

INDEPENDENT PRICING AND REGULATORY TRIBUNAL

REVIEW OF THE FEES OF THE NSW TRUSTEE & GUARDIAN

Tribunal Members

Dr Peter Boxall AO, Chairman  
Dr Paul Paterson, Member  
Ms Catherine Jones, Member

Members of the Secretariat

Ms Anna Brakey, Mr Gerard O'Dea and Ms Letitia Watson-Ley

At

IPART Offices, level 8, 1 Market Street, Sydney

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1 OPENING REMARKS

2  
3 THE CHAIRMAN: Welcome, everybody, and thank you all very  
4 much for coming this morning. I would like to welcome you  
5 to this roundtable on IPART's review of the fees and  
6 charges that we will recommend to the New South Wales  
7 government to be charged by the NSW Trustee & Guardian.

8  
9 My name is Peter Boxall. I am the Chair of IPART and I am  
10 joined by my fellow tribunal members, Paul Paterson, on  
11 my left, and Catherine Jones, on my right. Assisting  
12 the tribunal today are the IPART secretariat members  
13 Anna Brakey, Gerard O'Dea and Letitia Watson-Ley.

14  
15 Thank you to those who have made a submission to this  
16 review. Stakeholder submissions are available to the  
17 public on our website. We considered these submissions in  
18 developing our draft report, which was released on  
19 9 September. It is also available on our website.

20  
21 The purpose of today's roundtable is to briefly  
22 explain the reasons for the recommendations in our draft  
23 report and then to listen to your comments to help us  
24 formulate the recommendations for our final report which we  
25 will deliver to the New South Wales government by  
26 30 November this year.

27  
28 Why are we doing this review? The New South Wales  
29 government asked IPART to undertake the review. The  
30 objective is to recommend a fee structure for the  
31 NSW Trustee & Guardian that is clear, fair and transparent  
32 and, where possible, harmonises the fees and services  
33 provided by the Trustee & Guardian's precursor agencies,  
34 namely, the Office of the Protective Commissioner and the  
35 NSW Public Trustee.

36  
37 We have undertaken a detailed analysis of the  
38 information available. IPART's draft position is that  
39 vulnerable and disadvantaged clients should be asked to pay  
40 fees to cover the efficient costs of providing the services  
41 required. Any costs above the efficient costs of the  
42 NSW Trustee & Guardian should be borne by the agency. We  
43 seek, therefore, to set fees to just recover our estimate  
44 of the NSW Trustee & Guardian's efficient costs, not their  
45 actual costs.

46  
47 We have also recommended subsidised fees for some low

1 wealth clients most in need of financial assistance. We  
2 have identified some ways that the NSW Trustee & Guardian  
3 could improve its operations for the benefit of its clients  
4 and to strengthen its own financial position and hence  
5 reduce the call on the government's budget.

6  
7 We are not recommending fees for services where  
8 clients can choose whether to use NSW Trustee & Guardian or  
9 another service provider such as a lawyer. It is important  
10 to let the agency set its own fees in these cases so that  
11 it can be competitive.

12  
13 Many of the submissions that we received raised issues  
14 associated with NSW Trustee & Guardian's services. Many  
15 stakeholders are highly critical of the level of service  
16 that the agency provides, particularly in view of the fees  
17 charged.

18  
19 In addition to addressing the level and structure of fees, we have  
20 made a number of recommendations aimed at improving  
21 the NSW Trustee & Guardian's service delivery and  
22 transparency around fees including recommendations that  
23 aim to deliver better value for customers in terms of price and  
24 service levels; provide greater transparency in fee  
25 disclosures; improve reporting of service costs and  
26 revenues; and establish a system of centralised and audited  
27 fee waivers.

28  
29 We very much look forward to hearing your feedback on  
30 our recommendations. We have two sessions. The first will  
31 examine our approach to setting fees and the second will  
32 examine our specific fee recommendations.

33  
34 The secretariat will make introductory presentations for both  
35 sessions. After their introduction, I will then invite  
36 comment from roundtable participants, with a maximum  
37 of five minutes per speaker. After the discussion I will  
38 invite comments from the floor.

39  
40 Today's hearing will be recorded and a transcript will  
41 be available on our website next week. Therefore, to  
42 assist the transcribers, I ask that on each occasion you  
43 speak to please identify yourself and, where applicable,  
44 the organisation you are representing. I also ask that you  
45 please speak clearly and loudly.

46  
47 I will now hand over to Gerard O'Dea who will

1 introduce the first session.  
2  
3 SESSION 1: OUR APPROACH TO SETTING FEES:  
4  
5 MR O'DEA: Good morning, everyone. The first session will  
6 be broken into two parts. The first part will be about the  
7 quality of service provided by the NSW Trustee & Guardian.  
8 We will pose some questions to start off the discussion and  
9 the Chairman will seek comments from participants.  
10  
11 After that process, the second part will be on the  
12 next three topics that we have on the screen, namely, our  
13 approach to analysing and setting fees; services that  
14 we recommended fees for; and how we establish efficient  
15 costs.  
16  
17 Turning to the first part on issues with quality of service, the  
18 following points were recurring themes in submissions  
19 from stakeholders, predominantly family members, carers  
20 and friends. Many of these comments were similar to those  
21 that were received at the 2009 review.  
22  
23 As you can see from those points on the screen - and  
24 we have reflected these in the draft report - there were  
25 concerns about poor communication, the length of time that  
26 it took to deliver statements and the clarity of the  
27 statements.  
28  
29 The questions we are asking people to comment on are:  
30  
31 What are stakeholders' experience with the quality of  
32 service?  
33 With regard to our recommendations in the draft  
34 report, will our recommendations deliver better value for  
35 customers in terms of price and service levels, provide  
36 greater transparency in fee disclosures, and improve  
37 reporting of service costs and revenues?  
38 We are also recommending that there be an  
39 establishment of a centralised system of recording fee  
40 waivers.  
41  
42 Shall we address that now?  
43  
44 THE CHAIRMAN: I am a bit concerned if we just give one or  
45 two slides and then ask people to make a contribution,  
46 we will end up getting the same contributions over and over  
47 again. I think it might be best to do a number of slides

1 and then get a contribution and then we will move on to  
2 Letitia's presentation.  
3  
4 MR O'DEA: For the second part; we will go through and  
5 establish how we have come up with our proposal. The first  
6 step was establishing the current costs, and this was on  
7 data provided by the Trustee & Guardian. That is shown  
8 here in black on the slide. The second step was  
9 establishing what we thought were the potential savings and  
10 what are the efficient costs. That is our estimate of the  
11 efficient costs and potential savings. Step 3 shows the  
12 fees before any government subsidy.  
13  
14 The next step was to consider what CSO payments were  
15 necessary or were worthwhile and that is shown  
16 in step 4. In our draft report, fees  
17 that are to be paid by customers do not represent the full  
18 efficient costs, the addition of the government CSO does,  
19 and the potential savings are those that are absorbed  
20 initially by the Trustee & Guardian until they can find  
21 efficiency savings.  
22  
23 With regard to the services for which we have  
24 recommended fees, as the Chairman has pointed out, there is  
25 little point in recommending fees where there are  
26 competitive services. This hampers the Trustee &  
27 Guardian and does not deliver benefits to customers.  
28  
29 IPART's view was that the market will generate lower  
30 prices and better choice and quality where there is  
31 effective competition; therefore, IPART's draft  
32 recommendation is only to set prices where the NSW Trustee  
33 & Guardian's clients do not have a choice of service  
34 provider - that is, where the client is assigned by a court  
35 or a tribunal and also for low wealth clients.  
36  
37 We have made one exception to that rule and that is for privately  
38 managed clients who have investments with the NSW Trustee  
39 & Guardian Common Fund. Whilst the manager is  
40 not required to invest with the NSW Trustee & Guardian,  
41 given the vulnerability of the privately financially  
42 managed clients and the fact that these clients are often  
43 managed by family and friends rather than professional  
44 trustee firms, our preliminary view is that the investment  
45 management fee for privately managed clients should also be  
46 regulated.  
47

1 In looking at the services that are regulated, on this  
2 graph, the dark colours are the services for which we are  
3 recommending fees. For directly financially managed  
4 clients, it is 100 per cent. For privately financially  
5 managed clients, it is 100 per cent. For trusts, it is in  
6 the order of 85 to 90 per cent. For power of attorney  
7 drafting, our estimate is roughly fifty-fifty. Power of  
8 attorney administration is completely competitive. With  
9 regard to will drafting our estimate is for people who need  
10 assistance. In total, approximately 71 per cent of  
11 current Trustee & Guardian clients will be set a regulated  
12 price and 29 per cent of clients will be subject to market  
13 prices. These numbers are our best estimate; however,  
14 there will be some variation to client numbers in drafting  
15 services.

16  
17 Moving on to how we establish efficient costs, this  
18 graph shows an indexed representation of the expenses and  
19 workload of the NSW Trustee & Guardian in 2009/10, which  
20 was just after the amalgamation, until now. Rather than  
21 finding efficiencies post the amalgamation the actual costs  
22 of the NSW Trustee & Guardian increased by 10 per cent over  
23 the three years - this is highlighted by the red line in  
24 the graph - whilst at the same time the weighted average  
25 workload which we calculated using cost data provided by  
26 the NSW Trustee & Guardian and its consultants, has fallen  
27 by 7 per cent over the three years. The workload line is  
28 here on the graph and the cost line is above it.

29  
30 Turning to establishing the efficient costs of  
31 service delivery, the analysis shows that while expenses  
32 have increased over time, the matters managed by  
33 the Trustee & Guardian has decreased. Since 2010 the real  
34 expenses of the NSW Trustee & Guardian have increased by  
35 10 per cent while the volume of clients under management  
36 has fallen by 7 per cent. Overall the average cost per  
37 client has increased by 18 per cent since 2010.

38  
39 We also reviewed a confidential report prepared by the  
40 NSW Trustee & Guardian which supports our high level  
41 analysis. As a result, the tribunal is confident that the  
42 NSW Trustee & Guardian can make a 20 per cent efficiency  
43 saving. We consider that that is a conservative and  
44 reasonable estimate and quite achievable.

45  
46 The other issues for discussion are:  
47

1 Is our approach to the review appropriate?  
2 Do you agree that the fees should only be recommended  
3 for services where clients do not have a choice?  
4 Does the market provide sufficient pressure to protect  
5 customers for services where the Trustee & Guardian is  
6 subject to competition from lawyers and trust companies and  
7 is our approach to establishing the efficient costs of the  
8 NSW Trustee & Guardian reasonable?

9  
10 THE CHAIRMAN: Thank you very much, Gerard. Calling  
11 for comments around the table, Imelda, would you like to kick  
12 off?

13  
14 MS DODDS: I would like to make some introductory remarks  
15 if I may and I will note that NSW Trustee & Guardian has  
16 this morning delivered an interim submission in response to  
17 the paper. I have asked that you consider at your  
18 meeting tomorrow whether you would put it on the website  
19 ahead of the close of submissions. I understand and  
20 respect entirely that that is the choice of the tribunal  
21 and a decision that the tribunal will make.

22  
23 We have considerable concerns that some of the  
24 recommendations may have been based on inaccurate  
25 assumptions. We are concerned that they are unreasonable  
26 or overly costly to implement and manage and would make  
27 our fee structure too complex and difficult to understand from  
28 a client's point of view.

29  
30 While we understand IPART's economic approach to cost  
31 recovery, we believe that IPART has adopted, with respect, an  
32 academic position that fails to recognise the nature and type  
33 of business of NSW Trustee & Guardian and the economic  
34 cycles over which it has no control but materially impact  
35 our clients and finances.

36  
37 We do believe that there has been a failure to  
38 understand what constitutes a reasonable ongoing surplus  
39 required by us to retain our self-funded entity and that  
40 has to be one that is capable of delivering our vital and  
41 quality services to clients into the future.

42  
43 Our analysis indicates that the draft review suggests  
44 a surplus of \$1.5 million and we believe that is short by  
45 around \$7 million to \$8 million. That will threaten our  
46 sustainability and therefore our ability to deliver  
47 services.

1  
2 We are concerned that the report in no way mentions  
3 the fact that we are in the middle of a major  
4 organisational redesign, which we fully briefed the staff  
5 of IPART on at the commencement of this process, and that  
6 redesign is specifically tasked to improve efficiency in  
7 our service delivery.  
8  
9 While we make no specific comment on the size of the  
10 efficiency gains, we note that the IPART review suggests a  
11 blanket 20 per cent gain across all product lines, whereas  
12 the reality of available efficiencies will be much more  
13 nuanced and targeted.  
14  
15 We believe that the defined community service  
16 obligation is much more in the vicinity of or will be  
17 doubling in size from approximately \$5.1 million to  
18 \$10 million. This will obviously be a matter for  
19 government to consider and Treasury, in particular.  
20  
21 Our organisational redesign is in its final planning  
22 stages but it does recommend an entirely new business  
23 model. It has taken six months of very detailed analysis  
24 and design and the IPART fee review is one part of a very  
25 complex process. We do believe that IPART's report about a  
26 \$1.5 million surplus as a sustainable financial position  
27 does not actually concur with its own report from the  
28 Centre of Independent Economics, which states, and I quote:  
29  
30 In a competitive market fees and charges  
31 should reflect the efficient cost of  
32 providing services. This would include a  
33 fair return on investment.  
34  
35 In our interim submission, we go into considerable detail  
36 as to why we consider that this has not been reasonably and  
37 fairly reflected in the draft report.  
38  
39 We note the comments on the Common Fund and we believe  
40 that the recommendation that the investment fee on assets  
41 in the Common Fund be set at 0.1 is not reasonable. We  
42 disagree with the analysis of the cost basis for this  
43 recommendation and also point out that the equivalent fees  
44 charged by state trustees in both South Australia and  
45 Victoria is 1,000 per cent higher and that is not, when you  
46 read the report, a misprint. The same goes for other  
47 commercial organisations such as Perpetual Trustees. This

1 goes to the heart of our belief, that the IPART report has  
2 failed to recognise the nature of the business that  
3 NSW Trustee & Guardian is in and the requirement to  
4 maintain a sustainable position in order to deliver  
5 services.  
6  
7 We are concerned that the report does not reflect the  
8 fact that the NSW Trustee & Guardian is not a controlled  
9 entity and must self-fund to the maximum degree possible  
10 and that includes being able to self-fund for capital  
11 expenditure.  
12  
13 Many of the recommendations of the IPART report speak  
14 to efficiencies to be found in technology. This is  
15 something that we do not dispute and that is a part of this  
16 multi-faceted transformation process that we are currently  
17 engaged in. However, we must self-fund that technological  
18 advance, which is going to be to the tune of \$20 million in  
19 order to finalise it. That money has to come from  
20 somewhere, it does not come from Treasury. Over a period  
21 it is to come from within our own growth.  
22  
23 We also disagree with the categorisation of voluntary  
24 and involuntary clients. It is simply not correct to say  
25 that there is no choice in trust matters because of a  
26 decision by a court or tribunal pursuant to legislation and  
27 we go into some detail in our submission. NSW Trustee is  
28 not always the preferred choice by parties or their legal  
29 representatives. In fact, very often we are not.  
30  
31 In terms of intestate estates, which are the estates  
32 referred to here, they cannot be classed as involuntary.  
33 NSW Trustee & Guardian only administers 6 per cent of all  
34 intestate estates presented to the Supreme Court probate  
35 registry for letters of administration. The vast majority  
36 are simple estates managed by individuals and solicitors.  
37 What NSW Trustee & Guardian does tend to do is take on the  
38 estates that are very complex and sometimes very  
39 conflicted.  
40  
41 We are very concerned that this categorisation of  
42 intestate estates as involuntary could indeed undermine the  
43 entire government strategy for planning ahead, in  
44 particular the Get It in Black & White campaign and,  
45 secondly, the actual cost of managing intestate estates is  
46 higher than other deceased estates because of the need to  
47 do considerable research to identify people who are

