**Remuneration scale for administrators under the *Guardianship and Administration Act 2019***

Discussion Paper

# Abbreviations & Terms

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| ABA | Account by Administrator – a VCAT online system for document lodgement by administrators |
| GAA | *Guardianship and Administration Act 2019* |
| PRO | Practitioner Remuneration Order – made under the *Legal Profession Uniform Law Application Act 2014* |
| Professional administrator | An administrator appointed under the *Guardianship and Administration Act 2019* who is entitled to be remunerated for their work as an administrator.  For the purposes of this paper, references to professional administrators do not include State Trustees Limited and licensed trustee companies, for whom the remuneration scale will not apply. |
| SARC | Scrutiny of Acts and Regulations Committee |
| SAT | State Administrative Tribunal (Western Australia) |
| STL | State Trustee Limited |
| QCAT | Queensland Civil and Administrative Tribunal |
| Represented person | A person in relation to whom an administration order has effect; administration orders are made when an adult (the person to be represented by the administrator) is unable to make financial or legal decisions because of disability. |
| VCAT | Victorian Civil and Administrative Tribunal |
| VLSC | Victorian Legal Services Commissioner |

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# Overview

The purpose of this paper is to inform stakeholders of the Victorian Civil and Administrative Tribunal’s (VCAT) consideration of a new remuneration scale for professional administrators appointed under the *Guardianship and Administration Act 2019* (GAA).

The ability for VCAT to fix a scale of remuneration for professional administrators is a power provided under the GAA. The predecessor to the GAA required VCAT to approve the remuneration of each administrator under each order. However, to date, VCAT has not determined a scale of remuneration for administrators and continues to approve remuneration on a case-by-case basis.

Analysis commissioned by VCAT—which included a detailed examination of the current arrangements, along with stakeholder consultation (law firms, trustee firms, and accountants), benchmarking against other jurisdictions and service providers, and consideration of best-practice fee setting principles—has resulted in a proposed remuneration scale for administrators.

The analysis of the current framework, examination of cases, and consultation found that the current arrangements are complex, not transparent, and do not ensure accessibility and fairness for those persons whose interests should be at the forefront.

The proposed remuneration scale (see below) significantly simplifies the current arrangements for legal practitioners under the Practitioner Remuneration Order (PRO) made under the *Legal Profession Uniform Law Application Act 2014.* In terms of other professional administratorsthat are not legal professionals (such as accountants) the current remuneration orders provide ad-hoc, inconsistent approaches to and rates of remuneration.

The proposed remuneration scale for professional administrators seeks to balance the best interests and needs of represented persons with fair remuneration for administrators appointed by VCAT under the *Guardianship and Administration Act 2019*. The proposed remuneration scale also seeks to improve transparency and cost effectiveness.

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| --- |
| **Key features of the proposed remuneration scale:**   * The proposed remuneration scale would apply to professional administrators appointed under the *Guardianship and Administration Act 2019* who are entitled to be remunerated for their work as an administrator. This scale would not apply to State Trustees Limited or licensed trustee companies. * The proposed remuneration scale would apply as a default. That is, it would apply to all administration orders that have a professional administrator, unless VCAT uses its power to order different remuneration if it is appropriate to do so. * The proposed remuneration is: $300 per hourfor specified tasks that are generally required to be carried out by the administrator personally or require particular skills expected to be performed by the administrator themselves; and $100 per hourfor other administration tasks that would be expected to be performed by other staff (junior or support). * However, total fees charged for administration tasks would be capped at $8,000 per year, or $2,000 per year if the represented person has assets of less than $20,000 (excluding principal place of residence) and income less than $930 per fortnight. Administrators would be able to ask VCAT to vary or waive these caps. * The proposed remuneration (and caps) would not apply to genuine legal work, for example drafting contracts or providing legal advice, or providing financial advice or services for which a licence is required. Also, some administrator tasks (such as carrying on a business or acting as a director) would not be counted in the proposed cap. * The remuneration scale will operate prospectively (i.e., to new administration orders). * VCAT will publish information to assist professional administrators apply the scale. |

# Feedback sought

Before any decisions are made to set a new remuneration scale under the GAA, we welcome comments from professional administrators appointed under the GAA, represented persons and their family and friends, or from any other organisation or member of the public with an interest in this matter. All responses will be reviewed and assessed in the context of the framework outlined in this paper. Following this, VCAT may amend the remuneration scale proposed in this paper.

While in no way limiting any comments provided, feedback on the following questions will provide information to test the appropriateness of the proposed remuneration scale.

1. Do the indicated hourly rates fairly balance the interests of represented persons (and the value of the services they receive) with fair remuneration to professional administrators?
2. Does the distribution of tasks appropriately reflect both the nature of the tasks (the skill involved and/or the personnel involved) as well as value to the represented person?
3. How should the hourly rates be applied in practice? For example, in 6-minute increments, 15-minute increments, etc.? How can this be calculated in a way that does not impose additional administrative burden, while being transparent and fair?
4. The proposed scale would not apply to genuine legal work. Is the distinction between legal work and administrator work in the draft scale sufficiently clear? If not, what further clarification would be needed?
5. Should the final remuneration scale include the suggested fee caps (allowing exceptions where appropriate) or should caps continue to be only imposed when specifically considered? If so, what are the appropriate caps (noting the intended purpose is to keep robust controls over excessive fees, and that caps can be varied or waived if there is a clear reason to do so).

Responses to this Discussion Paper should be emailed in word or pdf format to the following address:

[vcatprincipalregistrar@courts.vic.gov.au](mailto:vcatprincipalregistrar@courts.vic.gov.au)

Submissions must be received by **5PM on Thursday 22 June 2023** in order to be considered before a final decision is made. All submissions will be treated as public documents unless a submitter requests, and VCAT agrees, to treat a submission as confidential.

# Context and current arrangements

## Role and function of administrators

An administrator manages the financial and legal affairs of an adult who is unable to make financial or legal decisions because of their disability.

Under section 30 of the *Guardianship and Administration Act 2019* (GAA), VCAT may make an administration order where:

* a proposed represented person does not have decision-making capacity in relation to financial matters
* there is a need for an administrator, and
* the appointment will promote the proposed represented person’s personal and social wellbeing.

Administrators may also be appointed for missing persons.

An administrator makes decisions about managing property, paying bills, and buying things the represented person wants or needs.

VCAT may also give administrators other powers, including:

* collecting income and other money owed to the represented person
* investing money
* leasing or selling property
* running a business
* signing contracts on behalf of the represented person, and
* paying financial support for children or other dependents.

The powers of an administrator are outlined in sections 46, 51 and 52 of the GAA. The administration order states what powers the administrator has and whether their powers are limited. Orders can also be tailored to individual circumstances, such as restrictions on the sale of property or on taking legal action, or requirements for the administrator to seek further approval from VCAT to take some actions.

Appendix A provides details concerning the duties of an administrator.

## Appointment of administrators

VCAT may appoint as an administrator any person (individual over the age of 18 or body corporate) if VCAT is satisfied that the person:

* will act in accordance with the duties set out in the GAA
* is not in a position where the person’s interests conflict, or may conflict, with the interests of the proposed represented person
* is a suitable person to act as the administrator in relation to the proposed represented person
* has sufficient expertise to make decisions about any financial matter to be specified in the administration order.

Often the administrator will be a friend or relative of the represented person. VCAT may also appoint as an administrator any other person or entity that meets the above criteria, and this is often (but not necessarily limited to):

* a solicitor
* an accountant
* State Trustees Limited (STL)[[1]](#footnote-2)
* a private trustee company (within the meaning of section 601RAA of the Corporations Act).

In practical terms, solicitors and accountants are often appointed where the matters to be administered include specific legal or financial issues. In theory, any professional services business could be considered to be a suitable entity.

