



Office of the Public
Guardian

Tasmania

Annual Report
2008-09

22 September 2009

The Hon Lara Giddings, MP,
Attorney General
Minister for Justice

In accordance with the requirements of Section 84 of the *Guardianship and Administration Act 1995*, I am pleased to submit the report of the performance of the functions of the Office of the Public Guardian for the year 1 July 2008 to 30 June 2009.

Lisa Warner
PUBLIC GUARDIAN

ERRATUM

At page 6 of the Office of the Public Guardian's Annual Report 2008-09 ("the Report"), line 14. The number "51" should read "33".

Additionally on page 6 of the Report a footnote should have appeared under the chart of workload comparison stating: "The numbers in this chart for 2008-2009 are based on separate orders made by the Guardianship Board as well as individual clients whose appointment of the Public Guardian as Enduring Guardian was enacted over the course of this financial year. In past years this data was calculated on the numbers of individual clients who may have been subject to more than one order in a given year."

Lisa Warner

PUBLIC GUARDIAN

05 October 2009

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1. Introduction

The Office of the Public Guardian takes its legislative authority from the *Guardianship and Administration Act 1995*. The Act was proclaimed and came into operation on 1 September 1997.

According to the Australian Bureau of Statistics, more than 14,000 Tasmanian citizens (or 3% of the population) are estimated to be limited in their capacity to make reasoned decisions in their own best interests due to conditions like:

- A dementia (like Alzheimer's Disease)
- A psychiatric condition
- An intellectual disability
- An acquired brain injury caused by illness, accident or other trauma.

The number of people with such disabilities is increasing as:

- The population ages in Tasmania – currently people over the age of 60 make up 18.4% of the population. By 2019, 1 in 4 people will be over 65.
- Currently there are 8,600 people over age 85. In the next 20 years this figure will double to 16,500 and is predicted to double again to 32,800 over the following two decades. There is a heightened risk of age-related decision-making disabilities with this group of people.
- Medical technology is better able to prolong the lives of people who have a disability, or who sustain an acquired brain injury.

The *Guardianship and Administration Act 1995* acknowledges the specific ways in which people with decision-making disabilities may be vulnerable and therefore require special consideration and support.

The main functions of the Office include:

Advocacy and Representation

- The Public Guardian promotes, speaks for and protects the rights and interests of persons with a disability;
- deals with service providers on behalf of persons with a disability; and
- represents persons with a disability before the Guardianship and Administration Board (the Board).

Investigation

- The Public Guardian investigates, reports and makes recommendations to the Minister on any matter relating to the operation of the Act and also may conduct investigations at the request of the Board.

Guardianship

- The Public Guardian acts as guardian or administrator when so appointed by the Board ensuring as much personal autonomy and respect for the wishes of the represented person as possible.

Systemic Issues

- The Public Guardian fosters the provision of services and facilities for persons with a disability;
- supports the establishment of organisations which support persons with a disability; and
- encourages the development of advocacy and education.

Information

The Public Guardian:

- disseminates information concerning the functions of the Public Guardian, the Board, and the operation of the Act; and
- gives advice on the Act and alternatives to the Act.

Our statement of values

At the Office of the Public Guardian, we undertake to make decisions in our clients' best interests, acting at all times with respect, integrity, accountability, open-mindedness, and understanding of individual needs. In carrying out our role we will abide by the *Guardianship and Administration Act 1995* and the Public Sector Code of Conduct.

When making decisions we will consider our clients' wishes, needs and aspirations. We will also consider the opinions of their families, friends, those supporting them, and the community at large. Communicating with our clients and key people in their lives enables us to gather sufficient information so that we can make fair, ethical and informed decisions that are in the best interests of our clients.

2. How are the Public Guardian and the Guardianship and Administration Board different?

The Public Guardian and the Guardianship and Administration Board are separate entities, with distinct roles and functions.

The Guardianship and Administration Board is the entity that makes decisions about the need for a guardian or administrator to be appointed.

