



Public Trustee Regulation 2001

under the

Public Trustee Act 1913

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Public Trustee Act 1913*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to repeal and remake the *Public Trustee Regulation 1999*. The new Regulation deals with:

- (a) the fees, commission and charges payable in connection with the administration of estates by the Public Trustee, and
- (b) other matters required to be prescribed in relation to the administration of estates and administration of the Public Trust Office.

In addition to the fees under the existing Regulation, the Public Trustee will be entitled to receive an administrative fee for managing the common fund under section 36A of the *Public Trustee Act 1913* and will also be able to charge fees for trust investment planning.

This Regulation also contains amendments, commencing on 1 November 2002, that will increase some of the fees and charges set out in the Regulation.

This Regulation is made under the *Public Trustee Act 1913*, including sections 9 and 59 (the general regulation-making power).

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Clause 1 Public Trustee Regulation 2001

Part 1 Preliminary

Public Trustee Regulation 2001

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Public Trustee Regulation 2001*.

2 Commencement

- (1) This Regulation commences on 1 November 2001, except as provided by subclause (2).
- (2) Clause 37 and Schedule 1 commence on 1 November 2002.

3 Definitions

- (1) In this Regulation:
 - estate* includes trust or fund.
 - the Act* means the *Public Trustee Act 1913*.
 - trustee* includes administrator or executor or any other person acting in a similar fiduciary capacity.
- (2) The explanatory note and table of contents do not form part of this Regulation.

Part 2 Fees, commissions and charges

Division 1 Fees

4 Taxation returns

If, in any estate in respect of which the Public Trustee acts either solely or jointly with any other person or persons as trustee, returns are required by any authority of the Commonwealth or of this or any other State or Territory for the purpose of assessment of any tax or duty, the Public Trustee may charge to the estate:

- (a) an investigation fee as determined by the Public Trustee to be appropriate, and
- (b) an additional fee (not exceeding \$75) for each return lodged.

5 Real estate inspections and valuations

The Public Trustee may charge the following fees:

- (a) a fee (not exceeding \$95) for any inspection, valuation or report regarding real estate,
- (b) a fee (not exceeding \$65) for preparation of specifications for repairs or renovations to any building or work,
- (c) a fee (not exceeding \$75) for a second or subsequent inspection (including a report arising from the inspection) on the progress of any such repairs or renovations.

6 Dealings affecting shares in an estate

- (1) The Public Trustee may charge a fee (not exceeding \$50) for notation and record of the assignment or mortgage of, or of any dealing affecting, a beneficiary's share in an estate.
- (2) Such a fee is payable from the share of the beneficiary concerned.

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Clause 7 Public Trustee Regulation 2001

Part 2 Fees, commissions and charges

Division 1 Fees

7 Attendances outside Public Trust Office

The Public Trustee may charge the following fees:

- (a) a fee (not exceeding \$30) for attending at the Office of State Revenue for the purpose of search, or of marking or stamping documents, or at Land and Property Information New South Wales for the purpose of search, or of lodging or uplifting documents,
- (b) a fee (not exceeding \$40) for obtaining an exemplification of grant of probate or administration and preparation of a power of attorney for the purpose of collecting assets situated outside New South Wales,
- (c) a fee (not exceeding \$75) for any other attendances outside the Public Trust Office.

8 Work done if representation not subsequently obtained

If, for the purpose of obtaining representation in an estate, the Public Trustee takes steps incidental to the Public Trustee's duties but does not subsequently obtain representation, the Public Trustee may charge to the estate a fee (not exceeding \$295) for the work involved.

9 Attempted realisation of assets

If:

- (a) the Public Trustee attempts, at the request of a beneficiary, to realise an asset in an estate, and
- (b) the asset is subsequently transferred or delivered unconverted into money to the beneficiary,

the Public Trustee may charge to the estate a fee (not exceeding \$175) for the work involved.

