



Guardianship Tribunal



Annual Report
2009/2010

Principles guiding the Tribunal

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

- give the person's welfare and interests paramount consideration;
- restrict the person's freedom of decision 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;
- encourage the community to apply and promote these principles.

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Letter to the Minister

Guardianship *Tribunal*

The Hon. Peter Primrose MP
Minister for Ageing
Minister for Disability Services
Level 33, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister,

I have pleasure in presenting the Annual Report for the Guardianship Tribunal for the year ended 30 June 2010.

This report has been prepared in accordance with the *Guardianship Act 1987* for presentation to Parliament.

Yours sincerely,



Diane Robinson
President
8 October 2010

Achievements and future directions

2009/2010 achievements

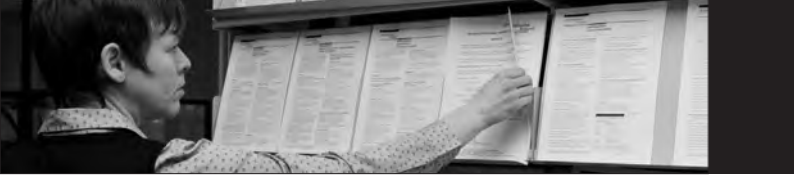
The Tribunal:

- finalised 7161 matters, undertook 1845 reviews and conducted 5850 hearings;
- undertook Tribunal member recruitment;
- celebrated the Tribunal's 20th anniversary with an event attended by the Minister for Disability Services, all past Tribunal presidents, current and past members, and guests from across the health, disability and legal sectors;
- participated in Seniors Week 2010;
- reviewed, updated and republished the Tribunal Members Manual;
- developed our new *Corporate Plan for 2009-2012*;
- reviewed and updated our recruitment and information packages for staff and Tribunal Member recruitment;
- developed a *Private Guardian Statement to the Tribunal* form to assist private guardians to provide information to the Tribunal;
- installed new digital recording systems and improved sound proofing in all hearing rooms;
- completed a Management & Leadership Program for managers and senior staff;
- produced new publications including *'What to expect at a Hearing'* and *'Who is a Party?'*
- improved our records management processes and developed a functional disposal authority;
- continued to improve our statistical reporting tools to support effective case flow monitoring and management;
- implemented an electronic calendar to gather and collate Tribunal member availability;
- remade the *Guardianship Regulation 2005*;
- contributed to the review of the *Powers of Attorney Act 2003*.

Looking ahead - initiatives for the coming year

The Tribunal will:

- finalise our business process reengineering project and align our structure with our new processes and procedures;
- continue to plan for and work towards positioning the Tribunal to manage its increasing workload associated with the ageing of the population;
- undertake planning to improve and expand our hearing room and staff office accommodation;
- continue to publish Tribunal decisions through the Australasian Legal Information Institute (AustL11) to improve access to information about the Tribunal;
- finalise a review of our complaint handling procedures and publications and train staff in these new processes;
- review our *Information Management and Technology Strategic Plan* and expand our access to and use of electronic systems;
- undertake a review and enhancement of our security systems and processes;
- develop the Tribunal's capacity for strategic community education;
- continue our commitment to a collaborative research project lead by the Queensland University of Technology (QUT), supported by a 2009 Australian Research Council - Project Grant Awards, concerning withholding and withdrawing life-sustaining treatment from adults lacking capacity;
- review and enhance our systems for the appointment of separate representatives.



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President's report



In 2009 the Guardianship Tribunal celebrated a significant anniversary. Twenty years earlier, in August 1989, the Tribunal was established, with bipartisan political support and enthusiastic backing from the disability sector. The importance of the Tribunal, and its work to protect the rights and welfare of our most vulnerable citizens, has never been in doubt.

For example, what might happen to "Emily" who has been diagnosed with advanced dementia and whose children cannot agree about where and how to care for her? Who will decide about the best accommodation for her? Often that question cannot be answered without an application to the Guardianship Tribunal for the appointment of a guardian for Emily. How can "Jim" live safely at home when he suffers from severe anxiety and chronic substance abuse and refuses to pay for the services he needs to remain in his own home? A decision about Jim having a financial manager may need to be made by the Tribunal. "Betty" needs an operation but her intellectual disability and her fear of surgery prevent her from agreeing to the procedure. The guardianship legislation provides mechanisms for substitute consent to ensure Betty receives necessary and appropriate medical treatment.

The guardianship system in New South Wales empowers and protects adults living with cognitive disabilities. The Guardianship Tribunal facilitates this by appointing guardians and financial managers as substitute decision makers. Since opening its doors in 1989 the workload of the Tribunal has grown enormously but the goals and vision of the Tribunal and its commitment to supporting people with disabilities has never varied.

Workload

This year the Tribunal experienced a 9% growth in workload as compared to the previous financial year. 7002 new applications were received by the Tribunal and over 9000 matters were dealt with. Applications to review Enduring Guardianship appointments increased by 5.2% and reviews of Financial Management orders increased by 10.3%. Procedural hearings conducted by the Tribunal increased with the number of Directions hearings doubling.

Much of the Tribunal's work in the 2009/2010 year has focused on responding to the challenges it now faces as the population ages and its workload continues to expand.

Our processes and procedures

The Tribunal has been reviewing its processes and procedures to ensure that our work practices efficient and effective and that our systems support and reflect our commitment to the welfare and best interests of our clients. In 2009/2010 we made several significant achievements in this area.

The Tribunal's investigation unit plays a pivotal part in the management of applications prior to hearing. New and improved systems, including a new investigation plan, a new questionnaire for private guardians and a new format investigation report were trialled, reviewed and implemented to improve the service we provide to people with disabilities and their families and carers.

Significant work was done to improve our pre hearing processes. An electronic calendar for Tribunal members now supports more efficient

scheduling. Changes were also made to the management of documents, allowing earlier and more efficient distribution of hearing papers to better support Tribunal members. Rural hearing locations were reviewed and travel arrangements were streamlined to improve the services the Tribunal provides in regional New South Wales.

Corporate plan

In 2009 a new corporate plan was developed to guide the Tribunal over the next three years. Its focus is the development, implementation and improvement of strategies that will ensure quality services to people living with a disability, their families and carers. The five key strategies underpinning the plan include continued improvement in organisational performance; a review and upgrade of the Tribunal environment; improving and expanding our capacity for community education; enhancing our capacity to support staff and members and working to maintain and enhance the Tribunal's leadership role in the disability sector.

Tribunal members

Our Tribunal members have impressive expertise in and understanding of disability issues. They are appointed in one of three categories – legal, professional and community. In 2009/2010 the Tribunal recruited new members across all three categories. Nearly 400 applications were received in response to an advertisement and a careful and lengthy interview process followed.

I would like to take this opportunity to congratulate and welcome our new Tribunal members who will commence their terms of appointment on 1 August 2010. The appointment of some of our existing members will cease early in the new financial year and I would like to acknowledge and thank them for their dedication and contribution to the work of the Tribunal.

Community education and liaison

In October 2009 Guardianship Tribunal decisions became available on the AustLII website.

This allows applicants, service providers, family members and others appearing before the Tribunal to gain a greater understanding of the guardianship jurisdiction and the procedures of the Tribunal.

In 2009/2010 the Tribunal engaged in a joint project with St Vincent's Hospital and the Public Guardian to analyse events from making a guardianship application through to the decision of an appointed guardian, with a view to identifying reasons for delay or areas for improvement. One hypothesis was that the Tribunal's processes may have resulted in delay in the appointment of a guardian and so in the decision making process. When the data was analysed the contrary was demonstrated. The Tribunal's procedures facilitated efficient and effective management of applications which resulted in the timely appointment of guardians.

The Tribunal receives many requests for education and training in relation to the New South Wales guardianship system and the role of the Tribunal. We are committed to providing meaningful community education, although the increase in our application rate and necessary adjustments to resource allocation has meant that the Tribunal has had to carefully prioritise community education goals and activities.

We are working towards creating a strategic education unit within the Tribunal to facilitate greater awareness of the guardianship system in New South Wales. Citizens have the right to appoint their own guardians and financial decision makers and information about how to 'plan ahead' through the appointment of an enduring guardian and the making of a power of attorney needs to be widely available. A strategic education unit will support the autonomy of people living with a disability by improving community awareness of enduring guardianship and enduring powers of attorney. It will also help disseminate practical information about the guardianship jurisdiction and the role of the Guardianship Tribunal which may lessen the need for people to

initiate legal proceedings before the Tribunal.

Thanks

On behalf of the staff and members of the Tribunal I would like to thank the Minister for Disability Services, the Hon. Paul Lynch MP for his work in the disability sector and his support of the Guardianship Tribunal. The Tribunal also acknowledges the CEO and staff of Ageing, Disability and Home Care (ADHC). This Human Services agency has provided invaluable support in relation to a range of Tribunal initiatives. The Tribunal is also funded through ADHC and spent \$8.8 million in the 2009 /2010 year.

The Executive unit of the Tribunal is comprised of the President, Deputy President, the Registrar, the Legal Officer and two administrative assistants. I would like to acknowledge and thank all members of the Executive team for their tireless efforts, camaraderie and professionalism. Towards the end of the 2009/2010 year I took a period of leave and Malcolm Schyvens, the Deputy President assumed the role of Acting President. Two Tribunal members, Ms Christine Fougere and Mr Bill Tearle, were appointed as part time Deputy Presidents of the Tribunal to assist the

Acting President and I particularly wish to thank them for energy, enthusiasm and commitment to the Tribunal.

Two decades of guardianship

In November 2009 the Guardianship Tribunal marked its twenty year anniversary with a celebration at the Balmain Town Hall attended by the Minister for Disability Services, a number of distinguished guests, Tribunal members past and present and many Tribunal staff. This event provided not only an opportunity to reflect on the positive impact the Tribunal has had on the lives of individual people and in the disability sector over the last two decades, it also afforded an appropriate occasion to thank the members and staff of the Tribunal, who made these achievements possible. I would like to echo those thanks now and conclude by acknowledging the extraordinary efforts of the Tribunal's staff and membership over the last twenty years and particularly in recent years when we have undergone a significant period of change and renewal.



Diane Robinson
President

Ratification of the UN Convention on the Rights of Persons with Disabilities

The ratification by the Australian Government of the UN Convention on the Rights of Persons with Disabilities signaled a new era in rights protection in Australia. The Convention articulates the specific action that all levels of government must take to ensure that the rights of people with disabilities are respected, protected and fulfilled.

Ratification of the Convention was, however, just the starting point. Implementation is now the challenge faced by all levels of government and civil society and is a challenge welcomed by the Guardianship Tribunal. The Tribunal continually monitors its own practices and

procedures in order to ensure that the organisation maintains a rights-based approach to the implementation of the legislation that it administers. The Convention has provided a further opportunity for the Tribunal to assess how it 'measures up' against the fundamental rights recognised in that instrument including the rights of persons with disabilities to be free from exploitation, violence and abuse, protection of the integrity of the person, the right to live independently in the community and to enjoy the highest attainable standard of health.

Of critical importance to the work of the Tribunal are those rights recognised in article 12 and 13 concerning the right to equal recognition before the law and access to justice. Article 12 has already been the subject of considerable discussion in international and national arenas. Article 12 reaffirms the right of all persons with disabilities to equal recognition before the law. It requires States Parties to ensure that persons with disabilities receive the support they may require in order to exercise their legal capacity on an equal basis with others in all aspects of their lives. The article also requires that States Parties provide appropriate and effective safeguards to prevent abuse in relation to all measures taken that relate to the exercise of legal capacity.

These safeguards must:

- respect the rights, will and preferences of the person
- be free of conflict of interest and undue influence
- be proportional and tailored to the person's circumstances
- apply for the shortest time possible
- be subject to regular review by a competent, independent and impartial authority or judicial authority
- be proportional to the degree to which such measures affect the person's rights and interests.

These safeguards are already entrenched in the *Guardianship Act 1987* and form the basis of the practices and procedures of the Tribunal.

The *Guardianship Act 1987* requires that substitute decision making be undertaken only as a last resort and only when necessary and in the best interests of the person involved. Although the presumption of capacity is not explicit in the Act, it operates as a common law presumption and the Tribunal manages its jurisdiction on this basis. The evidence provided in proceedings before the Tribunal must be able to support a finding that the person does not have the necessary capacity to make the decisions identified as being critical in the person's life at that time. In addition, the Tribunal must

always consider the adequacy of existing informal arrangements that would avoid the need for an order to be made. This approach is already required by the legislation.

It is the duty of everyone exercising functions under the Act to regard the views of the person who is the subject of proceedings. The Tribunal has developed a number of strategies to maximise the participation of the person with a disability in hearings so that the will and preferences of the person can be understood by the Tribunal. These measures include travelling, where possible, to locations convenient to the person, facilitating the involvement of independent legal representation for the person or, where the person is unable to instruct their own legal representative, appointing a separate legal representative for the person, encouraging the involvement of other advocates and providing other forms of accommodation, such as interpreters, supports for the hearing impaired and flexibility in relation to the timing and manner in which hearings are conducted to take into account fluctuations in a person's ability to participate and provide their views.

These measures also assist in ensuring that proceedings are conducted free of conflict of interest and undue influence. The Tribunal must give paramount consideration to the rights and interests of the person in all proceedings rather than the rights or interests of others involved in the person's life.

The Tribunal is required to make guardianship orders for as short a time as possible and in a manner that is proportional and tailored to the person's circumstances. Regard must be had to the importance of preserving the person's existing family relationships and the importance of preserving the person's particular cultural and linguistic environment. The Tribunal must consider the practicability of services being provided to the person without the need for making an order.

Financial management orders may only be made in circumstances where a person is incapable of managing their own affairs, there is a need for an order and it is in the person's best interests to make the order. In considering these matters, the Tribunal must observe the principles contained in section 4 of the *Guardianship Act 1987*.

The 'triaging' system utilised by the Tribunal's registry is another mechanism that regards the person's particular circumstances. This requires that every application made to the Tribunal undergo an assessment of the person's situation and potential risk. This assessment determines how quickly the matter is listed for hearing.

Reviews of guardianship orders are conducted automatically at the end of the term of the order. The Tribunal also has the power to make time limited financial management orders that require an automatic review of the order at the end of its term. Reviews of both guardianship and financial management orders may be requested by the person who is the subject of the order or any person with a genuine concern for their welfare. Such requests may be made at any time. The Tribunal may also initiate an own motion review of both types of orders.

Of all of the guardianship jurisdictions in Australia, NSW remains the only one that requires written reasons to be produced for every substantive decision made, thus ensuring transparency. All parties have the right to appeal Tribunal decisions to the Administrative Decisions Tribunal and the Supreme Court of NSW and are provided with written information about their appeal and review rights after each hearing.

As noted elsewhere in this annual report, the number of applications to the Tribunal is increasing rapidly, largely reflecting the ageing population. The Tribunal continues its efforts to manage its increasing workload whilst never losing sight that this jurisdiction deals with the most fundamental of human rights, namely, the right that all members of the community have to make decision about their own lives, in all of its complexities. It must also be recognised that circumstances will arise whereby our capacity to make decisions for ourselves may become impaired to such an extent that the lack of some provision for substitute decision making may lead to breaches of other fundamental human rights including the right to integrity of one's own person, to live free from abuse and neglect and to ensure that we all have access to necessary medical treatment.

