QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*TJ v Public Trustee of Queensland & Anor* [2022] QCATA 189
PARTIES:	**TJ** (applicant/appellant) v **PUBLIC TRUSTEE OF QUEENSLAND** **CRG** (respondents)
APPLICATION NO/S:	APL149-20
ORIGINATING APPLICATION NO/S:	GAA611-16 Applicaton for Directions
MATTER TYPE:	Appeals
DELIVERED ON:	28 November 2022
HEARING DATE:	9 September 2021
HEARD AT:	Brisbane
DECISION OF:	Senior Member Guthrie
ORDERS:	**1. The oral application for leave to appeal is granted.** **2. The application for leave to rely upon fresh evidence is dismissed.** **3. The application to appeal is dismissed.**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – where decision made to dismiss an application for compensation under the *Guardianship and Administration Act* 2000 (Qld) - where applicant claims member made errors of law – where appeal tribunal dismissed appeal APPEAL AND NEW TRIAL – ADMISSION OF FURTHER EVIDENCE – EVIDENCE NOT AVAILABLE AT HEARING – where applicant seeks to rely on publicly available report – where application to rely on fresh evidence refused *Guardianship and Administration Act* 2000, s 33, s 34, s 35, s 36, s 59, s 125, s 130, s 155, Schedule 1 *Queensland Civil and Administrative Tribunal Act* 2009, s 142(1), s 142(3)(b) *Trusts Act* 1973, s 24

Cachia v *Grech* [2009] NSWCA 232 at [13].
CRG [2020] QCAT 153.
CRG [2019] QCAT 168.
Ebner v The Official Trustee in Bankruptcy (2000) 205 CLR 337.
Glenwood Properties Pty Ltd v Delmoss Pty Ltd [1986] 2 Qd R 388.
Maffey v *Mueller* [2016] QCATA 19.
McIver Bulk Liquid Haulage Pty Ltd v Fruehauf Australia Pty Ltd [1989] 2 Qd R 577.
QUYD Pty Ltd v Marvass Pty Ltd [2009] 1 Qd R 41.
Thang Long Pty Ltd v CTS Sunstate Group Pty Ltd [2022] QCATA 18.

APPEARANCES & REPRESENTATION:

Applicant:	Self-represented
Respondents:	R Whiteford, Official Solicitor to the Public Trustee of Queensland
	M Jones of Counsel appointed to represent CRG

REASONS FOR DECISION

Background

[1] TJ was appointed by the Tribunal as an administrator for CRG on 26 April 2016 replacing the Public Trustee of Queensland (the Public Trustee).

[2] On 12 May 2020, the learned member of the Tribunal decided to dismiss TJ's application for an order that, pursuant to s 59 of the *Guardianship and Administration Act* 2000 ('the GAA Act'), compensation be paid to CRG by the Public Trustee.[1] TJ appeals that decision.

[3] The decision followed the same member's earlier decision on 6 June 2019, that the Public Trustee should compensate CRG in a particular sum, for its failure to comply with the GAA Act in the exercise of a power. At the same time, the learned member dismissed the claim brought against the Public Guardian ('the compensation decision').[2] That decision was not the subject of an appeal. In the appeal, TJ relies, to some extent, on the reasons the learned member gave for the compensation decision.

[4] On 10 September 2020 the Appeal Tribunal appointed Mr Matthew Jones of Counsel as representative for CRG for the appeal proceedings pursuant to s 125 of the GAA Act to represent his views, wishes and interests. Mr Jones had been appointed representative for CRG in the proceeding below.

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1 *CRG* [2020] QCAT 153.
2 *CRG* [2019] QCAT 168.

[5] TJ says that the learned member has made errors of law in deciding not to order that compensation be paid to CRG in relation to the Public Trustee's decision to sell CRG's real estate. During the course of the appeal hearing, when it became apparent that he may, in fact, be arguing that the learned member had made errors of fact or errors of mixed fact and law, I granted TJ leave to make an oral application for leave to appeal which he did at the hearing.

[6] In the course of the application proceeding to a hearing on the papers, the learned member made a series of directions including those made 24 February 2020:

> 1. The tribunal proposes to determine the two matters for which compensation is sought under section 59 of the *Guardianship and Administration Act* 2000 (Qld) (that is the real estate matter and compensation relating to the misappropriation of moneys matter) on the papers without further submissions on a date after 16 March 2020.
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> 2.On the question whether the material already submitted is sufficient to deal with remedy, the tribunal proposes that if it decides that a compensation order should be made but considers that there is insufficient material to quantify the correct level of compensation then it will make directions for further evidence and/or submissions to be provided by the parties.
>
> 3.If any interested party wishes to submit that the above proposals are unsuitable properly to dispose of the matters, then that party should give submissions to the tribunal and to all other interested parties explaining why the proposals are unsuitable: by **4:00pm on 9 March 2020**

[7] The learned member proceeded to determine the application without the need for further directions, evidence, or submissions in relation to remedy, having determined that a compensation order should not be made.

[8] In his application to appeal, TJ sought orders that the Public Trustee pay compensation to CRG 'for the loss of the real estate and opportunities TJ had on 5 February 2004'. At the hearing, TJ agreed that in the event the Appeal Tribunal decided to set aside the decision of the learned member, it would not be appropriate for the Appeal Tribunal to award a specified sum of compensation in the appeal given the directions made by the learned member on 24 February 2020.[3]

[9] I have considered the written submissions filed in the Tribunal by the parties and their representatives as well as the oral submissions made at the hearing.

Grounds of appeal

[10] TJ's application to appeal sets out the following grounds of appeal:

a) The learned member did not apply the statutory weight of the following legislative provisions:

   (i) Section 34 of the GAA Act and the General Principles[4]

   (ii) Section 35 of the GAA Act and s 24 of the *Trusts Act* 1973

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3 Application for leave to appeal or appeal (AP001), Part D.

4 As in force at the time of the decision, that is, in schedule 1 of the GAA noting amendments to the GAA including the General Principles took effect from 30 November 2020.

(iii) Section 33 of the GAA Act and section 36 of the GAA Act

b) The learned member's determination of CRG's loss has disregarded CRG's rights and interests in the 2002 decision of the Guardianship and Administration Tribunal ('the GAAT') and is not consistent with that decision.[5]

[11] At the hearing, TJ submitted that the learned member had erred by making assumptions he was not culturally competent to make and those assumptions demonstrated racial bias. I have dealt with that submission as a separate ground of appeal.

Background decisions

[12] TJ relies on a number of previous decisions made by the GAAT and this Tribunal concerning CRG. I consider it useful to summarise those decisions at the outset.

[13] By Supreme Court Order dated 21 December 2000, the Public Trustee was appointed administrator for CRG to manage a settlement sum.

