

30 September 2009

The Hon Lara Giddings, MP,  
Attorney General  
Minister for Justice

In accordance with the requirements of Section 84 of the *Guardianship and Administration Act 1995*, I am pleased to submit the report of the performance of the functions of the Guardianship and Administration Board for the year 1 July 2008 to 30 June 2009.

Anita Smith  
**PRESIDENT**  
Guardianship and Administration Board

## Table of Contents

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Report of the Board and the President .....	2
Role of the Board .....	5
Applications.....	7
Investigation and Case Management.....	8
Emergency Applications .....	8
Hearings .....	10
Reviews of Existing Orders .....	13
Client Profile.....	14
Guardianship .....	15
Registration of Enduring Guardianships .....	17
Reviews of Enduring Guardianships.....	17
Administration .....	18
Reviews of Enduring Powers of Attorney.....	20
Consent to Medical and Dental Treatment.....	22
Requests for Statements of Reasons and Appeals .....	23
User Satisfaction Surveys.....	23
Community and Professional Education .....	25
Office Administration .....	27
How to Contact the Board .....	29
Appendix 1 - Board Members at 30-6-08 .....	30
Appendix 2 - Statistical Summary.....	36
Appendix 3 - Community Presentations .....	37
Appendix 4 – Financial Summary 2008-09 .....	38

## Report of the Board and the President

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“For E.R., acquiring and smoking cigarettes gives each day meaning. It is a skill and a habit that he learned as part of the informal curriculum of a life spent mostly in State Government institutions. He did not learn to speak and has few, if any, other interests in life. His relentless efforts to obtain cigarettes define E.R. as a member of his community.”<sup>1</sup>

E.R. was the subject of an application for the appointment of a guardian. However the kernel of the application was whether E.R. should be denied his pleasure in smoking to provide some limited improvement in his rapidly declining health. Because E.R. cannot speak for himself, other persons had imposed their personal and professional judgments upon him in a way that the Board believed had the potential to undermine his quality of life.

It is not an unusual case for the Board to have to determine such a delicate ethical, medical and legal matrix of issues. When an adult cannot make decisions because of their disability, the vacuum of power can result in other persons, well intentioned or otherwise, assuming levels of control that a person without a disability would not tolerate. At times the appointment of a guardian or administrator clarifies the source of legal authority and re-asserts the individual’s liberty and dignity, including his or her dignity of risk. A guardian was appointed for E.R. to ensure that medical decisions about E.R. were made with his wishes and quality of life in mind.

It is that matrix of legal, medical and ethical issues and the balancing of the fundamental principles in section 6 of the *Guardianship and Administration Act 1995* which makes the work of the Board so rewarding for Board members and staff members alike.

The work of the Board is attracting national and international interest with papers about the Board’s operations being delivered to:

- International Guardianship Network/Canadian Conference on Elder Law – Vancouver November 2008 (funded by attendee)
- Australian Guardianship and Administration Council Conference – Brisbane 19-20 March 2009
- Australian Institute of Judicial Administration Tribunal’s Conference – Sydney 4-5 June 2009
- ‘Expert Roundtable’ Briefing of Australia’s delegation to the Committee on the UN Convention on the Rights of Persons with Disabilities – Sydney 22 September 2009 (funded by Conference organisers)

And upcoming engagements to address:

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<sup>1</sup> ER (Guardianship) [2008] TASGAB 15

- Rights Responsibilities and Rhetoric Mental Health Conference in Adelaide 8-9 October 2009
- World Congress on Adult Guardianship in Yokohama October 2010 keynote address (funded by Conference organisers)

In these arenas, the operations of the Tasmanian Guardianship and Administration Board attract attention because of the informal, inquisitorial structure of our investigations and hearings and the close follow-up of appointees after orders are made. Our systems are seen as proactive models in the international struggle against elder abuse.

Additionally the unique structure of Tasmanian legislation which allows for treatment of people with psychiatric disabilities to be considered under an incapacity system rather than a mental health system attracts particularly positive attention, especially since the ratification of the UN Convention on the Rights of Persons with Disabilities. Unfortunately, this uniquely protective and rights-based structure is the subject of a draft Government Mental Health Bill which would remove that ability.

Advice provided by the Solicitor General to the Public Guardian in January and February 2009 created a great deal of unrest in the aged care and mental health sectors when that advice questioned the ability of a guardian to consent to the hospitalisation of a person under guardianship. Agencies responded in a variety of ways, some issuing mental health orders of questionable validity, others concerned that vulnerable people would have to be evicted from care facilities. The issue was determined by the Board in *E.K.R.*<sup>2</sup> and the powers of a guardian to consent to hospitalisation were confirmed. An appeal against that decision was considered by the Public Guardian but not pursued which means that the issue could arise again. The incident highlighted the need for a coordinated review of guardianship laws with mental health laws. It is feared that new mental health legislation, currently being developed in isolation from guardianship laws, will cloud rather than clarify an already complex issue. The Board made a comprehensive submission to the Legislative Council *Mental Health Legislative Measures Inquiry* on this issue during the reporting year.

As exciting and diverse as work for the Board is, in many respects 2008-2009 has been a challenging year for the Board. Primarily, challenges arise because of limitations in funding and continual increases in work load. Other challenges arise because of the discovery of abuse and neglect of people with disabilities in our community and the under resourcing of the agencies who should be available to prevent that abuse and neglect. The Board continues to see circumstances of abuse of elderly people or people with disabilities. Such instances of abuse are seldom the subject of legal action or prosecution.

Last year the Board noted in its annual report the protective effect that section 30(2)(b) of the *Powers of Attorney Act 2000* had with regard to prevention of elder abuse. That section prohibited the relatives of any party to an enduring power of attorney from witnessing the document. In the Board's experience, ensuring that witnesses to the instrument are unrelated to the parties ensured a level of external scrutiny which was protective against coercion and exploitation. That section has since been repealed without consultation with the Board.

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<sup>2</sup> *EKR (Guardianship)* [2009] TASGAB 2

Last year the Board also raised concerns about the Department of Health and Human Services directly managing clients' funds. The Board is pleased to report that Disability Services has divested itself of all direct management of client funds. However during the reporting year, the Board received *Freedom of Information* advice which suggested that a further half a million dollars of client funds was being directly managed by Mental Health Services. The Board has been assured by Mental Health Services that this activity is under active review and that applications for the appointment of an administrator will be made for clients who lack the ability to make reasonable decisions.

As always, Board members are assisted by the expertise of a small group of staff in the Hobart office. We have consistently heard and determined around 95% of all matters within 45 days of receipt of the application and this has always been due to the efficient administration and investigation of guardianship and administration applications by the staff, most of whom now have many years of experience with us. As discussed in the body of the report, there have been significant personnel changes within the Board and the office. The Board notes the assistance of the Public Trustee is enabling Gaylene Cunningham to be seconded from that office to the Board to as Acting Registrar for approximately 3 months. Gaylene's assistance during that time was invaluable and her professionalism is a credit to the Public Trustee.

I trust that this report to Parliament will reinforce to Parliamentarians the important role that the Board has in assisting and protecting vulnerable persons in our community and the need for that role to be appropriately resourced.

Anita Smith  
PRESIDENT

## Role of the Board

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### Major Statutory Functions

The functions of the Guardianship and Administration Board (the Board) are established by the *Guardianship and Administration Act 1995*. Supplementary functions are established in Part 3 of the *Wills Act 2008*, Part 4 of the *Powers of Attorney Act 2000* and section 32 of the *Mental Health Act 1996* (MHA).

The Board has three major areas of activity. Firstly, the Board can appoint guardians for adults with disabilities who do not have capacity to make important life decisions for themselves. Secondly, the Board can appoint administrators to manage the financial estates of adults with disabilities who cannot manage their estates because of their disabilities. Thirdly, the Board can make substitute decisions to consent to medical treatment on behalf of people with disabilities who lack the capacity to authorise such treatment themselves.

Other statutory functions of the Board include giving advice and directions to guardians and administrators, registration of enduring guardianships, reviewing and, if necessary, revoking or altering an existing enduring power of attorney or enduring guardianship, creation of statutory wills and, in the case of unlawful detention of persons with a disability, ordering their removal to a safe place.

Because an adult's right to make financial and lifestyle decisions is a fundamental human right, such powers are only invoked where they represent the least restrictive alternative and where they will protect the best interests of the person. Consultation with the person with a disability, if possible in the hearing, is fundamentally important to the decisions of the Board.

The Board operates as an independent statutory tribunal. Hearings are conducted as much as possible in an informal inquisitorial style primarily to facilitate the meaningful inclusion of people with disabilities into the process of taking evidence. The informal style encourages participation wherever possible. The inquisitorial functions ensure that all of the necessary factual materials relevant to an application are compiled and presented to the Board to be tested in the hearing.

### Composition of the Board

Names and brief biographies of the Board members current at the close of the reporting year are listed in Appendix 1.

Board members are selected for their understanding of the underlying principles of the Act and excellent communication and analytical skills. They are drawn from a wide range of disciplines including occupational therapy, nursing, psychology, social work, accounting, medicine and law and are particularly selected for their understanding of the issues facing people with disabilities.

A number of legally qualified Board members have enjoyed significant career recognition this reporting year. Unfortunately, this has meant they are no longer available for membership on the Board. The Board thanks them for their significant contributions to the work of the Board and best wishes for future endeavours:

- Malcolm Schyvens was appointed as Deputy President of the NSW Guardianship Tribunal
- Terry McGuire was appointed as a Federal Magistrate

- Melanie Bartlett, Deputy President, was appointed as a Tasmanian Magistrate
- Anne Parker was elevated to Official Secretary at Government House

Paul Mayne who has served on the Board since 2002 did not seek reappointment when his term expired during the reporting year. Paul has been an excellent member of the Board and we thank him for his significant contribution.

Debra Wood, who was appointed in 2006, moved into a new area of medical practice and withdrew from Board activities. Debra was an enthusiastic member of the Board and we wish her well in future endeavours.

Elizabeth Love, who has been a member since 2002, was reappointed after the expiry of her term during the reporting year. The Board is fortunate to have a number of members who have been members for 5 to 10 years. However, we have identified a need for more members with medical and financial expertise State-wide and more legally trained members in the North West of the State. Advertisements were placed in all three newspapers in May 2009 and selection processes, conducted in accordance with the Attorney General's new procedures, have just concluded at the time of writing and will be reported upon in next year's annual report.

