



SUMMARY REPORT ON THE FINDINGS FROM
THE TASMANIAN ECONOMIC REGULATOR'S
INQUIRY INTO THE PUBLIC TRUSTEE'S FEES AND
CHARGES

FEBRUARY 2024

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1 REGULATOR'S FINDINGS AND RECOMMENDATIONS

The Regulator's findings, recommendations and notes from conducting the prescribed body inquiry into the Tasmanian Public Trustee's fees and charges are set out below.

1.1 Findings

No.	Description	Reference
1	The Public Trustee is in the process of transitioning its service delivery from a substituted decision-making model to a supported decision-making model to reflect industry best practice.	5.1.1
2	The Public Trustee's total operating expenditure increased significantly from \$8.8 million in 2021-22 to \$10.6 million in 2022-23 and is forecast to continue to experience large increases to 2026-27. The Public Trustee attributes these increases to its changing service delivery model.	5.1.1
3	At the same time as increasing its operating costs, the Public Trustee has experienced a decrease in its represented person clients in 2021-22 and 2022-23. With legislative amendments scheduled to come into effect in September 2024 to make the Public Trustee the administrator of last resort, the Regulator anticipates that the trend of declining represented person clients will continue.	5.1.1
4	The Public Trustee does not utilise timesheets or other methods to track time and effort against each of its services. As such, it has not been possible to obtain sufficiently accurate cost information to determine if its costs are efficient on an individual service level.	5.1.2
5	Based on the benchmarking comparison with other Australian public trustees' operating costs, particularly in comparison with Victoria which has fully implemented a supported decision-making framework, the Regulator considers there is evidence to suggest that the Public Trustee's total operating costs and costs for delivering financial administration services to represented person clients are too high.	5.1.3
6	Based on an examination of the Public Trustee's financial information, the Regulator found that the Public Trustee recognises all of its costs in accordance with full cost attribution.	5.2.1

7	The Regulator has been unable to assess the Public Trustee's cost recovery for clients who are required by legislation to use its services, as the Public Trustee was unable to provide disaggregated revenue data.	5.2.2
8	It is acknowledged that there is complexity in the relationships between the cohort of clients that are required by legislation to use the Public Trustee's services and its Community Service Obligation (CSO) clients. These relationships are illustrated in Figure 1 in section 3.6 of this report. However, there appears to be some misunderstanding by the Public Trustee about these two cohorts of clients. This has made it difficult for the Public Trustee to separate its regulated clients from other clients for the purposes of this inquiry.	5.2.2
9	Based on analysis of the Public Trustee's costs and revenue for providing services to its CSO clients, the Regulator found evidence of cross-subsidies between CSO clients and non-CSO clients. While this cross-subsidisation likely includes clients who are required by legislation to use the Public Trustee's services who are not CSO clients, it has not been possible to identify the extent to which these clients are subsidising the fees of non-regulated clients due to data limitations.	5.2.2
10	For most services, the Public Trustee typically charges the maximum permitted under the <i>Public Trustee Regulations 2019</i> in pursuit of its commercial objectives as a Government Business Enterprise. It may not be appropriately balancing its competing interests of maximising revenue and protecting the interests of its vulnerable clients.	5.3
11	The Public Trustee's fees and charges for different services are unlikely to reflect its costs of delivering these services.	5.3.1
12	Stakeholder feedback indicates that the Public Trustee's represented person clients often do not understand its fee structure and are not provided with any fee estimates when first placed under an administration order.	5.3.1
13	As evidenced by comments made by stakeholders, the levying of a 2.2 per cent capital commission on unrealised assets can place a financial burden on clients and necessitate clients needing to sell assets to finance the Public Trustee's fees.	5.3.1
14	While the Public Trustee charges its fees in accordance with the maximums permitted under the Public Trustee Regulations, client representative organisations consider that commission arrangements are unfair and do not reflect the level of service received.	5.3.1

15	Based on comments provided by stakeholders during the inquiry, the Regulator questions the appropriateness of the Public Trustee levying the full income commission of 6.6 per cent on Australian Government income streams such as the aged pension and disability support pension for low-income clients.	5.3.2
16	The Public Trustee may be incentivised to direct client investments into its own investment funds as it only receives income commissions on interest and dividends from investments in its common fund or group investment fund.	5.3.2
17	The Public Trustee charges an investment management fee of 1.1 per cent per annum on the capital amount of investments managed by external providers. Most clients with external investments are likely to be paying multiple sets of management fees on the same investment. It is unclear what service the Public Trustee is providing to clients for this fee.	5.3.3
18	The Public Trustee does not publish the investment management fee for funds it manages (such as in its common fund or group investment fund) on its website or in its fee schedule.	5.3.3
19	No investment management fees are visible on the client statements viewed by the Regulator. The Public Trustee confirmed that investment management fees are deducted from income received, such as interest, prior to its distribution to clients consistent with traditional funds management in Australia.	5.3.3
20	The remaking of the <i>Public Trustee Regulations in 2019</i> removed a previous regulation that prescribed a list of additional fees and charges. This change has reduced the oversight of the other fees, in addition to the income commission, capital commission and investment fees, levied by the Public Trustee.	5.3.4
21	There appears to be confusion as to whether the fee waiver for the costs of the Tasmanian Civil and Administrative Tribunal Annual Review as included in Schedule 1 of the CSO Agreement applies only to CSO represented person clients or to all represented person clients of the Public Trustee.	5.3.4.1
22	There is confusion as to whether the fee waiver for establishment fees for represented person clients, as set out in Schedule 1 of the CSO Agreement, extends to all represented person clients or only CSO represented person clients of the Public Trustee.	5.3.4.1

23	Based on advice received from stakeholders, the Public Trustee levies multiple emergency order management fees where more than one staff member is required to be in attendance.	5.3.4.3
24	The Public Trustee charges an hourly legal fee for legal services provided in the course of delivering financial administration, estate administration and trust management services, on top of the commissions charged.	5.3.4.4
25	The Public Trustee currently charges an hourly rate of \$430 for legal services. This fee is not made available on its website. Rather, the website provides that legal services are charged at a rate determined by the Public Trustee but not exceeding the maximum hourly attendance rate set out in the <i>Supreme Court Rules 2000</i> .	5.3.4.4
26	The Public Trustee levies an account keeping fee on all regulated clients except represented person clients with assets of less than \$100 000. The monthly account keeping fee of \$13.50 is higher than the account keeping fee charged by commercial banks.	5.3.4.4
27	The Public Trustee levies transaction fees on all of its clients based on the number and type of transactions made. It is not clear what additional work clients are paying the Public Trustee for via these transaction fees, particularly in the instance of direct debit fees, which are automated once the periodic transactions have been set up.	5.3.4.6
28	The Public Trustee will sometimes waive fees and charges for a client upon request in cases of hardship or where the charges are excessive taking into account the amount of work involved. The Public Trustee's fee waiver policy is not public and does not appear to be uniform in its application.	5.3.4.7
29	<p>The Regulator found that the consistency of the Public Trustee's fees and charges with other public trustee offices in Australia differs across the services provided:</p> <ul style="list-style-type: none"> ▪ for represented person clients with assets of \$100 000 and over (represented persons who are not CSO clients), the income commissions and capital commissions are among the highest in the country; ▪ for estate clients, the commission rates charged rank as average; and ▪ for trust clients, the commission rates are at the lower end of fees charged nationally. 	6.2 & 6.3

30	Unlike the Public Trustee, public trustees in other Australian jurisdictions apply a reduced income commission on Australian Government payments, such as the aged pension or the disability support pension.	6.2
31	The systems used by the Public Trustee are old and not integrated. As a result, the data provided has at times differed, depending on who accessed it and which system it was accessed from.	7.1
32	The Public Trustee is not transparent with the fees and charges applicable to different clients, with no one central document/schedule that explains all the fees and charges that could be levied on clients.	7.2
33	There is the potential for competitive neutrality concerns arising from the Public Trustee's allocation of Government grant funding and concerns that more stringent regulatory frameworks are imposed on private sector operators compared to the Public Trustee.	7.4
34	Unlike private trustee companies that are required to comply with the requirements under the Commonwealth <i>Corporations Act 2001</i> , State and Territory public trustee offices are only required to comply with requirements of their respective Trustee Companies legislation, as State and Territory offices are eligible to opt-in to the national regulatory framework, but are not required to.	7.5

1.2 Recommendations

The Regulator recommends:

- A. The Public Trustee undertakes an efficiency review of its operations after it has completed the implementation of the supported decision-making model in September 2024. The review should be commenced by no later than November 2024.
- B. The Public Trustee implement a more robust system for tracking time and effort spent in delivering its services to clients, to ensure that costs are allocated accurately.
- C. The Public Trustee urgently reviews its cost allocations across the business and ensures that it is able to track its cost allocations on an ongoing basis.
- D. The Public Trustee conducts a review of its fees and charges to ensure that clients required by legislation to use its services are not subsidising the fees of other clients.
- E. The Public Trustee reviews and justifies the levying of an investment management fee on assets outside of its own funds.

- F. Consideration should be given to standardising the name of the investment management fee (referred to as a "trustee fee" in relation to its investments in its common fund and group investment fund) to ensure clients are aware of what fees they are being charged.
- G. The Public Trustee publish the investment management fee it applies to investments in its common fund and group investment fund on its website and in its fee schedule.
- H. To increase transparency around the application of the investment management fee, the Public Trustee separates and identifies the fee on a client's statement.
- I. To reduce confusion regarding its obligations under the Community Service Obligation Agreement with the Government, the Regulator considers that the Public Trustee should seek clarification as to whether the annual report fee and establishment fee are intended to be waived for all represented person clients.
- J. The Public Trustee reviews its fee schedule as it relates to emergency orders to ensure that clients and their representatives are aware of the maximum fees that may be charged.
- K. In the interests of transparency, the Public Trustee should publish the hourly rate it charges for legal services on its website.
- L. The Public Trustee provides justification for the charging of legal fees, in addition to capital and income commissions. This justification should be made in terms of additional expense incurred, that has not been adequately covered by the capital commission and income commission levied and that the private sector is unable to levy commissions and hourly rates for legal fees as it is considered 'double dipping'.
- M. The Public Trustee reviews its application of account keeping fees and justifies the charging of this fee, in terms of additional expense incurred that has not been covered by the capital commissions and income commissions levied.
- N. The Public Trustee reviews and provides justification for the levying of transaction fees, in terms of additional expense incurred that has not been covered by the capital commission and income commission levied.
- O. The Public Trustee should ensure that, at a minimum, it is meeting the Financial Service Guide fee and charge information provision requirements placed on private sector trustee companies under the *Corporations Act 2001*.
- P. Given the issues identified by the Regulator regarding the availability and accuracy of data provided by the Public Trustee during the inquiry, the Regulator considers that the Public Trustee's systems should be audited.
- Q. Based on the consultation feedback received during the inquiry, the Regulator recommends that the Public Trustee provides more cost information to represented person clients. Where possible, this should include a capital commission quote at the beginning of a financial administration order based on an estimate of the client's asset values. This should include information on the capital commission levied on unrealised assets.

- R. The Public Trustee review its fee waiver policy to ensure that it is applied in a transparent, consistent and fair manner.

1.3 Notes

In addition to the Regulator's findings and recommendations from conducting the inquiry, the Regulator notes the following:

- (a) In noting the Public Trustee's system and data quality issues and high costs of providing services, the Regulator considers that there may be merit in more closely examining the arrangements in the Northern Territory, where some aspects of running the public trustee are outsourced.
- (b) While the Regulator is only able to investigate competitive neutrality concerns once a complaint has been lodged, the Public Trustee should exercise caution in its allocation of Government grant funding to ensure that it is not in breach of competitive neutrality principles.
- (c) There is merit in examining the benefits available to clients of private law firms under the *Legal Profession Act 2007* (such as external complaint avenues and regulatory oversight from the Legal Profession Board of Tasmania) to determine if these benefits should be extended to the Public Trustee's clients.

2 BACKGROUND

Under Part 4 of the *Economic Regulator Act 2009* (the Act), the Minister responsible for the Act may direct the Regulator to enquire into, and report on, a matter relating to the pricing policies of a prescribed body. A prescribed body is an agency, Government Business Enterprise, State-owned company, a subsidiary of a Government Business Enterprise or State-owned company, statutory authority or Local Government body.

In July 2023, the Treasurer directed the Regulator to conduct an inquiry into the Public Trustee's pricing policies. This inquiry was one of the recommendations from the Independent Review of the Public Trustee of Tasmania conducted in 2021. The Treasurer's direction can be found at Appendix A and the inquiry's Terms of Reference can be found at Appendix B of this report.

The Regulator's inquiry is to assess the fees and charges for clients who are required by legislation to use the Public Trustee's services:

1. whether the fees and charges for the provision of service to these clients:
 - a. reflect efficient costs of service provision, consistent with industry best practice for service delivery; and
 - b. are consistent with recovering those costs on a full cost attribution basis through efficient cost allocation mechanisms; and
 - c. are structured with simplicity and equity.
2. where possible, that the fees and charges are consistent with that observed in other comparable markets nationally and internationally, including comparable services provided by the private sector; and
3. any other matters that impact on fees and charges for clients required by legislation, that the Regulator considers relevant, including known future legislative changes.

For the inquiry, information was obtained from the Tasmanian Public Trustee, the Public Guardian, the Tasmanian Civil and Administrative Tribunal, Advocacy Tasmania, Community Legal Centre Tasmania, Speakout Advocacy, Legal Aid, Law Society of Tasmania, Department of Justice, Department of Treasury and Finance, public trustees from other Australian jurisdictions, international public trustees and private trustee companies in Australia.

In undertaking this inquiry, commercially sensitive information was collected. The Regulator has used powers under the Act to prohibit the publication of sensitive information, as its public release may have consequences for the provider of the information and other commercial parties. This summary report contains the Regulator's findings and recommendations without the confidential information provided to the Regulator.

3 INTRODUCTION

The Public Trustee is an independent organisation established to act on behalf of the Tasmanian community.

The Public Trustee can be traced back to 1853 when the Tasmanian Curators Office was established by statute as part of the Colonial Supreme Court. By 1924, the Public Trustee had become a separate Government department.

The original role of the Public Trustee was to manage the estates of those who died without leaving a will (intestate), or the administration of deceased estates where there was a will but no executor was appointed or the appointed executor was unwilling to act. The purpose of these early activities was for the Public Trustee to be the administrator of last resort for deceased estates as a low or no cost social welfare service to the Tasmanian community.

Further, the Government expects the Public Trustee to provide representation, advice and professional services for Tasmanians, particularly for those individuals who are disadvantaged and whose means do not allow them to readily access legal advice and representation for the management of their estates and affairs.

The Public Trustee in its current form as a Government Business Enterprise (GBE) was proclaimed in 1995 with the *Government Business Enterprises Act 1995* (GBE Act), and an independent Board was appointed to oversee its management.

3.1 The role of the Public Trustee

The Public Trustee currently provides the following services:

- will drafting;
- estate administration;
- enduring power of attorney;
- enduring guardianship;
- financial administration;
- trust management;
- property for sale; and
- unclaimed monies.

Amongst the Public Trustee's clients for these services, some or all of the clients receiving the estate administration, financial administration or trust management services are required by legislation to use the Public Trustee as the service provider. Those clients who are required by legislation to use the Public Trustee are the focus of this inquiry, as required by the Terms of Reference. These clients are discussed in section 3.3 of this report.

3.1.1 Financial administration services

The Public Trustee provides financial administration services to individuals subject to an administration order from the Tasmanian Civil and Administrative Tribunal (TasCAT). This means that the Public Trustee acts as an administrator to help an individual manage their finances, because the individual has been determined to have difficulty managing their finances or is unable to make important financial decisions because of disability or illness.

These individuals are referred to as represented persons.

As an administrator for a represented person, the Public Trustee provides the following services:

- payment of bills and debts;
- distribution of income;
- protection of financial well-being;
- ensuring the person's goals and wishes are reflected in their day-to-day budget; and
- providing support so that the client is capable of managing their own finances where possible.

For these services, the Public Trustee charges:

- an investment management fee, based on the value of investments each year (1.1 per cent per annum on the capital amount of investments regardless of whether the investment is managed by the Public Trustee);
- an income commission, based on the income received by the represented person each year (6.6 per cent per annum on all income received, unless discounted rates apply - further details are provided in Chapter 5); and
- in some circumstances, a one-off capital commission (a sliding scale depending on asset value).

Some represented persons will have assets that need to be sold in order to fund their living expenses. The most common example of this is selling an asset, such as a house, to meet the costs of securing a place at a nursing home. Once the asset has been sold, the Public Trustee charges a capital commission. The Public Trustee also charges a reduced capital commission rate on unrealised assets when the financial administration order expires.

Together, the capital commission, income commission and investment management fees account for most of the Public Trustee's revenue. These fees are discussed in detail in section 5.3.

3.1.2 Estate administration services

Estate administration is the process of managing a deceased person's assets. This will involve paying any outstanding debts and distributing the estate's assets to its beneficiaries.

According to the Public Trustee, the process of estate administration generally takes between six to 12 months, depending on the complexity of the estate. The process may take longer if there are disputes or difficulties arise during the process.

Similar to financial administration clients, capital commission, income commission and investment management fees are applied by the Public Trustee to the estate's assets during the period of administration.

3.1.3 Trust management services

A trust is a legal arrangement which allows a person or organisation to manage finances and / or property for the benefit of another person. The Public Trustee has advised the Regulator that the main reason that a trust is set up is to protect the interests of those who will eventually benefit from the trust.

Trusts are subject to capital commission, income commission and investment management fees from the Public Trustee during the period of management.

3.2 The Independent Review into the Tasmanian Public Trustee

The Independent Review into the Tasmanian Public Trustee was announced in June 2021 by the former Attorney-General, following a number of concerns raised through the media, and directly to the Government, regarding the operations of the Public Trustee and its dealings with clients and client outcomes.

The scope of the review was wide and focussed on the sustainability, governance, administrative and operational practices of the Public Trustee and the impact which the implementation of proposed law reforms would have on those practices. The review report was handed down in November 2021 and contained a number of recommendations.

Many of the submissions to the review were concerned primarily with the Public Trustee's role in acting as administrator for represented persons under the provisions of the *Guardianship and Administration Act 1995* (Guardianship Act).

As part of the review, the appropriateness of the fees and charges applied by the Public Trustee for its services was considered in the context of fairness to clients.

The review report noted that:

"Over 60 per cent of the Public Trustee's clients do not have a choice about whether they use the Public Trustee's services and pay its fees."

"There are elements of monopoly pricing by the Public Trustee for administration and management services that it is required by legislation to provide for Represented Persons and Minor Trusts."¹

¹ Final Report from the Independent Review of the Public Trustee, page 53.

The review report also noted that the prices of monopoly service providers elsewhere in the economy are regulated because there is not market for these services to set efficient prices. As such, it was recommended that the Treasurer request the Tasmanian Economic Regulator to undertake a review of the Public Trustee's fees and charges for those clients who are required by legislation to use its services.

In response, and as explained in Chapter 2 of this Report, in July 2023, the Treasurer issued a Direction and Terms of Reference requiring the Regulator to conduct an inquiry into the Public Trustee's fees and charges.

3.3 Clients required by legislation to use the Public Trustee

The Terms of Reference refers to four groups of clients who are required by legislation to use the Public Trustee's services. For these clients, the Public Trustee is the only service provider available.

In this report, these clients are collectively referred to as regulated clients. These clients are:

- represented persons under order by TasCAT;
- testators or beneficiaries of estates or trusts following an application under sections 16, 17, 18 or 19 of the Public Trustee Act;
- beneficiaries of trusts established under the *Victims of Crime Assistance Act 1976* and *Workers Rehabilitation and Compensation Act 1988*; and
- beneficiaries of trusts established under order of the Supreme Court of Tasmania in relation to civil claims damages.

All represented person clients that use the Public Trustee's financial management services are, by definition, required by TasCAT to use the Public Trustee as their service provider.

