INDEPENDENT PRICING AND REGULATORY TRIBUNAL

REVIEW OF FEES OF THE OFFICE OF THE PROTECTIVE COMMISSIONER

Tribunal Members

Dr Michael Keating AC - Chairman
Mr James Cox
Ms Sibylle Krieger

Held at IPART
BT Tower
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THE CHAIRMAN: I would like to begin by wishing you a good afternoon and thank you for attending. My name is Michael Keating, and I am the chairman of IPART. On my left is Mr Jim Cox, the tribunal's chief executive officer and full-time member. On my right is Ms Sibylle Krieger, the tribunal's part-time member.

The tribunal is conducting this review today under section 9 of the IPART Act. The Premier has asked the tribunal to look at the fees charged to directly and privately managed clients of the Office of the Protective Commissioner.

The tribunal has gathered information for the review from the OPC and other stakeholders. It published an issues paper in mid-June on which submissions were sought and received. The submissions have provided a great deal of information to the tribunal and I think they have significantly enhanced our understanding of the OPC.

In the tribunal's preliminary view, caring for protected persons is an important part of social policy. Where people cannot afford to pay for OPC services, that ought to be reflected in the size of the subsidy that the OPC receives from government.

IPART has also engaged Ernst & Young, an accountancy firm, to provide a full cost analysis of the OPC's audited accounts, and the latest available was for 2006/2007. I understand that Ernst & Young are examining OPC's current 2008/2009 budget and undertaking a similar, albeit indicative only, exercise, but more on that later. Thank you to everybody here who has assisted us thus far.

The terms of reference define the scope of the review. IPART is to review the fees charged by the OPC in order to recommend a fee structure that is clear, fair and transparent. In the process of doing this, IPART is to assess OPC's capacity to fully recover the cost of services and its clients' capacity to pay. IPART is also to indicate the options by which any shortfall in fee revenues relative to costs could be funded.

The essential issue which seems to have emerged is whether the present charging system meets the objectives of being clear, fair and transparent. A number of submissions complain that the charges bear little apparent relation to

the work done. Some submissions also express concerns about the affordability of the charges, on the one hand, and the extent of cross-subsidisation on the other. The purpose of today's hearing is to seek further information through a structured discussion on some of the specific issues raised in the issues paper and the submissions.

After carefully considering your comments today and all of the submissions received, IPART will make its recommendations in a report to the Attorney-General and the OPC by the end of September.

Before we commence proceedings today, I will outline the way the tribunal will run. We have circulated in advance a document setting out the questions we wish to focus on in each of the key areas, and we will try to follow the order of topics set out in that document.

For each topic, the secretariat will give a short introduction. I will then invite participants around the table here to provide any further pertinent comment on the relevant issue. In order to complete our business, I would ask that these comments be brief and be confined to matters within the terms of reference of the review. Before concluding each topic, I will invite questions and comments from any other interested people seated not at the table, but elsewhere in the room.

The first topic will cover whether and in what circumstances there should be a flat fee related to costs of service or whether fees should continue to be a percentage of income or assets. The second topic will be the current fee structures for directly managed clients. The third topic will be the fee structure for privately managed clients. In both cases, we will discuss how they could be altered to make them clear, fair and transparent. The fairness requirement, in particular, is likely to generate discussion on related criteria, such as whether the fees are competitive or suitably reflective of social obligations or costs of service.

The fourth topic will be the range and quality of OPC's services and the cost of providing them and, fifth and finally, we will discuss the form and size of any New South Wales Government subsidy, views on deregulating fees and the timing of the next fee review.

As you no doubt have already observed, this roundtable is being transcribed, so I would ask that you please identify yourself and your organisation before speaking, at least the first time up, not necessarily every time, and can you also speak loudly and clearly for the benefit of the transcriber.

One other observation I would like to make concerns the major restructure of the OPC that I think is about to commence. It may be that IPART will have to consider making two sets of recommendations in this review. The first set will be recommendations that we think could be applied immediately. The second set, in that case, will be recommendations that can only be applied as more detailed service, cost and client information is collected as the OPC restructure is bedded down. An alternative is that IPART might deliver a report that covers the immediate future pending a further review after the restructure is in place. We will discuss that sort of choice in the final topic.

I would now like to hand over to Dennis Mahoney, who will introduce the discussion on fees.

DR MAHONEY: Thank you, Mr Chairman. Good afternoon, everybody. The first topic is how should client fees be structured. This topic, however they are structured, assumes the level of subsidy would be the same under all the structures. So at this point we are primarily interested in the nature of the fee setting and not the degree of subsidy that might or might not always be involved in that fee structure.

In order to levy fees related to the costs of providing service in the case of a fee-for-service structure, it is necessary to have the relevant information, such as costs by client groups or by specific services. Unfortunately, as the discussion notes that you received when you signed in mentioned briefly, it was not possible to allocate services and their costs to specific client groups and/or services in 2006/2007 when Ernst & Young did a review of the costs of the OPC.

However, as the chairman mentioned, the OPC has provided us with information concerning 2008/2009 based on the new operating structure for directly managed clients, and we understand that one reason for adopting the new

structure was in order to be able to distinguish between clients based on the extent to which they make use of OPC services.

Now Ernst & Young will be able to give us an indicative allocation of costs by those client groups and by some specific services, and it will be possible to estimate the average cost of servicing some of the client groups. The average costs that will be meaningful will be for those groups where clients receive similar levels of service, but other groupings of clients may have to be more narrowly defined and data collected if meaningful average costs of servicing them are to be derived.

The reason for mentioning this is it is useful background to the question for discussion and it shows that it may be possible to introduce fees into the OPC that relate to services that may supplement or replace fees that are related to income or assets. However, the questions as in the discussion notes and on the screens, for those of you who would like to use the screens to stay focused, are would a fee-for-service system be preferable to OPC's current fee structure, assuming that both are equally subsidised?

Another way of saying that a little more precisely is should client fees be based on a flat fee structure that reflects the level of service provided or a percentage of assets and income? Of course, it may be that as a result of discussions around the table we think a mixture of both approaches might be appropriate. In any case, the principles to be applied are that fees should be clear, fair and transparent and a couple of others that the chairman mentioned - flexible and competitive.

THE CHAIRMAN: It is now open for discussion. Ms Dodds?

MS DODDS: Thank you, Mr Chairman. With your leave, if I could perhaps make some remarks by way of general introduction, I would appreciate that.

THE CHAIRMAN: Sure.

MS DODDS: Since my appointment a little less than a year ago, I have been conscious of many concerns regarding the services of the Office of the Protective Commissioner, and we see some of those reflected very clearly in the

submissions.

We have been working systematically to address those issues in that period since my appointment, and one of those issues, and a very important one, is the question of fees. There may be a sense, I think, sometimes that people feel that the OPC is not concerned about the question of fees, but that is in fact not the case. We do have concerns, of course, about fees, and I think they are reflected in our various submissions, but of course these are set by regulations, and so there must be a clear and defensible process when moving to change them, and that is why we very much appreciate the IPART inquiry into the fees and the very public nature of the inquiry as well.

We also understand that of course there is a group of people who object stringently and strongly to the fact that fees exist in any way, shape or form for the services provided by the office, but it also has to be acknowledged that we do provide a public service and at some level a fee must be levied.

We are providing a public service to arguably some of the most vulnerable people in our community, and if we really wanted to go back in history, we could go back as far as Roman times to know that there has been a recognition of fee responsibility of community and government to meet the needs of this group, and that of course leads me and OPC to the view that this inevitably means that the cost of service must be subsidised to some degree. So I am heartened to hear, and I acknowledge it is the preliminary view of the tribunal, but I am heartened to hear it.

I very much appreciate the fact that in disseminating information about the IPART review it may have created a level of confusion amongst our client base. It is a devil-and-the-deep-blue-sea situation because it is a public process and a failure to inform people would have been fundamentally flawed and denied people the opportunity to express their concerns.

Can I say that the submissions provide me and the OPC with a very, very rich source of information and feedback, and those messages will not go unheard. However, you will not hear me or any member of staff of the OPC comment on any individual submission here today, and the reason for

that is quite simply that it would be a breach of our responsibility and legislation and a breach of privacy and confidentiality, something that we can't do. We can talk in general terms, but not the specifics, so I simply wanted to observe that for people's information.

Many of the concerns expressed go directly to the issue of the services provided by the Office of the Protective Commissioner and the way in which they have been managed, and many people will be aware that there is a new structure for directly managed services which commenced on Monday this week and it is being implemented throughout the month of August. Similarly, there is a proposal to restructure private management branch and we are testing some elements of that presently.

I just wanted to briefly, if I could, recap the essence of the OPC submission, which is that you need fees in order to operate. They do not cover all of our costs, and I and the office do not think that would be reasonable or that they should in fact cover all of the costs. However, we note that over the years since 2003 the level of treasury funding apportioned has reduced to such an extent that it now represents only 10 per cent of our overall revenue, and we believe that needs to change.

At some level we will always need to charge fees, but whatever they are, they need to be easily understood by the client group, and that is an issue that I will touch on briefly in a moment; equitable; flexible; and applied in a consistent manner.

As I have said, we are looking at an important public service - 72 per cent of our clients have assets of less than $50,000 and 60 per cent have assets of less than $25,000, and in anyone's terms, that is not a lot of money.

What this does mean, and we also acknowledge and we are very concerned about, is that clients with larger estates are paying higher fees, and that is an important issue of equity to be addressed. While we do need to note and acknowledge that matters coming from court settlements include an amount to cover the cost of future fund management fees, and those provisions exist, there is still an important question to be answered there.

In private management branch there are similar

problems with the current fee system, and that fee system has remained unchanged since 1985 and we fully recognise the need to change that system.

We also reiterate that any fee-for-service model - indeed, any model - will have an impact on the clients in both private and direct management branches, with a significant number in both being unable to pay. So the bottom line for us is, and I hope it was clear throughout our submission, to ensure that services are not denied to people who can't afford to pay them and that those with larger estates are not paying more than is reasonable.

Mr Chairman, as we go through, I just thought I might mention, as I noted earlier, it is not even yet 12 months since I have been in this position and people might wonder why I appear to have the back line of the Wallabies sitting behind me, which is an arrangement of senior staff. It really isn't my security detail at all, but they do have a detailed corporate history that I may lack if there are particular questions that need to be answered. So with your leave, I may be asking them to answer some questions.

I think we have made it clear that we welcome the opportunity to redevelop the entire fee structure system of the OPC. There are questions around the fee-for-service system, the flat-fee system, versus the percentage fee.

One of the threshold issues for us is the ease with which our client group will be able to understand the fee system. Feedback that we received from the fee system prior to the 2003 system introduced by the then IPART review was that it was confusing, that there were a range of fees and people found it difficult to understand them, that they found the percentage fee easier to understand. We simply put that on the table by way of information, not as a particular view or defence for one form or another. Thank you.

