



***Public Trustee Act 1978***

# **Public Trustee Regulation 2001**

**Reprinted as in force on 1 March 2006**

**Reprint No. 1G**

**This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
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# Information about this reprint

This regulation is reprinted as at 1 March 2006. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

## **Dates shown on reprints**

**Reprints dated at last amendment** All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

**Replacement reprint date** If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.



## Queensland

# Public Trustee Regulation 2001

## Contents

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|                     |                                                                                       | Page |
|---------------------|---------------------------------------------------------------------------------------|------|
| <b>Part 1</b>       | <b>Preliminary</b>                                                                    |      |
| 1                   | Short title . . . . .                                                                 | 3    |
| 2                   | Commencement . . . . .                                                                | 3    |
| 3                   | Definitions . . . . .                                                                 | 3    |
| <b>Part 2</b>       | <b>Interest and investments</b>                                                       |      |
| 4                   | Interest payable on amounts in the common fund, Act s 19(1)(c)                        | 3    |
| 5                   | Prescribed investments for unclaimed moneys, Act s 25(3)(b) . .                       | 4    |
| <b>Part 3</b>       | <b>Fees and remuneration</b>                                                          |      |
| 6                   | Fees for legal services by official solicitor, Act s 142(2)(h) . . . . .              | 4    |
| 7                   | Power to remit fees, Act s 142(2)(ha) . . . . .                                       | 5    |
| 8                   | Remuneration of advisory trustees, Act s 41(8) . . . . .                              | 5    |
| <b>Part 4</b>       | <b>Miscellaneous financial matters</b>                                                |      |
| 9                   | Preparing accounts, Act s 142(2)(e) . . . . .                                         | 5    |
| 10                  | Payment of claims, Act s 142(2)(a) . . . . .                                          | 6    |
| 11                  | Application of Act, pt 8 to unclaimed superannuation benefits,<br>Act s 97B . . . . . | 6    |
| <b>Part 5</b>       | <b>General</b>                                                                        |      |
| 12                  | Seal, Act s 142(2)(a) . . . . .                                                       | 7    |
| 13                  | Execution of documents, Act s 142(2)(a) . . . . .                                     | 7    |
| 14                  | Provision of legal assistance, Act s 142(2)(j) . . . . .                              | 8    |
| 15                  | Repeal of Public Trustee Regulation 1989 . . . . .                                    | 8    |
| <b>Schedule 1</b>   | <b>Interest payable on amounts in common fund</b> . . . . .                           | 9    |
| <b>Schedule 2</b>   | <b>Dictionary</b> . . . . .                                                           | 10   |
| <br><b>Endnotes</b> |                                                                                       |      |
| 1                   | Index to endnotes . . . . .                                                           | 11   |
| 2                   | Date to which amendments incorporated . . . . .                                       | 11   |

|   |                           |    |
|---|---------------------------|----|
| 3 | Key .....                 | 11 |
| 4 | Table of reprints .....   | 12 |
| 5 | List of legislation ..... | 12 |
| 6 | List of annotations ..... | 13 |

# Public Trustee Regulation 2001

[as amended by all amendments that commenced on or before 1 March 2006]

## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Public Trustee Regulation 2001*.

### 2 Commencement

This regulation commences on 1 September 2001.

### 3 Definitions

The dictionary in schedule 2 defines particular words used in this regulation.

## Part 2 Interest and investments

### 4 Interest payable on amounts in the common fund, Act s 19(1)(c)

- (1) The annual rates of interest payable under the Act, section 19(1)(c) to estates having amounts held in the common fund are stated in schedule 1.
- (2) However, the annual rate of interest payable under the Act, section 19(1)(c) in relation to the part of a class 1 amount, class 3 amount or class 4 amount that the public trustee considers is not required at call or to meet short term or unforeseen liabilities of an estate is 4.8%.

- (3) For class 2 amounts, the annual rate of interest payable under the Act, section 19(1)(c) in relation to the part of the amount that the public trustee considers is not required at call or to meet short term or unforeseen liabilities of the estate is—
  - (a) if the rate agreed under schedule 1, item 2(a) or the rate allowed by order of a court is more than 4.8%—the rate agreed or allowed; or
  - (b) otherwise—4.8%.
- (4) Interest payable to an estate at the annual rate mentioned in subsection (2) or (3) must be credited monthly to the estate.
- (5) Interest payable under the Act, section 19(1)(c) is calculated on the daily balance of the amount held for the estate.

