



2010

PARLIAMENT OF TASMANIA

**AUDITOR-GENERAL  
SPECIAL REPORT No. 88**

**Public Trustee: management of deceased  
estates**

**June 2010**

Presented to both Houses of Parliament in accordance with the provisions of the  
*Audit Act 2008*

Printed by:

Print Applied Technology, Hobart

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**ISBN 978-0-9806277-6-3**



10 June 2010

President  
Legislative Council  
HOBART

Speaker  
House of Assembly  
HOBART

Dear Madam President

Dear Mr Speaker

**SPECIAL REPORT NO. 88**

**Public Trustee: management of deceased estates**

This report, relating to my audit of compliance by Public Trustee with its internal policies and procedures as they relate to administering deceased estates, has been prepared consequent to examinations conducted under section 23 of the *Audit Act 2008*.

Yours sincerely

H M Blake

**AUDITOR-GENERAL**



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## Foreword

On its website, under the heading ‘Why should I choose Public Trustee?’, Public Trustee advises that it is:

“... an independent, impartial, professional organisation. Our core business is Estate and Trust administration and we can offer you, and your beneficiaries, a number of distinct advantages.”

Those advantages are listed as reliability, understanding, experience and expertise.

This compliance audit focussed on Public Trustee’s administration of deceased estates and whether, in so administering, it complied with its internal policies and procedures. These internal policies and procedures are important as they have a bearing on the four advantages listed and on whether or not Public Trustee satisfies them.

We found a high level of compliance leading to my conclusion that Public Trustee administers deceased estates in a proper fashion and in doing so complied with internal policies and procedures.

H M Blake

Auditor-General

10 June 2010





## **Executive summary**

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## Executive summary

### *Background*

A will is a legal document in which a person states how they want their assets to be distributed after they die. A will names an executor who is to be responsible for ensuring that the wishes of the deceased are met. Public Trustee is a government business enterprise with a number of lines of business. One of Public Trustee's major activities is to manage deceased estates when it has been nominated to perform that role.

In this compliance audit, our objective was to ensure that Public Trustee complied with its internal policies and procedures as they relate to administering deceased estates.

The scope encompassed completed and in-progress files dealing with deceased estates from each Public Trustee regional office from the beginning of 2008.

### *Detailed audit conclusions*

#### *Role of the executor or administrator*

Sample testing that we conducted indicated that Public Trustee had properly identified beneficiaries, accounted for estate net assets, obtained probate or letters of administration and distributed assets in a proper fashion. Consequently, we were satisfied that Public Trustee complied with its internal policies and procedures.

#### *Monitoring and reporting*

Public Trustee actively monitored its performance against key performance indicators. Reporting, both within the organisation and externally, was timely and pertinent.

### *Recommendation*

The following table reproduces the single recommendation contained in the body of this Report.

<b>Rec No</b>	<b>Section</b>	<b>I recommend that ...</b>
1	2.3	Public Trustee includes targets for client satisfaction in the Annual Report to give a clearer indication of attainment of the business's goals.

**Audit Act 2008 section 30 — Submissions and comments received**

## *Audit Act 2008 section 30 — Submissions and comments received*

### *Introduction*

In accordance with section 30(2) of the *Audit Act 2008*, a copy of this report, was provided to the Public Trustee.

The comments and submissions provided are not subject to the audit nor the evidentiary standards required in reaching an audit conclusion. Responsibility for the accuracy, fairness and balance of those comments rests solely with those who provided a response or comment.

### *Submissions and comments received*

#### **Public Trustee**

The Public Trustee notes the report and welcomes the findings. In relation to the one recommendation contained in it, the Public Trustee will consider that in the preparation of its 2010 Annual Report.

## **Introduction**

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## Introduction

### *What does managing a deceased estate involve?*

A will is a legal document in which a person states how they want their assets to be distributed after they die. A will names an executor who is to be responsible for ensuring that the wishes of the deceased are met. The executor could be a family member or friend.

However, because of the onerous nature of the responsibilities many people opt for 'professional' executors such as trustee companies, solicitors or Public Trustee.

After a person has died, their estate becomes a separate legal entity and the Supreme Court must then confirm that the will is valid. That process, known as probate, confers on the executor the power to administer the estate.

