



Fees and charges review

**Submission by
Queensland Advocacy Incorporated**

The Public Trustee of Queensland

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About Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (**QAI**) is an independent, community-based advocacy organisation and community legal service that provides individual and systems advocacy for people with disability. Our mission is to advocate for the protection and advancement of the fundamental needs, rights and lives of the most vulnerable people with disability in Queensland. QAI's board is comprised of a majority of persons with disability, whose wisdom and lived experience of disability is our foundation and guide.

QAI has been engaged in systems advocacy for over thirty years, advocating for change through campaigns directed at attitudinal, law and policy reform. QAI has also supported the development of a range of advocacy initiatives in this state. For over a decade, QAI has provided highly in-demand individual advocacy services. These services are currently provided through our three advocacy practices: the Human Rights Advocacy Practice (which provides legal advocacy in the areas of guardianship and administration, disability discrimination and human rights law, non-legal advocacy support with the Disability Royal Commission, the justice interface and education, and social work services); the Mental Health Advocacy Practice (which supports people receiving involuntary treatment for mental illness); and the NDIS Advocacy Practice (which provides support for people challenging decisions of the National Disability Insurance Agency and decision support to access the NDIS). Our individual advocacy experience informs our understanding and prioritisation of systemic advocacy issues.

QAI's recommendations

QAI recommends:

1. QAI supports the full implementation of the recommendations contained in the Public Advocate's report '*Preserving the financial futures of vulnerable Queenslanders: A review of the Public Trustee's fees, charges and practices.*' Recommendations 1 and 2 are directly applicable to the scope of this review and are provided in full at the end of this submission.
2. QAI urges the implementation of a rights-based approach to working with people with impaired decision-making capacity, including implementation of supported decision-making practices as is required by the Convention on the Rights of Persons with Disabilities (CRPD). This involves ensuring that people with disability under financial administration of the Public Trustee are properly informed, consulted and involved in decision-making that affects them.
3. That the results of this review are independently reviewed and made publicly available.
4. The rationale behind certain fees, the inconsistent application of fees, the accuracy and quality of information regarding fees, as well as the disproportionate impact of fees on clients with moderate income and assets, to be urgently reviewed.
5. That the Queensland government review its financial responsibilities towards supporting people deemed to have impaired decision-making capacity through subsidising the Public Trustee's Community Service Obligations.
6. Extending the scope of the Public Trustee's review to include the financial practices of the Public Trustee itself, not just the fees and charges applied to its clients. The use of revenue from client fees and charges to subsidise other client services, and the impact on the Public Trustee's compliance with its legal responsibilities as a fiduciary, must be urgently considered.

Introduction

QAI welcomes the opportunity to provide feedback on the Public Trustee's fees and charges regime. QAI has extensive experiencing supporting people with disability whose financial affairs are managed by the Public Trustee. We acknowledge that the vision of the Public Trustee is to further enhance and protect the dignity and interests of its consumers, and to ensure the ongoing provision of security and peace of mind for Queenslanders, however we have concerns regarding the extent to which this vision is realised in practice.

Earlier this year, the Public Advocate released a report *'Preserving the financial futures of vulnerable Queenslanders: A review of the Public Trustee's fees, charges and practices'* following an extensive review after concerns were raised about the negative impact of the Public Trustee's fees and charges on the financial outcomes of vulnerable trustee and administration clients of the Public Trustee. This report raises serious concern for many of QAI's clients, who are under the administration of the Public Trustee. The review revealed a range of Public Trustee fees, policies and practices that suggest the Public Trustee is breaching some of its legal and fiduciary duties, and not acting in the interests of its clients. QAI endorses this report in its entirety and the 32 recommendations for reform contained therein. We commend the Public Trustee for undertaking this review of its fees and charges and for commissioning PricewaterhouseCoopers to conduct a review into the costs of services provided by the Public Trustee. QAI looks forward to learning the outcome of this work and providing further feedback throughout future consultation processes.

This submission will provide some general feedback on the Public Trustee's survey on its fees and charges, before highlighting the issues QAI feels should most urgently be addressed as a result of this review. It will then conclude by highlighting key recommendations for reform.

