



The Office of the Public Guardian would like to thank **Free Space Studio** | **Arts Access Darwin**, Darwin Community Arts for providing the artwork used in this Annual Report.

The Free Space Studio is an inclusive and supportive visual arts studio project focused on the development of studio skills for young artists with disabilities.

Arts Access Darwin provides arts-based workshops, professional development opportunities and events for people with disabilities. Arts Access Darwin partners with disability service providers and arts organisations to increase access to and participation in the arts for people with disability throughout the Northern Territory.

Office of the Public Guardian Annual Report 2016-17

ISSN 2208-570X

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Office of the Public Guardian Annual Report 2016-17



Acknowledgement of Country

The Office of the Public Guardian acknowledges the Aboriginal and Torres Strait Islander peoples with whom we work and for whom we provide a service. We pay our respect to the Ancestors, Elders and Aboriginal communities who are the custodians of this land.



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The Hon Natasha Fyles MLA Minister for Health Parliament House DARWIN NT 0800

Dear Minister

Re: Office of the Public Guardian Annual Report, 2016-17

In accordance with the provisions of section 74 of the *Guardianship of Adults Act 2016*, I am pleased to present the inaugural Annual Report of the Office of the Public Guardian, 2016–17.

The Northern Territory Office of the Public Guardian commenced operations as an independent statutory authority on 28 July 2016, with the introduction of the *Guardianship of Adults Act 2016*. The Office is responsible for providing guardianship and advocacy on behalf of adults with impaired decision-making capacity. The new Act brings the Northern Territory into alignment with other Australian jurisdictions and marks a new opportunity for strengthening protection and advocacy for adults with impaired decision-making capacity in the Territory.

The following report details the activities and achievements of the Office of the Public Guardian since its establishment in July 2016.

Yours sincerely

BETH WALKER **Public Guardian**

31 October 2017

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Message from the Public Guardian

Message from the Public Guardian



The year has been a time of rapid change and growth for adult guardianship in the Northern Territory.

I am pleased to present the 2016–17 inaugural Annual Report of the Office of the Public Guardian.

The Office of the Public Guardian is an independent statutory authority established under the *Guardianship of Adults Act 2016* (the Act). Our core role is to provide adult guardianship services, and to support the Northern Territory community in areas of guardianship through advocacy, education, information, research and other supports.

This report relates to the first 11 months of operations and achievements of the Office of the Public Guardian since its establishment under the Act on 28 July 2016.

Transition under the Act

The year has been a time of rapid change and growth for adult guardianship in the Northern Territory. Notwithstanding a number of operational challenges, the transition of the Office of the Public Guardian from a service within the Department of Health to an independent statutory office has been relatively smooth. The implementation of the provisions of the Act and related regulations has been successful, and I commend my staff for their professionalism and dedication throughout this period.

The Office of the Public Guardian has observed a progressive increase in guardianship enquiries and administrative responsibilities associated with adults under guardianship orders since its inception in 2016. This is the result of a range of factors including increased awareness among professionals and members of the community of the role of adult guardianship, and the broadening of areas of authority related to guardianship under the Act. Provisions for guardianship, for example, have been expanded to accommodate not only persons with intellectual disability, but persons with impaired decision-making capacity from any cause.

National Disability Insurance Scheme

The National Disability Insurance Scheme (NDIS) forms an integral part of the reform in the delivery of disability services in Australia and is being rolled out progressively across the Territory. Our staff have played a key role in supporting represented adults under public guardianship transitioning under the NDIS, with Adult Guardianship Officers participating in every NDIS planning meeting to ensure our clients' continued access to support services.

Context for adult guardianship in the Northern Territory

The Northern Territory geographically is the third largest of Australia's states and territories, covering a total area of 1,349,129 square kilometres. It has a total estimated resident population of 245,000 (ABS Cat. No. 3101 Dec. 2016) of which 25 per cent identify as Aboriginal and/or Torres Strait Islander. The Territory has the lowest population density of all the Australian states and territories, with only 0.2 people per square kilometre.

While most Territorians live in regional centres, a significant number live in remote and very remote locations. Due to the sparse population, harsh climate and rough terrain, infrastructure in most of the Territory is limited. Delivering services in the Northern Territory therefore is uniquely challenging, and in many cases requires specialised expertise.

The Northern Territory has the highest number of adult guardianship orders relative to population in Australia. The circumstances in which many Territorians grow, live and age is having a deleterious effect on life outcomes. Linkages between social determinants such as housing, education, employment, income and health are well established and have been documented by the Australian Institute of Health and Welfare and Australian Bureau of Statistics, among others.

Aboriginal people living in remote communities are particularly vulnerable to poor physical and mental health outcomes due to a complex array of structural and social factors, including poor living conditions and limited access to crucial health and support services.

A consequence of these factors is that while Aboriginal and Torres Strait Islander people represent just under 26 per cent of the Territory's population, they comprise an estimated 78 per cent of adults under guardianship where the Public Guardian is appointed. This means that a disproportionate number of clients for whom the Public Guardian is sole or joint guardian are Aboriginal, compared to represented adults in the Northern Territory who have private adult guardians.

As an independent government agency, the Office of the Public Guardian is uniquely positioned to be a strong voice and advocate for people under guardianship in the Northern Territory. As Public Guardian my mandate is to ensure that we meet our responsibilities under the Act and provide a service that is accountable, ethical and grounded in human rights.

On behalf of my staff and Office, I present to you the inaugural annual report of the Office of the Public Guardian and a new era of guardianship in the Northern Territory.

BETH WALKER

Whether

Public Guardian



Guardianship of Adults Act

The *Guardianship of Adults Act 2016* (the Act) provides the contemporary legal framework for adult guardianship in the Northern Territory. The Act commenced on 28 July 2016 and supersedes the *Adult Guardianship Act 1989*.

The Act:

- established the independent Office of the Public Guardian and the statutory position of Public Guardian
- transferred jurisdiction for guardianship matters from the Local Court to the Northern Territory Civil and Administrative Tribunal
- introduced comprehensive guardianship principles.

