



# ANNUAL REPORT 2018-19



# GUARDIANSHIP AND ADMINISTRATION BOARD

ANNUAL REPORT  
2018-19

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# REPORT OF THE PRESIDENT

It is my privilege to present on behalf of the Guardianship and Administration Board the annual report for the 2018-2019 financial year.

The workload of the Board continues to grow. There has been a 12% increase in new applications and in particular, a 10% increase in guardianship applications, and a 21% increase in administration applications. Applications for guardianship and administration and the review of these orders represent the large proportion of the Board's work. There has been a 10% increase in hearings from the previous reporting year.

The Board has statutory decision making powers in relation to guardianship and administration matters, enduring guardians and attorneys, certain medical and dental procedures, and limited functions in relation to restrictive interventions and statutory wills. The Board determines emergency order applications, can provide advice or direction to administrators, guardians (including enduring) and attorneys, and determines requests for access to confidential information.

The Board holds an enduring guardian register, for registration of enduring guardian instruments of appointment. There are currently 35,702 Instruments (including revoked instruments) registered. The Board also performs a compliance function of auditing reports from public and private guardians, and reports and financial statements from public and private administrators.

The Board is grateful to the support of the Department of Justice in allocating resources to undertake statistical and financial modelling to support the Board in its bid for greater resourcing. The modelling indicated new applications (not applications for review of order) have grown from 872 in 2013-14 to 1233 in 2017-18, and modelling projects that it will reach 1848 in 2022-23. The majority of applications before the Board involve people over 65 years of age, with the most common disability being dementia. The modelling showed the predicted growth in application numbers will continue due to increased dementia and mental health disabilities, and an ageing population. The modelling indicated the Board will require additional funding for hearings and additional administrative staff to meet its statutory functions. The financial and human resource risk associated with the increased demand on the Board was highlighted.

Further, the educative focus of the work expected to be done by the NDIS Quality and Safeguards Commission, which commenced operations in Tasmania on 1 July 2019, is also predicted to impact on the number of applications for approval of restrictive practices and/or guardianship. It is also anticipated that the Royal Commission into Aged Care Quality and Safety which was established on 8 October 2018 and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability which was announced on 4 April 2019 may have a bearing on the applications received by the Board. The recommendations and outcomes from these Royal Commissions will be of significant interest and importance in



the safeguarding of vulnerable Tasmanians.

*Legislation* – In December 2018 the Tasmanian Law Reform Institute (TLRI) delivered its Final Report into the review of the *Guardianship and Administration Act 1995*. The report recommends significant change. Among the report's recommendations is the removal of the need to establish that a person has a 'disability', and removal of what is in a person's 'best interests' with instead decisions about a person's life being based upon their views, wishes, preferences and rights. The Report also recommends a supported decision making framework, as well as the existing substitute decision making regime. The Report considers a range of safeguards to protect against the abuse and neglect of people. The Report also recommends a framework for advance care directives be included in any legislative reform.


The Tasmanian Government has not yet responded to the Final Report. If the recommendations in the Final Report are adopted in part or in full, this will have significant financial and operational resourcing implications for the Board and its Registry. Any change to legislation will require appropriate resourcing of the Board.

On 5 July 2018 a Final Report of the *Disability Services Act 2011* was tabled in Parliament. The *Disability Services Act 2011* gives jurisdiction for the approval of restrictive practices in Tasmania. The *Community, Health, Human Services and Related Legislation (Miscellaneous Amendments) Act 2019* commenced on 18 June 2019, with amendments to the *Disability Services Act 2011*, including the insertion of a definition of 'therapeutic' and lengthening of the period for which a Board approval of a restrictive intervention may apply.

*Projects* – Following the Australian Law Reform Commission's 'Elder Abuse – A National Legal Response' Report dated May 2017, the Australian Guardianship and Administrative Council (AGAC) led by the NSW Civil and Administrative Tribunal (Guardianship Division) and funded by the Commonwealth Attorney-General's Department, developed and published best practice guidelines on how State and Territory tribunals can support a person who is the subject of guardianship proceedings to participate in the hearing proceedings, as far as possible. Consistent with these recommendations the Board Registry has made changes to processes to encourage and facilitate participation of a person who is the subject of an application at hearing. This is demonstrated by the Board:

- sitting at disability accommodation venues and other venues to ensure participation;
- having registry staff contact the person, their supports and the applicant pre-hearing to encourage the person's attendance, wherever possible;
- implementing appropriate safety measures or addressing accessibility issues;
- using teleconferencing more frequently;
- using interpreters to ensure natural justice is afforded to the person or parties;
- updating some of the Board information and resources; and
- ensuring timely delivery of hearing papers to the person.

Unfortunately, the Board does not have video conferencing facilities or regular access to such facilities which would allow greater participation of persons at hearings. The Board believes



there is further opportunity in the year ahead to progress with the implementation of these guidelines, within the confines of its limited resourcing.

The Board has also progressed with implementing the “Recommended National Standards for Working with Interpreters in Courts and Tribunals”, which was produced by the Judicial Council on Cultural Diversity – <https://www.naati.com.au/media/1680/mca04694-national-standards-web-171025pdf.pdf>. The firmer adherence to the National Standards has resulted in greater use of interpreter services across Board hearings over the reporting period.

*Engagement* – The Board is regularly invited to speak to varied audiences, including the Law Society of Tasmania, THS hospitals and facilities, disability and other service providers. The President or Registrar of the Board meets with stakeholders where appropriate. The Board is also invited to make submissions on reviews of relevant legislation or projects such as the prevention of elder abuse or restrictive practices authorisation processes.

