

Public Trustee

# Response to the Public Trustee Governance Review

November 2024

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## 1. Introduction

On the 23<sup>rd</sup> of September 2024, Government announced “the Public Trustee will be restructured, with the commercial will, estate and trustee services currently provided to be transferred to the private sector”. Furthermore, that independent expert advice on the appropriate governance structure for the services provided by the Public Trustee was being prepared for the Government.

Following this, on the 7<sup>th</sup> of October 2024, Government provided a copy of the Structure Review Terms of Reference. The Board of the Public Trustee notes the revised scope of the review which limits its focus into an ‘appropriate governance structure for the delivery of non-commercial services’. This scope, by definition, looks only at governance structures for the Public Trustee after the organisation has been restructured with will, estate and trustee services transferred to the private sector.

The Board's intent in this submission is to provide a broader and fulsome view of the considerations through an evidence-based approach to illustrate the benefits of the current Government Business Enterprise (GBE) model in comparison to other models, with reference to the decisions and responsibilities the GBE Board is required to execute. Importantly, we seek to inform on the broader impact on the Tasmanian community which has been a key focus of the Board in delivering a range of vital services to the community and in which we have a current duty to all Tasmanians.

The Public Trustee operates as a GBE, with the oversight of two shareholding Ministers with Board accountability and executive decision-making. In the 2021 Independent Review into the Public Trustee (IRPT), Damien Bugg AM KC highlighted that Tasmania's Public Trustee operates more like a government agency and GBE, than a government backed independent authority, which raises the question whether a change of governance structure is necessary.<sup>1</sup>

The Principal Objectives in the *GBE Act 1995* (s7) requires ‘a sustainable commercial rate of return that maximises value for... the economic and social objectives of the state’. In the Board's view, profit, or dividend is neither a reliable nor sole measure for performance. The economic and social objectives for the State by the Public Trustee is to offer services for all Tasmanians, regardless of the value of their estate, to support the growing needs of the community. ([Governance of the Public Trustee](#))

In the past, the outdated Community Service Obligation (CSO) thresholds and long-standing funding shortfall, has led to significant resource constraints and restricted economies of scale being achieved, negatively impacting the client experience and creating unmanageable workloads for frontline staff, representing a significant psychosocial risk. ([Annex F](#) - CSO Thresholds)

In line with the IRPT recommendation for Government to fully fund CSO obligations in 2021, the 2024-25 State budget now provides the additional CSO funding recommended to underpin the Public Trustee's new client focused model of service. The Public Trustee's employees are resourced and supported to meet the expanded legislative obligations and provide quality services in line with the organisation's updated [Ministerial](#) and [Client Service Charters](#).

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<sup>1</sup> Damien Bugg AM KC, (2021) [Independent Review](#): Public Trustee Tasmania.

The Public Trustee's positive transformation has been driven by strong leadership, Board autonomy and professional experience, culture and change management which has produced outstanding results to date acknowledged by clients, stakeholders and the community. The recent announcement by Government to restructure the Public Trustee has created great uncertainty for the clients, supporters, stakeholders and staff of the Public Trustee.

A restructure of the organisation at this stage would disrupt the Public Trustee's positive momentum of achievements, destabilise the organisation and jeopardise performance in the immediate to medium term directly impacting on the recently improved client experience. Privatisation of commercial services is not considered best practice or to be in the interests of the community, as all Tasmanians deserve cost effective options for the provision of independent executor, trustee and attorney services - the role of Public Trustees around Australia.

It is the Board's view, the restructure would achieve very little in terms of good governance. Clients would be better served if the Public Trustee be allowed to continue its transformation and focus its energy and resources on finalising recommendations from the IRPT, Office of the Economic Regulator (OTTER) Report and important client reforms from the Disability Royal Commission. Arguably the operating model and practices being developed and implemented by the Public Trustee are Australia's best practice compared with other states in terms of meeting these reforms.

With significant reforms already implemented, a focus on future strategic opportunities and implementing the remaining recommendations from OTTER, it is projected that the Public Trustee's operations will become financially sustainable, growing its revenues, further improving efficiencies and continuing to defray the costs of delivering important Community Service Obligations for vulnerable Tasmanians into the future.

Public Trustees across Australia, while operating under a variety of governance models, all recognise and are preparing for the impending peak in demand for trustee services over the next 20 years. Growth in the ageing population represents the biggest intergenerational wealth transfer in Australian history (one in six people are over 65, a 52% increase since 2009, ABS 2022).

To exacerbate this significant social impact, rates of disability and dementia are increasing, with Tasmanians having the highest rate of disability (26% compared to 18% nationally, ABS 2015). Tasmania is expecting a 56% increase in people living with all forms of dementia by 2054.<sup>2</sup>

Importantly, the future effectiveness of the Public Trustee is protected by the existing GBE model, by ensuring the provision of important and essential services including acting as an 'independent' executor, attorney and trustee at an affordable price to all Tasmanians not otherwise provided by the private sector. This model offers the ability to adapt to demand and regulate the service provision through the offset of CSO costs and public oversight.

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<sup>2</sup> Dementia Australia (2024) [2024-2054 Dementia Prevalence Data Estimates and Projections](#) – All forms of dementia.

## 2. Executive summary

The Public Trustee has embraced significant legislative changes arising from reforms over the last three years. The organisation has adapted to challenges and implemented best-practice service delivery to Tasmania's most vulnerable population as evidenced by outstanding results in the 2023-24 Independent survey conducted by [Myriad Research](#).

Throughout its history as a Government Business Enterprise (GBE), revenue from commercial services have defrayed the cost of delivering non-commercial services for vulnerable Tasmanians. This has been particularly valuable in covering the shortfall in operational funding over the past 10-year period and beyond.<sup>3</sup> In line with the IRPT recommendation 4.2 (2021), fully funding the CSO agreement locks in an opportunity to enable future efficiencies.

Ceasing to provide commercial services would forfeit an important revenue source and result in Government bearing the full cost of service delivery as well as exposing Government to the full brunt of inevitable future cost increases. The important offset enabled by the provision of commercial services would otherwise be utilised to ensure vulnerable Tasmanians continue to receive the support they need well into the future. Furthermore, any separation of services based on the criteria of 'commercial or non-commercial' is fundamentally flawed due to the utilisation of multiple services by a person throughout one's lifetime and beyond as their estate passes onto the next generation.

Implementation of a re-structure and transferring commercial services to the private sector creates significant concerns for the 23,000 Tasmanians who through their own choice, created a Will and nominated the Public Trustee as their sole executor (Will Bank). The practicalities of implementing such a transfer are problematic and need to be reconsidered. The value of the Public Trustee 'Will bank' represents significant future commercial revenues through estate administration services.

### Responsiveness of current GBE model

The Public Trustee under a GBE model has been able to act with urgency to press on with improving community outcomes, even in the face of delays in funding. The GBE model, including utilising its balance sheet, has enabled the organisation to act with agility and be more responsive to community needs and changing generational, social and economic challenges.

Critically, to properly resource ongoing operations with the dramatically improved levels of service provision required by the IRPT and the recent amendments to the *Guardianship and Administration Amendment Act*, the Board approved the necessary funding required by utilising its capital reserves to subsidise operations whilst implementing the recommendations from the IRPT. This enabled the Public Trustee to make significant progress implementing a range of initiatives improving outcomes for vulnerable Tasmanians in a timely manner. The GBE model enabled the avoidance of unnecessary delays that would have occurred under a different less flexible governance model, awaiting appropriate Government funding which wasn't provided

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<sup>3</sup> [Annual Report](#), (2024) Tasmanian Audit Office Report, Economic dependency, Note 28, p.78.

until the recent 2024-25 State Budget approximately 3 years after the date the IRPT was first handed down in November 2021.

