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29 May 2008

Dr Michael Keating AC
Chairman
Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office NSW 1230

Dear Dr Keating,

RE: SUBMISSION TO IPART IN RELATIONSHIP TO OPC FEES

I write in relation to IPART's review of the Office of the Protective Commissioner's fees. To assist in this process please find attached the OPC's Fee Proposal.

OPC understands how difficult and complex a process this can be and IPART's involvement in reviewing our fees to make sure they are as equitable as possible is very much appreciated.

Please be assured that my staff will be available to offer the Tribunal any assistance that may be required while the review is taking place.

Yours sincerely,

Imelda Dodds
Protective Commissioner and Public Guardian

Attached

Office of the Protective Commissioner
Attorney General's department of nsw

Proposal to IPART Inquiry

on

Fees Payable to the Protective Commissioner

INTRODUCTION

The Office of the Protective Commissioner (OPC) charges fees for its services and they are set out in the Protected Estates Regulation 2003.

In 2003 the Independent Pricing and Regulatory Tribunal (IPART) conducted a review of OPC's fees. The outcome of that review was the establishment of a new fee structure for estates under the direct management of OPC. Part of that review included the provision of $9m of Treasury funding to address the gap between fee income received and the cost of the delivery of services.

While it was intended that a review of fees levied by the Private Management Branch of OPC would be conducted by IPART in 2003 unfortunately, this was not possible.

As a part of the 2003 review, IPART recommended that the fees levied by OPC be reviewed in 5 years. IPART is conducting that review now. It will also include a review of the fees levied by OPC's Private Management Branch.

This document represents OPC's proposals relating to fees for

- Direct management and
- Private management

The submission takes into account the current operating structure of both branches and the fact that the manner in which services will be delivered to clients in direct management will undergo change in the 2008/2009 financial year. These changes may influence the manner in which fees are levied in the future. However, at this stage OPC recommends maintaining the status quo in relation to direct management. Recommendations for a new schedule of fees for Private Management are contained later in this submission.

When considering the question of fees, OPC management is of the view that fees should as far as possible be easy to understand, equitable, flexible but applied in a consistent manner.

A critical issue in relation to fees levied across OPC is the question of fee for service. Under the current fee structure asset rich clients pay higher fees and this is in accordance with industry practice. However, over 50% of OPC clients under direct management do not have sufficient funds to pay on a fee for service basis. The issue is where the funds come from to pay for the service to these clients. An equitable balance has to be found between the fees levied on clients who can afford to pay and the amount of Treasury funding required to meet the cost of providing service to those clients who cannot afford to pay.

Such a balance h as been impossible to achieve as Treasury funding has been progressively reduced from $9m in 2003/04 to $2.825m in 2007/08.

While the current directly managed client fees are charged on an ad valorem basis (i.e. on a percentage basis) similar to our competitors the income derived is very dependent on market movements. Due to the fall in the share market since November 2007, OPC's fee income is down approximately 10%. We note that this is also affecting our competitors however they do not accept "unprofitable" estates as OPC does. OPC's client base is determined by decisions of Courts and Tribunals and cannot be individually selected as is done by trustee companies. The result is that 60% of OPC's clients have financial assets of less than $25k and almost 72% of OPC's clients have financial assets below $50k.

In view of the legislation all clients under protective management must interact with OPC in some way. This has the effect of creating a quasi monopoly environment. As noted the majority of that market has modest means and government has a clear responsibility to ensure that any fee structures levied by OPC are, as far as possible equitable and affordable. This necessitates the injection of Treasury funding in order to meet governments community service obligation.

The submission sets out the following:

- OPC's role, in brief
- the principles outlined above
- the services and fees in direct management and proposals for the future
- the services and fees in private management and proposals for change
- financial implications for OPC.

ROLE OF OPC

OPC is appointed to manage the financial affairs of people with impaired decision-making ability.

The Protective Commissioner or a Private Manager can be appointed under the Protected Estates Act 1983 to manage the financial affairs of people who by view of disability are unable to manage their own affairs.

The Protective Commissioner directly manages the estates of 8,787 people[1]. The nature of the disability that brings people under management is relevant. The breakdown is provided below.

