Submission
No 13

INQUIRY INTO SUBSTITUTE DECISION-MAKING FOR PEOPLE LACKING CAPACITY

Organisation: NSW Trustee and Guardian

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31 August 2009

Re: Substitute Decision Making for People Lacking Capacity

Please find attached a copy of the NSW Trustee and Guardian (NSWT&G) submission in relation to your reference referred to you by the Honorable Attorney General.

I remain available to the committee to provide further information as required

Yours faithfully

Imelda Dodds
A/CEO
NSW Trustee and Guardian

• Introduction

The NSW Trustee and Guardian ("NSWT&G") was established on 1 July 2009 and brings together the former offices of the Protective Commissioner and Public Guardian and the Public Trustee NSW.

The *NSW Trustee and Guardian Act 2009* represents an amalgamation of the former *Public Trustee Act 1913* and the *Protected Estates Act of 1983*.

The Public Guardian is a statutory officer reporting administratively to the CEO of the NSWT&G. The Public Guardian is making a separate submission in his statutory capacity.

In his submission the Public Guardian outlines at some length the history of guardianship legislation, the philosophical underpinnings, importance of assisted decision making and the use of substituted decision making as a last resort. These views are supported by NSWT&G but are not repeated here as the case has been well put elsewhere.

This submission is focused on the needs of people who lack capacity to manage all or part of their estate and for whom a financial management order has been made. The submission is presented in four parts. Part one provides background information to assist the Committee and readers to understand the work of the NSWT&G. Part two addresses the specific matters raised by the Hon Attorney General in his brief to the Committee.

Part three provides specific recommendations in relation to the roles and responsibilities of the NSWT&G in relation to the operation of Financial Management orders.

Part four addresses broader policy issues as they pertain to the affairs of people who lack the capacity to make decisions on their own behalf.

Since 1 July the staff of the NSWT&G have been focused on the establishment of the new organization and the myriad of work associated with a merger process. The time available to prepare a detailed submission has therefore been limited. However I remain available to the Standing Committee to provide information, clarification and evidence as required.

• Part One

The NSWT&G is a public service organisation and is a business centre within the Department of Justice and Attorney General. The CEO reports to the Attorney General via the Director General.

The NSW Trustee and Guardian seeks to be the best provider of personal trustee, financial management and substitute decision making services. We protect and promote the rights and interests of our clients.

We operate pursuant to the *NSW Trustee and Guardian Act 2009* and the *NSW Trustee and Guardian Regulation 2008* and have regard to a wide range of legislation impacting on our operations.

We help our clients and the community of NSW in the following ways:

1. We manage their assets and help plan for their future under a power of attorney
2. We provide advice with their estate
3. We make their Will should they need a professional executor and/or trustee
4. We act as financial manager for people with decision-making disabilities
5. We authorise and direct the performance of private managers appointed by the Supreme Court or Guardianship Tribunal
6. We manage deceased estates as executor so assets at death are dealt with according to clients' wishes
7. We also manage deceased estates as administrator under the laws of intestacy and other circumstances for example where a person renounces their executorship in favour of the NSWT&G
8. We act as trustee of fixed or discretionary trusts created in Wills, deeds and court orders for families, children and people with disabilities
9. We manage property in civil assets restraint and forfeiture
10. We act as trustees for protected defendants
11. We manage the affairs of people who are declared missing persons
12. We promote the making of a Will, Enduring Power of Attorney and Enduring Guardianship
13. We provide advice on relevant aspects of government policy and legislation
14. We contribute to relevant law reform development.

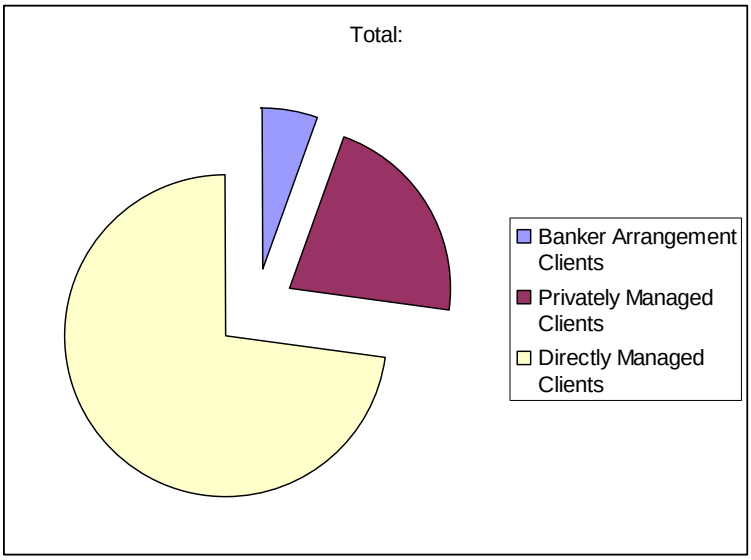
In discharging our services we are guided by our values:

