Investigation into State Trustees

June 2019
Accessibility
If you would like to receive this publication in an alternative format, please call 9613 6222, using the National Relay Service on 133 677 if required, or email vocomms@ombudsman.vic.gov.au.

The Victorian Ombudsman respectfully acknowledges the Traditional Owners of the lands throughout Victoria and pays respect to them, their culture and their Elders past, present and future.
Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the Ombudsman Act 1973 (Vic), I present to Parliament my report Investigation into State Trustees.

Deborah Glass OBE
Ombudsman

27 June 2019
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreword</td>
<td>4</td>
</tr>
<tr>
<td>Executive summary</td>
<td>6</td>
</tr>
<tr>
<td><strong>The investigation</strong></td>
<td>12</td>
</tr>
<tr>
<td>Why we investigated</td>
<td>12</td>
</tr>
<tr>
<td>Authority to investigate</td>
<td>13</td>
</tr>
<tr>
<td>How we investigated</td>
<td>13</td>
</tr>
<tr>
<td>Procedural fairness and privacy</td>
<td>14</td>
</tr>
<tr>
<td>About State Trustees and personal financial administration</td>
<td>16</td>
</tr>
<tr>
<td>The history of public trustee duties in Victoria</td>
<td>16</td>
</tr>
<tr>
<td>About State Trustees</td>
<td>16</td>
</tr>
<tr>
<td>How personal financial administration works</td>
<td>18</td>
</tr>
<tr>
<td>State Trustees’ clients</td>
<td>19</td>
</tr>
<tr>
<td>Laws, standards and safeguards</td>
<td>20</td>
</tr>
<tr>
<td><strong>Does State Trustees act in its clients’ interests?</strong></td>
<td>25</td>
</tr>
<tr>
<td>Financial management</td>
<td>25</td>
</tr>
<tr>
<td>Communication with clients</td>
<td>44</td>
</tr>
<tr>
<td>Support for clients’ independence</td>
<td>56</td>
</tr>
<tr>
<td>Fees and commissions</td>
<td>63</td>
</tr>
<tr>
<td><strong>What causes the problems with State Trustees’ services?</strong></td>
<td>68</td>
</tr>
<tr>
<td>Flawed case management</td>
<td>68</td>
</tr>
<tr>
<td>Backlogs</td>
<td>74</td>
</tr>
<tr>
<td>Workforce challenges</td>
<td>74</td>
</tr>
<tr>
<td>Neglect of human rights</td>
<td>77</td>
</tr>
<tr>
<td>Cost-shifting</td>
<td>78</td>
</tr>
<tr>
<td>Accountability and transparency gaps</td>
<td>81</td>
</tr>
<tr>
<td>Commercial pressures</td>
<td>85</td>
</tr>
<tr>
<td><strong>What is State Trustees doing to fix the problems with its services?</strong></td>
<td>87</td>
</tr>
<tr>
<td>Case management</td>
<td>87</td>
</tr>
<tr>
<td>Communication with clients</td>
<td>88</td>
</tr>
<tr>
<td>Financial management</td>
<td>88</td>
</tr>
<tr>
<td>Support for clients’ independence</td>
<td>88</td>
</tr>
<tr>
<td>Human rights</td>
<td>89</td>
</tr>
<tr>
<td>Moving forward</td>
<td>89</td>
</tr>
<tr>
<td>Conclusions</td>
<td>90</td>
</tr>
<tr>
<td>Opinion</td>
<td>93</td>
</tr>
<tr>
<td>Recommendations</td>
<td>94</td>
</tr>
<tr>
<td>Appendix</td>
<td>100</td>
</tr>
</tbody>
</table>
There can be few more potent examples of the imbalance of power between the individual and the state than when the state assumes control over someone’s financial affairs. Whatever money or property a person has is no longer theirs to deal with, homes can be sold and personal property dispersed. The impact of this is obvious, the responsibility it places on those entrusted with their affairs equally so.

There are, of course, good reasons why a public trustee is necessary for the thousands of people in Victoria who through illness, injury, incapacity or disability are unable to look after their own affairs. It protects people at risk of exploitation and is intended to provide a service looking after that person’s interests. But if you cannot replace your worn-out shoes or buy Christmas presents for your family, you should rightly expect the best possible service from the agency appointed to look after your interests.

Too many times, that agency fails. I recognise that the complaints to my office, which have risen markedly in the past couple of years, are a small percentage of the many thousands of interactions the public has with State Trustees. But those complaints, and the similar stories told by key organisations dealing regularly with State Trustees, present a troubling picture.

People with assets living in poverty, money not being paid when needed, at other times money being paid unnecessarily, such as continued insurance on a car that had been sent to the wreckers three years before. Spending a third of a client’s life savings on legal expenses, without consultation. Delayed payment of bills raising the risk of homelessness. Clients capable of communicating their wishes finding their possessions went into a skip.

At the heart of these complaints is the overwhelming sense of powerlessness; the indignity of having to request money for a haircut to supplement a meagre allowance, the frustration of being a case, not a person, in one example we looked at having to repeat details to up to 48 different consultants. The humiliation of going to the bank to collect your pension, only to find the money is no longer there.

State Trustees is sometimes appointed against people’s wishes and in situations of family conflict, and I acknowledge it can be a difficult job balancing competing financial and lifestyle demands. I also acknowledge that many State Trustees staff are trying to do the right thing in what can be very challenging circumstances, and that the Ombudsman rarely sees the instances when clients are satisfied. But the evidence of dissatisfaction, directly impacting on people’s quality of life, is too substantial to be treated as other than systemic.
State Trustees’ performance has been reviewed exhaustively over the decades, including by my office and the Auditor-General. Many of those reports, fundamentally, were addressing the question of whether State Trustees acts in the interests of its vulnerable clients. While improvements in performance are also periodically reported, the reports regularly raise concerns about delay, poor communication and questionable decision making, often caused by high workloads and inexperienced staff.

We have, happily, come a long way since the nineteenth century, when people who ‘lacked capacity’ were locked up in institutions, and the Master-in-Lunacy had both physical and legal control over their affairs. State Trustees has been Victoria’s public trustee for 80 years. It has been a government department, a statutory corporation, and since 1994, a state-owned company. The public trustee model has evolved, and Parliament has taken welcome moves to put more control into the hands of State Trustees’ clients.

State Trustees has around 10,000 clients with an illness, injury or disability at any one time and, last financial year, it managed over $2 billion across all its functions. It is a company whose sole shareholder is the Treasurer. Yet it operates on a commercial imperative, under pressure to reduce losses, with many of its recent problems stemming from changes in 2017 to its case management model. Until we began this investigation it did not have a Disability Action Plan and its procedures made no reference to human rights. Since we have been raising issues with State Trustees throughout our investigation, we have already begun to see progress, and I welcome the commitment of the new CEO to making real improvements.

I thank the State Trustees staff we spoke to for their candid assessment of the problems they faced; the dedication of many staff was apparent, as was their frustration at not being listened to in the past. I hope the new operating model, which recognises that people have very different needs, addresses at least some of the serious issues this report identifies.

But fundamental questions remain about its establishment. It is the only public trustee in Australia to be set up under corporations law. While we found no evidence of individual decisions being made for commercial reasons, there is evidence of commercial pressures limiting its service as a whole.

Puzzlingly, it is exempt from freedom of information laws and publication is subject to onerous restrictions, with people raising concerns about access to their own information and the media facing restrictions on publishing information about concerns, even if clients consent. After so many reports questioning whether State Trustees acts in the interests of clients, it would be prudent to review whether a corporations law model acts in the interests of clients, and ways to secure its accountability to clients and the public.

State Trustees’ clients are, by definition, some of the most vulnerable people in the state. The Parliament’s recent enactment of a new Guardianship and Administration Act, with a sharpened focus on the human rights and dignity of persons with a disability, offers an opportunity to reconsider Victoria’s approach to their support. We have already seen a positive shift towards recognising the rights of people with disabilities to make decisions about their own lives. Respect for human dignity means we must do better.

Deborah Glass
Ombudsman
Executive summary

Why we investigated

1. State Trustees looks after the financial affairs of around 10,000 Victorians who cannot manage their own money because of disability or mental illness. It generally collects their income, pays their bills, takes care of their property, manages any legal issues and invests their savings.

2. In recent years, a growing number of these people, or their family members or advocates, have complained to the Victorian Ombudsman. They often told common stories – unpaid bills, trouble getting money for everyday expenses and poor communication. Some tried to resolve their concerns with State Trustees but said it failed to respond or failed to fix the problems.

3. The Ombudsman was concerned about these complaints for several reasons:
   • State Trustees’ clients are vulnerable, not just because of their disability or illness, but because State Trustees controls their money and property.
   • The Ombudsman and the Victorian Auditor-General reported concerns about State Trustees in 2003 and 2012 respectively. The complaints suggested problems were persisting.
   • The Victorian Parliament has been revising laws to strengthen the rights of people with a disability who need help with their financial affairs, consistent with the United Nations Convention on the Rights of Persons with Disabilities. The complaints raised questions about State Trustees’ readiness for this new approach.

4. On 5 July 2018, the Ombudsman notified the Chair of State Trustees’ board and its minister, the Treasurer, that she intended to investigate whether State Trustees acts in its clients’ best interests in its role as a financial administrator.

Does State Trustees act in its clients’ interests?

Financial management

5. The investigation reviewed the cases of 30 State Trustees clients in depth. Twenty-three of those cases contained evidence of poor financial management. Examples included:

   • failure to ensure clients were receiving correct pension and other entitlements. In one case, State Trustees delayed telling Centrelink about changes to a client’s income, causing him to miss out on $10,888 in extra disability support pension payments (see page 26).
   • failure to pay clients’ bills on time or check the accuracy of payments. In several cases, clients were threatened with eviction or electricity and gas disconnection because State Trustees did not monitor or pay rent or bills (see pages 72, 73 and 75). In another case, State Trustees continued paying for a woman’s car insurance for three years after she told them she sent the car to the wreckers (see page 32).
   • delays paying clients’ aged care bonds. In one case, State Trustees took almost two years to get financial advice about selling an elderly woman’s properties to pay her nursing home bond. In the meantime, the woman was liable to pay high daily fees to the nursing home and expenses for her properties. When Ombudsman investigators looked at her case, her savings were gone and she owed $47,000 to the nursing home (see page 33).
   • failure to challenge debts or fines where warranted. In one case, delays led to an elderly man being chased by debt collectors for a $5,000 storage facility debt (see page 36). In another case, State Trustees paid $2,058 from an elderly client’s money for traffic fines, despite being warned someone else was driving his car (see page 39).
6. The investigation identified cases of good financial management as well, so it is difficult to tell precisely how common the problems are. However, legal, advocacy and financial counselling organisations reported similar problems in submissions to the investigation. Evidence from State Trustees managers and internal reports also confirmed some problems have been systemic.

Communication with clients
7. The law recognises the right of State Trustees’ clients to have a say in decisions about their money.

8. However, State Trustees’ data shows that, following its initial meeting with new clients, it only visits three to four per cent of clients each year. It does not speak regularly with clients about their long-term financial goals and wishes.

9. State Trustees’ procedures say it is meant to consult clients, where possible, about their annual budget and major decisions. The investigation saw cases where this did not happen. In one case, State Trustees spent a third of a woman’s savings on legal action to challenge a family will, without seeking her views (see page 47). In another case, State Trustees sought the Victorian Civil and Administrative Tribunal’s (VCAT) approval to evict a woman’s son from her house, without speaking with her first (see page 48). In a third case, miscommunication after a woman moved into aged care led to a State Trustees contractor taking her personal possessions, including family photographs, to the tip (see page 55).

10. Some clients, family members and advocates complained to the Ombudsman that it has been hard for them to communicate with State Trustees. State Trustees’ managers confirmed call waiting times have been long in recent years, in one case ranging up to 1 hour and 25 minutes.

11. Surprisingly, for an organisation with 10,000 clients with a disability, State Trustees has not always tailored its communication to clients’ needs and preferences. Some communication viewed by the investigation was technical and confusing.

Support for clients’ independence
12. The law also encourages State Trustees to act in a way that assists clients to become capable of administering their own affairs, as far as possible.

13. State Trustees operates a Financial Independence Program, which gives clients a chance to manage some of their own expenses and show they can take control of their money. However, less than two per cent of clients participate in the program. State Trustees managers said that, even when a client manages their expenses successfully, it has not proactively recommended VCAT alter or revoke the client’s administration order.

14. Nor has State Trustees routinely given clients the type of information and support they need to make sound financial decisions. In the cases reviewed by the investigation, State Trustees sometimes provided confusing or conflicting information about clients’ financial circumstances. It did not routinely give clients a copy of their budget, and says it has been concerned about the risk of financial abuse. It does not offer advice or assistance to build budgeting and financial skills, or partner with organisations that can provide this support. A joint submission from Darebin Community Legal Centre and Mind Australia said State Trustees’ practices create ‘a culture of dependence’.
Fees and commissions

15. Ninety-five per cent of State Trustees clients receive some form of government pension and a significant proportion live in financial hardship. They sometimes complain to the Ombudsman about the amount they have to pay State Trustees for its services.

16. All public trustees in Australia charge fees and commissions. The Victorian Government currently gives State Trustees over $18 million a year to support services for people in financial hardship. The investigation noted State Trustees reviewed its fees and commissions in 2017 and 2018 and reduced some charges.

17. There is scope for the Victorian Government to do more to reduce the impact of fees and commissions on clients:
   • The Victorian Government currently reimburses clients for some State Trustees fees when their savings fall below a threshold, set at around $3,000. This threshold has not changed since at least 2007 and other states and territories operate more generous fee relief schemes.
   • State Trustees’ clients pay the goods and services tax (GST) on fees and commissions. By contrast, the New South Wales Trustee and Guardian obtained a private ruling from the Australian Taxation Office so its clients do not pay GST on its charges.
   • State regulations require people subject to administration orders earning more than $844 a fortnight to pay an annual fee to VCAT. There is scope to waive the fee. However, in many of the cases reviewed by the investigation, this did not happen. Imposing such a fee on people with a disability, most of whom are pensioners, raises questions about fairness.

What causes the problems with State Trustees’ service?

18. The investigation appreciated the frankness of State Trustees’ recently appointed Chief Executive Officer and its managers about the source of these problems. They include the following issues.

Case management

19. In 2017, State Trustees replaced the case management model traditionally used by public trustees, under which clients have an individual employee looking after their affairs, with a new model called ‘streaming’. Under the new model, clients deal with teams of employees specialising in particular tasks.

20. This change was well-motivated but poorly implemented. State Trustees employees now deal with a broad range of clients and are less familiar with their individual histories and needs. Clients, family members and advocates sometimes express frustration about having to explain their situation to a new person at State Trustees every time they call. Some advocacy organisations and State Trustees managers told the investigation State Trustees has become more ‘transactional’ and less focused on clients as people.

21. The investigation found oversight of clients’ affairs under the new model has been poor. We reviewed several cases where problems ‘slipped through the cracks’ as client files moved from employee to employee. In one case, 14 different employees dealt with a client’s affairs in a seven-week period. In another, at least 48 different employees dealt with a client’s affairs since the introduction of the streaming model in 2017.
Backlogs

22. State Trustees managers also said the organisation underestimated its workload when it changed its case management system, and it has been grappling with significant backlogs. The investigation heard some teams are two to three months behind in their work. State Trustees’ data shows it has not met its own timeliness performance benchmarks for two years.

Workforce challenges

23. State Trustees told the investigation the new case management model is also unpopular with employees and has resulted in increased staff turnover. While State Trustees has been recruiting new staff, it will take time for them to develop experience and expertise.

24. These problems are not all new. The Victorian Auditor-General’s 2012 report on State Trustees noted high workloads and problems with staff turnover and experience.

25. Managers told the investigation that workloads and the breadth of knowledge expected of employees are still unrealistic. For example, the investigation heard employees in the team dealing with new clients had caseloads of 100 files in 2017 and 2018, compared with a target of 40 files. Almost all managers said the organisation needs additional employees.

Neglect of human rights

26. Amidst these internal changes and challenges, the human rights and needs of people with a disability received limited attention.

27. Until the investigation started, State Trustees did not have a Disability Action Plan, its procedures made no reference to the Charter of Human Rights and Responsibilities Act 2006 (Vic) and it provided no human rights training for its employees.

Accountability and transparency gaps

28. In the cases reviewed by the investigation, State Trustees was often aware of problems with its services, but had not always acknowledged or fixed them.

29. The investigation found State Trustees has a good complaint handling system and a committee that can compensate clients for financial losses, but these systems are not always effective in practice. Problems are not always escalated to State Trustees’ complaints team or compensation committee. In some cases reviewed by the investigation, State Trustees sought to justify its actions instead of resolving mistakes.

30. Some State Trustees clients, family members and advocates also told the Ombudsman they had trouble accessing records held by State Trustees when they suspected errors. State Trustees is not subject to Victoria’s freedom of information laws and has not provided clear, accessible advice to clients about their rights to access their own information.

Cost shifting and commercial pressures

31. State Trustees has operated as a state-owned company with commercial objectives since 1994, an arrangement that is unique amongst public trustees in Australia. Some Members of Parliament at the time questioned the impact this might have on its services for the community.
32. Although the investigation found no evidence that State Trustees’ decisions were motivated by profit in individual cases, there is evidence that commercial pressures limit its services for clients as a whole. State Trustees’ financial administration services traditionally run at a loss and there is ongoing pressure to contain costs. For example, in 2012 State Trustees introduced a program to reduce costs. It advised employees to:

- ask clients (or their support network) to arrange their own utility connections. This is despite clients not having legal capacity to enter contracts with utility providers, and some clients lacking capacity to identify the best plan and monitor bills.
- limit the effort going into budget reviews and managing clients on the Financial Independence Program.

33. When given an opportunity to respond to a draft of this report, State Trustees said:

it is not aware that its current organisational status presents an ‘ongoing challenge’, or of the evidence that it is commercial pressures that limit its services to clients as a whole. State Trustees faces resourcing pressures but it is not necessarily the case that another organisational status would alter that.

34. Since this is the third report since 2003 to raise concerns about State Trustees’ services for clients, and successive boards and executives have not been able to deliver lasting solutions, it would be prudent for the Victorian Government to examine whether the state-owned company model is appropriate.

35. Early in the investigation, the Chair of State Trustees’ board and the Ombudsman agreed that State Trustees and the investigation team would meet regularly to try to resolve concerns at an early stage.

36. The Ombudsman wrote to State Trustees’ recently appointed Chief Executive Officer about the investigation’s review of 30 client cases. As a result, State Trustees paid or reimbursed around $65,000 to 13 clients, apologised to 11 clients and agreed to meet or consult five clients.

37. The Ombudsman also drew the Chief Executive Officer’s attention to common themes emerging from the evidence. State Trustees is now addressing some of the problems. It told the investigation it:

- is developing an alternative case management model with a stronger focus on clients
- is reviewing all aged care client files quarterly to identify files that are progressing slowly and the causes of delay
- has arranged training for staff about debts and infringements
- is amending its procedures to make it clear when employees must consult clients, and changing its database so managers can track compliance
- is making some information for clients more accessible
- is reviewing the way it identifies clients for its Financial Independence Program
- has launched its first Disability Action Plan and introduced human rights training for employees.

What is State Trustees doing to fix the problems with its services?
Recommendations

38. These initiatives are a sound start towards addressing many of the immediate problems identified by the investigation. However, some problems have a long history and require fundamental change.

39. This report makes 14 recommendations to State Trustees and Victorian government departments aimed at ensuring State Trustees has the governance, funding, expertise and systems needed to serve the interests and rights of clients. They include:

- a review of State Trustees’ governance and status as a state-owned company
- a review of the Victorian Government’s funding for State Trustees
- measures to strengthen State Trustees’ engagement and communication with people with a disability and mental illness, and carers and advocacy organisations
- measures to increase State Trustees’ transparency and accountability, including reviewing the application of freedom of information laws to State Trustees
- measures to increase fee relief for clients in financial hardship.

40. State Trustees and most Victorian government departments accepted the recommendations in full or in principle. The Department of Justice and Community Safety said it had not had an opportunity to consult with VCAT about the two recommendations directed to that department.
The investigation

Why we investigated

41. In recent years, a growing number of people have complained to the Ombudsman about how State Trustees manages their financial affairs, or those of their loved ones (see Figure 1 below).

42. State Trustees is one of Victoria’s biggest providers of personal financial administration services. It steps in when people cannot manage their own affairs because of disability, illness or injury. It generally collects their income, pays their bills, takes care of their property, manages any legal issues and invests their savings. In 2018, it managed the affairs of around 10,000 ‘clients’ (State Trustees’ term for people who use its services).

43. The clients and family members complaining to the Ombudsman often told common stories - unpaid bills, trouble getting money for everyday expenses and poor communication. Some said they tried to resolve their concerns with State Trustees but it failed to respond or failed to fix the problems. Some clients were struggling to understand what was happening with their money.

44. The Ombudsman was concerned about these complaints for several reasons:
   - State Trustees’ clients are vulnerable, not just because of their disability or illness, but because State Trustees controls their money and property. State Trustees occupies a position of trust in their lives. The complaints raised questions about how it upholds this trust.

Figure 1: Complaints to the Victorian Ombudsman about State Trustees and personal financial administration

Source: Victorian Ombudsman
• The Ombudsman discussed some of these problems in its 2003 report on State Trustees, and the Victorian Auditor-General raised concerns again in 2012.1 Despite changes made by State Trustees, the complaints to the Ombudsman suggested problems were persisting.

• At the time, the Victorian Parliament was considering new laws to strengthen the rights of people with a disability who need help managing their financial affairs. The new laws were intended, amongst other things, to introduce more detailed professional standards and to give clients a greater say in what happens with their money. The Parliament passed these laws shortly before this report was finalised (see pages 20-21). The complaints to the Ombudsman raised questions about State Trustees’ readiness for this new approach.

45. On 5 July 2018, the Ombudsman notified the Chair of State Trustees’ board and its minister, the Treasurer, that she intended to investigate whether State Trustees acts in its clients’ best interests in its role as a financial administrator. The investigation aimed to identify whether the problems raised by the complaints to the Ombudsman are systemic, the underlying causes and what State Trustees needs to do to prepare for the rights-based approach of the new laws.

Authority to investigate

46. The Ombudsman investigates administrative actions by Victorian public authorities. The definition of an ‘authority’ includes State Trustees by virtue of section 2 and schedule 1, item 12 of the Ombudsman Act 1973 (Vic).

47. This investigation was conducted as an ‘own motion’ investigation under section 16A of the Ombudsman Act. The Ombudsman often uses this power to investigate possible systemic problems in public authorities.

How we investigated

48. The investigation focused on State Trustees’ role as a personal financial administrator for people with disabilities under Victoria’s guardianship and administration laws.2 It also considered State Trustees’ services under the Powers of Attorney Act 2014 (Vic), under which it plays a similar role for people who appoint it under a power of attorney. Pages 20-23 explain the difference between these laws in more detail.

49. The investigation:

• obtained and analysed more than 2,700 pages of internal documents and data from State Trustees including procedures, audit reports and briefings for State Trustees’ board and Chief Executive Officer

• invited submissions from peak legal, disability and financial counselling organisations which work with State Trustees clients. The investigation met with Seniors Rights Victoria and received written submissions from:
  o Victoria Legal Aid
  o the Office of the Public Advocate, which sometimes acts as the legal guardian for State Trustees clients
  o Financial and Consumer Rights Council, the peak body for financial counsellors in Victoria
  o Mental Health Legal Centre


2. When this investigation began, these laws were set out in the Guardianship and Administration Act 1986 (Vic). During the investigation, the Parliament passed a new Guardianship and Administration Act 2019 (Vic). The new Act is scheduled to commence in March 2020.
• received information from seven private individuals. The Ombudsman did not issue a public call for submissions, but these individuals contacted the investigation with information.
• reviewed 648 complaints to the Ombudsman about State Trustees and personal financial administration since 2015.
• reviewed the cases of 30 State Trustees clients in depth. The cases were selected from complaints to the Ombudsman and submissions to the investigation. The Ombudsman summoned State Trustees’ records for the clients from 1 July 2015 and the investigation reviewed the material.
• spoke with other public trustees in Australia about their practices.
• interviewed the Department of Health and Human Services officer who manages the Victorian Government’s funding agreement with State Trustees (see page 16).
• interviewed six State Trustees managers about the company’s policies and practices.