*Board members* – Members of the Board are appointed on the basis of their relevant professional skills and experience, including experience with people with disabilities. During the reporting period, two Board member open recruitment processes were undertaken, one in Burnie seeking legal members and the other State-wide seeking legal, medical and disability-focussed professions. In total 15 members were appointed or reappointed to the Board in the reporting period. A one-day Member Induction Training Session was held with new members after each recruitment round. New members were then required to observe hearings before sitting on panels of the Board.

Member training was conducted on 9 November 2018 and included excellent training from the Hon. Justice Helen Wood on the Recommended National Standards for Working with Interpreters in Courts and Tribunals, and presentations from the Acting Director of Disability & Community Services and Senior Practitioner in respect of the NDIS Quality and Safeguards Commission and restrictive practices. Optimally, training should occur more frequently, to allow members to be fully briefed in changes and reform in the jurisdiction.


I would like to acknowledge and thank those Members who resigned or left the Board in the reporting period.

*The Board Registry* – The Registry has continued to concentrate on reform of its processes and procedures within its resourcing capabilities. Ensuring natural justice to the person subject to the proceedings and all parties who appear before the Board remains an important focus and driver of registry processes.

Consistent with its goal of encouraging and facilitating greater participation in hearings of people with a disability, over the course of the reporting period the Hobart hearing room was upgraded to improve its safety and accessibility standards.

For example, improved public seating was purchased, and portable duress alarms and a CCTV system were installed. The Board Registry acknowledges with thanks funding from the Department of Justice, to complete this upgrade.






The Department of Justice has also allocated a resource from its Information and Communications Technology output to assist the Board to establish an automated document generator that will hopefully be implemented later in 2019. Given the Board's 20+ year old unsupported case management system has significant limitations, it is hoped this new development will assist in streamlining what has been largely manual processes. It should be noted, the civil jurisdiction of Justice, including the Board and other tribunals are scheduled for inclusion in Stage 3 of the Department's Justice Connect project, which is a program of work that will replace current out-dated systems with an integrated end-to-end system solution. The Board looks forward to the implementation of a new Case Management System, in due course.

Registry staff have received training throughout the reporting period conducted by the President or Registry, guest speakers and from within the Department of Justice where appropriate. During the reporting period there were various impacts on staffing, including maternity leave, workers compensation and health related absences, return to work placements, and secondment terms. The ability of the Board Registry to cope with staff absence is difficult given how small the Registry team is. The turnover of staff and short fixed-term employment opportunities do impact significantly on daily processes and operational efficiencies. It is hoped that the Board will be successful in obtaining further funding for positions it sees as critical to operate and perform all necessary registry functions in an efficient manner. Extensive submissions have been made to the Department in this regard, particularly for a Senior Legal and Policy Officer/Member and Executive Assistant in charge of Listings.

*The next 12 months* – We will continue to progress reforms of our Registry practices and processes. We will continue to consolidate on the work within the Registry of encouraging the participation of the person subject to the application, at hearing. We look forward to implementing our new Order templates. We will progress the review and where appropriate the revision of our written materials, handbooks, etc.

The next 12 months will also see a move to new premises in Hobart, given the lease of the current premises is not being renewed. It is important that future premises focus on accessibility for all, and that our hearing room and associated facilities particularly those with disabilities, so they can fully participate in proceedings.

It is also sincerely hoped that Tasmania, which is the only state within Australia without a single civil and administrative tribunal, will soon be able to move to this model. For the Board, a single tribunal has the advantage of sharing administrative supports, staffing and property, being able to enjoy better technology, such as a case management system, video conferencing facilities, digital on-line lodgement of applications and filing system and which centralised operations provides a greater profile in the Tasmanian community.



*Sincere thanks* – go to the members of the Board for their hard work, diligence and continued commitment in performing their member duties. It must always be remembered that without members, the Board could not function. Our Members receive a modest sitting fee for the time spent preparing for and hearing matters, some of which can be legally complex. Their work is gratefully acknowledged. I thank the Deputy President Mr Colin McKenzie for his support during the reporting year.

Registry staff continue to impress by their commitment and willingness to perform registry functions to aid and ensure fair, prompt and assessable justice is achieved, within very limited resources – financial, human and within confined facilities. I sincerely thank the Registry staff for their ongoing dedication to the work of the Board.

I express my gratitude to Acting Registrar Jarrod Bryan (July 2018 and ongoing support to the Registry) and Acting Registrar Aneita Browning (August 2018 to June 2019) for their significant contribution and demonstrated support over this year and for the progress within the Registry that has been made.

I thank the Department of Justice, particularly Deputy Secretary Kristy Bourne and Director of Human Resources Ms Kerrie Crowder for their support in this reporting year.

I look forward to the opportunity to continue the important work of the Board in 2019-2020.

Rowena Holder  
**President**



# WHO WE ARE

# OUR LEGISLATIVE FRAMEWORK

## The Board

The Guardianship and Administration Board (the Board) is an independent statutory authority established under the *Guardianship and Administration Act 1995* in Tasmania. The Board exercises a protective jurisdiction, safeguarding the rights of people with a disability who are incapable of making their own decisions.

The Board is constituted by a President and at least 5 other members, one of whom is to be the Deputy President.

## The President and Deputy President

The President is responsible for the overall operation and administrative functions of the Board and the allocation of its work. The President, who is a legal practitioner sits on hearings as the presiding member. The President is the only full-time member of the Board. The Deputy President may exercise the functions of the President if delegated by the President or if the President is absent from Tasmania or is prevented by illness or incapacity from exercising those functions.

## Board Members

Board members are appointed by the Governor on the recommendation of the Attorney General for a period of up to 3 years. Board members are appointed on a sessional basis to conduct hearings and determine the applications made to the Board.

