



Private Manager's Handbook

Your guide to what is required and expected of a private manager



NSW Trustee
& Guardian

Contents

Private Management Overview	3		
Financial management orders	3		
What is a private manager	3		
Multiple private managers	3		
NSW Trustee & Guardian's role	4		
Your client service team	4		
Getting Started	5		
Your Role as a Private Manager	7		
Decision making	7		
Consultation	7		
Key duties	8		
Conflict of interest	8		
Spending	9		
Spending requiring approval	9		
Making gifts and loans	9		
Giving the managed person some financial control	10		
Managed person's Will	10		
Guardians	10		
Payment for private managers	10		
Responsibilities of a Private Manager	11		
Security	11		
Bank accounts	11		
Financial records	11		
Lodgement of accounts	11		
Employment of carers	11		
The NDIS	11		
		Assets	12
		Investing	12
		Dealing with real estate	12
		Buying assets other than real estate	12
		Selling assets other than real estate	12
		Insurance	12
		Authorised Visitors	13
		What is an authorised visitor	13
		The role of an authorised visitor	13
		Authorised visitor fees	13
		Legal Issues	14
		Signing documents	14
		Court cases	14
		Power of Attorney	14
		Professional advice.....	14
		Seeking legal advice from our legal team.....	14
		The managed person makes a Will	14
		Deceased estates	15
		The managed person runs a business	15
		Your role in other legal matters	15
		Death of the managed person	15
		Does a financial management order apply outside NSW?	15



Changing Private Managers	17
Resigning as a private manager	17
Death of a private manager	17
Removing a private manager	17
Revocation of a financial management order ..	17
NSW Trustee & Guardian Fees	18
Case studies	19
Feedback, Complaints and Review of Decisions	20
APPENDIX 1: Sample letter	22
APPENDIX 2: When to use the Change in Estate form	23
Helpful contacts	24
Inclusive services	26

Fees outlined in this document are current as at June 2022 and are subject to change. Visit our website for our current fees: www.tag.nsw.gov.au

Introduction

Managing the financial affairs of someone who is unable to do so themselves is a position of great trust and responsibility. We hope the Private Manager's Handbook will assist you in your role and provide an understanding of what is required and expected of you as a private manager.

We have included information about how to carry out your responsibilities and the part we play at NSW Trustee & Guardian. We have also included topics that other private managers have found useful.

If you need any further advice or guidance along this journey, please do contact your client service team.

We look forward to working with you.

NSW Trustee & Guardian



Private Management Overview

Financial management orders

A financial management order is a legal decision appointing a person (or persons) to manage the financial affairs of someone who has been found not to have capacity. A financial management order can only be made by the Supreme Court of NSW or the Guardianship Division, NSW Civil & Administrative Tribunal (NCAT).

The order is made according to the *NSW Trustee and Guardian Act 2009* or *Guardianship Act 1987* and appoints either a private manager or NSW Trustee & Guardian to be financial manager.

When making its decision, the court or tribunal considers all the evidence and will make a financial management order if it is satisfied that:

- the person cannot manage their own financial affairs
- informal arrangements to assist the person are not suitable
- an order is in the best interests of the person who does not have the capacity to manage their financial affairs.

What is a private manager

A private manager is a person who has been appointed by either the Supreme Court of NSW or the Guardianship Division, NCAT, to manage the financial affairs of a person without capacity. A private manager may include a spouse, other family member or friend of the person whose financial affairs they are managing.

Multiple private managers

In some instances more than one private manager may be appointed. The most common forms of this are:



Jointly

When private managers are appointed jointly, they must work with the other private manager in looking after the managed person's estate. Joint private managers have a shared, not a separate, responsibility for all decisions. This includes signing cheques and deciding about how to invest funds.



Jointly and severally

When private managers are appointed jointly and severally, they can work together or act individually when making decisions for the managed person. Decisions that require consideration by NSW Trustee & Guardian need to be submitted jointly.

If one of the private managers dies, the remaining private manager takes on full responsibility for the estate without the need to obtain a new financial management order.

NSW Trustee & Guardian's role

NSW Trustee & Guardian is an agency within the NSW Department of Justice. We have a statutory role to oversee private managers and work with them to assist them in fulfilling their role.

In our role, we have two customers – the private manager and the person whose finances have been placed under management. In looking after the interests of both, we are responsible for:

- issuing Directions and Authorities that give the private manager authority to administer the managed person's estate
- overseeing the performance of the private manager

