

Guardianship Tribunal



Annual Report 2006/2007

*'working in the best interests of people with
disabilities and their families'*

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Acknowledgments

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members of the Guardianship
Tribunal for their contributions
to this report.

Special thanks to
Mr and Mrs J. Tomlinson,
Mrs H. Jones, Mrs M. Vincent and
Mr and Mrs Borg who appear in
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Principles guiding the Tribunal

The Guardianship Tribunal must observe the principles in the *Guardianship Act 1987*. These principles state that everyone dealing with people with a disability has a duty to:

- give the person's welfare and interests paramount consideration;
- restrict the person's freedom of decision and freedom of action as little as possible;
- encourage the person, as far as possible, to live a normal life in the community;
- take the person's views into consideration;
- recognise the importance of preserving family relationships and cultural and linguistic environments;
- encourage the person, as far as possible, to be self-reliant in matters relating to their personal, domestic and financial affairs;
- protect the person from neglect, abuse and exploitation;
- and encourage the community to apply and promote these principles.



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President's report

As a society we value highly the right of all citizens to make their own decisions about personal, lifestyle and financial matters. But illness and disability can have a serious impact on our capacity to make such decisions. Today, age related illness and disability are increasingly common. Many people in New South Wales live with an intellectual disability. Some members of our community face significant decision making difficulties when affected by mental illness or the consequences of drug or alcohol abuse.

The work of the Guardianship Tribunal is extremely important in protecting the rights and welfare of people with a decision making disability. By appointing guardians and financial managers, the Tribunal facilitates substitute decision making, to promote the best interests of people who are unable to make their own decisions.

The New South Wales guardianship legislation celebrates its 20th anniversary in 2007. It has often been considered a model for guardianship legislation in other parts of Australia and the world. Last year the Tribunal was visited by members of the Irish Law Reform Commission and the Parliament of Alberta Canada as part of their respective investigations into the best ways to renovate their own guardianship systems. This year we had a delegation of Japanese academics and guardianship authorities as well as a visit from the President of the Hong Kong Guardianship Tribunal.

While this international interest is reassuring, we must not rest on our laurels. It is vital that the Tribunal responds and adapts to the changing needs of our clients in the disability sector. The *Guardianship Amendment Act 2007*, passed in June 2006, is one such response. The amendments facilitate a number of changes to the processes and procedures of the Tribunal which assist us to continue to effectively manage our workload, appropriately allocate resources and prevent significant increases in the waiting time for Tribunal hearings.

While applications for guardianship orders, financial management orders, reviews of enduring guardianship appointments and enduring powers of attorney and special medical applications will continue to be determined by a Tribunal of at least three members, the amendments allow the Tribunal to be constituted by less than three members for review and major medical consent matters. These changes bring the New South Wales Guardianship Tribunal into line with developments in guardianship tribunals in other Australian jurisdictions. The amendments are expected to come into operation in August 2007.

The Tribunal has also undertaken a number of projects to ensure continuous improvement in the quality of the service people receive from the Tribunal. In 2006/2007 the Tribunal's application forms were re-designed and improved to assist people making an application to the Tribunal. The Tribunal's files were reorganised to improve ease of usage and accessibility for Tribunal members and staff.

The reports generated by the Tribunal's investigation staff were streamlined using our electronic database. A number of other processes, including the production of the Tribunal's notices of hearing and post hearing documentation, were partly or fully automated. The Tribunal continued to work with the Government Chief Information Office towards streamlining the transfer of information between the Tribunal and the Office of the Public Guardian and the Office of the Protective Commissioner.

Considerable work was done towards the completion of an updated Tribunal members manual. The Tribunal also laid the foundations for establishing a system for the publication of its notable decisions on the Tribunal's website. This is expected to be realised later in 2007. At the same time planning and key projects for the implementation of the legislative amendments were undertaken and completed.

The 2006/2007 year saw a number of changes in the membership of the Tribunal. Marion Brown left the Tribunal after 12 years as Deputy President. Marion made a significant contribution to the work of the Guardianship Tribunal and in particular her involvement in the Tribunal's community education programmes will be greatly missed. We wish her well in the future. In February 2007 we welcomed Robin Gurr as our new Deputy President. Robin has extensive experience both as a lawyer and a tribunal member. She has been the President of the Community Services Appeals Tribunal, Deputy Registrar of the Family Court and was previously a presiding member of the Guardianship Tribunal.

I would like to thank those part time members of the Tribunal who retired in 2006/2007 for their commitment and service to the Tribunal. And a warm welcome to our newly appointed part time members, who like their predecessors, bring a wealth of experience and expertise to the work of the Tribunal. I am pleased to

report that approval was obtained in this financial year for an increase in Tribunal members' remuneration – a welcome acknowledgement of their dedication and hard work.

The Tribunal is grateful for the support of two Ministers in the 2006/2007 year. The Hon. John Della Bosca MLC was Minister for Ageing and Minister for Disability Services until March 2007. Minister Della Bosca made a major contribution to disability services in New South Wales and provided significant advocacy and support for the Tribunal. Minister Della Bosca was succeeded by the Hon. Kristina Keneally MP. Minister Keneally has a strong commitment to disability and ageing issues and the needs of the carers and family members of people with a disability. The Tribunal looks forward to continuing to work with Minister Keneally.

The Tribunal is funded to perform its work through the Department of Ageing, Disability and Home Care (DADHC). While the Tribunal operates as an independent statutory body, our links with DADHC highlight the Tribunal's role as a specialist disability tribunal and assist in maintaining sound links and networks in the disability sector. In 2006/2007 the Tribunal spent \$8.7 million.

The 2006/2007 year has been a year of significant achievement for the New South Wales Guardianship Tribunal. The Tribunal's achievements have been possible because of the steadfast commitment of its staff and members. Their dedication to the principles and objectives of the Guardianship legislation has allowed the Tribunal to continue to serve those people in New South Wales who live with a decision making disability and their families and carers.



Diane Robinson
President



About us

Tribunal staff and members

The Guardianship Tribunal consists of two separate groups of people. The first group, the Tribunal staff are full time and part time New South Wales public service employees who manage the day to day administration of the Tribunal. As at 30 June 2007, the Tribunal had 64.1 full time and part time staff positions, filled by 67 people. The second group, the Tribunal members are appointed by the Governor on recommendation of the Minister for Disability Services. During 2006/2007, there were 78 part time Tribunal members, most of whom were available on a part time basis to conduct hearings. The Tribunal staff and members are all experienced people who are committed to promoting the rights of people with disabilities, including their right to make their own decisions wherever possible.

Until May 2007, the senior staff person was the Executive Officer/Registrar. In May 2007 a realignment of the Tribunal's management team resulted in the creation of a new Registrar position. The staff and their work are organised into the Executive Unit and four other units: Business Services Unit, Coordination and Investigation Unit, Client Information Services Unit, and Hearing Services Unit. Each unit plays an essential role in producing positive outcomes for people with disabilities.

Tribunal members

The Tribunal members conduct hearings and make the Tribunal's determinations. They are appointed on the basis of their significant professional and personal experience with people who have disabilities or their legal skills and experience. On most occasions when a panel of the Tribunal is convened to hear an application about a person with a disability,

it comprises a legal member who presides and two expert members. One expert, the professional member, has experience in the assessment or treatment of adults with disabilities. The other expert, the community member, has experience, usually familial, with people with disabilities. The combination of the three members ensures the Tribunal not only conducts its proceedings fairly, relies on credible evidence and remains within its jurisdiction but also that it focuses on the physical, psychological, social and emotional needs of the person the hearing is about. This enables the Tribunal to take a holistic approach to its decision making.

Tribunal members consider written evidence and take oral evidence from the person and other parties and witnesses at the hearing, either in person or by telephone or video conference. They keep the hearing focused on relevant issues, by asking questions and directing the parties and witnesses to the issues being considered. At the end of the hearing, they assess the evidence and decide if there is a need to appoint or reappoint a guardian or a financial manager for the person. The Tribunal members usually announce the decision at the end of the hearing and provide written orders and reasons for the decision to the parties. The backgrounds of individual Tribunal members are detailed on pages 48 - 58.

Tribunal staff

The Tribunal's structure is based on functional groups including:

- the 'front door' of the organisation, with an external focus on communicating with potential clients and the general community;
- management and preparation of cases, with a focus on processing cases for hearing or, where appropriate, assisting with their informal resolution; and
- completion end, with a focus on setting up and supporting the hearing and post-hearing processes.

In addition, there is a fourth functional group providing the necessary internal support to allow the other three functional groups to work well. The four functional units, in addition to the Executive Unit, form the organisational structure.

Client Information Services Unit

is responsible for the switch, enquiries, receipt of applications and incoming mail, coordination of feedback, administration of

reviews, processing the withdrawal of applications, the website, publications and community education.

Coordination and Investigation Unit

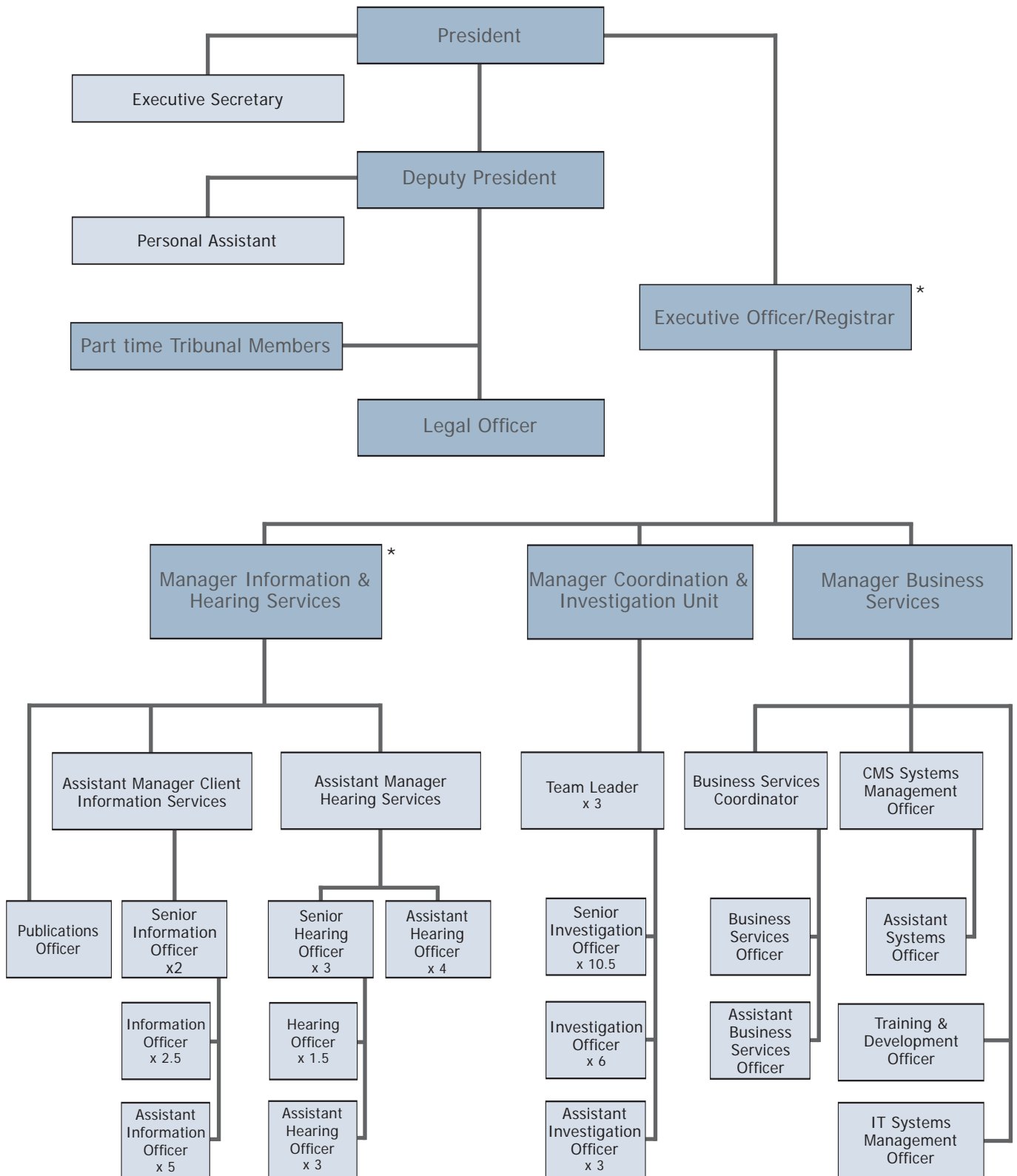
assess, investigates and prepares all new applications and review cases for hearing.

Hearing Services Unit provides support for hearings, including scheduling, and member liaison, coordination of notices, travel, venue and interpreter arrangements, post-hearing enquiries, and distribution of Orders and Reasons for Decision.

Business Services Unit is responsible for human resource management, finance and other administrative services, management and support services for information technology, communication and client data base systems, and training and development for staff and members. For further details, refer to the organisational chart opposite.



Organisational chart



* From May 2007 the Executive Officer/Registrar position and the Manager Information & Hearing Services position were replaced by the new position of Registrar.

Legislation relating to the Guardianship Tribunal

Legislative changes

The *Guardianship Act 1987* sets out the legislative framework under which guardianship orders are made, operate and are reviewed in New South Wales. The Act establishes the Guardianship Tribunal and the Public Guardian. It provides for the making of appointments of enduring guardianship and for the review of those appointments where necessary.

The Act provides for substitute decision making in relation to medical and dental consent for those persons 16 years and above who are unable to give informed consent to their own treatment. It establishes the hierarchy of 'person responsible'. A 'person responsible' is able to give substitute consent for medical and dental treatment without the need for a formal guardianship order.

The *Guardianship Regulation 2005* should be read together with the *Guardianship Act 1987* as it contains further provisions about enduring guardians and medical treatment and sets out the prescribed forms required by the *Guardianship Act 1987*.

The Guardianship Tribunal also has jurisdiction under the *Children and Young Persons (Care and Protection) Act 1998* to consent to special medical treatment for people under 16 years of age. The definition of 'special medical treatment' is set out in section 175 of the *Children and Young Persons (Care and Protection) Act 1998* and includes sterilisation.

The *Guardianship Act 1987* and the *Protected Estates Act 1983* govern the making of financial management orders.

The Tribunal has jurisdiction under the *Powers of Attorney Act 2003* to review and vary an enduring power of attorney.

The Tribunal can make orders concerning the making or operation and effect of an enduring power of attorney. On reviewing an enduring power of attorney, the Tribunal can make orders, including orders which:

- Revoke an enduring power of attorney.
- Vary an enduring power of attorney.
- Remove an attorney from office and substitute a new attorney.
- Reinstate a power of attorney which has lapsed because one of the attorneys has died, resigned or become incapacitated.
- Declare whether or not a person had the mental capacity to make an enduring power of attorney.
- Declare an enduring power of attorney invalid, either wholly or partially.

The Tribunal has the power to decide that a review of an enduring power of attorney should be treated as an application for financial management. The Tribunal may proceed on that basis and make a financial management order if appropriate.

A financial management order suspends any powers of attorney that have been made by the protected person (the person whose estate has been placed under management).



Legislative changes since 1 July 2006

Amendments to the *Guardianship Act 1987*

In 2006, amendments to the *Guardianship Act 1987* were proposed to improve the flexibility of the Tribunal to respond to the needs of people with disabilities and their families and carers.

