

Submission by



qai

Queensland
Advocacy
for Inclusion

Fees and charges reform for key services of the Public Trustee of Queensland

To the Public Trustee of Queensland

May 2024

About Queensland Advocacy for Inclusion

Queensland Advocacy for Inclusion (QAI) is an independent, community-based advocacy organisation and community legal service that provides individual and systems advocacy for people with disability. Our purpose is to advocate for the protection and advancement of the needs, rights, and lives of people with disability in Queensland. QAI's Management Committee is comprised of a majority of persons with disability, whose wisdom and lived experience guides our work and values.

QAI has been engaged in systems advocacy for over thirty years, advocating for change through campaigns directed at attitudinal, law and policy reform.

QAI also provides individual advocacy services in the areas of human rights, disability discrimination, guardianship and administration, involuntary mental health treatment, criminal justice, NDIS access and appeals, and non-legal advocacy for young people with disability including in relation to education. Our individual advocacy experience informs our understanding and prioritisation of systemic advocacy issues.

Since 1 January 2022, QAI has also been funded by the Queensland Government to establish and co-ordinate the Queensland Independent Disability Advocacy Network (QIDAN). QIDAN members work collaboratively to raise the profile of disability advocacy while also working towards attitudinal, policy and legislative change for people with disability in Queensland.

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QAI's recommendations, key observations and concerns

1. QAI supports both options for reform proposed in the PTQ Discussion Paper for the reform of fees for financial management clients but prefers **Option 1**.
2. QAI supports the proposed options for reform provided the cost of any dealings between the PTQ and clients' superannuation funds are included in the new PFA fee.
3. QAI requests the PTQ confirm that the current policy regarding rebate of property management fees for clients' principal place of residence will be retained under the new fee options.
4. QAI supports keeping the financial management fee below cost for PFQ level 1 and 2 clients, provided the Queensland government agrees to fund the PTQ to operate on a financially sustainable basis.
5. In recent years, the PTQ has been charging significant fees to those financial management clients considered 'able to pay', to cover the cost of providing the overall service, including the cost of the fees rebated for those clients considered 'unable to pay'. In effect, one group of clients was subsidising services for another group. This is a breach of the PTQ's fiduciary duties. A trustee cannot favour one class of beneficiary over another.
6. If the PTQ is to continue to provide Community Service Obligations (CSOs) in the form of fee rebates to financial management clients, it needs to have another means of funding those expenses, either from independent revenue sources such as interest earned on its investments, other fees and charges earned from services to clients to whom it does not owe a fiduciary duty or from an annual Budget allocation.
7. QAI calls on the Queensland government and the State Opposition to make a public commitment to providing the necessary annual Budget allocation to the PTQ to support the recommended fees and charges reforms and fund PTQ Community Service Obligations.
8. PTQ financial administration client fees should be capped by government at a specific percentage of their annual income (to ensure that clients on limited incomes are not driven into poverty), with any fees payable above that amount rebated to the client. The government should reimburse the PTQ for the cost of these rebates as part of the annual Budget process.

9. One means by which the Queensland government can manage the growth in Community Service Obligations (CSOs) would be for it to enter into an agreement with the PTQ about what CSOs it approves the PTQ to provide to the community, with the agreement outlining the value, purpose and benefits of the CSOs and committing the government to funding their costs annually.
10. The PTQ should introduce means testing for its free will service to ensure it is only providing free services to those people who do not have the capacity to pay. This would be consistent with the will services offered by Public Trustees in other Australian jurisdictions.
11. The PTQ should not be providing funding to the Office of the Public Guardian. It is the role of government to fund government agencies.
12. The PTQ cease the practice of obtaining financial advice in relation to the management of clients' superannuation assets that are being managed by a third party superannuation fund.

Background

One of QAI's specialist areas of legal service provision is in guardianship and administration. We operate a service funded by the Public Trustee of Queensland (PTQ) that helps people who have the PTQ appointed as their financial administrator to exercise greater financial autonomy, including helping them to apply to the Queensland Civil and Administrative Tribunal (QCAT) to have those orders revoked.

