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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 – with people over the age of 65 predicted to increase from 14% of the population in 2002 to 34% of the population by 2051 (with associated age-related decision-making disabilities)
- It is projected that 8 to 11% of the population will be over age 85 by 2051
- 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;
- investigates complaints and allegations about the actions of a guardian or an administrator or someone acting under a power of attorney; and
- investigates any matter referred by 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.

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. It can require the Public Guardian to conduct investigations and report back to the Board, and provide legal authority for the Public Guardian to enter premises where a person with a disability is in danger.

The Public Guardian provides advocacy services on both an individual and systemic basis, acts as guardian when appointed by the Board, conducts investigations, 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.

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.

Guardian – North/North West

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.

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.

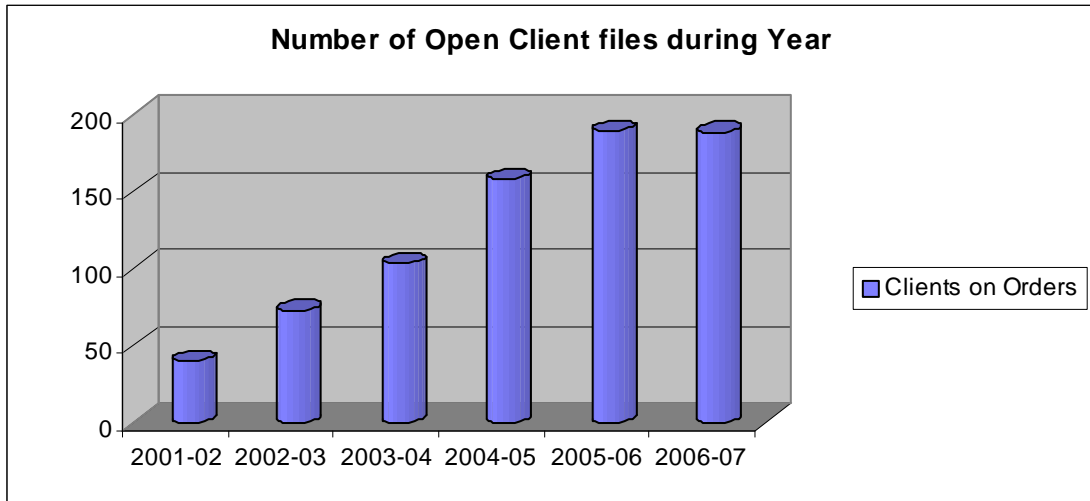
6. Caseload of Office

From July 2006 to June 2007, the Guardianship and Administration Board made 93 new appointments of the Public Guardian as guardian, renewed 18 existing orders, and made 2 administration orders appointing the Public Guardian, for a total of 113 orders. The Public Guardian also dealt with 3 matters as the appointed Enduring Guardian. For 56 clients an emergency order was made, valid for 28 days. There were 81 appointments made in previous years that continued on, making a total of 197 guardianship and administration orders and Enduring Guardianship matters.

Workload Comparison Office of the Public Guardian:

	2006-07	2005-06	2004-05
Open Cases at 1 July 2006	101	88	70
Number of orders Lapsed or Revoked during year	11	13	12
Number of Emergency orders (28 days duration)	56	50	65
Number of New Guardianship Orders or active Enduring Guardianship	88	42	34
Number of New Administration Orders	2	2	1
Total Number of clients on orders (or active E.G. appointments) during the year	188	189	158
Open Cases at 30 June 2007	119	101	88

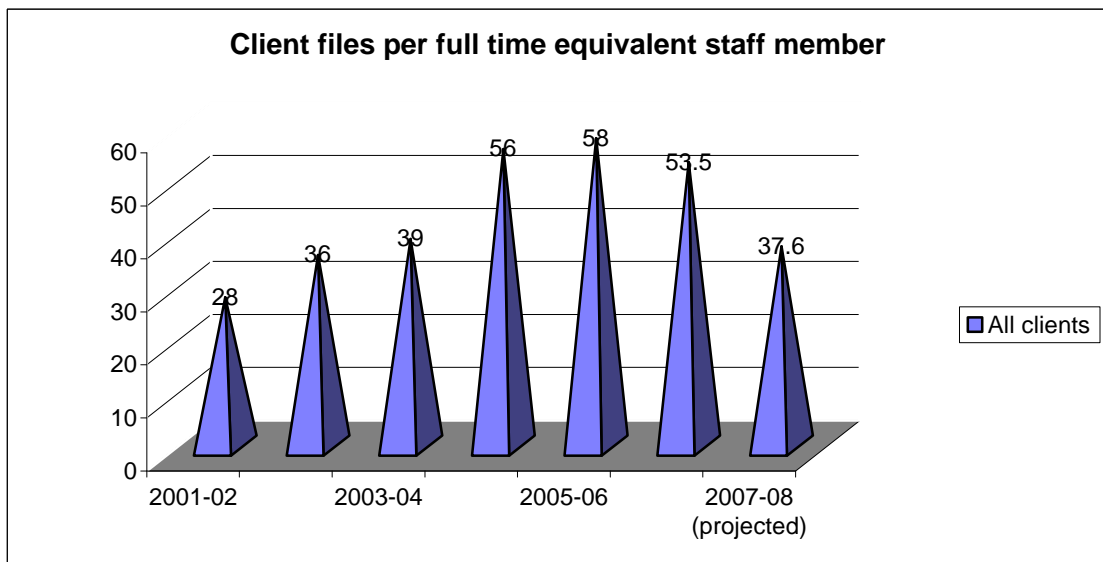
The reporting year 2006-2007 has been characterized by a growth of demand for guardianship services once again.



