



# Guardianship and Administration Board

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Annual Report 2011 - 12

30 September 2012

The Hon Brian Wightman, 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 this report on the administration of the Act and the financial statements for the Guardianship and Administration Board for the year 1 July 2011 to 30 June 2012.

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 is a pleasure to continue to be involved in an area of law that produces creative and positive outcomes for people with disabilities. The subject matter of applications before the Board can be both saddening, when members and staff of the Board witness neglect and abuse of people with disabilities, and uplifting, when we witness a person's recovery from incapacity or the support and love that some families and agencies provide for people with disabilities.

The work of the Board is becoming increasingly complex, partly due to the complexity of some person's estates and partly due to relationship dynamics in the support network surrounding persons with disabilities. Family members and support persons of people with disabilities can have markedly different views about what is in the best interests of the person with a disability and sadly, can often confuse the interests of the person with a disability with their own interests. The day-to-day work of Board members in balancing the wishes of a person with a disability against his or her freedom of decision and action and his or her best interests is a complex task.

Internationally, there have been calls for the abolition of guardianship (substituted-decision-making schemes) in favour of more informal supported-decision-making schemes. However, Board members and staff continue to witness a need for substitute decision-making where it has been proven to be appropriate. The Board, guardians and administrators have an important role in protecting and advancing the rights of people with severe disabilities. The following cases are just three examples from more than one thousand applications coming before the Board this reporting year:

*Noelene* (not her real name) is 74 years of age. She appointed her solicitor as her attorney under an enduring power of attorney in circumstances which caused the Board to doubt Noelene's understanding of that appointment.

The attorney then placed Noelene's house on the market for \$160,000. The highest appraisal for the property was \$205,000. The attorney rejected an offer of \$150,000 (conditional on finance) submitted by a real estate agent. When the real estate agent indicated that this offer might be increased to \$160,000, and that the purchaser's finance had been approved, the attorney dismissed the real estate agent.

Twelve days later, despite having re-engaged the real estate agent, the attorney personally presented an unconditional contract to Noelene to sign for \$145,000.00. At the time of signing, Noelene was not aware that the purchaser was the attorney's daughter. Under an emergency order, the Board revoked the appointment of the attorney and appointed the Public Trustee as administrator for Noelene. That was confirmed after a hearing. The attorney's daughter withdrew from the contract. The Board has referred the behaviour of the solicitor/attorney to the Legal Profession Board which is investigating the matter.

[For more details see: [www.austlii.edu.au](http://www.austlii.edu.au), published as *NPG (Review Enduring Power)* [2011] TASGAB 22]

**Bernadette** (not her real name) is a 48 year old woman with a very happy disposition and a penchant for pretty clothes and jewellery who, by reason of an intellectual disability, has never attained the ability to speak. She lives in a specialised facility run by a not-for-profit organisation. She has little contact with her family.

Bernadette's elderly parents died within one month of each other, but she was not invited to their funerals. In an estate worth approximately \$600,000, Bernadette's parents bequeathed her \$10,000 in trust. The balance was shared equally between her three sisters. Bernadette is in receipt of a disability pension and has no significant assets. Bernadette's accommodation provider applied for the appointment of an administrator to represent her interests in the division of her parents' estate. Her family opposed any changes to the distribution of the estate.

The Board appointed the Public Trustee as Bernadette's administrator with a view to challenging her parents' wills to obtain a fairer share of the estate. The matter is currently in mediation.

[For more details see: [www.austlii.edu.au](http://www.austlii.edu.au), published as *BI (Administration)* [2011] TASGAB 16]

**Brendan** (not his real name) is a 52 year old man with severe autism. He is unable to speak and has no close family. He is the beneficiary of a significant trust from his father's estate. Expenditure from the trust is made exclusively on the recommendation of Brendan's carer. When the Board heard an application for administration, it learned that for the last 30 years Brendan was cared for by a friend of his father's and that:

- Brendan is usually at home alone during the day when his carer is at work full-time.
- Brendan had not seen his GP for 4 years and has no Disability Services service co-ordinator.
- Brendan does not attend any day programs and is not connected with any external service providers.

Brendan's contact with the environment outside his home is controlled exclusively by his carer, who admitted to not having reviewed the patterns of Brendan's life for 30 years. Brendan's isolation stemmed from alleged behavioural issues; however the Board had no independent description of the behaviours or their level of severity. On the facts before the Board, it was possible that Brendan's carer, or the carer's long term employer (a disability service provider), may be possible beneficiaries of the trust fund (approx. \$1 million) upon Brendan's death.

Noting the evidence of a Specialist Consultant Psychologist, the Board appointed the Public Guardian as Brendan's guardian to ensure the ongoing engagement of an independent advocate and case manager for Brendan, to facilitate his access to services, including day services and to promote his independence and participation in the life of the community.

The Board also appointed the Public Trustee as Brendan's administrator as a 'fresh set of eyes' with regard to day to day arrangements in Brendan's estate.

[For more details see: [www.austlii.edu.au](http://www.austlii.edu.au), published as *BEKM (Guardianship and Administration)* [2011] TASGAB 23]

In each of the above cases, the rights of the person with a disability had been overlooked in favour of either the convenience or advantage of other persons. Brendan and Bernadette lack the ability to express their own wishes. Noelene could express her wishes, but was so deeply confused about events that she was incapable of protecting her estate to obtain the true value of her property at sale. In each of these cases, there is a need for a person with lawful authority to intervene to ensure that the interests of the person with a disability are promoted and respected. This requires more than mere support, but will require substituted decision making.

A comprehensive review of Guardianship laws by the Victorian Law Reform Commission tabled this year has confirmed the ongoing need for guardianship and administration (substituted-decision-making) laws, but suggested the development of some supported-decision-making models for persons who could make a decision with more adequate supports. The contents of the report arising from the review will provide a valuable framework for a future review of Tasmania's guardianship laws.

### **Overview:**

In addition to a significant case load in the 2011 to 2012 reporting year, the Board has a number of significant projects on foot:

- Development of a comprehensive electronic case management system and the ability to keep electronic registers of instruments and orders.
- Responding to the 2011 independent review of the Office of the Public Guardian
- Proposal to generate funding with the imposition of cost recovery fees on certain statutory functions
- Proposal to co-locate with other Justice Department tribunals
- Revision of all application forms and pro forma Health Care Professional Reports
- Development of a second video for publishing on the website, detailing the process for making an application
- Involvement in reform of the *Powers of Attorney Act 2000*, the *Mental Health Act 1996*, the *Alcohol and Drug Dependency Act 1968* and the development of the *Disability Services Act 2011*.

The Board established a forum for regular users of the Board to provide feedback on our operations at a policy and procedure level. Attendance at two meetings so far has been enthusiastic and

beneficial for all involved. Stakeholder groups have provided representatives to the meetings and we intend to hold such meetings twice per year.

The Board, in partnership with the Public Guardian and the Public Trustee, was fortunate to host the March 2012 meeting of the Australian Guardianship and Administration Council in Hobart. Guest speakers to the meeting included Disability Discrimination Commissioner, Graeme Innes AM, renowned expert on medical consent laws, Sir Ian Kennedy and Professor Andrew Robinson from the University of Tasmania's Faculty of Health Sciences. Apart from the icy Hobart weather, it was a very successful meeting and the Board extends its thanks to His Excellency, Governor Peter Underwood AC and Mrs Underwood for hosting a reception at Government House to welcome our interstate colleagues.

The Board is fortunate to be assisted by a small but dedicated team in the Hobart office who ensure the prompt investigation and listing of applications. The Board members continue to ensure that parties to hearings participate in a fair and efficient process. It is my pleasure to work with excellent staff and Board members and I thank them for their continued support and assistance.

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). New functions have been assigned to the Board pursuant to the *Disability Services Act 2011* for the approval of restrictive interventions.

