



# **Guardianship and Administration Board**

## **Annual Report 2016 - 17**

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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 2016-2017 financial year.

In the 2016/2017 financial year the Board managed its biggest workload to date, with an increase in applications of 49% and an increase in finalised outcomes of 46%, compared to the previous financial year. While there has been an increase of applications across all areas, the area of significant growth has been in relation to the management of financial estates. Noticeably there has been a 55% increase in administration applications received, an 88% increase in applications for review of existing administration orders and a 63% increase in review of administration orders made. The number of Reviews of Enduring Power of Attorneys has also increased, more than doubling in number from the previous financial year. Further, the Board conducted 1027 hearings in 2016/2017 an increase of 51% compared to last year.

To adapt to the impact of the ageing population, the continued roll out of the NDIS and its increasing workload, the Board must continuously review and improve internal work procedures and processes. A focus during this last financial year has been to review our pre hearing processes so as to assist the Board to function in the most appropriate, efficient, and effective manner. We have looked at staff roles and duties and made changes to our organisational staffing structure and delegations. We have introduced regular listing meetings to ensure listing of hearings encourages the involvement of the person whom the application is about, and sufficient time is given to hearing the application. At the listing meeting the composite of the Board hearing the matter to ensure the use of member specialist knowledge and experience is also considered. We have adopted a 3 month listing schedule to plan for and manage our growing workload and support the efficient uses of Board member resources. Changes in process has also been made to allow for the earlier distribution of hearing papers to Board members. While we do not have the benefit of a case management system we have fully revised our document and records management for all new applications and reviews. The Board's current electronic filing system has been restructured, Board hearing papers and documents are now scanned and saved electronically which has resulted in greater efficiencies.

A considerable amount of work has been done to streamline work processes to facilitate the speedier preparation of applications and to ensure we are complying with our statutory obligations in respect of commencing hearings within 45 days. In the first half of the financial year the Board was not meeting this requirement due to heavy workloads, staff shortages and the level of investigation Board staff had traditionally been doing prior to hearing. I am grateful to the Department of Justice who have supported the Board with additional funds to allow a small increase in our staffing. This has gone some way in assisting with the management of the registry's workload.

Changes were also made so Board staff no longer investigate matters that are the subject of an application before the Board. Board staff are now performing an intake and assessment function and collating information for hearing. If the Board determines that further information is required, then it can refer a

matter to the Public Guardian for investigation. These measures have ensured the Board is now complying with its statutory requirements while still maintaining quality service.

Member training in this financial year focused mainly on the NDIS. Two tribunal members and one staff member joined me in attending the National Conference of the Australian Guardianship & Administration Council on the 17-18<sup>th</sup> October 2016 in Sydney on “Reflecting Will and Preferences in Decision Making”.

Staff training has been a priority this financial year. Board staff have met regularly for training to consolidate their understanding of changes made to processes and to obtain information from external services. Staff have also been supported to attend member training and external training opportunities where appropriate. Also staff are required to observe Board hearings 2-3 times a year to develop knowledge and experience of the hearing process.

The Board’s dedicated staff have managed an increase in workload this financial year while also contributing in a collegiate way to the review of many of our internal work processes. I thank them for their ongoing support, commitment and goodwill.

The Board’s 25 members have continued to give of their time, expertise and skill to ensure fair and efficient decision making is achieved. I would like to recognise the contribution of Mr Ken Stanton who has been a valued legal member of the Board for 5 years before resigning in June 2017. I thank the Deputy President Mr Colin McKenzie for his support and all Board members for their professionalism and dedication. It is a privilege to work with staff and Board members who are motivated by a strong focus on and commitment to the rights and welfare of people with disabilities.

I thank the Attorney-General of Tasmania, the Hon Dr Vanessa Goodwin MLC, and the acting Attorney-General of Tasmania, the Hon Matthew Groom for their support to the Board. I am grateful for support from the former Secretary of the Department of Justice, Mr Simon Overland, the former Deputy Secretary, Ms Ginna Webster and the Acting Deputy Secretary Ms Kerrie Crowder.

I look forward to the year ahead which will see the important review of the *Guardianship and Administration Act 1995* and the ongoing evaluation of our work practices and procedures. Maintaining our focus on people with disabilities, their families and supporters, and maintaining the quality of the service we deliver, remains our focus and challenge.

Rowena Holder  
President

## WHO WE ARE

### The Board

The Guardianship and the Administration Board is an independent statutory tribunal established under the Guardianship and Administration Act 1995 in Tasmania. The Board conducts hearings to determine applications about adults with a disability who are incapable of making their own decisions because of their disability and who may require a legally appointed substitute decision maker. The Board appoints substitute decision makers as a last resort when other forms of assistance have failed or are not available and where there are no appropriate decision-making arrangements in place. A substitute decision maker is a person who has been appointed with legal authority to make decisions on behalf of another person who is incapable of making a decision because of a disability.

### The President and Deputy President

The President is responsible for the overall operation and administrative functions of the Board. The President has a leadership role for the Board in the development of policies and practices, direction for the registry staff, allocation of hearings, and reporting to Parliament. The President sits from time to time 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 casual basis to conduct hearings and determine the applications made to the Guardianship and Administration Board. Board members are appointed on the basis of their understanding of the underlying principles of the Act, excellent oral and written communication skills and analytical skills.

Our Board Members have an extensive range of skills, qualifications and experience with people with disabilities across the health, disability, aged and community sectors, or have legal skills and experience. Having a multi-disciplined Board ensures that not only legal issues raised in the Applications before the Board are determined, but a holistic approach to decision-making can be achieved.

Appendix I provides names and a brief biography of Board members current at the close of the reporting year.

## Board Staff

The Board has 8 staff, 3 working part time during the reporting period.

In consultation with the President, the Registrar manages the operations of the Board to ensure it achieves its legislative, policy, and public sector requirements and obligations.

Under the general control and direction of the President, the Registrar and staff of the Board gather information and make necessary enquiries and list applications for hearing. Registry staff ensure that timelines are efficiently adhered to. Their high level of organisation is largely responsible for the timely delivery of outcomes to applications.

Board staff provide an enquiry service to members of the public as to the role of the Board and the Board's processes. Board staff also respond to enquiries from persons who are considering making an application to the Board, giving general direction about whether such an application is necessary and what information may be useful to the Board if an application is submitted. This is a large part of the Board's work and in 2016/17 this amounted to over 900 hours. Board staff can assist people to identify informal solutions to address a person's decision making needs and which may mean that an application to the Board is not required.

