



A Guide for Financial Administrators

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Being a financial Administrator is often considered a compliment, particularly for a close friend or relative, but it is a role that demands time, sound financial skills, legal support and substantial responsibilities.

These responsibilities have been set out in the new *Guardianship & Administration Act 2000*.

Since 1915, the Public Trustee of Queensland has provided professional financial and legal assistance to Queenslanders with a decision-making disability. We are conscious of the need for high level accountability in financial administration to achieve the best possible outcome for people with a disability.

There are circumstances where individuals can now be Administrators, so we have put together this guide to endeavour to help clarify the responsibility involved and to help private administrators in their role.

While the guide covers many situations a private administrator will encounter, each set of circumstances is different, however our Disability Support Unit is available to help with any queries you may have.

We are proud to produce this guide to help private administrators in their role. It is another illustration of our ongoing commitment to people with a disability and their communities.



Greg Klein
Public Trustee

“Being an Administrator is about managing finances responsibly; it is also about helping the person enjoy life.”

The role of an administrator is challenging. What do you do now? What are your responsibilities? What can you invest in? What can you spend money on?

This guide seeks to answer these and many of the questions faced by administrators in a clear and straightforward way.



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Introduction

Who is The Public Trustee?

The Public Trustee is a state government department, which provides trustee and financial services to Queenslanders. Since its beginning in 1915 the Public Trustee has played an important role assisting in the administration of the financial affairs of people who through age or a physical, psychiatric or intellectual disability have been unable to do so themselves.

The Public Trustee acts as an independent and impartial Administrator, providing economical and accessible investment, legal and associated services. It is the largest Administrator in Queensland, with a network of regional offices. The Public Trustee is Administrator to some 5,500 people who need help making financial decisions.

What is an Administrator?

An Administrator makes financial decisions and legal decisions relating to the financial affairs, for adults who are unable to do so themselves.

Administrators are appointed by the Guardianship and Administration Tribunal. The Tribunal is an independent Queensland Government body that determines the best person or organisation to appoint.

The role of an Administrator

An Administrator needs the skill and experience to make impartial decisions that best promote the adult's quality of life. It is about being responsible and careful in making investment and spending decisions. However, it is also very much about using the money of the adult for their maximum benefit. Money should not sit idle but should be productively invested. A diligent and imaginative Administrator can ensure that this happens.

While obviously needing some financial help, the adult should not be denied all control over their own affairs once an Administration Order has been made. The Administrator should, wherever possible, consult the adult about decisions and consider if access to at least some day to day money can be given to the

person. While this may involve some risk, this is outweighed by allowing the adult dignity.

An Administrator's main concern must always be the interests of the adult. However, in making decisions, an Administrator will need to take many factors into account, including:

- the adult's immediate and long-term needs
- the views of the adult
- the views of the family, appointed Guardian and other interested parties
- the financial resources available
- the adults' previous, current and desired lifestyles
- the adult's family commitments
- the arrangements made by the adult before the Administration Order was made.

These and other issues are dealt with in this guide. However, every situation is different, so if your questions are not answered here, telephone the Disability Support Unit of The Public Trustee, which is available to assist. (Ph: 1300 651 591)

The powers and responsibilities of an Administrator are laid down by law in Chapter 4 Parts 1-3 of the *Guardianship and Administration Act 2000*. The Administrator should obtain a copy of this Act and at least read these chapters. References will be made to specific powers later in this guide.

Copies of the Act are available from Goprint, 371 Vulture Street, Woolloongabba, Qld, 4102 Telephone: (07) 3246 3500 Fax: (07) 3246 3607 or can be viewed on-line at www.legislation.qld.gov.au

Getting Started

You've been appointed as Administrator, what do you do now?

The order of the Guardianship and Administration Tribunal appoints you as Administrator. You should firstly read the Order carefully to ensure you understand the scope of your responsibility. Before you take any action in your new role, you need to work out a financial management strategy. This will help clarify what you should do for the adult with a decision making disability.

Your duties and responsibilities as Administrator

The functions and powers of an Administrator are set out in Chapter 4 Parts 1-3 of the *Guardianship and Administration Act 2000*. The primary role of an Administrator is to manage the estate of the adult. However these general duties may be varied by certain restrictions imposed within the body of the order made by the Guardianship and Administration Tribunal. The Act sets out an Administrator's responsibility to:-

- ❑ act honestly and with reasonable diligence
- ❑ follow any directions specified in the Tribunal's Administration Order
- ❑ avoid conflict transactions
- ❑ keep accurate records. The Tribunal may instruct you to provide Administrator records for examination and auditing
- ❑ keep your property separate from the adult's property
- ❑ consult and act jointly with others appointed to make decisions for the adult
- ❑ follow the provisions of the Act where real estate, security transactions or making investments for the adult are involved

When appointed as an Administrator you are normally required to develop and put in place a formal plan of management to ensure the effective and responsible administration of the adult's affairs. Refer to page 50 of the Financial Recording and Reporting section of this guide.

Your duties as Administrator include:

- ❑ maintaining clear and accurate records, including receipts, of all actions you take on the adult's behalf
- ❑ initiating or following-up any matters that affect the adult's finances, such as taxation, social security entitlements and legal claims and insurance
- ❑ ensuring that the adult and their relatives and carers are included in the decision-making process
- ❑ recognising and considering the adult's cultural and religious values when making decisions
- ❑ complying with the Prudent Person Rule when making or maintaining investments on behalf of the adult. Refer to page 91 of the Appendices.

What an Administrator cannot do

There are some things an Administrator can never be authorised to do. For example, an Administrator cannot make decisions in regard to personal matters such as giving consent to medical treatment or deciding where the adult should live. These fall within the scope of guardianship. For more information contact the Guardianship and Administration Tribunal.

As Administrator, you also cannot make decisions on what are considered "special personal matters". These are defined in Schedule 2 Section 3 of the *Guardianship and Administration Act 2000* as follows: -

- a) making or revoking the adult's Will
- b) making or revoking a Power of Attorney, Enduring Power of Attorney or Advance Health Directive of the adult
- c) exercising the adult's right to vote in a Commonwealth, State or local government election or referendum
- d) consenting to adoption of a child of the adult under 18 years
- e) consenting to marriage of the adult.

Reporting requirements for Administrators

As Administrator, you are required to maintain records that are reasonable in the adult's circumstances. These records are to be produced to the Guardianship and Administration Tribunal at such times as the Tribunal determines. Receipts of expenditure should be retained to present if required.

As mentioned previously, the Guardianship and Administration Tribunal will also normally require a formal Financial Management Plan to be lodged by the Administrator.

An Administrator who fails, without reasonable excuse, to produce any required records, can be penalised for non-compliance with the terms the *Guardianship and Administration Act 2000*. Refer to "Penalties for Non-Compliance" at Page 16 of this guide.

How important is keeping records?

The reporting of Administration records is required by law as it improves the accountability of such a responsible position.

The *Guardianship and Administration Act 2000*, is the law covering the appointment and role of Administrators. Part 2 section 49 states the following:

1. An Administrator for an adult must –
 - a) keep records that are reasonable in the circumstances
 - b) if required by the tribunal – produce records of dealings and transactions involving the adult's property that are reasonable for inspection at the time the tribunal decides.
2. An Administrator must also, if required by the tribunal –
 - a) keep the records the tribunal decides
 - b) produce the records for inspection at the time and in the way the tribunal decides.

It should also be noted that under Chapter 8 Part 1 section 174 of the *Guardianship and Administration Act 2000*, the Adult Guardian has a role in investigating complaints and allegations about actions taken by Administrators.

An Administrator can be held personally liable if found to be negligent in their duties.

What should be covered in financial reports?

This should cover:

- all items of income
- expenditure (categorised if necessary)
- a record of all assets and liabilities
- sale or purchase of assets, including investments
- gifts made and received
- Taxation
- investment plan

Penalties for non-compliance

The *Guardianship and Administration Act 2000* details the penalties that can be incurred by Administrators for non-compliance with the terms of the Act. As of April 2000, one penalty unit equals \$75.00.

Who do you tell when you are appointed?

Notify all organisations with which the adult holds investments of your appointment as Administrator. This includes banks and other financial institutions in which the adult has accounts or deposits and companies in which they hold shares. You should also notify other sources of income of the adult e.g. Centrelink, Veterans' Affairs and anyone who owes money to the adult. Do not forget to also inform organisations to which the adult has outstanding debts.

A certified copy of the Order appointing you as Administrator should be provided to these organisations.

The adult's property will continue to be in his or her name after an Administrator is appointed.

If the Tribunal appoints an Administrator for a matter involving an interest in land, then the Tribunal will instruct the Administrator to notify the Registrar of Titles of their appointment as Administrator. A Form 14, General Request Form

will need to be lodged together with a certified copy of the Order. A notification fee of \$10.00 will be payable. To obtain a copy of this Form, contact the Land Titles Office.

The need for a working account

It may be useful to establish a bank account to use as a 'working account'. This is the account into which income is received and from which expenditure is paid. Having all of the income and expenditure of the adult flow through one account makes it easier to keep track of income and expenditure.

Many Administrators find it convenient to use one of the existing accounts of the adult as a working account. It may be advisable to close other accounts and consolidate the funds. The bank/financial institution will need to see a copy of the Order before this can be done.

You are required to keep full details of the assets of the adult. You should also keep details of all income and expenditure. Except for minor items such as confectionery or toiletries you should keep documentation of all income and expenditure. This includes invoices, receipts, statements accompanying cheques received and bank statements. You may be required to provide detailed accounts to the Guardianship and Administration Tribunal. These cover the assets you are holding, money and other assets received and payments made. You must produce records of dealings and transactions involving the adult's property that are reasonable for inspection at such times as the Tribunal determines.

