

Public Trustee Regulations 1942

Reprinted as at 3 October 2000

Western Australia

Public Trustee Regulations 1942

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Reprinted under the Reprints Act 1984 as at 3 October 2000

Public Trustees Act 1941

Public Trustee Regulations 1942

1. Citation and Interpretation

- (1) These regulations may be cited as the *Public Trustee* Regulations 1942 ¹.
- (2) In these regulations unless the contrary intention appears
 - "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.

[Regulation 1 inserted in Gazette 28 September 1984 p.3158.]

2. Public Trust Office

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.

[Regulation 2 amended in Gazette 19 May 1944 p.388.]

3. Common Seal

(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. Form of claim

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

5. Forms

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

[Regulation 5 amended in Gazette 30 June 1972 p.2169.]

6. Fees

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

[Regulation 6 inserted in Gazette 30 June 1972 p.2169; amended in Gazette 20 July 1993 p.3962.]

6AA. Certain costs payable by Public Trustee

Where the Public Trustee employs a solicitor, in accordance with section 53 of the Act, to obtain a grant of probate or grants of administration in relation to the estate of a deceased person, the Public Trustee shall —

- (a) pay the solicitor's costs to the solicitor from moneys in the estate; and
- (b) reduce the fees charged under item 1(1)(a) of the Second Schedule by either
 - (i) the fee charged by the solicitor for obtaining the grant; or
 - (ii) the fee which would have been payable to the solicitor under the *Non-Contentious Probate Costs Scale 1991**,

whichever is the lesser.

[* Determined by the Legal Costs Committee under section 58W of the Legal Practitioners Act 1893.]

[Regulation 6AA inserted in Gazette 20 July 1993 pp.3962-3.]

6A. Allowances payable to agents

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 \$100.00 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

[Regulation 6A inserted in Gazette 9 July 1943 p.665; amended in Gazette 18 August 1978 p.3063.]

7. Moneys to be paid to consolidated revenue

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

- [8. Revoked in Gazette 12 December 1947 p.2255.]
- [9. Revoked in Gazette 1 May 1969 p.1347.]

10. Public Trustee next friend of represented person

Where the Public Trustee is the administrator or joint administrator of the estate of a represented person any proceeding by the Public Trustee with respect to any property of the represented person or any property in which he is interested or for the recovery of damages for conversion of or injury to

r. 10A

that property shall be taken in the name of the represented person by the Public Trustee as his next friend.

[Regulation 10 inserted in Gazette 20 July 1993 p.3963.]

10A. Prescribed amount — s. 45(2)

The prescribed amount referred to in section 45(2) of the Act is \$500.

[Regulation 10A inserted in Gazette 5 September 1986 p.3272; amended in Gazette 6 September 1991 p.4714.]

11. Procedure

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.

First Schedule

(Reg. 5)

Form No. 1

NOTICE TO CREDITORS AND CLAIMANTS

[Heading amended in Gazette 30 June 1972 p.2169.]

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 20, 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

20 .

J. H. GLYNN, Public Trustee.

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

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First Schedule

Form No. 2
Public Trust Office, Perth,
The Manager,
redeceased.
PLEASE have the notice to creditors and claimants as shown hereunder 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.
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 the
excluded from participating in the distribution of the assets.
Dated this day of
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
WHEREAS the abovenamed deceased died at or
the
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 <i>Public Trustee Act 1941</i> , 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
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
administration of the said estate in Western Australia.
AND WHEREAS the said deceased made last Will and Testament bearing date the
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 <i>Public Trustee Act 1941</i> 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 20
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
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
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 <i>Public Trustee Act 1941</i> 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
Public Trustee

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
In the matter of the Estate of
WITH reference to the election by the Public Trustee, filed in this Honourable Court in this matter on the day of
the Public Trustee now finds that the gross value of the property to be administered exceeds the sum of \$10 000 (or that the deceased died possessed of property outside the State) and the said election is hereby revoked.
DATED the
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 20
Public Trustee.
[SEAL.]
[Form No. 6 deleted in Gazette 18 August 1978 p.3064.]