MR SIMPSON: Jim Simpson from the New South Wales Council For Intellectual Disability. Just to say first of all that the people whom I'm representing are people with intellectual disability, many of whom are under the financial management of the Protective Commissioner, some of whom would also have private financial managers, and those individuals under management would almost all be within the 60 per cent of clients that Imelda mentioned

with stakes less than $25,000, and probably very highly represented would be people below $10,000 even more so.

I just want to raise one particular concern about the notion of fee for service within especially the context of the people I'm representing. The level of service provided by the Office of the Protective Commissioner would seem to me to quite often be related to the nature of the person's disability. If the person is finding it hard to understand, or doesn't remember why I can't get this money or that I even rang yesterday to get this money, if the person has an acquired brain injury, he may well have disabilities that influence control, frustration and tolerance, and those sort of factors may well lead to the person making even daily approaches or calls to the Office of the Protective Commissioner. So at one level that is a high level of service, but very much related to the things that are beyond the control of the individual who is making those calls.

That then leads into how the Office of the Protective Commissioner responds to that approach and ironically if there is not a skilled response to how to address this individual's needs and maybe work out a way to put something into the person's life that will short-circuit these daily calls - not always possible, but a skilled response may be able to achieve that sort of thing - if that sort of skilled response does not occur ironically that may mean that the level of service is further increased because the reasons for the constant seeking of service are not being addressed.

Because of those factors I certainly have some major concerns about moving to a fee-for-service approach, whether or not subsidised.

THE CHAIRMAN: I think the question is whether you can devise a structure that meets your concerns in the fee-for-service approach. The reason for considering fee-for-service is the concern that people, clearly a minority, but nevertheless a significant minority, feel that they in effect are being overcharged because it is worked out on the basis of (inaudible).

MR SIMPSON: I understand that.

THE CHAIRMAN: It is really, can we meet their concern at

the same time as meeting the concerns that you quite properly have drawn our attention to.

MR RAMJAN: Three quick points to make around this. The reason that people are under the protection of the Protective Commissioner is because they have an incapability and they have a need. That is why an order is made in the first place. In looking at all of the aspects of this review, you have to keep in mind why the OPC exists in the first place, what its function is and what its place is within our community.

When you come to capability, if we talk about a fee-for-service, we are in a situation where we are determining that this person doesn't have the capability to make their own decisions to look after their estate and then we are placing them in a position which I suspect might be contrary to the Second Reading Speech debate around the amendments to the Guardianship and Protective Estates Act where we are talking about providing a service to these people who need the service because they can't make decisions.

The decision about when a service will be applied will be applied by the organisation that is appointed to assist people who are incapable of making that decision. There is a paradox there that I think is very difficult to resolve in a fee-for-service situation.

I have no doubt that the process that is going on at the OPC is leading us towards a better form of service.

Sorry, I should have said at the beginning, my name is Robert Ramjan and I am the CEO of the Schizophrenia Fellowship of New South Wales, so I am representing people with a mental illness.

I have no doubt that the reforms going on will lead to a better service outcome and that management is looking at things in the right way and heading in the right direction.

However, you cannot guarantee that that will always be the case. So in a situation where the capability of the person is the reason they are under control and the decision has been made by the person who is appointed because of the incapability, you run a great risk at some point in the future of the person with the greatest need

being denied the service because they don't have the capacity to pay for the service. That is not why the OPC was established.

The final point I make is that one of the submissions you received that is on the web site was from one of our members and it reflects a view of a lot of people with a mental illness under the Office of the Protective Commissioner. She had requested an increase in her allowance. If I remember the figures correctly, she was getting $90 a fortnight as comfort money, or money to spend on herself, and she asked for an increase of $5. It was denied because she couldn't afford it. And the final line in her submission was, if I can't afford to get $5 extra to spend on myself, how can I afford to pay more fees.

MR WHITEHEAD: Peter Whitehead, Public Trustee. I suppose I am here today because I have observed what has been happening right around Australia in a number of jurisdictions and only one jurisdiction, that is Queensland, has actually gone to a fee-for-service model. Other public trustees have stuck to a commission-based fee and a prescriptive fee basis for some activities.

That works to advantage sometimes because the client actually knows what the consistent fee will be based on the value of their assets and then they also know that they will be billed for activities that arise in any particular year that may not arise every year, therefore there is a transparency in respect of the fee for a service.

It is very easy to say from a management point of view that you can be sure of the revenue and therefore you know that you have continuity and capability of providing the infrastructure. That is where I think the commission makes it easy for an organisation. When you are managing fiduciary, you are not just dealing with individual clients, you are actually having to have an infrastructure to fund the funds management and all sorts of processes in trust accounting controls, and they just don't come cheap. Technology is expensive and you need to have these controls in place, otherwise your risk is too great, and your risk is magnified by the number of clients and the funds under management.

It is really difficult with a fee-for-service without putting a loading in to cover all those factors and get a

fee that people will think is fair because there has to be a loading for all the expenses you have on top, because you are dealing with 8,000 or 10,000 or 12,000 clients, not just one client.

People compare fee for service with people who do this on an individual basis and sometimes that is an unfair comparison because they don't have the full infrastructure in the organisation to fund their clients. So I go for a hybrid model generally. I think a lot of the people who are doing protective work but under the power of attorney management still use a commission fee plus incidental fees for services for their activities and we have found in the industry that it does provide you with that capacity to provide not just a service to the client but the infrastructure required.

THE CHAIRMAN: Since you have commented on the hybrid model, just in case there is a misunderstanding, I would emphasise what is written on the board, that the fee-for-service model would be subsidised. It is important to bear that in mind. We are not envisaging a fee-for-service model that is full cost recovery.

MR WHITEHEAD: While you have a subsidy, unless you have identified those components of the fees and your services to calculate that subsidy - I note you said it will be talked about later this afternoon - that is where you have got to have very good information systems to measure and record and bulk up, because once you have your subsidy application from Treasury they just don't write a cheque, it has to relate to actuals, and it is on an annual basis. You can't just say, last year it was this, this year it will be this. It is done on an annual basis.

You have to have a good system to measure that and that is quite intensive, especially as mentioned by Jim, the nature of the client will often demand what we would often call overservicing in a commercial organisation.

THE CHAIRMAN: Again, just by way of clarification, we would envisage doing an (inaudible) report. We would be recommending a subsidy over a period, whatever period. It would not seem to us to involve a lot of negotiation with Treasury. The government will either accept the report from IPART or not. That is the first point of clarification.

The second point is that you are quite right to say that the information demands of setting the system up are significant. If the information is not there, you can't do it in a fee-for-service model. That would mean something like a hybrid system, and you might have to identify some services, but not total coverage of the system.

MR COHEN: Brian Cohen, I am the co-chair of the Advisory Council for the OPC. Can I just raise one matter that just came out of that last discussion.

It seems to me that one of the practical difficulties is that there is an assumption that in either case there will be a subsidy. The quantification of that from say the OPC's point of view is retrospective, whereas funding is prospective, and it seems to me that leads to the sort of problem that the last few years have shown - and these are figures provided by the OPC - namely, the 05/06 year revenue was $29.7m, expenditure was only $24.5m and there was a surplus of over $5m. You got to the recently finished financial year, revenue had dropped to $28.7m and expenditure had risen to $31.1m, so there was then a deficit of $2.4m.

The difficulty is, as I understand government financing - and this follows a bit from what Peter Whitehead was saying - is that the subsidy went down because the previous year the revenue had gone up. Part of that revenue, of course, was because of the fact that the share market was buoyant. Next year, whenever next year is, one does not know what the income is going to be, but nevertheless Treasury will be looking at what last year's was, not what next year's is. So it does seem to me to raise a practical difficulty in relying too much on subsidies although obviously a subsidy is going to be essential.

THE CHAIRMAN: Just a couple of points in relation to that. Whatever system of charging we have, there can be difficulties in predicting the future from past data. That is true whatever the system. The second observation is that we are envisaging a system with multiple (inaudible), a multiple charging system (inaudible).

The third observation is that, of course, a fee-for-service type model will be less volatile in terms

of revenue than one that is based on value of assets.

MS KRIEGER: Based on a couple of the comments that people have made, there may be some misunderstanding of what we mean by fee-for-service. I think a number of people who have spoken are interpreting that as the kind of minute-by-minute detailed time-based billing that you might get from a commercial professional service organisation.

What we are really talking about is something broader than that which is a fee for a type of service. We are not talking about a fee that would be totally sensitive to whether one call is made per day or two calls. It would not be as finely graduated as that.

MS BEGBIE: Jacqui Begbie, I am here representing clients but more importantly my brother and my father. I am in quite a unique position with the OPC in that I am a private manager for my father, who had a stroke, it was an age-related illness, he cannot communicate at all. He cannot even speak to the OPC to tell anyone what he wants, not even me. And I also have a brother who is 43 years old who suffered a brain injury when he was 18 years old and he is a directly managed client of the OPC and has been since 1992.

With my brother, he has all of his services managed, so he is in effect effectively meant to be managed by the OPC. But it is impossible to tell from the statements what the OPC's fees have been pre-2004 because they are not clear and they are not transparent. So personally I favour a fee-for-service system because you can see what is being charged and on what basis and what for. And it is very clear for him and much more understandable for him - I will sell my house, the OPC will charge me $350 to do that, or whatever is the fee. So it is very clear and he can look down his list of ins and outs in his statement and see, well, that is right, and so there is no cause for frustration for him or no cause for, well, I don't understand this.

But the current fee charge on his statement says, OPC management fees, and it can vary from $1800 a month to $1200 a month, depending, and he does not get that that is calculated on the total value of his assets and portfolio or whatever. It is very difficult to try to manage his expectation because he is expected to budget every month

and live within his weekly thing, but the OPC fee every month is different. He just does not get it and there is no point of explaining to help him understand that, he just does not follow it.

What I wanted to say here in relation to the 28 points of service, there is a charge that is capped at $2,200 for establishing the client. It seems to me, certainly when my father had a stroke and I had to take over his affairs, it was a total nightmare trying to work out what his liabilities were and it seriously took me six months before I could actually go to the Guardianship Board and apply for guardianship because I actually didn't know what the problems were.

Personally I think $2,200 is really not enough, even if it is capped, because the amount of work that has to be done in trying to establish some of this is quite huge and quite difficult to do and also the issues around privacy are very time consuming, going back to people. I don't think that is enough and I think a commission basis or a fee basis on establishment is not such a silly thing.

In the ongoing management, each of those things, of those 28 points of service, are dealing with commercial entities or doing something that has a commercial nature in the market and they should be able to be costed. If you are going to pay a Centrelink payment or collect income on behalf of somebody, it will be easy to establish, well, what is the bank transfer fee to get that income or the bank fee to deposit it, so it will be easier to have a fee-for-service based on each of those 28 points of servicing. I know some of them are, but still it is not clear when a client gets their statement that says, OPC fees, one line, it is not clear what is broken up in terms of a fee-for-service or what is broken up as an actual percentage.

