

annual report

2003/2004

*Guardianship
Tribunal*

The Hon. Carmel Tebbutt, MLC
Minister for Disability Services
Level 25, 9 Castlereagh Street
Sydney NSW 2000

Dear Minister,

I have pleasure in presenting the Annual Report for the Guardianship Tribunal for the year ended 30 June 2003, in accordance with the *Annual Reports (Statutory Bodies) Act 1984*.

Yours sincerely



Nick O'Neill
President, Guardianship Tribunal

Principles guiding the Tribunal

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

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

ISSN 1329-2080

Copyright Guardianship Tribunal 2004.

Guardianship Tribunal
2a Rowntree Street
(Locked Bag 9)
Balmain NSW 2041

This report is copyright. People or organisations wishing to reproduce any part of this report must obtain permission from the Guardianship Tribunal.

Editor: Anita Ray

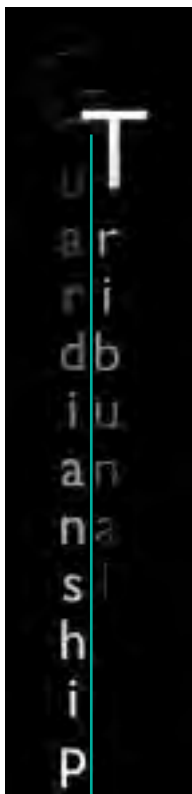
Layout and design: Anita Ray

Photography: Martin Brady

Printed by: Robert Burton Printers

Contents

President's Report	2
The First 15 Years	4
About Us	12
Tribunal members	12
Tribunal staff	12
Legislation relating to the Guardianship Tribunal	13
Organisational chart	14
What We Do	18
The role of the Guardianship Tribunal	18
How the Tribunal deals with an application	19
Our Work	20
Year in review – 2003/2004	20
Improving services	26
Appeals from decisions of the Tribunal	30
Freedom of information	31
Complaints	31
Clinical trials	32
Communicating with our Clients	34
Community awareness and education	34
Publications	34
Website	36
Award-winning videos	37
Papers presented	37
Our People	38
Tribunal staff	38
Training for staff	42
Training for Tribunal members	42
Tribunal members	43
Definitions	51





President's Message

THE YEAR 2003/2004

The financial year 2003/2004 has been the biggest year yet for the Guardianship Tribunal. During that time, the Tribunal received the greatest number of applications for a year—4,430—while, at the same time, conducting the greatest number of hearings, 3,871, and resolving many of the applications by other means. During the year, our enquiry service dealt with the greatest number of logged calls—13,316. At the same time, we introduced a new website, launched by the Minister responsible for the Tribunal, the Honourable Carmel Tebbutt, whose support of the Tribunal is appreciated greatly. The Tribunal played a major role in the development of the *Powers of Attorney Act 2003*, which came into force on 16 February 2004. This Act gave the Tribunal significant new jurisdiction to deal with problems arising from the making, operation and effect of enduring powers of attorney.

Also during the year, we continued to improve our processes of getting matters to hearing in a timely but well-prepared manner. We advanced the long-term project of using the new capabilities created by information technology to streamline the administrative processes of the Tribunal, reduce the amount of repetitive work by automating some processes, and increase the access to and the effective usability of information held in the Tribunal's databases.

These matters are taken up elsewhere in the report.

In the last 15 years there has been a growing confidence in tribunals generally and the Guardianship Tribunal in particular. The Guardianship Tribunal does its work excellently. Parties and other interested persons are assisted by the Tribunal's staff to understand the nature of the proceedings they are involved in so that they can obtain the relevant report evidence and provide their own evidence to the hearing.

The hearing panels of the Tribunal conduct their proceedings in an informal way, questioning those attending in order to draw out relevant evidence and relevant opinions about what should be done in the best interests of the person with a disability that the hearing is about. The Tribunal members and staff are committed to ensuring the procedures they follow result in a fair hearing in each case.

The overwhelming majority of those attending the hearings of the Tribunal are happy with the outcome. The Supreme Court has made almost no criticisms about how the Tribunal conducts its proceedings and it has upheld its approach to obtaining the views of the person the hearing is about in the absence of other parties and witnesses. The Administrative Decisions Tribunal has sent back for re-hearing only three matters appealed to it.

Despite its efforts, along with others, to encourage people to plan ahead and appoint their own enduring guardians and attorneys, the Guardianship Tribunal's

application rate is steadily growing, up 5.5 percent in 2003/2004. The Tribunal spent \$7.3 million to conduct its operations in 2003/2004.

THE FUTURE OF THE TRIBUNAL

The now established and well-based confidence in the Tribunal will mean that, from time to time, it will be given new jurisdiction. However, its central expertise is hearing and determining applications and reviews relating to people with decision-making disabilities. Its jurisdiction should be limited to matters where a person with a disability is at the centre of the issues under consideration.

In response to the unavoidable growth in its workload, the Tribunal will continue its policy of continuous improvement, ensuring its processes are as efficient as possible in getting matters to hearing in a timely but appropriately prepared manner. It will continue to take advantage of developments in information technology to streamline and cheapen its processes so that the financial resources given to the Tribunal by the Department of Ageing, Disability and Home Care will be used as efficiently and as effectively as possible.

Its commitment to membership training and a steady turnover of members will ensure a vigorous, well-trained, experienced and expert group of members to conduct hearings that are procedurally fair but deliver well-considered outcomes to ensure that the welfare and interests of the

person with a disability are properly provided for.

MY FINAL REPORT

I have been President of the Guardianship Tribunal for 10 years now. In all, I have served over 15 years as either President or Deputy President of the Tribunal. I have had the honour of deciding when to leave the Tribunal. I have chosen to go at the end of 2004. While I am happy with my decision, I will be sad to leave behind so many fine colleagues who make up the membership and the staff of the Tribunal. In my 15 years, I have learnt so much from them in terms of their professional expertise, their wisdom borne out of their life experience and their commitment to improving the lives of people with disabilities unable to make decisions for themselves.

While I have had the opportunity to play a central role in the establishment and development of the Tribunal over that period, I would not have succeeded in my task without the expertise, contribution and commitment of all those who have been members of the Tribunal or members of its staff during that time. It has been a great privilege to have been their leader for the last 10 years.



Nick O'Neill
President

The First 15 Years



The 2003/2004 financial year was the 15th year of the Tribunal's operation. It is appropriate to review the Tribunal's development and achievements over that period.

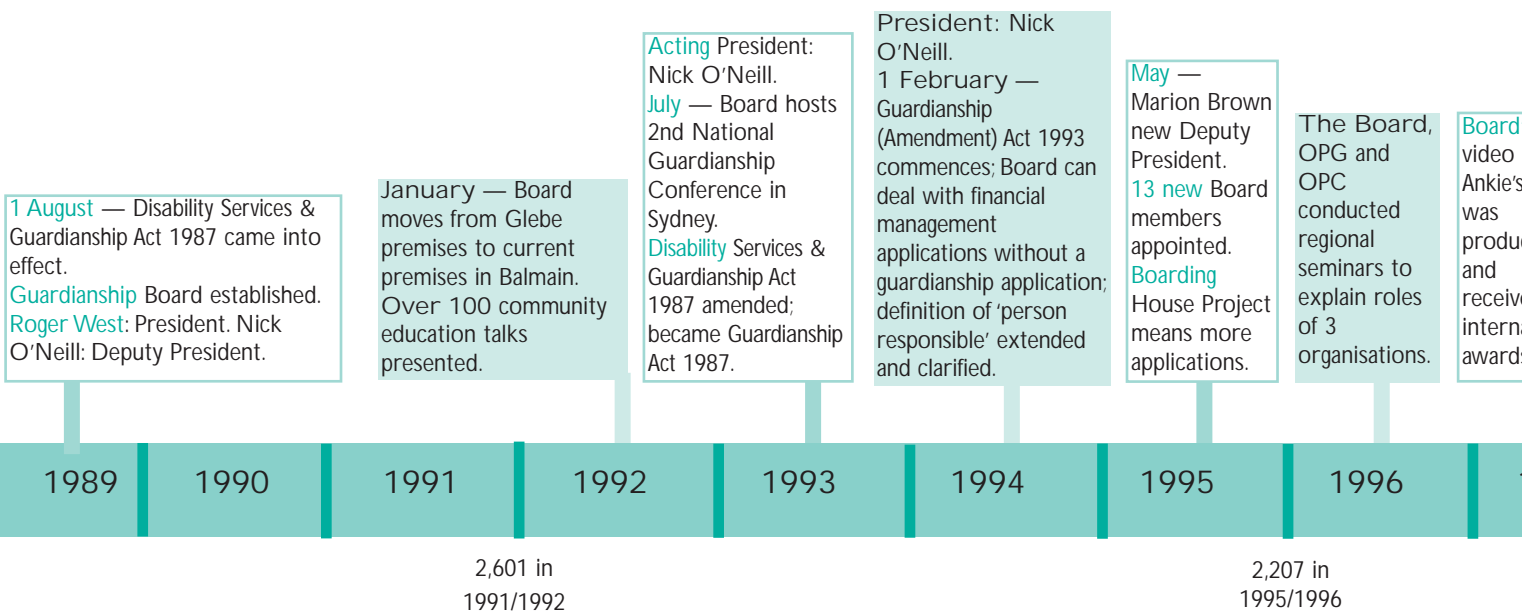
The legislation establishing the Guardianship Tribunal, then known as the Guardianship Board, came into force on 1 August 1989. That legislation was the *Disability Services and Guardianship Act 1987*, the name of which was changed to the *Guardianship Act 1987* in April 1993. The Tribunal also had jurisdiction given to it by the *Protected Estates Act 1983*.

care and treatment for people with an intellectual disability, brain damage, dementia and other non-psychiatric conditions. The legislation, in the form of the *Disability Services and Guardianship Act 1987*, was enacted on the initiative of the then Labor Government but with the support of all major political parties.

The work of creating the Tribunal as an operating organisation began in January 1989, after the election of the Greiner Coalition Government, with the appointment of Roger West as its first President. I was appointed its first Deputy President in April 1989. Jenny Owen was the Tribunal's first Registrar and first staff member. She commenced duties in 1988 and conducted the administrative work that led to the appointment of Roger West as President. During 1989, key leadership positions were established and filled. Janene Cootes and Barbara Squires became the Tribunal's first two social workers, the forerunners of what is now the Coordination

ESTABLISHMENT OF THE TRIBUNAL

In 1984, a working party was established to develop a proposal for new guardianship legislation in NSW. This followed an international trend towards modern, flexible guardianship laws but it was also a response to the serious concerns that then existed about the inappropriate use of mental health laws to obtain



2,601 in 1991/1992

2,207 in 1995/1996

new guardianship and financial management

and Investigation Unit and Lesley McGowan was appointed Deputy Registrar. As a management group, we began to develop the processes for handling the Tribunal's caseload.

Roger West and I played a key role in the recruitment of the part-time presiding, professional and community members of the Tribunal by calling for expressions of interest, interviewing many of those who expressed interest and by recommending to the Tribunal's then Minister, the Honourable Virginia Chadwick, a number of people to be appointed to the Tribunal by the Governor. (For more detail on the early history of the Tribunal, see 'Getting started', Guardianship Board NSW, *The First Two Years*, August 1991, pp. 7-8.)

The Tribunal's first headquarters was 'Bidura', the Victorian mansion in Glebe Point Road, Glebe, designed and built by the famous colonial architect Edmund

Blackett. Because the Tribunal grew quickly and needed more hearing rooms and more space for staff than available at 'Bidura', it moved in January 1992 to its present premises in Balmain.

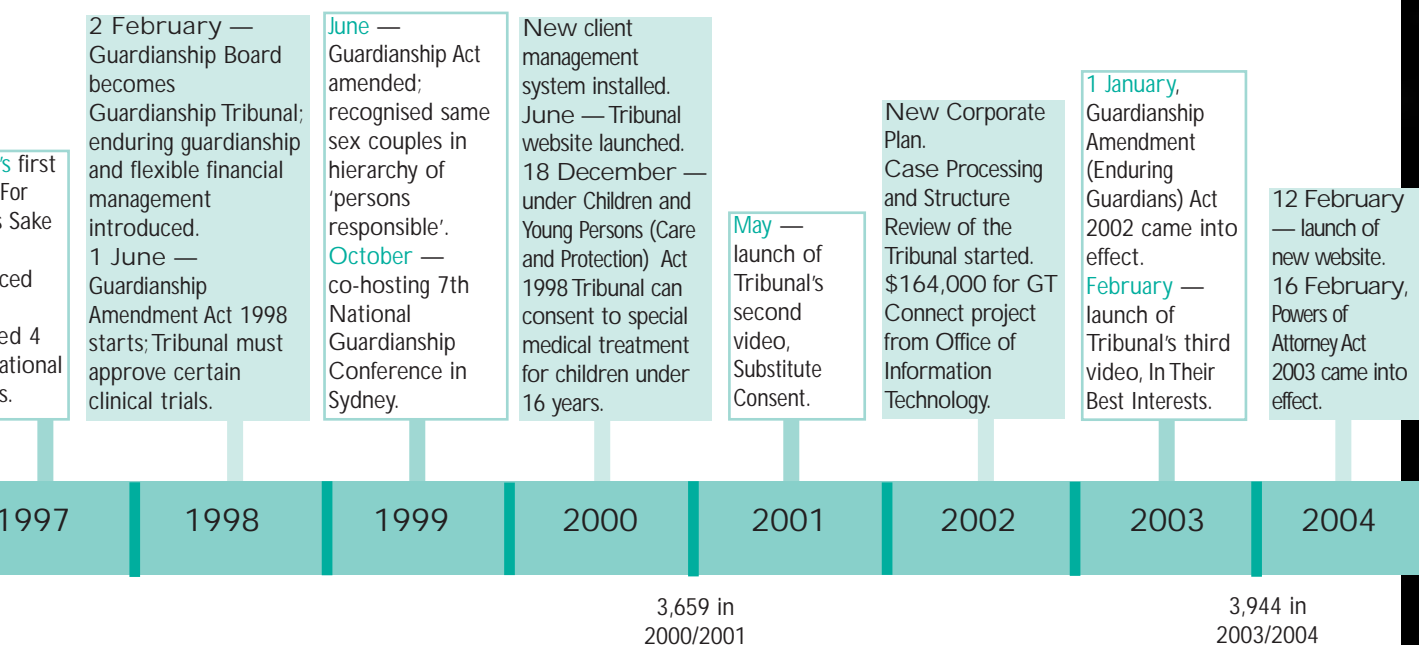
THE TRIBUNAL'S JURISDICTION EXPANDS AND ITS LEGISLATION IS STREAMLINED

When the Guardianship Tribunal began operations, its jurisdiction related to guardianship orders and it had the role (which it continues to have today) of acting as a substitute decision-maker for medical and dental treatment when a person unable to give a valid consent to their own treatment has no 'person responsible' to act as their substitute decision-maker. At this time, the Tribunal could only deal with applications for financial management orders if a guardianship order was also

applied for in relation to the same person. That requirement was dropped in 1994 when amendments to the *Protected Estates Act 1983* came into force to allow the Tribunal to deal with applications for either guardianship or financial management orders or both in relation to a person with decision-making disabilities.

This change to the Tribunal's legislation was one of the improvements made by the *Guardianship (Amendment) Act 1993* which came into force on 1 February 1994 after being enacted on a bipartisan basis. That Act also improved Part 5 of the *Guardianship Act* dealing with substitute consent to medical and dental treatment, in particular by clarifying and extending the definition of 'person responsible'.

Early in 1994, Roger West was appointed Commissioner for Community Services and I



T
a
n
d
i
b
i
u
n
s
h
i
p

became Acting President. My appointment as President of the Tribunal was confirmed in August 1994. Marion Brown was appointed the Tribunal's second Deputy President in May 1995.