Once probate has been granted, the executor implements the instructions of the deceased, as expressed in the will. The executor is able to collect the assets and pay any debts owed by the deceased person. When that process is finalised, the executor has a duty to distribute the estate of the deceased person as directed in the will.

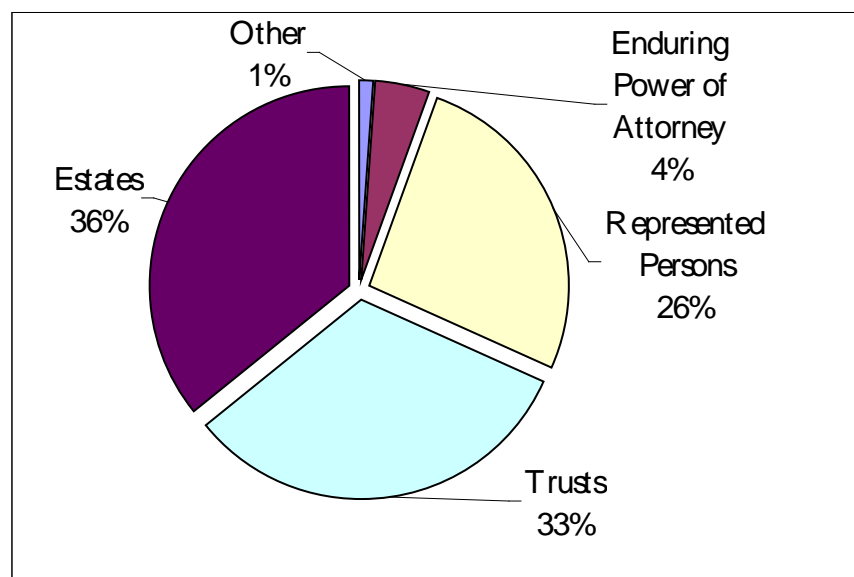
In the situation where a person dies without a will, known as dying intestate, the law (*Administration and Probate Act 1935*) determines what will happen with the deceased's estate. That Act determines the next of kin of the deceased and what their share in the estate will be. The next of kin, in these circumstances, can request the Public Trustee (or another person) to administer the estate.

### *What does Public Trustee do?*

There is a Public Trustee in each state and territory. Tasmania's Public Trustee was established in 1853 and was the first office of its kind in Australia. While Public Trustee may perform the role of executor or administrator when so appointed, it also has other roles:

- administering trusts
- managing the financial affairs of represented persons when appointed by the Guardianship and Administration Board
- acting as attorney for people requiring assistance to manage their financial affairs.

Figure 1 shows the relative scale of these activities at Public Trustee as at 30 June 2009. Estate management is currently the largest business area.

**Figure 1: Business activities at Public Trustee**

In its 2008–09 Annual Report, Public Trustee advised that it had \$132 million in client funds under management, with total client assets of \$199 million. In the same period, Public Trustee wrote 640 new wills and 870 revision wills.

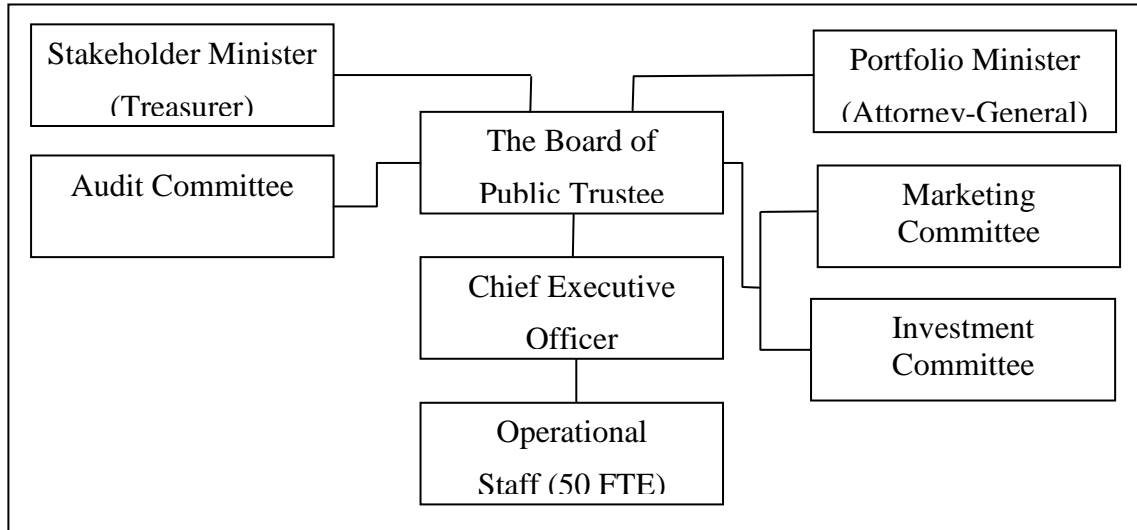
#### *Governance and management of Public Trustee*

Public Trustee became a government business enterprise in 1996 and it operates offices in each region of the State.

