

VICTORIA

Auditor-General
of Victoria

PERFORMANCE AUDIT REPORT No. 63

REPRESENTED PERSONS

**Under State Trustees'
administration**

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The President
The Speaker
Parliament House
Melbourne Vic. 3002

Sir

Under the provisions of section 16 of the *Audit Act* 1994, I transmit Performance Audit Report
No. 63, *Represented persons: Under State Trustees' administration.*

Yours faithfully

J.W. CAMERON
Auditor-General

Contents

	Foreword	vii
PART 1	EXECUTIVE SUMMARY _____	1
	<i>Overall audit conclusion</i> 3	
	<i>Summary of major findings</i> 7	
	<i>Summary of suggestions for improvement</i> 11	
PART 2	BACKGROUND _____	15
	<i>Role of State Trustees</i> 17	
	<i>Role of the Tribunal</i> 18	
	<i>Role of an administrator</i> 18	
	<i>State Trustees as an administrator</i> 19	
	<i>Community service obligations</i> 20	
	<i>Recent initiatives taken by State Trustees</i> 20	
PART 3	CONDUCT OF THE AUDIT _____	23
	<i>Decision to conduct the audit</i> 25	
	<i>Audit objectives</i> 25	
	<i>Scope of the audit</i> 26	
	<i>High level audit criteria</i> 28	
	<i>Resourcing the audit</i> 28	
	<i>Assistance provided to my staff</i> 29	
PART 4	COMMUNITY SERVICE OBLIGATIONS _____	31
	<i>Establishment of a service agreement</i> 33	
	<i>Key obligations under the agreement</i> 33	
	<i>Service performance standards and targets</i> 34	
	<i>Performance achievements</i> 37	
	<i>Monitoring by the Department</i> 38	
	<i>Funding provided to State Trustees</i> 40	
	<i>Improving arrangements</i> 42	
PART 5	QUALITY OF SERVICES _____	43
	<i>Background</i> 45	
	<i>Overall performance assessment</i> 46	
	<i>Initial assessment of client's position</i> 46	
	<i>Plan of management</i> 47	
	<i>Preparation and management of budgets</i> 50	
	<i>Financial planning and management</i> 51	
	<i>Promoting client independence</i> 56	
	<i>Finalisation of administration</i> 58	
	<i>Overlaps and gaps in the provision of services</i> 59	
	<i>Acquisition of goods and services</i> 61	

PART 6	CLIENT COMMUNICATION AND ACCOUNTABILITY _____	65
	<i>Importance of regular communication</i> 67	
	<i>Client contact program</i> 68	
	<i>Initial client visit</i> 68	
	<i>Ongoing client contact</i> 70	
	<i>Recent initiatives</i> 72	
	<i>Complaint handling mechanisms</i> 73	
	<i>Conduct of an annual client survey</i> 76	
	<i>Financial accountability to clients</i> 77	
PART 7	MANAGEMENT FRAMEWORK _____	79
	<i>Accountability to the Tribunal</i> 81	
	<i>Administrator caseloads and expertise</i> 82	
	<i>Fraud prevention and detection</i> 85	
	<i>Service charges levied on clients</i> 86	
	<i>Investment performance</i> 89	

Foreword

A number of people within our community have a disability, such as dementia or intellectual impairment, which results in them requiring assistance in managing their financial and legal affairs. For many of these people, State Trustees is assigned responsibility by the Victorian Civil and Administrative Tribunal, Guardianship List to act as administrator of their affairs.

This is at times a difficult and challenging responsibility to fulfil in that State Trustees is required to act in a person's best interests by taking into account their wishes, albeit that in some cases the person may not be capable of articulating those wishes. It also requires State Trustees to exercise a high degree of professional judgement in making decisions which may not always coincide with the views of the person, their family members or other interested parties.

Prior to commencing this audit it was evident to my Office that there is a significant degree of public interest, and in some isolated cases concern, regarding State Trustees' performance in discharging its responsibilities as administrator for this vulnerable group of people. This Report provides an independent insight into State Trustees' performance over the past 4 years and outlines several suggestions which are aimed at complementing the initiatives State Trustees has taken to date in improving the quality of its services.

J.W. CAMERON
Auditor-General

Part 1

Executive summary

Part 1.1

Overall audit conclusion

Background

1.1 The provision of personal administration services to represented persons comprises a core component of State Trustees' business. These services relate to cases where the Victorian Civil and Administrative Tribunal, Guardianship List has appointed State Trustees Limited to administer the affairs of people deemed unable to make reasonable judgements in respect of their estate. At 31 March 2000, State Trustees was the appointed administrator for approximately 7 000 represented persons and managed assets valued at around \$400 million on their behalf.

Impetus for the audit

1.2 As administrator, State Trustees is responsible for the general care and management of the estate of represented persons and exercises all rights on behalf of the represented person. As such, State Trustees can have a direct bearing on the quality of life of these people, who by the very nature of their mental, physical or medical incapacity, comprise one of the most vulnerable groups in our community. It is also an area which is of significant public interest and concern as reflected by the number of letters received by my Office from the public and stakeholder groups.

1.3 Against this background, it was considered that a performance audit would enhance accountability to the Parliament, represented persons and other interested parties by providing an independent assessment of the performance of State Trustees in discharging this key responsibility.

Audit objectives

1.4 The audit was directed at assessing whether State Trustees had discharged its responsibilities in the best interests of represented persons, in compliance with relevant legislation, in a cost-effective manner and with proper accountability. Particular attention was paid to assessing the extent to which the standard of services provided had improved over the past 4 years, given that State Trustees had a focus on continuous improvement over that period.

1.5 There are often a number of parties involved in providing services to represented persons. This audit also examined whether this resulted in any overlaps, gaps or lack of clarity in relation to responsibilities which impacted adversely on State Trustees in fulfilling its obligations.

1.6 The audit also evaluated whether the arrangements between State Trustees and the Department of Human Services for the provision of community services in this area were adequate. Funding received for these services is currently around \$5 million per annum, or 20 per cent of State Trustees' total revenue.

Quality of services

1.7 It was clear from our audit examinations that significant progress has been made by State Trustees over the past 4 years in improving the quality of the services it provides to represented persons. While the level of compliance with sound management practices has increased in many areas, there remains scope for improvement, particularly in areas of enhanced financial and management planning, strengthened accountability through better documentation of decisions, and improved timeliness in relation to decisions made and actions taken.

1.8 Improvements are also required in the communication processes between State Trustees and represented persons, or their family or carers, in that we found initial visits were often not made to clients and regular ongoing contact was not always evident.

1.9 As a suitable framework was not in place to measure and assess the caseloads of administrators, it was not possible for us, or State Trustees, to determine whether current workloads had contributed to the limited direct contact with represented persons and the delays in completing tasks.

1.10 Given that represented persons are not in a position to choose an alternate service provider, it is important that they are all assured of a high standard of service which optimises their position. A range of improvements are still needed for this to be achieved.

Fulfilment of legislative responsibilities

1.11 We concluded that State Trustees had generally fulfilled its responsibilities to represented persons in accordance with legislative requirements. However, several specific legislative aspects require further attention or clarification.

1.12 First, more attention needs to be given by State Trustees, wherever possible, to its legislative responsibility to encourage and assist represented persons to become capable of administering their own financial affairs. In almost all cases examined, there was no evidence that administrators had assessed the client's capacity in this regard.

1.13 State Trustees has a legislative responsibility to act in the best interests of represented persons by ensuring their wishes are considered. Given the current weaknesses in terms of direct contact with represented persons, their families or carers we had some doubts regarding the extent to which this requirement is adequately met.

1.14 We also found there is a need to clarify the scope of State Trustees' legislative responsibility in acting for represented persons. In practice, State Trustees has not always adopted a consistent approach in this regard. While their actions in the case of some represented persons were restricted to dealing only with legal and financial matters, in others they went beyond these areas on the basis that the action was deemed to be necessary, in the best interests of the client. Discussions between State Trustees and the Victorian Civil and Administrative Tribunal are needed to provide further clarification in this area.

Gaps and overlaps in service provision

1.15 In many cases, decisions impacting on represented persons are made by a range of parties including State Trustees, guardians, health carers and social workers. Under current arrangements, potential exists for gaps and overlaps to exist in providing services. This is particularly evident where different parties are appointed by the Victorian Civil and Administrative Tribunal to manage aspects of the represented person's affairs. It can be further complicated by the previously mentioned lack of clarity regarding the scope of State Trustees' legislative responsibilities in relation to represented persons.

Community service obligations

1.16 In accordance with a Community Service Obligations Agreement with the Department of Human Services, State Trustees is funded to administer the estate of those persons who otherwise would not have the necessary resources to meet the cost of this service. While the arrangements in relation to funding were found to be generally adequate, scope exists to improve the framework. This includes the need to enhance the appropriateness and usefulness of the performance standards used to measure the quality of services provided and the method for determining the cost to State Trustees of providing this service.

1.17 Set out in Part 1.2 of this Report is a summary of our major findings and Part 1.3 sets out suggestions for improvement.

❑ **RESPONSE** provided by Managing Director, State Trustees Limited

State Trustees welcomes the auditor's acknowledgments that, overall, there have been significant improvements in our performance and our management of the affairs of represented persons over the past 4 years.

More importantly, the audit provides an independent assessment which will help in identifying opportunities to continue improving the services in this area which is consistent with State Trustees' objective in all areas of operation.

We note that a large portion of the audit consisted of reviewing hard copy files. Some of the new data recording and workflow monitoring systems now used through our "STRATIS" computer system were not tested. This may well have affected some of the results, particularly in the areas of communication and task outcomes.

For example, the hard copy files do not disclose the level of communication which is now primarily recorded electronically. For instance, last year, 1 129 clients were visited in their own residence, 12 800 client meetings were held at our offices and there were over 130 000 telephone contacts. We believe this is a significant improvement in personal contact with our clients.

We shall study the suggestion that all clients be visited annually. We are not certain, however, that such a resource intensive process adds value to our service, particularly when trained carers, case managers, social workers and others provide the frequent contact designed to meet our clients' needs. Our current policy is to visit our clients when requested, or when we have concerns.

We shall consult with the Department of Human Services on this issue.

State Trustees also keeps a central register of accommodation facilities it visits and retaining this information on each individual file is a matter that we will need to consider further.

We agree that the scope of State Trustees' responsibility in acting as administrator needs to be clarified. For instance, the Guardianship and Administration Act provides no power for an administrator to make decisions concerning the accommodation or health care of its clients and we, therefore, refer such matters to the authorities specifically charged with this responsibility.

We thank the audit team for bringing to our attention the lack of documented procedures on the methods we use to assist our clients to become capable of administering their own estates and we shall address this issue immediately.

We will, in conjunction with the Department of Human Services, examine the service standards in a further attempt to quantify and measure "best interest" outcomes for our clients.

We thank the audit team for its constructive approach and analysis and confirm that we will be seeking additional advice on some of the issues raised.

The extent of the improvement within State Trustees is to the credit of the staff, particularly within the very difficult area of operation covered by this Report.

We see the Report as assisting us to improve our ability to meet the needs of our clients in this area.

Part 1.2

Summary of major findings

COMMUNITY SERVICE OBLIGATIONS

Page 31

- The performance standards agreed between State Trustees and the Department of Human Services as a basis for funding community service obligations focus almost entirely on quantitative and timeliness aspects of service delivery. While these are important, they do not adequately address the determinants of service quality.
Paras 4.7 to 4.17
- The performance standards do not adequately measure State Trustees' achievements in relation to its legislative requirements to act in the best interests of clients, encourage financial independence and consult with represented persons to determine their wishes.
Paras 4.13 to 4.15
- For the 18 month period to December 1999, State Trustees did not meet the level of performance required in relation to the ongoing management of clients funded through community service obligation arrangements. There was almost no improvement over that period.
Paras 4.18 to 4.19
- The \$75 000 penalty imposed on State Trustees for not meeting the required performance standards during 1998-99 was minimal in terms of the value of funding received. This raises doubts regarding whether the penalty constituted a sufficient incentive to improve future performance.
Para. 4.20
- Over the 4 year period to June 1998, procedures were not in place for periodically assessing achievements against agreed performance standards.
Paras 4.22 to 4.25
- There were weaknesses in State Trustees' measurement of its compliance with performance standards relating to the ongoing management of clients.
Paras 4.26 to 4.28
- Systems are not in place within State Trustees to enable an accurate determination of the net cost of providing community service obligations on an individual client bases. On the basis of available data, we are of the view that current estimates are likely to be understated.
Paras 4.33 to 4.38

QUALITY OF SERVICES

Page 43

- The quality and timeliness of State Trustees' initial assessments of the personal and financial position of its new clients were found to have significantly improved in recent years.
Paras 5.8 to 5.11
- Plans of Management had not been prepared for almost half of the represented persons who became clients of State Trustees during 1995-96. Where Plans were in place, they were often not prepared within the required 65 day timeframe or were not reviewed on an annual basis.
Paras 5.13 to 5.22
- Aside from some isolated instances, budgets had been prepared for represented persons with adequate consultation with represented persons and/or interested parties.
Paras 5.24 to 5.28
- State Trustees' performance in preparing financial plans within the 65 day timeframe had improved from 76 per cent in 1995-96 to 84 per cent in the case of more recent files examined. The more recent achievements are still below the target.
Para. 5.38
- Annual reviews of financial plans were not undertaken in 54 per cent of the cases examined with some not reviewed for several years. Where reviews were undertaken, they were found to be comprehensive and adequate.
Paras 5.40 to 5.42
- State Trustees rarely consulted with represented persons or their families regarding the contents of financial plans and investment strategies prepared on their behalf, even in cases where substantial funds were involved.
Paras 5.43 to 5.44
- Decisions taken by State Trustees to realise low value client investment holdings and place the proceeds within the State Trustees' investment funds were considered appropriate and in the best interests of the represented persons.
Paras 5.45 to 5.46
- Although a key legislative responsibility is to, as far as possible, promote client independence, administrators were not provided with any procedural guidance or formal training. In this regard, there was very limited evidence that this issue had been given consideration by State Trustees.
Paras 5.48 to 5.54
- Over the past 4 years State Trustees has generally improved its performance in key aspects of finalising the affairs of represented persons. Greater attention is required to ensure that statements of the financial position at the date of a client's death are prepared in a timely manner.
Paras 5.55 to 5.65
- Differing interpretations by administrators of State Trustees' legislative obligations to represented persons had led to inconsistencies in their actions and, in turn, created potential gaps and overlaps in the provision of services in some cases.
Paras 5.66 to 5.72
- Procedures implemented by State Trustees to procure goods and services for represented persons were assessed as generally sound. However, scope exists for further enhancements in this area.
Paras 5.73 to 5.79

CLIENT COMMUNICATION AND ACCOUNTABILITY**Page 65**

- Although contact programs for new clients had been developed in all cases examined, around 20 per cent were not prepared within 3 months of State Trustees' appointment as administrator. A high proportion of the programs were not regularly reviewed.
Paras 6.7 to 6.9
- Over the past 4 years, the percentage of represented persons visited at the time of State Trustees' appointment increased significantly. However, in recent times, visits were still made in the case of only 58 per cent of new appointments.
Paras 6.10 to 6.13
- The level of consultation with represented persons or interested parties to determine their wishes was inadequate although there has been a significant improvement in recent years.
Paras 6.14 to 6.15
- The extent to which contact programs developed for represented persons had been implemented in practice was found to have improved over the last 4 years. However, in 15 per cent of more recent files examined we found that plans had still not been appropriately implemented.
Para. 6.16
- Although ongoing contact was generally maintained with the represented persons' carers or family members by telephone or letter, only minimal face-to-face contact occurred.
Paras 6.17 to 6.22
- State Trustees places considerable reliance on nursing home and accommodation staff in terms of maintaining contact with the 65 per cent of the represented persons who live in such facilities. However, information on the quality of nursing homes and other special accommodation facilities was not compiled.
Paras 6.23 to 6.25
- The number of complaints registered by State Trustees between July 1994 and November 1999 was relatively low. However, the number may be understated as not all complaints made are registered.
Paras 6.36 to 6.38
- State Trustees' annual client satisfaction surveys did not provide statistically valid results in respect of represented persons.
Paras 6.42 to 6.44
- Positive action has recently been taken by State Trustees aimed at addressing past weaknesses in its communication processes.
Paras 6.26 to 6.29

MANAGEMENT FRAMEWORK

Page 79

- Due to legislative constraints placed on the scope of the audit, we were unable to examine the accountability arrangements within the Victorian Civil and Administrative Tribunal for monitoring the performance of State Trustees in relation to managing represented persons.
Paras 7.1 to 7.3
- State Trustees' procedures for examining the financial statements prepared by other administrators appointed by the Victorian Civil and Administrative Tribunal were found to be satisfactory.
Paras 7.4 to 7.7
- A formal framework for determining optimum caseloads for administrators had not been established, nor had action been taken to identify appropriate methodologies to underpin such a framework.
Paras 7.9 to 7.11
- A reduction in staff turnover achieved by State Trustees in the last 12 months has contributed to the establishment of an adequate skill base. This has been complemented by a sound training program.
Paras 7.16 to 7.21
- Aside from some minor aspects which need to be addressed, State Trustees' approach to fraud prevention and detection was found to be adequate.
Paras 7.24 to 7.26
- An adequate system is in place to ensure that service charges levied on represented persons are accurately calculated.
Paras 7.27 to 7.30
- The capital commission charges of State Trustees are, on face value, higher than those charged by 4 other equivalent interstate offices.
Paras 7.31 to 7.35
- Investment returns achieved by State Trustees are highly competitive relative to its performance benchmarks and the returns of 2 comparable funds.
Paras 7.36 to 7.40

Part 1.3

Summary of suggestions for improvement

1.3.1 A number of suggestions for improvement are contained throughout the Report. A listing of the applicable references is summarised in the following table.

