Appointing a nominee

Quick summary: If you're 18 or older, you have the right to make decisions about your business with the NDIS, including how we interact with you. We'll always start from the principle that you can make decisions for yourself. But we know making decisions can sometimes be hard. We'll check with you to see if you're ok making decisions independently. If not, we'll see if you can make decisions with support. If you're younger than 18 you can be supported by a child representative.

If you're not able to make decisions, even with support, we'll explore who else can make decisions and do things on your behalf. We call this representative decision-making, and we call this person a nominee. The role of a nominee is voluntary, which means they don't get paid.

If you have a nominee, they'll be responsible for making decisions about your business with the NDIS and doing things on your behalf. NDIS laws say a nominee must support you to make your own decisions as much as possible. They must also understand your wishes and preferences, and act in a way that promotes your personal and social wellbeing. We'll only appoint a nominee for you if it's the only option to make decisions about your business with the NDIS.

There are some decisions you need to make, such as the goals you want to pursue, and which providers you want to use. There are some decisions we need to make to help you to do this. For example, we make the decisions about your NDIS funding and supports set out in your plan. And we decide whether to appoint or suspend a nominee.

When we say 'we decide' or 'our decision', we mean the decisions that the NDIA needs to make. When we say 'you decide' or 'your decision', we mean the decisions that you need to make about your business with the NDIS.

What's on this page?

This page covers:

- Do you need help to make your NDIS decisions?
- What types of nominees are there?
- Who can be your nominee?
- What do we consider when appointing a nominee?
- What are the duties of a nominee?
- How do you get a nominee?

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- When would a nominee appointment be cancelled or suspended?
- What if you don't agree with a decision we make?

You might also be interested in:

- Child representatives
- Your privacy and information

Do you need help to make your NDIS decisions?

If you're 18 or older, we:

- assume that you're able to make decisions about your life and your business with the NDIS[1]
- believe you're the best person to make decisions that affect your life
- want to help you build your skills in making decisions
- want you to have every opportunity to act on your own behalf, with or without support
- believe you should be involved in any decision-making that affects you, and wherever possible make decisions for yourself[2]
- believe you have the right to have choice and control and be at least an equal partner in decisions that will affect your life.[3]

There are different ways you can get help to make decisions about your business with the NDIS. You might want a support person like a family member, friend or an advocate to attend NDIS meetings with you. Or you may like to give express consent so that we can discuss and share information about your business with the NDIS with other people.

Express consent is different to a nominee because your support person can't make decisions for you like a nominee can. You can give express consent by using an NDIS consent form, or you can tell us verbally, in writing, or in some other way that you communicate. You can talk to us about how to get support for decision-making at any time.

If you're applying to the NDIS, you can have a guardian or support person help you make decisions, instead of a nominee. We can only appoint a nominee once you become a participant in the NDIS.

What decisions do you need to make about the NDIS?

There are lots of decisions you'll need to make about your business with the NDIS. These include:

- what goals you want to pursue

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- how you'll pursue your goals
- which providers you want to buy your NDIS supports from. Learn more in section **What is an NDIS provider?** of Our Guideline – Your plan
- when and how you get your NDIS supports
- how your family, friends and people in your community support you
- how you can get support from mainstream and community services
- how you want your NDIS funding managed
- how your NDIS supports are working for you.

What if I can't or don't want to make my own decisions?

As a last resort, if you can't, or don't want to make your own decisions about your business with the NDIS, even with support, you can ask us to appoint someone to make these decisions for you. We call this representative decision-making, and we call this person a nominee. That is, someone represents you by doing things and making decisions on your behalf.[4] Under the laws for the NDIS, there are important rules about when it's appropriate for us to appoint a nominee, who can be your nominee and what their duties are. We only appoint a nominee for you when it's not possible to support you to make your own decisions or you choose not to make your own decisions.

If you're not sure whether you need a nominee, check whether the statements below apply to you.

You might need a nominee if:

- it's very difficult or impossible for you to make important decisions that affect your life
- you need a lot of help from someone else to work with us on making decisions about your business with the NDIS
- you need support to work out what decisions might be best for your personal and social wellbeing
- you need a lot of help from someone else to develop, understand or manage your plan
- you find it hard to work out or think about the information you need when making decisions.

In rare situations, we may decide to appoint someone to make decisions on your behalf even if you don't ask us to. We would only do this if there was no other way for decisions to be made about you and the NDIS.[5] Learn more about what we consider when appointing a nominee.

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What types of nominees are there?

There are 2 types of nominees:

- plan nominees
- correspondence nominees.

