

Administrator's Handbook

INFORMATION FOR PRIVATE ADMINISTRATORS IN TASMANIA



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Definitions

In this Handbook:

Act means the *Guardianship and Administration Act 1995* (Tas);

Administration Order means an Order of the Tribunal appointing a person as an administrator of the estate of a person;

Administrator means any person appointed as administrator in an administration order;

disability means any restriction or lack (resulting from any absence, loss or abnormality of mental, psychological, physiological or anatomical structure or function) of ability to perform an activity in a normal manner;

estate refers to the income, assets, debts, liabilities, real estate and financial affairs of a person;

Guardian means a person named as a guardian in a guardianship order or as an enduring guardian in an instrument of appointment as such;

Represented person means a person –

- (a) in respect of whom –
 - (i) a Guardianship Order is in force; or
 - (ii) an Administration Order is in force; or
 - (iii) both a Guardianship Order and an Administration Order are in force; or
- (b) who appoints an enduring guardian and who, by reason of disability, becomes unable to make reasonable judgments in relation to his or her personal circumstances.

Tribunal means the Tasmanian Civil and Administrative Tribunal.

Tribunal Act means the *Tasmanian Civil and Administrative Tribunal Act 2020*.

Guardianship and Administration Act 1995 (Tas)

The functions of the Tribunal in relation to Guardianship stream proceedings are established by the *Guardianship and Administration Act 1995* (the Act).

The Act gives the Tribunal jurisdiction to hear and determine applications for Guardianship and Administration and reviews of those Orders.

Part 4 of the Act pertains to Guardianship, and Part 4 Division 3 sets out the powers and duties of a Guardian.

Part 5 of the Act sets out the law in relation to the appointment of Enduring Guardians and gives the Tribunal authority to review an instrument appointing an Enduring Guardian. Pursuant to section 89 of the Act, the Tribunal must keep a register of any instruments of appointment as an Enduring Guardian under Part 5.

Under Part 6 of the Act the Tribunal has jurisdiction to consent to medical and dental treatment.

Part 7 of the Act pertains to Administration. Division 4 of Part 7 sets out the powers and duties of an Administrator.

The Act can be found at www.legislation.tas.gov.au

The Tasmanian Civil and Administrative Tribunal

The Tribunal is an independent statutory tribunal established under the *Tasmanian Civil and Administrative Tribunal Act 2020*. In relation to Guardianship stream proceedings, the Tribunal exercises a protective jurisdiction safeguarding the rights of people with a disability who because of their disability, are unable to make reasonable judgements and decisions.

The Tribunal is constituted by a President, Deputy Presidents and other members from professional backgrounds.

The powers of the Protective Division – Guardianship Stream of the Tribunal are exercised under the Act, the *Powers of Attorney Act 2000*, *Disability Services Act 2011* and *Wills Act 2008*.

The Tribunal conducts hearings to determine applications about adults with a disability who are incapable of making some necessary decisions and who may require a legally appointed substitute decision maker. A substitute decision maker is a person who has been appointed with legal authority to make decisions on behalf of another person.

The Tribunal can appoint the following substitute decision-makers:

- A Guardian to make decisions about specific personal matters arising in the life of a person with decision making disability.
- An Administrator to manage the estate of a person with a disability.

The Tribunal can make substitute decisions on behalf of a person with a disability, by:

- Consenting to medical or dental treatment in some circumstances.
- Approving the use of a restrictive intervention under the *Disability Services Act 2011*.
- Making a statutory will for a person with a disability who has not previously made a purported will.

The Tribunal also keeps a register of instruments of appointment of Enduring Guardians, being privately appointed Enduring Guardians.

Principles under the Guardianship and Administration Act 1995

The Act establishes principles that guide all powers used under the Act. This means that the principles apply to all decisions and actions that are undertaken as a Guardian or Administrator. The principles are set out in section 6 of the Act.

A function or power conferred, or duty imposed, by the Act is to be performed so that:

- (a) the means which is the least restrictive of a person's freedom of decision and action as is possible in the circumstances is adopted,
- (b) the best interests of a person with a disability or in respect of whom an application is made under this Act are promoted, and
- (c) the wishes of a person with a disability or in respect of whom an application is made under this Act are, if possible, carried into effect.

These principles can conflict with each other and it can be difficult to find a balance between them. For example, it may be difficult to ensure that a person's expressed wish is respected, while ensuring that they are adequately protected from exploitation or abuse. It is not always possible to make a decision that will be acceptable to the person under Guardianship or Administration and at the same time ensure their proper care and safety.

Administration - Introduction

What is an Administrator?

The Tribunal may appoint an Administrator for a person, who acts like a financial manager of the represented person's estate. The appointment will be made at a hearing after an application is made in respect of the person. An Administrator may either be an individual or an organisation (such as the Public Trustee) who has been given legal authority by the Tribunal to manage some or all of a represented person's financial affairs.

Before the Tribunal makes an Administration Order, it must be satisfied under section 51 of the Act that the proposed represented person:

- is a person with a disability; and
- is unable, by reason of the disability, to make reasonable judgments in respect of all or any part of his or her estate; and
- is in need of an Administrator of his or her estate.