The testators or beneficiaries of estates or trusts under sections 16 to 19 of the Public Trustee Act are:

- section 16 - trusts established for infants;
- section 17 - deceased estates where the person died without a will; and
- sections 18 and 19 - deceased estates where there is no executor of a will that has the capacity to administer the estate.

For estate administration, only beneficiaries of deceased estates where the person died without a will, and where there is no executor of a will that has the capacity to administer the estate, are regulated clients.

For trust management, only beneficiaries of:

- infant trusts; and
- trusts established -
 - under the *Victims of Crime Assistance Act 1976*;
 - under *Workers Rehabilitation and Compensation Act 1988*; and
 - by order of the Supreme Court of Tasmania in relation to civil claims damages,
 are regulated clients.

3.4 Legislative framework

The Regulator's inquiry is to assess the fees and charges for clients who are required by legislation to use the Public Trustee's services. For the purposes of this inquiry, legislation which requires specific clients to use the Public Trustee's services includes: the *Guardianship Act*; the *Victims of Crime Assistance Act 1976*; and the *Workers Rehabilitation & Compensation Act 1988*.

In addition to these Acts, the Public Trustee and its operations are governed by a legislative framework, which is detailed below.

3.4.1 The Public Trustee Act 1930

The Public Trustee is established under the *Public Trustee Act 1930* (Public Trustee Act) which provides for the establishment, powers and functions of the Public Trustee as an organisation.

Section 11 of the Public Trustee Act specifies fees charged to be as prescribed:

- (1) ...the Public Trustee may, in addition to any money properly expended by it and chargeable against an estate that is under the Public Trustee's administration or control, charge and receive for work done or services, goods or information supplied fees, commission, remuneration, expenses and charges determined by the Public Trustee but not exceeding any maximum fees, commissions, remunerations and charges prescribed in the regulations.

3.4.2 The Public Trustee Regulations 2019

The *Public Trustee Regulations 2019* (the Regulations) came into effect on 1 December 2019 and prescribe the maximum fees, commissions, remunerations and charges receivable by the Public Trustee. These are the capital commission rates for financial administration, estate administration and trust management services; income commission rates; and investment management fees for all services. While the Public Trustee can charge below the maximum rates, they have opted to charge the maximum rate for capital commissions and income commissions.

Prior to the implementation of the current Regulations in 2019, these maximum rates had remained unchanged for over 30 years.

3.4.3 The Guardianship and Administration Act 1995

Section 54 of the Guardianship Act lists the persons eligible as administrators, which includes the Public Trustee.

Section 55 of the Guardianship Act relates to remuneration of professional administrators and provides:

- (1) An administrator who carries on a business of, or including, the administration of estates, whether under this Act or otherwise, is, if the Tribunal so determines, entitled to remuneration out of the estate of the represented person for the work involved in administering that estate, whether the work was or is performed before or after the commencement of this section.
- (2) This section does not affect the right of the Public Trustee or a trustee company to recover charges and expenses under any other law.

3.4.4 Government Business Enterprises Act 1995

Section 7 of the GBE Act establishes the principal objectives of a GBE as follows:

1. The principal objectives of a Government Business Enterprise are -
 - a. to perform its functions and exercise its powers so as to be a successful business by -
 - i. operating in accordance with sound commercial practice and efficiently as possible; and
 - ii. achieving a sustainable commercial rate of return that maximises value for the State in accordance with its corporate plan and having regard to the economic and social objectives of the State.

In accordance with sections 36 and 37 of the GBE Act, the Public Trustee must also comply with a Ministerial Charter. The Charter sets out the Government's broad policy expectations and requirements for the Public Trustee.

The Government objective for the Public Trustee, as outlined in the Ministerial Charter is:

To safeguard the personal, legal and financial interests of vulnerable clients, including represented persons, acting with regard to the will, preference and rights of clients to the extent possible.

The Ministerial Charter states that the primary purpose of the Public Trustee is to provide independent and professional trustee services to the Tasmanian community, irrespective of the value of any particular matter or an individual's circumstances. In providing these services, the Public Trustee will provide trusted advice and support to clients that is relevant and accessible.

Section 4.4 of the Ministerial Charter specifies:

The Shareholding Ministers expect the Public Trustee to set prices, fees and charges which:

- meet the objectives of efficiency, and financial sustainability;
- comply with all legislative and regulatory instruments; and
- take into consideration any relevant Government policies and agreements.

The Shareholding Ministers expect the Public Trustee to set prices, fees and charges that are fair and proportionate for clients covered by funding agreements with the Government.

The Regulator considers that there may be tension between the obligations imposed by the GBE Act, the expectations of its Shareholding Ministers and the services the Public Trustee provides particularly to disadvantaged Tasmanians.

3.4.5 Legislative amendments

On 29 September 2023, the *Guardianship and Administration Amendment Act 2023* ('Amendment Act') received royal assent. The Amendment Act implements key recommendations from the Tasmania Law Reform Institute's 2018 *Review of Guardianship and Administration Act 1995*. One of the key recommendations from this review was the prioritisation of supported decision-making as the model for decision-making over the practice of substituted decision-making. This recommendation was supported by the 2021 Independent Review report.

A substituted decision-making model is when a person is permitted under the law to make decisions on behalf of someone who does not have capacity.²

By contrast, a supported decision-making model is when a person helps someone to make their own decisions and have control over things that impact or are important to them.³

The Amendment Act makes clear that when a guardian or administrator is appointed, the right to legal agency is not extinguished. The represented person has the right to continue to make decisions where they have the capacity to do so and, where this is not the case, decisions made by substituted decision-makers are to be based on the will and preference of the represented person in all but limited circumstances.

The Public Trustee has been transitioning to the new decision-making model since the release of the 2021 Independent Review report.

The Public Trustee has advised that more staff have been employed to meet the change in service delivery, with the average number of clients per case manager dropping from 150 to 50. The changes to the operating model and the associated increase in the number of staff have led to increases in the Public Trustee's operating expenditure over the past year with further increases expected as both new and existing staff receive training in the new model

² <https://www.qld.gov.au/health/support/end-of-life/advance-care-planning/legal/decision-makers>

³ <https://www.tag.nsw.gov.au/guardianship/supported-decision-making-and-capacity>

together with the costs of upgrading the IT infrastructure to support the implementation of the new service delivery model.

The Amendment Act also limits the Public Trustee's role in financial administration by making it the administrator of last resort. The amendments prescribe that TasCAT may only appoint the Public Trustee, the Public Guardian or another trustee company as the administrator if no person eligible for appointment has consented to be appointed.

The Amendment Act will come into effect in September 2024 and the Public Trustee's transition to the new decision-making model must be fully implemented by then.

3.5 The relationship between the Public Trustee and other entities

3.5.1 The Tasmanian Civil and Administrative Tribunal

TasCAT is a specialist tribunal that has the responsibility for resolving legal applications, appeals and other proceedings through appropriate dispute resolution processes such as mediations and conciliations, or through conducting hearings that provide a final decision about proceedings.⁴

Under the Guardianship Act, the Public Trustee can be appointed by TasCAT as an administrator of the financial affairs of a proposed represented person. In its role as an administrator, the Public Trustee is required to represent people who suffer from disabilities, mental health issues and age-related illnesses and incapacities. Any person may apply to TasCAT for an administration order in respect of a person with a disability or incapacity.

An administration order is made for a period of three years, during which time it can be reviewed by TasCAT and, if the situation of the represented person has changed such that they no longer require financial administration services, the administration order will end.

TasCAT requires all administrators and guardians to provide a written report on the circumstances of each represented person who is subject to an administration or guardianship order at least once in each 12-month period. The written report must contain a complete financial report that details the relevant history for the represented person, whether there has been any change to the represented person's disability, living and family situation, any action taken by the administrator during the reporting period and whether the administrator or guardian believes there is an ongoing need for an order.

Section 54 of the Guardianship Act lists the persons eligible to act as administrators and the matters that TasCAT has to consider before making an appointment. Beside the Public Trustee, TasCAT may appoint the Public Guardian, a private trustee company or any other person who consents to act as administrator if TasCAT is satisfied that the person:

- will act in the best interests of the proposed represented person; and

⁴ <https://www.lst.org.au/TasCAT-the-role-and-functions-explained/>

- is not in a position where his or her interests conflict or may conflict with the interests of the proposed represented person; and
- is a suitable person to act as the administrator of the estate; and
- has sufficient expertise to administrate the estate.

In 2020-21, prior to the Independent Review, TasCAT had appointed the Public Trustee as the administrator for all administration orders made during the year.⁵ The Independent Review found that this was the result of TasCAT rejecting many individuals who put themselves forward as an administrator but who, due to having a close personal relationship with the proposed represented person, did not meet the requirements set out in the Act.

The Independent Review recommended that the legislative framework be changed to enable TasCAT to examine the extent of a conflict of interest for a proposed administrator. After this change was implemented in 2021-22, the proportion of administration orders where the Public Trustee was appointed dropped to 42.4 per cent, with the vast majority of the remaining administration orders going to private individuals. TasCAT advised that a private trustee company was appointed as the administrator for three orders in 2021-22 and these appointments were made because the applicants for administration orders expressed a preference for the private trustee company.

3.5.2 The Public Guardian

The Public Guardian is an independent statutory officer established under the Guardianship Act. The key responsibility of the Public Guardian is to act as a guardian when appointed by TasCAT and to represent people before TasCAT.

Under the Guardianship Act, the Public Guardian can be appointed as the guardian for a guardianship order and the administrator for an administration order. TasCAT advised that the Public Guardian has been appointed as the administrator for an administration order in the past. However, in more recent years, the Public Guardian has only been appointed as the guardian for a guardianship order.

The Public Guardian often shares the same represented person clients as the Public Trustee and will act on behalf of a client to make an application for an administration order.

The Public Guardian advised that any complaint received from a client regarding the Public Trustee is referred back to the Public Trustee.

A representative from the Public Guardian sits on the Public Trustee's stakeholder reference group.

3.5.3 Tasmanian Advocacy Groups

There are a number of advocacy groups in Tasmania that provide support to individuals with a disability by acting for them before TasCAT when an application for administration order is made and providing ongoing support.

⁵ TasCAT's annual report for 2020-21 and the Independent Review report, page 22.

A number of advocacy groups also sit on the Public Trustee's stakeholder reference group, including:

- Anglicare;
- Baptcare;
- COTA Tasmania (Council on the Ageing);
- Health Consumers Tasmania;
- MultiCap Tasmania;
- North West Support Services;
- Palliative Care Tasmania;
- SpeakOut Advocacy;
- Tasmanian Council of Social Services (TasCOSS); and
- Tasmania Legal Aid.

The Public Trustee's stakeholder reference group also includes the Tasmanian Health Service and two will clients of the Public Trustee.

3.5.4 TPT Wealth

TPT Wealth Limited is the only private Tasmanian trustee company and is wholly owned by MyState Limited. It provides a range of financial services including managed funds, commercial lending, wills and estate planning.

Under the Guardianship Act, TPT Wealth can be appointed as the administrator for an administration order. However, unlike the Public Trustee, private trustee companies like TPT Wealth are not obligated to accept the appointment.

As noted earlier, there have only been a small number of appointments to TPT Wealth and they are generally made following a preference expressed in the application for an administration order.

3.6 Community Service Obligation clients

Under Part 9 of the GBE Act, Community Service Obligations (CSOs) have been declared in relation to the Public Trustee's responsibilities to administer estates, trusts and the financial affairs of the represented persons, notwithstanding that the financial value of these matters prohibits full cost recovery. The Public Trustee performs the following CSO activities on behalf of the Government:

- administration of Absolute Estates⁶ with a gross asset value of less than \$60 000;
- administration of Continuing Trust⁷ and Life Tenancy Estates⁸ with a gross asset value of less than \$100 000;
- administration and management of Minor Trusts⁹ with a gross asset value of less than \$20 000; and
- management of assets for represented persons with a gross asset value of less than \$100 000.

The Government provides funding to assist in meeting the costs of the Public Trustee for providing the CSO activities. The funding for the CSOs is determined on a regular basis by the Government and is based on the Public Trustee's net avoidable costs of providing the CSO activities.

As the CSO clients are categorised based on the value of their assets, they are different from the clients that are required by legislation to the Public Trustee's services as defined in the Terms of Reference. However, there are overlaps between these two client groups, as shown in Figure 1.

It is important in the context of this inquiry to discuss CSO clients, as the Public Trustee currently only splits its operating expenditure between CSO and non-CSO clients, and not according to whether clients are required by legislation to use its services. As a result, the Regulator has had to rely on data relating to CSO clients as a proxy in undertaking some analysis.

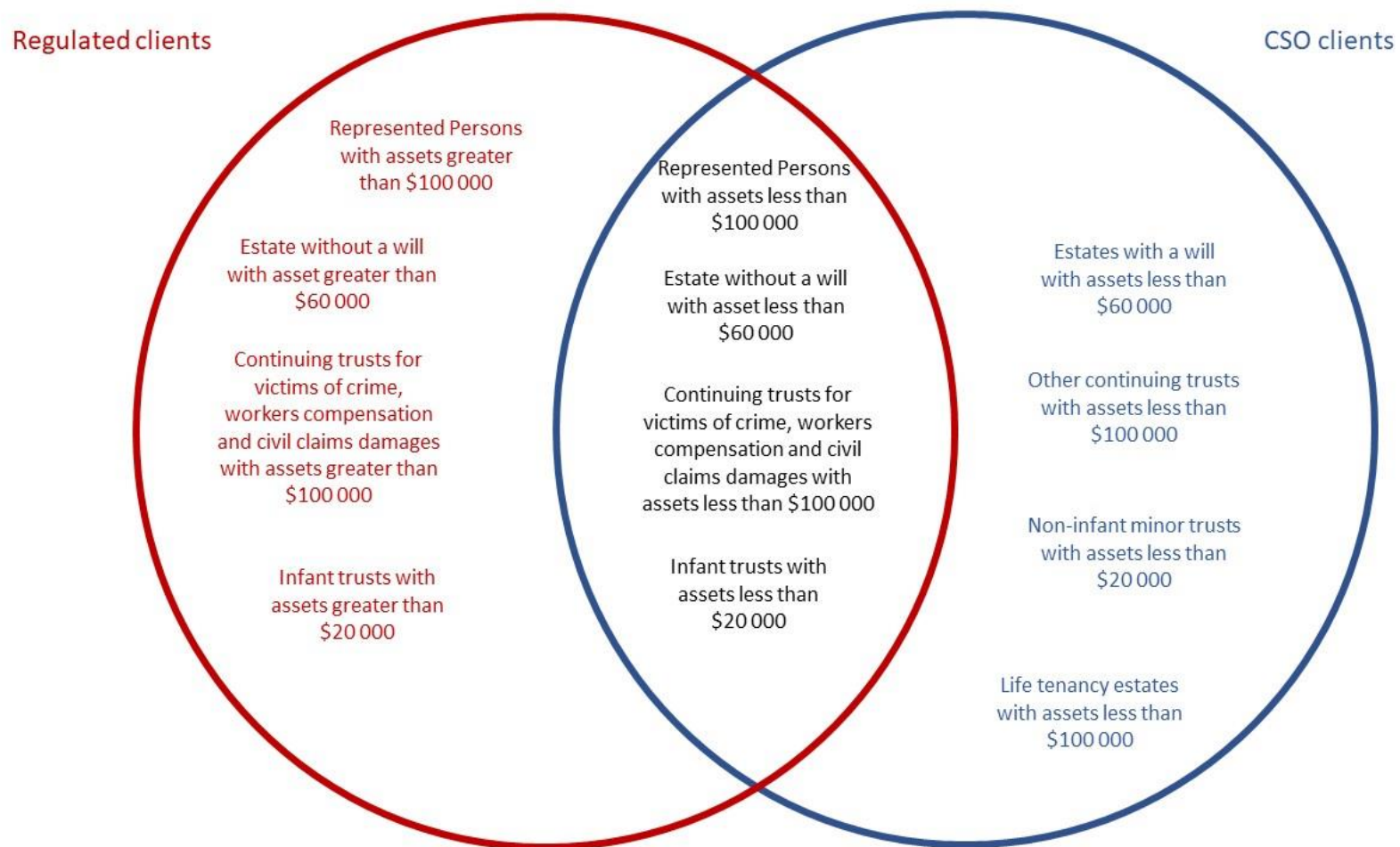
⁶ An Absolute Estate is an estate that confers an absolute right to property that is not subject to any limitations, restrictions or conditions.

⁷ A Continuing Trust is a trust that lasts beyond the life of the person who created it.

⁸ A Life Tenancy Estate is when a will includes that a particular person has the right to live in a home for the remainder of that person's life.

⁹ A Minor Trust is when a trustee holds assets in trust for a specified time, defined by a particular event. This could include when a child: reaches a particular age, passes a particular milestone, successfully completes an event (eg completing tertiary education).

Figure 1: relationships between regulated clients and CSO clients



3.7 The Public Trustee's client composition

The Public Trustee's clients differ widely in terms of their capacity to pay for its services. For example, some represented persons are relatively wealthy, holding significant assets and income streams, whereas others have minimal assets and rely on Services Australia payments as an income stream.

In order to obtain a better understanding of the Public Trustee's client composition, the Regulator has disaggregated the Public Trustee's clients based on the value of their assets.

Over 20 per cent of the data provided by the Public Trustee did not contain any information on the client's assets and the Regulator has removed these clients when calculating average asset values.

The Public Trustee advised that the missing asset data is due to an internal system error. Further discussion on the Public Trustee's data issues can be found in section 7.1.

Caution therefore needs to be used in interpreting the outcomes of this exercise due to the quality of the data provided by the Public Trustee.

The Regulator grouped the Public Trustee's clients by assets into four tiers: very low (\$0 to \$10 000), low (\$10 000 to \$100 000), medium (\$100 000 to \$400 000) and high (\$400 000+). The average asset value for each class of clients and the proportion of clients that fit within that asset category are set out in Table 1.

Table 1: the Public Trustee clients categorised by type of service and value of assets

Type of service	Value of assets							
	Very Low (\$0 TO \$10 000)		Low (\$10 000 to \$100 000)		Medium (\$100 000 to \$400 000)		High (\$400 000+)	
Proportion and average value of assets by type of service								
	Proportion (per cent)	Assets (\$)	Proportion (per cent)	Assets (\$)	Proportion (per cent)	Assets (\$)	Proportion (per cent)	Assets (\$)
Trusts	27.5	1 419	48.3	38 941	17.5	164 340	6.7	629 255
Estates	75.8	6	10.8	41 304	8.6	213 469	4.8	732 808
Financial administration	43.6	3 737	49.7	62 060	4.6	180 501	2.1	652 221

The data provided by the Public Trustee shows that a significant proportion of the Public Trustee's clients have assets of very low or low value for each service.

4 APPROACH TO THE INQUIRY

The Regulator's approach to the inquiry comprised the following major tasks:

- Liaising with key staff at the Public Trustee and issuing a number of information requests relating to the Public Trustee's operations.
- Analysing financial and other information provided by the Public Trustee, trustees in other jurisdictions and stakeholders.
- Conducting desktop research and assessing publicly available information from a range of sources.
- Considering findings from previous reviews conducted into the Public Trustee, particularly the Independent Review.
- Staff from the Regulator's office consulting with key stakeholders.

5 FEES AND CHARGES AND EFFICIENT COSTS

Under the Terms of Reference, the Regulator was required to assess whether the fees and charges for the provision of services to clients who are required by legislation to use the Public Trustee's services:

- reflect the efficient costs of service provision, consistent with industry best practice for service delivery;
- are consistent with recovering these costs on a full cost attribution basis through efficient cost allocation mechanisms; and
- are structured with simplicity and equity.

5.1 Efficient costs of service provision

In addressing this aspect of the Terms of Reference, the Regulator met with staff from the Public Trustee and requested financial performance information relating to the Public Trustee's operations.

The Regulator also obtained financial performance information from public trustee offices in other Australian jurisdictions to benchmark the Public Trustee's costs for service delivery.

