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COMMERCIAL IN CONFIDENCE MATERIAL REMOVED FROM CHAPTER 5.

INDEPENDENT REVIEW

PUBLIC TRUSTEE TASMANIA

Damian Bugg AM QC

30 November 2021

ACKNOWLEDGEMENTS

I wish to record my appreciation for and acknowledge the contributions of a number of people and organisations whose generous assistance in providing information, advice and direction, assisted greatly in undertaking this Review.

Firstly, and in no particular order, I thank Ginna Webster, Secretary DOJ, Tony Ferrall, Secretary DTF, David Bailey, Director DTF, Andrew Taylor, ACT Public Trustee and Guardian, Samay Zhouand, Public Trustee Queensland, Beth Walker, Public Trustee and Guardian NT, Megan Osborne CEO NSW Trustee and Guardian along with her team, Nicolle Rantanen, Public Trustee SA, Anita Smith, former President of GAB and currently VCAT member, Kate Hanslow, formerly of the TLRI, Bruce Paterson SLP DOJ, Leica Wagner DOJ, Paul Kingston, CEO of the MAIB, Rowena Holder, President of GAB, Jeremy Harbottle, Public Guardian, Miles Farrow of TPT Wealth, Malcolm Schyvens, President of TasCAT. Particularly I acknowledge all members of the Board of the Public Trustee especially the Chair, Mark Scanlon and members of the Executive Management of the Public Trustee, David Benbow (now former CEO) Glenn Lucas, Acting CEO and CFO, Gaylene Cunningham and Rodney Clifford both senior managers at PT. Their readiness to participate in the Review and respond to the detailed questions asked and matters put would not have been comfortable. The Board readily acknowledged that there are problems and demonstrated a desire to address them and move forward.

Stakeholders and parties who made submissions:

Advocacy Tasmania
Anglicare
Australian Association to STOP Guardianship and Administration Abuse
Community Legal Centres Tasmania
Council of the Ageing
Health Consumers Tasmania
The Law Society of Tasmania
Mental Health Council of Australia
Office of the Public Guardian
Speak Out Advocacy
Tasmanian Aboriginal Legal Services
Tasmanian Council of Social Services
Tasmanian Greens
Tasmanian Labor

Their contribution was of great assistance, particularly the compilation of clients' accounts of their experiences and reference back to issues of principle. Later I asked a number of stakeholder representatives to attend the office and expand on their submissions and later again a number attended for a stakeholder group session. I learnt a lot from these sessions and I do appreciate the time and thought put in to assisting the Review process.

Many people responded to the advertisements we published and the review team understands what some of you had to do to sit down and write an account for me which for many of you must not have been comfortable. While the terms of my

appointment and the role I have will not permit me to find a remedy for those of you seeking one, I have been assisted by your efforts.

Finally I wish to acknowledge the considered and expert input I received from the members of my “Team”, Derek Inglis BEc (Hons), and Jan Baxter BA, LLB. To have two people with such relevant skill sets, who were prepared to work long hours and at inconvenient times to help complete this task was more than I could have hoped for. The fact that they were able to meet the demands I made was one thing, but they were also the only members of the “Team”. All appointments, contacts and clerical work was undertaken by Jan, assisted by Derek. I felt that the assurance of confidentiality for the people we were expecting to come forward was best demonstrated this way. That makes demands. The layout and printing was all done by Jan under enormous pressure from me. And in amongst all that both Derek and Jan applied their expertise to the matters I had to consider. Thank you.

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REVIEW OF THE PUBLIC TRUSTEE

NOVEMBER 2021

INTRODUCTION

This review was announced by the Attorney General and Minister for Justice, the Honourable Elise Archer MHA on 10 June 2021 when "a number of concerns had been raised recently, both through the media and directly to the State Government, about the operations of the Public Trustee (PT) and its dealings with clients and client outcomes."

The Scope of the Review, set out in the Terms of Reference document released by the Attorney General on 30 June 2021 (Appendix 1), and reprinted in the Executive Summary, is wide and focuses, amongst other things, on the sustainability, governance, administrative and operational practices of the Public Trustee and the impact which the implementation of proposed law reforms would have on those practices. The Terms of Reference for this review appear in Appendix 1.

A number of the concerns which had given rise to this Review were outlined to me in submissions I received in response to advertisements, published in Tasmania's local newspapers in July and early August, seeking input and comment on the subject matter of the Review. Many of those submissions concerned only one aspect of the work of the Public Trustee, where the Public Trustee is undertaking the role of administrator for represented persons under the provisions of the Guardianship and Administration Act 1995('the Act').

The final item within the Scope particulars, "any associated relevant matters to assist the review of the administrative and operational practices of the Public Trustee", is sufficiently wide to enable me to consider these submissions. The concerns expressed involve a consideration of the provisions of the Guardianship and Administration Act, which I have found are not well understood by many within the community, nor are the laws concerning wills and inheritance and the implications which moving someone in to care under the Act may have for the property, possessions and financial affairs of that person.

A Guardianship and Administration Order, made by the Tasmanian Civil and Administrative Tribunal (TasCAT) appointing the Public Guardian as guardian and/or the Public Trustee as administrator pursuant to the provisions of the Act has the effect of placing a state entity in the position of guardian and representative of the person the subject of the order. This representative role which carries with it significant statutory powers and responsibilities with no prior personal relationship with the represented person.

Because of the importance of the Act and its potential to impact the lives of so many, (at the time of writing this report the Public Trustee stands in the position of Administrator for approximately 1300 Tasmanians), and the concerns people and stakeholders expressed to me in their submissions I have decided to devote the first part of this report to considering the issues which submissions raised with me and the involvement of the Public Trustee, the Public Guardian and TasCAT in them. The

second part will contain my report on the scope particulars which relate to the operation, governance and sustainability of the Public Trustee and the statutory provisions under which it operates. This aspect of the review involved a detailed consideration of these matters and is reported in eight small chapters, each addressing a particular from the Review scope.

EXECUTIVE SUMMARY

The Public Trustee in Tasmania can be traced back to the Office of the Curator of Intestate Estates, established by an Act of Parliament in 1853. The office first became known as the office of the Public Trustee in 1912. The work of the Office has expanded and it now plays an important role in the state interacting with a broad cross section of the community and undertaking a range of welfare roles. Importantly the Office provides Government with the source of representation and advice and professional services for Tasmanians, particularly people who are disadvantaged and whose means do not enable them to readily access legal advice and representation for the orderly management of their estates and affairs.

The scope of this Review is set in wide terms because the Government seeks reassurance that the Public Trustee is providing professional services which are delivered with integrity and understanding to the Tasmanian community and which meet the requirements of the Public Trustee Act 1930 and other applicable legislation.

Scope

The review will inquire into, report on and make recommendations in relation to the following matters:

- *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;*
- *the extent to which the Public Trustee effectively meets its commitments under the "Mission, Vision and Values" statement, particularly in relation to a client service focus, with respect and integrity across all its functions;*
- *the appropriateness of current fees and charges applied by the Public Trustee for its services, given its costs and objectives;*
- *the appropriateness of the current Community Service Obligation Agreement between the Crown and the Public Trustee;*
- *the financial sustainability of the entity with particular reference to ongoing changes in the number and composition of clients and commercial activities;*
- *whether the current Public Trustee governance framework is appropriate in assisting the effective delivery of the entity's main undertakings and any appropriate changes to current governance arrangements that may be required;*
- *the impact that the implementation of the recommendations arising from the Tasmanian Law Reform Institute's review of the Guardianship and Administration Act 1995 would have on the administrative and operational practices of the Public Trustee;*

- *the potential for current operational practices to benefit from the implementation of reforms to service delivery recently implemented by similar organisations in other jurisdictions; and*
- *any associated relevant matters to assist the review of the administrative and operational practices of the Public Trustee.*

Summary of Recommendations

TasCAT hearings

1.1. The TasCAT ensure that hearings are held for the granting of all emergency orders and explain the emergency order process and outcome to the subject and his or her family and support group.

1.2. The TasCAT update the Annual Report pro forma for Administrators to include a report on section 57 duties and outcomes.

1.3 The Attorney General introduce legislation to amend the Guardianship and Administration Act 1995 in advance of implementing the recommendations of the TLRI:

- to enable TasCAT to examine the extent of a conflict of interest. I suggest adopting the provisions in the WA Legislation; and
- consider at the same time a minor amendment of the appeal provisions of the Act to incorporate the WA provisions.

Communication between the Public Trustee and clients

The Public Trustee:

2.1. Review communications across all fields of work of the Public Trustee;

2.2. Consider the levels of service/communication required for represented persons and implement them;

2.3. Consider the appropriateness of the CAMs pooling model and settle performance standards;

2.4. Train all staff on record keeping, particularly accurate inventory recording when the Public Trustee takes possession of property; and

2.5. Consider its resourcing requirements for CSO clients in the context of the next CSO Agreement.

Files, file management and legal matters

The Public Trustee:

3.1. Improve its file management practices and recording, including resubmit/reminders; and

3.2. Review filing separation between the legal section and operational filing for the same matter.

Education and awareness

4.1. The Public Trustee develop appropriate information and presentations so that the Tasmanian community understands the various roles and powers of the Public Trustee especially:-

(i) in areas of managing a represented person's estate and
(ii) when entering an aged care facility and
(iii) more generally about the Trustee's powers when administering a represented person's affairs.

Stakeholder engagement

5.1. The Public Trustee engage with stakeholders and implement a Customer Reference Group to assist in the development of appropriate service initiatives and improve its services to clients.

Client services and training

The Public Trustee:

6.1. Develop a customer centric model to support the journey of all Public Trustee clients with a focus on delivering best practice in the industry so that Tasmanians feel secure in their engagement whether that be as a represented person, executor or administrator of last resort;
6.2. Provide training to staff about customer service standards and appropriate expectations as a professional trustee;
6.3. Implement a program of training for client account managers that covers the policies and procedures of the Public Trustee to better support staff; and
6.4. Develop a policy to be able to identify and triage complex matters including legal/commercial and to obtain appropriate advice to avoid delays in the administration of estates; and
6.5. (a) Expand management reporting to the Board to include a regular Board report on compliance with administrator obligations under the Guardianship and Administration Act 1995; and

(b) Include in the report under 6.5(a) a separate section which addresses performance against best practice standards for administrators.

Oversight and accountability

7.1. The Government appoint the Disability Services Commissioner to an oversight role for represented persons with a grievance.

Effective performance

C1.1 The Attorney General and Treasurer update the Public Trustee's Ministerial Charter to reflect their expectations in respect of CSO and represented person clients and the management of funds held in trust.

C.1.2 The Public Trustee include in its Statement of Corporate Intent performance measures relating to:

- trustee industry financial performance targets;

- its obligations under the Guardianship and Administration Act 1995 Act to represented persons in respect of promoting their independence and communication in respect of their wishes;
- client satisfaction with CSO delivery; and
- its obligations under the Public Trustee Act 1930 as a manager of trust funds.

Appropriateness of fees and charges

C3.1 The Treasurer request the Tasmanian Economic Regulator to undertake a review of the Public Trustee's fees and charges for those clients who are required by legislation to use its services.

C3.2 The Public Trustee match the fees charged to represented persons with those in the Northern Territory.

C3.3 The Public Trustee keep the Treasurer informed on the status of its request for a GST exemption for represented person fees.

Appropriateness of CSO Agreement

C4.1. The Attorney General and the Treasurer review the scope of the CSO services purchased from the PT where there appears to be private sector provision such as for the administration of estates under $60k.

C4.2. The Public Trustee include performance indicators relating to the quality of client service provided in the next CSO agreement.

C4.3. The Attorney General and the Treasurer fully fund the Public Trustee's net avoidable costs of service provision in the next CSO agreement, with funding escalation to reflect demand growth.

C4.4. The counterparty to the next CSO agreement should be the Minister for Community Services supported by the proposed Tasmanian Disability Commissioner.

Appropriate governance

C6.1. The Attorney General and the Treasurer retain the existing GBE model for the Public Trustee and use the performance framework in the Government Business Enterprises Act 1995 to improve service delivery to its CSO clients and represented persons.

Administration Orders and Represented Persons

The orders made by TasCAT appointing a guardian and/or an administrator for a person the subject of an application before it are made when that person is usually at a very vulnerable stage in their life. Many are without family or close friends, and even if that is not the case, most are confused or struggling to understand why their lives have been changed so dramatically. Orders will be made if TasCAT is satisfied that the person has a disability and is unable by reason of that disability (i) to make reasonable judgements in respect of matters relating to his or her person or circumstances and is in need of a guardian or (ii) to make reasonable judgements in respect of matters relating to all or any part of his or her estate and is in need of an administrator of his or her estate. The orders may be either partial or plenary (full), but for the purposes of this summary, the consequence for the person, now referred to as a represented person, is life changing.

Probably the more confusing process for the represented person, and their family and friends, is the making of an emergency order, guardianship and/or administration. Emergency orders have, until this month (November 2021) been granted without a hearing and the applicant, sometimes a social worker based on medical advice in the hospital where the represented person has been admitted, making a telephone call to TasCAT for the order. These emergency orders and the subsequent process of extending the order to a full order were the subject of a number of submissions received by me.

The difference between a guardianship order and an administration order is often explained by the use of the descriptions “lifestyle” and “financial”, respectively. I believe that this simplified description of roles may well be the cause of a number of issues giving rise to submissions and complaints about the performance of the Public Trustee in fulfilling administrator obligations towards represented persons, their friends and families. I will explain this in Part 1.

People have expressed concern that they had, until the accident or episode hospitalising their relative, spouse, friend or neighbour, helped and cared for that person quite satisfactorily yet when offering to continue to do that before TasCAT they were either overlooked or the offer declined in preference to either the Public Guardian and /or the Public Trustee, state officers, in the latter case fee charging, and, in their eyes, strangers to a situation which they were better suited to deal with. The provisions of the Act as to eligibility for the roles are not without issues and the Tasmanian Law Reform Institute has made recommendations for the reform of these provisions, particularly in the area of conflict of interest as a disqualifying factor.

The consequence of an administration order placing the estate, property and possessions, of the represented person in the hands of an administrator, an empty house being locked in some cases to family members and the sale of that family home which appears to be contrary to expectations of inheritance are difficult to come to terms with, particularly when the circumstances of the orders and their legal consequences are not easily understood and sometimes not properly explained.

Some of the submissions I received were from people genuinely concerned that something wrong was being done. A jurisdiction which is described as ‘protective’ is in the minds of some, particularly those who do not understand it and are confronted with it in a moment of family crisis, harsh and unfair.

Concerned family members, friends and support groups, have expressed concern that their ability to seek review of or appeal a decision in a jurisdiction where the Tribunal conducting the hearing and making the decision is not bound by the rules of evidence and where the appeal grounds are so restrictive that reviewing an apparent error is almost impossible when an error of law must be shown in an appeal as of right, but leave of the Supreme Court must be obtained if the appeal is on a question of fact.

Delays in responses and limited communication from the Public Trustee were also matters of concern raised with me and some submissions received were also critical of actions taken quickly and apparently without proper discussion, understanding or referral resulting in disposal of property which had value, possessions with sentimental value, payments not made for ongoing accounts and commitments and delays in dealing with more complex financial transactions causing loss to a beneficiary or owner.

The areas of responsibility covered by this review are not always easy to navigate and while complaints and submissions were made from a variety of sources, there is no doubt that many represented persons are the grateful beneficiaries of having the responsibility for account keeping, debt negotiation and over all financial management lifted from their shoulders by the experienced work of Client Account Managers in the Office of the Public Trustee.

The problems and complaints expressed to me are not unique and most other jurisdictions in Australia have, in recent years, had reviews and inquiries of a similar nature arising from similar complaints and allegations, and reference is made to some of these in Part 2 of this report.

The matters referred to provide a summary of the concerns expressed and the path which had to be followed to better understand both the problem, if there was one, and then consider recommendations. Some matters were found to have a simple explanation while others did demonstrate a problem.

As explained to many of the people who made submissions, I do not have the authority or the resources to resolve matters or achieve a remedy for people who have taken the time to outline their concerns to me. The fact that they have done so creates the opportunity for me to better understand the issues and, where needed, recommend change.

The Operation Governance and Sustainability of the Public Trustee.

The work of the Public Trustee and the important place the Office occupies in the community of this State has changed significantly since its beginning in 1853. The Office now undertakes a diverse range of responsibilities which the first eight particulars of the Scope explore.

The Public Trustee is now a Government Business Enterprise which requires the Office to function along corporate lines, with a Board and operating and reporting responsibilities contained within the *Government Business Enterprises Act 1995* with commitments to a Mission, Vision and Values Statement entailing client service obligations which are examined in chapter 2 of Part2.

Being a Government Business Enterprise (GBE) carries with it certain Community Service Obligations (CSO) which are the subject of a funding agreement with the Crown The extent of those obligations and the funding basis to support that service has been examined and reported on in detail in chapter 4 of Part 2.

The governance framework, financial sustainability and the appropriateness of the fees charged by the Public Trustee are also considered in chapters 3, 5, and 6, respectively.

The impact which the implementation of the recommendations of the Tasmanian Law Reform Commission in its Review of the Act in 2018 is likely to have on the administrative and operational practices of the Public Trustee is considered in chapter 7. The focus of this chapter centres on the reforms around decision making and their impact on the practice of administrators appointed by TasCAT concluding that there are cost, resource and skills implications which will have an identifiable but not quantifiable impact on the Office.

The scope of the review includes a consideration of the current operational practices of Trustee offices in other Australian jurisdictions and the potential for reforms to service delivery in those offices to benefit the operation of the Public Trustee in Tasmania. Our conclusions after examining these offices is that there are some benefits to be obtained from the adoption of some of these practices and reform recommendations.

ABOUT THE REVIEW

On 10 June 2021 the Attorney-General and Minister for Justice announced that the Tasmanian Government would undertake an independent review into the administrative and operational practices of the Public Trustee. On 30 June 2021 the Terms of Reference for the review were released and on 2 July 2021 it was announced that I would be appointed to undertake the review. A final report was to be submitted to the Public Trustee's shareholding Ministers by no later than 30 November 2021. Media releases on the Attorney-General's Website accompanied the announcements with detailed Terms of Reference, which included particulars of the Scope of the review.

In announcing the review the Tasmanian Government indicated its commitment to ensuring an opportunity for members of the public and key stakeholders of the Public Trustee, including the Board and Executive Management Team of the Public Trustee, to provide input in relation to the matters detailed in the Review scope.

At about the same time as my appointment was announced appointments were made for two persons with appropriate skills and experience to assist me with the review. Those persons are:-

Mr. Derek Inglis, BEc (Hons), UTAS, former FAICD and FCIS.

Derek is a former board member and company secretary of Tasmanian government businesses and a statutory authority. He has extensive experience in the provision of advice to the Government on the performance, governance and sale of Tasmanian Government businesses and statutory authorities.

Ms. Jan Baxter BA (Crim) with distinction, LLB Deakin and Graduate Diploma in Legal Practice, Adel.

Jan has extensive experience in the work of a Public Trustee having held senior positions in the office of the Public Trustee, South Australia (2010-2021) having previously worked for the ATO with her last two roles being at executive level, national positions as well as senior roles with the Courts Administration Authority and the Department for Families and Communities in South Australia.

The availability of two people with the experience of Derek and Jan to work on the review with me was fortunate and I will say more later.

The review team arranged for advertisements to be placed in the Mercury, Examiner and the Advocate newspapers on 24 July 2021, 31 July 2021 and 7 August 2021 inviting submissions and providing details on how to make a submission. Submissions were due by 5.00pm on Friday, 20 August 2021, however the Attorney-General announced an extension of time to Friday, 27 August 2021 to enable the public and key stakeholders' further time to make submissions.

The review team identified information to be sought from the Public Trustee in relation to the Review scope. In addition, questions were formulated against the particulars of the Review scope so that we could obtain further details from the Public Trustee about its services, operations and practices.

This extensive list of questions was provided to the Public Trustee's Chairman, Chief Executive Officer and Chief Financial Officer when we met them on 23 July. The discussion had at this meeting assured me that the questions we had detailed would provide the Public Trustee with the opportunity to provide answers and explanations under the first 8 scope particulars. The detail sought was extensive and the answers, with follow up questions and further answers exchanged through November provided us with much of the material required to provide the assessments detailed in Part 2.

I received 71 submissions from both private individuals and stakeholders which covered a range of matters including procedural, legal and professional standards commentary as well as information in relation to their experiences of the customer services provided by the Public Trustee.

We met with Public Trustee representatives on a number of occasions during July to November 2021, including meetings with some members of the Executive Management Team, meetings with the Board on three occasions and regular discussions with Executive Management members during lengthy periods of file examination in the offices of the Public Trustee during the first two weeks of November.