A plan nominee can make decisions about parts of the preparation, management or changes to your plan, that you choose. They will receive notices from us relating to your plan, and the details of the notices we send to you. A correspondence nominee can make some decisions about your business with the NDIS, not including those for the plan nominee. We send notices about you or for you to a correspondence nominee and tell them when we contact you directly.

You can have either a plan nominee, a correspondence nominee, or you can have both.[6]

You can have the same person as both your plan and correspondence nominee.[7] Or you can have one person as your plan nominee and someone different as your correspondence nominee. We can also appoint more than one person as your plan nominee.[8] For example, we could appoint 2 people as your plan nominees, each person being responsible for different decisions.

What is a plan nominee and what do they do?

A plan nominee can make decisions about:

- planning – preparing or changing your plan[9]
- managing and using your funding on NDIS supports.[10]

A plan nominee can be appointed to do either or both of these things.[11]

You can have more than one plan nominee.[12] If you have 2 or more plan nominees, they may each have different responsibilities. But only one can manage the funding in your plan. If you want to change or update who can manage the funding in your plan, you or your nominee can contact us. We'll then make a decision about who manages the funding in your plan.

In some cases, your plan nominee can't manage your funding. For example, if we are aware that they have been convicted of an offence punishable by 2 or more years in prison, or involving fraud or dishonesty.[13] Learn more in section **When can't you self-manage your funding?** in Our Guideline – Creating your plan.

You can ask us to limit the things your plan nominee can do. For example, you might want to decide by yourself what goals you want to pursue with your NDIS plan, but you want your plan nominee to help you manage your NDIS funding.[14]

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We can also limit what plan nominees can and can't do for you, depending on what decisions we need them to make for you.[15]

When your plan nominee does something on your behalf, we look at this as if you had done it yourself.[16]

If you have a plan nominee appointed by us, they should only act on your behalf when you're not able to do it yourself.[17] Learn more about the duties of a nominee. A nominee must support you to make your own decisions, as much as possible.[18] They must understand your wishes and preferences, and promote your personal and social wellbeing.[19]

Your nominee doesn't have any criminal liability under the laws of the NDIS for:

- anything you do or fail to do
- anything the nominee does in good faith, in their role as your nominee.[20]

However, an exception to this would be if your plan nominee refused or didn't comply with a notice from us asking for a statement about the use of your funding.[21] A nominee may be responsible for criminal offences under other laws in this case.

What is a correspondence nominee and what do they do?

A correspondence nominee is someone who can make some decisions for you about your business with the NDIS. But they can't do anything or make decisions about:

- preparing or changing your plan
- managing your funding for NDIS supports.[22]

If you need someone to make decisions for you about your plan, you may need a plan nominee.

A correspondence nominee can ask us for information about you, or for you.[23] They can receive letters and notices from us about you, or for you.[24]

When your correspondence nominee writes to us on your behalf, we treat this as if you had written to us yourself.[25] When we send your correspondence nominee a piece of information, we treat this as if we're sending it to you.[26]

Any notice we would normally give to you as a participant, we'll give to your correspondence nominee.[27] In most cases, we expect your nominee to respond to us if we ask them to do something or give us information.

How long can your nominee be appointed for?

Your nominee can be appointed for a set period of time or indefinitely.[28]

If the appointment is for a set period, we can arrange for your nominee's role to end:

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- after a period of time, for example, after 6 months
- when a certain event takes place, for example, when you turn a certain age, or at your next plan reassessment.[29]

Having a nominee appointed for a set period can be good when you're building your decision-making skills. You may have NDIS supports included in your plan to build these skills. We'll talk to you about the different help available for decision-making. We'll also help you to change from having a nominee and representative decision-making, to supported decision-making when you're ready.

A set period might also be best when:

- we think we should review your need for a nominee after a period of time, for example, whenever we change your plan or at a check-in[30]
- we expect an appointed decision-maker, for example, a guardian will probably be appointed for you, and you'll only need a nominee until then[31]
- the person you want as your nominee isn't currently available and we need to appoint someone else as a nominee until that person becomes available[32]
- your nominee is a court-appointed or participant-appointed decision-maker, and we think their role as your NDIS nominee should end when their appointment as your decision-maker ends.[33]

When we decide how long to appoint your nominee for, we must also consider:[34]

- what you want[35]
- the opinions of any carers who help you to make decisions and manage your day-to-day activities[36]
- the opinions of other people who support you.[37]

If your nominee is appointed for a set period of time, we'll notify you and your nominee in writing. We'll do this before the nominee role ends. We'll also notify you, using your preferred communication method.

Who can be your nominee?