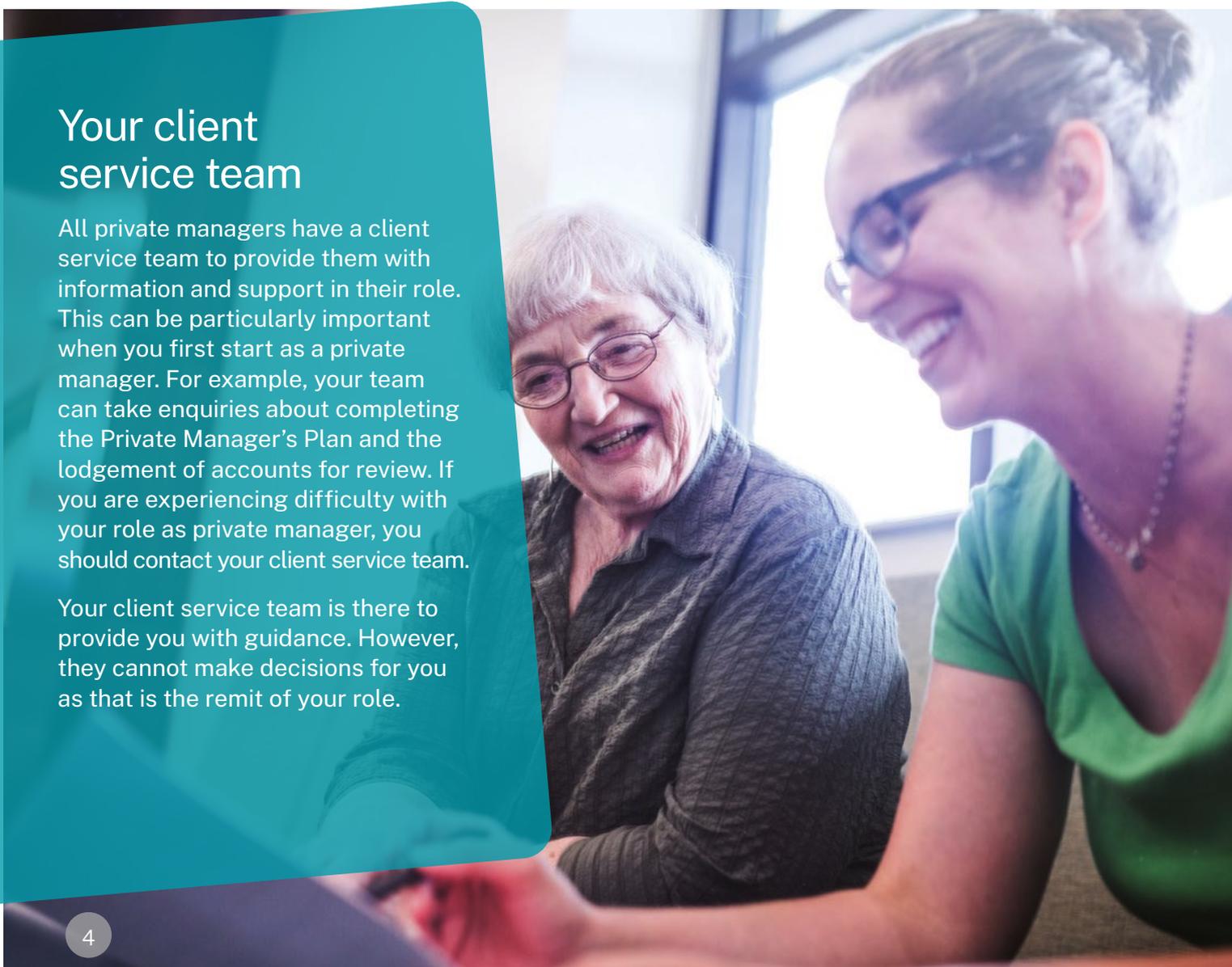
- authorising implementation of the Private Manager's Plan
- reviewing and checking accounts
- seeking reports from an authorised visitor or other professionals about the managed person's needs
- approving the release of funds to meet the managed person's needs
- authorising the sale or purchase of major assets by the private manager
- seeking a review of the private manager's appointment if they do not comply with their obligations.

We charge fees for our private management services. A full outline of these fees is contained on page 18.

Your client service team

All private managers have a client service team to provide them with information and support in their role. This can be particularly important when you first start as a private manager. For example, your team can take enquiries about completing the Private Manager's Plan and the lodgement of accounts for review. If you are experiencing difficulty with your role as private manager, you should contact your client service team.

Your client service team is there to provide you with guidance. However, they cannot make decisions for you as that is the remit of your role.



Getting Started

There are several steps to formalising a private manager's authority.



Step 1
Financial management order appoints private manager



Step 2
Directions and Authorities document issued



Step 3
Private Manager's Plan completed



Step 4
Relevant people informed

Step 1 Appointment

You will usually receive a financial management order appointing you as private manager following a hearing before the Supreme Court of NSW or Guardianship Division, NCAT. Before you can commence duty as a private manager, we must issue you with a document called Directions and Authorities.

Step 2 Directions and Authorities document issued

The Directions and Authorities document sets out your powers as a private manager. It is based on information provided in the financial management order. It will include a number of standard powers, such as the ability to receive income and pay day-to-day expenses and a list of directions from us.

The Directions and Authorities can be changed as circumstances require. If you need authorisation to do something that is not detailed in the document, you must contact your client service team and ask for approval. Your client service team will be able to clarify whether or not you have the authority to take a particular course of action.

Where the Guardianship Division, NCAT makes a financial management order with a review or expiry date, the Directions and Authorities document will include this date. The order may need to be renewed after this date. If the order is renewed you will receive new Directions and Authorities.