Board members actively participate in education and networking opportunities presented by the Council of Australasian Tribunals and the Australian Institute of Judicial Administration. Additionally, Board members attended the following education sessions in 2008-2009:

11 July 2008 – GAB Annual Meeting and Training on Chairing Hearings

5-6 September 2008 – National Judicial College Decision Writing Course by Prof. Raymond

16 October 2008 – Law Society & GAB Seminar on Elder Abuse – Sue Field

16 October 2008 – GABfest Procedural Fairness – Jill Toohey

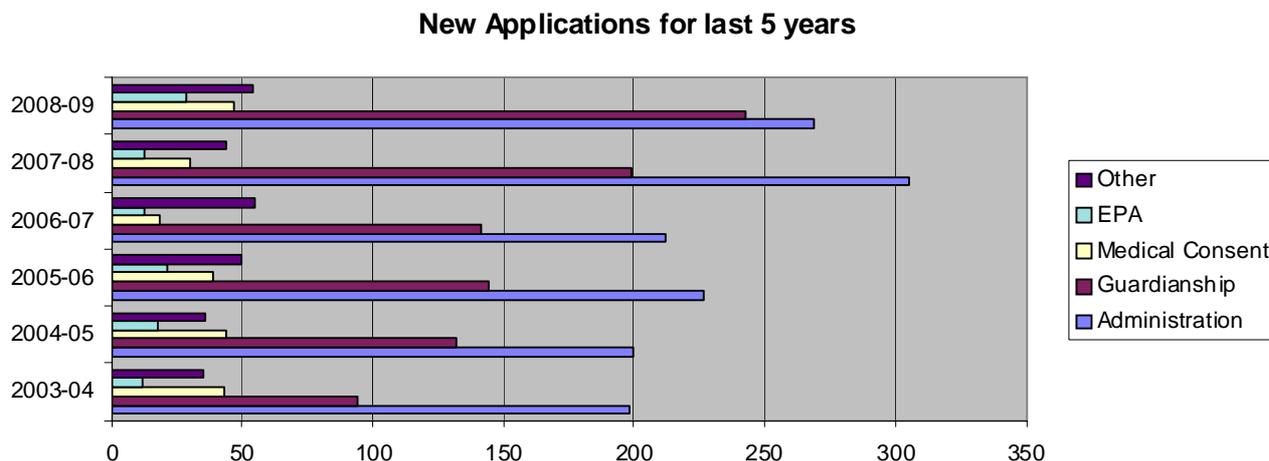
19-20 March 2009 – Australian Guardianship and Administration Council Conference

15 May 2009 – Law Society & GAB Seminar on Family Agreements – David Davis

# Applications

## Applications received

The total number of applications (including the triennial review of orders) received for the period 1 July 2008 to 30 June 2009 was 873. Of these 642 were new applications with the remainder being reviews of existing orders.



In 2002-2003 the Board received 389 applications. The total number of applications has grown in every year since 2002-2003 and has more than doubled in that time.

It is most likely that the numbers of applications will continue to grow for the foreseeable future. A number of factors contribute to the continuing increase, such as the operation of the legislation becoming better understood in the community and the legal profession, the ageing population, uncertainty about changes in mental health legislation, changes in banking and financial practices and concerns about elder abuse and institutional practices.

## Application Forms

The *Guardianship and Administration Regulations 2007*, the *Wills Regulations 1997*, and section 34 of the *Powers of Attorney Act 2000* prescribe certain requirements for applications to the Board. Some Board functions, such as registration of interstate orders and applications for advice and direction are not prescribed in regulations. The Board has developed a range of pro forma application forms and Health Care Professional Reports to ensure that applicants provide all necessary information to the Board as early as possible.

These forms are amended and updated from time to time in response to user-feedback. Application forms and pro forma Health Care Professional Reports are available on the website. Most applicants seek advice from staff members of the Board before downloading and completing application forms. This approach is still preferred by the Board as it prevents unnecessary applications.

## **Investigation and Case Management**

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The legislation requires that the hearing of an application must commence within 45 days of receipt of the application. Administrative staff members ensure that such timelines are efficiently adhered to and their high level of organisation is largely responsible for the timely delivery of outcomes to applications. Additionally, administrative staff field thousands of telephone enquiries each year which are not statistically recorded.

Under the general control and direction of the President, the registrar and staff members of the Board register applications, refer them for investigations, seek specialist reports and witness statements and list applications for hearing.

Under the legislation, which was drafted in line with Victorian precedents and practice, the investigation function actually falls to the Office of the Public Guardian (section 17 and 15(1)(j) *Guardianship and Administration Act 1995*) with the Board having no overt powers of investigation. However, the Board's staff members have undertaken this function, almost exclusively, because the Public Guardian has never been resourced to do so.

The Board has improved investigation practices by requiring searches for enduring powers of attorney and enduring guardianships and title searches on all guardianship and administration applications.

The investigation by the Board's staff members has three functions:

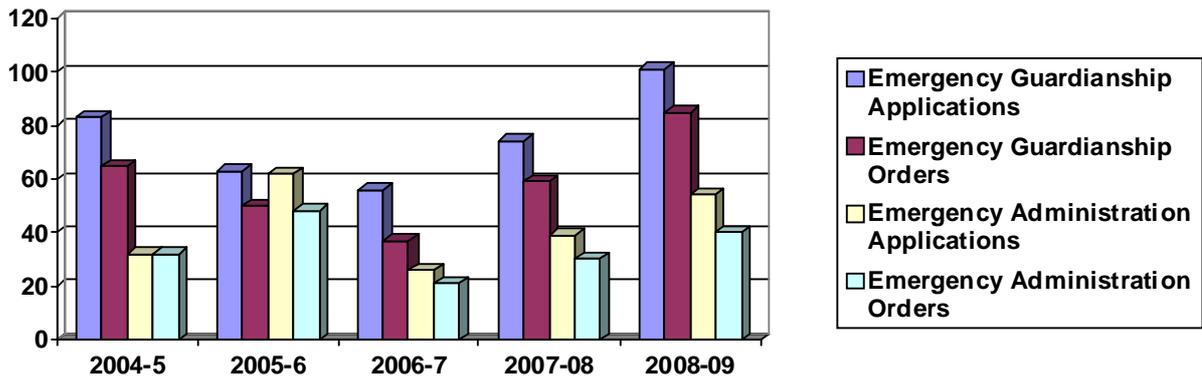
- (i) To prepare a case for hearing, ensuring all the relevant evidence is placed before the Board.
- (ii) To explore whether less restrictive alternatives than the appointment of a guardian or an administrator might address the concerns of the applicant.
- (iii) To promote access to justice, particularly for people with disabilities subject to the application, by explaining the investigation and hearing process and taking statements prior to the hearing.

This work can include arranging meetings of interested parties who may have been in dispute or conflict, contacting service providers directly - including Aged Care Assessment Team (ACAT) staff, social workers in hospitals or the directors of nursing in aged care facilities, to offer support and suggest solutions. It involves much time and effort, but is valuable in protecting the rights of people with disabilities as well as promoting the underlying principles of the Act. Like the administrative staff, investigative staff undertake a great deal of work that is not statistically recorded but which is vital to the operation of the office and the Board. We are extremely fortunate to have such knowledgeable, dedicated and experienced staff members.

## **Emergency Applications**

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Pursuant to section 65 of the Act, the Board may, in circumstances of urgency, make an emergency guardianship or administration order without the need for a hearing. Because the evidence supplied with an application for an emergency order is not usually tested in a hearing, the orders are limited in their operation in that only the two statutory agencies, the Public Guardian and the Public Trustee may be appointed. Such appointments are only valid for 28 days and may only be renewed once for a further 28 days. If an order is needed beyond that time, a full application and hearing is required.



Eighty (101) emergency guardianship applications were received. Eighty five (85) emergency guardianship orders were made, seven (7) were refused (2008-09 refusal rate 7%, 2007-2008 refusal rate 13%

There were 27 more applications for emergency guardians this year and 26 more appointments than last year. There was a similar increase in the numbers of applications for emergency administrators with 15 more applications received and 10 more appointments made.

Fifty four (54) emergency administration applications were received. Forty (40) emergency administration orders were made, Three (3) were refused (2008-09 refusal rate 5.5% 2007-2008 refusal rate 19.5%).

While the Board does not expect the numbers to continue increasing in the next reporting year, given changes in financial and aged care institutional practices, it is likely that the numbers will remain at this level.

## Hearings

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The Board may sit in a Division of three (3) members or one (1) member. A hearing usually takes approximately 45 minutes. Hearings that take significantly longer than 45 minutes usually involve a protracted dispute between parties who disagree about what is in the best interests of the person with the disability. Each hearing is assisted by evidence from the proposed represented person, his or her close associates, carers and health care professionals. Evidence is often presented to Board members in writing, including the health care professional reports and the report of the Investigation and Liaison Officers. Wherever possible, the proposed represented person attends and contributes to the hearings.

Section 72 of the *Guardianship and Administration Act 1995* requires that the Board commence to hear an application within 45 days after the application is received by the Board. The Board is 100% compliant with section 72.

The Board has upgraded its *Notices of Hearing* in the reporting year. The new notices provide more information to persons attending hearings and create efficiencies in office procedures.

The following statistics are presented on two bases: (i) that the figure counted below is for matters finalised, as opposed to commenced, within 45 days and (ii) because an application is defined under the regulations as including the Health Care Professional Report (HCPR), an application is not deemed to have been received until the Board is in possession of both the application and the HCPR, in other words the Board becomes seized of the application upon receipt of both documents. There are frequent occasions where the HCPR arrives significantly later than the initial application – this delay is not counted for these statistical purposes.

The Board conducted six hundred and eleven (611) hearings during the year. Ninety eight point five percent (98.5%) of matters were finalised 45 days after receipt of the application. Point five percent (0.5%) of matters were finalised between 45 and 50 days after receipt of the application and the remaining one percent (1%) of matters were finalised after 50 days. Matters taking longer than 45 days were generally particularly complex cases or matters where relevant witnesses were unavailable for a period.