There was consultation with stakeholders in the disability and guardianship fields who were invited to comment on a Discussion Paper which outlined the proposed changes. Submissions were received from stakeholders and the distribution of the Discussion Paper via the Tribunal's website allowed comments from members of the public, Tribunal members and staff.

The *Guardianship Amendment Act 2007* was passed on 19 June 2007 and assented to on 22 June 2007. The Act had not commenced as of 30 June 2007.

The amendments provide for four key changes to the *Guardianship Act 1987*:

- 1. The appointment of Tribunal members for a maximum term of five years rather than three.**
- 2. Revision of the criteria which must be met before the Tribunal can make a non reviewable guardianship order.**

Prior to the amendments, the Tribunal could only make a non reviewable guardianship order if satisfied that:

- (a) the order relates solely to the taking of one or more specific decisions or actions on behalf of the person the subject of the order, and
- (b) there is no need for the order to continue after the decisions or actions concerned have been taken.

The amendments enable the Tribunal to make a non reviewable guardianship order if:

- the Tribunal is satisfied that, in all the circumstances, it is in the best interests of the person that the order is not reviewed at the end of its term.

These changes give the Tribunal greater flexibility to make non reviewable guardianship orders where this is in the best interests of the person with a disability. A 'non reviewable' guardianship order lapses at the end of its term. It may, however, be reviewed if the Tribunal considers it necessary or if the person under guardianship, his or her guardian or someone with a genuine concern for the welfare of the person requests a review.

3. The constitution of the Tribunal by one, two or three members when hearing reviews of guardianship or financial management orders or applications for consent to major medical or dental treatment.

The amendments provide for the Tribunal to be constituted by one or two members when the Tribunal is dealing with the following types of matters:

- Reviews of guardianship orders
- Reviews of financial management orders
- Applications for consent to major or minor medical treatment
- Applications to recognise an interstate guardianship or financial management order
- Procedural decisions
- Reviews of decisions of the Registrar

When the Tribunal is constituted by one or two members, those members may be a legal, professional or community member. A Tribunal panel reviewing a decision of the Registrar must include a legal member.

The Tribunal continues to be constituted by three members when hearing guardianship or financial management applications or applications for special medical treatments. No change was made to the legal criteria for making or reviewing orders or to the Tribunal's obligation to produce written Reasons for Decision. The appeal process remains the same.

4. The role of the Registrar of the Tribunal is expanded.

The amendments provide for the Registrar of the Tribunal to make procedural decisions such as:

- Joinder of parties
- Granting leave for parties to be legally represented
- Appointing separate representatives
- Giving directions about the conduct of proceedings
- Granting adjournments
- Consenting to the withdrawal of applications to the Tribunal
- Dismissing applications for want of prosecution or no jurisdiction
- Refusing requests to review guardianship or financial management orders
- Recognising interstate guardianship or financial management orders

All decisions of the Registrar can be reviewed by the Tribunal. Decisions of the Registrar to refuse requests for review can be reviewed by the Tribunal which can re-hear the matter and confirm or set aside the Registrar's decision.

Amendments to the *Mental Health Act 1990*

The *Mental Health Act 1990* is to be repealed on the commencement of the *Mental Health Act 2007*. The 2007 Act was passed on 6 June 2007 and was assented to on 15 June 2007 but had not commenced as of 30 June 2007.

The *Mental Health Act 2007* will, on commencement, repeal section 12(2) of the *Mental Health Act 1990* which provided that a person under guardianship may be admitted to a psychiatric hospital as a voluntary patient if the person's guardian applied to the superintendent of the hospital for that admission and the guardian's application was approved by the Guardianship Tribunal.





What we do

Role of the Guardianship Tribunal

Our statutory role

The Guardianship Tribunal is a New South Wales Government legal tribunal established under the *Guardianship Act 1987*. The principal role of the Guardianship Tribunal is to hear and determine applications for the appointment of guardians and financial managers for adults with decision making disabilities. The Tribunal also reviews the guardianship orders it makes and may review its financial management orders. It has jurisdiction to give substitute consent to medical and dental treatment. The Tribunal has jurisdiction to review enduring guardianship arrangements and enduring powers of attorney and has a range of powers in relation to these reviews.

The Act requires that the Guardianship Tribunal conducts its proceedings with as little formality and legal technicality as the circumstances permit. The Guardianship Tribunal may obtain information on any matter as it thinks fit and is not bound by the rules of evidence. The Guardianship Tribunal is, however, bound by the principles of natural justice.

Through the Tribunal's community education programs, videos, publications, enquiry service and the work of its Coordination and Investigation Unit, the Tribunal educates and informs the community about the role of the Tribunal. This includes education about the various informal decision making arrangements that may mean that an application to the Tribunal is not needed.

How the Tribunal functions

Proceedings before the Guardianship Tribunal are about whether a person with a decision making disability needs a substitute decision maker and, if so, what powers or functions

that substitute decision maker should have. Proceedings before the Tribunal are about an individual and his or her right to continue to make their own decisions.

The Guardianship Tribunal does not follow an adversarial approach to its decision making and instead uses more inquisitorial methods. This may include outlining the relevant issues and obtaining evidence through a series of open ended questions. In the process of assessing the oral and written evidence presented, the Guardianship Tribunal is bound by section 4 of the Act. The welfare and interests of the person with the disability should be given paramount consideration and a guardian and/or financial manager should only be appointed if this is in the best interests of that person.

Through their knowledge of disabilities and the services available, the professional and community members play an essential role in determining whether an order should be made and, if so, what powers or functions a guardian should exercise. Guardianship Tribunal members bring a wealth of specialist knowledge, expertise and experience to an often complex decision making process.

The Tribunal can appoint private individuals or public officials to act as guardians and financial managers. Private guardians are usually family members or friends of the person with a disability. Before the Tribunal can appoint a private guardian, it has to be satisfied that the guardian is compatible with the person for whom the application was made, there is no conflict of interest that would impact on decision making, and the proposed guardian is willing and able to accept the role. The Tribunal can appoint the

Public Guardian to make decisions for a person with a disability if there are no family or friends who can assume that role, or if the circumstances make it inappropriate to appoint a private guardian.

The Tribunal can appoint a family member or friend to act as a private financial manager. A private manager is appointed subject to the supervision and direction of the Protective Commissioner. The private manager is required to keep appropriate accounts and submit them to the Protective Commissioner

for audit annually. Before the Tribunal can appoint a private manager, it must be satisfied that the person is suitable to undertake the role. Alternatively, the Tribunal can commit the property and affairs of a person to be managed directly by the Protective Commissioner. In either case, whether a private manager is appointed or the Protective Commissioner manages, the person whose affairs are under management will be charged fees by the Protective Commissioner for management or supervision.

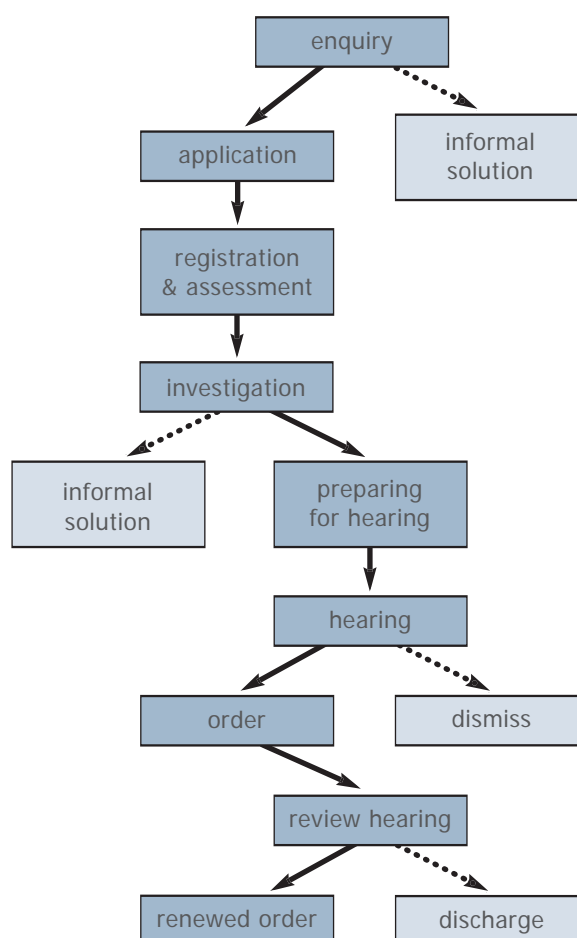
How the Tribunal deals with an application

Most people with a disability do not need a guardian or a financial manager. There is no need to contact the Guardianship Tribunal unless there is a breakdown in informal arrangements for decision making for a person with a disability or there are no informal arrangements available.

Lodging an application with the Tribunal for the appointment of a guardian or financial manager for a person with a disability is a serious matter.

Applications can be made to the Tribunal by anyone with a genuine concern for the welfare of the person with a disability. Someone with a genuine concern for the person with a disability may be a family member or a friend or their doctor, caseworker, professional carer or other service provider.

Dealing with an application: the steps





Enquiry Service

Before making an application, service providers, professionals, family members or friends of the person are encouraged to telephone the Tribunal's enquiry service. The service offers advice about whether there is a need to make an application. There may be a number of informal arrangements to assist the person without the need for a financial management order. The enquiry service provides information about these options.

Application or informal solution

Where informal solutions are available, there may be no need for an application. There may also be other agencies that can provide appropriate assistance for the person without the need for a Tribunal order. Applications are made where a person is at risk or there is no informal solution available to help the person.

Registration and assessment

An application is registered on receipt by Tribunal staff. Following registration, all applications are assessed for urgency. The Tribunal has to be satisfied that the welfare and interests of the person with the disability are given paramount consideration.

Investigation

Staff of the Tribunal's Coordination and Investigation Unit will contact the applicant, family members and service providers and the person who is the subject of the application.

During the investigation process, the submission of medical and other professional reports relating to the person's disability/incapacity and the need for an order will be requested.

The investigation officer prepares a report, outlining the background to the application, the issues and the views of all parties and interested persons.

Urgent applications

The Tribunal can convene within hours to hear urgent applications. These hearings are generally by telephone. The Tribunal also operates an after hours service if urgent applications need to be heard outside normal business hours.

Order

The Tribunal makes guardianship orders, financial management orders or orders consenting to medical treatment. The Tribunal also makes orders relating to enduring guardianship and enduring powers of attorney. The Tribunal will generally announce its decision on the day of the hearing.

Following the hearing the Tribunal issues written Reasons for Decision. The Order and Reasons for Decision are sent to the parties as soon as possible after the hearing.

The Tribunal can decide not to make an order and can dismiss an application.

Review hearing

The Tribunal can review guardianship and financial management orders. Orders can also be reviewed on request. At the review hearing the Tribunal will consider whether the order needs to continue.

Renewed order

On review the Tribunal may renew the order if the person continues to need a substitute decision maker.

Discharge

In certain circumstances, the Tribunal can decide that the order should not continue, for example if a guardian is no longer needed.



Our work

Year in review – 2006/2007

Highlights

- 5,890 new applications
- 546 new applications to review existing orders
- The primary disability was dementia in 50% of new clients
- 4,735 hearings conducted
- 12,118 enquiries received
- 2 appeals made against Tribunal's decisions to the Supreme Court – both pending
- 15 appeals made against Tribunal's decisions to the Administrative Decisions Tribunal – 2 appeals upheld, 6 pending, 5 dismissed, 2 withdrawn
- 7 applications for approval of clinical trials – 6 were approved

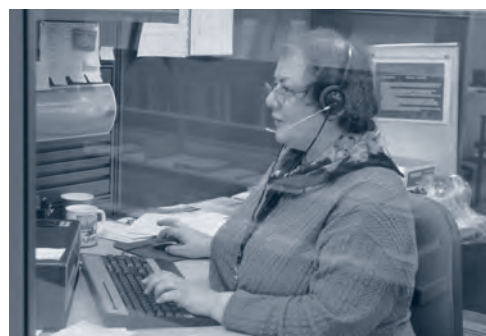
Enquiries service

The Tribunal's enquiries service, which operates from 9.00 am to 5.15 pm Monday to Friday, responded to 12,118 enquiries over the past year, an average of 48 enquiries per day. The enquiries service is staffed by experienced officers to ensure that the advice provided is always of the highest quality. The enquiries service provides the option for callers to leave their contact details and calls are generally returned within a few hours.

An important function of the enquiries service is to discuss the need for a guardianship or financial management application. In many cases, Tribunal staff will be able to suggest alternatives. For example, the daughter of an elderly woman with dementia contacted the enquiry service about becoming her mother's guardian. The daughter provided daily care and support to her mother. She explained

that her mother needed surgery to remove a melanoma but the doctor was not satisfied that she understood the treatment sufficiently to give an informed consent. The doctor told the daughter to contact the Tribunal about becoming her mother's guardian. The enquiry officer was able to advise the daughter that, under Part 5 of the *Guardianship Act 1987*, she was automatically the 'Person Responsible' for her mother and that no application to the Tribunal was necessary for her to be able to provide substitute consent.

In some cases, an informal alternative may not be possible, such as when a property needs to be sold to cover special accommodation needs or medical costs. To make these decisions on behalf of the person with the disability, someone may need the authority granted under a Tribunal order. Enquiries staff will discuss the particular circumstances with the caller and assist them to access appropriate application forms and information. The Tribunal's website is a valuable and accessible source of information including Tribunal publications and application forms.



New applications

In 2006/2007, the Tribunal received 5,890 new applications. Of these new applications received, 2,405 (41%) were for the appointment of a financial manager; 2,351 (40%) were for the appointment of a guardian; 475 (8%) were applications for consent to medical treatment; 27 (0.5%) were for the review of an enduring guardianship appointment and 90 (1.5%) were for the review of an enduring power of

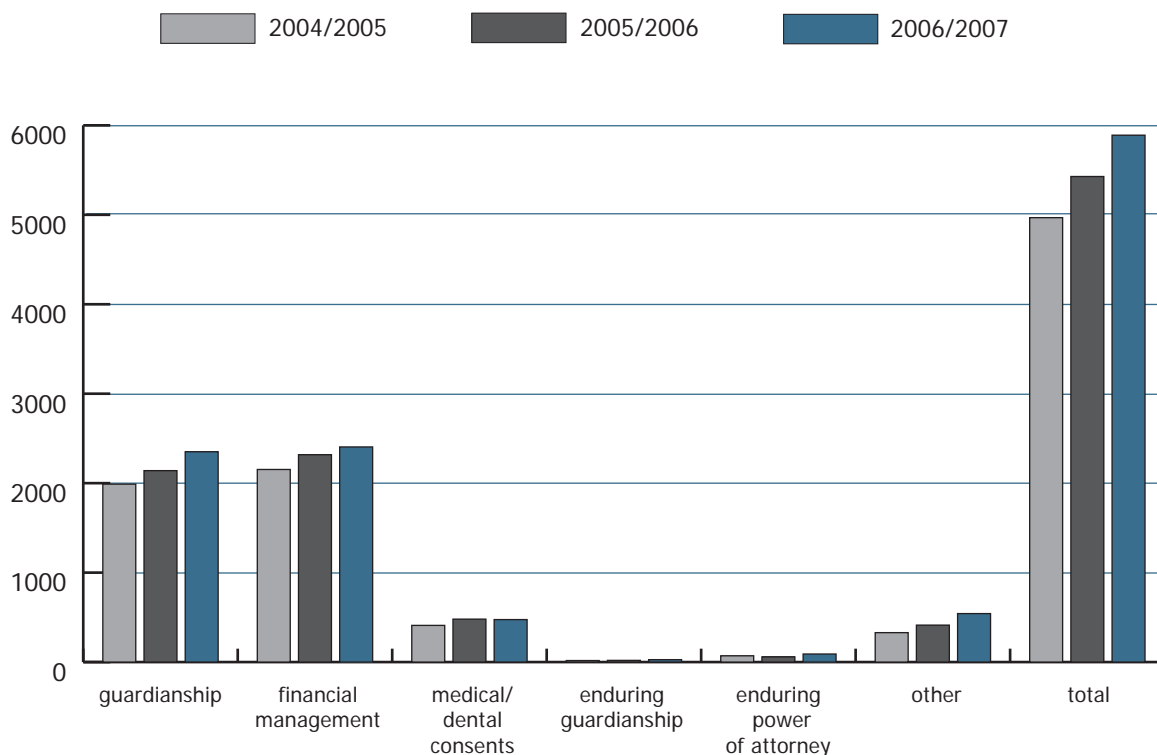
attorney. The Tribunal also received 542 (9%) applications for clinical trial approvals, recognition of interstate appointments, approval under section 12(2) of the *Mental Health Act* 1990 and procedural determinations which have been grouped under "Other" in Table 1. Table 1 shows a breakdown of the new applications received this year and a comparison with the two previous years.