Board Members have a range of skills, qualifications and experience with people with disabilities across the health, disability, aged and community sectors. Board members have a background in legal, medical, pharmacy, nursing, accounting, social work or other relevant disciplines.

At the end of the reporting year, the Board had 33 members. [Appendix 1](#) provides names of Board members during the reporting year.

## Board Registry Staff

The Board has a Registrar appointed under section 9 of the *Guardianship and Administration Act 1995* and registry staff. In consultation with the President, the Registrar ensures the proper functioning and operations of the Board Registry.

[Appendix 2](#) provides the Board's organisational chart.

## Guardianship and Administration Act 1995

The functions of the Board are established by the *Guardianship and Administration Act 1995*. The Act grants the Board jurisdiction to hear and determine applications for guardianship and administration and reviews of those orders. The Board also has jurisdiction to consent to medical and dental treatment.

The Board keeps a register of any instruments of appointment of an enduring guardian under Part 5 of the *Guardianship and Administration Act 1995*. The Board has authority to review an instrument of appointment of an enduring guardian. The Board can give advice and directions to guardians (including enduring guardians), and administrators.

## Powers of Attorney Act 2000

The Board has authority under the *Powers of Attorney Act 2000* in relation to enduring powers of attorney to review an enduring power of attorney. It can also give advice and direction to an attorney.

## Disability Services Act 2011

Under the *Disability Services Act 2011* the Board determines applications for restrictive interventions for people with disabilities by services funded or managed by disability and community services and has authority to approve the use of a restrictive intervention.

## Wills Act 2008

The Board has functions under Part 3 of the *Wills Act 2008*. The Board may order the execution of a statutory will for a person who lacks testamentary capacity and who has never made a valid will.

## Legislative Change

The *Community, Health, Human Services and Related Legislation (Miscellaneous Amendments) Act 2019* commenced on 18<sup>th</sup> June 2019. It amends the *Disability Services Act 2011*.

# HOW WE WORK

## Our Vision

To respect the rights of people with disabilities to make their own decisions wherever possible, and when it is not possible, to ensure that processes that we employ are accessible, impartial, expeditious, highly competent and result in just decisions by the Board.

## Our Mission

The Board will:

- operate in accordance with the law and in a manner sensitive to the needs of its users
- make decisions that reflect the rights and interests of people with decision-making disabilities, their families and carers, and the Tasmanian community
- be an efficient, effective and highly skilled independent statutory authority.

## Principles

In all of its operations, the Board must observe the principles which are set out in section 6 of the *Guardianship and Administration Act 1995*. These principles state that where a *function or power conferred, or duty imposed*, by this Act is to be performed so that:

- the means which is the least restrictive of a person's freedom of decision and action as is possible in the circumstances is adopted; and
- the best interests of a person with a disability or in respect of whom an application is made under this Act are promoted; and
- the wishes of a person with a disability or in respect of whom an application is made under this Act are, if possible, carried into effect.

## Pre-hearing Process

The Board receives an application and most applications need to include a Health Care Professional Report from a medical practitioner or psychologist which provides evidence about the disability and capacity of the subject person to make decisions about the issues raised in the application. The Board's staff may contact persons relevant to an application and will obtain copies of relevant documents.

Most applications to the Board are prepared for hearing by a Registry officer. The role of the Board's Registry is to provide information about the Board's

practice and procedure, to list the application for hearing, and to send notices of the hearing to the parties. The Board Registry officer will often speak with the person or the applicant to identify how the person can best participate in the proceedings.

Before the hearing, the Registry officer will send out a Matter Summary itemising the information received by the Board.

Section 72 of the *Guardianship and Administration Act 1995* requires that the Board commence to hear an application within 45 days after the application is received by the Board. Parties and persons with a proper interest in a matter (including the person with a disability) will be invited to a hearing. The Board must give all parties and persons with a proper interest not less than 10 days' notice of the hearing, as required by Section 69(1) of the *Guardianship and Administration Act 1995*.

Where appropriate, interpreter services are used to assist parties to participate in the hearing.

## Hearing Process

Whenever possible the Board conducts hearings with the person subject to the application, in attendance. This is important, so the person can give evidence as to their wishes, pursuant to section 6 of the *Guardianship and Administration Act 1995*. Attendance can also be by telephone. Unfortunately, the Board does not have video conferencing facilities, which would provide greater flexibility in assisting the participation in hearings of people located in different locations throughout Tasmania; or even interstate.

The Board will consider the relevant written evidence that has been provided. The Board will also hear evidence from other parties and witnesses participating in the hearing. Evidence is usually not taken on oath. Written submissions can also be made prior to the hearing and form part of the Board's hearing papers.

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

The Board may sit in a division of one or three members. In most but not all cases, a panel of three members will hear and determine a new application. Reviews of existing orders may, be determined by one or three members.

Hearings are held regularly at:

- Level 2/144 Macquarie Street, Hobart
- Roy Fagan Centre in Lenah Valley
- Magistrates Court in Launceston
- Magistrates Court in Burnie
- Magistrates Court in Devonport

The Board will also conduct hearings at other venues when appropriate to do so, to facilitate the attendance and participation of the person subject to the application, at the hearing.

## After the Hearing

Most decisions are delivered immediately at the end of each hearing with brief verbal reasons being provided by the chairing Board Member to the parties. A formal typed order is then sent to all parties.

A person aggrieved by a determination of the Board may request in writing within 21 days after the making of the determination, a written statement of reasons.

