

# **PSA Submission: IPART review of NSW Trustee and Guardian fee structure**

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**Public Service Association of NSW**

**160 Clarence Street**

**SYDNEY NSW 2000**



## **Introduction**

The Public Service Association of NSW (the Association) is the industrial organisation that represents staff employed at the NSW Trustee & Guardian (NSWTG). Members provide service to trustee clients, including financial management, will making, estate administration, trust management and powers of attorney.

The submission has been compiled by the Association in consultation with the NSWTG delegates committee and provides insight into how the organisation's fees currently operate. The submission also provides recommendations in relation to how NSWTG's fee structure could operate more effectively, particularly in light of the organisation's community service obligations (CSO) and current staff shortages at the agency.

NSWTG is an off-budget agency. Accordingly, the fee structure of the organisation directly funds the salaries of NSWTG staff. This income is supplemented by a CSO payment from the State Government.

Despite NSWTG operating off-budget, the agency is subject to the same saving requirements as "on-budget" departments and agencies funded through consolidated revenue. The consequence of these enforced savings is that staff positions at NSWTG have been left vacant or deleted. This translates to a reduction in the level of service provided, or in some instances, non-delivery of services to some of the most vulnerable people in NSW. This situation is exacerbated by growth in the client base of NSWTG (see NSWTG's last annual report). As such, any funding structure proposed by IPART must deal with this staff shortage and facilitate the recruitment of additional staff to NSWTG.

### **1. Do you think the broad principles we used for our 2008 review of the Office of Protective Commissioner fees are appropriate for the current review of the NSWTG's fees? Should we add a principle that we should not recommend fees for services that are provided in a competitive market?**

The Association agrees with the broad principles of the 2008 review. However, it is recommended that the NSWTG fee structure as determined by IPART be subject to public oversight and debate and client consultation. This includes fees for services that are provided in a competitive market.

The Association considers it appropriate to use the principles used in the IPART 2008 Review of the Office of Protective Commissioner, namely:

- Fees should reflect the costs of providing service;
- Funding to meet the social obligations should come from the State Government;
- Protected persons should pay no more than if the service were provided by commercial organisations operating in competitive markets;
- The criteria for assessing protected persons' capacity to pay and waiving of fees if they have no capacity should be a balance between simplicity and flexibility to reflect individual circumstances.

With regard to trustee services that are subject to market competition, the Association does not disagree with the adding of the principle that IPART not recommend fees for

these services. However, the level of complaints staff receive regarding fees suggests there is a need to review and clarify IPART's interpretation of a 'clear, fair and transparent' fee structure. If there were any new fees to be introduced by NSWTG, the Association would expect public oversight and a client consultation process to be overseen by IPART.

**2. Do you agree with our preliminary view that we should recommend fees for the following NSWTG services?**

- **Financial management services for protected persons (including services for 'intensive needs' directly managed, other directly managed and privately managed protected persons).**
- **Trustee services for low-wealth customers.**

The Association agrees that IPART should recommend fees for protected persons and trustee services for low-wealth customers. However, IPART needs to identify how the term low-wealth is determined in relation to trustee customers. For example low wealth could be determined in relation to:

- Trustee services below a certain value;
- Estates/trusts rejected by other organisations or solicitors;
- A particular type of estate e.g. little money, no realty, or no large share-holdings;
- The point at which administration of the trust is unprofitable

A further issue to consider is at what figure should the Community Service Obligation be triggered.

**3. Do you agree with our preliminary view that we should not recommend fees for the NSWTG's trustee services for market customers, but that the NSWTG should set its own fees for these services? If not, please provide your reasons.**

As stated at Issue 1, the Association submits that any new fees currently not being charged by NSWTG should be subject to a process of client consultation and public oversight and debate on the impact of the new fees.

**4. Do you support our proposed approach for estimating the efficient costs of the NSWTG's regulated services, including identifying benchmark fees for similar services in the competitive market, and adding costs specific to serving protected persons, including 'intensive needs' protected persons?**

- **If so, what are the most appropriate benchmarks available?**
- **If not, what methodology should we use to estimate these efficient costs?**

It is difficult to respond to this issue in the absence of data and costings. We note the failure of NSWTG to comply with IPART's 2008 recommendations regarding upgrading of its information systems. SAP Australia was awarded a contract for the installation of a new computer system on 31 October 2012. The Association understands that there is still no agreement on which software package is to be applied to NSWTG.

