

Advocacy for young people with disability and decision-making impairment

The NSW Child Safe Standards for Permanent Care require that young people have leaving care plans that support their transition from out-of-home care (OOHC).

The Department of Family and Community Services (FACS) and the NSW Public Guardian have developed a [protocol](#) to assist young people in OOHC experience a smooth transition from statutory OOHC to adult disability services. The protocol allows for the [NSW Civil and Administrative Tribunal](#) (NCAT) to appoint the Public Guardian with an Advocacy function for a young person who:

- has reached 16 years of age
- is under the parental responsibility of the Minister for Family and Community Services
- has impaired decision-making capacity because of a disability
- has no other person available and suitable to act in that role or if there is conflicting views about the young person's future care and support arrangements.

How the Public Guardian with an Advocacy function is involved

The Public Guardian will advocate on behalf of the young person in the leaving care planning process by:

- engaging with the young person about their wishes, concerns and issues that the leaving care planners need to explore including service, accommodation and other support options
- facilitating processes that enable the young person to communicate their wishes, concerns and unmet needs
- being a consistent party in a time of major change in the young person's life
- contributing independent perspective on complex problems
- advocating for collaborative planning between FACS, OOHC NGOs, potential service providers and other parties.

The Minister for FACS retains legal parental responsibility and decision making authority and the caseworker (NGO or FACS) retains case management responsibilities for the young person.

The importance of early planning and identification of eligible young people for advocacy

An early start in planning for services and ongoing care arrangements contributes to better outcomes. The caseworker with case management responsibility should consider the need for an application for the appointment of the Public Guardian with an Advocacy function when a young person turns 15 years as part of their leaving care preparations. This allows sufficient time for the application and appointment process to be finalised soon after the young person's 16th birthday.

The caseworker needs to consider the capacity of the young person to make their own decisions and contribute to their leaving care plan. If they consider decision making is impaired, the appointment of the Public Guardian with an Advocacy function may be appropriate if no other person is available and suitable to act in that role or if there are conflicting views about the young person's future care and support arrangements.

When to make an application

An application for the appointment of the Public Guardian with an Advocacy function should be submitted as soon as practicable after the young person turns 16. This enables the Public Guardian to be involved in leaving care planning discussions as early as possible. The Public Guardian can only be appointed after the young person turns 16 years old and expires when the young person reaches 18 years.

Who is responsible to make an application

FACS is responsible for completing and lodging the application with NCAT as it has parental responsibility for the young person. FACS staff can access the [NCAT application form and protocol](#) from the [Casework Practice procedure](#).

The NGO caseworker is responsible for identifying eligible young people and consulting with FACS about how to provide the necessary information to support the application. An [NGO Checklist](#) has been developed to assist caseworkers through this process.

What must be included in the application

An application to NCAT should include the NCAT application form, a copy of the protocol, the young person's case plan and any relevant medical reports.