

September 2008

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

In accordance with the requirements of Section 84 of the *Guardianship and Administration Act 1995*, I am pleased to submit the report of the performance of the functions of the Guardianship and Administration Board for the year 1 July 2007 to 30 June 2008.

Anita Smith
PRESIDENT
Guardianship and Administration Board

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Report of the Board and the President

On 17 July the Federal Government ratified the United Nations Convention on the Rights of Persons with Disabilities. Ratification was an important measure of Australia's commitment to the rights of persons with disabilities.

Hopefully the ratification of the Convention will result in re-thinking the delivery of services to people with disabilities in Tasmania. In some key areas, the Board has concerns that an institutional mind-set remains and continues to limit appropriate adherence to and respect for the rights of people with disabilities. Goggin and Newell opined:

“In 2000, Judy Jackson, the Tasmanian Minister for Community Services and Health, proudly proclaimed that the deinstitutionalisation was complete in her state. With more modesty, other states still recognise that they have some way to go. Deinstitutionalisation of people with disabilities was the Holy Grail after which surely the lot of people with disabilities would be inherently better. However we would suggest that deinstitutionalisation has been accompanied by its own institutional values and practices, and constitutes a problematic reinstitutionalisation.”¹

One of the defining characteristics of institutionalisation of people with disabilities is the exercise of dominion by organisations over the voices and choices of people with disabilities. The *Guardianship and Administration Act 1995* (the Act) exists to clarify the very rare circumstances where the authority to make decisions and exercise rights on behalf of a person with a disability is assumed by another person or agency. Therefore the passing of the Act was seen as part of the movement of deinstitutionalisation, in that it ensured that decision making rested with a person with a disability unless a fair and equitable legal process had taken place to cede that decision making power to another. Even then, such substitute decision making power is required to be as limited as possible in the circumstances.

A series of cases and incidents during the 2007-2008 reporting year have caused the Board to believe that the process of deinstitutionalisation is far from complete insofar as the inappropriate exercise of dominion over the rights of people with disabilities is concerned. Such activities will, in the future, be relevant to the Articles of the Convention.

The members of the Guardianship and Administration Board are concerned that in the cases described below, there has been an abject failure on the part of the relevant agencies to step back from their programs and ask the fundamental question: “*Do I have the authority to make this decision on behalf of another person?*” Hopefully the ratification of the Convention will cause these kinds of questions to be asked more often. In the meantime, the Act exists to clarify those situations where a person with a disability retains the ability and the right to make their own decisions and those rare situations where a substitute decision-maker ought to be appointed.

¹ Goggin, G. and Newell, C. *Disability in Australia, Exposing a Social Apartheid*, UNSW Press, 2005, page 129.

Article 12 - To ensure the equal right to own and inherit property, to control financial affairs and to have equal access to bank loans, credit and mortgages:

Amongst the 826 applications received during this reporting year, the Guardianship and Administration Board received 34 individual applications from the Department of Health and Human Services for appointment of an administrator (pursuant to Part 7 of the *Guardianship and Administration Act 1995*) regarding residents of Disability Services. The applications related to individuals who have lived in accommodation supported by Disability Services. That accommodation is now managed by private operators and the project for transfer between services was called the Living Independently Project (LIP).

The reason given for each of the administration applications was that the funds of the individual clients had historically been managed by staff of Disability Services without an administration order, but as the private group home operators did not want to have responsibility for managing client funds, for reasons of probity, the appointment of an administrator was now required. All of the residents are persons with a severe disability and incapable of making reasonable financial decisions.

Of the 34 applications, 5 were withdrawn because a family member may be in a position to manage the client's funds.

Of the remaining 29 applications that proceeded to hearing before the Board:

- The highest single resident account was \$50,000.00 and the lowest was \$6000.00.
- The total amount of resident funds was \$694,000.00.
- None of the residents had ever had an administrator appointed to manage those funds.
- All of the applications were granted and in the majority of applications the Board appointed the Public Trustee as administrator.

In many applications, the resident's funds had been managed for decades. In the Board's experience, most group homes and nursing homes who manage disabled resident's funds limit accounts to \$2000-\$3000 to limit the potential risk for misappropriation by staff. Increasingly accommodation facilities refuse to manage residents' funds at all for the same reason.

It was not clear from the applications what authority the Department had to manage the resident's funds, nor what checks and balances were in place to ensure probity.

The Board has referred this matter to the Auditor General who has agreed to investigate. The Department of Health and Human Services has acknowledged the Board's letter expressing concern but we await the substantive response.

Article 14 (1)(b) To ensure that persons with disabilities enjoy the right to liberty and security and are not deprived of their liberty unlawfully or arbitrarily:

The Board received an application for the appointment of a guardian for a man who resided in a secure psychiatric ward for acutely unwell persons. The evidence before the Board was that the man was not acutely unwell, but no other suitable accommodation was available to him. Despite this he was not free to leave that facility without permission of staff, he was denied personal possessions in his room and his ability to conduct a relationship with a resident of the non-secure ward was controlled by staff. He did not consent, and indeed lacked the capacity to consent to any

of these restrictions, yet the evidence before the Board suggested that such restrictions had been imposed for a period of at least 4 months in 2007-2008 without any legal authority whatever.

Surely this is the ultimate and the typical exercise of institutional power over a person with a disability, to unlawfully deprive him of his liberty. In his words: "Like gaol, it's just like being in gaol."

Article 22 Respect for Privacy:

The Disability Services Ethics Committee is established under section 10 of the *Disability Services Act 1992*. Its role is to monitor programs and services. Members of the Committee are appointed from outside the Department of Health and Human Services. Support staff members are provided by the Department of Justice.

The President of the Board raised with Disability Services in 2006 a number of concerns about the operation of the Committee in evaluating individual behaviour management plans rather than broader services and programs. (Individual behaviour management plans submitted to the Committee would generally concern challenging behaviours of particularly vulnerable people with disabilities. Details in the plan may be extremely sensitive, such as a person's risk-taking or sexual behaviours and their medical or psychiatric conditions.) She alerted the agencies to a lack of specific power to waive client confidentiality to allow the assessments of individual behaviour management plans and medical files and a lack of any delegation of functions by the Minister to allow that activity.

In response to the 2006 letter, the Committee made some procedural changes but continued to receive and deliberate upon individual behaviour management plans.

The President wrote again on 29 April 2008 questioning whether the delivery of sensitive personal information about individuals with disabilities is consistent with the Department's Personal Information Protection policy and with clauses 2(1) and (4) of Schedule 1 of the *Personal Information Protection Act 2004*. She also questioned whether it was appropriate for an administrative Committee - not bound by statute to conduct hearings, take evidence or apply procedural fairness (natural justice) to individuals' rights - to be receiving and deliberating upon such materials.

That letter was sent to Disability Services, the Ethics Committee and the Department of Justice. In 5 months, there has been no substantive response to the issues raised and only the first two recipients have acknowledged receipt of the letter.

The Board remains concerned that the Committee is acting beyond power with regards to individual behaviour management plans and that such matters ought to be addressed to the resident's 'person responsible' (within the meaning of section 4 of the *Guardianship and Administration Act 1995*) or a guardian. The question for the Committee and for the two Government agencies is 'What authority does the Disability Services Ethics Committee have to receive and deliberate upon this sensitive information?' The fact that this question was raised in 2006, but cannot be promptly answered in 2008 suggests that all agencies have failed to enquire where the authority to operate in this manner comes from and is therefore an institutional exercise of dominion over the lives of people with disabilities.

Conclusion:

The President of the Board has made submissions to the Legal and Constitutional Affairs Committee Inquiry into Older Persons and the Law (5 June 2007), the Review into the *Mental Health Act 1996* (May and September 2007). In both circumstances, the President emphasised how the appointment of a guardian or administrator can protect the rights of a person with a disability.