With regard to benchmark fees, care should be taken in relation to comparing NSWTG with other financial and estate organisations. The type of service being compared needs

to be clearly identified and it should be asked whether the same service NSWTG provides to protected person is being provided in the open market.

The major cost to NSWTG is salaries of staff and one manner of measuring cost would be in relation to the salary level of the employee allocated to the particular type of client. For instance the average client would be allocated to a grade 3/4 clerk. A complex needs client would be allocated to a grade 5/6 or 7/8 clerk. Clients with lesser needs would be allocated to a grade 1/2 or 3/4 clerk. The Association has never been given concrete information regarding the grading structure at NSWTG and the allocation of clients, despite asking management on several occasions.

**5. Is IPART's previous interpretation of a 'clear, fair and transparent' fee structure appropriate for this review of the NSWTG's fees? If not, what would you recommend?**

The Association agrees that IPART's interpretation of a clear, fair and transparent fee structure: is appropriate for the review of fees. In particular, the Association submits that:

- 'Clear' means readily understandable and not difficult to explain;
- 'Fair' means clients with capacity to pay not be charged more than the costs of services provided, and clients with limited capacity to pay not be burdened beyond their capacity; and
- 'Transparent' means fees publicly available and not hidden or unexpected;

The Investment fees charged for both protected and trustee clients would appear to fail the 'transparent' rule as the fee is taken out in the background and does not appear on the client account.

If IPART was to apply the 'clear, fair and transparent' criteria to the Trustee fee structure, the following questions, based on complaints received by staff from clients to NSWTG staff, should be addressed:

- Is it fair to charge the same commission rates in an estate with a realty transfer as is charged in an estate with a realty sale?
- Are administration fees on multiple accounts in the one matter fair?
- Are attendance fees for obtaining electronic documents fair given they are greater than the cost of the search?
- Is the calculation of the long-term trust fee understandable or transparent to the client?

**6. Do you agree with our proposed approach to identify the costs of serving protected persons before considering the fair proportion of those costs that protected persons should pay? If not, what methodology do you recommend we use?**

Refer to our comments at Issue no. 4.

The excessive workloads experienced by staff suggest that management at NSWTG have not adequately accounted for the time and resources required to satisfactorily serve protected persons. For instance, grade 3/4 clerks in dual service branches have

workloads in the range of 130 to 150 plus clients. This is far too much for one staff member to deal with in an effective manner.

The Association recommends that the NSW TG needs to be more realistic in relation to the number of protected person clients a single clerk can manage at any one time. The amount of time and the level of resources required for the service of protected persons should be determined in relation to the complexity of each client case. The level of complexity of a client should correspond to the grading of a clerk, with the more difficult cases going to clerks of higher grading.

As such, the Association cautions against the use of any methodology which derives cost from current staffing allocations.

**7. What is the appropriate level of fees for protected persons? What level of community service obligation (CSO) should the Government provide?**

Any monetary outlay that has been necessarily incurred and is beyond the capacity of the protected person to pay should be seen as a social obligation for Government to provide. Currently there is no clear system for assessing these amounts. A system was recommended in the last IPART review in 2008. This review recommended that any shortfall should be invoiced to the Government for payment as CSO.

The estimated CSO contribution in the 2008 IPART review of NSW TG's fee Structure was a payment totalling \$10.6 million per year. This last IPART review also recommended that the figure be index to inflation and growth in client numbers. The Association expects that the CSO payment, when calculated today would be far more than \$10.6 million. This is particularly so because it is known that the surplus funds of the NSW TG have diminished significantly and may soon be non-existent.

**8. Is the NSW TG's current policy for waiving fees and charges well-targeted, providing appropriate assistance only to clients who need it?**

The policy for waiving fees is applicable to both protected persons and trustee services and is separate to reduced fees for low-wealth trustee matters (see Issue 2).