Board members generally hear 3-4 applications in a session. The six hundred and eleven (611) hearings were held over one hundred and sixty four (164) sessions in this reporting year, whereas in the immediate past year 583 hearings were held in 162 sessions. Therefore Board members hear an average of 3.7 applications per session this reporting year, whereas last reporting year they heard an average of 3.6 applications per session. This number has been increasing steadily in recent years, meaning that Board members are doing more work for a set session fee.

The gap between numbers of applications received and applications heard (262 applications) is made up as follows:

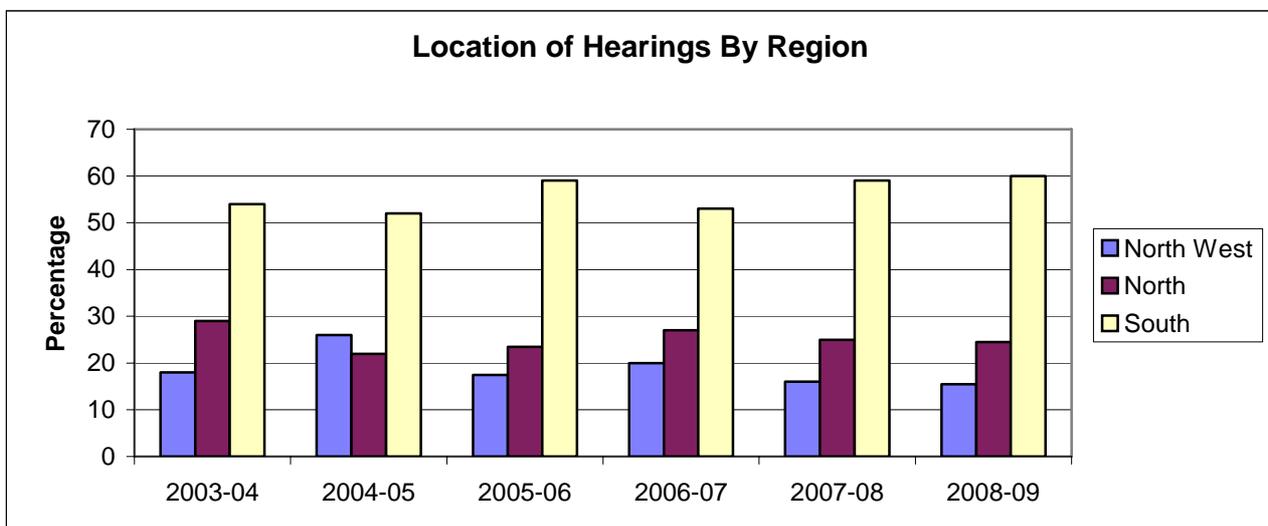
- (i) The total number of applications includes emergency applications pursuant to section 65 which are decided without a hearing (192)
- (ii) applications are withdrawn during the investigation process either because a less restrictive alternative has been pursued or the issues have resolved (50).
- (iii) the person subject to the application died (20).

## Location of Hearings

It is policy of the Board that, as far as possible, hearings should be held in the place that causes the least inconvenience to the proposed represented person and other interested parties. As the Board's hearing process is relatively informal, hearings can and have been held in hospitals and nursing homes as well as the Board's designated hearing room in Hobart. Because the majority of medical consent applications involve persons refusing treatment for psychiatric illnesses, and these people are frequently also subject to a continuing care order under the *Mental Health Act 1996*, most medical consent applications are heard in the departments of psychiatric medicine or the psychiatric intensive care units in public hospitals. This enables the treating doctor to attend to present oral evidence and, most importantly, enables the patient to give his or her views on the application.

The Board expresses its thanks to the Department of Justice (Launceston), Community and Health Services (Devonport), the Launceston General, Royal Hobart and North West Regional Hospitals and to Family Based Care Inc (Burnie) for the provision of hearing rooms.

The following graph shows the apportionment of sessions in the three regions of the State in the last four years. Of the 611 hearings held in 2008-09, 369 were held in the South, 150 in the North and 92 in the North West. During the reporting year, the Board has held the majority of hearings in North West Tasmania in the Ulverstone Courthouse. This property is owned by the Department of Justice and not frequently used for any other purpose. The ability to centralise North West hearings in Ulverstone has created efficiencies for the office. However, hearing premises in the North West and in Launceston continue to be less than ideal. Primarily this is because the Board has no funds available to pay rental for hearing rooms so we use premises which are rent-free and are therefore limited in choice of premises. Finding more suitable hearing premises will be a priority when funding increases again.



## Post-hearing procedures and support

The Board produces written orders following each hearing. Administrators also require certified copies of the orders as proof of authority. A private administrator (i.e. an administrator other than a trustee company or the Public Trustee) is provided with a manual outlining the responsibilities of his or her function. The Board has developed a quarterly newsletter that is sent to administrators.

This complements 2-hour training sessions offered by the Board in Launceston and Hobart for administrators.

Administrators or guardians appointed by the Board enjoy informal support from staff members following their appointment. Private administrators consult with staff members of the Board for practical advice about their functions, such as how to establish direct payments from Centrelink to the represented person's nursing home, the formal requirements of reporting or whether Board approval is required before sale of real estate etc. Many such enquiries avert the need for administrators to make formal applications for advice and direction from the Board.

If an enquiry by an appointee cannot be resolved simply, the appointee may be directed to make a formal application for advice and direction from the Board. Depending upon the nature of the request for advice and direction, the Board may respond in writing to the request or convene a hearing.

At times staff members receive complaints about an appointed administrator or guardian, even where a review application has not been received. This is not strictly a function of the Board's staff members. In the legislation, section 17(1) makes the investigation of such complaints about a guardian or administrator a function of the Public Guardian, but the Public Guardian has never been resourced to undertake this role. As a result, the Board's staff members attempt to informally counsel or conciliate some complaints or refer others to an application to review the appointment.

When the Board appoints an administrator or a guardian, the person appointed is required to submit an annual report to the Board. Additionally, the Board may order that the person appointed submit interim reports or plans. The Board also has the ability to order an attorney under an enduring power of attorney to submit reports. Each of these reports is scrutinised by a member of staff and considered by a member of the Board for its compliance with formal requirements, probity and against the best interests of the represented person. This checking process has been reviewed and enhanced in the reporting year.

Where a report is not submitted in a timely fashion, is deficient or discloses irregularities the administrator or guardian may be required to supply further detail. Additionally an administrator may be audited pursuant to section 63 of the Act. The Board member may authorise a review of the appointment by Board's own motion to address irregularities. Through this process of scrutiny, the Board has detected unauthorised gifts from the represented persons' estates and inadequate or inappropriate management of funds. Audit and 'show cause' proceedings have been instituted under section 63 of the Act, usually resulting in substitution of the administrator.

Guardian's reports are mostly reviewed to ensure that the orders are being actively used to make decisions on behalf of the represented person. If a guardianship order appears to have been inactive for a period, the guardian may be invited to submit an application to review.

This is a significant function of the Board and its officers. It is roughly estimated that the Board reviews some 700 reports by guardians and administrators per year. With increasing numbers of orders and increasing complexity of estates, this will become a more significant and demanding part of the Board's work.

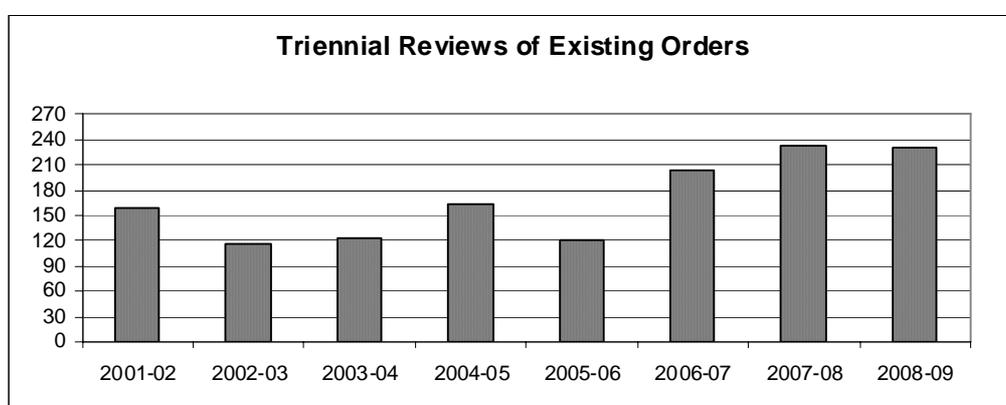
## Reviews of Existing Orders

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In addition to the annual reporting by persons appointed as guardians and administrators which is an administrative operation, the Board conducts review hearings at least once every three years.

Applications for reviews of guardianship or administration orders are made pursuant to section 67 of the Act, either as a consequence of the expiry of the order or because a person believes an order or a term of the order is no longer appropriate to the circumstances. Most often, applications for review arise from the expiry of the term set by the Board. Some mid-term applications are made by the represented person seeking greater control over decision making or finances, others may result from the Board's own motion as part of the reviews of annual reports discussed above.

The following graph provides a comparison with previous years:

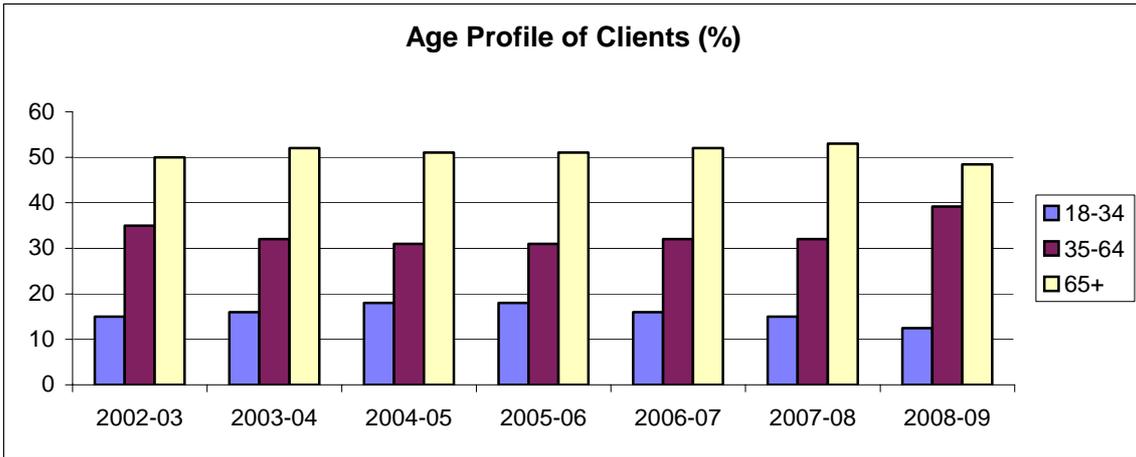


Review hearings have a very important function for the Board. Firstly, they serve the intentions of the 1995 legislators who saw regular reviews as essential to a modern guardianship system; it is a fundamental aspect of serving the “least restrictive alternative”. Secondly, reviews are a learning tool for the Board to witness first hand the aspects of their orders that were successful or unsuccessful in the lives of represented persons. Very often we are able to witness the effect of an order in redressing abuse and reducing family conflicts and hostilities.