The Regulator sought to examine and compare the Public Trustee's costs at an aggregate level and at the service delivery level for financial administration, estate administration and trust management services against other trustees across the country.

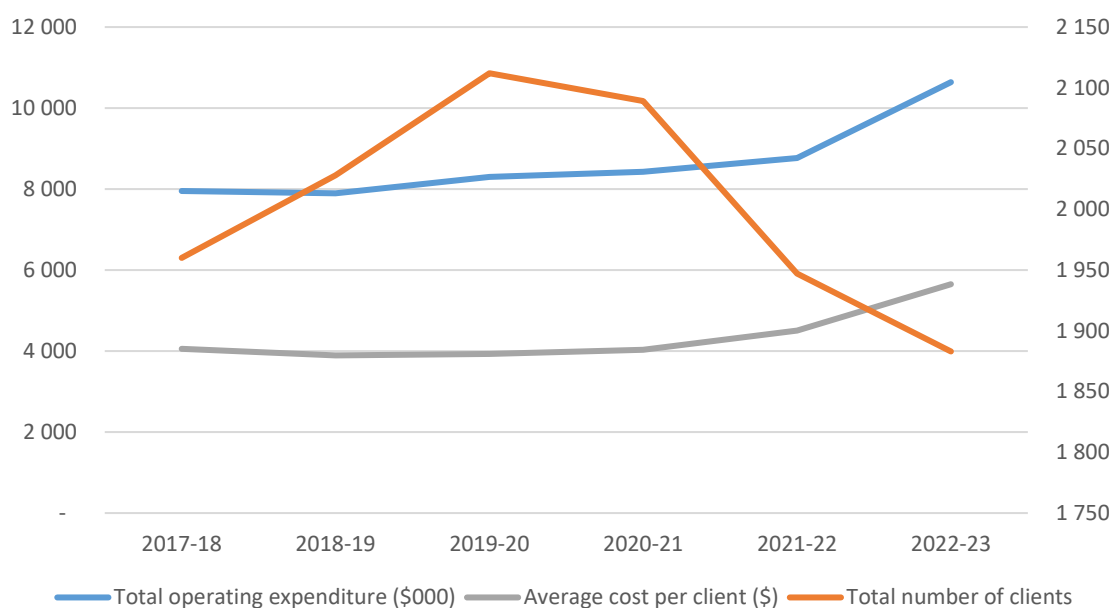
5.1.1 The Public Trustee's total costs

The Regulator expects the Public Trustee's total operating costs to fluctuate based on the number of clients it services each year and has therefore analysed trends in both costs and client numbers over the past six years.

Table 2: the Public Trustee's total operating expenditure and client numbers from 2017-18 to 2022-23¹⁰

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Total operating expenditure (\$000)	7 953	7 895	8 302	8 430	8 767	10 639
Total number of clients ¹¹	1 960	2 028	2 112	2 089	1 947	1 883
Average cost per client (\$)	4 058	3 893	3 931	4 035	4 503	5 650

The Public Trustee's operating expenditure has been trending up in the past six years, with the biggest increase occurring between 2021-22 and 2022-23. The Public Trustee has advised that this increase is due to it commencing the process of changing its service delivery model for represented person clients.

Figure 2: the Public Trustee's total operating expenditure, average cost per client (left) and the total number of clients (right) from 2017-18 to 2022-23

The Public Trustee has advised that the move from a substituted decision-making model to a supported decision-making model involves more staffing resources. The Public Trustee expects its operating expenditure to continue to increase into the future.

The Public Trustee's 2023-24 to 2026-27 Corporate Plan forecasts further increases in total operating expenditure from 2023-24 to 2026-27. The biggest driver of the increase is staffing costs.

¹⁰ The total operating expenditure for the years 2017-18 to 2022-23 was sourced from the Public Trustee's Annual Reports, as was the total number of clients in 2022-23. The total number of clients from 2017-18 to 2021-22 were provided by the Public Trustee.

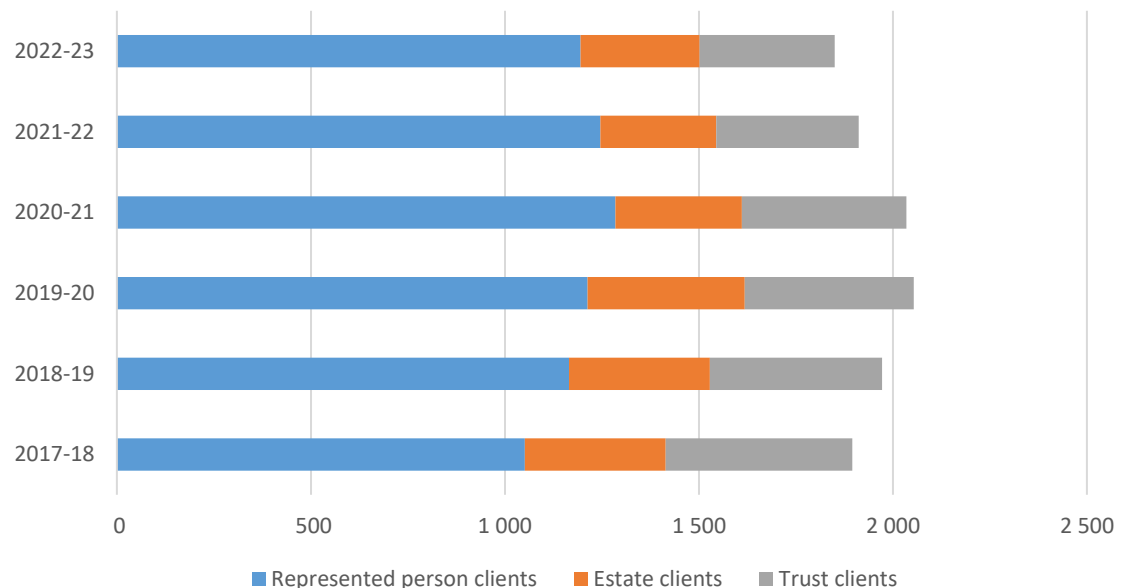
¹¹ The number of clients excludes the number of will clients each year.

Table 3: composition of the Public Trustee's represented person clients, estate clients and trust clients from 2017-18 to 2022-23

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Represented person clients	1 051	1 165	1 213	1 285	1 246	1 195
Estate clients	363	363	405	326	299	307
Trust clients	481	444	436	424	367	348

As can be seen in Table 3, represented person clients accounted for approximately 60 per cent of the Public Trustee's total clients in the past six years, with the number of represented person clients increasing from 2017-18 to 2020-21 but decreasing in the most recent two years. The recent decrease in represented person clients is the result of TasCAT appointing more private individuals as the administrator for represented persons, as discussed in section 3.5.1 of this report.

The Regulator expects this trend of declining represented person clients to continue, as the Public Trustee becomes the administrator of last resort under the *Guardianship and Administration Amendment Act 2023*, which will be enacted in September 2024. The Public Trustee has advised that it has not updated its client number forecasts since the passage of the Amendment Act.

Figure 3: composition of the Public Trustee's represented person clients, estate clients and trust clients from 2017-18 to 2022-23.

5.1.2 Establishing the allocation of costs

In order for the Regulator to examine the Public Trustee's costs for the delivery of the selected services to regulated clients, accurate data recording how much effort goes into the delivery of each those services was required. That is, along with the cost associated with delivering each service, the Regulator required information regarding:

- the different level of services delivered to different clients;
- how much effort goes into the delivery of each service;
- the value of the client's / the estate's assets; and
- whether the client is required by legislation to use the Public Trustee's services.

While it is common practice for professional service providers to monitor time and effort and allocate costs, the Public Trustee does not maintain any timesheet records on the effort required to deliver services to each client. This is not unique to the Tasmanian Public Trustee, with no other public trustees in Australia keeping regular timesheet records across all of their services. The only exception is Queensland, where staff are required to record their time spent on certain activities during two-weekly focus periods each year, with this information used as an input into Queensland's annual activity-based costing process.

The Public Trustee maintains a Client Management System (CMS) for the tracking of client records and client matter progression. The CMS was introduced on 1 July 2017 and has undergone a number of refinements since its implementation. The CMS provides for the recording of key client information which is uploaded from a financial management system each evening and has the following functionality:

- identifies by the service(s) or service stream provided by the Public Trustee to each client; and
- provides an estimated time for different tasks to be completed across the range of work practices so that the capacity of staff can be monitored and reports provided.

As a part of implementing the CMS, the Public Trustee surveyed its client account managers for a period of two months in 2017 to establish the effort hours required for the delivery of tasks within different services.

The effort hours data obtained from that exercise were then included in the CMS as an indicator of the amount of time required to undertake each task in providing a service to clients. However, the effort hour data in the CMS has not been reviewed or varied since the initial exercise in 2017. Further, the effort hour data relates only to the delivery of tasks by client account managers and does not include the time allocated by legal, financial services, marketing or management staff.

The Regulator therefore decided to apply the effort hour breakdown data per service to the Public Trustee's total operating costs as these costs include all of the Public Trustee's costs including costs relating to legal, financial services, marketing and management.

The Public Trustee advised that the CMS is used primarily to track staff work progress and workload and that the actual hours spent on any task is unknown.

The Public Trustee provided the Regulator with a breakdown of its effort hours across all services and all clients for 2021-22 and 2022-23. Despite the uncertainty and limitations in the CMS data, it is the only data source available to the Regulator to assess the efficiency of the costs of the Public Trustee to deliver its services to regulated clients.

5.1.3 Efficiency measures

In Australia, the majority of public trustees offer the following services to clients:

- financial administration;
- trust administration;
- estate management;
- enduring power of attorney; and
- wills.

To allow for the variation in size of the Australian public trustees, the Regulator has compared the average costs for service delivery rather than a making a direct comparison of total operating costs. Average costs were obtained by dividing the total operating expenditure for each jurisdictional public trustee by the number of clients receiving each service during the year.

The estimated average costs for service delivery by jurisdiction depend on the composition of clients serviced by each public trustee during the year, as well as the service delivery model used by each jurisdiction.

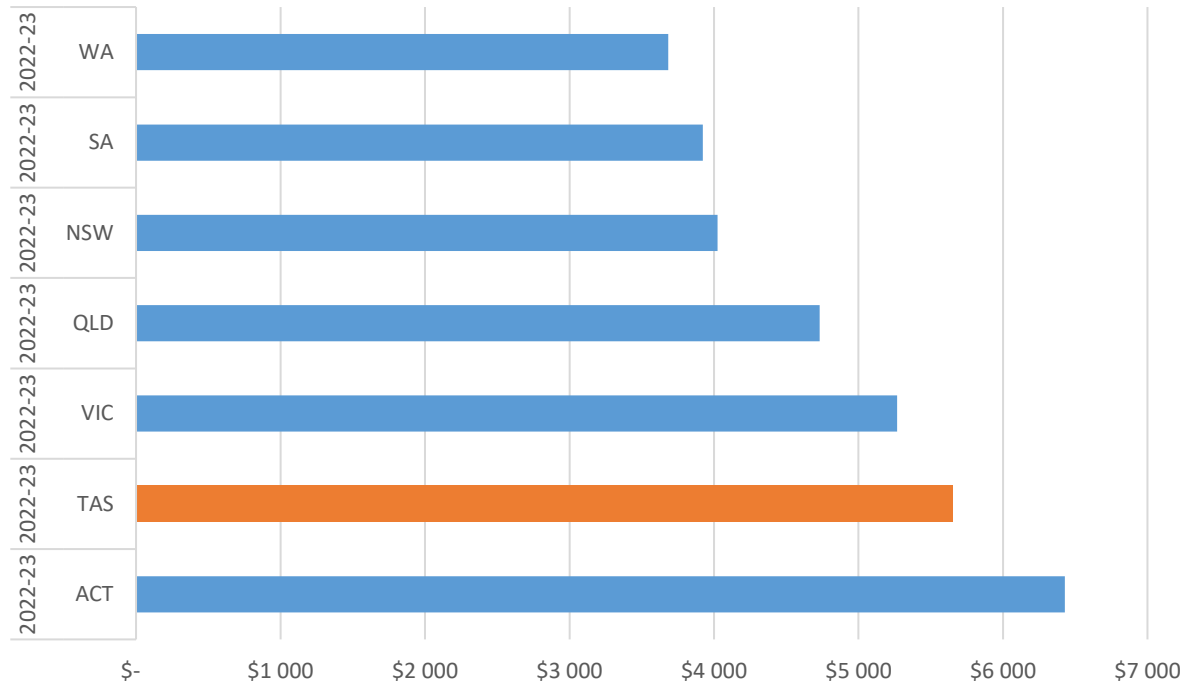
The total number of clients receiving each service during the year are published in each public trustee's annual report. There are some variations in how each public trustee counts the number of clients as reported in their annual report. For example, Queensland reports the number of deceased estates finalised during the year whereas Victoria reports the number of deceased estates under management.

The annual report for each jurisdiction also reports the number of wills drafted during the year. While the will drafting service requires resources, the number of wills completed during the year are not included as a part of the total number of clients counted for the jurisdictional comparison. This is because will drafting sometimes overlaps with the enduring power of attorney and estate services and could result in double counting with respect to services provided to some clients.¹²

The outcome of the benchmarking analysis of average costs per client across the jurisdictions are shown in Figure 4.

¹² This is encouraged by the Public Trustee, which offers discounted will drafting service to clients who nominate the Public Trustee as their attorney or administrator.

Figure 4: comparison of Australian public trustees' average cost of delivering all services per client^{13,14,15}



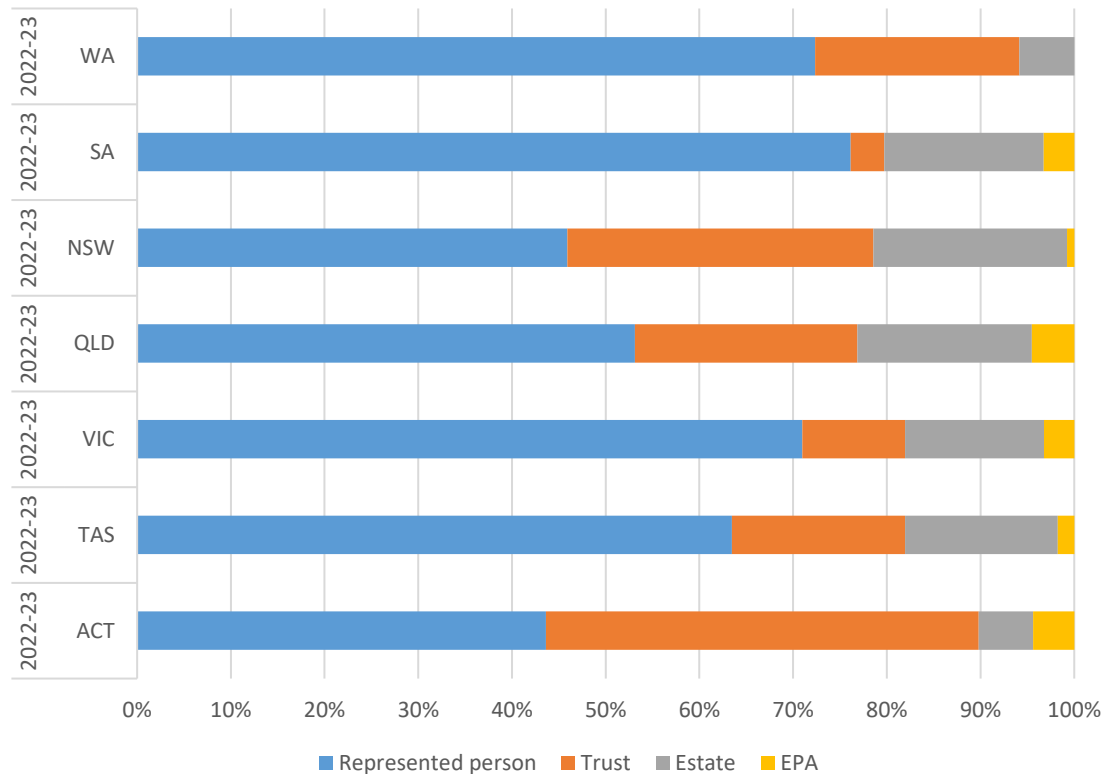
At \$5 650, the Public Trustee’s average cost per client is the second highest, behind only the Australian Capital Territory, which had an average cost per client of \$6 429 in 2022-23. The lower average cost per client in the larger Australian jurisdictions may in part be due to economies of scale. Additionally, the ACT Public Trustee and Guardian incorporates both the public trustee and the public guardian, which is likely another source of higher costs compared to the Tasmanian Public Trustee.

The average cost per client is also affected by the client composition, which varies across jurisdictions and from year to year.

¹³ The benchmark comparison does not include Northern Territory, as its costs are not comparable. The Office of Public Guardian and Trustee in the Northern Territory is not a standalone entity and receives administrative support from the Northern Territory’s Department of Justice, which reduces its operating costs. Arrangements in the Northern Territory are discussed in more detail in Chapter 7.

¹⁴ Total costs and client numbers are sourced from public trustees’ most recent published annual reports. Some state public trustees also act as the public guardian.

¹⁵ Average cost per client for 2022-23 for all jurisdictions.

Figure 5: composition of clients per jurisdictions¹⁶

As shown in Figure 5, the composition of clients varies markedly across the jurisdictions. In 2022-23, the State Trustee in Victoria had the most comparable client composition to the Tasmanian Public Trustee.

However, for 2022-23, the Public Trustee's average cost per client was 10 per cent higher than in Victoria. This is despite Victoria having fully implemented a supported decision-making model for its represented person clients.

The State Trustee advised that it commenced transitioning from a substituted decision-making model in 2019-20, with the model fully implemented in July 2023. Based on the State Trustee's annual report, its total operating expenditure increased by 27 per cent from 2018-19 to 2022-23. This increase is significantly less than the Tasmanian Public Trustee's forecast increase in total operating expenditure of 79 per cent from 2021-22 to 2026-27.

Based on the benchmark comparison of the average cost per client, particularly in comparison to Victoria, and the Public Trustee's forecast increase in total operating costs, the Regulator considers there is evidence to suggest that the Public Trustee's total operating costs are too high.

In order to assess the Public Trustee's efficient costs for the provision of financial administration, estate administration and trust management services, the Regulator

¹⁶ EPA (enduring power of attorney) is a legal document which allows appointed individual(s) or organisations to take care of a client's financial affairs.

benchmarked the Public Trustee's costs for the delivery of these services against costs incurred by public trustees in other jurisdictions in providing these services.

As previously noted, the Regulator has obtained aggregated effort hour data from the Public Trustee's CMS, which has been used as the basis for the benchmarking exercise.

The Public Trustee advised that it has never been required to breakdown its total costs and allocate them between different services. Therefore, the accuracy of the aggregate effort hours data is questionable and this could be reflected in the results of the benchmark comparison.

At a high level, the Regulator's benchmarking comparison found that:

- the Public Trustee's average cost per represented person client in 2022-23 is over three times Victoria and New South Wales' costs, more than double Queensland's costs and 37 per cent above the ACT's costs. While some of this variation may be explained by the difference in legislative requirements for represented persons across jurisdictions, this alone cannot explain the majority of the variation, particularly as Victoria, with the lowest average cost per represented person client, has fully implemented a supported decision-making model;
- the Public Trustee's average cost per estate client is the second highest of the jurisdictions examined;
- the Public Trustee's average cost per trust client is the second highest of the jurisdictions examined; and
- the average cost for the delivery of trust management services is the lowest of the services examined.

5.1.4 Findings

The Public Trustee is in the process of transitioning its service delivery from a substituted decision-making model to a supported decision-making model to reflect industry best practice.

The Public Trustee's total operating expenditure increased significantly from \$8.8 million in 2021-22 to \$10.6 million in 2022-23 and is forecast to continue to experience large increases to 2026-27. The Public Trustee attributes these increases to the costs of changing its service delivery model.

