

OUR REF/TT

Office of the Tasmanian Economic Regulator
GPO Box 770
Hobart TAS 7001
Attn: Director

via email: Kirstan.Long@economicregulator.tas.gov.au

2 February 2023

To the Office of the Tasmanian Economic Regulator

RE: Submission: Inquiry to assess fees and charges for clients who are required by legislation to use the Public Trustee's services.

Thankyou you for the opportunity to provide a submission. The Board welcomes the inquiry and sees it as timely given the Disability Royal Commission recommends all Australian jurisdictions conduct an independent review of the fees and charges payable by persons subject to an administration order.

Background

The Independent Review into the Public Trustee (IRPT) commissioned by Government, and conducted by Damian Bugg AM KC, was completed in 2021.

The Review was accepted in full, and the Government together with the Public Trustee committed to implementing all 28 recommendations contained in that Review. Since that time, the Public Trustee has undergone a period of unprecedented organisational change, and I am very pleased to report that 26 of the 28 recommendations have now been implemented. The Board remains committed to ensuring the Public Trustee provides Tasmanians with the best possible services to improve people's lives.

In accordance with our Corporate Plan the Public Trustee is focused on the following goals:

- Our customer is central
- Strong and trusted relationships with stakeholders
- A committed, capable, and engaged workforce; and
- A fit for purpose business model

The Public Trustee provides financial administration services for people with impaired decision-making ability only when appointed by the Tasmanian Civil and Administrative Tribunal. People do not proactively enter a commercial

arrangement of their own volition for the provision of these services.

The Public Trustee is an organisation that provides essential services to some of most vulnerable people in the Tasmanian Community and as a general principle our view is these services should be provided at no cost, or at a minimum be subsidised, and only payable by people deemed to have the financial means to do so. The 'means test' should be consistent with a broadly accepted asset or income eligibility test such as those used for Commonwealth Government Pensions or Income Support payments.

It is important to highlight an inconsistency that currently exists with the application of fees between Guardianship and Administration. By way of comparison, The Office of the Public Guardian Tasmania does not charge fees for the services they provide to people when they are appointed as Guardians.

Summary of Recommendations

1. The government fully funds the Public Trustee's net avoidable costs of service provision in its Community Service Obligation agreement (CSO) with funding escalation to reflect demand growth.
2. Review CSO net avoidable cost methodology exploring alternative methodologies.
3. Update the Public Trustee Regulations 2019 providing a more simplistic and equitable fees and charges model.
4. Introduce a simpler and more equitable fee for service charging regime based on the complexity, time and work involved replacing the existing capital and income commission model.

Recommendations

- 1. The Government fully funds the Public Trustee's net avoidable costs of service provision in its Community Service Obligation agreement (CSO) with funding escalation to reflect demand growth**

IRPT Recommendation 4.2 states:

"The Attorney General and the Treasurer fully fund the Public Trustee's net avoidable costs of service provision in the next CSO agreement, with funding escalation to reflect demand growth." ¹

This is a key recommendation of the IRPT and central to the Public Trustee's ability to fully implement all the recommendations as well as meet its new obligations under its Ministerial Charter and the changes to the *Guardianship and Administration Act 1995* which have implications for the way in which the Public Trustee supports our clients.

A key purpose of the Act is to:

¹ Independent Review Public Trustee Damian Bugg AM KC 2021, pg. 60

“Protect and promote the rights and dignity of persons who have impaired decision-making ability by applying the principles of the Convention on the Rights of Persons with Disabilities, including support persons with impaired decision-making ability to make, participate in and implement decisions that affect their lives.”²

In 2023, the Public Trustee introduced a Supported-Decision Making framework with input from clients and stakeholders which places the client at the centre of all decisions. It ensures the client's will, and preferences are considered, making the Public Trustee's services more personalised and client focused. Major reforms were introduced to support the new client-centric model including the reduction in caseloads from 150 to 50 clients per client account manager and a fully funded CSO is essential to support these reforms and ensure vulnerable Tasmanians continue to receive the support they need into the future.

