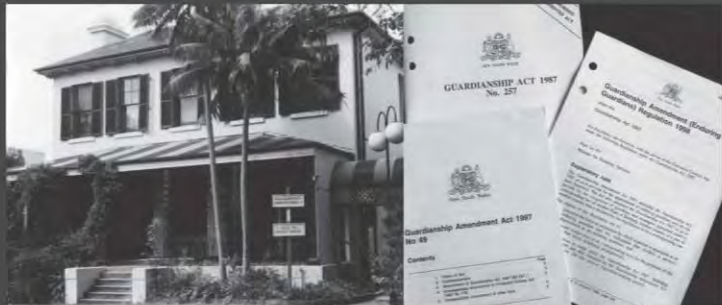


# *Guardianship Tribunal*

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Annual Report  
2012/2013

## 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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**Level 3, 2a Rowntree Street**  
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**Balmain NSW 2041**

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# Letter to the Minister

## *Guardianship Tribunal*

The Hon. Greg Smith SC MP  
Attorney General  
Minister for Justice  
Level 31  
Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Attorney General and Minister,

I have pleasure in presenting the Annual Report for the Guardianship Tribunal for the year ended 30 June 2013.

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

Yours sincerely,



Malcolm Schyvens  
President  
14 October 2013

# 2012/2013 Achievements

## The Tribunal:

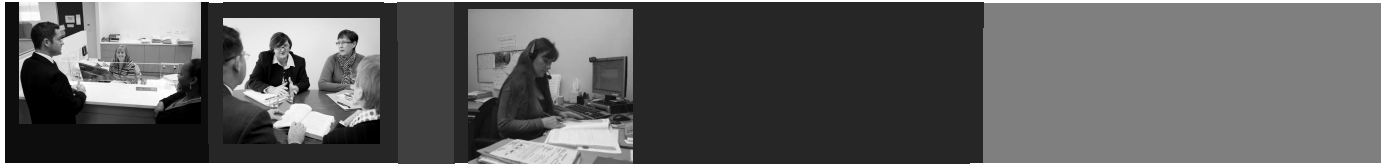
- finalised 10,648 matters, including 2,371 review matters and conducted 7,021 hearings
- undertook Tribunal member recruitment resulting in the appointment of 12 new members
- managed the induction, training and mentoring of new Tribunal members
- issued Practice Note No 1 of 2013 – Summonses Issued by the Guardianship Tribunal
- commenced a performance appraisal process for members sitting as a single member
- installed video conference facilities in four hearing rooms to facilitate access to the Tribunal and to support the timely and efficient use of Tribunal resources
- implemented a project to facilitate the finalisation of 551 applications through streamlined listing and preparation for hearing
- participated in the Reference Group, Operational Group and Working Groups to prepare for the commencement of the NSW Civil and Administrative Tribunal "NCAT" on 1 January 2014
- continued our commitment to promoting community awareness of the role of the Tribunal and the **benefits of "planning ahead" through seminars and participation in Law Week 2013**
- developed a six month hearing schedule to assist the Tribunal to plan for and manage its growing workload and support the efficient use of Tribunal member resources
- developed information and support kits to improve support and enhance access to the Tribunal for people making an application about themselves or making an application to revoke or amend their Tribunal order
- updated and improved the Tribunal member expertise database to enable the most appropriate and efficient use of members' specialist knowledge and experience
- conducted a practical workshop for Tribunal staff preparing hearing reports to ensure the reports meet the needs of Tribunal members and Tribunal users
- commenced a pilot project to review and improve our procedures for listing regional hearings to support a regular presence of the Tribunal in regional locations and ensure the most efficient use of Tribunal resources
- nominated and supported a number of staff to participate in the **Department's leadership programs**
- published updated information sheets in seven community languages to assist people to understand the role of the Tribunal and to provide information about Tribunal proceedings

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## Looking ahead – initiatives for the coming year

### The Tribunal will:

- continue to contribute to Reference Group and Working Groups leading to the commencement of the NSW Civil and Administrative Tribunal "NCAT" on 1 January 2014
- continue to publish Tribunal decisions through the Australasian Legal Information Institute (AustLII) to improve access to information about the Tribunal and from 2014 will publish decisions on CaseLaw
- continue to review and improve our practices and procedures and enhance the use of available technologies to support the Tribunal to manage the projected growth in its workload while maintaining a high quality of service
- review the Tribunal Members' Manual
- review case management procedures and practices in relation to case management of complex applications



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# President's Report



## *“24 Years of empowerment and protection”*

I am pleased to present the annual report for the Guardianship Tribunal for 2012/2013.

The inaugural President of the Tribunal (then known as the Guardianship Board), Mr Roger West, commented in the Board's first report released in August 1991:

*“I certainly believe it can be said that the New South Wales legislation (the Guardianship Act 1987) has profoundly and positively affected the lives of many people with disabilities and those who care about and for them.”*

**Mr West's comments remain true more than two decades later. Our community as a whole continues, year by year, to provide greater acceptance and recognition of the rights of people with disabilities. Perhaps there could be no greater illustration of these improvements than the recent bipartisan support for the establishment of the National Disability Insurance Scheme.**

For 24 years, I believe the members and staff of the Tribunal have played an important part in improving the lives of not only individuals with decision making impairments, but have also contributed to the better understanding the community has developed of **the rights of those individuals to “enjoy legal capacity on an equal basis with others in all aspects of life” (Article 12(2) of the UN Convention on the Rights of Persons with Disabilities)**. I am sure that our members and staff will also play an important role in the current major development in our jurisdiction, the increasing recognition of the desirability of assisted decision making as opposed to substitute decision making, whenever possible.

2012/2013 has once again seen the Tribunal receive, and conduct hearings for, a record number of applications whilst simultaneously engaging in preparations to form part of the NSW Civil and Administrative Tribunal (“NCAT”) once it commences on 1 January 2014.

### **Workload achievements**

**The Tribunal's workload has continued to grow, a pattern which has persisted for several years.**

Over the last five (5) years, the number of hearings conducted has increased by nearly 39% (see full analysis page 37), whilst member and staffing levels have remained relatively the same. The timely completion of matters in the face of such workload growth is testament to the dedication and efficiency of our people.

Compared to last financial year, the Tribunal recorded an increase in applications of nearly 7% and finalised **a record 10,648 matters. Nearly 26% of all hearings were conducted at 31 locations other than the Tribunal's premises in Balmain** (see page 38). To promote full participation in hearings, the Tribunal provided the services of an accredited interpreter on 524 occasions in 51 different languages.

The NSW community's ongoing need for information and assistance for people that may have a decision making impairment is illustrated in the Tribunal receiving 13,333 enquiries and in excess of 65,000 website hits in 2012/2013.

The Tribunal is able to attend to its workload due to the support of the Department of Attorney General and Justice. The Tribunal recorded expenditure of \$11.7 million during the period. I take this opportunity to thank the Attorney General and Minister for Justice, the Hon. Greg Smith SC MP, and the Director General, Mr Laurie Glanfield, for their support of the work of the Tribunal during this financial year.

## **NCAT**

On 26 October 2012, the Attorney General and Minister for Justice, the Hon. Greg Smith SC MP, announced the integration of over 20 state Tribunals into a new overarching tribunal. This new body, to be known as the NSW Civil and Administrative Tribunal ("NCAT"), will commence operations on 1 January 2014 and is to include the Guardianship Tribunal.

In announcing the establishment of NCAT, the Attorney General explained that:

*"One of the strengths of the state's tribunals is that their panels contain experts from the community and relevant professions and these specialist panels will form the backbone of NCAT. This will allow us to take advantage of their expertise."*

*The NSW model will be structured to preserve existing specialties rather than taking a 'one size fits all' approach.*

*In that way, the NSW Civil and Administrative Tribunal will be different from the super tribunals operating in Victoria, Western Australia, Queensland and the ACT and we are hoping to learn from their experiences."*

This commitment to the retention of specialisation has been evident throughout the establishment process, particularly in relation to the guardianship jurisdiction. One of the four Divisions of NCAT will be the Guardianship Division attending solely to the current workload of the Guardianship Tribunal and the multi-disciplinary three member panel model is to be retained in its current form. The retention of the multi-disciplinary model is, in my opinion, of great significance, as it will see the continuation of the application of a diverse understanding of disability in our hearings. The use of multi-disciplinary panels has unfortunately diminished in the guardianship jurisdictions of other states where tribunal amalgamation has occurred.

An NCAT implementation Project Team commenced operations in January 2013. The Guardianship Tribunal has been working intensely with this team and the other Tribunals included in the amalgamation to ensure the successful commencement of NCAT. I wish to thank our Registrar, Ms Amanda Curtin, who has tirelessly **led the Tribunal's involvement in this project. Ms Curtin and I have worked collaboratively with our future NCAT colleagues** to ensure that the specialised nature of our current operations, focussing on the empowerment and protection of people with decision making impairments, remains in the new entity. We have promoted the extension of some aspects of our operations across all Divisions of NCAT to promote accessibility for people with disabilities.

## **Tribunal Members**

In addition to the Presidential members, the Tribunal was comprised of 92 members during the period. The breadth of skills available to the Tribunal through its multi-disciplinary members remains a cornerstone of our ability to engage in fair, efficient and accessible decision making in an inquisitorial manner. Our Tribunal Members have an extensive range of qualifications and experience with people with disabilities across the health, disability and community sectors. Their expertise is essential in balancing often competing priorities,



including the protection and empowerment of the person with a disability and ensuring that all parties, including the person who is the subject of an application, are accorded procedural fairness in a jurisdiction where there is minimal involvement of legal representatives (4% of all matters heard in 2012/13).

Following an open merit recruitment process, the Attorney General approved the appointment of 12 additional members to the Tribunal: 3 legal, 6 professional, and 3 community members. After completing an extensive two (2) day induction course and a series of hearing observations, these new members commenced sitting in October 2012.

Complementing our already diverse and experienced membership, these additional members include: barristers and solicitors with direct personal experience of caring for a person with a disability; a neuropsychologist with clinical expertise in the treatment and assessment of people diagnosed with dementia; and community members who have worked extensively as disability advocates and who identify as having a disability themselves.

During the period the Tribunal continued its strong tradition of training for members, conducting four half day sessions. The training included both internal and external speakers and covered topics such as: autism; understanding squalor and hoarding behaviours; restrictive practices; implementation of the National Disability Insurance Scheme (NDIS); and ongoing relevant case law developments. We also enhanced our member performance appraisal programme, extending it to include assessment and feedback for members sitting as a one-member panel, not only as part of a three-member panel.

I would like to thank all members for their time, dedication and professionalism throughout the period and recognise the contribution of members who ceased their role with the Tribunal in 2012/2013, namely Des Sheehan, Robert Quickenden, Rhonda Buskell, Michelle Chapman, Sabina Hollmack, John Woodforde, Maree Gill, Gordon Lambert, Carol Logan, Michael McDaniel and Kath McLean. Monica MacRae ceased her role shortly after the end of the financial year and I would like to highlight and thank Monica for her very significant contribution to the Tribunal having been a legal member since the Tribunal commenced in 1989 – some 24 years of service.

### **Tribunal Staff**

During the period the Tribunal had 64.88 full time equivalent positions on its establishment.

Our staff come from a range of backgrounds, including legal, social work and health fields. Their primary duty is to engage with the person the subject of an application, to ensure that wherever possible their views are available to the Tribunal and that their involvement in the hearing process is both promoted and supported.

Tribunal staff also perform the pivotal function of triaging applications received by the Tribunal. This triage process, which takes place on the day each application is received, assists the Tribunal to identify the immediacy and severity of risk to the health and well-being of the person the subject of the application. This process in turn equips the Tribunal to prioritise hearings, promoting the efficient management of our workload in a timely manner and within the parameters of our funding allocation.

The Tribunal prepares matters for hearing and, importantly, seeks to involve the person with a disability in the process. This is consistent with the principles of the *Guardianship Act 1987* and the UN Convention on the Rights of Persons with Disabilities. This preparation contributes to the quality of decision making, evidenced by the small number of appeals - 22 appeals lodged out of 10,280 matters heard in the past year. Over the past three years the Tribunal has introduced risk based triage of applications and new case management procedures which have significantly reduced the number of applications pending. This has been achieved without compromising the quality of preparation and decision making. In the past year nearly 50% of the most urgent matters were resolved on the day of receipt with 90% being resolved within 2 days.



## Community Engagement

As the Tribunal's workload increases, our primary focus must be the preparation and hearing of applications. Nonetheless, we continue to build upon our relationships with external organisations and provide education, training and comment on substitute decision making issues. These engagements benefit both the **NSW community and the Tribunal and accords with the Tribunal's duties under Section 4 of the Guardianship Act 1987.**

Some examples of this engagement include:

- **Participation in numerous working groups and committees such as the Law Society of NSW's Elder Law and Succession Committee, the Planning for Later Life Forum auspiced by the Office of Ageing, and the Supported Decision Making Pilot Advisory Group**
- Through the Department of Attorney General and Justice (DAGJ), made contribution to numerous legislative and reform submissions, including the development of the NDIS, review of the legislation governing Enduring Powers of Attorney, a Commonwealth Senate Inquiry into sterilisation, and a review of the *Mental Health Act 2007*;
- Presenting on several topics on the development of the guardianship jurisdiction at the 2<sup>nd</sup> World Congress on Adult Guardianship held in Melbourne in October 2012;
- Hosting, and exchanging practice and procedure information, with senior office holders of like jurisdictions from the United Kingdom (the Court of Protection) and Hong Kong (the Guardianship Board of Hong Kong); and
- Providing in excess of 22 presentations to various NSW organisations to enhance general awareness of the workings of the Tribunal and the *Guardianship Act 1987* generally (see full details page 30).

## Conclusion

As this will be the last annual report of the Tribunal before the establishment of NCAT, I wish to recognise and thank all past and present members and staff of the Tribunal for their dedication and commitment over the last 24 years. A number of our members and staff have been with the Tribunal since the doors first opened.

I also acknowledge the significant contributions of past Presidents of the Tribunal, Mr Roger West, Mr Nick O'Neil and Ms Diane Robinson, each of whom have steered the Tribunal through changing times and increasing workloads, whilst ensuring that we have continually delivered an effective, efficient and accessible service for people with decision making impairments, their family members and carers.

I particularly wish to thank those who have been members of the Tribunal's **Executive during the reporting period**, Ms Sue McIlhatton (Deputy President), Ms Christine Fougere (Deputy President), Ms Jan Redfern PSM (Deputy President), Ms Amanda Curtin (Registrar), Ms Esther Cho (Deputy Registrar) and Ms Alex Sprouster (Legal Officer). The management group of the Tribunal has overseen not only a record level of applications and hearings, but has simultaneously dealt with the work that has been required to prepare the Tribunal for the amalgamation into NCAT. Whilst the workload this year has been particularly onerous, this group has at all times managed it with professionalism and good humour.

I look forward to the year ahead, a year of significant change for the Tribunal, which will see the important role the Tribunal plays in the empowerment and protection of people with decision-making impairments continue within the framework of the Guardianship Division of NCAT.



**Malcolm Schyvens**  
**President**

## Who we are



## The Tribunal

The Guardianship Tribunal is 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 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 a person's capacity to make his or her own decisions and the need for guardianship, financial management or medical consent orders.*

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.

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 medical and dental treatment, and
- approve a clinical trial so that people with decision making disabilities may take part.

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

At the end of 2012/2013, the Guardianship Tribunal has one full time member (the President) two part time Deputy Presidents, 92 part time Tribunal members and 64.88 full time equivalent positions and 63.64 full time equivalent Tribunal staff members.

## The President and the Deputy President

The President is responsible 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 Deputy Presidents report directly to the President of the Guardianship Tribunal. The Deputy Presidents assist and support the President in the operation and administration of the Guardianship Tribunal. The Deputy Presidents 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.** The President and the Deputy Presidents also sit from time to time as the presiding member at hearings.

## Tribunal members

Tribunal members are appointed by the Governor on the recommendation of the Attorney General 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 expertise of its multi-disciplinary panel ensures that, in addition to determining the legal issues raised in the application, the Guardianship Tribunal 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.

## Tribunal staff

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 the Department of Attorney General and Justice 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 obligations.

The Registrar also exercises **a range of functions to enhance the Guardianship Tribunal's ability to manage its caseload**, including recognising the appointment of interstate guardians and/or financial managers and making 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:

- Case Management Unit
- Tribunal Systems Unit
- Executive Unit

The Case Management Unit is led by the Deputy Registrar and comprises five teams responsible for information and enquiries, management of applications and reviews and scheduling and listing functions.

The Information Triage Team delivers first tier triage for the Tribunal providing information to potential applicants and the community about the role of the Tribunal, the application process and the range of informal solutions available as alternatives to an application. The Team assesses applications against the **Tribunal's Risk Triage Scale** based on the immediacy and severity of possible risk to the subject person and prepares

some applications for hearing. The Team is responsible for registering incoming correspondence and applications and managing the community education program.

Three Application Management Teams undertake an important case preparation role. Tribunal staff assist the **person with the disability to understand the Tribunal's role and procedures in relation to applications for new orders and applications to review orders made by the Tribunal.** Where necessary staff seek information about the capacity and decision making needs of the person who is the subject of the application and, where appropriate, assist with the informal resolution of matters which may result in an application being withdrawn before a hearing.

