



# *Guardianship Tribunal*



Annual Report  
2010/2011

## 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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**Balmain NSW 2041**

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# Letter to the Minister

## *Guardianship* *Tribunal*

The Hon. Greg Smith SC MP  
Attorney General  
Minister for Justice  
Level 31  
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 2011.

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

Yours sincerely,



Yours sincerely,  
Malcolm Schyvens  
President  
7 October 2011

# Achievements and future directions

## 2010/2011 achievements

### The Tribunal:

- finalised 8963 matters, processed 2102 review matters and conducted 5727 hearings
- 22 new Tribunal members were appointed
- improved capacity to manage the increasing demand for its services by establishing and recruiting to the new position of Deputy Registrar
- undertook consultation and remade the Guardianship Regulation
- finalised our case management business process review and aligned our staff structure with our new processes and procedures
- provided comprehensive training to Local Health Networks across NSW about the Tribunal's jurisdiction and procedures
- participated in Seniors Week 2011
- successfully integrated the Tribunal's asset management, finance, administration and human resources functions into the Department of Attorney General and Justice
- undertook planning to improve and expand our hearing room and staff office accommodation
- reviewed our security systems and processes and planned for system improvements
- provided training for Legal Aid NSW on the role of separate representatives appearing before the Tribunal
- contributed to the development of a training program for staff of the NSW Trustee and Guardian who will witness enduring guardianship appointments
- together with the Public Guardian and St Vincent's Hospital, conducted research on applications to the Tribunal concerning hospital inpatients
- continued to improve our statistical reporting tools to support effective case flow monitoring and management.

## Looking ahead - initiatives for the coming year

### The Tribunal will:

- continue to plan for and work towards positioning the Tribunal to manage its increasing workload associated with the ageing of the population
- begin recruitment action for new Tribunal members in January 2012
- consolidate the Tribunal's transition into the Department of Attorney General and Justice across information technology, human resources, asset management, finance, and administrative areas
- seek to develop and access information technology solutions and electronic document exchange to improve service to Tribunal users and Tribunal members
- review and enhance our systems for the appointment of separate representatives
- continue to publish Tribunal decisions through the Australasian Legal Information Institute (AustLII) to improve access to information about the Tribunal
- develop the Tribunal's capacity for strategic community education
- continue our commitment to 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.



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# Acting President's Report



*"I do not need someone to decide for me. I just want more help to make decisions myself."*

This is not an uncommon statement made by a person with a disability when faced with the prospect that the Guardianship Tribunal may make an order appointing someone to make decisions on his or her behalf.

For twenty one years the Tribunal has been conducting hearings and evaluating evidence to determine where that balance lies for each individual. Does the evidence support a decision to dismiss an application where appropriate support can be provided and this is in the best interests of the person? Or is it the case that the individual is vulnerable and at risk of exploitation and an order appointing a Guardian or a Financial Manager will both protect and empower the person to live a full life in the community?

These are some of the challenges which our Tribunal members faced in determining the 8963 matters finalised in 2010/2011.

This year has been a period of change and consolidation for the Guardianship Tribunal.

## **Change of Ministerial responsibility**

On 3 April 2011 the staff of the Tribunal was transferred from Ageing Disability and Home

Care (ADHC) within the Department of Family and Community Services to the Department of Attorney General and Justice (the Department). On 2 June 2011 responsibility for the *Guardianship Act 1987* and the operation of the Tribunal was transferred from the Minister for Disability Services to the Attorney General and Minister for Justice. The Tribunal had been hosted within the Disability and Community Services portfolios since its establishment in 1989. I acknowledge the support that the Tribunal has received over the past 21 years from its former host department.

The transition of the Tribunal into the Department, whilst by no means complete, is progressing well thanks to the efforts of those within the Department and the Tribunal. I thank the Attorney General, the Hon. Greg Smith SC MP, and the Director General, Mr Laurie Glanfield, for their support of the Tribunal during this transition period.

## **President Diane Robinson**

Ms Robinson resigned from her role as President of the Tribunal effective 25 February 2011. Ms Robinson was appointed as a part time legal member in 1990, shortly after the Tribunal was established. On 14 February 2005, Ms Robinson was appointed as President of the Guardianship Tribunal.

The Tribunal has benefited greatly from Ms Robinson's vision and unfailing commitment

to the principles underpinning the operation of the Tribunal. This foresight has resulted in a new framework and approach to enable the Tribunal to continue to respond to its ever increasing workload, while ensuring that the focus at all times remains on protecting and empowering the most vulnerable persons in our society.

On behalf of the members and staff of the Tribunal I thank Ms Robinson for her leadership over the last 6 years.

### **Workload**

This year the Tribunal conducted 5727 hearings at its Balmain premises and at 27 other cities and towns throughout New South Wales, from Lismore to Menindee.

The Tribunal's workload is directly related to the ageing demographic of the Australian population. This year 60% of all applications to the Tribunal were for people who were 65 years of age or older. Approximately half the applications received by the Tribunal were for people with dementia. The prevalence of dementia is projected to increase four-fold by 2050. In New South Wales alone, projections suggest an increase in the number of persons with dementia to rise from approximately 88,000 in 2010 to 188,000 by 2030 and to 341,000 by 2050.<sup>1</sup>

### **A new approach to case management**

The Tribunal has continued working to finalise its Business Process Review project. The review has been comprehensive, involving case management and administrative procedures. Under its new triage procedure, all applications received by the Tribunal are assessed for any identifiable risk to the person the subject of the application. New case management pathways have been established to support appropriate management, preparation and listing of applications for hearing.

A key focus of the review has been to promote efficiency in practice and procedure to support the effective management of the Tribunal's growing workload, at the same time ensuring

that the focus remains on the best interests of the person who is the subject of the application. This includes supporting, wherever possible, that person's understanding of, and involvement in, the Tribunal proceedings.

This year we undertook a restructure of our case management and registry teams to align our staff structure with our new case management and administrative procedures.

We created and recruited to a new position of Deputy Registrar. Five teams of case management staff were brought together within a single Case Management Unit under the leadership of the Deputy Registrar. This has enabled improved monitoring and management of case flow and increased opportunities for staff to experience different roles within the Tribunal.

I am indebted to the Tribunal's Registrar, Ms Amanda Curtin, and the entire staff who worked collaboratively to review and improve the work practices of the Tribunal and proactively develop our new operating systems.

### **Training and external relationships**

Providing training and increasing awareness of the jurisdiction has remained an important facet of the Tribunal's operations in 2010/2011.

As in past years, the Tribunal conducted training sessions for all of our members including additional seminars for those members who preside at hearings. These sessions always prove an excellent means of bringing our members together to discuss current case law developments and to enhance our members' expertise in areas relevant to the Tribunal's jurisdiction. Issues covered this year included cultural awareness and how to engage with persons who may have a level of cognitive incapacity in the context of a hearing. An extensive staff training programme is also conducted monthly together with a requirement that all staff observe at least one hearing every 6 months. This provides an invaluable practical insight into the importance



of the work carried out by our staff in preparing applications for hearing.

The Tribunal engaged with a number of organisations on matters relating to our jurisdiction, including:

- Providing extensive training sessions across all areas of NSW Health as to the operation of the *Guardianship Act 1987* (outlined later in this report);
- Providing training in conjunction with Legal Aid NSW to legal practitioners appointed as separate representatives for persons the subject of applications before the Tribunal;
- Outlining the practice and procedures of the Tribunal's case management system to the Victorian Law Reform Commission which is currently reviewing and compiling a report on guardianship laws in Victoria; and
- Meeting with a delegation of representatives from Japan engaged in an extensive review of the guardianship laws in that country.

### **The year ahead**

I look forward with enthusiasm to the year ahead. The Tribunal commences the new financial year with efficient and improved procedures and committed members and staff.

I would like to thank the members and staff of the Tribunal for their work throughout the year. I wish to particularly thank the staff for their

patience and cooperation during a period of significant change. I express my gratitude to the members of the Tribunal's Executive Unit. Mr Bill Tearle, a legal member of the Tribunal, was appointed a part time Deputy President of the Tribunal in February 2011 to assist during the period following Ms Robinson's resignation. I thank Mr Tearle for his support and contribution as Deputy President during this period. Ms Amanda Curtin, Registrar, and Ms Esther Cho, Deputy Registrar, have worked tirelessly to manage and implement the Tribunal's revised procedures and staff structure and I thank them for this undertaking.

Our collective challenge is to continue to build upon the success we have achieved to date. We must constantly evaluate our practices and procedures to ensure we are acting, at all times, in the best interests for those in the New South Wales community who come within the ambit of our jurisdiction. To do this we must adapt to meet our increasing workload demands whilst never diminishing our quality of service.



Malcolm Schyvens  
Acting President

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<sup>1</sup> Access Economics: Keeping Dementia Front of Mind: August 2009



## Who we are



# Who we are

The Guardianship Tribunal is a legal tribunal established under the New South Wales *Guardianship Act 1987*. The Tribunal promotes the rights and welfare 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 its work 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 medical and dental treatment, 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 and the role of the Tribunal. Staff of the Tribunal provide information about the application process 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; 87 part time Tribunal members and 66.88 full time equivalent positions and 57.68 full time equivalent employees.

## The President and the Deputy President

The President is responsible for the overall operation and administration of the Guardianship Tribunal and for ensuring that the principles of the *Guardianship Act 1987* are applied to its functions. 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 Attorney General 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 expertise of its multi-disciplinary panel ensures that, in addition to determining the legal issues raised in the application, the Guardianship Tribunal 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.

## **Tribunal staff**

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 the Department of Attorney General and Justice policies and procedures.

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 recognising the appointment of interstate guardians and / or financial managers and making 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:

- Case Management Unit
- Tribunal Systems Unit
- Executive Unit

The Case Management Unit is led by the Deputy Registrar and comprises five teams responsible for registry, case management, inquiries, and scheduling and listing functions.

The Information Triage Team delivers first tier triage for the organisation providing information to potential applicants 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 Team assesses all applications against the Tribunal's Risk Triage Scale based on the immediacy and severity of possible risk to the subject person and is involved in preparing a number of applications for hearing. The Team is also responsible for registering incoming correspondence and applications and also manages publications and the community education program.

Three Application Management Teams undertake 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 Support Team liaises with the Tribunal members and is responsible for scheduling and listing applications and reviews for hearing. The Team provides support for hearings, coordinates the distribution of material for members, and makes travel and hearing venue arrangements. It is also responsible for distributing Orders and Reasons for Decision.

Led by its Manager the Tribunal Systems Unit is responsible for key functions supporting the delivery of Tribunal services including: managing and developing the Tribunal's Case Management System (CMS); training staff and members to use the CMS; developing and producing statistical reports to support the management of the Tribunal's workload and workflow; and developing effective records management systems. It is responsible for the management of the Tribunal's systems including: information management, communications and information technology, security and access systems, human resources, financial and administrative services, procedure management, client and administrative records management, coordination of facilities and asset management, coordination of seminar programs for Tribunal members and staff and publications for the community.

Staff of the Executive Unit support 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*
- *Children and Young Persons (Care and Protection) Act 1998*
- *Mental Health Act 2007*
- *NSW Trustee and Guardian Act 2009*

The *Guardianship Regulation 2010* 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 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, 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 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 Sophia – Bringing the parties to a settlement

The Tribunal may conduct a procedural hearing before it considers the substantive merits of an application before it. At a procedural hearing, the Tribunal might, if it is proper in the circumstances, issue directions to ensure that the substantive hearing can be conducted in a way that is procedurally fair for each of the parties.

Sophia is an 82 year old woman of central European heritage, who lives in an aged care facility on the outskirts of Sydney. Sophia has three sons – Alexander, who lives interstate, and John and Michael, who live in Sydney. Some years ago, Sophia appointed John as her enduring guardian, and also as her attorney under an enduring power of attorney.

Alexander applied to the Tribunal, requesting the appointment of both a guardian and financial manager for his mother. Alexander claimed that John had declined his request to provide him with any information concerning their mother, and had made all decisions on her behalf without any consultation with himself or Michael. Alexander also claimed that neither the aged care facility nor his mother's general practitioner would give him any information about his mother. Alexander provided a copy of a letter signed by John on behalf of Sophia, stating that she wanted no contact with Alexander unless she requested it in writing.

The Tribunal received information that Sophia wished to be legally represented in these proceedings. At a procedural hearing to consider this request, the Tribunal gave leave for Sophia to be legally represented. However, it quickly became evident during the procedural hearing that there was a very high level of conflict among Sophia's three sons.

