

29 September 2005

The Hon Judy Jackson, MHA,  
Attorney General  
Minister for Justice and Industrial Relations

In accordance with the requirements of Section 84 of the *Guardianship and Administration Act 1995*, I am pleased to submit the report of the performance of the functions of the Guardianship and Administration Board for the year 1 July 2004 to 30 June 2005.

Anita Smith  
**PRESIDENT**  
Guardianship and Administration Board

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## President's Report

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### Anita Smith

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It is my pleasure to present my third report as President of the Guardianship and Administration Board. It is a privilege to undertake this role of President of the Board, which brings with it the opportunity to work with highly skilled and dedicated Board members and staff members and the opportunity to cooperate with the offices of the Public Guardian and the Public Trustee.

Most of all, it is a privilege to be in a position to make decisions that have a measurable positive effect in the lives of vulnerable people in difficult circumstances. Because of the provisions that require the Board to review orders every three years, members get the opportunity not only to make decisions but to see how the orders that we make have impacted in the lives of the represented persons. Overwhelmingly, that impact is positive.

On behalf of Board members I would like to acknowledge that those responsible for bringing about such positive changes are:

- Represented persons themselves who evince a desire to improve their lives and act upon it
- Family members, social workers, advocates, medical practitioners, public servants and care givers who identify a need for substituted decision making and pursue an application before the Board, then support the operation of the orders after they are made
- Committed administrative and investigation staff of the Board who ensure that applications and resultant orders focus upon areas of actual need in the life of the person with a disability
- Highly dedicated guardians and administrators who carry out the instructions of the Board, cognizant of the principles of the Guardianship and Administration Act 1995 (the Act) and the important responsibility that has been vested in them

I wish to thank Board members who undertake their important role with great efficiency and commitment to the well being of people with disabilities. Board members intelligently and compassionately ensure that hearing procedures are accessible and procedurally fair and that their orders are appropriate. I note that the level of payment for Board members does not reflect the expertise that they bring to the role or the value of their time. I hope that a review of the sizing of Board members fees will proceed in the next financial year to better reflect the value of that work.

Congratulations to 13 new Board members who have joined the Board this year. Anne Tullgren, who was appointed in 2002, did not seek re-appointment when her term expired. On behalf of the Board, I wish to record our thanks for her work for the Board and wish her well in future endeavours. Congratulations also to Board member, Melanie Bartlett who has been appointed as a temporary magistrate.

A number of important changes have occurred for the Board this year. These include:

- A move to new and more suitable premises
- Re-development of our website
- Ongoing development of the *Manual for Members of the Guardianship and Administration Board* with 13 chapters now completed
- Development of a targeted and comprehensive education program for the Government services who most frequently submit applications to the Board

- Development of a community education program within Adult Education
- The first prosecution under the provisions of the Act
- The induction of 13 new members to the Board, and
- A further increase in the number of applications to the Board

Each of these issues are detailed within the body of the report, but I wish to record my thanks to the staff members and members of the Board who have assisted in bringing these changes about and also coped with the increase in workload.

On 23 June 2005, in response to an exchange during Parliamentary Estimates regarding the operation of the Board, I wrote to the Departmental Secretary indicating an increase in both the number and complexity of matters coming before the Board. I anticipated that without an extension of funding and available staffing, the Board and its staff could not continue to operate efficiently. I am pleased to report that the Department has responded by the time of writing this report to put in place some stop-gap measures. These will assist in coping with the extra demand in the short term. It is still important that the long-term funding of the Board is reviewed.

Mary Rowe who has undertaken investigations on behalf of the Board in North West Tasmania has resigned her position which she has held since 2002. Mary's investigative and interpersonal skills have been highly valued by the Board. We thank her for her hard work and wish her well in her relocation to the South.

I wish to record my thanks to former member Joan Fitznead who volunteered her time to assist with the editing of the new Manual. I would also like to thank Gina Goodman who attended as a volunteer on work experience in the office for some weeks as part of her legal professional training.

To the staff of the Board I record my appreciation for their efforts during an unusually busy year. As always they have undertaken their tasks with efficiency and dedication to the principles of the Act.

Anita Smith  
**PRESIDENT**

## **Role of the Board**

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### **Major Statutory Functions**

The Guardianship and Administration Board's (the Board) functions are established by the *Guardianship and Administration Act 1995*. Supplementary functions are established in Division 9 of the *Wills Act 1992*, Part 4 of the *Powers of Attorney Act 2000* and section 32 of the *Mental Health Act 1997* (MHA).

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

Other statutory functions of the Board include giving advice and directions to guardians and administrators, monitoring and if necessary revoking 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, to order their removal to a safe place.

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

### **Investigation and Case Management**

Under the general direction of the Registrar and the President, staff members of the Board control the process of receiving applications, referring them for investigations, seeking specialist reports and listing applications for hearing. The legislation requires that the hearing of an application must commence within 45 days of receipt of the application. Administrative staff members ensure that such timelines are efficiently adhered to, and their high level of organisation is largely responsible for the timely delivery of outcomes to applications.

The investigation by the Board's staff members has two functions. One is to prepare a case for hearing, ensuring all the relevant evidence is placed before the Board. The other function is to ensure that, wherever possible, if the issues that prompted an application can be resolved without a formal appointment, then those less restrictive options are pursued. The Board's investigative staff members consistently take the approach that formal appointments and orders are a 'last resort'. After investigation, staff of the Board may find that applications have been sought in an excess of caution or where other avenues of support have not been attempted. Investigators and administrative staff assist people to access other means of assistance wherever possible. This work involves much time and effort, but is valuable in protecting the rights of people with disabilities as well as promoting the underlying principles of the Act.

## Composition of the Board

On 30 June 2005 the Guardianship and Administration Board was comprised of 31 members. His Excellency, the Governor, appoints members on the recommendation of the Attorney General. Thirteen new members were appointed in early 2005.

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

The Board members are grateful to the organisations that have provided training and professional development during 2004-05. Members of the Board are eligible to be members of the Australian Institute of Judicial Administration (AIJA) or the Council of Australasian Tribunals (COAT) and were therefore able to take advantage of training offered by those organisations. This included a conference for AIJA Tribunals members in Sydney and COAT activities.

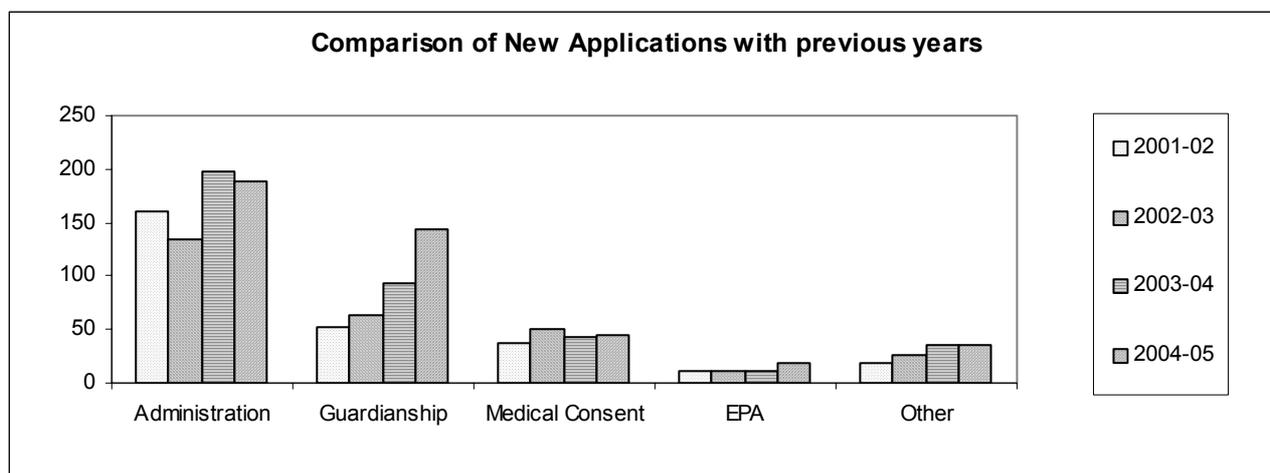
Members of the Board are listed in Appendix 1.

