

South Australia

## **Public Trustee Regulations 2010**

under the *Public Trustee Act 1995*

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##### **1—Short title**

These regulations may be cited as the *Public Trustee Regulations 2010*.

##### **2—Commencement**

These regulations will come into operation on 1 September 2010.

##### **3—Interpretation**

In these regulations—

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

## 4—Commission and fees

- (1) 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 1.
- (2) 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*<sup>1</sup>) are as set out in Schedule 2.
- (3) If a maximum or minimum rate or amount is provided in Schedule 1 or Schedule 2, the Public Trustee may determine the rate or amount in a particular case, subject to that maximum or minimum.

### Note—

- 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.

## Schedule 1—Common fund—commission

### 1—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% of the capital amount invested.

### 2—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%.

## Schedule 2—Commission and fees

### Part 1—Commissions

#### Division 1—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 |
|---|----------------------------|
| does not exceed \$200 000                       | 4%                         |
| exceeds \$200 000 but does not exceed \$400 000 | 3%                         |
| exceeds \$400 000 but does not exceed \$600 000 | 2%                         |
| exceeds \$600 000                               | 1%                         |

- (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 or domestic partner of a deceased person of—
  - (a) a home formerly shared by the spouses or domestic partners; 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 share of the home and household furniture and effects of the spouse or domestic partner.

- 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% 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%.
- 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.

## **Division 2—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%;
  - (b) on rent—at the rate of 7.5%.
- (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%.

### Division 3—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.
- 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% of the value of the estate.

### Part 2—Fees

- 12 The fees set out in the table are maximum fees.
- |   |   |          |
|---|---|----------|
| 1 | For the preparation of—   |          |
|   | (a) a contract for the sale of estate property  | \$181.82 |
|   | (b) a tenancy agreement   | \$181.82 |
|   | (c) a deed  | \$181.82 |
| 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 item 1) | \$164.55 |
| 3 | For the production of a certificate of title  | \$140.00 |
| 4 | For the preparation of a certificate of interest or any other certificate   | \$55.45  |

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### Schedule 2—Commission and fees

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|   |  |            |
|---|--|------------|
| 5   | Annual administration and audit fee for each trust estate or fund administered by the Public Trustee   | \$121.82   |
| 6   | For undertaking work in relation to taxation (per hour, or part of an hour)  | \$123.64   |
| 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) | \$190.91   |
| 8   | For securing, prior to the sale of real or leasehold estate, such information as is necessary to comply with all legal requirements                      | \$190.91   |
| <b>Note—</b>  |  |            |
| 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)  | \$280.00   |
| 10  | For—   |            |
|   | (a) a detailed inspection and report on a building (per hour, or part of an hour)  | \$123.64   |
|   | (b) an inspection of any other property (per hour, or part of an hour)   | \$123.64   |
| 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  | \$500.00   |
|   | (b) fee for valuation of property  | \$1 000.00 |

#### Notes—

- 1 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.
- 2 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—Revocation and transitional provision

### 1—Revocation of *Public Trustee Regulations 1995*

The *Public Trustee Regulations 1995* are revoked.

### 2—Transitional provision

These regulations do not affect an arrangement, understanding or undertaking made before the commencement of the *Public Trustee Regulations 1995* 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.

## Legislative history

### Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal regulations and variations

New entries appear in bold.

| Year | No  | Reference                      | Commencement  |
|------|-----|--------------------------------|---------------|
| 2010 | 190 | <i>Gazette 26.8.2010 p4423</i> | 1.9.2010: r 2 |
| 2011 | 138 | <i>Gazette 9.6.2011 p2329</i>  | 1.7.2011: r 2 |