There are laws and rules we must apply when deciding who can be your nominee. Some of the things we ask you to think about in the section What should you think about when deciding who you want to be your nominee are about these rules. We work with you to make sure whoever is appointed as your nominee is the right person for you. We need to make sure they'll always promote your personal and social wellbeing, understand your wishes and preferences[38], and support you to make your own decisions, as much as possible[39].

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We'll ask you who you want us to appoint as your nominee,[40] in whatever way you express your wishes.[41] For example, you might tell us verbally, write to us, you might express in a non-verbal way, or through a support person.

Can I decide who I want as my nominee?

If you ask us to appoint a specific person, we'll probably appoint that person.[42] We'll check:

- that this is your decision, and you haven't been pressured to appoint them[43]
- if there is a conflict of interest, for example, they're also one of your providers[44]
- if the person is already helping you in your life and what they're already doing to help you.[45]

We'll ask you if you have carers or other people who support you and make decisions in your day-to-day life. If so, we'll also talk to them and ask their opinion about you having a nominee and if they think the person would do a good job.[46]

You might already have a government or court appointed decision-maker, who has similar responsibilities to a nominee. Learn more about how we work with legally appointed decision makers.

We need to make sure the person who'll be your nominee understands what it means to be a nominee and will do the best job they can for you.[47]. Learn more about the duties of a nominee.

What questions do we ask about your proposed nominee?

When you have asked for someone to be made your nominee, we'll appoint them if we can.[48] But there is information we'll need to collect, and things we'll need to think about, before we decide to appoint someone to be your nominee.

We'll ask you and your proposed nominee some questions. We'll think about the answers before deciding to appoint your proposed nominee.

We'll ask:

- Has your proposed nominee given written consent to be made your nominee?[49]
- Have you and your nominee thought about your wishes, and how you might communicate them to your nominee?[50]
- Will the nominee appointment have a positive or negative effect on your relationships with your family, friends and informal networks?[51]
- Do you already have any arrangement with your proposed nominee?[52]

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- Have you and your proposed nominee talked about how they will help you to build your capacity to make decisions for yourself?
- Has your proposed nominee put any pressure on you to make them your nominee?[53]
- What do some of the other people who support you think about your proposed nominee being your representative decision maker?[54]
- Is your proposed nominee willing and able to:
    - work with others who look after your wellbeing[55]
    - involve you in decision-making[56]
    - help you to make decisions for yourself[57]
    - understand your wishes and preferences, and support decisions that reflect them[58]
    - do all the activities needed of a nominee, for example, they might have to enter into contracts on your behalf.[59]
- Does your proposed nominee understand the duties of a nominee, and will they be able to carry out these duties?[60]
- Do you trust your proposed nominee?[61]
- Is your proposed nominee sensitive to your cultural and language background?[62]
- Can your proposed nominee understand and work with any communication system or other supports you have (including relevant technology)?[63]
- Do you make life decisions without help from a court or participant appointed decision maker?
- Does your proposed nominee have any conflict of interest with you?[64]
- Does your proposed nominee have any convictions that would make them not suitable to be your nominee?[65]
- Has your proposed nominee given any information or answered any questions in relation to their appointment, or refused to, particularly about any criminal history or conflicts of interest?[66]

We need to think about their answers to these questions and think about them being your nominee if they refuse to answer the questions.[67]

We're responsible for making the final decision on who is appointed as your nominee for the NDIS.[68] However, we can't appoint a nominee unless they have agreed to their appointment in writing.[69]

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If the person you want to be your nominee can't be appointed for some reason, we'll discuss this with you. We'll discuss if there is someone else we can appoint or help you come up with another option to support you in making decisions.

We'll also talk with you about what type of nominee you want them to be.

Learn more about the different types of nominees.

What should you think about when deciding who you want to be your nominee?

When you think about who you want to be your nominee you should ask yourself if that person:

- is able and willing to carry out the duties of a nominee
- is someone you trust
- will do things that support your personal and social wellbeing
- will support you by making decisions that are good for your personal and social wellbeing
- has the skills to support you
- will help you to make decisions
- will work with you to build your decision-making skills
- is able to act on your behalf and make decisions for you
- is able and willing to give written consent to be your nominee.

If you have a family member or friend who has always supported you to make decisions in the past, you might want them to be your nominee. If we make this person your nominee, it's a way we can help you to:

- strengthen your relationship with that person
- make the support networks you already have more official.

You can also ask us to appoint a body corporate (an organisation or company) as your nominee. The body corporate or organisation would need to give us the name of the person who'll be acting on your behalf.[70]

Being a nominee can be rewarding and can also be challenging, even for the people who already play an important role in your life. We're happy to explain what the role involves and support the person or people who become your nominee.