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 personal decisions. Secondly, the Board can appoint administrators to manage the financial estates of adults with disabilities who cannot manage their estates because of their disabilities. Importantly, all appointments are periodically reviewable and are required to report to the Board annually, which means the Board has a compliance function with respect to appointees. 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, 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. New functions under the *Disability Services Act 2011* involve the assessment and approval 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, 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 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. The Board has been fortunate to be awarded a second grant from the Law Foundation of Tasmania and we will shortly be producing an accompanying video to this, related to the process of making an application to the Board.

## 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.

In 2009-2010 the Board had 30 members. This number was unwieldy given the requirements for professional development and listing members with sufficient regularity to retain their skills in conducting hearings. In 2010-2011 the number reduced to 28. During the reporting year, due to resignations and attrition in reappointments, the Board has reduced to 22 members which is an optimum number to be able to provide statewide representation.

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, medicine and law and are particularly selected for their understanding of the issues facing people with disabilities.

Board members attended full-day in-house training sessions on 18 November 2011 (*Process management and announcing the decision of the Board*) and 24 - 25 May 2011 (*Assessing Applications for Restrictive Interventions*).

## Board Member Appointments

The following members were reappointed during the reporting year:

Kate Brown  
Mary Davies  
Gerard Dibley  
Wendy Hudson (Beveridge)  
Lindi Wall

The following members' appointments expired without reappointment during the reporting year:

Kellie Ashman  
Patricia King  
Martin Morrissey  
Tony O'Neil

Toni Law resigned as a member when she moved interstate.

The Board wishes to express its thanks to Ms. Ashman, Ms. King, Dr. Morrissey, Mr. O'Neil and Ms. Law for their contribution to the work of the Board.

Marguerite Lester resigned her appointment during the reporting year. Although all members make a valued and valuable contribution to the work of the Board, of the departing members, Marguerite

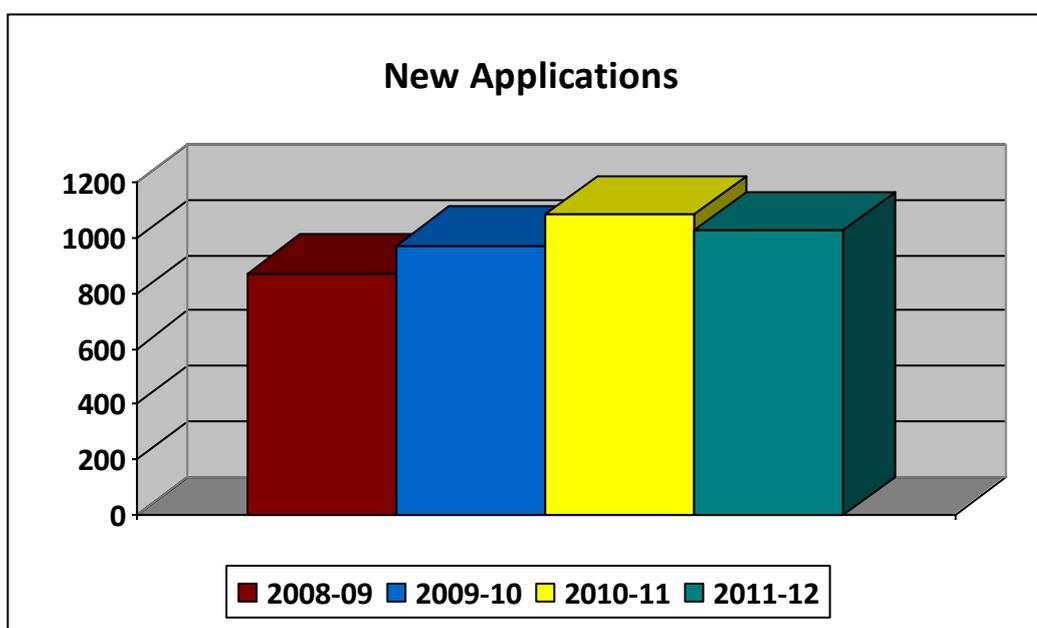
Lester has been the longest serving, being one of the foundation members appointed in August 1997 when the Board was first created. She has had a significant influence in determining the culture and personality of the Board and has determined some of our most demanding applications, surviving more than one appeal with an unblemished record. The Board would like to acknowledge her unwavering support to fellow Board members and staff and her high level administrative and analytical skills, as well as a healthy dose of common sense.

## Processing of Applications

### Applications Received

The total number of applications (including the review of orders) received for the period 1 July 2011 to 30 June 2012 was 1029. Of these 750 were new applications with the remainder being reviews of existing orders.

Although the number of applications has plateaued this year, for reasons expressed in previous years' reports, the Board anticipates that the numbers of applications will continue to grow for the foreseeable future.



During the reporting year, the Board has undertaken its most significant review of the application forms and *pro forma* Health Care Professional Reports in a decade. The focus of the review was to make the forms more user-friendly and accessible. The Board received feedback from the Regular Users Group in the development of the new forms. The new forms are now available on the Board's website.

The Board's electronic existing case management system has a number of deficits. During the year we received assistance from the Department of Justice ITSMG program to develop a Project Proposal & Requirements Definition. Hopefully in the next financial year we will put a business case for funding the proposal and developing a fully functioning case management and electronic registration system.

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

The legislation and regulations require that the hearing of an application must commence within 45 days of receipt of the application and the Health Care Professional Report. 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. 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.

During the reporting year, Board members were surveyed with respect to the contents of Investigator's reports. Board members expressed a high degree of satisfaction with the contents and format of Investigators' reports. However some changes have been implemented to ensure that reports are suitable for circulation to parties to hearings as well as to Board members.

### **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.

Each year we report against the percentage of applications that have been *determined* within 45 days. In previous years we have equated the rate of determinations with the rate of compliance, which is in error. Our present case-management system (under review) is not capable of providing statistics about the rate of compliance with section 72, but can report upon the numbers of applications determined within 45 days.

The Board determined 89% of applications within 45 days. This is an improvement on last year but not as good as previous years. This figure does not include emergency applications which do not require a hearing.

Matters determined later than 45 days (11%) were generally particularly complex cases or matters where relevant witnesses were unavailable for a period. An application for consent to a sterilisation has remained undetermined since receipt in February 2010 because the young woman named in the application is being trialled on alternative and less restrictive contraceptive/menstrual management techniques.

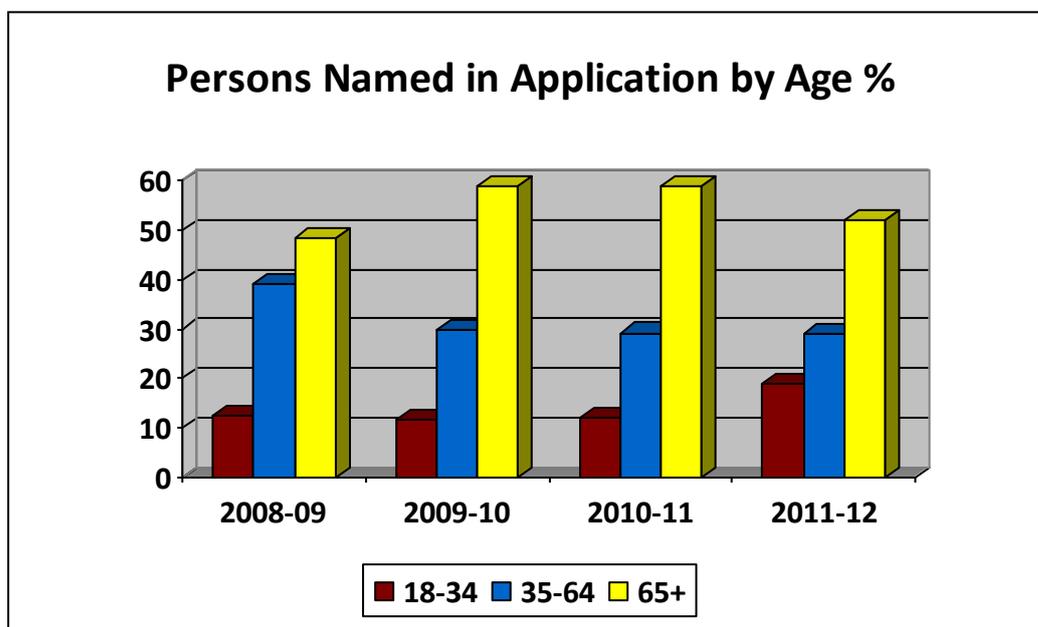
Board members heard an average of 5 applications per sitting this reporting year, which is steady.

