

14 October 2021

Ms Megan Osborne
Acting Chief Executive Officer
NSW Trustee and Guardian
By email: consultations@tag.nsw.gov.au

Changes to NSW Trustee and Guardian's fees

Dear Ms Osborne,

Legal Aid NSW welcomes the opportunity to make a submission to the NSW Trustee and Guardian in response to the discussion paper, *Changes to NSW Trustee and Guardian's fees*, dated 14 September 2021.

Legal Aid NSW provides legal services across NSW through a state-wide network of 25 offices and 243 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged. The work of our civil law solicitors includes our Children's Civil Law Service, among other specialist services which focus on assisting the most vulnerable clients in our community. Such clients include those with cognitive impairment, language or literacy issues, low levels of education, young people, Aboriginal and Torres Strait Islander people, and clients in out-of-home care (**OoHC**).

In summary, Legal Aid NSW is not opposed to the NSW Trustee and Guardian's proposed fee changes under the *NSW Trustee and Guardian Regulation 2017*, however we provide suggestions to ensure that such changes are equitable for our clients.

In response to the consultation questions, Legal Aid NSW provides the following comments.

Question 1: Do you have any feedback on our proposal to change the wills and estate planning fees?

Legal Aid NSW welcomes the fact that people who are eligible for the full Centrelink Age Pension, as well as people receiving the Disability Support Pension (**DSP**) and the Department of Veterans' Affairs Pension (**DVA**) who would otherwise be eligible for the full Centrelink Age Pension, will continue to receive these services free of charge.

We suggest that the eligibility be extended to include those eligible for the full rate of any Centrelink pension, as it currently limits access to a small number of our young clients who would benefit from the service. We are specifically concerned about our clients in OoHC who currently fall out of scope, but are likely to have finances in trust following victim services recognition payments. Such young people would benefit from utilising free-of-charge will and estate planning. Young people in OoHC are vulnerable to exploitation, and access would ensure that they are empowered to safeguard their assets and enables self-determination. We do not believe that widening this provision would pose a financial burden on the NSW Trustee and Guardian as the requests would be limited.

Further, we hold concerns regarding the classifications of the Indicative Wills pricing category, which moves “unequal division of an estate to multiple beneficiaries and different substitution arrangements” into the medium pricing classification. This is likely to have an impact on our clients who have minor assets within a very small estate and wish to divide such assets between multiple family members. We suggest that an alternative and more equitable fee schedule would be one based on total estate worth.

Question 8: Do you have any feedback on our proposal to increase the value of small estates to support customer needs? (This proposal is not a fee change).

Legal Aid NSW supports increasing the prescribed value of small estates in the *NSW Trustee and Guardian Regulation 2017*¹ from \$20,000 to \$50,000, which will be beneficial to our clients.

Other comments

Legal Aid NSW seeks to share our concerns regarding several aspects of the NSW Trustee and Guardian’s fees which fall outside the scope of this discussion paper.

Legal Aid NSW assists many vulnerable children and young people through our Children’s Civil Law Service. We have become concerned about the excessive fees associated with managing monies in trust and its impact on Legal Aid NSW’s clients, specifically those in OoHC who are under the age of 18 years.