Table 1. Categories of new applications: three year comparison

NB: Other category includes procedurals / recognitions / s. 12 (2) approvals / clinical trials

Application types	2004/2005	2005/2006	2006/2007
guardianship	1,989	2,140	2,351
financial management	2,153	2,318	2,405
medical / dental consents	410	480	475
enduring guardianship	17	19	27
enduring power of attorney	70	58	90
other	329	413	542
Total	4,968	5,428	5,890

Chart 1: Categories of new applications



Who made the applications?

Anyone with a genuine concern for the welfare of a person with a disability can make an application to the Tribunal. This could be a family member or a friend of the person with the disability or someone in a professional relationship with the person (eg. their doctor, caseworker, professional carer or other service provider). In 2006/2007, 51.9% of the applications received were made by family members, friends, carers or the person him or herself. The remaining applications were made by professionals, such as social workers, case managers, doctors or residential care staff.

Primary disability of new clients

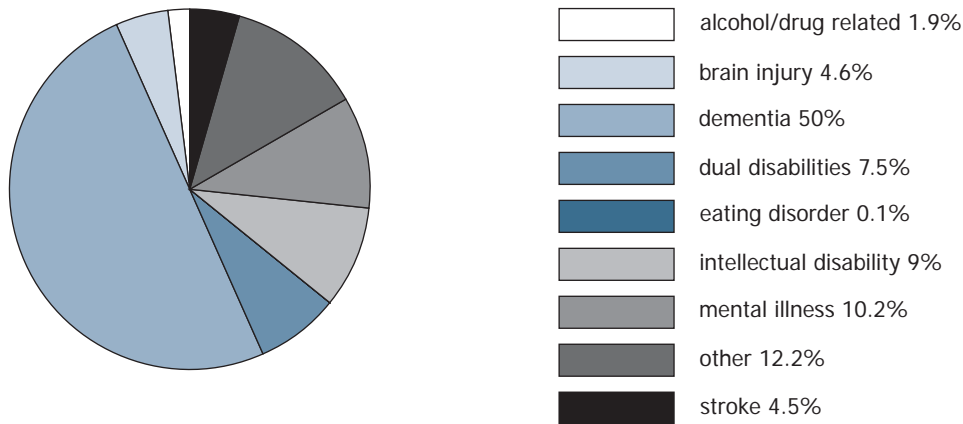
As has been the trend in previous years, the most common primary disability identified for new clients was dementia (50%). The next most common types of disabilities identified were dual/multiple disabilities (7.5%), mental illness (10.2%), and intellectual disability (9.0%). In 12.2% of new clients the disability was not identified by the applicant. Table 2 shows a breakdown of the disability types of new clients.

Table 2: New clients by disability type in 2006/2007

Primary disability of clients	Number	Percentage %
alcohol and drug related	51	1.9%
brain injury	124	4.6%
dementia	1,365	50%
dual disabilities	201	7.5%
eating disorder	5	0.1%
intellectual disability	247	9%
mental illness	278	10.2%
other	332	12.2%
stroke	122	4.5%
Total	2,725	100%

Chart 2: New clients by disability type in 2006/2007

Chart displaying the primary disability groupings of new clients and their percentages.



Age and sex

Of the new clients registered during the year, 47% were men and 52% were women (1% unknown). The majority of new clients over the age of 65 were women. In this age group women represented 58.5% of new clients. Men represent 59.4% of the people in the under 65 years age group.

Cultural background

Applications are made for people with a wide range of cultural backgrounds. Applicants are asked to identify the cultural background of the person the subject of the application. Those most frequently represented were Aboriginal/Torres Strait Islander, Italian, Greek, Polish, German, Chinese, Croatian, Maltese, Dutch and Hungarian.

Language spoken at home

Applicants are also able to identify the language spoken at home by the person with the disability. A total of 51 languages other than English were identified, the most

frequent of these being Italian, Greek, German, Polish, Cantonese, Indonesian and Spanish. Aboriginal languages and Auslan (Australian sign language) were also represented in applications received this year.

Interpreters used

Where appropriate, the Tribunal provides accredited interpreters to assist people attending hearings. Interpreters were provided on 209 occasions during the year and provided services across 33 different languages. Interpreters for Italian, Greek, Croatian, Arabic, Cantonese, Hungarian, Auslan, Mandarin, Polish, Russian and Vietnamese were provided on five or more occasions. The Tribunal arranged for documents to be translated into other languages including Braille.

Applications

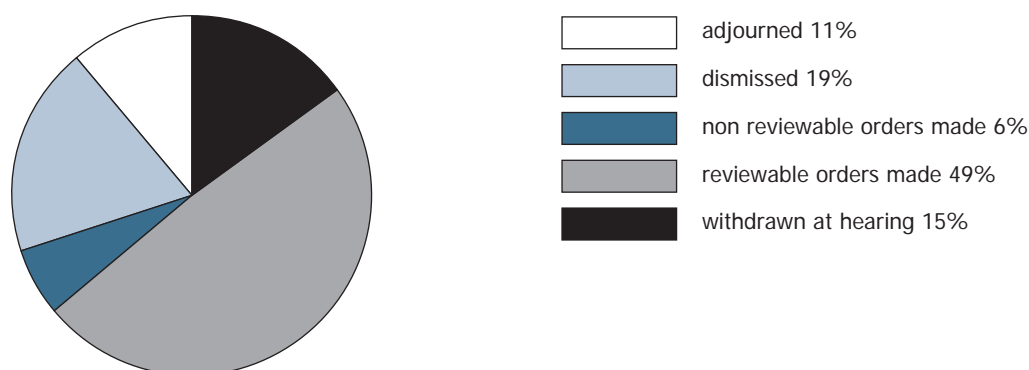
Guardianship outcomes

In 2006/2007, the Tribunal received 2,351 new guardianship applications. In total, 2,364 new guardianship applications were determined by the Tribunal. Of these, 1,727 matters were dealt with at hearing and 637 matters were finalised without requiring a hearing.

The outcomes for guardianship matters determined at hearings are summarised in Chart 3.

Of the 55% of applications that resulted in a guardianship order being made, private guardians were appointed in 39% of the cases and the Public Guardian in 60%. In the remaining 1%, a private guardian was appointed for some functions and the Public Guardian for other functions.

Chart 3: Hearing outcomes of new guardianship matters



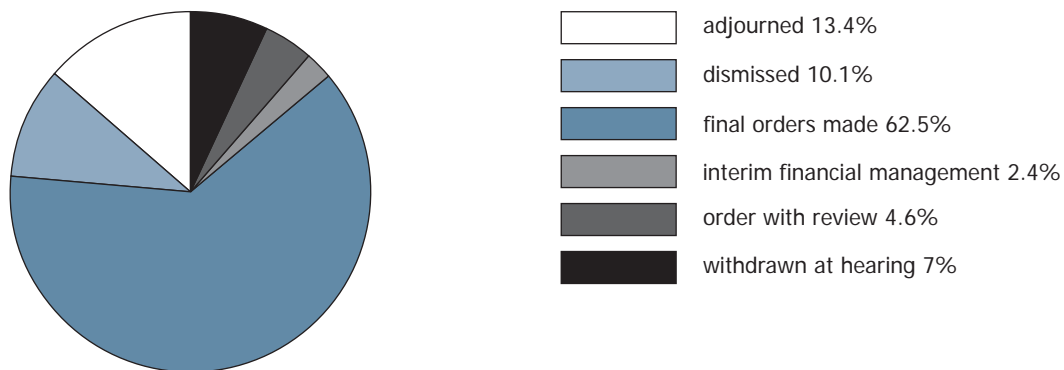
Financial management outcomes

In 2006/2007, the Tribunal received 2,405 new financial management applications. In total, 2,619 new financial management matters were determined by the Tribunal. Of these, 2,022 were dealt with at hearings and 597 matters were finalised without requiring a hearing.

The outcomes for financial management matters finalised at hearings are summarised in Chart 4.

Of the 69.5% of matters where financial management appointments were made, 90% resulted in final financial management orders; 6.7% had a review period stipulated in the order and 3.3% were interim financial orders.

Chart 4: Hearing outcomes of new financial management matters

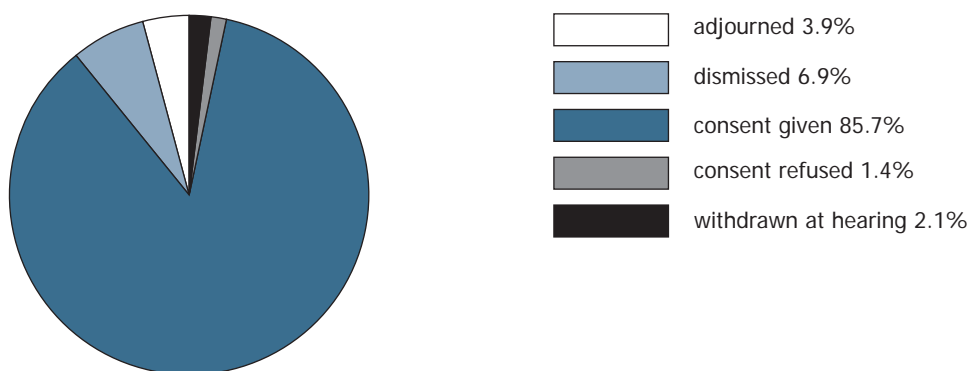


Consent to medical or dental treatment outcomes

A total of 484 applications for consent to medical or dental treatment were received by the Tribunal during the year. Of these, 435 matters were determined at hearings and 49 matters were finalised without requiring a hearing.

Hearing outcomes for medical and dental consent matters are summarised in Chart 5.

Chart 5: Hearing outcomes for medical and dental consent matters



Reviews of enduring guardianship

The Tribunal dealt with 35 applications to review the appointment of enduring guardians during the year. Twenty nine (29) reviews of the appointment of enduring guardians were heard with five enduring guardianship appointments confirmed, seven matters adjourned, three matters withdrawn, three matters dismissed, five appointments suspended, four revoked, one conciliated and one decision reserved.

Reviews of enduring power of attorneys

The Tribunal dealt with 117 applications to review an enduring power of attorney or to

obtain advice or directions about the operation of the power of attorney. One hundred and eight (108) applications to review an enduring power of attorney were heard by the Tribunal. Thirty eight (38) reviews were dismissed, 22 matters were adjourned, 12 matters where single orders were issued, 12 matters where multiple orders were issued, one matter where directions were given, 15 matters were withdrawn, two matters revoked, five matters resulted in a financial management order being made and one matter was conciliated.

Reviews of guardianship orders

Most guardianship orders are reviewed at the end of their term. Guardianship orders may also be reviewed on request at any time.

Requested reviews are usually made by guardians.

A request for review may be made because the circumstances of the person under guardianship have changed significantly or because new issues have arisen which may require the addition of or variation to guardianship functions in the order.

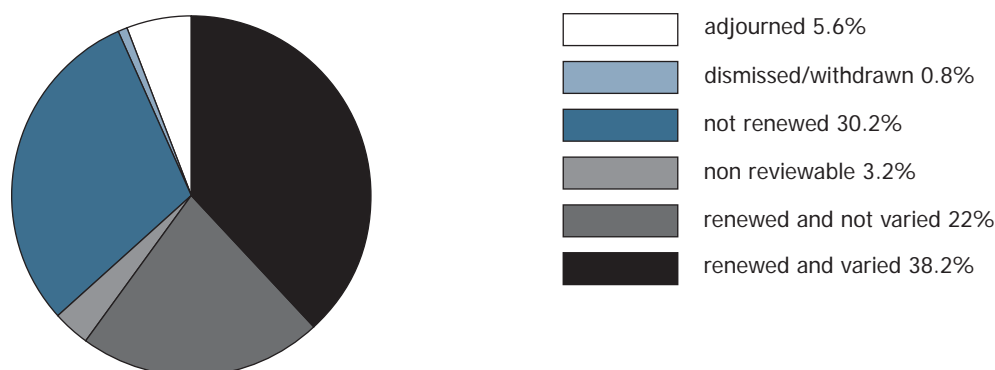
The Tribunal dealt with 1,672 reviews of guardianship matters during the year. Of these,

1,429 were considered at hearings and 243 matters were finalised without requiring a hearing.

The outcomes for reviews of guardianship orders finalised at hearings are summarised in Chart 6.

In 22% of review matters determined at hearing, the guardianship order was renewed; in 38.2% of matters the order was renewed and varied; while in 30.3% of matters the order was not renewed as it was determined that there was no longer a need for an order.

Chart 6: Outcomes for reviews of guardianship orders determined at hearing

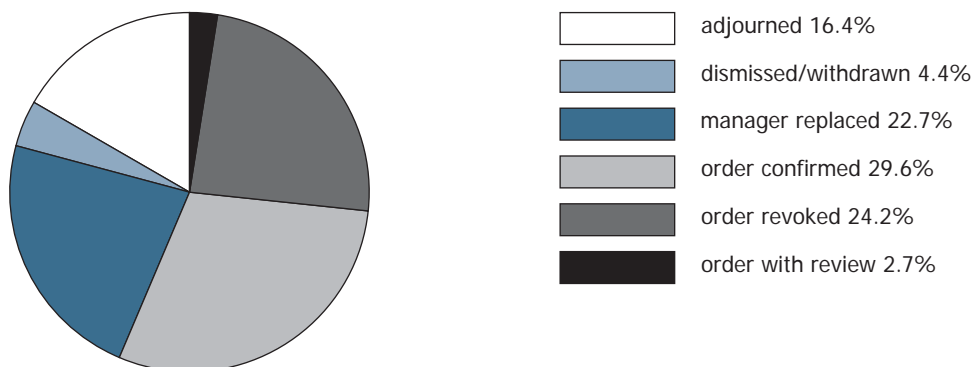


Reviews of financial management orders

The Tribunal dealt with 514 reviews of financial management orders during 2006/2007 year. Of these, 38 were finalised without requiring a hearing. Four hundred and seventy six (476) matters were heard by the Tribunal resulting in

141 orders confirmed, 115 orders revoked, 108 managers replaced, 78 adjournments, 14 withdrawals, 13 reviewable orders made and seven reviews dismissed.