I look at this from my brother's point of view and I have incredible difficulty in trying - I am sure most people around the table dealing with people with mental disabilities completely understand - it is so difficult to get people to actually comprehend their situation and actually have him understand that he has to live within a budget, otherwise he will not have enough money to live for the rest of his life. And when he sees more money coming out for the Protective Commissioner than he gets himself it

is just a cause of frustration.

It is an understandable perspective for the people who are the recipients that I think a fee-for-service for some of these things that are happening would be much clearer.

THE CHAIRMAN: Thank you.

MR MUNDY: I would like to endorse Jacqui's comments on what she said about fee-for-service. John Mundy, I am here on behalf of my son. I would just like to make the following comments, please.

From the perspective of a high net worth client, I think that the $50,000 a year fee seems to me to be far too much money for the services provided.

THE CHAIRMAN: We have trailed our coat a bit on that already.

MR MUNDY: As I say, I endorse what Jacqui said about fee-for-service. I would just like to say that I think the IPART issues paper clearly identifies funding issues at OPC which adversely affect, at least in my son's case, his financial dealings. According to a significant number of submissions that I have read, the OPC seems to me to be unfair and does not offer value for the services provided.

If IPART, with all the resources at its disposal, finds it difficult to clearly identify fair value for the service rendered by OPC, how can individual clients expect to understand this important and complex issue?

My view is that there is a systemic failure at OPC to provide clearly understood and transparent fee structures to its clients. OPC should stop trying to defend the indefensible and right now and here accept and acknowledge that they have a problem with the way they are funded.

Unfortunately, the restructure of fees in 2003 did little to address the issues of fairness and affordability. Various bodies, including the Public Body Review Committee, as far as back as 2001 identified problems with the OPC's funding arrangements. The OPC's fees structure is unfair. Almost everyone except OPC - maybe that is a little unfair from what I have heard from some of the people I spoke to this afternoon, but it was my view, maybe it still is -

that everyone except the OPC knows this is unfair and accepts that is the case.

The act that governs the way the OPC is funded is too open-ended and it is fatally flawed. The act casts too wide a net over those it tries to protect to be effective. OPC, it seems, can only think inside the square and habitually compares itself with commercial organisations which it sees as performing a similar role.

I would like to ask, when will the OPC understand that it is not a commercial organisation and that the role that it performs is quite different from the private investment companies, which are able to cherry pick the clients they choose to represent.

I believe that the OPC is trying to do two things at the same time: on the one hand it states that its fees compare favourably with private funds. On the other hand, it says that it has no option but to support and subsidise clients who cannot afford its fees. This managerial focus to clients satisfies nobody. The roles of providing a community service and an effective investment service are mutually exclusive and incompatible with one another.

OPC maintains that it is powerless to resolve the funding dynamic that it faces. That is the message I have been hearing over the 13 years that I have had anything to do with OPC. It seems to me that it is resistant to change. OPC's role to protect those unable to protect themselves is not the issue here. What is the issue is OPC's inaction to solve funding and inequalities amongst its clients.

Very large sums have been taken by the OPC from the so-called wealthy clients by way of cross subsidies, so much so that great concern is now expressed by many that the depleting effect of these estates threatens the sustainability of future care costs for many of the most vulnerable people in society. Pointing this out to OPC attracts no denial that this is in fact the case. Instead, it simply states that its hands are tied because that is the way the system works. That sort of response, quite frankly, is not good enough.

It is only the way the system works if the "steady as you go" attitude applies, as appears to be the case with

OPC's current outlook on fees. Something needs to change because, as previously stated, those adversely affected are amongst the most vulnerable people in society and OPC above all should be proactive in bringing about changes to help them. A wealthy client is no better placed at OPC than a client with fewer assets. Why is that? Because the compensation provided by the courts to these so-called wealthy clients is based on their lifetime care needs. It is not, and never was, awarded on the basis of making up funding shortfalls and subsidising anybody.

Funding shortfalls after the application of reasonable fees should be resolved by government funding under its community service obligations. The only thing an OPC client should be concerned with is, have I paid this organisation a fair fee-for-service and have I received a fair income for my investments.

Fees must reflect the services provided.

In summary, the OPC casts too wide a net and tries to be all things to all people. Consequently, it not only overcharges its wealthy clients, it also fails to deliver an adequate level of service across the board due to its poorly targeted system of funding.

The views of OPC in its submissions to IPART speak of an organisation fighting a rearguard action against the tide of opinion crying out for fundamental restructure of its management practices. OPC must take heed of the views expressed in this forum and make changes to deliver goal oriented outcomes, especially to obtain a much greater level of government funding. Anything less will represent a loss of a great opportunity to improve the welfare of all of its clients.

There should be no more excuses or more reviews, and certainly no more talkfests about these sorts of things, it just needs to get on and get the job done.

MS McALPINE: Ethel McAlpine, from the Department of Ageing and Disability and Home Care. Our clients are people with an intellectual disability, predominantly in supported accommodation who have their pension funds invested with OPC. These are people at the other end of the spectrum of assets, with very small assets, and I would just like to note that regardless of which system we use,

whether fee-for-service or a flat rate, if there is not a Treasury subsidy it will be very difficult for these people to be able to afford either option.

In our submission we indicated that we would support a fee-for-service as long as there was an hourly rate for core functions because most of the client work that we represent would only be using core functions, and other functions were set at a variable rate - that we would support that. But I would like to reinforce again that, regardless of the method we use, if there is no Treasury subsidy, it will be very difficult for disadvantaged clients.

THE CHAIRMAN: Any other people at the table want to intervene who have not at this stage? If not, before we move to the next topic, is there anybody else in the room who would like to comment?

MR RYAN: Thanks, Mr Chairman, very briefly. Dennis Ryan, designated carer, primary carer. The lad has been in the OPC for a long time as a client for schizophrenia and I've had to do a lot of field work for a very long time.

I'm massively disappointed with the services. I get copies of everything where we attempt to succeed all the time. OPC, for example, applied to the Commonwealth to get a mobility allowance. They failed very quickly and were notified about it and complained back to me. They went behind my back and we weren't involved in the application. It took me a week to get it. We even got back pay for him.

Then in December and January of this year, Sunshine Melbourne and the Commonwealth sent out review forms. We knew nothing about it. This is typical of what has been going on for years. There needs to be an improvement.

The lad was sent a threatening letter. He's had about eight threatening letters. Any one of them is enough to set off a psychotic episode, which means it gives an opportunity for the police to shoot him dead and other bad things in his life to do with suicide and so on.

Any rate, both systems seem to have problems. One of the big problems for someone like me is the lack of information. It would be nice if we could get out to OPC once or twice a year and talk to someone with knowledge

that doesn't hide behind privacy of this and privacy of that.

I was very heartened by some of the comments that Rob Ramjan made and the personal story of John Mundy, and we have got a copy of something here, and the lady alongside of him, and so on, so I'm hoping for a better service.

Basically, I don't know enough information to even favour one or the other. I mean, pigs might fly, toss a coin and so on. I don't even know how on earth you can sign that unless you've got proper information, and most of us will never have proper information. So I just toss it in and thank you very much for giving me the opportunity.

THE CHAIRMAN: We might now move to the next topic.

DR MAHONEY: Thank you, Mr Chairman. While the feasibility or otherwise of fees relating to service are being assessed, the tribunal still seeks your guidance on the current fee structure and whether these can be changed in ways that make them either clearer, fairer, more transparent, flexible or competitive.

The three fees that we are concerned about under directly managed clients you are all familiar with. Maybe all of you are familiar with them. They are set out on page 2 of the notes that we circulated as an aid for discussion.

At a high level, the management fee structure involves two percentages of assets and two caps, upon which you may wish to comment.

To aid discussion, we have posted three questions concerning these fees. One was should the $50,000 cap on the OPC's total management fee be reduced on the grounds of fairness? That was the first question.

Should the one per cent establishment fee that Jacqui mentioned a little while ago be increased and/or the cap lifted above $2,200 to improve the level of cost recovery in establishing new clients that we have here? At the moment, according to work that Peter Graham from Ernst & Young did for us, the establishment fee covers about a quarter of the costs that OPC incurs in establishing the

directly managed clients.

Lastly, should the investment fee be increased or decreased from its present 0.5 per cent? That is all the introduction I think we need, Mr Chairman. We should get plenty of comments.

MR MUNDY: May I say something about the establishment fee, Mr Chairman? My son was awarded his compensation in June 1995. The fee charged, as far as I can tell, to set up a trust account and a future care fund was $61,108. I don't see that any reasonable person could say that that was fair value for money. A cheque from the insurance company is given to the OPC. They put $5m of it into a term deposit and the remaining money into a future care account and they charged my son $61,108.

Now, Jacqui quite rightly pointed out that there are more complex set-up structures than that, but in my son's case, I can't see any value, or fair value, in that charge.

I have a document here that shows the actual transaction that took place. I couldn't quite --

THE CHAIRMAN: We don't need to question what you have told us.

MR MUNDY: You said you don't want individual cases, but this is an example of an establishment fee of such a large magnitude for such a small amount of work, unless I have completely misread what actually happened at OPC.

THE CHAIRMAN: I want to use the time to give someone else an opportunity.

MS DODDS: Very briefly, our views on each one of these, if I can start with the $50,000 cap. In principle, our view is yes, and at the risk of obviously sounding like a bureaucrat, I nevertheless have to have a view to the impact of that on funding.

We have done - and I stress this is quite rudimentary - an assessment of the impact of a reduction of the fee cap in terms of revenue drop that would then need to be met from a treasury level. These are very preliminary and they would need a finer level of assessment, but for general purposes today, a cap at

$40,000 would see a drop of $3.13m, approximately; $30,000, $4.73m; $20,000, $6.36m; and putting the cap at $10,000, would see a drop of $9.26m. So that is just simply provided for the benefit of the information today.

The current cap of $50,000 involves a fee waiver of approximately $640,000 and affects a very limited number of clients - approximately 24 - but we are there looking at the group of clients and the very sensitive issue of people with higher-value estates paying more in fees, and I think we have recognised that as a critical issue.

If I could turn to the establishment fee and recognise the issue that is being addressed, it doesn't cover the cost of operations. Again, if there was an increase in that fee, we would need to look very carefully at other fees to see that the overall effect was not such that it further enhanced the problem of people's capacity to pay, so there is a natural balancing act there related to that fee.

With regard to the 0.5 per cent investment fee, our view is that that fee should not change. It is competitive. But of course, once again, it depends on the changes to the other two: all elements need to be looked at in relationship to each other, and we don't pretend to try to second-guess the outcome of this inquiry.