Another important element of the CSO Agreement is funding escalation. With Tasmania's ageing population, we will continue to experience an increase in the number of people requiring support under administration with impaired decision-making ability as a result of mental health or age-related illnesses such as dementia.

Without an escalation mechanism, the Public Trustee will be faced with the same historical underfunding. It will continue to experience the challenges it did in the past, of meeting increasing client service requirements.

2. Review CSO net avoidable cost methodology exploring alternative methodologies

The Community Service Obligation Deed sets the CSO obligation to be calculated, as the net avoidable costs. This is defined as all the costs that would be avoided if the Public Trustee did not provide the CSO and agreed activity, including:

- a) The incremental variable cost of extra output; and
- b) Net of all CSO revenue generated by the Public Trustee from CSO activities.

Under Section 62 of the *Government Business Enterprises Act 1995* it provides the costing basis for community service obligation, whilst section 63 details the funding of the community service obligation.

Under section 64 of the *Government Business Enterprises Act 1995*, it states the Treasurer must review annually the costing basis and the method and basis on which the undertaking of the community service obligation is funded.

As part of the Public Trustee 2023 internal audit, Deloitte reviewed the methodology of the CSO calculation of net avoidable costs. Deloitte recommended the Public Trustee “explore alternative methods”³. In conjunction with the fee review, this will assist to more precisely determine the costs associated with these services, allowing the Public Trustee to eliminate any

² Guardianship and Administration Act 2023, Section 71a, page 23

³ Deloitte. (2023). *Public Trustee - Accounts Receivable and Receiving IA F24 Visit 1 Draft Report - Final*. Deloitte

margins before submission for cost recovery.

3. Update the Public Trustee Regulations 2019 providing a more simplistic and equitable fees and charges model

Three Acts of Parliament, plus the Public Trustee Regulations comprise the principal legislations which determine how the fees of the Public Trustee are determined:

- The *Public Trustee Act 1930* is the Portfolio Act and sets out the organisation's basic powers, duties and how fees are to be charged; and
- Public Trustee Regulations 2019 Statutory Rules 2019, No 77 is created under the *Public Trustee Act 1930* which – sets out the maximum fees the Public Trustee can charge.

The Public Trustee Regulations 2019 Statutory Rules 2019, No 77 will need to be reviewed and updated. The existing fee structures are complex and require simplification. The model also requires changes to be more equitable, to ensure the amount charged for the service is commensurate with the effort involved in providing the service on a consistent basis.

4. Introduce a simpler and more equitable fee for service charging regime based on the complexity, time and work involved replacing the existing capital and income commission model.

The existing income and capital commission charging regime is a legacy fee model with shortcomings that should be replaced with a simpler fee for service model to ensure fees are applied in a fair and equitable manner.

To be equitable, those who have a higher capital base should not be subsidising services for those with a lower capital bases, as can be the case under the existing commission structure, which is a percentage applied against the asset or income under administration. In addition, there are occurrences where fees are either excessive or insufficient when compared to the work involved in undertaking the task.

A fee for the service model reflecting the time, effort, and complexity is a more equitable model, ensuring services rendered are appropriately charged and compensated.

Fees also need to be simple and transparent, so our clients can easily understand what the cost of the service will be both now and into the future. Under the existing fee structure this is not the case.

Future Considerations

In October 2022, the Minister for NDIS commenced an independent review to put people with disabilities back at the centre of NDIS. The final report was released in December 2023 which includes 26 recommendations and 139 supporting actions. As a full Government response to the review has not yet been released, the Public Trustee is unsure at this time as to the impact the review will have on the clients we support.

Conclusion

We thank you for the opportunity to provide a submission and look forward to receiving the outcomes from the review.

Yours sincerely

A handwritten signature in black ink, appearing to read "T. Taylor". The signature is written in a cursive style with a horizontal line above the first few letters.**Therese Taylor****Chairperson of the Board
Public Trustee**