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

Of the 669 hearings held in 2011-12, 56% were held in the South, 28% in the North and 16% in the North West.

### Age Profile

The majority of applications received in this reporting year, as with all previous Annual Reports, related to persons over 65 years of age. As the general population is ageing, it is anticipated that the numbers of applications will to increase in coming years.

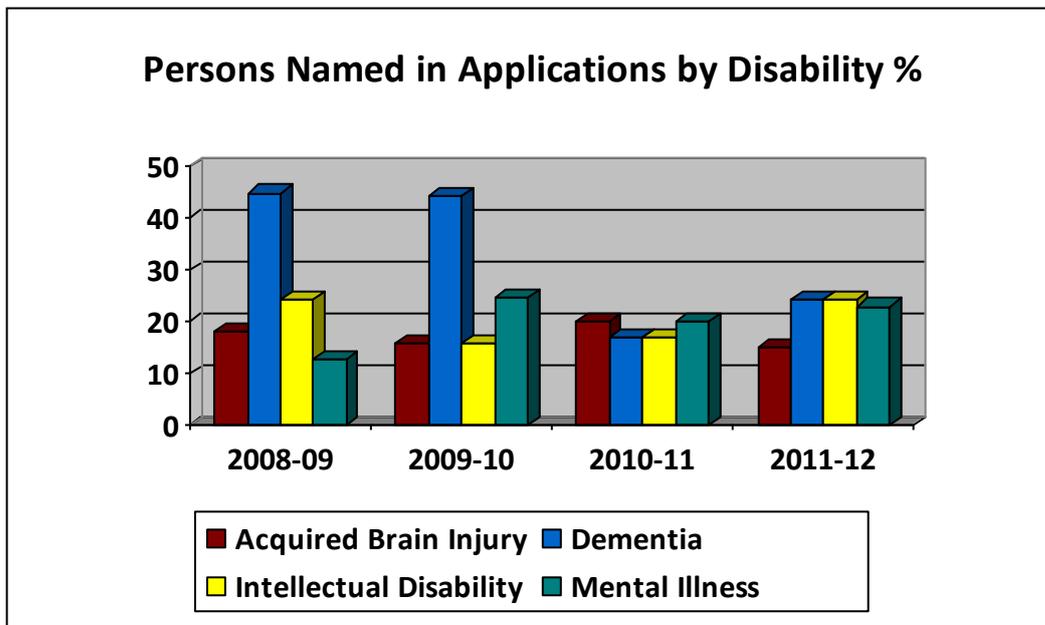


Persons over 65 years of age continue to comprise a significant proportion of the persons about whom applications are made at 52% of the total group. This is a slight drop on the proportion of elderly persons from recent years. Most likely this is as a result of the policy discussed under the ‘Disability Profile’ heading below.

## Disability Profile

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.

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.



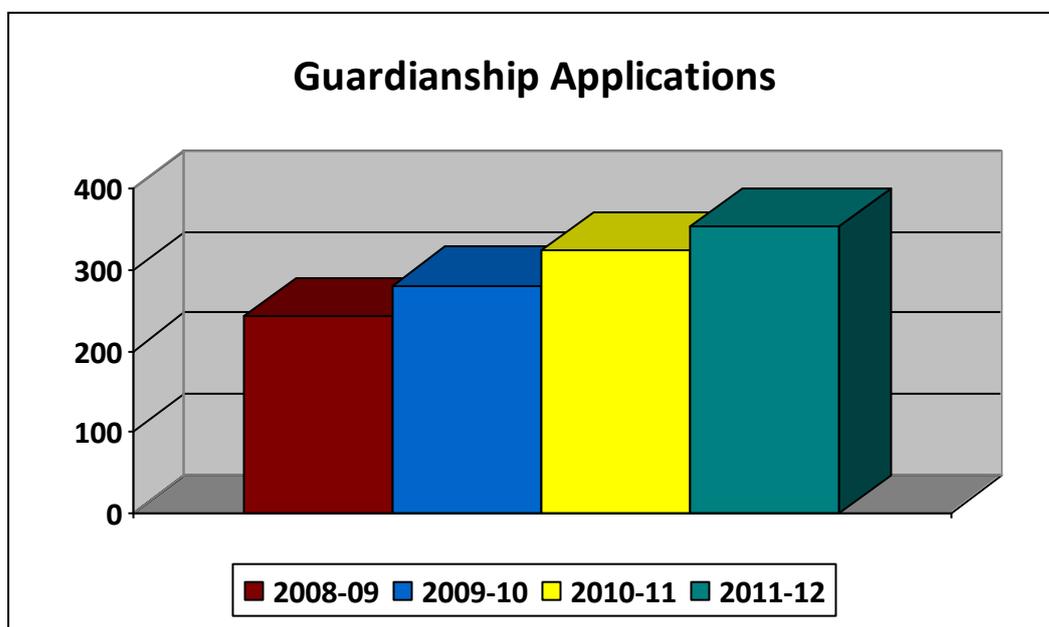
This reporting year, an increase in the percentage of applications relating to persons with intellectual and psychiatric disabilities is noted. This most likely relates to a change in practice by supported accommodation facilities with regard to management of residents' funds. The Board published a policy about this which is available on our website: *Management of a Resident's Funds in a Supported Accommodation Facility – A Legal Perspective*. A number of such facilities made service-wide conversions from informal management of residents' funds to having an administrator appointed for each resident. Most residents to whom these applications related have intellectual or psychiatric disabilities.

## 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 and short term orders.



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

Following are some decisions made during the reporting year that demonstrate the range of issues that might lead to the appointment of a guardian<sup>1</sup>:

*LBI (Guardianship and Administration) [2011] TASGAB 19*

LBI has an intellectual disability and a mood disorder. She was unreliable in taking her medication and her medical care had been disjointed. LBI's home was inhabited by dogs with poor toilet training and numerous visitors who took advantage of LBI physically and materially. LBI did not have adequate food in the home. Service providers expressed

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

frustration in their attempts to improve LBI's health and wellbeing. A guardian was appointed to obtain an independent clinical assessment of LBI's health and need for services. The guardian was also given powers to decide where LBI lives temporarily or permanently.

*DMH (Guardianship)* [2011] TASGAB 14

DMH had been forced to move from long term accommodation to a nursing home because of her increasing blindness from cataracts. Due to persistent delusions, DMH refused to have the cataracts surgically rectified because she believed that her blindness was due to a hex issued by her sister and only witchcraft remedies would restore her sight. The guardian was appointed to make health care decisions and to decide where she would live temporarily or permanently.

*DMB (Guardianship)* [2012] TASGAB 4

DMB was resident at the Wilfred Lopes Centre pursuant to a Continuing Care Order. Emergency and uncoordinated responses to DMB's mental illness have seen her hospitalized for the better part of three years and the evidence suggests that she has regressed under that regime. A guardian, having decision making powers over health care and accommodation can provide a unified approach to health care and accommodation decisions and promote consistency and coordination as well as promoting her rehabilitation and freedom.

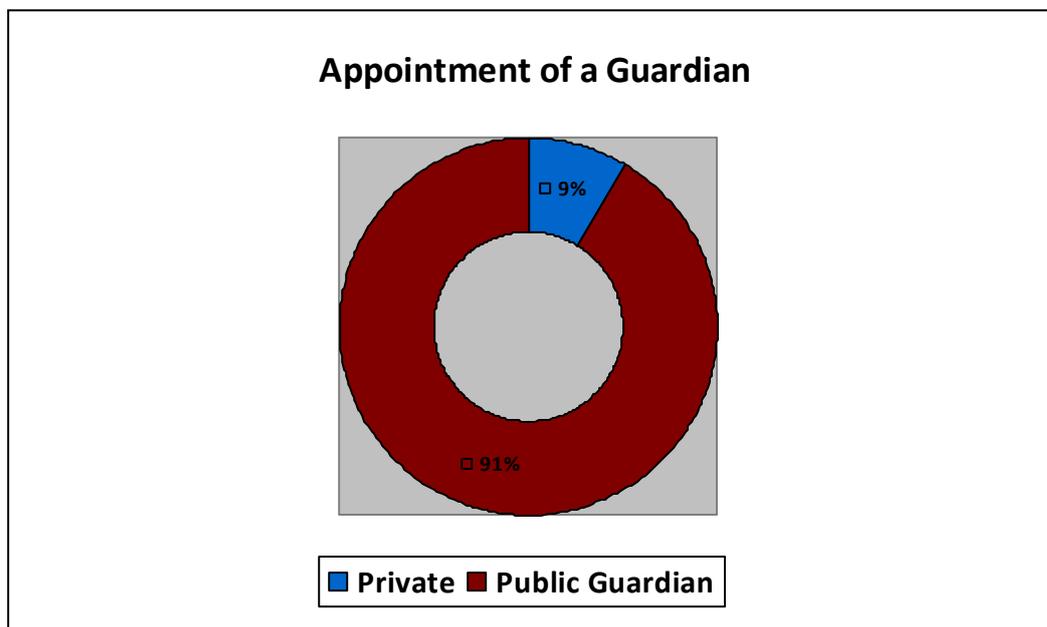
*KJFI (Guardianship and Administration)* [2012] TASGAB 7

Because of her disability, KJFI exhibits verbally and physically abusive behaviour toward her mother, is at risk of physical, financial and sexual abuse from members of her community, is impaired in her capacity to care for herself, and resists carer's plans for assessment and rehabilitation. The Board appointed a guardian to make health care decisions on KJFI's behalf, including obtaining and acting upon an Occupational Therapy report and a psychological assessment for the purpose of treatment and rehabilitation and make decisions about her place of residence.

*LL (Guardianship)* [2012] TASGAB 15

LL is detained on a restriction order at the Secure Mental Health Unit. LL was demonstrating minimal response to antipsychotic treatment. So long as his mental condition fails to improve, the treating team will endeavor to find the treatment or combination of treatments that may break through his resistance to treatment. Because it was likely that treatments will change over time, the applicant considered the appointment of a guardian to have greater flexibility than orders under the *Mental Health Act 1996*. At times LL must be restrained to have treatment. Although a guardian does not have powers to authorise restraint of a forensic patient, the Board was concerned that the Forensic Tribunal guidelines and the Chief Forensic Psychiatrist's Standing Orders were insufficient to protect the rights of a forensic patient with respect to restraint. The Board appointed a guardian to consent to health care on LL's behalf and to monitor the use of restraint to administer medical treatment to LL.

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



The following cases demonstrate some of the considerations that the Board takes into account when selecting a guardian<sup>2</sup>:

*TGM (Guardianship and Administration) [2012] TASGAB 1*

TGM's son and daughter both sought appointment as her guardian. Staff at the Aged Care Facility where TGM lived expressed serious concerns that a move from that premises to another may cause deterioration in TGM's health. Despite these concerns which the Board accepted, TGM's daughter, TMM, stated that she would move her mother if appointed guardian. TGM's son, UM, had limited contact with his mother in recent years, even during the period of his father's death and funeral. He stated that some years ago, he and his family made a conscious choice to step away from family matters because of the impact of TGM's mental illness on family dynamics. Additionally, TGM did not readily express approval for the option of appointing UM as her guardian. The Board did not consider that either of TGM's children were suitable for appointment as guardian.

*HNE (Guardianship and Administration) [2011] TASGAB 20*

HNE, an elderly man with dementia, invests a great deal of trust in his daughter, UI, to make decisions on his behalf. The appointment of UI is reflective of HNE's wishes and will preserve existing family relationships. The Board was impressed that UI had undertaken a significant range of tasks already in preparation for the role as guardian. The role, being limited to making decisions about where he shall live temporarily or permanently, is not a complex one and although members of HNE's family could not agree on many things, they

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

at least all appeared to agree that returning home was not an option and that the point had been reached where HNE requires residential aged care. UI was appointed as a limited 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:

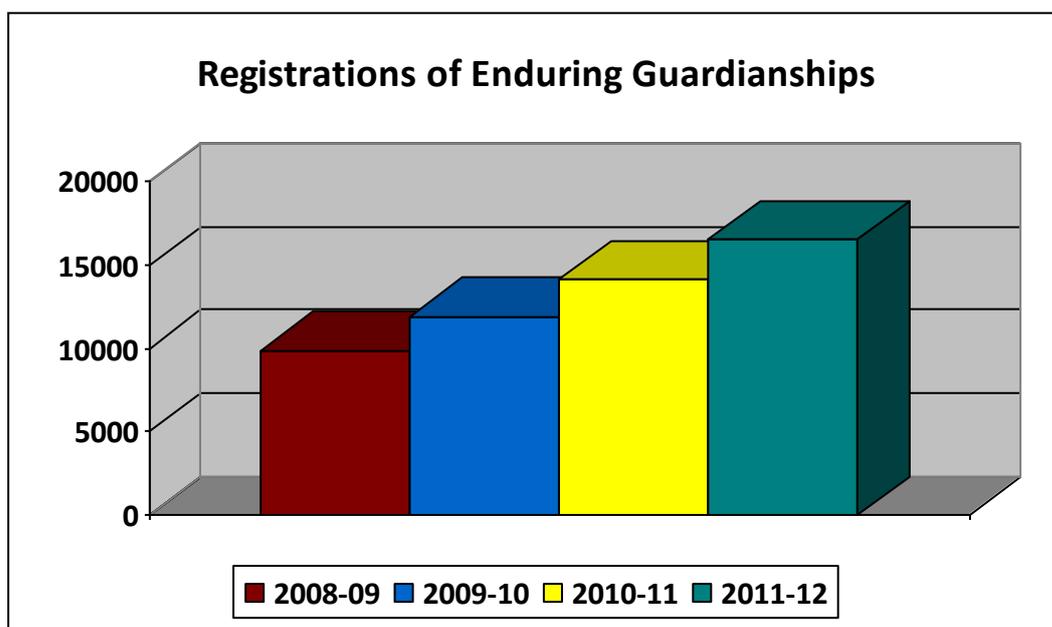
- (i) to foster the provision of services and facilities for persons with a disability;
- (ii) to support the establishment of organizations which support any such persons;
- (iii) to encourage the development of programmes that support any such persons (including advocacy programmes, educational programmes 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 –
  - a) the functions of the Public Guardian; and
  - b) the functions of the Board; and
  - c) the operation of this Act;
- (x) to give advice on the powers that may be exercised under this Act relating to persons with a disability as to the operation of this Act generally and on appropriate alternatives to taking action under this Act;
- (xi) investigate complaints and allegations concerning the actions of a guardian or administrator or a person acting or purporting to act under an enduring power of attorney.
- (xii) investigate and report to the Board in relation to a matter the subject of an inquiry before the Board.
- (xiii) any other function assigned to the Public Guardian by any other Act or law.

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

Because previous annual reports by the Public Guardian have not provided comprehensive data regarding the 12 statutory functions other than ‘acting as a guardian’ assigned to that Office, it is not possible for the Board to report upon the extent to which that part of the Act is being administered.

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

Part 5 of the *Guardianship and Administration Act 1995* enables a person to appoint an enduring guardian to make personal decisions for him or her in the event that the person is no longer capable of making those decisions. An instrument appointing an enduring guardian must be registered with the Board. On 30 June 2012 the register held 16674 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](http://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.