If the investment fee is to continue, then the current process is clear and transparent and, importantly, that also contains the management expense ratio which can sometimes be very confusing if it is explained in other ways. Thank you.

MS BEGBIE: I think one of the most important points - and I think it has been raised really quite clearly in the submissions - is the issue of the investment fee and the fees or the management fees being cross-subsidised, wealthier clients cross-subsidising other clients.

Certainly from John's submission and my submission, that is exactly what's happening in our cases, certainly for my brother and John's son. The fees that they are paying are well above the kinds of services that they are getting. Even if those services are capped at $20,000, they are still paying more than that, really, in fees, and that means, if you look at the tables that were put out in

the IPART review paper, that they are cross-subsidising other clients.

To repeat John's point before, these compensation payments were awarded to these people to last them their lifetime, not to provide a social subsidy for other people, and I think it really should come out in the IPART review that it is the social responsibility of our government here in New South Wales to provide additional subsidy for people who can't afford it, and the people who can afford it should be paying a fair commercial fee for the services that they are getting, providing those services are quality, which we are going to deal with later, but I just have a real issue in this whole thing about this notion of cross-subsidy.

Until I read some of the submissions and really had a detailed look at my brother's accounts, I had no idea that that was actually occurring, and now that I do know, I find it particularly offensive, because we have a government and we have social policies to take care of people who can't afford things.

On the other side of that, my father is one of those people who can't afford things and he does need social policy intervention. He has worked his entire life, he has paid taxes, he has done all of those right things, but he didn't have a nest egg to be able to live off, so he looks to the government to do that for him, as do many of the other OPC clients.

THE CHAIRMAN: I understand your comments in relation to the 1.1 per cent management fee and the 1 per cent establishment fee. As Ms Dodds said, the 0.5 per cent investment fee is competitive commercially. Another way of saying that is that if you put it out to a private fund, you'd be paying that sort of fee calculated in that sort of way. I just wondered if you were concerned about that as well?

MS BEGBIE: Personally, no, because I can see that that is a reflection in the market. In fact, when I looked at all the Public Trustee fees - I mean, I personally have money invested as well, and I can tell you I pay more than 0.5 per cent investment fee, so I think that is quite reasonable.

I think it is reasonable that those kinds of fees are subsidised for people in these situations. God knows they have enough to deal with in their lives without all of these added pressures that come their way in terms of finance.

As far as I'm concerned, as long as that investment fee is in line with the market or what you get if you go somewhere else, I don't see it is an issue. But we also need to remember that these clients can't just go somewhere else without people like me applying to the Supreme Court and bringing a complaint about the Protective Commission in order to justify why they want to go somewhere else. It is quite an arduous process. So they don't really have choices. But as long as they are in line with the market, what is commercially available in the market, I don't see an issue.

MR MUNDY: Mr Chairman, would it be in order for me to give you one very concise example of an historic cross-subsidy situation, or is that not in order with what you want?

THE CHAIRMAN: It is certainly in order. You don't need to convince us about cross-subsidy.

MR MUNDY: Yes, but this is very graphic. In the first year my son had his funds invested, $5m attracted OPC 16 per cent interest. That is what is on the record. OPC, therefore, obtained $800,000 in income from my son's $5m. He received $470,000 in actual payment to him from the OPC. Anyone around the table can do the math. He paid in excess of $300,000 in one year alone in cross-subsidy. Does anyone at this table think that that is a fair outcome?

DR MAHONEY: With respect, sir, that actually isn't the situation now, though, is it? You are giving an historic example where there weren't caps.

MR MUNDY: I did say to the chairman would it be in order to cite one historical example. I know perhaps it is not in order because you want to talk about future things, not past things.

I have on record three other examples of similar outcomes for the first year, the second year and the third

year, and the record shows hundreds of thousands of dollars per year lost to my son in income he could have been paid if it were not for cross-subsidy.

MR RAMJAN: If I might just pick up on the point, that is a terrible situation and no matter where this review goes I don't think we would ever want to go back to a situation like that.

To reflect the views of Jacqui earlier, in all three areas it should be commercially competitive, and if it is commercially competitive, then the fee structure is probably a reasonable structure. Where the cap kicks in is a different matter altogether, but in establishing the 1.1 per cent, the 1 per cent and the 0.5 per cent, the real critical issue is is it commercially competitive.

I think there is sometimes misunderstanding about what the fees actually mean and because in some ways this is a government service for people who are in need of that service there is a belief in certain sectors that there should be no fee, and I would reflect that view where the people - many of our people - will not be affected by the investment fee because they have nothing to invest. For many of our people we would argue that they are greatly disadvantaged by any fee at all. Their quality of life is severely affected. But where it is a commercially competitive fee, I think a lot of the arguments against it tend to disappear because you have a fair comparison.

The one query that I would have - and I might be totally misinformed about this - is the OPC used to manage its own common fund and that common fund is now, as I understand, managed elsewhere. Is there an additional fee that is being charged outside of the OPC that is affecting the income available to people who do have an estate?

MS DODDS: No, hence my comment that absorbed into the 0.5 per cent fee - absorbed into that fee - is the fees of the management through State Street with BNP Paribas as the master custodian. So there is not an additional fee for that.

MR RAMJAN: The estate is just charged 0.5?

MS DODDS: That's correct.

MR MUNDY: Does that cover superannuation funds?

MS DODDS: Sorry, the 0.5?

MR MUNDY: You say that the 0.5 per cent covers --

MS DODDS: No, we don't charge an investment fee on superannuation funds.

MR MUNDY: But the superannuation funds do charge a fee presumably, do they?

MS DODDS: They would do.

MR MUNDY: So this is a fee on top of a fee.

MR FARRELL: If I can interpose, there is no 0.5 per cent investment fee charged on any superannuation funds. The actual superannuation fund we use is an industry fund with extremely low fees. I would be happy to give you details of that.

THE CHAIRMAN: I would just like to intervene. This is an inquiry to help us set fees. I think where people want specific information from the OPC, they should pursue that with the OPC.

MR WHITEHEAD: My comment will only be on the establishment fee. It is quite clear from the amount of work to establish, and it has been discussed already, that the cap 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. So that was a key focus.

I know Queensland have a fee of about $4,500, I think, as their establishment fee in these matters, and they have done a lot of work to determine what effort goes into that over a number of years, so it is more than double what OPC currently have as their cap, so it is something that could be easily focused on.

THE CHAIRMAN: I think the management fee is also much lower in Queensland.

MR COX: If I could just ask one question, I suppose, particularly to Jacqui Begbie and to Peter Whitehead who favour this, increasing the establishment fee. Do you think the 1 per cent structure is appropriate or should we be thinking in terms of a flat rate establishment fee with rebates?

MR WHITEHEAD: Putting my hat on as well knowing how treasury might respond, the flat fee would probably be able to be determined to cover quite a lot of the general activity. It would also define what is the affordability for the clients so that you have got the gap, therefore, to form your subsidy claim. I'm not sure whether I'm right on what you're saying because I missed a bit of your introduction, but I'm concerned that if you always have a percentage for an establishment fee you could have that potential criticism and lack of transparency of activity required to set up that client.

MR COX: So are we better to think of something related to the amount of work done?

MR WHITEHEAD: That's right. Establishment is establishment. A commission-based fee tends to relate to the responsibility and overhead, and all those types of things that are built into the risk that you are doing and relate to the value of the assets more closely.

Establishment involves a lot of tasks, and if you have a very large investment portfolio to establish, that might be set aside because you might need an additional fee for that as part of your fee for service because that can take a lot of time, and that may not be part of your establishment as a standard component; a lot of the clients of OPC will have very little money and require very little investment planning, but the ones who do need it need to be set aside. So I think to categorise your clients on the basis of their assets and type of disability, that might be a helpful way to sort that out.

MS BEGBIE: When my brother was established as a client, which was a long time ago, and I can hardly even remember the things, it was the exchange of a few cheques and stuff as well, but he had nothing, basically, except his

compensation cheques, very much like John. It was the transfer of a cheque from the Supreme Court's trust account to the OPC. I don't think that these rules actually existed back in 1992, so I was quite excited when I saw this and I said, "Wow, they do a lot of things for clients now. I wish we'd had this in the first place, too. We'll take this up with the OPC because I'd like to see some of this revisited," so we had these plans and we had this kind of stuff for my brother in future.

As I mentioned before, it really is difficult, certainly for an older person - and I speak on behalf of my father here - to work out what the hell he was doing and how many bank accounts he had and how many tax returns he hadn't done and how many superannuation systems he'd subscribed to over 40 years of working. It was an absolute nightmare and it took me months and months and months to figure it out. I did this in my time, when I had time to call people, and it does take a lot of time and effort, and I think that needs to be recognised.

Because it takes time and effort, there is a real cost in doing that and I think it would be - maybe not "easy", that would probably be too simple a word, but I think it would be quantifiable. You should be able to quantify it in terms of time and effort and, therefore, people who can afford more should pay for that time and effort that goes into it, and that way if it is a simple thing, like my brother's or John's son, which is a cheque that goes from here to there and it is a minimum setting up of investments and things, then that is what they pay for, and that might cost $2,000, but if it is complex, like my father's was, in trying to sort things out and get everything on one piece of paper so he actually understood his financial position, which was not huge but entirely complex, just trying to put all of his superannuation in one place, then that takes a lot more time and effort, and even though he probably couldn't afford to pay for the time and effort involved, at least it should be costed and you should be able to show that to treasury, "Well, this is what it takes, and this is the affordability of the client and this is the level of subsidy that this client gets," the same as we do when we go to Centrelink and ask for a subsidy on something.

THE CHAIRMAN: Does anyone else want to intervene on this topic? Does anybody else in the room want to intervene on

this topic.

MS PEEK: My name is Catherine Peek. I work with Disability Advocacy NSW. I work with Mark Grierson on the mid north coast of New South Wales. I would just like to make a comment in relation to the investment fee. I have probably three or four clients who fit into the same bracket as these people over here, high assets, who I'm helping on the mid north coast at the moment.

I suppose the comment I'd like to make is there were several comments before about the 0.5 per cent being commercially competitive. I think that's true, but I do believe that the service - again, we go back to the service - what people get, my clients at least, in terms of financial service for that investment fee is pretty terrible in a lot of cases.

There have been some matters that I have dealt with where there has been what I view as negligence on behalf of the OPC in terms of investing funds in time for people to make sure that they get the best benefit out of the money that the OPC is looking after for them.

So, yes, it is commercially competitive, but whether it is necessarily the best option for some people with high-level assets is sometimes questionable, I believe. I just wanted to make that point.

THE CHAIRMAN: I think we might move from this topic.