In October 1994, the *Mental Health Act 1990* came into force, giving the Guardianship Tribunal the jurisdiction to give or withhold its approval of any application made by a person's guardian to have the person under guardianship admitted to a psychiatric hospital as an informal patient. The Tribunal has been called upon to exercise this jurisdiction regularly. In 1996, the Tribunal discovered that it had been given jurisdiction under the *Adoption Information Amendment Act 1995*. That Act commenced 1 September 1996. The Tribunal

has rarely been asked to exercise its jurisdiction in relation to adoption information directions.

The Tribunal's workload increased rapidly in its early years as manifested by the number of hearings the Tribunal conducted. The Tribunal conducted just under 2,000 hearings in 1991/1992. This increased to over 3,500 by 1995/1996. Since that time, it has increased steadily to 3,871 in 2003/2004.

As the Guardianship Tribunal's workload continued to increase, I took the initiative to commence the process which led to the introduction of enduring guardianship in New South Wales and played a substantial part in the development of the legislation. By appointing an enduring guardian, an adult with capacity can decide whom they want to make personal or lifestyle decisions for them if they should become incapable of

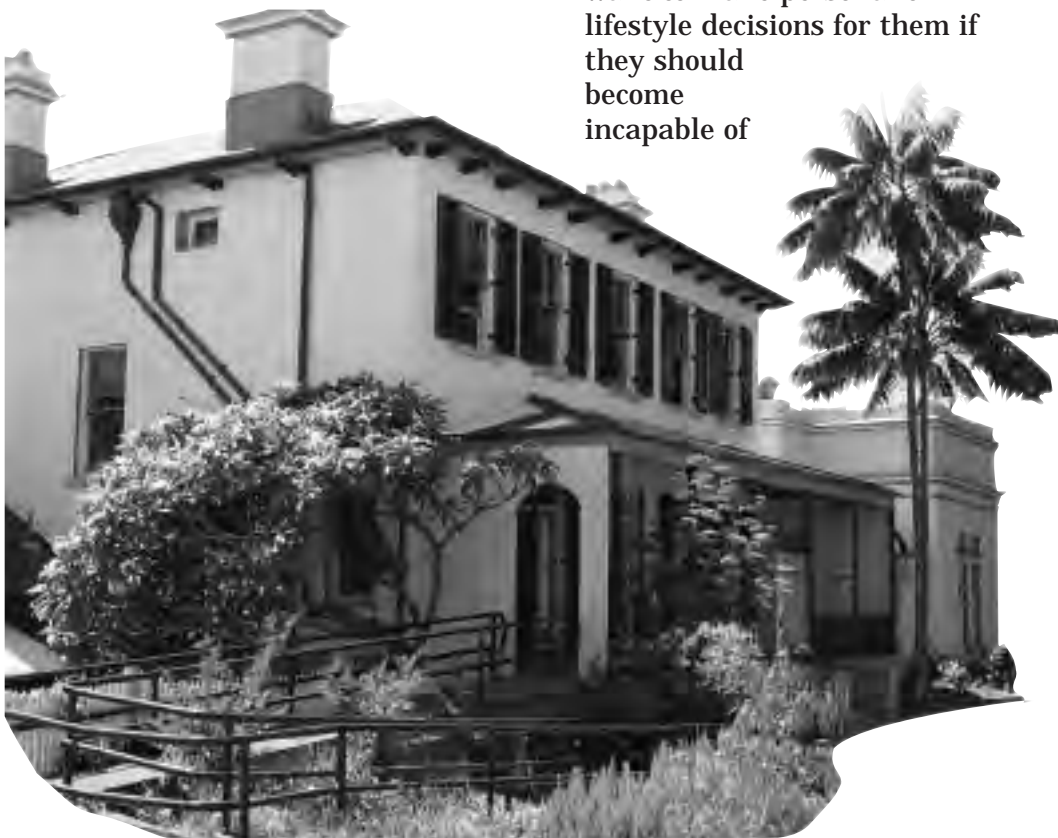
making those decisions for themselves. The idea was well supported and the *Guardianship Amendment Act 1997* providing for it passed through Parliament on a bipartisan basis. The legislation allows a person to give directions to their enduring guardian and this can be a form of advance directive about the health care the person wishes to receive if they lose the capacity to make those decisions for themselves.

Appointments of enduring guardianship are now regularly made. When people are planning ahead and getting their affairs in order, they are encouraged to appoint enduring guardians and attorneys under enduring powers of attorney as well as making or revising their wills and, if they wish, to make advance health care directives.

In the same legislation that came into force on 2 February 1998, the Guardianship Board became the Guardianship Tribunal and was given greater flexibility as to the financial management orders it could make. The provisions giving the Tribunal jurisdiction to make financial management orders was transferred from the *Protected Estates Act* to the *Guardianship Act*.

At this time, legislation was proposed to give the Tribunal a protective role to ensure that those unable to give a valid consent to their own treatment could not be included in a clinical trial unless that

Bidura in Glebe Point Road, Glebe was the first home of the Guardianship Board.



clinical trial was first approved by the Guardianship Tribunal. The Tribunal could not give its approval unless it was satisfied that a range of safeguards had been met. This legislation was seen by some as controversial and was referred to the Standing Committee on Social Issues of the Legislative Council of the New South Wales Parliament. That bipartisan committee conducted a public enquiry and then recommended unanimously that the legislation be enacted (Report No 13, Standing Committee on Social Issues, Legislative Council, New South Wales Parliament, *Clinical Trials and Guardianship: Maximising the Safeguards*, September 1997). It was enacted with bipartisan support as the *Guardianship Amendment Act 1998*. The Guardianship Tribunal is required to report annually in its annual report on the clinical trials it has approved in the previous year (see pages 32 and 33).

As from 18 December 2000, the Tribunal has had jurisdiction to deal with applications for consent to the sterilisation of children and associated matters under the *Children and Young Persons (Care and Protection) Act 1998*.

On 16 February 2004, as a result of the Green Paper on Powers of Attorney issued in 1999 on the initiative of Tony Lamb of what is now called Land and Property Information, and with input from other officers of that agency, particularly Alan King, the Public Trustee of NSW, the Attorney General's Department and the Tribunal's Deputy

President, Marion Brown, and myself, the *Powers of Attorney Act 2003* came into force. That Act provides new rules for the making of powers of attorney that give increased protection to those who make enduring powers of attorney and subsequently lose capacity. The Act also gives the Guardianship Tribunal jurisdiction to review the making, operation and effect of enduring powers of attorney. A more detailed description of the operation of the *Powers of Attorney Act 2003* is set out on pages 13 to 17.

THE TRIBUNAL'S ADMINISTRATIVE SYSTEMS BECOME ELECTRONIC

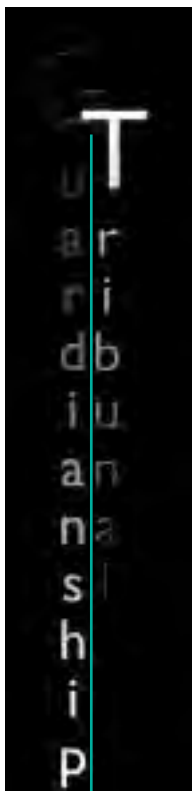
In early 2000, the Tribunal introduced its electronic client management system which greatly enhanced its ability to carry out many of its operations electronically, such as the scheduling of hearings, the production of documents including notices of hearing, orders and reasons for decision. The Tribunal has continued to automate as many of its administrative processes as possible as advances in information technology have made this possible.

THE NSW GUARDIANSHIP SYSTEM AS A MODEL FOR OTHERS

The guardianship system in New South Wales has been the model for guardianship

systems introduced in at least two other places. In 1998, Hong Kong introduced a guardianship system based on the New South Wales model and invited the then Director of the Office of the Public Guardian, John LeBreton, and myself to Hong Kong to train the members of the Guardianship Board there and the social workers and doctors likely to be making use of that Board's services. We provided that training in April 1999.

In 2000, the legislation creating the Guardianship and Administration Tribunal of Queensland was enacted based on the guardianship legislation of New South Wales. I provided to the first members of the Guardianship and Administration Tribunal of Queensland in 2000.



THE AUSTRALIAN GUARDIANSHIP AND ADMINISTRATION COMMITTEE ESTABLISHED

In 1993, together with the President of the Guardianship and Management of Property Tribunal in the Australian Capital Territory, Ron Cahill, and the then Public Guardian of Western Australia, Imelda Dodds, I set up the Interjurisdictional Committee, now known as the Australian Guardianship and Administration Committee. That Committee comprises the heads of the Guardianship Boards and Tribunals, the Public Advocates and Public Guardians and the Public or State Trustees of each state and territory and the Protective Commissioner of New South Wales.

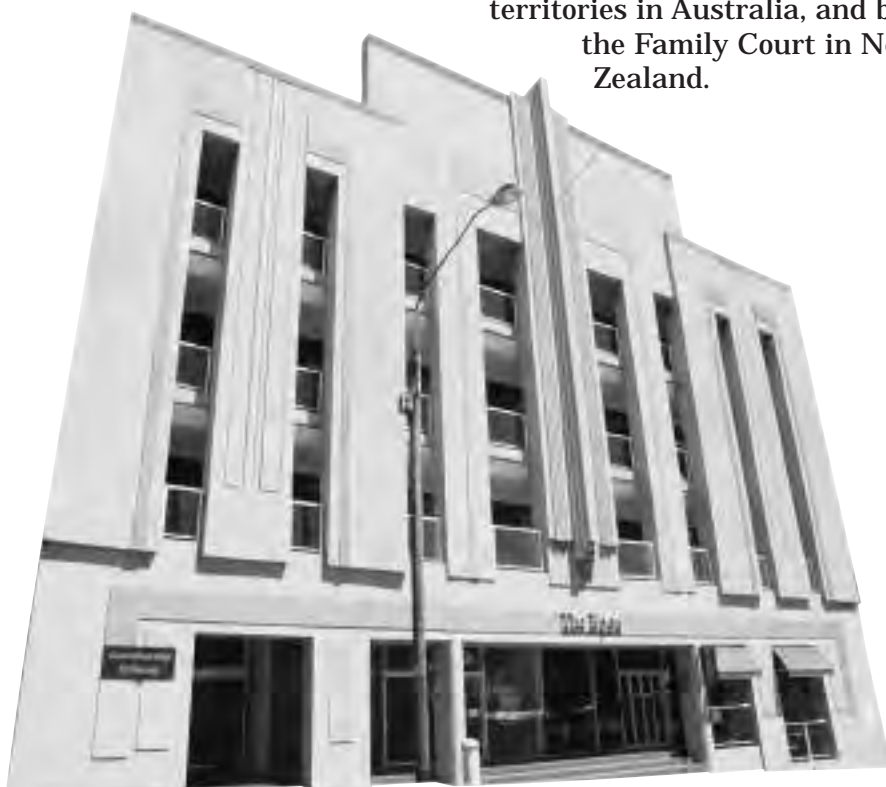
RECOGNITION OF APPOINTMENTS IN OTHER STATES AND TERRITORIES

One of the roles of the Committee has been to encourage each state and territory to recognise the appointments of guardians and financial managers of the other states and territories and to allow those appointed as enduring guardians or their equivalents or attorneys under and enduring power of attorney to be recognised in the other states and territories of Australia. New South Wales has taken a lead in this matter. The *Guardianship Amendment Act 1997* and subsequent regulations have provided for the recognition in New South Wales of guardians and financial managers appointed by the guardianship boards and tribunals in other states and territories in Australia, and by the Family Court in New Zealand.

The *Guardianship Amendment Act 2002* and subsequent regulations provide for the recognition of enduring guardians or their equivalents, appointed under the laws of other states and territories to be recognised in New South Wales. Similarly, the *Powers of Attorney Act 2003* provides for the recognition in New South Wales of enduring powers of attorney made in other states and territories.

THE TRIBUNAL'S CONTRIBUTION TO POLICY DEVELOPMENT

In the last 15 years, the Guardianship Tribunal has regularly been consulted by other government agencies on issues relevant to its jurisdiction. These issues include medical and dental consent matters, advance directives, decision-making at the end of life, behaviour management and medication for behavioural control and sterilisation of adults and children. The Tribunal has played an important support role in relation to the government's policy of encouraging senior citizens and others, through the Department of Ageing, Disability and Home Care, to plan ahead against the possibility of them losing decision-making capacity.



The Tribunal's present premises in Balmain.

COMMUNITY EDUCATION

Commencing in 1989, the President, Deputy President and staff of the Tribunal have played a major role in promoting awareness and understanding of the role of the Guardianship Tribunal, the associated bodies and other matters of importance in the lives of adults with decision-making disabilities. To this end, the Tribunal has developed a website which is both comprehensive and accessible to people with disabilities. The Tribunal has organised and run a large number of community sessions over the last 15 years and, in addition, has given hundreds of education sessions to other organisations and groups during that time. In 2003/2004, the Tribunal organised five of its own community education sessions and gave 40 other presentations in response to invitations from other organisations.

KNOWLEDGE, DISCUSSION AND DEBATE ABOUT THE WORK OF THE TRIBUNAL AND RELATED MATTERS

Through papers presented by either its President or Deputy President, the Tribunal has played an active role in contributing to knowledge and debate about issues relevant to the Tribunal's jurisdiction. Recent examples are papers given to the 29th International

Congress on Law and Mental Health held in Sydney in October 2003 and to the 15th World Congress on Medical Law in August 2004. Lists of papers presented on behalf of the Tribunal are set out in its annual reports. The papers presented on behalf of the Tribunal in 2003/2004 are set out on page 37.

The Tribunal hosted the 2nd National Guardianship Conference in Sydney in July 1993 and co-hosted, with the Office of the Protective Commissioner and Office of the Public Guardian, the 7th National Guardianship Conference in Sydney in October 1999.

The President, Deputy President and Legal Officer of the Tribunal regularly contribute to publications about guardianship and related matters, such as the Law Handbook and the Lawyers Practice Manual.

THREE PRIZE-WINNING VIDEOS

The Tribunal has made three videos to assist in increasing community knowledge about the Tribunal. The first, *For Ankie's Sake*, made in 1997, is about the process of making an application to the Tribunal. The second, *Substitute Consent*, made in 2000, deals with substitute consent to medical and dental treatment. The third, made in 2002, *In Their Best Interests*, shows in detail the hearing process. All three videos have won awards overseas.

MEMBER AND STAFF TRAINING

Since its establishment in 1989, the Tribunal has taken seriously the need to train not only its staff but also its members. All members, whether they be presiding, professional or community members, bring significant skills and experience to the Tribunal. However, additional expertise, skill and experience are required by members for the successful handling of hearings as mandated by the *Guardianship Act*. The Tribunal's proceedings are to be conducted with as little formality and legal technicality and form as the circumstances of the case permit and the Tribunal is entitled to inform itself on any matter in such manner as it thinks fit. However, in doing so, while the Tribunal may be flexible in the procedures it adopts, it must

act in a way that is procedurally fair, but also with understanding of and empathy for the anxieties and emotions of those appearing before it. People make applications to the Tribunal or come to hearings to give evidence not for personal gain but because circumstances have arisen that indicate that an order may need to be made in the interests of a person with decision-making disabilities.

The Tribunal has developed a program of regular training. All of its members receive three half-days' and one full-day's training per annum for the purpose of developing and maintaining Tribunal skills and for keeping up-to-date with developments in the major disabilities of those who are the subject of the Tribunal's hearings, namely dementia, intellectual disability, acquired brain damage and psychiatric condition. In addition, all

members have at least two days of induction and experience of co-sitting with colleagues from the same category of membership. Presiding members receive extra training, when necessary, concerning new legislation and other relevant legal developments. These training days help build not only collegiality between members but consistency both in the way they conduct hearings and in the decisions they make in relation to individual hearings.

As the workload of the Tribunal grew, so did the membership. At the end of 2003/2004, the Tribunal had 70 members. New appointments since that time have increased the membership to 78 members.

