



The Hon Jarrod Bleijie MP
Attorney-General and Minister for Justice

In reply please quote: 2316360

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Mr Neil Laurie
Clerk of the Parliament
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Laurie

I refer to E-Petition 2096-13 tabled in the Legislative Assembly on 7 August 2013 regarding the Public Trustee of Queensland.

The petitioners have raised the following issues regarding The Public Trustee of Queensland:

1. Fees and Charges – *“The Public Trustee Peter Carne wrote 26 November 2012 to a disabled client Mr Clinton VanDenBerg and said “If the balance of the funds held on your behalf fall below \$10,000, the Public Trustees fees are then estimated to be \$3,143M again with an additional \$206 for miscellaneous expenses”. This equates to a total management fee of 33% per year or greater”.*
2. Financial Statements – *“The Public Trustee of Queensland 2012 Annual Report financial statements – fees (FS17) page 43 show that \$66.01M and \$6.986M (Total \$72.997M) were received due to “Administration of estates and trusts and other revenue and Trust Fees”; and*
3. Investment Performance – *“Public Trustee Peter Carne, wrote (26 November 2012) to a disabled client Mr Clinton VanDenBerg and admitted “Thirdly with respect of your investment concerns, you are correct in outlining that the Growth Component losses you referred to in the Investment Product Profiles provided to you by Mr Marks for the Australian Equities Fund, the Higher Growth Fund and the Growth Fund, have produced negative returns for the last 5 years”.*

Furthermore, the petitioners have requested *“an independent public inquiry to be held which examines, details and justifies: the fees and charges levied by the Queensland Public Trustee on all clients; and the officially acknowledge negative returns incurred by the Queensland Public Trustee for the last 5 years”.*

Given the complexity of the issues raised, I have addressed each of the points raised under separate headings.

Fees and Charges

The petitioners refer to correspondence dated 26 November 2012, which was sent from the Public Trustee to Mr Clinton VanDenBerg, outlining that *"if the balance of the funds held on your behalf falls below \$10,000, the Public Trustee fees are then estimated to be \$3,143.00 again with an additional \$206 for miscellaneous expenses"*.

Mr Rob Messenger, the Principal Petitioner has suggested that *"this equates to a total management fee of 33% per year or greater."*

Section 17 of the *Public Trustee Act 1978* provides that the Public Trustee's fees and charges must be *"reasonable having regard to the circumstances in which the service is provided"*. The Public Trustee fixes the fees and charges for services provided by Gazette Notice. The Public Trustee prepares a Fees and Charges Notice fixing his fees and charges, the Notice is published in the Government Gazette and pursuant to the *Statutory Instruments Act 1992* that Notice is tabled in the Legislative Assembly within 14 days after it is notified so that Parliament can comment in relation to it. The Public Trustee's Fees and Charges also benefit by consideration from the Legal Affairs and Community Safety Committee.

I am advised that the Public Trustee issued correspondence to Mr VanDenBerg on 26 November 2012. The correspondence was prepared in response to Mr VanDenBerg's concerns with the Public Trustee's management of his affairs. The estimated fee of \$3,134 was quoted in accordance with the Public Trustee's Gazetted Fees and Charges Notice. The fee quoted was based on all the assets managed by the Public Trustee not just the cash balance. The Public Trustee was managing cash and property assets.

Mr Messenger's calculation of the total management fees of 33% per year or greater is incorrect. That calculation was based only on the cash holdings and did not take into account the other assets under management.

I would like to add that Mr VanDenBerg was further advised in this same correspondence that if, in the event that the balance of his cash assets fell below \$5,000, that he may be entitled to a Community Service Obligation rebate. The rebate would equate to a maximum net annual charge of 5% of the cash balance held on his behalf, (plus a reduced miscellaneous expenses fee), charged proportionately on a monthly basis. The Public Trustee applied the Community Service Obligation rebate to Mr VanDenBerg's matter from January 2013.

Financial Statements

The petition quotes from the Public Trustee of Queensland 2011-12 Annual Report the revenue derived by the Public Trustee of Queensland from the administration of estates and trusts and other revenues of some \$72.997M. I can confirm that the amount quoted is accurate. However, the petition does not include the \$25.798M of Community Services Obligations delivered to Queenslanders by the Public Trustee at no cost to Government.

(3)

For completeness, I would like to refer the petitioners to the full note regarding the financial statements from which Mr Messenger, the Principal Petitioner's figure has been taken from. Please find this detailed in the table below.

3. Fees	2012 \$'000	2011 \$'000
Administration of estates and trusts and other revenue	66,011	60,655
Trust fees	6,986	7,477
Auctions revenue	4,153	3,721
Community service obligations	(25,798)	(23,466)
	51,352	48,387

As noted in the table above, the net fees reported in the 2011-12 financial year were \$51.352M.