Chart 7: Outcomes for reviews of financial management orders determined at hearings



Hearings

How many hearings were held?

During the year, the Tribunal conducted 4,430 scheduled hearings over 1,097 scheduled sittings. Of the scheduled sittings 85 were half day sittings. This was an average of four and a half hearings per sitting. The Tribunal also conducted 45 after hours and 288 procedural hearings. Together, a total of 4,735 scheduled, after hours and procedural hearings were held during the year.

Where were the hearings held?

Of the 4,735 hearings conducted by the Tribunal, approximately 77% of hearings were held in Balmain or in the Sydney metropolitan area. The remaining 23% of hearings were conducted in rural New South Wales (see table 3). Five hundred and twenty eight (528) hearings were held in Newcastle, Central Coast and Wollongong. See Table 4 on page 22 for details of the major hearing locations.

Table 3: Hearings conducted outside Sydney metropolitan area

Albury	Coffs Harbour	Morriset	Queanbeyan
Armidale	Dubbo	Moruya	Stockton
Bathurst	Goulburn	Mudgee	Tamworth
Blue Mountains	Griffith	Newcastle	Taree
Bowral	Lismore	Nowra	Tweed Heads
Central Coast	Maitland	Orange	Wagga Wagga
Cessnock	Merimbula	Port Macquarie	Wollongong

Table 4: Hearings and sittings by location

Location	Hearings	Sittings
Balmain	2,958	661
Sydney metropolitan	358	101
Central Coast	162	43
Newcastle	216	62
Wollongong	150	36
Other country	558	178
Sub total	4,402	1,081
After hours	45	39
Procedurals	288	140
Total	4,735	1,260

Procedural hearings

The Tribunal can determine some procedural matters with less than three members. In 2006/2007, the Tribunal conducted 288 procedural hearings. These hearings were conducted by either the President, Deputy President or a presiding member to whom the President delegated authority under section 51A of the *Guardianship Act 1987*. These matters included applications for legal representation, applications to be joined as a party, and requests for withdrawal of an application made to the Tribunal. Of the 138 applications for legal representation, representation was granted on 109 occasions. In addition the Tribunal appointed separate representatives on 185 occasions.

Recognition of appointments

The Tribunal has the jurisdiction to recognise the appointment of guardians and managers appointed under corresponding law in other states and territories. The Tribunal is able to recognise appointments made by relevant

guardianship bodies in all Australian states and territories and in New Zealand. During 2006/2007, the Tribunal received and determined 37 applications to recognise such appointments.





Case studies

The Guardianship Tribunal working in the best interests of people with disabilities and their families.

'Charlie's great nephew is appointed by the Tribunal to act as his guardian to make medical decisions on Charlie's behalf.'



Charlie

Charlie is 80 years old and is currently a patient at Prince of Wales Hospital where he has been admitted for some months. His wife, Myrtle, is a resident of a nursing home. Charlie and Myrtle did not have any children however, following the death of their niece they raised their great niece and nephew. There are also extended family members who are interested in Charlie's welfare.

Charlie is suffering from many longstanding medical conditions. His most recent admission to hospital arose from a septic shoulder infection which was not responding to treatment. Charlie has been suffering from multiple infections over 12 months and his condition is deteriorating. Charlie also suffers from advanced dementia and his physical health problems seem to be making his mental state worse.

Medical staff involved in Charlie's care believe he cannot give a view about what he wants to happen and he is refusing blood tests and, on occasions, medication and other treatment. It has been difficult for the family to provide direction to the hospital about ongoing treatment because different family members have different views about what should happen for Charlie.



It has been difficult for the family to provide direction to the hospital about ongoing treatment because different family members have different views about what should happen for Charlie.

The Haematology Registrar caring for Charlie makes an application to the Tribunal seeking a decision about changing Charlie's medical care from active treatment to palliative care. The palliative care plan for Charlie does not include antibiotics or other active treatment for his physical health problems.

Given the nature and extent of Charlie's medical conditions and the presence of his advanced dementia, the Tribunal considered that Charlie has a disability and is not able to make medical decisions for himself. All the family were in agreement about this.

The Tribunal considered whether Charlie needed a guardian to be appointed to make medical decisions on his behalf. The family acknowledged that it had been difficult for them as a group to make decisions.

During the course of the hearing the Tribunal assisted the family to better understand the role of a substitute decision maker. The Tribunal heard evidence that Charlie and his nephew had a close relationship, his nephew visited him often and provided support to attend medical appointments. The nephew told the Tribunal that through his previous discussions with Charlie he understood his views and wishes in relation to his health care and medical treatment.

The Guardianship legislation requires that a private person be appointed in preference to the Public Guardian if possible. The Tribunal decided to appoint Charlie's nephew as his guardian to make decisions in relation to his medical care and treatment, including decisions about the palliative care plan proposed for Charlie.

'The Tribunal revokes financial management order in Steven's best interest.'



Steven

Steven is a 49 year old man who has a mild intellectual disability.

Steven lived and worked in Sydney for over 20 years. He saved enough money to purchase his own home at Carlingford. Some years ago Steven agreed to marry a Malaysian friend whose visa had expired. She lived with Steven in his home in Carlingford and subsequently brought her teenage son and her boyfriend to live in the house. This resulted in a very difficult time for Steven. He was harassed and alienated in his own home and he became quite depressed.

Steven's father said that there were many family members available who would continue to assist Steven "for security" if the order was revoked.

In 1997, Steven's mother applied to the Tribunal to have the Public Guardian and the Protective Commissioner appointed to make decisions for her son. The Public Guardian decided it was appropriate for Steven to leave his property and the Protective Commissioner pursued a property settlement for Steven in the Family Court. Steven divorced his wife and moved to Dubbo where his parents lived. After his property settlement was finalised, Steven bought a house in Dubbo where he has been living independently for two and a half years. In 2006, Steven's father applied to have Steven's financial management order revoked as he believed that would be in Steven's best interests.

Steven's father said that when the original order was made for Steven in 1997 his circumstances were very different. Now Steven is secure in his own home and enjoys managing his house and garden. Steven has frequent contact with all his family members and has been living independently for several years. Steven does his own shopping, pays his bills and is a member of a local club. This submission was supported by a report prepared by Steven's doctor.

Steven uses an automatic teller machine to access his pension and pays his bills from his savings account. Steven's father said that there were many family members available who would continue to assist Steven "for security" if the order was revoked. Steven acknowledged at the hearing that he was aware of the importance of safeguarding his money and assets. Steven advised that he had managed his own money while he was living and working in Sydney.

The Tribunal decided that Steven was able to manage his day to day expenses and his disability support pension in his current circumstances. The Tribunal agreed that Steven was no longer vulnerable to financial exploitation or at significant risk of financial loss. The Tribunal revoked Steven's financial management order.

'No orders for Valerie.'



Valerie

Valerie, an elderly woman in her 80's, resides in her own home in a regional centre and is said to have some cognitive impairment. A member of the local aged care assessment team made an application for guardianship and financial management orders on the basis that Valerie is isolated and refuses the provision of services.

At the hearing, Valerie appeared articulate and intelligent despite her reported cognitive impairment. She told the Tribunal that she had worked in management nearly all her life and she had been living in her present home for the past 10 years after her husband's death. Her house is easy to manage as are her pet cats. She goes on a monthly outing with a friend but is no longer interested in attending social events. A neighbour, Robert, looks after her garden and provides cooked meals daily. Robert confirmed Valerie's evidence and stated that he did the gardening, provided cooked meals and did some repairs on her house if required. He enjoyed gardening and cooking and had the time to spare.



There was no evidence to suggest that someone was needed to make decisions on her behalf for accommodation, health care or services nor was anyone needed to make financial decisions.

In his evidence to the Tribunal, the applicant stated that Valerie could do with home help once a week and had been refusing services. He believed that, although she was coping at this stage, she would require more services as time went by. The medical evidence submitted to the Tribunal did not provide confirmation that Valerie suffered from dementia.

Valerie's grand-daughter spoke to the Tribunal on the telephone. She said her grandmother enjoys being independent, is not vulnerable and should continue to live her life as she wishes. In relation to the financial management application, the grand-daughter indicated that she was the appointed attorney under an enduring power of attorney and was prepared to act if her grandmother had a stroke or made financial decisions which were not in her best interests.

After reviewing the evidence, the Tribunal was not satisfied that Valerie suffered from a disability that prevented her making her own decisions. There was no evidence to suggest that someone was needed to make decisions on her behalf for accommodation, health care or services nor was anyone needed to make financial decisions. On that basis, the Tribunal dismissed the application for guardianship and financial management orders. The *Guardianship Act 1987* provides that the Tribunal can only make orders where it is satisfied that the person suffers from a decision making disability and that a formal guardian or financial manager is needed.

Corporate Strategic Plan 2006 – 2009

We are a Legal Tribunal

Our purpose is to keep paramount the interests and welfare of people with disabilities through facilitating decision making on their behalf.

We value and commit to:

- **Respecting individuals**
We promote the rights of people with disabilities and recognise their personal, family and cultural history and needs, while exploring options that maximise their rights.
- **Taking pride in our work**
We strive to ensure all our work is timely and of the highest quality.
- **Providing quality decision making**
We obtain the facts and make considered and balanced decisions.
- **Creating a helpful and professional environment**
We provide an environment that is accessible and responsive to the needs of people with disabilities.
- **Promoting fairness**
We operate as an independent, impartial and accountable Tribunal service.
- **Communicating and consulting**
We work as a team with each other and our stakeholders.

Our focus for the next three years:

To develop and implement strategies that will ensure the provision of quality services in an environment of increasing demands.

Our five strategies to achieve this:

1. Develop and implement strategies to improve the community's awareness and understanding of the role of the Tribunal and the services it provides.
2. Review Guardianship and related legislation to ensure it continues to promote the rights, best interests and protection of people with disabilities.
3. Review & improve the Tribunal's work processes, data management and use of technology to ensure that all cases are dealt with in a fair, efficient and flexible manner that is responsive to the needs of clients.
4. Review & improve the ways in which the Tribunal supports its staff and members to provide quality services to the community.
5. Review the Tribunal's working environment to ensure it is accessible and appropriate for clients, staff and members.



Improving services

Improving Our Services and Operations

Our Corporate Plan

The Tribunal's strategic direction is set out in its *Corporate Strategic Plan 2006 – 2009*.

The focus of the Corporate Plan is to 'develop and implement strategies that will ensure the provision of quality services in an environment of increasing demand'.

There is continued and increasing demand for the Tribunal's services. We are committed to managing our resources prudently and we are continually analysing and refining our work practices to respond to these demands without compromising our standard of service to people with disabilities.

The Corporate Plan sets out our goals in the following areas:

- Legislative review.
- Review of business processes, data management and use of technology.
- Review of our work environment.
- Supporting staff and Tribunal members.
- Improving community awareness.

In 2006/2007 the Tribunal made significant progress in all five areas and achieved many of its stated goals.

Reviewing our legislation

The demand for the services of the Tribunal has been steadily increasing, with the expectation that this growth will continue into the future as the population ages and increasing numbers of people are living with age related disabilities.

In 2006/2007 the Tribunal undertook a rigorous process of legislative review.

Four areas of reform were identified to facilitate the delivery of timely service to people with disabilities and those who support them, at the same time assisting the Tribunal to manage its increased workload and ensure greater efficiencies in the delivery of its service.

It is recognised that some review hearings involve less complex and contentious matters without major determinations about an individual's rights. It was proposed that the President of the Guardianship Tribunal be given discretion to sit one, two or three member panels to hear reviews and determine applications for consent to major medical treatment.

Legislative amendment was proposed to increase the flexibility of the Tribunal to make non reviewable guardianship orders where satisfied that this was appropriate in all the circumstances and was in the best interests of the person with the disability.

To assist in the delivery of the Tribunal's services it was proposed that the functions of the Registrar be extended to facilitate the conduct and management of non contentious applications to the Tribunal. Improved case management, through the exercise of the procedural functions of the Registrar, will benefit the person the subject of the application and other Tribunal users through timely management of these procedural matters.

In November 2006, the Tribunal released a Discussion Paper on the proposed amendments and undertook broad consultation with stakeholders. There was general recognition that the amendments provide a strong foundation for the Tribunal to continue to manage its growing workload while continuing to provide a high standard of



service to people with disabilities, their families and carers.

It is anticipated that the amendments will commence 1 August 2007.

Improving our processes

A new management structure

In 2006/2007 the Tribunal engaged IAB Services to make recommendations concerning the management and organisational structures within the Tribunal to improve its capacity to keep pace with increasing service delivery demands and ensure efficient, effective and cost effective delivery of services.

Following this review, it was recommended that the positions of Executive Officer/Registrar and Manager Information and Hearing Services be replaced by the new position of Registrar. Recruitment action to fill this new position was commenced but not completed in 2006/2007. It anticipated that the position will be filled in July 2007.

New and enhanced use of technology

The Tribunal has undertaken a number of projects in 2006/2007 to improve our processes and make better use of technology, to enhance the Tribunal's efficiency and effectiveness.

We have continued to work with the Government Chief Information Office (GCIO). In 2005/2006 the GCIO assisted the Tribunal to develop a high level Information and Communication Technology Strategic Plan (ICT). There has been further development of this strategy in 2006/2007 to assist the Tribunal to respond to key business challenges.

This year the GCIO and the Tribunal have worked together to develop a pilot project for a Guardianship Service Domain Hub. The pilot will allow the Tribunal to develop

an information technology solution for improved information exchange with the Office of the Public Guardian and the Office of the Protective Commissioner. It is anticipated that this will eventually replace the current manual, paper based processes involved in providing Tribunal orders and reasons for decision, and that the expected efficiencies will benefit people the subject of Tribunal orders.

The Tribunal continued to make improvements to its Client Management System (CMS) databases including making significant enhancements to prepare for the commencement of the legislative amendments. We identified and developed business rules to improve data integrity and reporting from the CMS.

The process of identifying who should receive a Notice of Hearing and providing these instructions to Hearing Services staff was also automated via the database with improved efficiency.

Staff members in our Coordination and Investigation Unit routinely prepare investigation reports to assist the Tribunal. A new electronic report was designed which draws on existing data from the CMS. The development of this project was undertaken and completed this year. Development of an electronic version of the Tribunal's Post Hearing Outcome Report programmed to interact with relevant hearing outcome data was also completed this year.

These reports will be implemented early in the next financial year and will make the reporting tasks more efficient.

Improving our accessibility

The Tribunal is conscious of the need to make its services as accessible as possible to those need them.

An important element in this is making it as easy as possible for people to approach the

Tribunal if they think that a family member, friend or client with a disability may need to have an order made by the Tribunal to assist, protect and empower them.

The Tribunal undertook an extensive review and development of its application forms and engaged information design consultants to work with staff to re-design our two most frequently used application forms (for guardianship and financial management orders and medical and dental consent).