We work with private

managers to assist them

in fulfilling their role.

Step 3

Complete Private Manager's Plan

One of your first responsibilities is to complete a Private Manager's Plan. This plan provides us with a full picture of the managed person's estate including forecast income and expenditure. The Private Manager's Plan form is included in your welcome pack and it can also be downloaded from www.tag.nsw.gov.au/forms or obtained by contacting your client service team.

All private management forms

can be downloaded from

www.tag.nsw.gov.au/forms

A sample letter that you can adapt

to tell people of your appointment

is included in this handbook in

Appendix 1. If you still encounter

difficulty having your authority

recognised, call or email your client

service team for further help.

Step 4

Relevant people informed

You will need to inform the people and organisations that you will deal with that you are the private manager of the managed person's affairs. These organisations could include:

- banks and financial institutions where the managed person has funds invested
- Centrelink
- Department of Veterans' Affairs
- Australian Taxation Office, if tax returns are to be lodged
- Revenue NSW, if land tax is applicable
- insurance companies
- professional advisors such as the managed person's solicitor and accountant
- nursing home/hostel or other accommodation where the managed person lives
- debtors and creditors of the managed person such as the local council, telephone provider, gas/electricity provider, Roads and Maritime Services, superannuation funds
- companies where the managed person has investments (including share registries).

Sometimes the person you deal with at a bank or organisation may not be familiar with financial management orders and may not understand what the order allows a private manager to do. They may ask to see a Power of Attorney document.

When you approach an organisation, it is important to have the financial management order and the Directions and Authorities to hand. You can tell the person that the financial management order actually holds more power than a Power of Attorney and gives you authority to manage and make changes to the customer's financial affairs.

Private managers are free to make decisions within the limits of the powers and authorities given to them.



Your Role as a Private Manager

Decision making

You are free to make decisions within the limits of the powers and authority given to you by the Directions and Authorities document. We will only step in if you act outside those powers or the decision made is significantly flawed or against the best interests of the managed person.

Private managers make decisions that the managed person would normally have made about managing their money. They become what is called a 'substitute decision-maker'.

Any decisions about spending and investing the managed person's money should be carefully considered. Decisions should be made with the aim of maximising the managed person's quality of life within their financial constraints. The interests and views of the managed person come first. It is not the private manager's role to preserve assets for the people who may eventually inherit their estate but to balance expenditure within the financial capacity of the estate.

Consultation

As a private manager you should regularly consult with the managed person about financial matters, if possible.

It is also important to obtain and consider the views of the managed person's immediate family, friends and other people closely involved in the managed person's life such as their appointed guardian.

Consultation on all major financial decisions and submitting a Change in Estate form to us for approval is essential.

Key duties

Some of the activities of a private manager are similar to those you carry out in managing your own finances. You will:

- collect all income and entitlements owing to the managed person
- pay all the managed person's expenses and debts
- ensure that all real estate and other assets such as motor vehicles the managed person owns are insured. You may also need to take out workers compensation or other insurance if carers are employed
- inform relevant authorities such as Centrelink, the Department of Veterans' Affairs and the Australian Taxation Office of any change in the circumstances of the managed person
- keep accurate records of income and expenditure
- lodge tax returns on the managed person's behalf
- ensure all the managed person's important documents, such as their Will and title documents are in a safe place.

As a private manager you also have specific obligations relating to the oversight of your financial management by NSW Trustee & Guardian. These are:

- following any directions given by us
- providing us with all relevant information relating to the financial affairs of the managed person including completing and submitting the Private Manager's Plan and the Change in Estate form when necessary
- providing any security that we request
- lodging accounts of your administration of the managed person's financial affairs
- ensuring that at all times you keep the managed person's financial affairs separate from your own, including using separate bank accounts in the managed person's name
- seeking prior approval from us for expenditure other than day-to-day expenses.

Conflict of interest

As a private manager you may sometimes find yourself in a situation where your personal and financial interests are in conflict with the interests of the managed person.

For example, a conflict of interest would occur if you:

- wanted to borrow money from the managed person's estate
- proposed that either you or a close relative or friend move into the managed person's house
- proposed that the managed person invest money in a company or business in which you or your family has an interest
- sought to gain a greater interest in a deceased estate and in so doing adversely affected the managed person's rights or entitlements.

It is important you recognise when a conflict of interest arises. A private manager needs to remain impartial when making decisions and must keep the interests of the managed person paramount.

If you believe that you have a potential conflict of interest, you should contact your client service team for information and assistance as soon as possible.

Private managers require

our approval to cover

expenses other than general

day-to-day expenses.

Spending

The Directions and Authorities gives you the power to meet a range of day-to-day expenses on behalf of the managed person. These expenses include:

- general living costs such as accommodation, care and medical expenses
- other costs associated with the managed person's property, e.g. rates, taxes, insurance, repairs, electricity, gas and telephone
- any items that will improve the managed person's life e.g. a new wheelchair. A private manager can spend reasonable amounts on these items, taking into account the managed person's financial circumstances
- fees for lawyers, accountants and other professionals. This does not include ongoing costs for legal proceedings
- maintenance and security of property and personal assets.

