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[1979

Crown Law Department,
Perth, 10th January, 1979.

THE undermentioned regulations made under the provisions of the Public Trustee Act, 1941 and amended from time to time up to and including the 18th August, 1978 are reprinted as so amended pursuant to the Reprinting of Regulations Act, 1954 by authority of the Attorney General.

R. M. CHRISTIE,
Under Secretary for Law.

PUBLIC TRUSTEE ACT, 1941

Regulations.

Published in the *Government Gazette* on the 26th June, 1942 and reprinted in the *Government Gazette* on the 5th July, 1956, incorporating all amendments thereto up to and including the 3rd May, 1955, and now further reprinted incorporating the amendments thereto published in the *Government Gazette* on the 1st May, 1969; 30th June, 1972; 28th December, 1973 and the 18th August, 1978, and the amendments that, pursuant to the provisions of section 8 of the Decimal Currency Act 1965 are deemed for the purposes of this reprint to be amendments to the regulations; pursuant to the Reprinting of Regulations Act, 1954.

Reprinted pursuant to the Reprinting of Regulations Act, 1954, by authority of the Attorney General dated 10th January, 1979.

PUBLIC TRUSTEE ACT, 1941

Regulations.

1. In these regulations, if not inconsistent with the context—
 “The Act” means the Public Trustee Act, 1941;
 “Estate” includes trusts estates and property which the Public Trustee as trustee, executor, administrator, guardian, next friend, committee, manager, receiver, attorney or otherwise is entitled under the Act to control, manage, administer, or deal with.

Reg. 2
Amended by
G.G. 19/5/44,
p. 388.

2. The Public Trust Office shall be situate in the city of Perth. Any premises which the Public Trustee from time to time occupies for the purpose of carrying on the business of the Public Trust Office shall be the Public Trust Office for the purpose of the Act and these regulations.

(3) (i) The common seal of the Public Trustee shall bear the words “The Common Seal of the Public Trustee, Western Australia.”

(ii) The common seal shall be kept in the custody of the Public Trustee, or such other officer as is authorised by him.

4. Every claim upon the Public Trustee shall be made in the form required by the Public Trustee.

Reg. 5.
Amended by
G.G. 30/6/72,
p. 2169.

5. The several forms in the First Schedule hereto shall be used for the purposes to which they are respectively applicable, with such variations as may be required.

Reg. 6.
Added by
G.G. 20/11/42,
p. 1182.
Substituted
by G.G.
30/6/72,
p. 2169.

6. The fees to be charged by the Public Trustee shall be those set out in the Second Schedule to these regulations.

Reg. 6A
added by
G.G. 9/7/43,
p. 665.
Amended by
G.G. 13/8/78,
p. 3063.

- 6A. Agents of the Public Trustee may be paid an allowance for estates secured by them and administered by the Public Trustee in accordance with the following scale, such allowance to be a charge against the revenue of the Public Trustee:—

Value of Estate.	Allowance.
Up to \$100.00	Nil
Over \$100 and not exceeding \$1 000	\$5.00
Over \$1 000 and not exceeding \$2 000	\$7.50
Over \$2 000 and not exceeding \$5 000	\$10.00
Over \$5 000	\$20.00

7. All moneys received by the Public Trustee by way of commission fees and charges shall be paid to consolidated revenue.

8. [Reg. 8 revoked by G.G. 12/12/47, p. 2255.]

9. [Reg. 9 revoked by G.G. 1/5/69, p. 1347.]

Reg. 10
Substituted
by G.G.
1/5/69,
p. 1347.

10. Where the Public Trustee has undertaken the care and management of the estate of an incapable patient or infirm person, any proceeding by the Public Trustee with respect to any property of that incapable patient or infirm person or any property in which he

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is interested or for the recovery of damages for conversion of or injury thereto shall be taken in the name of that patient or person by the Public Trustee as his next friend.

11. In case of doubt as to the mode of procedure to be adopted by the Public Trustee in any particular case, the procedure to be adopted shall be such as the Court directs.

Reg. 5.

FIRST SCHEDULE.

