

SUBMISSION TO IPART FOLLOWING ROUNDTABLE

Robert G Haebich

CAPACITY

As with my initial submission and my contribution to the Roundtable, my participation is personal and is on my own account only. It is appropriate to declare that I am a current member of the Trustee and Guardian Advisory Council.

INTRODUCTION

I appreciated being able to participate at IPART's Roundtable. Proceedings were conducted in an ordered, informal and open manner which was much appreciated. I am indebted to the Tribunal, staff and participants for informing my concerns.

A new concern for me was the reported dissatisfaction with TE&G because of the low rate of return on certain managed funds. A cause of dissatisfaction was revealed to be that clients were disadvantaged because bankers insisted on treating funds sourced through TE&G as being wholesale funds. This cause needs to be addressed.

As with my earlier submission prior to and at the Roundtable, I do not propose to address the detail and intricacies of IPART's analysis and TE&G's presentation at the Roundtable.

My concerns include:

- IPART's business model differs fundamentally from that of the government imposed business model under which TE&G is required to operate;
- IPART has made and relied on assumptions which are inaccurate;
- IPART has dismissed figures provided by TE&G without supporting explanation as to why TE&G's figures were rejected and the reasons for accepting IPART's figures;

- IPART has reached significant conclusions in the admitted absence or paucity of data or has not identified and accessed possibly useful sources of relevant data;
- TE&G's long and short term sustainability.

IPART's business model differs fundamentally from the government imposed business model under which TE&G is required to operate.

This is my primary concern.

TE&G is not a controlled entity and must self-fund to the maximum degree possible.

IPART considers that fees should be based on efficient cost for involuntary clients and as the market determines for voluntary clients.

IPART considers any cross subsidization of costs as between involuntary clients (as defined by IPART) to be unfair and should be abolished. In its business model for TE&G, IPART restricts cost recovery from involuntary clients to efficient client cost. TE&G is required to absorb cost in excess of efficient client cost. IPART assesses the differential to be 20%.

The IPART business model recommends that vulnerable and disadvantaged clients should be asked to pay fees to cover the efficient costs of providing the service required. IPART has recommended subsidized fees for some low wealth clients most in need of financial assistance.

In terms of client costs for vulnerable and disadvantaged clients the difference is:

TE&G is obliged to cross subsidize activities under the government's current self-funding model.

IPART proposes that the tax payer subsidize the vulnerable and disadvantaged who I understand to be those who qualify for full Centrelink pension.

Nevertheless IPART acknowledges there would be others who would not qualify for the IPART recommended subsidy and that it would be for TE&G to waive fees for such persons.

IPART introduces the possibility in the longer term of a more radical renovation of TE&G. IPART's recommendation that there be government funding of wills and powers of attorney subject to such funding being first used in a pilot with a view to ultimately extending such subsidies to clients of lawyers in private practice. This recommendation does not appear to be within IPART's terms of reference. The recommendation appears to possibly foreshadow the eventual transfer of drafting of powers of attorney and of wills and ultimately trust and probate work to the private profession by way of a form of legal aid. The implications of such a course for stakeholders especially the government as funder and TE&G, have not been examined.

The IPART model assumes that the government is willing to meet the efficient costs of the vulnerable and disadvantaged client who qualifies for full pension benefits and that the government will provide additional funds for a two year transition period. IPART's assumption is essential to its model.

It is not clear how IPART anticipates TE&G could sustainably rely on involuntary client efficient costs less waived fees and invest in change and technology should the government not provide adequate transition funding . IPART has recommended a transition subsidy of \$1.7 million over each of two years. TE&G has submitted this amount is substantially inadequate.

The nub of my concern is that IPART has based its recommendations on a business model inconsistent with the current government business model for TE&G. I am not in a position to suggest which is the better model, assess the accuracy of the figures nor to anticipate whether the government would be willing to change the business model under which it requires TE&G to operate.

IPART has made and relied on assumptions which are inaccurate.

There are a number of incorrect assumptions on which IPART seems to have relied. These were substantially dealt with by TE&G at the Roundtable. To me the most obvious error was the categorizing of intestacies as "involuntary" matters. In practice the TE&G services only 6% of intestacies. In other instances there are legal processes available at a cost to persons wishing to use the services other than those of TE&G.

The real determinants as to whether the services of TE&G are used are often financial capacity and method of costing. In the instance of estates, the TE&G fee structure is more financially attractive than that of most private solicitors, where the value of the estate is low, there entrenched personal issues and/or or identification and location of beneficiaries is complex. Such considerations would be likely to seriously erode the net value of the estate if charges were to be on a timed fee per attendance basis. TE&G has a high level of waived fees because of client financial difficulty.

IPART seems to presume that should some of the involuntary categories of TE&G work be made “voluntary”, that work would be attractive to the private legal profession or trust companies. That there is, so far as I know, no pressure by the private legal profession for such work to be “freed up” and that trust companies have a fairly high value cut off point, suggests that such work has at best a low profit/cost ratio. Indeed trust companies and private practitioners are known to send on to TE&G unprofitable work. As I understand it, TE&G is not able to reject work.

