

South Australia

## Guardianship and Administration Regulations 1995

under the *Guardianship and Administration Act 1993*

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### Legislative history

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#### 1—Short title

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

#### 3—Interpretation

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

#### 4—Constitution of Board for proceedings and conduct of business

- (1) The Board may be constituted of—
  - (a) the President or a Deputy President sitting alone; or
  - (b) the President, or a Deputy President, sitting with a member of a panel,in relation to the hearing of any proceedings or the conduct of any business other than the making of an order under section 29 (a *guardianship order*) or an order under section 35 (an *administration order*) of the Act.
- (2) The Board may be constituted of—
  - (a) a member of a panel sitting alone; or
  - (b) any 2 members (whether or not from the same panel) sitting together,in relation to the hearing of any proceedings or the conduct of any business other than—

- (c) the making of a guardianship order or an administration order; or
  - (d) the making of an order under section 42(3) of the Act exempting a disposition of property or contract from being voidable by an administrator; or
  - (e) the making of an order under section 44(5) of the Act disallowing an item of expenditure by a private administrator; or
  - (f) the making of an order under section 44(6) of the Act determining the costs and expenses to be paid by an administrator to the Public Trustee; or
  - (g) the making of an order under section 45(2) of the Act disallowing an item of expenditure by the Public Trustee; or
  - (h) the review of a decision or order of the Registrar under section 64 of the Act; or
  - (i) the stating of a case on a question of law to the Supreme Court under section 65 of the Act; or
  - (j) the making of an order under section 81(2) of the Act or section 35(2) of the *Mental Health Act 1993* authorising publication of a report of Board proceedings.
- (3) Despite subregulations (1) and (2), the Board constituted of any member sitting alone, or any 2 members sitting together, may make an order as a matter of urgency pursuant to section 14(7) of the Act, provided that any such order is not exercised more than once in relation to any 1 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 or domestic partner—
    - (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

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Revocation of regulations

The *Guardianship and Administration Regulations 1995* were revoked by Sch 2 of the *Guardianship and Administration Regulations 2010* on 1.9.2010.

### Principal regulations and variations

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
2005	270	<i>Gazette 15.12.2005 p4330</i>	15.12.2005: r 2
2007	51	<i>Gazette 26.4.2007 p1410</i>	1.6.2007: r 2

### Provisions varied

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
r 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>15.12.2005</i>
r 4	substituted by 270/2005 r 4	15.12.2005
r 8		
r 8(1)	varied by 173/2001 r 3	19.7.2001
	varied by 51/2007 r 21	1.6.2007
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

### Historical versions

19.7.2001

15.12.2005