In order to keep its vigour, the Tribunal needs a small but steady stream of new members. However, much of the strength of the Tribunal lies in the



expertise of members gained through their years of regular sitting on hearings. Maintaining the balance between the experience and wisdom gained through sitting, and the constant need to inject new knowledge and up-to-date experience into the Tribunal, is a key issue for the leadership of the Tribunal and those who make the final recommendations to the Governor as to who should be members of the Tribunal and how long they serve. I believe that this balance has been achieved in relation to the Guardianship Tribunal.

The standing of the Guardianship Tribunal as one of the leading tribunals in New South Wales was recognised through my becoming the first Convenor of the New South Wales Chapter of the newly formed Council of Australasian Tribunals in 2003.

The Tribunal has developed into a body which has made and continues to make a very

significant contribution to the lives of people with disabilities, their families and service providers, not only through its processes of dealing with applications for guardianship, financial management, medical and dental consent, reviews of guardianship and financial management orders, reviews relating to enduring guardians and enduring powers of attorney, but also through its general educational role and its important contribution to policy development. In addition, it contributes to public awareness not only of its work but of matters relevant to its work including, in particular, of the need for people to put in place the arrangements they would like in the event of them losing decision-making capacity.



Nick O'Neill
President



About Us

The Guardianship Tribunal consists of two separate groups of people. The first group—the Tribunal staff—are full-time and part-time New South Wales public service employees who manage the day-to-day administration of the Tribunal. As at 30 June 2004, the Tribunal employed 69 staff. The second group—the Tribunal members—are appointed by the Governor on recommendation of the Minister for Disability Services to make decisions at hearings. During 2003/2004, there were 70 Tribunal members, most of whom were available on a part-time basis to attend hearings. The Tribunal staff and members are all experienced people who are committed to promoting the rights of people with disabilities, including making their own decisions wherever possible.

Of the 69 staff, the senior staff person is the Executive Officer/Registrar. The staff and their work are organised into the Executive and four units: Business Services Unit, Coordination and Investigation Unit, Client Information Services Unit, and Hearing Services Unit. Each unit plays an essential role in producing positive outcomes for people with disabilities.



TRIBUNAL MEMBERS

The Tribunal members conduct the hearings and make the determinations. They are appointed on the basis of their significant professional and personal experience with people who have disabilities or their legal skills and

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

The panel considers the written evidence and takes evidence from the person the hearing is about and other parties and witnesses at the hearing or by telephone or video conference. They keep the hearing relevant, by asking questions and directing the parties and witnesses to the issues being considered. At the end of the hearing, they assess the evidence and decide if there is a need to appoint or reappoint a guardian or a financial manager for the person the hearing is about. The Tribunal members then announce their decision at the end of the hearing and provide written orders and written reasons for their decision within 12 working days. The backgrounds of individual Tribunal members are detailed on pages 43 to 50.

TRIBUNAL STAFF

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

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

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

Client Information Services Unit deals with switch, enquiries, receipt of applications and other incoming mail, coordination of feedback and other correspondence, administration of reviews preparation and withdrawals processing, website, publications and community education.

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

Hearing Services Unit sets up and supports all

hearings, including

- ◆ scheduling, and member liaison; and
- ◆ coordination of notices, travel, venue and interpreter arrangements, post-hearing enquiries, and orders and reasons.

Business Services Unit handles human resources, finance and other administrative services, management and support services for information technology, communication and client data base systems, and training and development for staff and members. For further details, refer to the organisational chart on pages 14 and 15.

LEGISLATION RELATING TO THE GUARDIANSHIP TRIBUNAL

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

The Act creates the regime for substitute decision-making in relation to medical and dental consent for those persons 16 years and above unable to give a valid consent to their own treatment. Usually,

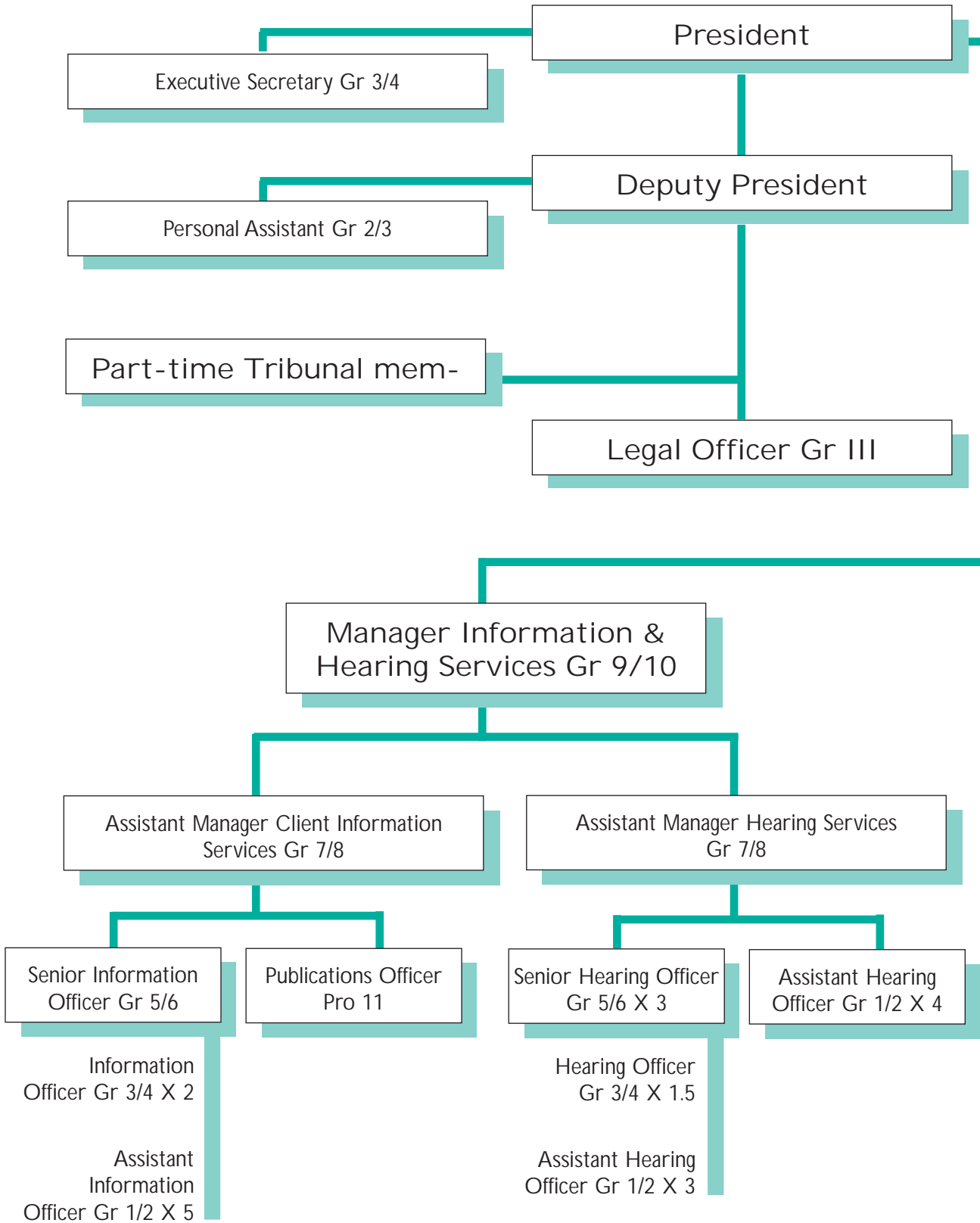
this consent can be provided by the person's 'person responsible'.

The *Guardianship Regulation 2000* should be read in tandem with the Guardianship Act as it contains further provisions about enduring guardians and medical treatment as well as setting out the prescribed forms required by the Guardianship Act.

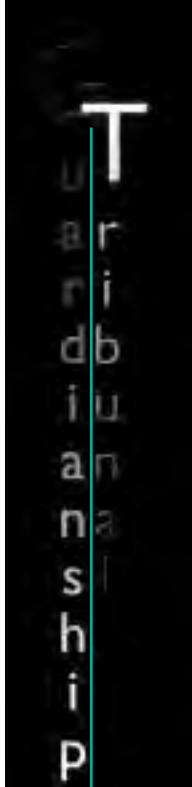
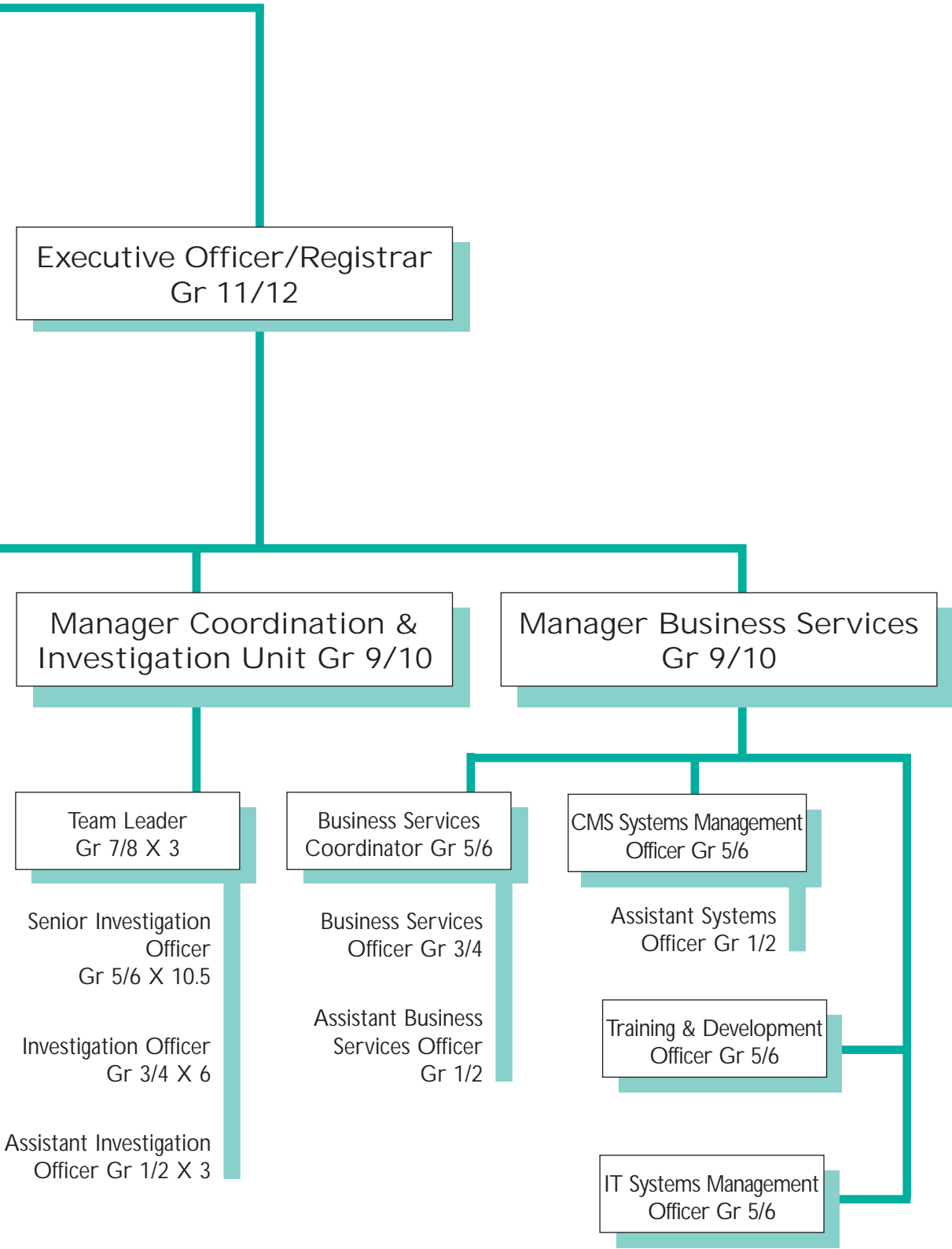
Both the Guardianship Act and the *Protected Estates Act 1983* deal with financial management and the Protective Commissioner. The *Guardianship Act* deals with the process of making applications for financial management to the Guardianship Tribunal and the Tribunal's authority to make financial management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

The *Protected Estates Act* sets out how financial management orders can be made by the Supreme Court, magistrates and the Mental Health Review Tribunal. The *Protected Estates Act* (continued page 16)

ORGANISATIONA



AL CHART



sets out the powers of the Protective Commissioner and how estates placed under management by one of these courts or tribunals are to be administered.

The Powers of Attorney Act 2003 came into operation on 16 February 2004. It deals with the



Casestudy

A review of an enduring power of attorney: A family untangled

Ms P, an elderly woman in her 70s, appointed two attorneys under an enduring power of attorney in early 2002. One attorney is her daughter Ms T and the other is the family's solicitor, Mr R. Ms P lives in her own home but has a male carer. All Ms P's bills are paid by Mr R and she receives a weekly allowance directly into her bank account for her day-to-day expenses.

An application to review the enduring power of attorney was made to the Tribunal by the family solicitor, Mr R, and another solicitor at the same firm, Mr S. The application was made on the basis that Ms P's affairs would be more efficiently managed with the appointment of non-family members as attorneys. In addition, an application for a financial management order and an application for a guardianship order were also made by other parties.

At the hearing, the Tribunal needed first to determine whether Ms P lacked the capacity to make a new enduring power of attorney and whether the Tribunal had the jurisdiction to review the enduring power of attorney. The professional

and medical reports stated that Ms P suffered from degenerative cognitive impairment. When the Tribunal spoke with Ms P, she was uninhibited, repetitive and did not understand what was happening. The Tribunal was satisfied on the basis of the evidence that Ms P did not have the capacity to make a new enduring power of attorney. The Tribunal considered that it had the jurisdiction to review the existing enduring power of attorney.

The applicant, Mr R, provided evidence that Ms P's finances had been well managed by his firm and that her income through the weekly payments amounted to \$40000, which was sufficient for her needs and social activities. However, since most of the money was being spent by Ms P's older daughter and her husband, Mr and Mrs W, a mortgage had been secured to ensure against the sale of her house.

The younger daughter, Ms T (the other appointed attorney), outlined how arrangements had been made for her mother with private meal providers and a male carer through the aged care assessment team. In addition, Ms P's car was being used by the Mr and Mrs W, who had accumulated traffic fines of over \$2000. Mr W, Ms P's son-in-law and his wife maintained that the money

held in trust for Ms P was being denied to her. Mr P, Ms P's brother was in support of the application to amend the enduring power of attorney.

Having heard the evidence, the Tribunal was satisfied that it would be in the best interests of Ms P if an order were made removing the existing attorneys. The Tribunal made a new order, appointing substitute attorneys, Mr R and Mr S from the firm of solicitors. At the same time, the Tribunal determined there was no need for a financial management order to be made and that application was dismissed. In relation to the application for guardianship, the Tribunal determined that, since Ms P had assistance and with paid services, there was no need for a guardianship order. Accordingly, the application for a guardianship order was dismissed.

By substituting an appropriate attorney, the Tribunal was able to remove contention between family members about how Ms P's finances were being handled. More importantly, the review of the enduring power of attorney ensured that more formal arrangements under a financial management order and/or guardianship order need not be made.

making of powers of attorney and gives the Guardianship Tribunal and the Supreme Court detailed jurisdiction to review the making, operation and effect of enduring powers of attorney. The *Powers of Attorney Act* followed a period of consultation with the community and government representatives about the need to make changes to the power of attorney scheme in New South Wales.

The Act is designed to ensure that solicitors and others qualified to witness the making of an enduring power of attorney satisfy themselves that the person making the power of attorney (the principal) knew what they were doing. The Act also protects the principal by limiting how their attorney may handle their property and financial affairs. In particular, the changes introduced by the new legislation are that:

- ◆ there is a new form which can be used to make a power of attorney;
- ◆ a person may authorise their attorney to give gifts or bestow benefits on others or the attorney if a certain standard phrase is used in the power of attorney. Only certain types of gifts or benefits are authorised if the standard phrase is used;
- ◆ there is clarification of the effect on the power of attorney if one of the attorneys dies, resigns or becomes incapacitated;
- ◆ there is recognition in New South Wales of powers of attorney made in other Australian states or territories.

