

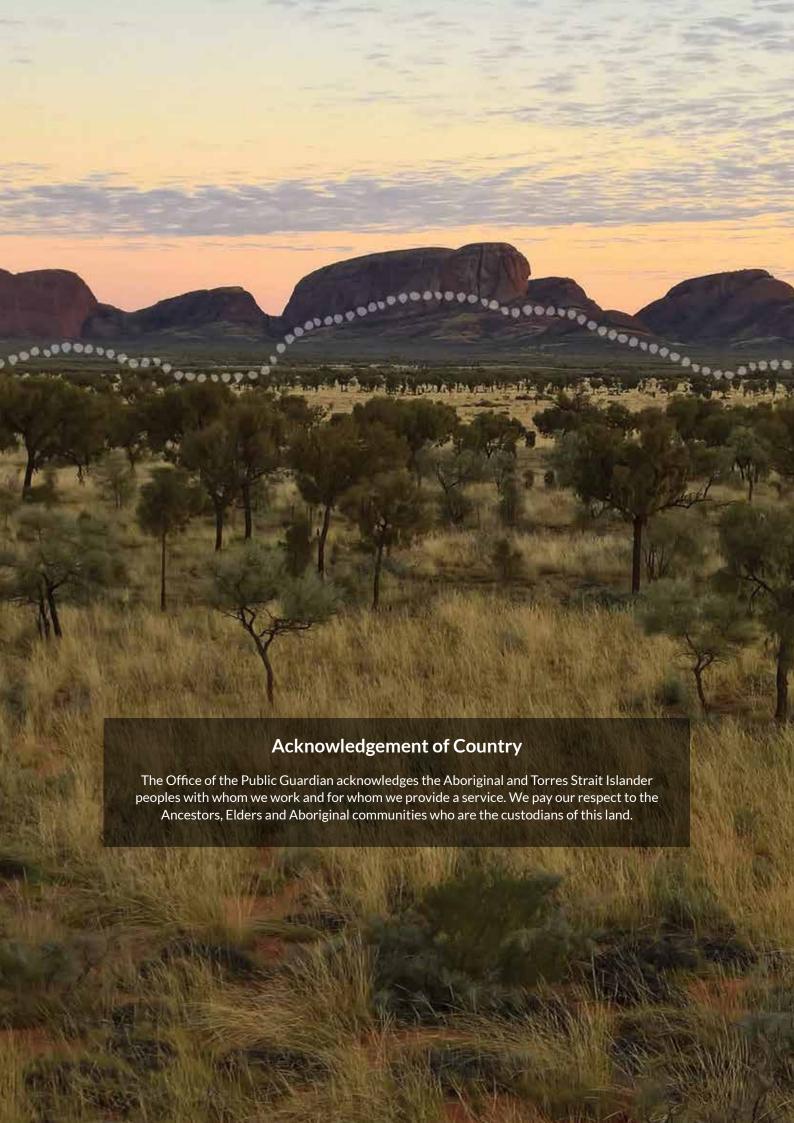
ANNUAL REPORT 2019-20





Office of the Public Guardian Annual Report 2019-20







GPO Box 1722 Darwin NT 0801

T: 1800 810 979

E: public.guardian@nt.gov.au W: www.publicguardian.nt.gov.au

The Honourable Selena Uibo MLA Attorney-General and Minister for Justice Parliament House DARWIN NT 0800

Dear Minister

Re: Office of the Public Guardian Annual Report 2019-20

In accordance with section 74 of the *Guardianship of Adults Act 2016* of the Northern Territory, I am pleased to submit the Annual Report of the Office of the Public Guardian for the year ending 30 June 2020.

