

National Guidelines for Financial Managers

October 2024 Edition

Introduction

These National Guidelines (the Guidelines) are an initiative of the Australian Guardianship and Administration Council (AGAC)¹ and relate closely to the *National Standards of Public Guardianship* endorsed by AGAC in 2016.

In 2014, the Australian Law Reform Commission published its review on Equality, Capacity and Disability in Commonwealth Laws. The review sought to operationalise Australia's commitments under the United Nations *Convention on the Rights of Persons with Disabilities* (the Convention). The review informs continuing law reform throughout Australia.

AGAC has long had a focus on protecting and promoting the rights of people with decision-making disabilities to be free from abuse, neglect and exploitation, including by recognising and responding to these issues when they occur.

The Guidelines set out the levels of service that financial managers in State and Territory government agencies should aspire to provide when managing all or part of a person's financial affairs.

The Guidelines provide a benchmark and framework for the development of similar and even higher standards of service by financial managers consistent with the relevant legislation in each State and Territory jurisdiction.

In this document, the term 'financial manager' includes a reference to 'administrator' under equivalent State/Territory legislation.

Preamble

The ratification of the Convention by Australia on 17 July 2008 has informed the development of these Guidelines.

The Convention promotes, protects and ensures the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities. The Convention defines these rights in each area of life and includes – access to justice, freedom of expression, independent life in the community, education, work, standard of living, health care, rehabilitation, and participation in political and public life.

In particular, Article 12 – *'Equal recognition before the law'* provides that –

- persons with disabilities have the right to recognition everywhere as persons before the law
- persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life
- appropriate measures are taken to provide access by persons with disabilities to the support they may require to exercise their legal capacity
- appropriate and effective measures are taken to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs, to have equal access to financial institution loans or mortgages and to ensure they are not arbitrarily deprived of their property, and
- all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law.

¹ AGAC is registered as a company limited by guarantee and as a charity with the Australian Charities and Not for Profits Commission. For more information on the aims and functions of AGAC, please see www.agac.org.au

Within the limits of the relevant law in each State and Territory, such safeguards will ensure that the measures –

- respect the person's rights
- respect their will and preferences (or welfare and interests where that is the law)
- are free of conflict of interest and undue influence
- are proportional and tailored to the person's circumstances
- apply for the shortest time possible
- are subject to regular review by a competent, independent, impartial authority or judicial body
- are proportionate to the degree to which such measures affect their rights and interests, and
- are appropriate and effective to ensure the person's equal right to own or inherit property, to control their own financial affairs, to have equal access to financial institution loans or mortgages, and to ensure they are not arbitrarily deprived of their property.

Other principles and legislation that must also be taken into account, when applying these Guidelines, include the guiding principles and human rights set out in various laws concerning the provision of services to persons with disabilities, anti-discrimination and equal opportunity legislation and other human rights legislation and charters.

Such principles generally refer to a range of rights including –

- to be treated with dignity and respect at all times
- not to be discriminated against
- to have autonomy to make decisions with the least restriction and interference
- to live a meaningful life in the community
- to be listened to and have their views fully considered
- to be assisted to make their own decisions to the greatest extent possible
- to keep the person's relationships with their spouse or partner and any children as well as their culture and their language, and
- to be protected from abuse, neglect or exploitation.

These Guidelines aim to help the person achieve these goals to the extent possible within the limitations of the legislated roles and responsibilities of a financial manager.

In some cases, e.g. where a person lacks the capacity to understand, it would not be possible for the financial manager to fully consult. However, where the financial manager's obligations are qualified, e.g. "to the extent feasible/appropriate", the financial manager will always act in good faith and with the individual rights, interests and welfare of the person in mind when determining the extent to which they can fulfil those obligations.

Findings and recommendations from the Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report (2023)* have also been considered and informed an update of these Guidelines so that financial managers will be better able to meet community expectations related to accessibility, cultural awareness and communication.

