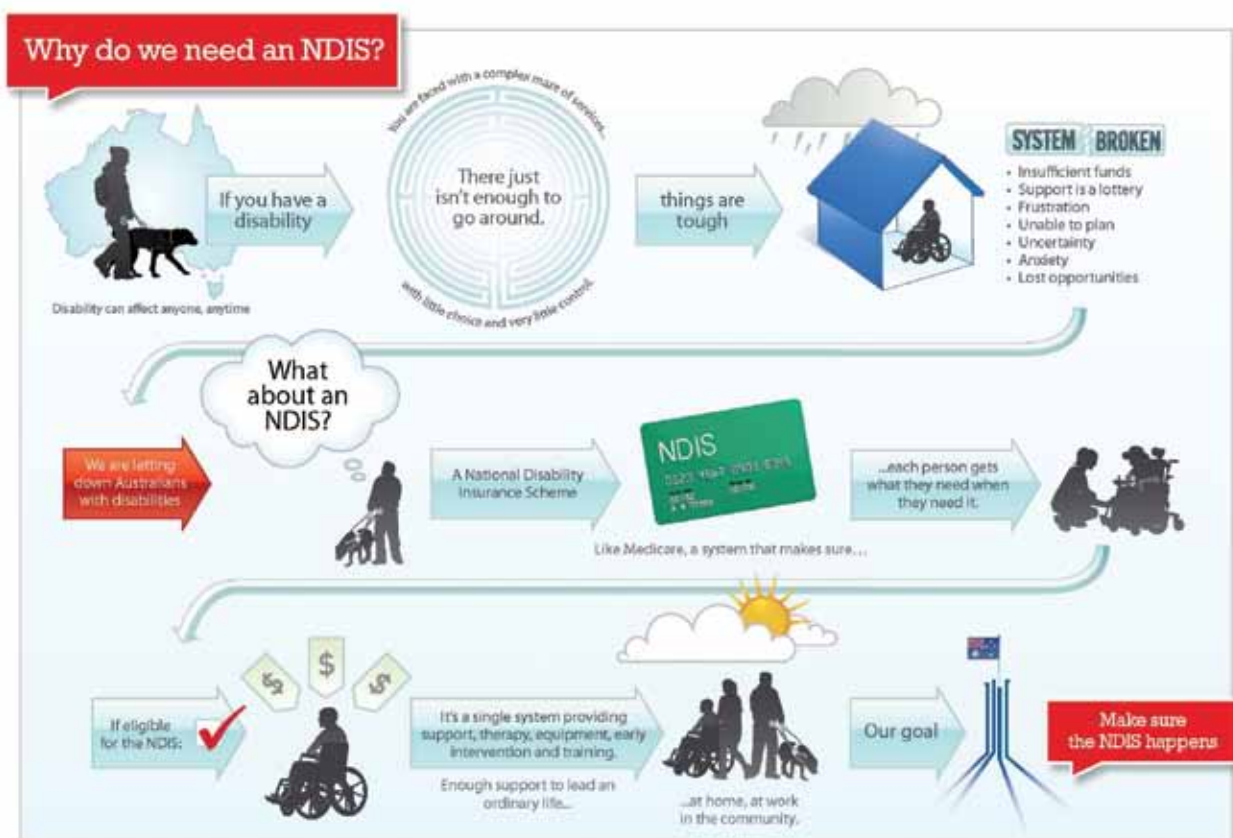
The first stage of DisabilityCare Australia will be launched in trial sites in July 2013. The roll-out will take place over a number of years and at its completion it is intended that all current and new disability clients will be receiving DisabilityCare Australia services. DisabilityCare Australia trials will take place in ACT, SA, TAS, parts of NSW and parts of VIC.

DisabilityCare Australia will operate under the *National Disability Insurance Scheme Act 2013*. DisabilityCare Australia will give people care and support that is objectively assessed as reasonable over the course of their lifetime, offer early intervention where it will improve a person's functioning or slow the progression of their disability and work with carers to make sure the care they provide is sustainable.

National Disability Insurance Scheme Act also sets up an organisation — the *National Disability Insurance Scheme Launch Transition Agency* (the Agency). The Agency is charged to support people with a disability including providing funding, determining if people with disability are eligible to be DisabilityCare Australia participants, helping people develop and review their plans and building community awareness.

Why Do We Need DisabilityCare Australia?

Source: Every Australian Counts Campaign (2013),
Everybodycounts.com.au/ndis_dl_infographic_brochure.pdf



FAQ's and more information



Frequently asked questions

Q. How do I find out about DisabilityCare Australia?

DisabilityCare Australia has a website that includes up to date information in formats for the visually impaired. Website link: www.ndis.gov.au

Q. Does DisabilityCare Australia have a hotline?

DisabilityCare Australia has a hotline for anyone seeking more information. The details are:

1800 800 110 free call.

Office hours 8.00 am to 5.00 pm.

You can also email:

NDISenquiries@fahcsia.gov.au

Q. I am a parent or carer of a person with disability. Is there any information that explains my role in DisabilityCare Australia?

Please see information in 'The role of Parents, Carers, Guardians, and Nominees' section of "Discover A DisabilityCare Australia Help Guide". DisabilityCare Australia website also contains resources for parents and carers.

Q. My home is not in an DisabilityCare Australia trial site. When will DisabilityCare Australia come to my area?

DisabilityCare Australia will be rolled out across Australia when the Commonwealth, States and Territories have made commitments of funding to the Scheme. It is anticipated this may take a number of years.

More information

DisabilityCare Australia Website:

www.ndis.gov.au/about-an-ndis/what-is-an-ndis/

National Disability and Carers Alliance:

disabilitycareralliance.org.au/ndis-engagement-project

"National Disability Strategy, An initiative of the Council of Australian Governments 2010 – 2020", Commonwealth of Australia available at:

www.fahcsia.gov.au or www.coag.gov.au

"A better way of helping people with a disability. The main ideas from the Final Report",

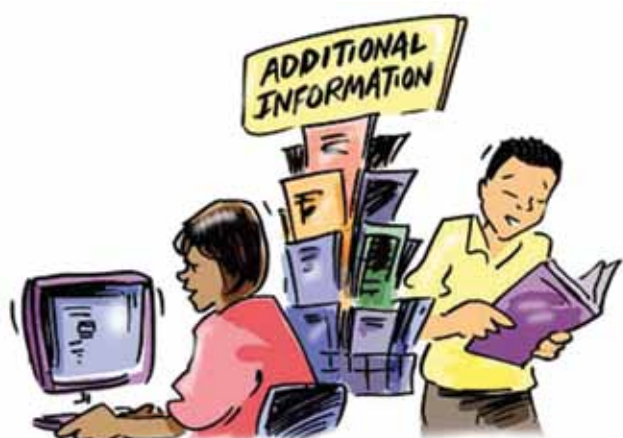
Productivity Commission July 2011 available at:

www.pc.gov.au/__data/assets/pdf_file/0007/111400/disability-support-easy-english.pdf (Easy English)

People with Disability Australia website:

www.pwd.org.au

2 Becoming a participant in DisabilityCare Australia



To become a participant a person makes an 'access request' using an approved form. DisabilityCare Australia will evaluate this request applying access criteria including age, residence and either disability or early intervention requirements. DisabilityCare Australia may request that the prospective participant undergo assessments or examinations. This will help DisabilityCare Australia to apply the criteria.

Age – Generally, a person meets the age requirements if the person is under 65 years old when the access request in relation to the person was made. Additional age requirements apply to persons in DisabilityCare Australia launch sites in South Australia and Tasmania. (See, "Discover A DisabilityCare Australia Help Guide" for more information).

Residence – A person meets the residence requirements if the person resides in Australia, and is either an Australian citizen, the holder of a permanent visa, or a special category visa holder.

Disability – A person meets the disability requirements if the person has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments, or impairments attributable to a psychiatric condition, and the person's impairment(s) are, or are likely to be permanent and result in substantially reduced functional capacity.

Early Intervention Requirements – A person meets the early intervention requirements if they have a disability as above or is a child who has developmental delay and DisabilityCare Australia is satisfied the provision of early intervention supports will likely include their future needs for supports.