SUMMARY OF SUGGESTIONS FOR IMPROVEMENT

<i>Report reference</i>	<i>Paragraph number</i>	<i>Suggestion</i>
Part 4 Community service obligations	4.9	The performance standards agreed between State Trustees and the Department of Human Services need to be expanded to also focus on determinants of service quality.
	4.12	Targets in relation to performance standards are set at 90 per cent. Secondary targets, such as more liberal time frames, should be established for the remaining 10 per cent of clients.
	4.14	Specific performance standards should be developed to aid in measuring the extent to which State Trustees has acted in the best interests of clients, assisted clients to administer their own estate and consulted with clients. These standards should be supported by guidelines to be used by administrators.
	4.16	Performance standards should be supported by more specific requirements in some areas of service delivery. These should be agreed between State Trustees and the Department of Human Services.
	4.28	Relevant events and actions relating to ongoing management should be recorded in State Trustees' management information system to provide more accurate information for measuring performance.
	4.35	The accuracy of cost estimates could be improved through calculating the net costs of providing community service obligations on an individual client basis and the implementation of a time recording system.

SUMMARY OF SUGGESTIONS FOR IMPROVEMENT - *continued*

<i>Report reference</i>	<i>Paragraph number</i>	<i>Suggestion</i>
Part 4 Community service obligations - <i>continued</i>	4.38	The Department of Human Services should initiate a further review of the current remuneration model used as a basis for funding community service obligations.
	4.40	Consideration should be given by the Department of Human Services to assigning a higher priority to a proposed benchmarking review of performance standards and costs for community services.
Part 5 Quality of services	5.13	All files established prior to 1996 should be progressively reviewed to ensure a Plan of Management is in place.
	5.16	Assessments of the adequacy of accommodation facilities relative to the fee paid, and the sufficiency of client allowances should be recorded on individual files.
	5.17	The timeliness of preparing Plans of Management needs further improvement.
	5.22	State Trustees' performance in relation to its ongoing client review functions should be closely monitored.
	5.53	There is a need for greater monitoring and appropriate documentation of the assessed potential for individuals to achieve an enhanced level of independence. Strategies and appropriate staff training should be developed in this area.
	5.58	Attention should be given to improving the timeliness and preparation of documentation relating to finalising client files.
	5.70	State Trustees should seek clarification from the Victorian Civil and Administrative Tribunal where doubt exists as to the scope of its legal responsibilities.
	5.72	The initiative to reduce the potential for gaps and overlaps in service provision should be monitored.
Part 6 Client communication and accountability	5.79	A number of areas relating to the procurement of goods and services for represented persons could be strengthened.
	6.13	Consideration should be given to undertaking an initial visit of all new represented person clients at the time of State Trustees' appointment.
	6.22	Greater attention needs to be given to increasing the frequency of direct contact with represented persons
	6.25	Timely information on the performance of nursing homes and other special accommodation facilities needs to be compiled and used to assist in determining the need to undertake client visits.
	6.29	State Trustees needs to carefully monitor the application of its new client contact policy to ensure its obligations to represented persons are properly met.
	6.38	Criteria in relation to the registration of client complaints should be developed with a view to ensuring comprehensive information is available for management purposes.
	6.44	An annual satisfaction survey of represented persons, or their immediate carers, should be undertaken.

SUMMARY OF SUGGESTIONS FOR IMPROVEMENT - *continued*

<i>Report reference</i>	<i>Paragraph number</i>	<i>Suggestion</i>
Part 7 Management framework	7.11	The usefulness of information compiled for determining administrator caseloads needs to be enhanced, particularly in terms of maintaining data on the complexity of individual cases.
	7.26	The fraud control strategy could be improved in a number of areas.
	7.35	Service charges should be regularly reviewed to ensure they compare favourably with equivalent trustee agencies.

□ **RESPONSE** provided by Managing Director, State Trustees Limited

This section largely identifies the areas that are believed to offer opportunities for improvement.

We comment on these sections, where relevant, within the body of the Report.

A number of items identified are not current issues but are noted for completeness.

In other cases, performance has continued to improve since the completion of the examinations in preparation for the Report.

Part 2

Background

ROLE OF STATE TRUSTEES

2.1 State Trustees Limited was established in July 1994 under the *State Owned Enterprises Act 1992* as the legal successor to the State Trust Corporation of Victoria. The main functions of State Trustees are to provide:

- trustee services for government, private sector business entities and individuals;
- personal administration services;
- specialised legal, financial and tax services including will making, establishing powers of attorney, financial planning, management of compensation funds, genealogical services and trust administration; and
- funds management services and investment products.

2.2 The provision of personal administration services represents a core element of State Trustees' business. A significant proportion of these services are provided to represented persons. In these cases, the Victorian Civil and Administrative Tribunal, Guardianship List has appointed State Trustees as the administrator of the affairs of people deemed unable to make reasonable judgements in respect of their estate.



Examples of brochures outlining services provided by State Trustees.

ROLE OF THE TRIBUNAL

2.3 The Victorian Civil and Administrative Tribunal, Guardianship List commenced operations in July 1998 replacing the former Guardianship and Administration Board. The Tribunal and the Office of the Public Advocate both play a crucial role in determining whether a person is in need of an administrator.

2.4 The primary role of the Guardianship List of the Tribunal, as defined in the *Guardianship and Administration Act 1986* is “... to protect adults who as a result of a disability are unable to make reasonable decisions in respect of their personal circumstances or estate”. The Tribunal is empowered to appoint a guardian to make personal and lifestyle decisions on behalf of represented persons, on matters such as accommodation or health care, and/or to appoint an administrator of their estate.

2.5 Any person may make an application to the Tribunal seeking the appointment of an administrator. In doing so, they may nominate a person such as a family member, friend, accountant, solicitor, State Trustees or a private trustee company who they consider would be appropriate to undertake the role. The Public Advocate may also make an application to the Tribunal for the appointment of a guardian or administrator, or for a review of appointment arrangements.

2.6 In cases where an administrator is not nominated by the applicant, or the nominee is considered by the Tribunal to be unsuitable, for example where there is significant family conflict, State Trustees or the Public Advocate may be appointed by the Tribunal as administrator.

ROLE OF AN ADMINISTRATOR

2.7 The *Guardianship and Administration Act 1986* provides for the appointment of an administrator by way of an Administration Order of the Tribunal specifying any particular powers and duties assigned to the administrator in addition to the broader responsibilities assigned by the Act. Subject to the Act and the Administration Order, an administrator:

- has responsibility for the general care and management of the estate of the represented person;
- takes possession and care of, recovers, collects, preserves and administers the property and estate, and generally manages the affairs of the represented person; and
- exercises all rights which the represented person might exercise if she/he had legal capacity.

2.8 In exercising such wide powers, the legislation requires administrators to act in the best interests of the represented person. The Act stipulates this is achieved if, as far as possible, the administrator acts in such a way as to encourage and assist the represented person to become capable of administering the estate and, in consultation with the represented person, takes into account the wishes of the represented person.

2.9 Typically, an administrator performs the following functions on behalf of a represented person:

- prepares and periodically reviews their financial plan and budget;
- manages real estate and other assets;
- collects income;
- manages liabilities and pay accounts as they fall due;
- invests available funds; and
- manages legal and associated issues.

STATE TRUSTEES AS AN ADMINISTRATOR

2.10 During the past decade, the incidence of the appointment of State Trustees as administrator has declined. In 1989-90, State Trustees was appointed as administrator in 67 per cent of Orders made by the Tribunal compared with 42.5 per cent in 1995-96. In contrast, the proportion of administrators appointed from the ranks of relatives and others steadily increased over that period. Information regarding the proportion of cases assigned to State Trustees subsequent to 1995-96 was not readily available from the Tribunal.



State Trustees' head office, located in Exhibition Street, Melbourne.

2.11 At 31 March 2000, State Trustees was the appointed administrator for approximately 7 000 represented persons and managed assets valued at around \$400 million on their behalf. The ages of the represented persons as well as their particular circumstances varied significantly. Around 40 per cent were 61 years or older, 49 per cent were between 31 and 60 years of age and the remaining 11 per cent were less than 30 years of age. All had some form of disability such as intellectual impairment, a mental disorder, brain injury, or dementia which impacted on their ability to make reasonable decisions.

COMMUNITY SERVICE OBLIGATIONS

2.12 As a State-owned company, State Trustees must perform its functions for public benefit by:

- operating its business as efficiently as possible consistent with prudent commercial practice; and
- maximising its contribution to the economy and well-being of the State.

2.13 In adopting commercial practice, State Trustees would not normally accept appointments as administrator in circumstances where it would incur a loss. Such losses could arise through undertaking unprofitable activities designed to meet community and social objectives.

2.14 Since July 1994, a Community Service Obligations Agreement has been in place between State Trustees and the Minister for Community Care (formerly the Minister for Youth and Community Services), covering the provision of services to certain represented persons. Such services are delivered under the provisions of the *State Trustees (State Owned Company) Act 1994* which provides that the Minister is responsible for ensuring members of the public have access to services relating to the management and administration of their estates and property. These provisions only apply to persons, including children, who in the opinion of the Minister do not have the financial capacity to pay for such services. State Trustees is recompensed for the provision of these unprofitable services conditional on the achievement of certain performance standards stipulated within the Agreement.

2.15 The funds received by State Trustees under the provisions of the Agreement amounted to \$5.8 million in 1998-99.

RECENT INITIATIVES TAKEN BY STATE TRUSTEES

2.16 In recent years, State Trustees has implemented a program of continuous improvement in respect of a range of client services. The initiatives adopted have included the following:

- Increasing client accessibility by establishing a Customer Service Centre located in the metropolitan area and several other centres located in regional areas;
- Appointing a Client Assessment Officer and purchasing an additional 10 motor vehicles to facilitate improved client contact;
- Enhancing client communication by providing regular service information to clients and members of the community;

- Appointing a Client Relations Officer to deal formally with any complaints received;
- Conducting public forums to allow stakeholders and advocacy groups to raise concerns and have input to service delivery initiatives. These meetings have also provided an opportunity to explain the administration role, responsibilities and obligations; and
- Utilising new information systems to improve the efficiency of service delivery, particularly in the area of managing clients' financial affairs and file management.

Part 3

Conduct of the audit

DECISION TO CONDUCT THE AUDIT

3.1 In 1997, my predecessor determined that a need existed to conduct a performance audit of the management by State Trustees of the affairs of represented persons on the basis that:

- such management has a direct bearing on the quality of life of a significant proportion of the community who are unable to manage their legal and financial affairs and who by the very nature of their mental, physical or medical incapacity comprise one of the most vulnerable groups in our community; and
- the area was of significant public interest and concern as reflected by the number of letters received by my Office from the public and stakeholder groups.

3.2 It was also considered that a performance audit would enhance accountability to the Parliament, represented persons and other interested parties in terms of providing an independent assessment of the performance of State Trustees in the discharge of its responsibilities.

3.3 Finally, following consultation with the Public Accounts and Estimates Committee on my 1998 performance audit program, this audit was endorsed by the Committee as a priority audit.

AUDIT OBJECTIVES

3.4 The objectives of the audit were to:

- assess whether the arrangements to administer the provision of community service obligations were adequate;
- evaluate whether, in terms of the various agencies involved in providing services for represented persons, there were any overlaps or gaps in service provision which impacted adversely on the capacity of State Trustees to fulfil its obligations and whether the responsibilities of service providers were clearly defined;
- assess the extent to which the standard and scope of service delivery provided by State Trustees had improved over the past 4 years and provide value added suggestions regarding its efforts to continuously improve, taking into account:
 - the mandate of State Trustees as a State-Owned company;
 - the practicality of any such suggestions from a financial and cost-effectiveness perspective;
 - requirements imposed on State Trustees by Community Service Obligations Agreements; and
 - the capability of clients; and
- determine whether State Trustees discharged its responsibilities in terms of managing the affairs of represented persons:
 - in their best interests, based on information available at the time;
 - in compliance with relevant legislation and requirements;
 - in a cost-effective manner; and
 - with proper accountability.

SCOPE OF THE AUDIT

3.5 The audit scope was predominantly confined to an examination of personal administration services provided by State Trustees to represented persons.

3.6 To complement an assessment of organisational management procedures, the audit included an examination of a sample of cases where the Victorian Civil and Administrative Tribunal, Guardianship List had appointed State Trustees as the administrator.

3.7 In addition, 6 cases were selected for more detailed examination. These cases were drawn from public submissions received which raised concerns regarding the management of represented persons. The purpose of examining the specific cases was to ascertain whether there was any substance to the concerns raised and to determine whether any deficiencies in these cases reflected more widespread weaknesses in State Trustees' management processes.

3.8 Certain activities performed by the Department of Human Services, pertaining primarily to its role in the administration of the Community Service Obligations Agreement, also formed an integral part of the audit.

3.9 Due to variations in the nature of the client base administered by equivalent interstate and private sector trustee organisations or administrators, it was not feasible to make a comparison, during the audit, of the performance of State Trustees against comparable entities.

Sampling methodology

3.10 The key phases of State Trustees' role as an appointed administrator comprise:

- *Initialisation* which involves a range of activities necessary at the time or soon after the appointment of State Trustees as the administrator;
- *Ongoing management* which involves day-to-day management of the represented persons' affairs; and
- *Finalisation* which occurs when the Administration Order is revoked by the Tribunal or notification is received of a client's death.

3.11 A statistically valid sample of cases was selected for examination which achieved a reliable coverage of each of these phases. A total of 200 case files were selected from a total population of around 8 000 files comprising 6 000 cases managed by State Trustees at August 1999 and 2 000 closed between July 1995 and August 1999 due to the finalisation of the administration. Three-quarters of the sample related to cases that were open at August 1999 while the remainder pertained to cases that had been closed after July 1995.

3.12 The sample was structured in such a way to enable conclusions to be reached regarding any changes in the quality of management approaches over the last 4 years.

Public input sought

3.13 As part of the information gathering process, an advertisement was placed in the press in October 1998 inviting comments from the public in relation to the performance of State Trustees in managing the affairs of represented persons.

Period covered

3.14 The audit primarily covered the period from July 1995 to August 1999. The examination of management procedures and service delivery included an assessment of the extent of progress, or otherwise, resulting from State Trustees' focus on continuous improvement over that period.

Compliance with auditing standards

3.15 The audit was performed in accordance with Australian Auditing Standards applicable to performance audits and accordingly included such tests and other procedures considered necessary in the circumstances.

Limitations to the audit scope

3.16 The scope of the audit as originally planned included an examination of the accountability provisions between State Trustees and the Victorian Civil and Administrative Tribunal, Guardianship List. As an integral part of this examination we proposed to review how the Tribunal ensured that:

- State Trustees was properly accountable for the manner in which it administers the affairs of represented persons; and
- annual reviews undertaken by State Trustees for the Tribunal of the accounts prepared by all private administrators were adequate in terms of timeliness and quality.

3.17 However, legal advice from the Victorian Solicitor-General and the Victorian Government Solicitor obtained by the Department of Justice in 1996, in relation to an audit of the Children's Court of Victoria, indicated that I have no legislative power to conduct an audit and subsequently report any findings in relation to the functioning of a court.

3.18 The Secretary of the Department of Justice subsequently advised my predecessor in September 1998 that the Solicitor-General had confirmed that the legal advice applied with equal force to the Victorian Civil and Administrative Tribunal and as such there was no statutory authority for the inclusion of the Tribunal in a performance audit.

