

## Administrator information pack

As an administrator appointed by QCAT you have accepted a complex and responsible role managing all or some of the financial affairs of an adult with impaired capacity. **Below is a list of attached documents to assist you in your role, which we encourage you to read.**

- [Your role and responsibilities as an appointed administrator](#) This document provides helpful information and summarises your responsibilities, powers and rights, as well as the major sections of the *Guardianship and Administration Act 2000* that apply to administrators. QCAT strongly recommends that this document be retained for ongoing reference.
- [Banking guidelines for administrators – fact sheet](#)  
Outline of the basic requirements of dealing with banks including advising them of your appointment, the correct structure of bank accounts and how to manage any bank issues.
- [Maintaining financial records – fact sheet](#)  
This provides information on maintaining financial records.
- [Prudent person rule – fact sheet](#)  
Detail of your duties to manage and invest the adult's savings and assets to ensure a reasonable return.
- [A financial management plan \(FMP\) for appointed administrators](#)  
This form is to be completed if QCAT requires you to lodge an updated FMP. The requirement to lodge will be clearly stated in QCAT's decision.
- [Account by administrator \(ABA\) form](#)  
This is QCAT's approved form for completion of the annual account of your administration. If you have been granted a partial exemption, you do not need to complete this form but should lodge the documents detailed in QCAT's decision. Unless stated in the decision, the accounts are to be lodged annually two (2) months before the anniversary of the date of your appointment.
- [Declaration as to continuing appropriateness for appointment](#)  
If you have been granted a partial exemption from providing full accounts, you will need to sign this declaration and submit it with the documents outlined in QCAT's decision.

### I have just been appointed, what should I do?

- Read QCAT's decision and the attached information carefully to fully understand your role and responsibilities. You can also refer to QCAT's website at [qcat.qld.gov.au](http://qcat.qld.gov.au)
- Make contact with the adult's bank or establish new bank accounts as required. **Note:** no bank should fail to recognise your legal authority to act on the adult's behalf. However, ensure you have a copy of QCAT's decision. If difficulties are encountered speak to the bank manager or refer the matter to their head office.
- Make contact and establish your authority as administrator with appropriate parties including Centrelink and the accommodation and/or care provider.



Queensland Civil and Administrative Tribunal

- Establish a system to maintain financial records for the adult.
- **Please note:** if QCAT's decision exempts you from providing annual accounts, you must still maintain full financial records.
- If required, begin preparations to lodge the FMP form by the due date specified in QCAT's decision.
- Notice of interest in land (NOIL): QCAT's decision will contain this clause if the adult owns property, as your appointment as administrator must be registered on the property title/s. For help completing this, please refer to the Registrar of Titles on 13 QGOV (13 74 68) or visit Department of Natural Resources and Mines website > Our department > Contact us > [Titles Registry enquiries and lodgement details](#).

# Your roles and responsibilities of a private administrator

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## The role of an administrator

An administrator is a person QCAT appoints to help adults with impaired decision-making capacity by making certain financial and legal decisions on their behalf. This ensures that the adult's needs are met and that their financial interests are protected.

Generally, administrators are given the authority to make decisions on behalf of the adult such as:

- maintaining property
- paying bills
- making business decisions
- managing investments.

Administrators are not allowed to make decisions about personal or health care matters unless:

- they have also been appointed as a [guardian for the adult](#); or
- they have been appointed as the adult's attorney for personal matters under an [enduring power of attorney](#); or
- there is no formalised appointment and they are acting as the adult's [statutory health attorney](#).

If the adult can communicate their views and wishes, administrators should take these into account when making any decisions.

## General principles of the Act

The *Guardianship and Administration Act 2000* aims to balance the right of an adult with to maintain decision-making independence with their right to adequate and appropriate decision-making support.

To achieve this balance, a range of general principles are to be applied by administrators. These include:

### 1. Presumption of capacity

An adult is presumed to have capacity to make their own decisions unless it is established they are unable to do so.

### 2. Same human rights and fundamental freedoms

All adults, regardless of decision making capacity, must have access to the same human rights and fundamental freedoms. These include:

- respect for inherent dignity, worth and equal rights
- individual autonomy and independence of persons
- non-discrimination
- full and effective participation and inclusion in society
- respect for difference and acceptance of persons with impaired capacity
- equality of opportunity and accessibility
- equality between all persons regardless of gender.

### **3. Empowering adult to exercise human rights and fundamental freedoms**

Empower an adult to exercise their human rights and fundamental freedoms and encourage and support them to:

- perform social roles valued in society
- live a life in the community and to take part in activities
- achieve physical, social, emotional and intellectual potential
- become as self-reliant as practicable.

### **4. Maintenance of adult's existing supportive relationships**

An adult's existing supportive relationships should be maintained. This may involve consultation with the adult to:

- find out who are the members of the adult's support network
- any persons who have an existing supportive relationship with the adult
- any members making decisions for the adult on an informal basis.

The role of families, carers and other significant persons in an adult's should be acknowledged and respected.

### **5. Maintenance of adult's cultural and linguistic environment and values**

An adult's cultural and linguistic environment and set of values, including religious beliefs, must be maintained and taken into account when making decisions.

