

7 June 2021

Mr Samay Zhouand
Public Trustee of Queensland
GPO Box 1449
Brisbane Qld 4001

Via email: Samay.Zhouand@pt.qld.gov.au

Dear Mr Zhouand



Please accept my warm congratulations on the recent announcement of your appointment to the role of Public Trustee. I wish you every success in the role and look forward to continuing to work closely with you on your Public Trustee reform agenda.

I am writing about the implementation of the recommendations in my report *Preserving the financial futures of vulnerable Queenslanders: A review of Public Trustee fees, charges and practices* (the Report).

I note the government has accepted in principle the majority of the 32 recommendations in the report and that 23 recommendations have been referred to the Public Trustee to implement.

I confirm your advice at one of our recent meetings that members of your leadership team, in particular, your legal advisors, do not accept many of the fundamental observations in the report and the basic legal principles on which many of the recommendations are based. Specifically, they do not accept the findings relating to the numerous practices of the Public Trustee that amount to breaches of fiduciary duty. Nor is there an acceptance that there is duplication and overlap in some fees and charges. This is despite evidence in the report that the Public Trustee charges an annual Asset Management Fee on client assets, as well as an additional Management Fee on those assets invested in the Public Trustee's Growth Trust, which is in addition to the management fee charged by Queensland Investment Corporation to manage the investment.

I think it is reasonable to assume that the government accepted the majority of the recommendations in the Report on the basis that it has accepted the fundamental facts and legal principles on which the findings and recommendations are based. This appears to be at odds with the Public Trustee's position. My concern is that if those primarily responsible for implementation of the recommendations of my Report — officers of the Public Trustee — do not accept them, it is unlikely that they will be effectively implemented. I am extremely concerned to ensure that we do not miss what is likely to be a once-in-a-generation opportunity to transform the Public Trustee into a modern, transparent and accountable trustee agency.

My second concern is that your management team is proceeding with implementation of one key recommendation of the Report — a comprehensive review of the Public Trustee's fees and

charges scheme — without waiting for government to settle critical policy decisions that are likely to require legislative amendment, and should be finalised before any such review can effectively proceed. The problems with the fees and charges review are further complicated by the Public Trustee's leadership team not accepting some of the key points in the Report, as outlined above.

Of particular concern is the issue of the Public Trustee retaining earnings on client funds invested in the Common Fund, which you refer to as the 'interest differential'. As noted in my Report, section 19 of the *Public Trustee Act 1978* suggests that the Public Trustee can retain some interest from the earnings on client money in the Common Fund, but does not specifically acknowledge that this amounts to a breach of fiduciary duty and permit the retention of the earnings (as is required by law to override an established legal principle such as the principles relating to the obligations of a fiduciary), nor does it specify the amount of the earnings that the Public Trustee can retain.

In 1996, the Queensland Auditor-General expressed concerns about the level of earnings on the Common Fund that the Public Trustee was retaining from client funds. The Auditor-General observed that between 27 and 48 percent of the earnings on the Common Fund had been retained by the Public Trustee over the prior five years and took the view that the amount retained was 'inequitable', recommending the Public Trustee return some of the earning to clients. Rather than address this issue, in the last financial year, the Public Trustee retained over 60 percent of the earnings on client funds in the Common Fund.

Recommendation 11 of my report states:

Do not profit from administration clients unless expressly permitted by law

As a fiduciary and financial administrator, the Public Trustee should not profit from administration client funds unless expressly permitted by legislation. Any such legislative provisions should set clear limits on the amount and purpose of any income or 'profit' (See recommendations 29 and 31).

The purpose of this recommendation was to seek amendment of section 19 of the *Public Trustee Act* to ensure that it expressly permitted the Public Trustee to profit from earnings on clients, but set clear limits on the amount and purpose of any earnings that could be retained.

As noted in the government response to the Report, implementation will require legislative amendment, that will need to be informed by some significant policy decisions about whether to formally permit the Public Trustee to profit from earnings on client funds and the extent to which Government will permit that to occur.

Since the earnings on client funds amount to a significant revenue source for the Public Trustee, it is imperative that government policy decisions are made in relation to this, and other key issues that may affect the Public Trustee's operations and revenue, before any review of fees and charges can effectively proceed.

I am concerned that the Public Trustee has set an ambitious timeframe to have the fees and charges review completed by August 2021. Any such review completed without taking into account the matters I have outlined and also negotiating a review of the Public Trustee's large Community Service Obligation program, would fail to address many of the key issues and concerns identified in my report.

I have attached a Table I have prepared listing the Report recommendations, the government response and the Public Trustee response to each, and identifying where these responses are

misaligned or inconsistent. Considering the Attorney-General indicated that the Government accepted the majority of the Report recommendations, I respectfully suggest that we identify these inconsistencies and seek clear direction from the Attorney-General about how she wishes to proceed, to avoid delays and potential wasted effort and resources.

As I have already indicated to you, I am keen to participate on any working groups or provide any assistance or support to advance implementation of the Report recommendations.

Yours sincerely



Mary Burgess
Public Advocate

Enc

cc. Mr David Mackie
Director-General
Department of Justice and Attorney-General

Ms Jennifer Lang
Deputy Director-General
Department of Justice and Attorney-General

Ms Leanne Robertson
Assistant Director-General
Department of Justice and Attorney-General

Ms Rebecca McGarry
Executive Director
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Department of Premier and Cabinet

Preserving the financial futures of vulnerable Queenslanders: A review of the Public Trustee fees charges and practices

Recommendation	Queensland Government response	Public Trustee response	Public Advocate view
1 Undertake a full fees and charges review <ul style="list-style-type: none"> Review the Public Trustee's fees and charges regime for administration clients to achieve: <ul style="list-style-type: none"> a. a simpler fee regime for administration clients. Administration clients and their supporters must be able to easily understand the Public Trustee's fees, what services are provided for the fees, and how and when the fees will be charged; b. fees that are more equitable and take into account clients' financial circumstances and their level of income. All clients should pay something towards the cost of the Public Trustee services they receive. The fee regime should include a mechanism that ensures the fees payable to the Public Trustee by administration clients with limited income do not reach a level where the fees become financially oppressive and negatively impact clients' lives, deplete their assets and/or drive them into poverty; c. fees that reflect the actual cost to the Public Trustee of providing the services. The fees charged should not be inflated to cross-subsidise services provided to other Public Trustee clients, other organisational activities or to provide 'profit' for the Public Trustee, unless specifically permitted by legislation; d. no duplication or overlap in fees. Where clients have been charged an Asset Management Fee on an asset, the Public Trustee should not impose any additional charges for the management or investment of those clients' funds; e. cease the practice of charging administration clients fees on assets (such as superannuation fund holdings or other investments) managed by third parties and for which the clients are already paying management fees to those third parties. At a minimum the Public Trustee should charge a lower fee for superannuation fund holdings where it can be shown that there is annual 'active' management of the clients' funds; and f. a fee structure that supports and encourages administration clients to exercise autonomy and lead independent lives. Administration clients should not be charged higher fees where they require more support to exercise their capacity and autonomy in relation to their financial affairs. <p>NOTE: Legislative amendment required.</p>	<p>Referred to the Public Trustee</p> <p>Partially supported in principle.</p> <p>The PT has committed to undertaking an independent comprehensive review of all of its gazetted and non-gazetted fees and charges.</p> <p>The PT does not accept that there is any duplication or overlap in fees or any fees that are charged for no service.</p>	<p>The PA requests the PT to cease practices that amount to double charging or the charging of fees for no service. Otherwise, there is a risk that these unconscionable practices may continue. The PA would like to contribute to the PT's fees and charges review using the knowledge acquired from this project.</p> <p>For any review of fees and charges to be effective the PT needs to fully understand its operating costs and be confident in its estimation of its various sources of revenue. This includes its revenue from the retention of investment earnings on client funds that it refers to as the 'interest differential'.</p> <p>The report recommends the Public Trustee Act be amended to acknowledge the conflicts and breaches of fiduciary duty inherent in the PT's retention of the interest differential and formally permit and limit the scope of this practice. Currently the PT retains over 60% of the earnings on client funds. In 1996, the Auditor-General expressed the view that the PT's retention of between 27%–49% of the earnings was 'inequitable'.</p> <p>Whether the PT can earn revenue from clients' funds and what proportion of earnings on clients' funds the PT can retain is a policy decision that must be made by government and the Public Trustee Act must be amended to permit same.</p> <p>Until these issues are settled (along with the amount of CSOs the government wants the PT to provide), any review of PT fees will not be taking account of all relevant considerations.</p>	<p>The Public Advocate will continue to work with the Public Trustee to support it to improve the accessibility and transparency of information about its fees and charges.</p> <p>The PA is particularly keen to work with the PT to improve the transparency of Client Statements of Account for implementation as soon as possible.</p>
2 Improve the transparency of fees and charges <ul style="list-style-type: none"> The Public Trustee adopt the following practices to improve the transparency of its fees and charges: <ul style="list-style-type: none"> a. Provide clear and accessible information to administration clients about its fees and charges and the services clients will receive for those fees; b. The Public Trustee's policies and manuals that guide what services administration clients receive and how the fees and charges for those services are calculated and applied be published in accessible language 	<p>Referred to the Public Trustee</p> <p>Accepted in principle</p>	<p>Accepted in principle</p>	<p>The Public Advocate will continue to work with the Public Trustee to support it to improve the accessibility and transparency of information about its fees and charges.</p>