Spending requiring approval

Private managers require our approval to cover expenses other than general day-to-day expenses.

Examples of items requiring approval include:

- spending on relatives – the managed person may have previously supported other family members and there may even be a legal obligation to provide support
- donations to charity – if the managed person had regularly made donations, it may be reasonable to continue doing so
- proposed expenditure which may not be included in the Directions and Authorities such as buying a car or buying real estate
- reimbursement of expenses.

When thinking about spending of this nature, you should consider whether enough money will be left to meet the managed person's day-to-day, long-term and special needs.

You must complete a Change in Estate form when seeking our approval for the expenditure. The Change in Estate form can be downloaded from www.tag.nsw.gov.au/forms or by contacting your client service team. A range of events when it is appropriate for a private manager to use the Change in Estate form are detailed in Appendix 2.

When we assess proposed changes to the estate, we take into account the:

- views of the managed person (if possible) and their family
- best interests of the managed person
- financial resources available.

Any subsequent changes to the estate will be considered in the same way.

We understand that a managed person's circumstances and needs change over time. Therefore, Change in Estate forms can be submitted for approval as life events require. If you have any questions relating to submission of a Change in Estate form please contact your client service team.

Making gifts and loans

Private managers can only make gifts and loans that fall within the requirements of the *NSW Trustee and Guardian Act 2009* Section 76 where:

- the gift is seasonal in nature or for a special event for a relative or close friend of the managed person
- it is a donation that the managed person made when they had capacity to do so or they might reasonably be expected to make
- the value of the gift or donation is not more than what is reasonable with regard to all circumstances of the managed person's financial circumstances and size of the estate.

In other cases, only the Supreme Court can authorise a gift outside of Section 76. You will need to demonstrate why you believe such a gift should be made, the effect on the estate and provide the views, if possible, of the managed person and other immediate family members.

Under the *NSW Trustee & Guardian Act 2009*, NSW Trustee & Guardian may authorise private managers to loan money to the managed person. No loans can be drawn from the managed person's estate unless it has been approved by the Supreme Court.

Contact your client service team to discuss in further detail.

Giving the managed person some financial control

In some circumstances, it is appropriate for the managed person to control some of their own money. This allows them a measure of control and enhances their independence. You can minimise risks around this through informal support and helping them to develop money management skills.

Sometimes a financial management order will allow the managed person to manage an asset or some income themselves. If you think that the managed person should control some of their money, but the financial management order does not permit this, approval needs to be given by us.

Managed person's Will

If possible, you should read the managed person's Will because some of its terms may affect the decisions you make about the estate. For example, if the managed person is leaving a gift of real estate in their Will, you should only consider selling the property if the proceeds are essential to the managed person's ongoing care.

As Wills are confidential documents the contents should not be disclosed to other people.

We may ask you to send us a copy of the managed person's Will.

Guardians

As well as being appointed private manager, you may also be appointed as guardian for the managed person. The Supreme Court of NSW or the Guardianship Division, NCAT may appoint a guardian to make decisions about specific health and lifestyle issues for the managed person.

If a separate guardian is appointed, you should consult with the guardian on all major financial decisions such as choosing suitable accommodation for the managed person.

Payment for private managers

Private managers are not paid for performing their work unless they have first obtained a remuneration order from the Supreme Court of NSW. Once a remuneration order has been obtained from the Supreme Court, we will consider payment of remuneration for work done as a private manager. To receive payment for acting as a private manager, you need to fill out a Change in Estate form. This can be downloaded from www.tag.nsw.gov.au/forms or obtained by contacting your client service team.

There are some instances where you may be reimbursed for reasonable out-of-pocket expenses with our approval. This is with the understanding that all family members agree to the payment. You must record all reimbursements of expenses as expenditure in the accounts that you lodge with us. Please contact your client service team for further information.

Responsibilities of a Private Manager

Security

We may ask you to lodge particular financial and legal documents with us. The documents required are decided on a case by case basis and are subject to the terms of the financial management order.

If security is required it will be requested on completion of the Private Manager's Plan.

Bank accounts

All accounts and investments should be held in the managed person's name alone.

Having a single bank, building society or credit union account through which all the managed person's money is channelled makes it easier for you to keep track of money coming in and going out of the managed person's estate. This account can be an existing account of the managed person or a new account opened in their name.

You cannot open an account in your own name as trustee for the managed person.

Financial records

Private managers are required to keep full details of the managed person's assets, debts, income and expenditure and they are to be retained for five years.

In keeping financial records:

- where possible, pay by cheque or debit card as this provides proof of payment
- keep the receipt when you pay
- when paying invoices, write 'paid' together with the date of payment on the invoice.

Lodgment of accounts

We ask you to lodge an account of the financial dealings you have carried out for the managed person so we can check they are in line with the Directions and Authorities and any further approvals we have granted. Lodgment of accounts is normally done on an annual basis.

You can use a bookkeeper or an accountant to assist with the preparation of accounts and the cost of this can be paid for from the managed person's estate.

Account forms can be downloaded from www.tag.nsw.gov.au/forms or contact your client service team for a form.

