IPART
New South Wales

Independent Pricing and Regulatory Tribunal

Review of Fees of the Office of the Protective Commissioner

Other Industries— Final Report
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The Tribunal members for this review are:

Dr Michael Keating, AC, Chairman

Mr James Cox, Chief Executive Officer and Full Time Member

Ms Sibylle Krieger, Part Time Member

Inquiries regarding this document should be directed to a staff member:

Dennis Mahoney (02) 9290 8494

Ken Maxwell (02) 9113 7712

Mandy Phan (02) 9290 8433

Independent Pricing and Regulatory Tribunal of New South Wales
PO Box Q290, QVB Post Office NSW 1230
Level 8, 1 Market Street, Sydney NSW 2000

T (02) 9290 8400 F (02) 9290 2061

www.ipart.nsw.gov.au

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1 Introduction and overview

The Protective Commissioner is an independent public official appointed under the *Protected Estates Act 1983* to protect and administer the financial affairs of people who are unable to make their own financial decisions ('protected persons'). The Protective Commissioner is also responsible for private managers who have been appointed to administer the financial affairs of other protected persons, by authorising or directing expenses to be incurred or investments to be undertaken on behalf of those persons. Her staff of around 250 at the Office of the Protective Commissioner (OPC) assists her to fulfil these statutory obligations.

The Protective Commissioner does not choose her clients. In each case she is appointed by court or tribunal order[1] and may not refuse to act. Private trustee companies are also available to carry out comparable services on behalf of protected persons, but they generally only agree to act on behalf of higher net worth individuals.

Clients of the OPC require a higher level of care (service) in respect of financial decision-making than most members of the general population because of their disabilities.

Of its more than 12,000 clients, the OPC directly manages the financial affairs of just under 9,000 directly managed clients and oversees around 2,500 privately managed clients as well as acting as banker for about 700 other clients (on behalf the of Department of Ageing, Disability and Home Care).[2] Applications for financial management orders in New South Wales have increased steadily in recent years[3] and this trend is expected to continue into the foreseeable future. Accordingly, the demand for the OPC's services is expected to grow.[4]

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1 Known as a financial management order.

2 These different types of OPC clients – directly managed clients, privately managed clients and banker clients - are explained in Chapter 2.

3 The OPC's main source of such orders, the Guardianship Tribunal, showed a rise of 12 per cent in applications for financial management orders in the two years to 2006/07. Source: Guardianship Tribunal, *Annual Report 2006/2007,* p 15, Table 1.

4 The increasing complexity involved in managing the OPC's directly managed clients, a feature that does not appear in aggregate numbers, was a trend also mentioned at the IPART Roundtable. "The OPC are dealing with, especially in our area [of schizophrenia], a more difficult client group than they used to be. I think that you can see that through the contacts that many people are having through accident and emergency where the complexity of the mental illness is overlaid with drug and alcohol abuse. The illegal drugs are more complex and they are creating a much more difficult and much more violent behaviour among certain people." Mr Rob Ramjan, CEO Schizophrenia Fellowship, Transcript p 46, lines 41-47.

Financial protection and fairness

The OPC's clients are, by their very nature, vulnerable members of society and it is appropriate that the OPC's work is supported by an across-the-board subsidy from the NSW Government. This view is reinforced by the fact that many clients have a limited capacity to pay for the services that the OPC provides. Around 80-90 per cent of the OPC's clients fall within Centrelink's eligibility tests (based on income and assets tests). Of those that do not, a number have received compensation payouts (as a result of accidents) that are meant to cover their living expenses over their lifetime.

The OPC presently charges for the cost of its services to *directly managed* clients by levying three fees, one an establishment fee, the second an annual personal management fee and the third an investment fee. The first two are expressed as percentages of client assets[5] with a combined fee cap of $50,000 per annum. The investment fee is charged as a percentage of the funds invested with the OPC.

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. An investment fee is also collected, expressed as a percentage of the value of any assets under management by the OPC.

Under the OPC's current commission-based fee structure, 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.

A major focus of the Review was to consider possible means of redressing the current high level of cross-subsidisation which in IPART's view is clearly undesirable. In reviewing possible fee structures IPART needed to balance a number of conflicting considerations:

- Minimising the extent to which the services provided to the financially less well-off clients are funded by other clients, all of whom are disabled.
- Balancing user pays principles against the community's reasonable social obligations, funded from tax revenue, to support the less advantaged in society. In the case of the OPC's clients, they are doubly disadvantaged, being disabled and predominantly low income earners.
- The costs of imposing complex subsidy entitlement rules or means-testing arrangements, for both the OPC and its clients.
- The benefits of a simple fee structure, given the nature of the OPC's client base, especially its directly managed clients.

5 Chargeable assets exclude principal place of residence and household contents, motor vehicle, accommodation bond, antiques and jewellery.

- Data limitations which frustrated attempts to fully identify and quantify the costs of the OPC's specific services; the cost of discrete client groups; clients' capacity to pay; and the full extent of cross-subsidisation.

In principle, IPART considers that cross-subsidisation among the OPC's clients should be avoided. However the principle that any subsidy should generally be provided by the broader community needs to be balanced against the availability of taxpayers' funds.

In IPART's view, a fee-for–service structure with appropriate subsidies or rebates for those with diminished capacity to pay would best resolve the anomalies and inequities inherent in the OPC's current fee structure. As well as being fairer, a subsidised fee-for-service fee model would also promote greater efficiency, by signalling to the OPC and its clients the actual resource costs of the various services being provided. However, despite investigating several possible fee-for-service models, and variants of these, IPART is currently unable to develop a suitable structure for the OPC.

Practical considerations

The practical difficulties IPART has encountered in developing fee-for-service charges for the OPC arise in part from the lack of sufficiently detailed costings of the OPC's services and also from the variability in client needs and in the levels of need. It is difficult, for example, to set fees that are based on the average cost of a particular service when there is a wide dispersion or spread of actual costs because of the differing intensities of individual client need. To apply uniform cost-based fees in these circumstances would itself lead to cross-subsidisation with high-need clients effectively being cross-subsidised by low-need clients.

The OPC's accounting and management information systems are not currently able to quantify the costs of the services it provides in sufficient detail to support realistic cost-reflective fees. Currently available information only permits costings for highly aggregated bundles of services and categories of clients with widely ranging needs and levels of need.

Modifying existing fee structures

Given these practical difficulties, IPART believes the best available option is not to move to a fee-for-service structure at this stage but to modify the existing fee structure to reduce cross-subsidisation. However, IPART believes that enhancements to the OPC's accounting and management information systems are essential and that with better information the feasibility of adopting a more cost-reflective fee structure should be reconsidered in a future fee review.

The need for increased Government funding

IPART believes that Government funding for the OPC should be increased from the amount of $2.8 million that was provided in 2007/08 to $10.6 million in a full year (2008/09 values). This increase of $7.8 million is comprised of:

- $3.3 million required to restore the OPC to a sustainable financial position, in the absence of any changes to fees, given the earlier cuts in Government funding and the lower contributions to the OPC's revenue from investment markets in current circumstances.
- $4.5 million attributable to the recommended fee reforms. These reforms are needed on social policy grounds to rectify inequities in the current fee structure. The proposals do not incorporate any significant across-the-board deepening in client subsidies. The existing management percentage fee rates remain unchanged below the recommended caps which are designed to reduce the extent of over-recovery and cross-subsidisation from a range of existing clients.

The level of subsidy recommended is not unreasonable by historical standards and by comparison with available information for other jurisdictions.

1.1 Purpose and scope of review

The purpose of this IPART review was to examine the fees charged by the OPC and to recommend a clear, fair and transparent fee structure.

In this context, 'clear' means that the fees should be readily understandable by clients or their representatives and advocates, and that the fee structure should not be unnecessarily complex or difficult to explain.

'Fairness' has been interpreted by IPART in two senses. It means that clients with the capacity to pay should not systematically pay more for the services they receive than those services cost to supply (in other words, should not cross-subsidise services provided to other clients). It also means that clients with limited capacity to pay should not be burdened beyond that capacity.

'Transparent' means that the fees charged are publicly available and that there are no hidden fees or unexpected expenses for clients when they are billed for the OPC's services.

In this review, IPART was required to review the OPC's costs and the extent to which the OPC recovers costs from various client groups. It was also required to consider the OPC's capacity to achieve full cost recovery given the nature of its services and its clients and to calculate any shortfall in revenues relative to costs.

As required by the Terms of Reference (reproduced in full in **Appendix A**), IPART was also to consider how any shortfall might be funded and whether continued regulation of fees would be necessary.

1.2 Overview of key findings

IPART's key findings are as follows:

- Full cost recovery is not feasible for the OPC. Indeed, the OPC's current cost recovery levels should be reduced to redress inequities that are inherent in the current fee structure. This requires a significant increase in the Government's annual subsidy contribution.
- A client's capacity to pay should continue to be a key factor in determining the OPC's fees. This finding results from considering how best to reflect the extreme social disadvantage of those who make up the OPC's client base and the Government's social policy objectives in the fee structure.[6]
- Cross-subsidisation of some of the OPC's clients by other clients should be avoided wherever possible, allowing for the application of competitive fees for financial investments. This finding results from considering how best to reflect the criterion of fairness in the fee structure.
- Separate fees should apply to the OPC's directly managed clients and to its privately managed clients. This finding results from a consideration of the different asset and income bases on which fees may feasibly be levied.
- IPART's recommended changes to the OPC's fees for directly managed and privately managed clients will make a practical and significant improvement to the current fee structure. The changes are practical in that they are neither complex to implement nor difficult to understand. They are significant because they will reduce cross-subsidisation and promote fairness.
- Fee structures that are more equitable and transparent may be possible once the OPC's databases become more comprehensive and focused on elements essential to a fees review, such as relevant client groupings and related data on capacity to pay, costs and revenues. Some cross-subsidisation may persist in practice between client groups and it certainly will remain within those groupings where there is wide dispersion of the services used by clients.
- The shortfall resulting from these findings should be funded by the NSW Government in such a manner that it provides the OPC certainty of funding over several years. Funding should be indexed annually but adjusted for an efficiency dividend and for any fluctuations in interest income and the surplus generated by the OPC's investment management activities. The latter is subject to the vagaries of the financial markets and may be lower in future years. In return, the OPC should be held accountable for achieving a suite of key performance indicators (KPIs) agreed between it and the Government.
- The 0.5 per cent investment fee should not be changed. The form of this fee is consistent with current practice in the funds management industry and the level of the fee is not unreasonable compared with fees charged by other managers.

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6 See NSW Government, *A Social Program Policy for NSW Government Trading Enterprises*, July 1994. While this applies to GTEs, a number receive significant Budget subsidies. The policy is relevant when considering the approach to the OPC's funding.

- Considering the vulnerable nature of the client base and the legislated monopoly position for all but high net worth clients, the OPC's fees should continue to be regulated.
- The OPC's fees should be reviewed in two stages: a limited mid-term review and a full review in five years time. The aim of the mid-term review would be primarily to re-assess privately managed fees in the light of the better data on capacity to pay, costs and revenues that would result from upgrades to the OPC's financial and management information systems. The review should be conditional upon the development of those systems and the OPC may require urgent additional capital funding to accomplish a systems upgrade.
- Improved information is essential to enable a full consideration of the OPC's fee structure in any future review.

To arrive at these key findings, IPART drew heavily on information provided by the OPC, undertook a process of public consultation and conducted its own research. Details of the review process are set out in Box 1.1.

Box 1.1 Review process

IPART undertook this review under Section 9 of the *Independent Pricing and Regulatory Act 1992*. As part of its review process, it conducted public consultation and its own analysis. More specifically, it has:

- posted on its website working papers relating to previous reviews of the OPC fees by IPART and other parties
- released an Issues Paper in June 2008 and invited submissions from all interested parties (a list of those who made submissions is provided in **Appendix B**)
- posted an analysis of the OPC's 2006/07 costs undertaken by Ernst and Young on IPART's behalf
- conducted a Public Roundtable discussion on 7 August 2008 (a list of attendees is provided in **Appendix B**) and posted a transcript of that discussion on its website shortly thereafter
- posted an analysis of the OPC's budgeted 2008/09 costs undertaken by Ernst and Young on IPART's behalf
- considered all the submissions and analysed the information it received before reaching the recommendations contained in this report.

