

Guardianship and Administration Board

Annual Report 2014-15

6 October 2015

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 2014 to 30 June 2015.

A handwritten signature in black ink, appearing to read 'Anita Smith', with a stylized, cursive script.

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.

It has been my privilege to be the President of this Board for over 12 years. In my first reporting year (2002-2003), the Board determined:

- 389 applications at a cost of \$1197 per application (not adjusted for inflation)

In this year it has determined:

- 1192 applications at a cost of \$870 per application

Thus the Board has had a 306% increase in case load and have become 140% more efficient in the determination of applications. In 2002-2003 the Board was 100% reliant on the funding appropriation from Government. Now the Board generates 20% of its revenue.

The ability to cope with such large increases in caseload is largely due to a small and dedicated team of staff working in the Hobart office and the dedication of our Board members statewide. This year saw the retirement of Jane Bliss who has been serving the Board almost since its inception. Jane's final position in the office was as Registrar and in that position as in all others she was outstanding in her knowledge of the legislation, her dedication to task, her organisational skills and her compassion for the persons who are the subject of applications before the Board. We wish Jane the very best retirement as it is well deserved. We also welcome Donna Spong as the new Registrar.

This reporting year has seen much staff movement as part of the broader rationalisation of the State Service. Though this has caused significant disruption, we have been very fortunate that while positions have been vacant we have been assisted by other agencies in the Department who have encouraged their staff members to provide administrative and investigative assistance to the Board. Particular thanks go to the Resource Management and Planning Appeals Tribunal and the Finance Branch of the Department of Justice for generously allowing staff to lend their time to the work of the Board. Without this assistance from members of the Department, the Board could not have continued to provide hearing services with its usual efficiency.

Very important projects currently on foot for the Board include a review of security arrangements, a review of our leasing arrangements and the development of an electronic case management system. We are also redeveloping our website and hopefully moving towards online lodgment of applications. However, there is a limit to how developments can be funded and maintained in such a small organisation. While the Board is very proud of its achievements it is not sustainable (for example) for the Board to be contracting for expensive electronic case-management services for a case load of less than 1500 applications per annum and if such expenses could be shared with other tribunals it would create economies of scale that are impossible for a small agency. This is just one example of why the unification of the many Justice tribunals to a single tribunal framework could create and sustain efficiencies that individual tribunals working apart cannot. Another example is the fact that with six highly specialised staff at the Board there are insufficient people in the office to cover the gaps in workload if one or more should take sick leave, annual leave or

when there are staff vacancies, hence the borrowing of staff from other agencies. In a single tribunal, there would be more flexibility in staffing arrangements and greater capacity for covering for staff vacancies and leave. There would also be less risk arising from key-person-dependencies.

The experience of guardianship tribunals that have joined single tribunal frameworks in all other Australian jurisdictions has been that the unique aspects of guardianship are not lost in the larger tribunal structure and the traditional inquisitorial and protective style of guardianship matters can be preserved in a larger body. One reason for this is that guardianship applications are high volume applications and, in some tribunals, guardianship applications represent the highest volume of applications, meaning that guardianship practices assume some priority in the management of caseload and the allocation of resources. From the writer's perspective there will be many advantages for the processing of guardianship and administration matters if Tasmania adopts a unified tribunal structure.

This report summarises the hard work and dedication of Board members and staff. It is a credit to them and I am proud to work with them.

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*.

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 Member Appointments

Kate Brown did not seek re-appointment to the Board when her term expired in October 2014 after 3 terms as a Board member. Kate has been an excellent member of the Board and we thank her for her significant contribution.

In the reporting year, the following members were re-appointed to the Board:

Mary Davies

Gerard Dibley

Wendy Hudson

Colin McKenzie – Deputy President

Lindi Wall

The Board extends its congratulations to the re-appointed members. It is a credit to all reappointed members that their skills and commitment to the Board are recognised in reappointment.

An advertisement was placed for expressions of interest in appointment to the Board in November 2014.

This resulted in the following appointments on 1 June 2015:

Elizabeth (Libby) Beyerle

Donald Jones

Muriel Rollins

Congratulations to the new appointees who will undoubtedly make a significant contribution to the work of the Board.

Processing of Applications

Applications Received

The total number of applications (including the review of orders) received for the period 1 July 2014 to 30 June 2015 was 1194, a 3% decrease on last year's case load. Of these 540 were new applications with the remainder being reviews of existing orders.

Disclaimer: This reporting year, due to changes in key personnel, new systems of counting have been adopted. There may be some discrepancies in reporting this year which may not be due to changes in case flow but due to changes in the counting of applications and outcomes. For this reason, sudden numerical changes noted in this year's annual reports may not be a reliable indicator of changes in case-flow or a reliable predictor of future trends.

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 making proceedings adversarial between the parties. 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 153 hearing sessions with a total of 649 hearings this year (down from 735 in the last reporting year)¹.

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. The average number of days for all applications to be heard was 33.4.

Of the 649 hearings held in 2014-15, 58% were held in the South, 27% in the North and 15% in the North West.

Generally hearings are completed within 45 minutes. However during the reporting year there have been three significant applications where the hearings endured for 3, 5 and 7 days respectively. This has a significant impact on the Board's resources, not only in the payment for members' time but in investigator's resources, the availability of hearing venues and availability of members. Typically extended hearings relate to reviews of enduring instruments with respect to significant estates where multiple parties are legally represented. If the Board continues to receive complex applications with extended hearing times, there will have to be investigation of the potential for cost-recovery from the parties involved.

