



New South Wales

Public Trustee Regulation 2008

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*.

JOHN HATZISTERGOS, M.L.C.,
Attorney General

Explanatory note

The object of this Regulation is to remake the *Public Trustee Regulation 2001* which is due to be repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following matters:

- (a) the fees, commission and charges payable in connection with the administration of estates by the Public Trustee,
- (b) the fees payable for managing the common fund under section 36A of the *Public Trustee Act 1913* and for trust investment planning by the Public Trustee,
- (c) other matters required to be prescribed in relation to the administration of estates,
- (d) the duty of the Public Trustee to maintain an index of wills,
- (e) the duties of members of staff of the Public Trustee.

In remaking the *Public Trustee Regulation 2001*, this Regulation makes the following substantive changes:

- (a) expressing the maximum fees that may be charged by the Public Trustee for certain attendances, and for real estate inspections and valuations, and the maximum charges that may be imposed by the Public Trustee for searches of records, in terms of an hourly rate rather than a single amount,
- (b) providing for an increase in:
 - (i) the maximum fees that may be charged, or the rate at which fees may be charged, by the Public Trustee under the Regulation, and

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Explanatory note

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- (ii) the maximum charges that may be imposed, or the rate at which charges may be imposed, by the Public Trustee under the Regulation, and
 - (iii) the minimum charges that may be imposed by the Public Trustee in relation to certain commissions payable under the Regulation,
in connection with the administration of estates by the Public Trustee,
 - (c) changing the basis for determining fees chargeable under the Regulation in relation to the lodgment of tax returns on behalf of estates and the remuneration of registrars engaged as agents in the administration of estates,
 - (d) removing the power of the Public Trustee to charge a fixed commission on the income received on the account of any trust committed to its administration or management for 2 years or more and introducing instead a progressive scale of trust fees chargeable by the Public Trustee in respect of any such long-term trust.

This Regulation is made under the *Public Trustee Act 1913*, including sections 9 (1), 18A, 34A (1), 34C (1), 50 and 59 (the general regulation-making power).

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Clause 1

Preliminary

Part 1

Public Trustee Regulation 2008

under the

Public Trustee Act 1913

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Public Trustee Regulation 2008*.

2 Commencement

This Regulation commences on 1 September 2008.

Note. This Regulation replaces the *Public Trustee Regulation 2001* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

estate includes trust or fund.

the Act means the *Public Trustee Act 1913*.

trustee includes an administrator or executor or any other person acting in a similar fiduciary capacity.

(2) Notes in the text of this Regulation do not form part of this Regulation.

Clause 4 Public Trustee Regulation 2008

Part 2 Fees, commissions and charges

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, and
- (b) an additional fee for each return lodged, that the Public Trustee determines to be appropriate.

5 Real estate inspections and valuations

The Public Trustee may charge the following fees:

- (a) a fee (not exceeding \$150 per hour) for any inspection, valuation or report regarding real estate,
- (b) a fee (not exceeding \$150 per hour) for preparation of specifications for repairs or renovations to any building or work,
- (c) a fee (not exceeding \$116 per hour) 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 \$68) for the notation and recording of the assignment or mortgage of, or of any dealing affecting, a beneficiary's share in an estate.
- (2) Any such fee is payable from the share of the beneficiary concerned.

7 Attendance fees

The Public Trustee may charge the following fees:

- (a) a fee (not exceeding \$40) 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 \$75) 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,

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Fees, commissions and charges

Part 2

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- (c) a fee (not exceeding \$150 per hour) for any other attendances outside the offices used by members of staff.

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 \$450) 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 \$300) 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 fee

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 \$10) on each account kept by the Public Trustee in respect of the estate.

12 Remuneration of registrars of Local Court

If the Public Trustee appoints a Local Court registrar 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 just and reasonable to cover the remuneration payable to the registrar for acting as such an agent.

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.

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- (2) The fee is to be calculated at a rate not exceeding 1.0% 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 \$150 per hour) for preparing, managing and reviewing an investment plan in respect of a trust.