THE GUIDELINES

The following Guidelines set out the levels of service that financial managers should aspire to provide when managing all or part of a person's financial affairs. The Guidelines complement legislative and other policies, principles and practices, codes of professional conduct and ethical behaviour, privacy and confidentiality of personal information and records, and other requirements which financial managers are required to meet in each State/Territory.

The Guidelines cover the following in respect to persons with an appointed financial manager –

- providing information
- advocating as necessary the person's views and involvement
- protecting their assets
- making financial decisions
- investing their money
- making payments
- recording their information
- respecting their privacy and confidentiality
- protecting and respecting legal rights
- being professional, and
- reviews of orders.

1. Providing information

The financial manager has a duty to keep the person informed about all aspects of the management of the person's financial affairs, to the extent feasible and appropriate for the person, including ensuring engagement with First Nations and culturally and linguistically diverse people is culturally safe and responsive.

The financial manager will seek to ensure that the person is, or has been, initially provided with information at least in respect to –

- who the financial manager is, details of their case manager or contact person and how they can be contacted
- how to request a copy or explanation of their reasons for any decision that may be significant to them
- how to make a complaint or request that a major decision (e.g. sale of their property to fund an accommodation deposit) be reviewed
- how to apply for their financial manager to be replaced, and
- how they can access information held about them by their financial manager.

The financial manager may, with the person's consent, the approval of the appropriate Court, Tribunal or Board, or if it considers it necessary to best serve the interests of the person, also provide the same information to the support network (e.g. guardian) involved in the person's life.

The financial manager may need to advise other service providers that they have been appointed to manage part, or all, of the person's financial affairs.

The financial manager will, where feasible, keep the person informed about their income and expenditure and the details of any investments they may have, and do so in ways appropriate to their needs and which respect their right to privacy and confidentiality about such information.

If requested, or appropriate, the financial manager will provide this information in other ways or formats best suited for the person to read and understand.

2. Advocating for the person

The financial manager has a specific role and responsibility which involves the person's financial and property matters. The financial manager cannot make decisions about where the person lives or what they do other than in respect to the management of their money and any property or investments that they may have. Any such decisions however need to be affordable to the person and, where feasible, the financial manager must endeavour to speak to the person about this.

The financial manager's role is about meeting the person's financial needs both now and in future years. In doing so, the financial manager should, to the greatest extent possible, consult with the person (and their support networks where appropriate) and accommodate their views and preferences.

The financial manager has a vital role in ensuring the person is not financially abused or unduly influenced by any person or organisation, including ensuring appropriate and effective safeguards are in place where practicable.

In the event the person (or the financial manager) believes they are being unfairly financially treated by any person or organisation (including Government departments) other than the financial manager, the financial manager will, where appropriate, consider the matter and, if warranted, pursue their financial entitlements.

3. The person's views and involvement

The financial manager must, whenever possible, seek the person's views on all decisions that need to be made and fully consider their views before making any such decisions.

The financial manager will, where feasible, assist the person to create opportunities for them to personally manage part or all of their own financial affairs.

The financial manager will, to the extent feasible and appropriate –

- consult with the person about major decisions concerning their financial affairs and may also consult with the person's support network (e.g. guardian), and
- advise the person of their right to request that major decisions made by the financial manager, that they disagree with, be independently reviewed.

The financial manager will, to the extent appropriate and according to law –

- provide the person with every opportunity to take back control of the management of some or all of their financial affairs (e.g. that may mean the financial manager enabling them to receive directly their Centrelink or Department of Veterans' Affairs (DVA) or other pension or entitlements before the person regains full control and has the appointment order revoked or discontinued)
- identify and facilitate connections with potential advocates and supporters
- assist the person to understand the decision that needs to be made and to make that decision with the financial manager's help
- maintain regular and ongoing communications with the person to build knowledge and trust, and
- be in contact as regularly as practicable about major decisions that need to be made about the person's finances.