The new forms will assist the public, the Tribunal and, most importantly, people with disabilities by:

- assisting applicants to focus on the persons' need for a substitute decision maker and understand when to apply to the Tribunal;
- providing clearer instructions on how to apply and the responsibilities of the applicant;
- identifying risk factors for the person and assisting the Tribunal to assess the complexity and urgency of matters more effectively;
- being presented in a more user friendly, accessible and up-to-date format which will assist busy professionals and family members to collect the information needed by the Tribunal

The forms are in print production and will be distributed early in the next financial year.

In 2006/2007 the Protective Commissioner's Liaison Officer returned to the Tribunal after the position had not been filled for almost two years. The role of the Liaison Officer has been enhanced to include a liaison role for both the Office of the Protective Commissioner and the Public Guardian. The availability of the Liaison Officer greatly increases support for clients and private guardians and managers when orders are first made by the Tribunal.

Improving our environment

The Tribunal's reception and staff areas were refurbished to make our work environment more pleasant for all Tribunal users and staff. The refurbishment included painting, and provision of new furniture.

The Tribunal purchased several artworks from the Public Guardian's 32 Life Pieces exhibition at Parliament House. The event celebrated the artistic achievements of people with disabilities. The works purchased by the Tribunal can be seen in the Tribunal's reception and waiting room.

The Tribunal undertook a review of its accommodation. An analysis of data relating to clients and applicants to the Tribunal indicated that Balmain remains a central location for people accessing our services. A new lease was negotiated including an option for acquiring additional space within the building as our operational needs grow.

Supporting staff and Tribunal members

The Code of Conduct for Tribunal Members was updated and finalised this year and the performance appraisal system for members was improved.

A review of the Tribunal Member's Manual has been undertaken and a new version of the manual is expected in 2007/2008. The Tribunal's intranet was designed and a working group met regularly to develop its content. The intranet will facilitate communication to and between staff of the Tribunal and provide a central and accessible repository for key internal information. This project is continuing.

Improving community awareness

The Tribunal publications and website were reviewed in preparation for the commencement of the amendments to the Act.

The Tribunal continues to provide information to the community about enduring guardianship and enduring powers of attorney as a means of planning ahead for possible future incapacity. Circumstances which might otherwise necessitate an application to the Tribunal may be avoided when these prior arrangements have been made. This year we reviewed our enduring guardianship and enduring power of attorney publications and forms and these were re-released in March 2007.

The Tribunal collaborated with other key stakeholder agencies in providing information about enduring guardianship and enduring power of attorney. The Tribunal is represented on the Planning for Later Life Forum and its subcommittees, looking at the development of a standard education package for use by all agencies.

Work began on the development of targeted education packages with the aim of tailoring information about the Tribunal's role and functions to the needs of specific groups such as general practitioners, aged care workers and legal professionals. This planning will continue in 2007/2008.

The Tribunal understands that applicants, people with disabilities, professionals and the community can benefit from understanding the sort of orders the Tribunal can make and the reasoning supporting those orders. The Tribunal has commenced a project to de-identify and publish Notable Cases on its website as is done in other guardianship and administration jurisdictions in other states and territories. Work on this project will continue into 2007/2008.

Appeals from decisions of the Tribunal

Decisions of the Tribunal may be appealed to either the Supreme Court or the Administrative Decisions Tribunal of New South Wales (the ADT).

Only parties to proceedings before the Guardianship Tribunal can appeal to the Supreme Court or the ADT.

The Supreme Court can hear appeals from any decision of the Guardianship Tribunal. The ADT can only hear appeals from decisions which were made after 28 February 2003. There are some decisions of the Tribunal, such as decisions about medical treatment, which cannot be appealed to the ADT.

Appeals to the Administrative Decisions Tribunal (ADT)

There were four appeals made during the previous financial year which were still pending as at 30 June 2006. Those four appeals were finalised in the current financial year. Of those four appeals, two were dismissed, one was upheld and remitted to the Tribunal for re-hearing and one was upheld with the ADT setting aside the Tribunal's order and substituting it with another order.

During the current financial year, there were 15 appeals against decisions at the Tribunal filed at the ADT. (see Table 5)

Two of those appeals were upheld by the ADT and the matters remitted to the Tribunal for re-hearing.



Table 5: Total appeals against Guardianship Tribunal decisions lodged at the ADT during 2006/2007

Total appeals made during 2006/2007	15
Appeal withdrawn by appellant	2
Appeal dismissed by ADT	5
Appeal upheld by ADT	2
Pending ADT hearing as at 30 June 2007	3

Appeals to the Supreme Court

There were two appeals from decisions of the Tribunal filed with the Supreme Court during 2006/2007. Both of these appeals are pending as at 30 June 2007.

At the end of 2005/2006 there were two appeals pending. One of those appeals was discontinued by the appellant and the other remains pending as at 30 June 2007.

Freedom of information

The Tribunal received no applications accompanied by the relevant fee for access to information under the *Freedom of Information Act 1989*.

The Tribunal is not an "agency" for the purposes of the *Freedom of Information Act 1989*. Section 10 of that Act provides that a tribunal is not included within that definition in relation to its judicial functions.

Complaints

During 2006/2007 the Tribunal received 91 written complaints. The complaints were generally about decisions of the Tribunal, the Tribunal's written Reasons for Decision, or how an investigation or hearing was conducted. Complaints about a decision of the Tribunal, the conduct of its members, or its written Reasons for Decision are handled by the Deputy President who is responsible for the Tribunal members. Complaints relating to the investigation of a matter are referred to the Manager of the Coordination and Investigation Unit who is responsible for staff who prepare matters for hearing.



Clinical trials

The purpose of the clinical trials provisions of the *Guardianship Act 1987* (Part 5, Division 4A) is to ensure that people who cannot consent to their own treatment can gain access to treatment which is only available through a clinical trial.

Safeguards

To ensure that people who cannot consent to their own treatment only take part in those clinical trials that may benefit them, the legislation contains a number of safeguards.

Firstly the Guardianship Tribunal must give its approval to the clinical trial as one in which those who cannot consent to their own treatment may take part. This requires those proposing the clinical trial to make their case to the Tribunal before they can treat adults unable to consent to their own treatment. The Tribunal will not grant approval unless the following criteria are satisfied.

1. Only people who have the condition to be treated may be included in the clinical trial.
2. There are no substantial risks to the patient or no greater risks than those posed by existing treatments.
3. The development of the treatment has reached a stage at which safety and ethical considerations make it appropriate for the treatment to be available to people who cannot consent to their own treatment.
4. The treatment has been approved by the relevant ethics committee.
5. Any relevant National Health and Medical Research Council guidelines have been complied with.

6. When the potential benefits are balanced against potential risks, it is clear that it is in the best interests of people who have the condition that they take part in the trial.

If the Tribunal gives its approval to the clinical trial, individual substitute consent must be given for each person taking part in the clinical trial. The legislation is structured so that this consent will usually be given by the 'person responsible' for the person unable to consent to his or her own treatment.

The 'person responsible' is usually the spouse, family member, carer or adult child of the person unable to give consent. In all cases in which the Guardianship Tribunal has given its approval to a clinical trial, the 'person responsible' has been empowered to give the substitute consent for the particular patient.

A further safeguard in the legislation is that anyone who provides treatment to a person in a clinical trial not in accordance with the legislation commits a serious offence and is liable to imprisonment for up to seven years.

Finally, the Tribunal must include, in its annual report, details of any clinical trial it approves.

Approval of clinical trials

During the 2006/07 financial year, the Tribunal received seven applications for the approval of clinical trials. The Tribunal conducted seven hearings which included an application registered in the previous financial year. There is currently only one application pending. Of the seven hearings conducted, four applications were approved, one was not approved, one was dismissed and one was withdrawn prior to hearing.

As required by section 76A(2A) of the *Guardianship Act 1987*, the details of those trials are set out opposite.

Clinical Trials 2006/2007

Name of clinical trials submitted for approval by the Tribunal	Trial sites	Outcome of Tribunal	Individual consents to be given by the 'person responsible'
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Trials for patients who are critically ill

1. A study of early parenteral nutrition versus standard care in the critically ill patient. An Australian and New Zealand Intensive Care Society Clinical Trials Group endorsed level one randomised controlled trial.	• Royal North Shore Hospital	Application dismissed	N/A
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Trials for patients with sepsis

2. Protocol F1K-MC-EVDK Study – a phase two study to evaluate dose and duration of treatment of Drotrecogin Alfa (Activated) using serial measurements of Protein C in patients with severe sepsis and multiple organ dysfunction.	• Prince of Wales Hospital	Approved	Yes
3. 01-04-TL-242-011 Study - a pivotal, multicentre, multinational, randomised, double blind, placebo-controlled study to evaluate the efficacy and safety of TAK-242 in adults with severe sepsis.	• Nil	Withdrawn	N/A

Trials for patients suffering from stroke

4. Low-dose tenecteplase versus standard-dose alteplase for acute ischaemic stroke. An imaging - based efficacy trial.	• John Hunter Hospital	Approved	Yes
5. A phase three multicentre, randomised controlled trial of very early rehabilitation after stroke (AVERT).	• Westmead Hospital • Mater Misericordiae Hospital Newcastle	Approved	Yes

Clinical Trials 2006/2007

Name of clinical trials submitted for approval by the Tribunal	Trial sites	Outcome of Tribunal	Individual consents to be given by the 'person responsible'
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Trials for patients with Alzheimer's disease

6. AVA102670 Study - a 54-week, double blind, randomised, placebo controlled, parallel group study to investigate the effects of rosiglitazone (extended release tablets) as adjunctive therapy to acetylcholinesterase inhibitors, on cognition and overall clinical response to APOE 4-stratified subjects with mild to moderate Alzheimer's disease (REFLECT - 3).	<ul style="list-style-type: none">• Prince of Wales Hospital• Hornsby Ku-ring-gai Hospital	Approved	Yes
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Trials for patients in critical care

7. Prophylaxis of Thromboembolism in critical care trial (Protect).	<ul style="list-style-type: none">• Blacktown Hospital• Royal Prince Alfred Hospital• Royal North Shore Hospital• Wollongong Hospital	Not approved	No
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Communicating with our clients

Community awareness and education

Highlights

During 2006/2007 the Client Information Services Unit organised community education seminars for professionals and carers and coordinated speakers for a wide range of stakeholder groups and organisations.

- 55 community education sessions were delivered throughout the year attracting a total of 2055 participants.
- 2 all day seminars for professionals and carers were held in Queanbeyan and Sydney.
- There was a 23% increase in visits to the Tribunal's website.
- Planning ahead brochures and forms were re-designed in a more accessible format.

Seminars

The Tribunal provides all day seminars throughout New South Wales for health, legal and welfare professionals and the general public. The seminars are divided into a morning session for professionals and an afternoon session for non-professionals.

Both sessions provide an overview of the role and functions of the Tribunal with an explanation of financial management, guardianship, enduring guardianship, enduring power of attorney and substitute medical and dental consent.

In 2006/2007 two all day seminars were conducted in the Sydney central business district and Queanbeyan attracting a total of 156 participants: 138 health, welfare and legal professionals for the morning sessions and 18 carers for the afternoon sessions.

Requested sessions

The Tribunal also provides speakers on request. These requests come from a wide range of organisations, including peak bodies, carer support groups, aged care facilities, hospitals, legal services, community health centres, neighbourhood centres, universities and TAFE colleges, specialist disability services and government departments.

The majority of requests in 2006/2007 came from aged care service providers. Fifty three (53) requested sessions were delivered throughout the year attracting a total of 1899 participants. A community education request form is available on the Tribunal's website for any organisation or group wanting to request a speaker from the Tribunal.

In summary, the Tribunal spoke to approximately 2,055 people across NSW, including health, welfare and legal professionals, people with disabilities and their carers, friends and family members.

The Tribunal also made a commitment to community education in its *Corporate Strategic Plan 2006 – 2009* with plans for the continuing review and development of its community education program.



Papers presented

Diane Robinson, President

'Fact Finding by Tribunal Members'

Presentation to the Refugee Review Tribunal and the Migration Review Tribunal, 3 August 2006.

'The Guardianship Tribunal'

Presentation to the State Legal Conference, 30 August 2006.

'The Guardianship Tribunal'

Presentation to Hornsby Community Mental Health, 8 November 2006.

'Fact Finding by Tribunal Members'

Presentation to the Claims Assessment and Resolution Service (CARS), 23 February 2007.

'The Guardianship Tribunal'

Presentation to Law Faculty, University of Western Sydney, 3 March 2007.

'The Guardianship Tribunal'

Community Education Seminar in Queanbeyan, 5 March 2007.

'Planning for Incapacity and Death - Advance Care Directives'

Presentation to Continuing Legal Education Conference, 16 March 2007.

'Fact Finding by Tribunal Members'

Presentation to Australian Guardianship and Administration Committee Conference, 23 March 2007.

'Advance Care Directives'

Presentation to Aged Care Association Australia New South Wales Annual Nursing and Management Issues Congress, 4 May 2007.

'Advance Care Directives'

Presentation to Central Sydney Division of General Practice, 16 May 2007.

Marion Brown, Deputy President (to February 2007)

'The Guardianship Tribunal'

Presentation to the Health Care Complaints Commission, 16 November 2006.

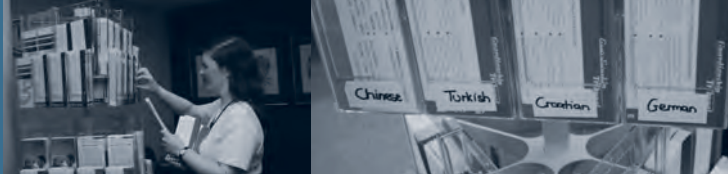
'Guardianship and the Courts, Capacity and Consent'

Presentation to Minors' Consent Law Reform 2006 Conference, 27 November 2006.

Robin Gurr – Deputy President (February 2007 - onwards)

'Powers of Attorney – Financial Abuse and Management'

Presentation to the Retirement and Beyond Conference, 29 May 2007.



Publications

The Tribunal produces a comprehensive range of publications about its role, functions and processes. These publications are accessed in a variety of ways: download from the Tribunal's website, and distribution by the Client Information Services Unit, community education presenters, Investigation officers preparing matters for hearing and Hearing Services Officers when written Reasons for Decision are issued.

The growing awareness of the importance of planning ahead in an ageing population is reflected in an increased demand for information about this. The Tribunal has responded by improving its Enduring Guardianship and Enduring Power of Attorney brochures and forms. These publications were re-issued in a more user friendly format in March 2007.

Current Guardianship Tribunal publications are listed on page 40.

Website

The Tribunal's website remains an important source of information for applicants, people with disabilities and those who support them, health and disability service providers, and the public. During 2006/2007 the Tribunal had 176,950 visits to its website compared to 143,399 during the previous year, an increase of 23%.

This year also saw an increase in the use of the website's online application facility. Six hundred (600) applications were lodged online compared to 499 in the previous year.



The Tribunal's website has the following features to assist users:

- Easy accessibility with features including long and short versions of content, varying text size, and normal or 'easy click' layout;
- Pages and information in languages other than English;
- Publications and application forms available for download;
- An online application facility;
- Video clips demonstrating what happens during a hearing;
- A separate section on enduring powers of attorney and enduring guardianship.

