

# Information Sheet

Protecting the human rights of adults with decision-making disabilities

## 5. ADMINISTRATION

The *Guardianship and Administration Act 1990* (the Act) recognises that people who are not capable of making reasoned decisions for themselves may need additional support and assistance not only to ensure their quality of life is maintained, but also to protect them from the risk of neglect, exploitation and abuse.

A person may lack capacity to make a reasoned decision due to dementia, intellectual disability, mental illness or an acquired brain injury. Such disabilities affect people's ability to manage various aspects of their personal estate.

People with a decision-making disability are often dependent on varying levels of support from others to achieve a reasonable quality of life within the community. This support is most often given by people who are already involved in the person's life, such as family, friends and service providers.

The Act provides for an adult with capacity to appoint someone (known as their attorney) by completing an enduring power of attorney form (see information sheet 8). Where this is not possible or the person has chosen not to complete an enduring power of attorney, the Act provides that the State Administrative Tribunal may appoint an administrator for a person with a decision-making disability. This ensures that financial and legal decisions are made in the best interests of the represented person.

Because the appointment of an administrator involves taking away a person's fundamental decision-making rights, it is a course of action which is taken by the State Administrative Tribunal as a last resort – only after less restrictive measures of safeguarding the person's finances and estate have been considered and found to be inadequate or unsuitable.

The State Administrative Tribunal will ensure that the scope of the authority granted by the administration order meets the needs of the represented person.

### WHAT TYPES OF DECISIONS?

An administrator has the authority to make financial and legal decisions on behalf of a person they represent. An administrator may be given authority by the State Administrative Tribunal to make all decisions regarding the management of the estate of the represented person including receipts of income, all expenditure, asset management (including sales and purchases) and debts servicing and repayment. This type of administration order is called plenary. Alternatively, the Tribunal may limit the decision-making authority of an administrator to specific areas such as legal decisions. This is called a limited order.



# Information Sheet

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There are some decisions an administrator cannot make. These include:

- making, amending or revoking a Will for the represented person except by order of the Supreme Court
- acting as an Executor of a Will in place of the represented person, unless approved by the Supreme Court
- delegating his or her authority to another person.

There are decisions an administrator cannot make without the written authority of the State Administrative Tribunal. These include:

- making gifts from the estate of the represented person — including money, property or possessions
- paying the travel expenses of family or friends who visit the represented person
- repaying any 'informal' loans to family and/or friends
- making 'testamentary advances' to the beneficiaries of the represented person's Will
- claiming the cost of time, labour or expertise ('remuneration') for the administration of the represented person's estate.

## **BEST INTERESTS**

An administrator is required to act in the best interests of the person they represent by:

- advocating for the represented person
- encouraging and assisting the person to be involved in the management of their own estate
- encouraging and assisting the person to make decisions about their own life
- protecting the person's estate from neglect, abuse and exploitation
- consulting with the person and taking into account their wishes
- maintaining the cultural, linguistic and religious environment of the represented person.

## **WHO CAN BE MADE AN ADMINISTRATOR?**

To be considered for appointment by the Tribunal, a proposed administrator must:

- be suitable and willing to be appointed
- be at least 18 years of age
- be prepared to act in the person's best interests at all times and encourage the person's independence, personal decision-making and participation in community life
- not be in a position where their own interests conflict with the best interests of the represented person

In situations where there is no-one available, suitable or willing to take on the role of administrator, the State Administrative Tribunal may appoint the Public Trustee.



# Information Sheet

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## ACCOUNTABILITY REQUIREMENTS

Administrators are accountable for the decisions they make and must keep accurate records of all transactions. They are required to submit annual accounts to the Public Trustee in the prescribed format. Accounts must be submitted for all transactions relating to the area or areas that are subject to the administration order. After examining the accounts, the Public Trustee may allow them or ask for more information. Administrators may be held personally liable for losses to the estate of the represented person.

## REVIEW OF ADMINISTRATION ORDERS

The State Administrative Tribunal is required to review all administration orders at least every five years, but depending on the circumstances, a review may be conducted sooner.

If an appointed administrator is no longer available to fulfil their responsibilities to the person they represent, an application can be made to the Tribunal for a new administrator to be appointed.

Any person who has an interest in the welfare of the person with a decision-making disability can apply to the Tribunal for a review of the administration order. If the issues underlying the original application for administration are resolved and there is no longer a need for the order, the Tribunal can revoke the administration order.

If someone is concerned that an administrator is not acting in the person's best interests, they may apply to the Tribunal. The Tribunal may convene a hearing and revoke the appointment and appoint a new administrator.

A review will be conducted by the State Administrative Tribunal if the administrator:

- dies
- applies to be discharged from their responsibilities
- is no longer able to fulfil their responsibilities to the person with the decision-making disability because of physical or mental incapacity
- is found to have been guilty of neglect or misconduct in relation to the estate of the person with the decision-making disability
- becomes bankrupt.

# Information Sheet

Protecting the human rights of adults with decision-making disabilities

## WHERE TO GET ADVICE AND SUPPORT FOR ADMINISTRATORS

If an administrator is uncertain about what decisions to make in the best interests of the represented person they may seek professional advice from a lawyer or financial advisor. It is also possible to make an application to the State Administrative Tribunal for directions on what action should be taken.

Administrators can employ, instruct and pay agents (e.g. solicitor, accountant, settlement agent, stockbroker or other person) to transact business related to the management of the person's estate.

## FOR FURTHER INFORMATION REGARDING ADMINISTRATION CONTACT

### Public Trustee

Private Administrators' Support Team  
553 Hay Street, PERTH WA 6000  
PO Box M946, PERTH WA 6843  
Telephone: 1300 746 212  
Facsimile: (08) 9222 6617  
Email: [public.trustee@justice.wa.gov.au](mailto:public.trustee@justice.wa.gov.au)  
Web: [www.publictrustee.wa.gov.au](http://www.publictrustee.wa.gov.au)

### Office of the Public Advocate

PO Box 6293, EAST PERTH WA 6892  
Telephone: 1300 858 455  
Facsimile: (08) 9278 7333  
Email: [opa@justice.wa.gov.au](mailto:opa@justice.wa.gov.au)  
Web: [www.publicadvocate.wa.gov.au](http://www.publicadvocate.wa.gov.au)

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