10 Carrying on business

If the Public Trustee finds it necessary to carry on a business in connection with the Public Trustee's administration of an estate, the Public Trustee may charge to the estate a fee that, having regard to the work involved, the Public Trustee considers just and reasonable.

11 Administration account and audit fees

The Public Trustee may, on a monthly basis, charge to an estate administered by the Public Trustee an administration account and audit fee (not exceeding \$8) on each account kept by the Public Trustee in respect of the estate.

12 Remuneration of Clerks of Local Courts

- (1) If the Public Trustee appoints the registrar or clerk of a Local Court to act as agent of the Public Trustee, under section 10 of the Act, in respect of the administration of an estate, the Public Trustee may charge to the estate such fee as the Public Trustee considers appropriate to cover the remuneration payable to the registrar or clerk for acting as such an agent.
- (2) The amount chargeable under this clause in respect of the collection of money or the realisation of property by or under the direction of the registrar or clerk of a Local Court is not to exceed 2.5% of any money collected by, or of the value of any property realised by, the registrar or clerk.

13 Fee for management of common fund

- (1) The Public Trustee is entitled to receive from or out of the income received by the common fund under section 36A of the Act a fee (according to the value of the work done and the services rendered) for the establishment, keeping (including the keeping of books of account) and conduct of the common fund.
- (2) The fee is to be calculated at a rate not exceeding 0.5% per year on the capital sums invested in the common fund during the period in respect of which the income is received or allocated.

14 Fee for trust investment planning

The Public Trustee may charge a fee (not exceeding \$55 per hour) for preparing, managing and reviewing an investment plan in respect of a trust.

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Clause 15 Public Trustee Regulation 2001

Part 2 Fees, commissions and charges

Division 2 Scales of commission

Division 2 Scales of commission

15 Realisation of capital

- (1) The Public Trustee is authorised to charge to an estate commission in respect of any matter in which the Public Trustee is appointed or acts (either solely or jointly with any other person or persons) as trustee in respect of the estate, calculated at the rate of:
 - (a) 4% on the first \$100,000, and
 - (b) 3% on the next \$100,000, and
 - (c) 2% on the next \$100,000, and
 - (d) 1% on any amount exceeding \$300,000.
- (2) The Public Trustee may impose a minimum charge under this clause of \$200 in respect of an estate.
- (3) Commission is payable on a capital asset at the time it is realised unless the Public Trustee directs that payment be deferred, either wholly or partially, until the period of any distribution.

16 Capital realised by former trustees

- (1) The Public Trustee is authorised to charge to an estate commission, at the rate of:
 - (a) 4% on the first \$100,000, and
 - (b) 3% on the next \$100,000, and
 - (c) 2% on the next \$100,000, and
 - (d) 1% on any amount exceeding \$300,000,on such of the capital of the estate realised by a former trustee as becomes vested in the Public Trustee.
- (2) The Public Trustee may impose a minimum charge under this clause of \$200 in respect of an estate.
- (3) Commission is payable on a capital asset as at the time it becomes vested in the Public Trustee unless the Public Trustee directs that payment be deferred, either wholly or partially, until the period of any distribution.

17 Unrealised property

- (1) The Public Trustee is authorised to charge to an estate commission on the value (as fixed by the Public Trustee) of unrealised real or personal property (except money) transferred or delivered unconverted into money to a devisee, legatee, beneficiary, widower, widow, next of kin or other similar class of person, under any will, settlement, trust or intestacy administered by the Public Trustee in respect of the estate, calculated at the rate of:
 - (a) 4% on the first \$100,000, and
 - (b) 3% on the next \$100,000, and
 - (c) 2% on the next \$100,000, and
 - (d) 1% on any amount exceeding \$300,000.
- (2) The Public Trustee may impose a minimum charge under this clause of \$200 in respect of an estate.

18 Income

- (1) The Public Trustee is authorised to charge to an estate commission on the gross amount of income received by the Public Trustee in respect of any matter in which the Public Trustee is acting as trustee in respect of the estate.
- (2) The commission is to be calculated at the rate of:
 - (a) except as provided by paragraph (b)—5.25%, or
 - (b) in the case of gross income received by way of rent that is subject to an agency charge for collection—2.5%.

