

Guardianship Tribunal



Annual Report
2008/2009

GUARDIANSHIP

TRIBUNAL

Principles guiding the Tribunal

The Guardianship Tribunal must observe the principles in the *Guardianship Act 1987*. These principles state that everyone exercising functions under the Act with respect to 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;
- encourage the community to apply and promote these principles.

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Letter to the Minister

Guardianship *Tribunal*

The Hon. Paul Lynch MP
Minister for Ageing
Minister for Disability Services
Level 34, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister,

I have pleasure in presenting the Annual Report for the Guardianship Tribunal for the year ended 30 June 2009.

This report has been prepared in accordance with the *Guardianship Act 1987* for presentation to Parliament.

Yours sincerely,



Diane Robinson
President
9 October 2009

Achievements and future directions

2008/2009 achievements:

We:

- finalised 8466 matters and conducted 5062 hearings;
- appointed a new Deputy President who commenced in October 2008;
- appointed 16 new Tribunal members and reappointed 32 current members;
- issued Practice Note No1 *Legal Practitioners and Guardianship Tribunal Proceedings*;
- reviewed and improved all Tribunal procedures and case management processes and undertook a three month project to facilitate the finalisation of pending applications;
- commenced a Management & Leadership Program for managers and senior staff to build on and develop skills, qualities and abilities in the areas of management, leadership, and communication;
- introduced a *Health Professionals Report form* to assist medical and other health professionals in providing information to the Tribunal;
- enhanced accessibility to information about the Tribunal through a new publication 'The Role of the Guardianship Tribunal', the conversion of our educational videos to DVD and through the introduction of a new requested review of guardianship application form.
- in collaboration with the Government Chief Information Office undertook a pilot through to production of the first stage of a Guardianship Service Domain Hub providing an information technology solution for improved information exchange with the Office of the Public Guardian and the Office of the Protective Commissioner.
- produced new recruitment and information packages for staff and Tribunal Member recruitment.

Looking ahead - initiatives for the coming year

We will:

- develop our new Corporate Plan for 2009-2012;
- celebrate the Tribunal's 20th anniversary;
- recruit new Tribunal Members in January 2010;
- enhance the Tribunal's hearing room facilities with the installation of digital recording equipment and improved soundproofing;
- continue the Tribunal's Management & Leadership Program;
- improve access to information about the role of the Tribunal by working with the Australasian Legal Information Institute (AustLII) to publish Tribunal decisions;
- continue to work with the Government Chief Information Office to develop information technology to support the work of the Tribunal and Tribunal members including the implementation of an electronic calendar to gather and collate member availability;
- continue to review and develop our case management procedures and explore avenues for improved differential case management of applications to the Tribunal;
- continue our commitment of a collaborative research project lead by the Queensland University of Technology (QUT), supported by a 2009 Australian Research Council - Project Grant Awards, concerning withholding and withdrawing life-sustaining treatment from adults lacking capacity.
- contributed to the review of the *Powers of Attorney Act 2003*.



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President's report



The NSW guardianship system

The UN Convention on the Rights of Persons with Disabilities and its Optional Protocol has been ratified by Australia. The Convention reaffirms the human rights and fundamental freedoms of all persons living with a disability. It is reassuring to see that the principles of the New South Wales Guardianship Act align with the principles which underlie the United Nations Convention.

For two decades the NSW Guardianship Tribunal has operated, in accordance with those principles, to facilitate substitute decision making for people with decision making disabilities. The Guardianship Tribunal operates as a court substitute specialist disability Tribunal to determine the threshold question of whether citizens' decision making capacities have or have not been impaired as a result of illness or disability. Guardians and financial managers are appointed as substitute decision makers, only when necessary and as a last resort. The importance of family relationships and cultural background are reflected in the statutory imperative for the appointment of family or other private individuals as substitute decision makers. The model also allows for a Public Guardian as a guardian of last resort to exercise decision making functions as prescribed by the Tribunal's order and subject to the ongoing review of such orders. The independent operation of the Guardianship Tribunal and the Public Guardian, supported by the impartial investigation of applications by the Tribunal's staff, ensure the system's accountability. The views and wishes of the person with the disability are a pivotal consideration in every decision of the Tribunal.

The NSW guardianship model has been replicated in other Australian jurisdictions and in other parts of the world. But several challenges face our guardianship system, among them the impact of the ageing population on the need for guardianship services and the capacity of our system to continue to deliver them – with fairness, compassion and respect for the individual. The Guardianship Tribunal has identified and pursued a number of initiatives to sustain its capacity to face these challenges.

Community education and the need to plan ahead

Many people are able to put substitute decision making arrangements in place for themselves at a time when they have full decision making capacity. Appointing an Enduring Guardian allows citizens to nominate who will decide about their personal care if they become unable to do so due to age, illness or disability. Executing an Enduring Power of Attorney provides authority for a family member, friend or other trusted person to manage financial matters after a person has lost the ability to do so. Deciding who to appoint, what specific decisions to delegate and how to discuss and communicate the appointment with family and friends is part of taking charge of our own future care arrangements.

Ongoing community education and community support in relation to these important 'planning ahead' tools is essential. The Tribunal has consolidated partnerships in the disability sector to foster and promote effective community education. The Tribunal is also committed to

providing information and guidance to assist applicants, parties and witnesses to understand the Tribunal's jurisdiction and processes. The Tribunal has revised many of its information sheets and in 2009 produced its first Practice Note, dealing with legal representation. The publication of the Tribunal's Reasons for Decision on the AustLII website will disseminate further information about the Tribunal's jurisdiction. The first published decisions will be available early in the 2009/2010 year.

Legal orders as a last resort

The Guardianship Tribunal takes into account the need to appropriately investigate the circumstances of each case, and to allow for the exploration of an informal resolution or the possibility of a conciliated outcome in accordance with the provisions of section 66 of the Guardianship Act 1987. The Guardianship Tribunal utilises a number of informal strategies, including pre hearing referrals and a range of alternative dispute resolution strategies, to assist in the informal resolution of matters coming before the Tribunal. This important aspect of the Tribunal's work supports the least restrictive outcomes for people with disabilities, based on the principle that formal legal orders should only be made when necessary.

In the 2008/2009 year the Tribunal finalised 2417 guardianship applications and 2564 financial management applications. Of those 2073 were conciliated or withdrawn, prior to or at hearing, or dismissed without the need for a formal order. In other words 42% were resolved, without the formal appointment of a substitute decision maker.

Our Review of systems and processes

The issues coming before the Tribunal are often complex and frequently the result of serious conflict between people involved with the person with the disability. For example, questions of elder abuse, particularly financial abuse, are increasingly common in relation to

applications to review Enduring Powers of Attorney, the fastest growing aspect of the Tribunal's jurisdiction.

Changes in the complexity of the work of the Tribunal provide a further impetus to ensure that our business is conducted in a timely and effective manner. The Tribunal's staff and members have worked very hard to review and improve the processes and procedures which govern how the Tribunal undertakes case management.

In 2008/2009 the Tribunal evaluated and revised its 'triage' model for the management of applications coming to the Tribunal. The Tribunal receives a considerable number of urgent applications. Some involve the need to safeguard the physical wellbeing of elderly people who are living in squalor or are vulnerable to neglect or elder abuse. Others require the protection of cognitively compromised people from financial loss or exploitation or the adjudication of conflicts about appropriate treatment in acute medical situations. Every application is assessed by staff and prioritised according to the urgency of the matter, focusing on any risk to the welfare, well being and best interests of the person with the disability. New procedures to ensure such risks can be adequately and speedily identified and that the Tribunal can respond accordingly have been developed and implemented.

The Tribunal has also reviewed its Information Technology capacities and developed new IT solutions to support the Tribunal's work. The transfer of information between the Guardianship Tribunal and the Office of the Protective Commissioner and the Office of the Public Guardian has been improved through the Guardianship Service Domain Project and the implementation of an electronic web based portal to streamline document exchange. The development of electronic mechanisms to support the management of the Tribunal's scheduling and listing procedures will continue in 2009/2010.

Our members

In October 2009 the Tribunal welcomed a new Deputy President, Mr Malcolm Schyvens. Mr Schyvens came to the Tribunal from Tasmania where he had been a valued member of the Tasmanian Guardianship and Administration Board. He was also the President of the Tasmanian Law Society, the managing partner of a Hobart law firm, and a Director of the Centre for Legal Studies (Tasmania). In addition, Mr Schyvens was the President of COSMOS, an organization providing services to people with intellectual disabilities. He brings a wealth of professional and personal experience in the area of disability and we welcome him to the Tribunal.

2008/2009 also saw the appointment of several new part time Tribunal members. In August 2009 six new legal members, three new professional members and seven new community members completed their induction program to prepare them to undertake their duties as Tribunal members. Ongoing professional development and performance appraisal for all members continues, with the Tribunal's revised performance appraisal program being fully operational in 2009.

Our thanks

The staff and members of the Tribunal would like to express their thanks to the Minister for Disability Services, the Hon. Paul Lynch MP. Minister Lynch has a strong commitment to social justice and his involvement in the disability sector and support for the Tribunal has been greatly appreciated.

The Tribunal also acknowledges the Department of Ageing, Disability and Home Care (DADHC). The Tribunal is funded to perform its work through DADHC. While the Tribunal operates as an independent statutory body, our links with DADHC highlight the Tribunal's role as a specialist disability tribunal. In the 2008/2009 year, the Tribunal spent \$8.9 million.

This has been a year of considerable change and achievement for the Guardianship Tribunal. I would like to personally thank the Tribunal's staff, who have managed a significant workload while also contributing to the review of our work processes. I would like to acknowledge and thank the Tribunal's Registrar, Ms Amanda Curtin for her support and dedication. It remains a privilege to work with staff and Tribunal members who are motivated by a strong focus on and commitment to the rights and welfare of people with disabilities.

In conclusion

The legal orders made by the Guardianship Tribunal have a significant effect on the rights of citizens. The New South Wales guardianship system must remain effective and vigilant in protecting and promoting the human rights and welfare of citizens living with a cognitive disability. The UN Convention is designed to promote, protect and ensure the full and equal enjoyment of human rights and fundamental freedoms for persons with disabilities, and to promote respect for their inherent dignity. The Convention is described as acknowledging a paradigm shift in attitudes and approaches to persons with disabilities. In New South Wales this shift has been taking place for some period of time and the Guardianship Tribunal is proud to be an integral part of it.



Diane Robinson
President

Who we are



Who we are

The Guardianship Tribunal is a legal tribunal established under the New South Wales *Guardianship Act* 1987. The Tribunal has a key role in both the protection and empowerment of people living with a decision making disability. It exercises a protective jurisdiction and facilitates substitute decision making by hearing and determining applications for the appointment of guardians and financial managers for adults with decision making disabilities.

The Guardianship Tribunal is a specialist disability tribunal for people with cognitive disabilities.

The Tribunal's three members: a legal member, a professional member and a community member ensure that a wide range of professional views and expertise as well as a strong family and community perspective is applied to questions of guardianship, financial management and medical consent.

The Guardianship Tribunal is a tribunal of last resort. Generally, the Tribunal is involved where there are no appropriate substitute decision making arrangements in place or where an appropriate alternative to an application cannot be found.

While most of the work of the Tribunal involves decisions about guardianship and financial management orders, the Tribunal also has the jurisdiction to:

- review the guardianship and financial management orders it makes
- review enduring powers of attorney and enduring guardianship appointments
- provide consent for treatment by a doctor or dentist, and
- approve a clinical trial so that people with decision making disabilities can take part.

The Guardianship Tribunal also has an educative role. Through its enquiry service, community education programs, videos, dvds, publications and the work of its staff the Guardianship Tribunal educates and informs the community about the application process, the role of the Tribunal and the various informal decision making arrangements that may mean an application is not needed.

To carry out its work, the Guardianship Tribunal has two full time members - the President and Deputy President; 83 part time Tribunal members and 44 full time equivalent staff and 16 part time staff members.

The President and the Deputy President

The President is directly responsible to the Minister for Disability Services for the overall operation and administration of the Guardianship Tribunal and for ensuring that the principles of the *Guardianship Act* 1987 are applied to the functions being performed by the Tribunal. The President also sits from time



to time as the presiding member at hearings. The Deputy President reports directly to the President of the Guardianship Tribunal. The Deputy President assists and supports the President in the operation and administration of the Guardianship Tribunal. The Deputy President may exercise the President's functions if delegated by the President or if the President is absent from New South Wales or is prevented by illness or other incapacity from exercising those functions.

Tribunal members

Tribunal members are appointed by the Governor on the recommendation of the Minister for Disability Services for a period of up to five years. Tribunal members are appointed on the basis of their significant professional and personal experience with people who have disabilities or their legal skills and experience. Tribunal members are appointed on a part time basis to conduct hearings and determine the applications made to the Guardianship Tribunal.

In most cases when a panel is convened to hear an application about a person with a decision making disability, it comprises a legal (presiding) member, a professional member and a community member. The legal member must be an Australian lawyer of at least seven years standing. The professional member is a person such as a doctor, psychologist or social worker who has expertise and experience in the assessment or treatment of adults with disabilities. The community member has experience, often familial, with people with disabilities.

