

**GUARDIANSHIP AND ADMINISTRATION BOARD
HENTY HOUSE LAUNCESTON**

Mr WKX, on the application of **Mr KMX**

GAB NO. XXXX of 2006

REASONS FOR DECISION

Malcolm Schyvens (Chair)
Marguerite Lester (Board Member)
Patricia King (Board Member)

Friday 23 June 2006

Guardianship – review of guardianship – represented person’s father seeking appointment on basis of various complaints against Public Guardian – complaints not substantiated, wishes and best interests of represented person

Procedures – exclusion of parties from hearing – seeing represented person separately – effect of restraint orders between parties on proceedings

Guardianship and Administration Act 1995 ss 6, 12, 20, 67

1. This is an application pursuant to section 67 of the *Guardianship and Administration Act 1995* (“the Act”) for review of the order made on 22 October 2004 appointing the Public Guardian as guardian for Mr WKX.

Details as to the Represented Person

2. Mr WKX was born on XX XXXXX 19XX; he is the son of Mrs BX and Mr KMX. Following an application in 1995 the Family Court of Australia made orders on 31 January 1996 that Mr KMX and Mrs BX have joint guardianship of WKX, that Mr KMX have sole custody and Mrs BX have unrestricted access.
3. On 1 March 2000 WKX was involved in a pushbike accident in which he sustained severe head injuries and as a result he now suffers from an

ongoing acquired brain injury. Following discharge from hospital after his accident WKX was accommodated in a Motor Accidents Insurance Board (“MAIB”) residential unit. He currently resides in Northern Tasmania where care is provided to him under the auspices of Anglicare. WKX communicates by means of an alphabet board.

4. At the original Guardianship hearing of 22 October 2004, separate applications from Mr KMX and Mrs BX for appointment as guardian were considered. The Guardianship and Administration Board was satisfied from the evidence presented at that hearing that the criteria outlined in Section 20 of the Act were met and the decision of the Board was to appoint the Public Guardian. The reasons for the decision are stated in paragraphs 36 - 40 of the written Reasons for Decision relating to that hearing.
5. Mr KMX, following the original hearing, made application pursuant to section 67 of the Act for review and the hearing was conducted on 15 July 2005. Paragraph 20 of the Statement of Reasons in respect of the Board’s decision in that matter stated that “the Board considered that there had been no changes of substance to the circumstances resulting in the appointment of the Public Guardian as guardian of the represented person and that the involvement of an independent guardian able to focus on, and act in, WKX’s best interest should continue.”

Pre-hearing matters

6. Notices of the hearing dated 31 May 2006 were sent to all interested parties.

7. The Board considered the following documents (these documents were also made available to all interested parties):

- (a) Original order of 22 October 2004 and Statement of Reasons,
- (b) Original order of Review Hearing of 15 July 2005 and Statement of Reasons,
- (c) Report by Ms Hillier on behalf of the Public Guardian compiled for the Review Hearing dated 19 June 2006,
- (d) Interim Restraint Order dated 15 November 2005 against Mr KMX,
- (e) Restraint Order dated 28 March 2006 against Mr KMX,
- (f) Copy of WKX's visitation schedule (undated),
- (g) Letter from Registrar of Guardianship and Administration Board to Mr KMX dated 11 May 2006,
- (h) Numerous letters from Mr KMX to the President of the Guardianship and Administration Board and/or the Registrar of the Board in respect of the review from on or about November 2005 to the date of hearing,
- (i) Numerous letters from Mr KMX to the Office of the Public Guardian "drop copied" to the Board from November 2005 to the date of the hearings, and
- (j) Numerous letters from Mr KMX to members of Parliament (Tas), the Governor of Tasmania, the Prime Minister of the Commonwealth of Australia, and "drop copied" to the Board from November 2005 to the date of the hearings.