19 Public Trustee acting as attorney or agent

The commission that is payable to the Public Trustee in any matter in which the Public Trustee is acting as attorney or agent is, in respect of both capital and income, to be as arranged between the principals and the Public Trustee.

20 Locating beneficiaries

- (1) If:
 - (a) the existence or identity of any or all of the persons beneficially entitled to share in an estate or of the next of kin is unknown or is not definitely established, and

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Clause 20 Public Trustee Regulation 2001

Part 2 Fees, commissions and charges

Division 2 Scales of commission

- (b) it is necessary for the Public Trustee to make inquiries or to advertise for the purpose of locating any such persons or next of kin,

the Public Trustee is authorised to charge to the estate, or to the share of the estate in respect of which it is necessary to make inquiries or advertise, a commission that the Public Trustee considers just and reasonable.

- (2) The amount of the commission is not to exceed 5% of the net value of the estate after payment of original claims.

Division 3 Charges

21 Charges incidental to exercise of power of sale

- (1) If, in respect of an estate, the Public Trustee is authorised by an order of a court to sell land, the Public Trustee may (unless otherwise directed by the court) impose a charge on the estate.
- (2) If the land is sold, the charge on the estate is not to exceed:
- (a) 4% on the first \$100,000, and
 - (b) 3% on the next \$100,000, and
 - (c) 2% on the next \$100,000, and
 - (d) 1% on any amount exceeding \$300,000.
- (3) If the land is not sold, the amount that may be charged is not to exceed \$290.

22 Execution of documents

The Public Trustee may (except in respect of an estate administered by the Public Trustee) impose the following charges in respect of the execution of documents:

- (a) a charge (not exceeding \$35) for executing any assurance of property by direction,
- (b) a charge (not exceeding \$40) for executing any assurance by way of confirmation,
- (c) a charge (not exceeding \$40) for executing any necessary consent for a mortgagee to exercise powers in respect of a mortgage.

23 Production of documents

The Public Trustee may impose a charge (not exceeding \$20) for producing any deeds or documents of title.

24 Search of records

- (1) The Public Trustee may impose a charge for making a search of records in the Public Trust Office in any case in which, in the opinion of the Public Trustee, an amount should be charged because of the time involved or of the nature or volume of the information sought.
- (2) The amount that may be charged:
 - (a) in the case of current records—is not to exceed \$30, and
 - (b) in the case of archived records—is not to exceed \$45.

25 Legal advice and proceedings

The Public Trustee may charge to an estate an amount to cover all costs and expenses incurred by the Public Trustee in providing any legal advice, or in conducting any legal proceedings, in connection with that estate.

26 General power to charge for services

The Public Trustee may charge such amount, for any service or matter not otherwise mentioned in this Regulation, as is agreed on or (in the absence of agreement) as the Public Trustee determines to be just and reasonable.

Division 4 General

27 Fees cumulative

Any fee, commission or charge that is payable from an estate under a provision of this Regulation is additional to any other fee, commission or charge, and to any other cost or expense, that is payable from the estate.

28 Amount of fees to be determined by Public Trustee

The amount of any fee, commission or charge payable in any particular case is, subject to this Regulation, to be determined by the Public Trustee.

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Clause 29 Public Trustee Regulation 2001

Part 2 Fees, commissions and charges

Division 4 General

29 Reduction and waiver of fees

The Public Trustee may reduce or dispense with any fee, commission or charge payable under this Regulation if, in any particular case, the Public Trustee considers that it is just and reasonable to do so.

30 Deduction of fees etc from funds

The Public Trustee may deduct any fee, commission or charge that is payable under this Regulation in connection with an estate from any money that belongs to the estate and that is held by the Public Trustee or is under the Public Trustee's control.