The Board staff prepare matters for hearing and seeks as far as possible, to get the person who is the subject of the Application, views and promotes their attendance at the hearing. The intake and assessment process is an important part of the Board's process, as it ensures that all relevant evidence is available to the Board members at the hearing.

Staff are responsible for listing and scheduling applications and reviews for hearing, managing hearing venue arrangements and ensuring board member papers are disseminated to sitting members.

The Board staff are responsible for distributing Orders and Statements of Reasons.



## HOW WE WORK

### 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.

### Initial 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.

The Board operates in an 'inquisitorial' model rather than making proceedings adversarial between the parties. Information can be requested and supplied to the Board without the usual privacy restrictions because of the operation of sections 11 and 85 of the *Guardianship and Administration Act 1995*. External agencies are generally highly compliant with requests for financial statements, medical records, rehabilitation notes and personal histories which supplement the information provided by the applicant.

Section 72 of the *Guardianship and Administration Act 1995* requires that the Board commence to hear an application within 45 days after the application under that Act 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*.

### Hearing Process

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

The Board is able to make arrangement for parties with particular needs. Where appropriate, interpreter services are used to assist parties participating in the hearing.

Hearings vary in length, depending on their complexity. Generally however hearings are completed within 45-60 minutes. Typically extended hearings relate to reviews of enduring instruments with respect to significant estates where multiple parties are legally represented.

In an emergency, a short term order (up to 28 days) may be made without a hearing. In these circumstances, only the Public Guardian or the Public Trustee can be appointed as a substitute decision maker.

The Board expresses its thanks to the Magistrates Court (Launceston, Devonport and Burnie), and the Roy Fagan Centre, for the provision of hearing rooms at no cost.

### Post-hearing Procedures and Support

To ensure the accountability of guardians and administrators, the Board implements the following procedures:

- A person applying for appointment as administrator must sign a declaration in the application acknowledging their duties under the Act
- The publication *Information for Private Administrators – A Handbook for Private Administrators* instructs administrator with regard to their duties, with an emphasis on probity. A similar publication exists for Private Guardians.
- Upon appointment administrators are required to sign an acknowledgement of their duties and the receipt of the Handbook.
- Administrators are required to submit receipts of expenses and statements from financial institutions to reconcile/verify balances claimed in the annual statements. Guardians are required to submit annual reports of the health and wellbeing of the represented person.
- A failure to provide an annual statement or receipts and statements within 3 months of the first request will trigger an automatic review hearing.
- The Board actively considers an administrator's competence in reporting at review hearings. Administrators whose reports are inadequate have been replaced by the Public Trustee, or another suitable administrator, even where no fraud has been alleged.

- The Board has a dedicated full-time Compliance Office whose duties centre upon 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 Compliance Officer who can either approve the report or submit it to a Board member for approval. Where an annual report is not approved, the Board member will either seek more information or require a review of the order 'on the Board's own motion'.

## WHAT WE DO

### Statutory Functions

The principal role of the Board is to hear and determine applications for the appointment of guardians and administrators. The Board can appoint guardians for adults with disabilities who do not have capacity to make important personal decisions. The Board can appoint administrators to manage the financial estates of adults with disabilities who cannot manage their estates because of their disabilities. Importantly, appointments of guardians and administrators are periodically reviewable and persons appointed as guardians and administrators are required to report to the Board annually, which means the Board has a compliance function with respect to appointees.

With the exception of treatment for a mental illness, 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, administrators, enduring guardians and enduring attorneys, 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.

Under the *Disability Services Act 2011* the Board assesses and approves applications for restrictive interventions (personal restraints) for people with disabilities.

### Legislation

The functions of the Guardianship and Administration Board (the Board) are established by the *Guardianship and Administration Act 1995*. Additional functions are established in Part 3 of the *Wills Act 2008*, Part 4 of the *Powers of Attorney Act 2000* and Part 6 of the *Disability Services Act 2011*.

### Amendments to Legislation

There have been no amendment to the *Guardianship & Administration Act* or other relevant Acts in this reporting period.

### Guardianship

The Board may appoint a guardian to make personal 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*.

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 judgments about their personal 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 and restriction of visitors. The duration of the order and the specific decision-making authority 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 judgments and protect that person from neglect, abuse or exploitation.

Section 21 of the *Guardianship and Administration Act 1995* sets out what a Board must take into account 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 judgments. 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 judgments about his or her estate or finances, and is in need of an administrator. The need for an order can arise where a person has not made, or has been unable to make, prior arrangements such as an enduring power of attorney. 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 act at all times 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.

The Public Trustee has a statutory advantage over private individuals seeking appointment as administrator. This is discussed in past reports and decisions of the Board: BND (*Review of Administration*) [2012] TASGAB 3 and HFO (*Review of Administration*) [2012] TASGAB 6.

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

The Board publishes a Handbook for Private Administrators on its website to ensure that administrators appointed under an order understand their duties and powers as an administrator.

## Reviews

### Reviewing Enduring Guardians

Part 5 of the *Guardianship and Administration Act 1995* enables a person 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 appointing an enduring guardian must be registered with the Board.

The Board has power under the *Guardianship and Administration Act 1995* to review the 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
- 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 enduring guardianship, or vary a term of the enduring guardianship, including appointing a new guardian, dismiss the application to review the enduring guardianship or give advice and direction to a guardian.

### Review Enduring Power 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*. These 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.

The Board may declare:

- the 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.

### Reviews of Existing Orders

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.

### Consent to Medical and Dental Treatment

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* for people who are incapable of consenting themselves. After hearing an application for consent to medical or dental treatment the Board may consent to the proposed treatment if it is satisfied: that the treatment is lawful; and that the patient does not have capacity to consent; and the treatment is in the patient'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*, 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 of persons with disabilities in Disability Services funded facilities 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 Guardianship and Administration Board if the Board 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. If a restrictive intervention is approved, for 90 days or 6 months, the Board will conduct another hearing on application of the parties when that time expires. The approval can be reviewed before the expiry. The Board can also appoint a guardian after hearing an application or give directions about the use of a restrictive intervention.

## Statutory Will

The Guardianship and Administration 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 that –

- a) that the person making an application for a statutory will is an 'appropriate person' to do so.
- b) that 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 had testamentary capacity.

If the Board is not satisfied of the above criteria, then the Board will dismiss the Application.



## 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. Most emergency applications are received from the State's three major hospitals. 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: *Processing of Emergency Applications*, on its website to assist applicants for emergency orders.

