



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 on DRAFT REPORT

Roundtable Conference held at Sydney on September 23, 2014

(name supplied but withheld)

As a private individual attendee at the Roundtable Conference on September 23, 2014 I would like to thank IPART for the excellent presentation and explanation of its Draft Review and proposed fee structure. Every participant was afforded the opportunity to voice their opinions and any items in the Draft Review which required clarification by the Chair were responded to in clear and comprehensive manner. I also would like to particularly thank IPART for also seeking the views of clients of the Public Trustee & Guardian which were given due consideration in the Draft Report.

The Public Trustee & Guardian (PT&G) operates as a commercial arm of the Government and offers its services on the open market as well as providing financial management services to involuntary clients as a result of direct financial management Orders placed upon them by the NSW Guardianship Tribunal.

I have read the written Submission by the PT&G which appears to be impressive in terms of the length and breadth of the services it provides and goals it aims to achieve – most of which rely on the income generated from fees, investment strategies and some govt. subsidies. However, it is a huge bureaucracy which requires enormous income to survive and not all the services which are described in the submission are provided at a satisfactory level or at all.

The PT&G's need for high fees to survive is an extremely poor business model which inevitably results in an unfair and excessive fee structure nor does it provide value for money, particularly for involuntary clients. Equally unfair is the fact that private managers who do all the hard work are charged unreasonably high fees by the PT&G just to have their accounts checked.

Government bodies, by their very nature, cannot and do not operate in the same manner as a private business entity. They do not have the necessary controls, culture, internal processes, productivity measures, safeguards, legislative freedoms, accountability, transparency or internal audits required to operate profitably or secure a competitive edge in the market place. They are rarely, if at all, self-sustaining or profitable.

In contrast, private business enterprise, large or small, rely on all of the above criteria as well as good management practices. Excellent service and management is a necessary platform on which to survive and prosper as well as retain and attract new clients. Additionally, it is a given that any private investor requires from its fund manager a suitable return on investment. The PT&G does not provide this.

Further, since the involuntary client cannot vote with its feet, the best outcome is for the capital to

remain intact. The PT&G fails to perform even on this basic level. Unfortunately, the facts are the the involuntary person's capital base is systematically eroded each year by very high fees and low returns on investment. This is hardly a performance outcome that should be rewarded!

The PT&G's current annual cap is \$15,000, IPART has suggested \$13,000 and the PT&G is seeking a cap of \$25,000 which is not only ridiculous but totally unacceptable. The small amount of work that is required to administer low worth estates should not attract the fees currently charged and should be considerably less than IPART has suggested in its Draft Report.

My comments are from the perspective of a family member who has been placed under a full and direct Financial Management Order by the Guardianship Tribunal and falls within the category of involuntary and low wealth client (cash reserves of less than \$200,000 excluding the family home).

I make no comment on fees that the PT&G charges for their services on the open market other than to say that the charges for administration of Wills, Powers of Attorney and commissions on sales of estate property are certainly not competitive with the fees and services on the open market. Solicitors, accountants and other professionals not only provide a far superior service but are totally accountable and transparent – the PT&G is not. Private clients have legal and other remedies to address mismanagement, unfair treatment and so on – involuntary clients do not. The usual complaint channels via Govt. departments are not only pointless but a waste of time because the Govt. is always right!

At the Roundtable Conference, despite stating the the PT&G at all times cared about and acted in the best interest of its client, Ms. Imelda Dodds, as the representative of the PT&G rejected outright the findings and recommendations of the Draft Report and concentrated only on the following main points.

She did not consider the issue of unfairness of excessively high fees on involuntary clients, the systematic depletion of estate funds by unacceptably high fees and poor investment returns or, indeed, the many complaints of dissatisfaction with the PT&Gs performance on almost every level.

Ms. Dodds main points were as follows:-

1. Increased fees were necessary and the only means by which the PT&G could remain sustainable or survive. They were also needed to finance future strategic goals.
2. Organisational redesign and implementation of a new business model was difficult, time consuming and adversely impacts on the PT&G's resources.
3. Productivity and efficiencies in its operations as recommended by IPART were not achievable.
4. Updating and improving accounting systems and data collection was difficult and financially unviable.
5. Budgeting for capital costs was a compromised if its current fee structure was not increased or, indeed, reduced.
6. Management of both complex and simple estates were difficult to quantify.
7. Difficulty in assessing cost/time/activity fee (benchmarking) for directly managed estates both simple and complex.
8. 18% reduction in clients despite increase in operating costs and CPI increases.
9. Reduced staff levels working under enormous pressure.
10. Projected increase in guardianship clients with financial management orders placed further strain on the PT&G's resources and higher fees enabled a larger surplus of funds to accommodate future higher operating costs.

