

Review of fees of the NSW Trustee & Guardian

Other Industries — Draft Report
September 2014

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Invitation for submissions

IPART invites written comment on this document and encourages all interested parties to provide submissions addressing the matters discussed.

Submissions are due by 10 October 2014.

We would prefer to receive them electronically via our online submission form <www.ipart.nsw.gov.au/Home/Consumer_Information/Lodge_a_submission>.

You can also send comments by fax to (02) 9290 2061, or by mail to:

Review of fees of the NSW Trustee & Guardian
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We may choose not to publish a submission—for example, if it contains confidential or commercially sensitive information. If your submission contains information that you do not wish to be publicly disclosed, please indicate this clearly at the time of making the submission. IPART will then make every effort to protect that information, but it could be disclosed under the *Government Information (Public Access) Act 2009* (NSW) or the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW), or where otherwise required by law.

If you would like further information on making a submission, IPART's submission policy is available on our website.

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1 | Executive summary

1.1 What did we review?

The NSW Government asked the Independent Pricing and Regulatory Tribunal of NSW (IPART) to review the fee structure of the NSW Trustee and Guardian (NSWTG). NSWTG was established in 2009, through the merger of the Office of the Protective Commissioner and the Public Trustee of NSW.

The objective of this review is to recommend a fee structure for NSWTG that is clear, fair and transparent and where possible, harmonises fees across NSWTG's services. Our Terms of Reference (TOR) are provided in Appendix A.

We have been asked to provide a final report to Government with recommendations by 30 November 2014.

Throughout our review we have identified ways that NSWTG can improve its operations for the benefit of its clients and its own financial position (and therefore the Government's budget). We consider NSWTG should restructure its operations and change the way it delivers its services to control its costs, become financially sustainable and deliver better value for money for its clients.

1.2 How will our proposed fees affect NSWTG clients?

IPART's position is that vulnerable and disadvantaged clients should not be asked to fund inefficiency in NSWTG's operations. Any inefficiency should be borne by NSWTG. We are achieving this by establishing a more cost-reflective, consistent and fair fee structure, so that fees only recover our estimate of NSWTG's *efficient* (not *actual*) costs.

In this review we have focussed on recommending a fee structure that is cost-reflective, consistent and fair. We have set fees to better reflect efficient costs and set subsidy payments (Community Service Obligations or CSOs) for clients who cannot afford to pay the full efficient fees.

While the impact of our proposed fees on different clients will vary, on average clients we are setting fees for will pay 11% less under our draft recommendations compared to current fees. However, different clients will see different changes in their fees, with some paying more and some paying less. The reason for some fees going up and others going down is that under the existing fee structure some clients are paying too much, while others are not covering the efficient cost of services they receive.

Table 1.1 summarises the fees clients are currently charged, as well as the fees proposed by NSW TG and recommended by IPART. This table also highlights that we are recommending a consistent fee structure across NSW TG services. For will and power of attorney drafting services, we are recommending NSW TG charge clients a one-off drafting fee. With respect to services that involve NSW TG having an ongoing role, our fee structure involves:

- ▼ an establishment fee
- ▼ an administration fee
- ▼ an investment management fee
- ▼ specialist services fees.

Table 1.1 Summary of current fees, NSWTG proposal and IPART recommended (per year)

Fees	Charged on	Current	NSWTG proposed	IPART recommended	Explanation of IPART's recommended changes
Direct financial management					
Establishment fee	Total assets excluding residential property	1%	1%	1%	We recommend:
Minimum charge		\$0	\$0	\$500	<ul style="list-style-type: none"> Introducing a \$500 minimum establishment fee. This should be waived for clients with assets lower than \$25,000 and halved for clients with assets between \$25,000 and \$75,000.
Maximum charge ^a		\$3,300	\$3,300	\$3,000	<ul style="list-style-type: none"> Keeping the 1% charge on assets. Reducing the maximum fee from \$3300 to \$3000. <p>These changes will better reflect the one-off costs of establishing a client. The reduction in the maximum charge aims to address the current over recovery from clients with a relatively high level of assets.</p>
Administration fee:					
Variable		1.1%	1.1%	1.3%	We recommend:
Fixed		\$0	\$0	\$120 ^b	<ul style="list-style-type: none"> Increasing the administration fee from 1.1% to 1.3%.
Maximum charge ^a		\$15,000	\$25,000	\$13,500 ^c	<ul style="list-style-type: none"> Introducing a \$10 a month administration fee. This should be waived for clients with assets lower than \$25,000 and halved for clients with assets between \$25,000 and \$75,000. Reducing the maximum charge from \$15,000 to \$13,500. This fee cap should apply to the sum of the variable and fixed components of a client's administration fee. <p>These changes will better reflect administration costs and be offset by a reduction in the investment fee (see below). The reduction in the maximum charge aims to address the current over recovery from clients with a relatively high level of assets.</p>

Fees	Charged on	Current	NSWTG proposed	IPART recommended	Explanation of IPART's recommended changes
Investment fee	Assets in the Common Fund	0.5%	0.75%	0.1%	We recommend reducing the investment fee from 0.5% of assets in the Common Fund to 0.1%. This will make the investment fee better reflect costs. As explained above, this reduction is offset by a 0.2% increase in the variable component of the administration fee.
Private financial management					
Establishment fee	Fixed fee	\$0	\$0	\$500	We recommend introducing a \$500 minimum establishment fee to better reflect the cost of establishing a client.
Administration fee		\$0	\$0	\$120 ^b	We recommend introducing a \$10 a month administration fee. Both the establishment and administration fees should be waived for clients with assets lower than \$25,000 and halved for clients with assets between \$25,000 and \$75,000.
Income fee: Maximum charge ^a	Income less allowances	4% \$2,000	4% \$3,000	0% \$0	We recommend eliminating the income fee because it is not cost reflective.
Investment fee	Assets in the Common Fund	0.5%	0.75%	0.1%	We recommend reducing the investment fee from 0.5% of assets in the Common Fund to 0.1%. This will make the investment fee better reflect costs.
Account checking fee					We recommend no changes to the account checking fees.
Low complexity ^a	Based on complexity	\$100	\$100	\$100	
Medium complexity		\$200	\$200	\$200	
High complexity		\$300	\$300	\$300	

Fees	Charged on	Current	NSWTG proposed	IPART recommended	Explanation of IPART's recommended changes
Trusts					
Establishment	Value of funds/assets held when first established				We recommend reducing the fees to make them more cost reflective.
1st \$100,000		4%	4.5%	3.5%	
2nd \$100,000		3%	3.5%	2.5%	
3rd \$100,000		2%	2.5%	1.5%	
Over \$300,000		1%	1.5%	0.5%	
Administration	Fixed fee	\$120 ^b	\$240 ^b	\$120 ^b	We recommend no change to the fixed administration fee. It is set at a level that is consistent with the fixed administration fees payable for other services (ie, \$10 per month).
Short term trust	Investment Income	5.25% (or 2.5% if real estate agent involved)	5.25% (or 2.5% if real estate agent involved)	0%	We recommend that the short term trust fee be eliminated. Trust fees should not vary according to the time assets are held. Our recommended trust fee (irrespective of time) is listed below.
Long term trust	Value of trust assets			Trust Fee^d	We recommend: <ul style="list-style-type: none"> ▼ A trust fee irrespective of the time assets are held. ▼ A declining fee structure that reduces trust fees for assets over \$250,000. This will better reflects costs and market practice.
1st \$250,000		0.5%	0.5%	0.5%	
2nd \$250,000		0.75%	0.75%	0.45%	
Over \$500,000		1%	1%	0.4%	
Investment	Assets in the common fund	0.75%	0.75%	0.1%	We recommend reducing the investment fee from 0.75% of assets in the Common Fund to 0.1%. This will make the investment fee better reflect costs.

Fees	Charged on	Current	NSWTG proposed	IPART recommended	Explanation of IPART's recommended changes
Estate administration					
Executor commission ^a	Value of funds/assets held when first established				We recommend increasing the fees for this one-off service to better reflect costs.
1st \$100,000		4%	4.5%	4%	
2nd \$100,000		3%	3.5%	3.3%	
3rd \$100,000		2%	2.5%	2.6%	
Over \$300,000		1%	1.5%	1.7%	
Minimum charge		\$200	\$200	\$200	
Administration	Fixed fee	\$120 ^b	\$240 ^b	\$120 ^b	We recommend no change to this administration fee. It is set at a level that is consistent with the fixed administration fees payable for other services (ie, \$10 per month).
Short term trust	Investment Income	5.25% (or 2.5% if real estate agent involved)	5.25% (or 2.5% if real estate agent involved)	0%	We recommend that the short term trust fee be eliminated. Trust fees should not vary according to the time assets are held. Our recommended trust fee (irrespective of time) is listed below.
Long term trust:	Value of trust assets			Trust fee^d	We recommend: ▼ A trust fee irrespective of the time assets are held. ▼ A declining fee structure that: – increases the percentage fee for the first \$500,000 of assets – decreases the fee for assets over \$500,000. This better reflects costs and market practice.
1st \$250,000		0.5%	0.5%	0.9%	
2nd \$250,000		0.75%	0.75%	0.8%	
Over \$500,000		1.0%	1.0%	0.7%	
Investment	Assets in the common fund	0.75%	0.75%	0.1%	We recommend reducing the investment fee from 0.75% of assets in the Common Fund to 0.1%. This will make the investment fee better reflect costs.

Fees	Charged on	Current	NSWTG proposed	IPART recommended	Explanation of IPART's recommended changes
Wills and power of attorney drafting					
Power of attorney drafting fee		\$0	\$0	\$230 (\$10 after CSO)	We recommend eligible clients pay a nominal fee of \$10 to obtain wills or powers of attorney under a subsidy program. Eligibility for these programs should be based on clients being eligible for the full-rate Centrelink age pension. The NSW Government should make a CSO payment to NSW TG to cover its remaining efficient costs of providing these drafting services.
Will drafting fee		\$0	\$400	\$320 (\$10 after CSO)	

Note: Figures are GST exclusive.

a Maximum charges are the most a client could be charged for that service each year.

b Fee is charged on a monthly basis, eg \$10/month (\$120 per year).

c The IPART recommended administration fee cap represents the maximum a client can be charged for both the variable and fixed components of the administration fee (\$13,380+\$120=\$13,500).

d A single trust fee applied to all trusts regardless of how long they have been in existence.

Source: NSW TG submission to our Issues Paper and IPART analysis.

Table 1.2 illustrates the impact of our proposed fee structure on clients within each service that have an average level of assets.

Compared with the significant fee increases requested by NSW TG, clients will generally pay lower fees under IPART's new fee structure. Comparing IPART's recommended fees to those currently payable:

- ▼ **Direct financial management:** The average client will be charged \$28 more annually under our recommended fee structure. The level of the establishment fee will remain unchanged, but the cap on this fee will be reduced.
- ▼ **Private financial management:** A new client with average asset values will now be charged an establishment fee of \$500 in their first year under our recommended fee structure (charging an establishment fee is in line with market practice). However, every subsequent year they will be charged \$252 less.
- ▼ **Trusts:** The average existing client will be charged \$506 less in annual fees under our recommended fee structure. A new trust client will be charged \$416 less in establishment fees.
- ▼ **Estate administration:** Annual estate fees are the same under our recommended fee structure. A new estate with average assets will pay \$1,110 more in executor fees.

Table 1.2 Fees payable by average client in each service (per year)

Fee	Current	NSWTG proposed	IPART recommended	Net fee for client
Direct financial management				
Annual fees	\$2,284	\$2,542	\$2,312	\$2,312
Establishment fee	\$1,607	\$1,607	\$1,607	\$1,607
Private financial management				
Annual fees	\$492	\$542	\$240	\$240
Establishment fee	\$0	\$0	\$500	\$500
Trusts				
Annual fees	\$1,020	\$1,140	\$514	\$514
Establishment fee	\$3,329	\$3,746	\$2,913	\$2,913
Estate administration				
Annual fees	\$1,010	\$1,360	\$1,010	\$1,010
Executor fee	\$9,300	\$10,950	\$10,410	\$10,410

Note: Figures are GST exclusive. Establishment or executor fees are payable one-off, whereas annual fees are ongoing.

We recognise that some low wealth clients will not have the capacity to pay these fees. We have aimed to explicitly link the CSO funding to specific services that the NSW Government and the community expect NSW TG to deliver to certain clients at subsidised levels. We have considered what portion of the new fee structure should be paid by clients and what portion should be paid by the NSW Government in the form of CSO funding.

Where we consider a subsidy is warranted and we have sufficient information, we have provided a sliding scale of subsidies, with very low wealth clients effectively paying no fees for some services (eg, financial management services). This has been our approach in relation to financial management services (see Table 1.3).

Table 1.3 Recommended CSOs – proportion of fee funded by Government

Asset levels	Minimum establishment fee (\$500)	Monthly administration fee (\$10)
\$0 - \$25,000	100%	100%
\$25,001 - \$75,000	50%	50%
\$75,001 and over	0%	0%

Source: IPART analysis.

Where we do not have sufficient information to identify clients who require a subsidy we have not increased fees and have suggested a way for NSW TG to identify clients eligible for any potential CSO payments (eg, trust services).

In relation to estate administration fees, we are not recommending a subsidy for any clients. Instead, we have set fees for NSW TG to recover its efficient costs from the estate.

We recommend eligible clients pay a nominal fee of \$10 to obtain wills or powers of attorney under a subsidy program. Eligibility for these programs should be based on clients being eligible for the full-rate Centrelink age pension. The NSW Government should make a CSO payment to NSW TG to cover its remaining efficient costs of providing these drafting services. Funding for this CSO payment will come from NSW TG's existing CSO funding.

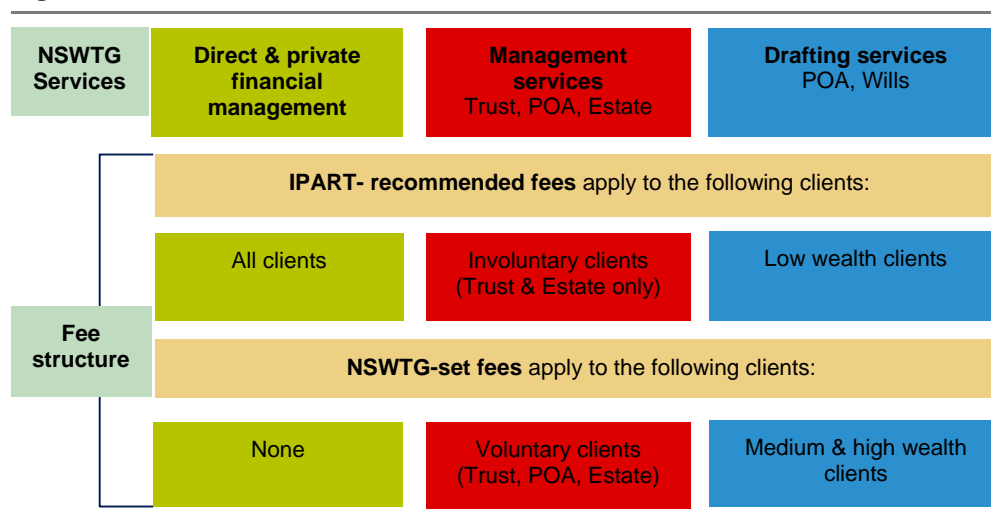
1.3 Why haven't we recommended fees for all NSWTG's services?

We are not recommending fees for services where clients can choose whether to use NSWTG or another service provider such as a lawyer. It is important to let NSWTG set its own fees in these cases so that it can remain competitive. To compete for clients, NSWTG will need to set fees at a level that offers value for money for clients (both in terms of service levels and price). As highlighted above, we have proposed draft fees only for services provided to clients who have no choice about whether their finances are managed by NSWTG. This includes:

- ▼ people assigned to the NSWTG by a court or tribunal due to their diminished capacity to make their own financial decisions (managed persons)
- ▼ people who did not choose to have NSWTG act as their trustee, rather it was the decision of a Court or Tribunal or required under legislation (eg, victim's compensation to a minor)
- ▼ estates administration for intestate estates (where there is no will) or estates where there is a will but whose nominated executor is unwilling/unable to act.

Figure 1.1 illustrates which fees are subject to our recommendations and which fees NSWTG should set itself.

Figure 1.1 New fee structure: IPART-recommended & NSWTG-set fees



In relation to will and power of attorney drafting, externalities¹ arise in connection with low wealth clients. This means that if such clients do not engage in these pre-planning services, it imposes a cost on the NSW Government (rather than the client).² We are recommending subsidy programs to address affordability concerns which may deter these clients from getting their wills or powers of attorney drafted, as discussed in section 1.2 above.

1.4 What do our recommendations mean for NSW TG?

Throughout our review we have identified ways that NSW TG can improve its operations for the benefit of its clients and its own financial position (and therefore the Government's budget). We consider that NSW TG's financial position is unsustainable, but that by restructuring its operations and changing the way it delivers its services, NSW TG can control its costs, become financially sustainable and deliver better value for money to its clients.

NSW TG's expenses have steadily increased since it was established in 2009, growing at an average annual rate of 6.7%,³ while total revenue has remained relatively flat.

NSW TG is currently covering the widening gap between its revenue and expenses by running down an Interest Suspense Account (ISA).⁴ While the Government has permitted NSW TG to use the ISA to fund its shortfall, the ISA is ultimately an asset of the Government. Using this asset to support NSW TG's operations results in forgone services in other areas (for example, in health and education), which could otherwise be provided with these funds.

Since the merger, NSW TG's expenses have trended up while the number of clients and matters it manages has fallen. This has led to NSW TG's average cost per client or matter rising by 18% since 2010.⁵ While some of this increase may be attributable to NSW TG managing more complex matters, we consider that there is scope for NSW TG to become more cost effective in the delivery of its services.

Based on our analysis, we consider there is scope for efficiency savings of at least 20% across NSW TG's operations. This figure is consistent with other non-public information we have reviewed.

¹ An externality arises where NSW TG is unable to recover through fees their efficient costs of providing these services to low wealth clients.

² For example, if a person dies without a will, a Court may appoint NSW TG to provide executor services (<http://www.tag.nsw.gov.au/intestacy-faq-virtual.html>, accessed 4 September 2014).

³ According to budget papers, NSW TG's annual expenses are expected to increase from \$65 million in 2009/10 to almost \$90 million in 2014/15. This is equivalent to an average annual growth rate of 6.7% over the period.

⁴ The ISA consists of returns on client investments that were placed in reserve prior to the 2009 merger of NSW TG's precursor agencies. While NSW TG can access the ISA to help fund its operations, it cannot transfer new funds into the ISA.

⁵ See Figure 2.3 in Chapter 2.

IPART's recommendations would move NSW TG to a more sustainable financial position and provide average fee reductions across the IPART-recommended fees (although some clients will pay more).

To illustrate the overall impacts on NSW TG, we have focused on the 2012/13 budget position because the majority of the data available for our analysis was from that year. We note that NSW TG's budget positions in 2013/14 and 2014/15 are similar to 2012/13. We therefore consider the results of our analysis for 2012/13 continue to be relevant and can be applied to NSW TG's current budget position.

Table 1.3 presents the NSW TG budget position for 2012/13 and what this would look like under NSW TG's proposal and IPART's recommendations. To assist in comparisons we divided fee revenue into regulated and unregulated based on the split recommended in this review.

Table 1.4 IPART modelling of overall budget impacts (2012/13)

2012/13\$	2012/13 budget	NSWTG proposal	IPART recommendations
Revenue			
- Fee revenue (regulated)	35,276,000	46,954,000	31,499,000
- Fee revenue (unregulated)	19,040,000	25,509,000	21,098,000
- Investment revenue	5,564,000	5,564,000	5,564,000
- Government – Public Guardian	7,558,000	7,558,000	7,558,000
- Government - CSO ^a	5,112,000	5,112,000	5,112,000
- Other revenue ^b	400,000	400,000	400,000
- Total revenue	72,950,000	91,096,000	71,231,000
Expenses			
- Expenses in scope	69,182,000	69,182,000	55,346,000
- Other expenses	14,384,000	14,384,000	14,384,000
- Total expenses	83,566,000	83,566,000	69,730,000
Net Position	-10,616,000	7,514,000	1,502,000

^a Under IPART's recommendations, the \$5.1 million CSO is split into \$3.2 million in explicit CSO payments and \$1.9 million general CSO.

^b IPART's estimate of the budgeted transfer from the ISA is excluded to show the underlying net position.

Note: Explicit CSO funding of \$3.2m is assumed to offset an equivalent amount of existing fee waivers.

Source: NSW Budget 2012-13 (bp3). NSW TG client data 2012/13. IPART analysis.

The key differences moving from NSW TG's 2012/13 budget position to the budget position based on IPART's recommendations are:

- ▼ operating expenses are reduced by 20%
- ▼ revenue from IPART's recommended fees falls 11%, due mostly to a reduction in fees for trusts and estate clients
- ▼ revenue from NSW TG-set fee increases 11%, due mostly to the introduction of unsubsidised fees for Will drafting.

Many stakeholders are highly critical of the service NSW TG provides, particularly in view of the fees charged. In their submissions, these stakeholders noted that:

- ▼ service quality is poor, particularly with regard to communication, property management and payments not being made on time
- ▼ fees are excessively high for some services which appear to involve minimal work by NSW TG, and are eroding the value of clients' accounts over time
- ▼ there is no clear rationale for some fees (eg, 4% income fee for private financial management clients which does not reflect the cost to serve these clients)
- ▼ fees are not clearly set out in Statement of Accounts, or do not reconcile with fee details publically available on NSW TG's website.⁶

We have made a range of recommendations aimed at improving the performance and transparency of NSW TG to deliver better value for money to its clients. These are set out below.

1.5 What do our recommendations mean for the NSW Government?

Moving to the recommended fee structure will likely result in an overall reduction in fee revenue of approximately \$1.7 million. This is largely a result of removing cross-subsidies that are currently covering a revenue shortfall in private financial management. We recommend that NSW TG develop a case, based on data from its Activity Based Costing system (see section 1.6 below), to develop user fees to recover the efficient cost of private financial management. In the interim, there will be a shortfall.

We recommend that the NSW Government provide additional budget funding of up to \$1.7 million per year for two years so that NSW TG can immediately adopt our recommended fee structure. This will provide immediate relief to the majority of NSW TG's clients.

As outlined above, we recommend that the NSW Government require NSW TG to make at least 20% efficiency savings. We also recommend that NSW Treasury and the Department of Justice monitor through the Budget process the transition from NSW TG's current position to that recommended by IPART with a view to ensuring that NSW TG is in a sustainable financial position.

We have also recommended that the NSW Government pilot the subsidies for will and power of attorney fees, and potentially make this subsidy contestable in the future.

⁶ We received and reviewed copies of account statements from a cross section of stakeholders.

1.6 When should IPART review NSWTG's fees and charges again?

We propose that IPART review NSWTG's fees and charges after five years. We favour a five year interval to give sufficient time for NSWTG to implement both measures to improve its operating efficiency and systems to accurately establish its efficient costs. Stakeholders generally supported an ongoing review of NSWTG's fees.

NSWTG's existing systems did not provide us with data that was robust enough for IPART to recommend fees for this review that varied according to a client's complexity/cost to serve. So as to enable its costs of servicing clients to be more readily identifiable, NSWTG should adopt an Activity Based Costing system. This activity information will provide a sound basis for future fee reviews to move NSWTG's fees towards more efficient and fair user charges.

1.7 How can you provide input to the review?

We invite all interested parties to make written submissions in response to this Draft Report.

In general, we seek your response on the draft findings and recommendations explained in this report, including any comment on:

- ▼ whether or not you agree with the services that we have recommended fees for and the level of our draft recommended fees
- ▼ the impact of our draft fee recommendations, and
- ▼ any other issues relevant to this review.

Submissions are due by Friday, 10 October 2014. In accordance with IPART's public submission policy, late submissions may not be accepted at the discretion of the Tribunal. Submissions can be provided on a confidential basis and, if so, will not be publicly disclosed. All other submissions will be posted online as soon as possible after the closing date for submissions. Further information on how to make a submission can be found on page iii, at the front of this report.

We will also hold a public roundtable on Tuesday 23 September 2014 to provide stakeholders with another opportunity to provide input to this review. If you wish to receive details of this event, please email trustee@ipart.nsw.gov.au or call 9290 8470.

We will consider all stakeholder submissions and comments in developing our final recommendations, which are due to be provided to the NSW Government at the end of November 2014.

Table 1.5 sets out an indicative timetable for the review.

Table 1.5 Indicative timetable for this review

Action	By
Release Issues Paper	9 May 2014
Receive submissions	16 June 2014
Release Draft Report	9 September 2014
Hold public roundtable	23 September 2014
Receive submissions on Draft Report	10 October 2014
Submit Final Report to Government	30 November 2014

Note: These dates are indicative and may be subject to change.

1.8 The structure of this report

The rest of this report explains our draft findings and recommendations, including relevant information provided in stakeholder submissions. The report is structured as follows:

- ▼ **Chapter 2** discusses the context for this review, including the history of NSW TG as an organisation, the services provided by NSW TG, the clients NSW TG serves, existing operational and service delivery issues, issues with the current fee structure and future challenges for NSW TG.
- ▼ **Chapter 3** sets out our approach to setting fees for NSW TG, including the process and principles we have followed in establishing the efficient cost of providing the services, which services should have their fees regulated and providing government subsidies or Community Service Obligations (CSOs) for the services. It also sets out the data underpinning our draft fee recommendations, including cost and activity data provided by NSW TG, common funds data and market data provided through comparative research and benchmarking undertaken by our consultants CIE.
- ▼ **Chapter 4** discusses our draft service specific fee recommendations for each of the key service areas of NSW TG – direct financial management, private financial management, trusts, will drafting, estate services and power of attorney drafting.
- ▼ **Chapter 5** discusses the anticipated impacts of our draft fee recommendations on clients, NSW TG and more broadly the NSW Government.
- ▼ **Chapter 6** discusses our other draft recommendations to address reporting and oversight issues with NSW TG’s current operations. It also discusses transitional and other issues related to our fee recommendations.

1.9 List of draft findings and recommendations on which we seek comment

We seek your comment on the following list of draft findings and recommendations. Next to each finding and recommendation is a page number in this report. Our discussion on each finding or recommendation can be found by turning to that page in this report.

Draft Findings

- | | | |
|---|--|----|
| 1 | NSWTG's financial position is unsustainable and is unlikely to improve without restructuring its operations. | 42 |
| | – Operating revenues do not cover operating expenses. It is currently drawing down an Interest Suspense Account (ISA) to cover shortfalls. | 42 |
| | – IPART's analysis of NSWTG's workload volume and expenses suggests there was an 18% increase in the average cost of servicing clients between 2010-2013. | 42 |
| 2 | We consider there is scope for NSWTG to make an efficiency saving of at least 20% of its current operating expenses. | 42 |
| 3 | NSWTG's current fee structure results in cross subsidies between services and between clients within each service. | 42 |
| 4 | Many of NSWTG's stakeholders are highly critical of the service it provides, particularly in view of the fees charged. | 42 |
| 5 | The fee structure for will drafting does not recover the efficient cost of providing this service, and so has an adverse impact on NSWTG's budget. | 95 |
| | – NSWTG incurs a significant cost in providing its existing 'free wills' service, with staffing costs of over \$3.8 million in 2012/13. It does not fully recover these costs through its estate administration services. As such, will drafting is partially cross-subsidised by other NSWTG services. | 95 |
| 6 | Based on the information NSWTG currently provides to clients, it may be difficult for them to understand the total fees they will be liable for by using NSWTG's 'free wills' drafting service. NSWTG does not charge an upfront fee for will drafting, but does subsequently charge clients for estate administration services. | 96 |
| | – Clients may not appreciate when they commit to this fee structure at the point of having their will drafted that estate administration fees can be relatively substantial. As such, they should compare NSWTG's estate administration fees against those charged by other service providers before engaging NSWTG to prepare their will. | 96 |

- 7 The fee structure for power of attorney drafting does not recover the efficient cost of providing this service, and has an adverse impact on NSW TG's budget. 115
 - NSW TG incurs a significant cost in providing its existing 'free power of attorney' service, with staffing costs of almost \$750,000 in 2012/13. 115

Draft recommendations

Common fund

- 1 NSW TG merge the two common funds into a single common fund to remove unnecessary duplication of systems and reporting. 61

Itemisation of fees

- 2 NSW TG present returns on investments in the common funds to clients before fees are subtracted. All fees, including the investment management fee to be clearly and consistently itemised on client account/activity statements. 61

Investment management fee

- 3 NSW TG lower the investment management fees from the current levels of 0.5% and 0.75% of assets p.a. to a harmonised fee of 0.1% of assets p.a. across all (regulated) common fund investments. 61

Direct Financial Management services

- 4 For direct financial management services, NSW TG: 69
 - Introduce a minimum establishment fee of \$500 and reduce the fee cap to \$3000. 69
 - Introduce a monthly account keeping fee of \$10 and reduce the fee cap for the ongoing administration fee to \$13,500. 69
 - Increase the ongoing administration fee from 1.1% p.a. to 1.3% p.a. of total assets under management. 69
 - Reduce the investment management fee from 0.5% to 0.1% applied to assets in the common fund. Introduce fees for services for investment planning and tax returns consistent with current practices in trust, PoA and estates administration. 69

- 5 The NSW Government introduce explicit CSO payments applied to the minimum establishment fee and the monthly account keeping fee for Direct Financial Management services. The CSO payment rates to be 100% for clients with total assets under management between \$0 and \$25,000 and 50% for clients with total assets under management between \$25,001 and \$75,000. Total assets under management does not include a client's home. 69

Private Financial Management services

- 6 For private financial management services, NSW TG: 76
- Remove the income fee. 76
 - Introduce a \$10 monthly administration fee. 76
 - Retain the existing account checking fees of \$100, \$200 and \$300 depending on complexity. 76
 - Collect complete asset data from PFM clients. 76
- 7 The NSW Government introduce explicit CSO payments applied to the minimum establishment fee and the monthly account keeping fee. The CSO payments rates to be 100% for clients with total assets under management between \$0 and \$25,000 and 50% for clients with total assets under management between \$25,001 and \$75,000. Total assets under management does not include a client's home. 76

Trust services

- 8 For trust services, NSW TG: 89
- Keep the existing fee structure for the establishment fee, but reduce fee levels. 89
 - Replace the short term and long term trust fees into a single administration fee. 89
 - Maintain the account keeping fee at \$10 per month. 89
 - Reduce the investment management fee from 0.75% to 0.1%. 89
 - Maintain the current fee level for its specialist services fees (eg, fees for investment planning, preparing tax returns). 89
 - Discontinue its current practice of establishing a separate trust account for each compensation payment made to the same client. Instead, clients should have one overall trust account with one set of fees and charges, and any additional compensation payments they receive should be paid into this trust account. 89

- 9 NSWTG develop an Activity Based Costing system to identify further reforms to NSWTG's Trust fees for the next fee review. Potential reforms include: 93
- Categorising involuntary trusts into low and high intensity trusts, with different fee levels for each trust category. 93
 - Introducing a minimum administration fee for both low and high intensity trusts, and offsetting this fee to some extent with a CSO payment. 93
 - Rebalancing the revenue raised from one-off and ongoing fees. 93

Will drafting services

- 10 NSWTG improve transparency around its fees at the point of engagement with its wills clients by: 98
- providing clients with a copy of its schedule of estate administration fees, which should include worked examples of fees for estates valued at \$50,000, \$100,000, \$250,000 and \$500,000, and 98
 - advising clients that they should consider comparing these fees with those offered by other service providers. 98
- 11 NSWTG provide better information about its fees to potential wills clients by including on its website worked examples of fees payable for estates valued at \$50,000, \$100,000, \$250,000 and \$500,000. 99
- 12 If NSWTG brings in an upfront fee for its will drafting service, the NSW Government introduce a three year pilot for will subsidies. Under the program: 103
- NSWTG would charge eligible clients a fee of \$320 for will drafting (new and remakes), which would be partially covered by a corresponding CSO payment from the NSW Government so that the actual cost to clients is \$10. 103
 - Clients would be eligible for the subsidy if they are also eligible for the full-rate Centrelink age pension. 103
- 13 If an independent evaluation of the will subsidy pilot program finds it effective, the NSW Government open up the program to other providers of will drafting services. 103
- Clients that meet the eligibility criteria would obtain a voucher for a subsidised will. Service providers could choose to accept this voucher and draft a will. They would then receive a corresponding partial CSO payment from the NSW Government based on the efficient cost of will drafting. 103
 - This efficient cost of providing will drafting services under the subsidy should be reviewed on a five yearly basis. 103

Estate administration

- 14 For estate administration, NSW TG: 113
 - Keep the existing fee structure for the executor fee, but increase fee levels. 113
 - Replace the short term and long term trust fees into a single administration fee. 113
 - Maintain the account keeping fee at \$10 per month, to ensure it is consistent with the account keeping fees charged by NSW TG across its other services. 113
 - Reduce the investment management fee from 0.75% to 0.1%. 113
 - Maintain the current fee level for its specialist services fees (eg, fees for investment planning, preparing tax returns). 113

Power of attorney drafting

- 15 NSW TG improve transparency around its fees at the point of engagement with its power of attorney drafting clients by: 117
 - providing clients with a copy of its schedule of power of attorney administration fees, which should include worked examples of fees for clients with assets valued at \$50,000, \$100,000, \$250,000 and \$500,000, and 117
 - advising clients that they should consider comparing these fees with those offered by other service providers. 117
- 16 NSW TG provide better information about its fees to potential power of attorney clients by including on its website worked examples of fees payable for estates valued at \$50,000, \$100,000, \$250,000 and \$500,000. 117
- 17 If NSW TG brings in an upfront fee for its enduring power of attorney drafting service, the NSW Government introduce a three year pilot for enduring power of attorneys. Under the program: 121
 - NSW TG would charge eligible clients a fee of \$230 for enduring power of attorney drafting (new and remakes), which would be partially covered by a corresponding CSO payment from the NSW Government so that the actual cost to clients is \$10. 121
 - Clients would be eligible for the subsidy if they are also eligible for the full-rate Centrelink age pension. 121
- 18 If an independent evaluation of the enduring power of attorney subsidy pilot program finds it effective, the NSW Government open up the program to other providers of power of attorney drafting services. 121

- Clients that meet the eligibility criteria would obtain a voucher for a subsidised enduring power of attorney. Service providers could choose to accept this voucher and draft an enduring power of attorney. They would then receive a corresponding partial CSO payment from the NSW Government based on the efficient cost of drafting an enduring power of attorney. 121
- This efficient cost of providing enduring power of attorney drafting services under the subsidy should be reviewed on a five yearly basis. 121

Service delivery

- 19 NSWTG responds to stakeholder concerns about its level of service by developing more comprehensive measures of service quality than the existing ones, with the Chief Executive Officer responsible for effectively implementing the revised measures and using them to drive service improvements. 144

Efficiency

- 20 The Chief Executive Officer of NSWTG is responsible for making at least a 20% efficiency saving on its current operating expenses within the next two years. 145
- 21 To improve its operating efficiency, the Chief Executive Officer of NSWTG: 145
- Implement consistent systems across NSWTG's service areas. 145
 - Ensure NSWTG conducts regular market testing of fees charged by third party providers, to ensure clients receive competitive rates for these services. 145
 - Adopt a risk-based approach to NSWTG's oversight activities, so it focuses on clients where there is a history of non-compliance, and conducts less regular review of clients with good compliance records. 145

Fee waivers

- 22 NSWTG apply its fee waiver policy in a more transparent, consistent and fair manner. Further, any fee waiver grants or refusals to be appropriately recorded, subject to regular audit and reported in its Annual Report for each service area. 146

Fee disclosure

- 23 NSWTG more clearly disclose all fees to clients, including those fees for third party service providers that NSWTG passes through to clients. This disclosure should occur both at NSWTG's point of engagement with clients,

and on a regular basis (such as in clients' Statements of Account) throughout the period of providing services to them. 146

Activity based costing

24 NSW TG adopt an Activity Based Costing system, which will support a move towards more cost reflective fees and better targeted CSO funding. 147

Transitional issues

25 The NSW Government provide additional budget funding of up to \$1.7 million per year for two years. This will allow NSW TG to immediately adopt our recommended fee structure. 148

26 NSW Treasury and the Department of Justice through the Budget process monitor the transition from NSW TG's current position to that recommended by IPART with a view to ensuring that NSW TG is in a sustainable financial position. 148

Future review of fees

27 IPART review NSW TG's fees and charges after five years. 148

2 | Context

This chapter provides the context for our review of fees of the NSW TG. It sets out what we have been asked to do. It provides some background on NSW TG as an organisation and our previous fee review of one of its predecessor organisations in 2008. It sets out the nature of NSW TG's services and discusses the clients it serves. It then discusses ongoing issues with NSW TG's:

- ▼ financial sustainability
- ▼ efficiency, and
- ▼ service delivery.