Background

The *Guardianship of Adults Act 2016* supports adults with impaired decision-making capacity who need help to make decisions about specified personal or financial matters, as stated in a guardianship order.

Its implementation was in response to the *Review of Adult Guardianship within the Northern Territory: final report* prepared by WestWood Spice in 2005, which sought to address a range of deficits identified in the existing model of adult guardianship in the Northern Territory. Emphasis was placed on:

- 1. Identifying options and making recommendations for a model of adult guardianship in the NT that:
 - protects the rights and interests of adults with an intellectual disability who have appointed guardians,
 - strikes a balance between policy, structural and operational considerations and promotes the public interest,
 - secures timely resolution of guardianship applications and reviews of orders,
 - takes into account the impact of factors such as geography and the needs of specific population groups on service infrastructure.
- 2. Identifying efficient and costed structural and/or systemic improvements necessary to align the NT adult guardianship system to national best practice.
- 3. Identifying legislative reform necessary to give effect to best practice recommendations.² (WestWood Spice 2005, p. 10)

The report recommended that the Northern Territory adopt the model of guardianship used by the states and the Australian Capital Territory. This required the drafting of new legislation to bring the Northern Territory in line with other jurisdictions and with contemporary best practice.

The legislative reform project was undertaken by the Department of Health during the 2015 and 2016 calendar years. Extensive stakeholder consultation was undertaken during the drafting of the legislation, which included the release of a draft Bill and call for public submissions. This ensured a thorough review of the proposed legislation prior to enactment.

The Adult Guardianship Act 1989, which has since been repealed, regulated the former guardianship regime in the Northern Territory. Under the preceding legislation the Minister for Health was the appointed Public Guardian. Adult guardianship was delivered under two streams of services that were located as divisions within the Department of Health:

- Executive Office of Adult Guardianship, responsible for receiving applications for guardianship orders and bringing matters to court
- Office of the Public Guardian, responsible for direct guardianship services.

With the introduction of the *Guardianship* of *Adults Act 2016*, the statutory authority of the Public Guardian moved to an independent body and away from the Minister. Along with the creation of an independent Office of the Public Guardian, the Northern Territory is now aligned with other jurisdictions in having an autonomous representative for represented adults.

The new Act recognises an adult's overall wellbeing, human rights and basic freedoms, and aligns the Northern Territory with the United Nations Convention on the Rights of Persons with Disabilities.

Key provisions of the Act

The 2016 Act:

- provided for the establishment of an independent Office of the Public Guardian and appointment of a statutory officer as Public Guardian
- transferred jurisdiction of administrative matters (applications and orders) from the Local Court to the Northern Territory Civil and Administrative Tribunal
- introduced comprehensive guardianship principles
- expanded guardianship to people with cognitive impairment from any cause
- introduced a modern decision-making framework in line with other Australian jurisdictions.

The Act:

- allows for the registration of interstate guardianship orders
- allows for interim (urgent) guardianship orders
- allows for orders to be made for young people aged 17 for when they turn 18.

The guardianship principles

The Act introduced a series of comprehensive guardianship principles to guide decision-makers in the exercise of their authority. The principles stipulate that decision-makers must always:

- act in the adult's 'best interests', in a way that least restricts their freedom of decision and action
- consider the adult's current and previously stated views and wishes
- support the adult to make their own decisions where feasible
- use their authority in line with the Guardianship of Adults Act 2016, the guardianship order and any other order of the Northern Territory Civil and Administrative Tribunal.

Expansion of guardianship eligibility criteria

Previously only people with intellectual disability were able to have a guardian appointed. The new Act expands the eligibility criteria to people with impaired decision-making capacity from any cause, including mental illness, dementia or acquired brain injury. The impairment may be episodic, not impaired for some personal or financial matters, inconsistent or dependent on the circumstances.

The broadening of the eligibility criteria has seen an increase in guardianship applications and caseloads since the implementation of the Act in July 2016.

Jurisdiction of Northern Territory Civil and Administrative Tribunal

The Northern Territory Civil and Administrative Tribunal (NTCAT) has the power to deal with and determine all administrative matters under the Act. It can request that the Office of the Public Guardian provide information to inform applications before it, and appoint the Public Guardian as guardian for an adult under a guardianship order.

The transfer of jurisdiction from the Local Court to the NTCAT removes the requirement for legal representation for persons seeking to make an application for guardianship or vary an order, and is intended to create a more accessible and flexible procedural environment for interested parties who appear before it.

The Public Guardian can be appointed as guardian by the NTCAT where no private citizen is deemed eligible. In the Northern Territory context this means that the Public Guardian has a significant and increasing client caseload with associated staffing and resource implications. At 30 June 2017, the Public Guardian was sole or joint guardian for 64 per cent of all guardianship orders in the Northern Territory.

United Nations Convention on the Rights of Persons with Disabilities

Australia signed the United Nations Convention on the Rights of Persons with Disabilities on 30 March 2007. The Australian Government ratified the Convention on the Rights of Persons with Disabilities in July 2008 and the Optional Protocol in 2009.

The United Nations Convention on the Rights of Persons with Disabilities identifies the rights of individuals with disabilities as well as the obligation of governments to:

promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all people with disabilities and to promote respect for their inherent dignity. (Article 1)

The Attorney-General of Australia, in ratifying the United Nations Convention on the Rights of Persons with Disabilities, declared:

[Australia] recognises that persons with disability enjoy legal capacity on an equal basis with others in all aspects of life. Australia declares its understanding that the Convention allows for fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards; (Convention on the Rights of Persons with Disabilities Declaration 2009, Schedule 2, Instrument of Ratification)

The Northern Territory Guardianship of Adults Act 2016 recognises the overall wellbeing, human rights and fundamental freedoms of persons with impaired decision-making capacity and is consistent with Australia's obligations under the United Nations Convention on the Rights of Persons with Disabilities.



Appointment of Public Guardian

Ms Beth Walker was appointed as the Northern Territory's first Public Guardian under the Guardianship of Adults Act 2016 on 28 July 2016.

Ms Walker has more than 25 years' experience in disability, aged care, mental health, child protection and family wellbeing, with 21 of these years being in the Territory. Her experience spans both the government and non-government sectors and statutory decision-making.