- Psychiatric Disability – 46%
- Developmental Disability–22%
- Age related – 15%
- Brain Injury – 14%
- Other – 3%

OPC also provides direction and authorities to 2,490[2] Private Managers who are appointed by the Supreme Court and Guardianship Tribunals. The breakdown of disability is provided below.

- Age related - 39%
- Brain injury- 25%
- Developmental disability – 13%
- Psychiatric – 8%
- Other – 15 %

People under financial management and their families sometimes oppose the Protective Commissioner being appointed to directly manage an estate. However, the Protective Commissioner will only be appointed if a court or tribunal considers:

- that someone objective needs to be involved in managing the estate
- there is no suitable alternative manager
- that it is in a person's overall best interests

The Protective Commissioner will work with the protected person, his or her family members and service providers when directly managing an estate.

Where a Private Manager is appointed to manage an estate, the Protective Commissioner will provide information to the Private Manager about their responsibilities, issue directions and authorities, set a security requirement for the estate and review income and expenditure statements (accounts) each year.

The decisions of OPC can be reviewed, first internally and then on application to the Administrative Decisions Tribunal (ADT).

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[1] Figures accurate at end April 2008
[2] Figures accurate at end April 2008

Principles underpinning OPC Fees

As part of this review, OPC has given consideration to the attributes of a fair and reasonable fee structure. Accordingly, a fee structure should embrace all of the following principles to the extent possible:

- Clear,
- Transparent,
- Fair,
- Competitive and
- Flexible.

Clear. One measure of a fee structure's clarity can be assessed by the publish-ability of the fee schedule and whether or not an organisation can and does state their fees in readily available print and on their website. Do the fees require an explanation? The ultimate measure is how easy it is for clients and stakeholders to understand the fee structure.

To date, only 3% of formal complaints received by OPC relate to fees. Some clients object to the payment of fees in principle and not because of a lack of understanding about the fee structure.

OPC believes that the current fee structure is clear and meets this principle.

Transparent. Are there any hidden fees? Are fees ambiguous or not readily apparent? Are the costs easily overlooked until incurred? Is there an hourly rate that a financially challenged client would find difficult to estimate or even ask about? Is it understood that there is a cost associated with providing services such as financial planning and tax preparation etc?

OPC's current fee structure for both direct and privately managed clients does not have any hidden fees. OPC may charge additional fees to cover exceptional costs however these are always disclosed.

Fair. The fees charged should reflect the effort, skills and resources associated with the service. Are the fees fair and reasonable? How do the fees compare to those charged by organisations offering similar services?

There are two approaches to the fair and reasonable test: the organisation as a whole and on an individual basis.

As an organisation, are costs covered? Without funding from the Treasury, OPC's costs would not be recovered from the fees charged to clients as many cannot afford to pay more than a nominal fee. At present there is a significant shortfall between the fees charged to clients and the cost of running the office. Management has to monitor the performance of the office to make sure that this shortfall is not primarily due to a poor structure or lack of efficiency. However, this study is about the appropriateness of our fee structure as applied to our clients.

The fee structure introduced in 2003 reduced the total amount of fees charged to OPC's clients and the shortfall was offset by the introduction of Treasury funding. On an individual basis the cap placed on the maximum management fee ($50,000 - introduced in late 2006) payable also improved things for clients with more assets subject to fees. However, it is OPC's view that it is not possible to charge fees on an across the board fee for service basis because over 50% of OPC's clients could not afford to pay. This will continue to result in clients with larger estates paying higher fees than clients with smaller estates. The aim will be to make this as equitable as possible.

Competitive. Clients' should pay "no more for the services provided by OPC than they would if these services were provided by commercial organisations".

Whilst OPC does not actively tout for business, we exist in a competitive environment. Due to the potential income available from the larger estates, there is active competition between trustee companies and financial planning groups for management or at least investment of the larger estates.

OPC's commercial competitors actively pursue high value clients that will make the arrangement economically feasible for their shareholders. OPC is appointed to manage the affairs of people with a wide range of estates – from pension only to multi million dollar estates. OPC cannot "select" its clients and would never seek to do so.

