

TASMANIA

PUBLIC TRUSTEE REGULATIONS 2019
STATUTORY RULES 2019, No. 77

CONTENTS

1. Short title
 2. Commencement
 3. Interpretation
 4. Attestation of mark in place of signature
 5. Remuneration of advisory trustees
 6. Maximum fees, commissions, remunerations and charges receivable
 7. Notice under section 17 of Act
 8. Prescribed amounts for certain sections of Act
- Schedule 1 – Maximum fees, commissions, remunerations and charges receivable
- Schedule 2 – Notice

PUBLIC TRUSTEE REGULATIONS 2019

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Public Trustee Act 1930*.

Dated 17 December 2019.

C. WARNER
Governor

By Her Excellency's Command,

ELISE ARCHER
Minister for Justice

1. Short title

These regulations may be cited as the *Public Trustee Regulations 2019*.

2. Commencement

These regulations take effect on
21 December 2019.

3. Interpretation

(1) In these regulations –

Public Trustee Regulations 2019
Statutory Rules 2019, No. 77

r. 4

Act means the *Public Trustee Act 1930*;

GST means the goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth;

property includes real and personal property.

- (2) Property is taken to be in the hands of the Public Trustee if the Public Trustee is lawfully authorised to administer or deal with that property.

4. Attestation of mark in place of signature

For the purposes of the Act, if a person is required to sign his or her name and is unable to sign his or her name –

- (a) the person is to make his or her mark where he or she is required to sign; and
- (b) another person is to attest, on the same document, that the document was read out and explained to the person making his or her mark.

5. Remuneration of advisory trustees

- (1) If an advisory trustee is appointed in accordance with section 22 of the Act, the advisory trustee is to be remunerated, subject to the provisions of a relevant trust instrument, at a rate –

- (a) subject to paragraph (b), that is determined by the Public Trustee with the agreement of the trustees; and
 - (b) that does not exceed 2% of the gross capital value of the estate of which the person is the advisory trustee.
- (2) Unless otherwise specified, the remuneration determined under subregulation (1) is determined exclusive of GST.

6. Maximum fees, commissions, remunerations and charges receivable

- (1) In this regulation –
- specified charges* means the fees, commissions, remunerations and charges specified in Schedule 1.
- (2) A specified charge in respect of a matter, or service, for which the specified charge is so specified in Schedule 1 is the maximum amount, exclusive of GST, that the Public Trustee may receive for that matter or service.
- (3) For the purposes of calculating a specified charge, a deduction is not to be made, from the amount in respect of which the charge is being calculated, for –
- (a) legal or equitable charges on property; or
 - (b) the expenses of a realisation of assets.

Public Trustee Regulations 2019
Statutory Rules 2019, No. 77

r. 7

- (4) If a specified charge is payable in respect of an estate, matter or service, the Public Trustee may deduct the specified charge from money held by the Public Trustee in the estate, matter or service that represents –
- (a) capital; or
 - (b) income; or
 - (c) both capital and income.
- (5) In addition to a specified charge that the Public Trustee is entitled to receive under the Act, the Public Trustee is entitled to reimbursement for any reasonable expense incurred in respect of –
- (a) an estate, matter or service; and
 - (b) an estate for which representation is not obtained.

7. Notice under section 17 of Act

For the purposes of section 17(2) of the Act, the form specified in Schedule 2 is the prescribed form.

8. Prescribed amounts for certain sections of Act

For the purpose of the following sections of the Act, the following amounts are prescribed:

- (a) for section 20(1) the prescribed amount is \$80 000;

Public Trustee Regulations 2019
Statutory Rules 2019, No. 77

r. 8

- (b) for section 20(4)(a) the prescribed amount is \$85 000;
- (c) for section 20A(1) the prescribed amount is \$30 000;
- (d) for section 20A(5) the prescribed amount is \$35 000;
- (e) for section 32(1)(y) the prescribed amount is \$20 000;
- (f) for section 34(1)(b) the prescribed amount is \$20 000;
- (g) for section 56(c) the prescribed amount is \$20 000;
- (h) for section 63(1) the prescribed amount is \$20 000;
- (i) for section 74(1) the prescribed amount is \$60 000.

