

Brian Maher



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Dr Peter J Boxall AO

Chairman

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Dear Sir

## IPART REVIEW OF NSW TRUSTEE AND GUARDIAN

I write in response to the Draft IPART Submission to Government.

I have an extensive knowledge of Estate and Trust administration, having been in the employ of Public Trustee NSW (prior to its amalgamation with the Office of Protective Commissioner) for some 44 years. At the time of my retirement in 2005 I held the position of Deputy Public Trustee/General Counsel.

Firstly, I find it surprising that the Draft contains some glaring inaccuracies, most especially in its references to what it terms "involuntary" clients. It states that NSW TG has a virtual monopoly in respect of intestacies, and goes on to canvass various issues concerning the fees that are/might be levied in such matters. There is in fact no such virtual monopoly – private trust companies and private individuals are entrusted by the Probate Court with the administration of intestacies and any prudent check with that Court would have elicited that fact. (This is not to deny that NSW TG possesses a particular expertise in the area of intestate law).

The Draft makes a similar factual error in its reference to the administration of estates where the appointed Executor is unable or unwilling to handle the estate. My comments in the previous paragraph relating to intestacies have equal application in regard to these estates (commonly referred to as CTA estates).

It naturally follows that any discussion of fees relating to intestacies and CTA estates – based on such a false premise – must of itself be flawed.

Secondly, the Draft is "internally confused" in its references to the possibility of charging fees for the drafting of Wills. In one place it is pointed out that the cost of this "free" service is (obviously) not covered by the (nil) fee and that this has a negative outcome so far as the overall efficiency is concerned, whereas later on it is suggested that a below-market fee be charged for the service – these two statements are clearly at odds with each other.

Also, in regards to the "free" Will-drafting service, no mention is made of the fact that the offering of "free" services as an "introducer" to a later service is a well known (and accepted) commercial practice – with the stipulation, of course, that the possibility/probability of fees in the future is spelt out at the time of the "original" service.

Thirdly, the inclusion of "selective" quotations and comments from some interested stakeholders is a matter of concern, especially selective, private individually-based "observations." The use of such "selective" inclusions – without any testing as to their accuracy or otherwise – is, in my view, hardly professional and more akin to the sort of comments thrown at the community by commercial current affairs programs.

Both Public Trustee NSW and the Office of Protective Commissioner had long and proud histories prior to the amalgamation in 2009 and I am sure that the staff involved in NSW TG has similar aims in offering the best possible service to their clients. Sure, no organisation is perfect and reviews as to efficiency are a necessary "part of life" in the quest for more professionalism.

I feel that they, and the Government which requested the Review, are entitled to expect that such Review be professional in every respect. In my view, the Draft falls short of professionalism in the areas I have addressed. I have not had the opportunity as yet to fully consider the costings/comparison charts etc. but reserve the right to make further comments/observations etc. at a later date.

Yours Faithfully



Brian Maher