

# NATIONAL STANDARDS FOR FINANCIAL MANAGERS

## Introduction

These National Standards for Financial Managers are an initiative of the Australian Guardianship and Administration Committee and follow from and relate closely to the National Standards of Public Guardianship endorsed by the Committee in 2001 and revised in 2009.

The Standards set out the minimum levels of service that persons who are unable to manage part or all of their financial affairs can expect to receive from their financial manager.

The Standards apply to financial managers appointed by an Order of an Australian Court or Tribunal.

The Standards provide a benchmark and framework for the development of similar and even higher standards of service by each State and Territory.

## Preamble

The ratification by Australia of the United Nations Convention on the Rights of Persons with Disabilities on 17 July 2008 has informed the development of these standards for financial managers.

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, amongst others, 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:

- you have the right to recognition everywhere before the law;
- you should enjoy legal capacity on an equal basis with others in all aspects of your life;
- all appropriate measures are taken to provide you with the support you may require to exercise your legal capacity.
- all measures that relate to the exercise of your legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with human rights law. Such safeguards will ensure that the measures:
  - respect your rights,
  - your will and preferences;
  - are free of conflict of interest and undue influence;
  - are proportional and tailored to your circumstances;
  - apply for the shortest time possible;
  - are subject to regular review by a competent, independent and impartial authority or judicial body; and

- that the safeguards are proportional to the degree to which such measures affect your rights and interests.
- all appropriate and effective measures are taken to ensure your equal right to own or inherit property, to control your own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and that you are not arbitrarily deprived of your property.

Also of particular importance to these standards are the 'Principles' set out in various pieces of legislation concerning the provision of services to persons with disabilities plus other human rights, equal opportunity and anti-discrimination legislative provisions.

Such 'Principles' generally refer to a range of your rights including:

- to be treated with dignity and respect at all times;
- not to be unlawfully or unfairly discriminated against in any shape or form;
- to be as free as you can be to do what you legally want to do;
- to live a meaningful life in the community;
- to be listened to and have your views fully considered;
- to be assisted to make your own decisions if at all possible;
- to keep your relationships with your spouse or partner and any children and your culture and your language;
- to be protected from any abuse or exploitation from other people; and,
- to live your life as free of interference from other people as is possible.

These standards aim to help you achieve these goals to the extent possible within the limitations of the role and responsibilities of a financial manager.

## **THE STANDARDS**

The following 12 standards set out the minimum level of services to be provided to you by a person appointed as financial manager. The standards 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 need to meet in each State and Territory.

The standards cover:

- Providing you with information;
- Your views and involvement;
- Advocating as necessary for you;
- Protecting your assets;
- Protecting and respecting your legal rights;
- Making payments to you and for you;
- Investing your money;
- Making financial decisions with you;
- Recording your information;
- Reviews of your Order;
- Respecting your privacy and confidentiality; and,

- Being professional.

## 1. Providing you with information

The financial manager has a duty to keep you informed about all aspects of their management of your financial affairs.

- The financial manager will try to ensure that you are or have been initially provided with at least information on:
  - who they are;
  - the details of their appointment and the reasons that has happened;
  - their roles and responsibilities and any limitations that may apply;
  - how they will make decisions that may be 'significant' to you;
  - how to request a copy or explanation of their reasons for any decision that may be 'significant' to you;
  - how to make a complaint or request that a 'major' decision (such as the sale of your property to fund an accommodation bond) be reviewed by someone else;
  - how to apply for a review of the Order or to have your financial manager replaced by somebody else;
  - how you can access information held about you by the financial manager.
- If requested and possible the financial manager will provide this information in ways or other 'formats' which are best for you.
- The financial manager may if appropriate also provide the same information to your immediate family members or other 'key' people involved in your life.
- The financial manager will also need to advise when appropriate, other service providers that they have been appointed to manage part or all of your financial affairs.
- The financial manager will keep you informed about your income and expenditure and the details of any investments that you may have and do so in ways appropriate to your needs and which respect your right to privacy and confidentiality about such information.

## 2. Advocating as necessary for you

The financial manager has a specific role and responsibility which involves your finances and estate. The financial manager cannot make decisions about where you live or what you do other than for your money and any property or investments that you may have. Any such decisions however need to be affordable to you and the financial manager may need to talk to you about this if needed. The financial manager's role is about meeting your financial needs both now and in future years. The financial manager does however have a vital role in ensuring that you are not financially abused by any person or organisation.