[14] On 28 November 2002, the GAAT changed the appointment of the administrator for CRG by removing the Public Trustee and appointing CRG's mother and his aunt jointly (the joint administrators) for all financial matters for a period of five years. The GAAT also made a number of directions including, relevantly, that the joint administrators provide an updated financial management plan within three months of the purchase in CRG's name of any land. Annual accounts were also directed.

[15] In the appeal, TJ specifically relies on the reasons expressed by the GAAT for that decision, in particular, the following paragraphs:

> The Tribunal has had evidence of [CRG's mother] and [aunt's] cultural appropriateness as blood-line elders and accepts this evidence. The Tribunal also accepts Dr Field's statement in her report that "[CRG] is very dependent on his mother". An examination of the medical reports which were submitted in support of this application for review also reveals [CRG's mother's] advocacy and support for [CRG] over an extensive period of time.[6]
>
> The Tribunal does recognise the importance of the ownership of land to aboriginal people and also acknowledges that appropriate decision in relation to the purchase of a property for [CRG] has been delayed due to the conflict between [CRG's mother] and the [Public Trustee].[7]
>
> It is also clear that the possession of a large fund of money by the [Public Trustee] for [CRG] has not improved his quality of life and in fact his quality of life has deteriorated to the extent that he now leads an itinerant lifestyle and is sniffing inhalants.[8]
>
> In deciding who is the most appropriate administrator the Tribunal believes that after a consideration of these [General] Principles the proposed administrators … are more likely to maintain the adult's cultural and linguistic

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5 Application for leave to appeal or appeal, Part C (AP001).
6 GAAT reasons for decision dated 28 November 2002, [28].
7 GAAT reasons for decision dated 28 November 2002, [38].
8 GAAT reasons for decision dated 28 November 2002, [39].

> ties, maintain his existing supportive relationships and encourage self-reliance than the exiting administrators.[9]

[16] The joint administrators purchased a bush retreat for CRG and later, on 22 July 2003, a unit at the Sunshine Coast. On 14 January 2005, the bush retreat was sold.

[17] Between the purchase of the properties and the sale of the unit in 2007, the Adult Guardian (as the office was then known) was appointed by the GAAT, during particular periods, to make decisions about where CRG lived. For the purposes of the appeal the parties do not dispute that the relevant periods for which the Adult Guardian was appointed to make such decisions was 22 December 2003 to 7 April 2004, and 7 February 2007 to 22 March 2007. CRG was incarcerated in late 2003 residing with his father as part of his bail conditions from 11 December 2003. Otherwise, it is agreed that CRG was presumed to have capacity to make his own decisions about where he lived.

[18] On 12 December 2003, the GAAT suspended the joint administrators under s 155 of the GAA Act which meant the Public Trustee became CRG's administrator.

[19] On 8 April 2004, the GAAT appointed the Public Trustee as administrator for CRG for all financial matters until further order. The learned member referred in his reasons to the GAAT's reasons for that decision at [16]:[10]

> CRG's mother and [TJ] had failed to pay rent on the unit despite being warned not to benefit, a number of items had been purchased and money expended which were not to CRG's benefit, the joint administrators had not pursued a Centrelink pension for CRG, tribunal approval was not sought for the purchase of either of the properties because CRG was not living in either of them (as required by what was then section 52 of the GAA), there had been a failure to provide an updated management plan within three months of the purchase of any land as directed by the tribunal, the tribunal's direction to account for the time as joint administrators had not been complied with and the joint administrators had not kept sufficient records. There had been a payment of $31,016.96 legal fees from CRG's money. Also, there was a complete breakdown in the relationship between CRG's mother and his aunt who were the joint administrators. The tribunal noted that CRG's aunt stated that she disagreed with the purchase of the unit and the financial benefits derived from it, with the result that she wished to resign as administrator.

[20] On 26 April 2017 the Tribunal decided that TJ should replace the Public Trustee as administrator for CRG.[11]

Relevant legislative provisions

[21] The relevant legislation including the specific provisions relied upon by TJ as in force at the time of the decision of the learned member follow.

[22] Section 59 of the GAA Act relevantly provided:

> **Compensation for failure to comply**

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9 GAAT reasons for decision dated 28 November 2002, [46].
10 Reasons for the GAAT decision dated 12 December 2003 at [39]-[51] and [22].
11 *CDM* [2017] QCAT 135.

(1) A guardian or administrator for an adult (an ***appointee***) may be ordered by the tribunal or a court to compensate the adult (or, if the adult has died, the adult's estate) for a loss caused by the appointed failure to comply with this Act in the exercise of a power.

…

[23] Section 24 of the *Trusts Act* provides:

Matters to which trustee must have regard in exercising power of investment

(1) Without limiting the matters a trustee may take into account when exercising a power of investment, a trustee must, so far as they are appropriate to the circumstances of the trust, have regard to the following matters—

(a) the purposes of the trust and the needs and circumstances of the beneficiaries;

(b) the desirability of diversifying trust investments;

(c) the nature of and risk associated with existing trust investments and other trust property;

(d) the need to maintain the real value of the capital or income of the trust;

(e) the risk of capital or income loss or depreciation;

(f) the potential for capital appreciation;

(g) the likely income return and the timing of income return;

(h) the length of the term of the proposed investment;

(i) the probable duration of the trust;

(j) the liquidity and marketability of the proposed investment during, and at the end of, the term of the proposed investment;

(k) the total value of the trust estate;

(l) the effect of the proposed investment for the tax liability of the trust;

(m) the likelihood of inflation affecting the value of the proposed investment or other trust property;

(n) the cost (including commissions, fees, charges and duties payable) of making the proposed investment;

(o) the results of a review of existing trust investments.

(2) A trustee—

(a) may obtain, and if obtained must consider, independent and impartial advice reasonably required for the investment of trust funds or the management of the investment from a person whom the trustee reasonably believes to be competent to give the advice; and

(b) may pay out of trust funds the reasonable costs of obtaining the advice.

[24] TJ also relies on other legislative provisions in the GAA Act as follows:

Section 33 of the GAA Act provides:

> **Power of guardian or administrator**
>
> (1) Unless the tribunal orders otherwise, a guardian is authorised to do, in accordance with the terms of the guardian's appointment, anything in relation to a personal matter that the adult could have done if the adult had capacity for the matter when the power is exercised.
>
> (2) Unless the tribunal orders otherwise, an administrator is authorised to do, in accordance with the terms of the administrator's appointment, anything in relation to a financial matter that the adult could have done if the adult had capacity for the matter when the power is exercised.
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> (3) For a guardian for a restrictive practice matter under chapter 5B, this section applies subject to sections 80ZE and 80ZF.

