



FREQUENTLY ASKED QUESTIONS **ADULT CHILDREN WITH DECISION MAKING DISABILITIES**

This information sheet answers the most commonly asked questions about caring for adult children where they have limited decision making capacity.

My child has an intellectual disability and is just about to turn 18. Why won't I still be the legal decision-maker?

When someone turns 18, they become an adult and legally entitled to make their own decisions.

This is the same for anyone with a decision-making disability. However, if your child's decision-making disability means that they lack capacity to make decisions in their own best interests, you may need to assist them with their decision-making. If your child thinks they can make informed decisions, your (adult) child makes their own decisions. That said, they may still want to seek your advice and support, but they will make the decision required.

I have been told by a friend/service provider that I have to apply to be the guardian/administrator or I will not be able to make decisions when my child turns 18. Is this true?

It is not always necessary for someone to have a guardian or administrator appointed, as long as there is no conflict and informal processes are working well.

If there is conflict, or if a bank or other financial institution wants to see a formal authority before they will talk to you about your child's finances, you may need to make an application to the State Administrative Tribunal (**SAT**) for an administration order.

Will my (adult) child need to have a guardian or administrator appointed?

If there are informal ways that decisions can be made in the best interests of the person with the decision-making disability, it is not always necessary to appoint a guardian or administrator.



Personal and lifestyle decisions

When arranging new support services, activities or accommodation, if your child, other family and professionals are all in agreement that this is in their best interests, the decision could be made informally.

Medical treatment decisions

The *Guardianship and Administration Act 1990 (WA)* sets out a 'hierarchy of treatment decision-makers' who can make treatment decisions for a person when the treating health professional says that person cannot make the decision themselves because they lack the capacity to provide informed consent to treatment.

Financial decisions

Informal processes are more limited with financial decisions because most organisations which deal with money and contracts want to see a formal authority before they will talk to someone about another person's finances. You may be able to work with some companies and agencies to find informal ways of managing bank accounts or to receive a Centrelink payment on behalf of your child. Though it is likely that you will need to apply for an administration order to manage your adult child's finances.

I am getting older and want to prepare for the future. Can I apply to have a guardian and administrator appointed for my child now, so I do not have to worry?

If you and your family are making decisions at the moment without a guardianship and/or administration order, then the 'informal processes' are working well. In most cases it is best to allow this to continue until there needs to be a change. A change could occur if you become unwell and you can no longer provide the care and support needed or a third party such as a doctor feels that your child's situation has changed significantly and a legal authority to act is needed.

The best thing you can do now to prepare for the future is to talk to family or friends about guardianship and administration, and what they may need to do in the future if you are no longer able to act as the informal decision-maker.

As soon as a guardian or administrator is appointed, that person takes over all decision-making as either guardian or administrator or both. So, if the informal processes are working well, you may think it is best to leave them in place until circumstances change for you or your adult child.



Can I nominate a guardian for my (adult) child in my Will?

No. It is not possible to will the guardianship of an adult to another person, even when that adult has a decision-making disability.

It is better to talk to trusted family members and friends now about who might be available to help your child in the future. This might be as simple as giving people the contact details for the Office of the Public Advocate or the SAT so that they know who to contact in the future.

I have heard about enduring powers of attorney and enduring powers of guardianship. What are these powers?

These are powers granted to a person to make financial and personal and lifestyle decisions on behalf of another. The powers can be granted to anyone who is 18 years of age or older and who has full legal capacity. The person granting the power(s) must have legal capacity to do so, failing that, the SAT can grant such power(s).

Is it possible for my child who has a decision-making disability to make these powers?

Probably not. To make either power an adult must have full legal capacity.

This means that the person must know and understand what the document is and the consequences of making it, including an understanding that they will be giving someone else the authority to make decisions which directly affect them and possibly their finances. If a person is already diagnosed with some form of decision-making disability, it does not automatically mean that they lack the capacity to grant the power.

However, for people in this situation it is recommended they see a qualified health professional who can assess if they have the capacity to understand what it means to grant those powers to another.

If the health professional says that they have capacity, it is recommended the written assessment is kept with the document which they complete to formalise the power so that everybody knows that they had the capacity to make it.

If someone does not have the capacity to grant the power, then an application for guardianship and/or administration may come into consideration. Though, as previously stated, not having capacity does not always mean an application needs to be made for guardianship and/or administration. If you have no choice and you must apply for guardianship and/or administration and you live in WA, you must apply to the SAT.



Who will make decisions about my (adult) child's property and finances, or personal, treatment and lifestyle options after I pass away?

For an adult who has lost, or who never had, capacity, the 'least restrictive' alternative can apply.

This means that where informal processes work in the person's best interests, decisions can be made informally by family and/or close friends. If informal processes are not working, an application can be made to the SAT for the appointment of a guardian and/or administrator.

I have no family who can make an application to the SAT. What will happen to my (adult) child?

If there is a demonstrated need, any interested party can make an application to the SAT for the appointment of a guardian and/or administrator for your adult child.

Interested parties can include residential care managers, local area coordinators, social workers, doctors or bank managers, as well as any other agency which requires a decision.

If I have no family, who will be appointed?

The Public Advocate can be appointed by the SAT as guardian of last resort to make decisions about personal, treatment and lifestyle matters in the best interests of your child. The Public Trustee can also be appointed by the SAT as administrator of last resort to make decisions about property and financial matters in the best interests of your child.