Ceasing To Be A Participant – Occurs when a participant dies; turns 65 years old and has entered a residential care service, or is being provided with community care on a full time basis; or their status is revoked.

FAQ's and more information



Frequently asked questions

Q. When is an impairment permanent or likely to be permanent?

An impairment is or is likely to be permanent if it is irreversible or likely to be irreversible.

Q. What kind of activities are considered relevant activities for the purposes of impairment?

Communication, social interaction, learning, mobility, self-care and self-management are considered relevant activities by NDIS Rules.

Q. Are there alternative ways to meet the access criteria?

If a person does not meet the age requirements, or the disability or early intervention requirements there may be alternative ways to meet the access criteria which will be detailed in NDIS Rules when finalised.

Q. What happens when I turn 65?

When you turn 65 you can no longer submit an access request to DisabilityCare Australia. If you are already a participant, you will cease to be a participant if you permanently enter a residential aged care service or are provided with permanent community care and you are 65 years or older.

More information

Draft Rules for Becoming a Participant are available at: yoursay.ndis.gov.au/document/show/27

Disability Directory further information: www.disabilitydirectory.net.au/understanding-the-ndis-draft-legislation-plans-and-funding/

3 Early intervention



One of the objectives of DisabilityCare Australia is to support people through ‘early intervention’ so that their disability is less likely to prevent them from participating in society in the future.

Through early intervention the scheme is able to:

- Fund supports that help minimise the impacts of a person’s disability.
- Help improve their functioning or prevent the deterioration of their functional capacity over their lifetime.
- Reduce the need for future support.
- Build the sustainability of each individual’s support network, particularly that of their immediate family.

Some examples of early intervention strategies include:

- Investment in community supports that would allow a person to remain in their own home rather than be forced to move into residential care.
- Therapy to slow or delay the impact of a degenerative condition.
- Early intervention programs in childhood to address developmental delay.

FAQ's and more information



Frequently asked questions

Q. What types of early intervention could be provided under DisabilityCare Australia?

Early intervention under DisabilityCare Australia can encompass a full range of disability supports and services including:

- Specific therapies.
- Aids and equipment.
- Behaviour and specialist interventions.
- Support coordination.
- Home and transport modifications.

People can receive early intervention in a range of settings depending on their requirements, including a person's home.

Q. What could early intervention look like under DisabilityCare Australia?

Where appropriate, early intervention will be a key part of the supports provided to people under DisabilityCare Australia, and could be considered at other life stages, including:

- **The planning process:** people will be able to work with DisabilityCare Australia to plan the things they can do now to reduce the impact of their disability over time and choose the interventions right for them.
- **When managing support options:** people will be able to access early intervention in addition to any ongoing support they are eligible to receive from DisabilityCare Australia.
- **Review and reassessment of a person's plan:** early intervention will mean different things to different people. DisabilityCare Australia will work with a person to make sure that their intervention works for them and is tailored to their needs and stage of life.

More information

**"Early Intervention Within The National Disability Insurance Scheme",
National Disability Insurance Scheme.**

www.ndis.gov.au/wp-content/uploads/2013/01/Early-Intervention.pdf

4 DisabilityCare Australia and human rights

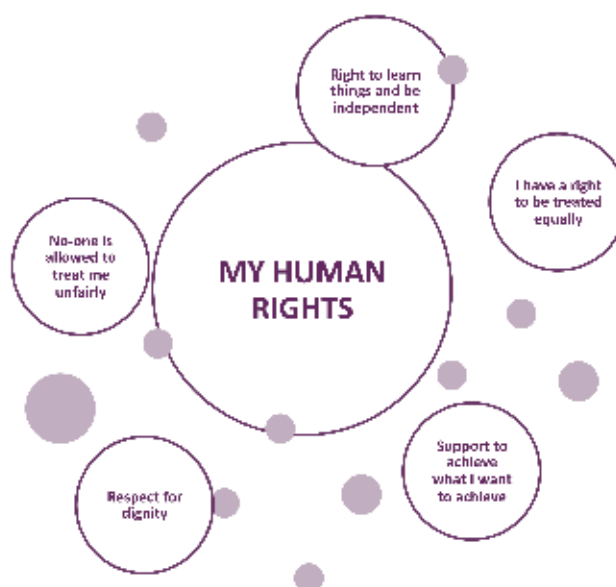
Human rights are fundamental rights and freedoms that are central to every human being. Human rights are said to be ‘inalienable’ which means they cannot be taken away.

In 2007 an international treaty called the *Convention on the Rights of Persons with Disabilities* (CRPD) came into operation for Australia. It ensures the rights of people with disability are realised.

DisabilityCare Australia Act contains a number of principles drawn from the CRPD. These include that people with disability have the same right as other members of Australian society to realise their potential for physical, social, emotional and intellectual development and that people with disability have the same right as other members of Australian society to be respected for their worth and dignity and to live free from abuse, neglect or exploitation.

DisabilityCare Australia supplements the Federal *Disability Discrimination Act 1992* (DDA), which provides protection for everyone in Australia against discrimination based on disability. Disability discrimination happens when people with disability are treated less fairly than people without disability. It also aims to promote equal opportunity and access for people with disability.

The DDA makes it against the law to discriminate against someone if they have a disability.



FAQ's and more information



Frequently asked questions

Q. DisabilityCare Australia implements Australia's obligations under international law, that sounds good, but what does it mean for me?

The new law contains provisions that specifically refer to the human rights of people with disability and imposes an obligation on the Agency to ensure that their decisions are made with reference to those rights.

More information

Australian Capital Territory

Disability Discrimination Legal Service (ACT)
www.welfarerightsact.org (Under construction)

New South Wales

Australian Centre for Disability Law
disabilitylaw.org.au

The Intellectual Disability Rights Service
www.idrs.org.au/home/index.php#sthash.N4JLf3n7.dpbs

South Australia

Disability Discrimination Services
www.sa.gov.au/subject/Community+support/Disability/Your+rights/Anti-discrimination+laws+and+disability+rights (An SA government publication).

Tasmania

Launceston Community Legal Centre
www.lclc.net.au

Northern Territory

Darwin Community Legal Service
www.dcls.org.au/disability-discrimination.html

Victoria

Disability Discrimination Legal Service Inc
www.communitylaw.org.au/clc_ddls/cb_pages/about_us.php

Queensland

Disability Discrimination Legal Service
www.cclc.org.au

Western Australia.

Sussex Street Community Law Services Inc
www.sscls.asn.au/Programs-Services/Disability-Discrimination

5 Advocacy and advocates

People with an intellectual disability, dementia, acquired brain injury or mental health issues may need advocates to help them get what they need.

Models Of Disability Advocacy

- **Citizen Advocacy**
Seeks to support people with disability by matching them with volunteers. Some of the matches made may last for life.
- **Family Advocacy**
Works with parents and family members to enable them to act as advocates with, and on behalf of, a family member with disability. Family advocates work with parents and family members on either a short term or issue-specific basis. Family advocates work within the fundamental principle that the rights and interests of the person with disability are upheld at all times.
- **Individual Advocacy**
Seeks to uphold the rights and interests of people with all types of disabilities on a one-to-one basis by addressing instances of discrimination, abuse and neglect.
- **Legal Advocacy**
Seeks to uphold the rights and interests of people with all types of disabilities on a one-to-one basis by addressing legal aspects of instances of discrimination, abuse and neglect.
- **Systemic Advocacy**
Seeks to influence or secure positive long-term changes that remove barriers and address discriminatory practices to ensure the collective rights and interests of people with disability are upheld.



Case Study – Amanda

Amanda is a 45 year old lady and has a moderate intellectual disability. She lives in a group home run by a service. Amanda is unhappy that the service workers take care of her money and don't give her enough to spend. She has brought the matter up with her parents but they do not want to approach the service directly as they are both nearly 80 years of age. An advocate's role could be to work at Amanda's direction, to support her and resolve the issue with the service so that Amanda has the right to make decisions about her money.

