

GUARDIANSHIP AND ADMINISTRATION BOARD, TASMANIA

*INFORMATION for PRIVATE
ADMINISTRATORS*



A Handbook for Private Administrators

Revised May 2017

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Information for Private Administrators

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INTRODUCTION

You have been appointed by the Guardianship and Administration Board as an administrator for a person with a disability. The Board appointed you because it was satisfied that you have the necessary qualifications and relationship with that person to carry out that important task.

Your new role requires you to take control of the person's finances in their best interests and to act with the highest integrity.

This Booklet has been written to assist you in understanding the duties that are involved in being an administrator and to know where and when to seek assistance. Because your appointment carries a heavy responsibility it is important that you obtain as much information as possible and take advantage of the resources available including the advice offered by staff members of the Board.

Further information can be obtained from the Board's website which is at:

www.guardianship.tas.gov.au

The relevant legislation can be found at:

www.thelaw.tas.gov.au

If you have any questions at any time or do not have internet access, please feel free to ask the Compliance Officer at the Board for further information. The contact number for the Compliance Officer is (03) 6165 7500.

Rowena Holder
President
22 May 2017

1. TERMINOLOGY USED IN THIS BOOKLET

An administrator is appointed by the Guardianship and Administration Board to manage the financial affairs of another person who lacks the ability to manage his or her own affairs because of a disability.

In the legislation and in this booklet, the person with a disability whose affairs you manage is called 'the represented person'.

While your role has similarities to the role of a person appointed under Enduring Power of Attorney, that term is not an accurate description of your role. Neither is 'guardian'. (A 'guardian' is a person appointed by the Board to make lifestyle and health decisions for a represented person.)

When this booklet refers to the legislation or 'the Act', it means the *Guardianship and Administration Act 1995*.

The Guardianship and Administration Board is usually referred to as 'the Board' in this booklet.

When this booklet refers to the represented person's estate it is a reference to all of the person's income, assets, debts, liabilities, real estate and financial affairs.

3. UNDERSTANDING THE ADMINISTRATION ORDER

You will have attended a hearing of the Guardianship and Administration Board to determine an application for appointment of an administrator for the proposed represented person.

The Board announced at the end of the hearing that they decided to appoint you as administrator. That decision will be recorded in a written and signed order. The order may grant you full powers to make any financial decisions, or it may be limited to making decisions only in a particular area. A full order will contain these words:

- “1. That XYZ be appointed administrator of the represented person.
2. That the powers and duties of the administrator be those conferred by Division 4 of Part 7 of the *Guardianship and Administration Act 1995*.”

The signed order will be posted to you within 24 hours or may be collected from the Board’s offices by arrangement. You should first read the order carefully to ensure you understand the scope of your responsibility. If you have any initial queries or questions about the order please discuss these with a staff member of the Board.

A number of the organisations that you will need to deal with, such as banks and credit unions, will require evidence of your appointment. Many of those organisations will require a certified copy of the order. The Board will supply you with 6 certified copies of the order for that purpose. If you require more copies, contact the Board.

The order itself is usually only one A4 page. If you want more detail about why the order was made and what evidence the Board took into account in the hearing, you may request a *Statement of Reasons* from the Board within 21 days from the hearing¹. This request must be in writing. You can access de-identified copies of past statements of reasons at: <http://www.austlii.edu.au/au/cases/tas/TASGAB/>

¹ Section 74 of the *Guardianship and Administration Act 1995*

4. YOUR DUTIES AND POWERS AS AN ADMINISTRATOR²

Your role as administrator is very similar to being a trustee. Misuse of the represented person's funds, for your own or someone else's gain, is a very serious matter and will most likely result in your removal as administrator and potentially referral to Police .

Most of the relevant information about your role as administrator is set out in Division 4 of Part 7 of the Act (sections 56 to 64)³. You should read these sections carefully because they establish the basis of most of the financial decisions that you will make for the represented person.

You may be appointed as an administrator with all of the powers under Part 7 of the Act, or the Board may have limited the decisions that you may make to a particular subject or a particular transaction. For instance, you may be appointed for the limited purpose of receiving funds for the represented person from the deceased estate of their parent, or to buy or sell a particular piece of real estate. These powers will be clearly set out in the order.

If you have been appointed as an administrator with full powers, you are responsible for making all of the financial decisions on behalf of the represented person.

In all of your actions as a full or limited administrator, you must consider and act in the best interests of the represented person⁴. That means that you must encourage the represented person to become capable of managing their own finances and always consult with them about financial decisions. You must also use the represented person's money to maximise his or her quality of life.

An administrator should not confuse his or her role as being solely about maximising the represented person's wealth. Acting in the represented person's 'best interests' obviously includes ensuring that he or she receives maximum income entitlements, that assets are prudently managed and debts and expenses are responsibly controlled. However, a good administrator will allow expenses for items that are not essential but may be enjoyable or enhance represented person's quality and enjoyment of life.

You have a duty to take into account, as much as you can, the wishes of the represented person. Sometimes the wishes of the represented person will directly

² Section 56 and 57 *Guardianship and Administration Act 1995*

³ See Appendix 6 of this booklet – Copies of relevant sections attached

⁴ Section 57 of the *Guardianship and Administration Act 1995*

conflict with their best interests; that is one of the challenges of being an administrator. You must weigh up the wishes of the represented person against what you consider to be in their best interests. The decision is yours to make. It can be a difficult but rewarding role.

The Board has appointed you personally; you do not have the ability to delegate the role to another person or organisation, although you can always seek professional advice.

As an administrator you must (subject to any limitations imposed by the order):

- Be responsible for the general care and management of the estate and financial affairs of the represented person;
- Take possession of, collect and generally administer the estate of the represented person in a prudent manner;
- Do anything in relation to the financial affairs of the represented person that he or she would have been able to do if he or she did not have a disability.

Specifically, (and also subject to any limitations imposed by the order) the duties and obligations of an administrator may involve:

- Collecting income;
- Paying accounts;
- Managing assets and liabilities;
- Managing and maintaining real estate;
- Purchasing or selling real estate;
- Surrendering life assurance policies;
- Recovering debts;
- Discharging mortgages;
- Preparing and lodging tax returns;
- Carrying on a business.

(i) Boundaries of an administrator's powers:

Being an administrator does not automatically mean that you will assume responsibility for lifestyle or medical decisions on the represented person's behalf. If the represented person is incapable of making these decisions, the Board may need to consider the appointment of a guardian. There may, however, be some overlap between the role of an administrator and a guardian and often decisions relating to financial management (e.g. paying a security deposit/bond on a rental premises) cannot be made without considering the represented person's previous, current and hoped for lifestyle.

If you are a close relative or spouse of the represented person, it is possible that because of that relationship you are also deemed to be the 'person responsible' for making medical treatment decisions if the represented person is incapable of making such decisions. For more information about who has authority to make medical decisions, please refer to the Board's website or request the Board's staff to provide you with the relevant Facts Sheets.

(ii) Recording Transactions:

You are required to keep full details of the represented person's assets, income and expenditure. Except for minor items such as confectionery and toiletries you should keep documentation of income and expenditure. This includes invoices, receipts, statements accompanying cheques received, and bank statements.

