

# *Guardianship Tribunal*



## **Annual Report 2004/2005**

*‘working in the best interests of people with  
disabilities and their families’*

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Level 3, 2a Rowntree Street  
(Locked Bag 9)  
Balmain NSW 2041**

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members of the Guardianship  
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to this report.

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### **Principles Guiding the Tribunal**

The Guardianship Tribunal must observe the principles in the *Guardianship Act 1987*. These principles state that everyone dealing with people with a disability has a duty to:

- give the person's welfare and interests paramount consideration;
- restrict the person's freedom of decision making and freedom of action as little as possible;
- encourage the person, as far as possible, to live a normal life in the community;
- take the person's views into consideration;
- recognise the importance of preserving family relationships and cultural and linguistic environments;
- encourage the person, as far as possible, to be self-reliant in matters relating to their personal, domestic and financial affairs;
- protect the person from neglect, abuse and exploitation;
- and encourage the community to apply and promote these principles.



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# Letter to the Minister

## *Guardianship Tribunal*

10 October 2005

The Hon. John Della Bosca, MLC  
Special Minister of State  
Minister for Commerce  
Minister for Industrial Relations  
Minister for Ageing  
Minister for Disability Services  
Assistant Treasurer  
Vice President of the Executive Council

Parliament House  
Macquarie Street  
Sydney NSW 2000

Dear Minister,

I have pleasure in presenting the Annual Report for the Guardianship Tribunal for the year ended 30 June 2005.

This report has been prepared in accordance with the *Annual Reports (Statutory Bodies) Act 1984*, for presentation to Parliament.

Yours sincerely,



Diane Robinson  
President, Guardianship Tribunal



## President's report

The Guardianship Tribunal first opened its doors for business in August 1989. Since that time the Tribunal has made determinations in relation to over 30,000 people. We have also assisted many more, who as family members, carers and service providers, support people with disabilities in NSW. It is most appropriate that we begin our annual report by focusing on the people who come before the Tribunal. The Guardianship Tribunal serves people who are full of potential, but who are sometimes vulnerable, people who are strong and courageous but often disempowered and people who have the right to dignity, respect, care and support but whose rights are often compromised.

The Tribunal works to both empower and protect people living with disabilities. Their welfare and best interests are our paramount concern. The Guardianship Tribunal has demonstrated, over many years, its capacity both as an organisation and as a collection of individuals, to maintain a strong focus on and commitment to the needs and interests of people with disabilities. The staff and members of the Guardianship Tribunal need to be acknowledged for their dedication and hard work and it is with great pleasure that I present, on their behalf, our annual report for the 2004/2005 financial year.

It has certainly been a year of change, challenge and achievement for the Tribunal. My appointment as President of the



Tribunal in 2005 followed the retirement of Nick O'Neill in December 2004. Nick had served the Tribunal over 15 years, first as Deputy President and then for the last 10 years as President. Nick's contribution to the work of the Tribunal was enormous. We were privileged to have access to his knowledge, guidance, professionalism, commitment and wisdom for those years. On behalf of all staff and Tribunal members I would like to thank Nick and wish him well for the future.

The Honourable Carmel Tebbutt finished her term as Minister for Disability Services during the 2004/2005 financial year. Minister Tebbutt made a great contribution to disability services in NSW and her support of the Tribunal was deeply appreciated. Our new Minister the Honourable John Della Bosca took over the Disability Services portfolio in early 2005. Minister Della Bosca has a strong commitment to social justice and his involvement in disability issues is very much welcomed. The Tribunal looks forward to a rewarding working relationship with our new Minister.

In early 2005 the Council on the Cost and Quality of Government commenced a performance review of the Guardianship Tribunal. Performance reviews are designed to assess whether NSW government agencies are operating in the most appropriate, efficient, effective and prudent manner. The Council is conducting an



intensive assessment of the Tribunal's processes and procedures in the light of demographic trends and budget constraints. The staff and members of the Guardianship Tribunal have made a considerable effort to provide information and support to the Council's review team and I would personally like to thank all staff and members for dealing with this review in such a professional and collegiate manner. At the time of writing this report the Council is still engaged in the review, which is expected to conclude in November 2005.

In addition to this external review, the Tribunal is reviewing its own corporate plan. The Tribunal's last corporate plan covered the years 2002 to 2005. In early 2005 we commenced a review of the plan with the aim of providing ongoing strategic guidance to the Tribunal over the next three years. A sound corporate plan is vital in ensuring that the Tribunal's policy of continuous improvement is successfully implemented. It also assists in prioritising key issues for the Tribunal and allows for a helpful evaluation of our achievements. Of particular importance in our review is the Tribunal's Information Technology plan. Our IT strategies have enabled us to improve the effectiveness and efficiency of the Tribunal and the consolidation of our IT plan is essential to managing the future demands of the Tribunal's jurisdiction.

Indeed the management of our increasing workload is one of the first things that comes to mind when reflecting on the Tribunal's achievements in 2004/2005. The workload of the Tribunal has continued to increase with 4,968 new applications received and a total of 6,889 matters (being both new applications and reviews) managed by the Tribunal in 2004/2005. This represents an increase of 4.4% as compared to last financial year. To deal with this workload

4,162 hearings (3,898 standard hearings, 33 after hours hearings, and 231 procedural hearings), were conducted by the Tribunal in 2004/2005. Matters which did not proceed to hearing were finalised in a number of other ways, with many matters able to be withdrawn following appropriate referral or informal resolution. The Tribunal's commitment to appropriate informal resolution is reflected in its promotion of community awareness and knowledge of guardianship and related issues. In 2004/2005 the Tribunal responded to 12,311 telephone enquiries, distributed over 81,000 publications and our website was visited on 106,537 occasions. The Tribunal spoke to approximately 2,869 people across NSW at community education sessions and the President and Deputy President were involved in a range of committees, forums and public presentations.

The Tribunal also made a number of changes to its work practises and hearing arrangements in the 2004/2005 financial year. The Tribunal endeavours to ensure that applications are heard or finalised in as timely a fashion as possible. In the Coordination and Investigation Unit the creation of a new team has provided a mechanism to streamline the preparation of more straightforward applications and reviews and has facilitated their rapid progress to hearing. Further work is planned for the streamlining of the investigation process and with increased flexibility in the Tribunal's scheduling practices, more work flow efficiencies are expected.

The Tribunal is funded to perform its work through the Department of Ageing Disability and Home Care. Our connection with the Department has fostered the strong disability focus of the Tribunal and

assisted in the development of sound links and networks in the disability sector. In 2004/2005 the Tribunal spent \$7.4 million.

The 2004/2005 financial year was the second year in which appeals could be made to the Administrative Decisions Tribunal (ADT) from the decisions of the Guardianship Tribunal. The Guardianship Tribunal welcomes this new appeal structure which allows greater accessibility, for people with disabilities, to an appeal process. In 2004/2005 17 appeals to the ADT were lodged in relation to decisions of the Guardianship Tribunal and two of those appeals were successful.

To conclude, I recall the Guardianship Tribunal's first annual report published in August 1991 in which the then President, Roger West said . . .

*"I certainly believe it can be said that the NSW Guardianship legislation has profoundly and positively affected the lives of many people with disabilities and those who care about and for them".*

This statement was certainly true when it was made 14 years ago. It remains true today. It also explains the rationale for the Tribunal's existence and the motivation and commitment of the Tribunal's members and staff. Maintaining our focus on people with disabilities and their families and maintaining the quality of the service we provide to them, as a specialist disability Tribunal, is our greatest achievement and a continuing challenge.



Diane Robinson  
President

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## The Guardianship Tribunal

### A Specialist Disability Service

Tribunals come in a variety of shapes and sizes. Some are annexed to regulatory bodies and involve peer assessment and disciplinary action. Some undertake administrative review. Other Tribunals, such as the Guardianship Tribunal, are decision makers about questions of fact and like courts, decide applications at first instance on their merits.

The Guardianship Tribunal is a specialist disability tribunal for people with cognitive disabilities. The Tribunal appoints guardians and financial managers as substitute decision makers, consents to medical treatment, including special medical

treatment and reviews private arrangements about enduring guardianship and enduring powers of attorney. In doing so the Tribunal acts to both protect and empower citizens who live with the challenges of disability. At the same time, Tribunal decisions have a significant impact on citizens' basic human rights such as rights to self-determination, freedom of movement and financial independence.

When Courts make decisions which affect such rights, they do so according to a traditional adversarial model. With legal representation and formal procedures, parties present their evidence and the

arguments best suited to their case. Competing rights and conflicting interests are resolved through an adversarial process safeguarded by judicial guidance, trial by jury and strict evidentiary and procedural protocols.

For people with disabilities this model is not ideal. The formality of the adversarial system is not “user friendly”. The requirement to present your own case, even with legal backup, is daunting. The disadvantage suffered by people with intellectual disabilities and mental illness in the court system is well documented and is equally felt by people with dementia and other cognitive impairment.

*“The Guardianship Tribunal with its emphasis on informality and a non-adversarial approach provides a special legal environment for people with disabilities.”*

The Tribunal operates under an inquisitorial model which means that it is not reliant on the information presented by parties to the hearing, but can inform itself about matters relevant to the welfare and best interests of the person with the disability. The Tribunal's staff and members have a wealth of knowledge, experience and expertise in the range of disabilities that come before the Tribunal. We understand the impact of dementia, the varieties of mental illness, the challenges of intellectual disability and with this knowledge have constructed an environment to support people through an essential legal process. Our communication skills, our environmental supports and our understanding of people's differing capacities and capabilities, allows the Tribunal to create and manage a legal experience that is non-threatening and can work as an adjunct to a therapeutic management plan.

The Guardianship Tribunal's premises at Balmain were chosen and designed to accommodate the special needs of the Tribunal's clientele. For example, people living with dementia can often feel confused and agitated in new or complicated surroundings. The design and decor of our reception area and hearing rooms has been carefully planned to provide a calm and reassuring atmosphere. People attending Guardianship Tribunal hearings sit around oval tables and talk to Tribunal members without the trappings of a formal courtroom.

The specialist nature of the Tribunal's approach is evident when an application is first received by the Tribunal. Tribunal staff are available to discuss the application with the person, their family and carers. The person with the disability is able to ask questions and have explanations and reassurances given about what to expect at the Tribunal's hearing. Evidence vital to the Tribunal's assessment of the needs and interests of the person is coordinated and collated by the Tribunal's staff. The attendance of witnesses is also organised to ensure a fully informed Tribunal decision.

An informal, client centred hearing process is central to our philosophy. Legal representation is not the norm although it may be allowed if necessary to safeguard and support the person with the disability. The informality of Tribunal hearings means that it is almost never the case that an oath is administered before witnesses provide information to the Tribunal. Similarly, affidavits are not required and cross-examination in the traditional, adversarial sense is not generally required.

The welfare of the person with the disability is our paramount concern and the views and wishes of that person are sought and taken into account. Natural justice is a crucial



consideration but the strict rules of evidence do not apply. The Tribunal determines its own procedures and rather than putting pressure on the subject person to formally present his or her own case, the Tribunal tests the evidence and seeks the outcome best suited to the needs and welfare of that person.

The Tribunal's role as a specialist disability tribunal is not always an easy one. There is often, for example, a tension between the need for informality and the very nature and exercise of the Tribunal's power and authority. Similarly, tension can arise when the need for personal information to remain private and confidential clashes with the legal requirements of procedural fairness.

The Tribunal has access to medical reports, neuropsychological and psychiatric assessments, the results of dementia screenings, and other information generally regarded as sensitive, personal and confidential. And often the person about whom the report or assessment is written is no longer able to make an informed decision about the disclosure of such information. Given the protective nature of the Tribunal's jurisdiction and the overarching principles of the guardianship legislation, the Tribunal may feel it is appropriate to safeguard a disabled person's privacy on their behalf.

For a legal tribunal, the requirements of natural justice and procedural fairness must be respected and accommodated. However, it is not the case that procedural fairness mandates the disclosure of all information in every case. The requirements of natural justice vary in different contexts and circumstances. The meaning of procedural fairness in a protective jurisdiction allows the Tribunal to manage issues on a case by case basis having regard to both the law and the needs of the subject person.

Strong and effective safeguards are necessary in any system that impacts on people's rights, arguably even more so when the system is an informal one, without the features of the traditional legal model. For the Guardianship Tribunal these safeguards are provided by the independence of the Tribunal, the three member Tribunal system, the expertise and experience of Tribunal members and the production of written Reasons for Decision for each determination of the Tribunal. These factors work together to ensure an effective and reliable system for decision making in this complex jurisdiction.

The multi member system is a safeguard for the protection and promotion of the rights and welfare of people with disabilities. In what is essentially an inquisitorial model it is imperative that the decision makers know what to ask and how to evaluate the evidentiary material before them.

*"The Tribunal's three members: a legal member, a professional member and a community member ensure that a wide range of professional views and expertise as well as a strong family and community perspective is applied to the questions of guardianship, financial management and medical consent."*

Similarly, the production by the Tribunal of written Reasons for Decision for each of its determinations ensures transparency and accountability in relation to the Tribunal's decision making. The NSW Guardianship legislation provides a best practice model by providing for Reasons for Decision as a matter of right. This is warranted given the kinds of decisions the Tribunal makes and the impact those decisions have on people's freedoms. It is also appropriate as people disadvantaged by cognitive or other impairment may be less inclined or less able

to navigate a system where Reasons for Decision are not automatically available.

The specialist disability service provided by the Tribunal is not limited to the preparation for and provision of Tribunal hearings.

The Guardianship Tribunal is also committed to fostering and supporting appropriate informal approaches to substitute decision making. Although, the Guardianship Tribunal deals with people with a wide range of disabilities – dementia, mental illness, intellectual disability, drug and alcohol related impairment, head injury, stroke, eating disorders and others - most people with a disability do not come before the Guardianship Tribunal. For many people with decision making disabilities family, friends or other informal arrangements work as effective supports.

Informal arrangements are encouraged by Tribunal staff who assist applicants in assessing the suitability of informal solutions to the problems or issues which might prompt an application. Staff can suggest parties access mediation or conciliation to address their disputes. Even when decisions are formally made by the Tribunal, they are made in the context of our strong commitment to the consensual resolution of issues in the best interests of the person with the disability.

Many people in NSW are now taking advantage of relatively new legal arrangements and appointing their own guardians and financial decision makers by executing enduring guardianship appointments and enduring powers of attorney. In addition, advance care directives can be made to facilitate citizens managing their own medical decisions in the event of accident or incapacity or at the end of life. These private arrangements allow the views and wishes of individuals to guide decisions about their lifestyle,

medical needs and financial matters throughout their life, even if they lose capacity. This avoids the need for an application to the Guardianship Tribunal to have formal legal arrangements put in place.

The Tribunal, with other organisations in the disability sector, is working to promote appropriate private arrangements. The Tribunal runs an extensive community education programme to assist professionals, carers and the community to understand the various legal options. The Tribunal's enquiry service, the work of its Investigation Unit, its numerous publications and its website are also part of the Tribunal's drive to provide information and support to people dealing with guardianship and related issues.

It is a significant achievement of the Guardianship Tribunal that it has created and nurtured a legal environment suited to the needs of people with disabilities.

*“The expertise of Tribunal members and staff and the processes and procedures of the Tribunal enable it to prepare, manage and hear applications in a way which serves and protects people with disabilities.”*

The Tribunal also provides a range of allied services to the people about whom applications are made, applicants and the broader community. The Guardianship Tribunal's focus on the special needs of its client group enables it to successfully operate as a specialist disability tribunal service and to provide a necessary, effective and appropriate alternative to the traditional court model.

Diane Robinson  
President



# About us

## Tribunal staff and members

The Guardianship Tribunal consists of two separate groups of people. The first group, the Tribunal staff are full-time and part-time New South Wales public service employees who manage the day-to-day administration of the Tribunal. As at 30 June 2005, the Tribunal had 59.5 full time staff positions, filled by 66 people. The second group, the Tribunal members are appointed by the Governor on recommendation of the Minister for Disability Services to make decisions at hearings. During 2004/2005, there were 78 Tribunal members, most of whom were available on a part-time basis to attend hearings. The Tribunal staff and members are all experienced people who are committed to promoting the rights of people with disabilities, including their right to make their own decisions wherever possible.

Of the 66 staff, the senior staff person is the Executive Officer/Registrar. The staff and their work are organised into the Executive Unit and four other units: Business Services Unit, Coordination and Investigation Unit, Client Information Services Unit, and Hearing Services Unit. Each unit plays an essential role in producing positive outcomes for people with disabilities.

### **Tribunal members**

The Tribunal members conduct the hearings and make the determinations. They are appointed on the basis of their significant professional and personal experience with people who have disabilities or their legal skills and experience. Each time a panel of the Tribunal is convened to deal with an application about a person with a disability,

it comprises a legal member who presides and two expert members. One expert, the professional member, has experience in the assessment or treatment of adults with disabilities. The other expert, the community member, has experience, usually familial, with people with disabilities. The combination of the three members ensures the Tribunal not only conducts its proceedings fairly, relies on credible evidence and remains within its jurisdiction but also that it focuses on the physical, psychological, social and emotional needs of the person the hearing is about. This enables the Tribunal to take a holistic approach to its decision making.