Before it makes a decision, the Tribunal must try to bring the parties to a settlement if this is possible and appropriate. During Sophia's procedural hearing, the Tribunal explored the possibility of bringing the parties to a settlement, just as it would do during a substantive hearing. The Tribunal reminded Sophia's sons that her welfare and interests should be given paramount consideration, and encouraged them to talk with each other, concentrating on their mother's best interests.

*Following those discussions, Sophia's sons reached agreement on her care, and the management of her financial affairs. Alexander told the Tribunal that he now wished to withdraw his application, and he and John assured the Tribunal that Sophia's sons were now reconciled. The Tribunal consented to Alexander withdrawing his application.*



### **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 financial management order and this 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 NSW Trustee and Guardian. 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 that the property and affairs of a person be managed directly by the NSW Trustee and Guardian.

### **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. 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

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.

There has been an 18% increase in applications to review enduring powers of attorney. Many applications involve complex legal and factual issues reflecting the complexity associated with people's financial arrangements involving issues of superannuation, investments and property.

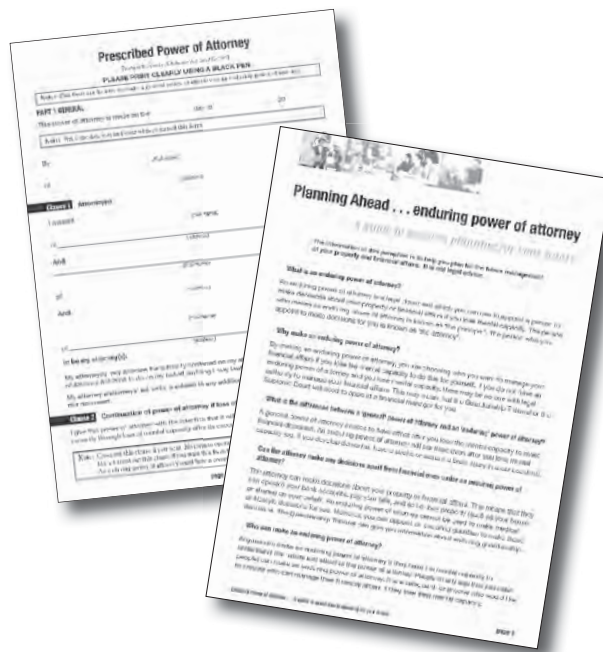
There has been a decrease of almost 10% in the number of applications to review enduring guardianship appointments.

### 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 has been made by the protected person (the person whose estate has been placed under management).

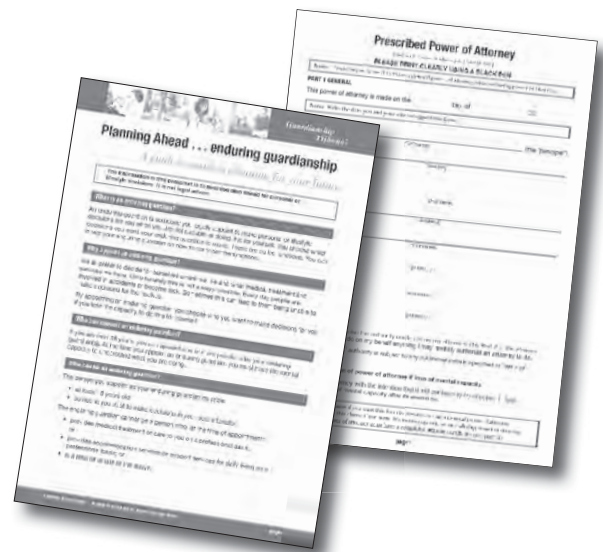


## Enduring Guardianship

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 make an order declaring that the enduring guardianship appointment has effect. This may be required in circumstances where there is 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 Suzana – Exclusion of pension income from financial management order

Suzana, who is 55 years old, currently lives alone in a Department of Housing unit in Sydney. Suzana is reported to have a diagnosis of bipolar disorder. Two years ago, the Tribunal made a financial management order, under which it appointed Suzana's friend, Effie, to be Suzana's private financial manager. The Tribunal then accepted evidence that Suzana had spent a significant inheritance that she had received following the death of her husband, and that Suzana's inheritance moneys from the estate of her late mother were also at risk of being dissipated.

Suzana applied to have the financial management order revoked, on the basis that she has now regained the capacity to manage her own financial affairs. At a procedural hearing, the Tribunal granted leave for Suzana to be legally represented in these proceedings.

Effie, Suzana's private financial manager, gave evidence that, when Suzana has access to money, that money "goes through her fingers". Effie also claimed that Suzana had recently obtained a loan of \$500 from Centrelink, but this had been dissipated in four days.

A social worker prepared a report in which she supported Suzana's application for the revocation of her financial management order. According to the social worker, it is stressful for Suzana being under a financial management order, and Suzana finds it to be demeaning.

The Tribunal took the view it was in the best interests of Suzana to adjourn the hearing of her application to revoke the financial management order. The adjournment promoted procedural fairness, by enabling Suzana and her legal representative to produce further evidence of Suzana's capability of managing her financial affairs. The adjournment also enabled each of the parties to consider whether it was their wish, if the financial management order did continue, for Effie to remain as the private financial manager, or whether it would be in Suzana's best interests to commit the management of her financial affairs to the NSW Trustee.

When the hearing resumed, Suzana's legal representative informed the Tribunal that Suzana now wished to withdraw her application to revoke her financial management order. Instead, Suzana asked the Tribunal to vary her financial management order, by excluding her Centrelink Pension income from her estate under management. Suzana acknowledged that the bulk of her estate would remain under management. The Tribunal consented to Suzana's request that she be permitted to withdraw her application to revoke her financial management order.

Suzana said that her self-esteem would increase if she were permitted to control all of her own pension income. She outlined her expenditure on medications, and confirmed that she is willing to take over the payment of some of her accounts. Suzana conceded that she did not wish to assume full responsibility for paying all of her bills.

A mental health rehabilitation worker spoke in support of varying Suzana's financial management order, outlining how it would be beneficial for Suzana for her to be able to assume responsibility for managing her own pension income. He assured the Tribunal that Suzana is capable of managing her pension income with the support of a particular welfare agency.

*The Tribunal was satisfied that it would promote Suzana's self-reliance in her financial affairs if she were to be given full control over her Centrelink Pension. Accordingly, as is permitted by section 25E of the Guardianship Act 1987, the Tribunal excluded Suzana's Centrelink Pension from her financial management order.*

## CASE STUDY Barry – Review of guardianship order, but dismissal of application for a financial management order

Barry, who is 70 years old, lives in the family home owned by himself and his wife, Joyce, in regional NSW. Joyce is now a permanent resident of a nearby aged care facility. Barry and Joyce have five children, but only their daughter, Sally, who lives interstate, maintains contact with them.

A year ago, the Tribunal appointed the Public Guardian as Barry's guardian, with the authority to make decisions concerning the services to which he should have access. Barry then had a diagnosis of frontal lobe dementia. More recently, when the Tribunal reviewed his guardianship order, it received evidence demonstrating a deterioration in Barry's physical and mental health, so that he now becomes very confused and suspicious.

The Public Guardian acknowledged that Barry had recently entered respite care of his own volition. Barry was able to spend a lot of time with his wife while he was staying at the same aged care facility. Barry's case manager told the Tribunal that she was confident that Barry is able to make his own decisions concerning his accommodation. Barry himself said that he does not wish to move to an aged care facility on a permanent basis.

The Tribunal attached a great deal of weight to the evidence that Barry had entered respite care of his own volition. The Tribunal was not satisfied that he currently needs to have a guardian to make decisions about his accommodation, and so did not give his guardian that authority.

Similarly, Sally confirmed during the hearing that she would be willing to provide consent to medical and dental treatment as her father's "person responsible". Barry confirmed that he would trust his daughter to do this. Accordingly, the Tribunal was satisfied that there is no need for a guardian to make decisions concerning Barry's health care, or his medical or dental treatment.

Although Barry insisted that he does not need to have more services at home, Sally acknowledged that her father does need to have more services. The evidence demonstrated that, to remain living at home in safety, Barry will need additional services such as domestic assistance, medication prompting and personal care, travel assistance and home care. The Tribunal was satisfied that Barry still needs to have a guardian to make decisions concerning the services that he is to receive.

Each of the participants in the hearing, including Sally and Barry himself, supported the reappointment of the Public Guardian. Accordingly, the Tribunal renewed the guardianship order for Barry, reappointing the Public Guardian for a period of 12 months, given the importance of keeping Barry's welfare and interests under review.

A member of the local aged care assessment team had applied for a financial management order for Barry, because she was concerned about his ability to manage his finances, given his lack of insight into his impairments. However, Barry was able to provide details of his assets, and the way in which he pays his bills. He insisted that he did not need any help in managing his finances. The applicant could provide no evidence to suggest that Barry was not able to manage his own finances.

Parliament has provided guidance as to the principles to be observed when the Tribunal exercises its functions. The Tribunal had particular regard to the principles in section 4 of the *Guardianship Act 1987*, which are set out on page 20 of this report.

*The Tribunal dismissed the application for a financial management order, because there was no evidence to suggest that Barry currently needs someone else to manage his financial affairs for him.*





## 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, who that substitute decision maker should be and what powers or functions the 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. Tribunal officers contact the person with the disability to determine the most appropriate means by which the person can, if possible, participate in the hearing.

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 and the Tribunal may inform itself on any matter in such manner as it sees fit.

## Our principles

The Tribunal must observe the principles set out in Section 4 of 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.

In most cases the panel convened to hear an application about a person with a decision making disability comprises a legal member (an Australian lawyer with at least seven years' experience) who presides and two other members.

The expertise of its multi-disciplinary panel ensures that, in addition to determining the legal issues raised in the application, the Guardianship Tribunal 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.

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 that is in the interests of the person with the disability.

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 exploration of the person's circumstances and his or her need for orders to be made. However, the Guardianship Tribunal can convene an urgent hearing within

hours of receipt of an application. These hearings are often conducted by telephone. The Guardianship Tribunal operates an after hours service where urgent applications are made and need to be heard outside normal business hours. Hearings may also be conducted by video conferencing.

Orders of the Tribunal may be made and announced at the end of the hearing or the decision may be reserved, and the order 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.

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## External influences on the 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.<sup>1</sup>

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. Making 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 and the community by:

- participating in Ageing, Disability and Home Care's Planning for Later Life forum and sub committees
- participating in Seniors Week in March 2011 by having a stall to provide information at the Seniors Week Gala Days at the Sydney Entertainment Centre
- providing community education to a range of aged care service providers.

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<sup>1</sup> Access Economics: Keeping Dementia Front of Mind: August 2009

## 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 making of appointments of enduring guardianship 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's 'person responsible'.

The *Guardianship Regulation 2010* should be read in conjunction 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*.

Both the *Guardianship Act 1987* and the *NSW Trustee and Guardian Act 2009* deal with the process of making applications for financial management to the Guardianship Tribunal and the Tribunal's authority to make financial management orders.

The *NSW Trustee and Guardian Act 2009* sets out how financial management orders can be made by the Supreme Court and the Mental Health Review Tribunal. The *NSW Trustee and Guardian Act 2009* sets out the powers of the NSW Trustee and Guardian when it is appointed as a financial

manager and how estates placed under management are to be administered.

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

### Legislative changes since 1 July 2010

#### **The Guardianship Act**

Minor amendments to the *Guardianship Act* were made by the *Statute Law (Miscellaneous Provisions) Act 2010* which was assented to on 28 June 2010 and came into effect during this financial year.

The amendments allow an application to the Guardianship Tribunal to be served on parties to proceedings separately from a notice specifying the time, date and place set down for the Tribunal's hearing of that application.

The amendments also enable the Guardianship Tribunal to serve notices on parties by electronic means provided that the recipient agrees to be served in this manner.

#### **The Guardianship Regulation 2010**

The *Guardianship Regulation 2005* expired in September 2010 and it was necessary for it to be remade before that time. The *Guardianship Regulation* supplements the *Guardianship Act 1987* and its provisions support and enable the practical operation of several provisions of the Act.

In 2010, the Tribunal undertook public consultation on the remaking of the Regulation and sought the views of the community and key stakeholders on whether any changes should be made to the Regulation and the nature of those changes. Following that process, some changes were proposed to the Regulation which were adopted.

The new *Guardianship Regulation 2010* was made by the Governor-in-Council on 11 August 2010 and came into effect on 1 September 2010.

The 2010 Regulation was remade in the same terms as the previous Regulation with the following key changes:

### **1. Drugs of Addiction**

The 2010 Regulation amends the classes of medical treatment that are declared to be special treatment for the purposes of Part 5 of the *Guardianship Act 1987* by removing the administration of drugs of addiction from the category of special treatment. This will enable a 'person responsible' to consent to the administration of those drugs to patients who lack capacity to consent and will remove the previous requirement that the consent of the Guardianship Tribunal is required before such drugs can be administered.

