

Changes to NSW Trustee & Guardian's fees: Discussion Paper

1 Introduction

This discussion paper is about proposed changes to NSW Trustee & Guardian Regulation 2017 (called "Regulations") and some of the fees that can be charged. This discussion paper describes the proposed changes and seeks your feedback on them.

1.1 About us

NSW Trustee & Guardian is a NSW government agency within the Stronger Communities Cluster.

At NSW Trustee & Guardian, we protect, promote and support the rights, dignity, choices and wishes of our customers. We make a difference in the lives of over 45,000 customers each year. Whether we are writing a Will, acting as an executor, attorney, trustee, guardian, or financial manager, we are here for critical moments in our customers' lives.

NSW Trustee & Guardian is a small agency, but we are entrusted with significant responsibility on behalf of our customers. This includes:

- ensuring our customers have access to their money
- prudently investing customer funds
- managing funds on our customers' behalf
- ensuring customers have a safe place to live
- preparing Wills and estate planning documents to reflect our customers' wishes
- administering customer estates and trusts, and
- protecting customers from the risk of abuse, neglect or exploitation.

1.2 Why are we consulting?

NSW Trustee & Guardian is proposing changes to some, but not all, of its fees.

To be able to make the proposed fee changes, we will first need to make changes to the Regulations.

We are committed to ensuring that our consultation processes are open and transparent. To achieve this we are inviting customers, members of the public and key stakeholders to comment.

The *NSW Trustee and Guardian Regulation 2017* regulates how NSW Trustee & Guardian sets and charges fees for services.

We are proposing changes to:

- Investment management fees
- Wills and estate planning fees
- Financial planning services
- Estate administration fees
- Financial management annual cap
- Private financial management fees
- Definitions and wording to make things clearer for customers
- Remove regulations that are no longer needed, and

- Other changes that will ensure our Regulations meet the needs of our customers and our organisation.

We are proposing to increase some fees and to reduce others.

Where we can charge for services, NSW Trustee & Guardian provides this expert advice and services at an affordable price. This will not change. Fees will remain competitive in the market.

All changes are detailed below.

Visit [our website](#) if you would like more information about our current fees.

1.3 Why are the changes needed?

We are building a stronger NSW Trustee & Guardian for our customers. We want to ensure that we can continue to deliver high quality services to the people of NSW.

NSW Trustee & Guardian provides an essential community service. Many of our customers are vulnerable, and we help support customers at critical moments in their lives.

To ensure NSW Trustee & Guardian continues to meet the changing needs of our customers and remains financially sustainable, we regularly review the way in which some of our fees are charged. Through this process we determine if any fees need to increase, be reduced, or they stay the same.

Some of our services are funded by government (our community service obligation or CSO) and others are funded by the fees we charge for services. In the last ten years, demand for our government funded services has increased by over 40%. Over the same period, the demand for services where we charge customer fees has declined. The complexity of our customers' needs has also increased. Some of the contributing factors to the complexity of the work we do includes an aging population, the increasing prevalence of dementia or multiple disability diagnosis, and working with multiple service systems undergoing significant change, such as the National Disability Insurance Scheme and Aged Care sector. As a result, our staff spend more time working on matters for our customers to provide them with the level of service that they need.

The cost of providing services has increased and current fees do not fully reflect the costs of providing services.

NSW Trustee & Guardian recently went through a review of its financial sustainability and secured additional CSO funding. We also identified some fees for customer-funded services that need to be reviewed. As a result, NSW Trustee & Guardian is seeking to change a small number of fees.

We understand that this will impact some of our customers and we are seeking feedback on the proposed changes before they are made.

1.4 What are the objectives of the changes?

We have several objectives we are trying to achieve by reviewing our fees:

- Deliver improved value for customers
- Increase service delivery for customers
- Increase eligibility for free services for more customers
- Better reflect the cost of delivering services
- Ensure our business activities compete fairly in the market, while meeting our objectives, and
- Make NSW Trustee & Guardian financially sustainable to deliver services into the future.

1.5 How can you have your say?

Your feedback is important.

We are now inviting input on the proposed changes.