## Applications

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### Applications received

The total number of applications (including the triennial review of orders) received for the period 1 July 2004 to 30 June 2005 was 594. Of these 430 were new applications with the remainder being reviews of existing orders.



The total number of applications (including triennial reviews) in 2003-04 had increased by 25% and was the highest since the Board's inception. In this financial year this marked increase continued with a further 18% increase. Most significantly has been the rapid increase in guardianship applications, which have increased by 125% in just two years. The increase has also been notable in emergency applications in both the guardianship and administration areas.

The increase overall in numbers of applications has been partly attributed to an increasing level of community knowledge of the Board's processes, due to the increased focus on education.

The particular increase in guardianship applications may reflect increasing pressure on Disability Services, one of the key service providers to the Board's potential client group. Increasingly the Board is being asked to appoint the Public Guardian to co-ordinate a matrix of services for people with multiple disabilities and complex needs. The education provided for staff members of Disability Services has meant that applications received from that agency are appropriately targeted.

The increase in guardianship applications may also be due to medical practitioners who provide treatment for psychiatric conditions becoming increasingly aware of the advantages of a consistent case managed approach to consent to medical treatment such as that provided by the Public Guardian under a limited guardianship order, rather than a stage-by-stage approval process by the Board with applications pursuant to Part 6 of the Act. Such a transition from making medical consent applications to making guardianship applications might be evidenced by the fact that while numbers of medical consent applications have remained steady, the numbers of applications for persons with mental illnesses has dramatically risen.

## **Application Forms**

Applications for orders of the Board are usually made in writing and on forms developed specifically for the purpose. The forms are only available from the Board. The Board's staff members endeavour to discuss the issues with potential applicants prior to the actual lodgement of a formal application. This helps people understand the role of the Board and ensures that it is not inundated with inappropriate applications. This practice also allows the Board staff to assist potential applicants to explore less restrictive options.

## **Hearings**

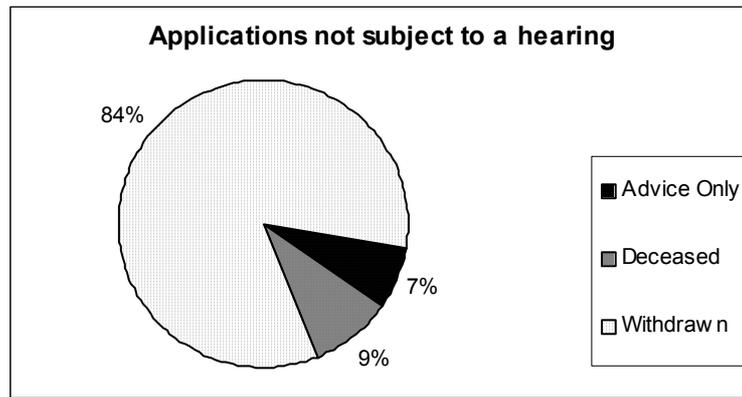
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The Board may sit in a Division of 3 members or 1 member. In uncontested applications, a hearing will run for approximately 45 minutes. Hearings that take longer than 45 minutes usually involve a dispute between parties who disagree about what is in the best interests of the person with the disability. Each hearing is assisted by evidence from the proposed represented person, his or her close associates, carers and health care professionals. Evidence is often presented to Board members in writing, including the health care professional reports and the report of the Investigation and Liaison Officers. Wherever possible, the proposed represented person attends and contributes to the hearings.

The Board conducted 409 hearings during the year, which enabled 97% of matters to be finalised within 45 days; 2.5% of matters between 45 and 50 days; and only 0.5% of matters in over 50 days. Matters taking longer than 45 days were generally non-urgent cases. The deferral of these cases provided additional time for the consideration of alternatives and improved the effective use of the time of Board members.

In 2004-05 there was an 18% increase in the number of applications but the proportion extending beyond 45 days has remained steady.

One hundred and eighty five (185) applications received during the year did not proceed to a hearing. Slightly more than half of these were matters, which were emergency matters and decided by the Board ex parte as envisaged in the legislation; of the others the reasons for not proceeding to a hearing are as indicated in the following chart.



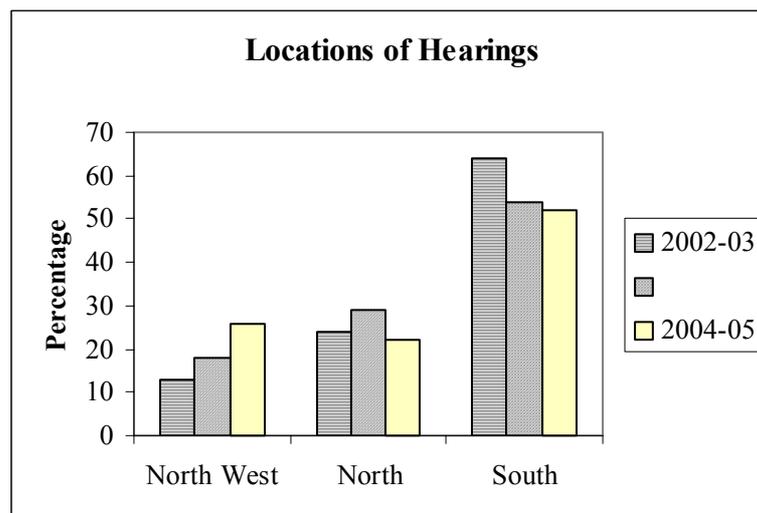
## Location of Hearings

It is Board policy that as far as possible hearings should be held in the place that causes the least inconvenience to the proposed represented person and other interested parties. As the Board's hearing process is relatively informal, hearings can and have been held in hospitals and nursing homes as well as the Board's designated hearing room in Hobart. Most applications for medical or dental consent – particularly those involving patients on a Continuing Care Order under the *Mental Health Act 1996* - are held at the relevant hospital. This enables the patient's medical file to be accessed by the Board during the hearing, allows the treating doctor to attend to present oral evidence, and most importantly enables the patient to give his or her views on the application.

The Board expresses its thanks to the Department of Justice Victims Assistance Unit and Family Based Care Inc for the provision of regular hearing rooms in Launceston and Burnie respectively.

Generally the Board is convened to hear three to four applications in a sitting.

The following graph shows the apportionment of sittings in the three regions of the State for 2002-03, 2003-04 and 2004-05. Of the 409 hearings held in 2004-05, 213 were held in the South, 90 in the North and 106 in the North West. North West hearings are held in either Devonport or Burnie.



409 hearings were held over 137 sittings in 2004-05, whereas in 2003-04 362 hearings were held in 129 sittings – hence the average matters per sittings, other than medical consent matters, has increased from around 3.5 to 4 in this financial year. Medical consent hearings are excluded from this averaging as the majority of medical consent matters are dealt with by single hearing sittings in a hospital setting.

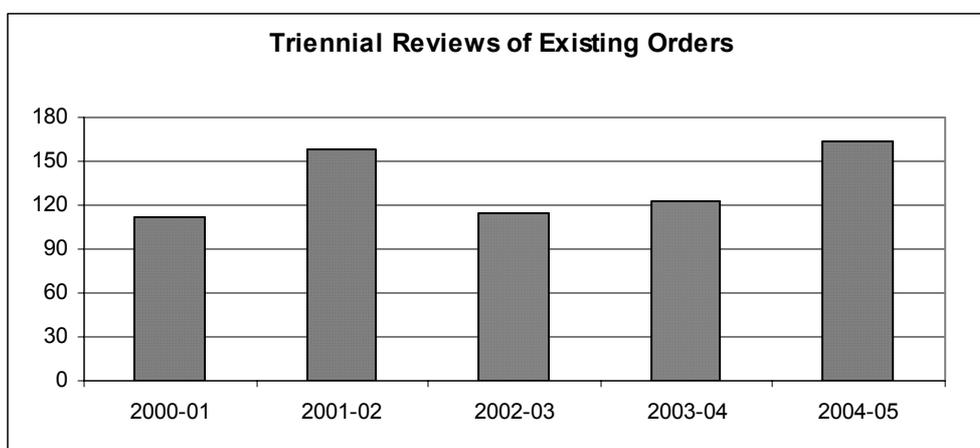
## Review of existing orders

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The Board can only make guardianship and administration orders for a maximum of three years. These orders are reviewed prior to their expiry to ascertain whether they need to be renewed. As the number of orders issued by the Board increases with the ageing population so too will the number of reviews increase. The number of reviews of existing orders increased by 33% from last year and by 4% from the previous 3 year cycle in 2001-02. Every third year has this statistical high for reviews due to the life cycle of the orders set up by the Board's first 18 months of operation, when all existing Supreme Court orders were reviewed.