8. The hearing was attended by the following persons:

Mr KMX, Applicant and father of WKX

Mrs BX, mother of WKX

Ms Kylie Hillier, Office of the Public Guardian

Ms EB, Manager, Accommodation Facility

Ms Linda Gourlay, MAIB, [pre-lunch break]

Ms Lisa Bingley, MAIB, [post-lunch break]

Mr Kim Booth, MHR (Bass) and also Advocate for Mr KMX

Mr Gary Whitney, the Applicant's Pastor

Mr Paul Challis, Citizens Advocate

Ms Anna Curtain, Investigation Officer, Guardianship and Administration Board

9. All interested parties were sworn on oath prior to providing evidence.

10. At the beginning of the hearing, the Board noted that copies of all documentation referred to in paragraph 7 had been forwarded to the interested parties. Mr KMX stated that he had not received his documentation despite them having been posted by express post on 19 June 2006. Mrs BX indicated that she had received her documentation. Whilst the majority of the documentation was in fact correspondence written to the Board by Mr KMX or to third parties and copied to the Board, there was other documentation, and in particular a recent report provided to the Board by the Office of the Public Guardian. A short break in proceedings occurred to ensure that Mr KMX had time to peruse the documentation and in particular that report.

Procedural matters

11. A preliminary matter which was raised was that of the existence of a Restraint Order. Mr KMX questioned whether the attendance of the abovementioned parties was in breach of the terms of a Restraint Order. A copy of the Restraint Order dated 28 March 2006 was provided to the Board which was issued by the Magistrates Court (Launceston) prohibiting Mr KMX from, inter alia, approaching Ms EB, Ms ND and all other employees of Accommodation Facility located in Northern Tasmania directly or indirectly including by telephone, email, facsimile or letter except for the purpose of attending meetings by consent between them and Mr KMX in the presence of a third party to discuss matters

relating to WKX. Ms EB indicated that she consented to Mr KMX attending the hearing and raised no issue with the hearing proceeding with all parties present. Accordingly, the Board was satisfied that there was no breach and continued with the hearing.

12. Mr KMX also sought a preliminary determination of the Board that the representatives of the MAIB and Anglicare be excluded from the hearing on the basis of such parties having a conflict of interest. Mr KMX based this premise on stating that both organisations had previously made allegations against him in respect of his relationship with WKX. The Board was not satisfied that Mr KMX had provided any basis for the Board to exercise its power under Section 12 of the Act to exclude either the representative of Anglicare (Ms EB) or the representative of the MAIB (Ms Gourlay).
13. The Board had been advised that WKX suffered a significant level of distress by reason of attending previous hearings of the Board. Ms EB confirmed the Board's concerns of having WKX attend the hearing advising that following the hearing in 2004 at Henty House, WKX was very distressed, explaining that WKX was so agitated that he nearly fell from his chair on several occasions, his agitation being exacerbated by Mr KMX telling WKX that as a result of the orders of the Board WKX now had a "new mum and dad", or words to that effect.
14. Accordingly, the Board, taking into account the best interests of WKX, as is the requirement of the legislation, decided to meet with WKX separately shortly prior to the hearing. Board members met with WKX at his accommodation shortly prior to the hearing commencing in the

presence of Ms EB who facilitated his communication with Board members.

15. Mr Booth, on behalf of Mr KMX, indicated that it was their view that the Board's actions in meeting with WKX in the absence of others was "hugely unfair and inappropriate" especially because of the presence of Ms EB.
16. The Board indicated that it felt it was necessary for Ms EB to attend the meeting between WKX and the Board to ensure that the Board was able to adequately communicate with WKX given that he communicates via an alphabet board.
17. The Board reported to all attending the hearing that at the meeting held with WKX the following was elicited:
 - That WKX was happy living where he is and that there was nothing that he was unhappy about in terms of his accommodation and environment there;
 - On asking WKX did he enjoy going on outings with his father and on outings with his mother he advised that we should be "keeping out of his family life";
 - On asking WKX his feelings as to attending the hearing today based on past hearings he seemed at first confused and then said he could not recall past hearings; and
 - On asking WKX as to whether he liked Ms Hillier of the Office of the Public Guardian he said that he could not recall.

The Hearing - 23 June 2006

18. At the outset of the hearing, the Board noted from the documentation that it seemed that evidence of disability, incapacity and need for a

guardian in respect of WKX was accepted as that presented at the hearing of 22 October 2004. That is, the criteria prescribed by Section 20 of the Act and that there had been no significant change in circumstances to cause a review of these elements. All parties at the hearing confirmed this understanding. The only issue in contention was the identity of the guardian.