On 27 September 2021 I provided the Public Trustee with a folder containing 29 of the submissions we had received which raised issues concerning the Public Trustee. I indicated that I wished to investigate those matters further after the Public Trustee had an opportunity to examine the submissions in detail. The Public Trustee has fully cooperated with my review. However I understand that legal advice sought by the Public Trustee following my request to examine the files and records relating to the 29 matters indicated that the provisions of the *Personal Information Protection Act 2004* prohibited the Public Trustee from disclosing the files to me. Authority from the Attorney-General to conduct an investigation pursuant to section 102(1) of the *Government Business Enterprises Act 1995* was obtained. This overcame the legal prohibition and enabled access to the files and records. The review continued without any real delay.

We accessed the 29 files and or electronic records of the Public Trustee during 1–18 November 2021 carefully reading through information relating to customer services provided and correspondence and reporting both from paper sources and the Public Trustee's electronic systems at the offices of the Public Trustee. The explanations given and discussions with the members of the Executive Management Team who met with us from time to time during these file inspections and the level of cooperation provided to us was extensive and very much appreciated.

My investigation was undertaken at three levels.(1) The detailed questioning from the Scope terms of the Public Trustee Executive Management with answers processed through the Board.(2) Examining and cataloguing the 71 submissions received then questioning certain persons who had made submissions and then communicating with the Public Trustee, the Guardianship and Administration Board (at that time still a Board) and the Public Guardian with details of the submissions or represented persons whose matters had raised questions.

(3) Consultation and meeting with stakeholders who had made submissions calling for discussion, also Treasury, the Public Trustee Board, the Public Guardian and the Guardianship and Administration Board, Public Trust offices in other jurisdictions, the Law Reform Institute, and researching reports of inquiries and reviews from other jurisdictions.

On 12 November 2021 the review team met with and held a stakeholder engagement meeting with a range of stakeholders who readily attended and provided their views and input on a range of issues covered in their submissions or raised by the review. This was a very positive engagement and the views expressed and suggestions made assisted us in better understanding stakeholder concerns and suggestions for better outcomes.

Why Investigate

While the Public Trustee operates independently of Government, the concerns raised with Government and through the media earlier this year in some cases involved clients of the Public Trustee, or advocacy groups on their behalf.
The Public Trustee interacts with many Tasmanians often at the most difficult and challenging times in their lives, and it is important that Tasmanians feel confident about and have trust in the manner and level of services provided and the important role the Public Trustee serves.

The Public Trustee must provide professional services, delivered with integrity, respect and understanding to the Tasmanian community. The public should be able to feel confident that the vision, mission, values and customer service standards communicated and acted on by the Public Trustee meet community expectations.

The consultation process undertaken during the investigation allowed all interested parties to have their say on the important issues being reviewed, including the administrative and operational practices of the Public Trustee.

A number of submissions I received concerned the broader guardianship and administration framework and the processes and procedures experienced. For this reason, using the last item of the scope terms I broadened my review to consider these concerns.

Submissions

Submissions were invited from individuals, members of the general public and stakeholders. To ensure accessibility and inclusion a wide range of stakeholder organisations who provide advocacy services for Tasmanians was also invited to make submissions on behalf of individuals as well as put their own organisational views forward.

A range of professional organisations and two political parties also made submissions and while taking in to account all of those submissions we also met with those who had made submissions about direct experiences to discuss and elaborate on their submissions.

Submissions were able to be made in writing and posted/delivered, emailed via a dedicated email address or via telephone to the review team. I also undertook to meet with and interview some individuals and representatives of stakeholder groups.

The submissions often provided very private information about personal circumstances that occurred during difficult times in peoples' lives and I sincerely thank all of those who took the step to provide information to assist me in undertaking the review.

Submissions are critical to ensuring that the voices of people and organisations in our community are heard and their views and experiences are taken into account. The review team ensured that individuals had appropriate supports and/or advocates to assist them during interviews.

Procedural Fairness and Privacy

Individuals who made submissions were asked to provide consent to the review team for sharing their particular submission with the Public Trustee, the Public Guardian or TasCAT. Only those submissions where consent was forthcoming were provided to the Public Trustee, TasCAT and the Public Guardian.

The Board of the Public Trustee was informed of the progress of the review and, ultimately provided with a briefing on the conclusions I had reached.

The independent review allows for submissions to be made public or private. Private submissions are not published in this report, however, with the consent of some individuals who wished their submission to remain anonymous, consent was received to provide a summary case study of their circumstances with sufficient details changed so as not to identify the person.

About the Public Trustee

In 1853 *An Act For The Better Preservation And Management Of The Estates of Deceased Persons In Certain Cases* (17 Vic, NO 4) was passed by the Tasmanian Parliament and assented to by the then Lieutenant-Governor which established the "Curator of Intestate Estates" which became the archetype of the first Tasmanian Public Trustee.

The first Act establishing the Public Trustee was *The Public Trust Office Act 1912*. That Act was amended in 1930 to become *The Public Trust Office Act 1930.*

Various amendments have occurred over the years but the original purpose of the earlier statutes and the role of the Public Trust Office was to deal with the management of intestate estates, (those who died without leaving a Will), or the administration of deceased estates where there was a Will but either no executor was appointed or the executor appointed was unwilling to act.

As with many other jurisdictions the purpose of those early activities was to be the administrator of deceased estates of last resort as a low or no cost social welfare service to the Tasmanian community.

Over the years the Public Trustee in its various forms became quite expert in dealing with deceased estates and its services branched out to Will making and other services and included the expansion to be able to appoint the Public Trustee as executor of a testator's estate. The Public Trustee charged fees for its services and became in many jurisdictions a profitable enterprise.

A marketing incentive in appointing the Public Trustee as executor of a person's estate has been the making of a free Will.

One of the biggest changes to the Public Trustee in Tasmania was its inclusion in the *Government Business Enterprises Act 1995* as a government business enterprise. This confirmed its status as a corporate legal entity and provided a principal objective of performing its role as a successful business and operating with sound commercial practice and efficiency while achieving a sustainable rate of return. In addition, as a government business enterprise there is an obligation to perform its community service obligations in an efficient and effective manner on behalf of the state of Tasmania. More is said about this in chapter 4 in Part 2.

Part of the statutory machinery in becoming a Government Business Enterprise is the appointment of a Board of Directors and a Chief Executive Officer to oversee the work of the organisation, devise and implement a corporate plan and operationalise that plan to achieve the intended results.

The Guardianship and Administration Board (GAB). (Now TasCAT.)

On 22 September 1995 the *Guardianship and Administration Act 1995 ("the Act"),* was given Royal Assent. That statute established the Guardianship and Administration Board (GAB) and provided, amongst other things, for the appointment of the Public Guardian as a guardian for persons and the Public Trustee as administrator of persons along with powers and duties respectively.

When a person's affairs are administered by the Public Trustee that person will have been the subject of an application before the Tasmanian Civil and Administrative Tribunal (TasCAT), formerly GAB. Once the application is heard and an order appointing an administrator made the person is referred to as a represented person.

The Public Trustee services a very wide range of clients who come from diverse backgrounds and age groups, they include the persons who made Wills with the Public Trustee, beneficiaries who benefit from the Will of the deceased, the beneficiary of a testamentary trust or Court Order and a person subject to an Order of TasCAT. In its role as the administrator of the financial affairs of represented persons the Public Trustee is required to represent people who suffer from disabilities, mental health issues and age related illnesses and incapacities.

The jurisdiction administered under the provisions of the Act is often referred to as a protective jurisdiction in which those persons with an incapacity who cannot manage some or all of their own affairs are protected through the appointment, by TasCAT, of a guardian and often an administrator pursuant to sections 20(1) and 51(1) respectively of the Act.

Administration Orders

Any person may apply to TasCAT for an administration order in respect of the estate of a person with a disability.

The term ‘disability’ is defined under the Act as:

‘any restriction or lack (resulting from any absence, loss or abnormality of mental, psychological, physiological or anatomical structure or function) of ability to perform an activity in a normal manner.”

TasCAT may make an order appointing someone to administer a person’s estate if, after a hearing it is satisfied that the person in respect of whom the application is made for the appointment of an administrator:-

(a) Is a person with a disability: and
(b) Is unable by reason of the disability to make reasonable judgements in respect of matters relating to all or any part of his or her estate: and
(c) Is in need of an administrator of his or her estate.(section 50 of the Act.)

Section 54 of the Act lists the persons eligible as administrators. The list includes the Public Trustee, the Public Guardian, a trustee company and any other person who consents to act as administrator if TasCAT is satisfied that :-

“(i) the person will act in the best interests of the proposed represented person; and

(ii) the person is not in a position where his or her interests conflict or may conflict with the interests of the proposed represented person; and

(iii) the person is a suitable person to act as administrator of the estate of the proposed represented person; and

(iv) the person has sufficient expertise to administer the estate.’

The qualification requirements under section 54 often result in a family member, friend or neighbour, who has put themselves forward as an administrator, being rejected by TasCAT.

A number of submissions contained criticisms of such outcomes, and the Law Reform Institute has recommended reform of the conflict of interest provision, which is considered in chapter 7 of Part 2 of this report. Put simply, the Institute recommends that the conflict test should permit TasCAT to assess the extent of any conflict rather than the existence of a conflict itself.

This amendment is likely to see more family members accepted as administrator and coupled with an explanation, in detail, as to the skills needed to undertake the role of administrator, ‘volunteers’ for the role of administrator will be more understanding of any adverse outcome to their offer.

The fact that many family members are not accepted as administrators usually results in the Public Trustee being appointed and I have made reference to the rise in numbers of represented persons for whom the Public Trustee is administrator in chapter 5.

If an administration order is made there is usually a guardianship order in place or one is made at the same time. An order for full guardianship, usually with the Public Guardian appointed, gives the guardian power to decide where the represented person lives, and with whom. Decisions as to whether the represented person may work, have visitors and, in certain circumstances, provide consent for medical treatment which is in the best interests of that person are all now likely to be made by the guardian.

The powers are extensive and the Public Trustee as administrator entering that person's life at the same time is, as a stranger, likely to be met by a person with friends and family, all of whom are confused, worried and uncertain as to the future. While there is a degree of overlapping of powers and functions, an administrator, at this time has a role which requires careful and understanding engagement with the represented person and his or her support network.

The represented person's Centrelink benefits are redirected to be managed by the Public Trustee, as are any bank accounts held by that person. In addition, the assets of the person and all property will be held and secured by the Public Trustee, who has wide powers to sell or realise that property. In doing so the person's best interests are to be observed and the Public Trustee must act prudently and observe its fiduciary duties as a trustee.

Essentially the Public Trustee has full control over the represented person's finances and their property and possessions. Once the person's assets are identified, collected and secured a budget is generally expected to be prepared and a personal allowance is usually provided to the person who can then shop for groceries, pay for transport and where affordable, undertake lifestyle activities.

While this is happening the guardian has more than likely negotiated for and arranged the placement of the represented person in a care home, the cost of which may require disposal of property held by the Public Trustee. Many life changing decisions are being made for a person who has, literally, lost control of their life. Properly understood and managed, this should be a comfort, bearing in mind the threshold test for orders to be made.

Those with limited funds who have for a variety of reasons fallen in to debt may find that having the Public Trustee manage their finances is quite restrictive as they no longer have autonomy over their own finances or choice about how much and when and how they spend their money. Even those with no debt or those who are financially secure and independent may find that having TasCAT appoint the Public Trustee as administrator of their affairs takes away their autonomy which can be difficult to accept. On the other hand, some people with incapacity and not able to manage their own affairs might find that having an administrator appointed makes their life easier and helps them to keep control of their finances.

Emergency orders for guardianship and/or administration can be made by virtue of section 65 of the Act. The process is less formal, does not require an application, a hearing or the giving of notice to any person. The jurisdiction of GAB (TasCAT) can be triggered by “a request made, or information received, by telephone or any other means that the Tribunal considers appropriate in the circumstances.” (section 65(4)(b))

Emergency orders made in this way remain in effect for such period as the Tribunal determines, but cannot exceed 28 days, before which one further emergency order may be made, but again not exceeding 28 days. I mention this process in the Executive Summary. Last year 209 Emergency Guardianship orders were made by GAB (TasCAT) and 81 Emergency Administration orders (GAB Annual Report 2020/2021). It is understandable that 128 more guardianship orders were made because the emergency is more likely to be one for placement in care, which is the Guardian’s role, than financial management, the role of an administrator.

In most cases where an emergency administration order is in place that circumstance is made permanent with an application being lodged for an administration order to be heard before the emergency order expires. Whenever an emergency order is sought for a person who is not already a ‘represented person’ TasCAT is required to appoint the Public Guardian and/or the Public Trustee as guardian and/or administrator, there is no discretion (Section 65(2)).

In the year 2020/2021, the Public Guardian was appointed guardian in normal applications for 373 persons and the Public Trustee administrator for 341 persons (GAB Annual Report).

The circumstances in which emergency orders are sought and made can be quite varied, but the number of emergency orders appears high and in view of the informal process and lack of requirement for notice, greater responsibility falls to both the guardian and administrator to properly inform and explain to the person who is the subject of the order precisely what has happened and what their role is likely to involve. People who have suffered a trauma, episode of confusion, vascular dementia or other disabling incident are likely to be both confused and vulnerable. A number of submissions made to me suggested that this process, on occasions, was not accompanied by an explanation to the person for whom the order was made.

An explanation may have been made to and forgotten by a person already confused, or none given, presumably because others assumed that someone else had explained what was happening. Whatever the situation, a process of informing should always be required.

Once an order for guardianship and/or administration is made I have previously said that the person the subject of the order becomes a represented person. The Act defines a represented person (section 3(1)) as:-

“a person-

(a) In respect of whom -

(i) a guardianship order is in force; or

(ii) an administration order is in force; or

(iii) both a guardianship order and an administration order are in force; or

(b) Who appoints an enduring guardian and who, by reason of disability, becomes unable to make reasonable judgements in relation to his or her personal circumstances;"

The Public Trustee has statutory obligations to the represented person pursuant to Section 57 of the Act which provides:-

"57 Exercise of power by administrator

(1) An administrator must act at all times in the best interests of the represented person.
(2) Without limiting subsection (1), an administrator acts in the best interests of the represented person if the administrator acts as far as possible-
(a) In such a way as to encourage and assist the represented person to become capable of administering his or her estate; and
(b) In consultation with the represented person, taking in to account as far as possible the wishes of the represented person."

Section 57 proved an interesting point of difference during the review in that all three members of the Review Team felt that the section required an administrator to do more than just manage and keep the accounts of a represented person. What appears to be positive duties in the section to "encourage and assist the represented person to become capable of administering his or her own estate" and "to act as far as possible in consultation with the represented person" has been largely ignored by the Public Trustee during the 26 years since the Act received Royal assent on the basis that this view of the section requires more of the Public Trustee than the Act requires. In other words, an administrator is not required to do those things contained in section 57.

I have examined the Second reading Speech and that supports the plain meaning of the words in the section, as does the decision of the GAB in 2003 in the matter of T (2003) TASGAB 1 where the Board noted that :-

"Resulting from an order under section 54, an administrator has specific instructions for the performance of his or her duty in section 57(2). These instructions are aimed at encouraging self-reliance in the represented person and enabling consultation between administrator and represented person in all decisions."

This passage was more recently relied upon by the GAB in TKH (Advice and Direction) (2021) TASGAB 50 (13 October 2021), in which the Public Trustee was a party.

I have said previously that a simplified description of responsibilities (see Executive Summary) of guardian and administrator as "lifestyle and financial" may well be the cause of a number of issues giving rise to complaints about the Public Trustee not fulfilling administrator obligations towards represented persons.

I have raised the question of the Public Trustee's obligations/duties under section 57 with its Board on September 30th, when we met with the Board on November 15th, and in email correspondence with the Chairman on Saturday November 20. I again raised the matter with the Board when we met on November 26th suggesting that there was a problem of an apparent misunderstanding within the Public Trustee of the application of section 57 to the Public Trustee in its role as an administrator under the Act and that it has been thus for 26 years.

The responses on all occasions lead me to conclude that for 26 years the Public Trustee has genuinely misunderstood the duties of an administrator under section 57.

That much is clear from what I have reported in the previous paragraph, but it is even more obvious when the Advice and Direction statement of Reasons in TKH (above) is read https://www.austlii.edu.au/cgi-in/viewdoc/au/cases/tas/TASGAB//2021/50.html, which demonstrate the misunderstanding and the narrowness of the administrator's role perceived by the Public Trustee. I have discussed the matter in the presence of Board members, the Acting CEO and by video conference with other Board members all of whom have cooperated fully with my inquiry in circumstances which must have been trying for everyone within the Public Trustee.

During my last meeting with the Board on November 26 the Board raised with me the fact that numerous administrator's annual reports submitted to GAB by the Public Trustee under section 66 of the Act should have been questioned for their lack of reference to compliance with section 57 duties if that is the effect of the section. I do not understand why this has not arisen before. Last financial year the Public Trustee should have submitted approximately 1300 such reports.

Because I had read all the submissions lodged with me and spoken with many people genuinely concerned about the apparent lack of empathy and engagement, as an administrator, by the Public Trustee, I wrote to the then President of GAB on November 2nd and, amongst other things, indicated the following:-

"At the other level of reporting, under section 66, I am interested in examining the level of reporting the Board has required, or the Public Trustee has provided, of compliance with the administrator's duties under section 57(1) and (2)(a) and (b)."

By letter of 4 November 2021, the President replied to that paragraph in the following terms:-

"I note your statement that you are taking a particular interest in the Public Trustee's compliance with section 63 of the Act, and the level of reporting the Board requires as per section 66 of the Act.

All Administrators are required to lodge an Annual Report, which must be accompanied by a statutory declaration, and statement of accounts for the reporting period. The reporting template for the Public Trustee prompts questions in relation to:

Income/expenditure

Assets and liabilities

Direct deductions from pension

Outstanding debts

Disability, capacity and need

Living and family situation

Emerging issues

Gifts

Additional comments or reporting notes.

These Annual reports are checked in detail by the compliance team within the Registry, and any irregularities or concerns are followed up with the Public Trustee."

Obviously the "prompt questions" for the Public Trustee would not have triggered any question of the compliance with section 57 obligations, nor would the completed Annual report raise any concerns with non-compliance within the Registry.

For these reasons, I believe that while the GAB President was aware of the requirements of section 57 in 2003 and GAB has this year reminded the Public Trustee of those requirements, neither the annual reporting obligations under section 66 nor the checking of those reports within the Registry of GAB has highlighted any non-compliance.

I believe that this is a point of real importance. What has been seen by many people, family and friends of represented persons, as indifference, poor communication and lack of engagement by the Public Trustee with represented persons and their support, and complained about through advocacy groups and the wider community may be attributed to a misconception of role. But change is needed to achieve an appropriate outcome.

In recent years the Public Trustee has consolidated service delivery components of its office in the North and South of the State respectively.

The staff undertaking represented person services for clients for whom the Public trustee has been appointed administrator now all work in two groups from the Hobart office of the Public Trustee. The efficiencies created by pooling this workload in the one office can be easily demonstrated if the work undertaken is able to be achieved by telephone calls and a computer with little face to face contact. However if this work requires the level of personal input the provisions of section 57 suggest, then the move to pooling CAMs in one region will not work. While this change has only been in place in recent years and during most of that time work practices have been impacted by the Covid pandemic, some of what we read and heard from the people making submissions is explained.

The staff working in this area are the Client Account Managers, CAMs, a title which tends to confirm the narrow role for an accounts only service. The CAMs work in two groups and in total average a workload of 80 represented person per CAM and each CAM is receiving per annum approximately 20 more represented persons.

PART 1 ASSOCIATED RELEVANT MATTERS

This Part of the report will detail aspects of the work of the Public Trustee which in turn identified areas of concern either referred to in submissions or apparent from the file inspections and discussions undertaken at the office.

1. TasCAT (formerly GAB) HEARINGS

(a)Emergency Orders.

The process by which emergency orders are made permits telephone requests, in the absence of the person against whom the order is sought. While TasCAT has modified that approach since November 5th this year, requiring a hearing for all emergency order applications, the fact that orders have been made in this way may explain a number of the submissions received complaining of confusion and lack of understanding of what was happening. Emergency orders which are a prelude to a formal application for a Guardianship and/or Administration order, explained earlier, are apt to confuse not only the represented person but also his or her family and support persons if there is not full disclosure with an empathetic explanation of what has already occurred and what is about to happen. This is a protective jurisdiction but, in the minds of some people who made submissions it has not felt that way.

We have met senior members of TasCAT and staff and are reassured that there is a continuing programme of public information about the work of TasCAT.

Many emergency orders have been made following telephone requests from hospital. I understand that urgent situations arise where, for example, an injured or unwell patient is refusing to remain in hospital when all medical signs indicate that the risks of further harm or worse are high and the prerequisites for a guardianship order exist. I have previously commented about the high number of emergency orders being made and do not wish to confuse the imperatives for such a situation, but are all emergency orders necessary? When they are, there must be some way in which the patient and family/support persons can be informed of what is happening and what the consequences of the order are.

(b)Applications for Guardianship and/or Administration Orders.

The submissions made which suggested an unpleasant experience or outcome through a hearing for an order or a review hearing were considered and discussed.

