



Guardianship Tribunal

The Honourable Ian West, MLC
Chair
Legislative Council Standing Committee on Social Issues
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr West,

Substitute decision making for people lacking capacity

I have received the Committee's letter dated 2 October 2009 and have made some minor corrections to the transcript of my evidence as requested. I am enclosing the corrected transcript with this letter.

I am also enclosing a number of decisions of the Supreme Court of New South Wales and a decision of the New South Wales Court of Appeal. The Committee asked me about the issue of best interests and I indicated there was case law on this point. I trust these cases provide some assistance to the Committee.

The Committee also requested more information about the resources required to allow the Tribunal to review all financial management orders at regular and possibly two yearly intervals.

At present there are 7,714 financial management orders in operation made by the Guardianship Tribunal. Last financial year we received 2,465 applications requesting new financial management orders and we made 1,507 such orders. The Tribunal reviewed 454 financial management orders, representing approximately one third of the orders made that year, but only a tiny fraction of all the orders which currently exist.

To review all financial management orders, including existing orders and the additional orders made each year by the Tribunal, would require significant resources. Resources would be required to cover hearing costs, Tribunal Member fees and necessary additional human and physical resources.

The Tribunal has calculated the resources needed based on an assumption that we would review all existing as well as future orders. It has been assumed that reviews of existing orders are staggered to commence over a 4 year period. In the first year a quarter of the existing orders would be reviewed; another quarter would be reviewed in the second year and so on until a two yearly review cycle is achieved.

The model takes into consideration an estimate of the number of orders which might lapse due to the death of the person under management or be revoked through the review

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process. However this estimate does not take into account the impact of the ageing population and projected increase in applications which might be made to the Tribunal as a result of a rise in the rate of dementia and other age related impairments.

To undertake two yearly reviews of financial management orders, as described above, would require an additional \$ 1.24 million in the next financial year. By 2014 the caseload of the Tribunal would have effectively doubled. Over the next 5 years, the Tribunal would require a total enhancement of at least \$9.5 million, exclusive of operating costs. A 10 year projection shows that the Tribunal's caseload would increase two and a half fold. These figures are conservative estimates given they do not take into account the projections around the ageing of the population.

An estimate of the total costs involved would need to take into account the costs for the Guardianship Tribunal and the costs associated with the New South Wales Trustee and Guardian's involvement, either as appointed manager or in providing direction to private managers.

I trust this information is of assistance.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Diane Robinson', with a long horizontal flourish extending to the right.

Diane Robinson
President
19 October 2009