The Hearing Support Team liaises with the Tribunal members and is responsible for scheduling and listing applications and reviews for hearing. The Team provides support for hearings, coordinates the distribution of hearing papers for members and makes travel and hearing venue arrangements. It is responsible for distributing Orders and Reasons for Decision to parties.

The Tribunal Systems Unit is responsible for key functions supporting the delivery of Tribunal services including: **managing and developing the Tribunal's Case Management System (CMS); training staff and members to use the CMS; developing and producing statistical reports to support the management of the Tribunal's workload** and workflow; and developing effective records management systems. It undertakes a range of functions including: information management, communications and information technology, security and access systems, human resources, financial and administrative services, procedure management, client and administrative records management, coordination of facilities and asset management, coordination of seminar programs for Tribunal members and staff and publications for the community.

Staff of the Executive Unit support the President, the Deputy President and the Registrar in providing leadership and direction to staff and Tribunal members. The Executive Unit ensures 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



## The Tribunal's jurisdiction

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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 reviews 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 older 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.

### Relevant Legislation

The Guardianship Tribunal is established by the New South Wales *Guardianship Act 1987* ('the Act'). The legislation which gives the Tribunal its jurisdiction and powers is:

- *The Guardianship Act 1987*
- *The Powers of Attorney Act 2003*
- *The Children and Young Persons (Care and Protection) Act 1998*

The *Guardianship Regulation 2010* and should be read in conjunction with the *Guardianship Act 1987* as it contains further provisions about enduring guardians, medical treatment and contains the prescribed forms required by the Act.

### Legislative changes

No amendments were made to the enabling Acts during the financial year 2012 - 2013. The *Children and Young Persons (Care and Protection) Regulation* was remade on 1 September 2012 but there were no changes to the Tribunal's jurisdiction.

On 1 May 2013 the NSW Parliament passed the *Powers of Attorney Amendment Act 2013*. The Tribunal will receive the jurisdiction to review a revocation of an enduring power of attorney. The Tribunal will be able to declare that the principal did or did not have capacity to revoke an enduring power of attorney and to declare that an enduring power of attorney should remain valid (in whole or in part). The Tribunal will also be able to convert an application to review a revocation of an enduring power of attorney into an application for a financial management order pursuant to the existing section 37(1) of the *Powers of Attorney Act 2003*. Application forms and information sheets will be available on the Tribunal's website once the *Powers of Attorney Amendment Act* has commenced.

*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 that 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

The *Guardianship Act 1987* sets out the legislative framework under which the Tribunal can make guardianship orders, how they operate and how they are reviewed in New South Wales.

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 and is partially or totally incapable of making his or her own decisions. The Tribunal must also be satisfied there is a need for the 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, as a guardian. Before the Tribunal can appoint a private guardian, it has to be satisfied that the personality of 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 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.

---

## Appointing financial managers

The *Guardianship Act 1987* establishes the process of making applications for financial management to the **Guardianship Tribunal and the Tribunal's** authority to make financial management orders.

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 a financial **management order and this is in the person's best interests. The need for an order can arise where a person has not made, or has been unable to make, prior arrangements such as an enduring power of attorney.** The nature of **the person's** financial circumstances may mean that someone needs 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 as the person's financial manager. In** these circumstances the financial manager is appointed subject to the direction of the NSW Trustee and Guardian. Before making such an appointment the Guardianship Tribunal must be satisfied that the person is suitable to undertake the role. Alternatively, the Tribunal can order that the property and affairs of a person be managed directly by the NSW Trustee and Guardian.



## Reviews of guardianship and financial management orders

The *Guardianship Act* sets out the Tribunal's role in reviewing guardianship and financial management orders.

The Tribunal conducts four types of reviews of its guardianship and financial management orders:

**Statutory reviews of guardianship orders** – this is an automatic review that the Tribunal is required to conduct at the end of the term of a guardianship order.

**Tribunal ordered reviews of financial management orders** – this is a review of a financial management order that the Tribunal conducts because the financial management order specified that it be reviewed within a certain period.

**Requested reviews of a guardianship or a financial management order** – this is a review that the Tribunal may conduct if it receives a request from the person who is the subject of the order or from someone with a genuine concern for the welfare of that person. These include applications to revoke the appointment of a financial manager and to appoint a different person in that role.

**Own motion reviews** – this is a review of an order initiated by the Tribunal.

When the Tribunal reviews one of its orders **it will consider the person's current circumstances to decide whether the order is still necessary and if any changes need to be made.** The Tribunal can also decide that the order should not continue because there is no longer a need for a substitute decision maker to make decisions on behalf of the person with a disability.

---

## Consenting to medical and dental treatment

The *Guardianship Act* provides for substitute decision making in relation to medical and dental consent for those persons 16 years and older 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 guardianship order.

The Tribunal can, on application, 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 Tribunal may also consent to special medical treatment for an adult with a decision making disability.

When hearing applications for consent to special medical treatment, the Tribunal must be constituted by three members: a legal member, a professional member and a community member. The Tribunal considers 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 Tribunal also has jurisdiction under the *Children and Young Persons (Care and Protection) Act 1998* to consent to some types of **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

The Tribunal has jurisdiction under *the Powers of Attorney Act 2003* to review an enduring power of attorney. Applications may be made to the Tribunal to review the making and the operation and effect of an enduring **power of attorney**. **These applications may raise complex issues concerning a person's capacity to make these appointments or raise questions as to the conduct of the attorney.**

The Tribunal can make a range of orders concerning the making or operation and effect of an enduring power of attorney including:

- 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 to make a financial management order if appropriate.

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

The Tribunal anticipates that its jurisdiction to review a revocation of an enduring power of attorney created under the *Powers of Attorney Amendment Act 2013* will commence early in the new financial year.

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## Reviewing Enduring Guardianship Appointments

The Tribunal has jurisdiction under *the Guardianship Act 1987* to review the appointment of an enduring guardian. There has been a 14% increase in the number of applications to review enduring guardianship appointments.

The Tribunal may revoke the appointment or confirm the appointment with or without varying the enduring **guardian's functions**. The Tribunal may also replace an enduring guardian with a substitute enduring guardian.

The Tribunal may make an order declaring that the enduring guardianship appointment has effect. This may be required in circumstances where there is doubt or dispute about whether 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.

A guardianship order suspends the operation of an enduring guardianship appointment.



## CASE STUDY Nancy – **urgent medical treatment**

### Background

Nancy is a 32 year old woman who is a patient in the emergency department of a major Sydney hospital. On a Friday morning, the Tribunal received an urgent application from Dr Jim Zhang, a consultant immunologist at the hospital. The application outlined that Nancy had a medical condition that resulted in symptomatic anaemia and urgently required a blood transfusion as she was at a high risk of heart attack.

*“Nancy. . . urgently required a blood transfusion as she was at a high risk of heart attack.”*

The application also requested the **Tribunal’s consent** to perform a bronchoscopy, possible gastroscopy /colonoscopy, and possible bone marrow biopsy. According to the application, Nancy was refusing all of the proposed treatment but was unable to elaborate as to the basis for the refusal.

Nancy suffers from paranoid schizophrenia and the psychiatric team were of the view that this illness was affecting her ability to understand the nature and effect of the proposed treatment and the serious nature of her physical health. In the treating **team’s view, Nancy was unable** to provide an informed consent to the proposed medical treatment and they had been unable to locate any family members or friends to assist in discussing these issues with Nancy or to potentially act in the role of her ‘**person responsible**’.

*“. . . Nancy was unable to provide an informed consent to the proposed medical treatment . . .”*

In recognition of the urgency of most applications for medical consent, these applications are case managed by the Triage Team. The Tribunal officer to whom the matter was allocated immediately commenced work on preparing the matter for hearing within a very tight timeframe. The Tribunal officer ascertained that there was a hearing gap later that same day with a three member panel. The professional member of the Tribunal was a psychiatrist.

After liaising with Dr Zhang to ensure his availability to participate in the hearing by telephone as well as making arrangements with the social work department of the hospital to **facilitate Nancy’s participation in the hearing, also by**

telephone, information was also provided that enabled the Tribunal officer to make contact with Carol who is a friend of **Nancy’s who also indicated her willingness to take part in the hearing**. As a result of **Nancy’s emergency admission to hospital** and her declining mental health in recent times, Carol had not been aware that Nancy had been admitted to hospital or the serious nature of her health conditions.

### Hearing

The hearing proceeded by way of telephone. The expertise provided by the professional member of the Tribunal led to Dr Zhang clarifying in his oral evidence that in fact consent was sought only for a blood transfusion and a bronchoscopy, both under sedation. Until the relevant tests are conducted and the results known, there was in fact no need for any approval to perform a colonoscopy, gastroscopy or a bone marrow biopsy as suggested by the application lodged with the Tribunal.

### Decision

On the basis of the written evidence provided in support of the application and the oral evidence provided by Dr Zhang, Nancy and Carol, the Tribunal was satisfied that without the treatment proposed there was a **significant risk that Nancy’s life was in jeopardy** and that the risks associated with each of the treatments, on balance, were relatively insignificant. The Tribunal was also satisfied from the evidence before and its interactions with Nancy that she lacked insight into her current medical predicament and was unable to articulate the basis of her objections to the treatment proposed.

*“. . . the Tribunal was satisfied that without the treatment proposed there was a significant risk that Nancy’s life was in jeopardy . . .”*

The Tribunal consented to the proposed treatment, as clarified during the hearing, and an order was faxed to the hospital shortly after the conclusion of the hearing so that treatment could commence for Nancy.

**Background**

John is a 73 year old man who has lived in an aged care facility in Woolloomooloo since 2010. Prior to this time, John lived in his own home in Surry Hills. John's two daughters, Frances and Bronwyn, live in Sydney. John's wife passed away a number of years ago. John was diagnosed in 2009 with Alzheimer's dementia of a moderate degree.

A report provided to the Tribunal by John's current geriatrician expressed the opinion that John does not have the capacity to make any decisions about his lifestyle or financial affairs. In 2008, John appointed his two daughters as his attorneys on the basis that they could make decisions jointly or separately.

*“John appointed his two daughters as his attorneys on the basis that they could make decisions jointly or separately.”*

Bronwyn lodged an application with the Tribunal seeking a review of the operation and effect of the enduring power of attorney as she was concerned about Frances' actions three months prior when Frances withdrew the sum of \$30,000 from John's bank account. The application noted that despite requests made by Bronwyn and lawyers acting on her behalf, Frances had not returned the money to John's account. Frances was also said to have received \$25,000 from her father's funds. Bronwyn requests that her sister also repay this amount.

**Hearing**

The evidence at the hearing indicated that there had been a long history of discord between the two sisters and dispute between them as to funds loaned or given by John to one or other of his daughters over the years. Frances gave evidence that she believes that she is “owed” a total of \$70,000 which represented the benefit that her sister has received from their father over the years. Frances told the Tribunal that she transferred the sum of \$30,000 from her father's bank account to her own account in recognition of this and after reaching agreement with her sister.

Bronwyn denied that such an agreement had been reached. She told the Tribunal that she did not believe that Frances was entitled to any funds from their father's account and that that was why she engaged lawyers to demand that the funds be returned. Bronwyn also gave evidence that shortly after she and her sister were appointed as their father's attorneys, she arranged for the payment of \$25,000 from their father's account to Frances who was living in New Zealand at the time.

Bronwyn told the Tribunal that she now knows that this had been a mistake and that she had felt “hassled” by her sister at the time. Bronwyn said that she now understands that she did not have the authority under the enduring power of attorney to transfer those funds.

**Decision**

The Tribunal decided to review the operation and effect of the enduring power of attorney on the basis of the conflict between Frances' financial interests and those of her father. An attorney must act in the best interests of the principal and must not obtain a personal benefit other than specifically provided for in the executed enduring power of attorney (Powers of Attorney Act, s 12(1)). John had specifically deleted the standard clauses in the enduring power of attorney that would have authorised his attorneys to confer benefits on the attorneys or any third person. Frances' actions in 2010 and 2012 and her evidence at the hearing led the Tribunal to the view that she had failed to appreciate her role and obligations as an attorney.

*“An attorney must act in the best interests of the principal . . .”*

The Tribunal was not persuaded that it was in John's best interests to make an order to remove Frances as attorney, as this would leave Bronwyn as the sole attorney. Having regard to the ongoing dispute between Frances and Bronwyn, and the evidence that Bronwyn has, in the past, exceeded her authority as attorney, the Tribunal was of the view that the ongoing management of John's affairs should be managed with more transparency and accountability. The Tribunal decided to make a financial management order and appointed Bronwyn as her father's private financial manager subject to the authority and directions of the NSW Trustee and Guardian. Appointing Bronwyn would, at least in part, maintain the arrangements made by John in 2008 when he appointed his daughters as his attorneys but at the same time would ensure a degree of accountability as a result of the reporting requirements to the NSW Trustee and Guardian. Bronwyn's evidence also satisfied the Tribunal that she now has a better appreciation of her role as a substitute decision maker.

*“. . . the Tribunal was of the view that the ongoing management of John's affairs should be managed with more transparency and accountability.”*

**Background**

Michael is a 17 year old man who lives in Nowra in supported accommodation as part of a community based program. The application for the appointment of a guardian and a financial manager was made by a Senior Clinical Consultant with the program. The application outlined concerns that Michael was at risk of physical and financial exploitation as a result of his disability and difficult family circumstances. Michael has been diagnosed as having a mild to moderate intellectual disability as a result of foetal alcohol syndrome.

*“Michael has been diagnosed as having a mild to moderate intellectual disability as a result of foetal alcohol syndrome.”*

The reports provided to the Tribunal indicated that Michael’s intellectual disability impairs his ability to regulate impulsive behaviour, comprehend social situations and social judgements or properly understand conventional standards of social behaviour. One of the reports described Michael as having **“come from a highly dysfunctional family background characterised by domestic violence, anti-social behaviour around alcohol abuse and involvement in the criminal justice system”**.

In view of his youth and vulnerability, the Tribunal ordered that Michael should be separately represented in the proceedings. The Legal Aid Commission of NSW subsequently provided funding for a solicitor to act in this role.

*“In view of his youth and vulnerability, the Tribunal ordered that Michael should be separately represented in the proceedings.”*

**Hearing**

The three member panel travelled to Nowra so that Michael could attend the hearing and provide his views to the Tribunal in person. The stress of the hearing meant that Michael found it very difficult to speak with the Tribunal.

However, the community member on the panel, the parent of a young woman with an intellectual disability, was successful in encouraging Michael to tell the Tribunal what he thought about the applications that had been made to the Tribunal.

The separate representative had met with Michael in the weeks leading up to the hearing in order to seek his views about the applications and presented these views at the hearing. The separate representative also submitted that, based on her discussions with Michael and the evidence before the Tribunal, **it was in Michael’s best interests** that orders were made appointing a guardian and financial manager for him.

**Decision**

After considering all of the available evidence, the Tribunal decided to appoint a guardian for Michael with decision making authority about his accommodation, health care, medical treatment and services. Whilst he was not yet 18 years of age, the evidence indicated that Michael had already had numerous interactions with the criminal justice system for non-violent offences. In these circumstances, and given his vulnerability as a result of his disability and family circumstances, the Tribunal appointed a guardian with general oversight of his legal affairs and to ensure that Michael is in receipt of necessary legal advocacy. **No one from Michael’s family wished to take part in the hearing** and, in these circumstances, the Tribunal appointed the Public Guardian as his guardian for 12 months.

*“The Tribunal decided to appoint a financial manager for Michael to prevent exploitation . . .”*

The Tribunal was also told that Michael receives a Centrelink disability support pension and that he regularly gives a significant proportion of his income to family members and friends.

The Tribunal decided to appoint a financial manager for Michael to prevent exploitation and to ensure his limited income is spent on his needs and not others. The Tribunal committed the management of his estate to the NSW Trustee and Guardian.

## How we work



### Our principles

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Proceedings before the Guardianship Tribunal are about whether a person with a decision making disability needs a substitute decision maker and, if so, who that substitute decision maker should be and what powers or **functions they should have. They are about a person's right to continue to make his or her own decisions.**

When the Tribunal is exercising its functions, the Tribunal must observe the principles set out in Section 4 of the *Guardianship Act 1987*. These principles state that any person exercising functions under the Act in relation to a person 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, and
- encourage the community to apply and promote these principles.

Staff and Tribunal members must act in accordance with the primary 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.

## Access to justice in a protective jurisdiction

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

The protective framework which the Tribunal operates within **underpins the work of both the Tribunal's members and staff.**

## Preparing applications for hearing

The focus on the interests of the person with a disability is reflected in the work that **the Tribunal's staff** undertake before an application or review of an order is heard by the Tribunal.

In every case before the Tribunal, the Tribunal officers of the Application Management Team strive to involve the person with a disability in the pre-hearing case preparation process as much as possible. Tribunal staff use their experience and expertise in a range of disability fields to communicate with the person with a disability to explain **the Tribunal's role, seek the person's view about the case before the Tribunal and assist with any questions or concerns** the person may have.

Tribunal officers also contact the applicant and the parties to provide them with information about the Tribunal hearing and clarify what evidence is required.

## Tribunal hearings

**The Tribunal will schedule hearings to allow sufficient time for appropriate exploration of the person's** circumstances and his or her need for orders to be made. However, the Guardianship Tribunal can convene an urgent hearing within hours of receipt of an application. These hearings are often conducted by telephone. The Guardianship Tribunal operates an after hours service where urgent applications are made and need to be heard outside normal business hours.

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

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.

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. The Tribunal is not bound by the rules of evidence however it must act in accordance with the rules of procedural fairness.

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.**

The Tribunal is able to make arrangements for parties with particular needs. Where appropriate, the Tribunal arranges the attendance of accredited interpreters to assist parties participating in hearings. Interpreters were used on 524 occasions during the year and provided services across 51 different languages including Arabic, Cantonese, Croatian, Greek, Italian, Macedonian, Mandarin, Serbian, Spanish, Vietnamese and Auslan.

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 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 may adjourn the hearing to be continued on a later date or may reserve its decision. 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.**

Although 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 2012/2013 the Tribunal conducted approximately 26% of its hearings outside Balmain at locations including Albury, Armidale, Ballina, Blue Mountains, Bowral, Central Coast, Coffs Harbour, Dubbo, Goulburn, Lismore, Mittagong, Moruya, Newcastle, Nowra, Orange, Port Macquarie, Queanbeyan, Shoal Bay, Stockton, Tamworth, Taree, Tweed Heads, Wagga Wagga, Wollongong and other locations in the Sydney metropolitan area.

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

### **Who makes the decisions?**

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

The Tribunal constituted by at least three members is required to determine applications for guardianship orders, financial management orders, reviews of enduring guardianship appointments and enduring powers of attorney, and special medical applications.

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.

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.





## Achievements and developments



### Improving practice and procedure

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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.

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#### **Practice Note 1 of 2013 – Summonses issued by the Guardianship Tribunal**

On 1 May 2013 the Tribunal issued a practice note to provide information about the Tribunal's practice where a party seeks to have a summons issued by the Tribunal or where the Tribunal issues a summons of its own motion. The Practice Note explains who may make a request for a summons to be issued and the procedure for making that request. The practice note **is available on the Tribunal's website**. **The Tribunal exercises a protective jurisdiction and when exercising functions under the Act paramount consideration is given to the welfare and interest of the person who is the subject of proceedings.** The Practice Note requires a party to request the voluntary production of documents or an appearance to give evidence before applying for a summons to be issued. Where the requesting party is unable or unwilling to do so then a party may request that the Tribunal issue a summons. The Tribunal may issue a summons of its own motion where there is no party able or willing to request **that a summons be issued or where, in the Tribunal's view, there are concerns for the welfare of the person subject of the proceedings and there is insufficient evidence to determine the application.**

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## **Information and support for people making applications about themselves**

The Tribunal recognises that people making applications about themselves may require additional information or support to understand the circumstances in which an application can be made, how to make an application and what happens at a hearing. In 2012/13 the Tribunal registered 24 applications from people seeking the appointment of a guardian or financial manager for themselves and 144 applications from people seeking to have their guardianship or financial management order revoked or amended. This year we reviewed our procedures for providing information to people who are enquiring about making these applications and developed support kits to better assist them to understand how to make an application and what information the Tribunal may seek in order to determine the application.

Three plain language information kits were developed to assist applicants seeking a review of their guardianship order, a review or revocation of their financial management order or those seeking the appointment of a guardian or financial manager. Each kit has a list of agencies that may be able to offer legal and other assistance to the applicant. These agencies provided information for inclusion in the information package to **help applicants'** identify the most appropriate source of help.

The kit for a person applying for the appointment of a guardian or financial manager provides information about the role of the Tribunal, what guardianship and financial management means, what information the Tribunal needs to determine an application, who may be appointed as a guardian or financial manager and what decisions the guardian or financial manager may make. The kits for people seeking a review of a guardianship order or seeking to have a financial management order revoked assists the applicant to identify whether the Guardianship Tribunal made the order and if not where they may direct their enquiries. It explains the difference between a review of an order and revocation of an order. All three kits contain information about how to make an application, how the application is prepared for hearing and what happens at a hearing.

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## **Tribunal member expertise database**

Members of the Tribunal, whether appointed as legal members, professional members or community members bring rich experience and a breadth of knowledge relevant to the work of the Tribunal.

This year we reviewed and updated our database of Tribunal member expertise. This ensures the efficient identification of Tribunal member qualifications and experience relevant to the matters before the Tribunal and assists in building the hearing schedule. It supports the most effective use of member specialist expertise in the conduct of the hearing and in the Tribunal's decision making.

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## **Comprehensive review of case management procedures**

In 2010/11 the Tribunal introduced new case management procedures to assist it to respond to the risk to the person the subject of the application identified in the application. Applications to the Tribunal are assessed and triaged on the day they are received. Our case management procedures guide the preparation of applications for hearing, underpin our listing and scheduling practices and our post hearing functions such as the production and distribution of Orders and Reasons for Decision. This year we undertook a comprehensive review of these procedures and updated them to reflect system improvements and practice developments.

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## Restrictive practices

The Tribunal may make a guardianship order giving the guardian the authority to make decisions about the use of restrictive practices. These practices are used in the context of a holistic approach to a person's need and with the aim of controlling the behaviour or contributing towards changing the behavior. Tribunal members and staff collaborated to develop a new information sheet "*Guardianship and Restrictive Practices*." This provides information about the circumstances in which someone may apply to the Tribunal for the appointment of a guardian in relation to a restrictive practice, what information the Tribunal may require to determine the application and the Tribunal's practice and procedure in hearing reviews of guardianship orders which include a restrictive practices function. The information sheet is available on the Tribunal's website.

## Improvements to information technology services and the Tribunal's Case Management System

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### Improved infrastructure and support

The Tribunal worked closely with the Department's Information Services Branch (ISB) in the transition of the Tribunal's network from a standalone site to an incorporated site managed by ISB. As part of the transition project the network's infrastructure was upgraded and linked into the Department's network. The upgrade included new servers, multifunctional devices, desktop personal computers and laptops. This improved infrastructure provides a solid foundation for the Tribunal's transition to the Guardianship Division of the NSW Civil and Administrative Tribunal in 2014.

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### Expanded video conferencing facilities

With its focus on the paramount interest of the person the subject of the application, the Tribunal generally schedules its hearings in locations across NSW to facilitate the attendance and participation of the person.

In 2012/13 the Tribunal installed video conferencing facilities into four of its hearing rooms. These improved and expanded facilities provide improved access to Tribunal proceedings for parties, family members and witnesses in regional NSW. It has also supported an improved method of participation for the person the subject of the application, who may be unable to participate in person because of the nature of their disability or illness. A video conference hearing provides additional context and information for the Tribunal and all participants than would otherwise be provided in a teleconference. The Tribunal's listing of video conference hearings has increased by more than 72% on the previous year.

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### Case Management System

This year the Tribunal reviewed and made improvements to its Case Management System (CMS) database. This included the introduction of automatic scheduling of monthly statistical reports and improved reporting to monitor and manage workflow. The Tribunal amended our application forms to make it easier for an applicant to provide information about the nature of the person's decision making disability and modified the data bases to better record this information. This information assists in listing applications for hearing, in forecasting trends in workload growth and in identifying opportunities for improved delivery of information about the role of the Tribunal.

## The Tribunal's website

Last year the Tribunal redesigned its website to align with those of other tribunals and courts within the Department of Attorney General and Justice. This was achieved while maintaining the features of the Tribunal's website that support its accessibility and included reviewing and updating content as required. The Tribunal's website remains an important and well utilised source of information for Tribunal users and the community and an entry point to Tribunal services for many Tribunal users.

## Improving our services through the development and support of Tribunal members

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### Tribunal members' development program

The Tribunal conducts a professional development program of seminars for members. This year we conducted one seminar for presiding members and three seminars for all Tribunal members.

Seminars 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 staff or by external speakers and professionals with expertise relevant to the work of the Tribunal.

Tribunal member seminars this year covered the following topics:

- *Autism* – Mr Mark Clayton, General Manager Strategy and Development, Sunnyfield and Ms Lyn Porter, Community Member.
- *Dementia* – Dr Gail Jamieson, Professional Member
- *Squalor and Hoarding* (Panel Discussion) – Professor John Snowdon, Psychogeriatrician, Concord Repatriation General Hospital, Ms Sue Cripps, Director, Homelessness, Mental Health and Disability Services, Catholic Community Services and Ms Sharon Nichols, Principal Guardian, Public Guardian
- *The Victorian Law Reform Commission Guardianship Final Report* – Mr Neil Rees, Former Chairperson Victorian Law Reform Commission
- *Young People Leaving Care* – Ms Julie Sedon, Manager Leaving Care, Ageing, Disability and Home Care, Ms Janice Carroll, Director Metro Intensive Support Services and Ms Judy Tonkin, A/Director Partnerships and Planning Metro South West Community Services and Dr Brendan New, Clinical Psychologist, Alternate Care Clinic, Redbank House
- *Summons Practice Note and Procedure* – Mr Malcolm Schyvens and Ms Alex Sprouster
- *Restrictive Practices – Discussion – The Guardianship Tribunal Information Sheet* – Ms Amanda Wood, Principal Psychologist at Amanda Wood Community Services
- *Operation of Financial Management and Guardianship Orders where EPA/EG in place* – Mr Malcolm Schyvens
- *Writing reasons for decision* – Ms Jan Redfern
- *Appointing private financial managers* – recent decisions in the Supreme Court – Ms Alex Sprouster
- *Review of Financial Management Orders / Interim Financial Management Orders* – Ms Jan Redfern and Ms Christine Fougere
- *Protocol with Department of Foreign Affairs and Trade – passport / travel functions in guardianship orders* – Ms Jan Redfern and Ms Christine Fougere

In addition to these seminars the Tribunal conducted a two day induction program for newly appointed members and training in the operation of the case management system for members conducting hearings as single members.

### **Performance appraisal and observation programs**

All members of the Tribunal participate in the **Tribunal's** performance appraisal program. A competence framework for Tribunal members sets out key competencies under five headings – knowledge and values, communication, conduct of cases, evidence and decision making and describes the performance indicators relevant to each competency.

A self-assessment report and hearing observation program developed for members were important tools used in 2012/2013. The Presidential members conducted hearing observations in March and April 2013.

### **Tribunal Members' Manual**

The **Tribunal Members' Manual** contains information about 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 members' online SharePoint portal and in hard copy at the Tribunal's premises. We will be undertaking a comprehensive review of the manual early in the new financial year.

### **Participation in inter and intra-state organisations and conferences**

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. The President participated in AGAC meetings throughout the financial year and reported back to members at the member seminars.

In October 2012 a number of members and staff attended the 2<sup>nd</sup> World Congress on Adult Guardianship in Melbourne. A key focus of the conference was the consideration of the effect of the United Nations Convention on the Rights of Persons with Disabilities on national and international guardianship laws and practices. The President and the Public Guardian presented a paper on the protocol between the Public Guardian and the Department of Family and Community Services. The protocol addresses the issue of young people with a disability aged between 16 and 18 years who are leaving the care of Community Services and transitioning into Ageing, Disability and Home Care and who require substitute decision making. The protocol provides for the appointment of the Public Guardian with a function of advocacy to participate in the transition planning process and advocate for positive outcomes to meet the needs of the young person.





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

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

### **Staff training program**

Staff **of the Tribunal access a range of learning and development opportunities through the Department's** training programs which provide information and skills relevant to their roles and the opportunity to gain skills to assist in their career development.

The Tribunal is also committed to supporting the training and professional development of its staff in relation to their work at the Tribunal and including information about developments in the health and disability sectors as it relates to this work. The suggestions and feedback of staff and Tribunal members are used to plan the staff training and professional development program to ensure its relevance and that it meets training needs.

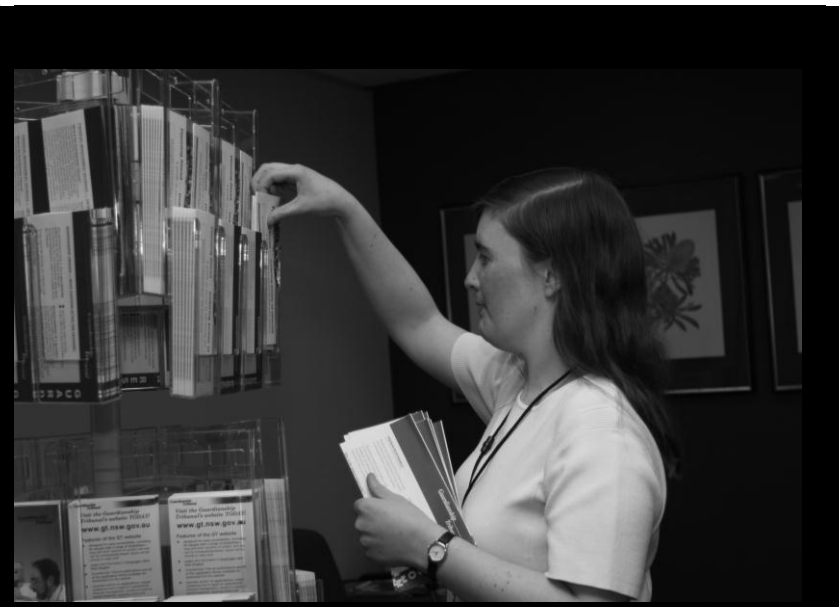
This year the Tribunal continued its monthly seminar program for staff as a practical and important way to support staff in their work. The seminars are an opportunity to receive and discuss information and support consistency, within and across Tribunal teams, in the information provided to Tribunal users and in the support provided to Tribunal members. This year our seminar program provided staff with skills, knowledge and information on a diverse range of subject areas including:

- Understanding the role and functions of the Public Guardian and the NSW Trustee and Guardian
- Conciliation under the Guardianship Act
- Fire Warden and Emergency Procedures Training
- Managing workplace stress
- Achievement Planning
- Compelling Evidence – Subpoenas in the Guardianship Tribunal
- Hearing Report Writing workshop for Tribunal Officers
- Restrictive practices and guardianship

### **Staff hearing observation program**

The Tribunal is also committed to maintaining a program, initiated in January 2010, in which staff are required to **observe two Tribunal hearings each year. This assists 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. This program has been acknowledged by staff as enriching their work experience and as a valuable learning opportunity. This program continues to be generously supported by Tribunal members.

## Community engagement



### Enquiry service and community education

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Each year thousands of people including people with disabilities, their families, friends and carers and the professionals who support them, access the Tribunal's enquiry service by telephone, in writing and in person.

The enquiry service assists members of the public and health, welfare and legal professionals to understand the Tribunal's jurisdiction and to access its services. The enquiry service provides a first tier triage function by providing information to potential applicants to assist them to understand what informal decision making options may be available for the person and to decide whether an application to the Tribunal is required. **The Tribunal's** enquiry staff provide information about the role and function of the Tribunal and its practice and procedure. Staff assist with information about enduring powers of attorney and enduring guardianship as a means to plan ahead in the event of future decision making incapacity and regularly refer people to the NSW Government's comprehensive *Planning Ahead Tools* website as another important source of information for individuals, legal and health professionals.

In the 2012/2013 financial year the enquiry service received 13,333 calls, visits and written enquiries.





## Publications

The Tribunal has a wide range of resources available to the community on its role, functions and procedures. Publications can be accessed and downloaded from the **Tribunal's** website or may be obtained directly from the Tribunal.

In April 2013 the Tribunal produced Practice Note 1 of 2013 – Summonses Issued by the Guardianship Tribunal.

In October 2012 the Tribunal produced **its information sheet about 'The Role of the Guardianship Tribunal'** in seven (7) community languages including Arabic, Chinese traditional, Greek, Italian, Korean, Turkish and Vietnamese, in order to facilitate access to the Tribunal.

Other new publications included: an information sheet about providing information to the Tribunal and confidentiality; a new information sheet about guardianship orders and restrictive practices; and information and support kits to assist people making applications for an order or seeking review or revocation of an order concerning them.

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## Law Week 2013

The Tribunal participated in Law Week in May 2013 in conjunction the Administrative Decisions Tribunal and the Consumer, Trader and Tenancy Tribunal. All three tribunals will be amalgamated into the NSW Civil and Administrative Tribunal in 2014. National Law Week is an annual event aimed at increasing public awareness about the law, the legal system and the legal profession as well as educating the community about the legal services available in New South Wales. The theme for Law Week 2013 **was 'Law and justice in your community'**.

The Tribunal participated at the community legal expo held in Parramatta. The expo provided an opportunity to interact with members of the public, raise awareness of the role of the Tribunal and network with other agencies providing legal services in NSW.



## Papers and training presented

### Mr Malcolm Schyvens, President

- Participation in Panel Discussion – *'A Resident with No Family, What Should a Home be Thinking Of?'* Better Practice Conference 2012, Aged Care Standards and Accreditation Agency, Brighton Le Sands 19 July 2012
- Participation in Panel Discussion – *'Representing Clients with Diminished Capacity – How Far Should You Go?'* NSW Law Society President's Charity CLE Series, Sydney CBD 19 July 2012
- *'The Role of Legal Practitioners in the Guardianship Tribunal,'* Riverina Law Society, Griffith, 8 September 2012
- *'The Guardianship Tribunal: Practice and Procedure,'* College of Law CLE, Sydney CBD, 19 September 2012
- *'Fiduciary Relationships – Does It All Come Down to Best Interests?'* 2<sup>nd</sup> World Congress on Adult Guardianship, Melbourne, 15 October 2012
- *'Appointing Substitute Decision Makers for Young People,'* 2<sup>nd</sup> World Congress on Adult Guardianship, Melbourne, 16 October 2012
- *'The Guardianship Tribunal: Practice and Procedure,'* Law Society of NSW CLE, Sydney CBD, 20 November 2012
- *'Guardianship – Understanding the Process for the Health Professionals,'* Macquarie Hospital, West Ryde, 5 December 2012
- *'Guardianship, Legal Practitioners, and Financial Management,'* NSW State Legal Conference, Sydney CBD, 26 March 2013
- Participation in Panel Discussion – *'Consent, Care and Tenure,'* Leading Age Services (NSW/ACT) Conference, Westin Hotel, Sydney CBD, 31 May 2013
- *'Effective Communication in Tribunals,'* COAT/AIJA National Conference, Brisbane, 6 June 2013

### Ms Jan Redfern, Deputy President

- Participated in a panel session *'Responding to Abuse'* at the Forum - Taking Action Against the Abuse of Older People: Pathways Out of the Maze run by the Education Centre Against Violence, which is a Department of Health state wide service, 26 June 2013

### Ms Sue McIllhatton, Deputy President and Ms Alex Sprouster, Legal Officer

- *'Understanding the processes and procedures of the NSW Guardianship Tribunal: For health professionals'* A half day seminar for health and services professionals in the Wollongong/Illawarra Area at Wollongong University, 30 November 2012

### Ms Alex Sprouster, Legal Officer

- *'The Guardianship Tribunal'* Office of the Legal Services Commissioner, 10 July 2012
- *'Guardianship: Protection and Empowerment'* Aged Care Standards Accreditation Agency Better Practice Conference 19 July 2012
- *'Understanding the processes and procedures of the NSW Guardianship Tribunal'* NSW Ministry of Health Sexual Assault Services Quarterly Statewide Meeting, 21 August 2012
- *'Understanding the processes and procedures of the NSW Guardianship Tribunal: For health professionals'* St George and Sutherland Mental Health Interagency Meeting, 26 September 2012
- *'The Guardianship Tribunal: Understanding the jurisdiction and processes'* NSW Elder Abuse Helpline, 25 February 2013
- *'The NSW Guardianship Tribunal'* University of Western Sydney, Elder Law, 9 March 2013
- *'The Guardianship Tribunal: Enduring Guardianship Appointments'* UNSW Elder Law CLE, 22 March 2013
- *'The Guardianship Tribunal: jurisdiction, procedures and representation at the Tribunal'* NSW Community Legal, 23 May 2013

### Ms Liesje Tromp, Senior Tribunal Officer

- *'Making an application the Guardianship Tribunal'* Presentation to Community Services, Ageing Disability and Home Care, Young People Leaving Care Program Staff for whole of NSW, 30 November 2012

## Feedback and Complaints

Public trust and confidence in the Tribunal is enhanced by having accessible and responsive mechanisms to receive and respond to feedback and complaints. The Tribunal welcomes feedback as an important way of maintaining accountability and identifying opportunities to improve its service.

Where appropriate, frontline staff respond to concerns raised by Tribunal users to facilitate a timely resolution of the issue. Matters of concern are commonly resolved in this way through the provision of information about the **Tribunal's practice and procedure and clarifying the role of the Tribunal.**

Complainants may assert that the Tribunal made the wrong decision or express general dissatisfaction with the outcome. Complainants are assisted to understand that a complaint is not the same as an application to the Tribunal to review an order it has made or appeal to the Supreme Court or the Administrative Decisions Tribunal against a decision of the Tribunal.

The Tribunal monitors who makes complaints and the nature of the complaint to identify opportunities to improve service delivery, information provision and to identify issues to be addressed through staff training and Tribunal member professional development.

This year the Tribunal finalised 10,648 applications and received 33 complaints compared to 59 complaints in the previous financial year.

Complainants raised concerns about the conduct of staff or Tribunal members, the way in which a matter was prepared for hearing, the way in which proceedings were conducted, late notice of proceedings or late receipt of evidence and the timeliness or quality of post hearing follow up. Complainants also raised concerns about procedural fairness, consideration of evidence, bias and representation at hearings. These issues relate to concerns about whether the Tribunal has administered the *Guardianship Act* lawfully. The Tribunal does not address concerns of this nature through its complaint mechanism. The Administrative Decisions Tribunal and the Supreme Court both provide an avenue of appeal to parties to Guardianship Tribunal proceedings on questions of law.



## Our work – the year in review



### Receiving applications

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In 2012/2013 the Tribunal received 8,145 applications. Of these, 1,067 applications were for procedural orders. Of the remaining 7,078 applications: 48% related to the appointment of a financial manager; 43% related to the appointment of a guardian; 5% were applications for consent to medical and dental treatment; 4% were for other applications including applications to review enduring powers of attorney or enduring guardianship appointments 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.**

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 and may require 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 2008/2009 to 2012/2013**

Application type	2008/2009		2009/2010		2010/2011		2011/2012		2012/2013	
	Received	Finalised	Received	Finalised	Received	Finalised	Received	Finalised	Received	Finalised
Guardianship	2274	2417	2446	2483	2481	2329	2584	2715	2794	2760
Requested review of guardianship	205	212	232	233	217	218	230	219	244	245
Financial management	2465	2564	2645	2734	2468	2418	2553	2549	2847	2976
Requested review of financial management	337	338	374	373	504	416	539	602	544	548
Review – enduring power of attorney	131	129	126	141	149	139	176	182	148	160
Review – enduring guardianship	57	58	61	74	55	48	83	76	95	102
Medical/dental consent	465	473	464	469	406	408	376	386	356	357
Recognition of appointment	50	49	41	41	43	44	44	44	42	42
Clinical trial	16	9	11	11	13	10	9	11	8	7
Direction to guardian	1	1	0	0	0	0	1	1	0	0
<b>Sub total</b>	<b>6001</b>	<b>6250</b>	<b>6400</b>	<b>6559</b>	<b>6336</b>	<b>6030</b>	<b>6595</b>	<b>6785</b>	<b>7078</b>	<b>7197</b>
Procedurals (own motion or by request)	435	434	602	602	977	951	1320	1311	1067	1080
<b>Total</b>	<b>6436</b>	<b>6684</b>	<b>7002</b>	<b>7161</b>	<b>7313</b>	<b>6981</b>	<b>7915</b>	<b>8096</b>	<b>8145</b>	<b>8277</b>

**Table 2 Five year comparative caseload statistics for statutory or Tribunal ordered review matters for the years 2008/2009 to 2012/2013**

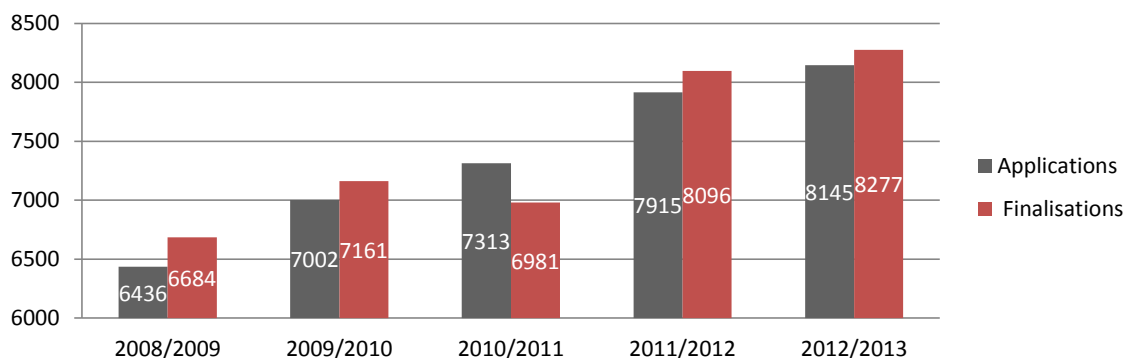
Statutory or Tribunal ordered review of orders	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013
	Reviews finalised	Reviews finalised	Reviews finalised	Reviews finalised	Reviews finalised
Guardianship	1626	1690	1825	1855	2128
Financial management	116	109	137	157	191
Recognition of guardianship appointment	17	16	5	18	19
Recognition of financial management appointment	23	30	15	26	33
<b>Total</b>	<b>1782</b>	<b>1845</b>	<b>1982</b>	<b>2056</b>	<b>2371</b>

## 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 48% were made by family members or friends of the person, 49% by someone in a professional relationship with the person, for example a health professional, professional carer or service provider, 2% by a person seeking an order for themselves or requesting a review of their own financial management or guardianship order and 1% by others.

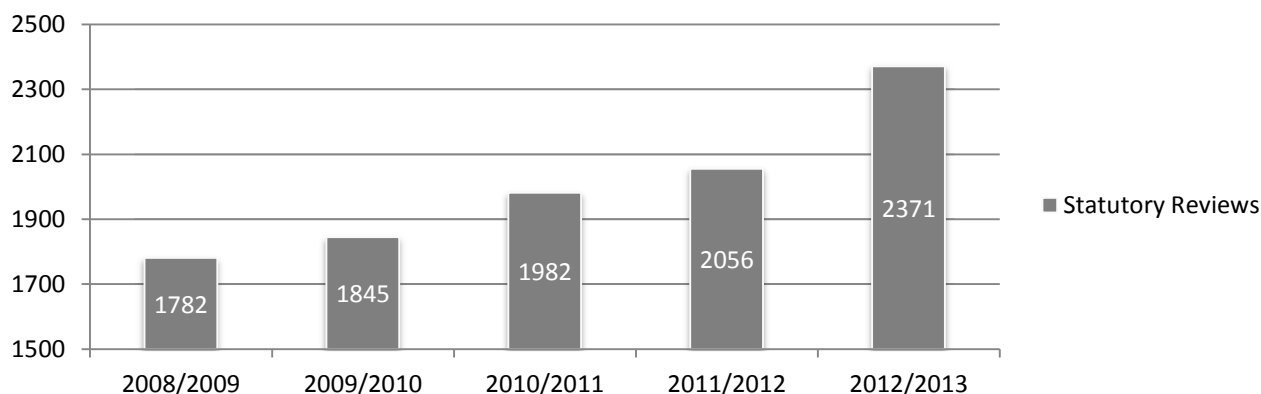
### Graph 1 Applications Received v Applications Finalised – A 5 year comparison

Over the 5 year period, 2008/09 – 2012/13, the increase in total application received was 26.6%.  
Over the 5 year period, 2008/09 – 2012/13, the increase in total applications finalised was 23.8%.

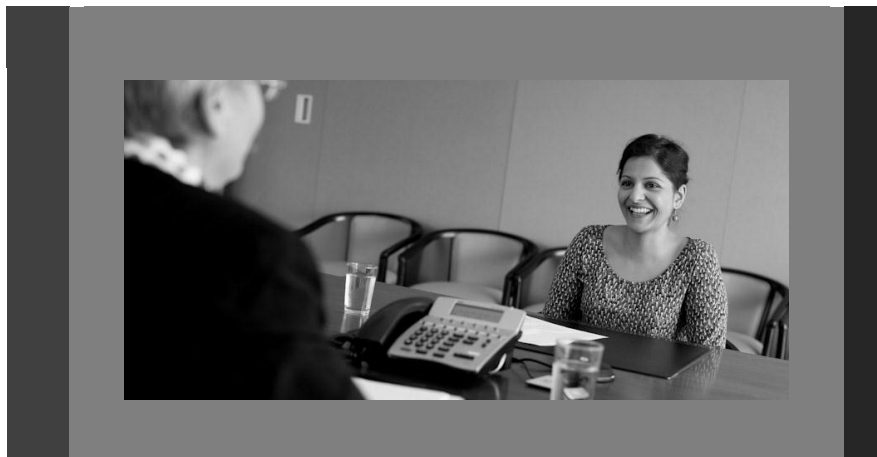
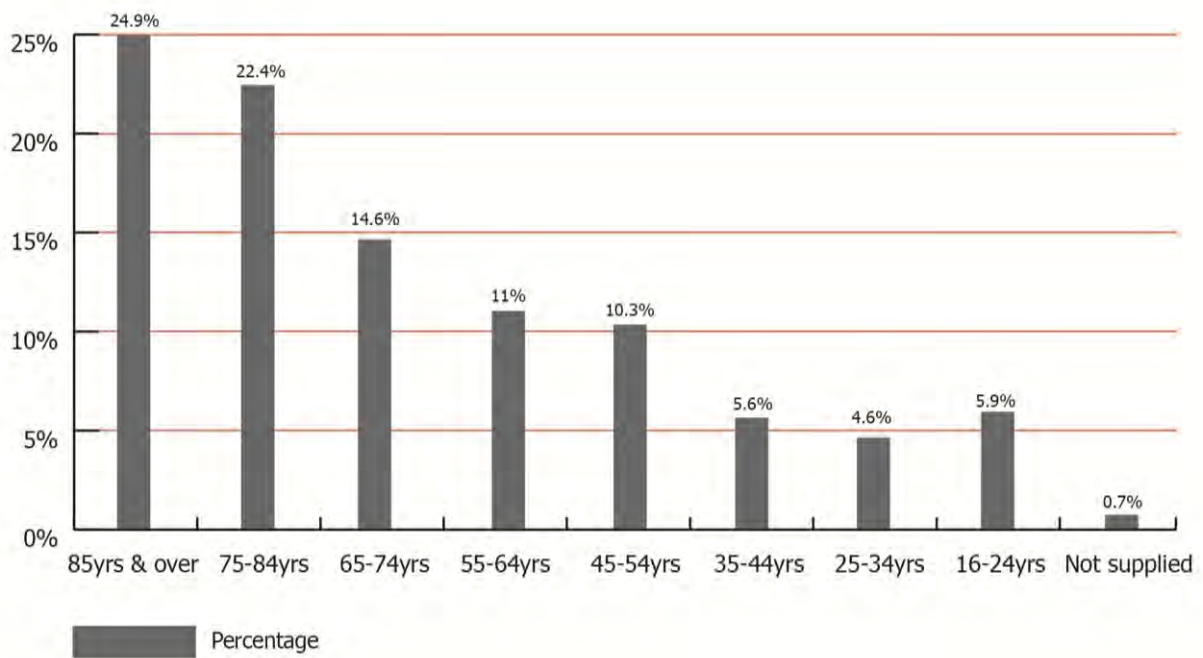


### Graph 2 Statutory Reviews Finalised – A 5 year comparison

Over the 5 year period, 2008/09 – 2012/13, the increase in the total number Statutory Reviews finalised was 33%.



**Graph 3 Age demographic of people the subject of applications to the Tribunal in 2012/2013**





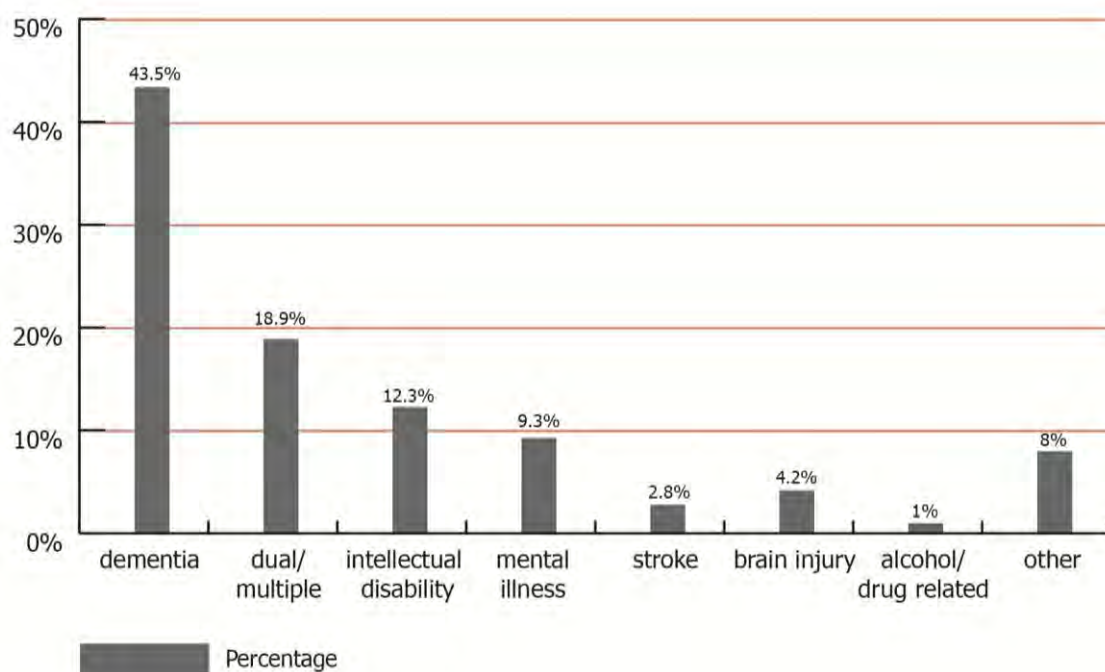
## People for whom applications were made by age, gender and disability

Out of the applications received this year 51% were for females and 49% were for males. Consistent with the ageing of the population 72.8% of applications were for people who were 55 years or older.