OPC has conducted a "high-level" analysis of Australian trust companies including government and commercial entities. Due to the complexity of fees charged by the different organisations, this analysis has been kept at a cursory level. Most states and commercial entities that provide the same or similar service as OPC use a declining percentage basis applied to the individual's assets/income. Some organisations charge a large up front fee or none at all. Some charge a low management fee, but recoup costs from clients' assets managed in a different department. Some charge hourly rates for standard services and various per transaction fees.

OPC is often quoted as the benchmark against which these organisations compare their fees, however they are not subject to the same level of regulation and therefore have considerably more flexibility in what they can charge for very large estates. In addition, they often have substantial charges for any activities beyond a very basic service as well as benefit significantly from investment fees (generally referred to as Management Expense Ratio or MER) when the estate moneys are invested in their own funds and/or through their platforms such as Mastertrusts or Fund of Funds.

As noted above the services offered by these "competitors" are often limited to activities such as basic bill-paying, financial planning and taxation. Any other services may often be outsourced at additional cost to the client, however this is not detailed in their promotional material. The cost of these services is included in the OPC Management Fee and not additional to it.

The core activities of these organisations are not related clients with disabilities and consequently their level of expertise varies greatly, however it is invariably below OPC's. This may not always result in the optimum investment mix for the client. By way of comparison, OPC's financial planners and other specialists work with and regularly consult with OPC's Disability Services Branch to ensure that the client's full needs and objectives are incorporated in all of OPC's investment and client planning.

Therefore a straightforward comparison presents difficulties due to the complexity of the individual fee structures. As a general rule, trustee companies and other organisations dealing with protected estates appear to be more expensive than OPC for the smaller and medium-sized estates and are more flexible in their approach to fees on larger estates however this can be illusory as mentioned previously. It should be noted however, that in terms of investment in OPC's managed funds, the 0.5% fee is all inclusive. This fee is the OPC equivalent to the MER charged by commercial operators. OPC's headline fees are generally lower than commercial competitors' headline fees.

The Federal government is currently reviewing options for the regulation of a cluster of financial services including Trustee Corporations with a view to harmonisation across states and territories. A green paper on the topic is due for release in the middle of this year.

The review will address the regulation of pricing and questions of consumer protection by introducing a common method of pricing disclosure. This is intended to assist consumers in the market to make a more informed choice of service provider. If and when a national approach to fee disclosure is introduced the question of comparison will be made easier.

Finally, it must be noted that there is no direct market equivalent to OPC's Private Management Branch. NSW legislation requires the application of safeguards that are not found to the same extent in other jurisdictions. A review of the Protected Estates Act is scheduled to occur in 2008/2009.

Flexible. In cases of hardship, clients may request that fees be waived. The request must be approved by a delegated officer and consistent with the OPC Fee Waiver policy. OPC has waived fees in the past in circumstances where to charge the fee would cause unacceptable hardship to the client. OPC intends to maintain this flexible approach to fees.

DIRECT MANAGEMENT

OPC currently provides services to clients through a structure introduced in August 2006. That structure makes greater use of specialist branches and teams in areas such as financial planning, assets and property management, insurances, tax and budgets. Client contact has been managed, in the main, through a call centre arrangement. While elements of the restructure have worked well OPC acknowledges that other parts have caused problems for our clients. OPC has listened to those concerns and in August 2008 will change the manner in which we will work with our clients on a daily basis.

For the purpose of this review it is important to take account of these changes as they may have an impact on the manner in which future fee structures may be developed. However, at present OPC recommends that the current fee structure be retained supported by Treasury funding to meet the fees of those clients unable to pay.

OPC Fees

The current fees for directly managed clients, banker and missing persons[3] are:

1st year establishment fee:	1% of assets (capped at $2,200)
Ongoing Management Fee:	1.1% of investment assets (i.e. excluding principal place of residence, motor vehicles etc)

The maximum annual ongoing management fee has been set at $50,000. This includes the establishment fee.

Investment Fee:	0.5% of investments in OPC Funds

It should be noted that part of the ongoing management fee is tax deductible.

These fees were primarily based on the recommendations contained in the 2003 IPART Report and were predicated on an appropriate level of Treasury funding. As previously noted this funding has been progressively reduced from $9m in 2003/04 to $2.825m in 2007/08.