The Public Guardian provides advocacy services on both an individual and systemic basis, acts as guardian when appointed by the Board, mediates problems, and makes decisions for clients in accordance with the principles outlined in the Act. It can seek direction from the Board about any matter. It is not a service provider, but rather

works with service providers to ensure that the needs and wishes of persons with disabilities are being met.

Because guardianship involves removing existing legal rights from a person with a disability, the Public Guardian has a role to play to ensure that guardianship is used as a last resort. The Public Guardian often plays a role in trying to mediate or resolve problems prior to a Board hearing so that, if possible, there is no longer a need for guardianship. If the Public Guardian is appointed as a person's guardian, and there is no longer a need for guardianship, the Public Guardian has a responsibility to apply to the Board to revoke the guardianship order.

3. Determining what is in the “best interests” of a person under guardianship

The guardian must act:

- in consultation with that person, taking into account, as far as possible, his or her wishes; and
- as an advocate for that person; and
- in such a way as to encourage that person to participate as much as possible in the life of the community; and
- in such a way as to encourage and assist that person to become capable of caring for himself or herself and of making reasonable judgements relating to his or her person; and
- in such a way as to protect that person from neglect, abuse or exploitation.

4. Who are the Public Guardian and staff?

Public Guardian

Lisa Warner was appointed as Public Guardian on 1 September 1997. She completed degrees in Arts and Sciences and Law, having studied in Canada, France, and Australia. She also holds an Advanced Diploma in Financial Services (Financial Planning). She has worked as an Ombudsman at the University of Saskatchewan, Canada, and at the Canadian Human Rights Directorate, Ottawa. She was admitted as a Barrister and Solicitor in Western Australia in 1990, has worked in private legal practice in Western Australia, and managed litigation and legislation at the Health Department of Western Australia.

Deputy Public Guardian

Margaret Colville was appointed as Deputy Public Guardian in June 1998. Margaret was a member of the Guardianship and Administration Board since 1988, and has been involved with the Down Syndrome Association, “The Towers Incorporated”, the Australian Association of Special Education, and Colony 47. Margaret was named as a Member of the Order of Australia in 2002 in recognition of her contribution to the lives of people with disabilities.

Executive Guardian

Michael Condon obtained an articles of clerkship with a Gold Coast based law firm in 1992 whilst externally undertaking a Bachelor of Laws that he completed from the Queensland University of Technology in 2000. Michael continued in private practise as solicitor and associate with a law firm in Brisbane until moving to Tasmania to reside permanently in 2004. Michael practised primarily in the areas of civil litigation and insolvency. Michael began work with the Office of the Public Guardian in September 2007 as an Executive Officer after a period of employment with The Public Trustee. He is married with one child.

Guardian – North

Kylie Hillier commenced working with the Office of the Public Guardian in May 2005. Kylie's experiences include project management with a business simulation company and a dot-com auction house in London. Her commitment to social justice has led to several years experience working in disability support in Ireland and in advocacy in both the Disability sector as the Willow Court Advocate at New Norfolk and in Aged Care across Northern Tasmania. Kylie integrates her role as a Guardian with other rewarding challenges such as helping her husband build their house, being mum to her two children, belonging to an amateur theatre company and dreaming of her next travel destination.

Guardian – North West

Kate Clayton joined the Office of the Public Guardian in June 2009 as Guardian for the north-west region. Kate has prior professional experience in a number of fields, including international and domestic human rights and gender-discrimination law and policy, environmental planning and infrastructure. She has been based in Canberra for the past four years, working principally with the International Section of the Commonwealth Office for Women. During this time, Kate assisted with Australia's representation at several United Nations forums, the drafting of UN resolutions and Australia's participation at APEC.

Kate grew up on a farm in northern Tasmania and completed her undergraduate study at the University of Tasmania in Hobart. She is an admitted practitioner of the Supreme Court of Tasmania. She has recently returned to work after the birth of her first child.