Section 34 of the GAA Act relevantly provides:

> **Apply principles**
>
> (4) A guardian or administrator must apply the general principles.
>
> Note— See schedule 1 (Principles).
>
> …

Section 35 of the GAA Act provides:

> **Act honestly and with reasonable diligence**
>
> A guardian or administrator who may exercise power for an adult must exercise the power honestly and with reasonable diligence to protect the adult's interests. Maximum penalty—200 penalty units

Section 36 of the GAA Act provides:

> **Act as required by terms of tribunal order**
>
> A guardian or administrator who may exercise power for an adult must, when exercising the power, exercise it as required by the terms of any order of the tribunal. Maximum penalty—200 penalty units.

[25] Also of relevance are the General Principles in the GAA Act as in force at the time of the decisions made by the Public Trustee:[12]

> **1 Presumption of capacity**
>
> An adult is presumed to have capacity for a matter.
>
> **2 Same human rights**

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12 General Principles set out in Schedule 1 of the GAA as in force prior to the amendments to the GAA which commenced 30 November 2020.

(1) The right of all adults to the same basic human rights regardless of a particular adult's capacity must be recognised and taken into account.

(2) The importance of empowering an adult to exercise the adult's basic human rights must also be recognised and taken into account.

3 Individual value

An adult's right to respect for his or her human worth and dignity as an individual must be recognised and taken into account.

4 Valued role as member of society

(1) An adult's right to be a valued member of society must be recognised and taken into account.

(2) Accordingly, the importance of encouraging and supporting an adult to perform social roles valued in society must be taken into account.

5 Participation in community life

The importance of encouraging and supporting an adult to live a life in the general community, and to take part in activities enjoyed by the general community, must be taken into account.

6 Encouragement of self-reliance

The importance of encouraging and supporting an adult to achieve the adult's maximum physical, social, emotional and intellectual potential, and to become as self-reliant as practicable, must be taken into account.

7 Maximum participation, minimal limitations and substituted judgment

(1) An adult's right to participate, to the greatest extent practicable, in decisions affecting the adult's life, including the development of policies, programs and services for people with impaired capacity for a matter, must be recognised and taken into account.

(2) Also, the importance of preserving, to the greatest extent practicable, an adult's right to make his or her own decisions must be taken into account.

(3) So, for example—

(a) the adult must be given any necessary support, and access to information, to enable the adult to participate in decisions affecting the adult's life; and

(b) to the greatest extent practicable, for exercising power for a matter for the adult, the adult's views and wishes are to be sought and taken into account; and

(c) a person or other entity in performing a function or exercising a power under this Act must do so in the way least restrictive of the adult's rights.

(4) Also, the principle of substituted judgment must be used so that if, from the adult's previous actions, it is reasonably practicable to work out what the adult's views and wishes would be, a person or other entity in

performing a function or exercising a power under this Act must take into account what the person or other entity considers would be the adult's views and wishes.

(5) However, a person or other entity in performing a function or exercising a power under this Act must do so in a way consistent with the adult's proper care and protection.

(6) Views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.

8 Maintenance of existing supportive relationships

The importance of maintaining an adult's existing supportive relationships must be taken into account.

9 Maintenance of environment and values

(1) The importance of maintaining an adult's cultural and linguistic environment, and set of values (including any religious beliefs), must be taken into account.

(2) For an adult who is a member of an Aboriginal community or a Torres Strait Islander, this means the importance of maintaining the adult's Aboriginal or Torres Strait Islander cultural and linguistic environment, and set of values (including Aboriginal tradition or Island custom), must be taken into account.

10 Appropriate to circumstances

Power for a matter should be exercised by a guardian or administrator for an adult in a way that is appropriate to the adult's characteristics and needs.

11 Confidentiality

An adult's right to confidentiality of information about the adult must be recognised and taken into account.

Application for leave to appeal

[26] An appeal on a question of law is as of right.[13] An appeal on a question of fact or mixed law and fact may only be made with the leave of the appeal tribunal.[14]

[27] The relevant principles to be applied in determining whether to grant leave to appeal are well established: Is there a reasonably arguable case of error in the primary decision;[15] Is there a reasonable prospect that the applicant will obtain substantive relief;[16] Is leave necessary to correct a substantial injustice to the applicant caused by some error;[17] Is there a question of general importance upon which further argument, and a decision of the appellate court or tribunal, would be to the public advantage.[18]

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13 QCAT Act, s 142(1).
14 QCAT Act, s 142(3)(b).
15 *QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.
16 *Cachia* v *Grech* [2009] NSWCA 232 at [13].
17 Op cit 5.

[28] I am prepared to accept that the matters raised by TJ in the appeal in relation to how the Public Trustee as administrator for CRG made decisions for CRG is a matter of general importance upon which a further argument and a decision of the Appellate Tribunal would be to public advantage. In particular, I accept that whether and the extent to which the General Principles in the GAA Act were applied by the Public Trustee in making decisions for CRG and how the Public Trustee as administrator balanced the application of the General Principles with the application of the prudent person rule in s 24 of the *Trusts Act* 1973 are matters of general importance upon which further argument and a decision of the Appeal Tribunal would be to public advantage. I have decided that to the extent necessary to hear and determine the appeal, TJ has leave to appeal.

Application to adduce to new evidence

[29] TJ also seeks to adduce new evidence in the appeal. TJ had initially sought to rely on a Brisbane Property Market Update dated 2 September 2021 published by Smart Property Investment citing Hedonic Home Value Index data by Corelogic released on 31 August 2021 ('the Property Market Update'). However, at the hearing agreed that reliance on such information was premature given that the learned member below did not deal with remedy and foreshadowed further directions for the provision of relevant evidence and submissions should that become necessary[19]. I consider that concession appropriate.

[30] The other 'new evidence' TJ seeks leave to adduce in the appeal is the document entitled 'Preserving the financial futures of vulnerable Queenslanders – A review of Public Trustee fees, charges and practices' published by the Public Advocate in January 2021 ('the Public Advocate report'). That document is a publicly available.

[31] In *Thang Long Pty Ltd v CTS Sunstate Group Pty Ltd*[20] the Appeal Tribunal had this to say in relation to applications to adduce new or fresh evidence:[21]

> Permission to introduce post-trial evidence is not given lightly. Finality of litigation is a firm policy of the law, particularly in tribunals where the legislature expects proceedings to be relatively simple and expeditious. Indeed the legislative purpose of the QCAT Act's leave-to-appeal provision is to ensure the primary decision will normally be final.
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> …
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> In the interests of finality the law sets a strict test for the admission of 'new' or 'fresh' evidence. The material in question must be evidence not reasonably available to the applicant at the time of the trial; it must be credible, and, if accepted, likely to have a substantial effect on the result.

[32] TJ wishes to rely on the Public Advocate report to the extent that it summarises and comments on decisions of the Tribunal, including in its appeal jurisdiction which TJ says are decisions that were made in relation to historical applications made concerning CRG. The Public Trustee says those decisions are not relevant in the

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18 *Glenwood Properties Pty Ltd v Delmoss Pty Ltd* [1986] 2 Qd R 388 at 389; *McIver Bulk Liquid Haulage Pty Ltd v Fruehauf Australia Pty Ltd* [1989] 2 Qd R 577 at 578, 580.