3.19 As a result of this limitation, the proposed audit inquiries regarding the adequacy of accountability arrangements between State Trustees and the Tribunal were excluded from the audit. I consider the necessity for such action unfortunate as it limited my ability to provide the Parliament with an evaluation of this important monitoring role in relation to one of the most vulnerable groups in our community.

3.20 In my recent discussions with the Department of Treasury and Finance and the Public Accounts and Estimates Committee regarding the proposed program for implementing legislative changes to the Audit Act, I emphasised the pressing necessity for this long-standing matter concerning my capacity to examine non-judicial matters within courts and tribunals to be resolved. I am seeking the active support of the Parliament in this regard to enact appropriate legislative provisions.

HIGH LEVEL AUDIT CRITERIA

3.21 A number of important principles, central to the efficient and effective discharge of responsibilities in managing the affairs of represented persons, were used in evaluating the performance of State Trustees. The principles are set out below:

- State Trustees should administer the affairs of represented persons in compliance with relevant legislative requirements and in the best interests of clients;
- State Trustees should meet its legislative obligation to consult with represented persons and ascertain their wishes;
- State Trustees should comply with the service delivery performance standards and targets specified in the Community Service Obligations Agreement;
- service delivery performance standards and targets specified in the Community Service Obligations Agreement should be adequate, realistic and appropriate;
- adequate complaint handling and dispute resolution procedures need to be in place and adequately publicised among clients and stakeholders;
- State Trustees need to be accountable to represented persons in respect of the management of their affairs;
- State Trustees should act in accordance with relevant legislative requirements and achieve an adequate rate of return when managing both pooled and unpooled investments on behalf of represented persons;
- commissions, fees and charges imposed on clients should be consistent with legislative requirements and State Trustees' published schedule of fees and charges;
- staffing levels, skills and training need to be adequate to ensure effective and efficient service delivery to represented persons;
- an adequate fraud prevention, detection and investigation framework needs to be in place to protect both clients and State Trustees; and
- services and facilities of appropriate quality and value for money should be obtained by State Trustees on behalf of represented persons.

RESOURCING THE AUDIT

3.22 The audit was undertaken by the former Audit Victoria under agreement with the Auditor-General. However, prior to the finalisation of this Report, legislative changes abolished Audit Victoria, with the staff of that organisation transferring to my Office. Consequently, the Report was finalised by my own staff.

3.23 Dr Jenni Rice, Senior Lecturer, Victoria University of Technology, provided specialist assistance to the audit team in selecting the sample of client files subjected to audit. Dr Rice holds a PhD (1985) in mathematical social psychology and has, since 1976, taught statistics and research methods.

ASSISTANCE PROVIDED TO MY STAFF

3.24 Significant support and assistance was provided to my officers by the management and staff of State Trustees and the Department of Human Services. I wish to express my appreciation to these entities for this assistance.

Part 4

Community service obligations

ESTABLISHMENT OF A SERVICE AGREEMENT

4.1 As indicated earlier in this Report, the Minister for Community Care is responsible for ensuring members of the public have access to management and administration services where they do not have the necessary resources to acquire such services for themselves. A large proportion of the represented persons administered by State Trustees fall within this category.

4.2 Since July 1994, a Community Service Obligations Agreement between State Trustees and the Minister has been in place for the delivery of community services for a period of 3 years to June 1997. A second Agreement covers a 5 year period to June 2002. In developing the current Agreement, the Department of Human Services undertook considerable consultation on its nature and content with a wide range of stakeholders including State Trustees, the Victorian Civil and Administrative Tribunal, the Office of the Public Advocate, other relevant service areas within its Department and providers of advocacy services for clients or people with a disability.

4.3 The community services which State Trustees is obliged to provide comprise Victorian Civil and Administrative Tribunal, Plenary (represented persons) Services, Awards Management Services, Personal Trust Services and Deceased Estate Administration. In relation to represented persons, the Agreement requires State Trustees to administer the client's legal and financial affairs and to be aware of circumstances beyond these matters.

4.4 State Trustees aims to provide a quality service to all clients and does not actively distinguish between those clients for which it receives funding under the Community Service Obligations Agreement and its other clients.

KEY OBLIGATIONS UNDER THE AGREEMENT

4.5 Under the current Community Service Obligations Agreement, State Trustees has a range of obligations including:

- providing community services to any client who requests those services or on whose behalf the services are requested;
- managing the affairs of represented persons and maintaining regular contact with clients and relevant third parties;
- meeting performance targets specified in the Agreement in relation to various performance standards;
- reporting quarterly to the Department of Human Services on achievements against performance standards outlined in the Agreement;
- reporting annually to the Department on the net cost of providing services;
- effectively managing the relationship between a client and any third party, including alerting the appropriate authority in order for them to organise the appointment or, where necessary, the intervention of a guardian, case manager or carer;
- monitoring the delivery of services, organising a complaints handling mechanism and staff training with a view to continuously improving the provision of community services; and

- maintaining records which enable the Department to monitor the extent to which State Trustees has complied with its legislative obligations.

4.6 The Department’s main obligation under the Agreement is to recompense State Trustees for providing the services in accordance with the terms of the Agreement.

SERVICE PERFORMANCE STANDARDS AND TARGETS

4.7 The current Community Service Obligations Agreement incorporates certain performance standards and targets relating to the functions undertaken by State Trustees. The key standards and targets are detailed in Table 4A.

**TABLE 4A
PERFORMANCE STANDARDS AND TARGETS**

<i>Standards</i>	<i>Target service level</i>	<i>Performance target</i>
<p>Initialisation of new clients</p> <p>Preparation of:</p> <ul style="list-style-type: none"> • Plan of Management • Client Contact Program • Financial Plan • Budget 	<p>Within 65 working days of receipt of Tribunal Order</p>	<p>90% compliance in relation to all standards</p>
<p>Ongoing management of existing clients</p> <p>Take appropriate action on receipt of advice of change in clients circumstances</p> <p>Review:</p> <ul style="list-style-type: none"> • Plan of Management • Client Contact Program • Financial Plan • Budget <p>Tax requirements completed</p> <p>End of year financial statements prepared</p> <p>Financial Statements to client/family</p>	<p>Within 14 working days of receipt of advice</p> <p>Annually from date of preparing Financial Plan</p> <p>To be completed within the Statutory Lodgement Guidelines</p> <p>In accordance with Tribunal Order</p>	<p>90% compliance in relation to all standards</p>
<p>Finalisation of administration</p> <p>Advise appropriate authorities of death of client/revocation of Order</p> <p>Prepare statement of financial position at date of death/revocation</p> <p>Complete taxation requirements</p> <p>Prepare statement of financial position to date of finalisation and make payment</p> <p>Hand over relevant documentation/deeds and effects held</p>	<p>Within 20 working days of receipt of advice of death /revocation</p> <p>Within 20 working days of receipt of legal authority to close account</p>	<p>90% compliance in relation to all standards</p>

4.8 We found the performance standards and related requirements specified in the Agreement to be satisfactory in terms of:

- addressing, with the exception discussed below, State Trustees’ legislative responsibilities;
- establishing a formal client management framework of initialisation, ongoing management and finalisation;
- incorporating time targets for all key activities;
- requiring the establishment of a complaints handling mechanism;
- specifying State Trustees’ obligations in relation to regular contact with clients and third parties, alerting third parties to opportunities or to problems, and maintaining records of actions taken; and
- requiring regular reporting to the Department of Human Services on performance against the targets.

4.9 Nevertheless, we consider that scope exists to significantly improve the quality and usefulness of the standards and requirements within the Agreement. While it is recognised that the quantitative and timeliness aspects of service quality included in the Agreement are important, the performance standards need to be expanded to also focus on determinants of service quality. Strengthening certain aspects of the Agreement could also assist in avoiding disparities in the expectation levels of the relevant parties, eliminating inconsistencies in the administration of clients’ affairs and ensuring full compliance with State Trustees’ legislative responsibilities.

4.10 Details of specific aspects which need to be improved are outlined in the following paragraphs.

Assessing client outcomes

4.11 At present, the performance standards and targets tend to focus on meeting timelines, completing tasks and following processes rather than on achieving outcomes for clients. For example, State Trustees is required to prepare a Plan of Management within 65 working days of receipt of an Administration Order from the Tribunal, but there is no standard for assessing whether the Plan has contributed to the successful administration of the person’s estate.

❑ **RESPONSE** provided by Secretary, Department of Human Services

The development of qualitative performance indicators and standards related to the broad objective of contributing to the successful administration of the person’s estate is a complex task and requires detailed consideration of the objective and development of appropriate and often proxy and intermediate measures. The Department has developed a project brief to benchmark existing trustee industry performance standards, policies and procedures, and costs of delivery of financial administration services. The implementation of this project will inform the basis for establishing new quality performance standards and measures and funding structures.

Performance targets

4.12 Targets for all performance standards have been set at a 90 per cent level of compliance. For example, the standard requiring the preparation of various plans and budgets is expected to be achieved for 90 per cent of clients. The 10 per cent leeway should be considered in the context that the current Agreement represents the first time such targets have been set. It has also been recognised by both parties that State Trustees may not be in a position to meet a performance target of 100 per cent given its past level of performance in some areas. However, we consider a secondary target such as a more liberal timeframe should be set to cover achievement of the performance standard for the other 10 per cent of clients.

□ **RESPONSE** provided by Secretary, Department of Human Services

Through the contract renewal process, the Department has refined State Trustees' performance standards. Further refinement of performance standards including the introduction of secondary targets, where appropriate, will be addressed by the proposed project on benchmarking trustee performance.

Legislative responsibility

4.13 The performance standards do not fully measure State Trustees obligations in relation to the requirement under section 49 of the *Guardianship and Administration Board Act 1986* to act in the best interests of represented persons; encourage and assist the represented person to become capable of administering their estate; and consult, taking into account as far as possible, the represented person's wishes. Similarly, State Trustees' internal procedures do not provide any guidance in this regard including how administrators can reconcile disparities between the wishes of the client and the client's best interests.

4.14 It is acknowledged that these aspects can vary from client to client and it is therefore difficult to develop specific standards and procedural guidelines. Nevertheless, as they are key legislative requirements we consider they should be covered within the standards. Given that they are areas subject to judgement or interpretation, it would also be prudent for greater assistance to be provided to staff to aid their actions and decisions. This could be achieved through practice guidelines, training programs and structured supervision.

4.15 Further comment on current practices relating to the requirement to encourage financial independence is detailed in Part 5 of this Report.

□ **RESPONSE** provided by Secretary, Department of Human Services

As part of the development of qualitative performance indicators related to financial independence and successful administration of the person's estate, the Department will work with State Trustees on how these indicators are reflected in the overall client framework and associated practices.

Breadth of performance standards

4.16 The performance standards only describe in broad terms the tasks to be completed by State Trustees leaving the specific details primarily to their discretion, particularly in terms of quality. For example, the standards require a Client Contact Program to be prepared and regularly reviewed but do not specify the desirable nature and frequency of contact. Such detail, while not necessarily forming part of the standard, should be specified and agreed between State Trustees and the Department.

□ **RESPONSE** provided by Secretary, Department of Human Services

As a service purchaser, the Department does not impose prescriptive and detailed guidelines on service providers how work functions are to be performed. The proposed benchmarking project on trustee performance can be expected to impact on detailed State Trustee standards, policies and procedures.

Cost-effectiveness

4.17 The cost component of service delivery is only addressed in 2 specific areas of the Agreement, namely, it provides for payment increases to be restricted to one per cent below Consumer Price Index increases, and requires State Trustees to undertake a feasibility study of time recording to provide a more accurate calculation of its administration costs. In the absence of reporting against benchmarks or periodic reviews of State Trustees' work practices, the Department of Human Services is not in a position to assess whether the services delivered under the Agreement represent value for money.

□ **RESPONSE** provided by Secretary, Department of Human Services

Assessing value for money requires relevant and comparative information on cost benchmarks and performance levels. The proposed project on trustee benchmarks is aimed at providing relevant information.

PERFORMANCE ACHIEVEMENTS

4.18 Table 4B details State Trustees' achievements against the performance standards for 1998-99 and for the 6 months ended 31 December 1999, as reported to the Department of Human Services.

TABLE 4B
LEVEL OF COMPLIANCE WITH PERFORMANCE STANDARDS
(per cent)

Standards	Average compliance		
	Target	Actual 1998-99	Actual for 6 months to 31 December 1999
Initialisation	90	95	97
Ongoing management	90	75	76
Finalisation	90	82	94

4.19 Table 4B highlights that over the 18 month period to December 1999 State Trustees achieved the required level of performance in relation to the initialisation standards and, in more recent times, the finalisation standards. However, for the entire period, State Trustees' performance was substantially below that required in relation to the key area of ongoing management of its clients with virtually no improvement over the 18 month period. State Trustees' poor performance in this area is consistent with the findings of a review of case files undertaken as part of the audit (further details are provided in Part 5 of this Report).

4.20 Based on the ongoing management results for the year ended 30 June 1999, the Department imposed a penalty of \$75 000. We considered the quantum of this penalty to be minimal in terms of the value of funding received and may not have been sufficient to constitute an adequate incentive for State Trustees to improve its performance.

□ **RESPONSE** provided by Managing Director, State Trustees Limited

State Trustees acknowledges that the average level of compliance for ongoing management for the 6 months to December 1999 has not substantially improved from year ended 30 June 1999. However, the level of compliance for each quarter shows a definite upward trend.

For the quarter ended September 1999, the result for ongoing management was 73 per cent; for the quarter ended December 1999, 78 per cent; and for the quarter ended March 2000, 83 per cent.

□ **RESPONSE** provided by Secretary, Department of Human Services

The \$75 000 penalty imposed by the Department was the first application of the penalty clause and represented one per cent of the value of the funding allocation for this performance standard. The objective of the Department was to reflect concern at the ongoing non-compliance in this area.

MONITORING BY THE DEPARTMENT

4.21 In monitoring the Community Service Obligations Agreement, the Department of Human Services relies on the provision of regular data by State Trustees, as required under the Agreement, and occasional independent reviews.

Limited reporting of performance

4.22 We found that under the initial Agreement, which covered the period July 1994 to June 1997, there was no requirement for State Trustees to report on its achievements against the performance standards. The only performance information reported to the Department during this period was the results of an independent review in November 1996, undertaken at the request of the Department. The review, which examined State Trustees' compliance with the standards in respect of files opened during the year ended 30 June 1996, identified non-compliance with the standards in a range of areas.

4.23 The absence of reporting requirements has been addressed in the current Agreement in that State Trustees is now required to provide a quarterly report to the Department which details its performance in meeting the targets for each performance standard. It also provides for the Department to access the documentation supporting claims made by State Trustees for payment and enables it to review the efficiency, effectiveness and appropriateness of State Trustees' service provision. State Trustees is required to co-operate with such reviews, provide all relevant information and act on any identified opportunities to improve its service provision.

4.24 Due to delays in reaching agreement on its terms and conditions, the current Agreement was not signed until December 1998. As a result, State Trustees did not commence regular reporting to the Department until the 1998-99 financial year. Consequently, over the 4 year period to June 1998, the only information received by the Department regarding State Trustees' achievements against performance standards was the November 1996 review.

4.25 We consider this was a significant breakdown in the accountability framework particularly given that funds totalling \$17.7 million were received by State Trustees over the 4 year period to June 1998.

□ **RESPONSE** provided by Secretary, Department of Human Services

The current Agreement between the Department and State Trustees imposes wide-ranging reporting requirements. Prior to signing of a new Agreement in December 1998, the Department was bound by the terms of the original Agreement which did not prescribe reporting requirements. State Trustees also had limited information-gathering mechanisms in place which also constrained the monitoring of State Trustees by the Department.

Reliability of performance information

4.26 Information relating to initialisation and finalisation performance standards is generated from State Trustees' management information system. Certain events, such as the receipt of an Order from the Tribunal, is automatically recorded in the system while administrators enter other actions such as the preparation of a budget or Plan of Management.

4.27 State Trustees' performance against the ongoing management service standards is derived from the results of random file reviews undertaken by its internal auditors. The sample of ongoing files examined each quarter represented only about 0.6 per cent, or 38 files from a total of almost 6 000. This raises doubts regarding the statistical reliability of the results and, in turn, the conclusions which can be reached from the results. To this extent, State Trustees does not adequately measure its compliance with the ongoing management performance standards and targets defined in the Agreement.

