

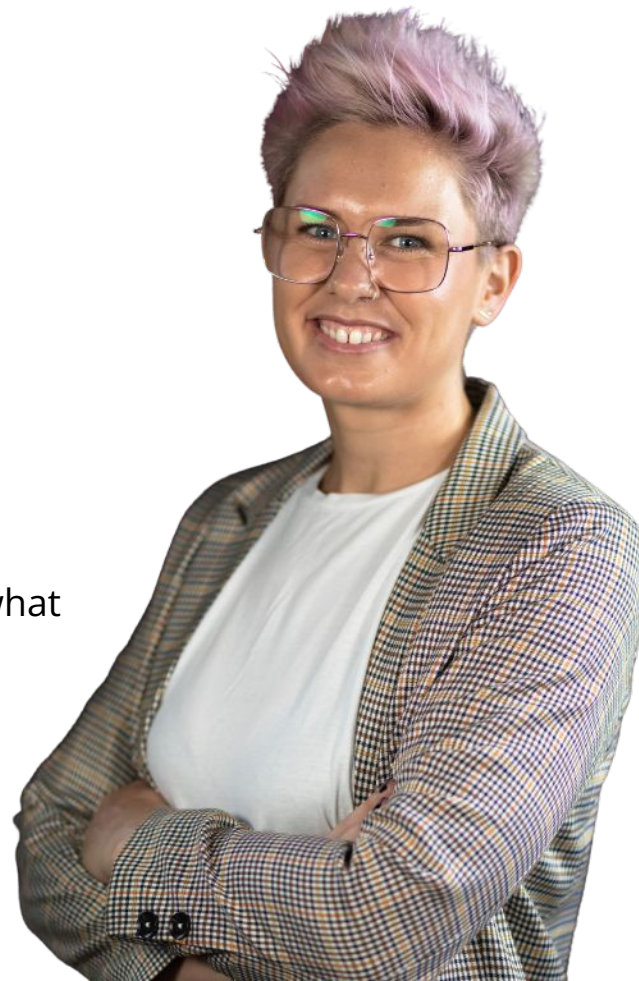
Guardianship in the NDIS space explained:

Let's explore the different types of guardianship, the financial management considerations, and the process to apply for guardianship within the context of the NDIS.

- Plan nominee in NDIS space
- Different types of guardianship
- When is it important to think about guardianship and what needs to be considered?
- What is the process to apply for guardianship?

Presenting tonight:

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Acknowledgement of Country

I would like to begin today by acknowledging the Traditional Custodians of the land on which we meet today, and pay my respects to their Elders past, present and emerging. I extend that respect to Aboriginal and Torres Strait Islander peoples here today.



Plan nominee in NDIS space

- A person (usually a parent or informal carer) can go through the process of requesting to be a plan nominee.
- A parent or informal carer who has been the individual's child representative does not automatically get appointed as the plan nominee when a person on the scheme turns 18.
- In rare circumstances when the NDIA find necessary they can appoint a plan nominee even when it has not been requested. They consider the person's wishes, capacity and the supports around the individual.
- Under the NDIS there are two types of nominee a plan nominee and a correspondence nominee.
- A single person can be appointed as both plan and correspondence nominee.
- Either type of nominee can be appointed either indefinitely or for a specified period of time.



Guardianship vs nominees

- Guardianship is different from nominees. Guardianship is the authority to manage the legal and non-legal affairs.
- Guardians are not nominees under the NDIS and there is no automatic process for guardians to be made nominees.



Different types of guardianship

- **Enduring Guardian:** An Enduring guardian only starts making decisions when you are unable to. An Enduring guardian is unable to make financial decisions.
- **Enduring Power of Attorney:** A person that you appoint that can start to make legal and financial decisions on your behalf if you lose capacity to be able to do so.
- **General Power of Attorney:** Someone you can appoint to sign documents for you if you lose the capacity.
- **Legal Guardian/Public Guardian:** Court-appointed when an individual lacks the capacity to make decisions in various areas of life, including personal, health and accomodation.