The panel considers the written evidence and takes evidence from the person the hearing is about and other parties and witnesses at the hearing or by telephone or video conference. They keep the hearing relevant, by asking questions and directing the parties and witnesses to the issues being considered. At the end of the hearing, they assess the evidence and decide if there is a need to appoint or reappoint a guardian or a financial manager for the person the hearing is about. The Tribunal members usually announce their decision at the end of the hearing and provide written orders and written reasons for their decision within 12 working days. The backgrounds of individual Tribunal members are detailed on pages 52 - 62.

## Tribunal staff

The structure of the Tribunal is based on functional groups. The functional groups are:

- the 'front door' of the organisation, with an external focus on communicating with potential clients and the general community;
- management and preparation of cases, with a focus on processing cases for hearing or, where appropriate, assisting with their informal resolution; and
- completion end, with a focus on setting up and supporting the hearing and post-hearing processes.

In addition, there is a fourth functional group, with a focus on providing the necessary internal supports to allow the other three functional groups to work well. The four functional units, in addition to the Executive Unit, form the organisational structure.

**Client Information Services Unit** deals with switch, enquiries, receipt of applications and other incoming mail, coordination of

feedback and other correspondence, administration of reviews, preparation and withdrawals processing, website, publications and community education.

**Coordination and Investigation Unit** deals with assessment, investigation and preparation of new and review cases for hearing.

**Hearing Services Unit** provides support for hearings, including scheduling, and member liaison, coordination of notices, travel, venue and interpreter arrangements, post-hearing enquiries, and distribution of Orders and Reasons for Decision.

**Business Services Unit** handles human resources, finance and other administrative services, management and support services for information technology, communication and client data base systems, and training and development for staff and members. For further details, refer to the organisational chart on page 12.

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## Legislation relating to the Guardianship Tribunal

### Legislative changes

The *Guardianship Act 1987* sets out the legislative framework under which guardianship orders can be made, how they operate and how they are reviewed in New South Wales. The Act establishes the Guardianship Tribunal and the Public Guardian and details the role of both organisations. It also provides for the making of appointments of enduring guardians and for the review of those appointments where necessary.

The Act creates the regime for substitute decision making in relation to medical and dental consent for those persons 16 years and above who are unable to give a valid consent to their own treatment. Usually this consent can be provided by the person's 'person responsible'.

The *Guardianship Regulation 2000* should be read in tandem with the *Guardianship Act 1987* as it contains further provisions about enduring guardians and medical treatment

as well as setting out the prescribed forms required by the *Guardianship Act 1987*.

Both the *Guardianship Act 1987* and the *Protected Estates Act 1983* deal with financial management and the Protective Commissioner. The *Guardianship Act 1987* deals with the process of making applications for financial management to the Guardianship Tribunal and the Tribunal's authority to make and review financial management orders.

The *Protected Estates Act 1983* sets out how financial management orders can be made by the Supreme Court, Magistrates and the Mental Health Review Tribunal. The *Protected Estates Act 1983* sets out the powers of the Protective Commissioner and how estates placed under management by one of these courts or Tribunals are to be administered.

The *Powers of Attorney Act 2003* empowers the Guardianship Tribunal, in addition to the Supreme Court, to review and vary an enduring power of attorney.

The Tribunal can make a variety of orders regarding the making or operation and effect of an enduring power of attorney. Following the conduct of a review of an enduring power of attorney, the Tribunal can make orders which:

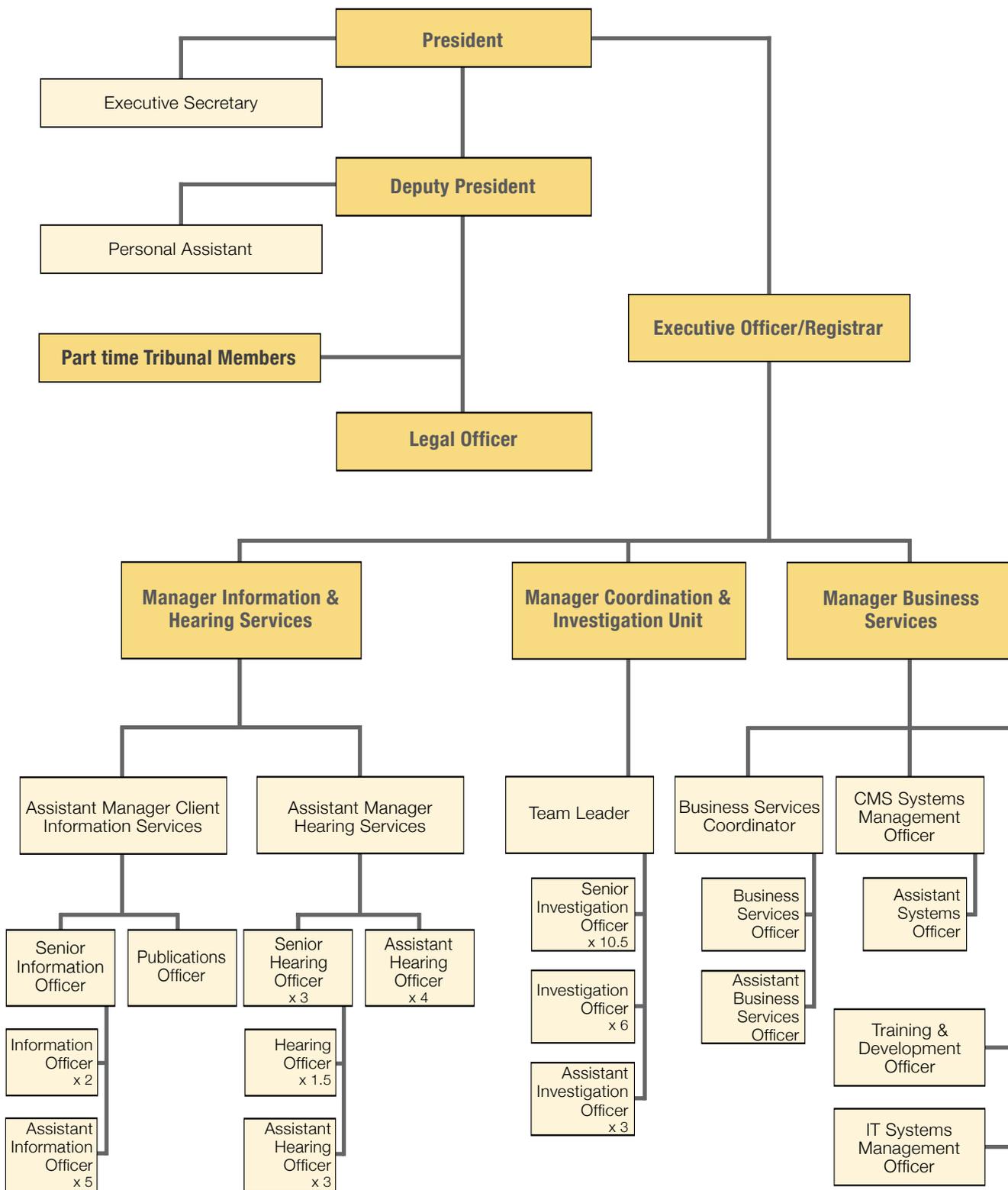
- Revoke an enduring power of attorney.
- Vary an enduring power of attorney.
- Remove an attorney from office and substitute a new attorney.
- Reinstate a power of attorney which has lapsed because one of the attorneys has died, resigned or become incapacitated.

- Declare whether or not a person had the mental capacity to make an enduring power of attorney.
- Declare an enduring power of attorney invalid, either wholly or partially.
- Declare that a person lacked or lacks capacity at a particular time or during a specific period. If such an order is in place, then the person who made the enduring power of attorney cannot revoke it.
- Order the attorney to provide accounts or other information to the Tribunal. The Tribunal may order the accounts to be audited or that an inquiry be carried out and a report submitted to the Tribunal.

The Tribunal also has the power to decide that a review of an enduring power of attorney should be treated as an application for a financial management order. The Tribunal can then proceed on that basis and make a financial management order for the person who made the enduring power of attorney, if appropriate. As has long been provided for under the *Protected Estates Act 1983*, the making of a financial management order suspends any powers of attorney that have been made by the protected person (the person whose estate is the subject of the order).



## Organisational chart





# What we do

## Role of the Guardianship Tribunal

### Our statutory role

The Guardianship Tribunal is a New South Wales Government Tribunal established under the *Guardianship Act* 1987. The principal role of the Guardianship Tribunal is to hear and determine applications made to it for the appointment of guardians and financial managers for adults with decision making disabilities. The Tribunal also reviews the guardianship orders it makes and may review its financial management orders. It has jurisdiction to give substitute consent to medical and dental treatment. The Tribunal also reviews enduring guardianship arrangements and enduring powers of attorney and has a range of powers in relation to such reviews.

Under the *Guardianship Act* 1987, the Guardianship Tribunal may conduct proceedings with as little formality and legal technicality and form as the circumstances of the case permit. The legislation also assumes that the Tribunal will operate in a procedurally fair manner. It also provides that the Tribunal may obtain information on any matter in such manner as it thinks fit. The provisions of Part 6 of the *Guardianship Act* 1987 deal with the Tribunal and proceedings before it.

Through the Tribunal's community education programs, its videos and publications, and its enquiry service, the Tribunal educates and informs the community about the work of the Tribunal and the various informal arrangements that may overcome the need to make an application or for the Tribunal to make orders.

### How the Tribunal functions

The Tribunal differs from other courts and tribunals in the kinds of proceedings it hears. In nearly all other courts or tribunals, proceedings involve a dispute between two parties. In many matters coming to the Guardianship Tribunal, there is no dispute. The person with a decision making disability may not appreciate the need for decisions to be made or actions to be taken in relation to them. Sometimes, there is conflict between those involved about what should be done for the person with the disability. Only rarely will the conflict be about whether or not the person has lost their decision making capacity.

Proceedings before the Guardianship Tribunal are about whether a person with a decision making disability needs a substitute decision maker and, if so, what powers or functions that substitute decision maker should have. Proceedings before the Guardianship Tribunal are about an individual person and their right to continue to make their own decisions.

In most matters, the Tribunal's decision affects the person the hearing is about. In some cases, the emotions and interests of other people involved in the hearing are affected as well. The Guardianship Tribunal conducts its hearings differently to other tribunals. It operates in an inquisitorial manner and controls its proceedings by setting out the issues and obtaining the evidence through a series of open questions at the hearing. The Tribunal then considers this evidence along with the report evidence

it has received. It determines whether or not the person the hearing is about has lost their decision making capacity and needs a guardian or financial manager and, if so, who that guardian or financial manager should be and their decision making functions.

Because of their knowledge of disabilities and the available services, the professional and community members play an essential role in determining whether an order should be made and, if so, what its content should be.

The Tribunal can appoint private people or public officials to act as guardians or financial managers. Private guardians are often family members or friends of the person with a disability. Before the Tribunal can appoint a private guardian, it has to be satisfied that the guardian is compatible with the person who has a disability, there is no undue conflict of interest that would impact on decision making, and that the person is willing and able to accept the role of guardian.

The Tribunal can appoint the Public Guardian to make decisions for a person with a disability if there are no family or friends who can assume that role, or if the circumstances of the case make it inappropriate to appoint a private guardian.

The Tribunal can appoint family members or friends to act as private financial managers. A private manager is appointed subject to the supervision and direction of the Protective Commissioner and a private manager is required to keep accounts and submit them to the Protective Commissioner for audit annually. Before the Tribunal can appoint a private manager, it must be satisfied that the person is able and suitable to undertake the role. Alternatively, the Tribunal can commit the property and affairs of a person to be managed directly by the Protective Commissioner. In either case, whether a private manager is appointed or the Protective Commissioner manages, the person whose affairs are under management will be charged fees by the Protective Commissioner for their management or supervision.

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## How the Tribunal deals with an application

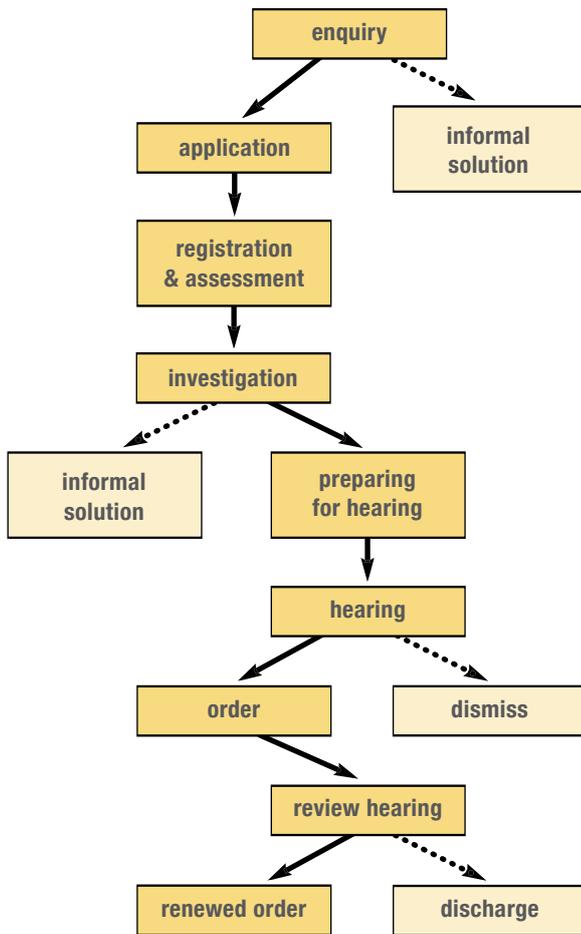
Most people with a disability do not need a guardian or a financial manager. There is no need to contact the Guardianship Tribunal unless there is a breakdown in informal arrangements in caring for a person with a disability or there are no informal arrangements available.

Lodging an application for the appointment of a guardian or financial manager for a person with a disability is a serious matter. The person submitting the application is,

in effect, asking the Tribunal to take away a person's rights to make their own lifestyle or financial decisions and to give those rights to someone else.

Applications can be made to the Tribunal by anyone with a genuine concern for the welfare of the person with a disability. Someone with a genuine concern for the person with a disability may be a family member or a friend or their doctor, caseworker, professional carer or other service provider.

## Dealing with an application: the steps



### Enquiry

Does the Tribunal need to be involved? Before making an application, service providers, professionals, family members or friends of the person are encouraged to telephone the Tribunal's enquiry service. The service offers advice about whether there is a need to make an application. There may be other informal arrangements to assist the person rather than having a hearing. The enquiry service offers advice about these options.

### Application or informal solution

Applications will often be needed where a person is at risk or there is no informal solution available to help the person. Where informal solutions are available,

such as using joint bank accounts, there is no need for an application. There may also be other agencies who can provide more appropriate assistance for the person.

### Registration and assessment

When an application is received, it is registered by Tribunal staff. This starts a legal process in which the Tribunal has to be satisfied that the welfare and interests of the person with the disability are given paramount consideration. All applications are assessed for urgency. The applicant must demonstrate that it is in the person's best interests before a withdrawal is approved. The welfare and interests of the person are considered in the assessment of the application.

### Investigation

A staff member of the Tribunal's Coordination and Investigation Unit will contact the applicant, family members and service providers and, wherever possible, the person who is the subject of the application.

The investigation process also requires the submission of medical reports relating to the subject of the applications disability/incapacity and the need for an order.

After developing an understanding of the situation, the staff member will write a report, outlining the background to the application, any major issues and the views of all the people involved. This report provides a summary for the Tribunal members at the hearing.

### Informal solution

During the investigation process, staff explore options on a regular basis with the people involved. This process can help to clarify issues and find satisfactory alternatives to formal guardianship or financial management for the problems

they are facing. The application can be discontinued in these circumstances.

### **Preparing for hearing**

The Tribunal will organize the hearing arrangements, such as interpreters, disabled access and notifies people of the time, date and place of the hearing.

### **Hearing**

Each time a Tribunal is convened, it comprises a legal member, a professional member and a community member. At the hearing, the three Tribunal members consider the evidence and opinions of all parties and determine if a guardian or financial manager or medical consent is needed.

### **Urgent applications**

If necessary, a hearing with a three member Tribunal can be set up within hours or days of receiving the application. Sometimes these matters need to be dealt with by telephone. This is rare and occurs only in extremely urgent situations.

### **Order**

At the hearing the Tribunal can make a guardianship order, financial management order or consent to medical treatment. Various decisions can be made about enduring guardianship and enduring powers of attorney. In most cases the decision will be made on the day of the hearing.

The Tribunal issues written Reasons for Decisions which explain the Tribunal's decision and summarise the evidence. The Order and Reasons for Decision are sent to the parties as soon as possible after the hearing, usually within 12 working days after the hearing.