1.3 List of recommendations

1 That the annual cap on the management fee for directly managed clients be lowered from $50,000 to $15,000. 34

2 That the cap on the establishment fee be raised from $2,200 to $3,300. 35

3 That the current four per cent annual income fee for privately managed clients be capped at $2,000 per annum. 36

4 That for privately managed clients:
- The existing 50 per cent threshold test for pension income be removed from 1 January 2009.
- In future, all Centrelink, Department of Veterans' Affairs and any overseas pension (equivalent to a Centrelink pension) income up to the level of the Centrelink Single Aged Pension be exempt from the four per cent income fee.
- Any allowances relating to Centrelink and Department of Veterans' Affairs pensions also be exempted from the four per cent income fee. 37

5 That the $100 accounts fee be amended to be $100 for simple accounts and that the fee be increased to $200 or $300 for accounts of greater complexity (as determined by the OPC). 37

6 That the new fee structure and associated funding be implemented on 1 January 2009. 42

7 That a total subsidy of $8.4 million be provided for the OPC in 2008/09, based on a full year subsidy level of $10.6 million. 43

8 That the following six high-level KPIs be part of the first multi-year funding arrangement:
- The setting of measurable major milestones in the OPC's strategic and corporate goals and periodic assessment of progress towards those goals (by June 2010).
- Development of a management information system capable of costing services and supporting strategies to improve services and increase productivity (by June 2010).
- Development of efficient cost benchmarks (by June 2010).
- Development of client service standards (by June 2010).
- Measures of responsiveness to clients' requests/needs (starting with timeliness, progressing to quality).
- Client and stakeholder satisfaction as measured by independent surveys and number of complaints and appeals. 45

9 That a rolling four-year funding agreement between Treasury, the Attorney General's Department and the OPC be implemented in which $10.6 million be the annual base for the period 2008/09 to 2011/12, from 1 January 2009. The $10.6 million should be adjusted each year for:

- changes in the CPI for Sydney
- changes in client numbers and
- an efficiency factor of 1 per cent.

In addition, the base should be adjusted to reflect any movements in the OPC's interest income of $1 million and in the surplus within Unit Registry of $4.4 million, both estimated for 2008/09 (with the surplus net of counterparty and the OPC's costs). For its part, OPC is to demonstrate satisfactory performance in terms of a defined list of KPIs (as specified in Recommendation 8) on which it reports annually. 45

10 That the OPC's financial and management information systems be upgraded as a matter of urgency so that they can generate the information essential for full consideration of the OPC's fee structure in any future review. 45

11 That the fees charged by the OPC continue to be regulated. 46

12 That a full review of the OPC's fees be conducted again in five years, with the review ending in June 2013. IPART also recommends that a mid-term review be conducted primarily to re-assess private management fees in the light of better data on capacity to pay, costs and revenues that should result from upgrades to the OPC's financial and management information systems. The review would be conditional upon the development of those systems. The mid-term review should conclude by December 2010. 47

13 That all dollar amounts in the recommended fee structure - the caps on the management, establishment and income fees and the account fees – should be adjusted for annual changes in the CPI for Sydney. 47

IPART's recommended fee structure for directly managed and privately managed clients, and how it differs from the present structure are shown in Table 1.1.

Recommended and current fee structures

Table 1.1 Comparison of OPC's current fees and IPART's recommended fees

	OPC's Current fees	IPART's recommended fees
Directly managed clients		
	FIRST YEAR FEE ▼ 1.0% of chargeable assets (up to a maximum of $2,200)	ESTABLISHMENT FEE ▼ 1.0% of chargeable assets (up to a maximum of $3,300)
	MANAGEMENT FEE ▼ 1.1% of chargeable assets pa (Total first year and annual management fee capped at $50,000)	MANAGEMENT FEE ▼ 1.1% of chargeable assets pa (Management fee capped at $15,000)
	INVESTMENT FEE ▼ 0.5% of the value of investments in OPC funds pa	INVESTMENT FEE ▼ 0.5% of the value of investments in OPC funds pa
Privately managed clients		
	INCOME FEE ▼ 4.0% of income (Income excludes government pensions and allowances subject to qualifying conditions and upper limits)[a]	INCOME FEE ▼ 4.0% of income (up to a maximum of $2,000) (Income excludes government pensions and allowances subject to upper limits)[b]
	ACCOUNTS FEE ▼ Up to a maximum of $100	ACCOUNTS FEE ▼ $100 for simple accounts ▼ $200-$300 for more complex accounts
Other fees applicable to all clients		
	▼ Deduction of amounts paid to third parties, such as banks, solicitors and authorised visitors, engaged on behalf of the client.	▼ Deduction of amounts paid to third parties, such as banks, solicitors and authorised visitors, engaged on behalf of the client.

a Currently if a Government pension or a Department of Veterans' Affairs pension, and including an overseas pension equivalent to a Centrelink pension, makes up at least 50 per cent of the protected person's total income, then the amount of the pension received up to the equivalent of the maximum rate of the current Centrelink Single Aged Pension plus, if payable, pharmaceutical allowance, mobility allowance, rent assistance and telephone allowance is not included as income.

b As per Recommendation 4.

Source: OPC; IPART.

The key change to the fee structure for **directly managed** clients is that the cap of $50,000 on the management fee has been lowered to $15,000. This lower cap will significantly reduce the degree of cross-subsidisation by high net worth clients, which IPART estimates at around $3.1 million per annum.

The key change to the fee structure for **privately managed** clients is to introduce a cap of $2,000 on the income fee and to exempt all pension payments from income fees, up to the level of the Centrelink Single Aged Pension. As with the management fee for directly managed clients, the cap will significantly reduce the amount of cross-subsidisation by high net worth clients which IPART estimates at around $1.4 million per annum.

1.4 Structure of the report

This report is structured as follows:

- Chapter 2 describes the characteristics of the OPC's clients and the services they receive
- Chapter 3 examines the OPC's revenues and costs and discusses the extent to which the current fee structure recovers the costs of services both in aggregate and for different client groups
- Chapter 4 explains IPART's recommended fee structure and the approach it took to arrive at this structure
- Chapter 5 discusses the implications of the proposed fee structure for the OPC and the Government, describes the issues associated with implementing the new fee structure and considers other matters set out in the Terms of Reference.

2 OPC's clients and services

The Office of the Protective Commissioner (OPC) manages the *financial interests* of its clients while the Office of the Public Guardian, established under the *Guardianship Act 1987*, makes decisions that enhance the *personal and lifestyle interests* of its clients. The positions of the Protective Commissioner and the Public Guardian[7] are held by the same person, but each office is functionally independent of the other. Each has separate staff and is governed by separate legislation.

In other States and Territories, the functions carried out in New South Wales by the OPC are performed by agencies that are the equivalent of the NSW Public Trustee.

This chapter describes the OPC's clients and the services they require.

2.1 OPC's clients

The OPC does not solicit for, or control the number of, its clients. It is *assigned* to be a client's legal financial manager by either the Supreme Court of New South Wales (Supreme Court), the Guardianship Tribunal (GT), the Mental Health Review Tribunal (MHRT) or a magistrate of the Local Court of New South Wales. About 80 per cent of the OPC's clients are assigned to it by the GT, and about 10 per cent from the MHRT. Only four per cent of its clients are assigned to the OPC by the Supreme Court; these clients are often individuals awaiting settlement of large damages claims.[8]

The Supreme Court and the GT may also appoint a private manager (a family member, friend or private trustee company) as financial manager.[9] In these cases, the OPC is required to ensure that the private manager follows agreed procedures that protect their client's financial interests.

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7 The NSW Public Guardian is a public official who can be appointed by the NSW Guardianship Tribunal to be the guardian of a person (16 years and over) with a disability when there is no other person suitable or able to be the guardian.

8 OPC, *Annual Report 2007*, p 11.

9 Anyone with a concern about another person's ability to make financial decisions can make an application to the GT. The GT must consider whether that person is able to make financial decisions for themself, and if not, who should be responsible for making them. Voluntary patients in a psychiatric hospital or psychiatric ward may also request that the Protective Commissioner manage their financial affairs. Before doing so, the OPC must be satisfied that no other means of managing a person's estate is feasible and appropriate.

The number and characteristics of the OPC's clients can be considered from several different perspectives, including type of management order, disability, age, income and assets.

By type of management order, as at July 2008, the OPC had:

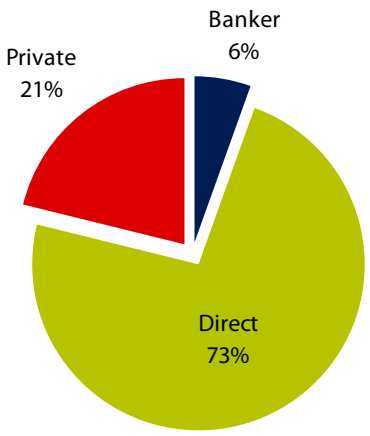
- 8,876 **direct** clients (directly managed clients); that is, clients whose financial affairs are managed directly by the OPC
- 2,549 **private** managers responsible for other individuals (privately managed clients) to whom the OPC gives authorisation and direction, with annual accountability.

The OPC also has 713 clients of the Department of Ageing, Disability & Home Care (DADHC) for whom it acts as **banker** (provides banking services) but whose financial affairs it does not formally manage ('banker clients').[10]

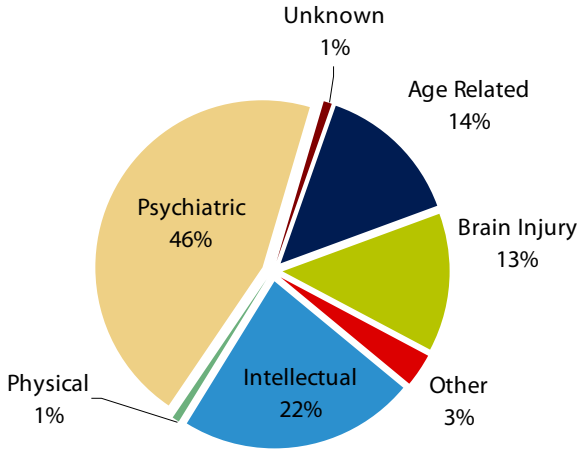
In all, as at July 2008, the OPC had 12,138 'accounts' to manage. The break-up of clients by financial management order is shown in Figure 2.1a.

Figure 2.1 OPC's client profile (as at July 2008)

a. Clients by financial management order



b. Clients by disability



Data source: Data provided by the OPC, July 2008.

[10] Information provided by the OPC, July 2008. Chapter 3 describes the functions performed by the OPC for its clients. The OPC may also be appointed by the Supreme Court as the financial manager of the estates of missing persons. The OPC was unable to provide data on the number of missing persons in its client base.

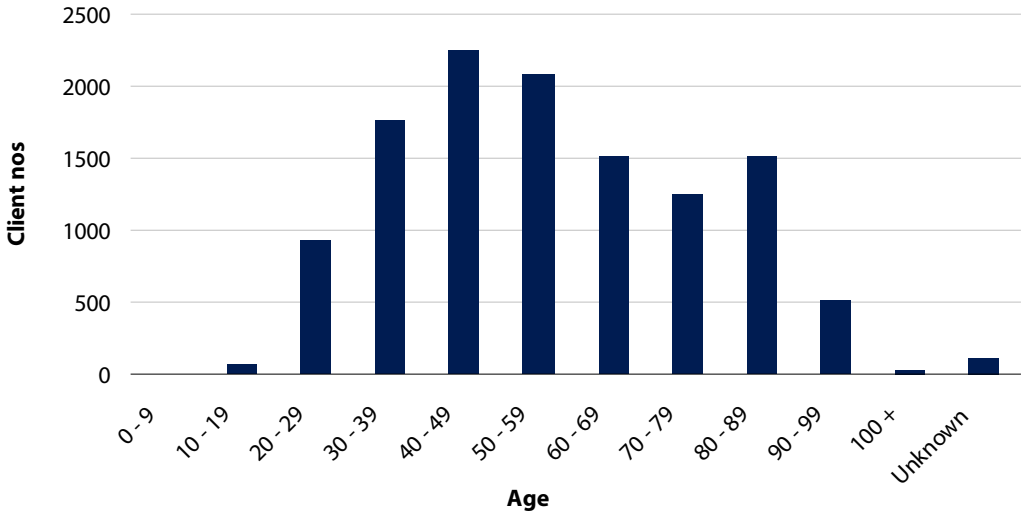
Viewed by disability, the OPC's clients are very diverse. The majority of its clients suffer from psychiatric disorders, brain damage or intellectual disabilities (Figure 2.1b). The severity of, and the incapacity caused by, their disabilities also varies widely.

This means that the OPC must address a broad range of needs. As a result, the cost of the OPC's services to clients is not simply related to the activities performed by the OPC's staff on behalf of those clients but also the time taken to decide what services should be provided.

The range and degree of disabilities create relationships which are difficult to manage, both from the OPC's point of view and that of its clients. The OPC is also obliged under section 50 of the *Protected Estates Act 1983* to consult the client and their family members before making a significant decision on the client's behalf.

By age profile, the number of the OPC's clients fluctuates significantly from year to year as additions from the issue of new financial management orders are offset by the issue of revocations of other orders and by the death of clients. In 2006/07, for example, there was an 'inflow' of 1,647 new clients and an 'outflow' of 1,142. These flows represented 15 per cent and 10 per cent, respectively, of the total client base of the OPC as at 30 June 2007.[11] (If such turnover continued steadily across the whole client base, the OPC would have a completely new set of clients every seven to ten years.)

