

South Australia

## **Guardianship and Administration Regulations 2010**

under the *Guardianship and Administration Act 1993*

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#### **1—Short title**

These regulations may be cited as the *Guardianship and Administration Regulations 2010*.

#### **2—Commencement**

These regulations will come into operation on 1 September 2010.

#### **3—Interpretation**

In these regulations—

*Act* means the *Guardianship and Administration Act 1993*;

*ADD* means the Administrative and Disciplinary Division of the District Court.

#### **4—Constitution of Board for proceedings and conduct of business (section 6(5) of Act)**

- (1) Pursuant to section 6(5) of the Act, 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 a guardianship order or an administration order.
- (2) Pursuant to section 6(5) of the Act, 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 an 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of an order under section 81(2) of the Act or section 107(2) of the *Mental Health Act 2009* (or section 35(2) of the repealed *Mental Health Act 1993*) authorising publication of a report of Board proceedings.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 power is not exercised more than once in relation to any 1 particular order in any proceedings.

#### **5—Board's annual report—prescribed particulars of warrants (section 16(2) of Act)**

For the purposes of section 16(2) of the Act, the prescribed particulars of warrants issued during the year are as follows:

- (a) the number of warrants issued during the year;
- (b) the status of the applicants for the warrants;
- (c) the age, sex and details of the mental incapacity of the persons to whom the warrants related;

- (d) the grounds on which the warrants were issued;
- (e) the action taken under the warrants.

**6—Jurisdiction of Board exercisable by Registrar with approval of President (section 17(3)(b) of Act)**

For the purposes of section 17(3)(b) of the Act, the following are matters of a prescribed class:

- (a) recognising a person as a *recognised advocate* for the purposes of the Act (section 3(1) of the Act);
- (b) directing the Public Advocate to carry out an investigation (section 28(1) of the Act);
- (c) approving the exceeding of an expenditure limit by an administrator (section 39(3) of the Act);
- (d) approving the disposition or acquisition of real property by an administrator (section 39(4) of the Act);
- (e) authorising the disclosure of the contents of a will or other testamentary disposition of a protected person (section 40(3) of the Act);
- (f) authorising the exercise by an administrator of powers after the death of a protected person (section 41(3) of the Act);
- (g) requiring an administrator to furnish the Board and the Public Trustee with further evidence supporting a statement of accounts (section 44(3)(b) of the Act);
- (h) allowing access to a statement of accounts to persons other than the protected person (section 44(7) of the Act);
- (i) requiring the Public Trustee to include other particulars in a statement of accounts (section 45(1)(c) of the Act);
- (j) allowing access to a statement of accounts of the Public Trustee to persons other than the protected person (section 45(4) of the Act);
- (k) determining that a professional administrator is entitled to remuneration out of the estate (section 46(1) of the Act);
- (l) fixing a rate of remuneration above or below the prescribed scale (section 46(2) of the Act);
- (m) revoking the appointment of a guardian or administrator where the guardian or administrator seeks such revocation (section 54(2)(a) of the Act);
- (n) reviewing 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) consenting to the medical or dental treatment of a person (section 59(2)(b)(ii) of the Act);
- (p) suspending operation of a decision, direction or order of the Board pending appeal (section 72(2) of the Act);
- (q) giving advice or directions to an administrator (section 74(1) of the Act);

- (r) directing 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).

### **7—Public Advocate's annual report—prescribed particulars of warrant applications (section 24(2) of Act)**

For the purposes of section 24(2) of the Act, the prescribed particulars of applications for warrants made during the year 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(3) of Act)**

- (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 1 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—\$19 000;
  - (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—\$8 700.
- (2) In this regulation—

***average weekly earnings*** means the amount published quarterly by the Commonwealth Statistician as the average full time adult ordinary time earnings across private and public sectors.

## **9—Scale of costs against party (section 67(15a) of Act)**

For the purposes of section 67(15a) of the Act, the prescribed scale is the scale set out in Schedule 1 of the *District Court Civil Rules 2006*.

## **10—Period for lodging appeal to Supreme Court against ADD decision (section 70(3) of Act)**

For the purposes of section 70(3) of the Act, the prescribed period is 14 days.

## **Schedule 1—Rates and fees**

### **1—Rate of remuneration for professional administrators (section 46(2) of Act)**

For the purposes of section 46(2) of the Act, the prescribed rate is \$71.50 for each hour.

### **2—Scale of legal practitioner fees (section 73(3) of Act)**

For the purposes of section 73(3) of the Act, the prescribed scale is as follows:

- (a) in relation to an appeal to the ADD or Supreme Court—
  - (i) for each 15 minutes, or part of 15 minutes, spent preparing for the hearing of an appeal (subject to a maximum of 3 hours) or attending the hearing of an appeal (including if the hearing is adjourned but excluding time taken to travel to or from the place of hearing) \$33.65
  - (ii) for each 15 minutes, or part of 15 minutes, spent travelling from the practitioner's usual place of business to the place where the person to whom the appeal relates is to be interviewed or the hearing of an appeal is to be held or from such a place to the practitioner's usual place of business \$12.50
  - (iii) for each kilometre, or part of a kilometre, travelled from the practitioner's usual place of business to the place where the person to whom the appeal relates is to be interviewed or the hearing of the appeal is to be held or from such a place to the practitioner's usual place of business \$0.71
- (b) in relation to an application for leave to appeal to the ADD—
  - (i) in the case of an application determined by the Board—for all work done (including attending before the Board) \$66.00
  - (ii) in the case of an application determined by the ADD—for all work done (including attending before the ADD) \$88.00

## **Schedule 2—Revocation of *Guardianship and Administration Regulations 1995***

The *Guardianship and Administration Regulations 1995* are revoked.

## Legislative history

### Notes

- 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 2010* were revoked by Sch 2 of the *Guardianship and Administration Regulations 2015* on 29.3.2015.

### Principal regulations

| Year | No  | Reference                      | Commencement  |
|------|-----|--------------------------------|---------------|
| 2010 | 201 | <i>Gazette 26.8.2010 p4600</i> | 1.9.2010: r 2 |