Should you examine the Will of the Adult?

You should check the contents of the Will of the adult and make a copy. The terms of the Will may affect some of your decisions as Administrator. For example, if the adult is making a specific gift of a block of land to a particular person in a Will, you may be reluctant to sell it and spend the proceeds. However, it may be necessary to sell the land to provide funds for the adult to enjoy a reasonable quality of life.

The Administrator should endeavour to preserve the adult's assets, especially if specifically bequeathed in the adult's will. However, it may be necessary to sell assets, particularly if they are wasting or deteriorating.

It should be kept in mind that, if specific property is left to someone in a Will and the Administrator then sells it, a beneficiary whose share in the estate under the Will has been adversely affected may apply to the Supreme Court for an order to rectify any distribution entitlement. Refer to Section 60 of the Guardianship and Administration Act 2000.

It is important that the adult's Will is kept in a safe place. Finally, remember that Wills are confidential documents. The contents should not be disclosed to anyone, except with the authority of the Guardianship and Administration Tribunal.

General Principles to be observed by an Administrator

The Administrator must observe the General Principles as set out in Schedule 1 of the *Guardianship and Administration Act 2000* when making any decision concerning the adult, or the estate of the adult. The General Principles provide a guide and framework for substitute decision-making.

1. Presumption of capacity

An Adult is presumed to have capacity for a matter.

2. Same human rights

The right of all adults to the same basic human rights regardless of a particular adult's capacity must be recognised and taken into account.

The importance of empowering an adult to exercise the adult's basic human rights must also be recognised and taken into account.

3. Individual value

An adult's right to respect for their human worth and dignity as an individual must be recognised and taken into account.

4. Valued role as a member of society

An adult's right to be a valued member of society must be recognised and taken into account. Accordingly, the importance of encouraging and supporting an adult to perform social roles valued in society must be taken into account.

5. Participation in community life

The importance of encouraging and supporting an adult to live a life in the general community and to take part in activities enjoyed by the general community must be taken into account.

6. Encouragement of self-reliance

The importance of encouraging and supporting an adult to achieve the adult's maximum potential and to become as self-reliant as practicable, must be taken into account.

7. Maximum participation, minimal limitations and substituted judgment

An adult's right to participate, to the greatest extent practicable, in decisions affecting the adult's life must be recognised and taken into account. Also, the importance of preserving, to the greatest extent practicable, an adult's right to

make their own decisions must be taken into account. For example:

- the adult must be given any necessary support and access to information to enable the adult to participate in decisions affecting the adult's life
- to the greatest extent practicable for exercising power for a matter for the adult, the adult's views and wishes are to be sought and taken into account
- an Administrator in performing a function or exercising a power must do so in a way least restrictive of the adult's rights.

The principle of substituted judgment must be used so that if, from the adult's previous actions, it is reasonably practicable to work out what the adult's views and wishes would be, an Administrator must take into consideration what is considered would be the adult's views and wishes.

However, an Administrator must perform a function or exercise a power in a way consistent with the adult's proper care and protection.

8. Maintenance of existing supportive relationships

The importance of maintaining an adult's existing supportive relationships must be taken into account.

9. Maintenance of environment and values

The importance of maintaining an adult's cultural and linguistic environment, and set of values (including any religious beliefs), must be taken into account.

10. Appropriate to circumstances

An Administrator should exercise their power in a way that is appropriate to the adult's characteristics and needs.

11. Confidentiality

An adult's right to confidentiality must be recognised and taken into account.

Administration in Action

What is a Guardian?

A Guardian is someone the Tribunal appoints to deal with the day-to-day affairs, excluding financial matters, of an adult whose decision-making capacity is impaired. They make decisions about personal matters, such as health care, accommodation, employment and support services.

Working with a Guardian

For some adults, the Tribunal will appoint a Guardian as well as an Administrator. Sometimes the Guardian and Administrator will be the same person. If not, it is important the Guardian and Administrator work together closely.

As Administrator, you must consult the Guardian about major financial management decisions, which are likely to significantly affect the adult's life or to affect the functions of the Guardian. When the Guardianship and Administration Tribunal appoints the Guardian, the Tribunal may limit the authority of the Guardian to certain functions eg. for decisions on where someone should live and what medical treatment they should receive.

Long term accommodation issues will require the cooperation of both the Administrator and the Guardian. Refer to Chapter 4 Part 1 section 40(1) of the *Guardianship and Administration Act 2000*. The following case study is an example of the application of this cooperation.

Case study

Jean is 83 years old and has Alzheimer's Disease. She has not been coping well at home but refuses to move into a nursing home. The Guardianship and Administration Tribunal appoints her son, Peter, as her Guardian with power to decide where she should live. The Tribunal also appoints her friend Judy as Administrator. Peter decides that his mother should move into a nursing home at least for a trial period. Judy now must decide on the future of the family home, whether it should be sold or rented. It is obviously very important she consult Peter about this in case there is any prospect of Jean moving back home.

In these situations, consideration must be given to the views of the adult in accordance with the General Principles of the Act.

The Administrator should also keep the Guardian informed of other major transactions involving the assets of the adult.

If the Administrator and the Guardian cannot agree, the Guardianship and Administration Tribunal or the Adult Guardian can be asked to help resolve the issue in dispute.

Should I consult anyone about decisions?

It will often be very important that you consult with other people about decisions you are considering. In particular, you should involve the adult as much as practicable. Just because the adult cannot manage their affairs alone, it does not mean they do not have important contributions to make, especially about things that reflect their personal values, likes and dislikes. By consulting with the adult, you can also enhance their feelings of dignity and the sense of retaining some control over their own affairs.

In accordance with the General Principles of the Act, the adult has a right to be a valued member of society and this must be recognised and taken into account. It is important to encourage and support the adult to perform social roles valued in society.

You should also consult with the adult's family members, friends or other interested people. They can provide insights or advice into the adult's needs and tastes. Also, their interest may be affected by the decision.

Living expenses for the Adult

As Administrator, you will need to determine the level of your involvement in the adult's financial matters. In determining this, the following issues should be considered:

- ❑ the nature of the Adult's disability
- ❑ whether the adult is subject to undue influence
- ❑ their financial position
- ❑ the adult's existing community support network
- ❑ the adult's lifestyle, values, choices and needs

There are also instances where an Administration Order is only required to assist the adult to look after large amounts of money or complicated transactions. The adult might be quite competent to look after their day-to-day finances and smaller amounts.

There will be situations where you make an agreed amount available to the adult for their basic needs. In consultation with the adult and/or interested parties, a budget should be drafted. Where appropriate, the adult should be given the opportunity to look after their everyday bank account. This account should be monitored and have funds deposited regularly.

Sometimes these arrangements are not appropriate and alternate arrangements are required. These can include: -

- ❑ an agreed amount paid to a trusted friend or carer
- ❑ payments for board/accommodation can include an additional amount for living expenses (where appropriate) paid direct to the manager of the accommodation facility. Please refer to the “Accommodation Options” section of this guide Page 38.

Where a float or living expenses are provided, it is very important for you to regularly monitor and review the situation to make sure the needs and rights of the adult are being properly met.

What can you spend money on?

You can spend money on basic items such as board and lodging, clothing, pharmaceutical needs optical, medical and dental expenses and accommodation fees. You should also pay the costs associated with maintaining the home of the adult. These may include rates, insurance, electricity, telephone and repairs. On all of these items, the Administrator is allowed to spend all 'reasonable amounts' taking into account the overall financial situation of the adult.

You must carefully consider the financial circumstances of the adult and any expenditure should be appropriate to these circumstances.

Identifying the needs of a person with a decision making disability can sometimes require initiative and imagination.

It is worth getting advice from professionals and those providing day to day support to the adult. Carers will often have valuable insights.

Here are a few ideas that some Administrators have come up with:

- ❑ Mary lived in a nursing home, liked to go on outings and was bored at the nursing home. With no family living nearby, her Administrator paid for a companion to take her on regular outings. Mary and her companion became close friends.
- ❑ Betty lives in a nursing home, likes watching television but does not like going to the television room. The obvious solution was to buy her a television, but the nursing home staff were worried other residents would tamper with the television and it could quickly be broken. The Administrator suggested that the television could be put on a bracket on the wall so Betty could use a remote control device.
- ❑ Joe has an intellectual disability and has trouble with his speech. Only one hour of speech therapy was provided from government funding where Joe lived. The Administrator paid a private speech therapist to come more often to enhance his life by improving his ability to communicate confidently.
- ❑ Joan has Alzheimer's Disease and enjoys having flowers around her. The Administrator arranged for flowers to be delivered twice a week.
- ❑ Jack had no interest in modern television programs. His Administrator bought him a video player and some old movies on video for him to watch.
- ❑ Ben, who is frail, found ordinary chairs uncomfortable. On advice from an Occupational Therapist, his Administrator bought Ben a water chair.

All the decisions in the examples were made in consideration of the adult's financial situation and individual circumstances.

This consideration must be given to ensure an adequate balance is maintained between meeting day to day needs, long term care and extraordinary items.

If you are in doubt as to whether money should be spent for a particular need, you can approach the Guardianship and Administration Tribunal for advice and direction.

Can you buy gifts on behalf of the Adult?

Unless the Tribunal orders otherwise, an Administrator can only give away the adult's property if the gift is of a nature that the adult would have made when they had capacity, or it is a gift that the adult might reasonably be expected to make. For example, birthday, wedding and Christmas gifts for relatives. The value of the gift should also be appropriate to their circumstances, especially their financial position and cultural beliefs. Refer Section 54.(1) of the *Guardianship and Administration Act 2000*.

Can you make donations to charity?