The role of an Administrator is similar to a trustee, as their most important duty is to act at all times in the best interests of the represented person. This applies to all decisions regarding property and finances that the Administrator makes on behalf of the represented person.

Who can be appointed as Administrator?

Pursuant to section 54 of the Act, the Tribunal may appoint as Administrator of the estate of a proposed represented person: the Public Trustee, the Public Guardian, a trustee company, or any other person who consents to act as Administrator, including the Guardian of the proposed represented person, if the Tribunal is satisfied that:

- they will act in the best interests of the person; and
- they are not in a position where his or her interests conflict or may conflict with the person's interests; and
- they are a suitable person to act as the Administrator of the estate of the person; and they have sufficient expertise to administer the estate.

In determining a person's suitability to act as Administrator, the Tribunal must take into account the wishes of the proposed represented person, so far as they can be ascertained, and the compatibility of the person proposed as Administrator with the proposed represented person and with his or her Guardian, if any.

Procedure

The Tribunal will hold a hearing within 45 days after receiving an application for Administration, and may appoint an Administrator for the estate of the represented person if there is a need.

Once an Order is made by the Tribunal at hearing, the Administrator will receive copies of the Order appointing them. Private Administrators will receive 3 certified copies by post. These copies can be taken to the bank/s of the represented person and any other institutions such as superannuation funds that require a copy of the Order to allow the Administrator access. If required the Administrator may contact the Tribunal to request further certified copies be sent to them via post.

Powers of an Administrator

An administrator has the power to do anything a represented person could have done in relation

to their estate if not under a decision making disability. Part 7 Division 4 of the Act outlines the powers and duties of an Administrator. The Tribunal's Order will state whether the Administrator's powers are limited and if so, which powers the Administrator has.

Section 56 of the Act outlines actions that the Administrator may take on behalf of the represented person. These include:

- collect income
- invest money
- lease real estate
- sell or exchange property
- pay any debts owed
- recover any debts owing
- carry on trade or business
- lodge tax returns
- bring and defend actions and other legal proceedings
- execute and sign deeds, instruments and other documents
- complete any contract for the performance of which the represented person was liable or enter into any agreement terminating liability
- pay any sum for the maintenance of the represented person (and, in the event of his or her death, for funeral expenses)
- pay any sum for the maintenance of the represented person's spouse, child or dependant
- spend money on repair or renovation of property
- pay or cause to be paid to the represented person for the personal use of that person

This is not an exhaustive list.

Extent of Authority

The exercise of the above powers is subject to the terms of the Tribunal's Order. If the Order is limited, it will not allow the Administrator complete control over all aspects of the represented person's estate. For example, if the Administrator only has power to make decisions with regard to a particular income source such as a pension, they will not have power to sell real estate on behalf of the represented person.

If the Order specifies the Administrator's responsibilities, the Administrator should ensure that they do not exceed their powers. If it appears that there is need for financial decisions to be made beyond the scope of the Order, the Administrator should contact the Tribunal to discuss a possible review of the Order (see page 10).

An Administrator should familiarise themselves with sections 56 to 64 of the Act.

Best interests

Under section 57(1) of the Act, an Administrator must act at all times in the best interests of the represented person.

Section 57(2) states that the Administrator does this if they act as far as possible in such a way as to encourage and assist the represented person to become capable of managing his or her estate, and in consultation with the represented person, taking into account their wishes as far as possible, and as an advocate for the person

Keeping of Records

Except for minor items, such as confectionery and toiletries, an Administrator should keep documentation of receipts and expenditure. An Administrator is required to report annually on the assets, liabilities, income and expenses of the represented person. For this reason, complete and accurate records need to be kept and the Tribunal may request these to be produced at any time.

Records that should be kept include:

- bank statements for the whole accounting period – these must include the full name of the account holder, BSB and account number
- Centrelink PAYG statement
- receipts for single expenses or purchases over \$1,000
- receipts for large combined expenses totaling more than \$500 but less than \$1,000 (for example, holidays, education or respite care)
- dividend or trust statements
- Statement of Adjustments (property settlement for sale or purchase of property)
- invoices or statements for accommodation
- mortgage statements, loan agreements or credit card statements
- sale or purchase contract, notes for shares and investments
- Superannuation account summaries or statements.
- RACF financial agreement

Access to Information

When making decisions on behalf of a represented person, an Administrator has the right to access all the information to which the represented person would be entitled. Administrators are provided with certified copies of the Tribunal's Order as confirmation of their appointment. This document enables the Administrator to access all financial information from companies and organisations that the represented person is entitled to access.

Key points

- The Administrator must act in the best interests of the represented person at all times
- The Administrator is accountable for the financial decisions they make
- The Administrator must keep records of all assets, income and outgoings
- The Administrator must not utilise the represented person's funds for their own gain, or mix the represented person's funds with their own.
- The Administrator must consult the represented person wherever possible and take into account their wishes as far as possible.

Getting Started as Administrator

First Steps

Upon receiving copies of the Order from the Tribunal, it is important that the Administrator reads the Order carefully to understand whether they have full or limited powers.

