NSW Trustee and Guardian

Audit Opinion

The audit of the NSW Trustee and Guardian's financial statements for the year ended 30 June 2011 resulted in an unmodified audit opinion within the Independent Auditor's Report.

Operational Snapshot

The NSW Trustee and Guardian provides:

- trustee services to the people of New South Wales,
- · financial management services to people with impaired decision-making abilities, and
- lifestyle decision-making services through the Public Guardian to people with impaired decision-making abilities.

All moneys held are kept in the trust fund (Common Funds) and are invested. The combined value of funds held in trust on behalf of clients was \$2.5 billion.

References in this comment to Trustee Services relate to activities of the former Public Trustee New South Wales, while references to Financial Management relate to activities of the former Office of the Protective Commissioner. The merger of these entities to form the NSW Trustee and Guardian is detailed below.

Key Issues

Internal Audit Recommendations

The NSW Trustee and Guardian has an active internal audit function, which reviews aspects of its business. Internal audit made 67 recommendations to improve processes and controls in 2010-11. It reported 94 recommendations from the previous and current years as currently being actioned at September 2011, 61 per cent of which had been partially implemented. While some recommendations date back to December 2008, only five have not been implemented within agreed timeframes. Recommendations currently being actioned include 20 intended to address high risk internal control shortcomings. Examples of these shortcomings are:

- no formal risk assessment being performed to assess a managed person's capacity to manage their own estate. Section 71 of the NSW Trustee Guardian Act 2009 allows NSW Trustee and Guardian to authorise a client to manage part of their estate, but there is a risk that section 71 authorisations will be made inappropriately in the absence of a formal risk assessment
- an annual stocktake is not performed of client personal property and inadequate segregation of duties exists in the receipting, storage and disposal of client personal property, increasing the risk of fraud and theft
- client personal property procedures do not require the value of all personal property to be recorded in client information systems, and the associated valuation reports to be stored in the document management system. The absence of formal procedures increases the risk of inconsistent and incorrect processing.

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The number and significance of internal audit findings show NSW Trustee and Guardian's internal control environment needs to improve

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NSW Trustee and Guardian has a high volume of non-standard transactions, which increases the risk of fraud. Non-standard transactions include:

- payments from client trust accounts to third parties, including overseas third parties
- reimbursements to third parties, such as client family members
- · direct cash payments to clients.

The variable nature of these transactions means they require more manual handling compared to standard, regular payments, and makes establishing a strong control environment more difficult to achieve, but more important.

The number and significance of internal audit findings suggests NSW Trustee and Guardian's internal control environment requires further improvement. Management advises that some recommendations will be addressed with the introduction of a new information technology management system.

Internal audit findings are reported regularly to the Audit and Risk Committee, which actively monitors and follows up outstanding recommendations.

Merger of the Public Trustee NSW and the Office of the Protective Commissioner

The NSW Trustee and Guardian was established on 1 July 2009 under the *NSW Trustee and Guardian Act 2009* (the Act). The Act abolished the Public Trustee New South Wales and the Office of Protective Commissioner, merged their assets and liabilities and formed the NSW Trustee and Guardian.

Last year I recommended the NSW Trustee and Guardian develop performance indicators and targets to:

- · measure the benefits of the merger
- monitor the progress, cost and timeliness of implementing the new information technology system to replace the existing Trust Estate and Asset Management System (TEAMS) and the Client Information System (CIS).

Management advises it cannot measure the benefits of the merger, because TEAMS and CIS are not capable of costing individual matters. Consequently, a comparison of the cost of processing matters before and after the merger is not possible. The NSW Trustee and Guardian advises that the financial systems and some information technology infrastructure are being merged, and a new service model is currently being rolled out.

Implementing an information technology system to replace TEAMS and CIS is still at an early stage. A request for a quotation for a project partner has been completed, but a decision has been deferred pending the outcome of a business process review, which is being scoped with internal audit.