1 potential beneficiaries under the estate.  
2  
3 We are concerned about the implementation of cost  
4 efficiencies. The draft review suggests that nearly  
5 \$14 million in expenses can be saved through efficiencies  
6 at an implementation cost of \$1.7 million per year over  
7 two years and I note again the blanket approach of  
8 20 per cent. We have already identified, through our  
9 own processes, a range of nuanced strategies that will  
10 enable us to make efficiencies. However, a reduction  
11 of \$14 million will be impossible to achieve without some  
12 reduction in FTE and NSW Trustee & Guardian is not  
13 automatically funded to provide redundancies and this  
14 money - this funding - does not allow for redundancies.  
15  
16 There are a series of inaccuracies and discrepancies  
17 which we brought to the tribunal's attention. These  
18 include, but are not limited to, a concern that was  
19 identified at a pre-release briefing, that the figures of  
20 our annual figures, which would include, I believe, that  
21 18 per cent figure, have included the funding that we  
22 administer on behalf of the Public Guardian. This money is  
23 derived from Treasury by way of a grant and we simply  
24 administer it on their behalf. It shows in our budget  
25 papers as being part of our costs but it is not in any way  
26 related to this review. We did draw that discrepancy to  
27 the team's attention and I am not sure whether that has  
28 been taken into consideration and whether that flows  
29 through in other calculations but I would be pleased to  
30 understand that.  
31  
32 The final point that I would wish to make,  
33 Mr Chairman, and thank you for your indulgence, is that the  
34 process undertaken in 2014 is a significant departure from  
35 those of the previous two reviews. Whilst I was not  
36 present for the 2003 review, I was for 2008 and the then  
37 OPC was regularly consulted to check data and operating  
38 assumptions for the purposes of validation. Whilst doing  
39 that, IPART maintained its proper independence and  
40 demonstrated a robust approach, which sought to verify  
41 material from any source, I should add, and to seek  
42 validation. Further, a draft report proposing fees was not  
43 written prior to the public hearing.  
44  
45 This approach certainly appears to have changed and  
46 been abandoned. Whilst we were available, we were rarely  
47 consulted for points of clarification or validation once

1 the submissions were received. As I have identified, we  
2 believe that there have been some fundamental - potentially  
3 fundamental - misunderstandings, possible errors that may  
4 have arisen by a failure to validate. We respectfully  
5 request that IPART consider a change in process while  
6 absolutely maintaining its important independence. Thank  
7 you.  
8  
9 THE CHAIRMAN: Thank you very much, Imelda. Who  
10 would like to go next? Ishanthi?  
11  
12 MS GUNAWARDANA: My name is Ishanthi Gunawardana.  
13 My father is currently directly financially managed by what  
14 was formerly known as the Protective Commissioner, now  
15 NSW Trustee & Guardian. He had a car accident in 1987  
16 which left him in a permanent vegetative state and  
17 approximately \$90,000 was given over to the Protective  
18 Commissioner to manage and the rest of his care is the  
19 subject of what was once a GIO guarantee. It is now  
20 managed by another insurance entity but it was originally  
21 the GIO. So a large part of his financial needs, in fact  
22 most of his financial needs, are actually taken care of by  
23 the GIO.  
24  
25 Really, I am here to represent my father but also my  
26 mother, whose financial needs are directly affected by the  
27 operations of the NSW Trustee & Guardian.  
28  
29 If you wouldn't mind going back a couple of slides,  
30 I would like to address some of the questions raised by  
31 them and the subsequent slides and some of the issues  
32 raised by Ms Imelda Dodds. I can only speak, obviously,  
33 from my own personal experience.  
34  
35 THE CHAIRMAN: Sure.  
36  
37 MS GUNAWARDANA: We have now been managed by the  
38 Protective Commissioner and the Trustee & Guardian, in its  
39 current form, for over 20 years and I would have to agree  
40 that our experience in quality of service is poor to  
41 abysmal and there have been some shining lights in that but  
42 when we first started it was much easier to contact them  
43 and we had a case manager allocated to us. Now you are a  
44 part of a general number and you don't know who you talk to  
45 and then the next person you talk to - anyway, I'm not here  
46 to go into the intricate details but generally there is an  
47 issue with the service proposition and we are not even a

1 high-maintenance client.  
2  
3 I have read the report, and I have a lot of sympathy  
4 for this. I have been there when - you know, it is  
5 40 per cent - people who have psychiatric or intellectual  
6 disability have come in and it is hard work. But with  
7 regard to my father and my mother, there may be one or two  
8 dealings per year, if that, with the Protective Commission  
9 and it is always fraught and it is difficult. So that is  
10 just the general experience in relation to the quality of  
11 service. As I said, there have been some shining lights  
12 within that, so I don't want to say that it is all bad.  
13  
14 In terms of are the tribunal's recommendations likely  
15 to improve quality of service, I am not entirely sure of  
16 that because I think the approach that the tribunal has  
17 taken - and I have some sympathy for what Imelda has said  
18 here - is that it is a bit of a blanket approach.  
19  
20 In my own experience, given that we are not  
21 high-maintenance clients, I certainly don't feel that we  
22 don't get the value for the fees that we are being asked to  
23 pay and I don't believe that the fee structure accurately -  
24 "accurately" is the wrong word - fairly reflects the  
25 services that are provided to someone like my father and my  
26 mother as opposed to someone who needs those services  
27 daily, weekly and having to have their hand held in a  
28 constant way.  
29  
30 I have seen the service proposition change over time  
31 from when they used to be in the Sydney office to when they  
32 moved to the Parramatta office and I can see why they have  
33 done that. It is actually more difficult now - I have only  
34 been to the Parramatta office once since their move - to  
35 actually go there. I understand that that's because of the  
36 nature of the clients that you would deal with, but I think  
37 the fees should actually reflect how much work you need to  
38 do for each customer and, to some extent, because you have  
39 people who really fall within some sort of - there are  
40 mental health issues and part of it is a public funding  
41 issue as well, but we, as private clients, shouldn't be  
42 subsidising that. I am sorry, I don't want to go on with  
43 that forever.  
44  
45 THE CHAIRMAN: No, that's fine. Just on that point,  
46 basically, in essence, what you are saying is that you are  
47 relatively low-maintenance clients.

1  
2 MS GUNAWARDANA: That's right.  
3  
4 THE CHAIRMAN: And you would expect to be charged less  
5 than somebody who is a high-maintenance client; right?  
6  
7 MS GUNAWARDANA: That's right and I think that an  
8 assessment needs to be done. There is an establishment fee  
9 paid, which is fine because there are start-up costs. An  
10 assessment needs to be made at that point in time whether  
11 you're low, medium, high - however you wish to categorise  
12 that.  
13  
14 THE CHAIRMAN: It is very difficult to make fees that  
15 granular without having activity based costing.  
16  
17 MS GUNAWARDANA: And I noticed that in the 2008  
18 recommendation, just to go back to that - and these haven't  
19 been acted upon - that there was insufficient data and  
20 there continues to be insufficient data and clearly the  
21 technology isn't there and there is a whole other gamut of  
22 issues.  
23  
24 THE CHAIRMAN: I would like to hear from the NSW Trustee  
25 & Guardian, in order to get a bit of a discussion going  
26 because I wasn't here in 2008, but I noticed also that  
27 there was a recommendation by IPART in 2008 that Trustee &  
28 Guardian develop activity based costing. As I understand  
29 it, that has not been done so until that is done, it is  
30 very difficult to have fees as granular and as  
31 differentiated as people like yourself I think might want.  
32  
33 What does T&G say to that?  
34  
35 MS DODDS: Thank you, Mr Chairman. The 2003 report  
36 recommended a full activity based costing, as I recall.  
37  
38 THE CHAIRMAN: It goes back longer?  
39  
40 MS DODDS: It does go back longer. When I appeared in  
41 2008, that work had not been done, however, the tribunal's  
42 view was that an absolutely full A, B, C approach may have  
43 been overly costly but we should move towards a costing  
44 approach. In 2009, of course, the merger of the two  
45 organisations overtook that and, of course, in merging  
46 the two organisations, two systems - bespoke and very  
47 different - the work has taken far longer than we had

1 certainly anticipated. The new and integrated system,  
2 which is just about to enter stage 3, will be incorporating  
3 that. However, during the period we did undertake a  
4 workload review by PwC, which has assisted in the  
5 development of the new system but also assisted in our  
6 current work, which identified activities and costing to  
7 the service level.

8  
9 THE CHAIRMAN: Thank you. Do you want to say anything  
10 more, Ishanthi?

11  
12 MS GUNAWARDANA: Yes, if I may.

13  
14 THE CHAIRMAN: Yes, sure.

15  
16 MS GUNAWARDANA: Just moving on to the next set of  
17 questions, in relation to whether the review is  
18 appropriate, I take on board the Trustee's comments but  
19 I guess one of the comments that Imelda made, which I take  
20 to task, is the investment fee at 0.1 per cent has not been  
21 reasonable.

22  
23 My father's estate, which is directly managed, made  
24 2.26 per cent last year. It has not been keeping up with  
25 CPI for the past 20-something years. I am just at a  
26 complete loss as to how to reconcile that when you could  
27 put it into - at retail rates - a cash deposit account at  
28 3.5 per cent. If you were to then take away the tribunal's  
29 recommended 1.4 per cent, actually half your return, and  
30 they have only taken into account CPI, whereas we have been  
31 going backwards for 20 years.

32  
33 In addition, you compare yourself to a commercial  
34 trustee but there is a market of services out there that  
35 you can choose from. 1.4 per cent in the commercial market  
36 is still quite high for services. Again we come back to  
37 the services that you are offering for someone like my  
38 father which, you know, is a very minimal amount. So I am  
39 struggling to understand this. I guess this also gets down  
40 to transparency as well. I don't even know what you are  
41 providing for the sort of 0.1 per cent or 1.4 per cent and  
42 how all the numbers sort of add up.

43  
44 THE CHAIRMAN: In the second session we are going to hone  
45 in on fees and CSO rules and being fair and transparent, so I was  
46 just wondering if we could hold that over until then.  
47

1 MS GUNAWARDANA: That's fine.

2  
3 THE CHAIRMAN: And maybe if some of the other individuals  
4 would like to make a comment. Gary, would you like to make  
5 a comment?

6  
7 MR BEAUMONT: Yes. Gary Beaumont, and I am an individual  
8 private financial manager. I would support a large amount of  
9 what the previous speaker has suggested there, but I just  
10 point out I would imagine I would be at the very lowest end  
11 of your scale, basically, and I will leave my comment on  
12 the fees, if you like, until after then.

13  
14 My main reason in putting a submission in was  
15 basically in regards to the income fee. I found the  
16 4 per cent of income was very extravagant in regard to -  
17 from me personally - the work that would have needed to be  
18 completed on my annual returns. I have structured  
19 everything up. I did have a little bit of I won't say  
20 "argument" but discussion with personnel from the trustee  
21 initially, but I stuck to my guns and I put all of my  
22 clients' money into a bank in a term deposit. I think  
23 I was fortunate a couple of years ago that I got in before  
24 it came down too far and I will currently be getting, for  
25 the next three years, 5.8 return.

26  
27 I would support what is being said there, that some of  
28 these things - the basic ways of going about them, saving  
29 fees from other financial managers and trust funds and  
30 whatever - may be avoided like that.

31  
32 I have also structured mine up so that everything -  
33 all my bills - are paid by direct debit and the only two  
34 incomes, which is a Centrelink pension and the term deposit  
35 interest, also directly go in. I really have no work at  
36 all to do; it is all done for me. My annual return  
37 basically consists of printing out my bank statements and  
38 forwarding my bank statements to be checked. I would  
39 suggest that there would be very limited checking needed to  
40 be done on mine and hence those were my thoughts on that  
41 fee structure. I don't have much more to say other than  
42 that at this point in time.

43  
44 THE CHAIRMAN: Thank you very much, Gary.

45  
46 I am just wondering, Brendan, do you want to say  
47 something?



1  
2 MR MOORE: Only to preface my comments with the fact that  
3 I am coming off an illness at the moment, so I'm sorry I am  
4 a bit foggy in the head still.

5  
6 Our involvement with the Trustee & Guardian sort of  
7 covers three levels, I believe, from the Alzheimer's  
8 Australia perspective. So people with dementia comprise a  
9 vast majority of clients referred for financial management  
10 through to NCAT, the guardianship division. So the pattern  
11 of clients that the tribunal, now guardianship division, has  
12 seen over the last couple of years, has dramatically  
13 changed from a younger person with a disability emphasis to  
14 an older person with dementia and just recently they have,  
15 if you like, cracked - 50 per cent of their caseload now is  
16 people with dementia.

17  
18 With the ageing of the population that we are witnessing  
19 and the growing numbers of people with dementia,  
20 that is only going to increase and, therefore, we would  
21 estimate that the client load for the Trustee & Guardian of  
22 people under financial management will increase and we  
23 suspect that because they are older people, they are not  
24 younger people, they will have greater assets, greater life  
25 histories and greater complexities. So there will be an  
26 increased onus on the Trustee & Guardian in the future to  
27 manage complex cases that we would have an interest in.

28  
29 For those clients that we are aware of, in terms of  
30 surveying our membership in preparation for a submission to  
31 the original review, there was a mixed view about that  
32 first question about the quality of services. Some  
33 certainly didn't feel that the quality matched the fees,  
34 whereas others were happy. I think quality varies  
35 enormously, in terms of people's perception and what they  
36 might be expecting to receive from a particular service.

37  
38 Another area where we do come in contact, and would  
39 obviously support what the Trustee & Guardian is doing, is  
40 what was flagged in the second paper by IPART, which is  
41 around the setting of wills and powers of attorney. We  
42 would be very supportive of the work that the Trustee &  
43 Guardian does in that area.

44  
45 A particular issue for people who acquire dementia is  
46 if they do not have any legal instruments in place and they  
47 are deemed not to have capacity, then there is a

1 significant issue for them about having their wishes  
2 communicated, so supporting the Trustee & Guardian to work  
3 in the area of increasing the rates of planning ahead in  
4 the New South Wales population is something we would  
5 entirely support. We would like to see fewer people  
6 getting a diagnosis of dementia and not having any legal  
7 instruments in place.

8  
9 Probably the third area that we have recently done  
10 some research in is that of financial abuse of people with  
11 dementia. This is probably another area where the Trustee  
12 & Guardian is also very prominent. What we found in our  
13 research was that 90 per cent of financial abuse is  
14 perpetrated by members of the family, so obviously having  
15 an independent person that can act as a financial manager  
16 or trustee would certainly be of benefit to a great many of  
17 our client base.

18  
19 THE CHAIRMAN: Thank you very much, Brendan.

20  
21 Robert, would you like to say something?

22  
23 MR HAEBICH: Yes. I think I should just make it clear  
24 that my position is that I am a member of the advisory  
25 committee to the Trustee & Guardian, but I do not represent  
26 the Trustee & Guardian or the advisory committee, I am here  
27 on my own account. One of the things I will find very  
28 interesting while I am here is to be informed as to how to  
29 respond when I return to the council of the advisory  
30 committee.

31  
32 I think the timing of your inquiries is rather  
33 unfortunate because ever since I have been on the council  
34 the T&G has been making strenuous efforts for change, top  
35 to bottom, radical changes and I think they are very  
36 fundamental, so that there is a sort of a crossover there,  
37 where, in my opinion, this inquiry - which is not your  
38 fault - is premature. Having said that, I do have some  
39 problems with the assumptions that seem to have been made  
40 in your recommendations.