As previously noted, while the current directly managed client fees are charged on an ad valorem basis (i.e. on a percentage basis) similar to our competitors the income derived is very dependent on market movements. Due to the fall in the share market since November 2007, OPC's fee income is down approximately 10%. We note that this is also affecting our competitors however they do not accept unprofitable estates as OPC does. OPC's client base is determined by decisions of Courts and Tribunals and cannot be individually selected as is done by trustee companies. The result is that 60% of OPC's clients have financial assets of less than $25k and almost 72% of OPC's clients have financial assets below $50k.

[3] The OPC can be appointed by the Supreme Court under S 21C of the *Protected Estates Act 1983* to manage the affairs of persons declared missing. The OPC also acts as banker for 702 people living in DADHC long term residential care. Over time this groups of clients' estates are being transferred to formal financial management via application to the Guardianship Tribunal.

IPART, in its 2003 report, recommended that OPC introduce an activity based costing (ABC) model that would allow the tracking of costs associated with management of an estate. It has not been possible to do this and particularly so under the current operating structure. OPC believes that an ABC model could be applied under the forthcoming structure.

There are two main issues with an activity based model. Firstly, a significant number of OPC clients would not able to pay the full cost of the services they use. Secondly, OPC fees prior to 2003 were based on a mixture of S57[4], capital, income and activity fees. These fees were very unpopular with clients due to the multiplicity of fee entries on their statements.

Services Provided to OPC Direct Managed Clients

The services provided by OPC and reflected in the current management fees include:

*a**) 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;

[4] S 57existed to supplement the operating costs of the OPC and has since been repealed.

- 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;

b) 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.

Alternative Models

To address the issue of an equitable fee structure OPC has considered three options. Table 1 provides an overview of costs and benefits of each option.

Table 1

Alternative	Benefits	Constraints
Maintain current fee structure	• No change • Meets basic requirements • Management information system already in place	• Does mean that some clients pay more for the service than other clients.
Reduce maximum fee paid by client	• Takes another step toward reducing the gap between the fees paid by different clients. • IT requirement not significant • Little to no change for the majority of clients	• Increases OPC's operating loss
Activity Based Fees	• Understand actual costs of providing each type of service • Potentially easier to substantiate Community Service Obligation costs	• Switching costs significant • IT requirements significant • Not popular with clients due to the multiplicity of fee strata • Communication with clients, given current restructure, significant

PROPOSAL

At this point in time the OPC does not propose a change to current model for directly managed clients, banker and missing persons[5] outlined below:

***1st year establishment fee:	1% of assets (capped at $2,200)***

***Ongoing Management Fee:	1.1% of investment assets (excluding principal place of residence, motor vehicles etc)***

The maximum annual ongoing management fee has been set at $50,000. This includes the establishment fee.

***Investment Fee:	0.5% of investments in OPC Funds***

Examples of the current and proposed fee structure can be found at Annexure A.

OPC has considered the question of seeking an increase in one or more of its fees but note that any increase of this nature will result in significantly higher fees to clients with larger estates prompting them to seek to move away from OPC management. Any increase would further disadvantage the almost 72% of clients with assets less than $50,000. However should the shortfall in Treasury funding continue we may have no option than to consider an increase in the percentages currently charged.

In coming years it should be possible to introduce a sliding scale of fees based upon the value of clients' assets. This, combined with activity based costing, may better reflect the service provided to clients. This option will also require Treasury funding. However, under the existing structure and for the immediate future OPC does not believe it can reasonably move to such an approach.

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[5] The OPC can be appointed by the Supreme Court under S 21C of the *Protected Estates Act 1983* to manage the affairs of persons declared missing. The OPC also acts as banker for 702 people living in DADHC long term residential care. Over time this groups of clients' estates are being transferred to formal financial management via application to the Guardianship Tribunal.

PRIVATE MANAGEMENT

The OPC provides direction and authorisation to “Private Managers” who have been appointed by the Supreme Court or the Guardianship Tribunal to manage the financial affairs of those people who are unable to manage their own affairs.

A Private Manager is usually a family member or friend of a person with a disability who is appointed by the Court or Tribunal to manage the person’s financial affairs. Trustee companies, if appointed, can also be Private Managers.

