

*Guardianship  
Tribunal*



Annual Report  
2007/2008

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

## Principles guiding the Tribunal

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

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

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**Guardianship Tribunal**  
**Level 3, 2a Rowntree Street**  
**(Locked Bag 9)**  
**Balmain NSW 2041**

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# Letter to the Minister

## *Guardianship* *Tribunal*

The Hon. Paul Lynch MP  
Minister for Ageing  
Minister for Disability Services  
Level 32, 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 2008.

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

Yours sincerely,



Diane Robinson  
President  
10 October 2008

# *Guardianship Tribunal*

## Achievements and future directions

### 2007/2008 achievements:

#### We have:

- finalised 8338 matters and conducted 4829 hearings;
- improved our system for Tribunal member performance appraisal and support and continued development of a new Tribunal Member Manual;
- implemented a new management structure with a new Registrar commencing in July 2007;
- introduced several initiatives to support staff, including a monthly staff seminar program, a quarterly staff bulletin and the development of a Tribunal intranet;
- implemented the *Guardianship Amendment Act 2007* which commenced on 1 August 2007 and provided for the Tribunal to be constituted by fewer than three members;
- operated a special project team for three months to facilitate the finalisation of approximately 840 matters;
- undertaken and completed an extensive review and development of our most frequently used application forms for guardianship, financial management and medical and dental consent;
- worked with the Government Chief Information Office to develop a Guardianship Service Domain Hub which will provide an information technology solution for improved information exchange with the Office of the Public Guardian and the Office of the Protective Commissioner.

### Looking ahead - initiatives for the coming year

#### We will:

- continue to support the Discovering Australian Guardianship Law project being conducted by Macquarie University to create a web based database of decisions by guardianship authorities;
- continue to work with the Government Chief Information Office in the development of the Guardianship Service Domain Hub;
- introduce a new health professional's report form to assist medical and other health professionals in providing information to the Tribunal;
- continue to review our case management procedures and explore avenues for improved differential case management of applications to the Tribunal;
- implement a Memorandum of Understanding between the Department of Ageing Disability and Home Care (DADHC), the Office of the Protective Commissioner and the Tribunal to effectively manage applications for DADHC clients who require formal financial management arrangements;
- manage the induction, training and mentoring of new Tribunal members recruited in 2008.



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## President's report



For almost 20 years the New South Wales Guardianship Tribunal has safeguarded the rights and welfare of people with decision making disabilities by providing an effective, fair and accessible legal process to facilitate substitute decision making on their behalf. When the Tribunal first began, the majority of its clients were people with an intellectual disability. Now 62% of applications made to the Tribunal concern people aged 65 and over and almost 50% of the people for whom the Tribunal makes orders are people living with dementia or other age related disabilities.

In April 2008 the New South Wales Government released *Towards 2030: Planning for our changing population*, a whole of government strategy to plan for demographic change. Linked to the *NSW State Plan*, this document identifies five key strategies which emphasise planning for change, improving prevention and early intervention, providing quality care and maintaining a productive, skilled and adaptable workforce. This Plan will assist government to prepare for and manage the ageing of our population.

In keeping with the *Towards 2030* strategies, the Guardianship Tribunal is preparing and planning for the impact of the ageing population. The Tribunal must manage its changing workload while ensuring that the quality of the service it

delivers, as a specialist disability tribunal, is maintained and nurtured. Significant work has been undertaken by the Tribunal in the 2007/2008 financial year to achieve that end.

### **Tribunal membership**

The Tribunal relies on its dynamic, expert and dedicated membership to meet its present and future challenges. To provide a quality service and maintain a productive Tribunal workforce, members' experience and understanding of people with disabilities must be complemented by their skills and effectiveness as quasi judicial decision makers.

During this year the Tribunal revised and revitalised its systems and procedures for the support of Tribunal members. The Tribunal has a *Member's Code of Conduct*. This year guidelines for dealing with performance issues and an improved system for performance appraisal of members were devised and, in consultation with members, finalised.

The Tribunal's approach to the reappointment of members is now managed, in part, through an open recruitment process. Members must test their eligibility for ongoing appointment through a merit based recruitment process after a relevant period of service.

The Tribunal advertised for new members at the beginning of 2008. Several existing members



sought a further term of appointment through this process and many were successful. In addition new Tribunal members were recruited across the three categories of membership.

The professional development programme for Tribunal members continued with sessions for all Tribunal members and specialist sessions for legal members. Our training program is important in maintaining members' legal and clinical expertise in the guardianship jurisdiction as well as facilitating the sharing of ideas and experience and promoting consistency in decision making across the Tribunal.

In 2007/2008 additional training was provided to Tribunal members to prepare them to sit as single member tribunals. This change followed the passage of the *Guardianship Amendment Act 2007* which came into effect on 1 August 2007. On that very day the first single member tribunal panel was convened and since then a considerable number of 'single member' reviews and medical consent hearings have been successfully conducted.

During this year the Tribunal Members Consultative Committee met regularly to act as a conduit for information between the members and management of the Tribunal. I would like to personally thank all members of the committee for their contribution to the development and finalisation of a range of protocols and procedures relating to the Tribunal membership.

I would also like to thank Ms Robin Gurr for her service and commitment to the Tribunal. Ms Gurr's term as Deputy President of the Tribunal came to an end on 30 June 2008. Her energy and efficiency were a vital ingredient in the Tribunal being able to revitalise many of its member related procedures. Her determination and dedication made her a valuable asset for both staff and members. Recruitment for a new Deputy President was undertaken in mid 2008.

### **Tribunal staff**

New arrangements for the leadership, management and support of the Tribunal's staff have allowed the Tribunal to make substantial progress in planning for the changes associated with our ageing population and in maintaining a productive, skilled and adaptable workforce.

Following the changes to the Tribunal's management structure last year, recruitment was undertaken for the position of Registrar. Ms Amanda Curtin was appointed as the Registrar of the Tribunal in July 2007. Ms Curtin was previously the Deputy Registrar at the Administrative Decisions Tribunal and has worked in the guardianship sector in both New South Wales and Queensland. In her first year with the Tribunal, Ms Curtin has made a significant contribution and has been responsible for driving many of the innovations and initiatives this year.

A new staff training program has been devised and implemented. Staff have also been supported to participate in external conferences and training programs. Communication with and between staff has been improved through a new staff bulletin and the introduction of the 'GT intranet.'

A considerable number of Tribunal policies and staff procedures have been reviewed and improved. The Tribunal's statistical reporting systems and records management system have been revised. Internal documentation has been rationalised and improved. The Tribunal has installed a new telephone system which has improved the facilities for staff as well as our service to clients, particularly those participating in Tribunal hearings by way of conference telephone link up.

### **Business processes**

To successfully adapt to the impact of the ageing population the Tribunal must also continuously review and improve internal work procedures and processes. Our processes must be smart, flexible and effective. They must support the Tribunal's staff to respond to enquiries, investigate



applications, schedule hearings and manage the hearing related needs of the person with the disability and other parties, in a timely and sensitive fashion. Considerable work was done in 2007/2008 to streamline the case management model traditionally followed by the Tribunal.

The Tribunal has also steered to completion a number of projects that began in earlier years. In particular, the Tribunal's new application forms have been in use for most of the year and have greatly assisted applicants to understand and manage the application process. The number of applications lodged with the Tribunal this year has remained stable, as compared to the previous financial year, and this is a reflection of the reduction in unnecessary applications, facilitated by the new application form.

The work which continues with the Government Chief Information Office will make possible the electronic transfer of information between the Guardianship Tribunal and the Public Guardian and the Protective Commissioner and so improve the tools staff have to manage their workload.

#### **A vote of thanks**

The support of our Minister, the Hon. Kristina Keneally, Minister for Disability Services and Minister for Ageing must be acknowledged. Minister Keneally has taken a very active interest in the work of the Tribunal and its staff and members. She visited the Tribunal during 2007/2008 to meet staff and launch the Tribunal's new application forms. She has provided invaluable support for the Tribunal's recent recruitment drive and programme of legislative reform. Minister Keneally has made a significant contribution to the disability sector and the Tribunal thanks her for her active and effective leadership.

The Tribunal also acknowledges the support of the Department of Ageing Disability and Home Care (DADHC). The Tribunal is funded to perform its work through the DADHC. While the Tribunal operates as an independent statutory body, our links with DADHC highlight the Tribunal's role as a specialist disability tribunal and assist in maintaining sound links and networks in the disability sector. In 2007/2008 the Tribunal spent \$8.7 million.

As always thanks must be accorded to the Tribunal's staff and members who work in a demanding and often challenging environment and do so with steadfast dedication, good humour and an unfailing commitment to the principles of the guardianship legislation and the welfare and best interests of people living with a decision making disability. I am very pleased, on behalf of the members and staff of the Tribunal, to present our annual report for the 2007/2008 year.

Diane Robinson  
President



## Who we are





## Who we are

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

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

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

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

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

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

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

To carry out its work, the Guardianship Tribunal has two full time members - the President and Deputy President; 74 part time tribunal members and 62 full time and part time administrative and registry positions.

### **The President and the Deputy President**

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



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

### **Tribunal members**

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

In most cases when a panel is convened to hear an application about a person with a decision making disability, it comprises a legal

(presiding) member, a professional member and a community member. The legal member must be an Australian lawyer of at least seven years standing. The professional member is a person such as a doctor, psychologist or social worker who has expertise and experience in the assessment or treatment of adults with disabilities. The community member has experience, often familial, with people with disabilities.

The multi-disciplinary panels not only ensure that the Guardianship Tribunal conducts its proceedings fairly, relies on credible evidence when making its determinations and remains within its jurisdiction but also that it focuses on the physical, psychological, social and emotional needs of the person the hearing is about. This enables the Tribunal to take a holistic approach to its decision making.

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



### **Staff of the Tribunal**

The Tribunal staff are full time and part time New South Wales public service employees who manage the day to day administration of the Tribunal and operate in accordance with DADHC policies and procedures. During 2007/2008 the Tribunal had 62 full time and part time permanent positions filled by 59.6 people. The organisational chart is found in Appendix No. 1.

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

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

- Client Information Services
- Coordination and Investigation
- Hearing Services
- Business Services and
- Executive Services.

The Client Information Services Unit delivers first tier triage for the organisation providing information to potential clients and the community about the role of the Tribunal, the application process and the range of informal solutions available as alternatives to an application. The Unit is responsible for registering incoming correspondence and applications and also manages publications and the community education program.