Employment of carers

A paid carer can sometimes help with domestic tasks and personal care, allowing the managed person to continue living in their own home.

Hiring carers through a commercial carer agency is the preferred option because the agency will take responsibility for all income tax and employee related expenses. A managed person can directly employ a carer, and it is possible that family members or the private manager can be employed. We advise that you seek advice from a lawyer or an accountant, as you will need to comply with all federal and state industrial awards and agreements. You should also contact an insurance provider for advice on the most appropriate cover for a carer.

The NDIS

The National Disability Insurance Scheme (NDIS) provides all Australians under the age of 65 who have a permanent and significant disability with the support they need. As an insurance scheme, the NDIS takes a lifetime approach, investing in people with disability early to improve their outcomes later in life. If the managed person has not yet accessed the NDIS, you can make contact with the National Disability Insurance Agency (NDIA).

To be eligible for the NDIS, the managed person must:

- be an Australian citizen or permanent resident
- be under 65 years of age
- have a lifelong disability that stops them from doing everyday things independently.

Assets

Investing

All investments must be held in the managed person's name.

When investing a managed person's money, you must comply with the *Trustee Act 1925*. Under this Act, a private manager can choose investments suited to the needs of the managed person but must use the care and skill that a 'prudent person' would use in managing someone else's financial affairs.

Investments must be reviewed at least once each year. You must provide confirmation when lodging accounts stating that you have reviewed the performance of the managed person's investments and are satisfied that these meet the requirements of the Act.

You are allowed to get independent investment advice and the Directions and Authorities gives you the authority to do so. We will normally ask you to seek financial advice if the estate is large or complex. The cost of obtaining investment advice can be charged to the estate of the managed person.

Our financial planners can be asked to prepare a financial plan for the managed person's estate on request. A fee of \$150 per hour will be charged for the preparation of a financial plan. Please speak with your client service team if you would like to make an appointment with our financial planners.

Dealing with real estate

If you intend to deal with real estate in any manner other than that already authorised in the Directions and Authorities you must complete and submit a Change in Estate form addressing issues relating to:

- purchase
- sale
- leasing
- occupation
- renovation of real estate.

Buying assets other than real estate

Unless you have the power under the Directions and Authorities, we must give approval for you to buy a major asset such as a car. To seek approval, complete and submit a Change in Estate form.

Selling assets other than real estate

The sale of major assets will impact on the managed person. The impact could be financial or affect a managed person's lifestyle. For example, the sale of shares may affect Centrelink payments; the sale of a car, furniture or personal effects may affect their lifestyle.

As well as thinking about how the sale will affect the managed person, you should consider whether the managed person or their family has asked that particular items be kept, or whether the managed person has left particular items in their Will. To sell a major asset, you need to complete and submit a Change in Estate form.

Insurance

Private managers are required to insure the managed person's assets for their full insurance value and to take out workers' compensation, public liability, personal liability and any other insurance cover that may be required. We will ask you to provide evidence that appropriate insurance is in place and maintained when lodging accounts.

You cannot open a bank

account in your name for

the managed person.

Authorised Visitors

What is an authorised visitor

An authorised visitor is a professional engaged by NSW Trustee & Guardian to assist in our oversight of private managers.

Our panel of authorised visitors are qualified and experienced professionals including social workers, psychologists, doctors and occupational therapists. They are independent of NSW Trustee & Guardian, which enables them to make recommendations they deem necessary and report on any areas of concern.

You will be advised of any recommendation made by an authorised visitor on which you should take action.

- a comprehensive assessment of the managed person's living environment, quality of life, social interactions, health status and needs
- an understanding of the managed person and, where relevant, their family's views about management of their estate, their needs and wishes and any particular decision under consideration
- a professional opinion on which the client service team can base decisions relating to their role of authorising and directing private managers
- recommendations which address unmet needs, enhance quality of life within available financial resources, and identify any issues for individual advocacy.

The role of an authorised visitor

The role of an authorised visitor is to prepare an independent report on the managed person providing:

Authorised visitor fees

There is a fee charged for visits from authorised visitors to cover the associated report writing, plus travel costs. The fee for the visit is paid for by the managed person's estate.

Legal Issues

Signing documents

Legal documents for the managed person can be signed by you as the private manager.

Under the *NSW Trustee and Guardian Act 2009* documents must be certified by a legal practitioner to be correct and protect the interests of the managed person.

NSW Trustee & Guardian must endorse all transfer documents of real estate.

Court cases

You have power under the Directions and Authorities to obtain and pay for professional legal advice. If the solicitor recommends starting court proceedings, we must first give approval. Court proceedings include:

- damages for injuries suffered in car accidents
- workers' compensation claims
- claims for maintenance and child support
- claims to recover assets where the managed person may have been exploited
- claims by the managed person against a deceased estate.

If we consent to the commencement or continuation of court proceedings, you will usually be given authority to:

- employ solicitors and legal counsel/ barristers
- conduct legal proceedings and give instructions on behalf of the managed person to the solicitor and legal counsel
- if advised by legal counsel, enter negotiations for settlement.