### **6. Respect for privacy**

An adult's privacy must be taken into account and respected. An adult's personal information, including health information, must be protected on the same basis as other people's personal information is protected.

### **7. Liberty and security**

An adult's right to liberty and security on an equal basis with others must be taken into account. An adult should not be deprived of their liberty except in accordance with the law.

### **8. Maximising an adult's participation in decision-making**

An adult has the right to make or participate in decisions that affect their life. To enable the adult to communicate their decisions they must be given access to support and information. The adult's views, wishes and preferences must be taken into consideration and may be expressed orally, in writing or in another way e.g. by conduct.

An adult is not to be treated as unable to make a decision unless all practicable steps have been taken to provide the adult with support and access to information to make and communicate a decision.

### **9. Performance of functions and exercise of powers**

When performing a function or exercising a power in relation to an adult it must be done in a way that promotes and safeguards the adult's rights, interests and opportunities and is the least restrictive.

### **10. Structured decision-making**

The person or other entity performing a function or exercising a power for an adult must:

- recognise and preserve the adult's right to make the adult's own decision
- if possible, support the adult to make a decision

- recognise and take into account any views, wishes and preferences expressed or demonstrated by the adult.

If the adult's decision cannot be determined, the person or other entity must use the principle of substituted judgement and take into account the adult's views, wishes and preferences would be if the adult had capacity. Once this information has been recognised and taken into account a decision can be made.

## Administrator duties

The *Guardianship and Administration Act 2000* sets out a number of duties for administrators. They include the duty to:

- apply with the general principles
- act honestly and with reasonable diligence
- act according to the decision QCAT made
- avoid any transactions that could be in conflict with the interests of the adult unless QCAT authorises.

Administrators must also:

- keep detailed records of dealings and transactions made on behalf of the adult
- submit accounts as specified in QCAT's decision • keep their assets separate from the adult's assets
- invest prudently and obtain financial advice.

If there are two or more administrators they have a duty to:

- make decisions together unless QCAT's decision states otherwise
- consult with the other administrators and any guardians regularly to ensure that the adult's interests are not prejudiced by a breakdown of communication.

## Administrator powers and rights

QCAT's decision will state the authority of the administrator, including the:

- extent of authority e.g. the administrator may be appointed to make some or all financial decisions
- number of administrators appointed and the nature of the appointment, that is, whether the administrators will make decisions together (jointly) or separately (jointly and severally)
- duration of the appointment.

### Decisions an administrator cannot make

Administrators are not allowed to make decisions about personal or health care matters unless:

- they have also been appointed as a guardian for the adult; or



- they have been appointed as the adult's attorney for personal matters under an enduring power of attorney; or
- there is no formalised appointment and they are acting as the adult's statutory health attorney.

There may be some overlap between these roles and the role of an administrator. Administrators should consult any guardian, power of attorney or statutory health attorney about major financial decisions which are likely to affect the lifestyle or health of the adult.

## **Access to information**

When making decisions on behalf of the adult, administrators have the right to access all the information to which the adult would have been entitled.

Administrators are provided with certified copies of the QCAT decision as confirmation of their appointment. This document enables the administrator to access all information from companies and organisations to which the adult would have had access.

## **Extent of authority**

QCAT may appoint an administrator for all financial matters or may specifically detail the matters for which the administrator is appointed.

If appointed for all financial matters, the administrator is responsible for all financial matters that the adult did, or legally could have conducted, on their own if they had capacity.

If QCAT specifies your responsibilities, you should ensure that you do not exceed your powers. If this proves unworkable, you should contact QCAT to discuss a possible review of your appointment to seek appropriate powers.

## More than one administrator

If more than one administrator is appointed, the appointment will be made either on a 'jointly' or 'jointly and severally' basis.

If 'jointly', the administrators are required to make decisions and conduct transactions on a joint basis. All documentation, including bank withdrawals or contracts signed on behalf of the adult must be signed by all administrators.

If 'jointly and severally', each administrator is entitled to make decisions and conduct transactions solely. Documentation, including bank withdrawals or contracts on behalf of the adult, can be signed by one administrator. However all administrators should consult and involve other administrators regarding their decisions.

## Length of appointment

QCAT may appoint an administrator for a period of up to five years. QCAT has the option of appointing [The Public Trustee of Queensland or a](#) private trustee company as administrator for an indefinite period.

Appointments are reviewed before the end of the appointment or earlier if QCAT considers it necessary. QCAT can also review an appointment if someone has applied for a review because of the actions of an administrator, or if any new or relevant information is provided about the adult's circumstances that may affect the appointment.

## Reporting requirements

As the appointed administrator you have a responsibility to lodge certain documents with QCAT. The QCAT decision will outline what you need to lodge. This may include:

- notice of interest in land
- financial management plan
- account of administration.

### Notice of interest in land

If the adult owns real estate, the administrator must lodge a notice of interest in land, usually within three (3) months of the appointment by registering QCAT's decision with the [Titles Registry](#).