In some instances people who were family members or close friends or supports of the represented person were disappointed and confused because they had been overlooked or their offer for appointment declined.

The administrator eligibility criteria in section 54(1), acting in the best interests, not in a position where interests conflict or may conflict, suitability and sufficient expertise are all important but there is confusion and embarrassment when conflict of interest is deemed the disqualifying point.

The outcome of a rejection of a proposal from family or friends for appointment is that the Public Trustee and or the Public Guardian will usually be appointed, bringing a stranger in to the represented person's life. The Law Reform Institute recommended reform of the conflict of interest provision of the Act to avoid, where possible, the loss of a well-meaning family member or friend from the direct support network of the represented person. The Institute recommended an 'extent' of conflict test as opposed to an 'existence' of conflict test. This should be considered.

Another submission to the review concerned the rather restrictive appeal provisions where an aggrieved party seeks to overturn or review a decision of the Tribunal. An unsuccessful appellant provided me with details of the significant costs she incurred in an attempt to appeal and seek leave to appeal a decision of GAB. Those restrictive appeal provisions, with consequent costs orders for the unsuccessful applicant, although removed from the Act on the passage of the TasCAT legislation, still apply to appeals from TasCAT decisions under the Act. The Law Reform Institute also recommended reform of these provisions and that should be considered.

(c)When an administration order has been made the administrator has two reports to provide to TasCAT annually. I am concerned that the pro forma used by TasCAT for reports under section 66 does not suggest a requirement for a report concerning the actions of the administrator under section 57 of the Act and the represented person's progress or status as a result of those actions. I am referring here to the comment from a Public Trustee Board member that GAB, or TasCAT, had not required any reporting by the Public Trustee under section 57.

Recommendations.

1.1. The TasCAT ensure that hearings are held for the granting of all emergency orders and explain the emergency order process and outcome to the subject and his or her family and support group.

1.2. The TasCAT update the Annual Report pro forma for Administrators to include a report on section 57 duties and outcomes.

1.3 The Attorney General introduce legislation to amend the Guardianship and Administration Act 1995 in advance of implementing the recommendations of the TLRI:

- to enable TasCAT to examine the extent of a conflict of interest. I suggest adopting the provisions in the WA Legislation; and
- consider at the same time a minor amendment of the appeal provisions of the Act to incorporate the WA provisions.

2. Communications between the Public Trustee and clients

A represented person and client survey undertaken on behalf of the Public Trustee in 2019 disclosed an uncomfortably high level of dissatisfaction with the Trustee's communication with its clients. This fact and the need for improvement were acknowledged by members of the Executive Management and the Board of the Public Trustee.

It was certainly a frequent additional criticism in the submissions we received and, from the reviews undertaken in other jurisdictions, it seems to be a problem elsewhere.

Represented persons or their representative expressed frustration with the lack of communication from the Public Trustee, inconsistent communications, lack of reporting or difficulty in understanding accounts reporting when received.

Perhaps the Public Trustee's misunderstanding of its duties under section 57 may explain a certain lack of reporting/communication with the represented person and/or their support network, but some submissions suggested that there was little or no contact with the represented person and when family members or friends attempted to make enquiries they were either ignored or rebuffed.

Some commented that the pooling of CAMs was not always helpful because calls left were not always returned.

One person who had become frustrated and travelled to the Hobart head office demanding to see a manager to discuss payment practices with her 50 year old son's account. When she refused to leave until she had seen the manager the police were called by security. The police arrived and on hearing from the frustrated and annoyed mother of a 50 year old it was suggested that the manager be called and the officer returned to the station. An internal review resulted in a letter of apology from the Office.

If people become frustrated they may well become difficult to deal with, but the frustration expressed to me from more than one source related to the fact that the Public Trustee, as administrator, is managing the assets of the represented person, not the Public Trustee's money, but it doesn't feel like that. This may also be a symptom of the confusion surrounding section 57 of the Act.

Lack of reporting the status of some represented persons' finances was also raised. Clearly annual reporting to a person whose financial affairs are controlled and managed under administration should be readily available to the represented person or his or her family that report has to be prepared for TasCAT anyway.

Consistent and timely reporting should occur. Annual account reporting for a family member who was the subject of an administration order was mentioned.

There were inconsistencies in timing. Initially the end of year reporting was for the end of March one year to the end of February next, then to the end of May for two years then back to April over a period of 5 years.

Communication issues were raised by stakeholders and represented persons. One reported matter involved a man who had been the subject of an emergency order following hospitalisation, was then removed to care only to be returned to hospital for further treatment to again be returned to care. The emergency order had become an administration order and plans were being made at Public Trustee to close the lease on his rented accommodation and clear his home out.

A staff member in one of the establishments the person was moving from or to was requested by telephone from the office of the Public Trustee to ask the person “if he wants anything from his home”, or words similar. The person, responded “No”, to the relayed question. If he was thinking that he was being asked if he wanted anything from home in the short term, that was not the case, his answer was mistakenly received as giving approval for the Public Trustee to clear the home.

File record keeping, as a record of communications, was in some cases deficient. In one matter, where possessions were disposed of and the property cleared a dispute arose concerning approval to do so or not. The file was deficient of any record, inventory or note of communication with the represented person, his friends or supporters. The property and the represented person were in the North of the State. A CAM based in Hobart may not be in the best position to manage such an exercise for a represented person.

Recommendations.

The Public Trustee:

2.1. Review communications across all fields of work of the Public Trustee;

2.2. Consider the levels of service/communication required for represented persons and implement them;

2.3. Consider the appropriateness of the CAMs pooling model and settle performance standards;

2.4. Train all staff on record keeping, particularly accurate inventory recording when the Public Trustee takes possession of property; and

2.5. Consider its resourcing requirements for CSO clients in the context of the next CSO Agreement.

3. Files and File Management and Legal Matters

The Public Trustee has been improving its recording and file management systems with the installation of an impressive Client Management System. The Board and Executive Management all referred to this task as one which was necessary to make the office ready to undertake reforms which all acknowledged were overdue.

The files and file management system before CMS we experienced first-hand because many of the files we examined were of the old hard copy variety until CMS was installed. The CMS was surely needed!

Records and recording have improved but the office appears to be still working from two filing systems. Files we wished to examine which involved legal questions or proceedings appeared to split and hard copies of the legal section were retained in the legal section of the office with little or no apparent record of what was happening between the two files.

The main office filing system should have a regulated resubmit or reminder system. From the 29 files we referred to the Public Trustee for review and comment we found the following examples of delays or oversights in the progress of files. Some appear to have suffered from an inertia which access to legal/commercial advice should have overcome.

Four years delay in finalising a special disability trust with consequent cost to the beneficiary through reduced Benefit Payments. There was explanation for some delay, but not four years.

Four years to finalise a share transaction in an estate causing an ASIC penalty for the delay, paid by Public Trustee.

One year with no apparent reply to an agent seeking instructions. So the agent submitted a bill.

The double payment of NSW counsel's fee in a contested will matter. Discovered by one of the review team. $10,000 unnecessarily paid twice and from the beneficiary's account.

The apparent payment for educational equipment from a trust account when the payment should have come from the account of a discretionary trust set up for education purposes. The advice as to the nature of the trust was difficult to link with the file.

Another issue was the lack of clarity in process to avoid conflicts of interest when the Trustee's solicitor gives advice to the Public Trustee concerning a matter involving a client of the Public Trustee.

Some of these issues may have been avoided if the legal section filing system was linked to the new CMS system and reminders, regular, are factored in to the filing system. If difficult legal questions or issues are delaying progress with a file, then avenues to advice for case officers should be well identified and available. Delays in winding up an estate may have significant financial consequences.

Recommendations.

The Public Trustee:

3.1. Improve its file management practices and recording, including resubmit/reminders; and

3.2. Review filing separation between the legal section and operational filing for the same matter.

4. Education and Awareness

Many of the submissions and the conversations we had with stakeholders indicated that there was a lack of community awareness about the Guardianship and Administration Act 1995 and the role of the Public Trustee and its powers as an administrator under the Act, particularly in relation to estates of represented persons.

This was demonstrated when the Public Trustee was required to sell the home of an elderly person to pay for the Refundable Accommodation Deposit on admitting that person in to a care home. A complaint was submitted to the Review by the elderly person's son because he, along with his parents had discussed the house and his expectation was that it would come to him as an inheritance. This expectation was seen as overridden by the Public Trustee. But what the Public Trustee was doing was acting 'in the best interests' of the represented person, as required by the Act.

In addition the review team found that there was a lack of understanding about the support that members of the community could obtain in relation to executor services from the Public Trustee.

Recommendation

4.1. The Public Trustee develop appropriate information and presentations so that the Tasmanian community understands the various roles and powers of the Public Trustee especially:-

(i) in areas of managing a represented person's estate and
(ii) when entering an aged care facility and
(iii) more generally about the Trustee's powers when administering a represented person's affairs.

5. Stakeholder Engagement

We found that the Public Trustee has been very active through the former CEO in building relationships with other Public Trustee executives across Australia and that networking on a national scale creates learning opportunities for business and office enhancement.

We were impressed with the Queensland's Public Trustee model for stakeholder engagement which provides a Customer Reference Group whose participants are the CEO's of all major NGO's who meet quarterly to assist the Queensland Public Trustee improve its services. I raised this subject with the stakeholder group we met with to discuss the review and there was unanimous support for introducing something similar in Tasmania. We discussed this with the Acting CEO of the Public Trustee and he had already commenced making contact with stakeholders.

Recommendation

5.1. The Public Trustee engage with stakeholders and implement a Customer Reference Group to assist in the development of appropriate service initiatives and improve its services to clients.

6. Client Services and Training

Client services are linked to communication and interaction with clients, but there does not appear to be any training for staff in providing client or customer service to represented persons.

In business emphasis on service is also related to attraction and retention of customers. Most represented persons do not come to the Public Trustee, they are brought there through administration orders or under a CSO arrangement.

Understanding the clients of the Public Trustee is an important aspect of providing service and there does not appear to be any such training for existing and incoming staff. We were informed that training is provided in areas such as well-being and work health and safety, which are important but with Vision and Values statements attributable to the Public Trustee on the website and the annual reports referring to personal respect for each other and their clients there should be more focus on a client base which is growing.

Additionally, there does not appear to be enough emphasis given to technical and process training of CAMs. Hasty and sometimes unrecorded disposal and removal of property and possessions and delays in dealing with complicated transactions suggest that more training in the area of estate management and awareness of the duties of executors and administrators would improve client relations and outcomes.

Recommendations

The Public Trustee:

6.1. Develop a customer centric model to support the journey of all Public Trustee clients with a focus on delivering best practice in the industry so that Tasmanians feel secure in their engagement whether that be as a represented person, executor or administrator of last resort;

6.2. Provide training to staff about customer service standards and appropriate expectations as a professional trustee;

6.3. Implement a program of training for client account managers that covers the policies and procedures of the Public Trustee to better support staff; and

6.4. Develop a policy to be able to identify and triage complex matters including legal/commercial and to obtain appropriate advice to avoid delays in the administration of estates; and

6.5. (a) Expand management reporting to the Board to include a regular Board report on compliance with administrator obligations under the Guardianship and Administration Act 1995; and

(b) Include in the report under 6.5(a) a separate section which addresses performance against best practice standards for administrators.

7. Oversight and Accountability

The Public Trustee currently manages the financial lives of 1300 people and the reporting demands of the Act require the preparation and lodgement with TasCAT of 2600 reports every year, or 10 per day. The volume of reporting is significant. The Public Guardian also has reporting responsibilities producing an enormous reading load for the TasCAT organisation.

Reporting by the Guardian and/or Administrator is, in a sense, one sided and we heard concerns that there were no available avenues to seek review or investigation of the administrator with a timely outcome. Performance standards either under the CSO agreement or as suggested elsewhere in these recommendations should, I believe, provide a level of independent oversight to better ensure accountability.

There should be more available oversight, by an entity or person, with sufficient power and resources for persons to feel confident of timely and thorough consideration of their grievance. While the Public Guardian has investigative powers under the Act, the use of that Office to oversee the performance of administrators seems inappropriate. The Government has announced its intention to appoint a Disability Commissioner. With appropriate powers and resources I believe this would establish an office with power and relevance to provide oversight and ready access for represented persons, and achieve a level of accountability for administrators working under orders of the TasCAT which is not present today.

Recommendation.

7.1. The Government appoint the Disability Commissioner to an oversight role for represented persons with a grievance.

PART 2 TERMS OF REFERENCE

The terms of reference for this review list nine items under 'scope' eight of which are dealt with as separate chapters in this second part of my report with the first item under scope referenced as 'Chapter 1' and so on. Similarly, the recommendations are referenced as C1.1 and so on in relation to each chapter.

Chapter 1

The extent to which the Public Trustee (PT) 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

The principal elements of the PT's current legislative framework comprise the *Government Business Enterprises Act 1995* (GBE Act), the *Public Trustee Act 1930.* In addition the *Guardianship and Administration Act 1995* ("the Act") imposes significant obligations on the PT in respect of more than half of its clients.

Effective performance is an accepted measure of meeting agreed objectives and Section 7 of the GBE Act specifies that:

The principal objectives of a Government Business Enterprise are –
(1) (a) to perform its functions and exercise its powers so as to be a successful business by –
(i) operating in accordance with sound commercial practice and as efficiently as possible; and

(ii) achieving a sustainable commercial rate of return that maximises value for the State in accordance with its corporate plan and having regard to the economic and social objectives of the State; and

(b) to perform on behalf of the State its community service obligations in an efficient and effective manner; and

*(c) to perform any other objectives specified in the Portfolio Act (*PT Act 1930).

(2) On the request of the Portfolio Minister, the Treasurer may, by notice published in the Gazette, specify the economic and social objectives of the State relevant to the Government Business Enterprise specified in the notice.

The PT has advised me that it does not have any additional economic or social objectives published in the Gazette pursuant to section 7(2) above.

Part 6 of the GBE Act provides that Ministers may set broad policy expectations for the PT in its Ministerial Charter. The PT provided a copy of its current Ministerial Charter which largely reiterates the legislative requirements in s7 above, it also specifies that the PT should take account of contemporary practice in customer service and have a customer service charter.

The main undertaking of the PT is to offer trustee services to the Tasmanian community. These are listed in its annual report and comprise:

- Preparation of Wills, Enduring Powers of Attorney;
- Acting as executor or administrator of estates or estate administrator if there is no Will;
- Assuming the role of executor when an executor named in a Will is unable or unwilling to act;
- Acting as attorney for people requiring assistance to manage their financial affairs;
- Acting as trustee for various types of trusts, including accident compensation awards;
- Managing the financial affairs of represented persons when the PT has been appointed as a financial administrator by the Guardianship and Administration Board; and
- Managing funds under the control of the PT to provide a commercial rate of return to contributors

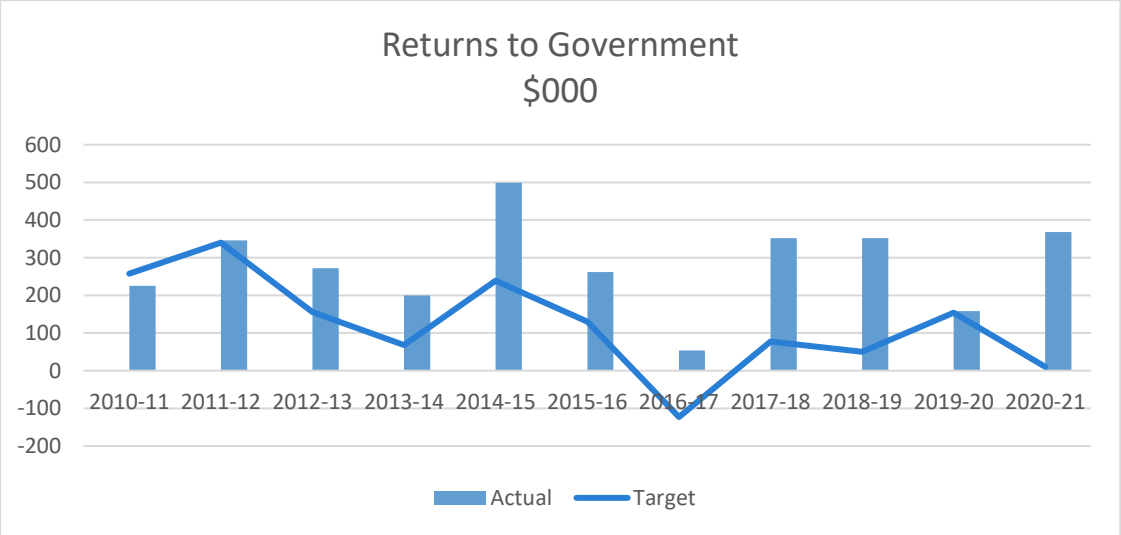
The PT is required under s41 of the GBE Act to prepare a Statement of Corporate Intent (SCI). This is a summary of its corporate plan required to be prepared under s39 of the GBE Act. The Statement of Corporate Intent contains financial and non-financial performance targets agreed between the Board of the PT, the Attorney General and the Treasurer. The Board is required to report on its performance against these targets in its annual report. This can be used as a measure of whether its performance is effective.

The following charts show how the PT performed against these agreed targets over the review period. The financial targets below are based on the Public Trustee's budgeted results for the forthcoming year. As such they measure its success at budget projections, rather than how it performed compared to an industry standard for its competitors. For example, the target return on assets should be reasonably stable from year to year and reflect the opportunity cost to Government of having funds invested in the PT business compared to elsewhere instead of the target fluctuating with its annual budget projections.

Financial Performance

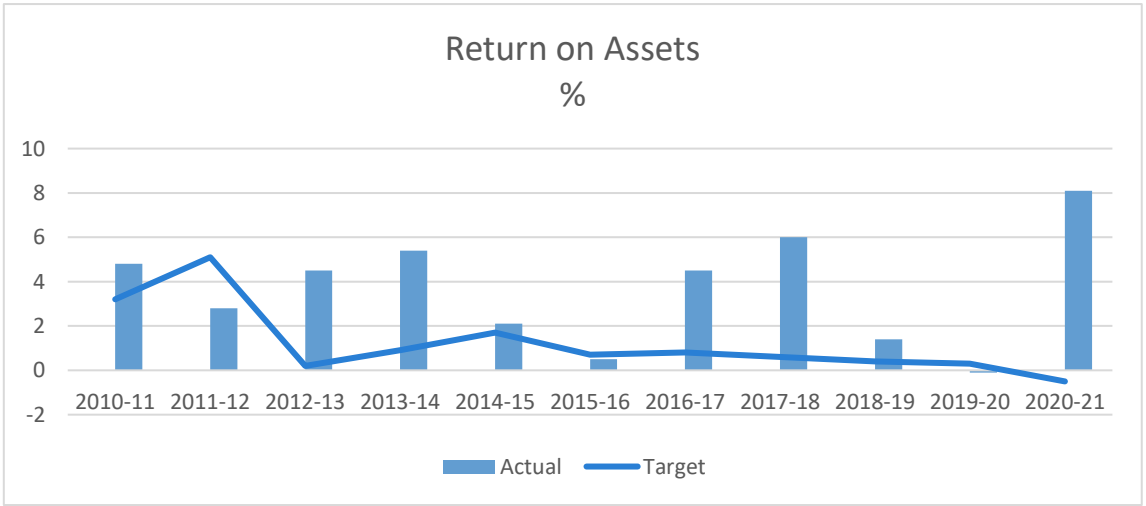
Returns to Government comprise dividends and tax equivalent payments to the State Government. Chart 1.1 below shows that the PT has met or exceeded its returns to Government target since 2011-12. The negative target for 2016-17 relates to a projected tax refund.

Chart 1.1



Return on assets, defined as operating profit before tax (operating revenue less operating expenditure) divided by average assets held over the year, is a measure of financial performance and shows how profitably the PT has utilised its assets. It can be used as a measure of the opportunity cost of the Government having scarce public funds invested in the PT compared to elsewhere. Chart 1.2 below shows that the PThas met its target return on assets for eight out of eleven years ending 30 June 2021.

Chart 1.2

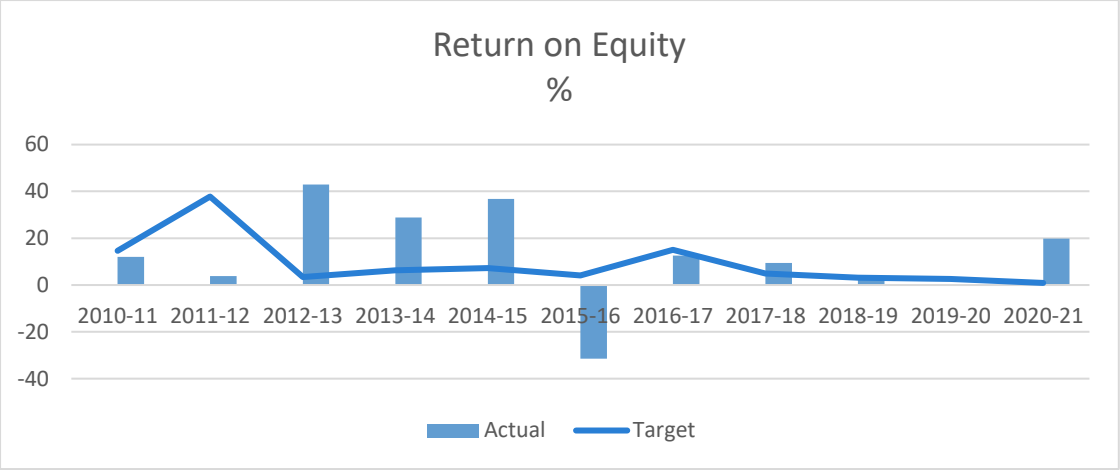


Return on equity means total comprehensive income divided by average equity held over the year:

- Comprehensive income includes re-measurement of its defined benefit superannuation obligation and fair value movements in investments in managed funds (net of related tax)
- Total comprehensive income means operating profit for the year after tax + comprehensive income.