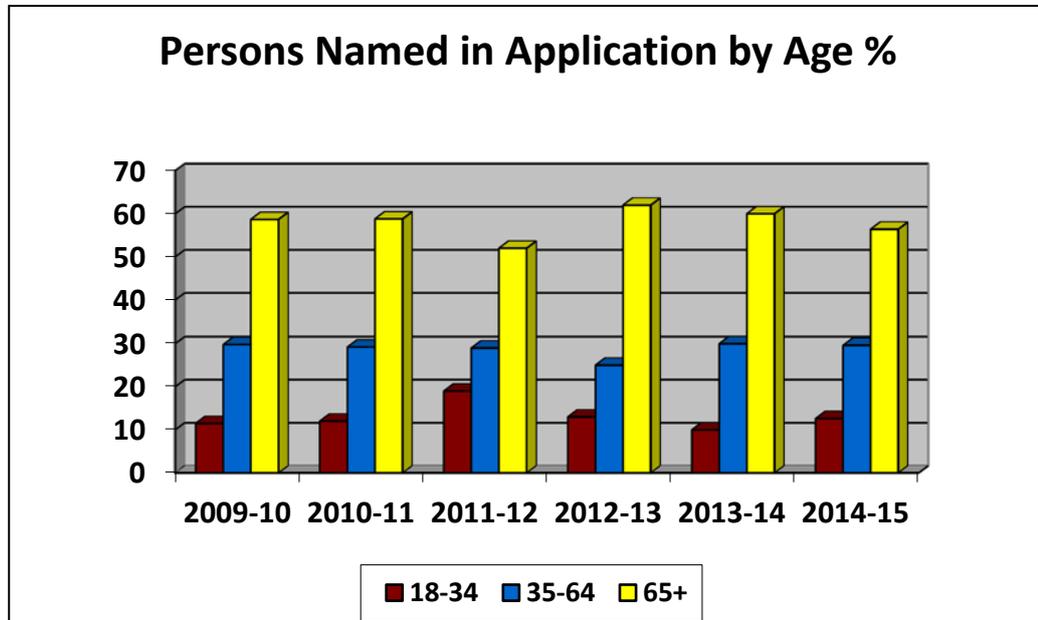
The Board expresses its thanks to the Magistrates Court (Launceston and Burnie), the Burnie City Council, the Roy Fagan Centre, the Launceston General, Royal Hobart, Campbell Town and North West Regional Hospitals for the provision of hearing rooms at no cost.

¹ Note the disclaimer above.

Age Profile

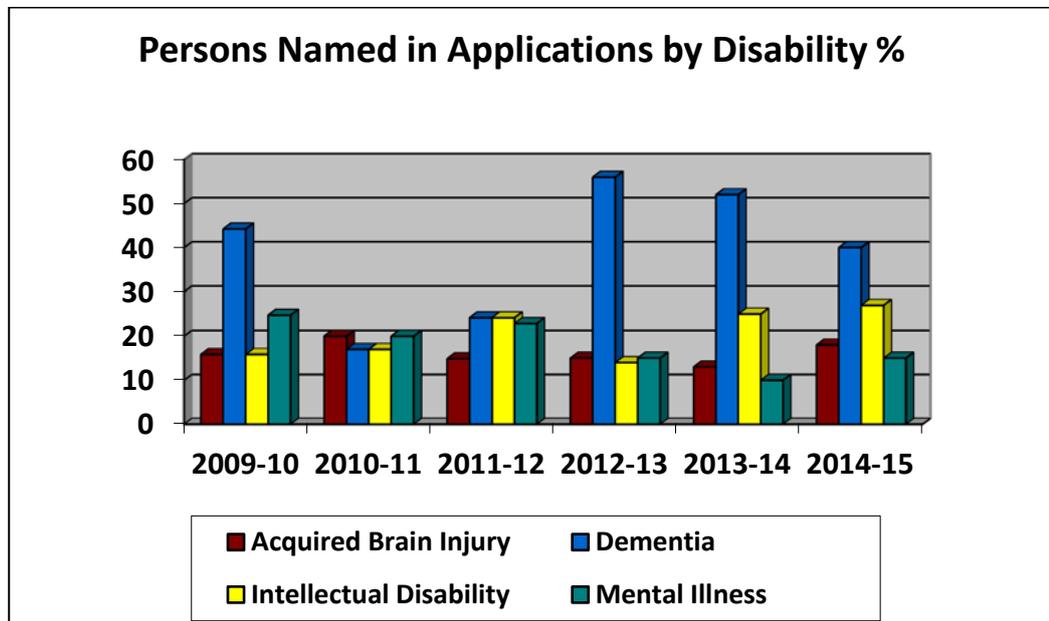
Persons over 65 years of age continue to comprise a significant proportion of the persons about whom applications are made representing 56.4 of the total group.

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.



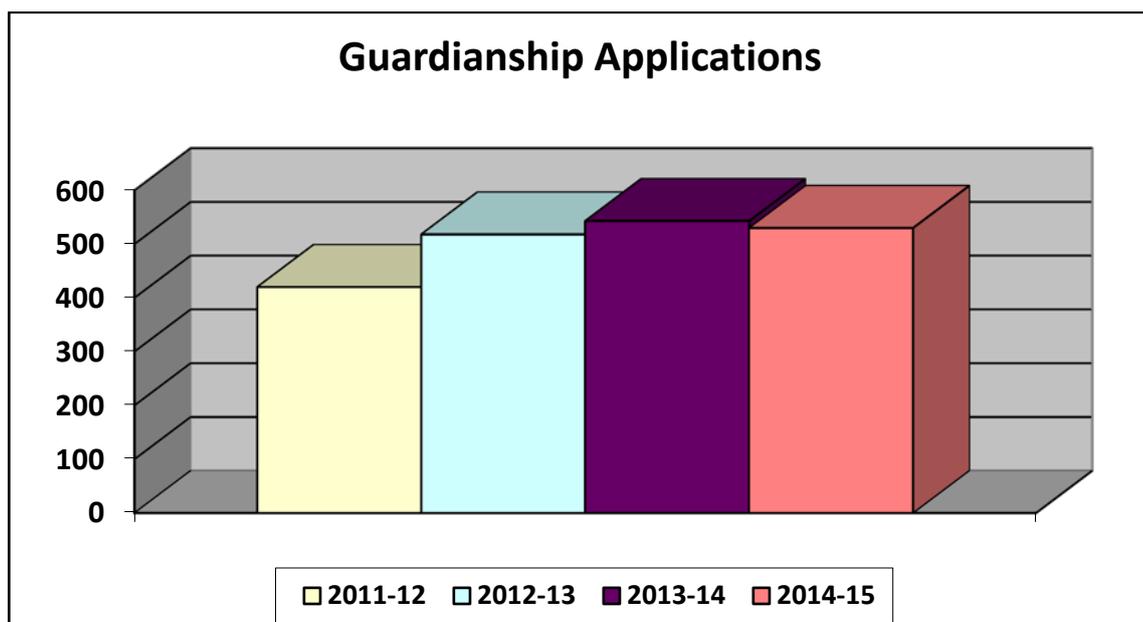
Consistent with the Age Profile of persons named in applications to the Board, a significant proportion of applications relate to persons with dementia as their primary diagnosis.