A hearing to review an order involves consideration of the material presented at the time the order was made and reports about the progress of the represented person and the relative effectiveness of the order.

The following graph provides a comparison with previous years:

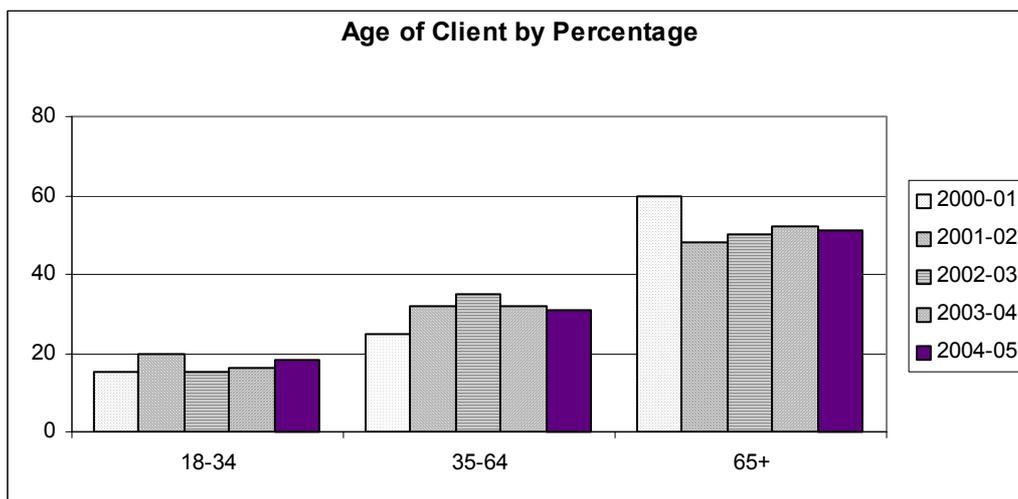


## Client Profile

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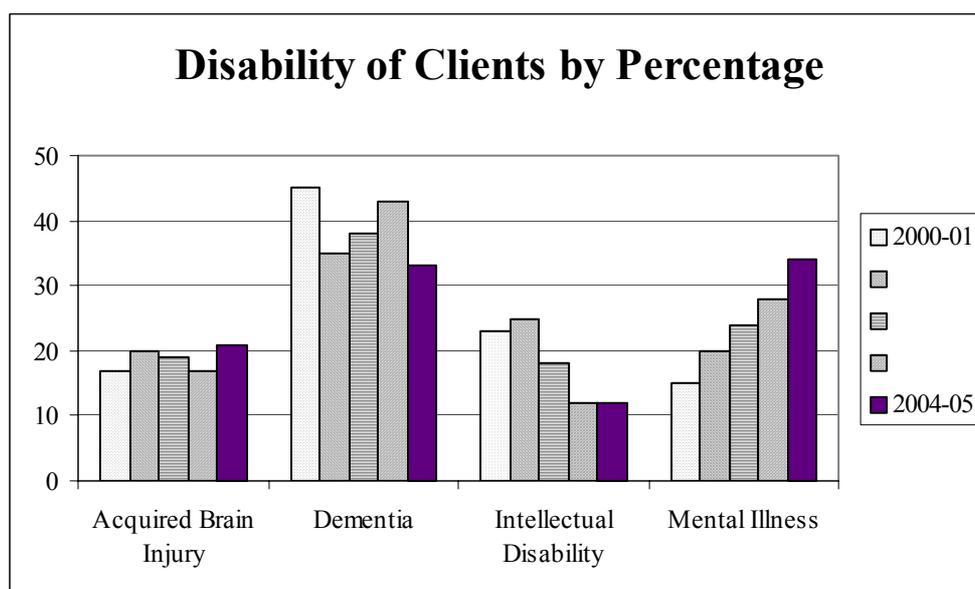
### Age Profile

As the following chart indicates, the age of the Board's clients has remained constant since the Board commenced operations. As would be expected, persons over 65 years of age comprise a significant proportion at 51% of the total client group. This figure may be expected to increase with the ageing population.



## Disability Profile

In 2004-05 33% the Board's new clients have dementia, 12% of new clients have an intellectual disability, 21% have a brain injury and 34% have a mental illness. This represented a shift of 10% away from dementia, with a 4% increase in clients with a brain injury and 6% increase in new clients with a mental illness. As can be seen from the chart the proportion of new clients with a mental illness has been steadily increasing over the last 4 years



## Guardianship Orders

The Board appoints guardians to make personal and lifestyle decisions for an adult with a disability who is incapable of making those decisions. This power arises from Part 4 of the *Guardianship and Administration Act 1995*. A guardian may be needed when assistance from family or friends is not working or not available, when there is a dispute within a family or between family and service providers about what is in the person's best interests, or when the person is at risk of neglect or abuse for any reason which clearly demonstrates the need for the formal intervention of a guardian. Guardianship is only used when there are no less restrictive alternatives available. The Board will

only appoint a guardian where there is a clearly demonstrated need and will not make ‘just in case’ orders.

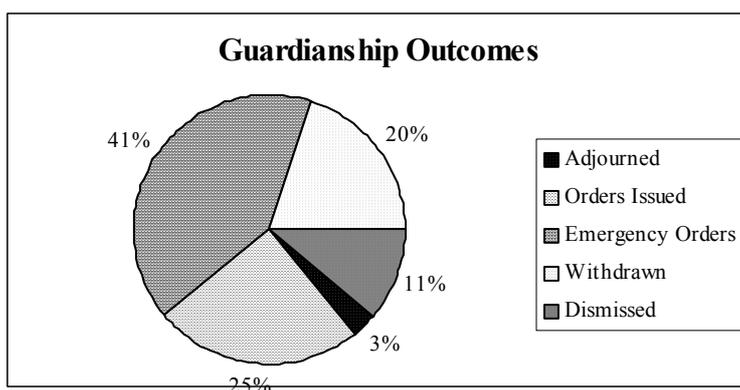
One hundred and forty four (144) new applications for guardianship were received during the year. Of these, 83 were applications for emergency orders where the Public Guardian is appointed for a maximum period of 28 days. Sixty five (65) Emergency Orders were granted, 18 were refused.

Thirty (30) applications subsequently were withdrawn and did not proceed to hearing. The Board issued 31 new orders appointing a Guardian. The Public Guardian was appointed in all but one of these orders. Seventeen applications were dismissed or refused and five were adjourned.

In addition there were 12 reviews of Guardianship orders. In all but three of these, the order was continued for a further period.

Staff of the Board and the Office of the Public Guardian expend considerable time and effort in attempting to resolve guardianship issues before they proceed to an application or a hearing. The making of an emergency guardianship order - effective for 28 days - will often enable the Public Guardian to resolve the issue without the need for a formal application. As a result of this proactive approach, the number of guardianship orders in operation at any given time will be approximately 15% of the number of administration orders. Additionally, guardianship orders are generally made for shorter periods of time and with greater limitations than administration orders. These statistics, more than any others, demonstrate the principle of the ‘least restrictive alternative’ in operation.

The Board’s investigative and administrative staff spend considerable time and effort in finding a solution to the problem before the matter reaches crisis point. This work can include arranging meetings of interested parties who may have been in dispute or conflict, contacting service providers directly - including Aged Care Assessment Team (ACAT) staff, social workers in hospitals or the directors of nursing in aged care facilities, to offer support and suggest solutions. Discussion will often take place with the person who has a disability, or his or her advocate, to attempt to settle ‘lifestyle’ issues.