There are four ways to provide feedback:

1. Complete the survey:

<https://www.surveymonkey.com/r/nsw-trustee-and-guardians-fees>

You can also request a printed version of the survey by contacting consultations@tag.nsw.gov.au.

2. By email:

consultations@tag.nsw.gov.au

3. By mail:

Office of the CEO
NSW Trustee and Guardian
Locked Bag 5115 Parramatta NSW 2124

There is no set format for submissions. The questions highlighted in blue boxes can be used as a guide. Submission can include feedback on all of the proposed changes, or just the ones you would like to provide feedback on.

All submissions may be published publicly. Please state if you would like your submission to be kept confidential. Any request for a copy of a submission marked "confidential" will be determined in accordance with the [Government Information \(Public Access\) Act 2009](#).

4. Call us

Please contact us at 1300 109 290 if you have questions about making a submission by phone. You can request a copy of the consultation materials to be provided to you.

All submissions must be received by **15 October 2021**.

1.6 How is this paper structured?

The next section will set out the proposed changes.

Each section will display the proposed change in a box with a blue border.

Proposed change: The change will be here.

It is proposed that this fee change commence on X Date.

There are 8 targeted questions, displayed in a blue box.

Targeted Question:

The question will be here.

The targeted question is identified under each change, and in a list at [Attachment 1](#).

The survey has the same questions as those in this discussion paper. You may choose to either complete the survey or send in a written submission.

2 Proposed changes to our fees

Most of our fees will not change.

These proposed changes will affect some of our customers.

Some of the changes will provide more benefits to our customers.

Customers will be impacted in different ways. In this paper we show the potential impacts on customers. We have used case studies to show this impact.

Wherever possible, we are aiming to minimise the impact on our fee-paying customers.

Most of our customers will see no impact. This includes:

- **Guardianship customers** who will continue to receive services free of charge. There is no proposed change to this arrangement.
- **Trust customers** who will see no changes to the trust establishment and management fee
- Customers who pay fees to administer **powers of attorney**
- **Most financial management customers** who will see no changes to establishment and administration fees. Some financial management customers with higher value estates may be impacted by fee cap and fees for services, detailed below.

All of NSW Trustee & Guardian's current fees are published on the [NSW Trustee & Guardian website](#).

An overview of the proposed changes and the impacts to customers are described below.

2.1 Changes to fees

2.1.1 Fees for drafting Wills and Powers of Attorney (Regulation 28)

A customer who considers engaging NSW Trustee & Guardian to prepare their Will, Power of Attorney and Appointment of Enduring Guardian has the option to use a private solicitor for this service. This means NSW Trustee & Guardian competes with private solicitors in the estate planning market. Customers are free to choose another provider to make their estate planning documents.

The current fees were introduced in 2016 for the preparation of Wills and Powers of Attorney and have not been changed since that time. NSW Trustee & Guardian proposes to set its own fees in line with a consideration of market conditions.

Current fees

NSWTG currently charges the following fees, inclusive of GST:

Package prices

- New Will, Power of Attorney and Appointment of Enduring Guardian: \$440 (Essentials package)
- Update Will and Power of Attorney: \$330 (package)

Document Prices

- New Will: \$330
- Update Will: \$220
- New Power of Attorney: \$220
- Update Power of Attorney: \$165
- New or update Appointment of Enduring Guardian: Free

Proposed change: We propose changing this regulation to allow NSW Trustee & Guardian to set its own fees to prepare Wills, Powers of Attorneys and Appointments of Enduring Guardian. All fees will be published on the NSW Trustee & Guardian website.

The following is **indicative pricing** for the new fees and is subject to change.

The fees to prepare a Will are based on the complexity of a customer's circumstances and wishes.

