

# **LEGISLATIVE COUNCIL**

## **Question Without Notice**

**Wednesday, 19 October 2022**

**C1073. Hon Nick Goiran to the Minister for Emergency Services representing the Treasurer**

I refer to your answer to my Question Without Notice on 18 October 2022 which confirmed that the Department of Treasury has in its possession the review commissioned by the Public Trustee in 2020 and that it will consider it as part of the current review it is undertaking, and I ask:

1. On what date was the decision made for the Department of Treasury to commence a review of the Public Trustee's self-funding model as recommended by the Auditor General?
2. Who was the most senior person to have made that decision?
3. Will you table the document which confirms the date the decision was made?
4. Will you table the 2020 review?
5. If no to either 3 or 4, will you undertake to comply with section 82 of the Financial Management Act 2006?

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### **Answer**

(1 – 3) The Department of Treasury provided a response accepting the Auditor General's recommendation on 8 August 2022. The response was signed by the Acting Under Treasurer and was published in full in the Auditor General's report, released on 10 August 2022.

(4) Yes. I now table the review.

(5) Not applicable.

# Review of the Public Trustee's Fees and Charges – Final Report

Final Report to the Western Australian Public Trustee's office

27 July 2020

**A Marsden Jacob Report**

Prepared for the Western Australian Public Trustee's office  
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#### **Acknowledgements**

Marsden Jacob consulted widely for this report. We would like to acknowledge and thank all the people we engaged with during this project. The report is better for your input. All final recommendations and views in this report are attributable to Marsden Jacob unless otherwise stated.

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## Acronyms and abbreviations

CSO	Community service obligation
F&C	Fees and Charges
PT	Public Trustee

# Executive summary and recommendations

## Introduction

The Public Trustee is a statutory authority in Western Australia, established in 1941 to provide a range of trustee services to the public, including trust management, estate administration and a Will preparation service.

Marsden Jacob were commissioned to undertake a review of the Public Trustee's fees and charges for trusts, deceased estates, Personal Financial Administration as well as Wills. In reviewing the Public Trustee's fees and charges we considered the fees charged by Public Trustees in other jurisdiction's as well as private sector fees and charges for each service. We also reviewed Government guidelines and principles on cost recovery fees and charges as well as for Operating Subsidies.

## Summary of findings

Overall, Marsden Jacob assessed that the current "work effort" fees regime is fair, reasonable and appropriate in most instances. As set out below (and detailed in section 5.1), we consider that the Public Trustees fee structure should be reviewed and that the inclusion of a premium over the work effort model should be considered for customers with a high ability to pay. This would ensure that the fee structure aligns with competitive neutrality objectives for customer segments where private sector providers also compete.

We also recommend some other revisions to individual fees as described in detail below. We found that the funding model for the operating subsidy should be reviewed and be the subject of an open discussion with Treasury and the broader community on how the Public Trustee's role and costs has changed over time.

## Proposed framework for setting fees

Across the major services provided by the Public Trustee (Wills, Deceased Estates, Trusts and Personal Financial Administration) clients vary in both their ability to pay and level of vulnerability.

The figure below sets out these two key factors as a matrix and proposes an approach to fees and charges that could be used for each of the categories on the table. It can be seen that three broad charging methodologies have been proposed.

<div>Discerning</div> <div>Level of vulnerability</div> <div>Vulnerable</div>	Fees waived (CSO calculated on work effort)	Work effort	Work effort + premium to align with Commercial rate
	Fees waived (CSO calculated on work effort)	Work effort	Work effort + premium to align with Commercial rate
	Fees waived (CSO calculated on work effort)	Work effort	Work effort??
	Low	<div>Ability to pay</div> <div>High</div>	

– Note: “Work effort??” in the bottom right hand corner is a point for discussion as set out in section 5.1.3.

Marsden Jacob’s understanding is that the framework for fees and charges proposed above do not vary significantly from the current approach. However, the decision to charge a premium over the cost of provision for services where there is a commercial alternative has not been explicitly stated.

**It is recommended that the Public Trustee review its approach to pricing – and consider adopting a framework such as the one proposed above. Once an overall strategy for fees and charges has been settled, the fees and charges for each service should be reviewed to ensure they align with the strategy.**

## Wills

Although our analysis indicates that the price charged by the Public Trustee for simple Wills is slightly higher than the private sector providers in Western Australia, currently the fees collected for Wills do not achieve full cost recovery. In addition, the capped price of a complex Will (\$1,650) could be substantially lower than the cost of some complex Wills – based on a discussion with a private law firm.

As there is a commercial market for Will preparation, the pricing framework set out in section 5.1 (and summarised above) suggests that Wills for most members of the public should be charged at a premium over the cost recovery rate to align with commercial pricing. However, in the case of the Public Trustee, fees for non-complex Wills appears to be slightly higher than the local Western Australian market. This may be impacting the ability of the Public Trustee to attract clients for Wills that are not made at concessional rates.

**The fees for Wills should be reviewed to ensure that they align with the Public Trustee’s overall approach to cost recovery.**

## Deceased estates

The fees for deceased estates are difficult to benchmark against most other jurisdictions or private sector providers because the WA Public Trustees fees are based on work effort pricing and most other jurisdictions and private sector providers fees are a proportion of the gross estate value.<sup>1</sup>

Comparing the fees with the private sector requires assumptions around the Level of service and the value of the estate. Assuming a Level 10 Service for the Public Trustee, the Public Trustee's fees are higher for two of four randomly selected private sector organisations up to an estate value of \$225,000 and then are lower for higher estate values. The other two private sector organisations have minimum fees of around \$20,000 which means that they are much higher over varying estate values.

**It is recommended that the Public Trustee consider removing the service levels for Deceased Estates and instead charge a standard rate for each standard unit of effort.**

In reviewing these fees:

- The revised fees could be structured to ensure that this is no loss or revenue.
- The standard units of effort should be reviewed to ensure that the list is relevant and a current estimate of the relative time taken for each task.

## Personal Financial Administration

Benchmarking the effective fees (including the waivers provided under Operating Subsidies) for personal financial administration across Public Trustees is challenging as the fees listed do not list all of the waivers and fee discounts applied by Public Trustees for clients that have a low ability to pay. However, on average, the waivers and discounts appear broadly similar to other jurisdictions at low asset values.

The Western Australian and Queensland fee models attempt to identify the full cost of servicing Personal Financial Administration clients. While many of these fees are waived or rebated – for clients with low asset values – it does ensure that the subsidy is transparent. Broadly, the Public Trustee's fee model for Personal Financial Administration appears complicated but suitable.

***It is recommended that the fees for personal financial administration should be reviewed to ensure that they align with the Public Trustee's overall approach to cost recovery.***

As a large proportion of Personal Financial Administration clients currently have their fees waived under the Operating Subsidy, the fee model for this service needs to be considered in tandem with any discussion of the Operating Subsidy.

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<sup>1</sup> Only two other jurisdictions (Queensland and Victoria) use some level of work effort calculation in setting executor fees for Deceased Estates. Two other jurisdictions (New South Wales and the ACT) noted that they can reduce or waive fees if the calculated fee was grossly disproportionate with the work effort



## Trusts

All jurisdictions other than Queensland and Western Australia charge fees for Trusts on a commission basis. This means that the fees charged in those other jurisdictions do not align to the costs of fund management.

The effective fees (including waivers provided under operating subsidies) for Trusts were benchmarked across Public Trustees at varying levels of the value of the trust.

The analysis indicates that Western Australian Public Trustee's fees are higher or lower than the average depending on the type of client. Additionally, a client with a high level of annual income into the trust is likely to have lower fees with the Western Australian Public Trustee relative to other Public Trustees, while a longer trust length (e.g. 20 years) will make Western Australian Public Trustee's total fees higher than other Public Trustees.

Furthermore, the Western Australian Public Trustee's fees are at or below four randomly selected private sector organisations across all of the client asset value ranges assessed.

Given that there are private sector providers who are interested in managing higher value trusts, an alternative segmentation of the fees would align with customer's ability to pay. This would ensure that the Operating Subsidy is accurately estimated for low value trusts and that higher value trusts are priced at a level that ensures competitive neutrality.

***It is recommended that the fees for different forms of Trusts should be reviewed to ensure that they align with the Public Trustee's overall approach to cost recovery.***

## Hourly rate

The hourly rate charged by Western Australia is similar to the rates charged by other jurisdictions. A review of the hourly rates quoted on the internet for paralegals appears to indicate that the hourly rate charged by most of the Public Trustee bodies is high compared to these commercial providers. However, caution is required in making this comparison as most law firms would not allow clients to access paralegal services without also charging for oversight by senior lawyers.

The hourly rate calculation includes the estimated value of the Operating Subsidy in the calculation. This appears to create a circularity (as the Operating Subsidy increases, the hourly rate increases. Then as the hourly rate increases, the Operating Subsidy increases).

**It is recommended that the calculation of the hourly rate be reviewed to ensure it aligns with the cost of service provision (excluding any Operating Subsidy).** If the Public Trustee decides to review its pricing in line with the framework proposed, then the hourly rate could be calculated on two bases – one for cost recovery and one including a premium to align with competitive neutrality.

## Operating subsidy

The current fees and operating subsidy models are strongly inter-linked and an overall understanding of the Public Trustees 'effective' fees requires a consideration of both elements.

However, currently the Fees and Charges applied by the Public Trustee undergo a high level of scrutiny while, the rebate policy is set by the Executive of the Public Trustee and is not open to external scrutiny.

Western Australia shares a similar approach to Queensland in calculating and funding the Operating Subsidy. This approach gives a reasonable estimate of the proportion of work that is applied to clients where the fees are waived or reduced.

As the Public Trustee is self-funded, the operating subsidy is financed through a range of income sources including the surplus funds from the Common Account and the Public Trustee Investment Fund as well as fees and charges applied to other customers. This approach means that the operating subsidy does not appear to align with the Western Australian guidelines on Operating Subsidies.

**We recommend the Public Trustee review its fees and charges to ensure that they align with the approach proposed in section 5.1.**

**We recommend that the Public Trustee seeks an open discussion with Treasury and the broader community on how the Public Trustee's role and costs has changed over time.**

The discussion with Treasury and the broader community should consider both whether the current criteria for waiving fees are appropriate and the most appropriate method for financing the operating subsidy.

# 1. Introduction

The Public Trustee is a statutory authority in Western Australia, established in 1941 to provide a range of trustee services to the public, including trust management, estate administration and a Will preparation service. This includes:

- Funds management and investment;
- Acting as a trustee or financial administrator pursuant to orders of courts or tribunals; and
- Administering the estates of people who die with or without a Will, in accordance with the terms of the Will or the relevant law and under the authority of the Supreme Court.

The Public Trustee has helped many disadvantaged members of the public by providing affordable or at no charge trustee services.<sup>2</sup>

## 1.1 Background

The functions of the Public Trustee, and the billing of fee and charges, were reformed significantly with the passage of the *Public Trustee and Trustee Companies Legislation Amendment Bill, 2006* which was assented to in March 2008.<sup>3</sup> As a result of these reforms the Public Trustee moved from a predominantly commission-based to a predominantly effort-based fee system in 2009.

Consistent with the *Public Trustee Act 1941*, the Public Trustee's fees and charges are gazetted annually.<sup>4</sup> Broadly, these fees and charges relate to the recovery of costs associated with activities undertaken by the Public Trustee for services such as deceased estates, trusts, Wills, enduring power of attorney drafting and executor support.

The model has not been reviewed since it was introduced in 2009, noting there is an annual review which examines relevance of individual fees rather than the model itself.

The Public Trustee's Fees and Charges model includes a 'safety net' for the Public Trustee to provide Operating Subsidy rebates to clients with little or no means for payment of services received. The impact of this operating subsidy is to enable the Public Trustee to provide services free of charge, or at a reduced cost, to clients who cannot afford them.

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<sup>2</sup> Public Trustee and Trustee Companies Legislation Amendment Bill 2006 – Second Reading Speech, 3 May 2007  
[https://www.parliament.wa.gov.au/hansard/hansard.nsf/0/604E72A1D155FBEC8257570007FADE5/\\$FILE/C37%20S1%2020070503%20p1641b-1642a.pdf](https://www.parliament.wa.gov.au/hansard/hansard.nsf/0/604E72A1D155FBEC8257570007FADE5/$FILE/C37%20S1%2020070503%20p1641b-1642a.pdf)

<sup>3</sup> <https://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=68B36013B271CB4048257235001A29C3>

<sup>4</sup> See Public Trustee's Scale of Fees Commencing 1 July 2019  
[https://www.slp.wa.gov.au/gazette/gazette.nsf/searchgazette/A0ECB70322F642D4482584230022C969/\\$file/Gg090.pdf](https://www.slp.wa.gov.au/gazette/gazette.nsf/searchgazette/A0ECB70322F642D4482584230022C969/$file/Gg090.pdf)

## 1.2 Scope of the review

Marsden Jacob were commissioned to undertake a review of the Fees and Charges model for trusts deceased estates and Wills. This included:

- Compare the current Fees and Charges model with other Public and Private Trustees within Australia and assess for relevance and appropriateness for the Western Australian Public Trustee.
- Assess the Hourly Rate for fairness and reasonableness compared to other Public and Private Trustees, where possible.
- Assess for reasonableness, the allocated 'standard hours' and the fees for Trust and Deceased Estate services, which includes the Public Trustee's Wills Services, as listed in the Scale of Fees.
- Assess the Operating Subsidy rebate model, including the current parameters, compared against other Public Trustees in Australia and provide comments and recommendations for improvement to ensure the model is financially sustainable, appropriate and fair to clients with little or no financial means.

## 1.3 Approach

In undertaking the review of the Public Trustee's fees and charges we undertook a range of research approaches:

- researched other jurisdiction's as well as private sector fees and charges for each of the key services;
- interviewed a number of relevant staff of the Western Australian Public Trustee;
- interviewed senior staff members of each other Public Trustee across Australia; and
- researched Government guidelines and principles on cost recovery fees and charges as well as for Operating Subsidies from Western Australia and other Australian jurisdictions.

## 2. Comparison with fees and charges used in other jurisdictions

### 2.1 Introduction

The Public Trustee's Fees and Charges are set out each year in the Government Gazette. The current version is Public Trustee's Scale of Fees – Commencing 1 July 2019.<sup>5</sup> The remainder of this section summarises the fees and charges for Wills, Deceased Estates, Personal Financial Administration and Trusts – as set out in the Gazette.

In this section, in terms of price for services, fees and charges for similar activities carried out by other Public Trustees have been compared. The source of the relevant information for each Public Trustee is provided in Table 1. As discussed in detail in the remainder of this section, the Public Trustee of Queensland is the only other trustee within Australia which has a strong emphasis on “work effort”.

Comparisons between Public and Private Trustees are examined in section 5.

Table 1: Sources of information on fees and charges

State/ Territory	Organisational name	Details on current fees and charges
Western Australia	Public Trustee	<a href="http://www.slp.wa.gov.au/gazette/gazette.nsf/searchgazette/A0ECB70322F642D4482584230022C969/\$file/Gg090.pdf">www.slp.wa.gov.au/gazette/gazette.nsf/searchgazette/A0ECB70322F642D4482584230022C969/\$file/Gg090.pdf</a>
Victoria	State Trustees	<a href="http://www.statetrustees.com.au/what-we-do/state-trustees-commissions-fees-charges">www.statetrustees.com.au/what-we-do/state-trustees-commissions-fees-charges</a>
Queensland	Public Trustee	<a href="http://www.pt.qld.gov.au/wills/fees-and-charges/">www.pt.qld.gov.au/wills/fees-and-charges/</a>
Northern Territory	Public Trustee	<a href="https://nt.gov.au/law/bdm/will-and-estate-management-fees">https://nt.gov.au/law/bdm/will-and-estate-management-fees</a>
South Australia	Public Trustee	<a href="https://publictrustee.sa.gov.au/fees-charges/">https://publictrustee.sa.gov.au/fees-charges/</a>
ACT	Public Trustee and Guardian	<a href="https://www.ptg.act.gov.au/images/inf/fact-sheet-fees.pdf">https://www.ptg.act.gov.au/images/inf/fact-sheet-fees.pdf</a>
Tasmania	Public Trustee	<a href="http://www.publictrustee.tas.gov.au/assets/files/public-trustee-fees-charges-january-2020.pdf">www.publictrustee.tas.gov.au/assets/files/public-trustee-fees-charges-january-2020.pdf</a>
New South Wales	Trustee & Guardian NSW	<a href="https://www.tag.nsw.gov.au/verve/resources/NSWTG-Fees-for-our-services.pdf">https://www.tag.nsw.gov.au/verve/resources/NSWTG-Fees-for-our-services.pdf</a>

<sup>5</sup> [https://www.slp.wa.gov.au/gazette/gazette.nsf/searchgazette/A0ECB70322F642D4482584230022C969/\\$file/Gg090.pdf](https://www.slp.wa.gov.au/gazette/gazette.nsf/searchgazette/A0ECB70322F642D4482584230022C969/$file/Gg090.pdf)

## 2.2 Wills

The fees and charges for Wills and Enduring Powers of Attorney and related services prepared by the Public Trustee in Western Australia are set out in Part 14 of the Gazette, specifically pointing to Schedule 14. Specific sources for information relating to fees and charges across all jurisdictions have been included in the comparison table (Table 2).

Table 2: Fees and charges for the preparation of Wills

	Western - Australia	Victoria	Queensland	Northern Territory	South Australia	ACT	Tasmania	New South Wales
Name	Public Trustee	State Trustees	Public Trustee	Public Trustee	Public Trustee	Public Trustee and Guardian	Public Trustee	NSW Trustee & Guardian
<b>Full price (single Will)</b>	\$347	\$330	Free	\$124.30	Not available	\$300	\$140	\$330 Proposed ~\$400
<b>Complex Will Hourly rate / maximum</b>	\$235 - \$395  \$1650	NA  NA	Not done (software based)	NB. Never used \$311.30	Not available	\$288  \$642	\$295  NA	Proposed ~\$3,000
<b>Concession</b>	\$50	\$200 if >60 or State Trustees as sole executor \$97 if both.	Free	\$24.20	Free	Free (1 Will every 2 years)	Free (one appointment per year)	Free (1 update each year)
<b>Qualify for concession</b>	Concession card holder	Age of recipient Appoint PT as sole executor	Nil - Not required to appoint PT as executor	Concession holder	Concession card holder Appoint PT as sole executor	Seniors ≥ 60 yrs concession card holders/ hardship	Concession card holder and appoint PT as executor	Full Centrelink Pension
<b>Source</b>	<a href="https://www.slp.wa.gov.au/gazette/gazette.nsf/searchgazette/A0EC870322F642D482584230022C969/\$file/Gg090.pdf">https://www.slp.wa.gov.au/gazette/gazette.nsf/searchgazette/A0EC870322F642D482584230022C969/\$file/Gg090.pdf</a>	<a href="https://www.statetrustees.com.au/what-we-do/state-trustees-commissions-fees-charges">https://www.statetrustees.com.au/what-we-do/state-trustees-commissions-fees-charges</a>	Pers Comms	<a href="https://nt.gov.au/law/bdm/will-and-estate-management-fees">https://nt.gov.au/law/bdm/will-and-estate-management-fees</a>	<a href="https://publictrustee.sa.gov.au/fees-charges/">https://publictrustee.sa.gov.au/fees-charges/</a>	<a href="https://www.ptg.act.gov.au/images/nf/fact-sheet-fees.pdf">https://www.ptg.act.gov.au/images/nf/fact-sheet-fees.pdf</a>	<a href="https://www.publictrustee.tas.gov.au/public-trustee-fees-charges.html#tab-0-217">https://www.publictrustee.tas.gov.au/public-trustee-fees-charges.html#tab-0-217</a>	<a href="https://www.tag.nsw.gov.au/fees-and-charges-wills.html">https://www.tag.nsw.gov.au/fees-and-charges-wills.html</a>

## 2.3 Deceased Estate

The fees and charges for deceased estates administered by the Public Trustee in Western Australia are set out in Part 4 of the Gazette. The fee payable for administering a deceased estate is calculated by:

- applying Schedule 3 to determine the total number of standard units of effort; then
- applying Schedule 4 to determine the service level and fee applicable to that total number of standard units of effort.

The Public Trustee of Queensland sets out its fees and charges for administering deceased estates in a similar way (Part 2 of the Gazette), calculated by applying Schedule 2A (deceased estates standard units of effort) and then Schedule 1 (deceased estates fees).<sup>6</sup> Table 3 compares the approach taken by different jurisdictions.

