



11 June 2014

**IPART Issues Paper May 2014:
A fair and transparent fee structure for the NSW Trustee and Guardian**

The Mental Health Coordinating Council (MHCC) is the peak body representing community managed organisations (CMOs) in NSW. Our members deliver a range of psychosocial disability support programs and services including housing, employment and social inclusion activities, as well as clinical and peer supported services with a focus on recovery orientated practice. MHCC members also include organisations that provide advocacy, education, training and professional development and information services. Our membership in NSW consists of over 200 organisations whose business or activity is wholly or in part related to the promotion and/or delivery of services for the wellbeing and recovery of people affected by mental health conditions. We work in partnership with both State and Commonwealth Governments to promote recovery and social inclusion for people affected by mental health conditions, participate extensively in policy and sector development and facilitate linkages between government, community and private sectors in order to effect systemic change. MHCC also manages and conducts collaborative research and sector development projects on behalf of the sector. MHCC is also a registered training organisation (MHCC Learning & Development) delivering nationally accredited mental health training and professional development to the mental health and human services workforce. MHCC is also a founding member of Community Mental Health Australia (CMHA), the alliance of all eight state and territory community sector mental health (MH) peak bodies. Together we represent more than 800 CMOs delivering mental health and related services nationally.

MHCC thanks the Independent Pricing and Regulatory Tribunal (IPART) for inviting us to comment on this issues paper which was made public in May. This tight time frame for submissions has made it difficult to consult broadly with our membership. Therefore, the comments we provide are based on our views and those shared with us by stakeholders we know to have experience in these matters. However, we cannot claim to have consulted to the extent that we normally do in order to provide feedback on such important matters as are raised in this paper.

The paper lists a number of issues for stakeholders relevant to the review and the Terms of Reference comments following:

1. Do you think the broad principles we used for our 2008 review of the Office of Protective Commissioner fees are appropriate for the current review of the NSW TG's fees?

1. Broadly we agree that the principles used in the 2008 review are appropriate to the current review.

Should we add a principle that we should not recommend fees for services that are provided in a competitive market?

We suggest that services provided in the competitive market should be subject to market forces, but that NSW TG should provide comparative information to assist clients make the best decisions as to where they can access those services. It is our view that many clients will assume that the government regulated body will provide the best oversight and accountability, as well as the best value for money. However, some information suggests that this may not be the case, as evidenced by this example following posted on the internet by a legal practice in NSW (posted: *Thursday, 14 November 2013. Posted in [Legal Issues Blog](#)*)

"NSW Trustee & Guardian – Free Will Offers

Many people would have heard of the **NSW Trustee & Guardian's** free Will service. Whilst this is an important service, what you don't know is that whilst the preparation of your **Will** may be free, you may be surprised at the fees charged to administer your **Estate** after you're gone.

Below is a list of estimated fees of private Solicitors verses that of the NSW Trustee & Guardian listed by value of Estate -

Value of Asset	Solicitors Fees (Incl GST)	Trustee Fees (Incl GST)
\$200,000.00	\$ 1,510.30	\$ 4,400.00
\$500,000.00	\$ 2,083.00	\$ 7,700.00
\$750,000.00	\$ 4,787.20	\$14,850.00
\$1 Million	\$ 6,017.00	\$17,600.00
\$2 Million	\$ 7,843.00	\$28,600.00
\$5 Million	\$12,100.00	\$61,600.00
\$10 Million	\$17,055.00	\$116,600.00

The NSW Trustee & Guardian fees can be found at www.tag.nsw.gov.au/executor-fees-and-charges.html

The Trustee and Guardian is a very important institution to preserve people's rights in NSW and by all means attend the free Wills days. But consider very carefully whether you allow them to prepare your **Will**. It may save you \$300.00 now but your children may well be shaking their heads and muttering under their breath after you're gone when they realise their **inheritance** has been significantly reduced by the **Trustee's Commission**."

Whilst we have no way of establishing the validity of these comments and comparative fee structure, we recommend that the NSW TG provide some comparative fee information, so that clients can better understand the discrepancies.