At the same time as its operating costs were increasing, the Public Trustee experienced a decrease in the number of its represented person clients in 2021-22 and 2022-23. With legislative amendments scheduled to come into effect in September 2024 to make the Public Trustee the administrator of last resort, the Regulator anticipates that the trend of declining represented person clients will continue.

The Public Trustee does not utilise timesheets or other methods to track time and effort against each of its services. As such, it has not been possible to obtain sufficiently accurate cost information to determine if its costs are efficient on an individual service level.

Based on the benchmarking comparison with other jurisdictional public trustees' operating costs, particularly in comparison with Victoria which has fully implemented a supported

decision-making framework, the Regulator considers there is evidence to suggest that the Public Trustee's total operating costs and costs for delivering financial administration services to represented person clients are too high.

5.1.5 Recommendations

The Regulator recommends that the Public Trustee undertakes an efficiency review of its operations after it has completed the implementation of the supported-decision making model in September 2024. The review should be commenced by no later than November 2024.

The Public Trustee implements a more robust system for tracking time and effort spent in delivering its services to clients, to ensure that costs are allocated accurately.

5.2 Full cost attribution and recovery

Competitive neutrality principles, as stipulated under National Competition Policy, require all significant government business activities to be corporatised. However, if full corporatisation is not feasible, full cost attribution must be applied to offset any competitive advantage arising from public ownership.

As the Public Trustee is corporatised, the Regulator has undertaken a theoretical full cost attribution exercise to inform the inquiry.

This exercise is not intended to reflect the efficient costs of operating the Public Trustee nor is it suggested that the Public Trustee's fees and charges should reflect the theoretical full attribution costs.

5.2.1 Full cost attribution

As set out in the Department of Treasury and Finance's guidelines, the application of full cost attribution results in costs that comprise:

- i. operating costs (direct and indirect); plus
- ii. capital costs (direct and indirect); plus
- iii. competitive neutrality costs such as taxes and guarantee fees.¹⁷

For full cost attribution purposes, the Regulator has assessed the Public Trustee's costs to include:

- operating costs;
- income tax equivalents;
- payroll tax; and
- fringe benefits tax.

The Public Trustee does not currently pay any guarantee fees as it does not have any borrowings that need to be financed, nor does it incur any land tax as it does not own any buildings.

Although the Public Trustee is a stand-alone entity, it does receive some support from the Department of Justice relating to recruitment and its payroll system. The Public Trustee pays the Department of Justice an annual fee as set out in a Service Level Agreement (SLA) for the support it receives.¹⁸ This fee is captured in the Public Trustee's total operating costs.

The Regulator has not identified any other costs that need to be incorporated into the Public Trustee's costs for full cost attribution purposes.

¹⁷ Department of Treasury and Finance, [Competitive Neutrality Policy | Treasury and Finance Tasmania](#)

¹⁸ The SLA for 2023 to 2026 is currently being negotiated.

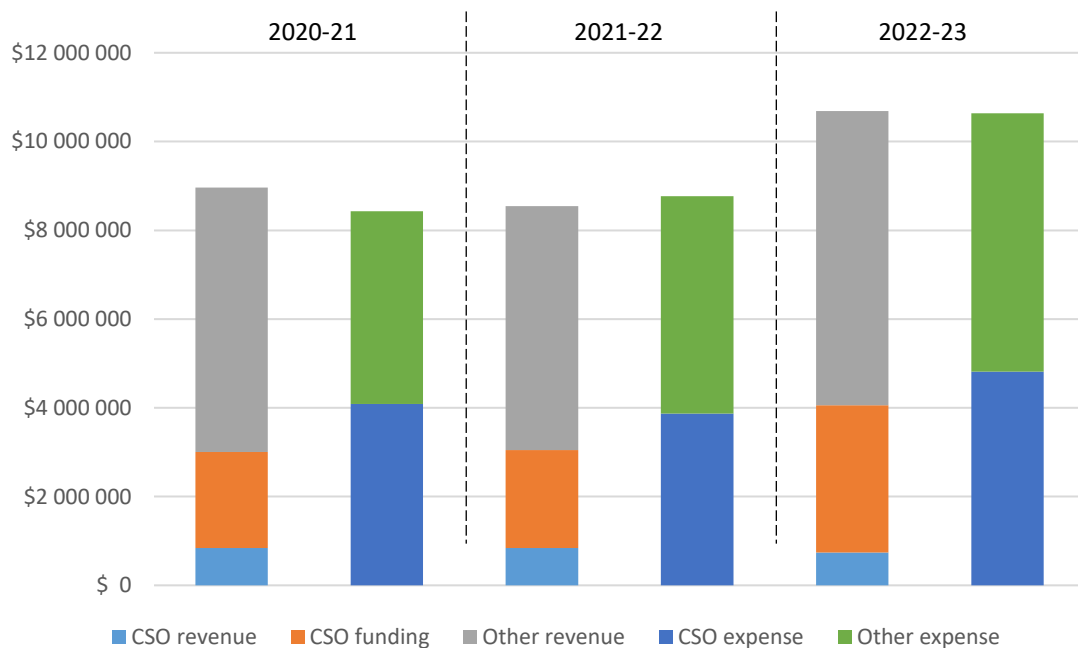
5.2.2 Cost recovery

In order to address this aspect of the Terms of Reference, the Regulator sought revenue data by service and income type from the Public Trustee. Due to issues with its internal systems and lack of technical capability to extract the information, the Public Trustee was unable to provide disaggregated revenue data. As such, the Regulator has been unable to assess the Public Trustee's cost recovery for its regulated clients. As an alternative and to address this Term of Reference to the greatest extent possible, the Regulator assessed the Public Trustee's cost recovery by examining its total costs against revenue as well as its CSO costs against CSO revenue.

The Public Trustee receives revenue from its CSO clients directly through its fees and charges, as well as funding from the Government to provide services to those CSO clients.

As discussed in section 3.6, the regulated clients within the scope of the Terms of Reference are different from the CSO clients but there is a reasonable degree of cross over between the cohorts. The Public Trustee receives funding from the Government to provide services to its CSO clients and provides regular reports to the Government on the costs of delivering CSO services, making this data easily available for analysis.

Figure 6: the Public Trustee's CSO costs, total costs, CSO funding and other revenue from 2020-21 to 2022-23



As evidenced in Figure 6, the Public Trustee's CSO costs exceed the combined CSO revenue and funding in all years examined.¹⁹ This suggests that there are cross-subsidies between the CSO clients and non-CSO clients, with the fees charged to the Public Trustee's non-CSO clients exceeding the costs of providing those services.

¹⁹ The Public Trustee's 2022-23 CSO funding does not include the Independent Review Recommendation funding it received from the Government of \$1 180 000. The Independent Review Recommendation funding is included in other revenue.

This cross-subsidisation likely includes clients who are required by legislation to use the Public Trustee's services who are not CSO clients. Given the data issues discussed elsewhere in this report, it has not been possible to identify the extent to which regulated clients' fees and charges are subsidising the fees and charges for non-regulated clients.

The Regulator further notes that there appears to be some misunderstanding by the Public Trustee with respect to its CSO clients and regulated clients.

5.2.3 Methods for cost allocation

Other than its CMS, the Public Trustee does not have a system in place that would allow for the allocation of its costs between the services it provides. As discussed earlier, the effort hour data currently contained within the CMS are the best proxy available for cost allocation across services, but these effort hours were established in 2017 and are not likely to reflect actual effort hours and costs of providing services. Additionally, the effort hours in the CMS only relate to the expected hours for client account managers and do not include any allowance for legal, financial services or management resources.

The Public Trustee is not unique in not allocating its costs between different services. Across the other Australian public trustees, only NSW, Queensland and the ACT have undertaken cost allocation exercises for all the services provided. Victoria has only allocated costs for its financial administration services.

The ACT Public Trustee and Guardian conducted a cost allocation review for the first time in 2023, which used current FTE data as the basis for allocation rather than timesheets.

No Australian public trustee currently requires its staff to keep complete timesheet records of their time allocations through the year for all services provided.

5.2.4 Findings

Based on an examination of the Public Trustee's financial information, the Regulator found that the Public Trustee recognises all of its costs in accordance with the principles of full cost attribution.

The Regulator has been unable to assess the Public Trustee's cost recovery for clients who are required by legislation to use its services, as the Public Trustee was unable to provide disaggregated revenue data.

It is acknowledged that there is complexity in the relationships between the cohort of clients that are required by legislation to use the Public Trustee's services and its Community Service Obligation (CSO) clients. These relationships are illustrated in Figure 1 in section 3.6 of this report. However, there appears to be some misunderstanding by the Public Trustee about these two cohorts of clients. This has made it difficult for the Public Trustee to separate its regulated clients from other clients for the purposes of this inquiry.

Based on analysis of the Public Trustee's costs and revenue for providing services to its CSO clients, the Regulator found evidence of cross-subsidies between CSO and non-CSO clients. While this cross-subsidisation likely includes clients who are required by legislation to use the Public Trustee's services who are not CSO clients, it has not been possible to identify the extent to which these clients are subsidising the fees of non-regulated clients due to data limitations.

5.2.5 Recommendations

The Public Trustee urgently reviews its cost allocations across the business and ensures that it is able to track the cost allocations on an ongoing basis.

The Regulator further recommends that the Public Trustee conducts a review of its fees and charges to ensure that clients required by legislation to use its services are not subsidising the fees of other clients.

5.3 Structure of fees and charges

The Terms of Reference require the Regulator to determine if the Public Trustee's fees and charges are structured with simplicity and equity. To address this Term of Reference, the Regulator reviewed the structure of the Public Trustee's fees and charges for the delivery of financial administration, estate administration and trust management services to its regulated clients.

Targeted consultation was undertaken with members of the Public Trustee's stakeholder reference group and other interested parties to gain firsthand insight into the customer experience in understanding the Public Trustee's fees and charges.

The Public Trustee's stakeholder reference group consists of its clients, advocacy groups and other government entities.

During targeted consultation, the Regulator engaged with the following stakeholders:

- Public Guardian;
- Speakout Advocacy;
- Advocacy Tasmania;
- Community Legal Centres;
- Legal Aid;
- Law Society of Tasmania; and
- an individual will client of the Public Trustee.

The Regulator's approach to addressing this aspect of the Terms of Reference included analysing publicly available fee information, responses received during consultation and supplementary information provided by the Public Trustee such as any complaints the Public Trustee received during 2021-22 and 2022-23 in relation to its fees and charges and feedback from its represented person clients and deceased estate clients' survey in relation to its fees and charges.

In addition to face-to-face meetings, Advocacy Tasmania and Community Legal Centres Tasmania made a joint written submission and submissions were received from the Law Society of Tasmania and the Public Trustee. A summary of the submissions can be found in Appendix C. All written submissions have been published on the Regulator's website at: [Prescribed Body Inquiries | Office of the Tasmanian Economic Regulator](#).

The Public Trustee reviews the level of its fees and charges periodically, with its most recent review in 2022 leading to a minor change in its conveyancing fees. However, to date, the Public Trustee has not reviewed the structure of its fees and charges to examine if its overall approach to charging clients remains appropriate. The Independent Review report noted that the Public Trustee intended reviewing its fee structure in 2022. However, this did not occur as, following the publication of the Independent Review report, the Public Trustee's focus turned to implementing the recommendations from the review.

While the Public Trustee levies different fees and charges for financial administration, estate administration and trust management services, there are some fees that are applied across

these three services and the revenue collected from these fees account for the majority of the revenue collected from regulated clients.

These fees are:

- capital commissions;
- income commissions; and
- investment management fees.

The other charges levied by the Public Trustee are discussed separately in section 5.3.4.

The Regulator has assessed the simplicity and equity of the Public Trustee's current fees based on the following principles:

- whether the structure of fees and charges is easy to understand for a client with little financial literacy;
- whether someone with some financial literacy could estimate fees and charges for clients based on the information publicly available;
- whether all the fees and charges are publicly available and easy to find;
- whether the fees and charges are fair for the services provided; and
- whether the relative difference in fees and charges are justifiable based on differing levels of service.

5.3.1 Capital commissions

A capital commission is charged with respect to all three services provided to regulated clients for the administration of a client's assets, with the rate varying depending on the value of the client's assets. The rates of capital commission and the asset thresholds differ across the services.

The Public Trustee charges capital commission to the maximum rates prescribed by the Regulations, except for CSO represented person clients with assets valued at less than \$100 000 (see section 5.3.1.1.).

The Public Trustee has advised that while most capital commissions are levied after the realisation of an asset, for financial administration clients, capital commissions are also levied on unrealised assets at the end of a financial administration order.²⁰ For most of its clients, the main asset that capital commissions are levied on is the house that they own or have inherited from a will.

The capital commission is calculated by the Public Trustee based on the gross value of an asset. In the example of a house, this means that the capital commission is levied on the value the

²⁰ For trusts arising from an estate, the capital commission is also applied to both realised and unrealised assets. However, as trusts arising from an estate are not covered by the Terms of Reference, the fees and charges for these arrangements are not discussed in this report.

house is sold at, before any real estate agent fees, real estate commissions and legal fees are deducted from the sale proceeds.

In 2022-23, 76.4 per cent of the Public Trustee's clients²¹ had some level of assets. After removing all represented person clients with assets valued at under \$100 000 who are not liable to pay capital commissions, capital commissions were levied on 28.3 per cent of the Public Trustee's financial administration, estate administration and trust management clients.

5.3.1.1 Financial administration

All financial administration clients (represented persons) are regulated clients for the purposes of this inquiry.

The capital commission rates for represented person clients depend on the value of the client's assets and whether the client is a CSO client, as shown in Table 4.

This reduction in fees for the represented person CSO clients was introduced by the Government in 2015 and was supported by additional CSO funding.

Table 4: rate of capital commission for financial administration service by value of assets

Assets valued at	Rate of capital commission applied
Under \$100 000 (CSO clients)	0 per cent
On the first \$200 000	4.5 per cent
Between \$200 000 and \$400 000	3.5 per cent
Between \$400 000 and \$600 000	2.5 per cent
Over \$600 000	1.5 per cent

The capital commission rates are applied in a similar way to progressive income tax rates, with the total capital commission applied to a client being the sum of the calculated capital commission rates from each relevant asset value range.

For example, a represented person client with a total asset value of \$99 999 will not be subject to any capital commission, while a represented person client with a total asset value of \$100 000 will be charged \$4 500 upon realisation of that asset and a represented person client with an asset valued at \$300 000 would be charged \$12 500 (first \$200 000 at 4.5 per cent (\$9 000) plus the next \$100 000 at 3.5 per cent (\$3 500)).

When a represented person's administration order ends, the Public Trustee levies a one-off 2.2 per cent commission on the value of any assets that have not been sold during the administration, based on the asset value at that time.

This one-off commission can equate to a significant impost for represented person clients, particularly those with higher value assets. During consultation, Legal Aid and Speakout Tasmania raised concerns regarding the 2.2 per cent capital commission for clients under an

²¹ The number of clients used in this calculation is the total clients using financial administration, estate administration and trust management services in 2022-23, after deducting clients that the Public Trustee could not extract asset records for from its CMS system. More detail on this data extraction issue is discussed in Chapter 7.

administration order. These client representative organisations consider that this commission scale is unfair as it does not appear to reflect the level of service received. In particular, the levying of the capital commission on a client's unsold house can lead to the client needing to sell the house in order to pay the fee.

The client representative groups noted general improvements in the service to represented person clients and level of engagement from the Public Trustee since the Independent Review. However, they also noted ongoing concerns regarding the provision of information to clients in relation to the Public Trustee's fees and charges. This is discussed in further detail in Chapter 7 of this report.

5.3.1.2 Estate administration

Some of the Public Trustee's estate administration clients are regulated clients for the purposes of this inquiry.

The duration of an estate under the administration of the Public Trustee is the time taken to finalise the deceased person's estate. According to the Public Trustee, this process is generally between 6 to 12 months.²² Estate beneficiaries are charged a lump sum amount at the end of the administration process.

In situations where a deceased estate has a value of less than \$111 111, the Public Trustee charges a fixed capital commission depending on the complexity of the estate, which is determined using a complexity matrix.

The fixed capital commissions for the different complexity levels are:

- Low complexity: \$1 500;
- Medium complexity: \$2 500; and
- High complexity: \$4 500.

The definitions of complexity are as follows:

- Low complexity: Section 20A of the Public Trustee Act (small estates); next of kin known; common fund and one sole bank account to be redeemed; creditors known; funeral bond to be recovered; and beneficiaries in agreement.
- Medium complexity: Section 20A of the Public Trustee Act (small estates); next of kin known; personal effects, household goods including vehicles (ie motor vehicles; motorcycles; trailers; caravans; boats etc) to be sold / transferred; beneficiary discord; sale and/or transfer of shares (one parcel); common fund and two sole bank accounts to be redeemed.
- High complexity: Election grants (Testate/Intestate); next of kin unknown; personal effects, household goods including vehicles (ie. motor vehicles; motorcycles; trailers; caravans; boats etc) to be sold/transferred; sale and/or transfer of shares (more than two parcels); investments to be redeemed (ie. superannuation, life insurance, bonds);

²² <https://www.publictrustee.tas.gov.au/estate-administration/>

common fund and more than two sole bank accounts to be redeemed; beneficiary discord.

The capital commission rates for deceased estates with asset values of more than \$111 111 are shown in Table 5.

Table 5: rate of capital commission for estate administration services by value of assets

Assets valued at	Rate of capital commission applied
On the first \$200 000	4.5 per cent
Between \$200 000 and \$400 000	3.5 per cent
Between \$400 000 and \$600 000	2.5 per cent
Over \$600 000	1.5 per cent

Unlike the represented person CSO clients, there are no discounted capital commission rates for estate administration CSO clients.

5.3.1.3 Trust management

Some of the court awarded trust clients where the Public Trustee is appointed as trustee are regulated clients for the purposes of this inquiry.

The capital commission rates for trust clients of court awarded trusts are based on asset values, as shown in Table 6. Unlike the financial administration CSO clients, trust CSO clients are subject to capital commissions.

Table 6: rate of capital commission for the management of a court awarded trust by value of assets

Assets valued at	Rate of capital commission applied
Under \$100 000	2.75 per cent
Between \$100 000 and \$500 000	2.2 per cent
Over \$500 000	1.1 per cent

Unlike financial administration services and estate administration services, there is no clear duration for the time that a trust is under the management of the Public Trustee.

As can be seen from Tables 4, 5 and 6, the capital commission rates and the asset value thresholds for trust clients differ from the rates and thresholds for estate administration clients and financial management clients.

The divergence in asset value thresholds was introduced in 2019, with changes made to the thresholds for estate administration and financial management clients. The remaking of the Regulations in 2019 was discussed in section 3.4.2 of this report.

Differences in capital commission rates across the services have been in place since the 1971 Regulations. The Regulator notes that the lower capital commission rates for trust management service may be justified by the lower cost of delivering trust management services per client.

5.3.2 Income commissions

The Public Trustee charges a 6.6 per cent commission on the receipt of all income, including:

- interest;
- dividends;
- pensions; and
- rental income (where the Public Trustee is managing the client's property).

In the same manner as capital commissions, all income commissions are charged on the gross value of income received.

The Public Trustee charges a discounted 3.3 per cent commission on the receipt of rental income where the Public Trustee is not managing the property. The differing income commission rate is prescribed by the Regulations, which states the maximum charge on gross income that is subject to an authorised charge for collection is 3.3 per cent²³.

The Public Trustee charges income commissions to the maximum rates prescribed by the Regulations, except for the CSO represented person clients.

Under the terms of the CSO, represented persons with assets under \$10 000 are not charged an income commission and for represented persons with assets between \$10 000 and \$100 000, a discounted 2.75 per cent of commission applies.

²³ The Regulation specifies 3 per cent, which is the rate exclusive of GST. As all rates quoted in the report include GST, the GST inclusive rate is used here.