Following the Board's request to the Departmental Secretary in May 2013, the Public Guardian accepts referrals out-of-hours for emergency applications and the Board provides a contact list of available Board members should an order be required. Consistent with the Board's experience of offering an out-of-hours service, there have been very few orders made as a result of this service. The Board extends its gratitude to the Public Guardian for performing this role.

## 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 appointing an enduring guardian must be registered with the Board. The Board keeps a register of all Enduring Guardians.

## Community Engagement

### User Satisfaction Surveys

The Board publishes a User's Satisfaction Survey on its website. Parties are informed of the survey when a copy of the Board's order is sent to them. The response rate to the survey is too low to produce any statistical analysis. However, the Board does receive some qualitative feedback that is useful in continually improving our processes.

### Law and Policy Reform

The Board participates in law reform consultations where it is appropriate and consistent with its role.

On 15 June 2017, the Australian Law Reform Commission (ALRC) published a report titled "Elder Abuse—A National Legal Response".

## Community and Professional Education Program

The Board promotes understanding of relevant legislation by providing training to professional development organisations such as the University, medical and nursing associations and the Law Society of Tasmania. In recent years, in response to budgetary restrictions, the Board has withdrawn from many community education events in favour of targeted professional development programs in disciplines related to the work of the Board.

A list of the Board's education activities is attached at Appendix 3.

## Website and Publications

The Board's website includes application forms, health care professional report pro formas, facts sheets, policies, process information and annual reports. 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 the interests of transparency and accountability, the Board publishes details of upcoming hearings on our website. This assists legal practitioners, advocates and support persons to assist a represented person to attend a hearing and be heard on crucial issues. The Board has also published Practice Directions, information booklets and on the website.

The Board publishes the following videos on its website:

- Attending a Hearing at Guardianship and Administration Board
- What happens at the Hearing
- After the Hearing
- Are you attending a Hearing?
- Are you attending a Hearing? (subtitles)

## Easy Read Fact Sheets

The Board has completed the process of converting some of its web-based Facts Sheets to 'Easy Read' English to enable persons with disabilities to be better informed about guardianship and administration laws. Easy Read presents information in a way that is very easy to understand. It uses images to support text and large font sizes. This represents the Board's commitment to upholding Article 9 of the United Nations Convention on the rights of persons with disabilities which states:

To promote the design, development, production and distribution of accessible information.

## The Year in Review - Statistics

### Applications Received

The total number of applications (including the review of orders) received for the period 1 July 2016 to 30 June 2017 by the Board was 1772. Of these 783 were new applications with the remainder being reviews of existing orders.

### Hearings

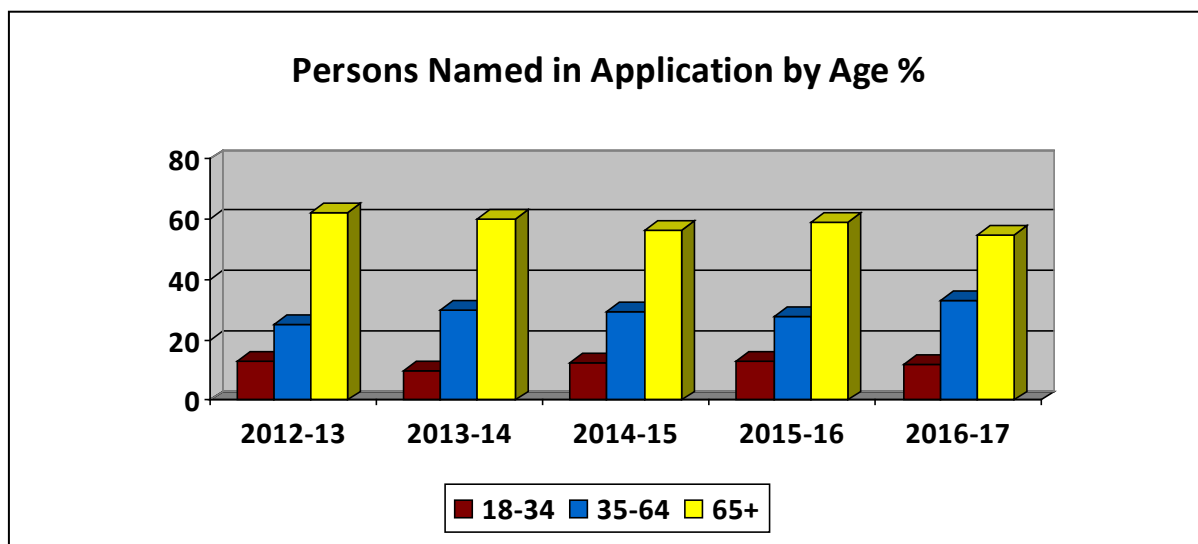
The Board conducted 190 hearing sessions with a total of 1027 hearings this year. The Board heard an average of 5.3 matters per sitting.

Of the 1027 hearings held in 2016-17, 55% were held in the South, 30% in the North and 15% in the North West.

Hearings were conducted by single members or panels constituted by 3 members.

### Age demographic of people the subjects of applications to the Board in 2016/2017

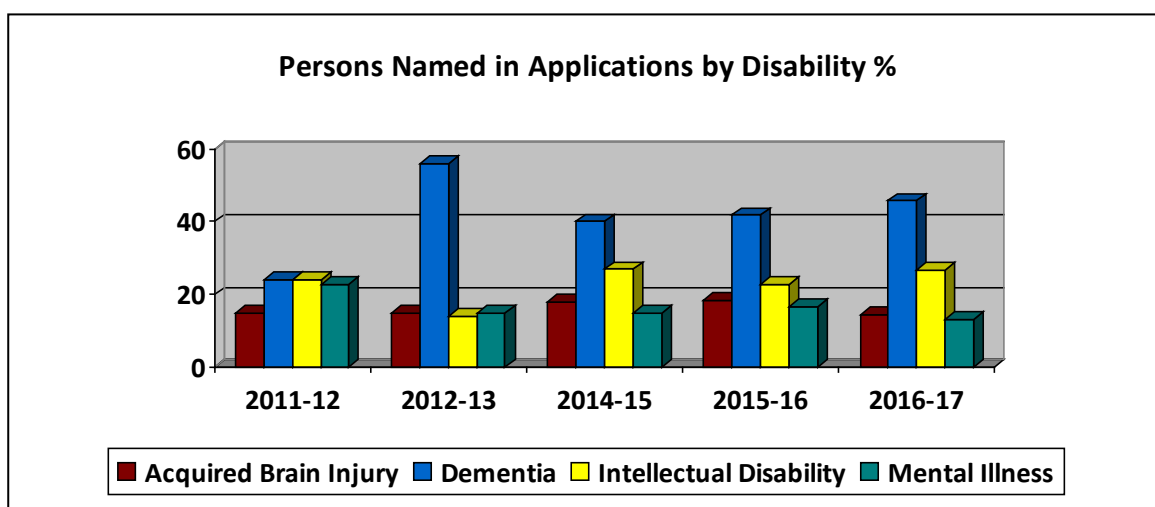
Persons over 65 years of age continue to comprise a significant proportion of the persons about whom applications are made representing 55% of the total group.