Figure 2.2 OPC – Number of clients by age groups (as at April 2008)



Data source: Data provided by the OPC, May 2008.

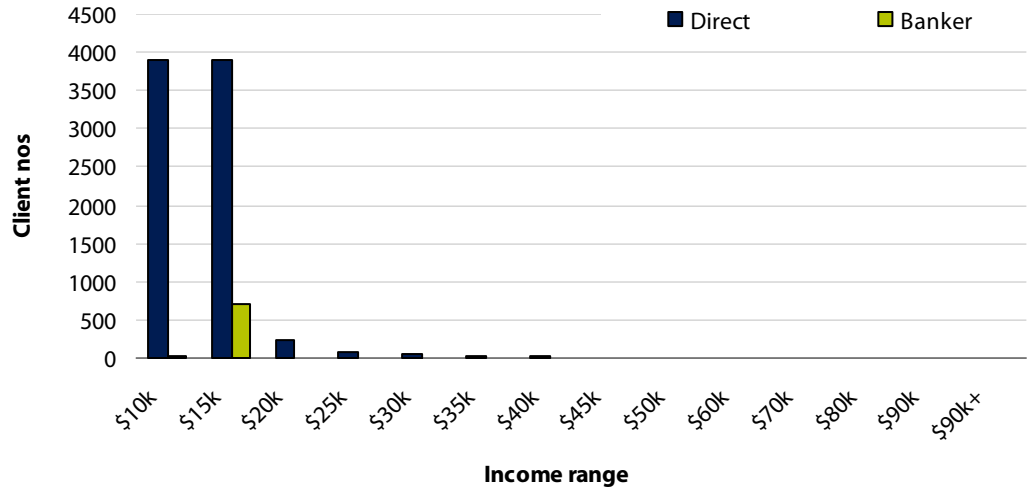
11 OPC, *Annual Report 2007*, p 11.

There are relatively few revocations of financial management orders. For example, in 2006/07, the number of clients who had orders revoked as a percentage of total clients was 2.2 per cent. By contrast, the number of deaths was 882 clients, or eight per cent of the total client base. This pattern is likely to continue, since around 17 per cent of the OPC's clients are aged 80 years or over (Figure 2.2).

By income, many **directly managed** and **banker clients** are in society's lowest income brackets. Few have incomes in excess of $20,000 per annum.

Directly managed clients are principally dependent on income support through Centrelink and/or the Department of Veterans' Affairs (DVA). Most, if not all, banker clients also depend on Centrelink income support in the form of aged and/or disability pensions and mobility and other allowances. Few banker clients have sufficient assets to generate significant income from investments.

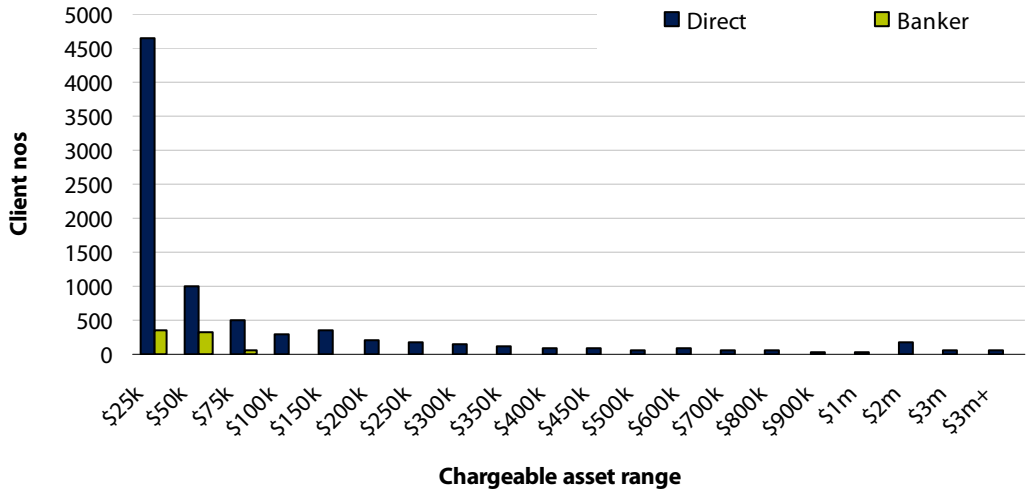
Figure 2.3 OPC - Directly managed & banker client numbers by income (as at July 2008)



Data source: Data provided by OPC, July 2008.

By size of asset holdings, most directly managed clients have assets worth less than $30,000. For the banker clients, most have assets under $40,000.

Figure 2.4 OPC - Directly managed & banker client numbers by asset value (as at July 2008)



Data source: Data provided by the OPC, July 2008.

Asset and income profiles of the OPC's privately managed clients are not readily available. Records of total assets and income are largely maintained on a manual rather than an electronic system. Up to a quarter of privately managed clients have some funds invested with the OPC. During the review, the OPC compiled income data showing that over half of its privately managed clients have incomes below $15,000 while around 77 per cent have incomes below $30,000. Only five per cent have incomes above $100,000.

2.2 OPC's services

The OPC performs a complex range of services tailored to its clients' needs. One way to consider its services is to focus on its two broad client types - directly managed and privately managed.

The tasks undertaken on behalf of the two client streams vary considerably. For directly managed clients the OPC, in effect, attempts to stand in the client's shoes and make decisions on their behalf. For privately managed clients, the OPC's role is to provide authorisations for, and ongoing monitoring of, the private managers.

2.2.1 Services to directly managed clients

In its submission to IPART, the OPC has provided a long list of the activities and tasks it undertakes in the service of its directly managed clients. The list involves up to nine functions related to establishing a client within the OPC's framework and up to 28 functions related to the ongoing management of that client.

The full '9/28' list is reproduced in **Appendix C**. It is based on the first two of the three major stages of a client's time with the OPC, those stages being:

- establishment of new client
- ongoing management of client's financial affairs
- finalisation.

The OPC has provided over 300 directly managed clients with the authority to manage part of their estates. This authority mainly applies to wages and salaries from supported employment and/or Centrelink payments. This authority gives clients some independence to manage their financial affairs. It also enables them to demonstrate that they have regained the capacity to manage their affairs as a precursor to a formal application to revoke a financial management order.

2.2.2 Services to privately managed clients

For privately managed clients, the OPC's list of services and tasks is much shorter (listed in **Appendix C**). The OPC directs and authorises activities and actions of private managers with regard to their management of the protected person's financial affairs, and monitors the ongoing performance of private managers generally.

There is, however, a wide range in the circumstances of privately managed clients. Some are managed to high professional standards by relatives or by trustee companies while others do not enjoy access to the same level of financial management and investment expertise. As a consequence, the assistance required from the OPC can vary widely from client to client.

2.2.3 Services to banker clients

The OPC's role with regard to its 713 banker clients is limited. It holds funds for some who live in large residential facilities operated under the auspices of DADHC. The OPC liaises with the managers of the facilities to ensure that accommodation and other expenses are paid at their request. The OPC neither actively manages banker client estates nor has authority to make decisions relating to property or legal matters. The banker clients are gradually being transferred to formal financial management orders through applications to the Guardianship Tribunal.

2.2.4 Funds management services

The OPC makes an investment management service available to all clients. Under a commercial arrangement with State Street global funds managers and custodians BNP Paribas, the OPC invests client funds across eight separate funds, each with their own earnings and risk profile.

2.3 Range and quality of services

There is a large social welfare element in many of the tasks performed by the OPC, especially for its directly managed clients, in the sense that, in a strictly commercial environment, many of the services would simply not be performed, or at least not performed to a standard that clients would find acceptable.

The range and quality of the services provided are generally important considerations when assessing the reasonableness and efficiency of the costs incurred in providing those services. In submissions to IPART, and at the Roundtable, many stakeholders argued that the quality of the OPC's services was below their expectation. Some raised concerns about efficiency while others advocated additional resources, both staff and offices, to achieve improvements in the quality of the services.

IPART found it difficult to establish appropriate benchmarks for assessing the efficiency of the OPC's operations. IPART notes that the rate of growth in the OPC's costs has been less than the combined growth in inflation and the growth in client numbers in the period since 2003/04, as indicated in section 3.1.2. Nonetheless, the question of the efficiency of the OPC's costs should be more fully considered in future reviews of the OPC's fees as improved data become available.

In deciding on the quality of its services, the OPC faces the same dilemma as do all service providers, but it is more acute in a protective jurisdiction where client need often exceeds the bounds of everyday experience.

2.3.1 OPC's new service structure for directly managed clients

The OPC itself has been dissatisfied with its operations in recent years, following an ultimately unsuccessful 2006 restructure. A further restructuring of services to directly managed clients was undertaken in August 2008 which seeks to raise its service quality.

To do this, the OPC has assembled its clients into groups that reflect the levels and types of services that they are likely to need. The OPC has then assigned staff into various teams to manage the affairs of their allocated clients.

For example, IPART understands that the majority of the OPC's directly managed clients will now deal with one of the **Primary Service** teams. If clients have a particularly important matter that needs to be resolved, they will have an individual staff member assigned to that matter (and client) until it is resolved.

Other clients, who live in supported accommodation and who do not have complex estates or significant conflict that has to be managed, deal with the staff of the **Supported Accommodation** team.

For some clients, more intensive management is required. These clients include:

- all new clients in the initial period after a financial management order is made
- clients in circumstances where there is ongoing and significant family conflict and
- clients that exhibit challenging behavioural problems or where ongoing complex estates are involved and which cannot be managed by one of the other teams.

The staff members assigned to manage financial matters in these cases form the **Intensive Support** team. The clients it services include new clients who are inducted through the *Intake* section and those who regularly attend either the OPC's *Clarence Street* or *Parramatta Justice Precinct* offices.

Appendix D contains a diagram of the OPC's new structure.

3 OPC's revenues and costs by client groups

This chapter considers the full costs of providing the OPC's services to its different client groups and the extent to which the current fee structure recovers the costs of providing those services.

It examines the full costs of the OPC's services, and the revenues generated from the current fee structure, in three ways. First, it examines the trends in costs and revenues annually since IPART's 2003 review. Second, it considers how costs and revenues might be broken up between the different client groups of the OPC for 2006/07 which is the latest year for which audited accounts were available at the time of the review. Finally, it repeats the same exercise with more finely classified client groupings using the OPC's 2008/09 budget.

Costs and revenues from the OPC's accounts had to be reworked into categories that aligned with the OPC's service areas and client groups so that estimates of costs and revenues per client or per client group could be made, as required by the Terms of Reference. Having such data is also essential if fees are to be levied in a manner which is related to the cost of the services clients receive.

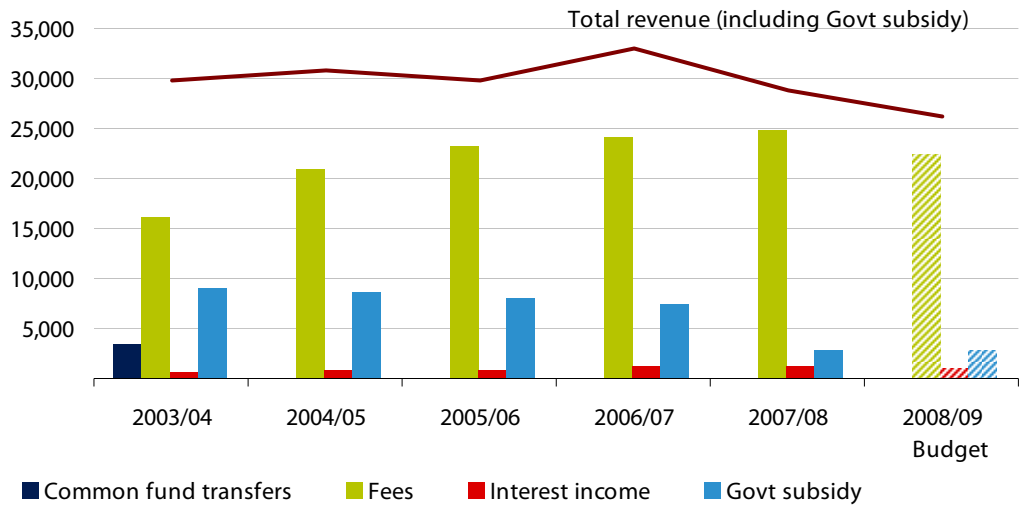
3.1 OPC's revenues and costs since 2003/04

3.1.1 OPC's revenues

The OPC has three main sources of revenue – fees that are related to clients' incomes, assets and services; interest revenue and Government subsidy.[12] The major sources of revenue since 2003/04 are depicted in Figure 3.1.

12 In the past, under clause 55 of the *Protected Estates Regulation 1995*, (since repealed) the OPC was able to cover revenue shortfalls by making transfers from interest earned on the Common Fund. The 2003 IPART Review identified this practice as a major source of cross-subsidy and recommended that reliance on Common Fund transfers be reduced.