At its most recent meeting of members, the Board considered the difference between the construction of the 'least restrictive alternative' in the fields of guardianship law compared to mental health law. The fundamental difference is that whereas a mental health order will always be restrictive in nature (because it allows for the involuntary detention and/or treatment of a person with a mental illness), a guardianship or administration order may be a tool of liberation (and therefore be the least restrictive alternative) from abuse and exploitation.

The Board expects that the guardianship jurisdiction will be an integral part of the Government's continuing interpretation of, and response to, the ratification of the UN Convention on the Rights of Persons with Disabilities.

Highlights in the 2007-2008 Report:

- The 2007-2008 year has attracted not only the greatest number of applications ever (826) but also the greatest year-on-year increase (27%) in the Board's history (See page 8 "Applications").
- Although the Board's workload has more than doubled in 5 years, our funding has increased by less than one third in the same period (See Page 25 "Office Administration").
- Ninety five percent (95%) of matters were finalised 45 days after receipt of the application. (See Page 11 "Hearings").
- The Public Trustee absorbed 60% of the 338 appointments of administrators (See page 18 "Administration"). The Public Guardian was appointed in 48 of 52 orders for guardianship (See Page 16 "Guardianship").
- A new discussion of "Post Hearing Support and Procedures" (Page 12).
- The completion of an education program started in the last reporting year has resulted in approximately 1600 enduring guardianships being registered by members of the Jehovah's Witness community to protect their religious freedoms and beliefs regarding blood transfusions (See Page 17 "Registration of Enduring Guardianships").
- Twelve members of the Board were re-appointed during the period (See Page 6-7 "Composition of the Board").

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 Division 9 of the *Wills Act 1992*, Part 4 of the *Powers of Attorney Act 2000* and section 32 of the *Mental Health Act 1996* (MHA).

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

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

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

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

Composition of the Board

Names and brief biographies of the Board members current at the close of the reporting year are listed in Appendix 1. Two new members were appointed in 2007-8: Grant Kingston and Dr Keith McArthur. The following members were reappointed: Anita Smith (President), Anne Parker, Patricia King, Gerard Dibley, Kellie Ashman, Mary Davies, Wendy Beveridge, Lindi Wall, Kate Brown, Terry McGuire, Tony O'Neil, and Dr Martin Morrissey. Members reflect a breadth of disciplines and depth of experience on the Board.

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

Dr Catherine Blackmore did not seek reappointment after her first term and did not sit beyond February 2008. The Board records our thanks for her work for the Board and wishes her well in future endeavours.

Board members actively participate in education and networking opportunities presented by the Council of Australasian Tribunals and the Australian Institute of Judicial Administration. Additionally, Board members attended the following customised education sessions in 2007-2008:

16 August 2007 – Fact Finding by Di Robinson (NSW Guardianship Tribunal President)

12 December 2007 – *GABfest* Applications for Medical Consent and Reviews

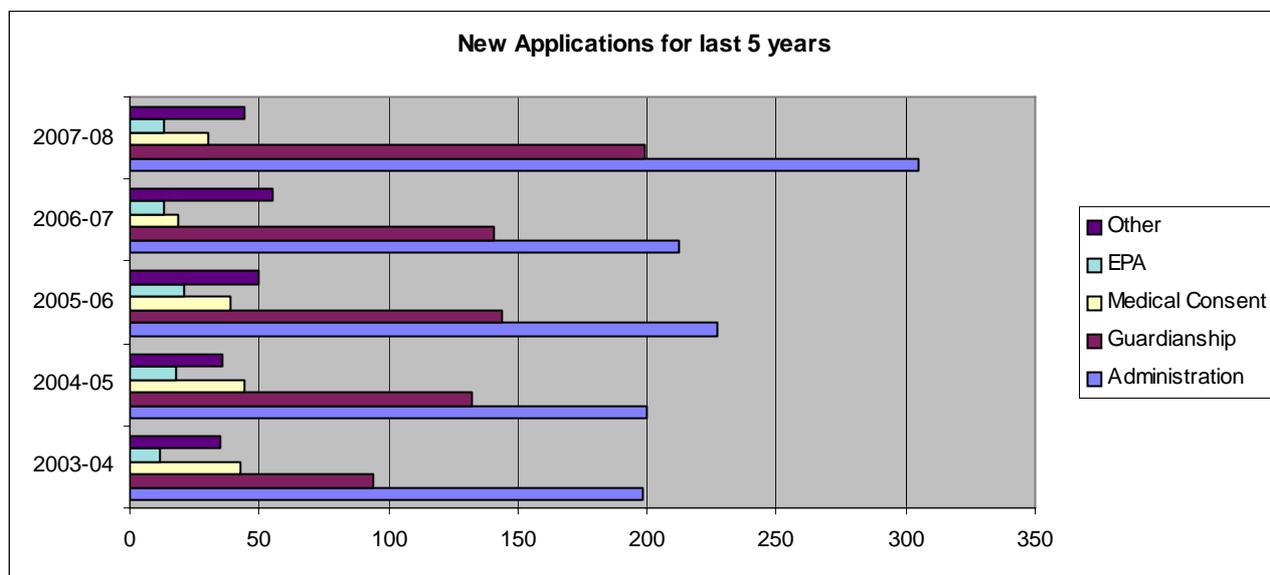
28 March 2008 – Administration Issues, plus presentation by John Lessor, Churchill Fellow and Victorian Mental Health Tribunal President

11 July 2008 - Annual Meeting and Training on Chairing Hearings

Applications

Applications received

The total number of applications (including the triennial review of orders) received for the period 1 July 2007 to 30 June 2008 was 826. Of these 592 were new applications with the remainder being reviews of existing orders. In 2002-2003 the Board received 389 applications.



The total number of applications has grown in every year since 2002-2003 and has more than doubled in that time. The 2007-2008 year has attracted not only the greatest number of applications but also the greatest increase (27%) year-on-year in the Board's history.

This significant increase follows two reasonably steady years and builds on increases of 25% and 18% in 2003-04 and 2004-05 respectively.

Two factors have been relevant to the increase. Firstly the Department of Health and Human Services transferred the operation of group homes to non-government agencies which prompted 34 applications for appointment of administrators to replace a system of client account management formerly operated by that Department (see introduction to this report).

Secondly, a change in the layout of omnibus application forms gave options to tick boxes according to application type. Applicants were inadvertently encouraged to select more application options than was actually required, falsely inflating the application numbers for certain types of orders. (This format has since altered.) However, this would only account for around 30 applications, meaning it is still the largest increase in numbers of applications that the Board has experienced.

Application Forms

The *Guardianship and Administration Regulations 2007*, the *Wills Regulations 1997*, and section 34 of the *Powers of Attorney Act 2000* prescribe certain requirements for applications to the Board. Some Board functions, such as registration of interstate orders and applications for advice and direction are not prescribed in regulations. The Board has developed a range of pro forma

application forms and Health Care Professional Reports to ensure that applicants provide all necessary information to the Board as early as possible.

The application forms and Health Care Professional Reports have been under review for a significant period of time and were finalised late in the reporting year. A new format was trialled in the reporting year. The outcome of this trial has seen further work and the final format will become available early in the new reporting year.

The Board intends to publish the application forms and Health Care Professional Reports on the website to promote accessible operations. This is a break with our historical procedures, where applications were only available upon request from staff of the Board in an effort to ensure that applications are only made as a last resort.

Investigation and Case Management

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. Additionally, administrative 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, refer them for investigations, seek specialist reports and witness statements and list applications for hearing.

Under the legislation, which was drafted in line with Victorian precedents and practice, the investigation function actually falls to the Office of the Public Guardian (section 17 and 15(1)(j) *Guardianship and Administration Act 1995*) with the Board having no overt powers of investigation. However, the Board's staff members have undertaken this function, almost exclusively, because the Public Guardian has never been resourced to do so.