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. A slight decrease this reporting year may be attributable to the closure of the Jasmine Unit at the Roy Fagan Centre.



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 guardian²:

BI (Guardianship and Review Administration) [2014] TASGAB 19

The applicant, LD, outlined that BI needs a guardian in relation to concerns regarding BI's future accommodation and future health care, in particular life support options. LD wanted to ensure that BI's long term interests will be represented by family, rather than an employee. BI's carers noted that there was no current question in respect of BI's accommodation and BI's health is currently stable. In these circumstances BI is not in need of a guardian because there is no current decision to be made regarding her accommodation and BI's health care needs can 'be met by other means less restrictive of that person's freedom of decision and action' through LD's role as her sister's person responsible which includes the ability to make decisions about BI's end of life choices. The application was dismissed.

GC (Guardianship) [2014] TASGAB 23

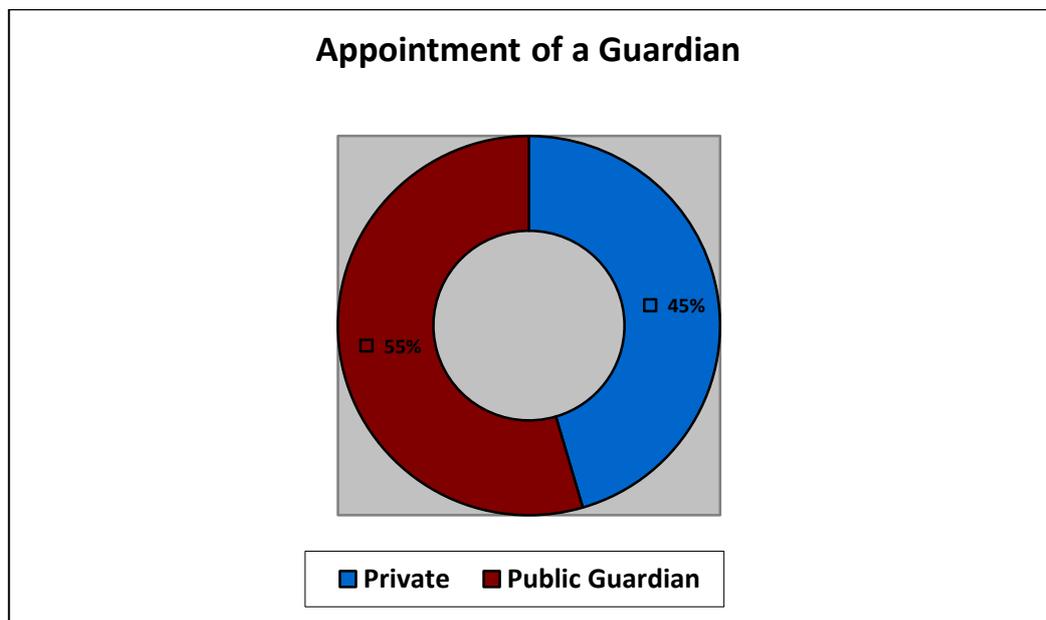
GC is a 58 year old man who lives in a facility operated by Mental Health Services. Mental Health Services applied for appointment of a guardian in relation to GC's medical treatment for diabetes and related incontinence issues on the advice of the Mental Health Tribunal. The applicant's evidence was that Mr. C does not have a history of objecting to treatment for his diabetes or his incontinence and is not currently objecting to such treatment. GC has a sister who is potentially available as his 'person responsible'. If she was not available, section 41 of the Act would also apply to treatment to which GC is incapable of consenting but compliant. The application was dismissed as there are alternatives available for ensuring that medical treatment is lawful that are less restrictive than the appointment of a guardian.

CEC (Guardianship) [2015] TASGAB 9

CEC is an 89 year old woman. Dr Monahan diagnosed her with Alzheimer's type dementia which is deteriorating and has been evident for some time. Until recently CEC had been cared for at home by her son SC. She was admitted to the Launceston General Hospital with pneumonia. There had been rising levels of concern about the ability of SC to provide adequate care for her, which SC disputed. CEC had recovered from her pneumonia but the medical team was not prepared to discharge her back into SC's care without an appropriate discharge plan that provided for CEC's ongoing needs. The information available to the Board suggested that it was improbable that there would be a resolution to CEC's discharge without the intervention of a guardian. The Public Guardian was appointed as the represented person's guardian limited to decisions about accommodation.

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

This reporting year appointments of private guardians were almost equal to appointments of the Public Guardian.



The following cases demonstrate some of the considerations that the Board takes into account when selecting a guardian³:

SM (Review Enduring Guardianship) [2014] TASGAB 22

SM appointed her daughter as her enduring guardian. However the guardian sought resignation from the role in light of family conflict about decisions about SM's future accommodation. SM had been assessed as eligible for residential care. Tension amongst SM's adult children became unmanageable to the extent one party threatened a restraint order against another. The Board treated the factor of 'preserving existing family relationships' as meaning, in these circumstances, 'not allowing family relationships to deteriorate any further.' The Board considered that KDO, who sought appointment as guardian, was unreceptive to his sister's concerns about sibling conflict and during the hearing he introduced irrelevant past issues that inflamed rather than resolved tension between siblings. The Board appointed the Public Guardian as SM's guardian.

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

BN (Review of Guardianship) [2015] TASGAB 4

Sometimes there is fervent disagreement between some of BN's family members and friends, BN's treating team and accommodation providers. BDT (BN's grandson) asserted that he would be capable of making decisions in the midst of significant family conflict. KN (BN's daughter) and BN's wife stated that working with the Public Guardian had relieved some pressure for them and considered it vital to have an independent person make such decisions for the preservation of family relationships. The Board continued the Public Guardian's appointment as guardian for BN.

GNH (Guardianship) [2015] TASGAB 3

There was disagreement between GNH's family members as to where GNH should live. MT believed the best accommodation to be the rural health facility and the other family members preferred an aged care facility. Each preferred the location closest to their places of residence. It would be potentially difficult for any family member to extract their own interests (avoiding travel time) from GNH's best interests in making a decision about where she is to live. The Board found that MT's interests "conflict or may conflict with the interests of the proposed represented person" and the "desirability of preserving existing family relationships" would be best served by the appointment of an independent guardian.