### **2. Witnesses to Enduring Guardianship appointments, revocations and resignations**

The 2010 Regulation includes a new provision prescribing certain classes of persons as eligible witnesses. Eligible witnesses are able to witness the appointment, revocation or resignation of an enduring guardian. The 2010 Regulation provides that the class of eligible witnesses will include employees of the NSW Trustee and Guardian and

staff of the Public Guardian who have been approved to perform this role by the Chief Executive Officer of the NSW Trustee and Guardian and have completed a course of study approved by the Minister. The class has also been expanded to include overseas-registered foreign lawyers.

### **3. Changes to the forms used to appoint, revoke or resign an enduring guardianship appointment**

The 2010 Regulation prescribes the forms to be used when an enduring guardian is appointed, when the appointment is revoked or when an enduring guardian resigns. The forms for appointing, revoking or resigning an appointment of enduring guardian have also been revised and changed to make them easier to understand and use.

### **4. Interstate enduring guardianship appointments**

The 2010 Regulation adds enduring guardianship appointments made under Western Australian law to those instruments which can be recognised as appointments of interstate enduring guardians in New South Wales. Western Australian appointments were not previously included in the Regulation.

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## **Our Corporate Plan**

The Tribunal's strategic direction is set out in its *Corporate Plan 2009-2012*.

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 which is strongly influenced by the ageing of the population.

We are committed to reviewing 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 for 2009-2012. These are to:**

- maintain and improve the effectiveness and standing of the Guardianship Tribunal as a specialist disability Tribunal.
- develop, implement, review and improve strategies that will ensure the provision of quality services in an environment of increasing demands.

*The Guardianship Tribunal continues to improve organisational performance to manage the increasing demand for its services and to ensure it responds to the needs of people with disabilities, parties and other Tribunal users.*

## Review of the Business Processes

Staff of the Tribunal contribute to improvements in practice and procedure to ensure that applications are managed efficiently and appropriately.

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

### **Business Process Review**

The Tribunal has continued work to review and implement improved business processes across its case management and administrative functions. The review has involved staff and Tribunal members in a series of focus groups and consultations in the development, trial and implementation of new procedures.

We have reviewed and implemented new case management procedures involving registration, management and preparation of applications for hearing and post hearing functions involving the preparation and distribution of orders and reasons for decision.

The Tribunal assesses and manages all applications under its new triage model which focuses on any issues of risk identified in the application for the person with the disability. Tribunal officers operate under new and improved procedures for preparing applications for hearing and for the management of statutory review matters.

Last year our process review focused on the development and trial of new procedures in the Hearing Support Team including procedures for: listing and scheduling matters before the Tribunal, generating and issuing notices of hearing, and distributing hearing papers and support tools to Tribunal members. We implemented an electronic calendar for Tribunal members to advise of their availability.

This year we have focused on improving and finalising procedures within the Hearing Support Team which support the timely production and distribution of orders and reasons for decision. We have developed our Case Management System to produce an enhanced and automated Daily Hearing Sheet and to provide improved information to Tribunal members and assist Tribunal officers who support the hearings. We will shortly finalise a report to summarise for Tribunal members and parties all documents filed up to the date of hearing.

As part of the business review process we developed 31 new and revised procedures in the Tribunal Systems Unit. These included new or improved procedures for:

- developing and managing our electronic Case Management System (CMS)
- developing and producing statistical reports from the Case Management System
- processing deceased client notifications
- records management of client and administrative files, and the retrieval of archived records
- processing Tribunal Members wages and claims
- accounts processing
- managing our establishment
- managing digital recordings of hearings
- managing our equipment and assets.

These changes in practice and procedure facilitate the continued delivery of a high quality service to parties and Tribunal users, and Tribunal members. They have provided improved systems to support staff in undertaking their roles and responsibilities and managing a growing and increasingly complex workload.

### **Statistics and reporting**

Throughout the year we have continued to review and improve both data collection and statistical analysis systems.

We continued to work to refine and develop appropriate reporting tools to assist in the management of matters before the Tribunal with improved data analysis informing our planning for, and allocation of, Tribunal resources. This work will continue into the new financial year.

### **Information Technology and Electronic Case Management System**

The Tribunal continued to make improvements to its Case Management System (CMS) database. This included an improved daily hearing sheet with increased auto population of key data to assist Tribunal members and our reception staff.

As part of our business process design project in the Hearing Support Team we reviewed and improved the documentation used by the Tribunal to advise the registry of the hearing outcome, instructions for any future proceedings and instructions for the preparation of Tribunal orders. Work has continued to refine these documents to ensure that they meet the needs of, and assist both Tribunal members and Hearing Support staff.

We have continued to develop the Guardianship Tribunal's SharePoint Portal as an electronic communication and collaboration system for Tribunal members. This is an internet accessible website for Tribunal Members containing a Member Availability Calendar, the Tribunal Member Manual and information, training and other resources. The electronic calendar enables members to indicate their availability electronically and enables the Tribunal to plan for and meet its hearing and scheduling obligations.

### **Private Guardian Statement to Tribunal**

Last year we developed a Private Guardian Statement to the Tribunal form and reported that this would be introduced in the coming year.

The form was developed to assist private guardians prepare for review hearings, provide information to the Tribunal, and to facilitate the most appropriate listing arrangements by providing current information about the circumstances of the person under guardianship.

It is structured to assist private guardians to provide information about:

- their role and guardianship decisions made during the period of the order,
- the need for future decision making for the person under guardianship,
- the guardian's views about the ongoing need for guardianship, and
- if relevant, about the professional and other key service providers involved with the person under guardianship at the time of the review.

These forms were first sent out to private guardians in August 2010. They are distributed three months before the review hearing to enable time for completion and return to the Tribunal.

Approximately 77% of completed statements are returned to the Tribunal each month. Many forms are comprehensively completed and in many cases private guardians provide additional information, such as professional and other reports, relevant to the matters to be considered at the review hearing.

This successful project has enhanced the preparation of review matters for hearing and is now incorporated as part of the Tribunal's case management practice.



*Building the capacity of the Tribunal to provide quality service to the community of New South Wales*



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

### Separate representatives

The Tribunal may appoint a separate representative for a person with a disability. A separate representative is an independent person, usually a lawyer, appointed by the Tribunal to represent the interests of the person who is the subject of an application to the Tribunal. The role of the separate representative is to present the views of the person wherever possible, present other relevant information and make submissions as to the best interests of the person to assist the Tribunal in its decision making.

In 2010/2011 the Tribunal made 328 separate representative appointments. This represents a 117% increase on the number of separate representative appointments made in the previous year.

The Tribunal will continue discussion with the New South Wales Legal Aid Commission in relation to the growing demand for this important function.

### Initiatives to meet professional development for Tribunal members

The Tribunal conducts a professional development program of seminars for members.

This year we conducted two seminars for legal members and three seminars for all Tribunal members. The seminars for the legal members involved discussion, presentations and practical exercises on legal issues.

Those for all members included 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 or by external speakers and professionals with expertise relevant to the work of the Tribunal.

Tribunal member seminars this year covered the following topics:

- Ageing, Dementia and Aboriginal People
- Meeting the legal needs of older people
- Acting for people who lack capacity: Ethical and practical challenges for lawyers acting for homeless people
- Advocates, Agents and McKenzie friends
- Separate Representatives
- The Role of the NSW Trustee in Private Financial Management
- Apprehended Bias
- Complaints, Code of Conduct, Competencies
- Roles of Members in Complex Cases.

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

All members of the Tribunal participate in the performance appraisal system for Tribunal members. The competence framework for members 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 member self assessment report and hearing observation program were developed in line with the competence framework. The Presidential members conduct hearing observations 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.

### **Tribunal Members' Manual**

The Tribunal Members' Manual contains information about the various areas of the Tribunal's jurisdiction and sets out the Tribunal's expectations of members in terms of conduct, competencies and performance. The Manual is available to all members on the Tribunal members' online collaboration site and in hard copy at the Tribunal's premises.

### **Staff training and development**

Applications made to the Tribunal are often complex and may involve a person with a disability in a situation of risk, or circumstances of significant conflict between the parties to the application. Tribunal 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 is committed to supporting the training and professional development of its staff. The suggestions and feedback of staff and Tribunal members are used to plan the staff training and professional development program. The program includes internal, Departmental and external training and development opportunities.

The Tribunal remains committed to continuing its monthly seminar program for staff as a practical and important way to support staff in their work. Staff are required to attend these seminars which address specific training needs and include topics and requests for information identified by staff. The seminars are an opportunity to receive and discuss information and support consistency, within and across Tribunal teams, in the information provided to clients and parties and in the support provided to Tribunal members. This year our seminar program provided staff with skills, knowledge and information on a diverse range of subject areas including:

- Dementia
- Autism
- Alternatives to Financial Management
- Occupational Health and Safety
- Disability Discrimination Laws - an overview
- Parties, Witnesses, Standing and Bias
- The role of the Private Guardian Support Unit
- Subpoenas
- Stories and Culture: Aboriginal Awareness
- Expanding our use of information technology.

A key staff training event this year was a Priorities and Time Management Workshop conducted for all staff. This was a practical workshop aimed at improving knowledge and skills in assessing and setting priorities, identifying the origins of time management issues and improving communication in time management.

In addition to our internal training program, staff attended workshops conducted by the New South Wales Ombudsman's Office on Managing Unreasonable Complainant Conduct and Complaint Handling for Frontline Staff. Other training included:

- Fire Warden and Emergency Procedures Training
- Merit Selection Training
- Statutory Interpretation
- Visio 2010.

The Tribunal is also committed to maintaining a program, initiated in January 2010, in which staff are required to observe two Tribunal hearings each year. This assists in further developing staff members' knowledge and experience of the hearing process and how the work of Tribunal staff supports the Tribunal Members and positive outcomes for people with disabilities. The hearings selected for observation are relevant to an individual's learning and development needs and areas of interest. This program has been acknowledged by staff as enriching their



work experience and as a valuable learning opportunity. It has been generously supported by Tribunal members.

In May this year a number of staff attended the Council of Australasian Tribunals (NSW Chapter) Eighth Annual Conference - "Being Accessible and Being Fair". Several staff attended an Elder Law Seminar conducted by the University of New South Wales NSW concerning issues of capacity and the role of legal practitioners in the Guardianship Tribunal.

The staff are informed about issues in a timely and effective way through the Tribunal's intranet and regular team and staff meetings.

The Tribunal has an active occupational health and safety committee (OH&S) which undertakes regular inspections and provides information and updates to staff as issues arise. 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 TrimEvac. Comsafe, the training arm of the New South Wales Fire and Rescue designed a quick reference guide to assist Tribunal officers in the management of different emergency situations. Tribunal officers regularly attend external training programs relating to OH&S such as First Aid.

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## Improving our environment for clients, staff and members

The Tribunal has experienced a growth in new applications of approximately 20% over the past five years. This year, in order to plan for and accommodate future growth, we undertook a comprehensive review of our hearing room and staff office accommodation requirements.

An accommodation plan was developed in September 2010 to identify current and future operational requirements and to accommodate planned staff increases. Early in the new year work will begin to increase staff accommodation. We also identified the need for additional hearing rooms at the Tribunal premises in Balmain where approximately 75% of hearings are held. We anticipate concluding this project early in the new financial year.

The Tribunal undertook a comprehensive review of its security requirements including the physical environment, electronic systems and response procedures. We anticipate implementing, in conjunction with the accommodation plan, a number of the recommendations arising from this review early in the new financial year.



## Community awareness



# Improving community awareness

The Tribunal continues to focus on improving community awareness and understanding of its jurisdiction.

## Publication of Tribunal decisions

The Tribunal publishes its de-identified cases on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)). Tribunal decisions are made available to assist members of the community, students, legal practitioners and others who have an interest in the decisions of the Tribunal and how these decisions are made.

## Research

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

The Tribunal continued its commitment 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*. The Tribunal's commitment to this project continues.

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. Tribunal officers also provide information to parties about legislative requirements and the Tribunal's role and processes when preparing a matter for hearing.

A Liaison Officer who is a representative of the New South Wales Trustee and Guardian (NSWTG) 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 NSWTG. For many people involved in hearings of the Tribunal, the Liaison Officer is the first contact that they have with the NSWTG after a hearing.

In keeping with the principles of the *Guardianship Act 1987*, the Tribunal's community education activities promote the least restrictive option for people with decision making disabilities and assist people to find alternatives to formal guardianship and financial management.