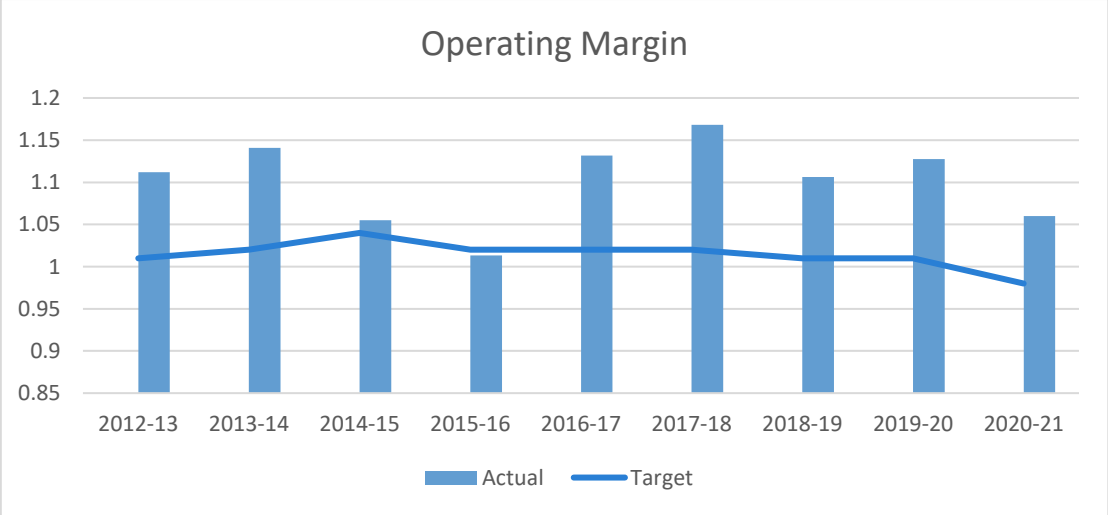
Return on equity is a measure of financial performance that shows how well the Government's equity in the PT has been deployed. Chart 1.3 below shows that the PT has exceeded its target return on equity in seven out of the eleven years of the review period.

Chart 1.3



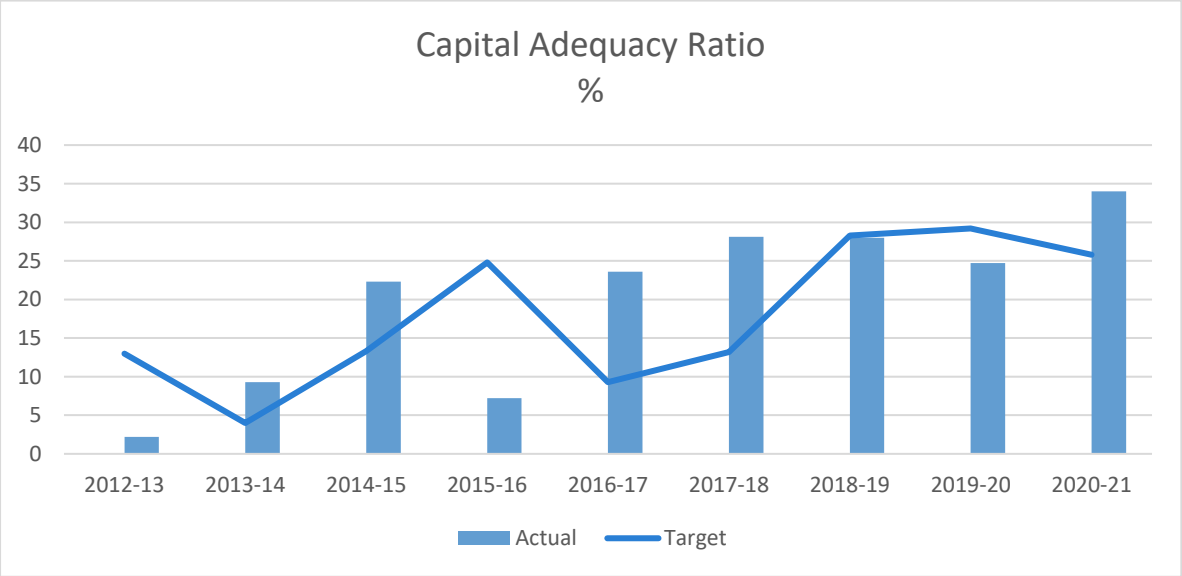
Operating margin means the ratio of operating revenue to operating expenses. It is a measure of financial solvency, a ratio greater than one shows that revenues from operations exceed outgoings. Chart 1.4 below shows that the PT has exceeded its target operating margin in all but one year since 2012-13.

Chart 1.4



Capital adequacy ratio means the ratio of tangible reserves (retained earnings) to tangible assets (such as cash, receivables, other financial assets, plant and equipment). It is another measure of financial solvency. Chart 1.5 below shows that the PT has met or exceeded its target capital adequacy ratio six times out of the nine years since 2012-13.

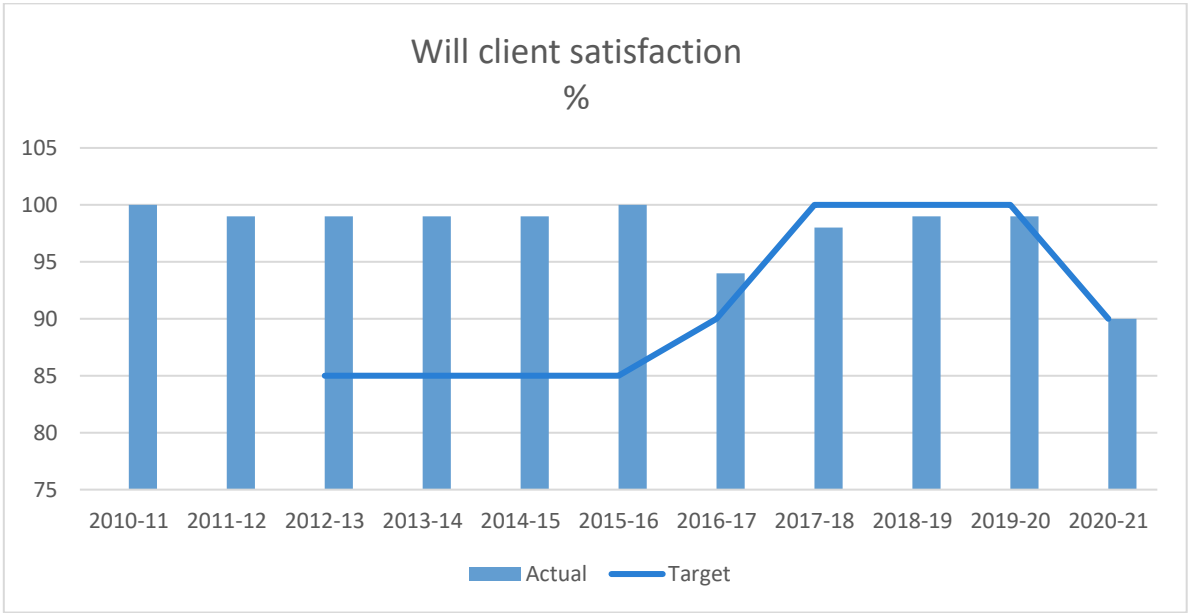
Chart 1.5



Non-Financial Performance

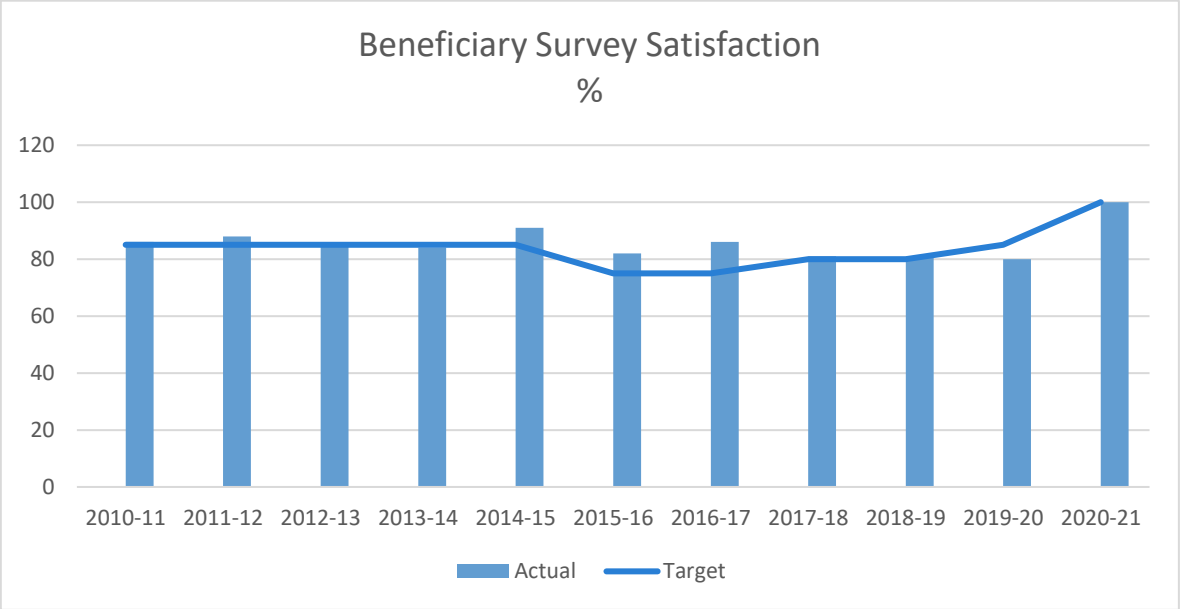
The will client satisfaction rating shows the percentage of will clients surveyed that were satisfied with the PT's drafting of their will. Chart 1.6 below shows that the PT has exceeded its target in five out of the eight years since 2012-13. In all these years bar two, its will client satisfaction ratio has been greater than 95 per cent.

Chart 1.6



The will beneficiary satisfaction rating in chart 1.7 below shows the percentage of beneficiaries surveyed who were satisfied with the PT's administration of the estate. It shows that at least eighty per cent of will beneficiaries have been satisfied with the PT's performance since 2010-11. The PT met or exceeded its target in nine out of the eleven years since then.

Chart 1.7



In summary, the PT has performed strongly against its target and in absolute terms in respect of returns to government, solvency and Will client's satisfaction. Its performance in respect of its profitability targets has been sound, while its absolute performance in respect of will client beneficiaries needs improvement.

Limitations of the Statement of Corporate Intent

There are several limitations with the targets measured in the SCI, as discussed below.

One limitation is that there are no performance standards in the SCI in respect of its obligations to represented persons under the GA Act 1995. For example s57 of this Act provides for:

Exercise of power by administrator

(1)An administrator must act at all times in the best interests of the represented person.

(2)Without limiting subsection (1), an administrator acts in the best interests of the represented person if the administrator acts as far as possible –
(a) in such a way as to encourage and assist the represented person to become capable of administering his or her estate; and

(b) in consultation with the represented person, taking into account as far as possible the wishes of the represented person.

There do not appear to be any performance standards set in respect of section 57(2)(a) or (b) above. Represented persons comprised 61 per cent of PT's clients in 2020-21.

I am aware that the GAB has recently raised concerns in respect of the PT's compliance with s57 as examined in part 1 of this report. These were reported in AUSTLII as TKH (Advice and Direction) [2021] TASGAB 50 (13 October 2021); and SBE (Review of Administration) [2021] TASGAB 29 (24 May 2021).

I received feedback from the Public Guardian (PG) advising that 81 per cent of active clients with the Public Guardian also have the PT appointed as administrator. The PG is responsible for health care and lifestyle decisions and the PT is responsible for financial decisions of the represented persons. The PG provided an example where a financial decision by the PT to cancel a health care policy diminished the health outcomes for the represented person which was not acting in their best interests as required under the GA Act. The PG notes that better communication by PT prior to such a decision would avoid this result.

In its submission to the review, Advocacy Tasmania provided several case studies to support its view that the PT does not meet the legislative requirements in section 57(2)(b) above.

Speak Out Advocacy in its submission to the review provided seven case studies from its clients. None of these clients reported receiving assistance from the PT in building capacity to administer their own financial affairs as required in section 57(2)(a) above.

A second limitation is that the SCI does not provide any guidance on whether the PT has performed its community service obligations (CSOs) in an efficient and effective manner as required under the GBE Act. These CSOs are specified in an agreement between the PT Board and the Treasurer, a copy of which can be found here Disclosure of non-procurement contracts over $2 million | Treasury and Finance Tasmania. They comprise the administration and management of:

- Estates with assets up to $60 000;
- Continuing trusts and life tenancies valued up to $100 000;
- Represented persons with assets up to $100 000; and
- Minor trusts with assets up to $20 000.

This Agreement (signed 28 June 2017) recognises that delivery of the above services may not be commercially viable without the Government making a funding contribution towards them. It requires the PT to provide the CSO to a high standard of proficiency, in accordance with the terms of this agreement and in accordance with all legislative requirements. The previous agreement in 2013 included more specific performance standards. The PT continues to report against these separately in its annual report. The indicators principally relate to measures of service delivery rather than service quality and do not provide information on client satisfaction with the services provided. Client's views on the services provided and the appropriateness of the current CSO agreement are examined in more detail later in this report. (Chapters 2 and 4).

A third limitation is that the above financial performance measures are not directly comparable to other providers of trustee services because to date the PT has not been fully funded for the provision of CSOs.

This means that its operating profit before tax and return on assets is lower than if it were fully funded. It is therefore not possible to determine if it is achieving a sustainable commercial rate of return as required under the GBE Act because its CSO funding from Government is not sufficient to meet its net avoidable CSO costs.

A fourth limitation is that the Statement of Corporate Intent (SCI) does not include any measures of the PT's performance against its obligations as a trustee in the Public Trustee Act 1930 and the *Trustee Act 1898*. For example, it managed as a trustee, client funds totalling $165 million as at 30 June 2021 in its Common Fund and Group Investment Fund No 2. These assets are excluded from the above performance measures as they are held in trust. PT provides performance information on the return on funds under trusteeship in its annual report, however there is no information in its SCI about the performance of these funds against target and fund management expenses. These are provided elsewhere in the finance sector such as in the superannuation industry.

A fifth limitation is that the SCI does not include PT performance measures in respect of its obligations in its Ministerial Charter so it is not possible to fully determine 'effective performance' in respect of customer service. It does have service standards on its website which comprise service delivery targets in respect of returning calls, correspondence and face to face meetings.

It does measure will client and will beneficiary satisfaction but not in respect of its services for other clients. It undertakes detailed client surveys which are discussed further in the next chapter.

Conclusion

Greater clarity is needed in respect of defining what is 'success' for the PT and ensuring that 'success' is achieved.

The PT is generally meeting the agreed targets in the SCI, although these are only a partial measure of its performance as they exclude its performance in respect of the CSO, its performance as a manager of funds held in trust and its performance of its obligations in respect of represented persons who comprised 61 per cent of its clients in 2020-21.

The targets used by the PT in its Statement of Corporate Intent need to be recast to reflect those appropriate for the trustee industry, rather than being based on its budget projections in each year.

This chapter examined whether the PT is performing effectively in the context of stakeholder feedback. The latter was assessed against client surveys measuring satisfaction in respect of will preparation and estate management. Client feedback is considered more extensively in the next chapter.

Chapter 1 Recommendations

C1.1 The Attorney General and Treasurer update the Public Trustee's Ministerial Charter to reflect their expectations in respect of CSO and represented person clients and the management of funds held in trust.

C.1.2 The Public Trustee include in its Statement of Corporate Intent performance measures relating to:

- trustee industry financial performance targets;
- its obligations under the Guardianship and Administration Act 1995 Act to represented persons in respect of promoting their independence and communication in respect of their wishes;
- client satisfaction with CSO delivery; and
- its obligations under the Public Trustee Act 1930 as a manager of trust funds.

Chapter 2

The extent to which the PT effectively meets its commitments under the *"Mission, Vision and Values"* statement, particularly in relation to a client service focus, with respect and integrity across all its functions;

The PT's mission, vision and values are defined in its 2020-21 annual report:

Throughout the PT, we seek to apply our mission, vision and values to decision making, programs and policies at every level, every day.

The Mission states the purpose of the PT– the reason for our existence. The Vision is the goal for the future; it states where the PT, as an organisation, is heading. The Values guide our behaviour and are based on the shared beliefs of the employees, management and Board of Directors of the PT.

Mission Statement

To offer specialist and independent trustee services to all Tasmanians.

Vision Statement

To be recognised for our professionalism, respected for our integrity and valued by our clients.

Values Statement

In seeking to achieve the mission and vision of the PT, the primary values of the staff, management and Board of Directors of the PT are:

• *Respect – personal and professional respect for each other and our clients.*

• *Service – a client service focus achieved by teamwork across* the whole organisation.

• *Integrity – open, honest and ethical service delivery.*

In assessing whether the PT has effectively met its commitments under the terms of reference I have considered this from the point of view of PT's staff and clients and stakeholders. The PT participated in the Tasmanian State Service staff surveys in 2018 and 2020. These surveys indicated that at a workgroup level those staff surveyed largely agreed that the above values were evident in their workplace. The PT rated slightly above the results for other agencies at a workgroup level in this regard. Staff surveyed also agreed that a high level of public trust was important in their work, this result was also above the average for other agencies.

At an agency level the staff survey results were generally weaker. In the 2020 survey PT staff rated satisfaction with their agency at 57% and job satisfaction at 54%. Staff engagement was around 50%. Although around 90% of staff thought they were treated fairly and with respect.

Measurement of client service focus

This was approached in the following ways:

- by reference to client service performance outcomes in the PT's annual report as outlined in Chapter 1 above;
- using the client survey results for the PT; and
- direct feedback from clients and stakeholder groups in respect of the terms of reference.

As noted in chapter 1 above there are limitations with the measurement of client service performance in its annual report including:

- the scope of these measures in the PT's Statement of Corporate Intent. It includes client survey results in respect of will preparation and will beneficiaries but excludes other major client groups such as represented persons, the largest client group; and
- its CSO performance measures are largely based on service delivery rather than service quality. The PT does publish complaints received in respect of its CSO activities. Its 2020-21 annual report showed that it received thirteen complaints during the year, one of which was substantiated.

Although complaints received are a measure of client service performance, they may not be comprehensive because other clients could be dissatisfied with the service received but for one reason or another do not lodge a complaint. Some of these limitations are overcome using client surveys discussed below.

The PT has undertook comprehensive annual client surveys in respect of estate beneficiaries and estate planning clients, and for represented persons in 2013, 2016 and 2019.

Table 2.1 below shows that since 2013-14 on average around 84 per cent of the PT's will beneficiary clients were satisfied with the service received. This exceeded the PT's average target over the period of 82 per cent. Survey questions included:

- were the services value for money. Clients were not asked directly about satisfaction with the level of fees; and
- would you recommend the PT's estate planning services to others?

This table also shows that 99 per cent of clients who had wills prepared by the PT were satisfied with the service. This exceeded the average target over the period of 93 per cent.

A standard will is prepared free for Seniors and Australian Government pensioner concession card holders when the PT is appointed as executor. It is unclear what percentage of estate planning clients met these criteria. If this is a significant percentage it is likely to underpin the high satisfaction rating for will preparation.

Table 2.1
Percentage of estate clients satisfied with PT services

Year ended 30 June	Will beneficiaries Target %	Will beneficiaries Actual %	Will clients Target %	Will clients Actual %
2021	90	90	100	100
2020	85	80	100	99
2019	80	81	100	99
2018	80	81	100	98
2017	75	86	90	94
2016	75	82	85	100
2015	85	91	85	99
2014	85	84	85	99
Average	82	84	93	99

Source: PT Statement of Corporate Intent (SCI)

Table 2.1 below shows the results of client surveys undertaken on behalf of the PT in 2019, 2016 and 2013. It shows the results for support network contacts for represented persons and independent represented persons. The table shows the percentage of respondents that agree or strongly agree with positive statements in respect of client experience with the PT and their relationship with the PT. Client experience questions included those relating to:

- communication,
- management of financial situation
- accessibility

Relationship with the PT questions included those relating to:

- overall satisfaction with the PT

- recommend PT to others

The results showed a decline over the three surveys in client satisfaction amongst support network contacts and the opposite for independent clients.