19 Directions of the Tribunal made 24 February 2020 and see [4] of these reasons.

20 [2022] QCATA 18.

21 Ibid at [11] and [12].

appeal and the Public Advocate's summary of, or comments about them, are irrelevant.[22]

[33] TJ seeks to rely on the Public Advocate's opinion that certain internal documents of the Public Trustee tended to inhibit application of the Prudent Person Rule[23], in particular, that the Public Trustee followed a financial template and that in doing so the application of the General Principles was secondary or did not occur.

[34] CRG submits[24] that there was a lack of evidence or submissions by the Public Trustee in the matter below. CRG submits that the proceeding should be remitted to the Tribunal for rehearing with the benefit of proper evidence as to the calculation of loss since none of the parties put sufficient material before the Tribunal. While CRG's representative says the Public Advocate's report is not evidence of any fact, matter or circumstance relevant to the Public Trustee's decision-making at the relevant time but is the opinion of a third party, CRG draws attention to recommendation 17 in the Public Advocate's report proposing that the Public Trustee move away from 'an inflexible standard template approach to investing to one that takes the clients' individual circumstances into account (wherever possible)' and that the Public Trustee has only supported that recommendation 'in principle' suggests the following:

a) The absence of evidence before the Tribunal below, by the Public Trustee, as to the decision-making process involved in June 2004 or June 2005 was because there was no such proper consideration of CRG's situation, but rather a 'default' position of selling real property to permit capital to be invested was followed;

b) The Public Trustee, on a remittal of the matter or re-hearing, would not be able to adduce evidence of a proper decision-making process at the time (being an inference which is already open, but which is supported by the Public Advocate's report); and

c) If the Appeal Tribunal accepts that submission that there should have been a deliberate and specific consideration of CRG's position in June 2004 and June 2005 (which TJ submits should have been by reference to certain GAA General Principles) then TJ would have good prospects of success on a rehearing, since it could be inferred that the Public Trustee would be unable to defend the decisions it in fact made and that failure should be fatal to its position. The key issue would then be the assessment of compensation.

[35] I accept the report was not available at the time of the learned member's decision. However, I do not consider the Public Advocate's report is evidence. The report relates to a review conducted by the Public Advocate. The conclusions in the report are those of the Public Advocate. The opinions expressed are those of the Public Advocate. The report does not contain evidence relevant to the issues for determination by the Tribunal below.

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22 Public Trustee's submissions in response to fresh evidence applications dated 13 April 2021 at [6] (IN007).

23 See for example [406] of the Public Advocate's report as referenced in the Public Trustee's submissions in response to the fresh evidence application dated 13 April 2021, in particular, at [7] (IN007).

24 CRG's submissions were made by his Tribunal appointed representative.

[36] The learned member made directions as set out earlier in these reasons so that the parties were aware that he proposed to determine the question of whether a compensation order should be made based on the submissions provided by the parties.[25] Those directions followed directions previously made for the filing of written submissions. Pursuant to s 130 of the GAA Act, to hear and decide a matter in a proceeding the tribunal must ensure, as far as it considers it practicable it has all the relevant information and material that was before the learned member.

[37] The parties were directed to provide all relevant information and submissions. It was open for the active parties in the matter below to provide to the Tribunal any information or material that may have been before the Tribunal in other proceedings concerning CRG. It is clear from the learned member's reasons for decision that he referred to relevant events and decisions made by the Tribunal as they occurred in the relevant period of time.[26]

[38] I have read the learned member's reasons, there is nothing in the reasons, nor in the proposed new evidence relied upon by TJ in respect of which I can find that the learned member failed to apply section 130 of the GAA Act. I do not consider that any of the 'new evidence' sought to be relied upon by TJ, if accepted, would be likely to have a substantial effect on the result. It is not compelling proof or evidence of anything. I dismiss the application to adduce new evidence.

The appeal

[39] TJ submits that the crucial starting point for consideration of his grounds of appeal is the decision of the GAAT made 28 November 2002. TJ argues that when the Public Trustee made the decision to tenant the unit and later to sell it, he acted contrary to the GAAT's order made 28 November 2002.[27] Linked to this submission, TJ submits further that the learned member 'applied a criminal standard of proof to determine CRG's loss in relying on a hypothetical that home ownership would have failed, to cast doubt on the GAAT decision which he says supports a finding that, on the balance of probabilities, CRG would have settled down in his own home supported by his mother'.[28] In support of that submission he relies on a report that was before the GAAT stating that CRG 'is very dependent on his mother and that she has advocated for and supported CRG over an extensive period of time'.[29]

[40] In have considered this submission with the terms of s 36 of the GAA Act. The GAAT did not direct the newly appointed administrators to make a decision to purchase land or any other real estate for CRG. The reasons for decision are not binding directions or orders that must be followed or complied with. Section 36 of the GAA Act makes it clear that an administrator must comply with the *terms of any order* of the Tribunal.

[41] The GAAT considered the information before it, including the proposed administrators plan to manage CRG's financial matters. While that particular plan

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25 Direction 1 made 24 February 2020.

26 *CRG* [2020] QCAT 153, [8], [9], [10], [24], [29], [37] and elsewhere in the reasons.

27 Written submission dated 9/2/20 lodged with application to appeal, Ground 2/, page 5 [AP001].

28 Written submission dated 9/2/20 lodged with application to appeal, Ground 2/, page 5 [AP001].

29 Written submission dated 9/2/20 lodged with application to appeal, Ground 2/, page 5 [AP001] referring to the report of Dr Maureen Field dated 30 July 2000 pp. 65-76 documents before the GAAT concerning CRG.

may have been considered appropriate by the GAAT at the relevant time, the reasons for the decision could not bind the Public Trustee or any other appointed administrator for CRG for all time. The GAAT could not, at the time of the decision, foreshadow all of the circumstances that might occur in CRG's life after the decision was made. The Tribunal, whether the GAAT or this Tribunal must hear and determine the particular application/s before it, based on the evidence before it at the time. At the time of the GAAT decision the specific unit in question had not been purchased and nor had the bush retreat. The GAAT did not assess the appropriateness of the administrators it appointed based on decisions to purchase those particular real estate assets. The learned member did not err in failing to find that the reasons for the GAAT decision were binding on the Public Trustee in making the decisions to tenant the unit in 2004, continue to tenant it for a period and then later sell it in 2007.

[42] Nothing in the learned member's reasons for decision relevant to how he weighed the evidence or made findings of relevant facts would support a conclusion that the learned member applied the criminal standard of proof. I can find nothing in the reasons for decision that would support a finding that the learned member reasoned the matter in such a way that it is apparent he considered that TJ, as administrator for CRG, had to prove beyond all reasonable doubt that the Public Trustee had breached the relevant legislative provisions. The Public Trustee provided information to the Tribunal about the decisions they made. The learned member referred to the relevant standard of proof at [76].