The financial manager may also assist the person to build decision-making capacity (e.g. through the use of specialist financial literacy courses) or seek assistance to understand the person's views where they have complex communication needs.

4. Protecting assets

The financial manager has a duty to protect the person's money and assets.

As soon as possible following appointment, the financial manager will –

- identify and secure financial assets and entitlements in respect to the person, including bank accounts, investments, property and major assets such as motor vehicles, government benefits or pensions

- identify any debts and liabilities such as mortgage payments and outstanding balances on credit cards
- investigate whether money or property is owed to the person, and
- check that assets such as property, motor vehicles and household contents are insured or obtain such insurance if appropriate, as and when funds become available to do so.

The financial manager will also seek to identify what government pensions, benefits or entitlements the person may be eligible to receive. Where feasible, the financial manager will support the person to apply for them, or will apply for them on the person's behalf.

To the extent appropriate, the financial manager should work with the person to obtain a broad understanding of their views and wishes in relation to the general management of their financial affairs. Further, where they are uncertain about the person's views in relation to a particular matter, or where a decision needs to be made about something that hasn't previously been discussed with the person, they should, where feasible, seek the person's views and preferences and support them to make their own decisions to the greatest extent possible.

5. Making financial decisions

The financial manager will use all available information to make decisions that accord with best practice financial management and that uphold the rights, interests and welfare of the person. Where relevant, this includes making decisions that are the same or similar to decisions the person made before the order was made, and considering what decision the financial manager thinks they would make now, if they could do so.

Before making a major financial decision, the financial manager will, as appropriate –

- ask the person's views
- consider the person's disability-related support needs and their social and cultural context
- ask the person's support network (e.g. guardian) involved in their life for their views
- ask for the views of relevant professionals, e.g. financial planners, disability specialists, tax experts, lawyers, and
- where consistent with the relevant law in the State or Territory, help the person make the final decision.

In particular, before making any decision to sell, rent or mortgage a property the person may own, the financial manager will –

- where feasible, seek and carefully consider the person's views and the views of their support network (e.g. carers or guardian) involved in their life, and
- carefully consider the impact on the person's life of such a decision, the need and future benefits to the person of such a decision, and the benefits or burden to the person and their finances of maintaining their property. This is particularly important if the person has been living in the property for a lengthy period of time.

6. Investing money

The financial manager can only invest the person's money in particular ways and only for the benefit of the person.

The financial manager will –

- in consultation with the person, where feasible, develop an annual budget to meet daily living and other expenditure needs and which is affordable
- keep the person's money separate from their own in an interest-bearing account in the person's name, and
- if the person has sufficient money left over, the financial manager will consult with the person, where feasible, to organise a financial plan to be developed so that the extra money is invested in ways

which will seek to increase the amount of money available to meet future needs.

7. Making payments

The financial manager can only use the person's money to benefit the person.

The financial manager will, in consultation with the person (to the extent feasible) –

- pay daily living and other expenditure needs in accordance with income and a budget
- pay for reasonable and affordable costs of the people who may rely on the person's income, e.g. a spouse, partner or children (depending on the legislation of the relevant jurisdiction) who the person was supporting or helping to support and is responsible for continuing to do so
- pay any amounts that the law determines must be paid, and
- take responsibility to pay the person's debts and liabilities as and when they fall due (to the extent the person can afford to pay such debts and liabilities), to ensure the person does not suffer any damage, loss or impact on services or accommodation.

The financial manager cannot lend any of the person's money or give away (as a gift or donation) any of their money to anyone else including themselves without legal authority to do so.

The financial manager cannot borrow any money from the person, use any of their money to pay the financial manager's debts or buy or transfer anything from the person without legal authority to do so.

8. Recording information

The information and records kept by a financial manager belong to the person.