The table shows that of those surveyed approximately 80 per cent of support network contacts and 87 per cent of independent clients were satisfied with the service provided by the PT in 2019. Conversely this means that up to 20 per cent of those support network contacts surveyed in 2019 were dissatisfied with the PT services provided. ('up to' because a small percentage of responses were 'don't know')

Table 2.2 also shows that of those surveyed in 2019 up to 34 per cent of support network contacts and 21 per cent of independent clients were not satisfied with how the PT communicated with clients.

These results indicate a significant amount of dissatisfaction with the client service provided by the PT. Further details are provided below.

Table 2.2
Represented persons client satisfaction survey results

	Support network contacts	Support network contacts	Support network contacts	Independent Clients	Independent Clients	Independent Clients
	2019	2016	2013	2019	2016	2013
	% agree	% agree	% agree	% agree	% agree	% agree
Client experience	79	87	89	87	75	76
Relationship with PT	81	88	86	88	74	70
Total	80	87	88	87	80	78
Communication	66	73	77	79	75	79

Client and stakeholder submissions

A summary of feedback received from stakeholders and clients in respect of the PT's client service focus in several areas is summarised below.

Mission vision and values

I received several stakeholder submissions where this matter was considered from the point of view of the PT's clients. COTA in its submission to the Review observes that there is nothing in the PT's Mission Vision and Values about putting the interest of clients first. It notes that respect does not include respect for clients' will, preferences and rights.

It identifies that in the PT's 2019-20 annual report the PT focussed on growing the business, continuous improvement, innovation and being a sustainable business, with clients not mentioned.

In its submission to the Review, Advocacy Tasmania provided several client case studies to support its view that the PT does not meet its commitments under its mission, vision and values statement particularly in relation to client service focus, with respect and integrity across its functions.

Property

- COTA Tasmania identified the impact of PT decisions on spouses and family members as an area of significant concern, consideration should be given to the impact on family members so that they reflect the preferences of the person for whom they are acting.
- Advocacy Tasmania's primary concerns in this regard were the decisions by client account managers to sell assets belonging to represented persons without consultation, or sufficient justification.
- Individual submissions that were investigated showed instances that:
    - the PT's procedure " Furniture and Effects Management for represented persons and enduring power of attorney clients was not always followed;
    - the procedure could benefit from tighter controls around access to keys, inspection and photographs of property by PT prior to a provider being engaged to clear or clean a property to ascertain contents, secure valuables and to reduce risk;
    - property was cleared and sold when proper consultation had not occurred with the represented person;
    - neighbours had access to premises when the PT was appointed exposing assets to risk;
    - it was not always clear what items had been stored and where they were stored;

Financial issues

- Anglicare cited a poor level of communication and responsiveness from the PT regarding payment of invoices.
- Anglicare also noted a lack of information for PT clients about its management of their financial affairs and the need to set a limit on the percentage of client benefits able to be retained to build up reserves.
- Most of the clients cited by Speak Out Advocacy in its submission to the Review reported not receiving regular or frequent information from the PT on their financial affairs.
- Individual submissions investigated by the Review Team indicated some invoices were missed being paid and that in one matter a large overpayment had been made for legal services although this was subsequently refunded by the receiver of the duplicate payment.

- In addition, there was evidence that represented persons with savings could have been offered a better lifestyle or support in some circumstances where use of their savings had been retained.
- In one matter it was detected that a vulnerable person was given funds that were far greater than required and could have exposed that person to exploitation by others.

Communication

- The Public Guardian in its submission noted that a lack of face to face client contact by PT staff exacerbated by COVID and a lack of resources has meant that represented persons particularly in the north and North West of the State have never met their client account manager and do not know what is happening with their finances.
- COTA Tasmania in its submission noted that it hears from members of the public that the PT regularly fails to consult with them or clearly explain decisions that it believes are not in the client's best financial interests. Speak Out Advocacy clients reported similar concerns.
- Individual submissions that were investigated by the Review Team found that:
    - It was also found that the PT did not communicate or consult directly with represented persons in circumstances that the PT proceeded to clear property and sell possessions or to seek their wishes as per section 57(2)(b) of the Act.
    - Communication was a problem in administering some deceased estates with delays in keeping beneficiaries or their representatives up to date and not responding to correspondence from beneficiaries or their representatives in a timely fashion.

Training

The Tasmanian Aboriginal Legal Service in its submission to the review recommended that the PT develop guidelines and provide education sessions to support Aboriginal communities and people in succession law. It also recommended that PT staff receive cultural awareness training in respect of the kinship systems, burial processes and self-determination processes for the Aboriginal community. I understand that COTA provides training in this area.

What is the PT doing about this poor client feedback?

The PT advised me that it has focussed on upgrading its technology to better support its clients. An example is its client management system which has significantly improved its client records.

Other actions include:

- Worked with Treasury to reduce represented persons fees and charges to ensure those with low asset levels received significant concessions on fees;
- Office upgrades and relocations to improve conditions for clients and staff.

Current strategies in progress include:

- Improvements in its management of direct property owned by represented persons. This will involve the establishment of a team including specialists in the sale, purchase, rental and maintenance of direct property;
- Implementation of a digital mailroom to improve efficiency in the processing and payment of client invoices;
- The introduction of a cultural development program and client centric service delivery model to address some of the poor results apparent from the 2019 survey of represented persons.

The PT has introduced a trustee services trainer to improve training for its client account managers. I understand that external training for client account managers is no longer available through the University of Western Sydney.

I was unable to find:

- evidence that the PT undertakes customer service training; and
- that PT engages with key stakeholder groups on a regular and structured basis.

Conclusion

As noted in chapter 1, there are no client service performance outcomes for represented persons and CSO clients included in the PT's SCI.

The PT has undertaken a survey in 2013, 2016 and 2019 of its represented persons clients, will clients and will beneficiaries. These showed that there is significant dissatisfaction with PT's communication with represented persons with up to one third of represented persons' supporters of this view. These also showed that about 13-20 per cent of represented persons or their supporters have been dissatisfied with the PT's overall performance in respect of represented persons.

The PT has undertaken substantial investments in technology, reduced fees charged to represented persons and systems to improve service delivery for represented persons and train its client account managers.

Despite the poor survey results and investment in technology and training, the board does not provide customer service training to its staff.

Chapter 3

The appropriateness of current fees and charges applied by the PT for its services, given its costs and objectives;

The appropriateness of the current fees and charges from the perspective of the PT's objectives relating to its financial viability is considered in more detail in chapter 5 of this report and not examined further here.

The appropriateness of its fees and charges is examined from the perspective of its clients. One set of criteria in the Review of Fees of the NSW Trustee and Guardian Independent Pricing and Regulatory Tribunal NSW 2015 (IPART) for considering this question is:

- Efficiency - clients only pay efficient costs of provision eg those reflecting industry best practice for service delivery, and only pay for the services they use.
- Fairness – clients individual ability to pay should be considered in their contribution to the payment of efficient costs of service delivery
- Simplicity- fees should be straightforward and easily interpreted by clients
- Transparency – fees should be publicly available, no hidden fees or expenses

The appropriateness of the PT's fees and charges can also be assessed against those of its counterparts in other Australian jurisdictions, private trustee companies and solicitors. I have largely considered PT fees and charges from the view point of fairness to clients.

How does the PT set its fees and charges?

The legislative basis for its fees and charges is in Section 11 of the *PT Act 1930*. The PT's significant sources of revenue are prescribed in the *Public Trustee Regulations 2019* and include:

- Capital commission
- Income commission; and
- Management fees.

The PT advises that it sets fees, charges and commissions at or below the maximum prescribed in the regulations. Those maximums were the subject of review and amendment in 2019. At the time of review, the PT liaised with Government in setting its fees and charges and, in doing so, was mindful of fees and charges of competitors.

From time to time the PT will benchmark fees where relevant to a specific issue or project. Some examples of where benchmarking has been completed follows.

Capital commissions

In November 2019, the PT Board resolved to approve a new Capital Commission scale to be applied to Deceased Estates, RP clients and New Trustee Appointments. This decision was supported by a paper that included benchmarking of capital commissions which showed that the new fees remained competitive with trustees in other jurisdictions and TPT Wealth locally.

Estate planning

In 2019 the PT reviewed estate planning fees of other states and TPT Wealth. It showed that PT's estate planning and estate administration fees were very competitive with public trustees in other jurisdictions.

Commissions vs Hourly Rates

Several stakeholders observed that the Public Trustee's commission based fees were excessive when compared to the hourly rates charged by some of its competitors.

The Review Team examined the cases of two clients where there were up to four year delays in PT settling the matter. A commission based fee structure does not provide any incentive for the PT to settle matters promptly. In one/both instances there was a partial rebate of fees.

Another example of where commission based fees may be inappropriate is in the administration of low value estates by the PT, which is one of the services it provides under its CSO agreement with Government (discussed further in chapter 4). The PT is unable to deliver this service commercially because its commission based charges do not provide sufficient revenue on a low value estate, whereas I understand solicitors provide these services commercially, using hourly charging rates.

The PT advised that it intends to review its fee structure during 2022 to evaluate whether greater use of hourly rates charges is feasible. It also advised that most other trustees both public and private use commission based fees.

Are the PT's fees equitable?

Fees and charges should reflect an individual's capacity to pay. The PT receives CSO funding from Government to enable it to fund service provision to clients where it is unable to cover its costs. The appropriateness of this CSO is considered in the next chapter.

There are several issues in respect of the equity of fees and charges raised by stakeholders including:

- Does the PT have a conflict of interest in balancing its commercial objectives with the provision of the above CSO services;
- How do the PT's fees and charges for these CSO services compare to those in other jurisdictions;
- Should the PT's fees and charges be subject to price regulation for those clients who do not have a choice about whether to use its services, such as Represented Persons and Minor Trusts;
- PT charging fees on superannuation accounts; and
- Should PT fees be GST exempt.

Conflict of interest?

The Law Society in its submission queried the appropriateness of the GBE model given the potential conflict it creates between the PT's commercial imperative and its fiduciary obligations to its clients.

The latter require it to ensure that there is no conflict of interest with those of its clients and that it does not profit from this fiduciary obligation. I note that the PT's fees are subject to regulation and the associated parliamentary scrutiny provides some protection in this regard.

The PT does not consider that the GBE legislation introduces a conflict of interest in its aspirations contained in the Mission, Vision and Values Statement. Service delivery is not compromised by a commercial imperative, particularly when delivering services to those considered Community Service Obligation clients or in the case of Estate Planning clients, those in receipt of a government pension.

The PT revenue model is essentially a cross subsidisation model where services are delivered consistently across all client groups, however there is a system of fee concessions for those in a position to be more significantly affected by the standard fee structure.

Fees and charges for Represented Persons – A Comparison

From 1 January 2016 the PT reduced the fees for Represented Person (RP) clients with assets of less than $100,000. The reduction in fees followed a joint review by Treasury and the PT. The review identified an option to reduce costs for Community Service Obligation (CSO) RPs by eliminating capital commissions and monthly account fees and reducing income commissions.

As a result of the review, the following changes to the PT's fees for CSO represented persons:

with assets between $10,000 and $100,000:

- elimination of capital commissions
- elimination of monthly account fees; and
- the reduction of income commissions from 6.60 to 2.75 per cent.

with assets under $10,000:

- the above changes; and
- the elimination of income commissions.

The full cost of the fee reduction was approximately $440 000 per annum, which the Government partly met by increasing the CSO funding to the PT by $250 000 per annum from 2016-17. The balance was funded from the Public Trustee's operating budget. Commercial clients continued to be charged full and applicable fees and charges.

Community Legal Centres in its submission to this Review argued that the PT's fees for CSO represented persons should be amended to reflect those of the NSW Trustee and Guardian, now the lowest cost jurisdiction. This would mean that represented persons with a gross asset value less than $25k pay no commissions or fees, while those with assets above this level and less than $100k would pay an annual income commission of 2.75 percent.

At the review team's request the PT updated the table prepared in 2015 that supported the above fee reduction. This confirmed that NSW now has lower fees than Tasmania for represented persons with assets up to $25k. It also showed that the NT does not charge fees for its represented persons with assets up to $40k and charges a lower income commission than the PT for clients with assets between $40k and $100k.

If the PT were to match these lower income commissions for represented persons it would reduce its own source revenue from represented persons. This reduction in CSO client revenue would need to be funded and considered in the context of a new CSO agreement as discussed in chapter 4.

Price regulation

The Law Society views some of the PT's charges as excessive when compared to those of a family or solicitors, with commission based charges potentially having little correlation to the work undertaken. It is also concerned about the possible lack of transparent fee disclosure for commission based charges in respect of estate administration.

For those clients that have a choice about whether they use the PT or not, the Law Society's concerns probably just reflect how markets work. Clients decide whether the services and pricing offered by the PT are attractive or not. This is different where clients don't have a choice about whether to use its services and pay its fees, such as Represented Persons discussed in part 1 of this report and minor trusts.

The PT may also be appointed to manage minor trusts under the following Tasmanian legislation - *Motor Accidents (Liabilities and Compensation) Act 1973*, the *Workers Rehabilitation and Compensation Act 1988* and the *Victims of Crime Assistance Act 1976.* The client and the PT are again obliged to accept these appointments.

Should the Public Trustee's fees and charges be subject to price regulation for such clients? The binding nature of the above appointments is akin to the PT being a monopoly service provider for these clients. The prices of monopoly service providers elsewhere in the economy, such as in the electricity, water and public transport sectors are regulated because there is no market for these services to set efficient prices. It may be beneficial for the above clients for the Public Trustee's fees and charges to be reviewed by the Tasmanian Economic Regulator, if not regularly then on a one off basis such as occurred for the NSW Trustee and Guardian by IPART. The scope of such a review should include represented persons, Minor Trusts and other clients that do not have a choice about using the PT.

In January 2021 the Queensland Public Advocate released a very extensive report on a review of fees and charges by the Queensland PT. A review by the Tasmanian Economic Regulator would enable the PT's fees and charges for these clients to be considered the context of this report and in more detail than has been possible in this review.

Fees on Superannuation Accounts

Some stakeholders observed that the charging of management fees on superannuation accounts seems inequitable when these funds are already managed by superannuation trustees. It appears like a fee for no service.

The PT has advised that:

- it is authorised to charge management fees under the *PT Regulations 2019;*
- these represent an important source of revenue to fund client services;
- such fees are charged by other trustees;
-

- an investment management fee of 1.1% per annum is charged on the capital amount of investments outside the Common Fund and Group Investment Fund only where income commission is not able to be charged because there is no income stream; and
- at 30 June 2021 it had 12 clients who were charged an investment management fee on their superannuation investments.

This is an area that should be explored in the Public Trustee's review of commissions versus hourly rates, mentioned above.

Should PT fees be GST exempt?

The NSW Trustee and Guardian fees for represented persons are exempt from GST through a Private Ruling from the Australian Taxation Office in 2013. Provided this is passed on the GST exemption reduces the costs of fees charged to represented persons by ten per cent.

In response to a request from the review team the PT advised that it has not applied for a Private Ruling. It has requested its tax advisors to consider whether the PT is able to apply for a private ruling on this issue.

Legal Fees

The Public Guardian (PG) noted a discrepancy in the treatment of clients for whom an Enduring Power of Attorney (EPOA) is in place and those who are represented persons. The former are billed as commercial clients and as a result charged for the time spent responding to their queries, whereas represented persons are not. In response the PT advised that:

- It is the client's decision to appoint it as EPOA to retain control, with knowledge of its advertised fees and charges;
- TasCAT cannot revoke an EPOA in favour of administration order under s53(1) of the GA Act; and
- In some instances where the PT holds an unregistered EPOA the TasCAT may proceed to make an administration order.

The PG also raised concerns about the charging of legal fees by the PT in house legal team, provided examples where the PT seeks in house legal advice in respect of lease agreements for Housing Tasmania properties and for vetting Specialist Disability Accommodation agreements.

The PG highlighted a finding from the Queensland Public Advocate's 2021 review of the Queensland PT that the benefits and costs of legal action for clients such as represented persons need careful consideration given their low incomes and assets to fund such actions.

Further to a request from the review team the PT advised the following in respect of its policies regarding legal fees:

Billing for Public Trustee's Legal Services arises where there is the provision of:

- *Legal advice and/or representation; and*
- *The service provided was over and above that of an administrator.*

The PT manages conflicts of interest in respect of the provision of legal services for represented persons by declaring the conflict to the Guardianship and Administration Board and seeks to revoke or restructure the appointment.

For the Public Trustee to act in the client's best interests, legal services are procured in consultation and agreement with the Client Account Manager and Personal Services Manager.

The appropriateness of the appointment is determined on a case-by-case basis concerning the area of law, the degree of expertise required, the urgency of the requirement for the service, the likely cost-benefit outcome, and the represented person's capacity to meet anticipated costs.

Consideration is given to and services sought from Legal Aid. In circumstances where the service sought is provided by Legal Aid; we anticipate they have the requisite degree of legal expertise required, they can accommodate the level of urgency arising from the referral, the likely cost-benefit outcome and the capacity of the represented person to meet their anticipated costs. Moreover, there is a cost-benefit in doing so.

Conclusion

Over 60 per cent of the PT's clients do not have a choice about whether they use the Public Trustee's services and pay its fees. These are the priority group in my view as other clients can choose an alternative service provider.

There are elements of monopoly pricing by the PT for administration and management services that it is required by legislation to provide for Represented Persons and Minor Trusts.

Its fees and charges are generally lower than public trustees in other jurisdictions and TPT Wealth Ltd, in areas such as asset commissions and estate planning fees for pensioners and seniors. Its income commissions for represented persons with gross assets less than $100k are not as low as those in the NT and NSW. Matching these lower fees will require funding.

The PT's fees for represented persons are subject to GST unlike those in NSW, where fees are 10 per cent lower than they otherwise would have been.

Chapter 3 Recommendations

C3.1 The Treasurer request the Tasmanian Economic Regulator to undertake a review of the Public Trustee's fees and charges for those clients who are required by legislation to use its services.

C3.2 The Public Trustee match the fees charged to represented persons with those in the Northern Territory.

C3.3 The Public Trustee keep the Treasurer informed on the status of its request for a GST exemption for represented person fees.

Chapter 4

The appropriateness of the current Community Service Obligation Agreement (CSO) between the Crown and the Public Trustee;

A community service obligation arises when a government specifically requires a public enterprise to carry out activities relating to outputs or inputs 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. (Productivity Commission 2008)

What is the CSO Agreement?

The agreement requires the PT to provide the following:

- Administration of absolute estates with a gross asset value less than $60k
- Administration of continuing trusts and life tenancy estates with a gross asset value less than $100k;
- Management of assets for Represented Persons, as defined in the Guardianship and Administration Act 1995, with a gross asset value less than $100k; and
- Administration and management of minor trusts with a gross asset value less than $20k.

The PT has a legislative responsibility to perform non-commercial activities under s30(2) of the PT Act 1930 which prohibits the PT from declining to accept any appointment solely on the ground of the small value of the property concerned.

The PT is required to accept the above matters for administration which may not be commercially viable, to provide the general community with access to professional traditional trustee services and to protect the financial interests of individuals under a legal, physical or intellectual disability, irrespective of the value of the client's funds.

The PT and the Crown entered the current CSO agreement in June 2017 which requires the PT to deliver the CSO and the Crown to provide funding, $2.2 million in 2020-21. The funding helps to offset the cost of service provision for CSO clients that cannot be recovered through fees and charges. The current CSO agreement is in Appendix 1.2.

The following four factors have been used to assess whether the CSO is appropriate:

- Scope and methodology;
- Performance of the PT in CSO delivery;
- Level of funding and its escalation; and
- Counterparty

Scope and Methodology of the CSO

Why do the four services listed above comprise the current CSO? For example the PT does not charge pensioners and seniors for will preparation where it is also the executor, should this be a CSO? Presumably this pricing regime is undertaken for commercial reasons.

From discussion with the Law Society it appears that solicitors also administer absolute estates with a gross asset value less than $60k, but do not receive a CSO. This suggests that this particular service does not qualify as a CSO under the GBE Act.

The scope of the above four services has not varied since the PT's first CSO agreement in 1997 with no change to the dollar amounts. In discussions with PT executive it appears that the current categories are historical. A review by KPMG in 2000 found that they were based on 'industry knowledge and experience.'

Is the PT the appropriate entity to provide the CSO? Clearly there are some activities that rest with the PT because of a legislative requirement such as those relating to represented persons and minor trusts. In my view it would be preferable to acquire the additional skills it needs and remain the provider, rather than start again from first principles.

The PT does not have an activity based costing system, it derives the costs of CSO delivery in relation to all CSO matters dealt with compared to total matters dealt with and uses this and judgement to apportion costs. The revenue collected in respect of CSO provision is subtracted from these CSO costs to arrive at a net avoidable cost.

