



New South Wales

# NSW Trustee and Guardian Amendment (Fees) Regulation 2016

under the

NSW Trustee and Guardian Act 2009

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

GABRIELLE UPTON, MP  
Attorney General

## Explanatory note

The object of this Regulation is to amend the *NSW Trustee and Guardian Regulation 2008* to:

- (a) prescribe the fees that the NSW Trustee may charge for drafting wills and powers of attorney, and
- (b) amend the fees payable to the NSW Trustee in relation to trust matters and in respect of the management of estates of managed persons.

This Regulation is made under the *NSW Trustee and Guardian Act 2009*, including sections 111 and 128 (the general regulation-making power).

## **NSW Trustee and Guardian Amendment (Fees) Regulation 2016**

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NSW Trustee and Guardian Act 2009

### **1 Name of Regulation**

This Regulation is the *NSW Trustee and Guardian Amendment (Fees) Regulation 2016*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

## **Schedule 1      Amendment of NSW Trustee and Guardian Regulation 2008**

**[1] Part 2**

Omit the heading. Insert instead:

### **Part 2      Fees and charges for trust matters**

**[2] Clause 13 Fee for management of common fund**

Omit “1.0%” from clause 13 (2). Insert instead “0.1%”.

**[3] Clause 15 Trust fee for long-term trusts**

Omit the clause.

**[4] Part 2, Division 2**

Omit the Division. Insert in Division 1 in appropriate order:

**16 Fees for drafting wills and powers of attorney**

The NSW Trustee may charge the following fees:

- (a) a fee of \$300 for drafting a new will,
- (b) a fee of \$200 for revising an existing will,
- (c) a fee of \$200 for drafting a new power of attorney,
- (d) a fee of \$150 for revising an existing power of attorney,
- (e) a fee of \$400 for drafting both a new will and a new power of attorney in respect of one estate,
- (f) a fee of \$300 for revising both an existing will and an existing power of attorney in respect of one estate.

**17 Trust establishment fee**

The NSW Trustee may charge a fee to a trust on the appointment of the NSW Trustee as trustee or to act as trustee (either solely or jointly with any other person or persons) of the trust, payable once only and calculated as a percentage of the value of the assets held on trust at the rate of:

- (a) 3.5% on the first \$100,000, and
- (b) 2.5% on the next \$100,000, and
- (c) 1.5% on the next \$100,000, and
- (d) 0.5% on any amount exceeding \$300,000.

**18 Fee for management of trust**

The NSW Trustee may charge an annual fee for the management of a trust of which the NSW Trustee is appointed or acts as trustee (either solely or jointly with any other person or persons) calculated at the rate of 0.7% of the value of the assets held on trust.

**19 Fee for management of estate**

The NSW Trustee may charge an annual fee for the management of an estate of which the NSW trustee has been appointed executor or administrator calculated at the rate of 0.7% of the value of the assets in the estate.

**19A Manner of payment of management fees**

The fee to which the NSW Trustee is entitled under clause 17 or clause 18 may be paid:

- (a) wholly from the corpus or capital, or
- (b) wholly from the income, or
- (c) partly from the corpus or capital and partly from the income, of the trust property.

**19B Estate establishment fee**

- (1) The NSW Trustee may charge a fee to an estate on the appointment of the NSW Trustee as executor or administrator of the estate, payable once only and calculated as a percentage of the value of the assets in the estate at the rate of:
  - (a) 4% on the first \$100,000, and
  - (b) 3.5% on the next \$100,000, and
  - (c) 2.5% on the next \$100,000, and
  - (d) 1.5% on any amount exceeding \$300,000.
- (2) The NSW Trustee may impose a minimum charge under this clause of \$200.

**20 Fee where NSW Trustee acts as attorney or agent**

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

**21 Locating beneficiaries**

- (1) The NSW Trustee may charge to an estate, or to the share of an estate in respect of which it is necessary to make inquiries or advertise, a fee that the NSW Trustee considers just and reasonable 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 NSW Trustee to make inquiries or to advertise for the purpose of locating any persons or next of kin.
- (2) The amount of the fee is not to exceed 5% of the net value of the estate after payment of original claims.

**[5] Clauses 28, 29, 31 and 32 (1)**

Omit “, commission” wherever occurring.

**[6] Clause 32 GST may be added to fees or charges**

Omit clause 32 (2). Insert instead:

- (2) Subclause (1) does not permit the NSW Trustee to charge an amount that is greater than 10% of the maximum amount payable to the NSW Trustee apart from that subclause.

**[7] Clause 32 (4)**

Omit the definition of *New Tax System Price Exploitation law*.

**[8] Clauses 37–38B**

Omit clauses 37 and 38. Insert instead:

**37 Interpretation**

(1) In this Part:

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

(2) 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—general**

(1) The fees payable to the NSW Trustee in respect of the management of estates of managed persons are as follows:

- (a) an account keeping fee payable on each account kept by the NSW Trustee in respect of the estate not exceeding \$10.00 per month,
- (b) for managing an investment for a managed person in a common fund—0.1% per annum of the value of the investment,
- (c) in respect of a return 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:
  - (i) an investigation fee, and
  - (ii) an additional fee for each return lodged,that the NSW Trustee determines to be appropriate,
- (d) for preparing, managing or reviewing an investment plan—such reasonable fee (not exceeding \$150 per hour) as the NSW Trustee may fix,
- (e) in respect of an asset of the estate that is real estate:
  - (i) for any inspection, valuation or report—such reasonable fee (not exceeding \$150 per hour) as the NSW Trustee may fix, or
  - (ii) for the preparation of specifications for repairs or renovations to any building or work—such reasonable fee (not exceeding \$150 per hour) as the NSW Trustee may fix, or
  - (iii) for a second or subsequent inspection (including a report arising from the inspection) on the progress of the repairs or renovations—such reasonable fee (not exceeding \$116 per hour) as the NSW Trustee may fix,

- (f) for the provision of legal advice, or for the conduct of any legal proceedings, in connection with the estate—such reasonable fee 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 may, in addition to any fee payable under this clause or clause 38A or 38B, charge the amount of any GST payable in respect of the service for which the fee is payable.
- (3) Subclause (2) does not permit the NSW Trustee to charge an amount that is greater than 10% of the maximum amount payable to the NSW Trustee apart from that subclause.

**38A Fees payable to the NSW Trustee—direct management**

- (1) This clause applies to the estates of managed persons where the NSW Trustee is the manager of the estate.
- (2) In addition to the fees payable under clause 38, the fees payable to the NSW Trustee in respect of the management of estates of managed persons are as follows:
- (a) for the establishment of the account of the managed person, payable once only—1% of the value of the estate, subject to a minimum fee of \$500 being payable, up to a maximum of \$3,000,
  - (b) for the management of an estate—1.4% of the value of the estate, up to a maximum of \$15,000, per annum.

**38B Fees payable to the NSW Trustee—private management**

- (1) This clause applies to the estates of managed persons where a person other than the NSW Trustee has been appointed as the manager of the estate.
- (2) In addition to the fees payable under clause 38, the fees payable to the NSW Trustee in respect of the management of estates of managed persons are as follows:
- (a) for the establishment of the account of the managed person, payable once only—\$500,
  - (b) for filing, examination and passing of accounts—such fee (not exceeding \$300) as the NSW Trustee may fix.
- (3) The NSW Trustee must certify to the manager of an estate of a managed person:
- (a) the amount of the fee payable under subclause (2) (b), and
  - (b) the name of the person who is required to pay the fees payable under subclause (2), and
  - (c) the time within which the fee is to be paid.