During 2020-21, there were 2,037 administration orders made under the GAA. Of these, 605 orders (30 per cent) appointed STL as the administrator and 1,432 (70 per cent) administration orders were made appointing ‘private’administrators.[[2]](#footnote-3) While the vast majority of ‘private’ administrators are friends or family, a small proportion of private administration orders are made for professional administrators—around 40 to 70 per year. This number includes licensed trustee companies, whose core business is managing peoples’ financial affairs. The number of administration orders that appoint a professional administrator such as a solicitor or accountant is in the order of 25 to 30 each year.

Appointments of administrators other than family members usually occur when there is no suitable family member or close family friend available, or where family members are in dispute and an impartial third party is required. In this sense, some administrators are appointed as ‘circuit breaker’ administrators to negotiate, manage and contend with complex family dynamics and the challenging needs of some represented persons.

When making the administration order, there may be legal issues to resolve (at least in the early part of the administration) and lawyers are often appointed. Accountants or financial advisors may also be appointed, particularly for larger estates. Sometimes, a practitioner such as a financial advisor may be appointed because they have been a trusted professional to the represented person or family prior to the order being made and the family wishes that relationship to continue.

## Remuneration of administrators

An administrator is not entitled to receive any fee, remuneration or other reward from the estate of a represented person or missing person for acting as administrator unless:

* VCAT otherwise specifies in the administration order, or
* the administrator is a person who carries on a business of, or including, the administration of estates.

Under section 175 of the GAA, administrators that carry on a business of, or including, the administration of estates are entitled to remuneration, but only:

* in accordance with a scale of remuneration for administrators that is fixed by rules made under the VCAT Act, or
* as determined by VCAT (i.e., on a case-by-case basis).

The ability for VCAT to fix a scale of remuneration for administrators was inserted into the GAA in 2020. Previously, VCAT was required to approve the remuneration of each administrator under each order,[[3]](#footnote-4) but no legal mechanism was provided to set a scale to apply to all administrators.

To date, VCAT has not determined a scale of remuneration for administrators. This Discussion Paper is to assist VCAT determine such a scale.

A remuneration scale would be fixed through an amendment to the VCAT Rules. The Rules are made under section 157 of the *Victorian Civil and Administrative Act 1998* by the VCAT Rules Committee. VCAT Rules are statutory rules for the purposes of the *Subordinate Legislation Act 1994* (see section 3); meaning the Rules must be tabled in parliament and are disallowable,[[4]](#footnote-5) but may be exempted from the need to prepare a regulatory impact statement.[[5]](#footnote-6)

While the remuneration scale would be made under the Rules, each administration order would need to specifically reference the scale for it to apply to that order. VCAT would continue to have discretion to include alternative remuneration arrangements in orders when it considered it appropriate to do so.

## How remuneration for administrators is currently set

In the absence of a remuneration scale, for a professional administrator (who carries on a business of, or including, the administration of estates) to receive any payment for their services, they would need VCAT to determine the amount of remuneration on a case-by-case basis.

While VCAT could make a detailed assessment of the most appropriate remuneration for each case, in practice, the administration orders more commonly allow remuneration according to:

* State Trustees—the standard fee arrangements used by State Trustees for these types of administrations. These are set by State Trustees having regard to their community service obligations and funding from the Victorian Government to enable subsidised services. This is generally on a commission basis, applying to both capital and income, with scope for additional costs.
* for private licensed trustee companies—remuneration is set according to fees published by the company, as allowed to be charged under their trustee licence[[6]](#footnote-7)
* for solicitors—remuneration according to the Practitioner Remuneration Order (PRO, made by the Victorian Legal Costs Committee[[7]](#footnote-8)). The PRO provides for remuneration based on the time of a task (hourly rate), the complexity of a task (as a rate per document length), and some fixed amounts for some tasks.
* for accountants—generally an hourly rate for the work undertaken, or a fixed commission on value of assets and/or income.

However, in some cases, the remuneration approved in the order has deviated from the standard fees for each group. In a small number of urgent or limited orders, the remuneration to be paid to State Trustees has been set at a fixed hourly rate (of $250 per hour). In a number of recent orders, VCAT has approved remuneration for legal practitioners on a different basis than the PRO (e.g., a fixed hourly rate), and has also at times included caps on the total fees that may be charged under the PRO.

These deviations in general only occur with the agreement of the administrator to accept reduced payment; however, sometimes VCAT considers the fees that an estate would need to pay when considering who to appoint as an administrator, or considers payments on a different criteria.

## Arrangements in other states

All other jurisdictions in Australia have arrangements similar to Victoria for the appointment of administrators and the ability of the VCAT-equivalent bodies to approve remuneration. However, details and administration of the schemes vary between states. Generally, private administrators (friends or family) are not entitled to remuneration for the administrator services they provide; however, if a court or tribunal appoints a ‘professional’ administrator then they are entitled to remuneration. The arrangements of remuneration are as shown below:

| **Australian jurisdictions** | **Arrangements** |
| --- | --- |
| New South Wales | Private financial managers are not paid for performing their work unless they have a remuneration order from the Supreme Court of NSW. The Supreme Court determines remuneration on a case-by-case basis. |
| Queensland | If the tribunal makes an order for a professional administrator, then remuneration is set on a case-by-case basis by the Queensland Civil and Administrative Tribunal (QCAT). QCAT recommends that a person obtains an estimate of fees from a professional administrator, the [Public Trustee of Queensland](http://www.pt.qld.gov.au) or a trustee company.  The Public Trustee has a detailed schedule for its services. Fees are based on the total value of the customer's assessable assets, along with a charge for administrative services based on administrative effort (e.g., number of transactions). |
| South Australia | An administrator who carries on a business of, or including, the administration of estates is entitled to remuneration out of the estate of the protected person for the work involved in administering that estate.  Under the *Guardianship and Administration Regulations 2015* the rate for professional administrators is $71.50 for each hour. The Tribunal may, however, fix a higher rate on a case-by-case basis. It is understood that the rate contained in the South Australian regulations is rarely used. |
| Western Australia | The State Administrative Tribunal (SAT) may fix remuneration – or a rate of remuneration – and order that the same be paid to an administrator out of the estate of the represented person if the Tribunal considers that, because of the size or complexity of the estate or both, remuneration should be paid to the administrator.  Remuneration is set by the SAT on a case-by-case basis. It is rare for SAT to appoint a private administrator who is paid. |
| Tasmania | An administrator who carries on a business of, or including, the administration of estates, is, if the Tribunal determines, entitled to remuneration out of the estate of the represented person for the work involved in administering that estate. Only one private administrator (aside from a trustee company) has been appointed in the last two years. |

Further details on arrangements in other states are contained in Appendix B.

In summary, remuneration arrangements in other states are mostly set on a case-by-case basis, although South Australia prescribes a default rate of $71.50 per hour. However, as noted in the table above, it is understood the South Australian regulation is rarely used. Public Trustee companies manage about 30 per cent of all administration orders in Australia. Public Trustees usually set fees as a percentage of the value of the represented person’s assets and/or income.

# The problems with the current arrangements

## The current approach to setting remuneration is confusing

Notwithstanding that State Trustees and licensed trustee companies must necessarily have their own approaches to remuneration, the remuneration determined for other professional administrators lacks coherence and transparency, and can sometimes be too complex for the lay person to understand. This is particularly the case for the friends and family of a represented person or for the represented person themselves.

While the issues and nature of each administration is different, there is a core set of tasks that are common to most, if not all, administrations. However, the payment for these tasks could be in reference to the PRO, a different hourly rate, or a different commission rate. Even where an administrator order allows application of the PRO, sometimes additional limits are added (e.g., a cap on total fees).

From the point of view of a represented person, it is not clear:

* why there are different approaches to determining remuneration
* whether the approach is most appropriate in the circumstances
* how the remuneration approach ensures the represented person gets value for what they pay.

## The PRO was not designed for the tasks of administrators

Under the *Legal Profession Uniform Law Application Act 2014*, the Legal Costs Committee may make orders with respect to the costs that may be charged by law practices for providing legal services. [[8]](#footnote-9)

The making of the PRO includes consultation with the Victorian Legal Services Board. The PRO must be tabled in parliament, is subject to scrutiny by the Scrutiny of Acts and Regulations Committee (SARC), and is disallowable by the parliament.