The multi-disciplinary panels not only ensure that the Guardianship Tribunal conducts its proceedings fairly, relies on credible evidence when making its determinations 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.

Appendix No. 2 lists and provides a brief background for each member of the Tribunal.

Staff of the Tribunal

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 and operate in accordance with DADHC policies and procedures. During 2008/2009 the Tribunal employed 60 people.

In consultation with the President, the Registrar leads and manages the operations of the Tribunal to ensure it achieves and meets its legislative, policy, corporate governance, risk management and public sector requirements and obligations.

The Registrar also exercises a range of functions to enhance the Guardianship Tribunal's ability to manage its caseload, including recognition of interstate guardians and / or financial managers and the making of determinations with respect to prescribed matters such as conduct of proceedings, and the determination of review requests.

Staff of the Tribunal undertake their roles supporting the work of the Tribunal within one of the following functional units:

- Client Information Services
- Coordination and Investigation
- Hearing Services
- Tribunal Systems and
- Executive Services.

The Client Information Services Unit delivers first tier triage for the organisation providing information to potential clients and the community about the role of the Tribunal, the application process and the range of informal solutions available as alternatives to an application. Following the implementation of new case management procedures, the Unit undertakes an assessment of all applications against the Tribunal's Risk Triage Scale based on the immediacy and severity of the subject person's risk of harm and is involved in the preparation of a number of applications for hearing. The Unit is also responsible for registering incoming

correspondence and applications and also manages publications and the community education program.

The Coordination and Investigation Unit undertakes an important case management role. As well as assisting the person with the disability to understand the Tribunal's procedures, staff gather information about the capacity and decision making needs of the person who is the subject of the application. Where appropriate staff assist with the informal resolution of matters which may result in an application being withdrawn prior to hearing.

The Hearing Services Unit liaises with the Tribunal members and is responsible for scheduling and listing applications and reviews for hearing. Staff of the Unit provide support for hearings, coordinate the distribution of material for members, produce and distribute notices of hearing, and make travel, hearing venue and interpreter arrangements. The Unit is also responsible for assisting with post hearing enquiries and for the distribution of Orders and Reasons for Decision.

The Tribunal Systems Unit is responsible for key corporate governance functions such as human resource management, finance, administration and for managing the Guardianship Tribunal's information management and technology systems.

The Executive Services Unit supports the President, the Deputy President and the Registrar in providing leadership and direction to staff and Tribunal members to ensure that the Guardianship Tribunal carries out its statutory duties with timeliness and effectiveness according to its own standards and those required under the Act. The Tribunal's legal officer provides advice to the President, the Deputy President, Tribunal members and staff, participates in the Tribunal's community education program and represents the Tribunal on a range of external committees.

What we do



What we do

Our statutory role

The Guardianship Tribunal is a legal tribunal established under the New South Wales *Guardianship Act 1987*.

Legislation which is relevant to the Tribunal's jurisdiction includes:

- *Guardianship Act 1987*
- *Powers of Attorney Act 2003*
- *Protected Estates Act 1983*
- *Children and Young Persons (Care and Protection) Act 1998*
- *Mental Health Act 2007*

The *Guardianship Regulation 2005* contains further provisions about enduring guardians and medical treatment and sets out the prescribed forms required by 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 can review the guardianship orders it makes and may review its financial management orders. The Tribunal can give consent to medical and dental treatment for people 16 years and over who are unable to consent to such treatment for themselves. The Tribunal also has jurisdiction to review enduring guardianship appointments and enduring powers of attorney.

Appointing guardians

A guardian may be appointed to make personal or lifestyle decisions for an adult with a decision making disability where the Tribunal is satisfied on the evidence before it that the person has a disability, an incapacity to make his or her own decisions and there is the need for the formal appointment of a substitute decision maker. The guardian may be appointed to make a range of personal decisions, for example, decisions about the person's accommodation, access to support services, health care or medical and dental treatment. The duration of the appointment and the specific decision making authority of the guardian is set out in the guardianship order.

The Guardianship Tribunal can appoint private individuals, usually a family member or friend, to act as a guardian. Before the Tribunal can appoint a private guardian, it has to be satisfied that the guardian is compatible with the person for whom the order is made, there is no conflict of interest that would impact on decision making and the proposed guardian is willing and able to undertake the role of guardian.

The Tribunal can also appoint the Public Guardian, an independent statutory officer, to make decisions for a person with a disability if there are no family or friends willing or able to be appointed or if the circumstances make it inappropriate to appoint a private guardian.

CASE STUDY (1)

Mario -

Review of Guardianship – the positive impact of a Guardianship Order

Mario is a 57 year old man who was hit by a train several years ago. As a result of this accident Mario has lost the use of both his legs and has an acquired brain injury.

An application was made to the Tribunal for a guardian to be appointed for Mario. This application was made by a social worker whilst he was an inpatient at a local hospital being treated for chronic liver disease. At its hearing, the Tribunal received evidence that since the train accident Mario had become very depressed, had not been able to engage in any form of employment, no longer had any contact with his immediate family and had developed a problem with alcohol. The Tribunal received evidence from Mario's general practitioner that Mario's decision making capacities were significantly impaired. The social worker told the Tribunal that prior to his admission to hospital, Mario was living in "squat" accommodation and was vulnerable to those residing with him.

After talking with Mario about his circumstances and his wishes for the future, the Tribunal decided to appoint the Public Guardian as Mario's guardian for one year with the functions of making decisions about his accommodation, his health and medical needs, and the provision of support services for Mario.

The Tribunal conducted a review of Mario's Guardianship Order at the end of the 12 month period. The Tribunal learned that Mario's life had improved since the guardianship order commenced. Temporary respite accommodation had been arranged for Mario in a location away from his previous "squat" accommodation. Mario advised the Tribunal that this was the best thing that could have happened to him. He was no longer influenced by his previous "flatmates" and had been able to better control his drinking. Mario's health had dramatically improved and he had accepted drop-in help and other services, something which he had rejected in the past.

Permanent accommodation however remained a problem for Mario. Mario's case worker advised the Tribunal that if Mario's accommodation needs could not be resolved on a permanent basis, there was a high likelihood that he would "revert to his old ways" and his health would deteriorate as a result.

The Tribunal renewed the guardianship order for a further six months to facilitate the arrangement of permanent accommodation for Mario. The order made on review gave the Public Guardian an accommodation function only.

Appointing financial managers

A financial manager may be appointed to make financial decisions for another person if the Tribunal is satisfied, on the evidence before it, that the person is incapable of managing his or her own affairs, needs to have a formal management order and such an order is in their best interests. The need for an order can arise where a person has not made, or has been unable to make, prior arrangements in the event of incapacity, such as an enduring power of attorney. The nature of their financial circumstances may mean that someone needs formal legal authority to manage their affairs, or there may be family conflict about what is in the person's best interests.

The Tribunal can appoint a family member or friend to act as the person's private financial manager. A private manager is appointed subject to the direction of the Protective Commissioner. Before the Guardianship Tribunal can appoint a private manager, it must be satisfied that the person is suitable to undertake the role. Alternatively, the Tribunal can order the property and affairs of a person be managed directly by the Protective Commissioner.

Consenting to medical and dental treatment

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' may be a guardian, (including an enduring guardian, with the necessary authority) spouse, carer, or close friend or relative. A 'person responsible' is able to give substitute consent for medical and dental treatment without the need for a formal guardianship order.

The Tribunal can also consent to certain medical and dental procedures for people who are incapable of consenting themselves. These powers ensure that people are not deprived of necessary

treatment because they lack the capacity to consent or are without a family member who can act as 'person responsible'. The Tribunal must be satisfied that the treatment promotes and maintains the person's health and wellbeing.

The Guardianship Tribunal may also consent to special medical treatment for an adult with a decision making disability. This may include any treatment that is intended or likely to result in permanent infertility. It also includes termination of pregnancy and other prescribed treatments.

When hearing applications for consent to special medical treatment, the Tribunal will be constituted by three members, a legal member, a professional member, such as a doctor and a community member. The Tribunal will take into account the views of the patient, where that is possible, and the views of guardians, family members, carers and health professionals.

Before the Tribunal can consent to special medical treatment resulting in permanent infertility it must be satisfied that the treatment is necessary to save the patient's life or to prevent serious damage to the patient's health.

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 less than 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*.

Reviewing enduring powers of attorney and enduring guardianship appointments

The trend in the growth of applications to review enduring powers of attorney and enduring guardianship appointments continued this year. Applications may be made to the Tribunal to review the making and the operation and effect of an enduring power of attorney and to review the appointment of an enduring guardian. These applications often raise complex issues concerning a person's capacity to make these appointments.

Many applications involve complex legal and factual issues reflecting the complexity associated with people's financial arrangements including issues concerning superannuation, investments and property.



Enduring Powers of Attorney

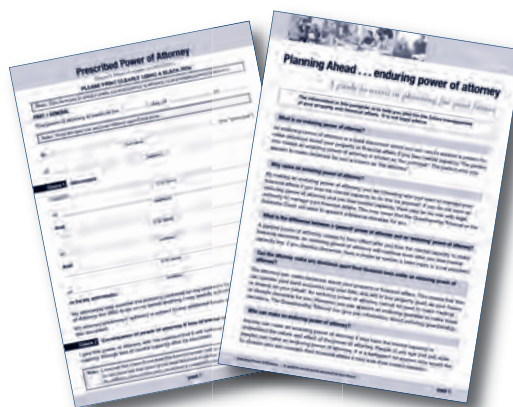
The Tribunal has jurisdiction under the *Powers of Attorney Act 2003* to review and vary an enduring power of attorney.

The Tribunal can make a range of orders concerning the making or operation and effect of an enduring power of attorney. For example, on reviewing an enduring power of attorney, the Tribunal can make 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 the operation of any power of attorney that have been made by the protected person (the person whose estate has been placed under management).

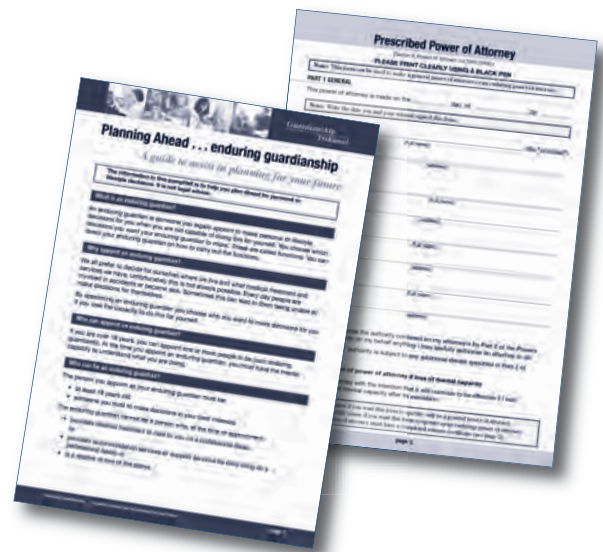


Enduring Guardianship

The Tribunal has jurisdiction under the *Guardianship Act 1987* to review the appointment of an enduring guardian. The Tribunal may revoke the appointment, confirm the appointment, replace an enduring guardian with a substitute enduring guardian and vary the functions of the enduring guardian.

The Tribunal may also make an order declaring that the enduring guardianship appointment has effect. This may be required in circumstances where there is some doubt or dispute about whether or not the person who made the enduring guardianship appointment has become a person 'in need of a guardian.' Enduring guardianship appointments only have effect during such periods of incapacity.

The making of a guardianship order suspends the operation of an enduring guardianship appointment.



CASE STUDY (2)

Rose -

Questions of decision making capacity and vulnerability

Rose is a 67 year old woman who lives in her own home with her 32 year old son, Terry. Terry has a mild intellectual disability. Rose has been diagnosed with dementia. She has one brother, Richard, and she has had a closer relationship with him since the death of her husband in 2005.

In early 2009, Rose appointed a new friend, Lawrence, whom she had met after attending art classes, as her enduring guardian and enduring power of attorney. Her brother, Richard, became increasingly concerned about Rose's well-being and the actions of Lawrence, and made an application to the Tribunal for the enduring power of attorney and the enduring guardianship appointment to be reviewed.

At the hearing, the Tribunal heard evidence from Rose's general practitioner that Rose's dementia had progressed significantly in the last six months. The clinical tests which the doctor had administered to assess Rose's cognitive state were done around the same time Rose appointed Lawrence as her guardian and attorney. Rose's doctor felt it was highly improbable that Rose understood the nature of the documents she was signing when she appointed Lawrence. The Tribunal also received evidence from neighbours and friends of Rose and Terry that since Lawrence had befriended them, both Rose and Terry rarely left their home (something quite contrary to their previous behaviour), appeared malnourished, and were living in increasingly squalid conditions.

The Tribunal examined copies of Rose's bank statements. They showed large withdrawals had been made from her savings accounts in the months leading up to the hearing. Rose could not recall these withdrawals. Lawrence told the Tribunal that he had withdrawn money using Rose's power of attorney as she had wished to give him money "as a gift" to help his art class business. The money "gifted" amounted to more than half of Rose's entire savings.

