

26 September 2017

Ms Belinda Wilson
President
Law Institute of Victoria

Via email: president@liv.asn.au

Dear Belinda,

Appointment of legal practitioners as administrators of the estates of represented persons

Thank you for your letter dated 5 June 2017 and for the consultation process you have undertaken to address the issue of appropriate remuneration arrangements for professional administrators appointed under the *Guardianship and Administration Act 1986* (Vic). The Tribunal has given further consideration to the appointment of legal practitioners as administrators of the estates of represented persons.

As you are aware, the Tribunal welcomes the ongoing commitment of legal practitioners to this important area of work. An alternative way to attract the expert contribution provided by legal practitioners to the role of professional administrator has been suggested within the Tribunal.

It is agreed and understood that there is a significant distinction between administrative work undertaken by an administrator of the estate of the represented person, and legal work. It is appropriate for this distinction to be made in Tribunal orders. It is proposed to amend the orders made as to remuneration for solicitor administrators so that they are in the form set out in the schedule.

The Tribunal is considering making the necessary practice amendments with effect from 1 January 2018. We welcome the opportunity to further consult on this matter. If you would like any further information, or to set up a meeting, your staff may contact my senior associate, Sara Kingston, on 9628 9059 or by email at sara.kingston@supremecourt.vic.gov.au.

Yours sincerely



Justice Greg Garde AO RFD
President

Cc: Nerida Wallace, CEO
Rebecca Park, Lawyer for the Elder Law and Succession Law Sections

SCHEDULE – Draft order

The Tribunal orders that:

1. The administrator is entitled to the following remuneration (inclusive of GST) from the estate of the represented person for acting as administrator:
 - A. A commission on gross income received at a rate not exceeding:
 - (i) 3.3% in respect of Centrelink or Department of Veterans' Affairs pensions; and
 - (ii) 6.6% in respect of all other income.
 - B. A once only capital commission of the gross value of any realised assets of the estate as follows:

Realised assets	Fee % of Realised Assets (incl. GST)			
	Up to \$500,000	\$500,001 to \$1,000,000	\$1,000,001 to \$3,000,000	Greater than \$3,000,000
Up to \$500,000	2.2	2.2	2.2	2.2
\$500,001 to \$1,000,000	–	1.5	1.5	1.5
\$1,000,001 to \$3,000,000	–	–	0.55	0.55
Greater than \$3,000,000	–	–	–	0.44

- C. A fee not exceeding 1.1% per annum on the amount invested on behalf of the represented person in an account deposited with an authorised deposit taking institution.
2. The administrator shall complete and forward to the Tribunal for approval a Financial Statement and Plan no later than {PLAN_OF_MGT_DATE}.
3. The administrator shall lodge with the Tribunal Accounts by Administrator (ABAs) for examination as follows:

Accounting period for first ABA: {ABA_DUE_DATE}.

Lodgment date for first ABA: As soon as practicable after 30 June but no later than {ABA_DUE_DATE}.
4. The administrator shall lodge subsequent ABAs for each financial year, commencing on 1 July and ending on the following 30 June, as soon as practicable after 30 June but no later than 30 September in each year.
5. In the event that the administrator considers it necessary for legal work to be undertaken on behalf of the represented person, including for the commencement or defence of legal proceedings, the administrator shall apply to the Tribunal under s 55 of the *Guardianship*

and Administration Act 1986 prior to commencing such legal work. If approval is granted, the administrator will be entitled to remuneration for the approved legal work on the scale set out in the Practitioners' Remuneration Order or in accordance with the approving order. The Tribunal retains an overall discretion as to what work will be undertaken by the practitioners and what fees are payable. Quarterly reports of legal work undertaken and costs and disbursements charged are to be provided to the Tribunal.