50. Early in the investigation, the Ombudsman and the Chair of State Trustees’ board agreed the investigation team and State Trustees would meet regularly to ensure issues were resolved in a timely way.

51. The Ombudsman wrote to State Trustees’ recently appointed Chief Executive Officer to raise concerns about the 30 cases reviewed by the investigation. As a result, State Trustees:
   • paid or reimbursed around $65,000 to 13 clients
   • apologised to 11 clients
   • agreed to meet or consult with five clients.

52. The Ombudsman also drew the Chief Executive Officer’s attention to common themes emerging from the evidence. State Trustees began addressing these problems during the investigation. It briefed the Deputy Ombudsman and investigation team on its reform initiatives in April 2019.

Procedural fairness and privacy

53. This final report contains adverse comments about State Trustees. In accordance with section 25A of the Ombudsman Act, the Ombudsman gave State Trustees a reasonable opportunity to respond to a draft of the report. This report fairly sets out State Trustees’ response. The letter from the Chair of State Trustees’ board is set out on page 100.

54. The Ombudsman also gave the Department of Health and Human Services and the Department of Justice and Community Safety an opportunity to comment on sections of the report regarding their functions.
55. In accordance with section 25A(3) of the Ombudsman Act, any other persons who are or may be identifiable from the information in this report are not the subject of any adverse comment or opinion. They are identified because the Ombudsman is satisfied:

- it is necessary or desirable to do so in the public interest and
- identifying those persons will not cause unreasonable damage to their reputation, safety or wellbeing.

56. The final report also contains case studies describing the experiences of some State Trustees clients and their families. The report changes names and other details about these people to protect their privacy. These changes also seek to comply with schedule 1 clause 37 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), which prohibits publication of any report of a guardianship and administration proceeding that identifies, or could reasonably lead to the identification of, any party to the proceeding.
About State Trustees and personal financial administration

57. To understand whether State Trustees acts in its clients’ interests, it helps to understand its history, its clients and the laws regulating its work.

The history of public trustee duties in Victoria

58. State Trustees is Victoria’s ‘public trustee’. In addition to managing the financial affairs of people with a disability, it prepares wills and powers of attorney, acts as an executor for deceased estates and administers trusts.

59. Public trustee functions in Victoria have a long history. From the 1840s, they were undertaken through a number of offices, including the Chief Commissioner of Insolvent Estates, the Curator of the Estates of Deceased Persons, an office called the ‘Master in Lunacy’ and the Master in Equity.

60. In 1939, the Public Trustee of Victoria was established by statute, taking over most of the functions of the Curator of the Estates of Deceased Persons and the Master in Equity.

61. The Public Trustee was part of a government department until 1987, when the Cain Government introduced the State Trust Corporation of Victoria Act 1987 (Vic) to turn it into a statutory corporation. The government told the Parliament:

   The Bill effects some historic reforms in the law relating to Government trustee services. It is a first, not only for Victoria but also the whole of the English speaking world.

   The principal purpose is to reform the Public Trust Office to allow a more entrepreneurial and commercially oriented Government trustee, while strengthening its capacity to fulfil its statutory responsibilities to provide services to its publicly represented person clients.³

62. In the debate that followed, the Opposition at the time objected to the changes on the basis that this new entity would compete with private solicitors and trustee companies.⁴

63. In 1994, the Kennett Government introduced the State Trustees (State Owned Company) Act 1994 (Vic) to convert State Trustees again, this time into a state-owned company with commercial objectives.

64. The Opposition at the time did not oppose the new laws, but some members expressed concern about the impact on State Trustees’ services for vulnerable members of the community (see extracts from the parliamentary debate on the following page).

About State Trustees

65. When the Ombudsman investigation began, State Trustees had been operating as a state-owned company for almost 25 years. The Treasurer holds the shares in the company and appoints its board. The company made a $9.2 million profit across all its services in 2017-18 and paid the government a $4.6 million dividend.

66. A large part of State Trustees’ income derives from fees and commissions paid by clients. The Victorian Government, through the Department of Health and Human Services, also gives the company more than $18 million each year under a ‘community services agreement’ to provide services to people who cannot afford to pay.

³ Victoria, Parliamentary Debates, Legislative Assembly, 26 March 1987, 888 (Race Mathews, Minister for the Arts).

Extracts from 1994 parliamentary debate about State Trustees

‘It is fair to say that the bill takes the State Trustees further in the direction of corporatisation and commercialisation ... I am concerned that in doing that and making it more commercially focused the government and the general community do not lose sight of the most important obligations the body has: to ensure that the affairs of people who are unable to look after themselves are dealt with properly. There is real concern on my part to ensure that people do not suffer in the rush to produce better financial outcomes from the State Trustees.’

Member for Pascoe Vale
Legislative Assembly, 19 May 1994

‘State Trustees is not meant to be a competitor with the private sector; it is designed to deal with people in whom the private trust sector is not interested. That is why its charter includes will-making. It is not a purely commercial enterprise, and I do not believe it should be treated in that way.’

Member for Jika Jika
Legislative Council, 26 May 1994

‘The corporatisation of State Trustees follows a trend by the government to make businesses out of agencies that provide community services. Real concerns have been expressed about this trend to corporatisation in terms of removing accountability that government-owned agencies tend to have.’

Member for Morwell
Legislative Assembly, 19 May 1994

‘It has been suggested that in some cases the personal difficulties of clients are such that they require the assistance of agencies that are not operating on commercial bases, that their physical requirements and other demands are not attractive to the private sector. Experience suggests that over time that may not necessarily remain the situation. We need to be vigilant and ensure that services are provided in ways that give people not just physical and financial support but maximum individual dignity.’

Treasurer
Legislative Assembly, 19 May 1994
67. State Trustees’ personal financial administration services are provided by its Client Services division. When the investigation started, Client Services had 89 managers, ‘consultants’ (State Trustees’ term for employees who manage clients’ affairs) and support staff working in this area in offices in Footscray, Dandenong and Bendigo. Client Services also draws on expertise from State Trustees’ Professional Services division, which employs in-house lawyers, financial planners, tax advisers and pensions experts.

68. The investigation took place at a time of significant change for State Trustees’ employees. In mid-2017, Client Services overhauled its personal financial administration services. It replaced the model traditionally used by public trustees, where each consultant manages a portfolio of clients and looks after all their affairs, with a new model known as ‘streaming’, where consultants are collectively responsible for managing a pool of clients (see page 68 for more detail).

69. The company was also undergoing leadership change. In February 2018, State Trustees’ board stood down its Chief Executive Officer amidst allegations of improper conduct. In July 2018, the Executive General Manager for Client Services left the company for another position. State Trustees’ board appointed a new Chief Executive Officer in October 2018. At the time of the investigation, many other managers were new or filling roles temporarily.

67. How personal financial administration works

70. State Trustees can be appointed to manage clients’ financial affairs in two ways:

- by the Victorian Civil and Administrative Tribunal (VCAT)
- by the client under an enduring power of attorney.

71. VCAT can appoint State Trustees under Victoria’s guardianship and administration laws. It often receives applications from health workers or family members concerned that a person is struggling to manage their money or is vulnerable to exploitation. Under the laws in place during this investigation, VCAT must be satisfied:

- the person has ‘a disability’
- the person is unable to make ‘reasonable judgments’ about all or part of their estate by reason of that disability
- the person is ‘in need of’ an administrator
- an administration order would be in the ‘best interests’ of the person.

72. VCAT must also consider the wishes of the person, if they can be ascertained, and whether there are any ‘less restrictive’ options available. If State Trustees is appointed this way, it is called the person’s ‘administrator’.

---

5 When this investigation began, these laws were set out in the Guardianship and Administration Act 1986 (Vic). During the investigation, the Parliament passed a new Guardianship and Administration Act 2019 (Vic). The new Act is scheduled to commence in March 2020.
73. People can appoint State Trustees themselves by executing an enduring power of attorney under the Powers of Attorney Act. The Act provides a way for people to plan for their future while they are still well. The person can authorise State Trustees to manage their affairs if they lose their decision making capacity in the future. In these cases, State Trustees is called the person’s ‘attorney’.

74. State Trustees is not the only body that can take on these roles. Family members, friends or trusted advisers are often appointed and there are other private trustee companies that also offer this service. However, State Trustees is the only company funded by government to provide services when people cannot afford to pay and there is no one else willing or suitable for the role. For this reason, it is sometimes called an administrator ‘of last resort’.

75. When State Trustees is appointed, it becomes a ‘substitute decision maker’ for the person. It takes control of their money and property and makes financial and legal decisions on their behalf.

76. State Trustees’ powers under the law are extensive. They include collecting the person’s income, paying their bills and expenses, investing their money, buying and selling their property, running a business and bringing or defending legal proceedings.

**State Trustees’ clients**

77. When the investigation began, State Trustees was managing the financial affairs of around 10,000 clients. Figure 2 below provides a picture of these clients based on State Trustees’ data.

**Figure 2: State Trustees’ VCAT and power of attorney clients (June 2018)**

Source: State Trustees data
78. The data shows a large proportion of State Trustees’ clients experience financial hardship. Ninety-five per cent of clients receive some form of government pension. Almost one in five clients has an income of less than $20,000 a year. Almost half have savings or assets valued at less than $30,000 and almost one in five has savings or assets valued at less than $5,000.

Laws, standards and safeguards

79. State Trustees’ powers over its clients’ money and property are extensive. The law gives it power to make decisions from selling the client’s home to everyday financial decisions. The investigation saw cases where clients had run out of funds allocated to them and had to ask State Trustees for extra money for things such as buying birthday and Christmas presents for family, going to the football and replacing worn-out shoes.

80. The law aims to safeguard the rights of State Trustees’ clients in several ways.

Guardianship and administration laws

81. Victoria’s guardianship and administration laws regulate how State Trustees manages the affairs of VCAT-appointed clients. The Victorian Parliament was considering changes to these laws while the investigation was underway.

82. The laws in place during the investigation are set out in the Guardianship and Administration Act 1986 (Vic). Section 49 of that Act requires administrators like State Trustees to act in a person’s ‘best interests’. They say an administrator does so if they act ‘as far as possible’:

- ‘in consultation with the represented person, taking into account as far as possible the wishes of the represented person’

83. Section 4 of the Act also says it is ‘the intention of Parliament’ that powers under the Act be exercised in accordance with three principles:

- ‘the means which is the least restrictive of a person’s freedom of decision and action as is possible in the circumstances is adopted’
- ‘the best interests of the person with a disability are promoted’
- ‘the wishes of a person with a disability are wherever possible given effect to’.

84. Submissions from the Office of the Public Advocate and Victoria Legal Aid to the investigation both noted that the term ‘best interests’ requires State Trustees to consider personal as well as financial interests. Victoria Legal Aid said:

The objects of the Act require State Trustees to use its powers as an administrator in ways which promote the represented person’s own autonomy and participation in decision-making. In our view, ‘best interests’ … encompasses consideration of the person’s unique circumstances, views and preferences including how they wish to live their life, what ‘quality of life’ looks like and what they perceive to be restrictive.

85. Section 55 of the Act allows administrators to apply to VCAT for advice about the exercise of their powers in individual cases.
86. When this report was being finalised, the Parliament passed new laws which are scheduled to take effect in March 2020. These new laws, which are set out in the *Guardianship and Administration Act 2019* (Vic), reflect changes in attitudes since the 1980s towards people with disabilities. The new Act refers to the 2006 United Nations Convention on the Rights of Persons with Disabilities (see the following page) and states that its primary object is ‘to protect and promote the human rights and dignity of persons with a disability’.6

87. Amongst other things, the new Act will:

• allow VCAT to appoint a ‘supportive administrator’ as an alternative to a traditional ‘substitute decision maker’ administrator like State Trustees. The supportive administrator’s role is to support the person to make their own decisions.

• impose more detailed professional duties on administrators like State Trustees to, amongst other things, ‘act honestly, diligently and in good faith’ and ‘exercise reasonable skill and care’ (section 55)

• replace the term ‘best interests’ with a set of principles to guide administrators. These include the principle that ‘a person with a disability who requires support to make decisions should be provided with practicable and appropriate support’. They also include the principle that ‘the will and preferences of a person with a disability should direct, as far as possible, decisions made for that person’ (sections 8 and 9).

---

6 See *PJB v Melbourne Health* [2011] VSC 327 (19 July 2011) [12]-[19], which discusses the core principles of the Act, including personal autonomy.
UN Convention on the Rights of Persons with Disabilities

The Convention is a 2006 international treaty that recognises and promotes the human rights of people with disabilities. In the words of a former UN High Commissioner for Human Rights, the Convention:

enshrines a ‘paradigm shift’ in attitudes that move from a view of persons with disabilities as objects of charity, medical treatment and social protection to subjects of rights, able to claim those rights as active members of society.

The Convention requires countries to protect and promote a series of human rights of people with disabilities, including the right to live in the community, the right to access buildings, facilities and information and the right to protection from exploitation, violence and abuse.

Article 12 of the Convention deals with the right to equal recognition before the law. Amongst other things, it requires countries to:

- recognise that people with disabilities enjoy legal capacity on an equal basis with others in all aspects of their lives
- take ‘appropriate measures’ to provide people with disabilities with access to the support they may require to exercise their legal capacity
- take ‘all appropriate and effective measures’ to ensure the equal right of persons with disabilities to control their own financial affairs.

The UN Committee on the Rights of Persons with Disabilities argues that Article 12 requires countries to replace substitute decision making laws, like those in Victoria, with supported decision making. Supported decision making models offer support to people with disabilities to make their own decisions. This support can include researching options for the person and helping them communicate their decision.

Australia was one of the first countries to sign and ratify the Convention but it reserved its right to keep substitute decision making laws. It issued an ‘interpretive declaration’ declaring its understanding that the Convention:

allows for fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort, and subject to safeguards.

At this stage, all Australian states and territories still have substitute decision making laws for people with disabilities who cannot manage their own financial affairs. However, several governments are considering ways to promote the human rights of people with disabilities within this framework.

---

Powers of Attorney Act

88. The Powers of Attorney Act regulates how State Trustees manages the affairs of its power of attorney clients.

89. Section 63 imposes professional duties on attorneys to, amongst other things, ‘act honestly, diligently and in good faith’ and ‘exercise reasonable skill and care’.

90. Section 21 states that, when an attorney makes a decision for a person, it must:

- ‘give all practicable and appropriate effect to the [person’s] wishes’
- ‘take any steps that are reasonably available to encourage the [person] to participate in decision making’
- ‘act in a way that promotes the personal and social wellbeing of the [person]’. This includes ‘recognising the inherent dignity’ of the person, and ‘having regard to the [person’s] existing supportive relationships, religion, values and cultural and linguistic environment’.

Fiduciary duties

91. State Trustees also owes duties to its clients under the law of fiduciary obligations. The courts have developed these laws over many years to regulate special relationships of trust.

92. Fiduciary relationships and duties are underpinned by a duty of loyalty. A person places trust and confidence in the fiduciary, who then undertakes to act in the interests of the person when exercising their decision making powers.

In Australia, fiduciaries’ obligations are expressed in two rules:

- The ‘no conflict rule’ – a fiduciary cannot act where there is a conflict between their private interests and the duty owed to the other person.
- The ‘no profit rule’ – a fiduciary cannot make an unauthorised profit from their position at the expense of the other person.

Charter of Human Rights and Responsibilities Act

93. As a public authority, State Trustees is also bound by the Charter of Human Rights and Responsibilities Act 2006 (Vic) when managing its clients’ affairs.

94. The Charter sets out the civil and political rights shared by people in Victoria. Section 38 requires public authorities to give ‘proper consideration’ to the rights in the Charter when making decisions, and to act compatibly with those rights.

95. State Trustees’ work has the potential to invoke several Charter rights, particularly when it is dealing with its clients’ homes and property. They include:

- the right to recognition and equality before the law (section 8)
- freedom of movement, which includes the ‘freedom to choose where to live’ (section 12)
- the right to privacy and reputation, which states that every person has the right ‘not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with’ (section 13). In 2018, the Supreme Court of Victoria said this right also protects ‘self-determination’ and ‘personal inviolability’.


13 PBU v Mental Health Tribunal [2018] VSC 564 (1 November 2018) [127]-[128].
96. The rights in the Charter are not absolute. Section 7 states that public authorities can limit rights if the limitation can be ‘demonstrably justified in a free and democratic society based on human dignity, equality and freedom’. Public authorities must take into account ‘all relevant factors’, including the nature of the right, the importance and purpose of the limitation and whether there is ‘any less restrictive means’ available to achieve that purpose.

97. In 2011, the Supreme Court of Victoria found VCAT breached the Charter when it appointed State Trustees to manage the affairs of a 58-year-old man with a mental illness. The man was an involuntary patient in hospital and VCAT appointed State Trustees in circumstances where it was expected to sell the man’s house, preventing him from going home. The Court held the decision was incompatible with the man’s rights to equality before the law, freedom of movement and privacy. Although the decision focused on VCAT and not State Trustees, it highlights the Charter’s relevance to State Trustees’ work.¹⁴

Other standards

98. State Trustees also follows the Australian Guardianship and Administration Council’s 2011 National Standards for Financial Managers. These non-binding standards describe how public trustees should deal with a number of practical, day-to-day issues such as providing information to clients, budgeting, investing money and keeping records of their work.

99. State Trustees’ community services funding agreement with the Department of Health and Human Services (see page 16) imposes standards as well, including a requirement that State Trustees use its best endeavours to provide services ‘in a proper, timely and efficient manner using that standard of care, skill and judgement that would reasonably be expected of a public trustee’.

Does State Trustees act in its clients’ interests?

100. In light of the recent complaints to the Ombudsman, the investigation’s first aim was to determine whether State Trustees acts in its clients’ interests. It focused on three obligations central to the laws in this area:

- professional financial management
- communication with clients about their wishes
- support for clients’ independence.

The investigation also looked at a fourth issue of considerable interest to State Trustees clients – the amount they pay for these services.

Financial management

101. As page 20 noted, State Trustees’ financial management powers are extensive. Complaints to the Ombudsman tend to focus on some key powers. The investigation also focused on those issues.

Income and entitlements

102. When State Trustees is appointed to manage a client’s affairs, one of its first tasks is identifying the client’s income and financial entitlements.

103. Most State Trustees clients rely on government pensions. State Trustees’ Professional Services division employs a specialist pensions team that liaises with Centrelink and the Commonwealth Department of Veterans’ Affairs (DVA) for Client Services consultants.

104. State Trustees also checks for potential legal entitlements, such as income protection insurance, ‘total and permanent disability’ insurance and ‘testators family maintenance’ claims.\(^{15}\)

105. State Trustees’ internal auditing shows it is generally effective at securing pension and other legal entitlements for clients, although the investigation reviewed one case where there were delays (see page 27).

106. The investigation identified State Trustees is less successful at updating Centrelink and DVA about changes in clients’ income and assets. Centrelink and DVA pensions are usually means-tested and State Trustees needs to inform them of changes to make sure clients do not receive too much, or too little.

107. The evidence shows State Trustees is sometimes slow to report changes in a client’s income. In the sample of 30 cases reviewed by the investigation, there were three cases where State Trustees did not communicate income changes to Centrelink. As a result, two clients missed out on higher pension payments. One client was overpaid and accrued a debt to Centrelink.

108. Victoria Legal Aid’s submission reported some of its clients experienced similar issues:

State Trustees’ failure to notify Centrelink of changes in their income caused [the clients] to incur debts or be denied payments to which they otherwise would be entitled … our clients were effectively prevented from participating in activities or spending their funds in ways that they enjoy and contribute to their quality of life.

109. State Trustees’ internal auditing shows it can be slow to report changes in clients’ assets as well. For VCAT-appointed clients, audits for the last half of 2018 showed discrepancies between State Trustees’ and Centrelink’s asset records in over half of the audited cases. These discrepancies may affect clients’ pensions entitlements. For power of attorney clients, audits showed clients were receiving the incorrect pension entitlement in 40 per cent of audited cases, often because Centrelink did not have correct asset values.

---

\(^{15}\) Income protection insurance provides benefits to people if they cannot work due to illness or injury. ‘Total and permanent disability’ (or TPD) insurance provides benefits if a person has a total and permanent disability and is often offered by superannuation funds. A testators family maintenance claim involves contesting the will of a deceased family member to claim a greater portion of the estate.
110. A State Trustees manager interviewed for the investigation confirmed delays updating Centrelink were ‘[q]uite common’ because of work backlogs in Client Services.

111. The following case studies illustrate the impact of these problems on State Trustees’ clients. State Trustees’ delay in updating Centrelink caused two clients to lose thousands in extra pension entitlements.

**Lost $10,888 in pension entitlements**

Richard is in his early 60s. He has bipolar disorder, depression and physical ailments. VCAT appointed State Trustees as his administrator in 2012.

Richard used to work but stopped when his illness made it too difficult to continue. He received monthly income protection insurance payments and a fortnightly disability support pension from Centrelink.

Richard’s insurance payments stopped in late October 2014, making him eligible for a higher pension. However, State Trustees did not tell Centrelink until 12 months later in October 2015.

Centrelink agreed to backpay Richard but only for a few months. Richard believed he lost around $10,000 in extra pension entitlements. He tried to litigate the matter but was unable to due to expired legal time limits. He then complained about this issue, and other matters, to the Ombudsman.

The investigation found an email from a consultant in his State Trustees file which recognised Richard had lost thousands of dollars. It said:

> Several changes of ... consultant and time and workload constraints appear to have contributed to this case ... [A]t many points pertinent information vital to the correct pension entitlement was overlooked and correct procedures to minimise risk were not acted on or followed.

Despite this finding, State Trustees did not compensate Richard. The Ombudsman asked why. State Trustees explained some of the delay was outside its control. It said the insurer delayed providing information, and when it asked Richard for information, he said he would ‘visit Centrelink himself and sort it out’. However, State Trustees acknowledged ‘we did make errors and as an act of goodwill’ it compensated Richard $10,888 plus interest of $1,172.
In addition to Richard’s income protection insurance, he also had total and permanent disability (TPD) insurance under his superannuation fund.

Richard tried himself to claim on the TPD insurance, but did not follow through. In 2017, Richard’s superannuation fund emailed State Trustees and said ‘it may be appropriate for you to consider whether these [insurance] claims should be pursued’.

Prior to this email, there is no evidence in Richard’s file that State Trustees considered claiming on the TPD insurance.

State Trustees acted on the superannuation fund’s advice and applied for TPD benefits for Richard.

Eight months later, the superannuation fund told State Trustees the claim was approved and the estimated benefit payable to Richard was $44,000.

Laura is in her late 30s and lives independently in public housing. She has schizophrenia and other health problems.

Laura lives with tight finances. She lived on Newstart allowance for many months, has no assets and, at one stage, she owed almost $16,000 in driving-related infringements.

Laura used to receive income protection payments, but they stopped around February 2017. Laura complained to the Ombudsman that State Trustees did not inform Centrelink about this change, causing her to miss out on a higher rate of Newstart. She said I lived on 50 dollars a week for a long time. They didn’t sort out my pension … I want compensation.’

The Ombudsman asked State Trustees to check whether Laura received the correct rate of Newstart once her income protection payments stopped. State Trustees said it expected Laura to report her other income to Centrelink herself because of her circumstances (see page 78 for more detail about this issue), but it acknowledged:

We did not ensure that the [income protection] payments were reported … to Centrelink, nor report in a timely manner once we found out they had stopped.

State Trustees calculated the difference between the payments Laura received from Centrelink, and the payments she was entitled to receive, to be $3,965. It paid this amount to Laura as ‘a gesture of good faith’.
Budgets and living allowances

112. Once State Trustees confirms a client’s basic income, it prepares a client budget.

113. These budgets are meant to set aside money for known expenses such as housing, utilities and personal expenses. Clients with some independence also get a ‘living allowance’ to spend at their discretion on food and other items. State Trustees is meant to review clients’ budgets once a year, and sooner if the client’s circumstances change.

114. The quality of the budgets in the 30 cases reviewed by the investigation varied. Some were comprehensive and set aside money for personal expenses like clothing, entertainment and gifts. Others were limited to accommodation and basic utilities, presumably in the expectation that clients would buy personal expenses from their living allowance. Two budgets failed to set money aside for electricity or gas, even though the clients were living independently.