Pursuant to section 66 of the *Guardianship and Administration Act 1995* the Guardianship and Administration Board requires the administrator of a represented person's estate to provide details of the administration to the Board. You are required to provide detailed accounts to the Board at least once in every twelve months and at other times when requested. A member of the Board's staff will alert when you the report is nearly due and provide you with the forms if necessary.

Listed are a number of important matters you should take into account in keeping records or conducting business on behalf of the represented person:

Essential Record Keeping:	Check ✓
Keep a written record or file of all transactions you undertake in relation to the represented person's estate	<input type="checkbox"/>
Keep the financial dealings and records of the represented person separate from your own	<input type="checkbox"/>
Record capital and income separately	<input type="checkbox"/>
Record and register all assets bought or sold in the represented person's name	<input type="checkbox"/>
Record all dealings in the name of the represented person, e.g. you should sign documents " <i>AB as administrator for BC</i> ".	<input type="checkbox"/>

The Act specifies that the administrator must provide the Board with a statement of accounts of the estate at such times as the Board determines. If you fail to provide the report within the required time, the Board may convene a review hearing to assess your continuing appointment as administrator.

The statement of accounts must contain details of:

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

Standard forms for your reports are included in the appendices to this booklet. You do not need to use the standard forms, which are a guide only, so long as the transactions are clearly recorded and easy to follow. The report must be in a form approved by the Board and supported by a statutory declaration from the administrator.

You must annually submit a completed copy of:

Appendix 1 – Standard Form Annual Report (or appropriate equivalent)

Appendix 2 – Statutory Declaration

Appendix 4 – Statement of Accounts (or appropriate equivalent)

The Compliance Officer of the Board will examine your report and may have the accounts audited by an independent auditor. The Compliance Officer may ask you to clarify any matters that are unclear in your report and may ask you to submit an amended report.

If, following an audit, or after its own investigation the Board is not satisfied with the reports, accounts or expenses, it may disallow certain expenditures. The Board would require an explanation from you about why the expenditures were made. If that explanation did not meet the test of being in the best interests of the represented person, the Board may determine that you as administrator are personally liable to the represented person's estate for the amount of expenditure disallowed. It is most likely that this would be determined at a hearing and you would be given every opportunity to explain, and if necessary defend, your actions.

If the estate that you administer has a value greater than \$50,000.00 (excluding principal residence and contents), you will be required to pay, from the estate, a fee to the Guardianship and Administration Board of \$170.00 to cover the costs of reconciliation and approval of the annual reports. If a fee is required, you will be sent an invoice with the appropriate fee payable and the methods for payment. If you believe that payment of the fee will cause the represented person hardship, you may write to the Board's Registrar requesting a waiver of the fees. Your letter will need to provide detail as to how the represented person will be adversely affected by the fee.

5. COMMON TASKS OF ADMINISTRATORS

In many administered estates, the first few months after the order is made involve the most work for an administrator.

At the time of making the order there may be assets that need to be sold, mail to be re-directed, debts that must be paid and direct-debit arrangements to be established. The following advice is to assist you to start out correctly and confidently. Once that is done, the management of the estate may become simpler.

Generally an administrator will re-direct income from benefits (e.g. Centrelink payments) to ensure control of the source of income. However, check the Board's order first, because sometimes the Board will exclude the management of the pension from the administration order (where there are other assets that require management) to leave some financial control with the represented person.

The following actions are typically undertaken by an administrator and are explained in greater detail below:

- (i) Notifying relevant organisations of your appointment
- (ii) Consolidating accounts, paying outstanding debts or negotiating a repayment schedule
- (iii) Managing (including selling, buying or renting) real estate
- (iv) Arranging direct payments
- (v) Spending
- (vi) Planning the management of the estate
- (vii) Investing funds
- (viii) Maximising income

(i) Notifying Relevant Organisations of Your Appointment

You should notify all relevant organisations (e.g. financial institutions, creditors) that you have been appointed as administrator for the represented person (RP). You should endeavour to have all finance-related mail re-directed to your address.

	Name	Date notified
RP's banks/credit unions
RP's employer		
Australian Taxation Office		
House Insurer		
Motor Vehicle Insurer		
Health Insurance		
Superannuation fund		
RP's solicitor		
RP's accountant		
Centrelink/Veteran's Affairs		
Nursing Home administration		
Supported accommodation manager		
Day care and support services		
Aurora		
Telstra		
Local Council (rates)		
Creditors
Debtors		
Other ...		

(ii) Consolidating Accounts paying outstanding debts or negotiating a repayment schedule

Because you will be required to account for all expenditure to the Board, it is advisable to establish a single ‘working account’ and consolidate all other accounts as much as possible to maximize accountability and simplicity in the workings of the estate.

Different actions may be required according to whether the represented person’s estate is in credit or in debt.

The following is a table to assist you to consider tasks that may be required if the represented person’s estate is in credit.

Where the estate is in credit:

	Actions:	Check ✓
Step 1	Review all existing accounts and any direct debit arrangements	<input type="checkbox"/>
Step 2	Decide whether all accounts are necessary or whether they can be consolidated	<input type="checkbox"/>
Step 3	Seek financial advice where appropriate	<input type="checkbox"/>
Step 4	Close unnecessary accounts and transfer funds into investment accounts or cash accounts.	<input type="checkbox"/>
Step 5	Keep records of all transactions	<input type="checkbox"/>

As stated above, a represented person’s estate that is in debit will require a different type of treatment. The following is a table to assist you to consider tasks that may be required if the represented person’s estate is in debit.

Where the estate is in debt:

	Action:	Check ✓
Step 1	Review all outstanding accounts, ascertain validity of debts, cancel unnecessary subscriptions or debit arrangements	<input type="checkbox"/>
Step 2	Contact creditors and notify of the administration order	<input type="checkbox"/>
Step 3	Seek financial or legal advice where appropriate	<input type="checkbox"/>

Step 4	Pay accounts, enter into negotiations to pay by instalments (or seek advice of the Australian Financial Security Authority ⁵ regarding insolvency) or file relevant documents to dispute a debt	<input type="checkbox"/>
Step 5	Keep records of all transactions	<input type="checkbox"/>

⁵ Australian Financial Security Authority is the government agency responsible for the administration and regulation of the personal insolvency system in Australia 1300 364 785

(iii) Managing (Including Selling or Buying) Real Estate

In the estates of most people, their real estate is their major asset. Therefore your duties as administrator are important in protecting that asset. Even if you intend to sell any real estate that the represented person has, you must take steps to ensure that while it remains in the ownership of the represented person, that it is appropriately protected.