Heading amended by G.G. 30/6/72, p. 2169.

Form No. 1.

NOTICE TO CREDITORS AND CLAIMANTS.

First Schedule amended by G.G. 18/3/78, pp. 3063-4.

In the Supreme Court of Western Australia—Probate Jurisdiction. NOTICE is hereby given that all persons having claims or demands against the estates of the undermentioned deceased persons (orders to administer whose estates were granted to me by the said Court under the Public Trustee Act, 1941) are hereby required to send particulars of such claims to me in writing on or before the day of 19 , after which date I will proceed to distribute the assets of the said deceased persons among those entitled thereto, having regard only to those claims of which I shall then have had notice.

Dated at Perth the day of 19 .

J. H. GLYNN, Public Trustee.

Name.	Date of Death.	Date of Order.	Address.	Occupation.

Form No. 2.

Public Trust Office, Perth,..... 19....

The Manager,

.....

re.....deceased.

PLEASE have the notice to creditors and claimants as shown here-under inserted once in your next issue and forward to this office the account, with a copy of the paper in which the advertisement appears.

J. H. GLYNN, Public Trustee, Perth.

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NOTICE TO CREDITORS AND CLAIMANTS.

Re.....
late of.....deceased.

ALL persons having claims or demands against the estate of the abovenamed are required to send particulars thereof in writing to the undersigned before theday of19....., otherwise they will be excluded from participating in the distribution of the assets.

Dated this day of 19..... .

J. H. GLYNN,
Public Trustee.

Form No. 3.
(Section 14 (1).)

ELECTION BY PUBLIC TRUSTEE TO ADMINISTER AN
INTESTATE ESTATE.

In the Supreme Court of Western Australia—Probate Jurisdiction.
In the matter of the Estate of.....
.....
.....
..... deceased, intestate.

WHEREAS the abovenamed deceased died at
on the day of19... , intestate,
leaving estate within the State of Western Australia the gross value
of which as estimated by the Public Trustee does not now exceed
\$10 000, and no person has taken out administration of the said
estate:

AND WHEREAS the Public Trustee is entitled to an Order to
administer such estate:

NOW this is to notify all whom it may concern that in pursuance
of section 14 (1) of the Public Trustee Act, 1941, the Public Trustee
hereby elects to administer such estate.

So far as now known to the Public Trustee the name, address,
and occupation of the said deceased at the date of his death are as
set out above and the total value of the estate is under \$.....
of which \$..... is real estate and \$..... personal estate.

Dated this day of 19..... .

Public Trustee.

Form No. 3A.
(Section 14(1).)

ELECTION BY THE PUBLIC TRUSTEE
TO ADMINISTER A TESTATE ESTATE.

In the Supreme Court of Western Australia—Probate Jurisdiction.
In the matter of the Will of
.....
.....
.....

WHEREAS the abovenamed deceased died at on the day of 19 leaving estate within the State of Western Australia the gross value of which as estimated by the Public Trustee does not exceed \$10 000 and no person has taken out probate or administration of the said estate in Western Australia.

AND WHEREAS the said deceased made last Will and Testament bearing date the day of 19.....; a certified copy of the Will is hereunto annexed and signed by the Public Trustee.

AND WHEREAS the Public Trustee is entitled to a Grant of Probate of the Will of the said deceased.

NOW this is to notify all whom it may concern that in pursuance of section 14(1) of the Public Trustee Act, 1941-1978 the Public Trustee hereby elects to administer with the Will the estate of the said deceased.

SO far as now known to the Public Trustee the name address and occupation of the said deceased at the date of death are set out above and the total value of the said estate is of which is real estate and is personal estate.

DATED this day of 19

Public Trustee.

Form No. 3B.

ELECTION BY THE PUBLIC TRUSTEE TO ADMINISTER A TESTATE ESTATE

In the Supreme Court of Western Australia—Probate Jurisdiction.

In the matter of the Will and Estate of

.....
.....
.....

WHEREAS the abovenamed deceased died at on the day of 19..... leaving estate within the State of Western Australia the gross value of which as estimated by the Public Trustee does not now exceed \$10 000 and no person has taken out probate or administration of the said estate in Western Australia.