Ms Walker was a member of the Mental Health Review Tribunal for over 16 years, and served both on the former Health and Families Ministerial Advisory Committee, the Community Housing Forum and the Consumer Health Forum.

The position of Public Guardian is a statutory appointment under the Act. It is made by the Northern Territory Administrator on the recommendation of the Minister for Health.

Independence of the Public Guardian

The independence of the Public Guardian as a statutory officer is an essential element of the Act and aligns the Northern Territory with models used in jurisdictions elsewhere in Australia. The Public Guardian's functions

include advocacy on behalf of adults with impaired decision-making capacity, policy development, service improvement, community education, investigations, research and guardianship.

The independence of the Public Guardian addresses in part conflict of interest concerns identified in the 2005 WestWood Spice review of adult guardianship in the Northern Territory. The review recognised the absence of a position with independent authority and recommended the creation of a separate organisation with an independent statutory officer as Public Guardian.

While the creation of a statutory appointment has in part addressed these concerns, there remains a view that the current hosting arrangement with the Department of Health may still present a conflict. The Office of the Public Guardian could be better positioned with like statutory authorities within the Department of Attorney-General and Justice. This would achieve a higher level of separation of powers and provide for full independence.



Office of the Public Guardian

Our mission is to provide adult guardianship services, information and advocacy that is responsive to the needs of the Northern Territory community and reflects contemporary, best practice guardianship principles within a human rights framework.

The mandate of the Office of the Public Guardian is broad. It includes the provision of guardianship for an adult when appointed by the Northern Territory Civil and Administrative Tribunal. The mandate further entails the delivery of advocacy, education, information, support, investigation and research that is responsive to the needs of the Northern Territory community.

As an independent statutory body, the Office of the Public Guardian is uniquely positioned to promote and protect the rights and interests of Territorians with impaired decision-making capacity, as well as those appointed under a guardianship order to act in matters on their behalf.

Our values

Commitment to service.

The Office of the Public Guardian is professional, hardworking, effective, innovative and efficient.



Collaboration.

The Office of the Public Guardian works collaboratively with stakeholders to achieve the best outcomes for people with impaired capacity.



Ethical practice.

The Office of the Public Guardian upholds the highest standards of practice and acts with integrity in all that it does.



Respect.

The Office of the Public Guardian respects all people and their rights as individuals.



Accountability.

The Office of the Public Guardian is accountable in all its actions. It is committed to providing a contemporary, best practice service consistent with the guardianship principles.



Diversity.

The Office of the Public Guardian values the diversity of its workforce and the community it serves.



Our team

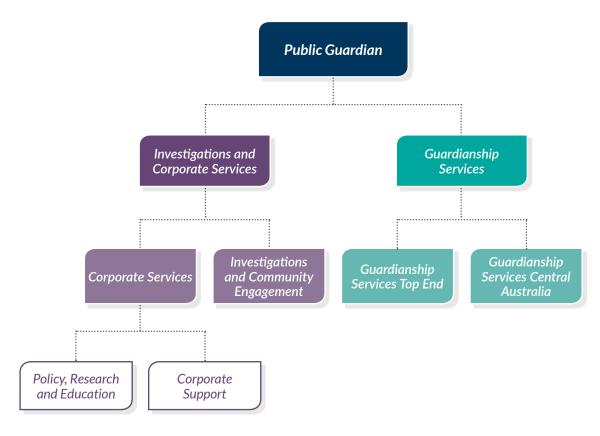


Figure 1: Organisational structure

The Public Guardian leads a professional team of 27 staff in Darwin and Alice Springs (at 30 June 2017). A further three positions are designated for recruitment in the coming year.

Table 1: Current staffing

Functional responsibility	Current staff		
Corporate Services	6		
Investigations and Community Engagement	5		
Guardianship Services	16		

Office of the Public Guardian

Recognition of staff

The Office of the Public Guardian gives special recognition to the following staff for their service in the Public Sector. These staff members have been part of the public guardianship team for many years. Their dedication and contribution to Territorians in need of guardianship is greatly valued.

Investigations and





Table 2: Organisational functions and responsibilities

Corporate services	community engagement	Guardianship services
Provide leadership and corporate support. Manage internal policies and procedures. Undertake systems advocacy and stakeholder management.	Assess applications to recommend if Public Guardian will continue as party to an application. Provide background information and reports to NTCAT for renewing, varying or revoking guardianship orders. Undertake community engagement and education activities and respond to requests for specific or complex information.	Act as a substitute decision-maker and financial manager on behalf of represented adults when appointed by the NTCAT. Prepare and submit reports for NTCAT hearings and provide information for renewing, varying or revoking orders. Advocate on clients' behalf.
Darwin	Darwin	Darwin and Alice Springs
Public Guardian Executive Assistant to the Public Guardian Business Manager Policy Officer Information Officer Reception Officer	Senior Manager, Investigations and Corporate Services Investigations Team Leader Investigations/Community Education Officers Administration Officer	Senior Manager, Client Services Guardianship Team Leaders Adult Guardianship Officers Administration Officers Records Project Officer

Guardianship

The Public Guardian is only appointed as guardian for an adult where no other option is available. Her authority to act for an adult is limited to the matters stated in the guardianship order. The Public Guardian may, in writing, delegate a person to undertake functions on behalf of the Public Guardian.

Once the Public Guardian is appointed on behalf of a represented adult, an Adult Guardianship Officer from the Guardianship Services team undertakes substitute decision-making functions under the authority of the Public Guardian. Depending on the guardianship order, the responsibilities of an Adult Guardianship Officer may include:

- identifying and consenting to appropriate accommodation for adults with needs in the disability and aged care sectors
- health care decisions, excluding restricted health care decisions
- financial decisions, such as budgets and dayto-day expenses
- legal instruction
- day-to-day service provision.