Dementia is the most frequently identified disability in applications for guardianship and financial management, requested reviews of guardianship and financial management orders and end of term reviews of guardianship orders. It is anticipated that the impact of the ageing of the population and increasing incidence of dementia will contribute to growth in applications for reviews of enduring guardianship appointments and reviews of enduring powers of attorney. Applications for people with other disabilities affecting their capacity to make decisions including mental illness, intellectual disability, stroke and brain injury comprise 28.6% of applications received this year.

In the new financial year the Tribunal will review its application forms to assist applicants to better provide information about the disability of the person about whom the application is made at the time of lodgment. This will assist the Tribunal to capture and report this data and to plan for the impact of the ageing of the population and the increasing incidence of dementia on its workload.

**Graph 4 Disability reported in applications received by the Tribunal in 2012/2013**



The Tribunal has revised the scope and method of statistical reporting and has extracted data relating to dementia from the category 'dual disability'. Caution should be exercised in comparing data in this report with those in previous annual reports.

## Hearings by the Tribunal

In 2012/2013 the Tribunal conducted 7,021 hearings over 2,039 sittings. This year the Tribunal heard an average of 5.0 matters per sitting and 1.46 matters per hearing. These hearings concerned 6,905 people with decision making disabilities.

The Tribunal also operates an after hours service to respond to urgent applications which need to be heard outside normal business hours. Sixty of the hearings conducted this year were held after hours.

This year the Tribunal finalised 10,648 matters. The Tribunal received 7,078 applications (excluding procedural applications) and finalised 7,197 matters. It also finalised 2,371 statutory review matters and 1,080 procedural matters.

This year 2,352 hearings dealing with 2,757 matters were conducted by single member panels and 111 hearings were conducted with the Tribunal constituted by two members.

**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 Case Management 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 and, 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 may be constituted by less than three members to determine some procedural matters.

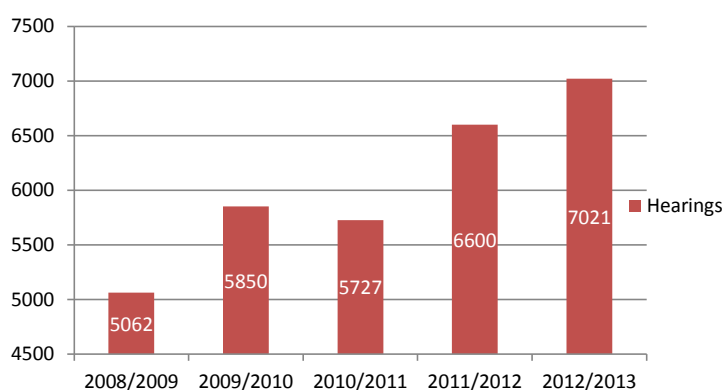
In 2012/2013 the Tribunal finalised 1,080 procedural matters. Procedural matters include applications for legal representation, applications by people seeking to be joined as a party, and requests for the Tribunal to consent to the withdrawal of an application.

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

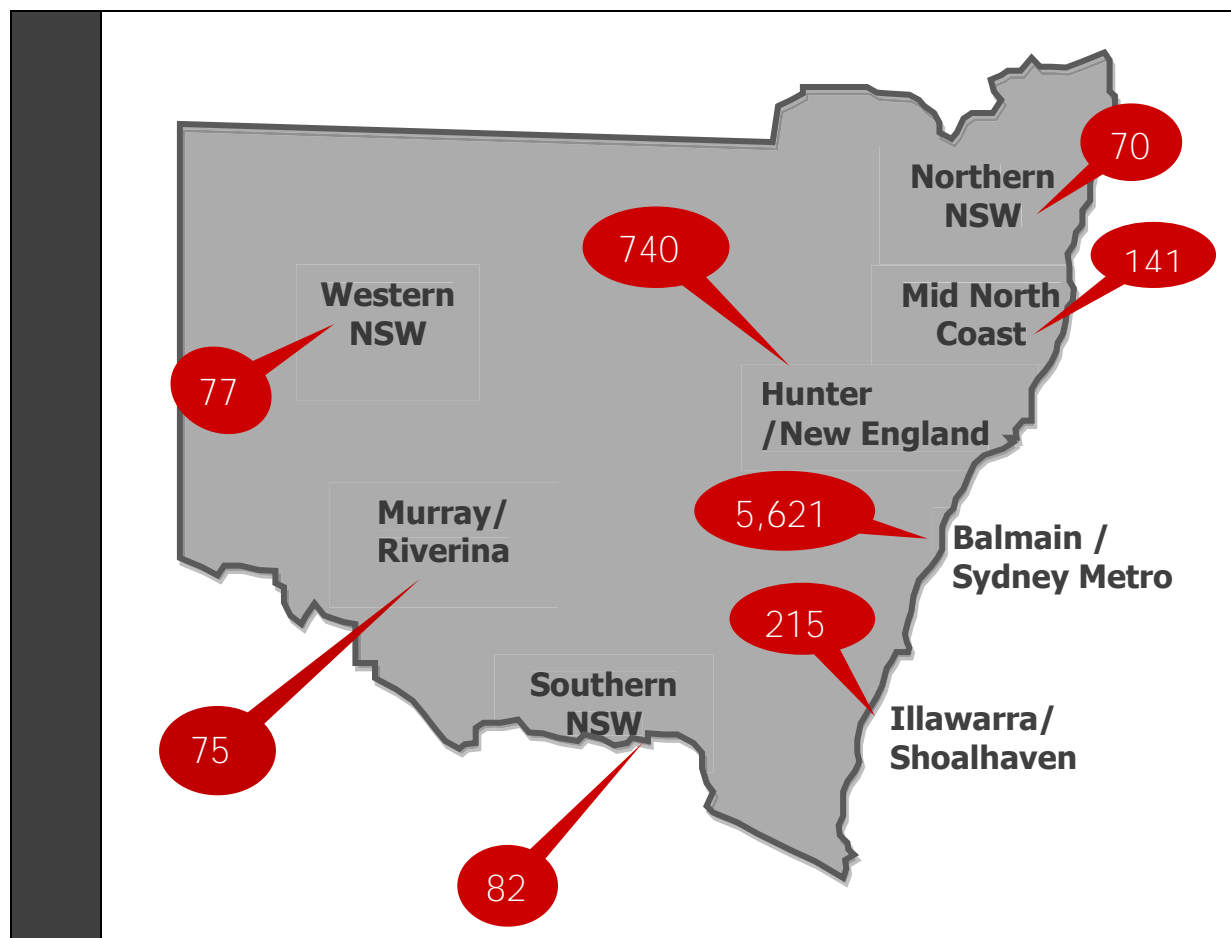
This year there were 268 applications for legal representation and representation was granted on 184 occasions. In addition, there were 258 appointments of separate representatives made by the Tribunal.

### Graph 5 Total number of hearings conducted for the years 2008/2009 to 2012/2013

Over the 5 year period, 2008/09 – 2012/13, the increase in total hearings conducted was 38.7%



## Location of Tribunal hearings throughout New South Wales



Region		Total hearings
Balmain / Sydney Metro	Balmain, Blacktown, Blue Mountains, Chatswood, Liverpool, Penrith, Sutherland, Sydney, Waterfall	5621
Hunter / New England	Armidale, Central Coast, Newcastle, Shoal Bay, Stockton, Tamworth, Taree	740
Illawarra / Shoalhaven	Nowra, Wollongong	215
Mid North Coast	Coffs Harbour, Port Macquarie	141
Murray / Riverina	Albury, Wagga Wagga	75
Northern NSW	Ballina, Lismore, Tweed Heads	70
Southern NSW	Bowral, Mittagong, Goulburn, Moruya, Queanbeyan	82
Western NSW	Dubbo, Orange	77
<b>Total hearings</b> (July 2012 - June 2013)		7,021

## Appointing guardians and financial managers

### Appointing guardians

In 2012/2013 the Tribunal finalised 5,133 applications and reviews in relation to guardianship. In 2,541 guardianship matters no appointment or reappointment was made. In these matters the Tribunal dismissed the application or the application was withdrawn with the consent of the Tribunal.\*

This year the Tribunal made 2,592 guardianship appointments. These are set out in Table 3.

Of the guardianship orders made, 36% appointed a private guardian or guardian/s, 61% appointed the Public Guardian and 3% appointed a private guardian/s and the Public Guardian with different decision making functions.

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. The Public Guardian is appointed in circumstances where a private guardian is unable to be appointed.

\*A variance of 63 arises where the Tribunal has received more than one guardianship application for a person with a disability, where those applications are heard concurrently and finalised by an order appointing the guardian/s.

**Table 3 Guardianship appointments made in 2012/2013**

	Private guardian/s including joint and alternate appointments	Public Guardian	Private and Public Guardian appointment (separate decision making authority)
<b>New appointments</b>	547	805	30
<b>Requested review appointments</b>	33	103	5
<b>Statutory review appointments</b>	337	640	29

## Appointing financial managers

This year the Tribunal finalised 3,715 applications and reviews in relation to financial management. In 1,512 matters no appointment was made because the Tribunal dismissed the application or because the application was withdrawn with the consent of the Tribunal.

This year the Tribunal made 2,149 financial management appointments.\* The financial management appointments made by the Tribunal in 2012/2013 are set out in Table 4.

Of the financial management appointments made this year, 40% of orders appointed a private manager or managers and 60% appointed the NSW Trustee and Guardian. The NSW Trustee and Guardian 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 and Guardian.

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\*A variance of 54 arises where the Tribunal has received more than one financial management application for a person with a disability, where those applications are heard concurrently and finalised by an order appointing a financial manager/s.

**Table 4 Financial management appointments made in 2012/2013**

	Private managers including joint appointments	NSW Trustee and Guardian
New appointments	777	1179
Requested review appointments	70	100
Statutory ordered/own motion review appointments	8	15

## Reviewing orders

In addition to hearing new applications the Tribunal may review the guardianship and financial management orders it has made.

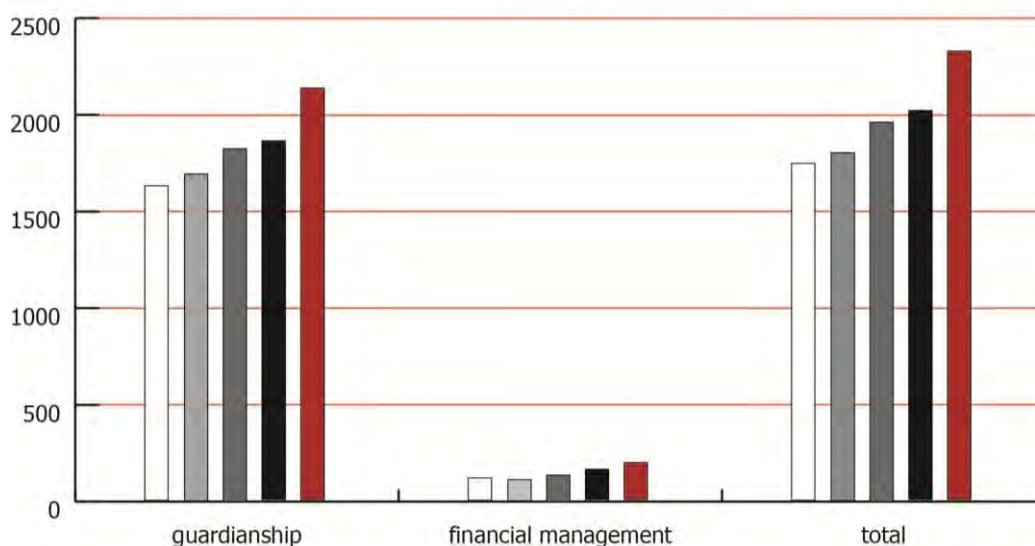
**Statutory reviews of guardianship orders** – an automatic review conducted close to the end of the term of the order to determine whether guardianship is still necessary and, if so, whether the order should be renewed with the same terms as the previous order or different terms to reflect any change in the circumstances of the person the subject of the order. The Tribunal can also decide to end the guardianship order if there is no further need for the order.

**Tribunal ordered reviews of financial management orders** – a review ordered by the Tribunal to be undertaken within a period of time as set out in the order.

**Requested reviews of guardianship and/or financial management orders** – a review at the request of the person who is the subject of the order or someone with a genuine concern for the welfare of that person where the applicant believes there is relevant new information, a change in the person's circumstances or the initial order is not working in the best interests of the person.

**Own motion reviews** – a review initiated by the Tribunal

**Graph 6 Statutory reviews – five year comparative caseload statistics for statutory or Tribunal ordered reviews for the years 2008/2009 to 2012/2013**



		Totals
<span style="display:inline-block; width:15px; height:15px; background-color:red; border:1px solid black;"></span>	2012/2013	2,319
<span style="display:inline-block; width:15px; height:15px; background-color:black; border:1px solid black;"></span>	2011/2012	2,012
<span style="display:inline-block; width:15px; height:15px; background-color:grey; border:1px solid black;"></span>	2010/2011	1,962
<span style="display:inline-block; width:15px; height:15px; background-color:lightgrey; border:1px solid black;"></span>	2009/2010	1,799
<span style="display:inline-block; width:15px; height:15px; background-color:white; border:1px solid black;"></span>	2008/2009	1,742

**Table 5 Requested reviews – five year comparative caseload statistics for requested reviews for the years 2008/2009 to 2012/2013**

	2008/2009		2009/2010		2010/2011		2011/2012		2012/2013	
Application	Received	Finalised	Received	Finalised	Received	Finalised	Received	Finalised	Received	Finalised
Requested review of guardianship	205	212	232	233	217	218	230	219	244	245
Requested review of financial management	337	338	374	373	504	416	539	602	544	548
<b>Total</b>	<b>542</b>	<b>550</b>	<b>606</b>	<b>606</b>	<b>721</b>	<b>634</b>	<b>769</b>	<b>821</b>	<b>788</b>	<b>793</b>

## Outcomes of all guardianship and financial management reviews this year

### Guardianship reviews

The Tribunal finalised a total of 2,128 statutory reviews of guardianship orders and 245 applications requesting a review of a guardianship order.

The outcomes of matters finalised at hearing can be seen in Table 6 below.

In 18.1% of review matters finalised at hearing, the guardianship order was renewed and not varied; in 37.9% of matters the order was renewed and varied; while in 39.3% of matters the order was not renewed as it was determined that there was no longer a need for an order. In 3.6% of matters a non reviewable order was made and 1.2% of matters were withdrawn or dismissed at hearing.

**Table 6 Outcomes of all guardianship reviews finalised at hearing for 2012/2013**

	Order confirmed / renewed and not varied	Order confirmed /renewed and varied	Order revoked / lapsed	Non reviewable order made	Withdrawn /dismissed
Statutory review – guardianship	343	601	756	70	N/A
Requested review – guardianship	18	157	30	1	23
<b>Total</b>	<b>361</b>	<b>758</b>	<b>786</b>	<b>71</b>	<b>23</b>



## Financial management reviews

The Tribunal finalised a total of 191 Tribunal ordered reviews of financial management orders and 548 applications requesting a review of financial management orders.

The outcomes of matters finalised at hearing can be seen in Table 7 below.

In 34.4% of review matters finalised at hearing, the financial management order was confirmed or varied; in 21.7% of matters the manager was replaced; in 26.4% of matters the order was revoked; in 3.5% of matters the Tribunal made a reviewable order, 14% of matters were withdrawn or dismissed at hearing.

**Table 7 Outcomes of all financial management reviews finalised at hearing for 2012/2013**

	Order confirmed/varied	Order revoked	Manager replaced	Reviewable order made	Withdrawn / dismissed	Review declined
Tribunal ordered/own motion review – financial management	113	37	7	12	0	N/A
Requested review – financial management	120	142	140	12	92	3
<b>Total</b>	<b>223</b>	<b>179</b>	<b>147</b>	<b>24</b>	<b>92</b>	<b>3</b>

## Recognition of appointments

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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 2012/2013 the Tribunal received 42 applications for recognition. The Tribunal determined 42 applications.

The Tribunal also reviews these orders. During 2012/2013 the Tribunal finalised 19 reviews of recognition of guardianship appointments and 33 reviews of recognition of financial management appointments.

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## Applications for the approval of clinical trials

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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

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

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.

- Only people who have the condition to be treated may be included in the clinical trial.
- There are no substantial risks to the patient or no greater risks than those posed by existing treatments.
- 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.
- The treatment has been approved by the relevant ethics committee.
- Any relevant National Health and Medical Research Council guidelines have been complied with.
- 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 medical 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 or friend 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 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 2012/13 financial year, the Tribunal received eight applications for the approval of a clinical trial. There were two applications pending from the previous financial year. The Tribunal approved five applications and did not approve one application. One application was withdrawn and three applications are pending.