115. State Trustees’ internal auditing confirms the need to improve budgeting for clients. It identified problems in at least one in five VCAT client files in 2018. These included cases where the budget failed to reflect the client’s actual expenses and cases where the annual budget review was overdue.

116. The most common complaint from clients to the Ombudsman about budgets is that State Trustees does not give them enough living allowance to ensure their quality of life (see quotes from complaints on the following page).

117. Some advocacy groups raised similar concerns in their submissions. The Mental Health Legal Centre’s submission referred to clients who have inheritances but are ‘living in poverty’. Victoria Legal Aid’s submission said:

Were it up to them, some clients would prefer to spend their money on items or activities that enhanced their quality of life in the short term, rather than ‘save for their funeral’, as they have put it.

118. When given an opportunity to respond to a draft of this report, State Trustees noted that clients’ budgeted living allowance is dependent on their funds and their circumstances.

119. In the 30 cases reviewed by the investigation, clients’ allowances ranged from $50 to $980 a fortnight. Some clients were living from pension to pension and had little money left over after paying basic expenses. Other clients had savings they could use to improve their quality of life. State Trustees was allowing them to access those savings, but usually in response to the client calling and asking for extra money. In one case, a client spent $19,000 of savings this way in three years (see case study on page 61). This was happening in a reactive, ad hoc way, not as a result of considered budgeting. Pages 59-60 discuss this issue in more detail, and its impact on clients’ independence.

Bills and expenses

120. In most cases, State Trustees takes responsibility for paying clients’ bills and expenses. It writes to the client’s service providers when it is appointed and asks them to send bills and invoices to its address. It sets up ongoing ‘memorised’ payments for regular expenses such as rent and uses a contractor to process other bills when they arrive. It only processes bills and invoices itself in certain cases, for example when a client gets an invoice from a new provider.
Quotes from people with complaints about budgets and living allowances

‘They’ve said, alright, $230 a fortnight is what you’ve got and that’s it. I just find it hard to make ends meet. I’m just buggered all the time because I can’t do anything because as soon as I do something extra, then I’ve got to watch my budget. And I’m not spending over the top.’

State Trustees client
Complaint to the Ombudsman

‘[Dad] was getting $60 a week living money to spend and it’s been reduced to $30. He wants access to his lump sum. I know they’ve got to budget for the rest of his life and whatever but he wants to go and see his brother in Queensland.’

Daughter of State Trustees client
Complaint to the Ombudsman

‘[Bill] owns his own property, has $250,000 in super, $10,000 in a buffer account and you have him on a budget of $20 [a] day.’

Friend of State Trustees client
Copy of complaint to State Trustees provided to the Ombudsman

‘I had no extra money for my son’s birthday. My birthday is coming up. My mum is cancer-free and I would like to go out for tea and celebrate … I have no warm clothes … [I would like] my allowance to be more than $135 a week. Can you imagine living on that much?’

State Trustees client
Complaint to the Ombudsman
121. Late or incorrect payment of bills generates many of the complaints to the Ombudsman about State Trustees. Advocacy groups like the Financial and Consumer Rights Council reported similar problems in submissions to the investigation.

122. State Trustees’ data shows its contractor processes most bills in a timely way. In 2017-18, it processed over 400,000 payments for VCAT-appointed and power of attorney clients and paid 98 per cent within 10 days.

123. However, the investigation identified late bill payments in several client files. In a few cases, State Trustees was slow to process bills itself. In others, State Trustees was not getting the client’s bills for payment because:

- State Trustees was slow to contact the service provider to ask it to send the client’s bills to State Trustees’ address.
- The service provider failed to respond to State Trustees and continued to send bills to the client or their family. State Trustees described this as an ‘ongoing issue’. It said, in one case, it wrote to an energy provider five times over many months before the provider started sending it the client’s bills for payment.

124. The investigation also identified cases in which State Trustees paid bills incorrectly. This was usually because:

- The bill was in the client’s name but a tenant or housemate was responsible for the expenses, and State Trustee did not seek reimbursement for the client.
- State Trustees overlooked applying for or renewing utility or rates concessions for the client.
- The client stopped using or needing a service, but State Trustees failed to cancel its memorised payments.

125. State Trustees does not routinely monitor clients’ accounts to check it is receiving and paying bills and expenses correctly. In response to a draft of this report, State Trustees said it conducts quality assurance checks of a random sample of five per cent of client files each year, and this can ‘trigger’ a review of the receipt and payment of clients’ bills and expenses. It said other triggers for such reviews are a review of the client’s budget; a client’s request for extra money; referral of a client bill for manual processing; or preparation of a report to VCAT.

126. In the cases reviewed by the investigation, it was often clients or their families or advocates who identified problems and brought them to State Trustees’ attention. The following case studies illustrate the impact of these problems. In the first case, a mother had to call State Trustees multiple times over many months to ensure it paid her son’s bills. In the second case, a delay in paying a court fee put a client at risk of further penalty. In the third case, State Trustees incorrectly paid car insurance for three years after a client disposed of her car.
Belinda’s son Josh is in his 20s and has schizophrenia. Josh rents his own unit but struggles to manage his bills, so in 2018 Belinda asked VCAT to appoint an administrator. She called State Trustees shortly after its appointment and provided the names of Josh’s property manager and utility companies so State Trustees could pay his bills.

Six months later, Belinda called the Ombudsman and said they had ‘nothing but trouble’ getting State Trustees to pay. She said she and her husband once paid Josh’s rent because it was six weeks late. She said she called and emailed State Trustees many times, but she was still getting Josh’s utility bills. She told the Ombudsman, ‘I don’t know what else to do.’

When the investigation looked at Josh’s file, it showed State Trustees:

- did not contact Josh’s property manager until Belinda called to say the rent was late. Belinda called State Trustees five times before it started paying Josh’s rent.
- did not contact Josh’s electricity company until six weeks after its appointment, after Belinda called to say she received his bill. State Trustees asked the electricity provider to send bills to its address, but it took many requests and months before the company responded.
- did not contact Josh’s water provider until three months after its appointment, after Belinda called to say she received that bill too. It took three weeks for State Trustees to contact the water company and six weeks for it to pay the bill.

When the Ombudsman drew the case to State Trustees’ attention, it acknowledged delays in Josh’s case and said it experienced ‘heavy workloads and reduced resourcing’ at the time. It confirmed it is now receiving and paying Josh’s bills. It has apologised to Belinda and Josh.

Chris has an intellectual disability and lives in supported housing. In 2017, he got into trouble with the law. A magistrate agreed to release him on a good behaviour bond if he paid $250 to the court fund. Chris’ support worker sent State Trustees a copy of the court notice, which read: ‘If you do not pay the court fund payment by the due date, you may be charged with contravening your adjourned undertaking’.

A few months later, the court contacted Chris because the $250 had not been paid. Chris’ support worker called State Trustees again. It paid the money to the court fund, almost eight weeks after the due date.

Chris’ support worker and lawyer complained to the Ombudsman. They noted that ‘failure to pay the [amount] would have put [Chris] at risk of a contravention of undertaking charge, which could have resulted in further financial penalty, or incarceration.’

State Trustees told the Ombudsman, ‘We have reviewed our records and cannot see any reasons as to why this was not done promptly.’ It apologised to Chris.
Aged care fees

127. State Trustees has over 2,700 clients aged over 70. Moving into aged care can be a significant event for such clients, affecting their financial position and day-to-day budget.

128. Commonwealth government aged care funding is means-tested and many people have to contribute to the cost of their care. They can pay daily fees or a one-off accommodation bond, which can be several hundreds of thousands of dollars. People sometimes need to sell their home or other assets to pay.

129. State Trustees has a specialist aged care team to manage this process. The investigation heard it starts by asking Centrelink to assess the client’s income and assets and determine how much they have to contribute. It usually gets financial advice from its in-house financial planners about the best way to pay. If a client has multiple properties or assets, it also gets tax advice.

130. The Ombudsman sometimes hears complaints that State Trustees is too slow to pay clients’ accommodation bonds. One State Trustees manager told the investigation the process usually takes:
   - up to six months if the client has no property
   - up to 12 months if the client has one property that needs to be sold
   - potentially longer if the client has more than one property or the matter is complicated by family conflict or allegations of financial abuse.

131. These timeframes can be costly for clients. Nursing homes often charge clients high daily fees until State Trustees pays the bond. In the meantime, clients who own properties are still paying council rates, insurance and other expenses for their properties. Managers told the investigation it is hard to rent clients’ properties to generate income for various reasons, including because State Trustees can only offer short term leases while it decides whether to sell.

Insurance for car that went to the wreckers

Page 27 of this report described a complaint Laura made to the Ombudsman about State Trustees’ handling of her Newstart allowance.

When the investigation reviewed Laura’s file, it noticed VicRoads suspended Laura’s driver licence and car registration in 2015 because of her driving infringements. Laura called State Trustees and told it she sent her car to the wreckers.

The investigation noticed that three years later in 2018, State Trustees still had Laura’s car listed in her assets and was still paying car insurance. The Ombudsman raised this with State Trustees, which acknowledged it should have cancelled the insurance in 2015. It repaid Laura for the three years of incorrectly paid premiums, totalling more than $800.
132. When the investigation asked State Trustees managers about these delays at interview, one said the problem is:

the work actually takes so long.
Unfortunately, people think that aged care is quite easy and they have a perception that when they get appointed to us we’re going to pay the [bond] immediately.

133. In the cases reviewed by the investigation, State Trustees was sometimes dealing with complex issues for clients. However, there was also evidence of delay on State Trustees’ part, which caused clients to incur large debts to their aged care providers. In the third of the following cases, a delay in correcting an error with fees meant the client overpaid his fees for more than a year.

Two years and $47,000 debt to nursing home

Ana is in her 70s and has dementia. After a stroke put Ana in hospital, her children had different views about what was best for their mother. In 2016, VCAT appointed the Public Advocate to decide where Ana would live and State Trustees to manage her finances. The Public Advocate decided Ana should move to a nursing home.

At the time, Ana had an age pension and tens of thousands of dollars in savings. She owned the house her husband built for them when he was alive, and also owned an investment property jointly with her children.

Two years later, her children made complaints to the Ombudsman. They said their mother’s savings were gone, she was in debt and State Trustees was trying to sell her properties.

Ana’s file showed there had been some delays by State Trustees. It:

• did not request financial advice about how to pay Ana’s nursing home fees until she had been in the nursing home for eight months. It took a further three months to request tax advice.
• did not minimise Ana’s property expenses in the meantime. It continued paying for a telephone at her vacant home until Ana’s daughter asked it to stop. Ana’s daughter asked State Trustees to rent the vacant properties, but was told State Trustees was waiting for financial advice.
• did not finalise its financial advice for Ana until she had been in the nursing home for almost two years.

In the meantime, Ana’s nursing home was charging $136 a day because she had not paid her bond. Her age pension was just over $100 a fortnight. The investigation confirmed Ana’s savings are gone and, at one point, she owed her nursing home $47,000.

Ana’s children initially agreed to sell the investment property but, as time went on, they became upset about what was happening. After taking almost two years to get financial advice, State Trustees gave Ana’s children two weeks to make a decision.

When the Ombudsman raised the case with State Trustees, it said disagreements between Ana’s children made her affairs ‘very challenging’ and it took some time to gather necessary financial information. However, it acknowledged it was also at fault and agreed to pay Ana over $26,000.

At the time this report was finalised in May 2019, VCAT was considering State Trustees’ role as Ana’s administrator and the future of her properties.
VCAT appointed State Trustees to manage Clive’s affairs four years ago. At the time, Clive was a pensioner in his 80s and had been diagnosed with dementia and physical ailments. He moved into a nursing home following State Trustees’ appointment. Clive’s nursing home was charging him daily fees that far exceeded his age pension, and he needed to sell his house quickly to pay his aged care bond.

Clive’s son complained to the Ombudsman that State Trustees delayed selling Clive’s home to pay his fees.

When the investigation reviewed Clive’s case, it found State Trustees took more than a year to do so. Clive owed the nursing home more than $26,000.

State Trustees told the Ombudsman some of the delays were outside its control. In particular, Clive had given a guarantee over his house to secure a loan for a relative, and it took several months for the relative to refinance the loan and release Clive from this obligation. However, State Trustees acknowledged it also contributed to the delay.

As Clive passed away shortly after the investigation reviewed his case, State Trustees repaid $6,400 to his estate.

Gus is in his 70s and lives in a nursing home. He has no family in Australia and VCAT appointed State Trustees to manage his affairs in 2017.

When State Trustees visited Gus at the nursing home in July 2017 to discuss his financial affairs, the consultant noted that Gus’s Centrelink-assessed daily fee appeared to be too high.

When the investigation summonsed Gus’s file in late 2018, there was no evidence to show what State Trustees had done to investigate or resolve the problem.

The Ombudsman asked State Trustees and it acknowledged ‘we did not pursue this and update Centrelink at the time, which appears to have been due to an oversight’. It said it contacted Centrelink in August 2018 and confirmed that Gus should have been paying only 51 cents a day. He had been paying almost $20 a day. State Trustees said it spoke to Centrelink following the Ombudsman’s letter, and arranged a reimbursement for Gus.
Debts

134. State Trustees also manages clients’ debts. Its procedures say consultants should get written confirmation of any debts and consult the client or third parties as needed. They say consultants should consider opportunities to challenge debts and whether it is in the client’s best interests to pay.

135. The investigation identified evidence of three problems with State Trustees’ management of debts for clients.

136. First, the investigation identified some cases where State Trustees was slow to deal with debts. The case study on the following page is one example.

137. Second, the investigation heard evidence that State Trustees often pays debts for clients without considering opportunities to challenge them. There are several legal and consumer schemes that protect financially vulnerable people with debts. For example:

- Some industries, such as the energy industry, operate financial hardship schemes under which people can ask companies to reduce or waive debts in some circumstances. Industry ombudsmen such as the Energy and Water Ombudsman Victoria can take complaints if companies fail to meet their obligations.
- Some debts become ‘statute-barred’ after a period of time (usually six years).
- People who rely on a Centrelink pension for income and have low assets may be ‘judgment-proof’, meaning they cannot be forced to pay the debt from their pension.16

138. In the 30 cases reviewed by the investigation, State Trustees successfully challenged debts for clients in some cases, but not others. State Trustees had not approached industry ombudsmen on behalf of clients in any of the cases.

139. Five advocacy groups reported similar problems in their submissions. The Financial and Consumer Rights Council said its members report that State Trustees sometimes pays debts even though the debts are statute-barred, the clients are ‘judgment-proof’ or there are questions about whether the creditor followed industry codes. The Mental Health Legal Centre said it hears from clients distressed by watching their money spent on debts that should be reviewed. Victoria Legal Aid provided the case study on page 38.

140. A State Trustees manager confirmed at interview that consultants have not always checked or challenged debts in recent times. She said it is ‘one of the areas that I think has fallen by the wayside. [The consultants] get a bill, the client can afford it, they just pay it.’

141. In correspondence with the Ombudsman, State Trustees said:

Deciding when it is in a client’s interests to be deemed judgment proof is often challenging … State Trustees can, and does, refuse to pay client debts on this basis. However, refusing to pay a debt can have long term consequences for the client, making it extremely difficult for them to obtain credit in the future.

… It is therefore appropriate for State Trustees to balance the client’s immediate financial position with their potential future needs. We will review our procedures on judgment-proof debts to investigate if we can better manage this balance.

---

16 Judgment Debt Recovery Act 1984 (Vic) s 12. Section 60 of the Social Security (Administration) Act 1999 (Cth) also provides that social security payments are ‘absolutely inalienable’, meaning they generally cannot be used to satisfy a debt.
142. Finally, the investigation identified cases where State Trustees was not working with clients and their support networks to address behaviours that drive debts. The Office of the Public Advocate’s submission, for example, described the case of a client who was making ‘frequent and lengthy calls to mobile phones from his landline and accruing exorbitant bills’. The case study on the following page, involving a woman with excessive energy usage, is another example.

143. Some other public trustees around Australia told the investigation that, although their role is limited to managing their clients’ financial affairs, they recognise it is in the client’s financial interests to address these issues. In Victoria, State Trustees does not always take this approach. The Office of the Public Advocate said, in its case, the client’s case manager contacted State Trustees recommending it place the client on a $40 flat-rate landline plan, but the problem was continuing 12 months later.

144. The following cases illustrate how State Trustees’ management of debts financially disadvantaged three clients.

---

**Delays lead to $5,000 storage debt**

Tom is almost 80 years old and lives in an aged care facility. State Trustees’ file refers to Tom having ‘hoarding behaviours’. At one stage, it was paying $500 a fortnight for Tom to store his possessions in three storage units. Tom agreed to close two units in 2016 but claimed he could pay for the last one himself. State Trustees agreed to let Tom pay on a two-month trial. State Trustees’ file shows the consultant suspected Tom would not be able to pay and then it could close the unit.

Two months later, the consultant visited Tom and reminded him the fees for the unit were due. She recorded that Tom became ‘flustered’ and noted ‘the storage units will need to be monitored and action taken soon’. Her suspicions were confirmed a week later when State Trustees got a copy of Tom’s bank statement showing he had 27 cents in the bank.

It took a further seven months for State Trustees to close the unit. By that time, the storage company told State Trustees that Tom owed more than $2,000 and it was referring the matter to a debt collector. A consultant put a note on the file saying State Trustees should ask for a debt waiver if the debt collector requested payment.

Ten months later, Victoria Legal Aid contacted State Trustees on Tom’s behalf. The debt collector had been contacting Tom directly and asking for more than $5,000.

When the Ombudsman raised the case with State Trustees, it said it asked the debt collector to send correspondence to its address to avoid further anxiety for Tom. It also asked the debt collector to waive Tom’s debt.

In May 2019, when this report was being finalised, State Trustees said its attempts to have the debt waived were unsuccessful and it reimbursed Tom for the cost of the unit from January 2017, when the two-month trial was meant to end, to July 2017.
Unresolved energy debts

Caitlin is in her 40s and has an acquired brain injury. She lives in public housing and receives a disability support pension. She has limited savings and no assets.

When VCAT appointed State Trustees as Caitlin’s administrator, she already owed a significant debt to her energy provider. By October 2016, she owed $9,788.

State Trustees asked Caitlin to switch energy providers, which she did. She immediately fell behind on payments again. By February 2018, she owed the new energy provider about $4,500.

One of Caitlin’s support workers complained to the Ombudsman about State Trustees’ management of this issue. When the investigation reviewed Caitlin’s case, her energy bills showed her energy consumption was sometimes equivalent to a six-person household. Caitlin lives alone.

Caitlin’s file showed State Trustees made sporadic lump sum payments and entered into various payment plans. However, there was no evidence it queried why Caitlin’s energy consumption was so high or why the debt kept rapidly growing.

When the Ombudsman raised the case with State Trustees, it said it tried to consult Caitlin about her usage and spending in the past and understood Caitlin’s support worker was looking into the issue in 2018.

It acknowledged its strategies had not addressed Caitlin’s debts. It said Caitlin’s first energy provider is refusing to waive her debt and has referred the matter to a debt collector. It was waiting for the energy provider to pass on the debt collector’s name so it could negotiate with them.

Ombudsman investigators suggested State Trustees contact the Energy and Water Ombudsman to resolve the problems, which it did. When responding to a draft of this report in May 2019, State Trustees also said it has tried to engage with Caitlin to find out why her high energy usage is so high but, despite these attempts, it has been unsuccessful.
State Trustees also deals with infringements on behalf of its clients.

Victoria’s infringements system is complex. Agencies usually provide an initial infringement notice with a due date. If the infringement is not paid on time, agencies start imposing additional penalties. The system offers several options for challenging infringements, some of which are particularly relevant to State Trustees’ clients:

- People with an intellectual disability or mental illness can seek a review of the infringement on the grounds of ‘special circumstances’ if they could not control their behaviour or did not understand they were breaking the law.
- For driving infringements, if the person was not driving their car at the time, they can nominate the real driver and have the infringement re-issued to them.

State Trustees’ procedures say consultants should consider opportunities to challenge infringements. However, at the time of the investigation, they provided little guidance for consultants about these options. When the Ombudsman gave State Trustees an opportunity to comment on a draft of this report, it said it has revised its procedures and trained staff. Pages 87-89 of this report provide more information about these steps.

---

**Failure to seek waiver for $15,000 hospital debt**

Victoria Legal Aid included the following case study about a client, who it called Tran, in its submission to the investigation:

Tran has been diagnosed with a mental illness and had been detained in a psychiatric unit for some years before State Trustees was appointed.

Tran had refused to pay his accommodation fees for the time he had spent in hospital and, whilst the hospital had not actively sought to recover the debt, when State Trustees was appointed, they soon arranged a payment plan of around $100 per fortnight to pay off the approximately $15,000 in arrears.

Tran was receiving [a disability support pension] of around $900 a fortnight and had little if any savings. He really enjoyed shopping but had very little money left over to do this once his accommodation and other fees were paid by State Trustees. This was frustrating for Tran. When Tran contacted [Victoria Legal Aid] we advocated to State Trustees to seek [a] waiver or reduction of the debt. In response, the hospital agreed to waive the debt and Tran’s discretionary spending was able to increase and he could again go shopping and attend outings with his friends.

Without [Victoria Legal Aid’s] advocacy, Tran would have been stuck making repayments of a considerable proportion of his income for years to come.

When given an opportunity to respond to this, State Trustees said it could not comment on the veracity of these claims as it had not been advised of ‘Tran’s’ real name.
148. When the investigation reviewed its sample of 30 cases in depth, it found one example where State Trustees went to some lengths to challenge multiple infringements for a client. However, this was the exception. In other cases, State Trustees missed opportunities to dispute infringements. There were also occasions on which State Trustees paid infringements late, causing clients to incur additional penalties.

149. Several advocacy groups also raised this issue in their submissions. Victoria Legal Aid said:

> We have acted for clients for whom State Trustees has paid thousands of dollars in fines rather than pursue a ‘special circumstances’ application which, although more time-consuming for State Trustees, is far more likely to be cost-effective for the represented person.

150. The Financial and Consumer Rights Council noted changes to the infringements system at the start of 2018:

> Financial counsellors report that State Trustees representatives are not up to date on these changes and are not in a position to inform clients and consult with them on the best combination of steps to deal with fines debt. There are reports of State Trustees ‘just paying’ the fines, perhaps on a payment plan, which in many situations will not be an approach that is in the best interests of the client.

151. The investigation asked one State Trustees manager about these issues at interview. The manager’s response noted lost opportunities for State Trustees to advocate for clients:

> We’re trying to bring in a process where we have that conversation with our client to say, ‘you’ve got an infringement notice, is it yours?’ I think that bit was not happening, to be honest, in all fairness.

152. The following case studies illustrate the impact on two clients. In the first case, State Trustees used $2,058 of a client’s money to pay for someone else’s infringements. In the second case, it told a client it would dispute an infringement, then paid it without consulting the client and charged the late fees to his account.

**$2,058 for someone else’s infringements**

Page 34 of this report discussed problems that Clive, a pensioner in his 80s, had with State Trustees about his aged care fees. Clive’s son also complained to the Ombudsman that State Trustees incorrectly paid infringements from Clive’s account.

Clive’s State Trustees file showed that, when State Trustees visited Clive and his family following its appointment, one of his sons showed the State Trustees consultant a ‘large garbage bag’ of infringements.

Clive’s son wrote to State Trustees a couple of months later warning that one of Clive’s relatives was driving his car and incurring the infringements.

However, Clive’s file showed that State Trustees continued to receive and pay most of the infringements from Clive’s account.

The Ombudsman asked State Trustees to review these infringements and refund Clive.

Clive passed away shortly after the investigation reviewed his case, but State Trustees acknowledged it did not verify who was responsible for the infringements and reimbursed Clive’s estate the sum of $2,058.
Fraud and financial abuse

153. Unfortunately, it is not uncommon to hear allegations of financial abuse or fraud involving clients’ property.

154. The public trustees in South Australia and the Australian Capital Territory have had cases where employees were charged with fraudulent activities involving clients’ property. The employees managed the estates of deceased clients or clients subject to administration orders.

