

Turning 18 Questions and Answers

for young adults with a disability,
family members, carers and
advocates

Part 1

Preparing for legal and financial decisions
after turning 18



About IDRS

The Intellectual Disability Rights Service (IDRS) is a not-for-profit organisation that works with and for people in NSW living with cognitive disability

Services at IDRS include:

Ability Rights Centre (ARC): a community legal centre that provides legal services, including legal advice, representation, NDIS appeals, and community legal education

Justice Advocacy Service (JAS): a non-legal criminal justice support service, including support at police stations and in court

Disclaimer:

This document is for general information only

It is not intended to replace the need for specific legal advice

This resource was developed on the land of the Gadigal people of the Eora Nation. We acknowledge and pay respect to the Traditional Owners and Custodians on whose land we walk, work, and live. Always was, always will be Aboriginal Land.

Part 1

Preparing for legal and financial decisions after turning 18

Part one of this guide provides information for parents, caregivers and advocates of a young person with a cognitive disability who is turning 18 in NSW.

This guide focuses on legal capacity and financial decision making.

This includes:

- How a young adult with a cognitive disability can make their own decisions after turning 18
- When and how to establish an Enduring Guardian or a Power of Attorney to get support in making decisions
- Understanding when and why the NSW Civil and Administrative Tribunal (NCAT) may become involved in appointing a decision maker

Turning 18

For young people with disability, their family, and their advocates, the transition into adulthood often comes with big questions, especially around money and legal decisions.

In NSW, when a young person turns 18, they become a legal adult. This means they have the legal right to make their own decisions about their life, finances, and care.





Key legal changes

Your authority ends

Parents and carers no longer have automatic legal authority to make decisions, financial or legal, for their adult child, even if they have a disability. Once a young person reaches 18, parents and carers are generally no longer allowed to interact with government or financial institutions on their child's behalf without official permission.

Capacity is presumed

The law assumes every adult has the capacity to make their own decisions, regardless of disability.

Supported Decision Making first

Your role becomes one of support and advice, helping a young adult make their own choices, rather than making the choices for them. Any formal interventions, like Financial Management Orders, are always considered as a last resort.

1. Decision making and legal capacity

What does it mean to have the 'legal capacity' to make a decision?

A person has 'legal capacity', or legal ability for a specific decision, if they can:

- **Understand** the main facts and choices, e.g., choice A vs choice B
- **Weigh up** the results of those choices, e.g., the pros and cons, the risks and benefits
- **Understand** how the results will affect them, i.e., the consequences
- **Communicate** their decision, e.g., speaking, nodding, shaking their head, making a noise, writing a mark, or using an assistive device.

Two legal phrases are commonly used to indicate that a person is legally able to make a decision:

- 'being able to understand the nature and effect of a particular decision at the time it is made', or
- 'having capacity'

Signatures

In NSW, there is no single law that says a signature must be a written name. If a person cannot write their name, any mark, sign, or stamp to indicate agreement counts as a legal signature.

2. Supported Decision Making

Supported Decision Making means helping a young adult make their own choices by:

- Providing them with information in an easy to understand format, e.g., pictures, diagrams, Easy Read
- Giving them time to think about and communicate their wishes
- Having a trusted person help them weigh up all the options and understand the risks and benefits in a way that they can understand

3. Substitute Decision Making

Substitute decision making is when one person is legally authorised to make decisions, for example, about healthcare, accommodation or financial decisions, for another person who can't make those decisions for themselves, even with support.

The legal documents or roles that establish a substitute decision maker include:

1. Enduring Guardian

What is an Enduring Guardian?

An Enduring Guardian is a trusted person that an adult can legally appoint to make important decisions about their life, health, and accommodation, but only if and when they lose the capacity to make those decisions themselves.

Key terms to understand:

Term	Meaning
Enduring Guardian	The trusted person who has been chosen to make decisions for someone else, e.g. a parent or carer.
Appointor	The person who chose the Enduring Guardian to make decisions for them, e.g. a young adult with disability.
Period of Authority	The guardian only has power during the time that the person is 'in need of a guardian'.
'In need of a guardian'	This means that the person is totally or partially unable to manage themselves at the time because of their disability.



Can an Enduring Guardian make financial decisions?

No, the Enduring Guardian can only make decisions about the person's lifestyle, health or accommodation.

Can a young adult with disability appoint an Enduring Guardian?

Yes, if they are 18 years or older and have the legal capacity or understanding to appoint an Enduring Guardian at the time it is signed.

How do you set up an Enduring Guardian?

