

NSW DISABILITY NETWORK FORUM

16 October 2014

Dr. Peter Boxall, AO
Chairman, Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office
NSW 1230

Re: Review of Fees for the NSW Trustee and Guardian

Dear Dr. Boxall,

The NSW Disability Network Forum appreciates the opportunity to give feedback on the review. The Disability Network Forum considered the draft recommendations at its meeting on 7th October 2014, and provides the following comments for your consideration. The Disability Network Forum appreciates the extension of time offered by the Tribunal to make a submission to this review.

About the NSW Disability Network Forum

The NSW Disability Network Forum comprises non-government, non-provider peak representative, advocacy and information groups whose primary aim is to promote the interests of people with disability. The NSW Disability Network Forum aims to build capacity so that the interests of people with disability are advanced through policy and systemic advocacy. The Council of Social Service of NSW (NCOSS) provides secretariat support to the Forum.

NSW Disability Network Forum member organisations have had extensive experience with NSW TG, including supporting their members and clients with applications for financial management orders, Tribunal hearings, and in their dealings with NSW TG. This submission focuses on fees for financial management functions exercised by the NSW Trustee and Guardian (NSW TG).

Principles for fee setting

The NSW Disability Network Forum does not consider it reasonable to charge fees to clients under involuntary financial management. Financial management is not optional; NSW TG is imposed as a financial manager by a court or tribunal. Therefore NSW TG cannot be treated as a 'monopoly provider' – it is performing a statutory function. Persons under financial management do not have choice because of a legal determination about their capacity to make decisions, not due to market failure. Most other government functions involving decision-making for vulnerable persons, such as statutory child protection, have no charges, nor would it be reasonable to levy them.

In recognition of the involuntary nature of financial management, the Disability Network Forum considers that fees must be minimal. It is therefore not sufficient to only consider the efficient cost in determining a fee structure. A number of other relevant considerations include:

- that financial management restricts the autonomy and human rights of protected persons;
- vulnerability of NSW TG clients; and
- broader social disadvantage experienced by people with disability.¹

¹ AIHW, *Australia's Welfare 2013: 5. People with disability*, Australia's welfare no. 11, Cat. no. AUS 174, Canberra, AIHW 2013, pp. 219-232.

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NSWTG functions may also result in social outcomes such as preventing crises, abuse and exploitation, and thus result in savings to higher cost services such as the health or justice systems.

The disadvantaged circumstances experienced by NSWTG clients are not limited to their capacity to pay fees, but also extend to their restricted life opportunities, some of which result from financial management itself. The NSW Disability Network Forum therefore proposes replacing the principle of “fairness” with the principle of equity. Equity as a principle also considers other circumstances such as lack of access to human rights, social disadvantage and vulnerability of NSWTG clients, and their restricted autonomy.

Recommendation 1

That IPART considers the vulnerability and social disadvantage experienced by NSWTG clients in its recommended fee structure, and replaces the principle of “fairness” with the principle of “equity”.

Fee structure

The NSW Disability Network Forum submits that the proposed \$500 minimum establishment fee for financial management is unwarranted. The analysis undertaken by IPART has not been able to transparently determine an efficient cost for establishing a new client because of limitations in data. Therefore the proposed minimum establishment and monthly fees appear to have little basis in evidence. As discussed above, the Disability Network Forum recommends other considerations are accounted for in fee setting. The Forum recommends against introducing a \$500 minimum establishment fee and \$10 monthly fee for financial management, and supports retaining the current percentage based fees.

Recommendation 2

That current establishment and monthly fees are retained, and introduction of any other establishment fee is delayed until the cost of establishing a new client can be determined.

The NSW Disability Network Forum supports the proposed reduction in the investment fee, yet submits that this fee should not exceed the return on investment achieved by NSWTG at any time.

Recommendation 3

That fees levied on investments do not exceed the return on investment.

The NSW Disability Network Forum also queries the proposed threshold rates for discounts and fee exemptions. These rates have no precedent in the current NSWTG fee structure, and the draft report does not explain this proposal. The proposed minimum asset amount for a person liable for the minimum fee is significantly below the average assets held by NSWTG clients. Average financial assets and income of NSWTG clients are low.

The Disability Network Forum is aware of people with disability under financial management who have low income but high financial assets due to inheritance or compensation payments. These assets must supplement people’s income for many decades. Threshold rates set too low would

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therefore compromise the welfare of people under financial management for many years into the future. The Disability Network Forum recommends that the threshold rates for discounts (\$75,000) and exemptions (\$25,000) are increased.

Recommendation 4

That threshold rates proposed by IPART for fee discounts and exemptions are increased.