## Post-Hearing Procedures and Support

To ensure the accountability of all private or public guardians and administrators, the Board specifies:

- A person applying for appointment as administrator and/or guardian must sign a declaration in the application acknowledging their duties under the *Guardianship and Administration Act 1995*.
- The publication *Information for Private Administrators – A Handbook for Private Administrators and Information for Private Guardians* provides instructions about their duties and is provided at the end of a hearing appointing a private administrator and/or guardian.
- Administrators are required to submit a report and financial statement annually or when ordered by the Board to do so. Guardians are required to submit annual reports on the decisions they have made relating to a person and/or circumstances. The Board has a sessional member whose duties include the receipt, and verification of reports submitted by administrators and guardians. All reports and financial statements by administrators are audited and verified by the member. Where an annual report is not approved, the Board will usually require a review of the order on the Board's 'own motion'.





# WHAT WE DO

## Guardianship

The Board may appoint a guardian to make personal decisions for a person with a disability who, because of their disability, is incapable of making those decisions. This power arises from Part 4 of the *Guardianship and Administration Act 1995*.

The Board will only appoint a guardian after there has been evidence that a person, about whom an application has been made, is a person with a disability, and is unable because of the disability, to make reasonable judgements about their person or circumstances, and is in need of a guardian.

The guardian may be appointed to make a range of personal decisions for example, where a person with a disability lives, temporarily or permanently, or what health care and support services the person with a disability will receive or restriction of visitors. The duration of the order and the specific decision-making powers of the guardian is set out in the guardianship order.

A guardian must act at all times in the best interests of the person under guardianship, consult with that person, taking into account, as far as possible, his or her wishes, advocate for that person, encourage that person to participate as much as possible in the life of the community, encourage and assist that person to become capable of caring for himself or herself and of making reasonable personal judgements and protect that person from neglect, abuse or exploitation.

Section 21 of the *Guardianship and Administration Act 1995* sets out what a Board must consider when assessing the suitability of a proposed guardian. If there is no family member or friend who is suitable the Board can appoint the Public Guardian as the guardian for the person. Under an emergency guardianship order, only the Public Guardian can be appointed. Similarly, only the Public Guardian can be appointed under an interim guardianship order.

## Administration

Part 7 of the *Guardianship and Administration Act 1995* provides the framework for the appointment of administrators who undertake financial management on behalf of people who, by reason of disability, are incapable of making reasonable financial judgements. The Board must be satisfied that the person about whom an application has been made, is a person with a disability, unable because of the disability of making reasonable judgements about his or her estate or finances and is in need of an administrator.

The duration of the order and whether the administrator is responsible for the whole estate or only a limited part of the estate, is set out in the order. An administrator must always act in the best interests of the person with a disability, consult with that person, taking into account as far as possible, his or her wishes.

Section 54 of the *Guardianship and Administration Act 1995* sets out what a Board must take into account when assessing the suitability of a proposed administrator.

Under an emergency administration order, only the Public Trustee can be appointed. Similarly, the Public Trustee can only be appointed under an interim administration order.

## REVIEWS

### Reviews of Existing Administration or Guardianship Orders

Applications for reviews of guardianship or administration orders are made pursuant to section 67 of the *Guardianship and Administration Act 1995*, either as a consequence of the expiry of the order or because a person believes an order, or a term of the order is no longer needed.

### Review of an Instrument of Appointment of an Enduring Guardian

The Board has power under the *Guardianship and Administration Act 1995* to review an instrument of appointment of an enduring guardian. An application can be made to the Board to review an enduring guardianship if a person believes that:

- An instrument appointing an enduring guardian is not valid; or
- A guardian is not capable or willing to perform the functions of a guardian; or
- A guardian acting under an enduring guardianship is not acting in the best interests of the person who appointed the guardian or has been incompetent or negligent as a guardian.

The Board can make an order to revoke an instrument of appointment of an enduring guardian, or vary a term of an instrument, including appointing a substitute guardian, dismiss the application or give advice or direction to a guardian.

## Review Enduring Powers of Attorney

The Board can make orders and declarations and give advice or directions in relation to enduring powers of attorney created under the *Powers of Attorney Act 2000*.

The Board may declare an enduring power of attorney is invalid, because:

- the donor did not have the mental capacity to make the enduring power of attorney; or
- it does not comply with other requirements of the Act for example, it was not witnessed correctly; or
- the donor was induced to make it because of dishonesty or undue influence.

The Board may make a range of orders concerning the making or operation and effect of an enduring power of attorney:

- vary a term or a power granted by the enduring power of attorney
- appoint a substitute attorney
- revoke the enduring power of attorney
- appoint an administrator of the donor's estate under the *Guardianship and Administration Act 1995*.

In emergency circumstances, the Board can suspend an enduring power of attorney and may appoint the Public Trustee as attorney or administrator for up to 28 days without a hearing.

The Board may direct or offer advice to an attorney about any matter arising under the enduring power of attorney.

## Consent to Medical and Dental Treatment

The *Guardianship and Administration Act 1995* provides for substitute decision-making in relation to medical and dental consent for persons who are unable to consent to their own treatment. Section 4 of the *Guardianship and Administration Act 1995* establishes "person responsible" who is able to give consent for medical or dental treatment. The Board can also provide consent to medical and dental treatment pursuant to Part 6 of the *Guardianship and Administration Act 1995* for a person who is incapable of consenting themselves. The Board may consent to the proposed treatment if it is satisfied: that the

treatment is lawful; and that the person does not have capacity to consent; and the treatment is in the person's best interests.