## Enduring Guardianship

Part 5 of the *Guardianship and Administration Act* 1995 enables a person to appoint an enduring guardian to make personal and lifestyle decisions for him or her in the event that the person is no longer capable of making those decisions. The enduring guardian has wide powers to make lifestyle decisions.

The instrument appointing as enduring guardian must be registered with the Board. As at 30 June 2005 the Board had registered 1928 enduring guardianships, up from 1157 12 months earlier. This

represents a continuing upwards trend since the start of a public awareness campaign commenced in the 2002-03 financial year.

At the start of 2003, the ratio of adult Tasmanians with registered enduring guardianships was approximately 1:1000. Since the publicity campaign it is now almost 7:1000. Staff generously assisted the publicity campaign by supplying thousands of information kits, conducting Education sessions and answering hundreds of enquiries from members of the public. Over 5000 kits were issued in 2004-05 and the kit is now available for download from the Board's website: [www.guardianship.tas.gov.au](http://www.guardianship.tas.gov.au).

The Education program has now been extended to include regular evening sessions "*Writing and Registering your Enduring Guardianship*" as part of the Adult Education program, these sessions are run in all three regions of the State.

The Board notes that approximately half of all enduring guardianships registered with the Board have been prepared and submitted by legal practitioners. Presumably this reflects a responsible practice of legal practitioners in encouraging their clients to execute an enduring guardianship as part of their client's estate management and planning, along with Wills and enduring powers of attorney.

## **Administration Orders**

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### **Administration Applications**

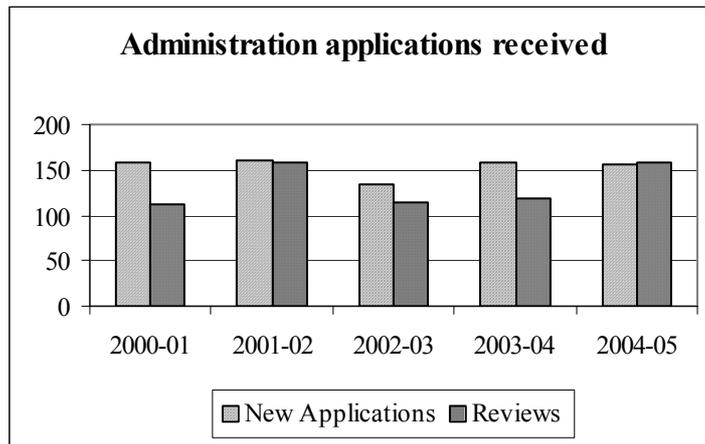
Part 7 of the *Guardianship and Administration Act* 1995 provides the framework for the appointment of administrators to undertake financial management on behalf of people who, by reason of disability are incapable of making reasonable financial judgments. The Board has consistently received more applications for the appointment of an administrator than any other kind of application. Although in 2004-05 the proportion of administration applications fell significantly below 50% for the first time in the Board's history.

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 judgements in respect of matters relating to his or her estate. In most cases the proposed represented person is over 65 years of age and suffering a form of dementia. Other common applications are for younger people with disabilities who are unable to control spending due to impulsiveness or addiction to alcohol, cigarettes, and other drugs or gambling.

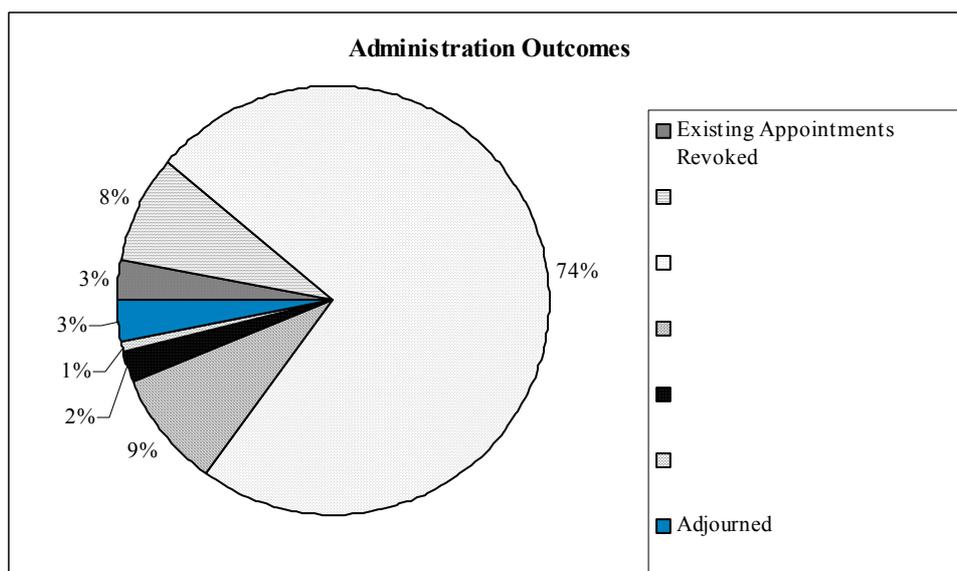
Because of the operation of privacy principles and the need for certainty when dealing with finance and property, there are fewer effective less restrictive options to administration than there are for guardianship. Financial institutions cannot accept informal arrangements for dealing with a person's estate, so both applications and orders for administration applications are more frequent.

### **Administration applications received**

Three hundred and forty six (346) applications for administration were received during the year, which included 32 applications for emergency orders and 158 reviews of existing administration orders.



The Board subsequently issued 306 orders of which 286 appointed an administrator, 13 revoked the existing appointment of an administrator, and on seven occasions dismissed the application. This figure includes 32 emergency orders appointing the Public Trustee as administrator. Twenty-seven applications were withdrawn prior to hearing; and five applications lapsed due to the death of the person who was the subject of the application.

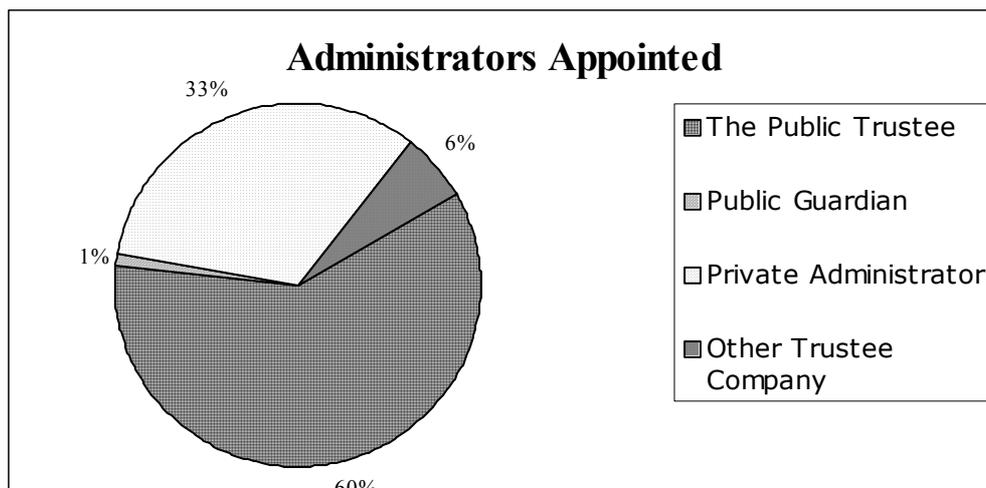


## Types of Administration Appointments

Section 54 of the Act enables the Board to appoint The Public Trustee, a trustee company, the Public Guardian or another person as an administrator. In respect of private administrators the Board must be satisfied that the proposed administrator is a suitable person to perform the role, has sufficient expertise and will act in the represented person's best interests. During the reporting year, the Board appointed private administrators in 33% of cases, compared to 40% in 2003-04.