Figure 3.1 OPC revenue by source ($,000)



Note 2007/08 data are actual but unaudited, 2008/09 data are budget forecast figures provided by the OPC, July 2008. The lower total revenue in 2005/06 reflects $2.5 million returned to clients.

Data source: Data provided by the OPC, June 2008.

Revenue from fees

Revenue from fees is derived from assets, income and services. In 2007/08 total revenue from these sources was $24.8 million (Table 3.1). Total revenue from fees grew strongly in the two years following the introduction of a new fee structure in 2004/05 as did investment income. That fee structure, which is still in use, is shown in Table 3.2. Fee revenue was relatively flat in 2007/08, a reflection of the falls in investment markets from late 2007. On present indications, the outlook for the investment markets is likely to be less buoyant in 2008/09, and possibly beyond, than in the period 2004 to 2006.

Table 3.1 OPC operating accounts ($,000)

	Actual 2003/04	Actual 2004/05	Actual 2005/06	Actual 2006/07	Actual 2007/08
Revenue					
Common fund transfers	3,386	0	0	0	0
Fees	16,285	21,046	23,267	24,285	24,771
Other	1,094	1,054	1,075	1,251	1,291
Refund of investment fees			-2,500		
Total Revenue	**20,765**	**22,100**	**21,842**	**25,535**	**26,063**
Expenses					
Personnel services	16,721	16,766	15,278	19,703	19,591
Depreciation	1,987	1,806	2,112	2,298	2,796
Other operating expenses	5,810	7,234	7,110	6,448	7,188
Total Expenses	**24,519**	**25,806**	**24,500**	**28,449**	**29,575**
Deficit before Gov't subsidy	**3,755**	**3,706**	**2,658**	**2,914**	**3,512**
Government subsidy	9,000	8,616	7,918	7,432	2,825
Surplus (+) / deficit (-)	**5,245**	**4,910**	**5,260**	**4,518**	**(687)**

Data source: Data provided by OPC, July 2008. Some figures may not add due to rounding.

In relation to fees on *assets*, there are three types. The first is a *management fee* that is levied on directly managed clients and banker clients. For directly managed clients, the management fee is charged at 1.1 per cent of the value of a client's 'chargeable assets'.[13]

There is also an additional charge in the first year calculated at 1.0 per cent of chargeable assets, but capped at $2,200. Banker clients are only charged the management fee of 1.1 per cent, and it is only applied to the value of client funds under the OPC's management.

[13] Chargeable assets exclude principal place of residence and household contents, motor vehicle, accommodation bond, antiques and jewellery.

Table 3.2 Current fees charged by the OPC

Service area	Fees	
Directly managed and banker clients	1. Management fee	▼ 2.1% pa on chargeable assets for first year* ▼ 1.1% pa on chargeable assets thereafter ▼ Total fee capped at $50,000 in any year. ▼ Includes preparation of financial management plan and tax returns.
	2. Investment fee	▼ 0.5% of the value of investments with the OPC.
	3. Other fees	▼ Disbursements paid to third parties, e.g. banks, authorised visitors, and solicitors engaged on behalf of the client.
Privately managed clients	1. Income fee	▼ 4% on the net annual income of the protected person.
	2. Investment fee	▼ 0.5% of the value of investment with the OPC.
	3. Accounts fee	▼ Not exceeding $100 per annum.
	4. Financial plan fee	▼ Varies depending on the complexity of the plan, but fees are fully reimbursed if the private manager invests funds according to the plan.

*The 2.1% management fee for first year clients is made up of the 1.1% annual management fee and an additional 1.0% first year fee. The 1.0% first year fee is capped at $2,200.

Source: OPC website.

From 1 July 2006 the Protective Commissioner capped the maximum management fees payable by a client in any year at $50,000. In 2007/08, the OPC collected $16.0 million in management fees. The introduction of the management fee cap recognised that some high net-worth clients were paying very large management fees.

The third type of fee calculated on assets is an *investment fee* which applies across the board to all clients with funds invested with the OPC. This fee is similar in nature to the fees levied by commercial funds managers. The fee is 0.5 per cent of the value of the client's investments with the OPC. The fee is not capped. Investment fee revenue varies with the size of the funds under management. In 2007/08, the OPC collected $6.5 million in gross investment fees.

In relation to fees on *income,* only privately managed clients pay an income fee. This is set at 4.0 per cent of net annual client income. In 2007/08, revenue from income fees was $2.3 million.

Directly managed and privately managed clients may also be charged a *service fee*, at the discretion of the Protective Commissioner, for any service considered to be "exceptional or additional".[14] Other services that attract fees usually relate to payments made to third parties, as noted in Table 3.2.

Since the 2003 IPART Review, revenue from fees has increased at an average annual rate of 11.1 per cent, partly because of changes in the fee structure and partly because of buoyant equity and property markets from 2003 to 2007.

The introduction of a management fee on assets meant that the OPC could charge fees calculated on the value of investment properties that, under the former fee structure, were not subject to fees. This resulted in a significant reduction in cross-subsidy to clients with investment properties, as such properties require far more administrative time than other investments with the OPC. Because of their expected impact on clients based on relatively high 2004 valuations, the management fee applicable to investment properties was phased in over three years. Client investment properties were again re-valued in 2007.

Interest income

The OPC's interest income, a relatively small component of total revenue, was $1.3 million in 2007/08. This is primarily the result of interest earned from short term investment in the money market.

3.1.2 Cost of operating the OPC

The OPC's expenses have fluctuated significantly from year-to-year in recent years (Table 3.1). The growth in total costs has averaged 4.8 per cent a year since 2003/04. This is less than the combination of average growth in client numbers of 3.3 per cent a year and general inflation of 2.7 per cent a year since 2003/04.[15] The major cost item is staff, currently at 66 per cent of total costs.

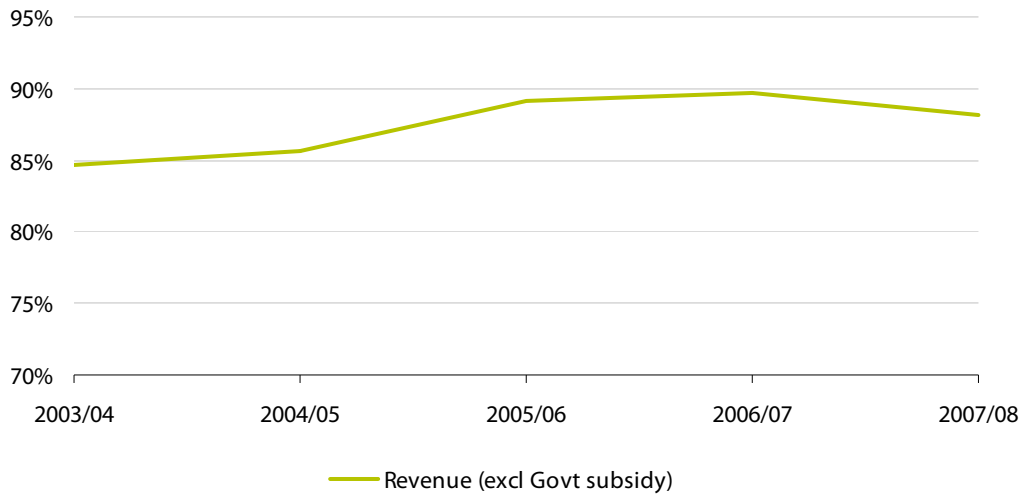
The rises in costs in 2006/07 and 2007/08 and the flattening out of the growth in fee revenues during those years have resulted in the OPC experiencing a sizeable shortfall of revenues relative to costs in 2007/08 (excluding Government subsidy).

14 OPC, *Policy on Fees Collection and Management*, V1.4, 9 April 2008, pp 3-4.
15 As measured by the rise in the Consumer Price Index for Sydney.

3.1.3 Cost recovery

The extent to which fees charged by the OPC in aggregate cover its annual operating costs can be calculated from the OPC's internal accounts by comparing the fee revenue it derives from clients plus other internal sources to its total costs. In 2007/08, for example, 88 per cent of the OPC's total cost of $29.6 million was recovered through fees and interest. Figure 3.2 shows how this 'cost recovery ratio' has changed over time.

Figure 3.2 Historical cost recovery ratios in the OPC



Data source: Data provided by the OPC, July 2008.

3.2 OPC's costs in 2006/07 and 2008/09

IPART drew on the consultancy services of Ernst and Young to analyse the OPC's costs. The consultant undertook a detailed investigation of the OPC's accounts for 2006/07. It then applied the same cost and revenue allocation methodologies to the 2008/09 budget to derive, where possible, similar costs and revenues by service area and client group.[16]

The full cost analyses, especially for 2008/09, provided valuable insight into the likely current cost of the OPC's services to various client groups and estimates of the average cost of those services per client within those groups.

16 Both reports by Ernst and Young are available on IPART's website under 'Other Industries'.

3.2.1 Full cost analysis and cost recovery in 2006/07

Costs for 14 high-level 'core' services and aggregate costs for directly managed and privately managed clients in 2006/07 are presented in Table 3.3. However, due to data limitations, it has not been possible to cost the full range of individual services provided by the OPC. Moreover, because of the complexity of many of the matters dealt with, and the varying intensity of individual clients' needs, actual costs for many of the OPC's services are believed to vary significantly from client to client and according to the particular circumstances involved. Some recommendations have been made for enhancements to current systems to provide more refined costing information in the future.

Ernst and Young were engaged to:

- perform a full cost analysis of the OPC's services
- measure the degree of cost recovery in the OPC by client groups and by service
- outline the practical steps involved in implementing an activity based costing system in the OPC.

A copy of Ernst and Young's report[17] is available on IPART's website.

This cost analysis was based on the OPC's most recent audited financial accounts, being the financial year ended 30 June 2007. It was considered that using audited figures for the 2006/07 financial year would produce more reliable and robust results than using unaudited 2007/08 year-to-date figures.

Ernst and Young found that it was not practical to attempt to cost each of the '9/28' services provided by the OPC. Instead, a number of core services that the OPC provides to its clients were identified. These services matched the OPC's organisational and cost centre structure at that time (which predates the 2008 restructure), thus allowing costs to be aggregated to services with a sufficient degree of confidence. These core services are referred to as Responsibility Centres.

The OPC's cost structure is divided into numerous cost centres which to a certain extent reflect its organisational structure in 2006/07. All costs incurred by the OPC are charged directly to the relevant cost centre or allocated to the cost centre by staff numbers. Ernst and Young identified the Responsibility Centres and their respective costs in the following way:

- identifying costs centres from the OPC's accounting system
- allocating costs centres to a responsibility centre
- identifying whether the responsibility centre is a direct or indirect cost
- allocating indirect costs to direct costs and

17 Ernst and Young, *Full cost review of services of the Office of the Protective Commissioner – 2006/07 costs*, 1 July 2008, hereafter Report on the OPC's 2006/07 Costs.

- allocating costs to direct responsibility centres or core services.

Table 3.3 OPC costs by core services, 2006/07

Responsibility Centre	Direct Costs ($)	Indirect Costs ($)	Over-heads ($)	Total fully allocated costs ($)	Total (%)
Liaison & Co-ordination	4,580,030	1,593,393	896,872	7,070,295	25%
Intake	577,250	256,439	175,930	1,009,619	4%
Finalisation	159,850	48,139	31,702	239,691	1%
Client Service Centre	934,115	272,253	389,420	1,595,788	6%
Private Management Support	1,597,723	526,240	390,566	2,514,529	9%
Budgets & Expenditure	1,856,337	799,006	456,812	3,112,155	11%
Legal Services	1,052,183	424,324	206,586	1,683,093	5%
Property Services	1,586,030	661,763	512,982	2,760,775	10%
Disability Advisory Services	858,512	307,582	194,546	1,360,640	5%
Investment- Funds Management	269,887	495,081	62,787	827,755	2%
Investment- External	175,461	48,554	31,028	255,043	1%
Financial Planning	596,484	287,147	129,064	1,012,695	4%
Taxation Services	357,514	214,952	81,216	653,682	2%
Client Trust Accounts	2,185,964	1,351,844	416,943	3,954,751	14%
Excluded[a]	0	398,509	0	398,509	1%
TOTAL	16,787,340	7,685,225	3,976,454	28,449,019	100%

a Community education expenses that ought not to be allocated to the OPC's' existing clients or other services.

Source: Ernst and Young, Report on the OPC's 2006/07 Costs, p 3.

The costs reported in Table 3.3 reflect the 14 high-level 'core' services. Due to the lack of matching data on clients' usage and/or transactions per service, it was not possible to determine the cost per client or the cost of specific individual services. Had that information been available, it would have provided a basis for establishing a cost-reflective fee-for-service structure. IPART envisages that with improved information recording, future reviews will be able to assess costs per client and for services at a more refined level.