- Client-centred service
- Integrity
- Independence
- Accountability
- Social justice
- Responsive
- Teamwork
- Respect
- Equity
- Self-determination

The focus in this submission is upon the areas relating to financial management for people with decision making disabilities by either our office or Private Managers.

At the end August 2009 the NSWT&G was directly managing the affairs of 9182 individuals and overseeing the work of a further 2795 Private Managers. Of the groups of people under direct management the majority have a psychiatric disability

No. of Active clients



Clients:	Total:
Banker Arrangement Clients	636
Privately Managed Clients	2,795
Directly Managed Clients	9,182
Total:	**12,613**

The NSWT&G receives its work from the following four sources

- Supreme Court
- Local Court Magistrates
- Guardianship Tribunal (GT)
- Mental Health Review Tribunal (MHRT) and

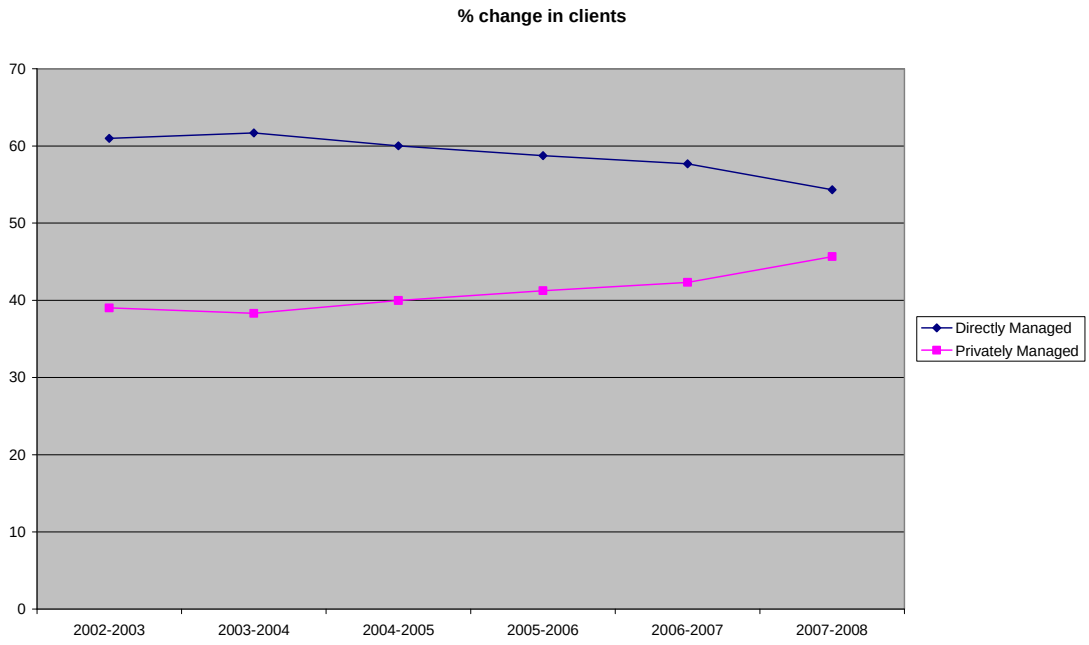
Table 1 shows the source of orders appointing NSWT&G (and the former OPC) since 2002. It is clear that the Guardianship Tribunal accounts for the vast majority of our work.