Introduction

QAI welcomes the opportunity to make a submission in response to the PTQ's *Proposed fees and charges reform for key services — public consultation paper* (the Consultation Paper).

We support the observations and recommendations of the Public Advocate in the report, *Preserving the financial futures of vulnerable Queenslanders: A review of Public Trustee fees, charges and practices*¹ (the Public Advocate Report).

This submission focuses specifically on the reforms proposed for PTQ financial management services, that is, services that are provided to people who have been found to have impaired decision-making capacity for financial matters. It also addresses the PTQ's scheme of 'Community Service Obligations' (CSOs) before finally addressing fees for financial advice. CSOs include a range of services and activities funded by the PTQ that are provided for free, or at a reduced or rebated, cost. The CSOs and their relevance to the fees and charges for financial management services will be discussed in this submission.

While QAI generally supports the proposed reforms outlined in the Consultation Paper, they alone will be insufficient to address the array of issues identified in the Public Advocate report. We therefore urge the Queensland government to continue its implementation of the recommendations contained in the Public Advocate report outside of this consultation process.

1. Proposals for reform of fees for Financial Management Services

Initial observations

QAI supports the reform objectives for this key service area outlined in the Consultation Paper, namely that:

¹ Public Advocate of Queensland, *Preserving the financial futures of vulnerable Queenslanders: A review of Public Trustee fees, charges and practices*, 2021.

The proposed changes take all practical steps to ensure that financial management customers pay no more in fees than what it costs QPT to provide the service. For all customers, QPT seeks to match fees with service costs, taking into consideration the complexity, responsibility, and skills required to perform the service. QPT also seeks to simplify the fee structure.²

We have interpreted this objective as being consistent with Recommendation 1c of the Public Advocate Report, which states:

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

...

- 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.³

To clarify, we take the view that clients who pay fees for Public Trustee services should pay no more than the actual cost of delivering the service to those individual clients. No client to whom the Public Trustee owes a fiduciary duty should pay any amount in fees or other charges to off-set the cost of any other services or rebated fees provided by the Public Trustee to other clients or to the Queensland community.

Proposed options for reform

We acknowledge the two options proposed for reform of financial management fees contained in the Consultation Paper.

On the face of them, both options offer significant reductions in fees for most clients.

Option 1 proposes that:

² Public Trustee of Queensland, *Proposed fees and charges reform for key services — public consultation paper*, p 4.

³ Public Advocate of Queensland, *Preserving the financial futures of vulnerable Queenslanders: A review of Public Trustee fees, charges and practices*, 2021, p xv.

- the Personal Financial Administration fees (PFA) for levels 3, 4, 5 and 6 would be reduced compared with FY 22, 'reflecting the average service cost';
- PFA fees for levels 1 and 2 would remain the same in real terms to FY22;
- The PFA fees would include a basic level of asset management service – up to five hours per year (excluding the management of real estate property) – with additional assessment management services beyond that incurring an Additional Service Fee on an hourly basis;
- Asset management fees would be abolished;
- Incidental outlays would be abolished.

We note that the Consultation Paper recommends adoption of Option 1. On the available information, we prefer Option 1 as recommended in the PTQ Consultation Paper on the basis that:

- all customers would either be either better or no worse-off
- 25% would obtain a significant fee reduction of over \$200 per year and
- customers with higher asset values would benefit due to reductions in personal financial administration and asset management fees.

However, our support for the proposed Options for reform are subject to the PTQ satisfactorily addressing the questions we have about their practical operation.

QAI's queries about the operation of the Options

One of the matters about which we require more clarity is how the PTQ proposes to deal with clients' superannuation. Historically, the PTQ has included the value of clients' superannuation that was being managed by a third-party superannuation fund in the value of clients' assets for the purposes of assessing the asset management fee that they would pay.

This is despite the superannuation being ‘managed’ by the superannuation funds and the clients paying annual fees to their superannuation funds for this service.