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<p>and format. This information should include scenario examples to clearly demonstrate the fees to be paid for that service.</p> <p>c. On appointment and annually, the Public Trustee send each client personal correspondence detailing the services they will receive and the fees for those services. This should also occur after any significant change to the client's financial circumstances. This communication should be written in plain English with clear explanations of all terms used. All correspondence to administration clients should explain how to locate relevant fees and charges information, policies and manuals on the Public Trustee website. Where clients do not have access to the internet, the Public Trustee should make this information available in hard copy on request.</p> <p>d. Review its policies and practices to ensure they actively encourage staff to be responsive to clients and their supporters, particularly in relation to explaining its fees and charges. This is likely to improve information transparency, client participation in the management of their financial affairs, and client satisfaction with Public Trustee services.</p> <p>e. The information presented in client Statements of Accounts be improved to make the statements more transparent and easier to understand. The statements should include summary information about categories of income and expenses and provide a total of the Public Trustee's fees, charges, additional service fees and outlays for the relevant period. Any special purpose or professional services payments should be the subject of separate correspondence that fully explains these costs and why they were incurred.</p>			<p>In relation to QCAT appointments, the PT is not an appointment of last resort. Often, families not realising the cost of the PT's services step back and allow the PT to be appointed to avoid the demands of administration.</p> <p>Without a requirement for the PT to disclose its fees, a discussion or consideration of those fees may not occur at the appropriate time. As stated in the report, there are times when the PT appears to compete with members of families for the appointment. As a consequence, not all PT appointments occur when there is no one else appropriate and available.</p>
<p>3 Consider the effect of fees when appointing the Public Trustee as financial administrator</p> <p>The Guardianship and Administration Act be amended to require a court or tribunal, when considering appointing the Public Trustee as a person's administrator, to consider the level of the Public Trustee's fees and their likely effect on the person's financial circumstances over time. This is especially relevant when there may be an alternative appointment option of a family member or friend as administrator who would not charge fees. The court or tribunal may need to request that the Public Trustee provide an estimate of annual fees and other usual charges and expenses associated with providing its services, prior to deciding the appointment.</p> <p>NOTE: Legislative amendment required.</p>	<p>Supports in principle</p>	<p>Accepted in principle.</p> <p>The PT refers to Supreme Court Practice Direction No 15 of 2018 which requires a proposed administrator to file an affidavit providing an estimate of the fund management costs.</p> <p>The PT also suggests that QCAT usually only makes an appointment if there is no one else appropriate and available.</p>	<p>Partially supported</p> <p>The PA accepts that it may be appropriate for the PT to obtain external financial advice in some cases, but certainly not all of the cases in which it has been obtained in the past and on a recurring basis.</p> <p>These arrangements must be reviewed to establish a more appropriate process that provides clients with value for money and delivers improved investment and financial outcomes. External financial advice should not be used as a means of managing risk for the PT and deflecting criticism in relation to the narrow investment options offered to clients.</p> <p>The PA will support the PT to undertake a procurement process for financial advice services. The PA warns that the tender document should not require, specifically or by implication, that the financial advisor only recommend PT investment products, unless the investment of client funds exclusively in PT products is expressly permitted under the Public Trustee Act.</p>
<p>4 Reconsider the practice of routinely obtaining external financial advice</p> <p>The Public Trustee review its practice of routinely obtaining annual financial advice from an external financial advisor and external legal advice to make Total Permanent Disability (TPD) insurance claims under clients' superannuation arrangements. The review should consider:</p> <p>a. whether obtaining external financial advice for most Public Trustee clients is reasonably necessary, considering the Public Trustee's expertise as a professional trustee;</p> <p>b. whether obtaining the external financial advice represents value for money for clients, taking into account:</p> <ul style="list-style-type: none"> - the Public Trustee's conservative investment policies which limit where and how clients' funds can be invested, and the returns they earn; and - the relatively low value of client assets for which the Public Trustee routinely obtains independent advice; 	<p>Referred to the Public Trustee</p>		

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C. whether the thresholds for obtaining external financial advice should be reviewed and raised significantly to ensure clients are not bearing the cost of the Public Trustee's mitigation of risk associated with its decisions;	Developing the capacity for internal financial planners is not supported at this time. The cost of providing internal financial advice would be prohibitive and would likely lead to higher costs for customers.		
d. when financial advice should be obtained for clients;	The PT is committed to undertaking a procurement process for financial advice services in 2021.		
e. the circumstances in which follow-up financial advice should be sought for clients; considering the costs of the advice and the genuine likelihood of a change in client investments being made; and			
f. whether obtaining external legal advice routinely to make TPD insurance claims under clients' superannuation arrangements is reasonably necessary and represents value for money, considering the relative simplicity of TPD claims processes.			
5 Discontinue general fees for incidental outlays The Public Trustee should cease the practice of charging general fees for incidental outlays to administration clients and only charge the actual costs of these outlays on each client's file if they are capable of being accurately costed.	Referred to the Public Trustee	Accepted in principle. Incidental outlays are being considered as part of the independent fees and charges review.	The PA notes this response and looks forward to the outcome of the review in relation to charges for incidental outlays.
6 Seek a Goods and Services Tax exemption The Public Trustee's Community Service Obligations be reviewed and consideration given to whether the Public Trustee's current Community Service Obligations should continue to be provided in their current form, and at current levels.	Supports in principle	Accepted in principle. The PT understands the NSW Trustee and Guardian obtained a 'private ruling from the ATO for charges which are recoveries and not fees'. However, the PT will consider this as part of the fees and charges review.	It is unclear why action in relation to obtaining an ATO ruling in relation to GST on the PT's fees should not be pursued as a matter of priority irrespective of the progress of the fees and charges review. The PA looks forward to the outcome of these inquiries.
7 Review Community Service Obligations The Public Trustee's Community Service Obligations be reviewed and consideration given to whether the Public Trustee's current Community Service Obligations should continue to be provided in their current form, and at current levels.	Referred to the Public Trustee	For further consideration. The PT will continue to support generous Community Service Obligations (CSOs) as we value and care for our customers and the community. Any decision to change the form or levels of CSOs is a matter for Government.	The AG advised in her response to the PA report that the government supports all of the recommendations in principle. As advised by the PT, any decision to change the form or levels of the CSOs is a matter for government. This misalignment of responses will need to be addressed. It appears the PT does not intend to act on this issue until it receives direction from the AG to review its CSOs in the context of its fees and charges review and propose a new CSO model outlining the specific types and levels of CSO that can be sustainably supported by the PT going forward for government endorsement and approval. The PT has been increasing the levels of CSOs annually without specific approval from government for those increases for many years. The PT delivered \$38M of CSOs in 2019-20, the highest level of any trustee in Australia. Victoria is the nearest with only \$18M of CSOs fully funded by the Victorian State Government. The current level and rate of growth of CSOs of the PT cannot be sustained. The PT is providing free wills to some Queenslanders who can afford to pay for them. These services are being subsidised by fees paid by PT clients, including those under administration. It is not likely the government intended CSOs to include free wills for people who can, and should, pay for the service, nor that those services should be subsidised by other clients' fees in breach of the PT's fiduciary duties. Both NSW Trustee and Guardian and State Trustees in Victoria charge members of the community to make wills for them. In 2019-20, PT's free wills program cost \$5M. NSW Trustee and Guardian provided \$1M of free wills and enduring documents to clients on full pensions. Otherwise, members of the community are charged a set fee of \$400 for a will and/or enduring document. The PT charges clients to make Enduring Powers of Attorney, making 24,400 free wills in 2019-20 but only 2,500 EPOAs. Supporting Queenslanders to make EPOAs reduces