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<sup>6</sup> <https://www.pt.qld.gov.au/media/1695/2019-fees-and-charges.pdf>

Table 3: Comparison of fees and charges for administering a deceased estate

	Western Australia	Victoria	Queensland	Northern Territory	South Australia	ACT	Tasmania	New South Wales
Summary description	Work effort	Value of Estate and Service Level	Work effort, Some additional transaction fees	Value of Estate	Value of Estate	Value of Estate	Value of Estate	Value of Estate
Executor fee (Capital commission)		PP Residence 1.1% Other Assets 3.85%		\$0 to \$200k 4.4% \$200k-\$400k 3.3% \$400k-\$600k 2.2% >\$600k 1.1%	\$0 to \$200k 4.4% \$200k-\$400k 3.3% \$400k-\$600k 2.2% >\$600k 1.1%	\$0 to \$200k 4.4% \$200k-\$400k 3.3% \$400k-\$600k 2.2% >\$600k 1.1%	\$0 to \$200k 4.5% \$200k-\$400k 3.5% \$400k-\$600k 2.5% >\$600k 1.5%	\$0 to \$100k 4.4% \$100k-\$200k 3.85% \$200k-\$300k 2.75% >\$300k 1.65% Propose move to \$250 or \$500k brackets
Executor fee (Work effort)	Units of effort – relating to 20 service levels	Level 1 \$5,170 Level 2 \$8,470 Level 3 \$12,870 Level 4 \$18,370	Units of effort – relating to 25 service levels			Can reduce if commission is unreasonable cf effort		Can reduce if commission is unreasonable cf effort
Total or minimum executor fee	Minimum fee \$2,637	The capital commission is the lesser of: (a) the sum of the Asset & Service Fees; and (b) 5.5% of the gross value of the estate.	Minimum fee \$1,692	Minimum fee \$622		Minimum fee \$2,505		Minimum fee \$220
Income Commission /		6.6% on gross income		3.3% on rent collected by Public Trustee	5.5% on gross income 2.75% on rents managed externally	5.5% on all income	6.6% on all income 3.3% on rents managed externally	
Estate management					\$173.00 per annum			Estate management 0.77% per year on value of assets held
Source	<a href="#">Western Australia</a>	<a href="#">Victoria</a>	<a href="#">Queensland</a>	<a href="#">Northern Territory</a>	<a href="#">South Australia</a>	<a href="#">Australian Capital Territory</a>	<a href="#">Tasmania</a>	<a href="#">New South Wales</a>



## 2.4 Personal Financial Administration

The fees and charges for Personal Financial Administration when administered by the Public Trustee in Western Australia are set out in Part 6 and Part 7 of the Gazette. This role is broken down into:

- A Plenary role (Part 6) – Under Sections 64, 65, 69 and 124 of the *Guardianship and Administration Act, 1990*
- A limited role (Part 7) – Under Sections 64, 65 and 69 *Guardianship and Administration Act, 1990*

Additional information on the role of the Western Australian Public Trustee is provided in Appendix 1, and the Gazette. A comparison of fees and charges as typically listed in pricing schedules is contained in Table 4.

Table 4: Comparison of fees and charges for personal financial administration

	Western Australia – plenary role	Western Australia – limited role	Victoria	Queensland GAAT Act	Queensland Other	Northern Territory	South Australia	ACT	Tasmania	New South Wales
Establishment costs	\$879	\$879		\$6,403.80	Nil			-	\$601 if assets >\$100k	1% of total assets (excl residence) Reduced if assets <\$75k
Annual service fee	Annual fee based on level of support \$1,465 - \$15,236	Annual fee based on # transactions \$0 - \$3,809		Annual fee based on # transactions \$679 - \$5,101	Annual fee based on level of support \$1,279 - \$8,996			-		
Annual mgt assets fee	Based on value of assets from \$0 - \$14,650			Based on value of assets from \$0 - \$13,201					1.1%	1.4% asset value up to max fee of \$15,000
Annual property mgt fee	\$2,930 per property	\$2,930 per property		\$962 per property	\$962 per property			-		
Investment fee										0.1% of value of managed investments
Capital commission			3.3% up to \$500k			1.1% or 2.2% if assets >\$40k excl residence	4.4% up to \$200k	1.1%	2.75% on non realised assets if assets <\$100k 4.5% realised assets up to \$200k	
Commission on income			Pension 3.3% Other income 6.6%			6.6% - rarely applied Not on pension income	5.5% on income 2.75% on rents managed ext	3.0%	6.6% but reduced for clients with low assets	
Source	Western Australia		Victoria	Queensland		Northern Territory	South Australia	Australian Capital Territory	Tasmania	New South Wales

## 2.5 Trusts

The Western Australian Gazette refers to, and defines pricing structures for, three different types of trusts. They are:

- Court trusts;
- Testamentary trusts; and
- Miscellaneous trusts.

The scope of our review includes all three types of trusts (Table 5). More detailed information relating to trusts is provided in Appendix 1.

Table 5: Types of trusts

Trust type	Definition	Relevant section in Gazette
Court trusts	<p>“court trust” means a trust established, including on an interim basis, pursuant to the order of a court, board, tribunal, assessor or other judicial or quasi-judicial body, except—</p> <p>(a) a trust of moneys paid into court; and</p> <p>(b) a trust established pursuant to an order made under the Inheritance (Family and Dependents Provision) Act, 1972 or Family Provision Act, 1972</p>	Part 10
Testamentary trusts	<p>“testamentary trust” means a trust established from a deceased estate, whether by a Will, intestacy, order pursuant to the Inheritance (Family and Dependents Provision) Act, 1972 or Family Provision Act, 1972, deed of family arrangement or otherwise, but only if the Public Trustee is or was the executor or administrator of the deceased estate;</p>	Part 11
Miscellaneous trusts	<p>“miscellaneous trusts” means all trusts other than the following—</p> <p>(a) court trusts;</p> <p>(b) testamentary trusts;</p> <p>(c) trusts of unclaimed moneys;</p> <p>(d) trusts of moneys paid into court;</p> <p>(e) the Give2Good Foundation; and</p> <p>(f) the Give2Good Charitable Foundation</p>	Part 12

In addition to these forms of trusts, Western Australia refers to protective management clients as a form of trust. Some other jurisdictions use this terminology – but these clients are also referred to as Personal Financial Administration.

### 2.5.1 Comparison of WA and Queensland trust fees

The Public Trustee of Queensland also breaks trusts down into different types (under Part 5 of their Gazette). While the trust types are slightly different the method for developing fees and charges are similar – through the use of work-effort (Table 6).

Table 6: Comparison of fees and charges for trusts in Western Australia and Queensland

	Western Australia Court trusts	Western Australia Testamentary trusts	Western Australia Miscellaneous trusts	Queensland Trusts other than testamentary	Queensland Testamentary trusts Duration of a life/Limited interest	Queensland Testamentary trusts No life or limited interest	Queensland DGR Charitable trusts
Establishment costs	Cost based on value of trust as received: \$0 - \$7,325						
Annual personal finance fee	Fee based on number of transactions per annum: \$0 - \$5,860	Fee for administering transactions: \$0 - \$3,809	Fee based on number of transactions per annum: \$0 - \$3,809	Service level fee based on number of transactions per annum: \$429.70 - \$2,149.15	Service level fee based on number of transactions per annum: \$0 - \$4,657.85	Service level fee based on number of transactions per annum: \$429.70 - \$2,149.15	
Annual assets fee	Fee for managing assets is based on the value of the assets: \$0 - \$14,650	Fee for managing assets is based on the value of the assets: \$0 - \$14,650	Fee for managing assets is based on the value of the assets: \$0 - \$14,650	Fee for managing assets is based on the value of the assets: \$0 - \$13,201.15	Fee for managing assets is based on the value of the assets: \$0 - \$13,201.15	Fee for managing assets is based on the value of the assets: \$0 - \$13,201.15	
Annual property management fee	Fee of \$2,930 per each property owned  (excluding principal place of residence of beneficiary or their spouse/partner/minor child)	Fee of \$2,930 per each property owned  (excluding principal place of residence of beneficiary or their spouse/partner/minor child)	Fee of \$2,930 per each property owned  (excluding principal place of residence of beneficiary or their spouse/partner/minor child)	Fee of \$962.60 for each property dealt with (excluding principal place of residence)	Fee of \$962.60 for each property dealt with (excluding principal place of residence for person or beneficiary)	Fee of \$962.60 for each property dealt with (excluding principal place of residence)	
Cessation costs	\$879	Applying total number of 'standard units of effort' required (Schedule 11) to determine appropriate service level (Schedule 12): \$879 - \$38,530	Applying total number of 'standard units of effort' required (Schedule 11) to determine appropriate service level (Schedule 12): \$879 - \$38,530		Applying total number of 'standard units of effort' required (Schedule 2B) to determine appropriate service level (Schedule 1): \$446.10 - \$33,690.10		
Commission on income							6% (excluding GST)

## 2.5.2 Fees and charges for trusts in other jurisdictions

Jurisdictions outside of Queensland and Western Australia set fees and charges generally in terms of percentage of the trust managed (Table 7).

Table 7: Fees and charges for administering trusts applied by other jurisdictions

	Victoria <sup>1</sup>	Northern Territory	South Australia	ACT	Tasmania	New South Wales
Capital commission	5.5% on the gross value of assets of the trust	Defined maturity date: 1.1% Undefined maturity date: 2.2%	Calculated on the gross capital value of the estate: <ul style="list-style-type: none"> <li>\$0 - \$200,00 - 4.4%</li> <li>\$200,001 - \$400,000 – 3.3%</li> <li>\$400,001 - \$600,000 – 2.2%</li> <li>\$600,001 + – 1.1%</li> </ul>	Cash assets: 1.1% Assets other than cash: calculated on the gross capital value of the estate: <ul style="list-style-type: none"> <li>\$0 - \$200,00 - 4.4%</li> <li>\$200,000 - \$400,000 – 3.3%</li> <li>\$400,000 - \$600,000 – 2.2%</li> <li>&gt; \$600,000 – 1.1%</li> </ul>	Calculated on value of the estate: <ul style="list-style-type: none"> <li>\$0 - \$100,000 - 2.75%</li> <li>\$100,001 - \$500,000 – 2.2%</li> <li>\$500,001 + - 1.1%</li> </ul> Minimum commission: \$123 Appointed as a new trustee (person request): <ul style="list-style-type: none"> <li>0 - \$200,00 - 4.5%</li> <li>\$200,001 - \$400,000 – 3.5%</li> <li>\$400,001 - \$600,000 – 2.5%</li> <li>\$600,001 + – 1.5%)</li> </ul>	Based on asset values: <ul style="list-style-type: none"> <li>\$0 – \$100,000 – 3.85%</li> <li>\$100,001 - \$200,000 – 2.75%</li> <li>\$201,000 - \$300,000 – 1.65%</li> <li>\$300,001 + - 0.55%</li> </ul> Minimum fee of \$220
Commission on income	6.6% charged on gross income of the trust	6.6%	5.5% on all income (except rental) 2.75% on rental if collected by external agent 8.25% on rental if collection managed by Public Trustee	5.5%	6.6% (on all including rental income where property is managed by the trustee) 3.3% on rental income (if not managed by trustee)	
Miscellaneous			Administration and audit fee: \$173/yr	Administration fee for all trusts (> \$10,000): \$123/yr Special Disability Trust – Centrelink audit fee: \$123/yr Administration of trusts under <i>Victims of Crime (Financial Assistance) Act 2016</i> and Child Protection Trusts (< \$100,000): no capital commission or administration fee	Other fees and may apply including: Account keeping fee of \$13.50 per month	Trust management: 0.77% pa on value of assets (excluding principal place of residence) Account keeping: \$132 per year Investment: 0.11% per year value of assets invested in NSW Trustee and Guardian investment funds
Source	<a href="#">Victoria</a>	<a href="#">Northern Territory</a>	<a href="#">South Australia</a>	<a href="#">Australian Capital Territory</a>	<a href="#">Tasmania</a>	<a href="#">New South Wales</a>

Notes:

2. These are the rates for trust administration in Victoria, including court-appointed administrations. The rates will only differ for Charitable Trusts.

2.6 Hourly rate

The Hourly Rate charged by the Public Trustee in Western Australia is set out in Schedule 1 (Dictionary) of the Gazette, and defined as:

- “hourly rate” means \$293 per hour, subject to a minimum fee of \$293.

Table 8 compares the hourly rate charged in other States and Territories.

Table 8: Hourly rates in different jurisdictions

	Western Australia	Victoria	Queensland	Northern Territory	South Australia	ACT	Tasmania	New South Wales
Rate per hour	\$293	\$216 Informal deceased estate administration \$271 Para-Legal \$223 conveyancing \$265 Senior Genealogy Researcher \$223 Genealogy Researcher	\$258.75	None identified	\$224 / \$235 Tax \$179 Genealogy \$176 property/inventory services	\$288 (multiple applications)	\$295 complex Wills	Estate tax lodgement \$297 first hour \$253 additional time
Source	<a href="#">Western Australia</a>	<a href="#">Victoria</a>	<a href="#">Queensland</a>	<a href="#">Northern Territory</a>	<a href="#">South Australia</a>	<a href="#">Australian Capital Territory</a>	<a href="#">Tasmania</a>	<a href="#">New South Wales</a>

## 3. Operating subsidy models

### 3.1 Operational subsidy model used in WA

#### 3.1.1 Framework

Section 38B(9) of the *Public Trustee Act 1941* gives the Public Trustee the authority to waive, either wholly or in part, any fees determined under the Act. This power has also been delegated to the Director of Trustee Services to waive fees to a maximum of \$5,000 per transaction

The WA Public Trustee developed a *Fee Waiver Policy/Procedure* in 2009 and this has been reviewed regularly (last reviewed August 2019). The WA Public Trustee refers to this as an *Operational Subsidy* or as a *Community Service Obligation* (sometimes shortened to CSO).

#### 3.1.2 Application of the Operational Subsidy

The following categories of clients are eligible for an Operational Subsidy:

- Protective management clients
- Enduring Power of Attorney clients who became clients before 1 July 2009
- Court trusts
- Miscellaneous trusts

The Operational Subsidy will rebate fees charged in any one month by the amount of fee:

- in excess of 5% of the client's total asset value;
- that reduces the client's "cash asset" value to below \$5,000; and
- personal financial administration fees will be rebated to a minimum of \$34 in any one month effective 1 July 2019.

### 3.2 Discounts and operating subsidies

#### 3.2.1 Value of CSOs and net cost to government

State and territory governments provide services to the community that are not commercial. These services are provided under a community service obligation (CSO) or operating subsidy framework.

Australian governments currently define CSOs in a range of ways, with many of those definitions being similar to the one defined by the Council of Australian Governments (COAG) Steering Committee on National Performance Monitoring of Government Trading Enterprises in 1994. The steering committee defined a CSO as:

*when a government specifically requires a public enterprise to carry out activities relating to outputs or inputs which it would not elect to do on a commercial basis, and which the government does not require*

*other businesses in the public or private sectors to generally undertake, or which it would only do commercially at higher prices (SCNPMGTE 1994:8).<sup>7</sup>*

Western Australia has defined an operating subsidy framework or guidelines<sup>8</sup>, which acts in the same way as a community service obligation framework. Under this framework an operating subsidy is defined as:

*a payment by Government, on behalf of the community, to a commercial entity for the provision of a good or service that would otherwise not be supplied, or would only be supplied at higher prices, had the supply of the good or service been assessed by the entity on purely commercial grounds.*

The operating subsidy guidelines state that operating subsidies can include arrangements such as price subsidies to general consumers, price subsidies to particular groups of consumers, rebates, special billing and payment arrangements or non-commercial community projects.

Furthermore, to be in scope of the Western Australian guidelines, an operating subsidy would have the following elements:

- It is a direct recurrent payment from Government to a 'commercial entity' (which includes public financial corporations, public non-financial corporations, and private sector commercial entities) – it does not cover cross subsidies between groups of consumers, or other implicit subsidies.
- A specific decision by Government is required to pay for a good or service 'on behalf of the community' (for example, so that concessional services can be offered to particular groups) – it is not intended to include circumstances where the entity pursues non-commercial activities for its own benefit, or where the Government purchases goods or services for its own use.
- The definition requires that the entity would not have supplied the good or service on a commercial basis in the absence of the decision by the Government to provide an operating subsidy, or it would have done so only at higher prices to consumers.

In this report, for simplicity, community service obligations or CSOs will refer to both CSOs and operation subsidies.

Two type of approaches have been applied by governments to fund the CSO. These are shown in Table 9.

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<sup>7</sup> SCNPMGTE (Steering Committee on National Performance Monitoring of Government Trading Enterprises) 1994, Community service obligations: some definitional, costing and funding issues, viewed 10 October 2016, <http://www.pc.gov.au/research/supporting/community-service-obligations/cso.pdf>.

<sup>8</sup> Operating subsidy guidelines (2015), Western Australian Government, viewed 10 May 2020, [https://www.wa.gov.au/sites/default/files/2020-02/operating\\_subsidy\\_guidelines.pdf](https://www.wa.gov.au/sites/default/files/2020-02/operating_subsidy_guidelines.pdf)

Table 9: Approaches to fund CSO

Approach to fund CSO	Further explanation	Application
Funding from government	The government provides a CSO payment to the trustee to fund CSO services. However, government may require a dividend payment if the trustee generates profits. The payment of dividends acts to reduce the net CSO payment.	South Australia Victoria Tasmania Australian Capital Territory New South Wales
Funding from internal operations	The trustee funds the CSO from its internal operations. This means that the subsidies that are paid to some customers are financed by higher prices for other customers. Moreover, in this case the government provides no funds to the trustee.	Western Australia Queensland

Source: Trustee annual reports (2018/19)

The value of CSOs provided for trustee services for each state and territory is contained in Table 10 and illustrated in Figure 1.

Table 10: Value of CSOs and net cost to government

State/Territory	Value of CSO or operating subsidy (\$m)	CSO payment to Trustee	Dividend (\$m)	Net cost to government (\$m)
Public Trustee (Western Australia)	21.4	0.0	0.0	0.0
Public Trustee (South Australia)	4.3	4.3	3.0	1.3
State Trustees (Victoria)	18.8	18.8	4.6	14.1
Public Trustee (Tasmania)	2.1	2.1	0.0	2.0
Public Trustee and Guardian (ACT)	0.5	0.5	0.0	0.5
NSW Trustee & Guardian	5.1	5.1	0.0	5.1
The Public Trustee of Queensland	35.7	0.0	0.0	0.0
Public Trustee (Northern Territory)	n.a.	n.a.	n.a.	n.a.

Source: Trustee annual reports (2018/19)

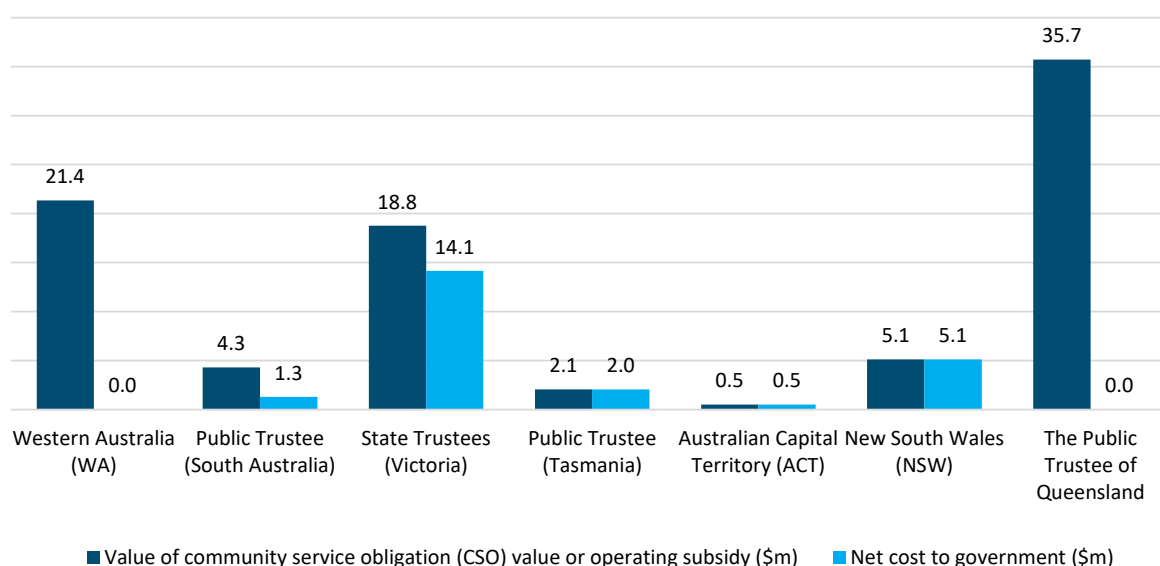
Notes:

1. Western Australia: The CSO is funded from the internal finances of the Public Trustee and are provided by the Public Trustee at no cost to the Western Australian Government.
2. South Australia: The Community Service Obligation payment to the Public Trustee increases the Public Trustee's profit, which are then fully repaid to government via dividends and tax equivalent payments. In 2018-19, the CSO payment was \$4.315 million. Net profits and the dividend were \$3.438 million.