FAQ's and more information



Frequently asked questions

Q. Where would I go to find more information about advocates?

The Department of Families, Housing, Community Services and Indigenous Affairs:
www.fahcsia.gov.au/our-responsibilities/disability-and-carers/program-services/for-people-with-disability/national-disability-advocacy-program/models-of-disability-advocacy/national-disability-advocacy-agencies-funded-by-the-commonwealth-by-state-or-territory

Disability Advocacy Network Australia:
operates to support and strengthen independent disability advocates as they serve as a voice for people with disabilities in our communities. This network is made up of almost 70 agencies from all over Australia who undertake a variety of advocacy services for those with a disability.
dana.org.au/

Endeavour Community and Advocacy Support Unit: serves to promote and protect the human rights of those with disability. By way of advocacy this moves to ensure that those who accept Endeavour supports and services are treated in accordance with the CRPD.
www.endeavour.com.au/Disability-services/Advocacy-NDIS

“A Self Help Guide for Parents by Parents of Children with Disability in Queensland”.
www.developingfoundation.org.au/media/user_files/5_MEtoo08.pdf

6 Communicating with people with a disability



DisabilityCare Australia puts people with disability in charge of planning and controlling their life by:

- Giving people with disability access to funding and supports so that they can participate fully in Australian society; and
- Helping people with disability realise their human rights.

To help a person with a disability to make decisions, it is necessary to communicate in the most appropriate way possible by:

- Providing information to the person in their preferred communication mode and format.
- Writing, speaking, using signs, symbols or line drawings, photographs or other objects.
- Using an Alternative and Augmentative Communication (AAC) system for people with communication needs. This may include using various types of equipment such as; a letter, word, picture board, voice synthesiser, computer or hearing loop.



Case Study – Helena

Helena can use some words and expresses herself in various ways including facial expressions and body language. Helena lives in a group home but she wants to move into another group home. An advocate spent time with Helena to support her, because the staff stated Helena did not have capacity to make a decision to move into the new home by herself. Through a series of meetings Helena communicated through symbols, pictures, photos and some language, to convey why she wanted to move and her capacity to make decisions about where she wanted to live. This was done in her own way with appropriate communication support.

FAQ's and more information



Frequently asked questions

Q. Are there other formal ways to provide help or resolve disputes?

Yes, there are Guardianship Tribunals (in each State) and they can consider applications for guardianship, financial management, and consent to medical and dental treatment for example.

More information

Queensland Government

(communicating with people with disability):

www.qld.gov.au/disability/community/communicating/

Commonwealth Government

(working with people with disability):

jobaccess.gov.au/Coworkers/Working_with_people_with_disability/How_to_communicate_with_people_with_disability/Pages/home.aspx

Vela Microboards Australia:

www.microboard.org/Vela_Affiliates.htm

Disability Advocacy Resource Unit:

www.daru.org.au/resource-library

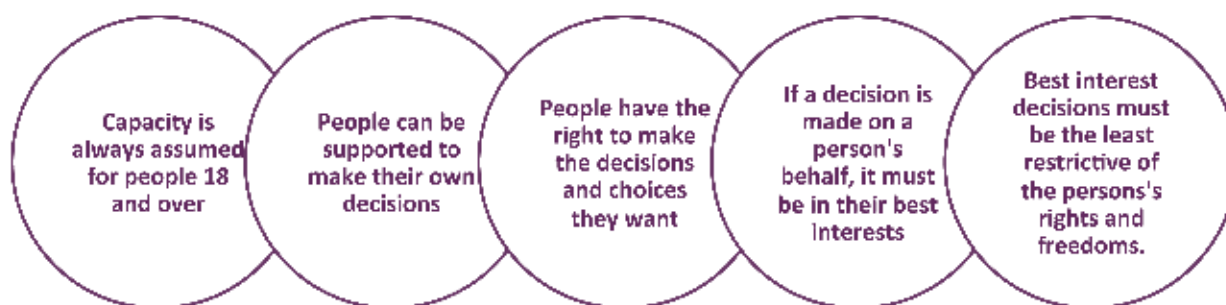
Judy Cohen, "Making Mediation Sessions Accessible to People with Disabilities".

www.mediate.com/articles/cohen.cfm

"Issues of Fairness and Justice in Alternative Dispute Resolution", National Alternative Dispute Resolution Advisory Council.

www.nadrac.gov.au/publications/PublicationsByDate/Documents/Issues%20of%20Fairness%20and%20Justice%20in%20Alternative%20Dispute%20Resolution.pdf

7 What is 'capacity' and why does it matter?



Capacity' is the legal word for a person's ability to make decisions. Under Australian law any person who is 18 is assumed to have capacity. That means that they can make all their own decisions. People with disability are also presumed to have capacity to make decisions that affect their own lives.

Generally, a person who has capacity to make decisions can understand the facts and choices involved, weigh up the consequences of the choices and understand how the consequences affect them and others. Additionally, they are able to communicate their decision.

Capacity is decision-specific and it is very rare for a person not to have capacity for any decisions at all. More often, a person lacks capacity when it relates to complex decisions. For example:

- A person might be able to decide where they want to live (personal decision), but not be able to decide whether to sell their house (financial decision).
- A person can do their grocery shopping (make a daily life decision about money), but not be able to buy and sell shares (make a more complex decision about money).

Capacity varies from person to person and from situation to situation. It doesn't remain the same all the time. It is affected by a person's abilities and by what's happening around them. Capacity can rise or fall, depending on things such as mental and physical health, personal strengths, the quality of services the person is receiving, and the type and amount of support.

FAQ's and more information



Frequently asked questions

Q. The person I care for can make some types of decisions without assistance but may find other decisions to be a struggle. How will DisabilityCare Australia account for this issue?

At the core of DisabilityCare Australia is a principle to empower people with disability and give them more control in their life. However, there are times when people with disability may need the valuable information or support of their carers, family, friends and community. This is why the *NDIS Act* provides for people such as 'plan nominees' and 'correspondence nominees' to assist people with disability in their life with DisabilityCare Australia. DisabilityCare Australia has published an important Fact Sheet about this, called "Choice and control within the National Disability Insurance Scheme". See: www.ndis.gov.au/resources/fact-sheets-and-publications/choice-and-control

More information

"Capacity Toolkit" published by NSW Attorney General's Department.

www.diversityservices.lawlink.nsw.gov.au/divserv/ds_capacity_tool.html

"Supporting Decision-Making – a Guide to Supporting People with a Disability to make their own Decisions" State Government of Victoria, Department of Human Services.

www.dhs.vic.gov.au

"Lifestyle Planning Guidelines" Version 1.0 Family and Community Services, Ageing, Disability and Home Care.

www.adhc.nsw.gov.au/__data/assets/file/0005/258584/Lifestyle_Planning_Guidelines_Aug_2012_web.pdf

"Working in Person Centred Ways".

A resource Book for NSW Advocacy and Information Services" Family and Community Services, Ageing, Disability and Home Care.

www.adhc.nsw.gov.au/__data/assets/file/0013/250033/Working_in_Person_Centred_Ways_Resource_Book.pdf

8 Independent, supported and substitute decision-making

The philosophy of DisabilityCare Australia is that the Scheme should maximise opportunities for people with disability to make decisions about controlling their support and the management of their funding arrangements.

DisabilityCare Australia will presume that people with disability have the capacity to exercise choice and control in their lives, and endeavour to support and develop their capacity.

This situation might be different for some people who have impaired capacity, whether this is caused by developmental delay, intellectual disability, mental ill-health, dementia or acquired brain injury.

The table below attempts to define the different types of decision-making, and identify issues that can arise in decision-making contexts. This material might help you reflect on your role in the decision-making of a person with disability.

Decision-Making Contexts	Definition	Issues To Think About
Independent Decision-Making	DisabilityCare Australia will presume that people with disability have the capacity to exercise choice and control in their lives, and endeavour to support and develop their capacity.	There may be greater operational challenges for people with intellectual disability due to limited prior knowledge about their values wishes.
Supported Decision-Making	Supported decision-making is where a person who needs help with decisions is given support from other people so that, so far as it is possible, the person with disability can exercise their own choice and control.	Does the person with disability have social networks? If not, how can these be built? Are advocates involved to ensure that decision-making does not involve duress?
Substitute Decision-Making	Situation where one person makes a decision on behalf of another. A 'power of attorney', 'enduring power of attorney' or Guardianship order can provide legal power for one person to act on behalf of another.	A guardianship order can be 'plenary', giving the guardian full decision-making power, or 'partial'. The guardian can make some decisions and not others. A 'power of attorney' or an 'enduring power of attorney' can only be made by a person who has capacity.

