



SAT

State
Administrative
Tribunal

Western Australia

Guardianship and Administration Act 1990

DECISIONS BULLETIN

No 6 February 2007

This Bulletin contains summaries of written reasons published by the Tribunal in February 2007. The full text of decisions and reasons can be found on the Tribunal's website at www.sat.justice.wa.gov.au. If you would like the monthly bulletin emailed to you directly, please forward your email address and details to info@sat.justice.wa.gov.au.

**GF and MA [2007] WASAT 28
5 FEBRUARY 2007
MS F CHILD (MEMBER)**

Guardianship and administration - Request for access to medical reports - Represented person deceased - Access not for the purposes of Guardianship and Administration Act 1990 - Application dismissed

These reasons relate to a determination by the Tribunal that an application for inspection and access to documents held by the Tribunal be dismissed.

The application was for release of copies of medical reports submitted at the hearing of applications in respect of MA for the appointment of a guardian and administrator heard by the Guardianship and Administration Board in September 2004.

The application for release of the documents was made by MA's daughter following MA's death. The applicant sought release to "prove [MA] did not have capacity at the time the new will was signed". The will was executed in 2004.

The application was refused because the purpose of the application for inspection was outside the purposes of the *Guardianship and Administration Act 1990* (WA) and was contrary to the public interest in maintaining the integrity of the Tribunal's processes in dealing with applications made under that Act.

**TC and Z [2007] WASAT 36
9 FEBRUARY 2007
MS V O'TOOLE (SESSIONAL MEMBER)**

Guardianship and administration - Need for orders - Enduring power of attorney revoked - Need for a guardian and administrator - Public Advocate appointed as limited guardian - Public Trustee appointed as plenary administrator - Cognitive capacity

An order was made appointing the Public Trustee as plenary administrator. The administrator was directed to investigate the represented person's financial situation retrospective to the time a criminal compensation payment was made in 2005.

An order was made appointing the Public Advocate as limited guardian to decide where and with whom the represented person is to live and to consent to treatment or health care and to determine what contact, if any, the represented person should have with others and the extent of that contact.

AS and AA [2007] WASAT 54

23 FEBRUARY 2007

MR J MANSVELD (MEMBER), MS D DEAN (MEMBER), MR J JAMES (SENIOR SESSIONAL MEMBER)

Guardianship and administration - Need for a guardian - Less restrictive alternative - Plenary guardianship - Functions of a guardian - Guardian and the represented person in a parent-child relationship - Plenary guardian to intervene in a generalised sense in the affairs of a person - Guardianship removes decision-making rights from a represented person - Need for an administrator

Applications for guardianship and administration were made for a 30 year old woman by a mental health service.

The woman had been diagnosed with an intellectual disability and a mental illness. She was assessed as having very few problem-solving abilities, lack of insight into the consequences of her decision-making, and severe oppositional behaviour in her daily life. The applicant was of the view that the woman was unable to meet her daily living needs and was currently living in inappropriate accommodation.

The woman's parents supported their daughter as best they could but were at the limits of their skills and emotional resources. The strain was affecting their health and relationship. The woman was reported to be at risk of abuse and exploitation.

The Tribunal appointed the Public Advocate as the woman's plenary guardian. The Public Advocate did not support the appointment, submitting that the woman's father was the person who could get her to do things better than anyone else and there did not need to be a guardian appointed for him to continue to do the best he could in that role; in addition, any appointed guardian would face the same difficulties as was currently the case, namely that the availability of services for the woman appeared to be very limited and she was so oppositional that it was questionable whether a guardian could enforce any decisions made.

The Tribunal disagreed. The woman's needs were significant and it was beyond the capacity of her parents to deal with all her issues. The provisions of the *Guardianship and Administration Act 1990* (WA) referred to the role of a guardian in the context of a parent-child relationship and in doing so placed a wide range of responsibilities and obligations upon a plenary guardian. It was not sufficient to argue against the appointment of a guardian on the basis that the guardianship appointment would be a very difficult one.

The Tribunal was mindful that a plenary order in its ultimate effect removed the personal decision-making rights of the woman and that such a determination should not be made lightly. For that reason the order appointing the Public Advocate was set to be reviewed by the Tribunal in 12 months so that a determination could be made in a timely manner as to the extent of the ongoing need for guardianship.

The woman's father was appointed her plenary administrator. Despite the concerns about the extent to which the parents could continue to assist the woman within the limits of their physical and emotional resources, it was decided that such an appointment would be complementary to the appointment of the Public Advocate as guardian, in that it could provide flexibility in financial decision-making for the woman in the circumstances of her oppositional behaviour and chaotic living situation. The administration order was also made for 12 months.