

5 December 2023

Office of the Tasmanian Economic Regulator  
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attn: Director

via email: [Kirstan.Long@economicregulator.tas.gov.au](mailto:Kirstan.Long@economicregulator.tas.gov.au)

To the Office of the Tasmanian Economic Regulator,  
**Re: Review of Public Trustee's pricing policies**

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Community Legal Centres Tasmania (CLC Tas) and Advocacy Tasmania welcome the opportunity to provide comment on the review of the Public Trustee's fees structure.<sup>1</sup> The review is timely with the Disability Royal Commission recently recommending that all Australian jurisdictions commit to both supported decision-making and an independent review of the fees and charges payable by persons subject to an administration order.<sup>2</sup> With the Tasmanian Parliament having recently passed amendments to Tasmania's *Guardianship and Administration Act 1995* (Tas) emphasising the right to supported decision-making,<sup>3</sup> this review provides another opportunity to improve the relationship between the Public Trustee and represented persons. Our submission strongly recommends that 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.

### **A Short History of Public Trustee Fees**

In 2014 Community Legal Centres Tasmania and Advocacy Tasmania released a report entitled *The Public Trustee and a Fair and Proportionate Fee Structure for Represented Persons*.<sup>4</sup> 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 recommended that represented persons reliant on Government assistance and with assets of less than \$10,000 should have all fees waived.

A year later in 2015 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

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<sup>1</sup> CLC Tas would like to acknowledge Samyar Parker and other persons and organisations who gave freely of their time in assisting with our submission.

<sup>2</sup> Commonwealth of Australia, *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report* (Volume 6: September 2023) recommendations 6.15 and 6.18.

<sup>3</sup> *Guardianship and Administration Amendment Bill 2023* (Tas).

<sup>4</sup> Community Legal Centres Tasmania and Advocacy Tasmania, *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 5 December 2023).



government operated public trustee organisations in other jurisdictions".<sup>5</sup> 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".<sup>6</sup> As a result of the changes, monthly account fees and income commissions on interest, dividends and pensions was 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.

In July 2021 the Attorney-General announced an independent review of the administrative and operational practices of the Public Trustee would take place.<sup>7</sup> Damian Bugg AM KC who was appointed to lead the review handed down his report in November 2021, recommending that the Tasmanian Economic Regulator undertake a review of the Public Trustee's fees and charges.<sup>8</sup> More recently, the Disability Royal Commission recommended that all Australian jurisdictions commit to an independent review of the fees and charges payable by persons subject to an administration order.<sup>9</sup>

### A comparison of Public Trustee's fees

Focussing on single persons in receipt of the maximum rate of either the Disability Support Pension or Age Pension (\$26,050.00),<sup>10</sup> the following Table outlines the fees charged by the Public Trustee in all Australian States and Territories:

**Table 1: Public Trustee Fees by jurisdiction**

Assets		< \$10,000	\$10,000 - \$25,000	\$25,000 - \$40,000
Income		26,065.00	26,065.00	26,065.00
Tasmania	Income Commission Fee	\$0.00	\$716.78	\$716.78
	Income Commission Percentage	0%	2.75%	2.75%
	Income Commission Fee	\$62.55	\$158.99	\$398.79

<sup>5</sup> Attorney-General, 'Public Trustee fees to be significantly reduced for low-income clients' (3 December 2015). As found at

<https://www.premier.tas.gov.au/releases/public-trustee-fees-to-be-significantly-reduced-for-low-income-clients> (accessed 5 December 2023).

<sup>6</sup> Attorney-General, 'Public Trustee fees to be significantly reduced for low-income clients' (3 December 2015). As found at

<https://www.premier.tas.gov.au/releases/public-trustee-fees-to-be-significantly-reduced-for-low-income-clients> (accessed 5 December 2023).

<sup>7</sup> Damian Bugg AM QC, *Independent Review of the Public Trustee* (November 2023) at 15.

<sup>8</sup> Damian Bugg AM QC, *Independent Review of the Public Trustee* (November 2023) at 53.