- ◆ there are changes to the witness' certificate requiring the witness to be satisfied that a person making an enduring power of attorney appeared to understand its nature and effect;
- ◆ there is a requirement that the attorney must sign their acceptance of their appointment under an enduring power of attorney before they can exercise authority as an attorney;
- ◆ both the Guardianship Tribunal and the Supreme Court can declare a person is no longer capable of managing their affairs.

The Guardianship Tribunal has designed an enduring power of attorney brochure and has an information sheet which reflect these legislative changes. These are also available from the Tribunal's website at www.gt.nsw.gov.au.

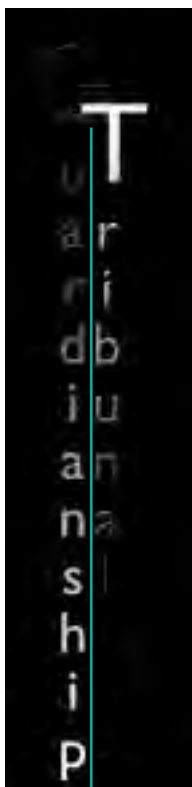
The new *Powers of Attorney Act* empowers the Guardianship Tribunal, in addition to the Supreme Court, to be able to review and vary an enduring power of attorney. The Tribunal can make a variety of orders regarding the making or operation and effect of an enduring power of attorney. Following the conduct of a review of an enduring power of attorney, the Tribunal can make orders, including orders that:

- ◆ revoke an enduring power of attorney;
- ◆ vary an enduring power of attorney;
- ◆ remove an attorney from office and substitute a new attorney;
- ◆ reinstate a power of attorney

which has lapsed because one of the attorneys has died, resigned or become incapacitated;

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

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





What We Do

ROLE OF THE TRIBUNAL

Our statutory role

The Guardianship Tribunal is a New South Wales Government tribunal established under the *Guardianship Act 1987*. The principal role of the Guardianship Tribunal is to hear and determine applications made to it for the appointment of guardians and financial managers of adults with decision-making disabilities. The Tribunal also reviews the guardianship orders it makes and may review its financial management orders. It has jurisdiction to give substitute consent to medical and dental treatment and a number of other smaller jurisdictions.

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

Through the Tribunal's community education programs,

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

How the Tribunal functions

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

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

In most matters before the Tribunal, the Tribunal's decision affects the person the hearing is about. In some cases, the emotions and interests of other people involved in the hearing are

affected as well. For these reasons, the Guardianship Tribunal conducts its hearings differently to other tribunals. The Tribunal operates in an inquisitorial manner. It controls the proceedings by setting out the issues and obtaining the evidence through a series of open questions at the hearing. The Tribunal then considers this evidence along with the report evidence it has received. It determines whether or not the person the hearing is about has lost their decision-making capacity and needs a guardian or financial manager and, if so, who that guardian or financial manager should be and their decision-making functions.

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

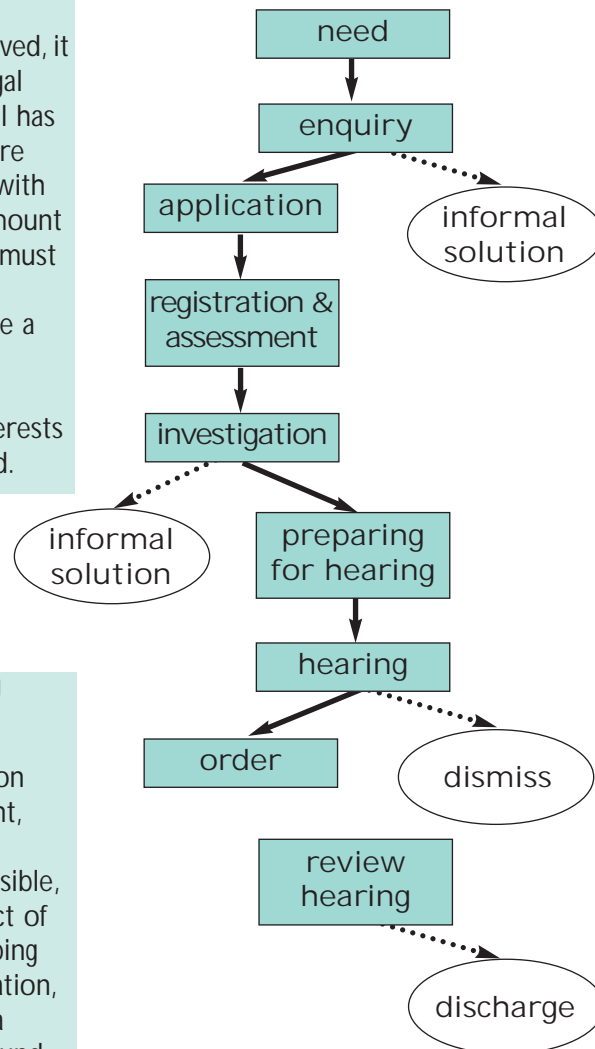
HOW THE TRIBUNAL DEALS WITH AN APPLICATION

Most people with a disability do not need a guardian or a financial manager. There is no need to contact the Guardianship Tribunal unless there is a breakdown in informal arrangements in caring for a person with a disability or there are no informal arrangements available. Lodging an application for the appointment of a guardian or financial manager for a person with a disability is a serious matter. The person submitting the application is, in effect,

Dealing with an application: the steps

Registration & assessment

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



Enquiries: does the Tribunal need to be involved

Before an application is made, service providers, professionals, family members or friends of the person are encouraged to telephone the Tribunal's enquiry service. This may establish that there are other informal arrangements to assist the person rather than going to hearing. The enquiry service offers advice.

Preparing for a hearing

A staff member of the Coordination and Investigation Unit will contact the applicant, family members and service providers, and, wherever possible, the person who is the subject of the application. After developing an understanding of the situation, the staff member will write a report, outlining the background to the application, any major issues and the views of all the parties. This report provides a summary for the Tribunal members at the hearing. By exploring options on a regular basis with the people involved. This process can help to clarify issues and find satisfactory alternatives to formal guardianship or financial management for the

Hearings

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

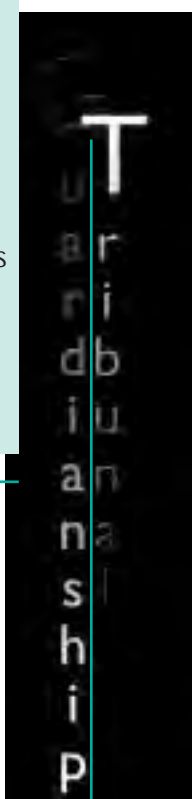
Order

The Tribunal issues written reasons for decisions relating to each hearing, which set out the Tribunal's decision, the evidence relied upon and the Tribunal's reasoning. The order and reasons for decision are sent to the parties as soon as possible after the hearing. Generally, these documents are finalised and sent within 12 working days after the hearing.

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

asking the Tribunal to take away a person's rights to make their own lifestyle or financial decisions and to give those rights to someone else. Applications can be made to the Tribunal by anyone with a genuine concern for the welfare

of the person with a disability. Someone with a genuine concern for the person with a disability may be a family member or a friend or their doctor, caseworker, professional carer or other service provider.



Our Work



YEAR IN REVIEW – 2003/2004

Telephone enquiries service

The Tribunal's enquiries service, which operates from 9.00 am to 5.15 pm Monday to Friday, dealt with 13,316 telephone enquiries over the past year, an average of 54 calls daily. The enquiries service is staffed by experienced officers to ensure that the advice provided is always of the highest quality. Because the enquiries service is often busy dealing with several callers at the same time, sometimes callers leave their contact details and their calls are returned within a few hours.

An important function of the enquiries service is to discuss the need for a

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

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

New applications

In 2003/2004, the Tribunal received 4,430 new applications. Of these new applications received, 2,032 (46.0%) were for the appointment of a financial manager; 1,912 (43.1%) were for the appointment of a guardian; 440 (9.9%) were

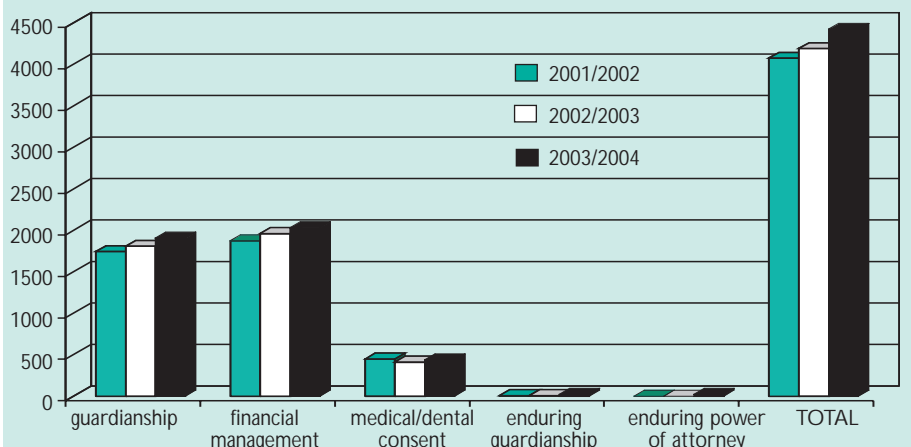
Highlights

- ◆ 4,423 new applications received.
- ◆ The most common primary disability was dementia in 45.5 percent of cases.
- ◆ 3,871 scheduled hearings held.
- ◆ 2 appeals against Tribunal's decisions to the Supreme Court.
- ◆ 25 appeals against Tribunal's decisions to the Administrative Decisions Tribunal.
- ◆ 12 applications for approval of clinical trials – 7 were approved.

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

	2001/2002	2002/2003	2003/2004
Guardianship	1,745	1,809	1,912
Financial management	1,873	1,962	2,032
Medical/dental consent	449	411	440
Enduring guardianship	8	9	22
Enduring power of attorney	n/a	n/a	24
Total	4,075	4,191	4,430

Chart 1: Categories of new applications



applications for consent to medical treatment; 22 (0.5%) were for the review of an enduring guardianship appointment and 24 (0.5%) were for the review of an enduring power of attorney. Table 1 and Chart 1 show a breakdown of the new applications received this year and a comparison with the two previous years.

Who made the applications?

Anyone with a genuine concern for the welfare of the person with a disability can make an application to the Tribunal. This genuine concern can arise from being a family member or a friend of the person with the disability or because of a professional relationship with them (eg. their doctor, caseworker, professional carer or other service provider). In 2003/2004, 53.8 percent of the applications received were made by family members, friends, advocates or self-applicants. The rest were made by professionals, such as social workers, case managers, doctors or residential care staff.

Primary disability of new clients

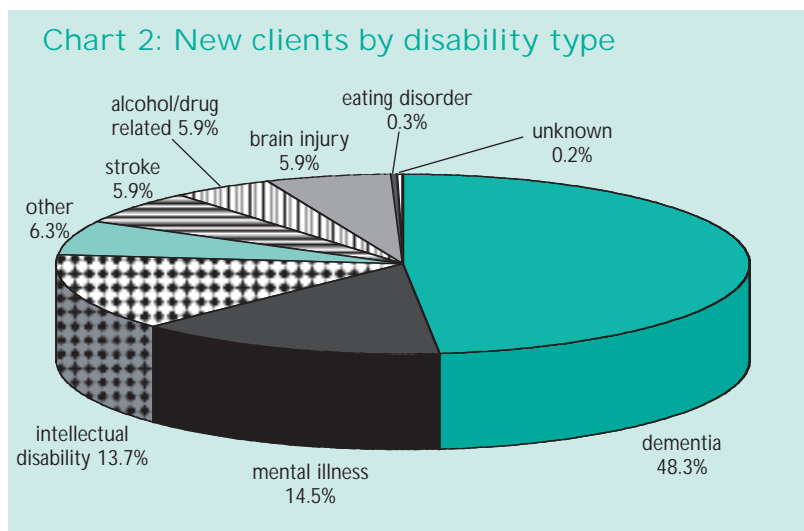
As in previous years, the most common primary disability identified on new clients where orders were made was dementia (48.3%). The next most common types of disabilities identified were mental illness (14.5%) and intellectual disability (13.7%). Table 2 and Chart 2 show a breakdown of the disability types of new clients.

Age and sex

Of the new orders made, 47 percent related to men and 53 percent to women. Unlike last

Table 2: New clients by disability type in 2003/2004

Primary disability of clients	Number	Percent (%)
Dementia	1,072	48.3
Mental illness	322	14.5
Intellectual disability	305	13.7
Other	140	6.3
Stroke	132	5.9
Alcohol/drug related	107	4.8
Brain injury	131	5.9
Eating disorder	6	0.3
Unknown	5	0.2
Total	2,220	100.0



year when the majority of orders made relating to people over the age of 65 were for men, this year the female subjects in this age group exceeded the men (61.6% for women and 38.4% for men). For people under 65 years, 61.6 percent of the orders made related to men.

Cultural background

Orders were made about people with a wide range of cultural backgrounds. Applicants are asked to identify the cultural background of the person the application is about. The most frequent of these were Italian, Polish, Aboriginal/Torres Strait

Chart 3: Outcomes for guardianship matters finalised at hearings

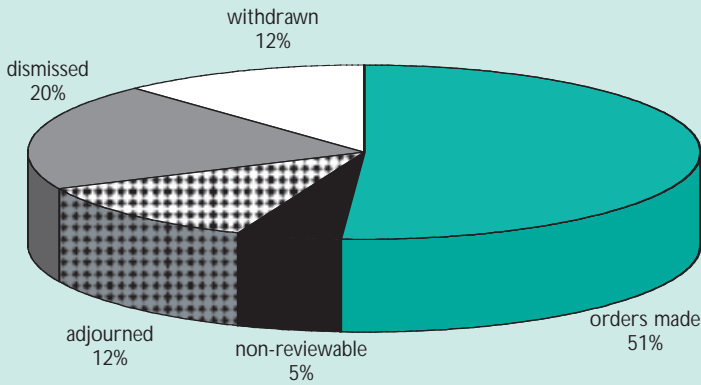


Chart 4: Disability in guardianship orders made

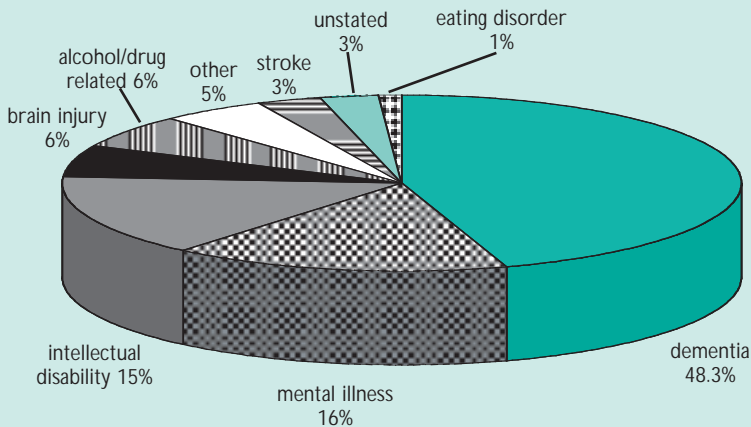
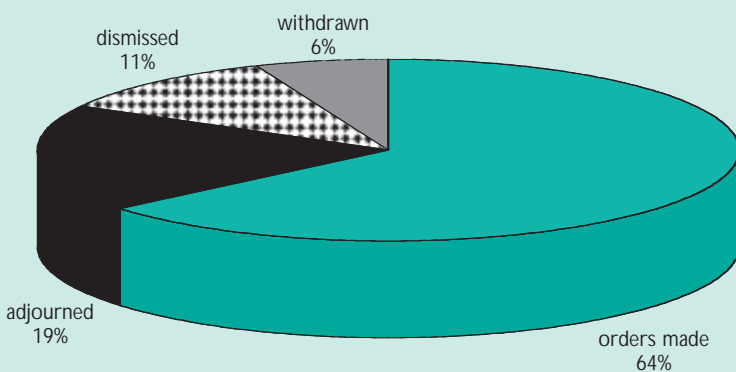


Chart 5: Outcomes for financial management matters finalised at hearings



Islander, Greek, German, Russian, Dutch, Lebanese and Hungarian.