These issues have significantly shaped our analysis and approach to the setting of NSW TG's fees proposed in Chapter 4, and our general recommendations in Chapter 6.

In this chapter, we also discuss some emerging issues that will affect NSW TG's future operations, namely the impact of:

- ▼ the National Disability Insurance Scheme (NDIS), and
- ▼ an ageing population.

2.1 What have we been asked to do?

The NSW Government asked Independent Pricing and Regulatory Tribunal of NSW (IPART) to review the fee structure of the NSW Trustee and Guardian (NSW TG). The NSW TG was established in 2009, through the merger of the Office of the Protective Commissioner and the Public Trustee of NSW.

The objective of this review is to recommend a fee structure for the NSW TG that is clear, fair and transparent and where possible, harmonises the fees for services provided by NSW TG's precursor agencies. Our Terms of Reference for this review are provided in Appendix A.

In conducting the review, we have been asked to:

- ▼ review the costs of delivering the services the NSW TG provides to clients
- ▼ review the extent to which there are differences in cost recovery between client groups, and the capacity of the NSW TG to seek full cost recovery from different clients based on the nature of the service they require and the value of each client's assets or estates
- ▼ provide advice on options for meeting any funding shortfall, and
- ▼ consider how the NSW TG's fees and charges should be reviewed in the future.

We have also been asked to take account of our previous report on the Office of the Protective Commissioner's fees (September 2008) and the Regulatory Impact Statement of the Public Trustee (April 2008).

We are to provide a final report to the NSW Government with recommendations by 30 November 2014.

2.2 History

2.2.1 Merger of Office of Protective Commissioner and Public Trustee

NSW TG was established in July 2009 through the merger of the Office of the Protective Commissioner (OPC) and the Public Trustee NSW.⁷ The NSW TG provides the same services to clients as its predecessor organisations and is administratively responsible for the Public Guardian.

2.2.2 IPART's 2008 review of fees

The most recent review of the former OPC's fees was conducted by IPART. The final report on this review was provided in October 2008.⁸ The terms of reference for that review were similar to those provided for our current review of NSW TG's fees.

⁷ This was enabled by the *NSW Trustee and Guardian Act 2009*.

⁸ A copy of the Final Report is available at :
http://www.ipart.nsw.gov.au/Home/Industries/Other/OPC/Review_of_Fees_of_the_Office_of_the_Protective_Commissioner/25_Feb_2009_-_Release_Final_Report/Review_of_Fees_of_the_Office_of_the_Protective_Commissioner_-_Final_Report_-_September_2008.

In making our recommendations for the 2008 review, we considered limited cost analysis, and aimed to balance the following four broad principles for a clear, fair and transparent fee structure:

1. Fees should reflect the costs of providing the service as far as practical, to minimise cross-subsidies between activities and client groups in line with the principles of fairness and transparency.
2. Funding to cover the costs of meeting the OPC's social obligations—including waiving fees for protected persons who are unable to pay the full cost of the services they receive, providing services that benefit the wider community and meeting Government policy objectives—should come from the State Budget, in line with the principle of fairness.
3. Protected persons should pay no more for the services provided by the OPC than they would if these services were provided by commercial organisations operating in competitive markets. Such a principle avoids cross-subsidies between protected persons.
4. The criteria and process for assessing protected persons' capacity to pay, and waiving fees if they have no capacity, should strike a balance between simplicity (for example, using an adjustment based on a standard measure such as estate size or income) and flexibility (to reflect individual circumstances).

In the 2008 review, we found that our ability to assess the OPC's efficient costs and to set fees that reflect these costs was constrained by the limited data available from the OPC's financial and management information systems. We recommended these systems be upgraded as a matter of urgency, to ensure they could generate the information needed to fully consider the OPC's fee structure for future fee reviews. We note that these systems are still not in place.

The NSW TG's current fee structure for managed persons broadly reflects our recommendations. There are two exceptions:

- ▼ NSW TG applied a 0.5% investment fee to privately managed customers' investments in the common fund.
- ▼ NSW TG has not indexed the fee caps.

The NSW TG has allocated funds for upgrading the management information systems, but this work is not yet complete.

2.2.3 2008 Regulatory Impact Statement on the PT's fees

In 2008, the fee structure of the Public Trustee was reviewed internally within the Attorney General's Department by means of a regulatory impact statement (RIS). This resulted in:

- ▼ increases to most fees in line with changes in the CPI
- ▼ an increase in the cap on the common fund management fee
- ▼ increases in the value limits for small estates administration
- ▼ the addition of a profit margin to fees for service
- ▼ the introduction of an additional fee for long-term trusts (to reflect the fees applied by commercial trust companies).⁹

2.3 NSWTG services and clients

As discussed, NSWTG was established in 2009. Its role is to act as an independent and impartial Executor, Administrator and Trustee for the people of NSW and to provide direct financial management services and direction to private financial managers. NSWTG has two core business areas:

- ▼ Financial Management Services, including:
 - Direct financial management: Provision of substitute financial management services for people with decision making disabilities who are generally subject to a Court or Tribunal order.¹⁰
 - Private financial management: Authorising and directing the performance of private managers.
- ▼ Trustee Services, including:
 - will making
 - estate administration
 - corporate and individual trust management
 - powers of attorney (PoAs).

Table 2.1 below summarises the different fee types currently applied to each service category.¹¹

⁹ Public Trustee, *Regulatory Impact Statement*, April 2008, pp ii-iii.

¹⁰ Some direct financial management clients are not subject to Court or Tribunal order, but are voluntary patients in a mental health facility. NSWTG may assume a financial management role if requested by the patient or, if the patient is under 18 years, a person with parental responsibility: *NSW Trustee and Guardian Act 2009*, s 53.

¹¹ Submissions to the Issues Paper refer to other types of fees charged that are not clearly specified on NSWTG's website or in legislation, eg, regulation fees, photocopying fees (legislation does, however, provide for the NSWTG being able to charge a broad range of fees).

Table 2.1 NSWTG service categories and fee types

NSWTG service	Fee types currently applied
Direct financial management services	Establishment fee, Management fee, Investment fee
Private financial management services	Income fee, Accounts fee, Optional Investment fee
Trust management services	Capital commission (on set up), Accounts fee, Tax return fee, Investment fee, Commission, Long term trusts fee
Will making services	Currently no fee
Estate administration	Executor fee, Accounts fee, Tax return fee
Power of Attorney – writing	Currently no fee
Power of Attorney – executing	Establishment fee, Accounts fee

Source: IPART, A fair and transparent fee structure for the NSW Trustee & Guardian, Issues Paper, May 2014 (Appendix B).

The sections below provide a brief description of the different service categories.

2.3.1 Direct financial management services

NSWTG is generally appointed as a direct financial manager by means of a financial management order by a Court or Tribunal. These orders are issued for persons with diminished capacity to manage their own finances. Individuals with psychiatric and intellectual disabilities make up a significant portion of NSWTG directly managed clients (40% of clients under direct management have psychiatric disabilities¹²). As a part of financial management NSWTG takes on responsibility for all aspects of a client's financial affairs including but not limited to: collection of income, payments to the client, management of real property and leasing arrangements, tax and financial planning.

2.3.2 Private Financial Management services

While NSWTG is the default body appointed as a financial manager of a managed person, the courts can also appoint a private individual (normally a family member or close friend or in a small number of cases a private trustee company is appointed). Approximately a third of managed persons in NSW are under the care of a private financial manager.¹³ NSWTG maintains an oversight role for these clients, auditing the annual reports that private managers are required to prepare and submit to NSWTG and providing advice and support to private managers.

¹² NSWTG submission to IPART, June 2014, p 10.

¹³ NSWTG, *Annual Report 2012-13*, Table 1, p 12.

2.3.3 Trust management services

NSWTG acts as a trustee, manager or receiver of funds for those unable to manage their own funds. NSW TG trusts typically fall into one of four categories:

- ▼ Trusts arising from wills such as life interests, disability trusts, discretionary trusts or fixed term and purpose trusts.
- ▼ Trusts arising from court/tribunal orders generally from compensation claims for personal injury, victim's compensation or workers compensation death benefits.
- ▼ Trusts arising from deeds.
- ▼ Trust deeds created by clients or arising from superannuation death benefits.

As trustee, NSW TG manages all aspects of the trust, including investing in the common fund, managing payments to clients, tax returns and annual reviews.

According to NSW TG, approximately 72% of trusts under management had a cash balance less than \$50,000. This means that the types of input required and the cost of this input may differ from the general market.¹⁴

2.3.4 Will making services

NSWTG has historically offered a free will making service, and promotes the importance of wills and other pre-planning documents through the use of "NSWTG Wills Day" events across the state. When NSW TG writes a will for a client, they require the client to appoint them as the executor. Fees are charged on deceased estates that may arise from the making of a will.

For the year ending 30 June 2013, NSW TG report that it had prepared approximately 9,500 wills.¹⁵ NSW TG retains approximately 7% of the market for will making.¹⁶ The majority share in the market (81%) sits with the legal profession. Comparing the number of wills drafted to the number of estates executed over the last 14 years, it appears that only about 12% of wills prepared by NSW TG are converted to deceased estates.¹⁷

2.3.5 Estate administration

NSWTG manages both testate (will) and intestate (no will) estates. NSW TG charges both commission fees and fee-for-services in this area, and serves as an executor of last resort where no one else is available.

¹⁴ NSW TG submission to IPART, June 2014, pp 17, 20.

¹⁵ NSW TG, *Annual Report 2012-13*, p 10.

¹⁶ NSW TG submission to IPART, June 2014.

¹⁷ NSW TG submission to IPART, June 2014. This assumes the volume of will drafting has been stable over the long term.

According to NSW TG, administration of deceased estates valued below \$50,000 represents 32% of their work.¹⁸

2.3.6 Powers of Attorney (PoAs)

NSW TG has a tiered management plan under attorney services, allowing clients to choose as much or as little help as they require while giving them the security of an independent, professional attorney. It comprises:

- ▼ Future Assist – where NSW TG act only at client request or when they are no longer able to look after their own affairs. These remain dormant until that time.
- ▼ Active Assist – where the client requires ongoing assistance in dealing with part or all of their financial affairs, these include enduring powers of attorney.

Once a Power of Attorney (PoA) transitions to Active Assist, NSW TG will take over managing the client's affairs in accordance with their wishes laid out in the PoA document. This will generally include tasks such as managing investments and assets, disbursement of funds to clients and paying of bills.

There are currently no fees charged for the preparation of a PoA. However, fees are charged when a PoA is activated.

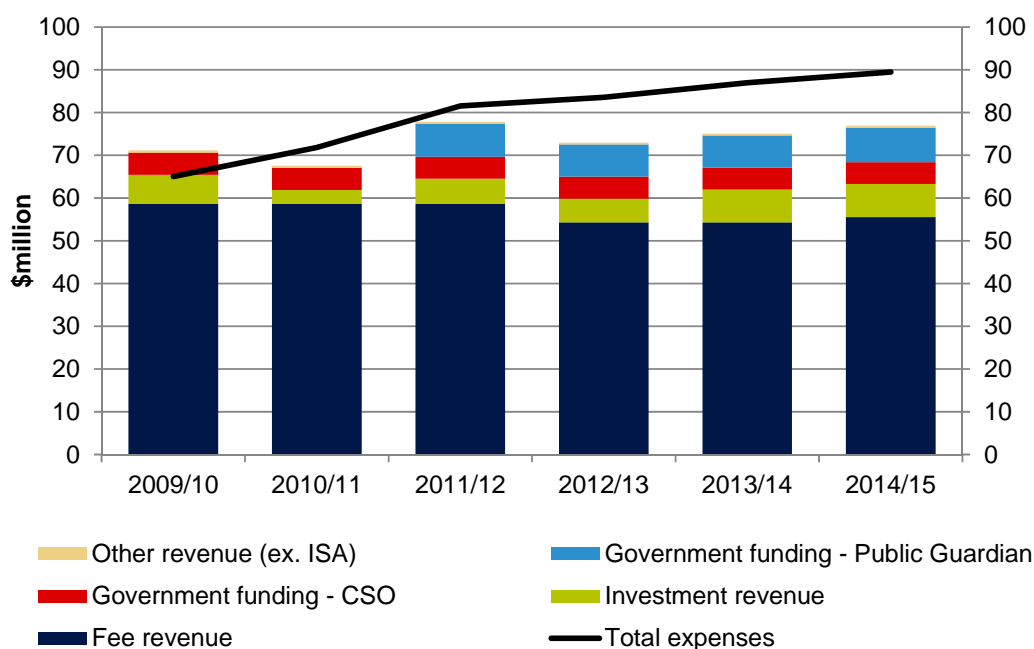
2.4 Financial sustainability

Since its establishment in 2009, NSW TG's costs have steadily increased while total revenue has remained relatively flat. This has led to a widening gap between revenue and expenses over time.

To fund this gap, NSW TG can make transfers from a reserve account, referred to as the Interest Suspense Account (ISA). The ISA consists of returns on client investments that were placed in reserve prior to the 2009 merger. Schedule 1 of the *NSW Trustee and Guardian Act 2009 (NSW)* (the NSW TG Act) directs NSW TG to not make deposits into the ISA. NSW TG can however continue to access the ISA to help fund its operations.

Figure 2.1 presents the overall budget position of NSW TG over the six years since it was established in 2009.

¹⁸ NSW TG submission to IPART, June 2014, p 20.

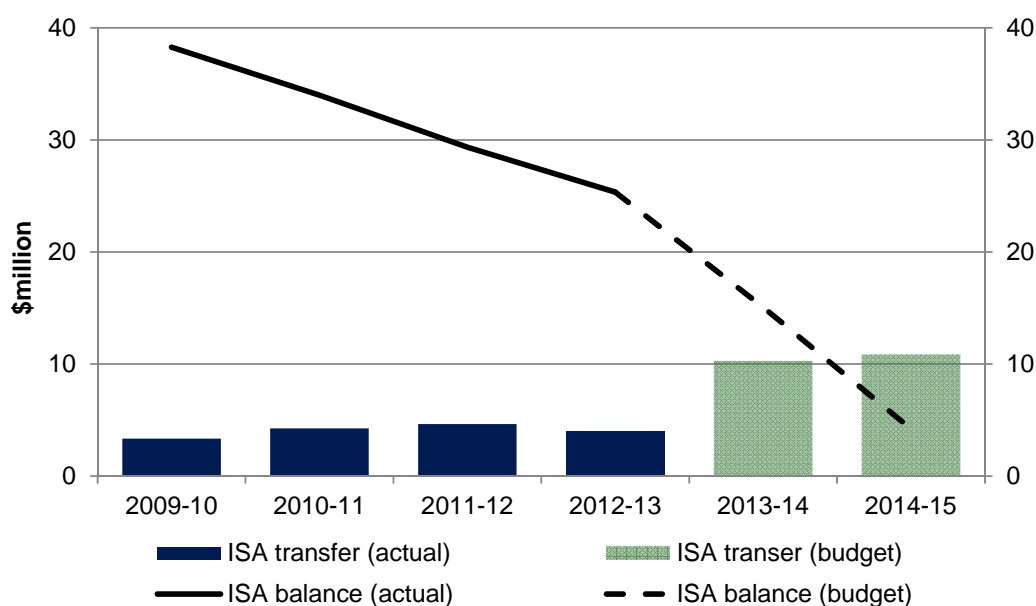
Figure 2.1 NSWTG budget position 2009/10 to 2014/15

Note: For 2009/10, the budget papers referred only to the Public Trustee of NSW. This chart presents the revised budget data for NSWTG for 2009/10 published in the 2010/11 budget papers. We have excluded the ISA component of 'other revenue' to make clear the gap between revenue and expenses.

Data source: NSW Budget, budget paper 3, 2010/11 to 2014/15.

According to budget papers over the period 2009/10 to 2014/15, NSWTG's annual expenses are expected to increase from \$65 million to almost \$90 million over the five-year period. This is equivalent to an average annual growth rate of 6.7% over the five-year period.

The following chart shows how NSWTG has run down the ISA from 2009/10 to 2012/13. The chart also projects how the ISA could be depleted going forward based on the net budget positions for 2013/14 and 2014/15.

Figure 2.2 NSWTG budget shortfall and ISA balance 2009/10 to 2014/15

Note: In 2009/10 the ISA balance was \$64 million. The Audit Office reported that NSWTG transferred \$26 million from the ISA to other funds in the common fund in 2011 (NSW Audit Office, 2011, *NSW Auditor-General's Report: NSW Trustee and Guardian*, volume 7, p 45). To account for this, we revised the ISA balance for 2009/10 to \$38 million (ie, \$64 million minus \$26 million).

Data sources: NSWTG Annual Reports 2010 to 2013. Common fund data provided by NSWTG. NSW Budget 2013/14 and 2014/15 (bp3).

At the end of 2012/13, the ISA balance was \$25 million. Based on 2013/14 and 2014/15 budget estimates, which indicate required ISA transfers of \$10 million and \$11 million respectively, the ISA could be exhausted by 2015/16. If actual ISA transfers are larger (smaller) than predicted, the ISA will be exhausted sooner (later) than 2015/16.

NSWTG's current financial position is unsustainable. Once the ISA has been exhausted, NSWTG will face a budget shortfall that will need to be funded directly by the NSW Government.

There are a range of options available to respond to NSWTG's budget shortfall:

- ▼ prepare to absorb the shortfalls into the NSW Budget once the ISA is depleted
- ▼ increase fees to bring revenue in line with operating expenses
- ▼ reduce costs to bring expenses in line with operating revenue.

We consider that it is important to establish whether or not NSWTG is operating efficiently before considering either additional budget funding or increasing fees.

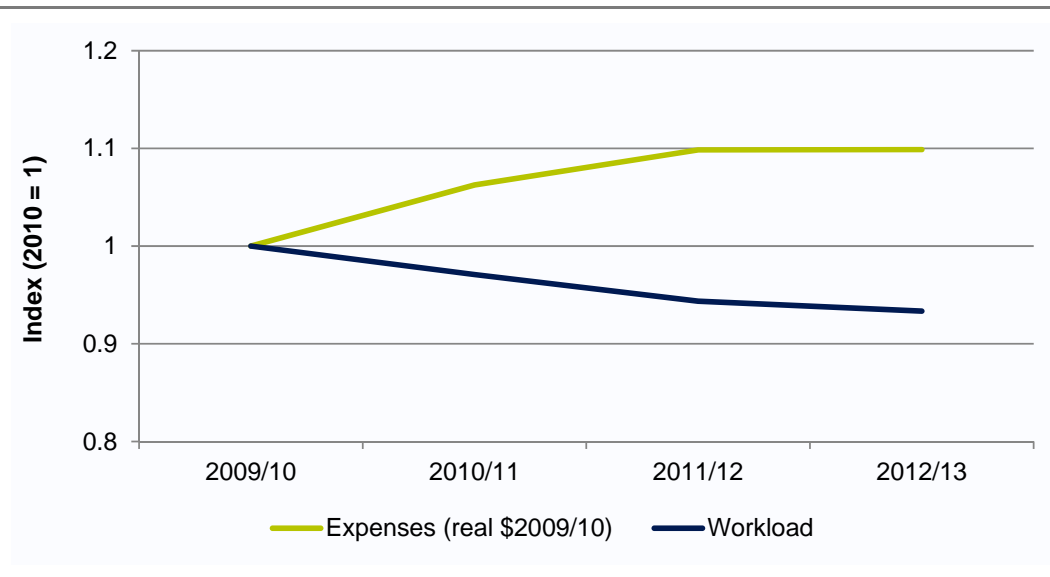
2.5 Efficiency

Based on stakeholder submissions, our analysis of publically available information and information provided by NSW TG, we consider there is significant scope for process improvements and efficiency savings across NSW TG.

We received several submissions from stakeholders, across multiple services, that either suggested NSW TG was generally inefficient or provided examples of processes that these stakeholders consider to be inefficient. Several examples of inefficiencies are provided in Chapter 4 including evidence of duplicated systems and unnecessary processes.

We have conducted high level analysis of NSW TG's expenditure and workload data. This analysis (summarised in Figure 2.3) shows that while expenses have increased, the number of clients and matters managed by NSW TG has decreased.

Figure 2.3 NSW TG Expenses and Workload 2009/10 to 2012/13



Note: Workload is the number of clients / matters in each year weighted by an estimate of average cost per matter/client for 2013 from data provided by NSW TG. This analysis assumes the intensity/complexity of clients/matters stays constant overtime as the number of clients/matters changes.

Note: assumes inflation rate of 2.5% p.a.

Data source: NSW TG Annual Reports (expenses and activity data). 2012/13 service cost data provided by NSW TG.

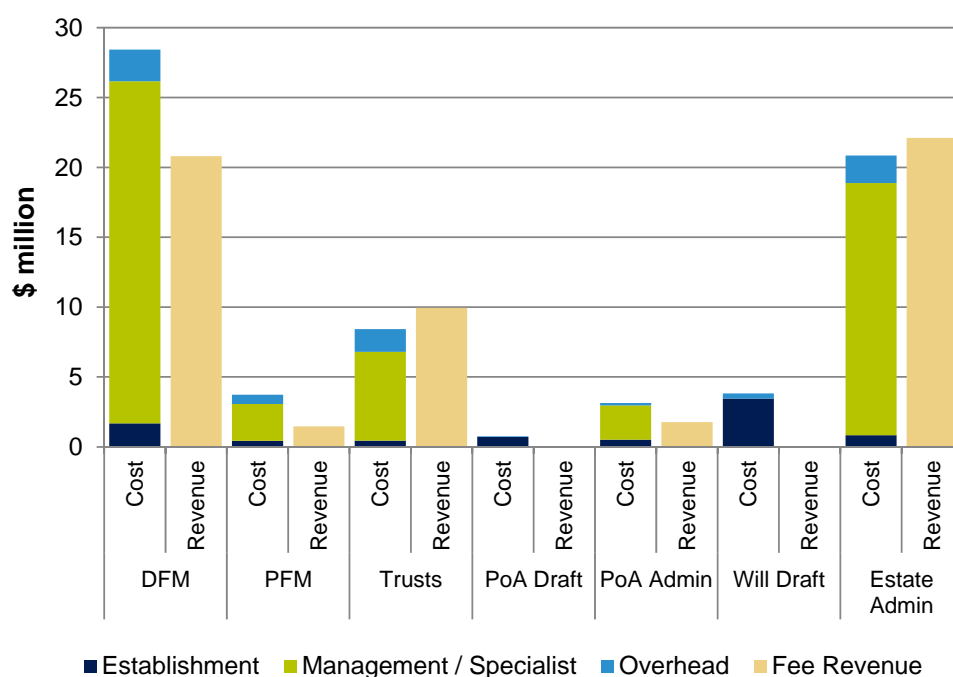
Since 2010, NSW TG's (real) expenses have increased 10% while the volume of clients and matters has fallen 7%. Overall, the average cost per client / matter has increased 18% since 2010.

We also had the benefit of reviewing a confidential report provided by NSW TG which supports our high level analysis. As a result, we are confident that 20% is a conservative, reasonable and achievable estimate of NSW TG's potential efficiency savings.

2.6 Cross subsidies between services and clients

NSW TG's current fee structure results in significant cross subsidies between services and between clients within each service. For example, as set out in Figure 2.4 below, fees over-recover from Trust and Estate Administration services, and under-recover in all other services. NSW TG justify free wills based on cost recovery through estate administration once wills are executed. However, according to our analysis, in FY 2012/13 fees for estate administration did not recover the all-in costs of will writing and estate administration. There is also no fee for drafting of Powers of Attorney. It follows that this service is also subsidised to some extent by other services and/or sources of revenue.

Figure 2.4 Actual cost and fee revenue by service in 2012/13



Source: Cost and revenue data provided by NSW TG.

From our analysis of the current fees charged by NSW TG, there is some evidence that current fees over-recover from low intensity clients and under-recover from high intensity clients. For example, fees don't reflect that some trusts require very little attention while others require significantly more.

2.7 Service delivery issues

There has been a history of client dissatisfaction with the level of fees and quality of services provided by NSW TG and its predecessor organisations. These issues were frequently raised by stakeholders in their submissions to our Issues Paper.

NSW Legislative Assembly Report into the Public Trustee - 2006

The Public Bodies Review Committee of the NSW Legislative Assembly conducted an inquiry into the Public Trustee of NSW (PT) in 2006. It reported on this inquiry in November 2006.¹⁹

At this time, the PT's role included:

- ▼ wills and estate administration
- ▼ powers of attorney
- ▼ trust management.

The Committee noted issues with client satisfaction relating to cost, timeliness and service delivery that suggested a need for greater transparency in the PT's operations and performance reporting systems. Its recommendations included that the NSW Government consider the viability of the PT adopting a fee for service pricing structure to provide testators and beneficiaries with a more precise level of charges in relation to work actually performed and overcome the inequities of the commission based system. The PT develop key performance indicators for all areas of its operations and publish these KPIs in its annual reports. The PT should comparatively benchmark case management service delivery operations, including timeframes for completion, with Public Trustees in other jurisdictions and publish this benchmarking information in its annual reports.

NSW Ombudsman investigation into NSW TG's decision-making – 2010/11

Due to complaints about NSW TG's processes and procedures, the NSW Ombudsman launched an investigation in 2010/11 into the standard of NSW TG's administrative decision-making.²⁰ The investigation covered:

- ▼ delays in decision-making
- ▼ delays in implementing suggestions from the NSW Ombudsman that had been agreed to
- ▼ lack of compliance by NSW TG staff with changes when they had been actioned

¹⁹ NSW Legislative Assembly, Public Bodies Review Committee, *Report into the Public Trustee of New South Wales*, Report No. 9/53, November 2006.

²⁰ NSW Ombudsman, *Annual Report 2010-11*, p 35.

- ▼ failures to identify systemic issues in administrative practices
- ▼ failures to respond to correspondence and phone calls.

The NSW Ombudsman's final report and recommendations arising from this investigation are not publicly available. NSWTG indicated that the investigation was formally closed in 2012/13.²¹

Stakeholder submissions to the Issues Paper

Stakeholders were highly critical of the service NSWTG provides, particularly in view of the fees charged. The majority of submissions provided were done so on either an anonymous or confidential basis. In their submissions, these stakeholders noted that:

- ▼ service quality is poor, particularly with regard to communication, property management and payments being made on time
- ▼ fees are excessively high for services which appear to involve minimal work by NSWTG, and are eroding the value of clients' accounts over time
- ▼ there is no clear rationale for some fees (eg, 4% income fee for private financial management clients)
- ▼ fees are not clearly set out in Statement of Accounts, or do not reconcile with fee details publically available on NSWTG's website.²²

Alzheimer's Australia's member survey indicated that of the survey respondents who had used NSWTG services for either financial management (50%) or trustee services (50%), just over half were satisfied with the level of service provided (56%). On the question of whether the standard of NSWTG's service is equal to a private trustee company, solicitor or accountant, 56% of survey respondents indicated that it isn't.²³

Mental Health Co-ordinating Council (MHCC) reported that its stakeholders consider that many NSWTG clients, their families and carers are less than happy with the services they receive. According to MHCC, since the merger in 2009, whilst services are more broadly available across regional areas, the quality of services has deteriorated. MHCC considers that this is primarily due to the loss of expertise that occurred because of the merger, and that the officers handling financial matters have little knowledge and understanding of the complexity of co-existing difficulties that many clients experience.²⁴

²¹ NSWTG, *Annual Report 2012-13*, p 21.

²² We received and reviewed copies of account statements from a cross section of stakeholders.

²³ Alzheimer's Australia submission to IPART, June 2014.

²⁴ Mental Health Co-ordinating Council submission to IPART, June 2014.

MHCC strongly advocates that key performance indicators (KPIs) are developed in consultation with clients and their carers to establish benchmarks for satisfaction and evaluation of service delivery over time.²⁵

According to the Public Service Association of NSW (PSA), a survey of NSW TG staff conducted in December 2011 revealed that 75% of staff were of the view that client service had not improved since 2009. Staff members often receive complaints from clients about procedures and communications, particularly regarding problems experienced with the phone systems and unreturned calls.²⁶

The PSA also commented that despite this, metric indicators such as tasks logs and electronic file notes reveal that the productivity of staff has in fact increased since 2009. It is simply the fact that there is insufficient staffing numbers to provide a higher level of service.²⁷

Alzheimer's Australia commented that the results of its survey of members indicate that, in relation to the transparency of NSW TG fees, only 56% of members said they were provided with information about fees.²⁸

Alzheimer's Australia also provided some member comments, including that members consider charges excessive. For example, one member commented "on an estate of less than \$36,000 to be charged \$1,200 per month was an excessive charge for paying bills without checking the accuracy of said bills when family was doing same job without charge to estate".²⁹

Another stakeholder commented that they were quoted \$4,000 for a document translation by NSW TG, which when they cross-checked they were provided with a quote around \$850 for the same documents from the National Accreditation Authority for Translators and Interpreters. They also commented that unwanted title searches had been performed (all without consent), and that this resulted in their account balance running on empty and payments being made late.³⁰

We acknowledge stakeholders' concerns about NSW TG's service delivery. Chapter 6 includes recommendations aimed at improving NSW TG's performance.

²⁵ Ibid.

²⁶ Public Service Association of NSW submission to IPART, June 2014.

²⁷ Ibid.

²⁸ Alzheimer's Australia submission to IPART, June 2014.

²⁹ Ibid.

³⁰ Trzopek, G. submission to IPART, June 2014.

2.8 Fee waivers

Section 111 of the NSW TG Act provides that the CEO of the NSW TG may waive, remit or reduce any fee where it appears just and reasonable to do so. NSW TG has a fee waiver, remission, deferral and reduction policy.³¹ This policy specifies that fees must be charged unless levying the fees would cause extreme hardship or would be inequitable. In considering whether to waive, remit or reduce a fee, the NSW TG must take into consideration the following items under its fee waiver policy:

- ▼ the size of the estate
- ▼ the client's needs
- ▼ the estate's commitments and liabilities
- ▼ whether the payment can be deferred
- ▼ whether the estate could pay for the fees over time
- ▼ whether the estate can make a part payment
- ▼ whether the client would suffer any financial or other hardship in paying the fees
- ▼ the impact of any decision on the NSW TG's funding should it be applied to similar estates.

The policy states that NSW TG does not waive fees if there is any possibility of collecting them in part, in instalments or at a later date.

However, NSW TG's fee waiver policy does not appear to be consistently applied, and the policy is not supported by a clear and centralised system for recording fee waivers. Stakeholder submissions suggested that the application of NSW TG's fee waiver policy appeared arbitrary, varying from branch to branch.

The PSA noted in its submission that the policy for waiving fees is applicable to both managed persons and trustee services, and is separate to reduced fees for low wealth trustee matters. The PSA commented that it was the experience of staff that the waiver system was arbitrary and varied from branch to branch and staff member to staff member. According to the PSA, there are a number of issues with the policy that have created this situation, namely:

- ▼ The scenarios where fees should be waived are not clearly identified in NSW TG policy.
- ▼ There is only one overarching principle, "hardship" which is applied in determining whether to grant a waiver of fees. It is the experience of staff that this principle is too broad.

³¹ NSW Trustee and Guardian, *Fees – Waiver, Remission, Deferral and Reduction – Policy*, 4 February 2014.

