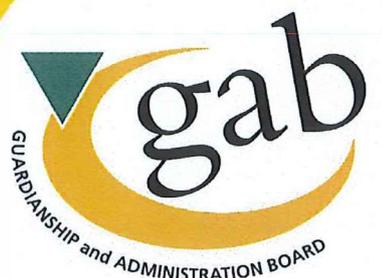


# ANNUAL REPORT 2017-18







# GUARDIANSHIP AND ADMINISTRATION BOARD

ANNUAL REPORT  
2017-18

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# REPORT OF THE PRESIDENT

It is my privilege to present on behalf of the Guardianship and Administration Board the annual report for the 2017-2018 financial year.

The reporting year has been a challenging one, mainly due to workload and staff shortages. In 2016-17 the Board managed its biggest workload to date, with an increase in applications of 49% compared to the 2015-16 year. The current reporting year has seen a slight decrease in applications, of 6.8% on the previous year. This is largely due to a reduction in applications for emergency administration orders and applications for review of orders.

In Tasmania the National Disability Insurance Scheme (the NDIS) is continuing to be rolled out by age group. The final adult age group 50-64 year olds, will join the scheme by 1 January 2019. As the NDIS has been rolling out in Tasmania, the Board has received a small number of applications concerning persons transitioning into the NDIS. The Board has published one decision which is NDIS related in this reporting period.

This reporting period has seen several reviews of legislation relating to the work of the Board.

The former Tasmanian Attorney General, the late Hon. Vanessa Goodwin, requested the Tasmanian Law Reform Institute (TLRI) to review the *Guardianship and Administration Act 1995* to ensure that it is responsive to the needs of the community, and that it advances, promotes and protects the rights of people with impaired decision making capacity. The Board was invited to meet with the reviewer and to identify and discuss issues relevant to the TLRI review. The Board made a detailed submission on 16 March 2018 in response to the TLRI *Guardianship and Administration Act 1995* Issues Paper (TLRI Issues Paper) which was submitted on 16 March 2018.

The TLRI's Issues Paper reviews how the *Guardianship and Administration Act* aligns with the United Nations Convention on the Rights of Persons with Disabilities (the UN Convention) and considers issues including how decision making might be guided by a person's will, preferences and rights rather than 'best interests'; the possible removal of the term disability as a precondition for Board orders and how decision making capacity should be assessed. The Issues Paper also considers informal and formal supported decision-making models as well as the existing substitute decision-making model and considers a review of the safeguards for substitute decision making that the *Guardianship and Administration Act* must protect and promote the interests of the person. These issues are consistent with the Australian Law Reform Commission's 2014 report *Equality, Capacity and Disability in Commonwealth Laws* which recommended reform so that state and territory laws and legal frameworks concerning individual decision making should be guided by National Decision-Making Principles as follows:

1. All adults have an equal right to make decisions and to have their decisions respected.
2. Persons who require support in decision-making must be provided with access to the support necessary for them to make, communicate and participate in decisions that affect their lives.
3. The will, preferences, and rights of persons who may require decision-making support must direct decisions that affect their lives.
4. Laws and legal frameworks must contain appropriate and effective safeguards in relation to interventions for persons who may require decision-making support, including to prevent abuse and undue influence.

Many of these issues, if adopted, are a significant move away from the existing guardianship regime. It is a shift that other Australian guardianship jurisdictions have taken or are considering to take<sup>1</sup>, and which better reflects the UN Convention.

The TLRI Issues Paper also considers Consent to Medical and Dental Treatment Advance Care Directives and the Appointment of Enduring Guardians, and the interrelationship of the Act with other legislation.

The Board awaits with interest the final report of the TLRI's review into the *Guardianship and Administration Act* and what, if any, reform initiatives are adopted by government. Any significant reform adopted will need to be supported with appropriate funding to ensure the Board can fully meet its statutory functions.



In July 2017 the Minister for Human Services endorsed an independent review of the *Disability Services Act 2011* into the operational effectiveness of it since its implementation in January 2012. The Board made written submissions as to the operations of the *Disability Services Act 2011*. The Review has been completed and the Final Report of the Review was tabled in Parliament on 5 July 2018. The Board awaits advice on any reform adopted by government.

The Board was invited to and made submissions on the remaking of the *Guardianship and Administration Regulations*. The *Guardianship and Administration Regulations 2017* were made by Special Gazette on 17 October 2017.

Interestingly, the Board notes that scrutiny and review over the use of restrictive practices is becoming an area of greater focus both at a state and national level.

The Board notes the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017* to establish the NDIS Commission was passed by Parliament on 4 December 2017. The NDIS Quality and Safeguarding Commission is established as an independent body to regulate the NDIS market and be responsible for registration, complaints, incidents, behavior support, worker screening and compliance. From July 2019 the NDIS Commission will commence full operations in Tasmania. The NDIS Commission's Senior Practitioner is tasked with providing leadership in behavior support and in the reduction and elimination of the use of restrictive practices by NDIS providers. It is noted the *Disability Services Act 2011* still gives jurisdiction for the approval of restrictive practices in Tasmania and existing relationships relating to quality and safety remain in place. The Board looks forward to seeing the work done in this area of behavior support and the reduction and where possible, the elimination of restrictive practices.

The Board notes the Federal Government's announcement of a Royal Commission into aged care following the Camell Paterson Review<sup>2</sup> and the Australian Law Reform Commission's Report *Elder Abuse – A National Legal Response* delivered in May 2017 and The Oakden Report<sup>3</sup>. The Board hears concerns through the course of its hearings and through stakeholder engagement about use of restrictive practices in aged care facilities. The Board awaits with interest as to whether restrictive practices in aged care facilities, which is largely unregulated will be an area of enquiry for the Royal Commission.

At a State level, the use of restrictive practices in the form of detention is also considered regularly in relation to patients with decision-making incapacity who are detained in State health facilities for ongoing assessment, care and sometimes medical treatment. In this regard the Board notes the decision of Coroner McTaggart into the death of Molly Jesse Smith<sup>4</sup>. Coroner McTaggart recommended that persons admitted to the Roy Fagen Centre, who lack the capacity to "consent to admission, residency and/or 'treatment' only continue the admission with the substitute consent of a legal guardian or under the *Mental Health Act 2013*."

It appears that a significant factor in any decision which involves the use of restrictive practices (including the detention of a person in a secure facility), whether against their will or otherwise, is that the restrictive practice should be subject to external scrutiny and review. This is consistent with the UN Convention Article 14 requiring that people with disabilities are:

'...not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.'

Article 14 requires that if persons with disabilities are deprived of their liberty through any process, other human rights protections will also apply. Article 12 requires that where a person's legal capacity, especially their ability to make independent decisions, is supported (for instance by the appointment of a guardian, or under a mental health scheme) such measures:

'...respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body.'

It is noteworthy that as deeper understanding is developing into our responsibilities under the UN Convention and our obligations in respect of the use and regular review of restrictive practices, frameworks such as the Quality and Safeguards Frameworks are being implemented.