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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
Dated the day of
Public Trustee.
[SEAL.]

[First Schedule amended in Gazette 18 August 1978 pp.3063-4.]

Second Schedule

Public Trustee's Fees

- (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 value of an estate
 - (i) where that value does not exceed \$300, \$30;
 - (ii) where that value exceeds \$300 but does not exceed \$2 000, 10% of that value;
 - (iii) where that value exceeds \$2 000, according to the scale 4% on the first \$200 000 of that value, subject to a minimum of \$200;
 - 3.3% on the next \$200 000 of that value;
 - 2.2% on the next \$200 000 of that value; and
 - 1.1% on the amount in excess of \$600 000 of that value;
 - (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 2.75% 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% 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 2.75% of that income.
- (1a) The fees to be charged under subitem (1)(a) shall be reduced in accordance with the following provisions
 - (a) where the estate includes
 - (i) a residential property that was the principal place of residence of the deceased person; or
 - (ii) an interest as a tenant in common in a residential property of the kind described in subparagraph (i),

and that asset is transferred to the spouse or a child (within the meaning of the *Inheritance (Family and Dependants Provision) Act 1972*) of the deceased person, the fee payable on that part of the estate is 1.1% of the gross capital value of that asset;

- (b) where 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 payable shall be 1.65% of the gross capital value of the asset;
- (c) where 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 payable shall be 1.65% of those proceeds; and
- (d) where the estate includes a lump sum payment, which is paid directly to the Public Trustee by the trustees of a superannuation fund, the fee payable on the part of the estate consisting of the lump sum payment shall be 1.65%.
- (1b) In subitem (1a)(a) the reference to the spouse of the deceased person includes a person who at the time of the deceased person's death was living with the deceased person in a marriage-like relationship, although not legally married to the deceased person.
- (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

Second Schedule

where the gross value of the assets of the estate does not exceed \$5 000, but where the gross value of the estate exceeds \$5 000 —

- (a) there shall be charged on so much of the gross value of the estate as exceeds \$5 000 but does not exceed \$10 000, one-half of the fee chargeable under subitem (1); and
- (b) there shall be charged on so much of the gross value of the estate as exceeds \$10 000, the fees chargeable under subitem (1).
- 2. (1) Subject to this item, the fee payable on the gross capital value of assets realised or moneys collected by the Public Trustee in relation to the estate of a represented person is 4% of that value.
 - (1a) Where the assets realised by the Public Trustee include the principal place of residence of the represented person, the fee payable in respect of that asset is 2.2% of its gross capital value.
 - (1b) The fee prescribed under subitem (1) does not apply to moneys withdrawn by the Public Trustee from a cheque account or savings account held with a bank or other financial institution.
 - (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 section 37(1) of the Act (other than moneys paid into court by a party to an action or proceedings), the fee chargeable is 1.375% of the amount of those moneys.

3A. Fee payable in respect of investment outside Common Fund

(1) Subject to subitem (2), on income earned, or on a distribution to an estate, from an investment outside the Common Fund under section 37(1) of the Act, the fee payable is 6% of the income earned or amount distributed, as the case may be.

(2) The fee prescribed under subitem (1) does not apply to any capital gain resulting from the realisation of an investment referred to in that subitem.

3B. Fee payable for administration of certain trusts

Where the Public Trustee has completed duties as the executor or administrator of an estate but continues to hold assets of the estate as trustee (including as trustee of a perpetual charitable trust), the fee payable for work performed in connection with the administration of the trust is \$110 per hour (or part of an hour).

