



Guardianship and Administration Board

Annual Report 2009 - 10

30 September 2010

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

In accordance with the requirements of Section 84 of the *Guardianship and Administration Act 1995*, I am pleased to submit the report of the performance of the functions of the Guardianship and Administration Board for the year 1 July 2009 to 30 June 2010.

Anita Smith
PRESIDENT
Guardianship and Administration Board

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Report of the Board and the President

I am pleased to present this Annual Report on behalf of the Board members and staff. The reporting year 2009-2010 has been a challenging but successful year for the Board. The major challenges have been a significant reduction in the number of staff available to assist the Board, including the loss of a senior position as a redundancy in the Department's response to the global financial crisis (see page 17).

The Board still requires a significant revision of funding being unable to fund its basic non-discretionary functions again this year without support from the Department of Justice to cover the overspend. Board members, most of whom are highly qualified senior professionals, are generally working for less than \$60 per hour (approx 5 hours per session at \$290) to make significant personal and financial decisions on behalf of persons with disabilities, all of which have a major impact upon the quality of life of those persons (see also page 17). These minimal session fees, however, represent the major cause of overspending due to an increase in the numbers of applications and hearings.

In 2010 the Board has raised concerns about the inability of the Public Guardian to conform to minimal national standards of public guardianship, as endorsed by the Australian Guardianship and Administration Council, due to structural and resource issues. The Board notes that the Department has agreed to a review of the Office of the Public Guardian to address deficiencies (see pages 8-10).

Despite the challenges, the Board has achieved a great deal in 2010. We have received the greatest number of applications (974) and conducted the most hearings (643) in the history of the Board (see page 26). All of these have been conducted in accordance with strict statutory timelines thanks to the hard work of the staff members in the preparation of matters for hearings. There have been no appeals from decisions of the Board in the reporting period.

The Board has produced some important land-mark decisions about its expectations upon persons appointed as administrators and guardians as published in *EKN (Administration)* [2010] TASGAB 9 (see pages 7 and 11) and *NN (Review Guardianship)* [2010] TASGAB 15 (see page 9). In addition all de-identified decisions are now publicly available on the Australian Legal Information Institute database (www.austlii.edu.au).

The Board continued its education programme, delivering 48 education sessions to over 900 people (see pages 14 and 28). The education programme includes the addition of several comprehensive publications on the Board's website to enhance the community's understanding of the relevant laws (see page 15).

I commend this report of the Board's activities to you.

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

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

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

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

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

Composition of the Board

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

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

In May 2009 the Attorney General sought expressions of interest for appointment of new members and a new Deputy President. Colin McKenzie was appointed as the new Deputy President of the Board. The following persons were appointed as members:

Abigail Bindoff
Will Downie
Rowena Holder
Toni Law
Andrea Schiwy
Eric Smith
Leanne Topfer

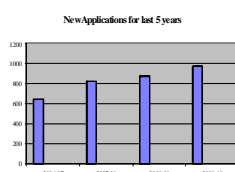
Leon Peck, Philippa Whyte, Elizabeth Dalgleish and Catherine Gavan (Wilding) were all re-appointed for a further 3 year term.

Due to reduced funding internal and external training for Board members has diminished. There was one training session combined with the Board's annual meeting during the reporting period.

Processing of Applications

Applications Received

The total number of applications (including the triennial review of orders) received for the period 1 July 2009 to 30 June 2010 was 974. Of these 670 were new applications with the remainder being reviews of existing orders.



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

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

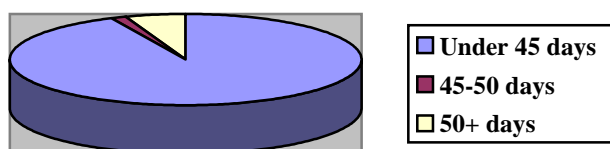
The legislation requires that the hearing of an application must commence within 45 days of receipt of the application. Registry staff members ensure that timelines are efficiently adhered to and their high level of organisation is largely responsible for the timely delivery of outcomes to applications.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

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

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

Section 72 of the *Guardianship and Administration Act 1995* requires that the Board commence to hear an application within 45 days after the application is received by the Board. The Board is 90% compliant with section 72.

The overwhelming majority of applications are not only heard but determined within 45 days. Matters determined later than 45 days (7%) were generally particularly complex cases or matters where relevant witnesses were unavailable for a period.

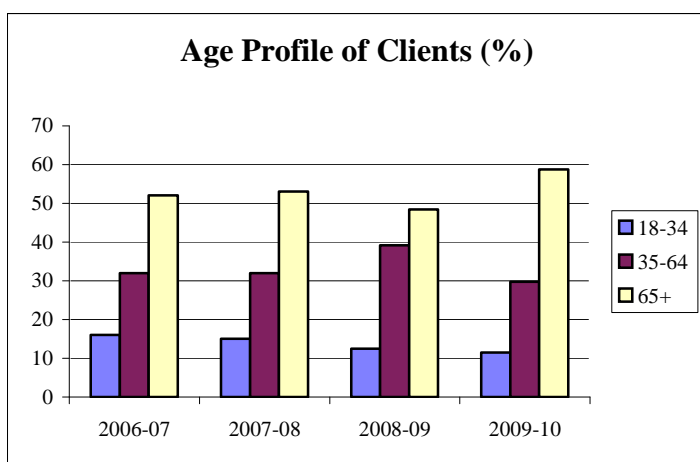


Board members heard an average of 4.6 applications per session this reporting year, whereas last reporting year they heard an average of 3.7 applications per session. This number has been increasing steadily in recent years, meaning that Board members are doing more work for a set session fee.

