



Brain Tumour Australia Information

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Legal & Financial Concerns

Legal & Financial Concerns—Money

If a bank account is in joint names, the partner of the person with the brain tumour can continue to operate it without any change in existing arrangements.

However, problems can occur if the person with the brain tumour diagnosis uses the account inappropriately or has accounts in their name only.

To avoid these difficulties, authority can be given, while legally competent, to another person to operate the account. It is important to remember that this authority will become invalid if the person is no longer legally competent. If they are unwilling to agree to a change of arrangement, it may be helpful to consult the bank manager about a possible solution.

Planning money matters ahead means:

- Having joint signatures on all bank, building society and credit union accounts
- Discussing financial affairs with a financial adviser.
- A Financial Information Service (FIS) Officer at Centrelink may be able to assist - there is no charge for this service.
- Arranging how and when the person with the brain tumour will access their finances

Who can help?

- Bank manager
- Accredited financial adviser
- Family lawyer

Centrelink Information to help you with your finances

An independent, free and confidential Financial Information Service (FIS) is available from Centrelink.

Phone 13 10 21 for information and to make an appointment. (Cost of a local phone call.) Details of this service are included in Centrelink's homepage at www.centrelink.gov.au.

Legal & Financial Concerns - Wills

A will gives instructions as to how the estate of a deceased person should be distributed. A will is only legal if the person making it understands its implications, so it is essential that wherever possible, a person makes, or updates their will while they are still competent to sign.

Planning wills ahead means:-

- Having an up-to-date will
- Knowing who the executor is
- Knowing where the documents are kept

Who can help?

- Family lawyer
- The Law Society or Institute, or Legal Aid
- The local community legal centre

Legal & Financial Concerns - Superannuation

Obtaining access to Superannuation

Australian Prudential Governing Authority (APRA) website is at <http://www.apra.gov.au/>

- Administers the Government legislation that permits the early release of Superannuation under "specified compassionate grounds".
- Consult the Superannuation Industry (Supervision) Act 1993, regulation 6.19A for an in-depth explanation.
- APRA must be satisfied that your application meets the criteria for early release of Superannuation under specified compassionate grounds, however
- The final decision lies with the trustee of your personal Superannuation fund.
- First step, please contact your personal Superannuation fund to make sure it will allow the early release of your Superannuation benefits.
- Benefits will not be released if your fund does not allow the early release of Superannuation (regardless of APRA's approval).

The full details of the APRA rules for Early Release of Superannuation can be found by accessing the above site

Specified compassionate grounds:

- **Permanent incapacity**
The trustee or RSA provider must be satisfied that the applicant is permanently incapacitated before a release can be made.
- **Financial hardship**
To be granted an early release you must:
be in receipt of a Commonwealth income support payments (ie. Centrelink) or Veterans Affairs service pensions; or Development Employment Projects (CDEP) Scheme payments; and have been so, continuously, for the last 26 weeks; **AND**
satisfy the trustee/RSA provider that you are unable to meet reasonable and immediate family living expenses.



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Legal & Financial Concerns cont.

Specified compassionate grounds: Financial hardship cont.

If you satisfy both of the previous noted tests, the trustee/RSA provider may, in any twelve month period, release to you one lump sum payment.

The lump sum payment is to be no more than a gross amount of \$10,000 and no less than \$1,000 (or the balance of your benefit if it is less than \$1,000).

APRA has produced a set of guidelines to assist trustees and RSA providers in assessing the early release of Superannuation benefits on the ground of severe financial hardship and, in particular, the meaning of 'unable to meet reasonable and immediate family living expenses'.

These Guidelines for Trustees (66 kb) are available in PDF format or may be obtained from any APRA office.

If you are aged 55 years and 39 weeks or more, an alternative, optional, objective test of severe financial hardship may be applied to you. That is, you must:

- have received a Commonwealth income support payment (ie. Centrelink) for a cumulative period of 39 weeks after reaching age 55; and
- not be gainfully employed on a full-time or part-time basis on the date of your application to the trustee/RSA provider.

If you satisfy this test, the trustee/RSA provider may release your entire benefit.

In all cases, as part of the objective test, applicants will need to provide the trustee/RSA provider with a letter from Centrelink, the Department of Veterans' Affairs or a CDEP grantee organisation confirming that you meet one of these tests.

- **Funeral assistance** To assist with funeral and other expenses related to the death of a family member – refers only to your dependant/s.
- **Palliative care** To provide care for a person who is dying from a terminal illness, including home care – refers to you or your dependant/s.
- **Mortgage assistance** To prevent your mortgagee (lender) from selling your principal place of residence – refers only to you.

Severe Financial Hardship and the Superannuation Holding Accounts Reserve (SHAR) - for more information, refer to the ATO website at www.ato.gov.au

Specified grounds for release

If you cannot gain early access to your Superannuation benefits on severe financial hardship grounds, you may consider asking APRA to approve the release of some or all of your benefits on specified grounds.

There are only very limited circumstances where benefits may be released on specified grounds. These are defined in Regulations cover expenses in respect of:

- medical treatment for the member or his/her dependant where the treatment is necessary to treat a life threatening illness or injury, or to alleviate acute or chronic pain or acute or chronic mental disturbance, and where such treatment is not readily available through the public health system
- life threatening illness or injury, or to alleviate acute or chronic pain or acute or chronic mental disturbance;
- modifications to the family home and/or vehicle to meet the special needs of a disabled member or his/her disabled dependant; or
- palliative care or death, funeral, or burial expenses for a member or his/her dependant.

In addition, it is possible to have an amount released to a member to prevent foreclosure of a mortgage, or exercise of a power of sale over the member's principal place of residence.