Use of Interest Suspense Account

Last year, I recommended the NSW Trustee and Guardian finalise the distribution of its Interest Suspense Account before 30 June 2011. Under the Act, the NSW Trustee and Guardian was required to determine by that date the allocation to:

- the Reserve Fund for the purposes of that Fund
- the existing common funds
- the NSW Trustee and Guardian for current and future costs incurred by it in exercising its functions under the Act.

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The NSW Trustee and Guardian engaged an actuary to determine the appropriate allocation of the \$59.9 million in the Interest Suspense Account at 30 June 2011. The funds were allocated as follows:

- \$16.0 million to the Reserve Fund
- \$9.9 million to the existing common funds
- \$34.0 million to the current and future costs of NSW Trustee and Guardian.

The actuary developed several scenarios ranging from a budget scenario (least conservative) to an adverse scenario (most conservative) to determine the funds required for the current and future operating costs of NSW Trustee and Guardian. The actuary recommended, and NSW Trustee and Guardian adopted the most conservative estimate.

The NSW Trustee and Guardian received \$7.6 million during the year from the Interest Suspense Account for the purpose of funding operating costs.

Performance Information

Client Satisfaction

The NSW Trustee and Guardian uses the following indicators to help improve its performance:

| Year ended 30 June | Actual | | | | |
|---|--------|------|------|------|------|
| | 2011 | 2010 | 2009 | 2008 | 2007 |
| Customer satisfaction index – Trustee Services | 84 | 84 | 87 | 80 | 73 |
| Process improvement satisfaction index – Trustee Services | 80 | 80 | 84 | 76 | 66 |
| Customer satisfaction index – Financial Management | 66 | na | na | na | na |
| Complaints received | 377 | 287 | na | na | na |

Source: NSW Trustee and Guardian (unaudited).

na not applicable.

The Trustee Services customer satisfaction and process improvement indices have remained consistent despite the ongoing challenges resulting from the merger. For the first time customer satisfaction was measured for Financial Management clients in 2010–11.

The NSW Trustee and Guardian advised the difference in satisfaction ratings between Trustee Services and Financial Management is mainly due to Financial Management clients being required by an order of a court or tribunal to use the NSW Trustee and Guardian. Trustee Services clients voluntarily choose the NSW Trustee and Guardian. Financial Management clients may be unhappy and/or do not understand the need for the order. The NSW Trustee and Guardian advised that strategies are being implemented to deal with Financial Management customer satisfaction, including developing a new service delivery model.

There was a 31.4 per cent increase in complaints made to NSW Trustee and Guardian during 2010–11. Over half the complaints related to delays in responses and decisions, and provision of information. A significant proportion of the complaints (262) came from NSW Trustee and Guardian's Financial Management activities.

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Trustee Services Performance

Last year, I recommended the NSW Trustee and Guardian continue liaising with other States to establish national benchmarking of performance across Public Trustees. Management advises its attempts over the past three years to implement national benchmarking across Public Trustees in other States has been unsuccessful as each State has different ways of charging clients and different applicable legislation, service standards and types.

The NSW Trustee and Guardian provided the following information on its performance for the volume and value of new business obtained during the year:

| Year ended 30 June | Volume (No.) | | | Value (\$m) | | |
|-----------------------------|---------------|-------|--------|-------------|------|------|
| | Target Actual | | Target | Actual | | |
| | 2011 | 2011 | 2010 | 2011 | 2011 | 2010 |
| Estates administration | 1,800 | 1,624 | 1,759 | 500 | 582 | 523 |
| Trusts duties | 775 | 875 | 993 | 50 | 50 | 50 |
| Powers of attorney services | 175 | 83 | 135 | 48 | 36 | 45 |
| Will making | 11,000 | 9,672 | 10,639 | na | na | na |

Source: NSW Trustee and Guardian (unaudited).

na not applicable.

The actual number of new matters decreased during the year for all categories and was below target for all categories, except for new trusts which exceeded target by 13 per cent. The value of new estates administration obtained was above target by 16 per cent while the value of power of attorney services was below target by 25 per cent.

