

Litigation by Administrators and Guardians



Guidelines for Applicants and Template for Applications

Last Revised February 2007
Guardianship and Administration Board, Tasmania

GUIDELINES FOR APPLICANTS

These guidelines are issued pursuant to Part 2 of Schedule 2 of the *Guardianship and Administration Act 1995* (the Act).

Anita Smith, President

Date: 23 February 2007

1. Standard application: An application for appointment of an administrator or guardian shall be made in accordance with Regulation 4, 10 or 11 of the *Guardianship and Administration Regulations 1997* and in compliance with the standard application forms issued by the Board. Applicants are encouraged to also use the additional application form marked “Attachment A” for the provision of additional information.

2. Requirement for additional information: Where the application is made for the purpose of appointing an administrator or guardian for legal proceedings, such application shall be accompanied by a statement by the legal representative having carriage of the matter (or if no legal representative, the applicant) indicating:

- Whether the proposed administrator/guardian has consented to appointment for the purpose of making substitute decisions in litigation and, where the proposed administrator/guardian is not one of The Public Trustee, Tasmanian Perpetual Trustees or the Public Guardian, a statement in accordance with paragraph 4 below. Applicants are encouraged to also use the form marked “Attachment B” for the provision of this information.
- Any limitations or specific directions sought within the order of the Board and the reasons for seeking such limitations or directions
- A description of the circumstances giving rise to the litigation (e.g. description of the accident and what damage has occurred)
- An outline of the history of legal proceedings (e.g. whether a writ, summons, complaint, application has been issued, whether liability has been admitted, outcomes of directions conferences, offers of compromise made, and how have instructions been taken to date?)
- Whether any orders of a court or tribunal have been made that relate to the appointment of a substitute decision maker by the Board
- Any funding arrangements made for the legal costs of the represented person

3. Other relevant information: Applicants or legal representatives are also encouraged to include with the application:

- Copies of existing legal opinions (*see paragraph 7, Background Information*)

- Copies of existing medical reports relevant to the quantification of claims for damages
- An estimate of the likely timeframe for settlement or determination of the litigation
- An estimate of the legal costs and disbursements incurred to date
- An estimate of the legal costs should the matter proceed to a hearing or an inquiry

4. Statement by the Person Seeking Appointment

Where an application for appointment of an administrator or guardian for litigation relates to the appointment of a person other than The Public Trustee, the Public Guardian or Tasmanian Perpetual Trustees, the person seeking appointment shall submit a statement to the Board indicating the extent to which he or she is:

- (i) Competent to understand the advice being given by counsel and to provide reasonable instructions in response to that advice (including reference to prior experience in litigation or as a substitute decision maker)
- (ii) Able to be objective about and familiar with the factual situation that is the subject of the litigation
- (iii) Familiar with the nature and effect of the disability of the represented person and the impact that his or her disability will have on the conduct of the litigation
- (iv) In close contact with the represented person and willing and able to report progress of the litigation and to adhere to duties under section 57(2)(b) of the Act
- (v) Adept at seeking more information where required, whether by way of further explanation from counsel or expert advice about financial implications of settlement, success or failure
- (vii) Able to make a 'common sense' assessment based on the advice from counsel and seek second opinions to verify that assessment where necessary
- (viii) Sensitive to the social, medical, financial and emotional effect of litigation upon the represented person, especially where the represented person will be required to give evidence and be cross-examined
- (ix) Conservative with instructions that might cause unnecessary costs or unduly expose the represented person to an award of adverse costs,
- (x) likely to have any conflict of interest
- (xi) seeking to retain appointment as administrator following conclusion of the action to administer any resultant compensation funds

Attachment A.

Additional Information Regarding the Appointment of an Administrator or Guardian for Litigation *(To be completed by the proposed represented person's legal representative, or if no legal representative, the applicant)*

1. Who is the proposed administrator/guardian?

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2. Has the proposed administrator/guardian consented to this appointment for the purposes of bringing or defending legal action? *(Please provide details)*

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3. What type of order are you seeking?

Guardianship ☐ or Administration ☐ *(Please tick one)*

Full Order ☐ or Limited Order ☐ *(Please tick one)*

Directions from the Board ☐

If you are seeking a limited order or directions from the Board, please specify any relevant limitations or directions and why you believe these are necessary:

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4. What were the circumstances giving rise to the litigation *(Please provide a description of the accident/action and why litigation is contemplated or has been commenced)*:

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5. Outline of the legal proceedings (*e.g. the relevant legislation, whether a writ, summons, complaint, application has been issued, whether liability has been admitted, outcomes of directions conferences, offers of compromise made etc. and how have instructions been provided on behalf of the proposed represented person to date?*)

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6. Are there any actions, claims or counter claims against the proposed represented person?

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7. What are the funding arrangements, if any, made for the legal costs of the represented person?

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8. Have any agreements been entered into regarding the proposed represented person's liability for costs and expenses of the action?

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9. What specific decisions will an administrator or guardian be required to make?

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10. Have any orders of a court or tribunal been made that relate to the appointment of an administrator or guardian by the Board?

Yes ☐ No ☐ (Please tick one)

If 'Yes', please attach a copy of such orders, a transcript or other relevant description.

11. Other relevant information:

Applicants or legal representatives are also encouraged to include with the application:

- Copies of legal opinions (*See paragraph 7 Background Information*)
- Copies of medical reports relevant to the quantification of claims for damages
- An estimate of the likely timeframe for settlement or determination of the litigation
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- An estimate of the legal costs and disbursements incurred to date:
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- Any information about an enduring power of attorney executed by the proposed represented person

Signed (*Legal Representative or Applicant*):

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Date:

Enclosures:

- 1.
- 2.
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- 10.
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Attachment B.

Statement by the Person Seeking Appointment:

(This statement is not required where the proposed appointee is The Public Trustee, the Public Guardian or Tasmanian Perpetual Trustees)

My full name, address and occupation or qualifications:

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My relationship to the proposed represented person is:

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My knowledge and involvement with these legal proceedings so far has been:
(Please include any information regarding contact you have had with the proposed represented person's solicitors):

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I am competent to make decisions regarding this litigation because:

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If you are aware of an *actual* or *potential* conflict of interest that you may have in being an administrator or a guardian please indicate below:

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I intend to include the represented person in making decisions relating to the litigation in the following ways (*See section 56 and 57 of the Guardianship and Administration Act 1995*):

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Other relevant information:

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I am/am not (circle one) seeking to retain appointment as administrator/guardian following the conclusion of any legal proceedings. (Please indicate below any specific intentions regarding compensation e.g. investment in a purpose built house etc)

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I hereby consent to appointment as an administrator/guardian for the purposes of bringing and defending legal actions on behalf of the proposed represented person.

Signed:

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Date: