

26 August 2014

The Hon. Vanessa Goodwin MLC
Attorney General
Minister for Justice

In accordance with the requirements of Section 84 of the *Guardianship and Administration Act 1995*, I am pleased to submit this report on the administration of the Act and the financial statements for the Guardianship and Administration Board for the year 1 July 2013 to 30 June 2014.

Anita Smith
PRESIDENT
Guardianship and Administration Board

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Report of the President

I am pleased to present this Annual Report on behalf of the Board members and staff.

This year, I intend to bring to light some concerns associated with the introduction of the *Mental Health Act 2013*.

Before 17 February 2014, the involuntary treatment of people with mental illnesses was within the jurisdiction of this Board in two ways. First, the Board could give consent to involuntary psychiatric treatment for persons who could not give informed consent to that treatment. Second, a guardian could be appointed to oversee the accommodation needs and/or give consent to treatment of a person with a mental illness. When making decisions on behalf of a person with a mental illness, the Board or a guardian was able to give an holistic response to the present and future needs of a person with a mental illness, considering their wishes, the least restrictive alternative and the person's best interests. Neither process was based, as mental health orders are, on discriminatory concepts such as the "risk" the person presented to themselves or society.

While the jurisdiction of the Board generally operated satisfactorily, there were some medical practitioners who complained that making an application to the Board duplicated efforts they made in promoting Continuing Care Orders before the Mental Health Tribunal for the same patients and subjected their patients to too many legal proceedings.

The development of the current *Mental Health Act 2013* had a long history. On 16 April 2007, the Director of Mental Health Services issued the *Review of the Mental Health Act 1996 Issues Paper*. That review sought to generate:

“... a set of options for legislative change to ensure that the Mental Health legislation in Tasmania promotes a model of care for mental health that is centred on people affected by mental illness, that promotes their recovery and that is provided equitably and efficiently.”

In June 2011, after a long consultation period including a Legislative Council Inquiry, Statewide and Mental Health Services released an exposure draft of the *Mental Health Bill 2011*. The Explanatory Guide to that Bill notes the historical interaction between the *Mental Health Act 1996* and the *Guardianship and Administration Act 1995* and states:

“The existence of separate legislative regimes for the authorization of detention and treatment is inconsistent with most other Australian jurisdictions. The existence of two frameworks adds a level of complexity to the treatment framework which appears to be unnecessary, which is confusing and which sometimes requires more than one hearing for the same person. This is both inefficient and can result in unnecessary stress to consumers at a time when they are acutely unwell.” (emphasis added)

Some *Key Features* of that draft exposure Bill were that it:

- “Enables decisions about treatment and treatment setting to be made within one legislative framework and by a single tribunal. ...

- Establishes a single Treatment Order which enables the authorization of treatment in either a community or inpatient setting, or through a combination of settings.”

Of *Urgent Circumstances Treatment*, the Explanatory Guide states:

“The draft Bill makes it clear that the urgent circumstances provisions are not intended to override or otherwise limit the operation of section 40 of the *Guardianship and Administration Act*, which enables medical treatment to be given to a person with a disability who is incapable of giving consent to the carrying out of the medical treatment, if the medical practitioner consider (*sic*) it to be necessary, as a matter of urgency, to save the person’s life, to prevent serious damage to the person’s health, or to prevent the person from suffering or continuing to suffer significant pain or distress.”

On 20 September 2011 Anne Burchill, Secretary of the Department of Health and Human Services, circulated a further draft *Mental Health Bill 2011* for comment. In her covering letter, Ms. Burchill stated:

“The Bill proposes dealing with the broader issues associated with compulsory treatment in community settings by providing for a single Treatment Order which would operate both in community and inpatient settings, enabling patients to flexibly transition between treatment settings as and when required and appropriate.”

When the *Mental Health Bill 2013* was presented to Parliament, the Minister told the House of Assembly:

“While the current *Mental Health Act 1996* provides authority for the detention of persons with a mental illness, the authority for treatment for persons lacking decision-making capacity is contained within the *Guardianship and Administration Act 1995*. The review process highlighted deficiencies in the current legislative framework, suggesting that working between the two Acts is unnecessarily complex. ...

This Bill seeks to remedy the difficulties associated with the current framework, which sees decisions about the treatment of a person with a mental illness who lacks capacity made pursuant to the *Guardianship and Administration Act*; while decisions about the setting in which treatment should be given are made pursuant to the *Mental Health Act*. The Bill establishes a streamlined and clarified treatment pathway featuring a single Treatment Order enabling treatment across a range of settings.”

Six years of consulting, drafting and promoting reforms were directed towards providing clarity and a single legislative guide for the treatment and care of persons with mental illness.

The *Mental Health Act 2013* commenced on 17 February 2014 and pursuant to section 22 of the *Mental Health (Transitional and Consequential Provisions) Act 2013*, consents given by this Board, guardians or persons responsible pursuant to the *Guardianship and Administration Act 1995* ceased to have effect when the consent was withdrawn by the person or body who gave it, upon the making of a Treatment Order or 30 June 2014.

The objects set out in section 12 of the Act include:

- “(a) to provide for the assessment, treatment and care of persons with mental illnesses;
- (b) to provide for appropriate oversight and safeguards in relation to such assessment, treatment and care;
- (c) to give everyone involved with such assessment, treatment and care clear direction as to their rights and responsibilities;
- (d) to provide for such assessment, treatment and care to be given in the least restrictive setting consistent with clinical need, legal and judicial constraints, public safety and patient health, safety and welfare;
- (e) to promote voluntary over involuntary assessment and treatment and the making of free and informed assessment and treatment choices;
- (f) to provide for all incidental and ancillary matters.”

Section 13 of the Act states that it is ‘intended to be the *primary source* of authority for the involuntary assessment, treatment and care of persons with mental illness in this State.’

Since the commencement of the Act, in applications coming before the Board, the Board has noted the following inconsistencies between the objects and/or the projected benefits of the new Act and its practical operation:

- The authority of a Treatment Order does not extend to determinations about the person’s accommodation, unless it is detention in an approved facility (most often a hospital). Accordingly, Treatment Orders do not enable ‘treatment across a range of settings’ but are limited to acute care, mostly in hospitals. It does not facilitate ‘patients to flexibly transition between treatment settings as and when required and appropriate.’ Where a person with a mental illness needs substitute decisions about longer term accommodation to promote their health and wellbeing, treating teams are still required to apply to this Board for appointment of a guardian.
- Some persons who were, prior to the enactment, the subject of two orders (being guardianship and administration) are now the subject of three orders (being guardianship, administration and a treatment order). This does not reflect efficiency in the administration of justice, nor does it reflect the principle of ‘least restrictive alternative.’ Additional proceedings still create unnecessary stress to consumers.
- A Treatment Order has no application to matters that are incidental or ancillary to the treatment and care of persons with their mental illness, such as the resolution of severe squalor in the person’s home. For such an issue, a guardianship order is still required and possibly an administration order. This does not reflect the principle of ‘least restrictive alternative.’ It has not simplified the roles of treating teams in providing care for people with mental illness.

- A Treatment Order has little or no practical application to the treatment of long term severe treatment resistant schizophrenia, where the person's needs have far more in common with advanced dementia than the risk-based needs dealt with under a Treatment Order. In such circumstances, practitioners have needed to apply to this Board for the appointment of a guardian.
- Numerous elderly persons are receiving involuntary treatment for mental illness with no clear source of authority and the operators of Residential Aged Care Facilities do not have standing to initiate an Assessment Order under the new Act. Neither have such operators been issued Departmental guidance as to how an Assessment Order might be obtained. Elderly persons in Residential Aged Care Facilities are consequently lacking 'appropriate oversight and safeguards in relation to such assessment, treatment and care.' Operators of the facilities have not been provided clear direction as to their rights and responsibilities by the Act.
- The *Transitional and Consequential Provisions* have limited the operation of section 40 of the *Guardianship and Administration Act*, meaning that provision does not apply to treatment of a mental illness given in life-saving situations, requiring the use of the more administratively burdensome regime under section 55 of the *Mental Health Act 2013* in emergency situations.

Sadly, the working between the two Acts remains unnecessarily complex and is possibly more complex than prior to the enactment of the *Mental Health Act 2013*. The new Act has not remedied the difficulties associated with the previous legislative framework nor has it established a streamlined and clarified treatment pathway for persons with mental illness.

For the medical practitioners who complained that the former legislative regime subjected them and their patients to too many proceedings, there is also disappointment. Under the old regime, practitioners complained that attendance at *two hearings* (the Board and the Mental Health Tribunal) was administratively burdensome and caused anxiety for their patients. For a long stay patient who might historically have had a guardian to consent to accommodation and treatment in a residential rehabilitation setting (for example Millbrook Rise) this might require *one Board hearing in three years* while the guardian had flexibility to alter the treatments and the restrictions under which that person lived according to their changing needs. Under the new regime, there could be up to *eight hearings per patient per year*.

Since the commencement of the Act those same persons with mental illness (and their treating teams) in the course of a single year will attend an initial hearing, a 30 day review hearing, 90 day reviews, renewal and amendment hearings etc. Frequent reviews theoretically provide better rights protection for persons with mental illness. However, a long-term patient and their treating team may now be subjected to *up to 7 Tribunal hearings per year*. If orders for longer term accommodation or management of their estate are also required, there will also be a hearing before this Board making up to eight sets of legal proceedings. This can generate enormous amounts of paperwork and take an unprecedented amount of clinician's time and energy away from direct care for patients. It also causes recurring distress and anxiety to acutely unwell patients.

I am aware that the Department of Justice has attempted to raise these issues, and others raised by the new Mental Health Tribunal, with the Department of Health. An interdepartmental meeting is yet to be arranged.

Anita Smith
PRESIDENT

Role of the Board

Major Statutory Functions

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*.

Functions that the Board formerly held pursuant to Part 5 of the *Mental Health Act 1996* ceased with the commencement of the *Mental Health Act 2013* on 17 February 2014.

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 of restrictive interventions (personal restraints) for people with disabilities.

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

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

A video demonstration of the Board's procedures, called *Are You Attending a Hearing?*, can be found on the Board's website.

Composition of the Board

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

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

Board members attended an intensive training seminar on 22 – 23 May 2014 which included the following presentations:

- Malcolm Schyvens, Deputy President, Division Head – Guardianship Division NSW Civil and Administrative Tribunal - *Case studies involving the interaction between the NDIS (Disability Care) and the operation of guardianship and financial management legislation.*
- Dr. John Chesterman, Manager Policy and Education, Office of the Public Advocate (Vic) - *Responding to violence, abuse, exploitation and neglect: Improving our protection of at-risk adults* - Report for the Winston Churchill Memorial Trust of Australia
- Panel session: *Tasmanian responses to elder abuse* with Jackie Hartnett, Crown Counsel DPP, Inspector Peter Harris, Tasmania Police, David Benbow, CEO Public Trustee, and Dr. John Chesterman.
- Panel session: *Interaction of Mental Health Act and Guardianship and Administration Act* with Anita Smith, President GAB, Richard Gruber, Deputy President Mental Health Tribunal, Dr. Martin Morrissey, Old Age Psychiatrist and member MHT.

Feedback from the seminar was very positive and the Board expresses its thanks to the presenters.

Members of the Guardianship and Administration Board are currently paid \$301.70 (non-chairing rate) or \$398.47 (chairing rate) per session, which normally comprises approximately four hours conducting hearings and approximately three hours of preparation. Members have raised with the Secretary (in 2012) and the Attorney General (in 2014) their concerns that (i) the fees have not kept pace with like tribunals, (ii) the processes for setting remuneration is not transparent and (iii) the remuneration is not reflective of the level of responsibility that Board members assume. The Attorney General and the Secretary have indicated that there will be no re-sizing of the Board and no increase in Board fees.

Board Member Appointments

Following an extensive recruitment drive in the last reporting year, no new members were appointed during the reporting year.

The following members were reappointed during the reporting year:

Susan Hill
Rodney Lester
Grant Kingston

The Board extends its congratulations to the re-appointed members, all of whom primarily sit in the North and North-West of the State. It is a credit to all reappointed members that their skills and commitment to the Board are recognised in reappointment.

The contribution of all members is highly valued and all members are deeply committed to the administration of justice for persons who come before the Board. It is unusual to single out a Board member, but in this Annual Report there will be an exception.

Sue Hill is a legal practitioner of 37 years' experience and was one of the original members of the Board meaning she has been a member for 17 years. Sadly, since her recent reappointment she has been prevented from sitting regularly due to ill health.

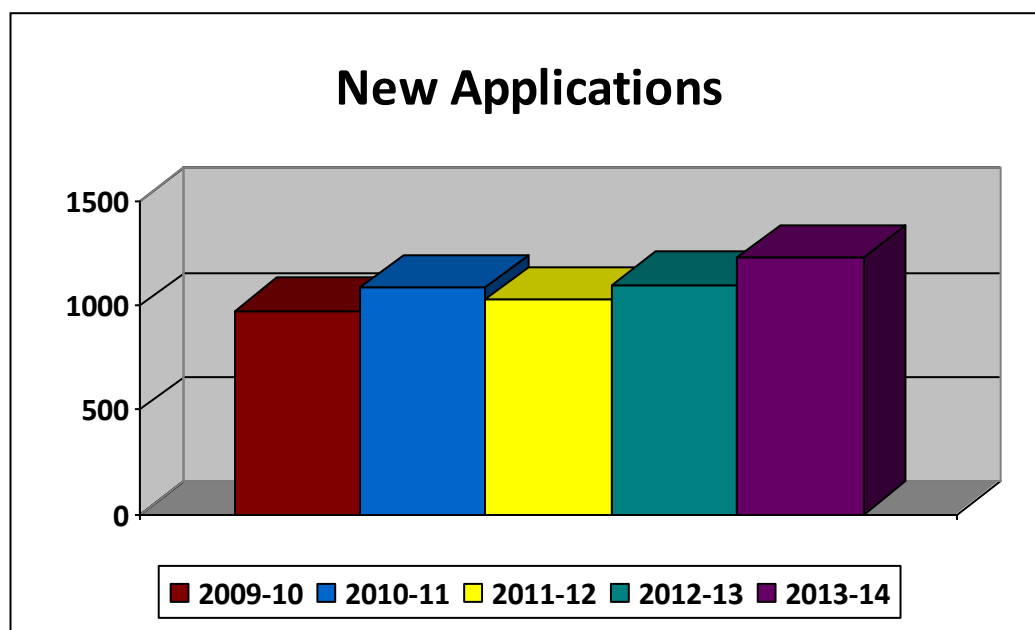
Sue has also been a member of the Mental Health Tribunal, the Local Government Association of Tasmania's Standards Panel and the Social Security Appeals Tribunal. She has contributed significantly to a range of community organisations for many years. As a founding member of the Board, Mrs. Hill has shaped much of its philosophy and practice. She contributes enthusiastically towards law reform and has frequently presented community legal education on behalf of the Board.

It is likely that Mrs. Hill has decided over 1500 matters since first appointed, which is the most significant contribution of any sessional member not just because of the number of years she has served the Board, but the frequency with which she has been available to sit on hearings or attend to emergency applications within each year. She has made the work of the Board's staff much easier over the years because of her warm and cooperative approach, her highly developed administrative skills and her prompt decision making and decision writing.

When conducting hearings for the Board and the Tribunal, Mrs. Hill has always shown great compassion and enormous common sense. In the very best traditions of adjudicators, Mrs. Hill demonstrates the courage of her convictions, sound judgment and decisiveness, independence of mind, moral courage and the ability to deal with matters impartially, fully and dispassionately whilst displaying empathy and sensitivity. She has been a significant mentor to other Board members particularly in Launceston and has, through her decisions and her inspiration to other members of the Board, improved the lives of many thousands of Tasmanians with disabilities and their families.

Processing of Applications

Applications Received



The total number of applications (including the review of orders) received for the period 1 July 2012 to 30 June 2013 was 1230. This represents an 11% increase on last year's case load and the highest number of applications received since the commencement of the Act. Of these 762 were new applications with the remainder being reviews of existing orders.

A new electronic case management system is being developed for the Board, with a view to making the processing of applications more efficient. This will be increasingly important if the numbers of applications continue to rise as they have this year.

Investigations – Parts 2 and 3 *Guardianship and Administration Act*

The investigation process is an important part of the Board's decision-making method. Where a proposed represented person has a disability which affects his or her ability to participate in the pre-hearing and hearing process, the investigators' role is to ensure that all relevant evidence is available to the Board members at the hearing and that the interests of the proposed represented person are fairly and accurately set out for the Board.

The investigators assist the Board to operate in an 'inquisitorial' model rather than an adversarial model. Information can be requested and supplied to the Board (via the investigators) without the usual privacy restrictions because of the operation of sections 11 and 85 of the Act. External agencies are generally highly compliant with requests for financial statements, copies of Wills, medical records, rehabilitation notes and personal histories which supplement the information provided by the applicant. Investigators assess the accuracy and the adequacy of the information presented in the application and provide succinct and professional reports to the Board.

Investigators also provide assistance to members of the public who are considering an application to the Board, giving direction about whether such an application is necessary and what information may be useful to the Board if an application is submitted.

Hearings - Parts 2 and 10 *Guardianship and Administration Act*

The Board conducted a record 735 hearings this year, by far the most hearings of any year since commencement of the Board's functions.

Under the general control and direction of the President, the registrar and staff members of the Board register applications, investigate them and list applications for hearing. Registry staff members ensure that timelines are efficiently adhered to. Their high level of organisation is largely responsible for the timely delivery of outcomes to applications.

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. Applications under other enactments (*Powers of Attorney Act 2000, Disability Services Act 2011, Wills Act 2008*) are not subject to this requirement. Each year the Board reports the percentage of applications that have been *determined*, as opposed to *commenced*, within 45 days.

Where a hearing commences but is adjourned, there will be a significant difference between the time for commencing to hear the application and the time for determination. Our present case-management system (under review) is not capable of providing statistics about the rate of compliance with section 72, but can report upon the numbers of applications *determined* within 45 days.

The Board determined 80% of applications within 45 days. This is a small improvement on the rate reported last year. The reasons for the extended times for determination were explained in last year's annual report and remain relevant.

Board members heard an average of 5.1 applications per sitting this reporting year, an increase on last year but consistent with recent years. Members hearing more applications per sitting can create efficiencies. However, if members are assigned too many applications per sitting it can have a detrimental effect on the quality of decision making. It would be of concern if the numbers of applications per sitting increased much beyond 5.1.

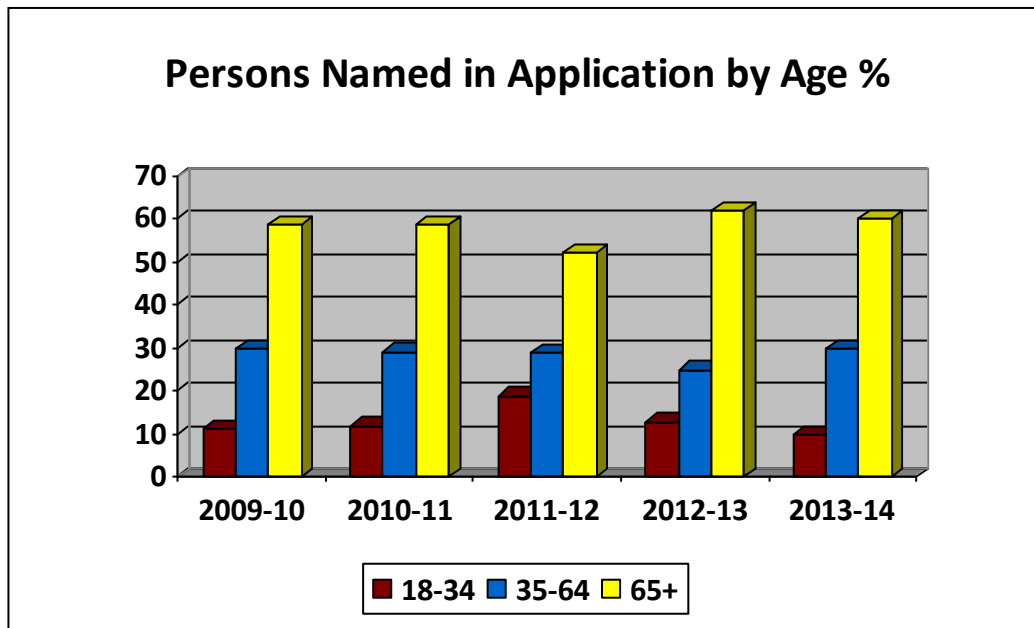
Of the 735 hearings held in 2013-14, 59% were held in the South, 27% in the North and 14% in the North West.

The Board expresses its thanks to the Magistrates Court (Launceston), the Burnie City Council, the Roy Fagan Centre, the Launceston General, Royal Hobart and North West Regional Hospitals for the provision of hearing rooms at no cost.

Age Profile

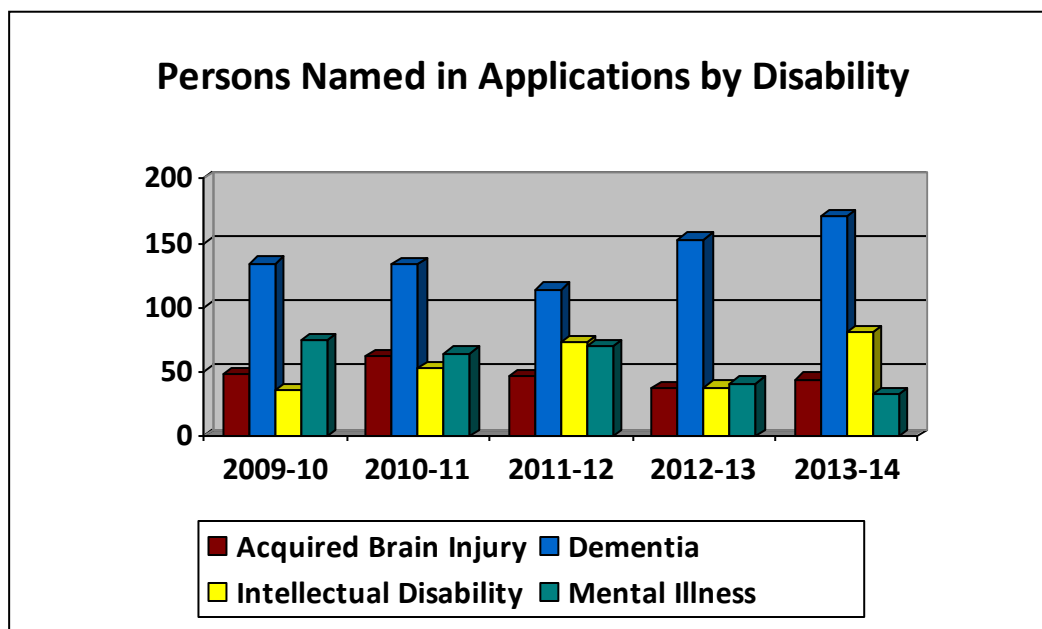
Persons over 65 years of age continue to comprise a significant proportion of the persons about whom applications are made representing 60% of the total group.

As the general population is ageing, it is anticipated that the numbers of applications will continue to increase in coming years.



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.



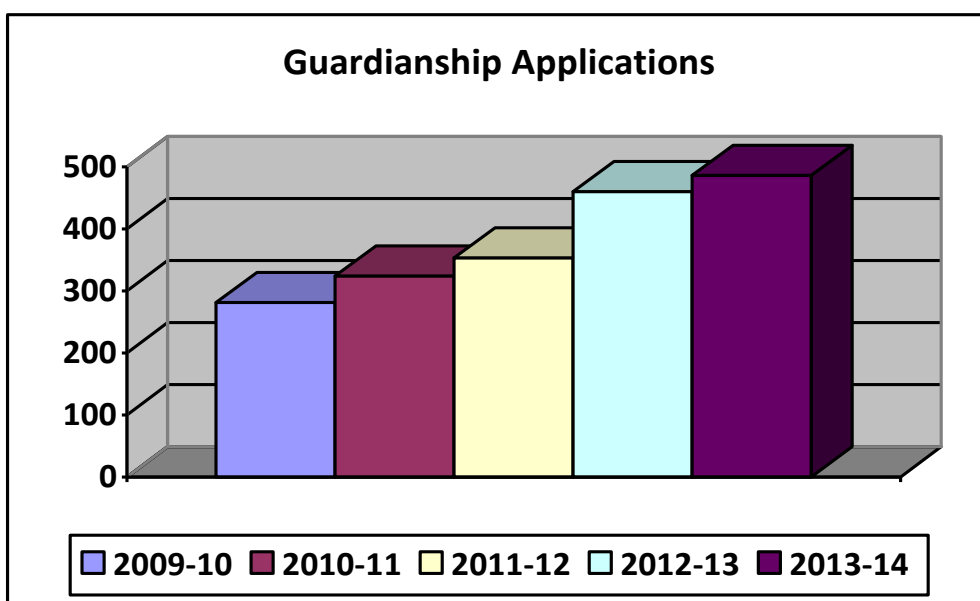
Consistent with the Age Profile of persons named in applications to the Board, a significant proportion of applications relate to persons with dementia as their primary diagnosis.

Performance of Functions by Category

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

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*.

A rise in the numbers of applications for the appointment of a guardian in recent years most likely relates to the changing practice of aged care providers where a person with a disability is detained in secure premises. To understand the role of a guardian in these situations, see the Board's policy, *Detention of people with dementia in secure facilities in State care in Tasmania*, available on the Board's website. Many applications and orders made in these circumstances are emergency short term orders limited to uncontested decisions about where a person lives permanently or temporarily. Where such orders are required longer term, family members and friends of the person with a disability are frequently available for appointment for these decisions.



Application forms and a Facts Sheet about the role of a guardian are available for download from the Board's website: www.guardianship.tas.gov.au.

Following are some decisions made during the reporting year that demonstrate the range of issues that might lead to the appointment of a guardian¹:

DQH (Guardianship) [2013] TASGAB 25

BH sought appointment as a guardian to avoid the situation where he cannot control his wife's admission to or discharge from a care facility as had occurred when she was admitted to the Roy Fagan Centre. The Board found that since discharge from the Roy Fagan Centre, a number of significant changes had occurred in BH and DQH's care regime, including changes to medication and increased community support. In the circumstances, the Board did not consider that there was a need for ongoing guardianship.

EH (Guardianship) [2013] TASGAB 30

EH has schizophrenia and end-stage renal failure. He requires dialysis three times weekly. A desire EH expressed to move to a remote location was inimical to his mental and his physical health. He has no vehicle, limited funds for transport and there are no suitable dialysis facilities near his preferred home. EH is compliant with dialysis treatment but not treatment for his schizophrenia. A guardian was sought to substitute accommodation decisions on his behalf. At the time of the hearing, EH was detained in hospital under a continuing care order under the *Mental Health Act 1996*. The Board considered that EH is in need of a guardian but that such a need is limited to issues related to psychiatric treatment and temporary or permanent accommodation post-discharge. Such order could only have full effect until the commencement of the *Mental Health Act 2013*.

QKF (Guardianship and Review Administration) [2014] TASGAB 4

QKF has an intellectual disability. His mother died and bequeathed the family home, where QKF lived, to six of her children meaning that QKF may have to move to give effect to the will. Reports raised concerns about QKF's isolation from the community, a lack of appropriate nutrition, a need for podiatry and better attention to his health needs arising from his diabetes. There were concerns that QKF's welfare has been neglected by his live-in carer and sister and funds provided for QKF were not being used to his benefit. The Board appointed the Public Guardian to make decisions about where QKF lives either permanently or temporarily, his health care, and the provision of any support services that may be required.

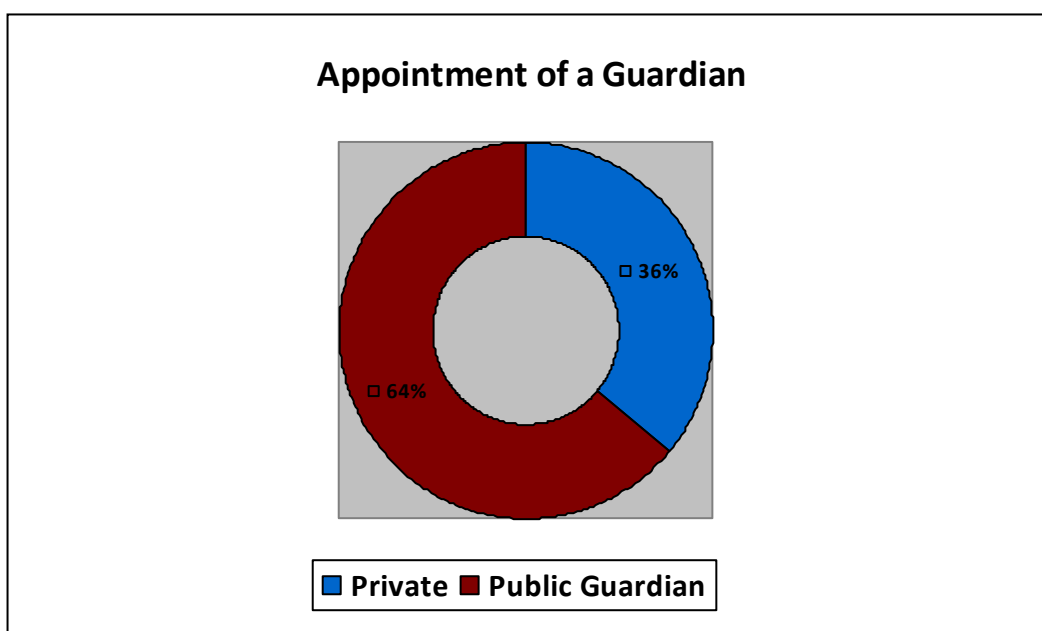
TKH (Review of Enduring Power of Attorney, Guardianship and Administration) [2013] TASGAB 13

TKH has epilepsy, a mild intellectual disability and executive dysfunction. He was living in his late father's house with a carer, but the executor of his father's estate wished to sell that

¹ All decisions are available in full at <http://www.austlii.edu.au/au/cases/tas/TASGAB/>

property, requiring a decision about TKH's future accommodation. There was a dispute about the sufficiency of TKH's day programs and his contact with the community. There was also concern that his aunt/carer was making decisions about his future accommodation that did not reflect TKH's wishes. The Board believes TKH's wishes and interests are best served by the appointment of the independent Public Guardian who will make objective and considered decisions regarding both where TKH should live and the provision of day services for TKH.

The majority of guardianship appointments have traditionally been appointments of the Public Guardian. This has continued in the reporting year but there has been a dramatic and sustained increase in the proportion of private guardians appointed over the last two years with the proportion of private appointments now being 36%. This is greater than the proportion of private administrators appointed this reporting year (31%). Private guardians are generally appointed in uncontested matters such as where a guardian is required to consent to a person with dementia being detained in a secure facility.



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

The following cases demonstrate some of the considerations that the Board takes into account when selecting a guardian²:

NSO (Review Guardianship) [2013] TASGAB 27

The Public Guardian has been the guardian for NSO since 2012 when the Board described the relationship between NSO and his mother as being characterised by Munchausen's by proxy. NSO's father made an application to review guardianship because of various complaints about the Public Guardian. NSO's family members believe that he has a serious medical condition but most medical advisers deny that there is any condition that requires treatment. NSO's father nominated a family friend as an alternative guardian in the hope that NSO will access treatment for the 'condition'. The Board expressed concern that the intensity of the contact between the current guardian and NSO's family may go beyond the capacity of a well-meaning volunteer. The Board was satisfied that the delegate of the Public Guardian had undertaken his duties diligently and had met the Board's expectations. The review application was dismissed.

KNWT (Review Guardianship and Administration) [2013] TASGAB 26

In 2012, the Board appointed DNS as guardian and administrator for KNWT. Mental Health Services applied for a review of the order because the guardian had suffered a breakdown of her relationship with KNWT, other family members and KNWT's care team. DNS had not acted in the represented person's best interests and was conflicted in her duties as a guardian, because she preferred family consensus to the wishes of KNWT. The appointment of DNS as guardian had undermined, rather than preserved, existing family relationships. Another family member was nominated as a guardian, but the Board considered that this person also preferred family consensus over KNWT's wishes. The Board was satisfied that the appointment of the Public Guardian best reflects the eligibility criteria in section 21 and the principles in section 6 of the Act.

BN (Review Enduring Guardian and Guardianship) [2013] TASGAB 21

QDT had been the agent of significant family disharmony and conflict with aged care staff since his intervention in BN's life four months before. QDT had expressed fanciful views about the appointor's capacities which had the potential to undermine the appointor's best interests and exacerbate the family conflict. QDT was not considered eligible for appointment as a guardian. BDT, QDT's son and BN's grandson, nominated himself as guardian. BDT's behaviour at the hearing did not satisfy the Board that he would be an impartial and dispassionate decision maker in the face of family conflict or conflict with aged care staff. The Board considered that BDT's natural love and affection for his parents

² All decisions are available in full at <http://www.austlii.edu.au/au/cases/tas/TASGAB/>

may put him in a position where his interests conflict with the interests of BN. The Board considered that the Public Guardian is the appropriate guardian for BN.

HKE (Guardianship) [2013] TASGAB 28

HKE has alcohol related dementia and possibly Alzheimer's type dementia. Without stable accommodation, HKE is likely to resume drinking alcohol heavily which is very dangerous as he has renal failure. HKE nominated ND, a former landlady, to be appointed as his guardian. The Board was not satisfied that ND had a clear understanding of the role of a guardian. The Board noted a history of HKE living in ND's accommodation, but being evicted when he failed to pay her rent due to having spent all of his money on alcohol or when his behaviour was unacceptable due to alcohol consumption. ND may be in a position where her interests conflict with HKE's interests. The Board considered the appointment of the Public Guardian to be suitable in the circumstances.

The Public Guardian – Parts 3 and 4 *Guardianship and Administration Act*

The purpose of an annual report is to ‘report on the administration of the Act’ – section 84. Under the Act, the Public Guardian has the following significant statutory functions:

- (i) to foster the provision of services and facilities for persons with a disability;
- (ii) to support the establishment of organizations which support any such persons;
- (iii) to encourage the development of programmes that support any such persons (including advocacy programmes, educational programmes and programmes to encourage persons to act as guardians and administrators);
- (iv) to promote, speak for and protect the rights and interests of any such persons;
- (v) to deal, on behalf of any such persons, with persons or bodies providing services;
- (vi) to represent any such persons before the Board;
- (vii) to investigate, report and make recommendations to the Minister on any matter relating to the operation of this Act;
- (viii) to act as a guardian or administrator when so appointed by the Board;
- (ix) to disseminate information concerning –
 - a) the functions of the Public Guardian; and
 - b) the functions of the Board; and
 - c) the operation of this Act;
- (x) to give advice on the powers that may be exercised under this Act relating to persons with a disability as to the operation of this Act generally and on appropriate alternatives to taking action under this Act;
- (xi) investigate complaints and allegations concerning the actions of a guardian or administrator or a person acting or purporting to act under an enduring power of attorney.
- (xii) investigate and report to the Board in relation to a matter the subject of an inquiry before the Board.
- (xiii) any other function assigned to the Public Guardian by any other Act or law.

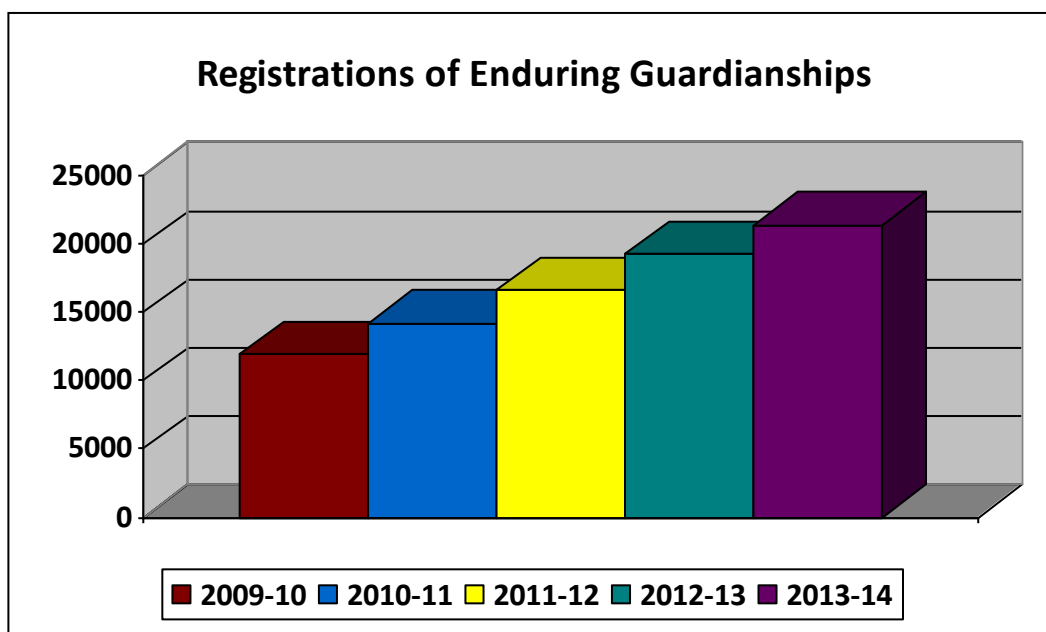
The Office of the Public Guardian concentrates most of its resources and activities on the function “(viii) to act as a guardian or administrator when so appointed by the Board”. An independent review in August 2011 concluded that the Public Guardian, in performing this particular function, was not meeting agreed *National Standards of Public Guardianship* and made recommendations for

significant changes to the Public Guardian's practice model. As with last year, the Board has not received feedback about the outcomes of that review in this reporting year.

Because previous annual reports by the Public Guardian have not provided comprehensive data regarding the remaining 11 statutory functions assigned to that Office, it is not possible for the Board to report upon the extent to which that part of the Act is being administered.

Registrations of Instruments Appointing Enduring Guardians – Part 5 *Guardianship and Administration Act*

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. On 30 June 2013 the register included 21,340 Instruments Appointing an Enduring Guardian.



During the reporting year, Parliament introduced amendments that have significantly clarified the role and responsibilities of enduring guardians. The *Guardianship and Administration Amendment Act 2013* commenced operation on 21 October 2013.

An information sheet and pro forma enduring guardianship instrument is available for download from the Board's website: www.guardianship.tas.gov.au. The Board publishes a Handbook for Enduring Guardians on its website to ensure that guardians taking up appointment under an instrument understand their duties and powers as an enduring guardian. This was updated to reflect the recent legislative amendments.

The Board collects fees for registration of enduring guardianships pursuant to the *Guardianship and Administration Amendment (Fees) Regulations 2012*. The Board has registered 2,086 instruments in the reporting year. Fees have been waived on 53 occasions. The Board charges \$65 for registration of enduring guardianships and \$46 for revocation. The Board collected \$120,732.20 in the reporting year from registrations of enduring guardianships or revocations.

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

The function of reviewing an enduring guardianship under Part 5 of the Act is a particularly complex area of work for the Board. The Board received 7 applications to review enduring guardianships during the reporting period during this reporting period. Following are examples of the decisions made during the reporting period³:

BN (Review Enduring Guardian and Guardianship) [2013] TASGAB 21

BN is an 85 year old man. He executed an Instrument Appointing an Enduring Guardian in favour of one daughter, her ex-husband and their son as an alternative guardian. The review was sought on the grounds that the appointor lacked capacity to understand the appointment. The Board considered that the considerable medical evidence overwhelmingly established that BN has experienced significant cognitive deficits since at least 2010 and that he would have had no capacity to understand the nature and effect of the document at the time of execution. The instrument was declared invalid.