This process protects:

- the adult's interest in the property by ensuring that only the appointed administrator can conduct transactions such as the sale of the property or registering of any mortgages
- the adult from being coerced by third parties or if the adult themselves decides to act on the property without the knowledge of the administrator.

This process involves:

- conducting a [search of the records of the Titles Registry](#) to identify any property registered in the adult's name
- lodging with the Registrar of Titles a notice on their [prescribed form](#) with a copy of QCAT's decision advising the Registrar that any interest in property held by the adult is subject to this decision
- providing QCAT with a copy of the *Lodgement Summary Report* from the Titles Registry confirming the notice has been lodged for each property the adult holds
- providing QCAT with a copy of the current title search.

This process will need to be repeated each time QCAT issues a new decision.

If the adult purchases a property subsequent to your appointment as administrator, this process will also have to be followed.

## Professional help

If you are not sure about any steps in the procedure, you can contact QCAT, the [Titles Registry](#) or seek legal advice.

## Financial management plan

You may have provided QCAT with a financial management plan when you applied to become the adult's administrator. However, there can be times when administrators may not have full access to, or be aware of, the adult's entire circumstances when an application is made. Also there may be important matters yet to be finalised. In these situations QCAT may require another plan and this will be specifically requested in the QCAT decision.

You can submit the plan using the [A financial management plan for appointed administrators - Guardianship and Administration Act 2000 form](#). Individuals, trustee companies and professionals can elect to provide QCAT with a separate plan as an attachment to this form.

The plan should contain personal and financial information about the adult as well as proposed care arrangements. The plan should then outline how the adult's finances can be best managed, taking into account these considerations.

It should include:

- details of income and sources 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 e.g., an accountant or solicitor

- a budget e.g. board and lodging, clothing, money for the adult's personal needs, pharmaceutical needs, optical expenses, medical expenses, hospital fees, nursing home fees, dental expenses
- what will happen to the adult's house
- all income and expenditure records
- investments you need to make and investments you need to track
- any proposed gifts e.g. birthday and 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 adult's financial and legal affairs.

You can also include any other relevant details of the person's financial matters, life circumstances and future considerations.

QCAT may request additional information if required.

## Professional help

If you are not sure about any steps in the procedure or how to answer any of the questions, please contact QCAT or seek advice from a professional such as an accountant, solicitor or financial planner.

## Account of administration

An account of your administration (ABA) is usually due every year; two months before the anniversary date of your appointment or as specifically stated in QCAT's decision.

The ABA provides QCAT with a summary of how you have administered the adult's financial affairs during the reporting period as well as an updated list of assets and liabilities. The opening date of the account is either the date you became the administrator or, if you have provided accounts previously, the closing date from your last set of accounts.

The ABA should summarise all receipts and payments made through the adult's bank accounts as well as payments made on their behalf.

Please note that there are also various documents that you are required to lodge with the ABA form e.g. copies of bank statements. For a full list of the documents required, please refer to section 23 of the [Account by Administrator form](#).

If an exemption has been approved, you will be advised of the full list of documents required to be lodged either in the QCAT decision, or by separate letter.

It is up to you to lodge your accounts by the due date. You will not be sent a reminder.

The [Account by Administrator form](#) is to be completed unless an exemption has been granted.

## Lodgement instructions

Where the accounts are to be lodged depends on the adult's assets.

### ***Assets more than \$50,000***

If the value of the adult's assets, excluding principal place of residence or nursing home accommodation deposit, is more than \$50,000, the accounts must be sent to one of the approved panel of examiners. An up-to-date list of the approved panel of examiners can be found on QCAT's website: [qcat.qld.gov.au](http://qcat.qld.gov.au) > Matter types > Administration for adults > Appointed administrator – about your role > [Reporting requirements](#).

### ***Assets under \$50,000***

If the value of the adult's assets, excluding principal place of residence or nursing home accommodation bond, is under \$50,000, the accounts must be sent directly to QCAT.

If a partial exemption has been approved, in all cases the accounts must be sent directly to QCAT.

### ***Fees***

The approved panel of examiners is entitled to charge a fee for this service. Fees vary, and you should contact the examiners directly for further details regarding their fees. QCAT does not regulate the fees charged.

While QCAT does not charge a fee for its services, it reserves the right to outsource matters valued under or equal to \$50,000 to one of the approved panel of examiners if necessary. The examiner is entitled to charge a fee for this service.

You will be issued with a tax invoice on behalf of the adult, and you are authorised and required to pay the tax invoice within 30 days of receipt from the adult's funds. Failure to pay the invoice may result in QCAT reviewing your appointment.

## Professional help

If you are not sure about any steps in the procedure or how to answer any of the questions, contact QCAT or seek assistance from another party or professional such as an accountant. Given that the cost is reasonable for this service, you are entitled to be reimbursed from the adult for the costs involved.

## Key responsibilities under the Act

The following are relevant sections from the *Guardianship and Administration Act 2000* to which you must abide.

- Appropriateness and competence (section 17)
- Notice of interest in land (section 21)
- Avoiding conflict transactions (section 37)
- Payment of expenses (section 47)
- Keeping records (section 49) and Records and audit (section 153)

- Keeping property separate (section 50)
- Investments (section 51)
- Gifts and donations (section 54)
- Maintaining an adult's dependants (section 55).