Indicative Wills pricing (ex GST)		
Simple	Medium	Complex
\$400 (single) \$600 (couple)	\$750 (single) \$1,000 (couple)	Up to \$3,000 (single) Up to \$4,000 (couple)
Simple arrangements include: <ul style="list-style-type: none"> • gifting your whole estate to your spouse and/or children 	Medium complexity arrangements include: <ul style="list-style-type: none"> • multiple specific gifts of assets, such as real estate and shares 	Complex arrangements include: <ul style="list-style-type: none"> • complex asset structures, such as a private company or trust

<ul style="list-style-type: none"> no complex asset structures, such as self-managed superannuation or business interests 	<ul style="list-style-type: none"> unequal division of an estate to multiple beneficiaries and different substitution arrangements 	<ul style="list-style-type: none"> granting a right for another person to live in a property for a period of time or any other long-term trust
Power of Attorney pricing (ex GST)		
Standard Power of Attorney to remain at \$200 (ex GST). However, Powers of Attorney for customers with superannuation will increase to \$300 (single) (ex.GST) and \$500 (couple) (ex.GST).		
Appointment of Enduring Guardian pricing (ex GST)		
Appointment of Enduring Guardian to be set at \$200 (ex.GST).		
It is proposed that the regulation change commence on 1 January 2022.		

What is the potential impact on customers who choose NSW Trustee & Guardian to prepare their Wills, Powers of Attorney and Appointments of Enduring Guardian?

- The increased fees will apply to **new** documents being prepared *after* the fee change.
- Customers will pay to have a new Appointment of Enduring Guardian prepared (previously this was free).
- Customers who have an existing Will or estate planning document with NSW Trustee & Guardian will not be impacted. However, if a customer seeks to update their documents, they will be impacted by a fee increase, unless they are exempt from paying the fee.
- Customers who have more complex estate planning arrangements would pay a higher fee for their documents to be prepared. For example, this could include complex asset structures such as businesses, trusts or a self-managed super fund. These arrangements are more complex and may require specialised legal advice.
- People who are eligible for the full Centrelink Age Pension will continue to receive these services free of charge. Customers receiving the Disability Support Pension (DSP) and the Department of Veterans' Affairs Pension (DVA) who would otherwise be eligible for the full Centrelink Age Pension are also eligible for the free service.

Case study 1

Ahmed is 55 years old and is thinking about contacting NSW Trustee & Guardian to write his Will and help set out his estate planning wishes. Ahmed works full time and is not eligible for a free Will. Ahmed has simple wishes for his Will and does not have a business or self-managed superannuation fund.

Ahmed can choose to go to a private solicitor to write his Will.

Under the current fees, Ahmed would pay \$440 (incl. GST) for NSW Trustee & Guardian to prepare his Will, Power of Attorney and Appointment of Enduring Guardian.

Under the proposed new fees, Ahmed may pay \$880 (incl. GST) for these documents.

If Ahmed had more complex estate planning needs, such as a family trust, he may need to pay a higher fee based on the complexity of advice that would be required to give effect to his wishes.

Targeted Question 1:

Do you have any feedback on our proposal to change the Wills and estate planning fees?

2.1.2 Fee for management of the common fund (Regulation 11)

Proposed change: We propose increasing the investment fee for the common funds from 0.1% to a maximum of 0.35%. NSW Trustee & Guardian will have the ability to set fees within that maximum limit.

It is proposed that this fee change commence on 1 January 2022.

Customers who don't have investments in the common fund will not be impacted.

The current fees were reduced to 0.1% in 2016 after previously being capped at 1%.

What is the potential impact on customers with investments in the common funds?

- Fees will remain highly competitive and will not impact customers with limited balances.
- The proposed new fee will impact new and existing customers with funds invested in the common funds.
- The increase to the asset-based fee will reflect a customer's ability to pay.
- The fees will be transparent and linked to the performance of the common fund. Fees are net of performance, and the return on the investments are reported to our customers.
- The fees charged only partially cover the cost of us providing this service.
- The fee is well below comparable rates in the market.
- Independent financial advice will continue to be provided by NSW Trustee & Guardian's financial planning unit to eligible customers.

Case study 2

Elizabeth is 60 years old and NSW Trustee is her financial manager. Elizabeth spends \$50,000 per year on her living expenses, owns her own home and has surplus funds of \$300,000 (excluding her home). Her funds are invested in the common funds.