## Disability Profile

The categories of disability for the purpose of the following graph are deliberately broad to enable data to be used in national comparisons. Where a person has multiple diagnoses, only the primary diagnosis is counted.

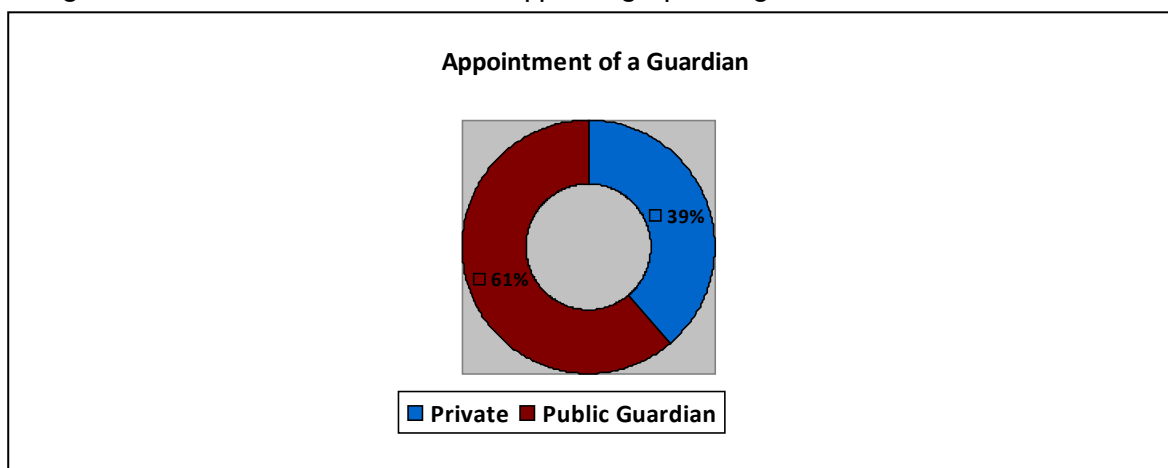
Dementia is the most frequently identified disability in applications before the Board. It is anticipated that the impact of ageing of the population and increasing incidence of dementia will continue to grow the number of applications to the Board who have as their primary diagnosis dementia.



## Applications for Guardianship Orders – Part 4 Guardianship and Administration Act

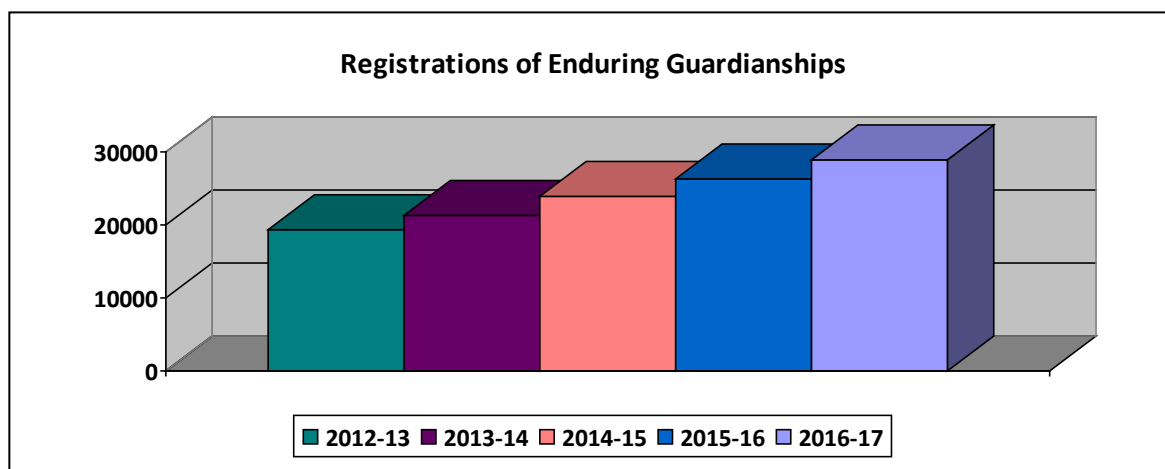
The Board registered 270 applications for guardianship, and 213 applications for emergency guardianship, for the reporting year.

After a hearing, the Board appointed the Public Guardian as guardian in 61% of guardianship applications and in the remaining 39% of matters, a private guardian was appointed. This equates to 86 orders appointing the Public Guardian and 55 Orders appointing a private guardian.



## Register of Enduring Guardianship Instruments

On 30 June 2017 the register included 28,844 Instruments Appointing an Enduring Guardian.



The Board collects fees for registration of enduring guardianships pursuant to the *Guardianship and Administration Amendment (Fees) Regulations 2012*. The Board has registered 2454 instruments in the reporting year. Fees have been waived on 12 occasions in this reporting year. As of the 1 July 2017 the Board charges \$69.75 for registration of enduring guardianships and \$49.60 for revocation. The Board collected \$172,262 in the reporting year from registrations of enduring guardianships or revocations.

