

I certify that this is a copy of the authorised version of this Statutory Rule as at 1 September 2024, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 September 2024.

K Woodward
Chief Parliamentary Counsel
Dated 2 September 2024

TASMANIA

GUARDIANSHIP AND ADMINISTRATION REGULATIONS 2017

STATUTORY RULES 2017, No. 66

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SCHEDULE 1 – FEES

GUARDIANSHIP AND ADMINISTRATION REGULATIONS 2017

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Guardianship and Administration Act 1995*.

Dated 10 October 2017.

C. WARNER
Governor

By Her Excellency's Command,

ELISE ARCHER
Minister for Justice

PART 1 – PRELIMINARY

1. Short title

These regulations may be cited as the *Guardianship and Administration Regulations 2017*.

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Part 1 – Preliminary

2. Commencement

These regulations take effect on
17 October 2017.

3. Interpretation

In these regulations –

Act means the *Guardianship and Administration Act 1995*;

drug of addiction means a substance listed in
Schedule 8 to the Poisons List;

Poisons List has the same meaning as in the
Poisons Act 1971;

restricted substance means a substance listed
in Schedule 4 to the Poisons List.

PART 2 – APPLICATIONS UNDER THE ACT

4. Application to be supported by report

- (1) An application to the Tribunal under the Act in respect of a person, other than an application made under section 44, is to be supported by a report from a health practitioner or other person with relevant qualifications and expertise to conduct an assessment of a person's decision-making ability –
 - (a) detailing, in accordance with Part 2 of the Act, the impairment to the decision-making ability of the person in respect of whom the application is made; and
 - (b) stating the opinion of the health practitioner or other person conducting the assessment as to whether the impairment to the person's decision-making ability affects the ability of the person to make decisions in respect of one or more of the following:
 - (i) personal matters;
 - (ii) financial matters; and
 - (c) providing details of reasonable steps taken to provide practicable and appropriate support to enable the person to make or communicate decisions in relation to matters specified in subregulation (1)(b).

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- (2) Subregulation (1) does not apply to a request under section 58 of the Act.
- (3) An application for the purpose of section 44 of the Act is to be supported by a report from a registered health practitioner detailing the following prescribed information:
 - (a) the condition requiring treatment;
 - (b) the nature of the proposed treatment;
 - (c) the date, time and place of the proposed treatment, if known;
 - (d) the impairment to the decision-making ability of the person in respect of whom the application is made;
 - (e) how the impairment affects the capacity of the person to give consent to the proposed treatment;
 - (f) the steps that have been taken to provide the person with any practicable and appropriate support needed to make or communicate decisions as to the proposed treatment;
 - (g) whether the person concerned is, or is likely to become, capable of consenting to the treatment;
 - (h) the risks to that person of carrying out the treatment;
 - (i) the risks to that person of failure to carry out the treatment;

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- (j) whether the proposed treatment can be postponed on the grounds that better treatment may become available;
 - (k) any alternative treatment available to that person.
- (4) An application for the purposes of section 44O of the Act in relation to any matter, question or dispute under Part 6A of the Act is to –
- (a) be supported by a report that meets the requirements of subregulation (1); and
 - (b) include a report from the health and medical research practitioner conducting or proposing to conduct health and medical research, in relation to the person in respect of whom the application is made, detailing –
 - (i) the nature of the health and medical research; and
 - (ii) evidence of approval to conduct the research and any relevant conditions associated with that approval; and
 - (iii) the nature of any health or medical research already conducted; and
 - (iv) the risks to the person of carrying out the research; and

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- (v) the risks to the person of not carrying out the research.
- (5) If a report is not provided in accordance with subregulations (1), (2) or (3), a statement must be supplied detailing the reasons why the report cannot be provided.
- (6) A health practitioner or other person with relevant qualifications and expertise to conduct an assessment of a person's decision-making ability must not submit a report that deals with the decision-making ability of a close family member of the person.

Penalty: Fine not exceeding 10 penalty units.

5. Application to be supported by declaration

- (1) An application to the Tribunal made under the Act is to be supported by a declaration by the person making the application that –
 - (a) reasonable steps have been taken to comply with section 13 of the Act; and
 - (b) all the information contained in the application is true and accurate; and
 - (c) the application is not misleading; and
 - (d) no details relevant to the application have been omitted.
- (2) A person must not make an application under the Act that is false or misleading in a material particular.

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Penalty: Fine not exceeding 10 penalty units.

6 - 10.

PART 3 – TREATMENT

11. Special treatment

The following treatments are declared to be special treatment for the purposes of Part 6 of the Act:

- (a) psychosurgery, including any neurological procedure carried out for the relief of the symptoms of Parkinson's disease;
- (b) any treatment involving the use of an aversive stimulus, whether that stimulus is mechanical, chemical, physical or otherwise.