General comments

Human rights approach

The Disability Network Forum notes that Article 12 of the UN Convention on the Rights of Persons with Disabilities (CRPD) is directly relevant to the functions of NSW TG. Under Article 12 people with disability are recognised as having equal legal capacity, and must be supported to exercise their capacity. The National Disability Strategy (NDS) commits all Australian Governments to achieving the provisions of the CRPD. The Australian Law Reform Commission is presently undertaking an Inquiry into Commonwealth laws that relate to legal capacity as part of the NDS. Although the Inquiry does not examine State and Territory guardianship regimes, it does address the intersection of Commonwealth and State and Territory laws. As a result of law and policy reform that may emerge from the Inquiry, NSW TG and its functions may undergo significant reform in the near future.

At present NSW TG rarely supports clients to exercise or develop their capacity. If NSW TG offered greater opportunities for clients to develop and exercise their capacity, NSW TG's workload could be reduced. Although there are legislative provisions for reviewing and terminating financial management orders, and for orders to be limited in time and scope, these are rarely used. Greater use of these provisions could substantially reduce the workload of NSW TG as well as giving effect to the NSW Government's human rights obligations. This could include developing individual plans to transition clients to managing more of their own finances or ceasing financial management.

Recommendation 5

That NSW TG develops further opportunities for clients to exercise and develop their capacity by:

- trialling and implementing supported decision making models;
- reviewing and planning to cease financial management on a case by case basis;
- offering greater opportunities for clients to make purchases and transactions;
- involving clients in budgeting and decision making;
- offering greater support for clients to engage in decision making and budgets; and
- offering training in financial literacy.

Accessibility of this review

The NSW Disability Network Forum is concerned that not all stakeholders have been able to engage with this review. Most NSW TG clients are people with intellectual disability or cognitive disability. The length of the draft report and the dense writing style can be difficult to understand for many people with intellectual disability. Many NSW TG clients have also not developed literacy or numeracy. The Disability Network Forum recommends that information about this and future reviews, including how to respond to IPART proposals, is made available in a broad range of formats to ensure people with disability can participate in the review. For people with poor literacy, the proposals would need to be explained by a participation worker.

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Recommendation 6

That IPART makes information about this review and its proposals available in a variety of accessible formats (including Easy Read, Auslan, and Braille), and the option to have proposals explained by participation workers.

Recommendation 7

That IPART offers a range of accessible options for response to reviews such as verbal responses that can be lodged by telephone, and taking submissions in person.

The National Disability Insurance Scheme (NDIS)

The Disability Network Forum notes that comments in the draft review report about the NDIS do not reflect many of the arrangements under the NDIS. The NDIS does not provide services directly, but provides funding for supports. A person may choose to assign the National Disability Insurance Agency, which administers the Scheme, as their fund holder. The person may also choose to manage their funds themselves or assign a third party to manage their funds. If the person manages their own NDIS funding, this would not mean that any agency engaging with the person would be eligible to recover a fee for its activities. If NSWTCG were to seek a fee for activity in relation to the NDIS, it must meet other conditions under legislation, regulation and guidelines.

Furthermore, as the NDIS will replace current disability services and supports in NSW, the Disability Network Forum does not anticipate that it will significantly increase the workload of NSWTCG in future. Engagement with the NDIS will replace the current engagement that NSWTCG has on behalf of its clients with disability support programs. In this respect, NSWTCG is in no different a position than any other agency that people with disability are involved with. Workload relating to the NDIS is not a sufficient basis for proposing increased fees.

Service quality

Disability Network Forum member organisations concur with other stakeholder submissions about the quality of services provided by NSWTCG. Member organisations have also experienced delays with correspondence, difficulty with contacting staff, and practices such as posting cheques where faster means for funds transfers are available. These practices result in poor outcomes for clients, some of whom have substantial financial assets, but live in as if in poverty. Inefficiencies also limit the extent to which clients can exercise their rights. The Disability Network Forum acknowledges that NSWTCG is working towards greater efficiency, and submits that a human rights approach must also be considered in reforms. The Forum suggests that IPART refers these matters to the Attorney-General, as they are outside the scope of this review.

Conclusion

The NSW Disability Network Forum appreciates the opportunity to provide feedback to this review, and looks forward to the release of the final report. For further information please contact Rashmi Kumar at rashmi@ncoss.org.au or (02) 9211 2599 extension 108.

Yours sincerely,

Tracy Howe
NCOSS CEO, on behalf of the NSW Disability Network Forum

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NSW Disability Network Forum Member Organisations:

Aboriginal Disability Network NSW	Multicultural Disability Advocacy Association of NSW
Association of Blind Citizens of NSW	NSW Consumer Advisory Group - Mental Health
Brain Injury Association NSW	NSW Council for Intellectual Disability
Deaf Australia NSW	NSW Disability Advocacy Network
Deaf Society of NSW	People with Disability Australia
DeafBlind Association NSW	Physical Disability Council of NSW
Deafness Council (NSW)	Positive Life NSW
Information on Disability and Education Awareness Services	Self Advocacy Sydney
Institute For Family Advocacy	Side By Side Advocacy Incorporated
Intellectual Disability Rights Service	Council of Social Service of NSW