You can set up an Enduring Guardian by

- **Making an appointment with NSW Trustee and Guardian**

The NSW Trustee and Guardian have approved employees who are legally allowed to witness these documents if they prepared them for you.

- **Going to a private lawyer**

This is an option if you have completed the form yourself, especially if the case is complex, e.g., there has been a major dispute in the family and/or you want to complete the process quickly.

Are there any restrictions, limitations or principles to follow?

Yes, the Enduring Guardian is not free to do whatever they think is best. They must follow strict principles that protect the rights of the person with disability.

They must ensure the person's freedom is restricted as little as possible.

They must consider and respect the person's past and present wishes when making decisions for them.

Their role is to make the decision they believe the person would have made if they had the capacity to do so.

Can an Enduring Guardian be cancelled or changed?

Yes, if the person still has capacity, they can cancel an Enduring Guardian at any time with a letter or the standard form. They must provide a copy to the appointed Guardian.

If someone else is concerned about the Enduring Guardian, they can apply to NCAT for a review.

Important limitation:

An Enduring Guardian can usually override the person's objections to accommodation or lifestyle decisions if their capacity prevents them from making a sound choice.

However, an Enduring Guardian does not have the authority to override a person's objections to medical or dental treatment. If a person is objecting to a necessary treatment, you must apply to NCAT. Only the Tribunal can give consent for treatment if the person is objecting.



2. Power of Attorney

What is a Power of Attorney?

Power of Attorney is a legal authority given to one person by another to make financial decisions on their behalf.

Key terms to understand:

Term	Meaning
Principal	The person giving the power to another person to make financial decisions for them.
Attorney	The person appointed to make financial decisions, e.g., a parent or carer. The Attorney should act in the Principal's best interest and always try to follow the Principal's genuine wishes.
Power of Attorney	A legal authority that the Principal gives to another person, the Attorney, to act on their behalf in financial matters. A Power of Attorney becomes invalid if the Principal becomes of unsound mind, unless it is an Enduring Power of Attorney.
Enduring Power of Attorney	A special type of Power of Attorney that continues to be valid even if the Principal later loses capacity, or becomes of unsound mind.



Does a Power of Attorney cover health and lifestyle decisions?

No. A Power of Attorney is only for financial and legal decisions. It does not cover where the person lives or their health care.

Can a young adult with disability appoint a Power of Attorney?

Yes, but only if they have the legal capacity, or the understanding, to appoint the Power of Attorney at the time it is signed. If they don't have legal capacity, the document is void or invalid.

How do you set up a Power of Attorney?

You can prepare the Power of Attorney and Enduring Power of Attorney forms by:

- going to a private lawyer
- making an appointment with NSW Trustee and Guardian.
- downloading the forms from the NSW Land Registry Services website.

While you can fill out the forms yourself, it is recommended to seek legal advice. A lawyer can prepare a Power of Attorney.

The lawyer must be satisfied that the person has the capacity to understand the Power of Attorney before it is signed. They may ask for a doctor's opinion.

Can restrictions and/or directions be added to a Power of Attorney?

Yes, a Power of Attorney can be limited to specific matters, limited in time, or in place. These restrictions and directions must be written in the Power of Attorney document.

Can the Power of Attorney be cancelled or changed?

Yes, if the person still has capacity, they can cancel the Power of Attorney at any time with a letter or the standard form. They must provide a copy to the appointed Attorney.

However, an Enduring Power of Attorney is made to continue even if the Principal later becomes of unsound mind. An application to NCAT or the Supreme Court is needed to cancel or change an Enduring Power of Attorney.

Power of Attorney, including an Enduring Power of Attorney, can also be formally cancelled or changed by an order from NCAT or the Supreme Court.

Can a Power of Attorney be put on hold or suspended?

Yes, a Power of Attorney is suspended, or put on hold, if NCAT makes a Financial Management Order.



3. Court and Tribunal Orders

If a young adult, even with support, cannot understand the nature and effect of a decision, they may need a formal order. These are separated into two key areas in NSW and can be made by the Supreme Court of NSW, the Mental Health Review Tribunal, or the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT).

Decision area	Legal order	What it covers	Who is appointed
Lifestyle & Health	Guardianship Order	Where the person lives, what services they receive, and consent for medical/dental treatment.	A Guardian (this can be a family member/friend, or the Public Guardian).
Money & Assets	Financial Management Order	Managing bank accounts, paying bills, buying/selling property, and handling legal affairs.	A Financial Manager (this can be a family member/friend, or the NSW Trustee and Guardian).