FAQ's and more information



Frequently asked questions

Q. How does DisabilityCare Australia support decision-making by people with disability?

DisabilityCare Australia aims to give people with disability more choice and control in their life and endeavours to support and develop their capacity to make important decisions in their life.

Q. What about people with disability who don't have capacity to make decisions alone?

DisabilityCare Australia recognises that not everyone has the capacity to make important decisions alone. Existing powers of attorney and guardianship orders are not affected by DisabilityCare Australia but the new legislation provides for appointment of 'nominees' who can also make decisions on behalf of others.

More information

ACT

ACT Civil and Administrative Tribunal (ACAT)
www.acat.act.gov.au

South Australia

Guardianship Board of South Australia
www.guardianshipboard.sa.gov.au

New South Wales

Office of the Public Guardian
www.publicguardian.lawlink.nsw.gov.au

Tasmania

Guardianship and Administration Board
www.guardianship.tas.gov.au

Northern Territory

Office of the Public Guardian
www.health.nt.gov.au/Aged_and_Disability/Adult_Guardianship/index.aspx

Victoria

Victorian Civil and Administrative Tribunal
www.vcat.vic.gov.au

Queensland

Guardianship and Administration Tribunal
www.qcat.qld.gov.au

Western Australia

State Administrative Tribunal
www.sat.justice.wa.gov.au

9 The role of parents, carers, guardians and nominees



People with disability are presumed to have capacity to make decisions that affect their own lives. However, the Act recognises that there may be circumstances where it is helpful to have another person appointed as 'nominee' to act on behalf of, or be involved in making decisions.

Nominees are people who have a duty to ascertain the wishes of a participant and to act in a way that promotes the participant's personal and social well-being. Parents, carers and guardians can be nominees.

Appointments of nominees will be justified *only* when it is not possible for participants to be assisted to make decisions for themselves. It is expected that, wherever possible, participants will be supported to make decisions for themselves.

Under DisabilityCare Australia, there are two types of nominee: a plan nominee and a correspondence nominee. Either type of nominee can be appointed either indefinitely or for a limited term.

A plan nominee is able to do any act that may be done by a participant under, or for the purposes of, the Act, that relates to:

- The preparation, review or replacement of the participant's plan; or
- The management of funding for supports under the participant's plan.

A correspondence nominee is able to make requests to the Agency (for example, requests for information), and receive notices from the Agency, on behalf of the participant.

A plan nominee or a correspondence nominee may be appointed:

- At the request of the participant; or
- On the initiative of DisabilityCare Australia.

FAQ's and more information



Frequently asked questions

Q. Who should be appointed as a nominee?

DisabilityCare Australia will appoint a nominee after considering the wishes of the participant, whether a guardianship order exists or any other decision-making order, and whether the prospective nominee is willing and able.

Q. Who cannot be appointed as a nominee?

A person under the age of 18, the Agency or any individual associated with the Agency other than in their personal capacity.

Q. How long does the appointment of the nominee last?

DisabilityCare Australia is able to appoint a nominee indefinitely or for a limited term.

Q. Will DisabilityCare Australia offer respite for carers?

DisabilityCare Australia Rules on "Supports for Participants" says that DisabilityCare Australia can be responsible for providing additional respite to parents of children. This is part of DisabilityCare Australia supports for children, families and carers as a direct result of a child's disability. The aim is to sustainably maintain a carer's role. The Rules do not specifically refer to respite for carers of adults. Alternatively, you may be eligible for *Commonwealth Respite and Carelink* assistance or *Respite Support for Carers of Young People with a Severe or Profound Disability* program.

More information

Draft Rules for children are available at:

yoursay.ndis.gov.au/document/show/17

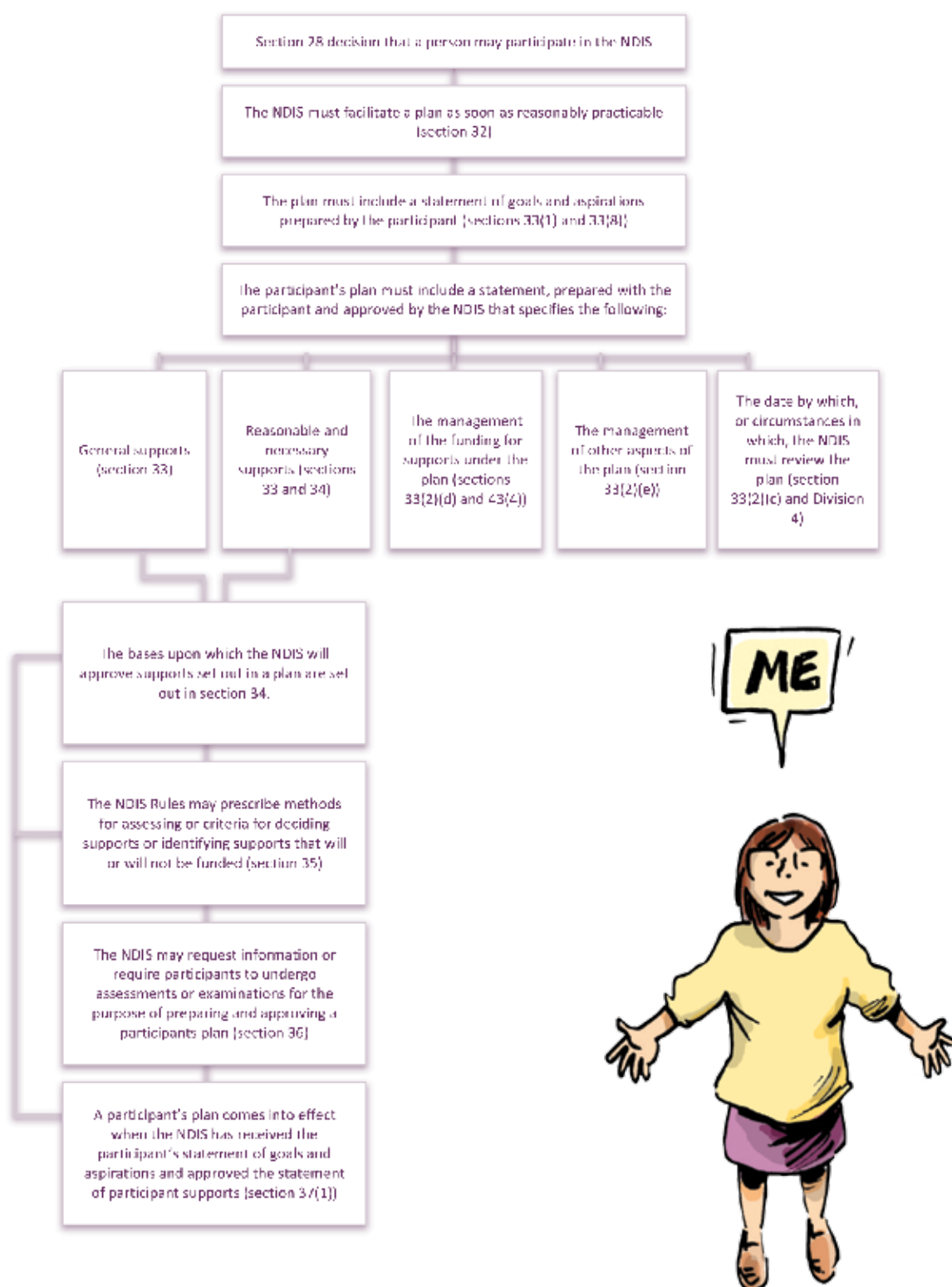
Draft Rules for nominees are available at:

yoursay.ndis.gov.au/document/show/23

10 How do I develop a participant's plan with DCA?

The plan will comprise two parts:

- The participant's statement of goals and aspirations and
- Statement of participant's supports



FAQ's and more information



Frequently asked questions

Q. Who requires a plan?

All participants in DisabilityCare Australia will have a plan.