### **Enquiry service**

The Tribunal's enquiry service is a popular source of information and support for people with disabilities, the community and health, legal and community service professionals. This financial year the Tribunal's enquiry officers handled 14,388 calls, visits and written enquiries. This represents a 19% increase on the previous year.

The Enquiry Service assists callers to determine the need for the Tribunal's involvement. 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 with the process of accessing and submitting application forms and supporting information.

### **Community education**

This year, Tribunal staff and members provided 22 community education sessions involving 910 participants.

These sessions were provided to hospital based teams, students of law and medicine, aged care workers, financial counsellors, mental health workers, disability workers, staff of complaint handling bodies and other tribunals, TAFEs and legal centres.

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.

The Tribunal also staffed a stall at the Senior's Week 2011 Expo at Darling Harbour.

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](http://www.gt.nsw.gov.au)).

### **Website**

Over the past year the Tribunal's website remained an important and well utilised source of information and an entry point to services. 98,287 visits were made to the website and 1096 online applications were lodged.

### **Publications**

The Tribunal has a wide range of resources available to the community on its role, functions and processes. Publications can be accessed and downloaded via the website or obtained directly from the Tribunal.

This year the Tribunal reviewed its information sheet *Three Separate Organisations* and its information sheet concerning reviews of enduring powers of attorney. The Tribunal's application form and information concerning consent to medical treatment was reviewed and amended following changes to consent requirements in the Guardianship Regulation 2010. A document setting out the procedure for a request for a transcript was also published.

### **DVDs**

This year the Tribunal continued to promote and distribute its three award winning educational DVDs, 'For Ankie's Sake,' 'In Their Best Interests' and 'Substitute Consent'. The DVDs are available to purchase or borrow from the Tribunal in a boxset. An order form is available for download from the Tribunal's website.



## Papers and training presented

### Diane Robinson, President

*'Enduring Guardianship and Enduring Power of Attorney'*  
Alzheimer's Australia, North Ryde, 25 November 2010

*'Role of the Guardianship Tribunal'*  
Catholic Community Services, Homebush Bay, 7 December 2010

### Malcolm Schyvens, Acting President

*'Guardianship Tribunal: Financial Matters and the Role of Lawyers' Elder Law Seminar*  
Hilton Sydney, 22 July 2010

*'Presentation: Advanced Care Planning Seminar'*  
Liverpool Hospital, 22 September 2010

*'Public Support for Guardians' World Congress on Adult Guardianship Law*  
Yokohama, 3 October 2010

*'Presentation: Understanding the processes and procedures of the NSW Guardianship Tribunal for Health Professionals'*  
Tweed Heads Hospital, 15 October 2010

*'Presentation: Understanding the processes and procedures of the NSW Guardianship Tribunal for Health Professionals' College of Clinical Neuropsychologists Training*  
Prince of Wales Hospital, 29 October 2010

*'Presentation: Enduring Guardianship' UNSW CLE*  
Sydney, 23 February 2011

*'Presentation: Understanding the processes and procedures of the NSW Guardianship Tribunal for Health Professionals'*  
Ryde Rehabilitation Centre, 2 March 2011

*'Presentation: Enduring Guardianship' City of Sydney Law Society*  
Sydney, 16 March 2011

*'Presentation: Legal Practitioners and the Guardianship Tribunal' Elder Law Seminar*  
UNSW CBD Campus, 29 March 2011

*'Presentation: Understanding the processes and procedures of the NSW Guardianship Tribunal for Health Professionals'*  
John Hunter Hospital, 3 May 2011

*'The Legal Status of Guardians in Advance Care Planning in Australia' 2nd International Society of Advance Care Planning and End of Life Care Conference*  
London, 23 June 2011

*'How to Care 2011' MCLE Breakfast - Law Society of NSW*  
Supreme Court of NSW, Thursday 30 June 2011

### Malcolm Schyvens, Acting President and Esther Cho, Legal Officer

*'Presentation: Understanding the processes and procedures of the NSW Guardianship Tribunal for Health Professionals'*  
Westmead Hospital, 28 July 2010

*'Presentation: Understanding the processes and procedures of the NSW Guardianship Tribunal for Health Professionals'*  
Royal Prince Alfred Hospital, 30 August 2010

*'Presentation: Understanding the processes and procedures of the NSW Guardianship Tribunal for Health Professionals'*  
Orange Base Hospital, 10 September 2010

*'Presentation: Understanding the processes and procedures of the NSW Guardianship Tribunal for Health Professionals'*  
Concord Centre for Mental Health, 16 November 2010

*'Separate Representatives in the Guardianship Tribunal' Legal Aid Commission*  
Haymarket, 7 March 2011

**Bill Tearle, Deputy President**

*'Guardianship and Financial Management'*

Annual Conference of the Financial Counsellors Association, 2 August 2010

*'The Mental Health Act and the Guardianship Act: Consent to Medical and Dental Treatment'*

Justice Health, 2 September 2010

*'The Law of Guardianship, Financial Management, and Consent to Medical and Dental Treatment'*

University of Sydney, Faculty of Law, 18 September 2010

*'The Guardianship Tribunal: Law and Procedure'*

Mental Health Review Tribunal, 16 February 2011

*'Legal Practitioners and The Guardianship Tribunal'*

Legalwise Seminars, Elder Law Seminar, 29 March 2011

*'The Law of Guardianship, Financial Management, and Consent to Medical and Dental Treatment'*

Commonwealth Department of Health & Ageing, Complaints Investigation Scheme, 19 May 2011

*'The Guardianship Tribunal: Guardianship and Consent to Medical and Dental Treatment'*

Family Planning NSW, 15 June 2011

**Esther Cho, Legal Officer**

*'Guardianship Tribunal Presentation'*

Homeless Persons' Legal Service, 8 July 2010

*'Understanding the processes and procedures of the NSW GT for health professionals'*

NSW Justice Health, 2 September 2010

*'NSW Guardianship Tribunal - Powers of Attorney'*

St Anne's Nursing Home, 22 October 2010

*'Understanding the processes and procedures of the NSW GT for health professionals'*

Queanbeyan Hospital, 3 November 2010

*'The Guardianship Tribunal'*

Health Care Complaints Commission, 18 November 2010

*'Role of Guardianship Tribunal'*

Aged and Community Services Association of NSW and ACT Inc (ACS), 2010 Northern Regional Conference, Armidale, 25 November 2010

*'Substitute Decision Making and the Guardianship Tribunal'*

Official Community Visitors Conference, 23 June 2011

*'Substitute Decision Making and the Guardianship Tribunal'*

Ageing, Disability and Home Care, Law and Justice Directorate, 27 June 2011



## Collaborative Training Program with NSW Health

A significant number of applications received by the Tribunal are for persons who are inpatients in NSW hospitals. As a result, health professionals based in hospitals are regularly applicants for the appointment of a guardian or financial manager, or alternatively, provide evidence relating to applications.

During 2010/2011, the Tribunal engaged in a collaborative education project with the Health Services Performance Improvement Branch of NSW Health. The impetus behind the project was Recommendation 5 of the *“Special Commission of Inquiry: Acute Care in New South Wales Public Hospitals”*, an inquiry conducted by Commissioner Peter Garling SC. This recommendation provides:

*“NSW Health should liaise with the Guardianship Tribunal to ensure that patients within acute care services in NSW public hospitals who are medically fit for discharge be given the appropriate priority for a hearing by the Tribunal.”*

The Tribunal developed a three hour training package entitled *“Understanding the Processes and Procedures of the NSW Guardianship Tribunal for Health Professionals”*. The program was designed to assist health professionals to better understand the importance of their role in Tribunal proceedings with a particular focus on:

- the inclusion of all relevant information in completing an application to the Tribunal;
- the need to clearly identify to the Tribunal any immediate risks of harm or detriment faced by the patient to ensure the Tribunal can triage applications appropriately and arrange urgent hearings as required;
- outlining the legal tests applicable for the appointment of a guardian, a financial manager, or for granting consent to applications for medical or dental treatment;

- providing guidance on writing reports to be submitted to the Tribunal;
- describing the hearing process and the role of parties to the proceedings.

The Tribunal’s Acting President, Mr Malcolm Schyvens, and the Legal Officer, Ms Esther Cho, conducted training sessions within each of the area and local health networks in NSW, which included the following locations: Westmead Hospital; Royal Prince Alfred Hospital; Liverpool Hospital; Prince of Wales Hospital; Sutherland Hospital; St George Hospital; Concord Centre for Mental Health; Ryde Rehabilitation Centre; John Hunter Hospital; Orange Base Hospital; Tweed Heads Hospital, and Queanbeyan District Hospital. Over 800 health professionals participated in the training program which received very positive feedback from attendees.

The Tribunal further assisted NSW Health in the development of a webpage dedicated to providing health professionals with information on the operations of the Tribunal and to provide assistance in making an application to the Tribunal.

This collaborative education program with NSW Health proved an excellent vehicle for the Tribunal to gain access to many health professionals who are in regular contact with the Tribunal. Ensuring that health professionals are aware of the need for the Tribunal to be provided with relevant evidence expeditiously when an application is lodged greatly assists the Tribunal in assessing the urgency of matters, and progressing applications to hearing.



## Our work - the year in review



# Our work - the year in review

## Receiving applications

In 2010/2011 the Tribunal received 7313 new applications. Of these, 977 applications were for procedural orders. Of the remaining 6336 new applications: 47% related to the appointment of a financial manager; 43% related to the appointment of a guardian; 6% were applications for consent to medical and dental treatment; 4% were for other applications including applications to review enduring powers of attorney or enduring guardianship arrangements or to approve clinical trials.

The Tribunal's application forms for financial management and guardianship applications assist applicants to focus on the person's need for a substitute decision maker and understand when to apply to the Tribunal.

The Tribunal continues to experience growth in the complexity of applications made to it. It has been necessary for the Tribunal to allocate increased resources including more staff time to prepare these matters for hearing. Complex applications need longer hearings to enable the examination of evidence and may require more procedural orders before the final determination of the application.



Table 1 Five year comparative caseload statistics for new, requested review and procedural matters for the years 2006/2007 to 2010/2011

Application type	2006/2007		2007/2008		2008/2009		2009/2010		2010/2011	
	Received	Finalised	Received	Finalised	Received	Finalised	Received	Finalised	Received	Finalised
Guardianship	2351	2218	2312	2461	2274	2417	2446	2483	2481	2329
Requested review of guardianship	213	210	175	179	205	212	232	233	217	218
Financial management	2405	2341	2452	2562	2465	2564	2645	2734	2468	2418
Requested review of financial management	333	309	368	370	337	338	374	373	504	416
Review - enduring power of attorney	90	77	119	117	131	129	126	141	149	139
Review - enduring guardianship	27	28	51	47	57	58	61	74	55	48
Medical/dental consent	475	474	447	455	465	473	464	469	406	408
Recognition of appointment	37	37	38	38	50	49	41	41	43	44
Clinical trial	7	9	6	6	16	9	11	11	13	10
Direction to guardian	1	1	0	0	1	1	0	0	0	0
<b>Sub total</b>	<b>6068</b>	<b>5830</b>	<b>6011</b>	<b>6287</b>	<b>6001</b>	<b>6250</b>	<b>6400</b>	<b>6559</b>	<b>6336</b>	<b>6030</b>
Procedurals (own motion or by request)	368	369	388	392	435	434	602	602	977	951
<b>Total</b>	<b>6436</b>	<b>6199</b>	<b>6399</b>	<b>6679</b>	<b>6436</b>	<b>6684</b>	<b>7002</b>	<b>7161</b>	<b>7313</b>	<b>6981</b>

Table 2 Five year comparative caseload statistics for statutory or Tribunal ordered review matters for the years 2006/2007 to 2010/2011