Yes, you can, provided the adult can afford the donation and either wants to make it or would have wanted to make it if they could still express a view. It would be relevant to know whether the adult previously made donations to charities. For example, an adult may have been making a donation of \$500 to a specific charity every year over a long period. Even when they have advanced Alzheimer's Disease, it may be reasonable to continue this practice. The Administrator would be seeking to give effect to the adult's wishes as indicated by the consistent pattern of donations in the past.

Decisions of this nature must be made having regard to the adult's financial circumstances. Refer Section 54 of the *Guardianship and Administration Act 2000*.

Motor Vehicles – Driver Assessments

You may be requested to buy a motor vehicle for the adult. This request may come directly from the adult or from their carer.

If presented with such a request, you must consider a number of factors:

- whether the vehicle is to be driven solely by the adult or if it is for the primary benefit of the adult

- the adult's capacity to drive
- whether the driver or the nominated driver holds a current driver's licence
- the adult's financial capacity to purchase and maintain the vehicle

To assist in determining whether a particular vehicle is suitable, an Administrator may consider obtaining a RACQ report for pre-owned vehicles and may obtain quotes for vehicles of similar type and condition. For pre-owned vehicle a REVS certificate may also be obtained on the date of purchase showing no encumbrances on the vehicle. Contact Queensland Transport on Ph: 13 23 80.

In the event of the purchase of a motor vehicle, you will be responsible for ensuring that the vehicle is registered and insured in the name of the adult.

There may be situations where it is necessary for a vehicle to be modified to make it easier and safer for the adult to drive. In these instances, you should consult with an Occupational Therapist to assess the needs of the adult in this area.

It is, of course, important to ascertain whether the adult has a current driver's licence and a medical clearance to drive. Even when holding a current driver's licence, the adult may have acquired disabilities subsequent to obtaining the licence and may not have been reviewed medically for fitness to drive.

If there is doubt about medical clearance, the Administrator should request a medical opinion from the adult's medical practitioner as to their capacity to drive and whether any restrictions apply.

Dependent on the medical opinion, a driver assessment conducted by an Occupational Therapist with specific qualifications in this area may be required. This assessment involves both physical and intellectual aspects of driving capacity and could include recommendations for vehicle modifications.

It is important that the adult's fitness to drive is assessed for a number of reasons: -

- the safety of the adult, passengers and other motorists
- if they are involved in an accident, and have not been cleared to drive, they may risk loss of insurance cover. The insurer may even refuse to provide cover if they are aware of the adult's medical condition.

There are a number of avenues for obtaining driver assessments. These include:

- ❑ Driver Assessment and Rehabilitation Service, Princess Alexandra Hospital Occupational Therapy Department (for those who have been in-patients at the PA Hospital)
- ❑ Commonwealth Rehabilitation Service (CRS) – they have regional offices throughout Queensland
- ❑ Accredited private Occupational Therapists

Personal possessions, furniture and effects

Administrators often have to consider what should happen to personal possessions especially if the adult moves from their home to somewhere like a nursing home. The Administrator may feel that other family members should hold some items in trust for the adult.

As far as possible, Administrators should try to give effect to the current wishes or wishes previously expressed by the adult. The Will of the adult should be considered. It will often be important to consult other family members who may be aware of the wishes of the adult, particularly about some items of sentimental value.

The Administrator should try to ensure that wherever the adult is living, they have items of sentimental value such as a favourite chair or family photographs within the environment. Items of substantial value, for example, a valuable coin collection, should of course, be stored somewhere safe. It will often be sensible for such things to be kept in safe custody at the adult's bank.

It can be appropriate for items to be looked after by other family members. This especially arises if the family member is a beneficiary of the items under the Will of the adult. However, the needs of the adult must remain the Administrator's primary consideration. In view of this, furniture may need to be sold and the proceeds used to meet the adult's needs.

As Administrator, you may be required to produce records of dealings and transactions involving the adult's property and explain the basis of decisions made at such times as the Tribunal determines.

When you sell items that are specifically given to someone in the Will of the adult, it should be noted that the *Guardianship and Administration Act 2000* provides that a beneficiary may apply to the Supreme Court and apply for an order to make good any disproportionate advantage or disadvantage. Refer to Section 60 of the *Guardianship and Administration Act 2000*.

The furniture and personal possessions of the adult should of course be insured, unless their value is insignificant.

An Administrator must take care to avoid conflict transactions. Refer to section 37 the *Guardianship and Administration Act 2000* and to page 46 The Importance of Being an Administrator section of this guide.

Centrelink benefits and other entitlements

Many people who require an Administrator are entitled to pensions, particularly the Age Pension or the Disability Support Pension. It is your responsibility to ensure that the adult receives all his or her entitlements. As well as the basic pension, Centrelink or the Department of Veterans' Affairs may provide supplementary assistance for rent, pensioner health benefits and fringe benefits. Rebates on council and water rates, electricity and telephone bills and other services can be obtained. It is important that you look into the entitlements of the adult.

Note that the Queensland Ambulance Service provides free ambulance service to pensioners and Queensland Government Seniors Cardholders and their dependants. For further information contact the Queensland Ambulance Service on 1300 369 003.

If someone is looking after the adult on a full-time basis, he or she may be entitled to a Carer's Pension or Allowance through Centrelink.

If the adult was born or resided overseas, they may be entitled to a pension benefit from that country.

Entitlements from Centrelink are affected by an income test and an assets test. The principal place of residence of the adult is exempted from the assets test. Current Centrelink practice is to allow this exemption to continue for up to two years after an adult moves from his or her home into a facility such as a nursing home. In planning investments and cash flow, you need to consider these tests. The value to the estate of the adult of a pension and fringe benefits should not be overlooked. However, Administrators need to be wary of taking the attitude that a pension or fringe benefit should be preserved at all costs. It may be prudent to discuss these issues with a financial adviser.

You must also be aware of any gifting provisions imposed by the pension authority.

Centrelink Financial Service Officers currently offer a free service on financial and investment matters. An Administrator may consider consulting a Financial Service Officer to ensure that the adult is receiving their full entitlements.

Centrelink and Department of Veterans' Affairs brochures and other information about entitlements are available from any of their Regional Offices.

Where can you invest the money of the Adult?

When investing funds of the adult, you must comply with the requirements as set out for trustees in Part 3 of the *Trusts Act 1973*.

With the introduction of the Prudent Person Rule amendment, trustees are no longer limited in the types of investments available and are able to select an investment strategy suited to the individual needs of the adult. You are, however, required to exercise the care, diligence and skill that a “prudent person” of business would exercise in managing the financial affairs of another person.

Without limiting the matters that an Administrator may take into account when making investments on behalf of an adult, section 24(1) of the *Trusts Act 1973* lists the following matters which need to be considered:

- ❑ the purpose of the investment and the needs and circumstances of the adult
- ❑ the desirability of diversifying investments

- ❑ the nature of and risk associated with existing investments and other property
- ❑ the need to maintain the real value of capital or income of the investment
- ❑ the risk of capital and income loss or depreciation
- ❑ the potential for capital appreciation
- ❑ the likely income return and the timing of income return
- ❑ the length of term of the proposed investment
- ❑ the probable duration of the trust
- ❑ the liquidity and marketability of the proposed investment during, and at the end of the proposed investment
- ❑ the total value of the adult's estate
- ❑ the effect of the proposed investment for the tax liability of the estate. (The effect on pension entitlement should also be addressed)
- ❑ the likelihood of inflation affecting the value of the proposed investment or other property
- ❑ the cost (including commissions, fees, charges and duties payable) of making the proposed investment
- ❑ the results of a review of existing investments.

You may obtain independent and impartial advice reasonably required for the investment of the adult's funds from a person whom you reasonably believe to be competent to give advice. If this advice is obtained it must be considered. Reasonable costs for obtaining the advice may be paid from the adult's funds.

As Administrator, you are required to review the performance of the investments at least once a year, in accordance with Section 22(3) of the *Trusts (Investments) Act 1999*.

The Public Trustee may be able to provide for your client's investment needs. We have a range of investments that meet the requirements for investment by an Administrator. The Queensland Investment Corporation, one of the largest wholesale funds managers in Australia, manages the investment funds.

Private Administrators have opportunities to access these products. For further information, contact The Public Trustee's Investor Hotline (1800 066 774) to obtain an Information Memorandum or go to the Public Trustee's Website at www.pt.qld.gov.au

Can you pay someone else to do the work?

You cannot delegate your responsibility for the estate of the adult to another person. This does not prevent you from seeking professional assistance with matters such as taxation, investment advice, accounting services or legal services and advice.

You may employ an accountant to carry out accounting duties but not actual management of the financial affairs of the adult. This would cover things like advice about taxation, investment decisions, social security entitlements and preparation of tax returns. It would not extend to activities such as investing money with an accountant, or the accountant being given the responsibility to decide about investment of the money.

The liability of the adult for Income Tax and Capital Gains Tax is not affected by the appointment of an Administrator. It is your responsibility to deal with these matters and you can choose to employ an accountant to assist with this. This would generally be the adult's regular accountant, if they already have one. Returns are lodged in the name of the adult and using the same tax file number but with the Administrator signing on behalf of the adult.

Working with Legal Issues

What if the Adult was running a business?

The *Guardianship and Administration Act 2000* empowers Administrators to continue operating the business of the adult. If the business is being operated through a company, you can be authorised to exercise the voting rights of the adult in the company and be a director.

Jointly owned property

The adult may own property jointly with someone else, usually their spouse. You need to consider joint ownership situations and what should happen in the best interest of those involved.

Generally, there is no reason why the joint ownership of assets cannot be continued, if this is the wish of the owners. In fact, the owners' wishes should be your starting point. Arrangements already in place should only be disturbed if it is necessary.