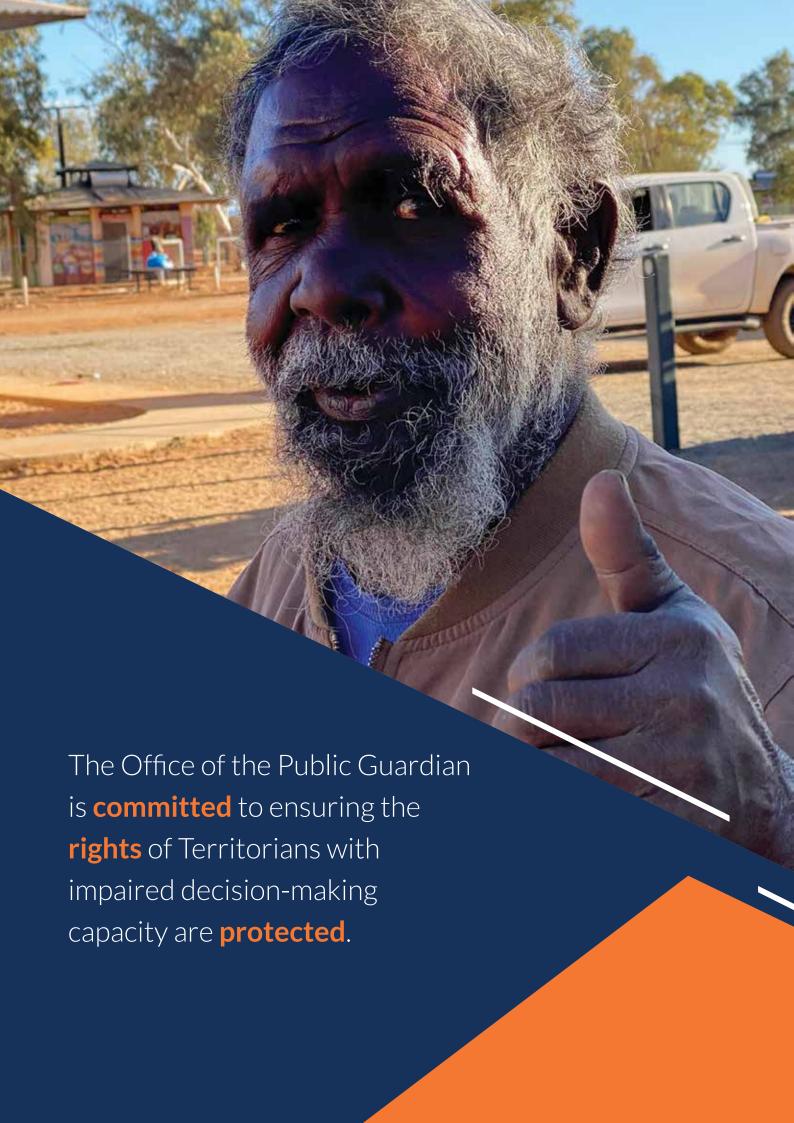
The Northern Territory Office of the Public Guardian is responsible for providing guardianship and advocacy on behalf of adults with impaired decision-making capacity. The following report details the performance and achievements of the Office of the Public Guardian for the 2019–20 reporting period.

Yours sincerely

BETH WALKER Public Guardian

Milathe

24 September 2020



Contents

Message from the Public Guardian	
Adult guardianship at a glance	4
Office of the Public Guardian	5
Advocacy	13
Financial management transfer	30
Inquiry and Engagement	32
Guardianship	40
Corporate Services and Policy	52
Stakeholder collaboration	58
Communications	62
Key Performance Indicators, budget and resourcing	65
Looking ahead	66