Table 7: income commission rate for different income types (non-exhaustive)

Income type	Rate of income commission applied
Interest and dividends from the Public Trustee's common fund and group investment fund; pensions; rental income where the Public Trustee manages the property	6.6 per cent
Rental income where external agents manage the property and income is paid into the Public Trustee's account;	3.3 per cent
All income from represented person clients with assets valued at between \$10 000 and \$100 000	2.75 per cent
Interest and dividends from external funds; rental income paid into the client's account; all income from represented person clients with assets valued at less than \$10 000	0 per cent

The Public Trustee does not apply a similar discounted income commission rate to estate administration or trust management clients where it is managing an estate with assets of a low value. Some of these clients are classified as CSO clients by the Government, while others are not, as the estate administration and trust management CSO clients are defined both by the value of their assets as well as their estate and trust type. The definition of CSO clients can be found in Section 3.6.

During consultation, one client representative stated that they considered it inappropriate for the Public Trustee to levy income commissions on pension payments received by low-income clients.

The Public Trustee only levies income commissions on returns from investments, such as interest and dividends, that are invested in its own funds (the common fund and the group investment fund). Where income from financial investments is received from client investments outside of the Public Trustee's control, the Public Trustee does not levy an income commission.

This arrangement may incentivise the Public Trustee to direct client investments into its own investment funds. This finding is consistent with findings from reviews in other Australian jurisdictions.

5.3.3 Investment management fee

The Regulations provide for the Public Trustee to charge a maximum of 2.2 per cent per year on the gross value of assets invested, regardless of whether the investment is in its common fund, group investment fund or outside either of these Public Trustee's managed funds.

The Public Trustee charges an investment management fee of 1.1 per cent per annum. The Regulator notes that the investment management fee is the only fee item for which the Public Trustee has not applied the maximum rate as prescribed in the Regulations. Similar to the application of income commission, the same investment management fee is charged across all three services.

Where the investment management fee is levied on an external investment that is managed by a third party, most clients are likely paying a management fee to that party as well. This creates a situation where clients are paying multiple sets of management fees for the

management of the same asset. Additionally, it is not clear what services are being delivered to clients by the Public Trustee in this situation.

The Regulator recommends that the Public Trustee reviews and justifies the levying of an investment management fee on assets held outside of its own investment funds.

The Regulator has found that the Public Trustee refers to the investment management fee that applies to investments in its common fund and group investment fund as a "trustee fee" in its Common Fund Investment Policy Statement and Group Investment Fund No.2 Investment Policy Statement. This has created some confusion as to the nature of this fee.

The Regulator considers the name of this fee item should be standardised, so the clients are aware that the trustee fee is the investment management fee.

The Public Trustee does not publish on its website or in its fee schedule that it charges an investment management fee for funds it manages in its common fund or through the group investment fund. When discussed with the Public Trustee, there was some misunderstanding about when this fee is levied.

The Regulator recommends that the Public Trustee publishes the investment management fee applying on the investments in its common fund and group investment fund on its website and in its fee schedules.

The Regulator's review of a number of client statements identified that no investment management fees were visible on the statements. The Public Trustee confirmed that investment management fees are deducted from income received, such as interest, prior to its distribution to clients and that this practice is consistent with traditional funds management in Australia.

The Regulator recommends that to increase transparency around the application of the investment management fee, the Public Trustee separates and identifies the fee on a client's statement.

5.3.4 Other charges

In addition to the fees and charges discussed earlier in this chapter, the Public Trustee also levies a number of other charges as set out below.

The remaking of the Public Trustee Regulations in 2019 removed a previous regulation that prescribed a list of additional fees and charges. This change has reduced the Public Trustee's accountability with respect to, and the transparency of these fees.

5.3.4.1 Annual Report fee

Under Section 66 of the Guardianship Act, TasCAT requires a guardian or administrator to provide at least one written report over a period of 12 months for a person under a guardianship or administration order. The Public Trustee levies an annual report fee of \$65 on clients for preparing this annual report. In comparison, the Public Guardian is also required to provide an annual report to TasCAT on the same basis, but it does not levy a fee for its report.

Furthermore, Schedule 1 of the CSO Agreement includes that the Public Trustee will meet the costs of TasCAT Annual Review fees for represented persons clients. There appears to be

confusion as to whether this fee waiver applies only to CSO represented person clients or all represented person clients of the Public Trustee.

The Regulator recommends that the Public Trustee seeks clarification as to whether the CSO Agreement requires it to waive the annual report fee for all represented person clients.

5.3.4.2 *Establishment fee*

For all financial administration clients with assets over \$100 000, the Public Trustee levies a one-off establishment fee of \$601. The CSO Agreement requires the Public Trustee to meet the costs of establishment fees for represented person clients.

As is the case for annual report fees, there is confusion as to whether this fee waiver is intended to apply to all represented person clients or only to CSO represented person clients.

The Regulator recommends that the Public Trustee seeks clarification as to whether the CSO Agreement requires it to waive the establishment fee for all represented person clients.

5.3.4.3 *Emergency Orders management fees*

The Public Trustee's fee schedule provides for management fees of \$120 per hour where TasCAT makes an emergency order to appoint the Public Trustee to administer a client's financial affairs.

These management fees are different from the fee structure for other financial administration clients, although the hourly fees charged are waived if the emergency order is converted to a full order.

During consultation, one client representative advised of a situation where, during a visit by Public Trustee staff to the client's nursing home, the Public Trustee required two staff to be present for safety reasons. As a result, management fees of \$240 per hour were charged to the client.

It is not clear from the Public Trustee's fee schedule that multiple management fees can be charged when more than one staff member is required to be present in the case of emergency orders.

The Regulator recommends that the Public Trustee reviews its fee schedule as it relates to emergency orders to ensure clients and their representatives are aware of the basis on which fees may be imposed in these instances together with the maximum fees that may be charged.

5.3.4.4 *Legal fees*

The Public Trustee charges fees for legal services incurred during the period of administration to its represented person, estate and trust clients. The legal fees, like all the other fees discussed in this section, are charged in addition to capital and income commissions and investment management fees.

The Public Trustee currently charges an hourly rate of \$430 for legal services. This fee is not made available on its website. Rather, the website provides that legal services are charged at a rate determined by the Public Trustee but not exceeding the maximum hourly attendance rate set out in the *Supreme Court Rules 2000*.

The Regulator recommends that the Public Trustee includes the hourly rate it charges for legal services on its website, to increase the transparency to clients for costs they may incur.

The Law Society of Tasmania advised that the practice of charging both a commission and an hourly rate for the administration of estates is unusual and not allowed for a lawyer in the private sector except in circumstance where the beneficiaries allow, as the practice is considered to be double dipping.

The Law Society also advised that the Public Trustee is exempted from complying with the *Legal Profession Act 2007*. That is, section 13(2)(l) of the Legal Profession Act allows staff at the Public Trustee or another trustee company to prepare a will or carry out any other activities involving the administration of trusts, the estates of living or deceased persons, or the affairs of living persons without needing to hold an Australian legal practising certificate.

This provision also exempts the Public Trustee and other trustee companies in Tasmania from complying with the maximum fees prescribed under the *Supreme Court Rules 2000*, when charging legal fees.

The Regulator considers the current approach by the Public Trustee of charging legal fees in addition to commissions to be unclear and inconsistent with the legal profession's practices.

The Regulator recommends the Public Trustee provides justification for imposing legal fees, in terms of the additional costs it incurs that are not recovered by the capital commission and income commission levied.

5.3.4.5 Account keeping fees

The Public Trustee's levies an account keeping fee equal to \$13.50 per month (or \$162 per annum) to all regulated clients except the represented person clients with assets below \$100 000.

This fee is higher than the account keeping fee levied by most commercial banks, which averages around \$5 per month.

The Public Trustee's account keeping fee applies on top of any commercial bank fees and the commissions charged by the Public Trustee.

The Regulator recommends that the Public Trustee reviews and justifies the levying of account keeping fees, in terms of the additional costs it incurs that are not recovered by the capital commission and income commission levied.

5.3.4.6 Transaction fees

The Public Trustee levies transaction fees on all its clients based on the transaction type and the number of transactions made. The value of the transaction fee per transaction are shown in Table 8.

Table 8: the Public Trustee's transaction fees by types of transaction

Types of transaction	Transaction fee per transaction
Direct debit	\$3.20
Voucher	\$3.20
Woolworths voucher	\$1.50
Domestic cheque drawing	\$6.00

The Regulator reviewed a number of client statements as part of the inquiry and identified that transaction fees can be material for some clients and exceed some of the other fees applied.

It is not clear what additional work the Public Trustee is carrying out in relation to levying transaction fees, particularly in the instance of direct debit transactions, which are automated once the periodic transactions have been set up.

The Regulator recommends that the Public Trustee reviews and provides justification for the levying of transaction fees, in terms of the additional costs it incurs that are not recovered by the capital commission and income commission levied.

5.3.4.7 Fee waivers

During consultation, it was brought to the Regulator's attention by client representative groups and the Public Trustee itself that the Public Trustee can and sometimes does waive fees for clients upon request.

The applications for fee waivers are considered in cases of hardship and where charges are excessive considering the amount of work involved and where the charges could result in the loss of future business from those clients.

The process for a fee waiver is published in the Public Trustee's internal guide to fees and charges, which is used by staff to apply fees and charges to client accounts. The Regulator has not identified any information or discussion of the process for a fee waiver on the Public Trustee's website or in other publicly available information.

A fee waiver is granted by the Public Trustee's CEO at the recommendation of the General Manager of Trustee Services and does not appear to be uniform in its application, but rather is considered on a case-by-case basis.

The Regulator recommends that the Public Trustee reviews its fee waiver policy to ensure that it is publicly available and is applied in a transparent, consistent and fair manner.

5.3.5 Stakeholder feedback

In addition to the stakeholder feedback discussed earlier in this Chapter in relation to specific fees and charges, many of the advocacy organisations the Regulator met with indicated high levels of confusion in relation to trying to understand the Public Trustee's fees and charges and then communicating these to clients.

5.3.5.1 Level of fees

The complaints received by the Public Trustee from its clients regarding fees and charges all relate to the fees and charges being too high.

The joint written submission to the inquiry received from Advocacy Tasmania and Community Legal Centres included two recommendations:

- the provision of services by the Public Trustee to represented persons subject to TasCAT orders should be recognised as an essential service and provided by the State for free. In the alternative, persons in receipt of Government assistance and with assets of less than \$40 000 should not be charged; and
- the Public Trustee receives CSO funding that keeps pace with demand growth.

The Regulator notes while CSO funding can be considered to have an impact on the fees and charges for some regulated clients, the level of the CSO funding and indexation method going forward is a policy matter and outside of the scope of this inquiry.

5.3.6 Case studies

To demonstrate how the fees and charges of the Public Trustee may apply to clients, the Regulator has developed a series of case studies.

The examples do not include external charges that will also impact on a client's income and assets, such as tax or real estate agent commissions.

5.3.6.1 Example one: represented person client receiving age pension and with no assets

As discussed in section 3.7 of this report, a significant proportion of the Public Trustee's financial administration clients for whom an asset value is recorded have a very low value of personal assets (between \$0 and \$10 000).

As a representative of this cohort, the Regulator has developed a case study based on an individual receiving the maximum amount of an age pension, with no assets.

Table 9 below shows representative fees and charges for a client receiving the maximum age pension totalling \$1 096.70 per fortnight²⁴, and making one direct debit transaction per fortnight from the Public Trustee to provide the client with an agreed amount of spending money.

²⁴ As of 11 January 2024, this includes the maximum pension supplement and energy supplement (<https://www.servicesaustralia.gov.au/how-much-age-pension-you-can-get?context=22526>)

Table 9: Public Trustee fees for a represented person client receiving the age pension and with no assets

Fee types	Amount
Income commission	\$0.00
Transaction fee	\$83.20
Annual Report fee	\$0.00
Total Public Trustee charges	\$83.20

A represented person with no assets is not liable to pay any commissions, annual report fee or monthly account fees. Other fees may apply, such as international bank transfers or legal fees, that are dependent on an individual's usage that are not included in the case study.

5.3.6.2 *Example two: represented person client receiving age pension and with assets valued at \$50 000*

As shown in Table 1, 49.7 per cent of the Public Trustee's represented person clients for which an asset value is available have assets between \$10 000 and \$100 000. These clients are liable to pay a reduced income commission.

Table 10 below shows a case study for a representative client receiving the maximum age pension of \$1 096.70 per fortnight with total assets of \$50 000. For the purposes of the case study, it has been assumed that one direct debit transaction per fortnight is made from the Public Trustee to provide the client with an agreed amount of spending money.

Table 10: Public Trustee fees for a represented person client receiving the age pension and with assets valued at \$50 000

Fee types	Amount
Income commission	\$784.00
Transaction fee	\$83.20
Annual Report fee	\$0.00
Total Public Trustee charges	\$867.20

A represented person with \$50 000 in total assets receiving the maximum aged pension would be liable to pay total annual charges of \$867.20. Other fees may apply, such as international bank transfers or legal fees, that are dependent on the individual's specific circumstances, have not been included in the case study.

5.3.6.3 *Example three: represented person client receiving \$2 000 per fortnight and with assets valued at \$300 000*

As shown in Table 1, 4.3 per cent of the Public Trustee's represented person clients, for which an asset value is available, have assets between \$100 000 and \$400 000.

For the purposes of the case study, it is assumed that the total assets are realised during the period of administration; the funds from the realised assets are invested for six months of the year, with no interest paid to the Public Trustee and no additional ad hoc charges.

Table 11 below shows a case study for a representative client receiving an income of \$2 000 per fortnight with assets valued at \$300 000, and two direct debit transactions per fortnight from the Public Trustee to provide the client with an agreed amount of spending money.

Capital commission and the establishment fee are one-off charges, with the remaining fees to be charged on an annual basis.

Table 11: Public Trustee fees for a represented person client receiving an income of \$2 000 per fortnight and with assets valued at \$300 000

Fee types	Amount
Income commission	\$3 432.00
Annual report fee	\$65.00
Account keeping fee	\$162.00
Transaction fee	\$166.40
Investment management fee	\$1 650.00
One-off fees	
Capital commission	\$12 500.00
Establishment fee	\$601.00
Total Public Trustee charges	\$18 576.40

A represented person with \$300 000 in total assets receiving \$2 000 per fortnight would be liable to pay total annual charges of \$18 576.40. Other fees may apply, such as international bank transfers or legal fees, depending on the individual's specific circumstances.

5.3.6.4 Example four: deceased estate with assets valued at \$100 000 where there is no will

For a deceased estate with assets valued at \$100 000 where there is no will, the minimum capital commission for a high complexity estate applies. The case study assumes the funds from realised assets are invested for six months in investments that are not under the Public Trustee's direct management and that one direct debit transaction per fortnight is made. Table 12 presents the fees and charges that would apply.

Table 12: Public Trustee fees for a deceased estate beneficiary with assets valued at \$100 000 where there is no will

Fee types	Amount
Investment management fee	\$550.00
Account keeping fee	\$162.00
Transaction fee	\$83.20
One-off fee	
Capital commission	\$4 500.00
Total Public Trustee charges	\$5 295.20

In this case study, total fees of \$5 295.20 would be levied on the deceased estate. Other fees may apply, such as international bank transfers, conveyancing or legal fees, that are depending on the individual's specific circumstances.

5.3.6.5 Example five: deceased estate with a assets valued at \$500 000 and where there is no will

This case study outlines the fees and charges that would apply for a deceased estate with a total estate value of \$500 000 and no will. It is assumed the funds from realised assets are invested for six months in investments that are not under the Public Trustee's direct management and two direct debit transactions are made per fortnight. Table 13 presents the fees and charges that would apply.

Table 13: Public Trustee fees for a deceased estate beneficiary with assets valued at \$500 000 and no will

Fee types	Amount
Investment management fee	\$2 750.00
Account keeping fee	\$162.00
Transaction fee	\$166.40
One-off fee	
Capital commission	\$18 500.00
Total Public Trustee charges	\$21 578.40

In this case study, total fees of \$21 578 would be levied on the deceased estate. Other fees may apply, such as international bank transfers, conveyancing or legal fees, depending on the individual's specific circumstances.

5.3.6.6 Example six: infant trust with assets valued at \$200 000

For the case study of an infant beneficiary of a trust with assets valued at of \$200 000, it is assumed that there is a five per cent return on investment and the investment is made into the Public Trustee's common fund and two direct debit transactions per fortnight. Table 14 presents the fees and charges that would apply to the case study client.

Capital commission and the establishment fee are one-off charges while the remaining fees are annual charges.

Table 14: fees for an infant trust beneficiary with assets valued at \$200 000

Fee types	Amount
Income commission	\$660.00
Investment management fee	\$2 200.00
Account keeping fee	\$162.00
Transaction fee	\$166.40
One-off fee	
Capital commission	\$4 950.00
Total Public Trustee charges	\$8 138.00

An infant trust with \$200 000 in total assets receiving a five per cent return on investments would be liable to pay total charges of \$8 138 in the example year. Other fees may apply, such as international bank transfers, conveyancing or legal fees, depending on an individual's specific circumstances.

5.3.7 Findings

For most services, the Public Trustee typically charges the maximum permitted under the *Public Trustee Regulations 2019* in pursuit of its commercial objectives as a Government Business Enterprise. Therefore, it may not be appropriately balancing its competing interests of maximising revenue and protecting the interests of its vulnerable clients.

The Public Trustee's fees and charges for different services are unlikely to reflect its costs of delivering these services.

Stakeholder feedback indicates that the Public Trustee's represented person clients often do not understand its fee structure and are not provided with any fee estimates when first placed under an administration order.

The levying of a 2.2 per cent capital commission on unrealised assets can place a financial burden on clients and necessitate clients needing to sell assets to finance the fee.

While the Public Trustee charges its fees in accordance with the maximums permitted under the Regulations, client representative organisations consider that commission arrangements are unfair and do not reflect the level of service received.

Based on comments provided by stakeholders during the inquiry, the Regulator questions the appropriateness of the Public Trustee levying the full income commission of 6.6 per cent on Australian Government income streams such as the aged pension and disability support pension for low-income clients.

The Public Trustee may be incentivised to direct client investments into its own investment funds, as it only receives income commissions on interest and dividends from investments in its common fund or group investment fund.

The Public Trustee charges an investment management fee of 1.1 per cent per annum on the capital amount of investments managed by external providers. Most clients with external investments are likely to be paying multiple sets of management fees on the same investment. It is unclear what service the Public Trustee is providing to clients for this fee.

The Public Trustee does not publish the investment management fee for funds it managed (such as in its common fund or group investment fund) on its website or in its fee schedule.

No investment management fees were visible on the client statements viewed by the Regulator. The Public Trustee confirmed that investment management fees are deducted from income received, such as interest, prior to its distribution to clients consistent with traditional funds management in Australia.

The remaking of the Public Trustee Regulations in 2019 removed a previous regulation that prescribed a list of additional fees and charges. This change has reduced the oversight of the other fees, in addition to the income commission, capital commission and investment fees, levied by the Public Trustee.

There appears to be confusion as to whether the fee waiver for the costs of the TasCAT Annual Review as included in Schedule 1 of the CSO Agreement applies only to CSO represented person clients or to all represented person clients of the Public Trustee.

There is confusion as to whether the fee waiver for establishment fees for represented person clients, as set out in Schedule 1 of the CSO Agreement, extends to all represented person clients or only CSO represented person clients of the Public Trustee.

It is also not clear from the Public Trustee's fee schedule that multiple management fees can be charged when more than one staff member is required to be present in the case of emergency orders.

The Public Trustee charges an hourly legal fee for legal services provided in the course of delivering financial administration, estate administration and trust management services, on top of the commissions charged.

The Public Trustee currently charges an hourly rate of \$430 for legal services. This fee is not made available on its website. Rather, the website states that legal services are charged at a rate determined by the Public Trustee but not exceeding the maximum hourly attendance rate set out in the *Supreme Court Rules 2000*.

The Public Trustee levies an account keeping fee on all regulated clients except represented person clients with assets of less than \$100 000. The monthly account keeping fee of \$13.50 is higher than the account keeping fee typically charged by commercial banks.

