

South Australia

GUARDIANSHIP AND ADMINISTRATION REGULATIONS 1995

REGULATIONS UNDER THE GUARDIANSHIP AND ADMINISTRATION ACT 1993

Guardianship and Administration Regulations 1995

being

No. 16 of 1995: *Gaz.* 2 March 1995, p. 797¹

as varied by

District Court (Administrative and Disciplinary Division) Amendment Act 2000 No. 4 of 2000 [Assented to 20 April 2000]²

¹ Came into operation 6 March 1995: reg. 2.

² Schedule 2 (cl. 1) came into operation 1 June 2000: *Gaz.* 18 May 2000, p. 2554.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the regulations see Appendix.*

SUMMARY OF PROVISIONS

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APPENDIX LEGISLATIVE HISTORY

Citation

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

Commencement

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

Interpretation

3. In these regulations, unless the contrary intention appears—

"the Act" means the *Guardianship and Administration Act 1993*.

Exercise of Board's powers by member sitting alone (s. 6(5))

4. (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 (s. 29(1) of the Act);
 - (ii) an administration order (s. 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 (s. 29(1) of the Act);
 - (ii) make an administration order (s. 35(1) of the Act);
 - (iii) make an order exempting a disposition of property or contract from being voidable by an administrator (s. 42(3) of the Act);
 - (iv) make an order disallowing an item of expenditure by a private administrator (s. 44(5) of the Act);
 - (v) make an order determining the costs and expenses to be paid by an administrator to the Public Trustee (s. 44(6) of the Act);
 - (vi) make an order disallowing an item of expenditure by the Public Trustee (s. 45(2) of the Act);
 - (vii) review a decision of the Registrar (s. 64 of the Act);
 - (viii) state a case to the Supreme Court on any question of law (s. 65 of the Act);
 - (ix) make an order authorising publication of a report of Board proceedings (s. 81(2) of the Act or s. 35(2) of the *Mental Health Act 1993*);

5.

- (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.

Powers exercisable by the Registrar (s. 17)

5. 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 (s. 3 of the Act);
- (b) direct the Public Advocate to carry out an investigation (s. 28(1) of the Act);
- (c) approve the exceeding of an expenditure limit by an administrator (s. 39(3) of the Act);
- (d) approve the disposition or acquisition of real property by an administrator (s. 39(4) of the Act);
- (e) authorise the disclosure of the will, etc., of a protected person (s. 40(3) of the Act);
- (f) authorise the exercise by an administrator of powers after the death of a protected person (s. 41(3) of the Act);
- (g) require an administrator to furnish the Board and the Public Trustee with further evidence supporting statement of accounts (s. 44(3)(b) of the Act);
- (h) allow access to statement of accounts to persons other than the protected person (s. 44(7) of the Act);
- (i) require the Public Trustee to include other particulars in statement of accounts (s. 45(1)(c) of the Act);
- (j) allow access to Public Trustee's statement of accounts to persons other than the protected person (s. 45(4) of the Act);
- (k) determine that a professional administrator is entitled to remuneration out of the estate (s. 46(1) of the Act);
- (l) fix a rate of remuneration above or below prescribed scale (s. 46(2) of the Act);
- (m) revoke the appointment of a guardian or administrator where the guardian or administrator seeks such revocation (s. 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 (s. 57(1)(b) of the Act);

6.

- (o) consent to the medical or dental treatment of a person (s. 59(2)(b)(ii) of the Act);
- (p) suspend operation of a decision, direction or order of the Board pending appeal (s. 72(2) of the Act);
- (q) give advice or directions to an administrator (s. 74(1) of the Act);
- (r) direct that an application under s. 74(1) of the Act be served on a person and be determined in the presence of parties (s. 74(2) of the Act);
- (s) review guardianship orders made under the former Act (Sched. Div. 3 cl. 8(d) of the *Mental Health Act 1993*);
- (t) review delegations made under former Act (Sched. Div 3 cl. 10(e) of the *Mental Health Act 1993*).

Annual report (Board)—prescribed particulars of warrants (s. 16)

6. 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.

Annual report (Public Advocate)—prescribed particulars of warrant applications (s. 24)

7. 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.

Limits on expenditure by administrators (s. 39)

8. (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—\$10 000;
- (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—\$6 000.

(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.

Rate of remuneration for professional administrators (s. 46)

9. For the purposes of section 46(2) of the Act, the rate of remuneration for a professional administrator is \$50 per hour.

Prescribed scale of costs for appeals to ADD

10. 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.

Period for lodging appeals to Supreme Court (s. 70)

11. 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.

Prescribed scale of legal practitioner fees (s. 73)

12. 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)	296
2.	For attending the hearing of the appeal (excluding any separate attendance solely to receive judgment),per hour or part of an hour	98
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	60
(b)	in the case of an application determined by the Court	80

9.

APPENDIX

LEGISLATIVE HISTORY

Regulation 10:

substituted by Act No. 4 of 2000, s. 9(2) (Sched. 2 cl. 1(a))

Regulation 12:

varied by Act No. 4 of 2000, s. 9(2) (Sched. 2 cl. 1(b))