

South Australia

PUBLIC TRUSTEE REGULATIONS 1995

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REGULATIONS UNDER THE PUBLIC TRUSTEE ACT 1995

Public Trustee Regulations 1995

being

No. 166 of 1995: *Gaz.* 3 August 1995, p. 368¹

as varied by

No. 203 of 1998: *Gaz.* 3 December 1998, p. 1743²

No. 71 of 2000: *Gaz.* 25 May 2000, p. 2734³

- ¹ Came into operation (except Sched. 3) 3 August 1995: reg. 2(1); Sched. 3 came into operation 17 November 1995 in accordance with section 5 of the *Fees Regulation Act 1927*: reg. 2(2).
- ² Came into operation (except regs. 3, 4 and 6) 3 December 1998: reg. 2(1), regs. 3 and 4 came into operation 13 December 1998: reg. 2(2), reg. 6 came into operation 12 March 1999 in accordance with section 5 of the *Fees Regulation Act 1927*: reg. 2(3).
- ³ **Came into operation (except reg. 4) 1 July 2000: reg. 2(1); reg. 4 came into operation 11 October 2000: reg. 2(2).**

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last consolidation.*
- *For the legislative history of the regulations see Appendix.*

Citation

1. These regulations may be cited as the *Public Trustee Regulations 1995*.

Commencement

2. (1) Subject to this regulation, these regulations come into operation on the day on which the Act comes into operation.

(2) Schedule 3 comes into operation in accordance with section 5 of the *Fees Regulation Act 1927*.

Interpretation

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

"Act" means the *Public Trustee Act 1995*.

Commission and fees

4. (a1) For the purposes of section 29(6a) of the Act, the rates or amounts of commission to be charged against an amount at credit in a common fund on account of a class of persons referred to in section 29(1)(b) of the Act are as set out in Schedule 1A.

(1) For the purposes of section 45 of the Act, the rates or amounts of commission and fees to be charged against an estate under the control of the Public Trustee (otherwise than under section 45 of the *Administration and Probate Act 1919*¹) are as set out in schedule 2.

(2) The fees to be charged for the examination of statements and accounts lodged under section 56 of the *Administration and Probate Act 1919*² or section 44 of the *Guardianship and Administration Act 1993*³ are as set out in schedule 3.

(3) 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.

¹ Section 45 of the Administration and Probate Act 1919 provides for the vesting of an intestate estate in the Public Trustee until administration is granted in respect of the estate.

² Section 56 of the Administration and Probate Act 1919 provides that the administrator of an estate must provide the Public Trustee with statements and accounts relating to the estate.

³ Section 44 of the Guardianship and Administration Act 1993 provides that the administrator of a protected person's estate must provide the Public Trustee with a statement of the accounts of the estate.

3.

SCHEDULE 1

Revocation and Transitional Provisions

Revocation

1. The *Administration and Probate (Scale of Public Trustee's Commission and Fees) Regulations 1994* (see *Gazette* 25 August 1994 p. 583) are revoked.

Transitional

2. 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 1A
Common Fund—Commission

A. COMMISSION ON CAPITAL

Commission—

- (a) in respect of estates administered by the Public Trustee, on money that is invested in a common fund on behalf of the beneficiaries of the estates that would otherwise be distributed to the beneficiaries; or
- (b) on money that is invested in a common fund on behalf of all other classes of persons referred to in section 29(1)(b) of the Act,

must be charged at a rate not exceeding the maximum rate of 1 per cent of the capital amount invested.

B. COMMISSION ON INCOME

Commission on income received in respect of money invested in a common fund on behalf of a class of persons referred to in section 29(1)(b) of the Act, must be charged at a rate not exceeding the maximum rate of 5 per cent.

SCHEDULE 2
Commission and Fees

PART 1—COMMISSIONS

A. COMMISSION ON CAPITAL

1. (1) Subject to this Part, commission—

- (a) in respect of estates of deceased persons and trust estates or funds held by the Public Trustee alone or with another person, on—
- (i) the proceeds of all assets realised; and
 - (ii) money collected; and
 - (iii) the value of unrealised property transferred or delivered in kind to, or specifically appropriated in trust for, a person entitled;
- (b) in respect of estates of protected persons (within the meaning of the *Aged and Infirm Persons Property Act 1940* or the *Guardianship and Administration Act 1993*) being managed or administered by the Public Trustee, on—
- (i) the proceeds of all assets realised; or
 - (ii) money collected; or
 - (iii) the value of unrealised property to which the estate is entitled at the conclusion of the management of the estate,

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

Capital amount or value of estate	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, the spouse of a deceased person of—

- (a) a former matrimonial home; or
- (b) any of the household furniture and effects,

commission must be charged at a rate not exceeding half of the maximum rate applicable under clause 1 on the value of the spouse's share of the matrimonial home and household furniture and effects.

6.