Who we are



Who we are

The Guardianship Tribunal is a legal tribunal established under the New South Wales *Guardianship Act 1987*. The Tribunal promotes the rights and welfare of people living with a decision making disability. It exercises a protective jurisdiction and facilitates substitute decision making by hearing and determining applications for the appointment of guardians and financial managers for adults with decision making disabilities.

The Guardianship Tribunal is a specialist disability tribunal for people with cognitive disabilities.

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 questions of guardianship, financial management and medical consent.

The Guardianship Tribunal is a tribunal of last resort. Generally, the Tribunal is involved where there are no appropriate substitute decision making arrangements in place or where an appropriate alternative to an application cannot be found.

While most of its work involves decisions about guardianship and financial management orders, the Tribunal also has the jurisdiction to:

- review the guardianship and financial management orders it makes
- review enduring powers of attorney and enduring guardianship appointments
- provide consent for treatment by a doctor or dentist, and
- approve a clinical trial so that people with decision making disabilities can take part.

The Guardianship Tribunal also has an educative role. Through its enquiry service, community education programs, videos, DVDs, publications and the work of its staff the Guardianship Tribunal educates and informs the community about the application process, the role of the Tribunal and the various informal decision making arrangements that may mean an application is not needed.

To carry out its work, the Guardianship Tribunal has two full time members - the President and Deputy President; 83 part time Tribunal members and 65.5 full time equivalent positions and 54 full time equivalent employees.

The President and the Deputy President

The President is directly responsible to the Minister for Disability Services for the overall operation and administration of the Guardianship Tribunal and for ensuring that the principles of the *Guardianship Act 1987* are applied to its functions. The President also sits from time to time as the presiding member at hearings. The Deputy President reports directly to the President of the Guardianship Tribunal. The Deputy President assists and supports the President in the operation and administration of the Guardianship Tribunal. The Deputy President may exercise the President's functions if delegated by the President or if the President is absent from New South Wales or is prevented by illness or other incapacity from exercising those functions.

Tribunal members

Tribunal members are appointed by the Governor on the recommendation of the Minister for Disability Services for a period of up to five years. Tribunal members are appointed on the basis of their significant professional and personal experience with people who have disabilities or their legal skills and experience. Tribunal members are appointed on a part time basis to conduct hearings and determine the applications made to the Guardianship Tribunal.

In most cases when a panel is convened to hear an application about a person with a decision making disability, it comprises a legal (presiding) member, a professional member and a community member. The legal member must be an Australian lawyer of at least seven years standing. The professional member is a person such as a doctor, psychologist or social worker who has expertise and experience in the assessment or treatment of adults with disabilities. The community member has experience, often familial, with people with disabilities.



The Hon. Peter Primrose, Minister for Ageing and Minister for Disability Services with Guardianship Tribunal Deputy President Mr Malcolm Schyvens.

The multi-disciplinary panels not only ensure that the Guardianship Tribunal conducts its proceedings fairly, relies on credible evidence when making its determinations 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.

Appendix No. 2 lists and provides a brief background for each member of the Tribunal.

Staff of the Tribunal

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 and operate in accordance with ADHC policies and procedures.

In consultation with the President, the Registrar leads and manages the operations of the Tribunal to ensure it achieves and meets its legislative, policy, corporate governance, risk management and public sector requirements and obligations.

The Registrar also exercises a range of functions to enhance the Guardianship Tribunal's ability to manage its caseload, including recognition of interstate guardians and / or financial managers and the making of determinations with respect to prescribed matters such as conduct of proceedings, and the determination of review requests.

Staff of the Tribunal undertake their roles supporting the work of the Tribunal within one of the following functional units:

- Client Information Services/Triage
- Coordination and Investigation
- Hearing Services
- Tribunal Systems and
- Executive Services.

The Client Information Services Unit/Triage Unit delivers first tier triage for the organisation providing information to potential clients and the community about the role of the Tribunal, the application process and the range of informal solutions available as alternatives to an application. Following the implementation of new case management procedures, the Unit assesses all applications against the Tribunal's Risk Triage Scale based on the immediacy and severity of the subject person's risk of harm and is involved in preparing a number of applications for hearing. The Unit is also responsible for registering incoming

correspondence and applications and also manages publications and the community education program.

The Coordination and Investigation Unit undertakes an important case management role. As well as assisting the person with the disability to understand the Tribunal's procedures, staff gather information about the capacity and decision making needs of the person who is the subject of the application. Where appropriate staff assist with the informal resolution of matters which may result in an application being withdrawn prior to hearing.

The Hearing Services Unit liaises with the Tribunal members and is responsible for scheduling and listing applications and reviews for hearing. Staff of the Unit provide support for hearings, coordinate the distribution of material for members, produce and distribute notices of hearing, and make travel, hearing venue and interpreter arrangements. The Unit is also responsible for assisting with post hearing enquiries and for the distribution of Orders and Reasons for Decision.

The Tribunal Systems Unit is responsible for key corporate governance functions such as human resource management, finance, administration and for managing the Guardianship Tribunal's information management and technology systems.

The Executive Services Unit supports the President, the Deputy President and the Registrar in providing leadership and direction to staff and Tribunal members to ensure that the Guardianship Tribunal carries out its statutory duties with timeliness and effectiveness according to its own standards and those required under the Act. The Tribunal's legal officer provides advice to the President, the Deputy President, Tribunal members and staff, participates in the Tribunal's community education program and represents the Tribunal on a range of external committees.

What we do



What we do

Our statutory role

The Guardianship Tribunal is a legal tribunal established under the New South Wales *Guardianship Act 1987*.

Legislation which is relevant to the Tribunal's jurisdiction includes:

- *Guardianship Act 1987*
- *Powers of Attorney Act 2003*
- *Protected Estates Act 1983*
- *Children and Young Persons (Care and Protection) Act 1998*
- *Mental Health Act 2007*

The *Guardianship Regulation 2005* contains further provisions about enduring guardians and medical treatment and sets out the prescribed forms required by the *Guardianship Act 1987*.

The principal role of the Guardianship Tribunal is to hear and determine applications for the appointment of guardians and financial managers for adults with decision making disabilities. The Tribunal can review the guardianship orders it makes and may review its financial management orders. The Tribunal can give consent to medical and dental treatment for people 16 years and over who are unable to consent to such treatment for themselves. The Tribunal also has jurisdiction to review enduring guardianship appointments and enduring powers of attorney.

Appointing guardians

A guardian may be appointed to make personal or lifestyle decisions for an adult with a decision making disability where the Tribunal is satisfied on the evidence before it that the person has a disability, an incapacity to make his or her own decisions and there is the need for the formal appointment of a substitute decision maker. The guardian may be appointed to make a range of personal decisions, for example, decisions about the person's accommodation, access to support services, health care or medical and dental treatment. The duration of the appointment and the specific decision making authority of the guardian is set out in the guardianship order.

The Guardianship Tribunal can appoint private individuals, usually a family member or friend, to act as a guardian. Before the Tribunal can appoint a private guardian, it has to be satisfied that the guardian is compatible with the person for whom the order is made, there is no conflict of interest that would impact on decision making and the proposed guardian is willing and able to undertake the role of guardian.

The Tribunal can also appoint the Public Guardian to make decisions for a person with a disability if there are no family or friends willing or able to be appointed or if the circumstances make it inappropriate to appoint a private guardian.

CASE STUDY **Fatema - Positive impact of a short term guardianship order**

Fatema is a 30 year old woman who lives with her mother, Nour, in rental accommodation in regional NSW. Fatema has severe physical and intellectual disabilities and a condition known as tuberous sclerosis that causes her to have seizures. Prior to his death a few years ago, Fatema's father had provided a lot of support and care for his daughter.

An application for a guardianship order was made by one of the service providers who provided support to Fatema at home. The application was made because of concerns that Nour was having difficulty in meeting Fatema's care needs and was not always providing Fatema with the medication that she needed. Nour has a mental illness and at the time of the hearing had been admitted to hospital because she was mentally unwell.

At the hearing, the Tribunal decided that a separate representative should be appointed for Fatema given her inability to communicate with the Tribunal and the impact that a guardianship order may have on her and her mother. The Tribunal adjourned the hearing for two weeks so that the separate representative could meet Fatema and could consider the information that had been provided to the Tribunal.

At the next hearing, the Tribunal decided to make a guardianship order for Fatema. The evidence provided to the Tribunal showed that despite her mother's best efforts, Fatema was missing out on support that could be provided to her by organisations in the community. The evidence also showed that Fatema had not been taken to see a doctor for quite some time. The separate representative felt that it was in Fatema's best interests for a guardianship order to be made. Nour did not object to making of a guardianship order.

The Tribunal appointed the Public Guardian as Fatema's guardian for one year and was given authority to make decisions about Fatema's accommodation, her health and medical needs and support services.

At the review of the guardianship order a year later, evidence was given to the Tribunal that over the period of the order, an extensive support system had been put in place for Fatema which meant that Fatema had been able to stay living at home with her mother. Fatema now had support people coming to her home to help her with her personal care needs and also helped with housekeeping and grocery shopping for Fatema. Fatema had also been to see a doctor and she was getting regular medication for her seizures.

At the hearing, Nour told the Tribunal that her mental health was much better than a year ago and that she was happy with the help that she and her daughter were receiving. The Tribunal decided that as arrangements were now in place for Fatema to get the care and assistance she needed and Nour was happy for this to continue, there was no need for another guardianship order to be made and allowed the order to lapse.

Appointing financial managers

A financial manager may be appointed to make financial decisions for another person if the Tribunal is satisfied, on the evidence before it, that the person is incapable of managing his or her own affairs, needs to have a formal management order and such an order is in their best interests. The need for an order can arise where a person has not made, or has been unable to make, prior arrangements in the event of incapacity, such as an enduring power of attorney. The nature of their financial circumstances may mean that someone needs formal legal authority to manage their affairs, or there may be family conflict about what is in the person's best interests.

The Tribunal can appoint a family member or friend to act as the person's private financial manager. A private manager is appointed subject to the direction of the NSW Trustee and Guardian. Before the Guardianship Tribunal can appoint a private manager, it must be satisfied that the person is suitable to undertake the role. Alternatively, the Tribunal can order the property and affairs of a person be managed directly by the NSW Trustee and Guardian.

Consenting to medical and dental treatment

The Act provides for substitute decision making in relation to medical and dental consent for those persons 16 years and above who are unable to give informed consent to their own treatment. It establishes the hierarchy of 'person responsible'. A 'person responsible' may be a guardian, (including an enduring guardian, with the necessary authority) spouse, carer, or close friend or relative. A 'person responsible' is able to give substitute consent for medical and dental treatment without the need for a formal guardianship order.

The Tribunal can also consent to certain medical and dental procedures for people who are incapable of consenting themselves. These powers ensure that people are not deprived of necessary

treatment because they lack the capacity to consent or are without a family member who can act as 'person responsible'. The Tribunal must be satisfied that the treatment promotes and maintains the person's health and wellbeing.

The Guardianship Tribunal may also consent to special medical treatment for an adult with a decision making disability. This may include any treatment that is intended or likely to result in permanent infertility. It also includes termination of pregnancy and other prescribed treatments.

When hearing applications for consent to special medical treatment, the Tribunal will be constituted by three members, a legal member, a professional member, such as a doctor and a community member. The Tribunal will take into account the views of the patient, where that is possible, and the views of guardians, family members, carers and health professionals.

Before the Tribunal can consent to special medical treatment resulting in permanent infertility it must be satisfied that the treatment is necessary to save the patient's life or to prevent serious damage to the patient's health.

The Guardianship Tribunal also has jurisdiction under the *Children and Young Persons (Care and Protection) Act 1998* to consent to special medical treatment for people less than 16 years of age. The definition of 'special medical treatment' is set out in section 175 of the *Children and Young Persons (Care and Protection) Act 1998*.

Reviewing enduring powers of attorney and enduring guardianship appointments

Applications may be made to the Tribunal to review the making and the operation and effect of an enduring power of attorney and to review the appointment of an enduring guardian. These applications often raise complex issues concerning a person's capacity to make these appointments.

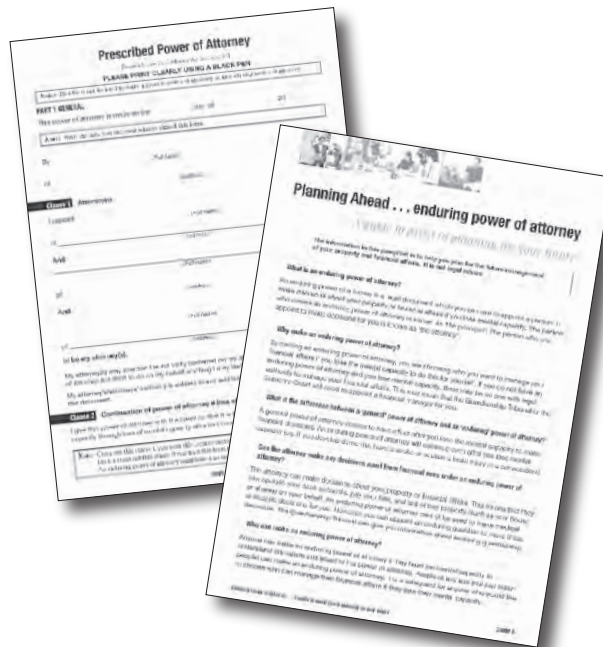
The trend in the growth of applications to review enduring guardianship appointments continued this year and there was a slight decrease of 3% in the number of applications to review enduring powers of attorney. Many applications however involve complex legal and factual issues reflecting the complexity associated with people's financial arrangements including issues concerning superannuation, investments and property.

Enduring Powers of Attorney

The Tribunal has jurisdiction under the *Powers of Attorney Act 2003* to review and vary an enduring power of attorney.

The Tribunal can make a range of orders concerning the making or operation and effect of an enduring power of attorney. For example, on reviewing 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.



The Tribunal has the power to decide that a review of an enduring power of attorney should be treated as an application for financial management. The Tribunal may proceed on that basis and make a financial management order if appropriate.

A financial management order suspends the operation of any power of attorney that have been made by the protected person (the person whose estate has been placed under management).