MBL (Guardianship) [2015] TASGAB 2

MBL needed a guardian to ensure that her accommodation is safe, appropriate and lawful. Her treating team did not believe that MBL's husband would make a suitable guardian as he has been unable to consider MBL's needs ahead of his own. The treating team had concerns about SL's mental health. The Board did not appoint SL but appointed the Public Guardian as a limited guardian.

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 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 –
 - x. the functions of the Public Guardian; and
 - xi. the functions of the Board; and
 - xii. the operation of this Act;
- xiii. 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;
- xiv. 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.
- xv. investigate and report to the Board in relation to a matter the subject of an inquiry before the Board.
- xvi. any other function assigned to the Public Guardian by any other Act or law.

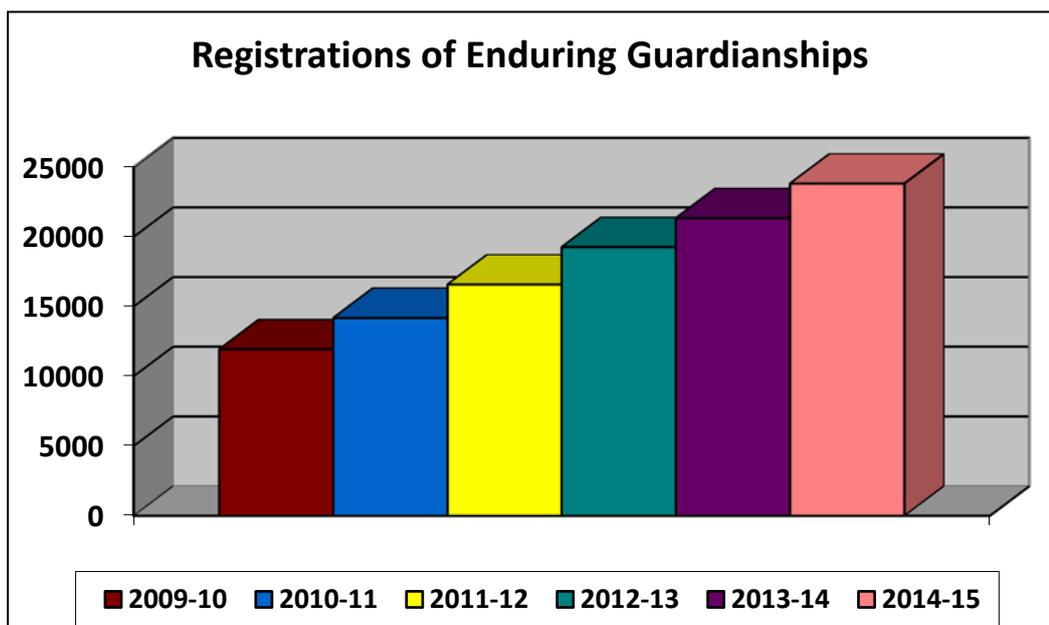
The Office of the Public Guardian concentrates most of its resources and activities on the function “(viii) to act as a guardian or administrator when so appointed by the Board”. An independent review in August 2011 concluded that the Public Guardian, in performing this particular function, was not meeting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

The Board congratulates former member, Kim Barker, on her appointment as Public Guardian in September 2015 and looks forward to a re-balancing of the focus of the Public Guardian’s functions under her appointment.

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 2015 the register included 23,824 Instruments Appointing an Enduring Guardian.



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 2483 instruments in the reporting year. Fees have been waived on 41 occasions. The Board charges \$65 for registration of enduring guardianships and \$46 for revocation. The Board collected \$163,798 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.

Following are examples of the decisions made during the reporting period⁴:

SM (Advice and Direction) [2014] TASGAB 17

SM appointed her daughter, FBM, as her enduring guardian. An assessment by the Aged Care Assessment Team determined that SM was eligible for permanent residential care, high level respite care and a HCP 3-4 package of assistance which FBM supported. Internal family conflict made it untenable for FBM to continue as enduring guardian because of disputes about the appointor's future accommodation. Family conflict was detrimental to the appointor's health and wellbeing. By advice and direction to the guardian, the Board varied the instrument to the extent that the Public Guardian be substituted as enduring guardian until a review application could be heard and determined.

BDX (Advice and Direction to an Enduring Guardian) [2015] TASGAB 6

BDX appointed KSL and ED as guardians. The enduring guardians sought revocation of the instrument and the appointment of the Public Guardian as a substitute guardian. The application noted a very high degree of family conflict between the guardians and BDX's son, UL, and this has prompted the guardians to seek removal from the role. Dr. Cleary's report confirmed that BDX was not in a position to revoke or amend her appointment independently of the Board. The guardians were formerly the appointor's live-in carers. That care burden became too much for them and they determined that she should move to residential care. That decision by the guardians has wrought the ire of both BDX and UL. Dr. Cleary expressed a concern that this 'significant conflict' may compromise the appointor's wellbeing and she is at risk of experiencing multiple accommodation changes which may not suit her needs. The Public Guardian was substituted as enduring guardian.

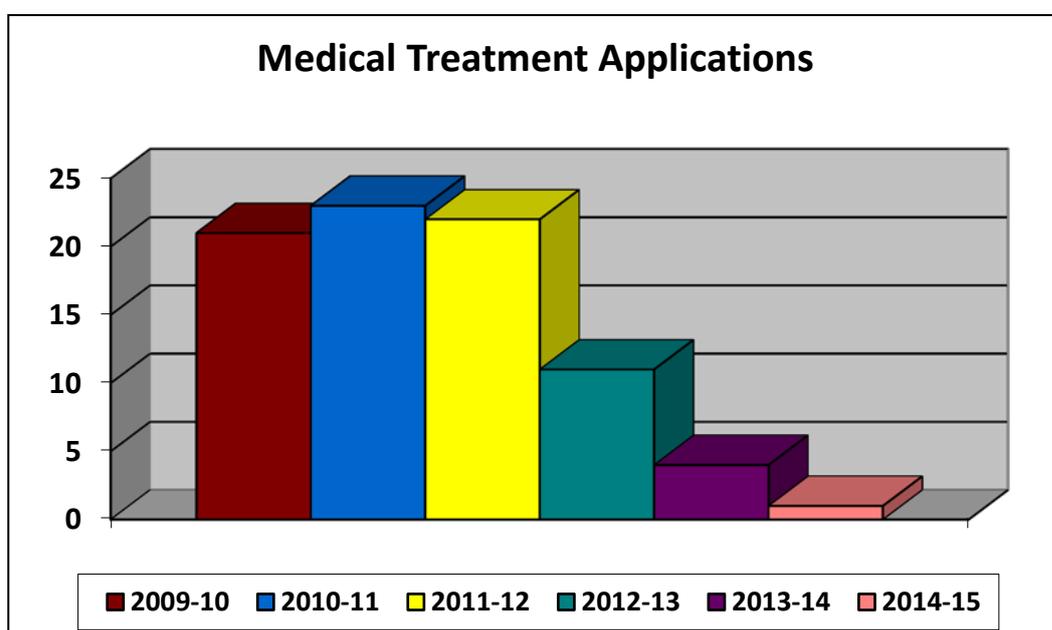
Application forms and a Facts Sheet about review of enduring appointments are available for download from the Board's website: www.guardianship.tas.gov.au.