Core Functions of Private Management Branch

The current key functions of the Private Management Branch (PMB) are:

- Establishing new matters, developing and issuing Authorities and Directions;
- Setting security;
- Considering Private Managers’ proposals e.g. Purchase/Sale of Assets, Investments, legal actions etc;
- The examination and passing of Private Managers’ annual accounts, the calculation and collection of fees payable to the Protective Commissioner;
- Referring/Reporting to the Guardianship Tribunal;
- Obtaining Director of Nursing Reports;
- Obtaining Authorised Visitor Reports.

Current Private Management - Fees

The fees set out in the Protected Estates Regulation 2003 that are applicable to the Private Management clients are:-

a) Regulation 4 (1) (b) Investment Fees: For the management of an investment for a protected person in an OPC investment fund (including the Access Fund) OPC charges 0.5% per annum of the value of the investment,. NOTE: Funds held as security are invested in OPC’s investment funds and attract the Investment Fee. Privately managed clients may also have funds other than “Security” in OPC Investment Funds.

b) Regulation 4 (1) (c) Income Fee: On the net annual income of a protected person in respect of whom a private manager has been appointed -OPC charges 4% per annum. A Private Manager is required to prepare and furnish annual financial reports. It is these financial reports that will detail the client’s income and determine the income fee payable. NOTE: Interest earned on funds held, as security, is included as income.

c) Regulation 4 (1) (e) Financial Plan Fee: For the development of a financial plan for a protected person in respect of whom a manager of the estate has been appointed – such reasonable fee as the Protective Commissioner may fix.

d) Regulation 4 (1) (f) Accounts Fee: For the filing, examination and passing of a Private Manager’s accounts OPC charges a fee of up to $100.

e) Regulation 4 (1) (g) Other Fees: Under certain circumstances a fee may be levied, at the discretion of the Protective Commissioner, for any service in the administration of an estate – such reasonable fee as the Protective Commissioner may fix. This special fee may be charged for work which has been particularly complex, time consuming or has unreasonably diverted an officer from other duties.

2006 OPC Review of Private Management Fees

The fees for Private Management have not been reviewed since their inception in 1985. They no longer properly reflect the work undertaken nor any changes in community expectations about the work undertaken in PMB.

In May 2006 OPC commenced its review of PMB fees and considered a proposal to develop a new fee structure. RSM Bird Cameron was engaged to prepare a report for inclusion in a consultation paper for stakeholders. This review did not proceed to conclusion; however the report is available as part of this review.

Objectives of Private Management 2006 Fee Structure

The objectives of the fee structure proposed in 2006 were:

1. To ensure OPC is provided with the resources to enable it to fairly and efficiently undertake its role in the direction and authorisation of Private Managers,
2. To provide an equitable fee structure, and
3. To increase OPC’s ability to recover its costs more directly and transparently.

To achieve these objectives, OPC requires a new Private Management fee structure. These objectives remain current.

The terms of reference for the RSM Bird Cameron report were to develop a new fee structure for private management services that:

(a) charges a set rate for core functions (guided by the principle that fees should be fair and reflect the actual cost of providing the service);
(b) is easy to administer;
(c) is comparable to fees for the same work in other jurisdictions;
(d) separates the funding of PMB from the directly managed client area;
(e) generates revenue which meets the full allocated costs of private management services.

Private Management Fee Models Considered In 2006

In developing the proposed new fee structure, RSM Bird Cameron considered five base models of price determination as listed below:

1) No Fees – full funding from NSW Treasury
2) Retention of current fee structure
3) Set Annual Fee – one equivalent fee amount for all clients
4) Hourly Rate for Core Functions – time costing model with variable rate for each function
5) Set Rate for Core Functions Model – variable rate for each function without the need for time costing.
6) Combination of cost recovery (model 3) and Treasury funding
7) Combination of cost recovery (model 5) and Treasury funding

The arguments for and against these models as presented in 2006 remain current. The Models considered in 2006 appear in Table 2.