The PRO sets fees in a number of ways: some items are based on the time taken for the task (e.g., travel and attendances), the length of documents written, read or transmitted (e.g., per folio (100 words) or per page). The fees assigned to different tasks take into account who within a law firm is likely to be undertaking the tasks, either directly or by having regard to the complexity and skill required for each task.

The fees included in the PRO are based on analysis of providing legal services. The fees implicitly reflect that the tasks are contributing to providing legal services to a client, and hence the fees are justified by the value of those resulting legal services.

In setting the remuneration under the PRO, the tasks of a legal professional or law firm performed in relation to acting as administrator—which at its core are not legal services—have not been specifically considered. There is nothing in the PRO to guide how fees should be charged for many administrator tasks which sometimes require the administrator to perform them personally, but often can be undertaken by other support staff. The rates in the PRO for reading and writing documents, even when priced on the basis of a clerk, still implicitly assume there is some (para) legal skill needed to perform the task, whereas many of documents at the core of an administration would not require this level of skill.

The PRO is complex for laypeople. A represented person, or their family, would ordinarily not have sufficient skill and knowledge of the legal profession to know if the PRO had been correctly applied, particularly in regard to the appropriate schedule of the PRO, or whether the types of work performed are ‘usual’ or ‘necessary’. While the use of cost consultants by some law firms provides a level of assurance that the fees being charged relate to work actually performed, it does not necessarily provide confidence that the total amount of fees is appropriate or represents value or efficiency in the context of administering a represented person’s financial affairs (while also adding to costs).

It is extremely difficult for a represented person or their family to understand before the appointment how the fees will be applied, contributing to poor transparency.

## Case studies

In development of this Discussion Paper and the proposed remuneration scale, VCAT reviewed fee data charged by professional administrators, as reported through the ABA process.

For those where remuneration was calculated in accordance with the PRO, a sample of remuneration fees was selected for detailed review.[[9]](#footnote-10) This sample included small, medium and large estate values, as well as complex and non-complex types of administrations.

The table below shows where each reviewed file sits in terms of the size of estate and VCAT’s view on the complexity of the administration. The amount of remuneration charged is shown (indicative amount), together with time periods for which the fees relate.

This sample shows that remuneration amounts vary widely, and the value of the estate and apparent complexity of matters to be managed is not necessarily a good predictor of the fees that will be payable.

Table 1: Remuneration amount charged by estate value – PRO examples from case studies

|  |  |  |
| --- | --- | --- |
|  | **Non-complex tasks** | **Complex tasks** |
| **Small estate value** | >$2,700 (12 months)  >$10,000 (6 months) | >$8,000 (12 months)\*  >$5,000 (4 months)\* |
| **Medium estate value** | >$7,000 (3 months) | >$7,000 (3 months) |
| **Large estate value** | >$9,000 (12 months) | >$10,000 (3 months)  >$16,000 (7 months)\* |

*\* These examples also included additional fees for litigation work, separately approved under s. 51 of the GAA. Only the remuneration attributed to non-litigation work is shown here.*

Special attention was given to assess the capacity of the represented person’s estate to pay the remuneration. In the samples reviewed, there were two examples where the only income was the pension, which would warrant particular concern to ensure total fees charged by an administrator had regard to the capacity of the represented person to pay the fees.

All other cases in the sample reviewed had sufficient other income and/or asset liquidity. This would in part reflect attention given at the time of appointment—i.e., represented persons with no income stream other than a pension would be, in general, less likely to have a solicitor appointed as the administrator. Nevertheless, there is a need to have additional safeguards in place to encourage accessibility and fairness should situations such as this arise.

A review of the sample of administrator invoices highlighted the following:

* Only one invoice in the samples provided clearly set out a basis on which the remuneration could be calculated—i.e., for each performed task listed, it showed the quantity of the task (e.g., units under the PRO) and the cost attributable to each task. However, a layperson would still need to consult and understand the PRO to verify that the charge for each task was correct, given the PRO rates are different for different tasks and calculated in different ways.
* All other invoices reviewed did not provide sufficient transparency to allow the remuneration to be checked. Most invoices provided merely a list of individual activities and a total remuneration amount, with no information about the quantity of each activity (e.g., time taken or size of documents), and no information about the rate charged for each activity. A represented person or their family would have limited ability to confirm that the remuneration was correct.
* The descriptions of work performed by an administrator varied considerably between the examples reviewed. About half were quite clear as to what was done; others only had very vague descriptions of the activity. As such, for those latter examples, it would be unclear from relying only on the invoice provided as to whether the task performed was genuinely necessary as part of the administrator’s duties, or to determine for what purpose the task was performed.
* It is expected that some of the tasks listed in the sample of invoices included legal work (other than litigation separately approved under section 51 of the GAA). However, there was not sufficient information in any of the invoices reviewed to clearly differentiate between core administrator work and other tasks that directly draw on the legal services of the administrator (e.g., legal advice, preparing contracts or wills).
* A number of invoices included a statement that the remuneration had been reviewed by an independent cost consultant (or included a letter from a cost consultant). While this may provide some assurance, it does not provide transparency as to understanding why certain tasks may have been performed, or the ability to scrutinise the time spent on certain activities.
* Some invoices appeared to actively discourage scrutiny, with disclaimers that any disputes about the remuneration charged would be assessed before the Supreme Court Costs Court or through a formal complaint to the Victorian Legal Services Commissioner (VLSC). Only a few of the invoices indicated that a person could speak with the principal about the remuneration if they had any questions, and only one invoice reviewed indicated that a person could request, at no charge, a more detailed breakdown of charges.

The conclusions from the review of the case studies are:

* remuneration amounts and charging practices vary widely, with no clear predictability of the fees that will be payable by a represented person
* a standardised approach to fee setting will supplement existing protections, such as the ABA process, and help guard against excessive remuneration fees
* even after analysis of the case studies, it is still unclear how the PRO is applied and it remains an opaque remuneration process.

Overall, the case studies indicate that the current arrangements are sometimes at odds with the objectives and principles of the GAA, are not transparent and are too complex for most people to understand how remuneration has been determined. It is considered that any proposed changes to remuneration setting needs to ensure accessibility and fairness for those persons under administration orders, balanced against the fair and attractive compensation of professional administrators.

## Preliminary consultation

During 2022, VCAT—with our assistance —consulted with a number of stakeholders about their views on the current arrangements, and the need to set a remuneration scale. These stakeholders included Villamanta, Seniors Rights, Law Institute of Victoria, Australian Unity, Equity Trustees, State Trustees Ltd, six law firms (that together represent the majority of current administration orders to law firms) and an accounting firm that acts as an administrator.

Many of the administrators that were consulted considered that transparency is achieved by having the remuneration methodology set up front, and by having the fees reported against that methodology (and using independent cost consultants).

Feedback received from other stakeholders raised concerns regarding transparency of total fees. This feedback, along with our analysis, highlighted:

* Despite the approach to fees being known at the start of the administration, the total amounts paid are often higher than the represented person expected (and rarely lower than expected). There are difficulties in being able to predict what the total fees will amount to.
* It is difficult for a represented person or their family to understand why the services (or the amount of time spent) were needed.
* It is sometimes unclear why a represented person is paying for a service they are possibly not receiving or do not believe they require.
* There is an additional cost for the represented person when costs consultants are used.

Other feedback from stakeholders suggested a number of measures that could be taken to improve confidence in the remuneration arrangements, which are not accepted as a feasible or practical way to address the known concerns.

