



INFORMAL ARRANGEMENTS FOR PEOPLE WITH IMPAIRED DECISION-MAKING CAPACITY

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Guardianship and Administration Act 1993
Advance Care Directives Act 2013
Consent to Medical Treatment & Palliative Care Act 1995

WHAT IS AN INFORMAL ARRANGEMENT?

An informal arrangement is where a family member, carer or close friend is able to make decisions, or assist in making decisions, for a person who lacks capacity to make decisions for themselves, without having formal legal authority. That is, there is no Enduring Power of Attorney, Advance Care Directive, Guardianship Order or other legal document that gives power to make decisions for another person.

The importance of informal arrangements is recognised in section 5(c) of the *Guardianship and Administration Act 1993*:

Consideration must, in the case of the making or affirming of a guardianship or administration order, be given to the adequacy of existing informal arrangements for the care of the person or the management of his or her financial affairs and to the desirability of not disturbing those arrangements.

WHEN MIGHT INFORMAL ARRANGEMENTS NOT BE ADEQUATE?

Informal arrangements may not be adequate when a person who does not have decision making capacity opposes decisions being made on his or her behalf, or there is conflict between family members over decisions about the person's health, accommodation, lifestyle or financial welfare.

An order may be necessary if the person is at risk of harm, self-neglect, exploitation or abuse. In these circumstances, an application can be made to the South Australian Civil and Administrative Tribunal (The Tribunal) for guardianship and/or administration order. A guardianship order appoints someone as guardian to make lifestyle and medical treatment decisions for the person. An administration order is made to appoint someone to make decisions about financial and legal matters. For more information about these orders, see [Information Sheets 4: Guardianship Orders and 5: Administration Orders](#).

INFORMAL ARRANGEMENTS AS AN ALTERNATIVE TO GUARDIANSHIP

Some examples of informal arrangements are:

- A relative, carer or friend may contact and organise community support and welfare services on behalf of a person with mental incapacity, and arrange for a person to be assessed by an Aged Care Assessment Team.
- Relatives with a close and continuing relationship with a person with impaired decision-making capacity are considered 'persons responsible' and can provide consent to most medical and dental procedures for that person. More complex medical or dental treatments may require legal authority, such as a guardianship order, under which a guardian is appointed who can consent for that person. *See Information Sheet 9: Consent to medical and dental treatment for people with impaired decision-making capacity.*
- A relative, carer or friend can arrange for a person with mental incapacity to be moved from home or hospital into a supported residential or aged care facility, providing there is no disagreement amongst family members about this decision. (e.g. under s96(6) of the *Aged Care Act 1997*, information may be given or an application made for a potential resident by another person who is 'authorised' to act on his or her behalf.

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- Service providers can consult a relative, carer or friend about the health and welfare of a person with mental incapacity. However, organisations may have concerns about breaching privacy principles and this may limit the organisations' ability to discuss the client's circumstances freely.

INFORMAL ARRANGEMENTS AS AN ALTERNATIVE TO ADMINISTRATION

Informal arrangements for managing the financial affairs of someone with a mental incapacity are somewhat limited. Privacy considerations, bank rules and legal issues place limits on what can be done. Some possible informal arrangements are:

Banks

By law, a person may only access another person's bank account if the account holder has granted written permission. Information about a customer's account will only be given to another person if he or she has an Enduring Power of Attorney or is appointed under an administration order. However, joint accounts holders or authorised signatories may be able to continue accessing an account to meet the financial commitments of a person with impaired capacity without obtaining an administration order. Accurate records should be kept of any transactions undertaken without formal legal authority.

Centrelink

Payments such as pensions may be paid either to the eligible person or to a nominee. The nominee may receive all or part of the eligible person's pension but must act in his or her best interests. Where a Centrelink customer has a mental incapacity, payment may be made to a nominee if he or she has authority under an Enduring Power of Attorney, guardianship order or Advance Care Directive, or if he or she is a suitable person willing to handle payments for the direct benefit of the customer (this may be a close family member or a close friend). Application forms to become a nominee are available at Centrelink offices. Supporting documentation is required from a doctor and/or a social worker for nominee applications.

Department of Veterans' Affairs

Payments from the Department of Veterans' Affairs can be made either to the eligible person or to a nominated agent or trustee. An agent is a person nominated by the pensioner. This appointment can only be made while the pensioner has mental capacity to do so. However, if the pensioner subsequently loses mental capacity, the agent can continue to act on his or her behalf.

Where there is no agent and a veteran pensioner loses decision-making capacity, a trustee can be appointed to act. A trustee can be appointed when the pensioner is so ill or disabled that he or she is incapable of managing his or her financial affairs. A trustee has a duty to manage the payment for the pensioner's benefit and must keep accounts and produce them at the request of the pensioner or Departmental officers. Application forms to become an agent or trustee are available from Department of Veterans' Affairs offices. Supporting documentation is required from a doctor and/or a social worker for trustee applications.

Commonwealth funded aged care facilities

Once a resident has been accepted by a facility, a formal agreement is entered into. This may be for payment of an accommodation bond, an extra services agreement or a resident agreement. Pursuant to s96(5) of the *Aged Care Act 1997*, another person 'representing' that person may sign the agreement. Informal arrangements can be adequate to achieve this. If a representative cannot access funds or the necessary financial information to meet the requirements of the aged care facility, an Enduring Power of Attorney will need to be activated (if one was prepared prior to the donor losing capacity). If no Enduring Power of Attorney exists, an application should be made to the Tribunal for an Administration Order.