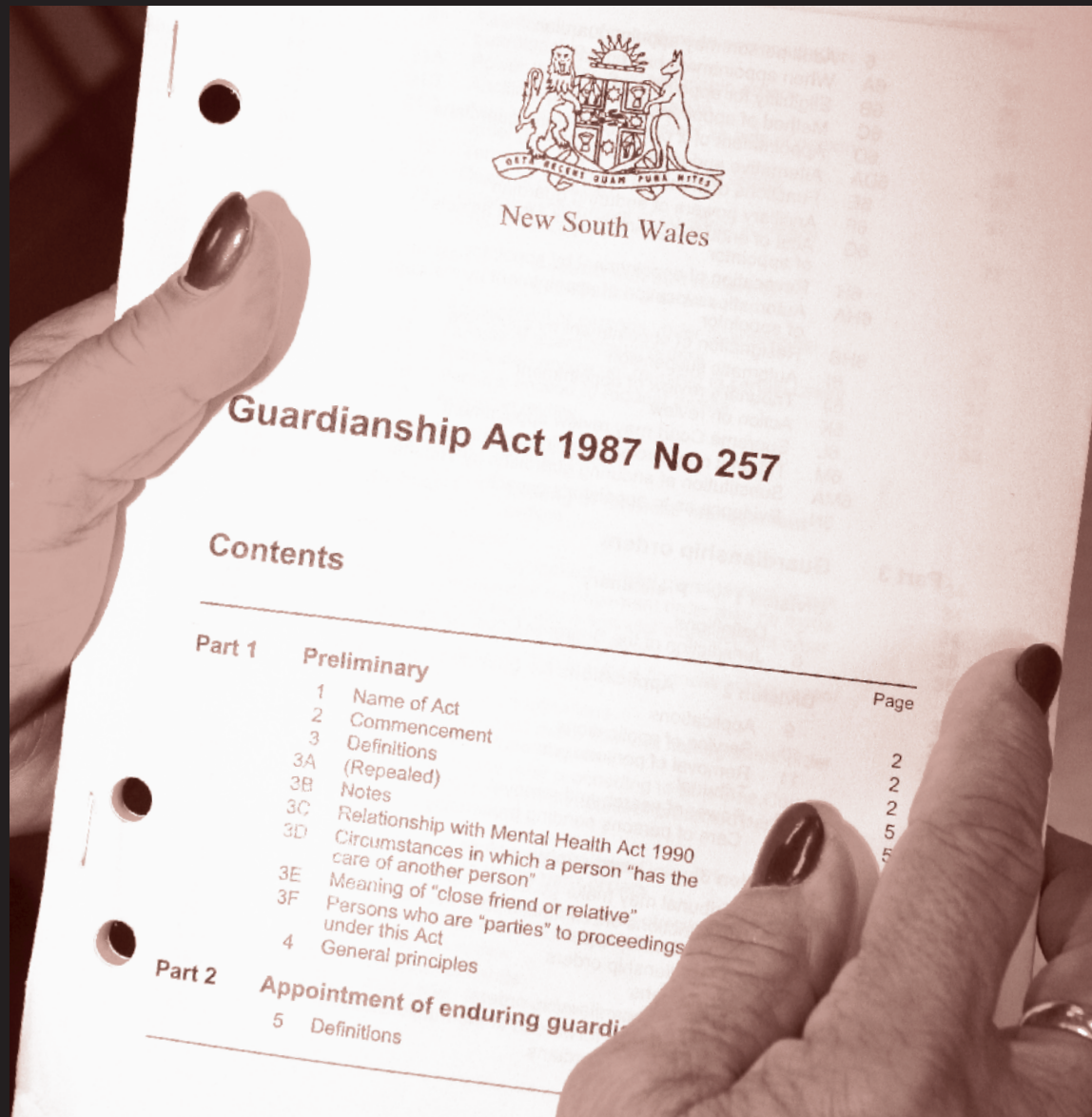
The Coordination and Investigation Unit undertakes an important case management role and assesses new applications for urgency and complexity. Staff investigate where necessary and prepare all new applications and review cases for the Tribunal by gathering information about the capacity and decision making needs of the person who is the subject of the application. Where appropriate staff assist with the informal resolution of matters which may result in an application being withdrawn prior to hearing.

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

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

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

# What we do





# What we do

## Our statutory role

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

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

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

The *Guardianship Regulation 2005* contains further provisions about enduring guardians and medical treatment and sets out the prescribed forms required by the *Guardianship Act 1987*.

*The principal role of the Guardianship Tribunal is to hear and determine applications for the appointment of guardians and financial managers for adults with decision making disabilities. The Tribunal can review the guardianship orders it makes and may review its financial management orders. The Tribunal can give consent to medical and dental treatment for people 16 years and over who are unable to consent to such treatment for themselves. The Tribunal also has jurisdiction to review enduring guardianship appointments and enduring powers of attorney.*

## Appointing guardians

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

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

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

## CASE STUDY (1)

### Mr Antonio -

#### Who can make an application to the Tribunal?

Mr Antonio is 91 years old, has severe dementia and has just moved to a nursing home. He has two daughters, Gina and Anna. Mr Antonio appointed Anna as his attorney under an enduring power of attorney.

Gina applied to the Tribunal for a financial management order for Mr Antonio. She disagrees with Anna about what should happen with Mr Antonio's house. Anna wants the house to be sold to pay the nursing home bond but Gina opposes this.

There have been major long term problems in the relationship between Gina and Mr Antonio. Anna told the Tribunal that when she first raised the idea of selling the house with Gina, she was extremely hostile to this idea and harassed and verbally abused Mr Antonio about it. Gina felt that she was entitled to make decisions about what should happen with the house because both she, along with Anna, would inherit it under Mr Antonio's will.

Anna gave the Tribunal a letter Gina had written to Mr Antonio in which she demanded a copy of keys to the house and threatened to move in there with her family, against Mr Antonio's wishes. In the letter, Gina said she did not care if Mr Antonio died in a nursing home, with the nursing home bond unpaid, as long as the house was not sold.

The Tribunal looked at the question of who has the legal right or 'standing' to make an application to the Tribunal for a financial management order. The *Guardianship Act 1987* says that an application can be made by any person with a 'genuine concern for the welfare' of the person to whom the application relates.

*The Tribunal decided that this means that the applicant has to have a genuine concern for the welfare of the person in relation to the subject matter of the application to the Tribunal.*

The Tribunal said that on the one hand, it is important that members of the community are encouraged to make applications for people who may need the protection of the *Guardianship Act 1987*. On the other hand, an application itself can be intrusive on the life and rights of the individual.

In this case the Tribunal found that Gina did not have 'standing' to make an application to the Tribunal for a financial management order in relation to her father. The Tribunal decided that Gina did not have a genuine concern for Mr Antonio's welfare in relation to her application to the Tribunal. Instead the Tribunal found that Gina's very negative relationship with her father and the conflict between her interests and his interests meant that she was not sincere or motivated by a desire to advance her father's interests in making the application. Gina's application was dismissed and no orders were made by the Tribunal.



### **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 their own affairs, needs to have a formal management order and such an order is in their best interests. This situation 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 and the nature of their financial circumstances means that someone needs formal legal authority to manage their affairs, or where there is family conflict about what is in the person's best interests.

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

### **Consenting to medical and dental treatment**

The Act provides for substitute decision making in relation to medical and dental consent for those persons 16 years and above who are unable to give informed consent to their own treatment. It establishes the hierarchy of 'person responsible'. A 'person responsible' may be a guardian, (including an enduring guardian, with the necessary authority) spouse, carer, or close friend or relative. A 'person responsible' is able to give substitute consent for medical and dental treatment without the need for a formal guardianship order.

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

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

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

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

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

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



## Reviewing enduring powers of attorney and enduring guardianship appointments

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

Many applications involve intricate factual situations and complex legal issues due to the increased complexity in the nature and extent of people's financial arrangements, the use of complicated financial structures and issues concerning superannuation, investments and property.



### Enduring Powers of Attorney

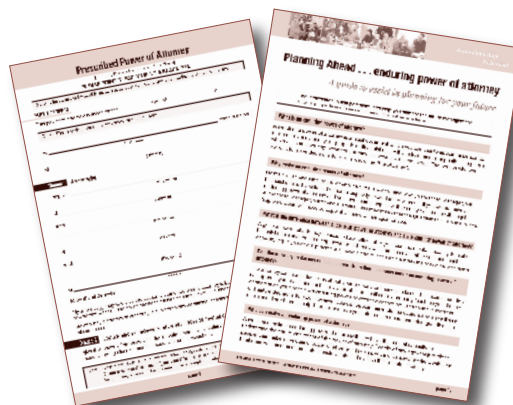
The Tribunal has jurisdiction under the *Powers of Attorney Act 2003* to review and vary an enduring power of attorney.

The Tribunal can make a range of orders concerning the making or operation and effect of an enduring power of attorney. For example, on reviewing an enduring power of attorney, the Tribunal can make orders which:

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

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

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

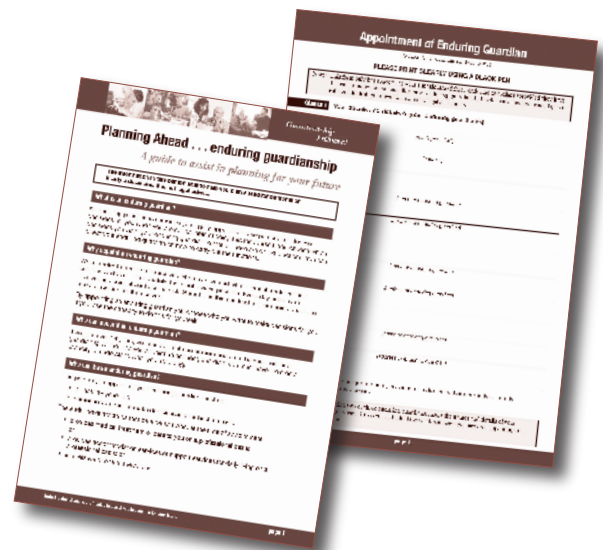


## Enduring Guardianship

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

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

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



## CASE STUDY (2)

Chrissie -

### **Drugs, alcohol, mental illness and guardianship - a complex case with a good outcome**

A year ago, the Tribunal made guardianship and financial management orders for Chrissie who is a gifted young woman in her mid twenties who has been diagnosed with schizophrenia.

At the time the Tribunal made the order, Chrissie lived alone in a rented flat. She had been admitted involuntarily to psychiatric hospitals and had had difficulty complying with her prescribed medication. The management of Chrissie's mental illness was significantly compromised by her involvement in the drug and alcohol scene which was endemic to the area where she lived. Although she had previously been enrolled in an art course and had managed her life well, this had changed by the time of the Tribunal hearing. Both her health and her finances were at risk. She was not eating regularly and lived in an unclean and unhealthy environment. Her money was spent on drugs and alcohol or had been given away to neighbours or spent on charity donations which she could not afford.