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

## Clinical Trials 2012/2013

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'
Protocol: NAI114373 – A Phase III international, randomised, double blind, double dummy study to evaluate the efficacy and safety of 300mg or 600mg of intravenous zanamivir twice daily compared to 75mg of oral oseltamivir twice daily in the treatment of hospitalised adults and adolescents with influenza.	• Westmead Hospital	Withdrawn	N/A
SOLACE 2: A Randomized, Single Blind, Placebo Controlled, Phase II Study of Half Molar Sodium Lactate Infusions to Improve Neurological Outcome in Out of Hospital Cardiac Arrest	• Nepean Hospital	Approved	Yes
PULSE STUDY: CS001: A Feasibility Study: A Safety Evaluation of the Use of Magnetic-guided Iron Particles Administered to Patients Suffering Acute Ischemic Stroke and Treated with Tissue Plasminogen Activator (tPA)	• John Hunter Hospital	Not Approved	N/A
BTD-001 DS102: A Phase IB, Double-blind, Randomized, Placebo-Controlled, Parallel Group Study of the Safety, Tolerability, Preliminary Efficacy and Pharmacodynamics of BTD-001 in Young Adults and Adolescents with Down Syndrome (Protocol No. BTD-001 DS102)	• Neuroscience Research Australia	Pending	
ENCHANTED: Enhanced Control of Hypertension and Thrombolysis Stroke Study	• Royal Prince Alfred Hospital • John Hunter Hospital • Gosford Hospital	Royal Prince Alfred and John Hunter Hospital - Approved	Yes
CL2-38093-012: Efficacy and safety of 3 doses of S38093 (2, 5, and 20 mg/day) versus placebo, in co-administration with donepezil (10 mg/day) in patients with moderate Alzheimer's Disease. A 24-week international, multi-centre, randomised, double-blind, placebo-controlled phase IIb study. Protocol No.: CL2-38093-012	• Calvary Mater Newcastle • Prince of Wales Hospital • Central Coast Neuroscience Research, Gosford	Approved	Yes
STOP-AUST: The Spot sign and Tranexamic acid On Preventing ICH growth - Australasia Trial	• John Hunter Hospital • Gosford Hospital • St Vincents Hospital • Royal Prince Alfred Hospital • Westmead 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'
EXTEND-IA: Extending the time for Thrombolysis in Emergency Neurological Deficits - Intra Arterial	<ul style="list-style-type: none"> <li>• John Hunter Hospital</li> <li>• Royal North Shore Hospital</li> </ul>	Approved	Yes
Mayflower Road Study: A phase II, multicenter, randomised, double-blind, parallel-group, placebo-controlled study to investigate the efficacy and safety of R0460252 added to the background therapy of the acetylcholinesterase inhibitors donepezil or rivastigmine in patients with moderate severity Alzheimer's Disease - BP28248	<ul style="list-style-type: none"> <li>• St Vincents Hospital</li> <li>• Central Coast Neuroscience Research, Gosford</li> <li>• Southern Neurology, Kogarah</li> </ul>	Pending	
TASTE: HMRI2012101 Phase III. Tenecteplase versus Alteplase for Stroke Thrombolysis Evaluation (TASTE) Trial.	<ul style="list-style-type: none"> <li>• John Hunter Hospital</li> <li>• Gosford Hospital</li> <li>• Royal North Shore Hospital</li> <li>• St Vincents Hospital</li> <li>• Royal Prince Alfred Hospital</li> <li>• Liverpool Hospital</li> <li>• Westmead Hospital</li> </ul>	Pending	

## Appeals from decisions of the Tribunal

Decisions of the Tribunal may be appealed to either the Administrative Decisions Tribunal of New South Wales ('the ADT') or to the Supreme Court. There are some decisions of the Tribunal, such as decisions about medical treatment, which cannot be appealed to the ADT. The Supreme Court can also hear appeals from any decision of the Guardianship Tribunal. Only parties to the proceedings before the Guardianship Tribunal can appeal.

### Appeals to the Administrative Decisions Tribunal

There were four appeals received during the previous financial year that remained pending as at 30 June 2012. Those four appeals were finalised: three were dismissed and one was withdrawn.

There were seventeen appeals lodged at the ADT against decisions of the Tribunal during the current financial year. Eight appeals were dismissed, five appeals were withdrawn and four appeals are still pending.

**Table 8 Appeals to the Administrative Decisions Tribunal against Guardianship Tribunal decisions from 2008/2009 to 2012/2013**

	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013
Appeals pending from previous year	6	3	5	3	4
New appeals	19	19	13	11	17
Appeals withdrawn	9	4	1	1	6
Appeals dismissed	6	9	9	6	11
Appeals upheld	7	4	5	3	0
Pending at year end	3	5	3	4	4

### Appeals to the Supreme Court

There was one appeal received during the previous financial year that remained pending as at 30 June 2012; that appeal was dismissed during this financial year. There were five appeals from decisions of the Tribunal lodged with the Supreme Court for this financial year; three were dismissed and two are pending.

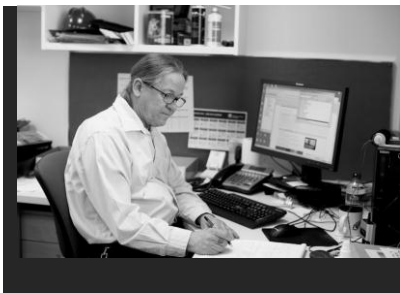
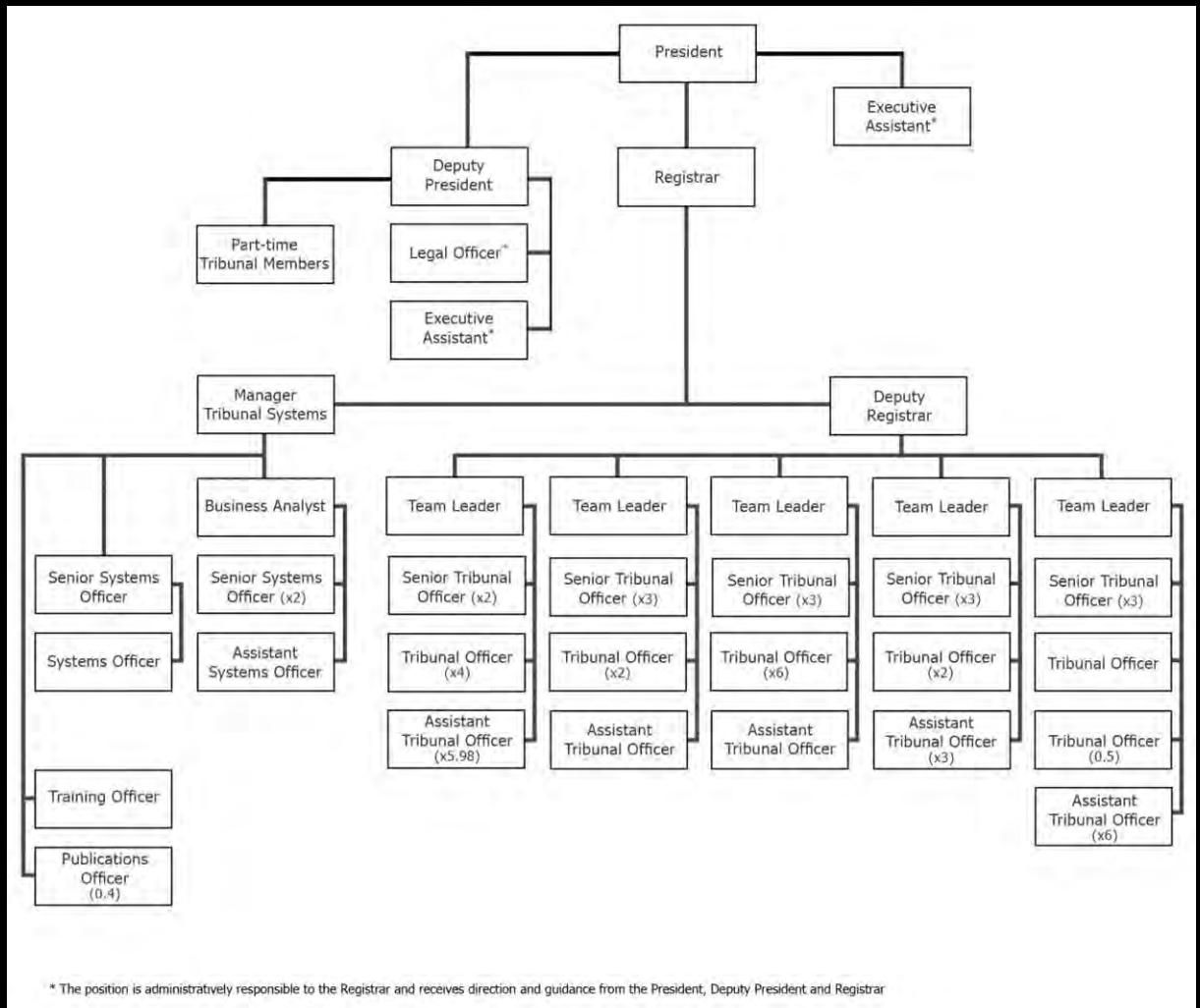
**Table 9 Appeals to the Supreme Court against Guardianship Tribunal decisions from 2008/2009 to 2012/2013**

	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013
Appeals pending from previous year	2	2	2	3	1
New appeals	2	3	4*	4	5
Appeals withdrawn	0	0	0	2	0
Appeals dismissed	2	3	2	2	4
Appeals upheld	0	0	1	2	0
Pending at year end	2	2	3*	1	2

\* This data has been revised following an audit and caution should be exercised in comparing data in this report with that in the previous year.

# Appendix 1

## Organisational chart



# Appendix 2

## Tribunal members



### **President – Mr Malcolm Schyvens**

Mr Schyvens was appointed as the President of the Guardianship Tribunal in September 2011. He was previously the Deputy President of the Tribunal having commenced in that role in October 2008. During his appointment as Deputy President, Mr Schyvens had been the Acting President of the Tribunal from May to September 2010 and again from February to August 2011.

Prior to his appointment in New South Wales, Mr Schyvens was a part time legal member of the Guardianship Board of Tasmania and a member of the Forensic Tribunal (Tas). He was also the President of the Law Society of Tasmania, Managing Partner, Ogilvie Jennings Solicitors (Hobart) and a Director of the Centre for Legal Studies (Tas).

Mr Schyvens 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. He currently holds the position of Vice Convener of the Council of Australasian Tribunals (COAT), NSW Chapter, and is a member of the Elder Law and Succession Committee of the Law Society of NSW.

He 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.



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### **Deputy President – Ms Sue McIlhatton** (to February 2013)

Ms McIlhatton was appointed as a full time legal member and a full-time Deputy President of the Guardianship Tribunal on 20 February 2012.

Prior to her current appointment She was a full time member of the Consumer Trader and Tenancy Tribunal. Ms McIlhatton has been a Deputy District Registrar of the Federal Court of Australia (NSW) and also a Judicial Registrar of both that Court and the Federal Magistrates Court. She was appointed as a Member to the Refugee Review Tribunal at its inception and subsequently became a Senior Member of that Tribunal. Prior to these appointments Ms McIlhatton held a range of positions as a solicitor at the Legal Aid Commission of NSW.



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### **Part time Deputy President – Ms Christine Fougere** (April 2013 – present)

Ms Fougere was appointed as a legal member of the Guardianship Tribunal in 2006 and was appointed as a part time Deputy President in April 2013. She had previously been appointed in the role of Deputy President during 2010. Ms Fougere is also a legal member of the Mental Health Review Tribunal.

Ms Fougere worked as the Deputy Director of Legal Services at the Australian Human Rights Commission, lectured in discrimination law at the University of Western Sydney and has worked in private legal practice both in the UK and in Western Australia.

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





**Part time Deputy President – Ms Jan Redfern** (April 2013 – present)

Ms Redfern was appointed as a legal member of the Guardianship Tribunal in August 2010 and was appointed as part time Deputy President in April 2013. She is also a Senior Member of the Commonwealth Administrative Appeals Tribunal and an independent consultant in governance, risk and compliance.

**Ms Redfern has over 30 years' legal experience in private practice and public service.**

She is a former partner of Hunt & Hunt Lawyers and has been a member of various professional and conduct committees, including the law committees of the Institute of Company Directors and Chartered Secretaries. Ms Redfern was a senior executive with the Australian Securities & Investments Commission for nearly 10 years and in 2007 she was awarded a Commonwealth Public Service Medal for outstanding public service in the field of corporate and financial services regulation.

Ms Redfern was admitted to practice in 1983. She holds degrees in law and economics from the University of Sydney, with a Master of Laws having been conferred in 1990.

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## Legal members

### **Robyn Bailey**

Solicitor and Mediator. Part time Member, Consumer Trader and Tenancy Tribunal. Mediator Workers Compensation Commission. Local Court arbitrator. **Over 20 years' experience acting for people with** acquired psychological and/or brain injury. Director of Explore Solutions Pty Ltd, a national alternative dispute resolution practice. Accredited specialist in personal injury law (NSW Law Society) and a member of the NSW Law Society's panel of mediators. Former Deputy Chair of the Board of Directors of the Brown Nurses, a Sydney based charity serving primarily those with mental illness.

### **Angela Beckett**

Solicitor and clinical psychologist. Experience in private legal practice and in a community legal centre. Extensive background in service provision to persons with a disability, including managing services for persons with an intellectual disability and developing a volunteer respite program for carers of persons with dementia. Qualifications and experience in alternative dispute resolution. Member of the Social Security Appeals Tribunal and the Consumer Trader and Tenancy Tribunal. Reviewer for the Office of the Legal Services Commissioner. Former Member of the Mental Health Review Tribunal, the National Disability Review Panel, Residential Tenancy Tribunal and the Child Support Review Office.

### **The Hon. Jennifer Boland AM**

Jennifer Boland was admitted as a solicitor in 1982. She was a partner in the firm Corrs Chambers Westgarth. Between 1998 and 1999 she was appointed as an Acting Judge of the District Court of New South Wales. In 1999 she was appointed a Judge of the Family Court of Australia, and in 2004 was appointed a member of the Appeal Division of the Family Court of Australia. On her retirement from the Court in February, 2011 she was appointed Adjunct Professor of Law at the University of Sydney. She is the past Chair of the Family Law Council, a former member of the Legal Services Tribunal, and the Legal Profession Advisory Council and is the current Chair of the NSW Nursing and Midwifery Tribunal.

### **Rhonda Booby**

Solicitor who has had lengthy prior experience in a range of positions in NSW Corrections, including as a psychologist and administrator with responsibility for issues related to the welfare and rehabilitation of offenders, including those with disabilities. Ms Booby established the Restorative Justice program in NSW Corrections and is the legal member of the Justice Health Human Research and Ethics Committee. She is also a member of the Mental Health Review Tribunal.

### **Susan Burns**

Ms Susan Burns was admitted to practice in 1980, having completed a Bachelor of Laws at the University of Sydney. She currently works at Spark Helmore Solicitors as Special Counsel, specialising in catastrophic injury claims. Prior to this Ms Burns was a partner at Abbott Tout Solicitors. Ms Burns has been involved with the Down Syndrome Association of NSW, FRANS and Family Advocacy. She has previously lectured at the College of Law in civil procedure.

### **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 and an arbitrator and mediator with the Workers Compensation Commission. Ms Connelly is a member of the Mental Health Review Tribunal, a member of the Law Society's Dispute Resolution Committee and she is on the Law Society's Panel of Mediators.

### **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 and Inaugural Chair of Steering Committee of NSW Cancer Council's Legal Referral Service.

### **John Currie**

Solicitor and University Lecturer; Consultant, Henry Davis York Lawyers, Sydney, Non-Presidential Judicial Member of NSW Administrative Decisions Tribunal sitting in the Legal Services Division. Adjunct Professor of Law, University of Sydney. Over 30 years as a solicitor in the specialised field of Financial Market Regulation, as well as practising in relation to Personal Investment Law, Estates, Financial Services and Administrative Law. **Author of major text on Financial Market Regulation. Deputy Chair of Lawyers' Assistance Programme, Inc.** Former Councillor of Law Society of NSW and Chairman of Law Society Powers of Attorney Task Force, Country Members' Assistance Programme, and Business Law Committee.

### **Jennifer D'Arcy**

Solicitor with experience in private legal practice, particularly in family law and community legal centres. Extensive Tribunal experience and currently a **member of the Social Security Appeals Tribunal, the Mental Health Review Tribunal and a senior member of the Veterans' Review Board.** Former reviewer for the Child Support Review Office and the Independent Protection Assessment Office (the latter, reviewing claims made by asylum seekers arriving by boat).

### **Robert Green**

Solicitor with over 30 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 with a variety of Tribunal experience, including as the inaugural President of the NSW Community Services Appeals Tribunal and as a Compensation Commission Arbitrator and Mediator. She has been Presiding Member of the Guardianship Tribunal since 2002 and Deputy President from February 2007 to June 2008. She has practised at a NSW Bar and as a consultant in evaluation and administrative decision making, particularly in the tertiary education sector and lectured in family and administrative law at UTS. She has had extensive involvement in the NGO sector, including as Chair of the Boards of the NSW Council of Social Services and Women's Legal Services Ltd.

### **Barbara Hughes**

Ms Barbara Hughes was admitted as a solicitor in 1998. She is a part time legal member of the Mental Health Review Tribunal. Prior to this, Ms Hughes was a solicitor at the Legal Aid Commission, including 18 months as a Legal Aid representative at the NSW Drug Court. She was also a criminal law duty solicitor at NSW local courts. Ms Hughes has a Masters in Law from the University of London.