We support the proposed options for reform provided that the cost of any dealings between the PTQ and clients’ superannuation funds are included in the new PFA fee.

If clients with superannuation will be required to pay an Additional Service Fee, we request the PTQ disclose:

- the proposed hourly rate for the Additional Service Fee;
- how the hourly rate will be calculated; and
- the number of hours of service the PTQ anticipates will generally be involved in dealing with clients’ superannuation funds.

It is also not clear how it is proposed that real estate held by a client that is the person’s principal residence will be treated under the new options. We assume that the PTQ proposes to retain the current policy which provides for the rebate of fees for management of real estate owned by clients that is their principal residence.

We request the PTQ confirm that the current policy regarding rebate of property management fees for clients’ principal place of residence will be retained under the new fee options.

Consultation Paper question: Given current cost-of-living challenges, do you support QPT keeping the financial management fee below cost for PFA level 1 and PFA level 2?

Considering the overwhelming majority of PTQ financial management clients depend on government payments/pensions as their primary source of income, this cohort is particularly impacted by the current cost-of-living challenges. It is becoming increasingly difficult for people in receipt of government benefits and pensions to make their incomes last from one fortnight to the next and to afford the increasing costs of food and accommodation.

Any relief from expenses for people who depend on income from government sources will be beneficial. Consequently, we support keeping the financial management fee below cost for PFQ level 1 and 2 clients, provided the Queensland government commits to funding the PTQ sufficiently to operate on a financially sustainable basis.

We acknowledge that both proposed options for fee reform will result in a significant reduction in PTQ annual revenue amounting to \$8.9 million under Option 1 and \$7.9 million under Option 2. Our key reservation in supporting Option 1 is that it will result in a greater reduction in PTQ revenue that will need to be funded. These additional funds will need to come from either other PTQ revenue sources (while avoiding breaching the PTQ's legal or fiduciary duties to other clients) or from funding from Consolidated Revenue as part of the annual Budget process.

The PTQ has never, in its history, received funding from government as part of the annual Budget process. Such a step would represent a significant shift in terms of the government's view of the PTQ and its obligations to properly fund the many critical services provided by the PTQ. Every other Public Trustee in Australia receives some financial support from its State or Territory government. Our concern with the proposals for fee reform in the Consultation Paper is that successful implementation of either Option is dependent on the Queensland Government committing to providing an annual Budget allocation for the PTQ from Consolidated Revenue. Without this commitment the whole PTQ fees and charges reform exercise is pure conjecture.

QAI calls on the Queensland Government and the State Opposition to make a public commitment to providing the necessary annual Budget allocation to the PTQ to support the recommended fees and charges reforms.

2. Community Service Obligations

Benefits and challenges that should be considered when reviewing the appropriateness of fee rebates for financial management customers?

The concept of providing free or reduced-cost services for vulnerable people under financial administration who have low levels of income and assets appears reasonable and potentially delivers significant benefits for those clients who receive the rebates. However, the key consideration when considering the provision of free or rebated services for a certain cohort of people is, who is ultimately paying for these services?

Historically, the way fee rebates have worked for PTQ financial administration clients is that the fees and charges for this cohort were set at a level, not to reflect the actual cost of provision of the service to the individual client, but to cover the cost of providing the overall service, including the cost of the CSOs or rebated fees. Accordingly, those who were considered 'able to pay' were charged significant fees to cover the cost of providing the overall financial management service and offset the costs of the fees rebated for those clients considered 'unable to pay'.

While at first glance, such an approach seems reasonable, it results in the unsatisfactory outcome where one group of PTQ clients receives preferential treatment to another group. Such a result amounts to a breach of fiduciary duty – a trustee cannot favour one class of beneficiary over another beneficiary.⁴ If the PTQ is to continue to provide CSOs in the form of fee rebates to financial management clients, it needs to have another means of funding those expenses, either from independent revenue sources such as interest earned on its own investments, other fees and charges earned from services to clients to whom it does not owe a fiduciary duty or from an annual Budget allocation.