- ▼ The application of the current waiver policy hinges on the discretion of staff and/or client complaints. As a result, inconsistencies occur when different branches waive fees in matters with like circumstances.³²

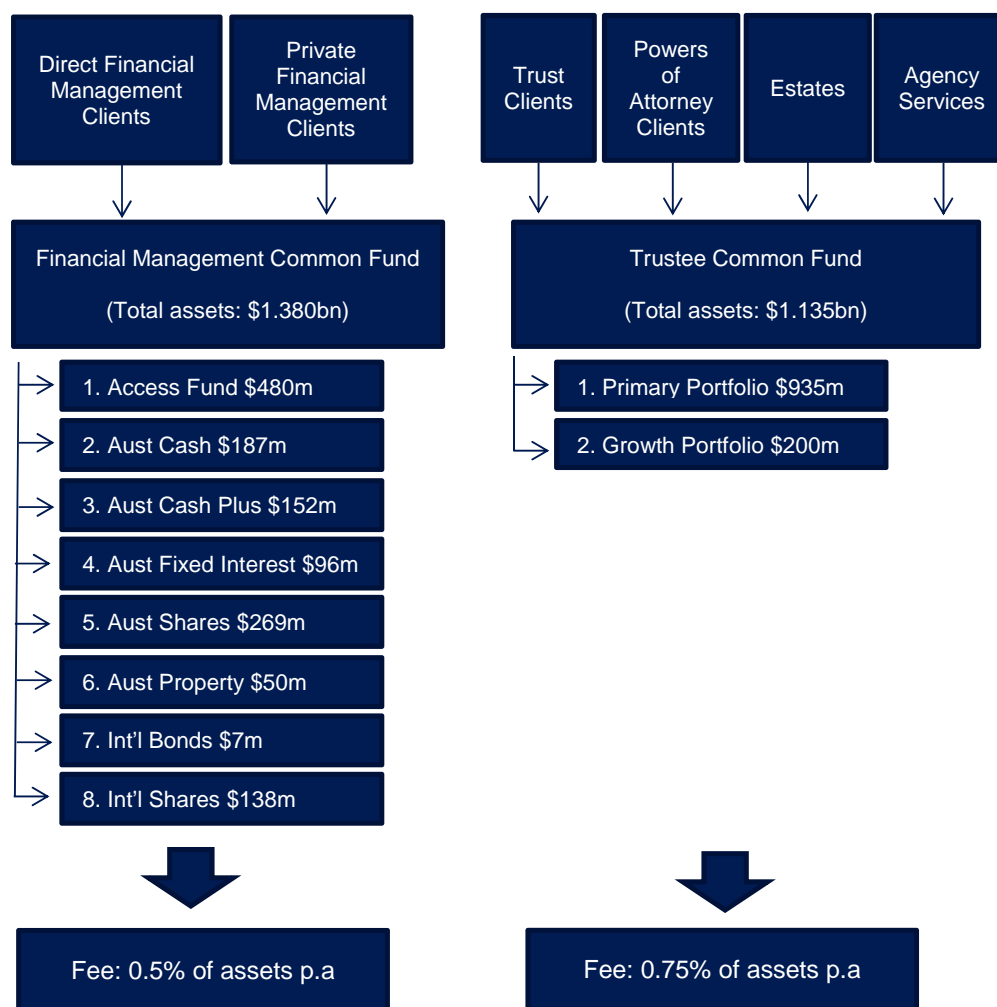
We acknowledge concerns about the fee waiver policy and have made recommendations in Chapter 6 to address this issue.

³² Public Service Association of NSW submission to IPART, June 2014.

2.9 The Common Fund

NSWTG operates two funds which are known jointly as 'the common fund'. In 2012/13 NSWTG had approximately \$2.5 billion under management in its common fund. Each fund contains a number of sub-funds as illustrated in Box 2.1.

Box 2.1 Current structure of common funds (2012/13)



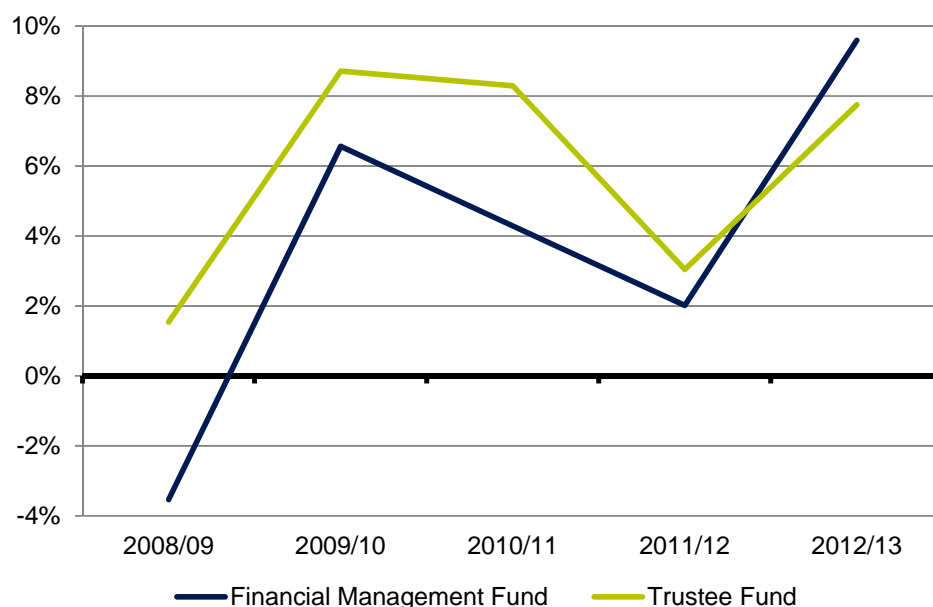
Source: NSWTG Annual Report 2012/13.

NSWTG currently charges two different investment management fees:

- ▼ 0.5% on assets in the common fund for Financial Management clients.
- ▼ 0.75% on assets in the common fund for Trusts, PoA, Estates and Agency clients.

Figure 2.5 shows the performance of the common fund (ie, Financial Management and Trustee funds) from 2008/09 to 2012/13. Performance is presented after investment management fees have been deducted. The chart shows the impact of the Global Financial Crisis (2008/09) and the relatively poor equity market performance in 2011/12.

Figure 2.5 Annual performance of common fund 2008/09 to 2012/13



Note: this chart presents the weighted average return, after fees, of each fund. This was calculated based on the opening balances and annual returns of each component of each fund.

Data source: NSW TG Annual Reports 2009 to 2013.

2.10 Future challenges

In addition to the existing issues discussed above, NSW TG faces some future challenges, namely:

- ▼ the National Disability Insurance Scheme (NDIS), and
- ▼ an ageing population.

These emerging issues will affect NSW TG's future operations.

2.10.1 National Disability Insurance Scheme (NDIS)

The NDIS is a Federal Government program that provides support for people with disabilities. Eligible participants can access NDIS support through a personal plan, prepared by the participant and a National Disability Insurance Agency (NDIA) planner.

The NDIS provides individuals with a disability with reasonable and necessary supports, which may include:

- ▼ support for daily personal activities
- ▼ transport
- ▼ workplace help
- ▼ therapeutic supports
- ▼ and other supports.

Therefore, the NDIS creates an entitlement for eligible people and NSW TG as a financial manager has an obligation to enable clients to access their entitlements.

The structure of the NDIS is to prepare plans directly with participants (rather than with the substitute decision maker if one exists). This means that a financial manager such as NSW TG may not be aware that an individual is receiving support under the NDIS. The Australian Guardianship and Administration Council have stated that there is significant confusion associated with the conflict between supported decision-making (such as occurs under the NDIS) and substituted decision-making (such as the function of NSW TG as a financial manager).³³

In general, clients of NSW TG receiving various services (trusts, financial management, etc) may be disabled and therefore have entitlements under the NDIS. The eligibility under the NDIS is not the same as the conditions under which an individual becomes subject to a financial management order. Therefore, there will be uncertainty associated with whether a client of NSW TG is entitled to support under the NDIS.

The NDIS is likely to create an additional administrative burden for NSW TG in financially managing clients, because it requires liaison with NDIA and NSW TG has an obligation to ensure that clients can gain access to their entitlements.

Fees are generally not charged by NSW TG on the supports received through NDIS because it is generally in a non-monetary form. That is, supports are often funded by direct payments from NDIA to the service provided (potentially through a brokerage firm). The travel allowance is the main support that is paid directly to the participant, and NSW TG generally does not extract fees from this payment.

As a result, this additional administrative burden is not funded from the client's assets or income.

³³ Submission 91 by Australian Guardianship and Administration Council to ALRC (2014), *Equality, Capacity and Disability in Commonwealth Laws* (DP81), available at http://www.alrc.gov.au/sites/default/files/subs/91_org_agac_comments.pdf.

2.10.2 Ageing population

As noted in our Issues Paper, the demand for NSWTG's services could be affected by the ageing of the population. According to NSWTG, between 2007/08 and 2013 the number of directly financially managed clients with age related impairment has risen from 0.1% to 11.4% of all directly managed clients.³⁴ It is anticipated that the proportion and number of clients with age related impairment will continue to grow in future.

IPART findings

- 1 NSWTG's financial position is unsustainable and is unlikely to improve without restructuring its operations.
 - Operating revenues do not cover operating expenses. It is currently drawing down an Interest Suspense Account (ISA) to cover shortfalls.
 - IPART's analysis of NSWTG's workload volume and expenses suggests there was an 18% increase in the average cost of servicing clients between 2010-2013.
- 2 We consider there is scope for NSWTG to make an efficiency saving of at least 20% of its current operating expenses.
- 3 NSWTG's current fee structure results in cross subsidies between services and between clients within each service.
- 4 Many of NSWTG's stakeholders are highly critical of the service it provides, particularly in view of the fees charged.

³⁴ Email communication from NSWTG, 26 February 2014.

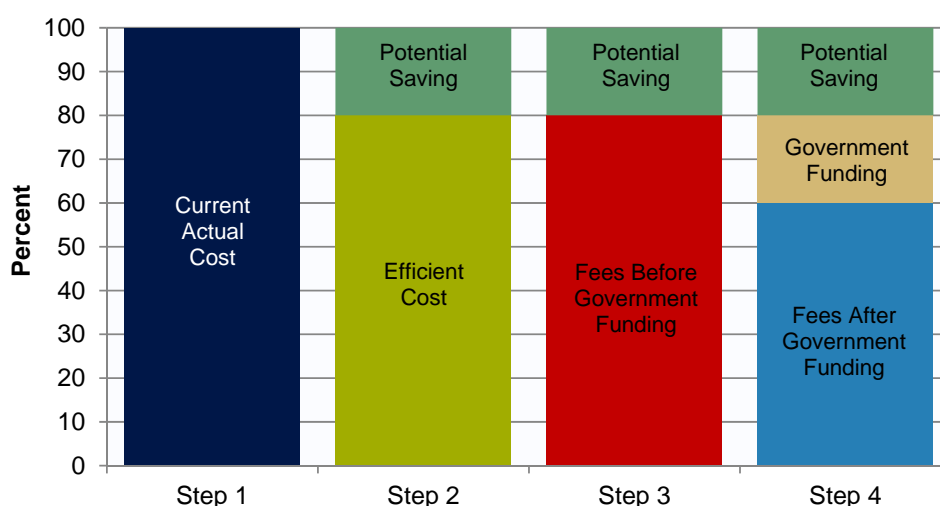
3 Our approach

The main objective of this review is to recommend fees for NSW TG services. Based on the availability of data and stakeholder feedback from our Issues Paper we have developed an approach to develop fees for NSW TG services. Our approach consists of four sequential steps:

1. Determine whether IPART should price regulate each service provided by NSW TG. Establish the current actual cost of providing the service.
2. Estimate efficient costs based on a review of market fees and efficiency analysis.
3. Select fee mechanisms and set fee levels to recover efficient costs while balancing our pricing principles of efficiency, fairness and transparency.
4. Determine an efficient allocation of government funding across services and within services to best meet policy and equity objectives.

This process is undertaken independently for each regulated service. Figure 3.1 illustrates the four sequential steps and shows how each step builds off the previous step.

Figure 3.1 Our approach



Note: The resulting proportions of each component may be different from that shown in this simplified illustration.

Table 3.1 sets out our objectives and describes the actions and rationale for each step of our approach.

Table 3.1 Process for setting NSWTG Service Fees

	Objectives	Actions	Rationale
Step 1	<ul style="list-style-type: none"> - Determine whether we should regulate prices for each service (or for a group of clients within a service). - Identify and quantify each service provided by NSWTG. 	<ul style="list-style-type: none"> - Consider whether clients have a choice of service provider or whether they are required to use NSWTG services. - Estimate quantity and cost for each service. 	<ul style="list-style-type: none"> - There should be a robust economic or equity basis for intervening in this activity and setting fees. - This will form a basis for Step 2 where we estimate the efficient cost of the service.
Step 2	<ul style="list-style-type: none"> - Establish the efficient cost for providing this service. 	<ul style="list-style-type: none"> - Form a position on the efficient cost of services based on assessment of available market data and estimates of potential efficiency savings. 	<ul style="list-style-type: none"> - Regulated fees should only recover the efficient cost of providing the service.
Step 3	<ul style="list-style-type: none"> - Select fee mechanisms and set fee levels that achieve the best balance between our pricing principles: efficiency, fairness and transparency. 	<ul style="list-style-type: none"> - Develop and apply pricing principles to recover the efficient costs of each regulated service. 	<ul style="list-style-type: none"> - Regulated fees should be designed to recover efficient costs, be positively related to cost to serve and be clearly understood by clients.
Step 4	<ul style="list-style-type: none"> - Establish whether the service has a clear social benefit component. - Consider client's ability to pay the recommended fees and estimate required government funding. 	<ul style="list-style-type: none"> - At a service level: estimate an appropriate level of government subsidy to achieve desired level of service/activity. - At a client level: develop rules to allocate government funding based on client characteristics such as assets, income and age. 	<ul style="list-style-type: none"> - There may be some services for which the social benefit exceeds clients' private benefit and therefore justifies a general government subsidy. - Setting clear rules to allocate government subsidies to those most in need of assistance will result in better targeted and more transparent use of government funding.

Source: IPART analysis.

Stakeholder comments on the proposed approach set out in our Issues Paper

One stakeholder indicated that they support the approach suggested in the Issues Paper with regards to regulated services. NSWTG should identify benchmark fees for similar services and clearly explain the additional costs in relation to serving protective persons with 'intensive needs'.³⁵

This stakeholder also agrees that managed persons are unlikely to have 'control over their additional costs and are likely to vary widely in terms of their capacity to pay for fees. Therefore, in the context of this review, a strictly user-pays approach may not be considered fair'. They agree that the additional costs that NSWTG faces in servicing managed persons should be considered before determining what level of fees individual managed persons should pay, and what proportion the NSW Government should contribute.³⁶

In terms of the approach for estimating costs and benchmarking fees, another stakeholder suggests that care should be taken in relation to comparing NSWTG with other financial and estate organisations. They consider that the type of service being compared needs to be clearly identified and it should be asked whether the same service NSWTG provides to the managed person is being provided in the open market.³⁷

The Department of Premier and Cabinet (DPC) note in its submission that the National Disability Insurance Agency (NDIA) sets prices in accordance with the prices for equivalent supports in local markets. These prices have been developed for the National Disability Insurance Scheme (NDIS) trial, and the NDIA and NSW are currently looking at whether these prices accurately reflect the market. DPC suggest that IPART may wish to consider the learnings from this trial in its review of the NSWTG fee structure.³⁸

³⁵ Mental Health Co-ordinating Council submission to IPART, June 2014.

³⁶ Ibid.

³⁷ Public Service Association of NSW submission to IPART, June 2014.

³⁸ NSW Department of Premier and Cabinet submission to IPART, June 2014.

3.1 Which services will have IPART-recommended fees?

3.1.1 Combination of IPART-recommended and NSWTG-set fees

The fee structure that we are proposing entails a combination of IPART recommended and NSWTG set fees (see Figure 1.2). Consistent with our preliminary view in the Issues Paper, we are only recommending fees for NSWTG services where market failure exists. This typically arises for those services where clients have no choice but to engage the services of NSWTG. For services where there is a competitive market, NSWTG should have the discretion to set its fees.

We consider this approach accords with the Terms of Reference,³⁹ which do not explicitly require IPART to recommend fees for *all services* provided by NSWTG. Instead, they require us to recommend a *fee structure* for the NSWTG. As indicated above, our new fee structure sets fees for certain services, and allows NSWTG to determine its fees for other services.

In providing its feedback to the Issues Paper, the PSA of NSW agreed with the position that IPART should not recommend fees for market customers.⁴⁰

Report on competitive markets

We engaged the Centre for International Economics (CIE) to examine the competitiveness of the market for each of NSWTG's services.⁴¹ CIE found that in most instances the private markets for NSWTG's services were competitive. That said, it did find evidence there did not appear to be a significant private sector market for trust or power of attorney administration services for low asset clients.

The focus of the information collected by CIE was on trustee companies. This means that, although trustee companies may not regularly serve clients that have assets below certain thresholds, other private sector providers such as solicitors may. In addition to the private sector, clients also have the option to appoint relatives or friends to act as their trustee or attorney for free (ie, at no cost to the client).

Drawing on CIE's analysis, we have proceeded on the basis that there is generally a competitive market for NSWTG's services, apart from in the instances outlined in section 3.1.2 below.

³⁹ Appendix A sets out the Terms of Reference in full.

⁴⁰ Public Service Association of NSW submission to IPART, June 2014.

⁴¹ Our engagement with CIE also involved other items as discussed in more detail in section 3.3.2.

3.1.2 Services with IPART-recommended fees

We are recommending fees for the following six services:

1. **Direct financial management** –all clients.
2. **Private financial management** –all clients.
3. **Trusts** –trusts where the client did not choose to have NSW TG act as their trustee, rather it was the decision of a Court or Tribunal or required under legislation.
4. **Estate administration** –intestate estates or estates whose nominated executor is unwilling/unable to act.
5. **Will drafting** –clients eligible for the full-rate Centrelink age pension.
6. **Power of attorney drafting** –clients eligible for the full-rate Centrelink age pension.

Our specific fee recommendations are set out in Chapter 4.

Monopoly supplier: services where clients have no choice but to engage NSW TG

For the services listed in items one to four, NSW TG's clients are 'involuntary'. They did not choose to have NSW TG provide the service, and they do not have the capacity to transfer to alternative providers. We consider that NSW TG is effectively the monopoly supplier of these types of services.

Power of attorney administration

We considered whether NSW TG was a monopoly supplier to clients in power of attorney administration. Clients elect to have NSW TG act as their attorney. However, once the enduring power of attorney is activated – which only occurs when the client loses capacity – NSW TG has an ongoing role in managing that client's financial affairs. The client is then unable to change attorney due to their incapacity.

While this may make NSW TG a monopoly supplier of attorney services for these clients, this is also the case for any private sector provider of attorney services once their clients lose capacity. Of relevance is that the client voluntarily agreed to NSW TG acting as its attorney. For this reason, we have not classified such clients as 'involuntary'.

Externalities: low wealth clients not engaging in pre-planning services may impose costs on Government

In relation to will and power of attorney drafting, externalities arise in connection with low wealth clients. This means that if such clients do not engage in these pre-planning services, it imposes a cost on Government (rather than the client).

As an example, if a person dies without a will, a Court may appoint NSWTG to provide executor services. NSWTG may not be able to recover through fees their efficient costs of providing these services to low wealth clients.

To minimise externalities, we are recommending subsidy programs. The aim of these programs is to overcome any affordability issues that may deter low wealth clients (who meet the eligibility criteria) from getting their wills or powers of attorney drafted.

Key differences with the Issues Paper

In the Issues Paper, IPART's preliminary view was that it would recommend fees for the following services because NSWTG is the monopoly supplier:

- ▼ Financial Management services (direct, private) – all clients.
- ▼ Trustee Services (trusts, powers of attorney, wills, estates) – low wealth clients.

The Mental Health Co-ordinating Council agreed that IPART should recommend fees for Financial Management services for managed persons and Trustee Services for low wealth clients.⁴²

IPART has since attained a greater understanding of NSWTG's services from our research, consultation with NSWTG and submissions from stakeholders. What primarily determines whether NSWTG is a monopoly supplier of Trustee Services is a client's legal capacity, rather than their wealth, as well as whether a Court or Tribunal has ordered (or legislation requires) NSWTG to provide the service.

In relation to low wealth clients, this means that we are now only recommending fees for drafting services (ie, power of attorney and will drafting services) where those clients meet the eligibility criteria.⁴³ For trust, estate administration and power of administration services, low wealth clients have the option of accessing these services from NSWTG or the private sector and paying a market fee. They can also appoint relatives or friends to act as their trustee, executor or attorney for free.

⁴² Mental Health Co-ordinating Council submission to IPART, June 2014.

⁴³ Recommended fees for these services apply to clients who are eligible for the full-rate Centrelink age pension.

One implication is that, if a low wealth client is unable to afford the fees charged by NSW TG or other service providers – or cannot arrange a friend or relative to provide the service – they may not be able to conduct their affairs in the way they want.⁴⁴ Our view is that this does not necessarily give rise to a market failure; rather the market may be signalling that the services sought are uneconomic or unfeasible.

3.2 General principles for fees and government subsidies

In order to ensure consistency in fees and subsidies across NSW TG services we have developed a set of general principles to guide us when developing recommendations on fees and government subsidies. These principles are necessary to ensure that our recommended fees and government subsidies are robust, clear and consistent across NSW TG.

In the Issues Paper we sought feedback from stakeholders on our interpretation of the terms ‘clear’, ‘fair’ and ‘transparent’ with regard to the development of recommendations on NSW TG’s fees.

Stakeholders generally supported these guiding principles. A number of stakeholder submissions raised concerns over whether NSW TG’s fees reflected the cost of the service. We have responded by adding a fourth principle, ‘efficiency’, to our set of guiding principles.

In developing these guiding principles, we reviewed reports from the Productivity Commission,⁴⁵ The Victorian Department of Treasury and Finance,⁴⁶ and IPART’s 2008 review of the Office of Protective Commissioner.⁴⁷

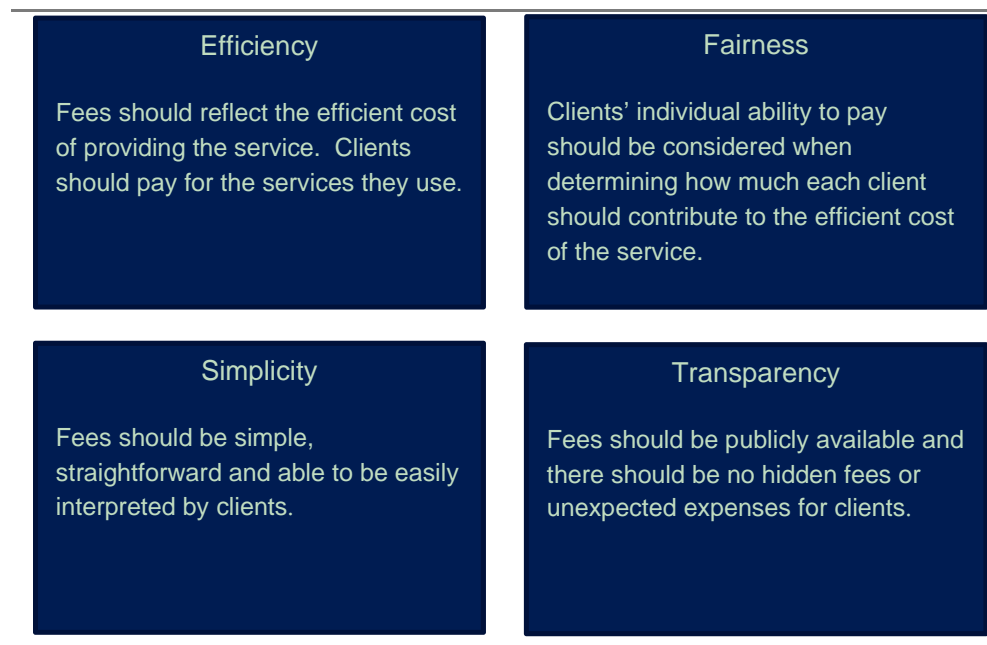
We have identified four key principles to guide our approach. These are: Efficiency, Fairness, Simplicity and Transparency. Figure 3.2 summarises these principles.

⁴⁴ For example, dispose of assets during their lifetime to relatives who are minors, to be held in trust until they attain majority.

⁴⁵ Productivity Commission, *Cost Recovery by Government Agencies*, March 2002.

⁴⁶ Department of Treasury and Finance, *Cost Recovery Guidelines*, January 2013.

⁴⁷ IPART, *Review of Fees of the Office of the Protective Commissioner – Final Report*, September 2008.

Figure 3.2 General principles to guide fee and subsidy recommendations

We note that applying these principles in practice can involve making trade-offs. For example, the most efficient fee structure may not be the most simple. Our objective is to develop recommendations on fees and government subsidies that clearly reflect these principles and, where there are trade-offs, achieve a fair and reasonable balance between the principles.

3.2.1 Government funding and CSOs

In response to our Issues Paper, stakeholders supported the position that there is a role for government funding to support clients that cannot afford to pay fees. One stakeholder commented that:

Any monetary outlay that has been necessarily incurred and is beyond the capacity of the protected person to pay should be seen as a social obligation for Government to provide. Currently there is no clear system for assessing these amounts. A system was recommended in the last IPART review in 2008. This review recommended that any shortfall should be invoiced to the Government for payment as CSO.⁴⁸

⁴⁸ Public Service Association of NSW submission to IPART, June 2014.

The NSW Government currently contributes about \$12.7 million per year to NSWTG through the Budget.⁴⁹ There are currently two components to this funding. Approximately \$7.6 million is provided to fully fund the operations of the Public Guardian. This is outside the scope of our review. Another \$5.1 million is provided in the form of Community Service Obligation (CSO) funding to support NSWTG's ongoing operations.⁵⁰ This is within the scope of our review.⁵¹

Currently, there does not appear to be a clear link between CSO funding and services NSWTG delivers with this funding. We have aimed to explicitly link the CSO funding to specific services that may not be commercially viable but that the NSW Government and the community expect NSWTG to deliver.

Where the cost of a service cannot effectively or efficiently be collected through user fees, there may be a role for government funding to ensure the service is delivered. According to economic theory, where the social benefit of a service exceeds clients' private benefit and therefore their willingness to pay for the service, there may be a role for government to provide a subsidy in order to achieve a socially optimal quantity of the service. Also, NSWTG serves clients that cannot afford to pay fees that would recover the efficient cost of the service. In this case there is a clear rationale for government to subsidise these services.

Our approach was to first establish the efficient prices for services which equal the total amount that will be collected by NSWTG. We then considered what portion of these efficient prices should be paid by clients and what portion should be paid by the NSW Government in the form of CSO funding. Our approach to determine the level and allocation of government subsidy has been tailored to each service and is set out in Chapter 4.

We consider that moving to explicitly tie government funding to CSOs will bring transparency and accountability to government funding of NSWTG's operations.

CSO funding should be targeted to those that need it most. Client eligibility for CSO funding should, in principle, be based on the most comprehensive measure of client wealth (ie, it should include income and residential property) so that it can best target those most in need of assistance. We note that practical limitations, for example not knowing a client's equity position in their home, can limit what is included in this measure of wealth.

⁴⁹ NSW Budget 2012-13 (bp3). NSWTG, *Annual Report 2012-13*.

⁵⁰ NSWTG, *Annual Report 2012-13*.

⁵¹ NSWTG can also access funding from the Interest Suspense Account (ISA) to balance its budget. This is another source of government subsidy. In FY 2012/13 this funding was budgeted to be approximately \$10.6m. Due to lower than expected expenses and higher than expected revenue, the actual ISA funding for FY 2012/13 was \$4 million.

3.3 Data underpinning fee setting

3.3.1 Data from NSWTG

Activity and cost data

As discussed in our 2008 review, a cost-reflective fee for service structure requires activity based costing data.⁵² That is, along with the overall cost of each service, we need to know how many transactions were delivered, how much time went into each transaction and which client benefited from each transaction. NSWTG is yet to implement an Activity Based Costing system. Therefore, data that allows us to link costs, activities and clients is currently not available.

In 2013, NSWTG engaged PwC to analyse, breakdown and cost its services for 2012/13. PwC's review identified and costed a total of 148 individual services across NSWTG. PwC then allocated these services across NSWTG's eight main service areas to provide an estimate of the actual cost of each service area.

We compared PwC's service area costs to our own estimate of NSWTG's total operating expenses and confirmed that PwC's analysis fully captures all of NSWTG's operating expenses.⁵³

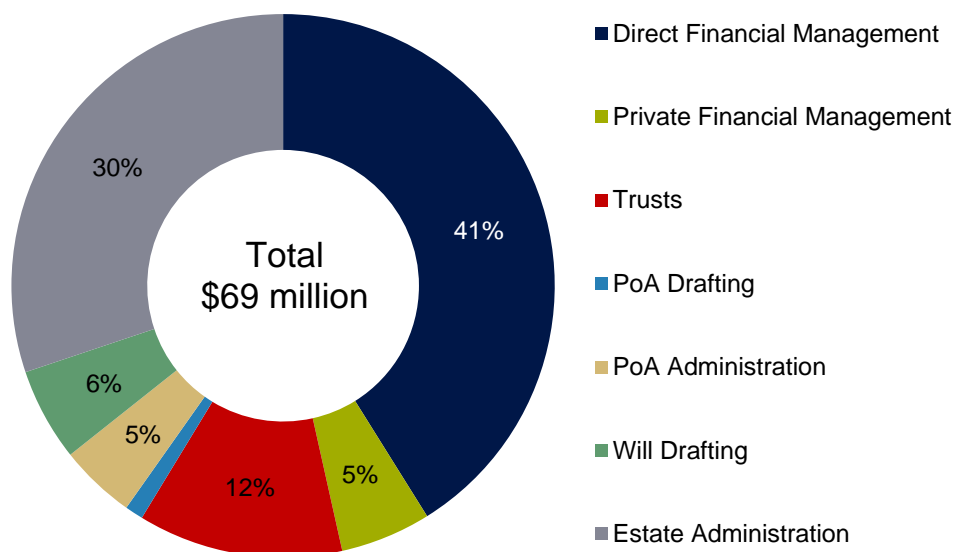
PwC's analysis allows us to understand costs by service at a high level. From this we can establish average costs for each service. In some cases it also allows us to understand the average cost of a particular transaction. However, it does not allow us to distinguish between complex high cost transactions and simple low cost transactions. This data limitation limits our ability to move towards cost reflective fees for service.

Figure 3.3 shows the breakdown of NSWTG's total operating expenses into the main service groups for 2012/13.

⁵² IPART, *Review of Fees of the Office of the Protective Commissioner – Final Report*, September 2008, p 26.

⁵³ Estimates of operating expenses in 2012/13 were \$69.2m (IPART) and \$69.5m (PwC).

Figure 3.3 NSWTG operating expenses by service 2012/13

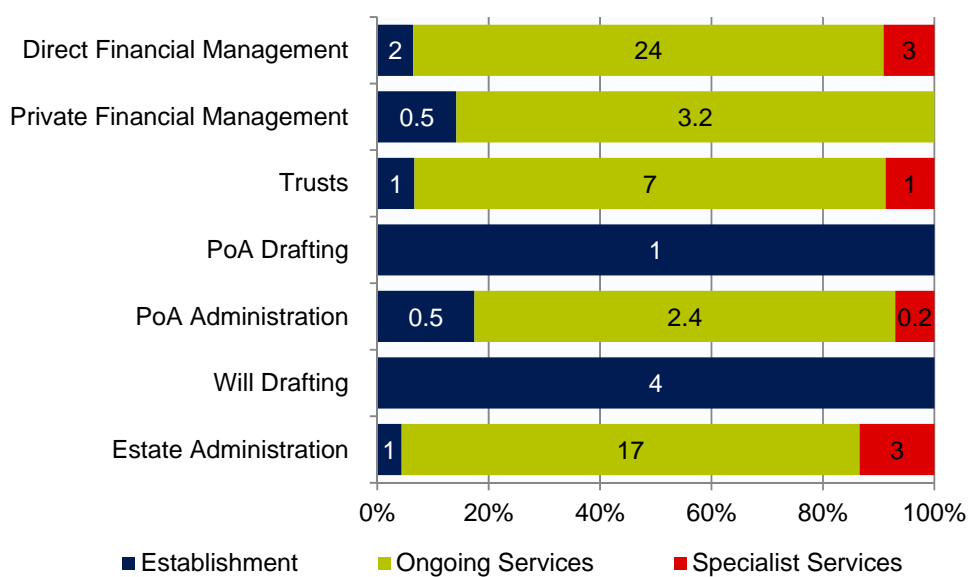


Note: We have excluded agency services (\$0.4m) because they are outside the scope of our review of fees.

Source: Workload and service cost data provided by NSWTG.

Figure 3.4 shows the relative proportions of establishment, ongoing administration and specialist services costs for each service in 2012/13.

Figure 3.4 Breakdown of operating expenses by service 2012/13 (\$million)



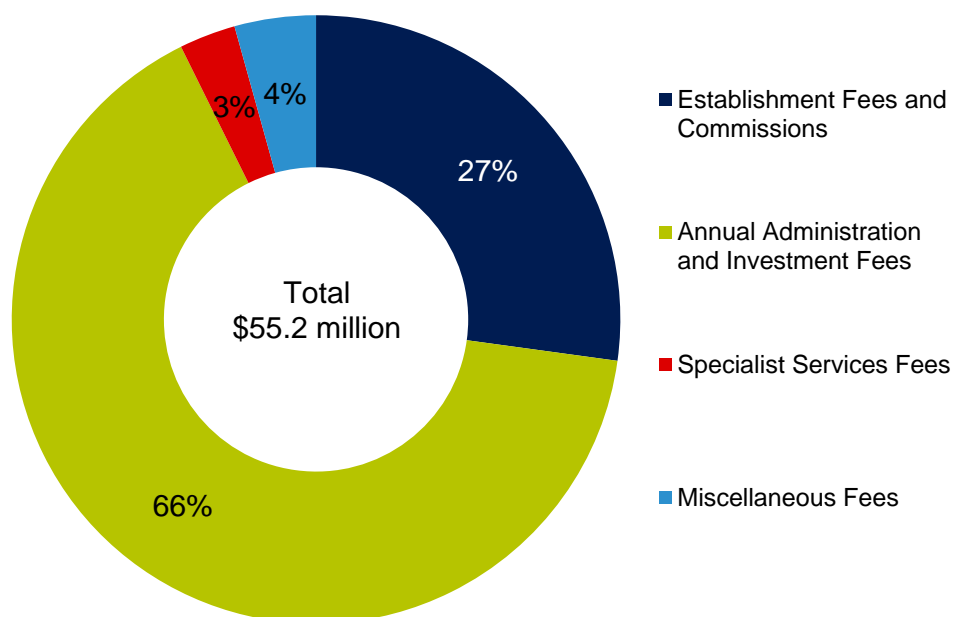
Note: We have excluded agency services (\$0.4m) because they are outside the scope of our review of fees.