Q. Why have a plan?

The purpose of the plan is to allow all individuals with a disability to think ahead to their future and offer them the assistance they need for times ahead.

Q. What is included in a plan?

The participant's plan includes both the participant's statement of goals and aspirations as well as the statement of participant supports.

Q. Who prepares a plan?

DisabilityCare Australia will prepare a plan on behalf of the participant.

Q. Who is involved in developing the plan?

The participant, their families and their carers will work with the Agency to explore their goals and aspirations, how their daily life is affected by their disability and to fully understand and support the options explored.

Q. What supports and services are included in a plan?

The purpose of DisabilityCare Australia is to consider a person's needs over their lifetime. Their plan will be developed to have the supports and services they need now and in the future.

Q. Is there flexibility in developing plans?

A key principle of DisabilityCare Australia is to develop increased flexibility and innovation. Many different participants will be able to access many different types of support.

More information

Draft Rules for Managing a Plan are available at:
yoursay.ndis.gov.au/document/show/25

Self-Directed Planning for People with a Disability information provided by the Victorian Department of Human Services.
www.dhs.vic.gov.au/for-individuals/disability/self-directed-support/self-directed-planning-for-people-with-a-disability

11 Planning for the future



Planning is based upon a person's dreams and aspirations, their abilities and interests and on what a person needs and wants for the future.

Legally, parents have no 'rights' at all over a child when she or he attains the age of majority, which is 18 in each State and Territory of Australia. More details are set out in the 'Capacity' section of "Discover A DisabilityCare Australia Help Guide".

If an adult person does not have the capacity to make a certain decision, someone called a 'substitute decision-maker' or 'supported decision-maker' might need to make the decision for them or assist them to come to a decision.

The person with the disability should be at the centre of the planning by:

- Developing the person's abilities.
- Basing planning on positive action.

Using the process of listening, clarifying and learning.

- Including family and people important to the person with a disability are all partners in the planning.

Planning involves communication as a person builds relationships with others and allows them to have a 'say' in their lives.

Under DisabilityCare Australia, a person with disability can appoint a 'nominee'. A plan nominee may do things on behalf of a participant including the preparation, review or replacement of their plan and the management of funding for supports.

FAQ's and more information



Frequently asked questions

Q. What does DisabilityCare Australia have to do with my future?

Planning for the future is key to DisabilityCare Australia. All participants will be assisted to develop their own personal statement of things they want to achieve (goals and aspirations) and which outlines their individual vision for the future.

Q. How will DisabilityCare Australia help me to achieve my goals in the future?

DisabilityCare Australia will assist people with disability achieve their goals and aspirations through the supports offered in their plan.

Q. If my plan for the future includes education will DisabilityCare Australia assist?

DisabilityCare Australia can fund education supports for example personal supports at schools or educational facilities required by an individual, portable aids and equipment, specialist transports, specialised support, and training for staff and non-clinical allied health.

Q. If my plan for the future includes employment how can DisabilityCare Australia help?

DisabilityCare Australia will offer assistance to support a person with disability to transition into employment as well as frequent and ongoing supports that assist a person with disability take part in work.

More information

For more information about planning for the future, there are a number of community legal centres across Australia which can assist. Please see the 'Additional Services Directory' in "Discover A DisabilityCare Australia Help Guide" for a list of organisations that can help.

12 How will the plan be managed?



The participant's plan must specify the management of funding supports under the plan and the participant's plan must specify that funding is to be managed wholly, or to a specified extent, by:

- The participant.
- The plan nominee.
- A registered plan management provider or,
- The Agency.

However a statement of participant supports in a participant's plan must not provide that the participant is to manage the funding for supports under his or her plan to any extent when:

- The participant is insolvent and under administration.
- DisabilityCare Australia is satisfied that management of the plan to that extent would present an unreasonable risk to the participant.

Or would permit the participant to manage matters prescribed by DisabilityCare Australia rules as being matters that must not be managed by the participant.

NDIS Rules will specify amounts payable to participants or fund managers, the time or times of payment and the manner of payment. NDIS Rules may provide that funds be payable to bank accounts and not until a bank account is nominated.

DisabilityCare Australia amounts must be spent in accordance with the participant's plan and NDIS Rules may require the retention of records relating to amounts paid, for a prescribed period. *(NB. At the time of writing this fact sheet, DisabilityCare Australia Rules have not been finalised).*

FAQ's and more information



Frequently asked questions

Q. Who can manage a plan?

A plan can be managed by the participant themselves, a registered plan management provider, DisabilityCare Australia or the plan nominee.

Q. Who is a registered plan management provider?

A registered plan management provider is a registered provider of supports approved to manage funding for supports by the Agency.

Q. Who is a plan nominee?

A plan nominee is a person nominated by a participant to manage a plan on their behalf.

Q. How are payments under a plan made?

Payments for support are made to the participant or a person managing their plan. This payment is made on condition that the money is spent in accordance with the plan and records are retained.

Q. There is a shortage of professionals to assist the person I care for. What will DisabilityCare Australia do to resolve that issue?

The job of DisabilityCare Australia is to coordinate services, including the provision of reasonable and necessary professional services.

Q. I receive different services from different people at different places. How will DisabilityCare Australia co-ordinate services?

DisabilityCare Australia will co-ordinate the services or identify a registered service provider to provide co-ordination services.

Q. Will DisabilityCare Australia ensure that there is sufficient funding in place to support my plan?

Funding for DisabilityCare Australia is coming from the Commonwealth Government and the State and Territory Governments that have agreed to participate in the scheme. Funding decisions are made on an individual basis.

More information

Choice and Control within the DisabilityCare Australia.

www.ndis.gov.au/resources/fact-sheets-and-publications/choice-and-control/

Plan Management Rules available at:
yoursay.ndis.gov.au/document/show/25

13 Reviewing and changing plans



A participant may change their plan at any time. The participant's plan is then taken to be replaced.

A participant may request that DisabilityCare Australia conduct a review of the participant's plan at any time and DisabilityCare Australia must decide whether to conduct a review within 14 days of receiving the request. However if DisabilityCare Australia does not make a decision within that period, it means they have decided not to conduct the review. If DisabilityCare Australia decides to conduct a review of the participant's plan, DisabilityCare Australia must commence the review within 14 days of deciding, and complete the review as soon as reasonably practicable.

DisabilityCare Australia will then prepare a plan with the participant that:

- Specifies general supports.
- Shows reasonable and necessary supports.
- Summarises review arrangements.

Displays management of funding for supports and management of other aspects of the plan, just as with the original plan.

Just as with the development of the participant's original plan, for the purpose of reviewing a participant's plan, DisabilityCare Australia may request information from a participant or another person, or require the participant to undergo assessments or examinations. Just as with the original plan, DisabilityCare Australia's decision to approve a plan is reviewable.

FAQ's and more information



Frequently asked questions

Q. When will a plan change?

A participant may change their statement of goals and aspirations at any time. As a result their plan will change to include these updating goals and aspirations.

Q. When can a plan be reviewed?

A participant may request DisabilityCare Australia to review their plan at any time or may review the plan on their own initiative. DisabilityCare Australia must decide whether or not to conduct this review within 14 days.

Q. What is the outcome of a review of plan?

If DisabilityCare Australia conducts a review of a participant's plan they must facilitate the preparation of a new plan with the participant.

Q. Does a new plan require a new statement of goals and aspirations?

A participant can maintain their existing statement of goals and aspirations. If they elect to do this it will simply form a part of their new plan.

Q. What does DisabilityCare Australia require in reviewing a plan?

DisabilityCare Australia may request the participant or another person provide information necessary to review the plan or require the participant to undergo an assessment and report back.

Q. What happens if my circumstances change?

A participant or potential participant must notify DisabilityCare Australia of a change in their circumstances which might affect their access request or status as a participant. This notification must be made in writing and as soon as reasonable practicable.

Q. What information might be required?

DisabilityCare Australia may require information from a participant where it is relevant to monitoring of support funding, spending in accordance with the participant's plan and determining entitlements and compliance.