In the event of legal proceedings against the managed person, you may, with our approval employ a solicitor and legal counsel to represent the managed person.

Power of Attorney

Any Power of Attorney (including an enduring Power of Attorney) given by the managed person is suspended while there is a financial management order in place.

Professional advice

NSW Trustee & Guardian may at time be required to seek legal advice from NSW Trustee & Guardians's Legal Department to make a decision based on a request received from the private manager regarding the management of the estate.

NSW Trustee & Guardian Legal team will charge a fee for providing this advice and this fee will be paid from the managed person's estate.

Seeking legal advice from our legal team

You have the power under the Directions and Authorities to obtain and pay for professional legal advice. In certain cases, when submitting a request for approval via the Change in Estate form to NSW Trustee & Guardian, the Private Management team may require legal guidance from our internal legal team.

Should the Private Management team require advice from our legal team to make an informed decision on a request, a fee will be incurred and will be payable from the managed person's estate.

The managed person makes a Will

You cannot make or change a Will for the managed person. However, the managed person may still be able to make a Will providing they have what is known as testamentary capacity.

If a managed person wants to make or change a Will, you should seek independent legal advice.

Deceased estates

If the managed person is an executor or administrator of a deceased estate, the private manager must seek additional direction from us to appoint another person or consent to apply for letters of administration.

The managed person runs a business

Depending on the situation, we may authorise you to sell or close the business. Alternatively, we may authorise you to continue operating the managed person's business. Each case will be considered on an individual basis.

Your role in other legal matters

The ability of the managed person to deal with their estate is suspended while a financial management order is in place. If a contract they have signed prior to a financial management order being made is in their interests, you can ask us for approval to complete the transaction.

Death of the managed person

Your role as a private manager will end when the managed person dies. Your final duties will be to:

- advise us of the managed person's death
- advise the executor of the managed person's Will or (where there is no Will) next of kin, of their death and details of their estate
- provide us with details of the executor or administrator of the person's estate.

The appointed executor or administrator will then administer the managed person's estate. Please send them all documents related to the estate. If there are outstanding fees for NSW Trustee & Guardian, these will be claimed from the estate.

After payment of all outstanding fees and copies of probate documents or letters of administration have been provided, we will release any funds or documents held in line with the written instructions of the executor.

If the estate is worth less than \$10,000 we may release any funds or documents without a copy of probate documents or letters of administration. You should contact your client service team for information on what to do in this case.

Does a financial management order apply outside NSW?

Interstate or overseas assets

Your power to deal with such assets depends on the acceptance of your authority in the state or country where the assets are located. A financial management order will generally only apply to assets in NSW. This means that you will have to seek a financial management order in the relevant state, territory or country for assets outside of NSW.

The managed person or private manager lives outside NSW

The financial management order still applies regardless of whether the managed person or private manager lives outside NSW. If both the managed person and the private manager live outside NSW, it is generally best to have the NSW order cancelled and apply for a financial management order in the relevant state or country. The exception to this is if there is real estate in NSW to be managed or sold.



Changing Private Managers

Resigning as private manager

If the private manager wants to resign, they need to apply to either the Supreme Court or the Guardianship Division, NCAT – where ever the financial management order was made.

If a Supreme Court of NSW made the order, it is recommended that a private manager seeks legal advice. A private manager's application to resign must be accepted by the court or tribunal before they can be released from their role.

A private manager should apply to resign if there is a conflict of interest and it is in the best interests of the managed person that another financial manager be appointed.

Death of a private manager

If a private manager dies, a replacement financial manager will need to be appointed.

Removing a private manager

NSW Trustee & Guardian may make an application to have the private manager's appointment reviewed with a view to someone else being appointed in their place if a private manager fails to act in the managed person's best interests. An application for review will also be made if the private manager has neglected to undertake their role according to the Directions and Authorities. For example, if the private manager does not lodge the Private Manager's Plan or accounts for review, does not pay the required fees, or does not meet security requirements.

Revocation of a financial management order

The Supreme Court of NSW or the Guardianship Division, NCAT may revoke the order if, according to a doctor, clinical psychologist, rehabilitation specialist or other appropriate professional, the managed person has regained the capacity to manage their own financial affairs. An application will need to be made to the court or tribunal which initially made the order.

The Guardianship Division, NCAT may also revoke an order if it considers that the order is no longer required and it should be revoked in the best interests of the managed person.

NSW Trustee & Guardian Fees

The *NSW Trustee and Guardian Act 2009* and *NSW Trustee and Guardian Regulation 2017* require us to charge fees to cover administration costs.

Fees are payable from the estate of the management person.

Details of our private management fee structure are set out below.

We will send out an invoice for our fees. Please ensure fees are paid within 21 days of the invoice date to avoid further action.

Fees (GST exempt)	
Establishment	<p>\$500 establishment fee</p> <p>Fee reductions apply for customers with total assets \$75,000 or less.</p> <p>Customers with assets:</p> <p>\$25,000 or less will be exempt \$25,001 – \$75,000 will pay \$250 \$75,001 or greater will pay \$500</p>
Account checking	<p>Yearly fee, based on complexity*:</p> <p>\$100 (low) \$200 (medium) \$300 (high)</p>
Investment	<p>0.15% of the value of the trust account, 0.25% for Income Fund and 0.35% for Financial Management Growth Fund in NSW Trustee & Guardian investment funds per year (fees are GST exempt)</p>

Additional fees for financial planning may apply.