Guardian - North/North West

Kevin Preece joined the office of the Public Guardian in November 2000 as Guardian North/North West. Kevin had a long and successful career in the Statutory Trustee industry holding the position of General Manager of Tasmanian Trustees Limited for a period of 23 years until September, 2000. He is a member of the Australian Institute of Company Directors, a Director of the Tasmanian Community Fund and has roles on a number of private company boards. Kevin is a past President of the Rotary Club of South Launceston and was awarded a Paul Harris Fellowship for service to Rotary

and his community. Kevin retired from the Office at the end of the 2008-09 financial year.

5. Office Location

The Public Guardian is located on Level 3, 15 Murray Street, Hobart and is contactable on (03) 6233 7608. Other staff work from their respective home-based offices around the State.

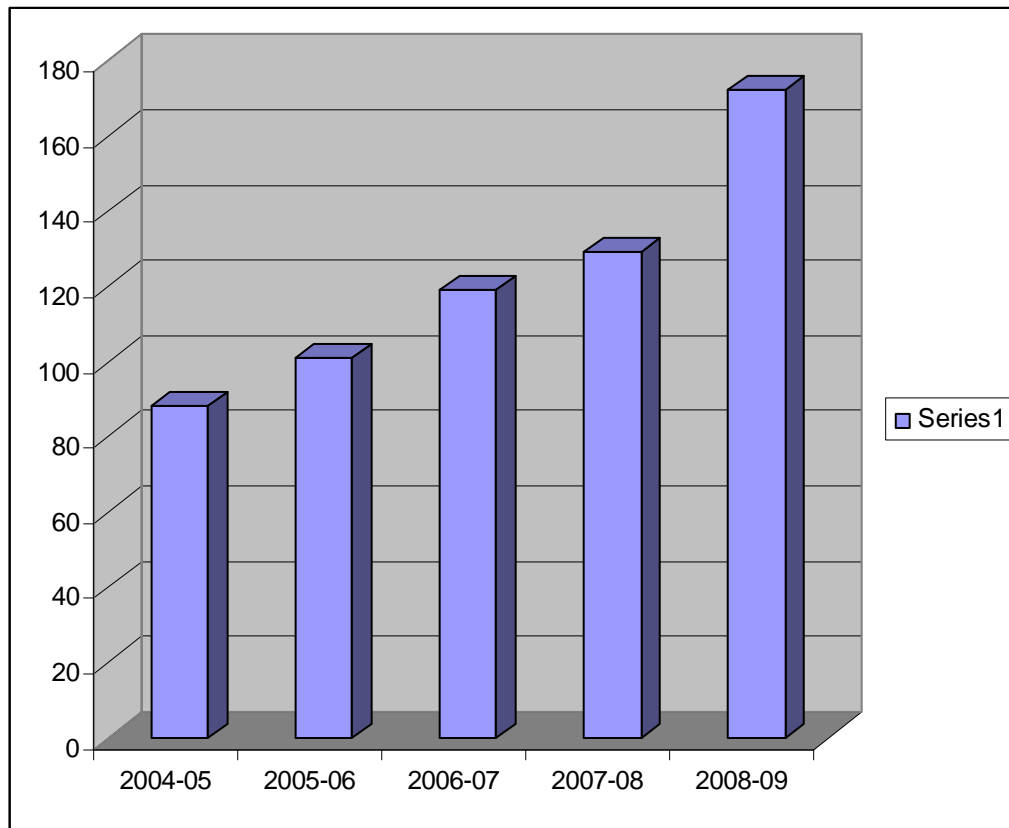
6. Caseload of Office

From July 2008 to June 2009, the Guardianship and Administration Board made 191 appointments of the Public Guardian as guardian, and made 4 administration orders appointing the Public Guardian, for a total of 195 orders. The Public Guardian also dealt with 3 matters as the appointed Enduring Guardian. For 87 clients an emergency order was made, valid for 28 days. A total of 320 clients were subject to guardianship or administration orders, or enduring guardianship during the year, and there were 172 open cases at the end of the financial year, an increase of 51% over the past year and an increase of nearly 95% over the past five years. The rate of people being placed under guardianship orders in Tasmania on a per capita basis is now amongst the highest in Australia.