In summary, with these important and timely Reviews, the Royal Commission and developments such as in the area of NDIS, further legislative reform may result which could impact significantly on the future operations of the Board.

## Registry and Board matters

Changes made in the 2016-17 reporting year that saw Registry staff no longer 'investigate' matters that are the subject of an application before the Board have continued. Board Registry staff perform an intake and assessment function and collate information for hearing. If the Board determines that further information is required, then it can refer a matter to the Public Guardian for investigation, pursuant to section 17(2) of the *Guardianship and Administration Act 1995*. This change means in Board Members being able to obtain relevant information through the course of the hearing, which has resulted in very few applications being referred to the Public Guardian for investigation in the reporting year.

Registry staff received training throughout the year and heard from speakers from Advocacy Tasmania, COTA, Legal Aid Commission of Tasmania as well as in-house training. Staff have also been supported to attend member training and training with the Department of Justice where appropriate.

During the reporting period, a recruitment process was undertaken for Board Members in Launceston which resulted in the appointment of five new members for a three year period commencing 6 August 2017. A one-day Member Induction Session was held with new members on 25 August 2017 and new members were then required to observe hearings before sitting on panels of the Board.

Member training was conducted on 16-17 November 2017 and included training on restrictive interventions, ethics and substitute decision making, tribunal experience and querulous litigants which was conducted by Dr Grant Lester, Consultant Psychiatrist.

The Board Registry has continued to concentrate on reform of its processes and procedures in the reporting year and this remains an ongoing focus and commitment in the year ahead

I sincerely thank the Members of the Board for their work and commitment and the expertise they apply in performing their functions. I also thank the Deputy President for his support during the reporting year.

The Board's Registry staff also make an invaluable contribution to the work of the Board. I would like to extend my gratitude to staff for their hard work, collegiality and dedication during this reporting year, particularly in light of the staff shortages that occurred. I would particularly like to acknowledge the lengthy service and contribution of Mr Lee Perry, who served the Board Registry for over 19 years and who retired on 14 December 2017. I also thank Ms Donna Spong who resigned during the reporting year. Also, my sincere thanks to Acting Registrar Jarrod Bryan for his significant contribution, particularly in the areas of reform of registry process and understanding of tribunal practice and procedural fairness.

I thank the Department of Justice, particularly Deputy Secretary Ms Kristy Bourne and Director of Human Resources Ms Kerrie Crowder for their support in this reporting year.

I look forward to the 2018-19 year as the Board continues to serve the Tasmanian community in the area of guardianship.

**Rowena Holder**  
President

<sup>1</sup> (The NSW Law Reform Final Report was tabled in Parliament on 15 August 2018, the ACT Law Reform Advisory Council published a report on 29 July 2016 the Guardianship and Administration Bill 2018 exists in Victoria; the Guardianship and Administration and Other Legislation Amendment Bill 2018 exists in Queensland; a Statutory Review of the Guardianship and Administration Act 1990 in WA and the Guardianship of Adults Act 2017 in force since 12 April 2017)

<sup>2</sup> Review of National Aged Care Quality Regulatory Processes, Ms Kate Carnell AO and Professor Ron Paterson NZM October 2017

<sup>3</sup> Groves A 2017 The Oakden Report, South Australia Department for Health and Ageing

<sup>4</sup> Molly Jesse Smith 2017 TASC 444

# WHO WE ARE

# OUR LEGISLATIVE FRAMEWORK

## The Board

The Guardianship and Administration Board (the Board) is an independent statutory authority established under the *Guardianship and Administration Act 1995* in Tasmania. The Board exercises a protective jurisdiction, safeguarding the rights of people with a disability who are incapable of making their own decisions.

The Board is constituted by a President and at least 5 other members, one of whom is to be the Deputy President.

## The President and Deputy President

The President is responsible for the overall operation and administrative functions of the Board and the allocation of its work. The President, who is a legal practitioner sits on hearings as the presiding member. The President is the only full-time member of the Board. The Deputy President may exercise the functions of the President if delegated by the President or if the President is absent from Tasmania or is prevented by illness or incapacity from exercising those functions.

## Board Members

Board members are appointed by the Governor on the recommendation of the Attorney General for a period of 3 years. Board members are appointed on a sessional basis to conduct hearings and determine the applications made to the Board.

Our Board Members have a range of skills, qualifications and experience with people with disabilities across the health, disability, aged and community sectors. Board members have a background in legal, medical, pharmacy, nursing, accounting, social work or other relevant disciplines.

At the end of the reporting year, The Board had 25 members. [Appendix 1](#) provides names of Board members during the reporting year.

## Board Registry Staff

The Board has a Registrar appointed under section 9 of the *Guardianship and Administration Act 1995* and registry staff. In consultation with the President, the Registrar ensures the proper functioning and operations of the Board Registry.

[Appendix 3](#) provides the Board's organisational chart.

## Guardianship and Administration Act 1995

The functions of the Board established by the *Guardianship and Administration Act 1995*. The *Guardianship and Administration Act 1995* grants the Board jurisdiction to hear and determine applications for guardianship and administration and reviews of those orders. The Board also has jurisdiction to consent to medical and dental treatment.

The Board keeps a register of any instruments of appointment of an enduring guardian under Part 5 of the *Guardianship and Administration Act 1995*. The Board has authority to review an instrument of appointment of an enduring guardian. The Board can give advice and directions to guardians (including enduring guardians), and administrators.

## Powers of Attorney Act 2000

The Board has authority under the *Powers of Attorney Act 2000* in relation to enduring powers of attorney to review an enduring power of attorney.

## Disability Services Act 2011

Under the *Disability Services Act 2011* the Board determines applications for restrictive interventions for people with disabilities by services funded or managed by disability and community services and has authority to approve the use of a restrictive intervention.

## Wills Act 2008

The Board has functions under Part 3 of the *Wills Act 2008*. The Board may order the execution of a statutory will for a person who lacks testamentary capacity and who has never made a valid will.

## Legislative Change

The *Guardianship and Administration Regulations 2007* were automatically repealed under the Subordinate Legislation Act on 17 October 2017. The Board was invited to make submissions on the remaking of the Guardianship and Administration Regulations, which it did. The *Guardianship and Administration Regulations 2017* were made by Special Gazette on 17 October 2017.

# HOW WE WORK

## Our Vision

To respect the rights of people with disabilities to make their own decisions wherever possible, and when it is not possible, to ensure that processes that we employ are accessible, impartial, expeditious, highly competent and result in just decisions by the Board.

## Our Mission

The Board will:

- operate in accordance with the law and in a manner sensitive to the needs of its users
- make decisions that reflect the rights and interests of people with decision-making disabilities, their families and carers, and the Tasmanian community
- be an efficient, effective and highly skilled independent statutory authority.