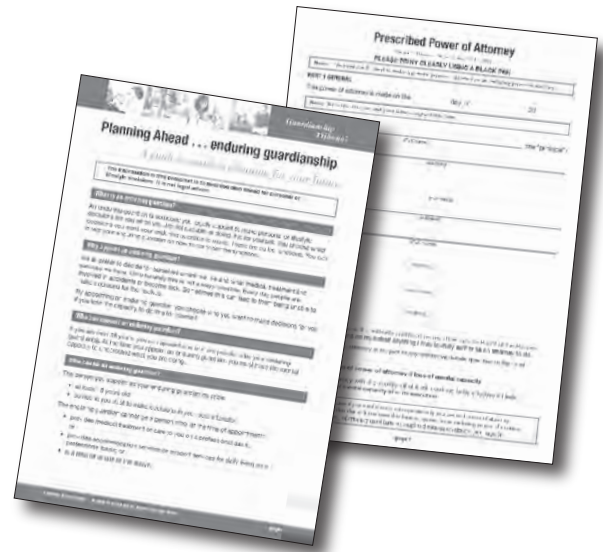


Enduring Guardianship

The Tribunal has jurisdiction under the *Guardianship Act 1987* to review the appointment of an enduring guardian. The Tribunal may revoke the appointment, confirm the appointment, replace an enduring guardian with a substitute enduring guardian and vary the functions of the enduring guardian.

The Tribunal may also make an order declaring that the enduring guardianship appointment has effect. This may be required in circumstances where there is some doubt or dispute about whether or not the person who made the enduring guardianship appointment has become a person 'in need of a guardian.' Enduring guardianship appointments only have effect during such periods of incapacity.

The making of a guardianship order suspends the operation of an enduring guardianship appointment.



CASE STUDY John - Revocation of financial management order

John is a 36 year old man who lives with his parents in Sydney. He has a mental illness that has led, in the past, to numerous admissions to hospital and treatment with anti-psychotic medication. The Tribunal received an application from John's parents to have a financial management order made for him. At the hearing, his long term psychiatrist told the Tribunal that John's illness meant that he had highly delusional thoughts much of the time and was vulnerable to being financially exploited. John's family members gave evidence that he had been persuaded by an acquaintance to give him money on a regular basis. John receives a disability support pension and had difficulty budgeting and saving money which made it difficult for him to make plans for the future. John supported the making of the order.

The Tribunal made a financial management order for John and appointed John's mother as his private financial manager subject to the direction of the NSW Trustee.

Two years later, John applied to the Tribunal to have the financial management order revoked.

At the hearing, the same psychiatrist who was involved in the first hearing told the Tribunal that John's mental health had been stable for some time and he was no longer suffering from delusions. The psychiatrist believed that John was well enough to manage his finances on his own. John's case manager agreed.

John told the Tribunal that things had improved a great deal since the order was made. He is now a student at TAFE and is working towards obtaining qualifications in the hospitality industry. He worked in hospitality before he became ill and hopes to do so again.

Despite the fact that John's affairs had been managed by the NSW Trustee for the last few years, John had a good understanding of his financial situation and was able to explain this to the Tribunal.

John's parents supported his application to have the order revoked. They felt that since John's mental health has improved, he has become much more independent and is able to make decisions for himself.

After hearing all the evidence, the Tribunal decided that John was now capable of managing his own financial affairs. He was no longer at risk of exploitation by other people and had the skills to manage his own finances and make plans for the future. The Tribunal revoked the financial management order which meant that John was back in control of his own finances.

CASE STUDY Patricia - Review of enduring power of attorney – acting on the wishes and in the best interests of the principal

Patricia is an 83 year old woman who lives in her own home with her son, Robert. Patricia has two other children, one of whom, Susan, lives in Western Australia and the other, Rhonda, lives in Sydney. Robert moved into his mother's home in 2008 and provides her with support and companionship. Whilst Susan is in regular contact with her mother and brother by telephone, she sees her mother in person once a year over the Christmas/new year period. Rhonda has a strained relationship with both her siblings and has limited contact with them. She does, however, visit her mother when she can.

In 2006, Patricia appointed Robert and Susan as her joint attorneys pursuant to an enduring power of attorney. Patricia specified that the enduring power of attorney was to operate when a medical practitioner certified that she is incapable of managing her own financial affairs. When visiting her mother from Perth over the holiday period in 2009, Susan noticed a significant decline in her mother's functioning and, after discussion with her brother, decided that their mother should be medically assessed so that a decision could be made about whether their authority to act as attorneys should be activated. Assessments conducted by a number of specialists indicated that Patricia had dementia, probably of an Alzheimer's type, that was of moderate severity. As a result, Patricia was experiencing irreversible, progressive cognitive impairment that meant that she was incapable of managing her own finances. After receiving this advice, Susan and Robert began formally acting as Patricia's attorneys. Although they were appointed jointly, Susan took the primary responsibility for the management of her mother's affairs from Perth.

Rhonda, who visited her mother more regularly than Susan, became concerned about her brother's gambling problem. She was particularly concerned that Robert might be using his mother's money on poker machines and wasn't seeing to all of his mother's needs.

Rhonda lodged an application with the Tribunal seeking a review of the operation and effect of the enduring power of attorney and an application for a financial management order. Rhonda asked the Tribunal to make a financial management order for her mother and, because of her difficult relationship with her brother and sister, requested that an independent financial manager be appointed.

At the hearing, Robert acknowledged that he had a gambling problem but denied that he had used any of his mother's money for his own benefit. Because of the family conflict, however, Robert told the Tribunal that he no longer wanted the role of attorney. Susan wished to remain as attorney. Patricia made clear her view that she wanted Robert and Susan to look after her money.

The Tribunal decided that it would be in Patricia's best interests if Robert was removed from the office of attorney. This left Susan as the sole attorney. The Tribunal was not persuaded that making a financial management order was in Patricia's interests. Allowing the enduring power of attorney to continue with Susan as attorney left in place, at least partially, the specific arrangements Patricia had made in 2006 concerning the management of her own financial affairs.



How we work



How we work

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. They are about an individual's right to continue to make his or her own decisions.

The Act requires that the Guardianship Tribunal conducts its proceedings with as little formality and legal technicality as the circumstances permit. The Guardianship Tribunal may obtain information on any matter as it thinks fit and is not bound by the rules of evidence. The Guardianship Tribunal is, however, bound by the principles of natural justice.

The protective framework within which the Tribunal operates underpins the work of both the Tribunal's staff and members. Anyone with a genuine concern for the welfare of a person who is incapable of making his or her own decisions may apply to the Guardianship Tribunal. Staff of the Tribunal provide information to the person with the disability, the applicant and other parties about the Tribunal's practices and procedures. Staff contact the person with the disability to determine the most appropriate means by which the person can, if possible, participate in the hearing.

The Guardianship Tribunal does not follow an adversarial approach in the conduct of its hearings and in its decision making. It uses more inquisitorial methods and the Tribunal may inform itself on any matter in such manner as it sees fit.

Our principles

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

- give the person's welfare and interests paramount consideration
- restrict the person's freedom of decision 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.

Staff and Tribunal members must act in accordance with the purpose of the Guardianship Tribunal which is to keep paramount the interests and welfare of people with disabilities through facilitating decision making on their behalf.

Through their knowledge of disability and the services available, the professional and community members play an essential role in determining whether an order should be made and, if so, what powers or functions a guardian should exercise. Tribunal members bring a wealth of specialist knowledge, expertise and experience to an often complex decision making process. The Tribunal will, where appropriate, endeavour to bring the parties to an application to a settlement that is in the interests of the person with the disability.

The nature and circumstances surrounding applications to the Tribunal often involve sensitive and personal information about the person with the disability, who may themselves be unable or limited in their ability to participate in the proceedings. The Tribunal may determine that proceedings be conducted wholly or partly in the absence of the public.

Hearings are generally scheduled to allow sufficient time for appropriate investigation of the person's circumstances and his or her need for orders to be made. However, the Guardianship Tribunal can convene within hours to hear urgent applications, often by telephone. The Guardianship Tribunal also operates an after hours service if urgent applications need to be heard outside normal business hours. Hearings may also be conducted via video conferencing.

Orders of the Tribunal may be made and announced at the conclusion of the hearing or the decision may

be reserved, with the order to be made at a later date. The Tribunal may determine not to make an order and dismiss the application or the application may, with the Tribunal's consent, be withdrawn during the hearing. The Tribunal will, as soon as possible after the hearing, send the Order and Reasons for Decision to the parties.

The Guardianship Tribunal's decisions may be appealed to either the Supreme Court or the Administrative Decisions Tribunal.

External influences on the work of the Tribunal

Legislation and legislative changes

Almost half of the Tribunal's clients experience cognitive incapacity as a result of age related disabilities. With the number of people over 65 in New South Wales set to rise by over 50% by 2030, the Tribunal will inevitably experience a growth in demand for its services for this client group.

The New South Wales Government's focus on planning for the ageing of the population has raised community awareness of the need for individuals to plan ahead for future incapacity. While making enduring powers of attorney or enduring guardianship appointments may prevent the need for orders to be made by the Tribunal, our Enquiry Service is increasingly responding to enquiries from people considering these options and providing information about the Tribunal's jurisdiction to review these arrangements.

This year the Tribunal continued to participate in planning for the impact of the ageing population and provided education to the aged care sector by:

- participating in ADHC's Planning for Later Life forum and sub committees
- participating in Seniors Week in March 2010 by having a stall to provide information at the Seniors Week Gala Days at the Sydney Entertainment Centre
- presenting at the New England Dementia Forum in July 2009 and for the Hornsby Ku-Ring-Gai Dementia Network in September 2009
- presenting for the Alzheimers Australia Dementia Helpline in August 2009
- providing community education to a range of aged care service providers.

Legislation relating to the Guardianship Tribunal

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 guardianship 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 informed consent to their own treatment. Usually this consent can be provided by the person's 'person responsible'.

The *Guardianship Regulation 2005* 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*.

The Guardianship Tribunal also has jurisdiction under the *Children and Young Persons (Care and Protection) Act 1998* to consent to special medical treatment for people under 16 years of age.

The definition of 'special medical treatment' is set out in section 175 of the *Children and Young Persons (Care and Protection) Act 1998* and includes sterilisation.

Both the *Guardianship Act 1987* and the *NSW Trustee and Guardian Act 2009* deal with the making of financial management orders. 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 financial management orders.

The *NSW Trustee and Guardian Act 2009* sets out how financial management orders can be made by the Supreme Court and the Mental Health

Review Tribunal. The *NSW Trustee and Guardian Act 2009* sets out the powers of the NSW Trustee and Guardian when it is appointed as a financial manager 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 be able to review and vary an enduring power of attorney.

Legislative changes since 1 July 2009

The Guardianship Act

Minor amendments to the Guardianship Act were made by the *Statute Law (Miscellaneous Provisions) Act 2010* which was assented to on 28 June 2010 but did not come into effect during this financial year.

The amendments allow an application to the Guardianship Tribunal to be served on parties to proceedings separately from a notice specifying the time, date and place set down for the Tribunal's hearing of that application.

The amendments also enable the Guardianship Tribunal to serve notices on parties by electronic means provided that the recipient agrees to be served in this manner.

The Guardianship Regulations 2005.

The Guardianship Regulation 2005 expires in September 2010 and will need to be remade before that time.

The Guardianship Regulation supplements the *Guardianship Act 1987* and its provisions support and enable the practical operation of several provisions of the Act.

In early 2010, the Guardianship Tribunal commenced a process of public consultation on the remaking of the Regulation and sought the views of the community and key stakeholders on whether

any changes should be made to the Regulation and the nature of those changes.

The consultation is still in process at the end of this financial year.

The NSW Trustee and Guardian Act 2009

The *NSW Trustee and Guardian Act 2009* was assented to on 26 June 2009 and came into effect on 1 July 2009. The *NSW Trustee and Guardian Act 2009* repeals the *Public Trustee Act 1913* and the *Protected Estates Act 1983* and constitutes a corporation known as the NSW Trustee and Guardian.

The NSW Trustee and Guardian will exercise the financial management functions previously

exercised by the Protective Commissioner.

The *Guardianship Act* has been amended to allow the Tribunal to appoint the NSW Trustee as financial manager for people with disabilities and to make consequential amendments.

The new legislation also repeals section 25E(3) of the *Guardianship Act* which required the Tribunal to notify the Protective Commissioner if it proposed excluding part of an estate from management. The effect of the repeal is that the Tribunal can now make orders excluding part of an estate from a financial management order without the need to notify other agencies.

Our Corporate Plan

The Tribunal's strategic direction is set out in its *Corporate Plan 2009-2012*.

The focus of the Corporate Plan is to 'develop and implement strategies that will ensure the provision of quality services in an environment of increasing demand.' The Tribunal operates in a demand driven environment which is strongly influenced by the ageing of the population.

We are committed to reviewing and refining our work practices to respond to these demands without compromising our standard of service to people with disabilities.

The Corporate Plan sets out our goals for 2009-2012. These are to:

- maintain and improve the effectiveness and standing of the Guardianship Tribunal as a specialist disability Tribunal.
- develop, implement, review and improve strategies that will ensure the provision of quality services in an environment of increasing demands.

The Guardianship Tribunal continues to improve organisational performance to manage the increasing demand for its services and to ensure it responds to the needs of people with disabilities, parties and other Tribunal users.

Review of the Business Processes

Staff of the Tribunal contribute to improvements in practice and procedure to ensure that applications are managed efficiently and appropriately.

During the year a number of projects were undertaken to deliver service improvement, meet the demands of our complex workload and continue to strengthen the platform from which we will deliver a quality service into the future.

Business Process Design Project

The Tribunal has continued work on its major business process design project. The review has involved staff and Tribunal members in a series of focus groups and consultations in the development, trial and implementation of new procedures.

Over the course of the year the Tribunal fully implemented its new triage model for the assessment and management of all new applications, implemented new strategies for preparing applications for hearing and implemented new procedures for the management of statutory review matters.

This year our process review focussed on the development and trial of new procedures in the Hearing Services Unit including procedures for: listing and scheduling matters before the Tribunal, generating and issuing notices of hearing, and distributing hearing papers and support tools to Tribunal members. We explored opportunities for improved integration of new work practices with IT solutions and implemented an electronic calendar for Tribunal members to advise of their availability.

These changes in practice and procedure facilitate the continued delivery of a high quality service to parties and Tribunal users, and support the timely preparation and listing of matters. They have provided improved systems to support staff in undertaking their roles and responsibilities and managing a growing and increasingly complex workload.

Statistics working party

Throughout the year staff have continued to review both data collection and statistical analysis systems. These improvements have supported senior staff and management to better monitor and manage the Tribunal's workflow. This work has enabled the Tribunal to revise and improve its data collection and statistical reporting. This has supported the implementation of new and revised case management procedures. The work of refining and continuing to develop appropriate reporting tools to assist in the management of matters before the Tribunal and inform planning for, and allocation of, Tribunal resources will continue into the new financial year.

Banker's cases

This year the Tribunal continued to receive applications in relation to what are commonly called "the banker's cases." These applications are made to ensure that the most appropriate financial management arrangements are in place for a number of ADHC clients who to date have received informal assistance from the NSW Trustee. The Tribunal received its first banker's case applications following the implementation of a Memorandum of Understanding in December 2008 and it is anticipated that we will continue to receive these applications into the new financial year.

Electronic Client Management System

The Tribunal continued to make improvements to its Case Management System (CMS) databases including the:

- development and release of new Management Reporting to enhance monthly case flow reporting and Annual report production.
- improvements to the Hearing Report which provides information to both the tribunal and parties to proceedings.
- improved reporting to ensure the timely production and distribution of orders and reasons for decision.

