

## What are Directions and Authorities?

This Directions and Authorities document sets out both the powers of the manager appointed to look after the financial affairs of a person no longer capable of making decisions on his or her own behalf, and the requirements of the Protective Commissioner regarding financial management. In short, the document states what the manager can do and what they must do. In framing the Directions and Authorities, the Office of the Protective Commissioner takes into account the complexity of the financial affairs that the manager will be handling.

Should the manager need to make a decision on a matter that the Directions and Authorities document does not cover, they can apply to the Protective Commissioner for extra decision-making powers. If the Protective Commissioner agrees, the Directions and Authorities will be amended. The Private Management Branch of the Office of the Protective Commissioner is the first point of contact for the manager in these circumstances.

Should the manager disagree with a decision made by the Office of the Protective Commissioner, the manager may ask for a review of the decision. Further information is provided in the Private Manager's Handbook.

### Compliance with these Directions and Authorities

The manager must comply with these Directions and Authorities and any orders or further Directions and Authorities of the Protective Commissioner. Failure to do so could result in a financial penalty.

Please note Section 70A of the Protected Estates Act 1983 which provides as follows:  
70A. Failure to comply with directions of Protective Commissioner

A person must not fail to comply with any direction that is given to the person by the Protective Commissioner in accordance with the Protective Commissioner's functions under this Act.

Maximum penalty: 100 penalty units.

How to contact OPC  
Office of the Protective Commissioner  
160 Marsden Street Parramatta  
Locked Bag 5115 Parramatta NSW 2124

Telephone: 02 8688 2600  
Outside Sydney: 1300 360 466  
TTY: 1800 882 889 (telephone typewriter)  
Fax: 02 8688 9788  
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Internet: <http://www.lawlink.nsw.gov.au>

# OFFICE OF THE PROTECTIVE COMMISSIONER

DIRECTIONS and AUTHORITIES  
Protected Estates Act 1983, Section 30

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Protected Person: #  
(referred to as “the protected person” throughout this document)  
Manager: #  
(referred to as “the manager” throughout this document)  
OPC Client Reference Number:  
Date:

In this document if a manager is directed to do something the manager must do so. There are penalties for not complying with a direction. If a manager is authorised to do something they may exercise discretion in exercising that power. Where more than one manager has been appointed, the word manager refers to all managers appointed.

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The Supreme Court of New South Wales/Guardianship Tribunal made a Financial Management Order/Interim Financial Management Order on #  
200#, #and a further Order on # 200#, appointing #  
manager of the estate of # , the protected person.

The Protective Commissioner gives the following DIRECTIONS and AUTHORITIES to the manager to enable #him/her/them to manage the estate.

These Directions and Authorities replace those issued to the manager on # .

The Guardianship Tribunal Financial Management Order is to be reviewed on or before#

#. These Directions and Authorities remain current until # .

The Protective Commissioner is empowered to issue these Directions and Authorities under section 30 of the Protected Estates Act 1983.

## 1. Priority Issue(s)

## 2. General Functions

Unless stated otherwise in this document the manager is authorised to:

- (a) Take possession of all papers and documents belonging to the protected person and to sign all documents relating to the protected person’s estate;
- (b) Receive and give a discharge for all money and property to which the protected person is or may become entitled;

- (c) Prepare and lodge all appropriate tax returns.

### **3. Banking**

The manager is authorised to:

- (a) Continue to operate the protected person's existing bank, credit union or building society account as a working account. Only the manager is authorised to use this account;
- (b) Open a new working account in the name of the protected person at a bank, credit union or building society of the manager's choice as an alternative to using an existing account. Only the manager is authorised to use that account;
- (c) Deposit all money for the protected person in the working account, and pay all expenses for the protected person from that account;
- (d) Close any bank, credit union or building society account that the manager considers is no longer needed.

### **4. Expenditure**

Taking into consideration the protected person's financial resources, the manager is authorised to pay all properly incurred expenses as follows:

- (a) All reasonable living costs, including accommodation, care and medical expenses;
- (b) All minor expenses incidental to the management of the estate;
- (c) All income and property taxes;
- (d) Municipal, water and sewerage rates and charges and strata levies for real estate owned by the protected person;
- (e) Mortgage payments on the protected person's real estate;
- (f) The cost of minor repairs to a limit of \$# in any one year as are necessary to maintain the protected person's real estate in good condition; [Additions, renovations or repairs above \$# in any one year will require the prior approval of the Protective Commissioner];
- (g) The cost of insurance cover for the property of the protected person for the full insurable value and such workers' compensation, public, personal liability and other insurance covers as may be necessary;
- (h) Gas, electricity and telephone charges;
- (i) Contributions for private health insurance where appropriate;
- (j) The protected person's reasonable holiday expenses;
- (k) The reasonable cost of running and maintaining the protected person's motor vehicle.