In the absence of an activity based costing system it is not possible to determine the extent to which the current four CSO services are individually non-commercial, and whether the scope of the CSO should be varied. As noted in chapter 3 would any of these be commercial if the PT charged hourly rates rather than commissions?

The net avoidable cost methodology is used in CSO agreements for other State Government CSOs within Tasmania and in other jurisdictions. The Productivity Commission also noted the frequent use of this methodology (PC Report on the Performance of Government Trading Enterprises 2008). Adoption of this methodology appears appropriate.

Performance of the PT in delivery of the CSO

The 2017 CSO Agreement requires the PT to 'provide the CSO to a high standard of proficiency and according to the terms of this Agreement and comply with all legislative requirements in carrying out the CSO.' No further details are provided in relation to performance indicators in respect of the delivery or quality of the services to be provided.

The 2013 CSO Agreement has the same performance standard but also includes detailed service specification and delivery standards for each of the four CSO services. These include time limits within which services must be performed such as initial client contact being made, income tax returns being prepared and lodged within ATO requirements.

Neither agreement provides service quality standards to address the issues identified in chapters 1 and 2 dealing with effective performance and client service focus respectively. For example, there are not any performance standards requiring the PT to:

- *encourage and assist the represented person to become capable of administering his or her estate; and*
- *consult with the represented person, considering as far as possible the wishes of the represented person.*

Other relevant service quality standards could be derived from the National Standards for Financial Managers produced by the Australian Guardianship and Administration Council (AGAC). Although these were developed for represented persons several of them would be applicable to other CSO clients. AGAC developed the standards in the context of the Australian Law Reform Commission's work to operationalise Australia's commitments under the United Nations Convention on the Rights of Persons with Disabilities (the Convention). AGAC makes the following comments about its standards:

The Standards set out the levels of service that financial managers should aspire to provide when managing all or part of a person's financial affairs.

The Standards provide a benchmark and framework for the development of similar and even higher standards of service by financial managers consistent with the relevant legislation in any particular jurisdiction in each State and Territory.

In this document, the term 'financial manager' includes a reference to 'administrator' under equivalent State/Territory legislation.

The PT advises that it aspires to meet these standards and provided me with examples of how it does so under each standard and associated staff training.

Full implementation of these standards by the PT would very likely require additional funding.

Advocacy Tasmania in its submission to the Review raised concerns about the absence of performance indicators in respect of service delivery to represented persons and the associated lack of external accountability of PT in respect of its performance in this regard.

COTA Tasmania in its submission noted that the Government should make a clear statement on the quality of service that Tasmanians should receive from the PT. It believes that a good first step would be to include customers in the co-design process in determining the characteristics of quality experience to be delivered by the PT.

If performance standards are specified in the next CSO Agreement it may be appropriate to consider whether these should be accompanied by the introduction of financial penalties for non-performance.

Funding during the agreement

Chart 4.1 below shows the decline in CSO revenue since 2016 resulting from the reduction in fees for represented persons. It also shows the increase in the avoidable costs of CSO service provision in recent years.

Chart 4.1

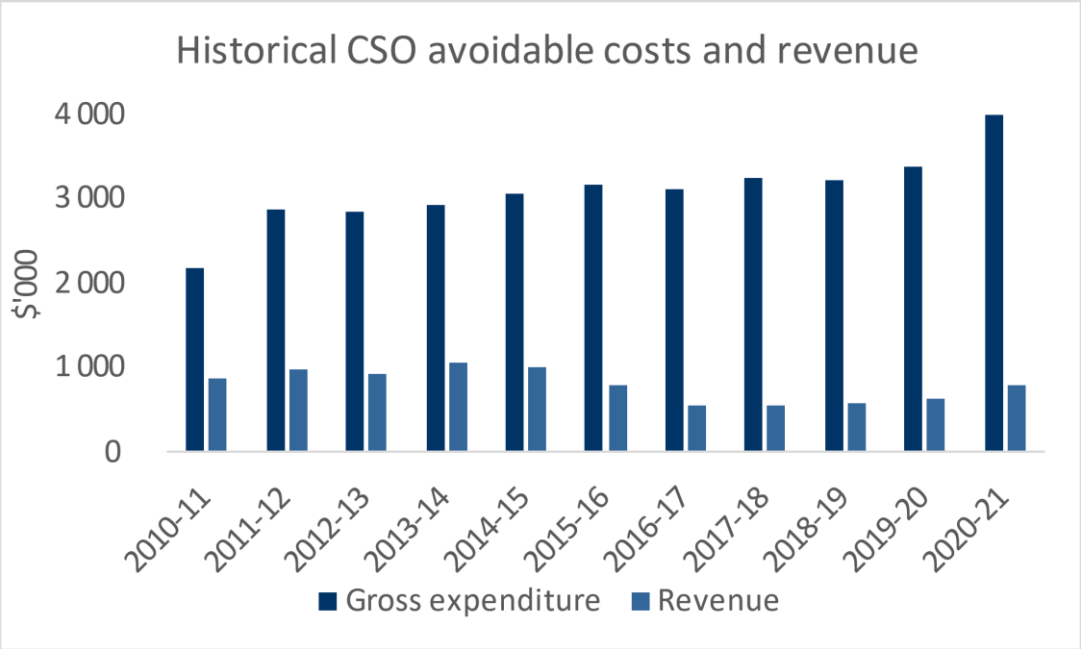
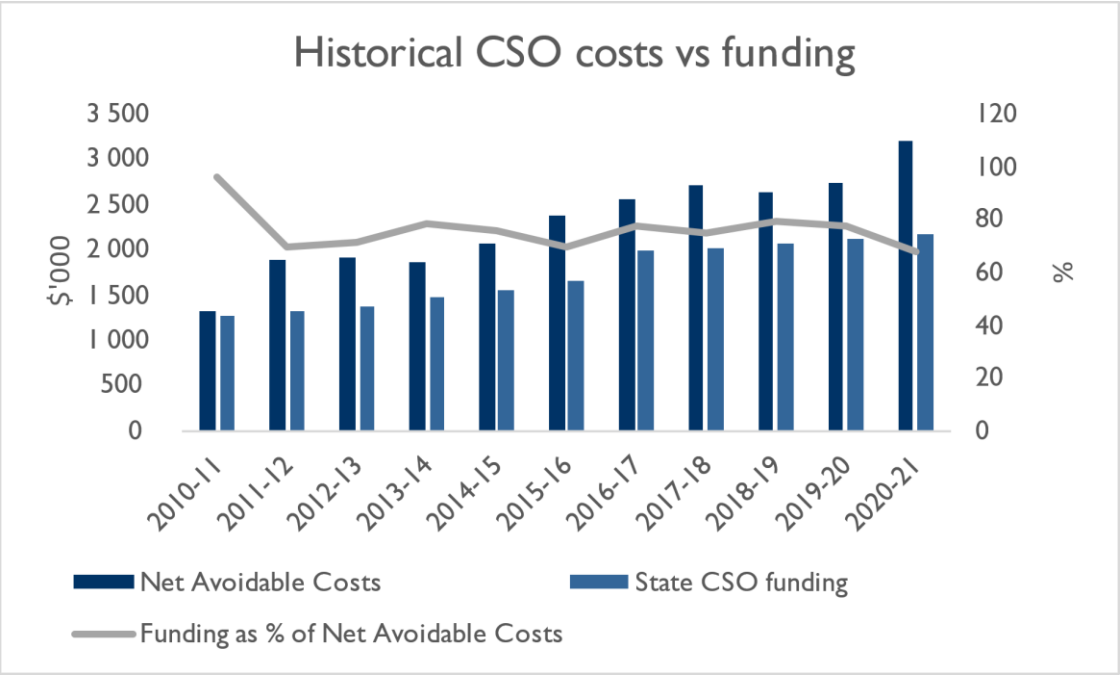


Chart 4.2 below shows that the funding PT receives under the 2017 CSO Agreement has been insufficient to meet its net avoidable costs, with a cumulative deficit of $7.2m to 30 June 2021. In recent years the PT has received CSO additional funding through the payment of a lower dividend than would have been required under the Government's dividend policy. It has only paid a dividend once the CSO has been fully funded. In 2021 the PT received $2.2 m in CSO funding with its net avoidable costs of service provision being $3.5m. Its funding was about 62 per cent of that required.

Chart 4.2



The Productivity Commission 2008 noted that despite requiring additional taxation, direct funding of CSOs from the budget has several advantages:

- Efficiency — prices for non-CSO functions can be set to reflect the cost of the commercial services supplied by the GTE;
- Transparency and accountability — the level of funding is publicly notified and subject to scrutiny in budgetary processes; and
- Equity — following a government decision to provide a CSO, funding is sourced from general tax revenue so the cost of social policy is shared by the whole community.

The budgetary impact of fully funding the CSO is likely to be minor given that it will increase PT's revenues and profitability and hence should be partly returned as higher tax equivalents and dividends. Dividends should also be higher than otherwise because they will no longer be 'topping up' the CSO funding. Given the above factors and the need to fully fund services for particularly vulnerable members of our community it would be appropriate to fully fund the CSO. This point was made well by the PG in its submission to the Review where it noted that a combination of a shortfall in funding from what is more than half the PT's business combined with an inability to recover costs given the low value of financial assets has meant higher caseloads for client account managers and their reduced availability and accessibility for vulnerable clients.

In its submission to the Review the PG provided several case studies where a lack of resourcing was contributing to a reluctance by the PT to take the necessary action where financial exploitation is suspected.

Advocacy Tasmania in its submission noted the significant discrepancy between the net avoidable costs of CSO provision and the funding received. It notes that given this discrepancy

it seems almost impossible for the PT to deliver satisfactory or even good customer service and remain financially sustainable in the delivery of its CSO.

As noted in chapter 2 there are client and stakeholder concerns about the quality of services provided by the PT over the review period with its current level of staffing. Community Legal Centres in its submission to the Review identified that PT's staffing had remained constant at around 53 FTEs since 2014-15 but its represented person clients had grown strongly as noted above. This trend plus reports CLC has received from clients dissatisfied with the service provided by the PT lead it to question whether the PT is adequately funded to provide services to represented persons.

Funding escalation

Schedule 1 of the 2017 CSO agreement specifies a funding escalation factor of 2.25 per cent to be applied annually. This presumably covers the PT for price inflation over the term of the agreement. Any increases in PT costs of service provision above 2.25 per cent or increases in numbers of CSO clients will be at PT's risk. It is likely to be more able to control its costs than its demand risk. There has been a significant increase in the number of PT represented persons over the life of the 2017 CSO Agreement, see Chart 5.4 below. Community Legal Centres observed in its submission to the Review that CSO funding should escalate having regard to growth in the number of represented persons.

It also noted that the reduction in represented person fees in 2016 had led to an increase in demand for represented person services from the PT as nursing homes moved out of this area.

Implementation of the TLRI reforms is expected to substantially increase the cost of supply of administration services. PT advises that similar reforms introduced in other jurisdictions resulted in an increase in CSO funding of up to 100 per cent, aside from the additional costs for their public guardian and TasCAT equivalents. In view of this risk a new CSO agreement should also provide for renegotiation once the TLRI reforms have been legislated.

Counterparty

Who is the appropriate counterparty to the CSO agreement with the Public Trustee? The current agreement between the Treasurer and the PT is basically a funding agreement that is administered by Treasury. Given the performance concerns identified in this report it would be preferable for the counterparty to have expertise in the delivery of services to CSO clients. The proposed Disability Commissioner may be the appropriate body to administer the CSO Agreement with the Minister for Disability Services as the counterparty. The Government proposed the creation of this position during the last election campaign.

I understand a discussion paper is currently in circulation in respect of this and other possible changes to the *Disability Services Act 2011*.

Conclusion

The scope of the CSO services provided has not changed since 1997. A review of the scope is needed in relation to administration of estates under $60k which appears to also be serviced by solicitors.

This report has highlighted that there are issues with the quality of services that the PT has provided to represented persons and other CSO clients. The current CSO agreement has no service quality performance standards. These could be derived from s57 of the Act, discussions with clients and AGAC best practice standards.

The counterparty to the CSO agreement with the PT should have skills and experience relevant to the provision of services to CSO clients.

Funding provided to the PT for the delivery of CSO services is equivalent to 62 per cent of its net avoidable costs of service provision.

The current funding escalation factor in the agreement does not recognise the significant increase in costs from the growth in represented persons of 8 per cent annually over the review period.

Chapter 4 Recommendations

4.1. The Attorney General and the Treasurer review the scope of the CSO services purchased from the PT where there appears to be private sector provision such as for the administration of estates under $60k.

4.1. The Public Trustee include performance indicators relating to the quality of client service provided in the next CSO agreement.

4.2. The Attorney General and the Treasurer fully fund the Public Trustee's net avoidable costs of service provision in the next CSO agreement, with funding escalation to reflect demand growth.

4.3. The counterparty to the next CSO agreement should be the Minister for Community Services supported by the proposed Tasmanian Disability Commissioner.

Chapter 5

The financial sustainability of the entity with reference to ongoing changes in the number and composition of clients and commercial activities.

The PT Board in its annual financial statements for 2020-21 has advised that:

there are reasonable grounds to believe that the entity (PT) will be able to pay its debts as and when they fall due.

The PT provided me with extensive supporting evidence for the Board's opinion that it is financially sustainable based on:

- projections of its financial performance, financial position and cash flows for the next four years in its corporate plan for 2020-21 to 2024-25;
- an analysis of factors that may affect whether it is a going concern. This analysis is based on the risk assessment procedures in the relevant auditing standard (ASA 570 Auditing Standard Going Concern) and does not raise any 'flags' that the PT may not be a going concern; and

- an examination of economic dependency of the PT arising from its receipt of CSO funding from the State Government that totalled $2.163m in 2020-21. Loss of this funding would make it financially unsustainable, however, the PT advises that if this were to occur an option for it would be to cease providing the CSO and avoid the cost of its provision.

Trustee Services Revenue

Chart 5.4 below shows that the proportion of TasCAT matters to total matters dealt with by the PT has increased from 32 per cent at 30 June 2011 to 61 per cent at 30 June 2021; and since 2010-11 there has been strong annual growth in commercial represented persons (assets >$100k) and CSO represented persons of about 7 per cent and 8 per cent respectively.

Chart 5.4

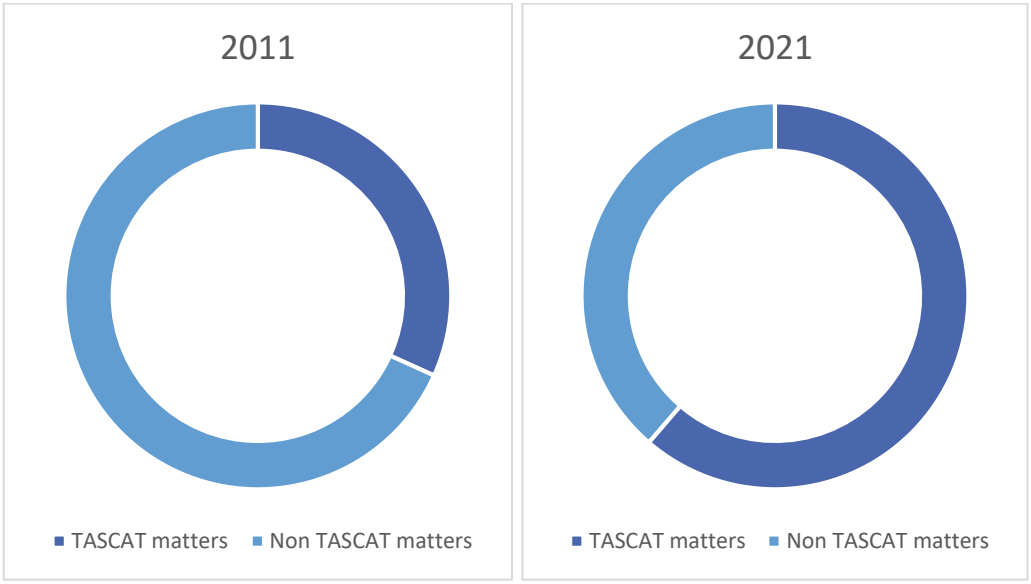
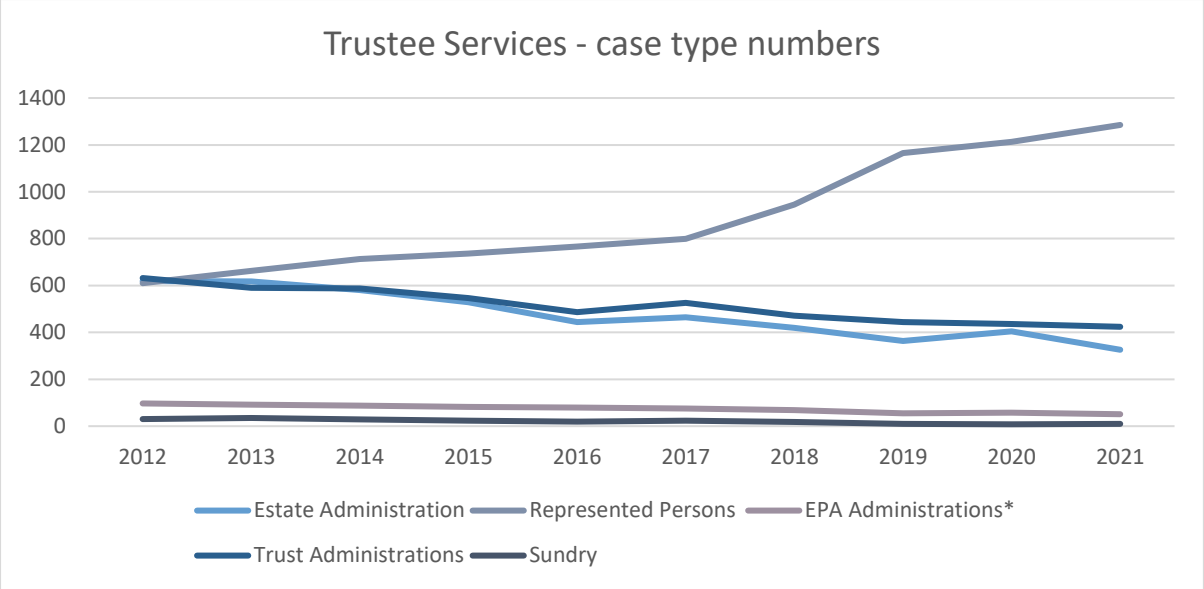


Chart 5.5 below shows the substantial growth in represented person numbers and the decline in the numbers of estate and trust administrations over the review period.

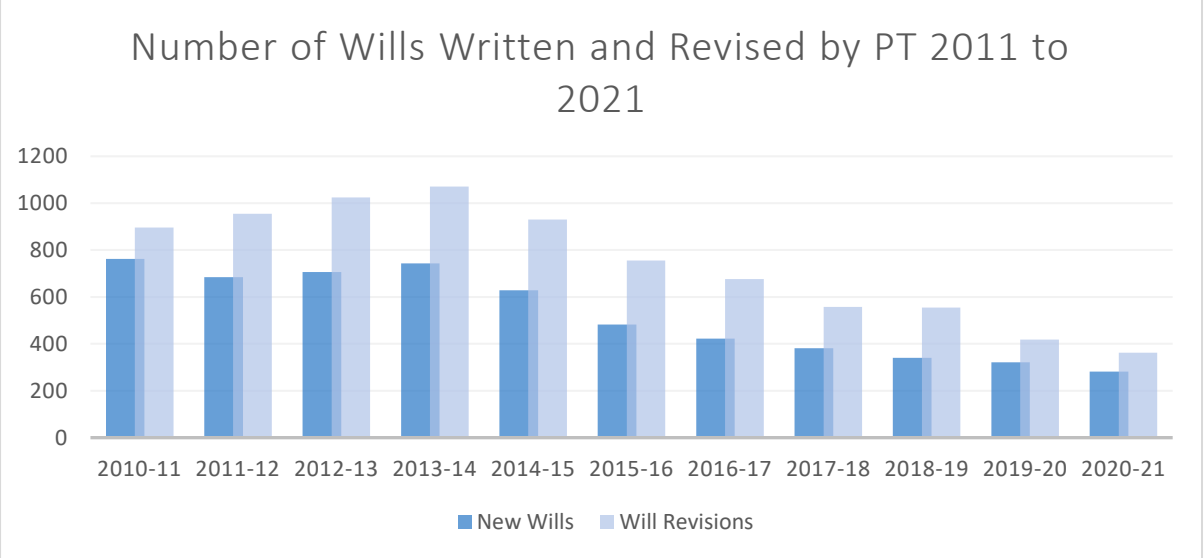
Chart 5.5



One of the major contributing areas to the profitability of the PT is the administration of a deceased estate. One of the pathways to the administration of a deceased estate is the PT's Will making services. There are, of course other ways that the PT becomes appointed to administer a deceased estate and the PT still fulfils the role as administrator of last resort for intestate estates.

Chart 5.5 below provides a graphic trend of the number of Wills written and revised by the PT

Chart 5.6



Data Source: PT Annual Reports.

