



Public Trustee Act 1978

Public Trustee Regulation 2023

Current as at 1 June 2025

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Queensland

Public Trustee Regulation 2023

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Public Trustee Regulation 2023

Part 1 Preliminary

1 Short title

This regulation may be cited as the *Public Trustee Regulation 2023*.

2 Commencement

This regulation commences on 1 September 2023.

3 Definitions

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

Part 2 Matters relating to interest and investments

4 Interest rate for amounts in common fund—Act, s 19

- (1) For section 19(1)(c) of the Act, the annual rate of interest for an amount other than a term deposit amount is stated in schedule 1.
- (2) The annual rate of interest for a term deposit amount other than a class 2 amount is the 6 month term deposit rate.
- (3) For a term deposit amount that is a class 2 amount, the annual rate of interest is—
 - (a) if a rate is allowed by order of a court—the rate allowed or the 6 month term deposit rate, whichever is the higher rate; or

- (b) if paragraph (a) does not apply and a rate equal to or more than the 6 month term deposit rate is agreed on by the public trustee and the person paying the amount to the public trustee—the rate agreed; or
 - (c) if paragraphs (a) and (b) do not apply—the 6 month term deposit rate.
- (4) Interest is calculated on the daily balance of the amount held in the common fund for an estate under administration.
- (5) In this section—

6 month term deposit rate—

- (a) for a period from 1 April to 30 September in a year—means the reserve bank rate for the month of February immediately preceding the period; or
- (b) for a period from 1 October in a year to 31 March in the following year—means the reserve bank rate for the month of August immediately preceding the period.

reserve bank rate means the retail deposit and investment rate of interest for 6 month bank term deposits published by the Reserve Bank of Australia on its website.

term deposit amount means the part of the amount held in the common fund for an estate under administration that the public trustee considers is not required at call or to meet short term or unforeseen liabilities of the estate.

5 Investing amounts credited to unclaimed moneys fund—Act, s 25

For section 25(3)(b) of the Act, an investment a trustee may invest trust funds in under the *Trusts Act 1973* is prescribed.

Part 3 Remuneration of advisory trustees

6 Remuneration of advisory trustees—Act, s 41

- (1) For section 41(8) of the Act, the remuneration of an advisory trustee is the remuneration agreed by the public trustee and the advisory trustee.
- (2) Subsection (1) applies subject to the trust instrument for the estate under administration.

Note—

See section 41(8) of the Act in relation to the court's power to make an order about the remuneration of an advisory trustee.

Part 4 Unclaimed superannuation benefits

7 Application of Act, pt 8 to unclaimed superannuation benefits—Act, s 97B

- (1) Part 8 of the Act applies to an unclaimed superannuation benefit if each accountable person holding the benefit is either—
 - (a) a corporation within the meaning of the Corporations Act taken to be registered in Queensland under that Act; or
 - (b) an individual whose principal place of carrying on the business of holding 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) 3 or more accountable persons hold the benefit; and

- (b) not all, but at least 1, of the accountable persons holding the benefit is a person mentioned in subsection (1)(a) or (b); and
 - (c) the principal place for administering the fund in which the benefit is held is in Queensland.
 - (3) The application of part 8 of the Act under this section extends to the following matters and persons—
 - (a) an unclaimed superannuation benefit situated outside Queensland, whether or not in Australia;
 - (b) anything done, entered into or happening outside Queensland, whether or not in Australia, in relation to an unclaimed superannuation benefit;
 - (c) an accountable person, a member of a fund or a beneficiary situated or residing outside Queensland, whether or not in Australia.

Part 5 Statements of account and fees

8 Preparing statement of account—Act, s 142

- (1) The public trustee must prepare a regular statement of account for each estate under administration or other matter in the Public Trust Office.
- (2) The public trustee may—
 - (a) give an interested person a copy of the regular statement of account free of charge; and
 - (b) at the request of the interested person and on payment of the appropriate fee, give the interested person—
 - (a) extra copies of the regular statement of account; or
 - (b) a copy of a statement of account other than a regular statement of account.
- (3) In this section—

appropriate fee, for a copy of a statement of account, means the fee decided by the public trustee, being not more than the reasonable cost to the public trustee of providing a copy of the statement of account.

interested person means a person the public trustee considers has a right to, or an interest in, a regular statement of account for an estate under administration or other matter in the Public Trust Office.

regular statement of account means a statement of account for an estate under administration or other matter in the Public Trust Office—

- (a) prepared by the public trustee at the times the public trustee considers appropriate for a statement of account to be prepared for the estate under administration or matter; and
- (b) covering the period the public trustee considers appropriate for a statement of account for the estate under administration or matter to cover.