DR MAHONEY: It's the same again in terms of discussion on the fees for privately managed clients. As well as the investment fee we have been discussing, there are the two other fees for privately managed clients which are listed on page 3 of the discussion notes. One was the income fee. It is noteworthy for its exemption of pensions, its uncapped nature and the broad range of privately managed clients to which it applies.

It seems anomalous to exempt some sources of income from the fee on financial hardship grounds and not others. It seems unfair to have an uncapped fee, and for both the income fee and the accounts fee it is questionable whether the same fee scale should be used for clients who have a very wide range of private managers and a very wide variety of financial affairs to audit.

So the tribunal would like discussion on these matters. Leading off the two questions, specifically on the 4 per cent income fee, should a cap be applied to that fee and, if so, what would be an appropriate level; and the $100 account fee, would the accounts fee be better if it was scaled to reflect the complexity of the account or the task? Over to the table.

MS DODDS: If I can perhaps just state clearly - and it is reiterating, in a way, what I said in my introductory remarks - this is a fee regime that has existed since the commencement of the legislation and the oversight of private financial managers. We think it is clearly in need of review.

In the first instance, we don't feel it is appropriate to continue with a percentage fee on income, and I think in our submission, albeit as a result of work done by Ernst & Young there were some anomalies thrown up that we need to review, we have been looking more towards having a fee for the activities that we actually undertake in regard to private management rather than a fee on income per se.

But if for any reason there was a need to continue the current system, either in the short or the longer term, we would believe that a cap should be introduced. We haven't got so far as to look at what that cap might be, but I simply wanted to make those notes.

To continue my theme of the day, and one that I know is also one that the tribunal has put as an underpinning comment, clearly, there would need to be funding to meet the shortfall for those clients who cannot meet the fees, either at all or only in part. For the benefit of the inquiry today, for the financial year just ended, the annual fees for the private management branch were $2.34m.

That is made up of the 4 per cent income fee, the accounts fee and some special fees. And special fees are very, very rarely levied and they are usually additional legal fees that come from our own legal services and can only be approved by the Commissioner.

THE CHAIRMAN: Thank you for those remarks. I wonder if I can ask, have you, well, you have not thought about what the cap should be. Have you done any work which, similar

to the previous fees direct from those clients, where you had different costs in terms of revenue? Have you done anything like that for private managed clients?

MS DODDS: No. Time has not permitted. As I indicated earlier, we have also been rolling out a restructure and dealing with a whole raft of service issues. Clearly it is work we need to undertake.

THE CHAIRMAN: That is reassuring. I think that is something we would like to explore further with you.

MR SIMPSON: Clearly from our point of view the current system is anachronistic and is even out of kilter with the reforms that have occurred with relation to direct managed clients five years ago.

One thing that I would like to emphasise from the perspective of people with intellectual disabilities is that I think there should be more flexibility in the system of supervision of private financial managers, which in term could then translate into reduced levels of supervision and therefore reduced levels of fees.

What we see certainly is that there is a sprinkling of situations regularly enough where there is a need, for whatever reason, to formalise the appointment of a family member as financial manager of the person with the intellectual disability, where it really comes down to, maybe 20, 30, $40,000 of savings plus a pension and the odd other non controversial issue to be addressed.

We feel in that sort of situation there should be flexibility for the Protective Commissioner to look at the situation and then say, look, you don't need ongoing supervision, here is your list of powers, if there is something not on there, come back to us, we will not require auditing in this straight-forward situation of very modest estate and clear bona fides; and indeed one of the values of that would be, for modest estates, to make it easier for a family member to act as financial manager in the case of a family member who has perhaps clear bona fides, who will not do the wrong thing by the person but who will struggle with the paperwork of audit requirements if they are required to do it.

So we would like to see some more flexibility in the

nature of the supervision which would then flow in whether or not there are fees involved in supervision.

THE CHAIRMAN: I wonder if I could ask Ms Dodds to give us a response to that suggestion because it is a bit outside our gallery of expertise.

MS DODDS: Thank you, Jim. One important thing to note is that there is also at the moment a simple division of accounts that exists for the less complex estates and so there is to some degree already in place a process that you are leading to there. I know the issue that is being raised and it is an important one. It does require some careful review of the legislation as to whether or not indeed going forward it is necessary to require accounts to be audited every year.

In some instances, we do have to recognise we do not live in a perfect world - in some instances it may be necessary that we audit accounts every year, for very good reasons, but for other person's circumstances it may be that auditing the accounts every second or third year may be all that is required and looking at that capacity is an important issue.

It is perhaps a side note, but an important one, to say next on my agenda of things to do is to reignite the review of the Protective Estates Act, which has not been reviewed for a significant period of time, and that is one of the issues that we have mooted that needs to be considered as part of that process.

MS BEGBIE: I don't wish to be disrespectful but I actually disagree with that. I think it is important that the OPC every year audits the accounts for every private manager because there are people out there in families who don't necessarily do the right thing by their families and things change within families and dynamics change within families and it would be quite a disservice to people who are being privately managed for their managers not to be checked.

I actually disagree with that. I think the OPC has a role in checking because if people like me didn't exist in the role of private manager, you would be managing the clients like my father, and you are accountable to tribunals like this to make sure that those people are

being looked after. Anybody doing any accounts for anybody is audited, so I don't see why people with disabilities should be exempt from that, especially when they are a group of people who are so open to exploitation, even by their own family members.

So I disagree, they should be audited every year, or at least checked. It is not hard to say, income this year, income, outgoings. It is a calculator job, a couple of hours to check a simple kind of thing.

MS DODDS: This is not - particularly in response to your comments, although I am very interested in them clearly, and I might add that we will be seeking submissions on the review of the act - we are part of the restructure in private management. Part of those initiatives also include moving towards the greater use of technology and I know that is an issue for you, and the capacity of private managers to enter their accounts through an IT-based system. That will take some time to put in place but of course that is one of the checks and balances that, if we did continue, if the act wasn't changed, we could continue with monitoring accounts every year. It may simplify it and it may also lead to less costs associated with it. But that is, I hasten to add, in the future, but we are actively looking at that.

MS BEGBIE: That is a major bugbear of mine. I find the OPC system quite backward. In terms of a management system that supports its people, it clearly does not support its people, it is terrible. To not be able to pay an account by direct transfer to pay your $100 account is completely backwards to me in this day and age, but I put that in my submission and I think it is well recognised within the OPC.

The other comment I make about this issue of the fee structure for private clients is that my father does not fall within this category, therefore I don't either, but he is exempt under the rules. He does not have to pay the 4 per cent income fee because his only income is his Centrelink disability pension. So I find that particularly offensive because I am not sure what the, if he was to have an income - that you would charge him a 4 per cent fee on that income is what I find offensive - because it is not clear to me what the OPC does for that fee. I don't understand what you do.

When I look at directly managed clients who pay 1 per cent or 1.1 per cent as an ongoing management fee, but of their income, but privately managed clients, where somebody else does all of the work, are expected to pay 4 per cent. Maybe I am misreading the structure, but I find that particularly offensive and I just find it quite absurd.

MR ROBINSON: Peter Robinson, if I can just respond to that. The directly managed clients, the fee attaches to the value of the assets, not to the income. That is the 1.1 per cent of the assets. In private management that is an income fee.

In terms of the work that private management does there are a range of, there are those range of authorities that are provided to private managers and the current basis of the fee is to capture the work that is attached to that and that is why the issues, or the proposal put forward by the OPC, is more directed towards a fee-for-service model.

MS BEGBIE: As I have said, I really don't understand the income. I get my directions and authorities from the Guardianship Tribunal that sits whenever it is and they review my guardianship and they provide me with all the orders, is my understanding, that it does not come from the OPC.

MR ROBINSON: That is not precisely the case, but we can talk about that outside.

MS BEGBIE: So that is my issue about the income fee. And the other issue I have is on the $100 account fee. My father's estate, in total, is less than $1000, so to pay an account fee when I do all of the accounts - I am quite happy that someone checks them and does the checks and balances, but to take, certainly the fee, one eighth of his entire estate, just for a $100 fee to have somebody check the stuff I have done, to me is absurd. He can't afford it and it should just be completely waived. Out of the three or four years I have been lodging statements, I have managed to get one waiver.

MR ELLIS: Ross Ellis, from the Trustee Corporations Association. I endorse the thrust of Jacqui's comments and just highlight the main point in our submission, that we feel there is a clear distinction between trustee companies

involved in this area and the average private manager. We think that the fees should recognise this.

The trustee companies have been in this business for over 100 years. We are very experienced and well resourced. And we don't see a case at all for the same income fee applying to the work they do to the work that the OPC does in looking over their shoulder and we think that could be reduced in the interests of the protected person.

MS DODDS: I simply want to note that whatever fee system we have going forward I think it is very important to note that there are a range of trustee companies providing services across Australia, including of course my colleagues, the public trustees across all jurisdictions, who have a distinct and direct relationship with this work. There are other trustee companies and it is our experience that the oversight varies from one company to another. In other words, some companies would require very little oversight at all, whereas others would, with regard to for example investment proposals, the purchase of a house, and in our experience the issue is often whether these processes have actually considered specialist disability issues.

The experience does vary, so I think that probably gives weight in a way towards a model going forward being preserved, that if we do have to provide a greater level of oversight for one organisation that that is reflected in the fee compared, to another that requires little or no oversight.

THE CHAIRMAN: Other comments? What I detect from this discussion is a recognition that the amount of service varies significantly to clients and that shouldn't be reflected in the fees charged. My suspicion is that there is quite a bit to establishing, just how you do that and how much variation there can be, will not be easy to do. You may not agree how much work has to be done either, as there is a debate about audit also, for example, whether an audit is necessary or not.

The general consensus seems to be that it would be desirable to move towards a fee structure for private clients which recognises rather more than the present approach does that there are quite significant differences

in the amounts that some clients require. We will take note of that.

I propose that we break for 10 or 15 minutes, then resume.

SHORT ADJOURNMENT.

THE CHAIRMAN: We will recommence. The next topic we want to discuss is the quality of services and the cost of services. I think there have been observations made under both those headings already, but Dennis.

DR MAHONEY: Thank you. IPART is broadly aware of the at times difficult environment within which OPC and its staff are required to operate and likewise in the February 2008 letter to clients the Protective Commissioner highlighted the difficulties that clients have in dealing with the OPC and that feature has been stressed both here today and also in quite a number of the submissions.

The drop in service quality and the increased number of complaints has been, as far as the tribunal understands it, a key driver behind the current restructure of the OPC's directly managed services and the imminent restructure of the services for privately managed clients. It is with the restructure in mind that the tribunal invites participants to discuss how progress towards the goal of better service at efficient costs might best be measured in the OPC.

Some submissions suggested KPIs might include independent client satisfaction surveys, measures of response times and measures of accessibility to the staff. So with two specific questions in mind to aid discussion, we are asking what key performance indicators or KPIs should be adopted to monitor the OPC's performance and how should it better measure what it costs to provide the services that it does provide.