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8 Discontinue client subsidisation of Community Service Obligations The Public Trustee cease using revenue raised through administration clients' fees and charges to fund or subsidise the cost of providing Community Service Obligations on the basis that a fiduciary should not use the funds of one client to fund services to another.	Referred to the Public Trustee Not supported. The PT does not fund or subsidise its CSOs from the fees and charges of financial management customers. Fees and charges, including CSOs, are being considered as part of the independent review of fees and charges.	The AG advised in her response to the PA report that the government supports all of the recommendations in principle. There is a conflict here. This misalignment of responses will need to be addressed. The PT's claim that it does not fund or subsidise its CSOs from the fees and charges of financial administration clients is not borne out by the financial information in the PT's Annual Reports and reproduced in the PA's report. In 2019-20, the PT's CSOs amounted to \$38M while investment revenue amounted to only \$21M. PT revenue from administration of estates, trust fees and other sources accounted for the \$17M shortfall. The 'value and care' shown to some PT customers appears to be at the expense of others, and amounts to a breach of fiduciary duty. In approving the new CSO model for the PT, the government should direct the PT that it can only fund its CSOs from its earnings on reserves, on the basis that a fiduciary should not use the fees from one client to fund or subsidise services to another.	demand on QCAT and the guardianship and administration system generally, and demand for PT administration services, and should be promoted by the PT.
9 Limit the level of Community Service Obligations The Public Trustee's Community Service Obligations should be capped at a level that can be reasonably funded from revenue earned on its investments.	Referred to the Public Trustee For further consideration. The PT will continue to support generous CSOs on 'we value and care for our customers and community'. Any decision to change the form or levels of CSOs is a matter for the government.	The AG advised in her response to the PA report that the government supports all of the recommendations in principle. There is a conflict here. The PT's denial that its fees result in the unavoidable depletion of client assets is not consistent with the evidence presented in the PA's report about the impact of PT fees and charges on some clients, especially those with low income, and who own the house they reside in. In approving the new CSO model for the PT, the government should direct the PT that it can only fund its CSOs from its earnings on reserves, on the basis that a fiduciary should not use the fees from one client to fund or subsidise services to another.	The government response to the PA's report does not outline the action the Queensland Government proposes to take in response to this recommendation.
10 Review fee rebate and financial hardship provisions to ensure client assets are not depleted by fees and charges The Public Trustee review its fee rebate and financial hardship schemes to: a. achieve more equitable outcomes for administration clients, especially those with limited incomes, such as pensions, who own their own home. The review should consider raising the level of assets for financial hardship eligibility above \$5,000 and reviewing the practice of including the value of clients' principal place of residence in the value of assets for calculating fee rebates; b. ensure no administration client will experience an unavoidable depletion of assets because of the amount of Public Trustee fees they pay and the inadequacy of the rebates; and c. develop a new stand-alone Fee Rebate and Financial Hardship Policy that is accessible and easy to understand to ensure that administration clients and members of the public know how the policy operates.	Referred to the Public Trustee Accepted in principle. The PT is committed to the financially responsible and transparent management of our customers' funds. Financial management customers benefit from generous CSOs and financial hardship rebates. The recommendation will be considered as a part of the comprehensive fees and charges review. HOWEVER The PT does not accept the inferences that its fees are inequitable or result in the unavoidable depletion of assets.	The AG advised in her response to the PA report that the government supports all of the recommendations in principle. There is a conflict here. The PT's denial that its fees result in the unavoidable depletion of client assets is not consistent with the evidence presented in the PA's report about the impact of PT fees and charges on some clients, especially those with low income, and who own the house they reside in. If the PT does not accept that its fee rebate and hardship schemes negatively impact some clients, resulting in the unavoidable depletion of their assets, it is unlikely that the concerns outlined in the fees and charges review.	The government response to the PA's report does not outline the action the Queensland Government proposes to take in response to this recommendation.
11 Do not profit from administration clients unless expressly permitted by law As a fiduciary and financial administrator, the Public Trustee should not profit from administration client funds unless expressly permitted by legislation. Any such legislative provisions should set clear limits on the amount and purpose of any income or 'profit' (See recommendations 29 and 31). NOTE: Legislative amendment required.	Supports in principle	No action required. The PT remains of the view that it has a clear mandate for its role and functions.	