AND WHEREAS the said deceased made last Will and Testament bearing date the day of 19.....; a certified copy of the Will is hereunto annexed and signed by the Public Trustee.

AND WHEREAS the Public Trustee is entitled to an Order to Administer with the Will the estate of the said deceased.

NOW this is to notify all whom it may concern that in pursuance of section 14 (1) of the Public Trustee Act, 1941-1978 the Public Trustee hereby elects to administer with the Will the estate of the said deceased.

SO far as now known to the Public Trustee the name address and occupation of the said deceased at the date of death are set out above and the total value of the said estate is of which is real estate and is personal estate.

DATED this day of 19.....

Public Trustee.

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Form No. 4.

MEMORANDUM REVOKING AN ELECTION BY THE PUBLIC TRUSTEE

In the Supreme Court of Western Australia—Probate Jurisdiction.

In the matter of the Estate of deceased.

WITH reference to the election by the Public Trustee, filed in this Honourable Court in this matter on the day of 19....., the Public Trustee now finds that the gross value of the property to be administered exceeds the sum of ten thousand dollars (or that the deceased died possessed of property outside the State) and the said election is hereby revoked.

DATED the day of 19.....

Public Trustee.

Form No. 5. (Section 59.)

CERTIFICATE OF APPOINTMENT (OR AUTHORITY) OF THE PUBLIC TRUSTEE.

In the matter of

THE Public Trustee hereby certifies that his appointment (or authority, as the case may be) in relation to the abovementioned in course of administration is (here set out the nature of the appointment or authority and the facts on the happening of which such authority was made or granted).

Dated the.....day of.....19.....

Public Trustee.

[SEAL.]

[Form No. 6 deleted by G.G. 18/8/78, p. 3064.]

Form No. 7. (Section 44 (6).)

CERTIFICATE OF AMOUNT OF ADVANCE FROM COMMON FUND.

THE Public Trustee hereby certifies that the amount owing by

for advances out of the Public Trustee Common Fund and interest thereon at the day of 19..... is..... dollars cents.

Dated the.....day of.....19.....

Public Trustee.

[SEAL.]

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SECOND SCHEDULE.
PUBLIC TRUSTEE'S FEES.

Second
Schedule.
Added by
G.G. 30/6/72,
pp. 2169-70.
Amended by
G.G. 28/12/73,
p. 4747;
G.G. 18/8/78,
pp. 3064-5.

1. (1) Subject to this item the following fees shall be charged in respect of the duties and services of the Public Trustee, acting alone or jointly, with respect to the estate of a deceased person (in addition to all moneys properly expended in respect of the estate)—

- (a) as to the gross capital of an estate—
- (i) where the gross capital value of the estate does not exceed \$300—\$30;
 - (ii) where the gross capital value of the estate exceeds \$300 but does not exceed \$2 000—10% of the value;
 - (iii) where the gross capital value of the estate exceeds \$2 000 the fee to be charged shall be ascertained according to the following scale—
 - \$200 or
 - 3½% on the first \$100 000 of that value;
 - 3% on the next \$100 000 of that value;
 - 2½% on the next \$200 000 of that value;
 - 2% on amounts in excess of \$400 000 of that value,
 whichever is the greater but where the fee is payable by the spouse of the deceased person the fee on the first \$100 000 of the gross capital value shall be \$200 or 3 per centum of that value whichever is the greater,
- but where—
- (iv) any property in an estate is an asset in another estate administered by the Public Trustee and in respect of which the appropriate fee in this schedule has already been paid the fee shall be 1½ per centum of the gross capital value; or
 - (v) the property in an estate consists of the proceeds of an asset which the Public Trustee receives as principal administrator from outside the State of Western Australia the fee shall be 1½ per centum of those proceeds;

- (b) as to the income of any estate—
- (i) in relation to income derived from rent—
 - (I) where the rent is collected by the Public Trustee without an agent, such amount as expressed as a percentage or otherwise under the scale adopted by the body known as the Real Estate Institute of Western Australia;
 - (II) where the rent is collected through an agent who is employed and paid a commission by the Public Trustee, such amount as equals 2½ per centum of that income;
 - (ii) in relation to income derived from sources other than rent—
 - (I) where the income is collected by the Public Trustee without an agent, 6 per centum of that income;
 - (II) where the income is collected through an agent who is employed and paid a commission by the Public Trustee, such amount as equals 2½ per centum of that income.