155. Since 1 July 2013, there have been at least 15 recorded cases of theft and losses involving State Trustees clients’ property. None of those cases involved fraudulent activities by State Trustees consultants. Most of those cases involved allegations against the client’s carer or ‘informal’ guardian.

156. State Trustees states that it has processes to prevent and detect fraud. Its Fraud Management Framework outlines various strategies, such as:

   • fraud awareness training for employees
   • employee screening such as police checks and anti-money laundering checks
   • reporting processes to ensure allegations of fraud are reported to management and acted on as required.

157. State Trustees reports that it has in-built controls in its technology to prevent fraud. It processes most invoices through its contractor, but its processing rules require it to refer invoices that appear ‘abnormal’ to State Trustees.

158. In these cases, the consultant or team leader must manually decide whether to process the invoice. However, the enormous volume of processing involved makes it difficult to detect potential fraud. A senior manager said:

   We’d make thousands and thousands and thousands of payments. We don’t have people who check that every single invoice that we pay has had a service ... it could be a period of time after that has occurred that it might get detected in the budget.

Failure to dispute infringement

This report discussed problems with State Trustees’ handling of Richard’s pension and other entitlements on pages 26-27.

Richard also told the Ombudsman he was unhappy about how State Trustees handled a speeding infringement.

Richard’s file showed he received the infringement in September 2015 and spoke to State Trustees about it. In December 2015, State Trustees told him it would apply on his behalf to have the infringement waived. Richard provided State Trustees with medical reports to support the application.

Three months later in March 2016, State Trustees told Richard it had paid the infringement, along with $328 in late payment penalties. It charged these late penalties to Richard’s account.

The Ombudsman asked State Trustees to refund the money. State Trustees said it decided to pay the infringement because challenging it on medical grounds could have raised questions about Richard’s right to drive a car but it acknowledged it should have consulted Richard. It refunded the amount it charged to Richard’s account for the infringement and late payment penalties.
159. In 2012, the Victorian Auditor-General noted that although State Trustees’ fraud processes are based on a model ‘that aligns with better practice’, there were problems implementing these processes in practice, as shown by two serious cases of fraud at the time.

160. The investigation found evidence which echoes these concerns. State Trustees’ quarterly internal audits examine whether consultants processed invoices for services or expenses which appeared abnormal or were not provided to the client. Over one in four audited cases for VCAT-appointed clients had problems such as duplicated payments, payments not supported by invoices and payments for services which had been cancelled.

161. The investigation did not identify any evidence of fraud by State Trustees employees in the 30 cases it reviewed. However, the case below illustrates how invoices may be automatically processed for a service that was never provided to a client. It also illustrates how delay in addressing the situation can impact on a vulnerable client’s wellbeing.

---

**Wrong payment of $1,360 and delay in refund**

Neil is in his 60s and experiences mental illness and Parkinson’s Disease. State Trustees has been his administrator since 2004.

Neil saw from his account statements that State Trustees had used his money to make monthly payments to a health provider. He had attended an appointment with the provider once, many years previously, but not recently. He complained to State Trustees about the recent monthly payments, which totalled $1,360.

The following day, Neil’s support worker also told State Trustees that he receives free health services at its facility. About a month later, State Trustees called the health provider. The provider was no longer operating and said they did not know Neil and had never attended Neil’s supported accommodation to provide services.

State Trustees tried to recover the $1,360 but was unable to. It did not refund Neil his money until eight months later.

Neil, with the support of his financial counsellor, complained to the Ombudsman about this and other matters. Neil said his problems with State Trustees contributed to his deteriorating mental health. He was hospitalised a number of times for self-harm.

State Trustees said it had no explanation for the time it took to refund Neil and it would meet with and apologise to him.

Neil is currently homeless. His financial counsellor explained it would be best for his mental health not to meet with State Trustees.

In May 2019, when this report was finalised, State Trustees said it had identified the person to whom the money was paid, reimbursed Neil and is considering referring the matter to the police.
162. The investigation’s sample of 30 client cases also show inconsistent approaches to managing allegations of financial abuse. State Trustees’ procedure manuals make clear that allegations of financial abuse and misappropriation must be investigated and they provide guidance on how to conduct those investigations.

163. While some allegations of financial abuse were dealt with promptly and appropriately, others were not. We acknowledge these issues are sometimes complex and difficult to pursue, as the following case shows.

**Attempts to protect client from financial abuse**

Joe is in his early 50s and has epilepsy, anxiety, intellectual impairment and cerebral palsy. He relies on the disability support pension for income.

VCAT appointed State Trustees as Joe’s administrator in 2016. Joe himself applied to VCAT for an administrator because he found it too difficult to manage his affairs by himself and told VCAT he was ‘being taken advantage of by others’.

Almost 20 years ago, one of Joe’s relatives needed money to settle a divorce. Joe helped the relative by giving her $150,000. In return, the relative transferred legal title in her property to Joe.

To this day, the relative still lives at the property. Joe’s support workers told State Trustees that the relative refused to let Joe live there, even though it is his house. Joe’s psychiatrist asked State Trustees to change the locks so he could move in and live there. Joe then clarified he did not want that to happen, because he did not want to jeopardise his relationship with the relative.

As Joe was unable to live in his property, his disability support pension stopped as the property was considered an investment property. His finances became tight.

State Trustees took action. It sought VCAT’s approval to sell the property, to enable Joe to buy his own property to live in. The relative lodged a caveat. State Trustees had the caveat removed and VCAT made an order approving the sale.

Ultimately, the sale did not go ahead because eventually the relative let Joe move in. Even though Joe still legally owns the property, it is now his principal place of residence and he is eligible for the disability support pension and has a stable place to live.

Given the complex situation, State Trustees did what it could to protect Joe’s interests, by taking steps to sell the property. Doing so would have helped Joe secure his disability support pension and buy his own place to live at the time.
Delay in investigating financial abuse claims

Bill is in his 70s and lives in his own home in Melbourne. He has an intellectual impairment from a childhood illness, an acquired brain injury and poor physical health. One of Bill’s relatives used to administer his affairs but gave up the role due to a conflict with Bill’s friend. As a result, State Trustees became Bill’s administrator in 2016.

The relative and friend accused one another of financially abusing Bill.

At the hearing, VCAT heard that Bill’s shares had been sold and his friend was holding Bill’s certificate of title for safekeeping. It also heard that Bill’s superannuation had been redeemed and transferred to Bill’s bank account without his previous administrator’s knowledge.

In light of these allegations, VCAT asked:

- State Trustees to investigate what happened with Bill’s money after his shares were sold.
- The friend to hand the certificate of title to Bill, who could then hand it to State Trustees.
- State Trustees to ensure that the money was returned to Bill’s superannuation and that the fund compensate Bill for any loss.

When our investigation reviewed Bill’s file in mid-2018, it found that State Trustees had lodged a caveat over Bill’s property to protect his rights. However, it had still not traced the money from the share sale or made any enquiries with the superannuation fund.

The Ombudsman wrote to State Trustees’ Chief Executive Officer about this matter.

In January 2019, State Trustees said it had been told that the money from the share sale was deposited into Bill’s bank account and used to buy household and personal items. It said it was obtaining Bill’s bank statements to verify this. It said ‘it overlooked pursuing the compensation’ from the superannuation fund and was ‘taking urgent action’ to follow it up.

State Trustees provided further information when given an opportunity to comment on a draft of this report in May 2019. It said it had seen evidence showing some money from the share sale was used for household expenses for Bill, but this did not account for the full amount. It said it considered action to recover the remaining money but decided it was ‘not appropriate in the circumstances’. It said it had arranged for Bill’s superannuation fund to refund the amount that had been redeemed from his account.
Communication with clients

164. The laws that safeguard the rights of State Trustees clients require State Trustees to consult them when making decisions about their money and property.

165. State Trustees has not always worked closely with its clients. When this office last investigated State Trustees in 2003, the former Victorian Ombudsman recommended ‘increased priority continue to be given to personal contact’ with clients and family. Nine years later, in 2012, the Victorian Auditor-General found ‘quality client engagement’ was still infrequent.

166. The investigation looked at State Trustees’ current practices.

New clients

167. State Trustees engages closely with clients when it is first appointed to manage their affairs.

168. For VCAT-appointed clients, State Trustees’ procedures require consultants to contact clients or close family or friends within two business days. Consultants explain State Trustees’ role; advise clients their pension will be redirected to State Trustees; discuss an interim living allowance; and address urgent issues.

169. State Trustees visits clients within 60 days, usually at home, to discuss their financial affairs and wishes. This meeting is an opportunity for State Trustees to collect basic information about bills, bank accounts, assets and services and the client’s circumstances. State Trustees also provides a ‘Welcome Pack’ with information about its services.

170. For power of attorney clients, these discussions usually take place when the person signs the power of attorney.

171. State Trustees’ recent internal auditing shows it complies well with these obligations. However, in the 30 cases reviewed by the investigation, there were two cases where there were problems with this communication.

172. A joint submission by Darebin Community Legal Centre and Mind Australia also suggested there is scope to improve these visits. The organisations spoke with two clients about their experiences. One client said, ‘they just talked to us about what they thought would be appropriate and what the court said’. The other client said, ‘[s]he [the consultant] just took notes about what I usually spent my money on.’ The submission noted ‘[t]hese reports do not evidence an attempt by State Trustees to engage in planning with consumers around short or long-term goals’.

173. In response to a draft of this report, State Trustees asked for information about the identity of these clients so it could take appropriate action. Ombudsman investigators have communicated this to the legal centre and Mind Australia.

174. The following case study is one case in which State Trustees did not tell an elderly client it was redirecting his pension, leading to confusion and distress.
Ongoing consultation

175. After State Trustees’ initial visit with clients, it does not visit them regularly to discuss their affairs unless a client asks for a meeting. In 2012, the Victorian Auditor-General reported that States Trustees visited five to eight per cent of clients each year. According to data provided by State Trustees to this investigation, that has fallen to around three to four per cent of clients.

176. State Trustees’ procedures require consultants to seek out clients’ views when making specific types of decisions. These include:

- the annual review of its client’s budget
- when making certain decisions, such as selling the client’s property or taking legal action in their name
- when changing some services for clients, such as health insurance.

177. These procedures appear to draw on the 2011 National Standards for Financial Managers, which limit consultation to ‘major’ decisions. Victoria Legal Aid’s submission described these standards as ‘weak minimum standards’ that arguably fall short of State Trustees’ obligations under the law. In response to a draft of this report, State Trustees submitted it was incorrect that the Standards are set at a lower level than its obligations as an administrator, and said ‘the submission is unclear as to the basis on which it makes such an assertion’.

178. In practice, the evidence suggests State Trustees’ compliance with its consultation requirements is patchy.

179. In the cases we reviewed in depth, State Trustees had attempted to consult the client (or their family or carers) during their last budget review in around a third of the cases.
180. State Trustees’ recent internal auditing shows better compliance with the requirement to consult about major decisions. However, the investigation identified cases where State Trustees made significant decisions affecting clients’ personal as well as financial interests, without speaking to clients. The case studies on pages 47, 48 and 49 describe these cases. Some advocacy groups reported similar cases in their submissions.

181. The investigation also identified several cases where State Trustees changed clients’ services and investments without consulting them.

182. A State Trustees manager explained at interview that it is State Trustees’ policy to redeem existing client investments such as term deposits, shares and managed investments, and reinvest the money in State Trustees’ investment funds. The manager said State Trustees can deviate from the policy if the client wishes. However, this option was not offered to clients in the cases reviewed by the investigation. The case study on page 49 is one example.

183. During interviews, a manager acknowledged consultation with clients is an ongoing challenge. The manager said they remind consultants every year about when they need to consult clients. The manager said:

   [i]t goes really, really well for three months ... Then it sort of drops off.

184. In response to a draft of this report, State Trustees said there had been multiple reminders to employees over the past year and listed four examples. They included a ‘quick reference guide’ on consultation for employees and a training session for managers about consultation requirements and the importance of ensuring consultants document their contact with clients. Client consultation requirements are also reflected in State Trustees’ procedures.

185. Advocacy groups again questioned the quality of State Trustees’ consultation with clients. Victoria Legal Aid, for example, questioned:

   how often State Trustees consults effectively with the represented person to explain the decision that needs to be made, ascertain the views of the represented person, present and discuss options, including their benefits and drawbacks, as part of the decision making process.
Melissa is in her 40s, has schizoaffective disorder and lived at home with her parents all her life. Her health workers asked VCAT to appoint State Trustees as her administrator after her father died and her mother became ill.

Melissa’s mother passed away some months later. Her will said Melissa could live in the family home rent-free for the rest of her life and divided the rest of the estate between Melissa and her brothers and sisters.

State Trustees was concerned the will did not leave Melissa enough money. An occupational therapist estimated Melissa needed up to $1 million over her lifetime to look after herself and the house. Under the will, Melissa was expected to receive less than a tenth of that amount.

Melissa called State Trustees about the will many times over the following year. State Trustees said it responded by phone and email. State Trustees’ file showed Melissa called three more times but no one returned the calls. State Trustees was running out of time to dispute the will. It spoke with Melissa’s case workers and wrote to the estate’s lawyers.

When Melissa found out what was happening, she was, in her own words, ‘enraged’. State Trustees had taken over $7,000 from her account to pay its legal team and expenses – almost a third of her life savings – without consulting her. To settle the dispute, it had also offered to sell the family home where Melissa had lived all her life, without consulting her.

State Trustees tried to engage with Melissa at this point and went to VCAT to seek approval for its actions. However, Melissa remained adamant she did not want the legal action to proceed. She told the Ombudsman:

I have 50% of the estate anyway because I live in the family home … [The State Trustees’ representative] was bullying me to let State Trustees pursue a greater share of my deceased mother’s estate. WHICH I DO NOT WANT. And I clearly do NOT need either.

After the Ombudsman raised the case with State Trustees, it apologised to Melissa. It said:

it is clear we did not consult properly with [Melissa] … prior to her claim, its likely costs and its personal and financial impacts.

It said it tried to speak with Melissa many times afterwards. It acknowledged ‘had State Trustees consulted more fully with [Melissa] in the first instance, our relationship with her would have been less challenging.’

The legal dispute about the will has since been settled and the estate paid Melissa’s legal fees. In response to a draft of this report, State Trustees also said it was ‘successful in obtaining a significantly greater share of her mother’s will for Melissa so that she could meet her on-going financial requirements.’

VCAT has changed Melissa’s administration order and she now manages most of her own finances.
Lynette has been a State Trustees client for many years and lives in supported accommodation. Her adult son, who has an autism spectrum disorder and other disabilities, lives in her house.

Lynette’s son has been described as a hoarder. Over the years, it has been difficult for State Trustees to maintain the house and collect rent to offset Lynette’s expenses. It became concerned Lynette’s money was running out and the house was falling into disrepair. In 2017, it applied to VCAT for approval to move or evict Lynette’s son.

Lynette’s son has a strong support group and one of them contacted the Ombudsman, claiming State Trustees had not consulted Lynette.

When the investigation looked at Lynette’s file, it found a copy of State Trustees’ application to VCAT, which said: ‘We have contacted [Lynette] and she does not want to be consulted with regarding the Property’. However, there was no evidence in the file to support this statement. State Trustees had not spoken with Lynette at all in two years.

When the Ombudsman raised this with State Trustees, it said its consultant spoke to a carer at Lynette’s supported accommodation.

After the first VCAT hearing, a consultant did speak with Lynette and Lynette said she wanted ‘if possible to let her son ... live in the house as he will have nowhere else to go.’

State Trustees told the Ombudsman: ‘Since we have become aware of [Lynette’s] views, they have been central to our actions.’ It signed an agreement with Lynette’s son allowing him to live in the house on the condition he pay rent and look after the property.

In May 2019, when this report was finalised, State Trustees said it consulted Lynette in March 2019 and continues to consult her regarding the ongoing issue of her son living in her house. They have agreed on Lynette’s preferred methods of communication. It said Lynette’s son is currently abiding by the terms of the agreement, and it will consult her about her preferences if he breaches the agreement in future.
Responsiveness to clients

186. In the 30 files reviewed by the investigation, most communication between State Trustees and clients was initiated by clients themselves, or their families or advocates.

187. Clients and other people can contact State Trustees by telephone, in writing and in person at its three offices. State Trustees’ most recent client survey showed just over 80 per cent of clients found it to be accessible.

188. Recent complaints to the Ombudsman focus on two particular issues with State Trustees’ communication.

189. The first is call waiting times. State Trustees routes all telephone calls to its Contact Centre in Bendigo. Data shows it took around 220,000 calls in 2017-18.

190. People who contact the Ombudsman often describe waiting on hold for long periods to speak with someone at State Trustees when they call (see the following page). Advocacy groups also mentioned this problem in their submissions.

191. A senior State Trustees manager acknowledged at interview that call waiting times at the Contact Centre have ‘been a concern for us’. The investigation heard that, in 2017-18, waiting times ranged from 17 minutes up to 1 hour and 25 minutes. State Trustees employed additional consultants in the Contact Centre in 2018 to try to address the problem. In the first half of 2018-19, waiting times ranged from three and a half minutes to 54 minutes. A manager told the investigation at interview in February 2019 that waiting times are still ‘really up and down’.

$4,448 to sell shares against client’s wishes

Phil is able to manage his day-to-day expenses himself but, in late 2017, VCAT appointed State Trustees for 12 months to help him with some complex financial issues involving his family.

Villamanta Disability Rights Legal Service complained to the Ombudsman about State Trustees’ treatment of Phil. It said Phil owned a portfolio of shares when State Trustees was appointed. It said Phil ‘owned these shares for some years, and was proud of his share ownership; and even when cash was tight, he had managed to hold onto them.’

Ten months into the administration order, Phil found out during a phone call that State Trustees sold his shares two months earlier. It also charged him $4,448 for financial planning, tax advice and brokerage fees associated with the sale. Villamanta told the Ombudsman ‘the administration order was supposed to be a safeguard for [Phil], but instead has cost him significantly.’

When the Ombudsman raised Phil’s case with State Trustees, it said its financial planners recommended the sale because Phil’s account was low and his pension provided little income. It acknowledged it did not consult Phil about his wishes. It said:

[Our] consultants in Client Services should consult with the client where it is practical given their disability and level of capacity, and fully advise the financial planners of their needs and wishes. In this case, we did not do so, for reasons that are unknown.

State Trustees said it apologised to Phil at the time. The Ombudsman proposed it also refund the $4,448 it charged Phil for the sale. State Trustees said it was likely it would have sold Phil’s shares even if it had consulted him because he had no other source of liquidity. However, it agreed to refund a portion of the fees ‘as a goodwill gesture’.
Examples of complaints about call waiting times

‘I attempted to call them a couple of times. You know, you sit on hold for 40 minutes.’

**Daughter of State Trustees client**
**Complaint to Ombudsman**

‘[Warwick] has further added that the wait times for the State Trustees call centre are significantly long, often upwards of 20 minutes. I can add that this has also been my own experience when calling State Trustees to speak with administrators.’

**Lawyer**
**Complaint to the Ombudsman**

‘Other times we are lucky to get through to an agent within an hour of being on hold.’

**Daughter of State Trustees client**
**Complaint to the Ombudsman**

‘I am advised that when my constituent contacts State Trustees there is sometimes a message stating that the waiting time for the call to be answered will be longer than 40 minutes. On one occasion my constituent was waiting on the telephone for over an hour.’

**Member of Parliament**
**Letter to the Ombudsman**

‘I don’t get any response [to emails]. I’ve left my phone number – nothing. I talk to the lady on the phone. [She] puts me through to another number ... I’m still holding on the phone ... sometimes I’m there for an hour. I mean I work full time ... I’m really frustrated because I can’t get through to anybody. I don’t know what else to do.’

**Mother of State Trustees client**
**Complaint to the Ombudsman**
192. The second issue raised by complaints to the Ombudsman is State Trustees’ responsiveness to telephone messages, emails and letters.

193. State Trustees’ procedures require consultants to respond to phone calls in three days and written communication in 10 days.

194. In the files reviewed by the investigation, State Trustees’ responsiveness varied – it responded on the same day in some cases but, in others, it did not respond at all. The case study below is one example.

195. Advocacy groups also raised concerns in their submissions. Victoria Legal Aid said, in its experience, State Trustees required ‘multiple follow-ups’ before it responds to emails. It said:

   For our clients – many of whom have complex needs in addition to their disability – this causes unnecessary frustration and distress.

196. The Office of the Public Advocate also reported problems in its submission. The Public Advocate sometimes acts as the legal guardian for State Trustees clients. The submission said clients sometimes call its office expressing frustration that they cannot access State Trustees. It said its employees will often intervene by answering the client’s question themselves or, in more complex matters, by passing the query on to State Trustees. It said some of its employees ‘have expressed frustration about the impost on their time’.

197. When given an opportunity to respond to this report, State Trustees said it would like to know the identity of these clients so it can take appropriate action. Ombudsman investigators communicated this offer to the Office of the Public Advocate.

198. The following case study is one example in which an advocacy organisation had to contact State Trustees multiple times over many months before it received a response.

---

### Seven months, three letters and no response

Anton is in his late 60s and has schizophrenia. He became a State Trustees client in 2015, at a time when he was gambling his pension and asking relatives for money.

In February 2018, Victoria Legal Aid wrote to State Trustees explaining that Anton’s mental state was stable now and the factors which led VCAT to appoint State Trustees were no longer relevant. It asked State Trustees to consider Anton for its Financial Independence Program (see page 56-57) so he could prove his capacity to manage his own money again.

When it got no reply, Victoria Legal Aid wrote again in April 2018. There was still no reply so it wrote again in June 2018. This letter was not answered either.

In September 2018, Victoria Legal Aid made a formal complaint to State Trustees. At this point, State Trustees contacted Victoria Legal Aid and agreed to start by giving Anton his living allowance to manage fortnightly instead of weekly.

When the Ombudsman raised the case with State Trustees, it said it considered Victoria Legal Aid’s letters when they arrived and, on each occasion, decided Anton was not suitable for the program. It said ‘we did not reply to VLA to advise them of our decisions. We cannot identify why no response was sent.’

Anton applied successfully to VCAT to revoke his administration order at the end of 2018.
199. State Trustees clients have a range of disabilities and illnesses that can affect their ability to communicate and understand information (see page 19). The investigation was interested in how State Trustees tailors its communication to suit their needs and preferences.

200. Making reasonable adjustments for people with disability is both the law and good practice. Section 45 of the Equal Opportunity Act 2010 (Vic) requires service providers to make ‘reasonable adjustments’ to ensure people with a disability can access services. The National Standards for Financial Managers also say financial managers will communicate in ways clients can understand.

201. When reviewing the investigation’s sample of 30 cases, we observed that State Trustees does not routinely ask clients how they prefer to communicate or record this information in its client database. One manager said at interview that her consultants usually ‘just gauge that on calls’ with clients.

202. The investigation identified some cases where consultants responded flexibly to clients’ needs. In one file, a client with a mental illness did not want State Trustees to come to her home and the consultant communicated with her by email.

203. However, the investigation came across other cases where State Trustees made no adjustments for a client’s disability. In one case, for example, a client’s advocate informed State Trustees the client was unable to read, but State Trustees told the client about a reduction in his living allowance in writing.

204. The investigation observed other practices that did not appear to cater to a client group with disabilities:

- Consultants in State Trustees’ Contact Centre have an average call target of six minutes. The investigation was told this is an average only and consultants can spend longer on calls if clients need more time. However, the investigation heard State Trustees’ Contact Centre takes around 900 calls a day, placing considerable pressure on its 17-18 rostered consultants to get through call volumes.
- State Trustees generally uses plain English in written communication, but it does not translate brochures or other information into ‘easy read’ or ‘easy English’, despite having around 2,400 clients with an intellectual or cognitive impairment (almost a quarter of its clients).
- Some of State Trustees’ written communication is complex and technical. The letter on the following page about infringements is one example. It was sent to a client who can communicate in writing but has multiple mental health disorders. Another example is State Trustees’ account statements for clients. These statements are meant to keep clients informed about the state of their finances, but they use terms such as ‘interest bearing holding’, ‘personalty’ and ‘capital receipts’. Some accounting knowledge is required to interpret them. The investigation acknowledges it is sometimes difficult to explain complex financial information in simple terms, but there was scope for improvement in the documents we reviewed.