MS DODDS: If I can just make a couple of points on key performance indicators. The OPC does report on them presently. They are aligned to our current structure. Some of them as a result of a move from the city to Parramatta and to changing technology perversely, and in reverse, has meant that there are some that we have not been able to measure since that move, and interestingly one

of those is timeliness and responses on telephone queues. However, as you also heard me say earlier, and as you know, there is a new structure rolling out and we are looking quite literally now at the range of changes and measures that we will be able to introduce and we are wanting to introduce in this new service environment.

We do, of course, have existing KPIs on staffing complaints, investment funds performance, and we do conduct client satisfaction surveys. They are not always independently conducted, and that point is well made. And, as you heard me say, our response times have been measured at various parts in the past two-year period. Clearly those would need to continue into the new service system but it will also provide us with the opportunity to develop further KPIs that respond to complaint satisfaction measures. But we are in the process of doing that presently, so comments made here today of course will be very warmly welcomed as part of the discussion, thank you.

MR GRIERSON: Mark Grierson, from Disability Advocacy New South Wales, based in Newcastle, the mid North Coast and Hunter regions.

I have set my comments out in my written submission, but couching it in terms of KPIs, I support the idea of having some performance indicators. I think they need to be much improved over the current ones at the moment.

One of the key points I made is we work in a regional area and it is very hard for us to get in contact or clients to get in contact with people from the OPC. We have raised this a number of times. We have tried to put up positive suggestions - and this relates to KPIs. In some way the officers need to get out there and that is one way of doing it. And maybe that is measurable. Or they need to establish partnerships with key support agencies for people with disabilities. There are lots of agencies out there that can be key partners to the OPC, to be able to get the best deal for clients, and Advocacy Services is one of those services and we have always been willing to try to work with the OPC, to work together with the OPC to get the best deal for our clients.

It is important to do client surveys. We do that all the time, exit surveys, we ask people when they leave, "did you get the outcome you wanted". Another interesting way

to test these changes - I am thinking positively about the new structure and hopefully it will make a big difference, but I wait and see - the other one is to survey the key agencies out there who assist people with disabilities to use the services. Ask them what they think. They are often very important. Clearly if you have a severe cognitive disability it is hard to fill out a client survey form sometimes, particularly if you are frustrated with the service, but if you are asking services like employment services, community access services, disability advocacy services, get them involved and ask them how you are going and measure it that way. They are my key points.

THE CHAIRMAN: Thank you.

MR SIMPSON: The first point I would like to make - and to put it into context what I am about to say is that I think it is impossible in the near future to be able to say at all what level of budget the OPC needs because we are at a situation where at least for the OPC's direct services they are currently nowhere near an appropriate level of quality. Some very good work is done but overall, from the perspective of our organisation and its constituents, service is at a very low quality.

I just want to also stress that that goes back many years. There is a feeling that there was a big mistake made in the restructure of three years ago, whenever it was - two years ago - and I would certainly very much agree with that. But there were major problems that well predated that restructure.

The restructure that is occurring now we certainly support and we certainly very much acknowledge what Imelda Dodds is seeking to do with the support of other good people to raise the quality of what is happening in the organisation.

It remains to be seen whether that will be in anyway sufficient to get the organisation to provide a reasonable quality of service to its clients and it may be that that restructure in the current restructure is just the beginning of a number of all that needs to happen in terms of organisational change, change of the culture within the organisation, ensuring there are staff there with the appropriate skills and numbers and aptitude.

What that means is that we are a long way away from knowing whether the current budget of the OPC is enough or perhaps vastly not enough to provide a reasonable quality of service to people who are being forced to accept that service because there are orders that bring their estates under management.

That will be a work in progress, to ascertain what budget is needed, which then obviously ties in with what fee structure will provide that budget, and obviously as I have touched on before from our point of view people who have been forced to accept the service, people who have had disabilities, people who generally are poor, there is a very high argument from our perspective for a very high level of government subsidy so as to ensure that at least poor people aren't paying fees.

In terms of KPIs I think there is a lot to be said for those as a measure of service quality. Three or four ideas from our end would be to what degree non routine needs of the person are being identified by the OPC's own initiative? There is a mistake that we can all fall into of thinking that being a financial manager is just about looking after the money and waiting for someone to come to you with a spending proposal. The nature of the disabilities that people have, and often the narrow perspective of the service providers who are around them, means that there is a real danger that someone might have $50,000 sitting there and no one is trying to put themselves into the head of that person with the disability about ways that money can be spent to enhance their quality of life. So we would see the OPC's role as being partly about doing that or making sure it happens.

If the OPC itself is identifying an extra need, spending needs for the person, that would be a valuable KPI.

Other ones would be the time it takes to establish an appropriate management system. All too often we see it taking many months for a management system to be established, causing great frustration and other potential detriment to the individual. Teasing that out a bit further, things like how long after the order is made the first personal contact occurs with the person with the disability and their immediate support people, whether it is family or service providers, to introduce the OPC and at

least get in place an initial management system that is responsive to the person's needs rather than something that is arbitrary such as stopping the pension going to their account and redirecting it to the OPC.

Also, how long it takes to get a really carefully planned management system in place after consultation with the person and their support systems.

Another KPI could be measuring how easy it is to access appropriate staff. A common complaint at present, and always has been, is how hard it is to get hold of the right person at the OPC who can deal with my issue, so to be able to measure hopefully improvements in that would be valuable.

And staff skills in sensitively communicating with people with disabilities would be another important issue that could be measured. The OPC faces a challenge in recruiting and maintaining staff who are interested in doing the financial work and also have the skills and aptitude and interest to deal sensitively with the clients.

Some people do it very well but I think that is an overall problem that something needs to be done about. So some sort of measurement of the skills of staff in communicating sensitively with clients and avoiding conflict, which might avoid cost as well, would be all to the good.

Finally, supporting something that Mark said, getting closer to the people, it seems really problematic to me that OPC has the one office in Sydney and I think without a much better outreach system than currently applies, perhaps including regional offices or people placed in - at least regional representatives who can really try to get their finger on the pulse of the local services and structure and be a resource about, if we need to buy this kind of service where is a good place to buy it and so on. There needs to be much more out there in the regions. I have talked far too long, thank you.

THE CHAIRMAN: No, I might get you to talk a bit more. I would just like to explore a little bit your remarks. Your starting point was you were not confident about the size of the OPC budget.

MR SIMPSON: Yes.

THE CHAIRMAN: And thought that it might not engender the quality of service that was appropriate within the confines of the present budget.

MR SIMPSON: Yes.

THE CHAIRMAN: Generally our business is price regulation. What we do when we regulate prices, we try and work out the efficient cost to deliver the appropriate services and quite often we regulate for less, which we are doing right now in other areas. (Inaudible). We have done it to other industries in the past, queried work practices and efficiencies and so on. I have to say, our capacity to do this to the OPC is negligible, particularly in the time available, and equally to judge the quality of service of staff. The easiest way to do it is to say, it is about right now, how best to work out the charges and deal with that, and there are warnings that might not be the right level of services (inaudible).

MR SIMPSON: I think that can be assumed.

THE CHAIRMAN: What I want to try to tease out a bit more, I think having understood your argument, is that if we use the KPIs, we then make an assessment of the KPIs in saying the service is about right or is unsatisfactory on the basis of the KPIs. In some cases KPIs might lead to a suggestion that they could be more efficient. At least one of the ones you mentioned, that went through my mind, it might be the way they are organising it, how people organise it.

THE CHAIRMAN: The particular KPI has gone out of my head. Others might be more inclined to your view; no matter how you remix them, they mightn't make it. Someone with the wisdom of Solomon decided to get the appropriate level of service.

Ideally, a bigger organisation would get the government to specify the level of service. They will do it in the licence, for example, of a utility. They will specify the level of service, and we say, "What's the cost of that?" Here it is unlikely we'll get the government to do that in any precise way.

I have summed up in my language what I think you're saying. That's quite helpful. We will look at KPIs and see how that applies to Protective Service. There is a problem with the KPIs, and some of them don't exist, and you just gave us some nice additions, and it will take time for them to exist. The easiest way if you see a deterioration in a KPI is to say, "Well, that is a very clear indication. It is not as good as it used to be. I am going to draw some conclusions from that."

MR RAMJAN: I think Jim said many of the things that I would have said in response from people with a mental illness, and so I would endorse everything that he said, and I have very little to add to it.

There is an historical situation here. The Protective Commissioner has existed for a very long period of time and at various times it has probably been adequately resourced for the task it has had at hand.

In recent times, in, say, the last 25 years, it has gone through a number of restructures, and those restructures haven't always worked out. It is going through another one now. Like Jim, I think the direction of it is the right direction. A lot of the complaints that we receive about the OPC are about timeliness, about not being able to contact the person who can answer the question, maybe talking to four, five, six different people before you get there. So going back to a system where you know who you are dealing with will be a critical difference.

We can't go back to when that last was and look at KPIs because the world has moved on. I think there will be some good KPIs out of it and there should be a reduction in complaints, because we are getting them regularly and I'm sure the OPC is getting them regularly.

What we want as an organisation from the OPC is a quality service, not a cheap service. In mental health there are always these silly ideas that we can restructure the way mental health services are provided, and the way it usually happens is we take a $100m budget and we apply that in different ways and everything falls apart.

The only way that you get a good outcome - and it has been demonstrated in a number of countries throughout the

world - with regard to mental health services is when you're doing that restructure you have to put a bigger investment in for a set period of time, evaluate that and then withdraw some of the funding because it is no longer needed.

The resources that are there, from the perspective that we are coming from in dealing with the OPC, are not enough at the moment to allow the restructure to work as well as it could work and to establish the KPIs that will allow it to be demonstrated.

Maybe they are inefficient and maybe that's what the KPIs will show, that there are massive inefficiencies within the organisation that need to be addressed. Maybe the resources aren't enough. But within a restructure, I have never seen it work anywhere in mental health services where if you don't put a bit of extra money in to get it through that hump of restructure, you get the best quality outcome.

THE CHAIRMAN: You said the resources aren't enough to deliver the service. Do you have evidence that you could provide to back that claim? I'm not saying that in an antagonistic sense.

MR RAMJAN: Absolutely. I understand exactly what you are saying. If I could roll out to you a string of things, it would serve the purposes very well.

What I have is intuitive evidence, rather than actual evidence. The OPC has struggled severely, in our view, over the last few years in providing an adequate service to the clients that they're looking after and their resources haven't increased greatly. They are now going back to a system of interaction with their client group, which we believe is highly appropriate, where you know who you are dealing with, and that takes greater resources than they have currently got.

THE CHAIRMAN: Can you show that?