In the previous annual report, the President reported that the State Government and the Public Trustee had reached an agreement that the Government would meet certain fees charged to the estates of represented persons with estates up to a value of \$100,000.00. The 7% decrease in appointments of private administrators is most likely a reflection of the advantages of the operation of that agreement. The Board would previously have to balance the cost to the represented person

against the advantages of professional management of estates. Reduced cost of administration means that professional administration is more realistic for more people.



## Enduring Powers of Attorney

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During the year to 30 June 2005, the Board received 18 applications for review of enduring powers of attorney (EPA) under the provisions of the *Powers of Attorney Act 2000*. In three cases the Board revoked the EPA and appointed an administrator, two substitute attorneys were appointed and five emergency administration orders were made. One application resulted in the Board giving direction to the attorney, one was dismissed and five applications were withdrawn. One donee was deceased before the application was dealt with.

## Consent to Medical and Dental Treatment

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Consent to medical and dental treatment comes within the jurisdiction of the Board through Part 6 of the *Guardianship and Administration Act 1995* and section 32 of the *Mental Health Act 1996*.

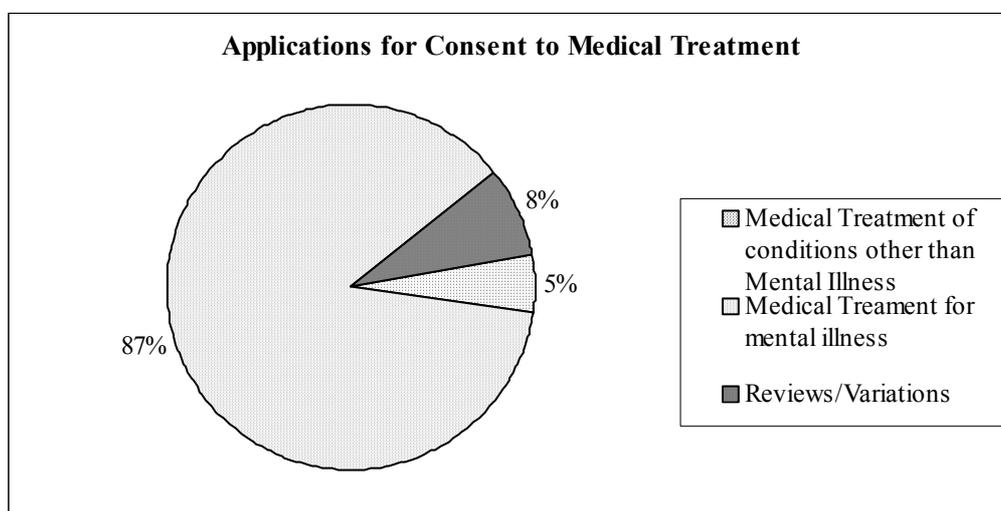
The *Guardianship and Administration Act 1995* ensures that a person with a disability who cannot give informed consent for medical or dental treatment is assisted in obtaining appropriate treatment. The essential elements of the legislation in this regard are:

- It is unlawful to carry out medical or dental treatment on a person with a disability who is incapable of consenting to the proposed treatment unless either a substitute consent for the treatment has been given, or the circumstances are such that consent is not legally required (eg emergency situations).
- In most cases where substitute consent is needed another adult person who meets the criteria as the 'person responsible' under the Act can provide it.
- If the proposed medical or dental treatment is classified as 'special treatment' only the Guardianship and Administration Board can consent.
- Some medical or dental treatment will not require consent. Urgent treatment and some minor treatment such as non-intrusive examinations are examples.

## Applications received

The Board received 44 applications for consent to medical treatment for persons with a disability who were incapable of consenting to treatment. This included 38 applications for consent to psychiatric treatment for persons with a mental illness who were unable to consent to treatment or was refusing treatment and three applications were for review or variation of existing orders. Of these 44 applications, only 32 orders were made, the others were either formally refused or withdrawn after consultation with the Board's staff.

The relatively small number of applications may reflect the fact that the 'person responsible' system works well. For most medical or dental treatment the 'person responsible' for the patient can consent or refuse consent to treatment. However, it might also reflect a level of misunderstanding amongst medical practitioners about how to lawfully obtain medical consent from people with impaired mental capacity. It appears that many medical practitioners are relying upon outmoded ideas of 'next of kin' or 'doctor's orders' rather than a working knowledge of the system provided by the legislation. The Board looks forward to extending its education program to reach more medical practitioners in the new reporting year.



## Requests for Statements of Reasons and Appeals

The Board received 9 requests for statements of reasons.

Following receipt of statements of reasons 3 matters were appealed to the Supreme Court. Of those matters 2 appeals were withdrawn and one has been adjourned sine die.

The Board published a new policy document this year entitled: "*How can I challenge a decision or order of the Guardianship and Administration Board?*" The number of requests for statements of reasons reflects the circulation of that policy statement. The Board encourages parties to a hearing to seek a statement of reasons so that they can gain a fuller understanding of the reasoning process.

Preparation of statements of reasons has a range of benefits in the appropriate delivery of justice and the professional development of Board members and the education of the community. Where a statement of reasons covers interesting or novel issues, it will usually be de-identified and then published on the website. To have the previous decisions of the Board available on the website is

invaluable in giving access to members of the community and the legal profession to the reasoning processes and the particular values of the Board.

## **Proceedings in Other Legal Forums**

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The Board was a complainant in a prosecution relating to an article with accompanying photograph concerning X, a person in respect of whom proceedings of the Board have been brought, published in the October 16<sup>th</sup> 2003 issue of the Advocate Newspaper.

Section 13 of the *Guardianship and Administration Act 1995* prohibits publication of any particulars calculated to lead to the identification of any person in respect of whom any proceedings of the Board have been brought, or any pictures of such person. Magistrate Wilson found the complaint proved and imposed a fine upon the Advocate Newspaper Pty Ltd.

This was the first prosecution of its kind and provided valuable guidance for the Board in understanding the boundaries of publication of materials relevant to application and hearing processes. It has also had an educative effect across all media outlets, with journalists now making a practice of contacting the Board before proceeding to print.

The operation of section 13 was subject to questions in Parliament during the reporting year, following an article produced by the Mercury Newspaper on 18 February 2005. Members of Parliament should be reassured that orders of the Board do not operate as ‘gagging orders’ as the ensuing debate implied, but have an important function in protecting the privacy of persons who, by reason of disability, cannot give informed consent to the publication of their personal and private details. Section 13 makes provision for the approval by the Board of publication of such information wherever it is in the public interest. No application has been made by any media outlet for such approval.

# Community and Professional Education

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## Presentations

### Community Education Programme

Greater knowledge and understanding of the operations of the Board and the legislation that we administer has enormous benefits for the community and people with disabilities. Therefore, the Board provides education on request to community, government and professional bodies.

In 2004-2005, the Board extended this longstanding practice to a program of targeting key organisations and offering comprehensive training. Organisations such as Disability Services (North, North-West and South), the Royal Hobart Hospital and the Launceston General Hospital were offered and readily accepted full day training for staff members. Each session was extremely well attended and tailored to the particular organisation, focussing upon the responsibilities of applicants and witnesses in hearings. The Board gratefully acknowledges the willing participation of the Public Guardian, the Public Trustee and the Office of the Director of Public Prosecutions in assisting in the provision of education to these organisations.

The benefits from these programs have been manifold. Firstly, the opportunity to exchange information and ideas with people who are frequently appearing before the Board was educative for all concerned. Secondly, the increased competence of applicants from those services and the knowledge of the areas in which the Board can provide valuable services to individuals have had enormous benefits for those services and their clients. The Board intends to repeat and extend these programs in future years.

Additionally, the Board has commenced to offer sessions to the community through the Adult Education program entitled *Writing and Registering Your Enduring Guardianship*. They operate as a practical 'how to' workshop on how to best ensure the effectiveness of enduring guardianships. The sessions have received very positive feedback and have continued into the new financial year's programs.

A full list of organisations that the staff members or members of the Board have addressed during the financial year is attached at Appendix 4.

Organisations seeking education sessions are encouraged to contact the Board.