205. State Trustees’ use of translation and communication services is also variable. It uses the National Relay Service for clients who are deaf, hard of hearing or have speech impairments, but requires clients or family members who do not speak English to pay for their own interpreters.
Dear [Name]

Re: [Name]

Progress of Infringement Notice
Hearing Time: 9.30am
Hearing Date: [Date]
Hearing Venue: Melbourne Magistrates Court

We regret to advise that the Issuing Agency declined our request to withdraw the Infringement Notice pursuant to the Special Circumstances provisions of the Infringements Act 2006.

We will now apply to the Enforcements Review Program, a division of the Magistrates’ Court, for the matter to be heard and determined under other provisions of the Infringements Act 2006.

We request that you attend to the Court Hearing to present the contents of your report.

At this Court Hearing, on a date to be scheduled, you will have to plead guilty to having committed the offences for which the Infringement Notice was issued.

When a guilty plea is made the Court is empowered to make a determination under the Special Circumstances provisions of the Infringements Act 2006. When it is intended to plead “Not Guilty” the matter cannot be assessed under the Special Circumstances provisions and any Special Circumstances will not be considered as relevant.

Yours sincerely

[Name]

Administration Support on behalf of Team 2 Pfa - Regional North
Communication with family, friends and advocates

206. When the investigation reviewed client files, it also observed State Trustees was sometimes consulting family, friends or advocates about decisions, rather than speaking with the client about their wishes.

207. State Trustees’ procedures says ‘all communication must be attempted with the client in the first instance’ and, if this is not suitable or possible, contact with third parties must be ‘in the best interests of our client’.

208. The investigation heard various reasons why State Trustees might speak with third parties.

209. The most obvious is that some clients are so unwell it is not possible to consult them. During interviews, one State Trustees manager said elderly clients with dementia sometimes find contact from State Trustees upsetting. The manager said they encourage their team to speak with clients, but State Trustees considers advice from families, nursing homes and sometimes doctors.

210. Other State Trustees managers said some clients refuse to speak with State Trustees because they resent VCAT’s decision to appoint an administrator and State Trustees’ intrusion into their lives. One said:

    They don’t like us. You can’t blame them. One day their pension was going into their bank account and the next day it wasn’t … They don’t want to engage with us and … that’s a really big challenge for us as an organisation.

211. The investigation also reviewed files where family members or advocates asked State Trustees to consult them before making decisions, usually about clients’ requests for extra money. These arrangements aimed to help clients manage their spending and prevent them falling into deficit and debt. As the case study on page 56 shows, State Trustees had not always sought the client’s own views about these arrangements.

212. In several cases reviewed by the investigation, it was not possible to tell why State Trustees was consulting third parties instead of clients. These clients were capable of communicating their own wishes and willing to engage with State Trustees, but State Trustees was not engaging with them. The case studies on pages 47-48 are two examples. The following case studies are other examples that illustrate the impact of this practice.
Heather is in her 70s and has bipolar disorder and dementia. She appointed State Trustees to manage her affairs under a power of attorney. In 2017, she moved from her retirement unit into a nursing home. State Trustees needed to clear her possessions from her unit so it could be sold.

State Trustees usually organises a property inventory when clients move into aged care so clients can mark what they want to keep, sell or give away. Heather did not have enough money to pay State Trustees’ contractor for an inventory, but she decided she wanted to give some of her furniture to her son (who also has a disability), sell what she could and donate the rest to charity.

Although Heather can communicate her wishes by telephone and in writing, State Trustees spoke with one of her friends about clearing the unit. After some months, Heather wrote to State Trustees saying there were still things she wanted to collect. By the time the letter arrived, it was too late.

State Trustees initially told Heather: ‘Any items that were not retained by you have been sold or donated.’ In her complaint to the Ombudsman, Heather said:

[The consultant] told me what wasn't sold would go to charity. I asked her what op shop it went to and I would go and buy it back ... Then she told me it had gone into a skip and [was] taken to a tip for landfill. I was distraught [and] I couldn’t stop crying.

Heather told the Ombudsman she lost family photographs, her son’s passport, her parents’ birth and death certificates, telephone and address books and other things ‘very precious to me’. She wrote, ‘I have never been so upset or angry. I feel very powerless.’

When State Trustees realised what had happened, it contacted its contractor and Heather’s retirement village to see if anything was left. It also agreed to speak with Heather weekly until her unit was sold and later paid her $3,500 compensation.

State Trustees told the Ombudsman ‘We deeply regret how we handled the removal and disposal of [Heather’s] possessions, contrary to her instructions ... we readily acknowledge we caused her great distress.’
Support for clients’ independence

213. Laws also require State Trustees to give its clients space and support to make their own decisions where possible. In the case of VCAT-appointed clients, the 1986 Guardianship and Administration Act, which applied during the investigation, encouraged State Trustees to:

- protect its clients’ independence as much as possible by acting in a way that is ‘least restrictive of [their] freedom of decision and action’ (section 4)
- promote their independence as far as possible by acting ‘in such a way as to encourage and assist [them] to become capable of administering [their own] estate’ (section 49).

214. The new 2019 Guardianship and Administration Act, which was passed by Parliament when this report was being finalised, will impose similar obligations on State Trustees when it commences in 2020.

215. The investigation looked at whether State Trustees currently supports its clients’ independence.

Financial Independence Program

216. State Trustees is one of the few public trustees in Australia with a formal program to build clients’ independence. Its Financial Independence Program gives VCAT-appointed clients an opportunity to manage some of their money themselves on a trial basis. State Trustees ‘starts off small’, in the words of one manager, by giving the client responsibility for one bill, such as their electricity bill. If the client manages well, State Trustees can expand their responsibility over time until they are ready to take control of their own affairs.

Discouraged client

Alex has an acquired brain injury and lives in supported housing that helps people with a history of long-term homelessness.

Alex used to call State Trustees often for extra money and was getting into financial trouble. Several years ago, Alex’s case workers asked State Trustees to speak with them before approving any requests. Since then, Alex has not had any direct contact with State Trustees.

Inner Melbourne Community Legal complained to the Ombudsman on Alex’s behalf. Alex told Ombudsman officers he wanted to speak with State Trustees, but it only wanted to hear from his case workers.

When the Ombudsman raised Alex’s case with State Trustees, it said:

While we generally aim to deal direct with clients, we consider it in the best interests of particularly vulnerable clients ... to work with [the organisation supporting Alex] as they request, rather than jeopardise [clients’] accommodation and stability of behaviour. The question of direct contact is a difficult issue, given he is a mutual client, but we both wish to work in his best interests.

State Trustees agreed to meet Alex and his case workers to talk about how they would communicate in future. State Trustees is now consulting directly with Alex.
217. To be eligible for the program, State Trustees’ procedures say clients must be managing their living allowance on a fortnightly basis and have a case manager or support person. The procedures say State Trustees is meant to assess clients for the program:

- every year, when it reviews the client’s budget
- when requested by VCAT, clients, family members or advocates.

218. In practice, the investigation found few clients get an opportunity to participate in the program. State Trustees’ data shows there were 143 clients in the program as at 30 June 2018. This represents 1.5 per cent of State Trustees’ VCAT-appointed clients.

219. Advocacy groups questioned whether State Trustees genuinely assesses clients for the program. They provided examples of clients who were overlooked or rejected by State Trustees, despite being capable of managing some of their affairs.

220. The investigation noted that State Trustees does not inform clients and families about the program in its Welcome Pack for new clients or on its website. Victoria Legal Aid’s submission said it:

frequently comes across clients who have been under administration for years and have not heard of the [program]. It is not uncommon for VLA lawyers to be the first to raise the [program] in circumstances where, arguably, State Trustees should have been proactive in initiating the program based on the person’s circumstances.

221. Evidence to the investigation also raised doubts about the program’s effectiveness in building clients’ independence. State Trustees:

- does not provide advice or support to build clients’ financial skills as part of the program. The NSW Public Trustee and Guardian, by comparison, told the investigation it provides fact sheets, budgeting information and telephone support for clients in its program.
- does not partner with other support services that could help clients build their skills. In their joint submission, Darebin Community Legal Centre and Mind Australia said Mind Australia works with a number of State Trustees clients and can help them with budgeting, but State Trustees has made no attempts to include it in discussions with clients.
- does not engage with clients in a meaningful way. Its procedures say consultants are meant to review a client’s progress after six or 12 months; contact the client and their support person to discuss how the client is managing; and ‘actively attempt’ to resolve any problems. In two cases reviewed by the investigation, State Trustees failed to conduct any review. In one case, a consultant cancelled a client’s involvement in the program without any discussion.

222. Managers acknowledged these problems during interviews. One said:

it entails a lot of work to put somebody on a Financial Independence Program … Yes, it’s important [but] consultants have a lot of work on their hands and it’s easier for them to do the budget … and move on … They already have so much to do.

223. The investigation asked another experienced manager whether the program was effective in building clients’ independence. Her response was brief: ‘No’.
224. The following case studies highlight the cases of two clients who were overlooked by State Trustees for the Financial Independence Program, despite having capacity to manage some of their own affairs.

**Capable client overlooked**

Darebin Community Legal Centre and Mind Australia included the following case study in their submission to the investigation. They wrote:

Sam’s ... finances have been managed by State Trustees for approximately 4.5 years. During this time, he does not recall State Trustees inviting him to be more involved in budgeting or offering him support to increase his capacity to budget larger amounts. Sam feels confident budgeting the funds provided to him by State Trustees. Funds are provided twice a week, apportioned so that $120 is released on Tuesday and $165 on Fridays.

When Sam is considering making a more substantial purchase, he researches what is available, records price and feature comparisons in his notebook, thinks about it for a few days, then calls State Trustees to ask for the funds to be released.

With appropriate support, Sam is likely to be capable of increasing his capacity to budget higher amounts provided less often by State Trustees, thereby increasing his financial autonomy. However, neither he nor his support workers have been informed that this is an option.

When given an opportunity to respond to a draft of this report, State Trustees said it would like to know the identity of ‘Sam’ so it can take appropriate action. Ombudsman investigators communicated this information to Darebin Community Legal Centre and Mind Australia.

**Independence wound back**

This report discussed problems Phil had with State Trustees’ sale of his shares on page 49.

Villamanta Disability Rights Legal Service told the Ombudsman that Phil also had trouble getting into State Trustees’ Financial Independence Program.

When VCAT appointed State Trustees in 2017 to help Phil with some complex financial issues, he was managing his day-to-day expenses well. His disability support pension was paid into his bank account every fortnight, and he arranged a series of direct debits from the account to make sure he paid his bills on time. The VCAT order noted, in bold, that Phil was ‘successfully managing his finances on a day-to-day basis and [was] a suitable candidate for inclusion in the Financial Independence Program’.

State Trustees did not include Phil in the program. Instead, it redirected his pension and bills to its address. Villamanta said it contacted State Trustees on Phil’s behalf and State Trustees agreed to pay Phil’s pension into his bank account so he could pay his bills himself. However, this took around six weeks. In the meantime, Phil’s direct debits were at risk of failing.

When the Ombudsman raised the case with State Trustees, it said its consultant ‘unfortunately overlooked’ VCAT’s note. It also said it was unable to give Phil his pension straight away because it had to pay other expenses for him. It had apologised to Phil previously and did so again.
State Trustees’ ‘least restrictive’ approach

225. The investigation also observed problems with the way State Trustees applies the ‘least restrictive’ principle in practice, particularly regarding client budgets and requests for extra funds.

226. State Trustees’ procedures say consultants should take a ‘least restrictive’ approach when preparing budgets. When a client requests extra money, the procedures say consultants should consider the client’s best interests, whether the request is reasonable and whether it is expedient to release the funds.

227. The procedures also discuss the concept of ‘dignity of risk’. They note ‘all people take risks in their lives and … risk-taking is a part of living a dignified life’. They advise consultants:

DO NOT refuse a request for funds because it adversely impacts on the budget. If a client has the money and the funds are for a purpose in the client’s best interests, the request should be granted.

228. When the investigation reviewed its sample of 30 client cases, we observed that State Trustees was not always consulting clients during budget reviews about their goals for their income and savings (see page 45).

229. As a result, some clients were calling State Trustees frequently to ask for extra money on top of their budget and living allowance. The investigation heard it is common for clients to make such requests. One manager said they made up three quarters of calls to State Trustees’ Contact Centre, which total around 220,000 each year.

230. Victoria Legal Aid’s submission described this system as a ‘restrictive drip-feed’ approach. It said:

Our clients often describe the indignity of having to call State Trustees to ask for money to buy toiletries or underwear or pay for a haircut or buy presents for their niece or nephew because their meagre allowance does not stretch that far.

231. When the investigation reviewed client files, we observed that consultants sometimes interpreted clients’ requests for extra money as a sign they could not manage independently.

232. State Trustees’ practices appeared to be contributing to the problem. State Trustees was giving information to clients about their budgets verbally and relying on them to remember what was said. It had not given any of the clients a copy of their budget, so they could see how much they had to spend and track their progress. Managers confirmed at interview that State Trustees does not send budgets to clients, unless they request a copy.

233. Darebin Community Legal Centre and Mind Australia spoke with two clients when preparing their submission. They said the clients had never seen a copy of their budgets and ‘both reported that this would be of assistance to them in improving their budgeting capacity’.

234. In response to a draft of this report, State Trustees said

[t]raditionally State Trustees has not automatically sent a client their budget as it has the potential to facilitate financial abuse, but we are reviewing this approach.
235. In the cases reviewed by the investigation, we also observed that State Trustees’ account statements did not give clients a clear picture of their spending or level of wealth:

- As page 52 noted, the statements were complex and assumed some accounting knowledge.
- The statements made it difficult for clients to see how they were spending money. They listed various categories of spending and showed the total amount spent by the client under each category. Categories like ‘Rent’ were self-explanatory, but others were cryptic. In one case, an amount described as ‘Motor Vehicle – Running Costs’ turned out to be CityLink tolls. In another case, we queried why State Trustees paid $100 for ‘Gardening’ for a man who lived in a high-rise apartment. State Trustees clarified the money was spent on pot plants.
- Some statements contained out-of-date or incomplete information about clients’ assets. In one case, State Trustees’ account statements listed the value of a woman’s properties as $500,150. The woman’s council rates notices listed the capital improved value of the properties at $1.44 million. In other cases, statements listed assets no longer held by the client (see case study on page 32).

236. The investigation also observed that when clients called State Trustees’ Contact Centre for money, they sometimes received inconsistent messages about budgets and spending. On some occasions, clients were told they were overspending their budget and were refused extra money. On other occasions, consultants agreed to requests. The case study on the following page is an example.

237. The submission from Darebin Community Legal Centre and Mind Australia recommended State Trustees take more positive measures to support clients – giving clients a print out of their budget at the start of each quarter; discussing budgeting and goal setting and the client’s progress; and setting joint targets aimed at increasing autonomy. They argued:

> The current approach denies represented persons an exit plan and resigns them to indefinite financial management by an administrator. It fosters a culture of dependence.

238. The following case study illustrates the impact of the current approach on one client’s ability to make independent decisions.
Warwick is in his 40s, has schizophrenia and lives in supported housing for people at risk of long-term homelessness. He receives a disability support pension. His main asset is his superannuation.

Warwick complained to the Ombudsman about State Trustees in 2018 with help from his support worker and Inner Melbourne Community Legal. Warwick told Ombudsman officers that State Trustees was putting money into his superannuation. He said he was frustrated because he is unwell and wants to spend more of his money now.

Warwick’s support worker said communication from State Trustees is ‘virtually non-existent’ and Warwick ‘is often unaware of his own financial standing’. He said he recently found out Warwick had a budget deficit with State Trustees and expressed concern that Warwick was overspending.

When the investigation reviewed Warwick’s file, it confirmed Warwick’s understanding of his financial position was incorrect. It showed Warwick had been calling State Trustees for extra funds and overspending significantly for years. In 2017-18, his spending exceeded his income by almost $10,000. Contrary to Warwick’s understanding, State Trustees’ financial planners had withdrawn over $60,000 from his superannuation to boost his liquidity.

State Trustees never told Warwick it was having to withdraw money from his superannuation. His account statements did not clearly show what was happening either. It did not include information about Warwick’s superannuation, so he could see that account balance dropping. Warwick could not see his cash account dropping either, because State Trustees was topping it up with the money from his superannuation.

Warwick was also getting conflicting messages when he called State Trustees for extra money. In one case, a consultant declined a request from Warwick for $250 for a fish tank because he was overspending. Less than a fortnight later, another consultant agreed to give Warwick $1,500 for a fish tank.

When the Ombudsman raised Warwick’s case with State Trustees, it acknowledged it should have discussed its financial plans with Warwick so he was aware of what was happening with his money. It said it wanted to take a least restrictive approach to Warwick’s requests for money but acknowledged ‘inconsistent decision-making has led to [Warwick’s] financial position to be precarious.’ State Trustees later met with Warwick to discuss his financial situation.
**Restoring independence**

239. Some clients who complain to the Ombudsman say they want to take back control of their financial affairs from State Trustees.

240. For State Trustees’ power of attorney clients, this is relatively straightforward. If the client regains capacity, State Trustees is required to act under their instructions and they can revoke the power of attorney if they wish. State Trustees’ procedures say it confirms the client’s capacity at regular intervals and may request a medical report.

241. VCAT-appointed clients, on the other hand, need to return to VCAT to have their order changed. VCAT reassesses orders at least once every three years. Clients can apply for an earlier hearing if they wish.

242. The National Standards for Financial Managers require State Trustees to be proactive about monitoring clients’ capacity to manage their affairs and informing VCAT. The Standards say financial managers like State Trustees will:

   • make recommendations about whether orders should be continued or revoked when they come up for reassessment
   • make their own submissions where ‘they feel that the Order is no longer necessary or should be less restrictive’.

243. State Trustees does not follow this standard. It prepares a written report to VCAT whenever clients’ orders come up for reassessment which has a section titled ‘Recommendation’. However, the recommendation in each report reviewed by the investigation was: ‘If the Tribunal sees fit, State Trustees would be pleased to continue the management of the affairs of [the name of the client].’

244. An experienced manager said at interview that they could not recall State Trustees ever making recommendations to VCAT. The manager said, ‘I’m not one hundred per cent sure of the reason … but we never have.’ Another manager said:

   I think we’re very supportive [of VCAT revoking orders] when the client or someone else initiates it … I’m not certain … that we proactively do that.

245. Managers said if clients or families ask about revoking orders, consultants advise them how to apply to VCAT. This relies on clients or their family or advocates to initiate this conversation.

246. Advocacy groups expressed frustration with this approach in submissions. The Mental Health Legal Centre said it once assisted a client who was still under administration despite not having seen a psychiatrist in 16 years. Victoria Legal Aid raised the following case in its submission.
Independent but still paying for an administrator

Paul is almost 60 and lives independently. He joined State Trustees’ Financial Independence Program in 2011. According to Victoria Legal Aid, State Trustees told VCAT it would recommend a review of Paul’s order if he completed the program successfully over three months.

Paul was successful in the program, but Victoria Legal Aid says State Trustees did not make any recommendation to VCAT when Paul’s order came up for reassessment in 2012, 2013 and 2015.

Victoria Legal Aid said Paul sought its advice in 2017. It said Paul was managing most of his own income at this point. It helped him apply to VCAT to have his order revoked and he is now managing his own affairs again.

Victoria Legal Aid noted Paul paid more than $8,000 in fees to State Trustees while he was on the Financial Independence Program.

The Ombudsman asked State Trustees to review Paul’s file and consider reimbursing some of its fees if it should have advised him about his options for revoking his administration order.

State Trustees said Paul may have been able to resume management of his affairs in 2015 but he did not request this during discussions with its consultants. It also noted VCAT made the decision to continue Paul’s administration order.

However, State Trustees said, ‘we recognise the need to be more proactive in recommending that orders be revoked.’

Fees and commissions

247. People who complain to the Ombudsman about State Trustees often mention the amount State Trustees charges for its services. The investigation also looked at these arrangements and whether State Trustees acts in the interests of clients.

State Trustees’ fees and commissions

248. State Trustees charges its VCAT and power of attorney clients the following fees and commissions for its services:

- a commission on clients’ income
- a management fee on clients’ cash and investment accounts
- commissions on any assets ‘realised’ while State Trustees is managing their affairs, such as property sales
- additional fees for professional services as needed such as tax, financial planning and legal advice
- additional costs for other expenses which State Trustees determines are needed for the client, such as costs of property inspections and maintenance.

249. These charges are authorised by law. The State Trustees (State Owned Company) Act states that State Trustees can charge ‘fair and reasonable’ commissions, fees, charges and disbursements. VCAT authorises State Trustees’ fees and commissions when it makes administration orders for VCAT clients. Power of attorney clients authorise State Trustees’ charges when they execute their power of attorney document.
The law recognises people with limited financial means may not be able to afford State Trustees’ fees and charges. The State Trustees (State Owned Company) Act makes the Minister for Disability, Ageing and Carers responsible for ensuring access to services for people in these circumstances. The Minister discharges this obligation through the Department of Health and Human Services’ community services agreement with State Trustees. Under the agreement, the department provides around $18 million each financial year to State Trustees to allocate across its services as it sees fit.

People who contact the Ombudsman often argue State Trustees’ fees are too high. At the time this report was drafted, for example, State Trustees was charging $385 to prepare a standard tax return for its clients. Many Victorian tax agents perform this service for a lower rate.

State Trustees reviewed its fee structure in 2017 and 2018. Internal briefings obtained by the investigation show it undertook extensive financial modelling and consultation with external stakeholders and tried to ensure no client was worse off. On 1 July 2018, it introduced a ‘fairer, new pricing structure’ for VCAT and power of attorney clients. Figure 4 below compares the main fees and charges for VCAT-appointed clients pre- and post-July 2018.

### Figure 4: State Trustees’ main fees and commissions for VCAT-appointed clients

<table>
<thead>
<tr>
<th></th>
<th>Pre 1 July 2018</th>
<th>Post 1 July 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Capital commission</strong></td>
<td>5.5% capital commission</td>
<td>For assets:</td>
</tr>
<tr>
<td>(charged on the gross</td>
<td></td>
<td>Up to $500,000: 3.3%</td>
</tr>
<tr>
<td>value of any asset</td>
<td></td>
<td>$500,001-$1,000,000: $16,500 plus 1.5% of the amount</td>
</tr>
<tr>
<td>realised during the</td>
<td></td>
<td>over $500,000</td>
</tr>
<tr>
<td>administration)</td>
<td></td>
<td>$1,000,001-$3,000,000: $24,000 plus 0.55% of the</td>
</tr>
<tr>
<td></td>
<td></td>
<td>amount over $1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>More than $3,000,000: $35,000 plus 0.44% of the</td>
</tr>
<tr>
<td></td>
<td></td>
<td>amount over $3,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Subject to VCAT’s order, an additional 2.2% may be</td>
</tr>
<tr>
<td></td>
<td></td>
<td>charged on the gross value of client’s assets if it</td>
</tr>
<tr>
<td></td>
<td></td>
<td>has ‘not otherwise received reasonable payment’ for</td>
</tr>
<tr>
<td></td>
<td></td>
<td>providing administration services</td>
</tr>
<tr>
<td><strong>Income commission</strong></td>
<td>3.3% on pension and allowances from Centrelink or</td>
<td>3.3% on pension and allowances from Centrelink or</td>
</tr>
<tr>
<td></td>
<td>Department of Veteran Affairs</td>
<td>Department of Veteran Affairs</td>
</tr>
<tr>
<td></td>
<td>6.6% on all other gross income</td>
<td>6.6% on all other gross income</td>
</tr>
<tr>
<td><strong>Management fee</strong></td>
<td>1.1% per annum on funds held in client’s Common Fund*</td>
<td>0.88% per annum on funds held in client’s Common Fund*</td>
</tr>
</tbody>
</table>

*State Trustees keeps some money for each client in a cash common fund. The fund operates like a transaction account and is used for pensions and other income and to pay everyday expenses like utility bills and insurance.
Financial hardship fee relief

253. In addition to the Victorian Government’s $18 million annual funding to State Trustees, the government also provides fee relief for the poorest of State Trustees’ VCAT-appointed clients.