4.28 The Department also raised this issue with State Trustees in June 1999 indicating that a sample of 10 per cent of management cases should be examined annually, which equates to 2.5 per cent or around 150 cases per quarter. The Department also acknowledged the cost of increasing the sample and suggested State Trustees needed to devise a more economical system of performance assessment. We consider this could be achieved if relevant events and actions taken were recorded in State Trustees' management information system in the same way as information is recorded in respect of initialisation and finalisation functions.

Examination of reports

4.29 We found that the Department actively utilises measures available under the Agreement to monitor State Trustees' performance. It was evident that the Department scrutinised the quarterly performance reports received from State Trustees and followed-up any matters of concern through to their satisfactory resolution.

FUNDING PROVIDED TO STATE TRUSTEES

Basis of funding

4.30 The *State Owned Enterprises Act 1992* allows a State-Owned company to be reimbursed for the net costs associated with undertaking uncommercial activities. The net cost represents the shortfall between the revenue received from service charges levied on clients and the estimated costs of delivering services. Clients who fall within the category of requiring services which would otherwise be regarded as uncommercial are not exempted from State Trustees' normal fees and commissions. Both the initial and current Agreements have in fact required State Trustees to maximise fee income collected from these clients.

4.31 At present the community service funding arrangements impact on represented persons who have assets valued up to \$50 000 which equates to around 75 per cent of the total number of represented persons administered by State Trustees.

4.32 Funding received by State Trustees in 1997-98 was \$5 million (including \$3.4 million relating to represented persons) and \$5.8 million in 1998-99 (including \$3.2 million relating to represented persons). These funds represented around 20 per cent of State Trustees' total revenue in both years.

Accuracy of net cost calculations

4.33 Although systems are not in place to enable State Trustees to accurately report the net cost of service provision on an individual client basis, systems are in place to enable State Trustees to estimate the net cost of community service obligation provision, based on the assumption that groups of clients holding a similar value of assets are likely to have similar costs. The Department of Treasury and Finance, in its role of funding community service obligations, engaged a chartered accounting firm in January 1994 to develop a remuneration model to determine these costs. The model was subsequently revised in 1997-98 as a result of a follow-up review by the chartered accounting firm. Further enhancements have been incorporated into the model by State Trustees as its computer systems have been improved.

4.34 We determined that the model is unlikely to arrive at the true net cost of the provision of community services and that the net costs currently funded are likely to be underestimated. The weaknesses in the model are:

- The net cost is based upon total estimated service costs and commission and fee income for groups of clients holding a similar value of assets rather than actual costs and commissions for individual clients;

- The costs incurred by State Trustees in managing clients are totalled and apportioned to various services it provides, including those provided to represented persons, in accordance with normal cost accounting practices. The costs allocated to services provided to represented persons are then allocated based on a weighting according to the complexity of the case. However, State Trustees was unable to provide us with documentation explaining the rationale underlying its weightings. We also noted that represented persons for whom State Trustees receive funding were applied the same weighting suggesting they were all of equal complexity;
- The allocation of costs does not take into account differences in costs to State Trustees in dealing with different individual clients;
- Clients are grouped into asset classes for calculating differences between revenue and costs on which the funding is based. This is effectively equivalent to cost transfers between clients and potentially results in lowering the estimates of net costs associated with providing community services; and
- The model results in only clients with assets up to \$50 000 being included in the calculation. Private sector trustee companies generally deem clients with estates under \$150 000 to be commercially unacceptable.

4.35 An immediate improvement in the accuracy of the model could be achieved by calculating net costs on an individual client basis using actual commission and fee income derived from each client, which is now recorded on State Trustees' client management information system and the estimates of costs per client. The accuracy of the cost estimates could also be improved if State Trustees implemented a time recording system which would provide a more accurate indication of service costs for each client or category of services.

4.36 Under the current Community Service Obligations Agreement, State Trustees was required to complete a feasibility study, by June 1999, of instituting a time recording system to enable it to more accurately determine the actual costs incurred in managing the clients covered under that Agreement. Although the completion date was subsequently extended to December 1999, we found that the study did not start until December and that a revised completion date had been set for June 2000.

4.37 This reflects a low priority given to this project by both State Trustees and the Department of Human Services relative to other improvement initiatives.

4.38 The matters identified during the audit indicate that it would be timely for the Department of Human Services to initiate a further independent review of the remuneration model. The review should include validating the rationale underlying cost allocations in relation to represented persons.

❑ **RESPONSE** provided by Secretary, Department of Human Services

The review of the community service obligations funding model undertaken in 1997 confirmed the validity of the fundamental principles behind the model. The Department will give further consideration to the issue of an independent review taking account of the availability of improved information.

IMPROVING ARRANGEMENTS

4.39 The Department of Human Services is proposing to conduct a benchmarking review of performance standards and service costs for community services to ensure that it is purchasing high quality services at a cost-effective price. The review is intended to examine equivalent interstate and overseas community service obligations arrangements, in order to identify the level and quality of services currently provided by trustee companies, and compare those with the arrangements in Victoria. The review is also to examine funding and administration arrangements.

4.40 However, we noted that since November 1996, when the proposed benchmarking review was first considered by the Department, no funding has been allocated to the project. Given the benefits that may flow from the review we consider it should be given a higher priority.

□ **RESPONSE** provided by Secretary, Department of Human Services

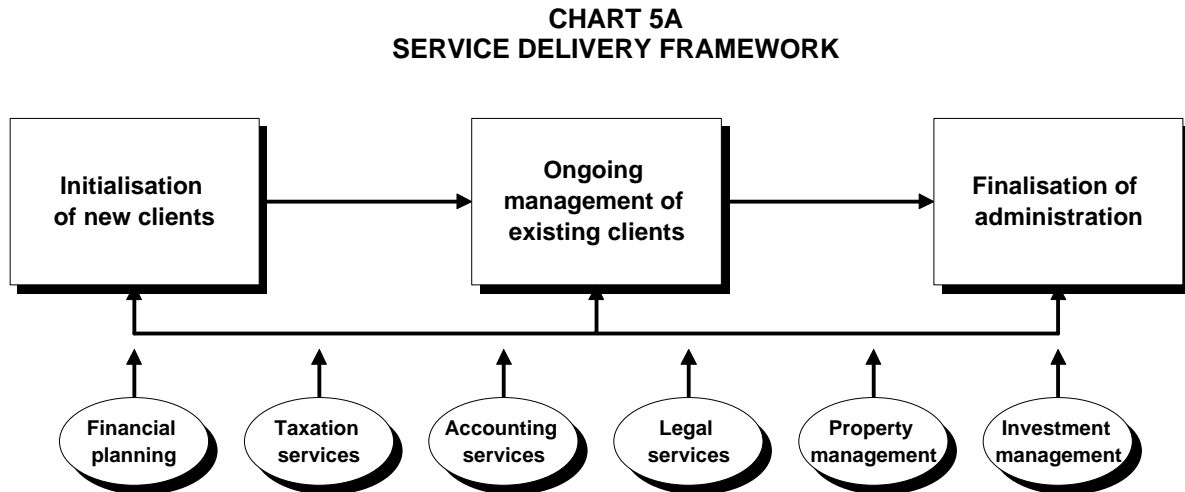
Given the complexities of the benchmarking project, the Department has devoted considerable resources in developing a project brief. The current intention is for the project to commence in the 2000-2001 financial year.

Part 5

Quality of services

BACKGROUND

5.1 A wide range of services are provided by State Trustees in the management of represented persons. An overview of the management framework is set out in Chart 5A.



5.2 As indicated in the chart, there are 3 key phases of administration, namely:

- *Initialisation* which involves examining the Administration Order issued by the Victorian Civil and Administration Tribunal, Guardianship List and related documentation to determine the existence of any particular provisions requiring action by State Trustees. It also involves contacting the client, family and other interested parties, such as the guardian or social worker, advising them of the appointment; obtaining specific details to assist in the establishment of the case files; and commencing action to identify all assets, liabilities, income and expenditure of the client;
- *Ongoing management* which involves day-to-day management of the represented persons’ affairs and includes legal and financial issues (including financial planning, budgeting and management of assets and investments) and client and related parties interaction; and
- *Finalisation* which occurs when the Administration Order is revoked by the Tribunal or notification is received of a client’s death. Action required at this time includes notifying relevant parties, finalising the client’s financial position and handing over any necessary documentation relating to the client to the new administrator or executor.

5.3 The quality of the services delivered by State Trustees were primarily assessed during the audit against:

- performance standards and targets established under the Community Service Obligations Agreement;
- internal administration procedures developed by State Trustees and in place for the period covered by the audit; and
- legislative responsibilities of State Trustees.

OVERALL PERFORMANCE ASSESSMENT

5.4 From our examinations it is clear that significant progress has been made by State Trustees over the past 4 years in improving the quality of the services it provides to represented persons. While the level of compliance with sound management practices has increased in many areas, there is still considerable scope for improvement, particularly in terms of:

- ensuring financial and management planning on behalf of represented persons is an ongoing process;
- addressing weaknesses in accountability which result from poor documentation of the decisions made or actions taken, particularly in the area of finalising clients' affairs;
- improving the timeliness of decision making and actions; and
- ensuring the wishes of clients are taken into account and encouraging them to be more independent in those limited cases where this may be possible.

5.5 Given that represented persons are not in a position to choose an alternate service provider, it is important that they are all assured of a high standard of service which optimises their position. For this to be achieved, further enhancements are needed.

5.6 The results of our review in relation to key areas of management are detailed in this Part of the Report and more specific issues relating to communication with clients are included in Part 6 of the Report.

5.7 In discussing our assessment, a number of individual cases have been included for illustrative purposes. These have been drawn from a number of cases examined in detail during the audit and from more general file reviews. While the cases and examples used in the Report do not necessarily reflect common situations, they have been included to assist in understanding the potential impact on represented persons of weaknesses identified in management processes.

INITIAL ASSESSMENT OF CLIENT'S POSITION

5.8 A key task facing State Trustees following its appointment as an administrator is to gain a comprehensive understanding of the represented person's financial position and personal circumstances. Successful completion of this task places State Trustees in a strong position to ensure that its ongoing management of the person's affairs is in accordance with their best interests. This can be achieved by:

- reviewing the Administration Order to identify any specific responsibilities imposed by the Tribunal;
- initiating contact with the client, primary carer, case manager, social worker and family members to explain the role of State Trustees and to obtain information on the client's financial and personal requirements such as weekly allowance required, accommodation needs, health issues, existence of a will, other legal matters and asset and investment holdings; and
- visiting the client to gain an understanding of the represented person's circumstances.



*Undertaking client visits
to obtain an understanding of a represented person's circumstances.*

5.9 Under the Community Service Obligations Agreement, State Trustees is required to complete initial client assessments within 65 working days of its appointment as administrator.

5.10 Our examinations identified that significant improvement had been made by State Trustees in recent years in assessing the personal and financial position of new clients. A number of deficiencies evident in 29 per cent of files initiated in 1995-96 were not found to exist in the later files examined. The main areas of improvement were:

- confirmation of pension entitlements and other sources of client income with relevant agencies;
- evidence confirming that the personal requirements of clients had been assessed; and
- updates of client budgets to reflect changes to pension entitlements.

5.11 The timeliness of the assessments had also improved. While around 75 per cent of files commenced in 1995-96 had an initial assessment within the required 65 day timeframe, the proportion had increased to 96 per cent in the period July 1998 to August 1999.

PLAN OF MANAGEMENT

5.12 A Plan of Management outlines the strategy for the ongoing management of a client's affairs. It contains critical information such as:

- specific requirements contained in the Tribunal's Administration Order;
- a program for client contact, incorporating the type and frequency of contact required;

- the due date for reviewing the client's budget and financial plan; and
- timeframes to be achieved in relation to key client issues for example, obtaining property valuations, dealing with any legal issues, and applying for a pension.

Adequacy of Plans

5.13 Although an important aspect of sound management, and a requirement of the Community Service Obligations Agreement since July 1994, internal processes requiring Plans of Management to be prepared for all clients were not put in place by State Trustees until mid-1996. This was evident from files of clients who became State Trustees' responsibility prior to that time in that almost half of those examined did not contain a Plan of Management. We consider it important that State Trustees take action to progressively review all files and ensure a Plan of Management is established for these long-standing clients.

5.14 While a Plan was present on all latter files examined, the files did not generally contain evidence of assessments to ensure that the living conditions of the client, relative to the accommodation fee paid, were adequate. Similarly, assessments were not evident of whether the present cash allowance provided to the client to cover day-to-day purchases was sufficient. The conduct of both assessments is a requirement of State Trustees' internal procedures.

5.15 State Trustees advised that it periodically undertakes an assessment of the general amenity and condition of various accommodation facilities and documents this on general accommodation files. However, as the results of these assessments are not held on individual client files, it was not clear to us whether the assessment extended to ensuring the facility was adequate relative to the fee paid by the client.

5.16 Given the vulnerability and condition of many represented persons, the assessment of accommodation and allowances represent basic yet significant elements in the effective management of their affairs. Such assessments should be recorded on client files to ensure all relevant information is available to assist in future decisions and to provide sound accountability over the decisions made by State Trustees.

5.17 The timeliness of preparing Plans also needs further improvement. In 1995-96, 18 per cent of Plans were not completed within the target timeframe of 65 days of State Trustees' appointment. While this had reduced to 15 per cent in the later period examined, it still needs further attention.

Review of Plans

5.18 To ensure Plans of Management continue to be relevant to a client's circumstances, they should be reviewed and updated annually or more regularly if warranted by changes in client circumstances.

5.19 State Trustees acknowledged to the Department of Human Services that its annual reviews of Plans over the period July 1997 to December 1999 had been the main area of non-compliance with the performance standards included in the Community Service Obligations Agreement. Although its performance has improved in recent times it is still below the agreed performance target (78 per cent compliance at December 1999 compared with the target of 90 per cent).

5.20 This situation was also evident in our examination of case files for clients who became State Trustees' responsibility prior to July 1995. Of the 50 per cent of case files examined which did contain a Plan, 79 per cent had not been reviewed on an annual basis and most of these had not been reviewed since their initial development which in some cases dated back to the mid-1990's.

5.21 We were advised by State Trustees' administrators that due to increased work pressures, plans are not progressively reviewed. Under section 61 of the *Guardianship and Administration Act 1986* the Tribunal reviews its Administration Order for each client every 3 years and in some cases administrators within State Trustees rely on this triennial review rather than undertaking an annual review.

5.22 With a view to improving performance in this area, State Trustees has recently assigned 2 additional senior officers to assist administrators in their ongoing client review functions. This matter should continue to be closely monitored by both State Trustees and the Department of Human Services.

□ **RESPONSE** provided by Managing Director, State Trustees Limited

While State Trustees accepts these findings we note that the auditors relied almost entirely on the information contained in hard copy files.

State Trustees does not believe an "annual review" to be appropriate and we are moving towards "on line" reviews. For example, it is not appropriate to find out in 12 months time that the pension paid was incorrect. We need to know immediately.

Our increasing use of the computer to monitor such matters is vital in meeting our productivity obligation and we are about to liaise with the Department of Human Services on the acceptability of the monitoring processes as a replacement for an "annual review".

This will also address the issue of sample size (paragraphs 4.26 to 4.28).

Quality of reviews

5.23 Reviews of Plans, when undertaken, were in the main found to be comprehensive in that significant changes in clients' circumstances were adequately addressed. There were, however, a number of instances where action taken by State Trustees was not considered adequate or timely in reviewing or addressing the needs of represented persons. Examples included:

- A case where there was little evidence of contact with a represented person or review of the person's circumstances subsequent to the client moving interstate in 1996; and
- A case where a visit to a client in May 1996 by State Trustees identified that the person experienced mobility problems. Purchase of an electric bed and a wheelchair was not approved by State Trustees until August 1997 some 3 months after it had received a request from the person's carer.

PREPARATION AND MANAGEMENT OF BUDGETS

5.24 The preparation and management of budgets, which detail the current status of a client's finances including all income sources and expenditure commitments, is a key responsibility of administrators. In preparing budgets, the following are important considerations for represented persons:

- the extent to which available funds are sufficient to meet essential ongoing expenditure requirements in respect of such things as accommodation and clothing; and
- whether all client requests and wishes requiring once-off or ongoing expenditure have been or can be met within the limits imposed by the need for prudent financial management of the person's affairs.

5.25 Where a client's expenditure exceeds income and assets are not sufficient to sustain the shortfall, the administrator must consider strategies to redress the problem. Options include re-evaluating the client's expenditure to identify and cease expenditure on non-essential items, waiving State Trustees' fees and commissions, contacting the client's family to discuss alternative solutions or, where relevant, attempting to negotiate a reduction in accommodation fees.