Survey feedback

QAI welcomes the Public Trustee's willingness to obtain public feedback and input into the review of its fees and charges. However, QAI notes the very short timeframe for consultation (less than three weeks), and notes that this is not sufficient time for the consultation process to be widely disseminated and accessed by all interested parties. Such is the complexity of the fees and charges regime, and the myriad ways in which it can disadvantage some Queenslanders, that not only is more time necessary, but further information regarding the intent and purpose of the review is required. QAI notes that the public survey has been contextualised in terms of 'changing demand and expectations' and needing to ensure services are 'accessible and financially sustainable', however it remains unclear whether this review is seeking to address any of the concerns raised in the Public Advocate's report or indeed whether the results of the survey will be independently reviewed.

QAI further questions the extent to which the survey questions will elicit the kind of meaningful feedback that is supposedly sought. For example, five of the fifteen questions ask for personal information about the person completing the survey, rather than their views. Three of the fifteen questions seek to obtain feedback regarding all of the Public Trustee's services, and a further two of the fifteen questions are general in nature and are unlikely to elicit feedback that will highlight areas requiring reform, for example 'Did you look at having the service provided by another service provider external to the Public Trustee' or 'How would you rate your experience using the Public Trustee'. It is disappointing that only five of the fifteen questions concern the Public Trustee's fees and charges regime, and that no detailed information regarding the different types of fees and charges is provided to those completing the survey.

What are the biggest issues that should be addressed in the review of fees and charges?

In its own words, the Public Trustee ‘provides financial services to many Queenslanders who for various reasons, need assistance in managing their financial affairs. Without support, these people may be vulnerable to exploitation or neglect.’¹ Yet despite this acknowledgement, the vulnerability of many Public Trustee clients appears to be unrecognised or ignored in many of the Public Trustee’s own practices and policies. The power imbalance inherent in the relationship between a Public Trustee officer and financial administration client is significant. Public Trustee officers are able to exert a formidable amount of control and influence over a person’s life, and yet there appears to be an alarming lack of accountability for their actions and an absence of safeguards in place to protect against improper use of power, and negative outcomes for clients.

QAI considers that the following issues require attention:

- The extent to which Public Trustee officers are skilled and trained in supporting people with a disability, including supporting administration clients to understand the fees and charges applied to their account. In 2019-20, 29% of the Public Trustee’s customers identified as living with an intellectual disability or psychiatric disability.² This percentage does not include the number of people living with another form of cognitive disability, or individuals whose disability is undiagnosed, meaning that the percentage will likely be even higher. Many people with intellectual, cognitive and psychiatric disability require support to receive and understand information, pursuant to supported decision-making practices. They may require information in different formats, and have the right to be consulted and their opinions sought regarding decision-making that affects them, even if undertaken by a substituted decision-maker. This includes decision-making regarding the application of fees and charges as well as actions that will result in the client incurring fees and charges. This is legally required as per the General principles of the *Guardianship and Administration Act 2000* (Qld). Specifically, ‘adults must be given the support and access to information necessary to enable the adult to make or participate in decisions affecting the adults life.’³ Further, entities performing functions under the *Guardianship and Administration Act 2000* (Qld) must ‘recognise and take into account any views, wishes and preferences expressed or demonstrated by the adult’.⁴ The legal basis for these requirements is further strengthened by the *Human Rights Act 2019* (Qld), which requires public entities to uphold every person’s right to recognition and equality before the law.⁵

QAI has heard from clients who receive administration services from the Public Trustee, that some Public Trustee officers have failed to inform them of decisions made, provide any reasoning for why decisions have been made or even consulted them about the need for a decision. Some clients have reported not even knowing who their Public Trustee officer is, and/or that it changes frequently. Getting in touch with the relevant Public Trustee officer can also be very challenging, with only a generic phone number or email address through which contact can be made. Requests for contact with Public Trustee officers also often go unanswered. In QAI’s experience, Public Trustee officers often fail to return client calls, or calls from lawyers acting on their behalf.