3.2.2 Full cost analysis and cost recovery in 2008/09

The OPC's budget for total costs in 2008/09 is $30.8 million. As directed by IPART, the consultant allocated those costs across four client groupings and two service areas in line with the OPC's new organisational structure.[18] The allocation was done in stages. First, the direct cost of the six groups/areas was estimated based on the labour cost of the staff that the OPC had allocated to each. Second, other indirect costs were also allocated based on staff numbers. Finally, the costs of operating a number of specialised areas were allocated to each group/area.

The fully allocated costs by each group/area were then divided by the client numbers in each group/area to derive an average cost of service per client for each of the four client groups and for one of the two services areas.[19]

As a result of this exercise (which is published on IPART's website), IPART refined the cost allocation in three ways, to better reflect the proportion of its total costs that the OPC would have to fund from fees generated from its client groups.

The first refinement was to split the clients being managed by the Intensive Support team into their three components – *Clarence Street*, *Parramatta Justice Precinct (*hereafter *PJP)* and *Intake* – because the services received and their costs differed significantly between the three components. Three average cost measures that reflected the services being provided to clients in each component provided information that would otherwise have been lost in one aggregated group.

The second refinement occurred because IPART decided that no separate, identifiable fee could reasonably be charged for the services of the OPC's *Assets* branch. This meant that its costs were re-allocated across the client groupings.

Finally, IPART observed that not all the OPC's costs need to be funded from revenue generated from its client groups. The OPC receives revenue from the 0.5 per cent investment fee charged by Unit Registry and from interest income. These general revenue amounts have therefore been netted off the costs that the OPC must cover from revenue from its client groups.

Costs by client group in the restructured OPC

The outcome of the cost allocation exercise is that it provided estimates of the net cost of servicing the various client groups of the OPC. These costs are shown in the first data column of Table 3.4, where the clients being managed by the Intensive Support team are divided into their three components.

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18 The four client groupings were Intensive Support, Primary Service, Supported Accommodation and Private Management. The two service areas were *Assets* and *Unit Registry*.

19 It was not possible to derive an average cost per client for the service area *Assets*. For details, see Ernst and Young Report on OPC's costs 2008/09, p 4.

The average cost of service per client by client group is found by dividing the fully allocated costs in each group by the number of clients in the group. The resultant average costs are shown in column (3). The average cost ranges from under $1,000 for privately managed clients as a group to around $13,000 for the small group of PJP regular clients.

However, not all these average costs are meaningful because the range of services used by clients within some or all of the groups may vary widely. It is likely that all clients in the groups known as *Clarence Street, PJP* and *Supported Accommodation* receive similar levels and types of services because of the way that the OPC has allocated them to each group. In their case, an average cost is a meaningful guide to the cost of serving most clients in each group.

But the clients grouped together in *Primary Service* seem to have widely different needs, depending on their particular circumstances which also change from time to time. The same appears to be true for the clients in *Private Management*, especially since the financial acumen of the private managers can also vary greatly from a trustee company to a caring relative who may, or may not, have financial management skills and experience.

Table 3.4 Cost recovery by client group (2008/09)

	Net Cost[a]	Number of clients[b]	Average cost per client	Revenue from fees	Shortfall	Cost recovery
	(1)	(2)	(3)	(4)	(5)	(6)
			=(1)/(2)		=(1)-(4)	=(4)/(1)
	$'000		$/client	$'000	$'000	%
Intake[c]	904	1,020	887	326	579	36
Clarence St	3,004	345	8,707	400	2,604	13
PJP	849	66	12,864	1,156	-307	136
Primary	13,938	4,726	2,949	9,565	4,373	69
Supported Accom.	3,985	3,523	1,131	4,392	-407	110
Directly Managed	**22,681**			**15,839**	**6,841**	**70**
Private Mgt	**1,812**	**2,549**	**711**	**2,465**	**-654**	**136**
Total	**24,492**			**18,304**	**6,188**	**75**

a Net cost in this table is net of internal revenue from interest income and investment fee surpluses.

b Client numbers are as at July 2008 except for *Intake* which is the number of clients processed by *Intake* in 2006/07 as cited in Ernst and Young, Report on the OPC's 2006/07 Costs, p 24.

c Budget revenue for *Intake* in 2008/09 is unavailable. IPART has used *Intake* revenue for 2006/07 adjusted by inflation and estimated client growth.

A fee-for-service approach to fee-setting, even if it were to be subsidised, would need to take account of the variation between the costs of servicing the different client groups in Table 3.4. However, as long as the degree of variation between the cost of servicing clients *within* some of the groups appears to remain large (especially for *Primary Service*, *Private Management* and *Intake*), IPART does not consider that such an approach would produce the fairness usually associated with fee-for-service pricing schemes.

Revenue by client groups

Other important information can be drawn from Table 3.4 by estimating the OPC's likely revenues for 2008/09 based on the current fee structure. The revenue estimates, shown in column (4), have been derived as follows:

1. Revenue for *Intake* has been approximated by taking the 2006/07 revenue estimate of Ernst and Young[20] and adjusting it for inflation. In principle, revenue should be estimated by applying the 1.0 per cent establishment fee to the asset holdings of the 2008/09 *Intake* clients, but their number cannot be reasonably estimated in advance.
2. Revenue from the 1.1 per cent management fee has been derived by applying it to the asset holdings of directly managed clients as at 2 July 2008. In effect, this calculation assumes that each client's asset values averaged over 2008/09 will equal their 2 July 2008 levels.
3. Revenue from the income and accounts fees for 2008/09 has been approximated by taking the total fees paid by privately managed clients in 2007/08 and adjusting for inflation.[21] In principle, the four per cent income fee and $100 accounts fee should be applied to the incomes of each privately managed client, but income data were not readily available at the time.
4. Revenue calculated in points 1 to 3 above has also been adjusted for the average annual growth in client numbers of 3.3 per cent.

Together with revenue generated from the 0.5 per cent investment fee – expected to be around $5.3 million[22] in 2008/09 – the OPC's total revenue this financial year is likely to be around $23.6 million. That is a little below the $24-25 million of recent years (Table 3.1), due largely to an expected decline in investment fee revenue in the face of depressed financial markets.

20 Ernst and Young, *Report on the OPC's 2006/07 Costs*, p 24.
21 At the Roundtable the OPC noted that private management revenue in 2007/08 was $2.34 million (Transcript p 30).
22 After allowing for external costs of funds management and custodian fees.

Cost recovery and an estimate of the size of the required subsidy in 2008/09

Given the estimates of revenue under the current fee structures, IPART derived estimates of the level of cost recovery by client groups and the size of the subsidy that would be required to fully cover the OPC's budget costs in 2008/09. The levels of cost recovery are shown in column (6) and the shortfall required in column (5) of Table 3.4.[23]

On this basis, cost recovery is estimated to be around 75 per cent for the OPC as a whole with unchanged fees in 2008/09, with widely differing levels of cost recovery across the client groups. Those differing levels reflect both the cost of services to each group and the revenue each generates under the current fee structure. The OPC must fund the gap between its revenues and costs.

Of course, the actual level of overall cost recovery will be different from any of the estimates presented in this chapter or the next one, for at least two reasons:

First, IPART has assumed certain outcomes for interest revenue and the OPC's investment fee surplus. It has assumed that interest received will be around $1.0 million (it was $1.3 million in 2007/08) and that the net surplus from its funds management activities will be $4.4 million (as it was in 2007/08). If interest received or the funds management surplus were to be lower than expected, the level of cost recovery would be lower and the level of the subsidy required would be correspondingly higher.

Second, the calculations in Table 3.4 are estimates only, based on reasonable, but uncertain, assumptions. Any number of events, such as an unexpected growth in the OPC client numbers or a cost overrun, may cause the actual outcome to diverge from these estimates.

[23] Note that the cost recovery ratios shown in Table 3.4, and referred to hereafter, are calculated on a **net** basis using fee revenue and costs net of internal revenue from Unit Registry and interest income. This calculation differs from the cost recovery ratios in section 3.1.3 which are based on **gross** revenue and costs.

4 Recommended fee structure

The previous chapter identified a number of the consequences of the current structure of the OPC's fees including the high level of cross-subsidisation. This chapter recommends changes to the structure and level of the OPC's fees in line with accepted principles of fee-setting. The fundamental objective is that the fees charged are clear, fair and transparent.

To achieve this IPART needed to balance a number of conflicting considerations:

- Minimising the extent to which the services provided to the financially less well-off clients are funded by other clients, all of whom are disabled.
- Balancing user pays principles against the community's reasonable social obligations, funded from tax revenue, to support the less advantaged in society. In the case of the OPC's clients, they are doubly disadvantaged, being disabled and predominantly low income earners.
- The costs of imposing complex subsidy entitlement rules or means-testing arrangements, for both the OPC and its clients.
- The benefits of a simple fee structure, given the nature of the OPC's client base, especially its directly managed clients.
- Data limitations which frustrated attempts to fully identify and quantify the costs of the OPC's specific services; the cost of discrete client groups; clients' capacity to pay; and the full extent of cross-subsidisation.

This chapter also analyses the implications of the recommended fee structure for the OPC's subsidy requirement from Government and the reasons why IPART believes that an increase in public funding from the low levels of recent years is justified.

The current commission-based fee structure, outlined in Chapter 2, is simple and straightforward to explain. The chief drawbacks are that:

- commissions paid are disconnected from the services rendered (which means that fees send no coherent price signals, either to the OPC or its clients, that might improve resource allocation within the OPC), and
- commissions paid can escalate well above the costs of providing the services to the clients.

IPART has addressed the second drawback by recommending a lower cap on the management fee and the introduction of a cap on the income fee. It has only been able to address the first drawback in a limited way, by making the establishment fee charged to directly managed clients and the accounts fee charged to privately managed clients more cost-reflective.

4.1 Principles considered in setting recommended fees

IPART kept four broad principles of fee-setting in mind as it sought to make the OPC's fees clear, fair and transparent. They are that:

1. Fees should reflect the **costs of providing the service** as far as practical, to minimise cross-subsidisation 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 clients 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. Clients 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 clients.
4. The criteria and process for assessing clients' **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).

4.2 Recommended fee structure

IPART adopted a two-stage process to reach its recommended fee structure. First, as presented in Chapter 3, it re-worked the OPC's current financial position so that it could better understand the costs of servicing each client group in the OPC's new structure and the fee revenues they generate. The re-working was confined to directly managed clients because data were available that enabled IPART to estimate the revenues and costs of each identifiable client group. No such breakdown of privately managed clients was possible.

The extent of the re-working of the directly managed client database at the OPC can be gauged by comparing the relative progress made by Ernst and Young on the OPC's 2006/07 accounts (when no client groupings were possible below the aggregate directly managed level) and the results for 2008/09 presented in Chapter 3.

Second, IPART considered various ways of setting fees under the OPC's 2008/09 organisational structure in line with the criteria set out in its Terms of Reference. In general, both IPART and the stakeholders who made submissions and participated in the Roundtable consider the current fee structure to be clear and transparent. But it fails to be fair because of large amounts of apparent cross-subsidisation. IPART therefore considered three approaches that would reduce the amount of cross-subsidisation in the current fee structure.

4.2.1 Subsidised flat fees

First, IPART considered setting fees to directly managed clients so that every client in a particular group would pay the same flat fee. The fee would be related to the subsidised cost of providing services to the group as a whole.

The attraction of this so-called "subsidised flat fee" approach is that it avoids the sort of cross-subsidisation that occurs when clients pay more than the average cost of servicing their group as a whole. Despite its appeal in principle and its use in some other jurisdictions, there are several considerations that weighed against a subsidised fee-for-service scheme in the case of the OPC.

First, the nature of the OPC's clients, especially those who are directly managed. They suffer from a range of disabilities that make it difficult for many of them to understand, let alone appreciate, the processes to which they are subjected.

Second, the approach took no account of *individual client* capacity to pay. As a result, flat fees that reflected the subsidised average costs of each group would have meant that substantially higher fees than at present would have been levied on those with the least capacity to pay.

4.2.2 Capping fees at cost of service

A second approach considered by IPART was to set fees on the basis of clients' capacity to pay but to cap fees at the costs of providing services to them. In practice, the only cost data available were the average costs per client group.

The approach has more merit than flat fees because it takes client capacity to pay explicitly into account. It also continues to recognise that efficiently set fees should be related to cost.

However, its chief weakness is that only *average* cost data are currently available by which to set the maximum cap that any one client might pay. Without data on the dispersion of client costs around the average, the assumption that the average could be used to set the maximum fee that any client would pay in each group would be unwarranted. Using the average in these circumstances would therefore have been an arbitrary choice.

A second weakness of this approach was that it generated a very large implicit subsidy because of the relatively low average costs estimated for several of the larger client groups.

A third drawback is that the level at which the cap is set would differ from group to group. If clients were re-allocated to a group with a higher average cost, the increase in the cap might prove difficult for the OPC's directly managed clients to understand and for the OPC to explain in simple terms.

