



New South Wales

Public Trustee Amendment Regulation 2009

under the

NSW Trustee and Guardian Act 2009

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *NSW Trustee and Guardian Act 2009*.

JOHN HATZISTERGOS, MLC
Attorney General

Explanatory note

The object of this Regulation is to amend the *Public Trustee Regulation 2008*, as a consequence of the enactment of the *NSW Trustee and Guardian Act 2009*, as follows:

- (a) to change the name of the Regulation,
- (b) to include provisions relating to the financial management of estates, as a consequence of the repeal of the *Protected Estates Act 1983*, and the subsequent re-enactment of its provisions,
- (c) to update references to the repealed *Public Trustee Act 1913*,
- (d) to include new provisions relating to the publication of notices of elections by the NSW Trustee and Guardian to administer certain small estates and other notices relating to small estates,
- (e) to provide for the certification of copies of wills required to be provided to financial managers of estates.

This Regulation is made under the *NSW Trustee and Guardian Act 2009*, including sections 18 (1) (a), 26 (1) (a), 27 (1) (c), 28 (1), 30 (1) and (2), 31 (1) (a) and (c), 43, 62 (1) (b), 80 (1), 91 (3), 95 (1) (a), 111 and 128 (the general regulation-making power).

2009 No 308

Clause 1 Public Trustee Amendment Regulation 2009

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NSW Trustee and Guardian Act 2009

1 Name of Regulation

This Regulation is the *Public Trustee Amendment Regulation 2009*.

2 Commencement

This Regulation commences on 1 July 2009 and is required to be published on the NSW legislation website.

3 Repeal of Protected Estates Regulation 2003

The *Protected Estates Regulation 2003* is repealed.

Schedule 1 Amendment of Public Trustee Regulation 2008

[1] Whole Regulation

Omit “Public Trustee” wherever occurring (other than in the note to clause 2).
Insert instead “NSW Trustee”.

[2] Clause 1 Name of Regulation

Omit “*Public Trustee Regulation 2008*”.
Insert instead “*NSW Trustee and Guardian Regulation 2008*”.

[3] Clause 3 Definitions

Insert “, in Parts 2 and 3,” before “includes” in the definition of *estate* in clause 3 (1).

[4] Clause 3 (1)

Omit the definition of *the Act*. Insert instead:
the Act means the *NSW Trustee and Guardian Act 2009*.

[5] Part 2, heading

Insert “for trust matters” after “charges”.

[6] Part 2, Division 1A

Insert before Division 1:

Division 1A Application

3A Application of Part

This Part applies to trust matters and matters other than matters relating to managed estates.

[7] Clauses 8, 10, 15 (4) and 31

Omit “Public Trustee’s” wherever occurring. Insert instead “NSW Trustee’s”.

[8] Clause 12 Remuneration of registrars of Local Court

Omit “, under section 10 of the Act,”.

2009 No 308

Public Trustee Amendment Regulation 2009

Schedule 1 Amendment of Public Trustee Regulation 2008

[9] Clause 13 Fee for management of fund

Omit “the common fund under section 36A of the Act” from clause 13 (1).

Insert instead “a common fund under the Act in respect of matters to which this Part applies”.

[10] Clause 13 (1)

Insert “in respect of matters to which this Part applies” after “common fund” where lastly occurring.

[11] Clause 13 (2)

Insert “in respect of matters to which this Part applies” after “common fund”.

[12] Clauses 28, 29, 31 and 32

Omit “Regulation” wherever occurring. Insert instead “Part”.

[13] Clause 30 Reduction and waiver of fees

Omit the clause.

[14] Part 3, heading

Omit the heading. Insert instead:

Part 3 Other matters relating to deceased estates

[15] Clause 33

Omit the clause. Insert instead:

33 Application of Part

This Part applies to trust matters.

[16] Clause 35 Small estates etc

Omit “section 18A (1), (2) and (3A) (a)”. Insert instead “sections 26 and 27”.

[17] Clause 35 (2)

Omit “section 18A (5)”. Insert instead “section 28”.