[43] TJ argues that the learned member did not apply the statutory weight of s 34 of the GAA Act and the General Principles.[30] TJ argues that the learned member adopted his reasoning in the compensation decision and, having specifically excluded consideration of the application of the General Principles in the reasons for that decision, failed to consider or give appropriate weight to the Public Trustee's application of the General Principles in the decisions it made about the unit.

[44] I do not accept that submission. It is clear from the learned member's reasons for decision in the compensation decision that the learned member considered the application of the General Principles and s 34 of the GAA Act. Indeed, the learned member went into some detail about the effect of the general principles upon the prudent person investment rule and upon the 'reasonable diligence to protect the adult's interests rule in s 35 of the GAA Act'.[31] Further, and in any event, the learned member in his reasons for the subject decision clearly considered whether the Public Trustee had applied the General Principles in making the relevant decisions for CRG.[32]

[45] During the course of the appeal hearing, TJ sought to adopt the submissions of CRG's representative that the hearing below was not procedurally fair and that the learned member made the incorrect inquiry in making the decision. While CRG was a respondent in the appeal, and it is my view that CRG's representative essentially sought to raise a fresh ground of appeal as a respondent, the Public Trustee

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30 Written submission dated 9/2/20 lodged with application to appeal, Ground 1/(A) [AP001];Written submission 'Appeal by TJ against Member Gordon's decision of 12 May 2020 in GAA611-16 [AS001].

31 *CRG* [2019] QCAT 168 at [13] to [43] inclusive.

32 *CRG* [2020] QCAT 153 at [5], [7], [36], [57], [77]

responded to the argument. For those reasons I have decided to deal with the argument presented by CRG.

[46] I consider that my reasons for rejecting the argument are the same as my reasons for rejecting TJ's submission that the learned member erred in concluding that the Public Trustee had applied the General Principles in making the relevant decisions about the unit.

[47] CRG's argument is that the learned member should have focussed on particular points in time and decisions made at those points in time. It is argued that the learned member failed to focus on the facts and circumstances that prevailed as of June 2004 before the unit was sold. It is argued that the learned member relied on circumstances that happened after that date to reflect back to conclude that the decision was reasonable. It is argued that the learned member failed to consider any alternative decision or scenario and then make a decision about what was the better or preferable decision for CRG at the relevant time. The alternative decision, rather than tenant the unit was to sell the block of land but keep the unit as a principal place of residence and therefore keep the full measure of Centrelink benefits. It is argued that once the unit was tenanted that was not an option because the tenants were in place for a year (from June 2004 to June 2005). It is argued then that, as at June 2005, there was another decision to be made by the Public Trustee as administrator and any decision at that time should be subjected to the same scrutiny, that is, what other decisions could have been made and what decision was in CRG's best interests. It is argued that there was no assessment at that time by the Public Trustee about whether CRG wanted to live in the unit. The learned member's failure to consider those particular points in time and to make the appropriate inquiry and seek relevant evidence for those particular points in time is said to amount to a lack of procedural fairness which is an error of law.

[48] Neither CRG nor the applicant provided any evidence in the matter below that might support a finding that CRG, if consulted at any of the particular points of time, would have expressed a view or wish to reside in the unit. There appears to be no dispute for the purposes of the appeal that, in the period from when the bush retreat and the unit were purchased until the unit was sold that the Adult Guardian (as it then was) was appointed to make decisions for CRG about where he lived, between 22 December 2003 and 8 April 2004, and then again between 7 February 2007 and 23 March 2007. Otherwise, in the relevant period, CRG with any support network could make his own decisions about where to live.

[49] The learned member made a number of findings of fact about where CRG was living at different points in time. The learned member set out the relevant financial circumstances of CRG at the relevant points in time. The Public Trustee had to apply the prudent person rule and the General Principles in making decisions for CRG. The learned member referred to the facts known to the Public Trustee at the time of the relevant decisions including: that CRG's mother and TJ moved into the unit soon after its purchase but CRG did not live there[33]; that TJ submitted that he and CRG's mother tried to encourage CRG to move to the unit with them but he

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33 *CRG* [2020] QCAT 153, [13] referring to Written reasons for the tribunal's decision given on 8 April 2004, [6].

insisted on staying in Brisbane; at the time he was sniffing petrol and he ended up in gaol.[34]

[50] The learned member made findings of fact about where CRG was living during the period 2003 to August 2007.[35]The learned member also made findings about the breakdown of the relationship between CRG's mother and TJ on the one hand and the Public Trustee as administrator for CRG on the other.[36]The learned member found there was a meeting on 5 February 2004 attended by CRG's father and stepmother at a time when CRG was using their home as a base.[37] It was at that meeting that the decision was made that the unit would be tenanted and the bush retreat considered for sale to improve CRG's financial position.

[51] In relation to the decision to rent out the unit and sell the bush retreat, the learned member said:

> There was a meeting on 5 February 2004.[38] CRG's father and the stepmother attended the meeting. At the time CRG was supposed to be living with them pursuant to his bail conditions and his father had left his job to look after CRG. There were insufficient funds at that time to contribute on CRG's behalf to this arrangement. It was agreed that the unit should be rented out and that the bush retreat would be considered for sale to improve the financial position.[39]
>
> The bush retreat was sold on 14 January 2005. At that time CRG was supposed to be living with his father, but it was more that he was using his father's house as a base. By then, the unit had been let out for $230 per week, and the Public Trustee had arranged for CRG to receive Centrelink payment, and payments were made to his father for board and lodging.[40]

[52] The learned member's reasoning regarding those facts then follows:

> These actions were clearly necessary to stabilise the immediate financial difficulty. They gave effect to the reality that CRG had expressed no interest in the bush retreat and little interest in the unit. It was also important to maintain CRG's father's home as a base, and so it was right that CRG would contribute to that financially. But there were debts to be paid and insufficient capital to pay them. The only sensible option was to sell one of the properties. It was certainly prudent to sell the bush retreat which had appreciated in value. And since the unit was let out on an ordinary residential tenancy, and there is no security of tenure for such lettings in Queensland, in the circumstances that was a prudent decision too, because it kept the unit available for CRG should he wish to live there after all.

[53] In my view the learned member has considered the decision by the Public Trustee to rent out the unit and found it to be prudent. TJ and CRG's mother had to be evicted from the unit to enable another tenant to reside there and pay rent to CRG. If CRG

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34 *CRG* [2020] QCAT 153, [14], referring to page 5 of submissions of 4 October 2019 at H454.
35 *CRG* [2020] QCAT 153, [15], [22], [23], [24], [26]
36 *CRG* [2020] QCAT 153, [54].
37 *CRG* [2020] QCAT 153, [61].
38 *CRG* [2020] QCAT 153 at [61] referring to the Public Trustee's letter to the tribunal of 9 September 2011 which is annexed to the current administrator's submissions at H445.
39 *CRG* [2020] QCAT at 153 at [61].
40 *CRG* [2020] QCAT at 153 at [62].

could have been supported to live in the unit with TJ and his mother that would have happened. The Public Trustee consulted with people with whom CRG was living at least from time to time. TJ himself in material before the learned member as referred to above admitted he and CRG's mother were unable to encourage CRG to move to the unit with them even after they moved into the unit.