If the Order is limited it will state which assets or income sources the Administrator has power over. For example, the Administrator's powers may only be exercised to control the person's Centrelink benefit, or their interest in a deceased estate.

The Order may also contain other clauses, such as provision for gifts to be distributed from the represented person's estate to a maximum amount per year, at the Administrator's discretion. If a full Order does not contain a gifting clause, the Administrator is not authorised to distribute gifts (including Christmas and birthday presents to others) from the represented person's funds.

The Administrator should contact the Tribunal staff if they have any questions about the Order or if someone is failing or refusing to recognise the Order.

The Administrator should inform relevant individuals and organisations of their appointment, such as:

- Banks, credit unions, building societies
- Centrelink, Department of Veteran's Affairs, overseas pensions
- Superannuation funds
- Financial investments, shares, managed funds
- Utility providers: electricity, phone, water, gas
- Vehicle registration and insurance provider
- House and contents insurance provider, rates, landlord (in the case of rentals) or nursing home
- Health insurance provider
- Carers and support service providers
- Employer/s
- Australian Taxation Office (ATO)
- Solicitors, accountants
- Creditors (anyone the represented person owes money to): loans, mortgages, hire/purchase, furniture rental
- Debtors (anyone who owes money to the represented person)

The Administrator should locate copies of important documents and Certificates of Title.

The Administrator should make note of all assets, liabilities, income and expenses that comprise the estate of the represented person. This may include:

ASSETS	LIABILITIES	INCOME	EXPENSES
Non-current: Real estate Personal property (furniture, contents, jewellery) Vehicle	Mortgages Loans (personal, car, hire/purchase, laybys) Credit card	Centrelink / Department of Veteran's Affairs pension Wages from employment	Accommodation (rent/board, nursing/group home) Utilities (phone, electricity, gas, water)

ASSETS	LIABILITIES	INCOME	EXPENSES
Other (prepaid funeral, nursing home contributions - RAD) Current: Bank accounts Investments / shares Superannuation		Superannuation Deceased estate entitlements Trust benefits	Insurance Mortgage repayments Food, clothing, toiletries Holidays, outings, entertainment Personal allowance Gifts/loans (if approved by the Tribunal)

The Administrator may find it beneficial to develop a financial management plan for the immediate and future management of the estate. This could involve:

- Considering the represented person's entitlements under Centrelink benefits, ensuring they are receiving the correct amount
- Drafting a budget comprising income and outgoings for the upcoming year
- Reviewing assets, considering whether disposal is in the best interests of the represented person
- Reviewing bank accounts, considering consolidation and direct debit arrangements

It may be necessary to seek professional financial advice where appropriate.

Financial Summary

Upon receiving the Order, the Administrator will also receive a Financial Summary document and be required to complete and return it to the Tribunal within 28 days, or such other time as the Tribunal determines. This document gives the Tribunal an outline of the represented person's assets and liabilities at the time of the Order, and their expected income and expenditure for the next year.

Consulting with the represented person and others

Where possible, an Administrator should consult with the represented person regarding any decisions they make to understand their wishes.

It may be valuable for the Administrator to consult the represented person's family, friends and care providers, as they can assist to ascertain the needs and preferences of the represented person. It may be important to consult with close family particularly in the case of big decisions such as buying and selling real estate. However, information generally should only flow from the family to the Administrator. It is not appropriate for the Administrator to provide personal financial information about the represented person to anyone except the represented person themselves.

Can others control some of the represented person's money?

If the represented person lives in supported accommodation such as a group home or a residential aged care facility (RACF), it may be sensible to provide the manager of the accommodation with a cash float to pay for things like outings, toiletries and confectionery.

It is important to note that the Administrator is accountable for all disbursements from the estate of the represented person.

The represented person's Will

The Administrator should familiarise themselves with the terms of the represented person's Will, if they have a copy.

A Will is a highly confidential document. Section 88 of the Act gives the Tribunal power to open and view a represented person's Will. An Administrator may seek the approval of the Tribunal to know the terms of a Will. The Administrator cannot divulge the terms to anyone without the Tribunal's approval.

Section 60 of the Act requires that an Administrator preserve the interest in assets known to be mentioned in the Will of the represented person. Preservation does not mean that an asset mentioned in the will cannot be sold, it does mean, however, that a person's interest (e.g. the monetary value of the asset) in an asset be preserved so far as the circumstances allow.

It is possible that a person who is under an Administration Order because they have lost capacity to make reasonable financial judgments may still have capacity to make a Will, as the legal tests are different. If the represented person wishes to make a new Will, or change their existing Will, it is important that they have access to medical and legal advice to assess their capacity to make a valid Will. The law is not straightforward in this area, so the Administrator may need to seek legal advice.

Conflicts of Interest

A 'conflict of interest' means that a conflict exists between the Administrator's duties as Administrator for the represented person and the Administrator's own interests or the interests of a relative, business associate, or a close friend of the Administrator.

An Administrator cannot make a decision, take any action or consent to doing something on behalf of the represented person where the Administrator has a conflict of interest in making that decision or taking that action on behalf of the represented person.