### Web site

The Board's web site was completely redesigned and modernised in the year as part of a review of all websites connected to the Department of Justice. The Support of the Department and in particular the Project Team, Grace Neuwenhuisen and Susan Evans must be acknowledged. The vast majority of the work to prepare content was undertaken by the Board's staff and the Board also records its thanks to them.

The new web site is more accessible and includes a range of de-identified decisions, which are representative of the Board's decision making. All the Board's publications can also be downloaded from the website. The website address was also simplified.

## **Publications**

The Board has prepared the following fact sheet publications as educational tools. The fact sheets are distributed through the Board's enquiry service, at community education seminars and on request.

- What is the Guardianship and Administration Board?
- Administration
- Guardianship
- Making a Statutory Will
- Consent to Medical or Dental Treatment
- The Public Guardian
- Enduring Guardianship
- Test for assessing competence for appointing an enduring guardian
- Test for assessing competence for appointing an enduring power of attorney
- Private Administrators Handbook
- Person Responsible
- Grievance Procedures

## **Human Resources**

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The Board has available to it 7 staff members, two undertake investigative work three undertake administrative responsibilities but are shared with the Mental Health Tribunal. In addition, a casual Investigation and Liaison Officer was employed in the north of the State on an 'as required' basis until February 2005. The senior staff of the Board are:

Registrar: Dale Webster

Executive Officer: Jane Bliss

Senior Investigation and Liaison Officer: Anne Perks

## **The Board's Accommodation**

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In December 2004 the Board's office relocated to purpose built accommodation from the offices that it had occupied since 1997. The new accommodation provides a better working environment for staff and the Board. The offices provide a safer and more appropriate venue for the majority of Hobart hearings. Brian Smith and Grant Stokes, from the Department of Justice, were endlessly patient and accommodating during the design, fit out and move and the Board records its thanks to them for that assistance. The Board acknowledges the staff's work to ensure that this difficult process was achieved without interruption to service to our clients, in fact hearings were able to be held on the day of the move.

The Board has also changed venue for hearings in Launceston since January 2005. We now access facilities within the Department of Justice offices at Henty House. These facilities are more easily accessed by clients and provide for a safer and more appropriate environment for hearings.

In Devonport and Burnie the Board hires rooms from the Department of Health and Human Services and Family Based Care Inc respectively.

## **How to Contact the Board**

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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

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)

The Board also provides after hours services, which are accessed by ringing the daytime number.

## Appendix 1 - Board Members at 30-6-05

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### **Anita Smith – President**

Appointed: 1 January 2003

Anita Smith was admitted as a legal practitioner in 1992. After 3 years in private practice, she established the statewide Disability Discrimination Legal Advocate service at the Launceston Community Legal Centre. This service is a federally funded position that provided free legal advice and representation to people with complaints under the *Disability Discrimination Act 1992* (Cth). The service also provides related community education and law reform advocacy.

After 2 years, Anita was seconded to the Human Rights and Equal Opportunity Commission in Sydney as a policy adviser to the Disability Discrimination Commissioner. Following the period of secondment, she was appointed as the Principal Solicitor at the New South Wales Disability Discrimination Legal Centre, a position she held until 1998. Anita was involved in national consultations and negotiations on behalf of the disability community upon the development of disability standards in transport, education and employment.

From 1998 to 2002, Anita was the Senior Adviser and Head of Office for the Tasmanian Attorney General. Anita is also a member of the Anti-Discrimination Tribunal.

### **Ruth Hanson - Deputy President** Appointed: 11 August 1997, reappointed 24 February 2003

Ruth Hanson has a professional background in teaching, and has held various management positions in welfare services and community development programs in both government and non-government services. Ruth served on the former Guardianship Board as the nominee of the Director for Community Welfare from 1987, contributing to the planning and development of the current Board prior to promulgation of the *Guardianship and Administration Act 1995*. She retained this involvement with the wellbeing of people who have disabilities when she was appointed as Deputy President.

Ruth currently serves on the Boards of Management of a number of service organisations and advisory bodies involving people with disabilities in the North West of the State.

### **Board Members**

#### **Kellie Ashman**

Appointed: 21 February 2005

Kellie Ashman was appointed to the Disability Services Ministerial Advisory Council in 2002. She is currently the Deputy Chair of that Council. She has developed and maintained extensive interests within the disability sector. She is a member of the Committee of Management for Tasmanian Acquired Brain Injury Services in Launceston.

#### **Carleen Bailey**

Appointed: 21 February 2005

Carleen Bailey joined the Commonwealth Public Service in 1974. At the time of appointment to the Board, she held the position of Disability Officer for Centrelink in Devonport. She has been the CES Disability Jobseeker Adviser for the North West Coast. She holds a Diploma of Community Services (Disability Work) and a Certificate IV in Assessment and Workplace Training.

#### **Kim Barker**

Appointed: 27 June 2003

Kim Barker has extensive experience working with people with disabilities. She currently has a small private practice as a rehabilitation consultant, counsellor and mediator, and is a member of the Mental Health 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.

**Melanie Bartlett**

Appointed: 22 March 1999, reappointed 28 October 2002

Melanie Bartlett graduated with a degree in Law at the University of Tasmania in 1975 and was admitted as a Barrister and Solicitor of the Supreme Court of Tasmania in 1978. Since that time she has worked mainly in private practice, having worked for the Legal Aid Commission in the late 1970's. Melanie is a member of the Council of the Law Society of Tasmania and was the President of the Society in 1999-00. Until recently she was a Commissioner of the Legal Aid Commission, a member of the Mental Health Tribunal and a partner in a legal firm based in Burnie. Melanie is a member of the Anti-Discrimination Tribunal and was recently appointed as an Acting Magistrate.

**Wendy Beveridge**

Appointed: 21 February 2005

Wendy Beveridge graduated with a degree in Law at the University of Tasmania in 1990. She practised as a solicitor with Jennings Elliot until 1996, when she took up practice at Dobson Mitchell and Allport until 2001. Since that time she has been the Commissioner's delegate with the State Service Commission, undertaken formal training as a mediator and operates her own mediation and facilitation business. She is also a sessional mediator with the Supreme Court, the Anti Discrimination Tribunal and Relationships Australia.

**Catherine Blackmore**

Appointed: 21 February 2005

Catherine Blackmore holds degrees in Arts and Science and was awarded a doctorate from Macquarie University in 1994. She was a consultant to the Department of Health and Human Services in 2004 developing the Tasmanian Mental Health and Wellbeing Educational Framework. She has held positions as a Principal Research Fellow at the University of Wollongong and Associate Professor at the University of Tasmania. She has been a principal investigator in numerous research projects and consultancies. She has published in the fields of ethics, suicide prevention and public health.

**Kate Brown**

Appointed: 21 February 2005

Kate Brown graduated with a degree in Arts Law at the University of Tasmania in 1995 and was admitted as a Barrister and Solicitor of the Supreme Court of Tasmania in 1996. Since that time she has worked in private practice, with Clarke and Gee, Dobson Mitchell and Allport and Simon Brown. She has practised mostly in litigation, including criminal law, family law and personal injuries litigation. Kate is a Committee member of the Tasmanian Bar Association, a Director of the Motor Accidents Insurance Board and a member of the Racing Regulatory Panel.

**Elizabeth Dalglish**

Appointed: 27 June 2003

Elizabeth Dalglish obtained combined Bachelor of Arts and Bachelor of Laws degrees. She has worked as a part time solicitor with the Legal Aid Commission for the past seven years providing community advice on a wide range of legal and social issues. Elizabeth has also worked as a child support solicitor with the Hobart Community Legal Service and has had personal exposure to working with people with disabilities and mental illness.

**Mary Davies** Appointed: 21 February 2005

Mary Davies qualified as a social worker in 1971. She has been employed as a social worker in both government and community based organisations since that time. She is a coordinator with the Dementia Carer Support Service in the North West area of Tasmania. Mary was a founding and ongoing member of the Alzheimer's Association, North West Tasmania.

**Gerard Dibley** Appointed: 21 February 2005

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.