5.26 For many of the files examined as part of the audit, the clients had minimal funds, i.e. less than \$50 000, and as such the management of their budgets was limited to ensuring the person's current and future needs and expenditure requirements were adequately met within the boundaries of their financial position.

5.27 Specific case files examined identified that financial budgets for new clients had been prepared with adequate consultation with the client and/or interested parties. Budgets were also generally found to have been updated to reflect changes in clients' circumstances such as pension revisions, additional client expenditure and changes in accommodation.

5.28 However, the following specific instances were observed where State Trustees' management of clients' finances could have been improved:

- The overpayment of pension entitlements to a client totalling more than \$7 000 over a 4 year period to June 1997 was not detected by State Trustees. Although the client had been repaying the debt since January 1998, no action had been taken by State Trustees to confirm the existence and amount of the debt with the pension agency or discuss the possibility of removing or modifying the debt;
- A budget in respect of a represented person was not prepared until 2 years after State Trustees' appointment as administrator. As a consequence, a situation arose where the client's expenditure exceeded his income;
- A situation arose where the continued appropriateness of a client's budget had not been reviewed for almost 3 years; and
- A review of a client's budget was commenced in March 1999. However, at the time of the client's death in November 1999 the budget review remained incomplete.

❑ **RESPONSE** provided by Managing Director, State Trustees Limited

State Trustees accepts these findings but is confident that the computerised system (monitoring) and workflow systems now in place will prevent recurrence of the type of issue identified (although improvements are still being developed to ensure better electronic linkages with Centrelink and the Department of Veterans' Affairs).

FINANCIAL PLANNING AND MANAGEMENT

5.29 Financial planning is a fundamental responsibility of an administrator and involves guiding represented persons through the various stages of their life cycle by devising strategies that enable them to enjoy a reasonable quality of life and achieve their financial goals.

5.30 The primary objectives of State Trustees in the provision of financial planning services include:

- maximising the wealth and welfare of the client for whom the financial plan is prepared;
- conducting planning in such a way that meets the particular requirements of individual clients in terms of their financial needs, objectives and goals;
- using recognised low risk investment products and promoting the philosophy of wealth accumulation and/or wealth preservation over the medium to long-term, rather than pursuing speculative high risk strategies; and
- balancing the risk and investment return requirements of individual clients.



Financial planning is a fundamental responsibility of an administrator.

Nature of assets

5.31 The assets managed by State Trustees on behalf of represented persons include cash, in the form of bank accounts and term deposits, investments; and non-cash items, such as personal effects, real estate, motor vehicles, businesses and farms. The majority of represented persons have only minimal non-cash assets such as property and equity investments. In fact, 75 per cent have assets valued at less than \$50 000. For these persons it is of critical importance that the assets are effectively managed to ensure that maximum benefits are derived through capital growth and/or dividend and interest earnings.

5.32 In total, assets valued at \$401 million were held by State Trustees at December 1999 on behalf of represented persons. This comprises \$150 million as detailed in Table 5B.

TABLE 5B
CLIENT ASSETS MANAGED BY STATE TRUSTEES
DECEMBER 1999
(\$million)

<i>Asset type</i>	<i>Value</i>
Cash	29.9
Bank accounts, short-term deposits, cash management funds	
Other monies	1.9
WorkCover awards, TAC compensation, court funds, shares in deceased estates, lump sum superannuation	
Investments	24.1
Shares, debentures, secured/unsecured loans, property and other trusts	
Personal assets	8.2
Furniture, personal effects, cars, caravans, boats, wheelchairs	
Real estate	86.0
House and land, commercial property, retirement units, rural properties	
Total	150.1

Source: State Trustees Limited.

5.33 In addition, \$251 million is held within State Trustees' investment funds. State Trustees' Common (Cash) Fund offers secure, at-call investment options. The Premium Funds were established by State Trustees in April 1996 and involve a diverse range of investment products which concentrate on liquid, high quality securities in the main investment sectors of cash, fixed interest, property, equity and managed funds.

Security of assets

5.34 State Trustees is responsible for initially identifying and accounting for all client assets and ensuring their ongoing security. The security of assets is maintained through:

- establishing a record for each client of their personal assets including jewellery, equipment, furniture and personal items with a material commercial value;
- seeking confirmation of investments held by the client and ensuring interest income is received and accurately accounted for;

- arranging routine property maintenance and annual inspections of property assets; and
- disposing of assets when appropriate to maximise their value to the client and avoid unnecessary maintenance and associated expenses.

Development of a financial plan

5.35 Financial plans developed by State Trustees primarily comprise investment strategies for client assets such as shares, debentures and property trusts.

5.36 The primary legislative requirements governing the manner in which State Trustees can invest funds on behalf of represented persons are contained in the *Guardianship and Administration Act 1986*. State Trustees is also required to comply with the *Trustee Act 1958* and the *Trustee Companies (Amendment) Act 1995*. A major change to the investment powers of trustees was introduced in 1995 when the “*list of authorised trustee investments*” was replaced by the “*prudent person*” principle. Under this principle, the trustee is to act prudently in determining the suitability of a particular investment.

5.37 State Trustees has developed a standard financial plan for clients with assets of less than \$50 000. In such cases, a comprehensive financial plan is not necessary due to the low level of available funds and the relative lack of complexity relating to the clients’ needs. For clients with assets greater than \$50 000, a financial plan is tailored around the client’s particular circumstances and financial needs. Consideration is given to such factors as a client’s age, health, liquidity requirements and long-term financial goals. We concur with the general approach taken by State Trustees to the preparation of financial plans for its clients.

5.38 Our examination of case files in relation to the preparation of financial plans disclosed that:

- although State Trustees’ performance in preparing the plans within the required 65 day timeframe had improved over the 2 periods (76 per cent in 1995-96 compared with 84 per cent in the period July 1998 to August 1999), the latter result was still below the target of 90 per cent; and
- in a small number of cases we found that standard financial plans, rather than tailored plans, had been prepared for clients with assets greater than \$50 000.

5.39 There were also some weaknesses in terms of the ongoing review of these plans and the extent to which clients or interested parties were consulted in the process.

Review of financial plans

5.40 Ongoing monitoring and review of financial plans is necessary to ensure that investment decisions and strategies remain appropriate to the individual needs and objectives of the client. This is reflected in the performance standards included in the Community Service Obligations Agreement which require reviews to be undertaken on an annual basis.

5.41 Our examinations identified that reviews of financial plans undertaken by State Trustees were comprehensive and adequate in terms of assessing the continued relevance of the plan to the person and their circumstances. However, the timeliness of the reviews was unsatisfactory with annual reviews not undertaken in 54 per cent of cases examined. In some instances, there was no evidence that a review of the financial plan had been undertaken since its initial development which in some cases was up to 2 years. In some cases, financial plans had not been reviewed for up to 3 to 5 years. Importantly, some of these clients had investment funds in excess of \$40 000.

5.42 The following examples provide specific details of the impact on represented persons of a lack of regular review and implementation of financial plans. We believe that the best interests of the clients were not addressed in these cases, particularly in terms of optimising their income return on investments.

Case 1

The represented person had funds of around \$320 000. A review undertaken by State Trustees in September 1994 identified that \$70 000 of the funds should be placed into State Trustees' Common (Cash) Fund. This was aimed at ensuring the client had sufficient funds to maintain his current lifestyle, which involved expenditure of over \$22 000 per annum; improving the balance of the client's portfolio and eliminating his income tax liability. However, the recommendation was not implemented.

In December 1996, State Trustees noted that:

- the client's financial position had not been reviewed for over 2 years;
- an \$85 000 investment in insurance bonds "*...continued to provide an inadequate return and should be redeemed immediately*"; and
- an amount of \$140 000 should be directed from the Common (Cash) Fund into growth assets and fixed interest investments.

Due to an oversight by State Trustees, the investment strategy of December 1996 was also not implemented.

In September 1997, State Trustees' specialist financial planners commented that to maximise returns to the client, the investment portfolio should be further diversified through redeeming the insurance bonds and re-investing the funds in State Trustees' Property and Equity Common Funds. They further commented that returns from the Common (Cash) Fund, where around 70 per cent of the client's funds had been retained over the years, had "*fallen significantly in the past year.*"

Case 2

A represented person suffering from memory loss and residing in a nursing home was assessed in November 1996 as having a life expectancy of 5 years. At this time the available funds of the client amounted to over \$200 000 which was all held in State Trustees' Common (Cash) Fund. Although scope existed to generate higher investment returns, State Trustees assessed that the advanced age and health condition of the client would not permit a longer-term capital investment as it would involve an unacceptable level of risk.

A subsequent financial plan was prepared by State Trustees in August 1997. The financial planner, at this time, recommended that 51 per cent of the funds be retained in the Common (Cash) Fund, 25 per cent be invested in 3 year fixed interest debentures and the remaining 24 per cent be invested in listed property trusts. Although this investment strategy was a reversal of the rationale adopted in the previous financial plan, particularly as the life expectancy of the client had now been further reduced, justification for the change was not documented on the client's file or within the 1997 financial plan. This raises a question regarding why the portfolio was not diversified earlier to maximise returns within an appropriate risk framework.

Lack of consultation with clients

5.43 In around one-fifth of 1995-96 files examined, it was not evident that State Trustees had consulted with the represented person or other interested parties prior to the development of a financial plan. Such consultation is necessary to ascertain the particular requirements of the client including their needs, goals and objectives or wishes as specified in the Act. For the more recent files, the level of consultation with clients was found to be appropriate.

5.44 While the final decision regarding implementation of a financial plan is the responsibility of State Trustees, internal procedures specify that administrators are to contact the client or family within 5 days of receiving the plan prepared by State Trustees' specialist financial planners to ensure that it meets the client's requirements and to gain client/family agreement. We found that in practice, State Trustees did not generally meet this commitment and rarely attempted contact even in cases where substantial funds were involved.

□ **RESPONSE** provided by Managing Director, State Trustees Limited

State Trustees accepts the findings but notes the tension between disclosure and privacy. It can be a fine balance as to how much of a client's personal affairs should be disclosed to family. In some cases, disputes within the family contribute to the need for State Trustees' appointment.

We note that the Victorian Civil and Administrative Tribunal, Guardianship List has, for the past year, identified the persons entitled to receive financial information relating to the estate, in its Order. State Trustees complies with this direction.

Management of cash assets

5.45 Cash assets held on behalf of represented persons are pooled and managed internally in either State Trustees' Common (Cash) or Premium Funds. In most cases, State Trustees retains cash assets such as term deposits until maturity and then re-invests the funds in one of its investment funds. This approach, rather than managing individual portfolios, achieves administrative efficiencies, and expands the range of available investment options and risk management strategies.

5.46 Our examination of files in respect of client initialisations disclosed that in a high proportion of cases the realisation of existing client assets was not an issue as the level of cash funds was relatively insignificant. In those cases which did involve the realisation of client funds, we found that the decisions taken were appropriate and were in the best interests of the client.

Management of non-cash assets

5.47 Although the ongoing management of clients' non-cash assets, such as property by State Trustees was found to be generally adequate, the following specific case illustrates the impact for represented persons where assets are not effectively managed.

A represented person owned a house and unit, and a portfolio of investments. The person shared the house with a friend who provided assistance to the person in exchange for rent-free accommodation. The unit was rented.

Although the represented person's property constituted the most valuable asset of the estate, a program of repairs and maintenance aimed at preventing any deterioration of the property was not established by State Trustees primarily due to the strong resentment of the client in allowing strangers onto the property. Consequently, when the represented person was admitted to a nursing home, some 9 years after becoming State Trustees' client, the house was beyond restoration. State Trustees was advised that as it would cost an estimated \$150 000 to restore the house, it would be more economical to dispose of the property.

It was clear to us that the actions of the represented person placed State Trustees in a difficult position in managing the property. However, in such a situation State Trustees should have referred the matter back to the Victorian Civil and Administrative Tribunal highlighting the impediments encountered in fulfilling its responsibilities and seeking the Tribunal's advice.

Other matters we noted that adversely impacted on the financial position of the represented person were as follows:

- A formalised occupancy arrangement with the assistant residing in the property had not been established by State Trustees and it was necessary to initiate legal action to remove the person from the property. A counter action was made against State Trustees on the basis that the helper considered she had an entitlement to live in the house for the remainder of her life. Legal costs of around \$60 000 were incurred and subsequently met from the represented person's funds;
- An initial inspection to ascertain the condition of the property was not undertaken until 7 months after State Trustees' appointment;
- State Trustees had not collected rent totalling \$2 300 from the occupant of the unit for a period of 12 months. They were required to take legal action to evict the occupant at a cost of \$1 000 which was also met from the represented person's funds; and
- State Trustees was required to write-off shares which had been acquired for \$2 000 as with the passage of time they had become unmarketable. Furthermore, around \$14 000 of investment bonds consistently yielding low returns were not redeemed until 5 and 6 years after State Trustees' appointment.

Following an investment portfolio review conducted in July 1997, State Trustees recommended approximately 50 per cent (\$240 000) of the client's investment funds be retained in State Trustees' Common (Cash) Fund. Even after allowing for the legal costs and an annual shortfall of income over expenditure of \$5 600, we consider the magnitude of the cash investment to be excessive given the person's estimated life expectancy of 4.5 years.

PROMOTING CLIENT INDEPENDENCE

5.48 As an administrator of a represented person, State Trustees has a legislative responsibility to act, as far as possible, in a way which encourages and assists represented persons to become capable of administering their own estate.

5.49 However, State Trustees' internal procedures are silent in this regard and administrators have not been provided with any formal training to equip them with the necessary skills to identify those clients who have the potential to become more independent.

5.50 In practice, inconsistent approaches have evolved. We found that some administrators applied their own discretion as to when and how a person was encouraged to self-manage while others relied primarily upon the client's social workers and case managers to provide this assessment. Decisions of administrators were not reviewed by a senior officer to assess their appropriateness and formal procedures were not in place to ascertain whether any actions taken by administrators to encourage independence had been successful.

5.51 In almost all case files examined there was no evidence that administrators had assessed the capacity of clients to self-manage and there were very few instances where clients had been given the responsibility to manage routine activities such as utilising automated banking facilities to draw their allowances, and to pay rental and other living expenses.

5.52 The following example illustrates the positive impacts for a represented person of gaining a greater degree of independence through appropriate management.

A represented person suffering mental, physical and financial problems, and in the process of a divorce and property settlement, was highly resentful of the appointment of an administrator and, consequently, most unco-operative.

Assistance and support provided to the client by State Trustees:

- improved the client's financial affairs to the stage where the person's financial difficulties were overcome;
- significantly reduced the level of mental aggravation to the client caused by the legal ramifications of motor vehicle accidents, divorce and property settlements; and
- facilitated arrangements for a hip replacement.

While the mental and physical condition of the represented person is likely to require ongoing involvement by State Trustees, it was very apparent that the degree of financial independence and personal dignity of the represented person had been markedly enhanced.

The efforts of State Trustees were acknowledged by the client and contributed to a marked improvement in the relationship between the client and State Trustees.

5.53 We acknowledge that due to the nature of their disability it would be highly improbable for many represented persons to become capable of administering their own estate or affairs. However, there is a need for greater monitoring and appropriate documentation by State Trustees of the assessed potential for individuals to achieve an enhanced level of independence. Such assessments should be supplemented with carefully devised strategies in cases where the potential for greater independence is identified. Administrators should also be provided with appropriate training programs and documented guidelines to assist them in undertaking these tasks.

5.54 Under the current Community Service Obligations Agreement, State Trustees and the Department of Human Services are to jointly undertake a pilot project aimed at establishing criteria by which administrators can assess the capability of represented persons to partially or fully manage their own affairs. To date, no timeframe has been established for completing the project and very little progress has been made.

❑ **RESPONSE** provided by Managing Director, State Trustees Limited

State Trustees notes the audit findings and will prepare appropriate procedural guidelines. However, it should be noted that State Trustees is limited by the legislative powers contained in the Guardianship and Administration Act.

We are currently sponsoring a research project “Financial Independence: Models of Best Practice” with Deakin University which will assist in this.

FINALISATION OF ADMINISTRATION

5.55 The responsibility of State Trustees to administer a represented person’s affairs ceases when the Victorian Civil and Administrative Tribunal, Guardianship List advises that it has revoked the authority or it is advised of the person’s death. As soon as State Trustees receive advice of the cessation of its appointment, it must ensure that no further transactions are made on behalf of the client apart from those associated with the finalisation of the administration.