- The financial manager when believing that you are being unfairly financially treated by any person or organisation (including Government departments) will pursue your financial entitlements for you.

### 3. Your views and involvement

They are your financial affairs and whenever possible the financial manager must ask you for your views on all major decisions that need to be made and fully consider your views before making any such decisions. Where possible the financial manager will work with you to create opportunities for you to manage part or all of your financial affairs yourself.

- The financial manager will:
  - consult with you if at all possible about ‘major’ decisions concerning your financial affairs and also consult with your immediate family members or ‘key’ people involved with you if appropriate;
  - advise you of your right and that of others to request that ‘major’ decisions by the financial manager that you disagree with be independently reviewed.
- The financial manager will ensure that you:
  - are provided with every opportunity appropriate and possible to take back control of the management of some or all of your financial affairs (eg. that may mean the financial manager enabling you to receive directly your Centrelink/DVA or other pension or benefit entitlements to start with before looking towards you regaining full control and having the Order revoked or discontinued so that you once again can have full control).
  - are assisted wherever possible to understand the decision that needs to be made and to make that decision yourself with the financial manager’s help.
- The financial manager will be in contact with you as regularly as practicable about ‘major’ decisions that need to be made about your finances.

### 4. Protecting your assets

The financial manager has a duty to protect your money and assets.

- As soon as possible following appointment the financial manager will as far as possible:
  - identify and secure your financial assets and entitlements for you including your bank accounts, investments, property and major assets such as motor vehicles, Government benefits or pensions;
  - identify any debts and liabilities that you may have such as mortgage payments, outstanding balances on credit cards;
  - investigate what money may be owed to you from whatever sources so that action can be taken if appropriate to get that money or property back for you;
  - check that your assets such as property, motor vehicles, household contents are insured or obtain such insurance if appropriate as and when funds become available to do so.
- The financial manager will also identify what Government pensions, benefits or entitlements that you may be eligible to receive but are not receiving and apply for them for you.
- The financial manager will rely on you and your immediate family members or other ‘key’ people involved in your life to assist them to do this.

## 5. Making financial decisions with you

The financial manager will try to make decisions which they feel are in your 'best interests' and the decisions should when possible and appropriate be the same or similar to the decisions that you have made in the past before the Order or those that the financial manager really thinks that you would make now if you could afford them.

- Before making a major financial decision for you the financial manager will:
  - where possible ask you for your views;
  - if appropriate ask your immediate family members or other 'key' people involved in your life for their views;
  - if appropriate, ask for the views of relevant professionals such as financial planners, disability specialists, taxation experts, lawyers; and,
  - help you when possible to make the final decision yourself if they believe you can do so.
- In particular, before making any decision to sell, rent or mortgage a 'property' that you may 'own' the financial manager must:
  - if appropriate, seek and fully consider your views about that and the views of your immediate family members or other 'key' people involved in your life;
  - carefully consider the impact on your life of such a decision;
  - the need and future benefits to you of such a decision; and,
  - the benefits or burden to you and your finances of maintaining your property.

## 6. Investing your money

The financial manager can only invest your money in particular ways and only for your benefit.

- The financial manager will:
  - develop an annual budget to meet your daily living and other expenditure needs and which is 'affordable' to you;
  - keep this money separate in an account in your name which pays you interest; and,
  - if you have sufficient money left over the financial manager will organise for a Financial Plan to be developed for you so that your extra money is invested in ways which will try to increase the amount of money that is then available to meet your needs into the future.

## 7. Making payments to you and for you

The financial manager can only use your money for you and your benefit.

- The financial manager will:
  - pay for your 'daily living' and 'other expenditure' needs in accordance with your income and budget;

- try to pay or settle any debts that you have;
  - pay for reasonable and affordable costs of the people who may rely on your income such as your spouse, partner or children and whom you were supporting or helping to support and are responsible for continuing to do so; and,
  - pay any amounts that the law determines must be paid.
- The financial manager cannot loan any of your money or give away (as a gift or donation) any of your money to anyone else including themselves without legal authority to do so.
  - The financial manager cannot borrow any money from you, use any of your money to pay their own debts or buy anything from you without legal authority to do so.