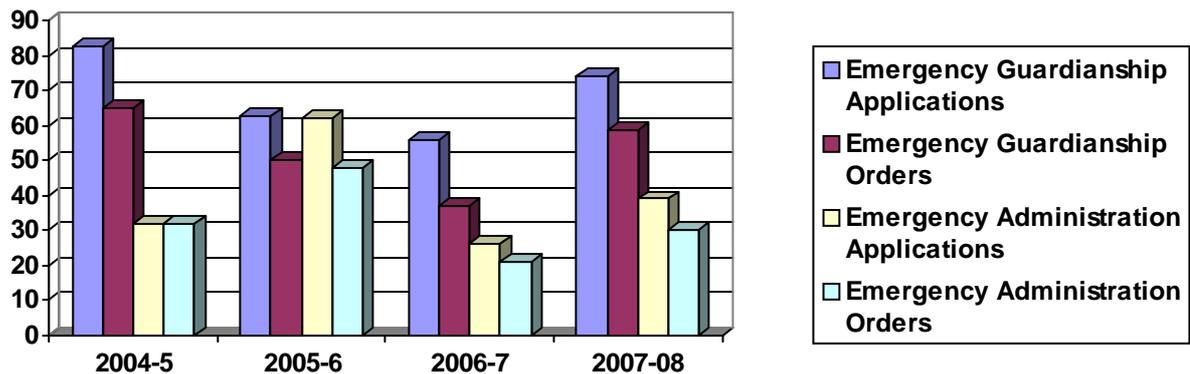
The investigation by the Board's staff members has three functions:

- (i) To prepare a case for hearing, ensuring all the relevant evidence is placed before the Board.
- (ii) To explore whether less restrictive alternatives than the appointment of a guardian or an administrator might address the concerns of the applicant.
- (iii) To promote access to justice, particularly for people with disabilities subject to the application, by explaining the investigation and hearing process and taking statements prior to the hearing.

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. It 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. Like the administrative staff, investigative staff undertake a great deal of work that is not statistically recorded but which is vital to the operation of the office and the Board. We are extremely fortunate to have such knowledgeable, dedicated and experienced staff members.

Emergency Applications

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. Because the evidence supplied with an application for an emergency order is not usually tested in a hearing, the orders are limited in their operation in that only the two statutory agencies, the Public Guardian and the Public Trustee may be appointed and such appointments are only valid for 28 days and may only be renewed once for a further 28 days. If an order is needed beyond that time, a full application and hearing is required.



Seventy four (74) emergency guardianship applications were received. Fifty nine (59) emergency guardianship orders were made, 15 were refused (2007-2008 refusal rate 13%, 2006-2007 refusal rate 33%).

Thirty nine (39) emergency administration applications were received. Thirty (30) emergency administration orders were made, 9 were refused (2007-2008 refusal rate 19.5%, 2006-2007 refusal rate 8%).

Fluctuations in the refusal rate of emergency applications are indicative of the highly individualised nature of such applications.

Hearings

The Board may sit in a Division of three (3) members or one (1) member. A hearing usually takes approximately 45 minutes. Hearings that take significantly longer than 45 minutes usually involve a protracted 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.

Section 72 of the *Guardianship and Administration Act 1995* requires that the Board commence to hear an application within 45 days after the application is received by the Board. The Board is 100% compliant with section 72.

The following statistics are presented on two bases: (i) that the figure counted below is for matters finalised, as opposed to commenced, within 45 days and (ii) because an application is defined under the regulations as including the Health Care Professional Report (HCPR), an application is not deemed to have been received until the Board is in possession of both the application and the HCPR, in other words the Board becomes seized of the application upon receipt of both documents. There are frequent occasions where the HCPR arrives significantly later than the initial application – this delay is not counted for these statistical purposes.

The Board conducted Five Hundred and Eighty Three (583) hearings during the year. Ninety five percent (95%) of matters were finalised 45 days after receipt of the application. Four percent (4%) of matters were finalised between 45 and 50 days after receipt of the application and the remaining one percent (1%) of matters were finalised after 50 days. Matters taking longer than 45 days were generally particularly complex cases or matters where relevant witnesses were unavailable for a period.

Board members generally hear 3-4 applications in a session. The Five Hundred and Eighty Three (583) hearings were held over one hundred and sixty two (162) sessions in this reporting year, whereas in the immediate past year 477 hearings were held in 143 sessions. Therefore Board members hear an average of 3.5 applications per session this reporting year, whereas last reporting year they heard an average of 3.3 applications per session.

The gap between numbers of applications received and applications heard (243 applications) is made up as follows:

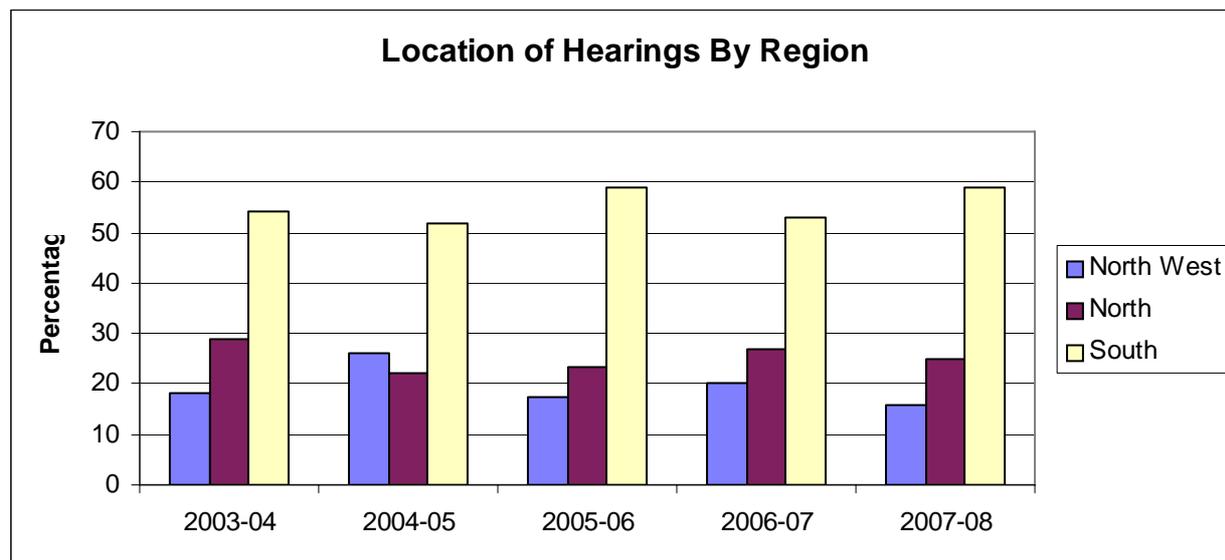
- (i) The total number of applications includes emergency applications pursuant to section 65 which are decided without a hearing (113)
- (ii) applications are withdrawn during the investigation process either because a less restrictive alternative has been pursued or the issues have resolved (122).
- (iii) the person subject to the application died (8).

Location of Hearings

It is policy of the Board 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. Because the majority of medical consent applications involve persons refusing treatment for psychiatric illnesses, and these people are frequently also subject to a continuing care order under the *Mental Health Act 1996*, most medical consent applications are heard in the departments of psychiatric medicine or the psychiatric intensive care units in public hospitals. This enables 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 (Launceston), Community and Health Services (Devonport), the Launceston General, Royal Hobart and North West Regional Hospitals and to Family Based Care Inc (Burnie) for the provision of hearing rooms.

The following graph shows the apportionment of sessions in the three regions of the State in the last four years. Of the 583 hearings held in 2007-08, 347 were held in the South, 147 in the North and 89 in the North West. North West hearings are held in either Devonport or Burnie.