Guardianship Tribunal current publications

Brochures

- 3 Separate Organisations (the roles of the Guardianship Tribunal, the Office of the Public Guardian and the Office of the Protective Commissioner)
- What Does the Guardianship Tribunal Do?
- We Welcome Your Feedback
- Planning Ahead ... Enduring Guardianship (includes form)
- Getting Ready for Your Hearing
- Planning Ahead ... Enduring Power of Attorney (includes form)
- Substitute Consent
- Website Features



Booklets

- Behaviour Management and Guardianship

Information sheets

- What Does the Guardianship Tribunal Do? (available in Arabic, Chinese, Croatian, English, German, Greek, Italian, Macedonian, Polish, Serbian, Spanish, Tagalog, Turkish, Vietnamese)
- Person Responsible
- Special Medical Treatment: Guidelines (plus information sheets about specific kinds of special medical treatments)
- Access to New Treatments through Clinical Trials
- Application for Approval of a Clinical Trial
- Medical and Other Professional Assessment Reports
- Guardianship Orders - What Happens after the Hearing?
- Financial Management Orders - What Happens after the Hearing?
- Review of Enduring Power of Attorney
- Website Access Features
- Online Applications
- Financial Management Orders – Review & Appeals
- Financial Management & Guardianship Orders – Review & Appeals
- Guardianship Orders – Review & Appeals
- Guardianship Hearings
- Financial Management Hearings
- Guardianship and Financial Management Hearings
- Representation at Hearings
- Preliminary Hearings
- Separate Representation
- Hearings to Review/Revoke Financial Management Orders
- Hearings for Reviews of Guardianship Orders



Application forms

- Application for Guardianship and/or Financial Management
- Application for Consent to Medical or Dental Treatment
- Application to be Joined as a Party to a Matter
- Application for Recognition of Appointment Under Corresponding Law
- Application to Review a Financial Management Order
- Application to Revoke a Financial Management Order
- Application to Revoke Enduring Guardianship
- Application to Review Enduring Guardianship
- Application to Review Enduring Power of Attorney
- Resignation of Appointment of Enduring Guardian / Alternative Enduring Guardian



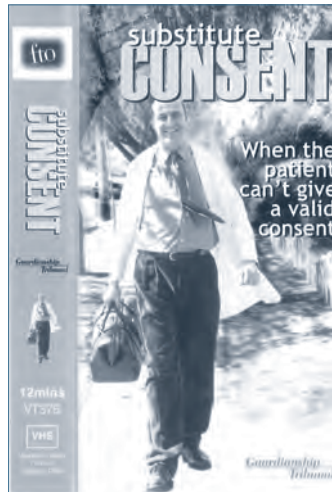
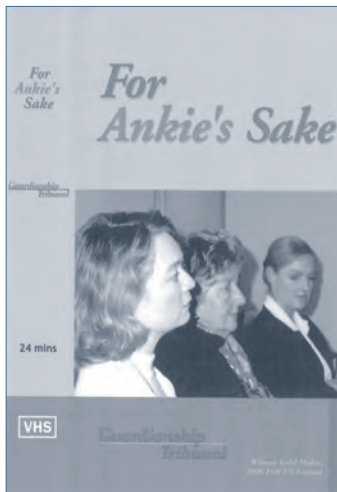
Videos

The Tribunal continues to distribute its three videos, *'For Ankie's Sake,' 'Substitute Consent'* and *'In their Best Interests'* which are available through the Tribunal's Client Information Services Unit.

The videos are an important tool in educating and informing the community about the role of the Tribunal and various informal arrangements that may prevent the need to make an application to the Tribunal.

For Ankie's Sake

This video tells the story of an elderly woman with dementia whose family members are in conflict about her care needs. It highlights that the Tribunal should be a 'last resort' when a person is incapable of making his or her own decisions and all other suitable alternatives to resolve the situation have been tried.



Substitute Consent

This video takes the viewer through several scenarios where a person with a disability requires medical treatment but is not capable of providing an informed consent. The scenarios clarify the different categories of treatment set out in Part 5 of the *Guardianship Act 1987* and the consent requirements for each. It also explains who has an automatic right as a 'person responsible' to provide consent to medical or dental treatment on behalf of a person who is incapable of doing so themselves.

In Their Best Interests

This video tells the stories of three people who come to the Guardianship Tribunal. Each scenario shows how a case comes to the Tribunal and how it proceeds to a resolution. The investigation process and hearing process is shown from beginning to end.

Our people

Tribunal staff as at 30 June 2007

Executive

President

Diane Robinson

Deputy President

Robin Gurr

Registrar

Vacant

Executive Secretary

Justin Standley

Personal Assistant

Lisa Whittaker

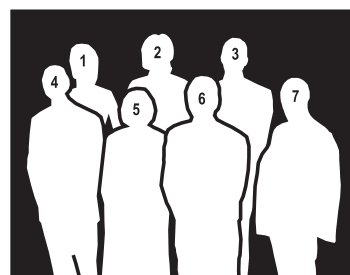
Legal Officer

Esther Cho

Executive



1. Lisa Whittaker
2. Diane Robinson
3. Justin Standley
4. Trevor Fairbairn*
5. Esther Cho
6. George Damalas
7. Robin Gurr



* Executive Officer/Registrar to May 2007

Business Services

Manager

Linda Sengstock

Training and Development Officer

Gail Yueh

Business Services Coordinator

Maria Sardisco

Kathy Tribe

IT Systems Management Officer

Dennis Maby

CMS Systems Management Officer

Patrick Gooley

Business Services Officer

Christine Small

Assistant Business Services Officer

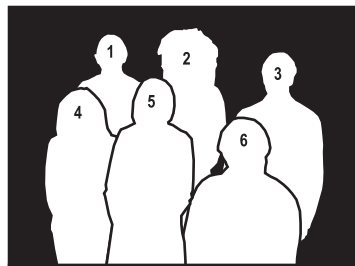
Sin-Lee Yeoh

Assistant Systems Officer

Christine Triantafillopoulos



Business Services



1. Dennis Maby
2. Kathy Tribe
3. Patrick Gooley
4. Christine Triantafillopoulos
5. Christine Small
6. Linda Sengstock

Absent: Gail Yueh,
Maria Sardisco,
Sin-Lee Yeoh

Coordination and Investigation

Manager

Ryan Williams

Team Leaders

Theresia Khoudair

Margaret Watson

Sue Young

Senior Investigation Officers

Peter Heffernan

Elizabeth Kensell

Lee Dargan

Amanda Legge

Frances Massy-Westropp

Katrina Morris

Paula Norris

Loretta Rosicky

Jane Samek

Louise Smith

Katherine Tidd

Investigation Officers

Mary Chapman

Trudi Cusack

Christopher Moore

Rebecca Ripperger

Maxine Spence

Liesje Tromp

Assistant Investigation Officers

Zebun Haji

Lois Warnock

Alex Young

Coordination and Investigation



1. Maxine Spencer
2. Liesje Tromp
3. Peter Heffernan
4. Christopher Moore
5. Jane Samek
6. Elizabeth Kensell
7. Paula Norris
8. Ryan Williams
9. Frances Massy-Westropp
10. Louise Smith
11. Katherine Tidd
12. Loretta Rosicky
13. Lois Warnock
14. Amanda Legge
15. Mary Chapman
16. Sue Young
17. Rebecca Ripperger
18. Theresia Khoudair
19. Alex Young



Absent: Trudi Cusack,
Lee Dargan, Zebun Haji,
Katrina Morris,
Margaret Watson

Client Information Services

Assistant Manager

Geraldine Northcott

Publications Officer

Yvette Wallis

Senior Information Officers

Robyn Barlow

Mark Harrison

Information Officers

Jihan Noun

Francesca Scimone

Assistant Information Officers

Diane Cracknell

Vi Huynh

Anna Kedves

Christine Lopez

Angela Ogden

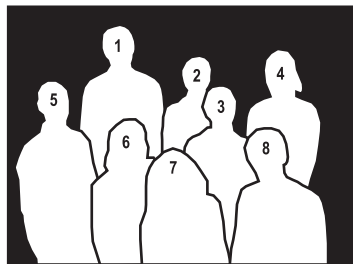
Tina Pasa

Danit Spiers

Client Information Services



1. Jonathon Savy
2. Francesca Scimone
3. Margaret Yorkston
4. Vi Huynh
5. Mark Harrison
6. Anna Kedves
7. Danit Spiers
8. Geraldine Northcott



Absent: Robyn Barlow
Diane Cracknell,
Christine Lopez, Jihan Noun,
Angela Ogden, Tina Pasa,
Yvette Wallis.

Hearing Services

Assistant Manager

Lesley McGowan

Senior Hearing Officers

Kerrie Menken
Cynthia Nejal
Lisa Spence
Rada Stevanovic

Hearing Services Officers

Jenny Reynolds
Janet Stringer

Assistant Hearing Officers

Pam Giurissevich
Evelyn Guibani
Doreen Gray

Marie McArdle
Christopher Mitchell
Michelle Savage
Sita Singh
Eleanor Torry

Hearing Services



1. Janet Stringer
2. Christopher Mitchell
3. Lisa Spence
4. Sita Singh
5. Evelyn Guibani
6. Lesley McGowan
7. Kerrie Menken
8. Marie McArdle
9. Doreen Gray
10. Pam Giurissevich
11. Cynthia Nejal

Absent: Jenny Reynolds,
Michelle Savage,
Rada Stevanovic, Eleanor Torry



Other staff employed in 2006/2007

Di Brehaut	George Damalas	Gary McDonald	Melissa Simcoe
Jane Brenham-Williams	David Evans	Frank Maguire	Sonia Tomasetig
Marion Brown	David Foote	Sian Moore	Margaret Yorkston
Tia Covi	Tania Hibbert	Janette Ogilvie	
Donna Crotty	Elizabeth Kim	Edwina Pickering	

Supernumerary Positions:-

Executive Officer/Registrar – Trevor Fairbairn

Manager, Client Information and Hearing Services – Janette Ogilvie

Training for Tribunal staff

The Guardianship Tribunal aims to provide a high standard of service delivery to our clients. To achieve this, the Tribunal conducts a comprehensive training program for its administrative staff. The program provides an opportunity for staff to attend training courses either at the Tribunal or externally. Over the past year these courses have provided staff with skills, knowledge and information

including IT, occupational health and safety issues, human resource matters and disability awareness.

Ongoing training relating to the Tribunal's computerised Case Management System has been a focus of our internal training program. This ensures that staff remain proficient in the use of this system which has continued to undergo development and improvement.

Disability awareness training sessions were conducted by Department of Ageing, Disability and Home Care (DADHC) trainers who are experienced in working with people with a range of disabilities. Information was provided on topics including, awareness of the different types of disabilities, mental illness, communication and ethical practices.

Fire drills and training in practical fire fighting techniques are provided on a regular basis to ensure the safety of both staff and visitors to the Tribunal. Comsafe, the training arm of the New South Wales Fire Brigade, conducted the training at the Tribunal's Balmain premises. Staff members also attended external training programs in First Aid, Ergonomics and Occupational Health and Safety.

Training courses attended by staff this year included:

Computing

- Microsoft Excel
- Microsoft Outlook
- Microsoft Powerpoint
- The Tribunal's Case Management System

Occupational Health and Safety

- Occupational Health and Safety Consultation
- Ergonomic training
- Fire Safety

Human Resources and Communication

- Merit Selection in the NSW Public Service
- Solution Focussed Supervision
- Effective Communication Skills
- Managing unsatisfactory performance
- Memory: a user's guide
- The indispensable assistant
- Time Management

Other Training

- Disability Awareness
- End of Life decision making
- Judgement Writing
- Legal Professional Privilege
- Researching legislation
- Australian Guardianship and Administrative Committee Conference
- Council of Australasian Tribunals Annual Conference
- Elder Law Issues

Training for Tribunal members

The Tribunal provides a program of half day seminars for members. There are generally four seminars per year for presiding members and a further four for all Tribunal members.

Seminars for the presiding members involve discussion or presentations relating to legal issues. This year the Tribunal was privileged to have Professor James Raymond, an international consultant, conduct a seminar on Judgement Writing

The all member seminars cover a range of issues relevant to the work of the Tribunal. They included presentations, workshops and discussions which provided information on clinical, disability and legislative issues.

Presentations were given by Tribunal members and by guest speakers from a range of disciplines.

Topics included in the seminar program included:

- End of life decision making
- Lifestyle, addiction and capability - gambling and impulse control
- Lifestyle, addiction and capacity - drugs, alcohol and addictive behaviour
- The impact of lifestyle and addiction on capacity
- Judgement Writing
- Guardianship functions
- The use of flexible orders
- Referral to the Supreme Court
- Legislative changes

Tribunal members



Diane Robinson, President

Diane was appointed as President of the Guardianship Tribunal in February 2005. She was previously the Deputy President of the Mental Health Review Tribunal where she led a review of the Mental Health Review Tribunal's civil jurisdiction, as well as being involved in the forensic work of the Tribunal. Diane has considerable Tribunal experience having been a presiding member of the Guardianship Tribunal for eleven years, a lawyer member of the Mental Health Review Tribunal, a part time lawyer member of the Social Security Appeals Tribunal and a lay member of the Medical Tribunal.

Prior to her Tribunal work, Diane was a Senior Lecturer in Law at the University of Technology. She has also been a Visiting Lecturer at the University of New South Wales. Her main teaching areas were the Law of Evidence, Jurisprudence and Criminology. Diane has also been involved in legal practice as a solicitor with Allen, Allen & Hemsley.

Diane has a strong interest in mental health issues and was an Official Visitor under the *Mental Health Act* 1990 at the Caritas Centre at St. Vincent's Hospital. She also has an interest in medico-legal issues and was previously appointed as the legal member (Ministerial appointee) of the New South Wales Medical Board.

Diane has given a number of presentations on aspects of the Tribunal's work including papers on advance care directives and enduring powers of attorney and has represented the Tribunal in a range of public forums.



Marion Brown, Deputy President (to February 2007)

Marion joined the Tribunal as Deputy President in May 1995. She was formerly the principal solicitor at the Women's Legal Resources Centre, a community legal centre and practised mainly in the fields of family law and violence against women and children. She served as a community representative on the New South Wales Child Protection Council and the New South Wales Sexual Assault Committee. She was also a commissioner on the New South Wales Legal Aid Commission and a part time hearing commissioner with the Human Rights and Equal Opportunity Commission.

Marion has conducted many community legal education presentations, including the Women Out West project in which a multi-disciplinary team worked with Aboriginal women in western New South Wales to



help women in various communities explore options to protect themselves and their children.

Currently, she is a member of a number of committees including the Specialist Advisory Committee for the Centre for Gender Related Violence Studies at the University of New South Wales. She was a representative on the Department of Ageing, Disability and Home Care Steering Committee for the Planning Ahead Project and Dementia Awareness for Lawyers Forum.

Marion has contributed to several publications, including *The Law Handbook* and *Law and Relationships: A Woman's A-Z Guide*.