It is important to note that the share in assets owned as joint tenants passes to the surviving owner. If the adult survives the other joint tenant, the property passes to him/her by virtue of survivorship. You should be cautious about interfering with such rights.

Conducting court cases for the Adult

As Administrator, you can initiate or continue court action if adequate funds are held. You should initially ascertain the likely cost of the legal work and whether it would be appropriate for an application to be made on behalf of the adult for legal assistance from Legal Aid. If appropriate you can make such an application.

Court action may include:

- ❑ claims for damages for injuries sustained in motor vehicle accidents; actions with respect to divorce, property settlement, spouse maintenance and child support in the Family Court
- ❑ claims to recover property where the adult has been unfairly taken advantage of. For example, where an unscrupulous person persuades the adult to sell a house to them for well below the market value

- claims where the adult has not received adequate provision in someone else's Will. Under the *Succession Act 1981*, the Supreme Court can vary the terms of a Will which does not adequately provide for a child, spouse, a former spouse, defacto spouse and some dependants or former dependants. This can also apply to estates distributed under the laws of intestacy (without a Will).

In the case of criminal proceedings against the adult, you cannot defend the proceedings as the representative of the adult. However, you can pay a solicitor to represent the adult.

You cannot represent the adult in Family Court proceedings for custody, guardianship of or access to the adult's children. Nor can you represent the adult in adoption proceedings or 'in need of care' applications in the Children's Court. If a Guardian has been appointed it will be the task of the Guardian to represent the adult in such proceedings. If the Guardian is incurring legal costs then you will need to advise the Guardian of the ability of the adult to pay such costs, or of the necessity to make applications for Legal Aid assistance. Therefore, it is important you liaise closely with the appointed Guardian.

How do you sign documents?

The usual way of signing a document on behalf of the adult is:

Signed for and on behalf of JOHN SMITH by GLENDA JONES of 10
Brown Street Kedron 4031 Administrator appointed under the
Guardianship and Administration Act 2000

If executing documents under the *Land Titles Act 1994* the signature of the Administrator should be as follows:

SIGNING ON BEHALF OF TRANSFEROR:

To be witnessed by a Justice of the Peace or Commissioner of
Declarations

SIGNING ON BEHALF OF THE TRANSFEREE:

To be witnessed by a Justice of the Peace or Commissioner of
Declarations

It would also be advisable to consult with your solicitor before executing any *Land Title Act 1994* documents.

Can the Will of the Adult be changed?

An Administrator does not have the power to make or change a Will for the adult. Having an Administrator does not mean the adult cannot make a Will themselves. The adult can change their Will, providing they have the required level of capacity. An Administrator does not have the power to prevent someone from making a Will. However, it would be reasonable in your role as Administrator to inform the Will maker of any doubts you may have about the capacity of the adult to make a valid Will.

For a Will to be valid, the person making the Will must have the required level of capacity. This is known as 'testamentary capacity'.

To have testamentary capacity the person must:

- understand the nature and effect of the act of making a Will
- understand the extent of the property of which they are disposing. That is, the amount and type of property to be covered by the Will
- be able to comprehend and appreciate the claims to which they ought to give effect.

If anyone disputes the validity of a Will they can challenge it in Court after the death of the adult. Where capacity is in question, it is recommended that a professional is engaged to prepare the Will. The Public Trustee offers a free will-making service.

What happens when the Adult dies?

Your powers as an Administrator cease when the adult dies. It is then up to the executor of the Will of the adult to apply to the Supreme Court for a Grant of Probate of the Will.

You have a responsibility to ensure that any assets remain secure during this period. You may also be required to provide a financial accounting to the executor of the estate.

If there is no Will, then the next of kin will be entitled to share in the estate of the adult under the 'laws of intestacy'. (Refer to the *Succession Act 1981*.) The right to apply to the Court for the administration of an estate belongs to the next of kin who may either instruct a solicitor or request the Public Trustee or another Trustee Company to act.

When the Court grants administration of the deceased estate, you must hand over the financial affairs of the adult to the executor.

In some situations, the Administrator and executor will be the same person. However, it will still be necessary to go through the procedures mentioned above before the property of the adult can be distributed to beneficiaries of the estate.

In instances where the value of the estate is quite small, it may not be necessary to obtain a formal Grant of Probate or Letters of Administration from the Court. This process is called 'informal administration'. In these circumstances, the relevant financial institutions, for example the bank, should be consulted.

For further advice regarding deceased estates, contact the Public Trustee on 1300 360 044 or go to the Public Trustee's Website at www.pt.qld.gov.au.

What happens if the Adult signs a contract or gives away property?

If faced with such a situation, you should promptly seek legal advice.

What if the adult is a Trustee?

Sometimes, the adult will be a trustee of assets under a formal trust document. In other cases, a trust document will require the consent of the adult before some action is taken. You are not automatically entitled to exercise these powers on behalf of the adult. The trust document will usually contain provisions for the appointment of a new trustee in the event of the decision making disability of one of the trustees.

However, you may need to obtain legal advice as to the powers and obligations (if any) the adult has in these situations.

Accommodation Options

You may be faced with various issues in relation to accommodation. What should happen to the home of the adult? What options are available to provide suitable accommodation for the adult? What should be done about investment properties?

What are the accommodation alternatives?

Depending upon the personal circumstances and financial resources of the adult, you may have a number of alternatives to choose from, such as:

- ❑ living in own home
- ❑ public housing
- ❑ co-ownership
- ❑ retirement villages
- ❑ hostels and boarding houses
- ❑ residential care facilities

Often an older person with a decision making disability, who owned their own home, moves into a hostel or nursing home. A decision must be made on what happens to the home. This can be a very sensitive decision. The views of the adult are very important in this instance and may outweigh pure financial considerations. For example, selling the house could be traumatic for the adult, particularly when it isn't strictly necessary. It is important to also consult with close family members, especially those who would be entitled to a share in the house under the Will of the adult.

Sometimes, it is best to leave the home unoccupied for a time in case it becomes possible for the adult to return with appropriate support services. In this case, it would be necessary to obtain unoccupancy insurance cover. See page 45.

It may also be important to the adult that they can visit the home regularly to enjoy the familiar surroundings and memories.

In some cases, it may be sensible to rent the home out so the adult can receive the dual benefits of income and capital appreciation. In other cases, it may be best or even necessary to sell the home. Refer to page 43 of this guide. The adult may need capital to buy into a retirement village or pay a nursing home

accommodation bond. You may wish to contact a financial adviser to assist in this decision.

Where you need help with the non-financial aspect of the decision, useful advice can often be obtained from the adult's doctor.

In your role as Administrator, you do not have the authority to make a decision on where the adult should live. If you feel the adult needs to be in a nursing home but the adult does not wish to go, an application should be made to the Guardianship and Administration Tribunal for a Guardianship Order.

Commonly, the adult's home is jointly owned with their spouse and the spouse continues living there after the adult has moved out. In these situations, it is appropriate for the spouse to simply continue in occupation. However, if the adult cannot be adequately supported on their other financial resources, you may need to discuss with the spouse the issue of selling the home. It might be possible for a smaller substitute property to be purchased for the spouse to live in with the remaining capital being available to meet the financial needs of the adult.

Public Housing

People with decision making disabilities are often eligible for public housing through Housing Queensland. There are long waiting lists for public housing. However, a disability or medical problem may entitle the adult to priority in obtaining accommodation or in obtaining a transfer from unsuitable Housing Queensland accommodation.

For further details, contact Housing Queensland on (07) 3227 7111.

Retirement Village

Apart from nursing homes there are other specialised forms of accommodation available for people who are capable of independent living but require some assistance with day to day tasks. For instance, self contained self care units in retirement villages. They are similar to other home units except that they have access to communal recreation, sporting and other facilities. They are designed for people who need little or no assistance with daily living. They provide people

with access to community facilities in close proximity to their residential unit and relieve the occupants of the normal obligations of ongoing maintenance of properties.

It is strongly recommended that independent legal advice be obtained before considering any form of retirement village or hostel accommodation. For further information contact the Office of Fair Trading: (07) 3246 1560.

There are some additional requirements imposed with hostels and serviced apartments, which receive funding from the Australian Government. The requirements of the Australian Government include setting a maximum fee which is payable and fixing the rate of refunds which will be made to occupants.

The Commonwealth Department of Health and Aged Care also sets out other guidelines of services, the rights of residents and other matters. For further information contact the National Aged Care Information Line: 1800 500 853.

Hostels and boarding houses

The adult may reside in a “private for profit” hostel or boarding house. There is diversity in most aspects of this accommodation including the physical environment and the services provided. You should ensure the financial matters of an adult who resides in this type of accommodation are carefully monitored.

It is recommended you obtain a copy of the fee structure and conditions of occupancy from the hostel and retain it to verify fees and conditions. For example, when the adult leaves a hostel is there a fee/cost imposed in lieu of adequate notice, is there a room holding fee if the adult is on holidays, etc.

You should ensure that, if the adult moves from one hostel to another, the first hostel is aware of the move so that the adult is not liable for paying two accommodation fees.

Payment Options

- ❑ arrange for the pension to be paid into the adult’s own bank account and withdrawals made from this for payments of accounts etc.
- ❑ arrange for the pension to be split by Centrelink through Centrepay.
Centrepay is a service provided free of charge by Centrelink to pensioners.

To use this service, it is necessary to complete a Centrepay Request for Deduction Form available from Centrelink Offices. One payment is made to the hostel for their fees and the balance is paid to the adult's bank account. Not all accommodation facilities are registered with Centrelink's Centrepay service. Contact Centrelink for further details.

It is also recommended that the Administrator maintain an inventory of the adult's assets and chattels, such as television and furniture items.

It is important to ensure the adult's privacy and confidentiality is maintained. Do not provide specific details of the adult's financial status to others as per General Principles. Refer to page 19.