Table 1 - Orders Made by Source (Directly and Privately Managed)

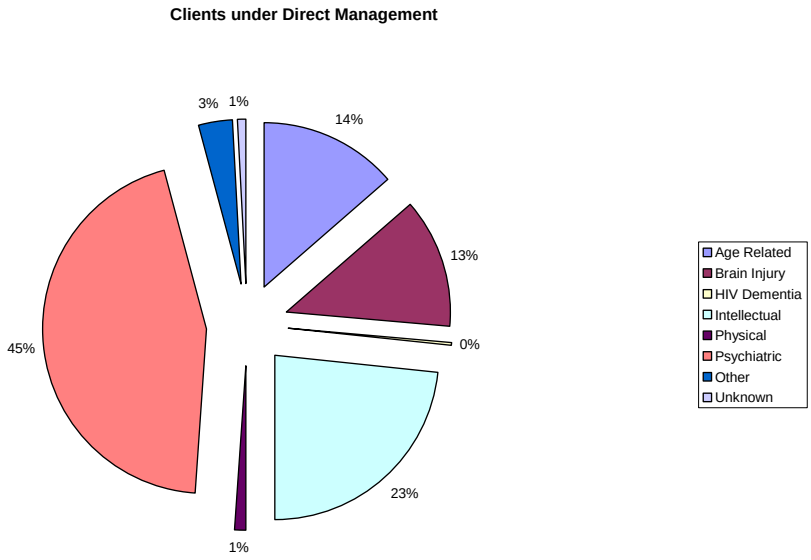
(Source)	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	*2007-2008*	2008-2009
Supreme Court	53	61	52	58	62	71	48
GT	1046	1078	1108	1282	1328	1443	1595
Magistrate	93	114	121	136	87	38	30
MHRT	86	135	135	153	174	121	93
Reciprocal	1	5	2	5	6	1	
Voluntary Request	1						
Other		2					
Total:	**1280**	**1395**	**1418**	**1634**	**1657**	**1674**	**1766**

The basis under which people have been appointed to manage has also changed over the years. *Section 15 of the Guardianship Act 1987* requires that the Guardianship Tribunal only appoints the Public Guardian as a person's guardian when there is no willing suitable or able family member or other person available. While no such equivalent provision exists in legislation with reference to financial management orders case law has provided the same intent. Thus the NSWT&G becomes the financial manager of last resort. Table 2 below tracks this trend.

Table 2 - Client movement from Private Management to Direct Management and Direct Management to Private Management



The majority of people under direct management have a psychiatric condition followed by people with an intellectual disability then aged related condition.



The NSWT&G provides support to people with small or modest estates through to large estates. The majority fall into the first category with over 50% of NSWT&G clients having assets valued at less than $20,000, a further 21% between $20,000 and $60,000 and less than 3.2% having assets over $1 million.

The decision to appoint a financial manager is taken seriously and removes from individuals a fundamental human right. People under financial management and their families sometimes oppose the NSWT&G being appointed to directly manage an estate. However, the NSWT&G will only be appointed if a court or tribunal considers:

- that someone objective needs to be involved in managing the estate
- there is no suitable alternative manager
- that it is in a person's overall best interests

The NSWT&G will work with the protected person, his or her family members and service providers when directly managing an estate.

Where a Private Manager is appointed to manage an estate, the NSWT&G will provide information to the Private Manager about their responsibilities, issue directions and authorities, set a security requirement for the estate and review income and expenditure statements (accounts) each year.

The decisions of NSWT&G can be reviewed, firstly through a formal internal process and then, if a client or stakeholder is dissatisfied, on application to the Administrative Decisions Tribunal (ADT).

By definition all clients under a financial management order have been found to lack the capacity to manage their own affairs. As such they are involuntary clients for whom the NSWT&G and Private Managers must evidence the highest standards.

• Part Two

In his letter to the Standing Committee the Honorable Attorney General identified three specific matters for consideration. Each is addressed below:

1. Amend the *NSW Trustee and Guardian Act 2009* to allow the relevant Court or Tribunal to exclude parts of an estate from financial management (similar to Section 25Eof the Guardianship Act, 1987).

The NSWT&G supports this amendment. The majority of Financial Management Orders made appointing the NSWT&G originate from the Guardianship Tribunal. It is incongruous that the Mental Health Review Tribunal does not have the same capacity. The Supreme Court already has this capacity under it's inherent powers however express provision for the same would be welcome.

2. Amend the *NSW Trustee and 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.

The NSWT&G supports this amendment for the reasons noted in point 1 above.

