

13 August 2021

Our ref: BT-MC

Jacob Fredericks
Executive Director – Fees and Charges
Public Trustee of Queensland
GPO Box 1449
Brisbane QLD 4001

By email: [REDACTED]

Dear Mr Fredericks

Review of the Public Trustee's Fees and Charges

Thank you for the opportunity to provide comments on the Review of the Public Trustee's Fees and Charges (**Review**). The Queensland Law Society (**QLS**) appreciates being consulted on this important issue affecting vulnerable Queenslanders.

This response has been compiled by the QLS Health and Disability Law Committee and Elder Law Committee, whose members have substantial expertise in this area.

Inadequate consultation timeframe

The Public Trustee performs services that are vital to our community, and QLS is committed to working collaboratively with the Public Trustee, including to advocate for law reform that would assist the Public Trustee to better carry out its important functions. QLS supports the work being done by the Public Trustee in relation to the Review, and accepts that it must charge fees at a level that allows it to cover its operating costs. However, QLS considers that the initial time period for stakeholder consultation on the Fees and Charges Review is very short. We were pleased to receive the assurances of the Public Trustee that there will be additional opportunities for consultation as options are developed during the review.

Fees and charges recommendations

QLS generally considers that implementation of the recommendations set out in the Public Advocate's report, 'Preserving the financial futures of vulnerable Queenslanders: A review of Public Trustee fees, charges and practices', would result in the Public Trustee functioning more efficiently and cost effectively, while remaining able to provide high-quality services to vulnerable members of our community.

Review of the Public Trustee's Fees and Charges

QLS would welcome increased transparency from the Public Trustee as to how it has responded, or is responding to, the concerns raised in the Public Advocate's report. We look forward to further engagement on those issues.

QLS supports in principle a number of the Public Advocate's recommendations, in particular:

- the Public Trustee's fees and charges regime for administration clients should be simple, easy to locate and understand, and communicated to clients on appointment and annually;
- fees and charges should take into account clients' financial circumstances and their level of income, should not be financially oppressive, and should not deplete their assets and/or drive them into poverty;
- clients should not be charged duplicate fees, for example, it is not apparent why clients should be charged a fee for assets managed by third parties for which the client is already paying management fees to third parties;
- the Public Trustee obtain external financial and legal advice only when such advice is necessary in the client's interests and represents value for money for the client. Legal advice obtained to protect the position of the Public Trustee should not be charged to the client
- the level of assets for financial hardship eligibility should be raised above \$5,000 (for example, the NSW Trustee and Guardian's threshold for fee rebates or discounts starts at asset levels of \$75,000 with additional discounts for clients with assets under \$25,000);
- review, update and publish the Prudent Person Rule Manual to ensure it appropriately reflects the Public Trustee's obligations as trustee and fiduciary;
- review the Public Trustee's position on conflict transactions, in particular its reliance on Supreme Court case no 5931 of 1996 as providing legal authority for all potential conflict transactions;
- consider whether approvals (or specific legislative amendments) should be sought in relation to investing administration client funds in the Public Trustee's own investment products; and
- develop an easy to understand and follow complaints process whereby clients and their advocates are supported to make complaints about the Public Trustee.

Public Trustee legal services and charges

Our members are particularly interested in the Public Trustee's response to the Public Advocate's findings about the use of the Official Solicitor, and any internal guidelines relating to engaging the Official Solicitor, as well as oversight of the Official Solicitor. Our members report that there is currently no process whereby the Official Solicitor's costs are externally audited. For people with impaired decision-making capacity who do not have family or friends to act as their advocate, this can result in zero oversight of the Official Solicitor's costs.

QLS understands that the Public Trustee has split its legal services to ensure that when a client is being charged for a legal service conducted by the Public Trustee, there is a separate legal team. Our members have indicated that it would be useful to have some more practical understanding about that.

Review of the Public Trustee's Fees and Charges

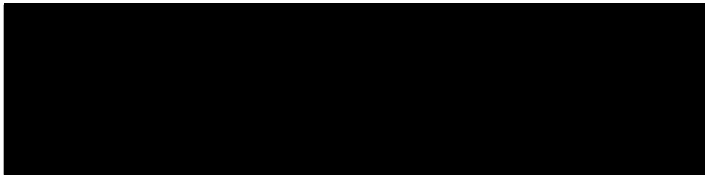
Other concerns relating to fees and charges

Our members have raised that the Public Trustee should ensure that debts are validly owed by people under their care before they start paying them. Issues like responsible lending, the fact that a client might be judgement proof, or whether the debt may be statute barred, are important to explore prior to paying off debts.

Finally, our members hold reservations about the mandatory practice of conducting annual building and pest inspections, smoke alarm inspections, and property valuations, all of which come at a cost and should be operated to some degree as a case by case decision.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Elizabeth Shearer
President