Learn more about the duties of a nominee.

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Who can't be a nominee?

There are some people who can't be appointed nominees.

A person under the age of 18 can't be a nominee.[71]

The NDIA can't be a nominee, but in some cases, someone who works for the NDIA could be your nominee. They would need to have a personal relationship with you, for example, if they're a family member or friend. If so, they would be a nominee because of their personal relationship to you, not as part of their work at the NDIA.[72]

What do we consider when appointing a nominee?

There are laws and rules we must follow when we decide whether to appoint a nominee for you. It's important that you know what we think about, and how we decide if we should appoint a nominee for you. Some of the things we ask you to think about in the section Who can be your nominee are about these rules and laws.

We first assume you can make your own decisions that affect your life.[73] You may need support to build your decision-making skills, and your skills could improve over time.[74]

We also realise that sometimes it may be necessary to appoint a nominee to make decisions and act on your behalf.[75]

We'd only appoint a nominee for you if it's not possible for you to be supported to make decisions for yourself.[76]

There are 2 ways a nominee can be appointed to act on your behalf:[77]

- you can ask us to appoint a nominee for you
- we can decide to appoint a nominee for you.

If you ask us to appoint a nominee, we'll usually appoint one.[78]

It's only in very rare circumstances that we'd appoint a nominee for you when you haven't asked for one. For example, if we think you need a nominee but you're unable to ask for one, even with support. In this situation a family member, friend, or another supporter might ask for a nominee for you or they might offer to be your nominee.[79]

The decision to appoint someone as a nominee would still need to be made by us once we have assessed all the information. We need to make sure they are the right person to be your nominee.

If you ask us to appoint a nominee, we need to check:

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- that no one has put pressure on you to appoint them – we'll check with you to make sure it's your decision, and not because you have been pressured or wrongly influenced by them[80]
- if there's a conflict of interest, for example, if they're also one of your providers.[81]

If we think you might need a nominee, but you haven't asked for one, we'll look at:

- whether we've discussed having a nominee with you[82]
- whether you're able to communicate with us and take part in the NDIS without having a nominee appointed[83]
- our expectation that a nominee should only be appointed as a last resort, and with safeguards in place to protect you[84]
- whether you have a court-appointed decision-maker or a decision-maker you've appointed yourself[85]
- whether you have any other relationships that:[86]
    - you could rely on to help you make your own decisions
    - could be strengthened to help you make your own decisions
    - could be improved by the appointment of a nominee.
- your opinion, and the opinion of:[87]
    - any person who helps you manage your day-to-day activities and make decisions
    - any court-appointed decision-maker or decision-maker you have appointed.

Learn more about what you need to do to get a nominee.

How we work with legally appointed decision makers

You might already have someone legally appointed by a government, tribunal, court or panel who helps with decisions or makes decisions for you in other parts of your life. For example, a Public Trustee, guardian, or a family member. Or you may have appointed someone yourself to make decisions for you.

If you have this type of decision-maker, we'll discuss with them the types of decisions they already help you with. If the decisions are similar to what you would need to decide in the NDIS, we usually appoint them as your nominee.[88] If their role is different to what you would need in the NDIS, we'll discuss with them, in writing, if you need a nominee and who we might appoint.[89]

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We're responsible for making the final decision on who is appointed as a nominee under the NDIS.[90] However, we can't appoint your legally appointed decision maker as your nominee unless they have agreed to the nominee appointment in writing.[91] We can't appoint anyone as your nominee unless they agree in writing to do it.

What are the duties of a nominee?

A nominee has responsibilities both to you and to the NDIS. These responsibilities apply whether you asked for the nominee to be appointed, or we appointed them.

Nominees play an important role in helping you make decisions about your NDIS supports. They must understand your rights, preferences, and wellbeing and act in a way that respects these.

If someone is thinking about being your nominee, they can use the information in this guideline to help them understand whether they can be your nominee. It will help them understand what is expected of them. This information also helps you know what you can expect from your nominee.[92]

If we appoint a plan nominee, a correspondence nominee, or both, there are certain duties they must carry out. We need to make sure the person is willing and able to carry out these duties.[93]

Your nominee must try to support you to make decisions[94], and try to find out what you would like to happen.[95] They must also act in a way that supports your personal and social wellbeing[96].

Your nominee must also talk with other people in your life about anything they're thinking of doing on your behalf about your business with the NDIS.[97]

These other people could include:

- for plan nominees, any other NDIS-appointed plan nominee you have[98]
- any court-appointed decision-maker you have[99]
- any other decision-maker you have appointed[100]
- any person who helps you make decisions and manage your day-to-day activities – for example, a family member, supporter, or carer.[101]

If you are unable to communicate what you want to happen, your nominee must try to work out what they think you would like to happen.[102]

They might do this by:

- looking back on other decisions you've made
- thinking about the experiences they've had with you

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- talking with other people who know you well.