If a potential conflict of interest arises, the Administrator should notify the Tribunal in writing or seek Advice and Direction from the Tribunal.

Decisions an Administrator cannot make

An Administrator cannot make personal, lifestyle or care decisions on behalf of the represented person. They cannot make the represented person enter a different residence or care facility. Similarly, an Administrator cannot make decisions regarding medical treatment, health care or services the represented person is to receive. If the represented person is incapable of making these kinds of decisions and they need to be made, a Guardianship Application may be required to be submitted to the Tribunal so it can consider the appointment of a Guardian.

An Administrator cannot vote in a State or Federal election on behalf of the represented person.

An Administrator cannot make, revoke or amend a represented person's Will, enduring power of attorney or enduring guardian instrument of appointment.

An Administrator may not delegate their role to another person. They may, however, seek professional advice as to how to exercise their powers and duties.

Remuneration for Administrators

If an Administrator is a person normally engaged in the business of administering estates (e.g. a commercial solicitor or a professional estate planner), they may be paid for their time, pursuant to section 55 of the Act. This occurs only very rarely, but the Administrator can contact the Tribunal should they have any enquiries about applying for remuneration. Otherwise, an Administrator is a voluntary role.

Where the Administrator or any other person has made expenditure for the represented person out of their own funds they can be reimbursed for those expenses, so long as there is adequate verification (such as receipts for purchases), even if they occurred prior to the Order being made. An Administrator is not expected to subsidise the represented person's expenses from his or her own funds.

Seeking Advice or Direction from the Tribunal

Under section 61 of the Act, an Administrator can apply to the Tribunal for Advice or Direction regarding any matter in relation to the Administration Order or the scope of their power under it. An Administrator may find it appropriate to do this when faced with a complex decision or one that may give rise to conflict.

The Tribunal may approve or disapprove of any proposed action by the Administrator, give such advice as it considers appropriate and/or vary the Order or make any other Order it considers necessary.

Under this section, the Tribunal may also of its own motion direct or offer advice to an Administrator in respect of any matter.

Applications for Advice or Direction are available from the Tribunal's website.

Gifts

Under the Act, any gift can only be made with the approval of the Tribunal and only if the power is included in the Order. This includes gifts to relations or close friends of a seasonal nature (eg Christmas presents) or for a special event eg wedding. Gifts may be to a person for whom or purposes for which the represented person might be expected to provide.

If the Order does not contain a gifting clause and the represented person would like to make a gift of any kind, the Administrator will need to make an Application for Gifts or Settlements to the Tribunal to approve ongoing gifts or a one-off gift. This also applies to loans or maintenance.

Applications are available from the Tribunal's website, or can be requested to be sent from Registry staff.

Review of Administration Order

When the expiry date of an Order is approaching, Tribunal Registry staff will contact the Administrator to seek review documentation. This is referred to as a statutory review of the Order. The Administrator is required to submit a Review of Order Application, a current Health Care Professional Report and their Administrator's Annual Report to the Tribunal. Often, a hearing will then be listed to review the need for an Order. At a review hearing, the Tribunal may continue, vary or revoke the Order.

Further, pursuant to section 67 of the Act, the Tribunal may at any time hold a hearing to review

an Administration Order. This may be by the Tribunal's own motion, upon application by the represented person (or on their behalf), or upon the application of any other person. Review applications can be found on the Tribunal's website.

A review might occur if:

- The represented person regains the ability to manage their finances
- There is no continuing need for an Administrator
- The Administrator cannot or does not wish to continue in their role
- There are concerns around management of funds
- The Administrator has a conflict of interest in relation to the represented persons estate

In some instances an Administrator may have difficulty with being the appointed Administrator. This may be for varied reasons including ill health, meeting the Tribunal's requirements or preserving the relationship with the represented person. It may be appropriate for a Review Application to be lodged so the appointment of an alternative Administrator can be considered.

Signing Documents

It may be important when signing some documents to seek the advice of a solicitor.

The usual way of signing a document on behalf of a represented person is:

Signed for and on behalf of the said JOHN SMITH by WANDA JONES, Administrator,

(signature of W. Jones)

If the represented person dies

If the represented person passes away while under a current Administration Order, the Administrator is required under section 63(3) of the Act to inform the Tribunal in writing within 7 days. A copy of the funeral notice or death certificate can be provided.

Within 28 days from the date of that notification the Administrator must provide the Tribunal with a final statement of accounts of the estate up until the date of death. A template for the final statement will be sent to the Administrator. This is the Administrator's final responsibility under the Order.

An Administrator should keep a copy of financial accounts and all supporting documents for long enough to meet any relevant legal obligations of the represented person's estate.

If the Administrator dies

Where an administrator dies, the Tribunal will need to review the administration order and may need to appoint a replacement Administrator.

Management of Finances, Assets and Liabilities

I. Assets

Bank Accounts (and similar)

Having a single working account generally allows for ease of management of the represented person's finances, including compiling information to meet the Administrator's reporting obligations (see page 22).