4.2.3 Introducing or lowering existing caps in the current fee structure

This approach is a variation of the existing structure and is simpler and more readily understood by clients or their representatives.

Lowering the management fee cap below $50,000 for directly managed clients

In view of the flaws in the other approaches noted above, IPART decided that explicitly setting an arbitrary, uniform cap on the maximum management fee was the most straightforward approach to a fee structure that would be clear, fair and transparent. By leaving the fee set at 1.1 per cent of chargeable assets, capacity to pay was retained as a central feature of the fee structure. The lower cap ensures that the amount of cross-subsidisation would be significantly reduced.

IPART examined several alternative caps. For example a cap as low as $10,000 was considered in part because the 2003 study done for IPART by RSM Bird Cameron cited the highest level of care in the most demanding of disability categories as $9,108. In terms of 2008/09 dollars, that is around $11,000.[24]

In the end IPART decided, on the basis of the available information, to set the management fee cap at $15,000. At this level, the revenue collected from most of the client groups falls significantly. It may be possible to make finer judgements on the best level at which to set the cap to minimise cross-subsidisations, but not until better cost and revenue data by client groups become available.

Recommendation

1 That the annual cap on the management fee for directly managed clients be lowered from $50,000 to $15,000.

[24] If the $9,108 were adjusted by the rise in the Sydney CPI to mid-2008 plus an assumed 3.7 per cent rise for 2008/09, it would be $10,541.

Increasing the cap on the Direct Management establishment fee above $2,200

In 2006/07, the establishment fee generated revenue of around $290,000 but the cost of providing the services, as measured by the costs of the *Intake* branch, was close to $1 million (as shown in Table 3.3). Estimates for 2008/09 (Table 3.4) suggest a continuing low rate of cost recovery by the *Intake* branch. Participants at the Roundtable in general acknowledged that the cost of establishing directly managed clients within the OPC was often well in excess of $2,200 and several suggested that the cap could be increased.[25]

In order to better reflect the cost of providing the *Intake* services without diminishing the importance of capacity to pay in fee-setting, IPART decided to recommend that the cap on the establishment fee be increased from $2,200 to $3,300.

Although the recommendation to increase the cap is well-founded on the principle of cost-reflectivity, its material impact is likely to be small. Based on the profile of the clients who progressed through *Intake* in 2006/07 and 2007/08, the OPC has indicated that around 58 clients are likely to be directly affected by the higher cap on the establishment fee.[26] The upper limit, if all 58 clients had sufficient assets to require them to pay at the higher cap, would be $63,800. This figure has been incorporated into Table 4.1.

Recommendation

2 That the cap on the establishment fee be raised from $2,200 to $3,300.

Introducing a cap on the income fee at $2,000 for privately managed clients

In contrast to the case with directly managed clients, the management fee for privately managed clients is not capped. As shown in Table 3.4, total revenue from the four per cent income fee for privately managed clients exceeds the estimated costs to be incurred by the OPC by 36 per cent in 2008/09. A number of privately managed clients are paying management fees that are greatly above the cost of the services that they receive from the OPC.

As shown in Table 3.4, the average cost per privately managed client in 2008/09 is estimated to be $711. However, as noted previously, there is a wide variance in the needs of individual privately managed clients and the actual costs incurred by the OPC in servicing these clients.

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25 For example, "It is quite clear from the amount of work to establish, … that the cap [on the establishment fee] must be lifted, because a lot of work goes into establishing a client that you get the benefit out of in future years and if you get that done right and you charge it, that is out of the way. It is clear that $2,200, at even $150 an hour rate recovery, gives you very little time to do all that work, bearing in mind the level of correspondence and discussion that has to go on" - Mr Whitehead, Public Trustee of NSW, Transcript page 26, lines 30-38. Similar sentiments are expressed by Ms Begbie on p 28.

26 Information from the OPC to IPART, 9 September 2008.

In addition, consistent with the general approach of IPART in this Review, a subsidy is warranted given the socially disadvantaged nature of the privately managed clients. In these circumstances, and in the absence of disaggregated cost data for the differing needs of privately managed clients, IPART considers that the four per cent income fees should be capped. In its judgment, an appropriate cap is $2,000 per annum.

A cap of $2,000 will also significantly reduce cross-subsidies being paid by private clients.

Recommendation

3 That the current four per cent annual income fee for privately managed clients be capped at $2,000 per annum.

IPART examined other options for changes to the structure of the income fee, especially in the light of the specific targeted threshold arrangements that apply to it. The present threshold in Private Management is based on whether a Government pension or a DVA pension (including an overseas pension equivalent to a Centrelink pension) makes up at least 50 per cent of the protected person's total income.[27] Another option was to recommend that the threshold be broadened to include all clients on the ground that thresholds usually refer to levels of income rather than its specific sources. The broad threshold could be justified on social welfare grounds (as with the tax-free threshold of $6,000 in the national income tax scales).

However, this option would be much more costly in term of revenue forgone and would have limited the scope to reduce the cap on the income fee. This would effectively increase the amount of cross-subsidisation.

IPART believes that the current policy should be changed to eliminate the arbitrary income test at an annual cost to the OPC's revenue of around $190,000. Together with the $2,000 cap on the income fee this measure brings cost recovery from Private Management to 61 per cent (as shown in Table 4.1).

27 If it does, then the equivalent of the maximum rate of the current Centrelink Single Aged Pension (currently $14,216 per annum) plus, if payable, pharmaceutical allowance, mobility allowance, rent assistance and telephone allowance is not included as income for the purpose of levying the four per cent income fee.

Recommendation

4 That for privately managed clients:

- The existing 50 per cent threshold test for pension income be removed from 1 January 2009.
- In future, all Centrelink, Department of Veterans' Affairs and any overseas pension (equivalent to a Centrelink pension) income up to the level of the Centrelink Single Aged Pension be exempt from the four per cent income fee.
- Any allowances relating to Centrelink and Department of Veterans' Affairs pensions also be exempted from the four per cent income fee.

Setting Private Management accounts fees that reflect complexity of audit

The OPC currently charges a $100 accounts fee on submission of the annual accounts for vetting. It has three formats for the forms in which the accounts must be submitted – simple, medium and full – which reflect the complexity of the accounts submitted.

A flat accounts fee seems to be a poor reflector of the costs of auditing each client's accounts. It seems to be a relatively simple matter to charge different fees in step with the different account formats, to the extent that those formats continue to reflect the varying degrees of auditing complexity. IPART therefore recommends that the OPC amends the accounts fee to be $100 for simple accounts and that the fee be increased in $100 increments to either $200 or $300 depending on the greater complexity involved (to be determined by the OPC).

Since many of the OPC's privately managed clients are likely to have straightforward accounts (77 per cent have incomes less than $30,000), the extra fees are unlikely to be large in total. As revenue from this is uncertain, it has not been included in the revenue estimates.

Recommendation

5 That the $100 accounts fee be amended to be $100 for simple accounts and that the fee be increased to $200 or $300 for accounts of greater complexity (as determined by the OPC).

4.3 Effects on OPC revenue, cost recovery and subsidy levels

The effects of the three cap changes on the OPC's revenues, cost recovery and required subsidy levels are shown in Table 4.1.

The left hand side of the table reproduces from Chapter 3 the expected 2008/09 financial position of the OPC under the current fee structure.

The right hand side shows how revenues, and therefore how cost recovery and required subsidies, would change under the cap recommendations.

Table 4.1 Cost recovery by client group before and after IPART recommendations, 2008/09 estimates

	OPC's current position				Recommended position		
	Net Cost[a]	Rev from mgt fees	Shortfall	Cost recovery	Rev from mgt fees	Shortfall	Cost recovery
	$'000	$'000	$'000	%	$'000	$'000	%
Intake[b]	904	326	579	36	390	515	43
Clarence St	3,004	400	2,604	13	326	2,679	11
PJP	849	1,156	-307	136	614	235	72
Primary	13,938	9,565	4,373	69	7,419	6,518	53
Supported Accom.	3,985	4,392	-407	110	4,001	-15	100
Direct Mgt	**22,681**	**15,839**	**6,841**	**70**	**12,749**	**9,931**	**56**
Private Mgt	**1,812**	**2,465**	**-654**	**136**	**1,099**	**712**	**61**
Total	**24,492**	**18,304**	**6,188**	**75**	**13,849**	**10,643**	**57**

a Net cost in this table is net of internal revenue from interest income and investment fee surpluses.

b Assumes that $63,800 is the increase in revenue as a result of the higher cap (58 clients times $1,100 as indicated by email to IPART from the OPC, 2 September 2008).

The lower cap on Direct Management reduces the amount of revenue collected from clients by around $3.1 million. In absolute terms the biggest reductions across the various teams are in Primary Service and the PJP. For directly managed clients in total, the effect of this revenue reduction is to decrease cost recovery to 56 per cent from 70 per cent and to increase the subsidy required from $6.8 million to $9.9 million.

The introduction of the cap on Private Management at $2,000 per annum more than halves the fees paid by clients at a cost of around $1.4 million.

The total required subsidy for the OPC, if the new fee caps were to be applied over the whole financial year, would be $10.6 million.

4.4 The need for increased public funding of the OPC

In deciding on the specific fee levels in its recommended fee structure IPART needed to weigh up a number of conflicting considerations, as discussed earlier in this chapter. On balance, IPART believes that there is a clear need for increased public funding of the OPC to enable implementation of the recommended fee reforms to reduce the reliance on cross subsidies and to underpin the financial viability of the OPC's operations.

IPART considers that its recommended level of Government subsidy is justified having regard to:

- the community's social obligations to the disabled, the mandatory nature of the OPC's services, and the lack of contestability of the services, particularly for directly managed clients
- the particular need to reduce the current excessive level of cross-subsidisation
- declining levels of public funding since 2003/04 and
- comparisons of subsidy levels with earlier periods and with available information for other jurisdictions.

To achieve this, government subsidy support needs to increase from the amount of $2.8 million provided in 2007/08 to $10.6 million (2008/09 values) in a full year. The increase of $7.8 million is comprised of:

- $3.3 million required to restore the OPC to a sustainable financial position in the absence of any changes to fees, given the earlier cuts in Government funding and lower contributions from investment markets
- $4.5 million attributable to the recommended fee reforms.

Social obligations to the disabled

The predominantly social welfare nature of the services provided by the OPC provides the obvious rationale for public subsidy and the chief argument against unsubsidised fully cost-reflective and fee-for-service pricing. Indeed, many services provided for the disabled by other public sector agencies are provided without charge.[28]

Therefore the OPC's cost recovery ratios that are substantially below 100 per cent are not merely explicable but entirely appropriate. In general, the OPC is one agency among several in New South Wales that *cares for those who cannot care for themselves*. This is a benefit to any society that values the life and welfare of all its citizens, not just those who can pay their way. To achieve that social benefit, the Government subsidises the OPC and other agencies in the broader 'protective jurisdiction' that includes the Office of the Protective Guardian and the Guardianship Tribunal.

As stated in the NSW State Plan, "…protecting those at risk, and supporting the most vulnerable is at the heart of what the NSW Government does."[29] The OPC's clients are particularly vulnerable in that they typically have little input into the appointment of the OPC to administer their financial affairs and little control over the services provided.

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28 These include mental health services, direct services provided by the Department of Health and, apart from some small charges for home care service, aged care services provided by the Commonwealth.

29 NSW, *State Plan*, p 67.

Some stakeholders have suggested that these community social obligations imply that the OPC's fees should be further reduced if not eliminated. However, the principle of user pays (or at least contributes), promotes both equity and efficiency in the use of taxpayer funds subject to social policy objectives and affordability considerations. IPART understands that the recovery of costs from the OPC's clients in accordance with their capacity to pay is consistent with Government policy.

In considering the cost of the fee reform recommendations, it should be noted that the proposals do not involve any significant deepening in across-the-board client subsidies. There is no change in the fee rates charged for management services (that is, the percentage fee rates on assets or net income) underneath the specified capped amounts. Further, the recommendations include increases to some fees – the establishment fee cap and the accounts fee – where it appears that the work involved in providing the service justifies a higher fee. The proposed lowering of the fee caps – principally for the management fee for directly managed clients and the income fee for privately managed clients - are targeted to reduce the extent of over-recovery and cross-subsidisation from a subset of clients.

Reducing cross-subsidisation

At present some clients are paying much more than the cost of the service that they actually receive. There can be little justification for this over-charging of one group of clients, who are already disabled and are obliged to use the OPC's services, in order to subsidise another group of clients. The 2003 IPART Review attempted to reduce the amount of cross-subsidisation by reducing the need for the OPC to transfer earnings from the Common Fund before distributions to clients. In this review, IPART is recommending that a further reduction in cross-subsidisation be achieved by lowering the cap set on the ongoing management fee paid by directly managed clients and by introducing a cap on the income fee paid by privately managed clients.