3. *Victoria: As part of a Community Service Agreement, the Victorian Government provides CSO funding to the State Trustees. The State Trustees pays dividends from profits to the Victorian Governments. In 2018-19, the State Trustees paid dividends of \$2.189 million. Dividends are set at 50% of operating profit after tax.<sup>9</sup>*
4. *Tasmania. The Tasmanian government funds the provision of Community Service Obligations via a CSO payment to the Public Trustee. On the 29th August 2014, the Treasurer made public that Government Business Enterprises are required to pay 90% of net profits after tax as a dividend each year, unless a business can justify a lower pay-out policy. The entity has an agreement with Government that a dividend will only become payable should the amount of that dividend exceed the Community Service Obligation funding gap for that year.<sup>10</sup>*
5. *ACT. Under an agreement with the ACT Treasurer, PTG pays ACT Treasury an annual dividend of 50% of any end-of-year operating surplus. The dividend for 2018-19 is Nil.<sup>11</sup>*
6. *NSW Trustee and Guardian receives a grant from Treasury to enable access by the community to professional executor or Will services, professional services in management of non-commercial trusts and professional financial management services for those with low-income or limited assets. The grant is recognised as revenue when NSW Trustee and Guardian obtains control over the assets comprising the grant.<sup>12</sup>*
7. *The CSO is funded from the internal finances of the Public Trustee and are provided by the Public Trustee at no cost to the Queensland Government.*
8. *Northern Territory do not have a defined community service obligation framework for its Trustee services.*

Figure 1: Value of CSOs and net cost to government (\$million)



Source: Trustee annual reports (2018/19)

Note: The Northern Territory Government does not have a community service obligation framework and, therefore, is not reported in Figure 1.

<sup>9</sup> <https://www.statetrustees.com.au/about-us/our-governance/annual-reports>, page 37

<sup>10</sup> <https://www.publictrustee.tas.gov.au/assets/files/annual-reports/2019-annual-report-final.pdf>, page 40

<sup>11</sup> <https://www.pt.qld.gov.au/about/publications/annual-reports/>, page 11

<sup>12</sup> <https://www.parliament.nsw.gov.au/tp/files/76851/NSW%20Trustee%20and%20Guardian%20Annual%20Report.pdf>, page 26

### 3.2.2 Comparing CSOs across Public Trustees

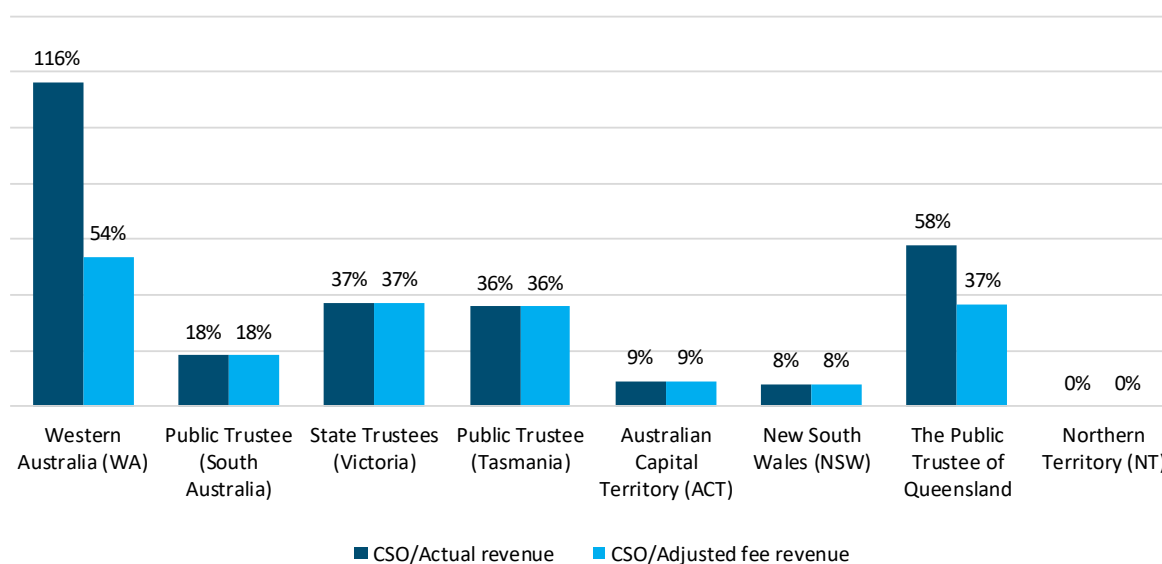
This section compares the CSO value across Public Trustees with reference to Public Trustee revenues and total client funds under management (Figure 2 and Figure 3).

Revenues are presented in two ways:

- Actual revenues received by the Public Trustees
- Adjusted revenues which gross up actual revenues by the CSO value. Therefore, adjusted revenues equal actual revenues plus the value of the CSO if the CSO value is not an income stream. This is relevant for Queensland and Western Australia as the Public Trustees do not receive a CSO payment from their respective state governments. This approach makes the comparison as if Queensland and Western Australia received the value of their CSO as a grant from government (in which case it would be a revenue stream) which would be same as what occurs in other states and territories.

After adjusting for revenues and trusts under management, the CSO value for Public Trustees in Western Australia and Queensland appear to be high relative to other Public Trustees.

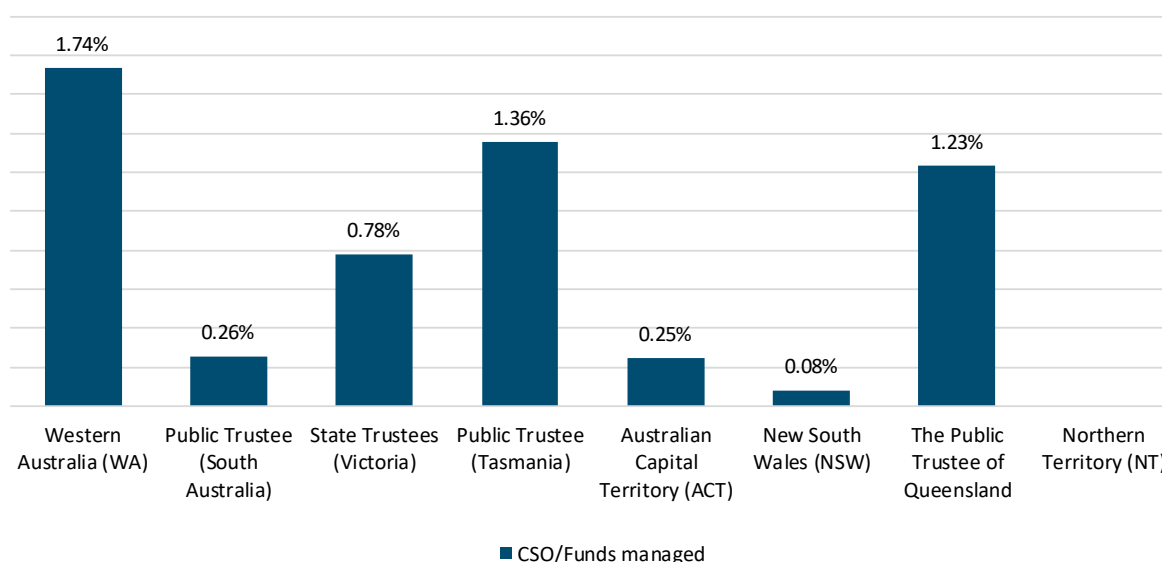
Figure 2: CSO value as % of fee revenue (%)



Source: Trustee annual reports (2018/19)

Note: The Northern Territory Government does not have a community service obligation framework and, therefore, is not reported in Figure 2.

Figure 3: CSO value as % of total client asset value under management (%)



Source: Trustee annual reports (2018/19)

Note: The Northern Territory Government does not have a community service obligation framework and, therefore, is not reported in Figure 3.

The analysis in Figure 2 and Figure 3 indicated that the CSO in Western Australia and Queensland appears high relative to other states and territories.

Discussions with Public Trustees in other states and territories indicate that the major driver of the magnitude of the CSO value is the number of personal financial management clients, as these are the clients that receive the most attention in terms of CSOs. In Western Australia, the personal financial management component of the CSO accounts for approximately 99 per cent of the total CSO value, while in Queensland it accounts for approximately 79 per cent.

In this context, the CSO value appears low in New South Wales and Victoria when the CSO value is compared to the number of personal financial management clients (Figure 4). However, this type of comparison has some significant limitations, including:

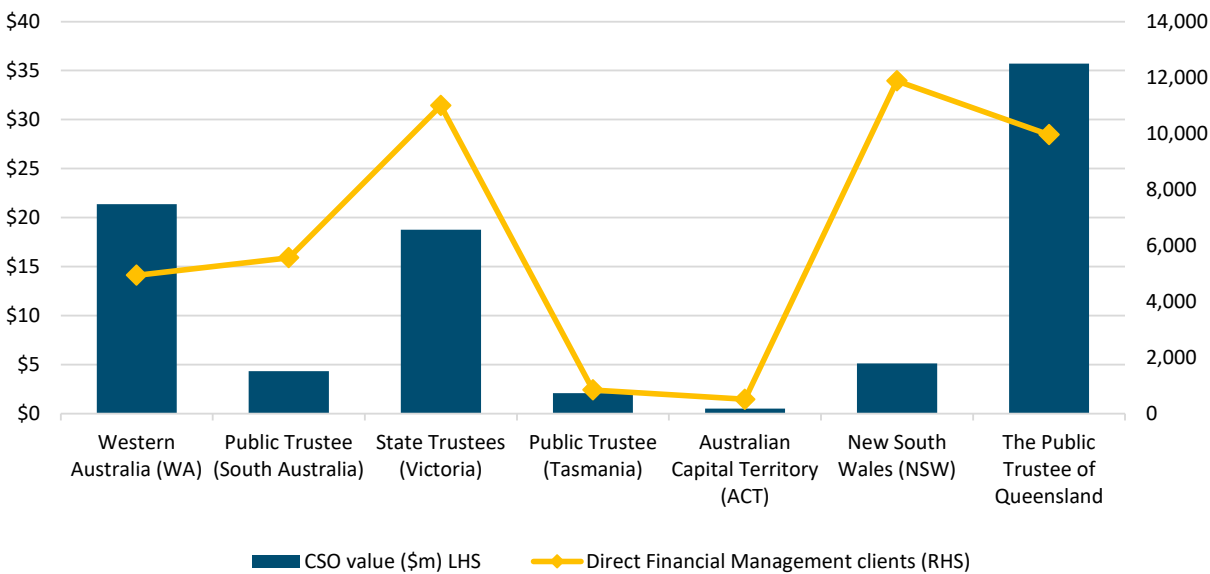
- Discussions with New South Wales and Victoria indicate that the value of their CSOs does not reflect the actual amount of a properly calculated community service obligation value. Rather, as the CSO payment is a payment from government, the CSO value is subject to government budgetary processes and therefore likely to understate the CSO value using first principle calculations. Indeed, some Public Trustees indicated that the CSO payment had not changed in many years. As Queensland and Western Australia's CSO value is not linked to a payment from Government, their CSO value is likely to be more reflective of the actual amount of a properly calculated CSO value.
- The value of the CSOs is sometimes only estimated for some products and not others. For example, subsidies provided for Wills and trusts are sometimes not included in the CSO value even though their prices are likely to be lower than the cost of providing the service. This acts to understate the CSO value for some Public Trustees.
- The profile of financial assets and income for personal financial management clients is likely to be different across the country. Those Public Trustees with a higher proportion of clients in the lower income and/or asset range are likely to have a higher CSO value.

Therefore, it is difficult to make firm conclusions about how the value of the CSO in Western Australia compares to other states and territories. However, it does indicate that fees comparisons across personal financial administration clients at the lower end of the income and assets spectrum would be a useful method to examine the underlying CSO approach being undertaken across Public Trustees.

To examine this further, Figure 14 in section 5.4 shows that the total fees for personal financial management clients with a value of assets of \$5,000 is approximately \$268 on average across all Public Trustees and approximately \$408 for PTWA. However, under the PTWA’s work effort approach and assuming a level 3 service level for personal financial administration, the total cost to service a client with \$5,000 in assets is approximately \$4,400 per annum on an equivalent annual basis.

This illustrates that, relative to other Public Trustees, the PTWA is providing a similar financial discount to personal financial management clients with a low value of assets.

Figure 4: CSO value compared to number of financial management clients



Source: Trustee annual reports (2018/19) and discussions with Public Trustees

Note: The Northern Territory Government does not have a community service obligation framework and, therefore, is not reported in Figure 4.

### 3.2.3 Discounts and concessions

In some cases, Public Trustees apply fee discounts or concessions for specific groups of people or for clients in defined circumstances. These are likely to contribute to the CSO value as they involve fees being discounted. However, it is noted that discounts and concessions do not indicate all areas where a CSO is being applied as it is possible that a service is being provided at a non-commercial rate across all types of customers.

#### Preparing Wills

Concessions or discounts for preparing Wills vary across Public Trustees (as shown in Section 2.2 and Table 2). A common approach is to at least provide discounts for concessions holders or those 60 years of age and

over. This is similar to Western Australia. Queensland provides a Will service that is free of charge for all Queenslanders.

### 3.3 Overview of income and expenditure

PTWA made operating surpluses for 2017/18 and 2018/19, notwithstanding that income on investments fell (Table 11).

Table 11: PTWA financial results

	2017/18	2018/19
<b>INCOME</b>		
<b>Fees and operating subsidy</b>		
Gross fee revenue	39,076,346	41,546,797
Operating subsidy	-19,178,018	-21,358,585
<b>Net fee revenue</b>	<b>19,898,328</b>	<b>20,188,212</b>
<b>Other income</b>		
Income on investments and other	5,542,282	5,066,772
<b>Total income</b>	<b>25,443,982</b>	<b>25,254,984</b>
<b>EXPENDITURE</b>		
Outcome based management (OBM) expenditure and other	-24,819,092	-24,565,959
<b>Total expenditure</b>	<b>-24,819,092</b>	<b>-24,565,959</b>
<b>NET SURPLUS/DEFICIT</b>	<b>2,919,068</b>	<b>1,775,761</b>

#### 3.3.1 Effect and value of the Operational Subsidy in Western Australia

The Operating Subsidy has grown substantially from \$7.4 million in 2011-12 to:

- \$16.5 million in 2015-16
- \$17.9 million in 2016-17
- \$20.1 million in 2018-19
- \$21.5 million in 2019-20 (estimated)

The most recent annual report (2018-19) indicates the growth in the percentage of clients who have services provided by the Public Trustee under the Operating Subsidy is up 2% from 2017-18 (Table 12).

Table 12: Growth in clients who have services provided under the Operating Subsidy

	2016-17	2017-18	2018-19	Target
Percentage of clients who have services provided by the Public Trustee under OS	53%	54%	56%	57%

Source: WA Public Trustee Annual report (2018-19)

## 4. Cost recovery policy and frameworks

### 4.1 WA framework for cost recovery

The framework for cost allocation and setting of fees and charges for service provided by the Western Australian Government are set out in two documents:

- Public Sector Commissioner's Circular Costing and Pricing Government Services (2016)<sup>13</sup>
- Costing and Pricing Government Services: Guidelines for Use by Agencies in the Western Australian Public Sector (April 2015)<sup>14</sup>

In addition to these two guidelines, we are aware that the WA Auditor General has previously reviewed some other fees and recommended changes to justify cost allocations.<sup>15</sup> The Auditor General concluded that agencies had weaknesses in their approach to setting fees and charges. These weaknesses included failing to clearly define the scope and purpose of fees, poor documentation of the methodologies and assumptions used in costing models, and lack of detailed costing of services for some fees and charges.

It is noted that this report aims to overcome each of these issues by documenting a clear methodology and set of assumptions used in developing cost models.

#### 4.1.1 Costing and pricing

The costing and pricing guidelines stress a distinction between costing and pricing. Costing involves determining the value of resources consumed in the production of goods or the provision of services. It provides a benchmark against which pricing and production decisions can be made.

While costing is an important consideration in pricing, the optimal pricing policy would also reflect additional market and competitive considerations, as well as the need to achieve a rate of return on investment (as applicable).

In this instance, Competitive Neutrality is an issue, as the Public Trustee is competing with private sector providers in providing these services (trusts, Will and deceased estates). Should charges be set at a rate that is below the competitive market rate, it may distort the market for these services.

The guidelines also state:

*Unless Government approves otherwise, prices should be set at levels that reflect the full costs of providing the services*

For this reason, we have focussed on identifying the full cost of the service provision. The guidelines specify that this should include:

- Direct Costs;

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<sup>13</sup> <https://publicsector.wa.gov.au/document/public-sector-commissioners-circular-2016-01-costing-and-pricing-government-services>

<sup>14</sup> [https://www.treasury.wa.gov.au/uploadedFiles/Treasury/Publications/costing\\_and\\_pricing\\_guidelines\\_june2015.pdf](https://www.treasury.wa.gov.au/uploadedFiles/Treasury/Publications/costing_and_pricing_guidelines_june2015.pdf)

<sup>15</sup> refer pages 15 and 16 for further detail of:

[http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3812912a334d2964959d7b78482577e500334f25/\\$file/t\\_p2912.pdf](http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3812912a334d2964959d7b78482577e500334f25/$file/t_p2912.pdf)

- Indirect Costs;
- Services received free of charge; and
- Opportunity Cost of Capital.

#### 4.1.2 Cost recovery guidelines from other jurisdictions

The Australian Government Cost Recovery Guidelines state that ‘where appropriate, non-government recipients of specific government activities should be charged some or all of the costs of those activities’.<sup>16</sup> Some considerations when making a policy include:<sup>17</sup>

- Promote equity (so recipients rather than the general public bear the cost);
- Improve efficiency, productivity and responsiveness of the government activities and accountability for those activities; and
- Increase cost consciousness (so stakeholders are aware of the costs to government of the activity).

As such, it was noted that when considering the type of activities which may lend themselves to cost recovery, it should be done so on a ‘case-by-case basis’.<sup>18</sup>

Most other Australian jurisdictions broadly follow this guidance from the Commonwealth. In Victoria, for example, ‘general government policy is that regulatory fees and user charges should be set on a full cost recovery basis because it ensures that both efficiency and equity objectives are met’.<sup>19</sup> However, it is also acknowledged that there will be some situations (as outlined in the guidance) where it may not be possible (or appropriate) to recover full costs.

South Australia takes account of the Australian Government Cost Recovery Guidelines. However, some agencies, such as Primary Industry and Regions SA, have, on top of this, their own cost recovery policies.

#### 4.1.3 Proposed criteria for cost recovery frameworks

The WA Treasury guidelines provide limited advice on assessing alternative fee collecting arrangements. However, by considering other guidance on cost recovery, we identified a set of criteria for considering cost recovery frameworks. Our proposed criteria for identifying costs to be recovered are set out in Table 13. It is also noted that these objectives may (in some cases) be competing objectives that must be weighed and assessed.

<sup>16</sup> Department of Finance, 2014, *Australian Government Cost Recovery Guidelines*. Resource Management Guide No. 304. Australian Government, Canberra. p.5.

<sup>17</sup> Ibid, p.1.

<sup>18</sup> Ibid, p.5.

<sup>19</sup> Department of Treasury and Finance, 2013, *Cost Recovery Guidelines*. January 2013. p.7.



Table 13: Criteria for identifying costs to be recovered

Proposed criteria	Summary explanation
Efficiency	Regulatory fees and charges should be set to ensure Government activities are efficient (funds collected are sufficient for an efficient cost base)
Competitive neutrality	When the government is competing against the private industry the fees and charges should be set to be competitive and to not distort the market
Fees and charges should be set to recover the full cost of delivering services (unless otherwise agreed)	Fees and charges should be set to recover the full cost of delivering services

Our proposed criteria for distributing costs between different users are set out in Table 14.

Table 14: Criteria for distributing costs to different users

Proposed criteria	Summary explanation
Equitable and fair sharing costs among users	Fees and charges are generally based on either a user-pays or beneficiary-pays model. A user-pays model allocates fees based broadly on the imposition of costs but may also consider the ability of a licence holder to pay a fee calculated on full cost recovery.
Ensuring transparency and ease of understanding	Fees and charges that are transparent in their allocation of costs and levels of cost recovery and are easily understood.
Minimising administrative burden (simplicity)	While a detailed fee calculation may allow a precise allocation of costs to licence holders, this may be opaque to industry members and may be excessively complex to administer. In contrast, a flat uniform fee for all licences (also called “postage stamp pricing”) may be administratively simple but not equitable. For this reason, this criteria may need to be balanced with the equity criteria.
Price / funding stability	In some industries the level of activity can vary significantly from year to year. For example, in resource industries (such as mining), exploration rates and the development of new mines vary substantially based on commodity prices. If fees and charges are linked to activities of these kind, then the Government would not have a stable funding source.
Ability to pay	Regulatory fees are set such that those that have a higher ability to pay will pay higher fees (also referred to as Vertical equity)
Promoting/encouraging desirable behaviours	Fees that are directly linked to activities (such as charging per job undertaken) may discourage the industry from reporting all jobs and promote the development of a black market.

Source. Marsden Jacob analysis

## 4.2 CSO Framework

As discussed in Section 3, a CSO is when government obliges a public or private service or infrastructure provider to provide a minimum level of service, associated with specific government policy objectives, that it would not otherwise provide on a commercial basis.

The WA government guidelines on Operating Subsidies<sup>20</sup> provides clear criteria for an operating subsidy to be included within the guidelines.