Some Administrators have control of an account into which all income is deposited in the first instance and arrange for regular smaller amounts to be deposited into another account for the represented person's personal allowance for discretionary spending. This is only appropriate if the represented person has the capacity to manage such discretionary spending themselves.

All bank statements should be checked closely, particularly where the represented person has access to an account. Represented persons should not have access to an account with a large balance unless such access has been granted under the Administration Order. Credit cards should not be used by represented persons.

Having all accounts held in the represented person's sole name also allows for ease of management of the represented person's finances. The intermingling of the represented person's fund with another person's, or the administrator's, may cause difficulties for accounting for the represented person's finances. Trust accounts should not be set up and, if they exist, they should be changed. Money held in trust can give rise to a number of legal issues, including in respect of deceased estates, Centrelink considerations (as to ownership) and taxation implications (who is liable to pay the tax on any income of the trust).

In the course of their duties an Administrator may find reference to amounts of tax withheld referred to on a bank statement. This usually occurs where the financial institution does not hold a Tax File Number (TFN) for the account. Unless the amounts withheld are very minor, Administrators should obtain a TFN and provide it to the bank. The ATO will ordinarily arrange a refund of withheld amounts if tax returns are lodged. Tax returns for previous years can also be lodged to obtain a refund of previously withheld amounts.

Investment / Shares / Managed Funds

An Administrator may invest money in any manner in which a trustee can invest.

Under the law, when a person is entrusted with another person's money, they must act according to a 'fiduciary duty'. This duty carries special responsibilities, to act in good faith, to take more care with another person's money than you would your own and to properly account for income, expenditure and losses. Exercising this duty might mean that an Administrator should seek professional advice before making important financial decisions.

When investing monies on behalf of a represented person, an Administrator must adhere to the 'prudent person' principle. This principle is set out in s.7 of the *Trustee Act 1898* and means that the Administrator must "... exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of another person."

This means that an Administrator is not able to make reckless decisions regarding investment and must always check, if necessary with independent advice, the viability of an investment.

Entitlements from Centrelink are affected by an income test and an assets test. In planning

investments and cash flow, Administrators should consider these tests. The value to the represented person's estate of fringe benefits should also not be overlooked.

Some Administrators may receive financial advice that they ought to invest the represented person's funds in a trust. However, investing the represented person's funds in any trust has the effect of giving control of the money to a different legal entity, even if the represented person is the only beneficiary of that trust. Investment in a trust is a 'settlement' for the purposes of the Act. Therefore an Administrator must seek the Tribunal's approval to invest funds in the trust pursuant to section 58 of the Act. To ensure that such investments can be made in a timely way, it is important to make an application for a settlement at an early stage of the development of the trust.

This applies to all trusts, including the Federal Government Special Disability Trusts that have some benefits for pension entitlements and taxation relief. For more information see:

<http://www.humanservices.gov.au/customer/services/centrelink/special-disability-trusts>

Or contact Centrelink's Special Disability Trust Team by:

- phoning 1800 734 750, for the cost of a local call except from mobile and pay phones; or
- emailing sdt.team@humanservices.gov.au

Administrators need to consider two issues in regard to whether it is appropriate to sell or retain shares held by the represented person:

- (a) If shares are sold, will the sale result in capital gains tax (this can be offset by capital losses in shares as well)?
- (b) Imputed Credits on the dividends distributed amount can be claimed back through the lodgement of an income tax return. Imputed credits can also form part of Managed Investment income and funds advise customers the amount to be declared.

In cases of an extensive estate, an Administrator may also need to make a decision as to whether to buy shares. Administrators should consider obtaining financial advice before any decision is taken.

Superannuation

An Administrator will need to consider whether amounts held in superannuation funds are best withdrawn, amalgamated, or periodic payments are received. If arrangements are in place at the time of appointment of the Administrator, no action may be required.

Withdrawn

It may be necessary to withdraw the funds - for example, where a RAD (refundable accommodation deposit) is required to be paid. There is a minimum age at which funds can be withdrawn. There also may be tax and Centrelink implications that need to be considered.

Amalgamation

If there is more than one superannuation fund involved, consideration could be given as to whether to consolidate them into one fund.

Periodic payments

Where periodic payments are in place it is likely the represented person has received advice or opted to take this course. You may need to consult a financial advisor, accountant, and/or Centrelink to establish if there is any benefit in changing the arrangements in place.

An Administrator must ensure that an annual statement is received from all relevant superannuation funds, showing the balance held in the fund and other relevant information, as the Administrator will need to include this information in the Annual Report required to be submitted to the Tribunal

Realty

An Administrator's obligations are to maintain and protect any property owned by a represented person, and ensure all insurances are current and accounts paid. Even if an Administrator proposes to sell real estate, they must take steps to ensure that whilst it remains in the ownership of the represented person all obligations are met.

Realty Occupied

Where the property is occupied, it must have full insurance cover (replacement value), rates must be paid, all bills for water and utilities must be paid, and the building, lawns and gardens must be maintained.

Realty Vacant

If the property is vacant the insurer needs to be notified and the policy endorsed. Most insurers require notification within a 30-60 day period of the property becoming vacant. An additional premium may be payable if the property is vacant.