254. Under the Department of Health and Human Services’ community services agreement with State Trustees, the department pays fees and commissions (excluding capital commissions and management fees) for clients with an average daily account balance of less than $3,000. State Trustees calculates clients’ entitlement to fee relief at the end of each financial quarter. The department reimburses State Trustees and State Trustees reimburses its eligible clients.

255. State Trustees’ data shows 2,640 clients, around a quarter of State Trustees’ clients, received fee relief in 2017-18. The department advised the investigation these payments totalled just under $1.15 million (excluding GST).

256. The Office of the Public Advocate’s submission raised concerns about the time it takes to reimburse fees to clients under this scheme. It said it can take three to six months for clients to have fees and commissions returned to their account.

257. A support worker with Launch Housing, an advocacy group which provides services to homeless persons, noted in his submission that the reasonableness of fees is a particular concern for the group’s clients.

258. The investigation noted the $3,000 threshold has remained unchanged for at least 11 years.

259. Other public trustees have more generous hardship policies for clients with low income or assets. The schemes are complex, but generally:

- The South Australian Public Trustee provides fee relief for clients with assets less than $4,950.
- The Queensland Public Trustee offers rebates to clients with assets less than $5,000.
- The Tasmanian Public Trustee does not charge income or capital commissions or monthly account fees for clients with assets less than $10,000.
- The New South Wales Trustee and Guardian does not charge establishment or account keeping fees for clients with assets less than $25,000. It also charges reduced fees for clients with assets between $25,000 and $75,000.

Other fee waivers

260. State Trustees’ procedures say VCAT-appointed clients can also apply to the Executive General Manager, Client Services for a fee waiver if the client is experiencing hardship, the client’s case is simple or VCAT authorises a waiver.

261. In practice, the fee waiver discretion is rarely exercised. A senior manager said at interview:

> In my six months in the role, I don’t recall a request to vary [personal financial administration pricing] different to what’s been in the VCAT order.

262. The investigation identified the following examples where a fee waiver appeared warranted but was not approved by State Trustees.
Refusal to waive commission for four months’ work

Ella is an elderly client who has lived in a nursing home since a stroke left her partly paralysed and unable to speak.

Ella’s children could not agree on how her affairs should be managed so VCAT appointed State Trustees as Ella’s administrator in early 2018. State Trustees charged Ella its usual fees and commissions including a once-off 5.5 per cent capital commission on her assets, totalling $840 (excluding GST).

Four months later, Ella’s son Nick applied to VCAT to become her administrator and VCAT revoked State Trustees’ appointment.

Nick was unhappy with the way State Trustees managed Ella’s affairs (see page 75 for more information). He asked State Trustees to refund its commission. A consultant explained to Nick that the charge was authorised by VCAT’s administration order. The consultant did not advise Nick that he could apply to the Executive General Manager, Client Services for a fee waiver.

Nick complained to the Ombudsman. We asked State Trustees to consider reimbursing a portion of the capital commission in light of the short time it acted as Ella’s administrator and the other problems with Ella’s case. State Trustees said it believed the $840 reflected the work it undertook for Ella during its period of administration. However, it refunded the commission in recognition of the other problems.

Limited order, same commission

Rosemary is in her 60s. She rents a house with her partner and receives a disability support pension.

VCAT appointed State Trustees as Rosemary’s administrator in late 2016 on a limited order. Limited orders are different from ‘plenary orders’, which give State Trustees the power to manage all of a client’s financial and legal affairs. State Trustees’ only role in Rosemary’s case is to manage an inheritance Rosemary received from her mother.

State Trustees’ invested the money in one of its investment funds. As of December 2018, State Trustees had charged Rosemary $4,600 in fees and commissions (excluding GST). These were the same fees and commissions paid by clients on a plenary order.

The Ombudsman asked State Trustees why this was so, given the limited nature of its work for Rosemary. State Trustees said it acted in accordance with Rosemary’s VCAT order.

The VCAT order states how much commission State Trustees is entitled to charge Rosemary. While State Trustees acted in accordance with this entitlement, it could have exercised its discretion to reduce the fees, taking into account the limited nature of Rosemary’s administration order.
GST and VCAT fees

263. While the investigation was reviewing State Trustees’ fees and charges, we noticed other organisations were charging State Trustees’ clients as well:

• State Trustees’ clients pay the 10 per cent goods and services tax (GST) on State Trustees’ fees and commissions.
• VCAT charges clients on administration orders an annual fee which, at the time this report was drafted, was $130.10.

264. State Trustees’ counterpart in New South Wales, the New South Wales Trustee and Guardian, does not charge its clients GST. It told the investigation it applied to the Australian Taxation Office for a private ruling to clarify this issue. The Australian Taxation Office issued a private ruling which recognised its financial management fees are GST-exempt.

265. In its response to the draft report, State Trustees said it will ‘raise with the Victorian Government the pursuit of a GST exemption’ for the fees on its services.

266. VCAT charges its annual fee under the Guardianship and Administration Regulations 2008 (Vic). Clients are liable to pay if they earn more than a specified amount each fortnight, calculated according to the poverty line.

267. The regulations provide for VCAT to waive all or part of the fee on the grounds of ‘undue hardship’, on its own motion, or on the application of an administrator. In the cases reviewed by the investigation, some clients had not paid the fee in recent years. Others were paying the fee even though they had less than $2,000 in their account and their only real source of income was the age or disability support pension.

268. The evidence identified by the investigation raises questions about the fairness of this policy.

269. The investigation gave VCAT and the Department of Justice and Community Safety, the department responsible for the Guardianship and Administration Regulations, an opportunity to comment on this issue. VCAT explained that it depends on the annual fee to partially fund the cost of proceedings in its guardianship list. VCAT and the department said the Regulations expire in November 2019 and a Regulatory Impact Statement about fees will be released for comment. The department said this will provide opportunity for considering whether the fees are set at an appropriate level, and whether ‘existing affordability mechanisms address the needs of this vulnerable cohort.’

270. There is an opportunity for State Trustees to advocate for its clients on these issues.
What causes the problems with State Trustees’ services?

271. The investigation wanted to find out what has been causing the problems and inconsistencies in State Trustees’ services. We looked at what was happening inside State Trustees, by reviewing internal documents and data, and interviewing State Trustees managers about their work. This uncovered a list of challenges facing State Trustees.

Flawed case management

272. When the investigation asked State Trustees managers about the problems we identified in client files, they often talked about case management.

273. Before the middle of 2017, State Trustees had a traditional case management model, similar to that used by other public trustees around Australia. Each client had an appointed consultant who managed all of their financial affairs.

274. State Trustees managers told the investigation this model created problems. It meant knowledge of a client’s affairs was concentrated in a single consultant. If that consultant became unwell or left the company, it was hard for someone else to take over quickly. Managers said there were also risks for clients if their consultant was underperforming for any reason.

275. In the middle of 2017, State Trustees introduced a new case management model called ‘streaming’. This involved workforce and technology changes. State Trustees:

- Reorganised its consultants into seven specialist teams. They included a team to set up new client accounts, an aged care team and teams for property and legal matters.
- Pooled the outstanding tasks for all of its clients in a new electronic system called ‘Pulse’. The Pulse system classifies client tasks according to type and allocates them to the relevant specialist team.
- Changed consultants’ roles so that, instead of managing a portfolio of clients, they now perform whatever specialist tasks are allocated to their team by the Pulse system.

276. For State Trustees’ clients, this means, that instead of having a single consultant looking after their affairs, they now have to deal with multiple consultants about different issues.

277. At the time, written briefings for the State Trustees’ board and Chief Executive Officer mentioned the new streaming model would ‘reduce preventable noise related to allocation, tracking and prioritisation of work’ and ‘remove single point dependency for clients leading to a better client experience’.

278. The investigation identified problems with the new model in practice.

Lost focus on clients

279. Under the new streaming model, consultants pick up tasks for different clients knowing little about their particular history or their affairs.

280. Managers said consultants familiarise themselves with clients before making decisions by reading their file. In the 30 cases reviewed by the investigation, some clients had complex needs and extensive records. The investigation heard that consultants in State Trustees’ Contact Centre, who have a six minute target for phone calls, are expected to check at least the last 14 days of records. Consultants in other teams can decide how far back they look.
281. This creates practical challenges for consultants:

- It takes longer to make decisions. One manager said, ‘If you don’t know that person, really inside and out, and the full gamut of their needs, it makes it really challenging ... [W]e find the time it takes consultants to complete tasks is a lot greater’.

- Client files are not always complete. The Victorian Auditor-General’s 2012 report criticised State Trustees’ record-keeping. When the investigation reviewed files, we also found key information and documents were sometimes missing, such as records of conversations with clients or carers and aged care residential agreements. State Trustees’ recently appointed Chief Executive Officer said in correspondence that State Trustees recognised its response to requests for information for some clients was ‘affected by failures to capture documents and record information’.

282. State Trustees’ managers observed at interview that the new model changed the ‘mindset’ of consultants. One said it made State Trustees ‘much more transactional in nature’. Another manager said they noticed consultants now tend to ‘tick and flick’ tasks rather than thinking about the client’s overall needs. The manager said:

we’re not managing a client as an individual, we’re managing the State Trustees’ pool of clients as a collective and we kind of forgot that they’re actually human beings.

283. Complaints to the Ombudsman sometimes reflect clients’ and families’ frustration with this approach, particularly where they previously had a good relationship with their consultant. The comments on the following page are examples.

**Low oversight and accountability**

284. When the investigation reviewed the sample of 30 client cases, we also observed issues for clients ‘slipping through the cracks’, as matters were handed from consultant to consultant.
Examples of comments about case management

‘Before … I had [Laura]. She was looking after [my brother]. Not a problem. Best woman on the planet … Wednesday when I rang the woman in charge … she said they were in a team. They don’t have individual people looking after individual souls. It’s a team effort. I don’t know how they’ve reorganised things but their team effort is out the door.’

Brother of State Trustees client
Submission to the Ombudsman

‘I have spoken to so many people at State Trustees. I’m sure the recent one doesn’t know what the others have told me.’

State Trustees client
Complaint to the Ombudsman

‘Siobhan, who has a mild intellectual disability, says she found it easier speaking to one person instead of now ‘just speaking to anyone’. Siobhan finds it confusing as with the pooled administrator system they do not know anything about her and she has to continually retell her story.’

Victoria Legal Aid
Submission to investigation

‘[My sister’s] financials are now actioned by a call centre of anonymous bill payers as opposed to designated consultants of the past that had allocated clients to properly manage.’

Sister of State Trustees client
Complaint to Ombudsman

‘[Mark] has some very significant communication issues due to his Acquired Brain Injury … he is not aware of any contact person assigned to his account, and named this as a source of frustration as consultants are often unaware of his financial standing.’

Support worker
Complaint to the Ombudsman

‘Jamie now does not feel he understands where his money is going and is confused by how State Trustees budgets for him. Jamie also gets really frustrated that each time he calls State Trustees he speaks to someone who does not know him or his case. He must explain his situation to a new person each time he calls.’

Victoria Legal Aid
Submission to investigation
285. The investigation asked managers how often State Trustees reviews clients’ files to make sure their affairs are up to date. Managers said this happens:

- When the administration order comes up for reassessment at VCAT and State Trustees prepares a report. This is usually every three years.
- During internal quality assurance audits. These audits look at 100 VCAT client files and 15 power of attorney files each quarter.
- When consultants review clients’ budgets. This is usually once a year, unless there is a reason to update the budget sooner.

286. In the meantime, if clients have an issue that needs monitoring or follow up, consultants are meant to hold onto the issue or add a ‘pending’ task to the Pulse system. One manager said, ‘a lot of the time those are the sorts of things that do get missed.’

287. In several cases reviewed by the investigation, consultants had noted problems on file but no one acted to address them. It was not clear who was responsible and accountable for resolving those problems.

288. One manager said at interview that when the streaming model was introduced:

> I noticed a huge shift in accountability … The consultants here I’ve always found to have such pride in the work that they do and … [they] genuinely care about the work that they do and the service that they provide. And although I don’t think that passion and that wanting to provide an excellent customer experience has gone, their level of accountability in terms of being holistic in the way they manage the clients, and taking accountability and ownership and responsibility, not just for that one piece of work but for everything that client might need at that point in time – that I don’t feel is there anymore.

289. Managers said they have introduced a rule so that when a consultant takes a task for a client, they complete other outstanding tasks for that client. One said:

> at least you’re dealing with that client and anything that client has going on for them at that particular point in time in a holistic way.

290. Some managers interviewed by the investigation said State Trustees needed ‘something in-between’ traditional case management and streaming. One said:

> we’ve gone from one extreme to the other extreme and I don’t feel that either of them are providing our clients with the service and the experience that they expect. And what they deserve.
The following case studies illustrate the impact of case management problems on two clients. One was put at risk of eviction and the other at risk of having her electricity disconnected.

**Unwell client at risk of eviction**

Adam has schizophrenia and lives in supported housing for people who have experienced long-term homelessness. To meet Adam’s needs, his support workers and State Trustees agreed State Trustees would consult his support workers before giving Adam extra money.

In the middle of 2017, around the time State Trustees moved to its new streaming model, Adam stopped taking his medication and became unwell. He called State Trustees and said he was moving to New South Wales. A consultant provided money for a train ticket. The consultant did not speak with Adam’s case workers but put a note on his file saying State Trustees needed to check with his housing provider before stopping his rent.

Adam called often in the next few weeks and spoke to different consultants. State Trustees cancelled his rent without following the advice to check with the housing provider. His file does not record when or why this happened.

A month after Adam left, another consultant called his support workers, who said Adam’s things were still in his room and they were expecting him to come home. State Trustees did not reinstate his rent until almost three weeks later, when a different consultant noticed State Trustees wasn’t paying Adam’s rent anymore.

Inner Melbourne Community Legal complained to the Ombudsman because Adam now owed rent arrears and had lost his Centrelink rent assistance during the period State Trustees stopped paying his rent. It said:

> From a social work perspective this is a particularly serious oversight as it may well have resulted in [Adam] facing homelessness again. Fortunately, [the housing provider] have taken the position that [Adam] will not face eviction for rent arrears, as they are a social housing enterprise and have some understanding around [Adam’s] mental health issues.

When the investigation looked at Adam’s file, we found at least 14 different consultants had dealt with Adam’s case in a seven-week period.
Beth is in her 70s and rents her own home using her age pension. VCAT appointed State Trustees as her administrator in 2017. A State Trustees consultant who visited Beth described her as a ‘lovely woman’ with a ‘neat and tidy’ home.

Fourteen months later, according to the State Trustees’ file, it took a call from a ‘distressed, confused and angry’ Beth because she had a disconnection notice from her energy company. The company told Beth her electricity and gas bills had not been paid for months and she owed more than $2,000.

Beth’s daughter complained to the Ombudsman. She said:

I just don’t feel that it’s right ... And they’re getting paid to do this as well.

Beth’s file showed State Trustees wrote to Beth’s energy company when it became her administrator, but the company did not respond and continued sending bills to Beth’s former administrator. State Trustees did not notice it was not receiving and paying any energy bills for Beth. State Trustees had to negotiate for Beth to pay off the debt in $40 fortnightly instalments.

The investigation also noticed other problems in Beth’s file:

- When Beth’s driver licence came up for renewal in October 2017, she told a State Trustees consultant she paid the licence fee and he agreed to reimburse her. Six days later, a second consultant, unaware of these events, paid the licence fee a second time. The following day, a third consultant identified the double payment and wrote in Beth’s file: ‘Hopefully VicRoads will send the funds back’. Three months later, a fourth consultant noted State Trustees needed to pursue a refund. At the end of 2018, the problem was still unresolved.

- State Trustees was meant to cancel Beth’s old car insurance policy after it became her administrator in 2017. It did not do so, even though the old insurer was warning the payments were overdue. Beth’s daughter emailed State Trustees in June 2018 to say the insurer was contacting Beth direct and this, along with other problems with her bills, was causing ‘extreme distress which is unacceptable due to her mental health’. The old insurer eventually cancelled the policy itself.

The Ombudsman raised these issues with State Trustees and it reimbursed Beth for her driver licence fee, car insurance and another expense. It also apologised to her for the distress and inconvenience caused by the insurance problems.

State Trustees’ file showed at least 48 different consultants dealt with Beth’s file since State Trustees moved to its streaming model in mid-2017.
Backlogs

292. The investigation also heard State Trustees underestimated its workload when it introduced the streaming model and it now has a significant backlog of work.

293. Managers explained at interview that State Trustees had trouble tracking workloads in the past because consultants worked on hard copy records. One said work ‘was all hidden in people’s drawers and in their filing cabinets and in little manila folders. So we didn’t actually know the volume of work we had.’

294. State Trustees’ internal briefings show the company expected the new streaming model to create efficiencies. One briefing to State Trustees’ board estimated Client Services could reduce its full-time equivalent workforce by 10.6 staff just from the technology changes.

295. When State Trustees put all of its tasks for clients into its new Pulse system in 2017, one manager said ‘a massive workload hit them. All of a sudden it was visible, hitting everyone in the face. [But] the resources had left the organisation.’

296. State Trustees’ internal performance reports show the extent of the problem. At one point, State Trustees had almost 10,000 tasks for clients outstanding.

297. This backlog affected State Trustees’ ability to efficiently complete work for clients. One manager told the investigation their team was two to three months behind with some work. State Trustees has timeliness targets for many of its tasks, such as responding to letters within 10 days or processing a client’s change of address within five days. It aims to comply with those targets at least 80 per cent of the time but has not met that goal for two years.

298. The investigation heard that State Trustees’ board approved an extra 16 employees in September 2018 and they were starting to reduce the backlog. A senior manager said, ‘we’ve still got a little way to go.’

299. When the Ombudsman wrote to State Trustees about problems the investigation identified in our review of 30 client cases, State Trustees said workload pressures contributed to the problems in many of the cases. The case study on the following page shows how this affects clients.

300. State Trustees managers told the investigation that teams now meet weekly to discuss the backlog and decide their priorities. One said:

‘it’s always a juggling act. As we put focus from week to week in one area and we bring that volume down and improve that [target] that means something else isn’t being touched … So sometimes it is a bit of a juggling act and a bit of just putting out the spot fires here and there.’

301. A senior manager told the investigation the company can at least see its workload now. The manager said, ‘Before we didn’t even know. So maybe we thought we were doing OK before but actually there was probably a whole lot of work that wasn’t getting done but we didn’t know because we didn’t have the visibility.’

Workforce challenges

302. State Trustees’ recently appointed Chief Executive Officer told the Ombudsman the new streaming model has been unpopular with consultants, and Client Services has seen increased staff turnover. He said this means Client Services has ‘a newer workforce, who are less experienced and are continuing to develop their skills working client files.’
303. State Trustees managers said during interview that some teams are affected more than others. The investigation heard the aged care team has had only nine of 12 positions filled in recent times. We also heard absenteeism has been a problem in State Trustees’ Contact Centre, adding to long call waiting times. One manager said extra staff had ‘certainly taken a lot of the pressure off’ but:

it’s a bit of a spiral effect where the guys are just getting exhausted so, you know, they’re working their backsides off here and becoming unwell, and when those ones that are unwell are back, these ones are off. And we’re constantly going like that.

304. State Trustees has five to six week induction training for new consultants but managers estimated it took from nine months to three years to become experienced. One said:

When you come in, you think it’s about paying bills and you think it’s about gathering people’s finances. It’s not. The things that you have to know ... it’s such a breadth of knowledge that no one person will come fully trained unless [they’ve] come from another trustee company in another state.
305. The Financial and Consumer Rights Council’s submissions also noted debt and financial vulnerability are increasingly complex areas and State Trustees has a difficult role. It recommended State Trustees consider employing more in-house financial counsellors or establishing referral processes to financial counsellors. In response to a draft of this report, State Trustees said it is considering its financial counselling resources.

306. Managers said consultants come from a range of backgrounds, often from financial planning or banking, but it can be difficult attracting experienced people. Most consultants receive less than the average weekly wage.

307. The investigation also heard that workloads are unrealistic. The investigation calculated that, on average, consultants in the Contact Centre could expect to deal with a minimum of 50 calls from clients and third parties a day. Consultants in the team that transitions clients into aged care (which still allocates case managers to individual clients) had 75-90 client files each. Consultants in the new client team averaged around 100 files in 2017 and 2018, compared with a target of 40 files. Consultants in other teams have a target of 10 tasks a day, which may involve reviewing and making decisions on different client files.

308. When the investigation asked about delays and failures to consult clients or enrol them in the Financial Independence Program, State Trustees managers pointed to these pressures. One said ‘it’s just layer upon layer upon layer upon layer. The manager said:

There’s too much for one person to do at any one given point in time. There’s too many things to remember. There’s too many processes. There’s too many systems. There’s too many databases.

I mean we went 12-18 months ago to having two computer screens because the business realised that it was just too hard to do our work on one. You need at least two. Sometimes I feel with all the different screens and systems I’ve got open I need five.

309. State Trustees’ internal data confirms Client Services’ voluntary staff turnover and absenteeism rates rose slightly in 2017-18. As at 30 June 2018, 23 per cent of consultants had worked in their roles for less than 12 months, although that is likely to increase as a result of recent recruitment.

310. These challenges are not new for State Trustees. One State Trustees manager said that before the streaming model was introduced, consultants used to manage up to 140 clients at a time, a workload they described as ‘ludicrous. Completely unrealistic’. In 2012, the Victorian Auditor-General Office’s report also talked about high staff turnover, high caseloads and high levels of new and inexperienced consultants.

311. Almost all of the State Trustees managers interviewed for the investigation said they would like to see State Trustees employ additional consultants. One said:

I’ve always been one of those people that go, you know, resourcing is not the answer. It’s processes. It’s having efficient processes and the right systems in place … [A]lthough I 100 per cent still agree with that, I think it’s gotten to the point here at State Trustees that resourcing is actually part of the problem as well. We do not have enough people to do the work. I think we can review our processes and our systems till we’re blue in the face but I think the resourcing is still a real issue for us at the moment.
Neglect of human rights

312. Amidst State Trustees’ operational changes and pressures, evidence suggests human rights and needs of people with a disability have received limited attention.

313. State Trustees has around 10,000 clients with a disability and its role represents a significant intrusion into their autonomy and independence. Despite this, the investigation found:

- State Trustees did not provide training for consultants about the Charter of Human Rights and Responsibilities Act until the investigation started.
- State Trustees did not have a Disability Action Plan until the investigation started.
- State Trustees includes information about working with people with a disability in its induction training, but there has been little ongoing training for consultants.
- As page 52 noted, State Trustees does not routinely ask clients about their communication needs and preferences. The investigation heard Contact Centre consultants use a different version of State Trustees’ client database and cannot easily access information about clients’ disability or illness when they call.
- State Trustees could not confirm whether it consulted disability or client groups when it was planning and implementing its new streaming case management model.
- During the investigation State Trustees revealed it had not engaged with the disability sector on proposed changes designed to improve the accessibility of its written communications, although it is now doing so.

314. Other public trustees in Australia told the investigation they take the needs of people with a disability and mental illness into account when developing services and provide guidance for consultants. For example:

- The NSW Trustee and Guardian has a communication guide for staff with links to advice on communicating with people with a disability, culturally and linguistically diverse clients and Aboriginal and Torres Strait Islander clients. Its staff attend disability awareness training and it has a Disability Advocacy Unit that provides training, support and guidance.
- The Queensland Public Trustee employs Disability Support Officers who can assist with planning and decision making about health and aged care. It also arranges regular training for staff about working with people with a disability.

---

17 The Disability Act 2006 (Vic) s 38 requires public sector bodies to prepare such plans for the purpose of reducing barriers to goods, services, facilities and employment, promoting inclusion and participation in the community and achieving tangible changes in attitudes and practices which discriminate against people with disabilities. Regulation 8 of the Disability Regulations 2018 (Vic) prescribes State Trustees as a ‘public sector body’ for the purposes of the laws.
Cost-shifting

315. The investigation also observed that State Trustees has shifted responsibility for some aspects of clients’ affairs to clients themselves, without considering their individual needs and capacity.

316. The investigation looked at three examples:

- **Choosing and connecting utilities and telephones** – In 2012, State Trustees stopped arranging utility connections and plans for clients. It advises clients that it ‘only pays the bills’ and clients need to arrange utilities themselves or seek help from family or support workers. When the investigation asked a State Trustees manager about this policy at interview, the manager said, ‘it’s to do with acting in the least restrictive manner and clients having the choice around the providers that they use’.