Language spoken at home

Information was also provided by applicants about the language spoken at home by the person with the disability. A total of 43 languages other than English were identified, including Aboriginal languages and Auslan (Australian sign language). Italian, Polish, Greek, German, Russian and Arabic were the most frequently nominated languages other than English.

Interpreters used

Where appropriate, the Tribunal provides interpreters to assist people attending hearings. Interpreters were provided on 199 occasions during the year across 41 different languages. Interpreters for Arabic, Cantonese, Croatian, French, German, Greek, Hungarian, Italian, Macedonian, Mandarin, Polish, Russian, Serbian, Spanish, and Ukrainian were provided on five or more occasions. Auslan (Australian sign language) interpreters were provided on six separate occasions during the year. Also, where appropriate, the Tribunal will arrange for documents to be translated into other languages and Braille.

Applications

Guardianship

In 2203/2004, the Tribunal received 1,912 new guardianship applications and finalised 1,759 new guardianship matters. Of the matters dealt with at hearings,

1,371 resulted in orders being made, including 166 adjourned matters and 554 matters were finalised without requiring a hearing. The outcomes for matters dealt with at hearing are summarised in Chart 3. Of the 41 percent of applications that resulted in a guardianship order being made, private guardians were appointed in 40.3 percent of the cases and the Public Guardian in 58.0 percent. In the remaining 1.7 percent, a private guardian was appointed for some functions and the Public Guardian for other functions.

Financial management

In 2003/2004, the Tribunal received 2,032 new financial management applications and finalised 1,891 financial management matters. Of the matters dealt with at hearings 1,743 resulted in orders being made, including 341 adjourned matters, and 489 matters were finalised without requiring a hearing. Of the matters finalised at hearings, 59.5 percent resulted in a financial management order and 39.5 percent were withdrawn, dismissed or adjourned. The outcomes for matters dealt with at hearings are summarised in Chart 5.

Of the 59.5 percent of matters where financial management appointments were made, 79 percent resulted in final financial management orders; 13 percent had a review period stipulated in the order and 8 percent were interim financial orders.

Consent to medical or dental treatment

A total of 440 applications for consent to medical or dental

Chart 6: Disability in financial management orders made

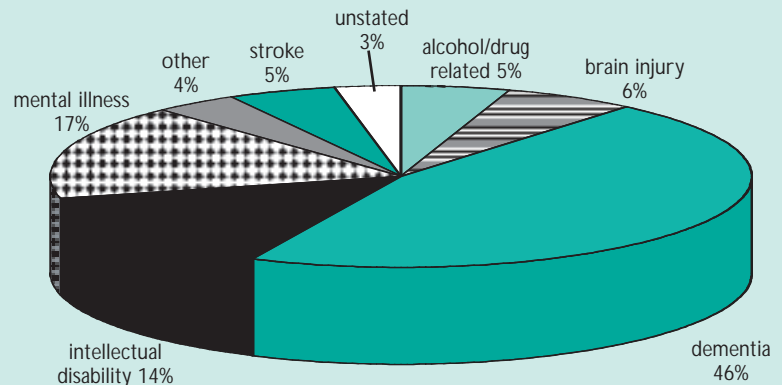
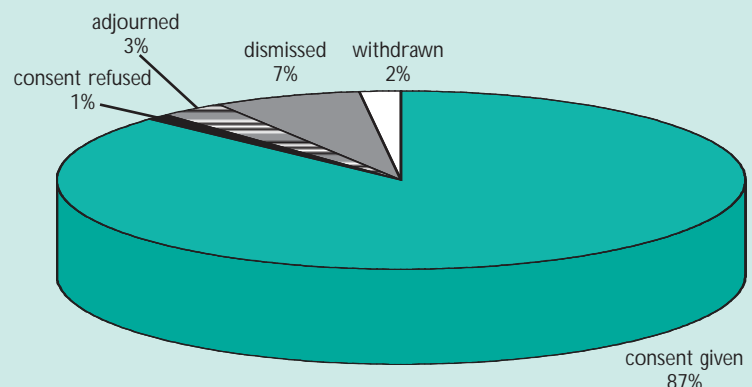


Chart 7: Hearing outcomes for medical and dental consent matters

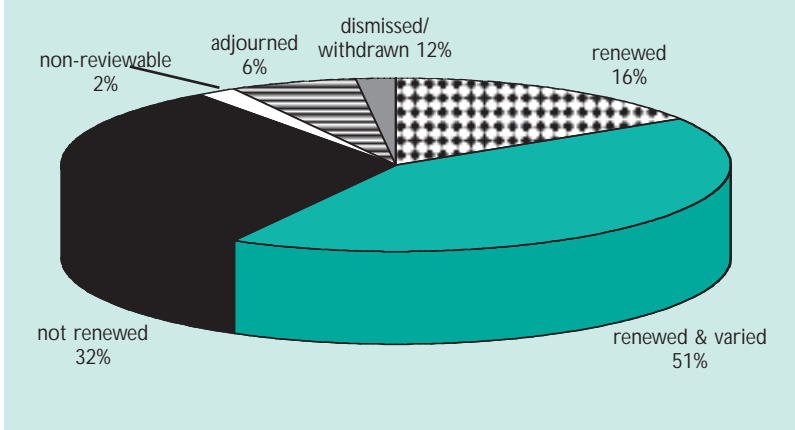


treatment were received by the Tribunal during the year and 426 matters were finalised at hearings and 34 matters were finalised without requiring a hearing. The outcomes of the matters finalised at hearings are summarised in Chart 7.

Reviews of enduring guardianship

The Tribunal received 22 applications to review the appointment of enduring guardians during the year. Eighteen of these matters were heard with five enduring guardianship appointments confirmed, seven matters adjourned, one matter

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



withdrawn and five appointments revoked when guardianship orders were made in their place.

Reviews of enduring power of attorneys

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

The Tribunal received 24 applications to review enduring powers of attorney or seek

Case study

A question of capacity Mrs W is in her 80s, is blind and has Alzheimer's disease. She is a permanent resident of an aged care facility. A member of the aged care assessment team made the application for a financial management order for her because Mrs W had made a power of attorney and a will in March 2003 when she had already lost capacity.

At the hearing, the applicant said that Mr W had contacted the local aged care assessment team in 2001 about Mrs W's future housing and care needs because he feared he may not outlive her. In March 2003, Mr W required hospital treatment and Mrs W was placed in respite care. After being discharged, Mr W joined Mrs W in the respite accommodation. In June 2003, Mrs W was placed in an aged care facility.

In the meantime, Mr W had asked a neighbour for help with organising their financial affairs. The neighbour advised the Tribunal that, in March 2003, he suggested that Mr W contact a solicitor if he wished to make documents and, subsequently, Mr W made a new power of

attorney and a new will, as did Mrs W. Mr W also appointed an enduring guardian. When Mr W died in November 2003, his estate was left to Mrs W.

The neighbour was concerned at the time about the validity of the will and power of attorney made by Mrs W. Both Mr and Mrs W had made wills in 1993 and Mr W had made a power of attorney some years later, which were superseded by the new documents made in March 2003. Now, Mrs W's house needed to be sold to cover the \$150,000 accommodation bond.

The Tribunal had before it medical reports from early 2003 that confirmed Mrs W had advanced Alzheimer's disease and would not have had the capacity to have made financial decisions. The Tribunal received evidence from a medical professional, who had assessed Mrs W in January 2003, that confirmed the written reports.

The Tribunal advised that it had no jurisdiction to review the validity of the will nor, at the time of the hearing, did the Tribunal have the authority to review the validity or terms of the enduring power of

attorney (hearing prior to 16 February 2004). There was no concern that the appointed attorney would not act in Mrs W's best interests. The Tribunal advised that its role was to determine whether Mrs W was capable of managing her affairs, whether she needed someone else to manage those affairs and if a formal financial management order would be in her best interests.

The Tribunal was satisfied there was sufficient evidence to suggest that Mrs W did not have the capacity to execute the power of attorney in March 2003 which cast doubt on the validity of her power of attorney and left it open to possible challenge. The Tribunal was also satisfied that there was a pressing need for her financial affairs to be managed so her house could be sold and an accommodation bond and aged care facility fees paid. As a result, the Tribunal was satisfied that it was in Mrs W's best interests to place her affairs under formal management. The Tribunal made a financial management order for Mrs W, appointing the Protective Commissioner as her financial manager.

advice and directions on the operation of enduring powers of attorney. Nine of these matters were heard with five reviews being dismissed, one matter adjourned with orders, one matter withdrawn and two matters where multiple orders were issued.

Reviews of guardianship orders

Most guardianship orders are reviewed at the end of their terms. They may be reviewed on request during their term. Requested reviews are usually made by guardians to increase or vary the guardianship functions. Others may also request a review because the circumstances relating to the person under guardianship have changed significantly or because of some other new issue relating to the guardian.

The Tribunal finalised 1,689 reviews of guardianship matters during the year. Of these, 1,448 orders were made following a hearing and 241 matters were finalised without requiring a hearing. The outcomes for matters finalised at hearings are summarised in Chart 8.

In 16 percent of matters, the guardianship order was renewed; in 42 percent of matters the order was renewed and varied; while in 32 percent of matters the order was not renewed as it was determined that there was no longer a need for an order.

Reviews of financial management orders

The Tribunal finalised 370 reviews of financial management orders during 2003/2004. Of these, 135

Table 3: Hearings conducted outside Sydney metropolitan area

Albury	Armidale	Bathurst	Bega
Blue Mountains	Bowral	Broken Hill	Central Coast
Cessnock	Coffs Harbour	Dubbo	Goulburn
Griffith	Lismore	Maitland	Merimbula
Morisset	Newcastle	Nowra	Orange
Parkes	Port Macquarie	Queanbeyan	Stockton
Tamworth	Taree	Tweed Heads	Ulladulla
Wagga Wagga	Wollongong		

Table 4: Hearings and sittings by location

Location	Hearings	Sittings
Balmain	2,477	587
Sydney Metropolitan	360	108
Newcastle	171	53
Central Coast	180	49
Wollongong	107	28
Other country	576	173
Sub-total	3,871	998
After hours	39	32
Total	3,907	1,030

matters were applications to revoke financial management orders on the grounds of regained capacity or best interests. Sixty-four of these orders were revoked.

The Tribunal also received 100 applications to replace the current financial manager. These applications were made for a variety of reasons, including that the manager no longer wanted to or was unable to carry on with this role, or when there were concerns raised about the manager's suitability. Fifty-nine appointed managers were replaced during the year. In 61 percent of these cases, the Protective Commissioner was appointed in place of a private manager.

Hearings

How many hearings were held?

During the year, the Tribunal conducted 3,871 scheduled hearings over 998 scheduled sittings. Of the scheduled sittings 51.5 were half-day sittings. This was an average of 4.09 hearings per sitting. In addition to this, the Tribunal conducted 36 hearings after hours. Together, a total of 3,907 scheduled and after-hours hearings were held during the year.

Where were the hearings held?

The Tribunal conducted approximately 73 percent of its hearings either at its Balmain premises or in the Sydney metropolitan area. The remaining 27 percent of hearings were conducted elsewhere in NSW. Of these, 34 percent were held in either Newcastle or the Central Coast. Table 3 shows a breakdown of the major hearing locations.

Procedural hearing

The Tribunal is able to determine some procedural matters with less than three members. In 2003/2004, the Tribunal conducted 197 procedural hearings. These

matters were determined by either the President or Deputy President and included applications for legal representation, applications to be joined as a party, and requests for withdrawal of some matters. Of the 115 applications for legal representation considered, representation was granted on 99 occasions.

Recognition of appointments

The Tribunal has the jurisdiction to recognise the appointment of guardians and managers appointed under corresponding law in other states and territories. The Tribunal is able to recognise

appointments made by relevant guardianship bodies in all Australian states and territories and in New Zealand. During 2003/2004, the Tribunal received 15 applications to recognise such appointments.

IMPROVING SERVICES

As part of the development of its Corporate Plan in 2002, the Tribunal established a three-year focus to 'improve our services and our service quality'. Major projects, that are helping to achieve this focus, have been undertaken and were either completed or substantially completed during the 2003/2004 year.

Case study

No orders needed

Mrs X, an elderly woman in her 80s, resides in her own home in a regional centre and is said to have some cognitive impairment. A member of the local aged care assessment team made an application for guardianship and financial management orders on the basis that Mrs X is isolated and refuses the provision of services.

At the hearing, Mrs X appeared articulate, intelligent and credible despite her age. She told the Tribunal that she had worked in management nearly all her life and she had been living in her present home for the past 10 years after her husband's death. Her house is easy to manage as are her pet cats. She goes on a monthly outing with a friend but is no longer interested in attending social events. A neighbour, Mr Y, looks after her garden and provides cooked meals

daily. Mr Y confirmed Mrs X's evidence and stated that he did the gardening, provided cooked meals and did some repairs on her house if required. He enjoyed gardening and cooking and had the time to spare.

In his evidence to the Tribunal, the applicant stated that Mrs X could do with home help once a week and had been refusing services. He believed that, although she was coping at this stage, she would require more services as time went by. The medical evidence submitted to the Tribunal did not provide confirmation that Mrs X suffered from dementia.

Mrs X's grand-daughter spoke to the Tribunal on the telephone and maintained that her grandmother enjoys being independent, is not vulnerable and should continue to live her life as she wishes. In relation to the financial

management application, the grand-daughter indicated that she was the appointed attorney under an enduring power of attorney and was prepared to act if her grandmother had a stroke or made bad financial decisions.

After reviewing the evidence, the Tribunal was not satisfied that Mrs X did suffer from a disability that prevented her making decisions. There was no evidence to suggest that someone was needed to make decisions on her behalf for accommodation, health care or services nor was anyone needed to make financial decisions. On that basis, the Tribunal dismissed the application for guardianship and financial management orders. The Guardianship Act provides that the Tribunal can only make orders where it is satisfied that the person suffers from a decision-making disability and that a formal guardian or financial manager is needed.

GT Connect

This project commenced in March 2003, with funding from the Office of Information Technology. The project consisted of three components. The main component involved the development of a new website for the Tribunal, which was designed in a way that maximises accessibility to and around the site for people with a range of disabilities. The second component created the ability for people to make applications to the Tribunal online via the new website. The third component of the project enhanced the ability of the Tribunal to exchange information and data electronically with its key partner agencies.

In February 2004, the Minister launched the Tribunal's new website and, by the end of June 2004, there had been in excess of 27,000 visits to the site and more than 130 online applications submitted. The Tribunal is very pleased with its new website as it greatly improves access to information about the Tribunal and is a significant part of the Tribunal's strategic direction towards increased use of the available technology to improve its service provision. (See page XX for greater detail on the website's content and visitor usage.)

Information Technology Plan

As part of its Corporate Plan strategy to actively identify new ways to use information technology in its business, the Tribunal commissioned an Information Technology Plan. This was completed in late 2002 and

identified the directions and actions that were needed to establish the necessary infrastructure that would allow the Tribunal to appropriately utilise information technology now and into the future. Importantly, this contributed towards the longer-term strategic direction of the Tribunal of greater use of technology in carrying out its day-to-day business to efficiently provide services to its clients.