## 8. Recording your information

The information and records kept by a financial manager is your information and records and not theirs, although in some cases legal privilege may apply to its release.

- The financial manager will ensure that:
  - They keep appropriate written records about how they are fulfilling their roles and responsibilities to you including:
    - when you were contacted or if appropriate your immediate family members or other 'key' people were contacted about a major financial decision and what you or they said;
    - the 'major' decision that the financial manager made and their reasons;
    - when you and other people if necessary were notified of the decision and of how to request a review of the decision;
    - details of your income, expenditure, budget, investments and other assets; and,
    - details on other important documents (such as the Certificate of Title to a property, your Will etc) including where they are safely stored
- The financial manager will keep (in accordance with the relevant laws) all necessary records (such as receipts, invoices) for all payments that they make for you.

## 9. Respecting your privacy and confidentiality

A financial manager has a duty to protect your privacy and confidentiality.

- The financial manager will generally not release any information about you or your financial affairs to any other person or organisation unless you have been asked and agree to the release of such information.
- The financial manager will in some cases however, have to release some information about your financial affairs to other persons or organisations to (for example):
  - ensure that your money and property is safe;
  - pay money to you for your daily living expenses;
  - pay your bills;

- get the views of your immediate family members or other ‘key’ people when it is appropriate to do so on a ‘major’ decision that needs to be made;
- organise legal action if necessary to protect your rights and entitlements;
- or because the law requires them to.

## 10. Protecting and respecting your legal rights

A financial manager has a duty to protect your legal rights involving your money and assets.

- The financial manager will take all steps reasonable and appropriate to (for example):
  - recover any money that may be owed to you by any person or organisation;
  - recover any property or asset that may be really yours or partly yours;
  - protect your interests in any business or company that you were involved with;
  - secure your inheritance or entitlement in a deceased estate;
  - secure compensation for you following injury;
  - commence or finalise legal matters such as Family Law or other non-criminal legal matters for you if appropriate.

## 11. Being professional

A financial manager must act professionally at all times towards you.

- The financial manager will:
  - Always treat you with respect and dignity;
  - Communicate with you in ways that you can understand;
  - Where possible avoid any conflict of interest situations;
  - Never impose their views on you although sometimes having to make decisions which you may not agree with;
  - Never unlawfully or unfairly discriminate against you on any grounds;
  - Respect your privacy and confidentiality;
  - Always manage your finances and estate with care and never take unnecessary risks with investing any of your money;
  - Not make or try to make decisions for you about your finances that they cannot and have no right to make;
  - Carefully consider your views (and those of your immediate family or other ‘key’ people in your life if appropriate) on any ‘major’ financial management decision that needs to be made;
  - Try to involve you as much as possible in the management of your financial affairs
  - Keep you regularly informed about your finances when appropriate and possible.
- The financial manager will:
  - As appropriate, 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 to you.
- The financial manager will:

- Keep themselves up-to-date on any changes to the law and procedures which impact on their role and responsibilities to you;
- Attend appropriate professional development or training programmes offered or made available to them which will help them to provide the best possible service to you.

## 12. Reviews of your Order

Some Orders are for a short period and then stop if not renewed. Other Orders continue and are not reviewed on particular dates or are reviewed on particular times. Financial managers should only continue to manage a person's financial affairs for as long as they are authorised to do so. A financial manager should also not manage any more or less of a person's financial affairs than that actually needed to be managed by them to fulfil their duties.

- The financial manager will:
  - Provide a report to any Court or Tribunal which is reviewing the need for the continuation of an Order and will set out in that report:
    - Your financial situation and circumstances including your income and expenditure, financial plan or investments if appropriate, and any projected financial needs or issues that you face;
    - Your views and those of your immediate family members or other 'key' people as appropriate;
    - What they (as financial manager) have done in terms of managing your financial affairs;
    - What they have done to enable you to regain some control over your financial affairs;
    - Their recommendation/s as to whether or not such an Order should be continued or revoked/discontinued if appropriate.
  - Make their own submission when appropriate to the Court or Tribunal recommending that the Order should be revoked/discontinued/varied because they feel that the Order is no longer necessary or should be less restrictive (eg. you should manage your Centrelink/DVA pension, benefits or entitlements but not your invested funds).
- If the financial manager recommends to a Court or Tribunal that the Order be continued it will be with the least restriction of your ability to manage your own finances and will be for the least additional time possible.