### **Dismiss**

The Tribunal can decide not to make an order and can dismiss the application.

### **Review hearing**

The Tribunal can review guardianship and financial management orders. Orders can also be reviewed on request. At the review hearing the Tribunal will consider whether the order needs to continue.

### **Renewed order**

The Tribunal can renew its order if there is still a need for decisions to be made for the person. Orders can be reviewed and renewed a number of times depending on the needs of the person with the disability.

### **Discharge**

In certain circumstances, the Tribunal can decide the order should not continue, for example if a guardian is no longer needed.





# Our work

## Year in review – 2004/2005

### Highlights

- 4,968 new applications received.
- The most common primary disability was dementia in 47% of cases.
- 3,898 scheduled hearings held.
- 2 appeals against Tribunal's decisions to the Supreme Court – both dismissed.
- 17 appeals against Tribunal's decisions to the Administrative Decisions Tribunal – 2 appeals upheld.
- 11 applications for approval of clinical trials – 9 were approved.

### Telephone enquiries service

The Tribunal's enquiries service, which operates from 9.00 am to 5.15 pm Monday to Friday, dealt with 12,311 telephone enquiries over the past year, an average of 49 calls daily. The enquiries service is staffed by experienced officers to ensure that the advice provided is always of the highest quality. Because the enquiries service is often busy dealing with several callers at the same time, sometimes callers leave their contact details and their calls are returned within a few hours.

An important function of the enquiries service is to discuss the need for a guardianship or financial management application. In many cases, Tribunal staff will be able to suggest alternatives. For example, a woman had a query about her adult daughter, who had an intellectual disability and resided in a group home. As the daughter required major medical treatment, residential care staff had advised the woman to apply for guardianship. The enquiries staff member reassured the caller that she was able to provide consent herself as her daughter was not objecting to

the treatment and the caller qualified as the 'person responsible' in her daughter's life.

In some cases, an informal alternative may not be possible, such as where a property needs to be sold to cover special accommodation needs or medical costs. To make such decisions on behalf of the person with the disability, someone else may need the formal authority of Tribunal orders. Enquiries staff will discuss the particular circumstances with the caller and send the appropriate application forms and information by mail, fax or refer callers to the Tribunal's website, which contains the majority of Tribunal publications and all application forms online.

### New applications

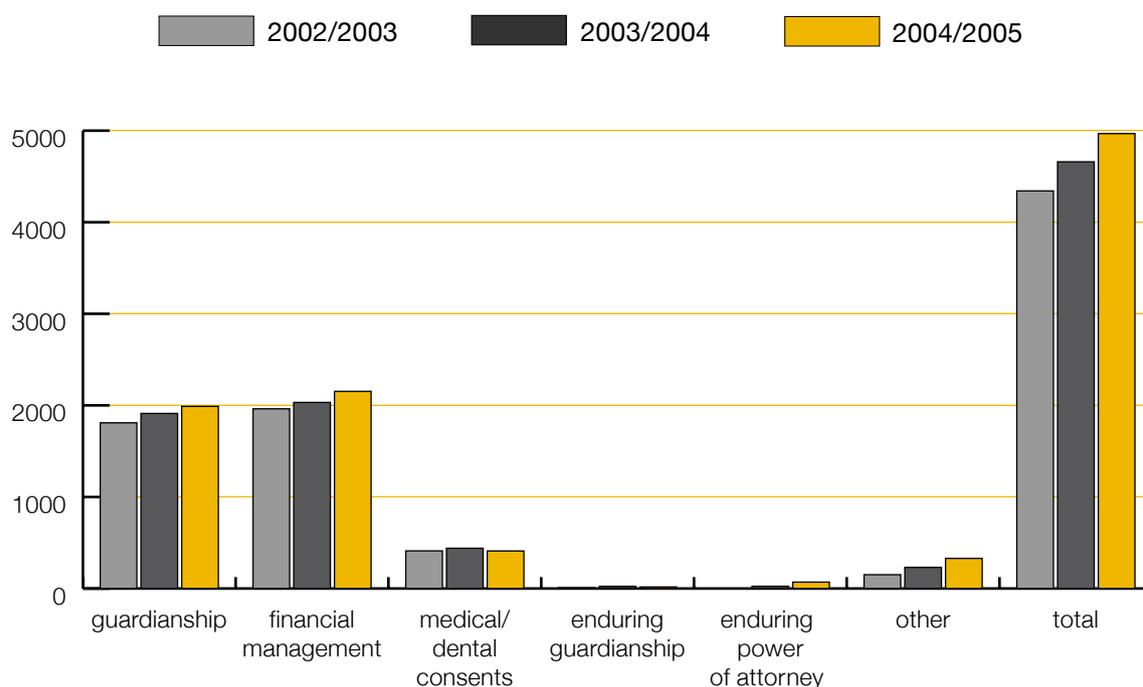
In 2004/2005, the Tribunal received 4,968 new applications. Of these new applications received, 2,153 (43%) were for the appointment of a financial manager; 1,989 (40%) were for the appointment of a guardian; 410 (8.2%) were applications for consent to medical treatment; 17 (0.3%) were for the review of an enduring guardianship appointment and 70 (1.4%) were for the review of an enduring power of attorney. The Tribunal also received 329 (6.6%) applications for clinical trial approvals, recognition of interstate appointments, approval under section 12(2) of the *Mental Health Act* 1990 and procedural determinations which have been grouped under "Other" in Table 1. Table 1 shows a breakdown of the new applications received this year and a comparison with the two previous years.

**Table 1. Categories of new applications: three year comparison**

*NB: Other category includes procedurals / recognitions / s. 12 (2) approvals / clinical trials*

<b>Application types</b>	<b>2002/2003</b>	<b>2003/2004</b>	<b>2004/2005</b>
guardianship	1,809	1,912	1,989
financial management	1,962	2,032	2,153
medical / dental consents	411	440	410
enduring guardianship	9	22	17
enduring power of attorney	N/A	24	70
Other	151	230	329
<b>Total</b>	<b>4,342</b>	<b>4,660</b>	<b>4,968</b>

**Chart 1: Categories of new applications**



### Who made the applications?

A person with a genuine concern for the welfare of the person with a disability can make an application to the Tribunal. This genuine concern can arise from being a family member or a friend of the person with the disability or because of a professional relationship with them (eg. their doctor, caseworker, professional carer or other service provider). In 2004/2005, 54% of the applications received were made by family members, friends, carers or the person themselves. The rest were made by professionals, such as social workers, case managers, doctors or residential care staff.

### Primary disability of new clients

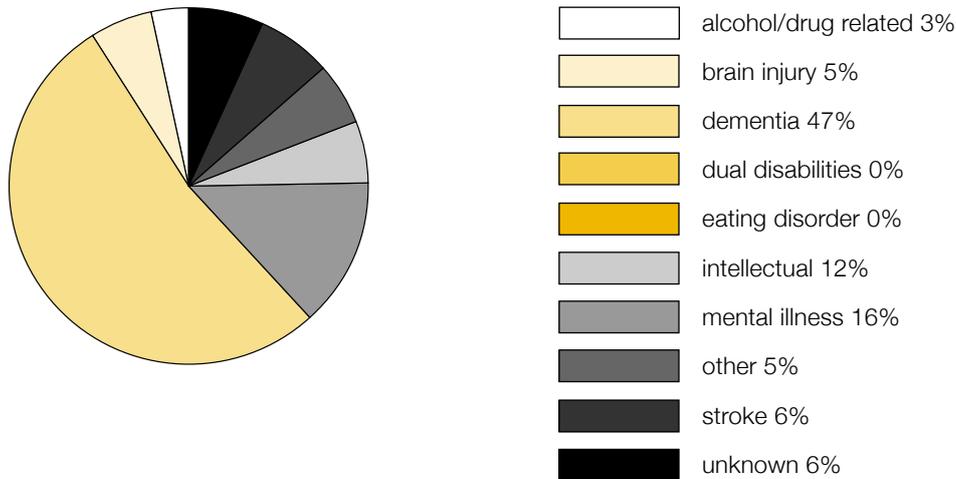
As in previous years, the most common primary disability identified for new clients where orders were made was dementia (47%). The next most common types of disabilities identified were mental illness (16%) and intellectual disability (12%). Table 2 and shows a breakdown of the disability types for new clients.

**Table 2: New clients by disability type in 2004/2005**

<b>Primary disability of clients</b>	<b>Number</b>	<b>Percentage %</b>
alcohol and drug related	79	3
brain injury	120	5
dementia	1,072	47
dual disabilities	7	0
eating disorder	1	0
intellectual	279	12
mental illness	369	16
other	117	5
stroke	130	6
unknown	151	6
<b>Total</b>	<b>2,325</b>	<b>100</b>

## Chart 2: New clients by disability type in 2004/2005

Chart displaying the primary disability groupings of new clients and their percentages.



### Age and sex

Of the new orders made, 47% related to men and 51% to women. Similar to last year, when the majority of orders made relating to people over the age of 65 were for women, this year the female subjects in this age group have again exceeded the men (57% for women and 41% for men). For people under 65 years, 59% of the orders made related to men.

### Cultural background

Orders were made about people with a wide range of cultural backgrounds. Applicants are asked to identify the cultural background of the person who is the subject of the application. The most frequent of these were Italian, Greek, Aboriginal/Torres Strait Islander, Polish, Hungarian, German, Croatia, Lebanese, Maltese, Austrian, Russian and Vietnamese.

### Language spoken at home

Information was also provided by applicants about the language spoken at home by the person with the disability. A total of 46 languages other than English

were identified. Italian, Greek, Polish, Hungarian, German, Croatia, Arabic, Spanish, Cantonese and Maltese were the most frequently nominated languages other than English. Aboriginal languages and Auslan (Australian sign language) were also featured.

### Interpreters used

Where appropriate, the Tribunal provides interpreters to assist people attending hearings. Interpreters were provided on 239 occasions during the year across 35 different languages. Interpreters for Arabic, Assyrian, Cantonese, Croatian, German, Greek, Hungarian, Italian, Korean, Lebanese Arabic, Macedonian, Maltese, Polish, Russian, Serbian, Spanish, and Vietnamese were provided on five or more occasions. Auslan (Australian sign language) interpreters were provided on five separate occasions during the year. Also, where appropriate, the Tribunal will arrange for documents to be translated into other languages and Braille.

## Applications

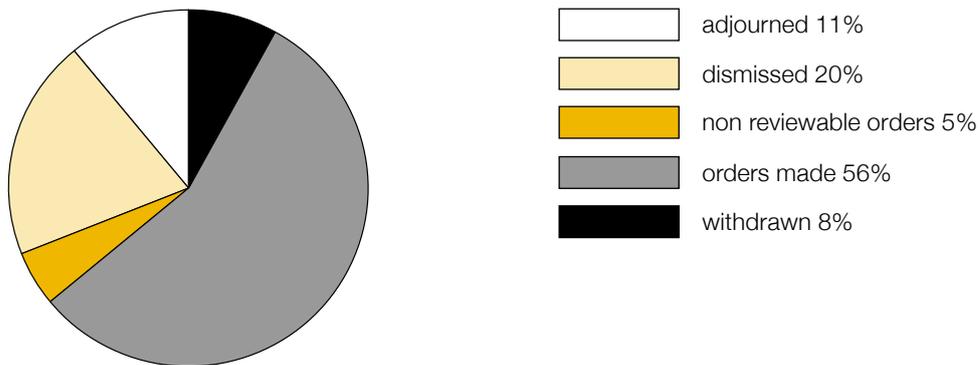
### Guardianship

In 2004/2005, the Tribunal received 1,989 new guardianship applications. In total, 2,036 new guardianship matters were determined by the Tribunal. Of the matters dealt with at hearings, 1,436 resulted in orders being made, including 154 adjourned matters and 600 matters were finalised without requiring a hearing.

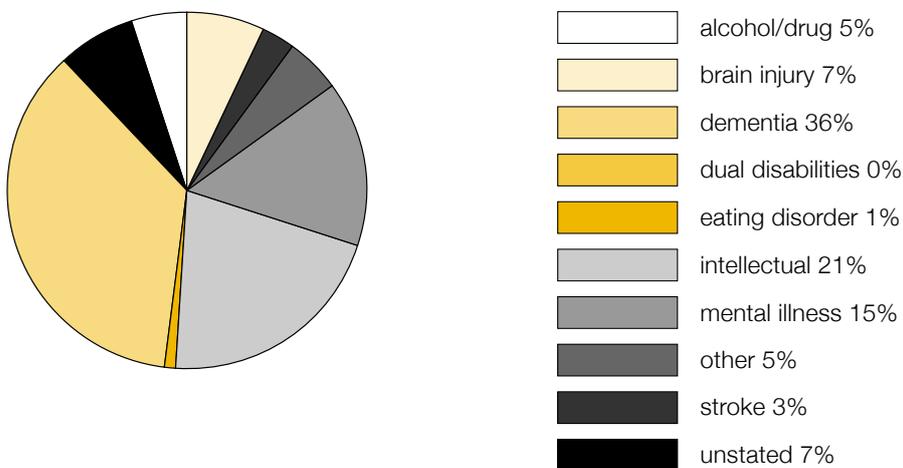
The outcomes for guardianship matters finalised at hearings:

Of the 56% of applications that resulted in a guardianship order being made, private guardians were appointed in 40% of the cases and the Public Guardian in 58%. In the remaining 2%, a private guardian was appointed for some functions and the Public Guardian for other functions.

**Chart 3: Outcomes of guardianship matters finalised at hearing**



**Chart 4: Primary disability in guardianship orders made**



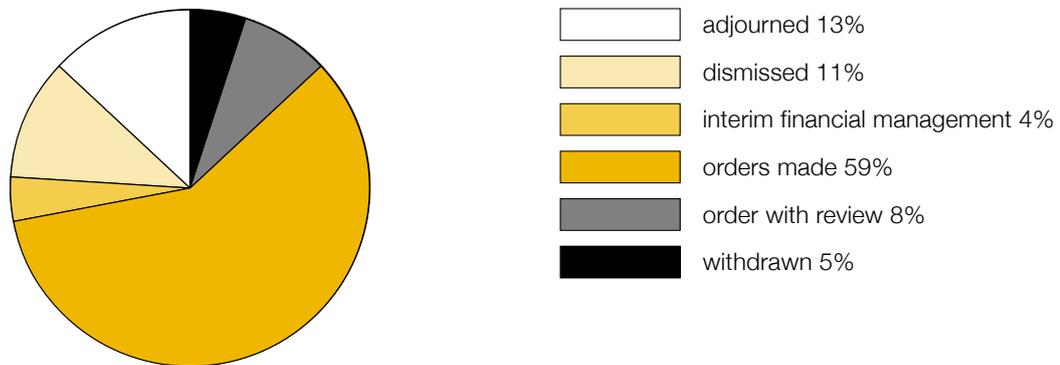
## Financial management

In 2004/2005, the Tribunal received 2,153 new financial management applications. In total 2,308 new financial management matters were determined by the Tribunal. Of the matters dealt with at hearings 1,760 resulted in orders being made, including 235 adjourned matters and 548 matters were finalised without requiring a hearing. Of the matters finalised at hearings, 71% resulted in a financial management order and 29% were withdrawn, dismissed or adjourned.

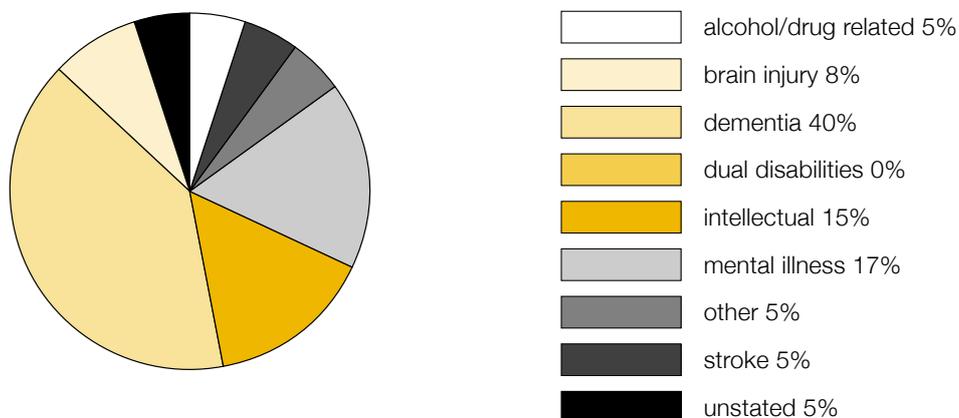
Outcomes for financial management matters finalised at hearings:

Of the 71% of matters where financial management appointments were made, 59% resulted in final financial management orders; 8% had a review period stipulated in the order and 4% were interim financial orders.

