

# Would you trust NSW?

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The recent merger of two small but critically important NSW government departments was done with the sort of ruthless precision associated with a cut-throat corporate takeover.

The forced marriage of the Office of the Protective Commissioner with the NSW Public Trustee has echoes of a hostile takeover by a cash strapped company desperate to get its hands on the target company's surplus investment assets.

The deal looks headed down the same path as many failed corporate mergers that put short-term financial objectives ahead of long-term planning.

It seems certain it will severely disrupt the ability of employees to do their jobs and lower the standard of service for clients who are among the most disadvantaged in the community.

The merger says a lot about how the state of NSW does business. It provides a microcosm of how the government is approaching the creation of 13 super agencies to absorb the bureaucracies run by 109 separate directors general. The bigger picture merger process is said to be a mess that is leading to an exodus of many experienced staff.

It is fitting that the public servant behind the merger of the Public Trustee and the Protective Commissioner, Laurie Glanfield, will emerge from the super agencies chaos with his role enhanced. He will be responsible for Police, Attorney Generals and Corrective Services and be answerable to NSW Premier Nathan Rees.

The merger of the Protective Commissioner and the Public Trustee was announced in the mini-budget in November 2008. Legislation was rushed through parliament shortly before it pulled stumps earlier this year with the support of Gordon Moyes, Fred Nile and the Greens. From July 1, the merged department became known as the NSW Trustee and Guardian.

Attorney General John Hatzistergos justified the merger of the Protective Commissioner and Public Trustee by claiming it would bring the state's bureaucratic structures into line with other states, save money and provide a network of regional offices for the 9,000 clients of the Protective Commissioner.

But the real heart of the deal was the government's desire to get its hands on the \$68.4 million in surplus funds in the Public Trustee's interest suspense account. With that cash in hand the Protective Commissioner can be removed temporarily from Treasury's funding list.

The surplus assets will be used to fund the Protective Commissioner, which was in need of \$10.6 million in annual government funds according to a report prepared in late 2008 by the Independent Pricing and Regulation Tribunal (IPART).

It is pretty clear to those who have analysed the costs of running both organisations as well as the trends in usage of services provided by both entities that the interest suspense surplus will be wiped out quickly.

Hatzistergos told parliament that he effectively has no idea how the merged entity will be funded on a permanent basis. He has asked IPART to report on sources of funding for the merged entity in mid-2010. That report should be available soon after the government loses office.

In the rush to get the merger sealed, the government sidestepped a perfect opportunity to bring key laws into line with the United Nations Convention on the Rights of Persons with Disabilities ratified by the federal government in July 2008.

The government was persuaded by People with Disability Australia (PWD) to reverse the onus of proof regarding a person's capacity to manage their financial affairs. But as PWD pointed out to Hatzistergos, in many respects the NSW Trustee and Guardian Bill 2009 violates Australia's international human rights obligations.

The Protective Commissioner is appointed by the courts to protect and administer the financial affairs of people who are unable to make their own financial decisions. Its highly skilled staff of 290 were already overworked before the merger, particularly the 150 front-line staff.

The Public Trustee was equally stretched and finding it difficult to meet its obligation to provide legal services for those seeking estate planning services but unable to afford a solicitor. It manages about 7,100 ongoing trusts, 5,800 deceased estates and 660 powers of attorney and holds 400,000 wills for current clients who have appointed the Public Trustee as their executor.

Legal experts have rightly questioned whether the legislation for the creation of the merged entity adequately recognised the difference between the tasks undertaken by the two organisations. Many have asked how a paralegal formerly working for the Public Trustee will handle working for the Protective Commissioner.

The Public Trustee was a self-funding body that was fully independent of government with a track record for meeting its fiduciary duties. As soon as the merger occurred this month, the Public Trustee Peter Whitehead was removed and the head of the Protective Commissioner Imelda Dodds was made acting head of the Trustee and Guardian.

The government said it would gain about \$100,000 in synergy benefits from the merger, a claim that echoes the hollow promises made by corporate raiders and their advisers.

The two departments have computer systems that don't talk to each other and merging them will more than wipe out the \$100,000. Also, many regional offices of the Public Trustee will need significant work to make them suitable for use by clients of the Protective Commissioner including ramps for the disabled.

In recognition of the widely expressed concerns that it did not consult adequately enough prior to the merger, Hatzisgeros has announced there will be a parliamentary inquiry into the merger later this year. That is not dissimilar to a corporate raider calling in consultants to justify a messy merger that went wrong.