Elizabeth's investments are invested as followed, with the following current returns and fees, and an estimate of the impact under the proposed fee increases:

Investment strategy	Balance	Returns on her investment (increase) to 30 June 2021	Current fees that Elizabeth pays	New fees that Elizabeth could pay
Cash portfolio	\$100,000	\$410 (0.41%)	\$100 (0.1%)	\$150 (0.15%)
Income portfolio	\$100,000	\$2,700 (2.7%)	\$100 (0.1%)	\$250 (0.25%)
Growth portfolio	\$100,000	\$30,700 (30.7%)	\$100 (0.1%)	\$350 (0.35%)

As a comparison, if those funds had been invested with another well-known private financial manager, her likely returns would be less, and the fees would be more, shown below.

Competitor fund returns	Competitor fee
\$20 (0.02%)	\$110 (0.11%)
\$2,200 (2.2%)	\$470 (0.47%)
\$30,000 (30%)	\$895 (0.89%)

Targeted Question 2:

Do you have any feedback on our proposal to change the investment management fees?

2.1.3 Fee for investment planning (Regulation 7)

Proposed change: We propose allowing NSW Trustee & Guardian to set its own fees for providing financial planning services to reflect the variety of work involved. This change will be consistent with industry standards and community expectations on transparency when paying for financial advice.

It is proposed that this fee change commence on 1 July 2022.

Customers who do not meet the criteria to receive financial advice (assets over \$250,000, excluding ownership of place of residence and living expenses) will not be impacted.

The investment planning fees have not been changed in the Regulations (and the prior Public Trustee Regulation 2008) since 2008.

What is the impact on customers receiving financial planning advice?

- The financial planning fee will be increased to be more in line with market conditions.
- The fee only partially covers the cost of delivering the service.
- It will provide transparency in the fee a customer pays for professional advice.

Case study 3

Abel is 60 years old and the NSW Trustee is Abel's financial manager. NSW Trustee & Guardian provides independent financial advice on Abel's investments (worth \$300,000).

Abel currently pays \$150 per hour (ex GST) for his financial plan to be created, and \$150 per hour (ex GST) for his financial plan to be reviewed each year.

Under the proposed changes, Abel may pay \$275 (ex GST) per hour for the review of his financial plan.

In considering the financial impact on Abel, the financial planner may also consider the impact of the increase in the investment management fee for the common fund (described above).

New customers would pay \$275 per hour (ex GST) for the plan to be created and then \$275 per hour for annual review.

Targeted Question 3:

Do you have any feedback on our proposal to change the investment planning fee?

2.1.4 Fees for estate establishment and administration of estate (Regulation 21)

Proposed change: We propose to amend the commission band rates as follows:

- 4.0% on the first \$100,000 to be increased to \$300,000
- 3.5% on the next \$100,000 to be increased to \$300,000
- 2.5% on the next \$100,000 to be increased to \$150,000
- 1.5% on any amount exceeding \$300,000 to be increased to \$750,000.

In addition, NSW Trustee & Guardian proposes to:

- remove the annual management fee of 0.7% for estate administration
- increase the minimum administration fee from \$200 to \$500
- introduce a new testamentary trust fee of 0.7% p.a. on the value of assets in the trust with a fee cap applying to some assets, to be charged on capital, income or both, and
- introduce a new estate administration commission on gross income during general administration.

It is proposed that this fee change commence on 1 July 2022.

What is the impact on estate administration customers?

- The proposed fees will impact new estates matters received after 1 July 2021.
- Some of the proposed fees will impact current matters that are under administration as of 1 July 2021.
- It is fair and equitable for our customers to remove the annual management fee.
- The fee structure will be simpler and easier to understand.
- The new fees are proposed to apply to new and/or current customers who have appointed us as the Executor of their Will, but where administration of the estate has not yet commenced as of 1 July 2022.
- The proposed fee structure remains reasonable in comparison to the market.

Case study 4

NSW Trustee & Guardian is the executor of an estate valued at \$1,000,000. Under the current fee bands, the estate would pay the following (ex GST) under the current bands:

Commission bands	%	\$ Fee
100,000.00	4	4000
100,000.00	3.5	3500
100,000.00	2.5	2500
700,000.00	1.5	10500
		\$20,500

Under the proposed changes, the estate would pay the following (ex GST) under the new bands:

Commission bands	%	\$ Fee
300,000.00	4	12000
300,000.00	3.5	10500
150,000.00	2.5	3750
250,000.00	1.5	3750
		\$30,000

The total capital commission would increase by \$9,500. This fee remains the same during the administration of the estate and is based on the value of the estate, not the length of time to administer the estate.