The evidence considered by the Tribunal showed that it was appropriate to revoke the appointment of Lawrence as Rose's enduring guardian and her attorney under the Enduring Power of Attorney. Rose's brother, Richard, told the Tribunal that he was happy to assist Rose and the Tribunal made orders appointing Richard as Rose's financial manager and guardian.

CASE STUDY (3)

Dorothy -

How Guardianship can support discharge planning . . .

Dorothy is 88 years of age and resides on her own in rented accommodation in the Eastern suburbs of Sydney. In late December 2008, Dorothy was admitted to hospital after experiencing heart problems. Whilst an inpatient, Dorothy was diagnosed as having dementia together with multiple underlying medical conditions.

After approximately three weeks in hospital, Dorothy's medical condition stabilised and her treating physician advised that she could be discharged. A meeting was held at the hospital with Dorothy's three children to discuss her future care needs. Dorothy's children were of the view that their mother could no longer care for herself in her own home. Dorothy's children described how, with the onset of dementia and contrary to her previous character, their mother was now often very abusive, irritable, disinhibited and often lacking insight into her own care needs. Dorothy had been vehemently opposing any provision of services to her in her own home even though she had difficulty preparing meals and attending to her personal hygiene.

As a result of the interactions with Dorothy's family, Dorothy was assessed by an Aged Care Assessment Team who determined that she required high level care. A placement was proposed for Dorothy but was only available for one week. Dorothy refused the placement and refused to be discharged from the hospital unless she was able to return to her own home.

A hospital social worker made an urgent application to the Tribunal for a guardian to be appointed for Dorothy. A hearing was conducted five days later. Dorothy refused to attend or otherwise participate, but she was represented by her separate representative, an independent lawyer appointed by the Tribunal to represent Dorothy.

The Tribunal heard evidence that Dorothy, due to dementia, was incapable of understanding her care needs and that it was unsafe for her to continue living independently. Dorothy's children were not willing to accept the role of her guardian and each supported the appointment of the Public Guardian as they felt that if any one of them was to take on such a role it would have a detrimental impact on their relationship with their mother given her level of aggression and opposition for any proposals for her future care.

The Tribunal appointed the Public Guardian as Dorothy's guardian with the ability to make decisions about her accommodation.

How we work



How we work

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. They are about an individual's right to continue to make his or her own decisions.

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.

The protective framework within which the Tribunal operates underpins the work of both the Tribunal's staff and members. Anyone with a genuine concern for the welfare of a person who is incapable of making his or her own decisions may apply to the Guardianship Tribunal. Staff of the Tribunal provide information to the person with the disability, the applicant and other parties about the Tribunal's practices and procedures and will actively investigate and gather information to prepare the application for hearing by the Tribunal.

The Guardianship Tribunal does not follow an adversarial approach in the conduct of its hearings and in its decision making. It uses more inquisitorial methods.

Our principles

The Tribunal must observe the principles in the *Guardianship Act 1987*. These principles state that everyone dealing with a person with a disability under the Act 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.

Staff and Tribunal members must act in accordance with the purpose of the Guardianship Tribunal which is to keep paramount the interests and welfare of people with disabilities through facilitating decision making on their behalf.

Through their knowledge of disability 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. Tribunal members bring a wealth of specialist knowledge, expertise and experience to an often complex decision making process. The Tribunal will, where appropriate, endeavour to bring the parties to an application to a settlement.

The nature and circumstances surrounding applications to the Tribunal often involve sensitive and personal information about the person with the disability, who may themselves be unable or limited in their ability to participate in the proceedings. The Tribunal may determine that proceedings be conducted wholly or partly in the absence of the public.

Hearings are generally scheduled to allow sufficient time for appropriate investigation of the circumstances of the person and his or her need for orders to be made. However, the Guardianship Tribunal can convene within hours to hear urgent applications, often by telephone. The Guardianship

Tribunal also operates an after hours service if urgent applications need to be heard outside normal business hours. Hearings may also be conducted via video conferencing.

Orders of the Tribunal may be made and announced at the conclusion of the hearing or the decision may be reserved, with the order to be made at a later date. The Tribunal may determine not to make an

order and dismiss the application or the application may, with the Tribunal's consent, be withdrawn during the hearing. The Tribunal will, as soon as possible after the hearing, send the Order and Reasons for Decision to the parties.

The Guardianship Tribunal's decisions may be appealed to either the Supreme Court or the Administrative Decisions Tribunal.

Legislation and legislative changes

Legislation relating to the Guardianship Tribunal

The *Guardianship Act 1987* sets out the legislative framework under which guardianship orders can be made, how they operate and how they are reviewed in New South Wales. The Act establishes the Guardianship Tribunal and the Public Guardian and details the role of both organisations. It also provides for the appointment of enduring guardians and for the review of those appointments where necessary.

The Act creates the regime 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. Usually this consent can be provided by the 'person responsible'.

The *Guardianship Regulation 2005* should be read with the *Guardianship Act 1987* as it contains further provisions about enduring guardians and medical treatment, as well as setting 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.

Both the *Guardianship Act 1987* and the *Protected Estates Act 1983* deal with the making of financial management orders. The *Guardianship Act 1987* deals with the process of making applications for financial management orders to the Guardianship Tribunal and the Tribunal's authority to make such orders.

The *Powers of Attorney Act 2003* empowers the Guardianship Tribunal, in addition to the Supreme Court, to review and vary an enduring power of attorney.

Amendments to the *Guardianship Act 1987*

The *Statute Law (Miscellaneous Provisions) Act 2008* was passed on 25 June 2008 and came into effect on 1 July 2009. It amended the *Guardianship Act 1987* to enable the appointment of part time Deputy Presidents.

The NSW Trustee and Guardian Act 2009

The *NSW Trustee and Guardian Act 2009* was assented to on 26 June 2009 but did not come into effect during the current financial year.

It repeals the *Public Trustee Act 1913* and the *Protected Estates Act 1983* and constitutes a corporation known as the NSW Trustee and Guardian.

The NSW Trustee and Guardian will exercise the financial management functions previously exercised by the Protective Commissioner.

External influences on work of the Tribunal

Almost half of the Tribunal's clients experience cognitive incapacity as a result of age related disabilities. With the number of people over 65 in New South Wales set to rise by over 50% by 2030, the Tribunal will inevitably experience a growth in demand for its services for this client group.

The New South Wales Government's focus on planning for the ageing of the population has raised community awareness of the need for individuals to plan ahead for future incapacity. While the making of enduring powers of attorney or enduring guardianship appointments may prevent the need for orders to be made by the Tribunal, our Enquiry Service is increasingly responding to enquiries from people considering these options and providing information about the Tribunal's jurisdiction to review these arrangements.

This year the Tribunal continued to participate in planning for the impact of the ageing population and provided education to the aged care sector by:

- participating in DADHC's Planning for Later Life forum and sub committees
- presenting at the annual Elder Law Conference in October 2008.
- providing community education to a range of aged care service providers including residential facilities, community based aged care package providers, aged care assessment teams and hospital based geriatric teams, dementia specific organisations, aged care rights services and aged care monitoring bodies.



Our Corporate Plan

The Tribunal's strategic direction is set out in its Corporate Strategic Plan 2006 – 2009. The Tribunal has regularly reviewed this Plan and will develop our Corporate Strategic Plan 2009-2012 early in the new financial year.

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.' The Tribunal operates in a demand driven environment characterised by a changing demographic with the ageing of the population. We have seen a steady growth in a complex area of our work being applications for reviews of enduring powers of attorney and reviews of enduring guardianship appointments.

We are committed to 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.

Legislative review and reform

During the year, the Department of Lands commenced a review of the *Powers of Attorney Act* 2003 to determine whether it still met its stated objectives. The Tribunal was involved in the working party established to review the legislation and assisted the Department of Lands in identifying key issues for public discussion and consultation. The Tribunal provided feedback and comment on the Issues Paper and Discussion Paper released by the Department of Lands.

The Tribunal also provided submissions and comment on:-

- The Special Commission of Inquiry into NSW Hospitals
- The Review of the *NSW Freedom of Information Act* 1989
- The Commonwealth Parliament's Inquiry into Better Support for Carers
- The National Disability Strategy being developed by the Commonwealth Government
- DADHC Draft Policy on Allocation of Places in Supported Accommodation and Respite Capacity
- The NSW Vexatious Proceedings Bill 2008

The Tribunal was also involved in providing submissions and consulting with the NSW Law Reform Commission about its reports and recommendations as follows:-

- Report 119 "Young People and Consent to Health Care"
- Report 114 "Deaf or Blind Jurors"
- Consultation Paper 3 "Privacy Legislation in NSW"

Amendments to the *Guardianship Act* came into operation on 1 August 2007 enabling the Tribunal to sit one or two member panels to determine reviews of guardianship or financial management orders, applications for consent to major medical or dental treatment and certain procedural matters. This year 56% of these matters were determined by the Tribunal constituted by fewer than three members.

We conducted further specialist training for Tribunal members to prepare them to sit as single member panels, increasing the capacity of the Tribunal to sit one or two member panels to hear statutory and requested review matters.

Review of business processes

Within their respective units staff contribute to improvements in practice and procedure to ensure that applications are managed efficiently and appropriately.

During the year a number of specific projects were undertaken to deliver service improvement, meet the demands of our complex workload and to strengthen the platform from which we will deliver a quality service into the future.

Business Process Design Project

The Guardianship Tribunal has reviewed all of its processes and procedures. This has been a major endeavour involving all of the Tribunal's staff and management teams.

The process of review began with a vision and values workshop for all staff on 13 August 2008, facilitated by our Senior Project Officer, Lynne Bruce. This workshop resulted in a fresh statement of the Tribunal's core values – Respect, Integrity, Fairness, Quality of Services, Open Communication and Innovation.

Lynne Bruce then led a number of staff and Tribunal member focus groups to map our work practices and facilitate ongoing consultation with staff and members. New procedures were developed, trialled and improved. These procedures enabled the Tribunal to develop a new triage model for the assessment and management of new applications. They also laid the foundation for new investigation strategies and case management pathways in the Investigation Unit.

In the last quarter of the year, the Tribunal conducted an intensive Trial and Transition project in which many of these procedures were piloted. Staff and member feedback was provided and the procedures were amended and several finalised. A significant focus of this project was to expedite the management and finalisation of

applications pending. The three month project successfully concluded on 30 June 2009 and resulted in the finalisation of 2,418 matters.

Work continues in the Hearing Services Unit with our focus being on the integration of new work practices with new IT solutions.

The new procedures facilitate the continued delivery of a high quality tribunal service, support the timely preparation and listing of matters and provide clear written guidance to the staff of the Tribunal in undertaking their roles and responsibilities.

Research

From time to time the Tribunal received requests from professional and academic colleagues undertaking research into social and legal issues related to the work of the Tribunal.

This year the Tribunal committed to a collaborative research project lead by the Queensland University of Technology (QUT), and involving the Guardianship and Administration Tribunal (Qld), Office of the Adult Guardian (Qld), Office of the Public Advocate (Qld), Victorian Civil and Administrative Tribunal, Office of the Public Advocate (Vic), and Office of the Public Guardian (NSW) successfully submitting an application to the 2009 Australian Research Council - Project Grant Awards to support the project Withholding and withdrawing life-sustaining treatment from adults lacking capacity: Enhancing medical decision-making through doctors' compliance with the law.

Statistics working party

Throughout the year staff have continued to review both data collection and statistical analysis systems. These improvements have supported senior staff and management to better monitor and manage the Tribunal's workflow. This work has enabled the Tribunal to revise the presentation of data and statistical reporting in its Annual Report and has informed the implementation of, and

amendments to, new and revised case management procedures as part of the business process design project. The work of refining and continuing to develop appropriate reporting tools to assist in the management of matters before the Tribunal and inform planning for, and allocation of, Tribunal resources will continue into the new financial year.

Banker's cases

In October 2008 the Guardianship Tribunal, DADHC and the Office of the Protective Commissioner finalised a Memorandum of Understanding (MOU) to facilitate the management of a number of applications that will be made to the Tribunal over the following two to three years in relation to what are commonly called "the banker's cases." The purpose of the MOU is to ensure that appropriate financial management arrangements are in place for a number of DADHC clients who to date have received informal assistance from the Protective Commissioner.

Through a number of DADHC workshops, staff of the Tribunal provided information to staff of DADHC who will be involved in both making applications to the Tribunal and in providing information to clients of the Department and their families about the role of the Tribunal. The Tribunal received its first banker's case applications following the implementation of the MOU in December 2008.

Website Compliance

We completed a project to ensure the compliance of our website with the NSW Government Website Style Directive, the objectives being that government websites are easy to navigate and are user friendly through standardising key elements to assist the community to obtain information.

