

27 August 2021

Public Trustee Review

Department of Justice
Office of the Secretary
GPO Box 825

Hobart TAS 7001

***via email:*** *PublicTrusteeReview@justice.tas.gov.au*

To the Department of Justice,

**Re: Review of the Public Trustee**

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to respond to the independent review of the administrative and operational practices of the Public Trustee.[[1]](#footnote-1) Our response is focused broadly on the following three terms of reference:

* the extent to which the Public Trustee is effectively performing its main undertakings and community service obligations with reference to relevant matters including legislative responsibilities, the current legislative framework and stakeholder feedback; and
* the appropriateness of the current Community Service Obligation Agreement between the Crown and the Public Trustee; and
* the appropriateness of current fees and charges applied by the Public Trustee for its services, given its costs and objectives.

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

We strongly support the role of the Public Trustee in providing financial administration to represented persons where a suitable person or organisation is unable to assist. However, the power that the Public Trustee wields over persons subject to administration orders is immense. It is therefore imperative that the wishes and best interests of the represented person remain central to the Public Trustee’s mission.As the Victorian Ombudsman has previously noted:[[2]](#footnote-2)

*There can be few more potent examples of the imbalance of power between the individual and the state than when the state assumes control over someone’s financial affairs. Whatever money or property a person has is no longer theirs to deal with, homes can be sold and personal property dispersed. The impact of this is obvious, the responsibility it places on those entrusted with their affairs equally so.*

**The Guardianship and Administration Board and the Public Trustee**

Any person may make an application to the Guardianship and Administration Board for an administration order[[3]](#footnote-3) although they are usually sought by a health worker or a family member concerned that a person is struggling to manage their money or is vulnerable to exploitation. As the Full Court of the Supreme Court of Western Australia in *Re Guardianship and Administration Board* noted about analogous legislation, the purpose of an administration order is:[[4]](#footnote-4)

*to ensure that [the person’s] financial affairs and other welfare is not jeopardised by improvident, or ill-considered personal decisions or action, or by unscrupulous or ill-advised influence of relatives, friends and others who may deliberately or inadvertently exploit the vulnerability of the person in need of assistance and protection*.

Following a hearing, an administration order will be made where the Board is satisfied that by reason of a disability the person is unable to make reasonable judgements about their financial affairs and requires the assistance of a financial administrator.[[5]](#footnote-5)

Family members, friends or trusted advisers are often appointed as administrators and private trustee companies may also be appointed, particularly where assets held by the person are significant. However, the Public Trustee is the only organisation funded by government and is usually appointed in circumstances where the person cannot afford to pay and no other suitable person or organisation can be found.[[6]](#footnote-6)

An administrator must “act at all times in the best interests of the represented person”.[[7]](#footnote-7) The *Guardianship and Administration Act 1995* (Tas) provides that this best interests principle is achieved by an administrator who acts as far as possible in such a way as to encourage and assist the represented person to become capable of managing his or her estate, and in consultation with the represented person, taking into account their wishes as far as possible.[[8]](#footnote-8)

To ensure that the person’s own autonomy is promoted and participation in decision-making is assured, it is clear that significant one-on-one engagement is required. According to the Public Trustee once they are appointed administrator they will arrange contact with the represented person and/or their support person and will seek to “achieve best possible outcomes” including meeting with the represented person and undertaking the following:[[9]](#footnote-9)

* *Talk about our role and responsibilities;*
* *Explain the administration process, including investment of funds and managing any potential legal issues that may arise;*
* *discuss an affordable budget; and*
* *explain our fees and charges.*

Following this initial consultation and taking into account the represented persons wishes the Public Trustee will then:[[10]](#footnote-10)

