

South Australia

Guardianship and Administration Regulations 1995

under the *Guardianship and Administration Act 1993*

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Legislative history

1—Short title

These regulations may be cited as the *Guardianship and Administration Regulations 1995*.

2—Commencement

These regulations will come into operation on the day on which the *Guardianship and Administration Act 1993* comes into operation.

3—Interpretation

In these regulations, unless the contrary intention appears—
the Act means the *Guardianship and Administration Act 1993*.

4—Exercise of Board's powers by member sitting alone (section 6(5))

- (1) For the purposes of section 6(5) of the Act, the powers of the Board may be exercised as follows:
 - (a) the President or a Deputy President may, sitting alone, exercise any power of the Board other than the power to make—
 - (i) a guardianship order (section 29(1) of the Act);
 - (ii) an administration order (section 35(1) of the Act);
 - (b) a member of the Board who is drawn from a panel may, sitting alone, exercise any power of the Board other than the power to—

- (i) make a guardianship order (section 29(1) of the Act);
 - (ii) make an administration order (section 35(1) of the Act);
 - (iii) make an order exempting a disposition of property or contract from being voidable by an administrator (section 42(3) of the Act);
 - (iv) make an order disallowing an item of expenditure by a private administrator (section 44(5) of the Act);
 - (v) make an order determining the costs and expenses to be paid by an administrator to the Public Trustee (section 44(6) of the Act);
 - (vi) make an order disallowing an item of expenditure by the Public Trustee (section 45(2) of the Act);
 - (vii) review a decision of the Registrar (section 64 of the Act);
 - (viii) state a case to the Supreme Court on any question of law (section 65 of the Act);
 - (ix) make an order authorising publication of a report of Board proceedings (section 81(2) of the Act or section 35(2) of the *Mental Health Act 1993*);
- (c) notwithstanding paragraphs (a) and (b), any member of the Board sitting alone may exercise the power of the Board to make an interim order under any provision of the Act, provided that—
- (i) the order is not to have effect for more than 7 days; and
 - (ii) the power is not exercised more than once in relation to any one particular order in any proceedings.

5—Powers exercisable by the Registrar (section 17)

For the purposes of section 17(3)(b) of the Act, the Registrar may, with the approval of the President, exercise the powers of the Board to—

- (a) recognise a person as a "recognised advocate" for the purposes of the Act (section 3 of the Act);
- (b) direct the Public Advocate to carry out an investigation (section 28(1) of the Act);
- (c) approve the exceeding of an expenditure limit by an administrator (section 39(3) of the Act);
- (d) approve the disposition or acquisition of real property by an administrator (section 39(4) of the Act);
- (e) authorise the disclosure of the will etc of a protected person (section 40(3) of the Act);
- (f) authorise the exercise by an administrator of powers after the death of a protected person (section 41(3) of the Act);
- (g) require an administrator to furnish the Board and the Public Trustee with further evidence supporting statement of accounts (section 44(3)(b) of the Act);

- (h) allow access to statement of accounts to persons other than the protected person (section 44(7) of the Act);
- (i) require the Public Trustee to include other particulars in statement of accounts (section 45(1)(c) of the Act);
- (j) allow access to Public Trustee's statement of accounts to persons other than the protected person (section 45(4) of the Act);
- (k) determine that a professional administrator is entitled to remuneration out of the estate (section 46(1) of the Act);
- (l) fix a rate of remuneration above or below prescribed scale (section 46(2) of the Act);
- (m) revoke the appointment of a guardian or administrator where the guardian or administrator seeks such revocation (section 54(2)(a) of the Act);
- (n) review the circumstances of any protected person other than one who is subject to a continuing detention order (section 57(1)(b) of the Act);
- (o) consent to the medical or dental treatment of a person (section 59(2)(b)(ii) of the Act);
- (p) suspend operation of a decision, direction or order of the Board pending appeal (section 72(2) of the Act);
- (q) give advice or directions to an administrator (section 74(1) of the Act);
- (r) direct that an application under section 74(1) of the Act be served on a person and be determined in the presence of parties (section 74(2) of the Act);
- (s) review guardianship orders made under the former Act (Schedule Division 3 clause 8(d) of the *Mental Health Act 1993*);
- (t) review delegations made under former Act (Schedule Div 3 clause 10(e) of the *Mental Health Act 1993*).