For an estate value at \$1,000,000.00, under the current regulations the 0.7% annual management fee amounts to \$7,000 (ex GST) over a 12-month period.

Under the proposed changes this fee is being removed.

A new fee of 5.25% commission on gross income received is being introduced.

If this estate earned 5% interest on the \$1,000,000 over a 12-month period, the interest would be \$50,000.

The new fee on this gross income would be \$2,625 (ex GST)

The total cost of administration over a 12-month period would see a reduction of \$4,375 (\$7,000 less \$2,625).

If the interest earned is less than 5% then the new income commission would be corresponding less and the reduction even greater.

For estates that are administered for longer periods of time this fee would be even further reduced.

Targeted Question 4:

Do you have any feedback on our proposal to change the fees for estate establishment and administration of estate?

2.1.5 Fees payable to NSW Trustee – direct management (Regulation 26)

Proposed change: We propose to increase the maximum cap for the ongoing management of an estate from \$15,000 to \$20,000 per annum.

Financial management fees do not attract GST as they are GST exempt.

It is proposed that this fee change commence on 1 July 2022.

What is the impact on financial management customers?

- **Most financial management customers will see no impact.**
- There are no changes proposed to the establishment or management percentage fees.
- The proposed increase to the maximum cap on fees will impact a small number of customers **with more than \$1.07m in assets** (excluding their principal place of residence) to reflect the cost of the higher complexity to manage their assets and financial needs.
- Increasing the cap will reflect the increased complexity of the higher value of the estate.
- Some customers impacted by the cap increase may *also* be impacted by the fee for common fund and investment planning fee increase. Increasing the cap will reflect the investment of time needed to provide customers with a high level of service.

Case study 5

Regina has the NSW Trustee as her financial manager. Regina lives in her own home (owned by her with no mortgage). Regina has assets worth \$2,000,000 invested in the common fund and an investment property worth \$2,000,000 which is leased to a tenant.

Under the current fees, Regina pays 1.4% of the value of the estate, with a maximum of \$15,000 per year for the ongoing management of her estate. Regina will also pay investment fees within the common fund.

Under the proposed fee changes, Regina would pay \$20,000 per year for the ongoing management of her estate and would also pay the investment fee for the funds she has invested in the common fund.

Targeted Question 5:

Do you have any feedback on our proposal to change the annual cap on the direct management fee?

2.1.6 Fees payable to NSW Trustee – private management (Regulation 27)

Proposed change: We propose to:

- increase the once only establishment fee from \$500 to \$650, with NSW Trustee & Guardian retaining the tiered fee reductions at set estate values.
- increase the annual accounts examination fee from \$300 to \$375, with NSW Trustee & Guardian retaining tiered fee reductions at set estate values.
- cease charging the annual administration fee of \$120 (maximum).

Private Management fees do not attract GST as they are GST exempt.

It is proposed that this fee change commence on 1 July 2022.

What is the impact on private financial management customers?

- The proposed increase in maximum fees aims to reflect the complexity and time required to establish customers and review accounts.
- Customers with lower asset values will still be eligible for reduced or waived fees.
- Existing private financial management customers would not be impacted by the new once only establishment fee as they have already paid their fee under the current fees.
- A sliding scale will apply for low asset value and low complexity matters. NSW Trustee & Guardian will retain the ability to apply tiered fees.
- In some cases, private financial management customers will pay less than they currently do as NSW Trustee & Guardian proposes to remove the annual administration fee.

Case study 6

Sarah is a new customer and has a family member as her private financial manager. She owns her own unit worth \$650,000 and has \$200,000 worth of investments. Under the current fees, Sarah pays \$820 (maximum fees applied at medium complexity) as follows:

- Establishment fee of \$500
- Administration fee of \$120
- Account checking fee of \$200

Her ongoing annual fees after the first year would be \$320.