IPART has recommended on its fairness test that involuntary clients should pay efficient cost fees only irrespective of capacity to pay. It is arguable that TE&G has a higher level of care and skill responsibility to involuntary clients. Ordinarily the higher the level of responsibility the higher the fee. In any case, where an involuntary client's affairs have been competently dealt with, to charge an involuntary client who can afford to pay just efficient cost would seem to provide for a windfall gain as compared with the situation of a voluntary client especially in the instance of a voluntary client who has difficulty paying or cannot pay market fees.

On a number of occasions IPART has stated that no or inadequate data was available yet proceeded to make a recommendation affecting the sustainability of TE&G. It is noted in those instances that IPART did not analyze similar costing, practices and policies of comparable organizations carrying out similar functions for a predominantly similar demographic.

IPART appears to have assumed that where the government has a policy or directs activity which is not categorizable as servicing the client, then the government should and would fund that activity. It is submitted that the

adequacy of such funding to enable TE&G to carry out its community service responsibilities including trends in type and extent of demand for TE&G services needs thorough examination.

IPART appears to have dismissed figures provided by TE&G without supporting explanation as to why TE&G's figures were rejected and the reasons for accepting IPART's figures.

IPART has not identified the basis on which it has dismissed TE&G's figures. The discrepancy between between IPART's figures and those of TE&G are on a number of occasions very considerable. In consequence highly relevant to any viability and sustainability tests applicable to IPART's business model. It would be very helpful if any such material was made available.

It seems that TE&G's figures have been dismissed yet data from comparable interstate organizations has not been accessed. TE&G has not been re-approached for further information. This is especially important where there is substantial difference between TE&G's figures and those decided upon by IPART.

IPART has reached significant conclusions in the admitted absence or paucity of data or has not identified and accessed possibly useful sources of relevant data

Rejection of TE&G figures is especially concerning where IPART has made a recommendation affecting TE&G's sustainability on the basis of admitted no or inadequate data being available and where this is made without explanation as to the failure to be able to obtain sufficient or any comparable information.

Especially important here is IPART's analysis of the intensity of client service. The demographic served by TE&G can reasonably be expected to require a greater intensity of service than is evident from the file notes on which IPART relies. Interstate comparable organizations may have been able to provide useful data.

TE&G's long and short term sustainability.

IPART is of the view that the market should determine the fees for voluntary clients but gives no indication as to the relevance of such fees to either TE&G's

short term or long term sustainability. IPART considers that TE&G has the capacity to make at least 20% efficiency savings and to sustain an approximately 10% reduction in involuntary client fees where involuntary clients constitute an estimated 71% of TE&G clientele. IPART's business model is said to produce an underlying surplus of 2.1% . IPART has recommended an allowance for a two year transition allowance of \$1.7m for each of those two years. There is no allowance for the effect of economic variables which affect TE&G income. In IPART's business model all other activities of TE&G should be funded by the government on the basis that those activities should not be subsidized by involuntary clients.

Efficient cost includes an allowance for depreciation. Such funds will accumulate from when IPART's business model commences.

TE&G has embarked on a program of substantial investment, in particular "2017 and Beyond" and its IT system upgrades. These expenses ought to be viewed as investment as the expenditure addresses far more than what is allowed for by "depreciation". TE&G is required to absorb actual costs above efficient cost. IPART while concluding and then requiring that TE&G can and should and reduce its fees to involuntary clients substantially cut costs, has not addressed how its business model will accommodate the cost of these investments for major change.

Should the government persist with the current business model under which TE&G operates but adopt IPART's recommendations , it would seem that the identified expenditure to introduce far reaching improvement will need to be revisited and/or services reduced in quality and quantity as a result of shedding of staff.

CONCLUSION

IPART has been required to make its recommendations before TE&G has had the opportunity to implement, analyze and report on the very substantial investment it is making in change.

IPART's fairness test as applied to involuntary clients can be interpreted to subjectively indicate that TE&G has been unfair to its involuntary clients. The

fact is that the cause of any such perceived unfairness is the business model under which the government requires TE&G to operate.

It is clear that both IPART and TE&G have the best interests of the clients of TE&G at heart.

My concern is with IPART's model and methodology in the context of TE&G's short and long term viability and sustainability.

It is imperative for TE&G's strategic and operational planning to know whether TE&G is to operate under the IPART business model or the current government business model. Which ever model is adopted, TE&G is must be able to viably and sustainably provide a quality and cost effective service that meets the needs of its clients.

From everything I have seen and observed as a member of the TE&G Advisory Council, I am able to say that I am of the definite opinion that the TE&G executive is foremost committed to serving the needs and interests of its clients and the community more generally and to that end is committed to the major changes which are being undertaken.

A black rectangular redaction box covering the signature of R G Haebich.

R G Haebich

10 October 2014