11. Regarded as a wholesaler, PT&G was not able to obtain optimum interest rates which were available to the retail market.
12. Implementation and redesign of new business models to comply with Reforms and UNCPD's principles and guidelines for supported/assisted decision making which benefits the Public Guardian (PG) and for which the PG made no financial contribution, severely impacted on the PT&G's current resources.
13. Terminology of "involuntary client" considered inappropriate.
14. Queensland's PT&G charges higher fees for its services than NSW.
15. Dementia is on the rise and will increase the need for PT&G's services in the future.
16. Administering very complex deceased estates was time consuming, lengthy and expensive (some over a 40 year period).

As evidenced from the above points, Ms. Dodds did not display any willingness to consider the reasons why IPART's Draft Report had merit and required consideration. In the PT&G's written Submission to IPART, it was stated that certain improvements were planned for the future. These included new technology (ISIS) systems and strategic projects and goals leading up to 2017 and beyond which would reduce the number of involuntary persons from the current ratio of 3.1 to 1.3 and increase its presence in the open market place. Other than the very limited pilot program of supported decision making for a specific disability, no real inroads have occurred.

Why then should current involuntary clients be charged fees that are based on a business model which factors in proposed future project costs which may or may not eventuate? A time/cost/activity analysis is the only fair way that a involuntary person's estate should be charged. Anything other than that is simply a cash grab. With all the in-house personnel and expertise available, how difficult is, therefore, to calculate a benchmark fee for administering an estate which only requires simple transactions such as paying utility bills, telephones, chemist bills, and other small incidentals? The current high fees are unfair, unjustifiable and certainly not value for money.

In 2012, a new Client Consultant Framework (CCF) was to be set up so that the PT&G "...could better understand and meet the needs of its clients ...". We are now in 2014 and nothing has changed or been effectively implemented. In fact, unless the prevailing culture of "them and us" is eradicated, all the so called "..... in the best interests of" will remain nothing but motherhood spin and fodder to feed to the press and embellish submissions or any other propaganda the PT&G feels free to promote.

As for the PT&G client surveys purported to present such high satisfaction levels, it would be interesting to know the number of people actually surveyed and who actually was surveyed. I have never received a feed back survey from any Govt. entity let alone the PT&G. I personally know of a large number of people who are dissatisfied and extremely angry with the way the PT&G currently operates not only in NSW but nationally. What the PT&G and its cohorts are mandated to do is substantially different from what they actually do or how they operate.

For example, four years ago my mother had more than sufficient funds to have an elevator lift installed when she was living in her two storey home. She also had two family members who were also willing to subsidise the costs so that she could remain living in her home where she received excellent one-on-one 24hr. family care. The PG would not permit the installation of the lift in order for her to remain living in the home and the PT&G would not permit the lift if mother was not living at home. This impasse went on for 4 years, each organisation "passing the buck" from one to another, resulting in mother being removed from her home, against her wishes and placed in a nursing facility. Her knees could not manage the 13 stairs to exit the home but her mild cognitive disability did not prevent her from living a happy, communicative and fulfilling life at home. How could institutionalisation be in her best interests or considered as "a last resort"? And why would

the PT&G not release the funds for the elevator despite the fact there was more than sufficient cash left over to provide for her care for a number of years? And why would they not let my brother and I contribute towards the cost which would be deemed as a gift?

Denial of the lift installation and retention of her estate funds was simply a callous cash grab. Four years later, there is no lift, mother removed from home and greatly distressed, the reasonably high cash reserves dwindled to an unacceptable low and a family torn apart.

Four years of absolute abject misery at the hands of the Guardianship Tribunals, PT&G and the PG is more than sufficient grounds to justify my complaints and there are many others like my family suffering at the hands of these bureaucratic dictators. The poor reputation these entities have earned in the community at large, is the reputation they deserve and share with other infamous entities such as DOCs.

The Guardianship Tribunal, the Public Guardian and Public Trustee & Guardian have failed and continue to fail the very people they purport to protect. Any genuine successes they may claim will pale into insignificance when contrasted with the people and families they have systematically destroyed, financially, emotionally and physically.

Amongst many circles, including the legal fraternity, the Guardianship Tribunal is regarded as nothing more than a clearing house for the Public Guardian and the Public Trustee & Guardian. Almost 90% of the people who come before the Tribunal with cognitive impairment and disabilities are placed under full Guardianship and Financial Management Orders whether it is warranted or not. Clearly, survival for each of these entities depends on head counts which provide the necessary \$s for survival – Ms. Dodds herself stated that fees were crucial for sustainability – and every dollar counts! Further, Ms. Dodds' statement that Qld. charges more than NSW for its services as a valid argument for fees increases was not only absurd but infantile.

If these three entities complied with the Principles and Guidelines of the UNCRPD when Aust. ratified the Agreement in 2008/9 fewer numbers of people would have Orders placed upon them and the PT&G may have taken a different direction. It was not the care for its involuntary clients or the initiative of the PT&G which instigated the so called “pilot programme for supported decision making”. It was in response to the demands by a number of stakeholders for reforms to stop the PT&G and its cohorts from abusing the basic human rights and freedoms of those unfortunate enough to come under their control. Had the UNCRPD Principles and Guidelines been enforceable under the law and Orders genuinely made “*as a last resort*” empire building and costs gouging would not have occurred.