Source: Workload and service cost data provided by NSWTG.

Fee data

PwC also modelled NSWTG's revenue by service. Figure 3.5 provides a high level summary of NSWTG's fee revenue for 2012/13.

Figure 3.5 NSWTG fee revenue 2012/13



Note: We have excluded agency services (\$0.8m) because they are outside the scope of our review of fees.

Source: Revenue data provided by NSWTG.

In this review, we are focused on establishment fees, ongoing administration fees and investment management fees. Figure 3.5 above shows that these fees together made up about 93% of NSWTG's total fee revenue in 2012/13.

Client data

We have developed revenue models of each regulated service based on detailed client level data.

NSWTG currently operates two separate client information systems:⁵⁴

- ▼ CIS: contains information for:
 - 11,415 direct financial management clients (1,338 were new in 2012/13).
 - 3,920 private financial management clients (818 were new in 2012/13).
- ▼ TEAMS: contains information for:
 - 5,927 trusts under management (1,005 were new in 2012/13).
 - 1,437 powers of attorney drafted (1,380 were new in 2012/13).

⁵⁴ NSWTG, CIS and TEAMS database extracts for 2012/13.

- 449 powers of attorney clients (48 were new in 2012/13).
- 9,686 wills drafted (4,949 were new in 2012/13).
- 6,547 estates under management (1,613 were new in 2012/13).

CIS is a relatively well developed system and we were able to extract the data required for our analysis. TEAMS is a less well developed and less sophisticated system. This presented significant challenges for the review. Specifically we needed to spend a considerable amount of time collecting, processing and resolving problems with TEAMS data in order to bring it up to standard.

3.3.2 Market data

As part of our review of NSW TG's fee structure, we engaged The Centre for International Economics (CIE) to collect, analyse and present information on the cost of providing comparable services in the private market. CIE's final report is available on IPART's website for this review.⁵⁵ We have factored in the findings of CIE's report in our service level recommendations in Chapter 4.

CIE focused on collecting fees and charges information from service providers in the market. There were two reasons for this:

- ▼ In competitive markets, prices (fees and charges) should reflect the efficient cost of providing the service.
- ▼ Schedules of fees and charges reveal key cost drivers. For example, fees based on the value of assets under management suggest that costs increase as the value of assets under management increase.

CIE also consulted with service providers in the market in order to understand:

- ▼ The activities covered by fees and whether some costs were recovered through other miscellaneous fees.
- ▼ The type of clients served by the private sector.

A key finding of CIE's report is that in most instances the private markets for NSW TG's services are competitive. However, CIE did find that for some services,⁵⁶ the market does not regularly serve clients that have assets below certain thresholds. This is because providers incur fixed costs that make it unattractive to serve clients with assets below certain thresholds. CIE cautions that this may limit the applicability of market fees to NSW TG because, for some services, a significant portion of NSW TG's clients have assets below the market threshold.

⁵⁵ http://www.ipart.nsw.gov.au/Home/Industries/Other/Reviews/Trustee_and_Guardian/.

⁵⁶ That is, financial management, trusts and PoAs.

That said, CIE also found that the private market is highly fragmented, with many smaller operators (such as solicitors) providing these services rather than a small number of dominant service providers. The focus of the information collected by CIE was on trustee companies. CIE notes that law firms also offer trust and power of attorney services, however they were unable to obtain detailed fee data from these providers.

This means that, although trustee companies may not regularly serve clients that have assets below certain thresholds, other private sector providers such as solicitors may. In addition to the private sector, clients also have the option to appoint relatives or friends to act as their trustee or attorney for free (ie, at no cost to the client).

Table 3.2 provides a high level summary across the six service areas for NSW TG.

Table 3.2 Summary of CIE's private sector benchmarking

	Fee (median)	% of assets	Implied asset level
Direct financial management			
- Establishment fee	Not available	n/a	n/a
- Annual fee	\$2,773	1.75%	\$160,000
Trusts			
- Establishment fee	\$3,300	1.10%	\$300,000
- Annual fee	\$4,125	1.38%	\$300,000
PoA drafting	\$165 - \$220	n/a	n/a
PoA administration			
- Establishment fee	\$2,338	1.71%	\$140,000
- Annual fee	\$2,750	2.02%	\$140,000
Will drafting	\$330 - \$385	n/a	n/a
Estate administration			
- Total fees	\$11,481	4.18%	No floor

Note: The implied asset level is calculated as the benchmark fee divided by the benchmark % of assets.

Source: The CIE, *NSW Public Trustee and Guardian, Cost benchmarking with the private sector*, Final Report, August 2014.

4 Recommended fees for specific services

4.1 Key features of IPART recommended fee

We are recommending a move to a more cost-reflective, consistent and fair fee structure.

Cost-reflective

We have amended NSWTG's existing fee structure to ensure the fees are largely cost reflective. That is, they recover the efficient costs of providing this service. This results in any inefficiency in NSWTG's operations being borne by NSWTG and not by clients in the form of higher fees.

Consistent

We are recommending a consistent fee structure across NSWTG services. For will and power of attorney drafting services, NSWTG will charge clients a one-off drafting fee. With respect to services that involve NSWTG having an ongoing role, our structure involves:

- ▼ an establishment fee
- ▼ an administration fee
- ▼ an investment management fee
- ▼ specialist services fees.

We have also harmonised fee levels for services that apply across most NSWTG's services. For example, the investment management fee for Financial Management and Trust/Estate Administration services is currently 0.5% and 0.75% respectively of assets invested in the Common Fund.⁵⁷ Under the new fee structure, these clients will now pay the same reduced fee of 0.1%, which more closely aligns it with NSWTG's cost of providing this service.

⁵⁷ See Section 2.9 for a description of the Common Fund.

Another element of consistency involves ensuring fees are broadly in line with market practice. Trust and Estate services currently charge short term fees based on a percentage of a client's income and long term fees based on a percentage of a client's assets. We have amended it by replacing these fees with a single asset-based, administration fee that is more consistent with market practice.

Fair

NSWTG's existing fees for Estate Administration and Trust services significantly over-recover costs. NSW TG uses excess revenue raised from these clients to effectively cross-subsidise services it provides to other clients. The new fee structure minimises these cross subsidies, by reducing a service's fees to only recover the efficient costs of that service.

The new fee structure also reduces cross subsidies between different client groups within a service (ie, high, medium and low wealth clients). For Direct Financial Management, we have introduced minimum establishment and administration fees. The revenue raised from these fees allows fee caps to be decreased, which in turn reduces the maximum fees payable by high wealth clients.

Another element of fairness involves not imposing significant fee changes where robust data is not available to support the change. This is particularly relevant with respect to specialist services fees. We are holding these existing fees constant until NSW TG's data systems are adequate to reliably estimate the cost of providing the services related to those fees. NSW TG needs to implement an Activity-Based Costing system (discussed in Chapter 6) to enable the NSW TG's costs of servicing clients to be more readily identifiable.

4.2 Common fund

The common fund was described in Section 2.9 of Chapter 2.

In 2012, NSW TG commenced a project to harmonise the custodian, management and unit registry functions of both the Trustee and Financial Management funds.⁵⁸ Transition to a single fund custodian and unit registry was completed in mid-2013. The funds management function was harmonised for all funds except the Trustee Growth Portfolio. The Auditor-General's 2013 Report to Parliament notes that due to the nature and risks inherent in the Trustee Growth Portfolio, it will remain with the NSW Treasury Corporation until market conditions improve.⁵⁹

⁵⁸ NSW Auditor-General's Report to Parliament, *NSW Trustee and Guardian*, vol 6, 2013, p 46.

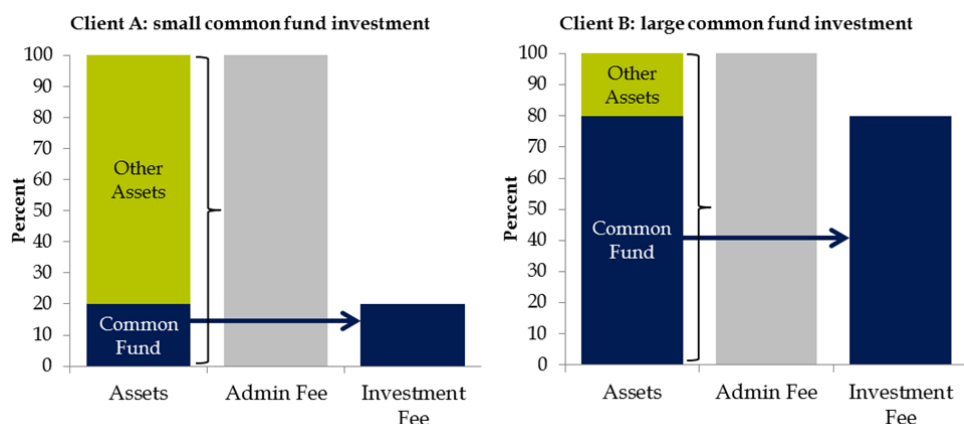
⁵⁹ Ibid.

NSWTG advised IPART that the ongoing use of two separate client information systems (CIS and TEAMS) and the different GST treatment of financial management and trustee clients have prevented NSW TG from fully merging the two common funds.⁶⁰

NSWTG charges an investment management fee on funds invested in the common funds. The fee is currently set at 0.5% p.a. for direct and private financial management clients and 0.75% p.a. for trust, PoA, estate and agency clients.

The current use of both administration fees and investment management fees result in different fees payable depending on the types of assets clients have and how they are invested. Figure 4.1 illustrates this differential treatment.

Figure 4.1 How allocation of assets affects client fees



Source: IPART analysis.

These diagrams show how clients with a small proportion of assets invested in the common fund (Client A) will pay lower fees than clients with a large proportion of their assets invested in the common fund (Client B). This is because assets in the common fund pay both administration fees and investment management fees.

⁶⁰ Email correspondence from NSW TG, 14 August 2014.

The investment management fee currently significantly over recovers the total cost associated with managing the common fund.⁶¹ That is, investment management fees recover orders of magnitude more than the internal costs (eg, processing and reporting) and external costs (funds management and custodian services).⁶² At the same time, administration fees under recover the general administration costs. Therefore, both the investment management fee and administration fees do not currently reflect the efficient cost of providing these services.

A more efficient solution would be to:

- ▼ recover the efficient costs of managing the common fund from an investment management fee applied to assets in the common fund
- ▼ recover the efficient costs on ongoing administration from an administration fee applied to all clients and all assets under management.

The investment management fee is currently applied at the fund level and, in effect, reduces the rate of return paid to client accounts. That is, clients do not see these fees itemised on their account/activity statements. Clients are instead presented only with returns after fees have been deducted.

Recommendations:

- 1 NSWTG merge the two common funds into a single common fund to remove unnecessary duplication of systems and reporting.
- 2 NSWTG present returns on investments in the common funds to clients before fees are subtracted. All fees, including the investment management fee to be clearly and consistently itemised on client account/activity statements.
- 3 NSWTG lower the investment management fees from the current levels of 0.5% and 0.75% of assets p.a. to a harmonised fee of 0.1% of assets p.a. across all (regulated) common fund investments.

4.3 Direct Financial Management

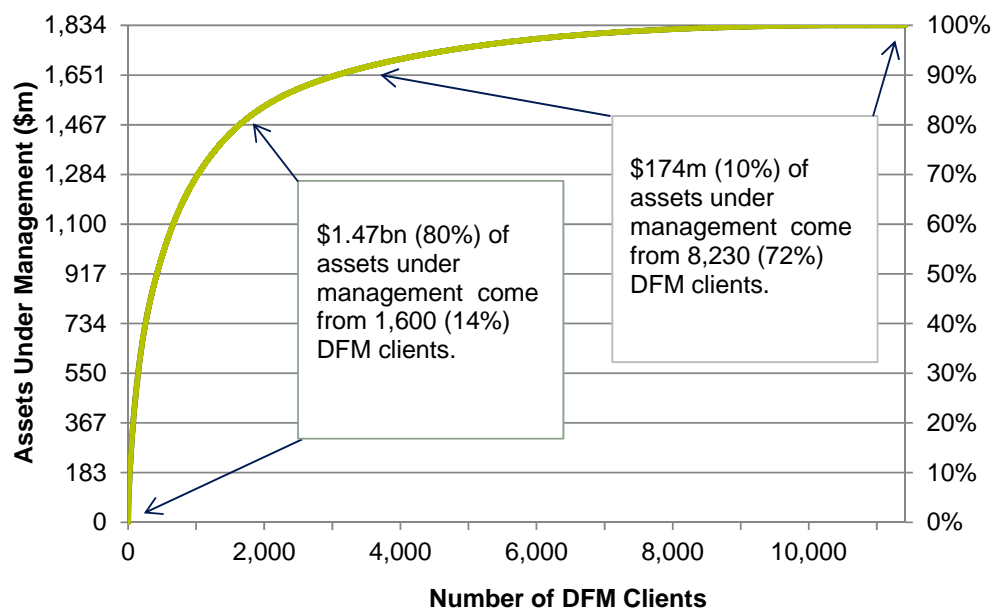
4.3.1 Description of service

There were 11,415 Direct Financial Management (DFM) clients active in 2012/13. These clients had average assets of \$150,000 and average annual income of \$37,000. Figure 4.2 shows how the majority of assets under management come from a small portion of DFM clients.

⁶¹ While the investment management fee over recovers costs, the gain is absorbed into other areas of NSWTG operations which are not fully cost recovered through fees.

⁶² We are not publishing this information due to its commercial sensitivity.

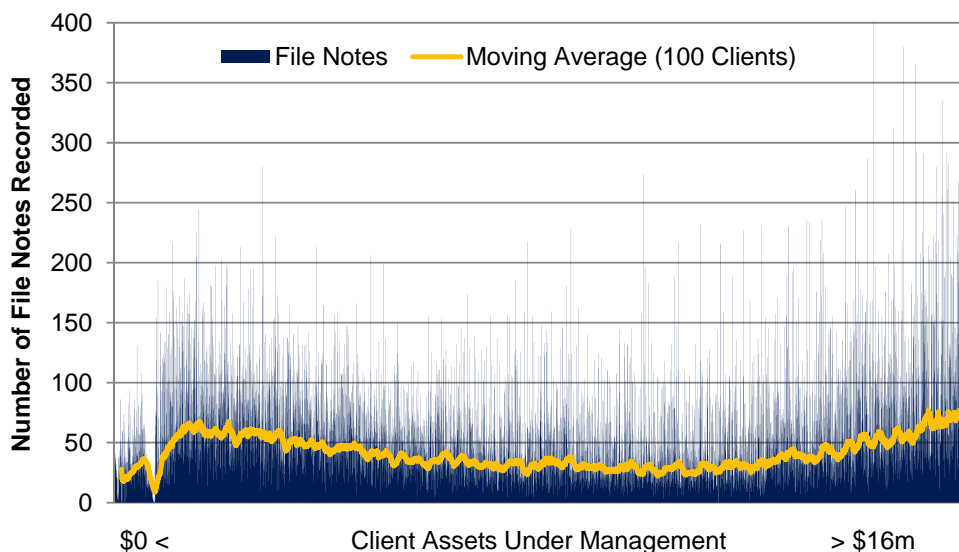
Figure 4.2 Cumulative value of assets under management 2012/13



Data source: NSW TG client data 2012/13.

Figure 4.3 shows intensity (measured by number of file notes recorded in 2012/13) in relation to the value of client assets under management. For this chart, clients have been ordered from lowest assets (left hand side) to highest assets (right hand side).

Figure 4.3 Intensity in relation to assets under management 2012/13



Note: Observations below the moving average line are not visible in this chart.

Data source: NSW TG client data 2012/13.

Each point of the moving average line (yellow line) shows the average for the previous 100 observations (ie, the 100 observations to the left of that point). The moving average line shows that there is a non-linear relationship between client assets and intensity (as measured by file notes recorded in a year). Intensity appears to be relatively low for clients with \$0 assets. Intensity picks up for clients with very low assets (~\$1,000 - \$5,000), moderates for clients with medium assets (~\$20,000 - \$80,000) before increasing again for clients with large assets (~\$300,000 - \$16 million).

Figure 4.3 also shows that, at all levels of wealth, there is a large amount of variation in intensity between clients (ie, the average number of file notes is 41 and the standard deviation is 37).

4.3.2 Current fee structure

Table 4.1 Direct financial management fees

Fee	Level
Establishment fee	1% of assets (capped at \$3,300).
Ongoing admin fee	1.1% of assets p.a. (capped at \$15,000).
Investment management fee	0.5% of assets in common fund p.a.

Source: NSW TG website.

NSWTG charges a 1% capital commission on establishment, an ongoing administrative fee of 1.1% of (total) assets under management p.a. and an investment fee of 0.5% of (common fund) assets under management p.a. Fee caps apply to the establishment commission and the ongoing administrative fee but not the investment management fee. There are currently no minimum fees.

4.3.3 Why move from the current fee structure?

Serving DFM clients is a significant part of NSW TG's operations. These clients are typically vulnerable individuals who may require significant resources and effort in the management of their affairs.

We have identified a number of deficiencies with the current fee structure. These include:

- ▼ Some fees over recover and others under recover efficient costs.
- ▼ Fees don't reflect that there are costs to serve clients regardless of their assets.
- ▼ The fee waiver policy may be inconsistently applied.
- ▼ One fee (ie, the investment management fee) is not clearly presented to clients.

4.3.4 NSWTG proposal

NSWTG proposes to increase the cap on the annual administration fee⁶³ from \$15,000 to \$25,000 and to increase the annual investment management fee from 0.5% to 0.75%. NSWTG also proposes to introduce specialist services fees for DFM clients charged at the same rate as is currently charged for Trusts, PoAs and Estates. We have modelled the impact of NSWTG's proposals for DFM clients and estimate that they would result in a \$6.9 million (31%) increase in fee revenue.

4.3.5 Stakeholder comments

Most stakeholders who commented on fees for Direct Financial Management services indicated they do not support a rise in fees, and they were dissatisfied with service quality. Further, some submissions indicated confusion over the level of fees.

NSWTG processes are inefficient

Several stakeholders referred to general inefficiencies in DFM services. These comments included:

- ▼ NSWTG fails to deliver, and its services could be managed by a third party for a fraction of the cost.
- ▼ NSWTG has duplication, procedural inefficiencies and lack of accountability and understanding of the needs of managed persons.⁶⁴

Fees too high and should be reduced or removed

Stakeholders commented that fees were excessively high for the services received.⁶⁵ Specific comments included:

- ▼ The annual investment management fee (charged on assets in the Common Fund) is exorbitant.
- ▼ The current ongoing administration management fee (of up to \$15,000) and annual investment fee of 0.5% should be removed.⁶⁶

Lack of transparency about fees

Stakeholders consider that fees are not clear, fair or transparent and that fees should be lower for disadvantaged people.⁶⁷

⁶³ Currently 1.1% p.a. on total assets under management.

⁶⁴ Individual – Anonymous submission to IPART, June 2014.

⁶⁵ Individual – Anonymous, Rourke, C., Berends, W., submissions to IPART, June 2014.

⁶⁶ Individual – Anonymous submission to IPART, June 2014.

⁶⁷ Berends, W., Individual – Anonymous, submissions to IPART, June 2014.

One stakeholder submitted that there is a lack of full fee disclosure – some fees appear fixed, whilst others are discretionary. This stakeholder also commented that the NSW TG’s website does not clearly or fully explain what the current or total fees are, and it is not clear whether the current investment strategy is aligned with the managed person’s risk profile.

Stakeholders submitted that statements of accounts (ie, statements detailing fees paid and value of assets) are not provided in a clear, accurate or efficient manner or, in some case, are not provided at all.⁶⁸

Poor service quality

Most direct financial management stakeholders indicated in their submissions that they were not satisfied with the level and standards of service provided by NSW TG.⁶⁹ Some submissions questioned the efficiency with which NSW TG provides its services, and the apparent lack of performance indicators.⁷⁰ Other submissions considered that NSW TG needed to improve their services and personal relationships with clients.

Specific comments included:

- ▼ Staff have been rude and abrupt and should be better trained in how to help people with disabilities. There also appears to be a high turnover of staff.⁷¹
- ▼ There is generally poor communication from NSW TG to clients and carers. NSW TG are slow to respond to requests and slow to make decisions on urgent matters.⁷²
- ▼ NSW TG mismanaged the sale of a client’s property (eg, an empty house not being sold in over two years), this resulted in additional costs being incurred.
- ▼ Correspondence from NSW TG was sent to an incorrect mailing address, or was significantly delayed, resulting in lapsed payments.⁷³
- ▼ Bills have not been paid on time which has resulted in overdue notices that have distressed clients.⁷⁴

⁶⁸ Individual – Anonymous, submission to IPART, June 2014.

⁶⁹ Rourke, C., Tjiu, M., Individual – Anonymous, Huszar, Z., submissions to IPART, June 2014.

⁷⁰ Individual – Anonymous, Huszar, Z., submissions to IPART, June 2014.

⁷¹ Individual – Anonymous submissions to IPART, June 2014.

⁷² Individual – Anonymous, Huszar, Z., submissions to IPART, June 2014.

⁷³ Individual – Anonymous submission to IPART, June 2014.

⁷⁴ Individual – Anonymous, Huszar, Z., submissions to IPART, June 2014.

Stakeholder suggestions to improve operations, fees and service quality

Stakeholders provided several suggestions on how NSWTG could improve their operations, fees and service quality. These suggestions include:

- ▼ NSWTG should better manage its costs and that this would allow it to provide better services to those most in need.
- ▼ A fee-for-service approach should be adopted. Fees should be based on the actual services provided in an efficient and timely manner rather than on asset based criteria and the NSW Government should provide for those that cannot afford the necessary services. Fees should relate directly to the amount of work done by the NSWTG to manage an individual's finances (eg, a fee structure based on frequency and complexity of services provided).⁷⁵
- ▼ Computer networks and data systems should be reviewed to reduce repeated provision of hard-copy information.⁷⁶
- ▼ The telephone network should be reviewed to streamline the central switchboard and voicemail with the aim of reducing response times.⁷⁷
- ▼ A contact person (with specific contact details) should be immediately assigned for new NSWTG clients.⁷⁸

We note stakeholders concerns and are responding to them by recommending that NSWTG make efficiency savings, adopt fees that are more simple, reflect the efficient cost of the service and are clearly presented to clients and take steps to improve service standards across all services.

Pricing principles

The current fee structure is inconsistent with a number of our pricing principles including:

- ▼ Efficiency - current fees (in absolute dollar terms) increase with assets which is not a perfect measure of intensity or cost to serve. This is inconsistent with the principle of efficiency in that some clients are systematically being charged more than the cost to supply the services while others are not paying the efficient cost of the services they receive.
- ▼ Fairness - there are currently no minimum fees for directly managed clients. This means that it is possible for some clients to avoid paying fees because of the types of assets they hold. Because there are no minimum fees, clients with large chargeable assets (eg, money in the bank) are subsidising clients with low chargeable assets (eg, clients that have invested in their home).

⁷⁵ Individual – Anonymous, Rourke, C., Berends, W., Individual – Anonymous, submissions to IPART, June 2014.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

- ▼ Transparency - NSW TG provides fee waivers and has a publicly available fee waiver policy. However, there is no clear information on how this policy is applied and it is not clear whether the policy is being applied consistently across the organisation.

4.3.6 Recommended fees and CSOs

Fees

We are proposing a move to a more cost reflective fee structure.

In an ideal situation, we would recommend fees that vary according to the actual cost to serve each client. Unfortunately, NSW TG's current systems do not record the data needed to move to this approach. While file notes provide an indication of workload there is no distinction between simple/routine file notes and more complex and time consuming file notes. As discussed in Chapter 6, we strongly recommend NSW TG implement its Activity Based Costing system as a matter of urgency. This will allow the organisation to collect data that will allow it to move to a more efficient and fair pricing structure in the future.

We are recommending a number of changes to DFM fees. These changes are designed to bring fees more in line with the efficient cost of DFM services.

For the establishment fee, we are recommending that it be held constant at 1% of total assets (excluding the client's residence) at establishment. We are recommending introducing a minimum fee of \$500 to recognise that NSW TG incurs some establishment costs that are not related to asset size. We are also recommending reducing the fee cap from \$3,300 to \$3,000 to reduce the level of cross subsidy between high and low asset clients.

For the administration fee, we are recommending a two-part fee. The first part is a \$10 per month fee that acts as a minimum fee. The second part is a fee of 1.3% of total assets under management p.a. We have also reduced the fee cap from \$15,000 to \$13,500 p.a. in order to reduce cross subsidies between high and low asset clients. The \$10 per month fee means that there is effectively a minimum fee of \$120 p.a. We have increased the percent of assets part of the fee from 1.1% to 1.3% p.a. We have done this so that this fee reflects the efficient cost of ongoing administration activities. Increasing this fee to reflect efficient cost of administration activities allows us to reduce the investment management fee so that it too reflects the efficient cost of providing investment management services.

As discussed in section 4.2, we are recommending a reduction in the investment management fee from 0.5% to 0.1% of assets held in the common fund p.a. This will better reflect the efficient cost of investment management services provided by NSW TG.

We are also recommending that NSW TG begin charging DFM clients for any specialist services they require such as investment planning and preparation of tax returns. We are recommending that NSW TG charge the same fees for these services that it currently charges in trusts, PoAs and estates services. We are recommending that NSW TG continue to charge the current fee levels for these specialist services because our analysis shows that they are recovering the efficient cost in trusts, PoAs and estates services.

Table 4.2 IPART recommended fees for DFM

Fee	Fees to be applied to:
Establishment fee	
<ul style="list-style-type: none">- 1% of assets at establishment- Fee minimum: \$500- Fee cap: \$3,000	<ul style="list-style-type: none">- The establishment fee applies to the total value of client assets at establishment (excluding primary residence).
Administration fee	
<ul style="list-style-type: none">- \$10 per month, plus- 1.3% of assets p.a.- Fee cap: \$13,500	<ul style="list-style-type: none">- \$10 fee applies to all active clients in the month.- 1.3% p.a. fee applies to the total value of client assets under management (excluding primary residence). Fee to be applied on a monthly basis.
Investment management fee	
<ul style="list-style-type: none">- 0.1% of common fund assets p.a.	<ul style="list-style-type: none">- The investment management fee of 0.1% p.a. is applied to assets invested in the common fund. Fee applied on a monthly basis.
Fees for specialist services	
<ul style="list-style-type: none">- Investment plans: \$150 base fee.- Tax returns: \$200 base fee.	<ul style="list-style-type: none">- \$150 per hour.- \$200 for the first hour. \$150 for additional hours.

Source: IPART analysis.

CSOs

We do not consider there to be a net social benefit provided by DFM services which would justify a general government subsidy. That is, for clients that can afford to pay fees that reflect the efficient cost of services they receive, we do not consider there to be a role for the NSW Government to provide a subsidy.

We consider there is a role for the NSW Government to provide assistance to DFM clients that do not have capacity to pay the recommended minimum fees.

NSW TG currently provides assistance to low wealth clients through its fee waiver policy. However, eligibility rules are not clear and there is a risk that the policy is applied inconsistently.

We are recommending the introduction of explicit CSO funding that is based on clients' wealth. To ensure that government funding is targeted to where it is needed most, we consider that the measure of eligibility for assistance should include the client's residence.

We are recommending the introduction of explicit CSO funding based on clients' total assets under management. We have decided to exclude clients' homes from the eligibility test because of data limitations.

Table 4.3 Recommended CSOs

Asset levels	Minimum Establishment Fee (\$500)	Monthly Admin Fee (\$10)
\$0 - \$25,000	100%	100%
\$25,001 - \$75,000	50%	50%
\$75,001 and above	0%	0%

Source: IPART analysis.

Recommendations:

- 4 For direct financial management services, NSW TG:
 - Introduce a minimum establishment fee of \$500 and reduce the fee cap to \$3000.
 - Introduce a monthly account keeping fee of \$10 and reduce the fee cap for the ongoing administration fee to \$13,500.
 - Increase the ongoing administration fee from 1.1% p.a. to 1.3% p.a. of total assets under management.
 - Reduce the investment management fee from 0.5% to 0.1% applied to assets in the common fund. Introduce fees for services for investment planning and tax returns consistent with current practices in trust, PoA and estates administration.
- 5 The NSW Government introduce explicit CSO payments applied to the minimum establishment fee and the monthly account keeping fee for Direct Financial Management services. The CSO payment rates to be 100% for clients with total assets under management between \$0 and \$25,000 and 50% for clients with total assets under management between \$25,001 and \$75,000. Total assets under management does not include a client's home.

4.4 Private Financial Management

4.4.1 Description of service

The Supreme Court and the Guardianship Tribunal have the power to make private financial management orders. These orders appoint an individual or individuals to manage the affairs of a person who the Court or Tribunal finds to be unable to manage their own affairs.

While private managers are responsible for the day to day financial management of protected persons, NSW TG is required to oversee and direct these managers.

In 2013, there were 3,920 private financial management clients. Most of these clients are managed by family members while around 10% are managed by private trustee companies.

4.4.2 Current fee structure

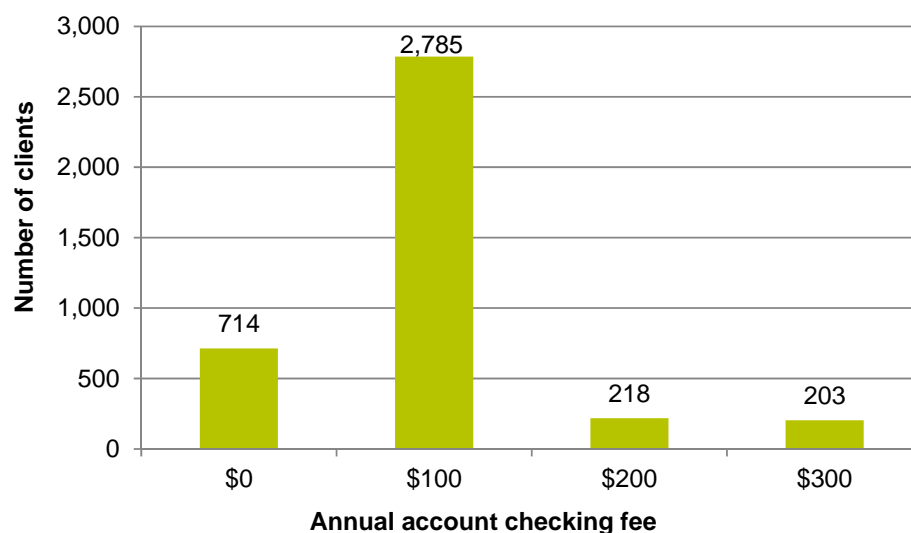
Table 4.4 Current fee structure

Fee	Level
Income fee	4% of income p.a. (capped at \$2,000).
Annual statement checking fee	\$100, \$200 or \$300 depending on complexity.
Investment management fee	0.5% of assets in the common fund p.a.

Note: Only 12% of private management clients have funds invested in the common fund.

Source: Current fee information available on NSWTG's website.

Figure 4.4 Distribution of annual account checking fees 2012/13



Data source: NSWTG Client Data 2012/13.

In addition to the fees set out above, NSWTG can arrange for social workers to visit and prepare a report on the general wellbeing of privately managed clients. We understand that when this is done, the cost of engaging the social worker is passed on to the client.

4.4.3 NSWTG Submission

NSWTG's submission proposes to increase the cap on the income fee from \$2,000 to \$3,000. NSWTG submission also proposes to increase the investment management fee from 0.5% to 0.75% of assets under management. We have estimated the impact of these two proposals to be in the order of \$0.3m p.a. which equates to an overall increase in fee revenue from PFM clients of 19%.

4.4.4 Stakeholder comments

There were 15 submissions received from individuals who are either privately managed clients or were relatives, carers or managers of privately managed clients.⁷⁹

Fees do not reflect the cost of the service

Many stakeholders indicated that fees for private financial management services should not be increased, especially considering the limited interaction with NSWTG. In many cases, this is limited to the submission of an annual report, prepared by the private manager, to the NSWTG for auditing.⁸⁰

One stakeholder submitted that NSWTG "do effectively nothing at all from year to year as the client's affairs are managed with great care by a private manager who has made no call at all on NSWTG".⁸¹

Objections to the current income fee

Stakeholders questioned the link between a client's income and the value of services they receive - suggesting that fees should be based on the value of services provided by NSWTG and not on a client's income. That is, NSWTG should move away from its current income fee and adopt a fee for service model.⁸²

A stakeholder also commented that the level of NSWTG oversight (and associated fees charged) should be reduced in cases where clients are able to demonstrate the capacity to manage their own affairs.⁸³

⁷⁹ 47% were confidential.

⁸⁰ Individual - Anonymous, Jeffree, S., Murphy, S., submissions to IPART, June 2014.

⁸¹ Brackenreg, J. submission to IPART, June 2014.

⁸² Beaumont, G. submission to IPART, June 2014.

⁸³ Individual - Anonymous submission to IPART, June 2014.

Service standards

Some stakeholders have indicated that they are not satisfied with the level and standards of service for private financial management services:

- ▼ One stakeholder commented that satisfying the NSWTG processes and requirements when purchasing property is time consuming and makes it difficult to proceed in a timely manner through the Sydney property acquisition process.
- ▼ One stakeholder commented that correspondence has been sent to non-current addresses.⁸⁴

One stakeholder commented that NSWTG personnel have used an “offhand and offensive tone in conversations, with the underlying implication that they may be stealing their father's money”.⁸⁵

Government funding of PFM

Stakeholder's also expressed the view that client's with low assets / income should be subsidised by government and not cross-subsidised by other clients with higher assets / income. Some stakeholders expressed concern about inefficient processes they are required to go through and poor quality of service from some NSWTG staff.

