



## Protected Estates Regulation 2003

under the

Protected Estates Act 1983

### Explanatory note

The object of this Regulation is to repeal and remake the *Protected Estates Regulation 1995 (the 1995 Regulation)*, due to be repealed on 1 September 2003 by section 10 of the *Subordinate Legislation Act 1989*. The repeal is to be postponed by an order of the Governor under section 11 of that Act.

This Regulation contains provisions with respect to the following:

- (a) the fees payable to the Protective Commissioner under the *Protected Estates Act 1983 (the Act)*—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,concerning the person's capability to manage his or her affairs—clause 5 and Schedules 1 and 2,
- (c) the form of certain orders made under the Act—clause 6 and Schedule 3,
- (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 decisions of the Protective Commissioner in connection with the exercise of the Protective Commissioner's functions in managing the estates of protected persons that are reviewable by the Administrative Decisions Tribunal—clause 9,
- (f) 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 10.

This Regulation also contains matters of a formal nature—clauses 1–3 and 11.

This Regulation differs from the 1995 Regulation in only one substantial respect. Clause 4 adopts a revised fee structure from that contained in the equivalent clause (clause 4)

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Explanatory note

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of the 1995 Regulation. Specifically, the new clause 4 adopts a fee structure similar to that used by some private sector trustee companies.

This Regulation is made under the *Protected Estates Act 1983*, including section 81 (the general regulation-making power) and the 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*.

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Clause 1      Protected Estates Regulation 2003

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## Protected Estates Regulation 2003

under the

Protected Estates Act 1983

### 1 Name of Regulation

This Regulation is the *Protected Estates Regulation 2003*.

### 2 Commencement

This Regulation commences on 1 October 2003.

### 3 Definitions

(1) 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*.

(2) Notes in the text of this Regulation do not form part of this Regulation.

### 4 Fees payable to the Protective Commissioner: section 8

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

(a) for the management of a protected person's estate:

(i) for the first year—2.1% of the value of the estate, and

(ii) for every subsequent year—1.1% of the value of the estate,

(b) for the management of an investment for a protected person in an investment fund—0.5% per annum of the value of the investment,

(c) on the net annual income of a protected person in respect of whom a manager of the estate has been appointed—4% per annum,

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Protected Estates Regulation 2003

Clause 4

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- (d) 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,
  - (e) for the development of a financial plan for a protected person in respect of whom a manager of the estate has been appointed—such reasonable fee as the Protective Commissioner may fix,
  - (f) for filing, examination and passing of accounts—such fee (not exceeding \$100) as the Protective Commissioner may fix,
  - (g) 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), 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.
- (3) The Protective Commissioner may, in addition to any fee prescribed under subclause (1), charge the amount of any GST payable in respect of the service for which the fee is payable.
- (4) Subclause (3) does not permit the Protective Commissioner to charge an amount that is greater than:
- (a) 10% of the maximum amount payable to the Protective Commissioner apart from that subclause, or
  - (b) the amount permitted under the New Tax System Price Exploitation law,
- whichever is the lesser.
- (5) In this clause:

***GST*** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

***New Tax System Price Exploitation law*** means:

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Clause 5          Protected Estates Regulation 2003

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- (a) the New Tax System Price Exploitation Code, as applied as a law of New South Wales by the *Price Exploitation Code (New South Wales) Act 1999*, or
- (b) Part VB of the *Trade Practices Act 1974* of the Commonwealth.

*value*, in relation to a protected person's estate, means the gross amount of the value of the assets (whether real or personal) of the estate without deduction of debts or liabilities secured or unsecured, but does not include the value of the protected person's principal place of residence.

**5 Information relating to Magistrate's inquiry as to patient's capability to manage affairs: section 15**

- (1) For the purposes of section 15 (a) of the Act, the prescribed information to be given is that specified in Schedule 1.
- (2) For the purposes of section 15 (b) of the Act, the prescribed information to be given is that specified in Schedule 2.

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

- (1) A Magistrate or the MHRT is to complete a notice of an order or interim order made by the Magistrate or the MHRT 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.

**7 Medical superintendent to notify Protective Commissioner of certain orders**

- (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 MHRT 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.

**8 Medical superintendent to notify Protective Commissioner of certain events**

The medical superintendent of a hospital must, as soon as practicable, give written notice to the Protective Commissioner of

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Protected Estates Regulation 2003

Clause 9

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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.

**9 Review by ADT of estate management decisions of Protective Commissioner**

All decisions made by the Protective Commissioner in connection with the exercise of the Protective Commissioner's functions under Division 3 of Part 3 of the Act are prescribed for the purposes of section 28A of the Act.

**10 Restriction on Protective Commissioner's discretion to deal with certain estates—prescribed amount: section 42 (1) (a) (i)**

For the purposes of section 42 (1) (a) (i) of the Act, the prescribed amount is \$10,000.

**11 Repeal and saving**

- (1) The *Protected Estates Regulation 1995* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Protected Estates Regulation 1995*, had effect under that Regulation continues to have effect under this Regulation.

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Protected Estates Regulation 2003

Schedule 1 Information to be given to person detained

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## **Schedule 1 Information to be given to person detained**

(Clause 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.



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Protected Estates Regulation 2003

Information to be given to nearest relative, guardian and friends of person detained Schedule 2

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## **Schedule 2 Information to be given to nearest relative, guardian and friends of person detained**

(Clause 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.

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Protected Estates Regulation 2003

Schedule 3 Notice of order or interim order for management

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### **Schedule 3 Notice of order or interim order for management**

(Clause 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)