*First year accounts submitted are charged an account checking fee of \$200, unless otherwise stated.



JOHN'S STORY

John is on a disability pension and has less than \$25,000 worth of assets. Fees payable for management of John's estate for the first year would be:

Initial establishment fee		No fee as John's assets are worth less than \$25,000
Account checking fee	\$100	John's estate is not complicated so a standard account checking fee applies.
Total paid	\$100	



SARAH'S STORY

Sarah owns her unit worth \$650,000 and has \$200,000 invested in the NSW Trustee & Guardian investment fund. \$50,000 of that investment is held in Sarah's Trust account, and \$150,000 is invested in the income fund. The fees Sarah pays:

Initial establishment fee (one off)	\$500	As Sarah's assets are valued at over \$75,000 the full fee applies
Create a financial plan (one off)	\$300	As the financial planner spent two hours at \$150 per hour to create the financial plan
Investment fee (ongoing)	\$75	\$50,000 x 0.15% (Trust account fee)
	\$375	\$150,000 x 0.25% (Income fund fee)
Account checking fee (ongoing)	\$200	Sarah's estate has been assessed as being of medium complexity, so a \$200 account checking fee applies.
Total fees year 1	\$1,450	
Ongoing yearly fees	\$650	As the establishment fee is only charged in the first year, this will not be charged in subsequent years

Feedback and Complaints and Review of Decisions

We are committed to continuously improving our service to customers and welcome your feedback. If you would like to let us know about how we've done something well, please let your client service team know.

If you would like to make a complaint please follow the steps below.



Step 1:

Speak to your client service team

Contact your client service team and speak to them about your concerns. If it is about a decision that was made, ask them to explain why the decision was made. You can request that the decision be explained to you in writing.



Step 2:

Speak with the manager of your client service team

If after speaking with your client service team you are still dissatisfied you can ask to discuss your concerns with the team manager.



Step 3:

Write to us to make a formal complaint

If after speaking with the manager of the client service team you are still unhappy you can write to us to make a formal complaint. The matter will be referred to a senior officer to review and respond, usually within 21 days.

Please write to:

Executive Support Team NSW Trustee & Guardian

Locked Bag 5115
Parramatta NSW 2124

If you remain dissatisfied you can contact the NSW Ombudsman on:

Phone: 02 9286 1000
Freecall: 1800 451 524
Email: nswombo@ombo.nsw.gov.au
Online: www.ombo.nsw.gov.au

NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000

Review of decisions



Step 1: Internal review

If you disagree with a decision made by NSW Trustee & Guardian you can ask the manager of your client service team to informally review the decision. However, some decisions such as significant decisions may be reviewed under a more formal process. In these situations, you must first ask for an internal review. This should be done in writing within 28 days of being told of our decision.

The review will be carried out by a senior person at NSW Trustee & Guardian who was not involved in the initial decision. That person will write to you within 21 days explaining the result of their review.

To organise an internal review write to:

Executive Support Team
NSW Trustee & Guardian
 Locked Bag 5115
 Parramatta NSW 2124

In your letter please request a Review of Decision and outline why you think the decision made was not in the person's best interests.



Step 2: External Review

If you are not satisfied with the outcome of an internal review you can seek an independent review by NCAT. This must be done within 28 days of the letter informing you of the result of the internal review.

Not all of our decisions are able to be reviewed. Decisions made in accordance with a direction by the Supreme Court of NSW cannot be reviewed. Reviewable decisions include:

- decisions made in accordance with our functions
- when we have not approved a request to allow or not allow the managed person to deal with their own estate
- decisions we have made in our authorisation and direction of you as a private manager.

Any interested person can apply for a review of our decisions.

In limited circumstances appeals can be made to the Supreme Court of NSW. Before undertaking an appeal to the Supreme Court of NSW legal advice should be sought.

Appendix 1

Sample letter informing organisations or people of the management order.

<date>

The Manager
<insert organisations name and address>

Dear Sir/Madam,

I am writing to advise you that on <date> I was appointed as the financial manager of <managed person>, by an order made by the Supreme Court of NSW/Guardianship Division of NSW Civil and Administrative Tribunal.

I enclose a copy of the order and the Directions and Authorities as issued by NSW Trustee & Guardian on <date> establishing my authority to act on behalf of <managed person>.

These Directions and Authorities give me the authority to <include Directions and Authorities which are appropriate for the organisation being addressed>.

Please note that all future correspondence relating to <managed person> should be addressed to me at:

<your name>
<your address details>

Yours faithfully
<your name>
Private manager appointed under *NSW Trustee and Guardian Act 2009*

Appendix 2

When to use the Change in Estate form

As a private manager you need to complete and submit a Change in Estate form when seeking approval for expenditure that is beyond day-to-day expenses and which may not be included in the Directions and Authorities. The Change in Estate form is available from your client service team or can be downloaded from our website.