## Effectiveness of the Public Trustee

### *Client and stakeholder satisfaction*

The effectiveness of the Public Trustee is evidenced by recent outstanding client support and stakeholder satisfaction results reported in the 2023-24 Annual report. Critical to the Public Trustee's effectiveness has been a focus on additional front-line resources placed around Tasmania, significantly reducing caseloads so our clients can access the services they need. Through consistent engagement, the Public Trustee has built strong relationships with its clients, support networks and community organisations so that the organisation is now seen as a trusted part of their lives.

POSITIVE SATISFACTION SURVEY RATINGS			
	2022-23	2023-24	
Estate administration (beneficiary) survey	93%	91%	
Estate planning survey	100%	100%	↑
Represented person client survey	75%	81%	↑
Represented person support network survey	79%	81%	↑
Stakeholder survey	97%	100%	↑

Table 1. Satisfaction survey results from all service areas.<sup>4</sup>

### *Staff engagement*

The Public Trustee has undergone a significant cultural change program. In the 2023-24 State Service Engagement Survey, the Public Trustee posted strong results and, in comparison with other Government agencies, rated above average results across *engagement*, *commitment* and *loyalty* indicators. The recent announcement regarding the restructure has created considerable uncertainty for staff, stakeholders and clients of the Public Trustee. A restructure would also create administrative strain and operational challenges for the organisation which would ultimately have a detrimental impact on client service delivery.

### *Implementing the Guardianship and Administration Amendment Act 2023.*

Tasmania's guardianship and administration regime is at the forefront of legislative changes in Australia. The costs and impacts of meeting the requirements of legislative reform was borne by the Board's ability to utilise its financial reserves.

The disruption of a restructure will impact the positive momentum gained at an integral point with the *Guardianship and Administration Amendment Act* only recently coming into effect on 1<sup>st</sup> September 2024.

<sup>4</sup> [The Public Trustee Annual Report 2023-24](#), p.16-17.

The Public Trustee is at a critical junction where the organisation should be focused on embedding the new client service model designed to meet its obligations under the amended legislation.

The proposed governance change would require the redirection of our focus and limited human resources at the expense of servicing the needs of vulnerable clients and embedding recent legislative reforms.

### *Social outcomes*

The impact of dedicating resources to implementing a review and restructure of core service areas represents a critical risk to client health, safety and wellbeing. The current cost of living and housing crisis means that the Public Trustee Client Account Managers are required to take proactive steps to consult with service providers to provide a safety net for a complex, diverse and vulnerable client base. The Public Trustee work with the broader community supporting clients towards a financially independent pathway, engaging with stakeholders in service provision to enable other supports.

The Public Trustee delivers training to continuously improve its trauma informed responses and cultural competency in client-focused service provision. The Financial Independence Pathway helps to prevent recidivism and homelessness, provide for basic needs and improve the safety and wellbeing of clients and their families.

The IRPT recommendation on the appropriateness of the CSO Agreement (C4.4), stated that the signatory on the next CSO Agreement should be the Minister for Community Services supported by the Tasmanian Disability Commissioner. The recent appointment of the Interim Disability Commissioner represents best practice in accountability and oversight for future governance and operations of the administration of represented persons and services to vulnerable clients. The Public Trustee is engaging with the Disability Commissioner and implementing the recommendations of the Royal Commission across its services.

The GBE model as implemented by the Public Trustee mitigates the safety risks and social impacts on clients through responsible provision of independent executor, trustee and attorney services. The Public Trustee has the expertise to identify and report elder abuse, financial abuse, instances of child and youth harm, domestic and family violence and responses to mental health risks including the impacts of alcohol and other drug use.

### *Prudent Investment Management of the Public Trustee*

The Public Trustee's Board, under the GBE model, has demonstrated to be a sound and prudent manager and investor of significant funds on behalf of both its commercial and non-commercial clients. The Board has overall ownership as the strategic manager of investments, ensuring client outcomes and corporate balance sheet objectives are met. The Investment Committee informs the Board and has oversight and responsibility for managing funds on behalf of a diverse range of clients with differing needs including represented persons, power of attorney clients, trusts, and estates. To cater to the specific needs of each individual client, such as liquidity and investment risk, there is regular engagement between the investment management team and client account managers.

In 2023-24, the Fair Value Movement in investments in managed funds was an increase of \$383K, 28.67% compared to the 2023 financial year. The total of the Fair Value Movement in investments in managed funds for the 2024 financial year was \$1.717M compared to \$1.334M for the FY23.

The Common Fund, Group Investment Fund No.2 and Corporate Investments posted positive returns for FY24 outperforming their target benchmarks. The quantum of the combined funds is approximately \$180 million.

- Common Fund gross earnings of 5.12% vs RBA cash rate target of 4.35%
- Group Investment Fund No.2 earnings of 6.75% vs objective of 5.87% over a rolling 5-year period with a FY24 return of 12.57%
- Corporate Investment return of 6.16% vs objective of 5.87%

The GBE model ensures a skills-based Board with expertise in investment, financial markets, financial risk management, and accounting and economics. Critical to the success of the Public Trustee is the Board and committee's ability to ensure a sound return on investment on behalf of clients.

### *Critical increase in future demand for trustee services*

Predictions of unprecedented growth in trustee, estates and attorney services industry indicates that fees from commercial services would significantly reduce the government's CSO obligations within five to ten years. (Refer to [Annex D](#))

- The Boomer Generation (born 1946-1964) are in retirement phase and will reach their average life expectancy of 81 years by 2027.
- Global trustee services industry is anticipating the biggest inter-generational wealth transfer in history to commence in the next four years (1 Trillion dollars globally).<sup>5</sup>
- Tasmania's boom in house prices greatly increases asset price growth and has a much greater impact on wealth inequality.<sup>6</sup>
- Tasmania has the highest rate of disability – 26% compared to 18% nationally (ABS 2015).
- Dementia Australia's research indicates that Tasmania is expecting a 56% increase in people living with all forms of Dementia by 2054.
- Increased rates of separation and divorce, second marriages and blended families has added to demand for and increased complexity regarding providing wealth protection services.<sup>7</sup>
- ABS research indicates Tasmania has the lowest household net income wealth in Australia – 26% below the national income and wealth average.

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<sup>5</sup> Productivity Commission (2021) [Wealth Transfers and their economic effects](#), Research Paper, 7 December 2021, Australian Government.

<sup>6</sup> *ibid.*

<sup>7</sup> Law Society of NSW (2022) LSJ Journal, [Estate and family law planning for the 'great wealth transfer' - Law Society Journal](#).



- Tasmania has lower educational outcomes including literacy levels compared to other jurisdictions, contributing to high rates of intestacy and low rates of the appointment of attorneys under enduring powers of attorney instruments.

These factors represent compelling evidence that there will be an exponential increase in demand for commercial legal and trustee services in the next 5-10 years. The Public Trustee is well positioned to meet the needs of the Tasmanian community requiring independent attorney, executor and trustee services in addition to providing a safety net for more vulnerable people such as those on government pensions or living with disability, and those with requiring support with literacy and numeracy skills.