⁴ *Whitehouse v Carlton Hotel Pty Ltd* (1987) 162 CLR 285.

What level of subsidy do you think the government should provide to financial management customers?

Financial management customers are people with impaired decision-making capacity, the overwhelming majority of whom have few assets and very low incomes. Most of these PTQ clients have had administration appointments imposed on them by QCAT. Considering the circumstances of this group the government needs to form a view about how much of their generally limited incomes (being pensions) they can afford to pay for PTQ services and still live a reasonable life.

We would suggest that the maximum amount any PTQ client should pay in fees should be capped by government at a specific percentage of their annual income. Accordingly, the remainder of any fees payable should be rebated to the client and the PTQ should be reimbursed annually by government as part of the annual Budget process for the cost of these rebates.

How can governments ensure that there are enough resources to meet the growing demand for financial management services?

It is clear that government needs to fund the growing demand for financial management services from Consolidated Revenue.

As noted in the Public Advocate Report, some of the problems that have occurred with the PTQ's operations are a result of the PTQ not participating in the annual Budget process and being subject to the same level of financial scrutiny and accountability as other government departments and agencies. This lack of oversight has potentially allowed inefficiencies in PTQ operations to develop and continue unchecked.

The Public Advocate Report also noted the enormous growth that had occurred in the PTQ's CSOs over the years that it had been providing them – 284% growth in 18 years – observing that this increase might not have occurred at such a rate had the PTQ been needing to obtain annual Budget approval to service these large expenses.

One means of managing this growth in CSOs would be for the Queensland government to enter into an agreement with the PTQ about what CSOs it approves it to provide to the community, with the agreement outlining the value, purpose and benefits of the CSOs and committing the government to funding their costs annually.

What is your view on how QPT can improve its assessment of financial capability to ensure that CSOs are targeted to those in need?

See discussion above. Specifically, no client on a limited income such as a pension should have to deplete assets to pay PTQ fees and charges as has occurred in the past and is still happening to PTQ clients under financial management.

Are there examples of other services that are means or asset tested that could inform changes to the CSO?

We suggest that the PTQ should means test its free will service and limit the number of wills a person can make unless they have had a change of financial or personal circumstances. All other Public Trustees across Australia means test these services.

Currently, this service is costing the PTQ over \$4 million per year. The Public Advocate Report found that in the past, the fees of some financial management clients were subsidising will services which they would never be able to use because of their own impaired decision-making capacity.

What are your views on QPT's current CSO arrangement?

The PTQ should not be providing funding to the Office of the Public Guardian. That is the responsibility of government. The Queensland Government should immediately commit to providing those additional funds to the Public Guardian and allow the PTQ to use the funds it currently allocates for its own operations.

How would you suggest it be changed to ensure that vulnerable customers have access to affordable financial management services?

See responses to the questions above.

3. Fees for financial advice

Another matter that we wish to raise in the context of the PTQ fees and charges review are the fees that continue to be charged to PTQ clients for financial advice.

The Public Advocate Report raised significant concerns about the PTQ's practice of obtaining expensive financial advice for clients that generally made no difference to the investment arrangements for the client. We will not go into detail about all of those concerns which were clearly outlined in the Public Advocate's report.

Our understanding is that the PTQ committed to ceasing this practice except where clients' circumstances had materially changed. However, we continue to see clients who are being charged significant annual fees for unnecessary financial advice where their circumstances have not changed from the previous year. Generally, this advice is being routinely obtained for clients who have superannuation that is being managed by their third-party superannuation fund.

The fees for these financial advices generally range between \$400 and \$800, depending on the value of the clients' superannuation. These expenses, in combination with the PTQ fees and charges currently being charged are so high that the clients do not have sufficient income to pay them and the PTQ is withdrawing funds from the clients' superannuation to pay its fees and the unnecessary financial advice.

We request the Public Trustee issue a direction to PTQ staff to cease the practice of obtaining financial advice in relation to the management of clients' superannuation assets being managed by a third party superannuation fund.

Conclusion

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