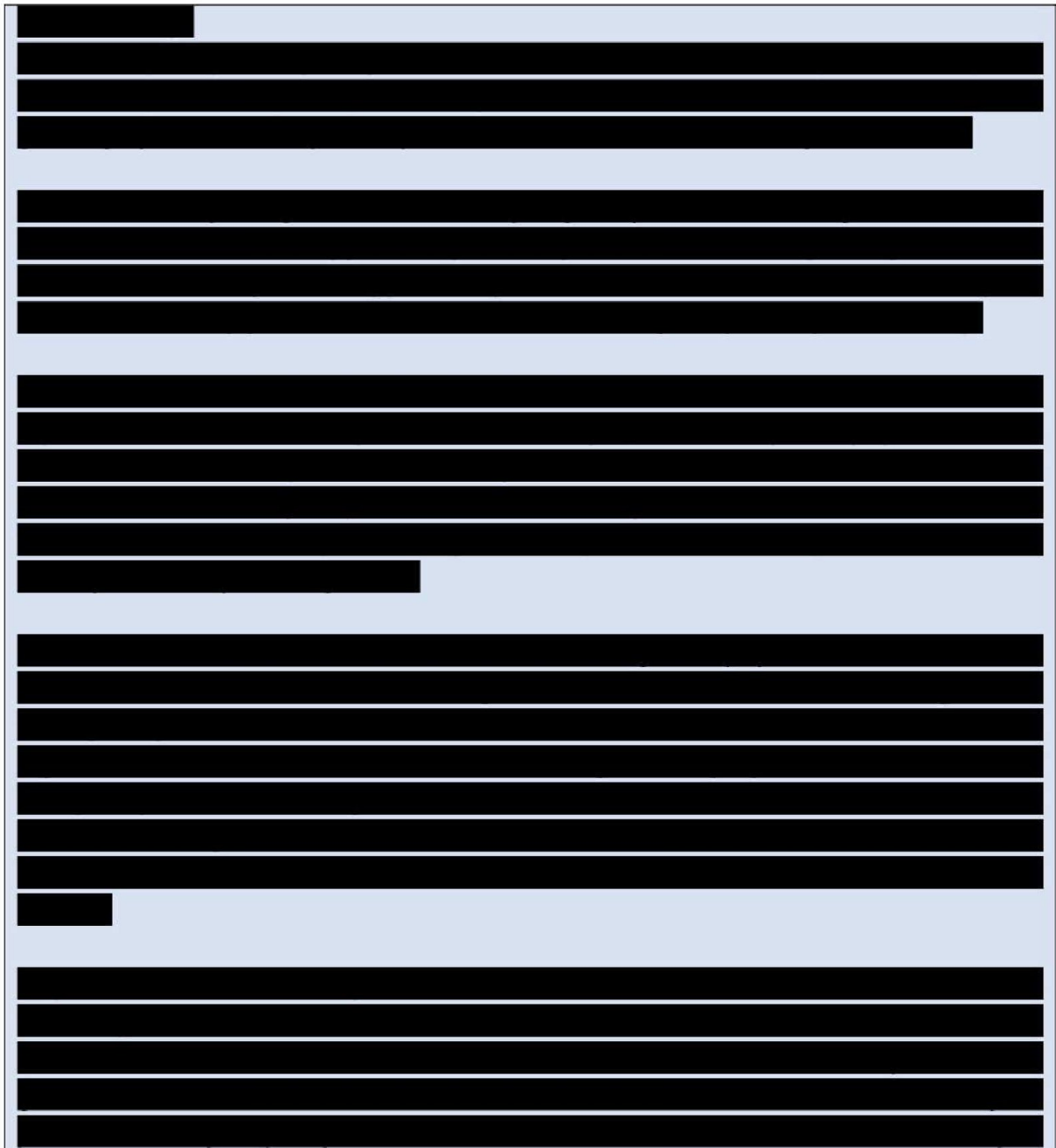
The circumstances where our clients might have money held in trust include:

- award of recognition payment for acts of violence perpetrated against a child (often resulting in their removal and being placed in care), or during their time in care
- award of damages pursuant to a successful claim of intentional tort (e.g. an unlawful assault or battery by police against a child)
- award of damages as a result of an identified claim against the State, and

¹ *NSW Trustee and Guardian Regulation 2017* (NSW) s 36(a).

- other miscellaneous circumstances, including being the beneficiary of a will or estate (superannuation), motor vehicle claim, etc.

We are aware that our clients' trust accounts have had excessive fees charged by the NSW Trustee and Guardian for 'managing' their money in trust whilst they are under the age of 18. We are concerned about such excessive fees being charged, and suggest that amendments be made to the fee schedule which would exempt a child or young person's account where it is demonstrated that they are vulnerable (i.e. by virtue of their OoHC status).



² All case studies in this submission have been de-identified.

[REDACTED]

Legal Aid NSW is aware that the decision to hold money in trust for a child or young person in OoHC is not made by the child or young person themselves, but rather is an automatic process directed by the courts and/or Victims Services NSW. We are concerned that the fees being charged are inconsistent with the purpose of awarding a person victims compensation, and unfairly impact on children and young people in OoHC. Further, we are concerned that the fees do not match the level of management applied in comparison to other services provided by the NSW Trustee and Guardian where there is active case management or financial planning.

[REDACTED]

Legal Aid NSW believes that the above stated reasons are all strong indications of why there should be an exemption of fees for trust accounts for vulnerable children and young people, especially those in OoHC.

Thank you for considering this letter. If you require any further information, please contact [REDACTED], [REDACTED], on [REDACTED], or at [REDACTED]

Yours sincerely

Brendan Thomas
Chief Executive Officer