The above chart demonstrates that the number of Wills written has been on a downwards trend since 2013/14. This in turn can affect the future profitability of the PT because it will not be administering the estate when the person passes away.

Between the financial years ended 2014 to 2021 there was a decrease in people going to the PT to have Wills written appointing the PT as executor of 62 per cent.

Conclusions

The PT is financially sustainable through to 2025 based on the information it has provided.

Implementation of the TLRI reforms could double the PT's costs of CSO provision and make it financially unsustainable in the absence of offsetting action.

Fully funding the CSO would significantly improve its financial sustainability.

Revenue growth has been lower than expenditure growth over the review period. A continuation of this trend in the longer term will weaken its financial sustainability in the absence of ameliorating action.

The PT has managed cost pressures through productivity gains from modernising its systems supported by information technology and expects to continue to do so. Based on client feedback discussed elsewhere in this report service quality is lower than required.

Trustee services revenue growth has been modest over the review period.

There has been strong growth in the number of TasCAT clients over the period.

There has been a downward trend in the number of estates administered by the PT over the review period. The decline in PT Wills over the review period suggests this downward trend will be an issue for its profitability in the longer term.

Chapter 6

Whether the current PT governance framework is appropriate in assisting the effective delivery of the entity's main undertakings and any appropriate changes to current governance arrangements that may be required;

The term governance means how the PT is controlled. This can be considered from the viewpoint of external governance and internal governance. The former relates to the control of the PT as a GBE and its responsibilities and accountabilities to Ministers and the Parliament under the *Government Business Enterprises Act 1995* which:

- Specifies the objectives, functions and powers of a GBE;
- Establishes the board, its role and powers, staffing arrangements;
- Defines powers duties and offences for directors and staff;
- Provides for a performance framework including the setting of objectives by Ministers, a ministerial charter that provides binding expectations for each GBE, corporate planning, reporting to Ministers and the power for Ministers to initiate an investigation into a GBE;

- Specifies its financial arrangements with Ministers in respect of taxation, dividends, guarantee fee payments and the application of the Treasurer's Instructions; and
- Defines its relations with Ministers in respect of the performance of non-commercial activities through community service obligations, including a Ministerial direction power.

Some parts of the above governance framework appear little used, with the PT's current Ministerial Charter having been signed in 2011.

Internal governance arrangements refer to how the PT is controlled by the Board and management. It includes defining the respective roles of the Board and management and how this is operationalised through its policies, procedures, guidelines, standards etc. I did not undertake an exhaustive review of all of its internal governance arrangements in the time available but have focused on some of those relating to the quality of services provided to clients in part 1.

Do the PT's current governance arrangements support effective performance? The effectiveness of its performance of its main undertakings was examined in chapter 1. The relationship between performance and governance is discussed below.

Another way of considering this question is what should be the purpose of the PT? Its purpose is currently principally defined in the GBE Act and the PT Act as delivering trustee services and operating as a commercial business. If its purpose were to be redefined as 'to deliver those services not provided by private trustee companies or solicitors' what would be the appropriate governance structure?

Would an alternative governance model better support the delivery of services to the PT's CSO and represented person clients? This question is considered below.

Do PT's external governance arrangements support effective performance given its current purpose?

COTA Tasmania in its submission to the Review noted that the operation of the PT as a GBE in a commercial environment while at the same time supporting people at the most difficult time of their lives can be challenging, but the two objectives are not mutually exclusive.

Questions raised by the Law Society in relation to governance were:

- whether PT lawyers who provide legal advice and legal services should be subject to regulation by the Legal Profession Board;
- the appropriateness of a government organisation earning revenue from clients funds and to profit from administration clients.

The effectiveness of PT's performance in the delivery of its main undertakings was considered in chapter 1 above where I concluded that it is generally meeting the agreed targets in the Statement of Corporate Intent, although these are only a partial measure of its performance as it excludes its performance in respect of the CSO, its

performance as a manager of funds held in trust and the performance of its obligations in respect of represented persons.

The question of whether these can be improved given its current purpose is considered below.

Two Governance Frameworks for the PT?

The PT is a GBE and an agency under the *State Service Act 2000*. In the PT's view this constrains its ability to act commercially as required under the GBE Act. This is because the salaries and employment conditions of its employees are determined under the State Service Act and the State Service Wages Agreement, rather than a workplace agreement that may better match the needs of the PT and its employees. It also means that the Head of the State Service is the employer, not the PT.

I note that TasTAFE is also an agency under the State Service Act with legislation currently before Parliament to amend this classification. Although there may be good reasons to amend the PT's industrial relations framework there would also be a high dead weight cost for a small entity to run its own industrial relations framework. In the absence of a business case from the PT supporting such a change, I have not further pursued this proposition.

This dual structure lacks clarity in that it makes the chairperson of the PT the Head of Agency and as such is responsible for determining the duties of PT employees, their classifications etc. Under standard governance arrangements for businesses this is always the role of the CEO, not the chair.

It also implies that there is an appointment and removal process for the chair under both the GBE Act and the State Service Act. I understand that this anomaly is close to being rectified with the appropriate changes to be gazetted once the Public Trustee's new CEO is appointed.

Experience in other jurisdictions

The delivery of public trustee services in other jurisdictions is considered in more detail in chapter 7 below. Similar functions are performed by the public trustee in each jurisdiction but different governance models are used. These range from commercial models such as State Trustees in Victoria which is a State Owned Company and the Tasmanian PT as a GBE, through statutory authorities in most other jurisdictions and delivery from within a Department in WA, where its public trustee is a division within the Department of Justice.

There have been reviews of public trustee equivalents in most other jurisdictions within the last five years, several of which have arisen from performance concerns about the administration of the financial affairs of represented persons such as the recent Victorian and Queensland reviews.

It would be fair to say that although a range of governance models exist in other jurisdictions there is no 'stand out' model supporting successful service delivery to represented persons. Governance may be part of the answer to improving performance, but it is not 'the answer'.

PT and Public Guardian

NSW and the ACT have each combined their respective PT and Public Guardian into one organisation. NT is soon to do so. My discussion with the ACT PT and Guardian indicated that this arrangement is performing well in the ACT, with the two arms operating independently within the organisation. Interstate experiences in this regard is considered in chapter 8

The Tasmanian Law Reform Institute (TLRI) considered this issue in its report (*Review of the Guardianship and Administration Act* TLRI 2018). It noted the following:

> *Tasmania has separate appointments of decision-makers for financial matters and personal matters. The GA Act includes provisions dealing with the appointment and powers of administrators and guardians. An 'administrator' is a person appointed by the Board to make financial decisions. A 'guardian' is a person appointed by the Board to make personal decisions.*
>
> *If the Board is satisfied that it needs to appoint a representative, then it must make separate orders appointing an administrator and guardian. There is no overlap between the roles and each serves a separate and distinct function to the other.*
>
> *After public consultation on the matter the TLRI concluded that given the differing functions and desirable skill-sets and the potential for conflicts of interest, the legislative framework retain separate roles of administrators for financial matters and guardians for personal matters. For these reasons and noting the lack of public support for this model, the Institute has not made recommendations to merge the roles of the PT and Public Guardian.*
>
> *The Institute does, however, endorse further consideration being given to the development of strategies which may have the potential to create efficiencies within the jurisdiction. Consideration should also be given to options to respond to feedback (cited in its report) indicating community perception that the existing framework is confusing and expressing a desire for the system to be more user-friendly and consumer driven.*

In view of the above conclusion I have not further investigated amalgamation. The TLRI reforms and respective roles of the PT and PG are considered in more detail in chapter 7 below.

Does the PT need a board?

Victoria and very recently Queensland, have boards providing strategic oversight of their respective public trustees. The inquiry by the Queensland Public Advocate recommended the introduction of a board for the Queensland PT.

As noted above the current governance framework that includes a board is not broken and has largely achieved its agreed performance targets over the last ten years. Would the PT's performance improve without a board?

Arguments in support of a board (OECD The Governance of Regulators 2014) include situations where:

- there is risk and complexity, such as significant and likely commercial, safety and social consequences;
- a degree of independence is required from government;
- a wide set of outputs is delivered;
- a high degree of judgement is required that requires a diversity of wisdom, experience and perceptions; and
- a significant degree of strategic guidance and oversight is required.

Arguably the delivery of the PT's main undertakings contains most of the above characteristics to varying degrees.

Arguments against having a board include:

- the PT is a small organisation, regular board meetings and the extensive reporting required for them create a significant resourcing requirement and opportunity cost for management;
- the client focus of successive boards has been mixed. It has invested in improved IT systems for client management which has improved productivity. On the other hand, concerns were raised by represented persons about service delivery in client surveys undertaken in 2013, 2016 and 2019. Action to address these concerns appears to have been slow, with the roll out of the cultural program and client centric delivery model still in progress in 2021.

Advocacy Tasmania in its submission noted that only one board member has noted experience with the disability sector and that future appointments would benefit from having much greater experience in this area, as would PT employees. It was not arguing against having a board but having a more appropriate skills mix on it.

Would another model be better? Given the above I do not think there is clear evidence to change the board model, given the PT's current purpose.

What should be the purpose of the PT?

Should the PT only provide services that the private sector does not? The PT currently has commercial and non-commercial clients. The former can also access services from the private sector such as private trustee companies, solicitors and will kits. In many cases there is an active market for trustee services such as estate planning and administration by solicitors.

There are fewer commercial participants in the provision of trustee services to (commercial) represented persons, with TPT Wealth a minor participant. The PT's non-commercial clients essentially comprise those identified in its CSO agreement discussed in chapter 4 above.

The Queensland Public Advocate in its review of fees and charges observed that *people under administration are not a 'market' whose business the PT is, or should be, competing for with other private trustee companies. They are vulnerable members of our community whose circumstances have resulted in them requiring support to manage their financial affairs.*

The Public Guardian in its submission to the review noted the tension between community service and commercial reality and believes consideration should be given to a model that recognises the needs of people for whom an administrator is appointed as being distinct from those who are a commercial client of the PT. The model must also support improved collaboration between the PT and the PG.

The South Australian PT has moved in recent years to a model where it largely provides services to non-commercial clients. This further explored in chapter 8 below.

If it is accepted that Governments should only be involved in service provision where there is market failure, what are the appropriate governance arrangements for the PT to provide those services? Governance options could include a:

- commercial business such as the PT current GBE governance model;
- statutory authority without a board; and
- division within a Tasmanian Government department.

If the PT only provided services to clients where there is market failure it would no longer be a commercial business, nor would it be competing with the private sector and need to operate on a competitively neutral basis. For these reasons a continuation of the GBE model would be inappropriate.

It could be constituted as a statutory authority such as South Australian PT, although it would be considerably smaller with much less own source revenue. Given its much smaller size, non-commercial status and its focus on service delivery it may be better sited within a Department such as is the case in WA.

If Government wished to redefine the purpose of the PT and appropriate governance arrangements it would require a more detailed examination of the merits or otherwise of such a proposal. In the time available for this review I have been unable to fully explore this question.

Conclusion

Good governance is widely seen as a necessary condition for effective performance by an organisation but it is not a sufficient condition. There are many other factors involved, several of which are addressed in this report.

The existing GBE model has generally resulted in effective performance as measured by the agreed, albeit limited SCI targets.

Although a range of governance models exist for PTs in other jurisdictions there is no 'stand out' model. Governance may be part of the answer to improving performance, but it is not 'the answer'.

The existing GBE model provides a transparent means for Government to set and monitor performance expectations for the PT given its current purpose. Instruments such as the Ministerial Charter and Statement of Corporate Intent should be more actively used to improve client outcomes.

If Government wanted to change the purpose of the PT such that it only provided services where the private sector cannot, this may require a different governance structure than the present GBE model. The preparation of a supporting business case should precede a decision to change the PT's purpose and governance arrangements.

Chapter 6 Recommendations

6.1. The Attorney General and the Treasurer retain the existing GBE model for the Public Trustee and use the performance framework in the Government Business Enterprises Act 1995 to improve service delivery to its CSO clients and represented persons.

Chapter 7

The impact that the implementation of the recommendations arising from the Tasmanian Law Reform Institute's review of the Guardianship and Administration Act 1995 would have on the administrative and operational practices of the Public Trustee

To report on this aspect of the scope of the review the TLRI report and recommendations were considered and the likely impact of the recommendations discussed with the Public Trustee, a number of key stakeholders including the GAB, PG, Ms Kate Hanslow, who prepared the final report and Issues Paper for the TLRI, and some stakeholders who made submissions to the Law Reform Institute.

The Act has remained largely unamended since it was passed and, understandably, does not therefore reflect the principles of the United Nations Convention on the Rights of Persons with Disabilities, 2006 ("the Convention"), which entered in to force on 3 May 2008.

The Convention involved a large body of work by the UN which reflected changing attitudes and approaches to persons with disabilities, moving from a position where persons with disabilities are viewed as dependents and protected socially to one where they are viewed as citizens with rights who are capable of exercising those rights and making decisions for their lives based on their free and informed consent, encouraged and supported to become active and participating members of society.

The opening statement of the Executive Summary of the TLRI Report that:-

> *"This Report evaluates the Guardianship and Administration Act 1995(Tas) ("the Act") against the human rights articulated in the United Nations Convention on the Rights of Persons with Disabilities. The Convention enshrines the rights of people with disability, including the equal right to make one's own decisions and for decisions about a person's life to reflect their will,*

preferences and rights" illustrates the significant shift any implementation of the Report's recommendations will bring to the commendable but now overtaken approach the Act brought to decision-making. That approach, one of substituted decision- making for represented persons by representatives will, when the recommendations are implemented become a supported decision-making model."

The structure and intent of the TLRI Report are then outlined. I will repeat that portion of the Executive Summary because it illustrates the breadth of the recommendations and the changes which the implementation of those recommendations will bring to the work of the Guardianship and Administration Board/TasCAT and all practitioners and service providers, including the Public Trustee, working in this important sector. That important section of the TLRI Report is as follows:

"Part 3 of this Report recommends revision to the guiding principles of the Act to instil the principles and obligations of the Convention. Whilst the Act currently requires a person's wishes to be carried into effect where possible, and for a least restrictive alternative to be adopted, it has been concluded that the present formulation does not give sufficient emphasis to the need for decisions to be based upon a person's will, preferences and rights, as the Convention requires. This reflects a shift from a paternalistic 'best interests' approach to representative decision-making. To simplify language, and to enhance community understanding of what this means in practice, the Institute proposes that the Act incorporate a practical, step-by-step Decision-Making Process to achieve decisions based upon a person's 'views, wishes, and preferences.' The Decision-Making Process, which is outlined in Part 11, permits only limited circumstances where a person's views, wishes and preferences may not be adopted. Where this is done, however, the Decision-Making Process continues to require a person's views, wishes and preferences to be advanced to the greatest extent possible.

Secondly, it is proposed that the scope of the Act's jurisdiction be revised. The Act presently enables decisions to be made for individuals with disability who, because of disability, are unable to make a reasonable judgment about their personal or financial matters. This Report recommends that the Act no longer require it to be established that a person has a disability. Instead, it is proposed that the Act apply to people who are unable to understand, retain, use or weigh information relevant to a decision, or communicate a decision.

Removal of the precondition for a disability promotes the equal rights of people with disability and removes the unequal treatment that people with disability are currently subject to under the Act. These reforms are discussed in Part 6.

Thirdly, the report makes a range of recommendations about how the Act can better promote access to quality, effective support with decision-making, consistent with obligations under the Convention. Whilst implicitly the Act already acknowledges the role that support can play with decision-making, including via the principle of adopting the least restrictive alternative, it has been concluded that more needs to be done. Reforms proposed aim to better acknowledge, foster and promote the use of support to make decisions to maximise a person's autonomy and promote a will, preferences and rights approach to decision-making for people requiring support. This Report recommends that a person not be deemed unable to make their own decisions if they could make a decision with support and that a demonstrated effort to offer individuals decision-making support be required before consideration of the need for a representative decision.

As part of strengthening and advancing the use of decision-making support, Part 7 of this Report recommends that Tasmania adopt a legislative framework of supported decision-making. This approach acknowledges the reality that people often make decisions with some level of support and validates decision-making processes that utilise support. It provides another alternative before the making of a representative decision, with the aim that representatives are utilised only as a last resort. These reforms will authorise and enable the provision of support where requested, without removing the decision-making rights of the individual to make their own decision. It will require quality, accessible decision-making supports to be made available for Tasmanians on an equitable basis. This is likely to particularly benefit members of the community who do not have individuals within existing social networks from which to draw decision-making support.

One of the ways that individuals can be supported to make their own decisions is to record those decisions in advance in a form that they can have confidence will be respected. Parts 4 and 5 consider the legislative framework surrounding how individuals can record their decisions in advance, including exercising choice by deciding who they wish to act as their representative if required and any terms of those appointments. These provisions are considered fundamental to ensuring that people retain maximum control of decisions affecting their lives. As part of supporting people to make their own decisions, Part 5 recommends that Tasmania adopt a legislative framework for the creation and use of advance care directives (ACDs) to record in advance their directions about future health care and treatment. Although the role and use of ACDs is already recognised in Tasmania at common law, the Institute has concluded that codification of the common law is both necessary and desirable to better promote the preparation and use of ACDs, and to reduce or eliminate the need for a representative decision.

Where it is determined that individuals require a greater level of support via the appointment of a representative, this Report proposes a raft of reforms to provide a rights-based approach to representative decision-making so that representatives only act where needed, and only for as long as needed.

This includes better articulating the duties of representatives. These reforms are discussed in Part 8 (Representative Decision-Making), Part 9 (Powers and Functions of Guardians), and Part 10 (Powers and Functions of Administrators).

This Report makes several recommendations that reflect obligations under the Convention to ensure that any interventions for people requiring decision-making support are subject to appropriate safeguards. Many of these safeguards are preventive as they aim to promote the rights and interests of people subject to the Act and prevent abuse or misuse of powers. These include recommendations to strengthen the role and functioning of the Guardianship and Administration Board (the Board) (discussed in Part 15) and Public Guardian (Part 16).

One reform proposed includes an increasing role and use of alternative dispute resolution as a means of resolving issues collaboratively, efficiently and without the need for a representative decision. Part 14 also makes recommendations to enhance the Board's accountability by ensuring that avenues to appeal Board decisions are appropriate and accessible. Other safeguarding strategies put forward include ensuring that the law is accessible and that processes are adequately responsive, as discussed in Part 18.

Safeguards for representative decision-making are explored in Part 12, with safeguards relating to consent to health care and treatment dealt with in Part 14. Whilst at first glance some of these proposals may appear insignificant, they are individually and collectively expected to provide substantial improvements to the Act's existing safeguards. In particular, it is proposed that the Public Guardian and the Board have strengthened powers to investigate and respond to circumstances where representatives act contrary to the Act."

Under the Act the Public Trustee is a service provider when appointed administrator for a represented person by order of the GAB.

Administration Orders are made by the Board (now TasCAT) after an application is made to it either under section 50 of the Act, or, where an Emergency Order is made under section 65. When the Board receives or entertains an urgent application for an Administration Order and determines that an Emergency Administration Order should be made, section 65(2) of the Act requires the Board to appoint the Public Trustee as Administrator. This report has considered the outcomes of some emergency order applications in and it is clear that the number of emergency orders has grown, and with it the work of the Public Trustee, as the only administrator appointed in emergency situations.

Non urgent applications are made under section 50, and under section 54 of the Act the persons eligible to be appointed as administrators in this way are the Public Trustee, the Public Guardian, a Trustee Company or any person, including the guardian of the represented person, who consents to act as administrator.

One of the reasons the work of the Public Trustee as an administrator under the Act has grown is Section 54(1)(d), which requires the Board to be satisfied of a number of matters before it may appoint an individual to be administrator. One such matter is that the "person is not in a position where his or her interests conflict or may conflict with the interests of the proposed represented person." The TLRI noted that the Board has "leaned" towards interpreting 'conflict of interest' in a practical way given it is almost inevitable that certain representatives, for example spouses or parents, will have personal interests in an issue". (para 12.8.11 of the TLRI Report)

Because of this 'practical' interpretation of conflict of interest the Public Trustee is often preferred to family members of the proposed represented person in non-urgent matters. This fact, coupled with the increasing number of emergency order applications, has resulted in the Public Trustee being more likely to be appointed Administrator in a majority of cases. Will this change under the proposed reforms?

The TLRI report recognizes that most people in the decision-making process are supported in some way and that informal support exists, for example, within families and friendships. Not all people will have equal access to such informal support and the TLRI recommends (see preamble) that ' a person not be deemed unable to make their own decisions if they could make a decision with support and that a demonstrated effort to offer individuals decision making support be required before consideration of the need for a representative decision.'

The TLRI considers Informal and Formal Supported Decision-Making Frameworks in Part 7 of its report and recommends the interposition of a legislated regime of supported decision making, thereby providing another strategy 'to ensure that a representative decision is only required as a last resort.'