Immediate steps to take regarding real estate/property:

		Check ✓
Step 1	Ensure that the property has full insurance cover. This is especially important if a house is <u>vacant</u> . If possible, obtain a written endorsement from the insurer noting that policy conditions still apply.	<input type="checkbox"/>
Step 2	Ensure appropriate security measures are in place (e.g. clearing junk mail, regular visits)	<input type="checkbox"/>
Step 3	Make arrangements regarding services, (e.g. water, phone, gas, electricity)	<input type="checkbox"/>
Step 4	Arrange mail re-direction where appropriate	<input type="checkbox"/>
Step 5	Notify mortgagees, (e.g. banks, credit unions) and make arrangements to continue payments	<input type="checkbox"/>

Medium term steps regarding property:

	Check ✓
Arrange for maintenance of lawns and gardens	<input type="checkbox"/>
Conduct a title search, locate the title and ensure that it is securely stored (e.g. bank, solicitor, professional trustees)	<input type="checkbox"/>
Contact Council and Lands Titles Office and arrange for re-direction of notices	<input type="checkbox"/>

Selling or buying real estate:

A decision to sell the real estate of the represented person is often discussed at the Board hearing. Such a decision may be straight forward, but often it involves a great deal of emotion for the represented person and members of their family. In this case it is important to consult as widely as possible, but ultimately the decision is for the administrator alone or for the Board.

Buying property involves a high degree of responsibility, because you must ensure that the property meets the needs of the represented person both financially and in terms of quality of life for that person.

You should seek advice from the following persons or organisations (where relevant) before selling or buying property:

	Check ✓
The represented person and other important persons in the represented person's life	<input type="checkbox"/>
The Compliance Officer at the Board	<input type="checkbox"/>
An independent valuer for a property valuation	<input type="checkbox"/>
A real estate agent	<input type="checkbox"/>
A conveyancing solicitor	<input type="checkbox"/>
Bank, credit union or other financier/investment company	<input type="checkbox"/>

Where real estate has been mentioned in a person's will, special provisions apply to the administrator with respect to the funds from the sale of that property. You are strongly advised to contact the Compliance Officer of the Board to discuss any decisions to sell any property that is mentioned in the represented person's will. See also Chapter 13 of this booklet for further information.

(iv) Arranging Direct 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, you can establish Centrepay payments of certain accounts. Centrepay is a voluntary deduction service where you can pay for private rent, gas, electricity, water and telephone 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, you need to complete a Centrepay Deductions Form. You can download this form from the website above or telephone Centrelink to have the form sent to you. You can also visit your nearest Centrelink Customer Service Centre to pick up a form.

Direct Debits

Wherever you can establish direct debits of insurance (home, medical, car, etc) or other regular payments (e.g. rates, rent, telephone or electricity) it can save you time and effort. You must always ensure that funds exist in the account from which direct debits are established. Many administrators find that direct debits can be convenient and simple to use.

Conversely, there are occasions where the represented person has established direct debits from his or her account that are either unnecessarily extravagant or are expenses that are not in his or her best interests. You will need to review these existing debit arrangements and cancel any unnecessary subscriptions.

Deductions to the represented person's account

In some circumstances, you might arrange to allow the represented person to have their own account for spending money. You can establish a direct deduction from the benefits/income that they receive into the represented person's account, like an allowance. You can make arrangements with your bank or credit union for such payments.

Paying allowances to the represented person for their own enjoyment or spending is consistent with the administrator's duty to encourage the represented person to become more capable with managing their own finances.

(v) Spending

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

Essentials:	Example
Shelter/accommodation	Nursing home fees, rent, rates, home insurance, board
Food	Meals on wheels, supermarket vouchers
Electricity	Heating, Aurora Pay-As-You-Go, Gas
Methods of communication	Telephone, interpreters, contact with friends and family, internet and email connections
Medication and therapy	Doctor's fees, health insurance, pharmacy accounts, optical, dental, physiotherapy, prosthetics, hearing aids
Mobility	Hoists, wheelchairs, customised beds, guide dogs, walkers, bus or taxi vouchers, vehicle registration and fuel expenses

For such necessities you should ensure that the quality of these is the best available within the limits of the estate and that they reflect the wishes of the represented person.

However, if there is money available after spending on the necessities, an administrator should ensure that expenditure enhances the represented person's comfort and enjoyment of life (e.g. holidays, excursions). A good administrator balances up 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 represented person's estate.

(vi) Planning the management of the estate

In some cases the Board may require an administrator to lodge a plan of management or statement of accounts within a period of time, usually 6-8 weeks, after his or her appointment. In other cases the administrator will find it useful to prepare a plan of management to enable effective administration of the represented person's estate.

The plan should list all the person's income and assets, and show how they will be used to maximise the benefit to the represented person.

The plan should cover the following matters:

- Income and source of income;
- Details of the assets and where they are situated;
- Debts and when they are due;
- Bank accounts used to record income and expenditure;
- Any professionals needed to help to manage the financial affairs, e.g. an accountant or solicitor;
- Proposed expenditure, e.g. board and lodging, clothing, money for the person's personal needs, pharmaceutical needs, optical expenses, medical expenses, hospital fees, nursing home fees, dental expenses, taxes, gas, electricity, rates, holidays, insurance premiums, repairs, and private health cover;
- What will happen to the person's house;
- All income and expenditure records; and
- Investments you need to make, and investments you need to keep track of.

A sample plan of management is attached at Appendix 5 (page 61) of this Booklet. You are encouraged to discuss with the Board's Compliance Officer the benefits of making a plan and the contents for the plan.

(vii) Investing funds

An administrator may invest money in any manner in which a trustee might invest.⁶

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 such as selling a house, investing in a business etc.

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 you 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 you are not able to make reckless decisions regarding investment and must always check, if necessary with independent advice, the viability of an investment. Generally, this encourages administrators to make more conservative than aggressive investments.

Entitlements from Centrelink are affected by an income test and an assets test. In planning investments and cash flow, administrators need to consider these tests. The value to the represented person's estate of fringe benefits should not be overlooked.

Remember that getting returns from investment is not always as important as ensuring that the represented person's life is enhanced by the use of the funds. There is little point in accumulating large investments if the represented person is living in dismal conditions.

Some administrators may receive financial advice that they ought to invest the represented person's funds in a trust. Please bear in mind that 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.

Technically, investment in a trust is a 'settlement' for the purposes of the Act. Therefore as administrator it is your responsibility to seek the Board'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 your application for a settlement at an early stage of the development of the trust.

⁶ Section 56(2)(b) of the *Guardianship and Administration Act 1995*

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 or

(viii) Maximising income

Many people who have administrators are entitled to Government benefits, especially the Aged Pension and the Disability Support Pension. It is the administrator's responsibility to ensure that the represented person receives all his or her 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 can be obtained.

It is important for the administrator to maintain the represented person's entitlements, including participating in reviews and keeping the represented person's entitlements up to date.

You can telephone Centrelink on 132 300 for Aged Pension enquiries or 132 717 for Disability Support Pension enquiries from anywhere in Australia.

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

6. GIFTS, SETTLEMENTS AND LOANS FROM THE ESTATE

Misuse of the represented person's funds is a very serious matter and will most likely result in your removal as administrator and potentially referral to Police. An administrator must not use any funds from the estate for the benefit of any person except the represented person.

The represented person's funds may only be used for the represented person's benefit and for no other individual. The only exception to this rule is where there has been a prior order of the Board approving a loan, gift or settlement from the estate or where there is a maintenance arrangement for a dependent of the represented person.

As noted in part 5 above, investment of the represented person's funds in a trust arrangement, even where the represented person will be the only beneficiary of the trust is considered a gift or settlement for these purposes. This is because the control of the funds will be given to the trustees, not the represented person.

