

SOUTH AUSTRALIA

**ADMINISTRATION AND PROBATE
(SCALE OF PUBLIC TRUSTEE'S COMMISSION AND FEES)
REGULATIONS 1994**

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REGULATIONS UNDER THE ADMINISTRATION AND PROBATE ACT 1919

*Administration and Probate
(Scale of Public Trustee's Commission and Fees)
Regulations 1994*

being

No. 145 of 1994: *Gaz.* 25 August 1994, p. 583¹

as varied by

No. 17 of 1995: *Gaz.* 2 March 1995, p. 803²

¹ Came into operation 1 September 1994: reg. 2.

² Came into operation 6 March 1995: reg. 2

Note: Asterisks indicate repeal or deletion of text. For explanation see Appendix.

Citation

1. These regulations may be cited as the *Administration and Probate (Scale of Public Trustee's Commission and Fees) Regulations 1994*.

Commencement

2. These regulations will come into operation on 1 September 1994.

Revocation

3. The *Administration and Probate Act (Scale of Public Trustee's Commission and Fees) Regulations 1982* (see *Gazette* 27 May 1982 p. 1804), as varied, are revoked.

Interpretation

4. In these regulations, unless the contrary intention appears—

"the Act" means the *Administration and Probate Act 1919*.

Commission and fees

5. (1) Pursuant to section 112(6) of the Act, the rate or amount of commission and fees to be charged on property—

(a) vested in the Public Trustee (otherwise than under section 45 of the Act); or

(b) in the possession of the Public Trustee; or

(c) under the management or control of the Public Trustee,

are as set out in schedule 1.

(1a) The fees to be charged for the examination of statements and accounts lodged under section 56 of the Act or section 44 of the *Guardianship and Administration Act 1993* are as set out in schedule 2.

(2) If a maximum or minimum rate or amount is provided in a schedule, the Public Trustee may determine the rate or amount in a particular case, subject to that maximum or minimum.

Transitional

6. These regulations do not affect an arrangement, understanding or undertaking made prior to the commencement of these regulations with respect to the commission chargeable in respect of an estate, trust or fund which is in the course of administration by the Public Trustee.

SCHEDULE 1
Commission and Fees

PART 1—COMMISSIONS

A. COMMISSION ON CAPITAL

1. (1) Subject to this Part, in the estates of deceased persons and trust estates or funds held by the Public Trustee alone or with any other person, the commission on—

- (a) the proceeds of all assets realised; and
- (b) money collected; and
- (c) the value of unrealised real and personal property transferred or delivered in kind to, or specifically appropriated in trust for, a person entitled,

must be charged at a rate not exceeding the rates set out in the following table:

| Amount or value | Maximum rate of commission |
|---------------------------------------|-----------------------------------|
| up to \$100 000 | 4 per cent |
| from \$100 000 to \$200 000 | 3 per cent |
| from \$200 000 to \$400 000 | 2 per cent |
| over \$400 000 | 1 per cent |

(2) If property is sold subject to a mortgage or other charge, the amount of the mortgage or charge is considered part of the proceeds.

(3) In the case of a transfer to, or sale on behalf of, a widow or widower of a former matrimonial home and any of the household furniture and effects, the commission must be charged at a rate not exceeding half of the maximum rate under subclause (1) on the value of his or her share of the matrimonial home and household furniture and effects.

2. Subject to this Part, in the estates of aged and infirm persons within the meaning of the *Aged and Infirm Persons Property Act 1940* and of patients and protected persons within the meaning of the *Mental Health Act 1976* the commission on—

- (a) the proceeds of all assets realised; or
- (b) money collected; or
- (c) the value of unrealised real and personal property to which the estate is entitled at the conclusion of the administration of the estate,

must be charged at a rate not exceeding the maximum rates applicable under clause 1.