**Chart 5: Outcomes of financial management matters finalised at hearing**



**Chart 6: Disability in financial management orders made**

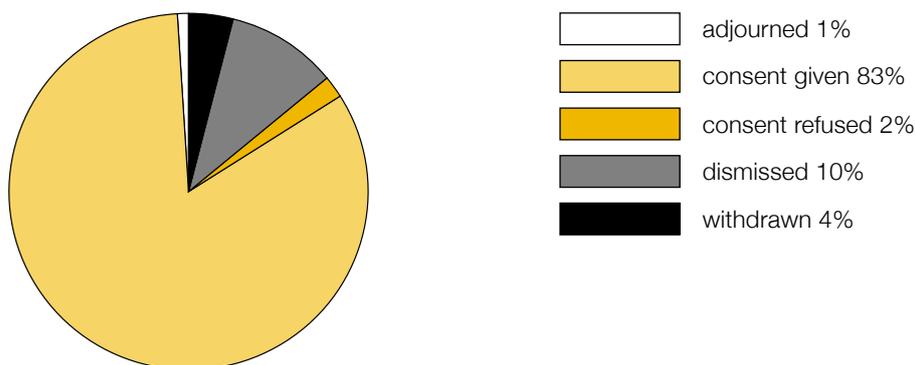


## Consent to medical or dental treatment

A total of 410 applications for consent to medical or dental treatment were received by the Tribunal during the year and 364 matters were finalised at hearings and 42 matters were finalised without requiring a hearing.

Hearing outcomes for medical and dental consent matters are summarised in Chart 7.

**Chart 7: Hearing outcomes for medical and dental consent matters**



## Reviews of enduring guardianship

The Tribunal received 17 new applications to review the appointment of enduring guardians during the year. Twenty two (22) reviews of the appointment of enduring guardians were heard during the year with five enduring guardianship appointments confirmed, six matters adjourned, three matters withdrawn, two matters dismissed, five appointments suspended and one appointment revoked when guardianship orders were made in their place.

## Reviews of enduring power of attorneys

On 16 February 2004, the *Powers of Attorney Act 2003* came into force, giving the Tribunal the jurisdiction to review the making, operation and effect of enduring powers of attorney.

The Tribunal received 70 applications to review an enduring power of attorney or to obtain advice or directions about the operation of the power of attorney. Fifty three (53) applications to review an enduring power of attorney were heard by the Tribunal. Fourteen (14) reviews were dismissed, 13 matters were adjourned and one appointment of an attorney was confirmed. The Tribunal made orders about an enduring power of attorney in 16 of the other applications. A financial management order was made in six of the applications and the Tribunal revoked the enduring power of attorney in one matter.

### Reviews of guardianship orders

Many guardianship orders are reviewed at the end of their terms. They may also be reviewed on request at any time. Requested reviews are usually made by guardians to increase or vary the guardianship functions. Others may also request a review because the circumstances relating to the person under guardianship have changed significantly or because new issues have arisen.

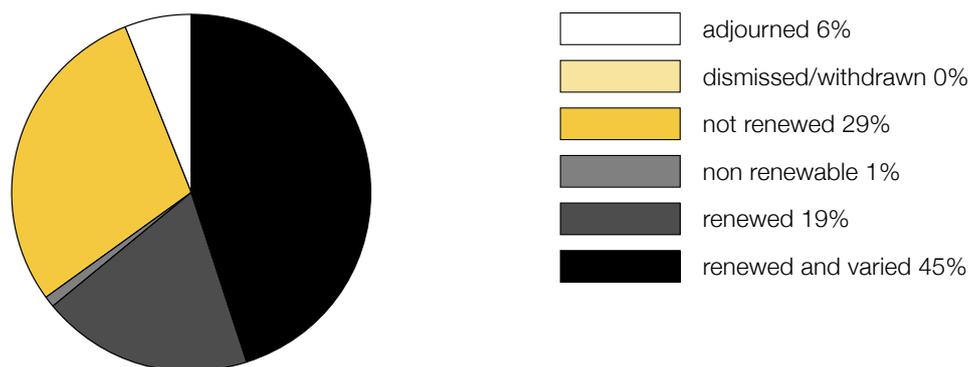
The Tribunal finalised 1,694 reviews of guardianship matters during the year.

Of these, 1,450 orders were made following a hearing and 244 matters were finalised without requiring a hearing.

Outcomes for reviews of guardianship orders finalised at hearings:

In 19% of matters, the guardianship order was renewed; in 45% of matters the order was renewed and varied; while in 29% of matters the order was not renewed as it was determined that there was no longer a need for an order.

**Chart 8: Outcomes for reviews of guardianship orders finalised at hearings**

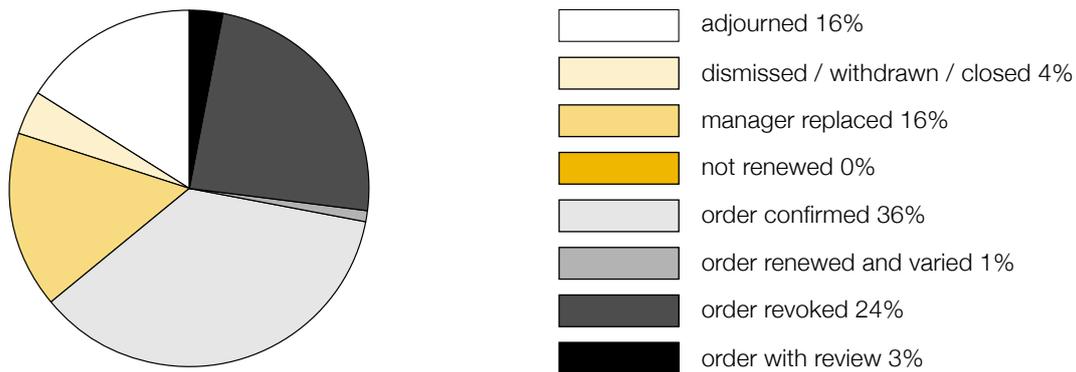


### Reviews of financial management orders

The Tribunal finalised 519 reviews of financial management orders during 2004/2005. Of these 451 orders were made following a hearing and 68 matters were finalised without requiring a hearing. One hundred and seventy nine (179) matters were applications to revoke financial management orders on the grounds of regained capacity or best interests. One hundred and ten (110) orders were revoked.

The Tribunal also received 126 applications to replace the current financial manager. Such applications are made for a variety of reasons. The manager may no longer be able to carry on with the role, or there may be concerns about the manager's suitability. Seventy four (74) appointed managers were replaced during the year. In 67% of these cases, the Protective Commissioner was appointed in place of a private manager.

**Chart 9: Outcomes for reviews of financial management orders finalised at hearings**



## Hearings

### How many hearings were held?

During the year, the Tribunal conducted 3,898 scheduled hearings over 1,012 scheduled sittings. Of the scheduled sittings 86 were half day sittings. In addition to this, the Tribunal conducted 33 hearings after hours and 231 procedural hearings. Together, a total of 4,162 scheduled, procedural and after-hours hearings were held during the year.

### Where were the hearings held?

The Tribunal conducted approximately 75% of its standard hearings either at its Balmain premises or in the Sydney metropolitan area. The remaining 26% of hearings were conducted elsewhere in NSW (see Table 3). Of these, 27% were held in either Newcastle or the Central Coast. Table 4 shows a breakdown of the major hearing locations.

**Table 3: Hearings conducted outside Sydney metropolitan area**

Albury	Armidale	Bathurst	Bega
Blue Mountains	Bowral	Central Coast	Cessnock
Coffs Harbour	Cooma	Dubbo	Goulburn
Griffith	Lismore	Maitland	Moree
Morisset	Moruya	Moss Vale	Newcastle
Nowra	Orange	Parkes	Port Macquarie
Queanbeyan	Stockton	Tamworth	Taree
Tweed Heads	Wagga Wagga	Wollongong	Yass

**Table 4: Hearings and sittings by location**

<b>Location</b>	<b>Hearings</b>	<b>Sittings</b>
Balmain	2,575	610
Sydney metropolitan	350	98
Central coast	150	44
Newcastle	165	52
Wollongong	110	28
Other country	548	180
Sub total	3,898	1,012
After hours	33	31
<b>Total</b>	<b>3,931</b>	<b>1,043</b>

### **Procedural hearings**

In addition to the above during 2004/2005, the Tribunal conducted 231 procedural hearings. These matters were determined by either the President or Deputy President and included applications for legal representation, applications to be joined as a party, and requests for withdrawal of some matters. Of the 106 applications for legal representation considered, representation was granted on 83 occasions.

### **Recognition of appointments**

The Tribunal has the jurisdiction to recognise the appointment of guardians and managers appointed under corresponding law in other states and territories. The Tribunal is able to recognise appointments made by relevant guardianship bodies in all Australian states and territories and in New Zealand. During 2004/2005, the Tribunal received 24 applications to recognise such appointments.





## Case studies

### Guardianship orders can work as a “problem solving” tool

Mr Green is a 76 year old man who was living with his wife in their home in Newcastle. Mr Green has a history of serious mental illness. Although Mrs Green has some very mild memory problems and quite a difficult personality, she has been able to assist in the care of her husband at home. Mr and Mrs Green have also been receiving support from community services in their home. Often, as a result of his illness, Mr Green would refuse services and sometimes prevent them from assisting him and his wife. Without the support of services, Mr Green’s health, nutrition and hygiene deteriorated rapidly.

Mr and Mrs Green have one daughter who is very concerned about her parent’s welfare. She arranged for Mr Green to go to a hostel for a period of respite care. At the hostel Mr Green was assessed as needing permanent supported accommodation.

Mr Green would not accept that he needed such accommodation. Mrs Green agreed that she could no longer manage her husband at home and that he needed to move to supported care. However, she did not want Mr Green to move away from her and was concerned that if her husband moved to supported accommodation, she would have to sell the house she was living in.

Mrs Green and her daughter could not agree on what to do and Mr Green was insisting that he should return home. The community service providers made an application to the Tribunal for the appointment of a guardian for Mr Green as they did not believe it was safe for him to return to live in his home.

*‘The Tribunal considered that it was not possible to informally resolve the family situation. However, the Tribunal was satisfied that Mr and Mrs Green’s daughter was acting in the best interests of her father and it was appropriate to appoint her as guardian for her father for six months. Mr Green’s daughter was authorised to make decisions about where her father should live and what health care services he should access.’*

Mr Green’s daughter, as his guardian, decided it was best for him to move to a residential care facility close to his wife, so that she could visit him daily and assist with his personal care. As guardian, Mr Green’s daughter encouraged him to continue to see his treating psychiatrist, but Mr Green was too anxious to leave the facility where he was living. The guardian then arranged for another psychiatrist to visit Mr Green. That psychiatrist considered that Mr Green was significantly depressed and that his depression was impacting on his capacity to make decisions. The psychiatrist recommended medication to try to alleviate Mr Green’s depression.

When the Tribunal reviewed the matter after six months, Mr Green was residing in the residential care facility approved by his guardian, and his wife was visiting daily. However, Mrs Green’s health had also deteriorated and she accepted that she would soon need to move to residential care herself and her house would need to be sold to fund her move. Their daughter suggested that the best course might be for

Mr and Mrs Green to move to a new residential facility that could provide them with the different levels of care that they required.

Neither Mr nor Mrs Green were opposed to that proposal. The Tribunal was satisfied that the daughter could make appropriate decisions for her father and would be able to act as his 'person responsible' if Mrs Green was not able to assume that role. The Tribunal considered there was no further need for a guardian to make decisions for Mr Green, as this could now be done informally. The Tribunal decided not to renew the appointment of a guardian for Mr Green.

## **Tribunal can review the appointment of an enduring guardian and enduring power of attorney**

Mrs Poulos is a 72 year old Greek widow who usually resides in her own home in Wollongong with one of her sons as her carer. Mrs Poulos has two sons but there is a history of conflict between them.

Mrs Poulos was admitted to hospital following a fall at home. The hospital social worker made an application to the Guardianship Tribunal for guardianship and financial management when it became clear that her two sons could not agree on her accommodation after discharge from hospital.

While Mrs Poulos was in hospital, she signed documents appointing one of her sons as her enduring guardian and attorney, pursuant to an enduring power of attorney. These documents were witnessed by a solicitor, as required by law.

Her other son applied to the Tribunal for these appointments to be reviewed. He claimed that Mrs Poulos did not have the mental capacity to understand these documents when she signed them.

At the hearing, the Tribunal examined medical reports about Mrs Poulos' capacity including a neuropsychological assessment of Mrs Poulos which was done the day after she signed the documents. According to the assessment, Mrs Poulos had a background of paranoid schizophrenia and progressively worsening memory. During the assessment Mrs Poulos was asked if she knew what a power of attorney was and replied that she did not. Although she recalled signing legal documents, she said she had no idea what they were for.

A geriatrician's report also confirmed Mrs Poulos' significant cognitive impairment.

Her son who had been appointed attorney and enduring guardian told the Tribunal that he believed his mother was capable of understanding the documents she signed.

The Tribunal was concerned about the circumstances in which the enduring guardian appointment and power of attorney were drawn up. The solicitor who witnessed these documents spoke with Mrs Poulos and her son in the grounds of the public hospital before the documents were signed. Although Mrs Poulos did not understand spoken or written English, no interpreter was obtained and her son had acted as the interpreter between his mother and the solicitor.

The Law Society's Guidelines for a solicitor taking instructions for a power of attorney are that a solicitor should seek instructions directly from the person and advise the person in the absence of the proposed attorney. In this instance Mrs Poulos was heavily reliant on the proposed attorney to act as her interpreter.

*'The Tribunal also noted the Law Society Guidelines which state that where a solicitor is aware that the person is in hospital or in an aged care facility, the solicitor must check with the [person's] doctor or other relevant health professionals and either obtain a report or make a note confirming how they decided that the [person] has the mental capacity to execute an enduring power of attorney.'*

The solicitor involved told the Tribunal that Mrs Poulos appeared responsive to questioning and answered "yes" when asked if she understood what she was signing. The solicitor stated that Mrs Poulos kept saying "yes, yes, OK" to most of his questions.

The solicitor stated that he was not aware of Mrs Poulos' dementia and had made no enquiries about it. The Tribunal was not satisfied that simply answering "yes" to questions or statements indicated that Mrs Poulos actually understood the documents she was signing.

The Tribunal spoke to Mrs Poulos at the hearing. She said that she had no recollection of having appointed an enduring guardian or having made an enduring power of attorney. Mrs Poulos said she thought a power of attorney helped her to get out of hospital. Mrs Poulos could not recall the last time that she had been in hospital and did not remember where she had spent the previous night.

The Tribunal was satisfied that Mrs Poulos lacked capacity when she signed the enduring guardian and enduring power of attorney documents. It revoked the appointment of the enduring guardian and appointed the Public Guardian to decide where Mrs Poulos should live. The Tribunal also made an order that the power of attorney was wholly invalid. The Tribunal appointed the Protective Commissioner as the financial manager of Mrs Poulos' affairs as both her sons were in dispute about her finances. The Protective Commissioner was appointed to ensure that Mrs Poulos' property and financial affairs would be managed in her best interests.

## **The Tribunal reviews orders in the best interests of their clients**

Sally is a young woman with a moderate intellectual disability. When Sally was very young, her family were unable to care for her and she was adopted by another family. Unfortunately, that was not a safe place for Sally. She was physically and sexually abused by her adoptive parents and she developed difficult behaviours and a serious personality disorder.

Sally was made a ward of the State and placed in the care of the Department of Community Services. Her first child was removed from her care when he was six weeks old. As she was approaching her 18th birthday and the end of her wardship, Sally's district officer applied to the Guardianship Tribunal for a guardian and financial manager to be appointed for her. The district officer had concerns that Sally's disability and her behaviours could place her at risk if she were to live independently in the community.

The Tribunal made a financial management order appointing the Protective Commissioner to manage Sally's finances and provided for the order to be reviewed in 12 months. The Tribunal adjourned the application for the appointment of a guardian for 12 months, to see if Sally could be adequately supported by informal mechanisms. At that time, Sally was accepting Home Care services to assist her with shopping and cleaning. She was also attending TAFE.

When the financial management order was reviewed in 12 months, Sally wanted to get rid of it. She resented the intrusion of the financial manager in her life. However, the Protective Commissioner had been able to arrange for Sally to start paying off her debts and they also arranged for her to receive an allowance three times a week, so that she was not without money for an extended time. The Tribunal was satisfied that it was in the best interests of Sally that the financial management order continue and the appointment of the Protective Commissioner was confirmed.

When the Tribunal considered the adjourned application for guardianship, there were concerns that Sally had little insight into her capacities and her needs. Sally often expressed the view that if she refused services provided to her by the Department of Community Services and others, she would be able to demonstrate her independence and would be better placed to have her child restored to her care. The Tribunal determined to appoint the Public Guardian as Sally's guardian for 12 months. The Public Guardian was authorised to determine what services Sally should access, and they could make such decisions over Sally's objections, if necessary.

When the Tribunal reviewed the guardianship order, Sally was 20 years old. She had matured considerably and was accepting the services offered to her, and she was seeking services when she felt she needed additional assistance. Sally was also seeing a psychiatrist on a regular basis, for general support and the management of her medical issues. The Tribunal was satisfied there was no need for a guardian to continue to make decisions for Sally and the order was allowed to lapse after one year.