If there are circumstances where you believe that it is appropriate for yourself or another person to receive a loan or a gift from the represented person's funds or to settle his or her funds into a trust, you must make a prior application to the Board for approval. If you believe that the represented person's fund or part of the funds will be best managed in a trust arrangement, you also need to seek the Board's approval for settlement of the funds into a trust.

The application for a gift, loan or settlement will proceed similarly to the original application for appointment as administrator. The process is commenced with a written application.

You are encouraged to think very carefully before making an application for a cash gift, particularly if you will be the receiver of the gift. The Board does not encourage the making of gifts merely because the represented person has abundant funds and his or her relatives do not. There will usually need to be a clear reason, related to the beliefs and practices of the represented person, why a gift is sought.

Some administrator's feel pressure from other members of the family to assist them from the represented person's estate with finance for major purchases such as cars, houses, business and travel. Before you make an application of this kind, it is important that you consider why that person has not been able to secure a commercial finance arrangement and whether that indicates something about the level of risk that he or she presents to the estate as a borrower.

If an administrator seeks approval for the distribution of small cash gifts to family members on days that are significant for religious or family reasons (e.g. birthdays, graduations, Christmas) and such gifts will not exceed \$5000 in any year, the administrator can apply verbally at a hearing for approval or using the form provided.

An administrator seeking approval for other kinds of gifts or settlements and gifts which will exceed \$5000 in any year, must provide substantial written information required under the President's Practice Direction.⁷

After a hearing the Board will either approve or disapprove any gifts, loans or settlements. The decision of the Board will be recorded in a written order.

Making a gift, loan or settlement from the estate by any other means is unlawful.

To make an application for a gift or a loan, contact the Compliance Officer of the Board on (03) 6165 7500.

⁷ See Appendix 7

7. 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. This occurs only very rarely, but if you should have any enquiries contact the Board for advice about applying for remuneration.

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 (e.g. receipts for purchases), even if they occurred prior to the order being incurred.

An administrator is not expected to subsidise the represented person's expenses from his or her own funds.

8. REVIEWS OF ADMINISTRATION ORDERS

An administration order can be made for a maximum of three years. After three years the order expires, unless it is renewed by a further order of the Board. A renewal of the order is made after an application, investigation and a hearing; the same as for the original order.

An Compliance Officer will remind you, as administrator of when the three-year period is drawing to a close and invite you to apply for a renewal if necessary.

Reviews might occur before the order expires in the following circumstances:

- An administrator cannot continue or does not wish to continue in the role;
- The represented person recovers the ability to manage their own financial affairs;
- A serious dispute arises about the management of major decisions in the estate;
- There is no continuing need for an administrator.

Applications for reviews can be obtained from the office of the Board.

9. DEATH OF THE REPRESENTED PERSON

The Board has no jurisdiction (i.e. control) over deceased estates.

If a represented person dies, as administrator you must:

- notify the Board within 7 days;
- notify the pension authorities, if any; and
- prepare a final financial statement (see Appendices 2 and 4) and lodge it with the Board within 28 days.

Your appointment ceases upon the death of the represented person, but you may pay the funeral expenses.

The executor or administrator of the estate will contact you for details of the estate. Depending on the value of the estate you may require that the executor or administrator produce Probate or Letters of Administration to you before you release any assets. It is recommended that you seek advice from a solicitor or a trustee organisation.

10. THE REPRESENTED PERSON'S FAMILY

The represented person's family can be a valuable source of information for the administrator in assisting you to ascertain:

- The represented person's day to day or long term needs
- The financial history of the represented person;
- Preferences that the represented person may have between particular financial transactions;
- Medical and accommodation issues that may have a financial impact;
- Succession issues (such as life estates, will provisions and the expectations of beneficiaries).

For that reason, as administrator it is sensible to consult with members of the represented person's family regularly and especially in relation to any major decisions in the estate such as selling real estate. However, information generally only flows one way – that is 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 himself or herself.

All financial decisions are your responsibility. Family members are a source of advice, but they cannot dictate the financial decisions that you will make.

You will need to act with discretion around issues such as:

- Disclosing any information about the extent of the represented person's estate;
- Being seen to favour any particular family members to the detriment of any others;
- Engaging in unhelpful conflict that disadvantages the represented person.

Some families become involved in internal conflicts and might not have the represented person's interests foremost in their minds. Where there is protracted conflict (for instance if members of the family disagree about where the represented person should live), it may be necessary to invest some of the represented person's funds into mediation services to attempt to resolve long standing conflicts in the best interests of the person. However, as administrator, you have the final decision about expenditure and investment regardless of any outcome from mediation.

Unless it is expressly specified in the order appointing you as administrator, you do not have any duty to provide any financial information about the represented person to any member of his or her family.

You have a duty to the represented person to protect their financial privacy, as you would with your own affairs. Therefore, if you believe that disclosing the details of the

represented person's financial affairs will not add any benefit to the wellbeing of the represented person, you should not make any disclosure. If this approach upsets family members, encourage them to contact the Board's Compliance Officer to discuss the issue.

11. CONFLICTS OF INTEREST

An administrator must avoid circumstances where their role as administrator conflicts with their own personal interests.

Some examples of conflicts of interests are:

- Where you have borrowed money from the represented person's estate prior to your appointment;
- Where you or someone close to you lives rent free (or at a reduced rent) in the represented person's house on a caretaker basis;
- Where the represented person has funds invested in a company or business in which you or someone close to you has any interest;
- Where you want to purchase a home jointly with the represented person.

If you are aware of a potential conflict issue, you should note this in the application for administration, or indicate this to Board members during the hearing. Should a conflicts of interest arise following appointment, you should write to the Board outlining the potential conflict as soon as possible after the potential conflict arises. A conflict of interest may often be resolved by the Board giving certain directions to ensure accountability in the conflict transaction.

A failure to declare or recognise a conflict of interest by an administrator could undermine your continuing appointment as administrator.

If you believe that you may be in a position of a conflict of interest, you should notify the Compliance Officer, as soon as possible, who will advise you whether you should seek directions from the Board.

12. PRIVACY ISSUES

See Chapter 10 regarding making disclosure about the represented person's funds to his or her family. You should not disclose aspects of the represented person's financial affairs, unless you are seeking professional advice (e.g. legal or financial) or supplying information to the Board on that person's behalf and the disclosure is appropriately protected by privacy laws.

From time to time, administrators can find that privacy laws unduly hinder the operation of the order. An administrator should be able to access all of the same financial information that the represented person could if he or she did not have a disability.

Banks and financial institutions are subject to the National Privacy Principles (NPPs) in the Federal *Privacy Act 1998*.

Those principles state at NPP2.1 that if an organisation collects personal information for one purpose it can only use or disclose it for a secondary purpose in limited circumstances. NPP2.1(g) permits an organisation to disclose personal information for a secondary purpose where disclosure for that purpose is required or authorised by law.

Your appointment as administrator means that it is lawful to disclose to you financial information that would otherwise be protected by the privacy laws (that is – it is a lawful secondary purpose). Your request must relate to your role as administrator for the represented person.