MR RAMJAN: I can try. As I say, it is intuitive. I have had an involvement in many forms with the OPC for 35 years, or thereabouts, and I have fought with the OPC on many occasions on behalf of the clients, so it is that intuitive feeling. What they are trying to do creates a higher level

of service but it also requires a greater level of staffing.

MR MUNDY: I don't know if I necessarily agree with that. In my past incarnation I was chief radiographer at St Vincent's Hospital, and without any extra resources it was a question of identifying what was needed to provide quality of service.

For example, in the radiology department - and this has some relevance to what we're talking about, I'm not going off the topic - you have various specialised modalities, okay. If, for example, the person running the CT scanner is off sick for the day and you turn up as a patient and you can't have your CT scan, that's not a particularly good quality of service, so what one does with the resources you already have, without any extra funding, is multi-skill the people concerned so that among the 30, 40-odd radiographers that I had at my disposal, I rotated them through the various specialities that they had to master to become multi-skilled.

The question to the Commissioner might be along these lines: what sort of multi-skilling and what sort of flexibility do you have in that regard, because it appears when you phone OPC there is one person doing one job and when they are off - they might be on leave or whatever - there is nobody necessarily to multi-skill and fill their shoes for that particular day or week or whatever it might be.

MS DODDS: The answer is not simple, of course. You are quite right, that in the radiography analogy you have specialists in each area. As you know, we have specialist branches which we are now referring, for want of a better term, to our back-of-house specialist services that have a capacity, sometimes very small, because they are very particular and expert, and I'm thinking of our risk and insurance branch at the moment that is quite small, but there is more than one person there at any one time to give that back-up in that area.

At the front of house, of course, as you know broadly, in the restructure that is going out we have teams of people who will be meeting clients' needs across that spectrum from people who require of us not just a daily contact, but sometimes several-times-a-day contact, and

that is usually directly related to the nature of their disability, and we must work with that. So we have a service that is at that end of the spectrum through to the people who, touching on one of the points that Jim was making, do not contact our service on a regular basis, principally because they can't, but nevertheless they have needs that need to be looked at in a proactive manner, and all points in between. So we are looking at scaling the way in which we meet our clients' needs across that spectrum with a very clear intent to focus on the clients' needs in the first instance.

Now, in those teams of course there is a range of staff who will have the set of skills and capacity to back people up if they are not there. Everyone has a sick day, as you rightly indicate. Everyone has to go on leave. Everyone has incidents that occur.

I am on the record separately, and it does need to be noted, that partly because of the restructure that we are finalising now, as in ending and moving into a new structure, partly as a result of the move of our offices from the city to Parramatta, we have had a net loss in staff, so that is a loss in skills, and that is acknowledged, and it is one of the many challenges that we face.

One of the important challenges that we are looking at now is bringing that skill level back up for the staff who are new to the organisation and need to develop that breadth of understanding across the organisation.

Because many of the staff of the Office of the Protective Commissioner still are former estate managers - and most people here today will recall that time - you would perhaps appreciate that those estate managers used to undertake almost all, and sometimes all, of the elements that our back-of-house specialist branches now undertake. So there is a skill base still there in the organisation of people who are multi-skilled. Sometimes their specific knowledge base is not as up to date, obviously, as it would be because these days they are not selling the house - that is the property branch's responsibility - but they have the knowledge and understanding of the elements that are contained within that.

So there are some challenges there, but clearly - I'm

sorry, I might be jumping a little bit - one of the important KPIs - there is a KPI for the Attorney-General's department anyway, but one of special significance for us is the training, and not just any training to meet the minimum training requirements of the department, but the highly targeted training to bed this restructure down.

MR RAMJAN: Mr Chair, you asked me a very fair question, did I have any evidence. Having had a second to think about it, I would like to throw evidence of varying weight in, some that has greater significance than others, but I will leave it for you to judge.

I sat on the Guardianship Tribunal from probably about 1991 until 2005/2006, so saw quite a few matters and a lot of the work is around the Protected Estates Act.

I would say with absolute surety from my perspective that the complexity of the matters that come under the Protective Commissioner have become greater and more difficult. In the first few years, it was very unusual to have a hearing where you would have lawyers present. In my last couple of years, the hearings regularly were represented hearings, contentious, and the financial matters associated with them were very complex. So that's the first point.

The restructure is taking us back to a situation where the Protective Commission will have greater direct contact, hopefully - this is our serious hope out of this - with the people under their management. In the past, there was a lot more direct contact between the staff of the OPC and the people under management, and that seems to me to be what is being suggested under the restructure. That does take more time, because people had gotten into a situation of sitting in their offices, which gives you more time to do the paperwork but less time to actually interact with the client group.

I would suggest that the client group that the OPC are dealing with, especially in our area, are 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. So I think the people are much more complex and are requiring a greater level of skill and care to avoid the serious conflicts that can come out of it.

This one I'm not sure about, but I would suspect that the numbers being serviced have increased, and I would leave that for you to check and see what the staff numbers against that are.

The suggestion that came from a couple of people about having regional offices is a clear bit of evidence of the need for more staff. I find it incomprehensible that the OPC has a single office and the public guardian has only three, but at least three, so some regional offices. There is a need for the OPC somehow or another to address people who don't live in Sydney. It is a third of the client group so they have got to be addressed in some form or another. If you create a new office, you are creating a new infrastructure and there is a need for more resources to do that.

The other one is, sadly, I would say the skill set amongst the staff at the OPC over quite a number of years has dropped off. I think it has dropped off because of a lack of contact with the client group. As the OPC has retreated into providing office-based services, the skill set amongst the staff who had the contact has been lost. I didn't realise, but if there has been a loss of net staff in the move to Parramatta, then even more of that skill set has probably been lost in the process, so you have to rebuild that skill set, and the only way you are going to do that is through educating. We have raised this with the OPC currently and in the past, that there is the need for a strong disability awareness and disability skills program to be put in place, so I offer those to you as some evidence.

THE CHAIRMAN: Thank you very much for that.

MS McALPINE: Can I add a couple of points to that. I really support what you are saying about the complex clients. DADHC operates the Integrated Services Program, which is a cross-government program for people with extreme challenging behaviours and various disabilities.

I have worked in disability for a very long time, and this is the most challenging group of clients that I have

ever encountered, and they would all be clients of the OPC. Any intervention with them is extremely difficult to plan, to implement, to manage over time. So I think the degree of complexity really, really has changed.

The second thing I would like to note is about a KPI for responsiveness. I would hate that just to be considered to be a time measure, as in, "When did I file and when did I get a response?"

There is a responsiveness that the OPC have given to our agency, and an example of that would be where we changed our holiday policy in 2000. Most clients living with us at that stage would have had a holiday as the group that lived in their house, and that was deemed inappropriate because you don't get anything individual in your life then, and we moved towards individually organised holidays, so that we are going to the OPC for those people who are clients of the OPC one at a time with their holiday plans and costings, and we get timely responses on that. I think that that is a different dimension to responsiveness where the OPC has responded to policy changes in another agency.

MS BEGBIE: I just have a couple of things I'd like to say. I saw a draft of some KPIs in looking at all of this stuff. I don't know that it ended up in the final pack. I work in the Department of Finance and we do everything by KPIs. Sometimes you can have death by KPIs.

In this instance, it is quite clear that the tribunal has established that the OPC really has an inefficient management information system. It can't tell you what you want, it can't give you electronic copies of things, blah, blah, blah, so if we impose a whole arduous set of KPIs on the OPC that have to be manually maintained, then that takes away from the client service function, which is the main nature of the complaint here - that is my understanding of it, the quality of the service. So I wouldn't like to see the imposition of manually calculating these KPIs, because there's not a system that can underpin it; it would take away from the client servicing and that, to me, would be a major problem.

The other thing I really wanted to say is about the quality of service. I think every submission made a point about the quality of services, so I don't think anybody in

this room is arguing it. There need to be major things happening in OPC and you're making some effort to try to address those things. But one area, really, in my opinion where the OPC misses the point is you occupy a very, very powerful position in these people's lives. You are the holder of their finances. I think you underestimate that. For my brother, for example, he has this thing that the OPC is a big wicked organisation who holds his purse strings and "They can't tell me what I'm going to do and not do with my money." This is his conversation.

It is quite sad that when he calls up the Protective Commission or I call up the Protective Commission to intervene on his behalf that that's kind of the way he's treated on the phone - "We'll get back to you", or you get the 21-day automated email response, or whatever. He doesn't want that, and nor do we. He wants somebody to listen to him and, if anything, just acknowledge that he has an issue. It doesn't have to be validated, just acknowledge, "Yes, there is an issue and we will do whatever."

I think that is something that is missing, certainly in the client liaison team that we have been dealing with, we have all been dealing with, in the last little while, this whole thing about commonsense: at the other end of the phone is a person who is totally reliant on what you tell them on the telephone. To many brain-injured clients, that's the whole focus of their day and it causes a lot of problems.

So I don't think we can just measure things on KPIs and our responsive time, and I wouldn't like responsiveness to be brought down to time either, because it is about "Did I get the result I set out to achieve? Did I achieve something?", whether that takes three hours in a queue on a phone or six weeks to get a meeting or whatever it is. The person has to get an end point, whatever that might be, and the KPIs should address that, but there is a human factor here that I think is largely missing when we want to measure things in numbers.

MS DODDS: Can I begin with one thing: first of all, importantly, Jacqui, to the point, I certainly never forget the fact that it is someone's money that we manage, and whether it is their pension alone or $6 million, I certainly see that as being fundamental to the way in

which we operate, and the client focus is central for us.

There has been a very painful period, I think, in our history that I sincerely hope we are turning around and moving out of at the moment. I have in a recent presentation to all of the staff had up a picture of the Queen Mary - actually, it wasn't the Queen Mary, but the analogy was it is like turning a liner in mid-ocean, so it is going to take some time to do that, but it is a point well made.

I want to see us in a position where every member of staff understands on every occasion that we are relating to clients, families and stakeholders, the absolute significance for the decisions that we are making, and I always stress, whether it be with staff or with community education, that we need to remember that one day it could be us, and we should always reflect on that whenever we move forward and relate to people, and I think that is fundamentally important.

That is a cultural issue, of course, that it takes time, and we have acknowledged we do have a skill loss. I do want to just also add something that I didn't say earlier, which is in going forward in addressing that, we are going to be going into our stakeholder agencies, because they are the holders of the knowledge that we need our staff to learn. So that is another element to that, and it is not about learning it once, it is about refreshing it all the time.

I have been practicing in my profession one way or another for a very long time, but what I learnt about developmental disability in 1976 when I commenced and what we know today is vastly different. What we knew two years ago in developmental disability to what we know today is vastly different, so it is a matter of continual learning.