6—Annual report (Board)—prescribed particulars of warrants (section 16)

For the purposes of section 16(2) of the Act, the particulars relating to warrants issued by the President and Deputy Presidents during the year that must be included in the Board's annual report are as follows:

- (a) the number of applications for warrants made during the year;
- (b) the status of applicants;
- (c) the age, sex and details of the alleged mental incapacity of the persons to whom the applications related;
- (d) the grounds on which the applications were based;
- (e) the number of applications withdrawn during the year;
- (f) the number of warrants issued during the year;
- (g) the number of warrants refused during the year;
- (h) in relation to warrants issued—
 - (i) the status of applicants;

- (ii) the age, sex and details of the mental incapacity of the persons to whom the warrants related;
- (iii) the grounds on which the warrants were issued;
- (iv) the action taken under the warrants.

7—Annual report (Public Advocate)—prescribed particulars of warrant applications (section 24)

For the purposes of section 24(2) of the Act, the particulars relating to applications for warrants made during the year that must be included in the Public Advocate's annual report are as follows:

- (a) the number of applications for warrants made during the year;
- (b) the age, sex and details of the alleged mental incapacity of the persons to whom the applications related;
- (c) the grounds on which the applications were based;
- (d) the number of applications withdrawn during the year;
- (e) the number of warrants issued during the year;
- (f) the number of warrants refused during the year;
- (g) in relation to warrants issued—
 - (i) the age, sex and details of the mental incapacity of the persons to whom the warrants related;
 - (ii) the grounds on which the warrants were issued;
 - (iii) the action taken under the warrants.

8—Limits on expenditure by administrators (section 39)

- (1) For the purposes of section 39(3) of the Act, the administrator of the estate of a protected person cannot, except with the prior approval of the Board, expend in any one year of administration more than the following amounts of money out of the estate in respect of the following matters:
 - (a) for accommodation costs (by way of rent or board and lodging) for the protected person—\$12 000;
 - (b) for premiums paid under the *Retirement Villages Act 1987*—\$100 000;
 - (c) for the maintenance of the protected person's spouse—
 - (i) the sum produced by adding together the amount of average weekly earnings applicable in respect of each week in that year; or
 - (ii) one half of the protected person's net income (that is to say, taxable income less tax) for the last financial year,whichever is the lesser;
 - (d) for the maintenance, education or advancement of the protected person's children and grandchildren—\$7 000.

(2) In this regulation—

average weekly earnings means the amount published quarterly by the Commonwealth Statistician of the Trend Estimate of Average Weekly Earnings for Ordinary Hours of Work for each Full-time Employed Adult Person in the State.

9—Rate of remuneration for professional administrators (section 46)

For the purposes of section 46(2) of the Act, the rate of remuneration for a professional administrator is \$57.50 per hour.

10—Prescribed scale of costs for appeals to ADD

For the purposes of section 67(15a) of the Act, the prescribed scale of costs is the scale set out in the relevant Schedule of the *District Court Rules 1992* as in force from time to time.

11—Period for lodging appeals to Supreme Court (section 70)

For the purposes of section 70(3) of the Act, the period within which an appeal to the Supreme Court must be instituted is 14 days.

12—Prescribed scale of legal practitioner fees (section 73)

For the purposes of section 73(3) of the Act, the prescribed scale for the fees that may be charged by a legal practitioner who represents an appellant before the Administrative and Disciplinary Division of the District Court (*the ADD*) or the Supreme Court (or the Board in relation to an application for leave to appeal) pursuant to the scheme established by the Minister under that section is as follows:

1	For all preparatory work done prior to the commencement of the hearing of the appeal (including attending adjournments of the hearing date)	\$325.60
2	For attending the hearing of the appeal (excluding any separate attendance solely to receive judgment), per hour or part of an hour	\$107.80
3	For all work done (including attending before the Board or Court) in relation to an application for leave to appeal to the ADD—	
	(a) in the case of an application determined by the Board	\$66
	(b) in the case of an application determined by the Court	\$88

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
1995	16	<i>Gazette 2.3.1995 p797</i>	6.3.1995: r 2
2000	(4)	<i>District Court (Administrative and Disciplinary Division) Amendment Act 2000</i>	Sch 2 (cl 1)—1.6.2000 (<i>Gazette 18.5.2000 p2554</i>)
2000	264	<i>Gazette 23.11.2000 p3310</i>	23.11.2000: r 2
2001	173	<i>Gazette 19.7.2001 p2714</i>	19.7.2001: r 2

Provisions varied

New entries appear in bold.

Provision	How varied	Commencement
r 8		
r 8(1)	varied by 173/2001 r 3	19.7.2001
r 9	varied by 173/2001 r 4	19.7.2001
r 10	substituted by 4/2000 s 9(2) (Sch 2 cl 1(a))	1.6.2000
r 12	varied by 4/2000 s 9(2) (Sch 2 cl 1(b))	1.6.2000
	varied by 264/2000 r 3	23.11.2000