## **Appropriateness and competence (section 17)**

When you applied as a proposed administrator, you signed a statutory declaration confirming that you were an appropriate adult and competent to act as an administrator.

There are a number of situations where your appointment can automatically be revoked or steps taken to remove you as administrator. You must tell QCAT if there are any changes to your circumstances which have affected your appropriateness or competence to act.

## **Notice of Interest in Land (section 21)**

If the adult owns real estate, your appointment as an administrator must be registered with the [Titles Registry](#).

## **Avoiding conflict transactions (section 37)**

A conflict transaction is any transaction which causes a 'conflict of interest' between your duty to the adult and either your interests, the interests of a person in a close personal or business relationship with you, or another duty you have.

Where a conflict transaction cannot be avoided, you must apply to QCAT for approval before entering into the transaction.

Below are examples of transactions where there may be a conflict or which may result in a conflict between your duties as an administrator and the adult:

- the adult lives in a nursing home and you or a person in a close relationship with you lives in or rents the adult's home
- you or someone in a close relationship with you buys the adult's car, house or any other asset
- you or someone in a close relationship with you obtains a loan from the adult
- the use of the adult's funds to obtain an asset such as a vehicle or property in the administrator's name
- the use of the adult's funds to pay for personal expenses or to lend money to a close friend.

## **Payment of expenses (section 47)**

You are entitled to reimbursement from the adult for 'reasonable expenses'. You must decide what is reasonable given the adult's circumstances and keep full records about the reimbursement.

All expenses relating to the adult should, as much as possible, be reflected in the adult's bank statements for transparency purposes. Regular payments from your own bank accounts and bulk reimbursements from the adult's bank account should be avoided.

**Important note:** *Administrators may not be paid for services. For example, if the administrator drives the adult to the shops, they are entitled to reimbursement for motor vehicle costs such as petrol but not for the time it took to drive them there.*

## Keeping records (section 49) and Records and audit (section 153)

You must keep detailed records of the administration on behalf of the adult including full details and records of the adult's assets (what they own), liabilities (what they owe), income (what they earn) and expenses (what they spend). You may choose to use any method to keep these records such as ledgers, spreadsheets or a commercial software system. You may wish to use QCAT's [Recording of receipts and payments form](#).

If you use a commercially available system such as MYOB, you are still required to complete and lodge an [Account by Administrator form](#). You may attach reports from your commercial software system as additional information.

QCAT may require you to have your accounts audited. Selection of an auditor will be based on the adult's circumstances, in particular, the size and complexity of the estate and whether the recommendation of the QCAT financial assessment manager or a panel examiner. QCAT requires that the auditor is qualified as per the [Trusts Act 1973](#) section 52.

## Keeping property separate (section 50)

All bank accounts, real estate and investments and property are to be kept separate. Existing property in the adult's sole name should continue in their name solely. Any property owned jointly by the adult and administrator e.g. the family home or existing joint bank accounts can remain in joint names.

For example, bank accounts for the adult should be structured as follows:

- in the adult's name with the administrator/s as signatories; or
- in the administrator's name as administrator for the adult (e.g. Mary Bloggs as administrator for Joe Bloggs). This structure should only be used in exceptional situations e.g. when there is a real risk that the adult or another person may attempt to have unauthorised access to the bank account.

**Important note – trustee bank accounts:** *Bank accounts should not be in your name as trustee for the adult. Trustee bank accounts are a contravention of the Guardianship and Administration Act 2000. Creating such an account causes significant legal problems about the ownership, taxation, liability and deceased estate administration.*

## Investments (section 51)

If you are going to invest money for the adult you must only invest in authorised investments made under the prudent person rule.

The prudent person rule refers to the duties and matters to be considered when investing for the adult and is contained in the *Trusts Act 1973*, Part 3. References to trustee in this section of that Act should be taken as applying to administrators.

The prudent person rule advises that when managing investments for another person, you must exercise care and diligence and adhere to a range of duties including:

- investing in investments that are not speculative or hazardous and which protect the best interests of all present and future beneficiaries
- obtaining advice and annually reviewing the performance of investments
- considering a number of matters such as the circumstances of the beneficiaries, the risk of capital or income loss and the likely return.

**Important note:** *If you have concerns that a proposed investment might breach the prudent person rule, you can [make an application to QCAT](#) to have the investment approved.*

If the adult held investments that were not authorised investments at the time of your appointment, you are allowed to continue these investments on behalf of the adult.

## Gifts and donations (section 54)

You can use the adult's money to purchase gifts or make donations without approval from QCAT if the gift or donation:

- is one that the adult would have made when he or she had capacity e.g. birthday and Christmas presents to children or grandchildren
- is reasonable in terms of value, taking into account the adult's individual circumstances
- is of a nature the adult might reasonably be expected to make e.g. a wedding gift for a child or grandchild.