Post-hearing procedures and support

The Board produces written orders following each hearing. Administrators also require certified copies of the orders as proof of authority. A private administrator (i.e. an administrator other than a trustee company or the Public Trustee) is provided with a manual outlining the responsibilities of his or her function. The Board has developed a quarterly newsletter that is sent to administrators. This complements 2-hour training sessions offered by the Board in Launceston and Hobart for administrators.

Administrators or guardians appointed by the Board enjoy informal support from staff members following their appointment. Private administrators consult with staff members of the Board for practical advice about their functions, such as how to establish direct payments from Centrelink to the represented person's nursing home, the formal requirements of reporting or whether Board

approval is required before sale of real estate etc. Many such enquiries avert the need for administrators to make formal applications for advice and direction from the Board.

If an enquiry by an appointee cannot be resolved simply, the appointee may be directed to make a formal application for advice and direction from the Board. Depending upon the nature of the request for advice and direction, the Board may respond in writing to the request or convene a hearing.

At times staff members receive complaints about an appointed administrator or guardian, even where a review application has not been received. This is not strictly a function of the Board's staff members. In the legislation, section 17(1) makes the investigation of such complaints about a guardian or administrator a function of the Public Guardian, but the Public Guardian has never been resourced to undertake this role. As a result, the Board's staff members attempt to informally counsel or conciliate some complaints or refer others to an application to review the appointment.

When the Board appoints an administrator or a guardian, the person appointed is required to submit an annual report to the Board. Additionally, the Board may order that the person appointed submit interim reports or plans. The Board also has the ability to order an attorney under an enduring power of attorney to submit reports. Each of these reports is scrutinised by a member of staff and considered by a member of the Board for its compliance with formal requirements, probity and against the best interests of the represented person. This checking process has been reviewed and enhanced in the reporting year.

Where a report is not submitted in a timely fashion, is deficient or discloses irregularities the administrator or guardian may be required to supply further detail. Additionally an administrator may be audited pursuant to section 63 of the Act. The Board member may authorise a review of the appointment by Board's own motion to address irregularities. Through this process of scrutiny, the Board has detected unauthorised gifts from the represented persons' estates and inadequate or inappropriate management of funds. Audit and 'show cause' proceedings have been instituted under section 63 of the Act, usually resulting in substitution of the administrator.

Guardian's reports are mostly reviewed to ensure that the orders are being actively used to make decisions on behalf of the represented person. If a guardianship order appears to have been inactive for a period, the guardian may be invited to submit an application to review.

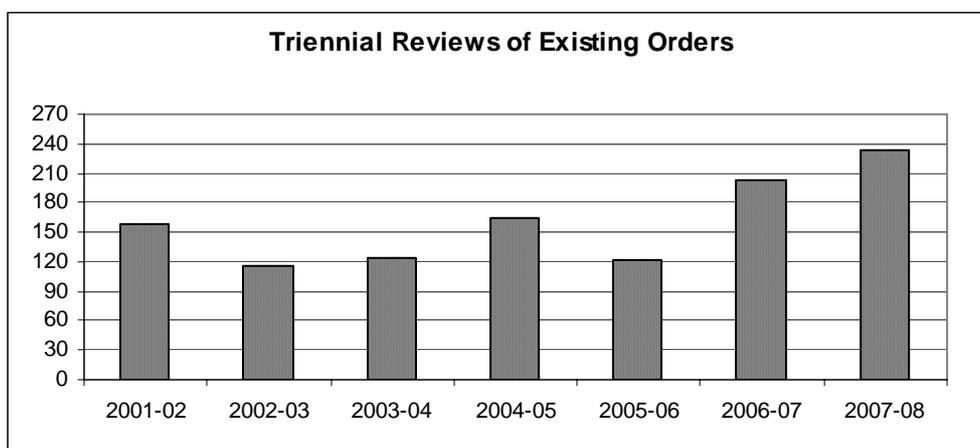
This is a significant function of the Board and its officers which has not been the subject of discussion in previous annual reports. However, it is roughly estimated that the Board reviews some 700 reports by guardians and administrators per year. With increasing numbers of orders and increasing complexity of estates, this will become a more significant and demanding part of the Board's work.

Reviews of Existing Orders

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. Most often, applications for review arise from the expiry of the term set by the Board. Some mid-term applications are made by the represented person seeking greater control over decision making or finances, others may result from the Board's own motion as part of the reviews of annual reports discussed above.

Any increase in orders made results in an eventual increase in the number of reviews. Historically there has been a 3-year cycle effect arising as an "echo effect" of the Board's first year of operation in 1997. With the 25% increase in new applications in 2003-4 and 18% in 2004-05, there is now an "echo effect" from those years also. This is evident in the last two year's numbers of reviews.

The following graph provides a comparison with previous years:

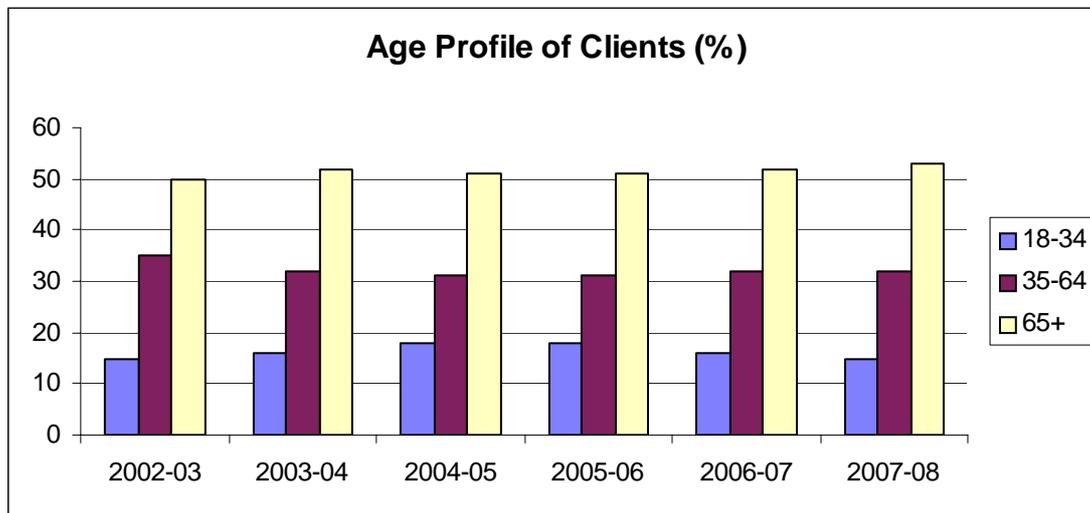


Review hearings have a very important function for the Board. Firstly, they serve the intentions of the 1995 legislators who saw regular reviews as essential to a modern guardianship system; it is a fundamental aspect of serving the "least restrictive alternative". Secondly, reviews are a learning tool for the Board to witness first hand the aspects of their orders that were successful or unsuccessful in the lives of represented persons. Very often we are able to witness the effect of an order in redressing abuse and reducing family conflicts and hostilities.

Client Profile

Age Profile

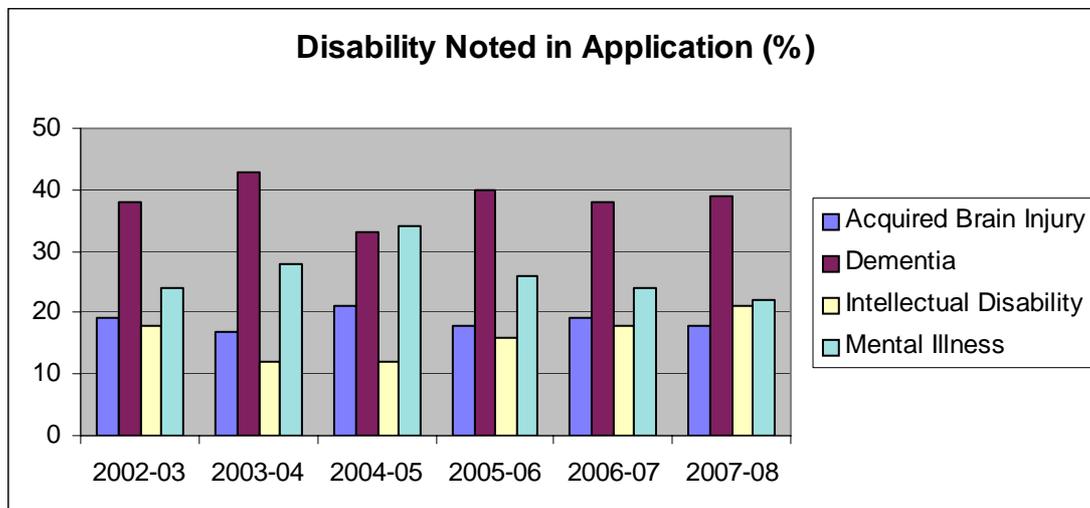
Persons over 65 years of age continue to comprise a significant proportion at 53% of the total client group. This figure has been reasonably steady over the last six years.