The Board expresses its thanks to the Department of Justice (Launceston and Ulverstone) and the Launceston General, Royal Hobart and North West Regional Hospitals for the provision of hearing rooms at little or no cost.

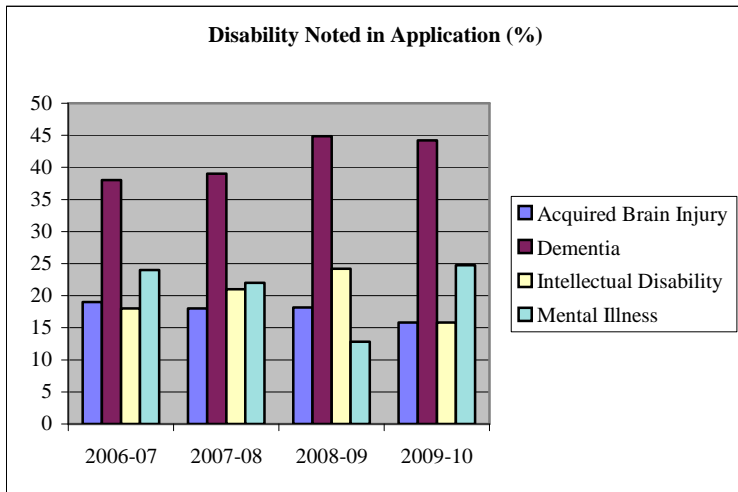
Of the 643 hearings held in 2009-10, 52% were held in the South, 29% in the North and 19% in the North West.

Age Profile



Persons over 65 years of age continue to comprise a significant proportion at 58.7% of the total client group.

Disability Profile



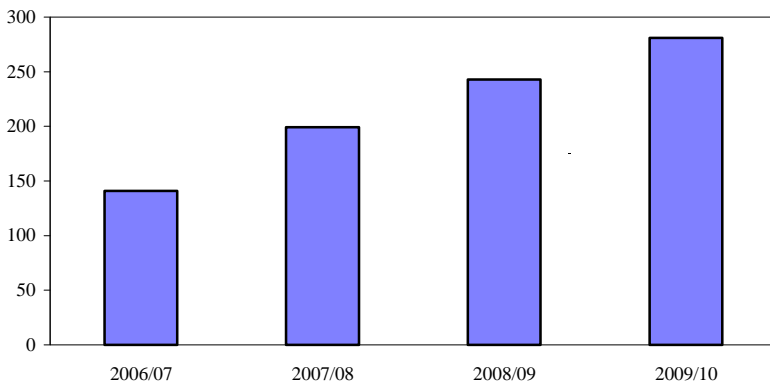
The categories of disability for the purpose of this graph are deliberately broad to enable data to be used in national comparisons and where a person has multiple diagnoses, only the primary diagnosis is counted.

As with all previous years of reporting, the most prevalent disability noted in applications is dementia by a significant margin. This continues to have an impact for projected case numbers in an ageing population.

Performance of Functions by Category

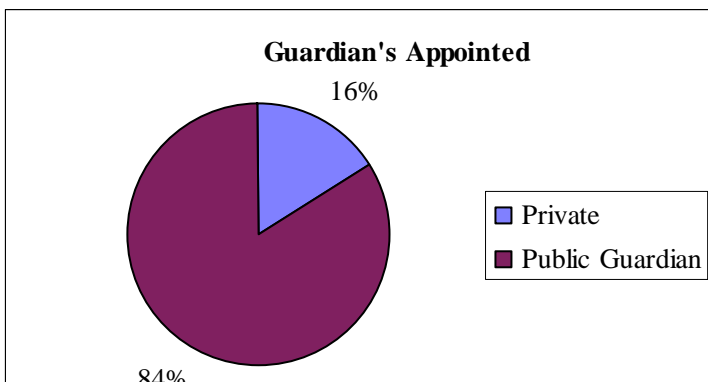
Applications for Guardianship Orders – Part 4 *Guardianship and Administration Act*

Guardianship Applications for the past 5 Years



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

The majority of guardianship appointments have traditionally been appointments of the Public Guardian.



The average duration of the appointment of a guardian during the reporting period (including emergency appointments) is 166 days i.e. less than 6 months.

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

The Guardianship and Administration Board and the Public Guardian are distinct and independent agencies created by the same piece of legislation.

The Board hears applications for the appointment of a guardian and on a majority of occasions where a guardian is required, appoints the Public Guardian to undertake the day-to-day decision making required of a guardian for a person with a disability. The Board appoints the Public Guardian in 84% of guardianship applications as the guardian for a person. The Board also has a monitoring and compliance role in obtaining reports and reviewing the operation of guardianship and administration orders, including orders where the Public Guardian is appointed.

The Public Guardian, like the Board, is charged with the responsibility to make decisions on behalf of some of Tasmania's most vulnerable adults. Persons represented by the Public Guardian all have significant disabilities and may not be able to raise concerns or provide feedback about the operations of that office, or be taken seriously if they do. In other jurisdictions, represented persons and their families have facilities to have individual decisions by guardians reviewed by administrative tribunals. In Tasmania, concerns about guardianship performance are mostly addressed through the Board's review of guardianship orders.

The Board, the Public Guardian and the Public Trustee are all represented on the Australian Guardianship and Administration Council (AGAC), a voluntary professional body which represents all Australian Government agencies involved in guardianship work.

In 2001 AGAC endorsed a document created by the statutory guardians and advocates in Australia called *National Standards for Public Guardianship*. AGAC endorsed an updated version of that document in late 2009. Tasmania's Public Guardian was a party to both endorsements. These *National Standards* have set minimum benchmarks for the performance of guardianship in Australia since 2001, including benchmarks for the minimum numbers of visits to a represented person per year, standards for informing persons under guardianship about their rights within the guardianship relationship and expectations of accountability and transparency. The *National Standards* do not have force of law and are merely a voluntary code. However they do set the minimum expectations that are considered by interstate equivalents of the Public Guardian to be fundamental to the performance of their work.

The Public Guardian is charged with 12 separate statutory functions established in the Act by sections 15 and 17. The performance of the functions assigned to the Public Guardian in Part 3 of the Act are crucial to the proper administration of the Act. The *National Standards* relate to only one of the Public Guardian's functions: *To act as a guardian when so appointed by the Board* (section 15(1)(h)). However, it appears to be the function to which the Public Guardian directs almost all of its resources.

Unfortunately, since 2001, the Public Guardian has never met these minimum *National Standards*. An example of the failure to meet the standards was discussed in the Board's decision in *NN (Review Guardianship)* 2010 TASGAB 15.

Because the Public Guardian is the guardian of 'last resort' the Board has faced the problem that where the Public Guardian has not performed well in the role as a guardian, the Board has no option

but to reappoint the guardian and trust that applying strict directions will address the deficits in performance. This difficulty was discussed in the Board's decision in *MEN (Guardianship)* [2009] TASGAB 22.

The failure to adhere to the *National Standards* does not mean that the Public Guardian has breached any laws, but it does mean that Tasmanians with severe disabilities who are under guardianship experience a significantly lower standard of guardianship than their interstate counterparts.

In her Annual Reports to Parliament the Public Guardian has noted:

2007-2008: "The demands on our time, coupled with the emergency and after hours work have been immense. Without additional support and resources provided to the office in the past financial year, this office would have been forced into *scaling back the services* that are provided. Now the office will be able to face *the coming years* in a much better position to provide necessary decisions for people most in need" (emphasis added)

and

2008-2009: "The demands on our time, coupled with the emergency and after hours work have been immense. This office now needs to prioritise clients, and *limit the service* it can provide." (emphasis added)

The reason for the change between the two year's reports was a purported increase from 169 to 320 clients per annum (151 additional Public Guardian clients), however the Board only appointed the Public Guardian in 237 cases (only 68 additional Public Guardian clients) in that year. In any event, it appears that the Public Guardian has imposed the anticipated limitations on client service during the reporting year.

On a number of occasions, where the Board has requested the Public Guardian to undertake actions in accordance with the functions assigned to the Public Guardian pursuant to section 17 of the *Guardianship and Administration Act 1995*, the Public Guardian has responded that her office is not sufficiently funded to assist the Board in ways that the Board has requested.

Although it is likely that, at the time of creation of the office, Parliament considered that all 12 statutory functions assigned to the Public Guardian were equally important in advancing the rights of people with disabilities, the function in section 15(1)(h) attracts the allocation of the majority of the Public Guardian's resources and as noted above, the Board believes that there are significant deficits within its performance of even that function.

In May 2010, the Board made a written submission to the Public Guardian and the Department of Justice suggesting a comprehensive review of the Public Guardian's performance of all 12 functions and its structure, with a view to a significant increase in funding to ensure that the rights of Tasmanians with disabilities were promoted and advanced. At the time of writing, the Department is preparing terms of reference for such a review but an independent reviewer has not yet been selected.

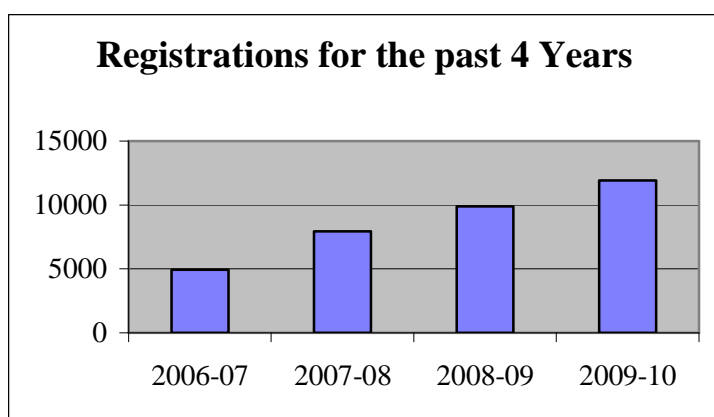
The Board has recently been informed that the Public Guardian is now working towards implementation of the standards but is hindered by resource and technology issues. However, the Public Guardian has also told the Board that if her office was required in directions issued by the Board to adhere to the *National Standards* then it would have to decline to allocate certain cases because it will not have the resources to apply to all clients, by which the Board understood her to be saying that the office would decline to discharge any guardianship duties for those unallocated cases. If this occurs, the proper administration of the functions and principles in the Act will be seriously undermined.

Until recently the Public Guardian had a practice of accepting appointments under enduring guardianships (private instruments appointing a guardian). Following questions raised by the Board about this practice, the Public Guardian sought advice from the Solicitor General about those appointments. The Solicitor General advised that accepting such appointments was beyond the scope of the 12 statutory functions assigned to the Public Guardian, meaning that all such prior appointments are now invalid.