The WA Operating subsidy guidelines state<sup>21</sup>:

*Cross subsidies are not within the scope of these Guidelines. Operating subsidies are preferable over cross subsidies in that they are more transparent, create greater accountability for the commercial entity receiving the subsidy, and have fewer deleterious effects on economic efficiency.*

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<sup>20</sup> Department of Treasury, Government of Western Australia, *Operating Subsidy Guidelines*, June 2015  
[https://www.wa.gov.au/sites/default/files/2020-02/operating\\_subsidy\\_guidelines.pdf](https://www.wa.gov.au/sites/default/files/2020-02/operating_subsidy_guidelines.pdf)

<sup>21</sup> Ibid, p.3.

## 5. Analysis

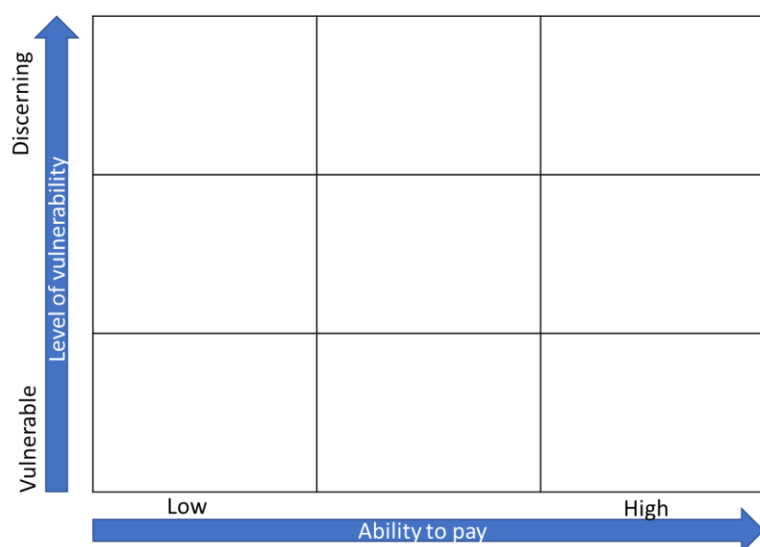
### 5.1 Overview of the role of the Public Trustee

Across the major services provided by the Public Trustee (Wills, Deceased Estates, Trusts and Personal Financial Administration) clients vary in both their:

- ability to pay; and
- level of vulnerability

As ability to pay and vulnerability are two key factors in the services provided and fees charged it can be envisaged as a matrix – as shown in Figure 5.

Figure 5: Matrix of Public Trustee customers



*Note: Client vulnerability may depend on both their own capacity and that of family and friends who act as advocates.*

Across the whole spectrum of clients, it is useful to consider the role of the Public Trustee in these markets. Some senior staff of the Public Trustee indicated that they consider clients that would not be served by the private sector to be a key client category.

#### 5.1.1 Ability to pay

Logically, there is a reasonable level of private sector competition for clients that have a high ability to pay (towards the right of the table). In contrast, there is negligible competition for clients with a low ability to pay (towards the left of the table). Services that are provided to customers with a low ability to pay are likely to not be commercially viable and may be provided under an Operating Subsidy. This is shown in Figure 6.

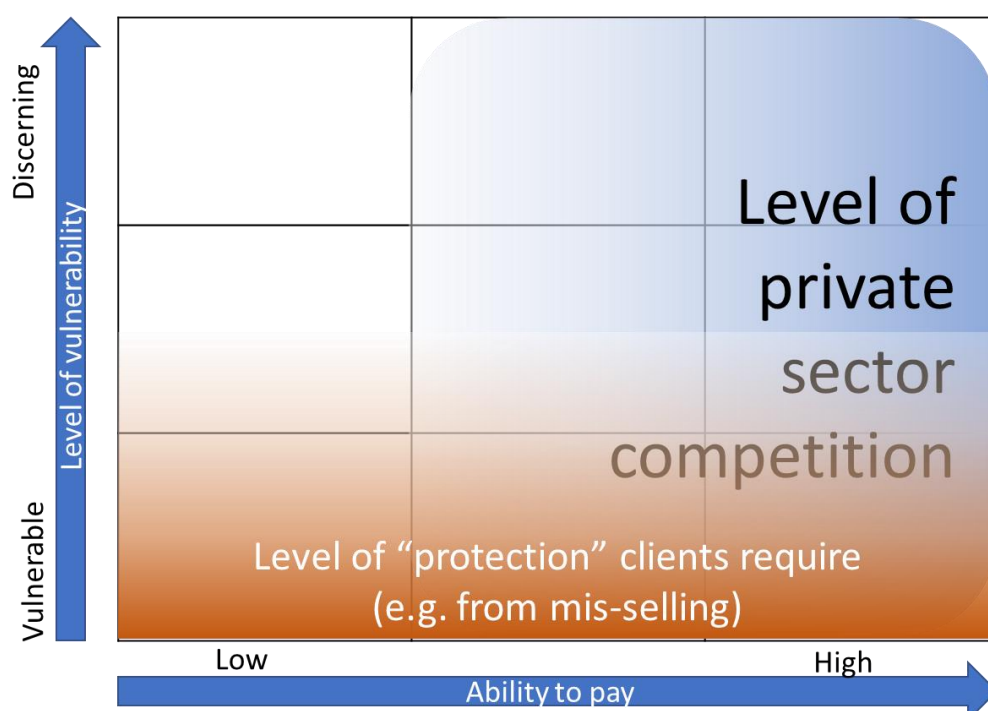
### 5.1.2 Ability to manage own affairs

Clients that are not able to manage their own financial affairs are a key client group of PTWA.

Clients with a high level of vulnerability require a higher level of support and may require extra support to assist with financial decision making and some level of “protection” from mis-selling. This requirement for support is a spectrum and is most important for very vulnerable clients (across the bottom of the table).

The spectrum allows various customer types to be identified. It can be seen that clients in the top right hand corner are both discerning and have a high ability to pay. These are potential clients who could readily obtain services from the private sector – if the Public Trustee were to reduce services.

Figure 6: Private sector competition



### 5.1.3 Services

The range of products offered by the Public Trustee can be mapped on this spectrum – but it is noted that some products and services are easier to map than others. Figure 7 shows a suggested alignment of products and services to the spectrum. By definition, high value trusts and Personal Financial Administration will lie along one axis of the table. All other products and services are less clear where the service would fall – and so we have proposed a likely alignment for most clients of this service.

Figure 7: Suggested alignment of PT services provided

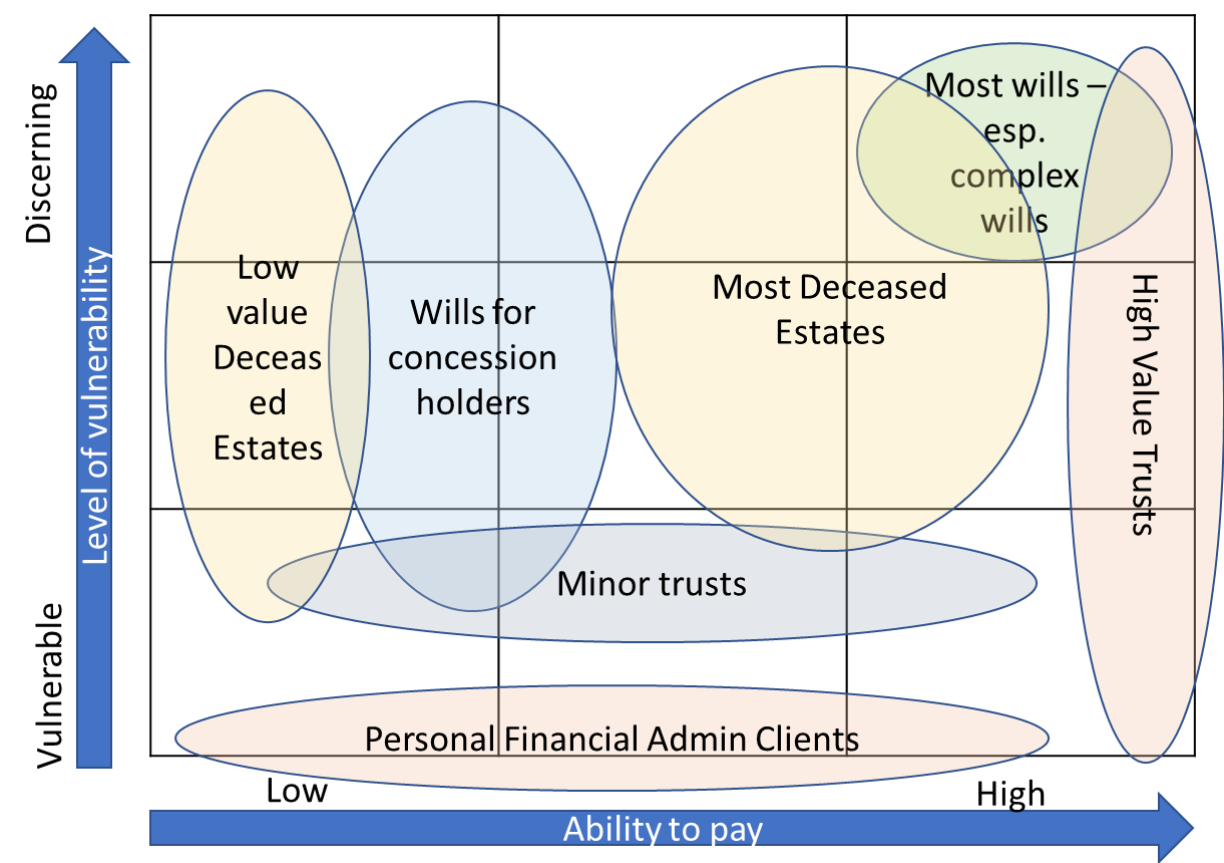
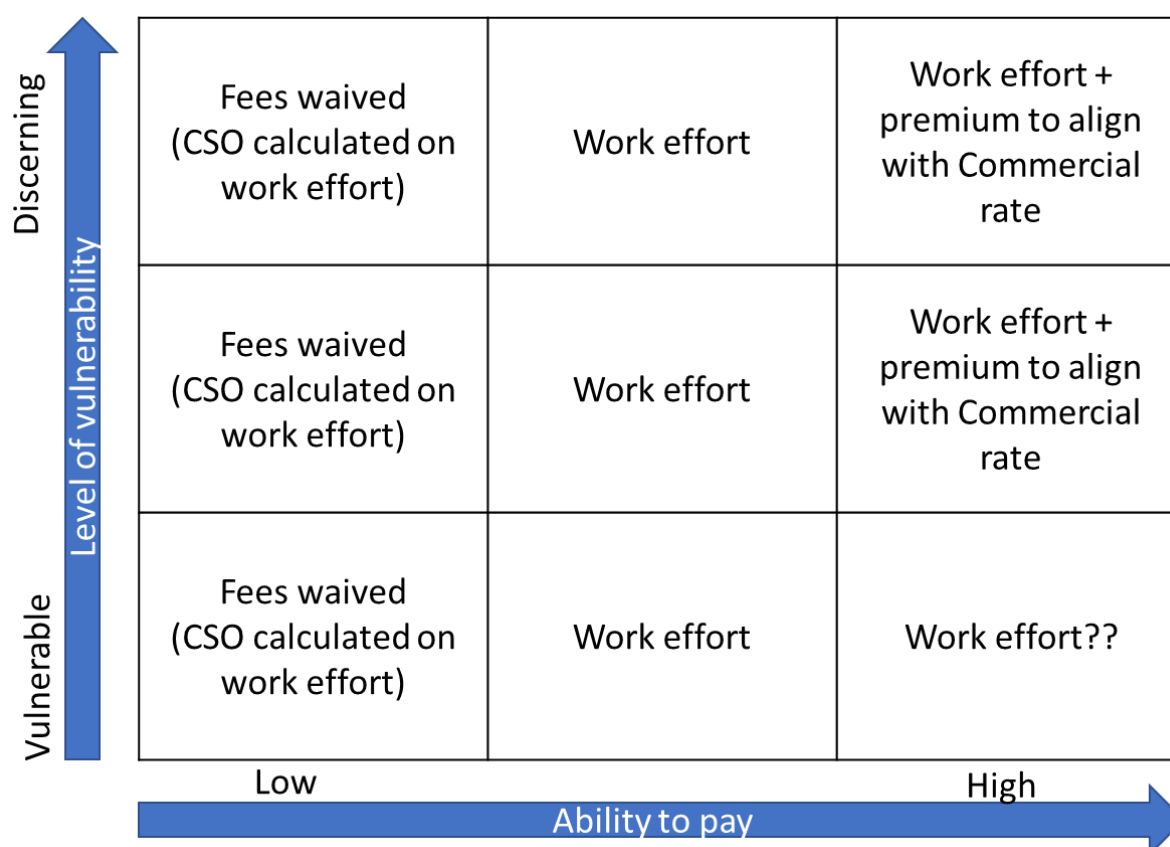


Figure 8 sets out the suggested approach to fees and charges that could be used for each of the categories on the table. It can be seen that three broad charging methodologies have been proposed.

Figure 8: Suggested fees to client



<div>Discerning</div> <div>Level of vulnerability</div> <div>Vulnerable</div>	Fees waived (CSO calculated on work effort)	Work effort	Work effort + premium to align with Commercial rate
	Fees waived (CSO calculated on work effort)	Work effort	Work effort + premium to align with Commercial rate
	Fees waived (CSO calculated on work effort)	Work effort	Work effort??
	Low	<div>Ability to pay</div> <div>High</div>	

On the right hand side (where Public Trustee competes most heavily with private sector providers), the fees and charges would include a premium plus the work effort calculation in order to align with commercial rates (ensuring competitive neutrality). However, there may be a small number of clients who fall into the category of ‘high ability to pay’ but also ‘very vulnerable’. There are alternative approaches for charging these clients and as they are based on differing philosophical positions, it is not obvious that one approach is better than the other.

- One position is to focus on the customer’s ability to pay, in which case they would be charged a commercial rate (based on a premium over the work effort).
- The alternative position is that society would expect all vulnerable customers to be protected and that the Public Trustee is more likely and better able to look after each client’s interests than private providers. This philosophical position could justify charging below a commercial rate in order to largely exclude private sector providers from this market segment.

As these alternative positions are based on differing philosophical positions, it warrants consideration by the Trustee’s executive to identify which approach aligns better with the Public Trustee’s values and strategy.

In the middle and left-hand columns, the fees would be calculated using the work effort ratios– but these would be waived or provided at a discounted rate for clients in the far left column (due to their low ability to pay).

#### 5.1.4 Recommendation:

Marsden Jacob's understanding is that the framework for fees and charges proposed above do not vary significantly from the current approach. However, the decision to charge a premium over the cost of provision for services where there is a commercial alternative has not been explicitly stated.









In this context, it is recommended that the Public Trustee provide greater clarity on its approach to pricing – such as the one proposed above. Once an overall strategy for fees and charges has been settled, the fees and charges for each service should be reviewed to ensure they align with the strategy.

## 5.2 Wills

### 5.2.1 Alignment with cost recovery principles

Based on our assessment, we reviewed the current fees and charges for Wills against the cost recovery principles and frameworks set out in section 4. The assessment is set out in [Table 15](#), below.

Table 15: Assessment of current Wills fees against cost recovery principles

Principle	Rapid assessment	Comments
Efficiency	NA	The efficiency of the Government service was not considered explicitly in this review
Competitive neutrality		The fees for simple single Wills appear to be roughly comparable with a sample of private sector organisations (Figure 9), although fees are slightly higher than those based in Western Australia. It is more difficult to assess competitiveness of complex Wills as private sector fees are typically based on a quote that is tailored to client needs.
Fees and charges should be set to recover the full cost of delivering services		The fees for Wills – and particularly complex Wills are set below full cost recovery
Equitable and fair sharing of costs among users		The discounted pricing of Wills means that costs are offset by other income sources
Ensuring transparency and ease of understanding		The current pricing of Wills is transparent and easy to understand for the public
Minimising administrative burden (simplicity)		The current pricing of Wills is easy for staff to explain and invoice
Price / funding stability		The current pricing structure would produce a high level of funding stability
Ability to pay		The discounted pricing of Wills means that it is not strongly linked to ability to pay for the majority of the population (with a medium or high ability to pay). However, the provisions of targeted concessions aligns well for those with a low ability to pay.
Promoting/encouraging desirable behaviours		The low pricing of Wills would encourage desirable behaviours as it would encourage more people to get a Will. This is seen as desirable as it would reduce the number of people dying without a valid Will.



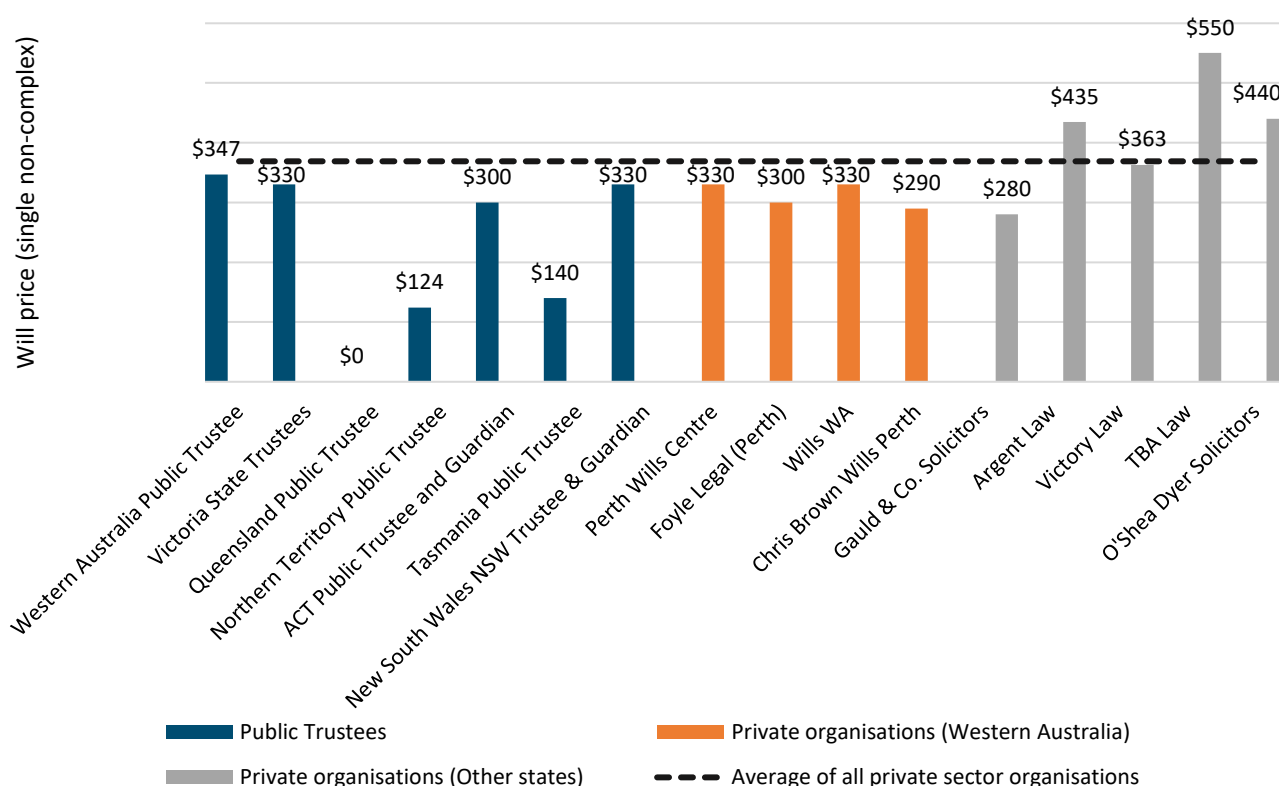
## 5.2.2 Comparison with other jurisdictions and private sector

As set out in section 2.2, most Public Trustees charge a similar full fee for Will preparation (Figure 9) – noting that some Public Trustees offer concessions rates. The concession fee for Will preparation varies from being free to (Queensland, South Australia, ACT and New South Wales) to \$200 in Victoria if over 60 or appointing the Public Trustee as the sole executor. This fee in Victoria is reduced to \$97 if both these criteria are met (i.e. over 60 and appointing the Public Trustee as the sole executor).

It is noteworthy that one jurisdiction (South Australia) only offers Wills to concession card holders – thus excluding the majority of the population. The South Australian Public Trustee described this as not competing in market where there are private providers.

The fee to prepare a simple single Will for the Public Trustee (WA) (\$347) is very similar to an average of nine randomly chosen private sector organisations across Australia (Figure 9). However, Will fees for the Public Trustee (WA) do appear to be slightly higher than for the four private sector organisations from Western Australia. This indicates that the Public Trustee may have difficulty attracting clients who do not obtain concessional rates for Will preparation.

Figure 9: Comparison of fees for single (non-complex) Wills across Public Trustees and selected private sector organisations



Note: The Public Trustee fees in this chart do not include concessions provided to specific client groups. Fees for private sector organisations were examined during mid-2020.