41  
42 The Trustee & Guardian really is a not for profit and  
43 really not a marketable organisation. Its clientele are  
44 generally default people and that means it is a clientele  
45 with substantial difficulty. Might I say, in that area,  
46 that my interest in going on the advisory council was  
47 historically I was very dissatisfied when representing

1 clients with the quality of the service and the cost.  
2 Since I have been on the committee I have been very  
3 impressed with the efforts being made to reform the  
4 organisation. As Imelda said, the organisation sees itself  
5 as having to fund itself, that that is its primary  
6 obligation, and I think that may have created some  
7 distortions.  
8  
9 On the other hand, IPART seems to feel that the  
10 organisation should fund itself, but for 71 per cent of its  
11 clientele, there should be a 20 per cent drop in its fees.  
12 To my mind, if it is just cost efficient, then, really, the  
13 question of sustainability comes up and I cannot quite see  
14 how the organisation, in the long term, can be sustainable  
15 on that basis and, in the short term, how the kinds of  
16 reforms that are required can be achieved.  
17  
18 I understand that T&G agrees that there is a great  
19 need for reform. I cannot see how, in the short term, it  
20 can be funded. It is not the kind of enterprise where you  
21 go out and obtain a loan. You are saying, "You can't have  
22 this income. It will be reduced." In the 2012 budget,  
23 there was a shortfall of something like \$10 million. There  
24 is that shortfall which has to be fixed up, plus you have  
25 to spend all that money on capital, training and change  
26 management. I don't understand how it will be feasible.  
27  
28 THE CHAIRMAN: Maybe it is worth clarifying that point.  
29 The IPART draft recommendation is not for a 20 per cent  
30 drop in fee income; it is actually 11 per cent. The 20 per  
31 cent reduction is in costs and, yes, it is an  
32 across-the-board measure. One reason why it is across the  
33 board is because there is no data available. Despite an  
34 inquiry by IPART in 2003 and another one in 2008, there is  
35 still no activity based costing data  
36 available.  
37  
38 IPART had to make a judgment - this is a draft paper,  
39 so that is why we are getting comments on it - that based  
40 on the confidential report we have seen and the movement of  
41 costs and workload since the merger, 20 per cent is a  
42 conservative estimate in terms of cutting costs.  
43  
44 Recently, Trustee & Guardian has been, amongst other  
45 things, using money from its interest account to fund the  
46 shortfall.  
47

1 MR DODDS: Interest suspense account, Mr Chairman  
2  
3 THE CHAIRMAN: Interest suspense account, yes. In a sense  
4 there is already a shortfall. That cannot go on forever.  
5 There is also a question of timing. There is a question of  
6 the amount of time it takes to make changes, because the  
7 longer it takes to make a change, that means that the  
8 clients, many of whom who are vulnerable and in  
9 disadvantaged circumstances and who don't have a choice,  
10 in a sense, have to wear higher fees than otherwise would  
11 be the case while these changes are made.  
12  
13 We have had a merger of the organisations in 2008,  
14 I think. It is now six years since then. Many other  
15 public sector organisations have merged and have made  
16 changes in less than six years. There might be some  
17 specific reason why it has taken longer here. However,  
18 that is only important for this discussion because if you  
19 do not make changes, if you take longer to make changes,  
20 then that means that the people you are servicing wear it.  
21 That is why there is some sense of urgency here, because the  
22 longer it takes to make changes, the longer it takes to get  
23 the data available to make it and there are people out  
24 there wearing it.  
25  
26 One can say, "Well, IPART'S report is a draft report."  
27 That is why we have draft reports and that is why we have a  
28 roundtable so people can make comments. Someone can say,  
29 "20 per cent is too much." Fine, produce the data, produce  
30 evidence - I do not mean you personally, Robert - make a  
31 counter-argument.  
32  
33 The issue is that you need to have some concept of  
34 what is the efficient cost, which includes a return on  
35 assets and depreciation of assets, and that is included.  
36 You need to have some concept of what the efficient cost  
37 is. The tribunal is not in a position to recommend a fee  
38 which covers more than the efficient cost because the  
39 tribunal is not in a position to recommend a fee be charged  
40 to somebody such as Ishanthi's father which is above the  
41 efficient cost.  
42  
43 If an organisation - not just NSW Trustee & Guardian  
44 but any other government organisation - is operating above  
45 the efficient cost, they, in a sense, and the government  
46 need to wear that, not the clients. That is what we are  
47 trying to drive at. We have come up with a draft proposal

1 which restructures the fees, which ends up with 11 per cent  
2 below, on average, has costs in the order of 20 per cent  
3 below what it currently is, and which is sustainable over  
4 time.  
5  
6 Obviously, if the 20 per cent reduction cost is too  
7 much, then the fees would have to be higher and things like  
8 that. It needs to be sustainable over time; it is just  
9 that we need to look at, for example, whether the cost  
10 assumptions are right, whether there is some review of the  
11 fees which needs to be tweaked, whether there is something  
12 that we were not aware of which we need to be made aware of  
13 to take into account before we come to the final report.  
14  
15 I thought, given your comments, Robert, it was a good  
16 opportunity to clarify that  
17  
18 MR HAEBICH: I appreciate your comments and I think mine,  
19 to the point that I have reached, can be summarised in my  
20 concern for sustainability.  
21  
22 THE CHAIRMAN: Sure  
23  
24 MR HAEBICH: At all times, and I do want this understood,  
25 my primary concern for ever being on this council was the  
26 interests of the clients of the organisation.  
27  
28 I was a bit impressed as well by the apparent  
29 assumption - you might want to correct me on that as well -  
30 that it is thought that we should divide into voluntary and  
31 involuntary and then categorise so many categories as  
32 involuntary. For example, taking the one that Imelda  
33 mentioned in particular, intestacies, when the Trustee &  
34 Guardian is handing over 20 per cent of intestacies, it  
35 would hardly be categorised as involuntary. There are  
36 others where you can approach the court for appointment or  
37 you can appeal. I am not sure that involuntary is the  
38 right category. I would think that the main category for  
39 involuntary is people who cannot afford to go to private  
40 enterprise.  
41  
42 There is also a bit of assumption, I think, that  
43 private enterprise would be interested in this work.  
44 I actually believe that this is an area where there is not  
45 a profit margin that would attract private enterprise.  
46  
47 THE CHAIRMAN: Can I comment on that?

1  
2 MR HAEBICH: Yes, sure. No, I would appreciate your  
3 comment  
4  
5 THE CHAIRMAN: That is a useful point and also Imelda  
6 raised some of these points as well. There is a reason why  
7 we have classified voluntary and involuntary. Let's put  
8 aside whether we have the classification exactly right, but  
9 conceptually, the reason why you classify between voluntary  
10 and involuntary is that somebody who can choose to go to  
11 the trustee, or go elsewhere in the private sector, has a  
12 choice and that choice can be made based on the fees that  
13 are charged and the services. We believe that, in those  
14 areas, the trustee should be allowed to compete with the  
15 private sector.  
16  
17 For those who are assigned to the trustee, say, as a  
18 result of legislation in parliament and the court system,  
19 where the community, through parliament, has made a  
20 judgment that these people are in a state where they need  
21 to have somebody independent keeping an eye on the  
22 management of their estates, those people do not have the  
23 choice to go, say, somewhere in the private sector to a  
24 private law firm or anywhere else, so they are involuntary.  
25 In other words, they just have to pay whatever fees are  
26 levied on them. They cannot take their business elsewhere.  
27 So that is the reason for that classification.  
28  
29 Then there is the point you made, which is a good  
30 point, "But some people would be very low income and even  
31 though they could go to a lawyer, the lawyer just will not  
32 provide a service", or something like that. That is why we  
33 have this concept of community service obligations. If the  
34 government or if parliament says that the government should  
35 subsidise low income people to get certain services, then  
36 we believe that they should be charged a fee but basically  
37 the government would pay the bulk of the fee on their  
38 behalf because they cannot afford it. That is a way of  
39 taking care of that situation whereby people who have very  
40 low income or very low wealth are basically cut out of the  
41 system because they cannot afford to get services that the  
42 community believes they should have access to.  
43  
44 The question is how do you set up a system which is  
45 transparent and fair? What we have put forward -  
46 this is a draft report, it is open for discussion  
47 - is that those people should be assisted

1 through a community service obligation. So that is, in a  
2 sense, to get at that point.  
3  
4 Imelda and others might advise us that we have the  
5 breakdown between voluntary and involuntary wrong. That is  
6 why we are having the roundtable and, yes, we will look at  
7 that. If we are convinced or if it is argued that we have  
8 classified a particular bunch of clients as voluntary when  
9 they are really involuntary or vice versa, then we will  
10 look at that.

11  
12 MR HAEBICH: I appreciate that. One of the things that  
13 you drew my attention to is that Imelda says basically that  
14 they are supposed to pay for themselves, so once you  
15 introduce government subsidies, you have a conceptual  
16 change. I am not saying I disagree with that; I am just  
17 pointing it out.

18  
19 One of the things that is not your fault - not  
20 everything is your fault - is your assumptions regarding  
21 the intensity of the service as well. I would suspect that  
22 there is not an activity based system that would allow you  
23 to be able to make those inclusions. They are not based on  
24 complexity, expedition, action, time involved, all of those  
25 sorts of things, and a process driven file note would  
26 reveal that data which you would require.

27  
28 With beneficial trusts when there is more than one  
29 beneficiary, some point was made about that, but different  
30 trusts have different legal requirements and administrative  
31 requirements. I, therefore, think that it is incorrect to  
32 say that there should be just one charge.

33  
34 I do not want to take up too much of your time.  
35 I just think that ultimately T&G is trying to develop a  
36 business model. From what I know of it, I am enthusiastic  
37 about it. You are not probably in a position to be able to  
38 do so, but it would be good to see how that business model  
39 would work out. I am particularly concerned about how,  
40 under your regime that is proposed, you can really finance  
41 all of these reforms, which I understand are expensive.

42  
43 THE CHAIRMAN: Thank you very much, Robert.

44  
45 Anyone else around the table? James?

46  
47 MR SHAW: I will properly introduce myself. I am

1 James Shaw, from the Public Service Association, manager of  
2 both strategic and industrial marketing. We represent our  
3 Public Service Association members in the NSW Trustee &  
4 Guardian. There are 595 employees, as we understand, and  
5 we have a strong membership in that organisation.

6  
7 We really question the suggestion that there has been  
8 a reduction in workload for staff within the organisation.

9 First of all, I should point out that there has been a  
10 long-term problem with respect to the workload that our  
11 members have endured. They have raised with us, over a  
12 long period of time, the issue of the workload and the fact  
13 that it is increasing. Even where there has been, in  
14 recent years, a reduction in the number of files they have  
15 had to deal with, there has been an increase in the  
16 complexity. That has not seen a reduction in their work  
17 load at all.

18  
19 Over the last couple of years, we have engaged with  
20 management in a workload committee. We have actually sat  
21 down and gone through a range of processes that exist  
22 within the organisation to see how they can be improved, to  
23 see how they can be made more efficient and therefore to  
24 take the burden off members in terms of their workload.  
25 But, as we talked to members - we recently had a discussion  
26 with a large number of members at Parramatta and in other  
27 areas - as organisers were walking around, it was very  
28 clear that the members still felt the burden of their  
29 workload. They had not seen any real reduction. To me,  
30 that just brings home the point that without more staffing,  
31 there is not an ability to really address that problem.

32  
33 As this recommendation is looking at a reduction in  
34 20 per cent, almost inevitably that is looking to reduce  
35 the number of staff.

36  
37 Staff in Trustee & Guardian work there because they  
38 care about the clients. They care about providing proper  
39 quality of service to people in need. As I hear talk of  
40 these issues about the quality of service, to me it seems  
41 that the problem really lies in the workload that is given  
42 to members of staff. They are just not able to keep up  
43 with the pressures on them. They are not able to keep up  
44 with the complexities and that is really where things are  
45 suffering.

46  
47 If there is a reduction in staff, if there is a cut,

1 the quality of service to clients will be reduced. There  
2 is no doubt in my mind about that. That will be the impact  
3 of any such decision by the government. That will be the  
4 impact of any such recommendation by IPART. There will be  
5 a reduction in staff and there will be a reduction in the  
6 quality of service given to clients. For those people who  
7 are concerned about the clients, I say to you that, really,  
8 this problem needs to be addressed.

9  
10 In terms of the fee structure, it is a matter for  
11 government and it is a matter for IPART to make its  
12 recommendations as to what is equitable and what is not.  
13 We have expressed some opinions, but ultimately that is a  
14 matter for IPART to recommend and for the government to  
15 make a decision on. However, those fees do need to reflect  
16 money coming into the organisation, because it is  
17 overwhelmingly an off-budget organisation. Money needs to  
18 come in to properly fund resources for the NSW Trustee &  
19 Guardian. Without that, staff cannot give the level of  
20 service that clients and their families expect, and that is  
21 the fundamental point that I have come here to make.

22  
23 The pressures on staff that exist at the moment are  
24 overwhelming. It seems to me that if there will be 20 per  
25 cent reduction - a 20 per cent efficiency saving - that  
26 will inevitably impact on staff numbers and it will  
27 inevitably impact on the quality of services provided.

28  
29 You can have graphs about the number of files that  
30 exist, but that has its assumptions. They do not show us  
31 what needs to be done in particular files at particular  
32 points in time. They do not show us the level of  
33 complexity.

34  
35 It is interesting to hear Imelda comparing T&G's fees  
36 with those in other states and that their fees are much  
37 higher and that they clearly reflect the need to bring in  
38 more income to employ the level of staff needed to properly  
39 look after clients within an organisation like Trustee &  
40 Guardian.

41  
42 I simply wish to make the point that we actually have  
43 staff who do care about the clients. They want to provide  
44 a proper service but they need to be given the resources to  
45 do so

46  
47 THE CHAIRMAN: Thank you very much, James.

1  
2 Andrew, would you like to say something?

3  
4 MR A McALISTER: Yes, thank you. My name is Andrew  
5 McAlister. I am here on behalf of Peter Carter, who is the  
6 director of the Mental Health and Drug and Alcohol Office.  
7 He has asked me to come along and speak on some of the  
8 issues which may involve the Mental Health and Drug and  
9 Alcohol Office. What it means for health is that there are  
10 a few issues here which go beyond mental health and drug  
11 and alcohol. We deal with a lot of patient services for  
12 involuntary patients and we are quite close with the Mental  
13 Health Review Tribunal as well. We also have arrangements  
14 with local health districts in terms of custodial trusts  
15 for patients.

16  
17 I am a delegate for Peter, so I can't confirm  
18 commitment or any agreement on behalf of health, but they  
19 do offer in-principle support for the preliminary findings  
20 of the IPART paper.

21  
22 One of the things that I would like to bring back to  
23 the organisation - and I think it would be interested in  
24 providing another submission in a bit more detail - is how  
25 these recommendations relate to the trust arrangements that  
26 we have with local health districts. For patients with  
27 trust arrangements, we have our own procedures. I think we  
28 really want to see how the recommendations here will affect  
29 our procedures for people who are not involuntary but also  
30 when it comes to involuntary patients.

31  
32 The Mental Health Review Tribunal does financial  
33 managements audits. Although it only involves a minority  
34 of persons here, I think the Mental Health Review Tribunal  
35 would be tremendously interested in how any changes that  
36 are made will relate to their assessments. They have to  
37 assess whether it is in the best interests of the person.  
38 They make a clinical judgment on the person. I am not sure  
39 that they are in a position, unless they get feedback from  
40 the Trustee & Guardian more regularly, I guess, to know  
41 whether the proposed fee changes are in the person's best  
42 interest. That is something that they would probably want  
43 to provide more input on.

44  
45 In contrast with the local health districts moving  
46 towards activity based funding agreements across the board,  
47 I do note that the mental health, drug and alcohol area is

1 one of the last areas to be incorporated into activity  
2 based funding. I guess that is to do with the complexities  
3 of the work that is undertaken.  
4  
5 I note James Shaw's point about the difficulty of  
6 trying to benchmark the complexity of the work through  
7 something like a file note. That seems a bit at odds,  
8 I guess. We are looking at the quality of work. What  
9 we are looking at is quality. I guess you are looking at  
10 the public determinants. We have an activity based task  
11 force that consults with our workers and I think they would be  
12 interested as well in providing the fees and costings of  
13 complex case management.  
14  
15 Another issue for us is around capacity. We are  
16 working with the Guardianship Tribunal and the Public  
17 Guardian around the Mental Health Act, reviewing some laws  
18 about what capacity means. One of the strong things we  
19 found in consultation and the review process was that  
20 capacity is a fluctuating concept. We would need to move  
21 towards incorporating the dynamic aspect of it. There is a  
22 six-month option for the tribunal to do an interim  
23 financial management audit, but they may be looking at  
24 different time frames and different or more flexible  
25 arrangements so that when people can contribute, they are  
26 able to do so.  
27  
28 I really don't have much more to offer, but I will be  
29 listening and bringing it back.  
30  
31 THE CHAIRMAN: Thank you very much, Andrew.  
32  
33 Is there anybody else around the table before I ask  
34 Imelda and then I will move to the floor. Yes, John.  
35  
36 MR CLARK: Thanks, Mr Chairman. I'd like to go back a  
37 couple of slides, if we could, just for a moment, to the  
38 dot points dealing with better value. I have a couple of  
39 questions. As to the issue of value, the value to me of  
40 a service may be very different from what it is for  
41 James Shaw or those across the table. It is very hard and  
42 it is almost nebulous as a questioner to ask that question  
43 particularly from the context of the delivery of service.  
44 My expectations may be very different to those of James.  
45  
46 If I look at the issue of transparency in fee  
47 disclosures, I think there is an interesting part to this

1 because what does transparency really mean? Does it mean  
2 that the fee is simple and it is totally understandable or  
3 does it mean something else? We have yet to actually cover  
4 any of that, I would suggest, at this table.  
5  
6 With regard to the third dot point on the slide -  
7 "improve reporting of service costs and revenues" - we have  
8 gone around and around about the issue of activity based  
9 costing.  
10  
11 One of the issues for me, and I have put in two  
12 systems based on activity based costing, is the enormous  
13 amount of assumptions that are built into these systems.  
14 The assumption that ABC will provide you with all the data  
15 that will be terrifically accurate and complete, I would  
16 suggest is false.  
17  
18 THE CHAIRMAN: I don't think anybody would make that  
19 assumption, would they?  
20  
21 MR CLARK: But there is a lot of talk about saying we need  
22 activity based costing. What it can do is provide an  
23 indication. It is not definitive, I would suggest. The  
24 amount of assumptions that are built into certainly large  
25 activity based costing systems, which is what would be  
26 needed here, would be substantial and you can actually sway  
27 that system one way or another quite easily. I think there  
28 needs to be a little bit of care and thinking around the  
29 issue of, "You must have activity based costing."  
30  
31 There are some other things that have come out of  
32 today for me. The issue of service offering gets back to  
33 the issue of value as well. In looking at an 11 per cent  
34 reduction in income, which is substantial for any financial  
35 services organisation, and then looking at a 20 per cent  
36 reduction in expenses, what is the expectation in terms of  
37 the delivery of service going forward? Getting on to  
38 James's point here, will it continue? Will it improve?  
39 Will we have enough money to actually keep this  
40 organisation afloat? Will it be a going concern? Those  
41 are major issues that need to be thought through as we go  
42 through and look at the fee structures, and I will stop  
43 there.  
44  
45 THE CHAIRMAN: We will give them further thought.  
46  
47 Anybody else?