* A common suggestion (by law firms) was that the PRO remains entirely appropriate for charging fees, and VCAT should instead mandate the use of cost consultants (or even appoint a panel of approved cost consultants) to validate that the fees being charged align with the PRO. As noted above, there are inherent problems with the use of the PRO to charge fees for the work of administrators, and the assurance provided by the use of cost consultants often does not address the perceived problems with amounts of total fees. Further, expanding the use of cost consultants would inevitably add to the costs charged to the estates of represented persons.
* Similarly, some administrators (and some other stakeholders) suggested that a better approach would be for VCAT to take a more active approach in scrutinising the fees charged by administrators. While there are processes in place for reporting fees to VCAT through the Account by Administrator (ABA) process, and there are powers for VCAT to order an administrator to pay back any remuneration, it is impractical to expect that VCAT would be able to undertake a detailed analysis of all fees charged by administrators. A more efficient way to improve assurance is a clearer and fairer fee structure.

These findings have informed the suggested remuneration scale outlined in the next section.

VCAT notes that most of the law firms consulted to date appear to be conscious of using what they consider to be the most appropriate rate for the task performed, even charging lower rates when the administrator actually performed the task personally (for example, for tasks that support staff would have the skills to undertake). While this is welcomed, it further highlights that the PRO is not fit for purpose for the remuneration of administrators.

# Addressing the problems by setting a remuneration scale

## Remuneration setting principles

In considering a framework to assess the effectiveness and fairness of remuneration principles, the Victorian Government’s *Pricing for Value Guide* provides useful criteria. Such a framework may be adapted for a renumeration scale and includes criteria that relate to efficiency, equity, and simplicity, as described below:

* Efficiency relates to the extent to which a remuneration scale provides efficient price signals about the economic costs of providing services. In this perspective, a remuneration scale should provide adequate returns to the service provider while recognising the value of the service to the represented person. If remuneration is set too low then service providers will exit the market, and some represented persons will be worse off by reduced choice of administrators.
* Horizontal equity means that, in general, people in similar situations should pay the same for the same services they receive. In the context of administrators, this means that represented persons should not pay different fees for the same services merely because of the identity or type of administrator that is appointed. While inevitably the services received will be different from person to person, there is a core set of tasks that are common across all administrations.
* Vertical equity imports a sense of ‘fairness’ and represents a remuneration scale where people should only pay according to their ability to pay.
  + Simplicity means the remuneration structure should be easy to understand, simple for government to administer, and easy for the service provider to apply.

The Guide also emphasises transparency as an objective: “Improve accessibility and transparency by making services and their associated fees easier for users to access, understand and use.”[[10]](#footnote-11)

These principles are articulated within the broad notion that the interests of the represented person are paramount. Section 3.5 below sets out design characteristics of what an efficient, equitable, and simple remuneration scale could look like.

## What problems can and can’t be solved by setting a scale

Setting a remuneration scale for the purposes of s. 175(2)(a) of the GAA cannot solve every problem with the current approach. In some circumstances, a case-by-case approach may be appropriate.

Setting a scale will remove the need for VCAT to have to set out detailed remuneration determinations in every administration order, but as noted above, remuneration for State Trustees and licensed trustee companies will have to continue to be included in orders separately, and even with a scale, there will still be a need for VCAT to make other orders regarding remuneration separately from the scale (including because of the scale itself: see below). It should therefore not be assumed that setting a remuneration scale will lead to significant efficiency improvements in how remuneration arrangements are put in place for each administration order.

However, setting a scale does provide an opportunity to improve consistency, fairness and transparency in how remuneration is determined (in those matters to which the proposed scale will apply).

But a remuneration scale does not of itself guarantee these outcomes. For example, whichever approach to remuneration (e.g., hourly rates, price per task or commissions), there will always be incentives for administrators to maximise their payment while minimising costs. This is not necessarily a bad thing in itself (it is desirable for administrators to earn a profit so that they remain available to offer administration services). The balance ultimately comes down to a robust remuneration structure that is well understood, and in a market where fiduciary duties remain at the forefront.

### Trustee organisations not within scope of recommended scale

It is not proposed to set a remuneration scale that would apply to State Trustees or private licensed trustee companies. This is because:

* The setting of fees by State Trustees is the result of detailed analysis of its statutory functions, policy objectives and funding decisions. VCAT does not intend to disturb that position. There is also the ability, which has been used, for VCAT to set a different remuneration amount for the State Trustee in situations of limited or urgent orders.
* Section 175(3) of the GAA states that remuneration determined by VCAT in relation to a licensed trustee company must not exceed the limit on fees that may be charged by a licensed trustee company under Chapter 5D of the Corporations Act. This provision is a carry-over from the GAA’s predecessor, introduced in 2010, when trustee company fees were more directly regulated under the Corporations Act. The current approach under that Act does not directly limit fees, but requires a trustee company to not charge fees higher than a schedule of fees that it has published on its website. Further, as each trustee company applies its own fees, for the proposed scale to be applied to trustee companies, the scale would need to separately set out the fees for each company, and be continuously updated if any trustee company changed its fee structure or amounts.

For these reasons it is not proposed to apply a scale of remuneration for State Trustees or licensed trustee companies, as the fees charged by these types of administrators are controlled by other mechanisms.

## Fairness to the Represented Person

At its core, decisions made under the GAA should be to promote the personal and social wellbeing of the represented person and consider their will and preferences as far as practicable. The amount that is paid to the administrator is one factor in the represented person’s interests, but not the only factor. The services they receive for the payment is also relevant.

In Queensland, the remuneration paid to an administrator may not be more than the amount the tribunal considers fair and reasonable, having regard to:

* the nature and complexity of the service; and
* the care, skill and specialised knowledge required to provide the service; and
* the responsibility displayed in providing the service; and
* the time within which the service was provided; and
* the place where, and the circumstances in which, the service was provided.[[11]](#footnote-12)

These are reasonable criteria. In addition, other relevant criteria scale would be:

* whether performing a particular service (task) was necessary or justified to promote the interests of the represented person, and
* the ability for the represented person to pay for the costs of such services.

## Fair remuneration to the administrator

The ability to appoint professional services firms as administrators is of benefit to represented persons. These firms provide expanded choices for represented persons and their families, capacity in the community to better ensure the demand for administration skills are met, and (from an economic point of view) contestability of services to (theoretically) be a discipline on quality and price.

As a fiduciary, an administrator should not profit from their client or because of their position. More accurately, a fiduciary is only permitted to profit with the informed consent of the beneficiary and with full and frank disclosure of all relevant information.

Therefore, the key issue is whether the remuneration methodology for professional administrators is able to be easily applied and understood by all parties. Some stakeholders consider the current arrangements fall short of this, as the complexity of the arrangements make it difficult for a represented person to know how much they will pay the administrator. A clear and consistent scale of remuneration will help ameliorate this risk.

It is desirable for there to be fair and attractive compensation for professional administrators. . If remuneration is set too low, such that it becomes unattractive to offer services, ultimately there will be a smaller and less competitive market of administrators that will limit the choices of represented persons. It is recognised that fair and attractive compensation is necessary in any proposed scale.

To that end, professional administrators should be recompensed for the value of the time they spend on administration tasks and in a way that recognises the specialist skills they bring to their role as administrators. However, this would vary for each administrator, or each type of administrator, and there are divergent methodological approaches in estimating a true opportunity cost of performing administrator tasks (the remuneration the administrator could have earned from doing something else).

Further, it is noted that the current approach to remuneration that relies on the PRO does not seek to compensate lawyers for their true opportunity cost. Legal practitioners could, if they wish, earn much higher rates than is provided for in the PRO. Hence, the current approach already embeds the principle of limiting remuneration below what a lawyer might otherwise be able to earn.

It is noted that in Queensland, the administrator is free to set their own remuneration rates, as long as they can demonstrate to the tribunal that the rates meets the criteria (set out above). The criteria are not a calculus to arrive at a particular rate of remuneration, but rather factors that the tribunal has regard to in determining whether the remuneration is, in all of the circumstances, fair and reasonable. In a dispute from 2014 about this requirement, the tribunal found that a remuneration rate of $420 per hour (for an appointment made in 2010) was fair and reasonable, because it reflected the true value of the administrator’s time.[[12]](#footnote-13)

However, setting a remuneration scale to apply to all professional administrators needs to embed a lower rate. The scale should reflect the distribution of rates that administrators might otherwise charge and recognise what is considered fair and reasonable from the point of view of the represented person (this might suggest a ‘lowest efficient price’ approach). However, any scale should avoid a situation where administrators are incentivised to reduce the *quality* of their services if rates are too low, or to withdraw from the market altogether.. Either scenario would not be in the overall interests of represented persons.

