

INDEPENDENT PRICING AND REGULATORY TRIBUNAL (IPART)
Review of the NSW Trustee and Guardian Fee Structure in accordance with Section 9(1)(b) of
the Independent Pricing and Regulatory Tribunal Act 1992

SUBMISSION

As stated in the Issues Paper there are currently 14,000 protected persons, 75% of which are directly managed and the remaining 25% privately managed by the NSW TG. It is further stated that in 2013, 92.8% of clients have come to the NSW TG via Guardianship Tribunals. This raises a number of questions including why so many protected persons had a financial management order placed on them in the first place.

In addition, it is stated in the Issues Paper that the number of protected persons will grow possibly because of the ageing population. However, an ageing population by itself does not increase the ratio of protected persons. The NSW TG is a commercial arm of the government and it has a vested interest in increasing the number of estates in its portfolio to generate income.

The Guardianship Tribunal contributes substantially to this end by acting as a "clearing house" for the NSW TG. A large percentage of persons who come before the Tribunal are placed under guardianship and financial management orders whether it is warranted or not. In the majority of cases it clearly is not. The Tribunals' default position appears to be self-serving. It is a contrived system of adding protected persons to an institutional headcount which smacks of cronyism with the NSW TG. Even protected persons with little or no assets are valued numbers by these organisations as they are used in an attempt to justify their budget demands. Guardianship is an often biased system that values legal gamesmanship and organisational mateship over right and wrong.

Certainly, when no suitable person is available to the protected person, financial management orders "of a last resort" are required in genuine cases of neglect, risk of financial disadvantage, exploitation or loss or potential dissipation of their money. Unfortunately, it appears that decisions and orders made by Guardianship Tribunals for financial management during the past 20 plus years do not appear to have been so circumspect.

Even in circumstances where the Tribunal has acknowledged and even commented on the exemplary manner in which the protected person's finances have been managed, can continued to be competently and willingly managed by either a family member or support person, full financial management orders in many cases are still placed on the protected person. Why?

Unlike guardianship, financial management orders are in place for the life of the protected person (unless they are interim orders) or until they are revoked by the Tribunal (which is uncommon) so that there is a guaranteed on-going source of income for the NSW TG.

From the Schedule Table D1 attached to the Issues Paper, it is clear that the charges levied by the NSW TG on a protected person's estate are more than sufficient. What is questionable is -

- (a) the efficiency with which those services are provided;
- (b) the level of complexity of the estates,
- (c) the actual number of complex estates;
- (d) the across the board skills levels of the NSW TG financial management personnel;
- (e) the lack of performance indicators;
- (f) the lack of any real and effective safeguards identifying financial exploitation, mismanagement and administrative inefficiencies;
- (g) the lack of penalties or legal remedies against NSW TG personnel for unconscionable and unlawful conduct,
- (h) the inability of the protected person to choose his own financial manager,
- (i) the lack of genuine accountability and transparency, and
- (j) the exuberance with which the NSW TG rushes off to sell the family home whether it is justifiable or not.

List of issues for stakeholder comment - Only for protected elderly and disabled persons

1. All Govt. monopolies should be regulated.
2. (i) Yes
(ii) Yes
3. No. There are no effective safeguards in place to ensure that fees are transparent or monitor standards of service provision.
4. No. The services provided by the NSW TG are not of the same standard as those in the open market and therefore should not be paid at the same level.

Many of the protected persons are on a pension and the services required are minimal. The meaning of "intensive needs" has not been clarified, therefore, the level of service required to perform these task and the question of attendant fees cannot be quantified. In any event, the protected person's financial management should not be regarded as a money making exercise by the NSW TG but should be an issue which forms part of the Govt.'s CSO mandate and obligation.

Protected persons could fairly be charged an annual administrative fee of no more than \$3,000pa. and any short fall should become the Govt.'s CSO obligation The current management fee of up to \$15,000 should be removed as should the annual investment fee of 0.5%. Low \$ worth protected persons are subjected to an unjustifiable "spend down" of their assets. Any increase in administrative fees should be in accordance with pension increases - no increase in pension means no increase in service fees.

Unlike guardianship, financial management orders are in place for the life of the protected person or until, in extremely the unlikely event, those orders are revoked by the Guardianship Tribunal.