The Board can provide consent to Regulation 12 treatments for an adult with a disability. Regulation 12 treatments include: electroconvulsive therapy (ECT); the removal of all or a substantial number of teeth; treatment with a drug where the primary purpose is to control the conduct of the person to whom it is given; treatment with a drug of addiction other than in association with the treatment of cancer or palliative care of a terminally ill patient; the treatment involves a substantial risk of death, brain damage, paralysis, permanent loss of function of any organ or limb, permanent and disfiguring scarring, or extreme pain or distress to the person.

Only the Board can give consent to Special Treatments which are defined under the *Guardianship and Administration Act 1995*, as treatments likely to lead to permanent infertility; termination of pregnancy; removal of tissue for transplant; psychosurgery; any treatment involving an aversive stimulus.

## Applications for Approval of a Restrictive Intervention

The Board has jurisdiction to determine applications for approval of restrictive interventions for persons with disabilities managed or funded by disability and community services, pursuant to Part 6 of the *Disability Services Act 2011*. An approval for the carrying out of a type of restrictive intervention in relation to a person with a disability may only be granted by the Board if it is satisfied that:

- a. the type of restrictive intervention will be carried out only for the primary purpose of ensuring the safety, health or wellbeing of the person or other persons; and
- b. the restrictive intervention is the type of restrictive intervention that is the least restrictive of the person's freedom of decision and action as is practicable in the circumstances.

The Board will either approve or not approve the restrictive intervention or give directions about whether that intervention is lawful for other reasons. The Board can also appoint a guardian after hearing an application or give directions about the use of a restrictive intervention.

## Statutory Will

The Board can, pursuant to the *Wills Act 2008*, make a statutory will for a person who lacks testamentary capacity and has not made a prior will or purported will. The Board must be satisfied:

- a. that the person making an application for a statutory will is an 'appropriate person' to do so;
- b. that the proposed testator is incapable of making a will; and
- c. having made reasonable enquiries, that the proposed testator has not made a will or any purported will; and
- d. that adequate steps have been taken to allow representation of all persons with a legitimate interest in the application, including persons who have reason to expect a benefit from the estate of the proposed testator; and
- e. that it is appropriate to make an order for the execution of a will for a proposed testator; and
- f. that the proposed will is, or is reasonably likely to be one that would have been made by the proposed testator if he or she had testamentary capacity.

## Emergency Applications

Pursuant to section 65 of the *Guardianship and Administration Act 1995*, the Board may, in circumstances of urgency, make an emergency guardianship or administration order without the need to give notice to any person or to hold a hearing. The Board can make such enquiries as it deems necessary. Under s 65 only the Public Trustee can be appointed as administrator and only the Public Guardian can be appointed as guardian.

An emergency order can be made for a period up to 28 days and can be extended only once for a further period up to 28 days.

The Public Guardian is the initial contact for out-of-hour's emergency applications. The Board provides the Public Guardian with a contact list of Board Members who can determine out-of-hours emergency applications.

## Registrations of Instruments Appointing Enduring Guardians

Part 5 of the *Guardianship and Administration Act 1995* enables a person with decision-making capacity, to appoint an enduring guardian to make personal decisions for him or her in the event that the person is no longer capable of making those decisions.

An instrument of appointment of an enduring guardian must be registered with the Board. The Board keeps a register of all Enduring Guardians.

## ENGAGEMENT

### Law and Policy Reform

The Board participates in law reform consultations where it is appropriate and consistent with its role. This last reporting period has seen a number of law reform consultations at a State level which the Board has been involved in and which have been referred to earlier in this Report:

- Review of the *Guardianship and Administration Act 1995 (Tas)* – now finalised
- Review of the *Mental Health Act 2013* - ongoing

### Professional Education and Engagement

The Board promotes understanding of relevant guardianship issues by providing training to professional organisations. The Board also meets with stakeholders from time to time and when appropriate.

### Website and Publications

The Board's website includes application forms, Health Care Professional Report forms, facts sheets, policies, process information, and Annual Reports.

All the Board's publications can be downloaded from the website. [www.guardianship.tas.gov.au](http://www.guardianship.tas.gov.au)

# THE YEAR IN REVIEW - STATISTICS

## Applications Received

The total number of applications (including statutory review of orders) received for the period 1 July 2018 to 30 June 2019 by the Board was 1697.

This is a 2.6% increase in applications as compared to the previous reporting year. Of these 1697 applications, 1381 were new applications with the remainder being statutory reviews of existing orders.

## Hearings

The Board conducted 1270 hearings in 240 sittings this year. This is a 10.6% increase from the previous reporting year. The Board heard an average of 5.2 matters per sitting.

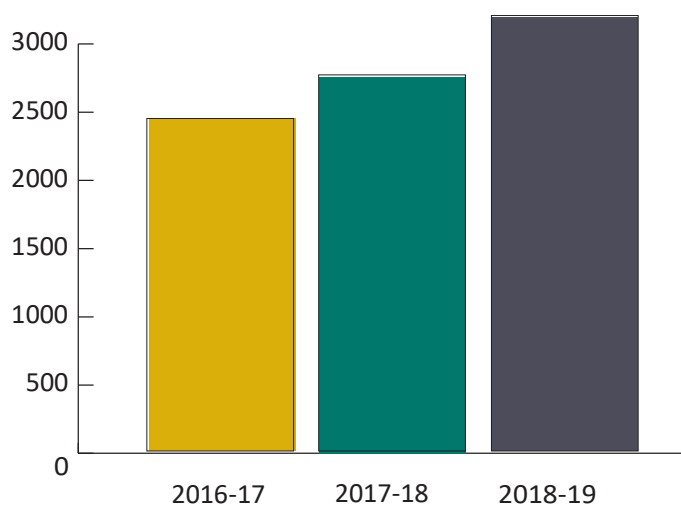
Of the 1270 hearings held in 2018-19, 60.4% were held in the South, 23.3% in the North and 16.3% in the North West. Hearings were conducted by single members or a panel constituted by 3 members.