15 Trust fee for long-term trusts

- (1) The Public Trustee is entitled to receive an annual trust fee in respect of any trust (other than a charitable trust) committed to its administration or management for 2 years or more, not exceeding the maximum fee determined in accordance with subclause (2).
- (2) The maximum annual trust fee is:
- (a) if the corpus or capital value of the trust property at the time of calculation is \$250,000 or less, an amount equal to 0.5% of the corpus or capital value, or
 - (b) if the corpus or capital value of the trust property at the time of calculation is greater than \$250,000 and not more than \$500,000, an amount equal to the sum of:
 - (i) \$1,250, and
 - (ii) 0.75% of the amount by which the corpus or capital value exceeds \$250,000, or
 - (c) if the corpus or capital value of the trust property at the time of calculation is more than \$500,000, an amount equal to the sum of:
 - (i) \$3,125, and
 - (ii) 1% of the amount by which the corpus or capital value exceeds \$500,000.
- (3) The trust fee to which the Public Trustee is entitled under this clause is to be paid by quarterly or half-yearly instalments, as determined by the Public Trustee, by such dates as are determined by the Public Trustee.
- (4) A quarterly instalment is to be equal to one-quarter, and a half-yearly instalment to one-half, of the annual fee. However, if the Public Trustee administers or manages a trust to which this clause applies for only part of the quarter or half-year period to which an instalment relates, the amount of the instalment is to be reduced on a pro rata basis, according to the proportion that the period of the Public Trustee's administration or management of the trust in that quarter or half-year bears to 3 or 6 months, respectively.

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- (5) The annual trust fee to which the Public Trustee is entitled under this clause may be paid wholly from the corpus or capital of the trust property or partly from the corpus or capital of the trust property and partly from the income of the trust property.
- (6) The Public Trustee is to consult with the beneficiaries, if it is practicable to do so, before determining from where a trust fee is to be paid. The Public Trustee must attempt such consultation at least once every two years.
- (7) In this clause:
charitable trust means a trust established for charitable purposes and includes a trust established for charitable purposes and also for non-charitable purposes.
corpus or capital value, in relation to a trust committed to the administration or management of the Public Trustee, means the gross amount of the value of the assets (whether real or personal) of the trust without deduction of debts or liabilities secured or unsecured.

Division 2 Scales of commission

16 Commission where Public Trustee realises 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 \$250 in respect of an estate.
- (3) Commission under this clause 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.

17 Commission on 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

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Part 2 Fees, commissions and charges

- (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 \$250 in respect of an estate.
- (3) Commission under this clause 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.

18 Commission on 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 \$250 in respect of an estate.

19 Commission on income

- (1) The Public Trustee is authorised to charge to an estate (other than a trust to which clause 15 applies) 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%.

20 Commission where Public Trustee acts 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.

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Clause 21

Fees, commissions and charges

Part 2

21 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
 - (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

22 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 \$450.

23 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 \$68) for executing any assurance of property by direction,
- (b) a charge (not exceeding \$68) for executing any assurance by way of confirmation,
- (c) a charge (not exceeding \$68) for executing any necessary consent for a mortgagee to exercise powers in respect of a mortgage.

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24 Production of documents

The Public Trustee may impose a charge (not exceeding \$40) for producing any deeds or documents of title.

25 Search of records

- (1) The Public Trustee may impose a charge for making a search of records held by the Public Trustee 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 is not to exceed \$150 per hour.

26 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.

27 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**28 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.

29 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.

30 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.

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Fees, commissions and charges

Part 2

31 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.

32 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.

Clause 33 Public Trustee Regulation 2008

Part 3 Miscellaneous

Part 3 Miscellaneous

33 Duties and obligations of members of staff

Each member of staff:

- (a) is to perform such duties as are allotted to the member from time to time by the Public Trustee, and
- (b) is required to bind himself or herself by written promise of secrecy in relation to the affairs of any estate administered by the Public Trustee.

34 Index of wills

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

35 Small estates etc

- (1) For the purposes of section 18A (1), (2) and (3A) (a) of the Act, the Public Trustee may administer property or an estate (as referred to in the subsection concerned) by election if the gross value of the property or estate does not exceed \$100,000.
- (2) For the purposes of section 18A (5) of the Act, the Public Trustee must file a memorandum and obtain probate or letters of administration as referred to in that subsection if the gross value of the property to be administered exceeds \$120,000.
- (3) For the purposes of section 34A (1) of the Act, the Public Trustee may deal with an estate without probate or administration if the net value of the estate does not exceed \$20,000.
- (4) For the purposes of section 34C (1) of the Act, the Public Trustee may deal with money payable by the Public Trustee in the manner referred to in that subsection if the amount of the money does not exceed \$20,000.

36 Prescribed signatories

For the purposes of sections 18A (1), (2), (3A) (a), (5) and (5A) and 50 (1) and (2) of the Act, any member of staff holding or acting in any of the following positions is a prescribed person:

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

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Clause 37

Miscellaneous

Part 3

37 Savings

Any act, matter or thing that, immediately before the repeal of the *Public Trustee Regulation 2001*, had effect under that Regulation continues to have effect under this Regulation.