For further information, contact the Hostel Industry Development Unit (HIDU) on (07) 32393055.

Residential care facilities

If the adult needs to enter a residential aged care facility, an Aged Care Assessment Team (ACAT) must assess their needs and approve either nursing or hostel level of care. Some aged care facilities will provide nursing home care only, or hostel care only, whereas others may provide both.

A decision regarding the specific facility they will enter will be made by the adult or guardian, where one is appointed. You should also be consulted as there will be a financial impact and it may be necessary to sign an accommodation bond agreement.

Facilities of this nature come under the Commonwealth *Aged Care Act 1997*. For further information contact Centrelink on 13 23 00, or the Government's Free Financial Information Service on 13 10 21.

Buying or selling real estate

As Administrator, you can undertake an authorised real estate transaction involving the sale or purchase of a property without referral to the Guardianship and Administration Tribunal.

'An authorised real estate transaction' is explained in Schedule 4 of the *Guardianship and Administration Act 2000* as a transaction involving:

- ❑ the sale of some or all of the adult's existing real property to enable an appropriate home to be supplied for the adult or a dependant of the adult that is reasonable having regard to all the circumstances, in particular the adult's financial circumstances
- ❑ the purchase of real property as a home for the adult or a dependant of the adult that is reasonable having regard to all the circumstances, in particular the adult's financial circumstances
- ❑ the purchase of real property to protect the value of some or all of the adult's existing real property.

However, should an Administrator need to make an unauthorised real estate transaction, approval of the Guardianship and Administration Tribunal will need to be obtained. (refer to Section 52 of the *Guardianship and Administration Tribunal 2000*.) You should apply to the Guardianship and Administration Tribunal with an Application on a Miscellaneous Matters form to seek approval for the property to be sold or purchased. The following information should be included in the request:

- ❑ full details of the adult including their date of birth and their current address
- ❑ details of the adult's income and expenses
- ❑ details of the adults' other assets and the values of such assets
- ❑ a copy of the Financial Plan
- ❑ details of the property to be sold or purchased (address and real property description)
- ❑ a copy of the property building inspection (if obtained) or details of the condition of any improvements
- ❑ a copy of the property valuation
- ❑ any other relevant information regarding the property, for example, rates position, outstanding requisitions, amounts due on mortgage, etc.
- ❑ if the property is jointly owned, or is to be purchased in joint names, instructions that have been received from the other joint owner

- ❑ set out the reasons for sale/purchase
- ❑ detail the adult's opinion

If the transaction is for sale of the adult's home, the following should also be included:

- ❑ a medical report from the adult's doctor with advice as to the following:
 - whether the adult is capable or will ever be capable of returning home to live
 - whether the adult is capable of making a valid decision as to the letting of their property or its possible sale
 - whether a sale of the property would have an adverse effect on the adult's health. See General Principles Section 11
- ❑ if the property is bequeathed under a Will, what is the opinion of the potential beneficiaries to a sale. Remember General Principle's have to respect confidentiality
- ❑ any Capital Gains Tax implications
- ❑ action to be taken regarding the disposal of house contents.
- ❑ What will be done with the sale proceeds

Upon receipt of the Guardianship and Administration Tribunal's Order consenting to the sale of the real estate, you can take action to sell the property.

Upon receipt of the Guardianship and Administration Tribunal's Order consenting to the purchase of the real estate, you can then enter into a contract to purchase.

Insurance

As Administrator, you are obliged to keep all real estate properly insured. Cover should extend to buildings, contents and public liability.

Where a property is left vacant, you must the notify the insurance company of unoccupancy. The company may consider that the policy has lapsed if they were not notified of the change in circumstances.

Repairs and improvements

You are able to spend the adult's funds on the maintenance of real estate owned by the adult to keep it in good condition.

If the home of the adult is very run down, you will need to consider very carefully whether it would be best to repair the property or to sell it. As well as considering the views of the adult and close family, advice from real estate agents and builders are needed to make a decision about the matter.

Rental of property

As Administrator, you can lease the home or other real estate of the adult if they are no longer able to live at home. The Administrator is required to seek the best rent reasonably obtainable. If the Administrator wishes, he or she may employ a real estate agent to find tenants and manage the property.

There may be instances where a family member has been a long-term resident in a property owned by the adult with nominal rental being paid. The Administrator may need to consider whether this arrangement should continue. In making this decision, the Administrator may take into account the adult's financial situation and the adult's wishes or what these wishes would have been had the adult been able to express them.

The importance of being an Administrator

Administrators take on a lot of responsibility when they accept their role. Every facet of the adult's finances must be considered and continually reviewed. While focus has been given to the different considerations of the adult, there are also issues Administrators need to be aware of.

Are Administrators paid?

As Administrator, you are entitled to reimbursement from the adult for reasonable expenses incurred in carrying out your role. This would include, for example, the cost of stamps and envelopes but would not include payment for your time.

Professional Administrators are entitled to remuneration or commission from the adult in accordance to the commission payable to a trustee company under the *Trustee Companies Act 1968*.

Avoid Conflicts of Interest

There are transactions where there may be conflict, or which may result in conflict, between the duty of an Administrator towards the adult and the interests of the Administrator. This also can extend to transactions with a person in a close personal or business relationship with the Administrator.

For example, a conflict transaction would happen if an Administrator (or close associate) buys the adult's car. You must avoid conflict transactions.

You may enter into a conflict transaction only if the tribunal authorises the transaction, conflict transactions of that type, or conflict transactions generally.

Refer to Section 37 of the *Guardianship and Administration Act 2000*.

Where it appears as though such conflict situations are unavoidable (for example, through joint ownership of assets) the Administrator must approach the Guardianship and Administration Tribunal for authorisation.

Can an Administration Order be revoked?

An Administration Order can be revoked if the Tribunal declares that the adult has decision-making capacity. An application can be made to the Guardianship and Administration Tribunal by the adult, or by someone else on their behalf.

The adult would need to supply at least one written report from a health provider outlining the nature of their alleged impaired capacity or ability to manage his/her financial matters.

If the Administration Order is revoked by the Guardianship and Administration Tribunal, the Administrator must hand back control to the adult over his or her financial affairs and provide full accounting.

What circumstances affect an Administration Order?

An appointment of Administrator ends, or may end, if:

- ❑ the Administrator becomes a paid carer (does not include someone receiving a carer's pension or similar government benefit), or health provider for the adult
- ❑ the Administrator and the adult are married when the appointment is made and the marriage is subsequently dissolved
- ❑ the Administrator dies
- ❑ the Administrator becomes bankrupt or takes advantage of the laws of bankruptcy as a debtor under the *Bankruptcy Act 1966* or a similar law of a foreign jurisdiction
- ❑ the Administrator is convicted of a criminal offence.

You are obliged to provide written advice to the Guardianship and Administration Tribunal of any changes in your circumstances that may affect your appropriateness or competence to act as Administrator. Refer to Section 17(1) of the *Guardianship and Administration Act 2000*.

In situations where an Administrator becomes bankrupt or is convicted of an offence, the Tribunal will need to make inquiries into the appropriateness and competence of the Administrator to perform functions and exercise powers under an Administration Order.

If the Administration Order appointed joint Administrators and the appointment of an Administrator ends due to any of the mentioned circumstances, then the remaining Administrator/s may continue to exercise the power.

Changing Administrators

The Administrator can be replaced by someone else if:

- ❑ the Administrator wants to resign. If an Administrator wishes to resign, he or she must apply to the Guardianship and Administration Tribunal for a review of the Order.
- ❑ the Administrator dies
- ❑ The Guardianship and Administration Tribunal consider the Administrator is no longer competent
- ❑ The Guardianship and Administration Tribunal consider another person is more appropriate for appointment.

If an Administrator dies or resigns, the Guardianship and Administration Tribunal will consider the need to appoint a replacement.

On the appointment of a new Administrator the former Administrator will need to hand over the financial affairs of the adult to the new appointee.

What if an Administrator dies?

A new Administrator will need to be appointed as discussed above under 'Changing Administrators'.

Does Administration apply outside of Queensland?

This question can arise in two ways:

- ❑ there may be property outside Queensland
- ❑ the adult may reside outside Queensland.

It is recommended that you obtain legal advice in these situations.

Financial recording and reporting

Financial management plan

Before the appointment of an Administrator is considered, the Guardianship and Administration Tribunal will require information about the suitability and competence of the person proposed as Administrator and information about how they will undertake their duties. Unless the Tribunal orders otherwise, a person who agrees to a proposed appointment as an Administrator must give a management plan to the Tribunal for approval. Refer to Section 20 of the *Guardianship and Administration Act 2000*.

The Guardianship and Administration Tribunal have produced a “Guide to Developing a Financial Management Plan for Proposed Administrators” see Appendix B. It provides information on how to prepare a management plan to assist the Tribunal to understand how you propose to undertake the duties of an Administrator.

You are not obliged to use the suggested format if you have a more complex arrangement or plan present. It is a guide only and you may wish to add additional details of the adult’s financial matters, life circumstances and future considerations.

What should a management plan include?

A management plan should list all the adult’s assets and income and demonstrate how they will be used to provide maximum benefit to the adult.

It should also include the following matters:

- ❑ income and source of income
- ❑ details of assets (including bank accounts) and where they are held
- ❑ any outstanding debts and when they are due
- ❑ any professional needed to help manage the financial affairs, such as an accountant or solicitor
- ❑ proposed expenditure, including board and lodging, clothing and personal needs, pharmaceutical needs, optical, dental and medical expenses, nursing home fees, taxes, services and insurance, repairs and private health cover
- ❑ what will happen with the adult’s house
- ❑ investment proposals

- any proposed gifts to be made from the adult's estate
- money required for maintenance of the adult's family
- legal matters relating to the adult's financial or property matters and how to address they will be addressed
- any additional information relating to the adult's financial and legal affairs.