As part of our business process design project in the Hearing Services Unit we have begun work on reviewing the documentation completed by the Tribunal at the conclusion of hearings and used for the preparation of Tribunal orders, for data entry into the case management system and to capture important information for any future hearings. The implementation of these developments will occur in the 2010/11 year.

Private Guardian Statement to Tribunal

To assist private guardians to prepare for review hearings and provide information to the Tribunal, and to facilitate the most appropriate listing arrangements, we have developed a Private Guardian Statement to the Tribunal form. This project is close to finalisation and we will begin using the form early in the new year.

Separate representative project

The Tribunal may appoint a separate representative for a person with a disability. A separate representative is an independent person, usually a lawyer, appointed by the Guardianship Tribunal to represent the interests of the person who is the subject of an application to the Tribunal. The role of the separate representative is to present the views of the person wherever possible, present other relevant information and make submissions as to the best interests of the person to assist the Tribunal in its decision making.

This year there has been a 25% increase in separate representative appointments and the Tribunal has had discussions with the New South Wales Legal Aid Commission in relation to this important function. This project will continue into the new year.

Records management

The Tribunal is committed to ensuring that its business and the delivery of its services are supported by efficient and effective records management. A key component of this is managing the retention and disposal of records. The Tribunal has continued a project to develop a Retention and Disposal Authority for submission and approval by the State Records Authority under the State Records Act 1998. The Tribunal is well placed to meet the requirement of all New South Wales Government agencies to have Records Retention and Disposal Authorities in place by 2010.



*Building the capacity
of the Tribunal to
provide quality
service to the
community of
New South Wales*

Improving our services through the development and support of staff and members

Professional development for Tribunal members

The Tribunal conducts a professional development program of seminars for members. This year two seminars were conducted for legal members and a further three seminars for all Tribunal members. Seminars for the legal members involved discussion, presentations and practical exercises on legal issues. Those for all members included a variety of presentations, workshops and discussions providing current information on clinical and disability issues, legislative updates and issues relating to the practice and procedure of the Tribunal. Presentations are given by Tribunal members or by external speakers and professionals with expertise relevant to the work of the Tribunal.

Tribunal member seminars this year covered the following topics:

- the UN Convention on the Rights of Persons with Disabilities
- dementia prevalence and its social impact
- real involvement – maximising the participation of the person with a disability in Tribunal proceedings
- major activities of the NSW Ombudsman
- end of life issues
- decision writing
- special medical treatment
- separate representatives and legal representatives – different roles and common issues.

Some Tribunal members have attended additional training in procedural issues and in the Tribunal's Case Management System in preparation for conducting hearings as a single member.

The revised performance appraisal system for Tribunal members was fully implemented this year. The competence framework for members sets out members' key competencies under five headings - knowledge and values, communication, conduct of cases, evidence and decision making. It describes the performance indicators relevant to each competency.

The Tribunal members self assessment report and hearing observation program were developed in line with the competence framework. Hearing observations occur twice a year in February and September.

The Australian Guardianship and Administration Council (AGAC) provides a national forum for State and Territory agencies that protect adults with a disability through adult guardianship and administration. AGAC facilitates the sharing of information between agencies to explore and develop consistent approaches to common issues and a collaborative focus on relevant matters.

Tribunal Members' Manual

A revised and updated version of the Tribunal Members' Manual was released this year to members. The Manual contains useful information about the various areas of the Tribunal's jurisdiction and sets out the Tribunal's expectations of members in terms of conduct, competencies and performance. The Manual is available to all members on the Tribunal's web based members' collaboration site and in hard copy at the Tribunal's premises.

Staff training and development

Applications made to the Tribunal are often complex in nature and may involve a person with a disability in a situation of risk, or circumstances of significant conflict between the parties to the application. Our staff have a diverse range of skills and experience which enable them to provide timely and efficient services to the Tribunal and to parties.

The Tribunal's Training Committee meets regularly throughout the year to plan and oversee the training and professional development program for staff. The program includes internal, Departmental and external training and development opportunities.

The Tribunal remains committed to continuing its monthly seminar program for staff as a practical and important way to support staff in their work. These seminars which staff are required to attend address specific training and information topics identified by staff. They are an opportunity to receive and discuss information and support consistency, within and across Tribunal teams, in the information provided to clients and parties and in the support provided to Tribunal members.

These seminars have provided staff with skills, knowledge and information on a diverse range of subject areas including:

- the UN Convention on the Rights of Persons with Disabilities
- ethics and professional standards
- effective communication
- the role of the Private Guardian Support Unit
- real involvement – maximising the participation of the person with the disability in Tribunal proceedings
- report writing training

- AVOs – prohibiting, preventing and protecting
- the mental health legislative framework
- time management.

In addition to our internal training, staff attended a workshop conducted by the New South Wales Ombudsman's Office on Dealing with Unreasonable Complainant Conduct and the Art of Negotiation.

In January we implemented a program for staff to observe two Tribunal proceedings each year. This will assist in further developing staff members' knowledge and experience of the hearing process and how the work of Tribunal staff supports the Tribunal Members and positive outcomes for people with disabilities. The hearings selected for observation are relevant to an individual's learning and development needs and areas of interest.

In May this year a number of staff attended the Council of Australasian Tribunals (NSW Chapter) Seventh Annual Conference - "Quality Decision Making".

Last year we commenced a Management and Leadership Program for managers and senior staff to build on and develop skills, qualities and abilities in the areas of management, leadership and communication. This program has assisted managers in the implementation of procedural changes and to support staff through this period of change and development. This year we completed the final module in that training program.

Effectively communicating with our clients has been a particular focus of our training program this year. The publication of staff bulletins, the maintenance of the Tribunal's intranet, and regular unit, team and staff meetings have been used to update and inform staff about issues in a timely and effective way.

The Tribunal has an active OH&S Committee which undertakes regular inspections and provides information and updates to staff as issues arise. To ensure the safety of our clients and our staff, fire drills and training in fire fighting techniques are regularly conducted. The training is provided by Comsafe, the training arm of the New South Wales Fire Brigade. Staff members also regularly attend external training programs in first aid, ergonomics and Occupational Health and Safety.

Supervision guide

This year the Tribunal launched a supervision guide for managers and staff providing practical guidance and support tools to aid the supervision process. This has formed the basis for a comprehensive review of supervision practices and is an important aspect of the Tribunal's revised case management practices and procedures.

Information Management and Technology (IM&T) Strategic Plan –

With the support of the IT Directorate, ADHC and the Tribunal developed its IM&T Strategic Plan 2009-2012. This plan aims to establish a foundation for operations and support to meet a number of business challenges and priorities over the next three years.

Improving our environment for clients, staff and members

This year a number of improvements were made to the Tribunal's premises including upgrading the soundproofing between our hearing rooms and creating additional work areas for use by Tribunal members. In conjunction with the review of our hearing support procedures we have begun a project to review options for hearing venues in regional locations.

We replaced our analogue system for recording Tribunal proceedings with digital systems for both the Tribunal's hearing rooms and for regional hearings. We have begun a comprehensive review of our security requirements and anticipate a full review of our physical environment, electronic systems and response procedures early in the new year.

We also introduced an electronic communication and collaboration system for Tribunal members. The Guardianship Tribunal's SharePoint Portal is an internet accessible website for Tribunal Members containing a Members Availability Calendar, the Tribunal Members Manual and other resources. The electronic calendar enables members to indicate their availability electronically and enables the Tribunal to plan for and meet its hearing and scheduling obligations.

Community awareness



Improving community awareness

The Tribunal continues to focus on improving community awareness and understanding of its role and services.

Publication of Tribunal decisions

This year, the Tribunal published its first de-identified cases on the AustLII website (www.austlii.edu.au). There are 56 cases currently published and more will be published on an ongoing basis. The Tribunal's notable cases are made available to assist members of the community, students, legal practitioners and others who have an interest in the decisions of the Tribunal and how these decisions are made.

The Tribunal would like to acknowledge and thank Associate Professor Cameron Stewart and Ms Catherine McGrath for their hard work for and dedication to this project.

Research

From time to time the Tribunal received requests from professional and academic colleagues undertaking research into social and legal issues related to the work of the Tribunal.

Last year the Tribunal committed to a collaborative research project lead by the Queensland University of Technology (QUT), and involving the Queensland Civil and Administrative Tribunal (QCAT), Office of the Adult Guardian (Qld), Office of the Public Advocate (Qld), Victorian Civil and Administrative Tribunal (VCAT), Office of the Public Advocate (Vic), and Office of the Public Guardian (NSW) successfully submitting an application to the 2009 Australian Research Council - Project Grant Awards to support the project *Withholding and withdrawing life-sustaining treatment from adults lacking capacity: Enhancing medical decision-making through doctors' compliance with the law*. The Tribunal's commitment to this project continues.

Student placements

The Tribunal's Legal Officer supervised two law students in their final years of their law degrees. One student spent two sessions of approximately four weeks each with the Tribunal as part of her practical legal training placement. She performed a range of tasks to assist the Legal Officer including research, contributing to the design of the Tribunal publications and conducting an audit of clinical trials which have been finalised.

The other student is assisting the Legal Officer with the preparations for the commencement of new freedom of information legislation.

Informing our clients

The Tribunal provides information about its role and the requirements of its legislation through its enquiry service, community education sessions, participation in conferences and other forums and through its website, publications and DVDs. Once an application is made, the officer preparing the matter for hearing provides information to the parties about legislative requirements and the Tribunal's role and processes.

A Liaison Officer who is a representative of the New South Wales Trustee (NSWT) is based at the Tribunal's Balmain premises. The Liaison Officer is available to provide information and guidance about the role and services of the NSWT. For many people involved in hearings of the Tribunal, the Liaison Officer is the first contact that they have with the NSWT after a hearing.

In keeping with the principles of the *Guardianship Act 1987*, the Tribunal's community education activities promote the least restrictive option for people with decision making disabilities and assist people to find alternatives to formal guardianship and financial management.

Enquiry service

The Tribunal's Enquiry Service remains a popular source of information and support for people with disabilities, the public and health, legal and community service professionals. This financial year the Tribunal's enquiry staff handled 12,126 calls, visits and written enquiries compared to 12,075 in the previous year.

The Enquiry Service assists callers to determine the need for the Tribunal's involvement. Enquiry officers are often able to clarify existing informal decision making mechanisms for people with disabilities or suggest alternative ways to resolve decision making problems. If an application is needed, enquiry officers can assist callers with the process of accessing and submitting forms and supporting information. They can also provide information about Tribunal procedures and the responsibilities of an applicant.

Community education

This year, Tribunal staff and members provided 26 community education sessions involving 1538 participants.

These sessions were requested by a range of organisations including hospitals and community health services, aged care services, peak bodies and associations, major charities such as the Samaritans, advocacy groups, carer's groups, tertiary education providers, legal services, and other Government organisations.

The sessions covered a range of topics including the role of the Tribunal, guardianship, financial management, consent to medical and dental treatment, behaviour intervention and support, planning ahead for later life, the application process and reviews of enduring guardianship appointments and enduring powers of attorney.

A community education request form makes it easier for organisations to supply information about their education needs. The form is available to download from the Tribunal's website (www.gt.nsw.gov.au).

Website

Over the past year the Tribunal's website remained an important and well utilised source of information and an entry point to services. 96,447 visits were made to the website and 1399 online applications were lodged.

The website offers a range of features to maximise its accessibility. A range of publications and application forms are available for download from the website and HTML versions of publications can also be accessed using screen readers.

Publications

The Tribunal has a wide range of resources available to the public on its role, functions and processes. Publications can be accessed and downloaded via the website or obtained directly from the Tribunal.

This year the Tribunal reviewed and amended its information sheet about clinical trials, developed an information sheet on appeals from decisions of the Tribunal in review of enduring power of attorney proceedings, produced 'Who is a party?' and 'What to Expect at a Hearing' information sheets.

The Tribunal Member's Manual was completed providing a significant resource for members and staff alike.

A Private Guardians' Statement form was developed to assist private guardians to update the Tribunal and provide their views at guardianship statutory review hearings. The Tribunal's complaint handling process underwent review this year and as part of that process an information sheet on making a complaint has been drafted.

DVDs

This year the Tribunal continued to promote and distribute its three award winning educational DVDs, 'For Ankie's Sake,' 'In Their Best Interests' and 'Substitute Consent'. The DVDs are available to purchase or borrow from the Tribunal in a boxset. An order form is available for download from the Tribunal's website.

Papers and training presented

Diane Robinson, President

'Complaints about the Conduct of Tribunal Members'

COAT Conference Sydney, 7 May 2009

'Planning Ahead and the Role of the Guardianship Tribunal'

New England Dementia Forum Tamworth, 29 July 2009

'Role of the Guardianship Tribunal'

Sydney Law School, University of Sydney, 19 November 2009

'Role of the Guardianship Tribunal'

Community Visitors Scheme Coordinators State Forum, 3 March 2010

'Role of the Guardianship Tribunal'

University of Western Sydney, 6 March 2010

'Substitute Decision Making and the Role of the Guardianship Tribunal'

University of New South Wales CLE Seminar: "Elder Law & Retirement Accommodation," 10 March 2010

Malcolm Schyvens, Deputy President

'The Guardianship Tribunal'

University of Notre Dame, 4 February 2010

'The NSW Guardianship Tribunal and the Role of Solicitors'

Law Society of NSW, Presentation to accredited specialists in wills & estates Sydney, 3 May 2010.

'Participation in Panel Discussion on Guardianship Jurisdictions'

13th Australasian Institute of Judicial Administration Annual Tribunal's Conference Brisbane, 10 – 11 June 2010

'Procedural Fairness and Guardianship'

Presentation to Guardianship and Administration Board of Tasmania Training Day, 17 June 2010

Malcolm Schyvens, Deputy President and Esther Cho, Legal Officer

'Presentation: Understanding the processes and procedures of the NSW Guardianship Tribunal for health professionals'

Sutherland Hospital, 9 December 2009

'Presentation: Understanding the processes and procedures of the NSW Guardianship Tribunal for health professionals'

Liverpool Hospital, 15 March 2010

Esther Cho, Legal Officer

'The Guardianship Tribunal'

Alzheimer's Australia Dementia Helpline, 13 August 2009

'The Guardianship Tribunal'

Justice Health Forensic Hospital, Malabar, 19 August 2009

'The Guardianship Tribunal'

Hornsby Ku-Ring-Gai Dementia Network, on 21 September 2009

'Guardianship'

Law for Non-Lawyers, Public Interest Advocacy Centre, 22 October 2009

'The Guardianship Tribunal'

Homeless Persons' Legal Service, 22 February 2010

'The Guardianship Tribunal'

Ageing Brain Focus Group OT Australia (NSW), 25 March 2010

'Procedural Fairness'

Staff Training Day at the Office of The Public Guardian, 19 April 2010

'Guardianship'

Law for Non-Lawyers Course, Public Interest Advocacy Centre, 1 June 2010

'The Guardianship Tribunal and End of Life Issues'

St George Hospital ICU, 22 June 2010

Our work - the year in review



Our work - the year in review

Receiving applications

In 2009/2010 the Tribunal received 7002 new applications. Of these 602 applications were for procedural determinations. Of the remaining 6400 new applications; 47% related to the appointment of a financial manager; 42% related to the appointment of a guardian; 7% were applications for consent to medical and dental treatment; 4% were for other applications including applications to review enduring power of attorney or enduring guardianship arrangements or to approve clinical trials.