The Public Trustee levies transaction fees on all of its clients based on the number and type of transactions made. It is not clear what additional work clients are paying the Public Trustee for via these transaction fees, particularly in the instance of direct debit fees, which are automated once the periodic transactions have been set up.

The Public Trustee will sometimes waive fees and charges for a client upon request in cases of hardship or where the charges are excessive taking into account the amount of work involved. The Public Trustee's fee waiver policy is not public and does not appear to be uniform in its application.

5.3.8 Recommendations

The Regulator recommends that the Public Trustee:

- reviews and justifies the levying of an investment management fee on assets outside of its own funds;
- gives consideration to standardising the name of the investment management fee (referred to as a "trustee fee" in relation to its investments in its common fund and group investment fund) to ensure clients are aware of what fees they are being charged;
- publishes the investment management fee it applies to investments in its common fund and group investment fund on its website and in its fee schedule;
- increases transparency around the application of the investment management fee by separately identifying the fee on a client's statement;
- clarifying its obligations under the CSO Agreement with the Government regarding whether the annual report fee and establishment fee are intended to be waived for all represented person clients;

- reviews its fee schedule as it relates to emergency orders to ensure clients and their representatives are aware of the maximum fees that may be charged.
- in the interests of transparency, publish the hourly rate it charges for legal services on its website;
- provides justification for the charging of legal fees, in addition to capital and income commissions. This justification should be made in terms of additional expense incurred, that has not been adequately covered by the capital commission and income commission levied and that the private sector is unable to levy commissions and hourly rates for legal fees as it is considered 'double dipping';
- reviews its application of account keeping fees and justifies the charging of this fee, in terms of additional expense incurred that has not been covered by the capital commissions and income commissions levied; and
- reviews and provides justification for the levying of transaction fees, in terms of additional expense incurred that has not been covered by the capital commission and income commission levied.

6 FEES AND CHARGES IN COMPARABLE MARKETS

Under the Terms of Reference, the Regulator was required to assess whether the fees and charges of the Public Trustee are consistent with those observed in other comparable markets nationally and internationally, and with comparable services provided by the private sector.

The Regulator has collected, where available, information about the activities, fees and charges in other markets nationally and internationally, and for the private sector for financial administration, trust management and estate administration.

6.1 Regulator's approach

In addressing this aspect of the Terms of Reference, the Regulator conducted research and analysed pricing information for other comparable markets where that information was publicly available.

Comparable markets include other public trustees in Australia and overseas, and also includes private sector trustee companies which provide similar services to the Public Trustee.

6.2 Australian public trustee comparison

In Australia, there are two different approaches to the application of fees and charges across jurisdictions.

Six out of eight Australian public trustees, including the Tasmanian Public Trustee, charge fees on a commission basis in relation to the administration of clients. In contrast, Queensland and Western Australia charge fees on an activity-based approach and group levels of activity into bands. This fee structure is discussed further in section 6.2.4.

For the purposes of this inquiry, the Regulator has compared fees and charges for public trustees that charge fees on a commission basis. The activity-based approach was not analysed for this exercise, as this would have required a large number of assumptions to be made regarding the time and effort spent on each activity performed for the delivery of the service to clients with different levels of assets, making direct comparisons difficult.

6.2.1 Capital commission

Overall, the Tasmanian Public Trustee's capital commissions are broadly comparable to, or lower than capital commissions of other Australian jurisdictions' public trustees for its financial administration, estate administration and trustee services.

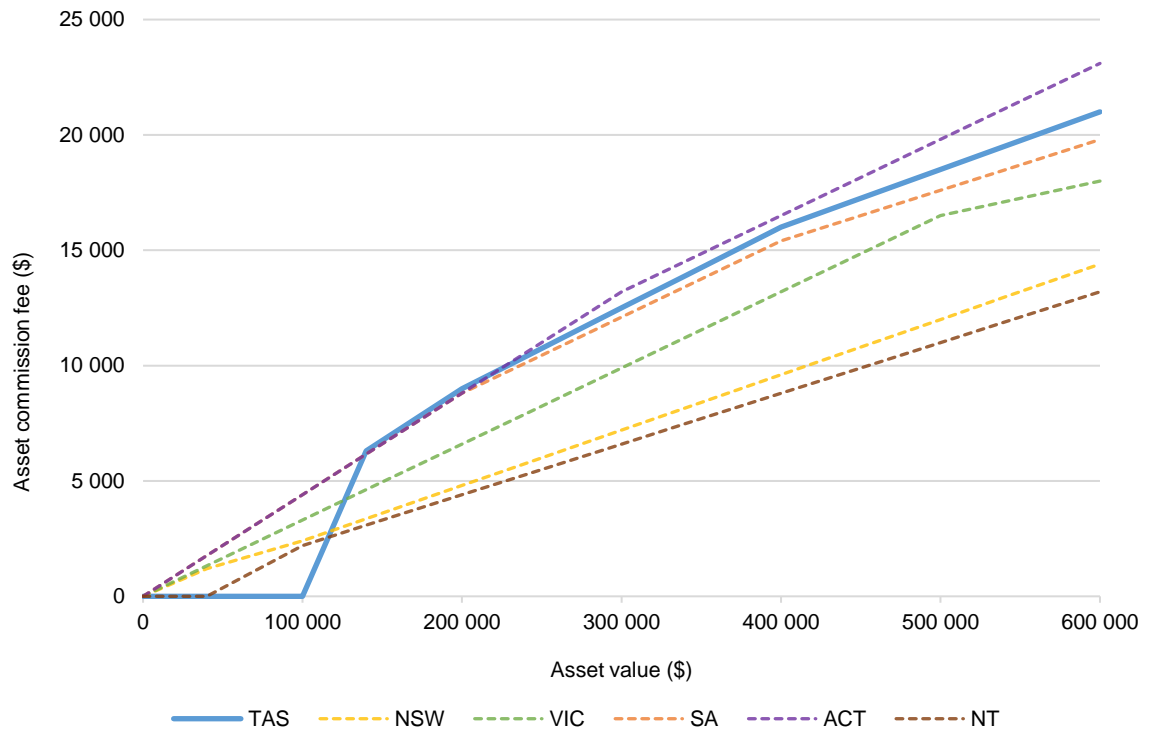
6.2.1.1 *Financial administration*

The structure of fees and charges for financial administration varies across different Public Trustees. The Tasmanian Public Trustee utilises a scaled capital commission structure, which is outlined in chapter 5.3.1.1 of this Report. A number of other Public Trustees also use a scaled

capital commission structure for financial administration, while others utilise a flat percentage fee for administering assets. For example, the Northern Territory levies a 2.2 per cent flat percentage fee on managed assets with a value greater than \$40 000.

Figure 7 illustrates the fees charged by Australian public trustees that levy capital commissions for financial administration services.

Figure 7: financial administration capital commission fee comparison by jurisdiction and value of assets



While the Tasmanian Public Trustee’s capital commission fees and charges for clients with assets valued at less than \$100 000 are the lowest of all jurisdictions (being zero), the fees for clients with assets of higher values are close to the highest compared to the fees levied by the other Public Trustees. For clients with assets valued at greater than \$100 000, the Northern Territory Public Trustee and Guardian consistently levies the lowest fees.

The following table presents the financial administration capital commission fees by jurisdiction.

Table 15: financial administration capital commission fees by jurisdiction and value of assets²⁵

Jurisdiction	Value of assets						
	\$0	\$100 000	\$200 000	\$300 000	\$400 000	\$500 000	\$600 000
TAS	\$0	\$ 0	\$9 000	\$12 500	\$16 000	\$18 500	\$21 000
NSW	\$0	\$2 400	\$4 800	\$7 200	\$9 600	\$12 000	\$14 400
VIC	\$0	\$3 300	\$6 600	\$9 900	\$13 200	\$16 500	\$18 000
SA	\$0	\$4 400	\$8 800	\$12 100	\$15 400	\$17 600	\$19 800
ACT	\$0	\$4 400	\$8 800	\$13 200	\$16 500	\$19 800	\$23 100
NT	\$0	\$2 200	\$4 400	\$6 600	\$8 800	\$11 000	\$13 200

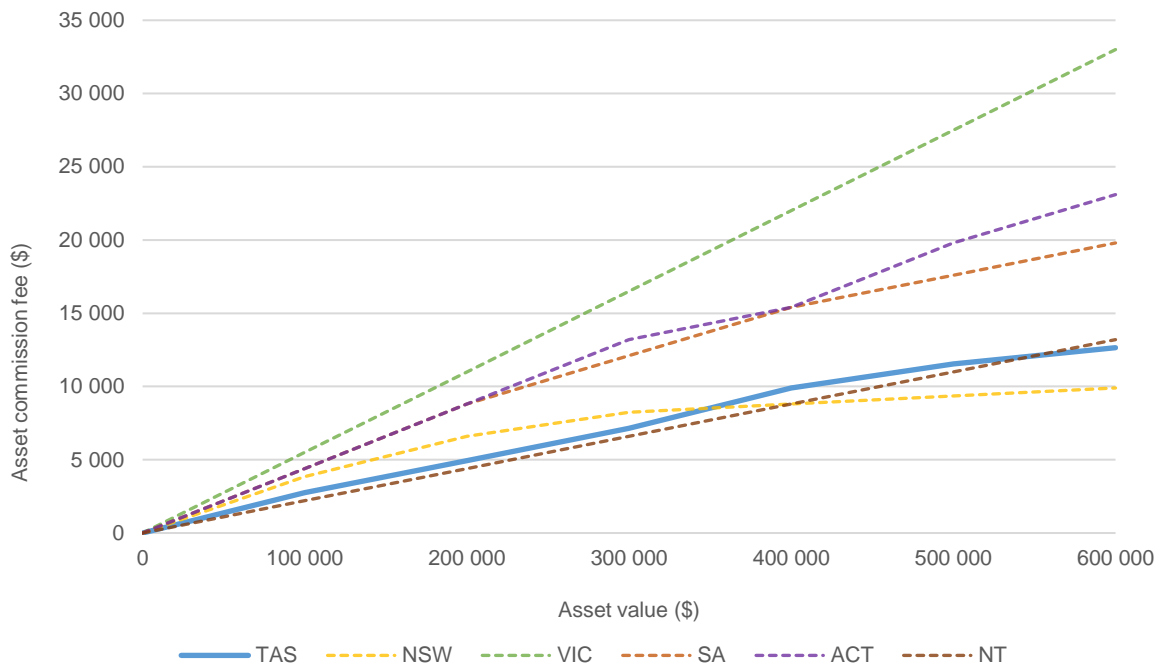
6.2.1.2 Trust management

The capital commissions applied to trust management services varies across jurisdictions. The Tasmanian Public Trustee, along with New South Wales, South Australia and the ACT use a scaled approach to capital commission, whereas Victoria and the Northern Territory levy flat percentage fees. The rates applied in these two jurisdictions differ considerably, with Victoria levying a 5.5 per cent fee regardless of the asset value, whereas the Northern Territory levies fees of either 1.1 per cent or 2.2 per cent, depending on whether the investment has a defined or undefined termination date.

Figure 8 illustrates the capital commissions charged by each Australian public trustee for trust management services.

²⁵ These calculations take into account the reduced fees for Tasmanian CSO clients, however, they may not account for similar programs in other jurisdictions.

Figure 8: trust management capital commission fees by jurisdiction



As shown in the chart, the Tasmanian Public Trustee's fees are towards the lower end of fees charged for administration of a court awarded trust.

The following table presents the trust management capital commission fees by jurisdiction.

Table 16: trust management capital commission fees by jurisdiction and value of assets

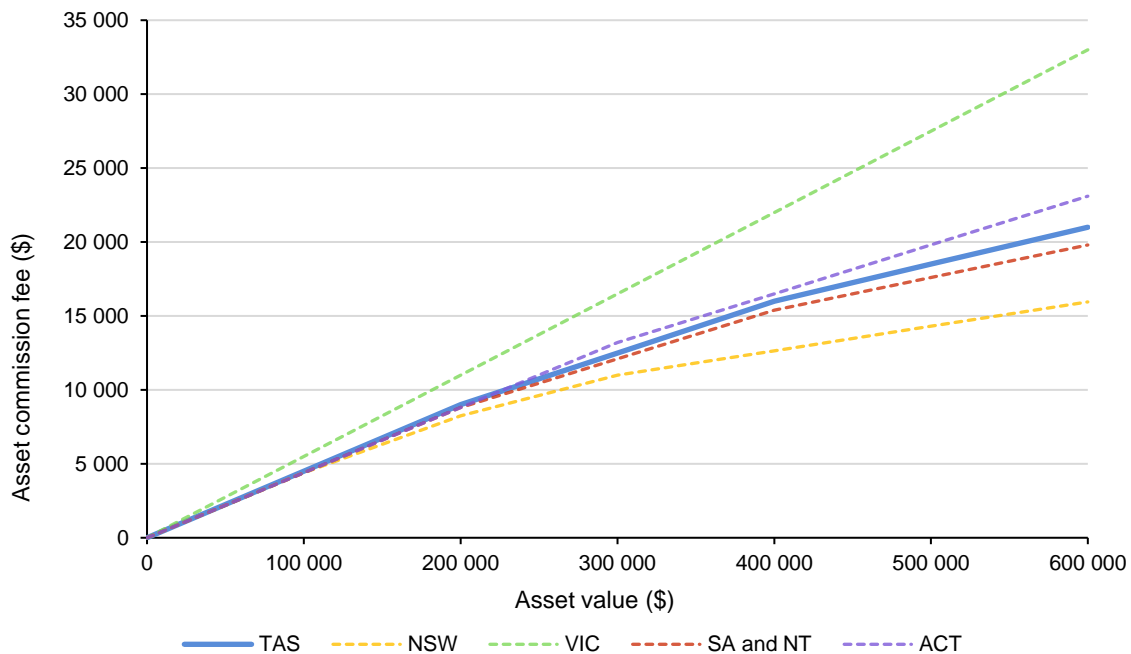
	Value of assets						
	\$0	\$100 000	\$200 000	\$300 000	\$400 000	\$500 000	\$600 000
TAS	\$0	\$2 750	\$4 950	\$7 150	\$9 900	\$11 550	\$12 650
NSW	\$0	\$3 850	\$6 600	\$8 250	\$8 800	\$9 350	\$9 900
VIC	\$0	\$5 500	\$11 000	\$16 500	\$22 000	\$27 500	\$33 000
SA	\$0	\$4 400	\$8 800	\$12 100	\$15 400	\$17 600	\$19 800
ACT	\$0	\$4 400	\$8 800	\$13 200	\$15 400	\$19 800	\$23 100
NT	\$0	\$2 200	\$4 400	\$6 600	\$8 800	\$11 000	\$13 200

6.2.1.3 Estate administration

Similar to trust management, the structure of capital commissions for estate administration services varies across jurisdictions, but there are a number of similarities. Victoria uses a combination of commission and an activity based flat fee; South Australia, the ACT and Northern Territory apply a similar scaled approach to the Tasmanian Public Trustee with some variances at the higher and lower bands; and New South Wales also uses a scaled approach but with varied percentages levied on lower dollar bands.

Figure 9 illustrates the capital commissions charged by each Australian public trustee for estate administration services.

Figure 9: estate administration capital commission fees by jurisdiction and value of assets



The Tasmanian Public Trustee’s fees sit in the middle range of capital commission fees levied for estate administration services.

The following table presents the estate administration capital commission fees by jurisdiction.

Table 17: estate administration capital commission fees by jurisdiction and value of assets

Jurisdiction	Value of assets						
	\$0	\$100 000	\$200 000	\$300 000	\$400 000	\$500 000	\$600 000
TAS	\$0	\$4 500	\$9 000	\$12 500	\$16 000	\$18 500	\$21 000
NSW	\$0	\$4 400	\$8 250	\$11 000	\$12 650	\$14 300	\$15 950
VIC	\$0	\$5 500	\$11 000	\$16 500	\$22 000	\$27 500	\$33 000
SA and NT	\$0	\$4 400	\$8 800	\$12 100	\$15 400	\$17 600	\$19 800
ACT	\$0	\$4 400	\$8 800	\$13 200	\$16 500	\$19 800	\$23 100

As discussed in section 5.3.1.2 of this report, Tasmania also levies a minimum fee depending on the complexity of an estate. This minimum fee has not been added to the capital commission fee comparisons, as various conditions must be met for an estate to be characterised as low, medium or high complexity. The levying of a minimum fee has the practical effect of ensuring that, for estates with assets of very low value (ie less than \$111 111), the Tasmanian Public Trustee levies the highest capital commission fees of the comparable public trustees.

The practice of levying a minimum fee appears to align with private sector providers’ practices but does not align with the approaches of most other public trustees that use a capital commission-based fee structure.

6.2.2 Income commissions

As discussed in Chapter 5 of this report, the Tasmanian Public Trustee charges a 6.6 per cent commission on the receipt of all income. The commission relates to interest, dividends, pensions and, where the Public Trustee is managing the property, rental income. For represented person clients, the fee is reduced to 2.75 per cent for clients with assets between \$10 000 and \$100 000, while no fee is charged for clients with assets under \$10 000.

The practice of levying income commissions is common across other jurisdictions, however, it does not appear that the New South Wales Trustee and Guardian, the Queensland Public Trustee or the Western Australia Public Trustee charge income commission fees.

The State Trustees of Victoria charges 3.3 per cent income commission on any pension and allowances received from Centrelink or the Department of Veteran Affairs, and 6.6 per cent on all other income for represented person clients. Income commission of 6.6 per cent is charged on gross income received by an estate or a trust.

The South Australian Public Trustee charges commission of 5.5 per cent on all income received by an estate, trust or financial administration client, except for rental income commission which is charged at 2.75 per cent where the Public Trustee does not manage the property and 8.25 per cent where the Public Trustee manages the property.

The Northern Territory Public Guardian and Trustee charges varied income commission rates depending on a client's circumstances. Centrelink income for represented person clients is exempted from income commission charges regardless of the client's asset level. For most other sources of income, the Northern Territory applies a discounted income commission of 2.2 per cent to clients with assets above \$40 000 and no income commission for clients with assets below \$40 000. Further discussion of the Northern Territory Public Guardian and Trustee's income commission fees is contained in section 7.3.

The Public Trustee and Guardian for the ACT charges commission of 6.6 per cent on income received in respect of the administration of trusts and estates. For financial management services, the ACT Public Trustee and Guardian charges 3.5 per cent commission on income in the form of Centrelink and Veterans Affairs pensions, and 6.6 per cent commission on all other income received.

The following table compares income commission fees levied by public trustee offices across Australia. This table has assumed income as gross income of an individual who is receiving the maximum age pension, as outlined in section 5.3.6.1.

Table 18: financial administration client income commission fee comparison by jurisdiction for Age Pension or Disability Support Pension recipients

Assets		<\$10 000	\$10 000 - \$100 000	\$100 000+
Income		\$28 514	\$28 514	\$28 514
Tasmania	Income commission percentage (%)	0	2.75	6.6
	Income commission fee (\$)	0	784.14	1 881.92
Victoria	Income commission percentage (%)	3.3	3.3	3.3
	Income commission fee (\$)	940.96	940.96	940.96
South Australia	Income commission percentage (%)	5.5	5.5	5.5
	Income commission fee (\$)	1 568.27	1 568.27	1 568.27
Australian Capital Territory	Income commission percentage (%)	3.5	3.5	3.5
	Income commission fee (\$)	997.99	997.99	997.99
Northern Territory	Income commission percentage (%)	0	0	0
	Income commission fee (\$)	0	0	0

The Tasmanian Public Trustee's income commission fees are among the lowest for financial administration clients who receive the maximum rate of the Age Pension or Disability Support Pension, and who have assets of less than \$100 000. However, for clients of the same income level who hold assets valued at \$100 000 or more, the Tasmanian Public Trustee's income commission fees are the highest of all comparable jurisdictions and approximately double those levied in Victoria and the ACT.