### 5.2.3 Analysis

Although our analysis indicates that the price charged by the Public Trustee for simple Wills is slightly higher than the private sector providers in Western Australia, currently the fees collected for Wills do not achieve full cost recovery. The most recent WA Public Trustees Annual Report<sup>22</sup> gives the average cost per Will prepared at \$662 - it is important to note that it is over \$300 more than the cost of a full price Will in Western Australia (\$347) and well above commercial rates (Figure 9). In addition, the capped price of a complex Will (\$1,650) could be substantially lower than the cost of some complex Wills – based on a discussion with a private law firm.

In other jurisdictions, some Public Trustees indicated that their fees for Wills are set at a discounted level because:

- Wills are seen as a “loss leader” resulting in further work being brought to the Public Trustee; and/or
- it is a community benefit to ensure as many people as possible have valid Wills ahead of their death

As set out in section 2.2, the Victorian discounts align to both of these principles – targeting clients over 60 years old (as those most in need of Will) and those that appoint the Public Trustee as the sole executor.

As the Western Australian pricing and discounts do not require the Public Trustee to be appointed as an executor, it is not clear that the preparation of Wills results in any additional work or fees for the Public Trustee.

### 5.2.4 Conclusion

As there is a commercial market for Will preparation, the framework set out in section 5.1 suggests that Wills for most members of the public should be charged at a premium over the cost recovery rate to align with commercial pricing. However, in the case of the Public Trustee, fees for non-complex Wills appears to be slightly higher than the local Western Australian market. This may be impacting the ability of the Public Trustee to attract clients for Wills that are not made at concessional rates.

The Victorian criteria for discounted Will pricing appear a suitable approach to ensure those most in need of a Will (over 60 years old) receive a discount and also recognise that Wills that appoint the Public Trustee as the sole executor will result in additional work and income. This discounting could be extended to cover concession card holders and/or other hardship cases as an indicator of clients with a low ability to pay.

The fees for Wills should be reviewed to ensure that they align with the Public Trustee’s overall approach to cost recovery – a review of which is proposed in section 5.1.

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<sup>22</sup> 28-19 Annual Report, <https://www.publictrustee.wa.gov.au/files/annual-reports/Public-Trustee-Annual-Report-2018-2019.pdf>


## 5.3 Deceased estates

### 5.3.1 Alignment with cost recovery principles

Based on our assessment, we reviewed the current fees and charges for Deceased Estates against the cost recovery principles and frameworks set out in section 4. This assessment is set out in Table 16, below.

Table 16: Assessment of current Deceased Estates fees against cost recovery principles

Principle	Rapid assessment	Comments
Efficiency	NA	The efficiency of the Government service was not considered explicitly in this review
Competitive neutrality		The fees for Deceased Estates are difficult to benchmark against private sector providers because Public Trustees fees are based on work effort pricing and private sector providers fees are a proportion of the gross estate value.
Fees and charges should be set to recover the full cost of delivering services		The fees for Deceased Estates – appear to align with the full cost of delivering services.
Equitable and fair sharing costs among users		The fees for Deceased Estates – appear to share costs fairly among users – allocating charges in line with costs incurred.
Ensuring transparency and ease of understanding		The fees for Deceased Estates are transparent but are not easy for the public to understand using the price schedule. However, the Public Trustee does estimate the total fees in advance for the client using a fee estimator. The Public Trustee in Queensland has an online tool available for customers to estimate total fees in advance which is not available in Western Australia.
Minimising administrative burden (simplicity)		The fees for Deceased Estates would be somewhat difficult for staff to explain and invoice.
Price / funding stability		The current pricing structure would produce a high level of funding stability
Ability to pay		The Public Trustee does not typically waive fees for Deceased Estates that have a limited ability to pay – but occasionally gives a fee reduction.

Principle	Rapid assessment	Comments
Promoting/encouraging desirable behaviours		The full cost recovery of Deceased Estates means that clients are able to compare the Public Trustee against other executors such as family members or private providers.

### 5.3.2 Comparison with other jurisdictions and selected private sector organisations

As set out in section 2.3, most jurisdictions charge Deceased Estates on a commission basis. Only two other jurisdictions (Queensland and Victoria) use some level of work effort calculation in setting executor fees for Deceased Estates. Two other jurisdictions (New South Wales and the ACT) noted that they can reduce or waive fees if the calculated fee was grossly disproportionate with the work effort.

The effective fees for Deceased Estates have been benchmarked across Public Trustees (Figure 17 to Figure 21) at varying levels of the gross value of estate under the following assumptions:

- All assets are sold over the course of administration which lasts for one year
- The principal place of residence accounts for 50% of gross assets and is not being transferred to the spouse through the execution of the administration
- All assets are fully owned by the estate and no income is received within the year of administration
- Effective fees include administration fees for the one-year period of administration
- No overseas assets as part of administration
- An appropriate equivalent service level has been chosen for Victoria and Queensland to make it comparable with Western Australia.

The analysis compares fees assuming either a Service Level 5, 10 or 15 for the PTWA.

At a service level 5 (Figure 10), this analysis indicates that PTWA's fees are higher than all other Public Trustees up to around a \$100,000 gross value of the estate and then are lower for higher estate values. However, the PTWA's fees are only slightly higher than the Public Trustee in Queensland at all estate values as their fees are also linked to work effort. For higher service levels (i.e. Level 10 and 15 in Figure 11 and Figure 12), the PTWA's fees are higher than all Public Trustees total fees up to a level of around \$225,000 for Level 10 and \$500,000 for Level 15 – and then lower beyond these estate values.

Furthermore, assuming a Level 10 Service Level for the Public Trustee, the Public Trustee's trust fees are higher for two of four randomly selected private sector organisations up to around an estate value of \$225,000 and then lower for higher estate values (Figure 13). The other two private sector organisations have minimum fees of around \$20,000 which means that they are much higher over the estate values shown in Figure 13.

A key driver of the difference between the fees for the Public Trustees in Western Australia and Queensland relative to other states is that their fees are based on work effort. In other states, fees are largely calculated based on a proportion of the gross estate value. This makes it challenging to benchmark fees across jurisdictions and with private sector providers. However, it is likely that other jurisdictions are not recovering their costs at low estate values.

Figure 10: Comparison of total Deceased Estate administration fees across Public Trustees (Level 5 service level for Public Trustee Western Australia)

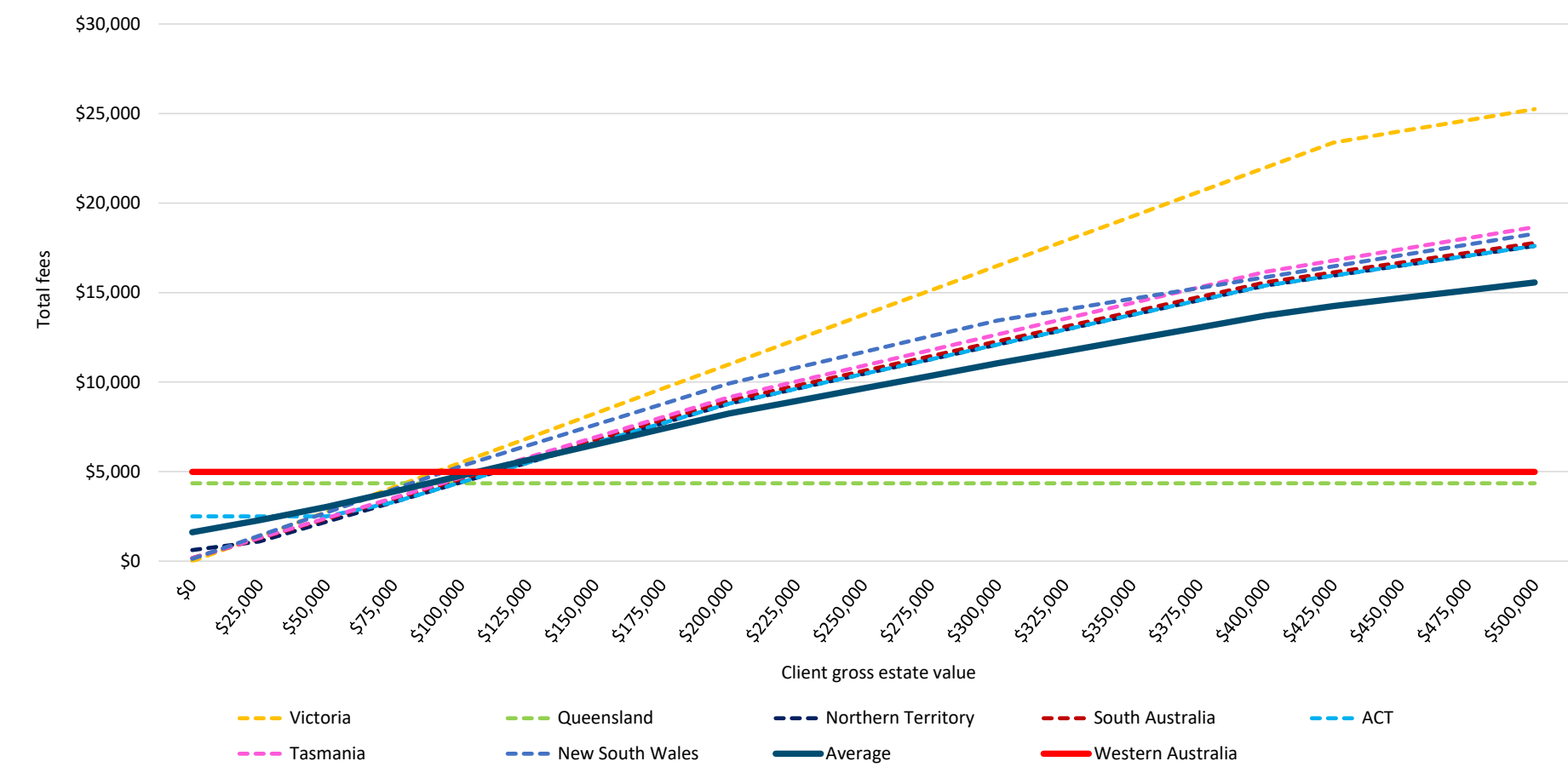


Figure 11: Comparison of total Deceased Estate administration fees across Public Trustees (Level 10 service level for Public Trustee Western Australia)

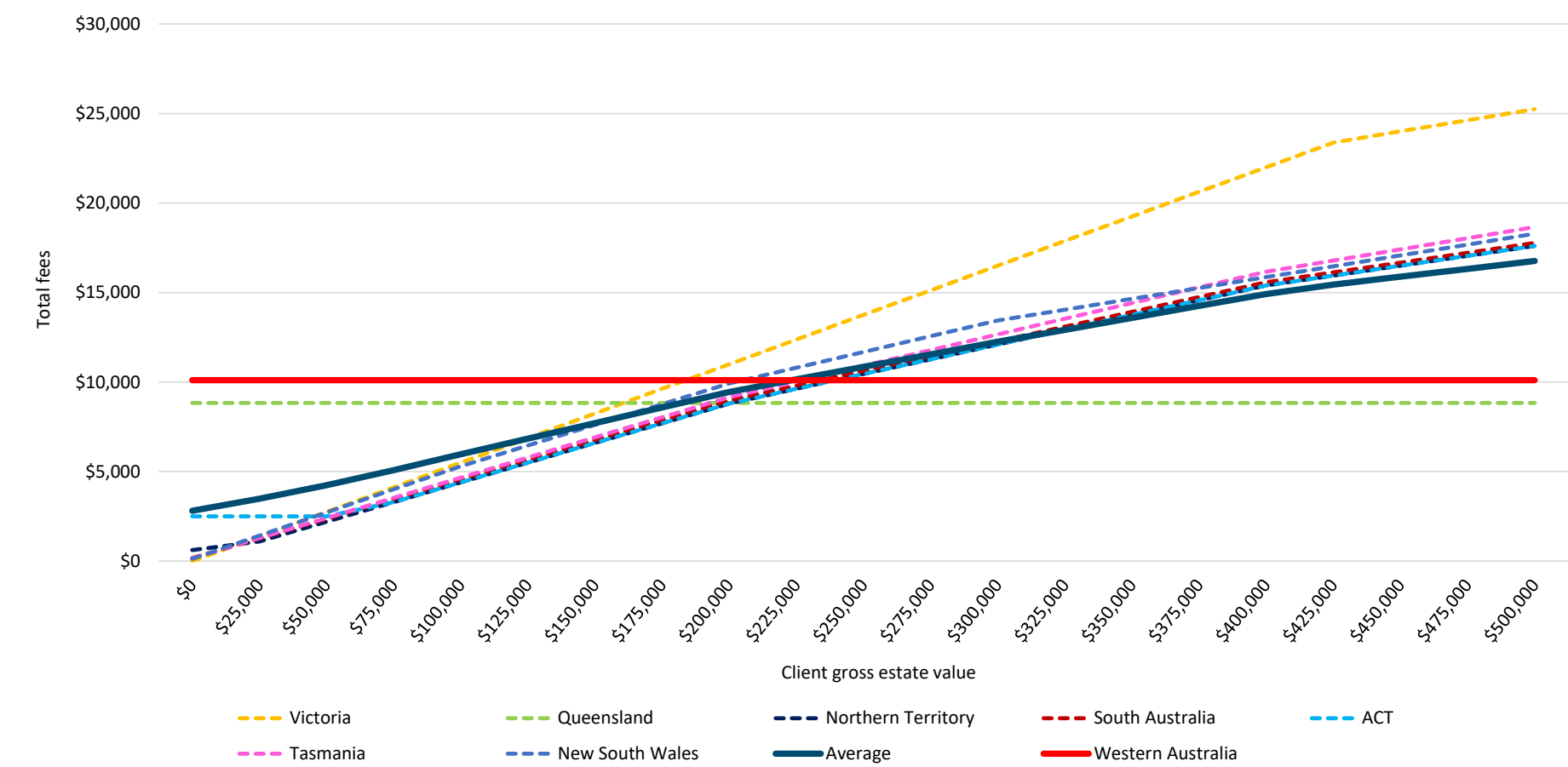


Figure 12: Comparison of total Deceased Estate administration fees across Public Trustees (Level 15 service level for Public Trustee Western Australia)

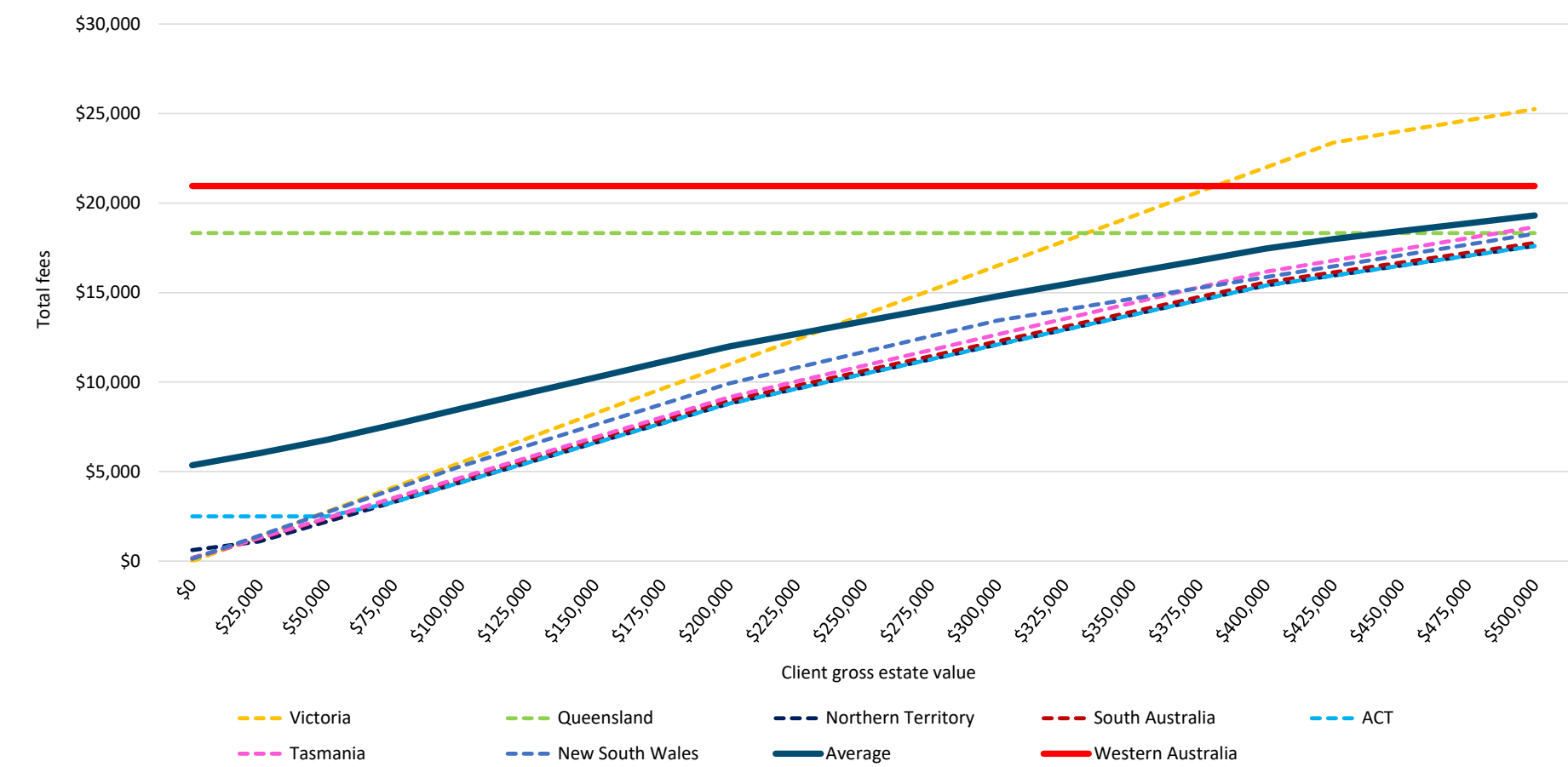
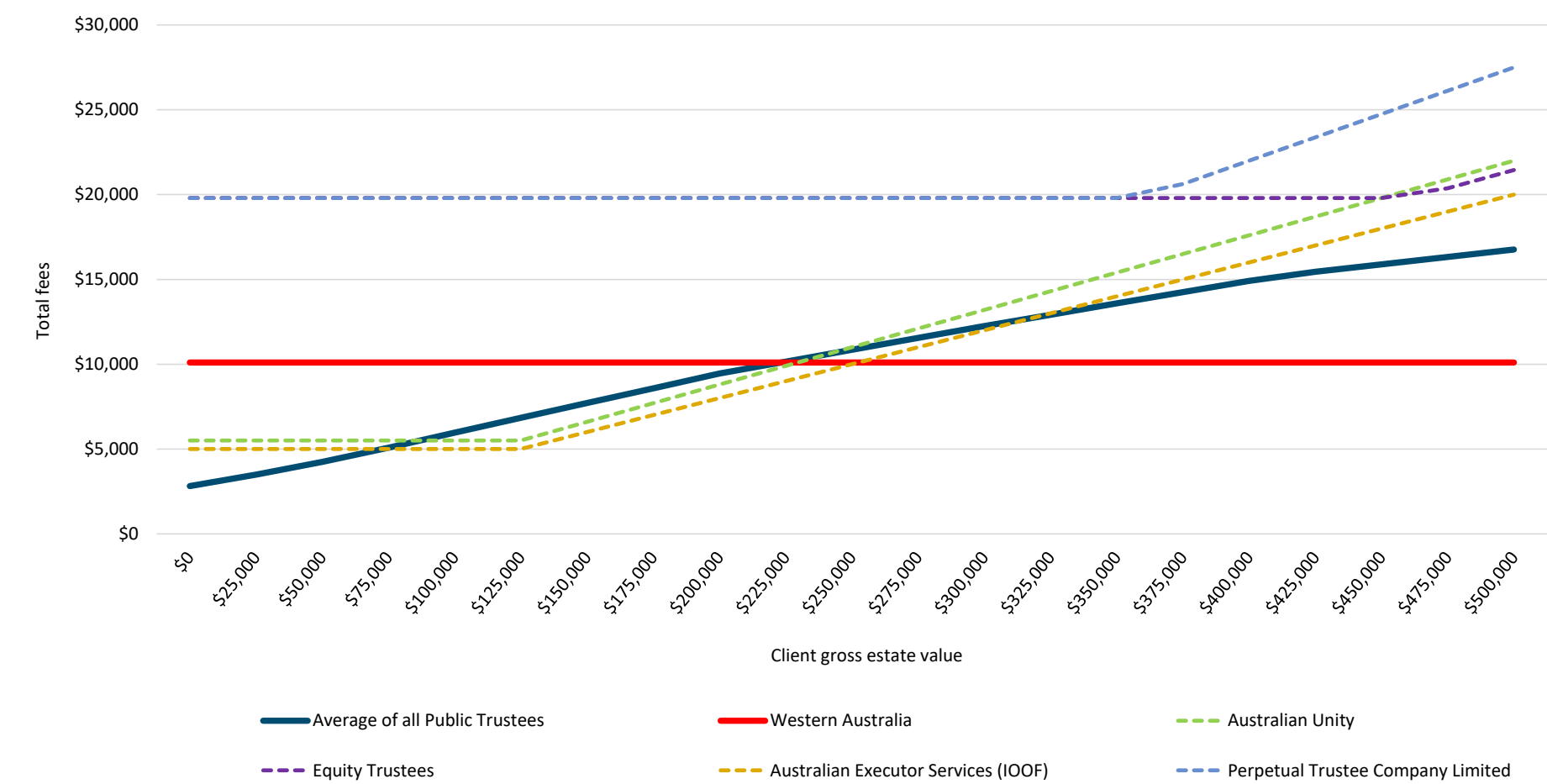


Figure 13: Comparison of total Deceased Estate administration fees (PTWA Service Level 10) with selected private sector organisations





### 5.3.3 Analysis

The Western Australian executor fees for Deceased Estates align well with the cost recovery principles. However, it is not clear that the two step process (standard units of effort aligning to service levels which align to fees) is advantageous over simply equating standard units of effort to a fee rate. The current fees appear to be based on a standard unit of effort costing \$29.30 and equate to six (6) minutes of time.

