

Changing Financial Arrangements

IDRS is often asked, by our client's family and/ or their carers, about changing financial arrangements in relation to our clients with intellectual disability.

Example question: *Fred is my adult brother. He has intellectual disability. He has a bank account in his own name. Fred's disability support pension is paid into his bank account and the balance is about \$30,000.00. Our dad has been allowed to operate Fred's bank account. Dad worked it out with the bank manager many years ago. Dad is now really old and said he doesn't want to manage Fred's bank account. I asked the bank if I could take over from dad in managing Fred's bank account. The bank said that I could not do so unless I had a Power of Attorney, or a Financial Management Order. Fred really needs an air-conditioner, and I want to put his money into a high interest account for Fred. What can I do?*

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 under 18 year old children
- people using a bank account in joint names
- a Centrelink 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,
- and may be other exceptions.

Before trying to change things you should consider if the person has the legal capacity, with supports, to make decisions about their financial arrangements. If so, their wishes should be followed, unless it can be proved that there is a need to make arrangements other than those they want.

Also consider that there may not be a need to change the arrangements that apply to some parts of a person's income, savings, or other property.

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

Powers of Attorney, Financial Management Orders, and Trusts create complicated financial arrangements that may not be necessary, and which may frustrate everyone involved.

A solicitor can advise about these matters.

A Financial Management Order can be made by the Mental Health Review Tribunal, The Guardianship Tribunal, or the Supreme Court. Usually, the hearing will be attended by the person with intellectual disability, their family, and carers.

Answer to the example question: *Fred's brother may be able to support Fred to be able to operate his bank account, even though Fred may not have capacity to do more complicated tasks. If that is not possible, then Fred's brother could apply to Centrelink to manage Fred's pension as his Centrelink Nominee, and Fred's brother could also talk to Fred's father about buying the air-conditioner and investing the \$30,000.00 for Fred's benefit.*

You can make a free appointment with IDRS to get legal advice about changing financial arrangements. (IDRS represents people with intellectual disability and therefore, someone who may have a conflict of interest should seek independent legal advice).

Contacts

IDRS (previously known as Intellectual Disability Rights Service)
www.idrs.org.au | Phone: (02) 9318 0144

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 solicitor
Phone: (02) 9926 0300

(IDRS: TC January 2018)

Disclaimer: This information is provided as a guide only. It is not intended to be used to give legal advice and no responsibility is accepted in that regard. You should seek legal advice about your own particular circumstances. This guide may not be reproduced or distributed without the author's permission.