



*Public Trustee Act 1978*

# Public Trustee Regulation 2012

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Queensland

# Public Trustee Regulation 2012

## 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 common fund—Act, s 19 . . . . .	3
5	Prescribed investments for unclaimed moneys—Act, s 25(3)(b) . . . . .	4
<b>Part 3</b>	<b>Fees and remuneration</b>	
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
<b>Part 4</b>	<b>Miscellaneous financial matters</b>	
9	Application of the Act, pt 8 to unclaimed superannuation benefits—Act, s 97B . . . . .	5
10	Preparing accounts—Act, s 142(2)(e) . . . . .	6
<b>Part 5</b>	<b>General</b>	
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
<b>Part 6</b>	<b>Repeal</b>	
14	Repeal of Public Trustee Regulation 2001 . . . . .	8
<b>Schedule 1</b>	<b>Interest payable on amounts in common fund</b> . . . . .	9
<b>Schedule 2</b>	<b>Dictionary</b> . . . . .	10



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# 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) 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 1.28%.
- (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]

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(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

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- (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

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- (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.



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## 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.

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# 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—0.2%; 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—0.2%; or
  - (c) payable in the ordinary course of administration or at call—0.2%.
- 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 0.86% 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—0.86%.
- 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—0.2%.

## 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.