It is recognised that any change to the remuneration arrangements will likely have consequences on the ‘market’ for professional administrators. For example, by fixing remuneration rates at a certain level, administering the affairs of some represented persons may become unviable for some professional services firms, with those represented persons instead being represented by someone else (often State Trustees). However, for others, the ability to engage professional services specialists may become a more affordable option. The important consideration is that, overall, the rates of remuneration continue to allow a reasonable degree of choice of administrator, options for personalised service, and the ability to appoint administrators best suited to the particular needs of the represented person.

## Task-based approach to delineation

Of the opportunities discussed with stakeholders, it is considered that a task-based approach is the most appropriate, being able to be clearly articulated, providing clarity, transparency and consistency. It also allows the scale to bring to the fore reasons why the current approaches are not fit for purpose, by giving focus to the common tasks expected to be performed by administrators.

The task-based approach allows the scale to set different rates for different tasks. It is common practice that, even where the appointed administrator is an individual, much of the day-to-day tasks are performed by other staff within the business (e.g., law clerks or administrative staff in a law firm). The remuneration attached to different tasks should reflect whether (and to what degree) a task is likely to be (or should be) performed by the administrator personally. This may be because of other requirements to deal directly with the administrator (e.g., dealing with banks), or because the particular skill required for the tasks is expected to be performed by the administrator themselves.

That said, it would be too cumbersome to have long tables or schedules with different rates for each task.[[13]](#footnote-14) It is proposed that tasks be grouped into two categories based on who needs to perform the task. During consultation, a range of tasks was considered and feedback was sought on how these tasks are typically performed (by whom). There was not universal agreement on these tasks.

It is recognised that weighing up all of the different objectives and considerations in setting an appropriate rate of remuneration does not lead to a clear single agreed rate. A range of different fee levels could be argued, with different values having similar overall merits, with slight differences in how they trade-off meeting the desired objectives. However, in absolute terms, it is considered that rates of remuneration materially below $250 per hour for the administrator (and $70 per hour for support staff) would have a significant impact on the availability and willingness of many professionals to continue as administrators; conversely remuneration rates materially above $400 and $120 per hour, respectively, cannot be considered to be in the interests of most represented persons. Hence, because the scale must set out specific amounts, the rates of remuneration listed below have been proposed.

Balancing the competing factors outlined above, VCAT considers that the following remuneration rates are representative of typical rates that are reasonable and fair to both a represented person and administrator and reflect sufficient value of service:

* **$300 per hour** for specified tasks that are generally required to be carried out by the administrator personally or require particular skills expected to be performed by the administrator themselves, and
* **$100 per hour** for other administration tasks that would be expected to be performed by other staff (junior or support).

The proposed hourly rates seek to better align the tasks performed by administrators with similar services provided in the business services sector (e.g., services provided by accountants, financial advisors).

|  |
| --- |
| **How rates were determined**  Complex tasks: A desktop survey of commercial (hourly) charge-out rates of the accounting and financial advisor segments of the business services sector was conducted. A typical hourly charge out rate of member financial services firms and accountants is around $200-$350 for a senior accountant or senior financial advisor.[[14]](#footnote-15)  Principal solicitors who act as administrators do not necessarily charge their usual commercial rate when doing administration work, but are subject to the PRO. While rates under the PRO vary and are often not based on time but on types of activities or length of documents, it is estimated that converted to an hourly rate, the PRO would result in fees for some of the more common administrator tasks usually performed by the administrator personally of between $250 and $350 per hour, depending on their efficiency.  It therefore seems that a reasonable rate for professional administrators to undertake more complex tasks is $300 per hour.  Routine administrative tasks: The ABS published rate for average weekly earnings in the Financial and Insurance Services sector[[15]](#footnote-16), which after allowing for on costs and overheads, is equivalent to a cost of $100 per hour.[[16]](#footnote-17) |

These rates should be linked to the *Monetary Units Act 2004* so that the amounts automatically increase annually in line with increasing costs of providing services, while also promoting efficiency.

It was also apparent that under the PRO (or other arrangements where payment is based on hourly rates) excessive fees appear to relate to tasks of little actual value to the administration of an estate or the represented person. These include charging for the time involved in making appointments, charging for the time (or length of email) related to sending a document that has already been subject to a charge for its preparation, and the time in taking calls from a represented person that are not for the purpose of performing the functions of the administrator. These incidental type tasks (and others) should not be a source of remuneration for administrators, but seen as ancillary, which they can choose how they manage, but are ultimately recompensed via the rates charged for the more substantive tasks.

Consistent with the pricing principles discussed above, these hourly rates would only apply to the tasks that make up the core work of administration of an estate—those tasks that will be common across most or all administrators. Services provided outside of this would not be subject to the same rates (or caps discussed below), and would reflect the type of additional service being provided.

For example, tasks or services provided by the administrator or their staff that are genuine legal services or advice—these are services that an administrator who is not a lawyer would usually be expected to seek independent legal advice on: for example, drafting legal documents such as contracts or wills, reviewing contracts where it would be usual to seek legal advice before signing, or interpreting legal requirements. For these tasks, the administrator is entitled to payment on the scale set out in the PRO.[[17]](#footnote-18) For accounting/financial management firms, the scale does not apply to fees that may be charged for providing financial advice of a type that requires a licence. This is to provide consistency, whereby if a professional administrator was, for example, an accountant and the need arose to obtain legal advice, the administrator would engage a legal practitioner outside of any remuneration scale. Alternatively, a professional administrator who is a legal practitioner may engage a financial advisor if specialist financial advice is required.

## Fee caps

Caps on fees are a useful mechanism to ensure that charges to a represented person are limited to a predictable (maximum) level, and that represented persons with limited ability or capacity to pay high fees are protected (e.g., no income-producing assets). VCAT currently uses fee caps in a range of orders it makes.

Fee caps, particularly for those represented persons that have limited ability to pay fees, are an optional element of the proposed remuneration scale, and further stakeholder feedback is invited on whether these should be included (see suggested approach in the next section). There may be some leeway in how fee caps are used—e.g., setting a strong cap on total fees may allow the hourly rate mentioned above to be set at a higher level, while a higher cap or the absence of any cap on fees may warrant the hourly rate to be set at a lower amount (such as $250 per hour) to provide greater confidence that fees are not excessive in aggregate.

The fee caps suggested in the next section are based on ensuring that the core tasks of an administrator can be performed, to sufficient quality, to meet the administrator’s duties under the Act, while recognising that many represented persons have limited capacity to pay fees, particularly where there are few assets (other than their home) or income (other than a pension). Of course, some fees would be outside the cap (such as where the administrator carries on the represented person’s business), and would also not apply to fees that are outside the scale (such as fees for legal services).

In any such system of fee caps there would need to be a mechanism whereby a service provider could apply to VCAT to set charges higher than the cap. This would be relevant for dealing with complex estates, high value estates, or dealing with legal disputes or other time-consuming matters. It may be that individual administrators may propose alternative approaches to safeguard the income available to represented persons; for example, fee caps could be waived where the administrator agrees that their fees above the cap will only be paid after some future event (such as sale of assets, which may be after the administration order has ended).

The intended purpose of a fee cap is to keep robust controls over excessive fees, and the cap can be varied or waived if there is a clear reason to do so.

## Overall assessment of proposed remuneration scale

Earlier in this chapter (see section 3.1), a number of remuneration principles were put forward. These principles are reformulated in the table below to provide a set of criteria against which the proposed remuneration scale can be examined.