Recommendation	Queensland Government response	Public Trustee response	Public Advocate view
12 Improve transparency of Public Trustee revenue sources The Public Trustee improve reporting of its sources of revenue, particularly revenue earned on administration client funds so that it is clear where clients' money is being invested, the overall returns on those investments, and the value of the interest differential that is being retained by the Public Trustee. The Public Trustee's revenue sources and use of administration client funds to raise revenue should be transparent and accountable so that people know how their money will be used and the likely returns on investments managed by the Public Trustee relative to their actual earnings.	Referred to the Public Trustee The PT is committed to increasing transparency and to financially and ethically responsible leadership and governance. Consideration will be given to how income received from the Common Fund can be more clearly reflected in the Annual Report.	Supported. The PT states that there is no cost to the 'customer' investing in the PT Common Fund and the Term Investment Account. This response disregards the PT's retention of earnings on client monies in those investments, which it refers to as the 'interest differential'. The proportion of earnings on client funds currently being retained by the PT amounts to over 60% of the total earnings. This clearly amounts to a cost imposed on those earnings by the PT and affects clients' investment returns.	The issue of transparency and reporting of revenue earned on client funds could be specifically addressed in any legislative amendment to section 19 of the Public Trustee Act, which deals with the PT retention of a proportion of the earnings on client funds in the Common Fund, referred to as the 'interest differential'.
13 Clearly report the fees and costs of managing Public Trustee investments The Public Trustee clearly report the fees it charges and other costs associated with the operation and management of its various investments (in particular the Common Fund, interest bearing term deposits and the Growth Trust) and its effect on clients' investment returns.	Referred to the Public Trustee HOWEVER The PT states that the PT Common Fund and the Term Investment Account.	Partially supported. The PT rejects the assertion that customers pay double charges.	The AG advised in her response to the PA report that the government supports all of the recommendations in principle. There appears to be a misalignment of responses here. It may be necessary for the AG to clarify her, and the government's, position in relation to this recommendation, especially in view of the acknowledgement (in her media release dated 10 March 2021, announcing a new Public Trustee Board), that the government 'has a responsibility to ensure the [PT] is open and accountable to community expectations'.
14 Stop requiring administration clients to pay double charges on their funds Administration clients should not pay double charges on their funds, where they pay an annual Asset Management Fee on their funds and additional fees to the Public Trustee and/or other organisations to manage investments dealing with those funds.	Referred to the Public Trustee The PT states that the Public Trustee Growth Trust Product Profile which provides information about its features, including costs is available on its web site and is also sent to customers who invest in the Growth Trust.	Partially supported. HOWEVER The PT rejects the assertion that customers pay double charges. The PT will be shortly publishing a fee ready reckoner to provide a concise overview of the different fees and charges applicable to financial management customers.	The AG advised in her response to the PA report that the government supports all of the recommendations in principle. There appears to be a misalignment of responses here. It may be necessary for the AG to clarify her, and the government's, position in relation to this recommendation. The PT's denial that it imposes double charges on the same client funds is not borne out by the evidence in the report. The PT charges clients an Annual Asset Management Fee on those some assets and charges an additional management fee on those some funds that are invested in the Growth Trust. The QIC also charges fees for managing and investing those funds on behalf of the PT. The Annual Asset Management Fee and the additional PT management fee on the funds in the Growth Trust amount to double charges on the same funds. These practices damage public confidence in the PT and do not meet basic tests of reasonableness and fairness and should be ceased as a matter of priority.
15 Limit the amount of Public Trustee surpluses and reserves There should be a limit on the amount of operating surpluses and reserves that the Public Trustee can accumulate. Any reserves exceeding the cap should be returned to clients in reduced or rebated fees.	Referred to the Public Trustee The PT aims to deliver a balanced budget each year. Any limits on the level of annual operating surpluses are a matter for the Government.	For further consideration. The PT aims to deliver a balanced budget each year. Any limits on the level of annual operating surpluses are a matter for the Government.	The AG advised in her response to the PA report that the government supports all of the recommendations in principle. The AG has referred this recommendation to the PT for implementation, however, the PT's position is that any limits on the level of annual operating surpluses are a matter for the government. There appears to be a misalignment of responses here.

Recommendation	Queensland Government response	Public Trustee response	Public Advocate view
			<p>As a fiduciary, the PT should not be seeking to run operational surpluses, unless expressly directed and permitted by government. While the PT states that it aims only to deliver a balanced budget, this position is not consistent with its own Strategic Plan 2016-20, which listed one of its strategies as being to 'Deliver the surplus required to enable sustainable reinvestment that supports current and future business objectives.'</p>
<p>16 Review investment practices and discontinue activities that do not directly benefit clients</p> <p>The policies and practices of the Public Trustee relating to the investment of administration client funds be reviewed, and any investment activities involving their funds that do not maximise direct benefits to those clients be discontinued.</p>	<p>Referred to the Public Trustee</p> <p>HOWEVER</p> <p>All investment activities undertaken on behalf of our customers are for their direct benefit, investment activities are informed by the customer's preferences, customer needs. Public Trustee's extensive investment experience, risk, and expert financial advice (where applicable).</p> <p>The investment practices of the Public Trustee will continue to be regularly reviewed.</p>	<p>Partially supported.</p>	<p>The AG advised in her response to the PA report that the government supports all of the recommendations in principle. The AG has referred this recommendation to the PT for implementation, however, the PT has not proposed any tangible response to this recommendation.</p> <p>The PT's response indicates that it does not accept that its investment activities have been for any purpose other than the direct benefit of clients and that no specific action needs to be taken to respond to this recommendation.</p> <p>The PA's report demonstrates that the PT has invested clients' funds exclusively in its own investment products, and has used external financial advice to justify those investments, while gaining the benefit of additional interest, fees and other charges on those investments.</p>
<p>17 Review and update the Prudent Person Manual</p> <p>Review and update the Prudent Person Rule Manual to ensure it appropriately reflects the law and the Public Trustee's obligations as a trustee and fiduciary. The review should include consideration, where appropriate, of a client investment approach that:</p> <ul style="list-style-type: none"> a. ensures that decisions about investing client funds demonstrate that each decision was made in the interests of the client; b. seeks to achieve more for clients than just the preservation of their assets; c. moves away from an inflexible standard template approach to investing, to one that takes the clients' individual circumstances into account (wherever possible); d. relies on an actual assessment of clients' individual investor/risk profiles (where possible), rather than assigning profiles based on clients' ages, and makes a meaningful distinction between each of the risk profiles and the types of investments considered appropriate for that profile. 	<p>Referred to the Public Trustee</p>	<p>Supported in principle.</p>	<p>The Prudent Person Rule has recently been reviewed to ensure that it complies with industry best practice.</p> <p>The Public Trustee's Structured Decision-Making Framework will ensure that customers and their support networks are actively involved in all decisions that affect them, including investment of their funds.</p> <p>The PT does not support a shift from asset preservation at this time. Asset preservation is about keeping a customer's money safe and secure. Regular interest or a growth in values allows it to grow over time. This is the most prudent strategy for the majority of the PT's customers, who often have limited assets and are unable to support higher risk investments.</p> <p>The PT does not accept that its investment strategies are inflexible. However, the PT's customers benefit from the economies of scale that are obtained through the PT's investment strategies. Without these economies of scale, it is likely that customers would incur increased costs and weaker outcomes.</p> <p>The AG advised in her response to the PA report that the government supports all of the recommendations in principle. The AG has referred this recommendation to the PT for implementation, however, the PT has not proposed any tangible response to this recommendation.</p> <p>The current way the PT uses the Manual means that customers cannot be 'involved' in investment decisions except to be told how the manual directs that their money will be invested. It provides no flexibility, informing clients about what the PT is going to do with their money does not amount to the clients being 'actively involved' in decisions affecting them.</p> <p>The PT's response that it does not support a shift from asset preservation indicates that asset preservation is the predominant investment approach of the PT irrespective of the client's financial circumstances or their risk appetite'. As the report demonstrates, irrespective of age or asset holdings, all PT clients are treated the same in terms of investments and risk. The problem for PT clients is that the fees are so high that they are unable to grow their assets from the small investment earnings, particularly considering how much of the interest differential is retained by the PT and the other fees and charges levied on the investments.</p> <p>The PT's response denying its investment options are inflexible and promoting the benefits of economies of scale is an admission that the PT is unable to provide even the most fundamental individualised investment opportunities for clients (despite charging them substantial fees to obtain individual investment advice from an external financial advisor) without the fees being prohibitive. This response suggests significant inefficiencies in its operations.</p>