Financial recording and reporting

Section 49 (1) of the *Guardianship and Administration Act 2000* requires you to produce records of dealings and transactions involving the adult's property to the Guardianship and Administration Tribunal when the Tribunal decides.

Recording of receipts and payments

Administrators are required to keep and produce, when required, an account of receipts and payments and a statement of the financial position of the adult. It is suggested that the following information be included in the recording process:

Payments

Each transaction should have a date, who the payment was made to, what the payment was for, cheque no. (if applicable) and the amount. A suggested format is contained in the appendix. A suggested format is contained in the Appendix. See Appendix A.

Receipts

An entry is to be made for each transaction. Each entry should have a date of receipt, the name of the person or institution that provided the funds, what it was for and the amount. A suggested format is contained in the Appendix. See Appendix A.

Payments

All payments, where possible, should be made by cheque as this provides adequate proof of payment. However, it is usual to maintain a balance of cash on hand to address the adult's day to day needs. To account for this, it is recommended a nominal sum of cash be maintained (say \$50.00) and regularly reimbursed from the cheque account.

A day book or similar record could be kept to facilitate a record of the cash payments and the regular reimbursements. See Appendix D.

Invoices

All invoices should be kept in a file, preferably in cheque order and endorsed "paid" together with the date and cheque number when the payment is made. It is appropriate to retain the original invoice and send to the payee the tear-off slip which is often provided or details of the invoice such as a number, date, estate name and the service or items provided.

It is important that you keep information on file about when, why and who the payment was made to.

Where the supplier of goods or services does not provide an invoice, you must prepare a receipt for the monies paid out and have it signed by the supplier specifying the goods or services provided.

Receipts

All monies received should be banked intact to enable the funds to be properly reconciled and to simplify the reconciliation process between your records and that of the bank.

There is no need to issue receipts for monies received by cheque or by electronic funds transfer (that is, by direct credit to the adult's bank account).

However, a cash receipt should be issued where monies are received by way of cash. Therefore, a simple duplicate cash receipt book should be obtained for the matter

Statement of account

A suggested format is contained in the Appendix. See Appendix A.

Bank interest and charges

Remember to update all bank accounts and include any interest and bank charges in the statement before providing the Guardianship and Administration Tribunal with a statement of the adult's assets and liabilities.

Statement of assets and liabilities

You should maintain a Statement of Assets and Liabilities to determine the overall value of the estate as well as providing a means by which the assets of the estate

can be assessed/managed. A suggested format is contained in the Appendix of this guide. See Appendix A.

Assets

Asset record

It is essential to maintain accurate, up to date records of the adult's assets, for example, furniture, real estate, motor vehicle and shares for proper estate administration. See Appendix A.

Cash holdings

This figure is obtained from the statement of receipts and payments and represents the total of all cash balances such as bank accounts, fixed deposits, and the cash float.

Real estate

Where the adult has an interest in real property (for example, land and/or house) it is suggested you obtain a valuation for determining the value of that interest. Where property is jointly owned by the adult (joint tenancy) half of the valuation is to be shown.

Where property is held as tenants in common, the appropriate proportion of the valuation is to be shown.

Where there has been a recent valuation by a qualified valuer, then it is appropriate to use that valuation. Only the interest of the adult in the property would be shown.

Furniture

It is recommended that where the adult owns a reasonable amount of furniture of significant value (antiques for example), it is appropriate to have it valued and include its value as a separate line item, under the heading of "furniture". In this situation, it is most important to have the furniture adequately insured.

However, furniture will usually consist of the usual household items such as tables, chairs, white goods, beds, etc. and under these circumstances, the insured value should be used under the collective heading of "furniture".

Motor Vehicle

Where a motor vehicle, motor bike, caravan, boat, and/or trailer is in the name of the adult then the market value should be used.

Shares/Investments

A separate schedule should be maintained to record shares. It is important to maintain complete and accurate records. This will be essential information for the preparation of taxation returns, maintaining Capital Gains Tax information as well as providing a valuation for inclusion in the statement of assets.

It is recommended you use the value of the cost of the shares when purchased or, if transferred to the adult, the transfer value. For shares acquired through participation in dividend reinvestment plans, record the discounted price paid for the share and the book closing date applicable to the dividend they relate to. There will be no stamp duty and brokers fees.

Personal effects

A nominal value should be included unless the items are of significant financial value. If valuable, have them properly identified, valued, and insured. Where a valuation is obtained out, use the valuation in the statement of assets.

Debts owed to the estate

Where debts are owed to the estate and enforceable by law, it is important they be brought to account until such time when they are collected or otherwise finalised. Every effort must be made to resolve such issues, however, failing this, you should assess the implications of seeking legal advice and assistance.

Other assets

Any other assets of significant value that cannot be included under the previously mentioned headings, should also be included in the Statement of Assets.

Liabilities

Unpaid accounts

Include any monies due that have exceeded their "due-by" date and any the adult has not been able to meet due to lack of funds.

Loans

Include any monies lent by the estate that require repayment irrespective of whether they are of a formal or informal arrangement. Details of all loans must be maintained. Use the amount(s) outstanding as at the date of the statement.

Mortgage

Where any real property in the name of the adult is subject to a mortgage, then the amount outstanding is to be included under the heading of liabilities. See Appendix A.

Reporting to the Guardianship and Administration Tribunal

The following completed documents should be made available to the Guardianship and Administration Tribunal for review when the Tribunal determines:

- statement of assets and liabilities
- statement of receipts and payment/cash reconciliation.

The Guardianship and Administration Tribunal may require copies of all bank accounts, term deposits, share certificates and other financial assets of the adult.

All assets of the adult must be recorded in the name of the adult.

Contact points

Australian Taxation Office

ATOaccess
280 Adelaide Street,
Brisbane Q 4001
GPO Box 9990
Brisbane QLD 4001
Telephone 13 2861

Alzheimer's Association Inc

State Resource Centre
7 Eveleigh St Woolloowin
Telephone: (07) 3857 4048

Brain Injury Association of Queensland Inc.

2/45 Black St
Milton Brisbane
Telephone: (07) 3367 1049
Freecall: 1800 673 074

Centrelink

Office locations throughout Australia

Annerley: 471 Annerley Road
Beaudesert: Post Office Square,
Brisbane Street

Browns Plains: 105 Browns Plains
Road

Capalaba: 42 Redland Bay Road

Chermside: 18 Banfield Street

Fortitude Valley: 435 St Paul's
Terrace

Goodna: 2 Smiths Road

Inala: 20 Wirraway Parade

Ipswich: East Street (Corner South
Street)

Mitchelton: 55 Osborne Road

Mt Gravatt: 96 Mt Gravatt Capalaba
Road

Nundah: 1176 Sandgate Road

Redcliffe: 159 Sutton Street

Stones Corner: 479 Logan Road

Strathpine: 242 Gympie Road

Toowong: 17 Lissner Street

Woodridge: 6 Ewing Road

Wynnum: 63 Bay Terrace

Customer Relations Enquiries: 1800
050 004

Pensions: 13 23 00

Families: 13 13 05

www.centrelink.gov.au

Commonwealth Department of Health and Aged Care

1800 550 552

Commonwealth Rehabilitation Service

1800 624 824

www.crsrehab.gov.au

Council on the Ageing (COTA)

PO Box 199

Nundah Qld 4012

Telephone: (07) 3256 6766

cotaq@cotaq.org.au

Department of Families Youth and Community Care

GPO Box 806

Brisbane Qld 4001

Telephone(07) 3234 0666

www.families.qld.gov.au

Department of Health

147-163 Charlotte St Brisbane

Telephone: (07) 3234 0111

www.health.qld.gov.au

Department of Veterans Affairs

(07) 3223 8333

www.dva.gov.au

Disability Services Queensland

GPO Box 806 Brisbane Q 4001

Telephone: (07) 3224 8031

Freecall: 1800 177 120

<http://www.disability.qld.gov.au>

mailbox@disability.qld.gov.au

Domiciliary Care (Domicare)

Head Office

Suite 3.4 Buranda Office Tower

Ipswich Road Buranda

Telephone: (07) 3891 5700

Freecall: 1800 177 190

Driver Assessment and Rehabilitation Service G.A.R.U

PA Hospital

Cornwall Street

Woolloongabba Q 4102

(07) 3240 2111

Guardianship and Administration Tribunal

16th Floor, 50 Albert St
Brisbane Q 4001
GPO Box 1639 Brisbane Q 4001
(07) 3234 0666

Hostel Industry Development Unit (HIDU)

GPO Box 1141
Brisbane Q 4001
(07) 3239 3055
www.dtrft.qld.gov.au

Housing Queensland

360 St Paul's Terrace
Fortitude Valley
Ph: (07) 3227 7111

Land Services Office

AXA Centre
Level 8
Cnr Edward & Charlotte
Telephone: (07) 3227 7001

Legal Aid Commission (Legal Aid Qld)

44 Herschel Street
Brisbane Qld
Telephone: 1300 651 188

Meals on Wheels

Ann Street Tower
295 Ann Street
Telephone: (07) 3221 9841

National Aged Care Information Line

1800 500 853

Nursing Homes Association of Queensland (Retirement Village Services)

Level 4
168 Edward Street
Telephone: (07) 3236 1281

Office of Fair Trading

GPO BOX 3111
Brisbane QLD 4001
Telephone: (07) 3246 1500
Fax: (07) 3246 1504
www.dtrft.qld.gov.au

Office of the Ageing

Dept.Families, Youth & Community Care
111 George Street
Brisbane Q 4001
GPO Box 806
Brisbane Q 4001
Telephone: (07) 3224 2625

Public Trustee

Head Office
Trustee House
444 Queen Street
Brisbane
Telephone: (07) 3213 9288

Public Trustee's Investor Hotline

1800 066 774
www.pt.qld.gov.au

Queensland Ambulance Service

1300 369 003

Queensland Transport

13 23 80
www.transport.qld.gov.au

State Ombudsman

(Parliamentary Commission for Administrative Investigations)
Jetset Centre
288 Edward Street
Telephone: (07) 3229 5116

The Adult Guardian

Level 14
15 Adelaide St
PO Box 554
George St Brisbane
Qld 4003
Telephone: (07) 3234 0870

The Public Advocate

Level 1 State Law Building
Cnr George & Ann St
PO Box 149
Brisbane Qld 4001
Telephone: (07) 3224 7362

Glossary

Administrator

A person appointed by the Guardianship and Administration Tribunal and responsible for decisions which are finance related.