Electronic Client Management System

The Tribunal continued to make improvements to its Case Management System (CMS) databases including the:

- development and implementation of new workload measurement reports for the Coordination and Investigation Unit

- development and implementation of an advanced client locality structure based on the Local Government Area (LGA)/Local Government Boundary(LGB) address/postcode allocation
- development and implementation of a new report to support the timely distribution of written reasons for decision
- enhancements to the Client Management System to support the implementation of new case management procedures
- further development and improvement on the design and format of the Investigation Report to the Tribunal.

Health Professional's Report

The Tribunal has developed a report to assist medical and other health professionals who provide information concerning applications before the Tribunal. This report was launched on 23 October 2008.

This initiative was reviewed in April 2009 and feedback was sought from staff, Tribunal members and Tribunal users. Feedback indicated that the form had met its objectives of facilitating the provision of information to the Tribunal, informing professionals about the information the Tribunal requires prior to determining an application and through the early receipt of this information assisting in the timely progress of an application to resolution.



Records management

The Tribunal is committed to ensuring that its business and the delivery of its services are supported by efficient and effective records management. A key component of this is managing the retention and disposal of records. The Tribunal is finalising a Retention and Disposal Authority to be completed for submission and approval by the State Records Authority under the *State Records Act 1998*. The Tribunal is well placed to meet the requirement of all New South Wales Government agencies to have Records Retention and Disposal Authorities in place by 2010.

Information and Communication Technology Strategic Plan – A Guardianship Service

Domain Hub

In 2005/2006 the Government Chief Information Office (GCIO) assisted the Tribunal to develop a high level Information and Communication Technology Strategic Plan (ICT). Projects associated with this strategy have continued to develop during 2008/2009 to assist the Tribunal to respond to key business challenges.

This year the GCIO and the Tribunal have continued to work together to further develop the Guardianship Service Domain Hub. This project forms part of the Collaborative Government Services (CGS) program which is an approved program within the NSW Government ICT Strategic Plan – *People First*.

This initiative provides the platform which 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 our exchange of information with these key stakeholders.

User acceptance testing of Stage One of the project was conducted in December 2008 and Stage One moved into production in January 2009.

Our collaboration with the GCIO has continued throughout 2008/2009 with the development of Stage 2 of the project. This focuses on the use of the shared service domain to support and improve efficiency in essential Tribunal activities such as gathering Tribunal member availability, creating the hearing schedule and listing matters for hearing. We are confident that the expected efficiencies will benefit the people who are the subject of Tribunal orders and parties to proceedings before the Tribunal.



Improving our work environment

Digital recording equipment

Work has been undertaken this year to identify a digital recording solution to replace the existing analogue recording systems currently in use and to enable the Tribunal to record its proceedings irrespective of the hearing location. We hope to install this new recording system early in the new financial year.

This year a number of improvements were made to the Tribunal's hearing room security. The security of the Tribunal's premises was also upgraded and improved.



Improving our services through the development and support of staff and members

Staff training and development

Staff of the Tribunal undertake work that is both high in volume and challenging. Applications made to the Tribunal are often complex in nature and may involve a person with a disability in a situation of risk, or circumstances of significant conflict between the parties to the application. Our staff have a diverse range of skills and experience which enable them to provide timely and efficient services to the Tribunal and to parties.

The Tribunal's Training Committee meets six times a year to plan and oversee the training and professional development program for staff. The program includes internal, Departmental and external training and development opportunities.

During the past year staff have been supported to attend a variety of training opportunities as part of their professional development. These courses have provided staff with skills, knowledge and information on a diverse range of subject areas including computer application programs, records management, occupational

health and safety issues, communication techniques, human resource management and legislative changes.

In May this year a number of staff attended the Council of Australasian Tribunals (NSW Chapter) annual conference.

The Tribunal remains committed to continuing the monthly seminar program for staff, initiated last year, as a practical and important way to support staff in undertaking their work and which staff are required to attend. These seminars address specific training and information topics identified by staff. They are an opportunity to receive and discuss information and support consistency, within and across teams within the Tribunal, in the information provided to clients and parties and in the support provided to Tribunal members.

This year we commenced a Management and Leadership Program for managers and senior staff to build on and develop skills, qualities and abilities in the areas of management, leadership

and communication. This program will assist managers in the implementation of procedural changes and to support staff through this period of change and development.

Effectively communicating with our clients has been a particular focus of our training program this year. In addition to our internal courses on customer service, staff attended a workshop conducted by the New South Wales Ombudsman's Office on dealing with unreasonable complainant conduct. The feedback from staff who attended the workshops has been very positive.

The publication of staff bulletins, the maintenance of the Tribunal's intranet, and regular unit, team and staff meetings have been used to update and inform staff about issues in a timely and effective way.

To ensure the safety of our clients and our staff, fire drills and training in fire fighting techniques are regularly conducted. The training is provided by Comsafe, the training arm of the New South Wales Fire Brigade. Staff members also regularly attend external training programs in first aid, ergonomics and Occupational Health and Safety.

Professional development for Tribunal members

The Tribunal conducts a separate program of seminars for members. This year three seminars were conducted for legal members and a further three seminars for all Tribunal members. Seminars for the legal members involve discussion, presentations and practical exercises on legal issues. Those for all members include a variety of presentations, workshops and discussions providing current information on clinical and disability issues, legislative updates and issues relating to the practice and procedure of the Tribunal. Presentations are given by Tribunal members relating to their area of expertise or by external speakers including the Public Guardian and Protective Commissioner, representatives of the Public Trustee, and professionals with expertise

relevant to the work of the Tribunal.

Tribunal member seminars this year included:

- Anorexia Nervosa – its impact on capacity to make personal decisions
- Autism and its effect on capacity
- The Lifetime Care and Support Authority of NSW
- Moving from home to residential aged care – payments, fees and rights
- Centrelink entitlements and residential aged care
- The mental health system and guardianship
- Geriatric mental health
- Legal representation at the Guardianship Tribunal
- Trusts
- Enduring Powers of Attorney

Some Tribunal members have attended additional training in procedural issues and in the Tribunal's Case Management System in preparation for conducting single member hearings.

The revised performance appraisal system for Tribunal members was fully implemented this year. This involved the development of a competence framework for members which sets out members key competencies under five headings- knowledge and values, communication, conduct of cases, evidence and decision making. It describes the performance indicators relevant to each competency.

The Tribunal members self assessment report and hearing observation program were developed in line with the competence framework. Hearing observations occur twice a year in February and September.

The Australian Guardianship and Administration Council (AGAC) provides a national forum for State and Territory agencies that protect adults with a disability through adult guardianship and administration. AGAC facilitates the sharing of information between agencies to explore and develop consistent approaches to common issues and a collaborative focus on relevant matters.



Community awareness



Community awareness

Informing our clients

The Tribunal provides information about its role and the requirements of its legislation through its enquiry service, community education sessions, participation in conferences and other forums and through its website, publications and DVDs.

In keeping with the principles of the Act, this education assists people to find alternatives to guardianship and financial management for people with disabilities. If an application is made, further information is provided by Tribunal staff who prepare matters for hearing.

A Liaison Officer who is a representative of the Office of the Protective Commissioner (OPC) is based at the Tribunal's Balmain premises. The Liaison Officer is available to provide information and guidance about the role and services of the OPC. For many people involved in hearings of the Tribunal, the Liaison Officer is the first contact that they have with the OPC after a hearing.

Enquiry service

The Tribunal's Enquiry Service is a well used resource for health, legal and community service professionals as well as the general public. This year saw an 8.8% increase in contacts with our enquiry service compared to last financial year with enquiry officers handling 12,075 calls and visits, an average of 47 per day.

The Enquiry Service assists callers to determine the need for the Tribunal's involvement and to identify alternatives to the making of an application where appropriate. Enquiry officers are often able to clarify existing informal decision making mechanisms for people with disabilities or suggest alternative ways to resolve decision making problems. If an application is needed, enquiry officers can assist callers to access the appropriate application forms and information, can explain the application process, and provide information about Tribunal procedures and the responsibilities of an applicant.

Community education

This year, Tribunal staff and members provided 25 community education sessions involving 1463 participants.

These sessions were requested by a wide range of health and welfare services including hospitals and community health services, aged care services, peak bodies, carer's groups, Divisions of General Practice, tertiary education providers, legal services, advocacy services, and other government agencies.

The sessions covered a range of topics including the role of the Tribunal, guardianship, financial management, consent to medical and dental treatment, behaviour intervention and support, planning ahead for later life, the application process and reviews of enduring guardianship appointments and enduring powers of attorney.

A community education request form makes it easier for organisations to supply information about their education needs. The form is available to download from the Tribunal's website (www.gt.nsw.gov.au).

Website

Over the past year the Tribunal's website continued to be an important source of information and an entry point to services. It was established as a benchmark in accessible website design and 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

- A separate section on enduring powers of attorney and enduring guardianship to provide people with information about how to make prior arrangements for substitute decision making should the need arise.



Publications

This year the Tribunal issued Practice Note No 1 Legal Practitioners and Guardianship Tribunal Proceedings. This practice note provides guidance to legal practitioners and parties about when and how to seek leave for legal representation. It also provides information about the Tribunal's appointment of separate representatives and discusses the various ways legal practitioners may be involved in proceedings before the Tribunal.

This year the Tribunal reviewed and improved a number of its publications. We introduced a new Health Professionals Report to assist medical and other health care practitioners presenting evidence to the Tribunal.

We introduced a new application form for people applying for a review of a guardianship order. Reviews of guardianship orders are often requested where the person's circumstances have changed and there may no longer be a need for an order

or where a change to the terms of the order is required.

This year we reviewed and improved our Application for Medical and Dental Consent form. This form now provides clearer instructions on how and when to apply for consent and assists the Tribunal to make an accurate assessment of any risk to the person with the disability. The Tribunal revised and updated its information sheets and produced a new publication "The Role of the Guardianship Tribunal."

For the Tribunal to continue to maintain the high level of service it provides to the disability sector it is imperative that the Tribunal is able to attract, recruit and retain highly qualified, motivated and committed staff and members. In 2008/2009 the Tribunal produced several comprehensive recruitment information packages. The recruitment package for staff provides detailed information about the roles and responsibilities of Tribunal staff, and general information about working conditions and entitlements. The recruitment package for Tribunal members explains the terms and conditions of a member's appointment to the Tribunal, what applicants should expect in the selection process and gives general information about the role and jurisdiction of the Tribunal.

Videos/DVDs

The Tribunal's three award winning educational videos, 'For Ankie's Sake,' 'In Their Best Interests' and 'Substitute Consent', were converted to DVD format and are now available in a three disc box.

Papers presented

Diane Robinson, President

'The Guardianship Tribunal'

University of Sydney, 12 September 2008.

'The Guardianship Tribunal'

Disability Council, 18 September 2008.

'Guardianship in the 21st Century: Challenges and New Directions Hong Kong Guardianship Conference 2009'
Hong Kong Guardianship Tribunal, January 2009.

'Communicating with People with Disabilities'

Australasian Institute of Judicial Administration, Interpreters Conference – Fremantle, March 2009.

'A Guardianship Odyssey: Challenges in Legislation and Practice in the 21st Century'

Australian Guardianship and Administration Council, 18 March 2009.

'The Guardianship Tribunal'

University of Western Sydney, 28 March 2009.

'Tribunals & Fact Finding AIJA Tribunals Conference'

AIJA Tribunals Conference, 5 June 2009.

Malcolm Schyvens, Deputy President

'Substitute Personal Decision Making'

Continuing Legal Education Centre, Sydney, 31 October 2008.

'Critical Issues for Drawing Appointments of Enduring Guardian and Powers of Attorney'

Wills and Estates Essentials Seminar for Legalwise, Sydney, 26 March 2009

'Diversity and Excellence in Tribunal Alternative Dispute Resolution'

Panel Discussion at the Council of Australasian Tribunals (NSW) Annual Conference, Sydney, 22 May 2009.

'Operating to Capacity: Guardianship Jurisdictions as examples of Innovative Tribunal Practice'

Panel Discussion at the 12th Australasian Institute of Judicial Administration Annual Tribunals Conference, Sydney, 5 June 2009.

Esther Cho, Legal Officer

'The Role of the Guardianship Tribunal'

Law Access, 23 July 2009.

'The Role of the Guardianship Tribunal'

Life Without Barriers – Tamworth, 28 August 2008.

'Mental Health Act 2007 - Changes'

Office of the Public Guardian, 17 September 2008.

'The Guardianship Tribunal – Medical Consents and the Guardianship Tribunal'

Family Planning NSW, 29 September 2008.

'NSW Guardianship Tribunal Current case trends and practical guidance for solicitors involved in Guardianship Tribunal proceedings'

First Annual Elder Law Conference, 16 October 2008.

'The Guardianship Tribunal – An Overview'

Law for Non-Lawyers Public Interest Advocacy Centre, 29 October 2008

'The Guardianship Tribunal'

Sydney South West Psychiatry Training Network, Campbelltown Hospital, 19 February 2009.

'The Guardianship Tribunal'

Concord Centre for Mental Health, 16 April 2009.