In addition, through the Public Trustee's social obligation to provide education to Tasmanians to reduce intestacy it can also provide a cost-effective choice for independent attorney, executor and trustee services which is not readily provided for in the private sector.

### Summary: benefits of the current GBE model and Board of governance:

- Retain and manage sufficient capital through own balance sheet to have the flexibility to meet the emerging needs and deliver the reforms
- Commercial activities that defray CSO costs to Government have oversight of a skilled Board
- Service delivery is directly managed in a streamlined way
- Funds management expertise
- Risk management specially tailored to delivering the social outcomes (i.e. supported decision making)
- The Board is Trustee and as such duties are continual and seamless over time regardless of changes in directors
- Arm's length from the political and bureaucratic process – best practice commercial management
- Limits moral hazard to government by meeting social obligations
- Low cost for what is delivered

## 3. Context and background

The Public Trustee notes the terms of reference of the Government's assessment of the structure of the Public Trustee. The Board remains committed to representing the interests of clients, stakeholders, employees and the broader Tasmanian community to help inform this assessment to ensure the impending implementation of the OTTER Report recommendations and that all clients continue to receive quality, effective and efficient service.

### Achievements to date

The Public Trustee has undergone unprecedented organisational change in the past three years, becoming a more client focused and responsive organisation. Central to the transformation has been the completion of 27 of the 28 recommendations from the

IRPT Review (2021) which has been achieved by actively engagement with clients, stakeholders, employees and government. The final recommendation must be implemented by government through Treasury.

In FY2024, the Public Trustee achieved overwhelmingly positive results from its client and stakeholder experience surveys as well as seeing a significant reduction in the number of complaints received.

Critical to this progress has been a focus on front-line services. With additional CSO funding due in 2024-2025 the organisation can now sustainably meet the needs of vulnerable Tasmanians to access personal and financial services. Clients and stakeholders have reported increased visibility, accessibility, and responsiveness, due to efficiencies created in an organisational restructure and reduction in caseloads to improve client service standards as demonstrated by a significant reduction in complaints.<sup>8</sup>

The Public Trustee 2024-25 Annual report noted the following key highlights:

- Introduced a new Supported decision-making framework placing people with impaired decision making at the centre of decisions that impact their lives, respecting their rights, will and preferences.
- Implemented a new Financial Independence Pathway empowering clients to build capacity and skills to increase independence in managing their financial affairs.
- Improved information accessibility by creating 'Easy Read' and 'Plain English' guides to Financial Administration along with the publication of a financial services handbook to simplify important information and make it accessible to clients and their supports.
- Ongoing community engagement and educational seminars are raising awareness about the importance of preparing estate planning documents, to reduce intestacy in Tasmania. These engagement efforts also emphasise the Public Trustee's role in protecting vulnerable individuals and highlight the issue of elder abuse.

## Embed best practice client services

Future priorities planned for further development of a fit-for-purpose sustainable model of business include:

- Critical service provision based upon unique client demographic for financial administration, wills and estates services to rural and remote communities across Tasmania including at-risk communities (support for financial literacy).
- Further reductions to service costs for vulnerable Tasmanians in addition to the existing waiver or reduction of fees for represented persons with assets under \$100,000.

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<sup>8</sup> A 50% reduction in substantiated complaints and 48% reduction in complaints received, [Annual Report 2023-24](#).

- Ensure a client-centred approach for the future by continuing investment in a dedicated, capable, and engaged workforce.
- Fee for service model of operations to be developed for a simpler, more equitable fee regime.
- Identify and manage the risks and opportunities of future uncertainties on employee retention, client support and stakeholder engagement in order to mitigate the risk of service disruption.
- Upgrading legacy systems to establish fit-for-purpose IT infrastructure and processes, ensuring client services remain efficient and responsive.
- Meeting our social & ethical obligations through new policies and procedures by using an ethical decision-making framework to waive or defer fees for clients experiencing financial hardship or extenuating circumstances.<sup>9</sup>
- Working with government on the Community Service Obligation Agreement for 2024-25 to maintain best practice service provision to represented clients.
- Ongoing stakeholder engagement in Tasmanian communities and with Trustee service providers across Australia to streamline operations and implement continuous improvement across all services.
- Increased role and contribution to Tasmanian communities providing important information and affordable services for a vulnerable client base.

## Tasmania's social objectives

Australia's population is ageing, and Tasmania has one of the oldest populations in Australia – where one in six people are over 65, a 52% increase since 2009.<sup>10</sup> Over the next twenty years, \$3.5 trillion is set to transfer from generation to generation representing the 'biggest intergenerational wealth transfer in history' (Productivity Commission, 2021)<sup>11</sup>. Approximately 90% of this wealth transfer will take place through estates. Projections suggest that by 2050, around 25% of Tasmania's population could be over 65, compared to about 20% in 2020. Some areas, particularly rural populations, are ageing faster than urban centres, impacting local economies and services.

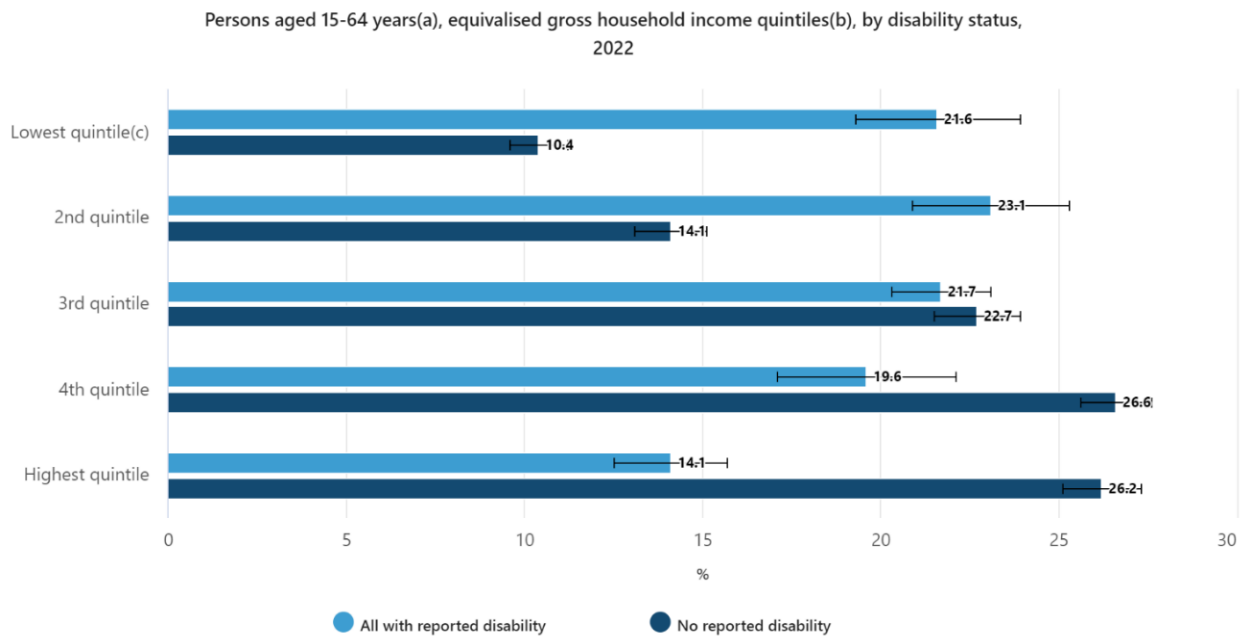
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<sup>9</sup> IRPT Recommendations, Ch. 3; and OTTER Review (para 1.2).

