

Changing Financial Arrangements

With some exceptions, the law protects each person's right to make their own financial arrangements, without other people being involved.

These exceptions may include:

- parents acting for their children who are under 18
- people using a bank account in joint names
- a Centrelink Payment Nominee using another person's Disability Support Pension for the benefit of that pensioner
- an Attorney acting under a Power of Attorney
- a Financial Manager acting under a Financial Management Order
- a Trustee using trust funds to help a Trust Beneficiary

The first step is to consider whether a person has the legal capacity to make decisions about their financial arrangements. Legal capacity means a person is able to hold rights and duties, and to exercise them to perform acts with legal effects. A person may be supported to exercise their legal capacity by a relative, friend, advocate, or appropriate professionals. A person's wishes about their financial arrangements should be followed, unless the person is not capable of managing their own property and affairs and there is a risk that the person may be disadvantaged or harmed.

A person may be able to manage some parts of their affairs, but not others. For example, a person may be able to do their grocery shopping and pay their regular bills, but may not be able to buy and sell shares or a house. Accordingly, there may not be a need to change the self-management arrangements that apply to some parts of a person's income, savings, or other property, such as their Centrelink pension and everyday bank account, but a need to have someone else look after more complex financial matters.

Powers of Attorney, Financial Management Orders, and Trusts may create complicated financial arrangements that are not necessary in a particular case. This may frustrate everyone concerned.

It is important for a person with disability to get legal advice before they change their financial arrangements. Any other person involved should get separate legal advice.

Sometimes a person with disability and people who genuinely care about the person disagree about the person's capacity to make financial decisions. It can be helpful for the person with disability to get legal advice about their situation before trying to settle such disagreements. A lawyer may be able to give guidance to a person about how to present their views, and may also be able to represent the person in negotiations or, if necessary, in a court or tribunal.

When a person lacks the legal capacity to make decisions about their financial arrangements, a Financial Management Order can be made by the Guardianship Division of the NSW Civil and Administrative Tribunal, the Mental Health Review Tribunal, or the Supreme Court. Usually, the hearing about financial management will be attended by the person with disability, their family, and carers. Relevant professionals who have assessed or worked with the person may also be involved. If a financial manager is appointed, that person acts a substitute decision-maker for the person with disability. The financial manager might be a private manager or the NSW Trustee and Guardian (a government agency).

Contacts

IDRS (Intellectual Disability Rights Service)
www.idrs.org.au | Phone: (02) 9265 6300

The Guardianship Division | NSW Civil and Administrative Tribunal
www.ncat.nsw.gov.au | Phone: (02) 9556 7600

Centrelink Disability Support Pension
www.centrelink.gov.au | Phone: 132 717

Centrelink Financial Information Service
www.centrelink.gov.au | Phone: 132 300

Mental Health Review Tribunal
mhrt@doh.health.nsw.gov.au | Phone: (02) 9816 5955

Law Society of NSW for a referral to a private solicitor
Phone: (02) 9926 0300

(IDRS: © 17 July 2018)

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