When Sally was 25, she applied to the Tribunal to have the financial management order that had been made for her, revoked. She was about to marry and was successfully caring for her second child. The Department of Community Services had closed its child protection file for Sally. Sally continued to see her psychiatrist regularly and she also had support from a budgeting counsellor and her fiancée. She had completed a six month, live in, parenting support program and matured further and developed more coping skills. Sally had negotiated with the Protective Commissioner for her to take responsibility for managing her Disability Support Pension. She had been doing that for ten months with the support of her budget counsellor and her future husband and she had managed well.

Both Sally's psychiatrist and her budget counsellor felt that she was capable of managing her finances and no longer needed a financial management order.

*'The Tribunal was satisfied on the evidence presented that Sally was now capable of managing her finances and determined to revoke the financial management order. Sally was able to marry in the Spring, without a guardian or financial manager making decisions for her.'*



## Improving services

The Tribunal's Corporate Plan, developed in 2002, established a three year focus to 'improve our services and our service quality'. This focus has been maintained and we have continued to work on projects and other developments that are aligned with the six key strategies identified in the Corporate Plan. During 2004/2005, a number of significant achievements were made in relation to the strategic directions of the Corporate Plan (2002 – 2005). We have commenced a review of the Tribunal's Corporate Plan to assist in the process of developing the new Corporate Plan to ensure the Tribunal's policy of continuous improvement is successfully implemented.

### Information provision

One of the Tribunal's core activities is to inform its customers and the general community about the Tribunal and what it does, as well as to assist people to clarify whether there is a need to make an application to the Guardianship Tribunal and what may be appropriate alternative courses of action.

The Tribunal does this in a number of ways, which are detailed in the section of this annual report on 'communicating with our clients' (page 40). The Tribunal actively seeks feedback at its community education seminars, has a program for regularly reviewing its publications and responds to feedback received via the website. These processes inform the Tribunal of improvements it can make to its information provision services.

### Utilising information technologies

In line with the NSW Government's e-government agenda, the Tribunal has made a commitment to expanding its use of information and communication technologies to improve its services and the efficiency of its operations. Ongoing developments and planning have continued in this area during 2004/2005.

#### 1. The website

One of the Tribunal's major avenues for providing information to the community is via its website, which was launched in February 2004. The website contains features that maximise its accessibility for people with disabilities. During 2004/2005, in excess of 106,000 visits were made to the site and the Tribunal has been very pleased with the positive feedback it has received (from Australia and overseas) in relation to its website and the ease of navigation and accessibility of the information on the site. Further updated technical improvements to improve the website's functionality will be progressed in 2005/2006.

New guardianship and financial management applications can be made online via the website. During 2004/2005, 288 applications were made to the Tribunal in this way. This means close to 10% of new matters registered with the Tribunal were received via the online process. In 2005/2006, the Tribunal will look to expanding the capacity of the online system so that more applications can be made online.

## **2. Information Technology (IT) Plan**

The Tribunal's first IT Plan was completed in late 2002 and contained a number of recommendations for the Tribunal to implement in order to establish an IT infrastructure that would allow greater utilisation of information technologies now and into the future. Throughout 2004/2005 the Tribunal continued to implement the recommendations of the IT Plan. By the end of the 2004/2005 year all the recommendations had been implemented except for the establishment of an intranet for the Tribunal. This is expected to be implemented in early 2005/2006 and also during that year a second IT Plan will be developed to set out the steps by which the Tribunal can continue to expand its utilisation of information and communication technologies to improve how it manages its work and delivers its services.

## **3. New Case Management System (CMS)**

The Tribunal's Case Management System (CMS) is a database that was custom designed for the Tribunal and has been in use for the past seven years. It stores data on all Tribunal clients and other contacts. It is used as a tool to help manage and coordinate the processing of applications received by the Tribunal, as well as to produce documents related to applications. It is also used to produce statistical and other reports which use the data contained in the CMS to provide information to the Tribunal that assists in managing the Tribunal's work as well as planning for workload trends.

Following a major review of the CMS in 2003/2004 a revised and upgraded CMS was launched in August 2004. Initial bugs in the system were gradually overcome and throughout the remainder of the year the CMS was further improved as various aspects of it were refined and added to. Further refinements will be made in

2005/2006 and there are additional modules to be implemented. The new CMS provides greater functionality, operability and flexibility and has delivered a much improved system where its features and the stored data can be better utilised at an administrator and user level.

## **Setting and maintaining standards**

As part of continuously looking at ways to improve our service provision, a substantial amount of work was undertaken during 2004/2005 to develop and document standards for the preparation of different types of matters in the Client and Investigation Unit. These standards ensure a consistency of approach to the various matters and assist both staff and members to know exactly what is expected in the preparation of matters for hearing, as well as helping to improve time to hearing.

As well, a range of procedures were reviewed and documented across all units following the introduction of enhanced information technologies that could be utilised to improve work practices.

In addition, the management of the Tribunal meets regularly to plan, discuss and review policies and procedures that are case related. All case related policies and procedures, once ratified, have a review date set so that appropriate updating can occur. In 2004/2005, six policy meetings were held, at which the review of 14 case related policies was commenced or completed, the re-ratification after review and updating of six policies was agreed and the development of two new policies was commenced.

## **Management meetings**

The management group of the Tribunal met monthly throughout the year to discuss and decide on issues that affect the whole of the organisation, including standing items such as the major projects being undertaken,

statistical reporting, budget performance, Occupational Health and Safety matters and relevant updates.

### **Disability Action Plan**

NSW Government agencies are required to formulate three yearly Disability Action Plans. The Tribunal's current Disability Action Plan completes in December 2005 and provides a strategic framework with clear goals for improving the accessibility of the Guardianship Tribunal's services and facilities and for measuring the progress towards those goals.

During the 2004/2005 year, ongoing implementation of the major projects referred to above assisted in contributing to the achievement of improved accessibility for people utilising the Tribunal's services.

In particular, the Tribunal's website provides comprehensive information and offers a number of accessibility features for people with a range of disabilities. As well, the IT and CMS upgrades provide the base for improvements to the delivery of the Tribunal's services.

In addition, the Tribunal regularly seeks feedback in relation to access for its regional hearings and feedback about its community education sessions is used to inform planning for future sessions.

### **Ethnic Affairs Priorities Statement**

All government agencies are required to observe the Principles of Multiculturalism in conducting their affairs and to report on key achievements and proposed future strategies in this area. The Guardianship Tribunal is committed to these principles. Activities that have occurred over the past year that work towards this commitment include:

- Ongoing identification of the need for, and coordination of, qualified interpreters and translators to ensure people's understanding in relation to the Tribunal's services and documents.
- Reporting on interpreter usage in the Annual Report.
- Reviewing the statistical information on the use of interpreter and translator services to help inform the Tribunal about current and projected requirements.
- Providing publications about the Tribunal in a number of languages.
- Providing information about the Tribunal in a range of languages on its website.

Proposed activities in the coming year that will continue to support the Tribunal's commitment to these principles include:

- Review and amendment of the culture and language data collected and recorded in the Tribunal's data base to improve accuracy and completeness of this information on the Tribunal's clients.
- Continuing focus on identifying the need for interpreter and translator services where needed to assist clients.
- Reviewing the languages in which Tribunal publications are provided to ensure they reflect the major language groups using Tribunal services.
- Utilising NSW demographic data and projections to assist the Tribunal to target information about its services to groups that are likely to need Tribunal services.
- Targeting of community education sessions to cultural and language groups identified as using Tribunal services.

## Appeals from decisions of the Tribunal

Decisions of the Tribunal may be appealed to either the Supreme Court or the Administrative Decisions Tribunal of New South Wales (the ADT).

Only parties to the proceedings before the Guardianship Tribunal can appeal to the Supreme Court or the ADT.

The Supreme Court can hear appeals from any decision of the Guardianship Tribunal. The ADT can only hear appeals from decisions which were made after 28 February 2003 and there are some decisions, such as decisions about medical treatment, which cannot be appealed to the ADT.

### Appeals to the Administrative Decisions Tribunal

There were 17 appeals made to the ADT from decisions of the Tribunal during 2004/2005 (see Table 5). There were four appeals received during the previous financial year but not finalised until the current year. Of those four appeals, three were dismissed and one appeal was upheld and remitted to the Tribunal to be heard again.

**Table 5: Total appeals received during 2004/2005**

Total appeals received during 2004/2005	17
Appeal withdrawn by appellant	8
Appeal dismissed by ADT	3
No standing to appeal	1
Appeal upheld by ADT	2
Pending ADT hearing as at 30 June 2005	3

The two appeals which were upheld by the ADT were remitted to the Tribunal for re-hearing. The ADT did not substitute its decision for that of the Guardianship Tribunal in any of the appeals.

### Appeals to the Supreme Court

There was one new appeal from a decision of the Tribunal lodged with the Supreme Court during 2004/2005 and one appeal which was still pending as at 30 June 2004 and was finalised this year.

There has been one appeal to the Court of Appeal from a decision of the Supreme Court dismissing an appeal from the Guardianship Tribunal. This appeal is still pending as at 30 June 2005.

### JM v Guardianship Tribunal & Ors [2005] NSWSC 115

The Guardianship Tribunal made orders that the estate of JM be subject to management under the Protected Estates Act 1983 and that the management of that estate be committed to the Protective Commissioner. JM appealed this decision to the Supreme Court.

JM was reported to have suffered from chronic fatigue syndrome. There was evidence before the Tribunal that JM had exhibited signs of self-neglect and was not able to manage life decisions in relation to his financial and property affairs. The Tribunal heard evidence about concerns that JM did not have the ability to deal with a notice of termination of his tenancy or to pursue matters related to an inheritance and the possible effect of that on his social security pension.

The appeal asserted that the Tribunal had made an error in its fact finding process,



specifically that the Tribunal made findings where there was no evidence to make such findings and the Tribunal allowed irrelevant material to enter its decision making process.

The Supreme Court dismissed the appeal on the basis that the appeal grounds were not made out. The Court found that the Tribunal was entitled to rely on the evidence before it about undertakings given by JM to take steps to protect his own interests which he had then failed to keep. The Court found that it had not been established that the Tribunal had relied on irrelevant material in making its decision.

JM subsequently appealed the decision of the Supreme Court to the Court of Appeal. This appeal is pending as at 30 June 2005.

### **P30048/04, Supreme Court (26 July 2004) Windeyer J**

This appeal was pending as at 30 June 2004.

The Guardianship Tribunal made a guardianship order for Mrs VT appointing her two daughters as her guardians. There was evidence before the Tribunal that there was a need for decisions to be made about Mrs VT's medical treatment. Mrs VT's son lodged an appeal with the Supreme Court indicating he wished to invoke the provisions of s. 67(5) of the *Guardianship Act* 1987 which provide that any appeal to the Supreme Court operates as an automatic stay of the decision appealed against. Mrs VT's son sought to ensure that the operation of the stay prevented his sisters from making decisions about Mrs VT's medical treatment pursuant to their authority as guardians. Mrs VT's son opposed the medical treatment being proposed for Mrs VT.

The Supreme Court made an interlocutory order lifting the stay which would otherwise apply. The Supreme Court found that, given Mrs VT's medical condition, it was not in her best interests to have the Tribunal's order stayed indefinitely until the appeal was heard. The Court noted that quick medical decisions would need to be made in the short term.

Mrs VT's son filed a notice of motion with the Supreme Court seeking a stay of the interlocutory order. The Court heard evidence that although the guardians had consented to medical treatment for Mrs VT, her son had challenged this on the basis that Mrs VT objected to the treatment and the guardians did not have the authority to override her objections. A guardian can only override a person's objections to medical treatment if the Tribunal has conferred on them that authority under s. 46A of the *Guardianship Act* 1987. The treatment had not proceeded and an urgent application for this authority had been made to the Guardianship Tribunal.

The guardians requested the Supreme Court to confer on them the authority to override their mother's objections to treatment. The Supreme Court dismissed the notice of motion as arrangements were made for the Tribunal to hold an urgent hearing on that day to consider the s. 46A application by the guardians.

The Tribunal ordered that the guardians be given the authority to override Mrs VT's objections to treatment. The guardians consented to the medical treatment.

Unfortunately Mrs VT passed away and in these circumstances, the appeal by Mrs VT's son was not heard by the Court and was dismissed.

## Freedom of information

The Tribunal received two applications for access to information under the *Freedom of Information Act 1989*.

Both applications requested information about client files which related to Tribunal hearings. The requests were refused on the basis that the Tribunal is not an “agency” for the purposes of the *Freedom of Information Act 1989*, as section 10 of that Act specifies that a Tribunal is not included

within that definition in relation to its judicial functions. The applicants were informed of this provision and the matters were finalised.

As at 30 June 2004, there was an outstanding application for review at the Administrative Decisions Tribunal which related to the Tribunal’s deemed refusal to provide documents to an applicant. This application for review was subsequently withdrawn by the applicant.

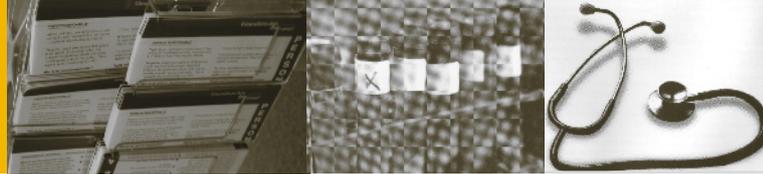
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## Complaints

Over the past year, the Tribunal received 94 written complaints. The complaints were predominately about decisions made by the Tribunal, or how an investigation or hearing was conducted. Complaints about

a decision or conduct of a hearing are handled by the Deputy President while complaints about the investigation are handled by the Manager Coordination and Investigation.





## Clinical trials

The purpose of the clinical trials provisions of the *Guardianship Act 1987* (Part 5, Division 4A) is to ensure that people who cannot consent to their own treatment can gain access to treatment only available through a clinical trial.

### Safeguards

To ensure that people who cannot consent to their own treatment may take part only in those clinical trials that may benefit them, the legislation contains a number of safeguards.

The first safeguard is that the Guardianship Tribunal must give its approval to the clinical trial as one in which those who cannot consent to their own treatment may take part. This requires those proposing the clinical trial to make their case to the Tribunal before they can treat adults unable to consent to their own treatment in the clinical trial. The Tribunal will not give its approval unless each of the following criteria is satisfied.

1. Only people who have the condition to be treated may be included in the clinical trial.
2. There are no substantial risks to the patient or no greater risks than those posed by existing treatments.
3. The development of the treatment has reached a stage at which safety and ethical considerations make it appropriate for the treatment to be available to people who cannot consent to their own treatment.
4. The treatment has been approved by the relevant ethics committee.
5. Any relevant National Health and Medical Research Council guidelines have been complied with.

6. When the potential benefits are balanced against potential risks, it is clear that it is in the best interests of people who have the condition that they take part in the trial.

Another safeguard comes into play if the Tribunal gives its approval to the clinical trial. Individual substitute consent must be given for each person taking part in the clinical trial. The legislation is structured so that this consent will usually be given by the 'person responsible' for the person unable to consent to their own treatment.

The 'person responsible' is usually the spouse, family carer or adult child of the person unable to give consent. In all cases in which the Guardianship Tribunal has given its approval to a clinical trial, the 'person responsible' has been empowered to give the individual substitute consent for the patient.

A further safeguard in the legislation is that anyone who provides treatment to a person in a clinical trial not in accordance with the legislation commits a serious offence and is liable to imprisonment for up to seven years.

A final safeguard is that the Tribunal must include, in its annual report, details of any clinical trial it approves.

### Approval of clinical trials

During 2004/2005, the Tribunal received 11 applications for the approval of clinical trials. The Tribunal heard nine of those applications. Eight trials were approved and one was adjourned. Two applications were withdrawn prior to the hearing. At the conclusion of 2004/2005 there were no applications awaiting a hearing or a determination.

Of the hearings conducted four of the clinical trials were for new treatments for treatment of patients with acute sepsis or pneumonia; one was for patients who had significant disabilities resulting from a stroke; one related to the treatment of patients in intensive care; one related to the use of a new medication in the treatment of Alzheimer's Disease; one related to

the treatment of patients with acute intracerebral haemorrhage; and one related to the new treatment of patients with serious infections due to resistant gram-negative organisms.