The Board anticipates moving to electronic registration and hopefully to a public search mechanism for the Register of Instruments Appointing Enduring Guardians. This will make the register more accurate and more accessible as well as protecting the integrity of the Register from possible risks of physical deterioration, flood, fire or theft to which the current hard copy register is subject.

Subject to the passing of subordinate legislation, the Board will also commence charging a cost-recovery fee for registrations (see Finances). Such fees will be waived in cases of hardship. Fees generated in this way will be applied towards the core functions of the Board.

### **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 5 applications to review enduring guardianships during the reporting period and 1 application for advice during this reporting period. Following is an example of one of the decisions made during the reporting period<sup>3</sup>:

#### *HC (Enduring Guardianship Directions) [2011] TASGAB 13*

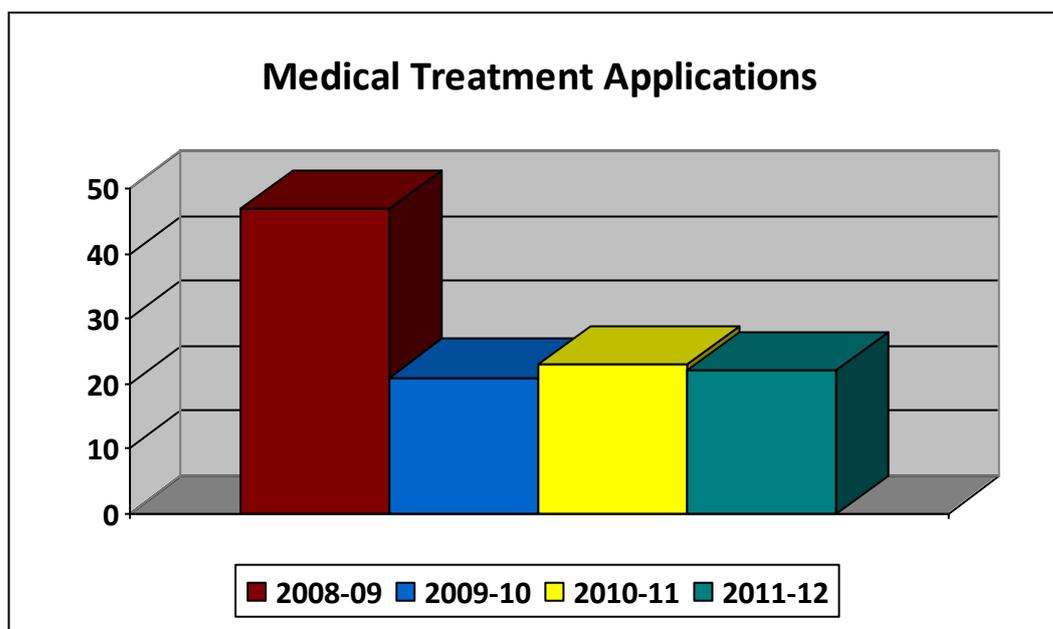
HC had appointed his wife and a close friend as enduring guardian and alternative enduring guardian respectively. Having lost capacity due to dementia, a decision needed to be made about his future accommodation. Both the guardian and the alternative guardian were concerned that making a decision about moving him to residential aged care would destroy their relationships. Both his marriage and the long term friendship are crucial supports for HC. It is clear that this particular decision will carry potentially destructive consequences for the relationships between all three individuals. The Public Guardian was substituted for the purposes of deciding where he should live permanently or temporarily.

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<sup>3</sup> All decisions are available 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* and section 32 of the *Mental Health Act 1996*. Note the comments below (page 23) with regard to the correlation between the decline in these applications and the increase in emergency guardianship orders



Following is an example of a matter decided under this power<sup>4</sup>:

#### *UHM (Medical Consent)* [2011] TASGAB 12

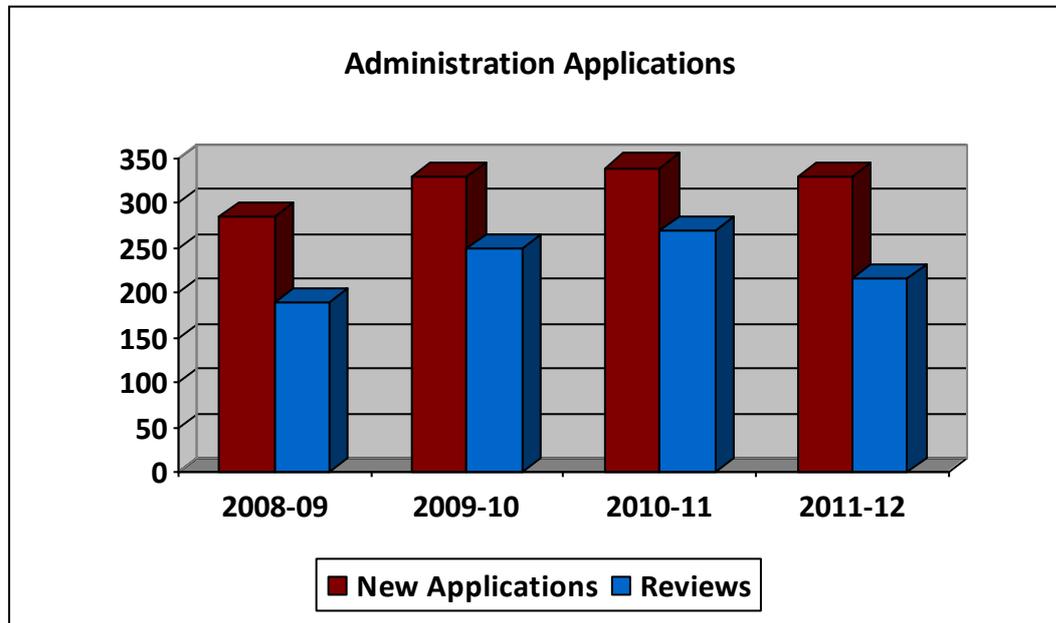
UHM is 42 years of age and has uterine fibroids. Without a hysterectomy, she will have increasing problems with menstruation, in particular her periods will be heavier and prolonged. There is a probability that a failure to remove the fibroids will mean that they will grow and may fill UHM's abdomen. Between August 2009 and September 2010 the fibroids had increased in volume by 70%. UHM has an intellectual disability and is unable to consent to a hysterectomy, although it was her strong wish to have the procedure. Being a special treatment, only the Board can consent to the procedure where UHM lacks capacity. The Board authorized the hysterectomy.

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

### 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.

Following are examples of matters decided under this power<sup>5</sup>:

#### *NHU (Administrator)* [2011] TASGAB 2:

NHU has schizophrenia and has been homeless since he was 12 or 13 years of age. He is described as an impulsive spender, at times preferring to spend his money on illicit drugs rather than essentials. At times a lack of money has inspired him towards aggression and to commit crimes for which he has been charged and found guilty. An inability to consistently pay rent has contributed to his long term homelessness. By consistently paying rent, limiting frivolous spending and reducing his access to illicit drugs an administrator can promote his recovery. The Board appointed the Public Trustee as his administrator for two years.