Note: In the case of joint liabilities, the manager is authorised to pay the protected person's proportional share only.

## **5. Investment**

The manager is directed to:

- (a) Submit to the Protective Commissioner a proposal for the investment of the protected person's estate within ( ) months. The proposal should include a list of the protected person's assets and liabilities. The proposal should meet the Protective Commissioner's Guidelines for Private Managers Seeking to Invest Protected Person's Funds;
- (b) Hold any of the protected person's existing investments in their current form of investment until such time as the proposal required in Clause# is received and considered by the Protective Commissioner;
- (c) On the transfer of any entitlements to the protected person from the estate of the late # , provide an accounting of the estate and submit a proposal as to the future management of the protected person's estate, including the inheritance from the estate of the late # . The proposal should meet the Protective Commissioner's Guidelines for Private Managers Seeking to Invest Protected Person's Funds;

The manager is authorised to:

- (d) Take up new issues of shares to which the protected person is or may become entitled or to sell the rights to these new share issues.

## **6. Professional Fees**

Having regard to the financial resources available to the protected person the manager is authorised to pay certain professional fees. These fees are:

- (a) The reasonable fees for the services of an accountant to carry out accounting duties (but not actual management of the protected person's estate);
- (b) The reasonable cost of obtaining financial/investment advice (but not actual management of the protected person's estate);
- (c) The reasonable cost of obtaining legal advice in relation to the management of the estate (but not actual management of the protected person's estate).

## **7. Leasing Real Estate**

The manager is authorised to lease or to continue to lease the real estate at # , and, after expiry of #that/those lease/s, to negotiate new leases at the best rent obtainable and to employ real estate agents and pay their reasonable charges. The manager is directed to forward to the Office of the Protective Commissioner the front page of the current and all subsequent lease agreements.

Should circumstances change which require the sale of this real estate then the manager shall submit a written proposal and recommendation for the approval of the Protective

Commissioner which meets the Protective Commissioner's Guidelines for Sale of Real Estate by Managers.

## **8. Real Estate**

- (a) The manager is not authorised to permit occupation of the protected person's real estate by other persons including members of the protected person's family without the prior written consent of the Protective Commissioner;
- (b) The manager is directed within # ( ) months to submit a recommendation as to the future use, retention or disposal of the protected person's real estate;
- (c) Should circumstances change which require the protected person to vacate the real estate at# the manager is directed to submit a written proposal and recommendation as to the future use, retention or disposal of the real estate;
- (d) If the proposal is to sell the real estate then the manager is directed to submit a written proposal and recommendation for the approval of the Protective Commissioner which meets the Protective Commissioner's Guidelines for Sale of Real Estate by Managers;
- (e) The manager is directed within (# ) months to submit a report and recommendation as to either #'s continued occupation of or the future use, retention or disposal of the real estate at # owned by the protected person;
- (f) The manager is directed within # (# ) months to submit a report and recommendation as to the proposed occupation of the protected person's real estate at# which meets the Protective Commissioner's Guidelines for Private Managers Concerning Occupation of Protected Person's Property by a Family Member".
- (g) The manager is directed to submit a proposal and recommendation #to purchase #or to make offers to purchase at a price not above \$#, the real estate at # which meets the Protective Commissioner's Guidelines for Private Managers for Purchase of Real Estate by Managers.

## **9. Aged Care Facilities**

- (a) The manager is directed to submit a proposal and recommendation for the payment of an entry contribution/accommodation bond to an aged care facility on behalf of the protected person which meets the Protective Commissioner's Guidelines for Private Managers for Entry into Residential Care Facility Agreement;
- (b) Should circumstances change which require the protected person to vacate any aged care facility, the manager is directed to lodge the proceeds of the redemption of any accommodation bond/aged care facility bond with the Protective Commissioner pending receipt of a proposal from the manager for the investment of the funds which meets the Protective Commissioner's Guidelines for Private Managers Seeking to Invest Protected Person's Funds.