## Register of Enduring Guardianship Instruments

34,856 Instruments of Appointment of an Enduring Guardian were registered as at 30 June 2018.

The Board has registered 3196 instruments in the reporting year.

Instruments of Appointment of an Enduring Guardian



## Requests for Statements of Reasons

Statements of reasons are produced upon request by a party aggrieved by a decision of the Board pursuant to section 74 of the *Guardianship and Administration Act 1995* or where the Board members determine that reasons ought to be produced. 41 statements of reasons were written during the reporting year.

The Board regularly publishes decisions which are carefully de-identified to provide members of the community and users of the Board an understanding of the work of the Board and the principles that are applied, which can be located at [www.austlii.edu.au](http://www.austlii.edu.au).

## Appeals to the Supreme Court

There were two appeals to the Supreme Court from a decision of the Board in the reporting year. One was upheld and the other is to proceed to an Appeal before the Full Court in late 2019.



# STATISTICAL SUMMARY

	2015-16	2016-17	2017-18	2018-19	Percentage difference between 2017-18 and 2018-19
					Applications received
Guardianship normal	207	270	324	357	10.19
Guardianship emergency	249	213	215	187	-13.02
Administration normal	239	371	348	422	21.26
Administration emergency	65	135	67	74	10.45
Extension of Emergency orders		181	134	80	-40.3
Medical and dental consent	1	3	13	5	-61.54
Statutory Will	2	4	1	0	-100
Restrictive Interventions	3	4	7	15	114.29
Review of Enduring Guardian	8	16	14	10	-28.57
Review of Enduring Power of Attorney	39	90	34	34	-
Other (gifts, advice, emergency EPA etc.)	82	76	72	57	-20.83
Review of existing orders	293	519	425	456	7.29
<b>Total applications received</b>	<b>1186</b>	<b>1772</b>	<b>1654</b>	<b>1697</b>	<b>2.6</b>
<b>Hearings Listed</b>					
Hearings listed <sup>1</sup>	679	1027	1148	1270	10.6

Finalisations for the 2018-19 period	
Finalisations <sup>2</sup>	1497
Emergency Guardianship	240
Emergency Administration	95
<b>Total</b>	<b>1832</b>

<sup>1</sup>Total applications listed before a Board, but not including emergency orders, renewals of emergency orders or applications withdrawn (with Board approval) prior to hearing.

<sup>2</sup> Includes renewals of emergency orders.

# FINANCES

A summary of the Board's financial expenditure is at Appendix 2.

## BUDGET and OPERATING COSTS

The operating budget allocated to the Board in 2018-19 was \$746,688. This was approximately 40% under the Board's actual expenditure of \$1,219,286. For several years the Board has been funded below base running costs. The Board managed its finances with the assistance provided by the Department's transfer of funds from retained revenue and consolidated funds. The underfunding impacts on the Registry's operations and planning, its ability to provide a level of customer service consistent with contemporary standards, and the ability to fulfil statutory functions.

This table sets out the financial position for the past 3 years:

Year	Annual budget	Actual expenditure	Variance
2016-17	715 616	1 078 317	(362 701)
2017-18	734 490	1 223 179	(488 689)
2018-19	746,688	1,219,286	(472,598)

In the three year period 2016-17 to 2018-19, actual expenditure for the Board has exceeded \$1.05m per annum, outstripping the annual budget year on year.

Despite the significant increases in the Board's workload and productivity there has not been a substantial revision of the budget to meet the minimal operational costs and the ever increasing demands on the Board. Instead, the Board continues to commence each financial year on a deficit budget. That continual shortfall has implications for the Board and its ability to operate optimally, respond appropriately to growing need, and attend to future planning. The next financial period, 2019-20, will mirror this situation.

As in previous years, the primary expenses continue to be salaries, member fees and rent.

A full financial summary is at Appendix 2.

## Salaries and Staff

Primary expenditure for the period was salaries and wages at \$792,697 (\$63,262 over budget).

This table shows the salaries and wages for comparison:

Year	Budget	Actual	Variance
2016-17	657 700	520 237	137 463
2017-18	735 606	647 202	88 404
2018-19	729,335	792,697	(63,362)

Significantly, during this financial year, sick leave expenses amounted to \$41,868 and workers' compensation expenses \$27,785.

Aside from the President and the Acting Registrar there were no legal staff employed by the Board during the period.

## Member Fees

The President is the only permanent member and there are an additional 32 member's state-wide who are constituted to a hearing panel when needed.

There was an increase in the budget from the previous year for member fees. In 2017-18 the budget for member fees was \$139,944 (\$136,176 for member fees and \$6,980 for members paid on invoice) with actual expenditure equalling \$176,840 (\$169,860 salaries and \$6,980 on invoice). In this reporting year the budget for member fees was \$187,536 (\$180,000 for member fees and \$7,536 for members paid on invoice) with actual expenditure of \$230,856 for member fees and members paid on invoice (equating cumulatively to \$43,320 over budget).

The Board members are either legal or other professional, such as medical or accounting. They sit in a half-day hearing list (morning or afternoon session of 4 hours). There was a fee increase for members effective 11 September 2018. The panel chair fee increased from \$414 to \$422 and the member fee from \$314 to \$320.

## Facilities

### South

The rent of the registry premises, at 144 Macquarie St Hobart, totalled \$76,161.

### North and North West

The Board wishes to express its thanks to the Magistrates Court of Tasmania for sharing their facilities with the Board, at no cost.

