Email received from Justice Windeyer to IPART on 19 June 2008

Thank you for sending me a copy of the Issues Paper. I do not think it appropriate for me to comment in detail on the issues raised, but I would like to make a few general comments:

1. 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.

2. Fee for service charging on its face seems fairer than commission based fees. Nevertheless, fee for service requires more record keeping and something like time costing. There is a move away from time costing at least for legal fees. A commission based fee structure is more easily understood and, if reasonable, is probably acceptable.

3. It is difficult to compare OPC fees with trustee company fees unless investment fees are taken into account. The OPC investment fee of 0.5% is said to include all investment expenses such as management expense ratios (MER's) of managed funds. Comparison with trustee companies is not always easy.

4. Trustee companies under the *Trustee Companies Act 1964* are authorized to act as managers of the estates of persons found unable to manage their affairs. In this Court proceedings under the *Protected Estates Act 1983* are commenced by summons, usually with a parent or sibling as plaintiff and the person in respect of whom a management order is sought as defendant. If the plaintiff seeks an order appointing a trustee company as manager that order would usually be made. The practice of the judge in charge of the Protective List is to require the fees to be charged to be stated, but this is not entirely satisfactory due to problems with any MER charges as different funds make different charges.

5. It may not be logical for the OPC to make the same charge against income of 4% for estates managed by statutory trustee companies as for private individual managers. The capacity of the Protective Commissioner to reduce such fees is, I understand, seldom, if ever, exercised.

6. To some extent level of fees bears upon selection of manager because the fees of authorized trustee companies are often compared - not always accurately - with those of the OPC. Thus if the annual management fee were capped at $20,000, being the maximum cost of servicing any particular estate, it is likely that more big estates would go to the OPC for management reducing the extent of cross-subsidisation which exists at present and being fairer to the large estates. For obvious reasons the trustee companies are not interested in small estates.

7. A proper concern of trustee companies is to make profits for shareholders. The reason such companies seek management of large estates is to contribute to those profits. This is, of course, not a proper concern of the OPC. The question of the appropriateness of cross-subsidisation is not one on which it is appropriate I should comment as a judge.

Mr Justice Windeyer
Supreme Court
Protective List
(IPART note: Mr Justice Windeyer is the Judge in charge of the Protective List of the Supreme Court)