Workload Comparison Office of the Public Guardian:

	2008-09	2007-08	2006-07	2005-06	2004-05
Open Cases at 1 July	129	119	101	88	70
Number of new emergency orders (28 days duration)	87	63	56	50	65
Number of new guardianship orders or active enduring guardianship clients	105	68	88	42	34
Numbers of new administration orders	4	1	2	2	1
Total number of clients on orders or active enduring guardianship appointments during the year	320	169	188	189	158
Open Cases at 30 June	172	129	119	101	88

The reporting year 2008-09 has been characterised by a heavy demand for guardianship services once again, and the effect of the ongoing orders is that workload continues to steadily build.



The volume and complexity of cases being handled across our Office is significant and challenging. This has been compounded by the rationalisation of services of other agencies which is affecting the level of support available to people who are unable to independently manage their own affairs.

As can be seen below the case load per staff member is higher than at anytime in the previous five financial years. The case load indicator is now well beyond the range of that of offices in other jurisdictions.

From July 2008 to June 2009, the Public Guardian acted as an advocate or provided advice, information and assistance and responded to approximately 4500 telephone queries during business hours and over 1000 telephone calls after hours and on weekends, representing 5500 calls.

The Public Guardian continues to receive increasing numbers of cases for mediation, information, and advice, and continues to play an active role in trying to resolve issues without the need for Board hearings or the possible imposition of more restrictive solutions.

The demands on our time, coupled with the emergency and after hours work have been immense. This office now needs to prioritise clients, and limit the service it can provide.

7. Structure of the Office

The office structure at 30 June 2009 was this:

Public Guardian (Policy and Systemic Advocacy) (1.0 FTE)		
Deputy Public Guardian (Case Co-ordination and Case Management) (0.5 FTE – South)		
South Executive Guardian (Case Management and Admin) 1.0 FTE	North Guardian (Case Management) 0.9 FTE	North West Guardian (Case Management) 0.5 FTE

8. Enduring Guardianship

There are many people in Tasmania who are interested in the concept of making what used to be called a “living will”. Many of us, at some stage in our lives, lose the capacity to make decisions because of accident, illness or some other event. If this happens, then decisions still need to be made, about important issues like what kind of medical treatment we will have or where we might best be cared for.

The idea of a “living will” has now been replaced by a concept called Enduring Guardianship. It is now possible for people to appoint a person or persons of their choosing to make decisions that are right for them. These decisions could include decisions about where to live, what health care to receive, and what other personal services could be received.

Appointing an Enduring Guardian is just as important as making a will, or appointing a Power of Attorney. Indeed, many people believe that because they have appointed a Power of Attorney that their personal needs will be met. But a Power of Attorney only gives the Attorney the power to deal with financial matters, not lifestyle and medical matters.

Many people have spouses and ex-spouses, relatives, friends, and some may have children and step-children from different partners. When it comes time to make a decision about what is best for the person who has lost the capacity to make appropriate decisions, there is sometimes conflict between carers. Appointing an Enduring Guardian means that a principal decision-maker is appointed who is willing

to act in the best interests of the person with a disability. It is a clear and unambiguous decision, made in advance, which may lessen family conflicts and enable the rights of the person with a disability to be protected.

The Office of the Public Guardian encourages people to appoint a person of their choosing, who understands and respects their values and wishes, and acts with their best interest at heart. It enables people to give their Enduring Guardian instructions about decisions that the Enduring Guardian must carry out, so long as those decisions are lawful, clearly expressed and practically possible to carry out.

If people do not feel comfortable appointing friends or family members as their Enduring Guardian, then the Public Guardian is also available to be appointed. The Public Guardian is also available to meet with and assist people with the paperwork involved in appointing an Enduring Guardian.