Staff members employed in the Office of Public Guardian are competent and dedicated practitioners who are genuine in their efforts to improve the lives of represented persons. The Board is concerned that without appropriate structures and resources, they are not appropriately supported to undertake the important work that is assigned to them.

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 and lifestyle 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.



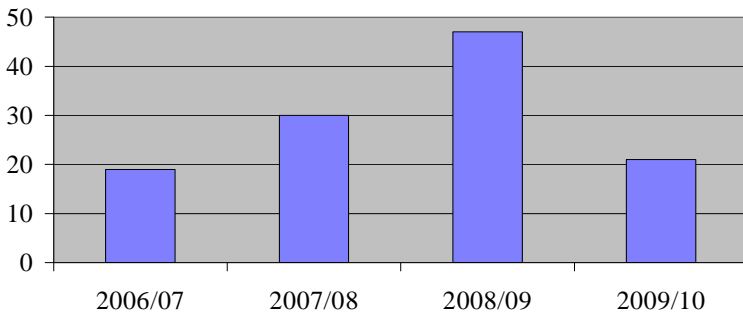
An information sheet and pro forma enduring guardianship instrument is available for download from the Board's website: www.guardianship.tas.gov.au. The Board continues to hold comprehensive workshops on *Writing and Registering Your Enduring Guardianship* and this year combined with the Public Trustee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

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

The function of reviewing an enduring guardianship under Part 5 of the Act has proven to be a particularly complex area of work for the Board. The Board received 6 applications to review enduring guardianships and one application for advice and direction by an enduring guardian during the reporting period.

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

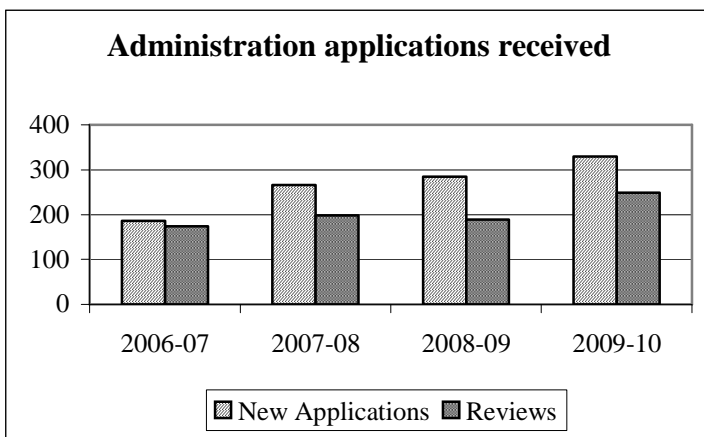
**Medical Treatment Applications received
in the past 4 Years**



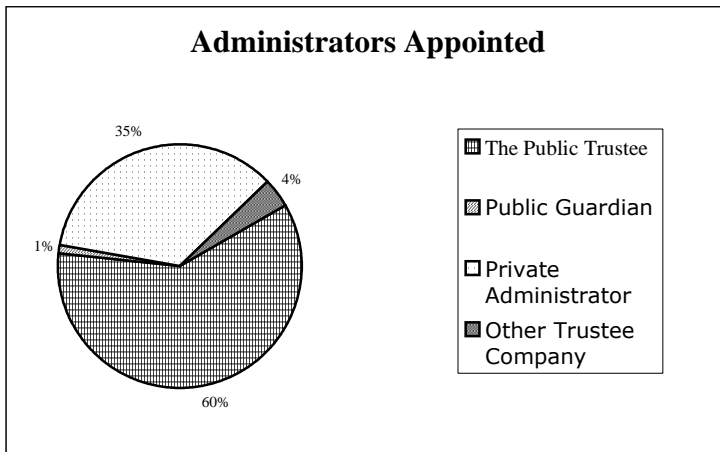
The Board has jurisdiction to determine applications for consent to medical and dental treatment pursuant to Part 6 of the *Guardianship and Administration Act 1995* and section 32 of the *Mental Health Act 1996*. Note the comments below with regard to the correlation between the decline in these applications and the increase in emergency guardianship orders

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.

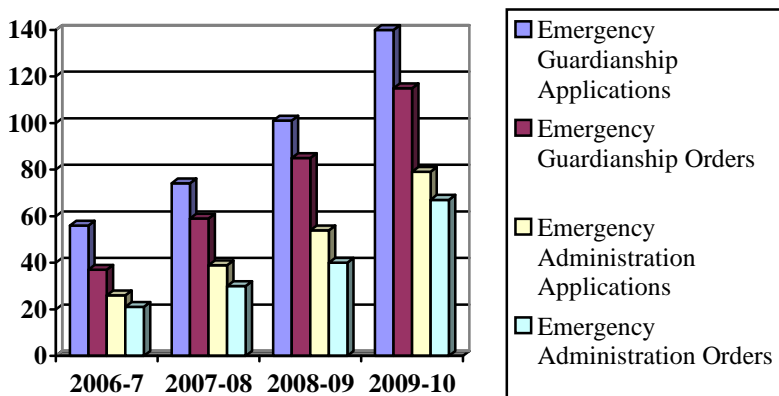


An administrator is a person appointed by the Board to make legal and financial decisions for an adult with a disability who is unable to make reasonable judgments in respect of matters relating to his or her estate.



Emergency Application - 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.



There has been a rise in applications for the appointment of guardians under emergency orders. This appears to correlate to a reduction in numbers of applications for the Board’s consent to medical treatment. Anecdotally, applicants have informed the Board that this reflects their preference to have an appointed delegate rather than a one-off consent to a particular treatment. 22% of the applications were rejected by the Board, mostly for a lack of demonstrated urgency.