## Reviews of Enduring Guardianships – Part 5 *Guardianship and Administration Act*

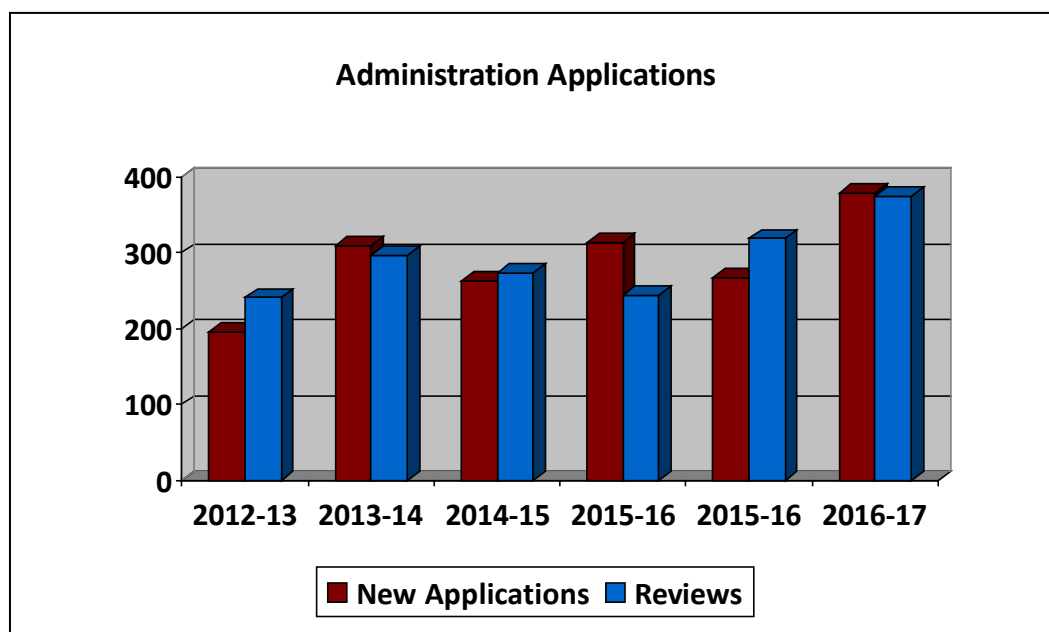
The Board received 10 applications to review enduring guardianships during the reporting period.

## Consent to Medical and Dental Treatment – Part 6 *Guardianship and Administration Act*

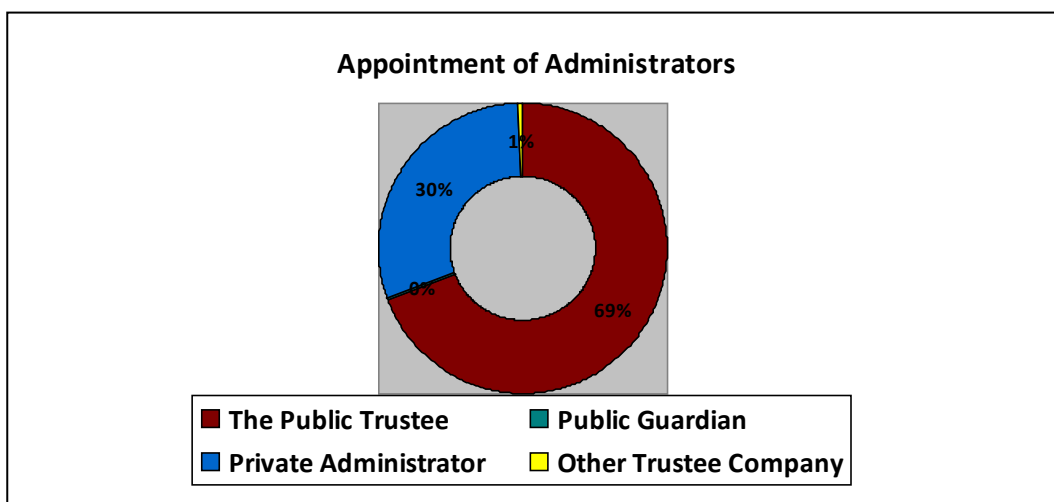
The Board received 3 applications in the reporting year. The numbers of applications has been declining in recent years.

### Applications for Administration Orders – Part 7 Guardianship and Administration Act

The Board received 371 new administration applications and 135 applications for emergency administration orders in the reporting year, set out in the table below.



The Public Trustee was appointed under 68% of orders for administration. Of the balance of appointees 30% were private administrators (family or friends), 1% Tasmanian Perpetual Trustees, 1% The Public Guardian..



### Emergency Applications - Part 8 Guardianship and Administration Act

The Board has made 213 emergency guardianship orders appointing the Public Guardian and 133 emergency administration orders appointing the Public Trustee. The Board can make emergency orders for

28 days and can extend them for a further 28 days. The Board extended 97 Emergency Guardianship Orders and 86 Emergency Administration Orders.

### Post-hearing procedures and support – Part 9 Guardianship and Administration Act

Post-hearing procedures represent a significant area of activity for the Board and its officers. The Board received and scrutinized approximately 1629 annual reports submitted by appointed guardians and administrators in the reporting year.

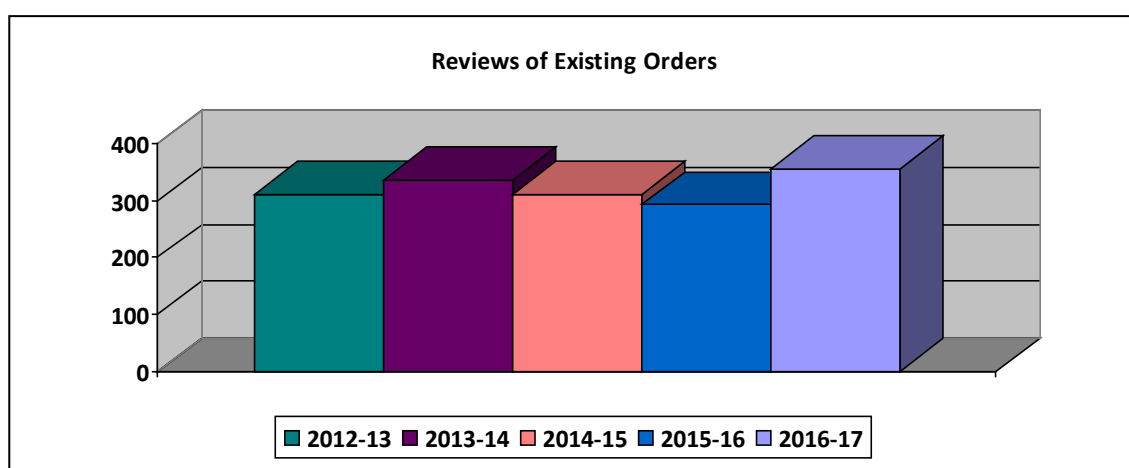
The Board receives fees for examination of administrator’s annual reports pursuant to the *Guardianship and Administration Amendment (Fees) Regulations 2012*. The Board charged \$180.50 for review of a private administrator’s report and \$127.76 for review of a report by the Public Trustee, where the assets of the represented person are above \$50,000. Fees charged to private administrators have generated \$18,184. A total of \$24,244 has been collected from Trustee companies. (Total Income from Annual Report Fees \$42,427.59).