<sup>10</sup> Australian Bureau of Statistics, (2024) [Disability, Ageing and Carers, Australia](#): Summary of Findings. 5/5 million Australians have disability 4/07/2024.

<sup>11</sup> Productivity Commission (2021) [Wealth Transfers and their economic effects](#), Research Paper, 7 December 2021, Australian Government.

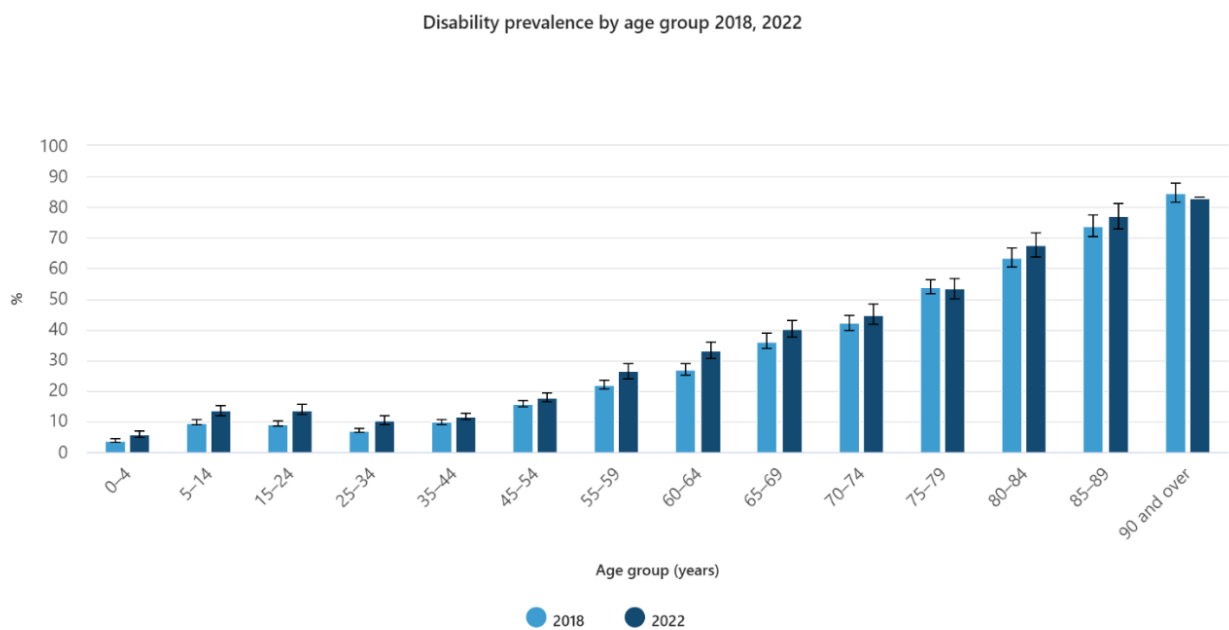
Figure 1. ABS Statistics 2022 – Disability, Ageing and Carers, income by disability status.



a. Living in households  
 b. Excludes people whose household income was not known  
 c. Includes households with nil income and households who reported no source of income

Source: Australian Bureau of Statistics, Disability, Ageing and Carers, Australia: Summary of Findings 2022

Figure 2. ABS Statistics 2024 – Disability prevalence by age group 2018, 2022.



Source: Australian Bureau of Statistics, 5.5 million Australians have disability 4/07/2024

Public Trustees across Australia, while operating under a variety of governance models, all recognise and are preparing for the impending peak in demand for trustee services over the next 20 years. Growth in the ageing population represents the biggest intergenerational wealth transfer in Australian history (one in six people are over 65, a 52% increase since 2009, ABS 2022).

To exacerbate this significant social impact, rates of disability and dementia are increasing, with Tasmanian having the highest rate of disability (26% compared to 18%

nationally, ABS 2015). Tasmania is expecting a 56% increase in people living with all forms of dementia by 2054.<sup>12</sup>

Additionally, each year approximately 50% of Tasmanians who pass away do not have a valid will. It is estimated just 32% of people have an Enduring Power of Attorney.<sup>13</sup> The Public Trustee plays an important role assisting Tasmanians to prepare important legal documents including a Will, Enduring Power of Attorney and Enduring Guardianship. Importantly these services are provided to all Tasmanians at an affordable cost. In its capacity as Tasmania's Public Trustee, it can perform the role of independent Executor, Attorney or Trustee which is a service not readily offered by the private sector. A number of Tasmanians appoint the Public Trustee as their executor or substitute executor when creating a Will through a private solicitor.

By withdrawing from the market this is likely to create a spike in intestacy levels as well as the number of older persons having to apply to the Tasmanian Civil & Administrative Tribunal (TASCAT), requiring the appointment of a guardian or administrator and placing additional pressures on the guardianship and administration system. Tasmania's social objectives are to educate and provide equal access to attorney, estate and trustee services to mitigate these risks and reduce social impacts.

Future reductions in fees and charges as recommended by reviews (IRPT 2021, OTTER, 2024) will increase service costs borne by the Public Trustee. Revenue from commercial services defray the cost of essential services provided to its vulnerable client base and ensures it is well resourced to adapt to changes in future demand. To remove the commercial services further impacts the financial sustainability of operations through reduced economies of scale while current capacity to meet client needs is demonstrating achievements through increased client satisfaction.

Tasmania's current thresholds for community service obligations, which serves as the basis of the decision to potentially transfer commercial services to the private sector, are outdated (1997) and have not been adjusted for inflation in 27 years (over 100% CPI increase in 27 years).

The thresholds for CSO obligations must be updated in line with inflation and nationwide reforms. Critical risks include loss of economies of scale and business continuity. Critical losses will be imposed on clients and business if the government privatises the commercial services of the Public Trustee using obsolete CSO asset thresholds. The CSO threshold must not be tied only to asset value, but consider other client needs out of moral and ethical obligations to satisfy community interests.

The Government's proposition to commercialise wills and estate management denies vulnerable Tasmanians the right to appoint Public Trustee as executor and places a burden on family and loved ones to perform the role. Over 23,000 Tasmanians have created wills appointing the Public Trustee as their executor – these are their wishes. As the only other jurisdiction in Australia to cease providing commercial will writing and estate administration services, SA Public Trustee still continues to provide will writing services for eligible people such as those on a government pension and continues to

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<sup>12</sup> Dementia Australia (2024) [2024-2054 Dementia Prevalence Data Estimates and Projections](#) – All forms of dementia.

<sup>13</sup> Research conducted by Queensland Trustees indicates 32% have appointed an enduring power of attorney. This figure is likely to be less in Tasmania impacted by low literacy and financial literacy rates.

act as executor for any Will written up until the time of its decision to commercialise wills services. The perpetual safekeeping of wills for represented persons and commercial clients who have now lost capacity is a moral and ethical obligation.