5. No. See 4 above
6. No. See 4 above
7. See 4. above

8. No statistics have been given regarding the number of protected persons who have received fee waivers nor have any examples been given of which circumstances would qualify a protected person to receive such exemptions. Therefore, no useful comment can be made.
9. See 4. above
10. No. The NSW TG's Will preparations are free of charge only when they are appointed the Executor which guarantees it ongoing revenue. The executor fees are too high and an account keeping fee of \$11 per month should be removed. No solicitor charges a monthly fee for retaining a Will nor do they charge such high executor fees. If anything, the fees charged should be substantially lower than their current rate.
11. Looking at the Tables B.1 and B2. it is not surprising that the NSW TG has become an extraordinary purveyor of funds for the Govt. with \$2.5 billion in its coffers. Any short fall in providing services to protected persons should be subsidised from the operating surplus. In any event, whether it comes from the Govt.'s CSO obligation or from this avenue, it all boils down to Govt. funds. - State or Commonwealth - they can argue the percentages of who pays what.
12. Absolutely not. Accounts are not provided in a clear, accurate or efficient manner. Bills are not paid on time. Any legitimate queries are met with disdain. Letters are not responded to and phone calls are met with message banks and rarely returned. There is a round robin of staff, duplication, procedural inefficiencies and lack of understanding of the needs of the protected person. Financial management orders are not flexible like guardianship orders so the Tribunal cannot tailor a financial order to the needs of each individual by varying the powers it gives to a manager. The Tribunal cannot limit the scope of an order nor can it review and change an order.

Protected persons are deprived of spending their funds in accordance with their needs. These life savings were accumulated to provide for twilight years, yet NSW TG is unwilling to provide the protected person with anything other than only a meagre allowance. When my parent needed a lift to be installed in the home as she is wheelchair bound and for which she had more than available funds to purchase, she was denied this right. The process took almost 3 years of approvals, withdrawals, approvals and withdrawals and still no resolution. The number of revolving case managers further added to the incompetencies in the service that the NSW TG provided.

Instead, they removed mother from her own home, against her wishes, and placed her in a nursing home so that they would not have to deal with our request and every medical professional's endorsement to have a lift installed. This is contrary to the Govt. latest initiative which encourages and assists elderly people to remain living in the community and in their own homes.

There was never any question raised, nor is there any issue about the excellent quality of care we provided to our mother nor was there ever any consideration given to mother's constant and ongoing requests to be returned to her own home. Mother has 24 hour one to one care at home plus allied community assistance yet the PT&G considers a nursing home, with a staff ratio of 1 to 8 to be "in the best interests of"

It is very clear in our case (and we have 2 letters of apology from the Attorney General regarding the TG's conduct) and from other many similar cases that the prime focus of the NSW TG is on keeping as much money in the coffers as is possible and the further value add of that action by selling off the family home for which they receive a sizeable commission. This

is legalised extortion.

If a private sector organisation operated in such a manner it would have a very short business life and be subjected to the full force of the law. The sad reality is that once in the clutches of this organisation and its cohorts, protected persons have no rights and no choice - they cannot vote with their feet and so the frustration remains for a lifetime and the NSW TG has a guaranteed 100% client retention. How many private sector organisation would love to have such a monopoly and an unfettered right to abuse human rights with no accountability despite all the spin and propaganda claiming that safeguards are in place?

It is stated that trustee funds are declining but the reasons have not been canvassed or identified. Is it because the current client base is elderly and, on their passing, reduces the level of funds available to the NWTG or is it that potential private clients are more informed and educated in financial matters and prefer to deal with the private sector rather than a government organisation - perhaps both?

For those in the NSW TG who perform to the best of their ability and with good intentions, I applaud their efforts but, regretfully, from past experience and from reports from many others who have family members under financial management orders, those personnel are very much in the minority for a variety of reasons.

The NSW TG has lost its way and true sense of purpose. The standard of service provided by the NSW TG is below par on all levels and requires an independent investigation. In 2014 I would have thought we had come a long way from the "master and slave" mentality yet it appears we have not made any meaningful progress.

13. Absolutely. Such information has never been willingly provided by the NSW TG. Therefore, it also allows concerned family members and support persons to see what charges are levied against the protected person's estate.
14. Yes - as a guide only. The fees charged by private managers should not be charged at a higher rate – they should negotiate a lower or a comparable rate only.

Dated: June 12, 2014

