

**HUMAN RIGHTS****DECISIONS BULLETIN****for the period 1 January 2009 - 31 January 2009**

This Bulletin contains summaries of all written reasons for decisions published by the Tribunal in the Human Rights stream for the period 1 January 2009 - 31 January 2009. 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 enter your email address and details at our subscription page.

GUARDIANSHIP AND ADMINISTRATION ACT 1990 (WA)

RE ML; EX PARTE WW [2009] WASAT 5 1

PB AND HDB [2009] WASAT 8 1

RE ML; EX PARTE WW [2009] WASAT 5**15 JANUARY 2009****MS F CHILD (MEMBER)****Guardianship and administration - Application for costs - Whether applicant entitled to the payment of his legal costs from the estate of the represented person - Whether legal representation necessary in circumstances of the case**

The applicant sought the payment of his legal costs associated with his application before the Tribunal for his appointment as his mother's guardian. The Tribunal decided that the case was a simple and uncontested one and, although the applicant had acted in the best interests of his mother, legal representation and the payment of legal costs from the estate of the represented person in the amount claimed was not warranted. Because the applicant lived outside Western Australia and worked offshore and there was a risk that he may not have been able to attend the listed hearing, some costs were allowed for the solicitor to appear at the hearing on his behalf.

PB AND HDB [2009] WASAT 8**21 JANUARY 2009****JUSTICE M L BARKER (PRESIDENT), MS J TOOHEY (SENIOR MEMBER),
MR J MANSVELD (MEMBER)****Guardianship and Administration - Review of guardianship order - Review by a full Tribunal - Public Advocate re-appointed as guardian - Guardian given plenary powers**

The Public Advocate had been appointed the limited guardian for HDB, an 82-year-old woman who was an inpatient at a psycho-geriatric hospital.

HDB had three sons, PB, KB and PD, and there was no clear agreement between them about where she should live.

The original application for guardianship had been made by KB as he was of the view that PB, who was caring for HDB, was not doing so in her best interests.

The Public Advocate had sought review of the guardianship order on a number of occasions because the actions of PB had necessitated additional authority being given to the guardian, including the decision about whether she should travel overseas and also to ensure that she was admitted to hospital for medical and capacity assessments.

At a review hearing held on 3 October 2008, the Public Advocate was appointed guardian for HDB with the functions of deciding where she should live, to consent to her treatment and health care, to determine the contact she should have with others, to determine the services and domestic supports to which she should have access and to decide whether she should travel outside of Western Australia (with attendant authority to hold her passport and to liaise with relevant authorities).

PB sought a review of that decision pursuant to s 17A of the *Guardianship and Administration Act 1990* (WA).

The Public Trustee had previously been given the authority to manage the estate of HDB and PB did not seek review of that decision.

The Tribunal decided to reappoint the Public Advocate as the guardian for HDB.

The Tribunal found that a plenary order was necessary to meet the current needs of HDB and to ensure that decisions could be made with the requisite certainty and promptness given that it was not in HDB's best interests to remain in the psycho-geriatric facility for any longer than her medical needs demanded.

The appointment of the Public Advocate was supported by KB and PD. PB did not propose himself as guardian and therefore could not be considered but even had he proposed himself the Tribunal would not have been satisfied, because of his past actions, that he would make decisions in HDB's best interests.