We were advised that the Standard units of effort allocated to each of the tasks set out in Schedule 3 of the Gazette have not been reviewed for some time and could be updated.

### 5.3.4 Conclusions

It is recommended that the Public Trustee consider removing the service levels for Deceased Estates and instead charge a standard rate for each standard unit of effort. This could be structured to ensure that this is no loss or revenue.









The standard units of effort should be reviewed to ensure that the list is relevant and a current estimate of the relative time taken for each task.

## 5.4 Personal financial administration

### 5.4.1 Alignment with cost recovery principles

Based on our assessment, we reviewed the current fees and charges for Personal financial administration against the cost recovery principles and frameworks set out in section 4. This assessment is set out in Table 17, below.

Table 17: Assessment of current Personal Financial Administration fees against cost recovery principles

Principle	Rapid assessment	Comments
Efficiency	NA	The efficiency of the Government service was not considered explicitly in this review
Competitive neutrality		As there is no competitive market for the Personal Financial Administration of most clients this criterion is less relevant for this service.
Fees and charges should be set to recover the full cost of delivering services		The fees for Personal Financial Administration – appear to align with the full cost of delivering services.
Equitable and fair sharing costs among users		The fees for Personal Financial Administration – appear to share costs fairly among users – as the fees are linked to levels of service required.
Ensuring transparency and ease of understanding		The fees for Personal Financial Administration is transparent but the multiple elements (service fees, management fees, property fees) would not be easy for the public to understand
Minimising administrative burden (simplicity)		The fees for Personal Financial Administration would be somewhat difficult for staff to explain and invoice
Price / funding stability		The current pricing structure would produce a high level of funding stability
Ability to pay		The Public Trustee will waive/reduce fees for Personal Financial Administration that are not able to pay.
Promoting/encouraging desirable behaviours		The policy of waiving fees for Personal Financial Administration may not encourage family and friends to provide the support – instead leaving it to the Public Trustee.

#### 5.4.2 Comparison with other jurisdictions and selected private sector organisations

Queensland is the only other jurisdiction that aligns its fees to the level of service required. All other jurisdictions link their fees to commission on the assets that are being managed.

This approach has the disadvantage that the fees are not linked to the work effort. However, the approach does ensure that the fees are linked to ability to pay.

##### Benchmarking the effective fees for personal financial administration with other Public Trustees

Benchmarking the effective fees (including the waivers provided under Operating Subsidies) for personal financial administration across Public Trustees is challenging as the fees listed in Table 4 do not list all of the waivers and fee discounts applied by Public Trustees for clients that have a low ability to pay. In some cases, Public Trustees provide some limited information in annual reports or fee schedules, while in other cases information is not publicly available.

In this context, to undertake comparative benchmarking analysis, additional information was obtained directly from Public Trustees on the rules and mechanics of these waivers and discounts. This has enabled the comparative fee analysis in Table 4 to be combined with information obtained from Public Trustees on fee waivers and discounts for people with a low ability to pay.

Some of the Public Trustees indicated to us that information on the exact rules around fee waivers and discounts for personal financial administration fees is confidential and not information that is typically made public. As a result, apart from the charts in this section of the report, more detailed information on the fee waiver rules and discounts for personal financial administration is not provided in this report.

The comparative analysis of total annual equivalent fees across Public Trustees for personal financial administration is shown in Figure 14, Figure 15 and Figure 16 for varying levels of the client's initial asset value. The analysis includes all fees (establishment, service, asset management, asset commission, income commission etc.). The analysis shows annualised fees over the relevant period of financial administration. In other words, one-off fees are spread evenly over the relevant period.

The comparative analysis in Figure 14 has been estimated using:

- Service Level 3 for both Western Australia and Queensland for personal financial administration fees; and
- Assuming that personal financial administration lasts for 5 years.

Additionally, the analysis in Figure 14 shows the fees that are paid by a client that has between \$0 and \$25,000 of assets. The analysis assumes that clients do not have a principal place of residence to be included as part of assets and that clients are under personal financial administration because of a court or tribunal order.

A key result of the analysis in Figure 14 is that it shows that PTWA's fees are relatively similar to the average of all Public Trustees across Australia. At some client asset ranges they are higher and in some cases they are lower. Notably, the comparative results in Figure 14 did not change for differing service levels (e.g. service levels 1 to 6).

In Figure 15, the comparative analysis is the same as for Figure 1, except that personal financial administration is assumed to last for 10 years. The results for Figure 1 and Figure 15 are very similar as one-off fees do not have a significant impact on the relative total fee amount for the client.

The comparative analysis in Figure 16 is the same graph as Figure 14 except that it has been extended over a longer period (client asset values between \$0 and \$250,000). This indicates that PTWA's fees are higher than other Public Trustees at higher client income ranges. However, discussions with other Public Trustees indicates that well over half of their personal financial administration clients have less than \$50,000 of assets and that the large majority community service obligation clients would be represented on Figure 14 which shows client assets between \$0 and \$25,000.

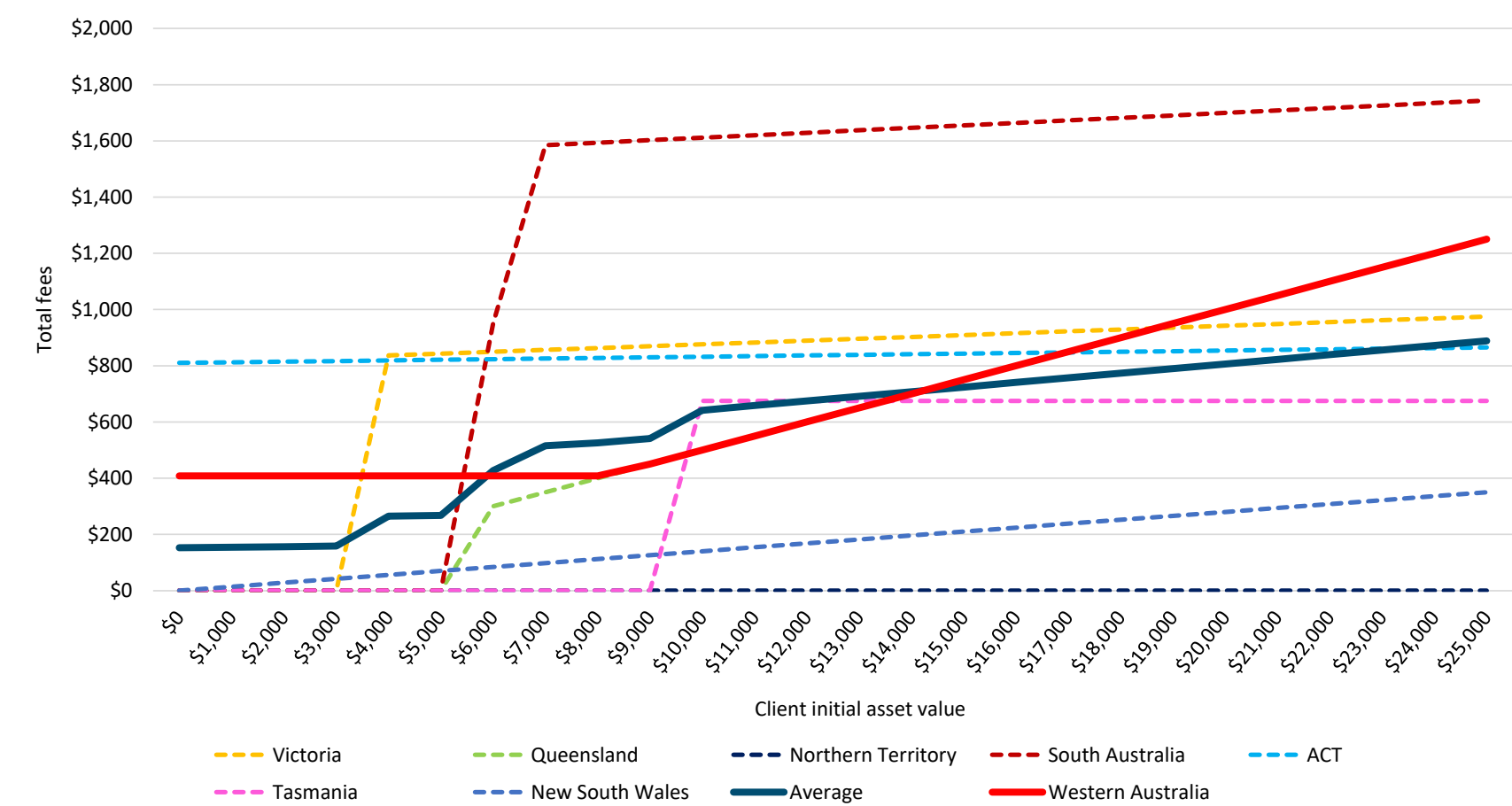
A comparison of fees with private sector organisations is not shown in the following graphs as their stated minimum fees are much higher than the discounts that are provided by Public Trustees for clients with low value assets. This is illustrated in Table 13.

Table 18: Minimum fees for financial management

Comparison of private sector	Service	Minimum establishment fee	Minimum ongoing annual fee
Australian Unity	Protected person appointment under financial management	n.a.	\$3,300
Equity Trustees	Court appointed financial management	n.a.	\$8,800
Australian Executor Services (IOOF)	Financial management/administration order	n.a.	\$4,500
Perpetual Trustee Company Limited	Financial management/administration order	\$3,300	\$5,775

*Note: n.a. refers to not applicable. Note that it is possible that private sector organisations may provide discounts on the minimum fees in this table. This would be likely be discussed with the client at the initial meeting, depending on their circumstances.*

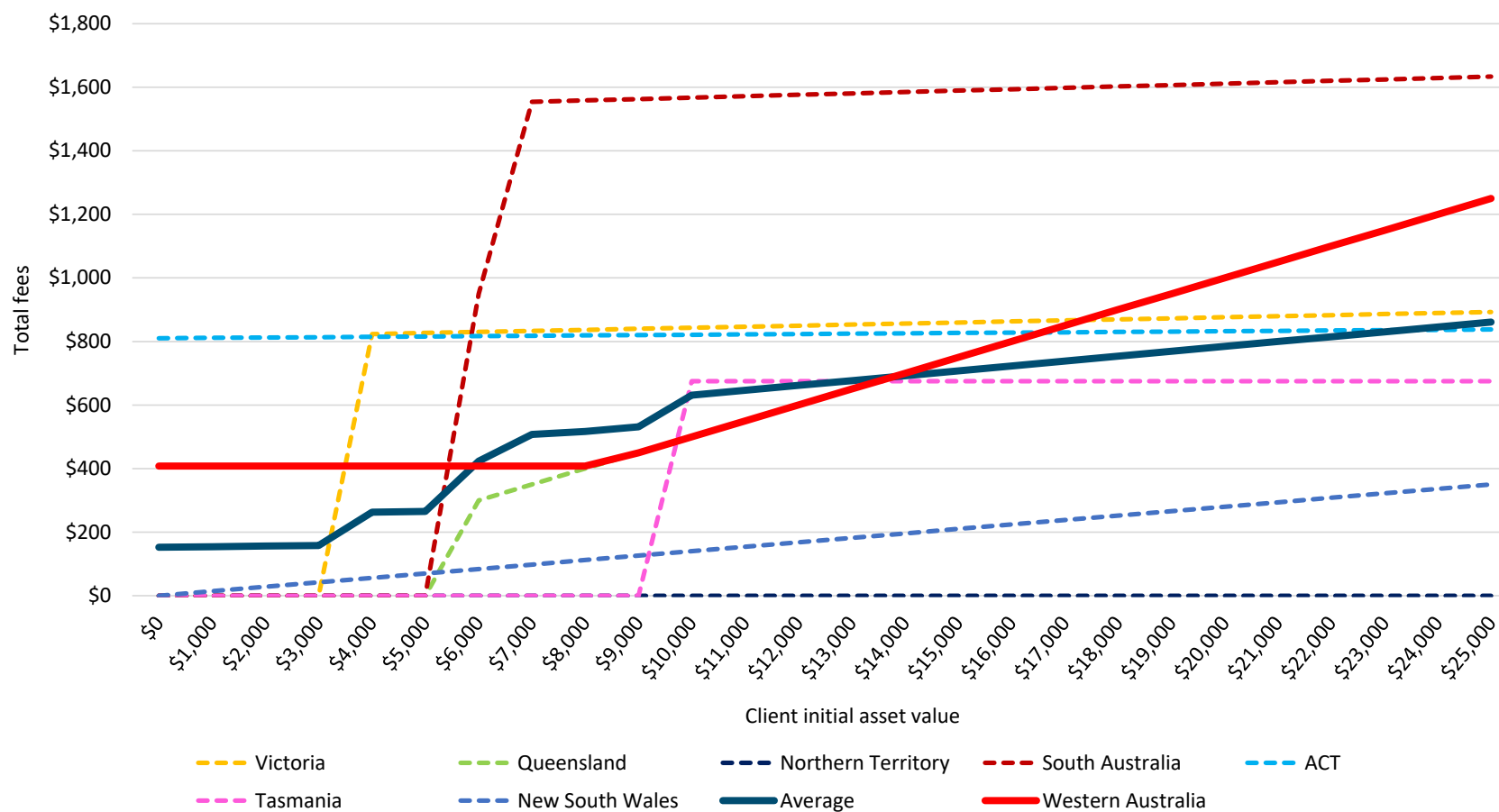
Figure 14: Comparison of total annual personal financial administration fees across Public Trustees (5 year financial administration)



Source: Marsden Jacob analysis

Note: ACT provides fee waivers for very low client asset values on a case by case basis which is not illustrated in this chart. The chart assumes that assets are all realised over the period of financial administration.

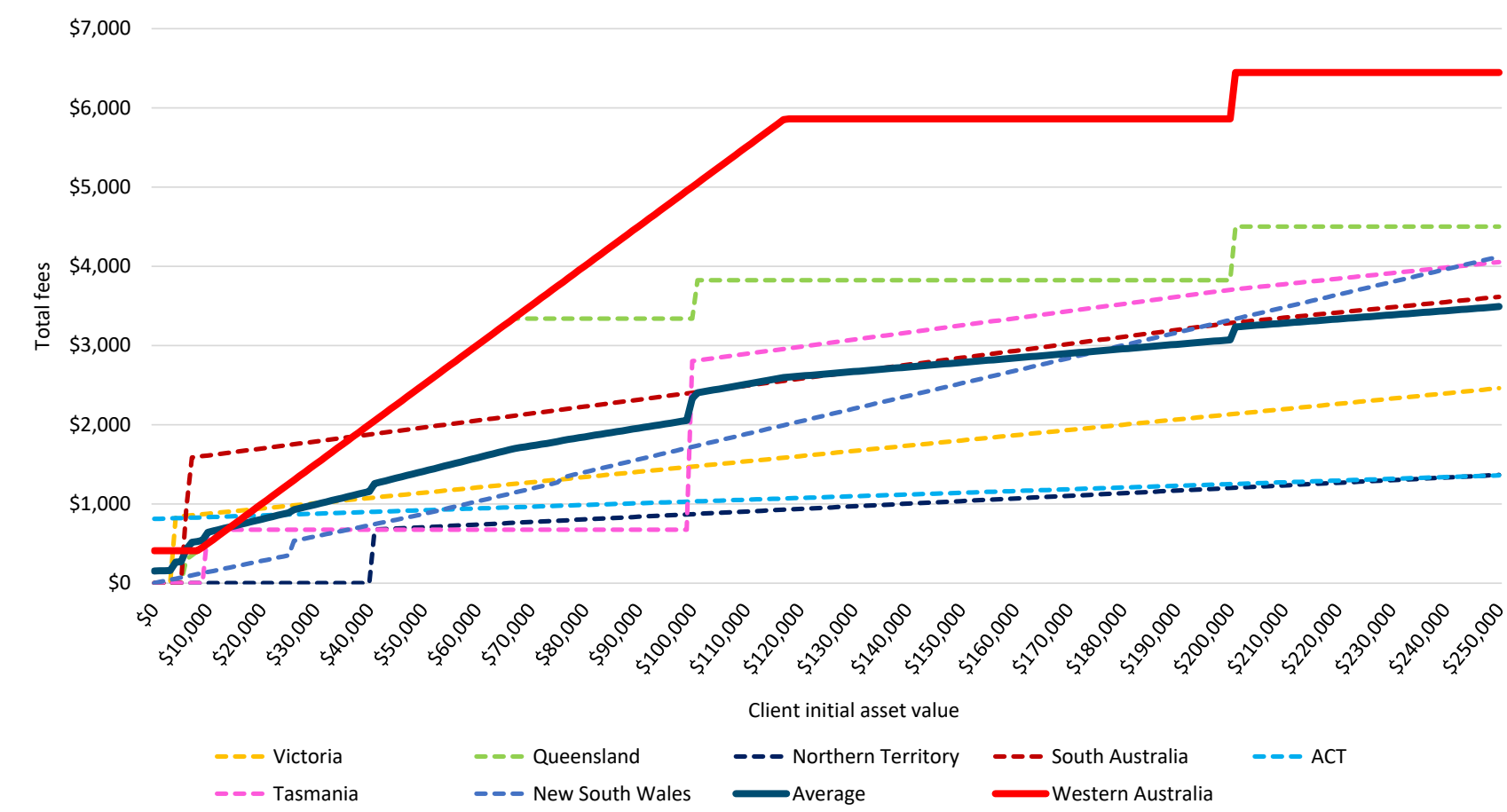
Figure 15: Comparison of total annual personal financial administration fees across Public Trustees (10 year financial administration)



Source: Marsden Jacob analysis

Note: ACT provides fee waivers for very low client asset values on a case by case basis which is not illustrated in this chart. The chart assumes that assets are all realised over the period of financial administration.

Figure 16: Comparison of total annual personal financial administration fees across Public Trustees (5 year financial administration)



Source: Marsden Jacob analysis

Note: ACT provides fee waivers for very low client asset values on a case by case basis which is not illustrated in this chart. The chart assumes that assets are all realised over the period of financial administration.

### 5.4.3 Analysis

While the use of commission for setting fees would not reduce the cost to the Trustee in each State or Territory, it may reduce the apparent Operating Subsidy – as minimal fees would be identified for clients with low value estates.

The Western Australian and Queensland fee models attempt to identify the full cost of servicing Personal Financial Administration clients. While many of these fees are waived or rebated – for clients with low asset values – it does ensure that the subsidy is transparent.

Members of the Public Trustee executive noted that both the number of Personal Financial Administration clients have increased in recent years, but also the level of support required by these clients has increased. The increase in the level of support required reportedly relates to changes in customer profiles (younger clients with a higher proportion of mental health or substance issues) and also the Public Trustee needing to take on additional roles. These roles include elements such as coordination with the NDIS and providing services that were previously provided by other Government Departments or businesses – such as cashing pension cheques.

### 5.4.4 Conclusion

Broadly, the fee model for Personal Financial Administration appears complicated but suitable.

Given the changing role of the Public Trustee with these clients it would be appropriate to review the fees and charges to ensure they are cost reflective.

As a large proportion of Personal Financial Administration clients currently have their fees waived under the Operating Subsidy, the fee model for this service needs to be considered in tandem with any discussion of the Operating Subsidy.

The fees should be reviewed to ensure that they align with the Public Trustee's overall approach to cost recovery – a review of which is proposed in section 5.1.











## 5.5 Trusts

### 5.5.1 Alignment with cost recovery principles

Based on our assessment, we reviewed the current fees and charges for Trusts against the cost recovery principles and frameworks set out in section 4. This assessment is set out in Table 19, below.