Privatising commercial services would not be a financially viable nor attractive option for law firms in Tasmania, due to the complex circumstances of the Public Trustee's client base. It strives to be a provider of choice for independent executor, attorney and trustee services. These key services fulfil a gap in services provided by private legal firms. Whilst Tasmania does have a private Trustee Company (TPT Wealth) it caters for more affluent clients starting with a minimum base fee of \$13,000 for Estate administration.<sup>14</sup>

Clients without an apparent executor or who cannot afford private legal fees may be disadvantaged by this model, including:

- older persons without any family
- individuals who are reliant on government pensions and support payments
- migrants and refugees,
- vulnerable adults with inherited assets,
- adults who were fostered, adopted or wards of the state – including forced adoptions and the *stolen generation*.
- Clients living in rural and remote locations
- Clients who have experienced family and domestic violence

In conclusion, the Public Trustee provides an affordable service for the entire community of Tasmania and essential services for vulnerable people and those with specific needs. An asset value threshold is not a fair test for whether a client requires the Public Trustee's services. It is not in the community interest to deprive vulnerable clients of this service, and the proposed changes do not meet the 'reasonable person test'.

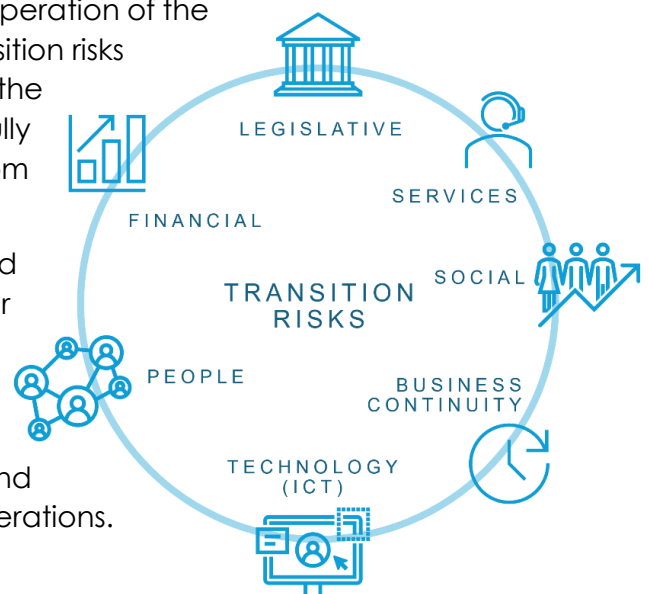
#### 4. Strategic risks of transition

A range of strategic risks must be identified and considered if a business case were presented to change the legislative basis for the operation of the Public Trustee as a GBE. The impacts of these transition risks are considered critical and affect all services, as the current operations teams have successfully navigated unprecedented changes from successive reforms and reviews (see Figure 3).

The decision to enter into another review and reform period would impact business continuity for the immediate to medium term, with unintended disruption to client service provision.

For more information, refer to [Annex A](#) – GBE governance matrix identifying transition risks and [Annex E](#) – Costs and impacts of restructure on operations.

Figure 3. Transition risks of a Public Trustee restructure



<sup>14</sup> TPT Wealth, [Financial Services Guide](#), 5 December 2023.

The following strategic risks regarding a transition to a different governance model or structure have been identified by the Board.

Category	Risk description
Legislative changes	<p>The supported decision-making framework implemented over the past 12 months represents a significant milestone in the Public Trustee's history, with survey results demonstrating its success.</p> <p>Change fatigue from a restructure would likely impact services over the next 12-18 months with risks of job losses for contracted services and increased workload affecting employee health and wellbeing and impacting retention of staff.</p>
Financial sustainability	<p>The commercial services of the Public Trustee offset the impact of a deficit in CSO funding.</p> <p>The impact of privatising commercial services represents a <i>critical risk</i> for business continuity in providing best practice service provision to all clients in need, regardless of the value of their assets.</p> <p>The reduced client base compromises economies of scale and forgoes investment, services and commercial revenues.</p>
Client service experience	<p>Recent organisational changes have significantly improved client, staff and stakeholder satisfaction in services.</p> <p>Further disruption caused by a restructure would represent a <i>critical risk</i> to service delivery due to uncertainty for staff and clients.</p> <p>Represented persons may be resentful of the appointment of an administrator, feel powerless and are often anxious about their finances and financial management by a third party. The Public Trustee staff work hard to gain trust and to reassure their clients, and these efforts could easily be undermined by uncertainty and significant change.</p>

<p>Social impacts</p>	<p>Clients are fundamental to our business, as is understanding their individual circumstances and need. The challenges include decentralised population, access and inclusion for the rights of people with a disability, awareness of the vulnerability of older persons, housing instability and access to health services.</p> <p>Tasmania's remote and rural population also has the lowest literacy and numeracy rates in Australia which significantly impacts upon financial literacy, employment, and skills in personal administration.</p> <p>The impact of a restructure would impact state-wide services for clients and their families, due to resources diverted to the administration of the possible change of governance.</p>
<p>People retention</p>	<p>The Public Trustee is entering into a talent attraction and retention phase subsequent to successive reviews and service improvements.</p> <p>The disruption of a governance restructure would likely impact the People and Culture strategy and delay progress. Reduced revenue impacts on workforce capability and client relationships for frontline service provision.</p> <p>This impact of the restructure is <i>extreme</i> due to effects upon recruitment and retention, further exacerbating single person dependency in highly specialist professional services.</p>
<p>Business Continuity Planning</p>	<p>Investment in financial and client management systems is overdue and the necessary funding sees implementation of systems upgrade in the next 12 months.</p> <p>The resources dedicated to the restructure represents a <i>critical</i> risk to further delay the procurement and implementation of upgraded trust, finance and client management systems.</p>
<p>Information Management and Security</p>	<p>IT systems upgrade planned for 2025 is necessary to overcome the administrative burden of manual reporting processes due to legacy trustee systems. Further delay to this system upgrade will likely impact upon efficiency of client services.</p>



## 5. Governance framework

The Public Trustee is transparent, accountable, compliant and engaged in all its operations and in line with statutory obligations and organisational values. The current GBE model has effectively managed the Public Trustee's brand and reputation through significant changes with outstanding results. Our commitment to a fit-for-purpose sustainable model of business that meets client needs now and for the long term is essential to meet the social needs of Tasmanian communities for the next generation.

Integral to a sustainable business model is full stakeholder engagement and transparency in reporting. Our commitment is to continue embedding the supported decision-making framework through consultation with stakeholders, clients, industry, business and community. The new reporting framework supported by increased stakeholder engagement has led to updated information disclosures to be communicated through a materiality impact assessment due in December 2024.

The Public Trustee's fiduciary duty is central to what it does. Through a responsible investment management of a wide portfolio, the Board offsets the costs to government for CSO funding and informs a sustainable business strategy for long term social and economic benefits. This is achieved through daily consideration of client needs by the Investment Manager in liaison with Client Account Managers.

The Board's oversight and advice provide accountability and oversight, and a specialised skill set, working alongside committees and executive at an operational level to meet client's will and preference. The Board utilises the professional experience of its members and committees to sustainably manage \$180 million for clients, to provide sustainable returns.

'IRPT recommendation 6.1:

The Attorney General and the Treasurer retain the existing GBE model for the Public Trustee and use the performance framework in the *Government Business Enterprises Act 1995* to improve service delivery to its CSO clients and represented persons. The preparation of a supporting business case should precede a decision to change the [Public Trustee's] purpose and governance arrangements (Bugg, 2021).'

### *GBE as a fit-for purpose business model*

The Board carries out its fiduciary responsibilities and accountabilities by acting in the best interest of its shareholders – the Tasmanian community.