12. Medical or dental treatment without consent

For the purposes of section 41(2) of the Act, the following cases are specified as cases where medical or dental treatment may not be carried out, on a person to whom Part 6 of the Act applies, without consent under Division 2 of that Part:

- (a) the treatment is continuing or ongoing and involves the administration of a restricted substance primarily to control the conduct of the person to whom it is given;
- (b) the treatment involves the administration of a drug of addiction other than in association with the treatment of cancer

- or palliative care of a terminally ill patient;
- (c) the treatment involves electroconvulsive therapy (ECT);
 - (d) the treatment involves a substantial risk to the person to whom it is given of –
 - (i) death; or
 - (ii) brain damage; or
 - (iii) paralysis; or
 - (iv) permanent loss of function of any organ or limb; or
 - (v) permanent and disfiguring scarring; or
 - (vi) extreme pain or distress;
 - (e) the treatment is intended, or is likely, to result in the removal of all or a substantial number of teeth.

13. Oral consent to be confirmed in writing

If a person responsible for a person to whom Part 6 of the Act applies gives consent under section 43 of the Act orally, the responsible person must give written confirmation of that consent as soon as practicable to the person to whom the consent was given orally.

PART 3A – ADVANCE CARE DIRECTIVES

13A. Interpretation of Part

In this Part –

health care has the same meaning as in section 35E of the Act.

13AB. Speech pathologists prescribed as health practitioners

For the purposes of Part 5A of the Act, a speech pathologist is prescribed as a health practitioner.

13B. Mandatory health care

For the purposes of the definition of *mandatory health care* in section 35L(1) of the Act, health care that is required under a direction given by the Director of Public Health under section 42 of the *Public Health Act 1997* is of a kind prescribed.

13C. Application to register advance care directive

- (1) An application to register an advance care directive under section 35X of the Act may be made by –
 - (a) the person who gave the advance care directive; or
 - (b) the legal representative of the person who gave the advance care directive; or

- (c) an adult on behalf of the person who gave the advance care directive only if the registration of the advance care directive by that adult is requested by the person; or
 - (d) a guardian for the person who gave the advance care directive, if that guardian has authority to make health care decisions in respect of that person; or
 - (e) the person responsible under the Act for the person who gave the advance care directive; or
 - (f) any other person who the Tribunal is satisfied has a proper interest in the matter.
- (2) An application to register an advance care directive under section 35X of the Act –
- (a) is to be in a form approved by the Tribunal; and
 - (b) must include a written, original copy of the advance care directive.

13D. Revocation of advance care directive

- (1) For the purposes of section 35Y of the Act, a person who has given a written advance care directive may revoke that advance care directive by giving, or causing to be given, a written indication that the person has revoked the advance care directive.

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Part 3A – Advance care directives

- (2) For the purposes of section 35Y of the Act, a person who has given an advance care directive by means other than writing, may revoke that advance care directive –
- (a) in the same manner as the advance care directive was given; or
 - (b) by giving, or causing to be given, a written indication that the person has revoked the advance care directive.

**PART 3B – PUBLIC GUARDIAN AND PUBLIC
TRUSTEE COMPLAINTS PROCESSES**

13E. Complaints processes

For the purposes of section 70(3) of the Act, any complaints processes established by the Public Guardian and the Public Trustee are to be consistent with Australian Standard 10002 Guidelines for complaint management in organisations (ISO 1002:2018 NEQ), as amended or replaced from time to time.

PART 4 – MISCELLANEOUS

14. Fees

The fees specified in Schedule 1 are the fees payable for the purposes of the Act in respect of the matters to which they relate.

15. Fees for examining statement of certain accounts

(1) In this regulation –

relevant estate means an estate of a represented person that is of more than \$50,000 in value at the last day of the period to which a statement of the accounts of the estate, provided to the Tribunal under section 63 in respect of the estate, relates.

(2) On providing to the Tribunal a statement of the accounts of the estate under section 63, the administrator of a relevant estate must pay the following fee for the Tribunal to examine the statement in accordance with section 63(4):

- (a) if the administrator is the Public Trustee, or a trustee company within the meaning of the *Trustee Companies Act 1953*, a fee of 83.5 fee units;
- (b) if the administrator is not the Public Trustee, or a trustee company within the meaning of the *Trustee Companies Act 1953*, a fee of 118 fee units.