**Important note:** *There are gifting provisions imposed by pension authorities such as Centrelink. These gifting provisions may not comply with the QCAT legislation and may require QCAT approval.*

## Maintaining an adult's dependants (section 55)

You may provide for the dependant/s of the adult providing it is reasonable considering the adult's circumstances, particularly their financial situation. A dependant can either be a child, spouse or another party who has been reliant on the adult.

## Reviewing the appointed administrator

The *Guardianship and Administration Act 2000* requires QCAT to review the appointment of an administrator. The tribunal conducts reviews in the way it considers appropriate either at an oral hearing or on the basis of written information received without parties in attendance.

Initially, QCAT will request that interested persons provide their views in writing about:

- the actions of an administrator
- any new or relevant information about the adult's circumstances that may affect the appointment.

If QCAT is satisfied that there are sufficient grounds for an appointment to continue, it may either:



- continue the existing QCAT appointment; or
- alter or appoint a new administrator, the QCAT appointment e.g. change the terms.

QCAT may only remove an appointed administrator if it considers:

- there is no longer a need for the appointment; • the guardian or administrator is no longer competent; or
- another person is more appropriate for appointment.

If QCAT is not satisfied that there are sufficient grounds for the appointment to continue, it must revoke the decision and remove the administrator.

QCAT reviews of an administration appointment can be commenced through:

- requested reviews
- periodic reviews • QCAT-initiated reviews.

## **Requested reviews**

The adult or any interested person may apply for a review of the appointed administrator at any time, showing evidence of changed circumstances, new information or concerns regarding the actions of the administrator.

## **Periodic reviews**

QCAT conducts an automatic periodic review of the appointed administrator usually commenced three (3) months before the QCAT appointment expires. You will receive a letter from QCAT around this time to advise you of how the review will proceed.

Some appointments of administrators will state that the appointment remains current until further order of the tribunal but that the appointment is reviewable and is to be reviewed in so many years. Reviews of these appointments are also commenced three (3) months prior to the specified review period.

## **QCAT-initiated reviews**

QCAT can initiate and conduct a review of any appointment of an administrator at any time. In the majority of cases, QCAT initiates reviews because an administrator has not provided documentation within a certain timeframe, or issues or concerns have been raised about the information contained in the documents submitted.

## **QCAT's decision about the review**

QCAT can give its decision at the end of the review hearing and set out the terms of the appointment in a written decision. Sometimes the decision will be made at a later date. In this case the decision will be sent to each party who received notice of the review hearing. In certain circumstances parties have the right to appeal the QCAT decision.

## Removing an appointed administrator

### Automatically revoking an administrator's appointment

An appointment of an administrator will end if:

- the administrator becomes a paid carer or health provider for the adult (this does not include receipt of a carers pension)
- the administrator becomes a service provider for a residential service where the adult is a resident
- the administrator was married to the adult when the appointment was made and the marriage is dissolved
- the administrator and the adult were in a registered relationship when the appointment was made and the registered relationship is terminated
- the administrator dies (and there are no other appointed administrators)
- the adult dies
- a coroner, the court or Births, Deaths and Marriages has declared the missing person has died
- the administrator becomes bankrupt or insolvent
- QCAT becomes aware of an enduring power of attorney appointing someone to manage the adult's financial affairs which was made prior to the appointment of the administrator.

### Removal of an administrator

Administrators can be removed when:

- they have not acted in the best interests of the adult
- they have not acted in terms of QCAT's decision
- they have neglected their duties or abused their decision-making authority, either generally or for a specific matter
- they have otherwise contravened the *Guardianship and Administration Act 2000*
- the need for an administrator no longer exists
- they are no longer competent to act as a decision-maker
- another person is more appropriate to be the adult's administrator
- they no longer wish to act.

### Withdrawal of an administrator

If an administrator wishes to withdraw from their role, an application must be made to QCAT. The tribunal must then give the administrator permission to withdraw. The administrator's appointment and responsibilities will end only when permission to withdraw is given.

## Frequently asked questions for appointed administrators

Where can I find more advice for administrators?

The [Public Trustee of Queensland](#) has a range of resources to help administrators in their role, including a [Guide for Financial Administrators](#).

## How do you prove your authority to act?

You will receive several certified copies of the QCAT decision. The decision outlines your authority to act on behalf of the adult for financial matters. You will need to present this document when you carry out your duties e.g. visiting banks and financial institutions where the adult has funds invested.

## What if the adult owns real estate?

If the adult owns real estate your appointment as an administrator must be registered with the Titles Registry. QCAT refers to this as a [notice of interest in land](#).

For more information on how to complete the forms, please make an online enquiry with the [Titles Registry](#) or phone 1300 255 750 or 13 QGOV (13 74 68).

## Do I re-submit a notice of interest in land with a new QCAT decision?

Yes. You must submit a notice of interest in land every time a new decision is made by QCAT. This ensures that all documentation the Registrar of Titles holds reflects the latest QCAT decision and fully safeguards the adult's interests.

## How do I establish a bank account for the adult?

If the adult does not have an existing bank account in their name, you will need to establish an account for the adult. You will be required to present the certified copy of the QCAT decision to the financial institution.