For further information contact the Guardianship and Administration Board on (03) 6165 7500 or the Office of the Australian Information Commissioner (OAIC) on 1300 363 992

13. THE REPRESENTED PERSON'S WILL

The last known will of a person cannot be established until after the point of death. After a death notice has been sighted by all the trustee companies and solicitor's offices it will only then be determined who has the last dated will.

It is possible that a person who has lost capacity to make reasonable financial judgments (i.e. a represented person) may still have capacity to make a will, as the legal tests are different. If the represented person wishes to make a new will, it is important that they have access to medical and legal advice to assess their capacity to make a valid will.

Two provisions of the *Guardianship and Administration Act 1995* are relevant to an existing will of a represented person: section 60 and section 88.

(i) Confidentiality of the Will

A will is always considered to be a highly confidential document. No one is entitled to know the terms of another person's will. A testator/testatrix should feel free to dispose of his/her property completely unfettered (subject to the operation of the *Testator's Family Maintenance Act 1912*). They should also feel free to alter their will at any point up until their death, assuming they have capacity.

Section 88 of the Act gives the Board power to open a represented person's will. An administrator may seek to have the approval of the Board to know the terms of a will and even then cannot divulge the terms to anyone without the Board's approval.

(ii) Preserving Assets Nominated in the Will - Section 60

Section 60 requires that an administrator should preserve the interest in the assets that are known to be mentioned in a represented person's will.

If the represented person had sound mind, the law assumes that they would normally remember that they had left a particular property to someone in their will and would not dispose of that property without changing their will or taking some other steps to achieve their desired intention. Where a person has lost the capacity to remember this or to change their will, an administrator is required to preserve any such interest.

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.

If as administrator you believe that an asset that you are dealing with may be mentioned in the represented person's will, you should contact the Compliance Officer at the Board to discuss how to proceed.

14. APPLYING FOR ADVICE AND DIRECTION

As an appointed decision-maker, most financial management questions can be resolved by getting appropriate legal and financial advice or the advice of the staff of the Board (Phone (03) 6165 7500).

General management and process enquiries can usually be answered by the Board's officers. Many private administrators contact the Board's Compliance Officer frequently to ensure that they are proceeding correctly with their management of the estate. Such a practice is encouraged by the Board because it ensures that decisions are being made with the represented person's best interests in mind.

In addition to the informal services offered to private administrators by the Compliance Officer, the Board members can offer a private administrator formal advice and direction pursuant to section 61 of the Act.

Where a decision is particularly complex, likely to give rise to conflict or has important legal ramifications, sometimes administrators apply to the Board for advice and directions.

The Board may decide to convene a hearing to determine the advice and directions sought by the administrator, which gives other parties the opportunity to comment upon the decision.

To apply for formal advice and directions, the administrator needs to write a letter to the Board setting out the question(s) to be determined and the reasons why the administrator believes that they need specific direction to make that decision.

If you have been given a direction by the Board pursuant to section 61(5), it is an offence to contravene a direction.

Appendix 1 - Standard Form Annual Report

Represented Person's Details

Name: _____

Address: _____

_____ Postcode: _____

The Administrator

Name: _____

Address: _____

_____ Postcode: _____

Telephone Number: _____

Date of the administration order: _____ GAB File Number: _____

Disability and Incapacity

Has there been any significant change in the represented person's disability or the represented person's capacity to make reasonable judgements in respect to all or part of his or her estate?

Living and Family Situation

Briefly describe any changes to the represented person's living situation. For example have there been any major changes in the represented person's:

- *accommodation* _____
- *relationships with other family members* _____
- *care arrangements or respite needs* _____
- *any significant health problems* _____
- *hobbies and other daily activities* _____
- *provision of services, e.g. case manager involvement, assisted employment*

Asset Transactions

Describe any significant changes to the represented person's assets since your appointment or re-appointment as administrator. For example –

- *sale or purchase of property including personal property*
- *significant changes of investment*

Significant changes to the nature of the administration

For example -

- *has the represented person been permitted to operate his or her own bank account or other funds*
- *any increase in the represented person's allowance*
- *whether the represented person's pension has been re-directed to a nursing home or group home*

Immediate and Future Plans

Are there any plans for the immediate and future management of the represented person's estate or to enhance his or her quality of life?

Any other matters you believe should be brought to the attention of the Board

Administrator's Signature

Date: _____/_____/_____

Appendix 2 – Statutory Declaration

In the matter of Date of Birth/...../.....
(Name of Represented Person)

STATUTORY DECLARATION

I, Mr/Mrs/Ms
(Name of Administrator)

of
(Address of Administrator)

as Administrator of the estate of

.....
(Name of Represented Person)

of
(Address of Represented Person)

solemnly and sincerely declare that the contents of the attached Form of Accounts for the period ending on / / detailing assets and income and expenditure for the represented person are true and correct

AND I make this solemn declaration under the *Oaths Act 2001*.

DECLARED by
(Signature of Administrator)

at this day of

BEFORE me
(Signature of witness) (Title of witness)

WHO CAN WITNESS THIS DECLARATION

Justice of the Peace, Commissioner for Declarations, legal practitioner, medical practitioner, nurse, dentist, pharmacist, chiropractor, veterinary surgeon, Police officer, Post Office agent; a teacher employed on a full-time basis; an officer of a court including a judge, magistrate, clerk of court, registrar, deputy registrar, sheriff, bailiff; bank, building society or credit union officer with 5 or more continuous years of service; minister of religion; civil marriage celebrant; officer of the Australian Defence Force; member of the Institute of Chartered Accountants or Australian Society of Practising Accountants or the National Institute of Accountants or Institute of Corporate Manager, Secretaries and Administrators or Institute of Engineers; members of Parliament or a local government authority; permanent employee of a Commonwealth or State authority with 5 or more continuous years of service.

Appendix 3 – Guide To Statements Of Accounts

As noted in the information section an administrator is required to lodge a statement of accounts with the Board at such times as the Board determines.

The attached work sheets can be used for the recording of all payments and receipts in an orderly manner.

PAYMENTS

Each transaction must have a date, to whom the payment was made, cheque no. (if applicable) and the amount, entered in the respective column (under the appropriate expense heading) and the total value of the cheque entered in the “total” column on the far right hand side of the work sheet.

RECEIPTS

An entry is to be made on the work sheet for each transaction. Each entry will have a date of receipt, the name of the person or institution who provided the funds and the amount, entered in the respective column (under the appropriate receipt heading), and the total value of the funds received entered in the “total” column on the far right hand side of the work sheet.

BALANCING THE WORKSHEETS

(both payments and receipts)

At the completion of the period for which you are to prepare the financial statements, (as at the 30th June) total each column including the “total” columns. The sum of the “total” column must equal the sum of all other columns. Once this is achieved, the worksheet is balanced and the totals can be entered against their respective headings on the statement of receipts and payments.