¹ Public Trustee of Queensland; <https://www.pt.qld.gov.au/fees-and-charges-review-public-consultation/>

² Ibid

³ *Guardianship and Administration Act 2000* (Qld), s 11B(3)8(2)

⁴ Ibid, s11B(3)10(3)

⁵ *Human Rights Act 2019* (Qld), s 15

- The accuracy and quality of information regarding fees and charges on the Public Trustee website requires review. For example, information about the service level fees for clients under personal financial administration continues to refer to clients supported by Disability Services Queensland, despite the rollout of the National Disability Insurance Scheme (NDIS) having caused Disability Services Queensland to cease to exist and having fundamentally altered the way in which people with disability are supported and funded to live independently in the community.
- The rationale behind certain fees appears to be inequitable. For example, charging clients an Asset Management Fee for ‘management’ of their superannuation fund, despite that fact that the tasks associated with managing the superannuation fund are being carried out by a third party.⁶ The amount of Asset Management Fee charged is also dependent upon the value of the asset rather than the level of work that is required to manage it. This means that some clients pay large amounts of money in Asset Management Fees for very little work. This is also inconsistent with the Personal Financial Administration Fees which vary depending upon how much contact the client has with the Public Trustee officer (and therefore how much work is required of them). Whilst the latter appears to try and reflect the ‘fee for service’ model, the extent to which the fees vary on the six-point scale is considerable and the rationale behind the differences appears to be unclear.
- The inconsistent application of fee rebates to client accounts and the overall premise of charging fees to clients in positions of financial hardship, to then reimburse them part or all of the fee, is confusing and difficult to follow. This is particularly problematic given that the very client cohort to which these rebates are often granted are likely to require support to understand the fees and charges regime. Further, the considerable amount of expenditure on the Public Trustee’s Community Service Obligations (i.e. fee rebates) suggests that a large number of clients experience financial hardship and therefore qualify for some kind of fee relief.⁷ To impose fees that are almost inevitably going to be rebated appears to be redundant, and is a source of great confusion.
- The application of inequitable fees and charges alongside practices of Public Trustee staff that drastically limit the amount of money administration clients are provided to live off as their primary source of income. The amount of money is often less than what a person would receive on a pension and is rarely sufficient to meet all of a person’s most basic needs. This is illustrated in the case studies below.
- Whilst the existence of the fee rebate scheme and the Public Trustee’s willingness to perform Community Service Obligations is commendable, the application of the scheme in practice disadvantages administration clients of moderate means and income, perversely placing them under additional financial stress and placing in jeopardy their ability to maintain owning their own home.⁸ This is because the fee rebate only applies once the client’s assets have reached under \$5,000, having been steadily depleted by large Personal Financial Administration Fees and/or Asset Management Fees. By this time, the individual who is likely to be receiving a pension as their primary source of

⁶ Public Advocate (2021) *Preserving the financial futures of vulnerable Queenslanders: Executive summary*; p 5

⁷ The Public Trustee, *Annual Report 2019-20*, p 14

⁸ Public Advocate (2021) *Preserving the financial futures of vulnerable Queenslanders: Executive summary*; p 11

income, is unlikely to be able to afford the upkeep involved in maintaining a property. In other words, the financial relief is too late and many clients in this situation end up having to then sell their own home.⁹

- QAI notes the Public Advocate’s analysis of the fee rebate scheme, including the inequity between Queensland and other Australian jurisdictions, whose State and Public Trustees all receive some form of government funding for their Community Service Obligations.¹⁰ This inequity and the Public Trustee’s subsequent lack of additional income is likely to be influencing the fees and charges that are disproportionately and punitively being applied to vulnerable people with disability. QAI supports recommendations for the Queensland government to review its financial responsibilities towards supporting people deemed to have impaired decision-making capacity through subsidising the Public Trustee’s Community Service Obligations.
- A review of the Public Trustee’s fees and charges will not be complete without reviewing the extent to which the Public Trustee financially profits from the management of its client’s financial affairs and the way in which revenue from client fees and charges is increasingly being used. In 2019-20, the Public Trustee kept \$12.9 million in interest earnings from the cash assets of its clients.¹¹ Further, the Public Advocate found that “the effect of the Public Trustee’s system of fees and rebates is that some clients who are able to pay fees subsidise a range of services and activities provided to others. Ultimately, this raises questions about whether the Public Trustee is acting in the interests of its administration clients and fulfilling its duties and obligations as a fiduciary.”¹² The scope of the Public Trustee’s review must therefore be broadened to include the financial practices of the Public Trustee, not just the fees and charges applied to its clients. The extent to which the use of revenue from client fees and charges is being used to subsidise other client services, and the impact on the Public Trustee’s compliance with its legal responsibilities as a fiduciary, must be urgently considered.