### Reviews of Existing Orders – Part 9 Guardianship and Administration Act

The following graph provides a comparison of the number of review hearings conducted this reporting year against the previous reporting years.

The Board heard 91 applications for the Review of Guardianship Orders and 374 applications for the Review of Administration Orders.

357 review orders were made that include statutory reviews, applications to review by an administrator or guardian or upon the Boards Own Motion.



### Applications to Review Enduring Powers of Attorney – Parts 4 and 5 Power of Attorney Act 2000

During the year to 30 June 2017, the Board received 87 applications for review of enduring powers of attorney under the provisions of the *Powers of Attorney Act 2000*. The number of these applications has increased in this reporting year.

The 87 applications were as follows:

Review of a power (incl. 7 applications of Board's own motion)	63
Emergency suspension	22
Advice and direction	2

### Applications for Approval of a Restrictive Intervention

4 applications for approval of restricted intervention and 1 application for ninety day approvals under the *Disability Services Act 2011* have been received in this reporting year.

### Applications under other legislation

The Board received 5 new applications for statutory wills pursuant to the *Wills Act 2008*.

### Requests for Statements of Reasons and Appeals – Part 10 *Guardianship and Administration Act*

Statements of reasons are 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.

All statement of reasons are de-identified and published on the Australian Legal Information Institute website: [www.austlii.edu.au](http://www.austlii.edu.au) . As at the time of publishing this report there are 260 decisions spanning from 1998 to 2015. Publishing de-identified statements of reasons is important because it enhances the Board's accountability for decision-making and because it gives persons appearing before the Board an opportunity to understand the decision-making processes of the Board.

17 statements of reasons were written during the reporting year.

There was one appeal from Board decisions in the reporting year.



## Statistical Summary

Applications received	2012-13	2013-14	2014-15	2015-16	2016-17
Total applications rec'd	1104	1230	1192	1186	1772
Guardianship normal	152	198	231	207	270
Guardianship emergency	311	288	239	249	213
Administration normal	195	247	263	239	371
Administration emergency	75	63	57	65	135
Extension of Emergency orders					181
Medical consent	11	4	1	1	3
Statutory Will	0	1	0	2	4
Other (EPA's, gifts, advice, Approval of Restrictive Intervention, Interstate recognition etc.)	50	92	73	82	76
Review of existing orders	310	337	301	293	519
Applications yet to be listed for hearing				94	110
Hearings conducted					
Total Matters hearings	657	735	649	679	1027
Guardianship	116	142	142	158	233
Administration	168	192	201	196	282
Medical consent	12	3	1	1	2
Statutory Will	0	0	0	3	5
Other	25	46	12	23	14
Reviews	336	352	293	298	491

Hearings by region					
South	363	432	374	361	565
North	170	200	177	191	308
North West	124	103	98	127	154

Outcomes					
Guardianship orders including orders made on review, but not emergency orders	107	130	143	152	175
Administration orders including orders made on review, but not emergency orders	371	441	455	376	612
Emergency Guardianship orders including renewed orders		253 for 168 persons	208	247	269
Emergency Administration orders including renewed orders		51 for 28 persons	39	89	186
Medical consent orders	6	2	1	1	2
Other orders (EPA's, EG, gifts, RI etc.)	22	30		31	72
Statutory Will orders	0	0	0	2	1
Applications dismissed	87	69	75	63	143
Matters adjourned	41	32	19	39	49
Applications lapsed/refused/withdrawn/ advice only	111	188		114	146
Community and Professional Education Sessions	15	12	15	19	11

## Finances

A full financial summary is at Appendix 2.

The Board collects fees for the following activities:

Function	Fee Units	Fee @ \$1.46 per fee unit
Registration of an enduring guardianship	45	\$68.00
Registration of revocation of an enduring guardianship	32	\$48.00
Search for an enduring guardianship	19	\$30.60
Examination of an administrator's annual statements of account (where estate has value greater than \$50,000)	118	\$180.54
Examination of the Public Trustee's annual statements of account (where estate has value greater than \$50,000)	83	\$127.76
Photocopies of documents	2	\$3.06

There is no fee for making any application to the Board. Examinations of statements of accounts are subject to a generous means test. Additionally, the regulations enable the Board to waive fees in circumstances of hardship.

Fees are collected by Service Tasmania who process lodgments and searches of enduring instruments. Further information about the fees is available at: [http://www.guardianship.tas.gov.au/new\\_fee\\_structure](http://www.guardianship.tas.gov.au/new_fee_structure)

Or view the regulations at: <http://www.thelaw.tas.gov.au>

Fees generated by the Board are applied directly back to fund the functions of the Board.

## How to Contact the Board

The Board's office is located at: Department of Justice  
Second Floor, 144 Macquarie Street, Hobart

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

Telephone Number: (03) 6165 7500 or 1300 799 625

Facsimile Number: (03) 6173 0211

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 I - Board Members at 30 June 2017

**Rowena Holder** - President                      Appointed:        8<sup>th</sup> August 2016  
    Appointed Member:    21 September 2009 and 18 February 2013

Rowena Holder graduated from the University of Tasmania with a Bachelor of Arts and Law in 1995. She was admitted as a Barrister and Solicitor of the Supreme Court of Tasmania in 1996. She worked in private practice practicing in criminal law, civil law, personal injuries law and family law up to 2011. Rowena was then employed as a legal practitioner and as the Manager of Advice and Legal Services at the Legal Aid Commission of Tasmania till July 2016. In February 2014 she was appointed as a member of the Mental Health Tribunal. Rowena is an accredited LEADR mediator and family dispute resolution practitioner. Rowena was appointed President of the Guardianship and Administration Board on the 8<sup>th</sup> August 2016.

**Colin McKenzie** – Deputy:    Appointed:        21 September 2009 and 13 October 2014

Colin McKenzie was admitted as a legal practitioner in 1983. Colin graduated from Law at the University of Tasmania in 1982 and qualified as a LEADR accredited mediator in 2004. He has practised law in private practice since his admission in a wide range of litigation areas in Hobart, served on the committee that established the Hobart Community Legal Service and from 1986 practised on the North and Northwest Coast of Tasmania. He is a partner of the firm of McLean McKenzie & Topfer based in Burnie. He was member of the board of Lifeline North West Tasmania from 2002-2008 and served as its president and national delegate. He has been a member of Ability Tasmania Group Inc Board since 2002, and a member of Marist Regional College Board of management from 2002 to 2008.