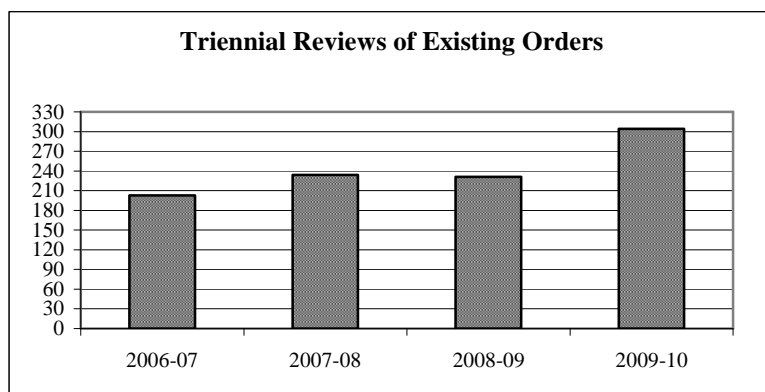
Post-hearing procedures and support – Part 9 Guardianship and Administration Act

In the 2008-2009 Annual Report the Board explained the post-hearing procedures which ensure supervision and support of guardians and administrators appointed by the Board. This is a significant function of the Board and its officers. It is roughly estimated that the Board reviews some 700 reports by guardians and administrators per year. With increasing numbers of orders and increasing complexity of estates, this will become a more significant and demanding part of the Board’s work.

An example of this important function is demonstrated in *EKN (Administration)* [2010] TASGAB 9 where the Board proceeded under section 63 of the Act. In that case the Board made the former administrator personally liable for losses in the estate of approximately \$325,000.00. The Board appointed the Public Trustee in place of the former administrator.

Reviews of Existing Orders – Part 9 Guardianship and Administration Act

The following graph provides a comparison with previous 4 years:



Applications for reviews of guardianship or administration orders are made pursuant to section 67 of the Act, either as a consequence of the expiry of the order or because a person believes an order or a term of the order is no longer appropriate to the circumstances.

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

During the year to 30 June 2010, the Board received 24 applications for review of enduring powers of attorney under the provisions of the *Powers of Attorney Act 2000*.

The Board granted two (2) applications by the attorney of enduring powers of attorney for advice, revoked eleven (11) enduring powers of attorney, appointing an administrator. One (1) application was dismissed, four (4) applications were withdrawn, one (1) was adjourned, two (2) were declared invalid, two (2) enduring powers of attorney were suspended and in one (1) the Board appointed a substitute attorney.

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

Applications under other legislation

The Board did not receive any fresh applications for statutory wills pursuant to the *Wills Act 2008* although it did consider and dismiss one application received in the previous reporting year.

No applications were received pursuant to section 32 of the *Mental Health Act 1996*.

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 covers are de-identified and published on the Australian Legal Information Institute website: www.austlii.edu.au.

Twenty-four statements of reasons were written during the reporting year, 3 more than the last reporting year. An increase in the numbers of statements of reasons written also represents an increase in workload for Board members.

There were no appeals from any decisions of the Board.

Community Outreach

User Satisfaction Surveys

Due to funding pressures, the Board did not distribute User Satisfaction Surveys in the reporting period. It is hoped that we may publish the survey on our website in the next reporting period.

Law Reform

The Board participates in law reform activities where it is appropriate and consistent with its role. We continue to be in discussion with the Department of Justice about a significant review of Parts 4 and 5 of the *Powers of Attorney Act 2000*. Additionally, the Board contributed to the following law reform processes during the reporting year:

DHHS – Review of the *Disability Services Act 1992*

DHHS – Review of the *Mental Health Act 1996*

Legislative Council – *Mental Health Legislative Measures Inquiry*

QLRC – Review of the *Guardianship and Administration Act 2000* (Qld)

VLRC – Review of the *Guardianship and Administration Act 1986* (Vic)

Community and Professional Education Programme

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

Members and staff of the Board delivered 48 education sessions to the Tasmanian community. Due to funding pressures the Board has decided to limit the provision of community education to opportunities for the professional development of persons employed in nursing, medical, legal or disability fields. In future, presentations to community and interest groups will be declined. A list of organisations that the staff members or members of the Board have addressed during the reporting year is attached at Appendix 3.

Last year we reported that the Disability Services *Decision Making Education Module* had not received ongoing funding. The Board was pleased that the module was offered to a private training company which has successfully developed and implemented the course in the reporting year.

Where it is able to, the Board promotes understanding of the Act through professional development organizations such as medical and nursing associations and the Law Society of Tasmania. The President has assisted in the establishment of the Elder and Succession Law Committee of the Law Society which has presented a range of seminars on relevant aspects of the law. She is also involved in the Aged Care and Rehabilitation Network, Medico Legal Society and the Pro Bono Committee of the Law Society to assist in the development of the law in these areas.

Provision of education is not one of the Board's statutory functions, but the Board has always produced a wide range of educational products to assist in making this area of law accessible to members of the community. Sadly, with an increase in caseload and pressure on resources, the Board will need to target future education towards professional development rather than community education.

Website and Publications

Updating and improvement of the Board's website has continued in 2009-2010.

