

COMHWA Member Briefing Paper – June 2023



Topic

The exploitation of those under the care of the Public Trustee by the procedures of this institution.

Purpose

The Public Trustee is a state government institution tasked with responsibly managing the estate of people who are found to be unable to take care of their own affairs safely or responsibly. This service is, in principle, designed to protect members of the community from suffering and being exploited.

Background

In 2008 the WA State Government instigated changes in the *Public Trustees Act* 1941 that altered the funding model for the Public Trustee, with the intention to make the organisation fully self-funded.¹ By 2012 the Public Trustee had achieved this self-funding through charging these newly determined administrative fees to its clients.

Over the last three years, multiple investigations into the Public Trustees of various Australian States have been carried out by media organisations, prompting state agencies to commence their own audits and investigations. This increased scrutiny has resulted from the reporting of particular cases where vulnerable clients of Public Trustees were overcharged or denied access to their funds for everyday necessities. In Queensland, for example, a Four Corners report revealed that individuals had been hospitalised, sedated and transferred to supported accommodation against their will while incurring tens of thousands of dollars in fees to the Trustee whose care they opposed. Even more concerning, the Trustee has the power to withhold funds that clients could use to mount legal challenges, and if their clients receive outside funding and help to mount such challenges, fight their case in court with their client's own money.²

In Western Australia, the Public Trustee has been accused of charging exorbitant rates for relatively simple financial services: In 2022 a widower was charged nineteen thousand dollars to have his deceased wife's shares transferred to his account. When this was challenged, the Public Trustee amended the fee to half of the original value.³ This year, it was revealed that a pensioner was having 40% of his income taken in fees and has had trouble ensuring that he is receiving enough weekly stipend to pay for his food.⁴ An

¹ Parliament of Western Australia. 2008. 'Public Trustee and Trustee Companies Legislation Amendment Bill 2006'

<https://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=68B36013B271CB4048257235001A29C3>

²Connolly, Anne. 2022. 'Australia's public trustee revelations are like a Hollywood movie — with a devastating plot twist' <https://www.abc.net.au/news/2022-03-20/australias-public-trustee-crisis-is-like-a-hollywood-movie/100921578>

³Turner, Rebecca and Ho, Casan. 2022. 'WA's Public Trustee under microscope after charging \$370 an hour to transfer ownership of shares' <https://www.abc.net.au/news/2022-10-16/wa-public-trustee-under-fire-over-fees-to-manage-estates/101499296>

⁴ Ho, Casan. 2023. 'Public Trustee leaves pensioner without money for food and takes 40 per cent of his income' <https://www.abc.net.au/news/2023-03-29/wa-public-trustee-high-administration-fees/102092732>

Consumers of Mental Health WA (CoMHWA)

additional concern in the Western Australian context is the lack of staffing in the Public Trustee and Public Advocate to appropriately contact, inform and care for their clients. It has been recently reported that, for the most junior manager at the Public Trustee in 2021, they were responsible for an average of 198 clients.⁵

The Issue

Vulnerable members of the community, including mental health consumers, are subject to the control of their finances by the Public Trustee, who are self-funded by charging administrative fees to those under their care. Because of privacy laws surrounding guardianship, it is illegal for news organisations to publish details of these stories⁶ and accordingly vulnerable people, deeply upset with the treatment they have received, have been silenced from talking about their experiences.

Response to date

In response to media reports, in 2022 the WA Auditor General produced a report on the Public Trustee noting that fees were frequently being charged for services that, in many cases, required little to no work from the Public Trustee.⁷ In response to the Auditor General's report, the Department of Treasury is investigating the appropriateness of the Public Trustee's self-funded model. Other States are also taking steps to try to address identified concerns in the operation of their Public Trustees, for example in 2022 the Public Advocate for Queensland, called for the reform of Guardian and Administration Act to ensure those under state care can speak with the media and be identified.⁸

CoMHWA's Position

- CoMHWA welcomes the increased scrutiny of Institutions such as the Public Trustee who are responsible for managing the affairs of vulnerable consumers of mental health.
- CoMHWA encourages a review of the policies that prevent the identities of vulnerable members of the community who consent to having their stories told.
- CoMHWA has concerns over the Public Trustee's self-funding model, and the potential influence this has on charging significant fees for the routine management of the affairs of the people they are supposed to help.

⁵Connolly, Anne. 2023. 'Prisoner of the State' <https://www.abc.net.au/news/2023-03-26/public-trustee-dementia-aged-care/102078430>

⁶ Ho, Casan. 2023. 'Families of people under state care stonewalled amid allegations of mistreatment' <https://www.abc.net.au/news/2023-04-30/public-trustee-confidentiality-laws-staffing-mistreatment/102179624>

⁷Office of the Auditor General. 2023. 'Public Trustee's Administration of Trusts and Deceased Estates' <https://audit.wa.gov.au/reports-and-publications/reports/public-trustees-administration-of-trust-and-deceased-estates/>

⁸ Connolly, Anne and Stewart, John. 2022. 'Calls to repeal gag laws for those under guardianship and trustees' <https://www.abc.net.au/news/2022-08-31/queensland-public-advocate-calls-for-changes-to-gag-laws/101383212>

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- CoMHWA is committed to advocating for the transparency of administrative fees and the accountability of the Public Trustee to consumers who require their assistance.

Have your say:

CoMHWA is dedicated to representing your views on these reforms. To have your say, please get in touch with our Systemic Advocacy Team at sysadvocacy@comhwa.org.au.