These practices cause considerable distress for many people with impaired decision-making capacity and their families and in some cases, have resulted in significant financial loss. A number of these issues are highlighted in the following case studies:

Case study #1

Morgan* is a 50-year-old man with an acquired brain injury arising from a serious traffic accident he was involved in 5 years ago. As a result of this accident, Morgan received significant financial compensation (in the realm of millions of dollars), which is now managed by the Public Trustee of Queensland under an administration order made by the Queensland Civil and Administrative Tribunal (“QCAT”) pursuant to the *Guardianship and Administration Act 2000* (Qld) (“GAA”). As a result of his significant assets, managed by the Public Trustee, Morgan is ineligible for any social security payment. Consequently, Morgan receives from his compensation approximately \$450 per week from the Public Trustee for living expenses. This amount is less than the maximum amount of the Disability Support

⁹ Ibid

¹⁰ Public Advocate (2021) *Preserving the financial futures of vulnerable Queenslanders: Executive summary*, p 10

¹¹ Slater & Gordon, *A Recent Review of The Public Trustee Queensland* in ‘Social Work & the Law: Winter 2021, p 8

¹² Public Advocate (2021) *Preserving the financial futures of vulnerable Queenslanders: Executive summary*, p 13

Pension (“DSP”) and well below the National Minimum Wage. When Morgan raised concerns about his weekly income with his Trust Officer, he was told there was nothing the Trust Officer could do.

In addition to the above, Morgan has concerns about the amount of fees the Public Trustee is charging him to manage his assets pursuant to an order he does not agree with. Further, Morgan does not understand how the Public Trustee is spending his money and making payments for his small debts, such as bills. As noted above, Morgan has difficulty in contacting and speaking with his Trust Officer about these concerns.

Case study #2

Gavin* is a 41-year-old man with an acquired brain injury and has a significant compensation lumpsum (in the realm of millions of dollars) that has been managed by the Public Trustee under a GAA order for an estimated 10 years. In the first half of the Public Trustee’s appointment, Gavin’s lumpsum would generate high interest, however, over the last 5 years, Gavin said the amount of interest he would receive on his compensation significantly decreased, to approximately one-fifth of the historic return. Gavin said he is unsure what has occurred for this decrease or what the additional money is being spent on.

Similar to Morgan in case study #1 above, Gavin is ineligible for social security and relies on income from his compensation, approximately \$600 per fortnight, despite the significant compensation amount and associated interest. In addition to daily living expenses, Gavin also pays child support from his fortnightly allowance of \$600. As noted in Morgan’s case study, this amount is below the maximum amount of DSP and well below that of the National Minimum Wage. Gavin also pays approximately \$10,000 per year for the Public Trustee to manage his properties.

Case study #3

Julia* is a 68-year-old woman who has multiple mental health diagnoses. Julia was subject to a GAA order appointing the Public Guardian as her guardian and the Public Trustee as her administrator for approximately 18 months. Julia had minimal assets, no liabilities, and was a recipient of the Age Pension, approximately \$945 per fortnight.

During the Public Trustee’s appointment, Julia maintained most of her financial independence, paying her bills and living expenses herself. Julia had concerns about the fees the Public Trustee was charging to manage her limited assets (approximately \$570 per month comprised of a “Personal Financial Administration Fee” and “Assets Management Fee”). When Julia’s advocate raised these concerns with the Public Trustee on her behalf, the advocate was informed that: “as part of The Public Trustee’s Community Service Obligation, [Julia] is in receipt of a hardship rebate. Additional information regarding fees and charges can be found on The Public Trustee of Queensland Website under Financial Administration, Fees and Charges”. This response was not only vague and non-descriptive, but the hardship rebate was inconsistently applied to Julia’s account.

In addition to ambiguity surrounding the Public Trustee’s fee structure and response to this uncertainty, the Public Trustee also cancelled Julia’s funeral insurance policy. Upon appointment as her administrator, the

Public Trustee cancelled all her direct debits, including her funeral insurance policy, which she had contributed towards for approximately nine (9) years. The Public Trustee explained it instead attempted to make an annual payment to Julia's policy, however, the insurance company was unable to reconcile this payment and redirected the money back to the Public Trustee. No further action was taken by the Public Trustee and, consequently, Julia's funeral insurance policy was cancelled. The Public Trustee took no action to rectify this and simply informed Julia she is able to look for a new insurance policy.