## Technology

The total budget for IT/computer was \$25,970. This includes IT/computer hardware, e-mail and computer leases. There was no budget for software licenses or website expenses, which totalled \$3,976. The actual expenditure in this reporting period for IT/computer totalled \$32,907.

## REVENUE

Appropriation was \$746,688 plus there was an additional \$230,000 inter-fund budget reallocations, totalling \$976,688.

## Registry Fees

The total revenue received this financial year through fee collection is \$279,418. Fees generated by the Board are applied directly back to fund the functions of the Board.

### Application Fees

The Board does not charge any fees for applications. The protective nature of the jurisdiction means that the core work of the Board cannot generate revenue. However, fees are collected for certain administrative tasks and also the Appointment of Enduring Guardian Register (pursuant to the *Guardianship and Administration Amendment (Fees) Regulations 2012*).

### Enduring Guardian Register

Lodgement of instruments for registration are made with payment to Service Tasmania. The fee for lodging an Appointment of Enduring Guardian was \$71.10 and Revocation was \$50.56

There is also statutory provision for fee waivers in circumstances where an appointor satisfies financial hardship.

### Examination of Annual Reports for Administration

The fee for examinations of statements of accounts for administrators was \$186.44. These are subject to a generous means test in order to protect a represented person's finances.

## FUTURE

There is an urgent need for the Board's budget to be reviewed. There are organisational performance and other risks if the agency continues to be chronically underfunded into the future. The pressing needs of the Board into the coming year include:

- Obtaining funding to engage a full-time Senior Legal and Policy Officer/Member.
- Member remuneration: this is currently insufficient to reflect the expertise required and to attract and maintain a diverse and skilled membership.
- Records management: the case management system is outdated and there is a need to digitise the Enduring Guardian Register.
- Staffing: additional staff are required to enable the Board to meet the current and increasing demands and diverse needs of the output.
- Information access: the Board's educational resources such as the website, handbooks and practice directions are overdue to review and updating.
- Member training: This should be at least twice yearly.

## SUMMARY

The Board continues to meet its statutory obligations, however, as a consequence of the ongoing underfunding this is, by default, the minimum level of service. The Output operates in a reactive rather than proactive way in service delivery.





# CONTACT DETAILS

The Board's office is located at:

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Hobart

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(03) 6173 0211

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Website:

[www.guardianship.tas.gov.au](http://www.guardianship.tas.gov.au)

Second Floor  
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Hobart

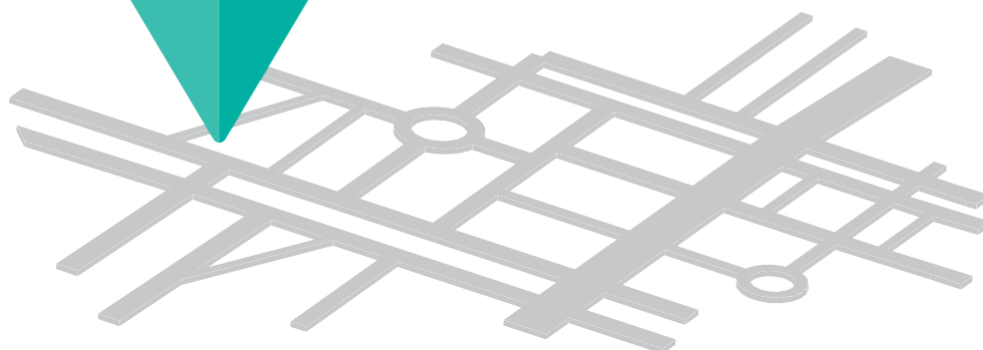


**CONTACT US:**

[guardianship.board@justice.tas.gov.au](mailto:guardianship.board@justice.tas.gov.au)



**1300 799 625**



# APPENDIX 1 - MEMBERS OF THE GUARDIANSHIP AND ADMINISTRATIONS BOARD

Full Time Member	
<b>President</b>	
Ms Rowena Holder	
<b>Deputy President</b>	
Mr Colin McKenzie	
<b>Sessional Members</b>	
Ms Susan Aylett *	Mr Anthony Mihal (L)
Ms Melanie Bartlett * (L)	Ms Louise Mollross (L)
Dr Juanita Breen	Mr Simon Nicholson (L)
Ms Kate Brown * (L)	Mr Justin Otlowski * (L)
Ms Colleen Cheek	Mr Clifford Partridge
Ms Elizabeth Clippingdale (L)	Ms Marie Pedersen
Ms Mary Davies	Mr Stuart Roberts (L)
Mr Gerard Dibley	Ms Mary Anne Ryan (L)
Dr Matthew Fasnacht	Dr David Saner
Mr Richard Grueber (L)	Mr Michael Stoddart * (L)
Ms Wendy Hudson (L)	Ms Sandra Taglieri * (L)
Ms Virginia Jones (L)	Ms Leanne Topfer * (L)
Ms Anna Jordan (L)	Mr Matthew Verney (L)
Mr Grant Kingston	Ms Carolyn Wallace *
Mr Cameron Lee (L)	Dr Robyn Wallace
Mr Rodney Lester	Mr James Walker (L)
Mr William Lester (L)	Ms Lindi Wall (L)
Ms Angela McKenzie	Ms Marilyn Williams (L)
Dr Kylie McShane	Ms Madeleine Wilson (L)
Dr Colin Merridew	

\*Members retired or completed their terms of appointment during the financial year

