

## Queensland's Public Trustee accused of profiting off people who lack capacity to manage own affairs

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People on guardianship orders are protected under legislation from publicly being identified as such. (AAP: Mick Tsikas)

Queensland's Public Trustee is charging asset-rich people in its care such high fees and charges, that they are drained of their resources in just a few years, the boss of a leading aged care support agency says.

It provides a range of services that include financial administration services to people who cannot manage their own money, managing deceased estates, and providing a free will-making service to Queensland residents.

Geoff Rowe, chief executive of Aged and Disability Advocates (ADA) Australia, said his service regularly received calls from people under financial administration who have become destitute.

"Certainly we see people who have gone in asset-rich and within a couple of years, those assets seem to have been dwindled away on fees and charges, and that's really concerning," Mr Rowe said.

"We see people who have been surviving on a pension, and managing to save, and have been doing that over a number of years.

"They've then gone under the control of the Public Trustee, and due to the fees and charges, they've ended up with no resources, with no savings."

Mr Rowe said given that outcome, in some cases people would have done a better job by themselves rather than with the support of the Public Trustee.

The reason people ended up under financial administration in the first place was they were judged by the Queensland Civil and Administrative Tribunal (QCAT) to lack the capacity to manage their own affairs.

### Key points:

- Queensland Public Trustee has been accused of fee-gouging vulnerable people
- Advocates have suggested asset-rich clients could be left destitute
- Public Trustee says it has a mandate for the structure of its operations



Over time, the Public Trustee has accumulated almost \$178 million in cash reserves. (ABC)

The Public Trustee of Queensland's annual report for 2019-20 goes some way towards explaining how the organisation was structured and why the state government conceded it needed to reform.

It is a self-funded organisation that does not receive government funding, instead generating some 71 per cent of its revenue through fees.

Over time, it has accumulated almost \$178 million in cash reserves.

The Public Trustee directed the ABC to its fees and charges section on its website, where one of its own example scenarios demonstrates it would take more than a quarter of an elderly man's pension in fees and charges.

Its scenario is a man named Peter living in a property he owns, with \$6,000 in savings.

Based on an average annual aged-care pension of \$24,551, the Public Trustee states it would charge Peter \$6,817 in annual fees and charges.



The Public Trustee is a self-funded organisation, generating some 71 per cent of its revenue through fees. (Pixabay.Com: Unclelkt)

While the Public Trustee spent \$35 million in providing free services like wills to thousands of people last year, estate lawyer Christine Smyth said the Public Trustee was charging high fees to the people who needed its service the most.

Ms Smyth, who specialises in elder law, has acted in numerous matters where the administration of the Public Trustee was being challenged.

She said one of the most disturbing problems she saw was people being charged the legal fees of the Public Trustee when people challenged or queried its actions or appointment.

People on guardianship orders are protected under legislation from being publicly identified as under guardianship.

Ms Smyth said while the legislation was designed to protect vulnerable people, it had also been a barrier to address issues in the system by effectively gagging people from speaking out.

### **'I was taken advantage of'**

Aged care resident Brian\* (not his real name), is one person who successfully had guardianship and financial administration orders revoked in 2017, after being charged thousands of dollars in fees.

He told the ABC after he returned home from a lengthy hospital stay, his care provider applied to QCAT to place him under financial administration.

Brian had been receiving disability support for a range of complex health issues, including a serious spinal condition that confined him to a wheelchair.

The first and final hearing was scheduled while he was still recovering, and his application to adjourn the hearing pending additional medical evidence was dismissed.

Brian spent six months under financial administration, during which time he was charged \$8,648 in fees and outlays, including \$2,500 in legal fees.

"There's no changing the system — there was no system," Brian said.

"There was just a process whereby a matter came before the tribunal and it was just presented as a factual matter and the decision was made — there was no discussion of the merit of the case."



Aged care resident Brian\* (not his real name), successfully had a guardianship order revoked. (ABC News: Stephanie Zillman)

Brian initiated a reopening of his case six months into a 12-month appointment of the public trustee and public guardian, ultimately leading QCAT to revoke the orders and accept his medical evidence.

Brian's advocate — ADA Australia — wrote to the Public Trustee querying the fees and requested a refund or reduction.

In a written statement provided to the ABC about Brian's case, his advocate said after it sought clarification of the fees, the Public Trustee clarified the legal fees were incurred because of QCAT's direction to prepare submissions in response to Brian's application to reopen the matter, and these submissions were prepared "on behalf of the Public Trustee".

The Public Trustee justified the fees on the basis they were reasonable for the work undertaken and "did not consider that a full or partial refund of fees is warranted in this instance".

Brian said he had initially thought the Public Trustee would "rescue" him from the bureaucracy he encountered at QCAT.

"[I thought] they would take away the bureaucracy of what was being done, and they would sort it all out," Brian said.

"But I wasn't informed, there was no information about how the system worked — I was taken advantage of."

### **Public Trustee has 'departed from its purpose'**

Ms Smyth said she believed the practices of the Public Trustee had departed significantly from its original purpose.

"[It] was set up last century as a benevolent organisation to undertake benevolent acts of generosity to our citizens, by providing free wills to soldiers who were about to go to war — and it has developed and morphed into something entirely different," Ms Smyth said.

"You've got an organisation that is entirely self-funded, questions are asked about [whether] it is proper and appropriate for a government organisation to profit off the poor circumstances of ... Queenslanders?"



Ms Smyth has acted in numerous matters where the administration of the Public Trustee was being challenged. (ABC News: Steve Keen)

That is a view shared by Mr Rowe.

"The focus of the Public Trustee I think over the years has been on generating enough income to run the machine — and the machine has almost become more important than the individuals they're there to support," Mr Rowe said.

He said cases like Brian's were ultimately unusual, because his guardianship order and the appointment of the Public Trustee had been revoked.

"The system does little to support people to become independent," Mr Rowe said.

"We see examples where a young person with an intellectual disability comes into the public trust system at age 18.

"Over time they can be taught the skills to become financially independent, and we don't see that happen."

Mr Rowe said while he believed the system encouraged dependency, there were green shoots.

"We've had some very frank and honest conversations with the Acting Public Trustee to say the system is broken ... that it needs reform, and I believe that he sees that," Mr Rowe said.



Mr Rowe said his service regularly gets calls from people under financial administration who have become destitute. *(ABC News: Dean Caton)*

### **Public Trustee has 'clear mandate'**

Both the Acting Public Trustee Samay Zhou and Attorney-General Shannon Fentiman declined to be interviewed, and their offices provided almost identical statements.

A spokesperson for the Public Trustee said the legislation that governed its powers had been tested by entities such as the courts, parliament, oversight agencies and the public.

"As such, the Public Trustee remains of the view that it has a clear mandate for its role and functions," the spokesperson said.

"We have also commenced an independent, comprehensive review of our fees and charges to ensure that they are fair, equitable and transparent."

The spokesperson also said it supported its customers to seek financial independence and ran a 'financial independence pathways' program to support customers to understand how to manage their own money and apply for capacity through QCAT.

In a statement, a spokesperson for the Attorney-General said Ms Fentiman was currently considering a report on the Public Trustee by the Public Advocate for Queensland.



Attorney-General Shannon Fentiman declined to be interviewed but her office sent a statement. *(ABC News: Rachel Riga)*