The following table presents a comparison of income commission fees levied on estate administration and trust management clients, by public trustee offices across Australia. As some jurisdictions charge reduced income commission fees for Centrelink benefit recipients, the maximum individual gross Age Pension/Disability Support Pension has been compared with the median individual Australian income. The Northern Territory has been excluded from comparison in this table, as income commissions for estate administration and trust management clients depend on the value of the assets held.

Table 19: estate administration and trust management clients' income commission fee by jurisdiction as a percentage of the full age pension and median Australian earnings²⁶

Income		Age pension \$28 514	Median Australian earnings \$41 860
Tasmania	Income commission percentage (%)	6.6	6.6
	Income commission fee (\$)	1 881.92	2 762.76
Victoria	Income commission percentage (%)	3.3	6.6
	Income commission fee (\$)	940.96	2 762.76
South Australia	Income commission percentage (%)	5.5	5.5
	Income commission fee (\$)	1 568.27	2 302.30
Australian Capital Territory	Income commission percentage (%)	3.5	6.6
	Income commission fee (\$)	997.99	2 762.76

Overall, the Public Trustee's income commission fees are broadly comparable for estate administration and trust management clients who receive income other than Centrelink payments. However, the Tasmanian Public Trustee's income commission fees are the highest for clients who receive the Disability Support Pension or Age Pension.

6.2.3 Other fees and charges

Public trustees in all Australian jurisdictions levy various other fees and charges for services provided to clients. Other fees and charges include investment management fees and fees provided for taxation and legal services.

Each public trustee office has varying information available for fees and charges for other services provided and there does not appear to be any consistency between the charging methods used for some of these fees.

²⁶ Median Australian individual yearly income has been calculated using 2021 Census data: <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/income-and-work-census/latest-release>

6.2.3.1 *Investment management fees*

Most Australian public trustees levy investment management fees. However, the approach to charging these fees and the structure of the fees varies considerably across the jurisdictions, with some jurisdictions basing fees on the investment type and others on the value of the assets invested.

New South Wales' investment management fee ranges from 0.15 per cent to 0.385 per cent per annum depending on the type of investment. South Australia also charges different rates depending on the type of investments, ranging from 1.025 per cent to 1.230 per cent per annum. Queensland is unique in charging different rates based on the amount invested, ranging from 0.1 per cent to 1.0 per cent per annum.

The ACT Public Trustee and Guardian uses the same approach as the Public Trustee and charges an investment fee of 1.1 per cent per annum for the management of assets both within its common funds and outside of its own direct investment funds.

6.2.3.2 *Legal fees*

The Tasmanian Public Trustee, the South Australia Public Trustee and the Northern Territory Public Trustee and Guardian do not make legal fees publicly available on their respective websites, whereas the ACT Public Trustee and Guardian, the Victorian State Trustees and the New South Wales Public Trustee and Guardian publish legal fees on their websites.

There are different methods for charging legal fees across these jurisdictions. The ACT Public Trustee and Guardian charges a flat fee of \$318 per hour for acting as an attorney in any capacity other than Enduring Power of Attorney, and a flat fee of \$488 per hour for acting as attorney in complex matters. In contrast, both the New South Wales Public Trustee and Guardian and the Victorian State Trustees charge hourly rates for legal services dependent on the level of experience or qualification of the practitioner. These hourly fees range from \$165 per hour for a Legal Assistant to \$561 per hour for a Director or Principal Solicitor for the New South Wales Public Trustee and Guardian and from \$228 per hour for a Legal Secretary or Administrative Support to \$563 per hour for a Senior Lawyer for the Victorian State Trustees.

6.2.4 *Queensland and Western Australia Public Trustee fees and charges*

The public trustees in Queensland and Western Australia charge fees using an activity-based approach and group levels of activity into bands.

The activity-based approach requires specification of all activities required for the delivery of a service, which is then converted into units of effort for these activities and a cost set for each established band for units of effort. Fee generation is established by the number and complexity of actions required to be undertaken, then simplified as a fee generation process.

6.3 Private sector provider comparison

In addressing the 'comparable services provided by the private sector' component of the second Term of Reference for this inquiry, the Regulator has collected, where available, information about the activities, fees and charges applied in the private sector for the same types of services as those provided by the Public Trustee.

The Regulator's approach has therefore focused on obtaining information on fees and charges for estate administration, trust management and financial management services.

The private sector market provides a number of services similar to those provided by the Public Trustee. In this report the Regulator has chosen to focus on private trustee companies. While some law firms also offer certain trustee services and will-making services, details about fees for these services are not generally available and where they are, they typically take the form of hourly rates, making it difficult to undertake direct comparisons.

The Regulator has collected publicly available information about private sector providers' fees and charges. These firms include Perpetual Private, TPT Wealth, Australian Unity Trustees, Equity Trustees and Australian Executor Trustees.

While a number of trustee companies provide trust management and estate administration services, these services appear to be non-competitive for clients with assets of low value, due to most private sector providers charging minimum fees which are relatively high compared to the fees charged by the Public Trustee for these services.

Overall, the Public Trustee's trust management and estate administration fees are generally lower than, or competitive with private sector providers. At the time of writing, minimal information is available from private trustee companies regarding fees and charges for financial management services.

The *Corporations Act 2001* (Commonwealth) provides a national regulatory framework for licensed trustee companies. Under this framework, trustee companies are required to report their fees in a published Financial Services Guide. State and Territory Public Trustee offices are eligible to opt-in to this framework. However, the Regulator understands that no Australian public trustees have done so to date.

Other obligations placed on licensed trustee companies are discussed in Chapter 7.

6.3.1 Financial administration

In Tasmania, there are very limited appointments by TasCAT to private trustee companies for financial administration services. TasCAT advised the Regulator that, in 2021-22, there were three appointments made to private trustee companies.

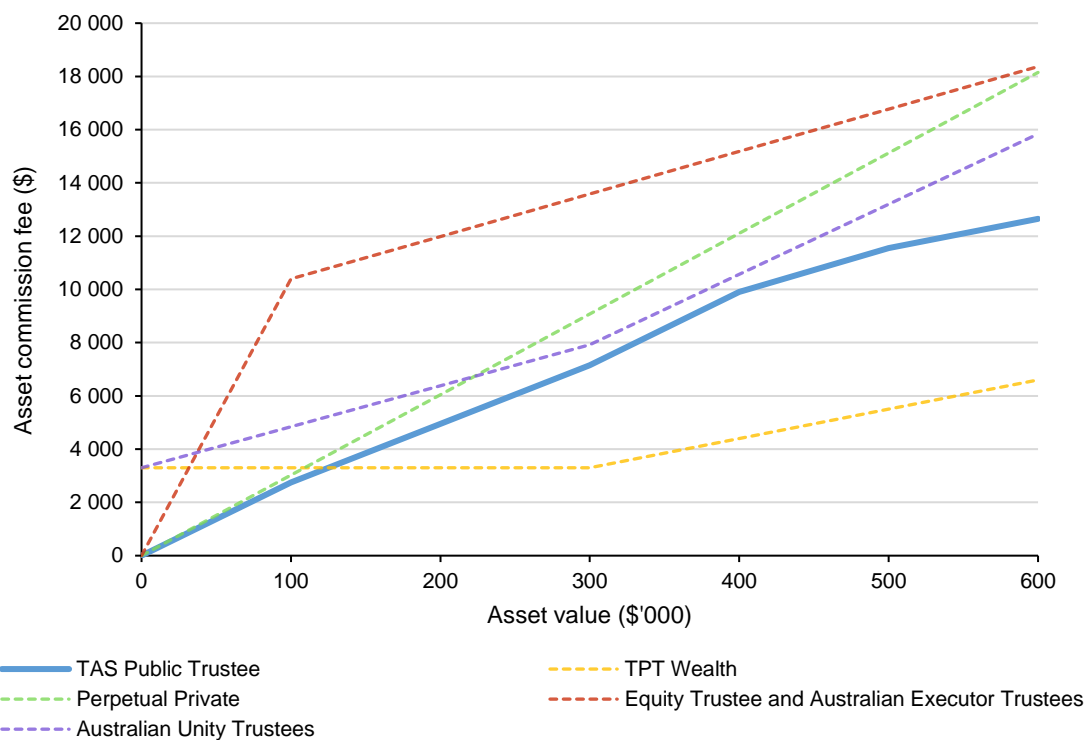
If a client's assets are managed or administered under a TasCAT Administration Order, the only Tasmanian-based private trustee company, TPT Wealth, applies a management fee of the greater of 1.265 per cent or \$5 500 on the gross value of the assets managed or administered. This means that clients with assets of a very low or low value will face capital commission fees of \$5 500, compared with \$0 if the Tasmanian Public Trustee is managing the assets.

However, for clients with assets of a medium to high value, TPT Wealth's fees are lower than the Public Trustee's. For example, for a client with assets of \$200 000, TPT Wealth would charge \$5 500, whereas the Public Trustee would apply a capital commission of \$9 000.

6.3.2 Trust management

As discussed previously, the Public Trustee applies a scaled approach for trust management capital commission fees. This aligns with the practises of some private sector providers, including Perpetual Private, Australian Unity Trustees, Equity Trustees and Australian Executor Trustees. By contrast, TPT Wealth levies the greater of \$3 300 or a percentage-based fee of 1.1 per cent for ongoing trust administration.

Figure 10: trust management capital commission fee comparison - Tasmanian Public Trustee and private sector service providers



The Public Trustee's trust management fees are generally competitive with private sector providers. However, for clients with assets valued at more than \$120 000, its fees are higher than those levied by TPT Wealth.

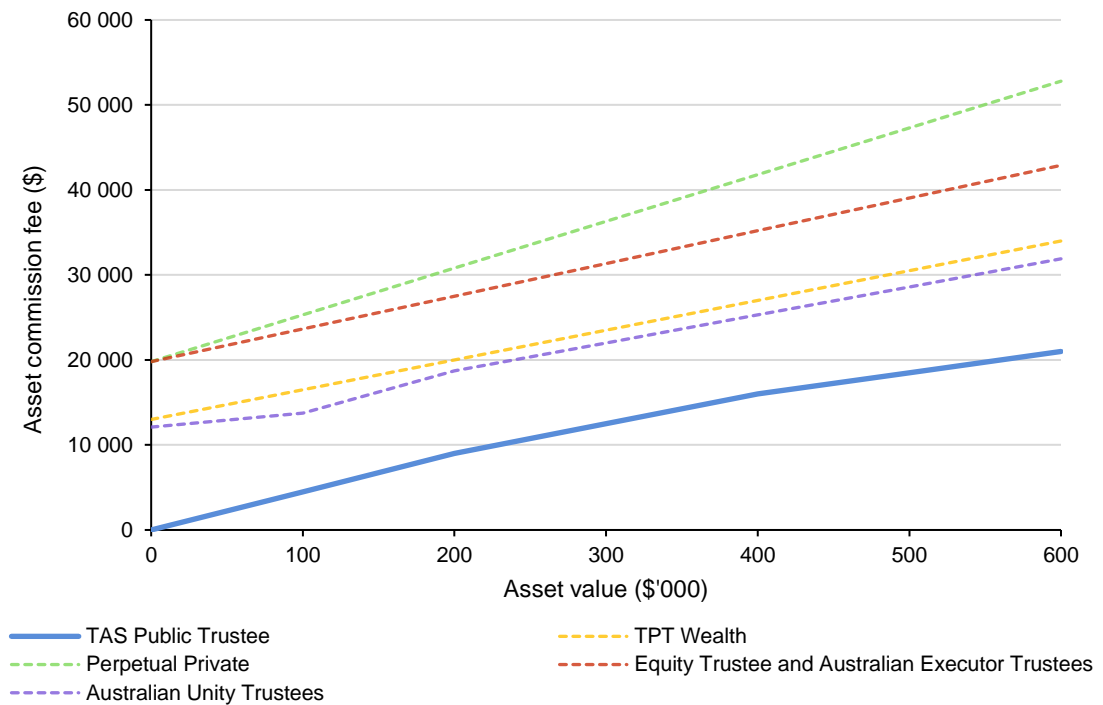
6.3.3 Estate administration

As discussed previously, the Public Trustee applies a scaled approach for estate administration capital commission fees. Most private sector providers considered also apply a scaled approach with varied asset levels and percentages. However, for TPT Wealth, capital commission is a once-only fee calculated as a base-fee plus a percentage fee on the gross assets of an estate.

Additionally, most private sector providers levy high minimum fees irrespective of the asset value. These range from \$12 100 charged by Australian Unity Trustees to \$19 800 charged by

Perpetual Private, Equity Trustees and Australian Executor Trustees. The Regulator suspects that these fees would deter low value clients from engaging private sector service providers to deliver these services.

Figure 11: estate administration private sector capital commission fee comparison - Public Trustee and private sector service providers



For each calculated asset value, the Public Trustee provides lower capital commissions for estate administration than private sector providers. There is a particularly significant difference between the fees for clients with assets of lower value, due to the relatively high minimum fees levied by most private sector providers.

6.3.4 Income commissions

Similar to the Public Trustee, a number of private sector providers charge income commission fees. However, it appears that most of these fees are applied only to gross income generated by the assets of an estate.

Perpetual Private charges an income fee of 5.775 per cent for all income earned by an estate. Australian Executor Trustees, Australian Unity Trustees and TPT Wealth charge income commissions of 6.6 per cent for all income generated from estate assets.

6.4 Internationally comparable markets²⁷

Public trustee offices appear to only exist in Commonwealth countries. The Office of the Public Trustee currently exists in various formats in New Zealand, the United Kingdom, most Canadian provinces, Singapore and Sri Lanka.

Each public trustee office provides similar services to those provided by the Public Trustee. Each international public trustee levies fees and charges for their services, but the structure of these fees and charges varies depending on the location. Some international jurisdictions apply a scaled approach to fees and charges which depends on the asset values of the estate or trust, similar to the Public Trustee, whereas others levy fixed fees plus hourly rates for additional work completed.

6.4.1 New Zealand

The New Zealand Public Trust was established in 1873 and was the world's first public trustee service organisation. The Public Trust is New Zealand's largest provider of wills and estate administration services.

The New Zealand Public Trust's fees and charges depend on the services required. Hourly rates are based on work completed, complexity and the level of expertise required.

For some services, the fees charged by the Public Trust are subject to a cap. The fees and charges cannot exceed five per cent of the total value of the assets of an estate, plus the income received by the Public Trust in respect of the estate.

6.4.1.1 Estate administration

Fees for initial administration activities are based on work completed, rather than as a percentage of the estate's assets. A combination of fixed fees for the standard work completed for all estates, and hourly rates for additional work are charged depending on the complexity of the work involved.

Standard fixed fees include an estate setup fee of NZ\$5 902 (~AU\$5 480) and an estate finalisation fee starting from NZ\$1 720 (~AU\$1 600).

6.4.1.2 Trust management

The New Zealand Public Trust charges initial set-up costs for trusts which vary depending on the value of the assets being managed. Minimum fees for setting up and managing trusts apply, such as an establishment fee of NZ\$1 486 (~AU\$1 380). Fixed fees for transferring assets into a trust and fees for other standard activities, such as transfer of property or transfer of cash assets, also apply.

²⁷ All currency conversions current as at 29 January 2024.

6.4.1.3 Personal assistance services

The New Zealand Public Trust also provides personal assistance services, where it provides assistance in the form of collecting income, organising repairs and service providers, and managing bank accounts and investments. Charges for these services are based on hourly rates that vary depending on the complexity of work involved, ranging from approximately NZ\$285 to NZ\$500 per hour (~AU\$265 to ~AU\$465).

6.4.1.4 Income commissions

The New Zealand Public Trust also charges an income handling fee of five per cent of the gross income collected, including rental income and interest payments.

6.4.2 United Kingdom

The Official Solicitor and Public Trustee of the United Kingdom combines two independent statutory offices, the Official Solicitor to the Senior Courts and the Public Trustee. The Public Trustee has various functions, which include acting as executor or administrator of last resorts for estates where the beneficiary is a vulnerable person, and as the title holder or an estate where there is no will or named executor or executor with ability to act.

The *Public Trustee (Fees) Order 2008* (UK) specifies the fees payable in relation to the services provided by the Public Trustee of the United Kingdom.

6.4.2.1 Executorship fee

An executorship fee is payable when the Public Trustee of the United Kingdom accepts the appointment as executor. The executorship fee is calculated as a percentage of the gross capital value of the estate's assets and is applied under a scaled approach as follows:

- 12.5 per cent on the first £50 000 (~AU\$96 620);
- 10 per cent on any excess over £50 000 up to £75 000 (~AU\$144 930);
- 5 per cent on any excess over £75 000 up to £100 000 (~AU\$193 240); and
- 3.8 per cent on any excess over £100 000.

A minimum fee of £1 250 (~AU\$2 415) applies.

6.4.2.2 Administration fee

A yearly administration fee is also charged by the Public Trustee of the United Kingdom. The administration fee is charged as a percentage of the net capital value of the estate's assets or the value of the assets in the trust fund as follows:

- 5 per cent on the first £30 000 (~AU\$57 970);
- 3 per cent on any excess over £30 000 up to £150 000 (~AU\$289 860);
- 2 per cent on any excess over £150 000 up to £375 000 (~AU\$724 650);
- 1.25 per cent on any excess over £375 000 up to £2 500 000 (~AU\$4 831 000);

- 0.6 per cent on any excess over £2 500 000 up to £3 000 000 (~AU\$5 797 000); and
- 0.3 per cent on any excess over £3 000 000.

A minimum fee of £375 (~AU\$725) applies.

6.4.2.3 *Income collection fee*

The Public Trustee of the United Kingdom also charges an income collection fee of 7.5 per cent on the gross income of any estate or trust received by the Public Trustee of the United Kingdom, including income from dividends or interest after the deduction of tax.

6.4.3 *Canada*

Canada does not have a singular public trustee office, instead nine of its provinces have their own Public Trustee office. The Office of the Public Guardian and Trustee Ontario has been chosen for comparison purposes in this Report.

The Office of the Public Guardian and Trustee Ontario safeguards the legal, personal and financial interests of specific Ontarians and their estates. Their services include financial administration, administering estates and holding funds in trust for minors and plaintiffs and defendants involved in lawsuits.

The Fees of the Public Guardian and Trustee are prescribed under Ontario legislation. The main fees for financial administration, estate administration and trust management are:

- compensation at the rate of 3 per cent on capital and income receipts, and 3 per cent on capital and income disbursements; and
- a care and management fee of three fifths of 1 per cent per annum on the average annual value of the assets under management.

Both fees are payable monthly by the client.

Additional fees, such as for client legal services and taxation services, may also be levied.

6.4.4 *Singapore*

The Singapore Public Trustee's Office exists within the Singapore Ministry of Law, a government agency. The Singapore Public Trustee has discretion to administer the estates of deceased persons where the value of the estate does not exceed SG\$50 000 (~AU\$56 700), along with compensation in motor accident cases.

6.4.4.1 *Deceased estates*

The Singapore Public Trustee charges fees for the administration of deceased estates. Different fees apply depending on where the estate funds or assets originate from. One set of fees exists for the administration of money from the Central Provident Fund (CPF), which is a compulsory savings and pension plan for working Singaporeans and permanent residents.

The percentage charged for administration of CPF funds is:

- 2.4 per cent on the first SG\$1 000 (~AU\$1 135);
- 1.5 per cent on the next SG\$9 000 (~AU\$10 210);
- 0.75 per cent on the next SG\$240 000 (~AU\$272 140);
- 0.45 per cent for the next SG\$250 000 (~AU\$283 475); and
- 0.30 per cent for amounts in excess of SG\$500 000 (~AU\$566 950).

A minimum fee of SG\$15 (~AU\$17) applies.

The Singapore Public Trustee is also able to administer other assets of an estate, if the value of the other assets is not more than SG\$50 000. The fees for administration are:

- 6.5 per cent on the first SG\$5 000 (~AU\$5 670);
- 6 per cent on the next SG\$2 000 (~AU\$2 270);
- 4.25 per cent on the next SG\$3 000 (~AU\$3 400);
- 2.75 per cent on the next SG\$10 000 (~AU\$11 340); and
- 2.25 per cent on the next SG\$30 000 (~AU\$34 020).