Key differences:

A Guardian cannot make financial decisions. A Financial Manager cannot make lifestyle or health decisions.



A. Guardianship Orders

What is a Guardianship Order?

A Guardianship Order gives the appointed Guardian the legal authority to make decisions for another person.

The Guardianship Order focuses on personal and lifestyle decisions, such as where the person lives, which support services they receive and what medical or dental treatments the person receives, excluding some serious or special treatments.

A separate order, known as a Financial Management Order, is required to manage the person's financial and legal affairs.

When is a Guardianship Order made?

NCAT does not make a Guardianship Order just because a person has a disability. The order is only made as a last resort when there is a clear and immediate need.

NCAT must be convinced that:

- There is a current need for someone else to make decisions due to the person's lack of capacity
- There is a dispute about care or accommodation that cannot be solved otherwise
- The person with a disability is objecting to decisions, and their incapacity means the objection can't be respected.

NCAT will not make an order if:

- Current arrangements are working well, e.g., family/carer is already handling things informally
- The problem is minor, or it's about a problem that has not yet occurred
- Less restrictive arrangements, like supported decision making, are satisfactory.

Who can apply for Guardianship Orders?

An application can be made by:

- The person with disability, if they are 16 or older
- Any person who has a genuine concern for the welfare of the person. This includes parents, carers, siblings, and service providers.

Seeking legal advice is strongly recommended due to the complexity of the process and the significant impact these orders can have on the person.

What must the Guardian do?

Even when a Guardian is appointed, they must always follow principles that protect the person's rights:

- The Guardian must consider the wishes of the person with a disability.
- The Guardian must ensure the person's freedom of decision and action is restricted as little as possible.

The appointed Guardian does not automatically have the right to overrule the person's objections. That authority must be clearly stated in the official Guardianship Order.

Is there any flexibility?

NCAT has the power to tailor the order precisely to the person's needs:

- A Guardian can be appointed for a single purpose, e.g., only for health decisions, or only for accommodation
- More than one person can be appointed. For example, a parent could be the Guardian for accommodation, while a professional or another family member is the Guardian for health matters
- Orders are typically for a set time and are regularly reviewed by NCAT. They can also be revoked or cancelled if the person no longer needs a Guardian.



B. Financial Management Order

What is a Financial Management Order?

A Financial Management Order is an order from NCAT that appoints a Financial Manager to manage a person's financial affairs and assets.

When would NCAT get involved?

If a young adult lacks the capacity to create a Power of Attorney or manage their finances, and a formal decision maker is needed, NCAT can become involved. This would be a last resort when there is a clear, current need that cannot be solved any other way. Examples include when a financial decision is needed, there is a serious dispute between family members about money, or the person is at risk of being exploited or spending money recklessly.

Who can be appointed as the Financial Manager?

A Financial Manager can be a suitable person in someone's life, like a parent, relative, or carer, or the NSW Trustee and Guardian if no suitable private person is available.

Important

A private Financial Manager will still be under the general supervision of the NSW Trustee and Guardian.

What must the Financial Manager do?

Even with an order, the Financial Manager must still respect and consider the person's wishes and freedom. A Financial Manager can only overrule the person's wishes if it is clearly in the person's best interest, e.g., to stop them spending money recklessly when they need the money for essentials or to stop the person from being exploited.

Can a Financial Management Order be reviewed?

Yes, the person, or anyone with a genuine concern, can ask NCAT to review the decision or change the appointed manager.

4. Key contacts

Ability Rights Centre (ARC) – a service of IDRS

Free legal advice, legal representation, and NDIS appeals support for people with cognitive disability in NSW

Call to make an appointment or get advice

P: (02) 9265 6350 (Monday – Friday 9 AM – 5 PM)

E: arc@idrs.org.au

W: www.idrs.org.au

Justice Advocacy Service (JAS) – a service of IDRS

Non-legal support for people with cognitive disability in the criminal justice system

P: (02) 9265 6300 or 1300 665 908 (Monday to Friday 9 AM – 5 PM)

E: intakeJAS@idrs.org.au

Call the Hotline on **1300 665 908** if a person in Police custody requires a support person and/or legal advice **24/7**

W: www.idrs.org.au

NSW Civil and Administrative Tribunal's (NCAT) Guardianship Division

Information on applying for or reviewing Guardianship or Financial Management Orders

P: 1300 006 228 (Monday to Friday 8:30 AM to 4:30 PM)

Ask for the Guardianship Division – press 2 when prompted

E: gd@ncat.nsw.gov.au

W: www.ncat.nsw.gov.au

Search: NCAT Guardianship Division