Chrissie did not want a guardian or financial manager to be appointed for her. She told the Tribunal she did not have schizophrenia but had depression. She did not want to move away from where she lived or from her friends. She was adamant she did not need any help and thought she could make her own decisions.

The Tribunal appointed Chrissie's mother and father as her guardians for twelve months with the power to make decisions about their daughter's accommodation, services and medical care. Her father was appointed as her financial manager.

A year later the Tribunal reviewed the orders it had made for Chrissie. By this time, with the support of her guardians, Chrissie and her boyfriend Shane had moved to a country town quite a distance from where she had previously lived. The community was very accepting of people with mental illnesses and had a range of services and mentoring support for carers.

The Tribunal was told that Chrissie's situation had improved immensely since she had moved. Chrissie was seeking to address her mental health and drug and alcohol issues in a residential Hospital Rehabilitation Program in which she had been participating for four months. She was to be discharged on a Community Treatment Order into the local community. Chrissie told the Tribunal that things had been going well for her and she had settled into the country.

Shane, Chrissie's parents and her mental health workers wanted the guardianship order to continue. They said they wanted to build on what had happened in the previous twelve months as it was still early days. They were concerned about the long term and the risk that Chrissie may fall back into a drug dependent situation.

*The Tribunal renewed the guardianship order for twelve months with Chrissie's parents to continue as her guardians. The order gave Chrissie the support she needed to progress her rehabilitation at this crucial point in her recovery. It was also helpful for Shane and Chrissie's relationship as Shane could defer to Chrissie's parents in relation to critical decisions.*

## CASE STUDY (3)

### Mrs Edwards -

#### **Making decisions as an enduring guardian and attorney**

Mrs Edwards has Huntington's Disease, which was diagnosed about seven years ago. She is 52 years old and lives in her own home with her teenage son Craig, her daughter Anna and Anna's baby daughter.

Mrs Edwards also has a brother Peter, who lives some distance away but keeps in close touch with her.

Mrs Edwards appointed Anna as her enduring guardian and authorised her to make a range of lifestyle and medical decisions for her, including decisions about where she should live. Anna is also her mother's attorney under an enduring power of attorney.

Mrs Edwards is in contact with the Huntington's Outreach Program. Her Key Worker, Janine, has made an application to the Tribunal for a guardianship order, a review of the enduring guardianship appointment and a review of the enduring power of attorney.

Janine says a decision needs to be made about Mrs Edwards moving to a residential facility and about what is to happen to her home. She says that this is too difficult a decision for Anna to make because of her closeness to her mother. She believes Anna may not want to make a decision with which her mother disagrees. There is also a 'conflict of interest' in relation to the house because Anna and Craig live there without paying any rent and this might affect Anna's decision about where Mrs Edwards should live and what to do with the house.

Anna would like to continue to make decisions for her mother but agrees the accommodation decision is very hard for her to make. If her mother does enter a residential facility, Anna would like to stay in the house under a tenancy agreement.

Mrs Edwards says she would like Anna to make decisions for her and would like her children to continue to live in the house.

In this case, the Tribunal made a twelve month guardianship order appointing two guardians. The Tribunal decided it was in Mrs Edwards' best interests to appoint Peter as guardian to make decisions about her accommodation and Anna as guardian to make health care and medical decisions for her mother.

The Tribunal also reviewed the enduring power of attorney and replaced Anna with Peter as the attorney. This meant he could decide what should happen with the house and could, if he considered it to be in Mrs Edwards' best interests, enter into a tenancy agreement with Anna and Craig so that Anna, her daughter and Craig could continue to live in the house.

*The decisions made by the Tribunal allowed Mrs Edwards' wishes to be respected and her best interests to be protected.*

## How we work





## How we work

Proceedings before the Guardianship Tribunal are about whether a person with a decision making disability needs a substitute decision maker and, if so, what powers or functions that substitute decision maker should have. They are about an individual's right to continue to make his or her own decisions.

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

The protective framework within which the Tribunal operates underpins the work of both the staff and members. Anyone with a genuine concern for the welfare of a person who is incapable of making their own decisions can apply to the Guardianship Tribunal. Staff of the Tribunal provide information to the applicant about the evidence the Tribunal will need to consider in making a decision about the application and actively investigate and gather information to prepare the application for hearing by the Tribunal.

The Guardianship Tribunal does not follow an adversarial approach to its decision making and instead uses more inquisitorial methods.

### Our principles

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

- give the person's welfare and interests paramount consideration
- restrict the person's freedom of decision and freedom of action as little as possible
- encourage the person, as far as possible, to live a normal life in the community
- take the person's views into consideration

- recognise the importance of preserving family relationships and cultural and linguistic environments
- encourage the person, as far as possible, to be self reliant in matters relating to their personal, domestic and financial affairs
- protect the person from neglect, abuse and exploitation, and
- encourage the community to apply and promote these principles.

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

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

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

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

urgent applications need to be heard outside normal business hours. Hearings may also be conducted via video conferencing.

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

during the hearing. The Tribunal will, as soon as possible after the hearing, send the Order and Reasons for Decision to the parties.

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

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## 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 guardians and for the review of those appointments where necessary.

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

The *Protected Estates Act 1983* sets out how financial management orders can be made by the Supreme Court, Magistrates and the Mental Health Review Tribunal. The *Protected Estates Act 1983* sets out the powers of the Protective Commissioner 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.

The *Children and Young Persons (Care and Protection) Act 1998* gives the Tribunal jurisdiction to consent to special medical treatment, such as sterilisation, for children and young people under 16 years of age.



## Legislative changes since 1 July 2007

### **Amendments to the *Guardianship Act 1987* - Increasing the Tribunal's flexibility**

In the previous financial year, the *Guardianship Amendment Act 2007* amended the *Guardianship Act 1987*. The amendments were passed in the previous financial year but did not commence until 1 August 2007.

The amendments bring about four major changes to the *Guardianship Act 1987*:

1. Tribunal members can be appointed for a maximum term of five years.
2. Revision of the criteria which must be met before the Tribunal can make a non reviewable guardianship order.
3. Allowing the Tribunal to be constituted by one, two or three members when hearing reviews of guardianship or financial management orders, applications for consent to major medical or dental treatment and certain procedural matters.
4. The role of the Registrar of the Tribunal is clarified and expanded.

These amendments facilitate a number of changes to the processes and procedures of the Tribunal to assist us in managing our workload, and appropriately allocating resources.

### **The *Mental Health Act 2007***

The *Mental Health Act 1990* was repealed this year by the *Mental Health Act 2007* which commenced on 16 November 2007.

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

Guardians may now request the voluntary admission of persons under guardianship to psychiatric hospitals without needing to obtain the approval of that application by the Tribunal. The Tribunal therefore no longer has jurisdiction to approve such admissions.







## External influences on work of Tribunal

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

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

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

- participating in DADHC's Planning for Later Life forum and sub committees
- participating in the New South Wales Government's Ageing 2030 consultations and roundtable held in October 2007
- presenting papers at the Association of Gerontologists Elder Abuse Symposium and the New South Wales State Legal Conference
- presenting on the role of the Tribunal in elder abuse cases for the Elder Law and Succession Committee of the Law Society
- providing community education to a range of aged care service providers including residential facilities, community based aged care package providers, aged care assessment teams and hospital based geriatric teams, dementia specific organisations, aged care rights services and aged care monitoring bodies.

Policy change in the corporate and community sectors can create unexpected demand for the Tribunal's services. Two examples this year involved the banking sector and a major aged care provider.

A major bank has advised that it now requires a power of attorney or a financial management order to open an account or replace a signatory where an adult client is not capable of doing this personally. It is anticipated that this policy change will result in an increase in both enquiries and applications to the Tribunal.

A major aged care provider has also amended its policy on the management of residents' finances this year. The change has affected residents in a number of Sydney based residential facilities and resulted in approximately 50 financial management applications being made in response to this provider's policy review.

### **Increased awareness of capacity issues**

This year saw the release of a valuable new resource from the Attorney General's Department, the *'Capacity Toolkit'*. The Tribunal was represented by the Deputy President, Robin Gurr, on the Capacity Reference Group that contributed to the development of this resource. The toolkit grew out of wide consultations, a roundtable and discussion paper all of which identified a need for more information about capacity principles and how to assess a person's capacity.

The toolkit gives practical information and guidance to a range of professionals as well as family and friends of people with disabilities. Increased awareness of capacity issues leads to a greater awareness of the role of the Tribunal in this area and is likely to contribute to an increase in the number of matters being brought to the attention of the Tribunal either as enquiries or applications.

## Our Corporate Plan

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

The focus of the Corporate Plan is to 'develop and implement strategies that will ensure the provision of quality services in an environment of increasing demand.' We will be undertaking a review of our Corporate Plan in the new financial year.

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

We are committed to continually analysing and refining our work practices to respond to these demands without compromising our standard of service to people with disabilities.

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

- legislative review
- review of business processes, data management and use of technology
- review of our work environment
- supporting staff and Tribunal members
- improving community awareness.

In 2007/2008 the Tribunal made significant progress in all five areas.

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## Legislative review and reform

In 2007/2008, the Tribunal's program of legislative review continued with the *Guardianship Amendment Act 2007* coming into operation on 1 August 2007.

The amendments enable the Tribunal to sit one, two or three member panels to determine reviews of guardianship or financial management orders, applications for consent to major medical or dental treatment and certain procedural matters.

In the past year, the Tribunal has conducted training for Tribunal members to prepare them to sit as single member panels to hear selected review matters. The single member panels commenced hearing matters on 1 August 2007. Tribunal procedures have also been revised to accommodate this change and staff have played a vital role in assisting and facilitating the changes occasioned by the amendments.

The amendments also enabled the Registrar of the Tribunal to make a range of procedural decisions such as consenting to withdrawal of applications. This process has been implemented and the Registrar now deals with a considerable proportion of procedural matters before the Tribunal.

The Tribunal has also undertaken legislative review through the statute law revision program to amend the *Guardianship Act 1987* to enable more than one Deputy President to be appointed and for Deputy Presidents to be appointed on a part time basis. The *Statute Law (Miscellaneous Provisions) Act 2008* was passed on 25 June 2008 but had not come into effect as of the end of the financial year.

These amendments seek to give the Tribunal greater flexibility in its management structure to respond to the increasing demand for Tribunal services.



## Review of business processes

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

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

### **New management structure**

The Tribunal's management structure was reviewed and improved in early 2007. The new position of Registrar was created and in July 2007 the new Registrar, Ms Amanda Curtin was appointed. Ms Curtin has qualifications in both law and speech pathology. She was previously the Deputy Registrar at the Administrative Decisions Tribunal and has worked in the guardianship sector in both New South Wales and Queensland.