4. Fees payable on income received

- (1) Subject to subitem (2), the fees payable on income received by the Public Trustee in respect of any fund or property held by the Public Trustee, alone or jointly, are the same as the fees referred to in item 1(1)(b).
- (2) The fee payable on income consisting of receipts of pensions or benefits in respect of unemployment, age, sickness, invalidity or war service received by the Public Trustee in respect of any fund held by the Public Trustee, alone or jointly, is 3.3% of the amount received, where the fund has a balance of \$2 000 or more or the person on whose behalf the fund is held has other funds or investments with a total value of \$2 000 or more.
- 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 agreements, shall be 3.85% on the gross proceeds of the assets realised and 6% 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
 - (a) purchase a dwelling house; or
 - (b) purchase vacant land and construct a dwelling house on that land,

for the use of any beneficiary under the estate or trust, the Public Trustee in arranging the purchase or the purchase and construction, as the case may be, is entitled to a fee of 1.1% of the sum of the values of —

Second Schedule

- (c) the dwelling house purchased or constructed; and
- (d) the land on which that dwelling house is situated, in addition to any expenses incurred in connection with the purchase or the purchase and construction.
- 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 —

On estates not exceeding \$10 000 in gross value \$27.50 On estates exceeding \$10 000 in gross value \$55

- 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.
- 9A.(1) The fees prescribed by subitems (2) to (5) are payable to the Public Trustee in respect of the exercise of his powers or the performance of his duties in relation to property which has been placed under the control of the Public Trustee under the *Crimes (Confiscation of Profits) Act 1988*.
 - (2) Fees in relation to the gross capital value of the property as determined by the Public Trustee are
 - (a) where that value does not exceed \$300, \$30;
 - (b) where that value exceeds \$300 but does not exceed \$2 000, an amount equal to 10% of that value; and
 - (c) where that value exceeds \$2 000, an amount equal to 0.2% of that value, subject to a minimum fee of \$200 where 0.2% of that value is less than or equal to \$200 (in this item called "the ascribed minimum fee").
 - (3) A fee payable under subitem (2)(c), other than the ascribed minimum fee, is payable in respect of each whole or part period of 12 months during which the Public Trustee has control of the property.

- (4) Where the Public Trustee is directed by a court to dispose of property the gross capital value of which exceeds \$2 000 and which attracts under subitem (2)(c) a fee other than the ascribed minimum fee, there is payable, in addition to the fees prescribed by subitems (2) and (3), an amount equal to 2.75% of the gross amount realised on the disposal of the property.
- (5) The aggregate fees payable under subitems (2) to (4) in respect of property the gross capital value of which exceeds \$2 000 shall not exceed 4% of the gross capital value of the property.

9B. Fees payable to the Public Trustee for examination of accounts

(1) In this item —

"value" means the gross capital value of the estate at the date of the examination.

(2) The fees specified in the Table to this subitem are payable to the Public Trustee for the annual examination of the accounts of the estate of a represented person.

Table		
Value of estate	Fee	
\$	\$	
1 000 — 10 000	22	
10 001 — 20 000	55	
20 001 upwards	66 per hour (or part thereof) spent examining the accounts	

9C. Fee payable for management of represented person's estate

- (1) In this item, unless the contrary intention appears
 - "value" means gross capital value on 30 June in the financial year in respect of which the fee is payable.
- (2) Subject to subitems (3) and (4), the annual fee payable to the Public Trustee for management of the estate of a represented person is the amount specified in the Table to this subitem corresponding to the value of those assets of the estate that are under the day to day care of the Public Trustee.

Table

Second Schedule

Value of estate \$	Fee \$
Not more than 5 000	55
5 001 to 15 000	110
15 001 to 25 000	165
25 001 to 50 000	220
50 001 to 100 000	330
100 001 to 500 000	550
500 001 to 1 000 000	1 100
More than 1 000 000	2 750

- (3) The annual fee referred to in subitem (2) is to be calculated on a pro rata basis for the first financial year in respect of which the fee is payable, unless administration of the estate commences on 1 July in that year.
- (4) If the Public Trustee ceases to administer the estate of a represented person on a day other than 30 June in a particular financial year
 - (a) the annual fee referred to in subitem (2) is to be calculated on a pro rata basis for that year; and
 - (b) for that purpose the value of the assets referred to in subitem (2) is their gross capital value on the day on which administration of the estate ceases.

9D. Fee payable for work done in relation to orders made under the Guardianship and Administration Act 1990

The fees calculated in accordance with the Table to this item are payable to the Public Trustee for work done in order to comply with an order made under the *Guardianship and Administration Act 1990* in respect of an estate, where the Public Trustee is not an executor, trustee or administrator of the estate.