One stakeholder considers that private management of clients saves the State of NSW quite a considerable sum of money (as clients would otherwise require direct management). Thus, any funding shortfall for the review of privately managed clients on only a Centrelink benefit should be met by the NSW Government. The stakeholder considers that the private manager's capacity to pay, given the additional costs they are already meeting for the client they are managing, should be considered as part of the process for setting fees for auditing financial accounts (eg, in the case of retired private managers on modest superannuation or old age pension incomes).⁸⁶

Some stakeholders commented that they can't understand why a fee is being charged at all, particularly when NSWTG's services have been imposed upon them.⁸⁷

⁸⁴ Brackenreg, J. submission to IPART, June 2014.

⁸⁵ Murphy, S. submission to IPART, June 2014.

⁸⁶ Individual – Anonymous submission to IPART, June 2014.

⁸⁷ Brackenreg, J., Individual – Anonymous, submissions to IPART, June 2014.

Suggestions for improvement

Some stakeholders made specific suggestions for improvement in relation to private financial management services, including that:

- ▼ Fees should be based on what services the client uses.⁸⁸
- ▼ Clients should be charged on a sliding scale, with a minimum and maximum ceiling and that some dispensation should be afforded to clients who have a demonstrative capacity to manage their own affairs, with minimum reliance on NSW TG services.⁸⁹
- ▼ Any additional income earned should not be included in assets when calculating fees⁹⁰ and that non-service related fees should be abolished.⁹¹
- ▼ A 'fee-for-service' regime would be preferred, whereby those needing assistance, when financially able, are asked to pay for such services as required. For NSW TG Clients who rely on Centrelink Benefits and have no private capital assets a "pro bono advice service being offered as needed to the least able members of our society" would be preferred.⁹²

We note stakeholder concerns in this area and are responding to them by recommending the removal of inefficient fees, changes to existing fees to make them more cost reflective and introduction of explicit CSO funding to assist low wealth clients. We are not increasing fees to address the current shortfall in PFM. We are recommending that NSW TG implement systems that will generate the data required to move to a fee for service approach to recover the efficient cost of services that clients use.

Pricing principles

Income fee

In our 2008 report, we said:

The cost of the OPC's services to privately managed clients is funded primarily by a fee on net annual income and an annual accounts fee... the fees paid by clients are fundamentally disconnected from the services the clients receive and the cost of providing those services. As a result, many of the OPC's clients are paying fees that far exceed the cost of the services they receive.⁹³

Figure 4.5 shows the relationship between workload (as measured by file notes per year) and the current income based fee.

⁸⁸ Beaumont, G. submission to IPART, June 2014.

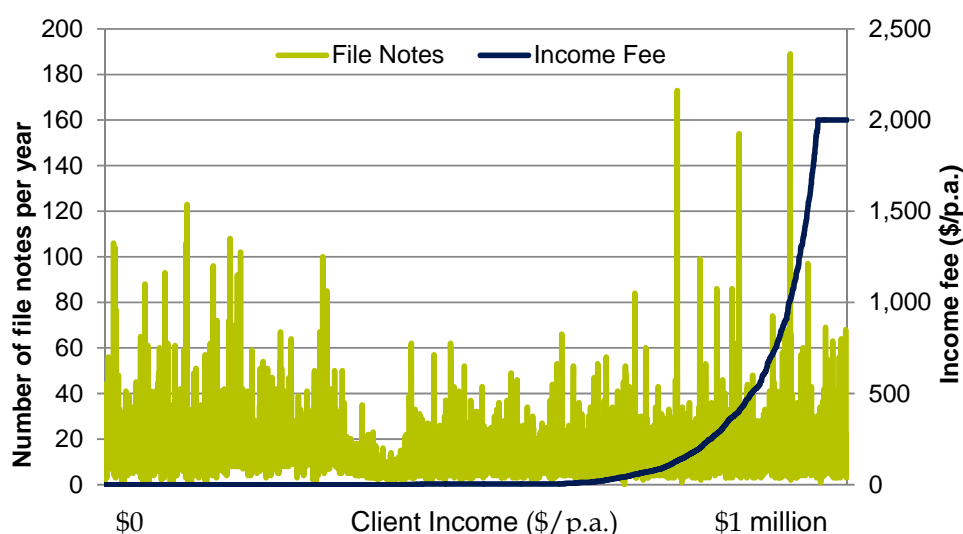
⁸⁹ Individual – Anonymous submissions to IPART, June 2014.

⁹⁰ Thomas, E. submissions to IPART, June 2014.

⁹¹ Murphy, S. submissions to IPART, June 2014.

⁹² Brackenreg, J. submissions to IPART.

⁹³ IPART, *Review of Fees of the Office of the Protective Commissioner - Final Report*, September 2008, p 2.

Figure 4.5 Intensity and income fee per client 2012/13

Note: Income fee currently capped at \$2,000. 40% of PFM clients report \$0 chargeable income (ie, income excl. gov't pensions).

Data source: NSW TG Client Data 2012/13.

Figure 4.5 shows that there is not a relationship between workload (as measured by file notes) and the existing income fee. Because the amount clients pay is not related to the cost they impose on NSW TG, this demonstrates that the existing income fee is not an efficient cost recovery mechanism.

Account checking fee

This fee is simple, transparent and varies according to complexity. We consider NSW TG should explore and develop further opportunities to move to these types of fees for service across their operations.

Investment management fee

This fee is currently 0.5% of assets. Our analysis (as shown in Section 2.4) shows that this fee significantly over recovers the internal and external costs of managing the common fund.

Although this service is discretionary (ie, managers of PFM clients are not required to invest client assets in the common fund), we are proposing to price regulate this service. Given the vulnerability of some PFM clients and the fact that these clients are often managed by family and friends (ie, not professional trustee firms), our preliminary view is that this service should be regulated. We invite stakeholder feedback on this position.

4.4.5 Proposed fee structure

Fees

In an ideal situation, we would recommend fees that vary according to complexity / cost to serve. Unfortunately, the available data does not support a move to this approach. While file notes provide an indication of workload there is no distinction between simple/routine file notes and more complex and time consuming file notes. We strongly recommend NSW TG implement its Activity Based Costing system which will allow them to move to a more efficient and fair pricing structure in the future.

We are recommending the introduction of an establishment fee of \$500. This fee recognises that NSW TG incurs establishment costs for private financial management clients that should not be recovered from other clients or through other unrelated fees.

We are recommending removal of the income fee on the basis that it does not reflect cost of service. We are recommending the introduction of a \$10 monthly administration fee for all private financial management clients. We are also recommending that NSW TG collect the activity data needed to develop fees for services provided to private financial management clients.

We are not recommending changes to the existing account checking fees at this time.

Table 4.5 IPART recommended fees for PFM

Fee	Fees to be applied to:
Establishment fee - \$500	- The establishment fee applies all PFM clients at establishment.
Administration fee - \$10 per month	- \$10 fee applies to all active clients in the month.
Investment management fee - 0.1% of common fund assets p.a.	- The investment management fee of 0.1% p.a is applied to assets invested in the common fund. Fee applied on a monthly basis.
Account checking fee - standard: \$100 - moderate complexity: \$200 - high complexity: \$300	- Account checking fees applied annually based on current classifications for standard, moderate complexity and high complexity.

Source: IPART analysis.

CSOs

We do not consider there to be a net social benefit provided by PFM services which would justify a general government subsidy. That is, for clients that can afford to pay fees that reflect the efficient cost of services they receive, we do not consider there to be a role for the NSW Government to provide a subsidy.

We consider there is a role for the NSW Government to provide assistance to DFM clients that do not have capacity to pay the recommended minimum fees.

NSWTG currently provides assistance to low wealth clients through its fee waiver policy. However, eligibility rules are not clear and there is a risk that the policy is applied inconsistently.

We are recommending the introduction of explicit CSO funding based on clients' total assets under management.⁹⁴ We have decided to exclude clients' homes from the eligibility test because of data limitations.

Table 4.6 Recommended CSOs

Asset levels	Establishment Fee (\$500)	Monthly Admin Fee (\$10)
\$0 - \$25,000	100%	100%
\$25,001 - \$75,000	50%	50%
\$75,001 and over	0%	0%

Source: IPART analysis.

Recommendations:

- 6 For private financial management services, NSWTG:
 - Remove the income fee.
 - Introduce a \$10 monthly administration fee.
 - Retain the existing account checking fees of \$100, \$200 and \$300 depending on complexity.
 - Collect complete asset data from PFM clients.
- 7 The NSW Government introduce explicit CSO payments applied to the minimum establishment fee and the monthly account keeping fee. The CSO payments rates to be 100% for clients with total assets under management between \$0 and \$25,000 and 50% for clients with total assets under management between \$25,001 and \$75,000. Total assets under management does not include a client's home.

⁹⁴ We note that NSWTG currently does not currently have complete information on all PFM client assets.

4.5 Trusts

4.5.1 Description of service and clients

Involuntary and voluntary trusts

NSWTG manages several different types of trusts, including Damages Trusts, Work Cover Trusts and Crimes Confiscation Trusts. Based on the trust type descriptions provided by NSW TG, we have classified the trusts it manages as either ‘involuntary’ or ‘voluntary’.

Involuntary trusts are those trusts where the client did not choose to have NSW TG act as their trustee. Rather it was the decision of a Court or Tribunal or required under legislation. Further, there are significant barriers to clients replacing NSW TG as trustee. For example, the client may not have the legal capacity to do so due to their age or disability. We consider that NSW TG is effectively the monopoly supplier of these types of trust services.

As outlined in Chapter 3, we are recommending fees only for involuntary trusts. For its other trust services, clients can choose alternative service providers within a competitive market. As such, NSW TG should have the discretion to set fees for voluntary trusts.

Box 4.1 outlines these different types of trusts, and indicates their classification as either involuntary or voluntary.

Box 4.1 Types of trusts administered by NSWTG

Involuntary trusts

- ▼ Damages Trust – Court awards damages (eg, under the *Civil Procedure Act 2005*) to a beneficiary who is a minor, and orders NSWTG to act as trustee until the beneficiary attains capacity.
- ▼ Workers Compensation Trust – Compensation awarded under the *Workers Compensation Act 1987* in respect of the death of a worker is temporarily held on trust by NSWTG until it can be awarded to the party entitled to it.
- ▼ Work Cover Trust – For those compensation payments made under the *Workers Compensation Act 1987* where the party entitled to it is a minor, the Court orders NSWTG to hold it on trust for them until the beneficiary attains capacity.
- ▼ Crimes Confiscation – Court orders NSWTG to seize assets (eg, under the *Confiscation of Proceeds of Crime Act 1989*) and hold them on trust.
- ▼ Protected Estate Trust – Court appoints NSWTG to hold the assets of a protected person on trust.
- ▼ Warehouseman's Lien Trust – NSWTG is required under the *Warehousemen's Liens Act 1935* to hold on trust any proceed of sale from unclaimed goods, less any lien the seller is entitled to.

Voluntary trusts

- ▼ Transferred Trust – Trustee of an existing trust transfers the trust to NSWTG to act as the replacement trustee.
- ▼ Original Trust – Beneficiary appoints NSWTG to act as trustee of their trust.
- ▼ Organisation Trust – Beneficiary (which is an organisation) appoints NSWTG to act as trustee of their trust.
- ▼ Sale Trust – Where a property is owned by more than one person, one of the parties can approach the Supreme Court and seek orders for a trustee to be appointed and for the property to be sold / partitioned under section 66G of the *Conveyancing Act 1919*.
- ▼ Court Trust – NSWTG holds funds on trust until a court case is resolved.

Source: IPART analysis based on descriptions of each trust type provided by NSWTG.

NSWTG managed 5,927 trusts in 2012/13, of which around 89% were involuntary trusts (see Table 4.7 below). The most common trust types were Damages Trusts and Work Cover Trusts.

Table 4.7 Types of trusts administered by NSW TG, 2012/13

Types of trust	No. of trusts	% of total trusts	Involuntary?
Damages Trust	4,565	77%	Yes
Work Cover Trust	609	10%	Yes
Transferred Trust	348	6%	No
Original Trust	294	5%	No
Crimes Confiscation Trust	91	2%	Yes
Protected Estate Trust	8	<1%	Yes
Organisation Trust	6	<1%	No
Sale Trust - Sec 66G	3	<1%	No
Workers Compensation Trust	1	<1%	Yes
Warehouseman's Lien Trust	1	<1%	Yes
Court Trust	1	<1%	No
Total	5,927	100%	

Source: IPART analysis of data provided by NSW TG and PwC.

Value of new and existing trusts

Trusts established during 2012/13 had a total asset value of just over \$63 million, and average assets of around \$63,000 (see Table 4.8). Involuntary trusts had a lower average asset value than voluntary trusts, with \$60,111 for the former compared to \$101,841 latter.

Table 4.8 Total asset value of new trusts, 2012/13

Types of trust	Asset value (\$m)	% of total asset value	Average	Involuntary?
Damages Trust	\$40.4	64%	\$47,530	Yes
Crimes Confiscation Trust	\$11.4	18%	\$316,547	Yes
Transferred Trust	\$6.8	11%	\$101,463	No
Work Cover Trust	\$4.3	7%	\$91,219	Yes
Organisation - Trust	\$0.4	1%	\$377,298	No
Original Trust	\$0.2	0%	\$39,309	No
Protected Estate Trust	\$0.0	0%	-	Yes
Sale Trust - Sec 66G	\$0.0	0%	-	No
Workers Compensation Trust	\$0.0	0%	-	Yes
Warehouseman's Lien Trust	\$0.0	0%	-	Yes
Court	\$0.0	0%	-	No
Total	\$63.4	100%		

Source: IPART analysis of data provided by NSW TG and PwC.

Looking at the different trust types, there is a wide range in average asset values. Damages Trusts and Work Cover Trusts have average asset values of around \$47,000 and \$91,000 respectively. This is substantially less than Organisation Trusts and Crimes Confiscation Trusts, which each have average asset values of over \$300,000.

In relation to trusts already established before 2012/13, they had a total asset value of around \$379 million, and average assets of almost \$77,000 (see Table 4.9).⁹⁵ In contrast to new trusts, the existing involuntary trusts had a higher average asset value than existing voluntary ones (\$79,372 for the former, compared to \$58,701 for the latter).

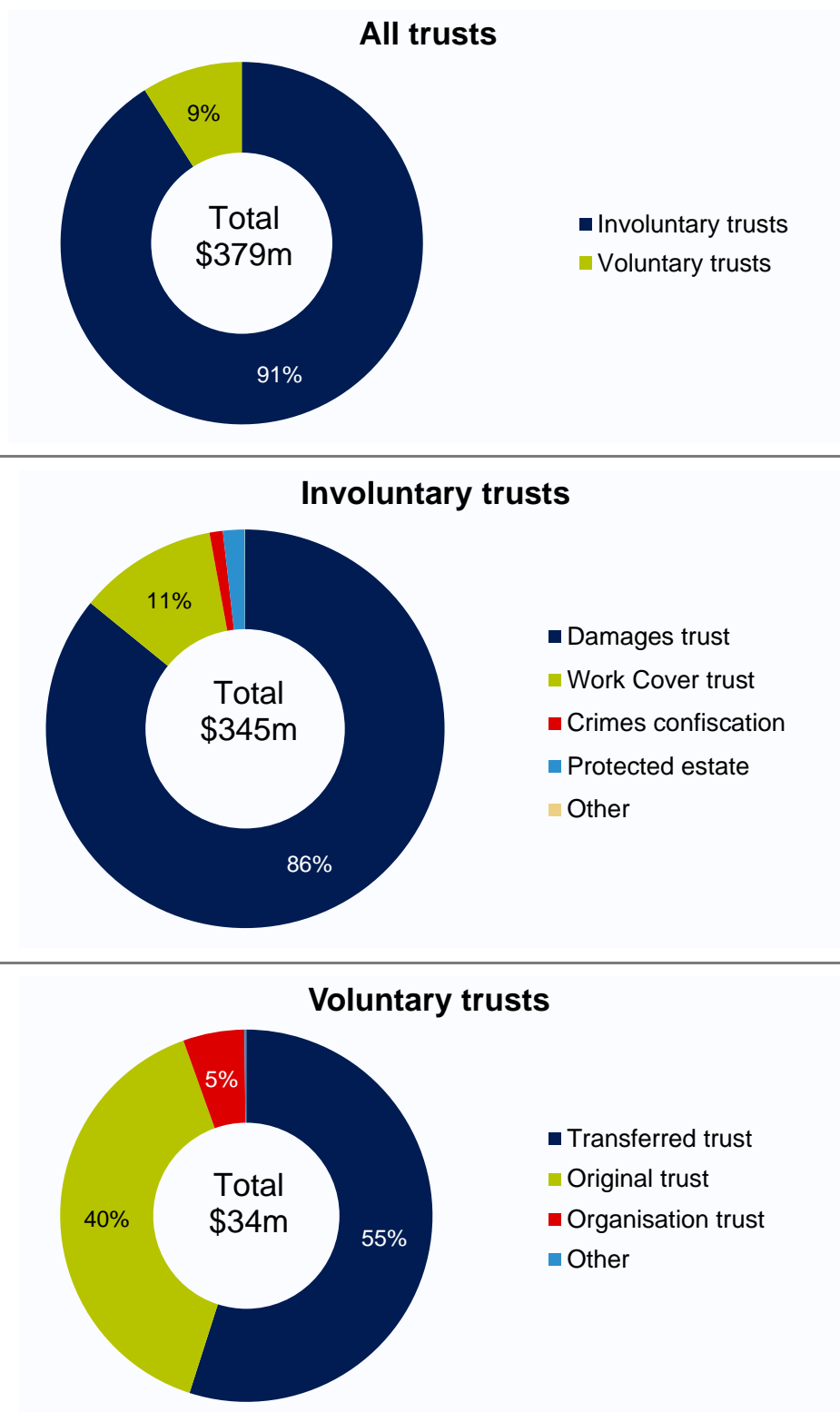
Table 4.9 Total asset value of existing trusts, 2012/13

Types of trust	Asset value (\$m)	% of total asset value	Average	Involuntary?
Damages Trust	\$295.9	78%	\$79,656	Yes
Work Cover Trust	\$38.8	10%	\$69,049	Yes
Transferred Trust	\$18.7	5%	\$66,565	No
Original Trust	\$13.5	4%	\$46,457	No
Protected Estate Trust	\$6.1	2%	\$760,288	Yes
Crimes Confiscation Trust	\$3.7	1%	\$67,872	Yes
Organisation Trust	\$1.8	<1%	\$362,913	No
Workers Compensation Trust	\$0.1	<1%	\$84,979	Yes
Court Trust	<\$0.1	<1%	\$29,655	No
Sale Trust - Sec 66G	<\$0.1	<1%	\$8,294	No
Warehouseman's Lien Trust	<\$0.1	<1%	\$3,898	Yes
Total	\$378.7	100%		

Source: IPART analysis of data provided by NSW TG and PwC.

As expected from their numbers, involuntary trusts comprise around 91% of the total asset value of existing trusts, compared to 9% for voluntary trusts (see Figure 4.6). Figure 4.6 also breaks down the asset values of involuntary and voluntary trusts into their different trust types.

⁹⁵ Reliable data is not available to compare the asset value of trusts across new and existing matters. Asset data for new matters include residential property (where such property forms part of the trust assets), whereas this is excluded from existing matter data. The reason for this difference arises from the different basis NSW TG uses for calculating its establishment and long term trust fees. These fees are discussed in section 4.5.2 below.

Figure 4.6 Total asset value of existing trusts, 2012/13

Data source: IPART analysis of data provided by NSW TG and PwC.

Trust client intensity

Looking at the annual volume of transactions processed by NSWTG for its trust clients (ie, client intensity) contained in Table 4.10, this indicates that:

- ▼ The typical trust customer requires minimal service from NSWTG on a day to day basis. Over three-quarters of involuntary and voluntary trust clients are 'low intensity', with NSWTG attending to less than two transactions a year for these clients.
- ▼ Involuntary trusts appear to generally require a lower effort by NSWTG to manage than voluntary trusts. Around 95% of new involuntary trusts are low intensity, compared to 78% of voluntary trusts.

Table 4.10 Trust intensity ranges, based on no. of transactions in 2012/13

Intensity range	High intensity	Medium intensity	Low intensity
	>=6 transactions	>=2 to <6 transactions	<2 transactions
New matters			
Involuntary trusts	1%	4%	95%
Voluntary trusts	6%	17%	78%
Existing matters			
Involuntary trusts	7%	10%	83%
Voluntary trusts	7%	15%	78%

Source: IPART analysis of data provided by NSWTG and PwC.

Combining measures of client assets and intensity in Table 4.11:

- ▼ Trust clients usually have low assets values (ie, less than \$100,000) and are low intensity.
- ▼ There is a higher concentration of low asset/low intensity involuntary trust clients when compared to voluntary trust clients. For example, 87% of new involuntary trust clients fit this description, compared to 54% of voluntary trust clients.

Table 4.11 Breakdown of trusts by asset and intensity ranges, 2012/13

	High intensity	Medium intensity	Low intensity
New matters			
<i>Involuntary trusts</i>			
High asset	1%	1%	3%
Medium asset	0%	1%	5%
Low asset	0%	3%	87%
<i>Voluntary trusts</i>			
High asset	0%	1%	8%
Medium asset	4%	6%	15%
Low asset	1%	10%	54%
Existing matters			
<i>Involuntary trusts</i>			
High asset	3%	1%	2%
Medium asset	1%	1%	5%
Low asset	3%	7%	76%
<i>Voluntary trusts</i>			
High asset	1%	1%	1%
Medium asset	1%	2%	10%
Low asset	6%	12%	67%

Note: Asset classes are defined as Low: <\$100,000, Medium: >= \$100,000 to <\$250,000, High: >=\$250,000.

Source: IPART analysis of data provided by NSW TG and PwC.

Care must be taken in interpreting intensity data. The quantity of transactions does not indicate their complexity or time taken by NSW TG to attend to them. As such, there is not a reliable link between a trust's intensity and actual costs incurred by NSW TG in attending to it.

4.5.2 Current fee structure

NSW TG charges five main fees for each trust (see Table 4.12):

1. An establishment fee, to recoup set-up costs. This fee is based on a sliding scale percentage of trust assets.
2. A short term trust fee, to cover the ongoing cost of managing the trust. It applies for the first two years from the trust's establishment date (ie, two years from when NSW TG commences work on the trust). The short term trust fee is based on a percentage of trust income.
3. A long term trust fee, to cover the ongoing cost of managing the trusts. It is based on a percentage of trust assets, and replaces the short term trust fee after two years.
4. An account keeping fee.
5. An investment management fee for investments in the Common Fund.

Table 4.12 Main current trust fees

Fees	Fee level
Establishment fee	
Asset values up to \$100,000	4.0% p.a.
From \$100,001 to \$200,000	3.0% p.a.
From \$200,001 to \$300,000	2.0% p.a.
Over \$300,000	1.0% p.a.
<i>Trust fees</i>	
Short term (trust income)	5.25% p.a.
Long term (trust assets)	
Asset values up to \$250,000	0.5% p.a.
From \$250,001 to \$500,000	0.75% p.a.
Over \$500,000	1.0% p.a.
Account keeping fee	\$10 per month
Investment management fee	0.75% p.a.

Note: Figures are presented excluding GST. Short term trust fee is charged for the first two years, and long term trust fee is charged after two years.

Source: NSWTG.

4.5.3 Problems with the current fee structure

Problems with the current fee structure for trusts include:

- ▼ it significantly over-recovers the actual costs of managing trusts
- ▼ short and long trust fees are inconsistent with market practice and the ongoing administration fee NSWTG charges its Direct Financial Management clients.

Fees significantly over-recover costs

NSWTG's current fee structure for trusts is set at a rate which over-recovers the costs of managing trusts. In 2012/13, revenue for trust management was \$9.9 million, while NSWTG's actual cost (excluding margin) of performing this service was \$8.4 million, an over-recovery of around \$1.5 million.⁹⁶ NSWTG is using this profit from trust clients to effectively cross-subsidise services it provides to other clients.

Fees are inconsistent with market practice and direct financial management

The split between short term and long term trust fees is historical. There is no clear basis for charging a fee on income in the short term, and then switching to an asset based fee after two years.

⁹⁶ Figures are based on PwC's analysis of NSWTG's 2012/13 costs and revenues.

In addition, it is inconsistent with the market practice for trust fees, which are typically charged as a percentage of assets.⁹⁷ It also does not accord with NSW TG's practice for charging Direct Financial Management clients. Their ongoing administration fee is wholly asset based, not partly income based.

4.5.4 NSW TG's submission on Trust fees

NSW TG proposes to increase its fees for Trusts but to keep the same structure.⁹⁸ However, it did not provide sufficient rationale in its submission to support this increase.

4.5.5 Stakeholder submissions

Stakeholder submissions to the Issues Paper broadly expressed dissatisfaction with both the level of fees charged for managing trusts and the service quality.

Fees decreasing the value of trusts

Several stakeholders felt that NSW TG's trust management fees were too high, and in many cases they were decreasing the value of the trusts. This was particularly an issue for stakeholders with lower value trusts. Some considered they would be financially better off if their trust funds were invested in term deposits.⁹⁹

The NSW Department of Premier and Cabinet also addressed this issue, noting that government-funded compensation payments, such as victims of crime compensation, are potentially being undermined by applying fees to trust accounts. It also noted that the beneficiaries of these trusts were generally disadvantaged in terms of family background, financial resources, and their long term prospects.¹⁰⁰

We have attempted to address these concerns in section 4.5.8 (future changes to trust fees), where we discuss an option to categorise involuntary trusts into low and high intensity trusts. Low intensity trusts would have a lower fee structure than high intensity trusts.

⁹⁷ The CIE, *NSW Public Trustee and Guardian, Cost benchmarking with the private sector*, Final Report, August 2014.

⁹⁸ NSW TG submission to IPART, June 2014.

⁹⁹ Individual – Anonymous and G Purvis, submissions to IPART, June 2014.

¹⁰⁰ NSW Department of Premier and Cabinet submission to IPART, June 2014.

Poor service quality

A number of these submissions also comment on poor service quality, particularly in the context of increasing fees. Two themes related to service quality of trust management were apparent from submissions:

- ▼ failure or significant delay in providing Statements of Account¹⁰¹
- ▼ no response or refusal to review fees or release funds to bank trust account/term deposit.

We acknowledge these concerns, and have made recommendations about greater transparency about fee disclosures (including in relation to Statements of Account) in Chapter 6.

Stakeholders suggestions to resolve problems with fees and service quality

Stakeholders suggested that:

- ▼ NSW TG must not work on the basis of a one size fits all approach to trust management.
- ▼ Trust beneficiaries should have choice as to who manages their funds rather than a Court deciding the funds be held by NSW TG.
- ▼ It may not be fair to charge fees on multiple accounts for the one matter.¹⁰² Instead, clients should have one overall trust account with one set of fees and charges, not separate accounts for each award with separate fees and charges.¹⁰³

In relation to the last point, the NSW Department of Premier and Cabinet indicated that children and young persons in care may receive more than one recognition payment from Victims Services.¹⁰⁴ Currently a separate trust is created for each award, incurring separate fees and depleting the funds in each trust. Having one overall trust account for each client for these recognition payments would rationalise the establishment and account keeping fees payable.

We have made a recommendation that clients should have one overall trust account with one set of fees. See section 4.5.7.

¹⁰¹ Individual – Anonymous submissions to IPART, June 2014.

¹⁰² Public Service Association of NSW submission to IPART, June 2014.

¹⁰³ NSW Department of Premier and Cabinet submission to IPART, June 2014.

¹⁰⁴ NSW Department of Premier and Cabinet advised in its submission that recognition payments range between \$1,500 and \$15,000 and are held on trust by NSW TG until the child turns 18 years.

4.5.6 Overview of IPART's fee structure

The fee structure for trusts should entail a combination of NSWTG-set and IPART-recommended fees. The market for trust management is competitive,¹⁰⁵ so NSWTG should have the discretion to set its fees within this market. Competition will force NSWTG to set its fees to reflect efficient costs. However, since NSWTG acts as monopoly supplier to a sub-group of clients, these clients should be subject to IPART-recommended fees.

As noted in section 3.1.2, IPART-recommended fees should apply to involuntary trusts. NSWTG is required to act as trustee of these trusts because of legislation or a Court/Tribunal order. The clients did not choose to have NSWTG provide the service, and they do not have the capacity to transfer to alternative service providers.

4.5.7 Clients subject to IPART-recommended fees

IPART-recommended fees

Our approach to recommending fees for trusts involves:

- ▼ ensuring the *fee structure* is broadly consistent with market practice, and
- ▼ reducing *fee levels* so that they only recover NSWTG's efficient cost of providing trust services.

In relation to reducing fee levels, we prioritised reducing the fee level for managing investments in the Common Fund (ie, the investment management fee). This is a fee that applies across all NSWTG services, so it is important to harmonise it. We then reduced other trust fee levels to remove any remaining over-recovery of NSWTG's efficient costs for trusts.

Our recommended fee structure is outlined in Table 4.13. In summary, NSWTG should:

- ▼ **Establishment fee:** Keep the existing fee structure for the establishment fee, but reduce the fee levels.
 - The existing fee structure is consistent with the market practice of having graduated fees, and based on a percentage of assets.
 - The revised fee levels better reflects the overall efficient cost of providing trust management services.

¹⁰⁵ The CIE, *NSW Public Trustee and Guardian, Cost benchmarking with the private sector*, Final Report, August 2014.

- ▼ **Administration fee:** Replace the short term and long term trust fees with a single administration fee.
 - The existing split between short term income based fee and long term asset based fee is historical. There is no clear reason for maintaining this split.
 - The new administration fee would use a graduated fee structure, based on percentage of assets. Further, fee percentages would decrease as asset size increases, reflecting decreasing marginal costs (which is consistent with market practice).
 - The new administration fee level is either the same or lower than existing long term trust fee levels, reflecting the efficient cost of providing trust management services.
- ▼ **Account keeping fee:** Maintain the account keeping fee at \$10 per month to ensure it is consistent with the account keeping fees charged by NSWTG across its other services.
- ▼ **Investment management fee:** Reduce the investment management fee from 0.75% to 0.1%, to harmonise the fee level across NSWTG's services and better align it with NSWTG's cost of providing this service.
- ▼ **Specialist services fees:** Maintain the current fee level for its specialist services fees (eg, fees for investment planning, preparing tax returns), to ensure they are consistent with the specialist services fees charged by NSWTG across its other services.

Table 4.13 IPART-recommended trust fees

Fees	Fee level	Frequency	Fees to be applied to:
1. Establishment fee			
Asset values up to \$100,000	3.5% p.a.	Fee applied one-off on establishment of trust	The establishment fee applies to the total value of client assets held on trust at its establishment (including residential property).
From \$100,001 to \$200,000	2.5% p.a.		
From \$200,001 to \$300,000	1.5% p.a.		
Over \$300,000	0.5% p.a.		
2. Administration (trust) fee			
Asset values up to \$250,000	0.5% p.a.	Fee applied on a monthly basis.	The administration fee applies to the total value of client assets held on trust (excluding residential property).
From \$250,001 to \$500,000	0.45% p.a.		
Over \$500,000	0.4% p.a.		
3. Account keeping fee	\$10 per month	Fee applied on a monthly basis.	
4. Investment management fee	0.1% p.a.	Fee applied on a monthly basis.	Fee applied to assets invested in the Common Fund.

Note: Figures are GST exclusive.

One trust account for each client

In order to minimise the fees payable by clients, we agree with the stakeholder suggestion that NSW TG should discontinue its current practice of establishing a separate trust account for each compensation payment made to the same client. Instead, clients should have one overall trust account with one set of fees, and any additional compensation payments they receive should be paid into this trust account.

GST on fees

The Australian Taxation Office (ATO) advised that NSW TG's fees for Trusts were subject to GST, since NSW TG appeared to be providing this service in competition with the private sector. However, its fees for Direct and Private Financial Management are GST exempt as they are not operating in direct competition with other service providers.¹⁰⁶

Based on our analysis of involuntary trusts, we consider that they are more akin to Direct and Private Financial Management, since NSW TG is effectively the monopoly supplier of these services.

Our usual approach in a pricing review is to regulate prices exclusive of GST, and to leave the imposition of GST to the organisation. However, we do consider there is merit in NSW TG clarifying whether involuntary trust services are subject to GST. As the GST is ultimately payable by clients, a ruling to exempt involuntary trust fees from GST would result in lower fees for these clients.

Recommendations:

8 For trust services, NSW TG:

- Keep the existing fee structure for the establishment fee, but reduce fee levels.
- Replace the short term and long term trust fees into a single administration fee.
- Maintain the account keeping fee at \$10 per month.
- Reduce the investment management fee from 0.75% to 0.1%.
- Maintain the current fee level for its specialist services fees (eg, fees for investment planning, preparing tax returns).
- Discontinue its current practice of establishing a separate trust account for each compensation payment made to the same client. Instead, clients should have one overall trust account with one set of fees and charges, and any additional compensation payments they receive should be paid into this trust account.

¹⁰⁶ Australian Taxation Office, *Private Ruling*, 19 September 2013.

While we have kept the *fee structures* generally consistent between Trusts and Estate Administration, we note that the IPART-recommended fees mean that the *fee levels* for these services are no longer the same. This is appropriate since those services have different efficient costs. As such, the actual fees required (and charged) to recover the efficient costs of Trusts and Estates will be different.

CSOs

At this stage we are not recommending a CSO payment apply to IPART-recommended trust fees. Our position is consistent with the existing CSO arrangements, which do not apply a CSO at the client level (ie, to reduce fees payable by clients).

Unlike for Financial Management Services, NSWTG does not have information on each client's overall asset profile. It only has data on each client's trust assets. As such, we are unable to gain a complete understanding of each client's ability to afford NSWTG's fees.

In addition, we have been advised that Courts or Tribunals factor into some compensation payments an amount to cover a trustee costs. We do not have data on the amounts reserved for trustee costs for the trusts managed by NSWTG, to see whether they adequately cover its fees and charges.

In the short term, we have attempted to address affordability concerns by not increasing fees. Rather, IPART-recommended fees are either the same or lower than existing trust fee levels. Additionally, we outline two initiatives in the future changes section (see section 4.5.8) which may further reduce the fees payable by trust clients:

- ▼ categorising trusts into low and high intensity trusts, with a lower fee structure for low intensity trusts
- ▼ introducing a minimum administration fee and offsetting this to some extent with a CSO payment.