Investigations and community engagement

The Investigations and Community Engagement team fulfil the crucial functions of:

- undertaking inquiries for applications under the Act provided to the Office of the Public Guardian by the Northern Territory Civil and Administrative Tribunal (NTCAT)
- determining whether the Public Guardian will remain a party to an application
- undertaking investigations at the direction of the NTCAT
- preparing reports and providing information to the Public Guardian and the NTCAT for consideration in appointing adult guardians or in the reassessment of orders
- conducting investigations when a complaint is received about the conduct of a guardian
- representing the Public Guardian in the Local Court or at NTCAT hearings.



Facilities - Central Australia and Top End

The Office of the Public Guardian has offices in Darwin and Alice Springs. The Central Australia team based in Alice Springs relocated from Flynn Drive to Jalistan House on Todd Mall (photo below) in May 2017. The centrality of our new premises in the heart of Alice Springs provides for increased access to our services by represented adults, private adult guardians and other key stakeholders.

Prior to the relocation, a record upkeep project was undertaken to ensure that Public Guardian files were correctly identified and archived according to Northern Territory Government guidelines for record management.

Extensive work has also gone towards identifying new office premises at Darwin Corporate Park that will provide for the consolidation of our Investigations and Community Engagement, Corporate Services and Guardianship Services teams in the Top End (currently housed in separate premises). Fitting out of the new office space has commenced with the move scheduled for July 2017.

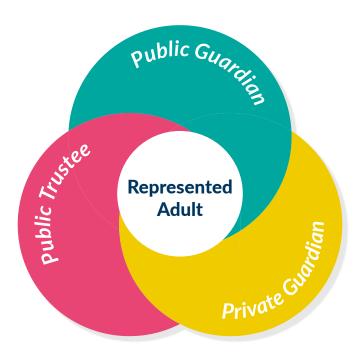


Adult guardianship in the Northern Territory

The Guardianship of Adults Act 2016 provides a legal mechanism for substitute decision-making for adults with impaired decision-making capacity who are not able to make informed decisions and reasonable judgements in certain personal or financial areas of their lives. In 2016–17, 890 adults were subject to guardianship orders in the Northern Territory.

Guardianship in the Northern Territory is effected by an application to and determination ('order') by the Northern Territory Civil and Administrative Tribunal. A guardianship order will detail the personal or financial matter, or a combination of matters, for which the guardian has authority to make decisions. Guardianship orders are individual to the person and their circumstances.

A guardian may be a family member, close friend, a person who is related to the adult through customary law or tradition, or anyone who has a genuine interest in the adult's wellbeing and is eligible for the role.



More than one guardian may be appointed for each or all matters if needed. If guardians are appointed jointly they have equal responsibility for decision-making and must be in agreement about all decisions made.

Guardians who are private citizens are referred to as private guardians to distinguish them from the Public Guardian and Public Trustee.

The Public Guardian or the Public Trustee may be appointed as sole guardian for an adult where no individual is deemed eligible for the role. The Public Guardian may also be appointed jointly with a private guardian. The functions of the Public Guardian are delegated

to Adult Guardianship Officers who act as substitute decision-makers for represented adults under the authority of the Public Guardian. The Public Trustee can be appointed for financial matters only.

In the Northern Territory, uniquely, the Public Guardian can be granted authority over financial matters as well as lifestyle decisions. The Northern Territory is the only jurisdiction in Australia where financial management on behalf of a represented adult can be delegated to the Public Guardian.

Adult guardianship in the Northern Territory

Responsibility for personal matters

A guardian may be given authority for matters relating to the represented adult's personal affairs. This may include, but is not limited to, decisions relating to accommodation, employment, education, day-to-day services, access by other people and legal matters.

Personal matters may include health care, but a guardian cannot give consent for restricted health care decisions such as actions that result in sterilisation, termination of a pregnancy and the removal of non-regenerative tissue for transplantation to another person.

The Public Guardian had responsibility for 494 accommodation matters, and 488 health care matters in 2016–17.



Responsibility for financial matters

Guardians with authority for financial matters may need to make decisions for the adult around the receipt and payment of monies, investment and banking, managing property (including artworks and real estate) and legal matters relating to financial matters.

The Public Guardian had financial responsibility for 397 represented adults over the reporting period.





The year in review

Transition of matters from the Local Court to the NTCAT

The transition of adult guardianship matters from the Local Court to the Northern Territory Civil and Administrative Tribunal (NTCAT) was concluded in the reporting period. This has had positive effects, reducing both the formality of proceedings and the period before which a matter is heard.

The transition has seen the development of a constructive professional relationship based on mutual respect and open communication between the Office of the Public Guardian and the NTCAT, creating a strong foundation for the future. It is anticipated that this relationship will continue to develop as we collaboratively continue to refine processes and procedures.

Adults under guardianship

During the year, 890 adults were subject to guardianship orders in the Northern Territory. The Public Guardian was appointed sole or joint guardian for the majority of these (n=575 or 64%), with the remainder (n=315 or 36%) appointed private adult guardians only (see Figure 2). Of the 575 adults under sole or joint guardianship with the Public Guardian, 78 per cent identify as Aboriginal or Torres Strait Islander.

The high prevalence of adults under guardianship with the Public Guardian is peculiar to the Northern Territory and may be a reflection of systemic issues in areas of social disadvantage, cultural dislocation and poor health, education, housing and employment outcomes.

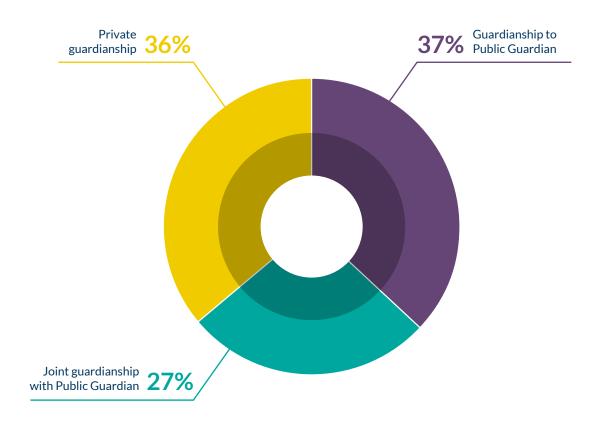


Figure 2: Guardianship orders in the Northern Territory

Guardianship

The Public Guardian was sole or joint guardian for the majority of represented adults in 2016–17 (n=575). Representation is highest for adults in the 45-54 and 75 years or more age groups. Sixty-nine per cent of guardianship orders made to the Office of the Public Guardian in 2016–17 included financial matters (n=397).