2. If an estate, trust or fund to which clause 1 would otherwise apply is worth \$5 000 or less, commission must be charged as set out in the following table:

Value of gross estate, trust or fund	Minimum commission
\$500 or less	\$50
\$501 to \$2 000	10 per cent of the value of the estate, trust or fund
\$2 001 to \$5 000	\$200

3. (1) 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 rate applicable under clause 1.

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

4. If property has been delivered or transferred to the Public Trustee on behalf of a person under section 65 of the *Administration and Probate Act 1919*, commission must be charged at a rate not exceeding the maximum rate applicable under clause 1.

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

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

6. If the Public Trustee has been appointed manager of unclaimed property under Part 6 of the Act, or holds money or other property in a capacity not otherwise dealt with in these regulations—

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

7. In calculating commission on capital, expenses arising from 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.

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

(2) However, if the transfer of property is delayed—

- (a) by an intervening life interest; or
- (b) by some 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

9. (1) Commission on income received by the Public Trustee in respect of an estate or trust or from a fund or property held by the Public Trustee alone or with another person must be charged—

- (a) on income other than rent—at the rate of 5 per cent;
- (b) on rent—at the rate of 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) Commission on—

- (a) old age, invalid, superannuation, war and service pensions;
- (b) sick pay;
- (c) payments of maintenance for divorced persons;
- (d) payments of maintenance for protected persons;
- (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) Commission in respect of rents collected by an agent who is employed, and paid a commission, by the Public Trustee must be charged at the rate of 2.5 per cent.

C. GENERAL

10. (1) The Public Trustee may charge commission at the appropriate rate at the following times:

- (a) subject to subclause (2), commission on money may be charged when the Public Trustee receives the money;
- (b) commission on property sold or realised may be charged when the Public Trustee receives the proceeds of the sale or realisation;
- (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.

8.

11. 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 per cent of the value of the estate.

PART 2—FEES

The fees set out in this Part are maximum fees.

1. For the preparation of—	
(a) a contract for the sale of estate property	\$138
(b) a tenancy agreement	\$138
(c) a deed	\$138
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 clause 1)	\$118
3. For the production of a certificate of title	\$100
4. For the preparation of a certificate of interest or any other certificate	\$50
5. Annual administration and audit fee for each trust estate or fund administered by the Public Trustee	\$118
6. For undertaking work in relation to taxation (per hour, or part of an hour)	\$90
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)	\$138
8. For securing, prior to the sale of real or leasehold estate, such information as is necessary to comply with all legal requirements	\$138
[Note: The fee referred to in item 8 will not 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
10. For—	
(a) a detailed inspection and report on a building (per hour, or part of an hour)	\$90
(b) an inspection of any other property (per hour, or part of an hour)	\$90
11. For services in connection with processing an application for a loan that is to be secured by a mortgage over property—	
(a) application fee	\$500
(b) fee for valuation of property	\$1 000

12. With respect to a service, or action taken, by the Public Trustee and not otherwise dealt with in these regulations, a fee may be charged as agreed with the person appointing the Public Trustee or requesting the Public Trustee to perform the service or take the action.

[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 3

Fees for Examination of Accounts, etc.

The fees set out in this Schedule are maximum fees.

1. For the examination of statements and accounts lodged under section 56 of the *Administration and Probate Act 1919* (per hour, or part of an hour) \$87

2. For the examination of statements lodged under section 44 of the *Guardianship and Administration Act 1993*, including preparation of a report to the Guardianship Board (per hour, or part of an hour) \$87.

APPENDIX

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provision from Regulation No. 203 of 1998, reg. 7)

7. Regulation 4 (which provides for the insertion of Schedule 1A in the principal regulations) does not affect an arrangement, understanding or undertaking made prior to its commencement with respect to the commission chargeable in respect of a common fund established by the Public Trustee.

Legislative History

(entries in bold type indicate amendments incorporated since the last consolidation)

Regulation 4(a1):	inserted by 203, 1998, reg. 3
Schedule 1A:	inserted by 203, 1998, reg. 4
Schedule 2	
Part 2	
Clause 1:	varied by 203, 1998, reg. 5(a)-(c); 71, 2000, reg. 3(a)
Clause 2:	varied by 203, 1998, reg. 5(d); 71, 2000, reg. 3(b)
Clause 5:	varied by 203, 1998, reg. 5(e); 71, 2000, reg. 3(c)
Clause 6:	substituted by 203, 1998, reg. 5(f); varied by 71, 2000, reg. 3(d)
Clause 7:	varied by 203, 1998, reg. 5(g); 71, 2000, reg. 3(e)
Clause 8:	varied by 203, 1998, reg. 5(h); 71, 2000, reg. 3(f)
Clause 10:	varied by 203, 1998, reg. 5(i), (j); 71, 2000, reg. 3(g)
Schedule 3:	substituted by 203, 1998, reg. 6
Item 1:	varied by 71, 2000, reg. 4(a)
Item 2:	varied by 71, 2000, reg. 4(b)