

NDIS and Making Decisions

The *National Disability Insurance Scheme Act 2013* says that people with disabilities are the decision-makers about their NDIS planning and supports. Even if you need a lot of support to make your wishes known, you have the right to have others help you to do what you would like to do. Someone else should only be making decisions for you if you really can't make the decision for yourself and only if there is absolutely no other option.

It can be confusing to figure out who should make decisions about the NDIS and a lot of people think that adults with intellectual disabilities always need someone else to their decisions, but that's not right! The NDIS has rules about who can make decisions about your NDIS plan and supports, and there are laws about adults and decision-making. The laws are different depending on where you live in Australia – this article is about adults with intellectual disabilities living in Victoria.

Your rights when it comes to the NDIS and making decisions

You have the right to be part of your NDIS planning meeting and to have the support you need to participate. *NDIS Act 2013, section 17A & section 31*

You have a right to make decisions about your goals, the services you use, and to choose who helps you to make your NDIS plan happen. *NDIS Act 2013, section 4*

You have a right to have information about your NDIS plan and supports ways that you can understand. *Commonwealth Disability Discrimination Act 1992, section 6*

You have a right to choose who supports you when you need to talk with the NDIS about your plan. *NDIS Act 2013, section 4*

You have a right to have your wishes taken into account, even if you need full support from family or friends, or a formal representative, to make decisions (e.g. a Guardian, Power of Attorney, Plan Nominee). *NDIS Act 2013, section 5; United Nations Convention on the Rights of Persons with Disabilities, Article 12; Guardianship and Administration Act 1986 (Vic) section 22*

Who else can make decisions about your NDIS supports?

Family

When you turn 18-years-old, your family can't just make decisions on your behalf about your NDIS plan or supports. Your family can help you with your decisions, but they can't contact the NDIS unless you say they can. If you want your family to be in charge of your NDIS decisions, you can ask that they become your 'Plan Nominee'. Your family cannot sign Service Agreements on your behalf or log in to the NDIS Portal if there is no formal order in place that says they can (e.g. Plan Nominee, Guardianship).

Plan Nominee

A NDIS Plan Nominee can make the same decisions that you would usually make for yourself if you are unable to but only about NDIS planning and supports – not about everything in your life. It is best if it is your choice to have a Plan Nominee and that you decide what you want them to help you with, but the NDIS also can appoint a Plan Nominee without your permission if they think you need one. Having a Plan Nominee should always be a last resort, and you should still be supported to make as many NDIS decisions as possible.

If you're choosing a Plan Nominee, it should be someone that you really trust - most people choose a close family member or friend. People who are being paid to support you at a disability service should never be appointed as your Plan Nominee because it is a conflict of interest.

Plan Nominees should always make decisions based on what they think you would want if you were choosing for yourself and not what the Plan Nominee thinks might be best for you.

A Correspondence Nominee is different from a Plan Nominee -they just receive the same information as you about the NDIS – they cannot make any NDIS decisions on your behalf.

Guardian

In Victoria, a legal guardian can be appointed to make decisions on behalf of adults if they're unable to make certain choices. Guardianship should only be used as a last resort because there are no options for supporting you to make your own choices. A lot of people think that parents of adults with intellectual disabilities can automatically make any and all decisions for you but that's not true - guardians must be legally appointed by the Victorian Civil and Administrative Tribunal (VCAT), and they are usually only allowed to make decisions for a short time (e.g. one year) and only about particular things (e.g. where you should live).

Even if you have a legally appointed guardian, they might not be entitled to make your NDIS decisions. It's important that guardians find out which decisions they are allowed to make, and service providers must check guardianship orders before they ask the guardian to make NDIS decisions.

Guardians of adults should only sign a Service Agreement if they have the correct order in place (e.g. 'access to services' decisions). Guardians must make NDIS decisions based on what they think you would want if you were making the decision for yourself.

Support Coordinator

Support Coordinators should not make decisions for you, but they should help you to understand the decisions that need to be made, and what you need to consider before you make a choice. If a decision needs to be made and you need assistance, your Support Coordinator should ask the people you know and trust to help you to decide (this is sometimes called 'consensus-based decision-making'). Support Coordinators should not be appointed as a Plan Nominee or sign Service Agreements for you.

Service Providers

Service providers should work with you and the people you trust to agree about decisions that need to be made. Service providers cannot make decisions about your NDIS plan, should not decide what your goals are, and cannot choose how you should spend your NDIS funding. You have the right to decide which services you use, what you want to buy from them and to use other services if you want to.

Service providers should not ask your family to make decisions for you or sign documents unless they are allowed to because they are a Plan Nominee or legal guardian. Service providers and workers (e.g. House Supervisor) should never be appointed as a Plan Nominee and should not force you to sign a Service Agreement that you do not agree with or understand.

Independent Advocate

Advocates can support you to make your own decisions by giving you information to weigh up your options and can support you to stand up for yourself if anyone is pressuring you about your NDIS decisions. Advocates help people who are having a disagreement with the NDIS, or with service providers or family about a decision. An advocate should never be appointed a Plan Nominee or sign Service Agreements on your behalf. An advocate can help you, and the people supporting you, to consider alternatives to having other people make decisions for you.

Supported Decision-Making

It's not OK for people to make decisions about your life without your involvement. You have the right to have support to make your own choices, even if it means that other people must do a lot of work to make it happen!

You can ask the NDIS for funding that helps you to build your skills to make your own decisions. People who need a lot of support with making decisions, or need full support in all decisions, can ask the NDIS for funding to bring together friends and family to help you with decisions over the long term (e.g. a Circle of Support, Microboard).

If you need advice about NDIS decisions, or if you are unhappy with the decisions other people are making for you, you can contact VALID for advocacy support on 03 9416 4003 or email intake@valid.org.au