

Review of the Guardianship Act 1987 - Question Paper 4: Safeguards and procedures.

Thank you for the opportunity to provide this submission to the review of the Guardianship Act 1987 ("Act") on Question Paper 4, question 5.2: The supervision of private managers. What if anything should change about the NSW Trustee and Guardian's supervisory role under the NSW Trustee and Guardian Act 2009 (NSW)? The Act.

As you have noted the NSW Trustee charges fees for supervising the management of a "protected person's" estate by a private financial manager. In addition, a fee must be paid out of the estate into a "surety bond scheme". A surety bond company will then reimburse the estate if the private manager's mismanagement causes a loss to the estate.

As you may be aware, Trustee & Guardian's authority to implement a surety bond scheme under the Act is currently subject to challenge in the NSW Civil and Administrative Tribunal.

I respectfully ask the Commission to be aware of the challenge to Trustee and Guardian's authority to implement this scheme and in due course to consider the arguments presented by both parties.

I am also a Private Manager who has been managing an estate of a family member and I am also a financial adviser. Even with the financial services legislation I am not exempt from having to sign the Surety Bond.

If I was to sign the Surety Bond then I put at risk all of my assets should the estate suffer any loss. It states in the terms & conditions of the bond that I am liable for any loss and guilt does not need to be established. When a payment is made by the insurer, they can then pursue the Private Manager to re-imburse them for payment of the bond plus legal fees. The Private Manager is liable even if they are not at fault - how is this even legal?

There has been no risk assessment completed and the Bond is to be funded by the estate of the protected person. If the NSW T&G want to relinquish their supervisory role, then perhaps they can fund the cost of the Bond.

There has been no consultation with Private Managers prior to the establishment of the Bond - the first I heard of it was when I received a letter demanding I sign the Surety Bond. I have refused to sign and the NSW T&G have threatened to remove me as the Private Manager of my relative's estate. I have managed the estate for over 24 years and every year I submit detailed accounts with no anomalies.

Also of interest to note is that Trustee companies do not need to sign a Surety Bond and people who have an Enduring Power of Attorney do not need to sign a Surety Bond.

It appears that Private Managers are being discriminated as one "bad" group of people i.e. it is assumed that Private Managers will mis-use Protected Persons' estate without any evidence that such mis-use or fraud would every occur.

It is important that what ever measures are used to protect vulnerable people in our community that it does not put another group of people at unnecessary risk of loss in the process.