- **Pharmaceutical Benefits Scheme (PBS) safety net** – The Commonwealth Government’s PBS scheme offers free PBS medication to pensioners once they spend more than a set amount on PBS-listed medication. State Trustees’ procedures say: ‘It is the client’s responsibility to keep a record of the amount spent on PBS medication … Ideally the chemist will monitor the client’s PBS related expenditure and advise when the client has reached the threshold.’ State Trustees told the investigation it is ‘not practical’ for it to monitor PBS spending for various reasons. For example, it said clients sometimes pay chemist expenses themselves and State Trustees cannot access their chemist records.

- **Reporting wages to Centrelink** – Where clients work while receiving a pension, State Trustees’ procedures state: ‘The client or Employer is required to report wages directly to Centrelink/[the Department of Veterans’ Affairs]. The investigation was told it is not practical for State Trustees to perform this function because clients often collect their own payslips and wages.

317. These procedures do not take into account clients’ individual capacity and circumstances. In the cases reviewed by the investigation, some clients had capacity to manage these functions, but others did not. The case study on page 79 is one example.

318. The investigation also identified other flaws with this approach:

- It is not clear why State Trustees takes a ‘least restrictive’ approach for utility services, but not for other services. State Trustees has main supplier arrangements for insurance and property services, for example, and organises them for clients.

- Clients have no legal authority to deal with money and property themselves once State Trustees is managing their affairs. Section 52 of the 1986 Guardianship and Administration Act provides that clients are ‘deemed incapable’ of entering contacts without an order from VCAT or State Trustees’ written consent. Any contracts entered into by the client may be ‘void and of no effect’. The South Australian and Queensland public trustees advised the investigation they arrange clients’ utility connections for this reason.

- State Trustees does not always give clients information and support to manage these issues themselves. In the case of utility and telephone plans, for example, the investigation observed cases where clients had no inkling they needed to check or change plans because State Trustees was receiving and paying all their bills. The case study on page 80 illustrates the problems caused by this approach.
319. In the cases reviewed by the investigation, State Trustees sometimes asked family members, advocates or employers to take on these responsibilities when clients could not manage them on their own.

320. This sometimes bred frustration with State Trustees. Family members and advocates report that providers sometimes refuse to deal with them because, unlike State Trustees, they have no legal authority to manage clients’ financial affairs. Some also queried why they were having to deal with these matters when clients were paying State Trustees.

321. State Trustees’ procedures do not explain what happens when clients have no family members or other people who can help. The investigation asked one manager at interview about what would happen to a client who did not have the capacity to monitor their utility plan and compare market options. The manager said, ‘They would sort of stay where they are then.’

Pension suspended three times in a year

Jack has schizophrenia and has been a State Trustees client for almost six years. He receives a disability support pension and earns extra money doing seasonal work on a remote property. Jack’s employer sends his wages and payslips to State Trustees. State Trustees used to report Jack’s income to Centrelink but, in March 2015, it told him he needed to report to Centrelink himself.

Jack’s sister complained to the Ombudsman. She said State Trustees ‘think that ... he can do all this stuff but when it comes to technology ... he can’t. He just can’t cope with it.’ She said Jack’s pension had been cancelled three times in 2017 because he failed to report his wages to Centrelink. State Trustees suggested Jack’s sister report to Centrelink for him.

When the Ombudsman reviewed Jack’s file for this investigation, it found:

• State Trustees should have known Jack would have trouble reporting his wages himself. A 2013 medical report on its file says his illness makes him ‘chronically thought disorder[ed] and disorganised’.
• State Trustees’ client database contains a 2014 note saying ‘it is not practical for [Jack] to report his own wages due to his remoteness’. The phone coverage at the remote property is unreliable and Jack often communicates with State Trustees by letter and postcard.
• State Trustees had asked Jack’s employer to report his income before. Its response to State Trustees was: ‘What do you get paid for then?’
• Jack’s sister had already told State Trustees that Centrelink refused to deal with her.

The Ombudsman raised Jack’s case with State Trustees. State Trustees said ‘given [Jack’s] unique circumstances, we appreciate that we should have worked closely with him and [his sister], and undertaken the reporting ourselves (as we had previously done).’

State Trustees said Jack does not have to report to Centrelink at the moment but it will monitor the situation and, if it changes, it will speak to him with a view to reporting his wages. It apologised to Jack’s sister. It had trouble contacting Jack directly but sent a letter of apology to him through his sister.
No solution to excessive phone bills

Jack’s sister also told the Ombudsman she had been trying to arrange a better mobile phone plan for her brother.

When the Ombudsman looked at Jack’s file, it found he was on a $40 capped monthly plan but some of his monthly bills were as high as $200. State Trustees paid these bills. It did not send copies to Jack or warn him he might need to check his plan.

Jack's sister contacted Jack's phone company herself and found out he was paying high bills because his phone was switched to roaming when he was working. She and Jack worked out how to switch off roaming mode on his phone, but they wanted to change providers.

The file showed Jack’s sister called State Trustees five times about his phone account over 14 months. She told the Ombudsman:

The trustee said ... it’s none of their business if the bills are above the capped amount. They can’t tell the client what they can do or can’t do. They refuse to send the bill[s]. And they just pay the money out of my brother’s account.

When the Ombudsman contacted State Trustees about this issue, it said it had spoken with Jack's sister and he now has a new phone plan. It acknowledged it ‘should have been more responsive’ to his sister’s concerns and ‘been consistent with our advice.’
Accountability and transparency gaps

322. In the cases reviewed by the investigation, State Trustees was sometimes aware of problems with its services but had not always acknowledged and fixed them. The investigation looked at its accountability and transparency systems.

Complaint handling

323. State Trustees has a good complaint handling system on paper. It has a written complaint handling policy and a central complaints team. It publishes information about how to lodge a complaint on its website and includes information in its Welcome Packs for new clients. It aims to respond to verbal complaints in three days and written complaints in seven days.

324. However, the investigation identified missed opportunities to resolve complaints in practice.

325. Consultants do not always escalate complaints to the central complaints team. An individual who made a submission to the investigation said, ‘I’ve rung State Trustees half a dozen times asking to speak to a supervisor or a manager or a complaints department. They don’t put me through to anybody.’ According to State Trustees’ internal audits, in 2017-18 consultants did not follow proper escalation processes in 16 to 25 per cent of audited VCAT client files.

326. State Trustees’ willingness to resolve complaints was also patchy in the files reviewed by the investigation. It sometimes failed to respond to complaints within its promised timeframes. It acted quickly to fix problems in some cases, but in others it appeared to justify decisions instead of admitting and resolving errors. The following cases illustrate these problems.
Missed opportunity to fix mistake early

Page 66 of this report discussed issues with State Trustees’ commissions on Rosemary’s investments. VCAT appointed State Trustees in 2016 to look after an inheritance left to Rosemary by her mother. State Trustees invested the inheritance in one of its managed funds but forgot to ask Rosemary for her tax file number. This meant Rosemary was liable to pay withholding tax on interest from the fund.

In 2018, Rosemary’s partner noticed $317 in tax charges on her account statement and called State Trustees. A consultant told him there was a fact sheet explaining the charges on State Trustees’ website. Afterwards, the consultant realised this was wrong and put a note in State Trustees’ client database:

[Another consultant] advised that more information had been found and it looks like [State Trustees] are in fault as no [tax file number] was provided which caused the tax to be withheld. Ultimately meaning the information I provided to [Rosemary’s partner] was incorrect ... Could this please be looked at and addressed asap.

Ten days later, Rosemary complained in writing. She said ‘I have since read through the fact sheet and fail to see anything about any form of tax. Please explain?’ State Trustees did not acknowledge its mistake. It said:

We have not been provided with your Tax File number. Once you lodge a tax return [the tax] will be refunded to you directly. If you wish State Trustees to prepare and lodge your tax return please provide us with your tax file number and instructions in writing providing any PAYG certificates and a copy of your previous tax return. This is a fee for service and will be charged to your State Trustees account.

At the time, State Trustees was charging clients $385 for tax returns. The Ombudsman contacted State Trustees to try to resolve the matter. Again, State Trustees said Rosemary would get the tax back if she lodged a tax return.

The Ombudsman wrote to State Trustees’ recently appointed Chief Executive Officer noting it was unfair to expect Rosemary to pay State Trustees or another tax agent to recoup money lost through State Trustees’ error.

At this stage, State Trustees acknowledged it would usually obtain a tax file number when investing client money to avoid withholding tax, but failed to do so in Rosemary’s case. It reimbursed Rosemary and apologised for not resolving the issue earlier.

It took multiple calls and a letter from Rosemary and her partner, and two interventions by the Ombudsman, before State Trustees agreed to resolve what should have been a straightforward case.
A changing justification

Eva’s younger sister Joanne has been a State Trustees client for more than 15 years. Joanne is on a pension and has limited savings but often asks State Trustees for extra money on top of her living allowance. State Trustees agreed to speak with Eva before agreeing to any large requests.

In 2017, a medical supply company called State Trustees and said Joanne wanted four ‘aged care type’ chairs costing $1,300. State Trustees paid on invoice. It did not speak with Eva or Joanne.

When Eva saw the chairs at Joanne’s house, she complained to State Trustees. It initially said Joanne could afford the chairs and it had to consider her wishes, which was correct.

Eva asked for a written response to her complaints but did not get one until three months later, after the Ombudsman intervened. State Trustees’ email to Eva referred to the chairs as ‘medical chairs’ and said:

The purchase of the chairs were considered a medical requirement, which [your sister] is able to make decisions regarding. State Trustees received a request from [your sister] and the selected supplier, for the purchase of the medical chairs. This request was considered in the context of our role and was approved on that basis and in particular given [your sister] is able to make decisions regarding her medical requirements.

When the Ombudsman reviewed Joanne’s file, there was no evidence to support these statements. The consultants involved in the purchase did not mention ‘medical requirements’ in their notes and there was no evidence to show Joanne needed chairs for medical reasons.

The Ombudsman wrote to State Trustees’ recently appointed Chief Executive Officer about the case. State Trustees acknowledged it could have communicated better with Eva and Joanne. It said:

We understand [Joanne] wanted chairs where she could sit comfortably while knitting, her favourite hobby. We considered them to be a medical requirement as she specifically requested them from a medical supplier.
Compensating clients for mistakes

327. In 2017, State Trustees created a system to proactively compensate clients for losses caused by its own errors. Where consultants identify a loss, they can apply to an Irrecoverable Loss Committee to compensate the client. In 2017-18, the Committee approved 312 applications and repaid clients $230,130.

328. In the investigation’s review of 30 cases, we identified multiple instances where clients lost money because of State Trustees’ errors (see for example case studies on pages 26, 27, 32, 33, 34, 36, 40, 72 and 73). State Trustees had compensated two clients. In other cases, there was no application to the Irrecoverable Loss Committee.

329. A State Trustees manager said at interview that a former senior manager ‘had a very stern view on what is and is not a loss. And it was … messaging we don’t look for losses. If one happens to come across our way, then yes, we will look at it, but don’t go looking for them.’

330. Managers said consultants apply to the Irrecoverable Loss Committee for ‘bigger things’ like lost Centrelink entitlements or property losses. One said consultants do not usually apply where clients incurred penalties or interest because of late payment of bills or infringements. The manager said there had been:

   a company-wide sort of view, that oh, well everybody pays their bills late at some point … can we be realistically expected to pay the client back that $17.96 for paying that phone bill late or things like that. That’s just my speculation.

   … I think [the former senior manager’s] messaging was sort of interpreted at that time, including by myself but by others, that, if … it is a late payment, well that would, I suppose fall into that category of looking for a loss. So let’s just ignore that, we saw that type [of] thing. I don’t think that’s the right mentality. I don’t think that’s very ethical, and I don’t think that’s transparent of us as an organisation.

Access to records

331. Clients, families and advocates who suspect errors on State Trustees’ part can find it difficult to access records and information.

332. The Freedom of Information Act 1982 (Vic) does not apply to State Trustees because although it is a state-owned company, it does not fall within the definition of an ‘agency’ under the laws. There is scope under the Act for regulations to be made to prescribe State Trustees as an agency to which the Act applies, but this has not occurred.

333. State Trustees also has obligations under Commonwealth and Victorian privacy laws to give people access to their own records, but it does not advertise this. Its website contains no information about making a request. There is information in State Trustees’ Welcome Pack for new clients – on page five of a detailed six-page Privacy Policy. In one of the cases reviewed by the investigation, a dissatisfied client asked to see her file. State Trustees’ response stated it was not covered by freedom of information laws and it could not provide information about communications with third parties for privacy reasons.

334. Advocates reported they have problems accessing their clients’ information. Victoria Legal Aid said its lawyers faced ‘considerable delays (up to months in some cases)’ when asking for information. The Financial and Consumer Rights Council said its members report that:

   not all State Trustees representatives are consistently open and prepared to share information about their actions in dealing with client finances, even when a client has given a clear authority to the financial counsellor to access this information. As a result, financial counsellors are sometimes simply unable to find out what actions State Trustees has taken in relation to client debts.

---

18 Privacy Act 1988 (Cth); Privacy and Data Protection Act 2014 (Vic).
Reporting to external organisations

335. The evidence before this investigation also shows State Trustees has not always acknowledged errors when dealing with external bodies in the past:

- **VCAT** – In one case, VCAT asked State Trustees to consider the costs of a delay in managing a client’s nursing home fees and to report back on the outcome of its investigation. State Trustees’ report to VCAT said ‘such delays were not due to any inaction on the part of State Trustees’. When the Ombudsman found evidence of delays and questioned State Trustees’ report, State Trustees said it spoke to the VCAT member in person because of sensitivities involving the client’s family. State Trustees did not compensate the client until the Ombudsman invited it to do so.

- **Ombudsman** – Some of State Trustees’ past responses to Ombudsman enquiries about cases reviewed by this investigation also failed to openly acknowledge errors. Some of the cases described in this report were only resolved after we summoned the clients’ files and wrote to State Trustees’ recently appointed Chief Executive Officer.

- **Victorian Department of Health and Human Services** – State Trustees gives the department a number of performance reports under their community services agreement. The department gave the investigation copies of State Trustees’ reports on call waiting times. They showed State Trustees answering more than 90 per cent of calls within three minutes since mid-2017. This is not a true reflection of State Trustees’ call waiting times, which have been as long as one hour and 25 minutes (see page 49).

336. While VCAT-appointed clients and families can complain to the Ombudsman, and raise problems during VCAT hearings, Victorian law restricts the media’s ability to report on such cases, even when this is the client’s choice. The Victorian Civil and Administrative Tribunal Act (schedule 1, clause 37) prevents a person publishing or broadcasting any report of a proceeding under the Guardianship and Administration Act that ‘identifies, or could reasonably lead to the identification of, a party to the proceeding’. VCAT can make an order permitting the publication, but only if it considers this would be in the ‘public interest’. VCAT cannot allow pictures to be taken of a party.

337. The Department of Justice and Community Safety advised the purpose of the provision is to ‘protect the dignity and privacy of the person subject of the guardianship or administration application’. It noted there are similar provisions in other legislation and the Parliament recently passed the *Open Courts and Other Acts Amendment Act 2019* (Vic) which will allow victims of sexual assault and family violence to apply for orders allowing their identities to be published if they are over the age of 18, provide consent, and there are no other reasons why the information should not be published. VCAT said the provision provides significant protection for the privacy of vulnerable people and noted that proceedings deal with matters of a ‘highly personal and sensitive nature’. It said that if people want to disclose their identity and situation to the media on the basis that it is in the public interest for their story to be told, they can apply to the Tribunal for an order.
Commercial pressures

338. People contacting the Ombudsman sometimes express suspicion that State Trustees’ actions are motivated by commercial interests, not the interests of its clients. As pages 16-18 noted, State Trustees operates as a state-owned company with commercial objectives and relies on fees and commissions from clients.

339. The investigation found no evidence that State Trustees was making decisions for commercial reasons in individual cases. However, the following evidence suggests that commercial pressures limit its services to clients as a whole.

340. The difficulty facing State Trustees is that, historically, its personal financial administration services have operated at a loss. A Department of Treasury and Finance efficiency review found that, in 2013, State Trustees made a net loss of $4.3 million on its community services, including services for VCAT and power of attorney clients. State Trustees was using government funding and its profit from other functions to subsidise these services.

341. Some of the problems identified by the investigation were the result, at least in part, of attempts by State Trustees to stem its losses by containing the cost of its services.

342. In 2012, State Trustees introduced a ‘Business Transformation Program’ with the goal of reducing the cost of services. The program’s stated aim was to develop a ‘sustainable service model’ which met legal and contractual obligations. The investigation reviewed a presentation to consultants that encouraged them, amongst other things, to:

- reduce the volume of budget reviews
- reduce the effort in ‘actively managing’ clients on the Financial Independence Program. Consultants were told ‘If we need to actively manage a client on the FIP, then reconsider whether they are suitable to be on the program.’

343. State Trustees’ decision to move to a ‘streaming’ case management model in 2017 was also expected to deliver efficiencies and savings for the company. One 2016 briefing to State Trustees’ board suggested that, along with other changes, it would save $3.66 million over five years.

344. These changes have stemmed the losses previously experienced by State Trustees. In 2017-18, State Trustees estimated that it made a $1.4 million profit from services to VCAT and power of attorney clients. This profit remains dependent on government funding, however. Without this funding, State Trustees would have run these services at a $15 million loss.

345. While State Trustees’ recently appointed Chief Executive Officer was frank with the Ombudsman about the issues identified by our investigation, he noted that financial pressures may limit State Trustees’ ability to address these issues. He wrote:

State Trustees has always faced – and will continue to face – resourcing constraints. Our fees and charges are largely set by legislation and, given that most of our clients are impecunious, we do not have a large revenue base. This means we will need to be targeted in the projects for improvement we initiate.
What is State Trustees doing to fix the problems with its services?

346. State Trustees told the investigation it is ‘implementing significant transformation’ to fix the problems described in this report. It is running a large-scale program called ‘Client First’. This program is designed to ensure that ‘the client remains at the heart of all State Trustee does’. It said it also sought feedback from a range of disability stakeholder groups about the program.

347. It also said it has completed other initiatives to address specific problems. It said it has:

- recruited more staff and reduced the backlog of work
- amended its procedure manual to require more frequent consultation with clients and reviews of client budgets
- engaged the Victorian Equal Opportunity and Human Rights Commission to provide human rights training for its staff
- developed new procedures for managing clients’ debts and infringements, and provided training to consultants on these issues
- amended its contract with its cleaning contractor to ensure the cleaners will safeguard clients’ photos, when they clear and clean clients’ properties.

348. As mentioned before, prior to the investigation, State Trustees did not have a Disability Action Plan (see page 77). As State Trustees has at least 10,000 clients with a disability, this is an important step. It now has a published Disability Action Plan, which is available on its website.

349. The following sections discuss some key initiatives which State Trustees is undertaking or has completed. The initiatives are aimed to address various issues such as:

- case management
- consultation and communication with clients
- financial management
- supporting clients’ independence
- human rights.

Case management

350. As mentioned already, problems arose under the old case management model when consultants went on unplanned leave or left their role (which State Trustees refers to as ‘single point dependencies’). However, the current streaming model also created problems, such as consultants making decisions without knowing clients’ history and having less accountability for managing clients.

351. State Trustees acknowledged these issues. It said it is currently developing an alternative ‘client centric’ model, which removes these ‘single point dependencies’ but still addresses the issues highlighted in this report. It appears that the future model will fall somewhere in between the old and current model, with a mix of traditional case management and streaming.

352. There is currently ‘client segmentation’ work underway to help State Trustees better understand its clients and their needs. This research will inform the type of case management model it adopts in the future, ensuring that the model caters to the unique needs of its different client groups.
Communication with clients

353. State Trustees said it has updated its procedure manual to place greater emphasis on consultation and communication with clients. It said the changes make it mandatory to consult with clients about:

- ‘major’ decisions, as required under the National Standards
- infringements.

354. This report has already noted how the language in clients’ account statements assumes some degree of accounting knowledge and is not easy to understand (see page 52). Account statements are computer-generated documents. State Trustees told the investigation it is working to ensure that account statements use more accessible language in future.

355. Currently, consultants choose between 137 different codes when recording their communications with clients in State Trustees’ database. These codes are, as State Trustees described, ‘lengthy and confusing’. They make it difficult for consultants to identify quickly whether consultation has occurred or not. To address this, State Trustees said it is reducing the number of codes. The aim is to simplify its record keeping system and support consultants to accurately capture their communications with clients.

356. State Trustees also told the investigation it will introduce reporting processes to make it easier for managers to keep track of consultations. There will also be new key performance indicators, to help managers measure the effectiveness and frequency of those consultations.

Financial management

357. State Trustees said it would update its procedure manual to expand on the use of dispute resolution services such as the Australian Financial Complaints Authority and Telecommunication Industry Ombudsman. These services are helpful when consultants and clients cannot resolve their complaints directly with service providers. They are also free. Making use of these services will create opportunities for consultants to advocate for clients about their consumer rights.

358. As noted before, budgets were sometimes overlooked and not reviewed as frequently as they should have been. To address this, State Trustees said it has introduced ‘triggers’ in its electronic systems to prompt consultants to complete budget reviews at particular times.

359. Given the complexities of moving clients into aged care, State Trustees said it has introduced quarterly reviews for these files, to identify files that are progressing slowly and causes for the delay. These reviews are aimed to manage these higher risk, more complex files in a more proactive way.

Support for clients’ independence

360. Senior managers said historically, State Trustees had an ‘all or nothing’ approach in determining clients’ capacity for independence. It told the investigation it wants to change this thinking to recognise the various degrees of independence that clients have. It said it is using its ‘client segmentation’ research to identify suitable groups of clients for its Financial Independence Program and is reviewing processes for identifying individual clients suitable for the program.
Human rights

361. When this report was drafted, the procedure manual contained no reference to human rights. State Trustees acknowledges that concern for its clients’ human rights ‘must permeate everything we do’. It says it ‘will continue to review how the Charter should be more expressly referenced in our procedures’.

362. State Trustees said it has also arranged human rights training for all its staff (see below) and ensured that its induction program for new staff covers human rights.

Moving forward

363. To support consultants in adapting to these changes, State Trustees says it has also organised staff training on matters including:

- budgeting
- handling infringements
- judgment-proof debts
- dealing with challenging behaviour
- communications with trusted advisors
- human rights.

364. Some of this training will be facilitated by external providers. State Trustees engaged Westjustice (Western Community Legal Centre) to deliver training on infringements and the Victorian Equal Opportunity and Human Rights Commission for training on human rights.

365. These initiatives appear sound in principle and provide a practical starting point for change. There will be more initiatives taking place after the investigation, to prepare State Trustees for the commencement of the new Guardianship and Administration Act in 2020.
Does State Trustees act in the interests of clients?

366. This investigation set out to determine if State Trustees acts in the interests of clients who cannot manage their own financial affairs because of disability, illness or injury. The evidence in this investigation suggests that, in the past, the answer has too often been ‘no’.

367. The 30 cases reviewed in depth by the investigation contained 23 cases involving poor financial management – lost entitlements, inaccurate budgets, late or incorrectly paid bills, mismanaged debts and fines, delays contributing to increased aged care fees and failure to pursue possible fraud and financial abuse.

368. It is difficult to tell precisely how common these problems are, as the investigation also identified cases of sound financial management. However, the problems feature often in the 648 complaints to the Ombudsman since 2015. Legal, disability and financial counselling organisations reported similar problems in submissions to the investigation. Evidence from State Trustees managers and internal audit reports also confirmed some of these problems were systemic.

369. The investigation also identified scope for State Trustees to move away from older-style, paternalistic services for people with a disability to a modern rights-based approach that involves clients in decisions about their lives. State Trustees’ engagement with clients has been impersonal and infrequent – focused too much on day-to-day tasks such as requests for extra money, and not enough on meaningful discussion about clients’ financial goals and options. State Trustees’ programs and practices for supporting clients’ independence do not appear to have been effective.