# Client Profile

## Age Profile

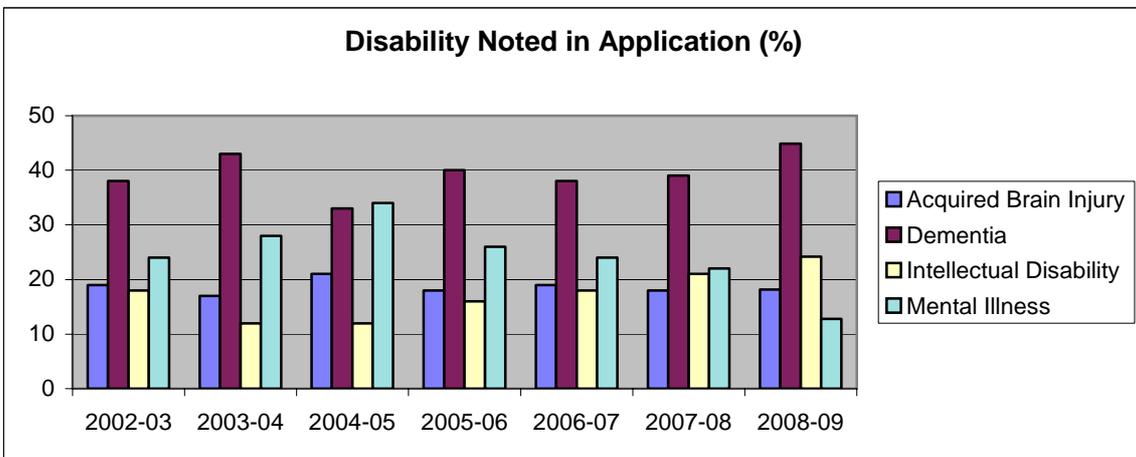
Persons over 65 years of age continue to comprise a significant proportion at 48.4% of the total client group. This figure has been reasonably steady over the last six years. This year there has been a jump in the numbers of persons aged 35-64 but no consequent change in the disability profile.



## Disability Profile

The legislative definition of ‘disability’ is not diagnostically based. Many persons who are subject to applications before the Board have multiple disabilities or disabilities that are not capable of simplistic description or diagnosis. The following categories are deliberately broad to enable data to be used in national comparisons.

According to data received with the applications, in 2008-09 44.85% of the Board’s new applications relate to people who have dementia as their primary disability, 24.2% of new applications relate to people who have an intellectual disability, 18.15% have a brain injury and 12.8% have a mental illness. As with all previous years of reporting, the most prevalent disability noted in applications is dementia by a significant margin. This has an impact for projected case numbers in an ageing population.



## Guardianship

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The Board appoints guardians to make personal and lifestyle decisions for an adult with a disability who, because of that disability, is incapable of making those decisions. This power arises from Part 4 of the *Guardianship and Administration Act 1995*.

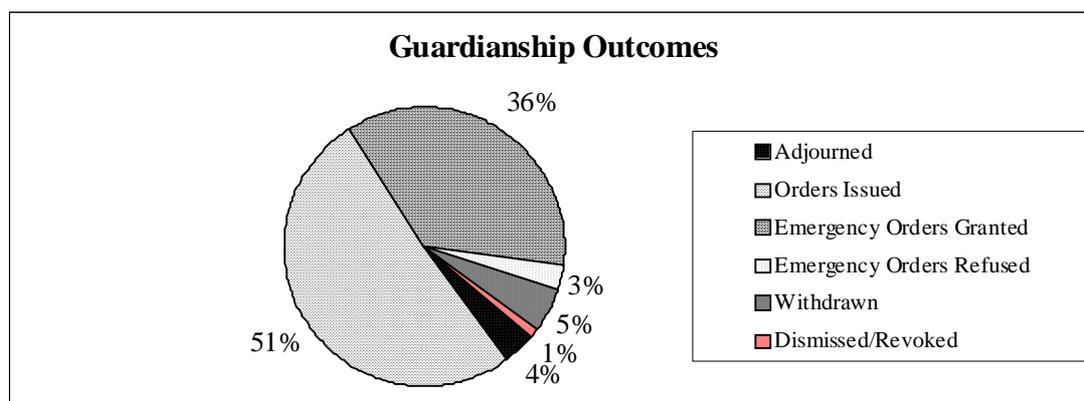
Most people with disabilities are capable of making and enforcing reasonable decisions about their accommodation, health care, relationships and other personal issues. Even a person who is not capable of making reasonable decisions about their finances (e.g. because of the effects of short term memory loss) can still be capable of making reasonable personal decisions. A guardian is only required where a person lacks capacity to make such personal decisions and there is a need for clear legal authority in making such decisions.

Two hundred and fifty eight (220) new applications for guardianship were received during the year. Of these, 80 were applications for emergency orders where the Public Guardian is appointed as guardian for a maximum period of 28 days. Eighty five (85) emergency orders were granted, 7 were refused or withdrawn. The making of an emergency guardianship order - effective for 28 days - will often enable the Public Guardian to resolve an issue (e.g. achieve successful transition of a person with dementia from home to an Aged Care facility) without the need for a subsequent formal application.

Ten (10) applications were withdrawn prior to a hearing. The Board issued ninety three (93) new orders appointing a guardian. Private guardians were appointed in 17 cases, the Public Guardian was appointed in all others. Eleven (11) applications were dismissed or refused and eight (8) were adjourned.

In addition, there were reviews of twenty nine (29) guardianship orders, twenty five (25) of which were continued for a further period.

Following the decisions in *ENT*<sup>3</sup> and *EKR*<sup>4</sup> and a consequent change of practice by Mental Health Services, the traditional gap between the numbers of guardianship applications and the numbers of administration applications has diminished this reporting year. At the same time, the numbers of appointments of private guardians has increased particularly in uncontested situations where a guardian is only required to consent to secure accommodation and to health care.



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<sup>3</sup> *ENT (Guardianship)* [2008] TASGAB 2

<sup>4</sup> *EKR (Guardianship)* [2009] TASGAB 2

## Rates of Guardianship as reported by the Public Guardian:

In 2007-8 (and again this year) the Public Guardian reported that:

*“The rate of people being placed under guardianship orders in Tasmania on a per capita basis is now amongst the highest in Australia.”*

The Board disputes this statement. This statement was initially based upon 2007 national data collated by the NSW Public Guardian. That data was published in the NSW Public Guardian’s submission to the NSW Legislative Council’s 2009 Inquiry into Substitute Decision Making for People Lacking Capacity. The relevant parts of the table show (*rankings added*):

State	Rate per 100,000
New South Wales	25.79 (2)
Victoria	17.20 (5)
Queensland	17.11 (6)
South Australia	25.24 (3)
Western Australia	13.59 (7)
Tasmania	24.06 (4)
Australian Capital Territory	30.86 (1)

These figures do not include the Northern Territory which has greater numbers of appointments than the Australian Capital Territory because of a variation in the role of a guardian.

What these figures show is that the number of Tasmanian under guardianship was equally (and more accurately) amongst the lowest rate per capita as amongst the highest. Tasmania represented the median number of appointments and was similar to the average number of appointments per capita (22 per 100,000). Given that Tasmania has a proportionately greater ageing population and that Tasmanian legislation allows for guardians to make treatment decisions on behalf of people with mental illnesses (whereas in other jurisdictions this is entirely the domain of the mental health laws) it would be expected that the rate of appointments of guardians in Tasmania would be slightly inflated compared to other jurisdictions, but on these figures it is not.

The Public Guardian in her 2008-9 report states that there has been a 51% increase in open cases in the reporting year. This is a miscalculation as, on her figures, the percentage should be 33%. The updated annual figures in the table on page 6 confuse two different rates. Data recorded in that table between 2004-2008 related to numbers of ‘clients’, the 2008-9 figure appears to be related to numbers of ‘orders’. One ‘client’ might be the subject of 2 emergency (28 day) orders before a final order is made, therefore representing 3 ‘orders’ for one client. Thus there has been a significant statistical error in the Public Guardian’s report. There has been a rise in the numbers of guardianship appointments, but not to the extent so reported.

## **Registration of Enduring Guardianships**

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Part 5 of the *Guardianship and Administration Act 1995* enables a person to appoint an enduring guardian to make personal and lifestyle decisions for him or her in the event that the person is no longer capable of making those decisions. If the appointor loses capacity to make decisions about his or her person and circumstances (health care, accommodation, access to visitors etc.), the enduring guardian can make such decisions on his or her behalf.

An instrument appointing an enduring guardian must be registered with the Board. As at the 30<sup>th</sup> of June 2009 the Board had registered 9879 enduring guardianships, which includes 1952 new registrations this reporting year. By 21 July 2009 we had registered 10,000 enduring guardianships. At the start of 2003, the ratio of adult Tasmanians with registered enduring guardianships was approximately 1:1000. It is now around 1:50.

The continuing increase in registrations of enduring guardianships primarily result from educational activities by the Board, the Jehovah's Witnesses program which was the subject of discussion in the last two annual reports and increasing activity by legal practitioners in encouraging clients to execute enduring guardianships as part of responsible legal practice.

An information sheet and pro forma enduring guardianship instrument is available for download from the Board's website: [www.guardianship.tas.gov.au](http://www.guardianship.tas.gov.au). The Board continues to hold comprehensive workshops on *Writing and Registering Your Enduring Guardianship* and this year combined with the Public Trustee to present *In the Event of Incapacity or Death* through the Adult Education program.