Table 2

Models	Benefits	Constraints
1. No fees - full funding from NSW Treasury	• Service provided to client at no cost to them directly	• Requires total funding from Treasury • Clients not paying fair fee directly • No other jurisdiction has this model
2. Retention of current fee structure	• No change • Ease of administration	• Fees do not reflect the actual cost of service to clients • Fee may not be affordable by some clients Requires some Treasury funding
3. Set annual fee – one equivalent fee amount for all clients	• Ease of administration • Transparency of fees • Generates revenue to meet full cost of private management services	• Fees do not reflect the actual cost of providing the particular service to clients • Fee may not be affordable by a significant number of clients
4. Hourly rate for core functions – time costing model with variable rate for each function	• Transparency of fees • More equitable	• Not as easy to administer as the set rates for core functions • There may be inconsistency between the actual cost of service delivered and the fee charged • Fee may not be affordable by some clients
5. Set rate for core functions – variable rate for each function without the need for time costing	• Ease of administration • Transparency of fees • Equitable	• There may be inconsistency between the actual cost of service delivered and the fee charged • Fee may not be affordable by a significant number of clients
6. Set annual fee with NSW Treasury funding	• Ease of administration • Transparency of fees	• As fee may not be affordable by Many clients this model requires Treasury funding • Does not eliminate potential inequity issues
7. Set rate for core functions with NSW Treasury funding	• Ease of administration • Transparency of fees	• As fees may not be affordable by some clients this model requires Treasury funding

Preferred Fee Model

OPC is deeply concerned about the capacity of people with modest estates to pay fees under the current or any future model in the absence of Treasury funding. OPC also recognises that the levying of fees in Private Management is a source of concern on the part of some Private Managers. However the legislation requires that OPC undertakes this work.

The model preferred by OPC in 2006 was the Set Rate for Core Functions with Treasury funding, that is Model 7.

Table 3 updates the rates recommended in the RSM Bird Cameron Report. OPC believes this model better reflects the costs of providing services to clients. However it is recognised that some clients will be paying more than the current fee and others would be paying less. Examples of current and proposed fees can be found at Annexure B. Fee relief while highly desirable will not be possible in the absence of Treasury funding.

Please Note: The figures used in Table 3 and in the conclusion do not take account of the potential impact of any Treasury funding. It has not been possible to model such an outcome and any broad estimate would risk misleading the reader. We are aware that as a part of the IPART inquiry such modelling may be conducted.

Table 3

Core Function	**Matters per Category(1)**	**Fee Per Matter ($)**	**Estimated Annual Revenue ($)**
Directions	599	1,500	898,500
Accounts	1,891	810	1,531,710
Authorised Visitor	15	1,300	19,500
Director of Nursing Report	1,123	125	140,375
Investment	145	2,100	304,500
Real Estate – Sale & Purchase	115	2,500	287,500
Real Estate – Other	944	210	198,240
Guardianship Tribunal - Referrals	60	1,750	105,000
Guardianship Tribunal – Reports	150	600	90,000
Total			**3,575,325(2)**

(1) Based on the figures in the 2006 RSM Bird Cameron Report and measured by time spent per matter for fee purposes. The figures above have been adjusted for inflation.
(2) Estimated total cost for Private Management in 2007/08 is $3,621,130

OPC recommends that these fees be regularly reviewed and indexed by inflation.

As the 2006 review of fees did not proceed to conclusion, the model proposed by RSM Bird Cameron has not been tested by OPC.

The private management core functions that would be subject to fees are set out below:

- Issuing Authorities and Directions
- Examination of Private Manager's annual accounts
- Obtaining Authorised Visitor Report
- Obtaining Director of Nursing Report
- Consideration of Private Manager's proposals for investments
- Consideration of Private Manager's proposals for sale and purchase of real estate
- Consideration of Private Manager's proposals for real estate other for example leasing
- Referrals to the Guardianship Tribunal
- Reports to the Guardianship Tribunal

The change from an income based fee to a fee for service model will inevitably result in increased fees for some clients and decreased fees for others. A substantial number of clients would not be able to meet the full cost of this model. This would result in a loss of revenue which would need to be offset by Treasury funding. In the absence of such funding OPC would have to consider increasing fees. This would have the same effect as any increase in Direct Management fees. That is increasing fees to larger estates leading to a greater desire to move away from OPC and further disadvantage the clients with modest estates.

The Set Rate for Core Functions with Treasury Funding Model (Model 7) as per Table 3 remains the OPC preferred model.