[18] Clause 35 (3)

Omit “section 34A (1)”. Insert instead “section 31”.

[19] Clause 35 (4)

Omit “section 34C (1)”. Insert instead “section 18”.

[20] Clauses 36 and 36A

Omit clause 36. Insert instead:

36 Notices and elections under Division 1 of Part 3.2 of the Act

- (1) A notice of an election under Division 1 of Part 3.2 of the Act must state that the election has been made and may contain any other particulars of the election that the NSW Trustee thinks fit.
- (2) A notice of an election under Division 1 of Part 3.2 of the Act must be published:
 - (a) if the deceased person resided in New South Wales at the date of death—in a newspaper circulating in the area where the deceased resided, or
 - (b) in any other case—in a Sydney daily newspaper.

36A Notice of administration of certain small estates

The NSW Trustee is to give such notice, by advertisement or otherwise as it thinks fit, of its intention to act under section 31 of the Act.

[21] Part 4

Omit clause 37. Insert instead:

Part 4 Managed estates**37 Interpretation**

Words and expressions used in this Part have the same meaning as they have in the *Mental Health Act 2007*.

38 Fees payable to the NSW Trustee

- (1) The prescribed fees payable to the NSW Trustee in respect of the management of estates of managed persons are as follows:
 - (a) for the management of an estate:
 - (i) for the first year—2.1% of the value of the estate, and
 - (ii) for every subsequent year—1.1% of the value of the estate,
 - (b) for the management of an investment for a managed person in a common fund—0.5% per annum of the value of the investment,

2009 No 308

Public Trustee Amendment Regulation 2009

Schedule 1 Amendment of Public Trustee Regulation 2008

- (c) on the net annual income of a managed person in respect of whom a manager of the estate (other than the NSW Trustee) has been appointed—4% per annum,
 - (d) for the investigation, preparation or lodgment of a return required by a taxation authority in respect of an estate in which the NSW Trustee acts—such reasonable fee for the investigation, preparation or lodgment as the NSW Trustee may fix,
 - (e) for the development of a financial plan for a person in respect of whom a manager of the estate has been appointed—such reasonable fee as the NSW Trustee may fix,
 - (f) for filing, examination and passing of accounts—such fee (not exceeding \$300) as the NSW Trustee may fix,
 - (g) for any other service provided, or any other disbursement incurred, by the NSW Trustee in the administration of an estate—such reasonable fee as the NSW Trustee may fix.
- (2) The NSW Trustee must certify to the manager of an estate of a managed person:
- (a) the annual amount of the fee payable to the NSW Trustee under subclause (1) (c), and
 - (b) the name of the person who is required to pay the fee, and
 - (c) the time within which the fee is to be paid.
- (3) The NSW Trustee may, in addition to any fee prescribed under subclause (1), charge the amount of any GST payable in respect of the service for which the fee is payable.
- (4) Subclause (3) does not permit the NSW Trustee to charge an amount that is greater than:
- (a) 10% of the maximum amount payable to the NSW Trustee apart from that subclause, or
 - (b) the amount permitted under the New Tax System Price Exploitation law,
- whichever is the lesser.
- (5) 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.

value means:

- (a) in relation to a managed person's estate (other than a managed missing person), the gross amount of the value of the assets (whether real or personal) of the estate without deduction of debts or liabilities secured or unsecured, but does not include the value of the person's principal place of residence, or
- (b) in relation to a managed missing person's estate, the gross amount of the value of the assets (whether real or personal) of the estate without deduction of debts or liabilities secured or unsecured, but does not include the value of the person's last known principal place of residence.

39 Information relating to mental health inquiry

- (1) For the purposes of section 43 (a) of the Act, the prescribed information to be given is that specified in Schedule 1.
- (2) For the purposes of section 43 (b) of the Act, the prescribed information to be given is that specified in Schedule 2.

40 Form of order or interim order that estate be managed under the Act

- (1) The Magistrate or MHRT is to complete a notice of an order or interim order made by the Magistrate or MHRT that the estate of a person be subject to management under the Act.
- (2) The notice is to be in the form specified in Schedule 3.

