

Information Sheet

Remuneration for Private Managers

1. What changes have occurred to make it necessary for me to apply for a remuneration order?

Recently in a Supreme Court Judgement the Court made orders regarding the payment of remuneration to private managers. In that judgement it was recognised that the role of a private manager is a gratuitous one. If a private manager of an estate is to be allowed remuneration out of the estate of the managed person there must be an order of the Supreme Court permitting it to be allowed.

2. What happens if I remunerate myself without a Supreme Court Order?

A private manager who takes, or retains, remuneration out of a managed estate without due authority may be liable for breach of the fiduciary obligations of a private manager and may be liable to be removed from the private manager's role.

3. Who makes the remuneration orders?

The Supreme Court judgement makes it clear that only the Supreme Court can make an order permitting remuneration to private managers.

4. What has changed for the role of the NSW Trustee and Guardian?

Upon the Supreme Court making a remuneration order the NSW Trustee and Guardian can then in an appropriate case allow remuneration payments. However any such remuneration must be limited to an amount that is just and reasonable in the context of the particular estate. NSW Trustee and Guardian

must also be satisfied that it is necessary for the benefit of the managed person that remuneration be allowed.

5. What is the new procedure for private managers to be remunerated?

- a. Every private manager seeking remuneration is required to obtain a remuneration order from the Supreme Court.
- b. Then the private manager will need to present the invoices to NSW Trustee and Guardian for the particular amount of remuneration to be paid.
- c. NSW Trustee and Guardian will then make a determination as to whether the remuneration sought is just and reasonable and authorise the payment to be made if satisfied.

It is only after written approval from NSW Trustee and Guardian that a remuneration payment may be made from the managed person's estate.

6. What do I need to do now?

- i. New financial management orders
 - (a) Disclosure of Request for Remuneration
In relation to new applications for financial management orders the applicant should disclose to the Supreme Court or Guardianship Division of NCAT that remuneration will be sought.

(b) Supreme Court
New remuneration orders may be obtained from the Supreme Court at the same time as the granting of the financial management order.

(c) NCAT Guardianship Division
Where a financial management order has been made by NCAT Guardianship Division the private manager will need to apply to the Supreme Court for a remuneration order.

ii. Existing financial management orders

In relation to existing managed person's estates where private managers are seeking payment of remuneration the private managers must obtain a remuneration order from the Supreme Court.

The application for the remuneration order needs to be made by the private managers themselves.

7. What is the Remuneration Information Form (RIF) to NSWTG and why do I need to complete it?

As part of the remuneration process the Supreme Court has determined

that NSWTG submit a report to the Court prior to or at the Hearing. In order to facilitate this process you will be required to forward a completed Remuneration Information Form to NSWTG. The information provided by you in the Remuneration Information Form will be utilised by NSWTG to complete the report to the Supreme Court. If this form is not completed by the private manager and submitted to NSWTG this will be reported to the Court.

8. Who informs the managed person and other stakeholders of the application of a remuneration order?

The private manager or the applicant for the financial management order is the person responsible to inform the managed person and other stakeholders of the application for remuneration.

9. How does NSW Trustee and Guardian monitor the private manager's remuneration in the future?

NSWTG will retain a monitoring role in remuneration and will require private managers to report on the remuneration amounts (usually as part of the annual accounts).

For any further enquiries please contact the PMB Remuneration Officer on 02-8688 2600 or email Private Management Branch at pmb@tag.nsw.gov.au