FINANCIAL IMPLICATIONS

OPC relies on the income generated from fees for 85 % of its total operating costs for privately managed and directly managed clients.

Table 4 outlines the financial results for the last two (2) years, and the projected result for the current financial year ($,000):

Table 4

Revenue	Actual 05/06	Actual 06/07	Projected 07/08
Management and Investment Fees	(1) 19,311	22,478	22,487
Direction and Supervision fees (PMB)	1,455	1,862	2,450
Misc	176	54	0
Investment Income	899	1,141	1,247
Funding from Treasury	7,918	7,432	2,825
Total Revenue	**29,759**	**32,967**	**29,009**
Total Expenditure	**(24,500)**	**(26,432)**	**(28,597)**
Surplus/(Deficit)	**5,259**	**6,535**	**412**

(1) Net of $2.5m rebate to clients due to exceptional returns on investment of client monies

The above information does not address any capital funding which is accounted for separately.

OPC anticipates that the 2008/09 year will result in an operating shortfall of $2.3m. This reflects a drop in management and investment fees influenced by the change in global investment markets. It also reflects the reduction in the level of funding from the Treasury. This shortfall will initially be covered from reserves but is not sustainable beyond one year.

The forward estimates for 2008/09, reflect a 10% decrease in management and investment fees based on actual results experienced since December 2007. This reduction relates directly to investment markets. OPC monitors the impact of market shifts closely throughout the fiscal year.

CONCLUSION

OPC recommends;

That the current fee model for directly managed clients, banker and missing persons[6] be retained as outlined below:

1st year establishment fee: 1% of assets (capped at $2,200)

Ongoing Management Fee: 1.1% of investment assets (excluding principal place of residence, motor vehicles etc)

The maximum annual ongoing management fee has been set at $50,000. This includes the establishment fee.

Investment Fee: 0.5% of investments in OPC Funds

and

That the Set Rate for Core Functions with NSW Treasury Funding Model (Model 7) as per Table 3 be adopted for the new Private Management fee structure.

Core Function	**Matters per Category(1)**	**Fee Per Matter ($)**	**Estimated Annual Revenue ($)**
Directions	599	1,500	898,500
Accounts	1,891	810	1,531,710
Authorised Visitor	15	1,300	19,500
Director of Nursing Report	1,123	125	140,375
Investment	145	2,100	304,500
Real Estate – Sale & Purchase	115	2,500	287,500
Real Estate – Other	944	210	198,240
Guardianship Tribunal - Referrals	60	1,750	105,000
Guardianship Tribunal – Reports	150	600	90,000
Total			**3,575,325(2)**

(1) Based on the figures in the 2006 RSM Bird Cameron Report and measured by time spent per matter for fee purposes. The figures above have been adjusted for inflation.
(2) Estimated total cost for Private Management in 2007/08 is $3,621,130.

OPC recommends that the Private Management fees be regularly reviewed and indexed by inflation.

The OPC believes that the proposed fee structures outlined for both Private and Direct Management meet the tests set out in this paper

[6] The OPC can be appointed by the Supreme Court under S 21C of the *Protected Estates Act 1983* to manage the affairs of persons declared missing. The OPC also acts as banker for 702 people living in DADHC long term residential care. Over time this groups of clients' estates are being transferred to formal financial management via application to the Guardianship Tribunal.

- Clear,
- Transparent,
- Fair,
- Competitive, and
- Flexible

OPC also considers that:

- The fees are competitive in an ever increasing competitive market segment;
- It has the in-house know-how for most if not all client needs and has extensive relationships with providers of expert services, supplier relationships, etc.;
- It has an experienced staff of over 250 people with hands-on industry experience; and
- It has a long history of advocacy and understanding client needs.

OPC accepts that the proposed models will not completely address the complex issue of equity between those clients who can afford to pay the fees and those who cannot. It is essential that any fee structure addresses the issue of what percentage of OPC's operating costs should be recovered by the charging of fees and what percentage should be provided through Treasury funding.

Annexure "A"

Examples of OPC Direct Management Fees:

OPC does not recommend any change to direct management fees at this time.

Client with pension only and little spare cash

A new client whose only income is a Disability Support Pension has $500 in his/her account at OPC throughout the first year.

