



Public Trustee Act 1978

Public Trustee Regulation 2012

Current as at 1 November 2016



Queensland

Public Trustee Regulation 2012

Contents

| | | Page |
|-------------------|--|------|
| Part 1 | Preliminary | |
| 1 | Short title | 3 |
| 2 | Commencement | 3 |
| 3 | Definitions | 3 |
| Part 2 | Interest and investments | |
| 4 | Interest payable on amounts in common fund—Act, s 19(1)(c) . | 3 |
| 5 | Prescribed investments for unclaimed moneys—Act, s 25(3)(b) | 4 |
| Part 3 | Fees and remuneration | |
| 6 | Remuneration of advisory trustees—Act, s 41(8) | 4 |
| 7 | Fees for legal services by official solicitor—Act, s 142(2)(h) | 4 |
| 8 | Power to remit fees—Act, s 142(2)(ha) | 5 |
| Part 4 | Miscellaneous financial matters | |
| 9 | Application of the Act, pt 8 to unclaimed superannuation benefits—Act, s 97B | 5 |
| 10 | Preparing accounts—Act, s 142(2)(e) | 6 |
| Part 5 | General | |
| 11 | Seal—Act, s 142(2)(a) | 7 |
| 12 | Execution of documents—Act, s 142(2)(a) | 7 |
| 13 | Provision of legal assistance—Act, s 142(2)(j) | 7 |
| Part 6 | Repeal | |
| 14 | Repeal of Public Trustee Regulation 2001 | 8 |
| Schedule 1 | Interest payable on amounts in common fund | 9 |
| Schedule 2 | Dictionary | 10 |

Public Trustee Regulation 2012

Part 1 Preliminary

1 Short title

This regulation may be cited as the *Public Trustee Regulation 2012*.

2 Commencement

This regulation commences on 31 August 2012.

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 common fund—Act, s 19(1)(c)

- (1) For the Act, section 19(1)(c), the annual rate of interest payable to an estate having an amount held in the common fund is stated in schedule 1.
- (2) However, for a term deposit amount for an estate, the annual rate of interest payable under the Act, section 19(1)(c) to the estate for the term deposit amount is 1.75%.
- (3) Also, if a term deposit amount for an estate is a class 2 amount and the rate agreed under schedule 1, item 2(a) or the rate allowed by order of a court is more than the rate mentioned in subsection (2) for the term deposit amount, the annual rate of interest payable under the Act, section 19(1)(c) to the estate for the term deposit amount is the rate agreed or allowed.

[s 5]

(4) Interest payable to an estate under the Act, section 19(1)(c) is calculated on the daily balance of the amount held for the estate.

(5) In this section—

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

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

For the Act, section 25(3)(b), the investments mentioned in the Act, section 19(1)(d) are prescribed.

Part 3 Fees and remuneration

6 Remuneration of advisory trustees—Act, s 41(8)

(1) The remuneration of an advisory trustee out of an estate 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.

7 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.

(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) Fees for legal services provided by the official solicitor must be paid into the common fund.
- (4) In this section—
legal services includes conveyancing services.

8 Power to remit fees—Act, s 142(2)(ha)

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

Part 4 Miscellaneous financial matters

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

- (1) The Act, part 8 applies to an unclaimed superannuation benefit if 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) The Act, part 8 also applies to an unclaimed superannuation benefit if—
 - (a) more than 2 accountable persons hold the benefit; and

[s 10]

- (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 the Act, part 8 under this section extends to the following things and persons—
- (a) an unclaimed superannuation benefit situated outside Queensland, whether or not in Australia;
 - (b) anything done, 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.

10 Preparing accounts—Act, s 142(2)(e)

- (1) The public trustee must, at times 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 an interested person a free copy of the regular account; and
 - (b) at the request of the interested person and on payment of the appropriate fee, give the interested 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.

interested person means a person the public trustee considers has a right to, or an interest in, a regular account.

Part 5 General

11 **Seal—Act, s 142(2)(a)**

The design of the corporation's seal may be decided by the public trustee.

12 **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.

13 **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—
 - (i) does not meet the criteria for legal assistance under the *Legal Aid Queensland Act 1997*, section 11; or
 - (ii) is refused legal assistance under the *Legal Aid Queensland Act 1997*; and
 - (b) the Minister has given approval for the public trustee to give aid to the person.
- (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.

Part 6 **Repeal**

14 **Repeal of Public Trustee Regulation 2001**

The Public Trustee Regulation 2001, SL No. 152 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—1.75%; 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—1.75%; 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 paragraphs (a) and (b) do not apply—a rate not less than 1.75% 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—1.75%.
- 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—0.3%.

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 an amount received by the public trustee for an estate under—

- (a) the Act, part 3, other than a class 2 amount; or
- (b) the Act, section 59.

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

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

class 5 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, class 3 amount or class 4 amount.

estate means an estate under administration.