⁴ All decisions are available in full at <http://www.austlii.edu.au/au/cases/tas/TASGAB/>

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*. The Board received 1 such application 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. Application forms and Facts Sheets about Consent to Medical Treatment are available for download from the Board's website: www.guardianship.tas.gov.au. Following is an example of the decisions made during the reporting period⁵:



NC (Medical Consent) [2014] TASGAB 15

NC is a 14 year old girl who lives with her mother, her siblings and her grandmother in a warm and supportive environment. NC has a severe intellectual disability. A Consultant Obstetrician and Gynaecologist applied for the Board to give its consent to NC having a laparoscopic hysterectomy for the removal of her uterus and tubes but not her ovaries. This application was made on the basis that it was surgery

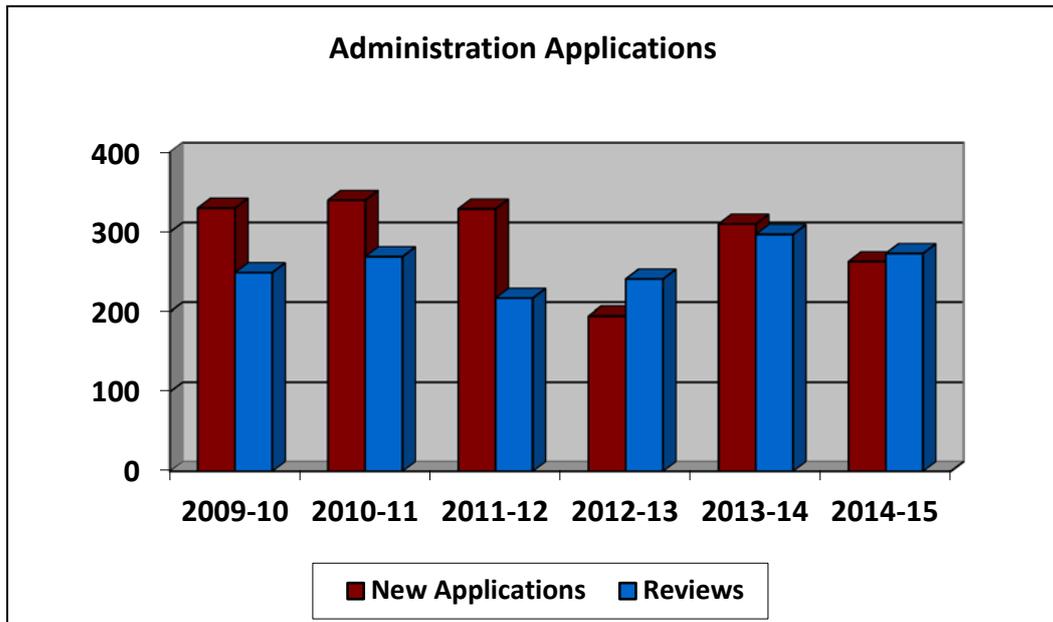
⁵ All decisions are available in full at <http://www.austlii.edu.au/au/cases/tas/TASGAB/>

appropriately carried out to treat a malfunction or disease that negatively affects NC's wellbeing and her quality of life. NC's major health problems include menorrhagia with dysmenorrhea and severe eczema. NC's periods are extremely long and heavy and last on average 10 days in every 28. The Board was satisfied because of the severity and rarity of NC's condition that the procedure would be in her best interests.

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.

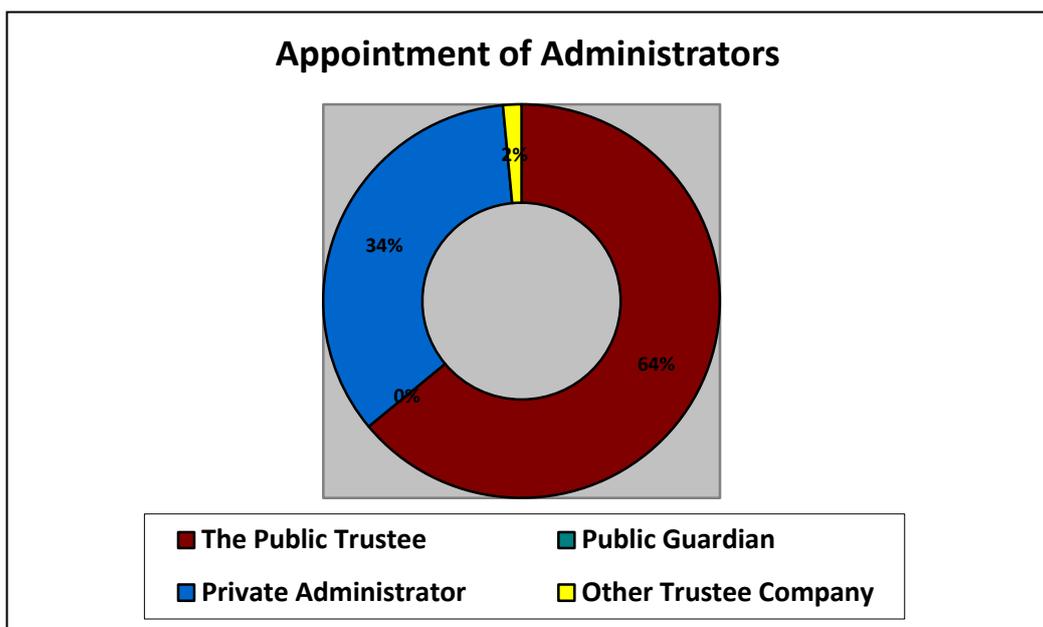


Application forms and a Facts Sheet about the role of an administrator are available for download from the Board's website: www.guardianship.tas.gov.au.