What is a legal guardian?

- Legal guardianship is the legal authority of an individual or entity to make decisions for an adult who cannot decide for themselves.
- The decisions can be in one area so medical for example or all areas so medical, accomodation, restrictive practices, dental and lifestyle.
- A guardian must be over 18 and not a paid carer. This may be a family member or anyone genuinely interested in the person's welfare. If there are no suitable candidates, a public guardian may be appointed



Public guardian vs legal guardian

- **Legal Guardian:** Typically a family member or trusted individual who assumes the role of guardian voluntarily. This person may have a close relationship with the individual and understand their preferences and needs.
- **Public guardian:** Appointed by the court to act as a guardian for individuals who have no suitable family or friends to take on the role. They ensure the individual's rights and interests are protected.



Financial Management

- Financial management is a separate process from the legal guardianship and public guardian. A Legal guardian/public guardian is unable to make financial decisions on behalf of the participant.
- If the person does not have capacity or anyone who can make financial decisions then they will be with the Financial Trustee who will make financial decisions on their behalf.



How is capacity determined?

Every adult is presumed to have capacity until proven otherwise.

Capacity assessment

Capacity depends on the decision being made. An adult may have the capacity to make one decision but not another. Capacity can also change over time and can be affected by many circumstances. These include illness or variable access to support.

Provide the Adult with the necessary information and support. An adult's capacity cannot be determined unless they have the information and support needed to make the decision.

** A capacity assessment is typically completed by a Psychologist or Neuropsychologist but it needs to be made clear in the referral that you are requesting a capacity assessment and what areas you are questioning capacity so they can assess the cognitive functioning in relation to their capacity in the different areas.



When to think about Legal Guardian

- Consider a Legal Guardian when an individual:
 - A person has turned 18.
 - Lacks the capacity to make decisions independently, especially in areas of health, lifestyle, dental and accommodation
 - Faces significant risks due to an inability to manage personal affairs.
 - Requires support to navigate complex legal or financial matters.



When to think about Public guardian

- When the person turns 18 years old
- When the person's informal supports identify that they are unable to sustain the role as the person's decision maker
- When the person has acquired an injury and is unable to make decisions
- When a person is moving out of home and the expectation of the informal supports is or has changed.
- When the person is at risk or has been taken advantage of due to not comprehending or having the capacity to comprehend the big decisions and the impacts.



Process to apply for guardianship

- **Seek legal advice:** Consult with a lawyer experienced in disability and guardianship law to understand rights, responsibilities, and options.
- **Complete application:** Gather necessary documentation and forms required for the guardianship application.
- **Court assessment:** The court will assess the individual's capacity and suitability for guardianship, considering evidence and expert opinions.
- **Court decision:** The court will make a decision to grant or deny guardianship based on the assessment and the best interests of the individual.



What evidence is important for guardianship

- The most important and valuable piece of evidence for guardianship is a capacity assessment completed ideally by a Neuropsychologist or a Psychologist that is trained in completing cognitive assessments.
- When referring to have a cognitive assessment completed for guardianship purposes it is important to specify in the referral that you would like them to assess capacity as the assessment report will be used to look at guardianship and specify what areas the guardianship is being considered for whether it is one area or all areas.



Legal guardian and plan nominees for NDIS providers

- If you are a guardian or plan nominee or are a participant who has a guardian or plan nominee, it is important to share this with all service providers when signing up or starting services with them.
- If you are a service provider it is your responsibility to ask who is the legal guardian and/or plan nominee and what their details are.
- It is important if you are a service provider not to assume capacity of the individual when it comes to decision making/ signing documents and to ensure they are legally the ones that are making these decisions.
- A person who has a plan nominee or legal guardian, may also appear to have capacity / understand the process /articulate themselves well. As a service provider or NDIA representative, it is important to take the responsibility of asking the questions and getting the relevant documentation to understand the situations of the individuals that you are working with, so that people who appear to have capacity do not put themselves at risk by starting/ceasing services or signing up to things



QUESTIONS?

