

On this page:

[What is a nominee under the National Disability Insurance Scheme?](#)

[Duties to the participant and the NDIS](#)

[Guardianship Information](#)

[NDIS participants under 18](#)

[Further Information](#)

What is a nominee under the National Disability Insurance Scheme?

People with disability are presumed to have capacity to make decisions that affect their own lives. This is usually the case, and it will not be necessary to appoint a person or a nominee where it is possible to support, and build the capacity of participants to make their own decisions for the purposes of the National Disability Insurance Scheme (NDIS).

However, the National Disability Insurance Scheme Act 2013 (NDIS Act) recognises that there may be circumstances where it is necessary for a person to be appointed as a nominee of a participant to act on behalf of, or make decisions on behalf of a participant. It is important to remember that this is a last resort measure.

Appointments of nominees will be justified only when it is not possible for participants to be assisted to make decisions for themselves. Appointments of nominees usually come about as a result of a participant requesting that a nominee be appointed. More information on the appointment process is set out below.

It is only in rare and exceptional cases that the NDIA will find it necessary to appoint a nominee for a participant who has not requested that an appointment be made. In appointing a nominee, the NDIA will have regard to the participant's wishes and the participant's circumstances (including their formal and informal support networks such as carers, family and guardians). The NDIS Act (section 80) and Nominee Rules (Part 5) set out the duties of nominees to ensure that participants have every opportunity to participate in the decision-making process for their plans.

Under the NDIS, there are 2 types of nominee: a plan nominee and a correspondence nominee. A single person can be appointed as both plan nominee and correspondence nominee. Either type of nominee can be appointed either indefinitely or for a specified term. The NDIA will issue an instrument of appointment which sets out the type of nominee being appointed, what acts and decisions they can do, the length of the appointment (if any) and any other relevant

matters such as whether there are other nominees appointed.

Duties to the participant and the NDIS

As a nominee, under the NDIS Act you have:

- duties to the participant
- duties to the NDIS.

Duties to the participant

Duty to understand the participant's wishes, and promote the participant's personal and social wellbeing

As a nominee, you must:

- find out what the participant would like to happen
- act in a way that supports the participant's personal and social wellbeing.

Sometimes the participant may not be able to let you know what they want. When this happens, you must try to work out what they think the participant would like to happen. You might do this by:

- looking back on other decisions the participant made
- thinking about the experiences you've had with the participant
- talking with other people who know the participant well.

Duty to consult

Before making an NDIS decision, you must also talk with other people in the participant's life. These people include:

- any other appointed NDIS nominee the participant has
- any court-appointed decision-maker the participant has
- any other decision-maker the participant has appointed
- any person who helps the participant manage day-to-day activities and make decisions, for example a support worker.

Duty to develop the participant's capacity

As a nominee you must help build the participant's skills to make decisions. Ideally, to a point where the participant can make decisions for themselves. This would mean they no longer need a nominee.

The NDIS must help you with this duty.

Duty to avoid or manage conflicts of interest

As a nominee you must tell the NDIS about any conflict of interest you have in relation to the participant. For example, if you provide the participant with services that you get paid for, NDIS needs to know. You must also tell the NDIS how you will manage this conflict of interest.

For body corporate nominees only

A body corporate nominee is an organisation or company appointed as the participant's nominee.

For each participant they are the nominee for, they must:

- make sure there is a person (officer or employee) who is involved with making the nominee decisions
- tell the NDIA who that person is
- tell the NDIA if that person changes.

Duties to the NDIS

Notices

We may send you or the participant a notice. A notice, usually a letter, will tell you when you need to complete an action or provide us with information.

As a nominee, you need to give us the information the notice asks for in the timeframe we tell you, unless you have a reason.

Correspondence nominees

We send all notices to the correspondence nominee. When we send a notice to you, as the correspondence nominee, we treat this as giving notice to the participant.

Sometimes we contact the participant directly and give them a notice. If we do this, we will tell you that we gave the participant a notice and provide you with the details.

Plan nominees

We must tell plan nominees when we send a notice to the participant about the preparation, management or review of their plan. This includes the details of the notice.

Notice about the nominee's ability to act

We will send a written notice to you asking you to tell us of any event or change in situation that may affect:

- your ability to act as a nominee
- your ability to comply with notices we give them
- our ability to give you notices.

Notice about use of the participant's NDIS funding

We may send plan nominees a notice asking them to tell us how the participant has used their NDIS funds.

Notices asking the participant to do something personally

When the notice asks the participant to do something personally, the participant must do this. You can't do it on the participant's behalf. For example, the notice asks the participant to complete an allied health assessment. The participant must attend the allied health assessment personally. This is not something you can do for the participant. But, the participant could ask you to go with them if they want. You should check with the person doing the assessment that this is okay.

Guardianship Information

Guardianship is different from nominees. Guardianship is the authority to manage the legal and non-legal affairs of a person such as power of attorney or Centrelink nominations. Guardians are not nominees under the NDIS and there is no automatic process for guardians to be made nominees. Where it has been identified by the NDIA that the participant requires a nominee and there is a guardianship arrangement in place, the presumption is that the guardian will be

appointed as the nominee.

Guardians being appointed as nominees.

As part of the appointment process for nominees the NDIA will have regard to whether the participant has a guardian, and will take the views of the guardian into consideration. There is a presumption that a guardian should be appointed nominee where their responsibilities are comparable to the duties of a nominee.

NDIS participants under 18

For a participant under 18 years of age child representatives instead of nominees can be appointed. A child representative is only appointed where the NDIA is making a determination that a person other than the person or persons with parental responsibility should be the child representative. There are rules about who has parental responsibility for a child participant and when a child representative can be appointed by the NDIA. Further information can be found at:

- [Chapter 4, Part 4 of the National Disability Insurance Scheme Act 2013 \(sections 74-77\)](#)
- [National Disability Insurance Scheme \(Children\) Rules 2013](#)
- [Operational Guidelines – Child Representatives](#)

Further Information

You can find further information on nominees:

- [Chapter 4, Part 5 of the National Disability Insurance Scheme Act 2013 \(sections 78 - 98\)](#)
- [National Disability Insurance Scheme \(Nominee\) Rules 2013 \(Nominee Rules\)](#)
- [Operational Guidelines – Nominees](#)

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