1  
2 MS GUNAWARDANA: I want to address a few things that  
3 have been said around the table. One is a point that I think  
4 Robert made, that certain people are not involuntary; they  
5 can simply go back to the court or the tribunal that put  
6 them there and appeal that decision. That is extremely  
7 costly and it is probably beyond some of the people who  
8 have actually been appointed to the T&G in the first place.  
9 I think that it is not as simple a position and I wanted to  
10 address that.  
11  
12 Secondly, everyone is excited about the new business  
13 model which will create, hopefully, all these efficiencies.  
14 I am talking as someone who has been with the Trustee &  
15 Guardian for 20-odd years. I think before we start  
16 rewarding what those efficiencies are, we need to actually  
17 see them because it is not something that I have observed  
18 to date.  
19  
20 Finally, as a representative of a client of the NSW  
21 Trustee & Guardian, we are not wanting this organisation to  
22 fail or that costs do not increase and somehow they should  
23 not be funded, but they do need to be fair in the context  
24 of the clients that they are servicing. Thank you.  
25  
26 THE CHAIRMAN: Thank you very much.  
27  
28 Yes, Imelda.  
29  
30 MS DODDS: Thank you very much, Mr Chairman. There are  
31 six points that I want to address, and leave until the next  
32 session the issues on the percentage fees raised by  
33 Ishanthi, if I may call you that.  
34  
35 MS GUNAWARDANA: Yes.  
36  
37 MS DODDS: The first, and important point, is I am sure  
38 that every single person in this room is focused on the  
39 client outcomes. Despite the fact that I know some people  
40 don't believe it, the NSW Trustee & Guardian operates from  
41 the first and foremost principle of providing services to  
42 our clients. Our clients are the most important people in  
43 the organisation. This has sometimes been a contested  
44 discussion in some quarters.  
45  
46 To answer a few questions that have come up, the first  
47 one - and this is important I think - is that IPART has

1 been provided with the workload review data that was  
2 undertaken by PwC that goes down to activity level for EFT  
3 costs and that is 90 per cent of our costs reserved, by the  
4 way. So we have provided that data.  
5  
6 It may be the case that IPART does not accept that  
7 data, but I make this point for the record, because it  
8 could otherwise be construed that we have done nothing  
9 around trying to measure the cost of activity in the period  
10 of time between the 2008 report and when the merger  
11 commenced - which, by the way, was 2009, until now. So  
12 that is factually not correct. The actual validity of that  
13 data may be in question but I do think that is important to  
14 place on the record.  
15  
16 The second one is the suggestion that there has been  
17 no change in that five-year period since the merger. There  
18 actually has been a lot of change in the organisation, as  
19 you would expect. One of the organisational constraints  
20 for us was in the legislation and that is something that is  
21 euphemistically called the Nile Amendment, which was an  
22 amendment passed which the Reverend Fred Nile proposed  
23 and was required in order for the passage of the Act. That  
24 restricted NSW Trustee & Guardian from any involuntary  
25 redundancy for a five-year period, save for SES officers,  
26 of which there were four in the entire organisation. That  
27 has been a significant restriction on our ability to change  
28 and I think it is important for the record to note that.  
29  
30 The other thing I do want to note is that there are -  
31 I should have done this earlier and I do apologise,  
32 Mr Chairman - a number of areas of recommendation that we  
33 support and one that we do support is the removal of the  
34 fee on incoming private management; we don't believe it  
35 should be there. So that will be one that I would hope you  
36 would be pleased about. We don't think it is justified.  
37  
38 The other points I want to make are related. I am not  
39 at liberty to talk in any detail in a forum such as this,  
40 at this point in time, about the details of our future  
41 transformation program, beyond that which has already been  
42 discussed with staff. The simple reason for that - and  
43 public servants present will understand it - is that there  
44 is a process that must be followed in terms of approval  
45 from the minister for such change and so on. We are in  
46 that process at the moment and, as I indicated, we are at  
47 the final stages of a planning phase.

1  
2 To give a flavour of some of the important changes  
3 that we see in the future, these are directly linked to the  
4 United Nations Convention on the Rights of Persons With  
5 Disabilities as it applies to people under a financial  
6 management order in that we are seeking to bring in to  
7 New South Wales a process that more properly reflects the  
8 will and the choice and preference of individuals over  
9 their lifetime, where they are able to express it and if  
10 they should lose capacity to manage their affairs.  
11  
12 We have recently been involved in a pilot study for  
13 supported and assisted decision making for people with an  
14 intellectual disability to enable them to take back  
15 management of their affairs.  
16  
17 One of the other things that we are looking at, and we  
18 regard very carefully - and I hear the concerns of the  
19 Alzheimer's Association, which we do share about the risk  
20 of financial abuse - is a well safeguarded, well  
21 safety-netted process that enables more private individuals  
22 to undertake the management of their family member's  
23 affairs, with a safeguard that would also provide them with  
24 some security in that role.  
25  
26 These are all very big, major changes and they are  
27 fundamental to the way in which we deliver services. In  
28 short, over a period of time - and not overnight because it  
29 cannot happen overnight - we want to be in a position where  
30 we see that we are less often appointed as a direct  
31 financial manager and we do take up our proper position as  
32 the financial manager of last resort.  
33  
34 My staff will hit a stop button on me in a moment  
35 because I have been known to speak for a long time on these  
36 issues but it is something that we feel very passionately  
37 about, it is a significant paradigm change and we believe  
38 that it will lead to better quality services into the  
39 future. The nature of this broad-ranging strategic  
40 direction was provided earlier in the consultation process  
41 but for the benefit of people here, particularly family  
42 members, private managers, I would want you to understand  
43 that this is a strategic direction.  
44  
45 Finally, the MHRT - Andrew is correct - their work in  
46 ratio to the work that NSW Trustee & Guardian undertakes is  
47 small. However, the legislation is very prescriptive and

1 does not allow for the flexibility that we would hope to  
2 see in the future and that would be that private managers  
3 could be appointed under that legislation. That is a  
4 problem at the moment. Only we can be appointed, and I am  
5 very well aware of many family members for whom we have  
6 been appointed who would rather have a family member  
7 involved. However, the process of that occurring is indeed  
8 costly and cumbersome. That would require an application  
9 to the Supreme Court and what we are aiming for in the  
10 future is a situation where that is not necessary and the  
11 support for family members to take on that role would be  
12 greater and legislatively possible. I think I had better  
13 stop there. Thank you, Mr Chairman.

14  
15 THE CHAIRMAN: Thank you, Imelda.

16  
17 Anybody else?

18  
19 MR SAURAN: My name is Alan Sauran. I am a private  
20 financial manager. I do have comment on specific fee  
21 recommendations but I think that should be held over to the  
22 next session; is that correct?  
23

24 THE CHAIRMAN: Sure, that's fine

25  
26 MR SAURAN: Just on things that happen in this session,  
27 one speaker criticised IPART's approach as being overly  
28 academic. That is not how I see it at all, I see it as a  
29 rigorous approach following the systems set out in the  
30 slide called "Our proposed approach" and I believe that is  
31 the correct way to approach it and I see that criticism as  
32 a compliment, actually.  
33

34 There seems to be a general assumption that some  
35 services would be of no interest to the private sector.  
36 I think that assumption is unwarranted if you take the  
37 community service obligation payment into account and you  
38 could compare that to a Legal Aid case, where clients who  
39 cannot pay receive a payment to fund a private service. So  
40 I don't think you can make a blanket assumption that  
41 services are not of interest to the private sector.  
42

43 Some people have mentioned 11 per cent reduction in  
44 income. That is not correct, the recommendation is  
45 11 per cent reduction in the fee per client on average. If  
46 this reduction leads to more clients, it could lead to an  
47 increase in income.



1  
2 Finally, I would like to point out one factual error  
3 in the draft report. I think it is important there be no  
4 factual errors, otherwise it gives the impression that  
5 IPART hasn't understood the issues, which I don't think is  
6 the case, I think IPART has understood the issues very  
7 well, so we should eliminate any factual errors. The  
8 factual errors are in table 5.7 "PFM Client Impacts" on  
9 page 130, the table confuses income fees with asset fees  
10 and it refers to a 500,000 annual income with a 4 per cent  
11 fee of \$20,000 a year, that is wrong. There is a cap on  
12 that fee of \$2,000.  
13  
14 The proposal from Trustee & Guardian is that the cap  
15 be increased to \$3,000, which conflicts with the statement  
16 we have just heard that they would welcome that fee being  
17 removed. I would look forward to Trustee & Guardian  
18 clarifying their position on that because they have made  
19 one submission to IPART and they make another statement  
20 right now.  
21  
22 In any case, the IPART record should correct that.  
23 There is never going to be a \$20,000 fee payable on  
24 \$500,000 of income and the error is in the table and also  
25 in the discussion on page 131. So if those errors on pages  
26 130 and 131 are removed, I think the draft report would be  
27 perfect, as it should be. Thank you.  
28  
29 THE CHAIRMAN: Thank you very much, Alan.  
30  
31 Trustee & Guardian, do you want to comment on that?  
32  
33 MS DODDS: Thank you, Mr Chairman. The only comment we  
34 would make is that in our submission sent today, we do have  
35 a revised fee proposal which would cover that. Thank you.  
36  
37 THE CHAIRMAN: Thank you. Anybody else? Yes, at the  
38 back. Do you want to come up to the microphone.  
39  
40 MS X: I won't give my name because my mother is under  
41 guardianship of Public Trustee. I have made some notes  
42 here, so I would like to respond to them in the format that  
43 I have made those notes. I don't know who they were, but  
44 there are some things that I have a problem with but before  
45 I go into that I want to say that I was very impressed with  
46 IPART's report and I say that simply because I don't feel  
47 that it was a document which had terms of reference already

1 told to them as to what they needed to do. In other words,  
2 I felt it was an impartial report. I think it was a fair  
3 report and I think it also gave a point of view of the  
4 people under the Trustee & Guardian and that is important  
5 because it never happens, it has always got conflicts in  
6 it, it is always what the government wants to be said.  
7  
8 There is one thing that bothers me. That I know  
9 Ms Dodds has said that, on the one hand, you are going to get  
10 an increase in people - as did the person from the  
11 Alzheimer's Association - simply because people are going  
12 to get dementia, but this is the problem - the public  
13 trustee and guardian, tribunals refer to dementia as simply  
14 being an overall blanket thing. Not everybody who gets  
15 dementia is going to have to come under guardianship, so  
16 that does not necessarily increase the amount or the level  
17 of people that you are going to get.  
18  
19 Equally too, you said that on one point and you went  
20 on to the other and said that you have now come up with  
21 this wonderful idea where people are going to have  
22 supported decision making, in fact, that will not be under  
23 tribunals, so that will impact on your fees and your model.  
24 Your model actually confuses me. I think, on one hand, you  
25 are the commercial arm of the government, you have to make  
26 money, you have to justify your existence; yet on the other  
27 hand, you've got a cohort of people there that have  
28 involuntary guardianship placed upon them and you are  
29 saying you can't really afford to do that because you are  
30 looking after these people.  
31  
32 What I am saying is maybe you should have a model which  
33 breaks things into two - one, you are a commercial arm,  
34 you can simply do what you want to do, how you want to  
35 do with people that wish to come to you, voluntarily, offer  
36 them a service and charge fees accordingly. People that  
37 are there involuntarily can quite competently, through  
38 family members and others, produce a financial management  
39 schedule that actually increases their assets rather than  
40 decreases them, which is what is substantially happening  
41 every single year with the Trustee & Guardian. You maybe  
42 need to look at that.  
43  
44 The UN convention was ratified in 2008 by the  
45 government. Why then is it so new in 2014 to say, "Oh,  
46 dear, we are going to go and do it now" - so poor decision  
47 making when, in fact, the principles and guidelines were

1 there all along to be followed.  
2  
3 The people that come under guardianship are not the  
4 last resort, they are of a first port, and that is where  
5 you get your head count and your fees and that's wrong. So  
6 you need to really look at it, from my point of view, what  
7 you really want to be. Do you want to be a commercial arm  
8 taking care of people that have funds to invest or are you  
9 just going to get a head count of people so that you can  
10 get sufficient funding that enables you to do the capital  
11 increases, or whatever you need to do, to survive?  
12  
13 The comments that have been made there about quality  
14 of service are very true and they are not complex, and  
15 neither are the questions, to understand about what level,  
16 how hard, how difficult. It is not difficult. For most of  
17 the people that come under the guardianship - the  
18 pensioners and so on - if you really were to do just a  
19 rough estimate of what is required for them, it is  
20 basically utilities, the occasional chemist bill, and a few  
21 other associated things such as insurances and so on.  
22 There is nothing else - zero. So what they are charging  
23 already is so expensive, it's not justifiable but the fact  
24 of the matter is we have to pay something.  
25  
26 What also angers me is that when you put a cap on the  
27 involuntary people of up to 30 - now to 15,000, which is  
28 what you are saying here - that has a consequence. If you  
29 have people that are pensioners, they are then subsequently  
30 forced into a nursing home and I will tell you why I  
31 believe they are forced into a nursing home. It is because  
32 if you have somebody under guardianship for two or three  
33 years and they are on a pension, you also have a  
34 substantial fee that is being paid to the Public Trustee.  
35 What does that then give you, when you look at what you  
36 receive as a pensioner and what you pay the trustee? You  
37 end up with a deficit - inevitable.  
38  
39 That deficit then accumulates. Two years later you  
40 are then told, "You will sell the house because we have to  
41 pay for the deficit" and that's not right, because if you  
42 had families that were managing things, you would never  
43 have a deficit and you would have an increase, as the young  
44 lady here said, because of what you can invest in. We're  
45 not stupid, none of us are stupid, because if you didn't  
46 want to do the financial management, you wouldn't do it.  
47 In most cases, when you go to the tribunal, it has been

1 proven, and they have accepted, that the people - the  
2 families - are managing it extremely well. Why then take  
3 it away from them?  
4  
5 The fees as they stand, in some cases, are very high.  
6 I think they should be changed. You put on \$13,000 as a  
7 maximum for the pensioners. I am not going to argue with  
8 that, do what you want, unless something changes with the  
9 way the Trustee and tribunals work, because it is not of  
10 the last resort, that is where you are having the problem.  
11 Select who you want. Collect the people that really do  
12 need the help and not just do the head count to justify.  
13  
14 There is another thing I take great offence to.  
15 I have run a business, I have done matters for the  
16 government, I have worked in projects and I can tell you  
17 this very assuredly - and I'm upset because we have had to  
18 suffer this for three years - and I thank IPART for putting  
19 through what they have put through.  
20  
21 I have dealt with the Public Trustee. I could not  
22 believe the round robin of people I had to deal with on one  
23 issue over a nine-month period. I can guarantee I spoke to  
24 about 12. They either don't know about project management  
25 or they don't have a team where there is a hierarchy -  
26 that's the decision maker, these are the people that  
27 present the information and then the decision is made. It  
28 has gone round and round and round and round until  
29 eventually two MPs, and also Greg Smith, gave me letters of  
30 apology for the appalling behaviour of the Trustee.  
31  
32 There must be people there that are fantastic. The  
33 law of averages says you have to have that, so 80 per cent  
34 is probably useless - that is what I would call them - and  
35 there are 20 per cent that are fantastic because that is  
36 what makes things roll.  
37  
38 I have seen inefficiencies that are just unforgivable.  
39 Every time you ring up, "Oh, I'm on a rostered day off", or  
40 "I'm on leave", or "I'm not here" or "I'm not there".  
41 I agree that the government does not work the same way that  
42 private industry does, I accept that, but I still will not  
43 accept the behaviour that I have seen in the last three  
44 years. If you have the temerity to ring them and say,  
45 "I haven't had a statement for over a year", you are told  
46 "What are you nitpicking for?", that is if you do get a  
47 phone call. Then if you write to them and you say, "Look,

1 I have to at least work out where the money is being paid,  
2 where it hasn't been paid", transparency is not difficult.  
3 If you have a bill, you pay it. If you have an account,  
4 you know what it is for. Why is it so complex? It's not.  
5  
6 I am not talking about your trusts. I am not talking  
7 at your other matters because I don't know about that, I am  
8 simply talking about people who are under involuntary  
9 guardianship. I think the fees are excessive and I think  
10 the reason why those fees are done are for the very reason  
11 that the houses get sold. I might add I have sufficient  
12 income of my own, as does the rest of my family. We are  
13 not interested in the family home, but I find it offensive  
14 that eventually my mother's home will be sold. Simply  
15 because of the expenses that have been accrued, the amounts  
16 of fees that the Public Guardian charges, my mother will  
17 have to sell her home. Why should she?  
18  
19 I am not happy with the Trustee & Guardian. I know  
20 there are wonderful people there, there has to be, but  
21 there are a lot of inefficiencies there and I think you  
22 really need to look at what you really want to do because  
23 the government does have a duty of care to take care of  
24 those people who cannot afford it and then you can go and  
25 do whatever you want about running a business.  
26  
27 If you look at what solicitors charge for wills, it is  
28 absolutely nothing like what the Trustee & Guardian  
29 charges. If you have a look at the sale of the properties,  
30 why should the Trustee & Guardian take a commission on the  
31 sale? The agent already takes a commission. Why? Why are  
32 the people in an involuntary guardianship forced to  
33 subsidise positions in the Trustee & Guardian, because  
34 that's exactly what we're doing? Thank you for your time.  
35  
36 THE CHAIRMAN: Thank you very much. Thank you for  
37 your contribution.  
38  
39 Anybody else from the gallery?  
40  
41 No? We are moving close to the morning break. Any  
42 last comments from around the table before we break for  
43 morning tea, to move on to the specific fee  
44 recommendations.  
45  
46 MS DODDS: Mr Chairman, I respect the last presenter and  
47 her desire to remain anonymous.