- (3) The value of the following items are not to be taken into account in determining the value of an estate of a represented person for the purposes of this regulation:
- (a) the represented person's household furniture and effects, including personal jewellery;
 - (b) the represented person's principal place of residence;
 - (c) the principal place of residence of the spouse of the represented person or a child, of the represented person, who is a minor;
 - (d) the represented person's former principal place of residence, if –
 - (i) it has been, at any time during the period to which the statement of the accounts relates, occupied by the represented person; and
 - (ii) it was not rented to another person at any time during that period;
 - (e) any deposit or bond that is held by a residential aged care facility in respect of the represented person.

16. Waiver of fees

On the application of a person, a registrar, within the meaning of the *Tasmanian Civil and*

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Part 4 – Miscellaneous

Administrative Tribunal Act 2020, may waive all or part of a fee that would otherwise be payable under these regulations by the person, if the registrar is satisfied that requiring the person to pay all or part of the fee would cause undue hardship to the person or a person represented by the person.

17. Inspection of register

(1) In this regulation –

register means the register kept by the Tribunal under section 89 of the Act.

(2) Subject to subregulation (3), the register is to be made available for inspection during normal business hours by members of the public.

(3) Access to an advance care directive registered with the Tribunal under section 35X of the Act is available during normal business hours only to the following persons:

- (a) the person who gave the advance care directive;
- (b) a guardian for the person who gave the advance care directive, if that guardian has authority to make health care decisions in respect of that person;
- (c) the person responsible under the Act for the person who gave the advance care directive;

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- (d) a health practitioner providing health care to the person who gave the advance care directive;
- (e) a hospital, hospice, health service establishment, nursing home or other health facility or service responsible for providing health care to the person who gave the advance care directive;
- (f) any other person who the Tribunal is satisfied has a proper interest in accessing the advance care directive.

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SCHEDULE 1 – FEES

Regulation 14

In this Schedule –

relevant instrument means an instrument of appointment as an enduring guardian under Part 5 of the Act.

	Item	Fee (fee units)
1.	Registration of a relevant instrument under section 32 of the Act	45
2.	Registration of an instrument revoking a relevant instrument under section 33 of the Act	32
3.	Search or inspection, in relation to a relevant instrument, of register kept by Tribunal	19.5
4.	Copy of a relevant instrument	20
5.	Certified copy of a relevant instrument	29
6.	Copy of recording of a proceeding under the Act	20 (per recording file)
7.	Photocopy of a document made by or on behalf of the Tribunal	2 (per page)

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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 17 October 2017.

These regulations are administered in the Department of Justice.

NOTES

The foregoing text of the *Guardianship and Administration Regulations 2017* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 September 2024 are not specifically referred to in the following table of amendments.

Citation	Serial Number	Date of commencement
<i>Guardianship and Administration Regulations 2017</i>	S.R. 2017, No. 66	17.10.2017
<i>Tasmanian Civil and Administrative Tribunal (Consequential Amendments) Act 2021</i>	No. 18 of 2021	5.11.2021
<i>Guardianship and Administration Amendment Regulations 2022</i>	S.R. 2022, No. 88	21.11.2022
<i>Guardianship and Administration Amendment Regulations 2024</i>	S.R. 2024, No. 39	1.9.2024

TABLE OF AMENDMENTS

Provision affected	How affected
Regulation 3	Amended by S.R. 2024, No. 39
Part 2	Substituted by S.R. 2024, No. 39
Division 1 of Part 2	Rescinded by S.R. 2024, No. 39
Regulation 4	Substituted by S.R. 2024, No. 39
Regulation 5	Substituted by S.R. 2024, No. 39

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Provision affected	How affected
Division 2 of Part 2	Rescinded by S.R. 2024, No. 39
Regulation 6	Rescinded by S.R. 2024, No. 39
Regulation 7	Rescinded by S.R. 2024, No. 39
Regulation 8	Rescinded by S.R. 2024, No. 39
Regulation 9	Rescinded by S.R. 2024, No. 39
Regulation 10	Rescinded by S.R. 2024, No. 39
Regulation 13A	Inserted by S.R. 2022, No. 88
Regulation 13AB	Inserted by S.R. 2024, No. 39
Regulation 13B	Inserted by S.R. 2022, No. 88
Regulation 13C	Inserted by S.R. 2022, No. 88
Regulation 13D	Inserted by S.R. 2022, No. 88
Regulation 13E	Inserted by S.R. 2024, No. 39
Regulation 15	Amended by No. 18 of 2021, s. 172 and S.R. 2024, No. 39
Regulation 16	Amended by No. 18 of 2021, s. 173
Regulation 17	Inserted by S.R. 2022, No. 88 Amended by S.R. 2024, No. 39
Schedule 1	Amended by No. 18 of 2021, s. 174