#### *BMFUM (Administrator)* [2011] TASGAB 15

BMFUM is a 66 year old pensioner with a long standing schizoaffective disorder. Because of her disability, BMFUM has refused to accept funds that she has inherited from her parent's estate. Additionally she was susceptible to having worthless shopping sprees for

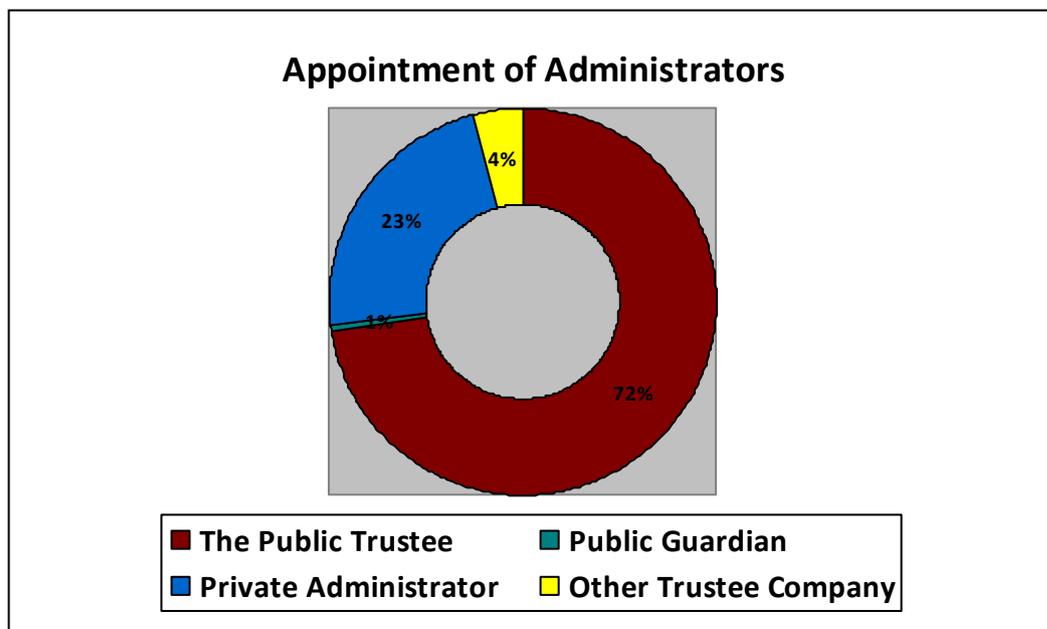
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<sup>5</sup> All decisions are available at <http://www.austlii.edu.au/au/cases/tas/TASGAB/>

items that provided her with no benefit. An administrator was appointed limited to her inheritance to ensure it is managed in her best interests. An administrator can also prevent these significant assets from being either (i) underused as is presently the case with the inherited share portfolio or (ii) used in a future spending spree that will not benefit BMFUM. The Board was not satisfied that she required an administrator with respect to her day-to-day management of her pension. The Public Trustee was appointed as limited administrator for three years.

*ONT (Administration) [2012] TASGAB 9*

ONT has dementia and is unable to manage day to day financial requirements or make major financial decisions. ONT owned property with an estimated value of \$374,000 and receives a payment of \$1,955 per fortnight from a superannuation fund, this being her sole source of income. She had \$34,000 in a bank account. The appointment of an administrator was required to enable the sale of her property to meet the Aged Care Facility bond payment, to facilitate her move to residential care and meet her future financial needs. The Board appointed the Public Trustee as her administrator for three years.



In the reporting year, the percentage of appointments of the Public Trustee jumped from an average of 60% each year to 72%. This most likely relates to a change in practice by supported accommodation facilities with regard to management of residents’ funds. A number of such facilities made service-wide conversions from informal management of residents’ funds to having an administrator appointed for each resident. (See *Management of a Resident’s Funds in a Supported Accommodation Facility, A Legal Perspective* – available on the Board’s website - for an explanation of this change in practice.) Many residents to whom these applications related have little or no contact with families, having been institutionalised for many years. Accordingly, in most cases there were not alternatives available to the appointment of the Public Trustee.

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

### **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. Almost eight percent (7.8%) of the applications were rejected by the Board, mostly for a lack of demonstrated urgency.

A rise in the numbers of emergency applications for the appointment of a guardian in recent years most likely relates to the changing practice of aged care providers where a person with a disability is detained in secure premises. To understand the role of a guardian in these situations, see the Board's policy, *Detention of people with dementia in secure facilities in State care in Tasmania*, available on the Board's website. Many applications and orders made in these circumstances are emergency and short term orders.

Following are examples of matters decided under this power<sup>6</sup>:

#### *KC (Emergency Guardianship)* [2011] TASGAB 28

KC was removed from residential aged care and returned home when her son/attorney became concerned that she could not afford the aged care fees. KC then reported being home alone for 10 days (despite requiring high level care), that she was without adequate food, and that she would cease taking her medication or was, at best, deeply confused about her daily medication regime and liable to make mistakes which could affect her health and wellbeing. The Board appointed a guardian to decide where she should live and suspended the enduring power of attorney, appointing the Public Trustee to manage her estate on an emergency basis.

#### *QNH (Emergency Guardianship)* [2012] TASGAB 12

QNH, an 86 year old man, had been in hospital for 69 days because health professionals were of the opinion that he was not safe to return home, but he was refusing residential aged care. A room had been offered in an aged care facility that met specific requirements set out by caring family members, and the benefits of such a room might have been lost to QNH if not accepted within a very short period of time. Due to his refusal, a guardian was sought to accept the room on his behalf. The Board took into account that the room offered by the specific aged care facility had special features which made it exclusively acceptable to close members of QNH's family. The Board was informed that unless the room was accepted on QNH's behalf it would very shortly be offered to another person. If that occurred, QNH and his family might wait a significant period of additional time (presumably with him remaining in hospital) until another suitable room was offered in that facility or have to

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

accept an unsuitable room in that or another facility. The Board appointed the Public Guardian as QNH's guardian, limited to making decisions about his accommodation for 28 days.

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

Post-hearing procedures represent a significant function of the Board and its officers. The Board received and scrutinized approximately 1300 annual reports submitted by appointed guardians and administrators in the reporting year. It is likely that this figure will continue to increase with increasing numbers of applications.

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.
- 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.
- A failure to provide an annual statement or receipts and statements within 3 months of the first request will trigger an automatic review hearing.
- The Board actively considers an administrator's competence in reporting at review hearings. Administrators whose reports are inadequate have been replaced by the Public Trustee, or another suitable administrator, even where no fraud has been alleged.
- The Board has a dedicated full-time Compliance Office whose duties centre upon the receipt, reconciliation and verification of reports submitted by administrators and guardians.
- All reports by guardians and administrators are firstly reconciled and verified by the Compliance Officer and then submitted to a Board member for approval. It is usually the President who reviews these reports. Where an annual report is not approved, the Board member will either seek more information or require a review of the order 'of Board's own motion'. There have been a considerable number of such reviews.

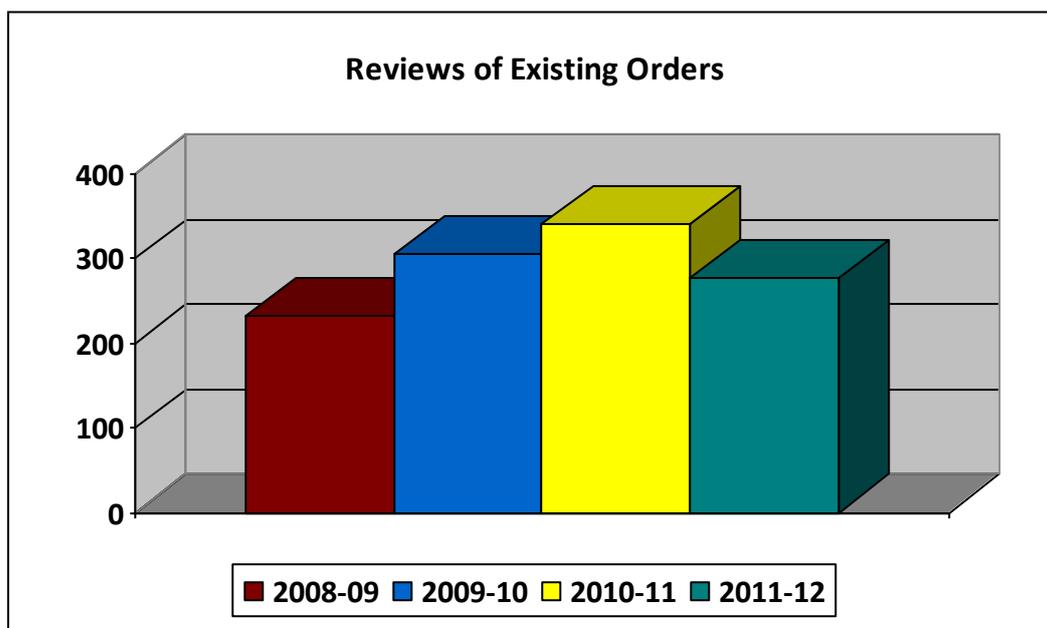
The Board pays close attention to the behaviour of administrators and the management of estates. Sadly, through these processes we have uncovered a number of administrators who have not adhered to their duties.