More information

Choice and Control within DisabilityCare Australia.

www.ndis.gov.au/resources/fact-sheets-and-publications/choice-and-control/

14 Review of decisions

DisabilityCare Australia has a number of significant decision-making powers. If you would like a decision reviewed, the stages of the review are:

Internal review

The first stage of review for these decisions is a process which is called an 'internal merits review'. This means an internal review undertaken by another appropriately authorised person in DisabilityCare Australia Agency who was not involved in making the original decision.

Notice of review

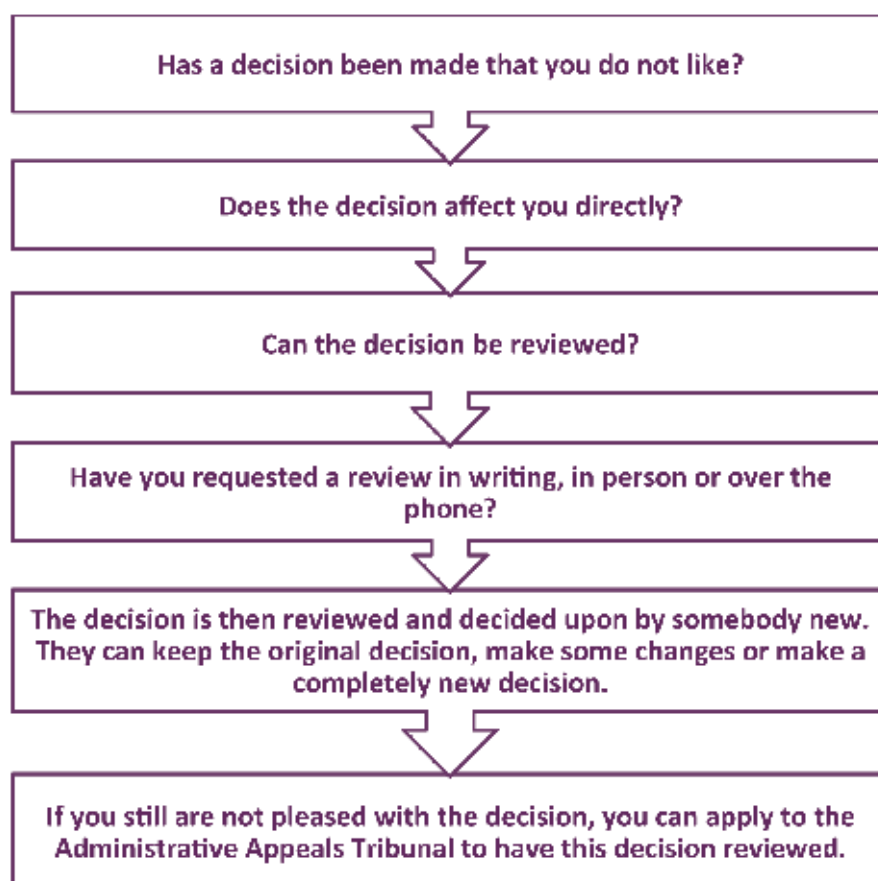
DisabilityCare Australia must give written notice of a reviewable decision to each person directly affected by the decision. A person who receives this notice may request a review of the decision within three months of receiving it.

Power of reviewer

A decision reviewer may confirm, vary or set aside the original decision. A request for review of a decision does not affect the operation of the decision or prevent actions being taken to implement the decision.

External review

A person may apply to the Administrative Appeals Tribunal for an external review of the decision to: confirm, vary or set aside the original decision arising from the internal review process.



FAQ's and more information



Frequently asked questions

Q. How will I know if a decision is reviewable?

DisabilityCare Australia must give written notice of a reviewable decision to each person directly affected by it.

Q. How can a request for review be made?

A request may be made by sending or delivering a written request to DisabilityCare Australia or making a request in person or by telephone.

Q. Can I withdraw a request for review?

A request for review of a reviewable decision may be withdrawn by sending or delivering a written notice to DisabilityCare Australia or contacting DisabilityCare Australia orally.

More information

New South Wales

Australian Centre for Disability Law
disabilitylaw.org.au

Northern Territory

Darwin Community Legal Service
www.dcls.org.au/disability-discrimination.html

Victoria

Disability Discrimination Legal Service Inc
http://www.communitylaw.org.au/clc_ddls/cb_pages/about_us.php

South Australia

Disability Discrimination Services
www.sa.gov.au/subject/Community+support/Disability/Your+rights/Anti-discrimination+law+s+and+disability+rights (An SA government publication)

Queensland

Disability Discrimination Legal Service
www.cclc.org.au

Tasmania

Launceston Community Legal Centre
www.lclc.net.au

Australian Capital Territory

Disability Discrimination Legal Service (ACT)
www.welfarerightsact.org (Under construction)

Western Australia

Sussex Street Community Law Services Inc
www.sscls.asn.au/Programs-Services/Disability-Discrimination

Administrative Appeals Tribunals

National phone number:
1300 366 700

15 Legal planning for the future

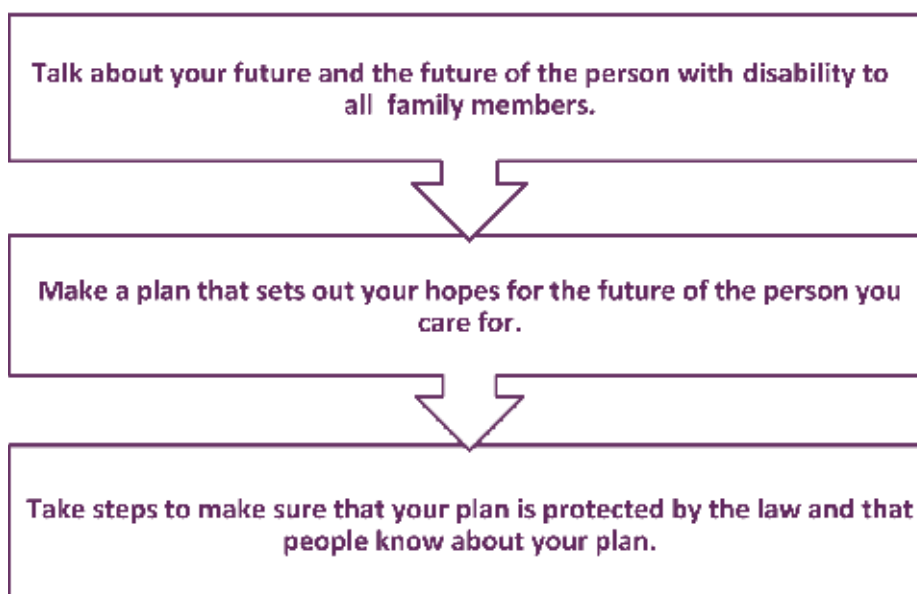
DisabilityCare Australia (DCA) is all about people with disability making plans for their future. This future will often involve other people who provide resources and support to a person with a disability; resources such as money or accommodation. DisabilityCare Australia will provide resources and support, but many people with a disability receive resources from other people, such as family members or friends.

People who are planning for the future with DisabilityCare Australia also need to think about the additional things they can and should do, beyond their DisabilityCare Australia planning, to make sure their future meets their expectations. This will be more important under DisabilityCare Australia because it is designed to allow people with disabilities, and their supporters, to make decisions now made by service providers or government.

In these Fact Sheets numbered 15-20, we provide information for people who may have impaired capacity, and for the carers, friends and parents who want to help make sure that those people with impaired capacity have resources at hand so that they can be secure in the future.

There are a number of legal options available to older parents or carers who wish to make such provision for the people they care for, including:

- Wills and estate planning
- Powers of attorney
- Trusts and Special Disability Trusts
- Guardianship



FAQ's and more information



Frequently asked questions

Q. Where can I go for help developing a valid Will?

It is possible to make a valid Will without the assistance of a solicitor but this is generally not advisable. Some solicitors are willing to provide this service free-of-charge, but often they will charge a fee for the 'execution' of the Will. The Public Trustee in each State and Territory can prepare Wills. However they also charge fees.

Q. How often should my Will be revised or updated?

Your Will expresses your wishes at a particular point in time. You may wish to review your Will when circumstances change to reflect accurately your current wishes. Those situations may include; divorce, the executor named in the Will becoming ill or unable to handle the responsibility or buying or selling assets.