The Guardianship Tribunal currently has the capacity to revoke an Order either because a person has regained capacity or because it is in the person's best interests to do so. It has been our experience over many years that in a small number of cases a person placed under a Financial Management Order may never be able to regain capacity to manage their affairs, however the actual presence of the Order is not assisting them in any practical way and may create more problems for the individual than it is solving. Typically these people have a mental illness of a long standing and persistent nature. Their pattern of financial management is unlikely to change. All attempts to assist them through the presence of a Financial Management Order have been unsuccessful and may result in behaviour that potentially places them at greater risk. While these individuals are relatively rare, when such circumstances arise it is imperative that the relevant Tribunals have the opportunity to revoke the Order on the grounds of best interests.

However the NSWT&G goes further in this regard and notes that under Section 89 and 90 of the *NSW Trustee and Guardian Act 2009* the CEO is charged with the responsibility for determining whether a Financial Management Order should continue in prescribed circumstances. Those circumstances are two fold. First where a person who has a Financial Management Order and has been subject to a Guardianship Order under the *Guardianship Act, 1987* and the Guardianship Order has been revoked or lapsed, and second where a person has been admitted to a psychiatric facility and is subsequently discharged. In both instances the CEO of the NSWT&G has the authority to determine whether financial management should continue but can only do so where there is evidence that the person has regained capacity. We are of the belief that this is an inherent conflict of interest and while the decision to continue management can be appealed to the Administrative Decision Tribunal or an application to revoke the Order can be taken back to the relevant Tribunal this places an unnecessary step in a process that is more appropriately reviewed by the relevant Tribunal.

We acknowledge that in making this recommendation there are resource implications for the respective Courts and Tribunals in reviewing the Financial Management Order at the time of lapsing of an Order or leaving hospital.

In the event that it was determined that the CEO of the NSWT&G should continue to have an active role in the review of Management Orders it is strongly recommended that the basis for review be put on the same status as that of Courts and Tribunals i.e. the basis for discontinuation of management include both regained capacity or best interests. Suggested amendment to Sections 89 and 90 can be found in the conclusion.

3. Amend the *NSWT&G Act 2009* to allow the MHRT to appoint a Private Manager.

The NSWT&G supports this amendment however in practice it has been our experience that many family members have grappled over a number of years with less restrictive alternatives trying to assist their family member with a mental illness. They are often exhausted by the process and willingly seek the intervention of the NSWT&G (former OPC). However this is not always the case and it should be open to the MHRT and indeed any Court or Tribunal to appoint a Private Financial Manager.

• Part Three

The work of a Private Manager appointed by a Court or Tribunal is overseen by the NSWT&G. Private Managers must submit a plan of management on receiving the "Authorities and Directions" document that enables them to act on behalf of the person under management. They must also lodge a statement of accounts on an annual basis. These accounts are examined to ensure that the Manager is acting in accordance with their authorities. These are safeguards intended to protect the estate of the person under management.

NSWT&G is considering a range of ways that may provide a better safety net for our clients. This poses the challenge to balance policy and legislation in such a way to be effective but not overly onerous on those Private Managers who are able to discharge their responsibilities.

The majority of Private Managers discharge their role faithfully and well. Some struggle with the role and approximately 1% of managers fail to meet requirements and in some cases abuse the position of trust to such a degree that the NSWT&G is required to refer the matter back to the Court or Tribunal with a request that the manager be replaced. The following anonymised case is provided by way of example.

Mr. B has dementia and his son was appointed as the Private Manager. The Private management Branch became concerned about the son's management of the client's estate due to incomplete annual accounts and finally the failure to lodge accounts at all. Problems included expenditure for which there was no or poor support was provided. The manager also recorded withdrawal of funds to pay strata levies which were not actually paid. Legal action was commenced against the client for recovery of strata levies and a bankruptcy notice filed. The manager was living in the client's house and was responsible for the payment of outgoings. Instead the accounts indicated that client was paying the property outgoings. The manager also failed to pay nursing home fees placing Mr. L at risk of losing his accommodation. On this basis the former OPC made application to the Guardianship Tribunal to replace the manager and another private manager was appointed.