Under the new proposed fees, Sarah as a new customer would pay \$900, as follows:

- Establishment fee of \$650
- Administration fee of \$0 (as it will no longer be charged)
- Account checking fee of \$250.

Her ongoing annual fees after the first year would be \$250.

In the above example, the establishment fee is a once only fee charged at commencement, and ongoing fees after the first year would be reduced from \$320 (current) to \$250 per year (proposed).

Targeted Question 6:

Do you have any feedback on our proposal to change the private financial management fees?

2.1.7 Supporting changes

Proposed change: NSW Trustee & Guardian proposes to remove some obsolete fees and regulations:

- To introduce Consumer Price Indexation indexation on all non-percentage-based fees and caps
- Regulation 9 – currently NSW Trustee may charge to an estate fees related to an asset of the estate that is real estate. This Regulation will be deleted.
- Regulation 14 – delete the fee relating to dealings affecting shares in an estate, as it will no longer be applicable.
- Regulation 23 – delete the fees related to the execution of documents as this regulation is obsolete.
- Regulation 24 – delete the fee related to the production of documents following the advent of online conveyancing.

NSW Trustee & Guardian also proposes to make some things clearer:

- Regulation 4 - expand or change to the definition of 'estate' to make it clearer the capacities for which NSW Trustee & Guardian can charge for its services.
- Regulation 8 - simplify wording to cover all aspects of taxation work.

- Regulation 12 'General power to charge for services' - remove words 'being such amount as is agreed on or (in the absence of agreement)'. Customers under financial management lack capacity to give agreement.
- Regulation 22 – change the wording associated with locating beneficiaries (currently applicable to deceased estates only) so that these services can also be undertaken for customers under financial management.
- Regulation 29 - reword the provision to include electronic attendances. NSW Trustee & Guardian to charge a reasonable fee that will be published on its website.

It is proposed that these changes commence on 1 July 2022.

Targeted Question 7:

Do you have any feedback on our proposal to make the additional changes?

2.1.8 Changes to support service delivery to customers

Proposed change: We propose to change the values for small estates and amounts payable to beneficiaries of estates.

This proposal is NOT a fee change.

- Regulation 36 – increase the prescribed value of small estates under 36(a) from \$20,000 to \$50,000 to reflect the increase in the value of small estates over time. This will align the amounts with Regulation 48 (below).
- Regulation 48 – increase the maximum amount for payments to beneficiaries (or other person) for the purposes of section 95 (1) (a) from \$10,000 to \$50,000.

It is proposed that these changes commence on 1 July 2022.

What is the impact to customers?

These changes directly benefit our customers and ensure small estates are administered in a timely and efficient way.

Targeted Question 8:

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

3 Submission instructions

You can provide feedback in the following ways:

1. Complete the survey:

<https://www.surveymonkey.com/r/nsw-trustee-and-guardians-fees>

You can also request a printed version of the survey by contacting consultations@tag.nsw.gov.au.

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Office of the CEO
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Locked Bag 5115 Parramatta NSW 2124

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All submissions may be published publicly. Please state if you would like your submission to be kept confidential. Any request for a copy of a submission marked "confidential" will be determined in accordance with the [Government Information \(Public Access\) Act 2009](#).

4. Call us:

Please contact us at 1300 109 290 if you have questions about making a submission by phone. You can request a copy of the consultation materials to be provided to you.

All submissions must be received by **15 October 2021**.

4 Attachment 1 – List of Consultation Questions

1. Do you have any feedback on our proposal to change the wills and estate planning fees?
2. Do you have any feedback on our proposal to change the investment management fees?
3. Do you have any feedback on our proposal to change the investment planning fee?
4. Do you have any feedback on our proposal to change the fees for estate establishment and administration of estate?
5. Do you have any feedback on our proposal to change the annual cap on the direct management fee?
6. Do you have any feedback on our proposal to change the private financial management fees?
7. Do you have any feedback on our proposal to make the additional changes?
8. Do you have any feedback on our proposal to increase the value of small estates to support customer needs? (This proposal is not a fee change).