Changes to the management structure including the removal of the position of Manager Information and Hearing Services, have resulted in the Assistant Managers of the Client Information Services and Hearing Services reporting directly to the Registrar and providing separate representation of these units within the management team.

### **Research**

From time to time the Tribunal received requests from professional and academic colleagues undertaking research into social and legal issues related to the work of the Tribunal. This year we were able to assist and facilitate a number of research projects, several focusing on elder abuse.

### **Statistics working party**

Throughout the year staff have reviewed data collection and statistical analysis systems. These improvements have supported senior staff and management to better monitor and manage the Tribunal's workflow.

### **New procedures for procedural applications and applications for medical consent**

This year the Tribunal established procedures relating to applications for the consent of the Tribunal to withdraw an application and the dismissal of applications for want of prosecution. We revised our procedures relating to applications for medical consent which included some applications being heard by single members and the creation of a medical consent register to facilitate the timely finalisation of these applications.

### **Banker's cases**

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

### **New application forms**

Last year the Tribunal undertook and completed an extensive review and development of its most frequently used application forms (for guardianship, financial management and medical and dental consent).

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

- assisting applicants to focus on the persons' need for a substitute decision maker and understand when to apply to the Tribunal;
- providing clearer instructions on how to apply and the responsibilities of the applicant;
- identifying risk factors for the person and assisting the Tribunal to assess the complexity and urgency of matters more effectively;



- being presented in a more user friendly, accessible and up-to-date format which will assist busy professionals and family members to collect the information needed by the Tribunal.

The new forms were launched by the Hon. Kristina Keneally, Minister for Ageing, Minister for Disability Services on 28 August 2007.

The new application forms have assisted senior staff when assessing the urgency and complexity of applications and have played a key role in stabilising the rate of applications to the Tribunal. The information contained in the forms also assists applicants to provide the appropriate evidence required to support the application.

#### **Case management working group**

This year the Tribunal made significant progress in its review of case management practices. Through the case management working group alternative models of differential case management have been explored as an essential strategy for managing our increasingly complex workload. The identification of different management pathways for different types of applications will facilitate the timely and efficient scheduling of matters before the Tribunal and assist in providing a high standard of service to parties. This work will remain a focus in the new financial year.

#### **New file structure**

In August 2007, the Tribunal introduced a new hard file structure to improve the handling, storage and security of documents and to make it easier for staff and members to retrieve and work with information on the file. A review of this project was undertaken and the feedback from staff and members indicates that these objectives have been met.

#### **Application finalisation project**

In the last quarter of the year the Tribunal undertook an intensive project to expedite the management and finalisation of applications identified either for possible withdrawal or straightforward matters which may proceed to hearing without the need for extensive investigation. The three month project, successfully concluded on 30 June, resulted in the finalisation of approximately 840 matters.

#### **Tribunal documentation**

This year the Tribunal undertook a review of its correspondence and documents resulting in a number of improvements to content and the efficiency of production. This included:

- review of the form and content of the Tribunal's correspondence acknowledging receipt of an application
- implementation of a single electronic notice of hearing
- improved Tribunal members feedback sheets to provide an accessible mechanism for timely feedback and information for the President, Deputy President and staff about the preparation of matters for hearing and areas for service improvement
- the introduction of new documentation to provide accurate post hearing information and contribute to improved accuracy in the electronic Case Management System,
- continued development of an electronic Coordination and Investigation Report to exploit the use of our case management system in the preparation of the report and to reduce duplication in the handling and use of this data.

#### **Electronic Client Management System**

The Tribunal continued to make improvements to its Case Management System (CMS) databases including enhancing the introduction of new work flow measurement and reporting for the Coordination and Investigation Unit and the incorporation of Local Government Area boundaries to assist in planning and scheduling regional hearings. Significant developments were also made in relation to new systems for monthly and annual statistical reporting.

#### **Professional's report**

Work began this year to develop a report template to assist health professionals who provide information concerning applications before the Tribunal. A report template will facilitate the provision of information to the Tribunal and inform professionals about the information the Tribunal requires prior to determining an application. The early receipt of this information will assist in the timely progress of an application to resolution. This work will continue in the new year with a process of consultation being completed before the report is fully implemented.

## Records management

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

## Information and Communication Technology Strategic Plan – A Guardianship Service

### Domain Hub

In 2005/2006 the Government Chief Information Office (GCIO) assisted the Tribunal to develop a high level Information and Communication Technology Strategic Plan (ICT). This strategy has continued to develop during 2007/2008 to assist the Tribunal to respond to key business challenges.

This year the GCIO and the Tribunal have continued to work together to develop a project for a Guardianship Service Domain Hub. This will allow the Tribunal to develop an information technology solution for improved information exchange with the Office of the Public Guardian and the Office of the Protective Commissioner. It is anticipated that this will eventually replace the current manual, paper based processes involved in our exchange of information with these key stakeholders.

Stage One of the project is nearing completion and it is expected that a pilot will be conducted in October 2008 with a transition to the exchange of a number of documents between agencies being fully implemented following the pilot.

In 2008/2009 we will continue to work towards the exchange of a number of other key documents including Tribunal Orders and Reasons for Decision via the Guardianship Service Domain Hub and are confident that the expected efficiencies will benefit the people who are the subject of Tribunal orders.

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## Improving our work environment

The Tribunal is looking forward to enjoying improved facilities following completion of a program of works undertaken by the owner of the Tribunal's premises at Balmain. These works are due for completion early in the new year.

This year the Tribunal completed a project to replace its telephony and improve the system's

capability to support better service delivery for parties participating in Tribunal proceedings by telephone.

The Tribunal also completed a project to replace data cabling which will support the Tribunal's capacity to utilise, where appropriate, new technologies over the next decade.

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

### Staff training and development

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

experience which enable them to provide timely and efficient services to the Tribunal and to parties.

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



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

A number of staff attended the Council of Australasian Tribunals (NSW Chapter) annual conference.

A key initiative this year has been the implementation of a monthly seminar program for staff as a practical and important way to support staff in undertaking their work and which staff are required to attend. These seminars address specific training and information topics identified by staff. They are an opportunity to receive and discuss information and support consistency, within and across teams within the Tribunal, in the information provided to clients and parties and in the support provided to tribunal members.

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

The provision of timely information to staff has also been supported through the development of a quarterly staff bulletin and the development and implementation of the Tribunal's intranet.

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

### **Professional development for Tribunal members**

The Tribunal conducts a separate program of seminars for members. There are generally four seminars per year for legal members and a further four seminars for all Tribunal members.

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

Topics covered in the seminars over the last year have included:

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

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

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

## Community awareness





# Community awareness

## Informing our clients

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

In keeping with the principles of the Act, the provision of this information assists people to find alternatives to guardianship and financial management for people with disabilities.

If an application is made, further information is provided by Tribunal officers preparing matters for hearing.

A Liaison Officer who is a representative of both the Office of the Protective Commissioner and the Office of the Public Guardian 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 Protective Commissioner and Public Guardian. Many people have an interview with the Liaison Officer immediately after a Tribunal hearing.

### Enquiry service

The Tribunal's Enquiry Service is a well used resource for health, legal and community service professionals as well as the general public. During the year, enquiry officers handled 11,098 calls and visits, an average of 44.75 per day.

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

### Community education

During the year, Tribunal staff and members provided 52 community education sessions involving 1724 participants.

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

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

A community education request form was developed to make it easier for organisations to supply comprehensive 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)).

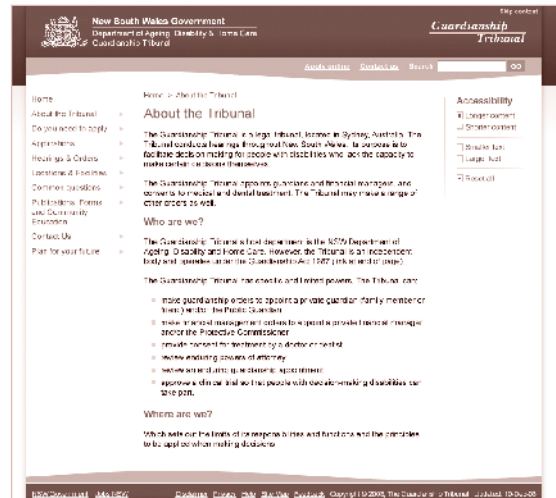




## Website

The Tribunal's website continued to be an important source of information and an entry point to services over the past year. There were 176,090 visits to the website compared to 176,950 last year, a decrease of 0.5% and 927 applications lodged online compared to 600 last year, an increase of 54.5%.

Enhancements were made to the appearance of the Tribunal's website with a cleaner, crisper design consistent with a New South Wales Government style directive. The fresh design increases content readability and ease of navigation for users.



## Papers presented

### Diane Robinson, President

#### *'Fact Finding by Tribunal Members'*

Presentation to the Guardianship and Administration Board Tasmania (GAB) Hobart, 16 August 2007.

#### *'Fact Finding by Tribunal Members'*

Social Security Appeals Tribunal (SSAT), 31 August 2007.

#### *'The Guardianship Tribunal – Elder Law'*

NSW State Legal Conference Talk, 31 August 2007.

#### *'The Guardianship Tribunal – Role and Jurisdiction'*

South Korean Human Rights Delegation, 19 September 2007.

#### *'Advance Care Directives and Enduring Guardianship'*

Continuing Legal Education (CLE) Centre Pty Ltd, 15 October 2007.

#### *'The Guardianship Tribunal'*

University of Western Sydney - Elder Law, 15 March 2008.

#### *'Substitute Personal Decision Making'*

Continuing Legal Education (CLE) Centre Pty Ltd, 27 March 2008.

### Esther Cho, Legal Officer

#### *'The Role of the Guardianship Tribunal'*

The Official Community Visitors, NSW Ombudsman's Office, Sydney, 26 July 2007.

#### *'Protection of Client Rights - The Role of the Guardianship Tribunal in elder abuse'*

Australian Association of Gerontology and Aged and Community Services Association – Wollongong, 10 August 2007.

#### *'The Role of the Guardianship Tribunal'*

Intellectual Disability Rights Service, 7 February 2008.

#### *'The Role of the Guardianship Tribunal in cases of elder abuse'*

Elder Law & Succession Committee of the Law Society, 1 April 2008.

#### *'The Role of the Guardianship Tribunal'*

Homeless Persons' Legal Service, 11 April 2008.

#### *'The Guardianship Tribunal – An Overview'*

Cumberland Campus University of Sydney, 23 April 2008.

#### *'The Role of the Guardianship Tribunal, Enduring Guardians and Enduring Powers of Attorney'*

Kidney Health - Well on My Way Forum, Parramatta, 9 May 2008.