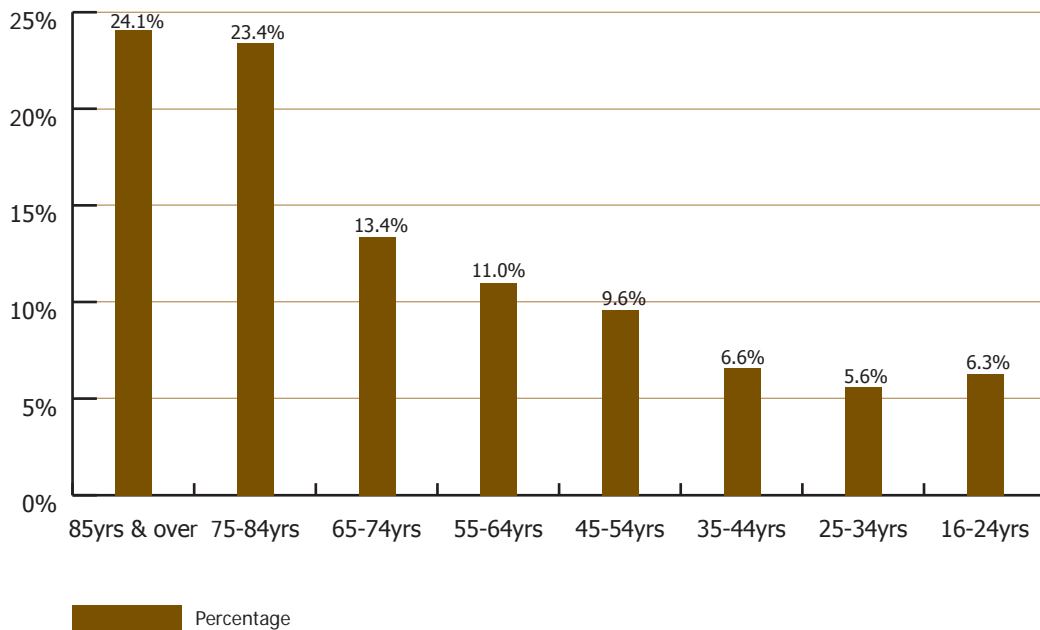
Statutory or Tribunal ordered review of orders	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011
	Reviews finalised	Reviews finalised	Reviews finalised	Reviews finalised	Reviews finalised
Guardianship	1417	1508	1626	1690	1825
Financial management	135	119	116	109	137
Recognition of guardianship appointment	5	13	17	16	5
Recognition of financial management appointment	21	19	23	30	15
<b>Total</b>	<b>1578</b>	<b>1659</b>	<b>1782</b>	<b>1845</b>	<b>1982</b>

## 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 47% were made

by family members or friends of the person, 48% by someone in a professional relationship with the person, for example a health professional, professional carer or service provider and 5% by others.

Graph 1 Age demographic of people the subject of applications to the Tribunal in 2010/2011

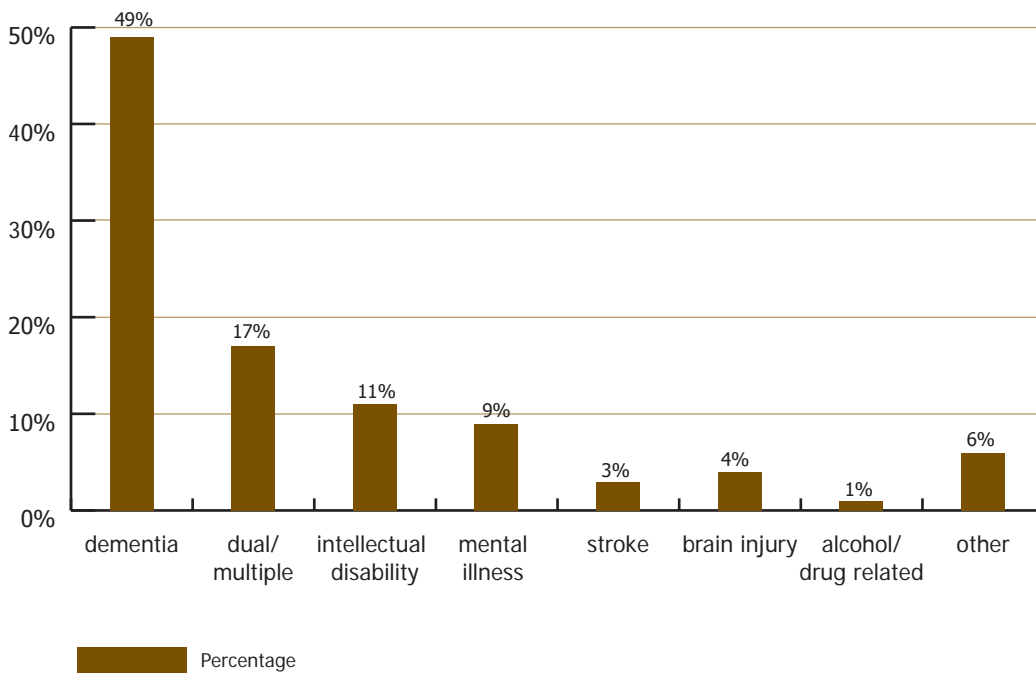


**People for whom applications were made by age, gender and disability**

Of the applications received this year just over half (51.6%) were for females and 48.4% were for males. Consistent with the ageing of the population 60% of applications to the Tribunal were for people who were 65 years or older.

The disability most frequently recorded in applications to the Tribunal in 2010/2011 is 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 37% of applications received this year.

Graph 2 Disability reported in applications received by the Tribunal in 2010/2011



## Hearings by the Tribunal

In 2010/2011 the Tribunal conducted 5727 hearings over 1542 sittings. This year the Tribunal heard an average of 1.47 matters per hearing and 5.5 matters per sitting of the Tribunal. These hearings concerned 5651 people with decision making disabilities.

The Tribunal also operates an after hours service to respond to urgent applications which need to be heard outside normal business hours. Thirty four of the hearings conducted this year were held after hours.

This year the Tribunal finalised 8963 matters. The Tribunal received 6336 new applications (excluding procedural applications) and finalised 6030 new matters. It also finalised 1982 statutory review matters and 951 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 Case Management 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 and, 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 may be constituted by less than three members to determine some procedural matters. In 2010/2011, the Tribunal finalised 951 procedural matters. Procedural matters include applications for legal representation, applications by people seeking to be joined as a party, and requests for the Tribunal to consent to the withdrawal of an application.

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

This year there were 256 applications for legal representation and representation was granted on 169 occasions. In addition, there were 328 appointments of separate representatives made by the Tribunal.

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## Appointing guardians and financial managers

### Appointing guardians

In 2010/2011 the Tribunal finalised 4372 applications and reviews in relation to guardianship. In 2269 guardianship matters no appointment or reappointment was made. In these matters the Tribunal dismissed the application or the application was withdrawn with the consent of the Tribunal.\*

This year the Tribunal made 2044 guardianship appointments. These are set out in Table 3.

Of the guardianship orders made, 35% appointed a private guardian or guardian/s, 63% 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 a private guardian is unable 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 interest and that the proposed guardian is willing and able to exercise the functions conferred in the order.

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\*A variance of 59 arises where the Tribunal has received more than one guardianship application for a person with a disability, where those applications are heard concurrently and finalised by an order appointing the guardian/s.



Table 3 Guardianship appointments made in 2010/2011

	Private guardian/s including joint and alternate appointments	Public Guardian	Private and Public Guardian appointment (separate decision making authority)
New appointments	365	604	23
Requested review appointments	28	79	7
Statutory review appointments	320	602	16

### Appointing financial managers

This year the Tribunal finalised 2971 applications and reviews in relation to financial management. In 1365 matters no appointment was made because the Tribunal dismissed the application or because the application was withdrawn with the consent of the Tribunal.

This year the Tribunal made 1601 financial management appointments.\* The financial management appointments made by the Tribunal in 2010/2011 are set out in Table 4.

Of the financial management appointments made this year, 45% of orders appointed a private manager or managers, and 55% appointed the NSW Trustee and Guardian. The NSW Trustee and Guardian is appointed in circumstances where a private manager is unable to be appointed. A private financial manager is subject to the direction of the NSW Trustee and Guardian.

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\*A variance of 5 arises where the Tribunal has received more than one financial management application for a person with a disability, where those applications are heard concurrently and finalised by an order appointing a financial manager/s.

Table 4 Financial management appointments made in 2010/2011

	Private managers including joint appointments	NSW Trustee and Guardian
New appointments	654	811
Requested review appointments	68	56
Statutory ordered/ own motion review appointments	2	10

## Reviewing orders

In addition to hearing new applications the Tribunal may review the guardianship and financial management orders it has made.

- Statutory reviews for guardianship orders** – an automatic review conducted 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 circumstances of the person the subject of the order.
- 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 welfare of 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 3 Statutory reviews - five year comparative caseload statistics for statutory or Tribunal ordered reviews for the years 2006/2007 to 2010/2011

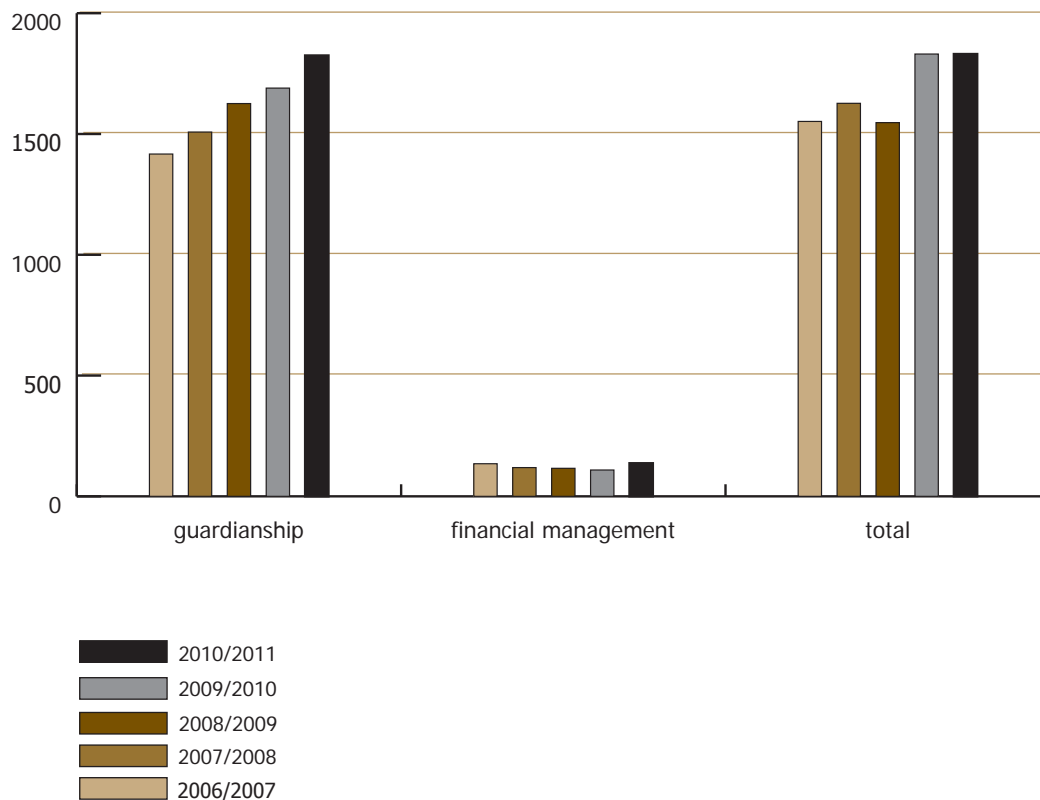


Table 5 Requested reviews - five year comparative caseload statistics for requested reviews for the years 2006/2007 to 2010/2011

Application	2006/2007		2007/2008		2008/2009		2009/2010		2010/2011	
	Received	Finalised	Received	Finalised	Received	Finalised	Received	Finalised	Received	Finalised
Requested review of guardianship	213	210	175	179	205	212	232	233	217	218
Requested review of financial management	333	309	368	370	337	338	374	373	504	416
<b>Total</b>	<b>546</b>	<b>519</b>	<b>543</b>	<b>549</b>	<b>542</b>	<b>550</b>	<b>606</b>	<b>606</b>	<b>721</b>	<b>634</b>

## Outcomes of all guardianship and financial management reviews this year

### Guardianship reviews

The Tribunal finalised 1825 statutory reviews of guardianship orders and finalised 218 applications requesting a review of a guardianship order.

In 20% of review matters finalised at hearing, the guardianship order was renewed and not varied; in 38% of matters the order was renewed

and varied; while in 37% of matters the order was not renewed as it was determined that there was no longer a need for an order. In 4% of matters a non reviewable order was made and 1% of matters were withdrawn or dismissed at hearing.

Table 6 Outcomes of all guardianship reviews 2010/2011 finalised at hearing

	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	340	545	630	61	0
Requested review - guardianship	13	139	35	2	17
<b>Total</b>	<b>353</b>	<b>684</b>	<b>665</b>	<b>63</b>	<b>17</b>

### Financial management reviews

The Tribunal finalised 137 Tribunal ordered reviews of financial management orders and 416 applications requesting a review of financial management orders.

In 29% of review matters finalised at hearing, the financial management order was confirmed;

in 25% of matters the manager was replaced; in 29% of matters the order was revoked; in 1% of matters the Tribunal made a reviewable order, 11% of matters were withdrawn or dismissed at hearing and in 5% of matters the order was renewed and varied.