In September 2003, a project implementation plan was completed that detailed



the approach, timelines and costings for the realisation of the strategic Information Technology Plan.

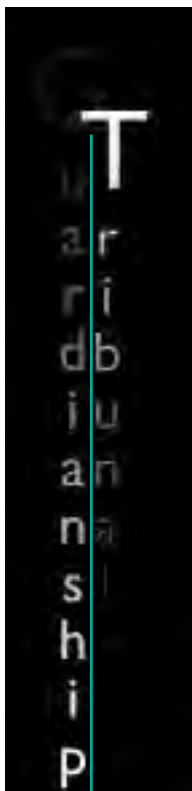
Implementation of the Information Technology Plan commenced in late 2003 and was close to finalisation by the end of the 2003/2004 year.

Installation of upgraded hardware, including new servers and new desktop computers for all staff, has provided the Tribunal with the necessary infrastructure to allow it to make the most of the available technology. The Tribunal will continue its progress towards greater use of technology for managing its work and for improving service provision to its clients.

Case Management System Upgrade

The Tribunal's Case Management System is a database that was custom designed for the Tribunal. It stores data on all Tribunal clients and is used to produce documents in relation to the preparation of applications for hearing and in relation to orders made by the Tribunal. It has been in operation since 1997.

During 2003/2004, a major review of the Case Management System was undertaken in order to implement a revised upgrade that incorporated new and



improved functionalities. As the review progressed, it became apparent that further improvements and additions would be required than first identified. However, it was an ideal opportunity to incorporate as many improvements as

needed to ensure the final product maximises the ability to provide optimum quality in the Tribunal's work. The new 'core system' of the upgraded Case Management System will be operational by early August 2004 and further

improvements will be rolled out over the following three to four months.

The revised structure

The 2003/2004 year saw the consolidation of work processes and systems, arising from the

Case study

Independence respected
Mr A, an elderly man in his 80s, lives in a hostel with his wife, Mrs A. Ms T, who is Mrs A's granddaughter and Mr A's step-granddaughter, has power of attorney for both. Ms T made an application for guardianship and financial management for both Mrs A and Mr A.

At the hearing in November 2003, the application in relation to Mrs A, the Tribunal appointed the Protective Commissioner as her financial manager and the Public Guardian as her guardian. On the basis of medical evidence supplied, the Tribunal was satisfied that Mrs A was incapable of managing her own affairs and her person. There was a need to appoint a guardian to make medical decisions and a financial manager to protect her interests in the sale of a property in a country town. The appointment of the Protective Commissioner suspended the power of attorney held by Ms T.

On the same day, the Tribunal heard the application in relation to Mr A. The Tribunal decided that there was insufficient medical evidence to establish whether Mr A lacked capacity. As urgent orders were not required for Mr A, the Tribunal adjourned the application.

the application for Mr A came on for hearing again in December 2003. Ms T, the step-granddaughter,

spoke of Mr A's inability to manage his finances or to organise his travel arrangements. She said that Mr A had no claim to any portion of the proceeds from the sale of Mrs A's property. (Other witnesses stated that Ms T was the beneficiary under Mrs A's will.)

Mr A's doctor stated that, although Mr A had diabetes and had suffered a stroke, this did not affect his ability to make decisions. A member of the aged care assessment team provided evidence that Mr A had scored well on a mini-mental state examination. The manager of the hostel provided evidence that, although Mr A could be argumentative, there were no major issues with his residing there.

When the Tribunal spoke to Mr A, he strongly opposed interference and was confident that he could make his own decisions and manage his own affairs. He was upset that Ms T was trying to prevent him from obtaining his half of the proceeds of the property sale. He claimed that the house had been bought with the proceeds of a sale of a former property held in joint names.

After hearing the evidence, the Tribunal decided to dismiss the application for guardianship as there was no evidence of a need for a guardian to make medical or accommodation decisions. The Tribunal made an interim financial order, appointing the Protective

Commissioner as Mr A's financial manager for six months, pending further consideration of his capacity to manage his financial affairs and further adjourned the application for a financial management order. The Tribunal's reasoning was that, as the major issue appeared to be the allocation of proceeds from the sale of Mrs A's property, the Protective Commissioner would be able to act in Mr A's best interests by investigating the circumstances behind the ownership of the property to ensure that he received his fair share.

In April 2004, Mr A made an application to revoke the interim financial management order. At the hearing, Ms T claimed that she was owed \$30,000 by Mr A for expenses. Mr A's manager at the Office of the Protective Commissioner stated that he appeared to have no major debts and Ms T's claim for reimbursements was unwarranted. It was possible that Mr A would receive half of the proceeds from the sale of the property.

The Tribunal dismissed the financial management application by Ms T and revoked the interim financial management order as requested by Mr A. Of prime concern to the Tribunal was that Mr A should be allowed to manage his own affairs. If, in the future, he is incapable of doing this, then another application can be made to the Tribunal.

implementation of new structural arrangements in the previous year. The improved structure enabled Tribunal staff to deal successfully with an increased workload, while also contributing to the progress of the major projects and adapting to changes in work practices.

Maintaining standards

The management of the Tribunal has a responsibility to ensure that the Tribunal is able to deal with its workload in an effective and efficient manner while meeting a high standard of service delivery to its clients. As part of ensuring this, it is critical that the Tribunal's work practices and procedures, relating to the processing of applications as well as other case related and administrative functions, are appropriate, consistent and remain relevant and current. The Tribunal's management has systems in place that facilitate appropriate consultation and communication and that ensure meetings are scheduled to occur regularly throughout the year, in a number of different forums, to consider these issues and make decisions concerning the development of new work practices and procedures or the review and updating of current ones. During 2003/2004, the Tribunal's management held 29 pre-scheduled meetings where issues such as these were dealt with. In addition, the Tribunal's management calls, or is involved in, numerous ad hoc meetings where identified issues need to be discussed and addressed outside of the regular meeting schedule.

Disability Action Plan

New South Wales Government agencies are required to formulate three-yearly disability action plans. The Tribunal's current Disability Action Plan provides a strategic framework with clear goals for improving the accessibility of the Tribunal's services and facilities and for measuring the progress towards those goals.

These major projects identified above contributed to the achievement of improved accessibility for people utilising the Tribunal's services through the establishment of a sound foundation that supports the goals of the Disability Action Plan. Specifically, the GT Connect project provides significant improvements in access to information about the Tribunal, while the Information Technology Plan and Case Management System upgrade provide the base for improving the delivery of the Tribunal's services. In addition, the Tribunal regularly reviews and assesses accessibility to its premises and other venues used for hearings and community education.

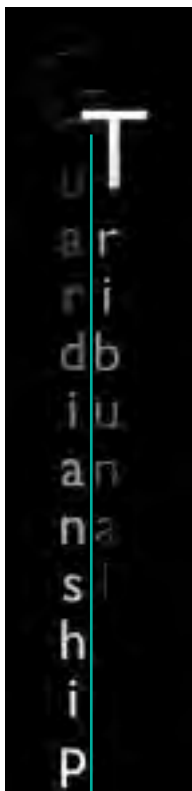
Ethnic Affairs Priority Statement

The Guardianship Tribunal is committed to ensuring that its services meet the needs of people from diverse cultural and linguistic backgrounds. Activities that have occurred over the past year that work towards this commitment include:

- ◆ increasing expenditure on the use of qualified interpreters and translators to ensure people's understanding in relation to

the Tribunal's services and documents;

- ◆ reporting on interpreter usage in the Annual Report;
- ◆ reviewing the statistical information on the use of interpreter and translator services to help inform the Tribunal about current and projected requirements;
- ◆ providing publications about the Tribunal in a number of languages; and
- ◆ providing information about the Tribunal in a range of languages on its website.



APPEALS FROM DECISIONS OF THE TRIBUNAL

Decisions of the Tribunal may be appealed to either the Supreme Court or the Administrative Decisions Tribunal of New South Wales. Only parties to the proceedings before the Guardianship Tribunal can appeal to the Supreme Court or the Administrative Decisions Tribunal. The Supreme Court can hear appeals from any decision of the Guardianship Tribunal. The Administrative Decisions Tribunal can only hear appeals from decisions made after 28 February 2003 and there are some decisions, such as decisions about medical treatment, which cannot be appealed to the Administrative Decisions Tribunal. There have been 25 appeals to the Administrative Decisions Tribunal from decisions of the Tribunal during 2003/2004 (see Table 5).

The three appeals that were upheld by the

Administrative Decisions Tribunal were remitted to the Tribunal for re-hearing. The Administrative Decisions Tribunal did not substitute its decision for that of the Guardianship Tribunal in any of the appeals.

There were two appeals from decisions of the Tribunal lodged with the Supreme Court during 2003/2004. Only one matter has been dealt with by the Court. The other matter is still pending as at 30 June 2004.

W v G [2003] NSWSC 1170, 25 November 2003, (11/03) Windeyer J

Mrs G was said to have a cognitive impairment due to advanced dementia which affected her ability to make decisions. Mrs G resided in a nursing home. Prior to moving to the nursing home, Mrs G had lived in her own home which she shared with her sister. Mrs G's sister lived in a different nursing home which was at least a two-hour drive from Mrs G's nursing home.

Mrs G's niece, Ms W, had made the decision to place her at the nursing home.

Mrs G's sister had a family friend, Mrs M. Ms W's view was that Mrs G should continue to remain in the nursing home. Mrs M's view was that consideration should be given to Mrs G moving to her sister's nursing home so the two sisters could live together.

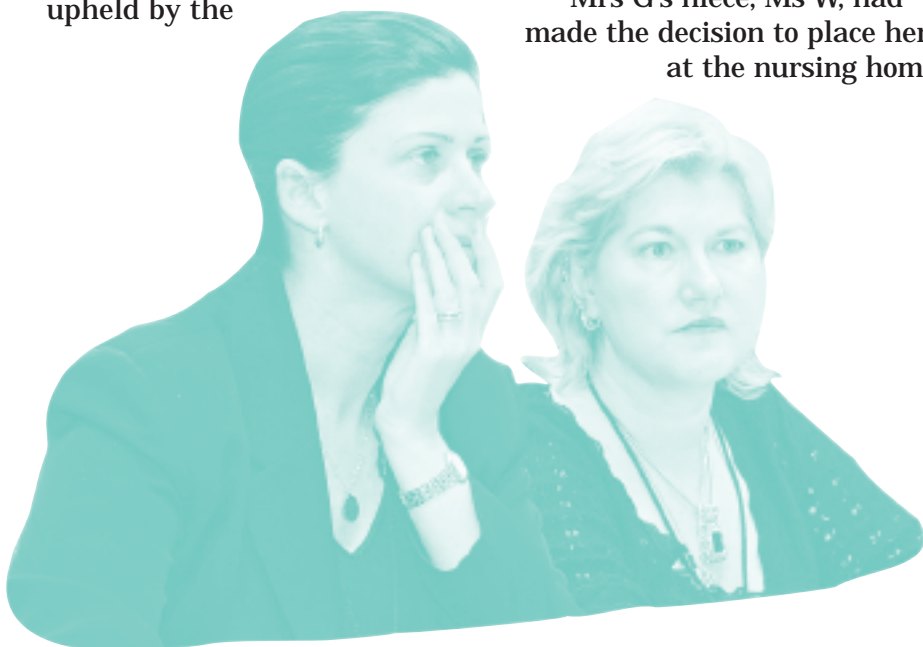
The Guardianship Tribunal appointed the Public Guardian to make decisions about Mrs G's accommodation and also appointed the Protective Commissioner to make decisions about her finances.

Ms W appealed that decision to the Supreme Court. The appeal was heard 13 months after it was lodged. In the meantime, Mrs G remained in the nursing home where she was placed by Ms W.

The Supreme Court allowed the appeal and ordered that the guardianship proceedings be re-heard by the Guardianship Tribunal. The Court also ordered that Ms W should be the financial manager subject to the supervision of the Protective Commissioner.

The Court discussed what factors the Guardianship Tribunal should take into account when considering whether to appoint a member of a person's family as a guardian or the Public Guardian.

At the rehearing the Tribunal did not appoint a guardian for Mrs G as her accommodation was settled, she had a person responsible to make substitute medical and dental decisions for her and there did not appear to be any other need for a guardian for her.



FREEDOM OF INFORMATION

The Tribunal received two applications for access to information under the *Freedom of Information Act*. The first application requested information about a client file relating to a Tribunal hearing. The request was refused on the basis that the Tribunal is not an 'agency' for the purposes of the *Freedom of Information Act*, as section 10 specifies that a tribunal is not included within that definition in relation to its judicial functions. The applicant was informed of this provision and the matter was finalised.

The second application was a request for information about the applicant. However, the Tribunal does not hold any information or records about the applicant. The Tribunal advised the applicant of this. However, as the application was not dealt with within the 28-day period set out in the *Freedom of Information Act*, the applicant requested an internal review on the basis that there was a deemed refusal of access under section 24(2) of the Act. The applicant was advised that it was a not a refusal because there were no documents in existence which could be provided. In the circumstances, the Tribunal did not regard the request for an internal review as a valid request under the *Freedom of Information Act*. Also, it was not accompanied by the relevant fee. The applicant subsequently lodged an application for review to the Administrative Decisions

Table 5: Appeals to the Administrative Decisions Tribunal

Appeal withdrawn by appellant	8
Appeal dismissed by ADT	10
Appeal upheld by ADT	3
Pending decisions as at 1 July 2004	4
Total	25



Tribunal. The application was still pending as at 30 June 2004.

COMPLAINTS

Over the past year, the Tribunal received 94 written complaints. The complaints were predominately about decisions made by the Tribunal, or how an investigation or hearing was conducted. Complaints about a decision or conduct of a hearing are handled by the Deputy President while complaints about the investigation are handled by the Manager Coordination and Investigation.

CLINICAL TRIALS

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

Safeguards

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

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

1. Only people who have the condition to be treated may be included in the clinical trial.
2. There are no substantial risks to the patient or no greater risks than those posed by existing treatments.
3. The development of the treatment has reached a stage at which safety and ethical considerations make it appropriate for the treatment to be available to people who cannot consent to their own treatment.

4. The treatment has been approved by the relevant ethics committee.
5. Any relevant National Health and Medical Research Council guidelines have been complied with.
6. When the potential benefits are balanced against potential risks, it is clear that it is in the best interests of people who have the condition that they take part in the trial.

Another safeguard comes into play if the Tribunal gives its approval to the clinical trial. Individual substitute consent must be given for each person taking part in the clinical trial. The legislation is structured so that this consent will usually be given by the 'person responsible' for the person unable to consent to their own treatment. The 'person responsible' is usually the spouse, family carer or adult child of the person unable to give consent. In all cases in which the Guardianship Tribunal has given its approval to a clinical trial, the 'person responsible' has been empowered to give the individual substitute consent for the patient.

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

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

Approval of Clinical Trials

During 2003/2004, the Tribunal received 12 applications for the approval of clinical trials. The Tribunal heard eight of those applications. Seven trials were approved and one was adjourned. One of the applications was withdrawn prior to hearing and three applications are yet to be determined.

Of the hearings conducted, two of the clinical trials were for new treatments for people who had significant impairments resulting from stroke; two were for critically ill patients with sepsis or pneumonia; one was to trial a treatment for people with severe brain injury; and one was to trial gastro-intestinal motility in critically ill patients. Another trial looked at a treatment to prevent thromboembolism while another sought to test a new treatment that may help to reduce some types of acute renal failure for patients in intensive care.

As required by Section 76A (2A) of the *Guardianship Act*, the Tribunal sets out details of those trials on the following page.