As mentioned in the Finance section of this Annual Report, subject to the approval of subordinate legislation, the examination and approval process for administrator’s statements of accounts will be the subject of cost-recovery measures on a means-tested basis in the near future. It is proposed that fees will be charged only if the estate is of more than \$50,000 in value. The value of \$50,000 will exclude the represented person’s household furniture and effects, including personal jewellery, the represented person’s principal place of residence or the principal place of residence of the spouse of the represented person or his or her child who is a minor.

### 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 with previous 4 years:



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

During the year to 30 June 2011, 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. 3 applications of Board’s own motion)	21
Emergency suspension	6
Advice and direction	2

The outcomes of those applications were as follows:

Continuing at end of financial year	6
Revocation and appointment of an administrator	6
Appointment of a substitute attorney	1
Declaration that an instrument was invalid	1
Application withdrawn	6
Donor died before hearing	1
Emergency application dismissed	1
Emergency application granted	5
Direction following a hearing	1
Direction without a hearing	1

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 power<sup>7</sup>:

*QH (Review enduring powers and Guardianship) [2012] TASGAB 2*

QH is an 84 year old man who lived in a nursing home in Hobart. In 2008, QH signed an enduring power of attorney appointing his wife, LH. One of QH's four children, KBH, made an application to the Board seeking a review of the enduring power of attorney. The application arose from the family's concerns about the actions of LH and her advice to them that she wanted a divorce and no longer wanted to be QH's attorney. Although some of his children sought appointment as his attorney, QH expressed a wish that he did not want a family member to act as attorney. Accordingly, the Board appointed the Public Trustee as substitute attorney.

*BMT (Review of Enduring Power of Attorney) [2011] TASGAB 26*

A dispute arose with respect to the amount which should properly be provided by the attorneys from BMT's estate for the benefit of his defacto partner ZH. The attorneys made an application, but then wished to withdraw the application. However ZH had continuing concerns with respect to the operation of the enduring power. Leave to withdraw the application was refused pending receipt of further information from ZH.

*FHK (Review Enduring Powers) [2011] TASGAB 18*

FHK appointed the Public Trustee as her attorney under an enduring power of attorney. She is 73 years of age and lives in secure "high care" residential aged care. Her late husband,

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

SCK died in 2010. His will appointed the Public Trustee as his executor, who obtained Probate in 2011. The Public Trustee applied to the Board because of perceived conflict of interest arising from the terms of the will which leaves all of the late SCK's estate to his two daughters. Their concern is that if the donor has a potential claim under the *Testator's Family Maintenance Act 1913* ('TFM claim') they cannot adequately represent both estates. To ensure that the donor's wishes in appointing an enduring power of attorney are not disturbed, but to also ensure that her best interests are investigated and promoted, the Board directed the Public Trustee to immediately seek independent legal advice as to the prospects of success of a TFM claim by the donor against her late husband's estate. Once advice was obtained by the attorney it would be submitted to the Board for a further direction from the Board about whether an administrator needs to be appointed to pursue a TFM claim or whether the attorney/executor can proceed to distribute the estate to the nominated beneficiaries without the need for a TFM claim.

### **Applications under other legislation**

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

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

No applications have been received under the *Disability Services Act 2011* in this reporting year.

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

Statements of reasons are produced upon request by a party pursuant to section 74 of the Act or where the Board members determine that reasons ought to be produced. All statement of reasons are de-identified and published on the Australian Legal Information Institute website: [www.austlii.edu.au](http://www.austlii.edu.au). As at the time of publishing this report there are 164 decisions spanning from 2002 to 2011. Publishing de-identified statements of reasons is important because it enhances our 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-seven statements of reasons were written during the reporting year, a 60% increase from the last reporting year. An increase in the numbers of statements of reasons written also represents a major increase in workload for Board members.

There were no appeals from Board decisions in the reporting year.

## Community Outreach

### Meetings with Regular Users

This year the Board established a Regular Users Group by inviting the following organisations to provide a representative to two meetings annually to provide feedback on procedural matters regarding how the Board engages with relevant parts of our community:

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

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

The meetings focus on the service-delivery aspect of the Board's work and relate to a structured agenda. The meeting is also an opportunity for the Board to inform regular users of any changes to forms, new policies or facilities. Meetings on 5 December 2011 and 18 June 2012 were 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. 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*

DHHS – Review of the *Alcohol and Drug Dependency Act 1968*

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

The President is part of an Independent Working Party working towards unification of Tasmania's tribunal system which aims to present an Options Paper to Government for consideration in the near future.

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

Department of Justice – Disability Framework for Action

DHHS – Elder Abuse Prevention Advisory Committee

DHHS – Elder Abuse Prevention Referral Pathways Working Group

DHHS – Elder Abuse Prevention Law Reform Working Group

Cradle Coast Electronic Health Information Exchange (eHIE) Project

National Mental Health Recovery Framework

Council of the Ageing – Elder Financial Abuse Reduction Project

### **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 organisations that the staff members or members of the Board have addressed during the reporting year is attached at Appendix 3.

In response to the introduction of new statutory functions under the *Disability Services Act 2011* the Board organized a seminar *Assessing Applications for Restrictive Interventions* for Board members. We were fortunate to be addressed by national experts in this area, Dr. Jeffrey Chan and Dr. Danny Sullivan. Both speakers generously provided their time without fee, with the Board meeting their travel and accommodation costs. The Board opened up the training session to persons in the disability services field and disability advocates. The seminar was extremely well attended and received. A video recording of the seminar was funded by Disability Services and will be available to Disability Services staff in the future.

The President has been an active member of the Elder and Succession Law Committee of the Law Society and, in her previous role as Chair of that Committee, organized a seminar *Elder Law Practice Issues and Reforms* during the reporting year. The seminar was made available to disability advocates, staff of the Public Guardian and Public Trustee as well as the legal profession.

The President is also a member of the Elder and Succession Law Committee of the Australian Law Council and a presenter at the annual Tribunals Conference of the Australian Institute of Judicial Administration. The President is the current Chair of the Australian Guardianship and Administration Council and the Convenor of the upcoming World Congress on Adult Guardianship to be held in Melbourne in October 2012.

### **Website and Publications**

The Board's website includes application forms, health care professional report pro formas, facts sheets, policies, process information and annual reports. All the Board's publications can also be downloaded from the website. The website address is [www.guardianship.tas.gov.au](http://www.guardianship.tas.gov.au)

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 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
- National Guardianship Standards (By the Australian Guardianship and Administration Council)
- National Standards for Financial Managers (By the Australian Guardianship and Administration Council)
- Management of Resident's Funds in a Supported Accommodation Facility – A Legal Perspective
- What is an Emergency? Applying for an emergency guardianship or administration order.
- Detention of People with Dementia in Secure Facilities

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

- Who is a party for GAB Proceedings?
- Requests for Transcripts
- Gifts and Settlements
- De-identification of Decisions for Publication

## Office Administration

### Human Resources

The Board had available to it a Registrar and five other staff members; two staff members undertake investigative work and the balance undertake registry responsibilities in conjunction with the Mental Health Tribunal and the Tasmanian Forensic Tribunal. Some staff members are employed part-time.

During the reporting year, there have been a number of changes to the appointments of the Investigators with the two holders of the substantive positions both taking leave without pay for significant periods to 31 January 2013. Those positions have been filled in the interim but, because of the time required for advertising and selection of positions, there have been significant periods when we have only had one Investigator available to the Board. The Board expresses its thanks to Board members Elizabeth Dagleish and Rowena Holder for stepping in to assist with investigations which has ensured that the work of the Board has continued to its usual high standards and prompt listing of hearings. Thanks also to the other staff in the Office who have not only taken on extra duties to meet the demands, but who have assisted in training newly appointed Investigators.