Disability Profile

The legislative definition of ‘disability’ is not diagnostically based. Many persons who are subject to applications before the Board have multiple disabilities or disabilities that are not capable of simplistic description or diagnosis. The following categories are deliberately broad to enable data to be used in national comparisons.

According to data received with the applications, in 2007-08 39% of the Board’s new applications relate to people who have dementia as their primary disability, 21% of new applications relate to people who have an intellectual disability, 18% have a brain injury and 22% have a mental illness. As with all previous years of reporting, the most prevalent disability noted in applications is dementia by a significant margin. This has an impact for projected case numbers in an ageing population.



Guardianship

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

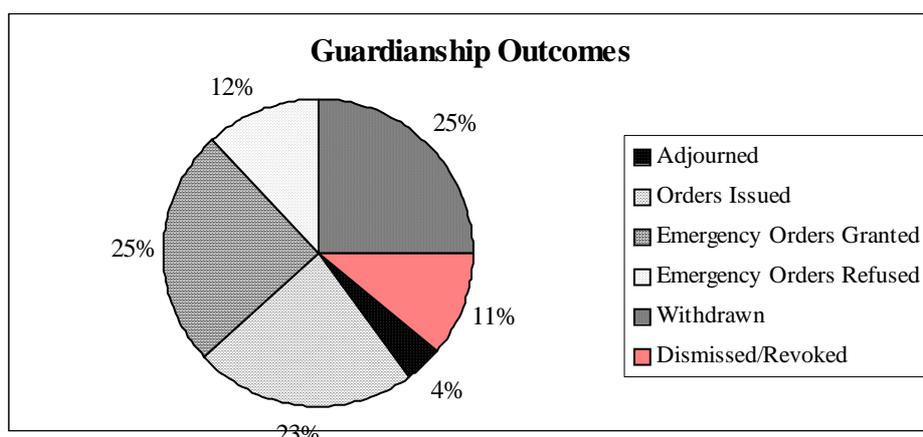
Most people with disabilities are capable of making and enforcing reasonable decisions about their accommodation, health care, relationships and other personal issues. Even a person who is not capable of making reasonable decisions about their finances (e.g. because of the effects of short term memory loss) can still be capable of making reasonable personal decisions. A guardian is only required where a person lacks capacity to make such personal decisions and there is a need for clear legal authority in making such decisions.

One hundred and ninety nine (199) new applications for guardianship were received during the year. Of these, 74 were applications for emergency orders where the Public Guardian is appointed as guardian for a maximum period of 28 days. Fifty (50) emergency orders were granted, 24 were refused or withdrawn. The making of an emergency guardianship order - effective for 28 days - will often enable the Public Guardian to resolve an issue (e.g. achieve successful transition of a person with dementia from home to an Aged Care facility) without the need for a subsequent formal application.

Forty Seven (47) applications were withdrawn prior to a hearing. The Board issued fifty two (52) new orders appointing a guardian. Private guardians were appointed in 4 cases, the Public Guardian was appointed in all others. Twenty three (23) applications were dismissed or refused and seven (7) were adjourned.

In addition, there were reviews of thirty six (36) guardianship orders, fourteen (14) of which were continued for a further period.

At any given time guardianship orders 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.



Registration of Enduring Guardianships

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. If the appointor loses capacity to make decisions about his or her person and circumstances (health care, accommodation, access to visitors etc.), the enduring guardian can make such decisions on his or her behalf.

An instrument appointing an enduring guardian must be registered with the Board. As at the 30th of June 2008 the Board had registered 7927 enduring guardianships, which includes 2991 new registrations this reporting year. At the start of 2003, the ratio of adult Tasmanians with registered enduring guardianships was approximately 1:1000. It is now around 1:60. An information sheet and pro forma enduring guardianship instrument is available for download from the Board's website: www.guardianship.tas.gov.au. The Board continues to hold comprehensive workshops on *Writing and Registering Your Enduring Guardianship* through the Adult Education calendar.

Last year the Board reported upon an education program encouraging Jehovah's Witnesses to protect their religious convictions regarding blood transfusions in enduring guardianships. Part of this education program involved the development of customised enduring guardianship forms in two varieties. The program has resulted in approximately 1600 enduring guardianships being registered by members of the Jehovah's Witness community. Therefore around 25% of all enduring guardianships presently registered in Tasmania now serve to protect the religious beliefs of Jehovah's Witnesses. This is by far the most comprehensive and successful program undertaken to promote the use of enduring guardianships and hopefully will promote certainty for medical staff as well as Jehovah's Witnesses in their medical decisions. The registration of such a large number of instruments over a short period of time involved a great deal of administrative work for staff members but also resulted in greater efficiency in the registration process.

The Board notes that, outside of the Jehovah's Witnesses program, approximately half of all other enduring guardianships registered with the Board in 2007-08 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.

Reviews of Enduring Guardianships

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. Although such applications arise infrequently, they are often highly contested matters. It is also a theme of such applications that the role and function of such orders is not well understood. Similarly to enduring powers of attorney, it is imperative that upon appointing an enduring guardian, the appointor and the guardian communicate clearly and frankly about the nature of the instrument and the expectations of the guardian. The key to success for an enduring guardianship is in selecting the appropriate person or persons for appointment.

Three applications for revocation of an appointment of an Enduring Guardian were received in the year. The Board ordered the revocation in two applications and made an order substituting the Public Guardian.

Administration

Administration Applications

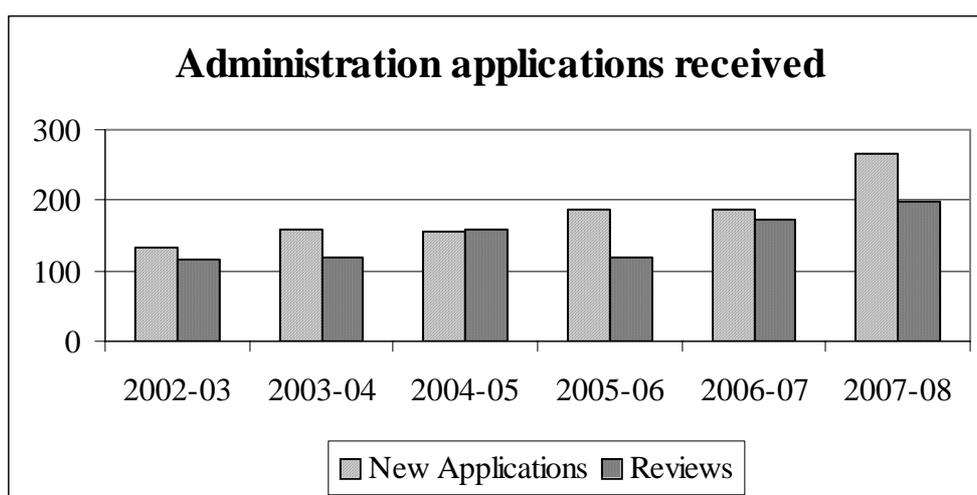
Part 7 of the *Guardianship and Administration Act 1995* provides the framework for the appointment of administrators who undertake financial management on behalf of people who, by reason of disability are incapable of making reasonable financial judgments. The Board has consistently received more applications (now 60%) for the appointment of an administrator than any other kind of application. In 2007-08 there was another significant increase in the number of triennial administration reviews and a significant increase in the number of new administration applications.