Recommendation	Queensland Government response	Public Trustee response	Public Advocate view
18 Publish the Prudent Person Manual The Prudent Person Rule Manual and all other Public Trustee manuals that guide the agency's decision-making about managing and investing administration clients' funds be published and re-written in accessible language.	<p>Referred to the Public Trustee</p> <p>Supported in principle.</p> <p>The Prudent Person Rule Manual that has been published online by the PT is a document that uses dense language and complex terms and concepts. It requires editing to be appropriately accessible by PT clients and their supporters. The PA supports the PT's commitment to reviewing and editing all of its online manuals and policies to improve accessibility.</p>	<p>Supported in principle.</p> <p>The Prudent Person Rule Manual has been published online since 14 May 2020. The majority of the PT's manuals are written for internal use and are not currently in a form which is user friendly or easy to digest for our customers or stakeholders. However, we are committed to increasing transparency and will consider the further release of manuals as they are reviewed and rewritten in accessible language.</p>	<p>The AG advised in her response to the PA report that the government supports all of the recommendations in principle. The AG has referred this recommendation to the PT for implementation, however, the PT has rejected the recommendation.</p> <p>In its response, the PT has not addressed the specific legal issue relating to its reliance on Supreme Court case No 5391 of 1996 as legal authority for all potential conflict transactions involving the investment of client funds.</p> <p>This amounts to a fundamental legal problem with the appropriateness of the PT's investment activities that must be addressed for the PT's operations to have public and legal legitimacy.</p> <p>It is irrelevant what proportion of clients' funds is invested in PT products. If there is a conflict, there is a conflict. The obligations of a fiduciary are strict. There are no acceptable degrees of breach of these duties.</p> <p>The PT is encouraged to take legal advice about how to address this significant legal issue and remedy any outstanding legal issues as a matter of priority.</p>
19 Review position on conflict transactions The Public Trustee review its reliance on Supreme Court case No 5391 of 1996 as providing legal authority for all potential conflict transactions involving the investment of administration client funds in its own products, particularly the Growth Trust.	<p>Referred to the Public Trustee</p> <p>Not supported</p> <p>The PT's expert financial advisor can consider a range of investment products outside of the PT's products, depending on the customers' individual circumstances. Less than 50 per cent of customers' funds are invested in the Common Fund or the PT Growth Fund. 32 per cent are invested in the Common Fund and 15 per cent invested in the PT Growth Trust.</p>		<p>The AG advised in her response to the PA report that the government supports all of the recommendations in principle. The AG has referred this recommendation to the PT for implementation, however, the PT has rejected the recommendation.</p> <p>This response does not address the fundamental issue that the PT invests all of its clients' available liquid assets in its own investment products. The proportion of those assets in PT investments is irrelevant, as already noted immediately above. Other client assets that are not invested in the PT's investments are generally assets that the PT cannot reasonably access or convert to cash, such as aged care deposits, superannuation or clients' homes that they reside in. As the PA's report notes, the PT acts wherever possible to convert clients' assets to cash to invest in its own products.</p>
20 Review the practice of only investing in Public Trustee investment products The Public Trustee review its practice of investing administration client funds almost exclusively in its own investment products and seek advice about how it can fulfil its statutory and fiduciary obligations while managing client funds and earning revenue. Where the Public Trustee proposes to invest administration client funds in its own investment products it should seek appropriate approvals under the Guardianship and Administration Act or seek a specific legislative amendment to expressly permit these breaches of its obligations. Such arrangements should also be published in an accessible format and declared to clients. NOTE: Legislative amendment may be required.	<p>Referred to the Public Trustee</p> <p>Not supported.</p> <p>The PT's expert financial advisor can consider a range of investment products outside of the PT's products, depending on the customers' individual circumstances. Less than 50 per cent of customers' funds are invested in the Common Fund or the PT Growth Fund. 32 per cent are invested in the Common Fund and 15 per cent invested in the PT Growth Trust.</p>		<p>The AG advised in her response to the PA report that the government supports all of the recommendations in principle. The AG has referred this recommendation to the PT for implementation, however, the PT has rejected the recommendation.</p> <p>The PT's response does not explain whether its new Customer Investment Strategy addresses or has dealt with the issues raised by the PA. It is difficult to understand why the PT would reject a</p>
21 Adopt a new client investment strategy The Public Trustee develop a new client investment strategy, the process for which should involve: <ul style="list-style-type: none"> a. Reviewing all internal policies, manuals and guidance documents relating to the management and investment of client assets to properly acknowledge and reflect the duties of a trustee and fiduciary. 	<p>Referred to the Public Trustee</p> <p>Not supported.</p> <p>The Customer Investment Strategy was recently externally reviewed and found to be appropriate and in accordance with industry best practice.</p>		

Recommendation	Queensland Government response	Public Trustee response	Public Advocate view
<p>b. Reviewing the purpose and continuing need for an overarching Client Investment Strategy and Primary Investment Strategy. Any future strategy or investment approach should not over-ride consideration of the individual circumstances and other needs of administration clients.</p> <p>c. Implementing investment decision-making policies that will:</p> <ul style="list-style-type: none"> (i) ensure that the interests of administration clients are at the centre of all investment considerations and decisions affecting their financial interests; (ii) use the client's individual financial and risk profile and living circumstances as the starting point for decision-making, before considering a change of investment strategy; and (iii) determine 'the expressed or implied risk appetite of the administration client in accordance with General Principle 7(4) the principle of substituted judgement, the client's investment history and individual financial circumstances. <p>d. Reviewing the definition of 'complex asset' (which currently includes shares and any amount of superannuation) in light of the Public Trustee's acknowledged high level of professionalism and skill as a trustee and administrator, to reflect a more current view of what constitutes a complex asset for management by a professional trustee.</p> <p>e. Reviewing the 'value of Assets' approach as the principal mechanism that determines whether independent financial advice is required. This review should be conducted with the objective of considering an approach that is based on a holistic appraisal of the key issues affecting the client's life (e.g. legal action, involvements in partnerships, trusts or companies, or complex tax arrangements) as well as the value, diversity and location of their assets.</p>		<p>recommendation that requires it to implement investment decision-making policies that:</p> <ul style="list-style-type: none"> • ensure the interests of administration clients are at the centre of all investment considerations and decisions affecting their financial interests; • use the client's individual financial and risk profile as the starting point for decision-making before considering a change of investment strategies; • determine the client's "expressed or implied risk appetite in accordance with the General Principles in the Guardianship and Administration Act. <p>All of these recommendations are consistent with the obligations of a regulated financial advisor.</p> <p>The PA is unaware of the PT's recent review of its Customer Investment Strategy, which appears to have essentially recommended that the PT continue to do what it has been doing with client funds.</p> <p>In the interests of transparency, the PT should publish the relevant review documents, including the review proposal. The PA is interested to learn whether the PA's concerns with its consultants and whether they were specifically addressed as part of the review.</p> <p>The PT's current approach to investing client funds is fundamentally flawed, in terms of providing appropriate personalised investment services to clients and must be addressed for the PT's operations to have public and legal legitimacy.</p>	<p>The AG advised in her response to the PA report that the government supports all of the recommendations in principle. The AG has referred this recommendation to the PT for implementation, however, the PT has rejected the recommendation.</p> <p>The PT's response demonstrates the inflexibility of its own Customer Investment Strategy, and its lack of consideration of any investments other than PT products. PT staff should not require 'expert' advice to know when investment of a client's funds in superannuation would be a better investment than investing in PT investment products. That information should be included in the Customer Investment Strategy.</p> <p>The PT's response does not address the issue of obtaining financial advice that does not provide measurable financial benefits for the client. The example provided appears to suggest that PT staff have little or no investment knowledge, and as noted, the issue of investment in superannuation should be an ordinary consideration as part of the Customer Investment Strategy.</p> <p>The PT does not address the aspect of the recommendation relating to undertaking an open tender process for external financial advice services at a minimum every five years. The current arrangements have been in place since 2012 and are well past due for reconsideration and testing of the market. The response suggests that the PT does not consider it necessary to undertake an open tender procurement process for these services on a regular basis.</p> <p>Further, the claim by the PT that its requests for external financial advice are 'lawful and reasonable in the circumstances', does not make it so. The PT has not addressed the very genuine concerns outlined in the PA report, about the PT's use of external financial advice and the charging of clients for those services, including</p>
<p>22 Reconsider routinely obtaining external financial advice for certain types of assets</p> <p>In addition to recommendation 4 and in regard to the practice of routinely obtaining external financial advice for administration clients:</p> <p>a. External financial advice should only be obtained at a client's expense as an exception and when clients or their supporters request this advice or there is a justifiable basis for the expenditure based on the amount and complexity of the clients' assets and the potential investment benefits for the client.</p> <p>b. If the Public Trustee continues to contract external financial advice services (even on a more limited basis), it undertake an open tender process and appoint a panel of providers (no less than two) and review and reappoint panel members on a regular basis, at a minimum, every five years.</p>	<p>Referred to the Public Trustee</p>	<p>The PT obtains external financial advice in circumstance where it is reasonable and appropriate to do so to further the customer's interest and comply with its fiduciary duties.</p> <p>Suspending external financial advice is not supported at this time. There are times when the expert financial advisor recommends an approach which is different to the Customer Investment Strategy. For example, there are situations where the Customer Investment Strategy may appear to be appropriate for a customer, however, the expert financial advisor will recommend that it is in the customer's best interests to invest their funds in superannuation. Without this advice, the customer may be disadvantaged by having their funds invested through the Customer Investment Strategy.</p> <p>Under the Public Trustee Act 1928, the PT is entitled to recover reasonable costs that have been properly incurred. All requests for external financial advice are lawful and reasonable in the circumstances.</p>	