This website includes application forms, health care professional report pro formas, facts sheets, process information, annual reports and the de-identified statements of reasons (decisions), which are representative of the Board's decision-making. All the Board's publications can also be downloaded from the website. The website address is www.guardianship.tas.gov.au

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 (Guide for Medical Practitioners)
- 6 Are you a Person Responsible?
- 7 The Public Guardian
- 8 Reviews of Enduring Powers
- 9 What if I Don't Agree With the Board's Decision?
- 10 Statutory Wills
- Enduring Guardian Form
- Enduring Guardianship Info Sheet
- Community Education Request Form

The Board also publishes a range of information booklets and policies:

- Private Administrators Handbook
- Private Guardian's Handbook
- Enduring Guardian's Handbook
- Person Responsible Guidelines Issued October 2008 pursuant to section 4(5) *Guardianship and Administration Act 1995*
- Litigation by Administrators and Guardians, Background Information
- Standard Directions to a Guardian
- Standard Directions to a Guardian under an Emergency Order
- National Guardianship Standards (By the Australian Guardianship and Administration Council)
- Management of Resident's Funds in a Supported Accommodation Facility – A Legal Perspective

Office Administration

Appointments

Congratulations to the following members for their reappointment during the reporting period: Philippa Whyte, Leon Peck, Elizabeth Dalglish, Kim Barker and Catherine Gavan (Wilding).

Welcome and congratulations to the following new members appointed during the period: Colin McKenzie (appointed as the new Deputy President), Andrea Schiwy, Eric Smith, Toni Law, William Downie, Rowena Holder, Leanne Topfer and Abigail Bindoff.

Human Resources

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

Office restructure

During the reporting period, the office has undergone its biggest restructure since inception. In October 2009, Anne Perks took a redundancy and around the same time there was another vacancy in the position of registrar. As these changes occurred within the context of the Government cutbacks responding to the Global Financial Crisis, it was necessary to undertake a complete review of all work done by this office and particular officers within it. I am pleased to say, at the time of reporting, that the review has been completed, certain positions have been abolished and others have been upgraded and successfully filled.

Anne Perks

Anne Perks took a redundancy in 2009. Anne had been the Senior Investigation and Liaison Officer with the Board since 1998, very shortly after the commencement of the Board. In this role she established many of the policies and practices of the Board as well as investigated many hundreds of applications that came before the Board. Anne was the source of advice for many medical practitioners and allied health professionals who had come to depend upon her wealth of knowledge about legal matters relating to people with disabilities. The Board would like to record its thanks for Anne's hard work and dedication to the role over 11 years.

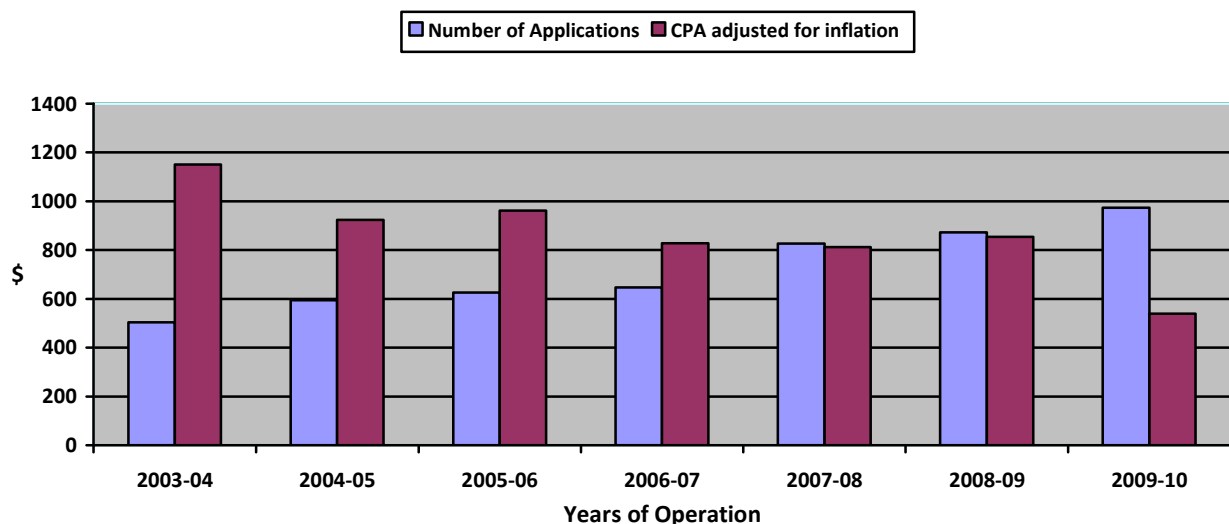
Finances

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

Changes in total number of applications and recurrent funding over the past 7 reporting years are as follows:

Year	Total applications received	% Increase in applications	Recurrent Funding	% Change in Recurrent Funding
2002/03	389		\$466,385	
2003/04	504	30%	\$490,505	+5%
2004/05	594	18%	\$470,169	- 4%
2005/06	626	5%	\$484,881	+3%
2006/07	647	3%	\$486,181	+1%
2007/08	826	27%	\$615,939	+27%
2008/09	870	6%	\$642,822	+4.5%
2009-10	974	10.6%	\$655,270	+1.9%
Compare				
2002/03-2009/10	+585	+150%	+\$188,885	+40%

In the past 7 years, the Board’s workload has increased 150% but its funding has only increased by 40%. The following graph compares the numbers of applications received since 2003-04 against the cost per application (CPA) adjusted for inflation. It demonstrates that while application numbers have increased, the funding applied to applications has significantly decreased.



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

A full financial summary is at Appendix 4.