**SCHEDULE 1 – MAXIMUM FEES, COMMISSIONS,
REMUNERATIONS AND CHARGES RECEIVABLE**

Regulation 6

PART 1 – INTERPRETATION

1. Interpretation

In this Schedule –

capital commission, chargeable on a matter, means the commission that may be charged on the gross capital value of the matter;

percentage, of an estate, means the amount equal to that percentage of the assets, gross capital, income, fund, money or the whole of the estate, as may be specified.

PART 2 – CHARGES ON CAPITAL

Division 1 – Estate of deceased persons

1. Except as provided in item 2 –

- (a) the maximum rate of capital commission chargeable in respect of an estate if the Public Trustee is, or is taken to be, the executor or administrator of the estate, is the sum of –

- (i) 4.09% on the first \$200 000 of the gross capital value of the estate or part of that amount; and
 - (ii) 3.18% on the next \$200 000 of the gross capital value of the estate or part of that amount; and
 - (iii) 2.27% on the next \$200 000 of the gross capital value of the estate or part of that amount; and
 - (iv) 1.36% on the gross capital value of the estate in excess of \$600 000; and
- (b) the maximum rate of capital commission chargeable on an interest of the deceased person in the principal place of residence, and the household furniture and household effects in that residence, that are transferred or conveyed to the surviving spouse of the deceased person, is 2% of the deceased person's interest in the residence.
2. The maximum rate of capital commission chargeable on assets –
- (a) situated outside Tasmania; and
 - (b) comprised in an estate of which the Public Trustee is the principal executor or administrator –

Public Trustee Regulations 2019
Statutory Rules 2019, No. 77

sch. 1

is 2% of value of the assets, if the Public Trustee's grant in respect of those assets is required to be resealed in another State or a Territory of the Commonwealth.

3. Despite items 1 and 2, if the application of the rates specified in items 1 and 2 results in a maximum commission of less than \$5 000 for an estate –
 - (a) those rates do not apply to the estate; and
 - (b) the maximum commission for the estate is \$5 000.

Division 2 – Trusts

4. The maximum rate of capital commission chargeable on a deed of trust or of a settlement, ante-nuptial or otherwise, is 2% of the value.
5. The maximum charge on each amount received by the Public Trustee under section 16 of the Act, is 3% of the amount so received.
6. The maximum charge on the gross value of assets in respect of which the Public Trustee is custodian trustee, is the sum of –
 - (a) 0.5% on the first \$50 000 of the assets or part of that amount; and
 - (b) 0.25% on the assets in excess of \$50 000.

Division 3 – Miscellaneous

7. The maximum rate of capital commission chargeable on money paid to the Public Trustee to be held or administered in terms of a court order or otherwise is the sum of –
- (a) 2.5% on the first \$100 000 of the money or part of that amount; and
 - (b) 2% on the next \$400 000 of the money or part of that amount; and
 - (c) 1% on the money in excess of \$500 000.
8. The maximum rate of capital commission chargeable on an estate administered and realised under the *Guardianship and Administration Act 1995*, if the Public Trustee is or is taken to be the executor or administrator of the estate, is the sum of –
- (a) 4.09% on the first \$200 000 of the estate or part of that amount; and
 - (b) 3.18% on the next \$200 000 of the estate or part of that amount; and
 - (c) 2.27% on the next \$200 000 of the estate or part of that amount; and
 - (d) 1.36% on the estate in excess of \$600 000.

Public Trustee Regulations 2019
Statutory Rules 2019, No. 77

sch. 1

- 9.** The maximum charge on the gross value of property that is the whole, or part, of an estate administered under the *Guardianship and Administration Act 1995* which is not realised but is transferred to the person entitled, or to his or her personal representative, on the termination of the Public Trustee's administration, is 2% of the value of the property.
- 10.** The maximum charge on money paid to the Public Trustee at the discretion of trustees, or managers, of a superannuation, retirement or provident fund or other similar scheme, for the administration on behalf of the beneficiaries, is 3% of the money so paid.
- 11.** Subject to item 12, the maximum rate of capital commission chargeable on proceeds collected on a policy of insurance, in respect of damage to property or loss by fire or otherwise, that are retained and administered by the Public Trustee, is the sum of –

 - (a) 4.09% on the first \$200 000 of the proceeds or part of that amount; and
 - (b) 3.18% on the next \$200 000 of the proceeds or part of that amount; and
 - (c) 2.27% on the next \$200 000 of the proceeds or part of that amount; and
 - (d) 1.36% on the proceeds in excess of \$600 000.