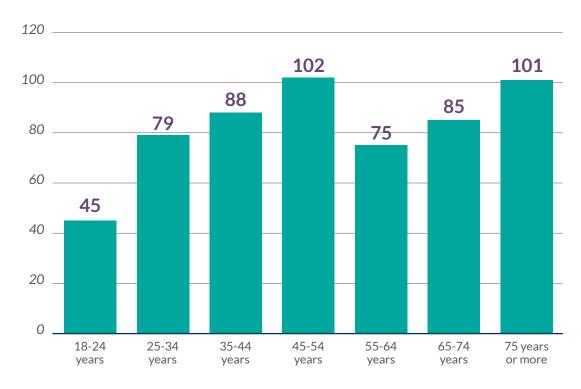


Figure 3: Age range of represented adults under sole or joint guardianship orders to the Public Guardian, 2016–17



ear in review

Appointment as sole guardian

The Public Guardian is appointed as sole guardian only where no other option is available. The Public Guardian was sole guardian for 332 adults in the reporting period. This equates to 58 per cent of the represented adults for whom the Public Guardian had decision-making responsibility. Seventy per cent of people under sole guardianship to the Public Guardian identify as Aboriginal or Torres Strait Islander.

Joint guardianship

A significant number of guardians who are joint guardians with the Public Guardian live in remote locations. These are often family members who have limited access to mainstream infrastructure or services. The Public Guardian was listed as joint guardian in 243 joint guardianship orders in 2016–17, with 174 in the Top End and 69 in Central Australia. The majority (90%) of represented adults in these orders identify as Aboriginal or Torres Strait Islander.

Gender

The majority of adults under the guardianship of the Public Guardian in 2016–17 were male.

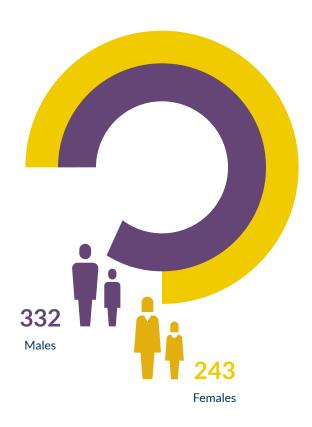


Figure 4: Gender of represented adults under guardianship to the Public Guardian

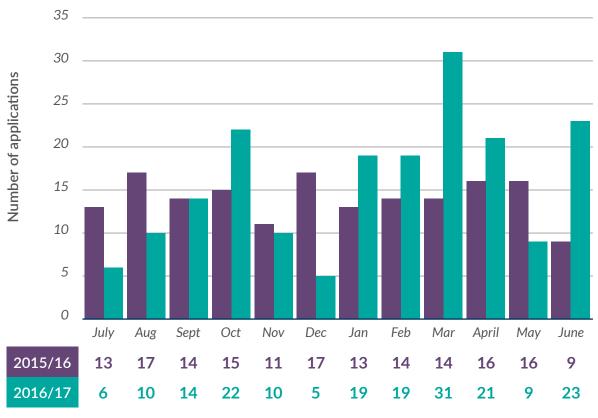
Applications for guardianship

The Office of the Public Guardian receives and reviews a copy of all applications for a guardianship order made to the NTCAT.

Since the commencement of operations in July 2016, 189 applications for a guardianship order have been received. The rate of applications in the six months to December 2016 was marginally lower than for the equivalent period in 2015–16. This may be explained by the introduction of new

guardianship legislation in July 2016 and associated transitional arrangements.

Overall, the rate of applications has increased. Between 1 January and 30 June 2017, applications for a guardianship order increased overall by 49 per cent compared with the equivalent period in the 2015–16 financial year (Figure 5). It is anticipated that the number of applications will continue to rise as a result of the expansion of the eligibility criteria.



Note: These figures are reflective of the date the Office of the Public Guardian received the guardianship application.

Figure 5: Number of guardianship applications, 2015-16 and 2016-17

Application types

New or interim orders

The Office of the Public Guardian received 174 applications for a new or interim guardianship order in 2016–17.

Interstate guardianship orders

The new legislation provides for the registration of interstate guardianship orders. In the reporting period four applications for the recognition of interstate guardianship orders were made to the NTCAT.

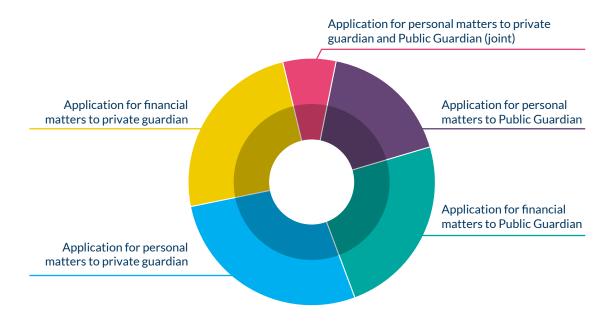
Restricted health care decisions

Restricted health care decisions can only be made by the NTCAT. They include actions that result in sterilisation, terminating a pregnancy, removing tissue that won't grow back for transplanting to another person, health care

for medical research and any other health care that regulation states is restricted. One application for a determination on a restricted health care decision was received in the reporting period.

Applications to vary, revoke or reassess a guardianship order

An application to vary, revoke or reassess a guardianship order can be made to the NTCAT by any person with an interest in the adult, including the adult themselves. An application may be made because the represented adult regained decision-making capacity, the guardian does not wish to continue in their role or the guardian scope of authority needs to be reviewed. Over the reporting period 10 applications to vary, revoke or reassess a guardianship order were received.



Note: Applications may include multiple matters.

Figure 6: Applications received by Office of the Public Guardian by type, 2016–17

Of all applications received by the Office of the Public Guardian in 2016–17, 53 were for sole orders to the Public Guardian, 25 for joint guardianship orders and 76 for private guardianship orders. The remaining 35 applications had not been determined as at 30 June 2017.