1  
2 There are many elements to issues that she has raised.  
3 It would be far too complex to even attempt to answer some  
4 of those, beyond some very general comments, particularly  
5 around aged care facilities and bonds, which is that very  
6 often this is legislation that is not ours and not within  
7 our control, but it would be far too complex, so I won't  
8 respond beyond that. Thank you.  
9  
10 THE CHAIRMAN: Thank you, Imelda. We have a transcript,  
11 so the comments from all participants, including the  
12 previous participant's comments, will be taken into account  
13 as we move to the final report. Yes. Do you mind coming  
14 up to the microphone, please. We will call you Ms X.  
15  
16 MS X: That's fine. Ms Dodds is quite correct in saying  
17 that the aged care situation is a very complex one, but my  
18 simple comment to that is that if you weren't so ready to  
19 take the protected person out of the family home and put  
20 them into a nursing home when there was no necessity, then  
21 you wouldn't have a problem with the amount of money that  
22 needs to be paid for bonds.  
23  
24 THE CHAIRMAN: Thank you very much.  
25  
26 MS X: Thank you.  
27  
28 MS DODDS: Mr Chairman, that does need to be responded  
29 to. The NSW Trustee & Guardian, despite the name  
30 "Guardian" in its title, does not have the authority to place  
31 persons in aged care facilities. Someone else makes that  
32 determination. Then what follows is the process of the  
33 legislation which governs funding in aged care facilities.  
34 The person who makes the decision is either a family member  
35 or, as a last resort, if appointed, the Public Guardian,  
36 who is a separate statutory authority. We then will have  
37 to make arrangements for the payment of a bond and, of  
38 course, two years after a person goes into aged care  
39 facilities, Centrelink deems the house as an asset and that  
40 very often, very sadly, is probably the most contested  
41 thing that we have to do and we don't enjoy doing it one  
42 bit, which is to sell the family home for that reason.  
43  
44 THE CHAIRMAN: Thank you, Imelda. I think one of the  
45 points made by Ms X was that because the rate of return is  
46 relatively low, that often the financial situation of the  
47 family member is such that they have to sell the home, but

1 I take the point that it is not Trustee & Guardian who  
2 actually makes the decision.  
3  
4 We are four minutes early so let's have a break for  
5 morning tea and resume at 11.30 for the second session.  
6 Thank you all very much.  
7  
8 SHORT ADJOURNMENT  
9  
10 SESSION 2: PART 1 - OUR SPECIFIC FEE RECOMMENDATIONS  
11  
12 THE CHAIRMAN: Welcome back to the second session.  
13 Letitia will run through first the recommended fee  
14 structure. Then I thought we could have a chance for  
15 discussion and questions. We will then move to  
16 transitioning to the new structure, whatever that might be,  
17 and we will deal with that towards the end of the session.  
18  
19 MS WATSON-LEY: As the Chairman mentioned, there are  
20 two sections to cover in the session: the fees and CSO funding  
21 rules for each service; and the issues around transitioning  
22 to the new fees.  
23  
24 Turning to the fees and CSO funding rules and to give  
25 an overview of the key changes for fees, in summary we are  
26 recommending two key changes to the Trustee & Guardian's  
27 existing fee structure. The first is to adjust fee levels  
28 to better reflect the service's efficient costs. On  
29 average fees for regulated services would decrease by  
30 11 per cent under IPART's fee proposal. However, bringing  
31 the fees into line with efficient costs means some fees  
32 will increase and some will decrease, so client impacts  
33 for each service will differ.  
34  
35 Another key change is to harmonise fee structures  
36 across services. This involves each service having an  
37 establishment fee, an account keeping and administration  
38 fee, an investment management fee and a specialist services  
39 fee.  
40  
41 In relation to government subsidies or community  
42 service obligation, the government currently allocates  
43 \$5.1 million as general CSO funding for the Trustee &  
44 Guardian's operations. We found it was unclear what  
45 services Trustee & Guardian provides for this funding.  
46 What I mean by that is that the government funding is not  
47 tied to specific outcomes.

1  
2 Under our recommendations we are moving to explicit  
3 targeted CSOs for three services - direct financial  
4 management, private financial management and the drafting  
5 service, which relates to wills and powers of attorney. We  
6 estimate this will require about \$3.2 million of the  
7 existing \$5.1 million CSO funding.  
8  
9 We acknowledge there will be a continuing but reduced  
10 role for the discretionary fee waivers. For example,  
11 introducing more structured CSOs for the financial  
12 management services, we estimate will result in a net  
13 decrease of fees waived for these services.  
14  
15 Turning to direct financial management, the main issue  
16 with the current fees was that some fees over-recover and  
17 some under-recover service's efficient costs. Also the fees  
18 currently do not reflect that there are minimum costs to  
19 serve clients regardless of asset size.  
20  
21 Many of the stakeholder comments we have received on  
22 the issues paper have been reflected at the roundtable.  
23 Trustee & Guardian's processes were inefficient - that was  
24 raised by some stakeholders. We have tried to respond to  
25 that by setting fees to only recover their efficient costs.  
26 It has been said that fees were too high for the services  
27 received. We have recommended that Trustee & Guardian  
28 develop more effective service quality measures.  
29  
30 There were also concerns about lack of transparency  
31 with fees, for example, with statements of account, what  
32 fees were being charged, and there were concerns that  
33 statements of account were not provided on a regular basis.  
34 We have recommended that Trustee & Guardian improve its  
35 fee disclosure. Specific items relating to that are clearly  
36 itemising fees in statements of account and also making  
37 sure that statements of account are provided on a regular  
38 basis to clients.  
39  
40 Many stakeholders urged for a more fee for service  
41 approach in this review. As we touched on in the previous  
42 session, the current systems do not support a move to that  
43 approach but we have recommended that Trustee & Guardian  
44 implement the costings system to facilitate this approach  
45 for a future fee review.  
46  
47 We are recommending fees for all clients for direct

1 financial management. We consider that the recommended  
2 fees better reflect the efficient costs of Trustee &  
3 Guardian and address over-recovery from high asset clients.  
4  
5 Going to the actual fees charged, we recommend that  
6 the establishment fee be maintained at the existing 1 per  
7 cent of assets charge. We are also recommending the  
8 introduction of a \$500 minimum establishment fee but  
9 applying the CSO to that fee. The CSO for clients who have  
10 assets under \$25,000 will be 100 per cent and for those  
11 with assets between \$25,000 and \$75,000, the CSO will be  
12 50 per cent. We also recommend a reduction in the maximum  
13 establishment fee from \$3,300 to \$3,000.  
14  
15 In terms of the ongoing administration fee, we  
16 recommend an increase from 1.1 per cent of assets to  
17 1.3 per cent. This is offset, to some extent, by our  
18 recommended reduction in the investment management fee.  
19  
20 We also consider that a \$10 a month fee should be  
21 introduced with a CSO applying to that, with the same asset  
22 threshold and percentages as mentioned for the  
23 establishment fee. We also recommend a reduction in the  
24 maximum fee charged from \$15,000 to 13,500. It is also  
25 recommended that the investment fee should be decreased  
26 from 0.5 per cent of the Common Fund assets to 0.1 per cent  
27 of assets to better reflect our estimate of those efficient  
28 costs.  
29  
30 With regard to private financial management, we  
31 received a lot of stakeholder concern about the income fee  
32 not reflecting the cost of the service. We have  
33 recommended that the income fee be removed and replaced  
34 with a \$10 a month fixed fee. Stakeholders also urged for  
35 a move to a fee for service approach and again we have  
36 recommended that the Trustee & Guardian implement a  
37 system that will allow that to be developed.  
38  
39 There was dissatisfaction with service standards in private  
40 financial management and we have recommended that  
41 Trustee & Guardian develop more effective service quality  
42 measures. In terms of the oversight of the private  
43 financial managers, stakeholders raised that if they have a  
44 good compliance history, there should be reduced oversight  
45 and associated fees for that. We consider there is merit  
46 in this approach and we have recommended that Trustee &  
47 Guardian adopt a risk-based oversight approach, which means

1 focusing efforts on clients with a history of  
2 non-compliance and less regular oversight of clients with a  
3 good compliance record. We consider that that would result  
4 in reduced costs for compliance and compliance management.  
5  
6 We are recommending fees for all private financial  
7 management clients. We recommend the introduction of a  
8 \$500 flat establishment fee. This is to ensure that the  
9 fee structure is consistent with other Trustee & Guardian  
10 services. A CSO will apply to this fee with the same  
11 asset threshold and same percentages as for direct  
12 financial management. For example, if a client has assets  
13 worth under \$25,000, a CSO of 100 per cent will apply.  
14  
15 For the ongoing administration fee, as flagged, we  
16 have recommended a removal of the income fee and it will be  
17 replaced with a \$10 a month fee with the same CSO threshold  
18 applying to that. For the investment fee, consistent with  
19 direct financial management, we recommend it be decreased  
20 from 0.5 per cent of Common Fund assets to 0.1 per cent.  
21 We consider that Trustee & Guardian should maintain the  
22 existing account keeping fee, which ranges from \$100 to  
23 \$300 depending on the complexity of a client's costs.  
24  
25 In relation to trusts we found that fees significantly  
26 over-recovered Trustee & Guardian's efficient costs for  
27 this service. We also found that Trustee & Guardian  
28 applied short and long term trust fees to clients. We  
29 found this practice was inconsistent with market  
30 practice identified by our consultant and also with the  
31 ongoing administration fee charged by other trust  
32 management services such as direct financial management.  
33  
34 As for other services, stakeholders in trusts  
35 commented on poor service quality. We have recommended  
36 more effective service quality measures. Specific to  
37 trusts and particularly to certain trusts was that the fees  
38 were excessive relative to the size of the trust, which  
39 meant that they were effectively eroding the principal of  
40 the trust.  
41  
42 For this review we did two things: We tried to set  
43 fees to efficient costs. We have also flagged that, for a  
44 future review, with better data systems in place, Trustee &  
45 Guardian might be able to identify low and high intensity  
46 trusts with different fee structures for each, with a low  
47 intensity trust requiring less work and so it would be less

1 costly to manage.  
2  
3 We have recommended fees for involuntary clients for  
4 trusts, so we have made a distinction between voluntary and  
5 involuntary. For example, damages trusts for minors  
6 would be classed as involuntary and we received some  
7 feedback on that distinction. Based on the current client  
8 data, we consider about 90 per cent of trusts would fall  
9 into this involuntary classification. We have recommended  
10 keeping the establishment fees but the level should be  
11 reduced to meet efficient costs. The fee levels outlined  
12 in the table on screen represent a 0.5 per cent decrease of  
13 the existing fee levels.  
14  
15 With the ongoing administration fee, we consider that  
16 the short and long term trust fees should be replaced with a  
17 single trust fee, which is consistent with what has been used  
18 for other Trustee & Guardian services such as direct  
19 financial management, and the fee levels should be moved  
20 to a declining fee level as opposed to the current  
21 inclining fee level.  
22  
23 The fee levels recommended there - 0.5 per cent of the  
24 first \$250,000 worth of assets - is the same as the  
25 existing fee level but for each asset increase, the fee  
26 then decreases.  
27  
28 We consider the current \$10 a month fee should be  
29 maintained and the investment fee should be reduced from  
30 0.5 per cent of the Common Fund assets to 0.1 per cent.  
31  
32 At this stage, we are not introducing CSOs for trusts.  
33 To do that we need better data on client assets to  
34 understand affordability issues. We would also need,  
35 potentially, information on compensation payments to  
36 understand whether they already recover or they already  
37 provide for the costs of managing the trust funds. We are  
38 seeking feedback in the draft report about collecting this  
39 data. We would like to understand whether it creates any  
40 red tape or undue burden compared with the potential  
41 benefits of setting targeted CSOs.  
42  
43 For wills and power of attorney drafting, the main  
44 issues with these fees were that the fee structure does not  
45 recover efficient costs. For wills and power of attorney  
46 drafting, there is currently no up-front fee. In  
47 particular for wills, stakeholders raised that the fees

1 were potentially difficult to understand. With no up-front  
2 fees and a free will service, there are substantial  
3 administration charges which are associated with having  
4 Trustee & Guardian draft a will and these charges need to  
5 be priced against other service providers.  
6  
7 We consider that it is a competitive market and  
8 Trustee & Guardian should have the discretion to set fees  
9 for most clients, but for those clients there should be  
10 greater transparency of the estate administration charges  
11 that are attached to any drafting service.  
12  
13 If Trustee & Guardian brings in an up-front drafting  
14 fee for these services, we think there should be a subsidy  
15 program introduced to address affordability concerns.  
16  
17 The subsidies apply to clients eligible for the full rate  
18 Centrelink aged pension. Those clients would pay a \$10  
19 nominal fee and the government would make a payment to  
20 make up the difference between that nominal fee and our  
21 estimates of the efficient cost of providing the service,  
22 which, as outlined in the table there, is \$320 for a will  
23 and \$230 for power of attorney.  
24  
25 Finally returning to estate administration, similar to  
26 trusts, there were concerns about fees over-recovering  
27 efficient costs. With the short and long term trust fees,  
28 this was inconsistent with market practices and other  
29 Trustee & Guardian services. Similarly stakeholders had  
30 concerns about poor service quality and considered that the  
31 fees were not fair or transparent and we have tried to set  
32 fees to recover Trustee & Guardian's efficient costs.  
33  
34 As with trusts, we are recommending fees only for  
35 involuntary clients. We consider, in this instance, that  
36 that is predominantly intestate clients. Based on current  
37 data, they represent about 30 per cent of Trustee &  
38 Guardian's estate clients.  
39  
40 Turning to the establishment fee for those involuntary  
41 clients, we are keeping the fee but increasing the levels  
42 of the fee. This is offset, to some extent, by a reduction  
43 in the investment fee. For clients with assets of  
44 \$100,000, the current fee level is 4 per cent and there is  
45 no change in the existing fees. However, for subsequent  
46 fee levels, there is a small increase based on the existing  
47 charge.

1  
2 We are recommending the administration fee be reduced  
3 to a single fee and again, similar to trusts, we are  
4 recommending a move to declining fee levels. We recommend  
5 maintaining the \$10 a month account keeping fee and  
6 decreasing the investment fee from 0.5 percent to 0.1 per  
7 cent of Common Fund assets.

8  
9 For estate administration, we are not recommending the  
10 introduction of targeted CSOs, which is consistent with the  
11 current arrangements. There are no targeted CSOs for  
12 estate administration currently. Unlike other services,  
13 affordability concerns do not appear to be directly  
14 applicable and we have focused our approach on setting fees  
15 to recover efficient costs.

16  
17 The issues for discussion on specific service  
18 recommendations are whether you agree with our proposed  
19 fees and we would like to find out whether you consider our  
20 approach to targeting CSOs is appropriate.

21  
22 THE CHAIRMAN: Thank you very much, Letitia. That  
23 basically lays out all our fee draft recommendations. So  
24 who would like to go first. Yes, Imelda.

25  
26 MS DODDS: Thank you, Mr Chairman. There are a couple of  
27 points that I want to make. The submission that we have  
28 put in today is an interim submission, bearing in mind that  
29 we may make further submissions as a result of the outcomes  
30 of today's roundtable. It is some 40 pages long. It  
31 obviously goes directly to the issue of the recommended fee  
32 structure, and I do not propose to read it, you will be  
33 glad to know.

34  
35 THE CHAIRMAN: Thank you.

36  
37 MS DODDS: However, I would encourage that people do  
38 read it and I would respectfully ask the tribunal to take that  
39 into its considerations tomorrow when it makes its  
40 determination about whether to upload it ahead of  
41 the October closure date.

42  
43 I want to make a comment and start with what we see as  
44 the overall impact on clients. We do provide a vital  
45 service to many vulnerable and also challenging clients in  
46 New South Wales. We argue that the recommendations, as  
47 they stand, could marginalise clients and put them at

1 further risk. We are the manager of last resort. If we  
2 are unable to fund our services appropriately, then it is  
3 these clients who will suffer the most.