Your nominee has a duty to do their best and make a genuine effort to support you.[103] They should:

- help you build your skills so that you can make more of your own decisions, and if possible, to a point where you no longer need a nominee.[104] We'll help your nominee with this duty[105]
- tell us about any conflict of interest they have in relation to you[106]
- avoid or manage any conflict of interest they have in relation to you.[107] For example, if your nominee is helping you with decisions about providers and also provides you with services that they get paid for.[108]

If a plan nominee is appointed at your request, they can only do things on your behalf if they believe either:

- it's not possible for you to do something, or be supported to do it[109]
- it's possible for you to do something yourself, but you don't want to do it yourself.[110]

If you can do something by yourself but don't want to, we'll see if we can help.

Remember, other people can also help you make your own decisions. You can also give us permission to talk to another person like a family member, friend or an advocate about your business with the NDIS. We call this express consent.

Express consent means you still make your own decisions, but you can consent for someone else to do things like represent you at a planning meeting, have access to information about your NDIS plan and advocate for you. They might talk to us about your NDIS plan and then explain things to you.

Express consent is different to a nominee because your support person can't make decisions for you like a nominee can.[111] You can give express consent by using an NDIS consent form, or you can tell us verbally, in writing, or in some other way that you communicate.

If you want to build your skills to make your own decisions, we may be able to fund NDIS supports in your plan to help you learn these skills, if they meet the NDIS funding criteria.

Anything your nominee does on your behalf must comply with the laws of the state or territory where you live. This includes if they are a court-appointed or participant-appointed decision-maker, for example a guardian or a person appointed under a power of attorney. They must comply with any obligations or restrictions placed on them under state or territory laws.[112]

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If we appointed your plan nominee, they may only do something on your behalf if they believe you can't either:

- make the decision or complete the task
- be supported to make the decision or complete the task.[113]

Letting us know about changes

NDIS laws say your nominee must tell us as soon as practical if circumstances change that may affect their ability to:

- act as a nominee
- receive notices from us
- do what is set out in notices from us.[114]

If they don't tell us about these changes, they may face a civil penalty under NDIS laws. When we say civil penalty, we mean a fine.[115]

Consequences of not meeting nominee duties

Your safety and rights are important to us. We want to make sure your nominee always acts in your best interests by following their nominee duties under laws for the NDIS. This is why we may take action if your nominee does not meet their nominee duties.

When we say take action we mean, suspending or cancelling the appointment.[116]

Depending on the circumstances, taking action could also mean a civil penalty or criminal action under the laws for the NDIS. We may do this if your nominee:

- provides false or misleading information to us or the NDIS commission[117]
- gets NDIS funding they know you're not entitled to[118]
- acts dishonestly with the intention to gain NDIS funding[119]
- intentionally destroys, changes or hides records about your NDIS matters[120]
- misuses their nominee role for personal gain[121]
- improperly accesses or seeks your information after they have stopped being your nominee.[122]

A civil penalty is a court imposed fine. Criminal action could result in time in jail.

We understand these are serious consequences. They are serious because nominees play an important role in upholding your rights and safety.

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It's important you understand the consequences of nominees not meeting their duties. That way you, and the person you want to be your nominee, can make informed decisions before asking us to appoint them as your nominee and during a nominee appointment.

NDIS laws also protect nominees. A nominee is not criminally liable, or liable to a civil proceeding:

- in relation to the actions of a participant[123]
- if they act in good faith in their role as nominee.[124]

How do you get a nominee?

If you want to get a nominee, there are a few things to do and discuss.

First, you need to contact us, your local area coordinator or planner and ask us to appoint a nominee. You can write to us or tell us about your request for a nominee. We'll need to know your proposed nominee's name and contact details.

If a member of your family, carer or friend think you need a nominee, then they can also contact us, your local area coordinator or planner to discuss it.

Learn more about what we consider when appointing a nominee.

We'll ask your proposed nominee to provide evidence of identity, if we don't already have this.

Learn more about your privacy and information.

We then ask you and your nominee some questions that help us work out if your proposed nominee is the right person to be your nominee. Learn more about the questions we ask your proposed nominee.

We'll send a letter to your proposed nominee. This will explain the duties of a nominee. Your proposed nominee will need to respond to our letter consenting to being your nominee.[125]

We'll talk with you about how long you want your nominee appointed for.