On the basis of the estimates for 2008/09, reducing cross-subsidies simply by capping fees at fair and reasonable levels will lower the OPC's cost recovery ratio. The overall cost recovery ratio under the recommended caps will fall to around 57 per cent.

Declining public funding since 2003/04

The Government's subsidy funding to the OPC has declined over the past five years following the initial increase in the subsidy from $3.0 million to $9.0 million in 2003/04 as a result of IPART's 2003 Review. Over this period, annual subsidy funding fell from $9.0 million, in 2003/04, to $7.4 million in 2006/07 then abruptly to $2.8 million in 2007/08, when the OPC's accounts moved into operational deficit.

The arbitrary nature of the cut in subsidy is neither satisfactory to the OPC or its clients or indeed to Budget processes.

Until recently, reduced Government funding has been largely offset by the growth in fee revenue and other internal sources of revenue (interest income and the surplus generated by funds management activity). In 2005/06, as a result of favourable investment conditions, OPC was able to return to clients $2.5 million in investment fees that had not been needed for OPC's operations.[30]

However, the current level of Government subsidy is unsustainable. While the OPC has been able to draw on its reserves to fund services in 2007/08 this is not sustainable in the future. As shown in Table 3.4, a continuation of the current fee structures would result in the OPC's operational shortfall increasing to $6.2 million in 2008/09 from $3.5 million in 2007/08. The OPC has stated that in the absence of increased Government funding the OPC would need to increase fees to maintain financial viability.

Subsidy level comparisons

As indicated, in 2003, after reviewing the fees charged to the OPC's directly managed clients, IPART recommended that the subsidy be set at $9.0 million. This recommendation was adopted. If that amount were adjusted for growth in total client numbers and inflation, and applying an annual efficiency dividend of 1.0 per cent, it would have resulted in it being $11.5 million in 2008/09.[31]

In 2006/07, the Victorian State Trustees Limited received Government Community Service Obligation funding of $9.9 million for disadvantaged clients.[32] This funding was made available to assist 8,749 disability clients unable to afford the cost of disability service as well as to an additional but unknown number of low income trustee clients[33]. Nonetheless, adjusting this level of funding support for movements in the cost of living and for the higher number of protected persons in New South Wales suggests a comparable benchmark of up to $14.0 million in 2008/09.

The Queensland Public Trustee received a higher level of Government Community Service Obligation funding, $11.9 million, in 2006/07 for its disadvantaged clients.[34] This funding was made available to assist 6,535 disability clients unable to afford the cost of disability services and, while direct comparisons are again difficult since this support was also intended to assist an unspecified number of trustee clients, the comparison provides no basis for believing that the proposed NSW subsidy level is excessive.

30 OPC, *Annual Report* 2006, p 4.

31 Client numbers have grown at an average annual rate of 3.3 per cent since 2003/04 and inflation has averaged about 2.7 per cent. The calculations in the text assume client numbers grow 3.3 per cent and inflation is 3.7 per cent in 2008/09.

32 State Trustees Limited, *Annual Report* 2007.

33 It is understood that trustee clients are less intensive users of State Trustees services that protected persons.

34 The Public Trustee of Queensland, *Annual Report 2007* pp 5 and 21.

5 Funding the shortfall and other issues

This chapter sets out IPART's recommendations regarding future funding arrangements for the OPC, implementation issues, the need for continued fee regulation and the proposed timing for the next review.

Because of the nature of the OPC's client base and the social policy obligations that the OPC performs, IPART's view is that contributions from consolidated revenue are the most appropriate way to fund the OPC's shortfalls.

5.1 Timing of introduction of new fee structure

To allow for sufficient time for the Government to consider IPART's recommendations and their funding, the new fees should be implemented from 1 January 2009.

Recommendation

6 That the new fee structure and associated funding be implemented on 1 January 2009.

5.2 Size of subsidy in 2008/09

This report has emphasised that the main reason IPART recommends a significantly higher subsidy is the social welfare nature of the client base. This was strongly borne out in the review process, particularly by those who made submissions and by participants at the Roundtable. The issue of sizeable cross-subsidies paid by some clients reinforces the need for a much higher subsidy.

To cover the revenue lost by recommending a lower cap on the management fee and to introduce a cap on the income fee, net of other changes recommended to the establishment and accounts fees, it is estimated that the OPC will require an initial *annual* subsidy of around $10.6 million in 2008/09 dollars.

Such a subsidy would remove major elements of cross-subsidisation in some parts of the present fee structure. It would also give the OPC time to bed down its restructure and put in place key performance indicators relevant to the restructured organisation.

Given IPART's recommendation that the fee changes take effect from 1 January 2009, the *actual* subsidy required for 2008/09 will be half of the current required subsidy of $6.2 million to cover the first half of the financial year plus half of $10.6 million to cover the second half of the financial year, or $8.4 million.[35]

Recommendation

7 That a total subsidy of $8.4 million be provided for the OPC in 2008/09, based on a full year subsidy level of $10.6 million.

5.3 Multi-year funding agreement

The abrupt reduction in the Government subsidy in 2007/08 was unsatisfactory as it could only be accommodated by a reduction in reserves which is not sustainable over time.

This risk can be alleviated by Government funding that is set in the context of a rolling multi-year arrangement involving mutual obligations from Treasury and the OPC, including an accountability framework in which effective cost control is demonstrated.

Further, it would be valuable to both Government and the OPC if the size of the funding is explicitly linked to the needs of clients and what they can afford to pay. That would then convert what might appear to be "shortfall funding" into **"affordability funding"**. Of course, under such an approach the costs of the services provided would need to be explicitly measured and the subsidies provided to clients with limited capacity to pay would need to be tracked.

Capacity to pay in this review has been considered in terms of income and/or assets. Such measures do not capture the impact on genuine capacity to pay that expenses unique to clients with disabilities may have, such as ongoing carer and medical expenses or irregular but large hospital expenses. Data were not available at the individual client level to enable more refined measures of capacity to pay to be derived. Again this reflects the inadequacy of the OPC's information systems at present to record client expenditure data electronically at a sufficiently disaggregated level.

Cost of services may be measured by various costing methods. IPART discussed several of these in the Issues Paper and has presented results of the traditional service costing approach in Chapter 3.

In lieu of the data required for such a fully articulated approach, it is nevertheless possible to inject greater certainty into the funding process for the OPC by embedding its shortfall funding in a rolling four-year agreement between Treasury, the Attorney General's Department (the latter is the host Department of the OPC)

[35] The figures for the subsidy are derived from Table 4.1. That table is based on the assumption that the profit from Unit Registry will be $4.4m in 2008/09, the same as in 2007/08.

and the OPC. The rolling four year arrangement replicates the budget and forward estimates process that applies for the State Budget at the departmental level.

The rolling agreement should initially require:

- Treasury to provide a base level of funding of $8.4 million in 2008/09 (as derived in the previous section) which is equivalent in the second half of the year to an initial annual rate of subsidy of $10.6 million.
- The $10.6 million be the notional base for the period 2008/09 to 2011/12, from 1 January 2009.
- The amount be adjusted each year by:
  - the change in the Sydney CPI
  - the change in client numbers
  - an efficiency factor of 1 per cent
  - the movement in interest received compared to a benchmark $1.0 million assumed for 2008/09 and the movement in the surplus from Unit Registry's investment funds management compared to a benchmark amount of $4.4 million estimated for 2008/09 (with the surplus net of counterparty and the OPC's costs).

As part of the first funding agreement, the OPC is to report on the list of key performance indicators (KPIs) presented below.

It is noteworthy that, in its 2007 review of the Public Trustee of NSW, the Public Bodies Review Committee has made several recommendations on service quality which might equally apply to the OPC, namely:

- *That the NSW Public Trustee comparatively benchmark case management service delivery operations, including timeframes for completion, with Public Trustees in other jurisdictions.*
- *That the NSW Public Trustee publish this benchmarking information in its Annual Report each year.*
- *That the NSW Public Trustee develop key performance indicators for all key result areas of its operations.*
- *That the NSW Public Trustee publish these key performance indicators in its Annual Report each year.*

Recommendation

8 That the following six high-level KPIs be part of the first multi-year funding arrangement:

- The setting of measurable major milestones in the OPC's strategic and corporate goals and periodic assessment of progress towards those goals (by June 2010).
- Development of a management information system capable of costing services and supporting strategies to improve services and increase productivity (by June 2010).
- Development of efficient cost benchmarks (by June 2010).
- Development of client service standards (by June 2010).
- Measures of responsiveness to clients' requests/needs (starting with timeliness, progressing to quality).
- Client and stakeholder satisfaction as measured by independent surveys and number of complaints and appeals.

Recommendation

9 That a rolling four-year funding agreement between Treasury, the Attorney General's Department and the OPC be implemented in which $10.6 million be the annual base for the period 2008/09 to 2011/12, from 1 January 2009. The $10.6 million should be adjusted each year for:

- changes in the CPI for Sydney
- changes in client numbers and
- an efficiency factor of 1 per cent.

In addition, the base should be adjusted to reflect any movements in the OPC's interest income of $1 million and in the surplus within Unit Registry of $4.4 million, both estimated for 2008/09 (with the surplus net of counterparty and the OPC's costs). For its part, OPC is to demonstrate satisfactory performance in terms of a defined list of KPIs (as specified in Recommendation 8) on which it reports annually.

Recommendation

10 That the OPC's financial and management information systems be upgraded as a matter of urgency so that they can generate the information essential for full consideration of the OPC's fee structure in any future review.

5.4 Future regulation of the OPC's fees

Many submissions expressed the view that, to avoid, and to be seen to avoid, potential exploitation of vulnerable NSW citizens by the OPC or market forces, fees should continue to be regulated.[36]

Regulation of the OPC's fees appears to be strongly in the public interest, for the following reasons.

First, the OPC does not, in general, operate in a competitive market. Regulation of fees and charges protect clients against possible abuses of monopoly power. With court- or tribunal-referral to the OPC, all but the high net worth clients have no alternative but to use the OPC's services. Moreover, since the OPC clients have a disability affecting their ability to make financial decisions, they are frequently vulnerable in their financial dealings, though to some extent such vulnerability is mitigated by the processes of appeal available to clients and other parties against decisions made by the OPC.

Second, fee regulation plays a major role in addressing equity issues. In particular, fee regulation may be structured to take account of distributional and affordability issues that deregulated fee structures would not.

Of course, fee regulation may add complexity and increase costs connected with administration, communication and compliance. It may also be overly intrusive, constrain flexibility and inhibit innovation, both within the OPC and among clients or their representatives.

But, in the light of the above considerations, IPART can see no case for the deregulation of the OPC's fees. Fees charged by public sector providers of financial administration services for disabled persons in all other Australian States and Territories are subject to regulation.

Recommendation

11 That the fees charged by the OPC continue to be regulated.

36 For example, in his submission Justice Windeyer said, "There should be no deregulation of fees. I do not understand deregulation is proposed, but it will be quite inappropriate for a State body providing services to disadvantaged persons. The main point, however, is that where fees are not regulated those who receive the service can choose whether or not to engage that service. Protected persons, being persons who cannot manage their affairs, in general have no choice and no power to negotiate."

5.5 Timing of next review of fees

In her July submission the Protective Commissioner indicated that the OPC did not have the resources to sustain a full review every 2-3 years but would welcome a mid-term review as a "temperature check". IPART is of the view that a full review need not be that onerous if appropriate quality data can be readily generated from established information systems.

IPART considers that more than a temperature check is required at a mid-term review so that the following things might be established:

- that the recommendations from this current review that are accepted by the Government have been implemented
- that the OPC has upgraded its management and information systems to such an extent that all the important cost and revenue aspects of its operations are reliably measured.[37]

This will allow IPART to reconsider the best fee structure for Private Management in the light of data on capacity to pay, costs of services and revenues by meaningful client groupings within Private Management.

Recommendation

12 That a full review of the OPC's fees be conducted again in five years, with the review ending in June 2013. IPART also recommends that a mid-term review be conducted primarily to re-assess private management fees in the light of better data on capacity to pay, costs and revenues that should result from upgrades to the OPC's financial and management information systems. The review would be conditional upon the development of those systems. The mid-term review should conclude by December 2010.

13 That all dollar amounts in the recommended fee structure - the caps on the management, establishment and income fees and the account fees – should be adjusted for annual changes in the CPI for Sydney.

[37] The Protective Commissioner has indicated that "we have commenced an IT project to map the requirements of any future system, undertake a preliminary review of comparable organisations in NSW, Queensland and Victoria and prepare a brief for limited tender for an external consultant" (letter to IPART, 28 August 2008).

Appendices

A Terms of Reference

OFFICE OF THE PROTECTIVE COMMISSIONER FEES REVIEW

Terms of Reference

I, Morris Iemma, Premier of New South Wales, pursuant to Section 9(1)(b) of the *Independent Pricing and Regulatory Tribunal Act 1992*, approve the Tribunal providing assistance to the Office of the Protective Commissioner (OPC) by undertaking a review of the fees charged by the OPC 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 direct and private management work;
- Review the extent to which there are differences in cost recovery between client groups; and
- Consider whether continued regulation is necessary and, if so, the level and structure of OPC's fees and charges.