[54] TJ argues that CRG's father and stepmother were not part of CRG's support network so it was not appropriate or it was a failure on the part of the Public Trustee to consult with them in relation to decisions about CRG's financial matters and therefore an error on the part of the learned member when he relies on that consultation to support a finding that the Public Trustee applied the General Principles in making decisions for CRG in relation to the unit and bush block. I do not accept that argument. At the relevant points in time, CRG was either living with his father and stepmother as part of his bail conditions and/ or at least using their home as a base by his own choice.

[55] I do not consider that it was necessary for the learned member to have identified every possible decision the Public Trustee could have made in June 2004 when the decision was made to tenant the unit, identify what the financial impact of each of those decisions would and could be based on potential scenarios and modelling of financial outcomes and then if the decision that was actually made, based on that modelling did not result in the best overall financial outcome conclude that it must follow it that the Public Trustee breached s 35 of the GAA Act. Neither s 35 nor any other section in the GAA Act of relevance points to any requirement to assess what was the best decision for CRG or what was in CRG's 'best' interests. Section 35 of the GAA Act refers to exercising a power honestly and with reasonable diligence to protect the adult's interests. The source of the Tribunal's power to make a compensation order is s 59 of the GAA Act. That section makes it clear that the discretion of the Tribunal to make such an order is enlivened only if there is a loss caused by the administrator's failure to comply with the GAA Act in the exercise of the power. If there is no such failure no compensation order can be made.

[56] I can find no basis to find that the learned member erred in the determination of any relevant facts or in applying the relevant law to find that the Public Trustee had not breached s 35 of the GAA Act or the General Principles in making the decision to tenant the unit. While CRG was not consulted, he had the opportunity to attend the family meeting with members who did attend. All of CRG's family members were aware the Public Trustee was appointed to make financial decisions for CRG. In making the decision, Principle 7 of the General Principles is particularly relevant. The Public Trustee obtained the views of CRG to the extent practicable at the time and views and wishes might also be obtained through consideration of conduct and/or past actions.

[57] The learned member found and it is uncontradicted that in June 2005 when the tenancy came to an end, CRG remained based at his father's residence. For similar reasons to those expressed in relation to the decision made in June 2004 to tenant the unit, I can find no error on the part of the learned member.

[58] The Public Trustee has never denied their inability to directly engage with CRG at relevant points in time. If CRG or TJ and any other member of CRG's support network could provide evidence relevant to those points in time that CRG's actual

views and wishes were different to those accepted by the Public Trustee based on their communications with CRG's father and stepmother and CRG's actual living arrangements at those points in time that could have been placed before the learned member. The learned member has thoroughly considered the evidence and submissions that were before him. I can find no error of either fact, law or mixed fact and law that would compel me to a different conclusion to that made by the learned member.

[59] TJ argues that the weight of the evidence supported a conclusion that the Public Trustee had breached s 24 of the Trusts Act. TJ refers to the learned member's findings that CRG's debts were increasing at a time when he was not receiving a Centrelink pension and no rent was being received on the unit.[41] However, it is uncontroversial and the learned member found that the Public Trustee was not reappointed as administrator until 12 December 2003 and, at that time, CRG did not have sufficient funds in his account to meet his daily living expenses and his assets comprised the unit, the bush retreat, about $500 in cash and about $2,677 held by a firm of accountants.[42] It is clear from the learned member's reasons that this was the situation prior to the meeting on 5 February 2004 and that the Public Trustee had held off enforcement of the non-payment of rates by the respective payments at that time. [43]

[60] TJ says that 'all the debt and deficit the learned member refers to arose as a direct result of the Public Trustee's decision of 5 February 2004'.[44] I do not consider the weight of the evidence supports such a conclusion. The Public Trustee took over the financial decision making for CRG from the joint administrators.

[61] In further support of his submission that all debt and deficit was the result of the Public Trustee's decision of 5 February 2004, TJ refers to parts of the following passages from the learned member's reasons [footnotes omitted]:[45]

> Turning to the sale of the unit in June 2007 (sic), even when rented out it is noticeable that it was not providing a good return for CRG as an investment. The rates were about $2,100 per annum, although this would be reduced by about $120 to allow for water consumption charges which a tenant would pay; the body corporate fees were about $1,500 per annum. In addition to these expenses however, there was also a property rental fee of about $600 per annum payable to the Public Trustee caused by having a property investment. And there were recorded expenses of $2,845 in 2004 connected with the unit. Some of these expenses appear to be extraordinary items, but others are the sort of charges an owner would face in the usual event. Assuming that it is right to allow for about half these expenses, the annual expenses directly connected with the unit were roughly $5,500 per annum or $106 per week. The rental income was $230 per week. The net investment return was therefore 2.7% (assuming a value of $240,000 for the unit). Although some capital enhancement of the value of the unit could be expected over time, this

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41 *CRG* [2020] QCAT 153 at [59].

42 *CRG* [2020] QCAT 153 at [58] including a reference in that paragraph to [29] of a previous Tribunal's decision dated 12 December 2003 at [29].

43 *CRG* [2020] QCAT 153 at [60] and [61].

44 Written submission dated 9/2/20 lodged with application to appeal, Ground 1. (B), page 3 [AP001] Written submission 'Appeal by TJ against Member Gordon's decision of 12 May 2020 in GAA611-16' [AS001].

45 *CRG* [2020] QCAT 153 at [65], [66] and [70].

> could not be guaranteed. And there were the usual risks associated with property ownership: unexpected reductions in the rental market or capacity value, or unexpected maintenance or repairs.
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> The Public Trustee says that at this time, despite the sale of the bush retreat and the new income coming into the estate, CRG's expenses still exceeded his income so that he could not afford to keep the unit as an investment. CRG's disability support pension was only $134.70 a fortnight as from February 2006. This was a depressed amount because of his assets. The value of the unit had to be included in his assets because he was not living there. The finances were not assisted by Centrelink issuing a refund notice on 9 August 2006 for overpaid pension in the sum of $15,500.56. The Public Trustee says that on 4 January 2007, $10,000 had to be withdrawn from CRG's cash investments to meet his debts. From this it can be seen that CRG's expenses exceeded his income at that time. CRG's separate representative regarded this as 'not surprising' bearing in mind the Public Trustee was paying significant sums to CRG's father. As the tribunal found in *CRG* [2019] QCAT 168, some of those payments to CRG's father should not have been made, but that has already been the subject of a compensation order.
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> …
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> As the separate representative points out, had CRG been persuaded to live in the unit at that time, his financial position would have changed completely. His disability support pension would have increased, and the payments to his father would not have been needed. This would have been a good solution for CRG if it could be achieved, as the Public Trustee had always recognised. The obvious difficulty was how that could be achieved. As has been demonstrated from actual events, it was in CRG's interests that he be cared for by family members living with him. But he showed no interest in this on a permanent basis until he became more settled in 2009. In the circumstances, although it may have been an option for the Public Trustee to consider ways in which the unit could be maintained for CRG should he wish to live there at some time in the future, it was certainly not an imprudent decision to opt instead for its sale.