## Principles

In all of its operations, the Board must observe the principles which are set out in section 6 of the *Guardianship and Administration Act 1995*. These principles state that where a *function or power conferred, or duty imposed*, by this Act is to be performed so that:

- the means which is the least restrictive of a person's freedom of decision and action as is possible in the circumstances is adopted; and
- the best interests of a person with a disability or in respect of whom an application is made under this Act are promoted; and
- the wishes of a person with a disability or in respect of whom an application is made under this Act are, if possible, carried into effect.

## Pre-hearing Process

The Board receives an application and most applications need to include a Health Care Professional Report from a medical practitioner or psychologist which provides evidence about the capacity of the person with a disability to make decisions about the issues raised in the application. The Board's staff may contact persons relevant to an application and will obtain copies of relevant documents.

Most applications to the Board are prepared for hearing by a registry officer. The role of the Board Registry is to provide information about the Board's

practice and procedure, to list the application for hearing, and to send notices of the hearing to the parties. The Board Registry officer will often speak with the person or the applicant to identify how the person can best participate in the proceedings.

Before the hearing, the registry officer will send out a hearing report summarising the information received by the Board.

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. Parties and persons with a proper interest in a matter (including the person with a disability) will be invited to a hearing. The Board must give all parties and persons with a proper interest not less than 10 days' notice of the hearing, as required by Section 69(1) of the *Guardianship and Administration Act 1995*.

Where appropriate, interpreter services are used to assist parties participate in the hearing.

## Hearing Process

The Board will consider the relevant written evidence that has been provided. The Board will also take evidence from the person the hearing is about and from other parties and witnesses participating in the hearing. Evidence is usually not taken on oath. Parties and witnesses can attend the hearing or give evidence over the telephone if necessary.

The Board is not bound by the rules of evidence; however, it must act in accordance with procedural fairness.

The Board may sit in a division of one or three members. In most but not all cases, a panel of three members will hear and determine a new application. Reviews of existing orders may, be determined by one or three members.

The Board is mindful of the necessity to provide accessibility of hearing locations and hearing rooms to those who require our services. Whenever possible the Board conducts hearings with the person subject to the application, in attendance. This is important, so the person can give evidence as to their wishes, pursuant to section 6 of the *Guardianship and Administration Act 1995*. Attendance can also be by telephone. Unfortunately, the Board does not have video conferencing facilities, which would provide greater flexibility in assisting the participation in hearings of people located in different locations



throughout Tasmania, or even interstate. Hearings are held regularly at:

- Level 2/144 Macquarie Street, Hobart
- Roy Fagan Centre in Lenah Valley
- Magistrates Court in Launceston
- Magistrates Court in Burnie
- Magistrates Court in Devonport.

The Board will also conduct hearings at other venues when appropriate to do so. For example, in this reporting year the Board heard and determined over 15 applications at a Disability Accommodation Service in the North West of the state and also in Hobart to facilitate the attendance and participation of the persons subject to the applications, in the hearing.

### After the Hearing

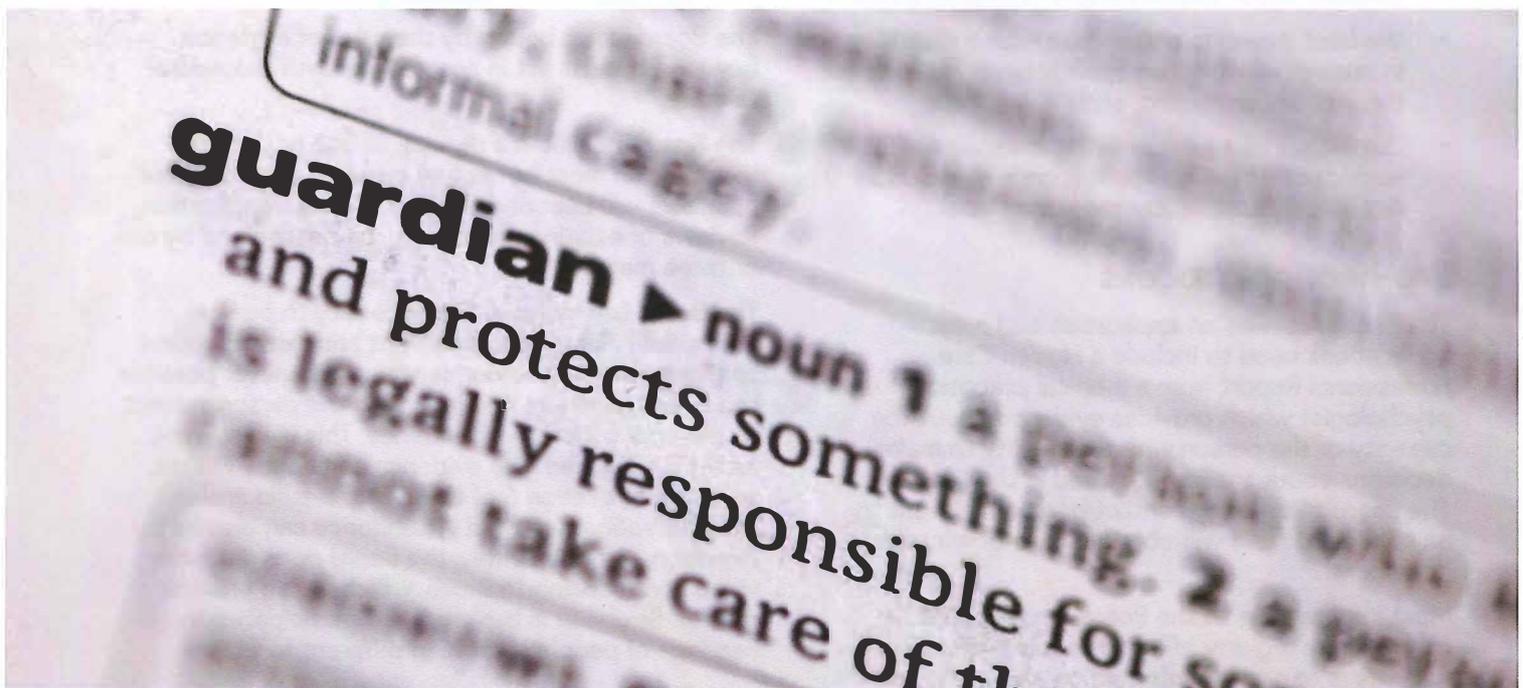
Most decisions are delivered immediately at the end of each hearing with brief verbal reasons being provided by the enquiring Board Member to the parties. A formal typed order is then sent to all parties.

A person aggrieved by a determination of the Board may request in writing within 21 days after the making of the determination, a written statement of reasons.

### Post-Hearing Procedures and Support

To ensure the accountability of all private or public guardians and administrators, the Board specifies:

- A person applying for appointment as administrator must sign a declaration in the application acknowledging their duties under the *Guardianship and Administration Act 1995*.
- The publication *Information for Private Administrators – A Handbook for Private Administrators and Information for Private Guardians* provides instructions about their duties and is provided at the end of a hearing appointing a private administrator and/or guardian.
- Administrators are required to submit a report and financial statement annually or when ordered by the Board to do so. Guardians are required to submit annual reports on the decisions they have made relating to a person's health and/or circumstances. The Board has a sessional member whose duties include the receipt, reconciliation and verification of reports submitted by administrators and guardians. All reports by guardians and administrators are firstly reconciled and verified by the member. Where an annual report is not approved, the Board will usually require a review of the order on the Board's 'own motion'.