In terms of governance, Public Trustee has a six-member Board that includes the Chief Executive Officer. Board members are appointed by the Governor on the joint recommendation of the Attorney-General and Treasurer (the Stakeholder Minister). The Portfolio Minister, charged with oversight of Public Trustee, is the Attorney-General.

The governance structure of Public Trustee is shown in Figure 2.

**Figure 2: Governance structure of Public Trustee**



### *Audit objective*

The audit objective was to ensure that Public Trustee complied with its internal policies and procedures as they relate to administering deceased estates.

### *Audit scope*

The scope encompassed completed and in-progress files dealing with deceased estates from each Public Trustee regional office from the beginning of 2008. We excluded ongoing files dealing with life tenancies or testamentary trusts.

Other lines of business such as trust management, enduring power of attorney and represented persons fell outside the scope of this audit.

### *Audit criteria*

Consistent with the above objective and scope, the audit criteria developed for this audit addressed compliance aspects of the following functions:

- operations — the role of the executor
- management — monitoring and reporting.

### *Audit approach*

To conduct the audit, we:

- examined background documentation



- tested a judgment sample of files (that is, encompassing a pre-determined range of dollar values) from each Public Trustee office
- interviewed relevant persons.

### *Timing*

Planning for this audit began in November 2009. We completed fieldwork in April and finalised the report in May 2010.

### *Resources*

The total cost of the audit excluding production costs was \$57 000.

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## **1 Role of the executor or administrator**

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# 1 Role of the executor or administrator

## 1.1 *Background*

The primary roles of an executor or administrator are to collect the estate's assets, pay any debtors and then to distribute assets in line with the will or statute.

As indicated in the introduction to this Report, we used a judgement sample of 34 deceased estate files to assess Public Trustee's performance. In doing so, we ensured that the sample contained a representative selection in terms of complexity and value of estates. The sample files were drawn from the Hobart, Launceston and Burnie offices.

The following sections of this Chapter, which loosely follow the sequence of events, discuss results of detailed testing that we undertook to confirm Public Trustee's adherence to its policies and procedures for estate management.

## 1.2 *Files demonstrated timely and ongoing action*

We expected that files would demonstrate timely and ongoing action and would not have any unexplained delays.

Winding up an estate can be drawn out unavoidably. For instance, selling real estate was a process that often triggered hold ups in finalising an estate. Also, identifying and locating next of kin is potentially time consuming, particularly if relatives live outside Australia. As an example, we noted in one file where beneficiaries were located in Poland and the file had stalled due to difficulties in tracing them.

Management oversight was apparent and other forms of internal control (see Section 2) were used to ensure that files remained active.

## 1.3 *Beneficiaries are identified*

While reviewing files we were looking to see that beneficiaries were identified correctly and that they were briefed on the estate administration process. When beneficiaries were identified, Public Trustee ensured that they signed a statutory declaration confirming their identity.

Our testing showed that files had evidence that beneficiaries were properly identified.

#### 1.4 *Inventories of assets and liabilities*

For assets such as motor vehicles and real estate, Public Trustee has a bulk insurance policy that provides coverage when it first assumes its role as executor. After this initial period, major assets must be itemised. Files that we examined showed that there were inventories of assets and that these were reflected in the application for probate (see following Section).

In the case of valuables such as jewellery or cash, Public Trustee normally negotiates with beneficiaries early in the estate management process to ensure that the items are safely held pending subsequent distribution. However, there are some cases where Public Trustee has to take valuables into its possession and these should be validated by receipts held on file. From our sample, we found that files had adequate documentation in regard to securing and identifying all assets.

#### 1.5 *Probate obtained?*

As mentioned in the Introduction, the law requires the Supreme Court to give executors or administrators authority to wind up an estate.