Land Tax is usually payable if the realty is vacated by the owner—even if still owned or occupied by a family member. If the owner was not personally resident on 1 July each year, Land Tax is payable for that financial year.

Realty Rented

Usually, the insurer needs to be informed if the property is occupied by a tenant, and the policy endorsed. There must be a registered rental agreement in place and the Bond (usually equivalent to 4 weeks rent) lodged with the "Rental Deposit Authority" (through Service Tasmania). Periodic inspections need to be carried out. An Administrator may wish to appoint a managing agent to look after the property.

If it is proposed to have a family member live in the property, the Administrator will have to consider whether there is a conflict of interest involved. An Administrator is to ensure that the represented person's best interests are being looked after. This means that rent should be paid by family members living at the property, and usually the rent should be at full market value.

Realty Sale

Where real estate is owned, one of the major decisions an Administrator is required to make is whether to sell the property. A sale may be required where the represented person's health has deteriorated to the extent that they can no longer live in the property and need to live with family or enter a RACF.

In considering the sale of the property it may be appropriate for an Administrator to consider the terms of the represented person's Will. Where a piece of real estate is specifically mentioned in the Will, special provisions apply to the Administrator with respect to what may be done with the funds received from the sale of the property. In these circumstances Administrators are advised to contact the Compliance Officer of the Tribunal to discuss the proposal. If a family member is intending to purchase the property, the Administrator must consider if there is a conflict of interest. In these situations an Administrator can seek advice and direction from the Tribunal at a hearing (see page 10).

If property is sold, the Administrator must seek to obtain the best possible price for the property. The selection of an agent (their charges vary), getting advice on marketing and method of sale (auction/private treaty) are important decisions. It is recommended that Administrators obtain at least two appraisals or have a qualified property valuer provide a report. Administrators generally leave the electricity connected until the property is sold.

Any offer that the Administrator believes should be accepted should be checked by a solicitor before the Administrator signs the sale contract. It is also important that the Administrator has confirmed the whereabouts of the Certificate of Title before marketing the property.

It is a good practice to ensure a deposit is held before signing a contract for sale as there can be the potential for the contract to be broken and lengthy ongoing legal issues. A solicitor is usually retained to complete the sale. Once the proceeds are received the Administrator must ensure that if the solicitor has not dealt with the following that they are attended to: cancellation and/or payment of outstanding electricity, water and insurance.

Following finalisation of the sale, the Tribunal requires a copy of the solicitor's settlement statement and evidence of the distribution of the nett proceeds (bank deposit, RAD receipt etc.)

Realty Purchase

In some instances it is proposed realty should be purchased for a represented person. It is prudent that a contract not be signed until it has been considered by a solicitor. It may be helpful to also obtain an independent property valuation/inspection report. This inspection can be particularly important as it provides an extensive report on the condition and faults of a property—this is a critical issue for older properties.

Appropriate insurance cover must be arranged once a contract for purchase is signed.

Funds or finance must be available to complete the purchase. An Administrator needs to consider how the purchase will affect the represented person's finances, their lifestyle and ongoing commitments. An Administrator needs to carefully consider whether it is in their best interests of the represented person for the purchase to occur. Again, applications can be made to the Tribunal for an advice and direction hearing (see page 10). Administrators should contact the Compliance Officer in the first instance if they have any concerns.

Personal Property - furniture contents, jewellery

As funds allow, personal property can be acquired or replaced as needed. Administrators should ensure that adequate contents insurance cover is arranged for personal property, and valuable items should be kept in a secure location

Vehicles - cars, boats, trailers, bikes

If vehicles are to be retained by or for the represented person they need to be insured and in a secure location. In some cases an Administrator may need to consider whether a vehicle should be retained if a represented person does not have the ability to operate the vehicle. The cost of registration, insurance and running costs also need to be considered.

Prepaid Funeral

If there are sufficient funds one option is for an Administrator to consider is making arrangements to prepay funeral costs. A potential benefit of such an arrangement is that Centrelink regard this "asset" as exempt for the purposes of calculating the value of the represented person's assets.

Refundable Accommodation Deposit (RAD)

One of the biggest issues confronting an Administrator is when the represented person enters a residential aged care facility (RACF) and a refundable RAD applies. A RAD is a payment for accommodation in addition to the basic care fee and means-tested care fees. Some people will have their accommodation costs met in full or in part by the Australian Government, while others will need to pay the accommodation price agreed with the RACF, based on an assets and income assessment. These payments take the form of lump sum payments or daily payment equivalents. If you need to pay an accommodation payment, you may choose not to pay the entire accommodation payment as a lump sum (RAD), or elect to pay some (or all) of it as a daily accommodation payment . It may be prudent to obtain financial advice.

2. Liabilities

This section deals mainly with outstanding amounts that are usually required to be repaid over an extended period, as compared to one-off payments. That subject is dealt with under Expenses, starting at page 20.

Mortgages

Mortgages on real estate owned by the represented person should continue to be repaid in accordance with the lending financial institution's requirements. If, for some reason, this is not possible the Administrator should contact the lender and discuss the position and what is proposed.