The process of appointing an Enduring Guardian is simple, free, and confidential. All Tasmanians who are 18 years of age and over need to consider their futures, and to think about what kind of decisions they want for themselves, and to appoint an Enduring Guardian. This way, they will ensure that someone they know and trust will be able to speak for them in the event they become unable.

The Public Guardian travelled throughout Tasmania, speaking at community forums in a variety of settings. Several thousand information kits have now been distributed from the Office of the Public Guardian and the Guardianship and Administration Board as well as Service Tasmania to people interested in appointing an Enduring Guardian.

The proportion of adult Tasmanians registering Enduring Guardians has gone from 1:1000 five years ago to approximately 1:37 as at 30/6/08. There are now over 10,000 registered Enduring Guardianships in Tasmania, which is an increase of over 2000 in 2008/09.

9. Other major projects

The Public Guardian is involved in the development of a Capacity Toolkit for Tasmania. The Capacity Toolkit is not an assessment tool, but it does provide information about capacity, capacity assessment, and the various legal tests of capacity in Tasmania.

We are also involved in working parties examining Advance Care Planning, Enduring Guardianship reform, palliative care, aged care and other health issues.

10. Community Education

Because of increasing workload pressure, the Public Guardian has had to severely limit the number of information and community education sessions throughout the year, and was compelled to choose mostly bigger seminars and conferences with more participants. The Public Guardian gave 16 presentations to more than 500 people on the Act, Enduring Guardianship, and the role of the Public Guardian to groups and agencies throughout the State.

11. Scope of a Guardian’s Decision-Making

Our office is continually asked about what a guardian can and cannot do. Expectations of individuals and organisations have at times exceeded our actual legislative power or authority. We have therefore defined what the role of our office is, and what it is not in the development of a document called “Scope of a Guardian’s Decision-Making”. This document is annexed to this Annual Report. It outlines what decisions we can and cannot make, and we hope that its publication will be again be helpful in clarifying the legislative and practical scope of our work.

12. Financial Summary 2008-09

	Budget	Actual Expend	Variation
SALARY RELATED EXPENDITURE	\$	\$	\$
	415,869	414,672	1197
INFORMATION TECHNOLOGY			
	15,740	15,453	287
MATERIALS, SUPPLIES & EQUIPMENT			
	9,987	12,077	(2,090)
TRAVEL & TRANSPORT			
	47,993	49,984	(1,991)
PROPERTY EXPENSES			
	13,066	12,459	607
FINANCE EXPENSES			
	0	298	(298)
OTHER EXPENDITURE			
	49,971	45,713	4258
TOTAL	552,626	550,656	1,970

Full Financial Reports for the Office are encompassed in the Department of Justice Annual Report

13. Conclusion

My team is called on to make decisions for some of the most disadvantaged people in the community 24 hours/day, 7 days/week and have long contributed far in excess of what could ordinarily be expected of staff. We work out of shared respect for people with decision-making disabilities, and I have tremendous respect for their abilities, compassion, focus, and empathy. I thank them most sincerely for the amazing work they do for people with disabilities and the Tasmanian community.

Lisa Warner

PUBLIC GUARDIAN

September 2009

ANNEXURE – SCOPE OF A GUARDIAN’S DECISION-MAKING

A guardian acts in the best interests of a represented person when they have a decision-making incapacity.

A guardian’s power is limited by the order made by the Guardianship and Administration Board. These powers could include the right to make decisions about the person’s accommodation, their health treatment, the people with whom s/he will have contact, and any other matters set out in the order, where such an order has been legally made.

A guardian does not make decisions about financial or legal matters, nor can they obtain financial resources or create services for adults.

The Public Guardian is only appointed by the Guardianship and Administration Board when there is no family member available or willing to take on the role of making complex decisions, or when there is conflict within the family, or when there is conflict between the family and service providers.

Guardianship Orders can either be limited to specific functions, or can be plenary, which means they give the guardian the ability to make decisions in most areas of a person’s life. Under either type of order a guardian cannot be appointed to make a will on behalf of the person they represent, to vote on their behalf, or to consent to their marriage.