(2) In time of war no fees shall be charged under this item on the estate of any deceased seaman or any member of the Defence Forces as constituted under the Defence Act 1903 of the Parliament of the Commonwealth and any Act amending or in substitution for that Act where the gross value of the assets of the estate does not exceed five thousand dollars, but where the gross value of the estate exceeds five thousand dollars—

- (a) there shall be charged on so much of the gross value of the estate as exceeds five thousand dollars but does not exceed ten thousand dollars, one-half of the fee chargeable under paragraph (1) of this item; and

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- (b) there shall be charged on so much of the gross value of the estate as exceeds ten thousand dollars, the fees chargeable under paragraph (1) of this item.
2. (1) Subject to this item on the gross proceeds of assets realised or moneys collected by the Public Trustee in estates of incapable patients or persons, or infirm persons, $3\frac{1}{2}$ per centum, except that—
- (a) no commission shall be charged on moneys withdrawn from a current account or fixed deposit in a Savings Bank or Trading Bank; and
- (b) on moneys received from an officer in any State (other than this State) or a territory of the Commonwealth or of New Zealand pursuant to subsection (1) of section 30 of the Act, the fee shall be $1\frac{1}{2}$ per centum with no distinction between capital and income.
- (2) Where the estate is that of an incapacitated member of the Defence Forces as constituted under the Defence Act 1903 of the Parliament of the Commonwealth and any Act amending or in substitution for that Act and the incapacity has been accepted by the prescribed authority under the Repatriation Act 1920 of the Parliament of the Commonwealth and any Act amending or in substitution for that Act as the result of war service, the fees payable under this item shall be reduced by half.
3. On moneys received for investment under the provisions of subsection (1) of section 37 of the Act or subsection (6) of section 16E of the Motor Vehicle (Third Party Insurance) Act, 1943-1976, 1 per centum.
4. Upon income, other than income consisting of the receipts of age, invalid, unemployment or sickness benefits paid by the Department of Social Security, war and service pensions and sickness payments made by co-operative or Friendly Societies, received by the Public Trustee in respect of any fund or property held by the Public Trustee alone or jointly including income earned from investment in the Common Fund the fees payable shall be the fees referred to in subparagraph (b) of paragraph (1) of item 1 of this Schedule.
5. Where the Public Trustee acts as agent or attorney his fee or charge shall be as is agreed on, and in the absence of agreement, shall be $3\frac{1}{2}$ per centum on the gross proceeds of the assets realised and 6 per centum on the income received except that in respect of rental received by the Public Trustee the fee shall be as fixed from time to time by the body known as the Real Estate Institute of Western Australia.
6. In any estate or trust where it is considered desirable to purchase a dwelling house for the use of any beneficiary under the trust the Public Trustee in arranging such purchase shall be entitled to a fee of 1 per centum of the value of such dwelling house in addition to any expenses incurred in connection with the purchase.
7. When the Public Trustee administers the estate of a deceased person moneys properly expended in respect of the estate shall include a charge to cover postages and stationery in accordance with the following scale—

Gross Value of Estates.

Not exceeding \$300	\$3.00
Exceeding \$300 but not exceeding \$1 000	\$6.00
Exceeding \$1 000 but not exceeding \$4 000	\$10.00
Exceeding \$4 000	\$20.00

8. The remuneration of advisory trustees shall, subject to any provisions of the trust instrument, be such as is fixed for each estate by the Public Trustee with the concurrence of the advisory trustees or, if they do not agree, such as is fixed by the Minister.
9. For any matter or service not in this Schedule provided for, the fees of the Public Trustee shall be such as are agreed or in the absence of agreement such as are fixed by the Public Trustee.