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.

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 64% of orders for administration. Of the balance of appointees 34.5% were private administrators (family or friends), 1.5% Tasmanian Perpetual Trustees.



The following cases are examples of the factors that the Board considers when selecting an administrator⁶:

HSJ (Guardian and Administrator [2015] TASGAB 5

HSJ is a 60 year old man who is in hospital having had a stroke. The application largely related to the arrangements for his discharge from hospital after the stroke. In Dr. Ramsden’s opinion, the proposed represented person is capable of simple financial transactions and would be capable of day-to-day finances but would need support with any novel arrangements. She considered that he would not be capable of major financial decisions. HSJ’s main deficit in decision making is to understand the needs that have arisen since his stroke and to appreciate the difference in his competence (and therefore his need for additional support) since the stroke. An administrator may be able to apply for Centrelink benefits, something HSJ refused to consider. KI (a friend and a qualified accountant) expressed an interest in appointment as his administrator on a voluntary basis. He believed that his appointment would be more compatible with the proposed represented person’s wishes and his behavioural patterns than the appointment of the Public Trustee. This nomination would save HSJ approximately \$11,000.00 in upfront commission to the Public Trustee. KI was appointed as administrator.

⁶ All decisions are available in full at <http://www.austlii.edu.au/au/cases/tas/TASGAB/>

UBT (Guardianship and Administration) [2015] TASGAB 8

UBT is an 89 year old man who lives in an Aged Care Facility. Since he was admitted to the aged care facility six months ago, UBT has been paying full fees because an assessment of his assets (required as part of the process of admission to aged care) had not been completed. UBT has a property which requires sale, rental or other management now that he no longer resides there. An administrator is needed to ensure that UBT is appropriately assessed for his aged care fees and that his assets and income are applied towards his needs. DG sought appointment as administrator. Because DG had not arranged an assets assessment in accordance with legislative requirements, DG had not reflected the prudent approach expected of a potential trustee. DG's son and UBT's grandson is a tenant in UBT's property. He pays for utilities and upkeep in lieu of rental. DG will have interests in seeing her son beneficially housed which may compete with her interests as an administrator for the owner of the property. DG's understanding is that she will inherit UBT's property and that the property ought to be retained to give effect to UBT's wishes. The Board could not be satisfied that DG is not in a position where her interests conflict or may conflict with the interests of the proposed represented person. The Public Trustee was appointed as administrator.

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 Board publishes guidelines: *Applying for an Emergency Guardianship or Administration Order*, and a practice direction: *Processing of Emergency Applications*, on its website to assist applicants for emergency orders.

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

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 1636 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 who can either approve the report or submit it to a Board member for approval. Where an annual report is not approved, the Board member will either seek more information or require a review of the order 'of Board's own motion'.

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

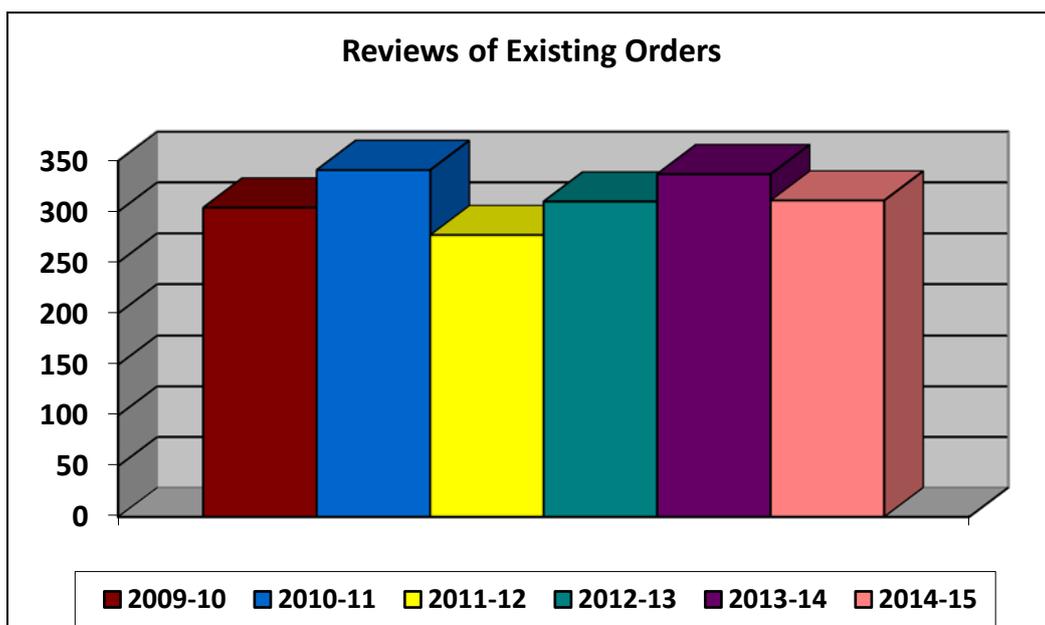
Lee Douglas Perry was delegated to perform and exercise the duties, obligations, rights and power of the Board described in section 63(1), (2), (3) and (4)(a) of the *Guardianship and Administration Act 1995* from 3 July 2015 until further notice. This means that the process of reconciling administrator's and guardian's reports is mainly conducted by Mr. Perry, the Board's Compliance Officer. As a result, the process of approval of annual reports will be more efficient in future.

The Board receives fees for examination of administrator's annual reports pursuant to 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 \$9788.36. A total of \$28,890.16 has been collected from Trustee companies.

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 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. 5 applications of Board's own motion)	24
Emergency suspension	6
Advice and direction	1

The outcomes of those applications were as follows:

Continuing at end of financial year	3
Revocation and appointment of an administrator	10
Declaration that an instrument was invalid and appoint administrator	1
Application withdrawn	4
Donor died before hearing	1
Dismissed	2
Substitute attorney appointed	1
Emergency suspension granted	6

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.

Following are examples of matters decided under this power⁷:

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

QHT (Review Enduring Powers) [2014] TASGAB 20

QHT is an 89 year old widow. She has a daughter from her first marriage, TNTE. A conveyancing clerk made no attempt to explain the enduring power of attorney to QHT at the time of execution. He did not interview her alone and made very cursory attempts to verify that she had an understanding of the instrument. The Board found that her innate social sensibilities and her propensity for reliance on others meant that QHT was merely compliant in the process rather than actively engaged in and understanding of it. The Board found the QHT possibly never had the skills to understand the nature and effect of an enduring power of attorney without significant tutoring and explanation which she did not receive from the clerk. Having experienced a decline in her cognitive functioning (particularly in her executive or higher cognitive function) due to the onset of dementia, on the balance of probabilities the Board found that QHT was quite unable to understand the nature and effect of the instrument at the time of execution. The Board declared the enduring power of attorney invalid because the Board is satisfied that the donor did not have the mental capacity to make the power.

