

12/12/03

Mr Ken Gabb  
Protective Commissioner,  
Office of the Protective Commissioner  
133 Castlereagh Street  
Sydney



*Working For  
Mental Health*

Mental Health  
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Dear Mr Gabb

Thank you for providing the Mental Health Co-ordinating Council (MHCC) with the opportunity to contribute to the review of the Protected Estates Act 1983. MHCC is the state peak body for non-government organisations (NGOs) working for mental health throughout NSW. MHCC represents the views and interests of over 130 NGOs in the formation of policy and acts as a liaison between the government and non-government sectors. Our member organisations specialise in the provision of services and support for people with a disability due to mental illness.

MHCC strongly supports measures, which improve the provision of information and services to clients of the Office of the Protective Commission (OPC) and welcomes the review of the Protected Estates Act.

## **Comments**

In general, the Act is expressed in a clear manner, which is relatively easy to understand, however, there are sections that need to be simplified and clarified. These are as follows:

- Part 2, 5B, (2) (b) “with an attestation by the signature of such a person of the fact of the affixing of the seal”
- Part 2, 9, (4) (a) “where the subpoena was issued by the Protective Commissioner of the Protective Commissioner’s own motion, from the Protective Commissioner, or (b) where the subpoena was issued by the Protective Commissioner on the application of a person, from the person”
- Part 3, Division 1, 15 (b) “ when giving the notice required to be given under section 38 of that Act give to each of the persons required to be given that notice the prescribed information with respect to the question of the capability of the person being brought before the Magistrate to manage his or her affairs”

- Part 3, Division 3, 24 (2) (e) “execute a power of leasing vested in the protected person having a limited estate only in the property over which the power extends”
- Part 3, Division 24 (n) “sequester the estate under the bankruptcy laws”

### **The Need for Further Safeguards**

Section 42 of the Act, which relates to the death of a protected person states that:

“(1) Where a protected person dies:

(a) the Protective Commissioner may, at the discretion of the Protective Commissioner:

(i) pay any sum (not exceeding the prescribed amount) out of money standing to the credit of the current account of the protected person in the trust fund, or

(ii) hand over any chattels having a value not exceeding that amount and forming part of the estate of the protected person or any documents having a value not exceeding that amount, or relating to property having a value not exceeding that amount, and forming part of the estate of the protected person,

to any person claiming to be entitled in the distribution of the estate or as legatee under the will of the protected person, notwithstanding that probate of the will or letters of administration has or have not been obtained, and notwithstanding that legal proof is not given of the right or title of the person so claiming, and

(b) except as provided by paragraph (a), the Protective Commissioner shall:

(i) pay all money standing to the credit of the current account of the protected person in the trust fund, and

(ii) hand over all chattels and documents forming part of the estate of the protected person,

to the legal personal representative of the protected person.”

This section refers to not exceeding the “prescribed amount”, however, it is not clear whether the prescribed amount is the total amount of the person’s estate or a lesser amount. This needs to be made clear.

This section also refers to paying money or handing over chattels to any person claiming to be entitled to them without that person needing to prove his or her right to the money or chattels. MHCC feels that stronger safeguards are needed in this area.

### **The Name of the Organisation**

MHCC is not convinced of the need to change the name of the organisation. We feel that the existing name is clear and simple and indicates the Commission’s function. Further, the existing name is familiar to clients and other stakeholders.

If the name is changed, we would suggest "The Office of Financial Guardianship". This is simple and describes the Commission's role. The main problem associated with this suggestion would be the potential for confusion with the Guardianship Tribunal.

If you would like to clarify any points in this submission, please do not hesitate to contact Ann MacLochlainn on (02) 9555 8388. MHCC would be happy to review any drafts of proposed changes.

Thank you for considering this feedback.

Yours sincerely,

Jenna Bateman  
Executive Officer  
Mental Health Co-ordinating Council

