

1995—No. 401

PROTECTED ESTATES ACT 1983—REGULATION

(Protected Estates Regulation 1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Protected Estates Act 1983, has been pleased to make the Regulation set forth hereunder.

J. W. Shaw
Attorney General.

Citation

1. This Regulation may be cited as the Protected Estates Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definitions

3. In this Regulation:

“**medical superintendent**” has the same meaning as it has in the Mental Health Act 1990;

“**the Act**” means the Protected Estates Act 1983.

Fees payable to the Protective Commissioner: sec. 8

4. (1) For the purposes of section 8 of the Act, the prescribed fees payable to the Protective Commissioner are as follows:

- (a) on the gross capital realised or collected by the Protective Commissioner in an estate (the fee being payable when the capital or any part of the capital is received by the Protective Commissioner):

- (i) on the first \$100,000—4 per cent;
 - (ii) on the second \$100,000—3 per cent;
 - (iii) on the third \$100,000—2 per cent;
 - (iv) on the excess above \$300,000—1 per cent;
 - (b) on the gross income received by the Protective Commissioner in an estate (not being income referred to in paragraph (c))—5 per cent;
 - (c) on the gross income received by the Protective Commissioner by way of rents that are subject to an agency charge for collection—2 per cent;
 - (d) on the net annual income of a protected person in respect of whom a manager of the estate has been appointed—4 per cent;
 - (e) for the investigation, preparation or lodgment of a return required by a taxation authority in respect of an estate in which the Protective Commissioner acts—such reasonable fee for the investigation, preparation or lodgment as the Protective Commissioner may fix;
 - (f) for supplying to a person, for the purposes of administration, particulars of the estate of a deceased person whose estate was being administered by the Protective Commissioner at the time of death—such fee (not exceeding \$100) as the Protective Commissioner may fix;
 - (g) for filing, examination and passing of accounts—such fee (not exceeding \$100) as the Protective Commissioner may fix;
 - (h) for any other service provided, or any other disbursement incurred, by the Protective Commissioner in the administration of an estate—such reasonable fee as the Protective Commissioner may fix.
- (2) The Protective Commissioner must certify to the manager of an estate subject to management under the Act:
- (a) the annual amount of the fee payable to the Protective Commissioner under subclause (1) (c) or (d); and
 - (b) the name of the person who is required to pay the fee; and
 - (c) the time within which the fee is to be paid.

Information relating to Magistrate's inquiry as to patient's capability to manage affairs: sec. 15

5. (1) For the purposes of section 15 (a) of the Act, the prescribed information to be given must be in the form specified in Schedule 1.

(2) For the purposes of section 15 (b) of the Act, the prescribed information to be given must be in the form specified in Schedule 2.

Form of order or interim order that estate be managed under the Act

6 (1) A Magistrate or the Tribunal is to complete a notice of an order or interim order made by the Magistrate or the Tribunal that the estate of a person be subject to management under the Act.

(2) The notice is to be in the form specified in Schedule 3.

Medical superintendent to notify Protective Commissioner of certain orders

7. (1) The medical superintendent of a hospital must give written notice to the Protective Commissioner of the making of an order or interim order by a Magistrate or the Tribunal to the effect that the estate of a patient be subject to management under the Act.

(2) The medical superintendent must give the written notice within 7 days of the making of any such order and must attach a copy of the order to the notice.

Medical superintendent to notify Protective Commissioner of certain events

8. The medical superintendent of a hospital must, as soon as practicable, give written notice to the Protective Commissioner of the occurrence of any of the following events in respect of a patient whose estate is or was subject to management under the Act:

- (a) the patient's discharge from the hospital;
- (b) the patient's transfer from the hospital;
- (c) the patient's absence with or without leave from the hospital;
- (d) the patient's return to the hospital from leave;
- (e) the patient's death at the hospital.

Restriction on Protective Commissioner's discretion to deal with certain estates—prescribed amount: sec. 42 (a)

9. For the purposes of section 42 (a) of the Act, the prescribed amount is \$10,000.

Repeal

10. (1) The Protected Estates Regulation 1985 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the Protected Estates Regulation 1985, had effect under that Regulation is taken to have effect under this Regulation.

SCHEDULE 1—INFORMATION TO BE GIVEN TO PERSON DETAINED

(Cl. 5 (1))

If the Magistrate directs that you are to be detained in a hospital, the Magistrate will then decide if you are able to manage your property and affairs.

You have the right to have a barrister or solicitor represent you before the Magistrate. If you do not want a barrister or solicitor, you can have another person of your choice represent you, but you can only do this if the Magistrate agrees.

If the Magistrate thinks that you are able to manage your property and affairs, you can continue to do so. However, if you wish, you can have the Protective Commissioner manage your property and affairs. You can ask the medical superintendent to arrange for the Protective Commissioner to do this.

If the Magistrate decides that you are not able to manage your property and affairs, the Magistrate will order that your property and affairs be managed by the Protective Commissioner.

If you do not agree with the Magistrate's decision that your property and affairs should be managed by the Protective Commissioner, you have the right to appeal to the Supreme Court.

**SCHEDULE 2—INFORMATION TO BE GIVEN TO NEAREST RELATIVE,
GUARDIAN AND FRIENDS OF PERSON DETAINED**

(Cl. 5 (2))

If the Magistrate considers the patient should be further detained, the Magistrate will also consider whether or not the patient is able to manage his or her property and affairs.

If the Magistrate considers that the patient is able to manage his or her property and affairs, then the patient can continue to do so. The patient can ask that his or her property and affairs be managed by the Protective Commissioner.

If the Magistrate is not satisfied that the patient can manage his or her property and affairs, then the Magistrate will make an order that the Protective Commissioner manage the patient's property and affairs.

If the patient does not agree with the Magistrate's decision that his or her property and affairs should be managed by the Protective Commissioner, the patient has a right to appeal to the Supreme Court.

**SCHEDULE 3—NOTICE OF ORDER OR INTERIM ORDER FOR
MANAGEMENT**

(Cl. 6)

An order*/interim order* has been made today that the estate of

.....

(name)

be subject to management under the Protected Estates Act 1983.

Date

.....
*(Signature and name of Magistrate)**

.....
*(Signatures and names of Members of Mental Health Review Tribunal)**

(* Delete if inapplicable)

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EXPLANATORY NOTE

The object of this Regulation is to repeal and remake the provisions of the Protected Estates Regulation 1985.

The Regulation contains provisions with respect to the following:

- (a) the fees payable to the Protective Commissioner under the Protected Estates Act 1983 (clause 4);
- (b) the information to be provided:
 - (i) to a person detained in a hospital under the Mental Health Act 1990;
and
 - (ii) to the nearest relative, guardian and friends of that person,
that the person's capability to manage his or her affairs is to be considered (clause 5);
- (c) the form of certain orders made under the Protected Estates Act 1983 (clause 6);
- (d) the matters of which the Protective Commissioner is to be notified in respect of certain protected persons (for example, the protected person's discharge from a hospital) (clauses 7 and 8);
- (e) the monetary limit on the Protective Commissioner's discretion to deal with the estate of a deceased protected person in certain circumstances (for example, if probate of the will of the deceased protected person has not been obtained) (clause 9).

This Regulation is made under the Protected Estates Act 1983, including section 81 (the general regulation making power) and various other sections mentioned in the Regulation.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