I absolutely agree with the concern about death by KPIs, and one of the points I wanted to make about measuring what it costs to provide our services is to acknowledge the fact that it has been clearly evidenced in this process that our current systems do need a lot of work done on them. You can't be doing this sort of reporting manually. We need to be looking at the business case to develop a new and more responsive system. That will cost, but it will be very necessary to underpin any processes

that we have going forward.

We can report on some of the KPIs using our existing system, but there are some that we can't and we'll need to have that system in place, as well as other IT enhancements.

DR MAHONEY: The last topic is an amalgam. I suspect we'll get most discussion on the size of the subsidy. The discussion note suggests that the present effective minimum subsidy is likely to be around $6.8m in this financial year we are now in, although only $2.8m is the current treasury allocation.

The figure $6.8m would be around 22 per cent, or just over a fifth, of the OPC's operating expenses last year of $31m. The question - let's hope it's not "How long is a piece of string?" - is what size of subsidy would be a reasonable reflection of the social obligations that the OPC seeks to fulfil? The other two questions are should the OPC's fees continue to be regulated or be deregulated and should there be a next fees review of OPC in two, three or five years' time?

THE CHAIRMAN: We have had quite a lot of discussion which has touched on the size of the subsidy. I suppose I wonder whether anybody can pick a number. It might be more helpful if we talk about what are the considerations in trying to assess the size of the subsidy. At the end of the day, IPART will probably pick a number in terms of our recommendations, but what is most important is how did we derive the number, what are the things we took into account. As I say, we have talked about these issues already, but now is the opportunity to add to what has been said on that.

Can I say, for my part, I think the submissions are pretty strong that the fees shouldn't be deregulated. We could save a bit of time, unless someone is very keen to have them deregulated. I don't recall any submission modelling deregulators, so we can save a bit of time on that.

The last issue is important, though, and I covered that to some extent in my opening remarks.

MR RAMJAN: I can be very quick. The number is impossible

and I think that is your task, to come up with a number. What I would ask for your consideration is a number plus for the next two years to assist in the restructure and to ensure that the KPIs are in place, so whatever number you come up with I would like you to give consideration to the fact that you don't do these restructures without some additional support to do it.

And tied into that, the last question about when should the next fees review should be, IPART is looking at fees but it is probably worthwhile saying in two years. If your recommendation is for this subsidy plus some additional money to help with the restructure, and it is for a two-year period, then two years is the time to come back to see whether it works, whether you have identified some inefficiencies that we can fix.

THE CHAIRMAN: I thought you would at least push us for things like quality in terms of regional offices and things like that.

MR RAMJAN: I would love you to do it, but I actually think things go in steps - I am a social worker by training and you plan your way ahead - the restructure of itself in the next 12 months and getting the systems in place. A plan towards regional offices, it has to be inevitable, it has to be, but whether it happens in the first year or the second year. I would love it if IPART found the need for regional offices because at the moment we are just not servicing a great bulk of people. And that has led to criminal charges being laid against somebody, somebody being before the courts, because of the move from the new Parramatta office from the old Sydney office, trying to get money and ended up losing their temper and putting a bin through a window.

The need for services, where people who have a need, to be accessible, is inescapable. It is worth looking at that.

The cost involved? Here is somebody who wants 20 bucks and they ended up having to go to court and ended up having representation, they took up court time, they may still end up in gaol, they may have a penalty against them they can't afford to pay, so there is a nonsensical value in it.

MR COHEN: At the risk of stating the obvious, can I suggest to IPART to aim high? The last subsidy suggested was $9m, and by this year it had gone down to $2.8m. I just suspect that, Treasury being Treasury, unless you aim high, you end up with a moderate amount in two years time.

MR WHITEHEAD: If I can comment as well, the situation is during the restructure there will be lots of things to think about, to measure in terms of the efficiency of service, and you will not know for another two or three years reliably enough to feed that into Treasury.

The simplest way is to say, if Imelda can provide an appropriate budget that she needs to deliver the restructure, to enhance certain systems, whatever, it might be just a gap for the next couple of years instead of trying to be really methodical about justifying why it should be a part of a budget, a rigid budget, and then you might get to a situation of knowing that you can justify your revenue, once you have reclassified across bands of matters where you know the service will not be led by fees. Until the restructure is analysed over a period, you will just not have a formula adequate enough to go to Treasury, but they do respond to the fact that there is a gap.

They do not like organisations having a deficit, but if it is a justifiable process, a restructure, they will respond to a period of time to give you to get to that. I don't want to go back to that same efficiency review that was done a few years ago, then have to redo all that again, unless there is better information systems to support it, and build into the next couple of years budgets maybe the regional offices, accelerate that so that they can understand where you are heading and the nature of what is required to deliver the services across the state.

Unless you get that relationship with Treasury, get it on board as to what you want to do, there just has to be a gap in the first few years.

MR GRIERSON: It is a long time to wait for those things to happen. I strongly support the regional offices, going down that track. By the same token, in the meantime, or as well, the point I reiterate is to use the services that are out there, have a better system of using what is out there to connect up with people as well. It is not a replacement for regional offices, the service really needs that, but

connect up with people who are already out there so they can better help them.

MS DODDS: I should have perhaps mentioned earlier that as part of the restructure, while we won't be able to go and visit every client, the intention is that we will be moving back to where it is appropriate doing those face-to-face visits, so it is day four of the roll-out. We have not got yet to addressing when we are going to be able to go back to doing a form of the visits that used to occur which were ones where we went to regional areas and utilised agencies, offices, stakeholders' offices, to provide an accessible point for clients to come and meet with us and also to regenerate those network connections.

That is very much stage one of a process that I would certainly hope will lead us to an expansion into regional offices, but that is something that I think we know has to be identified and well argued and planned for. I should have mentioned earlier that as part of this restructure that there is a clear intent, where it is appropriate, for staff to be moving out to visits again.

MR MUNDY: It sounds very well and good, but a substantial boost to the subsidy the government provides to people like my son who continue to pay $50,000 a year for five years, let's say, and I don't think that is fair. There should be something reasonable to meet the community service obligations that the Government has.

THE CHAIRMAN: Earlier in the day we were trying to establish what is a fair transparent clear structure.

MR MUNDY: That is one issue, but the issue that the gentleman here mentioned is we will have to wait a while for data to come through to assess what is going on. That is all very well and good from that perspective, but from my son's perspective while we are waiting he is still paying these enormous sums of money.

THE CHAIRMAN: We see as our job to come up with a fair structure of charges we want to be able to defend as being fair and transparent. That is our job. That may well involve a bigger subsidy than the present fee structure.

MR MUNDY: That is the reality, that without a subsidy, the other things can't be achieved.

THE CHAIRMAN: Just to continue the point, there will then be a judgment somewhere as to how much you can then put into quality improvements, given that you are asking for a bigger subsidy on the fees. You can bid higher, as has been suggested, and go for both, but at some point you do have to face the reality of what is the right balance between the subsidy and the quality. I think your argument is strongly for subsidies.

MR MUNDY: Of course.

MS BEGBIE: One issue that does not take account of is people like us who are cross subsidising people already, will that continue?

THE CHAIRMAN: The tribunal is trying to get a structure of fees that is fair and you have very well made the case that cross-subsidies in principle are not fair.

MS BEGBIE: I understand that.

THE CHAIRMAN: If there is not a cross-subsidy, then there will have to be a bigger public subsidy.

MS BEGBIE: If there is not, or it does not happen, for three years, will we be able to come back to the OPC and say, thank you, we want a refund of our cross-subsidy?

THE CHAIRMAN: I doubt it.

MS BEGBIE: That is my point.

THE CHAIRMAN: All we can say is that we were charged with a reference that asked us to produce a set of recommendations on a fee structure. What I am saying is that we will be taking account of what has been said in terms of what is not fair. We will be taking account of that. I can't tell you if the government will accept our recommendations or not. I can say that we have had a pretty good score rate in the past in getting our recommendations accepted but that does not necessarily follow that this one will. But generally we have had a pretty good score rate, and at the very least in the worst case scenario your hand has been strengthened as we are broadly supportive of your case.

It may well be the government will make recommendations which go a long way towards a government subsidy, but we can't say.

MR SIMPSON: I just wanted to emphasise something that was mentioned in the issues paper and that is that at the end of the day it is a disability service that we are talking about here and it is very peculiar for a disability service to charge all of its clients. In general terms disability services go much more the other way, of not charging for their services, whether it is case management for people with mental illnesses, most of the services that DADHC provides and so on. And that derives from the social justice issues, the community service obligations and the poverty of the people involved.

There is an additional element here that peoples affairs are under management because of compulsion, because of an order of a tribunal, in their interest, but nonetheless it is not something that people necessarily choose should happen.

There is a very strong argument for a very much increased level of government subsidy than currently exists. At a level of principle, to me I can see that if someone would need to pay an investment adviser anyway, whether they had a disability or not, for those sort of fees there is nothing we can argue about, but at least for people who are not wealthy, to be having to pay fees for this disability service as distinct from a range of other disability services that they are receiving seems to be really an accident of history and an accident of a perception about the fact that we are managing your money, and so we charge you money to do it. That really needs to be challenged, that sort of line of reasoning, because if that line of reasoning was taken to its logical conclusion, the government would be charging for all manner of other disability charges that are not charged for.

THE CHAIRMAN: We have noted that point. At the end of the day, as I have just indicated, there will be a question of where the priorities are. You can make a case perhaps for a submission to the government for more money, but there will be an issue where the priorities are. Without wishing to put you two at odds, if we pull down the costs to wealthy clients, we have used money that you would argue should be used to make the service free for some other

clients. That is the reality.

MR SIMPSON: Well, unless the government provides more.

THE CHAIRMAN: Yes. But that is the sort of balance that we have to look at.

Unless there is anyone else with a vital contribution to make?

MR RAMJAN: Can I just ask a question? When would the recommendations of the tribunal be available? Will they be publicly available?

THE CHAIRMAN: The nature of this inquiry is that we furnish our report to the Government. When we do a determination, we make it public. When it is under section 9, as this report is, of our act, it is a report which makes recommendations. So it is for the government to determine if and when it is released.

I would be extraordinarily surprised if the government didn't release it but I can't say exactly when it will release it. We are charged to report by the end of September. The most likely scenario is that it will be shortly after that, but I just have to put that caveat in, that that is the government's decision, not ours.

MR RAMJAN: Thank you.

THE CHAIRMAN: I have said much of what I was going to say by reason of my concluding remarks about trying to achieve the right balance so I will not repeat that.

I would like to once again thank you all for your contribution. From our point of view it has been an extremely productive afternoon. We have got I think a clearer picture and a better understanding of what people see as priorities. We have to resolve the priorities, but we have a clearer and much better understanding, and I thank you all for your contributions. I do hope that you will see our recommendations shortly after the end of September. Thank you very much.

AT 5.30PM THE TRIBUNAL ADJOURNED ACCORDINGLY