As required by section 76A(2A) of the *Guardianship Act 1987*, the Tribunal sets out the details of those trials below;

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## Clinical trials 2004/2005

Name of clinical trials submitted for approval by the Tribunal	Trial sites	Outcome of Tribunal	Individual consents to be given by the 'person responsible'
<b>Trials for patients with acute sepsis or pneumonia</b>			
1. CAPTIVATE - Three Arm Study - to evaluate the safety and efficacy of Tifacogin (Recombinant Tissue Factor Pathway Inhibitor) administration in subjects with severe community acquired pneumonia.	<ul style="list-style-type: none"> <li>Royal Prince Alfred Hospital</li> <li>Nepean Hospital</li> </ul>	Approved	Yes
2. DORI-10 Study - to compare the safety and efficacy of intravenous Doripenem with that of intravenous Imipenem in ventilator association pneumonia.	<ul style="list-style-type: none"> <li>Royal Prince Alfred Hospital</li> </ul>	Approved	Yes
3. ATTAIN Study - trial of intravenous Telavancin versus Vancomycin for treatment of hospital acquired pneumonia with a focus on patients with infections due to Methicillin-resistant staphylococcus aureus.	<ul style="list-style-type: none"> <li>Prince of Wales Hospital</li> </ul>	Approved	Yes
4. A Study of the safety and efficacy of three days continuous intravenous infusion of GR270773 in the treatment of suspected or confirmed gram-negative severe sepsis in adults.	<ul style="list-style-type: none"> <li>Royal North Shore Hospital</li> </ul>	Approved	Yes

Name of clinical trials submitted for approval by the Tribunal	Trial sites	Outcome of Tribunal	Individual consents to be given by the 'person responsible'
<b>Trials for patients who have significant disabilities resulting from a stroke</b>			
5. Centocor AbESTT-II Abciximab (ReoPro) in acute ischaemic stroke.	<ul style="list-style-type: none"> <li>• Royal North Shore Hospital</li> <li>• Westmead Hospital</li> <li>• Prince of Wales Hospital</li> <li>• Concord Repatriation Hospital</li> <li>• Central Coast Neuroscience Research</li> <li>• St Vincent's Hospital</li> </ul>	Approved	Yes
<b>Trials for patients in intensive care</b>			
6. The De-HEDIC trial - study looking at Haloperidol and Dexmedetomidine for the management of emergence delirium in intensive care.	<ul style="list-style-type: none"> <li>• Prince of Wales Hospital</li> </ul>	Approved	Yes
<b>Trials for patients suffering from Alzheimer's disease</b>			
7. Xaliproden in Alzheimer's Disease - 18 month study of the efficacy of Xaliproden in patients with mild to moderate dementia of the Alzheimer's type.	<ul style="list-style-type: none"> <li>• Royal North Shore Hospital</li> <li>• John Hunter Hospital</li> <li>• Westmead Hospital</li> <li>• Concord Repatriation Hospital</li> <li>• Central Coast Neuroscience Research</li> <li>• Prince of Wales Hospital</li> </ul>	Adjourned	n/a
<b>Trials for patients with intracerebral haemorrhage</b>			
8. CHANT - study to assess the safety and tolerability of 72 hours intravenous infusion of NXY-059 in adult patients with acute intracerebral haemorrhage (ICH).	<ul style="list-style-type: none"> <li>• John Hunter Hospital</li> <li>• Gosford Hospital</li> </ul>	Approved	Yes
<b>Trials for patients with serious infections</b>			
9. Tigecycline - study of Tigecycline for people with serious infections due to resistant gram-negative organisms.	<ul style="list-style-type: none"> <li>• Westmead Hospital</li> </ul>	Approved	Yes

# Communicating with our clients

## Community awareness and education

### Highlights

- 64 sessions were delivered throughout the year, attracting a total of 2,869 participants
- Increase by 71% of total participants in community education sessions throughout 2004/2005
- Total visits to the Tribunal's website exceeded 106,000

### Community awareness and education

The Tribunal had an exciting 2004/2005. The number of people attending community education sessions increased from 1,680 participants in 2003/2004 to 2,869 participants in 2004/2005, an increase of 71%. Throughout the year, the Client Information Services Unit organised community education sessions in different regions of NSW for professionals and carers and coordinated guest speakers in response to requests from a variety of agencies, groups and services.

### Community education sessions

A community education day arranged by the Tribunal consists of two sessions. The morning session is open to professionals and community workers involved in the disability and aged care sectors. It provides an overview of the role and function of the Tribunal with an explanation of financial management, guardianship, enduring guardianship, enduring power of attorney and medical and dental consent orders. The afternoon session covers the same topics as the morning session but on a more informal basis for carers, family and friends.

In 2004/2005 seminars were held in the Sydney central business district and Wollongong attracting a total of 236 participants, 169 professionals and community workers for the morning sessions and 67 carers for the afternoon sessions.

The Tribunal also responds to requests from a wide range of organisations to provide information and community education seminars on the work of the Tribunal. In 2004/2005 requests came from the health and community service sectors, nursing homes, age care accommodation providers, small non-government agencies (eg. neighbourhood centres), specialist dementia and disability services, supported accommodation services for people with a disability, community justice centres, legal services, cultural specific services, professional educational facilities, retirement associations and parent associations for people with disabilities. The largest volume of requests this year came from the Age Community Service network. Sixty two (62) requested education sessions were delivered throughout the year, attracting a total of 2,633 people. Participants ranged from active retirees wanting to plan for their future by finding out more about enduring power of attorneys and enduring guardianship to medical staff of an emergency unit of a major hospital.

In summary, the Tribunal spoke to approximately 2,869 people across NSW, from professionals and community workers to carers, friends, family members, parents of people with a disability and older people.



## Publications

Clients and the general public are able to obtain essential information about the Tribunal through its many publications. The Tribunal produces publications that inform people with disabilities, carers and the public about the Tribunal, its work and alternatives to accessing the Tribunal's services. Publications are distributed through the Tribunal's enquiries service and the website, at community education seminars and when requests are made to the Client Information Services Unit.

During 2004/2005, a major focus was the promotion of the Tribunal's website as a resource for accessing Tribunal publications. In addition, our new facility for the online lodgement of guardianship and financial management applications was also promoted.

Over the past year, the Tribunal distributed over 81,000 printed brochures and information sheets, which was a decrease of 16% compared to 2003/2004. This reduction in the call for printed publications is attributed to the success of our website and the

availability of the majority of Tribunal publications and all application forms online. (see section 'Website' on page 43)

The most widely distributed hard copy publication continues to be our brochure, *What Does the Guardianship Tribunal Do?* (12,406 printed copies were distributed in 2004/2005). Of interest is the increased distribution rate of our planning ahead brochures, *'How to Appoint an Enduring Guardian'* (8,340) and *'How to Appoint an Enduring Power of Attorney'* (7,020).

These two brochures also ranked highest in the top five most popular publications visited and downloaded from our website (Table 9).



### Most popular printed publications distributed in 2004/2005

Title	Distribution quantity
What Does the Guardianship Tribunal Do	12,406
Planning Ahead ... Enduring Guardianship	8,340
Planning Ahead ... Enduring Power of Attorney	7,020
Medical & Professional Assessment Reports	6,900
Person Responsible	5,781
3 Separate Organisations	5,742

# Publications

## Brochures

- 3 Separate Organisations (the roles of the Guardianship Tribunal, the Office of the Public Guardian and the Office of the Protective Commissioner)
- What Does the Guardianship Tribunal Do?
- We Welcome Your Feedback
- Planning Ahead ... Enduring Guardianship (includes form)
- Getting Ready for Your Hearing
- Planning Ahead ... Enduring Power of Attorney (includes form)
- Substitute Consent
- Website Features

## Booklets

- Behaviour Management and Guardianship

## Information sheets

- What Does the Guardianship Tribunal Do? (available in Arabic, Chinese, Croatian, German, Greek, Italian, Macedonian, Polish, Serbian, Spanish, Tagalog, Turkish, Vietnamese)
- Person Responsible
- Special Medical Treatment: Guidelines (plus information sheets about specific kinds of special medical treatments)
- Access to New Treatments through Clinical Trials
- Application for Approval of a Clinical Trial
- Medical and Other Professional Assessment Reports
- Guardianship Orders - What Happens after the Hearing?
- Financial Management Orders - What Happens after the Hearing?
- Review of Enduring Power of Attorney
- Revoking (or cancelling) the Appointment of your Enduring Guardian
- Website Access Features
- Online Applications

## Information sheets for people who are parties to hearings

- Guardianship Hearings
- Financial Management Hearings
- Guardianship and Financial Management Hearings
- Representation at Hearings
- Preliminary Hearings
- Separate Representation
- Hearings to Review/Revoke Financial Management Orders
- Hearings for Review of Guardianship Orders

## Application forms

- Application for Guardianship and/or Financial Management
- Application for Consent to Medical or Dental Treatment
- Application to be Joined as a Party to a Matter
- Application for Recognition of Appointment
- Application to Review a Financial Management Order
- Application to Revoke a Financial Management Order
- Application to Revoke Enduring Guardianship
- Application to Review Enduring Guardianship
- Application to Review Enduring Power of Attorney
- Resignation of Appointment of Enduring Guardian / Alternative Enduring Guardian

## Other publications

- Annual Report 2003/2004

## Website

During 2004/2005 the Tribunal has been enthusiastically promoting its website, through the work of Tribunal staff and members and particularly through the enquiries service and at community education seminars provided by the Tribunal. We have seen a significant increase in visits to our website (Table 6) and the downloading of publications from the website (Table 9).

### The Tribunal's website:

- is designed for easy accessibility for all people including people with a wide range of disabilities. Features include - long and short versions of content, text size can be increased/decreased, layout can be normal or 'easy click'
- has pages and information in languages other than English;
- has Tribunal publications and all application forms available for download from the website;
- contains a separate section on applications;
- enables online applications to be made;
- has a separate section on hearings and orders made;
- contains video clips demonstrating what happens during a hearing;
- has a separate section on enduring powers of attorney and enduring guardianship;
- provides up to date information on Tribunal seminars and expanded information on all Tribunal activities.

**Table 6: Total website visits 2004/2005**

July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	Jun	Total
6,143	5,479	5,717	8,190	8,150	8,944	9,383	10,280	11,434	11,629	10,991	10,197	106,537

**Table 7: Five most popular web pages visited (excluding home page) 2004/2005**

Publication	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	Jun	Total
Enduring Power of Attorney	691	654	709	831	841	939	1013	1161	1386	1361	1315	1160	12,061
Applications	642	651	626	625	731	661	772	837	933	858	918	885	9,139
Questions	468	437	448	486	499	492	557	630	702	741	666	716	6,842
Enduring Guardian	442	417	429	478	498	496	487	551	706	850	738	678	6,770
About Us	464	455	417	487	525	440	458	587	726	712	592	630	6,493

**Table 8: Total online applications received 2004/2005**

July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	Jun	Total
21	25	21	16	24	34	26	22	24	17	32	27	289*

\* Each application may involve more than one matter

**Table 9: Five most popular publications downloaded 2004/2005**

<b>Title</b>	<b>Total</b>
Appointment of Enduring Power of Attorney . . . Planning Ahead	6,043
Appointment of Enduring Guardian . . . Planning Ahead	3,697
Application for Guardian and/or Financial Management	3,208
Application to Review Enduring Power of Attorney	1,234
Application to Review Enduring Guardianship	1,097
<b>Total</b>	<b>15,279</b>

## Videos

The Tribunal continues to distribute its three videos, 'For Ankie's Sake,' 'Substitute Consent' and 'In their Best Interests' which are available through the Tribunal's Client Information Services Unit.

The videos are an important tool in educating and informing the community about the role of the Tribunal and various informal arrangements that may prevent the need to make an application or for the Tribunal to make orders.

### **For Ankie's Sake**

This video is an introduction to the role and procedures of the Guardianship Tribunal. Ankie's story depicts members of a family in conflict about the care of an elderly family member. It highlights the fact that the Tribunal should be a 'last resort' when a person is incapable of making his or her own decisions and all other suitable alternatives to resolve the situation have been tried.

### **Substitute Consent**

The *Guardianship Act* 1987 divides medical and dental treatments into four categories. It further defines when consent is required and who can provide substitute consent when a patient cannot consent for themselves.

When a medical practitioner assesses a patient is not capable of giving a valid consent to treatment, they have a legal responsibility in most circumstances to seek and obtain consent from a suitable substitute decision maker.

This video provides a snapshot of the urgent, major and minor categories of treatment and other aspects of the consent provisions.

### **In Their Best Interests**

This video tells the stories of three people who come to the Guardianship Tribunal. Each scenario shows how a case comes to the Tribunal and how it proceeds to a resolution. The investigation process and hearing process is shown from beginning to end, as well as how the Tribunal works. The role of Tribunal members, the applicant and other parties to a hearing is illustrated within the scenarios.

Coming to the Guardianship Tribunal for a hearing may be a daunting prospect for many people. However, it does not need to be. The video emphasises that the Tribunal works with the best interests of the person with the disability as its paramount consideration.

## Papers presented

### **Nick O'Neill, President** (Retired December 2004)

*'Decision making at the end of life - the case for consensus'*

Presentation to the 15th World Congress on Medical Law, Sydney, 4 August 2004.

*Towards quality dementia care - positive solutions in the workplace. 'End of life decision making. Should the developing practice become the developing law?'*

Presentation to the Hunter Area Health Services, Newcastle, 21 September 2004.

*'Representation before Guardianship Tribunals'*

Presentation to the Heads of Jurisdictions Meeting, October 2004.

*'Do all participants with dementia need an independent research guardian?'*

Presentation to the AC4R Annual Conference, 6 November 2004.

*'A practical person's guide to determining mental capacity'*

Presentation to the Australian Society for Brain Impairment's Mental Capacity Symposium, 7 December 2004.

*'Being an applicant or a witness at a Guardianship Tribunal hearing'*

Presentation to the ACAT Training Symposium, 15 December 2004.

### **Diane Robinson, President** (February 2005 – onwards)

*'Planning for Later Life - the role of the Guardianship Tribunal'*

Presentation during Senior's Week, 16 March 2005.

*'Advance Care Directives - Whose Final Decision?'*

Presentation to the Elder Law Seminar, College of Law, 17 March 2005.

*'Advance Care Directives and the Guardianship Tribunal'*

Presentation to the Law Society, 16 May 2005.

*'The Guardianship Tribunal'*

Presentation to the Steering Committee of the Council on the Cost and Quality of Government', 8 June 2005.

*'The Guardianship Tribunal'*

Presentation to the Disability Council', 30 June 2005.

### **Marion Brown, Deputy President**

*'Medical Consent and Substitute Consent, NSW Association for Adolescent Health, Legal and Ethical Responsibilities for Health Workers'*

Presentation to adolescent health workers, Cabramatta and Sydney, February 2005.

*'Elder Law Seminar - Powers of Attorney, The Good, The Bad and the Ugly'*

Presentation for the College of Law, 24 February 2005.

*'Powers of Attorney and the Role of the Guardianship Tribunal'*

Presentation for the College of Law, 19 March 2005.