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. Many are appointed for elderly persons with dementia who require maintenance of their regular accounts and protection of their income. 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.

Administration applications differ from guardianship applications in that, because of the operations of probity and privacy principles, less restrictive alternatives are not effective or acceptable in many circumstances. Financial institutions cannot accept informal arrangements for management of a person's estate; therefore administration orders are required more frequently than guardianship orders.

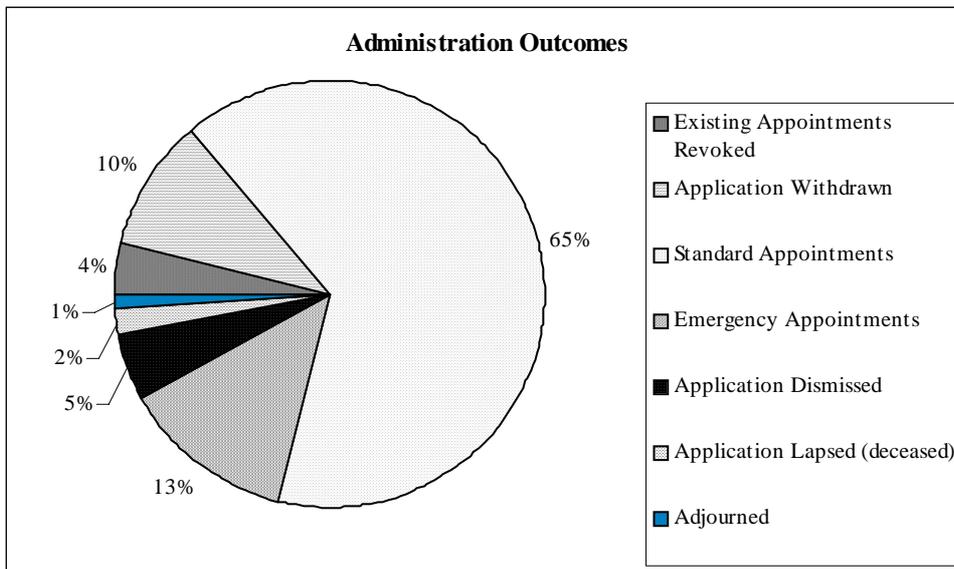
Administration applications received

Five hundred and three (503) applications for administration were received during the year, which included thirty nine (39) applications for emergency orders and one hundred and ninety eight (198) reviews of existing administration orders.



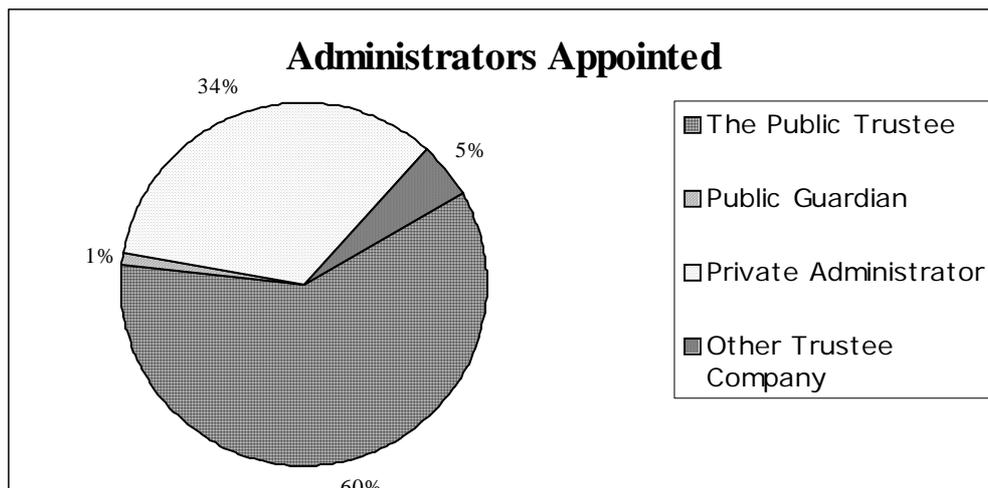
The Board subsequently issued three hundred and eighty seven (387) orders of which three hundred and thirty eight (338) appointed an administrator, seventeen (17) revoked the existing appointment of an administrator, and on ten (10) occasions dismissed the application. The Board made twenty-

two (22) emergency orders appointing the Public Trustee as administrator. Fifty seven (57) applications were withdrawn prior to hearing and six (6) applications lapsed due to the death of the person who was the subject of the application.



Persons appointed as administrator

Section 54 of the Act enables the Board to appoint The Public Trustee, a trustee company or the Public Guardian as an administrator. Where it is satisfied that another person is a suitable person to perform the role, has sufficient expertise and will act in the represented person’s best interests it can also appoint that person as an administrator (private administrators). During the reporting year, the Board appointed private administrators in 34% of cases. The Public Trustee absorbed 60% of all appointments of administrators.



Reviews of Enduring Powers of Attorney

During the year to 30 June 2008, the Board received 13 applications for review of enduring powers of attorney under the provisions of the *Powers of Attorney Act 2000*. These provisions allow the Board to:

- vary the enduring power of attorney;
- appoint a substitute attorney or an administrator;
- declare that the donor did or did not have mental capacity to make a valid enduring power of attorney;
- declare that the enduring power of attorney is invalid;
- revoke the enduring power of attorney and appoint an administrator; or
- make such other order as to the exercise of the power, or the construction of its terms, as the Board thinks fit.

The Board revoked seven (7) enduring powers of attorney, appointing an administrator. Two (2) applications were dismissed and four (4) applications were withdrawn.

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

These applications show two sides of an enduring power of attorney, one is a practical and simple instrument that facilitates financial management after the onset of a disability which is consistent with the principles of 'least restrictive alternative' and the wishes of the donor. The other is a powerful tool that can be abused or underused in the wrong hands. It is important that persons executing such instruments seek careful advice about who to appoint as an attorney. It is also important that persons do not accept appointment as an attorney without having a clear understanding of the nature and function of the role.

Two particular aspects of the *Powers of Attorney Act 2000* continue to impress the Board as being of great practical value and highly protective of incapacitated donors who come to the attention of the Board. They are subsection 32(3) (the ability of an attorney to assign the power to the Public Trustee) and the relationship between subsection 30(2)(b) and 33(2)(e)(ii). In light of experiences in hearing the applications that allege incapacity or coercion in execution of the instruments, the Board endorses the prohibition of relations of parties to the instrument being witnesses to the instrument.