## Publications

The Tribunal's new applications forms for guardianship and/or financial management and medical and dental consent developed late last year were launched early this year by the Hon. Kristina Keneally, Minister for Ageing and Disability Services.

The forms were widely distributed through the health and welfare sectors and feedback has been positive. The forms provide clearer instructions on how to apply and the responsibilities of the applicant. They focus the applicant on the need for guardianship, financial management or consent to treatment and assist the Tribunal to make a quick assessment of the urgency of an application.

The Tribunal reviewed and redesigned a number of its information sheets this year consistent with the style of its new application forms. The new format makes the Tribunal's information clear, uniform and recognisable and allows the Tribunal to reproduce information sheets inhouse. This versatility means that amendments can be easily accommodated resulting in accuracy of content and minimal waste.

The Tribunal began work on the development of an application form to request a review of a guardianship order and a form to assist professionals providing evidence to the Tribunal concerning guardianship and/or financial management applications.

## Videos/DVDs

The Tribunal's popular educational videos 'For Ankie's Sake,' 'In Their Best Interests' and 'Substitute Consent' continued to be used in community education presentations. Work was undertaken to convert these videos to DVD format to improve accessibility and convenience.



## Our work - the year in review





# Our work - the year in review

## Receiving applications

In 2007/2008 the Tribunal received 6399 new applications. Of these 388 applications were for procedural determinations. Of the remaining 6011 new applications; 47% related to the appointment of a financial manager; 42% related to the appointment of a guardian; 7% were applications for consent to medical and dental treatment; 4% were for other applications including applications to review enduring power of attorney or enduring guardianship arrangements or to approve clinical trials.

The Tribunal introduced new forms for financial management and guardianship applications, in September 2007. The new application forms

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

Table 1 Three year comparative caseload statistics for new, requested review and procedural matters for the years 2005/2006 to 2007/2008.\*

Application type	2005/2006		2006/2007		2007/2008	
	Received	Finalised	Received	Finalised	Received	Finalised
Guardianship	2148	2226	2351	2218	2312	2461
Mental Health Act S12(2)	104	108	129	126	43	52
Requested review of guardianship	189	192	213	210	175	179
Financial management	2318	2299	2405	2341	2452	2562
Requested review of financial management	281	301	333	309	368	370
Review - enduring power of attorney	58	75	90	77	119	117
Review - enduring guardianship	19	17	27	28	51	47
Medical/dental consent	480	494	475	474	447	455
Recognition of appointment	28	42	37	37	38	38
Clinical trial	9	7	7	9	6	6
Direction to guardian	0	0	1	1	0	0
<b>Sub total</b>	<b>5634</b>	<b>5761</b>	<b>6068</b>	<b>5830</b>	<b>6011</b>	<b>6287</b>
<b>Procedurals</b> (own motion or by request)	272	281	368	369	388	392
<b>Total</b>	<b>5906</b>	<b>6042</b>	<b>6436</b>	<b>6199</b>	<b>6399</b>	<b>6679</b>

\* The Tribunal has revised its method of statistical reporting and caution should be exercised in comparing data in this report with that in previous annual reports.

Table 2 Three year comparative caseload statistics for statutory or Tribunal ordered review matters for the years 2005/2006 to 2007/2008.\*

	2005/2006	2006/2007	2007/2008
<b>Statutory or Tribunal ordered review of orders</b>	<b>Reviews conducted</b>	<b>Reviews conducted</b>	<b>Reviews conducted</b>
Guardianship	1482	1417	1508
Financial management*	148	135	119
Recognition of guardianship appointment	5	5	13
Recognition of financial management appointment	7	21	19
<b>Total</b>	<b>1642</b>	<b>1578</b>	<b>1659</b>

\* The Tribunal has revised its method of statistical reporting and caution should be exercised in comparing data in this report with that in previous annual reports.

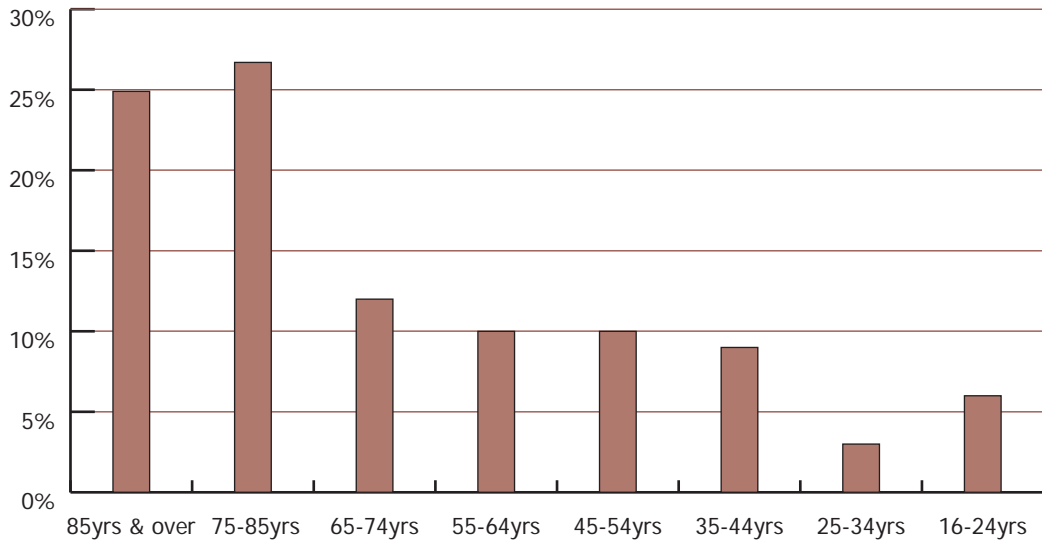


## Applicants to the Tribunal

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

51% were made by family members or friends of the person, 39% by someone in a professional relationship with the person, for example a health professional, professional carer or service provider and 10% by others.

Graph 1 Age demographic of people the subject of applications to the Tribunal in 2007/2008

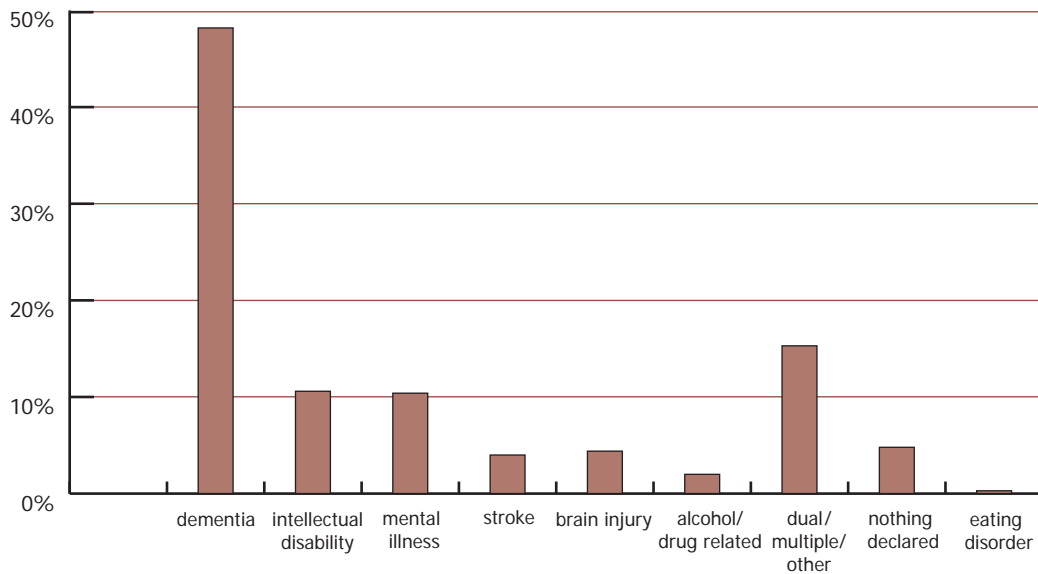


**People for whom applications were made - age, gender and disability**

Of the applications received this year just over half (52%) were for females and 48% were for males. This was also the case in the 2006/2007 year. Consistent with the ageing of the population, the majority (62%) of applications to the Tribunal were for people who were 65 years or older.

The most frequently recorded disability in applications to the Tribunal in 2007/2008 was dementia (48.2%). 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 31.5% of applications received this year.

Graph 2 Disability reported in applications received by the Tribunal in 2007/2008





## Hearings by the Tribunal

In 2007/2008 the Tribunal conducted 4829 hearings over 1369 sittings. This year the Tribunal heard an average of 1.45 matters per hearing and 5.1 matters per sitting of the Tribunal. These hearings concerned 4224 people with decision making disabilities.

The Tribunal also operates an after hours service if urgent applications need to be heard outside normal business hours. Of the hearings conducted this year 47 were after hours hearings.

This year the Tribunal finalised 8338 matters. The Tribunal received 6011 new substantive applications this year and finalised 6287, an increase of 7.8% on the matters finalised in 2006/2007. The Tribunal also finalised 1659 statutory reviews and 392 procedural matters.

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

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

### Procedural hearings

The Tribunal can be constituted by less than three members to determine some procedural matters. In 2007/2008, the Tribunal conducted 232 procedural hearings. Procedural matters include applications for legal representation, applications by people seeking to be joined as a party, and requests for consent by the Tribunal to withdraw an application.

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

There were 185 applications for legal representation and representation was granted on 121 occasions. In addition, there were 70 appointments of separate representatives made by the Tribunal.

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## Appointing guardians and financial managers

### Appointing guardians

Table three sets out the guardianship appointments made by the Tribunal in 2007/2008. This year the Tribunal heard 3388 applications and reviews in relation to guardianship. In 617 of these matters no appointment was made because the Tribunal dismissed the application either because it was satisfied that alternative informal arrangements existed or because the application was withdrawn with the consent of the Tribunal.