DXX (Emergency Suspend EPA and Administration) [2015] TASGAB 7

DXX executed an enduring power of attorney appointing DWN as his attorney. Advocacy Tasmania Inc. made the application at DXX's request noting that DXX had concerns about the attorney's management of his money and concerns that the attorney had sold his house to herself, possibly at less than its market value. DXX expressed different opinions when speaking with different persons and his genuine wishes were difficult to ascertain. The Board considered that the issue was urgent and attempts to investigate the nature and effect of the proposed transfer had not assured the Board that DXX's interests were being protected or that the transfer was occurring in circumstances that are consistent with the proper duties of an attorney. The Board made an urgent suspension of the power and appointment of the Public Trustee pending a hearing of the application.

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.

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*. The Board also provides advice and support to the DHHS Senior Practitioner when required.

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.

Following is an example of matters decided under this power⁸:

NHI (Restrictive Intervention) [2015] TASGAB 1

In the hearing of an application for the approval of a restrictive intervention the delegate of the Senior Practitioner asked the Board to consider whether the restrictive intervention under consideration might be considered to have been ‘taken for therapeutic purposes’ and therefore be excluded from the definition of restrictive interventions under the Disability Services Act 2011 (the Act). The intervention under examination was the use of a cot-sided bed for a 33 year old man with a severe intellectual disability which is used during usual sleeping hours. The cot-sided bed restricts his liberty of movement during usual sleeping hours. It is argued by his parents, specialist disability staff and an occupational therapist that the use of this bed establishes a sleeping or resting routine that not only eliminates some risks to him but enhances his health and wellbeing to a greater extent than would be achieved by active monitoring by staff. It is the view of the Board that “therapeutic purposes” within the Disability Services Act 2011 relates to (a) preventing, diagnosing, curing or alleviating a disease, ailment, defect or injury in persons, or (b) influencing, inhibiting or modifying a physiological process in persons; or medical treatment of a disorder, disease or ailment. The evidence suggests that this structure has had some effects in mollifying the occupant’s sleeping problems which in turn has benefited his health and assisted in controlling his epilepsy. However, there was no medical evidence suggesting that the structure had been recommended by a medical practitioner on the basis of medical science. The cot-sided bed is essentially a practical solution to a behavioural problem. Control of the behavioural problem has health benefits for the occupant of the bed but it is not, in the view of the Board, “taken for therapeutic purposes” within the meaning of the Act.

Applications under other legislation

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

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

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 260 decisions spanning from 1998 to 2015. Publishing de-identified statements of reasons is important because it enhances the Board's accountability for decision making and because it gives persons appearing before the Board an opportunity to understand the decision making processes of the Board.

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

There were no appeals 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
- National Disability Services
- Aged and Community Services Tasmania
- Assessment and Case Management South Community Care
- DHHS Senior Practitioner

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 27 April 2015 was enthusiastically attended and very productive.

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.

The Board provided feedback to a review of the *Mental Health Act 2013* in line with concerns outlined in last year's Annual Report.

As noted in last year's Annual Report, the Board presented to the Attorney General a recommendation 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. The Board is pleased to report that this amendment has been presented to Parliament.

Some further amendments to the role of the 'person responsible' have been proposed by the Board (in conjunction with the Public Guardian) in response to the interpretation issue discussed in *BN (Advice and Direction)* [2014] TASGAB.

As reported last year, 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. This issue and the issue of inadequate facilities for involuntary treatment of alcoholism has arisen recently in an unreported case before the Board and the consequences of this failure of legislative reform and the dearth of appropriate facilities remain tragic.

The Board continues to be an active participant in the following policy developments:

- Department of Justice – Disability Framework for Action
- DHHS – Elder Abuse Prevention Advisory Committee

The Board developed and submitted to the Department of Justice a proposal for package of amendments to address the issue of decision making for compliant but incapable persons with disabilities and other issues. Unfortunately this proposal was rejected.

The President provided responses to round 1 of the Department of Justice consultations in relation to the development of a single tribunal in Tasmania.

The Board provided material for inclusion in the State Government's response to Senate Committee Inquiry regarding the involuntary or coerced sterilisation of people with disabilities in Australia. The Board contributed to the Tasmanian Government Submission to the *Inquiry into violence, abuse and neglect against people with disability in institutional and residential settings*. The President also contributed to various reviews and submissions in relation to the continuing development of the National Disability Insurance Scheme.

As Chair of the Australian Guardianship and Administration Council (AGAC), the President wrote submissions to the Senate *Review of Domestic Violence in Australia* and also provided comment on the *Social Services Legislation Amendment Bill 2015*. As a result of the 2012 AGAC submission to the Senate Committee Inquiry regarding the involuntary or coerced sterilisation of people with disabilities in Australia,

AGAC acquired funding from the Commonwealth Government to review the AGAC Sterilisation Protocol and to keep more accurate national statistics on applications for sterilisations.

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 continued in the role of Chair of the Australian Guardianship and Administration Council in the reporting year.

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. 1What 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 has 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.

The President and Registrar provided induction training for new staff members. Staff members have participated in Department of Justice training for induction, workplace health and safety and mental health awareness. The Board expresses thanks to Mr, Bob Rumbold of Southern Cross Care for providing staff training in relation to changes to Aged Care funding.

Finances

A full financial summary is at Appendix 3.

The Board collects fees for the following activities:

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.

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

Facsimile Number: (03) 6173 0211

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

Website: www.guardianship.tas.gov.au

Appendix 1 - Board Members at 30 June 2015

President

Anita Smith 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 and a member of the Resource Management and Planning Appeals Tribunal. Anita is the Chair of the Australian Guardianship and Administration Council and was the Convenor of the 2012 World Congress on Adult Guardianship.

