

# Fund management: a trap for young players

**B**efore 1 October 2003 (and in the absence of evidence to the contrary) fees for fund management were calculated in accordance with the *Rosniak*<sup>1</sup> principle.

Example: Assume that a plaintiff was incapable of managing his own affairs. Assume that his life expectancy was 30 years and that the appropriate multiplier (at 5%) was 822.

Assume a fund for investment of \$3,000,000.

The calculation would proceed as follows:

(a) Establishment fee:	
On first \$100,000	\$4,000
On second \$100,000	\$3,000
On third \$100,000	\$2,000
On balance (\$2,700,000) @ 1%	\$27,000

(b) Cost of management of the fund:  
One is then invited to assume a return of 5% on the investment and a fee of 5.25% applied to that figure. That would produce an annual fee of \$7,875, or a weekly cost (allowing 52.18 weeks per annum) of \$150.92.

Capitalised over the balance of the plaintiff's life, the cost would equate to \$124,056.

Avoiding the recalculation of the investment of the sum for fund management (see *Bacha*<sup>2</sup>), the total sum calculated in this way for fund management is \$160,056.

On 1 October 2003 the Protected Estates Regulation 2003 prescribed the fees that the Office of the Protective Commissioner (OPC) can charge.

For the management of a protected person's estate the OPC can, and inevitably will, charge as follows:

- 2.1% of the value of the estate for first year of management; and
- 1.1% of the value of the estate for every year after the first year.

The first year's fee is made up of the 1.1% annual fee, plus 1% first-year fee which is capped at \$2,200.<sup>3</sup>

Making the same assumptions as for the example above, the fees likely to be charged are as follows:

(a) 1.1% of the value of the estate	\$33,000	
1% first-year fee capped at \$2,200	<u>\$2,200</u>	\$35,200
(b) 1% of the value of the estate for every year after the first year – ie, \$33,000 per annum or \$632.43 per week for 29 years (multiplier 809.6) deferred for 1 year (multiplier 0.952)		<u>\$487,436</u> \$522,636

This is a simplistic approach<sup>4</sup> to a complex actuarial calculation, but it does provide a broad guide to the sum that would be charged (in this case, 17.42% of the fund).

## RESULT

If one assesses the cost of fund management under the 'old' scheme once the 'new' scheme is operational, there could be a very significant shortfall, which would be readily recoverable against solicitor and/or counsel if the error was made.

Another consequence of this new range of fees is that private fund management becomes significantly more attractive. Before the Protected Estates Regulation 2003 was introduced, the principal complaint about private fund management was that the fees for private fund management were significantly greater than those of the Protective Commissioner. That is no longer the case. Plaintiffs' advisers must be aware of the difference between fees that were once charged and are now charged by the OPC bureaucracy.<sup>5</sup> ■

**Endnotes:** 1 *Rosniak v GIO* (1997) 41 NSWLR 608. 2 *Bacha v Pettersen*, Hunter J. 20.9.94. 3 See OPC's website, [www.lawlink.nsw.gov.au](http://www.lawlink.nsw.gov.au). 4 Defendants argue that the fee calculated in this way should be halved because the fund is steadily diminishing from the sum invested to zero over the period of the investment. This, likewise, is overly simplistic. 5 Be warned: there is much debate about whether the information published on the OPC's website accurately reflects the effect of the Regulations. In each case, the cost of fund management must be professionally assessed in accordance with the Regulations rather than the OPC's published information. Whatever the precise case, it is a fact that the new Regulations will ensure that if the funds are placed with the OPC the cost of management thereof will be many hundreds of thousands of dollars more than previously understood or as appears in ready reckoners published by forensic accountants and the like.

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