# WHAT WE DO

## Guardianship

The Board may appoint a guardian to make personal decisions for a person with a disability who, because of their disability, is incapable of making those decisions. This power arises from Part 4 of the *Guardianship and Administration Act 1995*.

The Board will only appoint a guardian after there has been evidence that a person, about whom an application has been made, is a person with a disability, and is incapable because of the disability, of making reasonable judgements about their person or circumstances, and is in need of a guardian.

The guardian may be appointed to make a range of personal decisions for example, where a person with a disability lives, temporarily or permanently, or what health care and support services the person with a disability will receive or restriction of visitors. The duration of the order and the specific decision-making powers of the guardian is set out in the guardianship order.

A guardian must act at all times in the best interests of the person under guardianship, consult with that person, taking into account, as far as possible, his or her wishes, advocate for that person, encourage that person to participate as much as possible in the life of the community, encourage and assist that person to become capable of caring for himself or herself and of making reasonable personal judgements and protect that person from neglect, abuse or exploitation.

Section 21 of the *Guardianship and Administration Act 1995* sets out what a Board must consider when assessing the suitability of a proposed guardian. If there is no family member or friend who is suitable the Board can appoint the Public Guardian as the guardian for the person. Under an emergency guardianship order, only the Public Guardian can be appointed.

## Administration

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 judgements. The Board must be satisfied that the person about whom an application has been made, is a person with a disability, incapable because of the disability of making reasonable judgements about his or her estate or finances and is in need of an administrator. The duration of the order and whether the administrator is responsible for the whole estate or only a limited part

of the estate, is set out in the order. An administrator must always act in the best interests of the person with a disability, consult with that person, taking into account as far as possible, his or her wishes.

Section 54 of the *Guardianship and Administration Act 1995* sets out what a Board must take into account when assessing the suitability of a proposed administrator.

Under an emergency administration order, only the Public Trustee can be appointed.

## REVIEWS

### Reviews of Existing Administration or Guardianship Orders

Applications for reviews of guardianship or administration orders are made pursuant to section 67 of the *Guardianship and Administration Act 1995*, 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 needed.

### Review of an Instrument of Appointment of an Enduring Guardian

The Board has power under the *Guardianship and Administration Act 1995* to review an instrument of appointment of an enduring guardian. An application can be made to the Board to review an enduring guardianship if a person believes that:

- An instrument appointing an enduring guardian is not valid; or
- A guardian is not capable or willing to perform the functions of a guardian; or
- A guardian acting under an enduring guardianship is not acting in the best interests of the person who appointed the guardian or has been incompetent or negligent as a guardian.

The Board can make an order to revoke an instrument of appointment of an enduring guardian, or vary a term of an instrument, including appointing a substitute guardian, dismiss the application or give advice and direction to a guardian.

## Review Enduring Powers of Attorney

The Board can make orders and declarations and give advice and directions in relation to enduring powers of attorney created under the *Powers of Attorney Act 2000*.

The Board may declare an enduring power of attorney is invalid, because:

- the donor did not have the mental capacity to make the enduring power of attorney; or
- it does not comply with other requirements of the Act for example, it was not witnessed correctly; or
- the donor was induced to make it because of dishonesty or undue influence.

The Board may make a range of orders concerning the making or operation and effect of an enduring power of attorney:

- vary a term or a power granted by the enduring power of attorney
- appoint a substitute attorney
- revoke the enduring power of attorney
- appoint an administrator of the donor's estate under the *Guardianship and Administration Act 1995*.

In emergency circumstances, the Board can suspend an enduring power of attorney and may appoint the Public Trustee as attorney or administrator for up to 28 days without a hearing.

The Board may direct or offer advice to an attorney about any matter arising under the enduring power of attorney.

## Consent to Medical and Dental Treatment

The *Guardianship and Administration Act 1995* provides for substitute decision making in relation to medical and dental consent for persons who are unable to consent to their own treatment. Section 4 of the *Guardianship and Administration Act 1995* establishes the "person responsible" who is able to give consent for medical or dental treatment. The Board can also provide consent to medical and dental treatment pursuant to Part 6 of the *Guardianship and Administration Act 1995* for a person who is incapable of consenting themselves. The Board may consent to the proposed treatment if it is satisfied: that the

treatment is lawful; and that the person does not have capacity to consent; and the treatment is in the person's best interests.

The Board can provide consent to Regulation 7 treatments for an adult with a disability. Regulation 7 treatments include: electroconvulsive therapy (ECT); the removal of all or a substantial number of teeth; treatment with a drug where the primary purpose is to control the conduct of the person to whom it is given; treatment with a drug of addiction other than in association with the treatment of cancer or palliative care of a terminally ill patient; the treatment involves a substantial risk of death, brain damage, paralysis, permanent loss of function of any organ or limb, permanent and disfiguring scarring, or extreme pain or distress to the person.

Only the Board can give consent to Special Treatments which are defined under the *Guardianship and Administration Act 1995*, as treatments likely to lead to permanent infertility; termination of pregnancy; removal of tissue for transplant; psychosurgery; any treatment involving an aversive stimulus.

## Applications for Approval of a Restrictive Intervention

The Board has jurisdiction to determine applications for approval of restrictive interventions for persons with disabilities managed or funded by disability and community services, pursuant to Part 6 of the *Disability Services Act 2011*. An approval for the carrying out of a type of restrictive intervention in relation to a person with disability may only be granted by the Board if it is satisfied that:

- a. the type of restrictive intervention will be carried out only for the primary purpose of ensuring the safety, health or wellbeing of the person or other persons; and
- b. the restrictive intervention is the type of restrictive intervention that is the least restrictive of the person's freedom of decision and action as is practicable in the circumstances.

The Board will either approve or not approve the restrictive intervention or give directions about whether that intervention is lawful for other reasons. The Board can also appoint a guardian after hearing an application or give directions about the use of a restrictive intervention.

## Statutory Will

The Board can, pursuant to the *Wills Act 2008*, make a statutory will for a person who lacks testamentary capacity and has not made a prior will or purported will. The Board must be satisfied:

- a. that the person making an application for a statutory will is an 'appropriate person' to do so;
- b. that the proposed testator is incapable of making a will; and
- c. having made reasonable enquiries, that the proposed testator has not made a will or any purported will; and
- d. that adequate steps have been taken to allow representation of all persons with a legitimate interest in the application, including persons who have reason to expect a benefit from the estate of the proposed testator; and
- e. that it is appropriate to make an order for the execution of a will for a proposed testator; and
- f. that the proposed will is, or is reasonably likely to be one that would have been made by the proposed testator if he or she had testamentary capacity.