Investment Performance

The Public Trustee, has the responsibility for investment management of clients' funds and must comply with the legislation from which its authority is sourced, together with the *Trusts Act 1973* (the Trusts Act). Under the Trusts Act, the Public Trustee is required to "*exercise the care, diligence and skill a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons*" in the investment of assets and funds.

The Public Trustee must, as a minimum, review annually the performance of the investments, both individually and as a whole. Further, the Public Trustee is required to take into account a wide range of factors, including the client's needs, diversification, the risk of capital or income loss, the likely return, the term of the proposed investment and the duration the Public Trustee will be managing the assets.

The Public Trustee engages external advisers in the formulation of client investment strategies in appropriate matters. Client's individual investment strategies are reviewed in light of their current circumstances and ongoing financial requirements. Where appropriate, the Public Trustee utilises the external financial planning services of RBS Morgans Limited to assist it in reviewing the appropriateness of investments for his clients.

The Public Trustee investment vehicles in which clients' funds may be invested comprise the Public Trustee Common Fund (Common Fund) and the Public Trustee of Queensland Investment Funds (PTIFs). Given the petition is focussed on returns stated in relation to the PTIFs, the remainder of the letter will focus solely on the operation of the PTIFs.

The Global Financial Crisis (GFC) that began in 2007 resulted in significant decreases in market values for growth assets, particularly equities both domestically and internationally. The GFC adversely impacted and caused significant volatility to investment returns since 2007. This has been the case for all participants in the financial services industry and accordingly has also adversely impacted the investment returns of the PTIFs.

(4)

Since the onset of the GFC, the PTIFs did encounter periods where negative investment returns were experienced, including for the five years ended 30 June 2012 as referred to in this petition. This was not unique to the PTIFs and was consistent with other funds across the industry including superannuation funds and managed funds. Throughout these challenging times, the Public Trustee has provided regular updates to clients about their investments and the PTIFs performed within the median range when compared to similar funds.

Over the past year, financial markets have generally improved both domestically and globally, and this is reflected in improved investment performance recorded by managed funds and superannuation participants. This has also been the case for the PTIFs which have continued to meet their investment objectives. The investment fund returns (net of PTIF management costs) for the period ended 30 June 2013 are detailed in the table below:

Investment Fund	1 Year pa.	3 Years pa.*	5 Years pa.*
Conservative	9.20%	6.40%	4.80%
Growth	14.60%	7.30%	3.60%
Higher Growth	17.30%	7.70%	2.50%
Australian Equities	19.50%	6.30%	1.40%

*Annualised return

Over the life of the matter, external investment advice was sought from Kendall Securities firstly and then RBS Morgan's. The investment strategy adopted for funds received in relation to Mr VanDenBerg's matter included investment in a number of PTIFs. While there was a downturn in the earnings of the funds during the GFC, the PTIFs performed within the median range when compared to similar funds at the fund level.

The true measure of the performance of investments for individual client is at the matter level taking into account when the client's funds were invested, the earnings made and when the investments were sold or redeemed. In relation to this specific client matter, of the initial funds received by the Public Trustee, a component of this was used to purchase a house. The latest valuation, undertaken by the Public Trustee, indicated that the house has more than doubled in value since purchase. In relation to the remaining funds received by the Public Trustee for the matter, the client has received, or had payments made on his behalf and at his request, amounting to approximately 1.3 times of the net amount received.

Summary

The petition requests the House pass a motion that calls on the Queensland Government to immediately hold an independent public enquiry which examines details and justifies:

- the fees and charges levied by the Public Trustee on all clients; and
- the officially acknowledged negative returns incurred by the Public Trustee for the last five years.

(5)

I do not consider that an independent inquiry is necessary or warranted. The Public Trustee's fees and charges have been set under the *Public Trustee Act 1978* and specifically are established by way of Gazette Notice. In acting as an adult's administrator, or attorney, the Public Trustee takes into consideration the unique circumstances of each client and tailors their service to meet their individual needs.

Fees and charges made by Public Trustee to a client are based on the level of service provided to each client. The Public Trustee's services are provided to all Queenslanders, irrespective of whether they can afford the actual cost of the services provided. In this regard, the Public Trustee considers rebating his fees on a case by case basis as a Community Service Obligation, at no cost to the Queensland Government.

Further to this, The Public Trustee has appropriate processes and controls for investment management of clients' funds. It is a requirement that client investment strategies are reviewed annually. This is to ensure that investment strategies and asset allocations remain appropriate to client needs. The Public Trustee periodically reviews investment systems, products, procedures and policies to ensure that it continues to meet the needs of clients whilst adhering to obligations under the Trusts Act.

The Public Trustee regularly reviews investment objectives and strategies to ensure that assets and liabilities are managed in an appropriately risk managed environment; and the PTIFs remain a suitable investment vehicle for clients, where it is determined that investment in growth assets is appropriate.

Yours sincerely



JARROD BLEIJIE MP
Attorney-General and Minister for Justice