## 10. Legal Proceedings

The manager is authorised to:

- (a) Retain a lawyer when appropriate to carry out any necessary legal work in connection with the management of the protected person's estate, (but not the actual management of the protected person's estate or commencement of legal proceedings) and to pay the reasonable costs and disbursements of that lawyer in accordance with Clause # of these Directions and Authorities;
- (b) Commence/continue with proceedings in the #Supreme/District Court of New South Wales/Family Court of Australia on behalf of the protected person against #, in respect of #, and in order to facilitate this to:
  - (i) employ lawyers to conduct the proceedings to conclusion and to pay their reasonable costs;
  - (ii) act, if necessary, as #tutor/next friend/case guardian for the protected person in the proceedings;
  - (iii) enter into settlement negotiations if so advised and, subject to the approval of the Court at the hearing of the proceedings, to compromise same on such terms as the manager may consider reasonable and proper if so advised by their lawyers;
- (c) Make an application to the Victims' Compensation Tribunal on behalf of the protected person in respect of the incident which occurred on #. Any compensation monies received are to be lodged with the Protective Commissioner pending further direction;
- (d) Call on the #executor/administrator of the estate of the late # to account to the manager in respect of the administration of the estate and to transfer any entitlements to the protected person. In the event of the failure of the #executor/administrator to so account to the manager, to take appropriate proceedings as the manager may be advised by lawyers to obtain the protected person's entitlements from the estate.

On the finalisation of the estate the manager shall submit a proposal as to the future management of the protected person's estate including the inheritance from the estate in accordance with Clause# of these Directions and Authorities;

- (e) Within ( ) month/s to investigate the circumstances of the sale of the real estate at # and the purchase of the real estate at#, including drawings made from #'s # Account No. # for the period #, to #, and to provide a report and recommendation as to any action proposed be taken in respect of these transactions.

The manager is directed to:

- (f) Make investigations, including seeking legal advice and within # month/s submit a report and recommendation in respect of any action to be taken on behalf of the protected person in respect of their interest in the estate of the late # ;

The manager is directed not to:

- (g) Receive or deal with any verdict or settlement moneys without the further authority or direction of the Protective Commissioner;

#### **11. Miscellaneous Functions**

- (a) The manager is authorised to sell the protected person's # motor vehicle Registered No. # at the best price obtainable;
- (b) The manager is authorised to proceed with the redemption of the share/s held by the protected person in # ,entitling them to occupy the property at #. The manager is directed to deposit the net proceeds of the redeemed share/s with the Office of the Protective Commissioner pending further direction;
- (c) The manager is directed to submit within ( ) months a report and recommendation as to the continued operation of \_\_\_\_\_.  
This report should include copies of the company's last tax return, annual report, financial statements and Memorandum and Articles of Association/Constitution;
- (d) The manager is directed to investigate and submit a recommendation as to payment or otherwise of the claim by # for \$# ;
- (e) The manager is directed to submit within ( ) months a recommendation as to the future use, retention or disposal of # owned by the protected person;
- (f) The manager is authorised to sell the assets and goodwill of the protected person's business known as # at the best price obtainable, and to sign all necessary documents to give effect to the sale;
- (g) The manager is authorised to continue to conduct the rural business of the protected person known as # and to enter into any lease, share farming or other agreement as may be appropriate for the proper management of that rural business;
- (h) The manager is authorised to lease or to continue to lease the mobile home located on site # ,and, after expiry of #that/those lease/s to negotiate new leases at the best rent negotiable;
- (i) The manager is authorised to sell the protected person's mobile home located on site # at the best price obtainable.

#### **12. Restrictions on Powers**

The manager is directed:

Not to deal with the estate of the protected person in any manner without the prior approval of the Protective Commissioner, unless stated otherwise in this document or any further Directions and Authorities given by the Protective Commissioner.

All further applications to the Protective Commissioner regarding the administration and management of the protected person's estate shall be made by letter to the Office of the Protective Commissioner. The manager shall make all inquiries necessary to establish the facts and give the matter careful consideration in order to make a specific recommendation.

**13. Security**

- (a) The manager is directed to lodge with the Protective Commissioner the relevant title document/s in respect of real estate at#
- (b) The manager is directed to lodge the relevant title document/s in respect of the real estate at# with a lawyer and to lodge with the Protective Commissioner a letter from that lawyer undertaking that the title document/s will not be dealt with or released without the prior written consent of the Protective Commissioner;
- (c) The manager is directed to lodge with the Protective Commissioner a letter from # undertaking that the relevant title document/s to the real estate at # will not be dealt with or released without the prior written consent of the Protective Commissioner;
- (d) The manager is directed to lodge with the Protective Commissioner a letter from the Bank/Credit Union/ Building Society, undertaking that the proceeds of Account No.# / Term Deposit No. # will not be dealt with or released without the prior written consent of the Protective Commissioner;
- (e) The manager is directed to arrange for Account No. # with the # Bank/Credit Union/Building Society at # to be transferred to a term deposit account at that Bank/Credit Union/Building Society, subject to lodging with the Protective Commissioner a letter from the #Bank/ Credit Union/Building Society undertaking that the proceeds of the term deposit will not be dealt with or released without the prior written consent of the Protective Commissioner;
- (f) The manager is directed on settlement of the sale of the protected person's real estate at # ,to deposit # the net proceeds of sale #their share of the net proceeds of sale with the Protective Commissioner pending receipt of a proposal from the manager for the investment of the funds which meets the Protective Commissioner's Guidelines for Private Managers Seeking to Invest Protected Person's Funds;
- (g) The manager is directed to lodge the proceeds of Account No. # at the Bank/Credit Union/Building society with the Protective Commissioner pending receipt of a proposal from the manager for the investment of the funds which meets the Protective Commissioner's Guidelines for Private Managers Seeking to Invest Protected Person's Funds;