The fee payable by this client in the first year of management would be:

$500 x 2.1% = $10.50 (management fee).
$500 x 0.5% = $2.50 (investment fee).

This gives a total of $13.00 or about $1.09 per month.

For every year after the first year, if the client's assets remain the same, the fee payable by the client would be:

$500 x 1.1% = $5.50 (management fee).
$500 x 0.5% = $2.50 (investment fee).

This gives a total annual fee of $8.00 or about $0.67 per month.

Client with her/his own home, cash and other assets

A new client owns her/his own home valued at $600,000; has $850,000 in cash; and owns an investment property valued at $280,000. These assets remain the same throughout the first year. The total assets upon which a fee would be payable is $850,000 + $280,000 = $1,130,000 (the value of the client's home is not included).

The fee payable by this client in the first year of management would be:

$ 1,130,000 x 2.1% (1.1% plus 1% 1st year fee capped at $2200) = $14,630 (management fee).
$ 850,000 x 0.5% = $4,250 (investment fee).

This gives a total of $18,880 or about $1,573 per month.

For every year after the first year, if the client's assets remained the same, the fee payable by the client would be:

$ 1,130,000 x 1.1% = $12,430 (management fee).
$ 850,000 x 0.5% = $4,250 (investment fee).

This gives a total annual fee of $16,680 or about $1,390 per month.

Client with her/his own home and substantial assets

A new client owns his/her own home valued at $500,000; has $17m in investment assets of which $1m is in superannuation and the remaining $16m in OPC funds. These assets remain the same through the first year. The total assets on which a fee would be payable is $17m.

The fee payable by this client in the first year of management would be:

$17,000,000 x 2.1% (1.1% plus 1% 1st year fee capped at $50,000) = $50,000 (management fee).
$16,000,000 x 0.5% = $80,000 (investment fee).

This gives a total of $130,000 or about $10,833 per month.
(Without the $50,000 cap, this client would pay $357,000 management fee in the first year).

For every year after the first year, if the client's assets remained the same, the fee payable by the client would be:

$17,000,000 x 1.1% (capped at $50,000) = $50,000 (management fee).
$16,000,000 x 0.5% = $80,000 (investment fee).

This gives a total annual fee of $130,000 or about $10,833 per month.
(Without the $50,000 cap, this client would pay $187,000 management fee each year).

Annexure “B”

Comparison of Current and Set Rates for Core Function Fees

Please note: These examples do not take into account the effect of any Treasury funding that could be applied to address the circumstances of clients who cannot afford to pay part or all of the fees levied by OPC. Please refer back to page 16 for a full explanation.

1. Client A

Client is aged 86, resides in a nursing home has $29,000 in term deposits and a $210,000 Accommodation Bond (paid in 1st year). Pension and term deposit/bank account interest are the only income.
The fee payable by this client <u>in the first year of management</u> would be:

Current Fee
$6,300 x 4% = $252.00 (Income Fee)

This gives a total 1st year fee of $252

Set Fee for Functions
Directions & Authorities $1,500
DON report $125

This gives a total 1st year fee of $1,625

For every year <u>after the first year</u>, an estimate of the client’s fees would be:

Current Fee
$925 x 4% = $37.00 (Income Fee)
$100.00 (Accounts Fee)

This gives a total fee of $137pa

Set Fee for Functions
DON report $125
Examination of Accounts $810

This gives a total fee of $935pa

2. Client B

Client is aged 30, resides at the family home has $4.5M in investments. Income is from allocated pension and investment distributions.
The fee payable by this client <u>in the first year of management</u> would be:

Current Fee
$95,325 x 4% = $3,813.00 (Income Fee)
$100.00 (Accounts Fee)
Real Estate – Sell/purchase $350.00 (Special Fee)

This gives a total 1st year fee of $4263

Set Fee for Functions
Directions & Authorities $1,500
Real Estate - Sell/purchase $2,500
Investment $2,100

This gives a total 1st year fee of $6,100

For every year after the first year, an estimate of the client's fees would be:

Current Fee

$48,800 x 4% = $1,952.00 (Income Fee)

$100.00 (Accounts Fee)

This gives a total fee of $2,052pa

Set Fee for Functions

Examination of Accounts $810

This gives a total fee of $810pa