Table

Officer carrying out work Fee

Clerical officer \$77 per hour (or part thereof)
Professional officer \$110 per hour (or part thereof)

9E. Next of kin searches

- (1) Subject to subitem (2), the fee payable to the Public Trustee in respect of work done for the purpose of establishing the next of kin of a deceased person is to be calculated at the rate of \$20 for every search of records conducted, or certificate, certified copy or other document obtained, whether in this State or elsewhere.
- (2) The minimum fee payable under this item is \$200.

9F. Fee payable for site visits

A fee of \$27.50 per visit is payable to the Public Trustee where it is necessary in managing an estate to visit any property or building that is part of the estate.

9G. Fees payable for certain services

The following fees are payable to the Public Trustee for services provided in the management of an estate —

- (a) \$110 per hour (or part of an hour) for the preparation of a tax return by an officer who is a registered tax agent under the *Income Tax Assessment Act 1936* of the Commonwealth;
- (b) \$110 for the arrangement of a lease in respect of land or premises that form part of the estate.
- 10. This Schedule is subject to section 38.

[Second Schedule inserted in Gazette 30 June 1972 pp.2169-70; amended in Gazette 28 December 1973 p.4747; 18 August 1978 pp.3064-5; 23 May 1980 p.1551; 28 September 1984 p.3158; 31 October 1986 p.4040; 24 February 1989 p.593; 6 October 1989 pp.3726-7; 6 September 1991 p.4715; 17 March 1992 p.1227; 20 July 1993 pp.3963-4; 21 April 1995 pp.1404-5; 11 March 1997 pp.1480-3; 30 June 2000 pp.3429-31.]

Notes

This reprint is a compilation as at 3 October 2000 of the *Public Trustee Regulations 1942* and includes the amendments effected by the regulations referred to in the following Table.

Table of Regulations

Table of Regulations Citation Gazettal Commencement Miscellaneous					
Citation	Gazettai	Commencement	Miscellaneous		
Public Trustee Regulations 1942	26 June 1942 pp.692-5	26 June 1942			
	20 November 1942 p.388	20 November 1942			
	9 July 1943 p.655	9 July 1943			
	19 May 1944 p.388	19 May 1944			
	12 December 1947 p.2255	12 December 1947			
	1 May 1969 p.1347	1 May 1969			
	30 June 1972 p.2169	30 June 1972			
	28 December 1973 p.4747	1 January 1974 (see regulation 2)			
	18 August 1978 pp.3063-5	18 August 1978			
	17 January 1979 pp.103-10	17 January 1979			
	23 May 1980 pp.1551-2	23 May 1980			
Public Trustee Amendment Regulations 1984	28 September 1984 p.3158	1 October 1984 (see regulation 2)			
Public Trustee Amendment Regulations 1986	5 September 1986 pp.3271-2	5 September 1986 (see regulation 2 and <i>Gazette</i> 5 September 1986 p.3265)			
Public Trustee Amendment Regulations (No. 2) 1986	31 October 1986 pp.4039-40	31 October 1986			

Citation	Gazettal	Commencement	Miscellaneous
Public Trustee Amendment Regulations 1989	24 February 1989 p.593	24 February 1989	
Public Trustee Amendment Regulations (No. 2) 1989	6 October 1989 pp.3726-7	6 October 1989	
Public Trustee Amendment Regulations 1991	6 September 1991 pp.4714-5	6 September 1991	
Public Trustee Amendment Regulations 1992	17 March 1992 pp.1226-7	17 March 1992	
Public Trustee Amendment Regulations 1993	20 July 1993 pp.3962-4	20 July 1993	
Public Trustee Amendment Regulations 1995	21 April 1995 pp.1403-5	21 April 1995	
Public Trustee Amendment Regulations 1997	11 March 1997 pp.1480-3	11 March 1997	
Public Trustee Amendment Regulations 2000	30 June 2000 pp.3429-31	1 July 2000 (see regulation 2)	