The Tribunal's application forms for financial management and guardianship applications assist applicants to focus on the person's need for a substitute decision maker and understand when to apply to the Tribunal. Last year we introduced a new form for applications

requesting a review of a guardianship order.

This new form explains what a requested review of guardianship is and the circumstances that may warrant such an application. It guides applicants to provide the required information, assists staff in the preparation of the matter for hearing and better serves the interests of the person under guardianship.

The Tribunal continues to experience growth in the complexity of applications made to it. It has been necessary for the Tribunal to allocate increased resources including more staff time to prepare these matters for hearing. Complex applications need longer hearings to enable the examination of evidence involving complex financial arrangements and more procedural orders before the final determination of the application.



Table 1 Five year comparative caseload statistics for new, requested review and procedural matters for the years 2005/2006 to 2009/2010.

Application type	2005/2006		2006/2007		2007/2008		2008/2009		2009/2010	
	Received	Finalised	Received	Finalised	Received	Finalised	Received	Finalised	Received	Finalised
Guardianship	2148	2226	2351	2218	2312	2461	2274	2417	2446	2483
Requested review of guardianship	189	192	213	210	175	179	205	212	232	233
Financial management	2318	2299	2405	2341	2452	2562	2465	2564	2645	2734
Requested review of financial management	281	301	333	309	368	370	337	338	374	373
Review - enduring power of attorney	58	75	90	77	119	117	131	129	126	141
Review - enduring guardianship	19	17	27	28	51	47	57	58	61	74
Medical/ dental consent	480	494	475	474	447	455	465	473	464	469
Recognition of appointment	28	42	37	37	38	38	50	49	41	41
Clinical trial	9	7	7	9	6	6	16	9	11	11
Direction to guardian	0	0	1	1	0	0	1	1	0	0
Sub total	5634	5761	6068	5830	6011	6287	6001	6250	6400	6559
Procedurals (own motion or by request)	272	281	368	369	388	392	435	434	602	602
Total	5906	6042	6436	6199	6399	6679	6436	6684	7002	7161

Table 2 Five year comparative caseload statistics for statutory or Tribunal ordered review matters for the years 2005/2006 to 2009/2010.

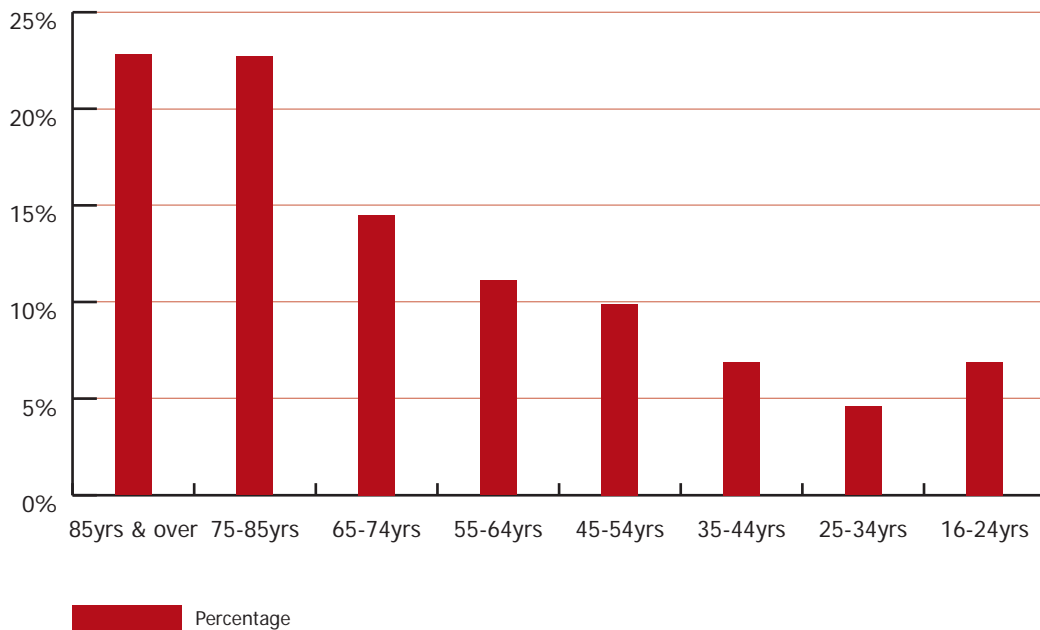
Statutory or Tribunal ordered review of orders	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010
	Reviews conducted/ finalised	Reviews conducted/ finalised	Reviews conducted/ finalised	Reviews conducted/ finalised	Reviews conducted/ finalised
Guardianship	1482	1417	1508	1626	1690
Financial management	148	135	119	116	109
Recognition of guardianship appointment	5	5	13	17	16
Recognition of financial management appointment	7	21	19	23	30
Total	1642	1578	1659	1782	1845

Applicants to the Tribunal

Consistent with the exercise of a protective jurisdiction, an application may be made by any person who, in the opinion of the Tribunal, has a genuine concern for the welfare of the person who is the subject of the application. Of the applications received by the Tribunal this year 49% were made

by family members or friends of the person, 46% by someone in a professional relationship with the person, for example a health professional, professional carer or service provider and 5% by others.

Graph 1 Age demographic of people the subject of applications to the Tribunal in 2009/2010

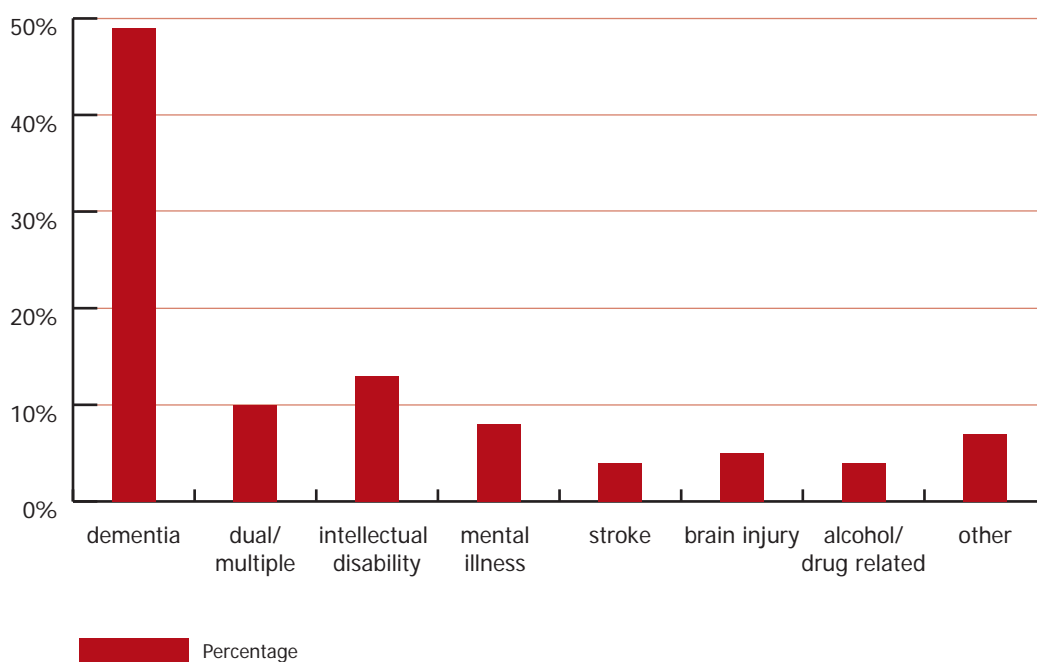


People for whom applications were made by age, gender and disability

Of the applications received this year just over half (50.7%) were for females and 49.3% were for males. Consistent with the ageing of the population, the majority (60%) of applications to the Tribunal were for people who were 65 years or older.

The disability most frequently recorded in applications to the Tribunal in 2009/2010 was dementia (49%). It is anticipated that this trend will continue and will contribute to the growth in applications for reviews of enduring powers of attorney and enduring guardianship appointments. Applications for people with mental illness, intellectual disability or a dual diagnosis comprise 31% of applications received this year.

Graph 2 Disability reported in applications received by the Tribunal in 2009/2010



Hearings by the Tribunal

In 2009/2010 the Tribunal conducted 5850 hearings over 1546 sittings. This year the Tribunal heard an average of 1.44 matters per hearing and 5.4 matters per sitting of the Tribunal. These hearings concerned 4665 people with decision making disabilities.

The Tribunal also operates an after hours service if urgent applications need to be heard outside normal business hours. Of the hearings conducted this year 39 were after hours.

This year the Tribunal finalised 9006 matters. The Tribunal received 6400 new applications (excluding procedural applications) this year and finalised 6559 matters. The Tribunal also finalised 1845 statutory reviews and 602 procedural matters.

In keeping with the principles of the Act and ensuring that a person's right to self determination is protected wherever possible, staff of the Investigation and Coordination Unit explore alternative avenues for assisted or substitute decision making for the person with the disability, which may mean that an order of the Tribunal is

not required. Section 66 of the Act provides for the Tribunal to attempt conciliation, where appropriate, to bring the parties to a settlement. Section 64A of the Act provides for an applicant to withdraw an application with the consent of the Tribunal.

Procedural hearings

The Tribunal can be constituted by less than three members to determine some procedural matters. In 2009/2010, the Tribunal conducted 360 procedural hearings. Procedural matters include applications for legal representation, applications by people seeking to be joined as a party, and requests for consent by the Tribunal to withdraw an application.

These hearings were conducted by the President, Deputy President or a presiding member to whom the President delegates authority under section 51A of the Act.

There were 224 applications for legal representation and representation was granted on 165 occasions. In addition, there were 150 appointments of separate representatives made by the Tribunal.

Appointing guardians and financial managers

Appointing guardians

Table three sets out the guardianship appointments made by the Tribunal in 2009/2010. This year the Tribunal heard 3932 applications and reviews in relation to guardianship. In 746 of these matters no appointment was made because the Tribunal dismissed the application either because it was satisfied that alternative informal arrangements existed or because the application was withdrawn with the consent of the Tribunal.

The Tribunal made 2114 guardianship appointments. Of these orders, 36% appointed a

private guardian or guardians, 61% appointed the Public Guardian and 3% appointed a private guardian/s and the Public Guardian with different decision making functions. The Public Guardian is appointed in circumstances where a private guardian is unable to be appointed. In appointing a private guardian the Tribunal must be satisfied that the proposed guardian is compatible with the person, there is no undue conflict of interest and that the proposed guardian is willing and able to exercise the functions conferred in the order.

Table 3 Guardianship appointments made in 2009/2010

	Private guardian/s including joint and alternate appointments	Public Guardian	Private and Public Guardian appointment (separate decision making authority)	No appointment made/ order revoked/ not renewed/ dismissed/ withdrawn/lapsed
New appointments	443	686	26	731
Requested review appointments	21	68	6	48
Statutory review appointments	292	545	24	579

Appointing financial managers

Table 4 below sets out the financial management appointments made by the Tribunal in 2009/2010. This year the Tribunal heard 3178 applications and reviews in relation to financial management. In 507 of these matters no appointment was made because the Tribunal dismissed the application either because it was satisfied that alternative appropriate arrangements existed or because the application was withdrawn with the consent of the Tribunal.

The Tribunal made 1858 financial management appointments. Of these 39% of orders appointed a private manager or managers, and 61% appointed the NSW Trustee. The NSW Trustee is appointed in circumstances where a private manager is unable to be appointed. A private financial manager is subject to the direction of the NSW Trustee.

Table 4 Financial management appointments made in 2009/2010

	Private managers including joint appointments	Protective Commissioner	No appointment made/ order revoked/ dismissed/withdrawn
New appointments	669	1072	481
Requested review appointments	48	59	145
Statutory ordered/ own motion review appointments	6	4	27

Reviewing orders

In addition to hearing new applications for the appointment of a guardian or financial manager, the Tribunal reviews guardianship and financial management orders it has made.

- **Statutory reviews for guardianship orders** – an automatic review conducted close to the end of the initial order to determine whether guardianship is still necessary and, if so, whether the order should be renewed with the same terms as the previous order or different terms to reflect any change in the person's circumstances.
- **Tribunal ordered reviews for financial management orders** – a review ordered by the Tribunal to be undertaken after a period of time as set out in the order.
- **Requested reviews** – a review at the request of someone with a genuine concern for the person who is the subject of the order where the applicant believes there is new information, a change in circumstances or the initial order is not working in the best interests of the person.
- **Own motion reviews** – a review initiated by the Tribunal where it considers this would be in the best interests of the person.

Graph 3 Statutory reviews - five year comparative caseload statistics for statutory or Tribunal ordered reviews for the years 2005/2006 to 2009/2010

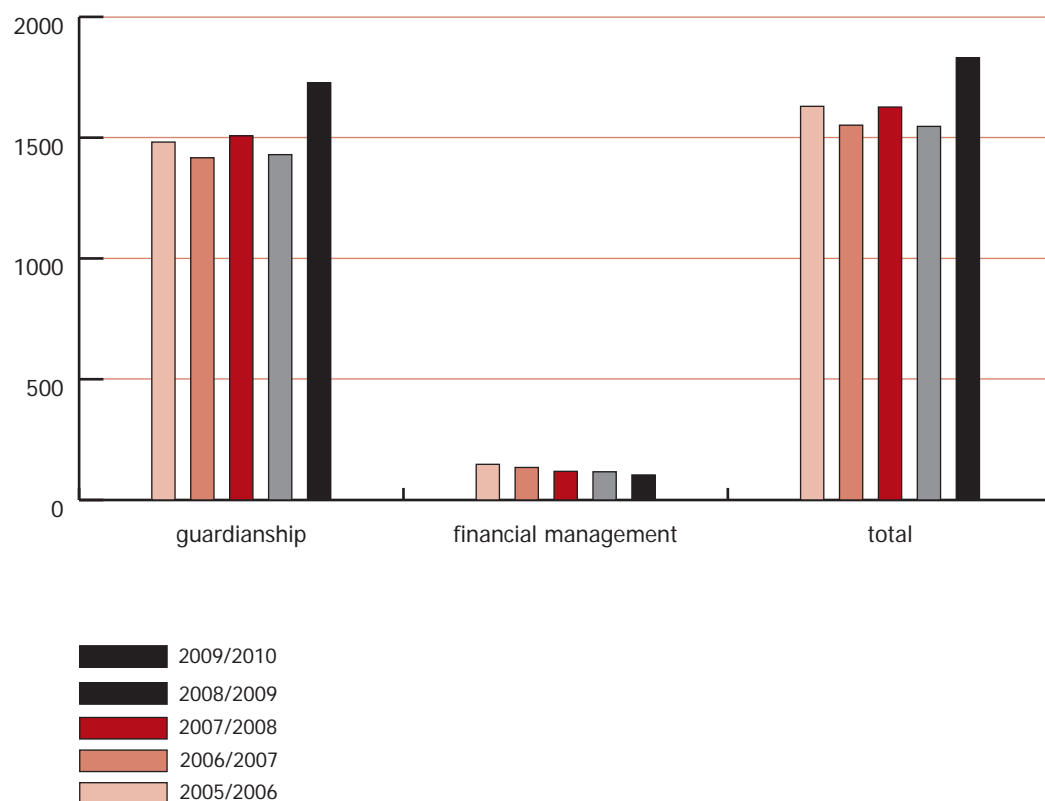


Table 5 Requested reviews - five year comparative caseload statistics for requested reviews for the years 2005/2006 to 2009/2010.