The legislation also allows APRA to assess applications for early release of benefits where the circumstances are consistent with, or in direct relationship to, the specified grounds.

Release of benefits to members who meet the specified grounds objective test will still be subject to the governing rules of their fund.

These also apply to Superannuation savings held in Retirement Savings Accounts (RSAs).

If you have already applied to APRA for approval, you can ring 1300 13 10 60 for information about your application.



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Legal & Financial Concerns

Legal & Financial Concerns - Guardianship Board

Office of Public Advocates and Guardianship Boards to be found in each state may have information on, and how to apply for:

- An Advocate to be appointed. or
- A Financial Administrator. (This can be a responsible family member) or
- A Guardian. (This can be a responsible family member) and information on making a:
 - Power of Attorney
 - Enduring Powers of Attorney (for some one to act on behalf of a person, at a time in the future, when the person is no longer unable to make their own decisions)
 - Medical Powers of Attorney
 - Guardianship

Reviewing above Documents / Orders

Guardians (Office of the Public Guardian or State equivalent)

Before appointing a guardian, the tribunal must have evidence of:

- Disability
- Incapacity
- Need

A guardian is a legally appointed substitute decision-maker with defined powers

They are not:

- Substitute case managers
- Guardian angels
- Baby sitters or substitute caregivers
- Fairy godmothers

A guardian cannot stop an alcoholic drinking, gamblers wasting money, give 24-hour supervision or stop family conflict.

Need to appoint a "Responsible Person"

- Who is person responsible? - Guardian appointed by the Tribunal
- Can be a spouse/defacto
- Carer, close personal friend/relative

Who meets the criteria?

- Evidence of a Close and continuing relationship
- Provides or arranges domestic support on a regular and unpaid basis

Financial Management

Appointment of a Financial Manager

Before appointing a financial manager, the Protective Commissioner (in NSW, other States may use different names for the equivalent role) must have evidence of:

- Exploitation is suspected
- Concern about contracts which the person cannot understand, needing to be made, eg sale or purchase of real estate etc
- Insufficient informal assistance if a person is suffering loss because of their inability to understand and manage their finances and:-
- No satisfactory informal management arrangements made when a person has significant financial means
- The need for decisions about the management of money, property, investments eg shares, or legal transactions to occur

When may you need to apply?

Before appointing a financial manager, the tribunal must have evidence of incapacity, need, best interests.

Guardianship Tribunal has the power to appoint guardians, financial managers as substitute decision-makers for those people who are unable to make decisions for themselves

- Because of disabilities or other causes
- Have lost ability to make decisions for themselves
- Need someone else to make decisions for them
- Alternative financial management

Guardianship Tribunal (or state equivalent)

- If a guardian needs to be appointed
- If a financial manager needs to be appointed
- Alternatives to Guardianship
- Help with decisions
- Informal decision making
- Person not actively/persistently resisting decisions
- Conflict can be resolved
- Enduring guardianship
- Ability when capable to:

Appoint your own guardian to make substitute personal or lifestyle decisions on your behalf if you become incapable

Solicitor or chamber magistrate witness signatures



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Legal & Financial Concerns cont.

Legal and Financial Concerns

We all prefer to maintain control of our own lives. Privacy, independence and freedom of choice are greatly valued.

However, after a brain tumour diagnosis occurs this sometimes can lead to people being unable to make rational or logical decisions for themselves. Families and people diagnosed with tumours of the brain often have concerns about the future and need to seek solutions to simple or complex legal and / or financial problems.

If concerns are raised about the following issues

- Disagreements about decisions currently being made
- The person diagnosed with a brain tumour is in need of protection from abuse, exploitation or an unsafe situation
- Managing finances
- Financial commitments
- Wills
- Power of Attorney
- **SEEK Professional advice**

Where can I get legal assistance?

- Community Legal centres - services available for free or low cost
- Private Lawyers - available to draw up wills, powers of attorney, advanced directives/living wills, etc - charges will apply
- Chamber Magistrates -Clerk of the Local Court - able to provide advice - services are free
- Public Trustee - can assist with wills, power of attorney's, estate management
- Guardianship Tribunal - who can then appoint guardians (Office of the Public Guardian in NSW, in other states it may be called the Guardianship and Administration Board or Public Advocate etc.)
- Financial managers (Office of the Protective Commissioner/Public Advocate)

Links

The following are links to the Guardianship Lists / Boards in Australia. Please Note Laws and Regulations vary in each state, and sites and information may change.

[NSW - Guardianship Tribunal](http://www.gt.nsw.gov.au)

<http://www.gt.nsw.gov.au>

[Victoria - Office of the Public Advocate](http://publicadvocate.vic.gov.au)

<http://publicadvocate.vic.gov.au>

[Tasmania - The Guardianship Board](http://guardianship.tas.gov.au)

<http://guardianship.tas.gov.au>

[Western Australia - Guardianship, Administration and Advocacy](http://justice.wa.gov.au)

<http://justice.wa.gov.au>

[Northern Territory - Office of Adult Guardianship](http://www.health.nt.gov.au/Aged_and_Disability/Adult_Guardianship/index.aspx)

http://www.health.nt.gov.au/Aged_and_Disability/Adult_Guardianship/index.aspx

[Queensland Guardianship](http://www.qcat.qld.gov.au/)

<http://www.qcat.qld.gov.au/>

[SA Office of the Public Advocate](http://www.opa.sa.gov.au/cgi-bin/wf.pl)

<http://www.opa.sa.gov.au/cgi-bin/wf.pl>

[ACT Office of the Community Advocate](http://www.publicadvocate.act.gov.au/)

<http://www.publicadvocate.act.gov.au/>