Deputy President

Colin McKenzie Appointed 21 September 2009, 13 October 2014 (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, and as Deputy President of the Mental Health Tribunal. She is a member of the Medical Board and the Parole Board, and, until very recently, the Social Security Appeals Tribunal. She is a Director of the Motor Accident Insurance Board and the Relationships Australia (Tasmania) Board. Kim's qualifications include a Bachelor of Arts Degree (Psychology), Diploma of Education and a Graduate Certificate in Counselling and Development. Kim was appointed as the Public Guardian in September 2015 and consequently resigned as a member of the Board.

Elizabeth (Libby) Beyerle Appointed: 1 June 2015

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

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.

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

Elizabeth Dagleish 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. 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, 19 December 2011 and 1 June 2015

Mary Davies graduated in 1971 with degrees in Arts and Social Work from the University of Queensland. She has been employed as a social worker in both government and community based organisations since that time. Mary was a founding member of the Alzheimer's Association, North West Tasmania, and has worked in the area of dementia care for the past 20 years. She currently holds the position of Senior Counsellor with Alzheimer's Australia Tasmania, North West.

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

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

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 18 February 2013

Rowena Holder graduated from the University of Tasmania with a Bachelor of Arts and Law in 1995. She was admitted as a Barrister and Solicitor of the Supreme Court of Tasmania in 1996. She worked in private

practice practicing in criminal law, personal injuries law and family law up to 2011. Rowena is currently employed as a legal practitioner and as the Manager of Advice and Legal Services at the Legal Aid Commission of Tasmania. In February 2014 she was appointed as a member of the Mental Health Tribunal. Rowena is an accredited mediator and family dispute resolution practitioner.

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

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

Donald Jones Appointed: 1 June 2015

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

Grant Kingston Appointed: 17 December 2007, 21 February 2011 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 Tasmanian Racing Appeal 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.

Muriel Rollins Appointed: 1 June 2015

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

Ken Stanton Appointed 18 February 2013

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, 19 December 2011 and 1 June 2015

Lindi Wall graduated with a degree in Politics in 1974 at the University of Nottingham and a degree in Law at the University of Tasmania in 1989. She was admitted as a Barrister and Solicitor of the Supreme Court of Tasmania in 1990. She has 18 years' experience in civil litigation with the firm of Wallace Wilkinson and Webster. In 2008 she was appointed to the position of temporary magistrate and currently works as a conciliator within the Department of Justice. She is a founding Board member of the Environmental Defenders Office (Tas) and was a member the Anti-Discrimination Tribunal from 2011 - 2015.

Carolyn Wallace Appointed 18 February 2013

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

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	2014-15
Applications received						
Total applications rec'd	974	1085	1029	1104	1230	1192
Guardianship normal	141	136	148	152	198	231
Guardianship emergency	140	188	205	311	288	239
Administration normal	251	242	235	195	247	263
Administration emergency	79	98	81	75	63	57
Medical consent	21	23	23	11	4	1
Statutory Will	1	0	0	0	1	0?
Other (EPA's, gifts, advice etc.)	37	57	60	50	92	73
Review of existing orders	304	341	277	310	337	301
Hearings conducted						
Total hearings	643	719	669	657	735	649
Guardianship	111	105	120	116	142	142
Administration	212	205	220	168	192	201
Medical consent	15	16	16	12	3	1
Statutory Will	0	1	0	0	0	0
Other	21	52	34	25	46	12
Reviews	284	340	277	336	352	293
Hearings by region						
South	332	410	370	363	432	374
North	186	198	188	170	200	177
North West	125	111	106	124	103	98

Outcomes						
Guardianship orders <small>including orders made on review, but not emergency orders</small>	101	91	81	107	130	143

Outcomes						
Administration orders <small>including orders made on review, but not emergency orders</small>	386	436	389	371	441	455
Emergency Guardianship orders <small>including renewed orders</small>					253 ^{for} 168 persons	208
Emergency Administration orders <small>including renewed orders</small>					51 ^{for 28} persons	39
Medical consent orders	13	14	15	6	2	1
Other orders (EPA's gifts, etc.)	13	12	14	22	30	
Statutory Will orders	0	0	0	0	0	0
Applications dismissed	48	45	77	87	69	75
Matters adjourned	40	47	48	41	32	19
Applications: lapsed/ withdrawn/ advice only	78	73	77	111	188	
Community and Professional Education Sessions	48	24	28	15	12	15

Appendix 3 – Financial Summary 2014 - 2015

Appropriation ¹	806,217
Fees and other revenue collected ²	230,437
Total Revenue	1,036,654
Employee related	801,035
Other employee related expenses	8,609
Travel related	14,101
Materials, supplies and Equipment	8,173
Property expenses	91,468
Information technology	30,025
Other expenses	26,635
Total Expenses	980,047
Increase in trust fund balance ³	56,608

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 seminars provided by the Board

The following professional development events were presented by Board and staff members in 2014- 2015:

Anita Smith, President

- Baptcare
- OneCare - Bishop Davies Court (2 sessions)
- Langford Services
- Law Society of Tasmania – Elder and Succession Law Committee
- Southern Young Lawyers – with Justin McMullen
- UTAS, School of Medicine Disability symposium for 3rd year medical students
- Community Based Support – Moonah
- Anglicare Tasmania Housing & Homeless Services Devonport
- Community Nursing North
- Community Dementia Service – Launceston
- Anglicare regarding Mental Health
- Legal Issues in Aged Care Seminar – ACST
- Sexual Assault Service
- Alzheimer’s Australia
- Office of the Director of Public Prosecutions
- The Public Trustee (2 sessions)
- Sexual Assault Medical Service (SAMS), Royal Hobart Hospital

Conference presentations

- *Accessibility, Diversity and Tribunals* with Linda Crebbin (General President ACAT) and Malcolm Schyvens (Deputy President NCAT) at the Dreams and Realities: The Evolution of Tribunals - Council of Australasian Tribunals National Conference 2015
- ANZAPPL 2014 Congress *Why Mental Health Legislation is (Hopefully) Terminally Ill* with Dr. Martin Morrissey, MBBS FRANZCP

Articles published

- *Lawyers Facing Client Supervening Incapacity*, Law Institute Journal (Victoria) with Prof. Gino Dal Pont

- *Should guardianship practices be abolished?* A chapter in the *Liber Amicorum* presented to Professor Makoto Arai (Japan) published by Universität Göttingen, Germany

Catherine Gavan, Board member

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

Elizabeth Love, Investigator

Parkside Foundation

Elizabeth Dagleish, Investigator

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

Mary Davies:

NW Tas TAFE - Aged care/HACC students