3. If an estate, trust or fund to which clause 1 or 2 would otherwise apply is worth \$5000.00 or less, commission must be charged at the rates set out in the following table:

4.

| Value of gross estate, trust or fund | Minimum commission |
|---|--|
| \$500.00 or less | \$50.00 |
| \$501.00—\$2 000.00 | 10 per cent of the value of the estate, trust or fund |
| \$2 001.00—\$5 000.00 | \$200.00 |

4. (1) Subject to this clause, if money is required to be paid to the Public Trustee on behalf of a party or person by order or rule of a Court, commission on that sum must be charged at a rate not exceeding the maximum rates applicable under clause 1.

(2) However, in respect of a portion of the money that is directed to be paid forthwith, the commission must be charged at a rate not exceeding 1 per cent.

5. If real or personal property has been delivered, conveyed or transferred, or money has been paid to the Public Trustee on behalf of a person under section 65 of the Act, commission must be charged at a rate not exceeding the maximum rates applicable under clause 1.

6. If the Public Trustee has been appointed as agent or attorney—

- (a) on the proceeds of all assets realised and money collected by the Public Trustee commission must be charged at a rate not exceeding the maximum rates applicable under clause 1; and
- (b) with respect to services or action taken by the Public Trustee and not otherwise dealt with in these regulations, commission must be charged at a rate agreed with the person appointing the Public Trustee as agent or attorney.

7. If the Public Trustee has been appointed as manager of unclaimed property under Division IV of Part IV of the Act, or holds money or property in a capacity not otherwise dealt with in these regulations—

- (a) on the proceeds of all assets realised and money collected by the Public Trustee commission must be charged at a rate not exceeding the maximum rates applicable under clause 1; and
- (b) with respect to services or action taken by the Public Trustee and not otherwise dealt with in these regulations, commission must be charged at a rate agreed with the person appointing the Public Trustee.

8. In calculating commission on capital, the expenses of the sale of property by the Public Trustee (including the commission on the sale of property paid by the Public Trustee to an agent) will be disregarded.

9. (1) For the purposes of this Part the value of unrealised property, unless otherwise directed by a Court or Judge, is the price which, in the opinion of the Public Trustee, the property would realise if sold in the open market.

(2) However, where the transfer of property is delayed by an intervening life interest or other intervening interest, order or condition that has the effect of postponing distribution for a period of over 24 months from the date of death, the value of the property transferred to a beneficiary is its value as determined by the Public Trustee on the date of the determination of the intervening interest, order or condition.

B. COMMISSION ON INCOME

10. (1) On income received by the Public Trustee in an estate or trust or from a fund or property held by the Public Trustee alone or with another person, including income earned from investment in the Common Fund, commission must be charged at the following rates:

- (a) commission on income other than rent 5 per cent
- (b) commission on rent 7.5 per cent

(2) Commission on income will be charged on the gross income received except where a business is carried on by the Public Trustee.

(3) If a business is carried on by the Public Trustee, commission on income will be charged on the gross income received from carrying on the business less all items of revenue expenditure attributable to the business (excluding expenses which are attributable to the general administration of the estate or trust, or the ownership of the assets).

(4) The commission on—

- (a) old age, invalid, superannuation, war and service pensions; and
- (b) sick pay; and
- (c) payments of maintenance for divorced persons; and
- (d) payments of maintenance for mental patients and protected persons; and
- (e) unemployment and sickness benefits paid by the Department of Social Security,

must be charged at a rate not exceeding the rate applicable under subclause (1).

(5) In respect of rents collected by an agent who is employed by and paid a commission by the Public Trustee, commission must be charged at the rate of 2.5 per cent.

C. GENERAL

11. (1) The commissions prescribed in this Part may be charged by the Public Trustee at the following times:

- (a) subject to subclause (2), commission on money may be charged when the money is received by the Public Trustee;
- (b) commission on property sold or realised may be charged when the proceeds are received by the Public Trustee;
- (c) commission on unrealised property transferred or delivered in kind to, or specifically appropriated in trust for a person entitled may be charged when the property is transferred, delivered or appropriated in trust.

