Submission to: Independent Pricing and Regulatory Tribunal

Subject : Review of fees of the Protective Commissioner
Other industries – Issues Paper, June 2008.

Pursuant to an Order of the Guardianship Tribunal, I was appointed Guardian for my father in October 2004, this included *Directions and Authorities* to act as his Private Manager. My father suffered a severe stroke and as a result is permanently incapacitated and totally unable to communicate. He did not have a power of attorney arrangement and had considerable outstanding bills and affairs that needed to be managed. Changes to the laws around Privacy a few years ago made it impossible to conduct any business on his behalf, which left no option but to seek legal Guardianship. I have been managing all his affairs since.

In addition to this responsibility, I have been associated with the NSW Office of the Protective Commissioner (OPC) since 1992. My association came about when, on the advice of medical practitioners and solicitors, I made application to the Supreme Court to appoint the Protective Commissioner as manager (under the *Protected Estates Act 1983*) for the estate of my brother.

Following a car accident in 1983 my brother acquired a brain injury which has severely altered the quality of his life and leaves him incapable of managing his own affairs. In 1992 there were no viable alternatives to managing his money other than via a family member. Given the various difficulties of managing people with a brain injury, the family wished to have an independent body administer his estate as it was seen as the least conflicting option. My brother was the recipient of a significant settlement some ten years after his car accident. Following settlement (in 1993) the OPC has been 'managing' his financial affairs with somewhat varying levels of quality.

My circumstances therefore provide me with insight into the OPC from a Private Managers perspective and as an advocate of an OPC directly managed client, my brother.

Under your classification, outlined in the IPART Issues Paper, my family classifies as follows:

Classification	Father	Brother
Management order	Guardianship Tribunal	Supreme Court
Client type	Privately managed	Directly managed
Disability	Age related / other	Brain Injury
Age group	60-69	40-49
Income	<$10k	$50-<75K
Value of assets	<$10k	$2m-<$4m including >$1.5m OPC investments
Fees	Usually an accounts fee of $100, but can sometimes be successful at obtaining a waiver.	Currently in excess of $1500 per month (based on report of February 2008)
Services provided	Account checking only (have never provided anything more)	Varied and detailed separately.

In respect to the Issues Paper I would like to draw your attention to the various items outlined below.

OPC's services, or lack of

Many aspects of the paper relate to the OPC's services. My first reaction is 'what services?' Since my brothers affairs have been managed by the OPC, he has gone through no fewer than about 6 estate managers when estate managers were the OPC's structured way of dealing with 'clients'. Since the OPC's restructure to their centralised client service system, dealing with them is quite arduous, completely frustrating, entirely condescending and more often than not, a complete waste of time.

The OPC's '9/28' concept of customer services is the first point in question. Although a long time ago now, I do not recall such detailed work (as outlined In the first year: establishment of new clients) in setting up my brothers affairs. Rather for my brother it seems that many of these '9' point criteria to client service have been retrofitted, so I'm unclear when this actual service charter came about. .

Of the 28 points of 'ongoing management' services to my brother (>$1500 p/month) he would receive less than a third of these services and then when he has been the recipient of these services they are more often than not inadequately carried out or not actioned at all.

For example, my brother purchased a boat some years go and informed the OPC more than 12 month ago he no longer wanted the burden of maintaining it and asked the OPC to sell it (service point 12) To date the boat remains on its mooring, is no longer used by him and the OPC continue to pay the associated costs of it from my brothers estate despite his previous instructions to sell it. He has no control over the OPC's continued debiting of his 'working account' and unless he chooses to pursue a complaint, he apparently has no authority in requesting its sale. This is the kind of example that causes us (as his family) to intervene on his behalf in order to resolve the issue. I question why the OPC will not take my brothers instruction, is this an example of their complete disrespect for their clients wishes?