* *Develop a budget to help pay your bills; and*
* *Transfer money to and from your bank account and use your money to pay your bills; and*
* *Talk to Centrelink and organise Centapay deductions; and*
* *Redirect your income and have your pension paid directly to the Public Trustee; and*
* *Deal with your foreign pension if you are entitled to one; and*
* *Complete your income and assets assessment for your admission to aged care; and*
* *Identify whether anyone owes you money and request that it be paid; and*
* *Deal with Aurora, Telstra, TasWater and other companies for you; and*
* *Organise the insurance and sale or rental of any real estate you may own; and*
* *Contact anyone you owe money to and work out a plan for repayment; and*
* *Provide you with a financial statement setting out all of your income, assets and expenses at least once a year; and*
* *Complete your income tax return and deal with any other investment needs, including shares or other investments; and*
* *With your permission, talk with your support person/s and staff about your financial matters; and*
* *Investigate any legal issues to do with your finances.*

As well as administering the represented persons financial affairs, the Public Trustee also has a statutory duty to encourage and assist the represented person to become capable of managing their own financial affairs.

Compliance with its statutory duties would mean that the Public Trustee organises regular meetings to consult and get instructions, ensure that bills are paid and put steps in place so that the represented person becomes capable of managing their own estate. It is clear that the role of administrator is both time consuming and time intensive.

**Is funding of the Public Trustee keeping pace with its increased workload?**

According to publicly available data, the number of represented persons whose financial affairs are managed by the Public Trustee has increased by 59 per cent over the last six years from 559 in 2014/15 to 889 in 2019/20. Over the same timeframe, the number of full-time equivalent staff has dropped slightly from 53.9 to 52.96 FTE staff.[[11]](#footnote-11)

It is our understanding that the Public Trustee employs Customer Account Managers (CAMs) to manage the financial affairs of represented persons. We were unable to locate any publicly available data demonstrating how many Public Trustee staff were employed as CAMs in 2014/15 or whether there had been a proportionate increase in CAMs in line with the increase in GAB orders in the years thereafter. However, anecdotally we are aware of a number of represented persons who have been dissatisfied with the level of service provided by the Public Trustee which may suggest high workloads and an overstretched workforce. In particular, we are aware of a number of represented persons who maintain that the Public Trustee has not acted in a consultative way, failed to meet with them or take their wishes into account. The same represented persons maintain that the Public Trustee has also failed to assist them to become capable of managing their own financial affairs.

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| **Recommendation 1:** That the Public Trustee is appropriately funded to comply with its statutory duties including acting at all times in the best interests of the represented person.  |

**Public Trustee fees and charges**

In October 2014 Advocacy Tasmania Inc and Community Legal Centres Tasmania released a report entitled *The Public Trustee and a Fair and Proportionate Fee Structure for Represented Persons*. The report found that in Tasmania, represented persons in receipt of Government assistance were being charged 7.4 per cent or approximately $1500.00p.a. of their pension in Public Trustee fees and charges. The report, which is included as an attachment at the end of this submission, called for reform of the Public Trustee’s fee structure.

A year later, the Government acknowledged that “[t]he Public Trustee has traditionally had one of the highest fee structures for Community Service Obligation (CSO) Represented Persons – people with assets less than $100,000 – compared to government operated public trustee organisations in other jurisdictions”.[[12]](#footnote-12) The then Attorney-General Vanessa Goodwin announced a “substantial reduction of fees charged by the Public Trustee for all Represented Persons with assets of less than $100,000”.[[13]](#footnote-13) As a result of the changes the Attorney-General noted that capital commissions, monthly account fees and income commissions on interest, dividends and pensions would be waived for represented persons with assets of less than $10,000 and reduced to 2.75 per cent for represented persons with assets between $10,000 - $100,000.

It has now been almost six years since the Attorney-General announced the changes. As a result, we have sought to provide some comparative analysis of the fees and charges regimes of Public and State Trustees in other Australian jurisdictions. Our focus was represented persons in receipt of a Disability Support Pension or Age Pension and with few if any assets.