Loans (personal, car, hire purchase layby)

The repayment of loans should be treated as a matter of importance. In most cases there is accruing interest and penalties involved for not paying on time. If there are current arrangements in place and the current income is adequate, it is likely repayments should just continue.

The Tribunal believes the represented person should have a budget that includes a saving component and therefore new loans should ordinarily not be entered into.

Credit Card

Credit Cards should usually not be available to a represented person. The holding of a Debit Card that can be accessed periodically from funds credited for personal spending is appropriate where sufficient funds are available, and only where the represented person has the capacity to manage such spending. The Administrator must ensure that such arrangements are not subject to exploitation by others or likely to be misused by the represented Person.

If a credit card is held by the represented person at the time of appointment alternate arrangements should be considered by the Administrator as part of their initial process after appointment.

3. Income

Centrelink /DVA /Overseas Pensions

It is the Administrator's responsibility to ensure that the represented person receives all of their pension entitlements. As well as the basic pension, Centrelink may provide supplementary assistance for rent, pensioner health benefits and fringe benefits. Also, rebates on council and water rates, electricity and telephone bills may be obtained.

It is important for the Administrator to maintain the represented person's entitlements, including participating in reviews.

Centrelink can be contacted by telephone on 132 300 for Aged Pension enquiries or 132 717.

The Department of Veteran's Affairs number is 133 254.

It is likely that no action will be required in respect of overseas pensions. The relevant organisation should be contacted with any changes of address or circumstances, or if an entitlement is likely to be affected.

Employment

The considerations for an Administrator in respect of employment of the represented person may include:

- whether the appropriate wage is being paid to the represented person by their employer;
- the need to advise Centrelink of any changes immediately;
- ensuring any superannuation obligations are paid by the represented person's employer;
- in the case of a small business or contractor, whether the necessary workers compensation cover is in place; and
- consideration of the need for an income tax return to be lodged.

Superannuation

An Administrator should liaise with the fund regarding any issues that arise with periodic payments and advise them of any changes the fund should be aware of.

Deceased Estate

Sometimes a will leaves a represented person a life interest in an estate. This means that whilst the represented person, as beneficiary, can access the income from an asset they are unable to withdraw the capital. How the life interest is to work is included in the will and the trustees under the will are obliged to ensure the terms are complied with.

A represented person's interest in the income does not prevent consideration of the purchase of a residence for the life tenant to live in. The property however remains in the legal ownership of the estate. This is one areas where a conflict of interest may arise during the course of an administration for example: where a person is an executor of a will and also appointed as Administrator for a represented person who is a beneficiary of the will.

Trusts

A Disability, Compensation or other trust may have been set up for the represented Person. These funds are administered by a trustee and are not part of the Administrator's responsibility.

Your responsibility is only in respect to any funds distributed for the person's benefit. Having a copy of the document is helpful in understanding the trust. The trust does not form part of the estate of a represented person unless income is distributed to them. Each fund is different and you should consult the trustee of the fund or seek independent legal advice as needed.

4. Expenses

Spending

As Administrator, you have an important role in ensuring that the represented person has the necessities of life.

Money can be spent on basic items such as Tribunal and lodging, clothing, pharmaceutical needs, optical, medical and dental expenses. Expenses associated with the represented person's home such as rates, insurance, electricity, telephone and repairs. On all of these items, the administrator is allowed to spend all 'reasonable amounts' taking into account the represented person's overall financial situation, and the wishes of the represented person. An Administrator should be careful not to limit expenditure only to these usual expenses, especially if the represented person is financially secure.

An Administrator must ensure that the represented person's immediate needs are met before other less essential purchases are made.

The Tribunal encourages Administrators to consider having a savings component in their budget planning. This assists in a number of ways, for example: accounting for inflation, for the purchase of larger items, holidays, future long-term needs (nursing home/funeral costs).

Administrators have flexibility as to how they choose to pay expenses. It is best practice to ensure that there is no intermingling of the represented person's funds with those of any other person. In some cases there may be a desire to maintain longstanding joint accounts. While this is permissible, it requires very careful record keeping to ensure the income and expenses of the represented person can be fully accounted for. The Administrator must ensure that no gifts or loans are made unless approved by the Tribunal.

To a large extent, the processes put in place will depend on the disability of the represented person and their ability to handle money that they may have access to. If there is a need to take complete control because the processes put in place don't work Administrators must take that action. The role of the Administrator is not to provide the represented person with everything they ask for but to ensure the funds are managed appropriately in the represented person's best interests.

An Administrator must balance the need for investments, to ensure consistency of income and comfort, against the need for leisure and entertainment for the represented person. Expenditure must always be reasonable with regard to the extent of the estate.

Automatic Payments

As Administrator you may find that certain facilities that enable direct payment or deductions for regular costs will make your task easier.

Centrepay

If the represented person is in receipt of Centrelink benefits, an Administrator can establish Centrepay payments of certain accounts. Centrepay is a voluntary deduction service that facilitates payment of private rent, gas, electricity, water and telephone expenses through a direct bill pay facility.