The financial manager will ensure that they keep appropriate written records about how they are fulfilling their role and responsibilities including, where feasible –

- the information used to calculate their income, expenditure, budget, investments and other assets
- when the person or their support network (e.g. guardian) were contacted about a major financial decision and what was said
- the major decision that the financial manager made and their reasons
- when the person and any other people were notified of:
 - the major decision, and
 - how to request a review of the decision, and
- details on other important documents (e.g. Certificate of Title to a property, a Will) including where they are located.

The financial manager will keep all necessary records (e.g. receipts, invoices) for all payments they make.

9. Respecting privacy and confidentiality

A financial manager has a duty to protect the person's privacy and confidentiality.

The financial manager will generally not release any information about the person or their financial affairs to any other person or organisation unless the person has been asked and agreed to the release of such information.

The financial manager will, in some cases however, have to release some information about the person's financial affairs to other persons or organisations to –

- ensure that their money and property is safe
- pay money for their daily living expenses
- pay their bills
- get the views of their support network (e.g. guardian) when it is appropriate to do so on a major decision that needs to be made, and

- organise legal action if necessary to protect their rights and entitlements, or because the law requires them to.

10. Protecting and respecting legal rights

The financial manager has a duty to protect the person's legal rights involving their money and assets.

The financial manager will, in consultation with the person, where feasible, take all steps reasonable and appropriate to –

- recover any money that may be owed to them by any person or organisation
- recover any property or asset that may belong to them
- protect their interests in any business or company that they were involved with
- secure their inheritance or entitlement in a deceased estate
- secure compensation following injury, or
- fund the commencement or finalisation of legal matters, e.g. family law, family provision.

11. Being professional

The financial manager must act professionally at all times.

The financial manager will –

- always treat the person, their support network and advocates with respect and dignity
- communicate regularly with the represented person, where feasible, and
 - in ways that they can understand
 - in accordance with the person's preferred format, and
 - where relevant, with the represented person's preferred attendees
- avoid any conflict of interest situations
- never impose their views on the person although sometimes having to make decisions which the person may not agree with
- never unlawfully or unfairly discriminate against them on any grounds
- respect their privacy and confidentiality
- always manage their finances and estate with care and never take unnecessary risks when investing money
- not make or try to make decisions about the person's finances that they cannot and have no right to make
- where feasible, seek and carefully consider the person's views (and those of their support network if appropriate) on any major financial management decision that needs to be made
- try to involve them as much as possible in the management of their financial affairs, and
- keep them regularly informed about their finances when appropriate and possible.

The financial manager will seek the advice of financial planners, taxation and accounting, disability, legal and other specialists to assist them as needed to provide the best possible service.

The financial manager will keep themselves up to date about any changes to the law and procedures which impact on their role and responsibilities to the person.

12. Review of Orders

An order of a Court, Tribunal or Board appointing a financial manager may be for a defined period. Alternatively, an order may be open-ended and reviewed periodically or on a particular date. A financial manager should only continue to manage a person's financial affairs during the currency of their appointment.

The financial manager may be required to provide a report to any Court, Tribunal or Board which is reviewing the need for the continuation of an order and will set out in that report –

- the person's financial situation and circumstances including their income and expenditure, financial plan or investments if appropriate, and any projected financial needs or issues that they face
- the person's views and those of their support network (e.g. guardian), to the extent obtaining such views is feasible and appropriate
- what they as financial manager have done in terms of managing the person's financial affairs
- what they have done, where feasible, to enable the person to regain some control over the person's financial affairs, and
- their recommendation/s as to whether or not such an order should be continued or revoked/discontinued if appropriate.

The financial manager may make their own submission to the Court, Tribunal or Board recommending that the order should be revoked, discontinued or varied because they feel that the order is no longer necessary or should be less restrictive, e.g. the person should manage their Centrelink or DVA pension, benefits or entitlements but not their invested funds.

If the financial manager recommends to a Court, Tribunal or Board that the order be continued, it will be with the least restriction of the person's ability to manage their own finances and will be for the least additional time possible.