From our sample testing, Public Trustee had obtained a grant of probate or letters of administration whenever necessary.

#### 1.6 *Distribute estate assets in line with terms of will*

After obtaining a grant, the next step is to realise all assets and pay any lawful claims owing by the estate. Thereafter, the beneficiaries are identified and the estate is distributed. Before that happens, Public Trustee deducts its fees and charges (see Section 1.7).

Where a will exists, the basis for payments to beneficiaries has already been determined and Public Trustee acted accordingly. For intestate estates, the distribution of the estate is determined by law.

In either situation we were able to confirm the validity of payments to beneficiaries. While we noted some errors related to filing, these were minor in nature and there was other supporting evidence on file to confirm that payments were correct.

#### 1.7 *Evidence to support Public Trustee's fees and charges*

Public Trustee earns revenue from estate management with a sliding scale of fees and charges based on the value of the estate. These fees are set by government determination.

As part of the audit, we sample tested files to verify that the fees and charges levied had been correctly applied. In all cases, we were able to reconcile the value of the estate to the fees that had been charged.

## 1.8 *Conclusion*

Sample testing that we conducted indicated that Public Trustee had properly identified beneficiaries, accounted for estate net assets, obtained probate or letters of administration and distributed assets in a proper fashion. Consequently, we were satisfied that Public Trustee complied with its internal policies and procedures.

## **2 Monitoring and reporting**

## 2 Monitoring and reporting

### 2.1 *Background*

Our expectation was that Public Trustee would have a current strategic or operational plan in place. Such a plan should include objectives, targets, performance indicators and strategies. It should also be the basis for monitoring and reporting.

### 2.2 *Strategic planning*

Public Trustee had a three-year corporate planning cycle and a corporate plan that is reviewed and updated annually. That plan was supported by individual business unit plans.

We obtained a copy of the 2009–10 business plan for Trustee Services. Various attributes of the plan were:

- Proposed action
- Responsible manager
- Timeliness measures
- Performance indicators
- Actual performance.

Between them, these attributes span the life of each initiative within the plan by setting out what is to be done, who is responsible, applicable time lines, relevant performance measures and achievement to date each quarter.

From our review of the business plan, monitoring by management was evident. Further, in terms of its stated goals, Public Trustee was making progress.

### 2.3 *Achievement against performance targets*

Public Trustee had a wide range of internal performance measures encompassing quality, quantity, business growth and client satisfaction indicators. In the 2008–09 Annual Report, we noted that the financial based indicators included targets.

Since it competes in a commercial environment, it is important that Public Trustee surveys its clients to ascertain feedback about the levels of service it provides. Beneficiaries are the largest client group and their views of the service they receive lie at the heart of Public Trustee's business.

Public Trustee routinely surveys beneficiaries with a view to continuous improvement, and publishes the results annually. The



most recent data to hand (i.e. 2008–09) indicated 554 surveys were sent out with a response rate of 33 percent. In dealing with Public Trustee, 78 percent of respondents stated that the experience either met or exceeded their expectations.

The Annual Report advised the organisation’s actual performance but that achievement was not publicly benchmarked, although management had set an internal target. It would be more informative if the target for client satisfaction were to be published.

**Recommendation 1**

**We recommend that Public Trustee includes targets for client satisfaction in the Annual Report to give a clearer indication of attainment of the business’s goals.**

2.4 *Quality review*

Three levels of quality review existed at Public Trustee, namely:

- an internal audit program (externally contracted)
- a compliance file and coaching review (externally contracted)
- internal review by management.

Public Trustee’s internal audit program encompasses a sample review of deceased estate files that are included in the internal audit report to management. The reports are also presented to the Audit Committee which monitors compliance. The internal audit contractor attends Public Trustee audit committee meetings.

The ongoing compliance file and coaching review that is contracted externally sees all files reviewed at their four-month anniversary. Afterwards, deceased estate files above a threshold value were reviewed on their anniversary. Additionally, there is a random sample of other estate files reviewed on their anniversary. Critical issues are identified, as are any items unresolved from earlier reviews.

Internally, there is also a management review process that covers estate management. Client Account Managers meet regularly with their supervisor to discuss progress with files and any problems that may have arisen. Monthly reports are produced; these look at key risk matters and are subject to follow up.

Quality assurance is a topic that receives serious attention at Public Trustee.