(L) Legal Members

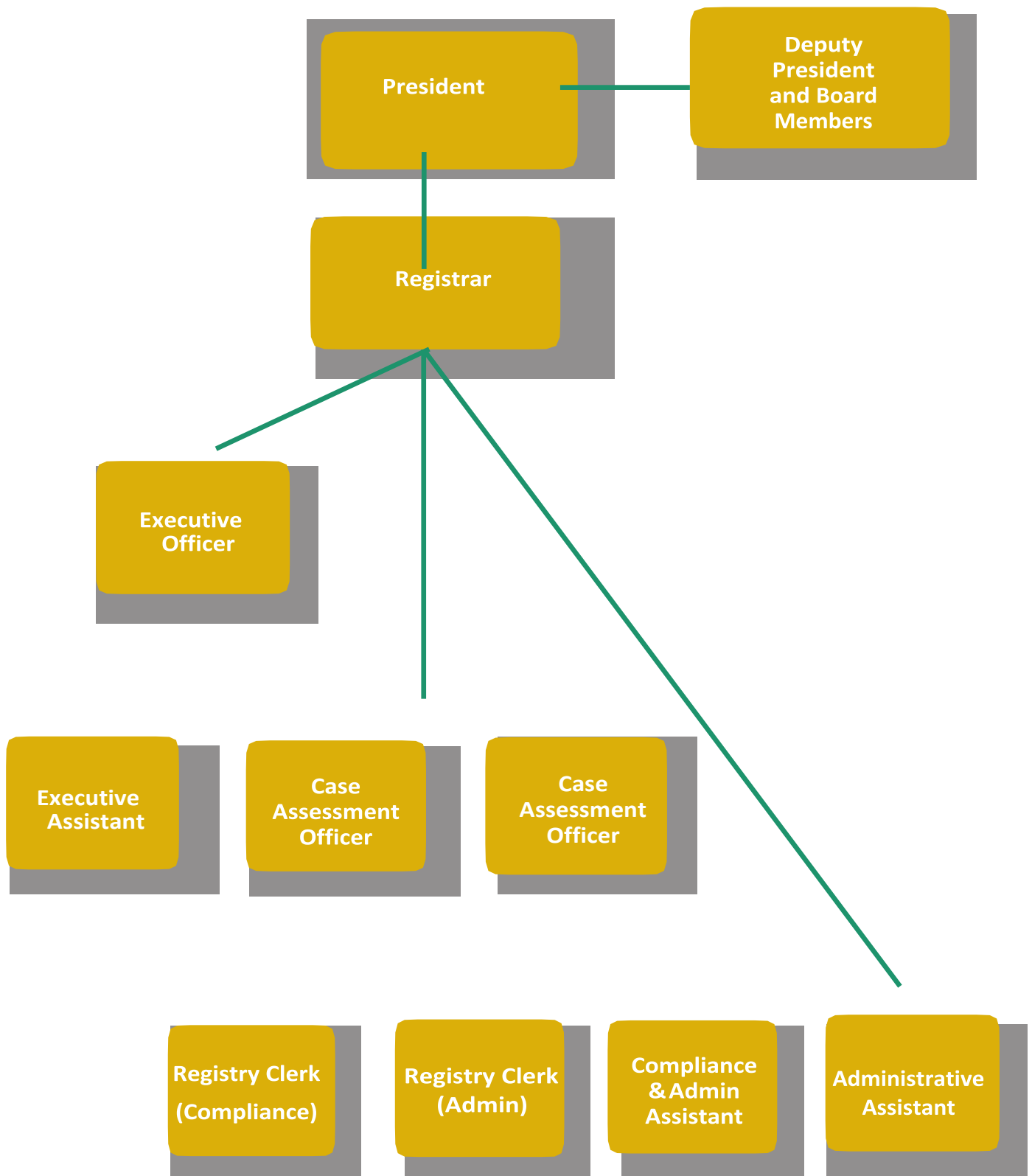
# APPENDIX 2 - FINANCIAL SUMMARY 2018-2019

The following table provides a summary of the budgeted revenue and expenditure for Guardianship and Administration Board for 2018-19:

	\$	2018-19 Budget \$
<b>Revenue</b>		
<i>Appropriation</i>		
- Recurrent	746,688.00	
- Capital	0.00	
- Reserved By Law	0.00	
Total appropriation		746,688.00
Other Revenue (retained)		230 000.00
<b>Total Revenue</b>		<b>976 688.00</b>
<b>Expenditure</b>		
<i>Recurrent Expenditure</i>		
Salaries, Wages & Employee Related Expenses (Includes Reserved by Law)	1,012,772.00	
Property Expenses (e.g., rent, power, cleaning, security etc.)	88,494.00	
Information Technology Expenses	29,206.00	
Grants	0.00	
Internal Transfers	0.00	
Other Non-Salary Expenses (e.g., stationery, telephone, travel etc.)	88,814.11	
Total recurrent expenditure		1,219,286.11
<i>Capital Expenditure</i>		
Capital Expenditure - Software/systems	0.00	
Capital Expenditure - Property	0.00	
Capital Expenditure - Other	0.00	
Total capital expenditure		0.00
<b>Total Expenditure</b>		<b>1,219,286.11</b>
<b>Total cash movement</b>		<b>-245,598.11</b>
<b>Opening cash position</b>		
- Section 8A(2) carry forward (prior year funding)		0.00
- Other retained revenues		910 613.95
<b>Total opening cash position</b>		<b>910 613.95</b>
<b>Closing cash position (should not be negative)</b>		<b>668,015.84</b>
<b>Revenue collected on behalf of Treasury ('Y' accounts)</b>		<b>0.00</b>



# APPENDIX 3 - ORGANISATIONAL CHART





## Guardianship and Administration Board

Email: [guardianship.board@justice.tas.gov.au](mailto:guardianship.board@justice.tas.gov.au)  
Website: [www.guardianship.tas.gov.au](http://www.guardianship.tas.gov.au)

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