



BraInLink

Better Caring
Better Outcomes

Legal and Financial Matters

THIS FACT SHEET highlights a number of legal and financial matters that may need tending, such as making wills, powers of attorney and guardianship, managing finances and financial assistance. Carers may take over these matters or assist a family member with them.

Attention to a number of legal and financial matters can make life easier for you and your family member, and can ensure that their wishes continue to be carried out up to and after their death.

If dementia is a concern, there comes a point where a person is considered legally to be mentally incapable of making decisions. At this point, carers, family, friends or a legally appointed third person take over these responsibilities on the person's behalf.

Planning ahead eases this process, ensuring that all legal and financial possibilities are considered while your family member is still capable, able to participate in discussions and able to sign documents.

Getting Started

Consider the following issues and try to determine what legal and financial areas you may need to start addressing.

Bank accounts: Can your family member's bank, building society or credit union accounts be accessed by you or their spouse or partner?

Financial situation: Have you discussed their financial affairs with them or their financial advisor, such as a bank manager or accountant?

Locate important documents: It is important to know where they keep the following documents: wills, house and land titles, mortgage documents, birth and marriage certificates, insurance policies, superannuation documents, Centrelink and Veterans' Affairs documents, share market certificates, Enduring Power of Attorney form.

Entitlements: Have you consulted Centrelink's Financial Information Service (FIS) Appointment Line to discuss your eligibility for benefits? An FIS Officer (Tel: 132 300) will make appointment for you to speak with an advisor in your area.

Wills

A will gives instructions as to how the estate of a deceased person should be distributed. If a person dies without a will, there is no guarantee that his or her wishes will be carried out. This can cause conflict, stress and even hardship for family members.

Encourage your family member to establish a will and to update it regularly so that it expresses their current wishes. To be legal, a will must be made and signed while the person is capable of understanding its effects and its full import. For more information, the Victoria Legal Aid Legal Information Service has an excellent publication available free with information about will-making – Securing their Future for Parents of Children and Adult Children with a Decision-Making Disability (Tel: (03) 9269 0210; country callers 1800 677 402; downloadable from website: www.legalaid.vic.gov.au).

If you require a solicitor to make a will, the Law Institute of Victoria Referral Service (Tel: (03) 9607 9550) can put you in touch with one.

Guardianship

A guardian is a person appointed by the Victorian Civil and Administrative Tribunal (VCAT) to make personal and lifestyle decisions for someone with a decision-making disability – an adult who

is unable to make reasonable decisions because of their disability and for whom important decisions need to be made. The guardian is responsible for making decisions that respect the person's wishes and that are in the person's best interests. Where possible, VCAT prefers to appoint a relative or friend of the person as their guardian. The initial application for guardianship is handled by the Office of the Public Advocate (Tel: 1300 309 337) before being handed over to VCAT.

Administrators: VCAT can also appoint an administrator to make financial and legal decisions for a person, such as managing their day-to-day finances. For more information, call the Office of the Public Advocate (Tel: 1300 309 337).

Enduring Powers of Attorney and Guardianship

While a person is still mentally capable, they can sign Enduring Powers of Attorney and/or Guardianship to appoint someone they trust to look after their affairs in the event that they lose the capacity to make decisions, either temporarily or permanently. "Enduring" means that the power continues (endures) for as long as the person is unable to make decisions.

The powers granted by the Enduring Powers of Attorney may give the attorney (the person appointed) the right to do most things necessary to ensure the person is well cared for. Conditions can be imposed however, such as preventing the attorney from selling the person's house.

There are three different powers, each with its own area of decision-making:

- > **Enduring Power of Attorney - Financial:** This is for making financial and legal decisions, such as managing a person's banking, property or paying their bills.
- > **Enduring Power of Attorney - Medical Treatment:** This applies to making medical treatment decisions, such as agreeing to medication or surgery on a person's behalf.
- > **Enduring Power of Guardianship:** This authority governs personal and lifestyle

decisions, such as where a person lives and the sort of health care they will receive.

As a carer, you might consider arranging Enduring Powers of Attorney and Guardianship for yourself to ensure that your affairs, and the affairs of your family member, are managed in the event that you also become incapacitated.

Enduring Powers of Attorney and Guardianship are simple to make. The Office of the Public Advocate has produced the publication *Take Control – A Guide to Powers of Attorney and Guardianship*, which contains all the forms you need and easy instructions to complete each form. Forms are also available from most newsagents and legal stationers.

Disability Services Legislation

Any disability and aged-care services funded by government are required to achieve certain standards and to protect a person's human rights.

Financial Assistance

Below is a summary of financial assistance that is available under a number of government schemes and programs.

Carers' Pension: Available to a person providing personal care and attention or constant supervision to a person with a severe physical, intellectual or psychiatric disability. Eligibility depends on a number of criteria, including assets, income and other benefits received.

Carers' Allowance: This is paid by Centrelink to a person caring for someone at home. It is not means tested or taxable and it does not affect entitlements to other pensions or benefits.

Disability Support Pension: Available to people who have a physical, intellectual or psychiatric impairment that prevents them from working for 15 hours per week over the next two years and who are unable to undertake educational or vocational training that would equip them to work within the next two years.

Health Care Card, Pensioner Concession Card: These cards entitle the holder to a wide range of concessions covering health, transport, household bills and recreation. Anyone on a Disability Support Pension automatically receives one of these.

Mobility Allowance: Available to people who cannot use public transport and who are engaged in employment, training or volunteer work for a minimum of 32 hours every month.

Rent assistance: Available to some people who receive payments from Centrelink and some people who live on low-incomes or in government-funded residential care or in disability or rehabilitation accommodation.

Pharmaceutical allowance: This is automatically included in a pension payment.

Telephone allowance: Assists with the cost of telephone rental and is available to pensioners who are telephone subscribers.

Bereavement payment: Available as a lump sum to the surviving partner of a pensioner couple.

Reduced charges and tariffs: People who receive Centrelink benefits may be able to receive reductions on their electricity, gas, council rates and car registration under two Department of Human Services schemes - The Utility Relief Grant Scheme and the Non-Mains Utility Relief Grant Scheme (anything that is not connected to mains power, such as bottled gas, alternative fuel sources).

Department of Veterans' Affairs: If your family member is part of the veteran community, he or she, and their spouse and dependents, may be entitled to benefits.

Disclaimer: This fact sheet is part of a series of information products about brain injury produced by brain injury organisations with significant assistance from the Department of Human Services, Victoria. The authors do not accept responsibility for actions taken, or not taken, as a result of any interpretation of the contents of this publication