'The Guardianship Tribunal'

Liverpool Mental Health, Liverpool Hospital, 5 June 2009

'The Role of the Guardianship Tribunal'

Kingsford Legal Centre, 23 June 2009.

Our work - the year in review



Our work - the year in review

Receiving applications

In 2008/2009 the Tribunal received 6436 new applications. Of these 435 applications were for procedural determinations. Of the remaining 6001 new applications; 47% related to the appointment of a financial manager; 41% related to the appointment of a guardian; 8% were applications for consent to medical and dental treatment; 4% were for other applications including applications to review enduring power of attorney or enduring guardianship arrangements or to approve clinical trials.

The new forms for financial management and guardianship applications introduced in September 2007 assist applicants to focus on the person's need for a substitute decision maker and understand when to apply to the Tribunal. In May this year we introduced a new form for applications requesting a review of a guardianship order. This new form explains what a requested review of guardianship is and the circumstances that may warrant such an application. It guides applicants to provide the required information, assists staff in the preparation of the matter for hearing and better serves the interests of the person under guardianship.

The Tribunal continues to experience growth in an increasingly complex area of its jurisdiction concerning applications for the review of enduring powers of attorney. It has been necessary for the Tribunal to allocate increased resources including more staff to prepare these applications for hearing, and more time and resources for the Tribunal in the examination of evidence involving complex financial arrangements and transactions. This year also saw continued growth in applications to review enduring guardianship arrangements.

The Tribunal is now dealing with matters which are increasingly legally complex and/or involve significant family conflict. This can be reflected in the need for longer hearings and more procedural orders before the final determination of the application.

The *Mental Health Act* 1990 was repealed by the *Mental Health Act* 2007 which came into effect on 16 November 2007. This Act repealed section 12(2) of the *Mental Health Act* 1990. Guardians may now request the voluntary admission of a person under guardianship to a psychiatric hospital without needing to obtain the approval of the Tribunal. The Tribunal no longer has jurisdiction to approve these admissions.

Table 1 Four year comparative caseload statistics for new, requested review and procedural matters for the years 2005/2006 to 2008/2009.*

Application type	2005/2006		2006/2007		2007/2008		2008/2009	
	Received	Finalised	Received	Finalised	Received	Finalised	Received	Finalised
Guardianship	2148	2226	2351	2218	2312	2461	2274	2417
Requested review of guardianship	189	192	213	210	175	179	205	212
Financial management	2318	2299	2405	2341	2452	2562	2465	2564
Requested review of financial management	281	301	333	309	368	370	337	338
Review - enduring power of attorney	58	75	90	77	119	117	131	129
Review - enduring guardianship	19	17	27	28	51	47	57	58
Medical/dental consent	480	494	475	474	447	455	465	473
Recognition of appointment	28	42	37	37	38	38	50	49
Clinical trial	9	7	7	9	6	6	16	9
Direction to guardian	0	0	1	1	0	0	1	1
Sub total	5634	5761	6068	5830	6011	6287	6001	6250
Procedurals (own motion or by request)	272	281	368	369	388	392	435	434
Total	5906	6042	6436	6199	6399	6679	6436	6684

* There has been a revision in the scope and method of statistical reporting and caution should be exercised in comparing data in this report with those in annual reports prior to this year.

Table 2 Four year comparative caseload statistics for statutory or Tribunal ordered review matters for the years 2005/2006 to 2008/2009.*

Statutory or Tribunal ordered review of orders	2005/2006	2006/2007	2007/2008	2008/2009
	Reviews conducted/finalised	Reviews conducted/finalised	Reviews conducted/finalised	Reviews conducted/finalised
Guardianship	1482	1417	1508	1626
Financial management*	148	135	119	116
Recognition of guardianship appointment	5	5	13	17
Recognition of financial management appointment	7	21	19	23
Total	1642	1578	1659	1782

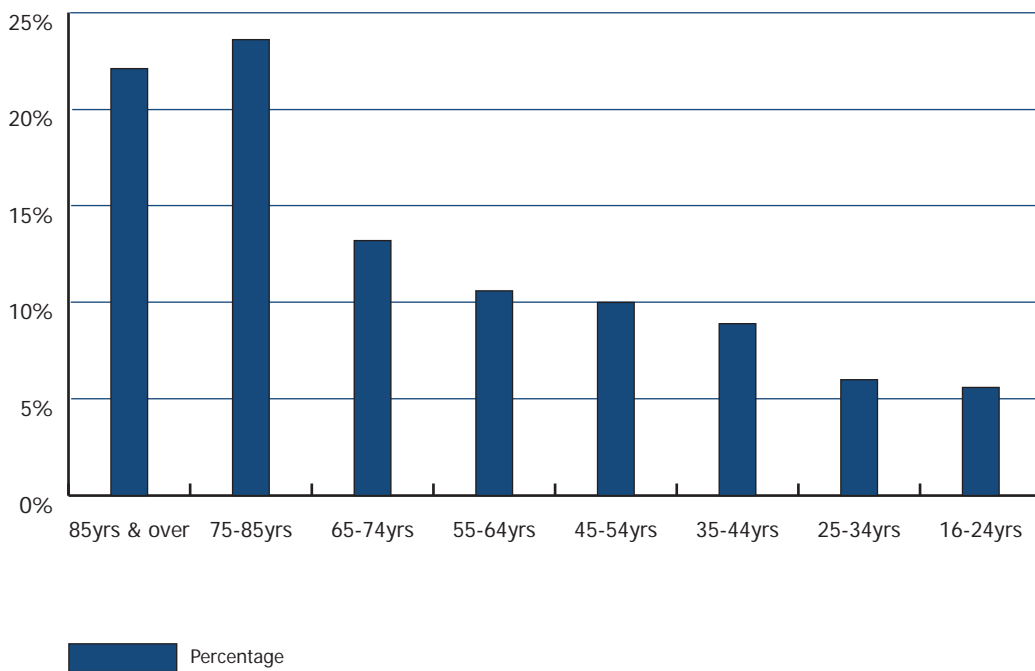
* There has been a revision in the scope and method of statistical reporting and caution should be exercised in comparing data in this report with those in annual reports prior to this year.

Applicants to the Tribunal

Consistent with the exercise of a protective jurisdiction, an application may be made by any person who, in the opinion of the Tribunal, has a genuine concern for the welfare of the person who is the subject of the application. Of the applications received by the Tribunal this year 50% were made

by family members or friends of the person, 41% by someone in a professional relationship with the person, for example a health professional, professional carer or service provider and 9% by others.

Graph 1 Age demographic of people the subject of applications to the Tribunal in 2008/2009

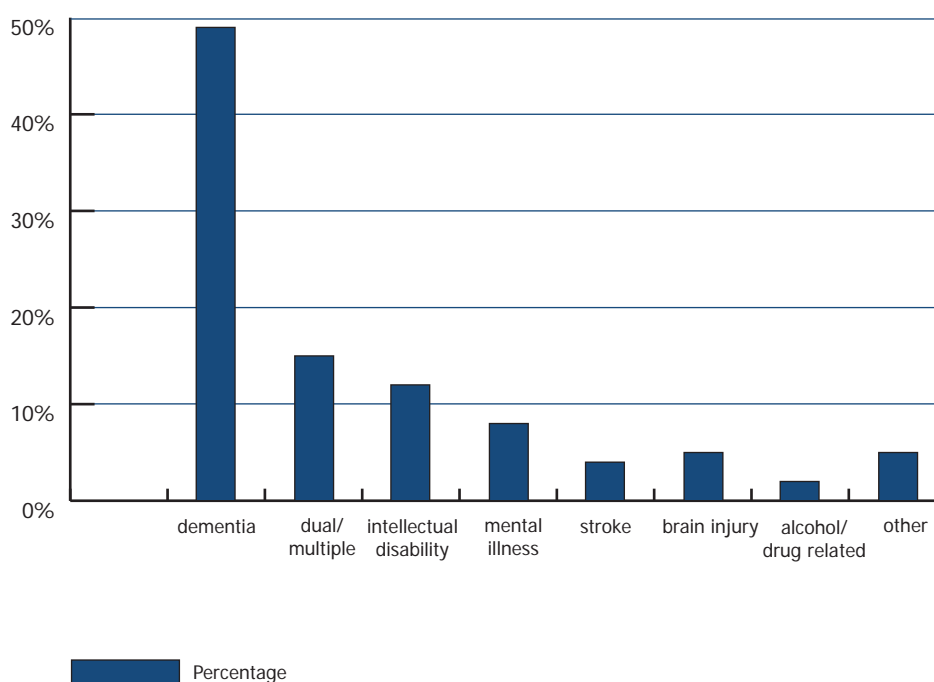


People for whom applications were made by age, gender and disability

Of the applications received this year just under half (49.8%) were for females and 50.2% were for males. Consistent with the ageing of the population, the majority (58.9%) of applications to the Tribunal were for people who were 65 years or older.

The most frequently recorded disability in applications to the Tribunal in 2008/2009 was dementia (49%). It is anticipated that this trend will continue and will contribute to the growth in applications for reviews of enduring powers of attorney and enduring guardianship appointments. Applications for people with mental illness, intellectual disability or a dual diagnosis comprise 35% of applications received this year.

Graph 2 Disability reported in applications received by the Tribunal in 2008/2009



Hearings by the Tribunal

In 2008/2009 the Tribunal conducted 5062 hearings over 1426 sittings. This year the Tribunal heard an average of 1.44 matters per hearing and 5.1 matters per sitting of the Tribunal. These hearings concerned 4216 people with decision making disabilities.

The Tribunal also operates an after hours service if urgent applications need to be heard outside normal business hours. Of the hearings conducted this year 41 were after hours hearings.

This year the Tribunal finalised 8466 matters. The Tribunal received 6001 new applications (excluding procedural applications) this year and finalised 6238 matters. The Tribunal also finalised 1542 statutory reviews and 419 procedural matters.

In keeping with the principles of the Act and ensuring that a person's right to self determination is protected wherever possible, staff of the Investigation and Coordination Unit explore alternative avenues for assisted or substitute decision making for the person with the disability, which may mean that an order of the Tribunal is

not required. Section 66 of the Act provides for the Tribunal to attempt conciliation, where appropriate, to bring the parties to a settlement. Section 64A of the Act provides for an applicant to withdraw an application with the consent of the Tribunal.

Procedural hearings

The Tribunal can be constituted by less than three members to determine some procedural matters. In 2008/2009, the Tribunal conducted 266 procedural hearings. Procedural matters include applications for legal representation, applications by people seeking to be joined as a party, and requests for consent by the Tribunal to withdraw an application.

These hearings were conducted by the President, Deputy President or a presiding member to whom the President delegates authority under section 51A of the Act.

There were 180 applications for legal representation and representation was granted on 139 occasions. In addition, there were 84 appointments of separate representatives made by the Tribunal.

Appointing guardians and financial managers

Appointing guardians

Table three sets out the guardianship appointments made by the Tribunal in 2008/2009. This year the Tribunal heard 3503 applications and reviews in relation to guardianship. In 661 of these matters no appointment was made because the Tribunal dismissed the application either because it was satisfied that alternative informal arrangements existed or because the application was withdrawn with the consent of the Tribunal.

The Tribunal made 1945 guardianship appointments. Of these orders, 33% appointed

a private guardian or guardians, 65% appointed the Public Guardian and 2% appointed a private guardian/s and the Public Guardian with different decision making functions. The Public Guardian is appointed in circumstances where there is no one else willing or appropriate to be appointed. In appointing a private guardian the Tribunal must be satisfied that the proposed guardian is compatible with the person, there is no undue conflict of interests and that the proposed guardian is willing and able to exercise the functions conferred in the order.

Table 3 Guardianship appointments made in 2008/2009

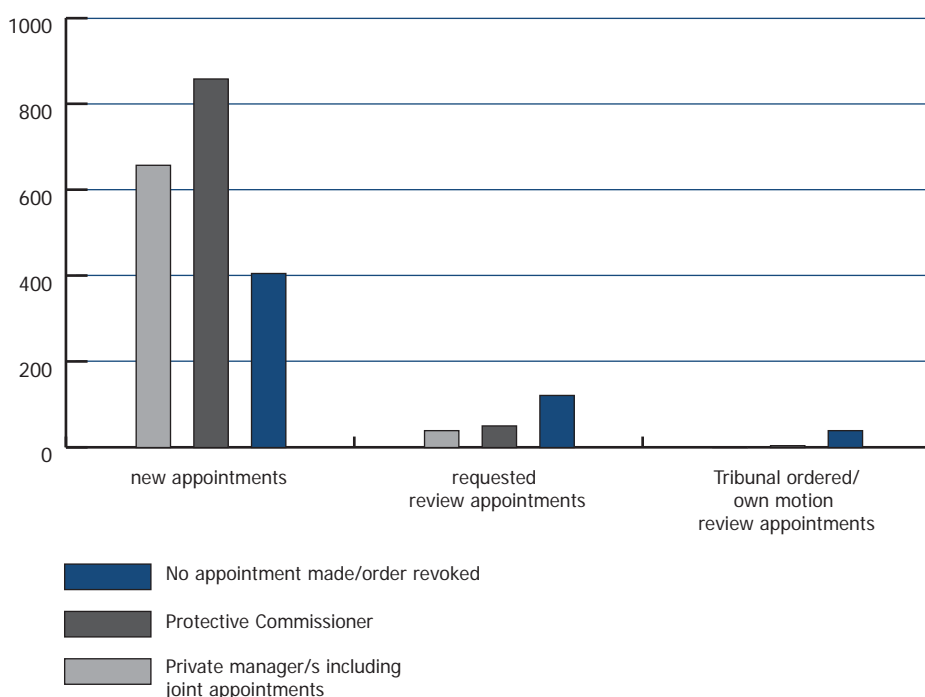
	Private guardian/s including joint and alternate appointments	Public Guardian	Joint private and Public Guardian appointment (separate decision making authority)	No appointment made/order revoked/not renewed
New appointments	364	628	16	647
Requested review appointments	17	70	4	33
Statutory review appointments	257	570	19	521

Appointing financial managers

Graph 3 below sets out the financial management appointments made by the Tribunal in 2008/2009. This year the Tribunal heard 2705 applications and reviews in relation to financial management. In 425 of these matters no appointment was made because the Tribunal dismissed the application either because it was satisfied that alternative informal arrangements existed or because the application was withdrawn with the consent of the Tribunal.