If we approve your proposed nominee, we'll send an instrument of nominee appointment letter to you and the nominee.[126] This is a document that includes information about:

- who has been appointed as your nominee
- what type of nominee has been appointed
- what things your nominee can't do
- how long the nominee is appointed for.

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The notice of nominee appointment tells the nominee they need to let us know if there's a change in situation that affects their ability to be your nominee.[127] We'll write to each person who is directly affected by our decision of whether or not to appoint a nominee.[128] We'll let them know that they can ask for an internal review if they don't agree with our decision to appoint a nominee.[129]

This could include:

- you, for example if you don't agree with our decision to appoint a nominee, or don't agree with who we appointed as your nominee
- the person who was appointed as your nominee
- someone else who wanted to be your nominee.

We'll also try to contact them by phone.

Learn more about how to ask for a decision to be reviewed.

What happens when you have a nominee?

If we appoint your proposed nominee, we'll issue an instrument of nominee appointment and send a copy to you and a copy to your nominee.[130]

This is a document that includes information about:

- who has been appointed as your nominee
- what type of nominee has been appointed
- what things your nominee can't do
- how long the nominee appointment is for.

If you have a plan nominee appointed, we'll contact them:

- when we check-in to see how you're going
- the next time your plan is due to be reassessed.

Depending on what level of authority your nominee has been given, we'll talk with them, and you, about:

- how your last NDIS plan worked for you
- what goals you have
- what supports you get from your family and friends
- what supports you get from community and mainstream services
- what NDIS supports you need to pursue your goals

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- how you and your nominee are building your capacity to make decisions.

Your plan nominee can also contact us if your situation or support needs change.

If your nominee has any questions about their role, they can talk to your planner, local area coordinator or contact us for advice.

What if I don't like something my nominee has done?

Your nominee must always act in your best interests. They are required to try to support you to make decisions and they must try to find out what you want to happen.

If you have concerns about something your nominee has done you should talk to your support coordinator, local area coordinator or planner for further advice. You can also contact us.

If you still have concerns, you can ask us to cancel your nominee. Learn more about when a nominee appointment might be cancelled or suspended.

What do we share with your nominee?

Your nominee will receive information from us – we usually call them notices. A notice is usually a letter giving you information, asking you to send us information or to do something.

We share different things depending on what type of nominee you have:

Correspondence nominee

If you have a correspondence nominee, then they'll receive all notices we give under the laws of the NDIS.[131]

When we give your correspondence nominee a notice, we look at this as if we have given the notice to you on the day your correspondence nominee received the notice.[132]

If we give a notice to your correspondence nominee asking them to do something on your behalf, then your correspondence nominee must respond to us. This includes if we ask them to tell us about something, or give us information or a document, on your behalf.[133] If they don't do this, you will be seen as having failed to comply with the requirement.[134]

However, there are times when we'll contact you directly, or we may want you to do something instead of your correspondence nominee. When we give the notice to you, we'll tell your correspondence nominee that we've given you the notice and give them details about it.[135]

Plan nominee

If you have a plan nominee, we'll send them any notices about the use of your NDIS funding. Any notices about the preparation or a change to your plan that we've sent to your correspondence nominee, we'll also send to your plan nominee.

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If we ask them for a statement of how your funds are being used, your plan nominee must respond to the notice and give us the statement.

If we give you a notice or letter about the preparation, management or a change to your plan, we must tell your plan nominee that we've given you this notice and the details of it.[136]

What if we need you to personally do something?

If a notice or letter asks you to personally do something, you'll need to do it yourself.[137] For example, we may need you to attend a medical or psychological examination.[138] So you'll need to take part in the examination, not your nominee. However, your nominee can go with you if you want them to, and the examiner is okay with them being there.[139]

If you have a correspondence nominee appointed, we may need to explain to them what we need you to personally do.[140]

If the requirement is about the preparation, management or a change to your plan, then we must let your plan nominee know what we need you to do.[141]

What do we need your nominee to share with us?

Notice about a nominee's ability to act on your behalf

We'll give your nominee a written notice when they are appointed reminding them to tell us of anything that affects, or is likely to affect:

- their ability to act as your nominee
- their ability to comply with notices we give them
- our ability to give them notices.[142]

The notice we send will remind the nominee how soon they have to tell us about any of the above situations. This should be at least 14 days from when the change happens or is likely to happen.[143]

The notice will also tell the nominee how they should let us know.[144] Your nominee must comply with the notice.

Some of the reasons your nominee might have to comply with the notice are:

- they're moving house or interstate which might mean they're unable to continue to be your nominee
- they change jobs and it affects them being your nominee
- they need to be a full-time carer to someone else and it will affect the amount of time they can help you
- they'll be travelling and it will be difficult to give them notices

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- a court or tribunal have appointed someone else to be your decision-maker
- any other event that affects them being able to be your nominee.