Another example relates to a recent incident where my brother incorrectly filled his car with Petrol instead of Diesel necessitating a trip to the service centre and a $900 charge to correct his mistake. He informed the OPC of this incident requested money be arranged so that he could collect his car. The OPC client services person in the 'centralised service system' told him he would have to wait 21 days until they could process a cheque. Since this caused him great frustration my mother intervened on his behalf and sought to arrange a direct deposit for the payment. Initially she was told by a customer service person that the process was delayed as they had to 'verify my brothers' affordability'. Pointing out the irony of the statement, she reminded the OPC they managed his money and know exactly what he can 'afford'. She was then told by the OPC they had no way to facilitate an electronic fund deposit and so a cheque would need to suffice, albeit in 21 days. Exasperated, my mother paid the bill herself and arranged to be reimbursed by the OPC however long it took.

Yet another example relates to the service points 13 – 17. My brother lives, in his own home, adjacent to a major industrial development. During the course of this development his home suffered some structural issues (cracks etc) due to the impact of ground compacting machines and the use of heavy machinery on his boundary fence. Sometime ago he made this known to the OPC who arranged for a building inspection and report. As yet my brother has not received his 2008 statement so it's not possible to tell if his account has been charged for these inspections and reports. In any case, he has not been provided with a copy of the fees associated with the inspection, or a copy of the inspection report or a follow up from the OPC as to the outcomes and any possible strategies to address the issues.

These examples raise a number of issues:

- the OPC appear to have no accountability to clients for services they fail to perform and when the do perform services they have no accountability as to the quality of the service;
- any lack of service provision by the OPC is unable to be addressed other than by family intervention (if the client has a family that are willing and able to intervene) or by instigating the frustrating and lengthy appeals process that the majority clients are unable to effect;
- the OPC do not consider the satisfaction of the client in carrying out their 'services';
- there appears to be a complete disconnect between the reality of a clients situation and the 'rules' of the OPC operating systems;
- the OPC's client service centre is not supported by an IT system that provides up to date details on a clients affordability status; and
- the OPC is lagging in their government obligation to move to electronic payment systems.

At establishment my brother was not adequately provided for by way of financial planning and in 15 years my brother has had only one Financial Plan prepared for him by the OPC. He has never been provided with a copy of this plan, he has only a review report created in 2006 which in he does not understand.

In a recent attempt to engage my brother in his financial affairs I reviewed this plan and all his OPC statements and identified that the OPC reporting provisions could be immediately improved to make it more meaningful for their clients. To assist my brother to understand his financial situation we requested (via email) that the OPC provide us with electronic copies of his account so that I could sort them by budget classification and help him to see where and how he was spending his money with the view to requesting the OPC to make a new financial plan.

An automated reply stated '*Your correspondence will be reviewed and dealt with within 21 days".* A few days later we received their official response as follows:

> *"Unfortunately we are unable to send your statements in an electronic format as we are not structured to do so. As you can appreciate the number of clients that this Office manages does not allow us to provide this option.*

I fail to understand how any organisation could justify charging >$1500 per month to manage your finances and not provide you with clear and transparent information about those finances in any manner that you request. The number of clients the OPC manages is not an issue for my brother, or any of their clients, and it should not preclude them from being provided with a service they request. The statement "*the OPC performs a complex range of services tailored to its client needs"* is highly questionable as is their level of flexibility.

The commencement of the client service centre has been an issue for my brother, and consequently the family, since its inception a few years ago. The previous system of appointing a dedicated estate manger enabled the manager to form a relationship with the client and where appropriate, with the family. In our case, with most estate managers, this facilitated a good working relationship with minimal frustration on behalf of my brother.

My brother, like most brain injured clients, is sometimes difficult to deal with and does not cope well with authorities telling him what he can and can't do with his own money. As a result of this we have witnessed his continued and escalating frustration that is further augmented by having to deal with a different person every time he contacts the OPC. The 'one size fits all' approach to customer service does not work and should be abandoned. The depersonalised interface causes clients unnecessary stress and hardship.