The volume and complexity of cases being handled across our Office is significant, and at times overwhelming. 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.

During the same period the allocated staffing of the office has increased from 1.4 full time equivalents to 2.5 full time equivalents, with the Department of Justice funding a further 0.75 position to assist with the workload. However, the staffing has not kept pace with workload, resulting in the number of matters being dealt with by each staff member almost trebling over the period.

I am happy to report that a significant boost to resources available to the office was part of the June 2007 budget so I am finally able to predict an easing of the burden on the staff of the office:



From July 2006 to June 2007, the Public Guardian acted as an advocate or provided advice, information and assistance and responded to over 4300 telephone queries

during business hours and 830 telephone calls after hours and on weekends, representing 5130 calls. This represents an increase in the number of telephone queries of 5% since last year.

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 colossal. Without additional support and resources, promised in the next financial year, this office would have been forced into scaling back the services that we provide. Now we will be able to face the coming year in a much better position to provide necessary decisions for people most in need.

7. Structure of the Office

The office structure at 30 June 2007 was this:

Public Guardian (Case Management, Case Co-ordination, Policy and Systemic Advocacy) (1.0 FTE)		
Deputy Public Guardian (Case Management) (0.75 FTE – South)	Guardian (Case Management) (0.75 FTE - North/N-W)	Guardian (Case Management) (0.75 FTE - North/N-W)

With the commitment of additional resources from government, we will be able to achieve the following structure:

Public Guardian (Policy and Systemic Advocacy) (1.0 FTE)		
Deputy Public Guardian (Case Co-ordination and Case Management) (0.75 FTE – South)		
Southern Office Guardians (Case Management) 1.0 FTE	Northern Office Guardians (Case Management) 0.75 FTE 0.75 FTE	North West Office Guardian (Case Management) 0.75 FTE

Executive Officer
(Administrative Support to PG and OPG and Assist all Guardians with Case Management)
1.0 FTE

This structure will reduce case loads to within the high end benchmark per fulltime equivalent guardian, allow for sufficient staff to handle the over 5130 general enquires, allow for better co-ordination of workloads and client interaction and also permit the Public Guardian to concentrate on more than crisis management, as is required by legislation.

8. Systemic Issues

The role of Public Guardian is a role that includes individual advocacy and guardianship service provision. It also encompasses a systemic advocacy function aimed at identifying and addressing common problems at their source. Systemic advocacy requires a longer term, strategic approach that is well informed by research, and communicated to key stakeholders and the community in a planned and professional way. It also requires a commitment of resources.

Due to the increasing nature of the Public Guardian's case load, there has been an ever diminishing scope for involvement in systemic issues, but there have been some major initiatives.

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 for themselves, 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 initiated a campaign to promote the rights of Tasmanians to appoint an Enduring Guardian while they have capacity. It 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, hosting community forums in a variety of settings. Newspaper ads were taken out, and via news and radio interviews, a few thousand information kits were distributed from the Office of the Public Guardian and the Guardianship and Administration Board to people interested in appointing an Enduring Guardian.

The proportion of adult Tasmanians registering Enduring Guardians has gone from 1:1000 3 years ago to under 1:100 as at 30/6/07. There are now 4936 registered Enduring Guardianships in Tasmania, which is an increase of 1667 in 2006/07.

Respecting Patient Choices Program

Most patients (85%) die after chronic illness, not sudden event. Up to 50% of these are not in a position to make their own decisions when near death. Problems occur when patients cannot be consulted, lines of communication break down, and families get upset.

One program stood out in its promotion of patient rights. Respecting Patient Choices was developed in Wisconsin, 1993, and was recently recognised as “best practice” by US National Coalition on Health Care and the Institute for Health Care Improvement. This program trains targeted nursing and allied health staff and selected volunteers to facilitate patient understanding of advance care planning.

The success of the program is attributed to shifting the focus away from the completion of legal documents to facilitating discussion about patient’s values and preferences. It was initially introduced to select groups in hospital in order to establish staff support and then extended to rest of hospital and community.

The aims of the program were to: initiate conversations with adults about future medical care, assist individuals with advance care planning, make sure plans are clear and available, and appropriately follow plans.

Deceased patients with an Advance Directive form were 7 times less likely to die in hospital. Deceased patients without an Advance Directive form were 1.3 times more likely to have been hospitalised in the last 6 months of life and during the last 6 months of life to have cost a median of \$2000 more in hospital services.