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

1 Index to endnotes

- 2 Key
- 3 Table of reprints
- 4 List of legislation
- 5 List of annotations

2 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 |
| amd | = amendment | prov | = provision |
| t | | | |
| 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 | renu | = renumbered |
| | | m | |
| ins | = inserted | rep | = repealed |
| lap | = lapsed | (retro | = retrospectively |
| | |) | |
| notf | = notified | rv | = revised version |
| d | | | |
| num | = numbered | s | = section |

| Key | Explanation | Key | Explanation |
|---------------|--------------------|--------------|---|
| o in c | = order in council | sch | = schedule |
| om | = omitted | sdiv | = subdivision |
| orig | = original | SIA | = Statutory Instruments Act 1992 |
| p | = page | SIR | = Statutory Instruments Regulation 2012 |
| para | = paragraph | SL | = subordinate legislation |
| prec | = preceding | sub | = substituted |
| pres | = present | unnum | = unnumbered |
| prev | = previous | m | |

3 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the **Reprints Act 1992** used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3003 9601 or email legislation.queries@oqpc.qld.gov.au.

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

| Reprint No. | Amendments included | Effective | Notes |
|--------------------|----------------------------|------------------|--------------|
| 1 | none | 31 August 2012 | |
| 1A | 2012 SL No. 185 | 1 November 2012 | |

| Reprint No. | Amendments included | Effective | Notes |
|--------------------|----------------------------|------------------|--------------|
| 1B | 2012 SL No. 214 | 1 December 2012 | |

| Current as at | Amendments included | Notes |
|----------------------|----------------------------|--------------|
| 1 February 2013 | 2013 SL No. 6 | |
| 1 April 2013 | 2013 SL No. 30 | |
| 1 July 2013 | 2013 SL No. 124 | |
| 1 January 2014 | 2013 SL No. 293 | |
| 1 April 2015 | 2015 SL No. 7 | |
| 1 May 2015 | 2015 SL No. 17 | |
| 1 July 2015 | 2015 SL No. 55 | |
| 1 September 2016 | 2016 SL No. 148 | |
| 1 November 2016 | 2016 SL No. 186 | |

4 List of legislation

Regulatory impact statements

For subordinate legislation that has a regulatory impact statement, specific reference to the statement is included in this list.

Explanatory notes

All subordinate legislation made on or after 1 January 2011 has an explanatory note.

Public Trustee Regulation 2012 SL No. 145

made by the Governor in Council on 30 August 2012

notfd gaz 31 August 2012 pp 1097–9

ss 1–2 commenced on date of notification

remaining provisions commenced 31 August 2012 (see s 2)

exp 1 September 2022 (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. 5) 2012 SL No. 185

notfd gaz 26 October 2012 pp 264–6
ss 1–2 commenced on date of notification
remaining provisions commenced 1 November 2012 (see s 2)

Public Trustee Amendment Regulation (No. 6) 2012 SL No. 214

notfd gaz 30 November 2012 pp 444–6
ss 1–2 commenced on date of notification
remaining provisions commenced 1 December 2012 (see s 2)

Public Trustee Amendment Regulation (No. 1) 2013 SL No. 6

notfd gaz 1 February 2013 pp 192–4
ss 1–2 commenced on date of notification
remaining provisions commenced 1 February 2013 (see s 2)

Public Trustee Amendment Regulation (No. 2) 2013 SL No. 30

notfd gaz 15 March 2013 pp 387–8
ss 1–2 commenced on date of notification
remaining provisions commenced 1 April 2013 (see s 2)

Public Trustee Amendment Regulation (No. 3) 2013 SL No. 124

notfd gaz 28 June 2013 pp 739–47
ss 1–2 commenced on date of notification
remaining provisions commenced 1 July 2013 (see s 2)

Public Trustee Amendment Regulation (No. 4) 2013 SL No. 293

notfd <www.legislation.qld.gov.au> 20 December 2013
ss 1–2 commenced on date of notification
remaining provisions commenced 1 January 2014 (see s 2)

Public Trustee Amendment Regulation (No. 1) 2015 SL No. 7

notfd <www.legislation.qld.gov.au> 27 March 2015
ss 1–2 commenced on date of notification
remaining provisions commenced 1 April 2015 (see s 2)

Public Trustee Amendment Regulation (No. 2) 2015 SL No. 17

notfd <www.legislation.qld.gov.au> 1 May 2015
ss 1–2 commenced on date of notification
remaining provisions commenced 1 May 2015 (see s 2)

Public Trustee Amendment Regulation (No. 3) 2015 SL No. 55

notfd <www.legislation.qld.gov.au> 26 June 2015
ss 1–2 commenced on date of notification
remaining provisions commenced 1 July 2015 (see s 2)

Public Trustee Amendment Regulation (No. 1) 2016 SL No. 148

notfd <www.legislation.qld.gov.au> 26 August 2016
ss 1–2 commenced on date of notification
remaining provisions commenced 1 September 2016 (see s 2)

Public Trustee (Interest Rate) Amendment Regulation 2016 SL No. 186

notfd <www.legislation.qld.gov.au> 21 October 2016
ss 1–2 commenced on date of notification
remaining provisions commenced 1 November 2016 (see s 2)

5 List of annotations

Interest payable on amounts in common fund—Act, s 19(1)(c)

s 4 amd 2012 SL No. 185 s 4; 2012 SL No. 214 s 4; 2013 SL No. 6 s 4; 2013 SL No. 30 s 4; 2013 SL No. 124 s 4; 2015 SL No. 7 s 4; 2015 SL No. 17 s 4; 2015 SL No. 55 s 4; 2016 SL No. 148 s 4; 2016 SL No. 186 s 4

SCHEDULE 1—INTEREST PAYABLE ON AMOUNTS IN COMMON FUND

amd 2013 SL No. 30 s 5; 2013 SL No. 293 s 4; 2015 SL No. 7 s 5

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