

Future planning

For people living with MS

No-one knows what the future holds but by planning ahead you can ensure that your affairs and the welfare of your family are taken care of in advance.

Why is it important to plan ahead?

The future is often unpredictable. Planning ahead enables individuals to maintain control over their affairs (and the welfare of their dependent families) if they are no longer present or unable to make informed decisions due to illness or injury. As such, there are a number of legal arrangements that are important for everyone to consider.

Many of these arrangements will involve consultation with qualified legal and financial advisers. However, it is crucial that these advisers understand your individual needs and circumstances. We've provided some additional contacts on page 3 to help you source relevant support.

What legal arrangements do I need to consider?

Legal will

It's important that everyone has an up-to-date will that has been developed with the assistance of a lawyer. If you do not have a will, when you pass away your assets will be distributed in the way that the law determines in the state you live or where your assets are. This may not be how you wish your assets to be distributed or managed.

A will allows you the security of knowing that your hopes and wishes for the future support and care of your family will be carried out, especially when there are dependants involved.

Advance health care directives

Advance health care directives (or 'living wills') document your preferences for medical care and treatment to apply in any future situation where you are unable to communicate or make your own decisions. The process and legal status of advance care directives can vary between states and territories. The Respecting Patient Choices website listed on page 3 provides state-specific information about this.

Trusts

A trust is a legal obligation placed on one person (the trustee) to manage the assets of the trust for the benefit of another person/s (beneficiaries). The trustee could be a family member, friend, professional adviser, a public trustee or private trustee company.

If establishing a trust while you are still alive, a trust deed will need to be prepared. A trust can also be set up in your will so that the trust will not begin until after you have passed. For example, if you need to have your assets managed and distributed by a trustee on behalf of minors or other dependents, it could be written into your will or the will could refer to a separate document containing the full terms of the trust.

Before setting up a trust, it is very important to seek professional financial and legal advice.

Enduring power of attorney

This is an important document that everyone should consider making. It is a way for you to appoint another person or organisation (your

attorney) to manage your financial and legal affairs if you become unable to do so because of illness or accident. You will need to decide on a suitable person to be your attorney (for instance, a family member, trusted friend or adviser).

An 'enduring power of attorney' (EPA) is different from a normal 'power of attorney' in that it continues to operate even if you have lost the capacity to make your own decisions. Importantly, though, when signing an EPA, you must be competent and capable of doing so, and a qualified person, such as a lawyer (which may differ in each state/territory), must witness the document.

Guardianship

State-based guardianship Tribunals or Offices of the Public Advocate operate to protect people with decision-making disabilities. They facilitate substitute decision-making in relation to the appointment of guardians and financial managers, or in relation to medical and dental consent, for people who do not have the capacity to make their own decisions.

These institutions can make guardianship orders to appoint a private guardian and/or the Public Guardian or Advocate when there is no other person suitable or able to be the guardian.

Considerations for family members and carers

While the above is applicable to everyone, for those who have a family member with high support needs, there are a number of additional considerations to make such as, how the person you care for will be supported in the future if you are no longer able to provide the love, care and support they need. Most people with a disability are able to make their own decisions or contribute to decision-making about their needs; however, there are some who have a low level of control over their lives.

As such, the Australian Government has developed an informative booklet, *Planning for the Future: people with disabilities* (see page 3), which has been written to assist people to find information and support to plan for the future wellbeing of a person who has high support needs. The booklet includes:

- guidance and options on things to consider when planning for the future
- information about how to set up a trust
- information about how to obtain financial and legal advice.

Useful contacts

MS Australia – ACT/NSW/VIC runs regular education sessions on 'Taking Control and Planning Ahead'. Participants receive advice from the Office of the Public Advocate about enduring powers of attorney, guardianship and administration.

ACT:

- ACT Law Society – www.actlawsociety.asn.au
- Public Trustee for the ACT – www.publictrustee.act.gov.au
- Public Advocate of the ACT – www.publicadvocate.act.gov.au

NSW:

- The Law Society of NSW – www.lawsociety.com.au
- LawAccess NSW – www.lawaccess.nsw.gov.au, 1300 888 529
- NSW Trustee & Guardian – www.tag.nsw.gov.au, 1300 364 103
- Office of the Public Guardian – www.lawlink.nsw.gov.au/opg, 1800 451 510
- NSW Guardianship Tribunal – www.gt.nsw.gov.au, 1800 463 928

Victoria:

- Law Institute of Victoria – www.liv.asn.au
- State Trustees – www.statetrustees.com.au
- Victorian Civil and Administrative Tribunal – www.vcat.vic.gov.au, 1800 133 055
- Office of the Public Advocate – www.publicadvocate.vic.gov.au, 1300 309 337

General:

- Australian Organ Donor Registry – www.medicareaustralia.gov.au
- Financial Planning Association of Australia – www.fpa.asn.au, 1800 626 393

- *Planning for the Future: people with disabilities* – an Australian government publication. Download a copy at www.fahcsia.gov.au/sa/carers/pubs/planningfuture/Pages/default.aspx or call 1800 050 009
- *Respecting Patient Choices* – national information about the advance care planning process – www.respectingpatientchoices.org.au
- *Securing their Future: for parents of children with a decision-making disability* – download from the ‘publications’ section at www.publicadvocate.vic.gov.au

References:

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For information about multiple sclerosis and MS Australia – ACT/NSW/VIC services:

MS Connect™: 1800 042 138 or msconnect@msaustralia.org.au

Web: www.msaustralia.org.au/actnswvic

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