## Emergency Applications

Pursuant to section 65 of the *Guardianship and Administration Act 1995*, the Board may, in circumstances of urgency, make an emergency guardianship or administration order without the need for a hearing. An emergency order can be made for 28 days and can be extended only once for a further 28 days.

The Board publishes guidelines: *Applying for an Emergency Guardianship or Administration Order* and a practice direction: *Emergency Guardianship* on its website at [www.guardianship.tas.gov.au](http://www.guardianship.tas.gov.au) to assist applicants for emergency orders.

The Public Guardian is the initial contact for out-of-hours emergency applications. The Board provides the Public Guardian with a contact list of Board Members who can determine out-of-hours emergency applications.

## Registrations of Instruments Appointing Enduring Guardians

Part 5 of the *Guardianship and Administration Act 1995* enables a person with decision-making capacity, to appoint an enduring guardian to make personal decisions for him or her in the event that the person is no longer capable of making those decisions.

An instrument of appointment of an enduring guardian must be registered with the Board. The Board keeps a register of all Enduring Guardians.

## ENGAGEMENT

### Law and Policy Reform

The Board participates in law reform consultations where it is appropriate and consistent with its role. This last reporting period has seen a number of law reform consultations at a State level which the Board has been involved in and which have been referred to earlier in this Report:

- Review of the *Guardianship and Administration Act 1995 (Tas)*
- Review of the *Disability Services Act 2011 (Tas)*
- *Guardianship and Administration Regulations 2017 (Tas)* were made by Special Gazette on 17 October 2017.

### Professional Education and Stakeholder Engagement

The Board promotes understanding of relevant legislation by providing training to professional organisations. The Board also meets with stakeholders from time to time and when appropriate.

A list of the Board's education and stakeholder engagement is attached at [Appendix 4](#).

### Website and Publications

The Board's website includes application forms, Health Care Professional Report forms, facts sheets, policies, process information, and Annual Reports. The Board has also published Practice Directions and information booklets on its website.

All the Board's publications can also be downloaded from the website. [www.guardianship.tas.gov.au](http://www.guardianship.tas.gov.au)

# THE YEAR IN REVIEW - STATISTICS

## Applications Received

The total number of applications (including statutory review of orders) received for the period 1 July 2017 to 30 June 2018 by the Board was 1651.

This is a 6.8% reduction in applications as compared to the previous reporting year. Of these, 1651 applications, 1230 were new applications with the remainder being statutory reviews of existing orders.

## Hearings

The Board conducted 1137 hearings in 226 sittings this year. This is a 10% increase from the previous reporting year. The Board heard an average of 5.3 matters per sitting.

Of the 1137 hearings held in 2017-18, 62% were held in the South, 22% in the North and 16% in the North West. Hearings were conducted by single members or panels constituted by 3 members.

## Register of Enduring Guardianship Instruments

31,600 Instruments of Appointment of an Enduring Guardian were registered as at 30 June 2018.

The Board has registered 2755 instruments in the reporting year.

## Requests for Statements of Reasons

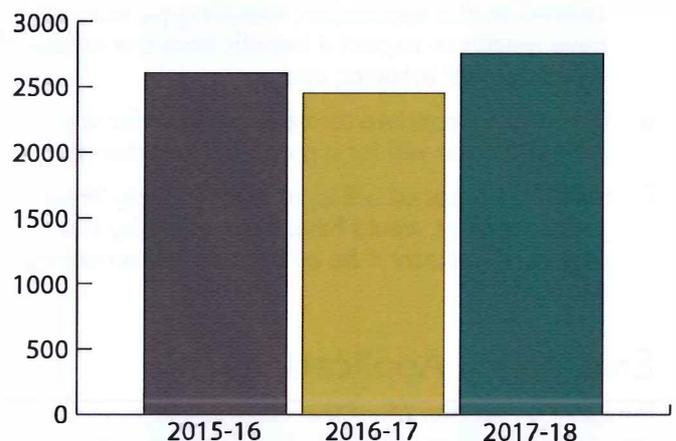
Statements of reasons are produced upon request by a party pursuant to section 74 of the *Guardianship and Administration Act 1995* or where the Board members determine that reasons ought to be produced in the year. 28 statement of reasons were written during the reporting year.

The Board regularly publishes decisions which are carefully de-identified to provide members of the community and users of the Board an understanding of the work of the Board and the principles that are applied, which can be located at [www.austlii.edu.au](http://www.austlii.edu.au).

## Appeals to the Supreme Court

There were two appeals to the Supreme Court from a decision of the Board in the reporting year. One was withdrawn and the other was dismissed.

Instruments of Appointment of an Enduring Guardian



# STATISTICAL SUMMARY

	2014-15	2015-16	2016-17	2017-18	Percentage difference between 2016-17 and 2017-18
<b>Applications received</b>					
Guardianship normal	231	207	270	324	20.0%
Guardianship emergency	239	249	213	215	0.9%
Administration normal	263	239	371	348	-6.2%
Administration emergency	57	65	135	67	-50.3%
Extension of Emergency orders			181	132	-27.0%
Medical and dental consent	1	1	3	12	400%
Statutory Will	0	2	4	1	-0.75%
Restrictive Interventions	1	3	4	6	50%
Review of Enduring Guardian	7	8	16	14	-12.5%
Review of Enduring Power of Attorney	33	39	90	52	-42.2%
Other (gifts, advice etc.)	73	82	76	59	-22.3%
Review of existing orders	301	293	519	421	-18.8%
<b>Total applications received</b>	<b>1192</b>	<b>1186</b>	<b>1772</b>	<b>1651</b>	<b>-6.8%</b>
<b>Hearings Listed</b>					
Hearings listed <sup>1</sup>	649	679	1027	1137	10.2%
<b>Finalisations for the 2017-18 period</b>					
Finalisations	1137				
Emergency Guardianship	215				
Emergency Administration	67				
<b>Total</b>	<b>1419</b>				

<sup>1</sup> Total applications listed before a Board, but not including emergency orders, renewals of emergency orders or applications withdrawn prior to hearing.

# FINANCES

A summary of the Board's financial expenditure is at Appendix 2.

## BUDGET AND OPERATIONAL COSTS

It has been the case for several years that the Board has been underfunded. Again in 2017-18 it did not operate from a sound financial position.

The budget allocation \$734,490 (see Revenue below) was close to 40% under the Board's actual expenditure of \$1,223,179.

This table sets out the financial position for the past 3 years:

Year	Annual budget	Actual expenditure	Variance
2015-16	715 029	980 407	(265 378)
2016-17	715 616	1 078 317	(362 701)
2017-18	734 490	1 223 179	(488 689)

In the three year period 2015-16 to 2017-18 there has been approx. a 25% increase in actual expenditure but only around 3% increase in the whole budget.

Despite the significant increases in the Board's workload there has not been a substantial revision of the budget to meet the minimal operational costs and the ever increasing demands on the Board. Instead the Board continues to commence each financial year on a deficit budget. That continual short fall has implications for the Board and its ability to operate optimally, respond appropriately to growing need, and attend to future planning. The next financial period, 2018-19 period will mirror this situation.

