

Applying for an Emergency Guardianship or Administration Order

What is an emergency order?

In emergency situations, the Tasmanian Civil and Administrative Tribunal (the Tribunal) can make short term guardianship or administration orders for up to 28 days. The emergency order can be made at very short notice. If necessary, it can be extended for a further 28 days. Emergency orders allow the Tribunal to act swiftly to protect individuals who are at risk. The Tribunal can only make an emergency order when the person is in urgent circumstances and where there are no less restrictive options to address his or her situation.

It is important that a person, for whom an application for the appointment of a guardian or an administrator is made, has an opportunity to be involved in the investigation and hearing process and can give evidence of their own wishes. Making emergency orders often removes that opportunity and should only be done in circumstances of demonstrated urgency.

Discuss your application with a Case Assessment Officer

Before you complete an application for an emergency order, please discuss the situation with a Case Assessment Officer. The Officer will be able to tell you whether the circumstances you describe are likely to meet the requirements of the legislation. If your application is urgent, the Officer will ensure that a Tribunal member is available at short notice to consider your application.

The legislation

Section 65 of the Guardianship and Administration Act 1995 (the Act) states:

65. Emergency orders

(2) Where the Tribunal considers it proper to do so, by reason of urgency, the Tribunal may, in respect of a person who is not a represented person but in respect of whom the Tribunal considers that there may be grounds for making a guardianship order or an administration order make an order appointing –

- (a) the Public Guardian as his or her guardian; or
- (b) The Public Trustee as administrator of his or her estate –

and in either case the Tribunal may make any order or give any direction considered appropriate in the circumstances.

What is urgency?

Generally, the Tribunal considers that a situation is “urgent” when there is sufficient evidence that a person with a disability is at immediate risk of significant harm unless a guardian or administrator is appointed within the next 10 days to 45 days. The Act requires 10 days notice

of a hearing to all parties and all applications must be heard within 45 days. Therefore, these periods represent the earliest and the latest that an application may be determined, apart from an emergency application.

An applicant should ask themselves: “What will happen to the person if there is no guardian or administrator for this person in the next 10-45 days?” Circumstances that the Tribunal has previously considered to be urgent include situations where the person about an application was made:

- was likely to suffer damage to his or her physical or mental health without the appointment of a guardian, or
- was at immediate risk of eviction from their home without an administrator, or
- had experienced personal violence or threats and there is a risk of further violence or threats, or
- was likely to suffer significant hardship or irreversible financial loss (e.g. by stealing or other forms of dishonesty), unless an administrator was appointed to take preventive action.

Emergency medical and dental treatment

Emergency orders are not generally required in circumstances of emergency medical or dental treatment. This is because a separate provision in the Act enables emergency medical treatment to be performed without formal consent of a guardian or a person responsible where the medical practitioner or dentist carrying out or supervising the treatment considers the treatment is necessary, as a matter of urgency –

(a) to save the person's life; or

(b) to prevent serious damage to the person's health; or

(c) except in the case of special treatment, to prevent the person from suffering or continuing to suffer significant pain or distress.

When is a situation NOT urgent?

The following situations are often the subject of successful (non-emergency) applications to the Tribunal. While they do involve some risks for the person with a disability, the risks are not generally immediate, therefore would not qualify for an emergency order and should proceed to a full hearing, for instance:

- A person with a mental illness has significant debts and is unable to pay them as they fall due.
- An elderly person is in hospital and wishes to return home. There is concern that when an Aged Care placement is found, they will refuse to move to the Aged Care Facility or that there will not be places available for that person.
- A person has been in hospital for a significant period of time and the bed is required for other patients.

- A person has been offered accommodation by Housing Tasmania but will not be granted a lease unless there has been an administrator appointed.

The more information that you offer, the quicker the Tribunal can respond to the circumstances that you have described.

What else needs to be in my application?

Your application needs to provide the Tribunal with sufficient information to be able to determine:

- Whether the person may have a disability that may render him or her incapable of making reasonable decisions and there may be a need for a guardian.
- Whether there are appropriate grounds for the appointment of a guardian or administrator.
- The wishes of the person for whom a guardian or administrator is proposed.

Please refer to other publications regarding the circumstances of appointment of guardians and administrators.

What happens after an emergency order is made?

It is important that you complete a regular application send it to the Tribunal as soon as possible. You must also ensure that a medical practitioner or a psychologist completes a Health Care Professional Report and provides this to the Tribunal.

The Public Guardian or the Public Trustee may be in touch with you during the currency of the emergency order to ensure that you have completed this task. However, as the initial applicant, it is your responsibility to complete the full application form as you are more likely to be aware of the reasons why an order has been sought than they are.

If you take any longer than 10 days after the emergency order is made to submit the application and HCPR, it is likely that the person to whom the emergency order relates will be without a guardian or an administrator for some period before the Tribunal can hear your application.