The Board is an independent resource of expertise which protects the interests of shareholders, manages risks, and engages with industry stakeholders

The implementation of the IRPT would not have been achieved to such a high level and in the timeframe stipulated without the oversight and direction of the Board's leadership. The board benefits from the advice and output of a diverse set of skills and experience, providing insight and initiating priority actions.

The flexibility of the current model allows the Public Trustee to act in the interests of clients first and foremost. The current framework is robust that enables business continuity in the face of unprecedented change.

### *Disadvantages of an advisory board or committee without Board oversight*

If proposed governance model were to incorporate an advisory committee, it is the Board's view that such a body would not be held accountable for the advice that it gives or for the outcomes of its decisions. The legal structure and duties of an advisory board are insufficient for the Public Trustee's requirements.

Therefore, the governance structure that best represents the requirement for accountability and transparency in client-focused services resides in the current GBE model.

## 6. Summary and key findings

The Board acknowledges the purpose of enquiring into the best governance model for a GBE such as the Public Trustee. The Board is committed, as is Government, to ensuring that the critical services provided by the Public Trustee to the Tasmanian community – particularly to disadvantaged and vulnerable members – are provided fairly, efficiently and effectively. The Board is of the view that the current GBE model works well, is fit for purpose, and there are no inherent flaws or disadvantages of significance. The Board considers the risks associated with transitioning to a different model are significant and not justifiable, particularly at this point in time. The Public Trustee, with the Board at its helm, has driven an extraordinary transformation in the past three years. Any substantial change to its governance model would likely jeopardise the continuity of this transformation.

Disruption created by the restructure would hamper future efficiencies and limit resources dedicated to embedding best practice service delivery to all Tasmanians, including access to services across regional and remote areas.

The impacts of the governance review on the Public Trustee's operations for the next 12-18 months and in the medium to long term are:

1. **Impact on client services** including delays, disruption and ineffective resource allocation
2. **Risks to staff** engagement and retention
3. **Cost of restructure** to government and impacts on business efficiency

The IRPT concluded that '[t]he existing GBE model provides a transparent means for Government to set and monitor performance expectations for the Public Trustee given its current purpose.'<sup>15</sup>

The proposed changes would likely reduce efficiencies and further limit professional services and necessary knowledge base to support sustainable operations. Refer to [Annex A](#).

A comparative analysis of nation-wide reviews into trustee services demonstrates that timely investment in operations to increase commercial services and upgrade systems contributes to improved client satisfaction driven by efficiencies. Refer to [Annex B](#).

As identified in the Bugg review, "though a range of governance models exist for Public Trustees in other jurisdictions there is no 'stand out' model. Governance may be part of

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<sup>15</sup> Bugg, p.69.

the answer to improving performance, but it is not 'the answer'.<sup>16</sup> A matrix of criteria for governance models for trustee services in Australia is provided at [Annex C](#).

The costs of machinery of government changes require considerable resources during a contractionary budget cycle. The proposed changes are reactionary to legacy issues that have in the main been thoroughly addressed. Whereas the 2023-2024 Annual Report clearly demonstrates the achievements despite being under resourced for its CSO obligations over the past 10 years.

## 7. Recommendations

1. **Retain** the current GBE governance structure to enable the business to continue to provide the emerging resource needs to maximise the long-term future capability in client services, including increased reporting responsibilities, systems efficiencies and client information security.
2. **Defer** the decision to restructure and consider evidence-based analysis of the costs and benefits of the outcomes of the proposed restructure compared to comparisons of trustee services in other states. The current GBE structure provides a long-term sustainable business model that considers both economic and social objectives and prioritises community interests over profit.
3. **Review** the existing CSO thresholds and definitions to allow optimal levels of CSO funding ensuring future sustainability and effective client service delivery.

## Annexure

- A. GBE Governance matrix identifying transition risks to a non-GBE model
- B. Comparative Analysis of Reviews into Public Trustee Services in Australia
- C. Matrix of governance models for trustee services in Australia
- D. Unprecedented growth prediction for estate services
- E. Costs and impacts of restructure on operations
- F. Community Service Obligation Thresholds

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<sup>16</sup> Bugg, p.68.

## Annex A – GBE Governance matrix identifying transition risks to a non-GBE model<sup>1</sup>

<b>Risks of transition</b>	<b>Strategic</b>	<b>Policy &amp; Processes</b>	<b>Communication</b>	<b>Reporting</b>	<b>Management oversight</b>	<b>Organisational structure</b>	<b>Operations</b>
<i>Governance risks</i>	Reduced board oversight	Unclear separation of powers	Reduced transparency	Reduced accountability	Resource restrictions	Restructure awaiting approval	Reduced capacity for compliance monitoring
<i>Reputational risks</i>	Brand and image	System disruption	Delays in system change	Absorbed by Department	Conflicts of client interests	Client relationship disruptions	Disruption to roles and responsibilities
<i>Financial risks</i>	Complexity of new delegations	System upgrade delays	Delay in planned efficiencies	Manual processes retained	Single person dependency	Job insecurity in key executive roles	Disruption to client services
<i>Physical risks</i>	Lease management	Resource constraints	Changes to infrastructure	Resource constraints	Capacity for critical incident management	Resource services state-wide	Rural and remote client needs
<i>WHSW risks</i>	Loss of fit-for-purpose strategy	Absorbed by Govt policies	Reliant on government processes	Subsumed by Govt requirements	Lack of autonomy to address risks	Impacts on staff wellbeing	Unmitigated risks to clients
<i>Client services risks</i>	Increased transition costs	Embed SDM	Client contact reduced	Resources impacted	Critical incident management	Reduced capacity for administration	Reduced regional coverage
<i>Legal risks</i>	GA Act Amendment implementation	Crown law obligations	Reduced transparency	Reduced accountability	Legislative changes	Transfer of contracts to govt	Administrative burden of wills transfers
<i>Ethical and conduct risks</i>	Consequences for failures	Interests of clients	Stakeholder engagement	Conflict of interest	Exercise of stewardship	Compromise trust of employees	Client satisfaction