**John de Jong** Appointed: 16 October 2000, reappointed April 2004

John de Jong is a registered psychologist in private practice in Devonport. He holds a Bachelor of Arts degree (Psychology) from Deakin University and Graduate Diploma Counselling Psychology from Monash University. His previous employment includes Clinical Psychologist at Dunburn House, Burnie and Child Welfare Officer and Coordinator of Youth Justice with the Department of Health and Human Services.

**Susan Hill** Appointed: 11 August 1997, reappointed 16 October 2000 and April 2004

Susan 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 in Hobart until 1981 and after moving to Launceston continued in private practice until 1993. Mrs Hill 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. She was a member of the Social Security Appeals Tribunal for 15 Years.

**Patricia King** Appointed: 21 February 2005

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

**Marguerite Lester** Appointed: 11 August 1997, reappointed 16 October 2000 and May 2004

Marguerite Lester holds a Bachelor of Applied Science (Occupational Therapy) degree and a Master in Business Administration. She is currently employed in a part time occupational therapy position working closely with general practitioners and their patients in a specified area of northern Tasmania. Past experience includes employment with organizations involving people with disabilities – Aged Care Assessment Team, Vocational Rehabilitation Service, St Giles in the north of Tasmania and other Hobart based facilities. Mrs. Lester is a member of the Mental Health Tribunal and the allied health representative on the Chronic Disease and Integration Taskforce for the General Practitioner Partnership Advisory Council.

**Rodney Lester**

Appointed: 16 October 2000, reappointed May 2004

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

**Elizabeth Love**

Appointed: 4 February 2002

Elizabeth Love, who holds a Bachelor of Arts (Social Work), is a rehabilitation consultant who has over 20 years experience in social work, a large proportion of which involved clients with intellectual disability, acquired brain injury, psychiatric disorders and substance dependency. Her work in both public and private practice includes extensive experience in isolated and rural regions of Tasmania

**Tony O'Neill**

Appointed 16 October 2000, reappointed 21 February 2005

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

**Terry McGuire**

Appointed: 21 February 2005

Terry McGuire graduated with a degree in Philosophy in 1980 and in Arts Law in 1983 and was admitted as a Barrister and Solicitor of the Supreme Court of Tasmania in 1984. He has worked in private practise, with Fuller and Stace, Doolan and Brothers, James Crotty, Piggott, Wood and since 1994 with Temple-Smith Barclay where he is a partner. He has practised primarily in family law and criminal law. He has formal training in mediation and has been active in the Family Law Practitioners Association of Tasmanian and the Law Council of Tasmania.

**Paul Mayne**

Appointed: 4 February 2002

Paul Mayne holds diplomas in Developmental Disability and the Management of Disability Services. He has worked in the disability/mental health field for over 16 years having trained initially as an auxiliary nurse at the Royal Derwent Hospital and subsequently managed group homes for the intellectually disabled.

**Martin Morrissey**

Appointed: 23 March 2005

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

**Anne Parker**

Appointed: 21 February 2005

Anne Parker is a legal practitioner. She is currently the Senior Adviser to the Office of the Governor of Tasmania. She has been admitted to practise since 1994 and has worked with Marstrand and Ayling, Ogilvie McKenna and the Legal Aid Commission of Tasmania. She has experience in the Magistrates Court and Family Court and in legal education and mediation.

**Leon Peck**

Appointed: 22 March 1999, reappointed 28 October 2002

Leon Peck has a background in health services. He has held the positions of District Manager (West/North West) Aged, Rural and Community Health; Director of Administrative Services, North West Regional Hospital, and Deputy Administrator, Mersey General Hospital. Leon holds a Bachelor of Arts degree from the University of Tasmania. He is currently the Chief Executive Officer, Rheumatism and Arthritis Foundation of Tasmania.

**Malcolm Schyvens**

Appointed: 27 June 2003

Malcolm Schyvens has combined Bachelor of Commerce and Bachelor of Laws degrees and has been a practicing solicitor since 1996 with substantial experience in legal matters relating to the Board's activities. Malcolm is an Official Visitor appointed under the *Mental Health Act 1996* and is a board member of Cosmos Incorporated, an organisation for the intellectually disabled.

**Anne Tullgren**

Appointed 4 February 2002

Anne Tullgren is a social worker with extensive experience in the mental health field, including dementia and brain injury. She has also worked as an official visitor and member of the Mental Health Tribunal in NSW. Anne currently works part-time for Centrelink as a social worker. She is a member of the Committee of Management for the Australian Association of Social Workers in Tasmania and edits their newsletter.

Ann's term expired in 2005 and she did not seek reappointment.

**Lindi Wall**

Appointed: 21 February 2005

Lindi Wall graduated with a degree in Law at the University of Tasmania in 1989 and was admitted as a Barrister and Solicitor of the Supreme Court of Tasmania in 1990. She has 14 years experience in civil litigation and is an associate at Wallace Wilkinson and Webster. She is a Board member of Nexus Inc and the Environmental Defender's Office.

**Kereth West**

Appointed: 11 August 1997, reappointed 16 October 2000 and May 2004

Kereth West is a graduate of the University of Tasmania having gained a Bachelor of Arts with Honours in 1983 and a Master of Psychology in 1989. Kereth has worked as a Clinical Psychologist since 1984 in both Mental Health Services and Intellectual Disability Services. She currently holds the position of Principal Clinical Psychologist with Mental Health Services.

**Philippa Whyte**

Appointed: 22 March 1999, reappointed 28 October 2002

Philippa Whyte holds a Bachelor of Laws degree and was admitted as a Barrister and Solicitor of the Supreme Court of Tasmania in 1980. Since then she has worked as a lawyer in private practice for over 22 years. In 2002 she was appointed to the position of Conciliation Officer within the

office of the Health Complaints Commissioner. Philippa is a trained mediator and also a member of the Mental Health Tribunal and the Social Security Appeals Tribunal.