12. Despite item 11, if commission is collected by the Public Trustee in respect of property to which item 11 applies, the maximum rate of capital commission chargeable on proceeds collected on a policy of insurance, held in respect of the property, is the maximum charge calculated under item 11 in respect of the property less the commission collected under that item in respect of the property.
13. The maximum charge on book debts collected by the Public Trustee is –
 - (a) if the debts are subject to an authorised charge for collection, 3% of the debt; or
 - (b) in all other cases, 6% of the debt.

PART 3 – CHARGES ON INCOME

1. In this Part –

gross income includes –

- (a) capital gains realised, less the capital loss suffered arising from an investment in the common fund or another common investment fund maintained by the Public Trustee; and
- (b) the gross income derived from a business carried on by the Public Trustee.

Public Trustee Regulations 2019
Statutory Rules 2019, No. 77

sch. 1

2. The maximum charge on gross income received by the Public Trustee, including interest paid in respect of an account at credit in the common fund or another common investment fund maintained by the Public Trustee, is, subject to items 3 and 4, 6% of the gross income.
3. The maximum charge on gross income, received by the Public Trustee, that is subject to an authorised charge for collection, is 3% of the gross income.
4. The maximum charge on a Commonwealth pension, or superannuation pension, paid to the Public Trustee is 6% of the pension.

PART 4 – PARTICULAR CHARGES

1. The maximum rate of commission chargeable on the capital or income of an estate, realised by a former executor, administrator, trustee or person acting in a fiduciary capacity and subsequently vested in the Public Trustee, is 2% of the capital or income of the estate.
2. If the assets of an estate or matter are administered or dealt with by the Public Trustee in more than one capacity, or an asset consists of a share in another estate administered by the Public Trustee, the maximum charge on the second or subsequent administration or dealing of the asset is 2% of the asset.

3. The maximum rate of capital commission chargeable on capital received by the Public Trustee as attorney or agent, or on property dealt with by the Public Trustee in any way in that capacity, is the sum of –
 - (a) 4.09% on the first \$200 000 of the capital or part of that amount; and
 - (b) 3.18% on the next \$200 000 of the capital or part of that amount; and
 - (c) 2.27% on the next \$200 000 of the capital or part of that amount; and
 - (d) 1.36% on the capital in excess of \$600 000.

PART 5 – INVESTMENT MANAGEMENT FEES

1. The maximum charge on the gross value of assets of the common fund or another common investment fund maintained by the Public Trustee is 2% of the value of assets per year.
2. The maximum management fee on assets invested by the Public Trustee in any capacity, except as executor or administrator of a deceased estate, is 2% of the gross value of the capital per year.

Public Trustee Regulations 2019
Statutory Rules 2019, No. 77

sch. 2

SCHEDULE 2 – NOTICE

Regulation 7

Form 1 – Notice under section 17

Public Trustee Act 1930

NOTICE UNDER SECTION 17

Under section 17 of the *Public Trustee Act 1930*, the Public Trustee gives notice that, after the end of the period of 14 days commencing on the publication of this notice, it will apply to the Supreme Court for letters of administration of the estate of the following deceased person who has died intestate:

....., late
(name) (occupation)

of
(address)

Dated this day of, 20.....

.....
(The Public Trustee)

Public Trustee Regulations 2019
Statutory Rules 2019, No. 77

Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 17 December 2019.

These regulations are administered in the Department of Justice.

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations –

- (a) prescribe, for the purposes of the *Public Trustee Act 1930* –
 - (i) the maximum fees, commissions, remunerations and charges that are receivable by the Public Trustee under that Act in certain circumstances; and
 - (ii) the remuneration payable to an advisory trustee; and
 - (iii) certain form and signature requirements in certain circumstances; and
- (b) are made consequent on the repeal of the *Public Trustee Regulations 2009* under section 11 of the *Subordinate Legislation Act 1992*.