

**GUARDIANSHIP AND ADMINISTRATION BOARD  
LAUNCESTON**

**Mr WKX on the application of Mr W**

GAB No. XXXX of 2005

**REASONS FOR DECISION**

Ruth Hanson	(Chair)
Catherine Blackmore	(Board member)
Gerard Dibley	(Board member)

15 July 2005

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

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

1. This is an application under section 67 of the *Guardianship and Administration Act 1995* for a review of the order made on 22 October 2004 appointing the Public Guardian as guardian for Mr WKX.
2. At the October hearing, separate applications from Mr WKX’s father, Mr W, and his mother, Mrs BX, for appointment as guardian were considered.
3. The Board was satisfied from the evidence presented that the disability, incapacity, and need criteria for the appointment of a guardian were met and the decision of the Board was to appoint The Public Guardian. The reasons for the decision are stated in paragraphs 36, 37, 38, 39 and 40 of the written Reasons for Decision relating to that hearing.

4. The application for review of the order is made by Mr W, father of the Represented Person, seeking to replace the Public Guardian as Guardian for his son. The applicant lists 20 specific concerns with the general care of Mr WKX, and his concern as to the manner in which the guardian delegated by the Public Guardian fulfils his duties. A copy of the application was forwarded to the Office of the Public Guardian, which provided a direct response to each of these concerns. Following this, the applicant agreed to a mediation process.
  
5. The mediation session took place on 7 June 2005, chaired by the Registrar of the Board and attended by Mr W, the Public Guardian Lisa Warner and Guardian Mr Kevin Preece. The outcome of the mediation was agreement to change the communication processes between the Office of the Public Guardian and Mr WKX's parents. This was confirmed in writing to Mr W by the Public Guardian in a letter dated 9 June 2005.
  
6. Discussion between the Registrar and Mr W following his receipt of this correspondence indicated that the mediation had not been successful, and the matter was listed for a formal hearing on 15 July 2005.
  
7. Notices of hearing dated *28 June 2005* were sent to all interested parties.
  
8. The hearing was attended by the following:

Mr WKX	Represented Person
Mr W	Applicant and Father of the Represented Person
Mrs BX	Mother of the Represented Person
Ms Kylie Hillier	Office of the Public Guardian
Ms EB	Manager, Accommodation Facility
Ms ND	Anglicare

Mr Phillip Livingstone	Motor Accident Insurance Board
Ms Christie Cowen	Motor Accident Insurance Board
Dale Webster	Registrar, Guardianship and Administration Board

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

Report from the Registrar dated 30 June 2005;

Correspondence Between the Applicant and the Registrar about the review;

The letter to Mr W outlining the decision to hold a hearing;

The Documents relating to the setting up of the mediation session;

Response from the Public Guardian to Mr W's primary concerns;

Letter requesting review and attaching a statement, which outlines Mr W's primary concerns;

Correspondence "drop copied" to the board by Mr W from October 2004 to May 2005;

Original Order of 22 October 2004 and Reasons for Decision; and

Summary of a treatment team meeting held on 7 July 2005 (provided at hearing).

10. Evidence of disability, incapacity and need was accepted as that presented at the hearing of 22 October 2004. The Board noted that the order appointing a guardian made on that day was not in question, but that the applicant disputed the appropriateness of the appointed guardian.

11. Mr W briefly outlined his dissatisfactions with the current guardian in the care and safety of his son, and the manner in which the Guardian operated. These were addressed in detail in the application and in the considerable correspondence from the applicant to the Board since the guardianship order

was made. They relate to the lack of daily presence of the guardian in Mr WKX's life, and the guardian's apparent delegation of responsibility to others regarding medical treatment decisions, particularly those regarding Mr WKX's physiotherapy program and safety in transport. He stated that he had discussed these with Mr WKX's mother and that she agreed with him. Mr W also told the Board that the guardian does not write or communicate with him.

12. Mrs BX stated she was happy with the current guardian, that he listens to her concerns, but that he does not always get back to her. She has concerns about his personal care. The Board heard from his mother that Mr WKX moved to Accommodation Facility 5 years ago for the increased socialisation this accommodation would enable, and that up until about 1 year ago he was happy there. However, she has noticed that for the past year Mr WKX has not been happy with his accommodation and that since he has been going to his father's place he has started being dissatisfied. She has not discussed this with his carers at the Accommodation Facility. Mr WKX has also been expressing dissatisfaction with school.
  
13. The manager of the Accommodation Facility, Ms EB, outlined the coordination of Mr WKX's care, including medical, transport, school subjects, the separate visits from and to his parents necessitated by the conflict between his parents, and the protocols in place for Mr WKX's physical safety when he travels in the Accommodation Facility wheelchair-accessible vehicle. Ms EB also explained the communication process between the Accommodation Facility and Mr WKX's guardian, including incorporation of the regular case coordination meetings agreed to at the mediation session of 6 June 2005. These will include staff from the Motor Accident Insurance Board, as well as para-medical service providers when appropriate.

14. When questioned about the applicant's concern regarding Mr WKX's suicidal tendencies, Ms EB stated she had consulted Mr WKX's doctor about the risk of suicide. Ms EB stated that the treating team did not hold the same concerns. She indicated that staff had noticed mood changes after Mr WKX had been with his father, and that on occasion Mr WKX had used his wheelchair in an aggressive way towards staff.
15. Asked to outline what he would do if appointed as guardian for his son, the applicant listed changes to physiotherapy arrangements, school programs and accommodation. He emphasised that under his guardianship Mr WKX would choose whether or not to participate in activities at any given time.
16. Mr WKX indicated clearly a number of times during the course of the hearing, by pointing, vocalising and using the communication board, that he wanted his father to be his guardian.

### ***Conclusion***

17. It was evident to the Board that significant effort is required and is currently made by his carers to effectively coordinate care, diet, health and medical treatment, educational and activity programs and regular contact with his parents for Mr WKX.
18. It was also evident to the Board that the applicant has experienced considerable frustration at the lack of effective and/or regular communication from his son's guardian. Whilst this is now being addressed through the communication process established as a result of the mediation session, it requires adequate time to become operational. Mr WKX's mother and

carers, whilst indicating some concerns regarding timeliness of communication from his guardian, were not supportive of the application and did not seek the appointment of an alternative guardian. Both his mother and care coordinator support the continuation of the Public Guardian.

19. The applicant was clear in his written application and his verbal representation at the hearing that he expected his son's guardian to be involved daily in his care, treatment and activities, as a parent would be. He was also very definite that if appointed as his son's guardian, he would give primary focus to carrying out Mr WKX's wishes regarding whether or not to participate in treatment programs such as physiotherapy or in school activities. This was of concern to the Board in considering its decision, given Mr WKX's complex needs, his lack of capacity to make reasonable decisions and his susceptibility to influence. The Board noted that although the role of a guardian has been explained to him on a number of occasions, the applicant did not present as having an understanding of the differences between parenting responsibilities for a minor, and alternative decision-making responsibilities for an adult with diminished capacity.
  
20. 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, Mr WKX's best interests should continue.

## **THE BOARD ORDERS**

1. That the Public Guardian continue as the represented person'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*.
3. That the Public Guardian include in annual reports to the Board (next due October 2005) the implementation of communication strategies set in place through the mediation meeting of 7<sup>th</sup> June 2005.
4. That the order remains in effect until 21 October 2007.

Ruth Hanson  
**CHAIR**

Ged Dibley  
**BOARD MEMBER**

Cate Blackmore  
**BOARD MEMBER**