Although I have not been there, my brother informs me that he hates the physical environment he describes as 'meeting cells' at Parramatta and now refuses to go there because he feels it is degrading and when he has been there he claims he is treated like a criminal. Given the hostile environment and the quality of the service provided by the OPC there is no possible justification the OPC could have in increasing its fees for any one.

I question whether the folks in the client service centre receive specific training in dealing with people with special needs. Most families and advocates for the client groups the OPC services will tell you quite openly that dealing with intellectual, brain injured or psychiatric clients is highly challenging even when you understand the clients personal circumstances. The OPC really needs to consider reverting to the 'estate manager' system especially for high demand clients or alternatively invest in high quality training programs that address the behaviours of the special group of clients the OPC support.

In reference to my own treatment as a Private Manager, until recently I have mostly been happy with the people I have dealt with although their attention to detail is often somewhat lacking and they often make mistakes. However, I had cause to deal with the OPC at the end of last year in respect to my fathers' accounts. I received a letter stating I did not have to lodge accounts for the 2007/08 year, instead I was required to lodge 2008/09. I queried this anomaly by email and was passed onto a new person who said it was a mistake and that I did have to lodge accounts for 2007/08. So because of this the accounts were late and the OPC appointed client service person sent me some very rude emails demanding I attend their Parramatta offices a few days before Christmas for a meeting with her at a specific time. I was quite taken aback by this as I live in rural NSW, run a 1000 acre property and have small children. Coming to Sydney a few days prior

to Christmas was not possible and coupled with the fact that I was not consulted about this nor was I a participant in the making of such an appointment was completely unprofessional when a simple telephone call actually resolved the issue. Again it reminded my of the lack of respect the OPC has for its clients in making unilateral decisions without so much as a simple phone consultation.

Inadequate consultation

In a recent review of my brother's financial statements I discovered that the OPC has set up a superannuation fund on his behalf. My brother cannot explain to me why this has occurred and is unable to provide evidence of his approval for this strategy. Prior to his accident my brother had a small amount of superannuation in his own fund and the OCP has rolled this into the fund they endorse and unilaterally decided to invest additional funds into superannuation on a yearly basis. In the Financial Plan review, the OPC implies a tax advantage as one reason for investment and refers to information about superannuation explained in an Appendix to their document which is non existent.

I have several concerns about this and question the OPC's right to determine such decisions without the consultation of the family. Many financially astute people have difficulty understanding superannuation and to propose it to a brain injured person in a way that is totally inaccessible to them is a complete infringement upon their rights.

Further more to invest in a superannuation scheme for a brain injured person who may not even reach the required retirement age is quite absurd. At the very least the acquisition of an up to date medical report on my brothers status which includes a review of his long term prognosis, coupled with a discussion with the family would have been in order prior to this decision being made.

Incidentally my brother has never been provided with any further detail about his superannuation and subsequent financial reports simply report his superannuation detail as a single line item in his 'assets summary'. All superannuation clients are provided with yearly statements as to their contributions, fees and charges, vested amounts etc, my brother is not provided with any of this information. In fact, the OPC's reporting on superannuation does not even include my brothers' membership number in case he ever wanted to make his own inquiry. It is not possible to ascertain any of the usual detail about his superannuation so it is not at all transparent, nor are the fees the OPC charges on top of the fees the superannuation organisation charges for provision of the same service.

Over the past 18 months or so my brother has sought the OPC's agreement to the establishment of a small bank account or funds that can he can access via credit facility. He does not require a credit card, he has no need for credit since he can afford whatever he want, he simply wants to be able to access money for purchases as and when he deems it appropriate. The OPC for reasons completely unclear to us will not provide this option for my brother.