### Board Members (In alphabetical order) (3 year terms)

**Susan Aylett**                      Appointed:        18 February 2013 and 27 June 2016

Sue Aylett is currently employed as a Mental Health Nurse Practitioner in general practice in collaboration with general practice GP's. She is also a Credentialed Mental Health Nurse and a current member of the Mental Health Tribunal. She has previously worked in acute, rehabilitation, forensic and community mental health. She has a Graduate Diploma in Mental Health, a Graduate Certificate in Initiatic Art Therapy, a Graduate Certificate in Forensic Nursing, a Masters degree in Forensic Mental Health and a Masters degree in Nurse Practitioner specialising in Mental Health. She has been recently been appointed as Adjunct Lecturer at the University of Tasmania in the Faculty of Nursing and Midwifery

**Melanie Bartlett** Appointed: 22 March 1999, reappointed October 2002 and February 2006  
Re-appointed January 2016.

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. Melanie worked at Simmons Wolfhagen in Hobart, the Australian Legal Aid Office and McLean Phillips and Bartlett until 1996 when she then set up the firm of Bartletts Barristers and Solicitors in Burnie with her husband Chris. Between 2005 and 2008 she had 3 periods as a temporary Magistrate and was appointed as a Magistrate in 2009. She resigned from that role in December 2015. Melanie was previously a member of the Council of the Law Society of Tasmania and was President of the Law Society in 1999/2000. She has been a Commissioner of the Legal Aid Commission, a member of the Mental Health Tribunal, a member of the Disciplinary Tribunal under the Legal Profession Act and a member of the Anti-Discrimination Tribunal. Melanie is currently a partner at Bartlett's.

**Elizabeth (Libby) Beyerle** Appointed: 1 June 2015

Libby Beyerle has worked in the Community Sector for the past 20 years having completed a Diploma of Community Services in 1995 and a degree in Social work from Deakin University in 2002. In 2007 Libby completed a Graduate Diploma in Family Therapy. Libby has worked in both the Community and Government sectors and currently works as a 'Specialist Rural Social Worker' employed by the THO and based out of the Deloraine District Hospital.

**Kate Brown** Appointed: 27 June 2016

Kate Brown was admitted as a Barrister and Solicitor of the Supreme Court of Tasmania in 1998 and since that time has worked in the Office of the Director of Public Prosecutions prosecuting in the Courts of Petty Sessions and Supreme Court. She has dealt with many serious matters, frequently prosecuting crimes of a sexual nature and crimes involving violence. During the course of her work she has specialised in cases involving witnesses who are vulnerable.

**Colleen Cheek** Appointed: 27 June 2016

Colleen Cheek graduated as a registered nurse in 1986, and has practised clinically in hospital and community settings in New Zealand, England, Queensland, Victoria, Western Australia and Tasmania. Colleen attained a Bachelor of Science from Massey University and a Master's degree from the University of Tasmania and has led projects implementing health information systems, including piloting the sharing of advance care planning information. Since 2012 Colleen has been a research fellow at the University of Tasmania Rural Clinical School, conducting research into issues which affect the health and well-being of rural communities. Colleen is a member of the University of Tasmania Health and Medical Higher Research Ethics Committee.

**Mary Davies** Appointed: 21 February 2005, reappointed 30 June 2008, 19 December 2011 and 1 June 2015

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. Mary was a founding member of the Alzheimer's Association, North West Tasmania, and has worked in the area of dementia care for the past 20 years. She has recently retired from the position of Senior Counsellor with Alzheimer's Australia Tasmania, North West.

**Gerard Dibley** Appointed: 21 February 2005, reappointed 30 June 2008, 19 December 2011 and 1 June 2015

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.

**Dr Matthew Fasnacht** Appointed: 12 October 2015

Matthew Fasnacht graduated from the University of Tasmania with a medical degree in 2001. He was admitted as a fellow of the Royal Australian and New Zealand College of Psychiatrist in 2010 and worked as a general psychiatrist for Mental Health Services for one year before completing further subspecialty training in Psychiatry of Old Age. He has worked since 2011 in the Older Person Mental Service where he is now the Senior Psychiatrist, the Huntington's Disease Service, and is also the Director of ECT at the Royal Hobart Hospital.

**Wendy Hudson** Appointed: 21 February 2005 reappointed 30 June 2008, 19 December 2011 and 1 June 2015.

Wendy Hudson (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 University of Tasmania.

**Donald Jones** Appointed: 1 June 2015

Donald Jones was a partner of Shields Heritage for 7 years and a sole practitioner for 10 years. He recently retired as a Magistrate after having served for 20 years in Burnie. During his time as a Magistrate he sat on the Mining Tribunal and he was the Coroner for the North-West and West Coast of Tasmania for 18 years. Donald has been an officer for numerous community groups and an honorary solicitor to various sporting clubs.

**Grant Kingston** Appointed: 17 December 2007, 21 February 2011, 2 December 2013 and 14 February 2017

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 is a Justice of the Peace.

**Rodney Lester** Appointed: 16 October 2000, reappointed May 2004, June 2007, July 2010, 2 December 2013 and 14 February 2017.

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 is a member of the Tasmanian Racing Appeal Board.

**Louise Mollross** Appointed: 14 February 2017

Louise is a partner at Ogilvie Jennings, and was admitted to the Supreme Court of Tasmania in 1987. Louise specialises in Family Law but also has extensive experience in a broad range of Commercial Law matters, Conveyancing, commercial transactions and mortgages. Louise also works extensively in the area of Wills & Estates, including wills, powers of attorney and estate administration. Louise is appointed to act as an Independent Children's Lawyer in the Family Court of Australia and as a Child Representative in the Magistrates Court. Louise has completed LEADR mediation training. She is a member of the Law Society of Tasmania, the Family Law section of The Law Council of Australia, the Australian Institute of Family Law Mediators (AIFLAM) and a committee member of the Family Law Practitioners Association of Tasmania.

**Angela McKenzie** Appointed: 27 June 2016

Angela has spent her working life overseas and in Australia both in urban and remote settings working with predominantly with people who are frail and aged. For the last 20 years Angela has worked in the community and residential age services sector and developed a strong interest and expertise in working with people with dementia. Angela has formal education in nursing and primary health care



**Justin Otlowski** Appointed: 27 June 2016

Justin Otlowski graduated with a combined degree in Economics (major in Accountancy) and Law from University of Tasmania in 1979. He was admitted as a Barrister & Solicitor of the Supreme Court of Tasmania in 1982. Justin was the Managing Partner of Simmons Wolfhagen and is currently a Consultant with that firm. For over twenty years Justin has been practising in the contentious and non-contentious aspects of the administration of estates. Justin has a keen interest in the Board's jurisdiction to overview the use of Enduring Powers of Attorney and also the Board's jurisdiction in respect of Statutory Wills.

