

Address

Date

**Re: Managed person**  
**Client Ref. 999999**

Re: New Requirements for Remuneration of Private Managers

Dear Sir/Madam

I am writing to advise you of changes to the NSW Trustee and Guardian (NSWTG) procedures for the payment of remuneration of private managers.

Please note that the changes affect only the payment of remuneration (in this letter referred to as the charging and payment of fees) of private managers for their management of the managed person's estates and not the reimbursement of any expenses that may be incurred by private managers in the performance of their duties.

In March 2014 the Supreme Court in the judgment of *Ability One Financial Management Pty Ltd v JB by his Tutor AB [2014] NSWSC 245* made orders regarding the charging and payment of fees of private managers.

In the Ability One judgment the Supreme Court established the following:

1. It was recognised that the role of a private manager is a gratuitous one for the benefit of the managed person.
2. If a private manager is to be allowed to charge and be paid fees out of the estate of the managed person there must be an order of the Supreme Court authorising the charging of fees for each estate.
3. Only the Supreme Court can make an order authorising the charging of fees for management of the managed person's estate.
4. After the grant of the Supreme Court Order to charge fees for the management of the managed person's estate NSWTG's role is to authorise each individual payment of fees from the managed person's estate.

In order to authorise the payment of the fees by the managed person's estate NSWTG must be satisfied that:

- That it is necessary for the benefit of the managed person that the fees be allowed.
- Any such fees be limited to an amount that is just and reasonable in the context of the particular estate.

In summary, the new process for private managers to be paid for the management of the managed person's estate will be as follows:

- 1) The private manager must make an application to the Supreme Court for an Order authorising the charging of fees by the private manager. This Order will need to be obtained only once for each estate.
  - a) In relation to new applications for financial management orders the proposed private manager should disclose to the Supreme Court or Guardianship Division of NCAT that it is intended that the manager proposes to charge fees to the managed person's estate for the management of the estate.
  - b) The charging of fees order from the Supreme Court should be applied for at the same time as the application for the financial management order.
  - c) If there is an existing managed estate where the private manager proposes to charge fees then an order authorising the charging of fees for each estate must be sought from the Supreme Court.
- 2) If there is a Supreme Court order authorising the charging of fees in the estate the private manager submits their first and all future fee invoices to NSW TG for approval to be paid from the estate of the managed person.

Please note you only need to obtain the Court Order once in each estate, however you need to seek authority for payment from NSW TG for every fees Invoice.

- 3) The private manager is authorised to pay themselves the invoiced fees only after receiving written approval from NSW TG.

Please read the enclosed Remuneration Information Sheet which has been designed to assist you by answering frequently asked questions about the new remuneration procedure.

For further enquiries you may have please contact the PMB Remuneration Officer on 02 8688 2600.

Or by email at [pmb@tag.nsw.gov.au](mailto:pmb@tag.nsw.gov.au)

Yours sincerely

Francesca Guido  
Assistant Director  
Private Management Branch