Decisions about where a person should live, permanently or temporarily

This gives the Public Guardian the right to take the following actions or decisions:

- Request an assessment of their accommodation needs, by services appropriate to the person’s disability (eg. Aged Care Assessment Team, Mental Health or Disability Services)
- Request specific allied health assessments to address identified needs (eg prior to a person returning home from hospital request that an Occupational Therapist assess a person’s home and make recommendations)
- Visit the current or proposed accommodation to determine the guardian’s view about whether the accommodation meets the person’s needs
- Seek information about standards monitoring, accreditation, licensing and other matters from the place of proposed accommodation
- Seek information about the proposed accommodation through consultation with family, service providers, and others
- Investigate the possibility of community services varying their management and support strategies to maintain a person in their home

- Investigate the possibility of agencies developing appropriate strategies to maintain a person to live in less restrictive accommodation (ie an aged care hostel rather than a secure nursing home)
- Request of attend case/other meetings to discuss accommodation issues
- Make complaints on behalf of a person to managers of accommodation services or relevant complaints, accreditation, monitoring or funding bodies
- Provide/withhold consent to a person remaining in their current accommodation
- Provide/withhold consent to a nominated accommodation option (whether permanent or temporary)
- Negotiate, or request that negotiations be carried out by the service coordinator or case manager, with the person about their accommodation alternatives before any decision is taken to move the person against his/her wishes
- Authorise others (eg health care workers, Tasmanian police or ambulance) to transfer a person to alternative accommodation
- Provide/withhold consent to an admission to a health care facility (but any specific tests or treatment procedures would need to be done under a health care function or treatment order)
- Provide consent to accommodation on a trial basis

What kinds of actions does the Public Guardian NOT undertake in relation to “accommodation decisions”?

- Find, or provide, accommodation for a person
- Take a person to new accommodation, or locate and bring them back if they leave that accommodation
- Assess a person’s accommodation and support needs.

These actions are the responsibility of a person’s case manager or primary support agency, in conjunction with other appropriate service providers.

- Pay or negotiate fees for accommodation

This is the responsibility of the person, a person acting informally on their behalf, their enduring power of attorney or their administrator.

Decisions about with whom the represented person is to live or the restriction of visits to them

These powers give the Public Guardian the ability to make the following decisions or actions:

- Seek an informal, and negotiated, arrangement for visits and/or contact
- Request that service coordinators develop an access plan in consultation with family and/or friends
- Request that service providers monitor visits (outlined in an access plan) and provide support to the person under guardianship during those visits, if necessary
- Request reports of, or data collection relating to, the impact of these visits on the person
- Request that others assist the person to gain a restraint order
- Make representation to the Tasmanian police, requesting that a complaint be made
- Request assessments of a person's capacity to make visiting/contact decisions, or of the impact of such visits upon a person
- Request or attend case/other meetings to discuss access issues
- Provide/withhold consent to visits or contact at given times/location, and dependent upon certain conditions (ie supervised access only)
- Make decisions that limit contact to a person under guardianship, or in certain circumstances deny contact
- Request proposals for times and dates of visits from family/friends/others
- Consent, or decline consent, to proposals for phone or written access
- Request, on the person's behalf, that accommodation services and/or administrators assist a person to change the locks to their home or change their telephone number to ensure their safety and security

What kinds of actions does the Public Guardian NOT undertake in relation to access decisions?

- Facilitate or supervise contact or visits between the person and others
- Take the person to/from access visits
- Assess the clinical impact of access visits on a person under guardianship

These actions are the responsibility of the person's service coordinator or primary support agency/service, in conjunction with appropriate health care workers /other services.

The Public Guardian will not make decisions regarding the marriage or divorce of any client, nor make any other personal decisions including pleading in court or voting.