How to Contact the Board

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

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

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

Facsimile Number: (03) 6233 4509

Email Address: guardianship@justice.tas.gov.au

Website: www.guardianship.tas.gov.au

Appendix 1 - Board Members at 30-6-10

Anita Smith – President

Appointed: 1 January 2003 (5 year term)

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

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

Colin McKenzie – Deputy President

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)

Kellie Ashman

Appointed: 21 February 2005 and 30 June 2008

Kellie Ashman was a member of the Disability Services Ministerial Advisory Council (now known as the Ministers Disability Advisory Council) from 2002 to 2008 and served as the Deputy Chair of that Council. She is a former member of the Committee of Management for Tasmanian Acquired Brain Injury Services in Launceston. She has developed and maintained extensive interests within the disability sector. Kellie served as a volunteer for St Michaels Association in Launceston as well as serving on their Board of Management between 2006 and 2009. She was a member of the Tasmanian Women's Council for two years until 2008 and was also a finalist in the Community Achievement Awards of 2007 and again in 2008 in the category of MAIB Disability Achievement. She is currently working towards her BA at the University of Tasmania.

Kim Barker

Appointed: 27 June 2003, reappointed August 2006 and February 2010

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

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

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

Abigail Bindoff Appointed: 21 September 2009

Abigail spent 12 years working in disability services including in staff training and service management roles before qualifying as a legal practitioner in 2006. She is presently an employed solicitor at Walsh Day James Mihal Pty in Ulverstone practising in wills and estates, family law and criminal law.

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

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

Elizabeth Dalgleish Appointed: 27 June 2003, reappointed August 2006 and September 2009

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

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

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

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

Gerard Dibley has extensive experience in public sector programmes 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.

William Downie Appointed: 21 September 2009

William has an accounting and finance background and has extensive commercial experience across a number of industries, specialising in retail and retail marketing. William is a Director of TOTE Tasmania, a member of the University Foundation Board of Governors, and the Director of a number of health and optical organisations.

Catherine Gavan (Wilding) Appointed: 27 June 2003, reappointed August 2006 and February 2010

Catherine is employed by the Department of Education as the Legal Services Advisor within the Legal Services Unit. She is also Legal Officer with the Specialist Reserve of the Royal Australian Air Force in Hobart.

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

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

Rowena Holder Appointed: 21 September 2009

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 Senior Associate at Rae and Partners Pty and specialises in family law property matters. Rowena is also a member of the Board of Directors of Presbyterian Care Tasmania.

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

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

Grant Kingston Appointed: 17 December 2007

Grant Kingston has an extensive background in the welfare and trust industry. Prior to joining the Board he was employed for 20 years at Centrelink in Tasmania and Western Australia, being Branch Manager at Broome, Port Hedland and Kununurra. In 1990 Grant became the NW Regional Manager for the Public Trustee. He retired from this position in 2006.

Toni Law Appointed: 21 September 2009

Toni Law completed a Bachelor of Social Work from the University of South Australia in 1992 and a Post Graduate Diploma of Social Welfare from James Cook University (Townsville) in 1995. Toni has worked as a social worker across South Australia, Queensland and Tasmania in a range of settings including hospitals, mental health, aged care and alcohol and drug dependency. Toni is an active member of the Tasmanian Elder Abuse Partnership and was appointed to Council on the Ageing Inc Tasmania Policy Council February 2010. Toni commenced as the Policy and Research Officer for the Mental Health Council of Tasmania (MHCT) during June 2010.

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

Marguerite Lester holds a Bachelor of Applied Science (Occupational Therapy) and a Master in Business Administration. Employment and community involvements in the north, south and northwest of Tasmania include acute care and community based allied health services, the Aged Care Assessment Team, Vocational Rehabilitation, paediatrics including physical disability. Mrs. Lester has represented allied health, and the aged care sector on advisory committees at state and national levels. Mrs. Lester is a member of the Mental Health Tribunal and other community groups.

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

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

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

Elizabeth Love, who holds a Bachelor of Arts (Social Work) 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.

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

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

Keith McArthur Appointed: 17 December 2007

Keith McArthur graduated in Medicine from the University of Sydney in 1985. He moved to Tasmania in 1987 where he ran a general practice in Wynyard until 2002. He practised in mental health as a trainee registrar and then as a medical officer at Parkside and Spencer Clinic until 2006. In June 2008 he completed a federally funded project in "Improving Care of the Aged in Residential

Aged Care Facilities”. He is currently dividing his time between general practice, primarily in aged care, and a part time psychiatric medical officer at Rivendell Clinic North West Private Hospital.

Tony O’Neill Appointed October 2000, reappointed February 2005 and June 2008

Tony O’Neill has an extensive background in health and human services. His former positions included Manager, Individual Child and Family Services and North West Regional Program Manager, Child, Family and Community Support Services with the Department of Health and Human Services. Tony holds a Bachelor of Arts (Community Social Services) from Charles Sturt University.

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

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.

Andrea Schiwy Appointed: 21 September 2009

Andrea Schiwy graduated from the University of Tasmania with a Bachelor of Commerce in 1983 and worked for many years in taxation and corporate regulation. Andrea is a member of the Social Security Appeals Tribunal, Nursing Board Tribunal (until 30 June 2010) and Legal Professional Disciplinary Tribunal. She is Deputy President of the Retirement Benefits Fund Board and a Director of Diabetes Australia (Tas).