One way to assist with these initiatives and identifying clients eligible for any future CSO payments would be for NSWTG to gather information on a client's overall asset profile (eg, in the same format as it uses for its Direct Financial Management service). It could also record the amount (if any) that a Court or Tribunal factors into a compensation payment to cover trustee costs.

We are conscious of not imposing unnecessary red tape on NSWTG and its clients in collecting data. We seek feedback from stakeholders on whether these ways to gather information for a potential CSO payment would be too intrusive or overly burdensome.

As outlined in section 4.5.5, we received several submissions from stakeholders about NSW TG eroding the value of their low asset trusts. In addition to feedback on the measures outlined above, we welcome additional suggestions from stakeholders on how to further improve the affordability of trust fees.

4.5.8 Future changes to trust fees

This review has primarily focused on setting trust fees to recover only NSW TG's efficient costs (while ensuring that fee structures are broadly consistent with market practice). We are conscious that this will require significant effort on NSW TG's part to bring its actual costs into line with efficient levels and to implement this new fee structure.

Once these initial fee changes have been implemented, we consider that further reforms to NSW TG's Trust fees involve:

- ▼ categorising involuntary trusts into low intensity and high intensity trusts, with different fee levels for each trust category
- ▼ introducing a minimum administration fee for both low and high activity trusts, and offsetting this fee to some extent with a CSO payment, and
- ▼ rebalancing the revenue raised from one-off and ongoing fees.

Categorise trusts into low and high intensity trusts

A number of stakeholders with lower value trusts indicated the NSW TG's fees were excessive relative to the size of their trusts, and they would prefer to their trust funds invested in lower cost options such as a term deposit (see Box 4.2).

We see merit in the proposal to offer lower cost trust options to clients, which are better tailored to their circumstances. One way would be for NSW TG to split its trusts into low and high intensity trusts.

- ▼ Low intensity trusts – trusts that are lower cost for NSW TG to manage. These trusts would typically have a relatively simple asset mix (eg, compensation payments), and would be offered a limited range of relatively low cost investment options (eg, term deposits).
- ▼ High intensity trusts – trusts that are higher cost for NSW TG to manage. In general, these trusts would have a more complex asset mix (eg, involving investment real estate), or it is appropriate based on the clients circumstances to offer them a wider range of investment options.

NSW TG would have different fee levels for low and high intensity trusts, based on its efficient costs of managing each trust category. Low intensity trusts would have a lower fee structure due to their relatively simple asset mix/investment options, meaning that NSW TG takes less time to manage these trusts than high intensity trusts.

A significant proportion of NSWTG's trusts may be candidates categorising them as low intensity trusts. Looking at the client intensity data (see Table 4.11), low asset/low intensity trusts comprise over three-quarters of involuntary trusts.

NSWTG will need to implement Activity-Based Costing to assess whether a trust should be categorised as low or high intensity. Activity-Based Costing will record the time NSWTG takes to manage its trusts, and therefore give a more accurate picture of the cost to manage each trust compared with the existing intensity data discussed in section 4.5.1 (which is based on the number of annual trust transactions, not time taken by NSWTG to process these transactions). Chapter 6 discusses NSWTG implementing Activity-Based Costing.

Introducing minimum administration fees with associated CSO payments

To further harmonise fees between NSWTG's services, it should introduce a minimum administration fee for both low and high intensity trusts. This minimum fee would be offset to some extent with a CSO payment for eligible clients.

This fee structure is consistent with our recommended fees for NSWTG's Financial Management services. The revenue raised from the minimum administration fee would be used to decrease the cross-subsidy between high and low asset trust clients, by reducing the graduated fee levels for the establishment and administration fees.

Rebalancing the revenue raised from one-off and ongoing fees

Another step to harmonise fees between NSWTG's services would be to rebalance the revenue raised from one-off and ongoing fees. Trusts have relatively high fee levels for one-off fees (establishment fees) and low fee levels for ongoing fees (administration fees) when compared to Direct Financial Management and also the fee levels set in the market for trust services.

We did not undertake a rebalancing between one-off and ongoing fees for this review, as it would mean raising the administration fee.¹⁰⁷ This fee increase would primarily impact on low asset trusts, a move which is not appropriate in view of stakeholder concerns about NSWTG's current fees and the lack of data available to target CSOs at low asset clients.

Any rebalancing of fees would need to be transitioned so that the impact on existing and new clients is clearly identified and taken into account. For example, new clients who had recently paid the (higher) establishment fees would be adversely affected if increases to administration fee levels were not staged.

¹⁰⁷ While at the same time reducing the establishment fee.

Recommendation

- 9 NSWTG develop an Activity Based Costing system to identify further reforms to NSWTG's Trust fees for the next fee review. Potential reforms include:
 - Categorising involuntary trusts into low and high intensity trusts, with different fee levels for each trust category.
 - Introducing a minimum administration fee for both low and high intensity trusts, and offsetting this fee to some extent with a CSO payment.
 - Rebalancing the revenue raised from one-off and ongoing fees.

4.5.9 Fees for voluntary trusts

While we are not recommending fees for voluntary trusts, since NSWTG is competing with the private sector to provide these trust services, its fees should reflect market practice. In this respect, we note that the fee structure for involuntary trusts is broadly consistent with market practice, and so will provide a useful template for NSWTG to adopt for voluntary trusts. Nevertheless, competition should ensure that NSWTG charges fees that provide value for money for its clients. Allowing NSWTG flexibility to change its fees periodically will allow it to set fees in response to changing conditions in the market for trusts.

4.6 Will drafting

4.6.1 Description of service and clients

Number of wills and market share

NSWTG drafted 9,686 wills in the 2013 financial year, of which around 51% were new wills and 49% were remakes of existing wills.

It has a 7% market share for will making. The majority share in the market (81%) sits with the legal profession.¹⁰⁸

Client age and asset profile

Around 44% of NSWTG will clients are aged 65 years and over (see Table 4.14). Clients aged between 50 and 64 years also comprise a significant proportion of clients (33%).

¹⁰⁸ NSWTG submissions to IPART, June 2014. Some Non-Government Agencies provide will drafting services. For example, the Australian Red Cross has arranged with solicitors to prepare or remake a simple will for a fee starting at \$75.

Table 4.14 Age range for will drafting clients, total wills (new and remakes) (2012/13)

Age range	0-29	30-49	50-64	65-79	80+	Total
No. of clients	236	2044	3209	2979	1218	9686
% of clients	2%	21%	33%	31%	13%	100%

Note: Age of client at the date that the will is executed.

Source: IPART analysis based on NSW TG data.

As expected, clients remaking their will are likely to be older than new will clients. The average age for remake clients is 66, compared with 57 for new clients.

NSWTG does not collect data on a client's actual assets. However, at the time of drafting the will, it does estimate an asset range for each client (see Table 4.15).

Table 4.15 Estimated asset range for will drafting clients, total wills (new and remakes) (2012/13)

Asset range	0-\$50,000	>\$50,000-\$250,000	>\$250,000-\$750,000	>\$750,000	Total
No. of clients	1244	1661	4844	1937	9686
% of clients	13%	17%	50%	20%	100%

Source: NSW TG data.

Table 4.15 indicates clients likely skew towards the higher end of the asset range. Around 70% of clients have an estimated asset size greater than \$250,000. Only 13% of clients have estimated assets of \$50,000 or less.

Some caution must be applied when interpreting this asset data. As mentioned, it is an estimate based on a client's description of their assets. Further, it does not provide a reliable indication of a client's asset size when the will is activated. Asset size will likely change between will drafting and activation of the will on a client's death.

4.6.2 Problems with the current fee structure

NSWTG has historically not charged clients for will drafting. Instead, it attempts to recover this cost by linking its wills and estate administration services. When drafting a will, it requires clients to appoint it as executor of their deceased estate. NSW TG then charges fees on such deceased estates.

Two main problems arise from this current fee structure:

- ▼ it does not recover the efficient cost of providing this service, adversely impacting on NSW TG's budget and resulting in NSW TG's other clients subsidising its will drafting service, and

- ▼ the linking of 'free wills' with estate administration services may make it difficult for clients to understand the total fees they will be liable for by using NSWTG's 'free wills' drafting service.

Fee structure does not recover its efficient costs

This current fee structure for will drafting is financially unsound since it does not recover the efficient cost of providing this service, and so has an adverse impact on NSWTG's budget:

- ▼ NSWTG incurs a significant cost in providing a 'free will' service. Staff costs allocated to will drafting comprised over \$3.8 million in 2012/13.¹⁰⁹
- ▼ Typically, there is a substantial time lag between incurring these costs and attempting to recover them through estate administration fees. Over the last 14 years, only about 12% of wills were converted to deceased estates that the NSWTG administers.¹¹⁰
- ▼ Additionally, estate administration revenue, which is largely generated by the wills service,¹¹¹ does not cover the combined cost of drafting wills and administering estates. There was a shortfall of around \$2.5 million in the 2013 financial year.¹¹² It follows that will drafting is partially cross-subsidised by other NSWTG clients (in addition to estate administration clients).

Fee structure may be difficult for clients to understand

Based on the information NSWTG currently provides to clients, it may be difficult for them to understand the total fees they will be liable for by using NSWTG's 'free wills' drafting service. NSWTG does not charge an upfront fee for will drafting, but does subsequently charge clients for estate administration services. Clients may not appreciate when they commit to this fee structure at the point of having their will drafted that estate administration fees can be relatively substantial. As such, they should compare NSWTG's estate administration fees against those charged by other service providers before engaging NSWTG to prepare their will.

IPART findings:

- 5 The fee structure for will drafting does not recover the efficient cost of providing this service, and so has an adverse impact on NSWTG's budget.
 - NSWTG incurs a significant cost in providing its existing 'free wills' service, with staffing costs of over \$3.8 million in 2012/13. It does not fully recover

¹⁰⁹ Figure based on PwC's analysis of NSWTG's 2012/13 costs and revenues.

¹¹⁰ NSWTG submission to IPART, June 2014.

¹¹¹ NSWTG may also generate estate administration revenue through acting as executor of last resort for intestate estates and estates where the nominated executor is unwilling/unable to act.

¹¹² Figure based on PwC's analysis of NSWTG's 2012/13 costs and revenues.

these costs through its estate administration services. As such, will drafting is partially cross-subsidised by other NSW TG services.

- 6 Based on the information NSW TG currently provides to clients, it may be difficult for them to understand the total fees they will be liable for by using NSW TG's 'free wills' drafting service. NSW TG does not charge an upfront fee for will drafting, but does subsequently charge clients for estate administration services.
 - Clients may not appreciate when they commit to this fee structure at the point of having their will drafted that estate administration fees can be relatively substantial. As such, they should compare NSW TG's estate administration fees against those charged by other service providers before engaging NSW TG to prepare their will.

4.6.3 NSW TG's submission on this fee

NSW TG recognises there are serious issues with the current fee structure.¹¹³ It proposes to address some of these issues by charging clients a flat fee for drafting wills of \$400.¹¹⁴ Its submission does not outline the impact this fee is forecast to have on client demand for will services.

Most Public Trustees in other States charge a fee for their will drafting services. However, they are generally below the \$400 proposed by NSW TG.

4.6.4 Stakeholder submissions on this fee

The Mental Health Co-ordinating Council raised a concern that, while wills are prepared free of charge, the subsequent estate administration fees may be uncompetitive when compared with other service providers.¹¹⁵

Another stakeholder commented that some solicitors offer half-price and nominal price structures for preparing wills for the elderly. They consider that the NSW TG should not charge market rates for such services, but perhaps should look at pricing initiatives offered by some sectors of the private sector.¹¹⁶

We have addressed concerns about NSW TG's disclosure of fees in section 4.6.6.

¹¹³ NSW TG submission to IPART, June 2014.

¹¹⁴ NSW TG submission to IPART, June 2014.

¹¹⁵ Mental Health Co-ordinating Council submission to IPART, June 2014.

¹¹⁶ Huszar, H. submission to IPART, June 2014.

4.6.5 Overview of IPART's proposed fee structure

The fee structure for wills should entail a combination of NSWTG-set and IPART-recommended fees. The market for wills drafting is competitive,¹¹⁷ so NSWTG should have the discretion to set its fees to be competitive within this market. However, externalities arise in connection with low wealth clients. This means that if such clients die without a will, it imposes a cost on the NSW Government (rather than the client). This sub-group of clients should be subject to IPART-recommended fees.

Clients subject to NSWTG-set fees

While NSWTG should have the discretion to set fees for most wills clients, its current approach to setting fees is highly problematic in terms of cost recovery and transparency. We make general recommendations about more proactive and stringent oversight of NSWTG's finances in Chapter 6, and service-level recommendations about enhanced transparency in section 4.6.6 below.

Clients subject to IPART-recommended fees

IPART-recommended fees should apply to low wealth clients, because externalities are likely to arise in relation to these clients.

- ▼ If a person dies without a will (ie, intestate), a Court may appoint NSWTG as executor to provide estate administration services.¹¹⁸ Fees for these services are largely dependent on the value of a client's assets, with lower asset values resulting in lower fees. As such, the fees NSWTG is able to charge low wealth clients may be below the level at which NSWTG can recover its efficient estate administration costs.
- ▼ We are recommending fees (with associated CSO payments) as an interim step to addressing such externalities. In the longer term, a more efficient approach may be to implement a voucher-type system of CSO payments for low wealth clients obtaining wills.

¹¹⁷ The CIE, *NSW Public Trustee and Guardian, Cost benchmarking with the private sector*, Final Report, August 2014.

¹¹⁸ <http://www.tag.nsw.gov.au/intestacy-faq-virtual.html>, accessed 4 September 2014.

4.6.6 Clients subject to NSWTG-set fees

NSWTG should improve transparency around the fees it sets for will drafting

As noted above, the Mental Health Co-ordinating Council raised a concern that the estate administration fees potentially payable by will drafting clients may be uncompetitive when compared with other service providers.¹¹⁹ It suggested that if NSWTG were to continue its practice of linking its will drafting service with being appointed executor of a client's estate – and so charging fees on the subsequent deceased estate – it should enhance transparency around this linkage.

Ideally, clients should compare NSWTG's estate administration fees against those charged by other service providers before engaging NSWTG to prepare their will. The Mental Health Co-ordinating Council considered that NSWTG should provide this comparative fee information.¹²⁰ In IPART's view, placing the onus on NSWTG to provide comparative data would be an unreasonable and costly burden. However, we do agree that there should be sufficient information presented in a manner that allows people to compare fees.

We recommend that NSWTG improve transparency at the point of engagement with its wills clients by:

- ▼ Providing clients with a copy of its schedule of estate administration fees, which should include worked examples of fees payable for estates valued at \$50,000, \$100,000, \$250,000 and \$500,000. Including worked examples will assist clients to understand how the fee schedule translates into actual charges.
- ▼ Advising clients that they should consider comparing these fees with those offered by other service providers.

NSWTG should also provide better information about its fees to potential wills clients by including the worked fee examples referred to above on its website.¹²¹

Recommendations:

10 NSWTG improve transparency around its fees at the point of engagement with its wills clients by:

- providing clients with a copy of its schedule of estate administration fees, which should include worked examples of fees for estates valued at \$50,000, \$100,000, \$250,000 and \$500,000, and
- advising clients that they should consider comparing these fees with those offered by other service providers.

¹¹⁹ Mental Health Co-ordinating Council submission to IPART, June 2014.

¹²⁰ Mental Health Co-ordinating Council submission to IPART, June 2014.

¹²¹ NSWTG's currently includes on its website the **fee percentage** charged, rather than the **actual fee** charged, for estates values of \$500,000, \$750,000 and \$1,000,000 (<http://www.tag.nsw.gov.au/fees-and-charges-wills.html>, accessed 7 August 2014).

- 11 NSWTG provide better information about its fees to potential wills clients by including on its website worked examples of fees payable for estates valued at \$50,000, \$100,000, \$250,000 and \$500,000.

4.6.7 Clients subject to IPART-recommended fees

Externalities are likely to exist for low wealth clients

If a person does not make a will, a Court may appoint NSWTG to act as their executor in intestacy proceedings. This imposes a cost on NSWTG (and the NSW Government), which can only be fully recouped if its fees for estate administration services are in line with this cost.

Fees for estate administration services are largely dependent on the value of a client's assets, with lower asset values resulting in lower fees. As such, the fees NSWTG is able to charge low wealth clients may be below the level at which NSWTG can recover its efficient estate administration costs. This results in an externality, with NSWTG (and the NSW Government) bearing the cost of such low wealth clients not pre-planning their affairs by making a will.

If the cost of subsidising will drafting is less than the cost of subsidising intestacy services, establishing subsidised wills for low wealth clients in effect minimises the size of the externality.

Targeting will subsidies at low wealth clients aged 65 years and over

Generally, it is important to ensure that subsidies are well-targeted so that Government achieves value for money. Therefore, will subsidies should be targeted at low wealth clients aged 65 years and over. The vast majority of intestate clients are in this age range (around 71% of intestate clients in 2012/13)¹²². Further, NSWTG generally incurs a loss in servicing low wealth intestate clients.

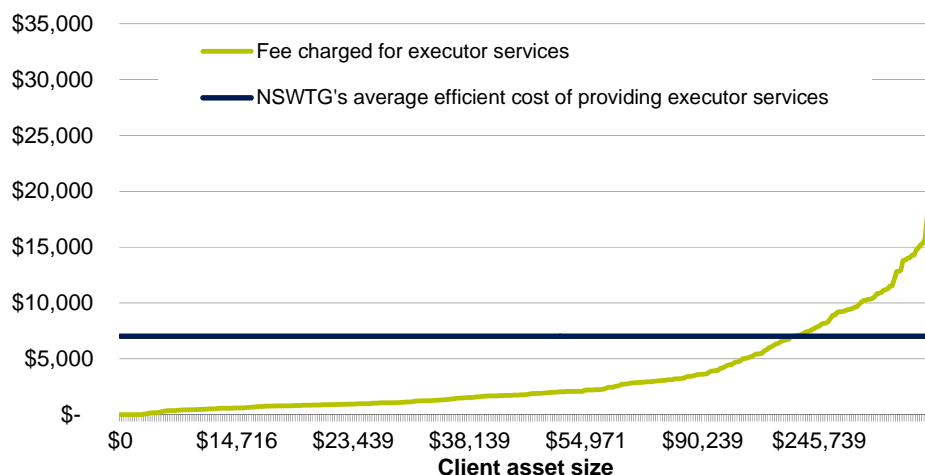
¹²² NSWTG had not yet been able to ascertain the age for another 20% of intestate clients, meaning that the actual proportion of clients aged 65 years and over is likely to be higher.

Executor fees generated from low wealth intestate estates are typically insufficient to cover NSW TG's efficient costs:

- ▼ NSW TG's efficient cost of providing executor services to a new estate in 2012/13 was around \$7,000 on average.¹²³ Based on its current fee structure, NSW TG recovers this efficient cost where a client's asset size is around \$200,000 (see Figure 4.7).¹²⁴
- ▼ NSW TG recovers fees from intestate clients that have assets above this 'breakeven point', which reduces the overall costs of intestacy. Even after taking these fees into account, there is a shortfall of around \$870,000 for NSW TG providing executor services to intestate clients aged 65 years and over.

Providing subsidised wills for these clients may reduce the magnitude of this shortfall.

Figure 4.7 Executor fees for intestate estates and efficient costs, 2012/13



Note: Figures are GST exclusive. IPART's average efficient cost estimate assumes that this cost does not vary based on the asset size of the client's estate under administration. If costs decrease as asset size decreases, this may reduce the 'breakeven point'.

Data source: IPART analysis based on data provided by PWC and NSW TG.

¹²³ We have calculated this figure by applying a 20% efficiency saving to NSW TG's actual costs to derive an overall efficient cost of providing executor services of \$11.4m, and dividing this efficient cost figure by 1,613, which is the number of new estate clients in 2012/13.

¹²⁴ For example, if a client has an asset size of \$100,000, NSW TG is able to charge that client \$4,000 (excluding GST) for executor services. This represents a shortfall of \$3,000 on its efficient costs of providing those services.

Outline of will subsidies program

Eligibility for subsidy based on full-rate Centrelink age pension

An administratively simple way of translating the target of the will subsidy (ie, low wealth clients aged 65 years and over) into practice is to make it only available to clients eligible for the full-rate Centrelink age pension.

This pension includes age, income and assets tests which provide useful indicators of clients who are likely to be:

- ▼ in the age range where intestacy is most probable to occur, and
- ▼ unable to afford will drafting services.

Additionally, there is a relatively small gap between pensionable age and average life expectancy, meaning there is a short time period between the cost of the will subsidy incurred by the Government and the costs of intestacy avoided by the Government.

Delinking NSW TG's will drafting and executor services

Another aspect of the will subsidy program would be delinking NSW TG's will drafting and executor services. Clients should have the ability to appoint someone other than the NSW TG to be their executor (which is not the case under NSW TG's current will drafting service – see section 4.6.2).

Apart from giving clients flexibility over their executor, this will minimise NSW TG's potential losses from administering low asset estates. Otherwise NSW TG will incur the costs of estate administration services for these clients (through acting as their executor), which it is unable to recover through fees due to client asset sizes being below the 'breakeven point' discussed above.

Will subsidies in the interim and long term

In terms of rolling out the subsidy program, we propose interim and long term goals.

Interim pilot

In the interim, we recommend a three-year pilot of will subsidies with the features outlined below:

- ▼ NSW TG should charge a will drafting fee of \$320 to clients who meet the criteria outlined above. This fee is based on our assessment of NSW TG's efficient costs for providing this service.

- ▼ To effectively address affordability issues, the cost of this service should be mostly borne by the Government rather than clients. As such, the actual fee would be covered to an extent by a corresponding CSO payment to NSW TG, so that clients only pay \$10 for this service.
- ▼ Clients would be eligible for one subsidised will every three years, or more frequently if there is a significant change in their circumstances (eg, death of spouse, divorce). If clients require will drafting service in excess of this threshold, they will pay the market rates set by NSW TG (or other service providers).
- ▼ After three years, the pilot should be assessed by an oversight or independent agency, to ensure its effectiveness. Data should be collected to measure both the costs of the program and the likely avoided intestacy costs.¹²⁵ Data should also be collected to measure client satisfaction with the service.

Longer term subsidy

If the pilot program is effective, we recommend it be opened up to other providers of will drafting services in the longer term. This would offer clients greater flexibility about where they could obtain a subsidised will. Further, competition between service providers may improve the quality of service clients receive. Additionally, it would place pressure on NSW TG to be efficient in terms of costs.

Clients that meet the eligibility criteria would obtain a voucher for a subsidised will. Service providers could choose to accept this voucher and draft a will. They would then receive a corresponding payment from the NSW Government based on the efficient cost of will drafting. This efficient cost would be reviewed on a five yearly basis. The actual fee payable by clients should continue to be covered to an extent by a corresponding CSO payment.

The efficient cost of providing will drafting services under the subsidy should be reviewed on a five yearly basis.

CSO

Clients should pay a nominal fee of \$10 to obtain a will under this subsidy. Based on our estimate of \$320 as the efficient cost of will drafting, the Government will pay a CSO to NSW TG of \$310 for each will it drafts under the program.

¹²⁵ In assessing the effectiveness of this program, the relevant agency should be cognisant of the 'free rider' effect. Some of the clients eligible for the subsidy would have obtained a will in any case, diluting some of the program's impact on avoided intestacy costs.

We are unable to identify from the data provided by NSW TG which clients are eligible for the full-rate Centrelink age pension, and so are eligible for the subsidy program. If all clients aged 65 years and over in 2012/13 were eligible, the CSO payment from the Government to NSW TG would be around \$1.3 million.

Introducing will subsidies

The will subsidy outlined above should be introduced if NSW TG brings in an upfront fee for its will drafting service. The subsidy would then operate to improve the affordability of this service for many low wealth clients.

As previously noted, NSW TG does not currently charge an upfront fee for will drafting. However, it is proposing to change this practice and impose a fee of \$400.

Recommendations:

- 12 If NSW TG brings in an upfront fee for its will drafting service, the NSW Government introduce a three year pilot for will subsidies. Under the program:
 - NSW TG would charge eligible clients a fee of \$320 for will drafting (new and remakes), which would be partially covered by a corresponding CSO payment from the NSW Government so that the actual cost to clients is \$10.
 - Clients would be eligible for the subsidy if they are also eligible for the full-rate Centrelink age pension.
- 13 If an independent evaluation of the will subsidy pilot program finds it effective, the NSW Government open up the program to other providers of will drafting services.
 - Clients that meet the eligibility criteria would obtain a voucher for a subsidised will. Service providers could choose to accept this voucher and draft a will. They would then receive a corresponding partial CSO payment from the NSW Government based on the efficient cost of will drafting.
 - This efficient cost of providing will drafting services under the subsidy should be reviewed on a five yearly basis.

4.7 Estate services

4.7.1 Description of service and clients

Estate administration involves both executor and trust services

NSWTG managed 6,547 estates in the 2013 financial year, of which 25% were new matters and 75% existing matters:

- ▼ NSWTG's new matters predominantly involve executor services. That is, obtaining probate for these estates and distributing assets among beneficiaries.
- ▼ In contrast, NSWTG's existing matters largely relate to trust management. Almost two-thirds of existing matters involve a long term trust, such as a testamentary trust or life tenancy. Other reasons for these ongoing matters include difficulty ascertaining the location of beneficiaries and legal challenges to the estate administration.

Involuntary and voluntary estates

Based on the estate type descriptions provided by NSWTG, we have classified the estates it manages as either 'involuntary' or 'voluntary' based on whether the client has a choice about the NSWTG providing the service.

Involuntary estates are those where NSWTG acts as the executor of last resort because of intestacy or a nominated executor being unwilling or unable to act. For example, if a person does not make a will, a Court may appoint NSWTG to act as their executor in intestacy proceedings. We consider that NSWTG is effectively the monopoly supplier of these types of estate administration services.

From the data provided by NSWTG, we are only able to identify intestate estates, not those where the beneficiary is unwilling or unable to act. Around 32% of all matters are intestate estates. This figure is considerably lower for new matters, with only around 23% of matters arising from intestacy in 2012/13.

As outlined in Chapter 4, we are recommending fees only for involuntary estates. For its other estate services, clients can choose alternative service providers within a competitive market. As such, NSWTG should have the discretion to set fees for voluntary trusts.

Value of new and existing estates

According to Table 4.16, new matters comprise significant proportions of both high and low asset estates (40% and 44% respectively). One reason for this distinction may be whether or not the estate includes real estate. In contrast, intestate estates originating during 2012/13 were largely concentrated in the low asset range (74%).

Table 4.16 Asset range for estate administration, 2012/13

Asset range	High asset >=\$250,000	Medium asset >=\$100,000 -<\$250,000	Low asset <\$100,000
New estates			
All new estates	40%	16%	44%
Intestate	14%	12%	74%
Existing estates			
All existing estates	11%	7%	81%
Long term trust	18%	11%	71%
Intestate	9%	5%	86%

Source: IPART analysis based on NSW TG data.

In relation to existing matters, 81% have an asset size of below \$100,000. This proportion rises to 86% for intestate estates. While long term trusts are also highly concentrated in the low asset range, a significant proportion have a high asset size, with 18% of long term trusts have assets of \$250,000 or more.¹²⁶

Estate client intensity

Based on intensity ranges (see Table 4.17), new matters typically require a greater effort to manage than existing matters. This is indicated by the larger proportion of new matters in the high and medium intensity ranges when compared to existing matters. Further, over 80% of existing matters were classified as low intensity in 2012/13, compared to only 56% of new matters.

The difference in intensity ranges is probably explained by new matters involving executor services, whereas existing matters are generally through this phase.

¹²⁶ Note that reliable data is not available to compare the asset sizes of estates across new and existing matters. Asset data for new matters includes residential property, whereas this is excluded from existing matter data. The reason for this difference arises from the different basis NSW TG uses for calculating its short term and long term fees (see Section 4.7.2 below).

Table 4.17 Intensity range for estate administration, 2012/13

Intensity range	High intensity ≥70 transactions	Medium intensity ≥30-<70 transaction	Low intensity <30 transactions
New matters			
All new matters	12%	31%	56%
Intestate	14%	12%	74%
Existing matters			
All existing matters	7%	11%	82%
Long term trust	4%	9%	88%
Intestate	3%	6%	91%

Source: NSWTG data.

Intestate estates appear to require minimal service from NSWTG on a day to day basis. Almost three-quarters of new intestate estates have a low intensity, rising to over 90% of existing intestate estates.

Combining measures of a matter's asset size and intensity allows us to develop a greater understanding of the NSWTG's client base (see Table 4.18):

- ▼ In relation to new matters, those with high asset values generally have a higher intensity than low asset estates. One implication is that fees linked to a matter's asset levels may accurately reflect the cost of serving these clients. However, the correlation between asset size and intensity is not as evident for existing matters. Instead, existing matters skew towards the low intensity range irrespective of asset size.
- ▼ The majority of intestate estates are low asset/intensity (52% and 79% for new and existing matters respectively).

Table 4.18 Breakdown by asset and intensity ranges, 2012/13

	High intensity	Medium intensity	Low intensity
New matters			
All new matters			
High asset	10%	15%	15%
Medium asset	1%	5%	9%
Low asset	1%	11%	32%
Intestate new matters			
High asset	3%	4%	7%
Medium asset	0%	3%	9%
Low asset	1%	21%	52%
Existing matters			
All existing matters			
High asset	1%	3%	7%
Medium asset	0%	1%	6%
Low asset	5%	8%	68%
Long term trust existing matters			
High asset	2%	4%	12%
Medium asset	0%	1%	10%
Low asset	1%	3%	66%
Intestate new matters			
High asset	1%	1%	7%
Medium asset	0%	0%	5%
Low asset	2%	5%	79%

Source: NSW TG data.

Care must be taken when interpreting intensity data. The quantity of transactions does not indicate their complexity or time taken by NSW TG to attend to them. As such, there is not a clear link between a matter's intensity and actual costs incurred by NSW TG in attending to it.

4.7.2 Current fee structure

NSWTG charges five main fees for estate administration (see Table 4.19):

1. An establishment fee, executor costs. This fee is based on a sliding scale percentage of estate assets.
2. A short term trust fee, to cover the ongoing cost of managing the estate. It applies for the first two years from the matter's establishment date (ie, two years from when NSW TG commences work on the estate). The short term trust fee is based on a percentage of trust income.
3. A long term trust fee, to cover the ongoing cost of managing the estate. It is based on a percentage of trust assets, and replaces the short term trust fee after two years.
4. An account keeping fee.
5. An investment management fee for investments in the Common Fund.

Table 4.19 Main current estate administration fees

Fees	Fee level
1. Executor fee	
Asset values up to \$100,000	4.0% p.a.
From \$100,001 to \$200,000	3.0% p.a.
From \$200,001 to \$300,000	2.0% p.a.
Over \$300,000	1.0% p.a.
Minimum fee	\$200
<i>Trust fees</i>	
5. Short term (trust income)	5.25% p.a.
6. Long term (trust assets)	
Asset values up to \$250,000	0.5% p.a.
From \$250,001 to \$500,000	0.75% p.a.
Over \$500,000	1.0% p.a.
7. Account keeping fee	\$10 per month
8. Investment management fee	0.75% p.a.

Note: Figures are GST exclusive. Short term trust fee is charged for the first two years, and long term trust fee is charged after two years.

Source: NSW TG.

4.7.3 Problems with the current fee structure

Problems with the current fee structure for estate administration include:

- ▼ it significantly over-recovers the actual costs of administering estates
- ▼ short and long trust fees are inconsistent with market practice.

Fees significantly over-recover costs

NSWTG's current fee structure for estates is set at a rate which over-recovers the costs of administering estates. In 2012/13, revenue for estate administration was \$22.1 million, while NSW TG's actual cost (excluding margin) of performing this service was \$20.8 million.¹²⁷ Some of this over-recovery is intended to cross subsidise will drafting costs. Section 4.6 (on will drafting) discusses the problems with this cross-subsidy.

Fees are inconsistent with market practice

The split between short term and long term trust fees is historical. There is no clear basis for charging a fee on income in the short term, and then switching to an asset based fee after two years. In addition, it is inconsistent with the market practice for trust fees, which are typically charged as a percentage of assets.¹²⁸

4.7.4 NSW TG's submission on this fee

NSWTG proposes to increase its fees for estate administration but to keep the same structure.¹²⁹ However, it does not provide sufficient rationale to support this increase.

4.7.5 Stakeholder submissions

In regards to fees for estate administration, comments from stakeholders included:

- ▼ NSW TG should not be charging fees to the beneficiaries of the estates they are responsible for.
- ▼ NSW TG's system of charging for administering deceased estates above \$100,000 value is unfair and not transparent. This stakeholder considered that the executor fee is the key problem, as it does not cover the cost of the work involved. The actual work of administering the deceased estate is paid for by additional fees and charges.¹³⁰
- ▼ NSW TG should provide some comparative fee information, so that clients can better understand the differences between its fees and those charged by alternative service providers.¹³¹

¹²⁷ Figures are based on PwC's analysis of NSW TG's 2012/13 costs and revenues.

¹²⁸ The CIE, *NSW Public Trustee and Guardian, Cost benchmarking with the private sector*, Final Report, August 2014.

¹²⁹ NSW TG submission to IPART, June 2014.

¹³⁰ Hurst, L. submission to IPART, June 2014.

¹³¹ Mental Health Co-ordinating Council submission to IPART.

- ▼ A fairer and more transparent system would be to remove the executor fee and only charge for the services used. The stakeholder recognised that if NSWTG's charging rates for services was currently too low, then the rates ought to be raised. Further, the stakeholder recommended the fee for service system used by the Public Trustee of Western Australia.¹³²

Alzheimer's Australia summarised noted that responses to its survey on NSWTG's service level/standards indicated that the high cost and delays in action associated with estates managed by the NSWTG were reasons for not using their services. Some specific survey comments included:

- ▼ "The fees are way over the top when you consider how poor the service is and how little actual 'management' of your finances takes place! It takes three times longer to answer any questions you might have and the stress involved in the process is ridiculous. Heaven help if you have a complaint because they answer to no one."
- ▼ "They took 18 months to process a modest estate and charged the earth."