Recommendations for change

QAI welcomes the Queensland Government's stated intention to create a Public Trustee board to provide oversight and direction to the Public Trustee in order to increase its transparency and accountability. Whilst this review represents a welcome first step towards reform, much change is needed. QAI supports the detailed recommendations for reform of the Public Trustee's fees and charges model as articulated in the Public Advocate's report. Most notably, Recommendations 1 and 2 are directly applicable to the scope of this review. They are included here in full for the sake of clarity:

Recommendation 1: Undertake a full fees and charges review¹³

Review the Public Trustee's fees and charges regime for administration clients to achieve:

- a. A simpler fee regime for administration clients. Administration clients and their supporters must be able to easily understand the Public Trustee's fees, what services are provided for the fees, and how and when the fees will be charged;
- b. Fees that are more equitable and take into account clients' financial circumstances and their level of income. All clients should pay something towards the cost of the Public Trustee services they receive. The fee regime should include a mechanism that ensures the fees payable to the Public Trustee by administration clients with limited income do not reach a level where the fees become financially oppressive and negatively impact clients' lives, deplete their assets and/or drive them into poverty;
- c. Fees that reflect the actual cost to the Public Trustee of providing the services. The fees charged should not be inflated to cross-subsidise services provided to other Public Trustee clients, other organisational activities or to provide 'profit' for the Public Trustee, unless specifically permitted by legislation;
- d. No duplication or overlap in fees. Where clients have been charged an Asset Management Fee on an asset, the Public Trustee should not impose any additional charges for the management or investment of those clients' funds;
- e. Cease the practice of charging administration clients fees on assets (such as superannuation fund holdings or other investments) managed by third parties and for which the clients are already paying management fees to those third parties. At a minimum the Public Trustee should charge a lower fee for superannuation fund holdings where it can be shown that there is annual 'active' management of the clients' funds; and
- f. A fee structure that supports and encourages administration clients to exercise autonomy and lead independent lives. Administration clients should not be charged higher fees where they require more support to exercise their capacity and autonomy in relation to their financial affairs.

¹³ Public Advocate (2021) *Preserving the financial futures of vulnerable Queenslanders: List of recommendations*, p 1

Recommendation 2: Improve the transparency of fees and charges¹⁴

The Public Trustee adopt the following practices to improve the transparency of its fees and charges:

- a. Provide clear and accessible information to administration clients about its fees and charges and the services clients will receive for those fees.
- b. The Public Trustee's policies and manuals that guide what services administration clients receive and how the fees and charges for those services are calculated and applied be published in accessible language and format. This information should include scenario examples to clearly demonstrate the fees to be paid for that service.
- c. On appointment and annually, the Public Trustee send each client personal correspondence detailing the services they will receive and the fees for those services. This should also occur after any significant change to the client's financial circumstances. This communication should be written in plain English with clear explanations of all terms used. All correspondence to administration clients should explain how to locate relevant fees and charges information, policies and manuals on the Public Trustee website. Where clients do not have access to the internet, the Public Trustee should make this information available in hard copy on request.
- d. Review its policies and practices to ensure they actively encourage staff to be responsive to clients and their supporters, particularly in relation to explaining its fees and charges. This is likely to improve information transparency, client participation in the management of their financial affairs, and client satisfaction with Public Trustee services.
- e. The information presented in client Statements of Accounts be improved to make the statements more transparent and easier to understand. The statements should include summary information about categories of income and expenses and provide a total of the Public Trustee's fees, charges, additional service fees and outlays for the relevant period. Any special purpose or professional services payments should be the subject of separate correspondence that fully explains these costs and why they were incurred.

QAI also urgently calls for the implementation of a rights-based approach to working with people with impaired decision-making capacity, including implementation of supported decision-making practices as is required by the Convention on the Rights of Persons with Disabilities (CRPD). This involves ensuring that people with disability under financial administration of the Public Trustee are properly informed, consulted and involved in decision-making that affects them. This will require change at both the Public Trustee's policy level as well as the individual level, with day-to-day practices of staff heavily influenced by organisational culture and values.

Conclusion

QAI thanks the Public Trustee for the opportunity to contribute to this review. We are happy to provide further information or clarification of any of the matters raised in this submission upon request.

¹⁴ Public Advocate (2021) *Preserving the financial futures of vulnerable Queenslanders: List of recommendations*, p 1