41 Medical superintendent to notify NSW Trustee of certain orders

- (1) The medical superintendent of a mental health facility must give written notice to the NSW Trustee of the making of an order or interim order by a Magistrate or the MHRT to the effect that the estate of a patient be subject to management under the Act.
- (2) The medical superintendent must give the written notice within 7 days of the making of any such order and must attach a copy of the order to the notice.

2009 No 308

Public Trustee Amendment Regulation 2009

Schedule 1 Amendment of Public Trustee Regulation 2008

42 Medical superintendent to notify NSW Trustee of certain events

The medical superintendent of a mental health facility must, as soon as practicable, give written notice to the NSW Trustee of the occurrence of any of the following events in respect of a patient who is or was a managed person:

- (a) the patient's discharge from the mental health facility,
- (b) the patient's transfer from the mental health facility,
- (c) the patient's absence with or without leave from the mental health facility,
- (d) the patient's return to the mental health facility from leave,
- (e) the patient's death at the mental health facility.

43 Review by ADT of estate management decisions of NSW Trustee

All decisions made by the NSW Trustee in connection with the exercise of the NSW Trustee's functions under Division 1 of Part 4.5 of the Act are prescribed for the purposes of section 62 of the Act.

44 Copies of wills

For the purposes of section 80 (1) of the Act, a copy of a will may be certified as a true copy of the will by any person of or over the age of 18 years.

45 Information that missing person is alive

For the purposes of section 91 (3) of the Act, the NSW Trustee may take into account any relevant information provided by the Commissioner of Police for the purposes of being satisfied that a managed missing person is alive.

46 Restriction on NSW Trustee's discretion to deal with certain estates—prescribed amount: section 95 (1) (a)

For the purposes of section 95 (1) (a) of the Act, the prescribed amount is \$10,000.

[22] Schedules 1–3

Insert after clause 46 (as inserted by this Regulation):

Schedule 1 Information to be given to person detained

(Clause 39 (1))

If the Magistrate directs that you are to be detained in a mental health facility, the Magistrate will then decide if you are able to manage your property and affairs.

You have the right to have a barrister or solicitor represent you before the Magistrate. If you do not want a barrister or solicitor, you can have another person of your choice represent you, but you can only do this if the Magistrate agrees.

If the Magistrate thinks that you are able to manage your property and affairs, you can continue to do so. However, if you wish, you can have the NSW Trustee and Guardian manage your property and affairs. You can ask the medical superintendent to arrange for the NSW Trustee and Guardian to do this.

If the Magistrate decides that you are not able to manage your property and affairs, the Magistrate will order that your property and affairs be managed by the NSW Trustee and Guardian.

If you do not agree with the Magistrate's decision that your property and affairs should be managed by the NSW Trustee and Guardian, you have the right to appeal to the Supreme Court.

Schedule 2 Information to be given to nearest relative, guardian and friends of person detained

(Clause 39 (2))

If the Magistrate considers the patient should be further detained, the Magistrate will also consider whether or not the patient is able to manage his or her property and affairs.

If the Magistrate considers that the patient is able to manage his or her property and affairs, then the patient can continue to do so. The patient can ask that his or her property and affairs be managed by the NSW Trustee and Guardian.

2009 No 308

Public Trustee Amendment Regulation 2009

Schedule 1 Amendment of Public Trustee Regulation 2008

If the Magistrate is not satisfied that the patient can manage his or her property and affairs, then the Magistrate will make an order that the NSW Trustee and Guardian manage the patient's property and affairs.

If the patient does not agree with the Magistrate's decision that his or her property and affairs should be managed by the NSW Trustee and Guardian, the patient has a right to appeal to the Supreme Court.

Schedule 3 Notice of order or interim order for management

(Clause 40 (2))

An order*/interim order* has been made today that the estate of

.....
[name]

be subject to management under the *NSW Trustee and Guardian Act 2009*.

Date

*[Signature and name of Magistrate]**

*[Signatures and names of Members of Mental Health Review Tribunal]**

[Delete if inapplicable]*