Appendix 4 – Statement of Accounts:

Represented Person:

Date of this Statement:

GAB File No:

ASSETS		
	LAST YEAR	THIS YEAR
Cash Held In Bank Accounts		
Real Estate		
Furniture		
Motor Vehicle		
Other Investment e.g. Shares, Debentures Etc		
Personal Effects		
Debts Owed To Estate		
Other (Please Describe)		
TOTAL ASSETS		(A)
LIABILITIES		
	LAST YEAR	THIS YEAR
Unpaid Accounts		
Credit cards, Loans etc.		
Other (Please Describe)		
TOTAL LIABILITIES		(L)
NET WORTH		(A - L)

Represented Person:

Date of this Statement:

GAB File No:

Balance held at the date of the last statement/order: (B)

Date of the last statement/order:

Receipts/Income:	
Income (Pension, salary, superannuation):	
Interest	
Dividends	
Sales of assets	
Matured policies	
Borrowings	
Other (describe)	
Total Receipts/Income:	(R)
TOTAL FUNDS (B)+(R) = (T):	(T)
Payments/Outgoings:	
Rent, Mortgage etc:	
Rates and land tax	
Insurance	
Personal Expenses	
Purchase of assets	
Real Estate Expenses	
Gifts or Loans	
Other (describe)	
Total Payments/Outgoings:	(P)
BALANCE OF FUNDS (T)-(P) = :	

Cash on hand:	
Bank Account 1:	
Bank Account 2:	
Bank Account 3:	
Fixed deposits 1:	
Fixed deposits 2:	
Fixed deposits 3:	
Shares or debentures etc:	
Cash:	
Other (describe)	
TOTAL CASH FUNDS:	

Appendix 5 – Sample Plan of Management

PLAN OF MANAGEMENT SUBMITTED BY ADMINISTRATOR TO GUARDIANSHIP AND ADMINISTRATION BOARD
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REPRESENTED PERSON: AMY SMITH

GAB File No. 3452

Assets at Date of Order

House	\$250,000	approx
(requiring rewiring and part repainting estimated to cost \$15,000)		
Contents	\$5,000	
Motor Vehicle	\$6,000	
CBA Taroonna	\$17,000	(cheque account)
Westpac Taroonna	\$25,000	(term deposit matures 6 months)
Total	\$303,000	

Debts at Date of Order

Electricity	\$116
Telephone	\$304
Rates	\$1128
Royal Hobart Hospital	\$678
Total	\$2226

Income at Date of Order

Age pension	\$350	per fortnight
Bank interest	\$56	per fortnight approx
Total	\$406	

Immediate Plan

- Banks and Centrelink have been shown the original and given a copy of the Administration Order and accepted it as proof of appointment.
- Banks statements have been obtained.
- All debts have been paid.

- Mrs Smith entered St John's Hostel. Paintings, her favourite chair and bedroom furniture have been installed in her own room.
- St John's requires an admission fee of \$65,000 and \$95 payment per week. Mrs Smith and administrator agree to sell the house to pay for the admission fee. Contract with Hostel perused by Solicitor to ensure protection of Mrs Smith's rights.
- Insurers informed of house being vacant and extra premium paid.
- Solicitors and Real Estate Agents instructed to proceed with sale of house after it has been cleared and tidied within next six weeks.
- Second-hand car dealers have valued Mrs Smith's car at \$6,000. With Mrs Smith's agreement, the administrator plans to sell to Jenny, a granddaughter, for that price after all grand-children invited to express an interest.

The household contents will be sold but Mrs Smith's children by agreement have decided to retain some items in safe keeping. A list of these items is held by me.

Estimated Expenditure Requirement

- \$190 per fortnight hostel maintenance charge
- \$ 22.50 per fortnight podiatrist and hairdresser
- \$ 80 per fortnight personal allowance
- \$ 40 per fortnight tax/expenses
- \$ 40 per fortnight flowers and water colours

Total \$372.50

Medium Term Plan

- \$14,500 from cheque account invested in fixed term deposit for six months at 4%.
- \$6,000 from sale of car to be invested in bank cash management fund with cheque facility to accommodate legal and real estate expenses over next three months. Pension to be credited to this account in the short-medium term.
- Upon receipt of net proceeds from sale of the house, administrator will obtain advice about investing the surplus proceeds (following payment of the \$65,000 admission fee) and the two fixed term deposits from a local accountant and the solicitor. Westpac and CBA Financial Advice Services also to be approached, i.e. Investment of approximately \$100,000.
- At this stage I intend to invest in fixed term deposits rather than any managed funds/trusts or equities and thus avoid being subject to calculation of income by Centrelink taking into account income received and unrealised capital growth in each preceding 12 months.
- An account will be set up with a nearby florist so that Mrs Smith has flowers delivered regularly. Her account with the local chemist will be maintained. To maintain her interest in water colours, the administrator will establish an account with a city art supplier and authorise the expenditure of \$30.00 per month.

- Family members will visit regularly to check any unmet needs.

Estimated Income to be Generated by Medium Term Plan

Pension	\$350	per fortnight
Income from \$100,000 investments	\$200	per fortnight
Bank interest - Cash Management Fund	\$ 9.20	per fortnight
Total	\$559.20	per fortnight

Estimated surplus per fortnight to be accumulated and invested in banks.

Signed: RODNEY SMITH

Administrator for Amy Smith

Dated: 18 January 2015

Appendix 6 – Extracts from the *Guardianship and Administration Act 1995*

6. Principles to be observed

A function or power conferred, or duty imposed, by this 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; and
- (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.

Division 4 - Powers and duties of administrator

56. Powers and duties of administrator

- (1) Subject to and in accordance with this Act and the relevant administration order appointing him or her, an administrator –
 - (a) has the general care and management of the estate of the represented person; and
 - (b) has the duty to take possession and care of, recover, collect and administer the property and estate of the represented person and generally to manage his or her affairs with the exercise of all rights, statutory or otherwise, in respect of the estate; and
 - (c) in the name of, and on behalf of, the represented person may generally do all acts and exercise all powers that he or she is authorized to do with respect to the estate with the same effect and in the same manner as the represented person could have done if that person were not under a legal disability.
- (2) Without limiting subsection (1), an administrator may, in the name and on behalf of the represented person and so far as may be specified in the administration order –
 - (a) collect, receive and recover any income or property to which the represented person is entitled; and
 - (b) invest money in any manner in which trustees may by law invest; and
 - (c) take a lease of real estate at such rent and on such conditions as he or she thinks fit, but not for a term exceeding 5 years without the consent of the Board; and
 - (d) exercise any power of leasing vested in the represented person; and
 - (e) surrender any lease, accept any lease, accept the surrender of any lease or renew any lease; and
 - (f) sell, exchange, partition or convert into money any property other than real estate; and
 - (g) sell, exchange, partition, convert into money or grant any interest in any real estate; and

- (h)** mortgage, purchase, acquire, lease or charge any property or sever any joint tenancy; and
 - (i)** pay any debts and settle, adjust or compromise any demand made by or against the estate, and discharge any encumbrance on the estate, and reimburse (whether legally obliged to make such reimbursement or not) any person who has expended money for the benefit of the represented person; and
 - (j)** carry on, so far as appears desirable, any trade, profession or business which the represented person carried on; and
 - (k)** agree to any alteration of the conditions of any partnership into which any represented person has entered or to a dissolution and distribution of the assets of the partnership; and
 - (l)** bring and defend actions and other legal proceedings in the name of the represented person; and
 - (m)** execute and sign deeds, instruments and other documents; and
 - (n)** complete any contract for the performance of which the represented person was liable or enter into any agreement terminating liability; and
 - (o)** pay any sum for the maintenance of the represented person (and, in the event of his or her death, for funeral expenses) for the maintenance of his or her spouse or any child, parent or other person dependent on him or her and for the maintenance and education of his or her children as may be expedient and reasonable; and
 - (p)** expend money in the repair, maintenance, renovation, reconstruction or preservation of any property; and
 - (q)** pay or cause to be paid to the represented person for the personal use of that person an amount of money standing to the credit of that person; and
 - (r)** give or cause to be given to the represented person for the personal use of that person any personal property which belongs to that person; and
 - (s)** do all matters necessary or incidental to the performance of any of the matters specified in this subsection and apply any money which it is necessary to apply for the purposes of this Act; and
 - (t)** exercise any power, including a power to consent, vested in the represented person, whether beneficially, or as a trustee, or otherwise.
- (3)** The Board may, by order, limit the exercise of any power as it thinks fit or direct that the represented person may continue to be responsible for any part of his or her property or estate.
- (4)** The Board may, subject to such conditions or restrictions as it considers necessary, authorize an administrator to do any act not specified in this section.