Recommendation	Queensland Government response	Public Trustee response	Public Advocate view
<p>23 Obtain advice about refunding financial advice fees</p> <p>In relation to the contractual arrangements the Public Trustee has with an external financial advisor for the provision of financial advice services to administration clients, the Public Trustee should:</p> <ol style="list-style-type: none"> review the contractual arrangements to ensure they do not unduly limit the investments the advisor can recommend (by limiting those investments to Public Trustee products) or otherwise interfere with the independence of the advice provided to administration clients; suspend the practice of charging clients for external financial advice that merely recommends investments in accordance with the Client Investment Strategy while the review of contractual arrangements is occurring; and take advice about whether the fees charged to administration clients for the financial advice referred to in b. (above), should be refunded. 	<p>Referred to the Public Trustee</p>	<p>Not supported.</p> <p>The PT obtains external financial advice in circumstance where it is reasonable and appropriate to do so to further the customer's interest and comply with its fiduciary duties.</p> <p>Suspending external financial advice is not supported at this time. There are times when the expert financial advisor recommends an approach which is different to the Customer Investment Strategy. For example, there are situations where the Customer Investment Strategy may appear to be appropriate for a customer; however, the expert financial advisor will recommend that it is in the customer's best interests to invest their funds in superannuation. Without this advice, the customer may be disadvantaged by having their funds invested through the Customer Investment Strategy.</p> <p>Under the Public Trustee Act 1978, the PT is entitled to recover reasonable costs that have been properly incurred. All requests for external financial advice are lawful and reasonable in the circumstances.</p>	<p>The AG advised in her response to the PA report that the government supports all of the recommendations in principle. The AG has referred this recommendation to the PT for implementation, however, the PT has rejected the recommendation.</p> <p>The PT's response does not address the genuine issues raised in the PA report or the substance of the recommendation.</p>
<p>24 Review the role and operations of the Official Solicitor</p> <p>The Public Trustee initiate an urgent and comprehensive review of the role and operations of the Official Solicitor to the Public Trustee. The review should give particular consideration to:</p> <ol style="list-style-type: none"> the structure of the arrangements between the Public Trustee and the Official Solicitor and whether they are appropriate and sufficiently transparent; whether the use of the Official Solicitor to provide legal services to administration clients is appropriate considering the potential conflicts in the Official Solicitor's role, issues of legal professional privilege and the Public Trustee financially benefiting from the Official Solicitor's fees; whether lawyers providing legal advice and services to people under administration should be required to hold practising certificates and be subject to oversight by the Legal Services Commission (this includes administration clients or their supporters being able to make a complaint to the Legal Services Commission); reviewing the scale of fees of the Official Solicitor, with particular consideration of the reasonableness and appropriateness of the fees for Public Trustee administration clients; making the scale of fees of the Official Solicitor available to administration clients and/or their supporters, particularly when consideration is being 	<p>Referred to the Public Trustee with exception of 24 (c) – whether Public Trustee lawyers should hold practising certificates</p>	<p>Partially supported in principle</p> <p>The Official Solicitor function was recently reviewed as part of the PT's interim governance and functional structure review. The review recommended the separation of the Official Solicitor Function into an Official Solicitor – Corporate Legal Services, and the Official Solicitor – Customer Legal Services.</p> <p>Currently both the Official Solicitor – Customer Legal Services and the Official Solicitor – Corporate Legal Services hold practising certificates. The Public Trustee is currently investigating the requirement for lawyers of the Official Solicitor Offices to hold practising certificates.</p> <p>The Official Solicitor Fees will be considered as part of the comprehensive and independent fees and charges</p>	<p>The AG advised in her response to the PA report that the government supports all of the recommendations in principle. The AG has referred this recommendation to the PT for implementation, however, the PT has not proposed a tangible response to this recommendation.</p> <p>The PT's response does not address the specific issues of whether the arrangements between the PT and the Official Solicitor are appropriate and sufficiently transparent. Nor to do they address the potential conflicts that can arise from these arrangements, including the PT financially benefitting from the fees charged by the Official Solicitor.</p> <p>The fact the current Official Solicitors hold practising certificates does not address the range of concerns raised about the Office of the Official Solicitor in the PA's report. The former Public Trustee and Official Solicitor both held practising certificates. This did not make their office or their individual legal staff accountable to the Legal Services Commission in the way other lawyers undertaking legal work on behalf of members of the public are.</p> <p>The PT has not provided any recent information about the establishment of legal panels except to advise that it will not be establishing a panel for lawyers providing advice on total and</p>

