

1991—No. 461

PUBLIC TRUSTEE ACT 1913—REGULATION

(Public Trustee Regulation 1991)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Public Trustee Act 1913, has been pleased to make the Regulation set forth hereunder.

PETER COLLINS
Attorney General.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Public Trustee Regulation 1991.

Commencement

2. This Regulation commences on 1 September 1991.

Definitions

3. In this Regulation:

“estate” includes trust and fund;

“the Act” means the Public Trustee Act 1913;

“trustee” includes administrator and executor and my other person acting in a similar fiduciary capacity.

PART 2—FEES, COMMISSIONS, CHARGES ETC.**Division 1—Fees****Taxation returns etc.**

4. 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 of such amount as the Public Trustee may determine to be appropriate; and
- (b) an additional fee (not exceeding \$39 per hour) for each return lodged.

Real estate inspections etc.

5. The Public Trustee may charge the following fees:

- (a) a fee (not exceeding \$80) for any inspection, valuation or report regarding real estate;
- (b) a fee (not exceeding \$20) for preparation of specifications for repairs or renovations to any building or work;
- (c) a fee (not exceeding \$65) for a second or subsequent inspection (including a report arising from the inspection) on the progress of any such repairs or renovations.

Dealings affecting shares in an estate

6. (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.

Attendances etc. outside Public Trust Office

7. The Public Trustee may charge the following fees:

- (a) a fee (not exceeding \$39 per hour) for attendance at the Stamp Duties Office for the purpose of search, or of marking or stamping documents, or the Land Titles Office for the purpose of search, or of lodging or uplifting documents;

- (b) a fee (not exceeding \$26 for each asset) 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 \$39 per hour) for attendance outside the Public Trust Office (other than attendances for the purpose of applying for a grant of probate or letters of administration and attendances at the Stamp Duties Office or the Land Titles Office).

Work done where representation not subsequently obtained

8. 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 \$260) for the work performed in taking those steps.

Attempted realisation of assets

9. If:

- (a) the Public Trustee attempts, at the request of the beneficiaries, to realise an asset in an estate; and
- (b) the asset is subsequently transferred or delivered in specie to those beneficiaries,

the Public Trustee may charge to the estate a fee (not exceeding \$130) for the work performed in so doing.

Carrying on business

10. 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 of such amount as, having regard to the work entailed, the Public Trustee considers just and reasonable.

Administration account and audit fees

11. The Public Trustee may, on 15 June and 15 December in each year, charge to an estate administered by the Public Trustee an administration account and audit fee (not exceeding \$12) on each account kept by the Public Trustee in respect of the estate.

Remuneration of Clerks of Local Courts

12. (1) If the Public Trustee appoints the 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 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 Clerk of a Local Court is not to exceed 2.5 per cent of any money collected or any property realised by the Clerk.

Division 2—Scales of commission**Realisation of capital**

13. (1) The Public Trustee is authorised to charge to an estate commission at a rate not exceeding:

- (a) 4 per cent on the first \$100,000; and
- (b) 3 per cent on the next \$100,000; and
- (c) 2 per cent on the next \$100,000; and
- (d) 1 per cent on any amount in excess of \$300,000,

on the gross capital realised by the Public Trustee in 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.

(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.

Capital realised by former executors etc.

14. (1) The Public Trustee is authorised to charge to an estate commission, at the rate of 4 per cent, 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 \$280 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.

Unrealised property

15. (1) The Public Trustee is authorised to charge to an estate commission at the rate of:

- (a) 4 per cent on the first \$100,000; and
- (b) 3 per cent on the next \$100,000; and
- (c) 2 per cent on the next \$100,000; and
- (d) 1 per cent on any amount in excess of \$300,000,

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, cestui que trust, widower, widow, next-of-kin or other person of a like character under any will, settlement, trust or intestacy administered by the Public Trustee in respect of the estate.

(2) The Public Trustee may impose a minimum charge under this clause of \$200 in respect of an estate.

Income

16. The Public Trustee is authorised to charge to an estate commission at the rate of:

- (a) except as provided by paragraph (b)—5.25 per cent; or
- (b) in the case of gross income received by way of rent that is subject to an agency charge for collection—2.5 per cent,

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.

Public Trustee acting as attorney or agent

17. 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.

Locating beneficiaries etc.

18. (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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- (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, such commission as the Public Trustee may determine.

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

Division 3—Charges**Charges incidental to exercise of power of sale**

19. 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 not exceeding:

- (a) \$100 or 5 per cent of the amount of the purchase money of the land, whichever is the greater; or
(b) \$250 if the land is withdrawn from sale.

Execution of documents

20. 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 \$25) for executing any assurance of property by direction;
(b) a charge (not exceeding \$30) for executing any assurance by way of confirmation;
(c) a charge (not exceeding \$30) for executing any necessary consent for a mortgagee to exercise powers in respect of a mortgage.

Production of documents

21. The Public Trustee may impose the following charges in respect of the production of documents

- (a) a charge (not exceeding \$15) for producing any deeds or documents of title at the Public Trust Office;
(b) a charge (not exceeding \$30) for producing any deeds or documents of title elsewhere.

Record searches

22. The Public Trustee may impose a charge (not exceeding \$30) for making a search of records in the Public Trust Office in any case in which, in the opinion of the Public Trustee, because of the lapse of time or of the nature or volume of the information sought, an appropriate fee should be charged.

Miscellaneous costs and expenses

23. The Public Trustee may charge to an estate an amount to cover all costs and expenses incurred by the Public Trustee in the management of the estate to which the charge relates, including costs and expenses relating to:

- photocopying, postage, telephone and telegrams
- legal assistance or legal proceedings
- charges or fees payable in any court or public department
- surveys
- the collection of rents
- auctioneer's or agent's charges

General power to charge for services

24. The Public Trustee may charge for any service or matter not otherwise mentioned in this Regulation such charge as is agreed on or as, in the absence of agreement, the Public Trustee fixes.

Division 4—General**Fees etc. cumulative**

25. 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.

Amount of fees etc. to be determined by Public Trustee

26. 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.

Reduction and waiver of fees etc.

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

Deduction of fees etc. from funds

28. The Public Trustee may deduct any commission, fee 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.

PART3—MISCELLANEOUS**Duties and obligations of officers**

29. 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.

Index of wills

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

Small estates etc.

31. (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.

Prescribed signatories

32. (1) For the purposes of section 18A (1), (2), (3A) (a), (5) and (5A) of the Act, persons holding or acting in the following offices in the Public Trust Office are prescribed persons:

- Chief Trust Officers
- Branch Operations Managers
- The Solicitor to the Public Trustee
- Branch Managers

(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:

- Chief Trust Officers
- Senior Trust Officers
- Branch Operations Managers
- The Solicitor to the Public Trustee
- Branch Managers

Repeal

33. The Public Trustee Regulations 1930 are repealed.

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EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, without any major changes, those provisions of the Public Trustee Regulations 1930 which are still required.

The new Regulation deals with:

- (a) the commission, fees, charges etc. 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.

This Regulation is made in connection with the staged repeal of subordinate legislation under Part 3 of the Subordinate Legislation Act 1989.
