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*** LAWYER ***

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10 October, 2014

Mr Gerard O'Dea
Review of the fees of NSW Trustee and Guardian
IPART
P O Box Q290
QVB Post Office 1230

Dear Mr O'Dea

Submission to IPART Fees NSW Trustee and Guardian

Introduction

I have the privilege to sit on the Advisory Board of NSW Trustee and Guardian (TAG).

I am a Lawyer of almost 30 years experience and my principal area of practice is and has been for this period Inheritance Law (Wills, Estates and related areas of law).

I have read the interim Report (**the Report**) circulated by IPART.

Issue of concern

In respect of the Report I express the concern that IPART has mistaken the role, duty and responsibility of TAG with respect to the administration of estates of deceased persons as prescribed by the relevant legislation.

TAG **does not have a monopoly** in the administration of the estates of deceased persons in New South Wales.

In the normal course it is the Legal Personal Representative of the estate of a deceased person who administers an estate of a deceased person. This is in the normal course:

- the executor appointed by Will (if a will exists); and where there is no Will or no executor nominated
- the person or institution appointed by the Court.

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The observation of my office.

The reality is that it is only where:

- A person dies without a Will and TAG is requested by police or family to protect the assets of a deceased person;
- A person dies appointing TAG in their Will as their Executor;
- A person dies with a Will, but for whatever reason there is no Executor to seek a grant of representation and some necessitous circumstance demands that TAG should be appointed; or the
- Court appoints TAG;

does TAG assume the administration of an estate.

It is my understanding that my observations are supported by statistics maintained by the Supreme Court.

I am pleased to say that from time to time my office works with TAG in the administration of deceased estates (my office refers estates to TAG) where circumstances call for and justify the appointment of TAG.

I have no hesitation where in appropriate circumstances warrant me to recommend the appointment to recommend that a client consider appointing TAG to administer a deceased estate. This is usually where an independent impartial legal personal representative is required to administer an estate of a family member.

Conclusion

I would be happy to be contacted to amplify on the above and I am happy to provide an overview of the relevant law if this would assist.

Given that we have an aging population and so many blended families the role of an independent and impartial custodian to superintend the administration of deceased estates is increasing. It is important for TAG to be able to deliver its services effectively and with the same resources as its competitors and on commercial terms.

With my kind regards
Yours sincerely



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