**Muriel Rollins** Appointed: 1 June 2015

Muriel Rollins graduated as a Registered Nurse in 1974. She worked for more than 20 years in both private and public sectors of service provision to people with intellectual disabilities in New South Wales till moving to Tasmania in 1988. She also worked for Disability Services North as a Registered Nurse and Clinical Nurse Consultant. Muriel attained a Graduate Diploma of Mental Health Nursing (Griffith University) in 1998 and has been a Credentialed Mental Health Nurse since 2009. She has worked in various mental health settings such as acute care, rehabilitation, community forensic mental health, and correctional health. She currently works on and off shore as a mental health nurse for International Health & Medical Services.

**Ken Stanton** Appointed: 18 February 2013 and 27 June 2016 – resigned June 2017

Ken Stanton was admitted as a legal practitioner in 1990. He has a Bachelor of Science, Bachelor of Laws and Master of Laws from Monash University. He practised as a barrister in Melbourne for approximately 5 years before moving to Launceston where he practised law in a wide range of litigation areas at the firm Shields Heritage where he was a partner for approximately 7 years. Since 2004 he has practised as a barrister in Launceston. He has served in many community organisations and is currently a board member of the Launceston Community Legal Centre. In February 2014 he was appointed as a member of the Mental Health Tribunal.

**Michael Stoddart** Appointed: 27th June 2016

Mike has been involved in the law for 44 years. He was a Stipendiary Magistrate in Papua New Guinea, a Senior Crown Counsel in the State Solicitor-General's Office, Principal Crown Counsel in the Office of Public Prosecutions in Tasmania and finally post retirement, served as Senior Prosecutor in the Northern Territory for three years. He has been particularly involved in prosecuting sexual crime and child abuse. Mike is a member of the Mental Health Tribunal and the Tasmanian Police Review Board. He is also on the Board of Cerebral Palsy Tasmania. He is a trained mediator working in the area of child protection at the Magistrates Court.

**Sandra Taglieri** Appointed: 18 February 2013 and 27 June 2016.

Sandra is a Barrister specialising in injury compensation law, personal injuries damages, administrative law, anti-discrimination, coronial, insurance, industrial and civil law generally. Prior to commencing practice at the Independent Bar in 2009, Sandra was a partner at Phillips Taglieri, Barristers and Solicitors. Sandra has been a member of the Supreme Court Rules Committee since 2011, a member of the Legislative Review Anomaly Committee of the Work Cover Board of Tasmania since 2007, a lecturer in industrial law at the Legal Practice Course of the University of Tasmania since 2009, Commissioner on the Legal Aid Commission of Tasmania 2009 to 2012 and was a Trustee of a charitable fund established to assist miners affected by the Beaconsfield Mine disaster in 2006. She is a part-time member of the Administrative Appeals Tribunal.

**Leanne Topfer** Appointed: 21 September 2009, 18 February 2013 and 27 June 2016.

Leanne is a legal practitioner with 29 years' experience in civil and estate litigation and family law. She is a partner of McLean McKenzie and Topfer in Burnie. She has been a member of the Council of the Law Society since 1999 and was President of the Society in 2005-6. Leanne is on the Executive of the Law Council of Australia. She is also a member of the Cancer Council Board and the Advance Burnie Board.

**Lindi Wall** Appointed: 21 February 2005, reappointed 30 June 2008, 19 December 2011 and 1 June 2015.

Lindi Wall graduated with a degree in Politics in 1974 at the University of Nottingham and a degree in Law at the University of Tasmania in 1989. She 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 within the Department of Justice. She is a founding Board member of the Environmental Defenders Office (Tas) and was a member the Anti-Discrimination Tribunal from 2011 - 2015.

**Carolyn Wallace** Appointed: 18 February 2013 and 27 June 2016.

Carolyn Wallace graduated as a Registered Nurse in 1980 and has a wide range of experience in acute care, both in the public and private sector, and in aged care. She has been employed by Southern Cross Care (Tas) Inc for the last 19 years and is currently the Director of Clinical Services for SCC (Tas). She has a Bachelor of Applied Science (Nursing) from UTAS and Master of Health Management from UNE.

**Juanita Westbury** Appointed: 18 February 2013 and 27 June 2016.

Juanita Westbury has practiced as a community pharmacist since 1992 in New South Wales, South Australia, England, and Scotland; registering in Tasmania in 2006. Juanita has a particular interest in older people's mental health and medication use in aged care. She completed a Master's degree in England on medication use in older people and was awarded her PhD at the University of Tasmania in 2011 on the use of sedatives in aged care homes. Juanita is currently appointed as a Senior Lecturer in Dementia Care at the Wicking Dementia Research and Education Centre and continues to research and promote optimal medication use in aged care facilities.

## Appendix 2 – Financial Summary 2016 - 2017

Appropriation	734,490
Fees and other revenue collected	210,000
Total Revenue	\$944,490
Employee related	975,385.08
Property expenses	88,420
Information technology	25,200
Other Expenses	71,874
Total Expenses	\$1,160,876.22
Increase in trust fund balance	-\$216,386.22
Closing Trust Fund Balance	\$445,011.05

On 31 January 2012 the Department of Justice received official confirmation from Treasury that the revenue from the fees will be retained by this output and there will be no reduction in the existing budget allocation due to the collection of fees.

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

## Appendix 3 – Professional Development seminars provided by the Board

The following professional development events were presented by Board & staff members in 2016- 2017.

Rowena Holder

- 28 September 2016 Wilfred Lopes Centre
- 28 September 2016 Allied Health Services at the Royal Hobart Hospital
- 28 June 2017 – Public Trustee Office in Hobart

Elizabeth Dagleish

- 27 July 2016 ACMS (THS) Assessment and Case Management Services including ACAT, Hobart

Mary Davies

- 3 August 2016 Tas Tafe, Devonport, Certificate III in Individual Support, Aged Care
- 11 May 2017 – TAS TAFE –

Grant Kingston

- 22 September 2016 Mosaic Support Services, Hobart
- 11 October 2016 Mosaic Support Services, Hobart

Carolyn Wallace

- 7 April 2017 UTAS Nick Cooling Medical Students
- 2 June 2017 School of Medicine Year 3 Primary Care 2016 Medical Students

Colleen Cheek

- June 2017 - Medical Students, Rural Clinical School Burnie