**Comparison of Public or State Trustee fees for persons under financial administration, in receipt of a Disability Support Pension/Age Pension and with limited assets**

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|  | **Cost of fees** **as a percentage****of income** | **Annual cost** **to a single pensioner** | **Fees and charges** |
| NSW Trustee and Guardian[[14]](#footnote-14) | 0% | $0 | No fees for clients with assets of less than $25,000. |
| State Trustees(Vic)[[15]](#footnote-15) | 0 - 3.3% | $0 - $817 | Fees waived where pensioner has no assets and average daily account balance of less than $3000. If more than this, 3.3% of pension is charged as administration fee. |
| Public Trustee of of Queensland[[16]](#footnote-16) | 0% | $100 | Nominal fee charged regardless of cost of Administration. |
| Public Trustee (WA)[[17]](#footnote-17) | 0% - 1.35% | $0 - $336 | Fees are waived for clients with assets of less than $5,000. There is a $213 annual fee for clients with assets between $5001 - $10,000 and a $336 annual fee for clients with assets between $10,001 - $30,000. |
| Public Trustee (SA)[[18]](#footnote-18) | 0% | $0 | No fees are charged where assets are less than $5300. |
| Public Trustee Tasmania[[19]](#footnote-19) | 0 – 2.75% | $0 - $681 | Fees are waived for clients with assets under $10,000. 2.75 per cent is charged for assets between $10,001 - $100,000.  |
| Public Trustee and Guardian (ACT)[[20]](#footnote-20) | 3.5% | $0 - $866 | 3.5 per cent of pension charged or administering pension. Statutory discretion to waive where hardship established.  |
| Public Trustee (NT)[[21]](#footnote-21) | 0% | 0% | Fees are waived where pensioner has assets of less than $20,000. |

The table above is calculated on the maximum rate of Disability Support Pension/Age Pension for a single person in August 2021 ($24,770.20 per annum).[[22]](#footnote-22)

Our review demonstrates that the Tasmanian Public Trustee does have some of the lowest fees and charges in Australia with no fees charged for represented persons with assets of less than $10,000. Only New South Wales and the Northern Territory have a higher fee waiver threshold. Nevertheless, we believe that Tasmania should adopt the best practice NSW model and waive all fees for represented persons with assets of less than $25,000.

We also believe that the Public Trustee should not impose “standard charges” of $3.20 for making client cash allowances, paying bills and reimbursing any payments made on behalf of the client. It is our understanding that these standard charges have been in place since at least 2016 and despite the improvements in electronic fund transfers remain relatively unchanged. As the CEO of the Public Trustee David Benbow noted in 2016, whilst many bills were formerly paid manually, technological improvements would probably result in improved productivity:[[23]](#footnote-23)

*…we are looking for ways to improve productivity. I think represented persons are a really good example. What we do for those clients is pay their bills. We receive their pension, we work with them to set up a budget and then pay their bills. At the moment we pay their bills almost manually. If we could turn around and get optical recognition for bill payment, the administrator would not have to do and you could almost bring that service back to a pure client service function.*

Given that five years have elapsed since these comments were made, it is likely that today most invoices including rent, electricity, telephone and pharmaceutical costs are paid both automatically and electronically. It is therefore difficult to understand how the Public Trustee can justify charging $3.20 per transaction. Expressed in another way, we do not believe that there is any justifiable correlation between the $3.20 charged per transaction and the cost of delivering the service. We also note that represented persons who are living more independently are likely to be charged more due to the higher number of transactions made. Finally, we note that it is only persons subject to administration orders who have to pay fees when they pay their rent, electricity, telephone or pharmaceutical costs. If the Government believes that a person’s liberty should be taken away from them, then it seems harsh and disproportionate to then make them pay. For all of these reasons, we believe that standard charges should be waived for represented clients with assets of less than $25,000 and reviewed for represented persons with higher asset levels.

