

# Policy: Review of Financial Management Orders

## Purpose

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To ensure that only those people for whom a financial manager is needed have their affairs managed under a Court or Tribunal Order.

It cannot be assumed that, for people for who a Financial Management Order is made, they have lost capacity in all areas of their life, or permanently. Each person's circumstances are unique. A person may lack capacity at one point in their life and either regain capacity or learn new skills that enable them to manage all or part of their estate.

In some circumstances, a person may never be able to regain capacity. However, a less restrictive alternative to a financial management order may be available and considered a safe and viable alternative.

Australia has ratified and is a signatory to the Optional Protocol of the United Nations Convention on the Rights of Persons with Disabilities. This means that Australia is required to ensure that domestic laws comply with the Convention.

In particular, Article 12 - Equal recognition before the law requires that:

- 1 States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.*
- 2 States Parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.*
- 3 States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.*
- 4 States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.*
- 5 Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.*

## Policy statement

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- The making of a financial management order by a Court or Tribunal is a last resort in order to protect the affairs of a person who has lost the capacity to manage their own estate.
- People for whom a financial management order is made should not be assumed to have lost capacity completely and forever. Each person's circumstances are unique and must be reviewed at regular intervals. Customers of NSW Trustee & Guardian have the right to seek a review of the original order appointing NSW Trustee & Guardian as their manager.
- Review of financial management orders are also triggered by specific events or changes in the person's circumstances or the order itself.
- The Supreme Court and NSW Civil and Administrative Tribunal (Guardianship Division) have the authority to review, confirm, vary or terminate financial management orders. The Mental Health Review Tribunal may revoke an order on applications provided it is satisfied that the person has regained capacity or it is in their best interests to do so ([section 88](#) of [NSW Trustee and Guardian Act 2009](#)).
- [Part 4.6 Division 2](#) of [NSW Trustee and Guardian Act 2009](#) gives the Chief Executive Officer of NSW Trustee & Guardian, in certain circumstances, the authority to review, confirm or terminate financial management orders.
- [Section 39](#) of the Act sets out the principles by which NSW Trustee & Guardian implements financial management orders. [Section 39\(b\)](#) requires that our actions should be least restrictive as possible. *The freedom of decision and freedom of action of such person should be restricted as little as possible.*
- The presence of a financial management order is a significant restriction in a person's life and should only be in place when absolutely necessary. [Section 90](#) of the Act allows the Chief Executive Officer of NSW Trustee & Guardian to consider whether management should continue.
- [Section 71 \(2\)](#) of the Act allows the Chief Executive Officer of NSW Trustee & Guardian to authorise a customer to deal with part of their estate
- NSW Trustee & Guardian aims to be proactive in its review of customer files to determine whether management should continue or be terminated.

## Scope

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All customers who are the subject of a Financial Management Order made by the Supreme Court, NSW Civil and Administrative Tribunal (Guardianship Division), or Mental Health Review Tribunal.

## Legislative context

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- [NSW Trustee and Guardian Act 2009](#)
- [Guardianship Act 1987](#)
- [Supreme Court Act 1970](#)

## Related resources

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[UN Declaration on the Rights of People with Disabilities](#)

## Document information

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<b>Title:</b>	Review of Financial Management Orders Policy
<b>Owner:</b>	Senior Manager, Trustee Services
<b>Approver:</b>	Director, Trustee Services
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