## 2.5 *Continual improvement evident in procedures?*

We examined elements of Public Trustee's management to gauge commitment to ongoing improvements in business efficiency. Strategies identified in the corporate plan (see Section 2.2) were one example of proposed improvements.

Another example was the Operational Initiatives Committee, whose members include executive management and external experts. The Committee meets monthly to discuss new initiatives as well as to evaluate the progress of previous initiatives set.

The existence of the Committee exemplifies an organisational culture where new ideas are encouraged and seriously considered.

## 2.6 *Conclusion*

Public Trustee actively monitored its performance against key performance indicators. Reporting, both within the organisation and externally, was timely and pertinent.

## **Independent auditor's conclusion**

## Independent auditor's conclusion

This independent conclusion is addressed to the President of the Legislative Council and to the Speaker of the House of Assembly. It relates to my audit of compliance by Public Trustee with its internal policies and procedures as they relate to administering deceased estates. My work was based on the objectives and scope detailed in the Introduction to this Report.

In developing the scope for this assignment and completing my work, Public Trustee provided me with all the information that I requested. There was no effort by the entity or staff to limit the scope of my work. This Report is a public document and its use is not restricted in any way by me or by any other person or party.

### *Responsibility of the Directors of Public Trustee*

The Directors of Public Trustee are responsible for establishing and maintaining internal policies and procedures for ensuring compliance with internal policies and procedures.

### *Auditor-General's responsibility*

In the context of this assignment, my responsibility was to express a conclusion on whether or not Public Trustee was compliant with its internal policies and procedures as they applied to management of deceased estates.

I conducted my work in accordance with Australian Auditing Standard ASAE 3100 *Compliance Engagements*, which required me to comply with relevant ethical requirements relating to audit and review engagements and plan and perform the:

- audit to obtain reasonable assurance whether not the Public Trustee complied with its policies and procedures in its role as executor of deceased estates
- review to obtain limited assurance whether not there was adequate monitoring and reporting in relation to management of deceased estates.

My procedures, based on the objectives and scope outlined in the Introduction to this Report were established by me without influence. The procedures depended on my judgement, based on my objectives and scope, and on my assessment of the risks of misstatement of the information obtained by me as part of this assignment.

I believe that the evidence I have obtained was sufficient and appropriate to provide a basis for my conclusions.

*Auditor-General's conclusions*

Based on the objectives and scope, it is my conclusion that Public Trustee had, based on my audit, in all material respects, properly identified beneficiaries, accounted for estate net assets, obtained probate or letters of administration and distributed assets in a proper fashion. Consequently, we were satisfied that Public Trustee complied with its internal policies and procedures.

I also concluded that, based on my review, which is not an audit, nothing has come to my attention that causes me to believe that Public Trustee does not actively monitored its performance against key performance indicators. Reporting, both within the organisation and externally, was timely and pertinent.

My findings resulted in one recommendation aimed at refining publicly available performance information.

H M Blake

Auditor-General

10 June 2010

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## **Recent reports**

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## Recent reports

<b>Date tabled</b>	<b>Special Report No.</b>	<b>Title</b>
Apr 2007	65	Management of an award breach Selected allowances and nurses' overtime
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Jun 2007	68	Risdon Prison: Business case
Oct 2007	69	Public building security
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Nov 2009	86	Major works procurement: Nation Building projects, Treasurer's Instructions 1299 and 1214
Jun 2010	87	Employment of staff to support MPs



## **Current projects**

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## Current projects

Performance and compliance audits that the Auditor-General is currently conducting:

<b>Title</b>	<b>Subject</b>
<b>Profitability, and economic benefits to Tasmania, of Forestry Tasmania</b>	Evaluates Forestry Tasmania's long-term financial and economic performance.
<b>Teaching of science in public high schools</b>	Examines the quality of science teaching in Tasmanian high schools.
<b>Public service productivity</b>	The audit will express an opinion on productivity in the Tasmanian State Service in relation to the number of employees over a ten-year period. It will examine changes in efficiency of public sector outputs and whether core services have increased in quantity, quality or range.
<b>Fraud control</b>	Assesses the effectiveness of fraud controls in government entities.
<b>College retention rates</b>	Examines the reliability of the process used to produce college enrolment and attainment data.
<b>Follow up of performance audits</b>	Ascertain the extent to which recommendations from previous audits (namely four reports tabled from November 2006 to April 2007) have been implemented.