- (5) Where a decision, action, consent or act is made, taken, given or done by an administrator under an order made by the Board or under any power or authority given by this Act, the decision, action, consent or act has effect as if it had been made, taken, given or done by the represented person and the represented person had the legal capacity to do so.
- (6) On the death of a represented person, an order appointing an administrator of that person's estate under this Act ceases to have effect except so far as it authorizes payment of funeral expenses.

57. Exercise of power by administrator

- (1) An administrator must act at all times in the best interests of the represented person.
- (2) Without limiting subsection (1), an administrator acts in the best interests of the represented person if the administrator acts as far as possible –
 - (a) in such a way as to encourage and assist the represented person to become capable of administering his or her estate; and
 - (b) in consultation with the represented person, taking into account as far as possible the wishes of the represented person.

58. Settlements and gifts

The Board on the application of an administrator or of its own motion after conducting a hearing may authorize the settlement of any property of a represented person, or the gift of any property of a represented person for –

- (a) the maintenance or other benefit of members of the represented person's family; or
- (b) making provision for other persons for whom, or purposes for which the represented person might be expected to provide if he or she were not a person with a disability; or
- (c) otherwise administering the represented person's affairs.

59. Powers of investment

An administrator may, with the consent of the Board and notwithstanding the *Trustee Act 1898* –

- (a) retain any investment, whether or not it is a trustee investment; and
- (b) invest in any investment specified by the Board, whether or not it is a trustee investment.

60. Preservation of interests in represented person's property

- (1) Where –
 - (a) any property of a represented person is disposed of under an administration order; and
 - (b) under the will or intestacy of the represented person, or by any gift perfected or appointment taking effect on his or her death, any

other person would, but for that disposal, have taken an interest in the property –

the other person is to take the same interest, so far as the circumstances may allow, in any property forming part of the represented person's estate that represents the property disposed of.

- (2)** If the property disposed of was real property, any property representing it, so long as it remains part of the represented person's estate, is to be treated as if it were real property.
- (3)** The Board may give such directions as may be necessary or expedient for the purpose of facilitating the operation of subsections (1) and (2), including the carrying of money to a separate account and the transfer of property other than money.
- (4)** Where –
- (a)** any property of a represented person is disposed of under an administration order; or
 - (b)** the Board or the administrator has ordered, directed or authorized that any such property be so disposed of –
- and the disposal would, but for this section, result in the conversion of personal property into real property, the Board may direct that the property representing the property disposed of, so long as it remains the represented person's property or forms part of his or her estate, is to be treated as if it were personal property.
- (5)** References in this section to the disposal of property are taken to include references to –
- (a)** the sale, exchange, charging or other dealing with property other than money; and
 - (b)** the removal of property from one place to another; and
 - (c)** the application of money in acquiring property; and
 - (d)** the transfer of money from one account to another –
- and any such references to property representing property disposed of are to be construed accordingly and as including the result of successive disposals.
- (6)** Where –
- (a)** any money is paid under an administration order; or
 - (b)** the Board or the administrator has ordered, directed or authorized that any such money be paid –
- for carrying out permanent improvements on, or otherwise for the benefit of, a represented person's property, the Board may –
- (c)** give directions as to accounting for the payment of that money; or
 - (d)** order that the whole or any part of the money so paid, or to be paid, is to be a charge on the property, whether without interest or with interest at a specified rate.
- (7)** A charge under subsection (6) may be made in favour of any person as the Board may determine and, in particular, where the money charged is paid out of the

represented person's estate, may be made in favour of a person as trustee for the represented person.

- (8) An order under subsection (6) may provide for excluding or restricting the operation of subsections (1) and (2).
- (9) A charge under subsection (6) does not confer any right of sale or foreclosure during the life of the represented person.

61. Application by administrator for advice, &c.

- (1) An administrator may apply to the Board for advice or directions on any matter relating to the scope of an administration order or the exercise of any power by the administrator under it.
- (2) The Board may require notice of the application under subsection (1) to be given to any person that the Board directs and may exercise its powers under this section without a hearing.
- (3) The Board may –
 - (a) approve or disapprove of any act proposed to be done by the administrator; and
 - (b) give such advice as it considers appropriate; and
 - (c) vary the administration order or make any other order that it could have made on the original application relating to the administration of the estate that it considers necessary.
- (4) The Board of its own motion may direct, or offer advice to, an administrator in respect of any matter.
- (5) An administrator who contravenes a direction given to him or her under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

62. Power of administrator to act until notice of discharge

- (1) Where the Board has received information otherwise than from the administrator that a represented person has died or has ceased to be a represented person, the Board must forthwith give notice of that fact to the administrator.
- (2) Unless the administrator knows that a person has ceased to be a represented person or has died, he or she may exercise all or any of the powers given to him or her by the Board with respect to the estate of the represented person.

- (3) On notice being given under subsection (1), the represented person or his or her legal representative, as the case may be, is bound by and may take advantage of any act done on behalf of the represented person by the administrator within the powers conferred on the administrator by the Board as if it had been done by the represented person and he or she had legal capacity to do so.

63. Reporting requirements for administrators

- (1) An administrator of a represented person's estate must furnish the Board, at such times as the Board determines, with a statement of the accounts of the estate, specifying –
- (a) the assets and liabilities of the estate; and
 - (b) the income and expenditure of the estate over a specified period; and
 - (c) such other particulars relating to the estate as the Board may require.
- (2) A statement under this section –
- (a) is to be in a form approved by the Board; and
 - (b) is to be verified by statutory declaration signed by the administrator and supported by such other evidence, if any, as the Board may require.
- (3) Where a represented person dies –
- (a) the administrator of his or her estate must, within 7 days after notification of the death, inform the Board in writing of the date of death; and
 - (b) the administrator must, within 28 days after that notification, provide the Board with a statement of the accounts of the estate – and the cost of auditing the accounts may be paid from the estate notwithstanding that the administration order has ceased to have effect.
- (4) The Board must examine a statement of accounts and may –
- (a) cause the accounts to be audited by The Public Trustee or another person determined by the Board at the cost of the represented person's estate; and
 - (b) if of opinion that the administrator, in making any expenditure in the exercise, or purported exercise, of his or her powers as such, did not act in good faith or with reasonable care, disallow that item of expenditure.
- (5) The Board must not disallow an item of expenditure unless it first gives the administrator and any other person the Board thinks fit the opportunity to appear before the Board and be heard on the matter.
- (6) Where the Board disallows an item of expenditure under subsection (4)(b), the administrator is personally liable to the represented person for the amount of the expenditure and to the Board for its costs and expenses incurred in relation to the disallowance.