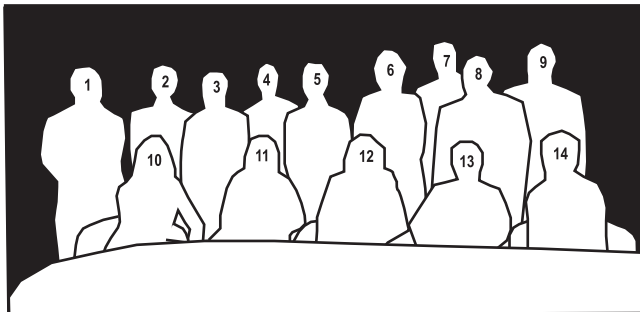
Robin Gurr, Deputy President (February 2007 onwards)

Robin was appointed as Deputy President of the Guardianship Tribunal in February 2007. She has a variety of Tribunal experience, including as a Presiding Member of the Guardianship Tribunal, a Senior Member of the New South Wales Fair Trading Tribunal, President of the Community Services Appeals Tribunal, a part time chairperson of GREAT (Government and Related Employees Tribunal) and as a New South Wales Workers Compensation Commission Arbitrator and Mediator. She has worked as a Registrar in the Family Court, in practice at the New South Wales Bar, as a consultant in evaluation and administrative decision making, particularly in the tertiary education sector and has taught in the areas of family and administrative law.

Robin is a trained and experienced mediator. Prior to becoming a lawyer she qualified and worked in education and training, social policy and planning for local and state governments and in the non government sector, in the United Kingdom and in Australia.

She has been active in the non government sector including periods as Chairperson of the Boards of the New South Wales Council of Social Services and the New South Wales Women's Legal Service.

Presiding (legal) members



- | | |
|----------------------|----------------------------|
| 1. Bernie Shipp | 10. Robyn Bailey |
| 2. Tony Krouk | 11. Catherine Donovan-Holm |
| 3. Jennifer Conley | 12. Carolyn Huntsman |
| 4. Monica MacRae | 13. Robin Gurr |
| 5. Christine Fougere | 14. Jenny D'Arcy |
| 6. Diane Robinson | Absent: John Cipolla, |
| 7. Bill Tearle | Anita Sekar, |
| 8. Desmond Sheehan | Geoffrey Hopkins, |
| 9. Peter Molony | James Simpson, |
| | Angela Beckett, |
| | Antony Carpentieri, |
| | Shaun McCarthy, |
| | Carol McCaskie |

Presiding (legal) members

Robyn Bailey

Solicitor with almost 20 years experience. Has a particular interest in acting for people with psychological and/or acquired brain injury. Principal of a busy Assessment and Mediation practice.

Angela Beckett

Solicitor and clinical psychologist. Experience in private legal practice and in a community legal centre. Member of the Social Security Appeals Tribunal and the Consumer Trader and Tenancy Tribunal of New South Wales. Reviewer for the Office of the Legal Services Commissioner. Qualifications and experience in alternative dispute resolution. Extensive background in service provision to persons with a disability.

Antony Carpentieri

Solicitor. Established a private practice in Liverpool and has worked as a sole practitioner and commercial mediator. Has a physical disability. Former full time member of the Consumer, Trader and Tenancy Tribunal, currently a part-time member. Former member of the Aged Care Complaints Resolution Committee.

John Cipolla

Solicitor. Experience representing clients with psychiatric and other disabilities both through Legal Aid and Mental Health Advocacy Service. Previously Principal Solicitor, Inner City Community Legal Centre. Experience in refugee law and as senior conciliator, Disability Discrimination Unit

of the Human Rights and Equal Opportunity Commission. Part time member of Consumer Trader Tenancy Tribunal and Migration Review Tribunal.

Jennifer Conley

Lawyer with experience in administrative law. Currently a member of the Consumer Trader and Tenancy Tribunal and the Administrative Decisions Tribunal.

Jenny D'Arcy

Solicitor with experience in private legal practice and community legal centres. Extensive tribunal experience and currently a member of the Social Security Appeals Tribunal and the Mental Health Review Tribunal and a senior member of the Veterans' Review Board.

Catherine Donovan-Holm

Solicitor. Director of Legal Policy in the Department of Disability Services in Queensland. Involved in the reform of Queensland's disability legislation. Previously employed as a solicitor with Queensland Legal, representing adults and children in the Magistrates, District and Supreme Courts.

Christine Fougere

Solicitor. Admitted to practice in the Supreme Courts of Western Australia and New South Wales. Currently employed as a senior lawyer in the Human Rights and Equal Opportunity Commission. Extensive experience in administrative law in the fields of human rights and discrimination.

Geoffrey Hopkins

Solicitor since 1979 in private practice and legal aid work. Experience in advocacy across range of courts and tribunals. Emphasis on criminal and civil law, especially housing law and consumer remedies and legal issues relating to people with disabilities and the aged. Involvement with community groups. Mediator with community justice centres, Supreme Court and Law Society panels. Former chairperson with Government and Related Employees Appeal Tribunal.

Carolyn Huntsman

Lawyer. Currently a member of the Mental Health Review Tribunal. Formerly member of the Social Security Appeals Tribunal, Refugee Review Tribunal, Fair Trading Tribunal and Residential Tribunal. Worked as a solicitor with Legal Aid

Commission, Aboriginal legal organisations and in private legal practice.

Tony Krouk

Solicitor in private practice. Accredited family law specialist. Registered family dispute resolution practitioner. Mediator and conciliator. Extensive experience representing people with brain injury, mental illness, intellectual disability and dementia.

Monica MacRae

Solicitor. Experience in private practice, particularly family law and general litigation. Member of the Social Security Appeals Tribunal and Mental Health Review Tribunal.

Shaun McCarthy

Lawyer, experience in private practice and legal aid in civil litigation and administrative law. Director, University of Newcastle Legal Centre. Clinical Lecturer in the School of Law at The University of Newcastle.

Carol McCaskie, AM

Lawyer. Member of the Mental Health Review Tribunal. Arbitrator, Workers Compensation Commission. Former general manager, Langton Centre. Qualifications in management, dispute resolution, geriatric nursing, nurse education and nursing administration.

Peter Molony

Barrister with extensive experience as a tribunal member, including the Social Security Appeals Tribunal, Small Claims and Residential Tenancies Tribunal and Refugee Review Tribunal. Judicial member of Administrative Decisions Tribunal.

Anita Sekar

Solicitor. Experience representing people with disabilities with community legal centres, namely the Intellectual Disability Rights Service and the Disability Discrimination Legal Centre. Member of the Mental Health Review Tribunal. Contributor to Halsbury's Laws of Australia in the area of mental health law. Experience in human rights law as a senior lawyer with the Human Rights and Equal Opportunity Commission and as a conciliator with the NSW Anti Discrimination Board. Past litigation experience with the Equity Division of the Supreme Court of New South Wales, Commonwealth Director of Public Prosecutions and Australian Broadcasting Authority.

Desmond Sheehan

Solicitor. Admitted to practice in the Supreme Courts of New South Wales and Queensland. Worked for the New South Wales Legal Aid Commission where involved in tenancy litigation and applications to the Protective Division of the Supreme Court. Previously a full-time member of the Residential Tenancies Tribunal. Currently a part time member of the Consumer, Trader and Tenancy Tribunal.

Bernie Shipp

Master of Laws. Experience as a solicitor in mainly criminal, family and welfare law with Legal Aid and Community Legal Centres. Member of the Consumer Trader and Tenancy Tribunal. Past member of Social Security Appeals Tribunal and Child Support Review Office. President of the Board of Macarthur Disability Services Ltd - a provider of services for people with a disability in the south-west region of Sydney.

James Simpson

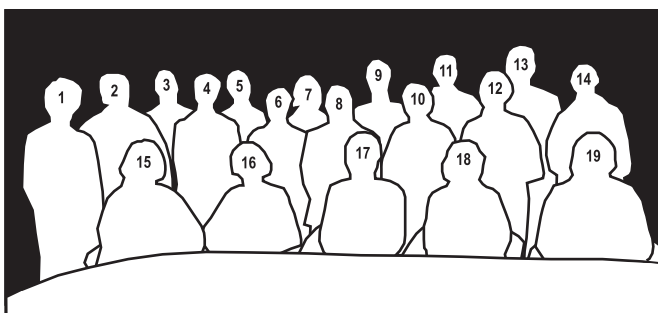
Solicitor, mediator and systemic advocate. Solicitor in private practice and first principal solicitor, Intellectual Disability Rights Service. Former deputy president, Community Services Appeals Tribunal. Presiding member, Mental Health Review Tribunal. Recipient of Justice Medal 2001- Law and Justice Foundation New South Wales.

Bill Tearle

Lawyer with extensive experience of financial counselling and mental health issues. Current member (and former full-time Deputy President) of the Mental Health Review Tribunal. A guest lecturer at Oxford University, and at several universities in Australia and New Zealand.

* Helen Boyton and Susan McIlhatton were both appointed as Presiding Members of the Guardianship Tribunal but did not participate in the work of the Tribunal this year.

Professional members



- | | |
|---------------------|-----------------------------|
| 1. Carolyn West | 15. Brenda McPhee |
| 2. Michelle Chapman | 16. Sally McSwiggan |
| 3. Melissa Staples | 17. Tony Ovadia |
| 4. Jean Hollis | 18. Isla Bowen |
| 5. Imelda Dodds | 19. Sarah Carlill |
| 6. Julie Garrard | Absent: Mary Ellen Burke, |
| 7. Susan Taylor | Rhonda Buskell, Lisa Lampe, |
| 8. Robert (TH) Yeoh | Meredith Martin, |
| 9. Susan Kurrle | Carmelle Peisah, |
| 10. Janice Wortley | Suzanne Stone, |
| 11. Ivan Beale | Paul Thiering, |
| 12. Sharon Flanagan | Velupillay Vignaendra, |
| 13. John Woodforde | David Mark Wallace, |
| 14. Helen Molony | Wai-Kwan (Tim) Wong |

Professional members

Ivan Beale

Psychologist, specialising in assessment and intervention for developmental and behavioural problems, as well as treatment adherence in people with chronic illness. Formerly Associate Professor and Director at the Learning Assessment Centre (University of Auckland).

Isla Bowen

Psychologist with extensive experience in development and implementation of behaviour intervention and support programs for people with intellectual disabilities. Lectures in developmental disability at Wollongong University.

Mary Ellen Burke

Clinical psychologist and consultant. Experience providing services to people with an intellectual disability who have challenging behaviour and their families/carers. Experience monitoring and developing services and service systems.

Rhonda Buskell

Qualifications in psychiatry and in rehabilitation medicine. Consultation liaison psychiatrist at Westmead Hospital. Formerly Director, Lidcombe Brain Injury Rehabilitation Unit.

Sarah Carlill

Registered nurse, 20 years working in mental health with experience in acute care, inpatient and community care. Currently clinical nurse consultant for Northern Beaches Mental Health Service.

Michelle Chapman

Senior Consultant Psychologist with NGO (Disability Services Australia) with family and professional experience of people with disabilities and expertise in behavioural intervention. Works with individuals who display challenging behaviours and at risk behaviours in accommodation and workplace setting and supports families through counselling and advocacy.

Imelda Dodds

Social worker. Consultant with extensive experience in practice and administration in the fields of disability and guardianship. Former Public Guardian of Western Australia. Immediate former President International Federation of Social Workers.

Sharon Flanagan

Clinical neuropsychologist with extensive experience of people who have suffered traumatic brain injury. Experience in adult rehabilitation in hospital and community settings and assessment of people with dementia and other acquired brain impairments.

Julie Garrard

Senior Social Worker and Project Coordinator in the Palliative Care Service at Calvary Health Care Sydney. Previous social work experience with people with intellectual disabilities, brain injuries and HIV/AIDS and in health care complaints.

Jean Hollis

Psychiatrist of Old Age. Currently in private practice. Research interests include issues of ageing and the use of antipsychotic medication and behavioural aspects of dementia.

Susan Kurrle

Geriatrician. Member of Aged Care Assessment Team. Experience assessing and managing abuse of older people, and dementia. Holds the Curran Chair in Health Care of Older People in the Faculty of Medicine at the University of Sydney.

Lisa Lampe

Psychiatrist. Admitted to the Royal Australian and New Zealand College of Psychiatrists. Currently a consultant psychiatrist in private practice and a Visiting Medical Officer at St Vincent's Hospital involved in the Clinical Research Unit for Anxiety and Depression. Member of the Mental Health Review Tribunal.

Meredith Martin

Special educator. Expertise in behaviour management and positive programming for people with a disability, particularly intellectual disabilities.

Brenda McPhee

Medical practitioner. Experience in women's health, aged care, counselling and GP Psychiatry. Medical officer, Bankstown, Campbellown, and Macquarie Fields Women's Health Clinics.

Sally McSwiggan

Clinical Neuropsychologist. Member of the Rehabilitation and Aged Care Team. Experience in the assessment of stroke, dementia and epilepsy. Special interest in mental capacity.

Helen Molony

Psychiatrist with extensive experience with people with intellectual disabilities and challenging behaviours.

Tony Ovadia

Clinical Psychologist with over thirty years experience in public mental health services and in a range of related areas such as housing and supported accommodation. A pioneer of community mental health services. Now in private clinical practice as well as in consultancy in the human services areas. Former Chair of the New South Wales Disability Council. Member of the Mental Health Review Tribunal and Vice President of the NSW Mental Health Association.

Carmelle Peisah

Consultant old age psychiatrist and research fellow at the Academic Department for Old Age Psychiatry, Prince of Wales Hospital and Conjoint Associate Professor University of NSW. Expertise in family therapy. Experience as expert in medicolegal cases related to capacity issues in older persons.

Melissa Staples

Clinical Psychologist/Neuropsychologist. Extensive specialist experience in the provision of Neuropsychological Assessment and Rehabilitation Services gained through public sector employment and private consultancy work. Experience spans both inpatient and community settings and draws on her wide exposure to the varied cognitive, behavioural and emotional consequences of psychological trauma and acquired brain injury, including degenerative neurological disease, traumatic and non-traumatic brain injury in adults.

Suzanne Stone

General practitioner. Currently in private practice; including assessment and management of elderly patients with dementia, both in institutional settings and in their own homes. Published in the field of pre-senile dementia. Experience in the field of women's reproductive health and with patients with eating disorders in community settings.

Susan Taylor

Social worker. Experience in the provision of mental health accommodation, case management and crisis services in the community. Former

manager of service providing support for people with multiple sclerosis. Member, Mental Health Review Tribunal and Social Security Appeals Tribunal.

Paul Thiering

Psychiatrist. Member of the Royal Australian and New Zealand College of Psychiatry. Former clinical director of the Pialla Unit at Nepean Hospital. Conducts a private practice and provides psychiatric management of developmentally delayed and psychogeriatric patients who are residents in group homes, hostels and nursing homes. Expertise in managing patients with a dual diagnosis of intellectual disability and chronic psychiatric disorders. Member of the New South Wales Mental Health Review Tribunal.

Velupillay Vignaendra

Neurologist with extensive experience of people who have strokes, acquired brain injury and other neurological impairments.

David Mark Wallace

Psychogeriatrician and consultant psychiatrist in private practice. A fellow of the Royal Australian and New Zealand College of Psychiatry. Visiting Medical Officer at the Wesley Private Hospital. Involved in treating residents in aged care facilities who have dementia and behaviour disturbances, depression and psychosis.

Carolyn West AM

Specialist in rehabilitation medicine. Head of Spina Bifida Unit, New Children's Hospital, Westmead. Visiting medical officer, Royal Prince Alfred Hospital and Westmead Hospital for adult services for people with spina bifida.

Wai-Kwan (Tim) Wong

Psychologist with experience in positive programming for people with intellectual disabilities. Has also worked with people with intellectual disabilities in areas of sexuality and sexual behaviours. Currently working with people affected by HIV/AIDS and Hepatitis C.