Adult

A person with impaired capacity

Adult Guardian

An independent officer appointed by the Government to protect the interests of people with decision-making disabilities.

Beneficiaries

The persons named in a will to benefit thereunder.

Capacity

(also known as decision making ability, mental capacity or sound mind)

This is the term used to describe if a person has the capacity to understand the nature and effect of decisions about a matter, can freely and voluntarily make decisions about a matter and can communicate their decisions in some way.

Court

Supreme Court of Queensland.

Dependant

A person who is completely or mainly dependant on the adult.

Enduring Power Of Attorney

A document giving another person authority to act for you at any stage during your lifetime, even if you lose capacity.

Estate

All real and personal property owned by the adult.

Guardian

A person appointed by the Guardianship and Administration Tribunal and responsible for decisions which are health or lifestyle related.

Interested Person

A person who has a sufficient and continuing interest in the adult.

Management Plan

A document stating how the Administrator plans to manage the adult's estate.

Power Of Attorney

A formal document giving another person the power to manage your financial affairs while you are alive and of legal capacity.

Primary Carer

A person who is primarily responsible for providing support or care to the adult.

The Public Trustee

An independent public official whose office manages the financial affairs of people who lack the capacity to manage their own affairs.

Tribunal

The Guardianship and Administration Tribunal.

Trustee

A person holding property upon trust for another.

Will

A document by which a person may direct the mode of disposal of their estate after their death.

Public Trustee Services

The Public Trustee of Queensland is Australia's largest Public Trustee. The office provides economical and accessible financial and legal services to the people of Queensland including trustee, estate management and free will making services.

The office was established in 1915 and has over 80 years of corporate experience. The Public Trustee is the largest personal estate manager in Queensland, with a network of regional offices, has a wills bank of approximately 500,000 wills and administers approximately 3,000 new deceased estates each year.

As part of this expert service, the Public Trustee manages, in its own right, the affairs of some 5,500 people who do not have legal capacity.

Will making and advisory service

The Public Trustee makes more than 20,000 wills each year. The service is provided free of charge to all Queenslanders regardless of whether or not the Public Trustee is appointed the executor of your estate. The Public Trustee specialises in making Wills and our expert staff are able to give information and advice on all options available.

Even if you have an existing will, chances are it will need to be revised from time to time. Marriage, the birth or death of a child, a divorce or separation or a change in your financial circumstances or assets may affect the way you want your estate distributed.

When you make a Will you must name an Executor. When the Public Trustee is your Executor, we will be responsible for the administration and distribution of your assets according to your wishes. As your Executor we provide permanence, independence and impartiality. A commission is charged only after your death. Full details of our fees and charges are available on request or on our website at www.pt.qld.gov.au.

Estates can be managed under the terms of a Will or under the laws of intestacy where no Will has been made.

Deceased Estates

The Public Trustee is the largest administrator of deceased estates in Queensland. The organisation acts under Government supervision and audit. The Public Trustee administers the estate of a person who has died when the Public Trustee has been named as Executor of the Will. The Public Trustee may also be authorised to replace the Executor when the appointed Executor is unable or unprepared to perform the duties, or where the Executor is not in Queensland, is deceased, or is unwilling to act. The Public Trustee may administer the estate of a person who has died without leaving a Will

Executors have to undertake many demanding duties while administering an estate, usually during a time of grief. Any person who has an interest in the estate may request the Public Trustee to act.

Joint Property

If a joint owner of property dies, the Public Trustee can arrange for the ownership of the property to pass into the name of the survivor. A fee is charged for preparing any necessary documentation.

Enduring Power of Attorney

Enduring Powers of Attorney (EPA) enable you to appoint someone else to manage your financial affairs and to make decisions about your Personal/Health affairs in the event you are unable to do so yourself. This may be the result of a serious accident or illness such as dementia. The document must be signed by you while you have capacity.

The Public Trustee can prepare different Powers of Attorney to cater for different needs and circumstances:

- General Power of Attorney
- Enduring Power of Attorney (both Personal/Health and Financial)

Appointing the Public Trustee as attorney gives you some unique advantages. The Public Trustee is impartial, will always be here and is easily accessible through our regional office network. No charge is made for the preparation of an EPA if the Public Trustee is appointed as attorney.

Taxation Return service

With over 3000 tax returns prepared every year, the Public Trustee's team of qualified professionals has the business experience and know-how to provide you with assistance and advice on all types of taxation matters. Our fee is tax deductible and we use the Australian Tax Office's Electronic Lodgement Service to speed up processing.

Whether you require tax planning or assistance in relation to capital gains tax or superannuation payments, the Public Trustee is able to help and prepare your tax return.

Funds Management service

The Public Trustee provides a full fledged, diversified funds management service offering prudent investments in the Public Trustee Investment Funds. These well managed and competitive funds provide a range of investment options to suit personal circumstances and desired level of risk. The Public Trustee has a team of experienced people who can help you decide where your money is best invested.

Property Services

The Public Trustee has a property branch, which can handle all aspects of property management for our clients. This includes a full and professional range of services including rent collection, property inspection and maintenance, Rental Board Authority requirements, advice on rent values and accountability and valuations of real estate and motor vehicles.

The Public Trustee is also one of the leading Auctioneers in Queensland. Our clients can have their residential properties, home units, vacant land and other property sold through our auction service.

The Public Trustee conducts regular auctions in Brisbane and regional areas of late model, low kilometre ex-government motor vehicles as well as surplus State Government equipment, computers, furniture and machinery and estate jewellery.

Disability Support Unit

The Public Trustee's Disability Support Unit offers specialised assistance to our clients and ensures they have access to advice on a range of disability issues including government and non-government services, specialist medical equipment, modification of housing and vehicles and accommodation support services. The Disability Support Unit liaises with government and non-government agencies to ensure our clients have access to the latest information and services.

Disability Service Standards:

Public Trustee services are delivered in accordance with our five Disability Service Standards. These standards are:

- ❑ Promote participation in planning and decision-making by clients, their families and other key people
- ❑ Clients are treated as individuals
- ❑ Recognise and respond to diversity
- ❑ Promote independence and quality of life
- ❑ Accountability

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Appendices

Appendix A

Financial Recording Forms

ASSETS

Name of adult:

Administrator:

Particulars of assets as at:

1.1. Details	1.2. Rate of Return (ie interest rate)	1.3. Amount/V alue
• Bank Accounts (list separately)		
• Shares (list all holdings)		
• Managed Funds (list each fund)		
• Furniture and personal effects (insured value)		
• Real Estate (list property address/es and attach copy of insurance certificate/renewal notice/s.		
• Other (list assets separately with description)		

LIABILITIES

Name of adult:

Administrator:

Particulars of liabilities as at:

1.4. Details	1.5. Amount/Value
• Mortgages	
• Credit Card Debt	
• Personal loans	
• Other (list assets separately with description)	

STATEMENT OF ACCOUNT

Name of adult:

Administrator:

From:

To:

	Receipts	Amount		Expenses	Amount
1.	Opening Balance				
2.	Income Receipts		4.	Income Expenses	
3.	Capital Receipts		5.	Capital Expenses	
			6.	Closing Balance	
7.	Total		8.	Total	

1. Opening Balance – The balance standing in the adult’s bank account/s as at the first day of the **accounting period**; this figure should also be the same as the closing balance of any previous **accounting period**.
2. Income Receipts – The total of income funds received as per Attachment ‘A’ Receipts.
3. Capital Receipts – The total of expenditure funds expended as per Attachment ‘A’ Receipts.
4. Income Expenses – The total of expenditure as per attachment ‘B’ Expenditure.
5. Capital Expenses – The total of capital expenditure as per attachment ‘B’ Expenditure.
6. Closing Balance – The balance standing in the protected person’s bank account/s as at the close of **business on the last day of the accounting period**
7. Total the Receipts column.
8. Total the Payments column.

The total of these columns must agree, thus proving the Accounts balance by showing that the opening balance plus income received less payments made equals the closing balance.

Appendix B

A Guide to Developing a Financial Management Plan for Proposed Administrators

1. A GUIDE TO DEVELOPING A FINANCIAL MANAGEMENT PLAN For Proposed Administrators

The Guardianship and Administration Tribunal can appoint administrators to deal with all or some financial matters for an adult with impaired decision-making capacity. Before an appointment of an administrator is considered the Tribunal will require information about the suitability and competence of the person proposed and information about how they will undertake their duties.

A management plan is only required when you have agreed to a proposed appointment as an administrator for an adult with impaired decision-making capacity.

The *Guardianship and Administration Act 2000* outlines how the Tribunal will consider an appointment of an administrator to act for an adult with impaired decision-making capacity for financial matters.

The Act states that unless the Tribunal orders otherwise, a person who agrees to a proposed appointment as an administrator must give a management plan to the Tribunal, or its nominee, for approval.

For further information about the role, duties and responsibilities of an administrator you should refer to the *Guardianship and Administration Act 2000*.