Eric Smith Appointed: 21 September 2009

Between 1991 and 2008, Eric had 17 years experience as a Client Account Manager at the Public Trustee, being elevated to the position of Senior Trust Officer in 2001. He has had first hand experience administering deceased estates and trusts, as well as the estates of persons with a disability who are the subject of orders by the Board. In that role, Eric had a great deal of experience in appearing before the Board in new applications, reviews, applications for gifts and statutory wills.

Leanne Topfer Appointed: 21 September 2009

Leanne is a legal practitioner with 26 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 a Director of the Law Council of Australia. She is also a member of the Cancer Council Board, the Tasmanian University Union Board and the Advance Burnie Board.

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

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

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

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

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

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

Appendix 2 – Statistical Summary

	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Applications received						
Total applications rec'd	594	626	647	826	873	974
Guardianship normal	49	81	85	125	142	141
Guardianship emergency	83	63	56	74	101	140
Administration normal	156	188	186	266	215	251
Administration emergency	32	62	26	39	54	79
Medical consent	44	39	19	30	47	21
Statutory Will	4	1	4	1	6	1
Other (EPA's, gifts, advice etc)	56	71	68	57	77	37
Triennial review of existing orders	170	121	203	234	231	304
Hearings conducted						
Total hearings	409	417	477	583	611	643
Guardianship	41	60	64	82	117	111
Administration	136	149	150	200	167	212
Medical consent	38	30	15	24	44	15
Statutory Will	2	1	1	2	3	0
Other	17	34	39	30	36	21
Reviews	175	143	219	245	244	284
Hearings by region						
South	209	246	253	346	369	332
North	92	98	128	147	150	186
North West	108	73	92	89	92	125

Outcomes						
Guardianship orders	105	103	56	67	118	101
Administration orders	316	273	296	345	330	386
Medical consent orders	32	24	14	21	30	13
Other orders (EPA's gifts, etc)	25	31	21	22	17	13
Statutory Will orders	2	1	1	1	0	0
Applications dismissed	26	49	30	39	37	48
Matters adjourned	15	8	29	33	30	40
Applications lapsed/ withdrawn/ advice only	79	127	92	136	87	78
Matters outstanding	10	20	10	31	5	10
Community & Professional Education Sessions	43	59	52	41	37	48

Appendix 3 - Community Presentations

Staff and Board members delivered education to over 900 people in the reporting year. Over 72 hours of community education was presented in forty eight (48) sessions. The average length of a session was 1.5 to 2 hours. The majority of sessions were delivered by the President. Sessions headed “GAB Education Calendar” were designed, promoted and delivered by the Board for a broad community audience. All other sessions were provided on request from the organisations mentioned below.

GAB Education Calendar

Adult Education Classes - *In the Event of Incapacity or Death* - presented with the Public Trustee

State Government Agencies

Aged Services Southern Area Team – Staff Training

Department of Health and Human Services– Staff Training

Disability Decision Making Education Module, Disability Services

Mental Health Services - Guardianship and Mental Health, Understanding the interaction between the two schemes – Psychiatry Registrars Training – Presented with the Mental Health Tribunal

RHH Department of Psychiatry – Staff Training

RHH Psychiatry Registrar Training – Staff Training

Spencer Clinic – Staff Training

The Public Trustee – Staff Training

Community Organisations

Alzheimer’s Australia (Tas)

Anglicare Financial Counselling Service

Aspire - Pathway to Mental Health

Australian Institute of Judicial Administration Tribunals Conference *Increasing Complexity: The changes in guardianship law and practice over 20 years*

Citizen Advocacy - Launceston

Commonwealth Respite and Carelink Centre

Community Based Support South Inc

Elder and Succession Law Committee of the Law Society – 2 seminars organised

Medico Legal Society of Tasmania – Dying with Dignity Seminar

Eskleigh Foundation Inc – Staff Training

Family Based Care – North – Staff Training

Independent Health Care Services – Staff Training

International Federation of Ageing Conference (Melbourne) – Presentation on International Comparisons with Enduring Powers of Attorney.

Langford Support Services Inc. – Training for Families of Residents

Masonic Peace Haven – Staff Training

Rights, Responsibilities and Rhetoric, Mental Health Conference – Adelaide - *Discrimination and Mental Health: The Future of Protective and Incapacity Jurisdictions with Regard to Mental Illness and Addictions* – presented with the Mental Health Tribunal

Migrant Resource Centre

National Disability Services Tas – Accommodation Committee Seminar on Financial Management

Presbyterian Care North – Staff Training

Royal Australian College of General Practitioners

Seniors Week Seminar presented with the Public Trustee

St Giles Society – Staff Training

University of Tasmania TIME for Dementia

University of Tasmania – Medical School, Health Care of Adults with Intellectual Disability

University of Tasmania – Perspectives on Ageing

UNSW - Expert Roundtable - briefing on the UN Convention on the Rights of Persons with Disabilities

Appendix 4 – Financial Summary 2009-10

Guardianship and Administration Board			
	Budget	Actual Expend	Variation
EMPLOYEE RELATED			
	531,045	477,135	53,910
TRAVEL AND TRANSPORT			
	24,100	24,927	-827
MATERIALS, SUPPLIES & EQUIPMENT			
	6,750	14,048	-7,298
PROPERTY EXPENSES			
	48,800	59,313	-10,512
FINANCE EXPENSES			
	0	0	0
INFORMATION TECHNOLOGY			
	15,871	12,209	3,662
CONSULTANTS			
	0	0	0
OTHER EXPENSES			
	28,704	74,651	-45,947
TOTAL	655,270	662,280	- 7,010

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