The proposed arrangements are considered superior to the current arrangements against all criteria. In other words, the proposed remuneration scale should address the problems with the current arrangements by:

* balancing the best interests and needs of represented persons with fair remuneration for administrators
* providing a simpler, more cost effective methodology to apply charges
* providing a consistent remuneration scale for service providers (administrators), thereby establishing a level playing field
* improving transparency for all parties.

Table 2: Criteria analysis summary

| **Criterion** | **Current arrangements** | **Proposed remuneration scale** |
| --- | --- | --- |
| **Fairness (to represented persons, incorporating vertical equity issues) and protection from unnecessary costs** | Remuneration arrangements lack coherence and transparency, and are too complex for the lay person to understand.  Under such a system the most appropriate levels of charging may not occur. | Will ensure that remuneration matches tasks performed and seeks to set an appropriate level of value of service. |
| **Transparency** | Poor transparency in terms of tasks that attract fees, what fees apply and how fees are calculated. | Significant improvement in transparency. Improved transparency will also enhance accountability and enhance ‘trust’ in the system by improving the ‘information asymmetry’. |
| **Cost effectiveness (efficiency, and whether remuneration is fair to administrators and incorporates horizontal equity issues)** | The current scale is an artefact of the legal profession and, while entirely appropriate for legal work, does not represent the most suitable framework for administrator tasks. | Greater transparency and simplicity should drive cost efficiencies. |
| **Simplicity** | Not simple. The PRO is not fit for purpose for administration tasks, and is opaque in terms of how it should be applied. | Provides improved simplicity by setting clear remuneration fees against clearly defined tasks.  Any party would be able to easily understand how the scale has been applied and fees calculated. |



# Other matters

A number of issues were raised in consultation, or identified through the analysis, which are beyond the scope of setting a renumeration scale, but which may assist or support better remuneration management. In parallel with progressing and implementing the remuneration scale, VCAT will:

* consider the need for additional guidance/statement of expected conduct by administrators. For example, administrators should be expected to set up processes to reduce time and costs of routine tasks wherever possible (e.g., use of automatic direct debits to pay bills, use of cheapest payment methods where available).
* identify potential ways to assist reducing some of the costs incurred by administrators. A common example given was the processes for administrators dealing with banks, which appears to take excessive amounts of time because the banks do not have a clear understanding of administrator orders and what documentation is necessary to allow them to deal with an administrator. Separate work would be required to talk to banks to find out how this could be addressed.
* consider guidelines on when different types of administrators are appropriate. For example, law firms would be preferred when there are legal issues to resolve and trustee companies preferred where there is a substantial asset base that required financial expertise to manage wisely. There was some discussion among stakeholders as to whether State Trustees should be seen as the default administrator. Some feedback from stakeholders indicated that State Trustees would not always be the most appropriate administrator for certain clients. A new remuneration scale may provide an opportunity to better articulate what administrators are suitable for different circumstances.

# Appendix A: Duties of an administrator when exercising functions

An administrator must act in accordance with the general principles set out in section 8 of the GAA and the decision-making principles set out in section 9 of the GAA.

**General principles[[18]](#footnote-19)**

1. A person with a disability who requires support to make decisions should be provided with practicable and appropriate support to enable the person, as far as practicable in the circumstances:

(i) to make and participate in decisions affecting the person; and

(ii) to express the person’s will and preferences; and

(iii) to develop the person's decision-making capacity.

2. The will and preferences of a person with a disability should direct, as far as practicable, decisions made for that person.

3. Powers, functions and duties under the GAA should be exercised, carried out and performed in a way which is the least restrictive of the ability of a person with a disability to decide and act as is possible in the circumstances

**Decision-making principles[[19]](#footnote-20)**

1. The administrator should give all practicable and appropriate effect to the represented person's will and preferences, if known.

2. If the administrator is not able to determine the represented person's will and preferences, the administrator should give effect as far as practicable in the circumstances to what the person believes the represented person's will and preferences are likely to be, based on all the information available, including information obtained by consulting the represented person's relatives, close friends and carers.

3. If the administrator is not able to determine the represented person's likely will and preferences, the person should act in a manner which promotes the represented person's personal and social wellbeing.

4. If the represented person has a companion animal, the administrator should act in a manner that recognises the importance of the companion animal to the represented person and any benefits the represented person obtains from the companion animal.

5. The represented person's will and preferences should only be overridden if it is necessary to do so to prevent serious harm to the represented person.

In addition to acting in accordance with the general principles set out in section 8 and the decision-making principles set out in section 9 (outlined above) of the GAA, an administrator must also:[[20]](#footnote-21)

* act as an advocate for the represented person
* encourage and assist the represented person to develop the person’s decision-making capacity in relation to financial matters
* act in such a way so to protect the represented person from neglect, abuse or exploitation
* act honestly, diligently and in good faith
* exercise reasonable skill and care
* not use the position for profit (unless permitted under section 175 or otherwise authorised by law)
* avoid acting if there is or may be a conflict of interest unless so authorised under the GAA, by order of VCAT or otherwise by law
* not disclose confidential information gained as an administrator unless authorised to do so under the administration order or by law.

Administrators are accountable for the decisions they make and must submit accounts every year to VCAT. Administrators must submit an Account by Administrator (ABA) each year with details of the represented person’s financial affairs.

An administrator may apply to VCAT for advice on any matter relating to the scope of the administration order or the exercise of any power under the order.[[21]](#footnote-22)

# Appendix B: Proposed remuneration scale

This section proposes a remuneration scale based on remuneration principles and the information gathered from consultation with stakeholders.

## Application

This remuneration scale would apply to all administration orders where the administrator (being an individual or a body corporate) carries on a business of, or including, the administration of estates, except the scale does not apply to:

* State Trustees Limited
* a trustee company within the meaning of section 601RAA of the Corporations Act
* an administration order that VCAT determines is not subject to this scale.

## Payment for acting as administrator

The amount the administrator is entitled to payment (including GST) from the funds of the represented person is shown below.

**$300 per hour[[22]](#footnote-23)** for any of the following tasks:

* Attending a VCAT hearing for appointment of administrator
* Establishing an understanding about the represented person’s income, expenses, assets, and liabilities
* Establishing an understanding about the represented person’s will and preferences for spending, gifting, managing assets and liabilities
* Establishing an understanding about whether the represented person has a NDIS plan in place, or whether they require one, and who will manage this process
* Meeting with a represented person’s guardian, determining decisions to be made by the guardian and likely impact on finances
* Communicating with relevant authorities, Centrelink, banks, financial advisors, etc – online or in person – to notify them that the administrator has been appointed by VCAT
* If necessary, replacing the represented person as director of a company or other role (such as appointor of discretionary trust), unless other provisions have been made for those roles (include seeking legal advice on performance of role)
* Deciding whether the represented person is able to have access to any funds, or manage any of the tasks themselves
* Deciding whether any restructure of bank accounts is required, establishing if the represented person has any joint ownership arrangements, and how these will be managed
* Reviewing, approving and lodging a Financial Statement and Plan
* Negotiating/making arrangements with debtors
* Carrying on a business of the represented person
* Attending reassessment hearings at VCAT
* Communicating with VCAT about any major decision for which an administrator requires approval or advice for prior to undertaking the transaction (e.g., large gifts or loans, change of ownership of assets e.g., from joint to sole, in some cases, sale of property).

**$100 per hour** for any of the following tasks:

* Securing, taking possession, or collecting assets
* Locating the represented person’s Will
* Collecting income (e.g., dealing with Centrelink concerning payment failures/errors)
* Paying accounts
* Maintaining records of all income and expenditure
* Managing assets and liabilities
* Managing and maintaining real estate
* Purchasing or selling real estate
* Renting out real estate, dealing with agents
* Surrendering life assurance policies
* Insuring property and other assets
* Paying debts
* Recovering debts owed to the represented person
* Discharging mortgages
* Ensuring that the represented person receives their entitlements to any deceased estates to which they are a beneficiary
* Preparing and lodging tax returns
* Recording transactions and filing/safe custody of documentation
* Preparing and lodging an annual Account by Administrator.