- (7) An administrator who, without reasonable excuse, contravenes this section is guilty of an offence and is liable on summary conviction to a penalty not exceeding 20 penalty units.

64. Delegation of Board's functions as to reporting

- (1) The Board may in writing –
- (a) delegate to such person as the Board may approve any of the functions or powers of the Board under section 63; and
 - (b) revoke wholly or partly a delegation.
- (2) A delegation –
- (a) may be made either generally or as otherwise provided by the instrument of delegation; and
 - (b) does not prevent the performance or exercise of a function or power by the Board.
- (3) A function performed, or power exercised, by a delegate has the same effect as if performed or exercised by the Board.

85. Protection relating to reports and information

- (1) A person who makes a report or gives information to the Board –
- (a) for the purpose of an application under this Act, to assist in deciding whether an application should be made under this Act; or
 - (b) when requested so to do by the Board, the Public Guardian or an officer of the Board –
- is not subject to any liability for making the report or giving the information so long as he or she acts in good faith and has reasonable and probable grounds for believing the report or information to be true.
- (2) A person who makes a report or gives information as mentioned in subsection (1) that is malicious or false in any material particular is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

88. Power to open wills

- (1) The Board, The Public Trustee or a trustee company, within the meaning of the *Trustee Companies Act 1953*, may, before or after the death of a represented person, open and read any paper or writing which purports to be, or is alleged to be, the will of the represented person.
- (2) An administrator other than The Public Trustee or a trustee company may, with the approval of the Board, open and read any paper or writing which purports to be the will of a represented person, but must not disclose its contents to any other person without the further approval of the Board.
- (3) The Board may, for the purposes of a hearing under this Act, open and read any paper or writing which purports to be, or is alleged to be, the will of a person in

respect of whom an application for a guardianship order or an administration order has been made.

Appendix 7 – Practice Direction - Gifts and Settlements

PRACTICE DIRECTION

This practice direction is issued pursuant to section 7A of the *Guardianship and Administration Act 1995* (the Act).

Rowena Holder, President

1. Form of Application:

Gifts or settlements over \$5000 in one reporting year: An application by an administrator pursuant to section 58 of the Act shall be in writing and provide the information required in paragraph 2, below. Such application may be made on the form at 'Attachment A'.

Gifts or settlements under \$5000 in one reporting year: Where the application is for the administration of token gifts (i.e. small cash gifts to family members of a seasonal nature on the occasion of a special event, including a birth or marriage) and do not exceed \$5000.00 in any reporting year, the application may be made in person by the administrator during a hearing of an application or review or otherwise by completing 'Attachment B'.

A "reporting year" means the period between annual reports submitted by an administrator upon the anniversary of the order.

2. Requirement for information:

Where insufficient information is provided in support of an application for a gift or settlement, the application may be rejected pursuant to the new section 11(13) of the Act without a hearing.

An administrator applying for a gift or settlement of a sum or sums greater than \$5000 in any reporting year must supply the following information:

- (a) *The history of the represented person's pattern of giving*: This will require the provision of statements of any witnesses to historical giving behaviour of the represented person, including if relevant the administrator.
- (b) *The present wishes of the represented person towards the gift if they can be ascertained*: If the represented person has requested the gift, details of when and how that request was made. If the request has been suggested to the represented person, details of their response.
- (c) *The history of any previous applications for gifts made to the Board and any future gift applications*: The Board will be interested in whether the approval of a gift will

'open the floodgates,' meaning whether granting a gift to one family member will cause other family members to feel entitled to a similar gift or whether the application for the gift may become an annual event.

- (d) *The purpose to which the gift or settlement will be applied and how that gift or settlement will maintain or benefit the donee:* Mere financial enrichment is not sufficient to establish maintenance or benefit. It is reasonable for the Board to examine the purpose to which the gift will be applied. It would also be advantageous to provide any evidence of the represented person previously supporting the purpose or similar purposes to which the gift or settlement will be applied.
- (e) *Alternatives:* The applicant should examine whether there are alternative means of providing that benefit from the estate, e.g. a loan, interest free loan etc. and inform the Board as to the preference for a gift rather than some other form of settlement.
- (f) *The effect upon the represented person's estate:* Where a sum of money would otherwise have been earning interest in the represented person's estate, a calculation of the value lost to the estate should be included with the application. Where there are numerous beneficiaries under the represented person's will, the loss of capital and interest has ethical implications for other beneficiaries who are not receiving an early grant. Further, some gifts may have an effect upon a person's entitlement to Commonwealth benefits. The size of the proposed gift relative to the represented person's estate is also relevant. If the gift or settlement will materially and negatively affect the represented person's quality of life it would not be approved.

Rowena Holder
PRESIDENT

Attachment A.

Application for a gift or settlement OVER \$5000 p.a., section 58 Guardianship and Administration Act 1995 (To be completed by the represented person's administrator)

1. Who will benefit or be maintained by this gift or settlement?

Name:.....

Relationship to Represented Person:.....

.....

.....

.....

2. Has the represented person been consulted with regard to this application?
YES / NO

(If "Yes" please provide details of their response:)

.....

.....

.....

3. Is this the first application for a gift or settlement from this estate?
YES / NO

(If "No" please provide details of previous applications:)

.....

.....

4. Do you anticipate future applications for a gift or settlement from this estate?
YES / NO

(If "Yes" please provide details:)

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5. What is the purpose of the settlement or gift? (*i.e. how will the gift benefit or maintain the beneficiary?*):

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6. What evidence exists to suggest that the represented person supports or would have supported the purpose outlined above?

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7. Are there any alternative means to effect the purpose of the gift or settlement other than from this estate? (*e.g. could the beneficiary support a personal loan, or enter into a loan agreement with the administrator of the estate?*)

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8. What financial affect will the gift or settlement have upon the represented person's estate? (*Please calculate any interest lost or pension benefits gained*)

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9. Is there any further information relevant to the Board's consideration of the application for a gift or settlement?

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Signed (Administrator):

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Date:

Enclosures:

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 2.
 3.
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Attachment B.

Application for a gift or settlement UNDER \$5000 p.a., section 58 Guardianship and Administration Act 1995 (To be completed by the represented person's administrator)

1. Who will benefit or be maintained by this gift or settlement?

Name:.....

Relationship to Represented Person:.....

.....
.....
.....

2. Has the represented person been consulted with regard to this application?
YES / NO

(If "Yes" please provide details of their response:)

.....
.....
.....

3. What is the purpose of the settlement or gift? (i.e. how will the gift benefit or maintain the beneficiary?):

.....
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.....

4. What evidence exists to suggest that the represented person supports or would have supported the purpose outlined above?

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5. Is there any further information relevant to the Board's consideration of the application for a gift or settlement?

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Signed (*Administrator*):

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Date:

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