Table 7 Outcomes of all financial management reviews 2010/2011 finalised at hearing

	Order confirmed/varied	Order revoked	Manager replaced	Reviewable order made	Withdrawn / dismissed before/at hearing
Tribunal ordered/ own motion review – financial management	80	35	5	5	0
Requested review – financial management	86	108	116	7	50
<b>Total</b>	<b>166</b>	<b>143</b>	<b>121</b>	<b>12</b>	<b>50</b>

### 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 2010/2011 the Tribunal received 43 applications for recognition. The Tribunal determined 44 applications.

The Tribunal also reviews these orders. During 2010/2011 the Tribunal finalised 5 recognition of guardianship appointments and 15 recognition of financial management appointments.

## 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 2010/2011 the Tribunal conducted approximately 23% of its hearings outside Balmain at locations including Albury, Armidale, Blue Mountains, Bowral, Central Coast, Coffs Harbour, Dubbo, Goulburn, Lismore, Maitland, Merimbula, Moree, Morriset, Moruya, Mudgee, Newcastle, Nowra, Orange, Peat Island Centre, Port Macquarie, Queanbeyan, Singleton, Stockton, Tamworth, Taree, Tweed Heads, Wagga Wagga, Wollongong and other locations in the Sydney metropolitan area.

Hearings may also be conducted by video conferencing and parties may 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 Tribunal is not bound by the rules of evidence. It may obtain information as it thinks fit. The Tribunal must however act in accordance with the rules of procedural fairness.

The hearing rooms at the Tribunal's premises are less formal than a court room and are designed to make the person with a 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 arrangements for parties with particular needs. Where appropriate, the Tribunal arranges the attendance of accredited interpreters to assist parties participating in hearings. Interpreters were used on 398 occasions during the year and provided services across 51 different languages including Arabic, Cantonese, Croatian, Greek, Italian, Korean, Macedonian, Mandarin, 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 applications the Guardianship Tribunal sits as a panel 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 1882 hearings dealing with 2182 matters were conducted by single member panels. Of these 56.9% related to guardianship reviews, 12.6% to financial management reviews, 1.7% to medical consent, 29.2% to procedural matters and 1.3% comprised of medical consent matters and reviews of interstate recognition orders.



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## Complaints

The Tribunal welcomes complaints as an opportunity to improve its services. Frontline staff assist complainants to resolve their concerns wherever possible. Complaints that cannot be resolved in this way are investigated and responded to in writing. The Deputy President responds to complaints about the hearing process and the conduct of Tribunal members. The Deputy Registrar responds to complaints about the preparation of matters for hearing and the conduct of staff. The Tribunal registered and responded in writing to 50 complaints in the 2010/2011 financial year.

A complaint is not the same as a review or appeal. To request a review of an order an application must be lodged with the Tribunal. Appeals from decisions of the Tribunal can be made to the Administrative Decisions Tribunal or the Supreme Court.

Frontline staff and managers received training in frontline complaint handling in the 2010/2011 financial year.



## 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

During the 2010/11 financial year, the Tribunal received thirteen applications for the approval of a clinical trial. There was one application carried forward from the previous financial year. The Tribunal conducted twelve hearings to consider the applications. The Tribunal approved ten applications (including the application pending from the previous year). Two applications were adjourned and are pending. Two other applications were not heard within the current financial year and are pending.

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 2010/2011

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'
A randomized, placebo-controlled trial of erythropoietin in Intensive Care Unit patients with traumatic brain injury.  (Pending from 2009/2010)	<ul style="list-style-type: none"> <li>• Nepean Hospital</li> <li>• Liverpool Hospital</li> <li>• Royal Prince Alfred Hospital</li> <li>• John Hunter Hospital</li> <li>• Westmead Hospital</li> <li>• Royal North Shore Hospital</li> <li>• St Vincent's Hospital</li> </ul>	Approved	Yes
Addition of extra sites to Clinical Trial Protocol 0911-305M. Nephro-protective effects of L-amino acids in critically ill patients: a multi-centre randomized controlled trial.	<ul style="list-style-type: none"> <li>• Gosford Hospital</li> <li>• Wollongong Hospital</li> <li>• Nepean Hospital</li> <li>• St Vincent's Hospital</li> </ul>	Approved	Yes
Talecris (Plasmin Stroke). Protocol T05018-1001: A Phase 1/2a, Open Label, Dose Escalation, Safety Study of Intra-Thrombus Plasmin (Human) Administration in Acute, Middle Cerebral Artery, Ischemic Stroke.	<ul style="list-style-type: none"> <li>• Royal Prince Alfred Hospital</li> </ul>	Approved	Yes
START-EXTEND. Start - Stroke Imaging Prevention and Treatment - Extend - Extending the Time for Thrombolysis in Emergency Neurological Deficits.	<ul style="list-style-type: none"> <li>• John Hunter Hospital</li> <li>• Gosford Hospital</li> <li>• Westmead Hospital</li> <li>• St Vincent's Hospital</li> <li>• Royal Prince Alfred Hospital</li> <li>• St George Hospital</li> </ul>	Approved	Yes
CONCERT PLUS: DIM18EXT. CONCERT: CONCERT PLUS (DIM18EXT): An Open-Label Extension of the CONCERT Protocol (DIM18) Evaluating Dimebon (Latrepidine) in Patients with Alzheimer's Disease - DIM18 EXT.	<ul style="list-style-type: none"> <li>• Hornsby Ku-ring-gai Hospital</li> <li>• John Hunter Hospital</li> <li>• Prince of Wales Hospital</li> </ul>	Approved	No
Phase 3 Extension, Multicenter, Long Term Safety and Tolerability Trial of Bapineuzumab (AAB-001) in Subjects with Alzheimer's disease who are Apolipoprotein E 4 carriers and participated in study 3133K1-3001-ww. Protocol 3133K1-3003WW.	<ul style="list-style-type: none"> <li>• Hornsby Ku-ring-gai Hospital</li> <li>• Gosford Hospital</li> </ul>	Approved	Yes
Phase 3, Extension, Multicenter, Double-Blind, Parallel Group Long Term Safety and Tolerability Trial of Bapineuzumab (AAB-001) in Patients with Alzheimer's disease who are Apolipoprotein E 4 Non-carriers and Participated in study 3133K1-3000-WW. Protocol 3133K1-3002WW.	<ul style="list-style-type: none"> <li>• Hornsby Ku-ring-gai Hospital</li> <li>• Gosford Hospital</li> </ul>	Approved	Yes

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'
Clinical Trial Protocol CAFQ056A2212 - A randomized, double-blind, placebo-controlled, parallel group study to evaluate AFQ056 in adult patients with Fragile X Syndrome.	<ul style="list-style-type: none"> <li>• Hunter Genetics, Waratah</li> <li>• NSW Developmental Disability Health Unit, Ryde</li> <li>• Murdoch Research Institute, Parkville VIC</li> </ul>	Approved Approved Not approved as site in Victoria	Yes
PROTOCOL NO X10-0173. A multicentre, randomised, double-blinded, placebo-controlled phase IIb study to compare the efficacy and safety of two dosing regimens of intravenous infusions of CytoFab (TM) (AZD9773) in adult patients with severe sepsis and / or septic shock.	<ul style="list-style-type: none"> <li>• Nepean Hospital</li> <li>• Blacktown Hospital</li> <li>• Wollongong Hospital</li> <li>• Royal Prince Alfred Hospital</li> </ul>	Approved	Yes
Addition of extra site to Clinical Trial Protocol 0911-305M. Nephro-protective effects of L-amino acids in critically ill patients: a multi-centre randomized controlled trial.	<ul style="list-style-type: none"> <li>• St George Hospital</li> <li>• Calvary Mater Newcastle</li> </ul>	Approved	Yes
LZAO trial- Solanezumab. H8A-MC-LZAO/Continued Efficacy and Safety Monitoring of Solanezumab an Anti-Amyloid antibody in Patients with Alzheimer's disease.	<ul style="list-style-type: none"> <li>• Gosford Hospital</li> <li>• St Vincent's Hospital</li> <li>• Bankstown-Lidcombe Hospital</li> <li>• Southern Neurology – Kogarah</li> </ul>	Adjourned	No
LZAN study, Protocol H8A-MC-LZAN. H8A-MC-LZAN (b): Effect of Passive Immunisation on the progression of Alzheimers Disease: Solenazumab (LY2062430) Versus Placebo.	<ul style="list-style-type: none"> <li>• Gosford Hospital</li> <li>• St Vincent's Hospital</li> <li>• Bankstown-Lidcombe Hospital</li> <li>• Southern Neurology – Kogarah</li> </ul>	Adjourned	No
Dexmedetomidine to lessen ICU Agitation: DahLIA study. A randomised, double-blind, multi-centre placebo controlled trial of dexmedetomidine for patients with agitation and delirium in the intensive care unit.	<ul style="list-style-type: none"> <li>• Royal North Shore Hospital</li> </ul>	Pending	N/A
SPICE Trial. A Pilot Prospective Randomised Control Trial of Sedation Practice in Intensive Care Evaluation (SPICE).	<ul style="list-style-type: none"> <li>• Nepean Hospital</li> <li>• St Vincent's Hospital</li> <li>• Prince of Wales Hospital</li> <li>• Albury Base Hospital</li> </ul>	Pending	N/A

## 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 five appeals received during the previous financial year which were still pending as at 30 June 2010. Those five appeals were finalised in the current financial year. Of those five appeals, three were dismissed and two were upheld and remitted to the Tribunal for re-hearing.

During the current financial year, there were 13 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 2006/2007 to 2010/2011

	Appeals pending from previous year	New appeals	Appeals withdrawn	Appeals Dismissed	Appeals Upheld	Pending at year end
2006/2007	4	15	2	7	4	6
2007/2008	6	19	5	13	1	6
2008/2009	6	19	9	6	7	3
2009/2010	3	19	4	9	4	5
2010/2011	5	13	1	9	5	3

### Appeals to the Supreme Court

There were two appeals which were received during 2009/2010, which remained pending as at 30 June 2010. These were both dismissed by the Court in this financial year.

There were six new appeals from decisions of the Tribunal lodged with the Supreme Court during 2010/2011 (see Table 9).

Table 9 Appeals to the Supreme Court against Guardianship Tribunal decisions from 2006/2007 to 2010/2011

	Appeals pending from previous year	New appeals	Withdrawn	Dismissed	Upheld	Pending at year end
2006/2007	2	2	1	0	0	3
2007/2008	3	2	2	0	1	2
2008/2009	2	2	0	2	0	2
2009/2010	2	3	0	3	0	2
2010/2011	2	6	0	2	1	5

## Access to Tribunal information under the *Government Information (Public Access) Act 2009*

The *Government Information (Public Access) Act 2009* (NSW) (the *GIPA Act*) replaced the *Freedom of Information Act 1989* (NSW) as of 1 July 2010. Under the *GIPA Act*, all public sector agencies, including the Guardianship Tribunal, must provide members of the public with information about their operations.

The Tribunal's website contains information for the public about how to obtain access to Tribunal information under the *GIPA Act* and also contains a publication guide as required by the *GIPA Act*.

Under the *GIPA Act*, any information which any court or tribunal, such as the Guardianship Tribunal, holds as part of exercising its judicial functions is excluded information and cannot be the subject of

a reviewable access application (section 19, s43 *GIPA Act* and Schedule 2). Therefore, any information which the Tribunal holds in relation to proceedings before the Tribunal is not accessible under the *GIPA Act*.

However, other information which is not excluded information can be obtained by making an access application under the *GIPA Act*.

The Tribunal did not receive any applications for access to non-excluded information under the *GIPA Act*. The Tribunal received seven applications which were invalid as they sought access to excluded information. The following tables contain statistical information about the applications made to the Tribunal under the *GIPA Act*.