As in previous years, the primary expenses continue to be salaries, member fees and rent.

A full financial summary is at Appendix 2.

## Salaries and Staff

Primary expenditure for the period was salaries and wages at \$647,202 (\$88,404 under budget).

This table shows the salaries and wages for comparison:

Year	Budget	Actual	Variance
2015-16	687 286	547 414	139 872
2016-17	657 700	520 237	137 463
2017-18	735 606	647 202	88 404

In all three periods the actual expenditure on salaries and wages was less than the amount budgeted. It appears that the variance in the salaries and wages is that this is the area where other expenditure is off set, in order to cover operational costs. Notably during the period sick leave was \$13,406 and workers' compensation \$23,597.

Excluding the appointments of the President and Registrar, the registry operated with only 6.4 FTE. That staffing level is insufficient (a) to manage the sheer increase in volume of applications and hearings, inbound enquiries, and Enduring Guardian Register and (b) for the Board to fulfill all of its statutory functions while achieving continuous improvement in service delivery.

Aside from the President and the Acting Registrar there were no legal staff employed by the Board during the period.

## Member Fees

The next expense for the Board was the member fees. The President is the only permanent member and there are an additional 25 members statewide who are constituted to a hearing panel when needed.

There was an increase in the budget from the previous year for member fees. In 2016-17 the budget for member fees was \$90,000 with the actual expenditure equaling \$120,628 (a variance of \$30,628). In 2017-18 there was an increase in the budget for member fees to \$139,944 (\$136,176 for member salaries and \$6,980 for members paid on invoice). However the fees totaled \$176,840 (\$169,860 salaries and \$6,980 on invoice). Exceeding budget by \$33,684 and \$3,212 respectively.

The Board members are either legal or other profession such as medical or accounting. They sit in a half day hearing list (morning or afternoon session of

4.5 hours). The current fee for the panel chair is \$412 and ordinary members is \$312. That is an average rate of approx. \$50 – \$60 per hour and does not include any preparation time.

## Facilities

The rent of the registry premises, at 144 Macquarie St Hobart, totaled \$67,593, being \$6027 under budget.

### South

Currently a conference room is used at the registry for hearings in the South of the state. It is both inappropriate and inadequate for members, registry staff and participants. Additional funding is needed to provide sufficient facilities for the registry and hearing room.

### North and North West

The Board wishes to express its thanks to the Magistrates Court of Tasmania for sharing their facilities with the Board, at no cost. The facilities are appropriate (safe, secure and accessible) and the arrangement is working well, however, there are limitations on listings not being the occupier for the facility

## Technology

The budget for IT/computer was \$20,000. That was exceeded by \$1332. Additionally there was no budget for computer leases, data communications, and software licenses which totaled \$4464.

## REVENUE

Appropriation was \$734,490 plus there was an additional \$210,000 inter-fund budget reallocations, totaling \$944,490.

## Registry Fees

The total revenue received this financial year through fee collection is \$199,813.95. Fees generated by the Board are applied directly back to fund the functions of the Board.

## Application Fees

The Board does not charge any fees for applications. The protective nature of the jurisdiction means that the core work of the Board cannot generate revenue. However fees are collected for certain administrative tasks and also the Appointment of Enduring Guardian Register (pursuant to the Guardianship and Administration Amendment (Fees) Regulations 2012).

## Enduring Guardian Register

Lodgement of instruments for the registration are made with payment to Service Tasmania.

The fee for lodging an Appointment of Enduring Guardian was \$69.75 and Revocation was \$49.60.

There is also statutory provision for fee waivers in circumstances where an appointor satisfies financial hardship.

## Examination of Annual Reports for Administration

Examinations of statements of accounts for administrators are \$192.90. These are subject to a generous means tests in order to protect a represented person's finances.

## FUTURE

There is an urgent need for the Board's budget to be reviewed. There are organisational performance and other risks if the agency continues to be chronically underfunded into the future. The pressing needs of the Board into the coming year include:

- Registry facilities: a hearing room upgrade is needed for safety and accessibility, and increased registry facilities to accommodate staff and members.
- Member remuneration: this is currently insufficient to reflect the expertise required and to attract and maintain a diverse and skilled membership.
- Records management: the case management system is outdated and there is a need to digitise the Enduring Guardian Register.
- Legislative reform: the Tasmanian Law Reform Institute will release its Report into the *Guardianship and Administration Act 1995* (Tas).



- Staffing: additional staff are required to enable the Board to meet the current and increasing demands and diverse needs of the output.
- Information access: the Board's educational resources such as the website, handbooks and practice directions are overdue for review and updating.

## SUMMARY

The Board continues to meet its statutory obligations, however, as a consequence of the ongoing underfunding this is, by default, the minimum level of service. The agency operates in a reactive rather than proactive way in service delivery.



# CONTACT DETAILS

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Second Floor, 144 Macquarie Street, Hobart

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Email Address:

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

Website:

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

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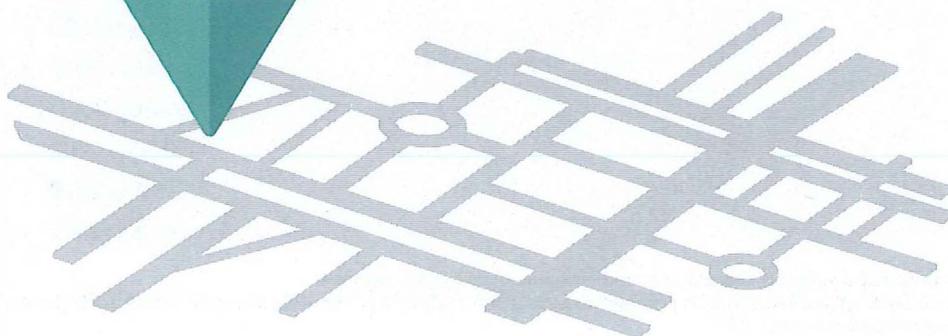