The Tribunal made 1615 financial management appointments. Of these 43% of orders appointed a private manager or managers, and 57% appointed the Protective Commissioner. The Protective Commissioner is appointed in circumstances where there is no one else willing or suitable to be appointed. A private financial manager is subject to the direction of the Protective Commissioner.

Graph 3 Financial management appointments 2008/2009



Reviewing orders

In addition to hearing new applications for the appointment of a guardian or financial manager, the Tribunal undertakes reviews of guardianship and financial management orders it has made.

- **Statutory reviews for guardianship orders** – an automatic review held close to the end of the initial order to determine whether guardianship is still necessary and, if so, whether the order should be renewed with the same terms as the previous order or different terms to reflect any change in the person's circumstances.

- **Tribunal ordered reviews for financial management orders** – a review ordered by the Tribunal to be undertaken after a period of time as set out in the order.
- **Requested reviews** – a review at the request of someone with a genuine concern for the person who is the subject of the order where the applicant believes there is new information, a change in circumstances or the initial order is not working in the best interests of the person.
- **Own motion reviews** – a review initiated by the Tribunal where it considers this would be in the best interests of the person.

Graph 4 Statutory reviews - four year comparative caseload statistics for statutory or Tribunal ordered reviews for the years 2005/2006 to 2008/2009

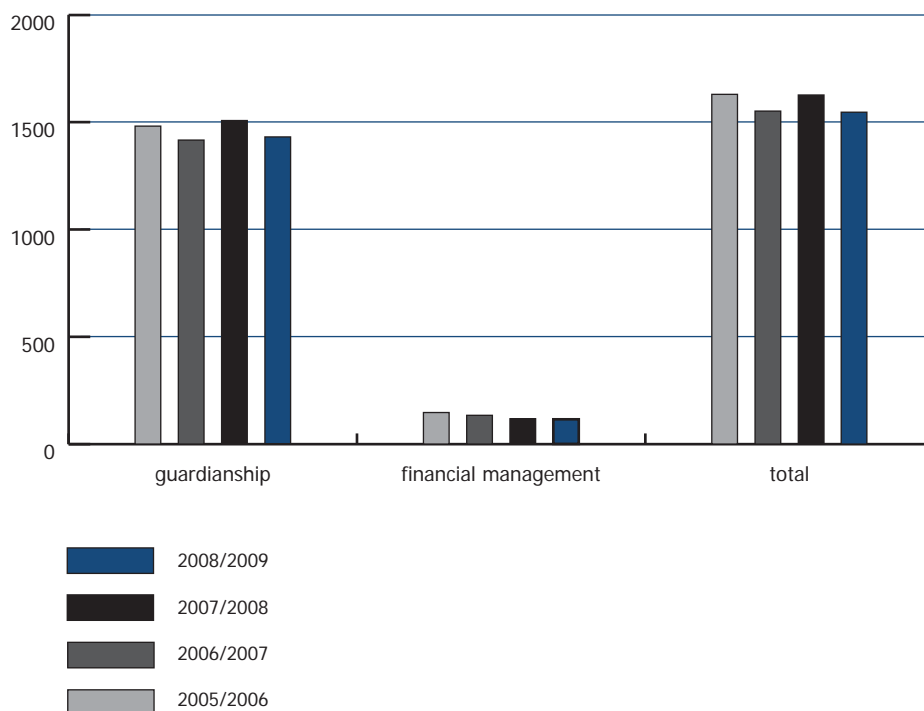


Table 4 Requested reviews - four year comparative caseload statistics for requested reviews for the years 2005/2006 to 2008/2009.*

Application	2005/2006		2006/2007		2007/2008		2008/2009	
	Received	Finalised	Received	Finalised	Received	Finalised	Received	Finalised
Requested review of guardianship	189	192	213	210	175	179	205	210
Requested review of financial management	281	301	333	309	368	370	337	329
Total	470	493	546	519	543	549	542	539

Outcomes of all guardianship and financial management reviews this year

Guardianship reviews

The Tribunal conducted 1430 statutory reviews of guardianship orders and finalised 210 applications requesting a review of a guardianship order.

In 21% of review matters finalised at hearing, the guardianship order was renewed; in 40% of matters the order was renewed and varied;

while in 35% of matters the order was not renewed as it was determined that there was no longer a need for an order. In 3% of matters a non reviewable order was made and 1% of matters were withdrawn or dismissed at hearing.

Table 5 Outcomes of all guardianship reviews 2008/2009

	Order confirmed / renewed and not varied	Order confirmed / renewed and varied	Order revoked / lapsed	Non reviewable order made	Withdrawn / dismissed at hearing
Statutory review - guardianship	310	488	521	52	0
Requested review - guardianship	19	132	17	2	11
Total	329	620	538	54	11

Financial management reviews

The Tribunal conducted 117 Tribunal ordered reviews of financial management orders and finalised 329 applications requesting a review of financial management orders.

In 28% of review matters finalised at hearing, the financial management order was confirmed; in

24% of matters the manager was replaced; in 33% of matters the order was revoked as it was determined that there was no longer a need for an order; in 1% of matters the Tribunal made a reviewable order and 14% of matters were withdrawn or dismissed at hearing.

Table 6 Outcomes of all financial management reviews

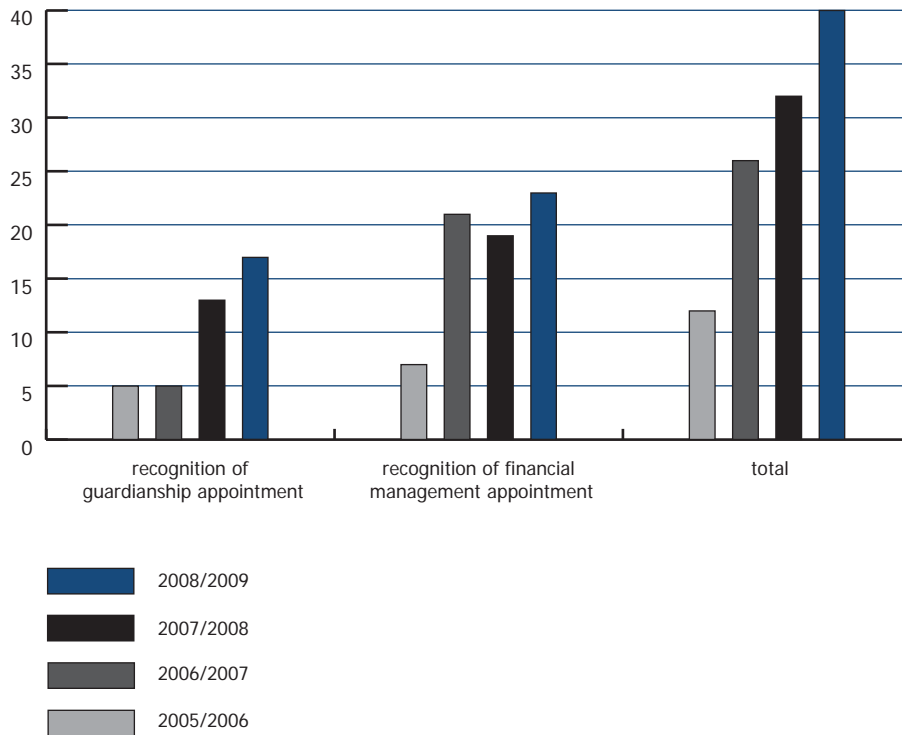
	Order confirmed	Order revoked	Manager replaced	Reviewable order made	Withdrawn / dismissed before/at hearing
Tribunal ordered/ own motion review – financial management	61	40	6	3	0
Requested review – financial management	59	101	96	5	60
Total	120	141	102	8	60

Recognition of appointments

The Tribunal has the jurisdiction to recognise the appointment of guardians and financial managers appointed in other Australian States and Territories and in New Zealand. During 2008/2009 the Tribunal received 50 applications for recognition. The Tribunal determined 47 applications, two applications were withdrawn and one application is pending.

Two applications were withdrawn. The Tribunal also reviews these orders. During 2008/2009 the Tribunal reviewed 17 recognition of guardianship appointments and 23 recognition of financial management appointments.

Graph 5 Review of appointment recognitions - four year comparative caseload statistics for reviews between 2005 and 2009



How and where hearings are conducted

Access to justice within a protective framework – facilitating participation

To facilitate access to its protective jurisdiction there are no fees required for lodging an application with the Tribunal.

While the Tribunal premises and staff are located in Balmain the Tribunal conducts hearings in a number of metropolitan, regional and rural locations across New South Wales. This facilitates access to the Tribunal and participation in proceedings by people with disabilities for whom applications are made, their family, friends and professionals and service providers.

In 2008/2009 the Tribunal conducted approximately 30% of its hearings outside Balmain at locations including Albury, Armidale, Bathurst, Blue Mountains, Bowral, Central Coast, Cessnock,

Coffs Harbour, Dubbo, Goulburn, Griffith, Lismore, Maitland, Merimbula, Morriset, Moruya, Mudgee, Newcastle, Nowra, Orange, Port Macquarie, Queanbeyan, Stockton, Tamworth, Taree, Tweed Heads, Wagga Wagga, and Wollongong.

Hearings may also be conducted via video conferencing and parties may also participate by telephone.

The *Guardianship Act 1987* requires that the Guardianship Tribunal conducts its proceedings with as little formality and legal technicality as the circumstances permit. The Guardianship Tribunal may obtain any information on any matter as it thinks fit and is not bound by the rules of evidence.

The hearing rooms at the Tribunal's premises are less formal than a court room and are designed to make a person with the disability feel at ease.

During a hearing the Tribunal focuses on the issues concerning the person with a disability and will try, where possible, to facilitate the person's participation and to seek his or her views.

Hearings vary in length depending on the number of matters to be heard and their complexity. The Tribunal may announce its decision at the conclusion of the hearing and advise the parties whether an order has been made, who has been appointed and the terms of the appointment. The Tribunal may adjourn the hearing to be continued on a later date or may reserve its decision. The Tribunal provides written Orders and Reasons for Decision to the parties.

The Tribunal is able to make special arrangements for parties with special needs. Where appropriate, the Tribunal arranges the attendance of accredited interpreters to assist people attending hearings. Interpreters were used on 189 occasions during the year and provided services across 37 different languages including Italian, Greek, Croatian, Polish, Serbian, Spanish and Vietnamese.

Staff of the Tribunal assist parties and their representatives and provide information about the role, practice and procedures of the Tribunal. The Tribunal also facilitates access to information and support through its Enquiries Service, its publications and website.

Who makes the decisions?

For the majority of matters the Guardianship Tribunal sits in panels of three members. Each panel consists of a legal member, a professional member and a community member.

Applications for guardianship orders, financial management orders, reviews of enduring guardianship appointments and enduring powers of attorney and special medical applications are determined by a Tribunal of at least three members.

The Tribunal may, at the discretion of the President, be constituted by fewer than three members when determining applications for medical consent, reviews of guardianship and financial management orders, requested reviews of guardianship and financial management orders and a range of procedural matters. These may include applications for leave to be represented or to be joined as a party.

This year 1104 hearings dealing with 1254 matters were conducted by single member panels. Of these 61.8% related to guardianship reviews, 4.8% to financial management reviews, 2.1% to reviews of recognition of interstate appointments, 2.9% to medical consent, 18% to procedural matters and 10.4% concerned other matter types.



Applications for the approval of clinical trials

The purpose of the clinical trial 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 a clinical trial before those who cannot consent to their own treatment may take part in the trial.

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.

Secondly, 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 enables this consent to be given by the 'person responsible' for the person unable to consent to his or her own treatment. The 'person responsible' is the guardian, spouse, carer or family member 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.

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

Finally, the Tribunal's Annual Report must include details of any clinical trial it has approved in the financial year.