More information

The Law Society in your State or Territory will assist you to find a solicitor or the Public Trustee is available to assist as well.

Australian Capital Territory

ACT Law Society

www.actlawsociety.asn.au/

ACT Public Trustee

www.publictrustee.act.gov.au

South Australia

Law Society of South Australia

www.lawsocietysa.asn.au/

SA Public Trustee

www.publictrustee.sa.gov.au

New South Wales

Law Society of NSW

www.lawsociety.com.au/

NSW Trustee and Guardian

www.tag.nsw.gov.au

Tasmania

Law Society of Tasmania

www.taslawsociety.asn.au/web/en/lawsociety.html

TAS Public Trustee

www.publictrustee.tas.gov.au

Northern Territory

Law Society of the Northern Territory

www.lawsocnt.asn.au/

NT Public Trustee

www.nt.gov.au/justice/pubtrust/index.shtml

Victoria

Law Institute of Victoria

www.liv.asn.au/

State Trustees Limited

www.statetrustees.com.au

Queensland

Queensland Law Society

www.qls.com.au/Home

QLD Public Trustee

www.pt.qld.gov.au

Western Australia

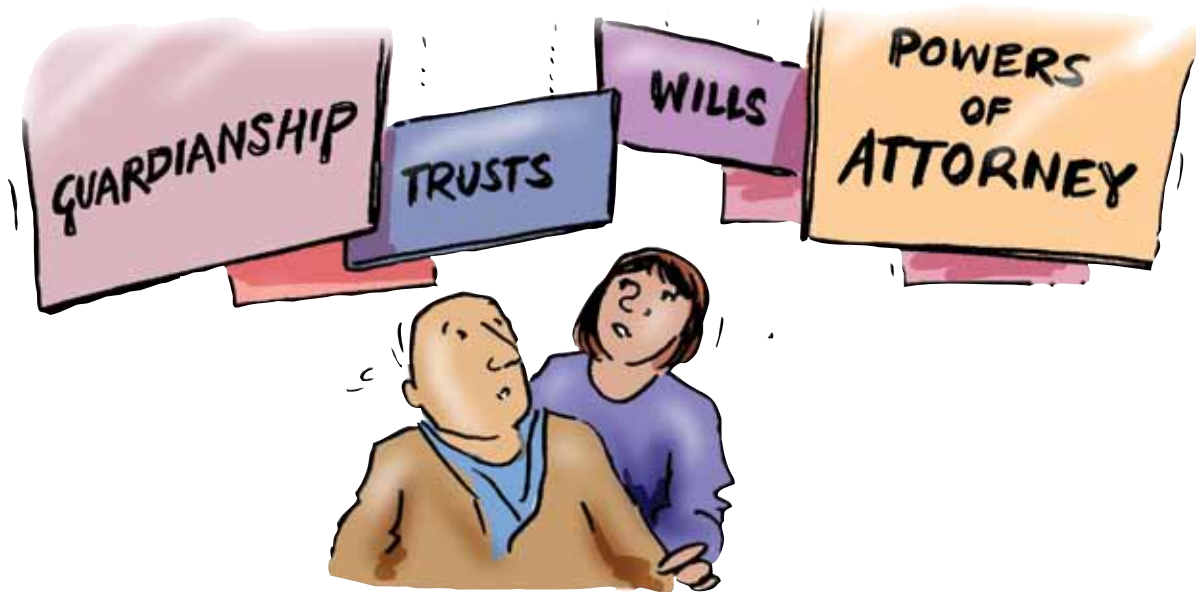
Law Society of Western Australia

www.lawsocietywa.asn.au/

WA Public Trust Office

www.publictrustee.wa.gov.au

16 Wills



Every person 18 years of age and older should make a valid Will. A Will should make provision for payment of debts, taxes and other liabilities you may have including funeral expenses. Your Will also distributes property/real estate, cash and bank accounts, investments and insurance policies, household furniture, clothing, and personal items.

Parents should be aware of the risks entailed in making a small provision for a son or daughter with an intellectual disability where there are sufficient resources to do so.

To avoid potential problems, a Will could include a trust that ensures that the property left behind is used for the advantage of the person with a disability (the 'beneficiary').

If you die without a Will, the law calls this intestacy. If you die with a Will that only gives away some, but not all, of your property, this is called a 'partial intestacy'. The Public Trustee may become involved in the execution of your Will, giving rise to additional expense.

To avoid all of these problems and complications, you should make a valid Will. It will make things less complicated and costly for your beneficiaries.

A valid Will can help your family or people who receive a gift under your Will (your 'beneficiaries') to avoid unnecessary costs, delay or legal challenges.

FAQ's and more information



Frequently asked questions

Q. Is A Solicitor Required To Prepare A Will?

No. A Will does not need to be prepared by a solicitor but if the person's property is valuable then a solicitor may be better placed to ascertain some legal issues such as undue influence by a carer for example.

Q. What are the 'nuts and bolts' of writing a Will?

A valid Will must be in writing, signed and witnessed.

Q. Can Someone Else Make A Will For A Person With Intellectual Disability?

No. Another person cannot make a Will for any other person. Guardians, trustees, parents and people under a Power of Attorney have no power to make a Will on another's behalf.

More information

The Law Society in your State or Territory will assist you to find a solicitor or the Public Trustee is available to assist as well:

Australian Capital Territory

ACT Law Society

www.actlawsociety.asn.au/

ACT Public Trustee

www.publictrustee.act.gov.au

South Australia

Law Society of South Australia

www.lawsocietysa.asn.au/

SA Public Trustee

www.publictrustee.sa.gov.au

New South Wales

Law Society of NSW

www.lawsociety.com.au/

NSW Trustee and Guardian

www.tag.nsw.gov.au

Tasmania

Law Society of Tasmania

www.taslawsociety.asn.au/web/en/lawsociety.html

TAS Public Trustee

www.publictrustee.tas.gov.au

Northern Territory

Law Society of the Northern Territory

www.lawsocnt.asn.au/

NT Public Trustee

www.nt.gov.au/justice/pubtrust/index.shtml

Victoria

Law Institute of Victoria

www.liv.asn.au/

State Trustees Limited

www.statetrustees.com.au

Queensland

Queensland Law Society

www.qls.com.au/Home

QLD Public Trustee

www.pt.qld.gov.au

Western Australia

Law Society of Western Australia

www.lawsocietywa.asn.au/

WA Public Trust Office

www.publictrustee.wa.gov.au

17 Guardianship

Guardianship is a word that is used to describe a relationship between people in which one or more persons, a 'guardian' exercises legal decision-making power over a person who lacks capacity to make decisions.

A 'guardianship order' is a legal decision made by a government department called a tribunal that decides who may be a guardian and what decisions they are allowed to make. Guardians can be family members or friends of a person with disability. If family or friends are unwilling or unavailable to make decisions on behalf of the person with disability, these powers can be exercised by the Adult Guardian in Queensland or the government guardianship office in your State or Territory. The responsibilities of a guardian include:

- Protecting the represented person from abuse, exploitation and neglect.
- Considering the represented person's wishes.
- Advocating for the represented person.
- Encouraging the represented person to make their own decisions where possible.

Guardians are accountable for the decisions they make and have a duty of confidentiality. The sorts of situations where formal guardianship orders might be needed are where:

A person does not have any family or friends willing and able to support the person and maintain informal decision-making arrangements.

- There is conflict about what is in the best interests of a person.
- Informal decision-making arrangements are proving detrimental to the best interests of the person.
- A person is being subjected to neglect, harm, abuse or exploitation.

A person's own decisions are now working in their own best interests and are in fact placing them at risk.

FAQ's and more information



Frequently asked questions

Q. What functions can a guardian exercise?

Guardianship orders specify what functions or powers the guardian can exercise. Some of the most common include:

- Accommodation – where the person lives currently and will live in the future and with whom they live and will live.
- Services – what services the person will access and engage in (for example day programs).
- Education and training – what education and training the person can receive.
- Work – whether a person can work, the nature of the work and with whom they can work.