**CONTACT US:**

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



**1300 799 625**



# APPENDIX 1 - MEMBERS OF THE GUARDIANSHIP AND ADMINISTRATIONS BOARD

Full Time Members	Expiration of appointment
<b>President</b>	
Ms Rowena Holder	7 Aug 2021
<b>Deputy President</b>	
Mr Colin McKenzie	12 Oct 2019
<b>Sessional Members - Legal</b>	
Ms Melanie Bartlett	31 Dec 2018
Ms Kate Brown	26 Jun 2019
Ms Elizabeth Clippingdale ^	6 Aug 2020
Ms Wendy Hudson □	31 May 2018
Mr Don Jones *	31 May 2018
Ms Virginia Jones ^	6 Aug 2020
Mr William Lester ^	6 Aug 2020
Ms Louise Mollross	13 Feb 2020
Mr Justin Otlowski	26 Jun 2019
Mr Stuart Roberts ^	6 Aug 2020
Mr Michael Stoddart	26 Jun 2019
Ms Sandra Taglieri	26 Jun 2019
Ms Leanne Topfer	26 Jun 2019
Ms Lindi Wall □	31 May 2018
<b>Non-Legal Professional members</b>	
Ms Susan Aylett	26 Feb 2019
Ms Elizabeth Beyerle *	31 May 2018
Ms Colleen Cheek	26 Jun 2019
Ms Mary Davies □	31 May 2018
Mr Ged Dibley □	31 May 2018
Dr Matthew Fasnacht	11 Oct 2018
Mr Grant Kingston	13 Feb 2020
Mr Rodney Lester	13 Feb 2020
Ms Angela McKenzie	26 Jun 2019
Mr Cliff Partridge ^	6 Aug 2020
Ms Muriel Rollins *	31 May 2018
Ms Carolyn Wallace	26 Jun 2019
Dr Juanita Westbury	26 Jun 2019

\* These members' appointments ended during this financial year and have not sought reappointment

□ These members' appointments have expired but continue pursuant to Subsection 21(3)(b)(ii) of the *Acts Interpretation Act 1931* for 6 months

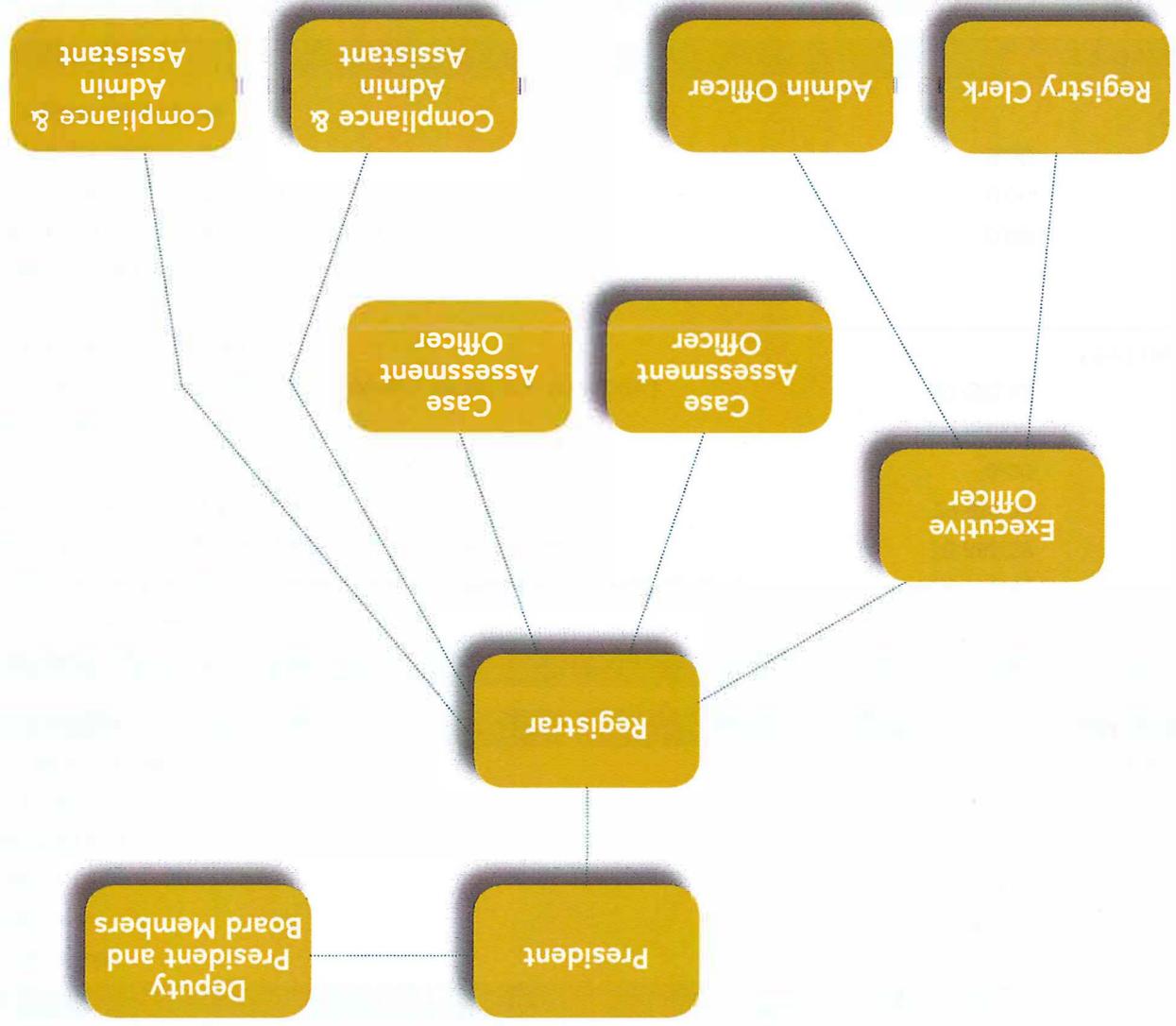
^ These Members' were newly appointed in August 2017

# APPENDIX 2 - FINANCIAL SUMMARY 2017-2018

The following table provides a summary of the budgeted revenue and expenditure for Guardianship and Administration Board for 2017-18:

	\$	2017-18 Budget \$
<b>Revenue</b>		
<i>Appropriation</i>		
- Recurrent	734 490.00	
- Capital	0.00	
- Reserved By Law	0.00	
Total appropriation		734 490.00
Other Revenue (retained)		210 000.00
<b>Total Revenue</b>		<b>944 490.00</b>
<b>Expenditure</b>		
<i>Recurrent Expenditure</i>		
Salaries, Wages & Employee Related Expenses (Includes Reserved by Law)	1 034 393.53	
Property Expenses (e.g., rent, power, cleaning, security etc.)	78 883.29	
Information Technology Expenses	29 818.34	
Grants	0.00	
Internal Transfers	0.00	
Other Non Salary Expenses (e.g., stationery, telephone, travel etc.)	80 083.67	
Total recurrent expenditure		1 223 178.83
<i>Capital Expenditure</i>		
Capital Expenditure - Software/systems	0.00	
Capital Expenditure - Property	0.00	
Capital Expenditure - Other	0.00	
Total capital expenditure		0.00
<b>Total Expenditure</b>		<b>1 223 178.83</b>
<b>Total cash movement</b>		<b>-278 688.83</b>
<b>Opening cash position</b>		
- Section 8A(2) carry forward (prior year funding)		0.00
- Other retained revenues		910 613.95
<b>Total opening cash position</b>		<b>910 613.95</b>
<b>Closing cash position (should not be negative)</b>		<b>661 397.27</b>
<b>Revenue collected on behalf of Treasury ('Y' accounts)</b>		<b>0.00</b>