9 Fees for legal services by official solicitor—Act, s 142

- (1) The public trustee may set a scale of fees for legal services provided by the official solicitor.
- (2) In setting the amount of a fee for a legal service, the public trustee must set an amount that gives 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 carried out, in providing the service; and
 - (d) the time spent in providing the service.

- (3) An amount received for a fee for a legal service provided by the official solicitor must be paid into the common fund.
- (4) In this section—
legal services includes conveyancing services.

10 Power to remit fees—Act, s 142

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

Part 6 Miscellaneous

11 Seal—Act, s 142

The public trustee may decide the design of the corporation's seal.

12 Execution of documents—Act, s 142

- (1) A document executed by the public trustee must be executed in a way that shows the public trustee's appointment or authority to act.
- (2) In this section—
document includes a transfer, mortgage, lease and agreement.

13 Provision of aid in legal proceedings—Act, s 142

- (1) This section applies in relation to a person who—
 - (a) does not meet the criteria for legal assistance under the *Legal Aid Queensland Act 1997*, section 11; or

- (b) is refused legal assistance under the *Legal Aid Queensland Act 1997*.
- (2) The public trustee may give aid to the person for a civil proceeding by or against the person.
- (3) For giving aid to the 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.

Part 7 Transitional provision

14 References to expired regulation

- (1) A reference in a document to the expired regulation may, if the context permits, be taken to be a reference to this regulation.
- (2) In this section—

expired regulation means the expired *Public Trustee Regulation 2012*.

Schedule 1 Interest rate for amounts in common fund

section 4(1)

- 1 For a class 1 amount—
 - (a) if the amount is held for a child or a person under a legal disability—0.19%; or
 - (b) if the amount is held for a beneficiary, other than a child or a person under a legal disability, who has no right to payment at call—0.19%; or
 - (c) if the amount is payable in the ordinary course of administration or at call—0.19%.
- 2 For a class 2 amount—
 - (a) if a rate is allowed by order of a court—the rate allowed; or
 - (b) if paragraph (a) does not apply and a rate is agreed on by the public trustee and the person paying the amount to the public trustee—the rate agreed; or
 - (c) if paragraphs (a) and (b) do not apply—a rate of at least 1.63% decided by the public trustee having regard to—
 - (i) the amount held; and
 - (ii) the period for which the amount is held; and
 - (iii) the purpose for which the amount is held.
- 3 For a class 3 amount—1.63%.
- 4 For a class 4 amount—the 90 day bank accepted bill rate for the relevant day for a quarter.
- 5 For a class 5 amount—0.19%.

Schedule 2 Dictionary

section 3

90 day bank accepted bill rate, for the relevant day for a quarter, means the 90 day bank accepted bill rate published by the Reserve Bank of Australia on its website for the relevant day for the quarter.

class 1 amount means—

- (a) an amount received by the public trustee under part 3 of the Act for an estate under administration, other than an amount that is class 2 amount; or
- (b) an amount received by the public trustee under section 59 of the Act for an estate under administration.

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

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

- (a) as manager of the estate under part 6 or 7 of the Act; or
- (b) as administrator for a financial matter under the *Guardianship and Administration Act 2000*.

class 4 amount means an amount credited to the unclaimed moneys fund for an estate under administration.

class 5 amount means an amount received by the public trustee under any Act for an estate under administration, other than an amount that is a class 1 amount, a class 2 amount, a class 3 amount or a class 4 amount.

quarter means any of the following periods—

- (a) 1 September to 30 November;
- (b) 1 December to the last day in February;
- (c) 1 March to 31 May;

(d) 1 June to 31 August.

relevant day, for a quarter, means—

- (a) for the quarter beginning on 1 September—the last business day in the preceding August; or
- (b) for the quarter beginning on 1 December—the last business day in the preceding November; or
- (c) for the quarter beginning on 1 March—the last business day in the preceding February; or
- (d) for the quarter beginning on 1 June—the last business day in the preceding May.