**Catherine Wilding**

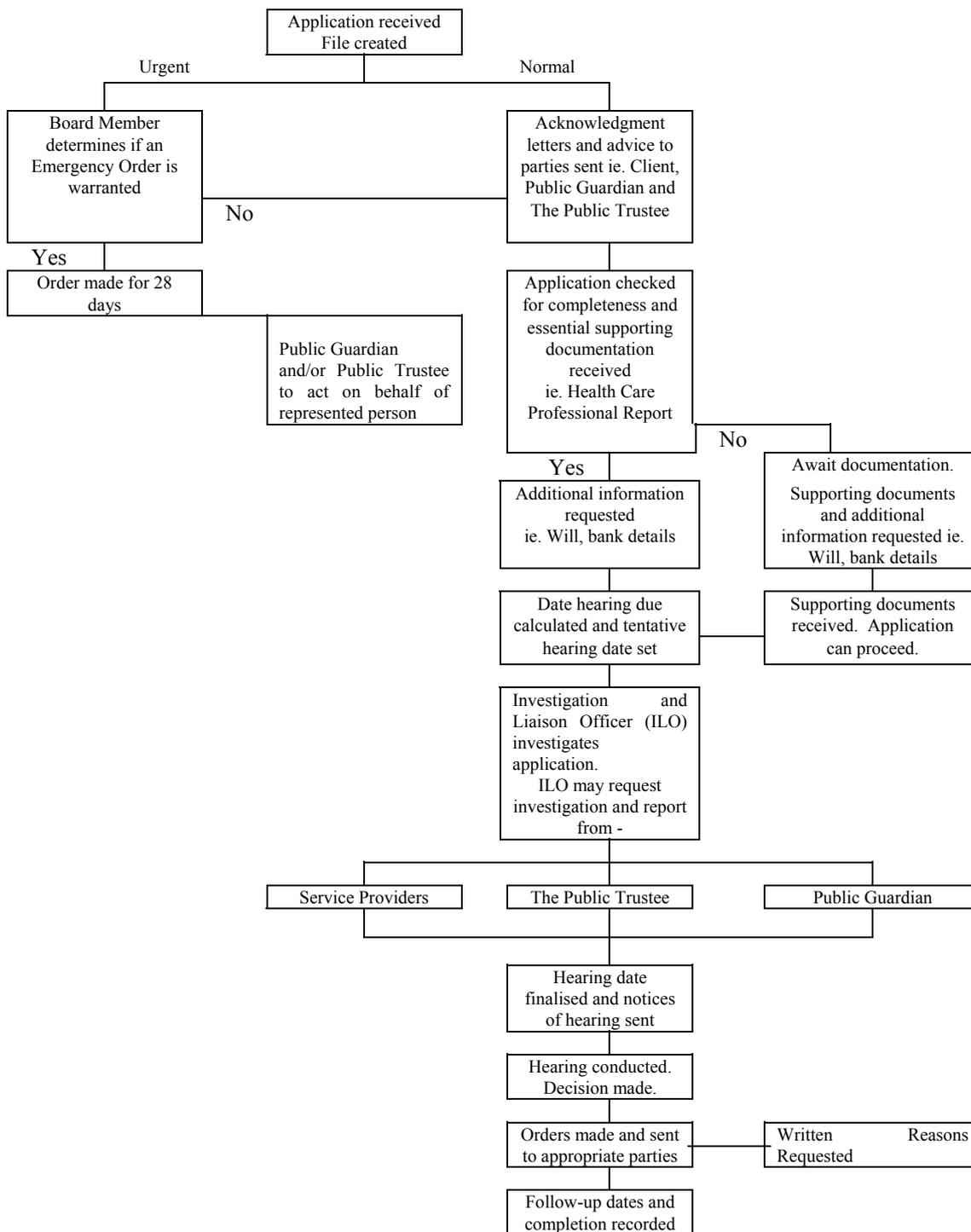
Appointed: 27 June 2003

Catherine Wilding has qualifications as a registered nurse and has attained a Bachelor of Laws degree. After a career in nursing for eight years, Catherine was admitted as a solicitor and practised for 4 years in private practice. Between December 1999 and August 2004 she was employed as Nurse Advisor – Professional Conduct with the Nursing Board of Tasmania. Catherine now works in aged care in the area of dementia care and is the legal officer with the Specialist Reserves of the Royal Australian Air Force in Hobart.

## Appendix 2 - Statistical Summary

	2001-02	2002-03	2003-04	2004-05
<b>Applications received</b>				
Total applications rec'd	437	403	504	594
Guardianship normal	30	53	51	49
Guardianship emergency	23	23	43	83
Administration normal	136	132	158	156
Administration emergency	24	4	40	32
Medical consent	37	53	43	44
Statutory Will	3	5	2	4
Other (EPA's, gifts, advice etc)	26	29	44	56
Triennial review of existing orders	158	115	123	170
<b>Hearings conducted</b>				
Total hearings	342	288	362	409
Guardianship	24	44	36	41
Administration	118	108	131	136
Medical consent	31	53	35	38
Statutory Will	0	2	3	2
Other	14	9	18	17
Reviews	155	115	139	175
<b>Hearings by region</b>				
South	192	183	193	209
North	72	65	105	92
North west	74	40	64	108
<b>Outcomes</b>				
Guardianship orders	39	56	70	105
Administration orders	287	206	268	316
Medical consent orders	24	38	38	32
Other orders (EPA's gifts, etc)	26	12	37	25
Statutory Will orders	0	2	2	2
Applications dismissed	11	38	12	26
Matters adjourned	4	12	13	15
Applications lapsed/ withdrawn/ advice only	42	57	48	79
Matters outstanding	10	12	16	10
<b>Community presentations</b>	15	27	44	43

## Appendix 3 - Dealing with an Application



## Appendix 4 - Community Presentations

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22/7/04	TAFE (Smithton)
4/8/04	Area Advisory Committee (L'ton)
4/8/04	Tasmania Ambulance Service (L'ton)
11/8/04	Australian Nursing Federation (Launceston)
11/8/04	Island Health College (Hobart)
11/8/04	Living with Memory Loss (Hobart)
17/8/04	Aust Nursing Federation (Hobart)
1/9/05	Disability Services (North West) – Full day session
2/9/05	Disability Services (North) – Full day session
6/9/04	APW (Anglicare) (Hobart)
21/9/04	Alzheimer Australia (Hobart)
30/9/04	Disability Services (South) – Full day session
30/9/04	Community Care (Launceston)
5/10/04	Seniors Week Public Forum (Hobart)
5/10/04	Nth Residential Support Group (L'ton)
5/10/04	Seniors Bureau (Hobart)
11/10/04	Southern Cross Care (Hobart)
14/10/04	Housing Tasmania Operational Management Group
18/11/04	Aged Care Special Interest Group NW (Ulverstone)
1/12/04	Living with Memory Loss Seminar (Hobart)
9/12/04	Royal Hobart Hospital – Full Day Session
24/1/05	APW (Anglicare) (Hobart)
24/2/05	National Service Association (Lindisfarne)
7/3/05	APW (Anglicare) (Launceston)
9/3/05	Alzheimer Australia (Hobart)

15/3/05 APW (Anglicare) (Hobart)  
17/3/05 Adult Education Workshop (Ulverstone)  
23/3/05 TAFE (Burnie)  
24/3/05 Carer Respite Centre (Huonville)  
31/3/05 Northern Occupational Therapists (Launceston)  
7/4/05 Adult Education Workshop (Hobart)  
15/4/05 Association of Independent Retirees  
22/4/05 Howrah School for Seniors  
27/4/05 Living with Memory Loss (Hobart)  
4/5/05 Public Trustee - Launceston Staff  
11/5/05 Carer's Association - Peer Education Workshop (Hobart)  
18/5/05 One Care Ltd (Burnie) x 2  
19/5/05 Adult Education Workshop (Hobart)  
27/5/05 Launceston General Hospital – Full day session  
31/5/05 Carer's Association - Peer Education Workshop (Campbell Town)  
20/6/05 Advanced Fraud Investigation Course – Tasmania Police  
21/6/05 Carer's Association - Peer Education Workshop (Devonport)  
28/6/05 Adult Education Workshop (Ulverstone)  
29/6/05 Kingston School for Seniors

## Appendix 5 – Financial Statement 2004-05

<b>Guardianship and Administration Board</b>			
<b>Financial Statement 2004-05</b>			
	<b>Budget</b>	<b>Actual Expend</b>	<b>Variation</b>
<b>EMPLOYEE RELATED</b>			
Salaries (incl Rec/LSL)	297,248	265,886	31,362
Board Member Fees	36,900	48,850	(11,950)
Other		2,003	2,003
Work Comp Ins		531	(531)
Payroll Tax	21,036	21,808	(772)
FBT	5,200	5,606	(406)
Superannuation	34,063	32,901	1,162
Training	3,669	2,948	721
<b>Total Employee Related</b>	<b>398,116</b>	<b>380,233</b>	<b>17,883</b>
<b>TRAVEL AND TRANSPORT</b>			
Travel	10,600	12,471	(1871)
Vehicle leases/Car Hire	9,000	5,135	4,865
Vehicle other	4,160	6,819	(2,659)
<b>PROMOTION</b>			
Advertising	1,500	925	575
Printing	1525	384	1141
<b>COMMUNICATIONS</b>			
Postage	2,000	1,727	273
Telephone	7,800	8,448	(648)
Other		76	(76)
<b>CONSULTANCIES</b>			
Consultant (non IT)	1,500		1,500
<b>ACCOMMODATION</b>			
Office Rental	7,668	31,040	(23,372)
Other		1,741	(1,741)
<b>INFORMATION TECHNOLOGY</b>			
Other Operational Leases	15,000	14,590	410
Office equip under \$5000	1,200	150	1,050
Comp hardware under \$5000			
Software licences	3,500	2,925	575
Other computers			
<b>OTHER EXPENSES</b>			
Other admin		2,119	(2,119)
Office requisites	4,800	4,800	
Maintenance			
Miscellaneous	1,800	1,207	593
<b>Total Non Salary Expenses</b>	<b>72,053</b>	<b>94,562</b>	<b>(22,509)</b>
<b>TOTAL</b>	<b>470,169</b>	<b>474,795</b>	<b>(4,626)</b>