[62] TJ argues that CRG's finances would not have been in ongoing deficit and he would have been much better off financially if he was living in his own home. I do not consider that any party takes issue with the proposition that if CRG was living in his home with the higher rate of pension that would have followed, he would have been financially better off. The learned member's reasons reflect that he understood and accepted that was the case. However, at no time prior to the sale of the unit, did the Public Guardian make a decision that CRG live in the unit nor did CRG choose to live on any permanent or even regular basis. The learned member has not erred in making those findings.

[63] TJ further argues that the Public Trustee made decisions about where CRG was to live by making the decision to tenant the unit and selling the bush retreat. Further, TJ says that the learned member erred in failing to take that into account in determining that the General Principles and s 24 of the Trusts Act were applied by the Public Trustee in making the decision to sell the unit and that in making such decisions the Public Trustee breached s 33 of the GAA.[46] I do not consider that the learned member erred in that regard. The learned member's findings about who

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46 Written submission dated 9/2/20 lodged with application to appeal, Ground 1(C), page 4 [AP001], 'My response to Matthew Jones's submission of 23 November 2020 at pp.2-3.

could make decisions about where CRG lived at relevant points in time are not in dispute. The Public Trustee was appointed to make decisions about financial matters. The decisions the Public Trustee made to tenant the unit, sell the bush retreat and ultimately sell the unit were decisions the Public Trustee had the power to make. As the learned member said:[47]

> These actions were clearly necessary to stabilise the immediate financial difficulty. They gave effect to the reality that CRG had expressed no interest in the bush retreat and little interest in the unit. It was also important to maintain CRG's father's home as a base, and so it was right that CRG would contribute to that financially. But there were debts to be paid and insufficient capital to pay them. The only sensible option was to sell one of the properties. It was certainly prudent to sell the bush retreat which had appreciated in value. And since the unit was let out on an ordinary residential tenancy, and there is no security of tenure for such lettings in Queensland, in the circumstances that was a prudent decision too, because it kept the unit available for CRG should he wish to live there after all.

[64] When financial difficulties continued and CRG was still not living in the unit as the learned member said: In the circumstances, although it may have been an option for the Public Trustee to consider ways in which the unit could be maintained for CRG should he wish to live there at some time in the future, it was certainly not an imprudent decision to opt instead for its sale.[48]

[65] I conclude that the learned member did not err in concluding that there was no failure by the Public Trustee to comply with s 24 of the Trusts Act, apply the General Principles or make any finding that the Public Trustee had made a decision about where CRG live beyond power and inconsistently with s 33 of the GAA Act.

[66] TJ argues that the learned member applied a hypothetical situation in his reasoning making an assumption that even if CRG was 'allowed' to live in his own home he would not have done so. TJ says the learned member's assumption or use of that hypothetical was infected with racial bias, the underlying weight given by the learned member to this assumption coming from an entrenched racist assumption or stereotype that First Nations people will not reside in a house even if you give them one. In making this argument, TJ relies on [78] of the learned member's reasons:

> In any case, even if there was such a failure, it cannot be said that any financial loss resulted from it. This is because, any family discussion at the time would most likely have been similar to that in 2001 – with the Public Trustee properly requiring a period of time to pass over which CRG was cared for by his chosen permanent family carer, followed by the purchase of a home for him under the same arrangement if the finances allowed. But on the balance of probabilities, this would not have found favour with CRG in 2007, because he was still very unsettled at the time and was still demonstrating an unhappiness to live permanently with any family carer.

[67] Linked to the argument that the learned member brought a biased view of the evidence including how that evidence was weighed, TJ argues that the Public Trustee made decisions outside of its power as administrator, namely (a) that CRG live with his father, (b) that the bush retreat be sold and (c) that the unit be rented

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47 *CRG* [2020] QCAT 153 at [63].

48 *CRG* [2020] 153 at [70].

out. TJ says those decisions left CRG without a residence of his own and a full pension as well as no ability for his mother to properly support him. [49]

[68] Paragraph [78] of the learned member's reasons cannot be read in isolation. In the previous paragraphs, [70]-[77], the learned member set out the evidence relied upon by him to determine that the decision of the Public Trustee to sell the unit was not an imprudent one in the circumstances, identifying that in making decisions for a person there may be more than one decision that could be made which would be considered prudent:

> As the separate representative points out, had CRG been persuaded to live in the unit at that time, his financial position would have changed completely. His disability support pension would have increased, and the payments to his father would not have been needed. This would have been a good solution for CRG if it could be achieved, as the Public Trustee had always recognised. The obvious difficult was how that could be achieved. As has been demonstrated by actual events, it was in CRG's interests that he be cared for by family members living with him. But he showed no interest in this on a permanent basis until he became more settled in 2009. In the circumstances, although it may have been an option for the Public Trustee to consider ways in which the unit could be maintained for CRG should he wish to live there at some time in the future, it was certainly not an imprudent decision to opt instead for its sale.
>
> The suggestion that anything the Public Trustee did, or failed to do, resulted in systemic bias against CRG's mother thereby depriving CRG of the chance to purchase a home in which to live with her and claim disability support pension is incorrect. It is clear that CRG chose where to live rather than accepting decisions made in this respect by others, including his own family. And it is incorrect to say that had the enquiries which were made in 2013 into the alleged misappropriation of CRG's funds by the joint administrators in 2003 would have made a difference if they had been made earlier. The fact is that the 2013 investigations did not exonerate CRG's mother. The Public Trustee obtained two legal opinions in 2013. With respect to the payment of legal fees using CRG's money, they differed: the first did advise that there was no breach of duty but the second advised that the joint administrators had been in breach of their obligation diligently to protect CRG's interests and to avoid conflict transactions. Both legal opinions considered that money had been spent improperly on vehicle expenses. A decision was made by the Public Trustee however, not to pursue either matter.
>
> The Public Trustee points out that it was only between 22 December 2003 and 8 April 2004 and between 7 February 2007 and 23 March 2007 that the Adult Guardian was appointed as CRG's guardian for accommodation decisions, and that there was no request over that time by the Adult Guardian to acquire a residence for CRG. The Public Trustee says there was no such request by anyone else, apart from the requests made in 2001 as referred to above.
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> It was only from about July 2009 when CRG became more settled that it would have been feasible to purchase a home for him, but by that time as the current administrator says, 'his trust assets had diminished to a point where appropriate home ownership was no longer possible'.