The Respecting Patient Choice program was brought to Australia by Victoria's largest public hospital, the Austin. The Austin has 750 inpatient beds, and significant numbers of patients over 65 (20%). A survey in November 2001 showed only 9.5% of inpatients had ever completed an advance care plan and of these only 55% were currently active.

The study empowered patients to recognise their ability to make informed decisions now (i.e. "I want no further chemo." "I want no further ventilation.")

The program does not increase anxiety if introduced sensitively. Patients are asked about goals and values in their lives and are reassured they will be cared for fully. Improvement in physical symptoms of depression, increase in patients' belief that health professionals care more, better preparation for death, lessening of burden on loved ones (eg decrease in family stress about withdrawing treatment).

Of those who did not participate in the program, more intervention was carried out (ICU admission, tracheotomy, CPR).

\$1.4 million was made available from Commonwealth Government to roll this program out into the community. The Royal Hobart Hospital, with support from executive and key clinicians, obtained funding to implement this program. The Public Guardian has worked with the Royal Hobart Hospital and an Ethico-Legal Sub-committee to adapt the program's documentation for Tasmania (Advance care plan, green sleeve process) and has chaired the Ethico-Legal Sub-committee and has been involved in other steering committees of the project.

The program has now been implemented at the Royal Hobart Hospital with excellent results. Staff are being trained in having end-of-life and ongoing health care conversations with patients. Some staff have reported that this is the best program they have been involved with for years.

Success elsewhere suggests that the Royal Hobart Hospital pilot will work. Continuing the program will eventually require funding from the State government. If the results continue to be promising, the program could be rolled out to all Tasmanian hospitals, both public and private, as well as to other health care providers and residential aged care facilities. The Public Guardian has discussed this initiative with key stakeholder groups such as the Division of General Practice, Directors of Nursing of aged care facilities, and hospital and community providers. There is tremendous support in the community for this program. To continue this program beyond the initial seed funding will require a commitment from the State government, which is urgently required. The cost of the roll-out would be more than offset by the savings to

the Health budget long term, particularly given Tasmania's aging population. Patients participating in discussions about their own future should clearly be able to decline expensive medical tests and procedures or to make decisions that they do not wish to receive CPR or be put on life-support machines.

The Public Guardian urges the government to support this worthy program, which enhances dignity and autonomy of patients.

9. 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 10 presentations to more than 400 people on aspects of the Act, the Board, Respecting Patient Choices and the role of the Public Guardian to groups and agencies throughout the State.

10. Investigations, Mediations, and Advocacy

The Guardianship and Administration Board may refer any suitable matter to the Public Guardian to investigate. This tends to occur in circumstances where there are concerns or allegations of neglect, exploitation or abuse of a person with a decision-making disability.

Cases have included:

- emotional abuse;
- health care disputes;
- mediation between carers, family members and service providers;
- physical neglect;
- self-neglect;
- psychological abuse;
- sexual abuse;
- accommodation;
- employment issues;
- contact with family members; and
- other lifestyle issues.

The Public Guardian will look at issues prior to the matter coming to hearing before the Board, collect further information that may assist in substantiating or disproving the concern raised, or provide advocacy or mediation in a particular matter.

10. Financial Statement 2006-07

	Budget	Actual Expend	Variation
EMPLOYEE RELATED			
Salaries (incl Rec/LSL)	172,454	184,200	-11,746
Other		1,984	-1,984
Work Comp Ins	400	246	154
Payroll Tax	11,111	14,748	-3,637
FBT	1,600	3367	-1,767
Superannuation	15,834	26,025	-10,191
Training	1,100	838	262
Total Employee Rel	202,499	231,408	-28,909
TRAVEL AND TRANSPORT			
Travel	16,219	14,638	1,581
Vehicle leases	14,737	14,552	185
Vehicle other	2,580	3,921	-1,341
Total Travel & Trans	33,536	33,111	425
ADVERTISING / PROMOTION			
Advertising	2,000	1,854	146
Promotional Material	1,000	890	110
Printing	4,300	2,267	2,033
Total advertising	7,300	5,011	2,289
COMMUNICATIONS			
Postage		279	-279
Telephone	7,200	9,549	-2,349
Other		238	-238

Total Comms	7,200	10,066	-2,866
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ACCOMMODATION

Office Rental	7,800	8,391	-591
Other	2000	2144	-144
Total Accommm	9,800	10,535	-735

INFORMATION TECHNOLOGY

Other Op leases	8,103	9,800	-1,697
Office equip under \$5000	4,048	2,252	1,796
Total Info Tech	12,151	12,052	99

OTHER EXPENSES

Other admin		249	-249
Office requisites	900	2,013	-1,113
Equip maintenance		355	-355
Miscellaneous	1138	507	631
Total Other Exp	2038	3124	-1086

TOTAL	274,524	305,307	-30,783
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8. Conclusion

I wish to express my gratitude for the increased funding which will be available to this Office in the coming financial year. 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 have been working at unsustainable levels for some time now. The funding required to properly staff our office and meet our statutory responsibilities fully is expected in the next financial year, and we look forward to this with a renewed sense of optimism both for our office and for our clients.

Lisa Warner

PUBLIC GUARDIAN

September 2007