

# Queensland



## Subordinate Legislation 2001 No. 152

### *Public Trustee Act 1978*

# PUBLIC TRUSTEE REGULATION 2001

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## **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) Interest 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 of the Act<sup>1</sup> applies to an unclaimed superannuation benefit if the only or each accountable person holding the benefit—

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1 The Act, part 8 (Unclaimed property)

- (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
- (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)(iii) 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—2.5%; 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—2.5%; or
  - (c) payable in the ordinary course of administration or at call—0.85%.
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 1.1% 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—1.1%.



## SCHEDULE 2

### DICTIONARY

#### section 3

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

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

**“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 trustee under part 6 of the Act;<sup>4</sup> or
- (b) as manager of the estate under part 7 of the Act.<sup>5</sup>

**“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 The Act, part 3 (Appointment as trustee or personal representative)

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

4 The Act, part 6 (Management of estates of incapacitated persons)

5 The Act, part 7 (Administration of property of prisoners)

## ENDNOTES

1. Made by the Governor in Council on 30 August 2001.
2. Notified in the gazette on 31 August 2001.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Public Trust Office.