The Tribunal should also:

- Review the capacity of the OPC to seek full cost recovery for the services provided to each client based on the nature of those services and the value of each client's estate, including clients whose estates are managed directly by the Protective Commissioner or by private managers under supervision of the Protective Commissioner;
- Advise on options for meeting any shortfall that may arise in view of that; and
- Have reference to IPART's report on the OPC's fees dated May 2003 and the Treasury Efficiency, Quality and Staffing Study report dated March 2005.

The Tribunal is to conduct the review and provide a report to the OPC by 30 September 2008.

Morris Iemma
Premier of New South Wales

B Submissions and Roundtable Participants

A total of 68 submissions were received, eight of which were confidential and six public submissions with the submitter's name withheld.

Table B.1 List of public submitters to the Issues Paper

	Name	Surname	Organisation
1	Brendan	O'Reilly	Department of Ageing, Disability & Home Care
2	Mark	Grierson	Disability Advocacy NSW Inc.
3	Imelda	Dodds	OPC
4	Ross	Ellis	Trust Corp
5	David	Barbour	Individual
6	Rosemary	Barraclough	Individual
7	V	Barrington	Individual
8	Sue	Bat	Individual
9	Elaine and Barry	Beadman	Individual
10	Jacqui	Begbie	Individual
11	Irene	Bennett	Individual
12	Amanda	Boyce	Individual
13	Ray	Breakwell	Individual
14	Maureen	Cahill	Individual
15	CJ	Clement	Individual
16	Douglas	Cliffe	Individual
17	Darryl & Christine	Clifford	Individual
18	Frank	Di Marte	Individual
19	Ken	Docksey	Individual
20	Dawn	Endersby	Individual
21	Stephanie	Gatien	Individual
22	Dianne	Haines	Individual
23	Tony & Julie	Heath	Individual
24	Mark	Hildebrand	individual
25	K	Hirst	Individual
26	Barbara	Ingram	Individual
27	Nerelle	Keough	Individual
28	Jan	Kiddey	Individual

	Name	Surname	Organisation
29	Robyn	Leroy	Individual
30	Samantha	Lim	Individual
31	Elizabeth	Lindsay	Individual
32	Carolyn	Lutton	Individual
33	Sinnwa	Ly	Individual
34	Arthur	Magrath	Individual
35	Kathy	Mainerd	Individual
36	Loris	Manns	Individual
37	Barbara	Melville	Individual
38	David	Mitchell	Individual
39	John	Mundy	Individual
40	Thomas	Naylor	Individual
41	Merilyn	Oakes	Individual
42	Kevin	Quealy	Individual
43	FJ	Quinn	Individual
44	Janice	Robertson	Individual
45	Dennis	Ryan	Individual
46	Kristine	Smith	Individual
47	Klaus & Suvian	Stimming	Individual
48	Evan	Swan	Individual
49	Paula	Tallen	Individual
50	Norman	Unsworth	Individual
51	Norman	Unsworth	Individual
52	Christine	Ustick	Individual
53	Mr Justice	Windeyer	Individual
54	Marion	Woof	Individual

Table B.2 List of attendees at the Roundtable

	Name	Surname	Organisation
1	Michael	Keating	IPART
2	James	Cox	IPART
3	Sibylle	Krieger	IPART
4	Steve	Lyndon	IPART
5	Dennis	Mahoney	IPART
6	Pamela	Soon	IPART
7	Bryce	Wilson	IPART
8	Mandy	Phan	IPART
Other attendees			
1	Jacqui	Begbie	Individual
2	Brian	Cohen	OPC Advisory Council
2	Nadine	DeVilla-le	AGD
3	Imelda	Dodds	OPC
3	Ross	Ellis	Trustee Corporations Assoc.
4	Bernie	Farrell	OPC
4	Peter	Graham	Ernst & Young
5	Mark	Grierson	Disability Advocacy NSW Inc
5	Francesca	Guido	OPC
6	Trevor	Lester	OPC
6	Ethel	McAlpine	DADHC
7	John	Mundy	Individual
7	Janet	Mundy	Individual
8	Catherine	Peek	Disability Advocacy NSW Inc
8	Robert	Ramjan	Schizophrenia Fellowship
9	Kevin	Robinson	OPC
9	Dennis	Ryan	Individual
10	Jim	Simpson	Council for Intellectual Disability
10	Peter	Whitehead	PT NSW
11			Carers Association - Representative

C Detailed listings of the OPC's services

For Directly Managed clients

In the first year: establishment of new clients

1. Provision of information on service standards to client/ carers.
2. Establishment of liaison database of available client information, eg, contact details, family/ carer details.
3. Identification and securing of client's assets and entitlements.
4. Identification of client's liabilities.
5. Payment of client's immediate and short term liabilities and needs.
6. Creation of schedule for payment of client's "routine" bills and management of client's longer term liabilities.
7. Provision/ arrangement of initial advice from a disability specialist on aspects of client's circumstances.
8. Provision/ arrangement of initial legal advice and strategy to address any outstanding legal issue.
9. Development of a financial plan (Statement of Advice) in consultation with the client, family and appropriate others, incorporating:
   - The client's short, medium and long term personal and financial objectives.
   - The client's short, medium and long term needs, eg, personal care.
   - The client's and appropriate others preferred means of contact.
   - Any cultural, ethnic, religious etc. views/ issues that need to be respected.
   - Annual budget to meet ongoing financial needs and objectives.
   - Strategy to address any outstanding issue relating to the client's disability/ies, eg, need for special accommodation and/or equipment.
   - Financial plan for investment of the client's funds.

Ongoing management (after year one)

1. Management of issues identified but not resolved during the establishment of relationship, eg, Family Provision Act claim.
2. Collection of regular income due to the client, eg, Centrelink payments, rent.
3. Collection of money due to the client, eg, damages award.
4. Evaluation of claims for payment for past care etc.
5. Payment of routine bills, eg, rates, rent, utilities.
6. Arrangement of and payment for insurance policies.
7. Provision of advice and assistance with negotiating of client – carer agreements.
8. Payment of carer fees/wages.
9. Payments in support of any dependents.
10. Provision of security for the client's personal assets, eg, jewellery, title deeds.
11. Acquisition/arrangement of acquisition of major asset, eg, residence, motor vehicle.
12. Sale/arrangement of sale of major asset.
13. Management of dwelling construction.
14. Management of dwelling modification, refurbishment etc.
15. Management of dwelling repairs.
16. Management of leased/ rented property.
17. Inspection of and provision of report on real property.
18. Securing dwelling contents upon vacation by the client.
19. Exercise of shareholder rights etc. in relation to the client's business.
20. Provision/arrangement of advice on the client's circumstances and needs from disability specialist.
21. Provision/arrangement of legal advice and representation to protect client's assets/ rights.
22. Preparation of income tax and land tax returns.
23. Seeking of Australian Taxation Office rulings.
24. Arrangement of and payment for interpreter and translation services for client contact.
25. Provision of reports to client/others on the client's assets, liabilities, income, expenditure as needed or at least six monthly (income/expenditure) or twelve monthly (assets/liabilities).
26. Review of annual budget, financial plan and client plan as needed or at least annually.
27. Provision of Reports and Proposals to the Supreme Court for determination of:
    - Major issues concerning, eg, management of the client's business interests.
    - Provision of a loan to family from the client's funds.

28. Provision of reports on the client's circumstances to the Supreme Court, Guardianship Tribunal or Mental Health Review Tribunal to assist review of financial management orders.

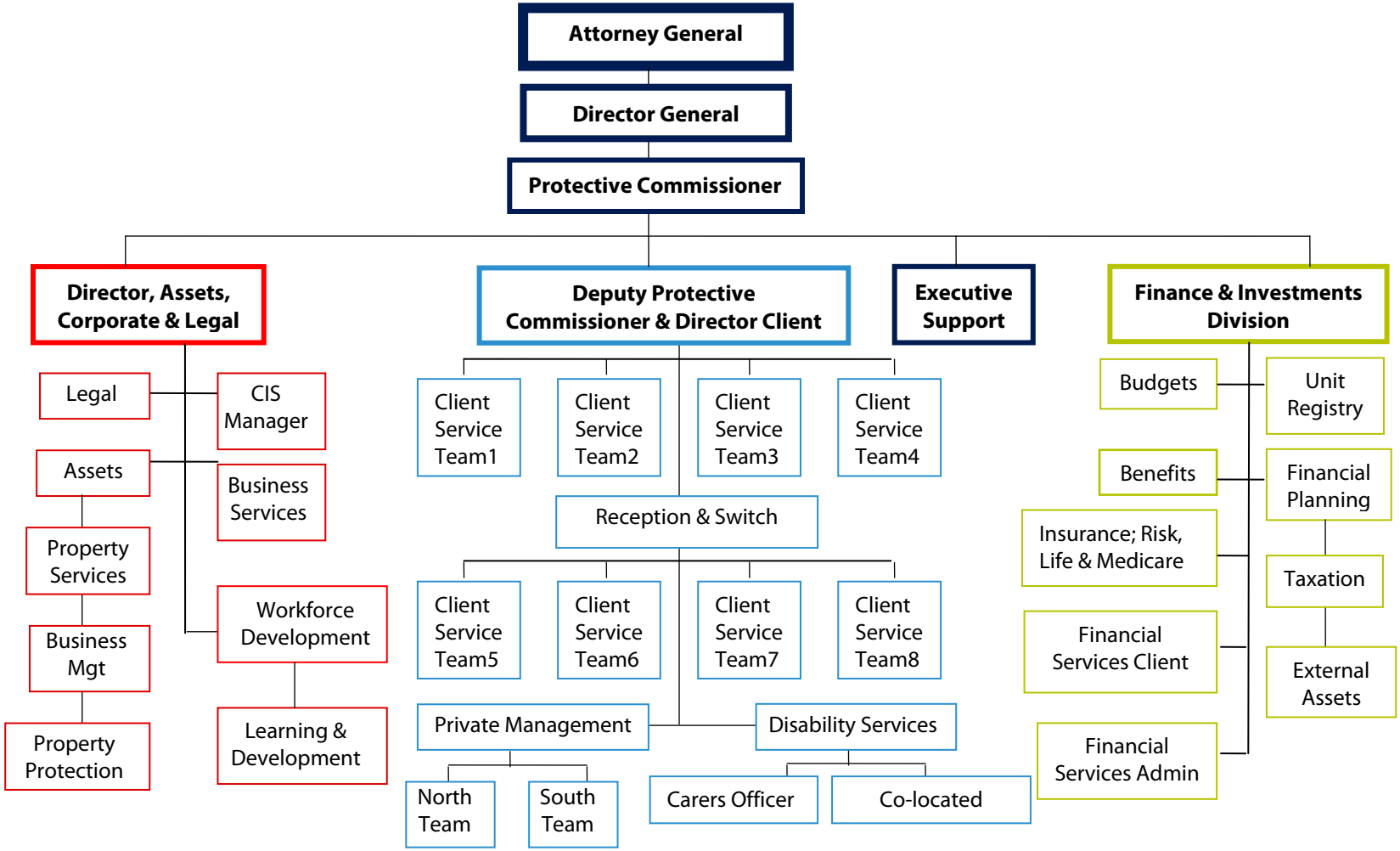
Finalisation of Management

- Payment upon revocation/discontinuance of the client's funds.
- Payment upon the client's death of funeral expenses and some liabilities.
- Provision upon the client's death of a statement of assets and liabilities, payment of the client's funds, and release of security documents to the client's legal personal representative.

For Privately Managed clients

1. establishing new matters, developing and issuing Authorities and Directions
2. setting security
3. considering private managers' proposals eg, purchase/sale of assets, investments, legal actions etc
4. examination and passing of private managers' annual accounts, and calculation and collection of fees payable to the Protective Commissioner
5. referring/reporting to the Guardianship Tribunal
6. obtaining Director of Nursing reports
7. obtaining Authorised Visitor reports.

D OPC's organisational structure as at August 2008


Attorney General
Director General
Protective Commissioner
Director, Assets, Corporate & Legal
Legal
CIS Manager
Assets
Business Services
Property Services
Business Mgt
Property Protection
Workforce Development
Learning & Development
Deputy Protective Commissioner & Director Client
Client Service Team1
Client Service Team2
Client Service Team3
Client Service Team4
Reception & Switch
Client Service Team5
Client Service Team6
Client Service Team7
Client Service Team8
Private Management
North Team
South Team
Disability Services
Carers Officer
Co-located
Executive Support
Finance & Investments Division
Budgets
Unit Registry
Benefits
Financial Planning
Insurance; Risk, Life & Medicare
Taxation
Financial Services Client
External Assets
Financial Services Admin

D OPC's organisational structure as at August 2008