Complaints about the conduct of a private guardian

The Investigations and Community Engagement team investigates formal complaints about the conduct of private adult guardians. Two investigations were commenced during this period. The Public Guardian's mandate to monitor and investigate complaints about the conduct of guardians is stipulated in section 61 of the Act.

Review of a decision by the Public Guardian

In 2017 the Office of the Public Guardian implemented a formal process of review for concerns related to decisions made by Adult Guardianship Officers on behalf of the Public Guardian. This is to ensure that we are accountable to the public for our decisions. The Public Guardian formally reviewed and varied one decision in the 2016–17 financial year.

Key Performance Indicators

The Office of the Public Guardian's performance over the 2016–17 reporting period has been placed against the forecast estimates published in Budget Paper No. 3 for 2016–17.

As Table 3 indicates, outcomes for the 2016–17 year exceeded budget estimates for most categories. This can be explained by a lack of historical data and reliance on budget projections for the first year of operations of the Office of the Public Guardian under the new Act. Forward estimates for 2017–18 are based on the first 10 months of operations since the appointment of the Public Guardian in August 2016.

Table 3: Key Performance Indicators

Key performance indicators	2016–17 Estimate	2016-17 Actual	2017-18 Budget
Number of adults under guardianship	789	890	868
Number of Aboriginal people under guardianship*	448	543	493
Number of people under private/community guardianship	277	315	305
Number of people under sole guardianship	286	332	315
Number of people under joint guardianship	219	243	240
Number of financial only management orders – Public Guardian	7	10	8
Number of financial management orders – Public Guardian**	397	397	437
Number of new orders - Public Guardian**	90	91	99
Number of new orders – private/community guardians	86	83	95
Number of new applications received	228	189	251

^{*}Aboriginal includes adults who identify as of Aboriginal and/or Torres Strait Islander descent.

^{**}Includes sole and joint guardianship orders to the Public Guardian.

Budget and resourcing

The Department of Health provides funding and administrative support to the Office of the Public Guardian. In 2016–17 \$4,608,000 was allocated for establishment costs, administrative functions and personnel. Extensive recruitment was undertaken in 2016-17 with a further three positions yet to be filled. It is anticipated that all remaining appointments will be concluded in the coming year.

The 2017–18 Agency Budget Statement for the Department of Health indicates a

reduction in funding for the Office of the Public Guardian with \$4,364,000 allocated. The Office of the Public Guardian has a broad mandate which includes guardianship, advocacy, education and investigations. There exists a significant concern that the Office of the Public Guardian will struggle to fulfil all areas of its mandate and evolving responsibilities in the current fiscal environment.



Advocacy and partnerships

Advocacy is a key function of the Office of the Public Guardian and is central to our practice. As an independent human rights focused organisation, the Office of the Public Guardian is uniquely positioned to raise issues encountered by represented adults in the Northern Territory on both a local and national level, and to give a voice to those under guardianship.

The nature of adult guardianship means that we engage with a multitude of agencies at varying levels to ensure that the needs of represented adults are addressed holistically at individual and systems levels. Over the year, the Office of the Public Guardian has continued to strengthen relationships with key agencies and stakeholders, and to promote understanding and awareness of issues of concern in the Territory.



Priority policy areas

A number of areas have been identified as priority policy areas for the Public Guardian.

Housing

Affordability and the availability of appropriate housing and service options for people with disability who have limited financial resources have been identified by the Public Guardian as matters in need of urgent redress in the Northern Territory.

The number of social admissions to hospitals due to a lack of appropriate supports and accommodation has proven to be an issue over the reporting period. The use of a specialised service in this way is viewed by the Public Guardian as inappropriate and leads to poor outcomes for a vulnerable population. Hospitals should not be a place for a person to stay simply because there is no other housing or support available.

As at 30 June 2017, an estimated seven represented adults were homeless. A discussion paper on *Pathways out of homelessness* noted that '[h]omelessness services in the NT are accessed at considerably higher rates than the rest of the country', with 'one in 30 Territorians access[ing] a homelessness service in 2015–16' (NT Department of Housing and Community Development c. 2016, p. 17).

The Office of the Public Guardian supports and encourages the development of housing and homelessness services that take into account the needs of people with impaired decision-making capacity.

Access to services

Delivering health and support services to remote areas of the Northern Territory presents challenges not faced in urban areas due to climate, distance and lack of infrastructure. People with impaired cognitive capacity will often have multiple and complex needs requiring flexible support solutions that can be difficult to obtain in remote settings.

The difficulties faced by people with multiple needs can be attributed in part to the systemic separation of mental health, disability and substance misuse services. It is unclear if many of these people will be eligible for the National Disability Insurance Scheme. The Public Guardian would like to see improved collaboration between these critical service areas, and integration focused on solutions, to facilitate improved outcomes for people with complex needs.

Restrictive practices

The use of restrictive practices, both physical and chemical, for adults with a mental illness or cognitive impairment is a practice of last resort. It is the view of the Public Guardian that should such practices be used they are scrutinised closely and carried out in a clear and accountable manner. The Office of the Public Guardian is working towards a definitive policy position on this issue.

Senior Territorians

The Office of the Public Guardian views the isolation of elders and elder abuse as a direct violation of human rights. The Office advocates for the development of additional support services to ensure that senior Territorians are protected and incidences of abuse reported and investigated.

Disability services

People living with disability require adequate and appropriate supports to reach their full potential. The Public Guardian has noted in several national submissions that the development and support of appropriate service providers in this space is critical. While the National Disability Insurance Scheme will support a better life for Australians with a significant and permanent disability, major challenges for the service sector are anticipated during the transition to this scheme.

The Public Guardian supported and welcomes the Zero Tolerance Forums about human rights, safety and preventing abuse and neglect of people with disability. These forums are designed to assist people with a disability and their support staff to identify and understand ways to prevent abuse and neglect and to recognise good practice in service provision.

Criminal justice system

The Office of the Public Guardian has a significant concern for those found unfit to stand trial. The indefinite nature of their detention with unidentified exit points into the community is highly problematic. The Public Guardian believes action that will ensure access to appropriately supported services for this group of Territorians is warranted.