**5 Prescribed investments for unclaimed moneys, Act s 25(3)(b)**

Each investment in which an amount held in the common fund may be invested is prescribed for section 25(3)(b) of the Act.

## **Part 3 Fees and remuneration**

**6 Fees for legal services by official solicitor, Act s 142(2)(h)**

- (1) The public trustee may set a scale of fees for legal services provided by the official solicitor for the public trustee or any other person.
- (2) In setting the amount of a fee for a legal service, the public trustee must set an amount that will give a fair and reasonable level of remuneration for the service having regard to—
  - (a) the nature and complexity of the service; and
  - (b) the number, type and importance of documents perused or prepared for the service; and
  - (c) the care, skill and specialised knowledge required, and the responsibility undertaken, in providing the service; and

- (d) the time spent in providing the service.
- (3) Fees for legal services by the official solicitor must be paid into the common fund.
- (4) In this section—  
*legal services* includes conveyancing services.

## **7 Power to remit fees, Act s 142(2)(ha)**

- (1) The public trustee may remit all or part of any fee otherwise payable under the Act.
- (2) Subsection (1) does not apply if the Minister directs that a fee may not be remitted.

## **8 Remuneration of advisory trustees, Act s 41(8)**

- (1) The remuneration of an advisory trustee out of an estate under administration is the remuneration agreed by the public trustee and the advisory trustee.
- (2) Subsection (1) applies subject to the provisions of any relevant trust instrument or court order.

# **Part 4 Miscellaneous financial matters**

## **9 Preparing accounts, Act s 142(2)(e)**

- (1) The public trustee must, at intervals the public trustee considers appropriate, prepare an account (a *regular account*) for every estate, trust or matter in the Public Trust Office.
- (2) The public trustee may—
  - (a) give to a person the public trustee considers has a right to, or an interest in, a regular account a free copy of the regular account; and
  - (b) at the request of the person mentioned in paragraph (a), and after payment of the appropriate fee, give the person—

- (i) extra copies of the regular account; or
  - (ii) a copy of an account, other than a regular account, prepared by the public trustee.
- (3) In this section—  
*appropriate fee*, for a document, means a fee decided by the public trustee that is not more than the reasonable cost to the public trustee of providing a copy of the document.

## **10 Payment of claims, Act s 142(2)(a)**

If—

- (a) the public trustee allows a claim; and
- (b) the claim is audited by an officer of the Public Trust Office;

the public trustee may pay the claim out of the common fund.

## **11 Application of Act, pt 8 to unclaimed superannuation benefits, Act s 97B**

- (1) Part 8<sup>1</sup> of the Act applies to an unclaimed superannuation benefit if the only or each accountable person holding the benefit—
  - (a) is a corporation within the meaning of the Corporations Act that is taken to be registered in Queensland under that Act; or
  - (b) is an individual whose principal place of carrying on business as a holder of benefits in an approved deposit fund or regulated superannuation fund is in Queensland.
- (2) Part 8 of the Act also applies to an unclaimed superannuation benefit if—
  - (a) more than 2 accountable persons hold the benefit; and
  - (b) 1 or more, but not all, of the accountable persons are persons mentioned in subsection (1)(a) or (b); and

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<sup>1</sup> Part 8 (Unclaimed property) of the Act

- (c) the principal place where the fund in which the benefit is held is administered in Queensland.
- (3) The application of part 8 of the Act under this section, extends to the following things and persons to the full extent of, but not to exceed, Parliament's legislative power—
  - (a) an unclaimed superannuation benefit situated outside Queensland, whether or not in Australia;
  - (b) anything done or entered into, or happening outside Queensland in relation to an unclaimed superannuation benefit, whether or not in Australia;
  - (c) an accountable person, a member of a fund or a beneficiary situated or residing outside Queensland, whether or not in Australia.
- (4) In this section—

*accountable person* see the Act, section 98.

*approved deposit fund* see the Act, section 98A.

*regulated superannuation fund* see the Act, section 98A.

*unclaimed superannuation benefit* see the Act, section 98A.

## **Part 5                      General**

### **12        Seal, Act s 142(2)(a)**

The design of the seal of The Public Trustee of Queensland may be decided by the public trustee.