It is the experience of staff that the waiver system is arbitrary and varies from branch to branch and staff member to staff member. There are issues with the policy that has created this situation, namely:

- The scenarios where fees should be waived are not identified in NSW TG policy;
- There is only one overarching principle, "hardship" which is applied in determining whether to grant a waiver of fees. It is the experience of staff that this principle is too broad;
- The application of the current waiver policy hinges on the discretion of staff and/or client complaints. As a result, inconsistencies occur when different branches waive fees in matters with like circumstances.

Where fees are waived, the amount waived should trigger a CSO payment to be paid by the government. A register of waivers is kept so the amount should be available when needed. From the NSW TG's last annual report, fees waived total \$13.15 million in the last financial year.

**9. Are the current caps on fees appropriate? Are they at the right levels? How should they be indexed over time?**

As stated previously, the Association does not have access to the costing details. However it is the experience of staff members that generally client accounts do not have sufficient funds to meet NSW TG fees.

Nonetheless, there are cases where client accounts have sufficient funds and the work performed costs more to NSW TG than the fees charged. In these situations, there should be an appropriate costing system to identify a fair fee. There should also be the ability for staff to exercise discretion to charge for additional costs above the cap. This cap should be indexed on a yearly basis.

**10. Should the NSW TG charge market-based fees for preparing Wills and Powers of Attorney? What is an appropriate fee for low-wealth customers? How should 'low-wealth' customers be defined?**

NSW TG has never charged for making Wills. Whether there should be a charge, should be subject to public debate. This debate should be broadened beyond the scope of the current IPART enquiry.

If NSW TG is to continue providing free Wills and Powers of Attorney (and Enduring Guardianships) then the cost of providing this service should be recovered by the Government as a CSO payment. Similarly if fees are introduced any shortfall in the fees and the cost of Will-making services should be billed to the Government as CSO. Once again costs of the Will-making service are not available.

Additionally, it should be noted that NSW TG only makes Wills for people who name NSW TG as executor or substitute executor. NSW TG could make Wills for anyone regardless of executorship and charge a fee for the service.

Finally a low wealth customer should be defined as anyone who cannot pay the fee NSW TG charges. The Will is made and then charged to the Estate upon death.

**11. Do you support our preliminary views that funding shortfalls should be met by the Government, including:**

- **Shortfalls resulting from the differences between the costs of providing financial service management to the NSW TG's clients and the fees that we recommend for these clients?**
- **Shortfalls resulting from the application of the fee waiver policy?**
- **Shortfalls resulting from other 'non-client' activities and inefficiencies (through budget funding)?**

The current system of CSO payments from the government which are to make up the shortfall do not reflect the real cost of the NSW TG's CSO. In this regard, a comprehensive costing system is needed and a cost accountant should be employed.

As noted above, fee waivers are recorded by NSW TG. The total amount should be billed to the Government for reimbursement.

It is not clear if information is available for costs associated with non-client functions or even their extent. Many of them arise out of the daily interaction with clients, such as referrals to legal services, financial counselling and advocacy, enquiries about the death of an individual, enquiries generated from the website. A significant part of the role of trustee managers involves miscellaneous matters, with or without a Will, where there are insufficient assets to justify formal administration of an estate but require investigation and assistance to families of the deceased.

**12. Are you satisfied with the level of service provided by the NSW TG? Do you think it has improved over the past 5 years? Is the level of service similar to what you would expect from a private service provider (eg, a trustee company, solicitor or accountant)?**

A survey of NSW TG staff conducted in December 2011 revealed that 75% were of the view that client service had not improved since 2009. Staff members often receive complaints from clients about procedures and communications, particularly the telephone system and unreturned calls.

Despite this, metric indicators such as tasks logs and electronic file notes reveal that the productivity of staff has in fact increased since 2009. It is simply the fact that there is insufficient staffing numbers to provide a higher level of service.

**13. Should IPART index and publish a list of fees and charges annually and review the fees and charges after 5 years?**

The Association submits that reviews should be more often than every 5 years and importantly, that the recommendations of reviews should be implemented in a timely and coherent manner.