Table 19: Assessment of current Personal Financial Administration fees against cost recovery principles

Principle	Rapid assessment	Comments
Efficiency	NA	The efficiency of the Government service was not considered explicitly in this review
Competitive neutrality		There is a competitive market for high value trusts and the Public Trustee appears to compete with private sector groups for these customers. Members of the Executive report that the Public Trustee used to receive a higher proportion of the market share for these trusts.
Fees and charges should be set to recover the full cost of delivering services		The fees for Trusts appear to align broadly with the cost of delivering services.
Equitable and fair sharing costs among users		The fees for Trusts – appear to share costs equitably among users – as the fees are linked to levels of service required.  There are reportedly some fees (such as transaction fees) where the charge does not align with the cost (e.g. automated regular bank transfers).
Ensuring transparency and ease of understanding		The fees for differing forms of Trusts are relatively complicated and would not be easy for the public to understand.  The fact that private companies offer additional services and charge on a commission basis means that potential clients will struggle to compare fees and services between the Public Trustee and other providers
Minimising administrative burden (simplicity)		The fees for Trusts would be difficult for staff to explain and invoice
Price / funding stability		The current pricing structure would produce a high level of funding stability

Principle	Rapid assessment	Comments
Ability to pay		The Public Trustee waive/reduce fees for Trusts that are not able to pay.
Promoting/encouraging desirable behaviours		The presence of private sector competition for higher value trusts means that the Public Trustee will be left with a disproportionate number of low value trusts if it does not price competitively for the commercially attractive clients.

### 5.5.2 Comparison with other jurisdictions

All jurisdictions other than Queensland and Western Australia charge fees for Trusts on a commission basis. This means that the fees charged in those other jurisdictions do not align to the costs of fund management.

#### Benchmarking effective fees for court trust with other Public Trustees

The effective fees (including waivers provided under operating subsidies) for Trusts have been benchmarked across Public Trustees (Figure 17 to Figure 21) at varying levels of the value of the trust under the following assumptions:

- All assets are realised at some point during the course of the trust administration; and
- The assets do not include a principal place of residence.

This analysis indicates that PTWA's fees are higher or lower than the average depending on the type of client (Level 2, 4 or 6). For example, a high transaction client of the PTWA (say Level 6 in Figure 19) is likely to have higher fees compared to other Public Trustees (Figure 17, Figure 18 and Figure 19) and a low transaction client (Level 2 in Figure 17) has fees that are relatively similar to other Public Trustees.

Additionally, a client with a high level of annual income into the trust is likely to have lower fees with PTWA relative to other Public Trustees (Figure 20), while a longer trust length (e.g. 20 years compared to the 10 years assumed in Figure 17, Figure 18 and Figure 19) will make PTWA's total fees higher than other Public Trustees (Figure 21).

Furthermore, the Public Trustee (WA)'s trust fees are at or below four randomly selected private sector organisations across all of the client asset value ranges shown in Figure 22. However, this also indicates that the Public Trustee's fees could become higher than private sector organisations if it were to increase its trust fees for clients with asset values between, say, \$100,000 and \$400,000.

Figure 17: Comparison of total court trust fees (PTWA Service Level 2), annual income is 10% of asset value and 10 year trust length

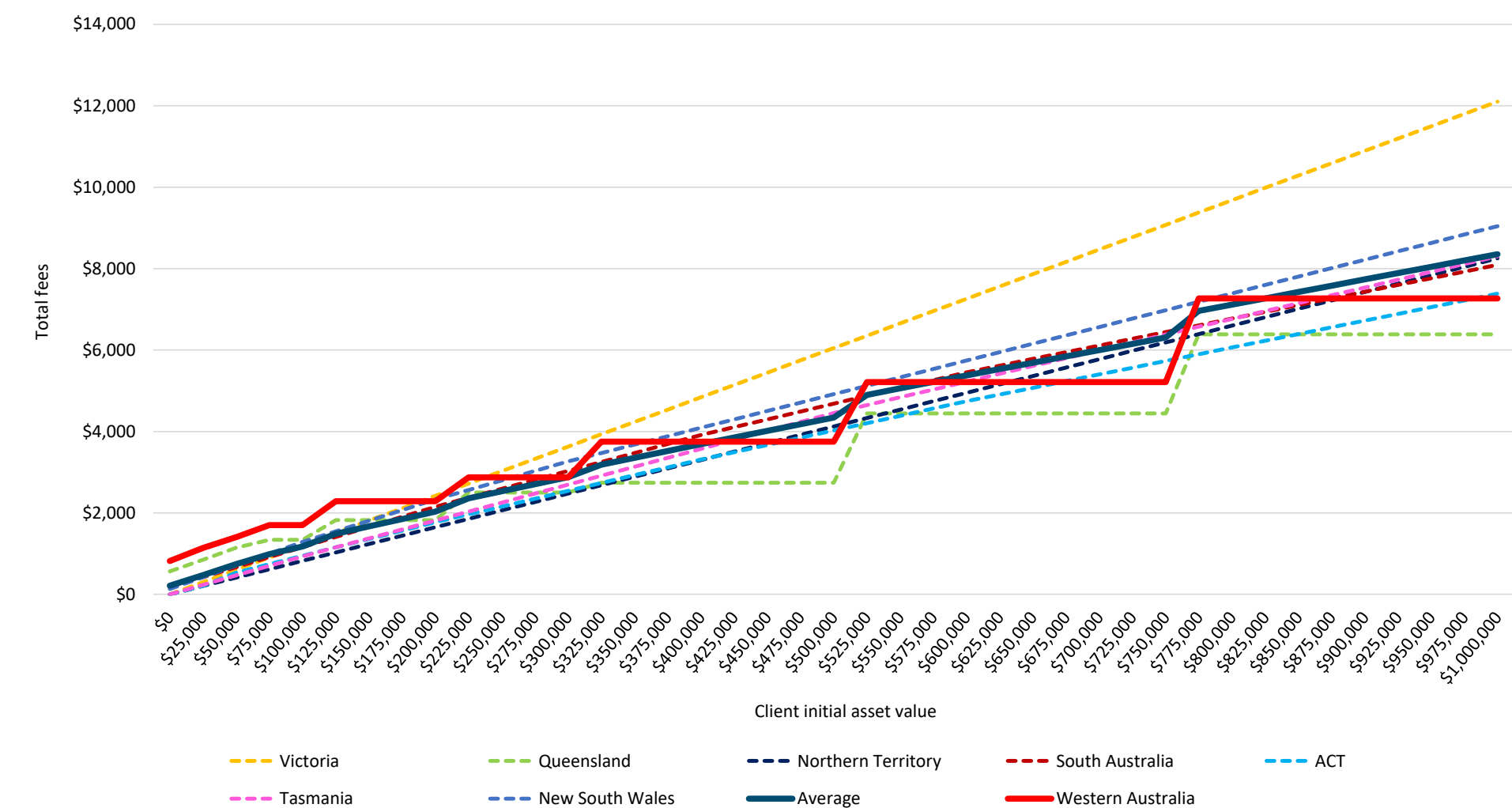


Figure 18: Comparison of total court trust fees (PTWA Service Level 4), annual income is 10% of asset value and 10 year trust length

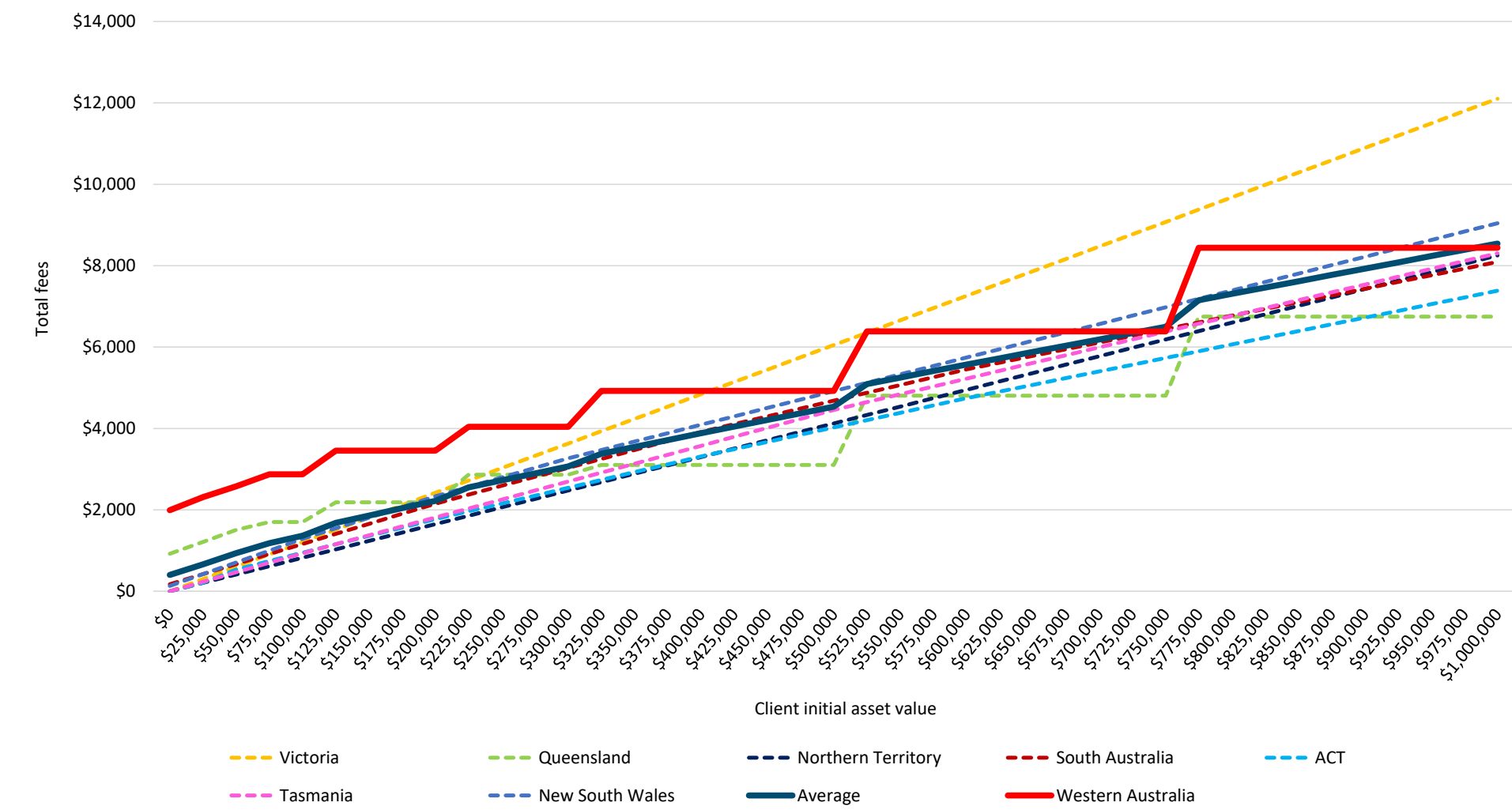


Figure 19: Comparison of total court trust fees (PTWA Service Level 6), annual income is 10% of asset value and 10 year trust length

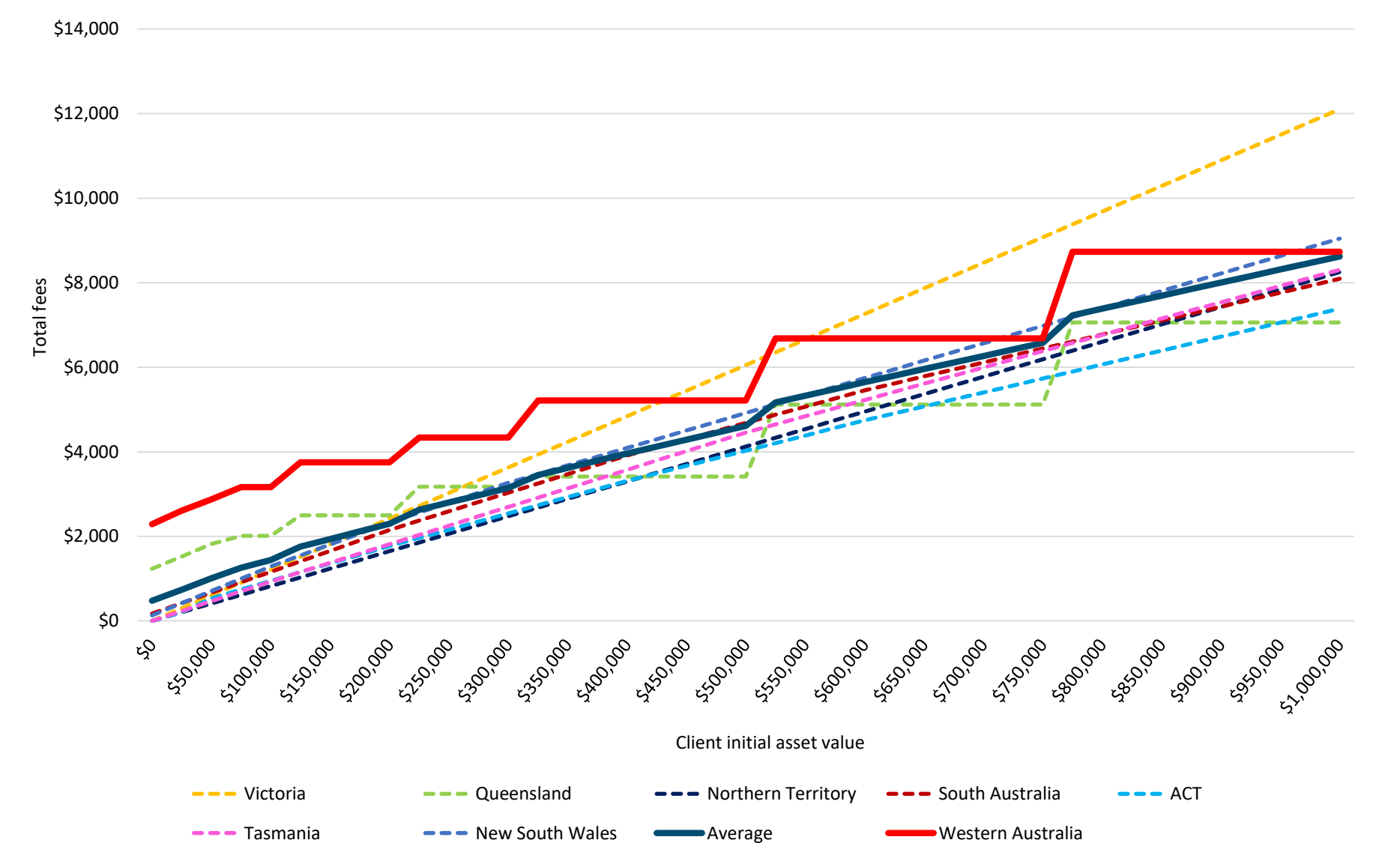


Figure 20: Comparison of total court trust fees (PTWA Service Level 4), annual income is 25% of asset value and 10 year trust length

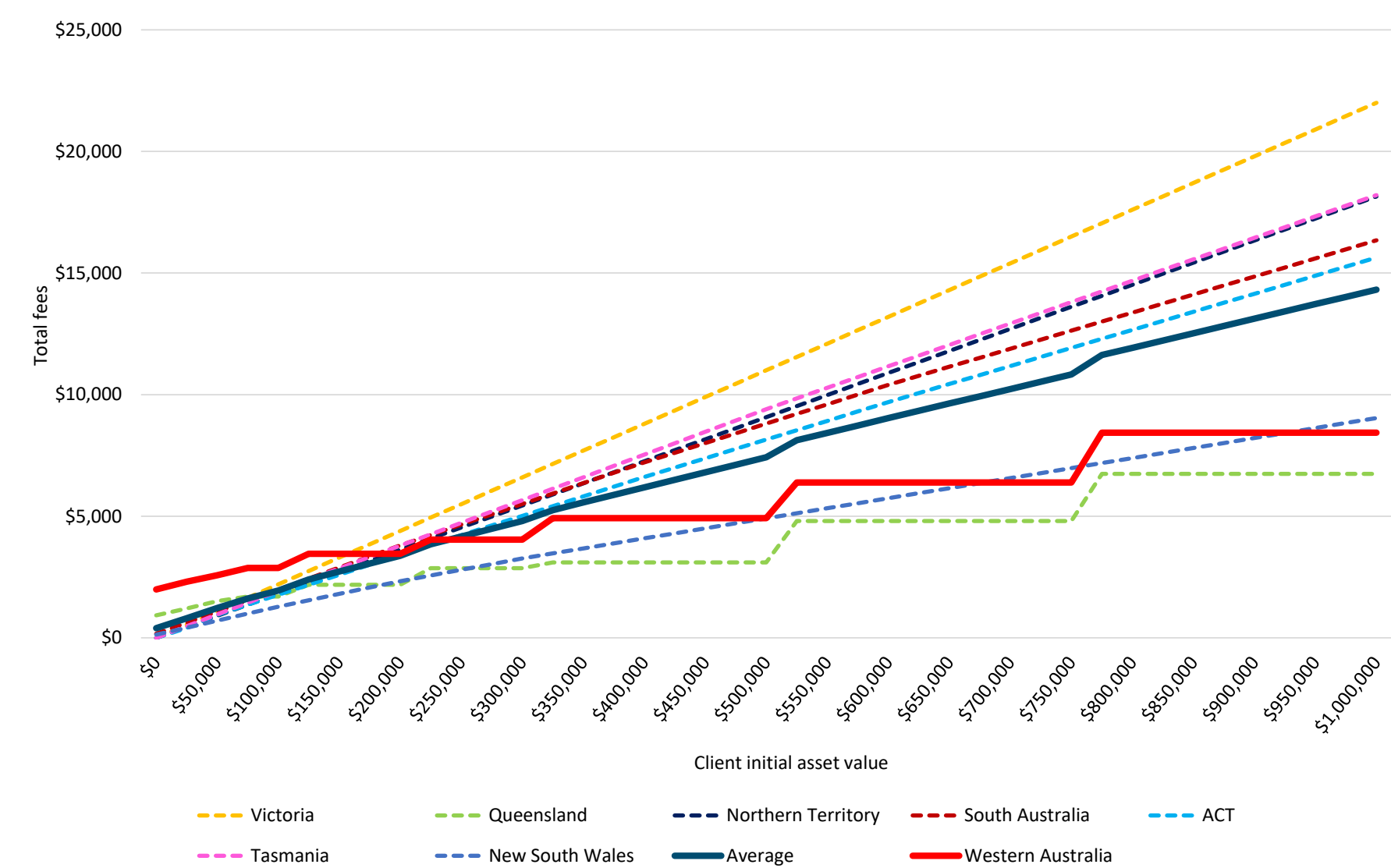


Figure 21: Comparison of total court trust fees (PTWA Service Level 4), annual income is 10% of asset value and 20 year trust length