<sup>9</sup> Commonwealth of Australia, *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report* (Volume 6: September 2023) recommendation 6.18.

<sup>10</sup> Australian Government, 'Payment Rates' (Services Australia: 2023). As found at

<https://www.servicesaustralia.gov.au/payment-rates-for-disability-support-pension?context=22276> and <https://www.servicesaustralia.gov.au/how-much-age-pension-you-can-get?context=22526> (accessed 5 December 2023).

<b>New South Wales</b>	Income Commission Percentage	0.24%	0.61%	1.53%
<b>Northern Territory</b>	Income Commission Fee	\$0.00	\$0.00	\$0.00
	Income Commission Percentage	0%	0%	0%
<b>Australian Capital Territory</b>	Income Commission Fee	\$912.27	\$912.70	\$912.70
	Income Commission Percentage	3.5%	3.5%	3.5%
<b>South Australia</b>	Income Commission Fee	\$0.00	\$1,433.57	\$1,433.57
	Income Commission Percentage	0%	5.5%	5.5%
<b>Victoria</b>	Income Commission Fee	\$860.14	\$860.14	\$860.14
	Income Commission Percentage	3.3%	3.3%	3.3%
<b>Western Australia</b>	Income Commission Fee	\$476.98	\$568.21	\$1,420.54
	Income Commission Percentage	1.83%	2.18%	5.45%

While the fees charged by the Public Trustee are calculated differently in every Australian State and Territory, a direct comparison is possible when comparing the minimum amount charged across different scenarios. In this analysis, three scenarios were compared where the represented person's assets were valued at less than \$10,000, less than \$25,000, and less than \$40,000 respectively. Our comparison reveals that for assets under \$25,000, both New South Wales and Western Australia offer more affordable fees than Tasmania. However, the most affordable fees are found in the Northern Territory, where represented persons with assets of less than \$40,000 are not charged any fees or charges.

In circumstances where the Tasmanian Civil and Administrative Tribunal has determined that a person requires an administrator because they are unable to make reasonable



judgments about their financial affairs<sup>11</sup> we strongly believe that the service should be provided free of charge. This is because we do not believe that persons should be further marginalised because of their disability. Persons without disability do not require a financial administrator to pay their rent, electricity or other costs because they are able to undertake such tasks themselves. We do not believe that where someone has a disability and a Tribunal has determined that the Public Trustee should administer their funds by paying their rent, electricity and other costs that the person should have to pay. In such cases, the Public Trustee should be viewed as providing an essential service in the same way that Government makes services free in health and education.

However, in the event that it is determined that Public Trustee fees for represented persons should be based on financial means, we strongly recommend that Tasmania adopt the more cost-effective Northern Territory model for Tasmania's most financially impecunious. We would also note that adoption of the Northern Territory model was recommended in the *Independent Review of the Public Trustee*,<sup>12</sup> and supported in principle by the Tasmanian Government.<sup>13</sup>

**Recommendation:** 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.

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

\*The creation of the Public Trustee 170 years ago was borne of an acknowledgement that individuals with decision-making disabilities required government assistance if they were to lead a life of full participation. Nowadays, the Public Trustee is a Government Business Enterprise owned by the Government on behalf of the Tasmanian community.<sup>14</sup> Whilst the range of Public Trustee services has grown considerably over the last century, the provision of services to represented persons remains an essential function of the Public Trustee as demonstrated in the Government's ongoing provision of Community Service Obligation funding.

In 2014 we provided the following explanation of a Community Service Obligation:<sup>15</sup>

*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*

<sup>11</sup> Section 51 of the *Guardianship and Administration Act 1995* (Tas).

<sup>12</sup> Damian Bugg AM QC, *Independent Review of the Public Trustee* (November 2023) at 53.