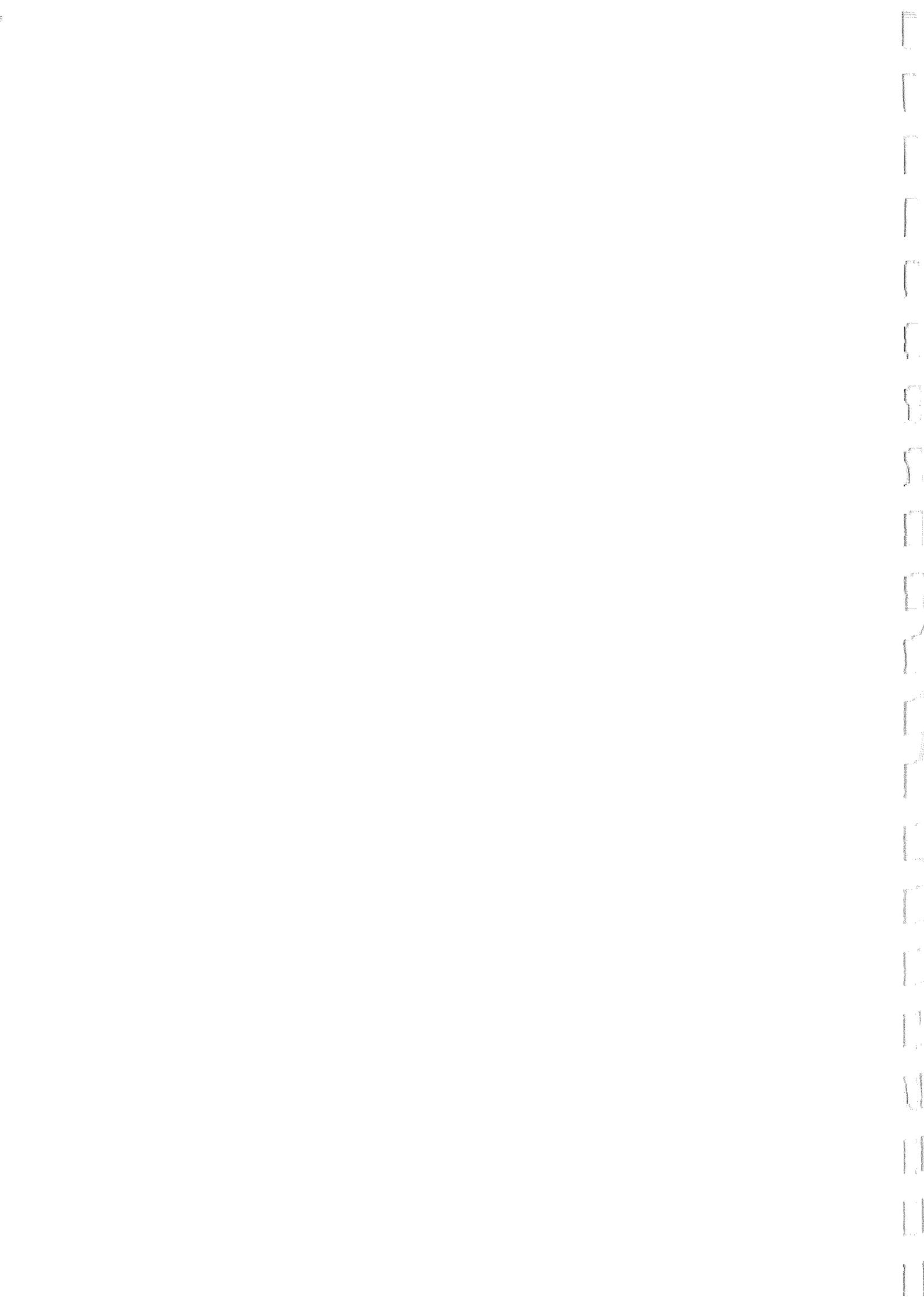
# APPENDIX 3 - ORGANISATIONAL CHART



# APPENDIX 4 - GUARDIANSHIP AND ADMINISTRATION BOARD STAKEHOLDER ENGAGEMENT AND EDUCATION 2017-18

12th July 2017	Education Session with Public Trustees of Tas, Personal Services Team in Launceston
3rd August 2017	TasTAFE Education Session in Burnie
3rd August 2017	DHHS, Parkside Burnie
10th August 2017	Meeting with Public Guardian, Senior Practitioner re: restricted practices
11th August 2017	Meeting with DHHS re NDIS Quality and Safeguards Framework
22nd August 2017	Meeting with Minister Groom
29th August 2017	Meeting with Public Guardian
6th September 2017	Meeting with TLRI Reviewer of the Guardianship and Administration Act 1995
15th September 2017	Meeting with Public Trustee
20th September 2017	Meeting with DHHS, Public Guardian and Solicitor General legal officer
28th September 2017	Meeting with Director of Legal Aid Commission of Tasmania
11th October 2017	Launceston General Hospital, Education Session
19th October 2017	AGAC Heads of Tribunal meeting in Perth, WA
20th October 2017	AGAC meeting in Perth, WA
2nd November 2017	Meeting with TLRI Reviewer
2nd November 2017	Meeting with Advocacy Tasmania
3rd November 2017	Meeting with DHHS
9th November 2017	Attendance at information session concerning the review of Disability Services Act 2011
9th November 2017	Meeting with NDIS State representative and DHHS
15th November 2017	Attendance at Elder Abuse Symposium
23rd November 2017	Meeting with Minister Archer
30th November 2017	Meeting with Roy Fagan Centre - Staff and Clinicians
6th December 2017	Meeting with NDIS Representative and DHHS
11th December 2017	Meeting with TLRI Reviewer
12th December 2017	Calvary Hospital Lenah Valley, Education Session
13th December 2017	Calvary Hospital at South Hobart, Education Session
19th December 2017	Meeting with Public Guardian Tas
27th February 2018	Meeting with Interim Commissioner for Children and Young People
8th March 2018	AGAC Heads of Tribunal meeting in South Australia
9th March 2018	AGAC Meeting in South Australia
23rd March 2018	Meeting with NDIS State Representative and DHHS
26th March 2018	Meeting with Public Trustee of Tas
6th April 2018	Tasmanian Medical Board, Education Session
10th April 2018	National Teleconference violence against people with a disability in institutional settings
16th April 2018	Meeting with Chief Civil Psychiatrist
26th April 2018	Meeting with Aged Care Deloraine
17th May 2018	Meeting with Public Trustee, Tas
5th June 2018	Meeting with Law Society of Tasmania, Elder and Succession Law Conference, Panel members
7th-8th June 2018	COAT Conference
20th June 2018	AGAC Elder Abuse National Projects Governance Group Meeting
22nd June 2018	Law Society of Tasmania, Elder and Succession Law Conference, Panel Facilitator
26th June 2018	Meeting with Relationships Australia







Guardianship and Administration Board

Email: [guardianship.board@justice.tas.gov.au](mailto:guardianship.board@justice.tas.gov.au)  
Website: [www.guardianship.tas.gov.au](http://www.guardianship.tas.gov.au)

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