IQ (Review Enduring Powers) [2014] TASGAB 3

IQ is 96 years of age, he has dementia and has difficulties with his short-term memory. However, some medical reports positively assert that IQ retains complex decision making capacity. The Board did not consider that the medical evidence could shift the presumption of IQ's present capacity to make reasonable judgments about his person and circumstances, even though he has some cognitive impairment and memory loss arising from dementia. The Board was not satisfied that IQ's enduring guardian had acted or attempted to act *in that capacity* and therefore the other issues in section 34 of the Act were not satisfied. The application was dismissed.

KQID (Review Enduring Powers) [2013] TASGAB 24

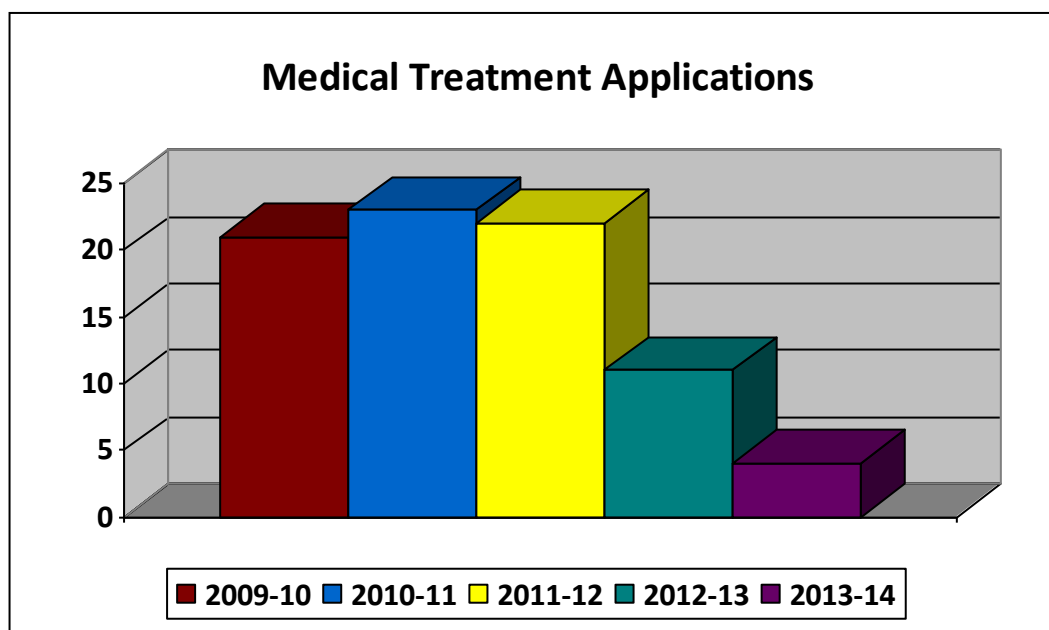
Evidence overwhelmingly established that KQID had a cognitive deficit as far back as October 2008. She has experienced significant and consistent cognitive deficits associated with dementia since at least 2010, a significant time prior to 2011 when she purportedly appointed an enduring guardian. Such severe memory loss indicates that the appointor would not have had full capacity to understand the nature and effect of the document at the time of execution. The instrument was accordingly revoked pursuant to Section 34(1A)(a) of the Act.

³ All decisions are available in full at <http://www.austlii.edu.au/au/cases/tas/TASGAB/>

Application forms and a Facts Sheet about review of enduring appointments are available for download from the Board's website: www.guardianship.tas.gov.au.

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

The Board has jurisdiction to determine applications for consent to medical and dental treatment pursuant to Part 6 of the *Guardianship and Administration Act 1995* and (prior to 17 February 2014) section 32 of the *Mental Health Act 1996*. The Board received 4 such applications in the reporting year.



The numbers of such applications has been declining in recent years and the Board anticipates very few of these applications in the future. Historically, the majority of such applications have related to treatment for persons with mental illnesses. Since 17 February 2014, the *Mental Health Act 2013* applies to such circumstances. Where consent was given to the psychiatric treatment of a person with a mental illness by the Board, a guardian or a person responsible such consent ceased to have effect after 30 June 2014 if not earlier⁴.

Application forms and Facts Sheets about Consent to Medical Treatment are available for download from the Board’s website: www.guardianship.tas.gov.au.

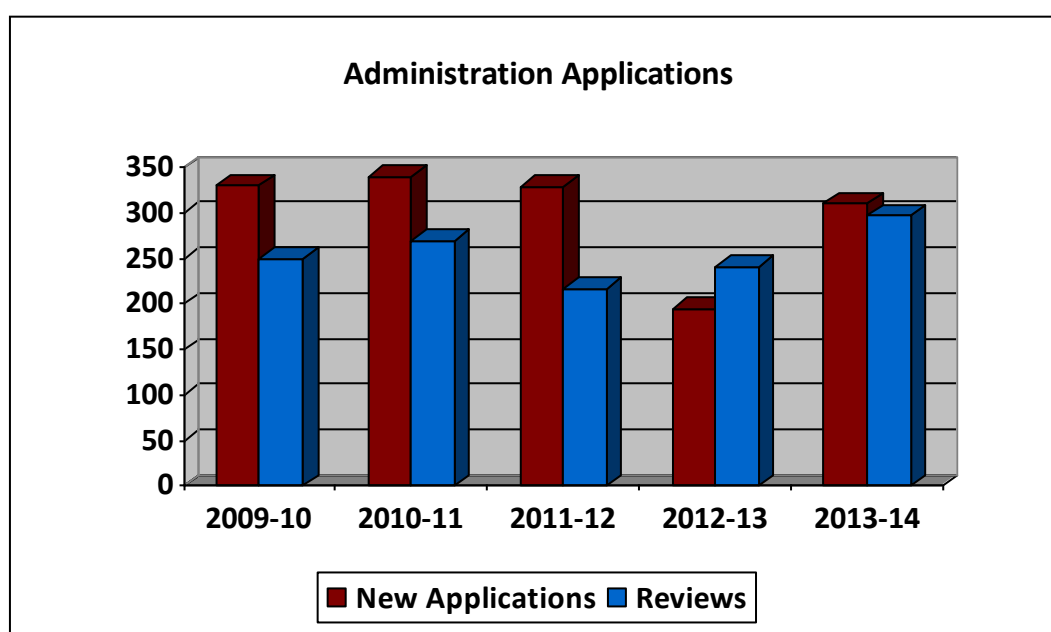
⁴ Section 22 *Mental Health (Transitional and Consequential Provisions) Act 2013*

Applications for Administration Orders – Part 7 Guardianship and Administration Act

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

An administrator is a person appointed by the Board to make legal and financial decisions for an adult with a disability who is unable to make reasonable judgments in respect of matters relating to his or her estate.

Application forms and a Facts Sheet about the role of an administrator are available for download from the Board's website: www.guardianship.tas.gov.au.



In the last annual report, the Board noted a significant decline in the numbers of applications for appointment of an administrator. That decline was not sustained and there has been a return to previous levels of activity under this function as well as the function to review existing administration orders.

Following are examples of matters decided under this power⁵:

SI (Guardianship) [2013] TASGAB 16

SI has schizoaffective disorder, a chronic serious mental illness and low intellectual function. Current Family Law proceedings related to issues about the welfare of SI's child and to the division of property from her relationship. The trial or settlement of these issues was imminent at the time of hearing. The Board was satisfied that there is a need for a

⁵ All decisions are available in full at <http://www.austlii.edu.au/au/cases/tas/TASGAB/>

substitute decision maker to act as ‘litigation guardian’ in the Family Law proceedings and that extensive supports had been attempted already but had not resulted in SI being able to give reliable instructions in the proceedings. The Board appointed the Public Guardian as administrator for SI.

TJ (Administration) [2013] TASGAB 14

TJ has an acquired brain injury resulting from alcohol use. He experiences significant deficits in impulse control and planning. TJ is malnourished and cannot control his desire to drink alcohol. TJ has poor living circumstances and a precarious financial situation having accrued debts that he is unable to repay from his Newstart allowance such that an application for the appointment of an administrator was made. However an opinion from a respected psychologist indicated that these problems arise from his addiction to alcohol, not his brain injury and that when his drinking has been controlled he regains decision making skills. The application was dismissed.

SQ (Administration) [2014] TASGAB 2

SQ has autism and lives in a supported accommodation facility. He has, in the past, been quite reckless with money. The Board was satisfied that, although when he was not accessing financial support services he had difficulty managing his funds, with the support of the facility he is now making reasonable judgments about his estate and he has capacity to lawfully instruct staff at the facility to give him that assistance. The application was dismissed.

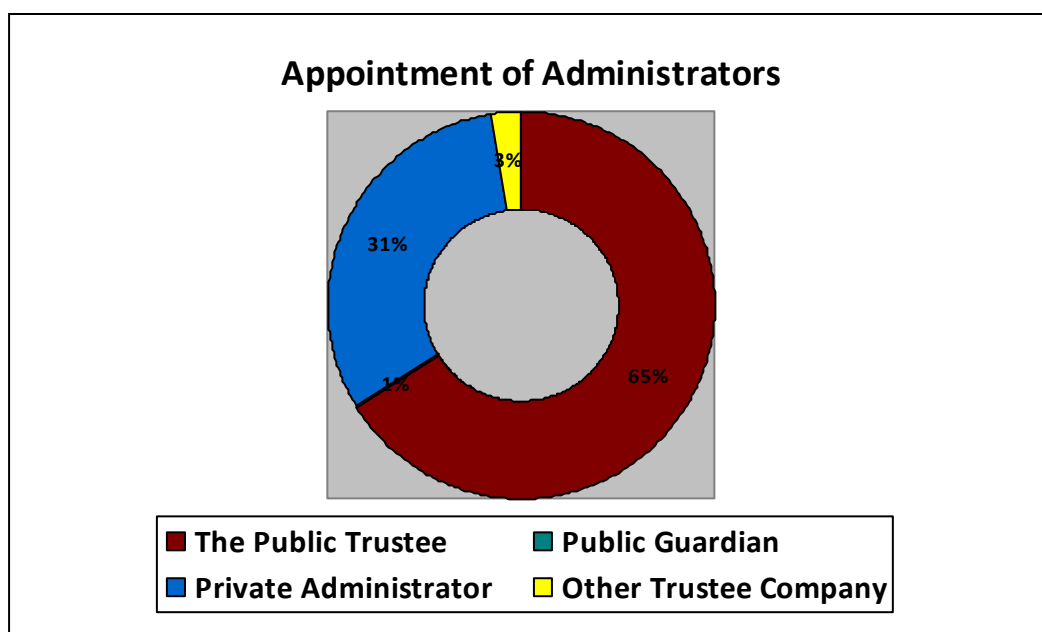
HWN (Review of Administration) [2013] TASGAB 15

The Board appointed SWN as administrator for his father, HWN, in October 2012. Another family member applied to review that order because he believed that SWN had not acted in the best interests of HWN or had insufficient expertise to administer the estate. The applicant had very high expectations of the administrator, some of which were borne of a misunderstanding of an administrator’s role. The applicant and his wife had meddled to a high degree in HWN’s affairs. They had assumed a misguided monitoring role over the administrator’s activities, thereby producing some of the confusion and delay in some of the transactions about which they complained. HWN and other members of HWN’s family did not share ST and JT’s misgivings about the administrator’s competence, alacrity and motivation. The application was dismissed.