Financial Management Performance

Funds Managed

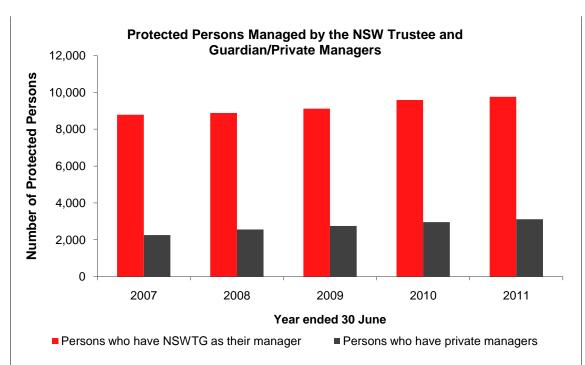
The NSW Trustee and Guardian provides financial management services to people with impaired decision-making abilities, who are unable to manage their own affairs. The Act outlines how the funds are managed. All moneys are kept in the trust fund (Common Fund) and are invested. The NSW Trustee and Guardian also manages other property (client assets external to the Common Fund) such as real estate, shares and term deposits. Funds managed were:

| Year ended 30 June | 2011 \$'000 | 2010 \$'000 |
|-------------------------|----------------|----------------|
| Common Fund investments | 1,111,697 | 1,196,851 |
| Real property | 703,641 | 664,429 |
| Other assets | 390,657 | 347,964 |
| Total Funds Managed | 2,205,995 | 2,209,244 |

Source: NSW Trustee and Guardian (unaudited).

Number of Clients

The NSW Trustee and Guardian manages the financial affairs of protected persons or authorises and directs the activities of private managers. Private financial managers can be appointed by the Supreme Court or Guardianship Tribunal.



Source: NSW Trustee and Guardian (unaudited).

There were 12,870 protected persons at 30 June 2011, an increase of 2.6 per cent compared to the previous year. The number of directly managed clients increased by 1.9 per cent and the number of privately managed clients increased by 5.1 per cent between 2010 and 2011.

Other Information

Common Fund Reports

The Trustee Common Fund and the Financial Management Common Fund consist of funds managed by the NSW Trustee and Guardian on behalf of its clients. My audits of the Financial Management Common Fund for the years ended 30 June 2009 and 2010 have not been finalised. I recently completed the audit of the Trustee Common Fund's financial statements for the year ended 30 June 2009, and the audit of the financial statements for 2010 is still in progress.

I found the Financial Management Common Fund had internal control deficiencies in systems governing the payment of client expenses. As a result, I have performed extensive detailed testing of client payments since 2006–07. The increased testing, combined with difficulties in obtaining appropriate audit evidence to support the validity of the payments significantly increased the time and cost of completing our audits. The detailed testing performed subsequent to 2006–07 supported the issue of unmodified audit opinions.

As noted under Key Issues above, the NSW Trustee and Guardian continues to perform internal audit reviews and implement recommendations to address the control deficiencies. NSW Trustee and Guardian has advised that the control deficiencies identified in previous years with the payment of client expenses have now been addressed.

Ombudsman's Review

Prior to the end of the 2010–11 financial year, the Ombudsman advised he would investigate issues relating to the administration of financial estates by NSW Trustee and Guardian. The investigation was not complete at the date of this report.

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Estate Beneficiary Identification Process

Last year, I recommended the NSW Trustee and Guardian implement appropriate measures and processes to facilitate identification of next of kin for intestate estates within reasonable periods of time. This recommendation followed the New South Wales Supreme Court's ruling on a protracted court case, which lasted over 40 years. The NSW Trustee and Guardian has advised that appropriate procedures have been implemented to prevent similar matters arising in future.

Service Delivery and Lease Agreements with the Department of Attorney General and Justice (DAGJ)

Last year, I recommended the finalisation of documented agreements relating to service delivery and occupation of the Justice Precinct Office to avoid disagreements and disputes over charges. A draft service level agreement has been developed for information technology services, but a formal lease agreement has not been developed for occupation of the Justice Precinct Office.

In 2010–11, the NSW Trustee and Guardian paid DAGJ \$2.1 million (\$2.0 million in 2009-10) to rent this accommodation and advises that rental charges are allocated between agencies within the Justice Precinct Office based on the floor space occupied. This reduces the risk of incorrect rental charges being paid.