19. Mr KMX submitted that the Public Guardian was an unsuitable guardian for WKX. Mr KMX wished to be substituted as WKX's guardian. This is similar to the substance of Mr KMX's earlier application for review to the Board heard on 15 July 2005. Mrs BX, and the representatives of the MAIB and Accommodation Facility indicated at this juncture to the Board that they were satisfied with the current order appointing the Public Guardian and were opposed to any amendment to the current order.
20. The hearing then moved to examining the substantive issues Mr KMX wished to raise in support of his application. Essentially, Mr KMX's issues were outlined in several recent letters forwarded to the Board. Despite Mr KMX presenting multiple grounds for review throughout such correspondence, many such stated grounds for review in fact remained the same as many of the other grounds depicted with the same allegations as to the failure of the Office of the Public Guardian in respect of each ground.
21. At all times material to the review, Ms Kylie Hillier had been delegated as an Officer of the Public Guardian with the guardianship of the represented person.

(A) Failure to communicate

22. The first matter raised by Mr KMX in support of his application was that he alleged that the Public Guardian had failed in her duty to put in place communication strategies as implied in the Board's previous orders. Mr KMX went on to state that he had in October 2005 attended a meeting involving interested parties as to WKX's care which was organised and chaired by a representative of the MAIB. Mr KMX stated that he had been "ruled out of order by the MAIB" and also that despite there having been put in place an agreement previously with the Office of the Public Guardian (OPG) to have three monthly meetings in respect of WKX's progress there had been only one such meeting.
23. In response to this allegation, Ms Hillier, on behalf of the Public Guardian, indicated to the Respondent that there had indeed been a first meeting and confirmed that at the time that a second meeting was to be staged Mr KMX was invited. Mr KMX clarified on this point that he had not attended due to his belief that the Restraint Order prohibited him from attending such meetings and the fact was that he saw little benefit in these meetings given they were "controlled" by the MAIB. Mr KMX also advised when questioned by the Board that he had not sought legal advice as to whether he could attend such meetings given the terms of the Restraint Order seemingly permitting, neither had he sought the consent of the parties named in the Restraint Order.
24. Ms Hillier's report to the Board dated 19 June 2006 stated that "I will no longer meet with him (Mr KMX) by myself as I feel uncomfortable, not so much in a physical way, but because what I say has been taken out of context so many times". Ms Hillier went on to state further in such report that "I would say that 80% of time spent on the WKX file to date

has been taken up with issues instigated by Mr KMX, and letters from him that I read and have replied to. Sometimes I wonder whether it is in WKX's best interest to spend so much time on issues his father raised and whether I am actually being an effective guardian for WKX..... it seems Mr KMX is never really happy with any of the decisions that I make, even if he suggested them in the first place”.

25. Mrs BX indicated to the Board that she has no difficulty with the level of communication between herself and Ms Hillier in respect of WKX and made it quite clear that she has always had her views as to WKX's care and rehabilitation taken into account by Ms Hillier and does not believe that Ms Hillier has failed in respect of communication in any way.
26. The Board was satisfied on the evidence provided that Ms Hillier and the Office of the Public Guardian had not failed to communicate to the level expected taking into account the requirements of the Act.

(B) Public Guardian subject to the “control” of the MAIB

27. Mr KMX had a theme to many of his review grounds which can be best described as alleging that the Office of the Public Guardian did not engage in independent decision-making and in fact was controlled in terms of decision making by the MAIB. Mr KMX offered little in the way of evidence in support of this proposition except to state that he believed the MAIB had previously made allegations about his relationship with WKX on the basis that they “wanted to gain control of WKX to lessen their exposure to costs as opposed to being with his father”.
28. Ms Hillier vigorously denied the allegation that she or the Office of the Public Guardian in some manner was controlled or had decision making

dictated to her by the MAIB. She went on to provide examples, for instance, when WKX required a tooth operation, she advised that it was she who made the decision as to the form of treatment that was necessary which happened to be the most expensive form of treatment to rectify the issue at hand which the MAIB then went on to agree to fund. She also went on to state that if a situation arose in making a decision in WKX's best interest that the MAIB did not support in terms of funding then she would certainly take the opportunity to advocate in favour of WKX and his entitlements. Ms Hillier went on to advise that thankfully such an occurrence had not arisen because the MAIB had agreed to fund all decisions made to date.