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| **Recommendation 2:** That all fees and charges are waived for represented persons with assets of less than $25,000 and reviewed for represented persons with higher asset levels. |

**The Public Trustee and Community Service Obligation Funding**

In 2014 we provided the following explanation of a Community Service Obligation:[[24]](#footnote-24)

*A Community Service Obligation according to the Productivity Commission arises when the Government ‘specifically requires a public enterprise to carry out activities … which it would not elect to do on a commercial basis, and which the government does not require other businesses in the public or private sectors to generally undertake, or which it would only do commercially at higher prices’.[[25]](#footnote-25) Community Service Obligations have traditionally been considered an essential service and as ‘critically important in ensuring those services are provided to lower income and/or socially disadvantaged groups…’.[[26]](#footnote-26)*

In 2015, following the Attorney-General’s announcement that there would be a “substantial reduction of fees” charged by the Public Trustee, the State Government agreed to offset the financial loss to the Public Trustee by increasing its CSO funding by an additional $250,000 from 2016-17.[[27]](#footnote-27) However, the funding increase was still not sufficient to cover the cost of the fee reduction with the Government acknowledging “[t]he balance of the cost of the fee reduction can be met from the Public Trustee’s operating budget”.[[28]](#footnote-28)

The substantial reduction in fees charged by the Public Trustee from 1 December 2016 resulted in a significant increase in applications to the Guardianship and Administration Board to have the Public Trustee appointed as administrator. Between 2015/16 and 2017/18 there was a 37 per cent increase in the number of CSO represented persons (from 571 to 784). The reason for this was explained by the CEO of the Public Trustee David Benbow during a Government Businesses Scrutiny Committee in December 2016:[[29]](#footnote-29)

*at the moment we are seeing an increase predominantly as a result of the change to our fee structure. A number of nursing homes and organisations managed people's financial affairs, not under the order from the Guardianship and Administration Board but quite deliberately on the basis that they felt our fees were at a level that made it difficult for their clients. As a result of our review, those fees are now amongst the lowest in the country and we are seeing a number of directors of those organisation who are personally liable for managing those finances looking to transfer those represented persons to us by going to the Guardianship Administration Board and applying for block orders, up to 30 or 40.*

In 2017 the State Government and the Public Trustee entered into a Community Service Obligation Agreement which was extended in 2020 (the Agreement).[[30]](#footnote-30) The Agreement provides that over four years the amount of CSO funding would increase from $2,023,000 in 2017/18 to $2,163,000 in 2020/21:

**State Government Funding of Public Trustee**

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|  | **2017/18** | **2018/19** | **2019/20** | **2020/21** |
| **CSO Funding** | $2,023,000 | $2,068,000 | $2,115,000 | $2,163,000 |

Over the course of the agreement, the amount of CSO funding provided by the State Government increased by 6.9 per cent. But, over the same period the Consumer Price Index (CPI) increased by 5.3 per cent.[[31]](#footnote-31) In other words, the level of funding provided to the Public Trustee to provide an essential service was not sustainable at its commencement, was only 1.6 per cent above CPI over the course of a four year funding agreement and at the same time as there was a large increase in the number of CSO represented clients.[[32]](#footnote-32)

The importance of appropriate CSO funding levels is highlighted in modelling carried out in the last few years by the Guardianship and Administration Board. The modelling predicted that the number of new applications received by the GAB would continue to increase “due to increased dementia and mental health disabilities, and an ageing population”.[[33]](#footnote-33)

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| **Recommendation 3:** That the Public Trustee receives community service obligation funding that is in line with the increase in represented persons.  |

If we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,

Benedict Bartl

Policy Officer

**Community Legal Centres Tasmania**

enc: The Public Trustee and a Fair and Proportionate Fee Structure for Represented Persons