The Tribunal made 1871 guardianship appointments. Of these orders, 33% appointed

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



Table 3 Guardianship appointments made in 2007/2008

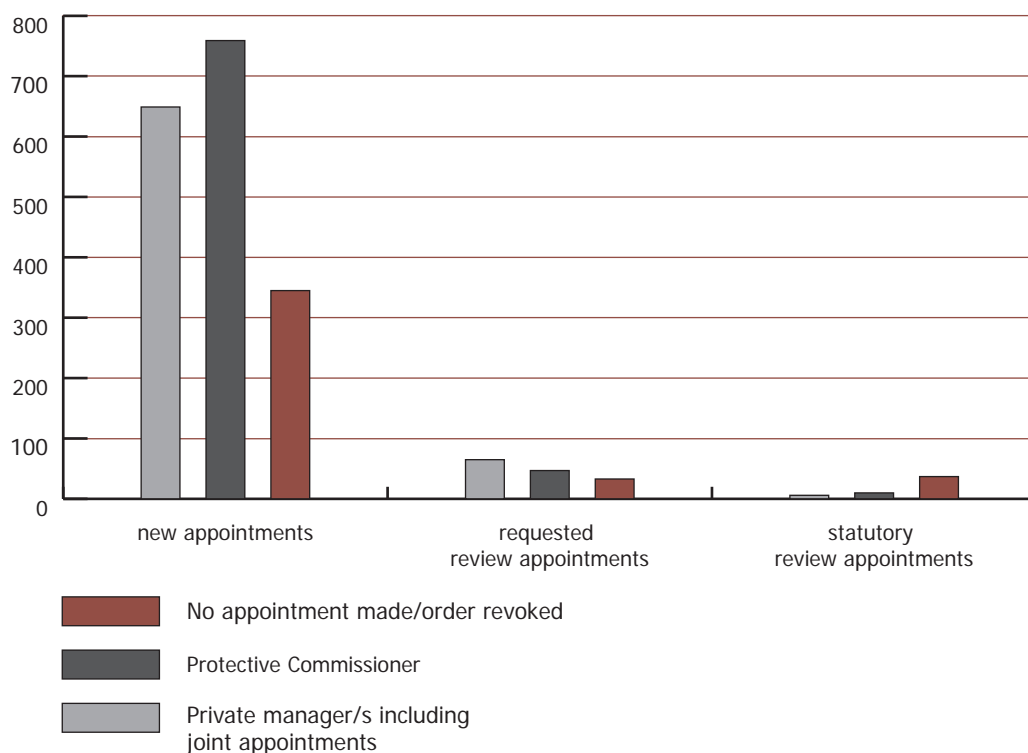
	Private guardian/s including joint and alternate appointments	Public Guardian	Joint private and Public Guardian appointment (separate decision making authority)	No appointment made/order revoked/not renewed
New appointments	361	615	19	606
Requested review appointments	15	56	1	11
Statutory review appointments	241	542	21	458

### Appointing financial managers

Graph 3 below sets out the financial management appointments made by the Tribunal in 2007/2008. This year the Tribunal heard 2589 applications and reviews in relation to financial management. In 378 of these matters no appointment was made because the Tribunal dismissed the application either because it was satisfied that alternative informal arrangements existed or because the application was withdrawn with the consent of the Tribunal.

The Tribunal made 1533 financial management appointments. Of these 47% of orders appointed a private manager or managers, and 53% appointed the Protective Commissioner. The Protective Commissioner is appointed in circumstances where there is no one else willing or suitable to be appointed. A private financial manager is subject to the direction of the Protective Commissioner.

Graph 3 Financial management appointments 2007/2008



## Reviewing orders

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

- **Statutory reviews for guardianship**

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

- **Tribunal ordered reviews for financial management orders** – a review ordered by the Tribunal to be undertaken after a period of time as set out in the order.

- **Requested reviews** – a review at the request of someone with a genuine concern for the person who is subject of the order where they believe there is new information, a change in circumstances or the initial order is not working in the best interests of the person.

- **Own motion reviews** – a review initiated by the Tribunal where it considers this would be in the best interests of the person.

Graph 4 Statutory reviews - three year comparative caseload statistics for statutory or Tribunal ordered reviews for the years 2005/2006 to 2007/2008

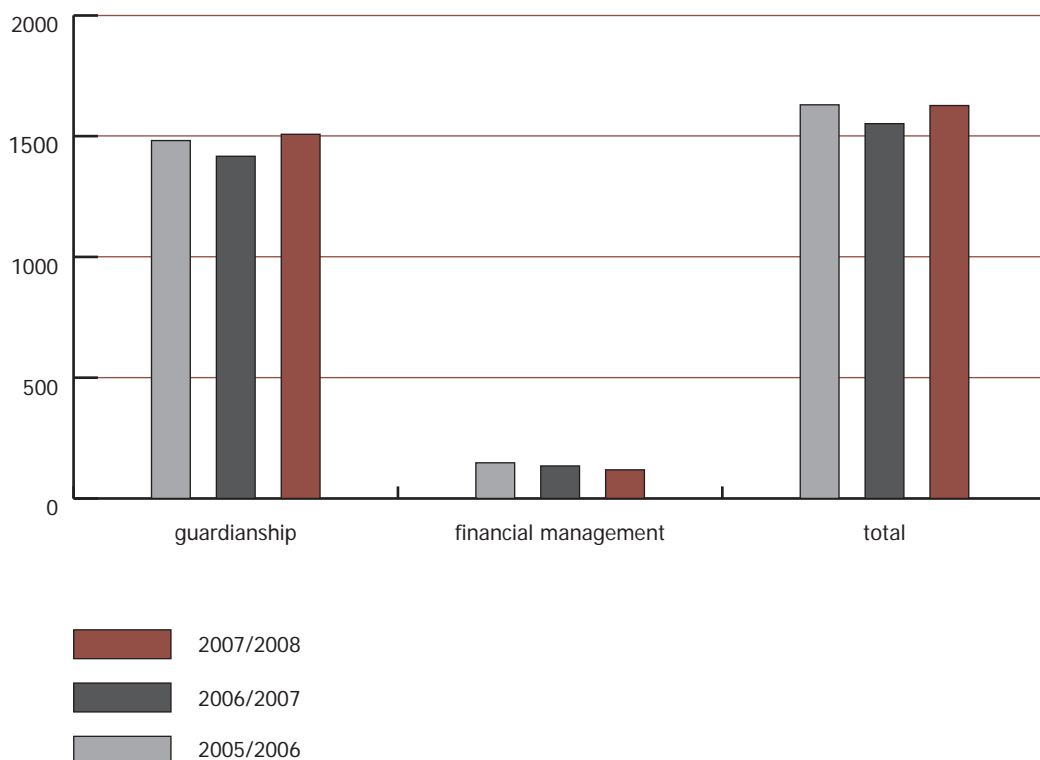


Table 4 Requested reviews - three year comparative caseload statistics for requested reviews for the years 2005/2006 to 2007/2008.\*

Application	2005/2006		2006/2007		2007/2008	
	Received	Finalised	Received	Finalised	Received	Finalised
Requested review of guardianship	189	192	213	210	175	179
Requested review of financial management	281	301	333	309	368	370
<b>Total</b>	<b>470</b>	<b>493</b>	<b>546</b>	<b>519</b>	<b>543</b>	<b>549</b>

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

### Guardianship reviews

The Tribunal conducted 1508 statutory reviews of guardianship orders and finalised 179 applications requesting a review of a guardianship order.

In 23% of review matters finalised at hearing, the guardianship order was renewed; in 41% of matters the order was renewed and varied; while

in 33% of matters the order was not renewed as it was determined that there was no longer a need for an order. In 2% of matters a non reviewable order was made and 1% of matters were withdrawn or dismissed at hearing.

Table 5 Outcomes of all guardianship reviews 2007/2008

	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	311	478	458	32	0
Requested review - guardianship	15	109	17	1	11
<b>Total</b>	<b>326</b>	<b>587</b>	<b>475</b>	<b>33</b>	<b>11</b>

### Financial management reviews

The Tribunal conducted 119 Tribunal ordered reviews of financial management orders and finalised 370 applications requesting a review of financial management orders.

In 27% of review matters finalised at hearing, the financial management order was confirmed; in 29% of matters the manager was replaced; in 35%

of matters the order was revoked as it was determined that there was no longer a need for an order; in 2% of matters the Tribunal made a reviewable order and 7% of matters were withdrawn or dismissed at hearing.

Table 6 Outcomes of all financial management reviews

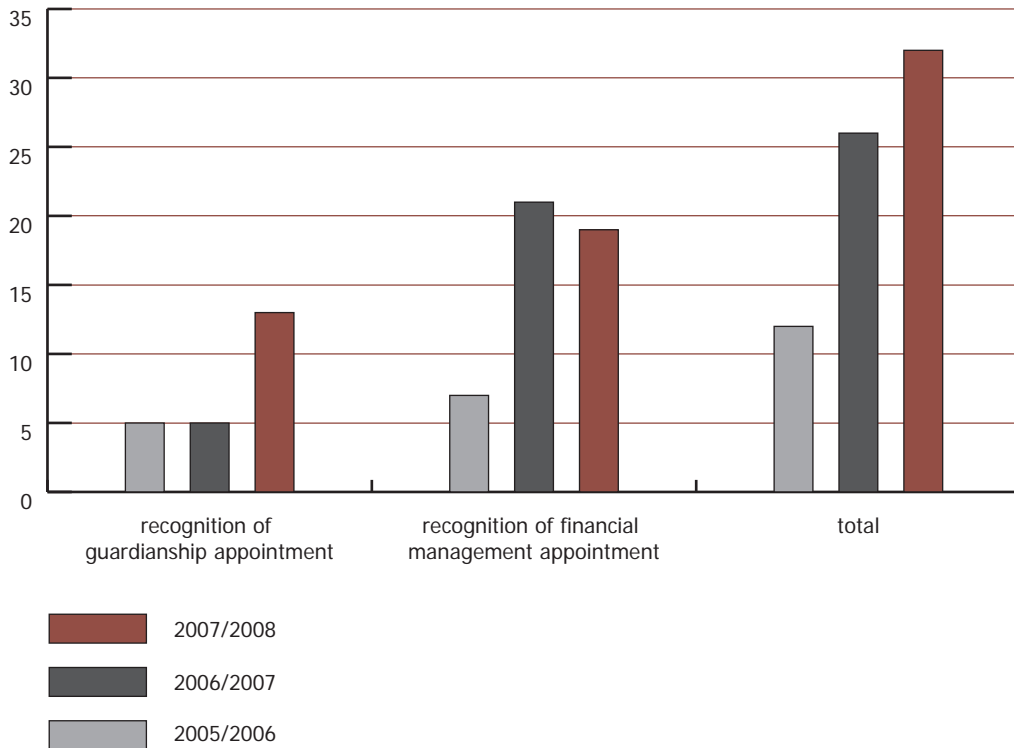
	Order confirmed	Order revoked	Manager replaced	Reviewable order made	Withdrawn / dismissed before/at hearing
Statutory review – financial management	59	37	4	8	0
Requested review – financial management	56	115	119	2	30
<b>Total</b>	<b>115</b>	<b>152</b>	<b>123</b>	<b>10</b>	<b>30</b>

### Recognition of appointments

The Tribunal has the jurisdiction to recognise the appointment of guardians and financial managers appointed in other states and territories and New Zealand. During 2007/2008, the Tribunal received 38 applications for recognition and determined 35 applications to recognise such appointments. Three applications were withdrawn.

The Tribunal also reviews these orders. During 2007/2008 the Tribunal reviewed 13 recognition of guardianship appointments and 19 recognition of financial management appointments.