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[49] Written Submission '(B) My response to the Public Trustee's submission of 20 November 2020, 1-7 inclusive'; Written submission 'Appeal by TJ against Member Gordon's decision of 12 May 2020 in GAA611-16' [AS001].

> As for the alleged failure of the Public Trustee to consult CRG in this period, the Public Trustee has stated that he had not been able to contact CRG personally since November 2001, but explains that this was because his whereabouts were not knows and CRG's support network did not 'constructively assist contact between CRG and the Public Trustee'. In fact, we know from other material that CRG did attend the Public Trustee's office on 6 September 2002, and we also know that the Public Trustee was present at a meting with the Public Guardian in February 2007. We know that the Public Guardian made great efforts in 2007 to contact CRG when it was known he had left his father's home, largely to no avail.
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> For the lack of direct contact, the current administrator blames what he says is the Public Trustee's inability to engage with CRG or his family in a culturally appropriate way.
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> As for the alleged failure to consult CRG's family about the decision made in this period, we know that CRG's father was party to the decision made on 5 February 2004 to sell the bush retreat and rent out the unit. We also know that over the period while the Public Trustee's information was that CRG was reliant on his father's home as a base, which included the beginning of 2007. The father and the stepmother were in regular and frequent contact with the Public Trustee.
>
> Although there is nothing to show who was consulted about the decision to sell the unit in 2007, and the lack of direct contact with CRG at the time was highly regrettable, there is insufficient evidence for me to find that there as a failure of the Public Trustee to apply the General Principles when making that decision.

[69] Paragraph [78] then follows. In my view [78] contains the learned member's secondary position or argument, that is, even if I am wrong and the Public Trustee has failed to apply the General Principles, no financial loss resulted from the failure to apply the General Principles. That reasoning is based on previous discussions that there would have been a period required for CRG to reside with a family member such as his mother and finding an appropriate home for him to reside in and be properly supported by the appropriate family member/s. The learned member found, on balance, that at the time, that option was not likely to have found favour with CRG because as previously found CRG did not become more settled until 2009.

[70] I do not consider that the learned member's reasons are infected with any assumption made about CRG's views that are based either wholly or in part on any claimed racial stereotype. The learned member set out the facts as he could find them based on the material before him. TJ, himself, in submissions that were before the learned member and set out at [14] and [17] agreed that CRG could not at the relevant time be encouraged to live in the unit. Further, CRG does not take issue with [12] and [13], [15], [16] or [17] of the reasons:

> As contemplated by the tribunal's decision of 13 December 2002, on 22 July 2003 the joint administrators used part of CRG's funds to purchase a unit in his name for $220,000. The unit was on the Sunshine Coast. Then on 5 September 2003 the joint administrators used part of his funds to purchase some vacant land in his name for $88,000. This has been described as a 'bush retreat'. The idea has been stated to be that the unit was large enough for CRG to live there with his carers, and the bush retreat would have provided him

> with 'cultural, lifestyle and healing opportunities, as well as a financial growth asset.
>
> CRG's mother and the current administrator, moved into the unit soon after its purchase, but CRG did not live there.
>
> In his submissions in this application for compensation, the current administrator explains what happened at that time. He says he and CRG's mother tried to encourage CRG to move to the unit with them but he insisted on staying in Brisbane; at the time he was sniffing petrol and ended up in gaol. He says that in fact CRG never lived in the unit at all, nor did he ever live on the bush retreat.
>
> Instead, CRG lived on the streets from time to time in early 2003 and then lived in a hostel. He was in gaol for about six weeks and after his release in December 2003 he lived with his father and his father's wife (his stepmother') in their rented home together with their children.
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> On 12 December 2003 on an emergency interim basis the tribunal suspended the joint administrators. On that date the Public Trustee was appointed as CRG's administrator and this appointment was confirmed in an order of the tribunal on 8 April 2004. The Tribunal gave reasons for this. CRG's mother and the current administrator had failed to pay rent on the unit despite being warned not to benefit, a number of items had been purchased and money expended which were not to CRG's benefit, the joint administrators had not pursued a Centrelink pension for CRG, tribunal approval was no sought for the purchase of either of the properties because CRG was not living in either of them (as required by what was then section 52 of the GAA), there had been a failure to provide an updated management plan within three months of the purchase of any land as directed by the tribunal, the tribunal's direction to account for the time as joint administrators had not been complied with and the joint administrators had not kept sufficient records. There had been a payment of $31,016.96 legal fees from CRG's money. Also, there was a complete breakdown in the relationship between CRG's mother and his aunt, who were the joint administrators. The tribunal noted that CRG's aunt stated that she disagreed with the purchase of the unit and the financial benefits derived from it, with the result that she wished to resign as administrator.
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> CRG's mother told the tribunal that CRG had not lived in the unit for more than a week.

[71] I consider the learned member carefully set out the information provided by all active parties and other information provided by CRG's mother and former administrator and appropriately weighed that evidence and information to arrive at the findings of fact made by the learned member. To prove actual bias the applicant must be able to rely on evidence which establishes, or from which a reasonable inference may be drawn, that the learned member did not, in fact, bring an impartial mind to the resolution of the question the decision-maker was required to decide.[50]

[72] The applicant has not taken me to any such evidence that either establishes or from which I might find a reasonable inference can be drawn. In my view the learned member has confined himself to the evidence before him and made findings of fact based on that evidence particular to the circumstances of CRG. I cannot find any

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50 *Maffey* v *Mueller* [2016] QCATA 19, [47].

part of the reasons for decision which might give rise to any concern that the learned member viewed the evidence through a discriminatory lens or took into account irrelevant considerations or considerations outside of the particular circumstances and facts relevant to the issued for determination in the matter below.

[73] To prove apprehended bias, the applicant must establish that:[51]

> a fair-minded lay observer might reasonable apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide…
>
> [This] requires two steps. First, it requires the identification of what it is said might lead a judge (or juror) to decide a case other than on its legal and factual merits. The second step is no less important. There must be articulation of the logical connection between the matter and the feared deviation from the course of deciding the case on its merits. The bare assertion that a judge (or juror) has an "interest" in litigation, or an interest in a party to it, will be of no assistance until the nature of the interest, and the asserted connection with the possibility of departure from impartial decision-making, is articulated. Only then can the reasonableness of the asserted apprehension of bias be assessed.

[74] TJ has not identified what might have led the learned member to decide the application for a compensation order other than on its legal and factual merits. The applicant has made a broad assertion. Any claim of bias, either actual or apprehended must fail.

[75] The appeal is dismissed.

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51 *Maffey v Mueller* [2016] QCATA 19 at [48] citing *Ebner v The Official Trustee in Bankruptcy* (2000) 205 CLR 337, [6], [8].