At present my brother is provided with $350 per week for his own living allowance. If he wishes to purchase something of greater value than this he must make application to the OPC to gain 'approval' for a purchase, sometimes requiring 'three written quotes' then suffer a 21 day waiting period for the OPC to raise a cheque and pay for it, if they so approve of the purchase. As an example, my brother needs to purchase a new lounge suite, he sees one on special that he likes, so has to approach the proprietor and ask for written quote on the lounge, inevitably explaining that he has to get approval to spend his own money and it could take 21 days for the proprietor to be paid.

Apart from the embarrassing situation this places my brother in, the proprietor may or may not help him, but more often than not says he cant hold sale stock and so the savings my brother might have made are now lost due to this abominable system he lives within.

My brother is seeking a debit account with visa facility (or similar) and access to $10,000 of his own money in order that he may live and operate in the world with dignity. Is brain injury is something that happened to him through no fault of his own, his settlement was provided to cater for his needs yet he cannot access it in order to lead as normal a life as possible. I question, do you live like this? Do you have to seek someone's 'permission' for money to purchase what you need and then be subjected to their whim on when an dhow they will pay for it? He is 43 not 13. Unfortunately this situation is untenable> Following significant unsuccessful attempts at setting this up and the cause of totally unnecessary huge angst on my brothers behalf I will be intervening with the OPC to have his wishes actioned.

Financial reporting

As a Private Manager I have completed a number of yearly accounts for my father an again am exasperated at the lack of flexibility in the provision of these records. I must provide printed copies of all my fathers' statements; provide a copy of every receipt related to his estate and complete a statutory declaration about the status of the accounts. I must do all this and provide it to the OPC in hard copy certified by a Justice of the Peace or equivalent. I cannot provide an excel spreadsheet despite that being the most efficient way to handle and report upon my fathers accounts. The OPC then charge my father $100 to check the accounts.

My fathers' estate is less than $800 and is primarily made up of his disability pension from Centrelink. His pension does not cover his most basic living allowance, the pile of medications he has been prescribed and the personal effects he needs to live. I subsidise my father several thousand dollars each year just to maintain a quality of life that is bearable. My father is quite a demanding patient and places considerable strain on the Nursing Home he resides in, he goes through a wheelchair every year or so, he suffers incidents requiring intervention almost every once a month. Each of these incidents require some form of intervention on my behalf and usually end up costing considerable time, effort and money to resolve. If I did not perform the role of Guardian and Private Manager for my father the OPC would be appointed as his manager and Guardian. Given the way the OPC treats its wealth clients, like my brother, I shudder to think what situation my father would be left in under this arrangement.

Since I do all the work I question how the OPC can justify a charge of $100, which in my fathers case is 1/8th of his entire estate, simply to review a few pieces of paper. For clients such as my father, which are many according to the statistics provided, I endorse a fully funded model of support. If governments will not provide these services for those most in need in our communities then who will? In a sense my father is lucky to have a family member who wishes to take on this role for him as there are many folks in care that do not have such an option. These issues are a matter for social policy requiring urgent attention. The growing population of older Australians is only going to place more pressure on this system which already appears broken.

In order to eliminate costs for my fathers' estate I do not maintain a cheque account for him as it attracts unnecessary bank fees. So to pay the OPC their $100 in fees last year I sought their bank account details to make a direct deposit (from my bank to the OPC). After several emails back and forth the OPC told me they did not have such a facility that I would need to either write a cheque from my own personal funds, get a bank cheque or money order (each of these cost money to do) and post it to them. I must say I find this completely backward. The OPC could have had my funds (albeit $100) in a matter of minutes but instead their archaic systems incurred a multitude of delays and caused me extra expense just to be able to pay them. I have now resolved every year to send a request for a waiver of fees for my father to avoid all the unnecessary time and cost burdens associated with lodging his accounts.

Financial reporting comparison

You may be interested to know that the extent of financial detail provided by Private Managers is more than the detail actually reported back to clients who are directly managed by the OPC. If you refer to the publication *Handbook for Private Managers – 2003* (it does not have an ISBN it is a photocopied guide, hand bound) Appendix E outlines the Private Managers reporting requirements.