4  
5 Overall, we find the proposed fee schedule complex and  
6 administratively burdensome but, more importantly, we feel  
7 that it will fail the test of "easy for clients to  
8 understand".

9  
10 Other elements we believe fail to take into account  
11 real market conditions, in particular the requirements of  
12 similar agencies, and I state here this is not just private  
13 trust companies which are declared for profit but other  
14 state trustees which are similar bodies - same bodies - to  
15 ourselves to self-fund, retain sufficient reserves to fund  
16 future operating costs and that includes capital  
17 expenditure and reserves required by organisations that  
18 operate under a financial services licence.

19  
20 While NSW Trustee & Guardian is not required to  
21 operate under a financial services licence, that is an  
22 instrument as a result of federal regulation of the trustee  
23 industry. Aside from State Trustees in Victoria, which is  
24 a fully corporatised organisation which must carry an FSL,  
25 none of my counterparts around Australia are required to  
26 have an FSL. However, we are, in effect, required to meet  
27 and should meet the requirements of organisations under an  
28 FSL and meet the requirements that would be expected by  
29 organisations, regulatory bodies, oversight bodies such as  
30 ASIC and APRA and comparable organisations.

31  
32 We believe that the CIE report on which IPART has  
33 relied is quite clear that, in a large number of areas, it  
34 has not been able to gather sufficient information to make  
35 a reasonable benchmark of our fees, for example, in trust  
36 management, and I quote page 8 of that report:

37  
38 Only 6 per cent of NSWTG clients have asset  
39 values greater than \$300,000, meaning that  
40 the range of private fees we present covers  
41 a small minority of the NSWTG client base.  
42 We believe this reduces the reliability of  
43 the estimate of fees and means a  
44 substantial adjustment must be made to the  
45 estimate in order for it to be taken as a  
46 benchmark for private sector costs.

1 We note that the CIE did not appear to be asked to  
2 benchmark public trustees and it is not clear to us whether  
3 IPART has taken this into account, despite, I am aware, of  
4 contacting several state body trustees.

5  
6 We believe our revised fees and charges which  
7 I mentioned later in the last session would eliminate some  
8 of the confusion by applying consistent pricing across all  
9 trusts, whether short or long term, voluntary or  
10 involuntary, although we do disagree with the definition.

11  
12 I could go into considerable detail - in fact the  
13 report goes into nearly two and a bit pages - on our  
14 specific concerns about the recommendation to review the  
15 fee for funds under management from 0.5 to 0.1, but in the  
16 interests of time, Mr Chairman, I think we might pick up  
17 issues as we go along.

18  
19 THE CHAIRMAN: It would be interesting to get, at least  
20 for me, a short description of why a decrease from 0.5 to  
21 0.1 is not a good idea from your point of view.

22  
23 MS DODDS: Thank you. We don't believe that the report  
24 recognises that 0.1 is below the cost of running some of  
25 the investment portfolios that we provide for clients. We  
26 have already noted that we are not a controlled entity. We  
27 are not on-budget, so, unlike other government  
28 organisations who might reasonably be expected to return a  
29 break-even position, we must return a surplus position in  
30 order to fund future services.

31  
32 THE CHAIRMAN: I am sorry to interrupt, but the next part,  
33 transitioning to the new fees, is where we hope to get into  
34 the business about what NSW Trustee & Guardian would look  
35 like under our regime and what it would have looked like  
36 under your proposal. One could argue that you are a  
37 government business and that you would be expected to cover  
38 your costs. We are saying that, under our proposal, you  
39 make a small surplus. You might say that is not enough.  
40 I am wondering whether we could leave that for a minute and  
41 if we could just concentrate on the fees that Letitia  
42 outlined, for example, why you think 0.5% to 0.1% is not a  
43 good idea.

44  
45 MS DODDS: Apart from the fact that, as I think I alluded  
46 to earlier, the CIE report notes that fees and charges  
47 should reflect the efficient cost of providing services

1 that that includes a fair return on investment, we believe  
2 that the 0.1 fee does not appear to cover the full cost  
3 of funds management and therefore would result in  
4 cross-subsidisation by non-Common Fund clients.

5  
6 We believe that the proposed margin would likely  
7 result in us not surviving a global financial crisis or  
8 asset market crash and definitely would not allow us to  
9 replace any ageing capital expenditure items, and that may  
10 render us unable to continue --

11  
12 THE CHAIRMAN: I might just say on that point, sorry,  
13 Imelda, when IPART or anybody else benchmarks a cost or a  
14 fee against the private sector, within that  
15 benchmark cost, is an allowance for the return on capital  
16 and for depreciation. Broadly speaking, there are two ways  
17 of developing a price for a government service. In the  
18 case of Sydney Water, we use the building-block approach,  
19 which is that we look at what the asset is, allow a return on  
20 assets, depreciation, what the operational expenditure is,  
21 tax obligations, and we come up with what is called  
22 notional revenue and then we set the price to recover  
23 that.

24  
25 In the case of organisations like Trustee & Guardian,  
26 where we have been asked to recommend a fee schedule - and  
27 this is not just Trustee & Guardian; there are others that  
28 we look at - we do not use the building-block approach  
29 because of data and other reasons, but we use a benchmark  
30 approach. If the private sector charges X and then IPART  
31 or anybody else says that the Trustee & Guardian or the  
32 public sector should charge X, that includes in X an  
33 allowance for capital and depreciation.

34  
35 One can argue whether there is enough or things like  
36 that, but I wanted to clear that point up because a number  
37 of times the point has been made that the recommended fee  
38 structure does not provide, in a sense, any profit, a  
39 return on capital, it does not provide things like that.  
40 I just wanted to clarify that.

41  
42 MS DODDS: Thank you. I do note, however, and repeat that  
43 it does not appear evident from the draft report and if  
44 there was an attempt to benchmark against other public  
45 agencies in other jurisdictions, it is not clear. As  
46 I have said earlier, the fees in my comparable state  
47 organisations are higher than our existing fees.



1  
2 THE CHAIRMAN: Would you like me to respond to that?  
3  
4 MS DODDS: Yes.  
5  
6 THE CHAIRMAN: You compete with the private sector in New  
7 South Wales. You do not compete with the public trustee in  
8 Victoria or in Queensland or anywhere else. So you are  
9 competing with the private sector in New South Wales.  
10 Admittedly some of the involuntary clients and particularly  
11 low income clients or low wealth clients would struggle to  
12 find a private sector competitor, but just put that to one  
13 side for a minute, you compete with them.  
14  
15 You are not competing with the State Trustees in  
16 Victoria. The fact that the State Trustees in Victoria  
17 might have higher or lower fees than you do might just be  
18 the result of some decision in the Victorian government  
19 budgeting process that they have made.  
20  
21 We have been asked to make an assessment of what are  
22 the fees that Trustee & Guardian should charge and we say  
23 what the fees should be based on the efficient  
24 cost. In some cases we look at the fees that are charged  
25 by the private sector for providing similar services as a  
26 benchmark. However, we are taking on board your point  
27 about the public trustees in other states and we will take  
28 that on board.  
29  
30 MS DODDS: Thank you, Mr Chairman. I think it is  
31 important to note, however, that - I think we may be  
32 getting into a bit of a circular argument and I am a little  
33 concerned about that -if we take the private sector fees in  
34 New South Wales, they are way higher than our current fees,  
35 so I find that point difficult, if not a little confusing.  
36  
37 Since the draft report has been released, we did send  
38 a detailed brief down on what we regard to be full costs of  
39 our Common Fund, to IPART last Friday. It is extremely  
40 complex to try and describe here. I am not sure whether  
41 one of the IPART staff wishes to comment or I might ask my  
42 director of client finance and funds to do that explanation  
43 rather than myself.  
44  
45 The bottom line is we think this fee is way, way too  
46 low and it will not provide us with the capital adequacy  
47 that we would require. Particularly when I refer to the

1 fact that while we are not required to carry an FSL by the  
2 fact that we are not regulated under the federal system, we  
3 are, in all effects and intents, required to meet those  
4 standards and this in no way would reflect what occurs  
5 under that scheme.  
6  
7 THE CHAIRMAN: Thank you very much, Imelda.  
8  
9 John, would you like to comment?  
10  
11 MR CLARK: Thank you, Mr Chairman. When I looked at the  
12 10 basis points, it is not 1 per cent, it is 10 basis  
13 points for the investment fee. Without looking at any  
14 data, I question the accuracy and completeness of the data  
15 that supports that. I look back, and I look back at my own  
16 career in financial services, and I say, "10 basis points.  
17 That's amazing. That is absolutely amazing as an  
18 investment management fee. That's probably the deal of a  
19 century." I cannot believe, and I would ask Imelda to  
20 perhaps comment on this, that this actually covers your  
21 cost base. In fact, I would suggest, on that fee alone,  
22 that you will make a substantial loss.  
23  
24 THE CHAIRMAN: We note the comment that you think 10  
25 basis points or 0.1 is too low. We've got it and we are going to  
26 look at the interim report that Imelda has put in. This is  
27 why we have those discussions, so we will do that.  
28  
29 Just so you know, the 0.1% was not something that was  
30 dreamt up by the staff or the tribunal. It is something  
31 that has come from analysing what is available in the  
32 private sector, which is essentially the competitors. We  
33 will look at that again and make sure that we have got it  
34 right. If we think we have got it wrong, we will change  
35 our recommendation.  
36  
37 MS BRAKEY: Could I add to that?  
38  
39 THE CHAIRMAN: Sure.  
40  
41 MS BRAKEY: It is important to remember when we are  
42 looking at these fees that it is not just the investment  
43 fee in isolation. Previously some of the administrative  
44 costs were collected through the investment fee. We have  
45 had an associated increase in the administration fee. What  
46 we are trying to do is pass through the investment fee at cost  
47 and pass through the administration costs of the

1 Trustee & Guardian in the administration charge.  
2  
3 THE CHAIRMAN: Ishanthi?  
4  
5 MS GUNAWARDANA: I know we have broken these things  
6 down into administration and investment, but from where I sit  
7 it is just one amount, which is 1.3 plus 0.1 and that is 1.4.  
8 That is what I judge the Trustee & Guardian on - returns.  
9 You may think you don't have enough adequate capital, but  
10 I am looking at what I got for my \$90,000 - or whatever the  
11 number is - investment. Just previous to that, when you  
12 take into account CPI, for the last 20 years we have gone  
13 backwards.  
14  
15 THE CHAIRMAN: Other comments around the table on the  
16 fees?  
17  
18 MR CLARK: I have one more, Mr Chairman, my apologies.  
19 The question again for Imelda is the issue of having what I  
20 will call an account keeping fee being introduced. Surely  
21 that has to have an effect on your systems and there must  
22 be some cost in developing systems to go with that. Do you  
23 have any feel for that?  
24  
25 MS DODDS: Thank you, John, you're talking, I think,  
26 specifically about the \$10 a month account fee.  
27  
28 MR CLARK: Yes.  
29  
30 MS DODDS: Yes, that will have implications for our  
31 systems. It will particularly have implications in private  
32 management because we don't retain funds from private  
33 managers unless there are funds under security and they are  
34 invested in the common fund separately to where an  
35 individual elects to put funds in the common fund. So that  
36 will be costly and onerous to implement. In our revised  
37 fee schedule and in the paper we are actually recommending  
38 that if we reduce that fee, that only be levied at the end  
39 of the year, at the same time as the review of the accounts  
40 levy for ease of administration, but in all other areas it  
41 does change the way in which it operates. That would have  
42 to be built into the new system.  
43  
44 Whilst I have the microphone, I note the  
45 recommendations of the report for effectively CSO funding  
46 in relation to will making and the subsidisation of that  
47 will also be very costly to administer and may cost more to

1 administer than the value of the fee retained.  
2  
3 THE CHAIRMAN: Thank you.  
4  
5 Would anyone else around the table like to make a  
6 comment? Yes, James?  
7  
8 MR SHAW: It is just in our submission but I would just  
9 like to highlight that the CSO contribution in the 2008  
10 IPART report was talking about whether there should be a  
11 payment in the order of \$10.6 million and the CSO  
12 contribution has not increased at all since 2008. In fact,  
13 as I understand it, since 2004 it is still around the  
14 \$5 million mark and that has been the CPI increases and so  
15 forth, so I think that is an issue that we want to bring to  
16 this tribunal's attention.  
17  
18 THE CHAIRMAN: There is the CSO and, as I understand it,  
19 there is the draw down on the interest suspense account  
20 that is over and above the CSO, as I understand it. That  
21 is, in a sense, another way of funding a shortfall and so  
22 from the standpoint of the New South Wales budget, that is  
23 a contribution made by the New South Wales budget. So we  
24 just need to be clear that we are talking about the same  
25 thing, James.  
26  
27 MR SHAW: I stand by my point, my point remains. There  
28 has been no increase since a large period of time.  
29  
30 THE CHAIRMAN: I am sure that point is right. There has  
31 been a draw down in the interest suspense account, which is  
32 another way of funding a shortfall, which we need to bear  
33 in mind.  
34  
35 Anybody else around the table? Alan from the gallery.  
36  
37 MR SAURAN: Alan Sauran, private financial manager. So a  
38 general comment first - I find the fees of the  
39 public trustees in other states is an interesting curiosity  
40 but it is not really relevant to the matter in hand.  
41 There's a whole lot of historic reasons why they may have  
42 come up with particular fees and it doesn't take into  
43 account their community service obligations, which are  
44 being treated separately in this case.  
45  
46 I am going to talk about private management fees only.  
47 I find the proposed structure simple and easy to

1 understand. I don't have the slightest difficulty  
2 understanding it and I think the average private financial  
3 manager wouldn't have any difficulty with it either. If  
4 they did, possibly they shouldn't be a private financial  
5 manager.  
6  
7 With the establishment fee, I agree with its  
8 introduction and I agree that the amount of \$500 probably  
9 reflects the efficient cost. However, I would make one  
10 exception, which hasn't been considered by IPART, which is  
11 the case of clients transferring backwards and forwards  
12 between direct management and private management. If they  
13 were to pay an establishment fee every time they  
14 transferred backwards and forwards, that would be  
15 inequitable and I suggest that in the case of an internal  
16 transfer, that the establishment fee be reduced or waived,  
17 on the basis that the efficient costs would be less than  
18 for a new client.  
19  
20 On the common fund proposed fee of 0.1 per cent, I would  
21 remind everyone that we are talking about index fund  
22 management, we are not talking about active management  
23 and the costs for index fund management are, in the private  
24 market, a lot less than for active management and although  
25 0.1 per cent is low, it is not a ridiculous number. If you  
26 look at costs of private index fund management, they are a  
27 lot lower than for active management.  
28  
29 Whether a private manager should pay the same 0.1 as a  
30 directly managed, IPART asks for comment on that. I would  
31 say yes for two reasons. One is because clients do switch  
32 backwards and forwards between private and direct and it  
33 would be strange if their fee were to change as a result of  
34 that switch and also for the reasons suggested by IPART  
35 itself, which is that private managers are mostly family  
36 members and not particularly financially literate.  
37  
38 The administration fee - I agree with the concept of  
39 an administration fee and if these systems do not permit  
40 that to be levied monthly, then it is quite acceptable for  
41 it to be levied annually at the same time as the accounts  
42 fee is levied and I don't see a big system implication for  
43 charging \$120 every year as a one-off. That's it.  
44  
45 THE CHAIRMAN: Thank you very much, Alan. Would  
46 anybody else like to make any comments at this stage?  
47

1 MR GAVIN: Yes.  
2  
3 THE CHAIRMAN: Paul?  
4  
5 MR GAVIN: We believe that there is scope to target some  
6 particular parts of the state administration for a CSO  
7 obligation.  
8  
9 THE CHAIRMAN: Okay.  
10  
11 MR GAVIN: In our submission we have talked about  
12 low-wealth areas, right, where a particular type of estate,  
13 the staff has a lot to do but the fee we charge is well  
14 below what the cost of doing it is. Another area would be  
15 the work done by managers and assistant managers helping  
16 the public administer the problems of their families when  
17 their deceased dies. We have no fee we can charge for that  
18 sort of work and yet that is going all the time.  
19  
20 Also we have matters that are referred to us from  
21 solicitors or other trustee companies that started, or  
22 whatever, and they don't want to proceed and they pass them  
23 onto us. We have to take them on. Those are the sorts of  
24 areas we think could be targeted as something that the  
25 organisation is doing as a community service and so,  
26 therefore, we think there is scope.  
27  
28 Then there are other ones. Let's say we have a will  
29 and the legacy in the will is a small amount of money,  
30 there might only be \$1,000, \$2,000, \$3,000 and our fees  
31 were just whittled away on that legacy and the grandchild  
32 won't get that \$3,000 or \$2,000 because of our fees. So  
33 those fees, the same as we are entitled to them, we would  
34 have to waive them to be fair to the beneficiary. That is  
35 an area where the waiving of those fees would be a  
36 community service obligation. We think there is scope to  
37 look at that sort of thing.  
38  
39 THE CHAIRMAN: Thank you very much, Paul. Just on that,  
40 we are still proposing to have a fee waiver arrangement and  
41 we have made some suggestions on that but when fees are  
42 waived, they would need to be funded, but they are  
43 different than a CSO in that a CSO says that basically  
44 people on the pension are entitled to certain CSOs or  
45 people with a very low asset base are entitled to certain  
46 CSOs, whereas fee waiver is more a judgment at the time by  
47 the officer involved. We are not suggesting that that be

1 phased out; we are just suggesting that with a more  
2 comprehensive CSO regime - and to get to the point that is,  
3 in a sense, relevant to James's point earlier - our  
4 recommendation is that the CSO regime be fairly well  
5 targeted.