# Our people

## Tribunal staff as at 30 June 2005

### Executive

**President**

Diane Robinson

**Deputy President**

Marion Brown

**Executive Officer/Registrar**

Trevor Fairbairn

**Executive Secretary**

Jenny Reynolds (part time)

**Personal Assistant**

Lisa Whittaker

**Legal Officer**

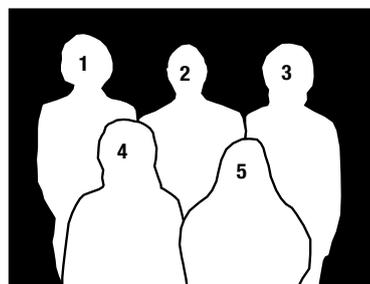
Esther Cho

### Executive



1. Marion Brown
2. Trevor Fairbairn
3. Diane Robinson
4. Lisa Whittaker
5. Esther Cho

Absent: Jenny Reynolds



### Business Services

**Manager**

Linda Sengstock

**Training and Development Officer**

Gail Yueh (part time)

**Business Services Coordinator**

Peter King \*

**IT Systems Management Officer**

Dennis Maby

**CMS Systems Management Officer**

Patrick Gooley

**Business Services Officer**

Christine Small

**Assistant Business Services Officer**

Sin-Lee Yeoh

**Assistant Systems Officer**

Christine Triantafillopoulos

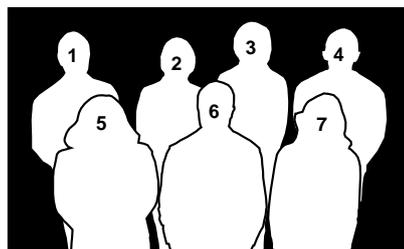


## Business Services



1. Patrick Gooley
2. Sin-Lee Yeoh
3. Christine Small
4. Dennis Maby
5. Christine Triantafillopoulos
6. Paddy Keane
7. Gail Yueh

Absent: Linda Sengstock



## Coordination and Investigation

### Manager

Ryan Williams

### Team Leaders

Theresia Khoudair (part time)

Amanda Legge (part time)

Margaret Watson

Sue Young

### Senior Investigation Officers

David Evans \*

Loretta Rosicky

Peter Heffernan

Elizabeth Kensell \*

Lee Dargan

Frances Massy-Westropp

Katrina Morris

Paula Norris \*

Louise Smith

Amanda Legge (part time)

Jane Samek

Melissa Simcoe

### Investigation Officers

Mary Chapman \*

Trudi Cusack (part time)

Catherine Colefax \*

Frank Maguire \* (part time)

Christopher Moore

Rebecca Ripperger \*

Kathryn Tidd

Liesje Tromp \*

### Assistant Investigation Officers

Maxine Spencer

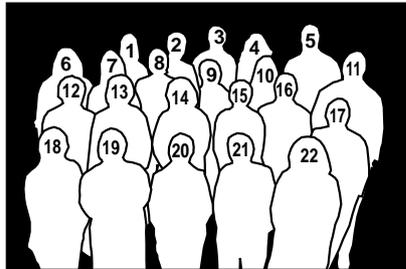
Lois Warnock

Zebun Haji

## Coordination and Investigation



1. Lee Dargan
2. Liesje Tromp
3. Christopher Moore
4. Jane Samek
5. Ryan Williams
6. Catherine Colefax
7. Paula Norris
8. Elizabeth Kensell
9. Loretta Rosicky
10. Melissa Simcoe
11. Peter Heffernan
12. Lois Warnock
13. Louise Smith
14. Theresia Khoudair
15. Mary Chapman
16. Trudi Cusack
17. David Evans
18. Katrina Morris
19. Margaret Watson
20. Maxine Spencer
21. Kathryn Tidd
22. Amanda Legge



Absent: Sue Young,  
Michelle Carvalho-Mora,  
Rebecca Ripperger,  
Zebun Haji,  
Frances Massy-Westropp

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## Client Information Services

### Manager Client Information and Hearing Services

Janette Ogilvie

### Assistant Manager

Geraldine Northcott \*

### Publications Officer

Yvette Wallis (part time)

### Senior Information Officers

Robyn Barlow

Dianne Brehaut (part time)

### Information Officers

Jihan Noun

Veronica Loh

### Assistant Information Officers

Sonia Tomasetig (part time)

Mark Harrison \* (part time)

Angela Ogden (part time)

Craig Oliver \*

Tina Pasa \* (part time)

Vi Huynh (part time)

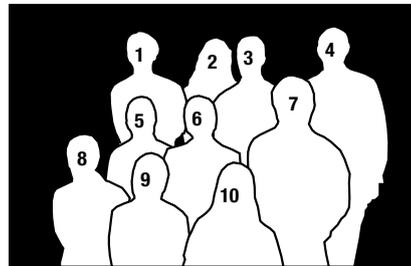
Diane Cracknell (part time)

## Client Information Services



1. Paul Johnson
2. Yvette Wallis
3. Mark Harrison
4. Frank Maguire
5. Dianne Brehaut
6. Janette Ogilvie
7. Alan Belton
8. Geraldine Northcott
9. Vi Huynh
10. Angela Ogden

Absent: Robyn Barlow,  
Jihan Noun, Sonia Tomasetig,  
Diane Cracknell, Tina Pasa



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## Hearing Services

### Manager Client Information and Hearing Services

Janette Ogilvie

### Assistant Manager

Lesley McGowan

### Senior Hearing Officers

Kerrie Menken

Cynthia Nejal \*

Gary MacDonald (part time)

Rada Stevanovic \* (part time)

### Hearing Services Officers

Lisa Spence \* (part time)

Janet Stringer \*

### Assistant Hearing Officers

Elizabeth Evans \*

Evelyn Guibabi

Doreen Gray

Michelle Savage

Christopher Mitchell

Sita Singh

Lisa Spence \* (part time)

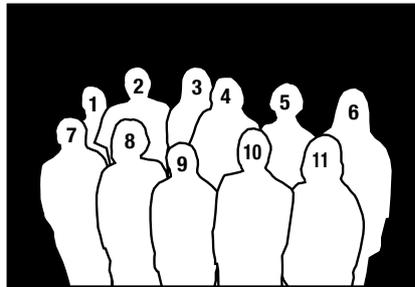
Eleanor Torry

## Hearing Services



1. Sita Singh
2. Christopher Mitchell
3. Evelyn Guibabi
4. Eleanor Torry
5. Kerrie Menken
6. Lisa Spence
7. Michelle Savage
8. Rada Stevanovic
9. Doreen Gray
10. Janette Ogilvie
11. Lesley McGowan

Absent: Gary MacDonald,  
Cynthia Nejal, Janet Stringer



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### Other staff employed in 2004/2005

Sonia Bernardi \*  
Lesley Chase \*  
Cristyn Davies  
Mariella Eberl

Pam Giurissevich \*  
Elizabeth Kim \*  
Anita Ray  
Phillipa Scott

Sally Shaw \*  
Dorothy Truong \*

\* *Temporary or acting*

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## Training for Tribunal staff

The Guardianship Tribunal aims to provide a high standard of service delivery to our clients. To achieve this goal, the Tribunal provides a comprehensive training program for its administrative staff. The program gives staff the opportunity to attend a variety of training courses conducted either at the Tribunal or at external training organisations. Courses attended over the past year have

provided staff with skills, knowledge and information on using computers, occupational health and safety issues, human resource matters and many other aspects of the Tribunal's work.

High level communication skills are essential in the provision of the Tribunal's services and have been a feature of many of the

internal training courses offered this year. Staff involved in the Tribunal's Community Education program received training in presentation skills and an orientation to the Community Education training package. Other communication related courses attended included Customer Service, Interpersonal Communication, Resolving Conflict and the effective use of email.

To ensure the safety of both staff and clients, training in practical fire fighting techniques is provided on a regular basis. The training is conducted at the Tribunal by Comsafe, the training arm of the NSW Fire Brigade. Other safety related issues addressed by external training programs attended by staff included First Aid, Office Safety and Occupational Health and Safety.

The broad range of training courses attended by staff included:

### **Computing**

- Microsoft Powerpoint
- Microsoft Outlook
- Computer File Management

### **Occupational Health and Safety**

- Occupational Health and Safety Consultation
- Office Safety
- Senior First Aid Certificate

### **Human Resources and Communication**

- Merit Selection
- The Art of Negotiation
- The New Manager
- Interpersonal Communication
- Effectively Resolving Conflict
- Customer Service
- Making Memorable Presentations

### **Other Training**

- Judgement Writing
- Dementia Forum
- Alzheimer's Australia Conference

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## **Training for Tribunal members**

Tribunal members bring a variety of skills and expertise to the Tribunal. They have a separate training program of seminars which develop and maintain those skills. The seminars provide up to date information on medications, major disabilities, legislation and other matters relating to clients.

Seminars run for half a day and provide a mix of presentations and discussions. Presentations are given by Tribunal members regarding their area of expertise or by guest speakers from a variety of fields. There are four seminars per year for presiding members and a further four for all tribunal members.

### **Topics covered in the last year have included:**

- Issues in the end stages of dementia
- Future direction in dementia care: NSW Health initiatives
- Future directions: options for accommodation
- Guardianship and offenders with intellectual disability
- Behaviour intervention for people with dementia
- Reviews of Enduring Powers of Attorney
- Administrative Decisions Tribunal and Supreme Court appeals
- Family conflict in dementia

## Tribunal members



**Nick O'Neill, President** (retired December 2004)

Nick O'Neill is a human rights lawyer in Australia and the Pacific and has taught, consulted and written on human rights in that region. He is co-author of *Retreat from Injustice: Human Rights in Australian Law*. He also has a strong administrative and constitutional law background. He is a former academic and practising lawyer in NSW, Victoria and Papua New Guinea, and official visitor to Rozelle Hospital.

In Papua New Guinea, he was a trial and appeals lawyer before being appointed Counsel Assisting the Commission of Inquiry into Land Matters. He established the Papua New Guinea Law Reform Commission and was its first secretary. He later played a significant role in the development of the Faculty of Law, University of Technology, Sydney.

Since joining the Tribunal, Nick has contributed chapters on the jurisdiction, practice and procedures of the Tribunal to various publications, including *The Law Handbook*, *Lawyers Practice Manual*, and *Older Residents' Rights*. He has also given numerous presentations on all aspects of the Tribunal's work and associated issues, including medico-legal issues to a wide range of audiences.

He has acted as an advisor, consultant and trainer to guardianship organisations both in Australia and overseas.



**Diane Robinson, President** (February 2005 – onwards)

Diane was appointed as President of the Guardianship Tribunal in February 2005. She was previously the Deputy President of the Mental Health Review Tribunal where she led a review of the Mental Health Review Tribunal's civil jurisdiction, as well as being involved in the forensic work of the Tribunal. Diane has considerable Tribunal experience having been a presiding member of the Guardianship Tribunal for eleven years, a lawyer member of the Mental Health Review Tribunal, a part-time lawyer member of the Social Security Appeals Tribunal and a lay member of the Medical Tribunal.

Prior to her Tribunal work, Diane was a Senior Lecturer in Law at the University of Technology. She has also been a Visiting Lecturer at the University of New South Wales. Her main teaching areas were *The Law of Evidence*, *Jurisprudence* and *Criminology*. Diane has



also been involved in legal practice as a solicitor with Allen, Allen & Hemsley.

Diane has a strong interest in mental health issues and was an Official Visitor under the *Mental Health Act* 1990 at the Caritas Centre at St. Vincent's Hospital. She also has an interest in medico-legal issues and is currently appointed as the legal member (Ministerial appointee) of the New South Wales Medical Board.

Diane has already given a number of presentations on aspects of the Tribunal's work including papers on advance care directives and enduring powers of attorney and has represented the Tribunal in a range of public forums.



### **Marion Brown, Deputy President**

Marion joined the Tribunal as Deputy President in May 1995. She was formerly the principal solicitor at the Women's Legal Resources Centre, a community legal centre and practised mainly in the fields of family law and violence against women and children. She served as a community representative on the NSW Child Protection Council and the NSW Sexual Assault Committee. She was also a commissioner on the NSW Legal Aid Commission and a part-time hearing commissioner with the Human Rights and Equal Opportunity Commission.

Marion has conducted many community legal education presentations, including the Women Out West project in which a multi-disciplinary team worked with Aboriginal women in western NSW to help women in various communities explore options to protect themselves and their children.

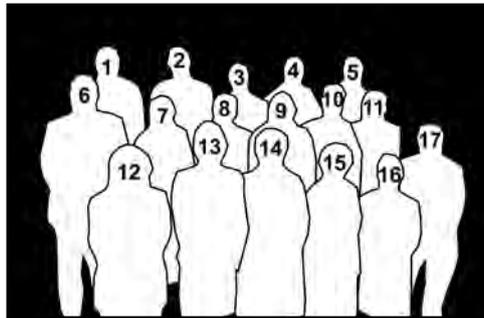
Currently, she is a member of a number of committees including the Specialist Advisory Committee for the Centre for Gender Related Violence Studies at University of NSW, and the NSW Health Seclusion and Restraint working group. She was a representative on the Department of Ageing, Disability and Home Care Steering Committee for Planning Ahead Project and Dementia Awareness for Lawyers Forum.

Marion has contributed to several publications, including *The Law Handbook* and *Law and Relationships: A Woman's A-Z Guide*.

## Presiding (legal) members



1. John Hislop
2. Geoffrey Hopkins
3. Monica MacRae
4. John Cipolla
5. Peter Molony
6. Anthony Giurissevich
7. Anita Sekar
8. Jennifer Conley
9. Linda Pearson
10. Tony Krouk
11. Bernie Shipp
12. Carolyn Huntsman
13. Marion Brown
14. Diane Robinson
15. Loretta Re
16. Angela Beckett
17. James Simpson



Absent: Sally Ann Chopping, Robin Gurr, Josephine Maxwell, Carol McCaskie, Bill Tearle.

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## Presiding (legal) members

### **Angela Beckett**

Solicitor and clinical psychologist. Experience in private legal practice and in a community legal centre. Member, Social Security Appeals Tribunal, Mental Health Review Tribunal and Consumer Trader and Tenancy Tribunal. Experience in alternative dispute resolution. Extensive background in service provision to persons with a disability.

### **John Boersig \*\***

Solicitor. Former Director, University of Newcastle Legal Centre and coordinator of a coalition of Aboriginal legal services to produce policy and research. Experience in criminal and personal injury law, victims' compensation and public interest advocacy.

### **Sally Ann Chopping**

Lawyer and former Chairperson of the Residential, Fair Trading, and the Consumer, Trader and Tenancy Tribunals. Experience in alternative dispute resolution.

### **John Cipolla**

Solicitor. Experience representing clients with psychiatric and other disabilities both through Legal Aid and Mental Health Advocacy Service. Previously Principal Solicitor, Inner City Community Legal Centre. Experience in refugee law and as senior conciliator, Disability Discrimination Unit of the Human Rights and Equal Opportunity Commission. Part-time member of Consumer Trader Tenancy Tribunal and Migration Review Tribunal.

**Jennifer Conley**

Lawyer with experience in administrative law. Currently a member of the Consumer Trader and Tenancy Tribunal and the Administrative Decisions Tribunal.

**Anthony Giurissevich**

Solicitor in private practice. Former legal member, Veterans' Review Board and Social Security Appeals Tribunal. Experience in general litigation and advocacy for people with brain injury and mental illness.

**Robin Gurr**

Former barrister and Registrar in the Family Court of Australia. Former President of the NSW Community Services Appeals Tribunal and Senior member of the Fair Trading Tribunal. Currently workers' compensation arbitrator and presiding member on GREAT. Experience in alternative dispute resolution.

**John Hislop**

Solicitor, now retired after more than 40 years in private legal practice. Former partner with firm with emphasis on business law, property, estates and litigation. Ten years (part-time) teacher with Faculty of Law, University of Sydney.

**Geoffrey Hopkins**

Solicitor since 1979. Private practice and legal aid work. Experience in advocacy across range of courts and tribunals. Emphasis on criminal and civil law, especially housing law and consumer remedies and legal issues relating to people with disabilities and the aged. Involvement with community groups. Mediator with community justice centres, Supreme Court and Law Society panels. Chairperson with Government and Related Employees Appeal Tribunal.

**Carolyn Huntsman**

Lawyer. Currently member, Mental Health Review Tribunal. Formerly member, Social Security Appeals Tribunal, Refugee Review Tribunal, Fair Trading Tribunal and Residential Tribunal. Worked as a solicitor with Legal Aid

Commission, Aboriginal legal organisations and in private legal practice.

**Tony Krouk**

Accredited family law specialist. Extensive experience representing people with brain injury, mental illness, intellectual disability and dementia.

**Carol McCaskie, AM**

Barrister. Member, Consumer, Trader and Tenancy Tribunal and Mental Health Review Tribunal. Arbitrator, Workers Compensation Commission. Former general manager, Langton Centre. Qualifications in management, dispute resolution, geriatric nursing, nurse education and nursing administration.

**Monica MacRae**

Solicitor. Experience in private practice, particularly family law and general litigation. Member, Social Security Appeals Tribunal. Member, Mental Health Review Tribunal.

**Hon. Josephine Maxwell**

Former judge of the Family Court. Family experience of dementia.

**Peter Molony**

Barrister with extensive experience as a Tribunal member, including the Social Security Appeals Tribunal, Small Claims and Residential Tenancies Tribunal and Refugee Review Tribunal. Judicial member of Administrative Decisions Tribunal.

**Linda Pearson**

Teaches administrative law at University of NSW. Current member of the Migration Review Tribunal and the Social Security Appeals Tribunal.

**Loretta Re**

Lawyer and Mediator. Legal member, Mental Health Review Tribunal.

**Anita Sekar**

Solicitor. Worked with the Equity Division of the NSW Supreme Court, Commonwealth Director of Public Prosecutions, Human Rights and Equal Opportunity Commission, and Australian

Broadcasting Authority. Worked in community legal centres, Disability Discrimination Legal Centre and Intellectual Disability Rights Service. Experience as a conciliator with NSW Anti Discrimination Board.

**Bernie Shipp**

Solicitor. Experience with Legal Aid and Community Legal Centres. Now a member of the Social Security Appeals Tribunal and Consumer Trader and Tenancy Tribunal. Director and Board Member, Macarthur Disability Services Ltd.

**James Simpson**

Solicitor, mediator and policy consultant. Former deputy president, Community Services Appeals Tribunal. Former

coordinator, Intellectual Disability Rights Service. Presiding member, Mental Health Review Tribunal. Justice Medal 2001- Law and Justice Foundation NSW.

**Bill Tearle**

Lawyer with extensive experience of financial counselling issues. Current member of the Consumer Trader and Tenancy Tribunal and a Deputy President of the Mental Health Review Tribunal. Has published several articles in law periodicals, and has contributed chapters to various law books. A guest lecturer at Oxford University, and at several universities in Australia and New Zealand.

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## Professional members



1. Michael Frost
2. Velupillay Vignaendra
3. Helen Molony
4. Carolyn West
5. Imelda Dodds
6. Ivan Beale
7. Jean Hollis
8. Sandra Dingle
9. Meredith Martin
10. Sharon Flanagan
11. Isla Bowen
12. Tony Ovadia
13. Janice Wortley
14. Robert Yeoh
15. Mary Ellen Burke
16. Julie Garrard

Absent: Hayley Bennett, Rhonda Buskell, Sarah Carlill, June Donsworth, Susan Kurrle, Brenda McPhee, Carmelle Peisah, Suzanne Stone, Susan Taylor, Wai-Kwan (Tim) Wong.