Table A: Number of applications by type of applicant and outcome

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Media	0	0	0	0	0	0	0	0
Members of Parliament	0	0	0	0	0	0	0	0
Private sector business	0	0	0	0	0	0	0	0
Not for profit organisations or community groups	0	0	0	0	0	0	0	0
Members of the public (application by legal representative)	0	0	0	0	0	0	0	0
Members of the public (other)	0	0	0	0	0	0	0	0

Table B: Number of applications by type of application and outcome

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Personal information applications	0	0	0	0	0	0	0	0
Access applications (other than personal information applications)	0	0	0	0	0	0	0	0
Access applications that are partly personal information applications and partly other	0	0	0	0	0	0	0	0

Table C: Invalid applications

Reason for invalidity	No of applications
Application does not comply with formal requirements (section 41 of the Act)	0
Application is for excluded information of the agency (section 43 of the Act)	7
Application contravenes restraint order (section 110 of the Act)	0
Total number of invalid applications received	7
Invalid applications that subsequently became valid applications	0

Table D: Conclusive presumption of overriding public interest against disclosure: matters listed in Schedule 1 to Act

	No of applications
Overriding secrecy laws	0
Cabinet information	0
Executive Council information	0
Contempt	0
Legal professional privilege	0
Excluded information	0
Documents affecting law enforcement and public safety	0
Transport safety	0
Adoption	0
Care and protection of children	0
Ministerial code of conduct	0
Aboriginal and environmental heritage	0

Table E: Other public interest considerations against disclosure: matters listed in table to section 14 of Act

	Number of occasions when application not successful
Responsible and effective government	0
Law enforcement and security	0
Individual rights, judicial processes and natural justice	0
Business interests of agencies and other persons	0
Environment, culture, economy and general matters	0
Secrecy provisions	0
Exempt documents under interstate Freedom of Information legislation	0

Table F: Timeliness

	Number of applications
Decided within the statutory timeframe (20 days plus any extensions)	0
Decided after 35 days (by agreement with applicant)	0
Not decided within time (deemed refusal)	0
Total	0

Table G: Number of applications reviewed under Part 5 of the Act (by type of review and outcome)

	Decision varied	Decision upheld	Total
Internal review			0
Review by Information Commissioner			0
Internal review following recommendation under section 93 of Act			0
Review by ADT			0
Total			0

Table H: Applications for review under Part 5 of the Act (by type of applicant)

	Number of applications for review
Applications by access applicants	0
Applications by persons to whom information the subject of access application relates (see section 54 of the Act)	0



# Appendix

Appendix 1 **Organisational chart**

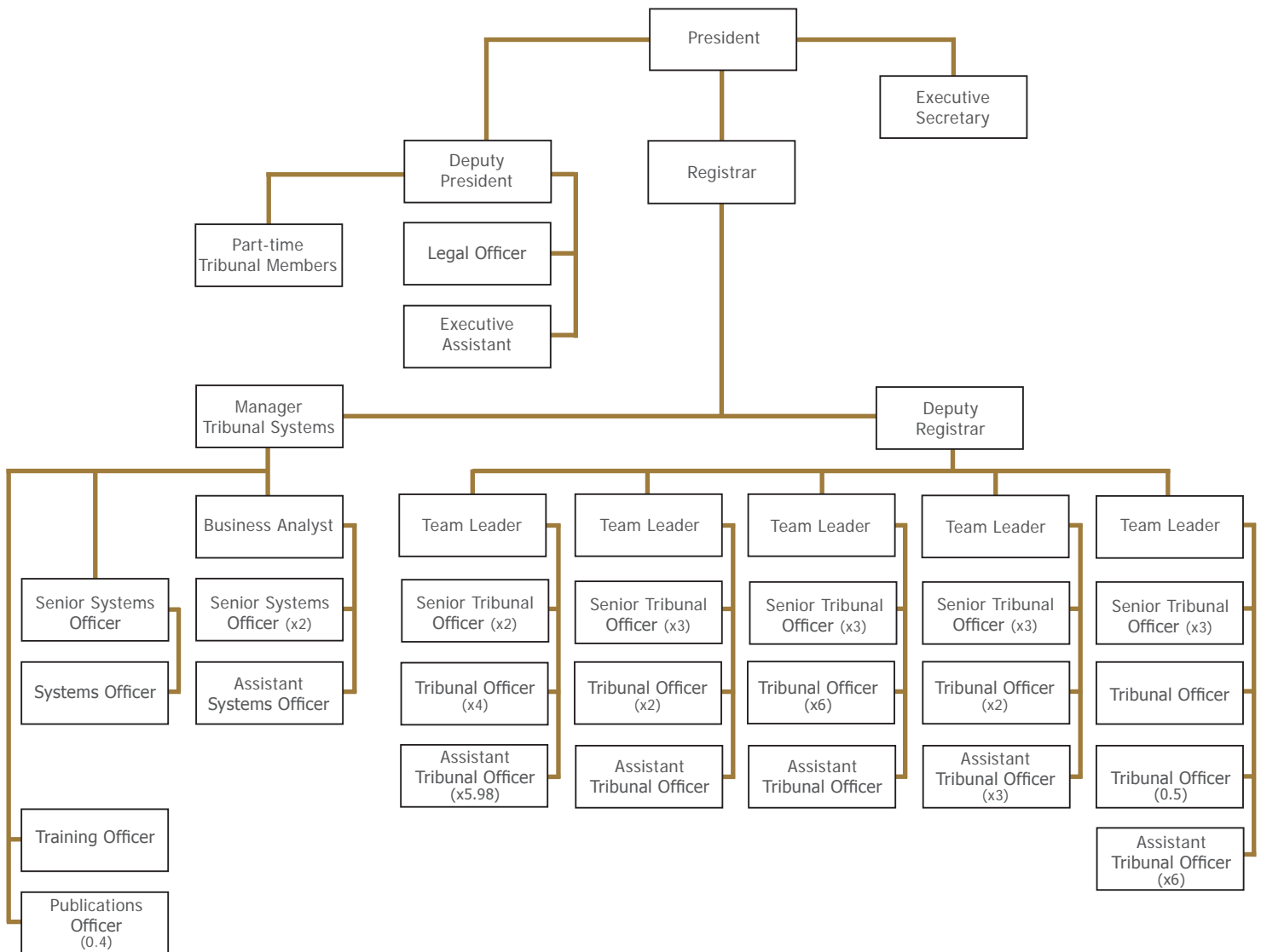
Appendix 2 **Tribunal members**

Appendix 3 **Definitions**



# Appendix 1

## Organisational chart



## Tribunal members

### Appendix 2



#### **Diane Robinson, President (to 25 February 2011)**

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, Acting President**

Malcolm was appointed Deputy President of the Guardianship Tribunal in October 2008. He is currently the Acting President of the Tribunal, having commenced that role in February 2011. He has previously been the Acting President of the Tribunal from May to September 2010.

Prior to his appointment in New South Wales, Malcolm was a part time legal member of the Guardianship Board of Tasmania and a member of the Forensic Tribunal (Tas). He was also 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.



**Bill Tearle, part-time Deputy President**

Bill, who has been a member of this Tribunal since 2004, was reappointed as a part-time Deputy President on 28 February 2011. He had previously been a part-time Deputy President for a four month period from May 2010.

Bill was admitted to legal practice in 1970. He is a current member (and former full-time Deputy President) of the Mental Health Review Tribunal. He is also a former member of the Consumer, Trader and Tenancy Tribunal, the Fair Trading Tribunal and the Residential Tribunal.

Bill has extensive experience of financial counselling and mental health issues, as well as senior management experience in both the public and private sectors. He has been a guest lecturer at Oxford University, and at several universities in Australia and New Zealand.



**Christine Fougere, part-time Deputy President**

Christine has been a part time legal member of the Tribunal since 2006. She was appointed as a part-time Deputy President for a four month period from May 2010.

Christine has considerable experience in discrimination, administrative and human rights law and practice. She is the Deputy Director of Legal Services at the Australian Human Rights Commission where she has worked for 12 years. Christine lectured in discrimination law at the University of Western Sydney for a number of years, worked for a human rights NGO in London and has worked in private legal practice both in the UK and in Western Australia. Christine was admitted as a solicitor of the Supreme Court of WA in 1994 and of the Supreme Court of NSW in 2001.

## Legal members

### **Robyn Bailey**

Solicitor and Mediator. Part time Member, Consumer Trader and Tenancy Tribunal. Mediator Workers Compensation Commission. Local Court arbitrator. Over 20 year's experience acting for people with acquired psychological and/or brain injury. Director of Explore Solutions Pty Ltd, a national alternative dispute resolution practice. Accredited specialist in personal injury law (NSW Law Society) and a member of the NSW Law Society's panel of mediators. Deputy Chair of the Board of Directors of the Brown Nurses, a Sydney based charity serving primarily those with mental illness.

### **Angela Beckett**

Solicitor and clinical psychologist. Experience in private legal practice and in a community legal centre. Extensive background in service provision to persons with a disability, including managing services for persons with an intellectual disability and developing a volunteer respite program for carers of persons with dementia. Qualifications and experience in alternative dispute resolution. Member of the Social Security Appeals Tribunal and the Consumer Trader and Tenancy Tribunal. Reviewer for the Office of the Legal Services Commissioner. Former Member of the Mental Health Review Tribunal, the National Disability Review Panel, Residential Tenancy Tribunal and the Child Support Review Office.

### **Rhonda Booby**

Solicitor who has had lengthy prior experience in a range of positions in corrections, including as a psychologist and administrator with responsibility for issues related to the welfare and rehabilitation of offenders, including those with disabilities. Ms Booby established the Restorative Justice program in NSW Corrections and is the legal member of the Justice Health Human Research and Ethics Committee.

### **The Hon. Jennifer Boland**

Jennifer Boland was admitted as a solicitor in 1982. She became a partner in the firm Corrs Chambers Westgarth. Between 1998 and 1999 she was appointed as an Acting judge of the District Court of New South Wales. In 1999 she was appointed a Judge of the Family Court of Australia, and in 2004 was appointed a member of the Appeal Division of the Family Court of Australia. On her retirement from the Court in February, 2011 she was appointed Adjunct Professor of Law at the University of Sydney. She is the past Chair of the Family Law Council, a former member of the Legal Services Tribunal, and the Legal Profession Advisory Council.

### **Antony Carpentieri**

Solicitor. Established a private practice in Liverpool and has worked as a sole practitioner and commercial mediator. Has a physical disability. Member of NSW Medical Board and Member of the Management and Advisory Committees of the Institute of Medical Education and Training.

### **John Cipolla**

Solicitor. 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.

### **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, clinical psychologist and consultant. Experience in private legal practice and in managing the provision of legal services in public companies. Extensive background in working with adults with mental health disorders or intellectual disabilities. Former statutory guardian at Victorian Office of the Public Advocate. Director of Diversity Council Australia. Inaugural Chair of Steering Committee of NSW Cancer Council's Legal Referral Service.

### **John Currie**

Solicitor and University Lecturer; Partner, Henry Davis York Lawyers, Sydney. Non-Presidential Judicial Member of NSW Administrative Decisions Tribunal sitting in the Legal Services Division. Adjunct Professor of Law, University of Sydney. Over 30 years as a solicitor in the specialised field of Financial Market Regulation, as well as practising in relation to Personal Investment Law, Estates, Financial Services and Administrative Law. Author of major text on Financial Market Regulation. Deputy Chair of Lawyers' Assistance Programme, Inc. Former Councillor of Law Society of NSW and Chairman of Law Society the Powers of Attorney Task Force, Country Members' Assistance Programme, and Business Law Committee.

### **Jennifer D'Arcy**

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

### **Catherine Donovan-Holm**

Solicitor. Previously engaged as a solicitor with Legal Aid Queensland and over 10 year's experience in developing and implementing legislation and policy including for people with a disability. Member of the Guardianship Tribunal since February 2007 and part time member of the Consumer Trader and Tenancy Tribunal.

### **Robert Green**

Solicitor with over thirty year's 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 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.

**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.

**Anthony 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. Director of the Professional Program and Clinical Lecturer in the School of Law at the University of Newcastle.

**Carol McCaskie, AM**

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. Has a Masters Degree in Law majoring in Dispute Resolution.

**Jillian Moir**

Qualifications in law and psychology. Many years experience as a conciliator/mediator in various jurisdictions. Currently a part time legal member of the Social Security Appeals Tribunal, member of the Veterans Review Board and member of the Housing Appeals Committee (since February 2010). Specialist mediator for the NSW Administrative Decisions Tribunal, the NSW Department of Fair Trading (Strata Mediation Panel), and conciliator at the Health Conciliation Registry, as well as an accredited Family Dispute Resolution Practitioner.

**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.

**Jan Redfern**

Solicitor, with over 27 year's legal experience in private practice and the public service. Former partner of Hunt & Hunt Lawyers and member of various professional and conduct committees. Former Executive Director with the Australian Securities & Investments Commission and Fellow of the Institute of Chartered Secretaries.

Part time Senior Member of the Commonwealth Administrative Appeals Tribunal, and consultant with law firm the Allygroup.

**Tracy Sheedy**

Ms Sheedy was admitted as a Solicitor of the Supreme Court of NSW in 1987. She is currently working as a Conference Registrar at the Administrative Appeals Tribunal, Member of the Consumer Trader and Tenancy Tribunal (part time) and a Member of the Mental Health Review Tribunal (part time). She was formerly a Member of the Social Security Appeals Tribunal. Ms Sheedy has an extensive background in the area of child protection law and alternative dispute resolution.