## **Reviews of Enduring Guardianships**

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The function of reviewing an enduring guardianship under Part 5 of the Act has proven to be a particularly complex area of work for the Board. Although such applications arise infrequently, they are often highly contested matters. It is also a theme of such applications that the role and function of such appointments is not well understood. Similarly to enduring powers of attorney, it is imperative that upon appointing an enduring guardian, the appointor and the guardian communicate clearly and frankly about the nature of the instrument and the expectations of the guardian. The key to success for an enduring guardianship is in selecting the appropriate person or persons for appointment.

Five (5) applications for revocation of an appointment of an Enduring Guardian were received in the year. The Board ordered the revocation in two applications with the Public Guardian being appointed under a guardianship order, in one matter the Public Guardian was substituted as enduring guardian. The other two applications were dismissed.

## Administration

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### Administration Applications

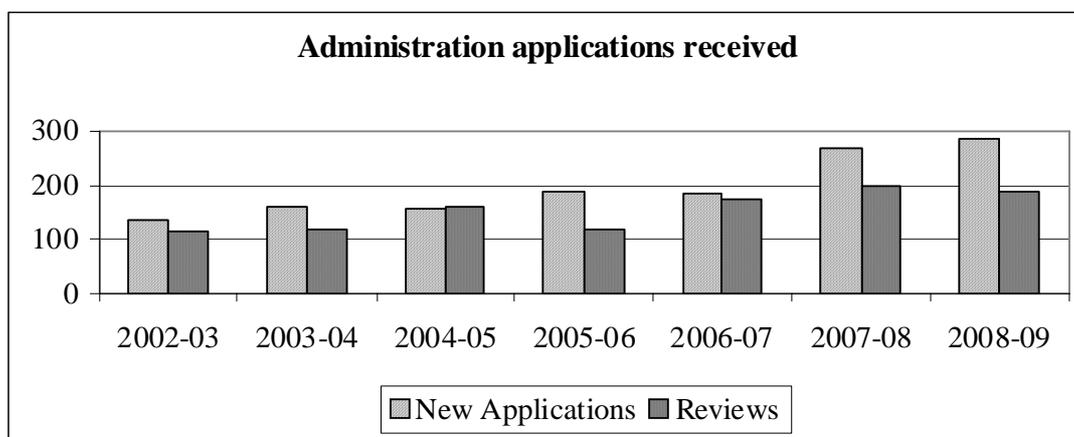
Part 7 of the *Guardianship and Administration Act 1995* provides the framework for the appointment of administrators who undertake financial management on behalf of people who, by reason of disability are incapable of making reasonable financial judgments.

An administrator is a person appointed by the Board to make legal and financial decisions for an adult with a disability who is unable to make reasonable judgements in respect of matters relating to his or her estate. Many are appointed for elderly persons with dementia who require maintenance of their regular accounts and protection of their income. Other common applications are for younger people with disabilities who are unable to control spending due to impulsiveness or addiction to alcohol, cigarettes and other drugs or gambling.

Administration applications differ from guardianship applications in that, because of the operations of probity and privacy principles, less restrictive alternatives are not effective or acceptable in many circumstances. Financial institutions cannot accept informal arrangements for management of a person's estate; therefore administration orders are required more frequently than guardianship orders.

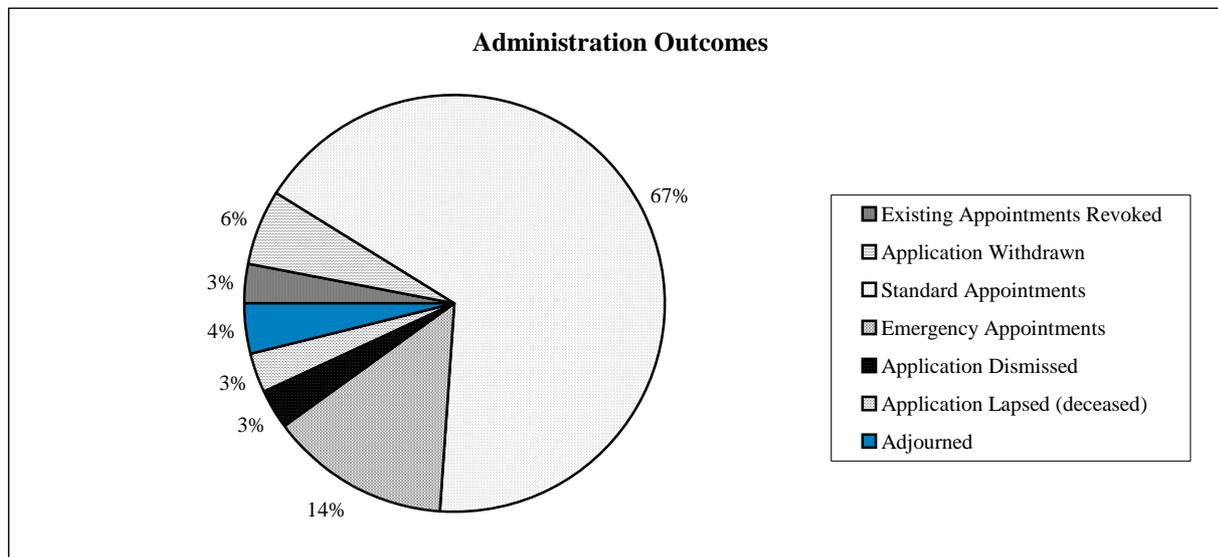
### Administration applications received

Four hundred and seventy four (474) applications for administration were received during the year, which included fifty four (54) applications for emergency orders and one hundred and eighty nine (189) reviews of existing administration orders. As is evident from the graph below, in the last reporting year there was a spike in applications for administration. This resulted in part from the *Disability Services Living Independently Program* which concluded in the last reporting year. However, with Mental Health Services now reviewing its management of client funds, the Board anticipates another spike in such applications in the next reporting year.



The Board subsequently issued three hundred and six (309) orders of which three hundred and nine

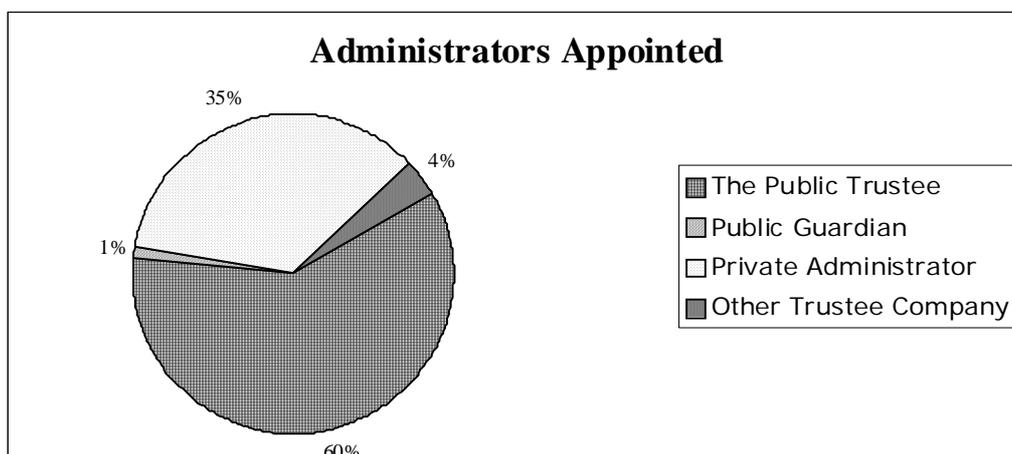
(309) appointed an administrator, fourteen (14) revoked the existing appointment of an administrator, and on twelve (12) occasions dismissed the application. The Board made twenty-nine (29) emergency orders appointing the Public Trustee as administrator. Twenty-six (26) applications were withdrawn prior to hearing and twelve (12) applications lapsed due to the death of the person who was the subject of the application.



### Persons appointed as administrator

Section 54 of the Act enables the Board to appoint The Public Trustee, a trustee company or the Public Guardian as an administrator. Where it is satisfied that another person is a suitable person to perform the role, has sufficient expertise and will act in the represented person’s best interests it can also appoint that person as an administrator (private administrators). During the reporting year, the Board appointed private administrators in 35% of cases. The Public Trustee absorbed 60% of all appointments of administrators.

The Board has instituted a practice of requiring all persons seeking appointment as a private administrator to provide a current National Criminal record Check prior to appointment and to declare any previous bankruptcies or insolvency arrangements. This practice improves the information available to Board members prior to appointments of administrators and reinforces to applicants the fiduciary nature of the appointment.



## Reviews of Enduring Powers of Attorney

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During the year to 30 June 2009, the Board received 22 applications for review of enduring powers of attorney under the provisions of the *Powers of Attorney Act 2000*. These provisions allow the Board to:

- vary the enduring power of attorney;
- appoint a substitute attorney or an administrator;
- declare that the donor did or did not have mental capacity to make a valid enduring power of attorney;
- declare that the enduring power of attorney is invalid;
- revoke the enduring power of attorney and appoint an administrator; or
- make such other order as to the exercise of the power, or the construction of its terms, as the Board thinks fit.

The Board revoked eleven (11) enduring powers of attorney, appointing an administrator. One (1) application was dismissed and three (3) applications were withdrawn. In five (5) cases the Board gave directions to the attorney, one (1) was declared invalid and in one (1) the Board appointed a substitute attorney.

Applications relating to enduring powers of attorney are among the most complex applications that the Board receives, particularly where the Board is required to judge, in retrospect, whether the donor had capacity to execute the document or whether the transactions by an attorney were appropriate and in the best interests of the donor. Applications may be received because of irreconcilable conflict between attorneys.

These applications show two sides of an enduring power of attorney, one is a practical and simple instrument that facilitates financial management after the onset of a disability which is consistent with the principles of 'least restrictive alternative' and the wishes of the donor. The other is a powerful tool that can be abused or underused in the wrong hands. It is important that persons executing such instruments seek careful advice about who to appoint as an attorney. It is also important that persons do not accept appointment as an attorney without having a clear understanding of the nature and function of the role.