2. *Do you agree with our preliminary view that we should recommend fees for the following NSW TG services?*
- *Financial management services for protected persons (including services for 'intensive needs' directly managed, other directly managed and privately managed protected persons).*
 - *Trustee services for low-wealth customers.*

2. MHCC agree with the statement that fees should be recommended for the two client types described above.

3. *Do you agree with our preliminary view that we should not recommend fees for the NSW TG's trustee services for market customers, but that the NSW TG should set its own fees for these services? If not, please provide your reasons.*

3. MHCC agree that the NSW TG should not recommend fees for market customers, but as suggested in answer to question 1, it would be useful if some comparative fee structures were available so that potential customers could evaluate whether any difference in the service model reasonably equates to a cost differential. At the very least the NSW TG could provide recommendations as to the questions a potential customer might ask when speaking to/instructing either NSW TG services or a commercial provider.

4. *Do you support our proposed approach for estimating the efficient costs of the NSW TG's regulated services, including identifying benchmark fees for similar services in the competitive market, and adding costs specific to serving protected persons, including 'intensive needs' protected persons?*
- *If so, what are the most appropriate benchmarks available?*
 - *If not, what methodology should we use to estimate these efficient costs?*

4. MHCC support the approach suggested that with regards to regulated services that NSW TG identify benchmark fees for similar services and clearly explain the additional costs in relation to serving protective persons with 'intensive needs'.
- Whilst we understand that NSW does not have a Legal Ombudsman, perhaps the NSW Ombudsman could undertake the role of benchmarking, or contract a suitable firm to undertake such a project. We would recommend in any event that IPART should conduct a benchmarking project every 5 years.
 - We believe that there are a number of benchmarking tools available in the UK, such as Lipper which is part of the Thomson Reuters Company. However, this may only be applicable to the UK market and relevant to Funds Management in a UK context. However, we are sure that firms such as Deloitte and KPMG could provide such information.

5. *Is IPART's previous interpretation of a 'clear, fair and transparent' fee structure appropriate for this review of the NSW TG's fees? If not, what would you recommend?*

5. MHCC agree that the definition of a "clear, fair and transparent" fee structure is appropriately defined in the Issues Paper (pp.21,22).

6. *Do you agree with our proposed approach to identify the costs of serving protected persons before considering the fair proportion of those costs that protected persons should pay? If not, what methodology do you recommend we use?*

6. MHCC agree that protected persons are unlikely to have "control over their additional costs, and vary widely in terms of their capacity to pay for fees. Therefore, in the context of this review, a strictly user-pays approach may not be considered fair" (p.24). We agree that the additional costs that the NSW TG faces in servicing protected persons should be considered before determining what level of fees individual protected persons should pay, and what proportion the Government should contribute.

7. *What is the appropriate level of fees for protected persons? What level of community service obligation (CSO) should the Government provide?*

7. Where protected persons have no assets and live on Centrelink payments, the Government should cover entirely the NSW TG's applicable costs and not further reduce income by charging fees. Where a person has an asset which is their place of residence, but lives on a Centrelink pension, a deferral of fees until circumstances change (i.e. charge on a deceased estate) may be appropriate. However, circumstantial consideration may need to be taken; for example if a person inheriting an asset is also a person with disability.

8. *Is the NSW TG's current policy for waiving fees and charges well-targeted, providing appropriate assistance only to the clients who need it?*

8. Our view is that the NSW TG's current policy for waiving fees is appropriate (p.26). We additionally propose that the NSW TG waive fees for people who have received compensation payouts where the payout does not include compensation to cover the cost of fees, including any interest that accrues to the compensation which may be used in the calculation to cover the person's daily needs in respect to their loss/disability.

9. *Are the current caps on fees appropriate? Are they at the right levels? How should they be indexed over time?*

9. MHCC propose that whilst the current caps are appropriate they should be indexed in line with other government indexing, such as salary indexing. The indexed amount should be reviewed every 3 years.

10. *Should the NSW TG charge market-based fees for preparing wills and powers of attorney? What is an appropriate fee for low-wealth customers? How should 'low-wealth customers' be defined?*

10. We are very concerned that whilst wills and PoAs are prepared free of charge the subsequent executor fee structure is one that seems to be uncompetitive against commercial rates (p.28). We understand that in NSW an assessment of the value of an estate excludes the residence in which the protected person resides, but nevertheless we urge that the executor services percentage be reviewed and benchmarked against commercial rates (taking into account the additional costs incurred due to intensive needs). If necessary, it would be preferable to charge a small fee payable over time for establishing a will.