### Finances

A full financial summary is at Appendix 4.

After many years of being critically underfunded, the Board is unable to continue to deliver services at its current level without a significant injection of funds. Although the bottom-line of our funding has not been cut, increases in public sector wages anticipated in the next term will mean that fixed cost are greater.

Acknowledging the financial position across Government, the Board has proposed to the Department of Justice and Treasury that the Board commence cost recovery on some limited parts of its function. Treasury has approved that, meaning subject to the passing of subordinate legislation, the Board can retain the funding generated to subsidise our core activities and there will be no reduction in the existing budget allocation.

Section 90(2) of the *Guardianship and Administration Act 1995* provides for the recovery of fees. The Board's proposal is limited to charging a cost-recovery fee on registration of instruments appointing or revoking enduring guardians, copies of documents, examination of statements of accounts by administrators (generously means tested) and transcripts. The Registrar will have discretion to waive fees in circumstances of hardship and there will be a reduced fee for clients of the Public Trustee.

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

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

## Appendix 1 - Board Members at 30 June 2012

**Anita Smith – President** Appointed: 1 January 2003 and 1 January 2008 (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 is an *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. Anita is the Chair of the Australian Guardianship and Administration Council and the Convenor of the 2012 World Congress on Adult Guardianship.

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

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

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

**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.

**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 has been 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 & Gee and Dobson Mitchell & Allport. She has practised mostly in litigation, including criminal law, family law and personal injuries litigation.

Kate is also a member of the Forensic Tribunal and the Mental Health Tribunal, a Director of the Motor Accidents Insurance Board and is the Chair of the Integrity Assurance Board under the *Racing Regulations Act*.

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

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

**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** 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. 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 and July 2010

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

Rowena Holder graduated from the University of Tasmania with a Bachelor of Arts and Law in 1995. She was admitted as a Barrister and Solicitor of the Supreme Court of Tasmania in 1996. Since that time she has worked in private practice practicing in litigation, including criminal law, personal injuries law and family law. Rowena is currently employed as a legal practitioner at the Legal Aid Commission of Tasmania. Rowena is also a member of the Board of Directors of Presbyterian Care Tasmania.

**Wendy Hudson** Appointed: 21 February 2005 and reappointed 30 June 2008

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

**Grant Kingston** Appointed: 17 December 2007 and March 2011

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.

**Rodney Lester** Appointed: 16 October 2000, reappointed May 2004, June 2007 and July 2010

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 a member of the Integrity Assurance Board.

**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.

**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, Australian Health Practitioner Regulation Tribunal.

**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 firsthand 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, and applications for gifts and statutory wills.

**Leanne Topfer** Appointed: 21 September 2009

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

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

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

**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

	2007-08	2008-09	2009-10	2010-11	2011-12
<b>Applications received</b>					
Total applications rec'd	826	873	974	1085	1029
Guardianship normal	125	142	141	136	148
Guardianship emergency	74	101	140	188	205
Administration normal	266	215	251	242	235
Administration emergency	39	54	79	98	81
Medical consent	30	47	21	23	23
Statutory Will	1	6	1	0	0
Other (EPA's, gifts, advice etc)	57	77	37	57	60
Review of existing orders	234	231	304	341	277
<b>Hearings conducted</b>					
Total hearings	583	611	643	719	669
Guardianship	82	117	111	105	120
Administration	200	167	212	205	220
Medical consent	24	44	15	16	16
Statutory Will	2	3	0	1	0
Other	30	36	21	52	34
Reviews	245	244	284	340	277
<b>Hearings by region</b>					
South	346	369	332	410	370
North	147	150	186	198	188
North West	89	92	125	111	106
<b>Outcomes</b>					
Guardianship orders	67	118	101	91	81

Administration orders	345	330	386	436	389
Medical consent orders	21	30	13	14	15
Other orders (EPA's gifts, etc)	22	17	13	12	14
Statutory Will orders	1	0	0	0	0
Applications dismissed	39	37	48	45	77
Matters adjourned	33	30	40	47	48
Applications lapsed/ withdrawn/ advice only	136	87	78	73	77
<b>Community &amp; Professional Education Sessions</b>	41	37	48	24	28

## Appendix 3 – Professional Development and Community Education provided by the Board

The Board presented 28 professional development seminars to related agencies and organisations and published in two external publications. The most significant education program delivered by the Board in the reporting year was providing half-day seminars to all Local Area Coordinators (LAC) in Tasmania in the sessions for Baptcare and Mission Australia. LACs have assumed the workload that was previously undertaken by Service Coordinators in Disability Services.

### **Anita Smith:**

*Australian Institute of Judicial Administration Tribunals Conference - Panel discussion: Impact of Australia's Decision to Ratify the UN Convention on the Rights of Persons With Disabilities on the Legislation Governing, and the Practice of, Guardianship and Mental Health Tribunals in Australia*

DHHS - Roy Fagan Centre

DHHS – Social Workers, Royal Hobart Hospital

DHHS – Mersey Hospital staff by video link

*The Law Society – Litigation Convention – Preparing for and Appearing in the Anti-Discrimination Tribunal, the Mental Health Tribunal and the Guardianship and Administration Board*

Tasmanian Hospitals and Health Care Facilities 58<sup>th</sup> Auxiliaries Conference – Guest Speaker

Devonport Polytechnic – Aged Care Students

Statewide presentations to Baptcare South West, Baptcare Launceston, Mission Australia North West, Mission Australia South East half-day seminars on:

*An Introduction to the Guardianship & Administration Board, Tasmania*

*Consent to Medical Treatment and Restrictive Interventions*

*Essentials in making an application to the Guardianship & Administration Board*

University of Tasmania Law School - Introduction to Law Students

University of Tasmania School of Nursing and Midwifery - Teaching Aged Care Facilities  
Queen Victoria Home

University of Tasmania School of Medicine – *Intellectual Disability, Legal Perspectives*

Director of Public Prosecutions staff – *Communication and People with Disabilities*

St Giles Society - staff training

Public Trustee – Senior’s Week presentation

Camerons Accountants – *Enduring powers and the role of the GAB*

*Are Guardianship Laws and Practices Consistent with Human Rights Instruments? A Chapter for Comparative Perspectives on Adult Guardianship* - to be published by Carolina Press in late 2012

Contribution to report on sterilisation of children with disabilities - *Marie Claire* June 2012 edition

**Colin McKenzie:**

Spencer Clinic - North West Regional Hospital

North West Regional Hospital

**Rowena Holder:**

Devonport Polytechnic – Aged Care Students

**Sue Hill:**

St Giles Society - staff training

Citizen Advocacy, Launceston

**Catherine Gavan:**

Aged Care Standards and Accreditation Agency Ltd. – Panel discussion - *A resident with no family, what should a home be thinking about?*

**Mary Davies:**

Devonport Polytechnic – Aged Care Students

## Appendix 4 – Financial Summary 2011 - 2012

<b>Guardianship and Administration Board</b>			
	<b>Budget</b>	<b>Actual Expend</b>	<b>Variation</b>
<b>EMPLOYEE RELATED</b>			
	586,102	561,215	24,887
<b>TRAVEL AND TRANSPORT</b>			
	25,400	19,321	6,079
<b>MATERIALS, SUPPLIES &amp; EQUIPMENT</b>			
	11,900	15,244	-3,344
<b>PROPERTY EXPENSES</b>			
	46,000	46,798	-798
<b>FINANCE EXPENSES</b>			
	0	0	0
<b>INFORMATION TECHNOLOGY</b>			
	15,778	16,557	-779
<b>CONSULTANTS</b>			
	0	0	0
<b>OTHER EXPENSES</b>			
	30,548	61,236	-30,688
<b>TOTAL</b>	<b>715,728</b>	<b>720,371</b>	<b>—4,642</b>

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