MFL is 82 years of age and has dementia. He was in need of an administrator because he had a large and complex estate including \$200,000.00 in cash hoarded in his home. He was moving to Aged Care. MFL's sons gave varying accounts of the whereabouts and ownership of the \$200,000.00 in cash. They had relied on improper financial advice which benefited them rather than MFL. The Board considered that each of MFL's sons felt an entitlement to at least some of the cash and that the presence of the large amount of cash had presented them with a high level of temptation with respect to their personal financial wellbeing. The Public Trustee was appointed as MFL's 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.

The Public Trustee was appointed under 66% of orders for administration, down from 74% in the past reporting year. Of the balance of appointees 31% were private administrators (family or friends), 2.5% Tasmanian Perpetual Trustees and 0.5 the Public Guardian.⁶



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.

⁶ Note figures in the table below vary slightly due to limitations in the Word program.

The following case is an example of the factors that the Board considers when selecting an administrator⁷:

HS (Review Administration) [2013] TASGAB 19

HS had been subject to an administration order appointing the Public Trustee as administrator for three years. There was no dispute that the order needed to continue. Between August 2011 and July 2013 the Public Trustee fees have amounted to \$1703.53, equal to 17.4% of the current value of her estate. EM, who manages the residential facility where HS lives, offered to act as her administrator without charge to reduce the cost of Public Trustee fees. There is little likelihood of HS changing her accommodation. Her accommodation fees are not subject to significant variation, being 83% of the pension. The Board's role in obtaining and considering an annual report from an administrator each year will be sufficient to monitor and redress the effect of any potential conflicts of interest. EM was appointed as administrator. (See also *LS (Review Administration) [2013] TASGAB 20.*)

⁷ All decisions are available in full at <http://www.austlii.edu.au/au/cases/tas/TASGAB/>

Emergency Applications - Part 8 Guardianship and Administration Act

Pursuant to section 65 of the Act, the Board may, in circumstances of urgency, make an emergency guardianship or administration order without the need for a hearing. 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 following table demonstrates that a significant proportion of initial applications are rejected by the Board (17% of emergency guardianship applications and 36% of emergency administration applications). This is generally because the Board determines that the matter is not sufficiently urgent as to require that an order be made without the opportunity for a hearing. The table also demonstrates that a significant proportion (104/351 or 29%) of all applications for emergency orders emanate from the Public Guardian and the Public Trustee seeking extensions of initial 28 days orders.

Application type received	# Applications	# Orders made
Emergency guardianship (initial) 28 days	203	168 (83%)
Emergency guardianship (extension on application of the Public Guardian) additional 28 days	85 (41% renewed)	85 (100%)
Total emergency guardianship	288	253 (87%)

Emergency administration (initial) 28 days	44	28 (63%)
Emergency administration (extension on application of the Public Trustee) additional 28 days	19 (43% renewed)	19 (100%)
Total emergency administration	63	47 (74%)

A rise in the numbers of emergency applications for the appointment of a guardian in recent years most likely relates to the changing practice of aged care providers where a person with a disability is detained in secure premises. To understand the role of a guardian in these situations, see the Board's policy, *Detention of people with dementia in secure facilities in State care in Tasmania*, available on the Board's website. Many applications and orders made in these circumstances are limited to the 28 or 56 day period and ongoing guardianship orders (up to 3 years) are not sought.

In the Board's last Annual Report, it anticipated a reduction in the numbers of applications for emergency guardianship with the commencement of the *Mental Health Act 2013*. There has been a drop from 311 emergency guardianship applications last year to 288. However the last reporting year was significantly higher than previous years, so a comparison over the next few reporting years will reveal whether the introduction of the new Act has any impact on the operation of this function.

Following are examples of matters decided under this emergency power⁸:

HDI (Emergency Guardianship) [2013] TASGAB 22

HDI was experiencing persecutory delusions and hallucinations and he was refusing food, drink, medications and treatment. Without Electro-convulsive Therapy (ECT), HDI's life was at risk and his psychosis would be exacerbated. No 'person responsible' was available and willing to give consent to ECT on behalf of HDI. Given the circumstances described, the Board considered there were sufficient grounds to conclude that HDI was in need of a guardian to determine whether he should have ECT. An emergency guardian was appointed. (Orders of this kind would now be dealt with under the *Mental Health Act 2013*).

JO (Emergency Guardianship) [2014] TASGAB 5

JO has a diagnosis of PTSD, major depression, a closed head injury, memory loss, cognitive impairment/intellectual disability, epilepsy and physical disability. The application sought the appointment of a guardian to expedite JO being linked and supported by appropriate professionals, including mental health, neurologists, alcohol withdrawal, medical compliance and personal care. The appointment of a guardian does not typically have the effect of expediting such support. It was considered that it was open to the applicant and JO's treating team to investigate the possibility of seeking an assessment or treatment order under the *Mental Health Act 2013* to address some of the issues confronting JO. The application was dismissed.

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.

In March 2014 the Board ceased to offer an out-of-hours telephone service. Such a service has been unfunded for many years and had relied on the goodwill of staff and members of the Board to continue. Following the Board's request to the Departmental Secretary in May 2013, the Public Guardian agreed to accept referrals out-of-hours for emergency applications and the Board compiled 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 few if any orders made as a result of this service. The Board extends its gratitude to the Public Guardian for assuming this role.

⁸ All decisions are available in full at <http://www.austlii.edu.au/au/cases/tas/TASGAB/>

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 1300 annual reports submitted by appointed guardians and administrators in the reporting year.

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 and then submitted to a Board member for approval. It is usually the President who reviews these reports. Where an annual report is not approved, the Board member will either seek more information or require a review of the order 'of Board's own motion'.

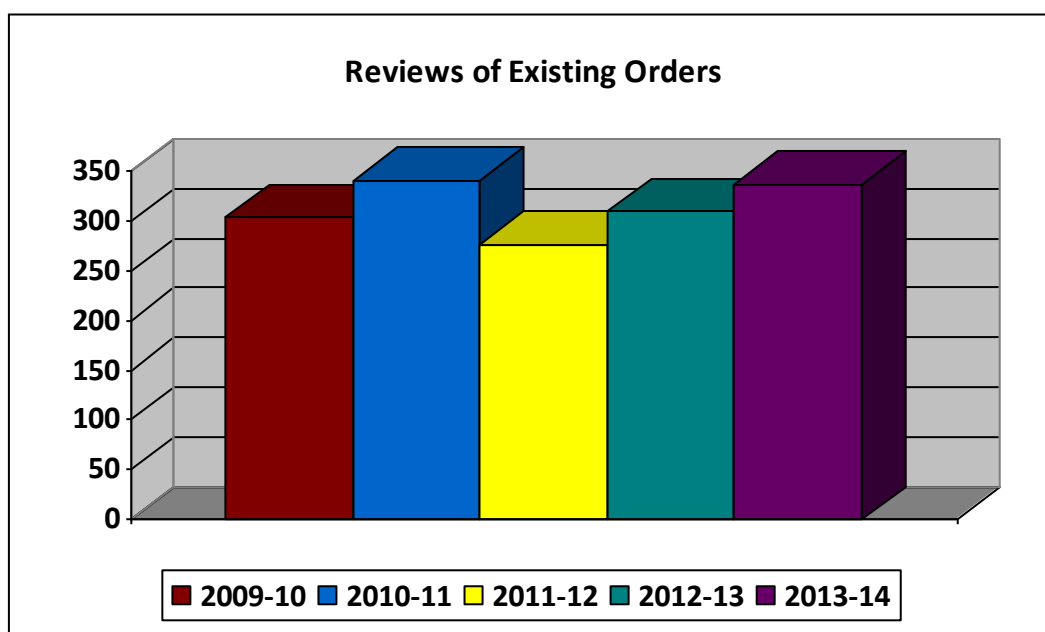
The Board pays close attention to the behaviour of administrators and the management of estates.

The Board commenced receipt of fees for examination of administrator's annual reports after the introduction of the *Guardianship and Administration Amendment (Fees) Regulations 2012*. The Board charges \$172 for review of a private administrator's report and \$121.91 for review of a report by the Public Trustee. Fees charged to private administrators have generated \$11,111.00. A total of \$26,201.66 has been collected from Trustee companies (215 occasions).

Reviews of Existing Orders – Part 9 Guardianship and Administration Act

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.

The following graph provides a comparison of the number of review hearings conducted this reporting year against the previous 4 reporting years:



Application forms for review of existing orders are available for download from the Board's website: www.guardianship.tas.gov.au.

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

During the year to 30 June 2013, the Board received 29 applications for review of enduring powers of attorney under the provisions of the *Powers of Attorney Act 2000*.