Application	2005/2006		2006/2007		2007/2008		2008/2009		2009/2010	
	Received	Finalised	Received	Finalised	Received	Finalised	Received	Finalised	Received	Finalised
Requested review of guardianship	189	192	213	210	175	179	205	210	232	233
Requested review of financial management	281	301	333	309	368	370	337	329	374	373
Total	470	493	546	519	543	549	542	539	606	606

Outcomes of all guardianship and financial management reviews this year

Guardianship reviews

The Tribunal conducted 1727 statutory reviews of guardianship orders and finalised 233 applications requesting a review of a guardianship order.

In 20% of review matters finalised at hearing, the guardianship order was renewed and not varied; in 37% of matters the order was renewed

and varied; while in 37% of matters the order was not renewed as it was determined that there was no longer a need for an order. In 5% of matters a non reviewable order was made and 1% of matters were withdrawn or dismissed at hearing.

Table 6 Outcomes of all guardianship reviews 2009/2010

	Order confirmed / renewed and not varied	Order confirmed / renewed and varied	Order revoked / lapsed	Non reviewable order made	Withdrawn / dismissed at hearing
Statutory review - guardianship	311	486	592	80	0
Requested review - guardianship	17	141	33	4	15
Total	328	627	625	84	15

Financial management reviews

The Tribunal conducted 104 Tribunal ordered reviews of financial management orders and finalised 373 applications requesting a review of financial management orders.

In 30% of review matters finalised at hearing, the financial management order was confirmed; in

26% of matters the manager was replaced; in 34% of matters the order was revoked as it was determined that there was no longer a need for an order; in 1% of matters the Tribunal made a reviewable order and 9% of matters were withdrawn or dismissed at hearing.

Table 7 Outcomes of all financial management reviews

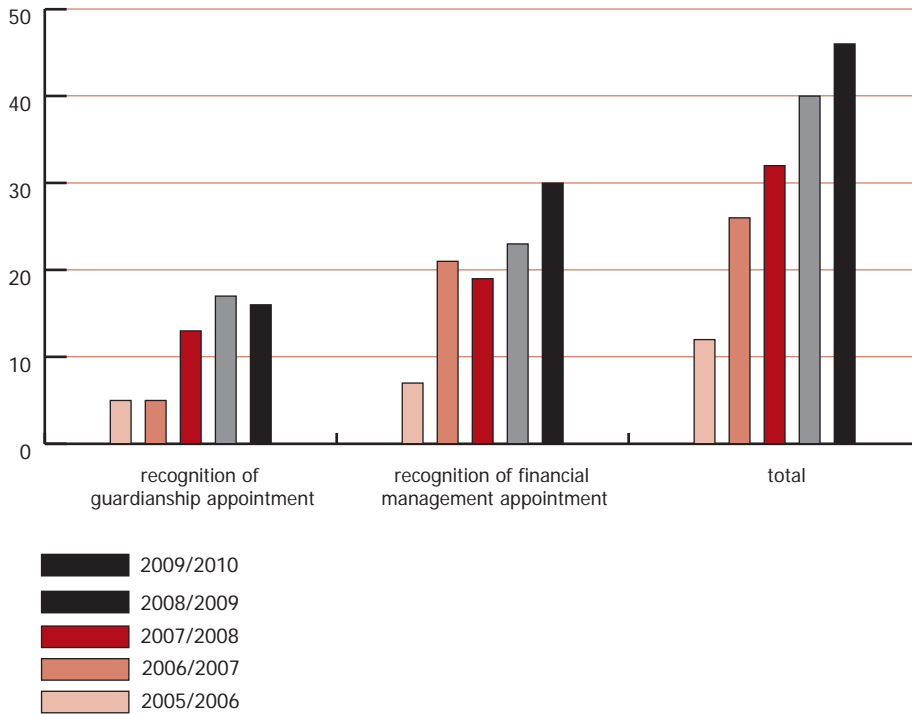
	Order confirmed/varied	Order revoked	Manager replaced	Reviewable order made	Withdrawn / dismissed before/at hearing
Tribunal ordered/ own motion review – financial management	47	27	11	1	2
Requested review – financial management	85	119	103	2	37
Total	132	146	114	3	39

Recognition of appointments

The Tribunal has the jurisdiction to recognise the appointment of guardians and financial managers appointed in other Australian States and Territories and in New Zealand. During 2009/2010 the Tribunal received 41 applications for recognition. The Tribunal determined 41 applications, one application was withdrawn.

The Tribunal also reviews these orders. During 2009/2010 the Tribunal reviewed 17 recognition of guardianship appointments and 33 recognition of financial management appointments.

Graph 4 Review of appointment recognitions - five year comparative caseload statistics for reviews between 2005/2006 and 2009/2010



How and where hearings are conducted

Access to justice within a protective framework – facilitating participation

To facilitate access to its protective jurisdiction there are no fees required for lodging an application with the Tribunal.

While the Tribunal premises and staff are located in Balmain the Tribunal conducts hearings in a number of metropolitan, regional and rural locations across New South Wales. This facilitates access to the Tribunal and participation in proceedings by people with disabilities for whom applications are made, their family, friends and professionals and service providers.

In 2009/2010 the Tribunal conducted approximately 29% of its hearings outside Balmain at locations including Albury, Armidale, Blue Mountains, Bowral, Central Coast,

Coffs Harbour, Dubbo, Goulburn, Lismore, Maitland, Merimbula, Moree, Morriset, Moruya, Mudgee, Newcastle, Nowra, Orange, Peat Island Centre, Port Macquarie, Queanbeyan, Singleton, Stockton, Tamworth, Taree, Tweed Heads, Wagga Wagga, Wollongong and other locations in the Sydney metropolitan area.

Hearings may also be conducted via video conferencing and parties may also participate by telephone.

The *Guardianship Act 1987* requires that the Guardianship Tribunal conducts its proceedings with as little formality and legal technicality as the circumstances permit. The Guardianship Tribunal may obtain any information on any matter as it thinks fit and is not bound by the rules of evidence.

The hearing rooms at the Tribunal's premises are less formal than a court room and are designed to make the person with a disability feel at ease.

During a hearing the Tribunal focuses on the issues concerning the person with a disability and will try, where possible, to facilitate the person's participation and to seek his or her views.

Hearings vary in length depending on the number of matters to be heard and their complexity. The Tribunal may announce its decision at the conclusion of the hearing and advise the parties whether an order has been made, who has been appointed and the terms of the appointment. The Tribunal may adjourn the hearing to be continued on a later date or may reserve its decision. The Tribunal provides written Orders and Reasons for Decision to the parties.

The Tribunal is able to make special arrangements for parties with special needs. Where appropriate, the Tribunal arranges the attendance of accredited interpreters to assist people attending hearings. Interpreters were used on 251 occasions during the year and provided services across 39 different languages including Arabic, Italian, Greek, Cantonese, Croatian, Mandarin, Polish, Serbian, Spanish and Vietnamese.

Staff of the Tribunal assist parties and their representatives and provide information about the role, practice and procedures of the Tribunal. The Tribunal also facilitates access to information and support through its Enquiries Service, its publications and website.

Who makes the decisions?

For the majority of matters the Guardianship Tribunal sits in panels of three members. Each panel consists of a legal member, a professional member and a community member.

Applications for guardianship orders, financial management orders, reviews of enduring guardianship appointments and enduring powers of attorney and special medical applications are determined by a Tribunal of at least three members.

The Tribunal may, at the discretion of the President, be constituted by fewer than three members when determining applications for medical consent, reviews of guardianship and financial management orders, requested reviews of guardianship and financial management orders and a range of procedural matters. These may include applications for leave to be represented or to be joined as a party.

This year 1647 hearings dealing with 1881 matters were conducted by single member panels. Of these 56.4% related to guardianship reviews, 12% to financial management reviews, 1.9% to reviews of recognition of interstate appointments, 1.7% to medical consent, 28% to procedural matters.



Applications for the approval of clinical trials

The purpose of the clinical trial 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 which is only available through a clinical trial.

Safeguards

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

Firstly the Guardianship Tribunal must give its approval to a clinical trial before those who cannot consent to their own treatment may take part in the trial.

The Tribunal will not grant approval unless the following criteria are 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.

Secondly, 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 enables this consent to be given by the 'person responsible' for the person unable to consent to his or her own treatment. The 'person responsible' is the guardian, spouse, carer or family member 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 substitute consent for the particular patient.

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

Finally, the Tribunal's Annual Report must include details of any clinical trial it has approved in the financial year.

Approval of clinical trials

During the 2009/10 financial year, the Tribunal received eleven applications for the approval of a clinical trial. There were seven applications carried forward from the previous financial year and there is one application pending. The Tribunal conducted sixteen hearings. Of the sixteen hearings conducted, fourteen applications were approved and two were not approved. One application was withdrawn and one is pending.

As required by section 76A(2A) of the *Guardianship Act 1987*, the details of those trials are set out on the following page.

Clinical Trials 2009/2010

Name of clinical trials submitted for approval by the Tribunal	Trial sites	Outcome of Tribunal hearing	Individual consents to be given by the 'person responsible'
A randomised, rater-blinded study to explore the effect of mefloquine in subjects with progressive Multifocal Leuko-encephalopathy (PML).	• St Vincent's Hospital	Approved	Yes
Clinical Trial AZ3110866: A fixed dose of SB-742457 versus placebo when added to existing Donepezil treatment in subjects with mild-to-moderate Alzheimer's disease.	• Southern Neurology – Kogarah	Approved	Yes
A randomized, double-blind, parallel-group, placebo-controlled, phase III study to evaluate the efficacy and safety of desmoteplase in subjects with acute ischemic stroke.	• John Hunter Hospital • Gosford Hospital • St Vincents Hospital	Approved	Yes
STATInS Study - a phase II randomised controlled trial of atorvastatin therapy in intensive care patients with severe sepsis - study of Atorvastatin Therapy in Sepsis - (ANZIC-RC 001).	• Royal Prince Alfred Hospital	Approved	Yes
Crystalloid versus Hydroxy-Ethyl Starch Trial (C.H.E.S.T). A multi-centre randomised controlled trial of fluid resuscitation with starch (6% hydroxyethyl starch 130/0.4) compared to saline (0.9 sodium chloride) on mortality in intensive care patients.	• Royal North Shore Hospital • Liverpool Hospital • Nepean Hospital • St George Hospital	Not approved as not a clinical trial within the meaning of s33(1) of the <i>Guardianship Act 1987</i>	N/A
The Cerebral Hypothermia in Ischaemic Lesion (CHIL) Trial (08/05/21/3.05). Phase 2 randomised controlled trial of mild hypothermia in acute ischaemic stroke.	• John Hunter Hospital • Calvary Mater Hospital Newcastle	Approved	Yes
"CONSCIOUS-3". AC-054-302 A prospective, multi-centre, double-blind, randomised, placebo-controlled, parallel-group study to assess the efficacy and safety of clazosentan in reducing vasospasm-related morbidity and all-cause mortality in adult patients with aneurismal subarachnoid haemorrhage treated by endovascular coiling.	• John Hunter Hospital • Calvary Mater Hospital Newcastle	Approved	Yes

Name of clinical trials submitted for approval by the Tribunal	Trial sites	Outcome of Tribunal hearing	Individual consents to be given by the 'person responsible'
Concert: A phase 3 multi-centre, randomized, placebo-controlled, double-blind twelve-month safety and efficacy study evaluating dimebon in patients with mild-to-moderate Alzheimer's disease on Donepezil.	<ul style="list-style-type: none"> • Hornsby – Ku-ring-gai Hospital • Prince of Wales Hospital • John Hunter Hospital 	Approved	Yes
AZ3110866: A fixed dose of SB-742457 versus placebo when added to existing Donepezil treatment in subjects with mild-to-moderate Alzheimer's disease.	<ul style="list-style-type: none"> • Southern Neurology – Kogarah 	Approved	Yes
Exploratory study of S38093 versus placebo in patients with mild to moderate Alzheimer's disease. An international, multi-centre, randomised, double-blind, placebo-controlled phase IIa study.	<ul style="list-style-type: none"> • Calvary Mater Hospital, Newcastle 	Approved	Yes
Oxycontin treatment for Prada Willi Syndrome	<ul style="list-style-type: none"> • Brain and Mind Research Institute - University of Sydney 	Approved	Yes
Protocol No. 12936A. Randomised, double-blind, parallel-group, placebo-controlled, fixed-dose study of Lu AE58054 in patients with moderate Alzheimer's disease treated with Donepezil.	<ul style="list-style-type: none"> • Central Coast Neuroscience Research, Gosford 	Approved	Yes
The PARITY study: A multi-centre phase 2b randomised controlled trial investigating the efficacy and safety of intravenous Paracetamol in reducing core body temperature after traumatic brain injury.	<ul style="list-style-type: none"> • St George Hospital • Liverpool Hospital • Nepean Hospital 	Approved	Yes
Protocol No. 12936A. Randomised, double-blind, parallel-group, placebo controlled, fixed-dose study of Lu AE58054 in patients with moderate Alzheimer's disease treated with Donepezil.	<ul style="list-style-type: none"> • Prince of Wales Hospital 	Approved	Yes
Nephro-protective effects of L-amino acids in critically ill patients: A multi-centre randomised controlled trial.	<ul style="list-style-type: none"> • Royal North Shore Hospital • John Hunter Hospital 	Approved	Yes

Name of clinical trials submitted for approval by the Tribunal	Trial sites	Outcome of Tribunal hearing	Individual consents to be given by the 'person responsible'
AuSPEN. Management of refeeding syndrome in critical illness: An Australian Society for Parenteral and Enteral Nutrition (AuSPEN) endorsed multi-centre clinical trial.	<ul style="list-style-type: none"> • Royal North Shore Hospital • Royal Prince Alfred Hospital • Nepean Hospital • John Hunter Hospital • St Vincent's Hospital 	Not approved as not a clinical trial within the meaning of s33(1) of the <i>Guardianship Act 1987</i>	N/A
Protocol No. T05018-1001. Protocol T05018-1001: A Phase 1/2a, open label, dose escalation, safety study of intra-thrombus plasmin (Human) Administration in acute, middle cerebral artery, ischemic stroke.	<ul style="list-style-type: none"> • Royal Prince Alfred Hospital 	Withdrawn	N/A
Extension of semagacestat trial for Alzheimer's disease patients. H6L-MC-LFBF/Open label extension for Alzheimers disease patients who complete one or two Semagacestat phase 3 double-blind studies (H6L-MC-LFAN OR H6L-MC-LFBC).	<ul style="list-style-type: none"> • Hornsby Ku-ring-gai Hospital • Prince of Wales Hospital • Southern Neurology – Kogarah • Prince of Wales Hospital • St George Hospital • Liverpool Hospital • Nepean Hospital 	Approved	Yes
A randomized, placebo-controlled trial of erythropoietin in Intensive Care Unit patients with traumatic brain injury.	<ul style="list-style-type: none"> • Nepean Hospital • Liverpool Hospital • Royal Prince Alfred Hospital • Westmead Hospital • John Hunter Hospital • Royal North Shore Hospital • St Vincent's Hospital 	Pending	Yes

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. There are some decisions of the Tribunal, such as decisions about medical treatment, which cannot be appealed to the ADT.