**Important note:** *Bank accounts cannot be held in trust for the adult. Please refer to [Keeping property separate](#).*

## What happens when the adult dies?

Your powers as an administrator cease when the adult dies. No further accounts are required to be provided to QCAT. You are required to inform QCAT in writing of the death of the adult within 30 days.

You will need to send QCAT an original or certified copy of one of the following:

- the death certificate, or extract of the death certificate
- the death or funeral notice published in a newspaper
- notification of death by a professional such as a doctor or director of nursing who was involved in the care of the deceased.

If there is a valid Will appointing an executor, the executor has the power to take over and administer the deceased estate. Alternatively, if the adult died without a Will (intestate) the estate will be distributed in accordance with the law.

You must make sure that the adult's assets are protected until control is handed over to the executor. You should provide records to the executor up to the adult's date of death.

For further advice about deceased estates and wills, you can seek legal advice or contact the [Public Trustee of Queensland](#).

## **Can a complaint be made about an administrator?**

If you have the appropriate facts to support a complaint against an administrator, you can lodge an application with QCAT for [review of an administrator](#). QCAT can suspend the administrator's powers for a three month period in appropriate circumstances.

If an administrator is suspended, the [Public Trustee of Queensland](#) is automatically appointed temporary administrator for the period of the suspension.

## **Can QCAT review an appointed administrator?**

There are various different types of reviews QCAT can conduct in relation to an appointed administrator. A hearing is held which gives interested parties an opportunity to put forward their views in writing about the actions of an administrator as well as any new or relevant information about the adult's circumstances that may affect the appointment.

Anyone with an interest in the matter can request a review at any time, including a guardian, administrator, family member, the [Public Guardian](#), the [Public Trustee of Queensland](#) or the adult concerned.

## **What happens if the adult's decision-makers disagree?**

If the adult has a guardian appointed or a statutory health attorney, the administrator/s should consult them about major financial decisions which are likely to affect the lifestyle or health of the adult.

Where there is more than one administrator appointed, all administrators should work closely together to ensure the best interests of the adult are protected.

If agreement cannot be reached, an application may be made to QCAT for a [review of the administrator](#), at which all issues can be heard.

## **Can I be reimbursed for the adult's expenses which I paid?**

All expenses should be paid directly from the adult's bank account where possible.

Administrators can be reimbursed for expenses paid on the adult's behalf, such as a chemist bill, however reimbursement as a regular method of paying the adult's expenses should be avoided.

If the expense is substantial and severely impacts the adult's finances, consideration should be given to delay a full reimbursement at one time.

## **Can I be reimbursed for my own expenses including travel costs?**

An administrator is entitled to reimbursement from the adult for reasonable expenses incurred in acting as administrator, however, they cannot be paid for their services or time.

Administrators must decide what is reasonable, taking into account the adult's financial circumstances and ensure sufficient funds are retained for the adult's care.

Administrators must keep records detailing what was reimbursed, and retain copies of receipts for individual items more than \$500.

For travel costs, an administrator can be reimbursed for reasonably incurred expenses such as air travel, accommodation and petrol costs. In relation to fuel costs, a set rate per kilometre is acceptable, though this should be reasonable with regards to the adult's financial situation.

Administrators may be required to justify their expenses to QCAT.

## **Can I purchase a motor vehicle for the adult?**

As administrator, you may purchase a motor vehicle to be used solely for the adult's benefit. The purchase must be in the adult's best interests and the cost reasonable considering the adult's financial situation. The motor vehicle should be purchased in the adult's name.

If the motor vehicle is used for any other purposes (e.g. by other family members), QCAT would expect that costs of the motor vehicle would be paid on a pro-rata basis.

## **Can I sell the adult's real estate?**

An administrator appointed for all financial matters is able to sell the adult's real estate without the approval of QCAT. The best interests of the adult should be considered and other interested parties (including any appointed guardians) consulted.

**Important note:** *If the real estate is being sold to someone in a close personal or business relationship to you such as family, friends or other associates, the sale will be considered a conflict transaction. Approval from QCAT is required prior to the conflict transaction occurring.*

The sale price should be at current market value. Any proceeds from the sale must be deposited into the adult's bank account, and a copy of the settlement statement provided with the annual accounts.

Any impact the sale may have on the adult's pension needs to be considered. Administrators may need to liaise with the appropriate organisation (e.g. Centrelink or the Department of Veterans Affairs) to determine the impact of the sale. **Can I rent**

## **out the adult's principal place of residence?**

The administrator has the power to do this without seeking approval from QCAT. The rent received should reflect current market values.

If the real estate is being rented to someone in a close personal or business relationship to you such as family, friends or associates, this will be considered a conflict transaction. Approval from QCAT is required prior to the conflict transaction occurring. If rent is below market value, reasons for this should be outlined in the conflict transaction application.

## What if the bank doesn't recognise me as administrator?

Initially, you should discuss the matter with the bank's branch manager who may have to refer to the bank's head office or legal section for advice. If this does not result in a satisfactory solution, you can lodge a complaint with the bank's centralised complaint line.

If this does not result in a solution, please contact QCAT with details of why the bank has refused to recognise your appointment.