'Low-wealth customers should be defined as people either living entirely on Centrelink payments or receiving equivalent income from their assets up to a specified level, which should not just be based on a minimum wage. People requiring NSW TG support may also have responsibilities such as elderly parents, children or partners with (or without) disability, and their income should be evaluated against their individual circumstances. There is no 'one size fits all' assessment of low wealth, including owning a property in a metro region where that value may be quite high, but that compelling the client to sell the property would seriously affect their social networks and quality of life. Valuation of property should take into consideration the life-style of the customer and an understanding of the area that the client has lived and worked in, and in which the client has family and community connections. Consideration must also be made to costs incurred in maintaining a reasonable quality of life that includes recreation, and other costs such as transport to receive care and support.

11. *Do you support our preliminary views that funding shortfalls should be met by the Government, including:*

- Shortfalls resulting from the differences between the costs of providing financial service management to the NSW TG's clients and the fees that we recommend for these clients?*
- Shortfalls resulting from the application of the fee waiver policy?*
- Shortfalls resulting from other 'non-client' activities and inefficiencies (through budget funding)?*

11. MHCC agree that any funding shortfalls should be met by Government. We believe the Government has an important role in a civilised society to support people who experience difficulties in managing various aspects of their life including financial management. Any shortfall in fees to the NSW TG is funded by the tax payer and we strongly advocate that no person should be further marginalised and live in poverty by virtue of their disability. The community is generally onside with that thinking.

*12. Are you satisfied with the level of service provided by the NSWTG?
Do you think it has improved over the last 5 years?
Is the level of service similar to what you would expect from a private service provider (e.g., a trustee company, solicitor or accountant)?*

12. Anecdotally, stakeholders have told us that many NSWTG clients, their families and carers are less than happy with the services they receive. Since the amalgamation of the Office of the Protective Commissioner and the Public Trustee in 2009, whilst services are more broadly available across regional areas, quality of service has deteriorated. This is primarily due to the loss of expertise that occurred because of the merger, and that those officers handling financial matters have little knowledge and understanding of the complexity of co-existing difficulties that many of their clients experience.

A degree of frustration is also expressed about accountability, and MHCC strongly advocates that KPIs are developed in consultation with clients and their carers to establish benchmarks for satisfaction and evaluation of service delivery over time. It is important that independent scrutiny be established and that complaints and appeals are published rather than just identifying problems through root cause analysis.

We appreciate that there is a correlation between service cost and quality, but it is important that standards are met whether paid for by the client or the state. Clients, particularly those unable to advocate for their needs and assert their rights, must be protected by society. Such services are crucial for society as a whole. After all, none of us know when we might be in need of support and protection. It is an important safety net for the community as a whole.

In answer to the second part of question 12, no - as we understand it, services provided by the NSWTG have not improved.

In answer to the last part of question 12, we do not imagine that the service provided is similar to that which might be expected by a private provider. We stress that it is critical that the NSWTG have additional skills and expertise to manage the financial affairs of vulnerable people and that the workforce must be suitably skilled to undertake this role. As with lawyers who work in a disability context, the expectation is that the NSWTG will ensure its employees receive the training and professional development they need to undertake their role satisfactorily, and that their workforce will be supported and supervised on an ongoing basis to ensure quality of service is maintained.

13. Should IPART index and publish a list of fees and charges annually and review the fees and charges after 5 years?

13. Yes, IPART should review its fees at least every 5 years, preferably every 3 years.

14. Should NSW TG use the fees that we recommend for protected persons as a guide in assessing the fees charged by private managers?

14. In theory the NSW TG should use its recommended fees as a guide to private practitioners for 'protected persons', but the benchmarking work mentioned earlier needs to be undertaken and the additional costs attached to intensive service delivery needs should be quantified against 'normal' service provision.

MHCC expresses its willingness to be consulted further regarding matters raised in this submission. Please feel free to contact me at corinne@mhcc.org.au or T: 02 9555 8388#102.



Corinne Henderson
Acting Chief Executive Officer