1.6. HOW DO I COMPLETE THIS FORM?

This guide has been prepared for proposed administrators. It gives information on how you can prepare a management plan that will help the Tribunal understand how you propose to undertake the duties of an administrator should you be appointed.

You can decide you do not need to use this format if you have a more complex arrangement or plan to present. Individuals, trustee companies and professionals can elect to submit a separate plan as an attachment to this form.

The form is divided into eight parts to assist you to provide information on:

- Preliminary details (which has basic information about the adult)*
- Lifestyle and cultural considerations to be included in the plan*
- Support needs of the adult*
- Further considerations which need to be addressed by the plan*
- Legal matters to be included in the plan*
- Financial details of the adult*
- How you propose to manage the adult's affairs*

- *Details about you, the proposed administrator completing this form*

1.7. WHAT SHOULD A MANAGEMENT PLAN INCLUDE?

A management plan should list, where known, all the adult's income and assets, and show how they will be used to maximise the benefit to the adult.

A management plan should also 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 account details*
- *Any professionals needed to help manage the financial affairs, eg an accountant or solicitor*
- *Proposed expenditure, eg. 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, holiday, insurance premiums, repairs and private health cover;*
- *What will happen to the adult's house*
- *All income and expenditure records*
- *Investments you need to make, and investments you need to keep track of*
- *Any proposed gifts, eg. birthday, Christmas presents*
- *Money to be spent for maintenance of the adult's family*
- *Legal matters relating to the adult's financial or property matters and how you propose to address these*
- *Any additional information relevant to the person's financial and legal affairs*

This material is a guide only and you may wish to add additional details of the person's financial matters, life circumstances and future considerations. If there is not enough space provided please attach information to the back of this form.

1.8. WHERE CAN I GO FOR HELP WITH THE MANAGEMENT PLAN?

If you are uncertain about any steps in the procedure or you are doubtful about how to answer any of the questions, you should talk to staff at the Tribunal.

1.9. HOW DO I LODGE A MANAGEMENT PLAN?

You can:

- deliver it in person to the Guardianship and Administration Tribunal (Floor 16, 80 Albert Street, Brisbane); or
- mail it to GPO Box 1639, Brisbane Qld 4001; or
- fax it to (07) 3221 9156

1.10. **3. WHAT SUPPORT NEEDS MUST BE CONSIDERED IN THE MANAGEMENT**

PLAN? *eg for the adult to continue to live in their own home they will need domestic assistance, nursing service, modifications to the property, purchase of aides or appliances. In the future the adult might need a placement in a hostel, independent living support or specialist services.*

What are the adult's current support needs:

What are the adult's future support needs (if known):

4. WHAT FURTHER CONSIDERATIONS NEED TO BE ADDRESSED BY THE MANAGEMENT PLAN?

7. HOW DO YOU AS PROPOSED ADMINISTRATOR INTEND TO MANAGE THE AFFAIRS IF APPOINTED? *Rather than use the space provided, you can attach your plan to this form if necessary.*

Immediate Plan: *that is, what actions do you plan to undertake immediately for the adult?*

For example:

- **Bank statements obtained**
- **All debts to be paid**
- **Mr Smith has entered Nursing Home**
- **Admission fee to nursing home to be paid \$45,000**
- **Insurers informed of house being vacated**

Future Plan: *that is, what long term strategy will address the adult's needs?*

For example:

- **\$14,500 from bank account invested in fixed term deposit for six months at 4%**
- **\$6,000 sale of car to be invested in bank cash management fund**
- **Upon receipt of proceeds of sale of house proposed administrator will obtain advice about investing the surplus (following payment of the \$45,000 nursing home admission fee)**
- **Family members will visit regularly to check and advise of any unmet needs**

8. DETAILS ABOUT THE PROPOSED ADMINISTRATOR COMPLETING THIS FORM

Miss / Mrs / Ms / Mr / Dr
(Given names) (Surname/Family name)

Address:

 (Postcode)

Telephone:
(Daytime) (After hours number if different)

Fax: E-mail:

What is your relationship to the adult?

IF YOU ARE A PROFESSIONAL OR COMPANY PLEASE ATTACH DETAILS OF REMUNERATION AND/OR FEE ARRANGEMENTS FOR UNDERTAKING ACTIVITIES AS AN ADMINISTRATOR.

Declaration:

- 1. I have read this completed application and consider to the best of my knowledge, that all of the information provided is true and correct, is not misleading and that no information relevant to the application and to the Tribunal has been omitted.**
- 2. I understand it is an offence to provide false, misleading or incomplete documents to the Tribunal.***

Signature of proposed administrator for

Date

*** Maximum penalty – 100 penalty units)**

Appendix C

Budget Analysis Form

BUDGET

INCOME/EXPENDITURE ANALYSIS

INCOME

Select: Wkly Mthly Qtly Yrly \$

Adult's Net (after tax) Income	
Partner's Net (after tax) Income	
Social Security	
Pension	
Family Allowance	
Mobility Allowance	
Other	
Annuity (after tax)	
Investment Income	
Rental Income	
Any other Income	
Total Income	

Select: Wkly Mthly Qtly Yrly \$

Taxation (provisional)	
Housing	
Mortgage Repayments	
Rent	
Council Rates	
Water Rates	
House & Contents Insurance	
Repairs & Maintenance	
Utilities	
Electricity	
Gas	
Telephone	
Travel Car	
Registration	
Insurance	
Maintenance	
Lease or Loan Payments	
Insurance	
Petrol	
Travel Other	
Trains/Bus Fares etc	
Personal	
Meals/Food	
Medical Health cover	
Loan/Credit card repayments	
Alcohol/Tobacco	
Entertainment/Gambling	
Clothing & Footwear	
Household furnishings	
Gifts B'days & donations	
Subscriptions	
Savings/Super/Insurance	
Care/Paid support expenses	
Medical consumables	
Hair/Beauty	
Child Support	
Specialist Medical Equipment	
Therapy/Counselling	
Recreational	
Holidays	
Regular Activities	
Educational	
Children	
Self/Partner	
Investment Expenses	
Any Other Expenses	
Total Expenditure	

Financial Projection for period of Plan

Total Income	Total Expenses	Income less Expenses	If deficit then >>>>	Draw down on capital per annum	Anticipated date capital will be exhausted

Appendix D

Monies on Hand Ledger

MONIES ON HAND

Name of adult:

Administrator:

Period: / / To: / /

DATE	DETAILS OF TRANSACTION	REFERENCE	MONIES IN		MONIES OUT		RUNNING BALANCE	
Opening Balance:								
Closing Balance								

Opening balance plus monies in minus monies out must equal closing balance

Appendix E

The Prudent Person Rule

THE PRUDENT PERSON RULE

excerpt from Part 3 of the *Trusts Act 1973*

Duties of trustee in relation to power of investment

22. (1) A trustee must, in exercising a power of investment –

- (a) If the trustee's profession, business or employment is, or includes, acting as a trustee or investing money for other persons – exercise the care, diligence and skill a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons; or
- (b) If the trustee's profession, business or employment is not, or does not include, acting as a trustee or investing money for other persons – exercise the care, diligence and skill a prudent person of business would exercise in managing the affairs of other persons.

(2) A trustee must, in exercising a power of investment, comply with a provision of the instrument creating the trust that is binding on the trustee and requires the obtaining of a consent or approval or compliance with a direction for trust investments.

(3) A trustee must, at least once in each year, review the performance, individually and as a whole, of trust investments.

1. Law and equity preserved

23. (1) A rule or principle of law or equity imposing a duty on a trustee exercising a power of investment continues to apply except so far as it is inconsistent with this or another Act or the instrument creating the trust.

(2) Without limiting the rules or principles mentioned in subsection (1), they include a rule or principle imposing –

- (a) a duty to exercise the powers of a trustee in the best interests of all present and future beneficiaries of the trust; and
- (b) a duty to invest trust funds in investments that are not speculative or hazardous; and
- (c) a duty to act impartially towards beneficiaries and between different classes of beneficiaries; and
- (d) a duty to obtain advice.

(3) A rule or principle of law or equity relating to a provision in an instrument creating a trust that purports to exempt, limit the liability of, or indemnify a trustee in relation to a breach of trust, continues to apply.

(4) If a trustee is under a duty to obtain advice, the reasonable cost of obtaining the advice is payable out of trust funds.

Matters to which trustee must have regard in exercising power of investment

24. (1) Without limiting the matters a trustee may take into account when exercising a power of investment, a trustee must, so far as they are appropriate to the circumstances of the trust, have regard to the following matters-

- (a) the purposes of the trust and the needs and circumstances of the beneficiaries;
- (b) the desirability of diversifying trust instruments;
- (c) the nature of and risk associated with existing trust investments and other trust property;
- (d) the need to maintain the real value of the capital or income of the trust;
- (e) the risk of capital or income loss or depreciation;
- (f) the potential for capital appreciation;
- (g) the likely income return and the timing of income return;
- (h) the length of the term of the proposed investment;
- (i) the probable duration of the trust;
- (j) the liquidity and marketability of the proposed investment during, and at the end of, the term of the proposed investment;
- (k) the total value of the trust estate;
- (l) the effect of the proposed investment for the tax liability of the trust;
- (m) the likelihood of inflation affecting the value of the proposed investment or other trust property;
- (n) the cost (including commissions, fees, charges and duties payable) of making the proposed investment;
- (o) the results of a review of existing trust investments.

(2) A trustee –

- (a) may obtain, and if obtained must consider, independent and impartial advice reasonably required for the investment of trust funds or the management of the investment from a person whom the trustee reasonably believes to be competent to give the advice; and
- (b) may pay out of trust funds the reasonable costs of obtaining the advice.