Graph 5 Review of appointment recognitions - three year comparative caseload statistics for reviews between 2005 and 2008



## How and where hearings are conducted

### Access to justice within a protective framework – facilitating participation

In keeping with a Tribunal exercising a 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 2007/2008 the Tribunal conducted approximately 36% of its hearings outside Balmain at locations including Albury, Armidale, Bathurst, Blue Mountains, Bowral, Central Coast, Cessnock,

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

Hearings may also be conducted via video conferencing and it may be possible for parties to participate by telephone.

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

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

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

The Tribunal is able to make special arrangements for parties with special needs. Where appropriate, the Tribunal arranges the attendance of accredited interpreters to assist people attending hearings.

Interpreters were used on 158 occasions during the year and provided services across 33 different languages including Italian, Greek, Croatian, Arabic, Cantonese, Hungarian, Auslan, Mandarin, Polish, Russian 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 help and information through its Enquiries Service, its publications and website.

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## Who makes the decisions?

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

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

From 1 August 2007 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 942 hearings dealing with 1077 matters were conducted by single member panels. Of these 66.6% related to guardianship reviews, 10.0% to financial management reviews, 1.5% to recognition of interstate appointments, 1.4% to medical consent, 18.7% to procedural matters and 1.8% concerned other matter types.

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.





## 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 where it is proposed that those who cannot consent to their own treatment may take part in the trial. This requires those proposing the clinical trial to make their case to the Tribunal before adults unable to consent to their own treatment can participate 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 usually the spouse, family member, carer or adult child of the person unable to give consent. In all cases in which the Guardianship Tribunal has given its approval to a clinical trial, the 'person responsible' has been empowered to give the substitute consent for the particular patient.

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

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

### Approval of clinical trials

At the end of 2006/2007 there were no pending applications for approval of a clinical trial from the previous financial year. During the 2007/2008 financial year, the Tribunal received six applications for the approval of clinical trials and these were all determined in the current financial year so there are no applications pending at the end of this year. Of the six applications determined, four applications were approved, one was not approved, and one was withdrawn prior to hearing.

Of the clinical trials approved, two involved the treatment of sepsis and two involved the treatment of Alzheimer's disease.

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 2007/2008

Name of clinical trials submitted for approval by the Tribunal	Trial sites	Outcome of Tribunal	Individual consents to be given by the 'person responsible'
ACCESS: A Controlled Comparison on Eritoran Tetrasodium and Placebo in patients with Severe Sepsis	<ul style="list-style-type: none"> <li>• Royal North Shore Hospital</li> </ul>	Approved	Yes
Protocol 2-001 - A Randomized, Double Blind, Placebo controlled, phase - 2b study to assess the safety and efficacy effects of ART-123 on subjects with Sepsis and disseminated intravascular coagulation.	<ul style="list-style-type: none"> <li>• Westmead Hospital</li> <li>• Wollongong Hospital</li> <li>• Blacktown Hospital</li> </ul>	Approved	Yes
A phase III, double-blind, randomized study to evaluate the safety and efficacy of BAL8557 versus a caspofungin followed by voriconazole regimen in the treatment of candidemia and other invasive candida infections (WSA-CS-008)	<ul style="list-style-type: none"> <li>• Westmead Hospital</li> </ul>	Not Approved	N/A
Protocol DEB-ZTSR-201 - A randomised, double blind, double-dummy, oral Donepezil controlled study on the safety and efficacy of repeated monthly subcutaneous injections of a sub-stained-release implant of ZT-1 in patients with moderate Alzheimer's Disease (AD).	<ul style="list-style-type: none"> <li>• Hornsby – Ku-ring-gai Hospital</li> <li>• Central Coast Neuroscience Research, Gosford</li> </ul>	Approved	Yes
Protocol E2020-G000-326; Double-Blind, Parrallel-Group Comparison of 23mg Donepezil sustained release to 10mg immediate release in patients with moderate to severe Alzheimer's disease.	<ul style="list-style-type: none"> <li>• Prince of Wales Hospital</li> <li>• Central Coast Neuroscience Research, Gosford</li> </ul>	Approved	Yes
Cognitive Impairment in the Elderly Homeless	<ul style="list-style-type: none"> <li>• St Vincent's Hospital</li> </ul>	Withdrawn	N/A





## Appeals from decisions of the Tribunal

Parties are advised in writing of their appeal rights when they are sent a copy of the Tribunal's Order and Reasons for Decision.

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

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

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

### Appeals to the Administrative Decisions Tribunal (ADT)

There were six appeals received during the previous financial year which were still pending as at 30 June 2007. Those six appeals were finalised in the current financial year. Of those six appeals, four were dismissed, one was withdrawn and one was upheld and the original matter was remitted to the Tribunal for rehearing.

During the current financial year, there were 19 appeals lodged at the ADT against decisions of the Tribunal (see Table 8) from approximately 4829 hearings held in 2007/2008.

None of those appeals were upheld by the ADT during this financial year.

Table 8 Appeals to the Administrative Decisions Tribunal against Guardianship Tribunal decisions from 2005/2006 to 2007/2008

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

## Appeals to the Supreme Court

There were three appeals to the Supreme Court which were received during the previous financial year which were still pending as at 30 June 2007 and two new appeals from decisions of the Tribunal lodged with the Supreme Court during 2007/2008 (see Table 9).

Both of the new appeals are pending as at 30 June 2008.

The pending appeals from the previous financial year were finalised in the current financial year.

One of those appeals was discontinued during the current financial year.

In another of those appeals, the appellant sought to both appeal the Tribunal's decision in relation to an application for a financial management order

and to apply to the Court for it to directly appoint an alternative financial manager. The appeal was not pursued and the Court appointed a private financial manager for the subject person.

In the remaining pending appeal, the appellant appealed against the Tribunal's decision to make a financial management order appointing the Protective Commissioner and a guardianship order appointing the Public Guardian.

In conjunction with the appeal, the appellant also sought orders from the Court for the appointment of a private manager. The Court set aside the guardianship order and appointed a private guardian. The Court also appointed a private financial manager who was subject to the direction of the Court rather than the Protective Commissioner.

Table 9 Appeals to the Supreme Court against Guardianship Tribunal decisions from 2005/2006 to 2007/2008

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

## Freedom of Information

The Tribunal received one application for access to information under the *Freedom of Information Act* 1989 (the FOI Act) which was accompanied by the relevant fee. The application was declined because the Tribunal is not an 'agency' for the purposes of the FOI Act as Section 10 of that Act specifies that a tribunal is not included within that definition in relation to its judicial functions.

## Complaints

During 2007/2008 the Tribunal received 57 written complaints. Broadly, the issues raised were about the Tribunal's processes, the conduct of

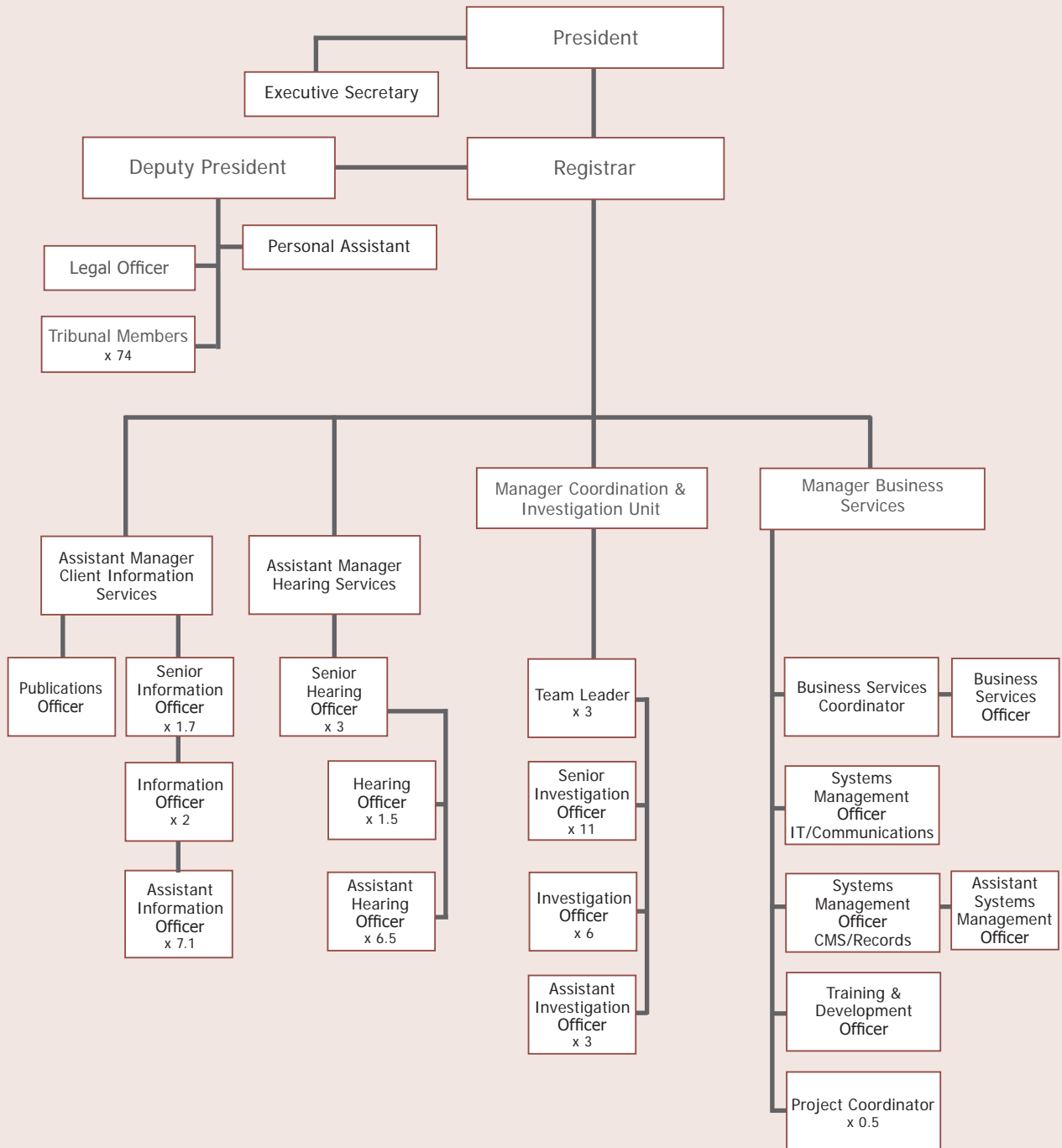
investigations and hearings, the evidence relied on by the Tribunal, the Tribunal's decisions and its written Reasons for Decision. Parties are advised of their appeal rights at the same time they receive a copy of the Order and Reasons for Decision. The Tribunal investigates and responds in writing to all written complaints. The Deputy President responds to complaints about decisions of the Tribunal, the conduct of Tribunal members and the Tribunal's written Reasons for Decision. The Manager of the Coordination and Investigation Unit responds to complaints about the preparation of a matter for hearing.