Health Care Decisions

The Public Guardian may take the following actions or decisions in relation to “health care” matters:

- Seek information from the treating practitioner about whether the person under guardianship can provide his/her own consent to the proposed treatment
- Provide/withhold consent to health care treatments, alteration of treatments, the reduction or withdrawal of treatments, and interventions and therapies
- Provide/withhold consent to treatment which overrides the objections of the person (where the Public Guardian is so empowered to do)

Despite the Public Guardian having an authority to override a person’s objections to treatment, in some circumstances it is not possible to ensure that particular medications are taken, or a procedure undertaken, by a person. For instance, a person may avoid taking medication, or perhaps on account of an itinerant lifestyle may avoid compliance with treatment. A guardian’s decision-making cannot guarantee that treatment will occur.

- Seek, from the treating practitioner, all necessary information required by any guardian or “person responsible” when asked to provide a substituted medical consent, including risks and benefits of the proposed treatment and alternative treatments, why the proposed treatment is favoured, the likely consequences of non-treatment, the exact nature of the condition to be treated, the views of the person and significant others, other treatments the person is receiving, etc.
- Stipulate a time-limit for consents, and place conditions upon these consents
- Request a second medical opinion as part of the process for determining whether to provide consent
- Advise medical practitioners and other allied health staff of their responsibilities in relation to seeking substitute consent from the appointed guardian
- Attend a consultation between a patient and their treating doctor to gain more information regarding the treatment and views of each party
- Make decisions about dietary matters (following recommendations by a dietician) where this impacts upon a person’s health
- Request health care and/or medical information relating to a person under guardianship
- Request a treatment plan, where a person is admitted to a health care facility or when major health concerns have been raised or diagnosed

- Ask to review nursing and medical notes when visiting a person under guardianship in a hospital, nursing home, or other facility
- Provide/withhold consent to requests for the release of health care information
- Request and consent to specialist medical assessments/reviews
- Request written reports following medical (or other health) reviews/assessments
- Request that check-ups be arranged (by a person's key worker or service coordinator) with a dentist, GP, optometrist, audiologist etc
- Provide/withhold consent to a person's discharge from a health care facility
- Request a health-care management plan for a person at risk of self-injury
- Request/attend case or review meetings to discuss health care matters
- Decide from which health care professional and/or services a person should receive support/assistance
- Make complaints to appropriate authorities on a person's behalf about health care matters
- Raise concerns (with family, carers, service providers or others) about activities which place a person's health at risk

What kinds of actions/decision does the Public Guardian NOT undertake in relation to health care decisions?

- Provide/withhold consent to treatment relying only on information from allied health staff and/or carers

The Public Guardian must ensure that the information provided has been checked with the treating practitioner, where appropriate.

- Take a person to health care appointments, health services or hospital admissions
- Make practical arrangements for health care appointments
- Develop treatment or health care plans, or provide detailed referral information to new health care providers
- Administer medication
- Supervise the taking of medication, or ensure medication/treatment compliance

These actions are the responsibility of the person's primary health care worker, key worker or service coordinator, in conjunction with other appropriate health care workers.

- Pay or negotiate fees for health care interventions

This is the responsibility of the person, another person acting informally on their behalf, their enduring power of attorney, or their administrator.

- *Consent to any "special medical treatment"*

There are certain things which only the Guardianship and Administration Board can consent to, such as sterilisation.

The Public Guardian will endeavour to provide sufficient information to practitioners so they can readily comply with their obligations under the legislation. The Public Guardian, however, cannot compel practitioners to seek consent for proposed treatments.

These actions are the responsibility of medical and dental practitioners. In relation to the supervision and/or administration of medications, however, some responsibilities are also incumbent upon other health care and service professionals involved in a person's care. Legal liability for not seeking of consent for treatment lies with the medical or dental practitioner and the health care facility in/through which treatment is provided. This liability arises from the practitioner's and the facility's "duty of care" to the patient. This duty of care cannot be delegated.

A hospital admission can occur without the Public Guardian's consent, when the person needs "urgent" medical treatment.