A minimum fee of SG\$15 (~AU\$17) applies.

6.4.4.2 *Trust management*

The Singapore Public Trustee holds money in trust for children until they reach the eligible age for distribution. The Public Trustee invests money held in trust in financial instruments and will pay these funds plus interest (less fees) earned to the child when they reach eligible age.

The Singapore Public Trustee charges fees based on the interest earned from invested trust funds:

- 5.5 per cent on the first SG\$1 000 (~AU\$1 135);
- 4.5 per cent on the next SG\$1 000 (~AU\$1 135);
- 3.5 per cent on the next SG\$1 000 (~AU\$1 135); and
- 2.25 per cent for amounts above SG\$3 000 (~AU\$3 400).

6.4.5 *Sri Lanka*

The Sri Lankan Department of Public Trustee provides trustee and estate administration services to the community, similar to the Public Trustee. The Regulator was unable to obtain information regarding the fees and charges levied by the Sri Lankan Department of Public Trustee.

6.5 Findings

The Regulator found that the consistency of the Public Trustee's fees and charges to with those of other public trustee offices in Australia differs across the services provided:

- for represented person clients with assets of \$100 000 and over (represented persons who are not CSO clients), the income commissions and capital commissions are among the highest in the country;
- for estate clients, the commission rates charged rank as average; and
- for trust clients, the commission rates are at the lower end of fees charged nationally.

Unlike the Public Trustee, public trustees in other Australian jurisdictions apply a reduced or no income commission on Australian Government payments, such as the age pension or the disability support pension.

6.6 Recommendations

The Regulator recommends that the Public Trustee should ensure that, at a minimum, it is meeting the Financial Service Guide fee and charge information provision requirements placed on private sector trustee companies under the *Corporations Act 2001*.

7 OTHER MATTERS

The Terms of Reference require the Regulator to assess whether there are any other matters that impact on the fees and charges for clients required by legislation to use the Public Trustee.

In response, the Regulator has identified the following issues that impact (or may impact) on prices which the Regulator considers should be brought to the Minister's attention:

- data availability and quality;
- provision of information to the Public Trustee's clients;
- the structure of the costs and fees of the Northern Territory Public Guardian and Trustee;
- competitive neutrality considerations;
- the application of the Legal Profession Act to the Public Trustee;
- operating model of the Public Guardian and its associated fees and charges.

7.1 Data availability and quality

In order to address the Terms of Reference for the inquiry, the Regulator has needed to examine the Public Trustee's total costs, CSO costs and its revenue. However, as discussed in section 5.1.2 of this report, the Public Trustee does not use timesheets or other cost allocation methods to track time and effort against the services that it provides to customers.

During the course of the inquiry, the Regulator found that the Public Trustee was not able to allocate its costs between clients required to use its services by legislation and other clients.

The Public Trustee operates two information systems, TACT, which is its financial management system and CMS, which is its workflow system.

TACT is used to record clients' fees and charges and to generate financial statements while CMS is used to track workflow progress against a set of prescribed tasks for the delivery of different services. CMS has built in effort hours for different tasks. This is similar to the units of effort approach used by the public trustees in Queensland and in Western Australia.

The Public Trustee uses the data from TACT in its annual report and corporate plan as well as in its requests for CSO funding from the Government. Client account managers receive an email update from CMS on the task, the effort hours for the task and when the task must be completed.

Both systems rely on manual updates and there is currently no process in place whereby the data between the two systems is reconciled.

Somewhat concerningly, the Regulator has found that the total number of clients generated from the two systems is different. In 2022-23, according to the Public Trustee's annual report (TACT data), it had 1 833 clients (not including will clients), whereas according to CMS, it had 1 740 clients.

The aggregated client information from CMS was only able to be extracted by its software developer as the Public Trustee does not have internal capability to aggregate client information.

Around 20 per cent of the client's information extracted from CMS for 2021-22 and 2022-23 returned an error with respect to the value of the client's assets (ie "asset record not found"). According to the Public Trustee, this is an error caused by the CMS needing to link an active client account manager to a client and if the client account manager for that client is no longer with the Public Trustee or their profile has not been set up in the Public Trustee's system because they are new, CMS could not display the client's asset.

As the Public Trustee has had high staff turnover in the last two years, there has been a sizeable number of clients whose profile has been caught in the transition. The Regulator has removed information relating to these clients from the analysis used in the report so as not to distort the outcomes from the analysis.

The Regulator also has concerns about the accuracy of the effort hours for tasks, as the data used is over six years old and based on only two months of timesheets. The Public Trustee advised that, with the implementation of the new decision-making model for represented person clients, the workflow tasks will change, making the current effort hour data presented in this report even less reliable in the future.

7.1.1 Recommendations

The Regulator recommends an audit to be performed on the Public Trustee's individual systems and between the systems.

7.2 Provision of information to clients

Noting the requirement for the preparation of an annual report and the charging of a fee for its provision, client representative groups have expressed dissatisfaction regarding the provision of financial statements to clients by the Public Trustee.

During consultation, client representatives noted that they have to pursue the Public Trustee repeatedly in order to obtain financial statements, and, as these reports are presented in Microsoft Excel format, they are very difficult to understand. Client representative groups further noted that the Public Trustee does not provide a quote or estimate of fees that are likely to be charged to a represented person entering into a financial administration arrangement.

The Regulator has examined a selection of client statements provided by the Public Trustee and has identified the following issues:

- commissions are recorded in total on client statements, and not broken down into capital commissions or income commissions;
- there is no transparency as to what is included in the payment processing fees, which can be significant;
- there is a general lack of transparency in the reporting of fees in client statements; and

- the name of some fees charged do not align to those published in the Fee Schedule. For example, the annual report fee is referred to as the Public Trustee GAB Review Fee in the Fee Schedule.

7.2.1 Recommendation

Based on the feedback provided during targeted consultation, the Regulator recommends the Public Trustee provides more fees and charges information to represented person clients where possible, together with a capital commission quotation based on an estimation of the value of the client's assets. This should include information on the 2.2 per cent commission levied on unrealised assets.

7.3 Northern Territory's costs and fees

A recommendation included in the Independent Review was for the Public Trustee to match the fees and charges to represented persons with the fees and charges levied in the Northern Territory.

The Regulator reviewed the fees and charges levied by the Northern Territory Public Guardian and Trustee and found that:

- The Northern Territory's Public Guardian and Trustee has a very different ownership and operating model to the Public Trustee. The Northern Territory Public Guardian and Trustee is hosted by the Northern Territory's Department of Attorney-General and Justice and is treated as a working unit within the Department. It receives support such as human resources, IT, industrial relations, office space facilities, management and communication. Unlike the Public Trustee, where the support received from the Department of Justice is costed in a SLA, the Northern Territory's Public Guardian and Trustee does not pay for this support from its annual budget. Therefore, its annual operating costs, as reported in its annual report, are significantly lower, after adjusting for the number of clients.
- As the Northern Territory's Public Guardian and Trustee is not a government-owned business, it is not subject to the same commercial return obligations as the Public Trustee.
- The Northern Territory's Public Guardian and Trustee charges no capital commission to its represented person clients with assets below \$40 000.

The capital commissions levied by the Northern Territory are set out in the following table

Table 19: Northern Territory's capital commission for its represented person clients

Value of asset	Rate of capital commission applied
Below \$40 000	0 per cent
Above \$40 000	2.2 per cent

In addition to capital commissions, the Northern Territory Public Guardian and Trustee also levies income commissions. However, represented person's income from Centrelink is exempted from income commission charges regardless of the client's asset level. For most of other sources of income, the Northern Territory applies a discounted income commission of

2.2 per cent to clients with assets above \$40 000 and no income commission for clients with assets below \$40 000. The Public Guardian and Trustee does apply a full income commission rate of 6.6 per cent to a limited number of income sources, such as royalties received and interest or distributions earned on investments.

The Northern Territory Public Guardian and Trustee advised while the income commission exemption for represented person clients with assets valued at less than \$40 000 does not cover all income sources, in reality, the majority of these clients are not liable to pay any fees.

It also advised that its fee structure and exemptions are a legacy arrangement. Previously, represented persons with asset below \$40 000 were managed by its public guardian, which levied no fees. When its public guardian and public trustee operations were combined to form the Public Guardian and Trustee, the public trustee's fee structure was adopted for the new combined entity.

From an efficient cost and cost recovery perspective, the Regulator considers the Northern Territory not comparable with Tasmania due to its different legislative and administrative arrangements.

In noting the Public Trustee's system and data quality issues and relatively high costs of providing services, the Regulator considers that there may be merit in more closely examining the arrangements in the Northern Territory, where some aspects of running the public trustee are outsourced.

7.4 Competitive Neutrality considerations

The Law Society of Tasmania expressed concerns over how the Public Trustee funds its commercial activities. In particular, concerns were raised regarding whether Government funding has been directed towards these activities, such that the Public Trustee is not competing with private trustee companies and law firms on a level playing field.

In particular, the Law Society highlighted specific concerns relating to the recent large increases in marketing by the Public Trustee along with its ambitious targets for increasing its number of will clients.

While the Regulator is only able to investigate competitive neutrality concerns once a complaint has been lodged, the Public Trustee should exercise caution in its allocation of Government grant funding to ensure that it is not potentially breaching competitive neutrality principles.

7.5 Licensed Trustee Company obligations

The Commonwealth *Corporations Act 2001* provides a national regulatory framework for licensed trustee companies. Through this Act, fees, governance arrangements, licensing and alternative dispute resolution procedures are regulated.

Traditional trustee company services, such as estate administration services and preparation of wills, are deemed to be financial services under this framework. This places the operations of licensed trustee companies under Australian Securities and Investments Commission (ASIC) oversight, and applies the regulatory and compliance requirements of Australian Financial Services Licenses (AFSL) holders to licensed trustee companies. This means licensed trustee companies are subject to laws and regulations for providing a financial service under its AFSL.

A number of consumer protections apply under the regulatory framework. Some relevant protections include the requirement:

- to provide clients with a Financial Services Guide, which includes information such as the kinds of financial services the entity is authorised to provide, and the fees the entity is to receive for provision of these services;
- that fees must be in accordance with statutory disclosure and publication requirements; and
- to have an internal dispute resolution process which complies with ASIC standards, and to be a member of an approved external dispute resolution scheme, which provides clients with an accessible dispute resolution process with decisions that are binding on licensed trustee companies.

Additionally, the framework also allows for a Court to review a licensed trustee company's fees, and if deemed excessive, to reduce the fees. In determining this, the Court may consider matters such as: whether the work performed was reasonably necessary; the quality of the work performed; the complexity of the work performed; and if the fees are calculated on a time basis, that the time taken in performing the work was proper.

The national regulatory framework under the Corporations Act places additional requirements on licensed trustee companies, as these companies are required to comply with this framework and individual State and Territory Trustee Companies legislation (such as the Tasmanian *Trustee Companies Act 1953*). In contrast, State and Territory Public Trustee offices are only required to comply with requirements of their respective Trustee Companies legislation, while State and Territory offices may opt-in to the national regulatory framework, but are not required to. This arrangement may have the effect of clients of State and Territory Public Trustees having less consumer protections than clients of licensed trustee companies.

7.6 Legal Profession Act 2007

The Legal Profession Act regulates legal practitioners in Tasmania and facilitates the regulation of legal practitioners on a national basis.²⁸ As discussed in section 5.3.4.4, the Legal Profession Act exempts work performed by the Public Trustee and other trustee companies under the Tasmanian Trustee Companies Act from the requirements to be an Australian legal practitioner.

Furthermore, staff offering legal services at the Public Trustee are not required to undertake professional development programs as is required of legal practitioners. The Law Society of Tasmania advised that public trustees in other Australian jurisdictions have opted in to the Legal Profession Act.

The Law Society are of the view that the exemption from the requirements of the Legal Profession Act does not provide for the same standards of service and customer protection that are required to be maintained by private law firms offering the same services.

²⁸ *Legal Profession Act 2007 (Tas)*, Long Title.

The Regulator considers that there is the potential for competitive neutrality concerns arising from different regulatory frameworks being imposed on the private sector and the Public Trustee.

The Regulator considers that there is merit in examining the benefits available to clients of private law firms under the Legal Profession Act (such as external complaint avenues and regulatory oversight from the Legal Profession Board of Tasmania) to determine if these benefits should be extended to the Public Trustee's clients.

APPENDIX A: DIRECTION TO UNDERTAKE THE PRESCRIBED BODY INQUIRY

**Deputy Premier
Treasurer
Minister for Infrastructure and Transport
Minister for Planning**

Level 10, Executive Building, 15 Murray Street, Hobart
Public Buildings, 53 St John Street, Launceston
GPO Box 123, Hobart TAS 7001
Phone: (03) 6165 7701; Email: Michael.Ferguson@dpac.tas.gov.au



Mr J Dimasi
Tasmanian Economic Regulator
Level 3
21 Murray Street
HOBART TAS 7000

21 JUL 2023

Dear Mr Dimasi

Thank you for your letter dated 13 June 2023, confirming that you have no proposed amendments to the draft Terms of Reference for the prescribed body inquiry into the fees and charges of the Public Trustee for clients required by legislation to use the Public Trustee's services (the Inquiry).

In accordance with section 39 of the *Economic Regulator Act 2009*, I now provide my formal direction for you to undertake the Inquiry, as per the attached final Terms of Reference.

Pursuant to section 39(5) of the Act, the Attorney-General and I have determined that Treasury is liable for the costs of the Inquiry.

I look forward to receiving a copy of the report at the end of February 2024.

Yours sincerely

A handwritten signature in black ink, appearing to read "Michael Ferguson".

Hon Michael Ferguson MP
Deputy Premier
Treasurer

Encl

APPENDIX B: TERMS OF REFERENCE

PRESCRIBED BODY INQUIRY
PUBLIC TRUSTEE'S FEES AND CHARGES
July 2023
Terms of Reference

Prescribed Body Inquiry

The Treasurer has requested the Tasmanian Economic Regulator to inquire into, when required by legislation, the fees and charges of the Public Trustee by undertaking a Prescribed Bodies Inquiry, under section 39 of the *Economic Regulator Act 2009*.

Background

On the 25 May 2022, the Government released its response to the Independent Review into the Administrative and Operational Practices of the Public Trustee, announcing its support in full, or in-principle, for all 28 recommendations of the Independent Review. The Public Trustee has also announced its support for the recommendations.

The Government's response to the recommendations includes in-principle support for Recommendation C.3.1: The Treasurer request the Tasmanian Economic Regulator to undertake a review of the Public Trustee's fees and charges for those clients who are required by legislation to use its services.

The Fees and Charges to be Investigated

The Regulator's inquiry is to assess the fees and charges for clients who are required by legislation to use the Public Trustee's services:

1. whether the fees and charges for the provision of services to these clients:
 - a. reflect efficient costs of service provision, consistent with industry best practice for service delivery; and
 - b. are consistent with recovering those costs on a full cost attribution basis through efficient cost allocation mechanisms; and
 - c. are structured with simplicity and equity.
2. where possible, that the fees and charges are consistent with that observed in other comparable markets nationally and internationally, including comparable services provided by the private sector; and
3. any other matters that impact on fees and charges for clients required by legislation, that the Regulator considers relevant, including known future legislative changes.

Where considered appropriate, the Regulator is to provide findings and recommendations on how the Public Trustee's fee structure and fee determination methodologies could be improved.

For the purposes of this inquiry:

- Clients who are required by legislation to use the Public Trustee's services are:
 - a. Represented Persons under order by the Tasmanian Civil and Administrative Tribunal;
 - b. testators or beneficiaries of estates or trusts following an application under section 16, 17, 18 or 19 of the Public Trustee Act 1930;
 - c. beneficiaries of trusts established under the *Victims of Crime Assistance Act 1976* and *Workers Rehabilitation & Compensation Act 1988*; and
 - d. beneficiaries of trusts established under order of the Supreme Court of Tasmania, resulting from damages arising from civil claims.
- Services are:
 - e. financial administration;
 - f. trust management; and
 - g. estate administration.

Key Deliverables and Timing

The Regulator is to deliver a report that details any findings and recommendations in relation to the matters detailed in this Terms of Reference. The report is to be delivered to the Treasurer by 29 February 2024.

Costs

In accordance with section 39(4)(f) of the *Economic Regulator Act 2009*, the Department of Treasury and Finance is liable to pay the costs of the prescribed body inquiry.

APPENDIX C: SUMMARY OF SUBMISSIONS

During the inquiry, the Regulator received written submissions from:

- Advocacy Tasmania and Community Legal Centres Tasmania;
- the Law Society of Tasmania, and
- the Public Trustee.

The submissions are available on the Regulator's website: [Prescribed body inquiries](#)

Advocacy Tasmania and Community Legal Centres Tasmania

The Regulator received the joint submission on 5 December 2023.

The submission strongly recommended that the provision of services by the Public Trustee to represented persons subject to TasCAT administration orders should be recognised as an essential service and provided by the State for free.

The submission provided an overview of the history of Public Trustee's fees and charges from 2014 onward, and focussed on two main areas of interest, a comparison of the Public Trustee's fees with other Australian jurisdictions, and the Community Service Obligation funding for the Public Trustee.

The submission contained two recommendations:

- the provision of services by the Public Trustee to represented persons subject to Tasmanian Civil and Administrative Tribunal administration orders should be recognised as an essential service and provided by the State for free. In the alternative, persons in receipt of Government assistance and with assets of less than \$40 000 should not be charged; and
- that the Public Trustee receives community service obligation funding that keeps pace with demand growth.

The Law Society of Tasmania

The Regulator received the submission on 31 January 2023.

A number of matters were addressed in this submission:

- The scope of the inquiry;
- the inseparability of the Public Trustee's commercial and non-commercial services;
- transparency and equitability in fee structures;

- market comparison mandate / alignment with market standards;
- compliance with international conventions;
- ethical and fiduciary obligations;
- power to charge for legal services;
- impact of legislative changes; and
- competitive neutrality principle.

The submission suggested examination and advice on the possibility of separating out the CSO and commercial services of the Public Trustee into two independent, but collaborative arms of the organisation.

Public Trustee

The Regulator received the submission on 5 February 2024. It highlights that the Public Trustee is an organisation that provides essential services to some of the most vulnerable people in Tasmania and that as a general principle, these services should be provided at no cost or be subsidised.

The submission also highlights an inconsistency in the application of fees between guardianship and financial administration, with the Office of the Public Guardian in Tasmania not charging any fees for the services it provides.

The Public Trustee's submission made four recommendations, which are:

1. for the Government to fully fund the CSO;
2. review the CSO net avoidance methodology;
3. update the Public Trustee Regulations; and
4. introduce a fee for a service charging regime based on complexity.

APPENDIX D: GLOSSARY

Term	Explanation
CMS	Client Management System
Competitive Neutrality	Competitive neutrality principles require all significant government business activities to not be advantaged by its public ownership.
CSO clients	Clients who are covered by the Public Trustee's Community Service Obligation Agreement
EPA	Enduring power of attorney
GBE	Government Business Enterprise
GBE Act	<i>Government Business Enterprise Act 1995</i>
Guardianship Act	<i>Guardianship and Administration Act 1995</i>
Intestate	A person who dies without having a valid will.
Legal Profession Act	<i>Legal Profession Act 2007</i>
Public Trustee Act	<i>Public Trustee Act 1930</i>
Public Trustee Regulations	<i>Public Trustee Regulations 2019</i>
Regulated clients	Clients who are required by legislation to use the Public Trustee's services, as prescribed by the Terms of Reference.
Represented Person	An individual subject to an administration order from the Tasmanian Civil and Administrative Tribunal, where an administrator has been appointed to

	manage the individual's financial, because the individual has been determined to have difficulty managing their finances or is unable to make important financial decisions because of disability or illness.
SLA	Service Level Agreement
TasCAT	Tasmanian Civil and Administrative Tribunal
Testate	A person who dies and who has a valid will.