As a Private Manager, my fathers' accounts must include a total breakdown of his income and expenses aggregated by Pension, Bank Account, and the like with corresponding assets and liabilities fully broken down and then aggregated into classifications. This is the reporting requirement for Private Managers. When comparing this to the reporting provided by the OPC to my brother I note the OPC do not provide this same level of reporting back to their own clients.

If I want to know how much my brother has spent on a particular type of expense I need to sit down with my calculator and go through each line of data to pick up the data I need, it is not aggregated by expense type and so cannot easily be related back to his budget to see how he is going. There are no details about his superannuation, his major assets are not valued and provided as part of his estate. His home that is owned outright is listed, but attracts no value, and his other major assets are not even listed. It is not clear whether a Tax lodgement was made and for what portion of funds, there are no details about his investments aside from a single line item with a figure.

I find this situation highly curious. Why are Private Managers subjected to a higher level of reporting than the OPC reports to their clients?

I also find it curious that the "*OPC has informed IPART that individual income data for privately managed clients are not presently available"* (page 12). Private managers have to report it, so why is it unavailable. Surely the OPC 's management information system, or reporting practices cannot be so inadequate ?

Fees

According to the last statement provided to my brother the OPC is charging him more than $1500 per month in OPC Management Fees. My brother actually lives off a $350 per week Living allowance while the OPC take care of all his household bills etc. But the bottom line is that the OPC is charging my brother more in fees that he is receiving in his own living allowance. I note also that his living allowance has not changed for sometime despite him changing over to a diesel car, rising fuel prices and associated prices for everything. How is this possible? This is a totally unacceptable situation.

From the IPART Issues paper, it is now clear to the family that my brother is cross- subsidising other OPC clients. Whilst I'm sure that my brother would be comforted to know that overcharges on his account were benefitting our father, it is totally beside the point and a complete misuse of his funds. A activity based costing system would certainly make the service more transparent and fairer, but would still not solve issues around client who could not afford to pay, again this is an issue for the Government and the determination of a social policy to addresses it. The OPC's fees are not 'clear, fair or transparent' for a privately managed client or for a direct client.

Private management fees for my father have never been collected as he has no income other than his pension and he has no investments. Until this issues paper I was not aware that my father was 'exempt' from the Income fee since his income is 100% reliant on Centrelink entitlements. Instead the only fees collected are the $100 accounts fee and this in my opinion is highly questionable. I endorse a totally fee free system for Private Managers as the managers themselves do all the work and not only carry the considerable time and expense burden they also have the emotional issues of a dependant family member to deal with. If private managers were not supporting their relatives/ friends etc the OPC would be dealing with another 2490 clients. Do they have the capacity to do this?

The future

Overall I question if and how, the OPC are preparing for the future influx of clients that will most obviously be a result of our ageing population. If the OPC cannot get a fee mechanism established that is fair and equitable in the short term, that takes account of the costs of providing the services, they will most certainly loose 'high value clients' to private sector organisations.

From my family's perspective we are very interested in the outcomes of this review; our recent request to the OPC for electronic statements was to facilitate an independent review of my brother's estate since the initial appointment of the OPC. We are now forced into considerable delay while this information is re-entered into a format that is usable to us and that will allow us some transparency into the OPC's management of my brother's estate. It appears that despite his significant funds, my brother is living at a standard well below what he is able to afford.

The family has also recently sought a full medical review of my brothers' situation including a review of his long term prognosis. To be quite frank we are not interested in preserving my brothers' funds for a retirement he is unlikely to reach while his daily quality of life suffers due to the OPCs inability to understand his situation.

Reading the IPART Issues paper and reviewing this whole situation has left us quite sickened by what is occurring with the OPC and their clients. On this basis the family has resolved to pursue a complaint with the OPC in order to improve the situation for my brother. I hope that our actions will also have some positive bearing for other OPC clients too.

With regards,

Jacqueline Begbie