## Contact information

### QCAT

Level 11259 Queen Street  
Brisbane QLD 4000

Phone: 1300 753 228, 8.30am-4.30pm

Email: [enquiriesQCAT@justice.qld.gov.au](mailto:enquiriesQCAT@justice.qld.gov.au)

Website: [qcat.qld.gov.au](http://qcat.qld.gov.au)

### Carers Queensland

Carers Queensland is the peak body that represents the interests of carers in Queensland. Carers Queensland's [Family Support and Advocacy program](#) provides carers with free support, information, advice and representation for adult guardianship and administration matters.

Phone: 1800 242 636

Website: [carersqld.asn.au](http://carersqld.asn.au)

### Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships

The Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships helps people with a disability and their families to access a range of supports and services they need as they move through the different stages of their life.

Phone: 13 QGOV (13 74 68)

Website: <https://www.communities.qld.gov.au/disability-connect-queensland>

### Mental Health Review Tribunal

The role of the Mental Health Review Tribunal is to review persons subject to the *Mental Health Act 2000* and ensure that the involuntary processes of assessment, treatment and detention of people with mental illness are properly applied

Phone: 07 3235 9059 or 1800 006 478 (local call outside Brisbane) Website:

[mhrt.qld.gov.au](http://mhrt.qld.gov.au)

## Office of the Public Advocate

The Office of the Public Advocate is an independent statutory body established to protect and promote the rights, autonomy and participation of people with impaired decision-making capacity.

Telephone: 07 3738 9513

Website: [justice.qld.gov.au/public-advocate](http://justice.qld.gov.au/public-advocate) **Office**

## of the Public Guardian

The Office of the Public Guardian protects the rights and interests of adults who are unable to make decisions for themselves. The Public Guardian can act as a person's decision maker for personal and some legal matters under an order from QCAT or as an attorney under an enduring power of attorney.

The Public Guardian can also investigate allegations of abuse, neglect or exploitation of an adult who is unable to make decisions for themselves.

The Public Guardian's [Community Visitor Program](#) staff visit facilities such as hostels to make sure that the interests of adults with impaired decision making capacity are promoted and their rights are protected.

Phone: 1300 653 187

Website: [publicguardian.qld.gov.au](http://publicguardian.qld.gov.au)

## The Public Trustee of Queensland

The Public Trustee of Queensland can act as a person's decision maker for financial and some legal matters either under an order from QCAT or the Supreme Court of Queensland or as an attorney under an Enduring Power of Attorney.

Phone: 1300 360 044

Website: [pt.qld.gov.au](http://pt.qld.gov.au)

## Titles Registry

The Department of Natural Resources and Mines incorporates the Titles Registry. If the adult owns property, you must lodge a notice advising your appointment as administrator with the Titles Registry for recording against the property.

Phone: 1300 255 750

Website: Department of Natural Resources, Mines and Energy > Our department >

Contact us > [Titles Registry enquiries and lodgement details](#)

# Banking guidelines for administrators

## Establishing your authority with the bank

You will receive several certified copies of the QCAT decision confirming your appointment as administrator and outlining your powers. The original of one of these copies should be presented to banks and financial institutions to establish your authority to act on the administrator's behalf.

If you experience problems, you should discuss the matter with the bank's branch manager who may have to refer to the bank's head office or legal section for advice. If this does not result in a satisfactory solution, you can lodge a complaint with the bank's centralised complaint line.

In addition, you should contact QCAT with details of why the bank has refused to recognise your appointment.

The Australian Banking Association has released a set of industry guidelines regarding banks and administrators. Banks are encouraged to adopt these guidelines and incorporate them into their internal processes, procedures and policies. These guidelines are available at [bankers.asn.au](http://bankers.asn.au).

## Bank accounts

No bank accounts containing the adult's funds should be held in the name of the administrator, any other party or held on a trustee basis. All bank accounts should be in the adult's name with the administrator as a signatory. All of the adult's income should be deposited into a bank account in their name and as far as possible all expenses should be paid from this bank account.

- 1. New bank accounts:** If the adult does not have an existing bank account in their name, one will need to be established. This account should be in the adult's name solely.
- 2. Existing bank accounts:** Existing bank accounts can be retained though you may wish to consolidate if the adult maintains a number of them. If the existing bank account is in joint names, for e.g. with the adult's spouse they can be continued however any new bank accounts should be in the adult's name solely unless the funds are clearly jointly owned.
- 3. Trustee bank accounts:** The bank account should **not** be in your name as trustee for the adult as this is a contravention of the *Guardianship and Administration Act 2000*. The establishment of trustee bank accounts creates significant problems in regards to ownership, taxation, liability and deceased estate administration. Any existing trustee bank accounts will need to be closed.
- 4. Account access:** If appropriate, the adult can continue to have full access to their bank account. However, if there is a real risk that the adult will use their funds inappropriately, or third parties may attempt to have unauthorised access to the account, you should discuss with the bank what restrictions can be placed on the account to protect the funds. This may involve the opening of a second bank account for the adult's sole use. Individual banks may have different policies regarding how they allow ongoing access to the adult and how they allow the administrator to access bank accounts.
- 5. New QCAT decisions:** If a new QCAT decision is issued either renewing or changing your appointment it is your responsibility to inform the bank of these changes and provide them with a copy of the latest decision.

