

Public Trustee - Structure Review

Terms of Reference

Objective

To undertake an independent review to determine the most appropriate governance structure for the delivery of the non-commercial services of the Public Trustee.

Background

The Public Trustee is a Government Business Enterprise with the principal objective of offering specialist and independent trustee services to the Tasmanian community, irrespective of the value of any particular matter.

The Public Trustee's 2022-23 Annual Report identifies the following main undertakings:

- preparing estate planning documents: wills, enduring powers of attorney and enduring guardianship;
- acting as estate executor or estate administrator when there is no will;
- assuming the role of executor if the person named in the will is unable or unwilling to act;
- acting as attorney for people requiring assistance to manage their financial affairs;
- acting as a trustee for various types of trusts, including accident compensation awards;
- assisting people to manage their financial affairs, when appointed as Administrator by the Tasmanian Civil and Administrative Tribunal; and
- managing funds that are under the control of Public Trustee, to provide a commercial rate of return to contributors.

Revenue

The Public Trustee's main sources of revenue are the income from its fees and charges (54 per cent of total revenue in 2023-24) and government support through its community service obligation and grant funding (42 per cent of total revenue in 2023-24).

Community Service Obligation

The Public Trustee is also funded by the Government to deliver a Community Service Obligation (CSO). The Public Trustee's CSO is:

- administration of absolute estates with a gross asset value of less than \$60 000;
- administration of continuing trust and life tenancy estates with a gross asset value of less than \$100 000;

- administration and management of minor trusts with a gross asset value of less than \$20 000; and
- management of assets for represented persons with a gross asset value of less than \$100 000.

Client groups

The Public Trustee services a combination of commercial and non-commercial clients (ie. CSO clients). For the purposes of this review, the Public Trustee's core clients are clients that are required by legislation to use the Public Trustee's services and/or clients covered by the Public Trustee's CSO.

Previous reviews

An independent review into the administrative and operational practices of the Public Trustee was undertaken by Damian Bugg QC in 2021. The report of the Independent Review was delivered to Government on 30 November 2021. The Government and the Public Trustee have implemented 27, out of the 28 recommendations from the Independent Review.

The Report of the Independent Review is available here:

https://www.justice.tas.gov.au/_data/assets/pdf_file/0003/711372/Report-on-the-Review-of-the-Public-Trustee.pdf

As recommended in the Report of the Independent Review, the Tasmanian Economic Regulator was directed to undertake an inquiry into the Public Trustee's fees and charges for Represented Persons and other clients who are required by legislation to use the Public Trustee's services. The Economic Regulator's report, which contains 34 findings and 18 recommendations, identifies a number of significant issues that require a substantive response from the Government and the Public Trustee.

The Report of the Economic Regulator's Inquiry is available here:

<https://www.economicregulator.tas.gov.au/other-industries/prescribed-body-inquiries>

Both the Economic Regulator's Inquiry and the 2021 Independent Review into the Public Trustee have raised questions about the appropriateness of the Government Business Enterprise (GBE) model for the Public Trustee. In response, the Government is planning changes to the structure of the Public Trustee. In particular, the suitability of an agency model, as a new structure for delivering effective and efficient services to the Public Trustee's core clients and transferring commercial services to the private sector.

Scope

The review will inquire into, report on and make recommendations as to:

- the best practice governance arrangements to ensure that the Public Trustee is fit-for-purpose and so that it achieves effective and efficient service delivery to its clients; and
- consider the suitability of an agency model, as a new structure for delivering effective and efficient services to the Public Trustee's core clients.

Reporting and timing

- A final report is to be submitted to the Public Trustee's Shareholding Ministers by no later than the end of November 2024.

Other matters

- The Review is to be undertaken by a person or entity that is external to the Public Trustee and Government, possesses the appropriate knowledge, skills and experience.
- In undertaking this review, the reviewer should utilise the information available from past reviews, including the Independent Review into the Public Trustee and Inquiry into the Public Trustee's fees and charges. Any duplication of work should be avoided.
- The Public Trustee is to be appropriately consulted through the review and the preparation of the report is to include the opportunity for the Public Trustee Board and Executive Management team to provide input into matters detailed in the scope (outlined above).