You can find out more about Centrepay at:

<http://www.humanservices.gov.au/customer/services/centrelink/centrepay>

To apply to use Centrepay, a Centrepay Deductions Form must be completed. The form can be downloaded from the website above or obtained from Centrelink by telephone request. Forms are also available from Centrelink Customer Service Centres.

Direct Debits

Establishing direct debits of insurance (home, medical, car, etc) or other regular payments (e.g. rates, rent, telephone or electricity) may be appropriate. . An Administrator must always ensure that sufficient funds exist in the account from which direct debits are established.

The Administrator may need to review existing debit arrangements and cancel any unnecessary subscriptions.

Reporting

Statutory Requirements

Section 63 of the Act requires that an Administrator provide the Tribunal with a statement of accounts of the estate of the represented person at such times as the Tribunal determines.

Section 66 of the Act requires that the Tribunal receive a report from the Administrator once every 12 months, in a form specified by the Tribunal. The Tribunal's usual practice is to send a request for the annual report which incorporates the statement of account a month in advance of the order's expiry month each year. The Tribunal gives the Administrator two weeks from the date of the request to submit the documentation.

The annual report must include:

- The assets and liabilities of the estate
- The income and expenditure of the estate over a specified period
- Such other particulars relating to the estate as the Tribunal may require

If the Administrator cannot submit the documentation in the timeframe given, they may contact the Tribunal to request an extension. The Tribunal will grant extensions for submission of reports on a case-by-case basis. If the report is to accompany documentation for a statutory review, as the order is approaching expiry, it is important it is submitted by the due date to allow the Tribunal sufficient time to prepare for a hearing if necessary.

If the value of the estate being administered is greater than \$50,000, the Tribunal charges a fee for audit of the report. The Administrator may apply in writing to have the fee waived at the time of submitting the report if it would cause undue hardship to the represented person.

Completing the Annual Report

The Tribunal will send an annual report template with the request letter which must be used. The report template contains instructions in each section for how to complete it. The Administrator must keep thorough records of all transactions made under the Order and use these to complete the report.

The first annual report is to be completed for a period beginning from the date the Order was made appointing the Administrator. In the case of subsequent annual reports, it is to be completed for a period beginning from the end date of the previous report. The end date for the report is the last day of the month to coincide with bank statements. For example, if the request is received in June, the end date for the report should be 31 May. These dates need to be entered into section 1 of the Report.

Section 2 – enter the represented person's details

Section 3 – enter the Administrator's details

Section 4 - outline any changes to the represented person's disability and incapacity, and living and family situation.

Section 5 - document the represented person's bank account balances at the start of the reporting period (A), any interest received during the period (B), any charges/fees/taxes paid during the period (C), and the closing balances at the end of the period (D).

Section 6 – document the total income received by the represented person from pensions, employment, superannuation and trusts. There are lines provided for the total from each source, and then the total must be added up (E).

Section 7 - document the income received by the represented person from other income sources such as interest (not including bank interest), loan repayments, benefits from a deceased estate, lump sum payments, asset sales, awards and settlements, NDIS payments made direct to the represented person and refunds. There are lines provided for the total from each source, and then the total must be added up (F).

Section 8 concerns the receipt of any income from the sale of real estate, dividends from shares, rent from a rental property or cash from investment sales and add up these totals (G).

Section 9 requires the Administrator to disclose whether the represented person received any other kind of income in the reporting period (H),

Section 10 is the total income received during the period from adding up totals B, E, F, G and H. This will give a figure for the total income in the accounting period (I).

Section 11 is to be completed with the total spent on the represented person's accommodation and personal needs, separated into various categories listed and the totals added up (J).

Section 12 asks whether the represented person made any loans, or gifts and details must be provided of the amount, to whom and why and the total added up (K).

Section 13 requires the Administrator to document whether the represented person bought any investments, real estate, assets valued at or above \$500, or prepaid for a funeral, and to add this total (L).

Section 14 asks whether the represented person made any other kind of payment not already documented and add this total (M).

Section 15 is the total expenditure paid throughout the period by adding C, J, K, L and M to give a figure for the total expenditure throughout the period (N). The reconciliation is the total opening bank balance (A) plus the total income (I) minus the total expenses (N). This should give a figure (O) which is equal to the figure for closing account balances in section 5 (D).

Section 16- provide details of the represented person's assets (bank balances, investments, real estate, personal property and any other assets. The total value of all assets should be entered at the end of the page (P).

Section 17 -document the represented person's liabilities or debts if they have any. This includes mortgages, loans, credit cards and any other debts. The total of all liabilities should be calculated to give a total figure (Q).

Section 18 requires the Administrator to give a figure for the net assets by subtracting Q from P and record this figure (R).

Section 19 asks whether there are any further explanations or comments. This is where the Administrator has an opportunity to explain any discrepancies in the report.

Section 20 is for the Administrator to tick that they have attached relevant documents, such as bank statements.

Section 21 explains how the Administrator can lodge the report with the Tribunal. The final page

of the report is a statutory declaration which must be signed by the Administrator and witnessed for the report to be accepted.



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