There is a common view that the management of a person's finances can be a matter of simple accounting. Increasingly this is not the case and sophisticated understanding of the nuances of financial management and the interplay between Commonwealth and State legislation particularly in relationship to the benefits and provision of Aged Care Bonds, together with the requirements of the Prudent Person Principle requirements of the *Trustee Act 1925* can create a complexity which challenges many Private Financial Managers. When significant problems arise an application to the relevant Court or Tribunal is necessary to seek the replacement of the financial manager. This is costly to all those involved. It is emotionally difficult for the Private Manager and places an added cost on the administration of justice. This Inquiry will specifically consider the extension of the power to appoint Private Financial Managers. NSWT&G supports that recommendation and notes that a dual responsibility exists. First for Courts and Tribunals to satisfy themselves about the ability of individuals when considering their appointment as a Private Financial Manager. Second the NSWT&G has a critical role to play in providing information and to Private Managers to enable them to discharge the role as intended. In the event that a Manager continues to experience significant difficultly or acts outside of the order NSWT&G has the

responsibility to return to the original Court or Tribunal and seek a review and have another Manager appointed.

Mr. M suffered severe brain injury as a result of a motor vehicle accident when he was struck by a vehicle. His wife was appointed as the private manager. From the outset Mrs. M struggled in her role as manager and in particular completing reporting requirements. A high level of assistance was required regarding all issues. The Private Management Branch found it very difficult to obtain basic information from the manager so that necessary authorities could be provided. Managing Mr. M's estate was not straightforward. There was a compensation claim to be settled; a property was purchased; a claim for payment for past care formed part of the process. In addition funds needed to be invested to provide an ongoing stream of income. In the midst of this Mrs. M made an interest free loan to her daughter. Staff of the PMB provided frequent contact by phone and in person at the office. Despite all this support it became necessary to make an application to replace the manager.

Section 68 of the *NSW Trustee and Guardian Act 2009* provides for the Supreme Court or Guardianship Tribunal to require a Manager it appoints to give security. This can include part of the estate under management. There is a question whether this should remain an option or to adopt an approach similar to the United Kingdom but with the capacity to waive the requirement in exceptional circumstances.

The Office of the Public Guardian in the United Kingdom is the statutory authority with oversight of Private Financial Managers. There is no statutory financial manager in the UK and the estates are managed by either families or professional financial managers. In all instances security is required which is a percentage of the value of the estate under management.

Setting security at a fixed percentage whilst attractive at one level may well be unworkable, and in small estates restrict the freedom/lifestyle of the managed person. Many matters involve jointly owned assets, assets such as superannuation (which is not technically held in the managed person's own name) as well as managed funds shares etc make obtaining security over same difficult. Currently the NSWT&G can request that security be lodged but cannot compel the same. However, the option to lodge an amount of cash or other security as directed by the NSW Trustee & Guardian could be considered and could serve to provide a further level of protection over the person's assets. The following case example illustrates the problem of a lack of mandate to demand security be lodged. Equally the problem of compliance will always be present, with or without legislative provision. We raise the matter for discussion.

Mr J's daughter was appointed as his private manager. One of her first tasks was the sale of property and security was set by the former OPC that the net proceeds of sale to be lodged pending receipt of an investment proposal. The investment proposal did not meet guidelines and further information was requested. During this period the manager did not lodge the proceeds of sale and did not lodge accounts. The former OPC took steps to freeze Mr. J's account in order to protect the monies from the sale and then made application for the private manager to be replaced. The former Protective Commissioner was appointed on review.

Private Financial Managers are required to lodge accounts for review. In practice this has been required on an annual basis. There is a view in some quarters that the

NSWT&G should have the capacity to vary the requirement to lodge accounts. In circumstances where a Manager is performing reliably well should it be possible for the NSWT&G to extend the reporting period to every two or three years? In the event that a manager is not performing well or there is a risk of exploitation an earlier reporting schedule may be warranted.

Currently the *NSW Trustee and Guardian Act 2009* and *NSW Trustee and Guardian Regulations 2008* do not make specific provision as to how often accounts should be submitted by private managers. Nor do the Act or Regulations provide legislative protection to the NSWT&G if it was to exercise a discretion to extend the period in which accounts are to be lodged. If the NSWT&G was to use such a discretion based on past reliability of the Manager but during the extension period the Manager performed less than satisfactorily the responsibility of the NSWT&G may come under criticism. Therefore if public feedback is in favour of extending the accounting period the Act should include a clause making specific provision for the exercise by the NSWT&G of such discretion and exempt it from any resulting loss or liability.