List of figures

Figure 1	Organisational structure	8
Figure 2	Proportion of represented persons who identify as Aboriginal	14
Figure 3	Number of Aboriginal people with guardianship orders in the Northern Territory, by guardianship type, 2019–20	15
Figure 4	Number of represented persons in Northern Territory hospitals awaiting accommodation for discharge: 2017–18, 2018–19 and 2019–20	21
Figure 5	Number of young people transitioning from out-of-home care to adult guardianship: trends over four years	24
Figure 6	Prisoners and Part IIA: number of represented persons in 2019–20	27
Figure 7	Prisoners and Part IIA: number of represented persons in 2019–20, by gender	27
Figure 8	Prisoners and Part IIA: number of represented persons in 2019–20, by primary impairment	28
Figure 9	Number of guardianship applications: trends over five years	35
Figure 10	Number of guardianship applications in 2019–20, by application type	36
Figure 11	Primary impairment stated on new and urgent applications: 2017–18, 2018–19 and 2019–20	37
Figure 12	Applications for guardianship orders in 2019–20, by Aboriginal and non-Indigenous status (%)	38
Figure 13	Number of new guardianship orders in 2019–20, by appointment type	38
Figure 14	Representation of private guardians in guardianship: 2017–18, 2018–19 and 2019–20	39
Figure 15	Number of persons with guardianship orders, by guardianship type: 2017–18, 2018–19 and 2019–20	42
Figure 16	Number of orders appointing private guardians: trends over four years	43
Figure 17	Primary location of persons with guardianship orders in 2019–20, by guardianship type	43
Figure 18	Number of persons with guardianship orders involving the Public Guardian, by gender: trends over four years	44
Figure 19	Number of persons with guardianship orders involving the Public Guardian, by age: trends over four years	45
Figure 20	Number of persons with guardianship orders involving the Public Guardian, by age and primary impairment	45
List of t	ables	
Table 1	Functions and responsibilities	9
Table 2	Current staffing	10
Table 3	Key Performance Indicators against forecast estimates, Budget Paper No. 3	65



Message from the Public Guardian

ensuring that the human rights of people with impaired decision-making capacity are protected

I would like to welcome you to the 2019–20 Annual Report of the Office of the Public Guardian. We have accomplished a great deal in the first four years of our operations since the establishment of the Office of the Public Guardian in July 2016 under the *Guardianship of Adults Act 2016*. I am extremely proud to outline our achievements for the past year as we continue to promote and protect the rights of vulnerable Territorians and to advocate for social justice.

At the heart of our operations and guardianship practice is the importance of ensuring that the human rights of people with impaired decision-making capacity in institutional and supported care settings and in society are protected. As Public Guardian I am strongly committed to ensuring that the interests and needs of persons with cognitive disability are known and reflected both in policy-making instruments and public debate.

Consequently, in 2019–20 the Office of the Public Guardian provided eight written submissions to national inquiries or commissions in areas that impact the lives and wellbeing of people with

cognitive disability under guardianship in the Northern Territory. These included submissions to the Joint Standing Committee on the National Disability Insurance Scheme (NDIS) inquiries into NDIS Planning, Supported Independent Living and Workforce and to inquiries by the Royal Commission into Aged Care Quality and Safety. Our submissions to the Royal Commission highlighted issues for younger people in residential aged care under guardianship and provided a Northern Territory perspective as regards to needs, programs and services.

We additionally provided key contributions in response to issues papers published by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability on health care for people with cognitive disability and the criminal justice system. A further submission was made to the Senate Select Committee on Autism.

We were pleased that the Northern Territory position was recognised in relevant published reports by a number of these inquiries and commissions.



As an organisation charged with advocating for the rights and wellbeing of vulnerable people, the matters raised in the Aged Care and Disability Royal Commissions are of immense concern and must lead to increased attention to accountability. Reports of abuse and neglect of people with disability in such settings cannot be ignored or tolerated. We are therefore continuing to refocus guardianship within our own organisation and the Northern Territory community to position human rights and supported decision-making front-of-centre in practice.

A further key priority area for the Office of the Public Guardian is the proposal to introduce statutory health care decision-maker legislation in the Northern Territory – a proposal we strongly support. We view the provision for statutory health care decision-makers as important in clarifying legal and administrative concerns and providing certainty in the making of health care decisions for people who lack the legal capacity to do so themselves.

In October 2019 a discussion paper outlining the background and proposal for health care decision-makers developed in conjunction with the Office of the Public Guardian was published by the Northern Territory Department of the Attorney-General and Justice. Following the release of this discussion paper we assisted the Department of the Attorney-General and Justice to conduct information sessions and workshops with service providers and communities across the Northern Territory to ensure understanding of the proposed legislation and to provide a forum for questions and concerns.