Approval of clinical trials

At the end of 2007/2008 there were no pending applications for approval of a clinical trial from the previous financial year. During the 2008/2009 financial year, the Tribunal received fourteen applications for the approval of clinical trials. Seven of these applications were determined in the current financial year and seven applications are pending. Of the seven applications determined, all were approved. As required by section 76A (2A) of the *Guardianship Act 1987*, the details of those trials are set out on the following page.

Clinical Trials 2008/2009

Name of clinical trials submitted for approval by the Tribunal	Trial sites	Outcome of Tribunal hearing	Individual consents to be given by the 'person responsible'
Double blind, placebo-controlled, efficacy and safety study of Clobazam (0.25, 0.5 and 1.0mg/kg/day) in patients with Lennox-Gastaut Syndrome administered as twice weekly subcutaneous injections in subjects with Rheumatoid Arthritis (OV-1012).	<ul style="list-style-type: none"> • Westmead Hospital • Stratgic Health Chatswood 	Approved	Yes
Safety and Effectiveness of open-label Clobazam in subjects with Lennox-Gastaut Syndrome.	<ul style="list-style-type: none"> • Westmead Hospital • Strategic Health Chatswood 	Approved	Yes
Randomised double blind control trial of oral risperidone versus oral haloperidol versus oral placebo with rescue subcutaneous midazolam in the management of delirium in palliative care patients.	<ul style="list-style-type: none"> • Braeside Private Hospital • Royal Prince Alfred Hospital • St Vincents Hospital • Calvary Mater Newcastle • Concord Repatriation General Hospital • Calvary Hospital – Kogarah 	Approved	Yes
Protocol FIK-MC-EVDP: A randomised, double-blind, placebo-controlled, multicenter, phase 3 study of drotrectogin alfa (activated) administered as a continuous 96-hour infusion to adult patients with septic shock (PROWESS - Shock).	<ul style="list-style-type: none"> • Royal North Shore Hospital • John Hunter Hospital • St George Hospital • St Vincents Hospital 	Approved	Yes
Protocol No X07-0289- "U01-NS052220 / U01-NS054630 : A phase III, randomized, multi-center, open label, 900 subject clinical trial that will examine whether a combined intravenous (IV) and intra-arterial (IA) approach to recanalization is superior to standard IV rt-PA (Activase ®) alone when initiated within three hours of acute stroke onset.	<ul style="list-style-type: none"> • St Vincents Hospital • Royal Prince Alfred Hospital 	Approved	Yes
INTERACT2 The second INTensive blood pressure Reduction in Acute Cerebral haemorrhage Trial. An international randomised controlled trial to establish the effects of early intensive blood pressure lowering in patients with intracerebral haemorrhage.	<ul style="list-style-type: none"> • Royal Prince Alfred Hospital • Concord Repatriation General Hospital • John Hunter Hospital • Gosford Hospital 	Approved	Yes
Protocol No X08-0292 "Safety and Efficacy of powder mannitol inhalation by intubated patients with sputum retention."	<ul style="list-style-type: none"> • Royal Prince Alfred Hospital 	Approved	Yes

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 the 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. 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 six appeals received during the previous financial year which were still pending as at 30 June 2008. Those six appeals were finalised in the current financial year. Of those six appeals, two were dismissed, one was withdrawn and three were upheld and remitted to the Tribunal for re-hearing.

During the current financial year, there were 19 appeals lodged at the ADT against decisions of the Tribunal (see Table 8).

Table 8 Appeals to the Administrative Decisions Tribunal against Guardianship Tribunal decisions from 2005/2006 to 2008/2009

	Appeals pending from previous year	New appeals	Appeals withdrawn	Appeals Dismissed	Appeals Upheld	Pending at year end
2005/2006	3	13	2	5	5	4
2006/2007	4	15	2	7	4	6
2007/2008	6	19	5	13	1	6
2008/2009	6	19	9	6	7	3

Appeals to the Supreme Court

There were two appeals to the Supreme Court which were received during the previous financial year which were still pending as at 30 June 2008 and two new appeals from decisions of the Tribunal lodged with the Supreme Court during 2008/2009 (see Table 9).

One of the pending appeals from the previous financial year was finalised in the current financial year and was dismissed by the Court. The other pending appeal remains outstanding.

Of the two appeals which were received during 2008/2009, one is pending at the end of this financial year and the other was dismissed by the Court.

Table 9 Appeals to the Supreme Court against Guardianship Tribunal decisions from 2005/2006 to 2008/2009

	Appeals pending from previous year	New appeals	Withdrawn	Dismissed	Upheld	Pending at year end
2005/2006	1	4	3	0	0	2
2006/2007	2	2	1	0	0	3
2007/2008	3	2	2	0	1	2
2008/2009	2	2	0	2	0	2

Freedom of Information

The Tribunal did not receive any applications for access to information under the *Freedom of Information Act* (the FOI Act) which were accompanied by the relevant fee.

The Tribunal is not an "agency" for the purposes of the FOI Act as section 10 of that Act specifies that a tribunal is not included within that definition in relation to its judicial functions.

Complaints

The Tribunal investigates and responds in writing to all formal complaints about its conduct and practices. The Deputy President responds to complaints about the hearing process and the conduct of Tribunal Members. The Manager of the Coordination and Investigation Unit responds to complaints about the preparation of a matter for hearing.

Between 1 July 2008 and 30 June 2009 the Tribunal received 66 formal complaints. Issues were raised about the Tribunal's administrative processes, the time taken for a matter to be listed for hearing, the conduct of investigations and hearings, and typographical errors in the Tribunal's written Reasons for Decision.

A complaint is not the same as a review or an appeal. To request a review of an order an application must be lodged with the Tribunal. Appeals from the Tribunal's decisions are conducted by either the Administrative Decisions Tribunal or the Supreme Court.

Appendix

Appendix 1 **Organisational chart**

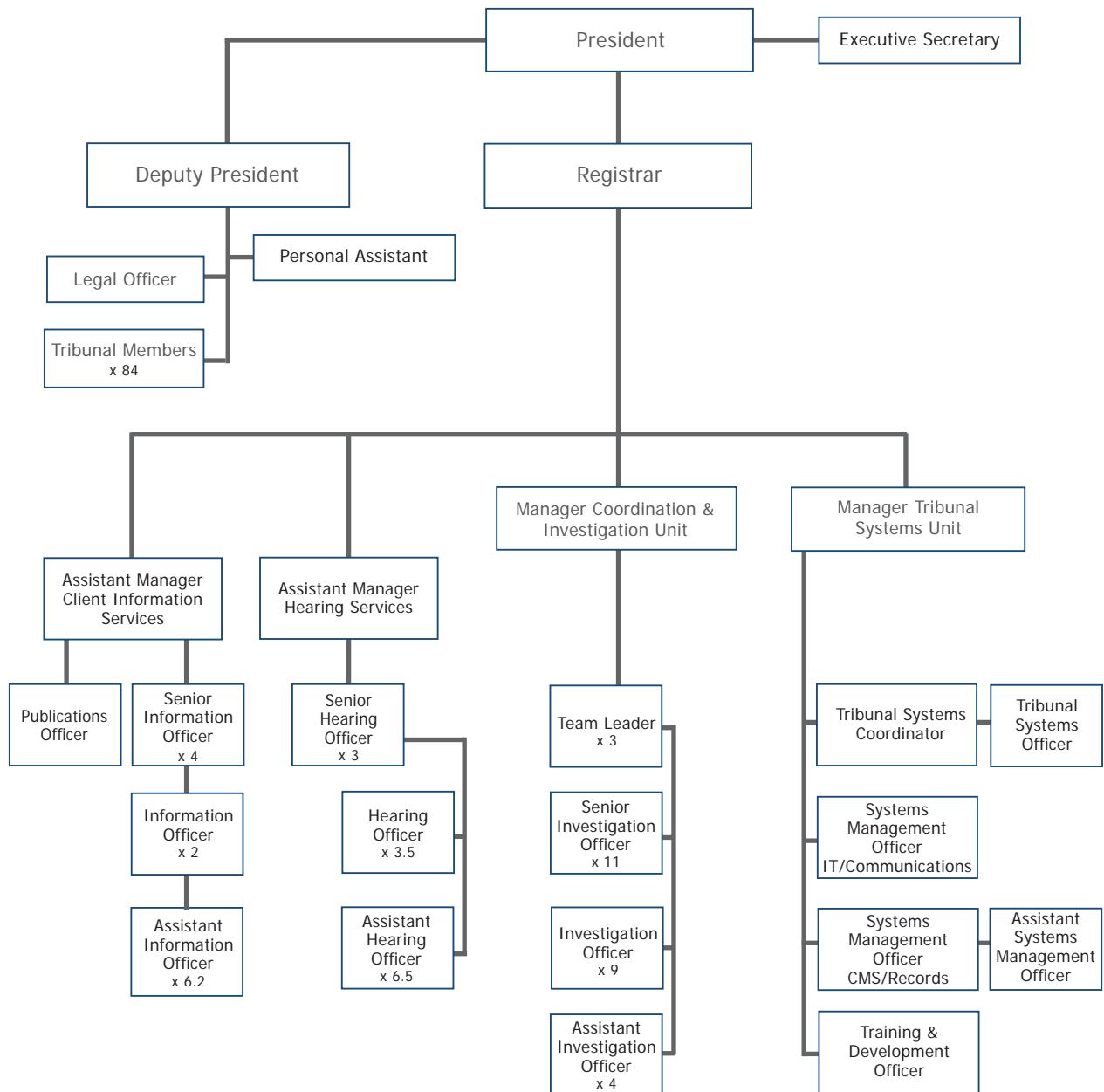
Appendix 2 **Tribunal members**

Appendix 3 **Definitions**



Appendix 1

Organisational chart



Tribunal members

Appendix 2



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.



Malcolm Schyvens, Deputy President

Malcolm was appointed Deputy President of the Guardianship Tribunal in October 2008. He was previously a part time legal member of the Guardianship Board of Tasmania and a member of the Forensic Tribunal (Tas).

Prior to commencing with the Tribunal, Malcolm was the President of the Law Society of Tasmania, Managing Partner, Ogilvie Jennings Solicitors (Hobart) and a Director of the Centre for Legal Studies (Tas).

Malcolm has previously been an official visitor under the Mental Health Act 1996 (Tas) and for many years was the President of Cosmos Inc., Tasmania's largest provider of day support services for people with intellectual disabilities.

Malcolm was admitted as a solicitor of the Supreme Court of Tasmania in 1997 and holds degrees in law and commerce from the University of Tasmania.

Legal members

Robyn Bailey

Solicitor and Mediator. Over 20 years experience acting for people with acquired psychological and/or brain injury. Principal of Explore Solutions; a national Alternative Dispute Resolution practice. An Accredited Specialist in personal injury law and a member of the NSW Law Society's panel of mediators. She has recently joined the Board of the Brown Nurses.

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 the 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 the Consumer Trader Tenancy Tribunal and the Migration Review Tribunal.

Jennifer Conley

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

Janice Connelly

Solicitor, arbitrator, conciliator and mediator. Experience as a solicitor with the Legal Aid Commission of NSW and Redfern Legal Centre. Extensive Tribunal and Local Court experience. Currently an Assessor and Arbitrator for the Local Court, an Arbitrator with the Workers Compensation Commission and a Chairperson with the Government and Related Employees Appeals Tribunal.

Elaine Connor

Solicitor and clinical psychologist. Experience in private legal practice and in managing the provision of legal services in public companies. Former statutory guardian at Victorian Office of the Public Advocate. Director of Diversity Council Australia. Extensive background in working with adults with mental health disorders or intellectual disabilities.

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.

Margaret Fahy

Solicitor and legal counsel for NSW Treasury Corporation. Experience in providing legal advice and representation to disadvantaged clients in community legal centres including: HIV AIDS Legal Centre, Consumer Credit Legal Centre and the Inner City Legal Centre. Trained as a solicitor for the Australian Government Solicitor and represented clients such as the ACCC in litigation. Practised as a solicitor for the ACCC and ASIC representing the relevant regulator in litigation. Started legal practice as a legal clerk at the DPP and as Justice Wilcox's associate in the Federal Court.

Catherine Donovan-Holm

Solicitor. Experience in the development and implementation of policy and legislation, including for people with a disability. Previously engaged as a solicitor with Legal Aid Queensland, member of the Guardianship Tribunal since February 2007.

Christine Fougere

Solicitor. Admitted to practice in the Supreme Courts of Western Australia and New South Wales. Deputy Director of Legal Services at the Australian Human Rights and Equal Opportunity Commission. Other experience includes part time lecturer in discrimination law at the University of Western Sydney, human rights work in the UK and private legal practice in Australia and the UK.

Robert Green

Solicitor with over thirty years experience. Worked for many years in criminal law, including as Deputy Director (Legal) of the Australian Special Investigations Unit (War Crimes). Experience representing clients with psychiatric and other disabilities with the Mental Health Advocacy Service. Part time member of the Mental Health Review Tribunal since 2003.