29. The Board was satisfied that there was no evidence to support the proposition raised by Mr KMX that the Public Guardian was in some manner failing in her duties to WKX in that she was "controlled" by the MAIB in her decision-making.

(C) Failure to provide a rehabilitation plan

30. Mr KMX alleged that the Public Guardian had failed to uphold her responsibilities to WKX in that she had not put in place a plan for his rehabilitation, either short term or long term.
31. In response to this allegation, Ms EB pointed out that WKX was currently attending a life skills course at TAFE which he had in fact requested to do himself. Ms EB went on to state that WKX's orthotics are currently being reviewed and that a new physiotherapist has just been engaged for a regular program. The Board was also advised that WKX attends a gymnasium class with a personal trainer at least twice a week. Further information was supplied indicating that WKX undergoes

regular speech therapy, attends hydrotherapy sessions twice a week and also engages in massages twice a week. He was also said to be due for a major rehabilitation review in Hobart in July or August.

32. Ms Hillier went on to outline in depth the steps which had been taken by herself and other professionals engaged in WKX's care in terms of having a long term rehabilitation plan for WKX with a view to providing him with realistic goals.
33. Mr KMX indicated that he had little confidence in the activities that had been outlined during the hearing relating to WKX's rehabilitation program and in particular questioned the worth of WKX attending a life skills program at TAFE. When questioned by the Board as to what in fact Mr KMX would propose as a short term or long term rehabilitation plan for WKX given his application as a substitute guardian, Mr KMX provided no information to the Board as to what he would propose but simply persisted in restating specific examples of being involved in WKX's care and rehabilitation prior to him entering Accommodation Facility .
34. The Board was satisfied that there was no evidence that the Public Guardian had in any way failed to act in accordance with her duty to engage in forming rehabilitation plans for WKX and, in fact, quite the contrary seemed to be the case on the evidence provided.
35. Many of the comments made by Mr KMX doubting the worth of WKX attending life skill classes such as those in which he was engaged at TAFE to engage socialisation skills and alike were of concern to the Board given his application to substitute himself as guardian.

(D) Parental rights v. Guardianship

36. Mr KMX, particularly through his Advocate Mr Booth, submitted, that having the Public Guardian appointed as guardian to a large extent removed his parental rights. The Board pointed out that there seemed to be some confusion as to the meaning of the term “guardian” as a concept compared to that as defined under the Act. The Board also pointed out that whilst the legislation utilised language comparing the appointment of guardian of a person over 18 years of age as to incorporating somewhat of a parental role, it was a different concept to that of a person appointed as guardian to someone over 18 years of age and should not be seen as removing the ability to have a normal relationship between parent and child.
37. On this point, Mrs BX stated she was happy with the Public Guardian’s appointment as her son’s guardian and stated that she did not feel in any way it removed her rights or role as WKX’s mother.
38. The Board expressed the view at this juncture of the hearing that all the circumstances presented to the Board to date in fact highlighted the need for a guardian, and perhaps more importantly, an impartial guardian, to ensure that WKX continued to have meaningful access to both of his parents which was his very clearly stated desire in the Board’s meeting with him. The Board further expressed the view that the appointment of an impartial guardian would seem to allow for both parents (if in the best interests of WKX) to have significant access and have a significant relationship with WKX and hopefully remove the risk of conflict that would seem apparent in the event that one parent was in fact appointed guardian in the circumstances.

(E) Parental access to WKX/Home Visits

39. Mr KMX submitted that the Public Guardian was not promoting or otherwise preserving family relationships with WKX and had in fact implemented systems which had restricted access to WKX, this being put into effect by means of a roster and a subsequent Restraint Order against Mr KMX.

40. Evidence was presented to the Board by both Ms Hillier and Ms EB explaining that it was necessary to put a roster system in place in respect of visits or outings involving WKX as there were often occasions where both parents were presenting at Accommodation Facility, at the same point in time, causing great stress to WKX as he suffered from divided loyalties. Further, as WKX has many therapies and life skill appointments during the course of a week, allowing a parent to remove WKX from his accommodation without factoring in such appointments meant that he was likely to lose the benefit of such therapies and appointments. Both Ms Hillier and Ms EB stressed the implementation of the roster was not to restrict the overall access of WKX's parents to WKX, but rather to control the timing of such visits so there was not a clash of visitations or a clash with pre-arranged services which were in the best interests of WKX.