Last year the Board endorsed the prohibition of relations of parties to the instrument being witnesses to an enduring power of attorney (page 20 Annual Report). This year, unfortunately, we must report that section 30(2)(b) of the *Powers of Attorney Act 2000* which prohibited that has been repealed. The Board was not alerted to any intention to repeal that provision and not consulted

about its removal by either the Department of Justice or the Department of Primary Industries. In a climate where Governments across the country are attempting to redress elder abuse, this was a retrograde step.

## Consent to Medical and Dental Treatment

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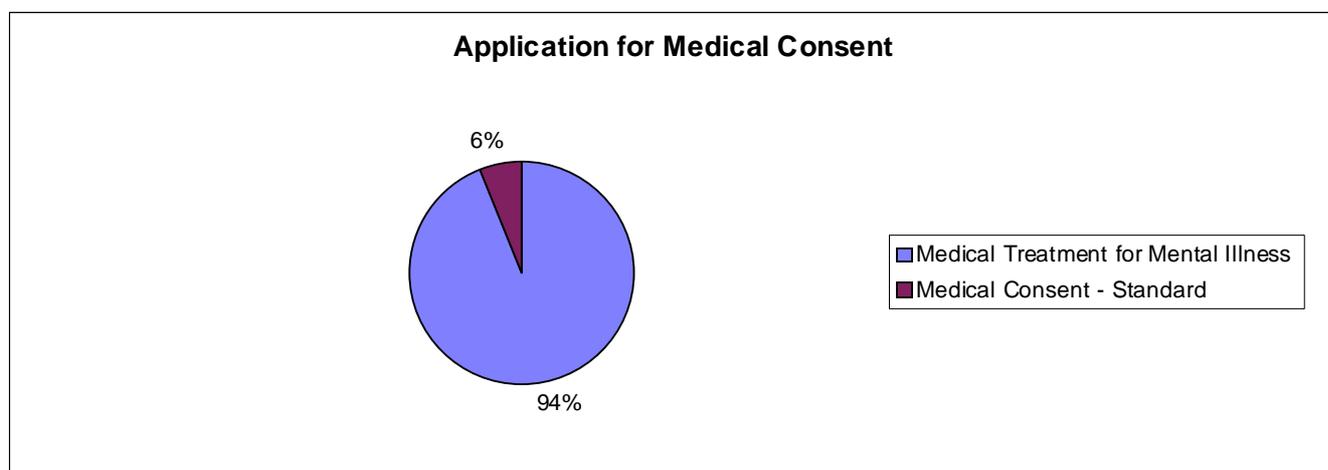
The Board has jurisdiction to determine applications for consent to medical and dental treatment pursuant to Part 6 of the *Guardianship and Administration Act 1995* and section 32 of the *Mental Health Act 1996*.

The *Guardianship and Administration Act 1995* ensures that a person with a disability who cannot give informed consent for medical or dental treatment is assisted in obtaining appropriate treatment. The essential elements of the legislation in this regard are:

- It is unlawful to carry out medical or dental treatment on a person with a disability who is incapable of consenting to the proposed treatment unless either substitute consent for the treatment has been given or the circumstances are such that consent is not legally required (eg emergency situations).
- In most cases where substitute consent is needed, another adult person who meets the criteria as the “person responsible” under the Act can provide such consent.
- If the proposed medical or dental treatment is classified as “special treatment” only the Guardianship and Administration Board can consent.
- Some medical or dental treatment will not require consent. Urgent treatment and some minor treatment such as non-intrusive examinations are examples.

### Applications received

The Board received forty seven (47) applications for consent to medical treatment for persons with a disability who were incapable of consenting to treatment. The vast majority of applications (45 or 94%) were applications for consent to psychiatric treatment for persons with a mental illness who were unable to consent to treatment or were refusing treatment. Two applications were for medical consent. Of the 47 applications, 31 resulted in a determination for the Board’s consent, 1 emergency guardianship order was made and the balance were refused following a hearing or withdrawn after the applicant had received advice from staff of the Board.



## Requests for Statements of Reasons and Appeals

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The Board produces an order at the conclusion of each hearing and notes are kept about the reasons for decision. A formal statement of reasons is not produced in every matter. Generally statements of reasons are only produced upon request by a party pursuant to section 74 of the Act or where the Board members determine that reasons ought to be produced. It is advisable to seek a statement of reasons before appealing a decision of the Board to the Supreme Court.

All statement of reasons covers are de-identified and published on the website (after the expiry of any appeal period or processes) which gives access to members of the community and the legal profession to the processes and interpretations employed by the Board.

Twenty-one statements of reasons were written during the reporting year. An increase in the numbers of statements of reasons written also represents an increase in workload for Board members.

There were no appeals from any decisions of the Board.

## User Satisfaction Surveys

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Given the limited use of sections 73 and 74 (appeals and statements of reasons) the Board instituted a User's Satisfaction Survey to obtain more consistent and representative feedback from Board users. These surveys were sent out with orders between October 2008 and February 2009 (approximately 350 surveys were sent).

The surveys seek feedback upon:

- The service provided by GAB staff prior to the hearing
- The hearing process and hearing facilities
- Notice periods and ability to prepare for the hearing
- Information provided in Facts Sheets and the website

Eleven surveys (3%) were returned to the Board. All were completed by applicants. The response rate does not produce an appropriate statistical sample. The majority of respondents were extremely positive about the pre-hearing and hearing procedures.

One respondent was concerned that too little information was given about the interaction between Tasmanian and Queensland legislation and that the discussion was not in simplified language that the represented person could understand (8.12.08). Other comments included in the surveys were:

*"We needed the order to assist Dad and the whole process was not intimidating at all. We felt the GAB acknowledged that they were there to help us help Dad."* 24.10.08

*"The Board gave an "open discussion" to all family members concerned"* 5.11.08

*"All the people associated with the Board were professional and extremely helpful ... From my experience could not wish for any improvement"* 28.1.09

*"Found the hearing quite helpful and it put me at ease"*10.2.09

Despite a small response rate, the Board is encouraged by these early results and will continue to seek feedback from Board users. A web-based survey is in development and it is hoped that such a survey may be more accessible and encourage more responses than a paper based survey.

## **Community and Professional Education**

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### **Community Education Programme**

The Board promotes and provides education on request to community, government and professional bodies in the interests of promoting access to justice. Community education is technically a function of the Public Guardian pursuant to section 15(1)(h) of the Act but the Board has taken the view that this does not preclude education activities by the Board.

Members and staff of the Board delivered 37 education sessions to the Tasmanian community. Of these, approximately a third of sessions were provided for the professional development of persons employed in nursing, medical or disability fields. The remainder were presentations to community and interest groups. Sessions average between 1 and 2 hours. A list of organisations that the staff members or members of the Board have addressed during the reporting year is attached at Appendix 3.

Organisations seeking education sessions are encouraged to contact the Board and ask for a Community Education Program Request Form to be faxed, emailed or mailed to them.

The Board also offers a range of community education sessions to the public. These are advertised on the website and are generally attract a nominal fee.

Last year we reported upon the development of a a working party that has been established under the auspices of Disability Services to develop a TAFE training module. Unfortunately, due to budgetary restrictions in the Department of Health and Human Services that program has been cancelled. The need for education about aspects of transition from home to residential care remains an area of unmet need.

### **Website and Publications**

Updating and improvement of the Board's website has continued in 2008-2009.

This website includes facts sheets, process information, annual reports and the de-identified statements of reasons (decisions), which are representative of the Board's decision-making. All the Board's publications can also be downloaded from the website. The website address is [www.guardianship.tas.gov.au](http://www.guardianship.tas.gov.au)

In addition to the website, the Board has prepared the following fact sheet publications as educational tools. The fact sheets are distributed through the Board's enquiry service, at community education seminars and on request.

- 1 What is the Guardianship and Administration Board?
- 2 Guardianship
- 3 Administration
- 4 Consent to Medical or Dental Treatment
- 5 Consent to Medical or Dental Treatment (Guide for Medical Practitioners)
- 6 Are you a Person Responsible?

- 7 The Public Guardian
- 8 Reviews of Enduring Powers
- 9 What if I Don't Agree With the Board's Decision?
- 10 Statutory Wills
- Enduring Guardianship Info Sheet

The Board also publishes a range of information booklets:

- Private Administrators Handbook
- Private Guardian's Handbook
- Enduring Guardian's Handbook
- Person Responsible Guidelines Issued October 2008 pursuant to section 4(5) *Guardianship and Administration Act 1995*
- Litigation by Administrators and Guardians, Background Information

## Office Administration

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### Human Resources

The Board had available to it a Registrar and six other staff members; two staff members undertake investigative work and the balance undertake registry responsibilities in conjunction with the Mental Health Tribunal and, since February 2006, the Tasmanian Forensic Tribunal.

The Board was grateful to the Public Trustee for seconding the services of Gaylene Cunningham to the Board from November 2008 to March 2009 as Acting Registrar. At the time of reporting Jane Bliss is Acting Registrar. The position of Registrar is likely to be filled on a more permanent basis in early 2010.

### Finances

The Board was unable to meet its budget target and was provided with support from the Department of Justice to cover this over spend. Most funds are spent on salary and Board member's fees. Non-salary items are already at a minimal or inadequate rate for a tribunal with statewide responsibilities. Despite this, the Agency was required to find further efficiencies in the Department's response to the global financial crisis. While we have adjusted our budget to suit the needs of the Department, it is unlikely that such strict measures can be sustained in the medium or long term.

The immediate results of funding cuts are:

- Reduced ability to investigate applications in the North and North West due to lack of funds for travel. Investigations are now conducted by telephone for applications outside the Hobart area.
- Cancellation of the out-of-hours emergency service previously offered by the Board.
- Reduced professional development for staff and Board members. In light of changing legislation and case law, such education now occurs in newsletters and emails rather than training sessions.
- Reduced capacity to offer education to community groups.
- Reduction in provision of multi-disciplinary Divisions to hear applications. Whereas the Board has always sat in divisions of three members with different qualifications and experience, applications are increasingly determined by a single member, which may undermine the quality of the decision making. Additionally, new members generally have the opportunity of sitting with other members to enhance their skills in process management. The ability to offer such training to new members is reduced with a reduction in funding.