We welcomed the implementation of the *National Disability Insurance Scheme* (Authorisations) Act 2019 which came into force on 1 July 2019, providing an authorisation and oversight framework for the use of restrictive practices by NDIS service providers. The Office of the Public Guardian views the use of restrictive practices as an infringement of human rights and is committed to the reduction, with a view to elimination, of the use of restrictive practices in the disability services sector.

A similar important piece of legislation which came into effect also on 1 July was the amendment to the federal Quality of Care Principles 2014. This amendment aims to minimise the use of chemical and physical restraints in residential aged care. However, the Office of the Public Guardian, together with Public Guardians and Public Advocates nationally, is concerned that the

partial and ambiguous regulation of practices in aged care facilities that stems from this amendment will negatively impact the lives of older people with disability.

Consequently, in August 2019, I co-signed with all other Public Guardians and Public Advocates nationally a letter in support of concerns raised by the Office of the Public Advocate (Victoria) and Human Rights Watch in submissions to the Parliamentary Joint Committee on Human Rights. This resulted in an invitation to provide verbal evidence to the Parliamentary Joint Committee on Human Rights inquiry into the Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019 in Sydney on 20 August 2019.

At an operational level, our efforts to assist more Territorians with becoming private guardians led to a collaboration early in 2020 with the North Australian Aboriginal Justice Agency to establish an action research project to investigate barriers to participation by Aboriginal people in formal guardianship systems and processes. The aim of this project is to ensure that Aboriginal people are empowered to act as private guardians and that guardianship systems are considered culturally safe, appropriate and inclusive.

The NDIS continues to occupy significant staff time and resources through administrative responsibilities associated with service agreements and plans for represented persons. Nonetheless, it is a testament both to our staff and the NDIS that the vast majority of represented persons eligible for the NDIS have successfully transitioned to the scheme and have current plans in place that provide for an improved level of support. Notwithstanding such advances, however, the level of support coordination in plans for persons under guardianship in remote areas remains a concern.

In 2019 approval was granted by the Northern Territory Government for the transfer of responsibility for financial administration from the Public Guardian to the Public Trustee. The transfer of financial administration for represented persons was a major project requiring a systems-wide coordinated effort by our staff in conjunction with the Northern Territory Civil and Administrative Tribunal and Public Trustee.

It required variations to exisiting guardianship orders and ensuring that represented persons, guardians, service providers, institutions and others understood the administrative process and implications going forward. It was a remarkable effort and all stakeholders are to be congratulated on the relatively seamless, if at times overwhelming, process. I am personally appreciative of the extraordinary effort of my staff in this period.

Despite the transfer of financial matters to the Public Trustee, the number of guardianship orders with Public Guardian involvement decreased by only five orders during the year with 640 orders overall at 30 June 2020. A total of 1106 persons had guardianship orders during the year, an increase of 6 per cent on 2018–19. We are pleased to report that private guardianship continued its upwards trend and we remain committed to encouraging community members to consider and embrace the role of guardian.

Our work with the Australian Guardianship and Administration Council and advocacy organisations has contributed to protecting and promoting the rights of vulnerable people with cognitive and other disability and to the understanding of guardianship in the Northern Territory. Moving forward we will continue to strengthen our advocacy to ensure that human rights and supported decision-making are embedded in institutional behaviours and practice and that our commitment to ensuring that guardianship services are culturally safe and accessible is fulfilled. We look forward also to working with peak advocacy groups who share a common goal in supporting the most disadvantaged in our community.

I would like to thank my staff for their significant efforts, commitment and dedication in a year that presented unique challenges. The impact and ongoing effects of COVID-19 in 2020 need to be acknowledged. The Northern Territory emerged at the time of writing relatively unscathed and we are appreciative of the leadership and cooperative efforts of our frontline workers and of government.

I would like also to express my gratitude to our colleagues and shared stakeholders in the disability, aged care and advocacy sectors in supporting Territorians with impaired decision-making capacity in our community and to the Department of the Attorney-General and Justice for their support in the first full year of our transition from the Department of Health.

It has been a privilege to be appointed the inaugural Public Guardian of the Northern Territory and an honour to have guided the Office of the Public Guardian in its first four years of operations.