The applications were as follows:

Review of a power (incl. 6 applications of Board's own motion)	26
Emergency suspension	9
Advice and direction	1

The outcomes of those applications were as follows:

Continuing at end of financial year	2
Revocation and appointment of an administrator	5
Declaration that an instrument was invalid and appoint administrator	7
Application withdrawn	6
Donor died before hearing	1
Dismissed	2
Substitute attorney appointed	2
Emergency application dismissed	0
Emergency application granted	9
Direction following a hearing	2

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.

During the reporting year, Parliament introduced amendments that have significantly clarified the role and responsibilities of attorneys acting under an enduring power of attorney. The *Powers of Attorney Act 2000* commenced operation on 1 February 2014.

Application forms and a Facts Sheet about review of enduring appointments are available for download from the Board's website: www.guardianship.tas.gov.au.

Following are examples of matters decided under this power⁹:

FD (Review Enduring Powers and Administration) [2014] TASGAB 8

The enduring power of attorney instrument was made by FD on 4 October 2012, appointing WC as her attorney. *The Powers of Attorney Act 2000* requires the donor's signature on the instrument to be witnessed by two witnesses, in the presence of the donor and each other. The Board received written statements from both witnesses – BI and NM – confirming that the donor, FD, was not present at the time they signed the instrument. This was not contested at the hearing. Accordingly, the Board determined the instrument to be invalid.

BFQ (Enduring Powers) [2013] TASGAB 29

A psychiatrist telephoned the Board reporting that he had just assessed BFQ at an aged care facility. He stated that BFQ has a marked dementia and limited understanding of her affairs. He also indicated that she had recently signed an enduring power of attorney and he considered that she would have absolutely no understanding of the nature and effect of that instrument. In addition, BFQ was very distressed and expressed remorse that she had changed arrangements to her power of attorney and her will. There was conflict amongst members of BFQ's family about the management and ultimate distribution of her assets and this also was causing her significant confusion and distress. The power was suspended and the Public Trustee appointed as an emergency administrator until a hearing was conducted.

⁹ All decisions are available in full at <http://www.austlii.edu.au/au/cases/tas/TASGAB/>

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*.

Three applications for approval of restricted intervention and 2 applications for ninety day approvals under the *Disability Services Act 2011* have been received in this reporting year.

Applications under other legislation

The Board did not receive any new applications for statutory wills pursuant to the *Wills Act 2008*.

No applications were received pursuant to section 32 of the *Mental Health Act 1996* and note this power ceased on 17 February 2014 with the commencement of the *Mental Health Act 2013*.

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 . As at the time of publishing this report there are 239 decisions spanning from 1998 to 2014. 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.

During this reporting year, the Board's Registry Clerk completed a project to upload all statements of reasons produced by the Board since commencement of the Act. As early records were incomplete it was a significant achievement to locate and upload all decisions. Previously unpublished decisions from 1998 to 2002 are now available online.

Thirty-three statements of reasons were written during the reporting year, which indicates that the level of demand for statements of reasons will be ongoing.

There was 1 appeal from Board decisions in the reporting year.

Community Outreach

Meetings with Regular Users

The Board continued meeting with a Regular Users Group to obtain feedback on procedural matters regarding how the Board engages with relevant parts of our community. Regular Users include:

- The Public Trustee
- The Public Guardian
- Advocacy Tasmania Inc.
- Disability Services
- Mental Health Services
- The Legal Aid Commission of Tasmania
- The Royal Hobart Hospital
- The Law Society
- Royal College of General Practitioners
- National Disability Services
- Aged and Community Services Tasmania

Such meetings are not an opportunity to comment on the Board's decisions in particular applications or its interpretation of the legislation. Status as a 'regular user' does not imply any special status as applicants before the Board, nor any entitlement to 'special treatment' in their relationship as an applicant or witness in any application before the Board.

The meetings focus on the service-delivery aspect of the Board's work and relate to a structured agenda. The meeting is also an opportunity for the Board to inform regular users of any changes to forms, new policies or facilities. A meeting on 16 September 2013 was enthusiastically attended and very productive.

Board members in each region attended morning teas with staff at the regional Public Trustee offices. Board members reported that it was a useful exchange of mutual expectations and gave members and Public Trustee staff a better appreciation of the role that each plays. Similarly, social workers from the Royal Hobart Hospital attended the Board's Hobart office for morning tea with the Board's staff. This was an opportunity to exchange feedback on emergency and application procedures with one of the more prolific applicants to the Board.

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.

In May 2014, the Board presented to the Attorney General a paper entitled: *Consent to the taking of DNA samples from victims with decision making disabilities*. This paper recommends that the *Guardianship and Administration Act 1995* be amended to allow for a 'person responsible' to give consent in circumstances where a forensic procedure is required for a person who is incapable of consenting. In the event of there being no 'person responsible' or the 'person responsible' being unreachable or under suspicion for the offence, it is recommended that the Public Guardian have automatic authority to consent. This paper was prepared with the assistance of UTAS Law School Intern, Jacob Skierka, who completed a 10-week internship with the Board in 2014.

Commencement of the *Guardianship and Administration Amendment Act 2013* and the *Power of Attorney Amendment Act 2013* provides greater certainty for persons appointed under enduring instruments and also provide some protections against elder abuse. The Board has published a Facts Sheet setting out the effects of the amendments.

The Board contributed to the development and transition to the *Mental Health Act 2013* during the reporting year. Implementation of that Act has not been as smooth or as successful as hoped and the Board looks forward to participation in a review of the new Act.

A review of the *Alcohol and Drug Dependency Act 1968* by the Department of Health and Human Services does not appear to have progressed significantly since the Board's last annual report. Please note the Board's comments with respect to this in *TJ (Administration)* [2013] TASGAB 14 which, sadly, re-iterate comments made in *XT (Administration)* [2006] TASGAB 2.

The Board has been an active participant in the following policy developments:

Department of Justice – Disability Framework for Action

DHHS – Elder Abuse Prevention Advisory Committee

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 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 4.

The President has been an active member of the Elder and Succession Law Committee of the Law Society but resigned from that role in April 2014.

The President has continued in the role of Chair of the Australian Guardianship and Administration Council in the reporting year. The Deputy President represented the President at a meeting of the Council in Perth in March 2014.

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

During the reporting year, in the interests of transparency and accountability, the Board commenced publishing 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 prepared the following fact sheet publications as educational tools:

- 1 What is the Guardianship and Administration Board?
- 2 Guardianship
- 3 Administration
- 4 Consent to Medical or Dental Treatment
- 5 Consent to Medical or Dental Treatment by a Personal Responsible
- 6 Review of Enduring Powers of Attorney
- 7 Review of Enduring Guardians
- 8 Statutory Wills
- 9 Approval of Restrictive Interventions
- 10 What if I don't agree with the Board's decision?
- 11 Enduring Guardianship Infosheet

The Board publishes a range of information booklets and policies:

- Private Administrator's Handbook
- Private Guardian's Handbook
- Enduring Guardian's Handbook

- What is an Emergency? Applying for an emergency guardianship or administration order
- Understanding the ‘person responsible’
- The role of Advocacy Services in the Tasmanian Disability Sector (by the DHHS)
- Registration of Instruments Appointing an Enduring Guardian
- Practice Direction Emergency Guardianship
- National Guardianship Standards (By the Australian Guardianship and Administration Council)
- Management of Residents’ Funds in a Supported Accommodation Facility – A Legal Perspective
- Litigation by Administrators and Guardians – Guidelines for Applicants and Templates for Applicants
- Litigation by Administrators and Guardians – Background Information
- Detention of People with Dementia in Secure Facilities
- Amendments to Legislation relating to Enduring Instruments

The Board has the following Practice Directions available on the website:

- Who is a party for GAB Proceedings?
- Requests for Transcripts
- Registration of Instruments Appointing an Enduring Guardian (where there is a current application or order for appointment of a guardian)
- Practice Direction Emergency Guardianship
- Gifts and Settlements
- De-identification of decisions for publication

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)

Office Administration

Human Resources

The Board had available to it a Registrar and five other staff members; two staff members undertake investigative work and the balance undertake registry responsibilities. Some staff members are employed part-time.

Finances

A full financial summary is at Appendix 3.

The Board and the Mental Health Tribunal have been co-located since the Board commenced and, over time, some staff positions became shared. That arrangement ceased after the new *Mental Health Act 2013* commenced and the workload and staffing of that Tribunal increased to an extent that co-location was no longer sustainable. There was some restructuring of staff positions to reflect changes that arose when the Tribunal re-located. This has resulted in the Board paying additional wages and rental costs.

Fees collected by the Board are as follows:

Function	Fee Units	Fee @ \$1.46 per fee unit
Registration of an enduring guardianship	45	\$65.00
Registration of revocation of an enduring guardianship	32	\$46.00
Search for an enduring guardianship	19	\$28.00
Examination of an administrator's annual statements of account	118	\$172.00
Examination of the Public Trustee's annual statements of account	83	\$121.91
Photocopies of documents	2	\$2.92

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

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

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

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Appendix 1 - Board Members at 30 June 2014

Anita Smith – President Appointed: 1 January 2003, 1 January 2008 and 16 April 2013 (5 year term)

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

Anita was previously the Chair of the Professional Review Tribunal under the *Nursing Act 1995*, an *ex-officio* member of the Forensic Tribunal (*Mental Health Act 1996*) and a member of the Anti-Discrimination Tribunal. She is a Criminal Injuries Commissioner. Anita is the Chair of the Australian Guardianship and Administration Council and was the Convenor of the 2012 World Congress on Adult Guardianship.

Colin McKenzie – Deputy President: Appointed 21 September 2009 (5 year term)

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

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. Sue is the first Mental Health Nurse Practitioner to work in a clinical setting in Tasmania

Kim Barker Appointed: 27 June 2003, reappointed August 2006, February 2010 and 8 April 2013

Kim Barker worked for many years with people with disabilities, as a rehabilitation consultant and counsellor. She was Deputy President of the Mental Health Tribunal until February 2014. She is a member of the Social Security Appeals Tribunal and the Parole Board. She undertakes dispute resolution as Chair of the Tasmanian Training Agreements Committee, and is a Director of the Motor Accident Insurance Board. Kim's qualifications include a Bachelor of Arts Degree (Psychology), Diploma of Education and a Graduate Certificate in Counselling and Development.