Changes in total number of applications and recurrent funding over the past 6 reporting years are as follows:

Year	Total applications received	% Increase in applications	Recurrent Funding	% Change in Recurrent Funding
2002/03	389		\$466,385	
2003/04	504	30%	\$490,505	+5%
2004/05	594	18%	\$470,169	- 4%
2005/06	626	5%	\$484,881	+3%
2006/07	647	3%	\$486,181	+1%
2007/08	826	27%	\$615,939	+27%
2008/09	<b>870</b>	<b>6%</b>	<b>\$642,822</b>	<b>+4.5%</b>
<b>Compare 2002/03-2008/09</b>	<b>+481</b>	<b>+124%</b>	<b>+\$176,437</b>	<b>+38%</b>

In the past 6 years, the Board's workload has increased 124% but its funding has only increased by 38%.

The Board's financial position is a consequence of the increased demand and it is a credit to the commitment of staff that the Board's performance and the services provided to the public have not declined in the face of this marked increase in their workloads.

A full financial summary is at Appendix 4.

## **How to Contact the Board**

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The Board's offices are located at: First Floor, Department of Justice Building  
54 Victoria Street, Hobart

Postal address: GPO Box 1307, Hobart, TAS, 7001.

Telephone Number: (03) 6233 3085 or 1300 799 625

Facsimile Number: (03) 6233 4509

Email Address: [guardianship@justice.tas.gov.au](mailto:guardianship@justice.tas.gov.au)

Website: [www.guardianship.tas.gov.au](http://www.guardianship.tas.gov.au)

## Appendix 1 - Board Members at 30-6-08

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### **Anita Smith – President**

Appointed: 1 January 2003 (5 year term)

Anita Smith was admitted as a legal practitioner in 1992. Anita graduated from Law at the University of Tasmania and has a Masters in Law from Monash University. She has practised law in private practice and community legal centres in Tasmania and New South Wales. She was a policy advisor to the Human Rights and Equal Opportunity Commission and a Chief of Staff to the Tasmanian Attorney General.

Anita is *ex-officio* member of the Forensic Tribunal (*Mental Health Act 1996*). She was previously the Chair of the Professional Review Tribunal under the *Nursing Act 1995*, and a member of the Anti Discrimination Tribunal. Between 2006 and 2008 Anita was the Chair of the Australian Guardianship and Administration Council.

### **Board Members (In alphabetical order)**

#### **Kellie Ashman**

Appointed: 21 February 2005 and 30 June 2008

Kellie Ashman was a member of the Disability Services Ministerial Advisory Council (now known as the Ministers Disability Advisory Council) from 2002 to 2008 and served as the Deputy Chair of that Council. She is a former member of the Committee of Management for Tasmanian Acquired Brain Injury Services in Launceston. She has developed and maintained extensive interests within the disability sector. Kellie provides volunteer services for St Michaels Association in Launceston as well as serving on their Board of Management since 2006. She was also a finalist in the Community Achievement Awards of 2007 in the category of MAIB Disability Achievement.

#### **Kim Barker**

Appointed: 27 June 2003, reappointed August 2006

Kim Barker worked for many years with people with disabilities, as a rehabilitation consultant and counsellor. She is Deputy President of the Mental Health Tribunal and a member of the Social Security Appeals Tribunal. She undertakes dispute resolution as Chair of the Tasmanian Training Agreements Committee, and is a Director of the Motor Accident Insurance Board. Kim's qualifications include a Bachelor of Arts Degree (Psychology), Diploma of Education and a Graduate Certificate in Counselling and Development.

#### **Melanie Bartlett – Deputy President**

Appointed 22 March 1999, reappointed October 2002 and February 2006 (Ceased work for the Board when appointed Magistrate in 2009)

Melanie graduated with a Law degree from the University of Tasmania in 1975 and was admitted to the Supreme Court of Tasmania as a Barrister and Solicitor in 1978. Other than working for the Australian Legal Aid Office in the late 1970's, Melanie has worked mainly in private practice. She was previously a member of the Council of the Law Society of Tasmania and was President of the Society in 1999/2000. Melanie was a partner in a legal firm based in Burnie, a Commissioner of the Legal Aid Commission, a member of the Mental Health Tribunal and a member of the Disciplinary Tribunal under the Legal Profession Act. She has been a member of the Anti-Discrimination Tribunal since 1999 and a temporary magistrate.

**Wendy Beveridge** Appointed: 21 February 2005 and reappointed 30 June 2008

Wendy Beveridge graduated with a degree in Law at the University of Tasmania in 1990. She practised as a solicitor with Jennings Elliot until 1996, when she took up practice at Dobson Mitchell and Allport until 2001. Since that time she has been the Commissioner's delegate with the State Service Commission, Commissioner for Criminal Injuries Compensation, sessional mediator with the Supreme Court, the Anti Discrimination Tribunal and Relationships Australia. Wendy is currently employed with the Legal Profession Board of Tasmania.

**Kate Brown** Appointed: 21 February 2005, reappointed 30 June 2008

Kate Brown graduated with a degree in Arts Law at the University of Tasmania in 1995 and was admitted as a Barrister and Solicitor of the Supreme Court of Tasmania in 1996. Since that time she has worked in private practice, with Clarke and Gee, and Dobson Mitchell and Allport. She has practised mostly in litigation, including criminal law, family law and personal injuries litigation. Kate is also a member of the Forensic Tribunal and the Mental Health Tribunal, a Director of the Motor Accidents Insurance Board and a member of the Integrity Assurance Board.

**Elizabeth Dalglish** Appointed: 27 June 2003, reappointed August 2006

Elizabeth Dalglish graduated from the University of Tasmania with a Bachelor of Arts and Law in 1991. She was admitted as a Barrister and Solicitor of the Supreme Court of Victoria in 1992 and then worked at the Consumer Credit Legal Service (Vic) the following year. Upon returning to Tasmania she worked as a Legal Officer for the Australian Securities Commission and then worked as the Child Support Solicitor at the Hobart Community Legal Service. In 1994, she commenced work at the Legal Aid Commission of Tasmania providing legal advice on a range of topics through the telephone legal advice and community education service.

**Mary Davies** Appointed: 21 February 2005, reappointed 30 June 2008

Mary Davies graduated in 1971 with degrees in Arts and Social Work from the University of Queensland. She has been employed as a social worker in both government and community based organisations since that time. She is Team Leader of the Dementia Carer Support Service in the North West area of Tasmania. Mary was a founding member of the Alzheimer's Association, North West Tasmania.

**Gerard Dibley** Appointed: 21 February 2005 and reappointed 30 June 2008

Gerard Dibley has extensive experience in public sector programs that support people with disabilities. He is currently a Company Director of PDF Management Services. He has formerly held positions as Coordinator Disability Services Unit, Manager of Children's Services, Acting State Program Co-ordinator for Aged and Disability Services and as the Deputy Director of Housing Tasmania. He is a current Board member of Nexus Inc Residential Services.

**Susan Hill** Appointed: 11 August 1997, reappointed October 2000, April 2004 and June 2007

Sue Hill holds a Bachelor of Laws degree and was admitted as a barrister and solicitor of the Supreme Court of Tasmania in 1978. Sue worked in private practice from 1981 until 1993. Sue has lectured and tutored in Business Law at the Hobart TAFE and the University of Tasmania in Launceston. Sue was instrumental in establishing the Northern Community Legal Service in Launceston. She is a member of the Mental Health Tribunal, the Standards Panel of the Local Government Association and is currently Deputy Chair of TASCAG –the minister’s advisory committee on Mental Health. She is also a member of the Women’s Council of Tasmania and a volunteer legal advisor for Citizens Advocacy. Sue was a member of the Social Security Appeals Tribunal for 15 Years.

**Patricia King** Appointed: 21 February 2005 and reappointed 30 June 2008

Patricia King obtained a Bachelor of Social Work at the University of Tasmania in 1992. Since that time she has worked with Children’s Services, the Launceston General Hospital and Disability Services (North). In the past Patricia has worked as a State Enrolled Nurse in Victoria. Patricia is a past board member of Independent Services, a day support service for people with a disability. She has served as an authorised officer for the predecessor of the current Board and as a nominated officer for this Board from 1997 to 2003.

**Grant Kingston** Appointed: 17 December 2007

Grant Kingston has an extensive background in the welfare and trust industry. Prior to joining the Board he was employed for 20 years at Centrelink in Tasmania and Western Australia, being Branch Manager at Broome, Port Hedland and Kununurra. In 1990 Grant became the NW Regional Manager for the Public Trustee. He retired from this position in 2006. Grant has experience in the areas of disability services, welfare, asset and financial management, taxation, Will making, estate planning, administration and conveyancing.

**Marguerite Lester** Appointed: 11 August 1997, reappointed October 2000, May 2004 and June 2007

Marguerite Lester holds a Bachelor of Applied Science (Occupational Therapy) degree and a Master in Business Administration. Employment and community involvements have included community based allied health services, the Aged Care Assessment Team, Vocational Rehabilitation Services, St Giles in the north of Tasmania and other Hobart based facilities. Mrs. Lester is a member of the Mental Health Tribunal and other community groups.

**Rodney Lester** Appointed: 16 October 2000, reappointed May 2004 and June 2007

Rodney Lester holds a Bachelor of Business (Accounting) from the University of Tasmania, a Master of Taxation from the University of New South Wales and a Company Director Diploma from the University of New England. Rodney has worked in private accounting practice for several years specialising in small business taxation and project development. He has held a number of directorships in both public and private companies, and currently is a director of Giant Steps Tasmania and the Meander Valley Enterprise Centre.

**Elizabeth Love** Appointed: 4 February 2002, reappointed August 2005, April 2009

Elizabeth Love, who holds a Bachelor of Arts (Social Work), has worked as a social worker for over 25 years in a variety of State and Federal government agencies and in the non-government sector. She has worked as a private rehabilitation consultant and currently works in private practice as an accredited mental health counsellor.

**Paul Mayne** Appointed: 4 February 2002, reappointed August 2005 (appointment expired 2009)

Paul Mayne holds diplomas in Developmental Disability, Disability Services Management and Company Directorship. He is CEO of a non profit community support organisation and is a sessional teacher at TAFE. Paul is a member of National Disability Services (NDS) and is chair of NDS Tas. accommodation forum and representative on the National NDS accommodation committee. Paul has worked in the disability/mental health field for over 23 years having trained initially as an auxiliary nurse at the Royal Derwent Hospital and subsequently managed group homes for people with intellectual disabilities.