6  
7 At the moment, as I understand it, it is more like a  
8 block funding, whereas we are recommending it be fairly  
9 targeted but there would still need to be some capacity to  
10 fund Trustee & Guardian where they have waived fees for the  
11 reasons that you outline. We will look at that again and  
12 tighten up on it.

13  
14 MR GAVIN: I would particularly like to refer to the ones  
15 where we take on work that solicitors and trustees pass on  
16 to us and we have to face the same problems that they have  
17 in doing it. Sometimes the reason they pass it on is  
18 because it is going to be a long-term matter - in relation  
19 to a residence, or something like that - and we have to  
20 bear the cost of that for what might be 30 or 40 years  
21 before it can be resolved.

22  
23 THE CHAIRMAN: Sure, thank you.

24  
25 Yes, Alan?

26  
27 MR SAURAN: I did miss one, it is the private management  
28 income fee. According to the draft report Trustee &  
29 Guardian is asking for an increase in the cap from \$2,000  
30 to \$3,000, that is according to the draft report, but  
31 according to a verbal submission today, they have modified  
32 that to a request for a zero income fee. So that is a  
33 significant discrepancy, so it needs to be sorted out  
34 before we go much further.

35  
36 THE CHAIRMAN: Thank you, Alan. Imelda?

37  
38 MS DODDS: Thank you, Mr Chairman. On a slightly  
39 different topic, and I have alluded to this earlier,  
40 clearly one of the bases for the report's finding is a  
41 belief that there is an over-recovery from high-asset  
42 clients. This goes to the data and most probably the  
43 disagreement about the validity of the data, which we hold  
44 to as being valid, by the way.

45  
46 Our PwC workload review and costings has demonstrated  
47 that in our broad client base, with clients with high-value

1 estates and high complexity, we do not recover a cost of  
2 service and our analysis has shown us quite clearly that  
3 this is the case. It has been, in previous reviews, an  
4 assumption that we were unable to test and I note that and  
5 I admitted that at the last review, and this relates to  
6 clients principally under a management order but in doing  
7 this work we also demonstrated it for estate administration  
8 as well.

9  
10 The assumption historically has been that clients with  
11 low-value estates and essentially a pension alone, were  
12 costing a great deal to provide services to, that they  
13 drove our costs up, and that, therefore, high-value clients  
14 and estates were cross-subsidising - it's a bit like  
15 Robin Hood, really - the needs of lower-value clients.

16  
17 Our data shows that with the exception of a small  
18 number of clients with a pension alone, with very high  
19 complex needs, and out of a client base of 11,500 under  
20 direct management, that group would be well less than 500,  
21 where the costs to serve do exceed the fee retained but  
22 that cannot hold true and that, in fact, the cost to serve  
23 higher-value complex clients is way and above the fee that  
24 we retain.

25  
26 That general principle has also been shown in the  
27 management of deceased estates where we are either the  
28 executor under a valid will or where we are managing an  
29 intestate estate under letters of administration and this  
30 in some way goes to the points that Paul has just made in  
31 regard to matters that we receive that other people could  
32 take on but do not and refer on to us. Thank you.

33  
34 THE CHAIRMAN: Thank you very much for that, Imelda.

35  
36 Any other comments? Robert?

37  
38 MR HAEBICH: I just have one short comment and that is  
39 with your subsidies and wills - which I have neither said  
40 I agree or I disagree with, except that I think it is  
41 important that people do make planning for their end of  
42 time - it seems that it is anticipated that this would  
43 probably be some kind of subsidy for the general  
44 practitioners across the scale. This will increase the  
45 number of wills made and I would think would increase  
46 substantially the number of wills where, as my friend was  
47 saying, to process them is not profitable and there needs

1 to be some kind of provision for that increase of very  
2 unprofitable work.

3  
4 THE CHAIRMAN: Yes, thank you, Robert. I think that if  
5 the government were to provide a subsidy for wills, both  
6 where people go to the Trustee & Guardian and also go to  
7 the private sector, it might well increase the number of  
8 wills written and that would need to be funded by the  
9 government.

10  
11 On the issue that it might lead to more wills as in  
12 the case of the ones described by Paul, I don't know, but  
13 that is an issue that we need to take up in terms of what  
14 we are going to recommend for the Trustee & Guardian for  
15 their funding for looking after estates where clearly the  
16 fee would exceed the amount of the estate and it is complex  
17 and long-term work.

18  
19 MR GAVIN: Also we are talking about where there is an  
20 increase in sending clients making wills, namely family  
21 members. You would find in most of those estates the wills  
22 are not worth going through the legal process and the  
23 executor still has to wind up the estate and they will come  
24 to us to help them do it. That is just the nature of the  
25 way it is.

26  
27 THE CHAIRMAN: As you well know, if people don't write  
28 wills, then the estate is intestate and it could well land  
29 in your lap anyway, and the subsidy for wills is consistent  
30 with the push by the government to get more people to write  
31 wills.

32  
33 Imelda?

34  
35 MS DODDS: Thank you, Mr Chairman. Obviously I can't  
36 comment on behalf of government about that subsidy because  
37 that is clearly a matter for Treasury to consider.  
38 Broadly, however, obviously one of our key strategic  
39 directions is to get people to plan for the future. A  
40 failure to do so risks people ending up having to go to a  
41 tribunal for an order, which is not a pleasant thing.  
42 I was a member of the tribunal, it is not that the tribunal  
43 is unpleasant, it is just not a thing people want to do.  
44 So obviously we support anything that increases people's  
45 preplanning.

46  
47 There is one other item that I had noted and failed to

1 comment on, if I might. It is not related to that; it is  
2 related to a point that Mr Sauran made and I think it is a  
3 very important one. It is correct that, from time to time  
4 there is a transfer when a person is under private  
5 management and there is a review of the order, for whatever  
6 reason - and there are many - and the person moves from  
7 private management to direct management and vice versa.  
8 That needs to be factored into consideration for the  
9 establishment fees and we would need to look at that and  
10 consider it but it is a very important point.

11  
12 THE CHAIRMAN: Thank you very much, Imelda.

13  
14 I suggest now that we move on to just the last, which  
15 is a short presentation. Letitia.

16  
17 SESSION 2: PART 2 - TRANSITIONING TO THE NEW FEES

18  
19 MS WATSON-LEY: In section 2 we are seeking feedback on  
20 transitional arrangements, so transitioning to the new  
21 fees. Our recommendations are based on primarily  
22 20 per cent of savings to Trustee & Guardian's  
23 operating expenses. We recognise that it would take time  
24 for the Trustee & Guardian to achieve such efficiency  
25 savings. Also moving to the recommended fees we  
26 estimate will result in an overall reduction in fee revenue  
27 of \$1.7 million. This results from removing the  
28 cross-subsidies between various services and uncovers an  
29 existing shortfall in private financial management.

30  
31 We are recommending that Trustee & Guardian develop a  
32 case based on activity based costing to develop user fees  
33 to recover the efficient cost of private financial  
34 management but in the interim there will be a shortfall.

35  
36 To facilitate the immediate adoption of IPART's fees we  
37 are recommending temporary government funding of up to  
38 \$1.7 million per annum for two years.

39  
40 Looking at the impact on Trustee & Guardian's budget,  
41 the table presents 2012/13 Trustee & Guardian's existing  
42 budget position and our estimates of revenue expenses under  
43 Trustee & Guardian's proposal and IPART's proposal.

44  
45 Comparing total revenue between the 2012/13 budget  
46 and IPART's proposal indicates a \$1.7 million increase in  
47 revenue, which arises in large part from private financial

1 management, and the total expenses decrease includes our  
2 estimate of 20 per cent decrease in operating expenses.

3  
4 IPART's recommendations in that comparison bring costs  
5 under control - on average reduce fees for regulated  
6 clients by 11 per cent and move Trustee & Guardian to a  
7 small overall surplus of \$1.5 million from the existing  
8 loss of over \$10 million.

9  
10 The issue for discussion is your views on our proposed  
11 transitional arrangements. I guess we have heard some of  
12 them in session 1 but we would like to hear whether there  
13 are any additional ones or a summary of those views for  
14 this session.

15  
16 THE CHAIRMAN: Thank you, Letitia. Would you like to  
17 kick off, Imelda?

18  
19 MS DODDS: I think we have made many points in relation to  
20 this. Those transitional arrangements have a direct impact  
21 on the New South Wales Treasury. I don't know what  
22 discussions IPART has had with Treasury in the preparation  
23 of this, so I am not at liberty to comment on that.

24  
25 We have already made the point that we believe that  
26 the fee proposal under-funds and is not realistic. If our  
27 proposals are to be accepted, in terms of ongoing costs,  
28 costs of operation, which also include our capital  
29 expenditure costs, I would suggest that that figure be  
30 elevated. I cannot comment on behalf of Treasury. I don't  
31 think I can make any more comment than that. I look to  
32 my colleague, the chief financial officer of the Department  
33 of Justice. While we are not a controlled entity, we do  
34 come under the Department of Justice for the purposes of  
35 overall cluster finances.

36  
37 THE CHAIRMAN: Thank you for that. I would like it if  
38 somebody can clarify for me - and it might well be one of  
39 your staff, Imelda - this reference to capital expenditure.  
40 Capital expenditure is not normally treated like  
41 operational expenditure and sort of recovered out of  
42 current revenue. Current revenue covers off expenses, plus  
43 a return on capital employed and depreciation. It is not  
44 normally used to fund capital expenditure, which can be  
45 quite lumpy, because otherwise we would have a situation  
46 where the fees for Trustee & Guardian clients would bounce  
47 around, depending on what the capital expenditure program

1 is.

2  
3 I just wondered whether somebody could clarify what  
4 the issue of capital expenditure is. Based on my  
5 experience when I was Secretary of Finance in Canberra in  
6 the Commonwealth government, normally capital expenditure  
7 is not funded from some sort of current revenue stream or  
8 current progression, it is something where a decision is  
9 made to have a large expenditure of capital and then it is  
10 funded over time to a rate of return on the capital and  
11 depreciation.

12  
13 John?

14  
15 MR CLARK: Thank you, Mr Chairman. I think the real issue  
16 is, without going back to government and seeking further  
17 funds for capital expenditure, that most organisations -  
18 and I will come back to the Public Service in a minute -  
19 would actually go and look at their cash flows. Usually it  
20 is based on their accumulated funds, which is often where  
21 the cash flow comes from, their working capital, when you  
22 think about it. That is where they would fund a lot of  
23 that capital expenditure.

24  
25 Now, there are two alternatives here. One is to go  
26 back to government and say, "Look, we really need X dollars  
27 to do this work over here of a capital nature", so that is  
28 one way of doing it; or you can say, "From the work that we  
29 have done over time and from the reserves that we have -  
30 cash reserves - we can fund this amount of capital  
31 expenditure at the end of the day". You are quite right,  
32 it is not recurrent in nature, but it is where you get the  
33 cash to actually fund that capital expenditure which is the  
34 key.

35  
36 THE CHAIRMAN: It is a really important point and it is a  
37 point that goes partly to the government budgeting system  
38 but it is a really important point. It is a little strange  
39 to put forward a regime which wants to increase the fees in  
40 order to generate funds for capital projects because, yes,  
41 the fees should cover depreciation, which would go towards  
42 funding the maintenance of capital and accumulating a  
43 reserve to replace capital, and it should fund a return on  
44 capital. It is sort of an interesting approach to  
45 government budgeting, I think, to have fees.

46  
47 We could talk academically, you know. Take fees at

1 the passport office. Let's say we're in Canberra and we  
2 are talking about the passport office and along comes the  
3 passport office, for example - this is hypothetical - and  
4 goes, "Well, you know, we need to refurbish our Bligh  
5 Street building. What we need to do is jack up the fees  
6 for passports in order to refurbish that". It would be  
7 really useful to sort this out because I think this is an  
8 area that, once we sort it out, we can get an understanding  
9 between IPART and T&G, and we can make headway.

10  
11 MR CLARK: But there is a difference, if I may. My  
12 understanding is that, in the Commonwealth, when you get  
13 your recurrent budget, you will also get the cash flow  
14 relating to depreciation. In New South Wales we don't get  
15 that cash flow.

16  
17 THE CHAIRMAN: Yes, but the point here is that you are  
18 getting the fee income, so this is not the Department of  
19 Health or something, this is T&G. You are getting a fee  
20 income which is coming from fees paid by your clients and  
21 in an effort to work out what the fees are - and we can  
22 disagree on the number - we try to work out what the  
23 efficient cost is and that efficient cost includes an  
24 allowance for depreciation and for a return on capital.  
25 What I am saying is that it should be in the fee income.  
26 We can have a difference of view about what the fee income  
27 should be.

28  
29 MR CLARK: Sure.

30  
31 THE CHAIRMAN: It should be in the fee income and it  
32 should be sufficient. In the event, then, that Trustee &  
33 Guardian might want to do a large program and finance a  
34 new program, then there are two alternatives. One is to get  
35 the funding from the budget, and gradually it would be  
36 repaid over time because you would be collecting more  
37 depreciation and return on capital or, alternatively, to  
38 borrow it, but that is sort of a bit academic. That is not  
39 really a valid option here.

40  
41 The key point is whether a large increase in capital  
42 expenditure as opposed to sort of ongoing capital  
43 expenditure should be funded by fees on clients, many of  
44 whom are involuntary clients - in other words, they don't  
45 have an option to go elsewhere.

46  
47 MR CLARK: It also gets to a fundamental issue for this

1 organisation about whether it should have a reserving  
2 policy as well.

3  
4 The point that Imelda made before about ASIC and APRA  
5 and their licence structures, which are built around the  
6 concept of things like capital adequacy, is an important  
7 point. If something goes wrong in Trustee & Guardian,  
8 where does it go to get the funding to make something  
9 good? That is a simple question.

10  
11 THE CHAIRMAN: Yes, I heard that point. I used to be a  
12 Commissioner of ASIC, so I have some background in FSLs and  
13 reserving and things like that. Imelda is right; Trustee &  
14 Guardian does not have to have a financial service licence.  
15 It is exempt because it is a public trustee and guardian.

16  
17 I imagine, and I don't know for sure, that the logic  
18 behind that is basically if something goes wrong, the New  
19 South Wales government picks it up. In other words, it is  
20 sort of self-insurance within the New South Wales  
21 government. That is different from finance company ABC in  
22 the Sydney central business district. If they go wrong,  
23 there is no government to pick that up, so ASIC has some  
24 sort of reserving policy to provide for that. In a sense,  
25 it is a slightly different circumstance. I think that is a  
26 good point, but the fact that Trustee & Guardian is in the  
27 New South Wales government, it is not the same as a private  
28 firm which does not have the backing of the government.

29  
30 MR CLARK: I guess my question is, in fact, whether -  
31 regardless of whether you are in the public service or in  
32 private - you should not have a reserving policy. That is  
33 my question then. I am not asking for an answer, I am just  
34 suggesting. I think it is an important point and one that  
35 needs to be weighed and considered going forward, that is  
36 all.

37  
38 THE CHAIRMAN: We will take it on board, thank you.