Abigail Bindoff Appointed: 21 September 2009 and 18 February 2013

Abigail spent 12 years working in disability services including in staff training and service management roles. During this time she completed diplomas relevant to disability services and welfare work. She undertook a Bachelor of Arts and Law at the University of Tasmania and graduated in 2005 before qualifying as a legal practitioner in 2006. She has been in private practice since then and is an employed solicitor at Cann Legal in Ulverstone practising in general law.

Kate Brown Appointed: 21 February 2005, reappointed 30 June 2008 and 19 December 2011

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

Simon Cooper Appointed: 18 February 2013

Simon Cooper was admitted as a legal practitioner in 1987. He was a partner at Ogilvie, McKenna, Barristers & Solicitors, Hobart from 1995 to 2001. He was appointed as Deputy Chair of the Parole Board in 1998 and as its Chair from 2000 to 2003. Between 2003 and 2006 he was a Senior Lecturer and Deputy Director, College of Law of England and Wales. In 2006 he was appointed as Chairperson of the Resource Management and Planning Appeal Tribunal. In 2013 he was appointed as a Tasmanian Magistrate.

Elizabeth Dalglish Appointed: 27 June 2003, reappointed August 2006, September 2009 and 18 February 2013

Elizabeth Dalglish graduated from the University of Tasmania with a Bachelor of Arts and Law in 1991. She was admitted as a Barrister and Solicitor of the Supreme Court of Victoria in 1992 and then worked at the Consumer Credit Legal Service (Vic) the following year. Upon returning to Tasmania she worked as a Legal Officer for the Australian Securities Commission and then worked

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as the Child Support Solicitor at the Hobart Community Legal Service. In 1994, she commenced work at the Legal Aid Commission of Tasmania providing legal advice on a range of topics through the telephone legal advice and community education service. Elizabeth is currently employed as an Investigator with the Board on a part-time basis. In February 2014 she was appointed as a member of the Mental Health Tribunal.

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

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 currently holds the position of Senior Counsellor with Alzheimer's Australia Tasmania, North West.

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

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.

Catherine Gavan Appointed: 27 June 2003, reappointed August 2006, February 2010 and 8 April 2013

Catherine is employed by the Department of Education as the Legal Services Advisor within Legal Services. She is also an Honorary Aide-de-Camp to His Excellency the Governor of Tasmania in her role as a reservist in the Royal Australian Air Force. Catherine has a background in nursing in the acute and aged care sectors having qualified as a registered nurse in 1986. Catherine worked in a private legal practice since 1994 (admitted as a Barrister and Solicitor in 1995) and for the Nursing Board of Tasmania gaining extensive experience in many areas of the law. Catherine is a founding member of the Tasmanian Branch of the Australian and New Zealand Association of Psychiatry, Psychology and Law.

Susan Hill Appointed: 11 August 1997, reappointed October 2000, April 2004, June 2007, July 2010 and 2 December 2013

Sue Hill holds a Bachelor of Laws degree and was admitted as a barrister and solicitor of the Supreme Court of Tasmania in 1978. Sue worked in private practice from 1981 until 1993. Sue has lectured and tutored in Business Law at the Hobart TAFE and the University of Tasmania in Launceston. Sue was instrumental in establishing the Northern Community Legal Service in Launceston. She is a member of the Mental Health Tribunal and the Standards Panel of the Local

Government Association. She is a volunteer legal advisor for Citizens Advocacy. Sue was a member of the Social Security Appeals Tribunal for 15 Years.

Rowena Holder Appointed: 21 September 2009 and 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. Since that time she has worked in private practice practicing in litigation, including criminal law, personal injuries law and family law. Rowena is currently employed as a legal practitioner at the Legal Aid Commission of Tasmania. Rowena is also a member of the Board of Directors of Presbyterian Care Tasmania. In February 2014 she was appointed as a member of the Mental Health Tribunal.

Wendy Hudson Appointed: 21 February 2005 reappointed 30 June 2008 and 19 December 2011

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 Commonwealth Department of Social Services.

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

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 and 2 December 2013

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 Integrity Assurance Board.

Elizabeth Love Appointed: 4 February 2002, reappointed August 2005, April 2009 and 18 February 2013

Elizabeth Love, who holds a Bachelor of Arts (Social Work) UTAS, has worked as a social worker for over 30 years in a variety of State and Federal government agencies and in the non-government sector. She has worked as a private rehabilitation consultant and currently works in private practice as an accredited mental health counsellor. Elizabeth is currently employed as an Investigator with the Board on a part- time basis.

Leon Peck Appointed: 22 March 1999, reappointed October 2002, February 2006, September 2010 and 18 February 2013

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

Ken Stanton – Member: Appointed 18 February 2013 (3 year term)

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.

Sandra Taglieri Appointed: 18 February 2013

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. She has worked as a lawyer in many areas of civil law and also criminal, family and commercial law. Sandra has been a member of the Supreme Court Rules Committee since 2011, a member of the Legislative Review Anomaly Committee of the WorkCover 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 has recently been appointed as a Part-time member of the Administrative Appeals Tribunal.

Leanne Topfer Appointed: 21 September 2009 and 18 February 2013

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 and 19 December 2011

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 appointed to the Anti-Discrimination Tribunal in 2011.

Carolyn Wallace Appointed 18 February 2013

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

Juanita Westbury has practiced as a community pharmacist since 1992 in New South Wales, South Australia, England, 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 doctorate at UTAS in 2011 on the use of sedatives in aged care homes. Juanita is currently appointed as a Lecturer in Pharmacy Practice at UTAS and continues to research and promote optimal medication use in aged care facilities.

Philippa Whyte Appointed: 22 March 1999, reappointed October 2002, February 2006, September 2009 and 18 February 2013

Philippa Whyte graduated with a degree in Law from the University of Tasmania in 1978 and was admitted as a Barrister and Solicitor of the Supreme Court of Tasmania in 1980. Since that time she has worked as a lawyer in private practice for over 22 years, in both litigation and commercial law. In 2002 she started work as the inaugural conciliation officer within the Office of the Health Complaints Commissioner and in 2009 was appointed to the position of Principal Officer within that office. Philippa is a trained and accredited mediator. She was also a member of the Mental Health Tribunal for 10 years and a member of the Social Security Appeals Tribunal for 6 years.

Appendix 2 - Statistical Summary

	2009-10	2010-11	2011-12	2012-13	2013-14
Applications received					
Total applications rec'd	974	1085	1029	1104	1230
Guardianship normal	141	136	148	152	198
Guardianship emergency	140	188	205	311	288
Administration normal	251	242	235	195	247
Administration emergency	79	98	81	75	63
Medical consent	21	23	23	11	4
Statutory Will	1	0	0	0	1
Other (EPA's, gifts, advice etc.)	37	57	60	50	92
Review of existing orders	304	341	277	310	337
Hearings conducted					
Total hearings	643	719	669	657	735
Guardianship	111	105	120	116	142
Administration	212	205	220	168	192
Medical consent	15	16	16	12	3
Statutory Will	0	1	0	0	0
Other	21	52	34	25	46
Reviews	284	340	277	336	352
Hearings by region					
South	332	410	370	363	432
North	186	198	188	170	200
North West	125	111	106	124	103

Outcomes					
Guardianship orders including orders made on review, but not emergency orders	101	91	81	107	130
Administration orders including orders made on review, but not emergency orders	386	436	389	371	441
Emergency Guardianship orders including renewed orders					253 for 168 persons
Emergency Administration orders including renewed orders					51 for 28 persons
Medical consent orders	13	14	15	6	2
Other orders (EPA's gifts, etc.)	13	12	14	22	30
Statutory Will orders	0	0	0	0	0
Applications dismissed	48	45	77	87	69
Matters adjourned	40	47	48	41	32
Applications lapsed/ withdrawn/ advice only	78	73	77	111	188
Community and Professional Education Sessions	48	24	28	15	12

Appendix 3 – Financial Summary 2013 - 2014

Appropriation ¹	758,179
Fees and other revenue collected ²	207,679
Total Revenue	965,858
Employee related	678,478
Travel related	20,248
Materials, supplies and Equipment	10,632
Property expenses	64,725
Information technology	13,392
Other expenses	25,743
Total Expenses	813,218
Increase in trust fund balance ³	152,640

¹On 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.

²The Department of Health and Human Services part-funded the Board's functions under the *Disability Services Act 2011*; such funds are included here.

³It is anticipated that funds in the trust fund will be applied to the development and maintenance of an electronic case management system which is under development and mentioned elsewhere in this report.

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

Appendix 4 – Professional Development and Community Education provided by the Board

The following professional development events were presented by Board and staff members in 2013- 2014:

Anita Smith:

Professional Development Presentations:

Department of Health and Human Services Elder Care Team NW

Department of Health and Human Services Correctional Primary Health Team, Risdon Prison

University of Tasmania, School of Pharmacy “Consent” in *Reducing sedative use in RACFs: the RedUSe project*

3rd World Congress on Adult Guardianship in Washington DC (self-funded)

Commentator - East Asian Congress on Adult Guardianship

Presentation of a joint paper with Malcolm Schyvens from New South Wales: *Disability Care Australia – A Revolution in Disability, Implications for the Operation of Guardianship and Financial Management.*

Presentation a joint paper with Laura Watts of British Columbia: *Human Rights Implications of Common Aged Care Practices.*

Commentator - Closing ceremony

Publication:

Are Guardianship Laws and Practices Consistent with Human Rights Instruments? A chapter in Comparative Perspectives on Adult Guardianship edited by Prof. Kim Dayton, Carolina Academic Press

Elizabeth Dagleish

Department of Health and Human Services Elder Abuse Awareness Day

Rowena Holder

COTA Tasmania

You're Worth It - preventing financial abuse of older Tasmanians

Launceston General Hospital

Rehabilitation Services, ARNA National Study Day

Catherine Gavan

University of Tasmania, School of Medicine Disability symposium for 3rd year medical students