**Desmond Sheehan**

Solicitor, qualified with Bachelor of Laws from University of Queensland. Admitted to practice originally in Queensland. Later admitted to practice in 1975 in NSW, and worked for the NSW Wales Legal Aid Commission (and its predecessors) in criminal law, family law, administrative law, and civil law in residential tenancy, residential parks and retirement village litigation, as well as a solicitor/advocate in applications to the Protective Division of the Supreme Court. Former member of NSW ministerial consultative committees involving reform of legislation for residential tenancies, residential parks and retirement villages. Previously a full-time member of the Residential Tenancies Tribunal and its successors from 1997 to 2005. Currently a part time member of the Consumer, Trader and Tenancy Tribunal.

**Bernard 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. Current Director and Past 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. Assessor with the Towards Healing project of the Professional Standards Office of the Catholic Church. Accredited LEADR-trained mediator.

**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 Rights Service and the Legal Aid Commission of NSW. A current presiding chairperson and member of the Housing Appeals Committee.

**Jennifer Whelan**

Admitted as a solicitor of the Supreme Court of NSW in 1991. Received an unrestricted practising certificate in 1999. Between 1991 and 2003, Ms Whelan worked as a solicitor in private practice, and later at the Human Rights and Equal Opportunity Commission, as it was then known. From 2003 to July 2010 Ms Whelan worked as a private consultant, researching and advising in the area of discrimination and human rights education. Ms Whelan returned to working as a senior lawyer at the Australian Human Rights Commission in July 2010.



## Professional members

### David Barker

Mr Barker is an accredited social worker working in an independent counselling, social work and psychology business on the South Coast of NSW. He is also a Part-Time Member of the Social Security Appeals Tribunal, a past authorised visitor at the NSW Trustee and Guardian, a contract counsellor and group program facilitator with the Veterans and Veteran's Families Counselling Service, authorised clinician with the NSW Children's Court Clinic and an accredited mental health worker with WorkCover NSW, Medicare Enhanced Primary Care and the Medicare Mental Health Care Program.

### 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. Extensive experience in mental health assessments and working with consumers, their families and support networks.

### Michelle Chapman

Senior psychologist and Regional Manager with NGO Disability Services Australia. Close family member with a congenital sensory disability. Experience and expertise in behaviour intervention and assessment for individuals with disabilities and dual diagnosis. Works with children, adolescents and adults who display challenging behaviours and at risk behaviours in school, respite, community access, accommodation and workplace settings and supports families through consultation and advocacy.

### Helen Creasey, AM

Dr Creasey is a geriatrician and neurologist of 30 year's standing with experience in age related brain disorders including dementia, stroke, Parkinson's disease. Her work has included clinical practice, teaching, research and service development.

### 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 psychologist/neuropsychologist with extensive experience providing services to individuals who have suffered traumatic brain injury and their families. Experienced in adult rehabilitation in hospital and community settings and assessment of people with dementia and other acquired brain impairments.

### Sabina Holldack

Dr Holldack obtained a Bachelor of Physiotherapy from the University of Queensland in 1988. In 1993, she obtained a Bachelor of Medicine & Bachelor of Surgery from the University of Tasmania and a Bachelor of Medical Science in 1990. Dr Holldack has worked in Mental Health since 1998, including many years of employment as a Psychiatry Registrar in the public hospital sector. She is currently employed part-time as Career Medical Officer at Wesley Private Hospital in Ashfield, which provides inpatient treatment for eating disorders, affective disorders and psychotic disorders, personality disorders and drug and alcohol detoxification.

### 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.

### Gail Jamieson

Dr Jamieson is a specialist geriatrician, currently working in private practice. Main practice focus is community care, providing comprehensive geriatric assessments, with interests in dementia, frailty, and advanced care planning.

### Susan Kurrle

Geriatrician. 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.

### Marie Matheson

Ms Matheson has both a Bachelor of Arts (Psychology) and a Master of Arts (Clinical Neuropsychology). She also has an Associate of Education, a certificate in ADR Mediation Training from Harvard University, and has completed a Masters Qualifying Course in Clinical Psychology. Ms Matheson has a lengthy employment history in clinical psychology and clinical neuropsychology, most recently was employed by the Family Court of Australia providing child-focussed interventions in respect of pre-trial and post-trial stages of court proceedings. She is a member of the Australian Psychological Association and a member of the College of Clinical Neuropsychologists. She was a recipient of a Churchill Fellowship following her work in the area of brain injury rehabilitation.

### Meredith Martin

Special educator. Experience includes direct service, teaching and management in university settings, disability and community services and education. Current work includes part time lecturer at Sydney University in School of Education and Social Work, and consultant assessing and supporting people with complex needs including challenging behaviour and mental health issues.

**Jane McAuliffe**

Ms McAuliffe obtained a Bachelor of Arts (Honours in Psychology) in 1983, a Master of Arts (Clinical Neuropsychology) in 1986 at the University of Melbourne and is currently undertaking a Doctor of Psychology (Clinical Neuropsychology) at Macquarie University. She has worked as a Clinical Neuropsychologist since 1987 in both private and public health settings and is currently employed as a Clinical Neuropsychologist at Hornsby Kuring-Gai Hospital and at Mt Wilga Private Hospital. Ms McAuliffe is a Registered Psychologist, and a Member of the Australian Psychological Society and the College of Clinical Neuropsychologists.

**Robyn McCarthy**

Geriatrician. Staff specialist, Aged and Extended Care Department, Concord Hospital. Experience in Geriatric Medicine in community as well as hospital inpatient settings.

**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, Hornsby Kuring-Gai Hospital. Experience in the assessment of stroke, dementia and epilepsy. Special interest in mental capacity.

**Tony Ovardia**

Clinical psychologist with over 40 year's 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 medico legal 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. Member of the Mental Health Review Tribunal. Published in the field of pre-senile dementia. Extensive current experience in all areas of general practice including: women's health, chronic disease management, management and assessment of dementia and treatment of mental health problems. Family experience in a wide variety of disabilities including physical disability, cognitive impairment and mental health disorders.

**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.

**Susan Thompson**

Family psychiatrist with over 15 year's 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.

**Lizabeth Tong**

Principal clinical psychologist for Sydney and Sydney South West Local Health Districts and authorised court clinician with the NSW Department of Attorney General and Justice. Current member of the NSW Psychologist's 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.

**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 at 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.

**Melanie Wroth**

Geriatrician. Working as Staff Specialist in Aged Care at Balmain and Royal Prince Alfred Hospitals. Consultant to Medical Board of Australia (previously NSW Medical Board), sitting as Panel or Committee Member in Performance Assessment, Professional Standards Committee and other hearings. Occasional Member of Medical Tribunal. Clinical tutor and examiner of medical students at University of Sydney and University of Notre Dame. Examiner with Australian Medical Council.

**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.

**Rhonda Ansiewicz**

Advocate for people with intellectual disabilities. In private practice working with people with mental illness. Chairperson of the Mullumbimby Neighbourhood Centre and a Board member of the Winsome Soup Kitchen, a hotel for homeless people in Lismore. Advocate and provides support for people with locked-in syndrome.

**Andrew Barczynski**

Social worker. President of a community agency providing a range of services; information and referral for culturally and linguistically diverse background ageing people. Extensive work history in disability employment, advocacy and complaint services. Family experience of disability. Employed in Community Programs Section (NSW/ACT) of Department of Families, Housing, Community Services and Indigenous Affairs.

**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 Circuitt**

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.

**Vanco Djoneski**

Advocate for people from non-English speaking backgrounds with all types of disability. Personal experience of accessing the human and disability service system. Extensive experience in assessing needs for people with disability and networking with relevant services for solutions to their issues.

**Faye Druett, OAM**

Long-standing involvement in the disability and guardianship sectors. Lived experience of disability. Worked in federal and state governments, and the non government sector in service provision, policy development and management and administration of legislation.

**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.

**Catherine Gerloff**

Ms Gerloff is the mother and carer of a 32 year old daughter with Downs Syndrome. Ms Gerloff has had extensive experience in advocating, supporting and lobbying for services and support for people with disabilities. Ms Gerloff was a member of the foundation committee and first president of Macarthur Disability Services in South West Sydney. She is a current Director on the Board of Management of Macarthur Disability Services. Ms Gerloff held a range of senior positions in the NSW Public Service. She holds a Bachelor of Education and is a registered family dispute resolution practitioner.

**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. Ms Gill is a Consumer member of community advocacy and disability organisations.

**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. Former Deputy Director of Mental Health Service at St Vincent's Hospital Sydney. Extensive experience in mental health, alcohol and other drug and co-occurring mental health/AOD disorders and HIV/AIDS. Family experience of dementia.

**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.

**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.

**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 persons with a disability. Former quality assessor in aged care services in New South Wales. Family experience of dementia and mental illness. Currently working as a senior investigator with Community Services.

**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 Chief Executive Officer 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.

**Robert Zoa Manga**

Dr Manga's qualifications include Bachelor of Medicine, Bachelor of Surgery, Beijing Medical University; MPH, MHSM, University of New South Wales, and he is a current PhD student, Sydney University. Robert is President of Spinal Talk Inc, a support group for people with spinal cord injury, Vice-President of People with Disability Australia, Member Reference Group of Sydney University Faculty of Health Sciences Australian ICF Disability & Rehabilitation Research Program.

**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 of NSW, Professor of Indigenous Education and Director of Jumbunna Indigenous House of Learning at the University of Technology, Sydney. Adjunct Professor in Indigenous Education at the University of Western Sydney. Former member of the NSW Mental Health Review Tribunal and NSW Administrative Decisions Tribunal. Family and social experience of people with disabilities, including dementia, alcohol-related brain damage, intellectual disability and HIV/AIDS.

**Kathleen McLean**

Parent of son with developmental disability. Family experience of dementia. Engaged with multiple disability associations. Interested in protecting the rights of individuals with intellectual disabilities. Qualified accountant with over 15 years of experience.

**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.

**Lyn Porter**

Parent of a child with a disability. Previously worked in the areas of child protection, sexual assault and domestic violence. Currently appointed as an Official Community Visitor. Qualifications in Social Science.

**Catherine Quinn**

Doctor of Social Work. Extensive experience in aged care and with people with dementia and their families.

**Margaret Smith**

Dr Smith is a community psychologist who has personal and family experience of bipolar disorder and depression. She has been a member of numerous government and community advocacy and policy groups in the mental health and disability areas since 1980. Meg is currently president of the Mental Health Association of NSW.

**Margaret Spencer**

Social worker. Project Officer at Intellectual Disability Rights Service and Honorary Research Fellow in the Australian Family and Disability Studies Research Collaborative (AFDSRC) at the Faculty of Health Sciences, University of Sydney. Previous experience providing health and welfare services to marginalized individuals in the inner city of Sydney. Doctoral research on the needs of parents with intellectual disability. Family and social experience with people with disability.

**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 and 22 years in disability services. Worked for 22 years in the guardianship sector. Former member with 12 years experience on the Social Security Appeals Tribunal. Former Official Visitor under the Mental Health Act 2007. Current Member of the Queensland Civil and Administrative Tribunal since appointment in 2002. Currently working with acquired brain injury and spinal cord injury patients through injury management.

**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 and Guardian.

**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.

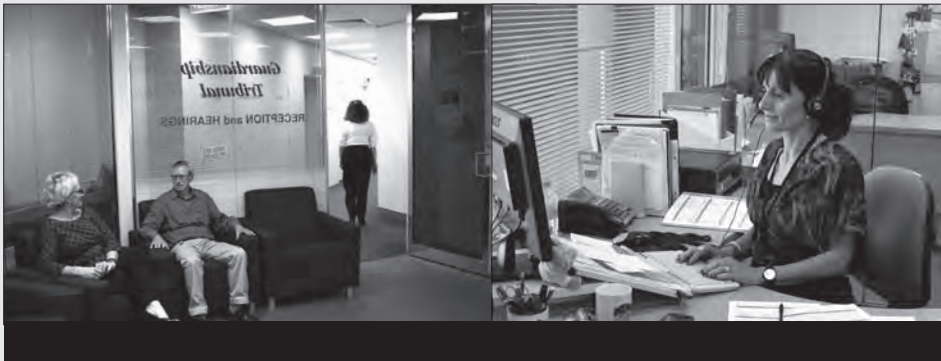
**Tribunal ordered review of financial management order** the Tribunal can order that a financial management order be reviewed within a specified time. However, the order can be revoked only if the person regains the capability to manage their own affairs or if the Tribunal is satisfied that it is in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