### **13        Execution of documents, Act s 142(2)(a)**

Transfers, mortgages, leases, agreements and other documents executed by the public trustee must be executed in a way showing the appointment or authority under which the public trustee acts.

**14 Provision of legal assistance, Act s 142(2)(j)**

- (1) The public trustee may give aid to a person for civil proceedings by or against the person if—
  - (a) the person is—
    - (i) not eligible for legal aid under the *Legal Aid Queensland Act 1997*; or
    - (ii) refused legal aid under the *Legal Aid Queensland Act 1997*; and
  - (b) approval for the public trustee to give aid to the person has been given by the Minister or a person authorised in writing by the Minister.
- (2) For giving aid to a person, the public trustee may—
  - (a) engage a lawyer to represent the person; and
  - (b) pay the lawyer the fees the public trustee considers reasonable.
- (3) An authority under subsection (1)(b) may be given to a person by name or to a person discharging a designated role.

**15 Repeal of Public Trustee Regulation 1989**

The *Public Trustee Regulation 1989* is repealed.

## **Schedule 1      Interest payable on amounts in common fund**

### section 4

- 1 For a class 1 amount—
  - (a) held for a child or a person under a legal disability—2.4%; or
  - (b) held for a beneficiary, other than a child or a person under a legal disability, who has no right to payment at call—2.4%; or
  - (c) payable in the ordinary course of administration or at call—0.3%.
- 2 For a class 2 amount—
  - (a) a rate agreed on by the public trustee and the person paying the amount to the public trustee; or
  - (b) a rate allowed by order of a court; or
  - (c) if no rate has been agreed on or allowed by order, a rate not less than 2.25% decided by the public trustee having regard to—
    - (i) the amount held; and
    - (ii) the period the amount is held; and
    - (iii) the purpose for which the amount is held.
- 3 For a class 3 amount—3.0%.
- 4 For a class 4 amount—0.3%.

## Schedule 2      Dictionary

### section 3

***class 1 amount*** means an amount received by the public trustee for an estate under—

- (a) part 3<sup>2</sup> of the Act, other than an amount received by the public trustee as agent, attorney, liquidator, receiver or manager; or
- (b) section 59<sup>3</sup> of the Act.

***class 2 amount*** means an amount received by the public trustee for an estate as agent, attorney, liquidator, receiver or manager.

***class 3 amount*** means an amount received by the public trustee for an estate—

- (a) as manager of the estate under part 6<sup>4</sup> of the Act; or
- (b) as manager of the estate under part 7<sup>5</sup> of the Act; or
- (c) as administrator for a financial matter under the *Guardianship and Administration Act 2000*.

***class 4 amount*** means an amount received by the public trustee for an estate under any Act that is not a class 1 amount, class 2 amount or class 3 amount.

***estate*** means an estate under administration, and includes property the public trustee has a right to administer, manage or deal with.

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2 Part 3 (Appointment as trustee or personal representative) of the Act

3 Section 59 (Compromise of actions by or on behalf of persons under a legal disability claiming moneys or damages valid only with sanction of court or public trustee) of the Act

4 Part 6 (Management of estates of incapacitated persons) of the Act

5 Part 7 (Administration of property of prisoners) of the Act

## Endnotes

### 1 Index to endnotes

|                                                   | Page |
|---------------------------------------------------|------|
| 2 Date to which amendments incorporated . . . . . | 11   |
| 3 Key . . . . .                                   | 11   |
| 4 Table of reprints . . . . .                     | 12   |
| 5 List of legislation . . . . .                   | 12   |
| 6 List of annotations . . . . .                   | 13   |

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 March 2006. Future amendments of the Public Trustee Regulation 2001 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

| Key    | Explanation                    | Key     | Explanation                             |
|--------|--------------------------------|---------|-----------------------------------------|
| AIA    | = Acts Interpretation Act 1954 | (prev)  | = previously                            |
| amd    | = amended                      | proc    | = proclamation                          |
| amdt   | = amendment                    | prov    | = provision                             |
| ch     | = chapter                      | pt      | = part                                  |
| def    | = definition                   | pubd    | = published                             |
| div    | = division                     | R[X]    | = Reprint No.[X]                        |
| exp    | = expires/expired              | RA      | = Reprints Act 1992                     |
| gaz    | = gazette                      | reloc   | = relocated                             |
| hdg    | = heading                      | renum   | = renumbered                            |
| ins    | = inserted                     | rep     | = repealed                              |
| lap    | = lapsed                       | (retro) | = retrospectively                       |
| notfd  | = notified                     | rv      | = revised edition                       |
| o in c | = order in council             | s       | = section                               |
| om     | = omitted                      | sch     | = schedule                              |
| orig   | = original                     | sdiv    | = subdivision                           |
| p      | = page                         | SIA     | = Statutory Instruments Act 1992        |
| para   | = paragraph                    | SIR     | = Statutory Instruments Regulation 2002 |
| prec   | = preceding                    | SL      | = subordinate legislation               |
| pres   | = present                      | sub     | = substituted                           |
| prev   | = previous                     | unnum   | = unnumbered                            |