5.56 In almost all of the cases examined, cessation of the administration arose as a result of the death of the client. In such cases, the role of State Trustees is to:

- notify relevant parties of the client’s death;
- accurately identify the client’s assets and liabilities at the date of death;
- complete taxation requirements;
- finalise the client’s financial position;
- effect payment to the executor;
- effect payment to the beneficiaries in cases where State Trustees is the executor; and
- handover any documentation and property held on behalf of the client to the relevant parties.

5.57 Our examinations covered case files closed between July 1995 and August 1999.

Key weaknesses in the finalisation process

5.58 A common finding across all key finalisation activities was a failure by State Trustees to prepare all of the necessary statements or complete all tasks within the established timeframes.

5.59 Comments on State Trustees’ performance in respect of the key activities of the finalisation process are detailed in the following paragraphs.

Notification of effected parties

5.60 Over the 4 year period to August 1999, State Trustees had improved its performance in notifying the relevant parties of a client’s death within 20 days, as required by internal procedures and the Community Service Obligations Agreement. Based on a review of more recent files, we concluded that State Trustees now complies with this requirement.

Statement of financial position

5.61 For around 2 out of every 3 files examined, a statement had not been prepared outlining the client's financial position at the date of death. This information is necessary to support State Trustees' applications for Grants of Probate. Where statements had been prepared, around 40 per cent relating to the earlier period examined were inaccurate. However, this had been addressed in the more recent files examined.

5.62 In terms of the timely preparation of the statements, only around 20 per cent of earlier statements were prepared within the 20 day time frame and this had increased to around 30 per cent in more recent times.

Closure of administration

5.63 A key aspect of the finalisation of a client's administration involves State Trustees obtaining the appropriate legal authority to distribute the estate to the beneficiaries or handing over this responsibility to the person's executor. To expedite this process State Trustees determined, following an assessment of the risks involved, to not obtain the legal authority in cases where clients' estates are valued at less than \$5 000. While we acknowledge that the ramifications of this determination is minimal, State Trustees should continuously monitor this situation.

5.64 Where legal authorities were sighted, we found that in recent times, target timelines had been met in 82 per cent of the cases in relation to taxation requirements, in 60 per cent of cases in relation to the preparation of final statements and making final payments, and in 50 per cent of cases in relation to the handover of documentation. These results indicate that there is significant scope for improvement in the timeliness of these actions.

5.65 We also found that in recent times, all handovers were substantiated by appropriate documentation and final payments had been satisfactorily effected. These results were a significant improvement on the earlier files examined. All statements of represented persons' financial position at the date of finalisation were found to be fairly presented.

OVERLAPS AND GAPS IN THE PROVISION OF SERVICES

5.66 In many cases, decisions relating to represented persons are made by a range of parties including State Trustees, the Senior Master of the Supreme Court, the Public Advocate, health carers and social workers.

5.67 This situation creates the potential for overlaps and gaps to occur in the provision of services, particularly where the respective roles and responsibilities of each party are not clearly articulated. It can also cause dysfunction, a party assuming responsibilities outside of their specific area of expertise or even expose a carer to legal action for acting beyond their designated powers.

5.68 Senior management of State Trustees advised us that their role is one limited to the administration of the financial and legal affairs of represented persons. However, from our discussions with individual administrators within State Trustees, it was evident that differing interpretations of their legislative obligations as an administrator had led to inconsistencies in their actions. In some cases actions taken by administrators, with a view to acting in a client's best interest, led to them undertaking activities which went beyond financial and legal matters. Indeed, it was clear that it would be very difficult for an administrator to manage the financial and legal issues of a represented person in complete isolation from other aspects of the person's life.

5.69 The following 2 cases illustrate the gaps and overlaps which can occur in the provision of administration services under current arrangements.

Case 1

The represented person suffered profound mental retardation and serious physical disabilities confining him to hospital for an extended period. A private residence was subsequently purchased for him by State Trustees to live in as this environment was expected to have a beneficial impact on his health and well-being.

A significant amount of compensation was awarded to the represented person, which was to be managed in equal proportions by the Senior Master of the Supreme Court and State Trustees. In addition to this money, a substantial sum was held in a discretionary trust fund for his welfare, to be utilised at the discretion of a private trustee company.

Although outside of State Trustees' control, the situation of having 3 different fund managers each providing investment services for the client and hence charging multiple administration fees and commissions presents an overlap in responsibilities which has the potential to impact on the efficient administration of the represented person's funds.

A further issue with this case concerned the person's medical care. Although not State Trustees' direct responsibility, it engaged a firm to provide the 24 hour medical care required by the person. A case manager also engaged by State Trustees to manage the person's care expressed concern with the quality of his medical management and indicated that in the absence of a medical guardian, no one person seemed to have the appropriate authority to make medical decisions on his behalf. The issue was later referred to the Victorian Civil and Administrative Tribunal, Guardianship List.

Case 2

The represented person was diagnosed with a mental illness. The person had managed his finances very poorly and was living in accommodation that was assessed by a social worker as below standard. State Trustees was appointed administrator and although documentation on the file suggested that the person's immediate family displayed little interest in his welfare a guardian was not appointed. The person was subsequently placed in supported accommodation.

Without the knowledge of State Trustees, the person undertook 2 overseas trips, incurring significant expenses and debts, which further deteriorated his already precarious financial position.

It was apparent that gaps existed in his overall care. On the one hand he was deemed incapable of managing the payment of his gas and electricity bills and yet he was able to make decisions regarding incurring costs on an overseas trip, consider the necessity for a medical operation, and deal with complex legal issues pertaining to his pending divorce and related property settlement.

Although outside State Trustees' narrow interpretation of its legislative responsibilities, it provided other assistance to this person to address some of these matters on the premise it was in the best interests of the client's welfare.

5.70 State Trustees should seek clarification from the Victorian Civil and Administrative Tribunal as to its legal responsibilities to clients to ensure any additional activities undertaken are not outside its legislative authority and as a result expose State Trustees to potential legal action.

5.71 Action to address the need for liaison between multiple carers was initiated by State Trustees in November 1998. Where a client has multiple carers or interested parties, State Trustees has determined to build and strengthen relationships with other parties to benefit their shared clients. This involves taking the lead in bringing all interested parties together and agreeing protocols for client service co-ordination. Application of this initiative was commenced in mid-July 1999 on a trial basis by a small group of administrators and, according to State Trustees, has been successful to date.

5.72 While we support the positive action taken by State Trustees it is important that its leadership role does not extend beyond establishing a co-ordination framework and that the impact of this initiative in terms of reducing the potential for gaps and overlaps in caring for represented persons is monitored.

ACQUISITION OF GOODS AND SERVICES

5.73 An important responsibility of State Trustees is to purchase the range of goods and services required by represented persons at suitable prices and appropriate quality. For the period 30 June 1997 to 31 December 1999, a total of \$273 million was paid by State Trustees from client funds to external service providers. These services were wide-ranging and commonly included nursing home and other accommodation fees, rental payments, living expenses and property maintenance fees.

5.74 In view of the significant amounts involved, State Trustees has established formal processes for:

- identifying suitable service providers and registering them on its preferred suppliers list; and
- procuring the required goods and services and paying for them subsequent to delivery.

5.75 Alternate suppliers may be employed if specifically requested by the represented person or where the circumstances warrant such action.

5.76 Unless a contract specifies otherwise, the performance of service providers is evaluated on an annual basis in accordance with State Trustees' criteria of quality, timeliness, accuracy, availability and cost. Poor performance may ultimately result in removal from the preferred suppliers list. Significant reliance is also placed by State Trustees upon case administrators and represented persons to detect and communicate unsatisfactory performance to the designated officers who will investigate the relevant issues and decide on appropriate courses of action and ultimately on whether the contractor's services will be terminated.

5.77 We examined the adequacy of procedures implemented by State Trustees to assist it in ensuring that services and facilities acquired on behalf of represented persons were of an appropriate quality and represented value for money.

5.78 Our examinations disclosed that sound processes were in place and that evaluative criteria applied by State Trustees were adequate. In particular, we found State Trustees' procedures to be consistent with the standards document issued by the Trustee Companies Association of Australia and also with a publication issued by the Office of the Public Advocate relating to obtaining value for money in respect of facilities and services financed by administrators.

5.79 Our examination also indicated that there exist a number of areas where improvements can be made to further enhance the mechanisms utilised by State Trustees for the procurement of goods and services for represented persons. These areas include the following:

- While State Trustees maintains records of payments made to service providers and has implemented adequate internal control mechanisms, the frequency and value of work referred to individual service providers is not independently monitored;
- The quality of services received was not always periodically reviewed. By way of example, State Trustees engaged an attendant carer for a represented person in 1993 with a view to improving the client's quality of life. Although State Trustees established the suitability of the carer, as there was no further contact with the client until 1995 nor any other scrutiny of the carer, it is unlikely that State Trustees could satisfy itself as to the performance of the attendant carer;
- Complaints against service providers dealt with and resolved by State Trustees' administrators are not recorded in State Trustees' complaints register for preferred suppliers for subsequent consideration when assessing service provider performance. Thus, non-performing service providers may be inadvertently retained on State Trustees' preferred suppliers list;

- In May 1998, an alliance was entered into with a private sector organisation to provide health insurance to represented persons for up to 4 years. The envisaged benefits for State Trustees included improved distribution, image and awareness; a commission from the sale of the organisation's products and the immediate availability of a retail branch network. The service provider was selected on the basis of past business experience with State Trustees rather than through a tender process, and the arrangement is not subject to a formal contract;
- Property insurance is available from a major insurance broker who was appointed through a competitive tendering process. Despite the preparation of a draft contract in April 1999 the arrangements have not been formalised. The company has continued to provide insurance cover for represented persons; and
- Tendering procedures adopted by State Trustees for the provision of third party services were not always sound. For example, in some cases submissions could be hand delivered to officers of State Trustees rather than deposited into a secure tender box for opening together with other tenders. Weaknesses in tendering practices can lead to questions regarding the probity, transparency and fairness of the tendering process.

Part 6

Client communication and accountability

IMPORTANCE OF REGULAR COMMUNICATION

6.1 Effective communication is an integral element of State Trustees' responsibilities as an administrator. Throughout the management process interactions between State Trustees and represented persons are necessary, particularly in terms of meeting legislative responsibilities to act in the best interests of the person, consult with them and, as far as possible, take into account their wishes. The responsibility is primarily one of consultation and does not mean that State Trustees is to act in accordance with the wishes of the person where this would be in conflict with their best interests.

6.2 In view of the circumstances of represented persons, a support network of primary carers, social and caseworkers, and guardians is involved in the care, administration and management of these persons. Consequently, in addition to the represented person, communication can involve one or a number of these interested parties.

6.3 The significance of client communication is reflected within the Community Service Obligations Agreement which includes a number of requirements and performance standards directed at encouraging a sound communication process.

6.4 Essential components of an effective communication framework include:

- undertaking an initial visit or contact with the represented person to assess their circumstances, including the nature of support networks in place, and to provide the person with an opportunity to express any wishes regarding the management of their affairs; and
- establishing, implementing and regularly reviewing a program setting out the nature and timing of State Trustees' planned communication, including discussion of the basis for the proposed communication strategy.

6.5 Given the importance of regular communication, it was disappointing to find that this aspect of State Trustees' management of represented persons has been an area of weakness over the past 4 years.

6.6 This part of the Report deals with our assessment of the approach taken by State Trustees in specific areas of communication. It also provides an evaluation of the framework in place for handling complaints, surveying clients and providing adequate and timely financial accountability back to those clients or interested parties.

❑ RESPONSE provided by Managing Director, State Trustees Limited

State Trustees acknowledge the importance of communication but believes the Report does not identify the full extent of the improvement in our communication with clients. As we stated earlier, the review of the hard copy file will not disclose the level of communication that, particularly over the last year, has been recorded electronically. We repeat that last year 1 129 clients were visited in their own residence, 12 800 clients were seen at our offices and we had over 130 000 telephone contacts.

CLIENT CONTACT PROGRAM

6.7 Contact between a represented person and the administrator can occur in a number of ways including:

- visits to the person's place of residence;
- clients visiting State Trustees' Offices;
- telephone discussions; or
- written correspondence.

6.8 A requirement of the Community Service Obligations Agreement is for a client contact program to be established for all clients within 3 months of State Trustees' appointment and to be reviewed annually.

6.9 The program establishes an ongoing communication strategy in respect of the represented person and specifies who is to be contacted, the method of contact, and how often the contact is to occur. Our examination identified that while contact programs had been developed for all new clients, almost 20 per cent had not been prepared within the 3 month timeframe. In addition, programs in place were not regularly reviewed. For example, 77 per cent of programs on files examined had not been reviewed annually with some not re-examined since they were developed in 1992.

INITIAL CLIENT VISIT

6.10 Following State Trustees' appointment, an initial phone call is generally made within 3 days to establish contact with the client or with other relevant parties such as family members, carers and guardians, and case managers where the client is unable to communicate. The aim of this process is to inform relevant parties of State Trustees' role and of the client's status as a represented person. We were advised by State Trustees that communication in the form of an initial visit is not considered necessary in all cases and this is assessed on a case-by-case basis.



Initial contact is made with the client, family members or carer.

6.11 Our examination of files indicated that there had been a significant change over the last 4 years in the percentage of represented persons who were visited at the time State Trustees was appointed. However, visits still only occurred in 58 per cent of cases. Documentation held on the files was inadequate to enable an assessment of whether the decisions not to visit clients was justified in the circumstances.

6.12 A recent initiative of State Trustees has been to enhance initial client communication through the provision to all new clients of a *Welcome Pack*. This publication contains general information on the role of State Trustees as administrators, details of relevant contact officers and other services provided by State Trustees to assist clients.

6.13 Consideration should be given to undertaking an initial visit to all new represented person clients. Such visits would assist in:

- establishing a relationship with the client;
- ascertaining the client's wishes and generally gaining knowledge of the person's circumstances and needs;
- providing an opportunity to minimise a represented persons' concern regarding the appointment, in cases where this exists, by explaining State Trustees role and approach; and
- promoting State Trustees' role as professional administrators.

Determination of client wishes

6.14 In terms of consulting with new clients to ascertain their wishes we found little evidence that this had occurred in around half of the files examined which related to the earlier period examined. In more recent files this had reduced to around 23 per cent.

6.15 The following case provides an illustration of where greater consideration could have been given to determining the client's wishes.

During 1995, State Trustees was appointed administrator of a person suffering dementia and experiencing difficulties in managing her own affairs. Throughout State Trustees' administration, doubt existed as to the extent of the client's disabilities and whether she could reliably express her wishes. The client's next of kin maintained she suffered no such disability and sought the revocation of the Administration Order while a number of other parties, including doctors, lawyers, and accountants varied in their estimations of the level of her disability.

Critical decisions were required to be made by State Trustees in relation to the person's major asset, funding of her accommodation and the discharge of the family's financial debts.

In relation to these decisions, the client's lawyers suggested that "...full and proper instructions be obtained from the represented person with respect to her wishes and independently verified before a solicitor and/or medical practitioner". Notwithstanding this suggestion and indications from State Trustees that frequent discussions took place with the client to both ascertain the client's ability to express her wishes and to identify those wishes, there was no evidence that State Trustees had reached a conclusion in this regard.

□ **RESPONSE** provided by Managing Director, State Trustees Limited

The case study is not entirely clear but State Trustees visited the client on 6 occasions and spoke on the telephone at least twice in an effort to determine her wishes.

ONGOING CLIENT CONTACT

Implementation of Client Contact Program

6.16 The commitment to visit the represented person at intervals specified in the Client Contact Program was not fulfilled in around half of the cases in the earlier period examined. Significant improvement was evident on later files but even in these cases commitments made in client contract programs were not met in 15 per cent of cases.

Frequency of contact

6.17 Regular contact with a large proportion of carers, and to a lesser extent represented persons or their family, did occur by telephone or letter. However, in many instances such contact was reactive in that it was initiated by the carer. While we also acknowledge that clients regularly visit State Trustees Offices, the contact is not necessarily with the represented person's administrator nor were we able to ascertain, in all cases, the nature of the contact. To this extent we were unsure of the effectiveness of this contact.

6.18 In terms of face-to-face contact, we observed that:

- Annual visits were rarely undertaken;
- In 13 per cent of cases there had not been a visit to the client since State Trustees' appointment. While this generally represented periods from 4 to 8 years, in one extreme instance it was 12 years; and
- In some instances clients had only been visited by State Trustees once in periods ranging from 4 to 8 years.

6.19 The consequence of minimal contact with the client or their carer was reflected in one case where State Trustees was not aware, nor had it been advised for a period of 18 months after the event, that their client had taken up residence with his carer due to the closure of his accommodation facility. In this case, State Trustees had not visited the client since its appointment as administrator in June 1981 to January 1994 when the person relocated.