Recommendation	Queensland Government response	Public Trustee response	Public Advocate view
<p>Given to obtaining legal advice for which the client will be required to pay; and</p> <p>f. whether the Public Trustee should establish a panel of solicitors and barristers that meet quality standards, deliver value-for-money, and whose fees are reasonable having regard to the vulnerabilities and financial disadvantage of many of the Public Trustee's administration clients.</p>	<p>This will be considered jointly by the Government and the Public Trustee Commission) review. This will be supported by the Legal Expert Transformation Panel.</p> <p>The Public Trustee is in the process of establishing legal panels for family law, property claims, personal injury claims, total and permanent disability claims, dust disease claims, and whether to bring a claim against the National Redress Scheme.</p>	<p>Permanent disability claims, but will be remaining with the current firm process.</p> <p>It is also unclear why the PT would be establishing a legal panel for claims against the National Redress Scheme when the Commonwealth Government has funded the knowmore legal service to provide these services for free to victims of abuse. The Public Advocate organised a meeting of Queensland agencies, including the Public Trustee of Queensland with representatives of knowmore's legal service in 2019 to ensure that agencies understood knowmore's services and appropriate connections were made. It is unclear how it would benefit a client of the PT to have them pay a private legal firm for services that could be accessed for free.</p>	<p>The AG advised in her response to the PA report that the government supports all of the recommendations in principle. The AG has referred this recommendation to the PT for implementation, however, the PT has not proposed any tangible response to the recommendation.</p> <p>The PT's response does not directly address the issues raised by this recommendation.</p> <p>Providing clients with support for structured decision-making and enhanced reporting and analysis of complaints data does not address the fundamental issue raised in the PA's report that clients who have suffered loss or harm through the decisions, actions or omissions of the PT, need to have support to investigate their legitimate claims.</p> <p>Currently, because people under administration are considered to lack legal capacity, they are unable to retain professional advice and services to assist them to investigate a claim without the approval of the PT. This is obviously a conflict situation that the PT cannot resolve.</p> <p>The fiduciary relationship between the Public Trustee and its clients is unique to government (except for the relationship between the Public Guardian and its guardian clients). There should be an independent process established by government, separate from usual government complaints processes, to consider and resolve the unique issues and complaints that can arise in a fiduciary relationship.</p>
<p>25 Develop a policy to support administration clients to make complaints about the Public Trustee</p> <p>Develop a policy for supporting administration clients to make complaints against the Public Trustee, including support to investigate claims, obtain legal advice and seek redress when a client alleges that the Public Trustee has, by act or omission, caused the client loss or harm. The policy should establish an appropriate process for referring client matters that warrant investigation, legal advice and/or redress to appropriate professionals for advice. Broad stakeholder consultation should be undertaken to develop an appropriate and efficient model that protects people's rights while containing costs. The final model for responding to client complaints and managing conflicts may need to be supported by legislation.</p>	<p>Referred to Public Trustee</p>	<p>Supported in principle.</p> <p>The PT supports feedback and encourages customers to raise concerns if they are unhappy with a decision or the actions of the PT.</p> <p>The PT response referred to the recent Queensland Audit Office Performance Audit examining the effectiveness of the PT's complaints system and its recommendations. The response referred to a number of initiatives it has introduced to address client complaints.</p>	<p>It is misleading for the PT to suggest that any amendment to make PT lawyers subject to oversight by the Legal Services Commission would be superfluous and therefore unnecessary. Clients of the PT who are dissatisfied with the conduct or fees of the Official Solicitor do not have standing to complain about their services or treatment to the Legal Services Commission. It is unlikely that clients would consider any such amendment unnecessary or superfluous'.</p>
<p>26 Amend legislation so Public Trustee solicitors are overseen by the Legal Services Commission</p> <p>Amend the Public Trustee Act to provide that solicitors employed by the Public Trustee must:</p> <p>a. while performing their role, have regard to the 'fundamental duties of solicitors' as set out in the solicitors' rules (as defined by section 217 of the Legal Profession Act); and</p> <p>b. be subject to conduct and disciplinary investigations by the Legal Services Commission.</p> <p>NOTE: Legislative amendment required.</p>	<p>Under further consideration by Government</p>	<p>Partially supported in principle.</p> <p>The fundamental duties of solicitors apply to all solicitors, including government lawyers. As such any amendment to the Public Trustee Act 1978 in this regard would be superfluous.</p> <p>The PT argues that government lawyers are already subject to the oversight of the Legal Services Commission in circumstances where they are referred by another legal practitioner.</p>	<p>The AG advised in her response to the PA report that the government supports all of the recommendations in principle. The AG has referred this recommendation to the PT for implementation, however, the PT has not proposed any tangible response to the recommendation.</p>
<p>27 Review Official solicitor policies and practices</p> <p>If the Public Trustee continues to provide legal advice and representation to administration clients using the Official Solicitor, it should review and update its policies, procedures and other guidance to Public Trustee lawyers to develop a comprehensive set of policies and procedures that:</p>	<p>Referred to the Public Trustee</p>	<p>Partially supported in principle.</p> <p>The Official Solicitor function was recently reviewed as part of the PT's interim governance and functional structure review. The review recommended the</p>	<p>The AG advised in her response to the PA report that the government supports all of the recommendations in principle. The AG has referred this recommendation to the PT for implementation, however, the PT has not proposed any tangible response to the recommendation.</p>

Recommendation	Queensland Government response	Public Advocate view
Public Trustee response		
<p>a. clarify who the client is in all legal matters and distinguish between the interests of the Public Trustee as the corporate entity and the Public Trustee as the representative of the person under administration;</p> <p>b. outline the law in relation to the duties of trustees, fiduciaries and lawyers and their duties to always act in their clients' interests;</p> <p>c. require lawyers in every case to consider the costs and benefits of any prospective legal action and provide advice (consistent with Rule 7 of the Australian Solicitors Conduct Rules) to ensure clients' funds are only spent when they are satisfied the expenditure is in the clients' interests, taking into account their individual needs, the risks, costs and likely outcomes;</p> <p>d. develop a policy around obtaining consent from administration clients (where appropriate), their guardians or personal support networks to engage a lawyer and disclose the likely costs, benefits and outcomes for the client, prior to embarking on any legal process;</p> <p>e. review the Official Solicitor's policy denying Public Trustee clients access to the legal advice they have paid for and to the invoices for that advice. The policy review should also consider the Public Trustee's role and duties under the Guardianship and Administration Act, including to support clients to participate in decisions affecting their lives; and</p> <p>f. as part of the process for issuing an invoice for legal fees, the Official Solicitor should review and assess the reasonableness of the fees in the context of the clients' overall financial circumstances and the likely outcomes and benefits of any proposed legal action.</p>	<p>separation of the Official Solicitor – Function into an Official Solicitor – Corporate Legal Services, and the Official Solicitor – Customer Legal Services.</p> <p>As part of the current practice, lawyers for the Official Solicitor consider the commerciality of the case, the customer's interest and views, the Human Rights Act 2019 and the benefit to the customer of the legal action. However, this was not the practice of the Official Solicitor less than one year ago, according to the PT's own response to the PA's requests for information about these matters. It is unclear whether these apparent policy changes have been formally recorded as a policy, or how they have been communicated to staff. It is also unclear what processes are in place to ensure that staff are complying with this new approach to providing legal services.</p> <p>It is unclear when the Legal Expert Transformation Panel will be convened to provide the guidance that the Office of the Official Solicitor requires.</p> <p>The PT's practice of denying clients and their supporters access to invoices and legal advice has allowed the PT to withhold information in some circumstances where it has not always been in the clients' interests.</p> <p>The fiduciary relationship between the Public Trustee and its clients is unique to government (except for the relationship between the Public Guardian and its guardianship clients). There should be an independent process established by government, separate from usual government complaints processes, to consider and resolve the unique issues and complaints that can arise in a fiduciary relationship.</p>	<p>The PT's response does not address the fundamental issues raised in the PA's report or the substance of this recommendation.</p> <p>The response does not advise whether any action has been taken to review the Official Solicitor's policies and practices. The response states that the lawyers' current practice is to 'consider the commerciality of the case, the customer's interest and views, the Human Rights Act 2019 and the benefit to the customer of the legal action.' However, this was not the practice of the Official Solicitor less than one year ago, according to the PT's own response to the PA's requests for information about these matters. It is unclear whether these apparent policy changes have been formally recorded as a policy, or how they have been communicated to staff. It is also unclear what processes are in place to ensure that staff are complying with this new approach to providing legal services.</p> <p>It is unclear when the Legal Expert Transformation Panel will be convened to provide the guidance that the Office of the Official Solicitor requires.</p> <p>The PT's practice of denying clients and their supporters access to invoices and legal advice has allowed the PT to withhold information in some circumstances where it has not always been in the clients' interests.</p> <p>The fiduciary relationship between the Public Trustee and its clients is unique to government (except for the relationship between the Public Guardian and its guardianship clients). There should be an independent process established by government, separate from usual government complaints processes, to consider and resolve the unique issues and complaints that can arise in a fiduciary relationship.</p> <p>The PA is aware that the PT has commenced a review of its fees and charges with a review to finalising that review in the second half of 2021. This is a very short timeframe within which to undertake the review, especially considering the various issues that need to be resolved before a comprehensive review can be completed.</p> <p>For the fees and charges review to be comprehensive and address all of the issues identified in the PA's report, as well as ensure the PT's financial sustainability, the PT needs to be certain of a number of matters before the review can proceed. These include:</p> <ul style="list-style-type: none"> • Cost of operations – including the cost of providing free services, also called Community Service Obligations (CSOs). In 2019-20 the PT's CSOs amounted to \$38M, the highest of any Public or State Trustee in Australia. The CSOs need to be reviewed. This is especially the case in relation to the provision of free wills, which cost the PT \$5M in 2019-20 when NSW Trustee and Guardian (NSW TAG) only spent \$1M on free wills for the community. The amount of free services provided by the PT impacts its cost of operations. Unless limits are placed on the level and type of CSOs, PT clients who are considered 'able to pay' will continue to pay fees that include a premium to subsidise services provided to other PT clients and members of the community. <p>Efficiency of operations – the PT has a workforce about the same size as the NSW TAG, which provides both administration and guardianship services to larger numbers of clients than the PT and also provides advice and oversight to over 5,000</p> <ul style="list-style-type: none"> •