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

| Reprint No. | Amendments to   | Effective        | Reprint date     |
|-------------|-----------------|------------------|------------------|
| 1           | none            | 1 September 2001 | 7 September 2001 |
| 1A          | 2001 SL No. 236 | 1 December 2001  | 7 December 2001  |
| 1B          | 2002 SL No. 89  | 1 May 2002       | 10 May 2002      |

  

| Reprint No. | Amendments included | Effective      | Notes |
|-------------|---------------------|----------------|-------|
| 1C          | 2002 SL No. 256     | 1 October 2002 |       |
| 1D          | 2004 SL No. 43      | 1 May 2004     |       |
| 1E          | 2005 SL No. 173     | 1 August 2005  |       |
| 1F          | 2005 SL No. 243     | 1 October 2005 |       |
| 1G          | 2006 SL No. 24      | 1 March 2006   |       |

## 5 List of legislation

### **Public Trustee Regulation 2001 SL No. 152**

made by the Governor in Council on 30 August 2001

notfd gaz 31 August 2001 pp 1618–19

ss 1–2 commenced on date of notification

remaining provisions commenced 1 September 2001 (see s 2)

exp 1 September 2011 (see SIA s 54)

Note—The expiry date may have changed since this reprint was published. See the latest reprint of the SIR for any change.

amending legislation—

### **Public Trustee Amendment Regulation (No. 2) 2001 SL No. 236**

notfd gaz 30 November 2001 pp 1179–82

ss 1–2 commenced on date of notification

remaining provisions commenced 1 December 2001 (see s 2)

### **Public Trustee Amendment Regulation (No. 1) 2002 SL No. 89**

notfd gaz 26 April 2002 pp 1540–3

ss 1, 3 commenced on date of notification

remaining provisions commenced 1 May 2002 (see s 2)

### **Public Trustee Amendment Regulation (No. 2) 2002 SL No. 256**

notfd gaz 27 September 2002 pp 340–4

ss 1–2 commenced on date of notification

remaining provisions commenced 1 October 2002 (see s 2)

**Public Trustee Amendment Regulation (No. 1) 2004 SL No. 43**

notfd gaz 30 April 2004 pp 1601–2

ss 1–2 commenced on date of notification

remaining provisions commenced 1 May 2004 (see s 2)

**Public Trustee Amendment Regulation (No. 1) 2005 SL No. 173**

notfd gaz 29 July 2005 pp 1146–8

ss 1–2 commenced on date of notification

remaining provisions commenced 1 August 2005 (see s 2)

**Public Trustee Amendment Regulation (No. 2) 2005 SL No. 243**

notfd gaz 30 September 2005 pp 425–6

ss 1–2 commenced on date of notification

remaining provisions commenced 1 October 2005 (see s 2)

**Public Trustee Amendment Regulation (No. 1) 2006 SL No. 24**

notfd gaz 24 February 2006 pp 798–801

ss 1–2 commenced on date of notification

remaining provisions commenced 1 March 2006 (see s 2)

## **6 List of annotations**

**Interest payable on amounts in the common fund, Act s 19(1)(c)****s 4** amd 2005 SL No. 173 s 4; 2005 SL No. 243 s 4; 2006 SL No. 24 s 4**Provision of legal assistance, Act s 142(2)(j)****s 14** amd 2001 SL No. 236 s 4**SCHEDULE 1—INTEREST PAYABLE ON AMOUNTS IN COMMON FUND**

amd 2001 SL No. 236 s 5; 2002 SL No. 89 s 4; 2002 SL No. 256 s 4; 2004 SL No. 43 s 4

**SCHEDULE 2—DICTIONARY**def “**class 3 amount**” sub 2005 SL No. 173 s 5