### **Anthony 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. Director of the Professional Program and Clinical Lecturer in the School of Law at the University of Newcastle.

### **Carol McCaskie, AM**

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. Ms McCaskie also has a Masters Degree in Law majoring in Dispute Resolution.

### **Jillian Moir**

Qualifications in law and psychology. Many years' experience as a conciliator/mediator in various jurisdictions. Currently a part time legal member of the Social Security Appeals Tribunal, member of the Veterans Review Board and member of the Housing Appeals Committee. Specialist mediator for the NSW Administrative Decisions Tribunal, the NSW Department of Fair Trading (Strata Mediation Panel), and conciliator at the Health Conciliation Registry, as well as an accredited Family Dispute Resolution Practitioner.

### **Craig Mulvey**

Mr Craig Mulvey was admitted to practice as a solicitor in 2001 and as a barrister in 2005. He has practised in the insurance and injury compensation claims areas, as well as commercial litigation, family law, equity and anti-discrimination. Mr Mulvey is a duty barrister at the Downing Centre and participates in the Pro Bono Assistance Scheme in the District and Supreme Courts. He is also a volunteer barrister and director at the Inner City Legal Centre. Mr Mulvey has recently completed a Masters in Law at the University of Sydney and he is also a part time law lecturer at the University of New England, lecturing in Legal Principles, Corporations Law and Taxation.

### **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.

### **Tracy Sheedy**

Ms Sheedy was admitted as a Solicitor of the Supreme Court of NSW in 1987. She is currently working as a Conference Registrar at the Administrative Appeals Tribunal, and a Member of the Mental Health Review Tribunal (part time). She was formerly a Member of the Consumer Trader and Tenancy Tribunal (part time) and formerly a Member of the Social Security Appeals Tribunal. Ms Sheedy has an extensive background in the area of child protection law and alternative dispute resolution and is currently the Chair of not-for-profit organization providing support to victims of domestic violence.

### **Desmond Sheehan**

Solicitor, qualified with Bachelor of Laws from University of Queensland. Admitted to practice originally in Queensland and worked in private legal practices for 5 years in Queensland and the United Kingdom. In 1975 admitted in NSW, and worked for the New South Wales Legal Aid Commission (and its predecessors) in criminal law, family law, administrative law, and civil law in residential tenancy, residential parks and retirement village litigation, as well as a solicitor/advocate in applications to the Protective Division of the Supreme Court. Former member of NSW ministerial consultative committees involving reform of legislation for residential tenancies, residential parks and retirement villages. Previously a full time member of the Residential Tenancies Tribunal and its successors from 1997 to 2005. Currently a part time member of the Consumer, Trader and Tenancy Tribunal.

### **Bernard Shipp**

Lawyer. Experience as a solicitor in mainly criminal, family and welfare law with Legal Aid and Community Legal Centres. Past member of the Consumer Trader and Tenancy Tribunal, Social Security Appeals Tribunal and the Child Support Review Office. 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. Accredited LEADR-trained mediator, Family Dispute Resolution Practitioner.

### **James Simpson**

Solicitor, mediator and systemic advocate. Senior advocate, NSW Council for Intellectual Disability and Presiding Member, Mental Health Review Tribunal. Formerly, solicitor in private practice, first principal solicitor, Intellectual Disability Rights Service and deputy president, Community Services Appeals Tribunal. Recipient of Justice Medal 2001 – Law and Justice Foundation New South Wales.

### **Stamatia Stamatellis**

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

### **Bill Tearle**

Has been a member of the Tribunal since 2004. He was appointed as a part time Deputy President for a four month period from May 2010, and again from 28 February to 31 December 2011. 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.

## Professional members

### **Uldis Bardulis**

Dr Uldis Bardulis is a general medical practitioner, who graduated with Bachelor of Medicine, Bachelor of Surgery from the University of NSW. He is currently a part time consultant psychiatrist at Wollongong Community Hospital and at Braeside Hospital, specialising in psychogeriatrics. Prior to this Dr Bardulis was the Psychiatric Registrar at Braeside Hospital and Shellharbour Hospital. He has also been the Acting Area Director of Medical Services for the Illawarra Area Health Service and Assistant to the Chief Medical Officer of NSW.

### **David Barker**

Mr Barker is an accredited social worker working in an independent counselling, social work and psychology business on the South Coast of NSW. He is also a part time Member of the Social Security Appeals Tribunal, a Member of the Tasmanian Mental Health Tribunal, a past authorised visitor at the NSW Trustee and Guardian, a contract counsellor and group program facilitator with the **Veterans and Veteran's Families Counselling Service, authorised clinician with the NSW Children's Court Clinic and an accredited mental health worker** with WorkCover NSW, Medicare Enhanced Primary Care and the Medicare Mental Health Care Program.

### **Ivan Beale**

Holds degrees of MSc and PhD in Psychology. Visiting Senior Fellow in School of Psychology, UNSW. Formerly Associate Professor of Psychology and Director of Learning Assessment Centre at University of Auckland. Extensive experience in assessment and rehabilitation of learning problems. Member of Mental Health Review Tribunal, NSW. President and Chair of Aftercare.

### **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**

Consultation-Liaison Psychiatrist working in the public sector with the medically ill and their families. Particular interest in epilepsy and other neurological disorders. Formerly a Rehabilitation Physician specialising in traumatic brain injury.

### **Michelle Chapman**

Senior psychologist and Regional Manager with NGO Disability Services Australia. Close family member with a congenital sensory disability. Experience and expertise in behaviour intervention and assessment for individuals with disabilities and dual diagnosis. Works with children, adolescents and adults who display challenging behaviours and at risk behaviours in school, respite, community access, accommodation and workplace settings and supports families through consultation and advocacy.

### **Helen Creasey, AM**

Dr Creasey is a geriatrician and neurologist of 30 years' standing with experience in age related brain disorders including dementia, stroke, Parkinson's disease. **Her work has included clinical practice, teaching, research and service development.**

### **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.

### **Roslyn Curran**

Ms Roslyn Curran is an accredited member of the Australian Association of Social Workers. She graduated with Honours in Social Work at the University of New South Wales. Ms Curran currently works for NSW Health working with young people with disability and frail aged in a community social work position. She has worked in aged care since 1990 and worked for Aged Care Assessment Teams between 2009 and 2010. Ms Curran has led monthly Dementia information sessions and carer support groups. She has also worked at the NSW Huntington Disease Service.

### **Sharon Flanagan**

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

### **Julie Garrard**

Senior social worker 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.

### **Sabina Holldack**

Dr Holldack obtained a Bachelor of Physiotherapy from the University of Queensland in 1988. In 1993, she obtained a Bachelor of Medicine and Bachelor of Surgery from the University of Tasmania and a Bachelor of Medical Science in 1990. Dr Holldack has worked in Mental Health since 1998, including many years of employment as a Psychiatry Registrar in the public hospital sector. She is currently employed part time as Career Medical Officer at Wesley Private Hospital in Ashfield, which provides inpatient treatment for eating disorders, affective disorders and psychotic disorders, personality disorders and drug and alcohol detoxification.

### **Jean Hollis**

Jean Hollis is a Fellow of the Royal Australian and New Zealand College of Psychiatrists and a member of the Faculty of Psychiatry of Old Age. She is appointed as a psychiatrist member of the Mental Health Review Tribunal. Dr Hollis has published peer reviewed articles analysing the risk of death for those older than 65 years dispensed antipsychotic medications. She was awarded a MPhil in Public Health. Dr Hollis has written consultancy reports concerning the mental health of older people for the Department of Veterans Affairs and NERTAC.

### **Gail Jamieson**

Dr Jamieson is a specialist geriatrician, currently working in private practice. Main practice focus is community care, providing comprehensive geriatric assessments, with interests in dementia, frailty, and advanced care planning.

### **Claudia Kennedy**

Ms Claudia Kennedy is a qualified rehabilitation counsellor. Ms Kennedy was employed at the Commonwealth Rehabilitation Service, assisting people with disability to gain employment and participate in the Community. Ms Kennedy was previously employed with Ageing, Disability and Home Care as the manager for Commonwealth State Negotiations and prior to this as the manager for the Home and Community Care (HACC) program. Ms Kennedy was also a lecturer in rehabilitation counselling at Sydney University.

### **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.

### **Katherine Martin**

Ms Katherine Martin is a clinical neuropsychologist, having completed a Masters in Neuropsychology from The University of Melbourne. Ms Martin currently works at Macquarie Hospital and War Memorial Hospital, specialising in psychogeriatrics and geriatric rehabilitation. Ms Martin is also completing postgraduate studies in Clinical Psychology. Ms Martin is an adjunct clinical supervisor at Macquarie University and is involved in research into psychosis and dementia.

### **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.

### **Marie Matheson**

Ms Matheson has a Bachelor of Arts (Psychology) and a Master of Arts Hons. (Clinical Neuropsychology). She has an Associate of Education, a certificate in ADR Mediation Training from Harvard University, and has completed a Masters Qualifying Course in Clinical Psychology. Ms Matheson has a lengthy employment history in Clinical Psychology and Clinical Neuropsychology, most recently was employed by the Family Court of Australia providing child-focused interventions in respect of pre-trial and post-trial stages of court proceedings. She is a member of the Australian Psychological Association and a member of the College of Clinical Neuropsychologists. She was a recipient of a Churchill Fellowship for her work in the area of brain injury rehabilitation.

### **Jane McAuliffe**

Ms McAuliffe has worked as a Clinical Neuropsychologist since 1987 in both private and public health settings and at present is employed at Hornsby Kuring-Gai Hospital and Mt Wilga Private Hospital. She is a Member of the Australian Psychological Society and the College of Clinical Neuropsychologists. Ms McAuliffe is currently undertaking a Doctorate of Clinical Neuropsychology.

### **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 Mental Health Review Tribunal. Currently completing a Doctorate of Clinical Neuropsychology in the area of Decision Making Capacity. Extensive experience in the assessment of dementia, stroke, epilepsy and capacity.

### **Tony Ovadia**

Has over 40 years' experience in public mental health, disability and generic community services. Her last psychology job in the public sector was as Manager of Central Sydney Area Health Service Boarding House Team. She has also worked for the NSW Ombudsman. Tony is a member of the Australian Psychological Society and its College of Clinical Psychologists and works part time in private practice with a wide range of clients including refugees, migrants and people with mental illness. She also works one day a week at an Aboriginal Medical Service. She has been involved extensively with the non-government sector and is interested in integrated and comprehensive service for people with disabilities.

### **Melanie Oxenham**

Melanie Oxenham is a social worker with extensive experience in the disability and aged care sectors. Melanie previously worked for the Public Guardian for 15 years in a variety of roles, including project manager for the planning ahead tools website. Melanie was formerly an Official Community Visitor and is a part time teacher in community services at TAFE. Melanie has an ongoing interest in decision making capacity and is currently involved in a supported decision making pilot.

### **Robyn Rayner**

Social worker with **over 40 years'** experience. Ms Rayner has diverse experience as a social worker, having worked with indigenous communities and youth in family restoration programs. Over the past 12 years, she has worked primarily 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. Supervises clinicians working with complex clients.

### **Suzanne Stone**

General practitioner. Member of the Mental Health Review Tribunal. Published in the field of pre-senile dementia. Extensive current **experience in all areas of general practice including: women's health, chronic disease management, management and assessment of dementia and treatment of mental health problems.** Family experience in a wide variety of disabilities including physical disability, cognitive impairment and mental health disorders.

### **Susan Taylor**

Social worker. Experience in the provision of mental health case management and crisis services in the community. Former manager of a 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.

### **Lizbeth Tong**

Principal Psychologist Mental Health Services, Sydney & South West Sydney Local Health Districts; Member Psychology Tribunal of NSW; Member, Clinical & Forensic Colleges of the Australian Psychological Society; A/Fellow British Psychological Society; Member, World Health Organisation Global Clinical Practice Network Internet Based Field Studies for the International Classification of Mental and Behavioural Disorders; List of Experts, International Criminal Court, The Hague.

### **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.

### **Phoebe Williams**

Dr Phoebe Williams graduated with a Bachelor of Medicine, Bachelor of Surgery (Honours) at the University of Sydney in 2008 and has since worked in adult medicine with a focus in psychiatry at St Vincent's Hospital, before moving over to Sydney Children's Hospital where she is currently based and is specialising in Paediatrics. Prior to her medical studies, Dr Williams worked as a therapist for children with profound autism and developmental disability after her graduation from the Australian National University with a Bachelor of Commerce and Bachelor of Science (Psychology). She has also completed a Masters of Global Health Science (International Public Health) at the University of Oxford as a Clarendon Scholar. Dr Williams has worked in many settings across the **globe since founding the NGO 'Hands of Help' which has worked in Uganda and Kenya to enhance education and health care standards, as well as remote Indigenous Australia.**

### **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 person centered planning for people with challenging behavior. Lecturer in Disability Studies and Community Services, qualified workplace trainer and accredited mental health first aid instructor. Extensive experience working with and advocating for people with intellectual disabilities, psychiatric disabilities and acquired brain injuries in community and educational **settings. Recipient Premier's Award for Excellence in Working with People in Boarding Houses.** Former State Manager DET & TAFENSW Disability Services.

### **Melanie Wroth**

Geriatrician. Working as Staff Specialist in Aged Care at Balmain and Royal Prince Alfred Hospitals. Consultant to Medical Board of Australia (previously NSW Medical Board), sitting as Panel or Committee Member in Performance Assessment, Professional Standards Committee and other hearings. Occasional Member of Medical Tribunal. Clinical tutor and examiner of medical students at University of Sydney and University of Notre Dame. Examiner with Australian Medical Council.

### **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.



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## Community members

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### **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 provides support for people with locked-in syndrome.

### **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**

Ms Cootes has social work and adult education qualifications. She is currently the Executive Officer of the Intellectual Disability Rights Service. Ms Cootes has extensive experience working with people with an intellectual disability in community and residential settings. She has been an Official Community Visitor visiting residential services and a member of the NSW Police Disability Advisory Council. Ms Cootes was on the staff of the Guardianship Tribunal for 12 years from its beginning in 1989.

### **Vanco Djoneski**

Advocate for people from non-English speaking backgrounds with all types of disability. Personal experience of accessing the human and disability service system. Extensive experience in assessing needs for people with disability and networking with relevant services for solutions to their issues.

### **Faye Druett, OAM**

Ms Faye Druett has personal experience of disability, as she has had a physical disability herself since early childhood. Ms Druett also has experience of intellectual disability and mental illness through being the Guardian of a woman with dual diagnosis for over 15 years. Ms Druett has been involved in the disability and guardianship sectors for over 30 years working primarily across all disability types. She has worked in federal and state government agencies and the non-government sector in positions which covered the areas of service provision, policy development, executive management, the administration of legislation and her passion of advocacy and capacity building of people with disability.

### **Belinda Epstein-Frisch, AM**

Ms Belinda Epstein-Frisch is the parent of a woman with disability. She holds a masters degree in Social Work and has more than 35 years' experience in negotiating to remove barriers and enhance opportunities for people with disability to have good lives. Ms Epstein-Frisch undertakes the systemic advocacy work for the Institute for Family Advocacy and Leadership Development, is a Member of the National Disability and Carer Council, the National Disability Strategy Implementation Reference Group and is a Director of the Supported Living Network. She led the Disability Safeguards Coalition for 10 years and has been an adviser to the NSW and Australian Governments through membership of reference groups in the areas of children's services, disability policy, education and law reform.

### **Jane Fraser, AM**

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.

### **Catherine Gerloff**

Ms Gerloff is the mother and carer of a 32 year old daughter with Downs Syndrome. Ms Gerloff has had extensive experience in advocating, supporting and lobbying for services and support for people with disabilities. Ms Gerloff was a member of the foundation committee and first president of Macarthur Disability Services in South West Sydney. She is a current Director on the Board of Management of Macarthur Disability Services. Ms Gerloff held a range of senior positions in the NSW Public Service. She holds a Bachelor of Education and is a registered family dispute resolution practitioner.

### **Maree Gill**

Social worker and sociologist. Lived experience of disability. Extensive experience in human rights, social justice and equity, especially **disability, homelessness, women's health, supported accommodation, mental health. Family experience of mental illness and dementia.** Former Associate Lecturer of medical students, research consultant and past member, NSW Administrative Decisions Tribunal. Ms Gill is a consumer member of community advocacy and disability organisations.

### **Fiona Given**

Ms Fiona Given has a Bachelor of Arts and a Bachelor of Laws. Ms Given worked as a Policy Officer for the Australian Centre for Disability Law. Prior to this, Ms Given worked at the Crown Solicitor's Office as a paralegal in the Community Law Practice Group and then acting solicitor for the Torts/Service Practice Group on the Bushfire Project. Ms Given has also worked as an intern at Interights, the International Centre for the Protection of Human Rights, in the Equality Programme. Ms Given runs her own consultancy firm doing disability related research and training and is a board member for People with Disability Australia and for the Independent Living Centre of NSW.

### **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 human services consultant. Has a Masters of Public Health and a Certificate in Alternative Dispute Resolution and is a member of the Mental Health Review Tribunal. Established Charmian Clift Cottages and was former Deputy Director of Mental Health Service at St Vincent's Hospital Sydney. Has extensive experience in mental health, alcohol and other drug disorders, HIV/AIDS homelessness and innovative supported housing services. 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, community services sector and disability services in New South Wales as well as state and federal agency experience in complaints handling with aged and disability services. A board member of the Intellectual Disability Rights Service for the last six years.