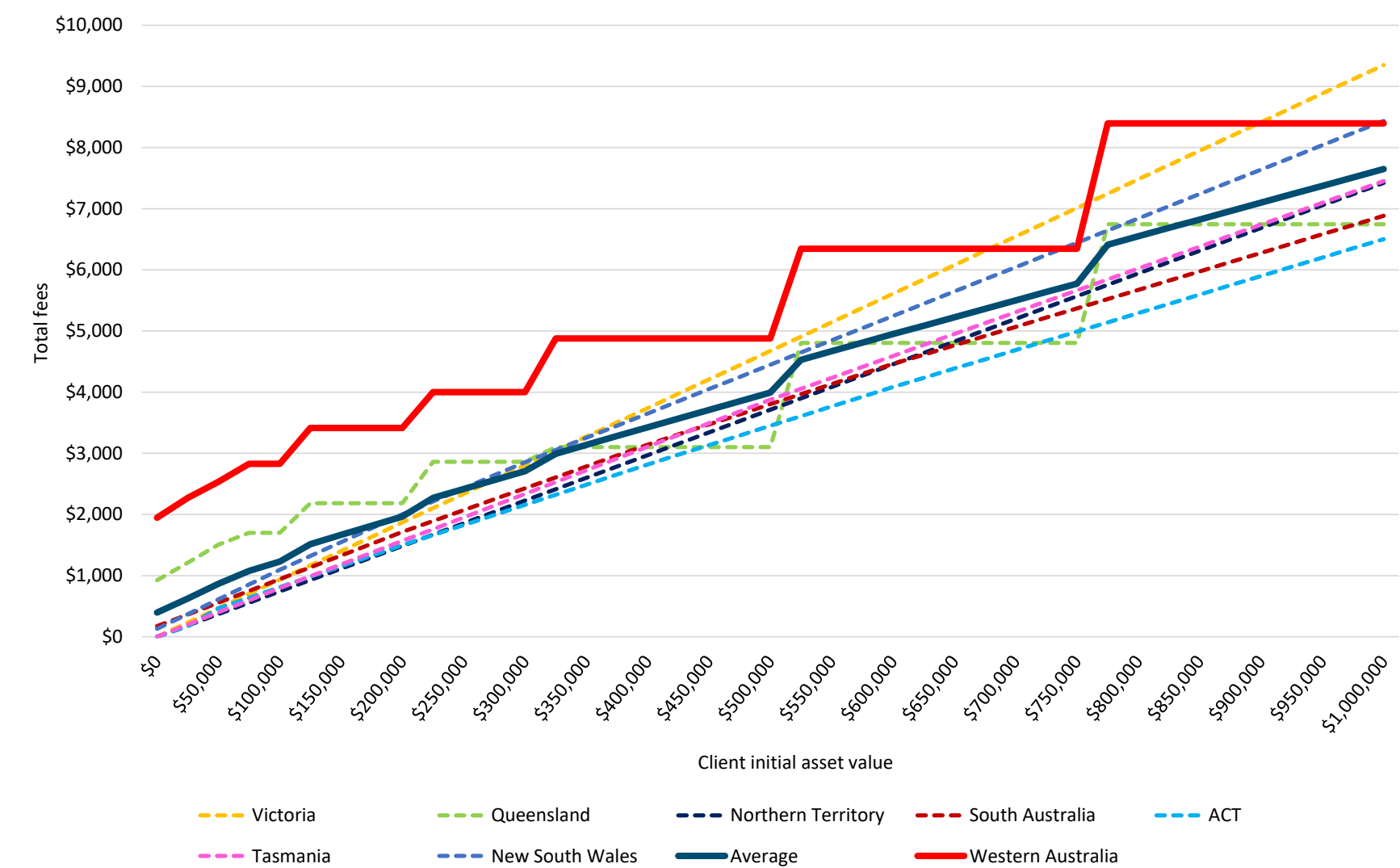
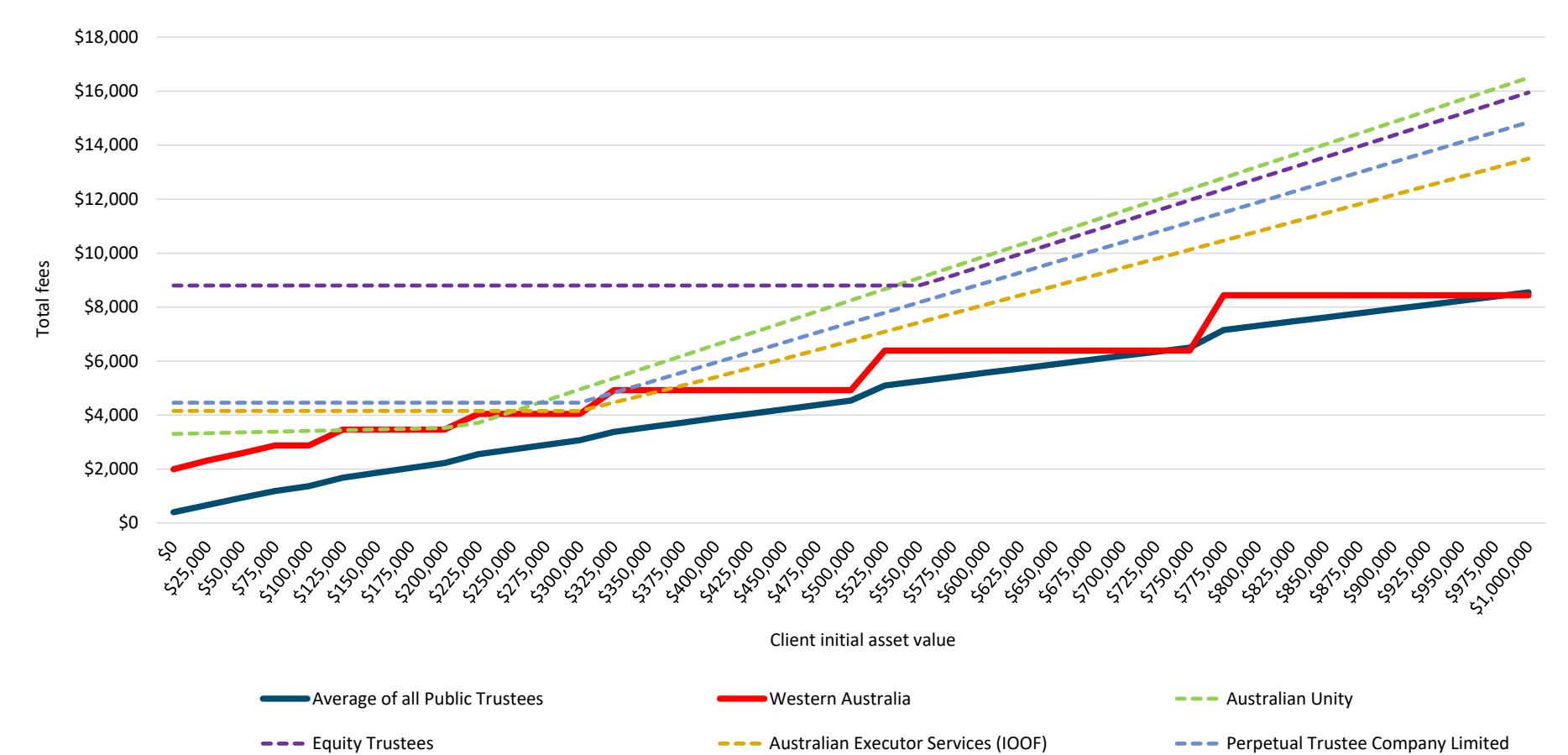


Figure 22: Comparison of total court trust fees (PTWA Service Level 4) with selected private sector organisations, annual income is 10% of asset value and 10 year trust length





### 5.5.3 Analysis

It is not clear that separate fees structures are required for Court trusts, Testamentary trusts and Miscellaneous trusts.

Given that there are private sector providers who are interested in managing higher value trusts, an alternative segmentation of the fees would align with customer's ability to pay. This would ensure that the Operating Subsidy is accurately estimated for low value trusts and that higher value trusts are priced at a level that ensures competitive neutrality.

In pricing higher value trusts it was noted that commercial trust managers offer a range of additional services (such as credit cards and mortgage discounts) that the Public Trustee are not able to offer. One member of the Executive noted that "we offer a Vanilla service" and also that "Vanilla needs to be cheaper". These factors should be considered in setting the fees for high value trusts.

Given the concern raised that transaction fees do not align with the costs of management these fees should be reviewed.

### 5.5.4 Conclusion

The fees for different forms of Trusts should be reviewed to ensure that they align with the Public Trustee's overall approach to cost recovery – a review of which is proposed in section 5.1.

## 5.6 Hourly rate

### 5.6.1 Alignment with cost recovery principles

Due to the unique nature of the hourly rate we did not compare it each element of the cost recovery principles. The application of the hourly rate clearly aligns the fees and charges with the cost

The hourly rate calculation includes the estimated value of the operating Subsidy in the calculation – this means that the hourly rate does not align with the actual cost of service provision.

### 5.6.2 Comparison with other jurisdictions

The hourly rate charged by Western Australia is similar to the rates charged by other jurisdictions. A review of the hourly rates quoted on the internet for paralegals appears to indicate that the hourly rate charged by most of the Public Trustee bodies is high compared to these commercial providers. However, caution is required in making this comparison as most law firms would not allow clients to access paralegal services without also charging for oversight by senior lawyers.

### 5.6.3 Analysis

The hourly rate calculation includes the estimated value of the Operating Subsidy in the calculation. This appears to create a circularity (as the Operating Subsidy increases, the hourly rate increases. Then as the hourly rate increases, the Operating Subsidy increases).

Over time this circular reference will inflate both the hourly rate and the perceived value of the CSO.

The inclusion of the Operating Subsidy in the hourly rate calculation also means that the fee charged would be inflated compared to the cost of service provision.

### 5.6.4 Conclusion

The calculation of the hourly rate should be reviewed to ensure it aligns with the cost of service provision (excluding any Operating Subsidy). If the Public Trustee decides to review its pricing in line with the framework set out in section 5.1, then the hourly rate could be calculated on two bases – one for cost recovery and one including a premium to align with competitive neutrality.

## 5.7 Operating Subsidy

The Operating Subsidy has increased substantially in recent years. This has been driven by:

- Number of Personal Financial Administration clients have increased
- Levels of service required for Personal Financial Administration clients have increased.

### 5.7.1 Alignment with cost recovery principles

The operating subsidy does not appear to align with the Western Australian guidelines on Operating Subsidies (WA Department of Treasury Western Australia *Operating Subsidy Guidelines*, June 2015).<sup>23</sup>

### 5.7.2 Comparison with other jurisdictions

As discussed in section 3.2.1, Western Australia shares a similar approach to Queensland in calculating and funding the Operating Subsidy.

The WA approach gives a reasonable estimate of the proportion of work that is applied to clients where the fees are waived or reduced.

Importantly, despite the differences in reporting the Operating Subsidy, the criteria for waiving fees for the personal financial administration fees (which is by far the largest contributor to the value of operating subsidies or community service obligations) appears to be broadly similar between jurisdictions based on the analysis in section 3.2.2.

### 5.7.3 Analysis

The review of the Operating Subsidy requires consideration around both the nature and quantity of fees that are waived or rebated and the manner in which these rebated services are funded.

#### Rebate criteria

Observations from Public Trustee Executive identified both clients that could:

- have their fees reduced or waived – possibly such as Minor Trusts where the fees may be larger than the income generated.
- incur their fees in full (so remove them from the Operating Subsidy) possibly such as clients that are asset rich, but cash poor.

We were advised that the main criteria for rebating fees is based on a threshold of \$5,000 of cash assets and 5% of the total asset value. It appears these threshold values have not been substantively reviewed for some time.

An alternative approach to waiving fees for clients that are asset rich and cash poor was suggested during our consultations. The suggested approach was that some or all fees could be deferred – and then collected at the closure of the case – such as on the death of the client. While a policy of this kind could be controversial it may be possible to design and consult publicly on fee deferral of this

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<sup>23</sup> [https://www.wa.gov.au/sites/default/files/2020-02/operating\\_subsidy\\_guidelines.pdf](https://www.wa.gov.au/sites/default/files/2020-02/operating_subsidy_guidelines.pdf)

kind that ensures that fees are waived for the neediest clients and some or all fees are recovered from other clients.

#### Funding of rebated services

As the Public Trustee is self-funded, the operating subsidy is financed through a range of income sources including the surplus funds from the Common Account and the Public Trustee Investment Fund as well as fees and charges applied to other customers.

This appears to have the effect of some customers partially subsidising the services provided to other customers that are included in the CSO.

It could be argued that if the community expects that clients that are vulnerable and/or are not able to pay for services are to be provided services by the Public Trustee then these services should be paid for by the broader public (through a Treasury allocation of Consolidated Revenue) – rather than being subsidised by other clients of the Public Trustee. This approach (an allocation of funds) would appear to align better with the Western Australian Government guidance on Operating Subsidies.

#### Governance and oversight

The current fees and operating subsidy models are strongly interlinked and an overall understanding of the Public Trustees 'effective' fees requires a consideration of both elements.

Currently, the Fees and Charges applied by the Public Trustee undergo a high level of scrutiny. Section 38A of the *Public Trustee Act 1941* requires that the scale of fees and charges are treated as regulations. In this manner, the scale of charges are:

- reviewed each year by the Parliamentary Joint Standing Committee on Delegated Legislation;
- are laid before the Parliament for 14 sitting days and are open to disallowance during this time; and
- published in the Government Gazette.

In contrast, the rebate policy is set by the Executive of the Public Trustee and is not open to external scrutiny.

Given the scale and importance of the Operating Subsidy – the differing levels of oversight of the fees and charges compared to the Operating Subsidy appears uneven.

#### 5.7.4 Conclusion

We recommend the Public Trustee review its fees and charges to ensure that they align with the approach proposed in section 5.1.

We recommend that the Public Trustee seeks an open discussion with Treasury and the broader community on how the Public Trustee's role and costs has changed over time. The discussion would set out that:

- The Public Trustee's role in providing services to vulnerable customers and those with a low ability to pay for services has increased
- The Public Trustee's ability to generate income from other sources (such as Common Account surplus and Public Trustee Investment Funds) have remained steady

- Currently, the effect of the Operating Subsidy is to increase the costs for other clients
- The Operating subsidy has been increasing over time<sup>24</sup>
- The current Operating Subsidy does not align with the WA Government's guidelines on Operating Subsidy.

The discussion with Treasury and the broader community should consider both whether the current criteria for waiving fees are appropriate and the most appropriate method for financing the operating subsidy.

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<sup>24</sup> Note that we were advised by Public Trustee senior staff that the Operating subsidy has increased since it was introduced. However, this was not timeframe is broader than the financial data provided to us.

# Appendix 1. Overview of WA fees and charges

## A1.1. Wills

Fees and charges for Wills are set out in Part 14 of the Gazette – which refers to schedule 14.

Preparation of Wills and Enduring Powers of Attorney and related services – Schedule 14

Item	Service	Fee
Preparing a Public Trustee Will		
1	Single client—concession holder	\$50
2	Couple—at least one client is a concession holder	\$39 per client
3	Single client—no concession holder	\$347
4	Couple—neither clients are concession holders	\$232 per client
Preparing a Will that is not a Public Trustee Will		
5	Single client	\$347
6	Couple	\$232 per client
Providing a service under section 37C(1)(b) of the Act where no Will is prepared:		
7	Single client—concession holder	\$50
8	Couple—at least one client is a concession holder	\$40 per client
9	Single client—no concession holder	\$150
10	Couple—neither clients are concession holders	\$100 per client
11	Conducting an ASIC search of a company or charity in connection with a service described in items 1 to 10 above	\$31.50

## A1.2. Deceased estates

Fees and charges for deceased estates are set out in Part 4 of the Gazette. Division 4 of Part 4 relates to Deceased estates commenced on or after 1 July 2019

Subject to this Division, the fee payable for administering a deceased estate is calculated by—

- (1) applying Schedule 3 to determine the total number of standard units of effort; then
- (2) applying Schedule 4 to determine the service level and fee applicable to that total number of standard units of effort.

Table 20: Schedule 4 -deceased estates—fees

Standard units of effort	Service level	Fee
1-90	1	\$ 2,637
91-110	2	\$ 3,223
111-130	3	\$ 3,809
131-150	4	\$ 4,395
<b>Note: Rows removed for brevity</b>		
816-965	17	\$ 28,275
966-1,115	18	\$ 32,670
1,116-1,315	19	\$ 38,530
OVER 1,315	20	Calculated at the hourly rate

### A1.3. Court trusts

In Western Australia, court trusts include both low value trusts such as Minor trusts (trusts held for children under 18 years old) and high value trusts (for example high value trusts such as motor vehicle accident payments). The definition of Court trusts also includes Protective management clients.

In most other jurisdictions (with the exception of Queensland) trusts (regardless of the type) the fees and charges are calculated under an umbrella term such as Trust Administration.

The Western Australian fees and charges for Court trusts are set out in Part 10 of the Gazette, with reference to Schedules 7, 8,9 and 15 (and summarised in Table 21).

Table 21: Summary of fees and charges applied to Court trusts

Trust phase	Relevant fees and charges	Summary of approach
Establishment costs	Establishment fee - Schedule 15 (Table based on value of the trust first received \$0 - \$7,325)	Based on value (ability to pay/work effort)
Annual fee	Annual fee personal financial - Schedule 9 (Table based on # transactions \$0 - \$5,860)	Number of transactions (work effort)
	Annual fee managing assets - Schedule 7 (Table based on value of assets from \$0 - \$14,650)	Based on value (ability to pay/work effort)
	Annual fee for managing residences and real property— with Schedule 8 (Fee of \$2,930 per each property)	Number of properties (work effort)
Cessation costs	Cessation fee of a court trust following the death of a beneficiary is \$879.	Flat fee



## A1.4. Testamentary trusts

Fees and charges for Testamentary trusts are set out in Part 11 of the Gazette, , with reference to Schedules 7, 8, 10, 11 and 12 (Table 22).

Table 22: Summary of fees and charges applied to Testamentary trusts

Trust phase	Relevant fees and charges	Summary of approach
Establishment costs	Not Applicable	Not Applicable
Annual fee	Annual fee for administering transactions - Schedule 10 (Table based on # transactions \$0 - \$3,809)	Number of transactions (work effort)
	Annual fee managing assets - Schedule 7 (Table based on value of assets from \$0 - \$14,650)	Based on value (ability to pay/work effort)
	Annual fee for managing residences and real property— with Schedule 8 (fee of \$2,930 per each property)	Number of properties (work effort)
Cessation costs	<p>Cessation fee of a testamentary trust is calculated by applying Schedule 11 to determine the total number of standard units of effort; then applying Schedule 12 to determine the service level and fee applicable.</p> <p>End result is \$879 - &gt;\$38,530 depending on the number and type of activity undertaken.</p> <p>If the cessation commenced prior to 30 June 2019, the fee is calculated in based on the Scale of Fees that was current when the Public Trustee commenced the cessation of the testamentary trust.</p>	Based on activities undertaken (work effort)

In order to determine the work effort calculation, the Gazette publishes a list of activities, and the corresponding 'Standard Units of Effort' in Schedule 11 (Table 23). The combined total of units is then applied to Schedule 12 (Table 24) to determine the Cessation fee paid.

Table 23: Schedule 11 – Cessation of Testamentary trusts and Miscellaneous trusts – standard units of effort

Activity	Standard units of effort
General trustee's duties in cessation of trust	25
Identifying and establishing beneficiaries and their entitlements—for each beneficiary above 3	10
For each specific bequest	5
For each beneficiary resident out of Australia	15
For each real property	20
For dealing with each cheque or savings account with an authorised deposit-taking institution	8
For dealing with each external investment	15
For dealing with each holding invested in a PTIF	20
For dealing with each fixed interest investment or term deposit with an authorised deposit-taking institution	15
For dealing with each refund of an entry contribution or accommodation bond to a nursing home, hospital, hostel or retirement village	15
For dealing with each motor vehicle, boat or trailer	10
For dealing with funds held by the Public Trustee in another capacity	15
For dealing with each interest in the estate of another deceased person that is not being administered by the Public Trustee	15
For dealing with each weapon	10
For dealing with each mortgage debt owing to the trust	25
For dealing with each other debt owing to the trust	10
For dealing with farm machinery or livestock	15

Table 24: Schedule 12 – Cessation of Testamentary trusts and Miscellaneous trusts – fees

Standard units of effort	Service level	Fee
1-30	1	\$ 879
31-40	2	\$ 1,172
Additional cells not shown for brevity		
516-615	18	\$ 18,020
616-715	19	\$ 20,950
716-815	20	\$ 23,880
816-965	21	\$ 28,275
966-1,115	22	\$ 32,670
1,116-1,315	23	\$ 38,530
OVER 1,315	24	Calculated at the hourly rate

## A1.5. Miscellaneous trusts

The fees and charges for Miscellaneous trusts are set out in Part 12 of the Gazette, with reference to Schedules 7, 8, 11, 12 and 13.

Table 25: Fees and charges for Miscellaneous trusts

Trust phase	Relevant fees and charges	Summary of approach
Establishment costs	Not Applicable	Not Applicable
Annual fee	Annual fee for administering transactions - Schedule 13 (Table based on # transactions \$0 - \$3,809)	Number of transactions (work effort)
	Annual fee managing assets - Schedule 7 (Table based on value of assets from \$0 - \$14,650)	Based on value (ability to pay/work effort)
	Annual fee for managing residences and real property— with Schedule 8 (fee of \$2,930 per each property)	Number of properties (work effort)
Cessation costs	Cessation fee of a miscellaneous trust is calculated by applying Schedule 11 to determine the total number of standard units of effort; then applying Schedule 12 to determine the service level and fee applicable.  End result is \$879 - >\$38,530 depending on the number and type of activity undertaken.  If the cessation commenced prior to 30 June 2019, the fee is calculated in based on the Scale of Fees that was current when the Public Trustee commenced the cessation of the miscellaneous trust.	Based on activities undertaken (work effort)

## A1.6. Personal financial administration

The fees and charges for Personal financial administration are set out in Part 6 and Part 7 of the Gazette, with reference to Schedules 6, 7 and 8 (Part 6) and Schedules 7, 8 and 13 (Part 7). This role is broken down into:

- A Plenary role (Part 6) – Under Sections 64, 65, 69 and 124 of the *Guardianship and Administration Act, 1990*
- A limited role (Part 7) – Under Sections 64, 65 and 69 *Guardianship and Administration Act, 1990*

A plenary appointment allows the administrator to make all the decisions and perform all the functions that the represented person could themselves if they did not have a disability. A limited appointment allows the administrator to make only the decisions or perform only the functions specified in any order.

The fees and charges associated with personal financial administration are shown in Table 26.

Table 26: Fees and charges relating to personal financial administration

Trust phase	Represented persons—when role is plenary (Part 6)	Represented persons—when role is limited (Part 7)	Summary of approach
Establishment costs	\$879	\$879	Flat fee
Annual fee	Annual fee personal financial - Schedule 6 (Table based on level of support \$1,465 - \$15,236)	Annual fee administering transactions – Schedule 13 (Table based on number of transactions \$0 - \$3,809)	Level of support/number of transactions (work effort)
	Annual fee managing assets - Schedule 7 (Table based on value of assets from \$0 - \$14,650)	Annual fee managing assets - Schedule 7 (Table based on value of assets from \$0 - \$14,650)	Based on value (ability to pay/work effort)
	Annual fee for managing residences and real property— with Schedule 8 (Fee of \$2,930 per each property)	Annual fee for managing residences and real property— with Schedule 8 (Fee of \$2,930 per each property)	Number of properties (work effort)
Cessation costs	Not applicable	Not applicable	Not applicable