Robin Gurr

Solicitor. Has a variety of Tribunal experience, including experience as a Presiding Member of the Guardianship Tribunal (Deputy President of the Tribunal February 2007 to June 2008), 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. Former 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 teaching in the areas of family and administrative law. A trained and experienced mediator.

Geoffrey Hopkins

Solicitor since 1979 in private practice and legal aid work. Experience in advocacy across a 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, the Refugee Review Tribunal, the Fair Trading Tribunal and the Residential Tribunal. Worked as a solicitor with the 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 with experience in private legal practice and as a sole practitioner. Extensive Tribunal experience. Former member of the Social Security Appeals Tribunal and currently a member of the Mental Health Review Tribunal.

Shaun McCarthy

Lawyer, with experience in private practice in regional areas and at Legal Aid. Director, the University of Newcastle Legal Centre. Acting Director of the Professional Program and 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 law, 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, the Small Claims and Residential Tenancies Tribunal and the Refugee Review Tribunal. Judicial member of the Administrative Decisions Tribunal and Arbitrator, Workers Compensation Commission.

Robert Quickenden

Thirty years experience working as a barrister in private practice with extensive experience acting for persons with a disability in all jurisdictions. Robert's interest in tribunal justice and the process for transparency and fairness in administrative decision making developed following experience as an Arbitrator in the Supreme Court and while Acting Judge of the District Court of NSW.

Anita Sekar

Solicitor. Experience representing people with disabilities with community legal centres, namely the Intellectual Disability Rights Service and the Disability Discrimination Legal Centre. Former Member of the Mental Health Review Tribunal. Contributor to Halsbury's Laws of Australia in the areas of mental health law and commercial law. Experience in human rights law as a senior lawyer with the Human Rights and Equal Opportunity Commission and as a conciliator with the New South Wales 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. Currently lecturing with the University of Western Sydney Law School.

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

Lawyer. 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 the Social Security Appeals Tribunal and the 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.

Stamatia Stamatellis

Lawyer. Experience as a solicitor at the Intellectual Disability Right Service and the Legal Aid Commission of NSW. A current presiding chairperson and member of the Housing Appeals Committee.

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.

Catherine Williamson

Practising lawyer with many years experience across a range of agencies in the Commonwealth and NSW state governments. Gained extensive knowledge of disability and guardianship issues, in addition to significant advice and litigation experience at NSW Department of Ageing Disability and Home Care. Gained an understanding of disability issues as they affect serious offenders within the NSW prison system while Executive Officer and Registrar of the Serious Offenders Review Council. Lecturer (part-time) of Administrative law, published author, and Principal Legal Officer, at the Australian Transaction Reports and Analysis Centre.

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. Clinical Consultant with the Illawarra Disability Trust. Honorary Fellow University of Wollongong. Extensive experience in developing and implementing behaviour intervention and support programs for people with developmental disability.

Mary Ellen Burke

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

Rhonda Buskell

Medical qualifications in Psychiatry and Rehabilitation Medicine. Consultation- Liaison Psychiatrist at Westmead Hospital with special interest in psychiatric aspects of neurological disorders.

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.

Allison Cummins

Registered Nurse. Qualifications and experience in aged care, particularly in the assessment and management of people with dementia in acute care, community and residential settings. Experience in, and commitment to, providing education and support for people with dementia and their carers and families.

Sharon Flanagan

Clinical Neuropsychologist with extensive experience providing services to individuals who have suffered traumatic brain injury and their families. 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 Researcher 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. Research interest: end of life care for terminally ill residents in nursing homes.

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 in 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.

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, Campbelltown, 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 forty years experience in mental health, disability and generic community services. She is especially interested in making services accessible to disadvantaged people and people from culturally diverse backgrounds. Vice President of the 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 an expert in medicolegal cases related to capacity issues in older persons.

Robyn Rayner

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

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 and 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 case management and crisis services in the community. Former manager of service providing support for people with multiple sclerosis. Member, Social Security Appeals Tribunal.

Velupillay Vignaendra

Neurologist with experience in management of patients who have strokes, acquired brain injury and other neurological impairments.

Susan Thompson

Family psychiatrist with over 15 years experience working in public hospital psychiatry with children and adolescents. Extensive experience and particular expertise in providing psychiatric consultation to children and adolescents with chronic medical illness, disability and chronic pain, as well as the inpatient and outpatient management of adolescents with eating disorders.

Liz Tong

Principal Clinical Psychologist for Sydney South West Area Health Service and Authorised Court Clinician with the NSW Attorney General's Department. Current member of the NSW Psychologists Registration Board Tribunal, the Expert Review Panel of the Concord Hospital Scientific Sub Committee of the Human Research Ethics Committee and the Clinical College of the Australian Psychological Society. Provides clinical services for the Crown Solicitor's Office of NSW. Has held academic posts at the University of the South Pacific and at the University of Sydney Faculty of Medicine. A Chartered Clinical and Forensic Psychologist with the British Psychological Society with experience in the UK. Has EuroPsy accreditation to practise in the EU.

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, at the Sydney Private Clinic and St Vincent's 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 the Spina Bifida Unit, the Children's Hospital at Westmead. Visiting medical officer, Royal Prince Alfred Hospital and Westmead Hospital for adult services for people with spina bifida.

Wai-Kwan (Tim) Wong

Counselling Psychologist. Experienced in developing positive programming and sexuality education programs for people with an intellectual disability, extensive clinical and psychotherapeutic experiences in working with people affected by HIV & AIDS and Hepatitis C. Conducted research and published in the areas of quality-of-life issues and the experiences of informal carers caring for people with chronic illnesses and disabilities.

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 Yeoh, AM

General practitioner since 1975. Board Member of Alzheimer's Disease International. Director of Alzheimer's Australia, NSW. Immediate Past National President of Alzheimer's Australia. Member of the medication advisory committees of several aged care homes. Official Visitor under the Mental Health Act 2007. Former member of the Ministerial Advisory Committee on Ageing, New South Wales.

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 for Intellectual Disability, Chairperson of the Northern Rivers Aunty programme.

Andrew Barczynski

Social worker. President of a community-based agency providing a range of services for ageing people from culturally and linguistically diverse backgrounds. Extensive experience with disability employment, advocacy and complaint services. Family experience with disability. Currently, working for Department of Families, Housing, Community Services and Indigenous Affairs in the Community Programs Section in NSW.

Elaine Becker

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

Parent of a son with intellectual disability and mental illness. Long term experience and involvement with various advocacy organizations and support services for people with disabilities, mental health issues and dementia, including as a past Chairperson and Board member of the New South Wales Council for Intellectual Disability.

Janene Cootes

Social worker. Currently Executive Officer at the Intellectual Disability Rights Service. Extensive experience working with people with an intellectual disability including as a Community Visitor. Previously Manager of the Investigation and Liaison Branch of the Guardianship Tribunal.

Faye Druett

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

Annette Evans

Social worker. Experience in managing a community aged care program for the Jewish community. Involved in living skills and 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 of caring and supporting a person with mental illness and dementia.

Maree Gill

Social worker and sociologist. Lived experience of disability. Extensive experience in social justice and equity, especially human rights, homelessness, supported accommodation, disability, mental health and women's health. Family experience of mental illness and dementia. Former Associate Lecturer of Medical students, research consultant and currently, 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.

Susan Johnston

Social worker and a human services consultant. A member of the Mental Health Review Tribunal and an accredited Mental Health First Aid trainer. Has a Master of Public Health and a Certificate in Alternative Dispute Resolution. Particular interest in mental illnesses, HIV/AIDS and alcohol and other drug disorders. Personal experience of caring for people with AIDS dementia and Alzheimer's disease.

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. Occasionally works 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.

Gordon Lambert

Mental health nurse with experience in the public health system in a range of settings including hospital and community mental health services, drug and alcohol services and correctional health services. Previously a senior lecturer at the University of Wollongong where he coordinated a multidisciplinary post graduate program in mental health. Currently an honorary fellow at the Illawarra Institute for Mental Health, University of Wollongong and a member of the NSW Mental Health Review Tribunal.

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.

John Le Breton

Previously Director of the NSW Office of the Public Guardian and Director Victim Services NSW. Former Member of the Mental Health Review Tribunal. Extensive experience in management and delivery of service for people with disabilities. Currently General Manager Disability Enterprises Leura.

Carol Logan

Trained as a 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 long-standing 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.

Shane Merritt

Registered Psychologist with the NSW Psychologists Registration Board. An Aboriginal (Kamilaroi) man from Northern NSW who has specialised in Aboriginal Mental Health over his career. Worked as a university lecturer in mental health for a number of years, helping to train health professionals. Has written articles and book chapters on Aboriginal mental health, professional education, ways of learning, collaborative curriculum development and effective learning environments. Currently a member of the Mental Health Review Tribunal. Experience in working with people affected by HIV and aids and those seeking to recover from alcohol and other drug addictions.

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.

Lyn Porter

Parent of a son with a developmental disability and mental illness. Completed six year appointment as an Official Community Visitor. Extensive experience in the criminal investigation of child protection and sexual assault matters. Previously worked in Women's Domestic Violence Court Assistance Scheme. Qualifications in Social Science (Community Services).

Catherine Quinn

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

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 the Governing Committee of the Consumers' Health Forum of Australia.

Leanne Stewart

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

Susan Warth

Psychologist and consultant with extensive experience with people with intellectual disabilities. Current Director of NSW Council on Intellectual Disability.

Margaret Watson

Background in social welfare and psychotherapy with experience in community development work, children and disability services. Worked as an officer of the Guardianship Tribunal for 18 years in the roles of Investigation Officer and Team Leader for 14 years. Former Member with 12 years experience on the Social Security Appeals Tribunal. Current Member of the Queensland Civil and Administrative Tribunal since appointment in 2002. Current Official Visitor under the Mental Health Act 2007.

Anne Whaite

Wide experience in the disability sector in both government and non-government organisations with qualifications and experience in dispute resolution. Current member of the Mental Health Review Tribunal and past member of the NSW Administrative Decisions Tribunal. Past president of the Western Sydney Intellectual Disability Support Group. Currently involved with H.O.M.E, an organisation working to develop an intentional community based on mutual support that provides affordable housing for a cross section of inner city residents, including people with intellectual disabilities.



Appendix 3 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 specified time, or when you have lost the capacity to make financial decisions.

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 NSW Trustee.

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.

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 and the person the application is about and usually includes their spouse or carer. The Public Guardian and NSW Trustee 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* and section 35 of the *Powers of Attorney Act 2003*. The Guardianship Tribunal may join others as parties to a proceeding.

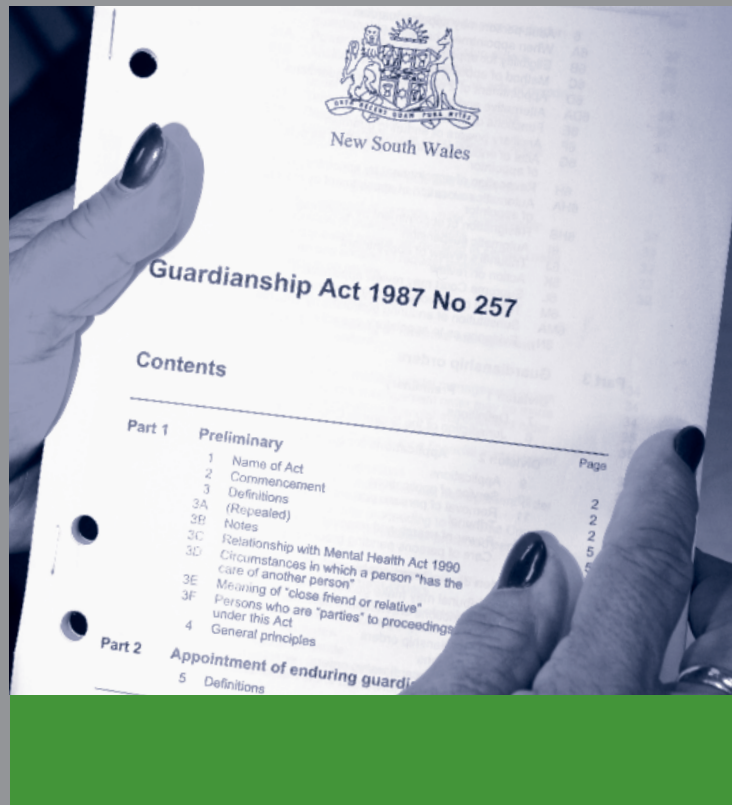
person responsible is someone who has the authority to consent to treatment for an adult who is unable to give a valid consent to their own medical or dental treatment. Sometimes, a patient is unable to make the decision or does not understand what the treatment is about or its effects. In these cases,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

requested review of financial management order the Tribunal may be asked to review an order for a variety of reasons such as concerns about a 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 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 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.

Tribunal ordered 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.



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 can review the guardianship orders it makes and may review its financial management orders.

The Tribunal can give consent to medical and dental treatment for people 16 years and over who are unable to consent to such treatment for themselves. The Tribunal also has jurisdiction to review enduring guardianship appointments and enduring powers of attorney.



Guardianship *Tribunal*

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