1. CLC Tas would like to acknowledge those persons and organisations who gave freely of their time in assisting with our enquiries and answering our questions. [↑](#footnote-ref-1)
2. Victorian Ombudsman, *Investigation into State Trustees* (June 2019) at 4. As found at <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-state-trustees/> (Accessed 27 August 2021). [↑](#footnote-ref-2)
3. Section 50(1) of the *Guardianship and Administration Act 1995* (Tas). [↑](#footnote-ref-3)
4. [2003] WASCA 268 at para. [43] per Heenan J; Anderson, Steytler, Miller and McLure JJ agreeing. [↑](#footnote-ref-4)
5. Section 51(1) of the *Guardianship and Administration Act 1995* (Tas). [↑](#footnote-ref-5)
6. Section 54 of the *Guardianship and Administration Act 1995* (Tas). [↑](#footnote-ref-6)
7. Section 57(1) of the *Guardianship and Administration Act 1995* (Tas). [↑](#footnote-ref-7)
8. Section 57(2) of the *Guardianship and Administration Act 1995* (Tas). [↑](#footnote-ref-8)
9. Public Trustee, Financial Administration Brochure. As found at <https://www.publictrustee.tas.gov.au/assets/files/public-trustee-financial-administraion_apr-21.pdf> (Accessed 27 August 2021). [↑](#footnote-ref-9)
10. Public Trustee, Financial Administration Brochure. As found at <https://www.publictrustee.tas.gov.au/assets/files/public-trustee-financial-administraion_apr-21.pdf> (Accessed 27 August 2021). [↑](#footnote-ref-10)
11. Data contained in Public Trustee Annual Reports 2014/15, 2015/16, 2016/17, 2017/18, 2018/19 and 2019//20. As found at <https://www.publictrustee.tas.gov.au/about/governance> (Accessed 27 August 2021). [↑](#footnote-ref-11)
12. Attorney-General, Vanessa Goodwin, ‘Public Trustee fees to be significantly reduced for low-income clients’, 3 December 2015. As found at <http://www.premier.tas.gov.au/releases/public_trustee_fees_to_be_significantly_reduced_for_low-income_clients> (Accessed 27 August 2021). [↑](#footnote-ref-12)
13. Attorney-General, Vanessa Goodwin, ‘Public Trustee fees to be significantly reduced for low-income clients’, 3 December 2015. As found at <http://www.premier.tas.gov.au/releases/public_trustee_fees_to_be_significantly_reduced_for_low-income_clients> (Accessed 27 August 2021). [↑](#footnote-ref-13)
14. NSW Trustee & Guardian, Financial Management Fees. As found at <https://www.tag.nsw.gov.au/fees/financial-management-fees> (Accessed 27 August 2021). [↑](#footnote-ref-14)
15. State Trustees, Commissions, Fees & Charges. As found at <https://www.statetrustees.com.au/what-we-do/state-trustees-commissions-fees-charges> (Accessed 24 August 2021). Also see Victorian Ombudsman, *Investigation into State Trustees* (June 2019) at para. 254 which states “under the DHHS community services agreement with State Trustees, the department pays fees and commissions (excluding capital commissions and management fees) for clients with an average daily account balance of less than $3,000”. As found at <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-state-trustees/> (Accessed 27 August 2021). [↑](#footnote-ref-15)
16. Conversation with Clinton Miles, Director of Disability Services, Public Trustee of Queensland on 16th April 2014. [↑](#footnote-ref-16)
17. Western Australian Government Gazette, *Public Trustee’s Scale of Fees*, 18 June 2021. As found at [https://www.legislation.wa.gov.au/legislation/prod/gazettestore.nsf/FileURL/gg2021\_105.pdf/$FILE/Gg2021\_105.pdf](https://www.legislation.wa.gov.au/legislation/prod/gazettestore.nsf/FileURL/gg2021_105.pdf/%24FILE/Gg2021_105.pdf) (Accessed 27 August 2021). [↑](#footnote-ref-17)
18. Correspondence received from the Acting Manager of Personal Estates, Public Trustee South Australia on 24 August 2021. [↑](#footnote-ref-18)
19. Public Trustee Tasmania, Financial Administration. As found at <https://www.publictrustee.tas.gov.au/financial-administration1.html> (Accessed 27 August 2021). [↑](#footnote-ref-19)