Alzheimer's Australia considered that the results of the survey suggested that there was significant scope for service improvement, particularly timeliness of responses. Without improvement, it would appear difficult to justify any increases in pricing when the perception is that the service is of a lesser standard than available privately.¹³³

While we recognise these complaints regarding fees, our position is that fees should be based on the efficient costs of NSWTG providing its services. As outlined in section 4.7.7, while some fees have decreased, others have increased so that NSWTG's overall revenue from administering involuntary estates covers its efficient costs.

4.7.6 Overview of IPART's proposed fee structure

The fee structure for estate administration should entail a combination of NSWTG-set and IPART-recommended fees. The market for estate administration is competitive,¹³⁴ so NSWTG should have the discretion to set its fees to be competitive within this market. However, since NSWTG acts as monopoly supplier to a sub-group of clients, these clients should be subject to IPART-recommended fees.

¹³² Hurst, L. submission to IPART, June 2014.

¹³³ Alzheimer's Australia submission to IPART, June 2014.

¹³⁴ The CIE, *NSW Public Trustee and Guardian, Cost benchmarking with the private sector*, Final Report, August 2014.

As noted in section 3.1.2, IPART-recommended fees should apply to clients where NSWTG acts as their executor of last resort because of intestacy or a nominated executor being unwilling or unable to act. Such clients are 'involuntary'. They did not choose to have NSWTG provide the service, and they do not have the capacity to transfer to alternative service providers.

4.7.7 Clients subject to IPART-recommended fees

IPART-recommended fees

Our approach to recommending fees for estate administration involves:

- ▼ ensuring the *fee structure* is broadly consistent with market practice, and
- ▼ amending *fee levels* so that they only recover NSWTG's efficient cost of providing estate administration services.

In relation to amending fee levels, we prioritised reducing the fee level for managing investments in the Common Fund (ie, the investment management fee). This is a fee that applies across all NSWTG services, so it is important to harmonise it. We then increased other estate administration fees to offset revenue forgone from this reduction in the investment management fee, so that overall fees only recover NSWTG's efficient costs for estate administration.

Our recommended fee structure is outlined in Table 4.20. In summary, NSWTG should:

- ▼ **Establishment fee:** Keep the existing fee structure for the establishment fee, but increasing the fee levels.
 - The existing fee structure is consistent with the market practice of having graduated fees, and based on a percentage of assets.
 - The revised fee levels replace revenue lost from reducing the investment fee. Further, they bring NSWTG's fees more into line with those charged in the market for executor services.
- ▼ **Administration fee:** Replace the short term and long term trust fees with a single administration fee.
 - The existing split between short term income based fee and long term asset based fee is historical. There is no clear reason for maintaining this split.
 - The new administration fee would use a graduated fee structure, based on percentage of assets. Further, fee percentages would decrease as asset size increases, reflecting decreasing marginal costs (which is consistent with market practice).
- ▼ **Account keeping fee:** Maintain the account keeping fee at \$10 per month to ensure it is consistent with the account keeping fees charged by NSWTG across its other services.

- ▼ **Investment management fee:** Reduce the investment management fee from 0.75% to 0.1%, to harmonise the fee level across NSWTG's services and better align it with NSWTG's cost of providing this service.
- ▼ **Specialist services fees:** Maintain the current fee level for its specialist services fees (eg, fees for investment planning, preparing tax returns), to ensure they are consistent with the specialist services fees charged by NSWTG across its other services.

Table 4.20 IPART-recommended trust fees

Fees	Fee level	Frequency	Fees to be applied to:
1. Executor fee			
Asset values up to \$100,000	4.0% p.a.	Fee applied one-off on providing executor services for the estate	The establishment fee applies to the total value of client assets within the estate (including residential property).
From \$100,001 to \$200,000	3.3% p.a.		
From \$200,001 to \$300,000	2.6% p.a.		
Over \$300,000	1.7% p.a.		
Minimum fee	\$200		
9. Administration (trust) fee			
Asset values up to \$250,000	0.9% p.a.	Fee applied on a monthly basis	The establishment fee applies to the total value of client assets within the estate (excluding residential property).
From \$250,001 to \$500,000	0.8% p.a.		
Over \$500,000	0.7% p.a.		
10. Account keeping fee	\$10 per month	Fee applied on a monthly basis.	
11. Investment management fee	0.1% p.a.	Fee applied on a monthly basis.	Fee applied to assets invested in the Common Fund.

Note: Figures are GST exclusive.

GST on fees

The Australian Taxation Office (ATO) advised that NSWTG's fees for Estate Administration were subject to GST, since NSWTG appeared to be providing this service in competition with the private sector. However, its fees for Direct and Private Financial Management are GST exempt as they are not operating in direct competition with other service providers.¹³⁵

Based on our analysis of involuntary estates, we consider that NSWTG is effectively the monopoly supplier of these services.

¹³⁵ Australian Taxation Office, *Private Ruling*, 19 September 2013.

Our usual approach in a pricing review is to regulate prices exclusive of GST, and to leave the imposition of GST to the organisation. However, we do consider there is merit in NSW TG clarifying whether involuntary estate services are subject to GST. As the GST is ultimately payable by clients, a ruling to exempt involuntary trust fees from GST would result in lower fees for these clients.

Recommendations:

14 For estate administration, NSW TG:

- Keep the existing fee structure for the executor fee, but increase fee levels.
- Replace the short term and long term trust fees into a single administration fee.
- Maintain the account keeping fee at \$10 per month, to ensure it is consistent with the account keeping fees charged by NSW TG across its other services.
- Reduce the investment management fee from 0.75% to 0.1%.
- Maintain the current fee level for its specialist services fees (eg, fees for investment planning, preparing tax returns).

While we have kept the *fee structures* generally consistent between Trusts and Estate Administration, we note that the IPART-recommended fees mean that the *fee levels* for these services are no longer the same. This is appropriate since those services have different efficient costs. As such, the actual fees required (and charged) to recover the efficient costs of Trusts and Estates will be different.

CSOs

We are not recommending a CSO payment apply to IPART-recommended estate fees. Our position is consistent with the existing CSO arrangements, which do not apply a CSO at the client level (ie, to reduce fees payable by clients).

Our main reason is that affordability is not a relevant concern for estates matters. The client is deceased and we have set fees for NSW TG to recover its efficient costs from the estate.

4.7.8 Future changes to estate fees

The client intensity data in Table 4.17 indicates that intestate estates appear to have a lower intensity than other estates. However, reliable data is not available to translate this intensity measure into actual costs.

Moving to an Activity Based Costing (ABC) system would enable the costs of NSW TG servicing intestate estates – as well as other type of estates – to be more readily identifiable. We make recommendations about implementing this system in section 6.4.

A future review of NSWTG's estate fees should use this ABC cost data to see whether intestate estates have a lower cost structure than other estates, and so their fee levels should be reduced accordingly.

4.7.9 Fees for voluntary estates

We expect that the fee structure (as distinct from fee levels) we recommend for involuntary trusts would also be adopted by NSWTG for voluntary estates. In particular, the single administration fee replacing the existing short and long term trust fees.

While we are not recommending fees for voluntary estates, since NSWTG is competing with the private sector to provide these Estate Administration services, its fees should reflect market practice. In this respect, we note that the fee structure for involuntary estates is broadly consistent with market practice, and so will provide a useful template for NSWTG to adopt for voluntary estates.

4.8 Power of attorney drafting

4.8.1 Description of service and clients

Number of power of attorney drafted

NSWTG drafted 1,437 powers of attorney in the 2013 financial year, of which around 96% were new powers of attorney and 4% were remakes of existing powers of attorney.

Types of powers of attorney

NSWTG offers a tiered drafting service. Clients nominate the extent to which the power of attorney document deals with their financial affairs. For example, a 'partial' power of attorney may only deal with paying specific bills or managing particular assets on a client's behalf.

In contrast, an enduring power of attorney deals with all of a client's financial affairs, and is activated once a client loses capacity to look after their own affairs. A client may lose capacity for reasons such as disability or age-related illnesses.

We are proposing to recommend fees only in relation to enduring powers of attorney (see 4.8.4 below). Based on the data provided to us by NSWTG, we are unable to identify the number of powers of attorney drafted in 2012/13 which fall into this category.

Client age and asset profile

Almost 50% of clients power of attorney clients were aged 65 years and over (see Table 4.21). Clients aged between 50 and 64 years also comprised a significant proportion of clients (34%).

The proportion of clients in these age ranges is very similar to those for will drafting clients. Further, the average client age for these two services is close (64 years for power of attorney drafting clients, 62 years for will clients).

Table 4.21 Age range for power of attorney drafting clients (2012/13)

Age range	0-29	30-49	50-64	65-79	80+	Total
No. of clients	15	228	487	525	182	1437
% of clients	1%	16%	34%	37%	13%	100%

Note: Age of client at the date that the power of attorney is executed.

Source: NSW TG data.

NSWTG does not collect data on a client's actual assets. Further, unlike for its will drafting service, it does not estimate an asset range for each client. As such, we are unable to analyse the asset ranges of power of attorney clients.

4.8.2 Problems with the current fee structure

As with its practice for will drafting, NSW TG has historically not charged clients for preparing powers of attorney. However, unlike for wills, it does not attempt to recover this cost by linking its power of attorney drafting and administration services. When drafting a power of attorney, NSW TG does not require clients to appoint it as the client's attorney (although they can if they want to).

Its current fee structure for power of attorney drafting is financially unsound, since it does not recover the efficient cost of providing this service, and so has an adverse impact on NSW TG's budget. NSW TG incurs a significant cost in providing a 'free power of attorney' service. Staff costs allocated to power of attorney drafting comprised almost \$750,000 in 2012/13.

IPART findings

- 7 The fee structure for power of attorney drafting does not recover the efficient cost of providing this service, and has an adverse impact on NSW TG's budget.
 - NSW TG incurs a significant cost in providing its existing 'free power of attorney' service, with staffing costs of almost \$750,000 in 2012/13.

4.8.3 NSWTG's submission on this fee

NSWTG's submission is silent on fees for power of attorney drafting. As such, we have assumed it does not propose to change from its current structure. That is, not charging a fee for drafting, but making the drafting service conditional on being appointed a client's attorney. Fees are then charged at the administration stage, and NSWTG is proposing an increase in these fees.

4.8.4 Overview of IPART's proposed fee structure

The fee structure for power of attorney drafting should entail a combination of NSWTG-set and IPART-recommended fees. The market for power of attorney drafting is competitive,¹³⁶ so NSWTG should have the discretion to set its fees within this market. However, externalities arise in connection with low wealth clients. This means that if such clients lose capacity without an enduring power of attorney, it imposes a cost on the NSW government (rather than the client). This sub-group of clients should be subject to IPART-recommended fees.

The externality arises because, if a person loses capacity, they may become either a direct or privately managed financial management client of NSWTG (depending on their circumstances). Fees for these services are largely dependent on the value of a client's assets, with lower asset values resulting in lower fees. As such, the fees that NSWTG may be able to charge low wealth clients may be below the level at which NSWTG can recover its efficient financial management costs.

We are recommending fees (with associated CSO payments) as an interim step to addressing such externalities. In the longer term, a more efficient approach may be to implement a voucher-type system of CSO payments for low wealth clients obtaining enduring powers of attorney. See Section 4.8.6.

4.8.5 Clients subject to NSWTG-set fees

NSWTG should improve transparency around the fees it sets for power of attorney drafting

As noted in section 4.8.2, NSWTG does not require clients to appoint it as their attorney in exchange for drafting the document. However, we still consider NSWTG should improve transparency around its fees where clients do appoint NSWTG as their attorney.

¹³⁶ The CIE, *NSW Public Trustee and Guardian, Cost benchmarking with the private sector*, Final Report, August 2014.

Ideally, clients should compare NSWTG's power of attorney administration fees against those charged by other service providers before engaging NSWTG to prepare their enduring power of attorney.

We recommend that NSWTG improve transparency at the point of engagement with its power of attorney drafting clients by:

- ▼ Providing clients with a copy of its schedule of power of attorney administration fees, which should include worked examples of fees payable for client with assets valued at \$50,000, \$100,000, \$250,000 and \$500,000. Including worked examples will assist clients to understand how the fee schedule translates into actual charges.
- ▼ Advising clients that they should consider comparing these fees with those offered by other service providers.

NSWTG should also provide better information about its fees to potential power of attorney clients by including the worked fee examples referred to above on its website.

These recommendations to improve transparency in fee disclosure are consistent with those we have made for will drafting in section 4.6.6.

Recommendations:

- 15 NSWTG improve transparency around its fees at the point of engagement with its power of attorney drafting clients by:
 - providing clients with a copy of its schedule of power of attorney administration fees, which should include worked examples of fees for clients with assets valued at \$50,000, \$100,000, \$250,000 and \$500,000, and
 - advising clients that they should consider comparing these fees with those offered by other service providers.
- 16 NSWTG provide better information about its fees to potential power of attorney clients by including on its website worked examples of fees payable for estates valued at \$50,000, \$100,000, \$250,000 and \$500,000.

4.8.6 Clients subject to IPART-recommended fees

Externalities are likely to exist for low wealth clients

If a person does not make an enduring power of attorney and loses capacity, a Court or Tribunal may make a financial management order concerning that person. This means that they may become either a direct or privately managed financial management client of NSWTG (depending on their circumstances). If this occurs, it imposes a cost on NSWTG (and the Government), which can only be fully recouped if its fees for financial management services are in line with this cost.

Fees for these services are largely dependent on the value of a client's assets, with lower asset values resulting in lower fees. As such, the fees NSWTG is able to charge low wealth clients may be below the level at which NSWTG can recover its efficient financial management costs. This results in an externality, with NSWTG (and the Government) bearing the cost of such low wealth clients not pre-planning their affairs by making an enduring power of attorney.

If the cost of subsidising enduring power of attorney drafting is less than the cost of subsidising financial management services, establishing subsidised enduring powers of attorney for low wealth clients in effect minimises the size of the externality.

Targeting power of attorney subsidies at low wealth clients

Generally, it is important to ensure that subsidies are well-targeted so that Government achieves value for money. Therefore, enduring power of attorney subsidies should be targeted at low wealth clients aged 65 years and over. This ensures that the power of attorney subsidy program is targeting the same clients as the will subsidy program, allowing NSWTG to generate efficiencies from drafting these documents at the same time. Just over 20% of directly managed clients are in this age range when they first become clients, rising to 48% for privately managed clients.¹³⁷

NSWTG typically incurs a loss in servicing these clients, with fees generated from their estates generally insufficient to cover NSWTG's average efficient financial management costs. As such, providing subsidised enduring powers of attorney for these clients may reduce the magnitude of this loss.

- ▼ NSWTG's efficient cost of providing ongoing direct financial management services in 2012/13 was around \$1,600 on average.¹³⁸ Based on its current fee structure, NSWTG recovers this efficient cost when where a client's asset size is around \$140,000.¹³⁹
- ▼ NSWTG recovers fees from direct financial management clients that have assets above this breakeven point, which reduces the overall costs of direct financial management. Even after taking these fees into account, there is a shortfall of around \$370,000 for clients aged 65 years and over when they when they first became directly managed.

¹³⁷ Only includes clients who were classified as 'Active Management' at some stage in 2012/13.

¹³⁸ We have calculated this figure by applying a 20% efficiency saving to NSWTG's actual costs to derive an overall efficient estate administration cost of \$18.7m, and dividing this efficient cost figure by 11,413, which is the number of direct financial management clients in 2012/13.

¹³⁹ This is the point where NSWTG can recover its annual efficient costs of administering direct financial management through fees (ie, it can charge \$1600 in fees).

Outline of enduring power of attorney subsidies program

An administratively simple way of translating the target of the enduring power of attorney subsidy (ie, people aged 65 years and over) into practice is to make it only available to clients eligible for the full-rate Centrelink age pension.

This pension includes age, income and assets tests which provide useful indicators of clients who are likely to be unable to afford power of attorney drafting services.

Enduring power of attorney subsidies in the interim and long term

Interim pilot

In the interim, we recommend a three year pilot of power of attorney subsidies with the features outlined below.

- ▼ NSWTG should charge an enduring power of attorney drafting fee of \$230 to clients who are eligible for the full-rate Centrelink age pension. This fee is based on available market data on the fees charged for this service, as well as our assessment of NSWTG's efficient costs for providing this service.
- ▼ To effectively address affordability issues, the cost of this service should be mostly borne by the Government rather than clients. As such, the actual fee would be covered to an extent by a corresponding CSO payment to NSWTG, so that clients only pay \$10 for this service.
- ▼ Clients would be eligible for one subsidised enduring power of attorney every three years, or more frequently if there is a significant change in their circumstances. If clients require enduring power of attorney drafting service in excess of this threshold, they will pay the market rates set by NSWTG (or other service providers).
- ▼ After three years, the pilot should be assessed by an oversight or independent agency, to ensure its effectiveness. Data should be collected to measure both the costs of the program and the likely avoided financial management costs.¹⁴⁰ Data should also be collected to measure client satisfaction with the service.

¹⁴⁰ In assessing the effectiveness of this program, the relevant agency should be cognisant of the 'free rider' effect. Some of the clients eligible for the subsidy would have obtained an enduring power of attorney in any case, diluting some of the program's impact on avoided financial management costs. However, as the actual fee payable by clients for the enduring power of attorney drafting service may not change significantly due to the CSO. This minimises the free rider effect.

Longer term subsidy

If the pilot program is effective, we recommend it be opened up to other providers of power of attorney drafting services in the longer term. This would offer clients greater flexibility about where they could obtain a subsidised enduring power of attorney. Further, competition between service providers may improve the quality of service clients receive. Additionally, it would place pressure on NSW TG to be efficient in terms of costs.

Clients that meet the eligibility criteria would obtain a voucher for a subsidised enduring power of attorney. Service providers could choose to accept this voucher and draft an enduring power of attorney. They would then receive a corresponding payment from the NSW Government based on the efficient cost of drafting an enduring power of attorney. The actual fee payable by clients should continue to be covered to an extent by a corresponding CSO.

The efficient cost of providing enduring power of attorney drafting services under the subsidy should be reviewed on a five-yearly basis.

CSO

Eligible clients should pay a nominal fee of \$10 to obtain an enduring power of attorney under this subsidy. Based on our estimate of \$230 as the efficient cost of power of attorney drafting, the Government will pay a CSO to NSW TG of \$220 for each power of attorney it drafts under the program.

We are unable to identify from the data provided by NSW TG which clients are eligible for the full-rate Centrelink age pension, and so are eligible for the subsidy program. If all NSW TG's current clients aged 65 years and over in 2012/13 were eligible, the CSO payment from the Government to NSW TG would be around \$150,000.

Introducing power of attorney subsidies

The subsidy outlined above should be introduced if NSW TG brings in an upfront fee for its enduring power of attorney drafting service. The subsidy would then operate to improve the affordability of this service for many low wealth clients.

As previously noted, NSW TG does not currently charge an upfront fee for power of attorney drafting. Further, its submission is silent on any proposal to change this practice and impose a fee.

Recommendations:

- 17 If NSW TG brings in an upfront fee for its enduring power of attorney drafting service, the NSW Government introduce a three year pilot for enduring power of attorneys. Under the program:
 - NSW TG would charge eligible clients a fee of \$230 for enduring power of attorney drafting (new and remakes), which would be partially covered by a corresponding CSO payment from the NSW Government so that the actual cost to clients is \$10.
 - Clients would be eligible for the subsidy if they are also eligible for the full-rate Centrelink age pension.
- 18 If an independent evaluation of the enduring power of attorney subsidy pilot program finds it effective, the NSW Government open up the program to other providers of power of attorney drafting services.
 - Clients that meet the eligibility criteria would obtain a voucher for a subsidised enduring power of attorney. Service providers could choose to accept this voucher and draft an enduring power of attorney. They would then receive a corresponding partial CSO payment from the NSW Government based on the efficient cost of drafting an enduring power of attorney.
 - This efficient cost of providing enduring power of attorney drafting services under the subsidy should be reviewed on a five yearly basis.

5 | Impact of proposed fees

In this chapter we present the impacts of the proposed fee changes on:

- ▼ NSWTG's revenue and expenses and the NSW government budget, and
- ▼ NSWTG's clients.

5.1 Cost and revenue impacts

To estimate the expenses and revenue impacts of the fee proposals, we have built revenue models using NSWTG 2012/13 client data for the eight core service areas.

We have modelled:

- ▼ The base case. Applying the current fee schedule to NSWTG 2012/13 client data.
- ▼ NSWTG proposal. Applying the fee structure set out in NSWTG's submission to our Issues Paper to NSWTG 2012-13 client data.¹⁴¹
- ▼ IPART proposal. Applying the fee structure and CSO arrangements recommended in Chapter 4 of this report to NSWTG 2012/13 client data.

Key assumptions used in our modelling include:

- ▼ We have held demand for NSWTG's services constant under each scenario. Although demand for unregulated (ie, discretionary) services is likely to change when fees change, we don't have estimates of how much it will change in response to a change in price (ie, we don't know the price elasticity of demand for NSWTG's services).

¹⁴¹ NSWTG submission to Issues Paper, May 2014, p 43.

- ▼ The introduction of explicit CSOs under IPART recommendations are assumed to offset an equivalent dollar value of existing fee waivers. That is, our proposed explicit CSOs of \$3.2 million are assumed to offset \$3.2 million of current fee waivers. We have estimated that current fee waivers are up to \$8 million.¹⁴² While our proposed CSO funding relates to new fees (such as minimum establishment fees) which will not directly offset existing fee waivers, we consider that introducing a more structured CSO policy for DFM and PFM will result in net reductions in fees waived for these services.

Our modelling also includes:

- ▼ Operating expenses to be reduced by 20% as discussed in Chapters 2 and 6.
- ▼ Regulated revenue to fall by about 11% due mostly to reduction in fees for trusts and estate clients.
- ▼ NSWTG total revenue falls by approximately \$1.7m which is equivalent to the ongoing shortfall in PFM under our proposed fees.
- ▼ Unregulated revenue is estimated to increase by about 10% from the introduction of unsubsidised fees for Will drafting. Only a subset of will drafting will be provided at subsidised rates.

We calculated the difference in total modelled revenue between the base case and the NSWTG proposal to estimate the revenue impact of NSWTG's proposal. Likewise, we calculated the difference in total modelled revenue between the base case and the IPART proposal to estimate the revenue impact of IPART's proposal.

Table 5.1 below presents the NSWTG budget position for 2012/13 and what we estimate the revenues and expenses would look like under NSWTG's fee proposal and IPART's fee proposal. To assist in comparisons we have split fee revenue into regulated and unregulated revenue.¹⁴³

¹⁴² NSWTG's submission to our Issues Paper stated that total fees waived, reduced or foregone in 2012/13 was approximately \$13 million. This figure includes the effect of fee caps and therefore overstates the level of fee waivers. Based on our modelling of the base case, it appears that NSWTG under recovered approximately \$8 million across all services in 2012/13.

¹⁴³ Regulated revenue is revenue from services we are recommending fees for. Unregulated revenue is from services we are not recommending fees for.

Table 5.1 IPART modelling of overall budget impacts (2012/13)

\$2012/13	2012/13 budget	NSWTG proposal	IPART proposal
Revenue			
- Fee revenue (regulated)	35,276,000	46,954,000	31,499,000
- Fee revenue (unregulated)	19,040,000	25,509,000	21,098,000
- Investment revenue	5,564,000	5,564,000	5,564,000
- Government – Public Guardian	7,558,000	7,558,000	7,558,000
- Government – CSO ^a	5,112,000	5,112,000	5,112,000
- Other revenue ^b	400,000	400,000	400,000
- Total revenue	72,950,000	91,096,000	71,231,000
Expenses			
- Expenses in scope	69,182,000	69,182,000	55,346,000
- Other expenses	14,384,000	14,384,000	14,384,000
- Total expenses	83,566,000	83,566,000	69,730,000
Net Position	-10,616,000	7,514,000	1,502,000

^a Under IPART's recommendations, the \$5.1 million CSO is split into \$3.2 million in explicit CSO payments and \$1.9 million general CSO.

^b IPART's estimate of the budgeted transfer from the ISA is excluded to show the underlying net position.

Note: Explicit CSO funding of \$3.2m is assumed to offset an equivalent amount of existing fee waivers.

Source: NSW Budget 2012/13 (bp3). NSWTG client data 2012/13. IPART analysis.

We estimate that NSWTG's proposal would move NSWTG from a current deficit of \$10.6 million to a surplus of \$7.5m. This would involve increasing regulated client fees by an average of 33%. As discussed through Chapter 4, we do not consider NSWTG's proposed fee increases are justified.

IPART's proposal would reduce regulated client fees by an average of 11% while moving NSWTG to a modest budget surplus and a more sustainable financial position. However, to achieve this NSWTG will need to make significant process reforms to deliver efficiency savings.

5.2 Impact on the budget

IPART's fee and CSO proposals result in no change to the current level of government funding.¹⁴⁴ Table 5.2 summarises how the composition of government funding would change moving from the current fee structure to IPART's proposed fee and CSO structure.

¹⁴⁴ Note in Section 6.5 we recommend temporary additional funding from the Budget to facilitate the immediate adoption of our proposed fee and CSO structures.

Table 5.2 Government funding 2012/13 (\$ million)

	Current	Proposed
Explicit CSO funding	-	\$3.2
General CSO funding	\$5.1	\$1.9
Funding for the Public Guardian	\$7.6	\$7.6
Total	\$12.7	\$12.7

Source: NSW Budget 2012/13 (bp3). NSWTG, *Annual Report 2012-13*. IPART analysis.

5.3 Client impacts

In this section we compare current fees to the fees proposed by NSWTG and the fees recommended by IPART.

5.3.1 Direct Financial Management

Current, proposed and recommended fees – DFM

Table 5.3 outlines the fee structure for DFM services under NSWTG's current and proposed charging arrangements and IPART's recommended fee structure. This is explained in detail in Chapter 4.

Table 5.3 DFM fees – Current, proposed and recommended (\$ per year)

Fees	Charged on	Current	NSWTG proposed	IPART recommended
Establishment fee: ^a	Total assets excluding residential property	1%	1%	1%
Minimum charge		\$0	\$0	\$500
Maximum charge ^b		\$3,300	\$3,300	\$3,000
Administration fee:	Fixed Fee ^c	1.1%	1.1%	1.3%
Account keeping fee:		\$0	\$0	\$120
Maximum charge		\$15,000	\$25,000	\$13,500 ^d
Investment fee	Assets in the common fund	0.5%	0.75%	0.1%

^a Establishment fees are one-off fees charged in the first year of service provision.

^b Maximum charges are the most a client could be charged for that service each year.

^c Charged on a monthly basis, ie, \$10/month (\$120 per year).

^d The IPART recommended account keeping and administration fee cap represents the maximum a client can be charged for both the account keeping and administration fees combined (\$13,380+\$120=\$13,500).

Note: Figures are GST exclusive.

Source: IPART analysis and NSWTG submission to Issues Paper, p 43.

Client impacts – DFM

Table 5.4 outlines the impact of the three fee structures on various asset values for each fee. We have selected a range of asset values to show the impact of the fee proposals and recommendations on clients.

Table 5.4 DFM client impacts – Client fees (\$ per year)

Value of assets ^a	Current	NSWTG proposed	IPART recommended	CSO ^b	Net fee for client
Establishment fee					
\$10,000	\$100	\$100	\$500	\$500	\$0
\$50,000	\$500	\$500	\$500	\$250	\$250
\$500,000	\$3,300	\$3,300	\$3,000	\$0	\$3,000
Account keeping fee					
\$10,000	\$0	\$0	\$120	\$120	\$0
\$50,000	\$0	\$0	\$120	\$60	\$60
\$500,000	\$0	\$0	\$120	\$0	\$120
Administration fee					
\$10,000	\$110	\$110	\$130	\$0	\$130
\$50,000	\$550	\$550	\$550	\$0	\$550
\$500,000	\$5,500	\$5,500	\$6,500	\$0	\$6,500
Investment fee^c					
\$10,000	\$50	\$75	\$10	\$0	\$10
\$50,000	\$250	\$375	\$50	\$0	\$50
\$500,000	\$2,500	\$3,750	\$500	\$0	\$500

^a The establishment and administration fees are calculated using the value of a client's total assets excluding the value of their residential property. The investment fee is calculated using the value of investments in the common fund.

^b Eligibility for a partial or full CSO is calculated using the value of a client's total assets including their residential property. For the purposes of the values presented in this table it is assumed that the hypothetical clients do not own residential property.

^c To model the investment fee impact, we have assumed that all assets under management are in the common fund.

Note: Values selected to illustrate impacts on low, medium and high asset clients. The investment fee is currently applied at the fund level and is not explicitly shown on clients account statements. Assumes all assets under management are in the common fund. Figures are GST exclusive.

Source: IPART analysis.

While many low wealth clients will be charged a higher establishment fee they will pay less under our recommended fee structure. See Chapter 4 for a detailed discussion of CSOs.

While under our pricing structure many clients who are not eligible for a CSO will experience an increase in their account keeping and administration fees this will be offset by a reduction in their investment fee. A client with \$500,000 in total assets will pay an additional \$1,120 in account keeping and administration fees. A client with \$500,000 in the common fund will pay \$3,250 less under our recommended fee structure compared with NSW TG's proposed increases.

Under our recommended pricing structure clients with less than \$50,000 in total assets will be charged a higher establishment fee than under the current fee structure because of the introduction of a \$500 minimum charge. To offset this we have recommended that this be mitigated by an explicit Community Service Obligation (CSO) for clients with total assets of \$75,000 or less.¹⁴⁵

All DFM clients would pay a higher investment fee under NSW TG's proposed fee structure. This is due to a 50% increase in the investment fee (from 0.5% to 0.75%). For a client with \$50,000 in the common fund this equates to a fee of \$375 per year. We have recommended that the investment fee be reduced to 0.1% which equates to a total charge of \$50 per year for a client with \$50,000 in the common fund, \$325 less than under NSW TG's proposal.

Most clients will pay higher account keeping and administration fees under our recommended fee structure. Only clients with more than \$1.2 million in total assets would pay higher account keeping and administration fees under NSW TG's proposed fees due to an increase in the maximum charge (from \$15,000 to \$25,000) and a reduction in the maximum charge to \$13,500¹⁴⁶ under our recommended pricing structure. For low wealth clients the increase in fees is largely due to the introduction of a fixed monthly account keeping fee of \$10 (\$120 annually). For clients with low asset values this fee will be reduced by an explicit Community Service Obligation (CSO). For example, clients with total assets of \$25,000 or less will receive a \$120 CSO on their account keeping fee and a \$500 CSO on their establishment fee.¹⁴⁷

Average client impacts - DFM

Based on 2012/13 financial year data provided by NSW TG on average DFM clients have approximately:¹⁴⁸

- ▼ \$100,000 in the common fund
- ▼ \$160,000 total assets under management (excluding residential property).

Table 5.5 summarises the impact of each of the three fee structures on DFM average asset values.

¹⁴⁵ Clients with total assets of \$25,000 or less will receive a 100% CSO on the minimum charge, ie, \$500. Clients with total assets between \$25,000 and \$75,000 will receive a 50% CSO on the minimum charge, ie, \$250.

¹⁴⁶ The IPART recommended administration fee cap represents the maximum a client can be charged for both the account keeping and administration fees combined (ie, \$13,380+\$120=\$13,500).

¹⁴⁷ Clients with total assets of \$25,000 or less will receive a 100% CSO on the minimum charge, ie, \$500. Clients with total assets between \$25,000 and \$75,000 will receive a 50% CSO on the minimum charge, ie, \$250.

¹⁴⁸ Average values are based on active clients in the 2012/13 financial year.

Table 5.5 Average DFM client – Client fees (\$ per year)

Average asset value	Current	NSWTG proposed	IPART recommended	CSO	Net fee for client
Establishment fee^a					
\$160,653	\$1,607	\$1,607	\$1,607	\$0	\$1,607
Account keeping fee					
\$160,653	\$0	\$0	\$120	\$0	\$120
Administration fee					
\$160,653	\$1,767	\$1,767	\$2,088	\$0	\$2,088
Investment fee					
\$103,273	\$516	\$775	\$103	\$0	\$103
Total DFM fees					
Annual Fee (ongoing)	\$2,284	\$2,542	\$2,312	\$0	\$2,312
Establishment Fee (once-off)	\$1,607	\$1,607	\$1,607	\$0	\$1,607

^a Establishment fees are one-off fees charged in the first year of service provision.

Note: Average asset values are based on an average of all active DFM clients in 2012/13. Figures are GST exclusive.

Source: IPART analysis.

A DFM client with average asset values would be charged \$230 more annually under NSW TG's proposal than under our recommended pricing structure. There will be no change in the establishment fee for new clients.

Account keeping and administration fees will be \$441 higher under our recommended fee structure. However, investment fees would be \$671 higher under NSW TG's proposal than under our recommended fee structure.

5.3.2 Private Financial Management

Current, proposed and recommended fees – PFM

Table 5.6 outlines the fee structure for PFM services under NSW TG's current and proposed charging arrangements and IPART's recommended fee structure. This is explained in detail in Chapter 4.

Table 5.6 PFM fees – Current, proposed and recommended (\$ per year)

Fees	Charged on	Current	NSWTG proposed	IPART recommended
Establishment fee ^a	Fixed fee	\$0	\$0	\$500
Account keeping fee		\$0	\$0	\$120 ^b
Income fee:	Income less allowances	4%	4%	0%
Maximum charge ^c		\$2,000	\$3,000	\$0
Investment fee	Assets in the common fund	0.5%	0.75%	0.1%
Account checking fee:	Account complexity			
Low complexity ^d		\$100	\$100	\$100
Medium complexity		\$200	\$200	\$200
High complexity		\$300	\$300	\$300

^a Establishment fees are one-off fees charged in the first year of service provision.

^b Charged on a monthly basis, ie, \$10/month (\$120 per year).

^c Maximum charges are the most a client could be charged for that service each year.

^d Complexity is based on NSW TG set guidelines.

Note: Figures are GST exclusive.

Source: IPART analysis and NSW TG submission to Issues Paper, p 43.

Client impacts – PFM

Table 5.7 outlines the impact of the three fee structures on various asset values for each fee. We have selected a range of asset values to show the impact of the fee proposals and recommendations on clients.