**No payment** would be charged for:

* Making appointments
* Attendances (including by phone) with the represented person that are not about their will and preference, or are necessary to perform/complete some tasks
* Sending/receiving documents by email or fax, where a fee can already be charged for the preparation, review or obtaining of the document.

However, total payment shall not exceed, unless VCAT otherwise approves:

* $8,000 per year of administration for all of the above tasks other than acting as director, carrying on a business, or other tasks specifically agreed by VCAT
* $2,000 per year of administration if the represented person has assets of less than $20,000 (excluding principal place of residence) and income less than $930 per fortnight. [Note: this income amount is set to the threshold in the GA (Fees) Regulations 2022.]

VCAT can agree to different caps upon application.

The scale will apply only to those administrators carrying on a business that includes administration of estates

While the proposed remuneration scale would not apply to State Trustees or licensed trustee companies, it would apply to any other administrator that, according to the GAA, carries on a business of, or including, the administration of estates.[[23]](#footnote-24)

There must be a reasonable connection between the administration of estates and the other business undertaken by the administrator (as opposed to running two separate “businesses” in parallel); this is likely to be satisfied for any professional services business, although it remains a relevant factor that the administration of estates should be part of the business of the administrator, not in substance a separate and distinct activity.

It is also noted that, for the scale to be applicable (or indeed for any remuneration entitlement at all), it is the named administrator who is to be carrying on the business. For example, a Queensland case (which has similar requirements for entitlements to remuneration as Victoria) highlighted that, where a proposed administrator was only an employee of a professional firm, and would be paid by the firm for her time performing administration work and using other company resources, the employee was not considered to be carrying on a business herself.[[24]](#footnote-25)

## Payments not covered by this scale

The above scale does not apply to:

* Reimbursements for disbursements reasonably and necessarily incurred
* Tasks or services provided by the administrator or their staff that are genuine legal services or advice—these are services that an administrator who is not a lawyer would usually be expected to seek independent legal advice on: for example, drafting legal documents such as contracts or wills, reviewing contracts where it would be usual to seek legal advice before signing, orinterpreting legal requirements. For these tasks, the administrator is entitled to payment on the scale set out in the Practitioner Remuneration Order. (Note: for legal services that require section 51 approval (bringing or defending actions or other legal proceedings), or for any other activities for which the administrator order states VCAT approval is required, remuneration would be determined under those separate arrangements.)
* For accounting/financial management firms, and if the scale is adopted by STL or a licensed trustee company, the scale does not apply to fees that may be charged for providing financial advice of a type that requires an Australian Financial Services (AFS) licence.

If a professional administrator were, for example, an accountant and the need arose to obtain legal advice, the administrator would engage a legal practitioner. Alternatively, a professional administrator who is a legal practitioner may engage a financial advisor if specialist financial advice is required. Bringing or defending actions or other legal proceedings (see s 51 of GAA) requires separate leave of VCAT.

## Transitional

Once the remuneration scale is in place, it would apply to new administrator appointments made from that date. It would not apply to existing administrator orders which already set out the remuneration arrangements.

# Appendix C: Remuneration of administrators in other Australian jurisdictions

| **State** | **Legislation/regulation** | **Remuneration** | **Comment** |
| --- | --- | --- | --- |
| NSW | *Trustee and Guardian Act 2009*  Section 20 (1) the NSW Trustee may appoint agents and act as an agent for other persons. | Legislation permits NSW Trustee & Guardian to charge fees to carry out our financial management services, but private financial managers are not paid for performing their work unless they have a remuneration order from the Supreme Court of NSW. | It is relatively common for a trustee company to manage a represented person’s assets. In this case, the trustee company submits its proposed charges. Before approving a remuneration order the Supreme Court of NSW will seek advice from the NSW Trustee & Guardian to assess whether the remuneration proposal is reasonable. Such remuneration orders are made on a case by case basis.  Only in rare circumstances will a private individual apply to manage the affairs of a represented person. In any case, the process for obtaining a remuneration order is the same. |
| Queensland | *Guardianship and Administration Act 2000*  Section 48 Remuneration of professional administrators:  (1) An administrator for an adult is entitled to remuneration from the adult if the tribunal makes an order that the administrator is to be remunerated by the adult.  (2) The tribunal may make an order under subsection (1) only if the administrator carries on a business providing professional services.  (3) The remuneration may not be more than the amount the tribunal considers fair and reasonable, having regard to—  (a) the nature and complexity of the service; and  (b) the care, skill and specialised knowledge required to provide the service; and  (c) the responsibility displayed in providing the service; and  (d) the time within which the service was provided; and  (e) the place where, and the circumstances in which, the service was provided. | If the tribunal makes an order for a professional administer,then remuneration of professional administrators is negotiated on a case by case basis. QCAT recommends that a person obtains an estimate of fees from a professional administrator, the [Public Trustee of Queensland](http://www.pt.qld.gov.au) or a trustee company.  The Public Trustee has a detailed schedule for its services. Fees are based on the total value of the customer's assessable assets (e.g., the fee for managing assets with a value of between $100,000 and $200,000 is $ 1,306.25 per annum).  The Public Trustee also recoups the costs of running their systems and for photocopying, postage and phone calls. An amount is charged based on the type of service and the number of transactions required to provide the service. For example, if there are between 71 – 90 transactions per annum (e.g., phone calls) then an additional charge of $80 is applied.  The fee for additional services is calculated at an hourly rate of $267.85 (including GST).  Many clients are eligible for the Community Service Obligation hardship rebate. | In a recent review (January 2021) of the Public Trustee’s fees, it was recommended that there be a full review of fees and charges owing to their complexity, lack of fairness, and lack of transparency. |
| SA | *Guardianship and Administration Act 1993*  46—Remuneration of professional administrators  (1) Subject to [subsection (3)](#id16756b1a_9974_439e_8bfa_19aa8e214fa3), an administrator who carries on a business of or including the administration of estates (whether under this Act or otherwise) is entitled to remuneration out of the estate of the protected person for the work involved in administering that estate (whether the work was or is performed before or after the commencement of this Act) if the Tribunal so determines.  (2) The rate of remuneration will be the prescribed rate unless the Tribunal thinks good reason exists for fixing some other higher or lower rate in relation to any particular estate and orders accordingly. | *Guardianship and Administration Regulations 2015*  Regulation 7—Rate of remuneration for professional administrators (section 46(2) of Act) For the purposes of section 46(2) of the Act, the prescribed rate is $71.50 for each hour. |  |
| WA | *Guardianship and Administration Act 1990*  Section 117. Remuneration  (1) The State Administrative Tribunal may fix remuneration or a rate of remuneration and order that the same be paid to an administrator out of the estate of the represented person if the Tribunal considers that, because of the size or complexity of the estate or both, remuneration should be paid to the administrator.  (2) A guardian, and except as provided in subsection (1) an administrator, shall not receive remuneration for services rendered to the represented person.  (3) Nothing in this section prevents the Public Trustee from receiving remuneration under the Public Trustee Act 1941; or limits the operation of section 16 of this Act or section 39, 87 or 88 of the State Administrative Tribunal Act 2004.  (4) Subject to subsection (3)(a), a corporate trustee shall only be entitled to commission in respect of the capital of the estate of a represented person to the extent that the State Administrative Tribunal expressly allows. | Set by the State Administrative Tribunal on a case-by-case basis. This is a rare occurrence. | Administrators are not usually paid for their work, nor reimbursed for lost wages. Generally, they take on the role out of friendship or a feeling of family responsibility.  Exceptions are made where the role of administrator will take an unusually large amount of time or where a professional is appointed, for example, the represented person’s solicitor or accountant. Payment is then made at a rate set by the State Administrative Tribunal.\*  **\***https://www.wa.gov.au/system/files/2021-05/PTO-private-administrator-guide.pdf |
| Tasmania | *Guardianship and Administration Act 1995*  Section 55 – Remuneration of professional administrators  (1) An administrator who carries on a business of, or including, the administration of estates, whether under this Act or otherwise, is, if the Tribunal so determines, entitled to remuneration out of the estate of the represented person for the work involved in administering that estate, whether the work was or is performed before or after the commencement of this section.  (2) This section does not affect the right of The Public Trustee or a trustee company to recover charges and expenses under any other law. | In practice, professional administration is undertaken by the Public Trustee or TPT Wealth (formerly Tasmanian Perpetual Trustees).  From 1 January 2016, if the Guardianship and Administration Board appoints the Public Trustee as a Financial Administrator, the following fees are charged:  For clients with assets under $10,000 – no capital commission, no monthly account fees; and no income commissions.  For clients with assets between $10,000 and under $100,000 – no capital commission, no monthly account fees; and a reduced fee of 2.75 % is charged on the receipt of all income such as interest, dividends and pensions.  For clients with assets over $100,000 – $601.00 one-off establishment fee; when the administration ends, a commission of 2.2% is taken on the current value of the assets which have not been realised during the administration.  On the first $200,000 or part 4.5%; on the next $200,000 or part 3.5%; on the next $200,000 or part 2.5%; and on amounts above $600,000 1.5%. A fee of $65.00 for completing the annual report required by the Guardianship and Administration Board is required, along with a fee of $150.00 for completing the 3 yearly review and report required by the Guardianship and Administration Board.  Legal services provided by legal practitioners are charged at a rate determined by the Public Trustee but not exceeding the maximum hourly attendance rate set out in the Supreme Court Rules 2000.  Administrator fees charged by TPT Wealth are as follows:  $0 - $100,000 Minimum fee of $9,000 applies  $100,001 - $400,000 5.50%  $400,001 - $750,000 4.40%  $750,001 - $1,000,000 3.30%  $1,000,001 - $2,000,000 2.20%  Above $2,000,001 1.10% | If an Administrator is a person normally engaged in the business of administering estates (e.g., a commercial solicitor or a professional estate planner), they may be paid for their time, pursuant to section 55 of the Act. This occurs only very rarely\*, but the Administrator can contact the Tribunal should they have any enquiries about applying for remuneration. Otherwise, an Administrator is a voluntary role.[[25]](#footnote-26)  \*Less than one per year – on a case by case basis (in the most recent case $600 per annum) |