More information

Australian Capital Territory

ACT Civil and Administrative Tribunal (ACAT)
www.acat.act.gov.au

South Australia

Guardianship Board of South Australia
www.guardianshipboard.sa.gov.au

New South Wales

Office of the Public Guardian
www.publicguardian.lawlink.nsw.gov.au

Tasmania

Guardianship and Administration Board
www.guardianship.tas.gov.au

Northern Territory

Office of the Public Guardian
www.health.nt.gov.au/Aged_and_Disability/Adult_Guardianship/index.aspx

Victoria

Victorian Civil and Administrative Tribunal
www.vcat.vic.gov.au

Queensland

Guardianship and Administration Tribunal
www.qcat.qld.gov.au

Western Australia

State Administrative Tribunal
www.sat.justice.wa.gov.au

18 Powers of attorney

An ordinary (or 'General') Power of Attorney is your legal document appointing a person or trustee organisation of your choice to manage your money and financial affairs while you are alive. This person or organisation is then known as your 'attorney'. This means they can operate your bank accounts, pay your bills or buy/sell assets or shares on your behalf.

There are two important points:

- To make a valid Power of Attorney you must be 18 years or over.
- You must have the capacity to understand the nature and effect of the appointment.

You can appoint an attorney:

- As your 'delegate' for a limited time – for example if you are going overseas or to deal with a specific situation – this is a **general power of attorney**. It applies until you revoke it or die, but it immediately ceases to be valid once you become legally incapable of deciding things for yourself.
- As someone to 'take over' decision-making when you become legally incapable of doing so for yourself – **this is an enduring power of attorney**. It applies until you die or it is ended or modified by an application to the Guardianship Tribunal, but you cannot alter it unless you regain your lost capacity.

You can use a 'Power of Attorney' for almost any financial purpose. For example, you can authorise your attorney to collect debts, vote at meetings, operate your bank account, manage your investments or carry out any other function which can be lawfully delegated. Enduring powers of attorney can always cover finances and may also be made over personal matters (such as where you live, or medical care).

A Power of Attorney ceases when you die. The executor named in your Will then takes over the responsibility of administering your estate.

FAQ's and more information



Frequently asked questions

Q. Does A Power Of Attorney Have To Be In Writing?

Yes. It is an important and powerful document giving an authority to another person to look after things you have nominated.

Q. What are the duties and responsibilities of an Attorney?

Your attorney is in an important position of trust and has a responsibility to always act only in your best interests. They therefore must:

- Be 18 years or over.
- Ensure that as your attorney their interests don't conflict with yours.
- Obey your instructions while you are mentally capable and any directions you make in the Enduring Power of Attorney.
- Act according to any limits or conditions placed on their authority.
- Not give gifts or give themselves or others a benefit using your finances unless you specifically authorise this.
- Keep their finances and money separate from yours.
- Keep accurate records of their dealings with your finances or property.

More information

Australian Capital Territory

www.publictrustee.act.gov.au/powers-of-attorney

South Australia

www.sa.gov.au/subject/seniors/Legal+issues/Power+of+attorney+and+advance+directives

New South Wales

www.lawsociety.com.au/community/publicationsandfaqs/legalquestions/Planningahead/index.htm

www.publicguardian.lawlink.nsw.gov.au/agdbasev7wr/_assets/publicguardian/m40675111/finalweb_version.pdf

Tasmania

www.dpiw.tas.gov.au/inter.nsf/WebPages/MPHS-8CSV76

Victoria

www.publicadvocate.vic.gov.au/publications/121/

Northern Territory

www.nt.gov.au/justice/bdm/land_title_office/power.shtml

Western Australia

www.publicadvocate.wa.gov.au/E/enduring_power_of_attorney.aspx

Queensland

www.justice.qld.gov.au/justice-services/guardianship/power-of-attorney

19 Trusts

A trust is a legal obligation placed on one person called the trustee, to look after the assets of the trust for the benefit of another person or perhaps a number of people who are called a 'beneficiary' or 'beneficiaries'.

The idea of a Trust is to separate the **power to control assets** from the **right to benefit from those assets**.

The person with disability can therefore benefit from the assets without the risks involved in having direct control over the assets.

To set up a Trust, firstly you will need legal advice as a Trust Deed has to be prepared. This Deed is a legal document which:

- Identifies who is the founder of the Trust, who is the Trustee and who benefits from the Trust
- Sets out the powers of the trustees
- Provides details of how the assets and/or money are to be used for beneficiaries

If a Trust is created, the Trustee has the right to control and administer the assets but only for the benefit of the beneficiary. The beneficiary has the right to benefit from the assets (such as living in the house or unit) but not the power to control (sell) the asset.

Example

If a person with an intellectual disability has 'title' or ownership to a house or unit for example, the situation could occur that the person could be at risk of exploitation or abuse because they may not have the full capacity of understanding the concept of the financial value of the property.

- However, if a Trust is created, the Trustee has the right to control and administer the assets but only for the benefit of the beneficiary and
- The beneficiary has the right to benefit from the assets (such as living in the house or unit) but not the power to control or sell the asset.

FAQ's and more information



Frequently asked questions

Q. How can a Trust be used for the benefit of a person with a disability?

A trust can continue to look after some of the interests of a person with disability after your death. If you decide to use a Trust for a family member with a disability the main decisions that you will need to make are:

- Who will be the trustees?
- What accommodation and care options should I provide for?
- How much direction and discretion can I give the trustee(s)?
- In what way can I divide my assets fairly for the person with the disability and other sons and daughters?

More information

The Law Society in your State or Territory will assist you to find a solicitor in your area.

Australian Capital Territory

ACT Law Society
www.actlawsociety.asn.au/

South Australia

Law Society of South Australia
www.lawsocietysa.asn.au/

New South Wales

Law Society of NSW
www.lawsociety.com.au/

Tasmania

Law Society of Tasmania
www.taslawsociety.asn.au/web/en/lawsociety.html

Northern Territory

Law Society of the Northern Territory
www.lawsocnt.asn.au/

Victoria

Law Institute of Victoria
www.liv.asn.au/

Queensland

Queensland Law Society
www.qls.com.au/Home

Western Australia

Law Society of Western Australia
www.lawsocietywa.asn.au/

20 Income support – Centrelink



The Commonwealth Government through Centrelink, provides financial support in the form of the Disability Support Pension for people with a physical, intellectual or psychiatric impairment.

A person may be eligible for Mobility Allowance as well to help a person to get to training or work if they cannot use public transport without substantial assistance because of the disability, illness, or injury.

Centrelink provides two payments in recognition of the role of carers who are usually (but not always) parents:

- Carer Allowance is a payment provided if the care for that person is in your home or that person's home and is not means tested.
- Carer Payment is an income source for full time carers whose opportunities for full time employment are restricted by their caring role. Carer Payment is means tested.

Both Carer Allowance and Carer Payment have eligibility criteria including that the person you care for must be in receipt of income support from Centrelink.

FAQ's and more information



Frequently asked questions

Q. Does parents' income affect a son or daughter's application for the Disability Support Pension?

No. Parents' income or assets has no impact. However a Worker's Compensation or Third Party damages award to your son or daughter will affect their payment. If a person is granted a Disability Support Pension, they may be able to claim for Rent Assistance even if they live at home with their family.

Q. How can I find out if my son or daughter is eligible for the Disability Support Pension?

An application pack can be obtained from Centrelink office or ringing phone on **132 850**. There is a requirement for medical reports and other relevant document to assess eligibility against 'impairment ratings'.

An 'impairment rating' is a measurement of the effect of physical, intellectual and psychiatric impairment on a person's ability to work. One of the criteria for Disability Support Pension is an impairment rating of at least 20 points on these Impairment Tables. Each table lists a range of conditions, symptoms and impairments, and gives a rating for each according to how it affects your capacity to work. Unless all 20 points come from a single table, there is usually also a requirement to have participated for 2 years in a disability employment support program.

More information

Centrelink

www.humanservices.gov.au/customer/subjects/payments-for-people-living-with-illness-or-disability

Phone: 132 717

(Carer Payment and Carer Allowance)

Hours: Monday to Friday 8.00 am to 5.00 pm

Welfare Rights Service Inc

www.wrcqld.org.au/dealing-with-centrelink/common-situations-and-solutions/disability.html