6.20 State Trustees' administrators advised that the infrequent contact with clients is primarily the result of their heavy caseloads and that as many represented persons have carers, accommodation supervisors and caseworkers it can rely on these people to alert it to the need to contact clients. Reliance is also placed on the Victorian Civil and Administrative Tribunal, Guardianship List who review the well-being of each represented person every 3 years. Further comment on administrator caseloads is detailed in Part 7 of this Report.

6.21 In our opinion, the existence of such mechanisms should not be substituted for State Trustees' responsibility to administer the estates of represented persons. Further, the lack of direct contact with clients and carers places doubt upon the extent to which State Trustees can effectively ascertain the client's wishes.

6.22 Greater attention needs to be given to increasing the frequency of direct contact with represented persons or at the very least implementing a contact program based on a robust and periodic assessment of the person's circumstances. While we acknowledge that client communications, and in particular client visits, are resource-intensive, State Trustees needs to ensure a sound management approach is adopted and legislative obligations to represented persons are met. This should be addressed in part by State Trustees' new client contact policy discussed later in this part.

Reliance on external parties

6.23 As previously stated, in maintaining contact with clients, State Trustees places considerable, and in some cases complete, reliance on the network of external parties, including nursing home and accommodation staff.

6.24 With around 65 per cent of represented persons managed by State Trustees residing in nursing homes or other special accommodation, it is critical that timely information pertaining to the performance of such facilities is compiled by State Trustees to ensure its continued reliance on them is well founded. We found such information is not compiled.

6.25 We consider such performance information could assist in determining the degree of reliance which can be placed on these external parties and assist in assessing the need to undertake client visits.

❑ **RESPONSE** provided by Managing Director, State Trustees Limited

State Trustees accepts the findings (subject to the comments in paragraphs 6.1 to 6.6 above), however, we do not accept that a visit is required for the financial management of a represented persons estate to be efficiently and effectively carried out.

It is certainly necessary for us to have contact with our clients - and we do - but in many cases their needs are better established through contact with their primary carers.

The reference to heavy caseloads appears inconsistent with the facts set out in Part 7, at least in relative terms.

The number of staff employed to deal with represented persons has increased from 35 in 1994 to 56 in 1999. This does not include accounting staff (who deal with receipts, payments, asset investigations and redemptions, previously dealt with by administrators) but does include those staff who deal initially with new clients and staff whose primary function is to take calls from our clients and respond immediately, where possible, to their requests.

RECENT INITIATIVES

6.26 In mid-1999, State Trustees formalised a Client Contact Program and Client Visit Policy for represented persons aimed at:

- establishing relationships with key stakeholders involved in the management of a person's affairs;
- setting expectations and guidelines in the management of the person's affairs by communicating with key stakeholders as to State Trustees' role;
- facilitating a consistent approach to visiting/contacting the person;
- ensuring that State Trustees maximise its ability to contact the person to ascertain their welfare;
- clearly identifying the type and frequency of contact the person requires;
- focusing resources on represented persons with the highest needs; and
- undertaking contact with represented persons within the limits of State Trustees' resources.

6.27 The Client Visit Policy provides for an initial visit to be conducted if the represented person meets 2 or more of the following criteria:

- no immediate family or next of kin;
- no contact with immediate family or next of kin;
- no carer;
- no social worker or case manager;
- no guardian;
- resides outside metropolitan Melbourne;
- resides in a supported residential unit, hostel, private or public rental or own home;

- will not be coming to State Trustees' Office regularly to collect their allowance or other funds;
- are unable to attend State Trustees' Office at all; and/or
- total assets of \$250 000 or more.

6.28 Where the Victorian and Civil Administrative Tribunal stipulates an initial visit to be undertaken or one is requested by an interested party, the policy requires the visit to be undertaken even if the above criteria are not met. The policy requires the frequency of ongoing client visits to be determined by administrators following an assessment of numerous factors including the client's residential circumstances, the nature of the client's disability and the existence of family or support network such as a social worker, case manager or guardian. The policy allows the frequency of visits to represented persons by State Trustees to range from annually to once every 3 years.

6.29 This action is positive in terms of addressing past weaknesses in the communication process. However, its effective application could not be fully assessed during the audit due to its recent adoption. State Trustees need to carefully monitor application of the new policy, in particular the upper limit of 3 years between visits, to ensure its obligations to represented persons are properly met.

COMPLAINT HANDLING MECHANISMS

6.30 Given the nature of State Trustees' role and function as an appointed administrator, the potential for complaints from clients and interested parties is ever-present. Consistent with State Trustees' commitment to maintaining client satisfaction and ensuring that its service standards are maintained, a complaint handling mechanism was established in late 1995 aimed at ensuring clients' complaints are expertly and independently investigated.

6.31 Since July 1997, State Trustees' *Administration of Complaints Policy* has been consistent with the standards enunciated in the *Australian Standard on Complaints Handling - AS 4269* which recognises that a client has a right to:

- complain and have the complaint heard;
- receive good quality service;
- comment on the level of service received;
- complain if a service is not provided or if it is not of a high standard; and
- a full and proper investigation and/or response to any complaint raised.

6.32 In the first instance, aggrieved persons are encouraged to contact and resolve any complaints directly with the relevant administrator. If the complainant remains dissatisfied, the matter can be referred to State Trustees' Client Relations Officer for investigation or mediation. Complaints may also be referred to that Officer through a member of State Trustees' senior management team or Board members.

6.33 All complaints referred to the Client Relations Officer are logged into a complaints database, are required to have action commenced within 24 hours of receipt, be acknowledged by letter and responded to, in writing, within 10 working days. These complaints are analysed by that Officer and regularly reported to the Board and executive management of State Trustees.

6.34 Where the complainants are dissatisfied with State Trustees' response, they can refer the matter to the Ombudsman, the Victorian Civil and Administrative Tribunal or the Public Advocate.

6.35 A brochure prepared by State Trustees entitled *Resolving Concerns* has been circulated to clients, relevant individuals and throughout various entities.



Information brochure prepared by State Trustees.

Number of complaints

6.36 The number of complaints received by the Client Relations Officer for the period July 1996 to November 1999, and the proportion assessed by the Officer as justified, are detailed in Table 6A.

TABLE 6A
NUMBER OF COMPLAINTS RECEIVED AND
INVESTIGATED,
JULY 1996 TO NOVEMBER 1999

<i>Year</i>	<i>Total number of complaints received</i>	<i>Percentage of complaints assessed as justified</i>
	(no.)	(%)
1996–1997	264	55
1997–1998	319	42
1998–1999	360	26
July–November 1999	135	33

6.37 Table 6A shows that the total number of complaints received has increased in recent years while the percentage of complaints found by the Client Relations Officer to be justified has fluctuated from year-to-year. The Client Relations Officer attributed the increase in the number of complaints received to the enhanced publicity by State Trustees of his role.

6.38 Given that over the period State Trustees had administrative responsibility for over 7 000 clients, we consider that the number of complaints received since 1996 is not excessive. However, we found that the full extent of complaints is not reported to management in that complaints raised directly with, and handled by, administrators are not registered. This inhibits proper assessments of State Trustees' performance in terms of minimising the level of justified client complaints and indeed potentially overstates its performance. To provide a more comprehensive picture, consideration needs to be given to registering all client complaints, where possible. This would incorporate developing appropriate criteria, for example non-compliance with service standards, to assist in defining a registerable complaint.

Nature of complaints registered

6.39 Details of the types of justified complaints lodged by represented persons and related parties over the period October 1996 to November 1999 are shown in Table 6B.

**TABLE 6B
TYPES OF JUSTIFIED COMPLAINTS,
OCTOBER 1996 TO NOVEMBER 1999**

<i>Type of complaint</i>	<i>Number of justified complaints</i>
Ineffective and/or absence of communication	101
Delay in effecting payment	53
Delay in organising payment	34
Delay in responding to and resolving issues	89
Delay in finalising the estate/ revocation of administration	27
Dissatisfied with decision	19
Ineffective management/use of funds	36
Request for further information/ insufficient information given	17
Total	376

6.40 As indicated in the table, over the last 3 years the major concerns of clients have been ineffective and/or absence of communication, delays in responding and resolving issues, and delays in effecting payments. As indicated earlier in this Part of the Report, issues surrounding weaknesses in the communication process were also identified during the audit.

Timeliness of responses to complaints

6.41 State Trustees' performance in responding to complaints was found to be satisfactory. Less than 10 per cent of complaints were not responded to within the required time frame of 10 working days. This performance could be further improved by taking appropriate measures aimed at ensuring requests for files and information made by the Client Relations Officer are responded to by administrators on a more timely basis.

RESPONSE provided by Managing Director, State Trustees Limited

It is worth highlighting that State Trustees has actively promoted the ability to express concerns in the period 1998 - 1999 and has widely distributed a brochure on that subject.

State Trustees has been within the jurisdiction of the Ombudsman since July 1998. In that time there has been one complaint found to be partly justified.

CONDUCT OF AN ANNUAL CLIENT SURVEY

6.42 Periodic feedback from clients is an important component of a continuous improvement process. The Community Service Obligations Agreement requires State Trustees to conduct a client survey annually with a view to eliciting feedback on its responsiveness to client needs, timeliness of actions taken and the quality of information provided to clients.

6.43 Although State Trustees conduct an annual survey covering all of its services and products, the results are unsatisfactory for the purposes of meeting the requirements of the Agreement as:

- the number of represented persons surveyed is insufficient to provide statistically valid results; and
- the survey does not specifically address State Trustees' performance against the standards specified in the Agreement.

6.44 Action should be taken to initiate an annual survey of represented persons or, if those persons are incapable of responding, their immediate carers, to assess the extent to which they are satisfied with State Trustees' administration services.

FINANCIAL ACCOUNTABILITY TO CLIENTS

6.45 State Trustees needs to maintain clear and accurate financial records for each represented person which detail assets, liabilities, expenses and income, and provide these persons with financial statements that summarise their financial position at a particular point in time. Financial statements for each person are generated automatically by State Trustees from its management information system either annually or upon request from the client.

6.46 Administration Orders made by the Victorian Civil and Administrative Tribunal appointing State Trustees may incorporate a requirement for financial statements to be prepared at specified intervals and issued to the represented person, family or other interested parties. The Orders usually stipulate the statements are to be provided to recipients within 28 days of each anniversary of the Order.

6.47 Our examination of a sample of files disclosed that State Trustees was only required by the Tribunal to provide annual financial statements to one out of every 5 represented persons. In these cases, statements were generally prepared within the time frames specified in the Administration Order, and the statements fairly reflected the client's financial position.

6.48 However, in a small number of cases accountability requirements specified in the Administration Order were not met by State Trustees. The following are specific examples.

Case 1

The Tribunal's Administration Order required the provision of quarterly financial statements to the client's next of kin within 28 days after the end of each quarter. Although annual accounts were prepared they were not provided, as required, to the next of kin until more than 2 months after the specified time frame.

Frustration by the interested parties at State Trustees' delay in producing financial statements led to an attempt by the next of kin to have State Trustees removed as administrator and replaced by a private sector trustee company. Although the Tribunal rejected the application, it indicated "...it would look unfavourably towards the Trustees if it did not meet its commitments".

Case 2

In accordance with the Administration Order a nominated party was to be provided with a copy of the represented person's annual financial statements commencing from the first anniversary date of the Order (18 January 1994). We found that:

- as financial statements were prepared on a financial year basis commencing from 1 July 1994, a time gap existed between the date of the Order and the 30 June 1994;
- financial statements for the years ended 30 June 1995, 1996 and 1997 were not forwarded to the nominated party until up to 3 months after the required date; and
- financial statements covering the quarter ended 30 September 1997 requested by the nominated party, in preparation for a Tribunal hearing, were provided to that person at the Tribunal hearing thus denying him adequate opportunity to examine the accounts prior to the hearing.

□ **RESPONSE** provided by Managing Director, State Trustees Limited

State Trustees acknowledges the findings but points out that these events occurred prior to 1997 and we are now confident that the new STRATIS Computer system will prevent recurrence of these issues.

Part 7

Management framework

ACCOUNTABILITY TO THE TRIBUNAL

Overview by the Tribunal

7.1 Where State Trustees is appointed as administrator, the Victorian Civil and Administrative Tribunal, Guardianship List still retains overall responsibility for the represented person. Consequently, it is important that sound accountability mechanisms are in place in relation to the fiduciary activities and decisions undertaken on behalf of represented persons. Such mechanisms take the form of periodic reviews by the Tribunal of Administration Orders and the submission to the Tribunal of annual financial statements in respect of each represented person.

7.2 Under the *Guardianship Administration Board Act 1986*, the Tribunal must conduct a review of the Administration Order within 12 months after making the Order, or at least within 3 years. The Act also provides for a review to be undertaken at any time prior to the Tribunal's triennial review, or at the request of either the represented person or any other person. Reviews are aimed at ensuring the needs of the represented person are being properly met and assessing whether it is necessary to continue with the Administration Order. Both the appointed administrator and the represented person are able to attend the review conducted by the Tribunal.

7.3 In the majority of State Trustee files examined, there was evidence that the Tribunal's reviews of Administration Orders had been undertaken triennially. However, as indicated in Part 3 of this Report, due to legal issues, the audit could not extend to examining the accountability exercised by the Tribunal over State Trustees.

Reviews of other administrators

7.4 Until 1 January 2000, a person or organisation, other than State Trustees, appointed as the administrator in respect of a represented person was required by the legislation to submit an annual set of financial statements for the estate to State Trustees, unless exempted by the Tribunal. The accounts, which set out the assets and liabilities of the represented person and all receipts and disbursements in respect of their estate, were to be examined by State Trustees and, where necessary, a recommendation made to the Tribunal to disallow any items from the accounts and highlight any issues warranting further attention. Administrators were required to pay State Trustees an amount certified by the Trustees as being the cost of examining the accounts. As a result of a legislated amendment, the Tribunal is now able to appoint persons, other than State Trustees, to undertake these annual examinations of financial accounts. The legislation now provides for an audit or examination to be undertaken.

7.5 If the Tribunal is not satisfied with the details provided in the accounts or they have not been completed to its satisfaction, it may review the administrator's appointment. State Trustees is not necessarily notified of actions taken or decisions made in response to any concerns it has reported to the Tribunal.

7.6 For the financial year ended 30 June 1999, the number of examinations undertaken by State Trustees was around 3 500, an increase of 16 per cent over the previous year. State Trustees' quarterly report to the Department of Human Services in December 1999 indicated that in 95 per cent of cases State Trustees had completed the examinations within the 40 day timeframe stipulated in the Community Service Obligations Agreement.

7.7 We found State Trustees' procedures for examining accounts prepared by other administrators were satisfactory.

ADMINISTRATOR CASELOADS AND EXPERTISE

7.8 In order to fulfil its legislative responsibilities, State Trustees requires an adequate complement of staff who possess a wide range of skills, knowledge and experience. At December 1999, 56 administrators were employed by State Trustees in the direct management of the financial and legal affairs of around 7 000 represented persons. Of these, 20 undertook support functions such as the initial tasks at the time of appointment and responding to client inquiries. The remaining 36 are specifically involved in the ongoing management of the affairs of represented persons.

Framework for determining caseloads

7.9 A formal framework for determining optimum caseloads for administrators had not been established by State Trustees, nor had action been taken to identify methodologies that may exist for this purpose or to seek advice from specialists. In practice, State Trustees substantially adopts an intuitive approach to assigning cases by considering aspects such as the socio-demographic characteristics of a region managed by the administrator. For example, State Trustees is aware that clients from one particular region are likely to pose more complex management issues because it is an area with a high proportion of residents at the lower end of the socio-economic scale and a high level of drug use. Thus, the caseload for administrators working with clients in this region needs to be lower than for some other areas.

7.10 In recent years, this approach to determining caseloads has been supplemented with additional management information, namely:

- The results of various internal and external reviews that examine performance against legislated requirements and performance standards and targets specified in the Community Service Obligations Agreement. Where instances of non-compliance are identified, the cause is investigated and a judgment made on the need to adjust an administrator's caseload; and
- A range of performance indicators covering such things as the number of concerns raised by clients, extent of contact with clients, amount of revenue and expenditure managed, and the number and time taken to process new clients. This information assists in identifying administrators who appear not to be performing at the required level or whose caseloads appear to be too high.

7.11 The usefulness of this information for the purposes of determining caseloads and client mix could be enhanced if it was supplemented with data on the complexity of individual cases. Such information would provide State Trustees with greater insight into the difficulties that an administrator may encounter and, in turn, the time and effort involved in managing cases. State Trustees study to examine the feasibility of introducing a time recording system, described in Part 4 of this Report, is a positive step in this regard.