## Maintaining financial records

Pursuant to the *Guardianship and Administration Act 2000*, section 49, an administrator must keep records that are reasonable in the circumstances and that can be produced as reasonable for inspection when QCAT requires.

It is recommended that as soon as you have been appointed as an administrator, you commence a system of keeping records that is easy to understand and maintain. You may choose any method to keep these records such as ledgers, spreadsheets or a commercial software system.



It is important that you use a manageable system that enables you to summarise the records in the annual [Account by Administrator form](#) if QCAT's decision requires.

If you need help in setting up your recordkeeping system, you may seek assistance from another party or professional such as a bookkeeper or an accountant. Given that the cost is reasonable for this service, you are entitled to be reimbursed from the adult for the costs.

## General information

- **Joint bank account:** Joint accounts established before your appointment can continue. Records should show the adult's share of joint income and expenses and the full amount for any that relate solely to the adult. Any joint assets or liabilities should be recorded according to the adult's share e.g. 50%. The tribunal understands that reconciling records is not possible with joint bank accounts.
- **One-off large expenses:** These items should be summarised separately in your records. Receipts should be retained if the individual item purchased is in excess of \$500 and a copy of these provided with the annual account of your administration to QCAT.
- **Adult's personal expenses:** If the adult is provided with a smaller regular sum it is acceptable to have a budget prepared and a regular amount deducted and recorded for these expenses.
- **Bank and other financial statements:** Please ensure that these are obtained from the relevant financial institutions and retained as they will be required for the annual account of your administration to QCAT.

## Examples

The circumstances of adults vary greatly, however below are several common situations and tips that may help you with your recordkeeping system.

- **Nursing home:** Nursing homes commonly issue a monthly accommodation account or statement detailing the charges, activities and medication expenses the adult incurs. It is not necessary to break down these individual expenses outlined on the statement. A single amount in your records for 'nursing home' is sufficient. Copies of the monthly statements should be retained for your records.
- **Supported/shared accommodation:** In these situations it is common for a regular amount based on an agreed budget to be forwarded to the care provider with additional funds paid on request. It is not necessary to break down the individual expenses the adult incurs in the care situation. A single amount in your records for the amount paid is sufficient. The care provider's reports should be retained for your records. For any large one-off expenses e.g. a fridge or bed the amount should be recorded separately and a copy of the receipt obtained from the care provider.

**Note:** *In the above situations it is your responsibility to ensure that the level and type of expenses the care provider incurs are appropriate and you are provided with records.*

- **Living with the administrator:** In this situation it is understood that the expenses of the adult can be mixed with the expenses of the other occupant/s of the house. In this scenario, it is recommended that a budget (suggested format below ) be drawn up for the adult's share of regular living and household expenses. The budget amount can then be drawn regularly from the adult's bank account to meet these expenses. There is no need to maintain receipts for items incurred, within this budget and a single amount can be summarised in your records as 'board and lodgings' or similar.

## Budget

The budget template is optional, but its use is recommended to help in your role. Please make any changes to headings to suit your particular situation. The template can be downloaded as a Word document from [qcat.qld.gov.au](http://qcat.qld.gov.au).

<b>Income – please select: weekly / fortnightly / monthly</b>	
Pension	
Family tax benefits	
Mobility allowance	
Rent assistance	
Wages/salary	
Bank interest	
Annuity(after tax)	
Investment income (including share dividends)	
Rental income	
Any other income	
<b>Total income</b>	<b>\$</b>
<b>Expenditure</b>	
<b>Accommodation</b>	
Nursing home fees/rent/board and lodgings	
Rates	
House/contents insurance	
Home repairs and maintenance	
Utilities (water/gas/electricity)	
<b>Transport</b>	
Registration/insurance/maintenance	
Petrol	
Trains/bus/taxi fares	
<b>Personal</b>	
Meals/food	
Medical (e.g. insurance and pharmacy)	

Alcohol/tobacco	
Entertainment (includes gambling)	
Personal care (Includes clothing/hair)	
Gifts/birthdays and donations	
Spouse/child support	
Care/paid support expenses	
<b>Recreational</b>	
Holidays	
Regular activities	
<b>Other</b>	
Education	
Loan repayments	
Other (enter description)	
<b>Total expenditure</b>	\$
<b>Total income (as calculated above)</b>	\$
<b>Net surplus/deficit</b>	\$

## The prudent person rule

The administrator has a duty to invest only in authorised investments. These duties are described in the *Trusts Act 1973* and referred to as the prudent person rule. These duties are detailed in the excerpt below. Note: All references to trustee in this excerpt should be taken as applying to administrators

**Important note:** *If you have concerns that a proposed investment might breach the prudent person rule, you can make an application to QCAT to have the investment approved.*

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Excerpt from the *Trusts Act 1973*, Part 3

### 22. Duties of trustee in relation to power of investment

- (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.

### **23. Law and equity preserved**

- (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.

### **23. Matters to which trustee must have regard in exercising power of investment**

- (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.