28 Considerations for the review of Public Trustee fees and charges

- The review of the Public Trustee's fees and charges for administration clients (see recommendation 1) should include the following to help maintain the organisation's long-term financial viability:
- a. consideration of changes over time in the:
 - economic environment and financial markets;
 - Public Trustee's sources of revenue; and
 - financial profile of administration clients and other clients of the Public Trustee that may impact their ability to pay fees.
 - b. examination of the various fees and charges applied by other State and Public Trustees to ensure consideration of a wide range of fee options that will assist it to adopt the most fair and equitable system, taking into account clients' incomes and assets, and the value of the services provided;
 - c. examination of the Public Trustee's costs of operation, including comparative analyses with other State and Public Trustees, which should include consideration of their levels of service provision, efficiency, productivity and service quality; and
 - d. consideration of alternative and innovative ways the Public Trustee can deliver services to administration clients at a lower cost.

Recommendation	Queensland Government response	Public Advocate view
		<p>private administrators and guardians. It is critical that clients who pay fees are not paying a premium for inefficiency.</p> <ul style="list-style-type: none"> Amount of interest differential the PT will retain – the Qld Government needs to make a policy decision about how much of the earnings on client funds the PT can retain to fund its operations and legislate to permit same. This will ensure appropriate transparency and accountability. The PT currently retains over 60 percent of the earnings on client funds. The Auditor-General found that the PT's practice of retaining between 27 and 48 percent of earnings on client funds in the five years leading up to 1996, was 'inequitable'. The government needs to direct the PT and legislate to legally permit and limit the amount of interest the PT can retain; and Acknowledging and ceasing all double charges on client funds – it is essential that the PA is given clear direction by government about charging clients more than one fee on the same funds. The PA has not accepted that the charging practices outlined in the PA's report amount to double charges. Unless it does, there is a real possibility that PT clients will continue to be subject to multiple charges on the same funds, which is inherently unfair and a breach of its fiduciary duties. Knowing what investments the PT can invest client funds in (see recommendation 29) – depending on how this recommendation is implemented may impact on various sources of income for the PT, which will affect the level of fees it will need to earn.
29 Amend legislation to clarify how the Public Trustee can invest client funds	<p>Supports in principle</p> <p>In the interests of clarity and transparency, and to remove all doubt about the lawfulness or propriety of the Public Trustee earning revenue from client funds, the Public Trustee Act should be amended to:</p> <ol style="list-style-type: none"> clarify the investments the Public Trustee is permitted to make using client funds, in particular addressing the issue of investments that are permitted that may amount to a conflict of interest, the circumstances in which it can earn revenue on those funds, and the conditions or limitations on those earnings; and require the Public Trustee to report its earnings on client funds in its annual financial statements. <p>NOTE: Legislative amendment required.</p>	<p>The PA is unaware of what action is proposed to review and amend the Public Trustee Act to ensure the PT operates in accordance with its fiduciary obligations, or the timeframes for such a review.</p> <p>The PT's argument that because it has conducted itself in a particular way or been investing its funds in a particular way for more than 100 years, then the practices must be lawful, does not amount to a valid legal argument. What might have been considered the acceptable practice of a fiduciary over 100 years ago is likely to have changed during the intervening decades. The amendments to the Trusts Act in the 1990s demonstrate this.</p> <p>Any legislative amendments that improve the transparency and accountability of trustees should be welcomed and encouraged, especially in terms of the legal and human rights of people with impaired decision-making capacity.</p> <p>The PA is unclear what steps are being taken to review and amend the Public Trustee Act to implement the AG's commitment to establish a PT Board to improve oversight and accountability.</p> <p>The PA is concerned that it is pre-emptive for the PT to proceed with a 'comprehensive fees and charges review' before the establishment of the proposed Board and without the benefit of its input into such a critical process that is likely to impact its operations for many years to come.</p> <p>It is also disappointing that the PT's main response to the suggestion of additional oversight mechanisms is the prospect of cost increases for clients.</p>
30 Consider additional oversight mechanisms	<p>Accepted – AG announced proposal to establish a Public Trustee Board</p>	<p>The PT is subject to the same extensive scrutiny and oversight that applies to other government agencies.</p> <p>The PT has introduced increased Governance and accountability measures through its Customers First Agenda which are some of the most stringent across state and public Trustees in Australia.</p> <p>While the PT supports any moves to increase transparency and accountability, careful consideration would need to be given to any</p>

Recommendation	Queensland Government response	Public Trustee response	Public Advocate view
31 Update the Public Trustee Act to better acknowledge rights and interests of people with impaired decision-making capacity The Public Trustee Act should be reviewed to update and modernise the Act to ensure that it reflects contemporary views about the rights and entitlements of people with impaired decision-making capacity whose affairs are administered by the Public Trustee. The review of the Act should: a. address issues relating to conflicts of interest or breaches of duty and ensure they are clearly acknowledged, the extent to which they are permitted and the limitations on those activities, including any profits that can be earned; b. address provisions in the Act that appear to permit breaches of the trustee's fundamental duties; and c. include amendments requiring greater accountability and transparency on the part of the Public Trustee about its fees and charges, various sources of revenue, including revenue earned from the Official Solicitor, on client funds invested in the Common Fund and from the management of other funds in which client money is invested.	Under further consideration by Government unintended consequences including potential cost increases for customers. The oversight of the PT is a matter for the Government, however, we would be pleased to participate in any discussions or reviews of the matter.	Supported in principle. It is recognised that the Public Trustee Act 1978 has been effective in achieving its objectives, however, would benefit from modernisation. The PT will establish a Policy Unit which will review the Act and make recommendations to the AG on potential amendments. However, any amendments to legislation is a matter for the Government.	It is unclear what steps are being taken to review and amend the Public Trustee Act. The PA is available to contribute to any legislative review proposed.
32 Amend legislation to ensure the Public Trustee is an appointment of last resort and the appointment is periodically reviewed The Guardianship and Administration Act be amended to provide: a. that the appointment of the Public Trustee as administrator for a person is an appointment of last resort; and b. consistency with other administration appointments, the appointment of the Public Trustee and other trustee companies as a person's administrator be subject to periodic review, at least every five years (preferably more frequently).	Under further consideration by Government NOTE: Legislative amendment required.	For further consideration It is generally the case that the PT is the appointment of last resort by QCAT. The PT is usually only appointed if there is conflict within a person's support network or there is no one will or able to accept the appointment. QCAT currently has the jurisdiction to periodically review the PT's appointment. Any changes to legislation are a matter for the Government.	It is unclear what steps are being taken to review and amend the Guardianship and Administration Act 2000 in light of this recommendation. The PT's response to this recommendation is potentially misleading. The fact that often the PT is the only party able to be appointed as administrator for a person in many cases, does change the fact that the legislation does not provide for PT appointments to be 'of last resort'. As noted in the PA's report, there are times where the PT appears to 'compete' with family members for an administration appointment. This could not occur if the legislation were changed. Further, while QCAT has the power to review any appointment at any time, under its current workload it is unlikely to review PT appointments periodically, as a matter of course, unless it is required to by legislation. In its review of the guardianship and administration system in Queensland, the QLRC recommended an amendment to provide that PT appointments should be periodically reviewed.