Below are examples of life events when you should submit a Change in Estate form.

1. Investing managed person's funds

If you want to invest funds on behalf of the managed person, we ask you to have regard to the Prudent Person Principle in the *NSW Trustee Act 1925* section 14c. This requires private managers to exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons. In making and implementing investment decisions you are under a duty to the managed person to distribute the risk of loss by reasonable diversification of investments.

2. Entering Aged Care Facility

Where a managed person has been assessed for placement in an aged care facility, and advised by the Department of Human Services that they are required to pay a refundable accommodation contribution (RAC) or a daily accommodation contribution (DAC) – or combination of both – you will need to complete a Change in Estate form for approval before you enter into a Residential Care Agreement on behalf of the managed person.

3. Sale of real estate

When you want to sell real estate owned by the managed person.

4. Purchase of real estate

When you want to purchase real estate on behalf of the managed person.

5. Lease of real estate

When you want to lease real estate owned by the managed person.

6. Modify/renovate property

When you want to modify or renovate a property owned by the managed person.

7. Occupation of a managed person's property by a family member

When you want to arrange for a family member to take up or continue occupation of a managed person's property at either a reduced rental or no rental at all.

8. Payment for past gratuitous care

You can request authority to make a payment to a care provider for past gratuitous care provided to the managed person where the managed person has received a compensation settlement.

9. Purchase of a motor vehicle

You can request to purchase a motor vehicle on behalf of the managed person. The purchase of a motor vehicle must be considered necessary and desirable for the care and management of the managed person's estate and of benefit to the managed person.

10. Legal proceedings

If you want to commence, continue or defend legal proceedings on behalf of the managed person.

11. Payment of legal costs

When you want to pay the cost of legal proceedings on behalf of the managed person.

12. Remuneration for management services provided by the private manager

If you have a remuneration order from the Supreme Court of NSW you also need to complete a Change in Estate form. This proposed change in the estate does not include payment for the provision of care to the managed person.

Change in Estate forms

can be downloaded from

www.tag.nsw.gov.au/forms

Helpful Contacts

Aged Care Services
Freecall: 1800 200 422
www.myagedcare.gov.au

Australian Taxation Office
Phone: 13 28 65
www.ato.gov.au

Dementia Australia
Dementia Helpline: 1800 100 500
Email: helpline.nat@dementia.org.au
www.dementia.org.au

Carers NSW
Phone: 02 9280 4744
Email: contact@carersnsw.org.au
www.carersnsw.org.au

Services Australia
Freecall: 132 717
Multilingual calls: 131 202
www.servicesaustralia.gov.au

Department of Veterans' Affairs
Freecall: 1800 838 372
www.dva.gov.au

Synapse
Phone: 1800 673 074
Email: info@synapse.org.au
www.synapse.org.au

Private Guardian Support Unit Public Guardian
Phone: 1300 361 389
Email: informationsupport@opg.nsw.gov.au
www.tag.nsw.gov.au/guardianship

Guardianship Division, NSW Civil & Administrative Tribunal (NCAT)
Phone: 1300 006 228
Email: gd@ncat.nsw.gov.au
www.ncat.nsw.gov.au

Intellectual Disability Rights Service
Phone: 02 9265 6350
Email: info@idrs.org.au
www.idrs.org.au

Law Access NSW
(free telephone and on-line legal information and advice)
Phone: 1300 888 529
www.lawaccess.nsw.gov.au

Legal Aid NSW
Phone: 1300 888 529
www.legalaid.nsw.gov.au

NSW Meals on Wheels
Phone: 1300 679 669
www.nswmealsonwheels.org.au

Multicultural Disability Advocacy Association
Phone: 1800 629 072
Email: madaa@madaa.org.au
www.madaa.org.au

NSW Office of Fair Trading
Phone: 133 220
131 450 (languages other than English)
www.fairtrading.nsw.gov.au

Revenue NSW
Phone: 02 9689 6200
www.revenue.nsw.gov.au

**Supreme Court of NSW
Equity Division – Protective**
Phone: 1300 679 272
Email: sc.enquiries@justice.nsw.gov.au
www.supremecourt.justice.nsw.gov.au

Inclusive services

We are committed to providing inclusive services for all of our customers. Everyone is different; so please let us know the type of adjustment you require, whether you are meeting with us or accessing our publications.

Requesting an adjustment can include:

- bringing a support person with you
- wheelchair access
- hearing amplification or relocating to a quieter area
- access to an interpreter
- documents in large print or electronic formats.

Some reasonable adjustments may require additional time to organise. If you are unsure please contact us in advance of your appointment.

Contact us



1300 540 724



www.tag.nsw.gov.au

Interpreter Services



If you need an interpreter when dealing with NSW Trustee & Guardian, you can telephone the Translating and Interpreter Service on **131 450** and they will ring the office for you at no cost.

Services

- Will Making
- Will Safe Storage
- Power of Attorney
- Enduring Guardianship
- Trust Administration
- Estate Administration
- Financial Management