31 GST may be added to fees, commission or charges

- (1) The Public Trustee may, in addition to any fee, commission or charge payable under this Regulation, charge the amount of any GST payable in respect of the service for which the fee, commission or charge is payable.
- (2) Subclause (1) does not permit the Public Trustee to charge an amount that is greater than:
 - (a) 10% of the maximum amount payable to the Public Trustee apart from that subclause, or
 - (b) the amount permitted under the New Tax System Price Exploitation law,whichever is the lesser.
- (3) This clause has effect despite any other provision of this Regulation limiting an amount that may be charged by the Public Trustee.
- (4) In this clause:

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

New Tax System Price Exploitation law means:

- (a) the New Tax System Price Exploitation Code, as applied as a law of New South Wales by the *Price Exploitation Code (New South Wales) Act 1999*, or
- (b) Part VB of the *Trade Practices Act 1974* of the Commonwealth.

Part 3 Miscellaneous

32 Duties and obligations of officers

The officers of the Public Trust Office:

- (a) are to perform such duties as are allotted to them from time to time by the Public Trustee, and
- (b) are required to bind themselves by written promise of secrecy in relation to the affairs of every estate administered by the Public Trustee.

33 Index of wills

The Public Trustee is to maintain an index of all wills lodged with the Public Trustee for safe custody.

34 Small estates etc

- (1) For the purposes of section 18A (1), (2) and (3A) (a) of the Act, \$50,000 is the prescribed amount below which the Public Trustee may administer an estate by election.
- (2) For the purposes of section 18A (5) of the Act, \$60,000 is the prescribed amount above which the Public Trustee must file a memorandum and obtain probate or letters of administration as referred to in that subsection.
- (3) For the purposes of section 34A (1) of the Act, \$10,000 is the prescribed amount below which the Public Trustee may deal with an estate without probate or administration.
- (4) For the purposes of section 34C (1) of the Act, \$10,000 is the prescribed amount below which the Public Trustee may deal with money owed by the Public Trustee in the manner referred to in that subsection.

35 Prescribed signatories

- (1) For the purposes of section 18A (1), (2), (3A) (a), (5) and (5A) of the Act, persons holding or acting in the office of Branch Manager in the Public Trust Office are prescribed persons.

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Clause 35 Public Trustee Regulation 2001

Part 3 Miscellaneous

(2) For the purposes of section 50 (1) and (2) of the Act, persons holding or acting in the following offices in the Public Trust Office are prescribed persons:

- (a) Branch Manager,
- (b) Assistant Branch Manager.

36 Repeal

- (1) The *Public Trustee Regulation 1999* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Public Trustee Regulation 1999*, had effect under that Regulation continues to have effect under this Regulation.

37 Amendment of Regulation

This Regulation is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 37)

- [1] Clause 4 (b)**
Omit "\$75". Insert instead "\$110".
- [2] Clause 5 (a)**
Omit "\$95". Insert instead "\$110".
- [3] Clause 5 (b)**
Omit "\$65". Insert instead "\$110".
- [4] Clause 5 (c)**
Omit "\$75". Insert instead "\$85".
- [5] Clause 7 (b)**
Omit "\$40". Insert instead "\$55".
- [6] Clause 7 (c)**
Omit "\$75". Insert instead "\$110".
- [7] Clause 8**
Omit "\$295". Insert instead "\$330".
- [8] Clause 9**
Omit "\$175". Insert instead "\$220".
- [9] Clause 14**
Omit "\$55". Insert instead "\$110".
- [10] Clause 21 (3)**
Omit "\$290". Insert instead "\$330".

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Schedule 1 Amendments

[11] Clause 22 (a)

Omit "\$35". Insert instead "\$50".

[12] Clause 22 (b) and (c)

Omit "\$40" wherever occurring. Insert instead "\$50".

[13] Clause 23

Omit "\$20". Insert instead "\$30".

[14] Clause 24 (2) (b)

Omit "\$45". Insert instead "\$55".

BY AUTHORITY