Appeals to the Administrative Decisions Tribunal (ADT)

There were three appeals received during the previous financial year which were still pending as at 30 June 2009. Those three appeals were finalised in the current financial year. Of those three appeals, two were dismissed and one was upheld and remitted to the Tribunal for re-hearing. During the current financial year, there were 19 appeals lodged at the ADT against decisions of the Tribunal (see Table 8).

Table 8 Appeals to the Administrative Decisions Tribunal against Guardianship Tribunal decisions from 2005/2006 to 2009/2010

	Appeals pending from previous year	New appeals	Appeals withdrawn	Appeals Dismissed	Appeals Upheld	Pending at year end
2005/2006	3	13	2	5	5	4
2006/2007	4	15	2	7	4	6
2007/2008	6	19	5	13	1	6
2008/2009	6	19	9	6	7	3
2009/2010	3	19	4	9	4	5

Appeals to the Supreme Court

There was one appeal to the Supreme Court which was received during the 2007/2008 financial year which was still pending as at 30 June 2009 and one which was received during the 2008/2009 financial year which was still pending as at 30 June 2009. Both of these appeals were dismissed in the 2009/2010 financial year.

There were three new appeals from decisions of the Tribunal lodged with the Supreme Court during 2009/2010 (see Table 9).

Of the three appeals which were received during 2009/2010, two remained pending at the end of this financial year and the other was dismissed by the Court.

Table 9 Appeals to the Supreme Court against Guardianship Tribunal decisions from 2005/2006 to 2009/2010

	Appeals pending from previous year	New appeals	Withdrawn	Dismissed	Upheld	Pending at year end
2005/2006	1	4	3	0	0	2
2006/2007	2	2	1	0	0	3
2007/2008	3	2	2	0	1	2
2008/2009	2	2	0	2	0	2
2009/2010	2	3	0	3	0	2

Freedom of Information

The Tribunal did not receive any applications for access to information under the *Freedom of Information Act* (the FOI Act) which were accompanied by the relevant fee.

The Tribunal is not an “agency” for the purposes of the FOI Act as section 10 of that Act specifies that a tribunal is not included within that definition in relation to its judicial functions.

Complaints

The Tribunal welcomes complaints as an opportunity to improve its services to people with disabilities. All formal complaints about the Tribunal’s processes and the conduct of its staff and members are investigated and responded to in writing. The Deputy President responds to complaints about the hearing process and the conduct of Tribunal Members. The Manager of the Coordination and Investigation Unit responds to complaints about the preparation of matters for hearing.

A complaint is not the same as a review or appeal. To request a review of an order an application must be lodged with the Tribunal. Appeals from decisions of the Tribunal can be made to the Administrative Decisions Tribunal or the Supreme Court.

A comprehensive review of the Tribunal’s complaint handling process was conducted this year. New information about making a complaint to the Tribunal will be published early in the next financial year. Staff will also receive training in frontline complaint handling in the 2010/2011 financial year.

Appendix

Appendix 1 **Organisational chart**

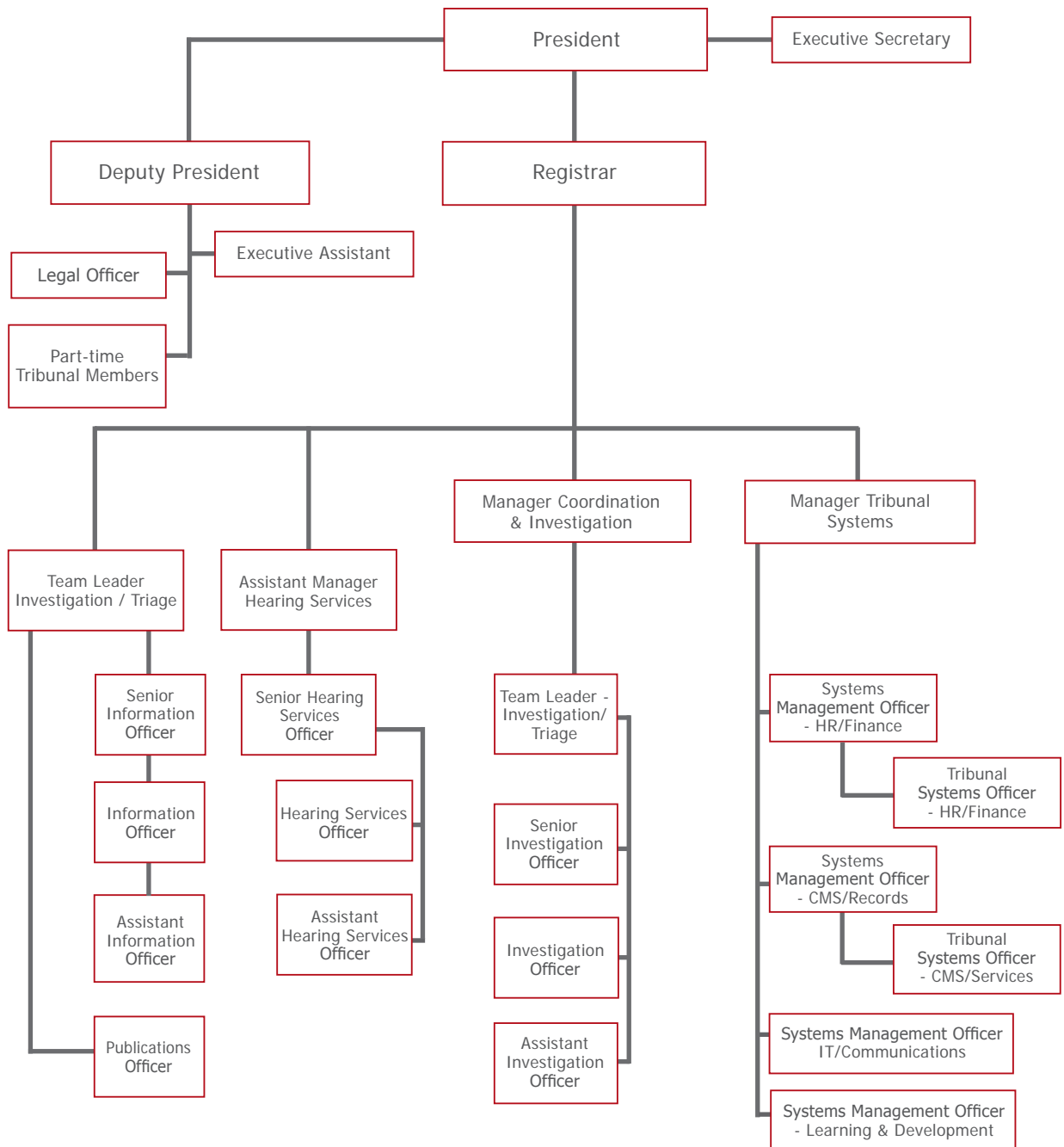
Appendix 2 **Tribunal members**

Appendix 3 **Definitions**



Appendix 1

Organisational chart



Tribunal members

Appendix 2



Diane Robinson, President

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 was previously appointed as the legal member (Ministerial appointee) of the New South Wales Medical Board.

Diane has 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.



Malcolm Schyvens, Deputy President

Malcolm was appointed Deputy President of the Guardianship Tribunal in October 2008. He was previously a part time legal member of the Guardianship Board of Tasmania and a member of the Forensic Tribunal (Tas).

Prior to commencing with the Tribunal, Malcolm was the President of the Law Society of Tasmania, Managing Partner, Ogilvie Jennings Solicitors (Hobart) and a Director of the Centre for Legal Studies (Tas).

Malcolm has previously been an official visitor under the Mental Health Act 1996 (Tas) and for many years was the President of Cosmos Inc., Tasmania's largest provider of day support services for people with intellectual disabilities.

Malcolm was admitted as a solicitor of the Supreme Court of Tasmania in 1997 and holds degrees in law and commerce from the University of Tasmania.



Christine Fougere, part-time Deputy President

Christine was appointed as a part-time Deputy President for a four month period from May 2010. She has been a part time legal member of the Tribunal since 2006.

Christine has considerable experience in human rights law and practice. She is the Deputy Director of Legal Services at the Australian Human Rights Commission where she has worked for over 11 years. Christine lectured in discrimination law at the University of Western Sydney for a number of years, worked for a human rights NGO in London and has worked in private legal practice both in the UK and in Western Australia.

Christine was admitted as a solicitor of the Supreme Court of WA in 1994 and of the Supreme Court of NSW in 2001.



Bill Tearle, part-time Deputy President

Bill, who has been a member of this Tribunal since 2004, was appointed as a part-time Deputy President for a four month period from May 2010.

Bill was admitted to legal practice in 1970. He is a current member (and former full-time Deputy President) of the Mental Health Review Tribunal. He is also a former member of the Consumer, Trader and Tenancy Tribunal, the Fair Trading Tribunal and the Residential Tribunal.

Bill has extensive experience of financial counselling and mental health issues, as well as senior management experience in both the public and private sectors. He has been a guest lecturer at Oxford University, and at several universities in Australia and New Zealand.

Legal members

Robyn Bailey

Solicitor and Mediator. Part time member Consumer Trader and Tenancy Tribunal. Local Court arbitrator. Over 20 years experience acting for people with acquired psychological and/or brain injury. Principal of Explore Solutions; a national alternative dispute resolution practice. An accredited specialist in personal injury law and a member of the NSW Law Society's panel of mediators. Deputy Chair of the Board of Directors of the Brown Nurses, a Sydney based charity.

Angela Beckett

Solicitor and clinical psychologist. Experience in private legal practice and in a community legal centre. Member of the Social Security Appeals Tribunal and the Consumer Trader and Tenancy Tribunal of New South Wales. Reviewer for the Office of the Legal Services Commissioner. Qualifications and experience in alternative dispute resolution. Extensive background in service provision to persons with a disability.

Antony Carpentieri

Solicitor. Established a private practice in Liverpool and has worked as a sole practitioner and commercial mediator. Has a physical disability. Member of NSW Medical Board and Member of the Management and Advisory Committees of the Institute of Medical Education and Training. Former full time member of the Consumer, Trader and Tenancy Tribunal, currently a part time member. Former member of the Aged Care Complaints Resolution Committee, Residential Tenancy Tribunal and legal member of Family Planning NSW Ethics Committee.

John Cipolla

Solicitor. Experience representing clients with psychiatric and other disabilities both through Legal Aid and the 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 the Consumer Trader Tenancy Tribunal and the Migration Review Tribunal.

Jennifer Conley

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

Janice Connelly

Solicitor, arbitrator, conciliator and mediator. Experience as a solicitor with the Legal Aid Commission of NSW and Redfern Legal Centre. Extensive Tribunal and Local Court experience. Currently an assessor and arbitrator for the Local Court, an arbitrator with the Workers Compensation Commission and a chairperson with the Government and Related Employees Appeals Tribunal.

Elaine Connor

Solicitor, clinical psychologist and consultant. Experience in private legal practice and in managing the provision of legal services in public companies. Extensive background in working with adults with mental health disorders or intellectual disabilities. Former statutory guardian at Victorian Office of the Public Advocate. Director of Diversity Council Australia. Inaugural Chair of Steering Committee of NSW Cancer Council's Legal Referral Service.

Jenny D'Arcy

Solicitor with experience in private legal practice and community legal centres. Extensive tribunal experience and currently a member of the Social Security Appeals Tribunal and the Mental Health Review Tribunal and a senior member of the Veterans' Review Board.

Margaret Fahy

Solicitor and legal counsel for NSW Treasury Corporation. Experience in providing legal advice and representation to disadvantaged clients in community legal centres including: HIV AIDS Legal Centre, Consumer Credit Legal Centre and the Inner City Legal Centre. Trained as a solicitor for the Australian Government Solicitor and represented clients such as the ACCC in litigation. Practised as a solicitor for the ACCC and ASIC representing the relevant regulator in litigation. Started legal practice as a legal clerk at the DPP and as Justice Wilcox's associate in the Federal Court.

Catherine Donovan-Holm

Solicitor. Previously engaged as a solicitor with Legal Aid Queensland and over 10 years experience in developing and implementing legislation and policy including for people with a disability. Member of the Guardianship Tribunal since February 2007 and part time member of the Consumer Trader and Tenancy Tribunal.

Robert Green

Solicitor with over thirty years experience. Worked for many years in criminal law, including as Deputy Director (Legal) of the Australian Special Investigations Unit (War Crimes). Experience representing clients with psychiatric and other disabilities with the Mental Health Advocacy Service. Part time member of the Mental Health Review Tribunal since 2003.

Robin Gurr

Solicitor. Has a variety of Tribunal experience, including experience as a Presiding Member of the Guardianship Tribunal (Deputy President of the Tribunal February 2007 to June 2008), a Senior Member of the New South Wales Fair Trading Tribunal, President of the Community Services Appeals Tribunal, a part time chairperson of Government and Related Employees Tribunal and as a New South Wales Workers Compensation Commission Arbitrator and Mediator. Former Registrar in the Family Court, in practice at the New South Wales Bar as a consultant in evaluation and administrative decision making, particularly in the tertiary education sector teaching in the areas of family and administrative law. A trained and experienced mediator.

Carolyn Huntsman

Lawyer. Currently a member of the Mental Health Review Tribunal. Formerly member of the Social Security Appeals Tribunal, the Refugee Review Tribunal, the Fair Trading Tribunal and the Residential Tribunal. Worked as a solicitor with the Legal Aid Commission, Aboriginal legal organisations and in private legal practice.

Tony Krouk

Solicitor in private practice. Accredited family law specialist. Registered family dispute resolution practitioner. Mediator and conciliator. Extensive experience representing people with brain injury, mental illness, intellectual disability and dementia.

Monica MacRae

Solicitor with experience in private legal practice and as a sole practitioner. Extensive Tribunal experience. Former member of the Social Security Appeals Tribunal and currently a member of the Mental Health Review Tribunal.

Shaun McCarthy

Lawyer, with experience in private practice in regional areas and at Legal Aid. Director, the University of Newcastle Legal Centre. Acting Director of the Professional Program and Clinical Lecturer in the School of Law at the University of Newcastle.