- (h) The manager is directed to lodge the sum of \$#  
with the Protective Commissioner pending receipt of a proposal from the manager for the investment of the funds which meets the Protective Commissioner's Guidelines for Private Managers Seeking to Invest Protected Person's Funds;
- (i) The manager is directed to lodge the proceeds of the #  
No. # of # with the  
Protective Commissioner pending receipt of a proposal from the manager for the investment of the funds which meets the Protective Commissioner's Guidelines for Private Managers Seeking to Invest Protected Person's Funds;
- (j) The manager is directed to arrange for funds held by the Supreme Court/ District Court of New South Wales on behalf of # \_\_\_\_\_ to be deposited with the Protective Commissioner pending receipt of a proposal from the manager for the investment of the funds which meets the Protective Commissioner's Guidelines for Private Managers Seeking to Invest Protected Person's Funds;
- (k) The manager is directed to lodge funds representing the proceeds of the Supreme Court/District Court of New South Wales award to # \_\_\_\_\_ with the Protective Commissioner pending receipt of a proposal from the manager for the investment of the funds which meets the Protective Commissioner's Guidelines for Private Managers Seeking to Invest Protected Person's Funds;
- (l) The manager is directed, following the implementation of an appropriate investment plan, to lodge with the Protective Commissioner a written undertaking from the funds manager that the capital amount lodged for investment will not be released without the prior consent of the Protective Commissioner;
- (m) The question of security/further security will be reviewed on receipt of the proposal required under Clause# of these Directions and Authorities and on receipt of the annual accounts.

#### **14. Authorised Visitors**

The Protective Commissioner is authorised to obtain an independent report on a protected person's health, general condition, standard of care, treatment and accommodation. The Protective Commissioner may direct an Authorised Visitor, who is an independent health professional, to provide such a report. The fees of the Authorised Visitor and any expenses incurred in providing the report are paid from the protected person's estate.

The manager is directed to pay the fees of the Authorised Visitor and any expenses incurred in providing the report from the protected person's estate within fourteen days of presentation of the invoice by the Office of the Protective Commissioner.

#### **15. Accounting**

The manager is directed to:

- (a) Keep proper accounts and vouchers relating to the management of the protected person's estate, to file the accounts annually in accordance with the Protective Commissioner's requirements and to pay fees in accordance with the Protected Estates Act 1983 and Protected Estates Regulation 2003;

- (b) Provide, with the annual accounts, a certificate stating that the manager has reviewed the performance of the protected person's investment portfolio and the manager is satisfied that the current investments as disclosed in the accounts fall within the Protective Commissioner's Guidelines for Private Managers Seeking to Invest Protected Person's Funds.

#### **16. Discharge of Manager or Revocation of Order**

The manager is directed:

To lodge with the Protective Commissioner a final account of all money received and paid and a financial statement for the protected person's estate within one (1) month of either the discharge of the manager or the revocation or termination of the Order. The final account must show the financial situation as at the date of the discharge or the revocation of the Order.

#### **17. Death of the Protected Person**

The manager's powers cease when the protected person dies. If this occurs, the manager is directed to:

- (a) Take immediate steps to contact the executor of the protected person's estate where there is a will or, where there is no will, the protected person's next of kin and inform them of the death and provide details of their estate as at date of death, including the liability to pay fees in accordance with the Protected Estates Act 1983 and the Protected Estates Regulation 2003;
- (b) Forward to the Office of the Protective Commissioner a copy of the death certificate and details of the executor/administrator of the protected person's estate and the lawyer acting for the executor/administrator;
- (c) File a final accounting of all money received and paid and a financial statement of the protected person's estate up to the date of death within three (3) months.

DATED:

for the PROTECTIVE COMMISSIONER