Assessment of caseloads

7.12 Changes in the number and type of clients administered, technology, the level of community service obligation funding received, profit levels, and legislated changes have all had an impact upon the level of resources and skills base required by State Trustees.

7.13 As previously stated, at December 1999 56 staff were involved in the management of around 7 000 represented persons. This compares with 47 staff at December 1997.

7.14 The absence of data relating to the complexity of cases, the mix of cases managed by administrators and the time spent by administrators on the range of cases they manage made it difficult for us to assess the reasonableness or otherwise of current caseloads. Differing operating arrangements and legislative responsibilities also inhibited a comparison of State Trustees' caseloads with those of equivalent interstate, overseas or private sector agencies.

7.15 However, findings from our examination of case files and discussions with State Trustees' administrators suggest that caseloads could be a factor contributing to:

- Instances of non-compliance with performance standards and targets, primarily in relation to preparing certain documentation and completing tasks within the required timeframe. This had consistently occurred over the 4 year period of our audit; and
- The limited extent of direct contact or consultation with clients by administrators.

□ **RESPONSE** provided by Managing Director, State Trustees Limited

It is worth noting that in addition to the increased staff in this area of operation, a number of functions have been moved to other areas and, further, significant productivity improvements have been achieved through the development of the information technology capability at State Trustees.

Staff turnover and experience levels

7.16 For several years State Trustees has experienced difficulty in maintaining a stable, experienced workforce and had been concerned about the potential impact this might have on its capacity to fulfil legislated responsibilities. Specifically, problems have been encountered in retaining newly recruited staff beyond their initial year of employment and other staff beyond years 2 to 5 of their employment.

7.17 Initiatives adopted by State Trustees to assist in arresting this problem and to attract suitably experienced staff have included:

- ensuring that salary levels and employment conditions are in line with other public and private sector trustee companies;
- offering salary increases for achieving a satisfactory level of performance; and
- establishing family-friendly employment policies.

7.18 This action has contributed to reducing the turnover of administrators from 22.7 per cent in 1997-98 to 17.6 per cent in 1998-99.

7.19 The level of experience of staff in administration services, at December 1999 was:

- all 6 senior administrators had over 10 years experience;
- 13 administrators had under 2 years;
- 11 had 2 to 5 years;
- 1 had 6 to 10 years; and
- 5 had over 10 years.



Skilled and experienced administrators manage the affairs of State Trustees' represented persons.

7.20 State Trustees has complemented the skill base with sound training programs which have included:

- an induction program including computer based interactive training;
- in-house and external courses and seminars; and
- on-job mentoring.

7.21 The workforce stability achieved by State Trustees in the last 12 months and experience levels of staff are now considered by us to be adequate.

FRAUD PREVENTION AND DETECTION

7.22 The fiduciary nature of State Trustees' activities, in conjunction with the inherent inability of a high proportion of represented persons to effectively monitor the activities of administrators, increases the potential risk of fraud, and the risk that such fraud goes undetected. Consequently, it is important for State Trustees to have in place clear strategies and effective procedures that minimize such risks.

7.23 There has been only one instance of fraud detected at State Trustees in the last 3 years. This defalcation occurred due to a failure of the approving officer to sight appropriate supporting documentation for a payment of around \$44 000.

Fraud prevention and detection controls

7.24 State Trustees' approach to fraud prevention and detection was found to be generally adequate. An important initiative in this regard has been the establishment, in April 1997, of a code of conduct that requires employees to:

- disclose any potential conflict of interest;
- avoid using any knowledge gained to harm State Trustees or a client, or for personal gain;
- report to management all inducements, incentives or offers received;
- avoid the purchase of any real estate or client assets for their own use or the use of any other person, except clients; and
- not solicit or accept gifts or payment for services provided in an official capacity.

7.25 The code assists in ensuring inappropriate relationships do not develop between staff and external parties who provide services to represented persons.

7.26 State Trustees' good progress in improving its overall fraud control strategy is acknowledged. The current framework could be further strengthened if the following aspects were addressed by State Trustees:

- *Client and community awareness* - The issue of fraud including State Trustees' commitment against fraudulent matters and willingness to prosecute perpetrators of fraud has not been communicated to represented persons or the broader community. Strategies should be implemented to promote greater client and community awareness of State Trustees' commitment to preventing fraud, through mediums such as brochures and other publications;
- *Formal reporting system* - A formal fraud reporting system is not in place and State Trustees rely on administrators, internal audit, complaints systems and staff grievance procedures to target potential fraudulent activities. It would be beneficial for State Trustees to introduce a formal fraud reporting mechanism to facilitate and encourage the reporting of suspected fraudulent practices to management, on a confidential basis. This would need to be supported by a clear policy confirming that management encourages staff to report suspected fraud and that such staff will be protected against recrimination;

- *Notification of fraud to external authorities* - A clear and formal policy, and detailed procedures, for reporting instances of suspected fraud or corruption to external authorities, such as police and social security, have not been developed by State Trustees. Such a policy and procedures should be established, together with specific arrangements and protocols;
- *Investigation guidelines* - State Trustees has not promulgated a set of investigation standards and procedures to guide staff and avoid uncertainty or confusion as to how potential fraud matters should be handled. State Trustees should develop, adopt and circulate a formal investigation standard;
- *Controls over payments on behalf of clients* - State Trustees’ internal and external auditors have indicated that key controls over the payment of accounts are adequate including a proper segregation of duties to mitigate the potential for fraudulent activities. However, controls could be strengthened by the adoption of a recommendation of the internal auditor that clients who elect to collect cheques in person should sign a register held by State Trustees to acknowledge receipt of moneys; and
- *Independent review of client financial statements* - Expanding the internal audit program of independently reviewing clients’ financial statements prepared by the Trustees’ administrators to incorporate a greater focus on fraud detection would further enhance the current framework.

SERVICE CHARGES LEVIED ON CLIENTS

Calculation of charges

7.27 The *Trustees Companies Act 1984* enables State Trustees to “charge and receive fair and reasonable commissions, fees and remuneration” for the provision of its services. The *Guardianship and Administration Board Act 1986* provides that administrators are not permitted to receive payment unless the Victorian Civil and Administrative Tribunal specifies otherwise in the Administration Order.

7.28 Table 7A details the service charges, in the form of fees and commissions levied by State Trustees since December 1997.

**TABLE 7A
SERVICE CHARGES LEVIED ON REPRESENTED PERSONS**

<i>Type of fee or commission</i>	<i>Basis for charging</i>
Capital commission	Once only commission, not exceeding 5%, on the gross value of any realised assets
Common fund fees	Management fee, to 1% per annum, on the capital sum invested in any of State Trustees’ Investment Funds
Income collection commission	Maximum of 6% on all income except Department of Social Security or Department of Veterans Affairs Pensions which is 3%

7.29 Service charges may be reduced or waived by State Trustees at its discretion. A represented person may, in accordance with State Trustees' *Reduction and Waivers of Commission Policy*, apply to State Trustees on the basis that application of the scheduled rates would cause hardship.

7.30 Our examination indicated that State Trustees has in place an adequate system to ensure that fees, commissions and charges are accurately calculated and we found no material errors in this regard. Procedures adopted by State Trustees for the waiver of charges were also found to be satisfactory. These findings are consistent with 2 internal reviews in this area, recently undertaken by State Trustees.

Comparison with interstate offices

7.31 We undertook a comparison of 2 types of commissions imposed by State Trustees with those levied by 4 other equivalent interstate offices namely, New South Wales, Queensland, South Australia and Western Australia.

7.32 Differing operating arrangements and legislated responsibilities within each State can affect the results of the comparison. For example, the level of government funding received, the requirement to provide a dividend and the types of clients managed can all impact on pricing structures. Nevertheless, the comparison suggested that in the area of income collection commission State Trustees' service charges compared favourably with the other 4 States. However, in the area of capital commissions charged on the value of realised assets, such as property or investments owned by the represented person, the comparison suggested that State Trustees did not compare favourably with the other States.

7.33 Table 7B provides a comparison of State Trustees' capital commission charges with the other offices examined.

**TABLE 7B
COMPARISON OF CAPITAL COMMISSION**

<i>State</i>	<i>Basis of charging</i>
Victoria	Maximum of 5% on gross value. This is a once only commission on the gross value of any assets realised by State Trustees.
New South Wales	No commission charged on personal assets that are held in joint names. No commission is charged on real estate held as joint tenants. However, a fee of approximately \$250 is charged to cover the legal work involved in transferring property to the surviving joint tenant. When solely owned assets are realised or transferred, a once only commission is charged based on the following formula: 4% on first \$100 000; 3% on next \$100 000; 2% on next \$100 000; and 1% on remainder over \$300 000.
Queensland	Commission is charged on the following formula for assets realised and brought within the Public Trustees control: 3.5% up to \$100 000; 2.5% on next \$100 000 to \$500 000; 1.5% on next \$500 000 to \$750 000; and 1% on remainder over \$750 000.
South Australia	Commission is not charged on joint assets and halved in the case of a transfer to, or sale on behalf of, a spouse of a matrimonial home. Commission is charged on the deceased person's estate only in respect of a property owned as tenants in common. Commission is based on the capital value of the estate and charged as follows: 4% on \$5 000 to \$100 000; 3% on next \$100 000 to \$200 000; 2% on next \$200 000 to \$400 000; and 1% on remainder over \$400 000. The total capital commission on any estate over \$5 000 will not exceed the maximum rate of 4%. Where the gross value of the estate is less than \$5 000, the commission is \$50 on the gross value to \$500; 10 per cent of the gross value of estates between \$500 - \$2 000; increasing to \$200 on the gross value of estates between \$2 001 and \$5 000.
Western Australia	Commission is 4% on assets realised or money collected excluding money from cheque or savings accounts and 2% where the asset realised is the principal residence

7.34 As indicated in the above table, State Trustees and Western Australia use a flat rate to calculate capital commission charges compared with the other 3 States that use a sliding scale. If State Trustees applied the maximum charge of 5 per cent, its fee is clearly higher than these other 3 States and this differential increases commensurate with increases in the value of the capital transaction. For example, a \$10 000 capital transaction would attract a commission of \$500 in Victoria compared with \$400, \$350 and \$400 in New South Wales, Queensland and South Australia, respectively. A transaction of say \$500 000 would attract a commission of \$25 000 in Victoria compared to \$11 000, \$13 500 and \$12 000, respectively, in the other 3 States.

7.35 Given that State Trustees is appointed to administer a represented person's estate rather than being chosen by that person, it should regularly review its service charges to ensure that they compare favourably with equivalent trustee agencies.

INVESTMENT PERFORMANCE

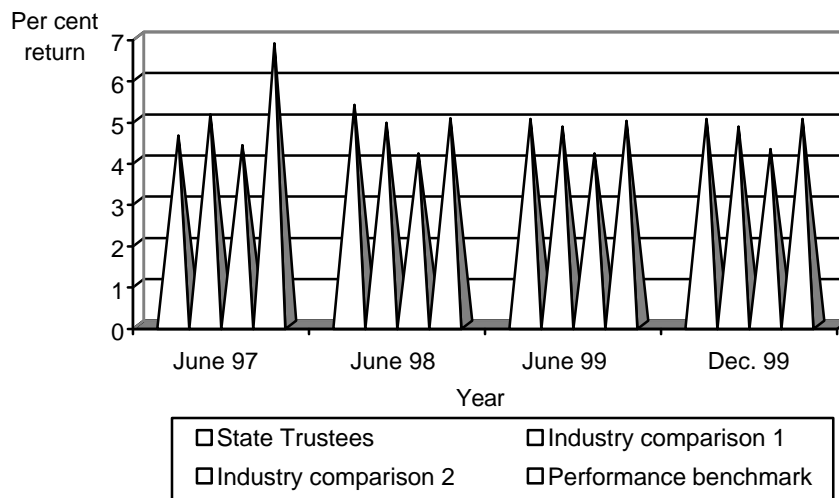
7.36 Investment return data is critical to any assessment of the performance of investing entities. In this regard, industry benchmarks are used by State Trustees as independent reference points against which its investment performance can be assessed. The benchmarks are asset class specific and usually take the form of indices designed to measure the returns generated.

7.37 Pooled investments managed by State Trustees, held in Common and Premium Funds, are managed in such a way as to replicate a relevant benchmark index, thereby returning to clients at least the market rate of return.

7.38 The investment fund strategy, including the appropriateness of the index performance methodology, has recently been subject to review by actuaries who have further supported State Trustees’ approach in this regard.

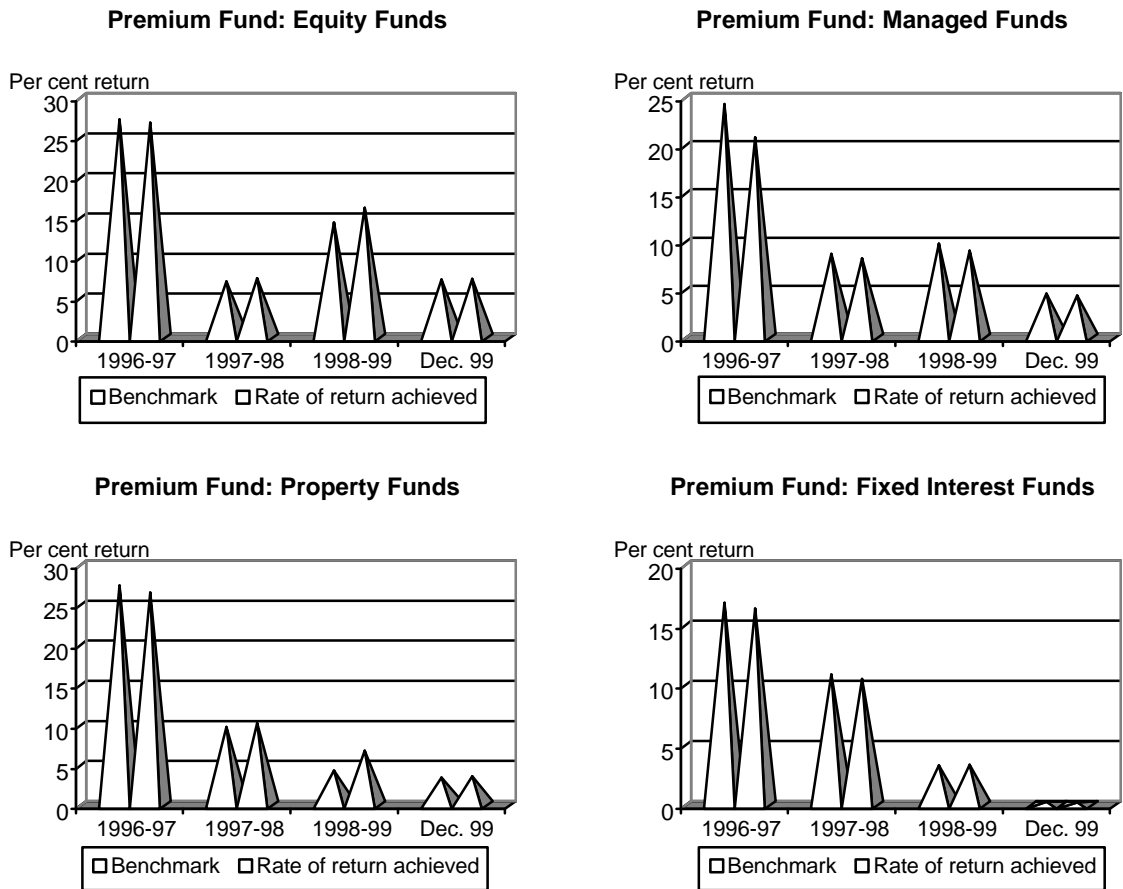
7.39 Tables 7C and 7D illustrate the rates of return achieved by State Trustees in the Common (Cash) Fund and Premium Funds against the performance benchmark over a period of 3.5 years. As State Trustees’ Common (Cash) Fund is similar in nature to cash management funds, a comparison with 2 other similar funds is also provided.

**TABLE 7C
COMMON (CASH) FUND: INVESTMENT RETURNS**



Source: State Trustees.

**TABLE 7D
PREMIUM FUND: INVESTMENT RETURNS**



Source: State Trustees.

7.40 As indicated in the Tables, the investment returns achieved on the State Trustees’ Common (Cash) Fund has consistently exceeded the performance benchmarks and the returns achieved by the 2 comparable funds over the July 1996 to December 1999 period. The performance of the Premium Funds generally equated to, and in some instances over the period, exceeded the average annual benchmark performance for all investment products with the exception of managed funds where performance was only marginally below the performance benchmark.

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