Contribution to national dialogue

The Office of the Public Guardian provided submissions to the Joint Standing Committee on the National Disability Insurance Scheme (NDIS) and the Productivity Commission in 2017:

- Joint Standing Committee on the NDIS for people with psychosocial disabilities related to a mental health condition, submitted February 2017
- Productivity Commission National Disability Insurance Scheme (NDIS) Costs, submitted April 2017.

The submissions provided an opportunity for the Office of the Public Guardian to raise concerns identified by staff assisting adults under guardianship who were entering into the NDIS scheme.

The Public Guardian attended the Australian Guardianship and Administration Council (AGAC) National Conference in October 2016 in Sydney and the AGAC Bi-Annual Meeting in March 2017. The AGAC provides a national forum for state and territory agencies that provide guardianship and administration to adults with cognitive impairment.

Inter-governmental dialogue

The Office of the Public Guardian has been leading the development of a protocol between the Office of the Public Guardian, Territory Families and the Office of Disability, Northern Territory Department of Health. The protocol will outline guardianship matters concerning individuals aged 17 who will likely be eligible for adult guardianship when they turn 18. The protocol lays out working arrangements between the three agencies to ensure effective coordination and a successful transition.

There are a number of key Territory agencies with whom the Office of the Public Guardian would like to develop protocols in the future. These agencies include the Community Visitor Program, Office of Disability and the Public Trustee.

In 2016–17 the Public Guardian and staff of the Office of the Public Guardian undertook engagement and information activities with Northern Territory Government agencies including the Aged Care Assessment Team, Allied Health Team and Office of Disability.

Collaboration with guardianship agencies

The Northern Territory Office of the Public Guardian has received substantial support from interstate guardianship agencies over the past year. Special thanks are given to the Victorian Office of the Public Advocate for their assistance in training staff and the development of key practices during the establishment of the Office of the Public Guardian.

Community education and engagement

The Office of the Public Guardian educates, informs and supports the Northern Territory community in areas of guardianship.

Stakeholder engagement

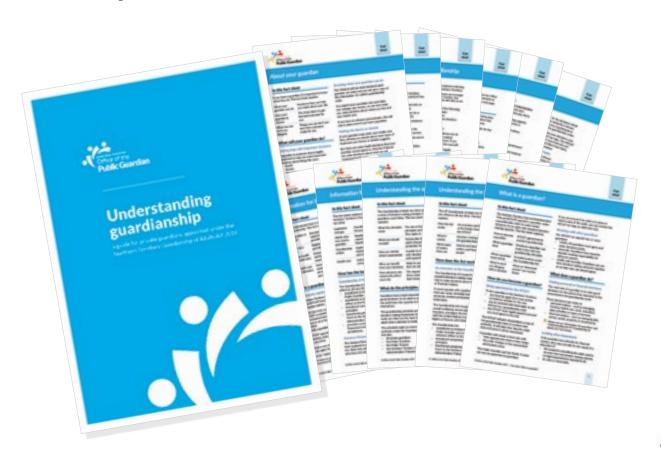
In 2016–17 the Public Guardian and staff of the Office of the Public Guardian undertook engagement and information activities with the following key stakeholder groups:

- Australian Association of Gerontology (NT)
- Australian Regional and Remote Community Services
- Central Australia Mental Health Services
- Central Australian Aboriginal Congress
- Community Visitor Program, Central Australia
- Life Without Barriers
- Mental Health Association of Central Australia
- North Australian Aboriginal Justice Agency
- NT Legal Aid.

Fact sheets and guide for guardians

Extensive work has gone into the creation of community education material over the last year. The Office of the Public Guardian has prioritised the development of a series of fact sheets and a guide for guardians entitled: Understanding guardianship: a guide for private guardians appointed under the Northern Territory Guardianship of Adults Act 2016.

These documents create a suite of material that is intended to assist private adult guardians and key stakeholders in understanding guardianship in the Territory. It is anticipated that the fact sheets and guide will be released in August 2016.



Website

A website intended to address the information needs of our community and provide an online presence is under development and progressing well. The content has been written and a web developer contracted to design and implement the information architecture and technical aspects. It is anticipated that the website will be finalised in the coming months.

Priorities for 2017-18

Community education and engagement priorities for 2017–18 include:

- ongoing community engagement outreach activities, including talks and information forums
- continued stakeholder engagement with a focus on enhanced communications and understanding.



National Disability Insurance Scheme

The National Disability Insurance Scheme (NDIS) is the new way of providing individualised support for Australians with disability. The NDIS will provide about 460,000 Australians under the age of 65 who have a permanent and significant disability with the reasonable and necessary supports they require to live an ordinary life. When an NDIS participant turns 65 they will be able to choose either to continue receiving disability supports through the NDIS or to receive supports through the Commonwealth aged care system.

The Northern Territory Government and Australian Government signed the *Bilateral Agreement between the Commonwealth and the Northern Territory: transition to a National Disability Insurance Scheme* in May 2016. This agreement outlines the roles and responsibilities required to transition to full coverage in the Northern Territory, and recognises the challenges encountered by the health and community service sector in the Territory's unique geographic and demographic context.

The NDIS is being introduced in stages across the Northern Territory. The transition commenced on 1 July 2016 with the implementation of the scheme as a trial site in the Barkly region, with the rollout for the East Arnhem region and Darwin (supported accommodation services) commencing on 1 January 2017. The NDIS is expected to be rolled out in full in the Northern Territory by 30 June 2019.

The Office of the Public Guardian welcomes the implementation of the NDIS in the Northern Territory. It is anticipated that the NDIS will introduce more choice and control for individuals in remote areas, in particular, for whom access to services and supports is severely constrained.

However, the implementation of the NDIS is not without its challenges due to the high number of represented adults for whom the Public Guardian is substitute decision-maker, who will need to transition into the scheme in the next years.