41. Ms Hillier indicated that Mr KMX refused to adhere to the roster/visitation schedule that was put in place and as a result there was a risk of certain therapies and appointments not continuing in respect of WKX. As a result of Mr KMX's continued failure to observe the visitation schedule, a Restraint Order was taken out against Mr KMX

effectively restricting his access to Accommodation Facility without consent.

42. On the issue of promoting family relationships, Mrs BX provided evidence contrary to that supplied by Mr KMX stating that staff from both the Public Guardian and Accommodation Facility had positively encouraged her to visit WKX and stated that to the best of her knowledge if ever WKX requested to see either his mother or father then both parents were advised of such.
43. As to the matter of home visits, Mrs BX stated that WKX considered her home “his home” and that he visits her at her residence at least every second weekend and also at times during week day(s). She stated that the MAIB had conducted works as required to make sure that her house was safe and accessible for WKX.
44. Mr KMX stated that WKX was not allowed to visit his home, as the Public Guardian had deemed his home “unsafe”. In this regard, Ms Hillier was of the understanding that Mr KMX lived in a caravan and that there was no bathroom facilities there. Ms Hillier had spoken to professionals and had formed the opinion that it was unsafe for WKX to be present given his need for a wheelchair or walker especially given the lack of toilet facilities.
45. Ms Hillier explained further in respect of the issue of visits to Mr KMX’s residence that she offered to provide an occupational therapist to assess Mr KMX’s residence with a view to work being conducted if so required to allow visits to occur. Ms Hillier stated that Mr KMX refused such an assessment, as he did not wish anyone from the MAIB anywhere near his

home. Ms Hillier went on to state that even when offering a therapist to conduct the assessment that was in no way associated with MAIB Mr KMX refused. It was as a result of these refusals for anyone to conduct an assessment on Mr KMX's home as to suitability that Ms Hillier felt she was forced to make a decision on behalf of the Public Guardian that WKX was not allowed to go to such premises until an assessment had been done.

46. Mr KMX stated that he did not believe that there was a need for any alterations to his residence for his son to be safe there. Mr KMX confirmed he would not allow any third parties to make an assessment of his property. The Board notes that Mr KMX's stance on this particular issue was quite a difficult stance to reconcile given that Mr KMX was asking to be appointed as WKX's guardian and therefore be responsible for promoting WKX's best interests despite, to date, not taking any requisite steps to ensure that WKX can safely visit him in his home.

(F) Incompatibility of the Public Guardian

47. Mr KMX submitted that in making the initial Guardianship order, the Board had failed to take any steps to ensure that the actual person being appointed of the Office of the Public Guardian (at this stage Ms Hillier) was compatible with WKX and submitted that there was a requirement for the Board in appointing a guardian to examine the actual characteristics of that person in terms of suitability to the circumstances of WKX.
48. The Office of the Public Guardian is an independent statutory office, specialised in appointment as guardians. The Board was not presented with any materials that suggested that their appointment was or had

been in any way inappropriate. Mr KMX's submissions concentrated on criticising services provided to his son by the Public Guardian and others. Such criticisms were not supported by the evidence of other witnesses. Mr KMX did not offer any positive suggestions for improvement of WKX's life other than in respect of enhancement of the father/son relationship.

Mrs BX's submissions

49. Mrs BX explained that she was very pleased with how WKX was progressing in his current circumstances and thanked all those persons who had supported him in reaching that stage, especially those who were present at the hearing.
50. Mrs BX expressed great concern that Mr KMX should never be given control over WKX's finances and went on to say that WKX experiences behavioral problems when he is with or has recently spent time with Mr KMX.
51. If Mr KMX were to be appointed WKX's guardian, Mrs BX explained that she believed that WKX would suffer greatly as Mr KMX had a very poor track history of dealing with care providers and that if he was in control of liaising with such professional care providers they would remove their support over time and WKX would have no support simply because Mr KMX is "so difficult to deal with".
52. Mrs BX expressed particular contentment with Ms Hillier acting in the role of WKX's guardian saying that she always felt she received all requisite information in respect of WKX's care and rehabilitation, that Ms Hillier always took on board any issues she raised and acted on

everything that she required and hoped that she would continue in the role as WKX's guardian.