John Woodforde

Psychiatrist with extensive experience in public and private psychiatric practice, Member Mental Health Review Tribunals, New South Wales and Northern Territory of Australia. Formerly Director of Psychiatry at St Vincent's Hospital and Clinical Lecturer in Psychiatry at University of

NSW, Member Medical Tribunal. Research in psychological aspects of chronic pain.

Janice Wortley

Special Educator and Psychologist with extensive expertise in developing and implementing behaviour management and positive programming for people with challenging behaviour. Extensive experience working with and advocating for people with intellectual disabilities, psychiatric disabilities and acquired brain injuries in community and

educational settings. Qualified workplace trainer, Lecturer in Disability Studies and accredited Mental Health First Aid Instructor.

Robert (TH) Yeoh, AM

General practitioner since 1975. Past president Alzheimer's Association of Australia. Member of the medication advisory committees of several aged care homes. Official visitor under the *Mental Health Act* 1990. Former member of Ministerial Advisory Committee on Ageing, New South Wales.

Community members



1. Maree Gill
2. Rhonda Ansiewicz
3. Catherine Quinn
4. Maria Circuit
5. Marika Kontellis
6. Janene Cootes
7. Susan Warth
8. Leanne Stewart
9. Robyn Rayner
10. Jennifer Klause
11. Kerrie Laurence
12. Andrew Barczynski
13. Mary Butcher
14. Faye Druett
15. Elaine Becker
16. Freda Hilson
17. Jane Fraser
18. Jeanette Moss
19. Alexandra Rivers

Absent: Stanley Alchin,
Annette Evans,
Janet Koussa,
Steve Kilkeary,
Hatton Kwok,
Carol Logan,
Leonie Manns,
Michael McDaniel,
Jennifer Newman,
Alan Owen.

Community members

Stanley Alchin, OAM

Retired director of nursing, Rozelle Hospital. Registered psychiatric nurse. Former President, After Care Association of New South Wales. Member, Mental Health Review Tribunal. Former Vice President, Sydney Male Choir.

Rhonda Ansiewicz

Part time lecturer in Aboriginal Community Work, University Western Sydney. Advocate for people with intellectual disabilities and in private practice working with people with a mental illness. Has experience within the family of mental illness. Board member New South Wales Council Intellectual Disabilities, Chairperson of the Northern Rivers Aunty programme.

Andrew Barczynski

Social worker. President of a non-government organisation providing information and welfare services for ageing people from culturally and linguistically diverse backgrounds. Extensive knowledge of disability employment and advocacy services. Family experience with disability. Currently, working for Department of Families, Community Services and Indigenous Affairs.

Elaine Becker

Social worker. Experience working with people with dementia and their carers. Worked with the Office of the Public Guardian. Family experience as private guardian.

Mary Butcher

Nurse with extensive aged care experience in residential and community settings. Experienced in palliative care management. Currently working as a quality assessor in the accreditation of aged care supported accommodation. Family experience of providing care to a person with dementia and intellectual disability.

Maria Circuit

Long term experience and involvement, with many advocacy and support services, for people with disabilities, and mental health issues. Mother of young man with intellectual disability and mental illness.

Janene Cootes

Social worker. Former community visitor to residential services for adults and children with disabilities and educator at the Intellectual Disability Rights Service. Past experience with people with an intellectual disability and as the first Manager of Investigation and Liaison at the Guardianship Tribunal.

Faye Druett

Longstanding involvement in the disability field. Has significant physical disabilities herself. Currently private guardian for a woman with intellectual disability. Worked in federal and state governments, and the non government sector in service provision, policy development, management and administration of legislation.

Annette Evans

Social worker. Experience in managing community aged care program for Jewish community. Involved in living skills, family and housing support for people with psychiatric disability; support for people with dementia and their carers. Past experience in tenants advice and advocacy and refuges for young people and women.

Jane Fraser

Parent of a young woman with a developmental disability. Welfare worker and former executive officer for People with Disabilities. Past Chairperson for the Disability Council of New South Wales for four years. Family experience caring and supporting a person with mental illness and dementia.

Maree Gill

Consultant, social researcher. Former university tutor to medical students. Extensive background in social justice and equity especially human rights: homelessness, supported accommodation, disability, mental health and women's health. Family experience of mental illness. Lived experience of disability. Qualifications in Sociology (Masters), Social Work, Adult Education, Management. Member, Administrative Decisions Tribunal.

Freda Hilson

Social worker. Significant experience working in the Disability Sector, working with people with intellectual disability, acquired brain injury, physical disabilities and mental illness. Former

executive director of the Brain Injury Association of New South Wales and Manager of Disability Services for Jewish Care and former Regional Manager with the Office of the Public Guardian. Former Deputy Director, Consumer Protection for People with Disabilities. Established the National Disability Abuse and Neglect Hotline. Currently a Community Visitor with the Ombudsman's Office.

Steve Kilkeary

Social worker. Trauma counsellor with suicidal and self-harming men. Work experience in mental health, intellectual disability and HIV/AIDS. Former primary carer to family members with disabilities.

Jennifer Klause

Extensive experience in intellectual disability rights work with experiences of educator, advocate, plain language publication and policy development roles. Former quality assessor in aged care services in New South Wales and complaints handling with aged and disability services across New South Wales.

Marika Kontellis

Previously social worker, now community sector adviser for aged care and disability service providers. Managed community options programs, assisting older people and people with disabilities to remain in their own homes. Former member, Disability Council of New South Wales. Family experience of mental illness.

Janet Koussa

Experience as a psychologist providing, assessment, case-management and support to people with intellectual disabilities and their families as well as extensive involvement in advocacy services. Formerly a hospital psychologist with people who have a mental illness. Currently working as a counselling psychologist at St John of God Hospital, an inpatient and outpatient psychiatric facility.

Hatton Kwok, OAM

Psychiatric nurse and rehabilitation counsellor. Currently chairman of the Australian Nursing Home Foundation. Established residential care facilities for aged people from Chinese backgrounds.

Kerrie Laurence

Specialist educator and community welfare worker with adults with a developmental

disability. Currently working as a quality assessor in the accreditation of aged care supported accommodation. Family experience of dementia and mental illness and relevant tribunal experience.

Carol Logan

Trained as General and Psychiatric Nurse. Worked as a Community Nurse in South West Sydney for 11 years then set up and managed Community Options for Centacare in South West Sydney. Previously Director of Centacare Catholic Community Services/Ageing and Disability Services 1996 to 2004.

Leonie Manns

Has a psychiatric disability and has been a longstanding consumer advocate in the field of disabilities. Former chair of the Disability Council of New South Wales. Family experience of dementia.

Michael McDaniel

Member of the Wiradjuri Nation, Dean, Indigenous Education, University of Western Sydney. Part time member, New South Wales Mental Health Review Tribunal.

Jeanette Moss, AM

Family experience of, and advocate for, people with a disability.

Jennifer Newman

Lecturer, Aboriginal and Torres Strait Islander Programs, Faculty of Education, University of Technology Sydney. Previously taught Aboriginal Studies for the Associate Diploma of Aboriginal Health and students of Rehabilitation Counselling and Occupational Therapy. Family and social experience of people with disabilities, including dementia, alcohol-related brain damage, intellectual disability and HIV/AIDS.

Alan Owen

Psychologist and senior research fellow, University of Wollongong. Former coordinator of a community mental health service, policy analyst, manager, coordinated care projects. Member, Mental Health Review Tribunal.

Catherine Quinn

Social worker. Extensive experience in aged care and with people with dementia and their families.

Robyn Rayner

Social worker with experience in aged care, palliative care, dementia, neurological rehabilitation and crisis intervention.

Alexandra Rivers

Family carer. Retired academic and teacher. Psychologist and special educator with extensive experience with people with a range of developmental and acquired disorders. Guardian ad Litem for the Children's Court of New South Wales and the Administrative Decisions Tribunal of New South Wales. Vice President of the Schizophrenia Fellowship of New South Wales, and of the Aboriginal Education Council of New South Wales. Board member, Schizophrenia Research Institute (NSW). Member of Governing Committee of the Consumers' Health Forum of Australia.

Leanne Stewart

Social worker. Consultant in aged and community services sector, specialising in retirement living and dementia care. Previous experience managing retirement villages, nursing homes and community aged care services.

Susan Warth

Psychologist and consultant with extensive experience with people with intellectual disabilities.





Definitions

clinical trial is a trial of a drug or technique that involves medical or dental treatment. Before an adult unable to give a valid consent to their own treatment may take part in a clinical trial, the Guardianship Tribunal must approve the trial. Usually, the person's 'person responsible' will be able to decide whether or not they take part in the clinical trial. Before an application can be made to the Tribunal, the approval of the relevant ethics committee must be obtained. Also, the trial must comply with the relevant guidelines of the National Health and Medical Research Council.

consent to medical or dental treatment if a person cannot understand the general nature or effect of treatment or cannot communicate whether or not they consent to treatment, they cannot give a valid consent to that treatment. Part 5 of the *Guardianship Act 1987* sets out who can consent on their behalf. Usually, this will be a 'person responsible'. If there is no 'person responsible' or the person is objecting to the treatment, the Guardianship Tribunal can act as a substitute decision maker. Only the Tribunal may act as substitute decision maker in relation to special medical treatments.

enduring guardian is someone you appoint to make personal or lifestyle decisions on your behalf when you are not capable of doing this for yourself. You choose which decisions you want your enduring guardian to make. These are called functions. You can direct your enduring guardian on how to carry out the functions. The appointment of an enduring guardian comes into effect when you lose capacity to make personal or lifestyle decisions.

enduring power of attorney is the document by which you appoint someone to act as your attorney on your behalf in relation to your property and financial affairs (eg. bank accounts or property or shares). The appointment may start when the power of attorney is made, at a particular time, or when you have lost the capacity to make financial decisions.

financial management order is an order which the Guardianship Tribunal makes when the Tribunal is satisfied that an adult is incapable of managing their financial affairs and needs someone else to manage those affairs on their behalf and that it is in their best interests that a financial order be made. It authorises the financial manager to make financial decisions for the person the order is about. Most financial management orders are permanent.

financial manager is a legally appointed substitute decision maker with authority to make decisions about and manage a person's financial affairs (eg. their money, property and other financial assets, such as share portfolios). A private financial manager may be appointed – a family member or friend – provided they are a 'suitable person' as required by the legislation. Otherwise, the Tribunal will appoint the Protective Commissioner.

guardian is a substitute decision maker with authority to make personal or lifestyle decisions about the person under guardianship. A guardian is appointed for a specified period of time and is given specific functions (eg. the power to decide where the person should live, what services they should receive and what medical treatment they should be given). A private guardian may be appointed – a family member or friend – provided the circumstances of the matter allow for this and they meet the criteria set out in the legislation. Otherwise, the Tribunal will appoint the Public Guardian.

guardianship order made by the Guardianship Tribunal names the guardian who has been appointed by the Tribunal, the length of their appointment and their functions. It authorises the guardian to make certain decisions for and instead of the person under guardianship.

order see **guardianship order** or **financial management order**

parties to a hearing always includes the applicant, the person the application is about, their spouse or carer. The Public Guardian and Protective Commissioner are automatic parties to applications for guardianship or financial management. Those who are automatically parties to a hearing are set out in section 3F of the *Guardianship Act 1987*. The Guardianship Tribunal may join others as parties to a proceeding.

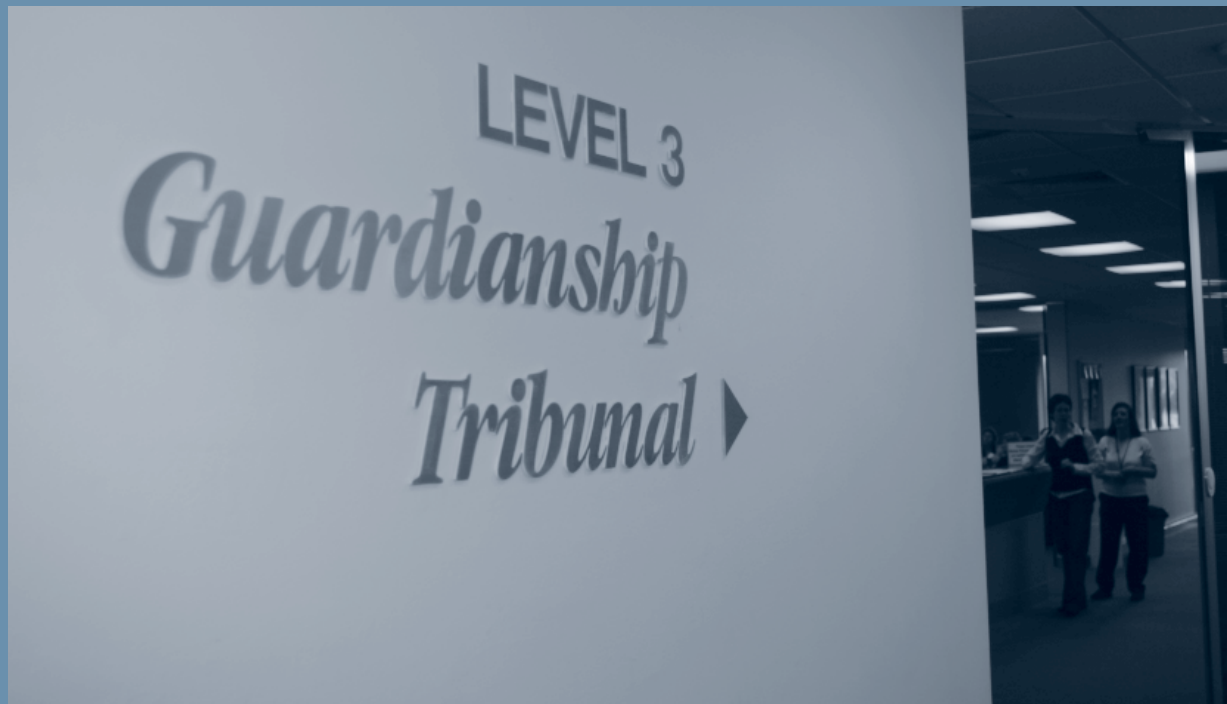
person responsible someone who has the authority to consent to treatment for an adult who is unable to give a valid consent to their own medical or dental treatment. Sometimes, a patient is unable to make the decision or does not understand what the treatment is about or its effects. In these cases, the person responsible can give substitute consent on behalf of the patient.

requested review of financial management order sometimes the Tribunal is asked to review an order because the private financial manager no longer wants to or is unable to carry on with this role, or concerns are raised about the manager's suitability as financial manager, or because the person has regained capacity, or it is in the best interests of the person to review the order.

requested review of guardianship order a guardian can request a review to increase or vary the guardianship functions. Others can request a review if the circumstances relating to the person under guardianship have changed or because of some other issue relating to the guardian.

review of financial management order the Tribunal can order that a financial management order be reviewed within a specified time. However, the order can be revoked only if the person regains the capability to manage their own affairs or if the Tribunal is satisfied that it is in the person's best interests to revoke the order.

review of guardianship order most guardianship orders are reviewed before expiry. Initial orders are made for a specific period of time. The Tribunal undertakes a review hearing where the order will either be allowed to lapse or it will be renewed.



The work of the Guardianship Tribunal is extremely important in protecting the rights and welfare of people with a decision making disability. By appointing guardians and financial managers, the Tribunal facilitates substitute decision making, to promote the best interests of people who are unable to make their own decisions.



Guardianship *Tribunal*

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