370. In the cases reviewed by the investigation, the result for clients and their families was often financial loss, distress and frustration. Clients are vulnerable because of disability or illness or financial hardship, and even small errors have significant consequences. Clients and their families place significant trust in State Trustees to manage their financial affairs. The investigation identified that, in the past, State Trustees has often betrayed that trust.

What causes the problems with State Trustees’ services?

371. The investigation appreciated the frankness of State Trustees’ recently appointed Chief Executive Officer, and the managers who participated in interviews, about the challenges facing the company.

372. The evidence shows the 2017 changes to State Trustees’ case management model were well-intentioned, but poorly implemented. They reduced State Trustees’ oversight of its clients’ affairs and added to backlogs and pressures on its workforce.

373. Some problems have a much longer history and have been the subject of comment by the Ombudsman and the Victorian Auditor-General before. State Trustees faces ongoing practical challenges managing high workloads and complex issues with limited staff and funds. These funding pressures have led to a reactive, transactional approach to clients’ affairs rather than a service based on forward-planning and advocacy for clients’ rights.

374. State Trustees also faces wider challenges embedding human rights into its core operations as required by law in Victoria, as well as accessible, responsive services for people with a disability.
375. Despite representing the interests of 10,000 vulnerable clients who cannot manage their own financial affairs because of disability, illness or injury, State Trustees did not have a Disability Action Plan until the investigation started. It also had no reference to the Charter of Human Rights and Responsibilities Act in its procedures and no training for staff. It had to be prompted by the investigation to engage with the disability sector on its initiatives designed to address the issues in this report. A more accessible, rights-based approach will require a significant shift in the skills and capabilities of its workforce.

376. There is also scope for State Trustees to improve its accountability and transparency, by ensuring that systems for handling complaints and compensating clients for mistakes work as intended.

**What needs to be done?**

377. State Trustees’ new leadership started to address some of these immediate problems while the investigation was under way. State Trustees paid around $65,000 to 13 of the clients whose cases were reviewed in depth by the investigation, apologised to 11 clients and agreed to meet or consult another five clients.

378. During the investigation, State Trustees also took or started planning initiatives to address systemic problems. In response to a draft of this report, for example, State Trustees said it is now engaging with a range of disability stakeholder groups about its reform initiatives and has ensured its procedures deal with the Charter.

379. The Victorian Government can assist State Trustees with this process. An ongoing challenge for State Trustees will be its status as a state-owned company with commercial objectives. While the investigation found no evidence that State Trustees was making decisions for commercial reasons in individual cases, there is evidence to suggest that commercial pressures limit its services to clients as a whole. Given this report is the third report since 2003 to raise concerns about State Trustees’ services for its clients, it would be prudent for the government to examine whether the state-owned company model is fit for purpose.

380. In response to a draft of this report, State Trustees said:

> State Trustees’ organisational status is not a matter for State Trustees. However, it is not aware that its current organisational status presents an “ongoing challenge”, or of the evidence that suggests it is commercial pressures that limit its services to clients as a whole. State Trustees faces resourcing pressures but it is not necessarily the case that another organisational status would alter that.

381. The risks involved in making State Trustees a profit-making company were obvious to some of the Members of Parliament who debated the matter in 1994. Since then, multiple reports have confirmed problems with State Trustees’ services. Successive boards and executives have not been able to deliver lasting solutions. This report identified evidence of underlying problems with State Trustees’ resourcing, inattention to the human rights and needs of people with a disability and questions about accountability and transparency. After 25 years, the evidence for a review is strong.
382. The Victorian Government could also do more to reduce the impact of State Trustees’ fees and charges on clients by updating the fee relief scheme for clients in financial hardship, and reviewing government fees and taxes on clients.

383. The Victorian Government could further improve State Trustees’ transparency and accountability by reviewing the application of freedom of information laws to State Trustees. This is particularly so in light of the shift towards recognising the rights of people with disabilities to make decisions about their own lives. It is also timely to review the restrictions in the Victorian Civil and Administrative Tribunal Act that restrict State Trustees’ clients choosing to identify themselves in the media. While the Act reflects a concern for the privacy of vulnerable people, it requires people with disabilities to go to the effort of seeking an order from a tribunal to exercise rights others can take for granted. Reviewing these laws in light of the Charter and the UN Convention on the Rights of People with Disabilities may identify options that strike a better balance between the rights and interests of State Trustees’ clients.

384. The new 2019 Guardianship and Administration Act offers a timely opportunity for State Trustees and the Victorian Government to start planning for these issues, and how they want to deliver services for people who need help managing their affairs due to disability or illness.

385. The recommendations in this report focus on ensuring State Trustees has the governance, funding, expertise and systems needed to serve the interests and rights of clients in the future.
386. Pursuant to section 23(1)(g) of the Ombudsman Act and based on the evidence obtained by the investigation, the Ombudsman is of the opinion that the following actions were wrong:

- State Trustees’ failure to ensure consistent professional financial management of clients’ affairs, including failure to claim correct entitlements, monitor payment of bills and expenses, ensure timely payment of aged care bonds and challenge debts and infringements where warranted
- State Trustees’ failure to consistently consult clients regarding their wishes, will and preferences
- State Trustees’ failure to implement effective practices to build the capacity of clients to manage their own affairs
- State Trustees’ past failure to provide guidance and training to employees about State Trustees’ obligations under the Charter of Human Rights and Responsibilities Act and the Equal Opportunity Act
- State Trustees’ failure to effectively implement its policies for resolving complaints, and identifying and remedying financial losses incurred by clients
- State Trustees’ failure to promote the rights of clients to access their personal information under Commonwealth and state privacy legislation.

387. Pursuant to section 23(1)(c) of the Ombudsman Act and based on the evidence obtained by the investigation, the Ombudsman is of the opinion that the following actions were taken in accordance with a rule of law, provision of an enactment or practice that is or may be unreasonable, unjust or improperly discriminatory:

- State Trustees’ application of a low threshold for fee relief for clients in financial hardship in accordance with its community services agreement with the Department of Health and Human Services
- State Trustees’ application of the goods and services tax to fees, commissions and charges, in the absence of a private ruling from the Australian Taxation Office
- State Trustees’ payment of VCAT annual fees on behalf of clients in accordance with the Guardianship and Administration Regulations
- State Trustees’ handling of requests for information because it has not been prescribed under the Freedom of Information Act.
Recommendations

To the Department of Treasury and Finance and the Department of Health and Human Services (in consultation with State Trustees):

**Recommendation 1: Governance**
Review State Trustees’ governance arrangements, including its status as a state-owned company, to determine if the current arrangements are the most suitable for meeting State Trustees’ community service obligations.

**Department of Treasury and Finance’s response:**
[The department supports the review of [State Trustees’] governance arrangements. [State Trustees] operating model is complex and will require a comprehensive review to unbundle its operating activities to identify what is considered core business and appropriate allocation of resources.

[The department] also intends to undertake a review of its Government Business Enterprise governance model and guidance materials by the end of the 2019-20 financial year.

[The department] will continue to monitor the financial sustainability and outcomes of the corporation to assess whether more comprehensive changes to the governance arrangements of the corporation could be implemented in the longer term if improved client service outcomes are not achieved.

**Department of Health and Human Services’ response:**
Accept. State Trustees is a State Government-owned company and the Victorian State Treasurer is its sole shareholder. When the Department of Treasury and Finance reviews governance arrangements for State Trustees the department will contribute to and support this review.

**Recommendation 2: Funding**
Determine future government funding required to ensure State Trustees meets all obligations under the Guardianship and Administration Act 2019 (Vic) and Powers of Attorney Act 2014 (Vic), including its obligations to:

(a) give effect to the will and preferences of each client
(b) support clients to participate in decision making
(c) act as an advocate for clients subject to administration orders.

**Department of Treasury and Finance’s response:**
A joint review by [State Trustees], the Department of Health and Human Services (DHHS) and [the department] is required to determine the efficient cost of delivering comprehensive and effective services to personal financial administration clients. Such a review should inform future funding allocated to these services by DHHS as part of its Community Service Agreement with [State Trustees].

**Department of Health and Human Services’ response:**
Accept. The department has invited State Trustees to prepare a funding submission to request additional funding to ensure that it is able to meet all of its obligations under the Guardianship and Administration Act and the Powers of Attorney Act. When the department receives this funding submission, the department will review the request and make a decision about whether additional funding is needed. Timelines for this work still need to be worked through with the Department of Treasury and Finance and State Trustees.
To the Department of Treasury and Finance:

**Recommendation 3: Disability expertise**

If the government chooses to retain State Trustees’ status as a state-owned company, consider the following skills and experience when recommending State Trustees board members for appointment – lived experience of disability and mental illness, and experience as a carer or advocate.

*Department of Treasury and Finance’s response:*

[The department] supports appointing future board members with lived experience of disability and mental illness as well as experience as a carer or advocate. This will be subject to the approval of the Treasurer of Victoria.

**Recommendation 4: Fee relief**

In consultation with State Trustees, apply for a private ruling from the Australian Taxation Office regarding the application of the goods and services tax to State Trustees’ services.

*Department of Treasury and Finance’s response:*

To reduce the cost of service fees charged to [State Trustees] personal financial administration clients, [the department] will work with [State Trustees] to seek expert advice as to whether [State Trustees] should apply for a private ruling to exempt the corporation from the application of GST on its services.

To the Department of Health and Human Services (in consultation with State Trustees):

**Recommendation 5: Fee relief**

Accept. The department will review the threshold for providing fee relief from State Trustees’ fees and commissions by December 2019 and, depending on the outcome of this review, make a decision about updating the threshold by June 2020.

*Department of Health and Human Services’ response:*

Accept. The department will review the threshold for providing fee relief from State Trustees’ fees and commissions by December 2019 and, depending on the outcome of this review, make a decision about updating the threshold by June 2020.

**Recommendation 6: Community services agreement**

Update the community services agreement to reflect State Trustees’ obligations under the Guardianship and Administration Act 2019 (Vic) and Powers of Attorney Act 2014 (Vic) and changes made under Recommendations 2 and 5.

*Department of Health and Human Services’ response:*

Accept. A variation to the current community services agreement will be negotiated and agreed with State Trustees by December 2019.
To State Trustees:

Recommendation 7: Workforce

Review State Trustees’ workforce for personal financial administration and power of attorney functions to determine:

(a) the level of resourcing required to meet State Trustees’ obligations under the Guardianship and Administration Act 2019 (Vic) and Powers of Attorney Act 2014 (Vic).

(b) the skills and capabilities required to meet State Trustees’ obligations under the Guardianship and Administration Act 2019 (Vic) and Powers of Attorney Act 2014 (Vic), including options for building disability, financial counselling and advocacy expertise.

State Trustees’ response:

State Trustees accepts this recommendation.

A key focus of the ‘Client First’ program is a review of the employee resources, skills and capabilities State Trustees requires in relation to its PFA and EPA clients, both under existing legislation and under the new Guardianship and Administration Act 2019 (Vic) when operational.

This includes reviewing State Trustees’ recruitment for specialist skills, particularly in mental health. Clients with mental health issues make up the largest category in PFA, as shown by the sample of clients whose records were viewed by the Ombudsman’s office.

State Trustees has also engaged with Financial Counselling Australia (FCA) and its state counterpart, the Financial and Consumer Rights Council (FCRC), about the provision of financial counselling to clients.

In addition, State Trustees has undertaken a number of initiatives to upskill its employees as advocates for its clients, including by having a legal advocacy group provide refresher training for the employees on handling client infringements and debts.

Recommendation 8: Engagement

Develop and implement a stakeholder engagement strategy to ensure State Trustees engages key disability, financial counselling and legal advocacy groups, and people with lived experience of disability and mental illness, regarding its services.

State Trustees’ response:

State Trustees has a stakeholder engagement strategy and accepts this recommendation to broaden that strategy.

State Trustees has engaged with advocacy groups such as the Disability Services Commission, Scope, the Office for Disability, the Victorian Equal Opportunity and Human Rights Commission, the Australian Network on Disability, the FCA and the FCRC. It is broadening that network to include more people with a lived experience of disability or mental illness and consulting with more organisations as part of its ‘Client First’ program and the development of its new operating model. It is also seeking to work more effectively with the legal advocacy groups who represent its clients.
Recommendation 9: Accessible communication

Update its communication for clients to:

(a) adequately explain all of State Trustees' obligations and service standards and their rights as clients

(b) ensure information is available in easy English and other accessible formats

(c) provide regular budgets and account statements in a way that meets the communication needs and preferences of the individual client

(d) ensure free translation and interpreting services, when required

(e) make appropriate use of technology for clients to access information about their finances easily, such as SMS, automated voicemail and online access.

State Trustees' response:

State Trustees accepted recommendations (a) and (b). It said:

State Trustees has refreshed its website to make it easier for clients to navigate and understand. It is also conducting a comprehensive review of the client experience for new PFA and EPA clients, including adapting the documents in the State Trustees' 'Welcome Packs' and better tailoring them to different kinds of clients, such as those living independently and those in aged care.

State Trustees has highlighted accessibility in its Disability Action Plan and engaged the Information Access Group, a design and communication agency specialising in accessibility, to produce easy English versions of key client documents.

State Trustees accepted recommendation (c) in principle, ‘noting it will require significant updating of IT platforms, which is a longer-term exercise’.

State Trustees accepted recommendation (d) for ‘PFA [ie VCAT-appointed] and EPA [ie power of attorney] clients, subject to available funding’.

State Trustees accepted recommendation (e) in principle ‘noting it will require significant updating of IT platforms, which is a longer-term exercise’.

Recommendation 10: Support for client independence

Work with financial counselling and community support organisations to develop an effective program to build clients’ financial skills and capacity to manage their financial affairs independently.

State Trustees' response:

State Trustees accepts this recommendation.

State Trustees will seek to involve the FCRC and other interested organisations in developing its enhanced Financial Independence Program for clients.

Recommendation 11: Access to personal information

Facilitate clients' access to their personal information under Commonwealth and Victorian privacy legislation.

State Trustees' response:

State Trustees accepts this recommendation.

State Trustees is working to better inform clients of their rights to access their personal information. For example, it has created a specific email address to facilitate their access to such information.
To the Department of Premier and Cabinet:

**Recommendation 12: Access to personal information**

Review the application of the *Freedom of Information Act 1982* (Vic) to State Trustees.

**Department of Premier and Cabinet’s response:**

[The department] supports this recommendation and will take steps to implement the recommendation at the next opportunity to amend either [the Freedom of Information] Act or the Freedom of Information Regulations 2019.

To the Department of Justice and Community Safety:

**Recommendation 13: Fee relief**

Abolish VCAT’s annual fee for people subject to administration orders.

**Department of Justice and Community Safety’s response:**

The department advised that it had not had the opportunity to consult VCAT regarding the recommendation. It said:

A ‘no regulation’ option is a standard inclusion in the preparation of regulatory impact statements.

The current Guardianship and Administration (Fees) Regulations 2008 will sunset on 10 November 2019. The [regulatory impact statement] process in late 2019 will provide an opportunity to investigate whether fees are set at the right level and appropriately respond to the needs of this vulnerable cohort.

The [regulatory impact statement] process will allow the department to model the impact of implementing recommendation 13 and seek comment on the proposal from external stakeholders across government and the community.
Recommendation 14: Accountability and transparency

Review schedule 1, clause 37 to the Victorian Civil and Administrative Tribunal Act 1998 (Vic) to ensure it does not prevent public debate about State Trustees, including in the media, where people consent to being identified.

Department of Justice and Community Safety’s response:

The department advised that it had not had the opportunity to consult VCAT regarding the recommendation. It said:

[T]here is a need to capture the need to balance transparency and open justice with the confidentiality framework for guardianship and administration proceedings at VCAT.

… The benefits of an open tribunal, such as public debate and discussion, must be weighed against the unique circumstances of the cohort for whose benefit the legislation exists.

VCAT can currently waive the confidentiality requirement, including in guardianship matters, where it is in the public interest to do so.

Consideration of the public interest is particularly important in the guardianship context, where some members of the vulnerable cohort may:

- have difficulty in assessing whether publicity would be in their best interest
- where the interests of a represented person may not align perfectly with those of their representatives, particularly where those representatives enjoy substitute legal decision-making power.
23 May 2019

Ms Deborah Glass OBE
Victorian Ombudsman
Level 2, 570 Bourke Street
MELBOURNE VIC 3000

Dear Ms Glass,

Thank you for the opportunity to provide a written response to the draft report on your investigation into State Trustees Limited (State Trustees).

In addition to its other roles, State Trustees looks after the finances of more than 10,000 Victorians pursuant to orders of the Victorian Civil and Administrative Tribunal (Personal Financial Administration, or PFA, clients) or Enduring Powers of Attorney (EPA clients). In doing so it deals with many hundreds of thousands of matters relating to these clients each year.

It takes seriously its role in providing services to some of the most vulnerable members of the community, in often very challenging circumstances, and has an objective of continuous improvement.

Accordingly, State Trustees regularly conducts independent internal audits of its operations, using recognised random sampling methodology, to inform better practice. Further, State Trustees regularly reports to the Department of Treasury and Finance and the Department of Health and Human Services, including on its meeting of the performance targets they set for it. It is also subject to external audit by the Victorian Auditor-General.

In 2016 State Trustees revised its strategy to focus on the public benefit, and as part of that subsequently reduce its client fees.

In 2018, the STL Board appointed a new CEO, who is recruiting his senior executive team.

In the meantime, the new CEO is implementing significant transformation at State Trustees through its ‘Client First’ program. Client First is an initiative to ensure the client remains at the heart of all State Trustees does and includes the redesign of its operating model having regard to its existing and future obligations to its clients.

State Trustees has also:

• Increased its client services’ staffing over the 2018 calendar year and significantly reduced the queues of outstanding work;
• Amended its procedures manual to require more frequent consultation with clients and its communication standards on recording of client consultations;
• Increased the circumstances in which its client services’ staff must review client budgets;
• Strengthened its internal quality assurance, including by adding questions around promoting client independence;
• Developed new wording for the template reports to VCAT to promote the revocation of the orders relating to clients who can manage independently;
• Used the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) to provide training sessions to its client services’ staff and ensured induction training covers human rights;
• Developed new procedures for managing client infringements and judgement-proof debts and engaged with WestJustice to provide the associated training;
• Engaged with a range of disability stakeholder groups about Client First and ways in which State Trustees can work with them to improve its services, including through the provision of accessible communication;
• Formulated and published a Disability Action Plan; and
• Amended the contract with its cleaning contractor to specifically ensure the safeguarding of all client photos during the clearing of client properties.

State Trustees welcomes your investigation, centred on 30 client cases originating from complaints to your office. Its detailed response to your draft report is at Attachment A.

Pleasingly your draft report recognises the resource constraints facing State Trustees and the challenge that is likely to present on the passing and operation of the Guardianship and Administration Bill 2018 (Vic).

As you are aware, State Trustees has an important role. Its staff are passionate about its work and committed to providing the best possible service to its clients. It would be helpful if your final report could also acknowledge that passion and commitment. Such an acknowledgement would support State Trustees in its transformation program.

If you have any queries, please do not hesitate to contact the State Trustees’ CEO, Matt Carrick.

Yours sincerely,

The Hon. Professor Jennifer Acton
Chair, State Trustees.
## Victorian Ombudsman’s Parliamentary Reports tabled since April 2014

### 2019

<table>
<thead>
<tr>
<th>Date</th>
<th>Report Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 2019</td>
<td>Investigation of a complaint about Ambulance Victoria</td>
</tr>
<tr>
<td>April 2019</td>
<td>Fines Victoria complaints</td>
</tr>
<tr>
<td>February 2019</td>
<td>VicRoads complaints</td>
</tr>
<tr>
<td>April 2018</td>
<td>Investigation into the imprisonment of a woman found unfit to stand trial</td>
</tr>
<tr>
<td>October 2018</td>
<td>Investigation into allegations of improper conduct by officers at Goulburn Murray Water</td>
</tr>
<tr>
<td>September 2018</td>
<td>Investigation of three protected disclosure complaints regarding Bendigo South East College</td>
</tr>
<tr>
<td>September 2018</td>
<td>Investigation of allegations referred by Parliament’s Legal and Social Issues Committee, arising from its inquiry into youth justice centres in Victoria</td>
</tr>
<tr>
<td>July 2018</td>
<td>Complaints to the Ombudsman: resolving them early</td>
</tr>
<tr>
<td>July 2018</td>
<td>Ombudsman’s recommendations – second report</td>
</tr>
<tr>
<td>June 2018</td>
<td>Investigation into child sex offender Robert Whitehead’s involvement with Puffing Billy and other railway bodies</td>
</tr>
<tr>
<td>June 2018</td>
<td>Investigation into the administration of the Fairness Fund for taxi and hire car licence holders</td>
</tr>
<tr>
<td>April 2018</td>
<td>Investigation into Maribyrnong City Council’s internal review practices for disability parking infringements</td>
</tr>
<tr>
<td>April 2018</td>
<td>Investigation into Wodonga City Council’s overcharging of a waste management levy</td>
</tr>
<tr>
<td>March 2018</td>
<td>Investigation of a matter referred from the Legislative Council on 25 November 2015</td>
</tr>
</tbody>
</table>

### 2018

<table>
<thead>
<tr>
<th>Date</th>
<th>Report Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 2018</td>
<td>Investigation into the financial support provided to kinship carers</td>
</tr>
<tr>
<td>November 2017</td>
<td>Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre</td>
</tr>
<tr>
<td>September 2017</td>
<td>Investigation into the management of maintenance claims against public housing tenants</td>
</tr>
<tr>
<td>September 2017</td>
<td>Investigation into the management and protection of disability group home residents by the Department of Health and Human Services and Autism Plus</td>
</tr>
<tr>
<td>September 2017</td>
<td>Enquiry into the provision of alcohol and drug rehabilitation services following contact with the criminal justice system</td>
</tr>
<tr>
<td>June 2017</td>
<td>Investigation into Victorian government school expulsions</td>
</tr>
<tr>
<td>August 2017</td>
<td>Report into allegations of conflict of interest of an officer at the Metropolitan Fire and Emergency Services Board</td>
</tr>
<tr>
<td>April 2017</td>
<td>Apologies</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date</th>
<th>Report Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 2017</td>
<td>Investigating into the provision of alcohol and drug rehabilitation services following contact with the criminal justice system</td>
</tr>
<tr>
<td>September 2017</td>
<td>Investigation into the management and protection of disability group home residents by the Department of Health and Human Services and Autism Plus</td>
</tr>
<tr>
<td>June 2017</td>
<td>Investigation into Victorian government school expulsions</td>
</tr>
<tr>
<td>August 2017</td>
<td>Report into allegations of conflict of interest of an officer at the Metropolitan Fire and Emergency Services Board</td>
</tr>
<tr>
<td>April 2017</td>
<td>Apologies</td>
</tr>
</tbody>
</table>
Investigation into allegations of improper conduct by officers at the Mount Buller and Mount Stirling Resort Management Board  
March 2017

Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville  
February 2017

Investigation into the Registry of Births, Deaths and Marriages’ handling of a complaint  
January 2017

2016

Investigation into the transparency of local government decision making  
December 2016

Ombudsman enquiries: Resolving complaints informally  
October 2016

Investigation into the management of complex workers compensation claims and WorkSafe oversight  
September 2016

Report on recommendations  
June 2016

Investigation into Casey City Council’s Special Charge Scheme for Market Lane  
June 2016

Investigation into the misuse of council resources  
June 2016

Investigation into public transport fare evasion enforcement  
May 2016

2015

Reporting and investigation of allegations of abuse in the disability sector: Phase 2 - incident reporting  
December 2015

Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations  
November 2015

Investigation into the rehabilitation and reintegration of prisoners in Victoria  
September 2015

Conflict of interest by an Executive Officer in the Department of Education and Training  
September 2015

Reporting and investigation of allegations of abuse in the disability sector: Phase 1 - the effectiveness of statutory oversight  
June 2015

Investigation into allegations of improper conduct by officers of VicRoads  
June 2015

Investigation into Department of Health oversight of Mentone Gardens, a Supported Residential Service  
April 2015

Councils and complaints – A report on current practice and issues  
February 2015

Investigation into an incident of alleged excessive force used by authorised officers  
February 2015

2014

Investigation following concerns raised by Community Visitors about a mental health facility  
October 2014

Investigation into allegations of improper conduct in the Office of Living Victoria  
August 2014