20. Correspondence received from Andrew Taylor, Public Trustee and Guardian on 25 August 2021. [↑](#footnote-ref-20)
21. Correspondence received from Cheryl Harris, Acting Senior Manager/Senior Guardian, Office of the Public Guardian on 7th May 2014 [↑](#footnote-ref-21)
22. Australian Government, Payment rates. As found at <https://www.servicesaustralia.gov.au/individuals/services/centrelink/disability-support-pension/how-much-you-can-get/payment-rates>; <https://www.servicesaustralia.gov.au/individuals/services/centrelink/age-pension/how-much-you-can-get> (Accessed 27 August 2021). [↑](#footnote-ref-22)
23. Parliament of Tasmania, *Hansard*, Government Businesses Scrutiny Committee, 8 December 2016. [↑](#footnote-ref-23)
24. Community Legal Centres Tasmania and Advocacy Tasmania Inc, *The Public Trustee and a Fair and Proportionate Fee Structure for Represented Persons* (October 2014). As found at <http://www.clctas.org.au/wp-content/uploads/2014/10/PublicTrusteeFeesPaperF.pdf> (Accessed 27 August 2021). [↑](#footnote-ref-24)
25. Industry Commission, Community Service Obligations: Policies and Practices of Australian Governments (Australian Government: 1997) at 7. The Productivity Commission was formerly known as the Industry Commission. [↑](#footnote-ref-25)
26. House of Representatives Standing Committee on Financial Institutions and Public Administration, Cultivating Competition: Report of the Inquiry into Aspects of the National Competition Policy Reform Package (Canberra: 1997) at 43. [↑](#footnote-ref-26)
27. Attorney-General, Vanessa Goodwin, ‘Public Trustee fees to be significantly reduced for low-income clients’, 3 December 2015. As found at <http://www.premier.tas.gov.au/releases/public_trustee_fees_to_be_significantly_reduced_for_low-income_clients> (Accessed 27 August 2021). [↑](#footnote-ref-27)
28. Attorney-General, Vanessa Goodwin, ‘Public Trustee fees to be significantly reduced for low-income clients’, 3 December 2015. As found at <http://www.premier.tas.gov.au/releases/public_trustee_fees_to_be_significantly_reduced_for_low-income_clients> (Accessed 27 August 2021). Also see Parliament of Tasmania, *Hansard*, Government Businesses Scrutiny Committee, 8 December 2016 in which the Public Trustee noted that there was a shortfall of CSO funding of around $750,000. [↑](#footnote-ref-28)
29. Parliament of Tasmania, *Hansard*, Government Businesses Scrutiny Committee, 8 December 2016. [↑](#footnote-ref-29)
30. Department of Treasury and Finance, Community Service Obligation Agreement 0 Public Trustee Deed of Variation and Extension (1 July 2017 – 30 June 2022). As found at [https://www.treasury.tas.gov.au/about-us/corporate-governance/routine-disclosure-of-information/disclosure-of-non-procurement-contracts-over-$2-million](https://www.treasury.tas.gov.au/about-us/corporate-governance/routine-disclosure-of-information/disclosure-of-non-procurement-contracts-over-%242-million) (Accessed 27 August 2021). [↑](#footnote-ref-30)
31. Australian Bureau of Statistics, Consumer Price Index, Australia. As found at <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release> (Accessed 27 August 2021). The CPI in June 2017 was 1.9 per cent; 2.1 per cent in June 2018; 1.6 per cent in June 2019 and -0.3 per cent in June 2019. [↑](#footnote-ref-31)
32. The 13 per cent increase does not take into account the 2020-21 financial year with the number of CSO represented persons not yet made publicly available. [↑](#footnote-ref-32)
33. Guardianship and Administration Board, *Annual Report 2018/19* at 3. As found at

<https://www.guardianship.tas.gov.au/__data/assets/pdf_file/0006/597084/FINAL-Annual-Report-2019-20-25-September-2020.pdf> (Accessed 27 August 2021). [↑](#footnote-ref-33)