Dianne Haines

14th July, 2008

Dr Michael Keating
Chairman
Independent Pricing and Regulatory Tribunal
New South Wales

Dear Dr Keating

I would like to present some thoughts regarding the Independent Pricing and Regulatory Tribunal (IPART) review of fees imposed by the Office of the Protective Commissioner (OPC) on estates they manage.

Firstly, I would like to make some general comments. In her submission, the Protective Commissioner, Ms Imelda Dodds, notes that the OPC does not have the capacity to choose the clients it acts for. Surely that makes the OPC a public service organisation and in that case, how can the OPC be compared to private companies who are able to select their clients on the basis of trust size and corresponding income generation? If the welfare of OPC clients, some of our society's most vulnerable members, is genuinely of prime importance, should not the government allocate guaranteed yearly "running costs" to supplement "sustainable" fees deducted from managed funds? If the OPC is expected to attract larger, more lucrative trusts, would not a reduction in fees through a short-term injection of government funds make the OPC a more attractive fund manager for larger trusts? With regard to incentives for the OPC to improve its performance in fund management, could there be an independent yearly evaluation of OPC performance that had the capacity to recommend a "bonus" payment from managed trusts to the OPC for management strategies that resulted in a significant boost to trust value?

Secondly, from reading the Issues Paper it appears that the current search is for a "one size fits all" formula for determining fee levels. Figures 2.3 and 2.4 of the Issues Paper show the enormous variability in both type of disability and age of OPC clients, and surely that variability makes it almost impossible to derive a "one size fits all" formula. Perhaps there should be a formal recognition within OPC's fee structure that there may need to be individual fee agreements for many clients. As an example of the pressures that affect the trust (and life) of a client who would be included in one of the smaller categories of OPC clients, I would like to describe the situation my son and I face at present. My son has been a client of the OPC since he was 12 years old, that is, for 20 years. The OPC was assigned to be manager of the fund he was awarded for injuries he sustained in a motor vehicle accident at 2 years of age, injuries that left him totally dependent on others and requiring 24 / 7 care for the rest of his life. As I do not have a copy of the original Court order I do not know if the level of management fees was specified then, but I am confident that 20 years ago, no realistic prediction could have been made regarding the levels that both management fees and care costs would reach today and I am sure it was never expected that my son's trust would have to support this level of expenditure. These are some of the issues we now face:

- OPC management fees are not negotiable and are deducted regardless of other costs
- for the first 10-15 years that my son was a client of the OPC, management fees were set at a fairly sustainable level
- care costs continue to rise and OPC management fees are no longer set at a sustainable level
- it has been implied to me by OPC staff that, in order to reduce care costs, I (a no longer young, single carer) should take back the care hours that the employment of paid carers has only recently partially relieved me of
- even if my son had no paid carers at all and I resumed total care, this would not make up the monetary short-fall reported by OPC staff
- this only addresses the monetary issues and does not take into account the loss of quality of life to my son if the social contacts brought into his life by his paid carers were taken away
- if I resumed total care, would I be sentencing my son and myself to a miserable life in order that the OPC could deduct its fees for a greater number of years before the trust finally ran out
- would my son be better off if we kept his paid carers, let him enjoy his life as much as he can until his trust runs out, then admit him to a nursing home where the government would support him for whatever was left of his life
- should I investigate the possibility of transferring his trust to a private manager

I am sure these issues, so important in regard to the trust of a 32 year old man with multiple disabilities who has already been a client of the OPC for 20 years and could still be a client in 30 years time, are totally different from those that are important to people who, for instance, become clients of the OPC at 70 years of age. Does the OPC have a responsibility for ensuring that funds entrusted to its management will last the lifetime of the individual, whether that is 10, 20 or possibly 60+ years? If so, then perhaps the formula for management fees (or the individual fee agreement) should make provision for the age of the individual when he/she became a client of the OPC and for how many years the fund may be expected to support that individual.

Thank you for the opportunity to contribute to this review process. Please do not hesitate to contact me if I can contribute in any other way.

Yours faithfully,
Dianne Haines