**Martin Morrissey** Appointed: 23 March 2005 and reappointed 30 June 2008

Martin Morrissey completed his training as a psychiatrist in 1996 at Westmead and associated hospitals. He was awarded the Fellowship of Old Age Psychiatry in the same year and the Fellowship of the Royal Australian and New Zealand Institute of Psychiatry in 1997. He practised in Northumberland, England until 2002 when he commenced a position as Consultant Old Age Psychiatrist with the Department of Health and Human Services in Tasmania.

**Keith McArthur** Appointed: 17 December 2007

Keith McArthur graduated in Medicine from the University of Sydney in 1985. He moved to Tasmania in 1987 where he ran a general practice in Wynyard until 2002. He practised in mental health as a trainee registrar and then as a medical officer at Parkside and Spencer Clinic until 2006. In June 2008 he completed a federally funded project in “Improving Care of the Aged in Residential Aged Care Facilities”. He is currently dividing his time between general practice, primarily in aged care, and a part time psychiatric medical officer at Rivendell Clinic North West Private Hospital.

**Terry McGuire** Appointed: 21 February 2005 and reappointed 30 June 2008 (Ceased work for the Board when appointed a Federal Magistrate in 2009)

Terry McGuire graduated with a degree in Philosophy in 1980 and in Arts Law in 1983 and was admitted as a Barrister and Solicitor of the Supreme Court of Tasmania in 1984. He has worked in private practice since 1994, with Fuller and Stace, Doolan and Brothers, James Crotty, Piggott, Wood and Baker and with Temple-Smith Barclay where he is a partner. He has practised primarily in family law and criminal law. He has formal training in mediation and has been active in the Family Law Practitioners Association of Tasmanian and the Law Council of Tasmania.

**Tony O’Neill** Appointed 16 October 2000, reappointed 21 February 2005

Tony O’Neill has an extensive background in health and human services. His former positions included Manager, Individual Child and Family Services and North West Regional Program Manager, Child, Family and Community Support Services with the Department of Health and

Human Services. Tony holds a Bachelor of Arts (Community Social Services) from Charles Sturt University.

**Anne Parker** Appointed: 21 February 2005 and 2008 (Resigned 2009)

Anne Parker is a legal practitioner. She is currently the Deputy Official Secretary to Governor of Tasmania. She has been admitted to practise since 1994 and has worked with Marstrand and Ayling, Ogilvie McKenna and the Legal Aid Commission of Tasmania. She has experience in the Magistrates Court and Family Court and in legal education and mediation.

**Leon Peck** Appointed: 22 March 1999, reappointed October 2002 and February 2006

Leon Peck has a background in health services, having served some 20 years with the now Department of Health and Human Service, predominantly in health care administration. Since leaving the Department Leon has been involved with non-government not for profit organizations, currently provides a consultancy service and has successfully owned and operated a hospitality business on Tasmania's east coast. Leon holds a Bachelor of Arts Degree from the University of Tasmania and is a Justice of the Peace.

**Malcolm Schyvens** Appointed: 27 June 2003, reappointed August 2006 (Ceased work for the Board when appointed Deputy President of the NSW Guardianship Tribunal in 2009)

Malcolm Schyvens has combined Bachelor of Commerce and Bachelor of Laws degrees and has been a practicing solicitor in private practice since 1996 with substantial experience in legal matters relating to the Board's activities. Malcolm is the Chairperson of the Board of Cosmos Incorporated, an organisation for the intellectually disabled, is an officer in the Australian Army Reserve and is an Official Visitor appointed under the *Mental Health Act 1996*. Malcolm is also the President of the Law Society of Tasmania, a member of the Tasmanian Forensic Tribunal and a Director of the Centre for Legal Studies Pty Ltd.

**Lindi Wall** Appointed: 21 February 2005 and reappointed 30 June 2008

Lindi Wall graduated with a degree in Law at the University of Tasmania in 1989 and was admitted as a Barrister and Solicitor of the Supreme Court of Tasmania in 1990. She has 18 years experience in civil litigation with the firm of Wallace Wilkinson and Webster. In 2008 she was appointed to the position of temporary magistrate and currently works as a conciliator. She is a founding Board member of the Environmental Defenders Office (Tas)

**Kereth West** Appointed: 11 August 1997, reappointed 16 October 2000, May 2004, June 2007

Kereth West is a graduate of the University of Tasmania having gained a Bachelor of Arts with Honours in 1983 and a Master of Psychology in 1989. Kereth has worked as a Clinical Psychologist since 1984 in both Mental Health Services and Disability Services. She currently holds the position of Co-ordinator, Specialist Clinical Services in DHHS's Complex & Exceptional Needs Service.

**Philippa Whyte** Appointed: 22 March 1999, reappointed October 2002 and February 2006

Philippa Whyte holds a Bachelor of Laws degree and was admitted as a Barrister and Solicitor of the Supreme Court of Tasmania in 1980. After that she worked as a lawyer in private practice for over 22 years. In 2002 she was appointed to the position of Conciliation Officer within the Office of the Health Complaints Commissioner and in 2009 was appointed to the position of Principal Officer within that

office. Philippa is a trained mediator and also a member of the Mental Health Tribunal. She was a member of the Social Security Appeals Tribunal for 6 years.

**Catherine Wilding** Appointed: 27 June 2003, reappointed August 2006

Catherine is employed by the Department of Education as the Legal Services Advisor within the Legal Services Unit. She is also Legal Officer with the Specialist Reserve of the Royal Australian Air Force in Hobart. Until recently Catherine practiced as a registered nurse in Aged Care on a dementia unit.'

**Debra Wood** Appointed: June 2006 (Ceased work for the Board when she changed area of practise in 2009)

Debra is a psychiatrist, currently Clinical Director of Tasmania's Forensic Mental Health Service. She is a new recruit from Victoria where she spent the last three years with the Victorian Institute of Forensic Mental Health (Forensicare). Prior to this late-life transition to forensic work, she held positions in civil mental health services and with the Chief Psychiatrist's Office of Victoria. Debra was a member of the Mental Health Review Board of Victoria from 2002-2007. She is completing a Bachelor of Arts from the University of Melbourne.

## Appendix 2 - Statistical Summary

	2004-05	2005-06	2006-07	2007-08	2008-09
<b>Applications received</b>					
Total applications rec'd	594	626	647	826	873
Guardianship normal	49	81	85	125	142
Guardianship emergency	83	63	56	74	101
Administration normal	156	188	186	266	215
Administration emergency	32	62	26	39	54
Medical consent	44	39	19	30	47
Statutory Will	4	1	4	1	6
Other (EPA's, gifts, advice etc)	56	71	68	57	77
Triennial review of existing orders	170	121	203	234	231
<b>Hearings conducted</b>					
Total hearings	409	417	477	583	611
Guardianship	41	60	64	82	117
Administration	136	149	150	200	167
Medical consent	38	30	15	24	44
Statutory Will	2	1	1	2	3
Other	17	34	39	30	36
Reviews	175	143	219	245	244
<b>Hearings by region</b>					
South	209	246	253	346	369
North	92	98	128	147	150
North West	108	73	92	89	92
<b>Outcomes</b>					
Guardianship orders	105	103	56	67	118
Administration orders	316	273	296	345	330
Medical consent orders	32	24	14	21	30
Other orders (EPA's gifts, etc)	25	31	21	22	17
Statutory Will orders	2	1	1	1	0
Applications dismissed	26	49	30	39	37
Matters adjourned	15	8	29	33	30
Applications lapsed/ withdrawn/ advice only	79	127	92	136	87
Matters outstanding	10	20	10	31	5
<b>Community &amp; Professional Education Sessions</b>	43	59	52	41	37

## **Appendix 3 - Community Presentations**

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Staff and Board members delivered education to almost 800 people in the reporting year. Over 48 hours of community education was presented in thirty seven (37) sessions. The average length of a session was 1.5 to 2 hours. The majority of sessions were delivered by the President. Sessions headed “GAB Education Calendar” were designed, promoted and delivered by the Board for a broad community audience. All other sessions were provided on request from the organisations mentioned below.

### **GAB Education Calendar:**

Adult Education Enduring Guardianships (4 sessions)  
General Overview (3 sessions)  
Private Administrators  
Aged Care Facilities / Allied Health Professionals

### **State Government Agencies:**

North West Regional Hospital:  
    Social Work Department  
    Spencer Clinic  
MAIB  
Mental Health Services

### **Other Community Organisations:**

APW Training  
Commonwealth Respite and Carelink Centre  
Australia / New Zealand College of Intensive Care Specialists  
University of Tasmania – Medical and Nursing Students (2 sessions)  
Community Based Care – South Inc.  
Tasmanian Bar Association  
National Seniors Australia (Tasmania)  
Polish Welfare Office  
Steps Employment & Training Solutions  
University of the Third Age  
Family Based Care – Burnie  
Central Coast Adult Day Centre – Ulverstone  
Community Nursing Staff – Ulverstone  
Independent Health Care Service  
Langford Disability Services  
Seniors Week – presentations jointly with Public Trustee

## Appendix 4 – Financial Summary 2008-09

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<b>Guardianship and Administration Board</b>	<b>Budget</b>	<b>Actual Expend</b>	<b>Variation</b>
<b>EMPLOYEE RELATED</b>			
	491,728	565,347	-73,6109
<b>TRAVEL AND TRANSPORT</b>			
	33,040	28,531	4,509
<b>MATERIALS, SUPPLIES &amp; EQUIPMENT</b>			
	8,400	12,687	-4,287
<b>PROPERTY EXPENSES</b>			
	40,500	39,929	571
<b>FINANCE EXPENSES</b>			
	0	1,225	-1,225
<b>INFORMATION TECHNOLOGY</b>			
	20,500	19,456	1,044
<b>CONSULTANTS</b>			
	0	1,613	-1,613
<b>OTHER EXPENSES</b>			
	48,655	64,501	-15,847
<b>TOTAL</b>	<b>642,822</b>	<b>733,288</b>	<b>-90,466</b>

Full Financial Reports for the Board are encompassed in the Department of Justice Annual Report in Output 1.6.