See recommendation 7.5

(1) That a legislated supported decision- making scheme be introduced in Tasmania.
(2) That, as part of introducing legislative reforms to establish a supported decision-making scheme, the Act be renamed to reflect the new framework.
(3) That legislative reform to establish a formal supported decision-making scheme be supported by an appropriate lead-time incorporating a comprehensive public education campaign explaining the reforms, emphasizing that the scheme is intended to complement not replace existing informal support arrangements."

The question of which classes of individuals ought to be ineligible to act as supporter is left by the TLRI to be further evaluated, however the detailed recommendations for safeguarding provisions in relation to supporters (recommendation 7.9) are such that a reasonable degree of experience and familiarity with such a role will be called for.

I suspect that the Public Trustee, especially with its Community Service Obligations, will be likely to be called on to undertake the role of supporter where a person lacks the usual informal support resources identified by the TLRI.

If I am right about this then the resource implications for the Public Trustee may be significant both in upskilling and work-type diversity, but the extent of any change will be affected by any preference the Board may develop for resources and specialization within the office of the Public Trustee for such supported decision-making assistance.

Will a legislated regime of supported decision-making reduce the workload which the Public Trustee currently carries as an administrator, or represented decision-maker, appointed by the Board?

In the last 5 years the caseload of represented persons for the Public Trustee has increased see charts 5.4 and 5.5 and our ageing population is likely to see that workload increase further even when the supported decision-making reforms are introduced.

Therefore it is more than likely that if the Public Trustee should experience any decrease in numbers of matters where it is appointed administrator the increased level of engagement and complexity which the other reform recommendations will impose on administrators will still have resource implications.

The current practice of the Public Trustee as administrator, in many cases, involves primarily account and asset management for represented persons with little contact with the “client” or their support network. The ‘people component’ of the proposed reforms will require more staff input, upskilling and one on one interaction than the current model.

Represented person surveys conducted for the Public Trustee, the most recent in 2019, were generally positive but the areas of criticism, that were accepted by senior Public Trustee staff and the Board, concerned poor communication and, in turn, responses to calls. Even without the additional resources my recommendations for improved performance in these areas will entail, the reform recommendations by the TLRI will require greater levels of communication and responses for all clients for whom the Public Trustee is administrator. The comments made when reporting on the CSO Agreement are pertinent to this concern as well.

Reform recommendations which will have resource implications are:-

1. The TLRI recommends the removal of “disability” from the test to assess a person’s ability to make decisions for the purposes of the Act. Instead the TLRI recommends that the Act adopts ‘decision-making ability’, not capacity,

to assess the level of independence a person has or the level of support needed. See Recommendation 6.4.." That the definition of decision-making ability provide that the person has decision-making ability if they are able to make a decision with practicable and appropriate support" and "That the Act provide that it may not be determined that a person does not have decision-making ability unless all practicable steps have been taken to provide the person with appropriate support to make and communicate a decision." The upskilling and workload implications for any Administrator, who has reporting duties and will be subject to greater oversight than presently applies, are significant and, quite frankly not capable of accurate estimation.
In Victoria where a not dissimilar raft of reforms was introduced some time ago the Public Trustee (and do we have any feedback from Victoria) was informed that the budget for this area of work doubled. I do not have any reason to doubt that the same may well apply in Tasmania.

2. The TLRI recommends a lead in time for the reforms around supported-decision making to "build capacity within the sector". (See paragraph 7.4.38). The role which the Public Trustee plays in the sector will require it to participate in any such capacity building exercise.
3. While there are certain duties for administrators under the Act, the Institute recommends a wider suite of duties for inclusion in the amended Act.
Recommendation 8.3
(1) That the duties of representatives be outlined in a separate section of the Act.
(2) That the duties of representatives include the following:

(a) to uphold the guiding principles of the Act.

(b) To act honestly, diligently and in good faith.
(c) To treat the represented person (the 'person') with respect and dignity.

(d) To communicate with the person by any means that they consider the person will be best able to understand.

(e) To keep the person informed about decisions made and steps taken by the representative as appropriate in the circumstances.

(f) To regularly consult with any other appointed representative of the person and keep them informed about substantial decisions or actions, subject to the terms of their appointment

(g) To act as an advocate for the person.

(h) To encourage and support the person to develop their decision-making abilities where possible.

(i) To act in such a way so as to protect the person from violence, neglect, abuse or exploitation; and

(j) To respect the person's right to privacy.

I am confident that the implementation of these recommendations, coupled with increased oversight and accountability of administrators will have serious resource implications for the Public Trustee.

Chapter 8
The potential for current operational practices to benefit from the implementation of reforms to service delivery recently implemented by similar organisations in other jurisdictions.

Each state and territory has a Public Trustee not always so named which provide similar but not entirely the same services to the community. The principal services of Will writing, deceased estate administration and providing financial administration for protected/represented persons are the same although each Public Trustee operates under its own statutory framework which provides slightly different jurisdictional powers.

Each Public Trustee also has different business process configurations which are to some degree reflective of their own history, organisational and corporate structure and unique to their demographic.

In some jurisdictions the role of Public Trustee and Guardian are separate statutory functions and in others the functions have been amalgamated. Further, in some jurisdictions the business of the Public Trustee is conducted as a government business enterprise and run as a commercial undertaking. In others there is simply a statutory office holder appointed as the Public Trustee and the organisation is a statutory authority.

The **Public Trustee in Tasmania** is currently run as a government business enterprise and is subject to the *Government Business Enterprise Act 1995.* The Public Trustee in Tasmania is a relatively small operation with approximately 53 FTE staff. It operates offices out of Hobart, Burnie, Launceston and Devonport.

The business processes are largely arranged around having the corporate and business support hub along with two represented person's teams, trusts and enduring powers of attorney clients being managed from the Hobart office.

The administration of deceased estates is largely managed from the Burnie, Launceston and Devonport sites. All sites can and do offer Will making services.

The service streams offered by the Public Trustee in Tasmania are as follows:

- Will/Instrument drafting – providing estate planning services by drafting Wills, Enduring Powers of Attorney and Enduring Guardian instruments to give effect to a person's wishes in the future.
- Deceased Estates – acting as an executor or administrator for a deceased person's estate with a Will appointing the Public Trustee as executor or in other circumstances as administrator with or without the Will annexed (intestacy).

- Trusts – acting as trustee for testamentary trusts, minor's trusts (those who are under 18 years of age), charitable trusts and other trusts, in for example, circumstances where a Court awards compensation in the form of damages or a trustee renounces in favour of the Pubic Trustee.
- Enduring Powers of Attorney – Management of the financial affairs of clients who have appointed the Public Trustee as attorney and the power has been activated.
- Represented Persons – the management of client's financial affairs pursuant to an Order of the TasCAT whether plenary or limited and in some instances acting on emergency Orders.

On 1 July 2017 the Public Trustee in Tasmania introduced a Client Management System (CMS). Prior to this the client records of the Public Trustee in Tasmania were paper based. The CMS has undergone a number of refinements since implementation. It provides for the recording of key client information which is uploaded from a financial management system each evening and has the following functionality:

- Identifies by different tabs the service(s) (or service stream as above) provided by Public Trustee to each client;
- Provides a checklist(s) system for Client Account Managers (CAMs) to follow for the steps that each type of service requires at various predetermined intervals expected for efficient service provision and tracks when key tasks are completed;
- Provides a dash board for managers to monitor the work of CAMs who may for whatever reason, fall outside the expected service provision timeframes and to assist staff in keeping their work on track within expected standards;
- Provides an electronic repository for correspondence, documents and forms sent to and received from clients and stakeholders
- Allows for contact notes to be created for every interaction with a client including stakeholders;
- Provides for summary notes to be recorded so that if a CAM is away, a manager or another CAM can determine the status of a client's circumstances;

- Allows for internal electronic actions to be initiated between individuals and teams requesting tasks to be completed within a specified timeframe. Actions remain on an individual or team's dashboard until completed providing a reminder for follow up. For example requesting the finance team to take action to sell (realise) shares in a deceased estate can be electronically initiated as an action;
- Has an inbuilt complexity model so that managers can allocate files to a CAM relevant to band level, competency and capacity.
- Tracks the names, complexity and numbers of clients assigned to each staff member;

- Provides an estimated time for different tasks to be completed across the range of work practices in the checklists so that the capacity of staff can be monitored and reports provided;
- Allows for the recording of performance output of staff.

The Public Trustee in Tasmania has also introduced a Business Services Unit to increase the capacity of CAM's by undertaking some of their basic service functions. There has also been a Records Information Management Project and a Digital Mailroom Project which looks to automate record digitisation. The results of these smaller projects are expected to be realised in the coming year.

As part of my review we looked at other jurisdictions' operational practices and reforms to report against this scope particular. The first part examines the amalgamation of the Public Trustee Office with the role of the Public Guardian.

Amalgamation of the Public Trustee and Guardian

The amalgamation of the roles of the Public Trustee and Guardian are operational in New South Wales, Australian Capital Territory and soon to be in the Northern Territory.

On 1 July 2009 the former Public Trustee of NSW and the then Office of the Protective Commissioner and Public Guardian amalgamated to form the NSW Trustee and Guardian. These respective former organisations existed in some form from 1847 and 1878 respectively. Established by the *NSW Trustee and Guardian Act 2009*, the **NSW Trustee and Guardian** provides essential services which include:

- Acting as executor in the administration of a deceased estate;
- Preparing Wills and Powers of Attorney and Guardianship Instruments;
- Administering trusts on behalf of beneficiaries;
- Administering funds on behalf of clients pursuant to Court Orders;
- Administering funds pursuant to administration Orders made by the NSW Civil and Administrative Tribunal where the Public Trustee is appointed;
- Managing funds due to civil forfeiture;
- Auditing the records of private administrators for compliance;
- Acting as guardian.

The role of Guardian is separate to the Public Trustee roles carried out but the Public Guardian does report to the Chief Executive Officer of the NSW Trustee and Guardian for administrative purposes.

NSW Public Trustee and Guardian have introduced a structured process where they try to assist people under administration Orders to achieve financial independence.

The NSW Trustee and Guardian is undergoing a review of fees and community consultation has been invited. The results of this review have not been completed. Demand for NSW services has increased in 2019-20 in relation to personal financial management and guardianship services for those who do not have the capacity to manage their own affairs. The 2019-20 Annual Report of the NSW Trustee and Guardian reports that the number of people represented by the Public Guardian had increased over a five year period to 30 June 2020 in the order of 37 percent.

At the time of writing this report, the NSW Trustee and Guardian was undergoing significant change and is currently looking at refreshing their entire operational model to address “pain points” and to determine how they can improve the customer experience to become more customer centred.

In this regard the organisation is reviewing what it looks like for the customer when they first access the NSW Trustee and Guardian services, their preferred means of communication, their residential situation, the primary contributing factors in assessing their capability, understanding the customer’s “story” and how the NSW Trustee and Guardian can engage on a more personal level. The aim is to put the customer at the centre of everything they do and in that regard they are looking to develop a customer excellence framework.

The NSW Trustee and Guardian is also looking at how they can provide staff with better support, better induction and continuing professional development activities especially given the challenges presented by managing resources during the Covid-19 pandemic.

In summary, the NSW Trustee and Guardian appears to be working towards a more customer centred approach which is underpinned by a human rights focus.

The **Australian Capital Territory (ACT)** also has an amalgamated structure providing services to the ACT community as Public Trustee and Guardian. The merger was effected by legislation enacted in 2016 with effect from April 2016.

The Public Trustee and Guardian in the ACT has reported that when you are examining difficult cases at a senior management level, the benefits of financial management and whole of life care being managed within one agency with significant savings to the individual are apparent. The ACT Public Trustee and Guardian is part of the Justice and Community Safety (JACS) Directorate which has the following vision:

“Protection and support of rights, choices, security and justice for all persons in the ACT community”.[1]

Similarly, the ACT Public Trustee and Guardian has a mission and values which support services being delivered to uphold the personal, legal and financial interests of clients by building trust in delivering its services, connecting with clients and the community and providing a respectful and professional service within a human rights framework.

The ACT Public Trustee and Guardian provides similar services to other traditional trustee and guardian service providers in each state and has continued its progress of a Business Transformation Strategy which focused on infrastructure, ICT and people and culture capability. In 2019/20 the ACT Public Trustee and Guardian moved to refurbished premises to better segregate operational areas from the governance and corporate/finance areas. They also transitioned to a new structure with an enterprise agreement and completed user acceptance testing for Microsoft

[1] 2020 Public Trustee and Guardian, Annual Report, P.7.

Dynamic 365 Customer Relationship Management (CRM) system with modules completed for Will drafting, Enduring Power of Attorney Drafting and Guardianship. They have also advanced work on electronic document and records management systems.

In Victoria State Trustees has been the subject of reports of the Victorian Ombudsman in 2003 and more recently in 2019. The 2019 investigation undertaken by the Victorian Ombudsman made 14 recommendations. Areas for improvement included client communication, support for client independence and improved stakeholder engagement. State Trustees' 2020/21 Annual Report provides details of the introduction of a new *Welcome and Induction* process for clients and the establishment of a Specialised Support Team for clients with more complex needs. The report also indicates that successful partnerships have been established to improve cross-sector collaboration to ensure everyone has equal access to essential services with an elder abuse roundtable and a *Victoria Police Elder Abuse Trial Advisory Group*. State Trustees also launched an on-line Will service, made improvements to trustee services and provided information on *Client First,* the State Trustees' change program which has completed two service delivery model improvement pilots identified as *Welcome and Induction,* and *Vendor and Payments*. The State Trustee's also reported to have delivered on the first phase of a *Client Engagement Record* project to improve client data capture in a digital format and to enable the consistent capture of information into their CRM.

In **South Australia**, the Public Trustee recognised that their role as financial administrators had and was continuing to increase. Analysis was also undertaken to examine the number of Wills written and how many of those Wills were eventually administered by the Public Trustee as a deceased estate matter. That analysis led to cost savings being realised in relation to some services provided and a change in the business model.

Will making and Enduring Power of Attorney services were previously available for all South Australians but from 1 July 2019 those services were only available to eligible concession card holders or those subject to administration by the South Australian Civil and Administrative Tribunal (SACAT) or the Courts. From 1 July 2019 there were also changes made to investment services that were previously offered to approved investors pursuant to Section 29(1)(b) of the *Public Trustee Act 1995* (SA). That service was discontinued for 227 investors.

The past few years has also seen the Public Trustee in South Australia improve business metrics and record keeping of operations, focus on improving quality assurance and strengthen risk management and employee compliance with policies and procedures. For example regular training was completed for employees managing trusts on the policies and procedures connected with that part of the business. That program of training also allowed staff to scrutinise and update policy and procedure documents. A new monthly compliance program was implemented

and a new telephone system was installed to allow for call recording. This was introduced to allow for call coaching to improve staff capability and to monitor client interactions in support of complaint investigations.

The **Public Trustee in Western Australia** reported that they have had a record number of appointments as a financial administrator by the State Administrative Tribunal. In 2020/21 they had their first full year of digitisation of incoming mail and invoices and this is reported to have assisted 30 per cent of staff in working from home during lockdowns for Covid-19 without disruption to client services. The office also commenced a work practices review in trust administration and detailed the design for productivity and system improvements in the Private Administrator Support Team.

The Public Trustee in Western Australia and other trustees in Australia also audit the accounts submitted as part of compliance with the various State's guardianship and administration legislation. It is noted that in Tasmania this role is currently conducted as part of the TasCAT rather than the Public Trustee in Tasmania.

The WA Auditor-General in its June 2016 report Management of Feedback from PT Represented Persons noted that the WA Public Sector Commission requires all government agencies to have a complaints management system that complies with the principles of the Australian/New Zealand Standard on complaints handling (AS/NZS 10002:2014).

The Australian standard seems to underpin the complaints process in several other jurisdictions including the Ombudsman. It may be worth the PT exploring the feasibility of its adoption.

Like many Public Trustees, the **Queensland Public Trustee** has been under increased scrutiny with the Queensland Public Advocate's report *Preserving the financial futures of vulnerable Queenslanders,* January *2021.* One of the major changes to the organisation from that report is the implementation of a new Board to steward the Queensland Public Trustee.

Queensland's Public Trustee moved to bring 'humanity' back into its service culture. This approach is based on a customer service first framework that seeks to be customer centric and ethical.

The purpose is to ensure that correct decisions are made on behalf of clients, (including some very difficult decisions). To assist in achieving this, the Public Trustee in Queensland has introduced a Customer Reference Group whose participants are the CEO's of all major NGO's who meet quarterly to assist the Queensland Public Trustee improve its services.

A similar stakeholder group has been introduced for government stakeholders providing complimentary services so that the Queensland Public Trustee can partner with them for example the Integrity Commissioner, the Deputy Ombudsman, and other partner agencies including Treasury, Justice, Attorney-General and Communities departments. The Public Trustee in Queensland also introduced a new organisational structure to separate client functions from corporate functions.

The official solicitors support either the corporate side of the business or the customer side of the business removing potential conflicts of interest.

The structure has also improved with a move to a regional model for services to be delivered across all Public Trustee functions with standard KPI's added. Four internal working groups have been established to support the business such as *Trusts and Transactions, People and Culture, Finance and Investments and Products and Services.* Further work is being conducted to consider a Structured Decision Making Model for clients who are unable to manage their own affairs who use the Public Trustee of Queensland's financial administration services. An internal customer advocate role provides a voice for clients, and an independent internal complaint review mechanism provides further safeguards for complainants. The Queensland Public Trustee also has a Financial Independence Program supporting those subject to administration orders using Public Trustee's services to assist people to achieve autonomy and manage their own financial affairs. This program also leverages support from the Queensland Department of Community Services and the client's support network.

Conclusion

How can we benefit? A better client focus.

If some of these reforms were to be implemented in Tasmania I would anticipate that a better client focus may be achieved, improved levels of communication with clients and collaboration with stakeholders together with an enhancement off staff skill sets.

APPENDIX I

Review of the Public Trustee

Terms of Reference

Objective:

To undertake an independent review into the administrative and operational practices of the Public Trustee.

Background:

The Public Trustee is a Government Business Enterprise with the principal objective of offering specialist and independent trustee services to the Tasmanian community, irrespective of the value of any particular matter.

The Public Trustee's 2019-20 Annual Report identifies the following main undertakings:

- preparing wills, enduring powers of attorney and enduring guardianships;
- acting as an executor of estates, or estate administrator if there is no will;
- assuming the role of executor when a person named in a will is unable or unwilling to act;
- acting as attorney for people requiring assistance to manage their financial affairs;
- acting as trustee for various types of trusts including accident compensation awards;
- assisting people to manage their financial affairs when the Public Trustee is appointed as a financial administrator by the Guardianship and Administration Board; and
- managing funds under the control of the Public Trustee in order to provide a commercial rate of return to contributor.

The Public Trustee delivers a number of non-commercial activities for the Government.

These are:

- administration of absolute estates with a gross asset value of less than $60 000;
- administration of continuing trust and life tenancy estates with a gross asset value of less than $100 000;
- administration and management of minor trusts with a gross asset value of less than $20 000; and
- management of assets for represented persons with a gross asset values of less than $100 000.

The Government meets the cost of these non-commercial activities through a Community Service Obligation Agreement between the Crown and the Public Trustee.

A number of concerns have been raised recently, both through the media and directly to the State Government, about the operations of the Public Trustee and its dealings with clients and client outcomes.

The Government expects that the Public Trustee provides professional services, delivered with integrity and understanding to the Tasmanian community, in accordance with its enabling and other applicable legislation.

Scope:

The review will inquire into, report on and make recommendations in relation to the following matters:

- 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;
- the extent to which the Public Trustee effectively meets its commitments under the *"Mission, Vision and Values"* statement, particularly in relation to a client service focus, with respect and integrity across all its functions;
- the appropriateness of current fees and charges applied by the Public Trustee for its services, given its costs and objectives;
- the appropriateness of the current Community Service Obligation Agreement between the Crown and the Public Trustee;
- the financial sustainability of the entity with particular reference to ongoing changes in the number and composition of clients and commercial activities;
- whether the current Public Trustee governance framework is appropriate in assisting the effective delivery of the entity's main undertakings and any appropriate changes to current governance arrangements that may be required;
- the impact that the implementation of the recommendations arising from the Tasmanian Law Reform Institute's review of the *Guardianship and Administration Act 1995* would have on the administrative and operational practices of the Public Trustee;
- the potential for current operational practices to benefit from the implementation of reforms to service delivery recently implemented by similar organisations in other jurisdictions; and
- any associated relevant matters to assist the review of the administrative and operational practices of the Public Trustee.

The inquiry timeframe should include matters within the last 10 years, that is from 1 January 2011 to the present day.

Reporting and Timeframe:

A final report is to be submitted to the Public Trustee's Shareholding Ministers by no later than 30 November 2021.

Other Matters:

- The Report is to be undertaken by a person or entity that is external to the Public Trustee and possessing the appropriate knowledge, skills and experience.
- Preparation of the report is to include the opportunity for members of the public and key stakeholders of the Public Trustee, including the Board and Executive Management Team of the Public Trustee, to provide input in relation to the matters detailed in the Review scope.