Consent to Medical and Dental Treatment

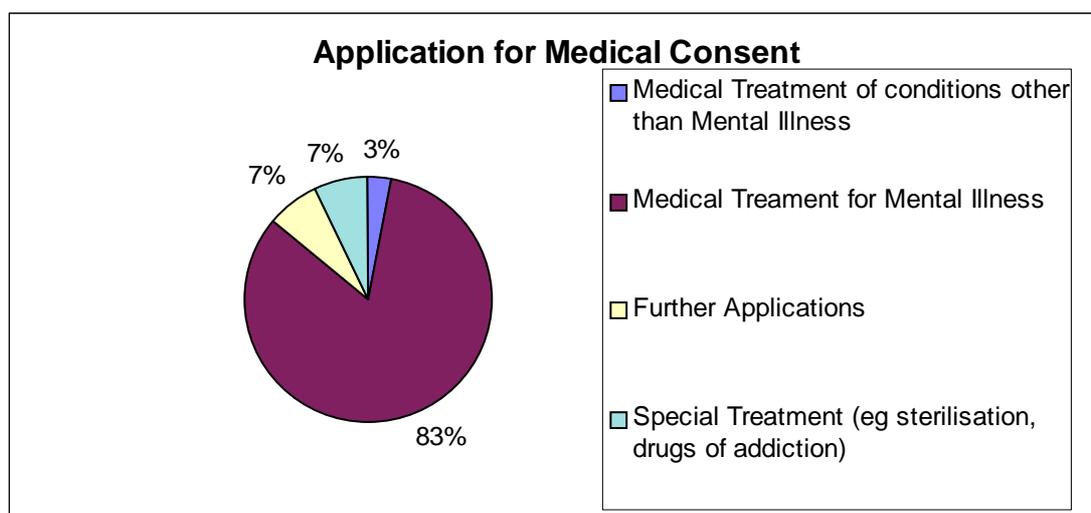
The Board has jurisdiction to determine applications for consent to medical and dental treatment pursuant to Part 6 of the *Guardianship and Administration Act 1995* and section 32 of the *Mental Health Act 1996*.

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 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 such consent.
- 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 thirty (30) applications for consent to medical treatment for persons with a disability who were incapable of consenting to treatment. The vast majority of applications (25 or 83%) were applications for consent to psychiatric treatment for persons with a mental illness who were unable to consent to treatment or were refusing treatment. Two applications were for special treatment. Of the 30 applications, 18 resulted in a determination for the Board’s consent, the balance were refused following a hearing or withdrawn after the applicant had received advice from staff of the Board.



Requests for Statements of Reasons and Appeals

The Board produces an order at the conclusion of each hearing and notes are kept about the reasons for decision. A formal statement of reasons is not produced in every matter. Generally statements of reasons are only 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. It is advisable to seek a statement of reasons before appealing a decision of the Board to the Supreme Court.

All statement of reasons covers are de-identified and published on the website (after the expiry of any appeal period or processes) which gives access to members of the community and the legal profession to the processes and interpretations employed by the Board.

Eighteen statements of reasons were written during the reporting year.

Only one matter was appealed in the reporting year and that appeal was subsequently withdrawn.

Given the limited use of sections 73 and 74 (appeals and statements of reasons) the Board will, in the next reporting year, institute a User's Satisfaction Survey to obtain more consistent and representative feedback from Board users.

Community and Professional Education

Community Education Programme

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

Members and staff of the Board delivered 41 education sessions to the Tasmanian community. Of these, approximately a third of sessions were provided for the professional development of persons employed in nursing, medical or disability fields. The remainder were presentations to community and interest groups. Sessions average between 1 and 2 hours. A list of organisations that the staff members or members of the Board have addressed during the reporting year is attached at Appendix 3.

Organisations seeking education sessions are encouraged to contact the Board and ask for a Community Education Program Request Form to be faxed, emailed or mailed to them.

The Board also offers a range of community education sessions to the public. These are advertised on the website and are generally attract a nominal fee.

In response to some contested applications before the Board, the President of the Board met with Wendy Quinn, Director of Disability Services and Jane Blake from Advocacy Tasmania to discuss the training available for staff members and families about the process of decision making for a person with a disability in residential care facilities. Primarily, we were concerned about clashes of values between families and group home staff having a negative impact for residents, particularly in times of transition. From these meetings a working party has been established under the auspices of Disability Services to develop a TAFE training module. This is an exciting development and a national first.

Website and Publications

During 2007-2008 there has been continued updating and improvement to the content of the website.

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

In addition to the website, 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.

- 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 Guardianship Info Sheet
- Private Administrators Handbook

Office Administration

Human Resources

The Board had available to it a Registrar and six other staff members; two staff members undertake investigative work and the balance undertake registry responsibilities in conjunction with the Mental Health Tribunal and, since February 2006, the Tasmanian Forensic Tribunal. The senior staff members assisting the Board as at 30 June 2008 are:

At 30 June 2008, the following staff undertook the Tribunals' administration:

Registrar:	Dale Webster
Executive Officer:	Jane Bliss
Manager, Investigation and Liaison:	Anne Perks

Finances

The Board was unable to meet its budget target and was provided with support from the Department of Justice to cover this over spend. This assistance allowed for an adjustment to the remuneration of the Board's President and Members.

Changes in total number of applications and recurrent funding over the past 6 reporting years are as follows:

Year	Total applications received	% Increase in applications	Recurrent Funding	% Change in Recurrent Funding
2002/03	389		\$466,385	
2003/04	504	30%	\$490,505	+5%
2004/05	594	18%	\$470,169	- 4%
2005/06	626	5%	\$484,881	+3%
2006/07	647	3%	\$486,181	+1%
2007/08	826	27%	\$615,939	+27%
Compare 2002/03-2007/08	+437	+112%	+\$149,554	+32%

What this table shows is that although the Board's workload has more than doubled in 5 years, our funding has increased by less than one third in the same period.

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

In the State Budget handed down in June 2007 the Board secured an additional 27 % in recurrent funding. This additional funding was vital to the proper functioning of the Board. However, as can be seen from this report, further demand for the Board's services and remuneration increases to better compensate members for their professional skills mean that a further substantial injection is now required. A full financial summary is at Appendix 4.

How to Contact the Board

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

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

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

Facsimile Number: (03) 6233 4509

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

Website: www.guardianship.tas.gov.au

The Board, via the Registrar and Manager, Investigation and Liaison, also provides after hours services which are accessed by ringing (03) 6233 3085.

Appendix 1 - Board Members at 30-6-08

Anita Smith – President

Appointed: 1 January 2003 (5 year term)

Anita Smith was admitted as a legal practitioner in 1992. Anita practised at Archer Bushby in Launceston and then established the statewide Disability Discrimination Legal Advocate service at the Launceston Community Legal Centre.

In 1995, Anita was seconded to the Human Rights and Equal Opportunity Commission in Sydney as a policy adviser to the Disability Discrimination Commissioner. She was then appointed as the Principal Solicitor at the New South Wales Disability Discrimination Legal Centre, a position she held until 1998. Anita then returned to Tasmania to take up a position as the Senior Adviser and Head of Office for the Tasmanian Attorney General.

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

Board Members (In alphabetical order)

Kellie Ashman

Appointed: 21 February 2005 and 30 June 2008

Kellie Ashman was a member of the Disability Services Ministerial Advisory Council (now known as the Ministers Disability Advisory Council) from 2002 to 2008 and served as the Deputy Chair of that Council. She is a former member of the Committee of Management for Tasmanian Acquired Brain Injury Services in Launceston. She has developed and maintained extensive interests within the disability sector. Kellie provides volunteer services for St Michaels Association in Launceston as well as serving on their Board of Management since 2006. She was also a finalist in the Community Achievement Awards of 2007 in the category of MAIB Disability Achievement.

Kim Barker

Appointed: 27 June 2003, reappointed August 2006

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.

Melanie Bartlett – Deputy President

Appointed 22 March 1999, reappointed October 2002

and February 2006

Melanie graduated with a Law degree from the University of Tasmania in 1975 and was admitted to the Supreme Court of Tasmania as a Barrister and Solicitor in 1978. Other than working for the Australian Legal Aid Office in the late 1970's, Melanie has worked mainly in private practice. She was previously a member of the Council of the Law Society of Tasmania and was President of the Society in 1999/2000. Melanie was a partner in a legal firm based in Burnie, a Commissioner of the Legal Aid Commission, a member of the Mental Health Tribunal and a member of the Disciplinary Tribunal under the Legal Profession Act. She has been a member of the Anti-Discrimination Tribunal since 1999 and a temporary 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, Commissioner for Criminal Injuries Compensation, sessional mediator with the Supreme Court, the Anti Discrimination Tribunal and Relationships Australia. Recently Wendy has taken a full time position with Child Protection in the North West.