Carol McCaskie, AM

Lawyer. Member of the Mental Health Review Tribunal. Arbitrator, Workers Compensation Commission. Former general manager, Langton Centre. Qualifications in law, management, dispute resolution, geriatric nursing, nurse education and nursing administration.

Peter Molony

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

Robert Quickenden

Thirty years experience working as a barrister in private practice with extensive experience acting for persons with a disability in all jurisdictions. Robert's interest in tribunal justice and the process for transparency and fairness in administrative decision making developed following experience as an Arbitrator in the Supreme Court and while Acting Judge of the District Court of NSW.

Desmond Sheehan

Solicitor. Admitted to practice in the Supreme Courts of New South Wales and Queensland. Worked for the New South Wales Legal Aid Commission in tenancy litigation and applications to the Protective Division of the Supreme Court. Previously a full-time member of the Residential Tenancies Tribunal. Currently a part time member of the Consumer, Trader and Tenancy Tribunal.

Bernie Shipp

Lawyer. Experience as a solicitor in mainly criminal, family and welfare law with Legal Aid and Community Legal Centres. Member of the Consumer Trader and Tenancy Tribunal. Past member of the Social Security Appeals Tribunal and the Child Support Review Office. Current Director and Past President of the Board of Macarthur Disability Services Ltd - a provider of services for people with a disability in the south-west region of Sydney. Assessor with the Towards Healing project of the Professional Standards Office of the Catholic Church.

James Simpson

Solicitor, mediator and systemic advocate. Solicitor in private practice and first principal solicitor, Intellectual Disability Rights Service. Former deputy president, Community Services Appeals Tribunal. Presiding member, Mental Health Review Tribunal. Recipient of Justice Medal 2001- Law and Justice Foundation New South Wales.

Stamatia Stamatellis

Lawyer. Experience as a solicitor at the Intellectual Disability Right Service and the Legal Aid Commission of NSW. A current presiding chairperson and member of the Housing Appeals Committee.

Catherine Williamson

Practising lawyer with many years experience across a range of agencies in the Commonwealth and NSW state governments. Gained extensive knowledge of disability and guardianship issues, in addition to significant advice and litigation experience at NSW Department of Ageing Disability and Home Care. Gained an understanding of disability issues as they affect serious offenders within the NSW prison system while Executive Officer and Registrar of the Serious Offenders Review Council. Lecturer (part-time) of administrative law, published author, and Principal Legal Officer at the Australian Transaction Reports and Analysis Centre.

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).

Isla Bowen

Psychologist. Clinical consultant with the Illawarra Disability Trust. Honorary Fellow University of Wollongong. Extensive experience in developing and implementing behaviour intervention and support programs for people with developmental disability.

Mary Ellen Burke

Clinical psychologist and human services consultant. Experience in providing services to people with an intellectual disability or mental health disorder who have challenging behaviour and their families/carers. Experience in monitoring and developing services and service systems.

Rhonda Buskell

Medical qualifications in Psychiatry and Rehabilitation Medicine. Consultation-Liaison Psychiatrist at Westmead Hospital with special interest in psychiatric aspects of neurological disorders.

Sarah Carlill

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

Michelle Chapman

Senior consultant psychologist with NGO (Disability Services Australia) with family and professional experience of people with disabilities and expertise in behavioural intervention. Works with individuals who display challenging behaviours and at risk behaviours in accommodation and workplace setting and supports families through counselling and advocacy.

Allison Cummins

Registered nurse. Qualifications and experience in aged care, particularly in the assessment and management of people with dementia in acute care, community and residential settings. Experience in, and commitment to, providing education and support for people with dementia and their carers and families.

Sharon Flanagan

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

Julie Garrard

Senior social worker and researcher in the Palliative Care Service at Calvary Health Care Sydney. Previous social work experience with people with intellectual disabilities, brain injuries and HIV/AIDS and in health care complaints. Research interest: end of life care for terminally ill residents in nursing homes.

Jean Hollis

Psychiatrist of old age. Currently in private practice. Research interests include issues of ageing and the use of antipsychotic medication and behavioural aspects of dementia.

Susan Kurrle

Geriatrician. Experience in assessing and managing abuse of older people and dementia. Holds the Curran Chair in Health Care of Older People in the Faculty of Medicine at the University of Sydney.

Meredith Martin

Special educator. Experience includes direct service, teaching and management in university settings, disability and community services and education. Current work includes part time lecturer at Sydney University in School of Education and Social Work, and consultant assessing and supporting people with complex needs including challenging behaviour and mental health issues.

Brenda McPhee

Medical practitioner. Experience in women's health, aged care, counselling and GP psychiatry. Medical officer, Bankstown, Campbelltown, and Macquarie Fields Women's Health Clinics.

Sally McSwiggan

Clinical neuropsychologist. Member of the Rehabilitation and Aged Care Team. Experience in the assessment of stroke, dementia and epilepsy. Special interest in mental capacity.

Tony Ovidia

Clinical psychologist with over forty years experience in mental health, disability and generic community services. She is especially interested in making services accessible to disadvantaged people and people from culturally diverse backgrounds. Vice President of the Mental Health Association.

Carmelle Peisah

Consultant old age psychiatrist and research fellow at the Academic Department for Old Age Psychiatry, Prince of Wales Hospital and Conjoint Associate Professor University of NSW. Expertise in family therapy. Experience as an expert in medicolegal cases related to capacity issues in older persons.

Robyn Rayner

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

Melissa Staples

Clinical psychologist/neuropsychologist. Extensive specialist experience in the provision of neuropsychological assessment and rehabilitation services gained through public sector employment and private consultancy work. Experience spans both inpatient and community settings and draws on her wide exposure to the varied cognitive, behavioural and emotional consequences of psychological trauma and acquired brain injury, including degenerative neurological disease and traumatic and non-traumatic brain injury in adults.

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 case management and crisis services in the community. Former manager of service providing support for people with multiple sclerosis. Member, Social Security Appeals Tribunal.

Susan Thompson

Family psychiatrist with over 15 years experience working in public hospital psychiatry with children and adolescents. Extensive experience and particular expertise in providing psychiatric consultation to children and adolescents with chronic medical illness, disability and chronic pain, as well as the inpatient and outpatient management of adolescents with eating disorders.

Liz Tong

Principal clinical psychologist for Sydney South West Area Health Service and authorised court clinician with the NSW Attorney General's Department. Current member of the NSW Psychologists Registration Board Tribunal, the Expert Review Panel of the Concord Hospital Scientific Sub Committee of the Human Research Ethics Committee and the Clinical College of the Australian Psychological Society. Provides clinical services for the Crown Solicitor's Office of NSW. Has held academic posts at the University of the South Pacific and at the University of Sydney Faculty of Medicine. A chartered clinical and forensic psychologist with the British Psychological Society with experience in the UK.

David Mark Wallace

Psychogeriatrician and consultant psychiatrist in private practice. A fellow of the Royal Australian and New Zealand College of Psychiatry. Visiting Medical Officer at the Wesley Private Hospital, at the Sydney Private Clinic and St Vincent's Private Hospital. Involved in treating residents in aged care facilities who have dementia and behaviour disturbances, depression and psychosis.

Carolyn West AM

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

Wai-Kwan (Tim) Wong

Counselling psychologist. Experienced in developing positive programming and sexuality education programs for people with an intellectual disability, extensive clinical and psychotherapeutic experiences in working with people affected by HIV & AIDS and Hepatitis C. Conducted research and published in the areas of quality-of-life issues and the experiences of informal carers caring for people with chronic illnesses and disabilities.

John Woodforde

Psychiatrist with extensive experience in public and private psychiatric practice, Member Mental Health Review Tribunals, New South Wales and Northern Territory of Australia. Formerly Director of Psychiatry at St Vincent's Hospital and Clinical Lecturer in Psychiatry at University of NSW, Member Medical Tribunal. Research in psychological aspects of chronic pain.

Janice Wortley

Special educator and psychologist with extensive expertise in developing and implementing behaviour management and positive programming for people with challenging behaviour. Extensive experience working with and advocating for people with intellectual disabilities, psychiatric disabilities and acquired brain injuries in community and educational settings. Qualified workplace trainer, lecturer in disability studies and accredited mental health first aid instructor.

Robert Yeoh, AM

General practitioner since 1975. Board member of Alzheimer's Disease International. Director of Alzheimer's Australia, NSW. Immediate Past National President of Alzheimer's Australia. Member of the medication advisory committees of several aged care homes. Official Visitor under the Mental Health Act 2007. Former member of the Ministerial Advisory Committee on Ageing, New South Wales.

Community members

Stanley Alchin, OAM

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

Rhonda Ansiewicz

Advocate for people with intellectual disabilities. In private practice working with people with mental illness. Chairperson of the Mullumbimby Neighbourhood Centre and a Board member of the Winsome Soup Kitchen, a hotel for homeless people in Lismore. Advocate and provide support for people with locked-in syndrome.

Andrew Barczynski

Social worker. President of a community agency providing a range of services; information and referral for culturally and linguistically diverse background ageing people. Extensive work history in disability employment, advocacy and complaint services. Family experience of disability. Employed in Community Programs Section (NSW/ACT) of Department of Families, Housing, Community Services and Indigenous Affairs.

Mary Butcher

Nurse with extensive aged care experience in residential and community settings. Experienced in palliative care management. Currently working as a quality assessor in the accreditation of aged care supported accommodation. Family experience of providing care to a person with dementia and intellectual disability.

Maria Circuit

Parent of a son with intellectual disability and mental illness. Long term experience and involvement with various advocacy organizations and support services for people with disabilities, mental health issues and dementia, including as a past Chairperson and board member of the New South Wales Council for Intellectual Disability.

Janene Cootes

Social worker. Currently Executive Officer at the Intellectual Disability Rights Service. Extensive experience working with people with an intellectual disability including as a Community Visitor.

Faye Druett OAM

Long-standing involvement in the disability and guardianship sectors. Lived experience of disability. Worked in federal and state governments, and the non government sector in service provision, policy development and management and administration of legislation.

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 New South Wales for four years. Family experience of caring and supporting a person with mental illness and dementia.

Maree Gill

Social worker and sociologist. Lived experience of disability. Extensive experience in social justice and equity, especially human rights, homelessness, supported accommodation, disability, mental health and women's health. Family experience of mental illness and dementia. Former Associate Lecturer of medical students, research consultant and currently, Member, Administrative Decisions Tribunal.

Freda Hilson

Social worker. Significant experience working in the disability sector, working with people with intellectual disability, acquired brain injury, physical disabilities and mental illness. Former executive director of the Brain Injury Association of New South Wales and Manager of Disability Services for Jewish Care and former Regional Manager with the Office of the Public Guardian. Former Deputy Director, Consumer Protection for People with Disabilities. Established the National Disability Abuse and Neglect Hotline. Currently a Community Visitor with the Ombudsman's Office.

Susan Johnston

Social worker and a human services consultant. A member of the Mental Health Review Tribunal and an accredited mental health first aid trainer. Has a Master of Public Health and a Certificate in Alternative Dispute Resolution. Former Deputy Director of Mental Health Service at St Vincent's Hospital Sydney. Extensive experience in mental health, alcohol and other drug and co-occurring mental health/AOD disorders and HIV/AIDS. Family experience of dementia.

Jennifer Klause

Extensive experience in intellectual disability rights work with experiences of educator, advocate, plain language publication and policy development roles. Former quality assessor in aged care services in New South Wales and complaints handling with aged and disability services across New South Wales.

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. Former member, Disability Council of New South Wales. Family experience of mental illness.

Janet Koussa

Experience as a psychologist providing assessment, case management and support to people with intellectual disabilities and their families as well as extensive involvement in advocacy services. Formerly a hospital psychologist with people who have a mental illness.

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.

Gordon Lambert

Mental health nurse with experience in the public health system in a range of settings including hospital and community mental health services, drug and alcohol services and correctional health services. Previously a senior lecturer at the University of Wollongong where he coordinated a multidisciplinary post graduate program in mental health. Currently an honorary fellow at the Illawarra Institute for Mental Health, University of Wollongong and a member of the NSW Mental Health Review Tribunal.

Kerrie Laurence

Specialist educator and community welfare worker with adults with a developmental disability. Currently working as a quality assessor in the accreditation of aged care supported accommodation. Family experience of dementia and mental illness and relevant tribunal experience.

John Le Breton

Previously Director of the NSW Office of the Public Guardian and Director Victim Services NSW. Former member of the Mental Health Review Tribunal. Extensive experience in management and delivery of service for people with disabilities. Currently Chief Executive Officer Disability Enterprises Leura.

Carol Logan

Trained as a 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.

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 New South Wales. Family experience of dementia.

Michael McDaniel

Member of the Wiradjuri nation of NSW, Adjunct Professor in Indigenous Education at the University of Western Sydney. Former member of the NSW Mental Health Tribunal and NSW Administrative Decisions Tribunal. Family and social experience of people with disabilities, including dementia, alcohol-related brain damage, intellectual disability and HIV/AIDS.

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.

Lyn Porter

Parent of a son with a developmental disability and mental illness. Completed six year appointment as an Official Community Visitor. Extensive experience in the criminal investigation of child protection and sexual assault matters. Previously worked in Women's Domestic Violence Court Assistance Scheme. Qualifications in Social Science (Community Services).

Catherine Quinn

Social worker. Extensive experience in aged care and with people with dementia and their families.

Leanne Stewart

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

Susan Warth

Psychologist and consultant with extensive experience with people with intellectual disabilities. Current Director of NSW Council on Intellectual Disability.

Margaret Watson

Background in social welfare and psychotherapy with experience in community development work, children and disability services. Worked for 18 years in the Guardianship sector. Former member with 12 years experience on the Social Security Appeals Tribunal. Current member of the Queensland Civil and Administrative Tribunal since appointment in 2002. Current Official Visitor under the *Mental Health Act 2007*.

Anne Whaite

Wide experience in the disability sector in both government and non-government organisations with qualifications and experience in dispute resolution. Current member of the Mental Health Review Tribunal and past member of the NSW Administrative Decisions Tribunal. Past president of the Western Sydney Intellectual Disability Support Group. Currently involved with H.O.M.E, an organisation working to develop an intentional community based on mutual support that provides affordable housing for a cross section of inner city residents, including people with intellectual disabilities.



Appendix 3 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 specified time, or when you have lost the capacity to make financial decisions.

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 NSW Trustee.

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.

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 and the person the application is about and usually includes their spouse or carer. The Public Guardian and NSW Trustee 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* and section 35 of the *Powers of Attorney Act 2003*. The Guardianship Tribunal may join others as parties to a proceeding.

person responsible is 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 the Tribunal may be asked to review an order for a variety of reasons such as concerns about a 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 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 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.

Tribunal ordered 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.



The principal role of the Guardianship Tribunal is to hear and determine applications for the appointment of guardians and financial managers for adults with decision making disabilities. The Tribunal can review the guardianship orders it makes and may review its financial management orders.

The Tribunal can give consent to medical and dental treatment for people 16 years and over who are unable to consent to such treatment for themselves. The Tribunal also has jurisdiction to review enduring guardianship appointments and enduring powers of attorney.



Guardianship *Tribunal*

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