



New South Wales

ATTORNEY GENERAL

30 June 2009

The Hon Ian West MLC
Chair
Legislative Council Standing Committee on Social Issues
Parliament House
Macquarie St
SYDNEY NSW 2000

Dear Mr West

I refer to the *NSW Trustee & Guardian Act 2009* which essentially amalgamates the Office of the Protective Commissioner and the Public Trustee. In doing this it repeals and re-enacts, with some modifications, the provisions of the *Public Trustee Act 1913* and the *Protected Estates Act 1983*. While the *NSW Trustee & Guardian Act 2009* contains amendments to the *Guardianship Act 1987* and to the provisions of what was the *Protected Estates Act 1983* it is acknowledged that further reform may be required. In order that any further concerns are canvassed through a comprehensive process – particularly with the disability sector – I request that the Standing Committee on Social Issues conduct an inquiry (reporting back to Parliament by 1 February 2010) into:

(a) whether NSW legislation requires amendment to make better provision for:

- (i) the management of estates of people incapable of managing their affairs; and
- (ii) the guardianship of people who have disabilities.

(b) As part of the reference the Committee could consider whether the following amendments should be made:

- (i) Amend the *NSW Trustee & Guardian Act 2009* to allow the relevant Court or Tribunal to exclude parts of an estate from financial management (similar to section 25E of the *Guardianship Act 1987*).
- (ii) Amend the *NSW Trustee & Guardian Act 2009* to allow the Supreme Court or the Mental Health Review Tribunal (MHRT) to vary or revoke an order (even where the person remains incapable of

managing their affairs) on the application of a person who, in the opinion of the Supreme Court or the MHRT, has a genuine concern for the welfare of the protected person.

(iii) Amend the *NSW Trustee & Guardian Act 2009* to allow the MHRT to appoint a private manager.

Thank you for your assistance in relation to this matter.

Yours faithfully


(John Hatzisiergos)