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

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

Elizabeth Dalglish Appointed: 27 June 2003, reappointed August 2006

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

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.

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

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

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.

Grant Kingston Appointed: 17 December 2007

Grant Kingston has an extensive background in the welfare and trust industry. Prior to joining the Board he was employed for 20 years at Centrelink in Tasmania and Western Australia, being Branch Manager at Broome, Port Hedland and Kununurra. In 1990 Grant became the NW Regional Manager for the Public Trustee. He retired from this position in 2006. Grant has experience in the areas of disability services, welfare, asset and financial management, taxation, Will making, estate planning, administration and conveyancing.

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

Marguerite Lester holds a Bachelor of Applied Science (Occupational Therapy) degree and a Master in Business Administration. Employment and community involvements have included community based allied health services, the Aged Care Assessment Team, Vocational Rehabilitation Services, St Giles in the north of Tasmania and other Hobart based facilities. Mrs. Lester is a member of the Mental Health Tribunal and other community groups.

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

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

Elizabeth Love Appointed: 4 February 2002, reappointed August 2005

Elizabeth Love, who holds a Bachelor of Arts (Social Work), has worked as a social worker for over 25 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.

Paul Mayne Appointed: 4 February 2002, reappointed August 2005

Paul Mayne holds diplomas in Developmental Disability, Disability Services Management and Company Directorship. He is CEO of a non profit community support organisation and is a sessional teacher at TAFE. Paul is a member of National Disability Services (NDS) and is chair of NDS Tas. accommodation forum and representative on the National NDS accommodation committee. Paul has worked in the disability/mental health field for over 23 years having trained initially as an auxiliary nurse at the Royal Derwent Hospital and subsequently managed group homes for people with intellectual disabilities.

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.

Keith McArthur Appointed: 17 December 2007

Keith McArthur graduated in Medicine from the University of Sydney in 1985. He moved to Tasmania in 1987 where he ran a general practice in Wynyard until 2002. He practised in mental health as a trainee registrar and then as a medical officer at Parkside and Spencer Clinic until 2006. In June 2008 he completed a federally funded project in "Improving Care of the Aged in Residential Aged Care Facilities". He is currently dividing his time between general practice, primarily in aged care, and a part time psychiatric medical officer at Rivendell Clinic North West Private Hospital.

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 practice since 1994, with Fuller and Stace, Doolan and Brothers, James Crotty, Piggott, Wood and Baker and 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.

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.

Anne Parker Appointed: 21 February 2005

Anne Parker is a legal practitioner. She is currently the Deputy Official Secretary to 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 October 2002 and February 2006

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.

Malcolm Schyvens Appointed: 27 June 2003, reappointed August 2006

Malcolm Schyvens has combined Bachelor of Commerce and Bachelor of Laws degrees and has been a practicing solicitor in private practice since 1996 with substantial experience in legal matters relating to the Board's activities. Malcolm is the Chairperson of the Board of Cosmos Incorporated, an organisation for the intellectually disabled, is an officer in the Australian Army Reserve and is an Official Visitor appointed under the *Mental Health Act 1996*. Malcolm is also the President of the Law Society of Tasmania, a member of the Tasmanian Forensic Tribunal and a Director of the Centre for Legal Studies Pty Ltd.

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 18 years experience in civil litigation with the firm of Wallace Wilkinson and Webster. In 2008 she was appointed to the position of temporary magistrate and currently works as a conciliator. She is a founding Board member of the Environmental Defenders Office (Tas)

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

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

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

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, reappointed August 2006

Catherine Wilding is a barrister in private practice and currently works at the Legal Services Unit, Department of Education. Catherine works part time as a registered nurse in Aged Care on a dementia unit and is also legal officer with the Specialist Reserves of the Royal Australian Air Force in Hobart.

Debra Wood Appointed: June 2006

Debra is a psychiatrist, currently Clinical Director of Tasmania's Forensic Mental Health Service. She is a new recruit from Victoria where she spent the last three years with the Victorian Institute of Forensic Mental Health (Forensicare). Prior to this late-life transition to forensic work, she held positions in civil mental health services and with the Chief Psychiatrist's Office of Victoria. Debra was a member of the Mental Health Review Board of Victoria from 2002-2007. She is completing a Bachelor of Arts from the University of Melbourne.

Appendix 2 - Statistical Summary

	2004-05	2005-06	2006-07	2007-08
Applications received				
Total applications rec'd	594	626	647	826
Guardianship normal	49	81	85	125
Guardianship emergency	83	63	56	74
Administration normal	156	188	186	266
Administration emergency	32	62	26	39
Medical consent	44	39	19	30
Statutory Will	4	1	4	1
Other (EPA's, gifts, advice etc)	56	71	68	57
Triennial review of existing orders	170	121	203	234
Hearings conducted				
Total hearings	409	417	477	583
Guardianship	41	60	64	82
Administration	136	149	150	200
Medical consent	38	30	15	24
Statutory Will	2	1	1	2
Other	17	34	39	30
Reviews	175	143	219	245
Hearings by region				
South	209	246	253	346
North	92	98	128	147
North West	108	73	92	89
Outcomes				
Guardianship orders	105	103	56	67
Administration orders	316	273	296	345
Medical consent orders	32	24	14	21
Other orders (EPA's gifts, etc)	25	31	21	22
Statutory Will orders	2	1	1	1
Applications dismissed	26	49	30	39
Matters adjourned	15	8	29	33
Applications lapsed/ withdrawn/ advice only	79	127	92	136
Matters outstanding	10	20	10	31
Community & Professional Education Sessions	43	59	52	41

Appendix 3 - Community Presentations

Staff and Board members delivered education to over 650 people in the reporting year. Over 75 hours of community education was presented in forty three (43) sessions. The average length of a session was 1.5 to 2 hours. The majority of sessions were delivered by the Registrar. Sessions headed “GAB Education Calendar” were designed, promoted and delivered by the Board for a broad community audience. All other sessions were provided on request from the organisations mentioned below.

GAB Education Calendar:

Adult Education Enduring Guardianships (4 sessions)
General Overview (2 sessions)
Private Administrators
Aged Care Facilities

State Government Agencies:

Royal Hobart Hospital:

- Oncology Ward 1B
- PICU In-service training
- Advanced Care Planning
- Emergency Department Nurses (2 sessions)
- Social Work Department

North West Renal Unit – Burnie
Magistrates Court of Tasmania
Wilfred Lopes Centre – Staff
Forensic Disability Service
Disability Bureau
Southern Oral Health Service
Aged Care Assessment Team – South

Other Community Organisations:

Prosser House Day Care (6 sessions)
TAFE – for Richmond Fellowship
Rural Health Week – Smithton – Enduring Guardianships Life Planning
International Guardianship Conference, Bergen ND
University of Tasmania – Medical and Nursing Students
St David’s Cathedral
Cosgrove Park Nursing Home – Aged Care Nursing Students (2 sessions)
APW Training (2 sessions)
National Seniors
Anglicare (Families of Accommodation and Disability Support clients)
Jehovah’s Witness – Enduring Guardianship
Australian Association of Gerontology – Elder Abuse
Hobart Community Legal Service
Alzheimer’s Australia – Tasmania
Sexual Assault Support Service

Appendix 4 – Financial Summary 2007-08

Guardianship and Administration Board	Budget	Actual Expend	Variation
EMPLOYEE RELATED			
	496,739	554,801	-58,062
TRAVEL AND TRANSPORT			
	31,800	32,203	-403
ADVERTISING / PROMOTION			
	2,000	693	1,307
COMMUNICATIONS			
	10,800	11,499	-699
ACCOMMODATION			
	40,500	11,879	28,621
INFORMATION TECHNOLOGY			
	20,500	13,044	7,456
OTHER EXPENSES			
	13,600	7,489	6,111
TOTAL	615,939	631,608	-15,669

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