Table 4: Number of represented adults under public guardianship who have transitioned to the NDIS as at 30 June 2017

Total	90
Tennant Creek	14
East Arnhem	15
Darwin	61

Participant engagement

The Office of the Public Guardian has been in negotiations with the National Disability Insurance Agency (NDIA) to address concerns about the adequacy of resources within the NDIS plans. Many clients in the Northern Territory require more resources, time and tailored processes to develop meaningful plans that take into account their cultural background, including the possible need for an interpreter.

Further, the interview tools used are more appropriate for high functioning individuals and professionals, and less suited to people with cognitive impairment. Inadequate emphasis has been placed on the value of having participants and their families or interpreters attend the planning meetings. As a result of their non-participation, key information has not been captured, negatively affecting the resulting support packages.

The relevance of the NDIS processes to remote Aboriginal communities, in conjunction with cultural competence considerations, must be addressed if the needs of the Territory's population are to be met under the NDIS.

Sector capacity

Sector capacity is a further concern for the Public Guardian in considering potential benefits, limitations and effects of the NDIS rollout.

The Northern Territory is unique in Australia in its geographic and demographic characteristics. The majority of clients under guardianship are Aboriginal and/or Torres Strait Islander with many living in remote or very remote regions.

There is a question as to whether the Northern Territory will have the capacity to provide the required services within the NDIS environment. Limited service delivery, a non-competitive marketplace, workforce shortages and a lack of infrastructure will produce 'weak' or 'thin' markets, primarily in regional and remote areas. This may result in poorer outcomes for participants, including less choice, higher prices and/or lower-quality supports and services. Importantly, in some areas of the Territory the marketplace is non-existent and no services are available.

The Office of the Public Guardian has concerns around the Territory's ability to adapt to the NDIS market structure and will continue to advocate in this area locally and nationally to ensure that the most vulnerable in our community have a voice.

NDIS participant plans

The Office of the Public Guardian has a vested interest in the delivery of NDIS services for persons with a disability in the Northern Territory.

We have been in negotiations with the NDIA to address concerns about the adequacy of resources within participant plans.

Inconsistencies and discrepancies between the NDIS plans have also been observed with no clear evidence-based rationale. The implementation of the scheme in East Arnhem highlighted the apparent absence of a clear justification behind different levels of packages, which is a particular cause for concern.

The Office of the Public Guardian identifies these concerns as an area that must be addressed to ensure that all plans meet the level of care and assistance required by each participant against the same standard of assessment.

Coordination of supports

The effective implementation of NDIS plans is reliant on the procurement and coordination of appropriate services (Coordination of Supports). The challenges faced in the Northern Territory necessitate that the level of coordination needs to be higher than in other parts of Australia. In some regions it has not been possible to obtain support coordination for represented adults engaged in the NDIS. An adequate level of coordination of supports is a critical component to successful plan implementation and achievement of goals.

The Office of the Public Guardian will continue to monitor the implementation of the NDIS closely and to advocate for Territorians under the scheme.

Looking ahead

The Office of the Public Guardian will continue to develop strong systems that are responsive to the needs of clients and foster a culture of continual improvement and innovation. Embedding a sustainable and efficient workforce which is highly skilled and respected is essential to achieving this mandate and is a priority area for 2017–18.

Community and sector engagement

The Office of the Public Guardian will develop a communications plan which will identify strategies and key areas for sector engagement. Improving our connectivity with stakeholders and the broader Territory community through targeted information and education activities is a key area of focus for our Office. The release of a series of plain language information fact sheets, a guide for guardians and our website will occur in the 2017–18 year.

The Public Guardian recognises the importance of progressing culturally inclusive information products which recognise the diversity of the Northern Territory population and the characteristics and needs of our community.

Information management system

A contemporary client information management system which will support best practice systems and processes and provide for improved reporting functions was commissioned in May 2017 and is currently being configured and built. Workshops have been conducted with the Office of the Public Guardian and the developer to identify our current and future business requirements and a timeline and process for migrating the data. The Office of the Public Guardian will transition into the system over the course of the 2017–18 year.

Financial management for represented adults

The Public Guardian is committed to ensuring that the best interests of adults for whom the Public Guardian has decision-making authority are considered at all times. An external review was commissioned in September 2016 at the request of the Public Guardian to examine the current controls and assess risks in relation to the Public Guardian's responsibility for financial matters for an adult under the Act. The recommendations are being considered and prioritised for actioning.

National Disability Insurance Scheme

The Office of the Public Guardian will continue to participate actively as advocate on behalf of adults under guardianship in the transition to full implementation of the National Disability Insurance Scheme in the Northern Territory.

Resourcing

Our first year of operations under the *Guardianship of Adults Act 2016* has seen an increase in guardianship applications that can be accredited directly to this legislation. It is anticipated that the number of guardianship orders for which the Public Guardian has sole or joint responsibility will continue to increase over the next year as the functions of our Office become more widely known and understood.

The ability of the Public Guardian to be appointed financial manager for an adult in the Northern Territory is unique in respect to other Australian jurisdictions. The bulk of orders for which the Public Guardian had decision-making authority in 2016–17 included financial matters (n=397 or 69%). This number is expected to increase and will have resourcing implications into the future.

Our Office also has other legislated functions, such as advocacy and education, for which dedicated resources have not been provided.

If the Office of the Public Guardian is to fulfil its mandate under the Act in full and provide a service that is consistent with contemporary guardianship principles and practice, then an increased level of resourcing will be required.

Priorities moving forward

We have identified a number of priority areas for the Office of the Public Guardian over our next three years of operations.

YEAR

2

- Solidify our organisational foundations with a focus on recording and reporting.
- Continue our development of position statements and policy papers.
- Foster collaborative relationships with identified key stakeholders.
- Progress our organisational planning.
- Promote a workplace culture embracing best practice, diversity and equality of opportunity.

YEAR

- Strengthen our relationships with key stakeholder groups.
- Increase community engagement among identified core client groups with a focus on guardianship education.
- Increase awareness of the functions of the Office of the Public Guardian, guardianship and related issues among the Territory population.

YEAR
4

- Evaluate the performance of the Office of the Public Guardian.
- Develop further systemic advocacy opportunities with a focus on joint collaboration with other agencies.

Figure 7: Priorities moving forward: 2017–2020