# Appendix

- Appendix 1 **Organisational chart**
- Appendix 2 **Tribunal members**
- Appendix 3 **Tribunal staff**
- Appendix 4 **Definitions**

# Appendix 1

## Organisational chart



## Appendix 2



### Tribunal members



#### **Diane Robinson, President**

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

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

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

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



#### **Robin Gurr, Deputy President (to 30 June 2008)**

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

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

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

## Legal members



Back from left - Peter Molony, Robyn Bailey, Bernie Shipp, Bill Tearle, Monica MacRae, Diane Robinson, Tony Krouk. Front from left - Jenny D'Arcy, Angela Beckett, Robin Gurr, Catherine Donovan-Holm, Carolyn Huntsman.

## Legal members

### **Robyn Bailey**

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

### **Angela Beckett**

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

### **Antony Carpentieri**

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

### **John Cipolla**

Solicitor. Experience representing clients with psychiatric and other disabilities both through Legal Aid and the Mental Health Advocacy Service. Previously Principal Solicitor, Inner City Community Legal Centre. Experience in refugee law and as senior conciliator, Disability Discrimination Unit of the Human Rights and Equal Opportunity Commission. Part time member of the Consumer Trader Tenancy Tribunal and the Migration Review Tribunal.

### **Jennifer Conley**

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

### **Jenny D'Arcy**

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

### **Catherine Donovan-Holm**

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

### **Christine Fougere**

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

### **Geoffrey Hopkins**

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

**Carolyn Huntsman**

Lawyer. Currently a member of the Mental Health Review Tribunal. Formerly member of the Social Security Appeals Tribunal, the Refugee Review Tribunal, the Fair Trading Tribunal and the Residential Tribunal. Worked as a solicitor with the Legal Aid Commission, Aboriginal legal organisations and in private legal practice.

**Tony Krouk**

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

**Monica MacRae**

Solicitor with experience in private legal practice and as a sole practitioner. Extensive Tribunal experience. Former member of the Social Security Appeals Tribunal and currently a member of the Mental Health Review Tribunal.

**Shaun McCarthy**

Lawyer, with experience in private practice in regional areas and at Legal Aid. Director, The University of Newcastle Legal Centre. Acting Director of the Professional Program and Clinical Lecturer in the School of Law at The University of Newcastle.

**Carol McCaskie, AM**

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

**Peter Molony**

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

**Anita Sekar**

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

**Desmond Sheehan**

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

**Bernie Shipp**

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

**James Simpson**

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

**Bill Tearle**

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

## Professional members



*Back from left - Susan Taylor, Carolyn West, Melissa Staples, Ivan Beale, Sally McSwiggan, David Mark Wallace, Tony Ovadia, Meredith Martin, Velupillay Vignaendra, Rhonda Buskell, Suzanne Stone, Sarah Carlill. Front from left - Mary Ellen Burke, Janice Wortley, Robert Yeoh, Helen Molony, Carmelle Peisah.*

## Professional members

### **Ivan Beale**

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

### **Isla Bowen**

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

### **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**

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

### **Sarah Carlill**

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

### **Michelle Chapman**

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

### **Sharon Flanagan**

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

### **Julie Garrard**

Senior Social Worker and Project Coordinator in the Palliative Care Service at Calvary Health Care Sydney. Previous social work experience with people with intellectual disabilities, brain injuries and HIV/AIDS and in health care complaints. Research interest: end of life care for terminally ill residents in nursing homes.

### **Jean Hollis**

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

### **Susan Kurrle**

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



**Meredith Martin**

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

**Brenda McPhee**

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

**Sally McSwiggan**

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

**Helen Molony**

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

**Tony Ovdia**

Clinical psychologist with over forty years experience in mental health, disability and generic community services. She is especially interested in making services accessible to disadvantaged people and people from culturally diverse backgrounds. Vice President of the Mental Health Association.

**Carmelle Peisah**

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

**Melissa Staples**

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

**Suzanne Stone**

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

**Susan Taylor**

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

**Velupillay Vignaendra**

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

**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, New Children's Hospital, Westmead. Visiting medical officer, Royal Prince Alfred Hospital and Westmead Hospital for adult services for people with spina bifida.

**Wai-Kwan (Tim) Wong**

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

**John Woodforde**

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

**Janice Wortley**

Special Educator and Psychologist with extensive expertise in developing and implementing behaviour management and positive programming for people with challenging behaviour. Extensive experience working with and advocating for people with intellectual disabilities, psychiatric disabilities and acquired brain injuries in community and educational settings. Qualified workplace trainer, Lecturer in Disability Studies and accredited Mental Health First Aid Instructor.

**Robert Yeoh, AM**

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

## Community members



Back from left - Catherine Quinn, Maree Gill, Maria Circuitt, Hatton Kwok, Freda Hilson, Andrew Barczynski, Jennifer Klause, Marika Kontellis, Susan Warth. Front from left - Jeanette Moss, Leanne Stewart, Jennifer Newman, Alexandra Rivers, Jane Fraser, Faye Druett.

## Community members

### **Stanley Alchin, OAM**

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

### **Rhonda Ansiewicz**

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

### **Andrew Barczynski**

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

### **Elaine Becker**

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

### **Mary Butcher**

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

### **Maria 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. Previously Manager of the Investigation and Liaison Branch of the Guardianship Tribunal.

### **Faye Druett**

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

### **Annette Evans**

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

### **Jane Fraser**

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

**Maree Gill**

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

**Freda Hilson**

Social worker. Significant experience working in the Disability Sector, working with people with intellectual disability, acquired brain injury, physical disabilities and mental illness. Former executive director of the Brain Injury Association of New South Wales and Manager of Disability Services for Jewish Care and former Regional Manager with the Office of the Public Guardian. Former Deputy Director, Consumer Protection for People with Disabilities. Established the National Disability Abuse and Neglect Hotline. Currently a Community Visitor with the Ombudsman's Office.

**Jennifer Klause**

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

**Marika Kontellis**

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

**Janet Koussa**

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

**Hatton Kwok, OAM**

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

**Kerrie Laurence**

Specialist educator and community welfare worker with adults with a developmental disability. Currently working as a quality assessor in the accreditation of aged care supported accommodation. Family experience of dementia and mental illness and relevant tribunal experience.

**Carol Logan**

Trained as a General and Psychiatric Nurse. Worked as a Community Nurse in South West Sydney for 11 years then set up and managed Community Options for Centacare in

South West Sydney. Previously Director of Centacare Catholic Community Services/Ageing and Disability Services, 1996 to 2004.

**Leonie Manns**

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

**Michael McDaniel**

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

**Jeanette Moss, AM**

Family experience of and advocate for people with a disability.

**Jennifer Newman**

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

**Alan Owen**

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

**Catherine Quinn**

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

**Robyn Rayner**

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

**Alexandra Rivers**

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

**Leanne Stewart**

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

Tribunal staff



**Executive**

<b>President</b>	Diane Robinson
<b>Deputy President</b>	Robin Gurr
<b>Registrar</b>	Amanda Curtin
<b>Legal Officer</b>	Esther Cho
<b>Personal Assistant</b>	Lisa Whittaker
<b>Executive Secretary</b>	Justin Standley

**Coordination and Investigation Unit**

**Manager** Ryan Williams

**Team Leaders**

Margaret Watson  
Sue Young  
Theresia Khoudair

**Senior Investigation Officers**

Loretta Rosicky  
Lee Dargan  
Louise Smith  
Paula Norris  
Amanda Legge  
Jane Samek  
Peter Heffernan  
Frances Massy-Westropp  
Katrina Morris  
Katherine Tidd  
Mark Harrison

**Investigation Officers**

Christopher Moore  
Jill Forrester  
Trudi Cusack  
Rebecca Ripperger  
Pam Vildos  
Liesje Tromp

**Assistant Investigation Officers**

Lois Warnock  
Maxine Spence  
Zebun Haji

**Client Information Services Unit**

**Assistant Manager** Geraldine Northcott

**Publications Officer** Yvette Wallis

**Senior Information Officers**

Robyn Barlow  
Jihan Noun  
Francesca Scimone

**Information Officers**

Diane Cracknell  
Alex Young

**Assistant Information Officers**

Anna Kedves  
Christine Lopez  
Angela Ogden  
Tina Pasa  
Lee Yeoh  
Margaret Yorkston

**Hearing Services Unit**

**Assistant Manager** Lesley McGowan

**Senior Hearing Officers**

Kerrie Menken  
Cynthia Nejal  
Lisa Spence

**Hearing Services Officers**

Janet Stringer  
Jenny Reynolds

**Assistant Hearing Officers**

Christopher Mitchell  
Marie McArdle  
Evelyn Guibani  
Sita Singh  
Eleanor Torry  
Michelle Savage  
Rachel Spies  
Pam Giurissevich

**Business Services Unit**

**Manager** Linda Sengstock

**Project Coordinator** Patrick Gooley

**Training and Development Officer**

Gail Yueh

**Business Services Coordinator**

Maria Sardisco  
Kathy Tribe

**IT Systems Management Officer**

Dennis Maby

**CMS Systems Management Officer**

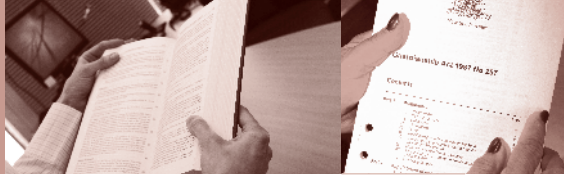
Patrick Gooley

**Business Services Officer** Christine Small

**Assistant Systems Officer** Christine Triantafillopoulos

**Other staff employed in 2007/2008**

Jane Brenham-Williams  
Michelle Carvalho-Mora  
Mary Chapman  
Anna Curtain  
Trevor Fairbairn  
Doreen Gray  
Elizabeth Kensell  
Bethany Nero  
Elizabeth Sandor  
Danit Spiers  
Rada Stevanovic  
Hoang Vi Huynh



## Appendix 4 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 Protective Commissioner.

**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 Protective Commissioner are automatic parties to applications for guardianship or financial management. Those who are automatically parties to a hearing are set out in section 3F of the *Guardianship Act 1987* 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*

Level 3, 2a Rowntree Street, Balmain NSW 2041  
Postal address: Locked Bag 9, Balmain NSW 2041

Telephone: 02 9556 7600  
Toll free: 1800 463 928  
TTY: 02 9556 7634  
Fax: 02 9555 9049

Email: [gt@gt.nsw.gov.au](mailto:gt@gt.nsw.gov.au)

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