<sup>13</sup> Attorney-General and Minister for Justice, *Government Response to the Independent Review of the Public Trustee*. As found at [https://www.justice.tas.gov.au/\\_data/assets/pdf\\_file/0005/711374/Government-Response-to-the-Independent-Review-of-the-Public-Trustee-Tasmania-May-2022.pdf](https://www.justice.tas.gov.au/_data/assets/pdf_file/0005/711374/Government-Response-to-the-Independent-Review-of-the-Public-Trustee-Tasmania-May-2022.pdf) (accessed 5 December 2023).

<sup>14</sup> Schedule 1 of the *Government Business Enterprises Act 1995* (Tas).

<sup>15</sup> 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 5 December 2023).



*undertake, or which it would only do commercially at higher prices'.<sup>16</sup> 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...'.<sup>17</sup>*

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.<sup>18</sup> 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".<sup>19</sup>

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:<sup>20</sup>

*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 organisations 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.*

Between 2017-18 and 2021/2022 the amount of Community Service Obligation funding barely kept up with inflation.<sup>21</sup> At the same time, the number of CSO represented clients increased significantly. The numbers of represented persons have continued to increase with

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<sup>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> 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 5 December 2023).

<sup>19</sup> *Ibid.* 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.

<sup>20</sup> Parliament of Tasmania, *Hansard*, Government Businesses Scrutiny Committee, 8 December 2016.

<sup>21</sup> In a submission to the Review of the Public Trustee, Community Legal Centres Tasmania noted that between 2017/18 and 2021/2022 CSO funding increased by 6.9 per cent but that the Consumer Price Index had increased over the same timeframe by 5.3 per cent: Community Legal Centres Tasmania, *Submission to the Review of the Public Trustee* (August 2021). As found at <http://www.clctas.org.au/what/reform/> (accessed 5 December 2023).



the most recent Public Trustee Annual Report reporting that 1195 persons are now subject to orders administered by the Public Trustee. This is a 118 increase in just once decade - from 546 in 2013/14 to 1195 in 2022/23.<sup>22</sup>

Finally, it is worth recognizing that the Public Trustee has “undergone a period of unprecedented organizational change” as the Attorney-General Guy Barnett recently observed:<sup>23</sup>

*In the last financial year, the Public Trustee has undergone a period of unprecedented organisational change. There have been several drivers for that, for example, the Independent Review into the Public Trustee, our Government’s significant reforms to the Guardianship and Administration Act 1995 and introducing a client-focused model of service and the significant effort in resetting the culture of the organisation.*

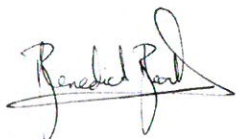
*... Major reform is the introduction of new organisational structure, including the recruitment of a significant number of client account managers and I am pleased to advise that as a result of that recruitment drive, there has been a significant reduction in caseloads from 150 down to 50 clients per client account manager. That is very good news. Many aspects of the new client-focused model of service are now in place, establishing ongoing stakeholder and client reference groups, as I mentioned earlier. There’s a lot more work that’s ongoing in terms of the independent review and rolling that out.*

The importance of appropriate CSO funding levels is highlighted in the significant increase in represented persons subject to Public Trustee administration orders, the reduction in caseloads from 150 to 50 clients per client account manager and the move to a more client-focused model. With an ageing population and a likely increase in dementia and mental health disabilities over the coming decades, it is clear that the Government needs to make sure that CSO funding keeps pace with demand growth to ensure that the Public Trustee can continue to carry out its important work.

<b>Recommendation:</b> That the Public Trustee receives community service obligation funding that keeps pace with demand growth.
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If you have any queries, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl  
Policy Officer  
**Community Legal Centres Tasmania**



Leanne Groombridge  
CEO  
**Advocacy Tasmania**

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<sup>22</sup> Public Trustee Annual Report 2013/14 and Public Trustee Annual Report 2022/23. As found at <https://www.publictrustee.tas.gov.au/about-us/governance/annual-reports/> (accessed 5 December 2023).

<sup>23</sup> Parliament of Tasmania, Government Business Scrutiny Committee, *Hansard* Friday 24 November 2023.