The following section is recommended for insertion in the *NSW Trustee and Guardian Act 2009* under Part 4.5 Division 3 following Section 73:

(a) The NSW Trustee may exercise its discretion as to when and how often the managed person's accounts are to be filed, examined and passed
(b) The Chief Executive Officer or any authorised person acting under the delegation or direction of the NSW Trustee or Chief Executive Officer in pursuance of this section in good faith shall not be subject to any personal action, liability, claim or demand

Finally, when a private Manager dies or resigns from the role there is not legislative provision to allow the NSWT&G to fill the gap until the relevant Court or Tribunal can consider the appointment of a new manager. Significant practical problems can arise in the interregnum. NSWT&G recommends that the committee consider the insertion of a new clause into the *NSW Trustee and Guardian Act 2009* making provision that on the death, incapacity or resignation of a private manager the NSW T & G be empowered to manage/protect the managed persons estate until such time as a new manager is appointed by the Court or Tribunal.

Ms R's mother was appointed by the Guardianship Tribunal as the private manager. Sadly Ms. R's mother died suddenly. There was not alternate financial manager appointed and bank accounts operated by the manager could not be accessed. Among other things a workers compensation claim was pending. An application was made to the Guardianship Tribunal for the then Protective Commissioner to be appointed, however in the intervening period Ms R suffered financial hardship due to the inability of anyone to access funds.

The following section is recommended for insertion in the *NSW Trustee and Guardian Act 2009* under Part 4.5 Division 2 following Section 70:

From and after the death, incapacity or resignation of a manager and until another manager is appointed the estate of a managed person shall be managed by the NSW Trustee and Guardian.

• Part Four

The passage of the *NSW Trustee and Guardian Act 2009* facilitated the integration of the principles found in Section 39. This represented an important and welcome departure from its predecessor the *Protected Estates Act 1983*.

S 39) It is the duty of everyone exercising functions under this Chapter with respect to protected persons or patients to observe the following principles:

(a) the welfare and interests of such persons should be given paramount consideration,
(b) the freedom of decision and freedom of action of such persons should be restricted as little as possible,
(c) such persons should be encouraged, as far as possible, to live a normal life in the community,
(d) the views of such persons in relation to the exercise of those functions should be taken into consideration,
(e) the importance of preserving the family relationships and the cultural and linguistic environments of such persons should be recognised,
(f) such persons should be encouraged, as far as possible, to be self-reliant in matters relating to their personal, domestic and financial affairs,
(g) such persons should be protected from neglect, abuse and exploitation.

Section 39 provides an important philosophical framework upon which the implementation of a Financial Management Order is based. However, these principles, strong as they are and landmark in their time were nevertheless developed in the 1980s. At that time the concept of substitute decision making was preeminent. Today there is much greater emphasis on assisted decision making in the first instance and reliance upon substituted decision making as a last resort. As noted previously, the argument in support of assisted decision making is well set out in the submission of the Public Guardian. Our comments are contained to the importance of assisted decision making in financial management.

When charged with the responsibility to make a decision for another person the NSWT&G or any Private Financial Manager is currently required to make decisions that are in the person's best interests. The principles clearly state that any action should be as least restrictive as possible and this of course infers an approach which is only used when it is absolutely necessary. While they are required to take into account the views of the individual and all other key persons in their life to come to a decision that is in their best interests, it is not so expressly put that wherever possible the person should be assisted to make the decision for themselves if they are capable of doing so at the time. The NSWT&G believe that a review of the Section 39 principles together with those articulated in the *Guardianship Act 1987* is timely and provides the opportunity to integrate the principle of assisted decision making. This would be consistent with Article 12(3) UN Convention on the Rights of Persons with Disabilities which states "*States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity".*

Section 71 of the NSW Trustee and Guardian Act (Section 23A of the former Protected Estates Act) also provides an important vehicle to give effect to the intention of assisted decision making. These provisions give scope to the NSWT&G to allow an individual under a Financial Management Order to actively manage as

much of the estate as they are able to do so at any one time. For some people under a Financial Management Order it may never be possible to achieve this outcome; however others will be able to manage part of their estate and for others still this provides an opportunity to provide solid evidence to a Court or Tribunal that they have regained capacity to manage their affairs. Private Managers can also act under S 71 with the concurrence of the NSWT&G.