(2) If the Public Trustee carries on a business, the commission on the income received in the course of carrying on the business must not be charged until the net annual trading profit has been ascertained.

(3) Commission on capital must not be charged more than once during the course of the administration of the estate, trust or fund.

12. For a service in connection with the identification of a beneficiary or the ascertainment and establishment of next of kin, the Public Trustee may charge, either against the estate or against the share of the person to whom the inquiries relate, an additional commission not exceeding 10 percent of the value of the estate.

PART 2—SCALE OF FEES

| | Maximum fee (\$) |
|--|------------------|
| 13. (1) For the preparation of— | |
| (a) a contract for the sale of estate property; or | |
| (b) a tenancy agreement; or | |
| (c) a deed | 120.00 |
| (2) For the preparation of a document for the purposes of the <i>Real Property Act 1886</i> (other than a document referred to in subclause (1)) | 100.00 |
| (3) For the production of a certificate of title | 100.00 |
| (4) For the preparation of a certificate of interest or any other certificate | 50.00 |
| (5) Annual administration and audit fee for each trust estate or fund administered by the Public Trustee | 100.00 |
| (6) For undertaking work in relation to taxation— | |
| (a) preparation of simple tax return (taking one hour or less) | 100.00 |
| (b) preparation of other tax returns— | |
| (i) an amount calculated at a rate not exceeding \$72.00 per hour, or part thereof; or | |
| (ii) \$150.00, | |
| whichever is the greater; | |
| (c) other work in relation to taxation (per hour, or part thereof) | 72.00 |
| (7) For the preparation of an affidavit required to satisfy the requirements of the Registrar of Probates (other than an executor’s or administrator’s oath) | 120.00 |

7.

- (8) For securing, prior to the sale of real or leasehold estate, such information as is necessary to comply with all legal requirements 120.00

Note: No fee will be charged where an agent or auctioneer employed by the Public Trustee in connection with the sale charges agent's commission.

- (9) For replacing lost documents (per document) 200.00
- (10) For the inspection of real or personal property—
 - (a) in the metropolitan area 120.00
 - (b) outside the metropolitan area (per hour, or part thereof) 72.00

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- (12) For services in connection with processing an application for a loan which is to be secured by a mortgage over property—
 - (a) application fee 500.00
 - (b) fee for valuation of property 1 000.00

Note: In all cases the Public Trustee's fees are payable in addition to commission and expenses paid to auctioneers or agents, legal costs and cash disbursed for postage, advertising, surveys, valuation, travelling expenses and other disbursements properly incurred in the administration, management or control of the estate, trust, fund or property to which the charge relates.

SCHEDULE 2*Fees for Examination of Accounts, etc.*

| | Maximum fee (\$) |
|---|---------------------|
| 1. For the examination of statements and accounts lodged under section 56 of the Act— | |
| (a) where the examination takes one hour or less | 50.00 |
| (b) where the examination takes more than one hour (per hour, or part of an hour) | 72.00 |
| 2. For the examination of statements lodged under section 44 of the <i>Guardianship and Administration Act 1993</i> (including preparation of a report to the Guardianship Board)— | |
| (a) where the statement is not complex and the report does not recommend the disallowance of any item of expenditure | 50.00 |
| (b) in any other case (per hour, or part of an hour) | 72.00 |

APPENDIX

LEGISLATIVE HISTORY

| | |
|-------------------|--|
| Regulation 5(1): | varied by 17, 1995, reg. 3(a) |
| Regulation 5(1a): | inserted by 17, 1995, reg. 3(b) |
| Regulation 5(2): | varied by 17, 1995, reg. 3(c) |
| Schedule: | renamed as Sched. 1 by 17, 1995, reg. 4(a) |
| Part 2 | |
| Clause 13(11): | revoked by 17, 1995, reg. 4(b) |
| Schedule 2: | inserted by 17, 1995, reg. 5 |