Notice about use of your NDIS funding

We may send your plan nominee a notice, usually a letter, asking them to tell us how your NDIS funds have been used.[145]

If we do this, we must include:

- how the plan nominee should give us this information
- the date they need to tell us by, which must be at least 14 days from the date we give the notice.[146]

If your nominee doesn't reply to the notice, or doesn't give us the information we ask for, unless they have a reasonable excuse, they'll be committing a criminal offence.[147]

Under the laws of the NDIS, if your nominee commits a criminal offence, the fact that they were acting as your nominee does not make you criminally responsible for what they do or don't do.[148]

Please note our guidelines only consider criminal offences under the laws for the NDIS and do not cover criminal offences under other laws.

When would a nominee appointment be cancelled or suspended?

There are several reasons why we may suspend or cancel your nominee's appointment.[149]

If your nominee doesn't comply with certain duties, we'll contact them to find out why not. We'll look at what they say when deciding whether to suspend or cancel their appointment as your nominee.[150]

We want to make sure your nominee is acting in your best interests. If we become aware they can no longer fulfill the role, or there is change in a court order, such as removing a guardian, we may suspend or cancel that nominee appointment.

If we cancel a nominee appointment, that person is no longer your nominee from the time we cancel. If we suspend a nominee appointment, the person can't act on your behalf during the time we're deciding whether they can continue to be your nominee or not.[151] If we cancel or suspend your nominee, we'll stop sending correspondence to them and stop sharing information about you.

We may suspend or cancel a nominee's appointment if:

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- we've appointed a nominee on our initiative, and you ask us to cancel that appointment.[152] Once you ask us, we have 14 days to decide whether or not to cancel your nominee's appointment.[153] If we decide to keep the person as your nominee, we must send you and your nominee a letter telling you our decision and the reasons for this[154]
- we send a written notice to your nominee, and they respond by telling us that they can't, or might not be able to help you make decisions and/or do things on your behalf because of a change in their situation. Based on this, we'll decide if it is appropriate to suspend or cancel your nominee's appointment.[155] When someone becomes your nominee, they agree to give us certain information if we ask.

If they don't comply with one of our written notices, we may suspend or cancel their appointment as your nominee. This includes if:

- your nominee fails to tell us that they can't, or might not be able to help you make decisions and/or do things on your behalf because of an event or change in their circumstances[156]
- your nominee doesn't reply to a request from us for information about their use of NDIS funding paid to them on your behalf.[157]

What if I want to change or cancel my nominee?

If the nominee was appointed at your request, we'll change or cancel the nominee if you ask us to.

If the nominee was appointed on our initiative and you ask us to change or cancel the nominee, we must make a decision within 14 days. We'll send you and your nominee a letter if we decide to keep the person as your nominee.

Learn more about when a nominee appointment might be suspended or cancelled.

If you want to change or cancel your nominee, you can contact us. You can also talk to your support coordinator, local area coordinator or planner for further advice.

What do we think about before we cancel or suspend a nominee's appointment?

Before we cancel or suspend a nominee appointment, we must think about:

- whether the nominee has done something that's inappropriate or not in line with their duties as a nominee[158]
- how the nominee has behaved with you[159]
- the results of any changes to your plan[160]

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- your opinion and the opinions of any person who cares for or supports you[161]
- how it will affect you if we suspend or cancel the nominee appointment[162]
- whether your nominee has been found guilty of a crime that is reasonably likely to affect their ability to act as your nominee.[163]

We must also look at whether you still need a nominee and think about the reasons you had a nominee appointed.[164]

When might we suspend a nominee's appointment?

We may suspend a nominee's appointment if it's reasonable to believe your nominee has, or is likely to cause you physical, mental or financial harm.[165]

We would send you and your nominee a copy of the instrument of suspension.[166] We'll also write to your nominee asking them to give us a statement within 28 days setting out the reasons why their appointment as your nominee should not be cancelled.[167]

If we get a statement from them, we'll look at what they say and decide as soon as possible whether or not they can continue to be your nominee.[168] We must make this decision within 14 days after the 28-day suspension period ends.

Once we've made our decision, we'll send a letter to you and your nominee explaining our decision.[169]

If we decide they can continue to be your nominee, the suspension will end and they can continue to be your nominee.[170]

When might we cancel a nominee's appointment?