Financial Information

Abridged Statement of Comprehensive Income

| Year ended 30 June | 2011 \$'000 | 2010 \$'000 |
|--|----------------|----------------|
| NSW Government contributions | 11,706 | 7,344 |
| Commissions and fees | 63,392 | 62,271 |
| Investment and other revenue | 8,799 | 8,109 |
| Revenues | 83,897 | 77,724 |
| Personnel services expenses | 52,609 | 56,748 |
| Lease expense, depreciation and amortisation | 6,948 | 7,251 |
| Other expenses | 12,858 | 10,898 |
| Expenses | 72,415 | 74,897 |
| Loss on disposal of non-current assets | (18) | (21) |
| Surplus | 11,464 | 2,806 |
| Other Comprehensive Income | | |
| Net increase in revaluation reserve | 831 | 427 |
| Total Comprehensive Income | 12,295 | 3,233 |

Government contributions in 2010–11 included \$3.7 million of donated assets from DAGJ.

The reduction in personnel services expenses is due to a \$5.3 million decrease in defined benefit superannuation expense, as advised by Pillar Administration based on an actuarial assessment.

Other expenses increased by \$2.0 million due to additional consultancy fees and IT upgrade fees for the planned merger of the two existing Client Management Systems, and a 2.5 per cent increase in service level agreement costs between NSW Trustee and Guardian and DAGJ.

Abridged Statement of Financial Position

| At 30 June | 2011 \$'000 | 2010 \$'000 |
|-------------------------|----------------|----------------|
| Current assets | 53,780 | 46,397 |
| Non-current assets | 63,535 | 57,779 |
| Total Assets | 117,315 | 104,176 |
| Current liabilities | 21,969 | 21,810 |
| Non-current liabilities | 38,360 | 37,675 |
| Total Liabilities | 60,329 | 59,485 |
| Net Assets | 56,986 | 44,691 |

Current assets increased mainly due to an increase in cash and cash equivalents resulting from:

- the receipt of \$7.6 million from the Interest Suspense Account
- no payments for income tax and dividends in 2010–11 compared to \$3.0 million in 2009–
 10 (as a for profit entity, the former Public Trustee was liable to pay dividend and income
 tax equivalents to Treasury).

Non-current assets increased due to a \$2.6 million increase in financial assets and a \$3.6 million increase in the carrying value of property plant and equipment.

Trustee Services Activities

The NSW Trustee and Guardian may act as a trustee; as an executor or administrator; as collector of estates under an order to collect; as an agent or attorney; as guardian or receiver of the estate of a minor; and as receiver of any other property.

The Trustee services of the NSW Trustee and Guardian include:

- will making
- · executor services
- administration of deceased estates
- · trustee of trusts created by wills, deeds, court orders and legislation
- power of attorney services
- management/sale of assets seized or confiscated under the Confiscation of Proceeds of Crime Act 1989 and the Criminal Assets Recovery Act 1990.

The Chief Executive Officer of the NSW Trustee and Guardian is also the Commissioner of Dormant Funds under the *Dormant Funds Act 1942*. This involves investigating and recommending proposals for dealing with funds acquired by trustees for charitable or other public purposes, which have become dormant.

Financial Management Activities

The NSW Trustee and Guardian provides the following services:

- manages the affairs of those persons who are not able to manage their own affairs and whose affairs have been formally committed to management by order under the Act
- authorises and directs the performance and duties of private managers appointed by the Supreme Court or the Guardianship Tribunal.

The Chief Executive Officer of the NSW Trustee and Guardian reports administratively to the Attorney General via the Director General of DAGJ.

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Public Guardian

The Public Guardian makes personal lifestyle decisions on behalf of adults who have a decision-making disability. Decisions are made in such areas as accommodation, services and consenting to medical and dental treatment. The Public Guardian also provides support to private guardians. The total number of clients managed for 2010–11 financial year was 2,560.

For further information, refer to www.tag.nsw.gov.au (NSW Trustee and Guardian) and www.lawlink.nsw.gov.au/opg (Office of the Public Guardian).