Clinical Trials 2003/2004

Name of clinical trials submitted for approval by the Tribunal	Trial sites	Outcome of Tribunal	Individual consents to be given by the 'person responsible'
Trials for patients suffering from severe traumatic brain injury			
1. DECRA a trial of decompressive craniectomy in patients with severe brain injury	Nepean Hospital John Hunter Hospital Westmead Hospital Liverpool Hospital Royal North Shore Hospital	Trial approved Approval of all sites except Royal North Shore which is still to be considered.	Yes
Trials for patients who have significant disabilities resulting from a stroke			
2. Intravenous Repinotan in patients with Acute Ischaemic Stroke	John Hunter Hospital Gosford Hospital Prince of Wales Hospital Royal North Shore Hospital Mater Misericordiae Hospital, Newcastle	All sites approved	Yes
3. SAINT – Stroke- Acute- Ischemic NXY treatment	Central Coast Neuroscience Research, Gosford John Hunter Hospital	Adjourned	
Trials for patients with acute sepsis or pneumonia			
4. Efficacy of Levosimendan in critically ill patients with unstable hemodynamics	Nepean Hospital	Approved	Yes
5. Venticute in patients with pneumonia or aspiration of gastric contents leading to intubation, mechanical ventilation and severe oxygenation impairment	Nepean Hospital	Approved	Yes
Trials for patients in intensive care			
6. Acetylcystein for prevention in ICU of radiocontrast induced nephropathy (a kind of acute renal failure)	Westmead Hospital	Approved	Yes
7. The use of Neostigmine to promote gastro-intestinal motility in critically ill patients	Westmead Hospital	Approved	Yes
Trials for patients at risk of thromboembolism			
8. Evaluate safety of Enoxaparin vs unfractionated Heparin in prevention of venous thromboembolism	Gosford Hospital Royal North Shore Hospital Royal Prince Alfred Hospital Westmead Hospital	All sites approved	Yes



Communicating with our Clients

COMMUNITY AWARENESS AND EDUCATION

The Tribunal had a very busy 2003/2004 presenting community education sessions to professionals and carers. Throughout the year, the Client Information Services Unit organises community education sessions in different regions of NSW and coordinates guest speakers in response to requests from agencies.

Community education sessions

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

A total of five all-day seminars were held throughout NSW in 2003/2004. Seminars were held in the Sydney central business district, Wollongong, Gosford, Armidale and Blacktown (western Sydney). These attracted a total of 371 professionals and community workers for the morning sessions and 168 carers for the afternoon sessions.

This year, there has been an increase in the number of carers attending the afternoon sessions. For example, over 70 carers attended the Gosford seminar, almost the same number as the professionals and community workers who attended the morning session.

Requested sessions

The Tribunal also provides speakers for agencies that request a speaker. The requests come from a wide range of organisations, including the health and community sector, the nursing home and hostel industry, small non-government agencies (eg. neighbourhood centres), supported accommodation services for people with a disability, and retirement associations. The largest volume of requests this year came from the health sector. Forty requested sessions were delivered throughout the year, attracting a total of 1,140 people. Participants ranged from a volunteer delivering food to elderly people at home to medical staff of an emergency unit of a major hospital.

In summary, the Tribunal spoke to approximately 1,680 people across NSW, from professionals and community workers to carers, friends, family members and parents of people with a disability and elderly person.

PUBLICATIONS

Publications are one of the main means of obtaining information about the Tribunal by clients and the general public. The Tribunal produces publications that inform people with disabilities, carers and the

Highlights

- ◆ Launch of the Guardianship Tribunal's new website by its Minister, the Honourable Carmel Tebbutt.
- ◆ Distribution of over 96,000 publications throughout NSW.
- ◆ 5 community education seminars across NSW.
- ◆ 539 people attended community education seminars.
- ◆ 40 requested sessions presented to community and professional organisations (1,140 participants).

public about the Tribunal, its work and alternatives to accessing the Tribunal's services. Publications are distributed through the Tribunal's enquiries service and the website, at community education seminars and requested education sessions, and when requests are made to the Client Information Services Unit.

During 2003/2004, the major focus for publications was to disseminate information about the new legislation, the *Powers of Attorney Act*, and the Tribunal's increased role in reviewing enduring powers of attorney. Other publications produced during the year promoted the Tribunal's new website and community education. The Tribunal produced seven new publications during the year: *Planning Ahead... Enduring Powers of Attorney* brochure and application form; *Substitute Consent* brochure; a flyer promoting the new website; two new information sheets for the new website, *Accessibility Features of the New Guardianship Tribunal Website* and *Online Applications on the New Guardianship Tribunal Website*, an information sheet on *Reviews of Enduring Powers of Attorney*, and the

Nick O'Neill and Marion Brown with the video production team of Edna Wilson, Sienna Brown and Cathy Miller with the 2003 Intercom award for 'In Their Best Interests'.

Most popular publications distributed and downloads from website

Title	No. distributed in 2002/03	No. distributed in 2003/04	Website downloads Feb-June 04
What Does the Guardianship Tribunal Do	17,319	16,927	731
Planning Ahead... Enduring Guardianship	13,394	8,794	1,185
3 Separate Organisations	8,466	8,225	54
Person Responsible	9,094	8,139	568
Medical & Professional Assessment Reports	9,240	8,405	n/a
Enduring Power of Attorney	8,229	7,389	1,680

application form *Application to Review an Enduring Power of Attorney*. Apart from the new publications, the Tribunal produced new versions of a number of publications, including *What Does the Guardianship Tribunal Do?* brochure and *We Welcome Your Feedback* brochure.

Over the past year, the Tribunal distributed over 96,000 brochures, application forms and information sheets, which was a decrease of 19 percent compared to 2002/2003. The launch of the new website and the availability of the majority of Tribunal publications and all application forms

online has reduced the call for printed publications (see section 'Website' on page 24). By far the most widely distributed publication is the brochure *What Does the Guardianship Tribunal Do?* (16,927 printed copies distributed in 2003/2004). Other high-volume publications and the comparative number downloaded from the Tribunal's website are provided in the table above.



Guardianship Tribunal Current Publications

Brochures

3 Separate Organisations (the roles of the Guardianship Tribunal, the Office of the Public Guardian and the Office of the Protective Commissioner)

What Does the Guardianship Tribunal Do?

We Welcome Your Feedback

Planning Ahead... Enduring Guardianship (includes form)

Getting Ready for Your Hearing

Planning Ahead... Enduring Power of Attorney (includes form)

Substitute Consent

Booklets

Behaviour Management and Guardianship

Information sheets

What does the Guardianship Tribunal do? (available in Arabic, Chinese, Croatian, English, Greek, Italian, Macedonian, Polish, Serbian, Spanish, Tagalog, Turkish, Vietnamese)

Person Responsible

Special Medical Treatment: Guidelines (plus information sheets about specific kinds of special medical treatments)

Access to New Treatments through Clinical Trials

Application for Approval of a Clinical Trial

Medical and Other Professional Assessment Reports

Guardianship Orders — What Happens after the Hearing?

Financial Management Orders — What Happens after the Hearing?

How to Revoke Your Guardianship Order

Information sheets for people who are parties to hearings

Guardianship Hearings

Financial Management Hearings

Guardianship and Financial Management Hearings

Representation at Hearings

Preliminary Hearings

Separate Representation

Hearings to Review/Revoke Financial Management Orders

Hearings for Review of Guardianship Orders

Application forms

Application for Guardianship and/or Financial Management

Application for Consent to Medical or Dental Treatment

Application to be Joined as a Party to a Matter

Application for Recognition of Appointment

Application to Review a Financial Management Order

Application to Revoke a Financial Management Order

Application to Revoke Enduring Guardianship

Application to Review Enduring Guardianship

Application to Review Enduring Power of Attorney

Other publications

Annual Report 2002/2003

WEBSITE

On 12 February 2004, the Minister for Community Services, Ageing, Disability and Youth, the Honourable Carmel Tebbutt, launched the Tribunal's new website. After almost nine months in development, the new website was uploaded on 30 January 2004. The website will be a benchmark in accessible website design for other government agencies. The new website:

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



The Minister for Ageing and Disability, the Honourable Carmel Tebbutt, launching the Tribunal's new website.

section on enduring powers of attorney and enduring guardianship;

- ◆ provides up-to-date information on Tribunal seminars and expanded information on all Tribunal activities.

AWARD-WINNING VIDEOS

Since its production in February 2003, the Tribunal's newest video, *In Their Best Interests*, has won three international film and video awards:

- ◆ 35th AIME Festival—certificate of merit: finalist
- ◆ 2003 Intercom—silver plaque
- ◆ 37th US International Film and Video Festival—third place 'Certificate for Creative Excellence'.

Extracts from the video can also be seen on the Tribunal's website.

Website Statistics from 16 February to 30 June 2004

Activity	Feb 04	Mar 04	Apr 04	May 04	Jun 04	Total
No. of visits	5,654	6,111	4,752	5,150	5,931	27,598
5 most popular pages (excl. home page)						
- Common questions	455	543	385	478	676	2,537
- About the Tribunal	467	598	409	465	517	2,456
- Enduring power of attorney	461	542	484	540	549	2,576
- Applications	637	699	516	542	541	2,935
- Publications & seminars	668	546	368	480	453	2,515
5 most popular publications						
- Appointment form enduring power attorney	217	311	255	260	288	1,331
- Enduring power attorney brochure	349	404	330	308	289	1,680
- Enduring guardianship brochure	220	220	204	294	247	1,185
- Application guardianship/financial management	66	113	142	207	238	766
- Appointment form enduring guardianship	173	211	209	259	298	1,150
Online applications received	30	35	22	21	22	130

Papers presented

Nick O'Neill, President

'Planning end-of-life care using Advance Care Directives (NSW)' — July 2004 (presentation to health professionals).

'Clinical trials and adults unable to give a valid consent to their own treatment — what has happened so far in NSW' — 1 October 2003, 29th International Congress on Law and Mental Health.

'Substitute consent, use of restraint, clinical trials, and ethical issues' — 15 October 2003, presentation to medical staff at Royal North Shore Hospital.

'Guardianship Tribunal: New jurisdiction to review enduring powers of attorney' — 17 May 2004, Law Week seminar.

'Dementia: Facing the hard issues' — 23 June 2004, 5th Biennial International Conference.

Marion Brown, Deputy President

'Overview of guardianship and financial management' — 24 March 2004, Legalwise seminar.

'The Powers of Attorney Act 2003 and the role of the Guardianship Tribunal' — 24 March 2004, Legalwise seminar.

'The Guardianship Tribunal's jurisdiction to review enduring powers of attorney. Powers of Attorney Act 2003' — 26 March 2004, College of Law.

Our People

TRIBUNAL STAFF AS AT 30 JUNE 2004

Executive

President	Nick O'Neill
Deputy President	Marion Brown
Executive Officer/Registrar	Trevor Fairbairn
Executive Secretary	Jennifer Reynolds
Personal Assistant	Lisa Whittaker
Legal Officer	Esther Cho



*L to r: Marion Brown, Nick O'Neill,
Jennifer Reynolds, Trevor Fairbairn,
Lisa Whittaker, Esther Cho.*

Coordination and Investigation

Manager	Ryan Williams
Team Leaders	Theresia Khoudair (part-time)/ Amanda Legge (part-time)
	Margaret Watson (part-time)/ Geraldine Northcott (part-time)
	Sue Young
Senior Investigation Officers	David Evans
	Loretta Rosicky
	Peter Heffernan
	Geraldine Northcott (part-time)
	Lee Dargan
	Frances Massy-Westropp
	Katrina Morris
	Paula Norris* (part-time)
	Louise Smith
	Amanda Legge (part-time)
	Jane Samek
	Melissa Simcoe (part-time)



Investigation Officers

Mary Chapman*
 Trudi Cusack (part-time)
 Andrew Gabriel*
 Frank Maguire* (part-time)
 Christopher Moore
 Paula Norris* (part-time)
 Philippa Scott
 Kathryn Tidd
 Liesje Tromp*

Assistant Investigation Officers

Maxine Spencer
 Lois Warnock
 Zebun Haji

Hearing Services

Manager Client Information and Hearing Services

Janette Ogilvie

Assistant Manager

Lesley McGowan

Senior Hearing Officers

Kerrie Menken
 Cynthia Nejal*
 Gary MacDonald (part-time)/
 Rada Stevanovic* (part-time)

Hearing Officers

Lisa Spence* (part-time)
 Janet Stringer*

Assistant Hearing Officers

Mariella Eberl (part-time)
 Elizabeth Evans*

Back l to r: Ryan Williams, Frances Massy-Westrop, Liesje Tromp, Loretta Rosicky, Lois Warnock, Maxine Spencer, Louise Smith, Christopher Moore, David Evans, Kathryn Tidd. Middle l to r: Mary Chapman, Jane Samek, Zebun Haji, Paula Norris, Melissa Simcoe, Amanda Legge, Frank Maguire. Front l to r: Katrina Morris, Trudi Cusack, Lee Dargan, Philippa Scott, Geraldine Northcott, Sue Young, Margaret Watson.



*Back l to r: Rada Stevanovic, Sita Singh, Mariella Eberl, Eleanor Torry.
Front l to r: Kerrie Menken, Lesley McGowan, Janette Ogilvie, Janet Stringer, Cynthia Nejal, Elizabeth Kim, Elizabeth Evans.*

Doreen Gray
Elizabeth Kim*
Christopher Mitchell
Sita Singh
Lisa Spence* (part-time)
Eleanor Torry

Client Information Services

Manager Client Information
and Hearing Services

Janette Ogilvie

Assistant Manager

Sonia Bernardi* (part-time)

Publications Officer

Anita Ray (part-time)

Senior Information Officers

Robyn Barlow

Diane Brehaut (part-time)

Information Officers

Jihan Noun*

Andrew Gabriel*

Assistant Information Officers

Sonia Tomasetig (part-time)

Cristyn Davies (part-time)

Angela Ogden (part-time)

Craig Oliver*

Tina Pasa* (part-time)/
Sally Shaw* (part-time)

Diane Cracknell* (part-time)

*Back l to r: Craig Oliver, Diane Brehaut, Sonia Bernardi, Anita Ray.
Front l to r: Jihan Noun, Diane Cracknell, Sally Shaw, Janette Ogilvie, Robyn Barlow.*



Business Services

Manager	Linda Sengstock
Training and Development Officer	Gail Yueh (part-time)
Business Services Coordinator	Maria Sardisco
IT Systems Management Officer	Dennis Maby
CMS Systems Management Officer	Patrick Gooley
Business Services Officer	Christine Small
Assistant Business Services Officer	Sin-Lee Yeoh
Assistant Systems Officer	Christine Triantafillopoulos

Other staff employed in 2003/2004

Frank Barbara*
 Tony Bolan*
 Caroline Brehaut*
 Natalie Clough (maternity leave)
 Tia Covi (on extended leave)
 Donna Crotty*
 Luke Duncan*
 Oscar Garrido*
 Pam Giurissevich*
 Tania Hibbert
 Suin Jung*
 Robyn O'Connor*
 Ruth Pearson
 Leanne Robinson
 Michelle Savage (on extended leave)
 Matthew Sexton
 Patrika Sheehan*
 Susan Wright



*Back l to r: Peter King,
 Christine Triantafillopoulos,
 Christine Small, Dennis
 Maby.*

*Front l to r: Sin-Lee Yeoh,
 Linda Sengstock, Patrick
 Gooley.*

* Temporary or acting

TRAINING FOR STAFF

Having a well trained, well informed workforce ensures the Tribunal is able to provide an efficient service for its clients. To achieve this goal, the Tribunal's administrative staff attended a variety of training programs, conducted either within the Tribunal or at external training organisations. These programs provided staff with skills, knowledge and information on using computers, occupational health and safety issues, human resource matters and many other aspects of the Tribunal's work.

The Tribunal's clients and issues relating to them have been the focus of much of the training undertaken over the past year. External programs attended include law and mental health, ageing in a multicultural society, vexatious litigants and understanding schizophrenia. An internally developed customer-service training program was conducted for staff by the Tribunal's Training and Development Officer.