1. State Trustees Ltd is a Victorian Government-owned company established via the *State Trustees (State Owned Company)*

   *Act 1994*. It has legislative functions and duties to represent people in certain situations. [↑](#footnote-ref-2)
2. Australian Adult Guardianship Orders 2020/21, Report on adult guardianship and administration/financial management applications and new orders 1 July 2020 – 30 June 2021, https://www.agac.org.au/assets/images/Annual-Report-on-Adult-Guardianship-Orders-2020-2021\_2022-03-14-014828.pdf [↑](#footnote-ref-3)
3. See section 47A of the *Guardianship and Administration Act 1986*. The rationale for the change under the new GAA was not discussed during the parliamentary debate on the Bill. [↑](#footnote-ref-4)
4. See also VCAT Act, section 157(3). [↑](#footnote-ref-5)
5. SLA, section 8(1)(b). The exemption certificate needs to be signed by the Attorney-General. [↑](#footnote-ref-6)
6. Chapter 5D of the Corporations Act regulates what fees may be charged by a licensed trustee company. [↑](#footnote-ref-7)
7. <https://lsbc.vic.gov.au/resources/practitioner-remuneration-order-2022> [↑](#footnote-ref-8)
8. Note: the PRO does not apply to litigation matters. Under the GAA, an administrator may only bring or defend an action or other legal proceeding if the VCAT order grants such a power (s 51). In such circumstances, a court or tribunal may order that a person who is or was an administrator be reimbursed from the represented person's estate for any costs incurred by the person as an administrator in bringing or defending an action or other legal proceeding. Therefore, the proposed scale of remuneration does not need to deal with payments associated with litigation. [↑](#footnote-ref-9)
9. Case files were de-identified and redacted where appropriate. [↑](#footnote-ref-10)
10. Department of Treasury and Finance, 2021, *Pricing for Value: A guide for government services - Pricing playbook* – Supplementary Material, no pagination [↑](#footnote-ref-11)
11. Section 48 – Remuneration of professional administrators, *Guardianship and Administration Act 2000* (Qld) [↑](#footnote-ref-12)
12. SMD (No 2) [2015] QCAT 190. However, QCAT did not suggest that $420 was appropriate in other circumstances, but found that it represented the value of the administrator’s time in this particular case. [↑](#footnote-ref-13)
13. The Queensland Public Advocate recently recommended a full review of its fees and charges, including proposing a simpler fee regime for administration clients and greater transparency. See: *Preserving the financial futures of vulnerable Queenslanders: A review of Public Trustee fees, charges and practices List of recommendations*, January 2021: https://www.justice.qld.gov.au/\_\_data/assets/pdf\_file/0006/698928/opa-public-trustee-fees-and-charges-report-list-of-recommendations.pdf [↑](#footnote-ref-14)
14. Commercially quoted hourly rates from websites: <https://obrienaccountants.com/baserate.html>; <https://www.blackandkrantz.com.au/about_us/fees>; <https://www.airtasker.com/accounting/tax-accountants/price/tax-accounting-cost/>; <https://www.airtasker.com/accounting/financial-advisor/price/financial-advisor-cost/>; [↑](#footnote-ref-15)
15. ABS Cat. 6302.0 Average Weekly Earnings, Australia, Financial and Insurance Services sector (May 2002). Sector selected as a proxy for staff of administrators (e.g., junior staff, support and admin staff, and clerks). [↑](#footnote-ref-16)
16. Average weekly earnings, Financial and Insurances Services Sector, original - males, full time adult ordinary time earnings - $2,355.80; Average weekly earnings, Financial and Insurances Services sector, original - females, full time adult ordinary time earnings - $1,907.80. Average week earnings (male and female) ÷ 40 hours x 1.75 provides a range of $83.48 to $103.08 (approximated to $100 per hour). See also: <https://www.abs.gov.au/articles/understanding-full-time-and-part-time-work> . Guidance notes provided by Department of Treasury and Finance suggest the use of a multiplier of 1.75 to account for labour on-costs of employees (factor of 1.25) and corporate overheads (factor of 1.50). [↑](#footnote-ref-17)
17. Note: for legal services that require section 51 of the GAA approval (bringing or defending actions or other legal proceedings), or for any other activities for which the administrator order states VCAT approval is required, remuneration would be determined under those separate arrangements. [↑](#footnote-ref-18)
18. Administration guide: A guide for people appointed as administrators under the Guardianship and Administration Act 2019 (March 2020), p. 12: https://www.publicadvocate.vic.gov.au/joomlatools-files/docman-files/booklet/Guardianship\_Guide.pdf [↑](#footnote-ref-19)
19. Administration guide: A guide for people appointed as administrators, ibid, p. 10 [↑](#footnote-ref-20)
20. See section 55 of the GAA. [↑](#footnote-ref-21)
21. Section 64 of the GAA. [↑](#footnote-ref-22)
22. It is recommended that when made under the Rules, the fee amounts will be set in terms of fee units under the Monetary Units Act, so they can increase without the need to remake the scale each year, and long administrations also benefit from increasing remuneration amounts. [↑](#footnote-ref-23)
23. VCAT may still allow remuneration to be paid to administrators that are not in the business of administration of estates, however this is a decision under s. 175(1) of the GAA, and would not fall within the scope of the proposed remuneration scale, which applies only to administrators under s. 175(2). [↑](#footnote-ref-24)
24. *Preston* [2016] QCAT 52. [↑](#footnote-ref-25)
25. https://www.tascat.tas.gov.au/\_\_data/assets/pdf\_file/0003/637302/Private-Administrator-Handbook.pdf [↑](#footnote-ref-26)