### **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.

### **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**

Teacher consultant and community welfare worker with adults with an intellectual disability. Former quality assessor in aged care services in New South Wales. Extensive experience in child protection and out of home care. Currently working as a senior investigator with Community Services. Family experience of dementia and mental illness.

### **John Le Breton**

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

### **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.

### **Robert Zoa Manga**

Dr Manga's qualifications include Bachelor of Medicine, Bachelor of Surgery, Beijing Medical University; MPH, MHSM, University of New South Wales, and he is a current PhD student, Sydney University. Robert is President of Spinal Talk Inc, a support group for people with spinal cord injury, Vice-President of People with Disability Australia, Member Reference Group of Sydney University Faculty of Health Sciences Australian ICF Disability & Rehabilitation Research Program.

### **Leonie Manns**

Lived experience of mental health issues and long-standing consumer advocate in the field of disabilities. Former chair of the Disability Council of New South Wales. Family experience of dementia. Ms Manns is also a member of the Mental Health Review Tribunal, Board member for Centre of Research Excellence for Mental Illness and Substance Abuse, University of New South Wales and guest lecturer at University of Technology Sydney in the Faculties of Nursing and Law.

### **Michael McDaniel**

Member of the Wiradjuri Nation of NSW, Professor of Indigenous Education and Director of Jumbunna Indigenous House of Learning at the University of Technology, Sydney. Former member of the NSW Mental Health Review 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.

### **Kath McLean**

Parent of son with developmental disability. Family experience of dementia. Engaged with multiple disability associations. Interested in protecting the rights of individuals with intellectual disabilities. Qualified accountant with over 15 years of experience in the public and private sectors.

### **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.

### **Edwina Pickering**

Ms Edwina Pickering currently works as a consultant in the health and community sectors, including as Review Co-ordinator for Quality Management Services and developing frameworks for new mental health programs for ACON, Carers NSW and the Western Australian Association of Mental Health Services. Ms Pickering has also worked with the Mental Health Association of NSW as Acting Chief Executive Officer and Deputy CEO. She has also worked at the NSW Ombudsman and at the Community Services Commission. Ms Pickering is currently a board member for the Intellectual Disability Rights Service. She has a Master of Arts (International Relations) from Deakin University and a Bachelor of Social Work from the University of NSW.

### **Lyn Porter**

Parent of a child with a disability. Previously worked in the areas of child protection, sexual assault and domestic violence. Currently appointed as an Official Community Visitor. Qualifications in Social Science.

### **Meg Smith OAM**

Dr Smith is a community psychologist and a fellow of the Australian Psychological Society. She is a registered psychologist and outreach counsellor with Veterans and Veterans Families Counselling Service. Her doctoral research focussed on the social and psychological impact of bipolar disorder. Previously associate professor at the University of Western Sydney teaching and researching in social policy, community mental health, counselling and youth work. Dr Smith has personal and family experience of bipolar disorder and depression. She has been a member of numerous government and community advocacy and policy groups in the mental health and disability areas since 1980 including the National Suicide Prevention Advisory Group and the Disability Advisory Council of Australia. Meg is currently president of the Mental Health Association of NSW and a part time member of the Mental Health Review Tribunal.

### **Margaret Spencer**

Social worker. Project Officer at Intellectual Disability Rights Service and Honorary Research Fellow in the Australian Family and Disability Studies Research Collaborative (AFDSRC) at the Faculty of Health Sciences, University of Sydney. Previous experience providing health and welfare services to marginalized individuals in the inner city of Sydney. Doctoral research on the needs of parents with intellectual disability. Family and social experience with people with disability.

### **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.

### **Margaret Watson**

Background in social welfare and psychotherapy with experience in community development work and 22 years in disability services. Worked for 22 years in the guardianship sector. Former member with 12 years' experience on the Social Security Appeals Tribunal. Former Official Visitor under the Mental Health Act 2007. Currently working with acquired brain injury and spinal cord injury patients through injury management.

### **Anne Whaite**

Wide experience in the disability sector in both government and non-government organisations with qualifications and experience in dispute resolution. Past member of the Mental Health Review Tribunal and the NSW Administrative Decisions Tribunal. Past president of the Western Sydney Intellectual Disability Support Group. and 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.

The following persons ceased to be Tribunal members during the reporting period:

**Michelle Chapman** (Professional Member)

**Maree Gill** (Community Member)

**Sabina Holldack** (Professional Member)

**Gordon Lambert** (Community Member)

**Carol Logan** (Community Member)

**Kath McLean** (Community Member)

**Robert Quickenden** (Legal Member)

**Desmond Sheehan** (Legal Member)

**John Woodforde** (Professional Member)

# Appendix 3

## The history of the Guardianship Tribunal



Guardianship Board staff 1991

The Guardianship Tribunal has played an important role in promoting and protecting the human rights and welfare of citizens living with a cognitive disability and ensuring the rights, protections and principles of the UN Convention are put into effect.

Throughout the past twenty four years the Guardianship Tribunal has been a leader in the guardianship jurisdiction both in Australia and internationally. It has been the model for guardianship systems introduced in other places. The Tribunal has made a very significant contribution to the lives of people with disabilities, their families and service providers. In 1998 Hong Kong introduced a guardianship system based on the NSW model and the Tribunal was involved in training of the Guardianship Board members in Hong Kong

The Tribunal has played a major role in promoting awareness and understanding of the role of the Tribunal in the community. The history of the Tribunal outlined on the following pages highlights our focus on the interests and rights of people with cognitive disabilities.





*Bijou Building in Balmain became home to the Guardianship Tribunal in 1992*

*The Tribunal has made a very significant contribution to the lives of people with disabilities, their families and service providers. In 1998 Hong Kong introduced a guardianship system based on the NSW model and the Tribunal was involved in training of the Guardianship Board members in Hong Kong.*

## **In the beginning . . .**

**1984**

- A working party was established to develop new guardianship legislation for NSW

**1987**

- *The Disability Services and Guardianship Act 1987* was enacted



**1989**

- 1 August 1989 the *Guardianship Act* came into effect establishing the Guardianship Board
- Legislation was enacted with the support of all major political parties
- The Guardianship Board commenced operations on 1 August 1980– becoming the third guardianship tribunal to be established in Australia
- Mr Roger West was appointed President and Mr **Nick O'Neill** was appointed Deputy President



*Mr Roger West  
President  
1989-1991*



*Mr Nick O'Neill  
Deputy President  
1989 – 1993*

**1989 -  
1991**

- 57 part time Tribunal members, 38 full-time staff
- 4,988 applications received over two years
  - 47.2% of applications concerned people with an intellectual disability
  - 33.8% of applications concerned people with dementia
  - 11.3% of applications concerned people with a brain injury
  - 5.6% of applications concerned people with a mental illness
- 2,920 orders were made: 31% guardianship, 15% financial management, 37% medical/dental consents

**1992**

- Guardianship Board moved from Glebe to its current premises in Balmain
- Over 100 community education sessions were presented
- Published booklet: *Behaviour Management and Adults with Intellectual Disability: The Role of the Guardianship Tribunal*
- 33% increase in telephone enquiries from the previous year
- A resource kit *Guardianship: A Balancing Act* was developed and published



*Mr Vern Dalton, then Director of Department of Community Services, The Hon. Mr John Hannaford MLC, then Minister for Community Services and Health with Mr Roger West, then President and Mr Nick O'Neill, then Deputy President of the Guardianship Board at the opening of the new Balmain premises, shown on the left.*

**1993**

- *The Disability Services and Guardianship Act* was amended and became the *Guardianship Act 1987*
- Guardianship Board hosted the 2<sup>nd</sup> National Guardianship Conference in Sydney
- The brochure '*What is the Guardianship Board?*' was translated into 10 community languages



*A hearing of the Guardianship Board*



*Guardianship Board reception area*



*Staff at the Guardianship Board*



## 1994

- Mr Nick O'Neill was appointed as President
- *Guardianship (Amendment) Act 1993* commenced on 1 February giving the Board jurisdiction in relation to financial management without the need for a guardianship application
- The definition of *person responsible* was extended and clarified
- Applications for people with dementia represent the vast majority of applications to the Board



Mr Nick O'Neill  
President  
1994 – 2004



Registry Branch - 1994



Community Education

## 1995

- Ms Marion Brown was appointed Deputy President in May
- 13 new Board members were appointed
- An increase in applications due to a major Boarding House project



Ms Marion Brown  
Deputy President  
May 1995 – Feb 2007

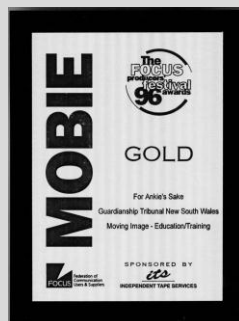
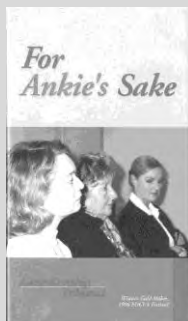


## 1996

- The Guardianship Board, the Office of the Public Guardian and then Office of the Protective Commissioner conducted regional seminars to explain the roles of the three organisations.
- The Guardianship Board participated in a Ministerial taskforce about the use of psychotropic medication in nursing homes

## 1997

- Guardianship Board's first award winning video *For Ankie's Sake* was launched
- Commenced an information technology upgrade and the development of a new case management system
- 7% increase in financial management applications from previous year



## 1998

- 2 February, Guardianship Board renamed the Guardianship Tribunal
- Enduring guardianship was introduced enabling people to appoint an enduring guardian to make decisions in the event that they lost capacity
- The Tribunal's jurisdiction was changed to enable it to make flexible financial management orders excluding parts of the person's estate from management

- Guardianship Tribunal given jurisdiction to determine whether to approve clinical trials which involve people with decision making disabilities



Then Tribunal President, Mr **Nick O'Neill** (left), then Minister for Disability Services **the Hon Faye Lo Po'**

(centre), and then Deputy President, Ms Marion Brown (right) at the inauguration of the Guardianship Tribunal in February, 1998.

## 1999

- The Tribunal celebrated 10 years of operation
- 4,533 new applications and 3,613 hearings
- Guardianship Tribunal is able to appoint separate representatives for people with cognitive disabilities to allow their interests to be represented at hearings
- *Guardianship Act* amended to recognise same sex couples in the hierarchy of *persons responsible*
- Guardianship Tribunal co-hosted the 7<sup>th</sup> national Guardianship Tribunal Conference in Sydney
- Guardianship Tribunal provided training and assistance to the newly established Guardianship Board of Hong Kong



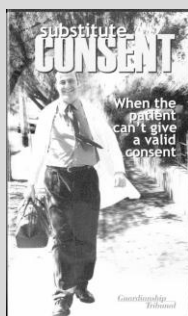
Director of the then Office of the Public Guardian, Mr John LeBreton (fourth from left) and then President of the Guardianship Tribunal, Mr Nick O'Neill (fifth from left) with the then Assistant Director, Social Welfare Department, (sixth from left) and other representatives of the Hong Kong's Social Welfare Department (1999).

## 2000

- The Guardianship Tribunal launched its new disability accessible website
- A new electronic client management system was installed
- Guardianship Tribunal acquired jurisdiction under the *Children and Young Persons (Care and Protection) Act 1998* to consent to special medical treatment for children under 16 years of age

## 2001

- The Tribunal launched its second award winning video, *Substitute Consent*



## 2002

- A new Corporate Plan was developed
- The Tribunal commenced a case processing and structural review
- Conducted a survey of applicants, guardians and financial managers
- Conciliation project trialled
- The Tribunal launched its third award winning video, *In their Best Interests*



## 2003

- *Guardianship Amendment (Enduring Guardians) Act 2002* came into effect on 1 January
- Guardianship Tribunal decisions may now be appealed to the Administrative Decisions Tribunal
- 15% increase in enquiries from previous year



*Mr Nick O'Neill and Ms Marion Brown, holding the award, with the video production team of Ms Edna Wilson, Ms Sienna Brown and Ms Cathy Miller with the 2003 Intercom award for the Tribunal's video 'In Their Best Interests'*



## 2004

- *Powers of Attorney Act 2003* came into effect giving the Tribunal jurisdiction to review enduring powers of attorney
- Launch of new website, February 2004



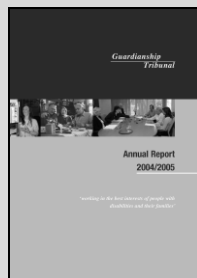
*The then Minister for Ageing and Disability, the Hon. Carmel Tebbutt, launching the Tribunal's new website. New website home page pictured to the left*

## 2005

- February 2005 Ms Diane Robinson was appointed President



*Ms Diane Robinson  
President  
Feb 2005 – Feb 2011*



## 2006

- 5,428 new applications, increase of 9.3% from previous year
- More than 143,000 visits to Tribunal website

## 2007

- Ms Robin Gurr was appointed Deputy President in February 2007



Ms Robin Gurr  
Deputy President  
Feb 2007 – June 2008

- Amendments to the *Guardianship Act* allow the Tribunal to be constituted by fewer than three members to hear review matters and applications for consent to major medical treatment
- Application forms are redesigned to assist applicants in making an application and understanding the information the Tribunal requires to determine the application

## 2008

- Mr Malcolm Schyvens was appointed Deputy President in October 2008
- Guardianship Tribunal released 3 DVD set of its videos, *For Ankie's Sake*, *Substitute Consent* and *In Their Best Interests*
- 18 July 2008 The United Nations Convention on the Rights of Persons with Disabilities was ratified

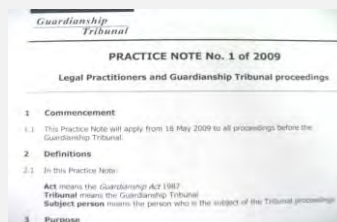


Mr Malcolm Schyvens  
Deputy President  
Oct 2008 – Feb 2011



## 2009

- The Tribunal celebrated 20 years of operation
- 6,436 new applications, 5,062 hearings
- The Tribunal issued its first Practice Note No. 1, Legal Practitioners and Guardianship Tribunal Proceedings. This is a guide for the legal profession who are representing clients at the Guardianship Tribunal
- A major business process review of all Tribunal case management procedures and practices and a new organisational structure developed



*Guardianship Tribunal celebrated 20 years of working in the best interests of people with a disability and their families*

## 2010

- Mr Bill Tearle and Ms Christine Fougere appointed part time Deputy Presidents



*Mr Bill Tearle  
Deputy President  
May 2010 – Sept 2010 (Part time)*



*Ms Christine Fougere  
Deputy President  
May 2010 – Sept 2010 (Part time)  
April 2013 – present (Part time)*

- The *Guardianship Regulation 2010* made
- The NSW Trustee and Guardian Act 2009*, came into effect on 1 July 2009
- 7,002 new applications, 5,850 hearings, 9,006 matters finalised

## 2011

- 3 April 2011 the staff of the Tribunal were transferred from Ageing Disability and Home Care (ADHC) within the Department of Family and Community Services to the Department of Attorney General and Justice.
- On 2 June 2011 responsibility for the *Guardianship Act 1987* and the operation of the Tribunal was transferred from the Minister for Disability Services to the Attorney General and Minister for Justice.
- Mr Bill Tearle was appointed as a Deputy President for the period 28 February to 31 December 2011
- Mr Malcolm Schyvens was appointed President in September 2011



*Malcolm Schyvens, President  
Acting President Feb 2011  
Appointed President Sept 2011 – present*



## 2012

- Ms Sue McIllhatton was appointed Deputy President in February 2012
- In October 2012 the NSW Government announced it will establish a NSW Civil and Administrative Tribunal, to be known as *NCAT*. The Guardianship Tribunal **will join more than 20 of the state's tribunals and be integrated into NCAT** as its Guardianship Division.
- 7,915 new applications, 6,600 hearings, 10,152 matters finalised
- The Tribunal increased its number of hearing rooms and video conference facilities, improved accessibility, security and staff and member office facilities



*Ms Sue McIllhatton,  
Deputy President  
February 2012 – Feb 2013*



## 2013

- 92 part time Tribunal members, 64.88 full time staff
- 8,145 new applications, 7,021 hearings, 8,277 new matters finalised
- Over past five years:
  - New applications have increased by 27%
  - Hearings increased by 39%
  - Total matters finalised increased by 26%
- 2012/13, the vast majority of applications were for people with dementia – 43.5% compared to 33.8% in 1989-1991. Applications for people with intellectual disability were 12.3% compared to 47.2% in 1989-1991.
- Ms Jan Redfern and Ms Christine Fougere appointed part time Deputy Presidents



*Ms Jan Redfern  
Deputy President (Part time)  
April 2013 – present*



*Ms Christine Fougere  
Deputy President (Part time)  
April 2013 – present*

# Appendix 4

## 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 and Guardian.

**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.*



*The Guardianship Board's first premises, Bidura, a Victorian Mansion in Glebe.*





*Guardianship Board Members, 1991*



*Bijou Building in Balmain became home to the Guardianship Tribunal in 1992*





## ***Guardianship*** ***Tribunal***

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