<sup>1</sup> Good governance guide – WA Public Sector Commission

## Annex B - Comparative analysis of reviews into public trustee services in Australia

State	Business model <sup>1</sup>	Services	References	Review history	New initiatives	Service impacts
<b>QLD</b>	Corporation sole under the Act representing the State. The Public Trustee is a person. Roles: Official Solicitor - Customer Legal Services. Customer Advocate.	<ul style="list-style-type: none"> <li>Financial administration</li> <li>Life-planning services, private probate services</li> <li>Deceased estate and trust administration</li> <li>Managing unclaimed moneys register</li> <li>Investment of charities' trusts.</li> </ul>	Public Sector Act 2022. <a href="#">Public Trustee Act 1978</a> (24 June 2024); <a href="#">Public Trustee Regulations 2023</a> (current 1 April 2024); <a href="#">Charitable Fundraising Regulation</a> .	Considering human rights in decision making – <a href="#">final report</a> .	New <a href="#">Office of the Customer Advocate</a> . New Act and Legislation. New <a href="#">Structured Decision Making Framework</a> based on <a href="#">La Trobe model</a> . Advisory and Monitoring Board.	New <a href="#">Customer First Strategy 2021-2026 Corporate Publications</a> – improved complaints management reporting.
<b>SA</b>	The Public Trustee is a Government Business Enterprise.	<ul style="list-style-type: none"> <li>Financial administration</li> <li>Trusts</li> <li>Power of attorney</li> <li>Estates</li> <li>Unclaimed property</li> <li>Legal deposit. <a href="#">SA Law Handbook</a></li> </ul>	<a href="#">Public Trustee Act 1995</a> (1.1.2024) <i>Public Sector Act 2009</i>	<a href="#">Evaluation of the Practices, Policies and Procedures of the Public Trustee</a> , 2017. ICAC.	Review of all policies, systems, processes, training including use of technology. Implemented PeopleSoft CRM. BASWARE Shared Services. Unit Registry (HiTrust)	<a href="#">Annual reports</a> Increased stakeholder engagement – Adult Safeguarding Unit (ASU), Office of Public Advocate (OPA) SACAT. Customer Experience Model. Accessibility Advocacy Sessions.
<b>VIC</b>	SOC. The State of Victoria serves as the sole shareholder of the company. State Trustees reports to the Treasurer through Department of Treasury and Finance. State Government-backed company registered with ASIC. Australian Financial Services License.	Grant program through <a href="#">State Trustees Australia Foundation</a> (charity funded by donations and bequests) Financial & legal: <ul style="list-style-type: none"> <li>Will Writing, POA</li> <li>Executor, Trustee services, Financial Administration.</li> <li>Private charitable trusts</li> <li>Genealogy &amp; Funeral</li> <li>Investment &amp; tax.</li> </ul>	<a href="#">Guardianship and Administration Act 2019</a> ; State Owned Enterprises Act 1992, State Trustees (State Owned Company) Act 1994; Trustee Co. Act 1984; Corporations Act 2001; Financial Management Act 1994.	<a href="#">Victorian Ombudsman</a> – Case management issues, service delays, lack of skills and resources, neglect of human rights, Fees and Charges 2019-20.	<a href="#">Annual Report 2022-23</a> Additional CSO funding (10K RPs), Client First Program. New service delivery model. CRM, Invest in technology, InTrust. Financial Administration Client Experience Index (CX)	New client feedback options, Client satisfaction improved, State Trustees Aus Foundation grant, community engagement.
<b>NSW</b>	Trustee and Guardian. Department of Govt. Commissioner of	<ul style="list-style-type: none"> <li>Wills, executor</li> <li>power of attorney</li> </ul>	<a href="#">NSW Trustee and Guardian Regulation 2017</a> ;	Independent Pricing and Regulatory Tribunal (IPART).	2009 – Merger of Public Trustee NSW with the Officer of Protective	<a href="#">Annual report 2022-23</a>

<sup>1</sup> Refer to [Annex C](#) for a Matrix of governance models for trustee services in Australia.

	Dormant Funds. Statutory functions of Trustee and Commissioner by CEO. Public Guardian statutory functions carried out by NSW Public Guardian. Report to A.G.	<ul style="list-style-type: none"> <li>• enduring guardianship deceased estates</li> <li>• financial management orders</li> <li>• guardianship orders.</li> </ul>	NSW Trustee and Guardian Regulation 2017; Guardianship Act 1987 and Guardianship Regulation 2016; Dormant Funds Act 1942 and Dormant Funds Regulation 2014.	NSW Law Reform Commissions Review of the Guardianship Act 1987. (2022-23)	Commissioner and Public Guardian. <a href="#">NSW Audit 2023</a>	New Customer Resolutions Coordinator. Publicly available policies and toolkits for client services. Disability Awareness Training.
<a href="#">WA</a>	Agency reports to the A.G. under the Department of Justice. Public Trustee is a person. CEO is statutory officer & accountable authority.	Will and Enduring Power of Attorney drafting, deceased estate administration, and personal trustee and administration services.	<a href="#">Public Trustee Act 1941 Website</a>	<a href="#">Office of the Auditor General 2022-23</a>	Audit on the administration of trusts and the handling of deceased estates. Fee review and new oversight model. New Governing Board	Increased transparency in reporting CSO obligations.
<a href="#">NT</a>	Reporting to the Department of Justice and the Attorney General. Responsible to Supreme Court.	Estate, trustee, will and will storage services to NT residents.	<a href="#">Public Trustee Act 1979 (15 Mar 2024)</a> ; <a href="#">Public Trustee Regulations 1979 (2002)</a> .	<a href="#">Health Care Decision Making Legislation Bill 2023</a>	'Principles to prioritise individuals' expressed wishes' First nations kinship. Alternatives	
<a href="#">ACT</a>	Public Trustee and Guardian (PTG) appointed by Director-General. (1-2 people with power of delegation)	Guardianship, Administration and Trustee services: wills, POA, trusts, estates, financial management, charitable fund, COCA.	<a href="#">Public Trustee and Guardian Act 1985</a> . (2022); <a href="#">Guardianship and Management of Property Act 1991</a> ; <a href="#">Human Rights Act 2004</a> ; Protection of Rights (Services) Legislation Amend. 2016	Protection of Rights Services Review – <a href="#">Final Report 2021</a> – 1.4.1 Joined up service delivery. <a href="#">Govt response June 2021</a> . s 16-24.	Clear separation of trustee and guardianship functions. Review of scope of guardianship function to decision making.	Functional conjoined teams, including through physical co-location, effective leadership, cultural evolution and ICT improvements
<a href="#">TAS</a>	Government Business Enterprise.	Financial administration, wills, estates, trusts, enduring power of attorney, enduring guardianship.	<a href="#">Public Trustee Act 1930 (2023)</a> ; <a href="#">Public Trustee Regulations 2019</a> ; <a href="#">GBE Act 1995</a> ; GAA Act 2023 Trustee Act 1898, Power of Attorney Act 2000. <a href="#">Disability Rights, Inclusion and Safeguarding Bill 2024</a> .	TLRI 2017-18, <a href="#">OTTER 2021-23</a> , <a href="#">Governance Review 2024</a> . See also TLRI 'A <a href="#">Charter for Human Rights for Tasmania?</a> ' Apr 24	27 of 28 OTTER implemented, SDM embedded, Agency or Commission model proposed (WLF). Disability Services Commissioner appointed 2024.	CSO funding shortfall 2022-23, ICT systems upgrade delayed.  SDM led to improved client satisfaction and employee survey results.

## Annex C – Matrix of governance models for trustee services in Australia

Considerations	GBE (TAS)	SOC (VIC)	Commission (NSW)	Independent Territory Auth. under Act (ACT)	GBE (SA)	Agency of Justice (WA)	Agency of Justice (NT)	Govt entity representing the State (QLD)
Public Trustee may be a person	X	X	✓	✓	✓	✓	✓	✓
CEO an accountable authority	✓	✓	✓	X	X	X	X	✓
Board governance	✓	✓	X <sup>1</sup>	X <sup>2</sup>	X <sup>3</sup>	✓ <sup>4</sup>	✓ <sup>5</sup>	✓ <sup>6</sup>
Statutory authority/ Body corporate	✓	X <sup>7</sup>	X	X	✓ <sup>8</sup>	✓	✓	X
Corporation sole	X	X	X	✓	X	X	X	✓
Report to Attorney General	X	X	✓	✓ <sup>9</sup>	✓	✓	✓	✓
Report to Shareholding Minister	✓	✓	X	X	X	X	✓	X
Registered with ASIC	X	✓	X	X	X	X	X	✓
Combined with Public Guardian	X	X	✓	✓	X	X	✓	X
Financial Services License	X	✓	X	X	X	X	X	X
Charitable fundraising/ grants	X	✓	X	✓	✓ <sup>10</sup>	✓	X	X <sup>11</sup>
Commercial services revenue	✓	✓	✓	✓	✓	✓	✓	✓

<sup>1</sup> NSW has an Independent Investment Review Committee (advisory only) and Audit and Risk Committee.