Equally, the “Foundation Principles” cited in the PT&G's written submission are simply theoretical. Not once did Ms. Dodds in the Roundtable Conference show any concern for the client dissatisfaction or the inequitable manner in which fees are levied against involuntary clients and private managers. The focus was on fees and PT&G's economic survival.

Relying on the premise of increased fees as its only salvation, clearly indicates that the PT&G lacks any business acumen and has lost its way. Complacency is the death knell for any business and failure to take on board client dissatisfaction, seek improvements or modify its business model not only smacks of arrogance but also of incompetence. Bureaucracy is precisely that and large government institutions such as Guardianship Tribunals, PT&G and PG rarely, if ever, provide good economic management or satisfactory service provision to its clients.

I would be extremely disappointed if IPART's Draft Report did not result in a positive outcome for involuntary clients or private financial managers.

On a Legal Issues blog posted on the internet on November 14,2013 a legal firm posted on the internet the following cost comparison of fees for Will administration.

For example, a solicitor might charge \$300 for a Will but must disclose his fees for administering a deceased estate. A solicitor administering an estate worth \$750,000 would charge \$4,787.20 whereas the PT&G which offers a free Will service but charges \$14,850.

An estate worth \$2m would incur a solicitor's fee of \$7,843 whereas the PT&G would charge \$28,600.

An estate worth \$10m would incur a solicitor's fee of \$17,055 whereas the PT&G would charge \$116,600.

An involuntary client has no freedom of choice. In contrast, an informed potential client, after comparing costs, would not be lured by the cost of a free Will to place administration of his/her estate in the hands of the PT&G. Equally, no accountant or bookkeeper would charge the fees the PT&G levies on the most basic of estates.

Not every client is well informed or able to make cost comparisons and it is they and their families who are at the losing end. When they eventually find out that all the spin and propaganda about good governance and acting in their best interests is just a lie – (the fees on Will administration alone prove that) it will, unfortunately, be too late.

According to the representative of the Alzheimer's Association, it has been projected that the number of people suffering from this disease will rise exponentially and will impact on the PT&G's bottom line. Again, as was pointed out by the Chair, this projection would not affect the PT&G's current or future financial resources as each new client would be charged fees which would increase the PT&G's income revenue accordingly. Surely, this common sense reasoning did not need to be pointed out to those who hold themselves as experts in the field!

Alzheimer's disease/dementia comes in many forms and there are many variables which need to be considered before a blanket statement is made suggesting that ALL Alzheimer's patients will come under the control of the PT&G. The Govt. has recently introduced many health care initiatives to assist these people to remain living in their own homes. Many may choose to do so, preferring to live under the care of family/friends/carers with the freedom of living their life how they and their families would wish without the intervention of the PT&G or PG.

Also, if the PT&G's so called Strategic Goal plan ever comes to fruition, hopefully in my lifetime, then it would follow that other forms of guardianship would replace the need for substituted decision makers and financial managers. Genuine “last resort” Orders would in fact only be implemented as a “*last resort*” and not the “*first port*” default position of the Guardianship Tribunal and its cohorts.. Not all family/friends/carers are abusers nor are all PT&G and PG officials honourable or acting “...in the best interests of””. Much is made about safeguards for vulnerable persons but safeguards are not a one way street – the Guardianship Tribunal, Public Guardian and the PT&G should have **independent** safeguards in place to strictly monitor their own questionable behaviours.

IN SUMMARY, it appears to me that the PT&G should undergo a thorough investigation of its current business model and ideology. Relying on increased fees in order to survive, as stated by Ms. Dodds, is not only extremely unfair to its involuntary clients but is a reckless and poorly

thought out business model.

I believe that the fees currently charged by the PT&G are over inflated and the recommendations by IPART, although higher than one would reasonably expect to pay, are a least a small step in the right direction.

There is no doubt that the NSW Guardianship Tribunal and its cohorts have a role to protect those people who are in need of care and have no family/friend/carer support, or are in danger of self-harm or exploitation. In those circumstances, it is incumbent upon the Government and its duty of care to these vulnerable citizens to fully fund those requisite services.

Therefore, instead of encouraging empire building, the Government has a duty to provide sufficient financial and other resources these Govt. bodies to operate fairly and efficiently and to ensure that they are fit for purpose.

I also do not believe that the PT&G should operate as the commercial arm of Government and rely on fees unfairly levied against involuntary clients or private managers to achieve that goal. Private investors have choices – involuntary clients do not.

In her 2009 speech “Ringing Changes” 2009, Ms.Imelda Dodds said -

“ We also have a responsibility to advocate at an individual and systemic level for our client s’ best interests.”

As the current representative of the NSW PT&G may I suggest that Ms. Dodds revisit that statement and applies those responsibilities to ALL clients currently under Financial Management Orders and to her organisation in general.


September 27, 2014