Finally and importantly, should the Committee recommend changes to NSW to incorporate the UN Convention on Rights of Persons with Disabilities into legislation the *NSW Trustee & Guardian Act 2009* could be amended to include a preamble to the Act recognizing the rights conferred on citizens as stipulated in the UN Convention. The following clause may be considered for that purpose.

In the operation of this Act the CEO and all persons with delegated authorities must in the performance of their duties observe the rights conferred by the UN Convention on Rights of Persons with Disabilities on those persons whose affairs come under the management of the NSW Trustee and Guardian. This Act recognises the rights in the Convention but specifically requires persons who oversee the operation of this Act to observe the specific rights in Article 12 of the Convention.

• Summary of Recommendations

The NSW Trustee and Guardian appreciate the opportunity to make a submission to the Inquiry. In summary NSWT&G supports the amendments referred to the Committee by the Honourable Attorney General, namely;

1. *Amend the NSW Trustee and Guardian Act 2009 to allow the relevant Court or Tribunal to exclude parts of an estate from financial management (similar to Section 25Eof the Guardianship Act 1987).*

2. *Amend the NSW Trustee and 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.*

3. *Amend the NSWT&G Act 2009 to allow the MHRT to appoint a Private Manager*

Further we submit that;

4. S89 (b) and S90 (2) (b) of the *NSW Trustee and Guardian Act 2009* be amended

   S89 NSW Trustee may terminate management of protected persons or patients
   (cf PE Act, s38)

   (1) The NSW Trustee may certify that management of the estate of a protected person or patient by the NSW Trustee is terminated if:

   (a) the protected person ceases to be a person under guardianship, or
   (b) (i) the protected person or patient ceases to be a patient,

and the NSW Trustee is satisfied that the person is capable of managing his or her own affairs or
(ii) that The NSW Trustee considers that it is in the best interests of the person that management be terminated (even though the NSW Trustee is not satisfied that the person is capable of managing his or her affairs.

5. *S 90 Continuation of management after discharge etc*
(cf PE Act, s 41 (2))

(1) This section applies if the NSW Trustee becomes aware that a protected person or patient whose estate is managed by the NSW Trustee:

(a) ceases to be under guardianship, or
(b) ceases to be a patient.

(2) If the NSW Trustee is not satisfied that the person is capable of managing his or her own affairs, the NSW Trustee must do all reasonably practicable things to inform the person:

(a) if the person is a protected person, that the person may apply to a specified body for the revocation of the order that the person's estate be subject to management, and
(b) if the person is a patient who is not a protected person, that the person may apply to have the management terminated, and
(c) in any case, that if the order is not revoked or an application for termination is not made, management of the estate will continue at the discretion of the NSW Trustee.

(3) The NSW Trustee may, at the discretion of the NSW Trustee, continue to manage the property and affairs of the person until:

(a) the order that the estate of the person be subject to management under this Act is revoked or, in the case of a person who is not a protected person, an application for termination is made, or
(b) (i) the NSW Trustee is satisfied that the person is capable of managing his or her affairs,

or

(ii) that The NSW Trustee considers that it is in the best interests of the person that management be terminated (even though the NSW Trustee is not satisfied that the person is capable of managing his or her affairs.

6. That the *NSW Trustee and Guardian Act 2009* Part 4.5 Division 3 following section 73 be amended to include:

(a) The NSW Trustee may exercise its discretion as to when and how often the managed person's accounts are to be filed, examined and passed
(b) The Chief Executive Officer or any authorised person acting under the delegation or direction of the NSW Trustee or Chief Executive Officer in pursuance of this section in good faith shall not be subject to any personal action, liability, claim or demand

7. That the *NSW Trustee and Guardian Act 2009* Part 4.5 Division 2 following Section 70 be amended to include:

From and after the death, incapacity or resignation of a manager and until another manager is appointed the estate of a managed person shall be managed by the NSW Trustee and Guardian.

8. That the NSW Trustee & Guardian Act be amended to include the following statement in the preamble to the Act.

In the operation of this Act the CEO and all persons with delegated authorities must in the performance of their duties observe the rights conferred by the UN Convention on Rights of Persons with Disabilities on those persons whose affairs come under the management of the NSW Trustee and Guardian. This Act recognises the rights in the Convention but specifically requires persons who oversee the operation of this Act to observe the specific rights in Article 12 of the Convention.

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