53. The Board was impressed with Mrs BX's evidence and submissions. The Board believed her to be a credible witness and a good judge of the needs and best interests of her son.

Ms EB's submissions

54. Ms EB stated that she would like to see the Public Guardian currently in place remain appointed as WKX's guardian. Ms EB felt that Ms Hillier, on behalf of the Public Guardian had built up a very good rapport with both WKX's service providers and WKX himself. Ms EB went on to state that whenever issues arose regarding WKX's well being, or issues raised by either Mr KMX or Mrs BX, in her experience Ms Hillier has addressed the matter quickly.
55. Ms EB expressed concern if Mr KMX was to be contemplated as being appointed guardian for WKX. She advised that he had demonstrated on more than one occasion that he would not be compliant with the recommendations made by experts. Ms EB provided an example that despite having been advised that allowing WKX to drink "fizzy cordials" affected his lungs Mr KMX had on occasion provided WKX with such drinks in her presence.

Public Guardian's submissions

56. On behalf of the Public Guardian, Ms Hillier stated that it was her belief that she was compatible with WKX and she believed she was looking after WKX's best interests and following the principles of the Act, taking into account his wishes. Ms Hillier discussed at length her views on

WKX's contentment in living at Accommodation Facility and described numerous interactions she has visualised of WKX enjoying the company of others at the Accommodation Facility .

57. Ms Hillier went on to state that she found that on occasion after WKX had interaction with Mr KMX there were reports to her that WKX would be very agitated and would become angry and would be at risk of falling from his chair or from his frame.
58. Ms Hillier submitted that she had at all times acted in the best interests of WKX following her appointment as guardian and would continue to do so if the Board saw fit.

Findings of the Board

59. In conclusion, much of the evidence provided by Mr KMX in support of his application was lacking in substance and was contradicted in many instances by other parties to the hearing, particularly when relating to matters pertaining to WKX's past rehabilitation and his current care.
60. Mr KMX failed to satisfy the Board that the Public Guardian was failing in her duties to WKX on any ground since having been appointed.
61. Further, Mr KMX did not advance any information to the Board to satisfy the Board that he would be a more appropriate guardian than the Public Guardian. In any event, given the evident conflict between Mr KMX and Mrs BX in terms of what each party believes is the most appropriate development plan for WKX it would be difficult to see how the Board could appoint Mr KMX as guardian even if in fact he had satisfied the

Board in respect to his application to have the Public Guardian removed as WKX's current guardian.

62. The Board needs to be satisfied that Mr KMX's involvement in WKX's life, whilst taking into account WKX's wishes, is indeed in WKX's best interests. Many facets of evidence presented to the Board, such as Mr KMX's difficult or strained relations with almost all care providers, the need to apply for and the successful grant of a restraint order against him, and Mr KMX's own stated views negating positive rehabilitation and socialization in which WKX is currently involved all concern the Board greatly.
63. To ensure that WKX's best interests are the prime focus in terms of his future care and rehabilitation, the Board finds it would be prudent for the Public Guardian to seek a report from a suitably qualified professional to examine WKX's relationship with each of his immediate family members. This to ensure that WKX's express wish of continuing and promoting his family relationships is fulfilled whilst ensuring that such interactions are controlled in a manner that his rehabilitation programs are not jeopardized and that the number of stressful situations in which he is put in a family context are minimised.

The Board orders:

1. That the Public Guardian continue as WKX's guardian;
2. That the powers and duties of the guardian be those conferred by Division 3 of Part 4 of the *Guardianship and Administration Act 1995*, and
3. That the order remains in effect until 21 October 2007.

The Board directs that the Public Guardian:

- (i) Seek the opinion of a qualified expert as to the adverse or beneficial effects of contact between WKX and each of the members of his family;
- (ii) Exercise the power pursuant Section 25(2)(d) of the Act to restrict or prohibit contact between WKX and any other person (including members of his immediate family) that the Public Guardian reasonably believes would have an adverse effect upon WKX.

Signed:

Malcolm Schyvens
CHAIRMAN

Statement of reasons delivered: 27 September 2006

For and on behalf of the Division:

Pat King
BOARD MEMBER

Marguerite Lester
BOARD MEMBER