Conscious of ensuring the safety of both staff and clients, the Tribunal arranges for staff to attend regular training in practical fire-fighting techniques. This training is conducted at the Tribunal by Comsafe, the training arm of the NSW Fire Brigade. Other safety concerns were addressed by external training programs in occupational health and safety consultation and risk management.

Staff attended a range of computer training programs.

Programs conducted internally covered computer file management, using Microsoft Outlook, and basic word processing skills. External courses attended by staff included:

Computing skills

- ◆ Microsoft Excel
- ◆ Microsoft Word
- ◆ Microsoft Access
- ◆ MS QL

Occupational health and safety

- ◆ occupational health and safety consultation
- ◆ risk management for managers and supervisors
- ◆ first attack practical fire-fighting

Human resources

- ◆ supervision
- ◆ staff selection techniques
- ◆ developing teams
- ◆ leadership
- ◆ training others on-the-job
- ◆ stress management

Other training

- ◆ ageing in a multicultural society
- ◆ International Congress on Law and Mental Health
- ◆ understanding schizophrenia
- ◆ conference on capacity.

procedural matters are also discussed.

The training is conducted in the form of seminars, with a mix of presentation and discussion. There are four seminars per year for presiding members and a further three half-day and one full-day seminars for all Tribunal members. Topics covered in the last year included:

- ◆ medication for behavioural intervention
- ◆ services for people with intellectual disabilities
- ◆ capacity and competency assessment
- ◆ *Powers of Attorney Act 2003*
- ◆ acquired brain injury and
- ◆ mental health issues including community treatment orders.

TRAINING FOR TRIBUNAL MEMBERS

Tribunal members have a separate training program that provides information about conditions, medications and other matters relating to clients. Legislative changes and

TRIBUNAL MEMBERS

Nick O'Neill, President

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

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

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

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



Nick O'Neill

Marion Brown, Deputy President

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



Marion Brown

and a part-time hearing commissioner with the Human Rights and Equal Opportunity Commission.

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

Currently, she is a member of a number of committees including the Specialist Advisory Committee for the Centre for Gender Related Violence Studies at University of NSW, Client Capacity sub-committee of Law Society Ethics Committee at the NSW Law Society. She was a representative on the Department of Ageing, Disability and Home Care Steering Committee for Planning Ahead Project and Dementia Awareness for Lawyers Forum.

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

Presiding (legal) members

Angela Beckett

Admitted as solicitor, also clinical psychologist. Experience in private legal practice and in community legal center. Member, Social Security Appeals Tribunal, Mental Health Review Tribunal and Consumer Trader and Tenancy Tribunal. Experience in alternative dispute resolution and service provision to persons with a disability. Formerly professional member of the Guardianship Tribunal.

John Boersig

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

Sally Ann Chopping

Lawyer and former Chairperson of the Residential, Fair Trading, and the Consumer, Trader and

Tenancy Tribunals. Experience in alternative dispute resolution.

John Cipolla

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

Jennifer Conley

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

Anthony Giurissevich

Solicitor in private practice. Former legal member, Veterans'

Review Board and Social Security Appeals Tribunal. Experience in general litigation and advocacy for people with brain injury and mental illness.

Robin Gurr

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

Christine Hayward*

Lawyer and former member of the Refugee Review Tribunal and Senior Deputy District Registrar in Commonwealth Administrative Appeals Tribunal.

John Hislop

Solicitor, now retired after more than 40 years in private legal practice. Former partner with firm with emphasis on business law, property,

Back l to r: Linda Pearson, John Hislop, Tony Krouk, Tony Giurissevich, Carol McCaskie, Monica MacRae.

Middle l to r: Josephine Maxwell, Bill Tearle, Jennifer Conley, Carolyn Huntsman.

Front l to r: Anita Sekar, Bernie Shipp, Marion Brown, Nick O'Neill, Angela Beckett.



estates and litigation. Ten years (part-time) teacher with Faculty of Law, University of Sydney.

Geoffrey Hopkins

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

Carolyn Huntsman

Lawyer and current member of the Mental Health Review Tribunal and the Social Security Appeals Tribunal. Experience in working for Legal Aid and Aboriginal organisations.

Tony Krouk

Accredited family law specialist. Experience representing people with brain injury, mental illness and dementia, as both a private and community lawyer.

Julie Lulham

Solicitor and social worker. Experience in private practice and community legal centres. Experience in head injury rehabilitation and geriatric medicine.

Carol McCaskie, AM

Barrister. Member, Consumer, Trader and Tenancy Tribunal and Mental Health Review Tribunal. Arbitrator, Workers Compensation

Commission. Former general manager, Langton Centre. Qualifications in management, dispute resolution, geriatric nursing, nurse education and nursing administration.

Monica MacRae

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

Hon. Josephine Maxwell

Former judge of the Family Court. Previously worked as a presiding member of the Guardianship Tribunal.

Peter Molony

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

Linda Pearson

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

Loretta Re

Barrister. Member, Mental Health Review Tribunal. Revised the law of evidence and formulated proposals for a Guardianship Tribunal (ACT) at the Australian Law Reform Commission.

Kim Ross

Solicitor and consultant in human rights and mental health law. Extensive tribunal

experience and current member of Consumer, Trader and Tenancy Tribunal, and Mental Health Review Tribunal.

Anita Sekar

Solicitor. Worked with the Equity Division of the NSW Supreme Court, Commonwealth Director of Public Prosecutions, Human Rights and Equal Opportunity Commission, and Australian Broadcasting Authority. Worked in community legal centres, Disability Discrimination Legal Centre and Intellectual Disability Rights Service. Experience as a conciliator with NSW Anti Discrimination Board.

Bernie Shipp

Solicitor. Experience with Legal Aid and Community Legal Centres. Now a member of the Social Security Appeals Tribunal and Consumer Trader and Tenancy Tribunal.

James Simpson

Solicitor, mediator and policy consultant. Former

deputy president, Community Services Appeals Tribunal. Former coordinator, Intellectual Disability Rights Service. Presiding member, Mental Health Review Tribunal. Justice Medal 2001— Law and Justice Foundation NSW.

Bill Tearle

Lawyer and financial counselor. Current member of the Consumer Trader and Tenancy Tribunal and the Mental Health Review Tribunal.

Professional members

Ivan Beale

Psychologist, specialising in assessment and intervention for developmental and behavioural problems, as well as treatment adherence in people with chronic illness. Formerly Associate Professor

Back l to r: Michael Frost, Velupillay Vignaendra, Helen Molony, Sue Stone, Ivan Beale.

Middle l to r: Meredith Martin, Carolyn West, Hayley Bennett, Rhonda Buskell, Sarah Carlill, Julie Garrard.

Front l to r: Jan Wortley, Robert Yeoh, Isla Bowen, Sandra Dingle, Tony Ovadia, Mary Ellen Burke.

and Director at the Learning Assessment Centre (University of Auckland).

Hayley Bennett

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

Isla Bowen

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

Mary Ellen Burke

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

Barbara Burkitt

Psychiatrist. Experience in psychogeriatrics, formerly psychogeriatrician, Central Sydney Area Health Service.

Rhonda Buskell

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

Sarah Carlill

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

Sandra Dingle

Psychologist. Experience assessing and assisting people with dementia, stroke and brain injury. Founding



coordinator of Home Respite Service, Wollongong.

Imelda Dodds

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

June Donsworth

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

Sharon Flanagan

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

Michael Frost

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

Julie Garrard

Manager of social work and bereavement teams at Calvary Health Care Kogarah, providing palliative care and aged care services. Also,

experience working with people with intellectual disabilities, brain injuries and HIV/AIDS, and in health complaints.

Jean Hollis

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

Susan Kurrle

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

Pamela Lockhart**

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

Brenda McPhee

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

Meredith Martin

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

Helen Molony

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

Helen Newman*

Clinical neuropsychologist in private practice. Experience assessing people who have suffered brain impairment.

Tony Ovidia

Psychologist with experience with people with mental illness. Previously managed the Boarding House Review Team.

Michael Pasfield*

Psychiatrist. Member NSW and NT Mental Health Review Tribunals. Former member Social Security Appeals Tribunal, Repatriation Review Tribunal and Veterans' Review Board. Consultant practice, psychiatric hospitals and government departments.

Carmelle Peisah

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

Suzanne Stone

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

Susan Taylor

Social worker. Experience in community mental health services and providing support services for people with multiple sclerosis. Member, Social Security Appeals Tribunal.

Velupillay Vignaendra

Neurologist with extensive experience of people who have strokes, acquired brain injury

Back l to r: Marika Kontellis, Allan Owen, Hatton Kwok, Jenny Klause, Annette Evans.

Middle l to r: Andrew Barczynski, Carol Logan, Maria Circuit, Jane Fraser, Mary Butcher, Rhonda Ansiewicz.

Front l to r: Faye Druett, Jeanette Moss, Robyn Rayner, Sue Warth, Leanne Stewart, Elaine Becker.

and other neurological impairments.

Carolyn West

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

Wai-Kwan (Tim) Wong

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

Janice Wortley

Psychologist with experience assessing people with psychiatric disabilities, acquired brain injury and intellectual disabilities. Experience in behaviour

intervention and support. Family experience of disability.

Robert (TH) Yeoh

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

Community members

Stanley Alchin, OAM

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

Rhonda Ansiewicz

Lecturer in social work and community work, advocacy and



human rights. Coordinator Aboriginal Rural Education Program in Community Welfare, University of Western Sydney. In private practice, works with people with a mental illness. Family experience with schizophrenia. Activist for social change.

Andrew Barczynski

Social worker. Manager of Emergency Relief Program in NSW for Commonwealth Department of Family and Community Services. Previously worked for 14 years in Disability Services Program. President of non-government organisation providing services for older people from culturally and linguistically diverse backgrounds.

Elaine Becker

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

Mary Butcher

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

Maria Circuit

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

Janene Cootes

Social worker. Community visitor to residential services for adults and children with disabilities and educator at the

Intellectual Disability Rights Service. Past experience with people with an intellectual disability and as the first Manager of Investigation and Liaison at the Guardianship Tribunal.

Faye Druett

Long-standing involvement in the disability field. Has significant physical disabilities herself. Currently private guardian for a woman with intellectual disability. Worked in federal and state (NSW and Queensland) governments, including as a service provider, policy development, management and administration of legislation.

Annette Evans

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

Jane Fraser

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

Steve Kilkeary

Social worker with experience in mental illness, gay men's health and HIV/AIDS. Guardian ad litem with Children's Court NSW.

Former primary carer to family members with disabilities.

Jennifer Klause

Project officer at Centre for Development Disability Studies educating nurses and community health workers. Extensive experience as advocate, service manager, consultant, educator and support to people with intellectual disabilities on consultative committees. Previous work with Community Services Commission and Intellectual Disability Rights Service.

Marika Kontellis

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

Hatton Kwok

Retired psychiatric nurse and rehabilitation counsellor. Currently chairman of the Australian Nursing Home Foundation. Established residential care facilities for aged people from Chinese backgrounds.

Kerrie Laurence

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

Carol Logan

Nurse, managed community option services in western Sydney. Previously Director of Centacare Catholic Community Services/Ageing and Disability Services 1996 to 2004.

Michael McDaniel

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

Leonie Manns

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

Jeanette Moss AM

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

John Mountford

Former Chairperson of the NSW Committee on Ageing. Accountant with extensive experience in private business, public service and charitable organisations.

Jennifer Newman

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

Alan Owen

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

Robert Ramjan

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

Robyn Rayner

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

Alexandra Rivers

Psychologist/specialist educator. Experience working with people with intellectual disabilities, behaviour difficulties or mental health problems and their families. Lecturer (Hon), Faculty of Education, University of Sydney. Vice-President, Schizophrenia Fellowship of NSW. Board member, Aboriginal Education Council, NSW.

Leanne Stewart

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

Susan Warth

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

* appointment ceased in 2003

** currently on leave from the Tribunal

DEFINITIONS

- clinical trial** is a trial of a drug or technique that involves medical or dental treatment. Before an adult unable to give a valid consent to their own treatment may take part in a clinical trial, the Guardianship Tribunal must approve the trial. Usually, the person's 'person responsible' will be able to decide whether or not they take part in the clinical trial. Before an application can be made to the Tribunal, the approval of the relevant ethics committee must be obtained. Also, the trial must comply with the relevant guidelines of the National Health and Medical Research Council.
- consent to medical or dental treatment** if a person cannot understand the general nature or effect of treatment or cannot communicate whether or not they consent to treatment, they cannot give a valid consent to that treatment. Part 5 of the Guardianship Act 1987 sets out who can consent on their behalf. Usually, this will be a 'person responsible'. If there is no 'person responsible' or the person is objecting to the treatment, the Guardianship Tribunal can act as a substitute decision-maker. Only the Tribunal may act as substitute decision-maker in relation to special medical treatments.
- enduring guardianship** 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) when you are not capable of doing this for yourself. The appointment may start when the power of attorney is made, at a particular time, or when you have lost the capacity to make financial decisions.
- financial management order** is an order which the Guardianship Tribunal makes when the Tribunal is satisfied that an adult is incapable of managing their financial affairs and needs someone else to manage those affairs on their behalf and that it is in their best interests that a financial order be made. It authorises the financial manager to make financial decisions for the person the order is about. Most financial management orders are permanent.
- financial manager** is a legally appointed substitute decision-maker with authority to make decisions about and manage a person's financial affairs (eg. their money, property and other financial assets, such as share portfolios). A private financial manager may be appointed - a family member or friend - provided they are a 'suitable person' as required by the legislation. Otherwise, the Tribunal will appoint the Protective Commissioner.

- guardian** is a substitute decision-maker with authority to make personal or lifestyle decisions about the person under guardianship. A guardian is appointed for a specified period of time and is given specific functions (eg. the power to decide where the person should live, what services they should receive and what medical treatment they should be given). A private guardian may be appointed - a family member or friend - provided the circumstances of the matter allow for this and they meet the criteria set out in the legislation. Otherwise, the Tribunal will appoint the Public Guardian.
- guardianship order** made by the Guardianship Tribunal names the guardian who has been appointed by the Tribunal, the length of their appointment and their functions. It authorises the guardian to make certain decisions for and instead of the person under guardianship.
- order** see **guardianship order** or **financial management order**
- parties to a hearing** always includes the applicant, the person the application is about, the proposed guardian and/or financial manager. Those who are automatically parties to a hearing are set out in Section 3F of the *Guardianship Act*. The Guardianship Tribunal may join others as parties to a proceeding.
- person responsible** someone who has the authority to consent to treatment for an adult who is unable to give a valid consent to their own medical or dental treatment. Sometimes, a patient is unable to make the decision or does not understand what the treatment is about or its effects. In these cases, the person responsible can give substitute consent on behalf of the patient.
- requested review of financial management order** sometimes the Tribunal is asked to review an order because the private financial manager no longer wants to or is unable to carry on with this role, or concerns are raised about the manager's suitability as financial manager, or because the person has regained capacity, or it is in the best interests of the person to review the order.
- requested review of guardianship order** a guardian can request a review to increase or vary the guardianship functions. Others can request a review if the circumstances relating to the person under guardianship have changed or because of some other issue relating to the guardian.
- review of financial management order** the Tribunal can order that a financial management order be reviewed within a specified time. However, the order can be revoked only if the person regains the capability to manage their own affairs or if the Tribunal is satisfied that it is in the person's best interests to revoke the order.
- review of guardianship order** most guardianship orders are reviewed before expiry. Initial orders are made for a specific period of time. The Tribunal undertakes a review hearing where the order will either be allowed to lapse or it will be renewed.

Guardianship Tribunal

Level 3, 2a Rowntree Street, Balmain NSW 2041

Postal address: Locked Bag 9, Balmain NSW 2041

Tel: (02) 9555 8500

Tollfree: 1800 463 928

TTY: 9552 8534

Fax: (02) 9555 9049

Email: gt@gt.nsw.gov.au

Website: www.gt.nsw.gov.au