We must cancel a nominee's appointment if:

- you ask us to, and the nominee was appointed at your request[171]
- your nominee writes to us telling us they no longer want to be your nominee[172]
- your nominee is suspended and they do not respond to our written request for a statement setting out the reasons why their appointment as your nominee should not be cancelled within 28-days.[173]

We may cancel a nominee's appointment if:

- we have reasonable grounds to believe your nominee has, or may cause you physical, mental or financial harm[174]
- they can no longer carry out their nominee duties[175]

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- an event or change in circumstances has happened, or is likely to happen, that means they can't fulfil their nominee duties[176]
- they don't tell us about an event of change in circumstances that impacts their ability to carry out their nominee duties.[177]

After suspending a nominee, we may cancel their appointment, even if they provide a statement within 28 days.[178]

Once we've made our decision, we'll send a letter to you and your nominee explaining our decision.[179] If we cancel your nominee's appointment, we'll send you both a copy of the instrument of cancellation.[180] When we say instrument, we mean a legal document.

When we look at suspending or cancelling a nominee appointment, we must always think about how your personal and social wellbeing will be supported.

If we cancel or suspend an appointment, we may appoint another person as nominee for a set period of time.[181] The process to appoint another person as your nominee is the same as the process in the how do you get a nominee section of this guideline.

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What happens when we cancel or suspend a nominee's appointment?

If we suspend your nominee's appointment:

- they won't be able to perform any functions on your behalf as your nominee
- we may appoint someone else to be your nominee for a set period of time.[182]

Before we decide to cancel or suspend your nominee's appointment, we would find out the reason they did or didn't do what they were supposed to do. In most cases, we wouldn't suspend or cancel your nominee if they reasonably believed they were doing what you wanted.[183] Or if they reasonably believed what they did, or didn't do, would promote your personal and social wellbeing.[184]

If we cancel or suspend a nominee, we'll stop sending correspondence and stop sharing information with them. We do not disclose information to anyone other than the appointed representatives listed on your record. We'll make sure correspondence will be sent to you or another nominee instead.

If you have concerns related to someone acting on your behalf, or receiving correspondence, you can contact us.

What if I want my nominee's appointment to continue?

If we decide to cancel or suspend your nominee's appointment, and you're not happy with our decision, you can ask for our decision to be reviewed.[185]

In either situation, we must give you and your nominee a copy of the instrument of suspension or cancellation.[186]

Similarly, if we decide **not** to cancel or suspend your nominee's appointment, and you're not happy with our decision, you can ask for our decision to be reviewed.[187]

Learn more about how to ask for a decision to be reviewed.

You can also talk to your support coordinator, local area coordinator, planner or contact us for further advice.

What if you don't agree with a decision we make?

The NDIS law tells us what decisions can be reviewed. If you think a decision we've made about your nominee is wrong, you can ask for a review of our decision if it was to:

- appoint a plan nominee or a correspondence nominee[188]
- suspend a nominee appointment, or not to suspend a nominee appointment[189]
- cancel a nominee appointment or not cancel a nominee appointment.[190]

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Any person **directly affected** by our decision can ask for a review.[191] This could be:

- you
- a person appointed by a court or tribunal to make decisions for you
- a nominee, someone who wants to be appointed as a nominee, or someone who used to be a nominee.

If we decide to appoint, suspend or cancel the role of a nominee, we'll write to each person directly affected by our decision.[192]

You can contact your local area coordinator or contact us to talk about the reasons for our decision. If you still don't agree with our decision to appoint, suspend or cancel the role of a nominee, you can ask for a review of our decision.[193] You have 3 months to ask for a review after you receive our decision in writing.[194] This means one of our staff, who wasn't involved in the original decision, will review the information and our decision.[195]

Learn more about reviewing our decisions.

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Reference list

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[2] NDIS Act 2013 s5(a)
[3] NDIS Act 2013 s4(8)
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[6] NDIS (Nominees) Rules 2013 r3.6
[7] NDIS Act 2013 s88(1)
[8] NDIS Act 2013 s86(6)
[9] NDIS Act 2013 s78(1)(a)
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[13] NDIS Act ss 44(2A)(aa)(i)-(ii)
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[16] NDIS Act 2013 s78(1)
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[18] NDIS Act 2013 s80(4)(a); NDIS (Nominees) Rules 2013 r5.10
[19] NDIS Act 2013 s80(1); NDIS (Nominees) Rules 2013 r5.3(a)(b)
[20] NDIS Act 2013 s98(1)-(2)
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[54] NDIS (Nominees) Rules r4.8(f)
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[116] NDIS Act 2013 s80; s90, NDIS (Nominees) Rules 2013 Part 6
[117] NDIS Act 2023 s59A; s59AB
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[191] NDIS Act 2013 s100(2)
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