Table 5.7 PFM client impacts – Client fees (\$ per year)

Value of assets ^a	Current	NSWTG proposed	IPART recommended	CSO ^b	Net fee for client
Establishment fee^c					
\$10,000	\$0	\$0	\$500	\$500	\$0
\$50,000	\$0	\$0	\$500	\$250	\$250
\$500,000	\$0	\$0	\$500	\$0	\$500
Account keeping fee					
\$10,000	\$0	\$0	\$120	\$120	\$0
\$50,000	\$0	\$0	\$120	\$60	\$60
\$500,000	\$0	\$0	\$120	\$0	\$120
Income fee					
\$10,000	\$400	\$400	\$0	\$0	\$0
\$50,000	\$2,000	\$2,000	\$0	\$0	\$0
\$500,000	\$20,000	\$20,000	\$0	\$0	\$0
Investment fee^d					
\$10,000	\$50	\$75	\$10	\$0	\$10
\$50,000	\$250	\$375	\$50	\$0	\$50
\$500,000	\$2,500	\$3,750	\$500	\$0	\$500
Account checking fee					
Low complexity	\$100	\$100	\$100	\$0	\$100
Medium complexity	\$200	\$200	\$200	\$0	\$200
High complexity	\$300	\$300	\$300	\$0	\$300

a The establishment fee is calculated using the value of a client's total assets excluding the value of their residential property. The investment fee is calculated using the value of investments in the common fund. The income fee is calculated on income not assets.

b Eligibility for a partial or full CSO is calculated using the value of a client's total assets including their residential property. For the purposes of the values presented in this table it is assumed that the hypothetical clients do not own residential property.

c Establishment fees are one-off fees charged in the first year of service provision.

d To model the investment fee impact, we have assumed that all assets under management are in the common fund.

Note: Values selected to illustrate impacts on low, medium and high asset clients. The investment fee is currently applied at the fund level and is not explicitly shown on clients account statements. Figures are GST exclusive.

Source: IPART analysis.

We have recommended that the investment fee be reduced to 0.1% which equates to a total charge of \$50 for a client with \$50,000 in the common fund, \$325 less than under NSW TG's proposal. All PFM clients would pay higher investment fees under NSW TG's proposed fee structure. This is due to a 50% increase in the investment fee (from 0.5% to 0.75%). For a client with \$50,000 in the common fund this equates to an increase of \$125 (from \$250 to \$375).

Under our recommended fee structure clients not eligible for a CSO will pay the full establishment fee (new clients only) and account keeping fee (all clients). This is expected to be offset by the removal of the income fee and reduction in the investment fee. All clients will pay \$120 in account keeping fees with new clients paying a \$500 establishment fee. A client with \$500,000 in the common fund will have their investment fee reduced by \$2000 (or \$3,250 compared with NSW TG's proposed increases) and a client with \$500,000 in income will pay \$20,000 less in income fees under our recommended fee structure.

Account checking fees are unchanged between the NSW TG proposed and our recommended price structures.

We have recommended that a fixed establishment fee of \$500 for new PFM clients and a fixed account keeping fee of \$10 per month (\$120 annually) be introduced for new and existing clients. PFM clients with less than \$50,000 total assets (excluding residential property) will be affected by a minimum fee of \$500 under our recommended fee structure. This will be mitigated by explicit CSOs similar to those for low wealth DFM clients and the removal of the income fee.¹⁴⁹ See Chapter 4 for a detailed discussion of CSOs.

Average client impact – PFM

Based on 2012/13 financial year data provided by NSW TG on average PFM clients have approximately:¹⁵⁰

- ▼ \$400,000 of assets under management (not including residential property)
- ▼ \$20,000 in the common fund
- ▼ \$7,000 in net income under management.

Table 5.8 summarises the impact of each of the three fee structures on PFM average asset values.

¹⁴⁹ Clients with total assets of \$25,000 or less will receive a 100% CSO on the administration fee minimum establishment charge (ie, \$500+\$120 = \$620). Clients with total assets between \$25,000 and \$75,000 will receive a 50% CSO on the administration fee and minimum establishment charge (ie, \$250+\$60=\$310).

¹⁵⁰ Average values are based on active clients in the 2012/13 financial year.

Table 5.8 Average PFM client – Client fees (\$ per year)

Value of assets	Current	NSWTG proposed	IPART recommended	CSO	Net Fee for client
Establishment fee^a					
\$405,725	\$0	\$0	\$500	\$0	\$500
Account keeping fee					
\$405,725	\$0	\$0	\$120	\$0	\$120
Income fee					
\$7,263	\$291	\$291	\$0	\$0	\$0
Investment fee					
\$20,237	\$101	\$152	\$20	\$0	\$20
Account checking fee					
Low complexity ^b	\$100	\$100	\$100	\$0	\$100
Total PFM fees					
Annual fee (ongoing)	\$492	\$542	\$240	\$0	\$240
Establishment fee (once-off)	\$0	\$0	\$500	\$0	\$500

^a Establishment fees are one-off fees charged in the first year of service provision.

^b The majority of PFM clients are classified as low complexity.

Note: Average asset values are based on an average of all active DFM clients in 2012/13. Figures are GST exclusive.

Source: IPART analysis.

A new PFM client would be charged \$198 more in their first year under our recommended price structure compared with NSW TG's proposed pricing structure. Every subsequent year they would be charged \$302 less under our recommended pricing structure.

5.3.3 Trusts

Current, proposed and recommended fees – Trusts

Table 5.9 outlines the fee structure for trust services under NSW TG's current and proposed charging arrangements and IPART's recommended fee structure.

Current and NSW TG proposed fees apply to all trust types. Our pricing structure is only concerned with regulating fees charged to involuntary trusts. We consider that NSW TG should have discretion setting fees for all other trust types. This is explained in detail in Chapter 4.

Table 5.9 Trust fees – Current, proposed and recommended (\$ per year)

Fees	Charged on	Current	NSWTG proposed	IPART recommended – Involuntary
Establishment ^a				
1st \$100,000	Value of funds/assets held when first established	4%	4.5%	3.5%
2nd \$100,000		3%	3.5%	2.5%
3rd \$100,000		2%	2.5%	1.5%
Over \$300,000		1%	1.5%	0.5%
Account keeping	Fixed fee ^b	\$120	\$240	\$120
Short term trust	Investment Income	5.25% (or 2.5% if real estate agent involved)	5.25% (or 2.5% if real estate agent involved)	0%
Long term trust				Trust Fee ^c
1st \$250,000	Value of trust assets	0.5%	0.5%	0.5%
2nd \$250,000		0.75%	0.75%	0.45%
Over \$500,000		1%	1%	0.4%
Investment	Assets in the common fund	0.75%	0.75%	0.1%

^a Establishment fees are one-off fees charged in the first year of service provision.

^b Charged on a monthly basis, ie, \$10/month (\$120 per year). NSWTG propose \$20/month (\$240 per year).

^c IPART recommended a trust fee to replace the short term and long term trust fees.

Note: Figures are GST exclusive.

Source: IPART analysis and NSWTG submission to Issues Paper, p 43.

Client impacts – Trusts

Table 5.10 outlines the impact of the three fee structures on various asset values for each fee. We have selected a range of asset values to show the impact of the fee proposals and recommendations on clients.

Table 5.10 Trust client impacts – Client fees (\$ per year)

Value of assets	Current	NSWTG proposed	IPART recommended – Involuntary
Establishment fee^a			
\$10,000	\$400	\$450	\$350
\$50,000	\$2,000	\$2,250	\$1,750
\$100,000	\$4,000	\$4,500	\$3,500
\$500,000	\$11,000	\$13,500	\$8,500
Account keeping fee			
\$10,000	\$120	\$240	\$120
\$50,000	\$120	\$240	\$120
\$500,000	\$120	\$240	\$120
Short term trust fee			
\$10,000	\$525	\$525	\$0
\$50,000	\$2,625	\$2,625	\$0
\$100,000	\$5,250	\$5,250	\$0
\$500,000	\$26,250	\$26,250	\$0
Long term trust fee			Trust Fee^b
\$10,000	\$50	\$50	\$50
\$50,000	\$250	\$250	\$250
\$100,000	\$500	\$500	\$500
\$500,000	\$3,125	\$3,125	\$2,375
Investment fee^c			
\$10,000	\$75	\$75	\$10
\$50,000	\$375	\$375	\$50
\$500,000	\$3,750	\$3,750	\$500

^a Establishment fees are one-off fees charged in the first year of service provision.

^b IPART recommended a trust fee to replace the short term and long term trust fees.

^c To model the investment fee impact, we have assumed that all assets under management are in the common fund.

Note: Values selected to illustrate impacts on low, medium and high asset clients. The investment fee is currently applied at the fund level and is not explicitly shown on clients account statements. Assumes all assets under management are in the common fund. Figures are GST exclusive.

Source: IPART analysis.

NSWTG's has proposed a 0.5% increase each of the four establishment fee bands. Trusts with \$50,000 worth of assets would pay \$500 more under NSW TG's proposed pricing structure compared with our recommended pricing structure.

NSWTG has also proposed doubling the account keeping fee on trusts from \$10 per month (\$120 annually) to \$20 per month (\$240 annually). We have recommended preserving the account keeping fee at \$10 per month (\$120 annually), meaning that trust clients will pay \$120 less under our recommended pricing structure.

We have recommended that the long term and short term trust fee be combined into a single trust fee to be charged to all trusts based on the value of assets in the trust. Currently short term trust fees are charged on income whereas long term trust fees are charged on the value of assets in the trust. This makes it difficult to measure the general impact on short term trusts because there isn't a direct correlation between asset value and income.

The impact on long term trusts largely depends on the value of assets in the trust. For example, there will be no change in the trust fees paid by a trust with \$50,000 worth of assets. However, a trust with \$500,000 will pay \$750 less under our recommended pricing structure.

NSWTG has proposed keeping the trust investment fee at its current level (0.75%) to maintain consistency between service areas. However, all trust clients would pay higher investment fees under NSWTG's proposed fee structure compared with our recommended fee structure. We have recommended that the investment fee be reduced to 0.1% which equates to a total charge of \$50 for a client with \$50,000 in the common fund, \$325 less than under NSWTG's proposal.

Average client impacts – Trusts

Based on 2012/13 financial year data provided by NSWTG on average Trust clients have approximately:¹⁵¹

- ▼ \$83,000 in assets in trust
- ▼ \$64,000 in the common fund
- ▼ \$1,000 in income.

Table 5.11 summarises the impact of each of the three fee structures on PFM average asset values.

¹⁵¹ Average values are based on active clients in the 2012/13 financial year.

Table 5.11 Average trust client – Client fees (\$ per year)

Value of assets	Current	NSWTG proposed	IPART recommended
Establishment fee^a			
\$83,235	\$3,329	\$3,746	\$2,913
Account keeping fee			
Fixed fee	\$120	\$240	\$120
Short term trust fee			
\$1,020	\$54	\$54	\$0
Long term trust fee			Trust fee^b
\$64,835	\$324	\$324	\$324
Investment fee			
\$64,834	\$522	\$522	\$70
Total Trust fees			
Annual fee (ongoing)	\$1,020	\$1,140	\$514
Establishment fee (once-off)	\$3,329	\$3,746	\$2,913

^a Establishment fees are one-off fees charged in the first year of service provision.

^b IPART recommended a trust fee to replace the short term and long term trust fees.

Note: Average asset values are based on an average of all active DFM clients in 2012/13. Figures are GST exclusive.

Source: IPART analysis.

On average, an existing client will be charged \$626 less under our recommended pricing structure compared with NSW TG's proposed pricing structure. A new trust client will be charged \$1,458 less in their first year (incl, \$832 less in establishment fees).

5.3.4 Estates

Current, proposed and recommended fees - Estates

Table 5.12 outlines the fee structure for estate services under NSW TG's current and proposed charging arrangements and IPART's recommended fee structure. Current and NSW TG proposed fees apply to all trust types. Our pricing structure is only concerned with regulating fees charged to estates of intestate clients or where the executor is unable or unwilling to act. We consider that NSW TG should have discretion setting fees for all other estate types. This is explained in detail in Chapter 4.

Table 5.12 Estates fees – Current, proposed and recommended (\$ per year)

Fees	Charged on	Current	NSWTG proposed	IPART recommended – Intestate
Executor commission: ^a				
1st \$100,000	Value of funds/assets held when first established	4%	4.5%	4%
2nd \$100,000		3%	3.5%	3.3%
3rd \$100,000		2%	2.5%	2.6%
Over \$300,000		1%	1.5%	1.7%
Minimum charge		\$200	\$200	\$200
Account keeping	Fixed fee ^b	\$120	\$240	\$120
Short term trust	Investment Income	5.25% (or 2.5% if real estate agent involved)	5.25% (or 2.5% if real estate agent involved)	0%
Long term trust:				Trust fee^c
1st \$250,000	Value of trust assets	0.5%	0.5%	0.9%
2nd \$250,000		0.75%	0.75%	0.8%
Over \$500,000		1.0%	1.0%	0.7%
Investment	Assets in the common fund	0.75%	0.75%	0.1%

^a Executor fees are one-off fees charged in the first year of service provision.

^b Charged on a monthly basis, ie, \$10/month (\$120 per year). NSW TG proposes \$20/month (\$240 per year).

^c IPART recommended a trust fee to replace the short term and long term trust fees.

Note: Figures are GST exclusive.

Source: IPART analysis and NSW TG submission to IPART Issues Paper, p 43.

Client impacts – Estates

Table 5.13 outlines the impact of the three fee structures on various asset values for each fee. We have selected a range of asset values to show the impact of the fee proposals and recommendations on clients.

Table 5.13 Estate impacts – Client fees (\$ per year)

Value of assets	Current	NSWTG proposed	IPART recommended – Intestate
Executor fee^a			
\$10,000	\$4,00	\$4,50	\$4,00
\$50,000	\$2,000	\$2,250	\$2,000
\$100,000	\$4,000	\$4,500	\$4,000
\$500,000	\$11,000	\$13,500	\$13,300
Account keeping fee			
\$10,000	\$120	\$240	\$120
\$50,000	\$120	\$240	\$120
\$500,000	\$120	\$240	\$120
Short term trust fee			
\$10,000	\$525	\$525	\$0
\$50,000	\$2,625	\$2,625	\$0
\$100,000	\$5,250	\$5,250	\$0
\$500,000	\$26,250	\$26,250	\$0
Long term trust fee			Trust Fee^b
\$10,000	\$50	\$50	\$90
\$50,000	\$250	\$250	\$450
\$100,000	\$500	\$500	\$900
\$500,000	\$3,125	\$3,125	\$4,250
Investment fee^c			
\$10,000	\$75	\$75	\$10
\$50,000	\$375	\$375	\$50
\$500,000	\$3,750	\$3,750	\$500

^a Establishment fees are one-off fees charged in the first year of service provision.

^b IPART recommended a trust fee to replace the short term and long term trust fees.

^c To model the investment fee impact, we have assumed that all assets under management are in the common fund.

Note: Values selected to illustrate impacts on low, medium and high asset clients. The investment fee is currently applied at the fund level and is not explicitly shown on clients account statements. Assumes all assets under management are in the common fund. Figures are GST exclusive.

Source: IPART analysis.

NSWTG has proposed a 0.5% increase each of the four executor fee bands. Trusts with \$50,000 worth of assets will pay \$250 more under NSW TG's proposed pricing structure compared with our recommended pricing structure.

NSWTG has also proposed doubling the account keeping fee on trusts from \$10 per month (\$120 annually) to \$20 per month (\$240 annually). We have recommended keeping the account keeping fee at \$10 per month (\$120 annually), meaning that trust clients will pay \$120 less under our recommended pricing structure.

We have recommended that the long term and short term trust fee be combined into a single trust fee to be charged to all trusts based on the value of assets in the trust. Currently short term trust fees are charged on income whereas long term trust fees are charged on the value of assets in the trust. This makes it difficult to measure the general impact on short term trusts because there isn't a direct correlation between asset value and income. An estate with \$50,000 worth of assets in a long term trust will pay \$200 more under our recommended pricing structure.

NSWTG has proposed keeping the estate investment fee at its current level (0.75%) to maintain consistency between service areas. All estate clients will pay higher investment fees under NSW TG's proposed fee structure compared with our recommended fee structure. We have recommended that the investment fee be reduced to 0.1% which equates to a total charge of \$50 for a client with \$50,000 in the common fund, \$325 less than under NSW TG's proposal.

Average client impacts – Estates

Based on 2012/13 financial year data provided by NSW TG on average estates have approximately:¹⁵²

- ▼ \$330,000 worth of assets
- ▼ \$2,200 in income
- ▼ \$90,000 in trust assets and
- ▼ \$74,000 in the common fund.

Table 5.14 summarises the impact of each of the three fee structures on PFM average asset values.

¹⁵² Average values are based on active clients in the 2012/13 financial year.

Table 5.14 Average estate – summary (\$ per year)

Value of assets	Current	NSWTG proposed	IPART recommended – Intestate
Executor fee^a			
\$330,012	\$9,300	\$10,950	\$10,410
Account keeping fee			
Fixed fee	\$120	\$240	\$120
Short term trust fee			
\$2,190	\$115	\$115	\$0
Long term trust fee			Trust fee^b
\$90,756	\$454	\$454	\$817
Investment fee			
\$73,512	\$551	\$551	\$74
Total estate fees			
Annual fee (ongoing)	\$1,010	\$1,360	\$1,010
Executor fee (once-off)	\$9,300	\$10,950	\$10,410

^a Establishment fees are one-off fees charged in the first year of service provision. Most estates are administered within a 12 month period, however some trusts take longer to administer due to complications.

^b IPART recommended a trust fee to replace the short term and long term trust fees.

Note: Average asset values are based on an average of all active DFM clients in 2012/13. Figures are GST exclusive.

Source: IPART analysis.

Annual estate fees are \$350 lower under our recommended pricing structure compared with NSW TG's proposed pricing structure. A new estate will pay \$540 less in executor fees.

5.3.5 Wills and PoA drafting

Table 5.15 summarises the impact of each of the three fee structures on PoA and will drafting clients.

Table 5.15 PoA and Will drafting fees – (\$ per year)

Fees	Current	NSWTG proposed	IPART Recommended ^a	CSO – pensioner	Net fee to client
PoA Drafting fee	\$0	\$0	\$230	\$220	\$10
Will Drafting fee	\$0	\$400	\$320	\$310	\$10

^a Recommended PoA and will drafting fees are for clients eligible for the full-rate Centrelink age pension.

^b CSOs are only available to clients eligible for the full-rate Centrelink age pension.

Note: Figures are GST exclusive.

Source: IPART analysis and NSW TG submission to Issues Paper, p 43.

Currently there are no fees for PoA and will drafting. NSW TG have proposed to introduce a fee for will drafting but not for PoA drafting. We have recommended fees for clients eligible for the full-rate Centrelink age pension, with NSW TG to have discretion to set fees for other clients.

NSW TG have proposed that a \$400 fee for will drafting be established. This is \$80 more than our recommended fee for low income clients (\$320). We have recommended that a \$230 fee for PoA drafting be established.

We have also recommended that low income PoA and will drafting clients receive a \$220 and \$310 CSO respectively to make their net fee to \$10.

6 Other recommendations

In this chapter, we make further recommendations in relation to underlying issues discussed in earlier chapters. These recommendations aim to:

- ▼ improve the quality of services
- ▼ enhance efficiency
- ▼ establish a system of centralised and audited fee waivers
- ▼ provide greater transparency in fee disclosures
- ▼ improve reporting of service costs and revenues.

We also make recommendations to enable NSWTG to transition to our proposed fee structure and in relation to future reviews of NSWTG's fees.

6.1 Improving quality of services

Stakeholders were highly critical of the service NSWTG provides, particularly in view of the fees charged. In their submissions, these stakeholders noted that service quality was poor, particularly with regard to communication, property management and payments being made on time.¹⁵³

In response to stakeholders concerns about service quality raised in our 2008 review, we recommended NSWTG develop key performance indicators to measure its responsiveness to clients' needs. We also recommended that it undertake independent surveys of client and stakeholder satisfaction and measure the number of complaints and appeals.¹⁵⁴

NSWTG has implemented several of these measures. For instance, it measures client satisfaction using two indices - a Customer Satisfaction Index and Process Improvement Satisfaction Index. It also externally audits client satisfaction with its telephone service and face-to-face service. Additionally, NSWTG publicly reports the number of complaints it receives and appeals against its decisions.¹⁵⁵ See Box 6.1 for further details.

¹⁵³ Individual – Anonymous; Huszar, Z., submissions to IPART, June 2014.

¹⁵⁴ IPART, *Review of Fees of the Office of the Protective Commissioner - Final Report*, September 2008, p 45.

¹⁵⁵ NSWTG, *Annual Report 2012-13*, p 21.

Box 6.1 NSWTG's publicly reported service quality measures

NSWTG reported the following measures in its most recent Annual Report.

Client satisfaction

- ▼ Financial management clients were less satisfied with NSWTG's service compared to trustee service clients. The Customer Satisfaction Index was 62 for financial management clients, compared to 85 for trustee service clients.
- ▼ Compared to the previous year, there was a slight decrease in customer satisfaction with its trustee services, with the Customer Satisfaction Index decreasing from 85 to 82. However, there was a small improvement in customer satisfaction with financial management services, with the Customer Satisfaction Index increasing from 60 in 2011/12 to 62 in 2012/13.
- ▼ According to an external audit, client satisfaction with NSWTG's telephone service decreased 3% on the previous year (to 71% in 2012/13). Clients were also less satisfied with its face-to-face service, decreasing 5% on the previous year (to 79% in 2012/13).

Complaints

- ▼ NSWTG maintains a central feedback register to record and act on complaints. In 2012/13, it finalised 60% of complaints within its target 21 day timeframe. Reasons for the delay in finalising complaints included the matter's complexity and the need for additional information.
- ▼ There were fewer complaints in 2012/13 compared to the previous year (349 and 386 complaints respectively). Issues raised in complaints included NSWTG's communication with stakeholders, delays in making decisions and length of time to receive a response.

Source: NSWTG, Annual Report 2012-2013, p 21.

Despite implementing these measures, stakeholder submissions to this review indicate there are still significant concerns about the quality of NSWTG's services. This may indicate that the existing measures are not identifying service problems in sufficient detail, or that NSWTG is not effectively using them to improve its services.

The Mental Health Co-ordinating Council strongly advocates that key performance indicators (KPIs) are developed in consultation with clients and their carers to establish benchmarks for satisfaction and evaluation of service delivery over time.¹⁵⁶ We are also of the view that NSWTG needs to respond to stakeholder concerns by developing more comprehensive measures of service quality than the existing ones, with the Chief Executive Officer responsible for effectively implementing the revised measures and using them to drive service improvements.

¹⁵⁶ Mental Health Co-ordinating Council submission to IPART, June 2014.

Recommendation

- 19 NSWTG responds to stakeholder concerns about its level of service by developing more comprehensive measures of service quality than the existing ones, with the Chief Executive Officer responsible for effectively implementing the revised measures and using them to drive service improvements.

6.2 Adopting practices that enhance efficiency

We recommend NSWTG investigate opportunities to improve its operating efficiency. This could include:

- ▼ Identifying best practice among services or branches, and then rolling them out across the organisation. A clear example is the distinction between the electronic systems used in Financial Management and paper-based systems used in Trustee Services.
 - Moving away from inefficient paper-based systems will likely lead to lower service costs. For example, services provided to direct financial management and power of attorney clients are similar.¹⁵⁷ Yet NSWTG's average cost per client for power of attorney management is nearly three times greater than direct financial management.¹⁵⁸
- ▼ Adopting a risk-based approach to its oversight activities,¹⁵⁹ particularly for private financial management. This involves NSWTG focusing its oversight activities on clients where there is a history of non-compliance, and less regularly reviewing clients with good compliance records. This should reduce the costs for clients who have compliant management.
- ▼ Conducting regular market testing of fees charged by third party providers, to ensure clients receive competitive rates for these services.
- ▼ Standardising its processes for obtaining assessments about a client's capacity from medical practitioners.
- ▼ Adopting a program of 'cultural change' from the grass roots up to focus NSWTG on service delivery to clients, skills enhancement including through internal mentorship programs and initiatives to drive efficiencies. The Chief Executive Officer of NSWTG would be responsible for delivering this program. This program would seek to systematically address the issues raised in stakeholders submissions to our review, complaints made to the NSW Ombudsman and the earlier NSW Legislative Assembly report into NSWTG's predecessor organisation in 2006.

¹⁵⁷ For example, they both involve managing financial assets for clients who no longer have the capacity to do so.

¹⁵⁸ Some of this cost differential may arise from the direct financial management service having greater economies of scale due to its larger client base. However, a significant component is likely the result of power of attorney services using inefficient systems.

¹⁵⁹ Subject to any oversight activities arising from NSWTG's fiduciary duty requirements.

Recommendation:

- 20 The Chief Executive Officer of NSW TG is responsible for making at least a 20% efficiency saving on its current operating expenses within the next two years.
- 21 To improve its operating efficiency, the Chief Executive Officer of NSW TG:
- Implement consistent systems across NSW TG’s service areas.
 - Ensure NSW TG conducts regular market testing of fees charged by third party providers, to ensure clients receive competitive rates for these services.
 - Adopt a risk-based approach to NSW TG’s oversight activities, so it focuses on clients where there is a history of non-compliance, and conducts less regular review of clients with good compliance records.

If NSW TG is unable to improve its operating efficiency, the NSW Government should assess which of NSW TG’s existing monopoly services could be opened up to private service providers.¹⁶⁰ Introducing competition to these services may result in lower service costs. It could also foster innovations and lead to improved service quality for the benefit of clients (ie, dynamic efficiency).

6.3 Centralising and regularly auditing fee waivers

NSW TG does not appear to have a transparent and centralised system for recording fee waivers. We were unable to clearly identify fee waivers on an individual client basis from the data it provided.¹⁶¹

Stakeholders indicated its fee waiver policy does not appear to be consistently applied. Submissions suggested that the application of NSW TG fee waiver policy was arbitrary, varying from branch to branch.¹⁶² Such an approach, coupled with the lack of centralised reporting, raises concerns about the probity of fee waivers.

This issue is significant given the size of fee waivers NSW TG grants each year. Based on our modelling, we estimate that current fee waivers are up to \$8 million annually.¹⁶³

IPART’s recommendation to restructure fees, so that they only recover NSW TG’s efficient costs, will ameliorate the need for NSW TG to have a broad fee waiver policy. Further, CSOs under the new fee structure will be better targeted to clients.

¹⁶⁰ Section 3.2 outlines the services where NSW TG is effectively a monopoly supplier.

¹⁶¹ Where the client-level data provided by NSW TG did outline fee waivers, it also included the effect of fee caps in those fee waivers, therefore overstating the level of fee waivers.

¹⁶² Public Service Association of NSW submission to IPART, June 2014.

¹⁶³ NSW TG’s submission to our Issues Paper stated that total fees waived, reduced or foregone in 2012/13 was approximately \$13 million. As noted above, this figure includes the effect of fee caps and therefore overstates the level of fee waivers.

That said, there will be instances where clients experience financial hardship and so require fee relief. In such cases, NSWTG should apply fee waivers in a more transparent, consistent and fair manner. Further, any fee waiver grants or refusals should be appropriately recorded, regularly audited and annually reported to NSW Treasury.

Recommendation

- 22 NSWTG apply its fee waiver policy in a more transparent, consistent and fair manner. Further, any fee waiver grants or refusals to be appropriately recorded, subject to regular audit and reported in its Annual Report for each service area.

6.4 Increasing transparency in fee disclosures

As discussed in section 4.6, it may be difficult for clients to understand NSWTG's fee structure for wills. That is, linking 'free wills' drafting with a requirement that clients to appoint it as executor of their deceased estate. These clients may not realise that estate administration fees can be relatively substantial, so they should compare NSWTG's fees against those charged by other service providers before engaging NSWTG to prepare their will.

In relation to NSWTG's ongoing and regular fee disclosure, some stakeholders commented that their Statements of Account (detailing fees paid and value of assets) were not provided in a clear, accurate or efficient manner, or were not provided at all. In other instances, the fees outlined in Statements of Account did not reconcile with the fees listed on NSWTG's website and in public brochures.

We consider that NSWTG should more clearly disclose its fees to clients, both at the point of engagement with them and on a regular basis throughout the period of providing services to them.

As part of our research into NSWTG's fees, we found it difficult to obtain public information on the fees third party services providers charge NSWTG, which it then pass-through to clients. For example, fees for social workers, removalists or real estate agents. It was also not clear from its website the criteria for triggering some of these fees (eg, when these visits will be required and charged to clients). NSWTG should publish fees for such third party services providers on its website, as well as the criteria for when these visits will occur.

Recommendations:

- 23 NSWTG more clearly disclose all fees to clients, including those fees for third party service providers that NSWTG passes through to clients. This disclosure should occur both at NSWTG's point of engagement with clients, and on a regular basis (such as in clients' Statements of Account) throughout the period of providing services to them.

6.5 Improving reporting of service costs and revenues

NSWTG's existing systems did not provide us with data that was robust enough to recommend fees that vary according to the costs of managing clients. So as to enable these costs to be more readily identifiable, NSWTG should adopt an Activity Based Costing system. This requires a strong commitment from the organisation to ensure accurate and useful information is collected.

Once in operation, this system should provide a more sophisticated level of detail about NSWTG's costs and revenues. NSW Treasury can then use this system to gain a better understanding of NSWTG's key revenue and cost drivers, and so more effectively monitor NSWTG's financial position. This activity information will also provide a sound basis for future fee setting, such as moving NSWTG's fees towards more efficient and fair user charges.

Recommendation:

- 24 NSWTG adopt an Activity Based Costing system, which will support a move towards more cost reflective fees and better targeted CSO funding.

6.6 Transitioning to the new fee structure

There are three key parts to IPART's fee recommendations:

1. An efficiency saving to bring operating costs closer to an efficient level.
2. Adopting a more efficient and cost reflective fee structure.
3. Adopting a more transparent and equitable CSO arrangement.

We consider that the efficiency saving is a priority because NSWTG will not be financially sustainable until it reforms its operations and can control its costs.

Based on our modelling and assumptions, moving to the recommended fee structure will result in an overall reduction in fee revenue of approximately \$1.7 million. This is largely as a result of removing cross-subsidies that are currently covering a shortfall in Private Financial Management (PFM). We are recommending that NSWTG develop a case, based on data from its Activity Based Costing system (see section 6.4), to develop user fees to recover the efficient cost of PFM. In the interim, there will be a shortfall.

If NSWTG moves to the recommended fee structure before efficiency savings are made and without assistance from the NSW Government, the reduction in revenue will result in faster depletion of the Interest Suspense Account (ISA).

We recommend that the NSW Government provide additional budget funding of up to \$1.7 million per year for two years so that NSWTG can immediately adopt our recommended fee structure.

As discussed in Chapter 2, the ISA is currently expected to be depleted within two years. This provides a window for NSW TG to implement efficiency savings before the ISA is depleted and the shortfall directly impacts the NSW budget.

Recommendations:

- 25 The NSW Government provide additional budget funding of up to \$1.7 million per year for two years. This will allow NSW TG to immediately adopt our recommended fee structure.
- 26 NSW Treasury and the Department of Justice through the Budget process monitor the transition from NSW TG's current position to that recommended by IPART with a view to ensuring that NSW TG is in a sustainable financial position.

6.7 How should NSW TG's fees be reviewed in future?

There was general support from stakeholders for the ongoing review of fees as proposed in our Issues Paper.¹⁶⁴ We proposed that IPART would index and publish annually any caps or fees that we recommend, and that IPART should review the fees and charges after five years.

Some stakeholders indicated their agreement to IPART reviewing NSW TG's fees at least every five years and preferably more often (eg, every three years).¹⁶⁵ We favour a five year interval to give sufficient time for NSW TG to implement measures to improve its operating efficiency and systems to accurately establish its efficient costs.

We have considered further the issue of annually indexing fees, and on balance do not recommend indexing at this point in time. Indexing of fees will be appropriate in future, once NSW TG has adopted an Activity Based Costing System and the efficient costs of providing services is established with greater confidence.

Recommendation:

- 27 IPART review NSW TG's fees and charges after five years.

¹⁶⁴ Huszar, Z. submission to IPART, June 2014, p 3.

¹⁶⁵ Mental Health Co-ordinating Council, Public Service Association of NSW submissions to IPART, June 2014.



Appendices

A Terms of Reference



2013-515736

4 FEB 2014

The Hon Greg Smith SC MP
Attorney General and Minister for Justice
Level 31 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Attorney *Greg,*

Thank you for your letter of 6 December 2013 regarding a proposed Independent Pricing and Regulatory Tribunal (IPART) review of the NSW Trustee and Guardian Fee Structure.

I agree to the review being conducted by IPART, in accordance with section 9(1)(b) of the *Independent Pricing and Regulatory Tribunal Act 1992*. The review should be conducted within the timeframe and on the terms specified in the attached Terms of Reference.

I note that, in accordance with usual practice for section 9 IPART reviews, NSW Trustee and Guardian will fund the review.

Yours sincerely

Barry O'Farrell MP
Premier

NEW SOUTH WALES TRUSTEE & GUARDIAN FEES REVIEW

Terms of Reference

I, Barry O'Farrell, Premier of New South Wales, pursuant to Section 9(1)(b) of the *Independent Pricing and Regulatory Tribunal Act 1992*, request the Tribunal to review the fees charged by the New South Wales Trustee & Guardian (NSWTG) for services provided to its clients, in order to recommend a fee structure that is clear, fair and transparent.

In conducting the review, the Tribunal should:

- Review the costs of service delivery (including a full expense analysis) for all services delivered to clients;
- Review the extent to which there are differences in cost recovery between client groups;
- Review and harmonise the existing fee schedules which reflect the former Office of Protective Commissioner and Public Trustee of NSW's operating base; and
- Consider how NSW TG fees and charges should be reviewed in the future.

The Tribunal should also:

- Review the capacity of the NSW TG to seek full cost recovery for the services provided to each client group based on the nature of those services and the value of each client's estate;
- Advise on options for meeting any funding shortfall that may arise; and
- Have reference to IPART's report on the Office of the Protective Commissioner's fees dated October 2008 and the Regulatory Impact Process of the former Public Trustee of NSW dated April 2008.

The Tribunal is to conduct the review and provide a final report to both me and the Attorney General by 30 November 2014.



Barry O'Farrell
Premier of New South Wales