39  
40 MS X: I want to agree with the last statements that were  
41 made. I agree with what you have said regarding the fees.  
42 The only thing I have not heard today is why hasn't the  
43 Trustee & Guardian looked at its investments because the  
44 investments are not bringing in a good return? Why don't  
45 they look at their policies and how they are investing  
46 their money in order to get the extra funding that they  
47 need rather than simply just looking at fees, whether it is

1 from voluntary or involuntary, to subsidise them? That's  
2 all I have to say.  
3  
4 THE CHAIRMAN: Thank you.  
5  
6 Ishanthi?  
7  
8 MS GUNAWARDANA: There was a question I put a long time  
9 ago and I was wondering when it was going to be answered.  
10  
11 THE CHAIRMAN: Why don't you repeat it.  
12  
13 MS GUNAWARDANA: Essentially it relates to the returns on  
14 investment. We have been talking about the cost structure  
15 all the time, which is obviously valid. As I said, the  
16 covering letter to my father's accounts for the last  
17 financial year says that we got a 2.26 per cent per annum  
18 return. I am just agog at that given the amount of funds that  
19 the Common Fund would actually have to invest compared  
20 with what you could get in the retail market for just  
21 depositing that into a bank account and then what you could  
22 actually do with that, which was Ms X's point, about  
23 funding some of the reserves. How would it operate in ABC  
24 Bank? They do not just talk about capital adequacy  
25 reserves. If you make a bad investment decision, you take  
26 a hit on your capital adequacy.  
27  
28 THE CHAIRMAN: Thank you for raising that again.  
29  
30 Maybe, Imelda, you could address that.  
31  
32 MS DODDS: Thank you, Mr Chairman. I will ask  
33 Bernie Farrell, who is our director of client funds and  
34 finance, to go into more detail in a moment.  
35  
36 One of the things that people often do not appreciate  
37 is that, as a trustee company, we are bound under several  
38 pieces of legislation, one of which is the Trustee Act, as  
39 are all trustee organisations, and that requires a prudent  
40 approach to investments, but I will pass over to Bernie.  
41  
42 MR FARRELL: I will make some general comments. The  
43 interest rates we pay can only relate to what is available  
44 in the marketplace. The current Reserve Bank cash rate is  
45 2.5 per cent. As Ishanthi mentioned, her father received  
46 2.26. If we had no investment fee on the trust accounts,  
47 he would have received 2.76 - still not as much as a retail

1 depositor and I will come to that in a moment.  
2  
3 When looking at the interest rates that we pay on the  
4 client trust accounts, you must compare them to bank  
5 operating accounts, not term deposits, because the money is  
6 at call. We are paying out money, we are receiving money,  
7 so it is more comparable to an operating bank account and,  
8 under those circumstances, it is a pretty good rate.  
9  
10 As a result of the GFC, some new banking regulations  
11 came into place called the Basel III regulations.  
12 I presume the Chairman is aware of those. They  
13 differentiate between wholesale and retail clients or  
14 depositors. The decision was made that retail deposits  
15 were far stickier and likely to stay with banks in the  
16 event of a crisis whereas the wholesale ones were less  
17 likely to stay, so banks are rewarded for having retail  
18 deposits.  
19  
20 If you walk into Westpac with \$50,000, you will get a  
21 better interest rate on a term deposit than we would get if  
22 we were to walk in with \$50 million because we are regarded  
23 as a wholesale depositor. We have had endless discussions  
24 with our bankers on this topic - this has been at quite a  
25 high level - however, it is their view that we are  
26 wholesale and there is not a great deal that we can do  
27 about it. However, we are in negotiation with a range of  
28 banks to place some large sums on term deposit where we  
29 hope to get a better margin on the money. This is still in  
30 negotiation, but the difference will probably be about 20  
31 or 30 basis points.  
32  
33 It has been suggested that we do term deposits for our  
34 clients, but it is totally impractical for us to run a term  
35 deposit program which has a separate term deposit or even a  
36 range of them for each client. The current pool fund  
37 structure that we have is the cheapest option available.  
38  
39 THE CHAIRMAN: Thank for clarifying that, Bernie.  
40 I noticed in a number of submissions that people make a  
41 point similar to the point that Ishanthi has made. They  
42 say, "I got a return of 2.5, roughly, whereas if I had put  
43 it in a term deposit in the local Commonwealth Bank,  
44 I would have got 3.5 or 4", or some figure like that. So  
45 what you are saying is that the money that you are managing  
46 for these people is basically invested at call, is that  
47 right?



1  
2 MR FARRELL: Yes.  
3  
4 THE CHAIRMAN: And you are saying now that you are  
5 looking at some options where you could invest some of it on  
6 term deposits which should increase the rate of return?  
7  
8 MR FARRELL: Yes.  
9  
10 THE CHAIRMAN: But obviously, I guess, under your  
11 mandate, you need to choose investments which are low risk  
12 and hence are lower return?  
13  
14 MR FARRELL: Yes, very low risk. Currently, the money in  
15 the day-to-day trust accounts is basically in bank bills  
16 and very short term deposits with banks.  
17  
18 THE CHAIRMAN: Do you want to follow up Ishanthi? Then  
19 we will hear from Alan.  
20  
21 MS GUNAWARDANA: We are paying at the moment a 50  
22 basis point investment fee for you to put money at call. That is  
23 the extent of your financial management of our accounts.  
24  
25 MR FARRELL: The trust account is the equivalent of a  
26 day-to-day bank account and looking at that equivalent, it  
27 pays a pretty good rate.  
28  
29 MS GUNAWARDANA: When we were having the previous  
30 conversation about comparing you with trustee companies  
31 which would do more than just put money into an account,  
32 there were some reasons that you --.  
33  
34 MR FARRELL: Sorry, I think you misunderstood me.  
35 Trustee companies or the equivalent would charge a higher  
36 fee than we do. For the cash day-to-day trust account, they  
37 would charge a higher investment fee. We have other  
38 investment options, where clients have sufficient funds to  
39 warrant it, to go into things like Australian shares,  
40 international shares, listed property and so on.  
41  
42 MS GUNAWARDANA: What I don't understand, and I still  
43 don't understand, is you do not even need a term deposit;  
44 you can open a cash trust management account anywhere  
45 online these days and get 3.5 per cent. I did a Google  
46 search this morning.  
47

1 MR FARRELL: As I mentioned, you are a retail client. We  
2 are a wholesale client. Banks are rewarded for taking  
3 money from retail clients and they are penalised for taking  
4 them from wholesale clients such as us. If you were to go  
5 back 10 years, we could get a higher rate than you could  
6 get.  
7  
8 MS GUNAWARDANA: So you only get the RBA cash rate?  
9  
10 MR FARRELL: No, we are getting a bit more than the RBA  
11 cash rate but, because we are a wholesale client, the banks  
12 will not give us a large rate because the banks are  
13 penalised. They have to hold more capital against our  
14 deposits than they do against, say, your individual  
15 personal deposits.  
16  
17 As I mentioned, we are in discussions with a number of  
18 banks at the moment. We are trying to achieve a better  
19 rate. We are talking about putting, say, \$100 million with  
20 bank X and \$100 million with bank Y in order to get a range  
21 of deposits going and get a higher rate than we are  
22 currently receiving.  
23  
24 MS GUNAWARDANA: I understand your point but the  
25 broader issue for the rest of us is that you want to fund capital  
26 expenditure somehow by encroaching on the capital of the  
27 people who have invested money in you. At the same time  
28 that capital is also being encroached on by low rates of  
29 return that are not even keeping up with the CPI, so we get  
30 squeezed either way.  
31  
32 THE CHAIRMAN: That is a good point. Thank you.  
33  
34 I will let Alan speak first and then Imelda.  
35  
36 MR SAURAN: There are two things and one is on the rates  
37 of return experienced by clients, Trustee & Guardian offer  
38 a whole range of different asset classes to invest in.  
39 Clients are not obliged to hold their money in the Common  
40 Fund which is short term investments.  
41  
42 If I was investing for 20 years, I would not put it  
43 all in short term interest. That is just my personal  
44 preference. I would be surprised if any financial adviser  
45 would recommend to do such a thing. Trustee & Guardian do  
46 offer all different asset classes which historically have  
47 had much higher returns.

1  
2 The other point is on the overall budget, IPART has  
3 assumed zero price elasticity because they do not know the  
4 price elasticity, so that is very conservative. If you  
5 were to take an 11 per cent reduction in fees, it would be  
6 very surprising if the number of clients who have a choice  
7 in the matter did not increase, so what we are looking at  
8 is a conservative case, I would submit. Thank you.  
9  
10 THE CHAIRMAN: Thank you very much, Alan.  
11  
12 Imelda, do you want to saying anything else?  
13  
14 MS DODDS: I think Mr Sauran has picked up on some of  
15 those issues, but I will elaborate a bit more. We have a  
16 portfolio of investment opportunities that are managed and,  
17 yes, they are managed by BlackRock with JP Morgan as the  
18 custodian. For clients with assets over \$250,000, there is  
19 a financial plan developed which attributes investment  
20 across that portfolio to provide for the ongoing growth,  
21 which is the point Mr Sauran has made.  
22  
23 I would not want anyone thinking that the money just  
24 goes into the cash account, it does not, but obviously,  
25 with an organisation such as we have, we do require an  
26 amount in cash because of the ins and outs that occur  
27 throughout every working day.  
28  
29 We have an independent investment advisory committee  
30 which oversees that. We also have a range of investment  
31 options which are within the realms of the Trustee Act and  
32 the prudent person's principles that are enshrined there  
33 that require us to invest safely and appropriately.  
34 However, depending on client circumstances, those  
35 investments may be made in a much more higher yielding and  
36 a slightly higher risk profile than would ordinarily be the  
37 case. That is part of the service that we provide and the  
38 complexity of the service we provide.  
39  
40 The other point that I would make is that while I very  
41 much appreciate, Ishanthi, the circumstances of each  
42 individual client, our work, the fees we charge and the  
43 income we derive, is across all of our products and  
44 services, which, as you see, is much more than just  
45 financial management services. There are other services  
46 that we provide and must provide, and I will return to the  
47 issue of capital adequacy.

1  
2 While there are sometimes big capital expenditure  
3 items, it has been, as far as I know, forever thus from the  
4 previous parent organisations that they have self-funded  
5 and that they have not had access to Treasury funds for  
6 capital expenditure.  
7  
8 THE CHAIRMAN: Thank you.  
9  
10 MR FARRELL: Just a small point, if I may.  
11  
12 THE CHAIRMAN: Yes.  
13  
14 MR FARRELL: The investments that we offer other than the  
15 day-to-day trust accounts do provide higher return,  
16 however, they are very volatile, particularly the  
17 Australian Share Fund. The Australian share market is  
18 still not back at its pre-GFC point. So if clients with  
19 small amounts had been invested in that, they would be  
20 facing very significant losses and possibly not able to  
21 fund their own expenditure. For that reason alone, we only  
22 put clients with over \$250,000 in the broader range of  
23 investments.  
24  
25 THE CHAIRMAN: Thanks, Bernie.  
26  
27 Ishanthi?  
28  
29 MS GUNAWARDANA: I guess we fall below that. I can  
30 only talk about my individual circumstances. We fall below  
31 the 250,000 threshold. I would bring up the point of, "well,  
32 who is absorbing those?" If you offer a different range of  
33 products to different people but you are proposing a flat  
34 investment fee, I am not sure why that should apply  
35 because, again, I see it as a circumstance of charging  
36 people, as is needed, for their investment product range,  
37 whatever that is.  
38  
39 MR FARRELL: That common investment fee across all  
40 products was put in place following the 2003 IPART report.  
41 If you go to, say, Perpetual, you will find a whole  
42 different range of fees according to the type of fund it  
43 is. IPART recommended that we have a single investment fee  
44 across all funds to reduce any incentive for us to put  
45 clients in funds that may pay a higher investment fee to us.  
46  
47 THE CHAIRMAN: We will look into that Bernie, thank you.

1  
2 Is there anything else? Yes, Robert.  
3  
4 MR HAEBICH: This is a separate issue relating to the  
5 fairness test. I am just wondering where you fit in the  
6 other role of T&G, which is to become involved in carrying  
7 out government policy, to, say, be involved in the Law  
8 Reform Commission's inquiry into the law of capacity or  
9 integration with the National Disability Scheme. How are  
10 those sorts of things to be paid for?  
11  
12 THE CHAIRMAN: Normally, if the government asks you to  
13 do something which is not servicing the clients, then the  
14 government should fund you to do that if the government  
15 asks T&G to do something like that.  
16  
17 MR HAEBICH: I don't think it is actually funded to do  
18 that.  
19  
20 THE CHAIRMAN: But the point is that otherwise you would  
21 have a situation where the fees to service the clients are,  
22 in effect, to implement other aspects of government policy  
23 under the scenario that you have outlined.  
24  
25 MR HAEBICH: I agree.  
26  
27 THE CHAIRMAN: That is, in a sense, having the fees from  
28 the service clients cross-subsidising the New South Wales  
29 taxpayer. There is a lack of transparency there and that  
30 is an issue. As to how have we dealt with that, to get to  
31 your question, we have not included that as an expense and  
32 we have not sought to recover it through fees because it is  
33 really a separate part of T&G's operations.  
34  
35 This comes up in other organisations. You can have an  
36 organisation which is providing a service and then the  
37 government asks us to recommend fees and we have to try  
38 and look at what costs are used to service the fees and what  
39 is, in a sense, a separate business.  
40  
41 Yes, Brendan?  
42  
43 MR MOORE: It is a question for IPART whether it has  
44 considered in a transition in the new fee arrangements. In my  
45 comments in the first session before morning tea I  
46 mentioned our concerns about the growing number of people  
47 with dementia who would be under direct financial

1 management services. We are supportive of the directions  
2 flagged around the wills and powers of attorney drafting.  
3 Obviously we would like more people to be planning ahead.  
4 There is also just a mention of the NDIS, we are also  
5 impacted by that. With people under the age of 65  
6 acquiring dementia, our interests in that are obvious.  
7  
8 A question then for IPART is whether, in the  
9 transition for the new fee arrangements, they have looked  
10 at trend analysis in the particular elements of Trustee &  
11 Guardian's business and the way there will be growth in  
12 some areas, decline in others and whether this puts them on  
13 a financially secure footing to be able to deal with this  
14 or does the revenue gap increase?  
15  
16 THE CHAIRMAN: I will have to ask staff to what extent we  
17 forecasted forward what is going to be the demand for the  
18 different areas of Trustee & Guardian's services, but if  
19 you were to have an increased number of clients in a  
20 particular area, then that would be covered by the fees  
21 that we are recommending and then whatever the government  
22 adopts, that would be covered by that.  
23  
24 Letitia?  
25  
26 MS WATSON-LEY: Just on that, we haven't done any  
27 forward assumptions or projections about likely changes in  
28 demand for services because the data was not available, so we  
29 are happy for data to be provided on that. We have looked at  
30 the 2012/13 client data and from that determining the  
31 efficient costs and the efficient fees for that, but in  
32 terms of trends going forward and whether a service is  
33 going to increase or decrease, we have not done that work  
34 and we are happy to receive data on that.  
35  
36 MR MOORE: Our thoughts would be that the clients that  
37 have been discussed here - the disadvantaged clients, the  
38 complex cases, the ones that are going to cost the Trustee  
39 & Guardian more - are potentially ones that we have an  
40 interest in and, if you like, the fee recovery may not be  
41 sufficient in the future to fully recompense the Trustee &  
42 Guardian.  
43  
44 THE CHAIRMAN: Just keep in mind the fee is per client.  
45 In the event that the number of clients go up because of,  
46 let's say, an increased number of people suffering from  
47 dementia, then they would come along and they would pay

1 whatever fees the Trustee & Guardian charges. If the fee  
2 that we are recommending, or the one that is eventually  
3 adopted by the government, is sufficient to cover the  
4 efficient cost of servicing those clients, that shouldn't  
5 be a problem. Where it becomes more of an issue is when  
6 you want to project forward Trustee & Guardian's P&L,  
7 basically - their surplus.

8  
9 MR MOORE: Or deficit.

10  
11 THE CHAIRMAN: Or deficit. That's a negative surplus.  
12  
13 Imelda?

14  
15 MS DODDS: Thank you, Mr Chairman. I would like to note  
16 that we did model forward demand. My understanding is  
17 that that has been provided. If there is some question about  
18 the validity of those figures, we would welcome the  
19 opportunity to talk that through but we have most certainly  
20 modelled forward in relation to our services. Much of it,  
21 of course, is based on ABS data, but others are based on  
22 forward projections of the growth in dementia, which is for  
23 everyone in this room quite frightening, but there is also  
24 material in terms of mental health trends as well, which  
25 are of concern. That is more recent.

26  
27 MS WATSON-LEY: I guess just on that, it is what Peter was  
28 saying - if demand for a certain service increases, the  
29 fees we have set are per client, so the fee revenue would  
30 also increase. So in terms of modelling the impact, we are  
31 focused on the 2012 budget which we have data for. We  
32 haven't done a forward projection of the budget impact on  
33 the fees.

34  
35 THE CHAIRMAN: Anything else? Any other comments?  
36 No? It is just about 1 o'clock, so we are right on time.

37  
38 CLOSING REMARKS

39  
40 THE CHAIRMAN: I would like to thank you all very much  
41 for attending. It has been a very interesting discussion and  
42 spirited at times and I think it has been a very worthwhile  
43 exercise.

44  
45 The transcript from today's forum will be available on  
46 our website within the next week. We are, of course, very  
47 grateful for the time you have taken to attend this forum

1 and to provide commentary. We will be taking all the  
2 commentary into account as we move to our final report.

3  
4 There is a further opportunity to have your views  
5 considered and that is by making a submission to the draft  
6 report and we will be accepting submissions up until  
7 10 October.

8  
9 Thank you and have a good afternoon.

10  
11 AT 12.57PM THE TRIBUNAL WAS ADJOURNED ACCORDINGLY

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