## Professional members

### Ivan Beale

Psychologist, specialising in assessment and intervention for developmental and behavioural problems, as well as treatment adherence in people with chronic illness. Formerly Associate Professor and Director at the Learning Assessment Centre (University of Auckland).

### Hayley Bennett

Clinical neuropsychologist in private and public practice, specialising in the assessment of mental capacity.

### Isla Bowen

Psychologist with extensive experience in development and implementation of behaviour intervention and support programs for people with intellectual disabilities. Lectures in developmental disability at Wollongong University.

### Mary Ellen Burke

Clinical psychologist and consultant. Experience providing services to people with an intellectual disability who have challenging behaviour and their families/carers. Experience monitoring, developing services and service systems.

### Rhonda Buskell

Qualifications in psychiatry and in rehabilitation medicine. Currently, consultant psychiatrist in private practice as consultation-liaison psychiatrist in public hospital system. Formerly Director, Lidcombe Brain Injury Rehabilitation Unit.

### Sarah Carlill

Registered nurse, 20 years working in mental health with experience in acute care, inpatient and community care. Currently clinical nurse specialist for Northern Beaches Mental Health Service.

### Sandra Dingle

Psychologist. Experience assessing and assisting people with dementia, stroke and brain injury. Founding coordinator of Home Respite Service, Wollongong.

### Imelda Dodds

Social worker. Consultant with extensive experience in practice and administration in the fields of disability and guardianship. Former Public Guardian of Western Australia. President International Federation of Social Workers.

### June Donsworth

Civil and forensic psychiatrist. Member of Mental Health Review Tribunal, member of Social Security Appeals Tribunal, psychiatrist at healthQuest, member of Impaired Registrants Panel of NSW Medical Board. Former psychiatrist on South Australian Parole Board and past member of South Australian Guardianship Board.

### Sharon Flanagan

Clinical neuropsychologist with extensive experience of people who have suffered traumatic brain injury. Experience in adult rehabilitation in hospital and community settings and assessment of people with dementia and other acquired brain impairments.

### Michael Frost

Former medical superintendent and chief executive officer, Marsden Centre. Former chief executive officer, Western Sydney Developmental Disability Service.

### Julie Garrard

Manager of social work at Calvary Health Care Sydney, which provides palliative care and aged care services. Also, experience working with people with intellectual disabilities, brain injuries and HIV/AIDS, and in health complaints.

**Jean Hollis**

Old age psychiatrist. Previously staff specialist (part-time) with Aged and Community Care Services Team at Concord Repatriation General Hospital.

**Susan Kurrle**

Geriatrician. Member of Aged Care Assessment Team. Experience assessing and managing abuse of older people, and dementia.

**Pamela Lockhart \*\***

Registered nurse. Experience assessing and providing services for people with dementia.

**Brenda McPhee**

Medical practitioner. Experience in women's health, aged care, and counselling. Member, Social Security Appeals Tribunal. Medical officer, Bankstown Women's Health Centre.

**Meredith Martin**

Special educator. Expertise in behaviour management and positive programming for people with a disability, particularly intellectual disabilities.

**Helen Molony**

Psychiatrist with extensive experience with people with intellectual disabilities and challenging behaviours.

**Tony Ovadia**

Clinical psychologist with over 30 years experience with people with psychiatric and other disabilities. Now in private practice, she has worked in institutions and was a pioneer of community health services. Established and managed the Boarding House Team in Central Sydney and also worked at the Community Services Commission on issues relating to disability services. Member of the Mental Health Review Tribunal and was an expert witness for the Chelmsford Royal Commission.

**Carmelle Peisah**

Consultant old age psychiatrist and research fellow at the Academic Department for Old Age Psychiatry, Prince of Wales Hospital and conjoint senior lecturer University of NSW. Expertise in family therapy. Experience in medicolegal cases of competency and testamentary capacity in older persons.

**Suzanne Stone**

General practitioner. Currently in private practice; including assessment and management of elderly patients with dementia, both in institutional settings and in their own homes. Published in the field of pre-senile dementia. Experience in the field of women's reproductive health and with patients with eating disorders in community settings.

**Susan Taylor**

Social worker. Experience in the provision of mental health accommodation, case management and crisis services in the community. Former manager of service providing support for people with multiple sclerosis. Member, Mental Health Review Tribunal and Social Security Appeals Tribunal.

**Velupillay Vignaendra**

Neurologist with extensive experience of people who have strokes, acquired brain injury and other neurological impairments.

**Carolyn West**

Specialist in rehabilitation medicine. Head of Spina Bifida Unit, New Children's Hospital, Westmead. Visiting medical officer, Royal Prince Alfred Hospital and Westmead Hospital for adult services for people with spina bifida.

**Wai-Kwan (Tim) Wong**

Psychologist with experience in positive programming for people with intellectual disabilities. Has also worked with people with intellectual disabilities in areas of sexuality and sexual behaviours. Currently working with people affected by HIV/AIDS and Hepatitis C.

### **Janice Wortley**

Psychologist experienced in assessment of people with psychiatric disabilities, acquired brain injury, intellectual disabilities and learning disabilities. Experience in behaviour intervention, positive programming and support. Experienced mediator, policy analyst. Extensive experience in the development and delivery of teaching programs in community services, disability and aged care.

### **Robert (TH) Yeoh, AM**

General practitioner since 1975. Currently president Alzheimer's Association of Australia. Member of the medication advisory committees of several aged care homes. Official visitor under the *Mental Health Act* 1990. Member of Ministerial Advisory Committee on Ageing NSW. Representing ADGP on National Aged Care Alliance.

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## **Community members**



1. Andrew Barczynski
2. Jennifer Klause
3. Stanley Alchin
4. Annette Evans
5. Hatton Kwok
6. Janet Koussa
7. Steve Kilkeary
8. Jeanette Moss
9. Marika Kontellis
10. Robyn Rayner
11. Jane Fraser
12. Janene Cootes
13. Rhonda Ansiewicz
14. Kerrie Laurence
15. Susan Warth
16. Carol Logan
17. Maria Circuit
18. Mary Butcher
19. Alexandra Rivers
20. Maree Gill
21. Jennifer Newman
22. Elaine Becker



Absent: Faye Druett,  
Leonie Manns,  
Michael McDaniel,  
Alan Owen,  
Robert Ramjan,  
Leanne Stewart.

## Community members

### **Stanley Alchin, OAM**

Retired director of nursing, Rozelle Hospital. Registered psychiatric nurse. Former President, After Care Association of NSW. Member, Mental Health Review Tribunal. Vice President, Sydney Male Choir.

### **Rhonda Ansiewicz**

Part time lecturer in Aboriginal Community Work, University Western Sydney. Advocate for people with intellectual disabilities and in private practice working with people with a mental illness. Have experience within the family of mental illness. Committee member of Western Sydney Intellectual Support Group and board member NSW Council Intellectual Disabilities.

### **Andrew Barczynski**

Social worker. President of a non-government agency focusing on information and welfare services for older people from culturally and linguistically diverse backgrounds. Extensive experience with disability employment and advocacy services. Currently, NSW manager of an Australian Government program assisting people in financial crisis.

### **Elaine Becker**

Social worker. Experience working with people with dementia and their carers. Worked with the Office of the Public Guardian. Family experience as private guardian.

### **Mary Butcher**

Nurse with extensive aged care experience in residential and community settings. Previously coordinated community care packages to support elderly people at home. Family experience of providing care to a person with dementia.

### **Maria Circuit**

Advocate for services and support for people with a disability. Parent of a son with an intellectual disability and mental illness.

### **Janene Cootes**

Social worker. Community visitor to residential services for adults and children with disabilities and educator at the Intellectual Disability Rights Service. Past experience with people with an intellectual disability and as the first Manager of Investigation and Liaison at the Guardianship Tribunal.

### **Faye Druett**

Long-standing involvement in the disability field. Has significant physical disabilities herself. Currently private guardian for a woman with intellectual disability. Worked in federal and state governments, and the non government sector in service provision, policy development, management and administration of legislation.

### **Annette Evans**

Social worker. Experience in managing community aged care program for Jewish community. Involved in living skills, family and housing support for people with psychiatric disability; support for people with dementia and their carers. Past experience in tenants advice and advocacy and refuges for young people and women.

### **Jane Fraser**

Parent of a young woman with a developmental disability. Welfare worker and former executive officer for People with Disabilities. Past Chairperson for the Disability Council of NSW for four years. Family experience caring and supporting a person with mental illness and dementia.

### **Maree Gill**

Consultant, social researcher. Former University tutor to medical students. Extensive background in social justice and equity especially human rights: homelessness, supported accommodation, disability, mental health

and women's health. Family experience of mental illness. Lived experience of disability. Qualifications in Sociology (Masters), Social Work, Adult Education, Management. Member, Administrative Decisions Tribunal.

### **Steve Kilkeary**

Social worker. Trauma counsellor with suicidal and self-harming men. Work experience in mental health, intellectual disability and HIV/AIDS. Former primary carer to family members with disabilities.

### **Jennifer Klause**

Extensive experience as advocate, service manager, consultant, educator and providing support to people with intellectual disabilities on consultative committees. Previous work with Community Services Commission and Intellectual Disability Rights Service.

### **Marika Kontellis**

Previously social worker, now community sector adviser for aged care and disability service providers. Managed community options programs, assisting older people and people with disabilities to remain in their own homes. Member, Disability Council of NSW. Family experience of mental illness.

### **Janet Koussa**

Counselling psychologist. Ten years' work with the Department of Community Services providing assessments, case-management and support to people with intellectual disabilities and their family. Extensive involvement in advocacy services for people with intellectual disabilities. Has experience writing, implementing and monitoring behaviour intervention and support plans for people with challenging behaviours. Conducted self-help groups for several years for women with eating disorders.

### **Hatton Kwok, OAM**

Psychiatric nurse and rehabilitation counsellor. Currently chairman of the Australian Nursing Home Foundation.

Established residential care facilities for aged people from Chinese backgrounds.

### **Kerrie Laurence**

Teaches in the Intellectual Disability Unit of TAFE and works with students with intellectual disabilities and acquired brain injuries. Relevant family and Tribunal experience.

### **Carol Logan**

Trained as General and Psychiatric Nurse. Worked as a Community Nurse in South West Sydney for 11 years then set up and managed Community Options for Centacare in South West Sydney. Previously Director of Centacare Catholic Community Services/Ageing and Disability Services 1996 to 2004.

### **Michael McDaniel**

Member of the Wiradjuri Nation, Associate Professor and Director Warawara Department of Indigenous Studies at Macquarie University. Part-time member, NSW Administrative Decisions Tribunal. Part-time Commissioner, NSW Land and Environment Court.

### **Leonie Manns**

Has a psychiatric disability and has been a long-standing consumer advocate in the field of disabilities. Former chair of the Disability Council of NSW. Family experience of dementia.

### **Jeanette Moss, AM**

Family experience of, and advocate for, people with a disability.

### **Jennifer Newman**

Lecturer, Aboriginal and Torres Strait Islander Programs, Faculty of Education, University of Technology Sydney. Previously taught Aboriginal Studies for the Associate Diploma of Aboriginal Health and students of Rehabilitation Counselling and Occupational Therapy. Family and social experience of people with disabilities, including dementia, alcohol-related brain damage, intellectual disability and HIV/AIDS.

**Alan Owen**

Psychologist and senior research fellow, University of Wollongong. Former coordinator of a community mental health service, policy analyst, manager, coordinated care projects. Member, Mental Health Review Tribunal.

**Robert Ramjan**

Social worker. Experience in mental health including chronic mental illness and psychogeriatrics. Executive officer, Schizophrenia Fellowship of NSW.

**Robyn Rayner**

Social worker with experience in aged care, palliative care, dementia, neurological rehabilitation and crisis intervention.

**Alexandra Rivers**

Family experience with dementia and severe mental illness. A retired academic, school teacher and special educator, she is a registered psychologist in NSW. Acts as a Guardian ad Litem for the Children's Court of New South Wales and for the Administrative Decisions Tribunal

of New South Wales. Vice President of the Schizophrenia Fellowship of NSW, and of the Aboriginal Education Council of NSW. Board member of the Mental Health Co-ordinating Council of NSW, and of the Neurological Institute for Schizophrenia and Allied Disorders (NSW). Member of the Governing Committee of the Consumers' Health Forum of Australia.

**Leanne Stewart**

Social worker. Consultant in aged and community services sector, specialising in retirement living and dementia care. Previous experience managing retirement villages, nursing homes and community aged care services.

**Susan Warth**

Psychologist and consultant with extensive experience with people with intellectual disabilities.

*\*\* currently on leave from the Tribunal*





# Definitions

**clinical trial** is a trial of a drug or technique that involves medical or dental treatment. Before an adult unable to give a valid consent to their own treatment may take part in a clinical trial, the Guardianship Tribunal must approve the trial. Usually, the person's 'person responsible' will be able to decide whether or not they take part in the clinical trial. Before an application can be made to the Tribunal, the approval of the relevant ethics committee must be obtained. Also, the trial must comply with the relevant guidelines of the National Health and Medical Research Council.

**consent to medical or dental treatment** if a person cannot understand the general nature or effect of treatment or cannot communicate whether or not they consent to treatment, they cannot give a valid consent to that treatment. Part 5 of the *Guardianship Act 1987* sets out who can consent on their behalf. Usually, this will be a 'person responsible'. If there is no 'person responsible' or the person is objecting to the treatment, the Guardianship Tribunal can act as a substitute decision maker. Only the Tribunal may act as substitute decision maker in relation to special medical treatments.

**enduring guardian** is someone you appoint to make personal or lifestyle decisions on your behalf when you are not capable of doing this for yourself. You choose which decisions you want your enduring guardian to make. These are called functions. You can direct your enduring guardian on how to carry out the functions. The appointment of an enduring guardian comes into effect when you lose capacity to make personal or lifestyle decisions.

**enduring power of attorney** is the document by which you appoint someone to act as your attorney on your behalf in relation to your property and financial affairs (eg. bank accounts or property or shares). The appointment may start when the power of attorney is made, at a particular time, or when you have lost the capacity to make financial decisions.

**financial management order** is an order which the Guardianship Tribunal makes when the Tribunal is satisfied that an adult is incapable of managing their financial affairs and needs someone else to manage those affairs on their behalf and that it is in their best interests that a financial order be made. It authorises the financial manager to make financial decisions for the person the order is about. Most financial management orders are permanent.

**financial manager** is a legally appointed substitute decision maker with authority to make decisions about and manage a person's financial affairs (eg. their money, property and other financial assets, such as share portfolios). A private financial manager may be appointed - a family member or friend - provided they are a 'suitable person' as required by the legislation. Otherwise, the Tribunal will appoint the Protective Commissioner.

**guardian** is a substitute decision maker with authority to make personal or lifestyle decisions about the person under guardianship. A guardian is appointed for a specified period of time and is given specific functions (eg. the power to decide where the person should live, what services they should receive and what medical treatment they should be given). A private guardian may be appointed - a family member or friend - provided the circumstances of the matter allow for this and they meet the criteria set out in the legislation. Otherwise, the Tribunal will appoint the Public Guardian.

**guardianship order** made by the Guardianship Tribunal names the guardian who has been appointed by the Tribunal, the length of their appointment and their functions. It authorises the guardian to make certain decisions for and instead of the person under guardianship.

**order** see **guardianship order** or **financial management order**

**parties to a hearing** always includes the applicant, the person the application is about, their spouse or carer. The Public Guardian and Protective Commissioner are automatic parties to applications for guardianship or financial management. Those who are automatically parties to a hearing are set out in section 3F of the *Guardianship Act* 1987. The Guardianship Tribunal may join others as parties to a proceeding.

**person responsible** someone who has the authority to consent to treatment for an adult who is unable to give a valid consent to their own medical or dental treatment. Sometimes, a patient is unable to make the decision or does not understand what the treatment is about or its effects. In these cases, the person responsible can give substitute consent on behalf of the patient.

**requested review of financial management order** sometimes the Tribunal is asked to review an order because the private financial manager no longer wants to or is unable to carry on with this role, or concerns are raised about the manager's suitability as financial manager, or because the person has regained capacity, or it is in the best interests of the person to review the order.

**requested review of guardianship order** a guardian can request a review to increase or vary the guardianship functions. Others can request a review if the circumstances relating to the person under guardianship have changed or because of some other issue relating to the guardian.

**review of financial management order** the Tribunal can order that a financial management order be reviewed within a specified time. However, the order can be revoked only if the person regains the capability to manage their own affairs or if the Tribunal is satisfied that it is in the person's best interests to revoke the order.

**review of guardianship order** most guardianship orders are reviewed before expiry. Initial orders are made for a specific period of time. The Tribunal undertakes a review hearing where the order will either be allowed to lapse or it will be renewed.





## *Guardianship* *Tribunal*

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