<sup>2</sup> ACT has an advisory Investment Board and Audit Committee

<sup>3</sup> SA has an advisory Investment Board and Audit Committee

<sup>4</sup> WA now has an interim Advisory Board and will convene a Governing Board (amending the Public Trustee Act 1941). Audit and Risk Management Committee.

<sup>5</sup> NT has an Investment Board with power to delegate authority to the Public Trustee (person).

<sup>6</sup> QLD has a statutory investment board, advisory Audit and Risk committee, and statutory oversight of Board (Public Trustee Advisory and Monitoring Board)

<sup>7</sup> VIC - Public company under the *Corporations Act 2001* (Cth) (CA) and authorised trustee company under the *Trustee Companies Act 1984* (Vic.), but not a licensed trustee company under Ch. 5D of the CA.

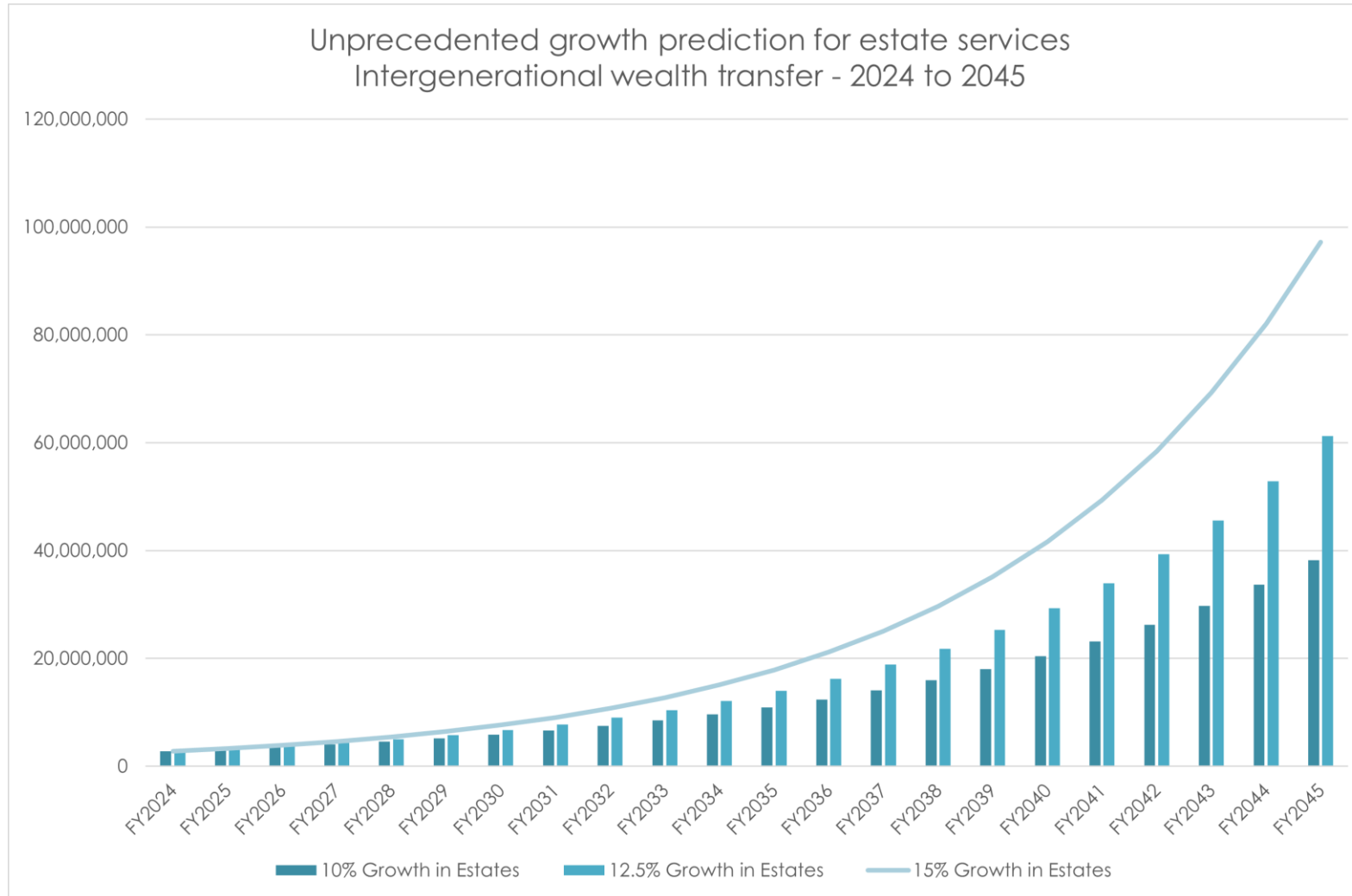
<sup>8</sup> SA is a Public non-financial Corporation.

<sup>9</sup> Director-General (ACT)

<sup>10</sup> Charitable fundraising only occurs through trusts managed by the Public Trustee SA

<sup>11</sup> Not directly provided – QPT is a trustee for charity which may undertake charitable fundraising/grants

## Annex D – Unprecedented growth prediction for estate services



### Assumptions

Headline inflation rate (CPI) – 3%, Current Estate Growth 10% (Average 2022-23 & 2023-24)

Peak wealth transfer projected for generational change over 27 years. 12.5% and 15% Estates Growth shown for illustrative purposes.

Increase in services required to support Tasmanian people living with disability and dementia.

Increase in rates of separation and divorce leading to unprecedented demand for independent estates services (Refer to [Exec. Summary](#))



## Annex E - Costs and impacts of restructure on operations

There are many disruptions during potential machinery of government changes or department restructures. The key is to work with clients, avoid common pitfalls and enhance the ability to achieve change and deliver tangible value. These are the common identified risks, costs and impacts of government restructures: (1)

1. **An exodus of leadership staff** - discouraged by disruptions to their jobs without appropriate support.
2. **Uncertainty**, reduced accountability and lack of role clarity.
3. **Time constraints** of a change in governance leading to unmanaged conflicts of interest between impacted departments.
4. **Resource constraints** lead to a lack of funding impacting ability to attract talent, training and implementation of new systems, policies and procedures.
5. **Lack of communication** – condensed, infrequent and generic messaging.
6. **Stakeholder uncertainty** leading to a lack of trust – changes are implemented without all stakeholders addressing their concerns.
7. **Change management** - Lack of understanding of the reasons for change and clarity around the timing of key actions.
8. **Poor culture** fit is a major reason for the failure of integrating governance structures.
9. **Lack of critical information** to transfer the funding needed to run programs within the new agency or organisation.
10. **Misappropriation of funding** – both baseline and program funding, and ICT integration costs.
11. **Failure to align ICT** can lead to unforeseen departmental costs and system fragmentation.
12. **Effects on business processes** such as misalignment of people capabilities impacting service delivery. (e.g., Departments who do not service 'clients')

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## Annex F – Community Service Obligation Thresholds

Public Trustee – Structure Review

[Terms of Reference](#) (Excerpt), WLF November 2024.

### *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: (established in 1997)

- 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.