BETH WALKER
Public Guardian



Adult guardianship at a glance

425

financial management orders transferred from the Public Guardian to the Public Trustee

1106

total guardianship orders

290

guardianship applications lodged **182**

new orders made

58%

of orders cited Public Guardian as sole or joint guardian

7%

of persons under **Public Guardian were** aged 18 to 24

36%

of persons under Public Guardian were aged 65 or over

92%

of persons under Public Guardian eligible for NDIS had an NDIS plan in place

77%

of persons under **Public Guardian identify** as Aboriginal or Torres Strait Islander

42%

of orders appointed



Office of the Public Guardian

Our mission

Our mission is to safeguard and promote the human rights of people with impaired decision-making capacity by providing 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.

Our vision

Our vision is for a safe, just and inclusive Northern Territory which respects and promotes the dignity and human rights of people with impaired decision-making capacity.

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 decision-making 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.



Diversity

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



Accountability

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

 to provide, or encourage the provision of, education about relevant issues

Our strategic objectives

- advocate for the human rights of people with impaired decision-making capacity
- collaborate with stakeholders to achieve the best outcomes for people with impaired decision-making capacity
- develop flexible, tailored approaches that meet the needs of our diverse community
- provide an effective, contemporary service that is informed and responsive
- develop and maintain a capable workforce

Our legislation

The Office of the Public Guardian was established under the *Guardianship of Adults Act 2016* (the Act) on 28 July 2016.

The Act recognises the rights and overall wellbeing of persons with impaired decision-making capacity and provides the current legislative and administrative framework for adult guardianship in the Northern Territory. Its provisions are consistent with the United Nations Convention on the Rights of Persons with Disabilities, which aims to 'promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity'.

The Act transferred jurisdiction for administrative matters from the Local Court to the Northern Territory Civil and Administrative Tribunal (NTCAT), introduced comprehensive guardianship principles and established the independent Office of the Public Guardian and statutory officer position of Public Guardian. The establishment of an independent office and statutory officer was crucial in addressing potential conflicts of interest which existed for the Minister for Health in the operationalisation of their role and duty as Public Guardian under the earlier *Adult Guardianship Act 1988*.

The introduction of comprehensive guardianship principles recognised also the need for systemic change in institutional responses to persons with impaired decision-making capacity, and provided for a broadening of functions under the auspice of the Public Guardian to inform guardianship practice and service delivery. These functions include community education, advocacy, research and policy development responsive to the needs of persons and organisations interacting with guardianship systems.

The Office of the Public Guardian monitors policy and legislative developments in other jurisdictions and considers how these developments may be reflected in Northern Territory legislation to improve the rights and lives of people with impaired decision-making capacity. During the year we released a discussion paper in partnership with the Department of the Attorney-General and Justice on the proposed introduction of health care decision-makers in the Northern Territory. This was followed by significant stakeholder and community consultation. The initiative will be progressed in the coming year and may result in legislative change to establish health care decision-makers as an alternative option to the legal appointment of a guardian for health care decision-making.

At the end of the next reporting period the Guardianship of Adults Act 2016 will have been in operation for nearly five years. It is anticipated that this milestone will invoke a review of the Act to evaluate the impact of this legislation and to consider amendments that reflect recent developments in substitute decision-making frameworks, including a legislative basis for supported decision-making.

Our structure and people

Executive

The executive management team oversees our Strategic and Operational Support and Guardianship business functions and provides guidance for staff and stakeholders in all matters of guardianship.



Executive team from left: Jennie Guinane, Director, Strategic and Operational Support; Beth Walker, Public Guardian; Lisa Patamisi, Director, Guardianship

Strategic and Operational Support is provided by dedicated teams under our Corporate Services, Policy and Inquiry and Engagement business streams. Guardianship services operate functionally as a unified business stream under Guardianship Top End and Guardianship Central Australia, reflecting the location of our staff and offices in the Northern Territory. All business streams engage with information, education, advocacy and research initiatives under the leadership of the executive management team.

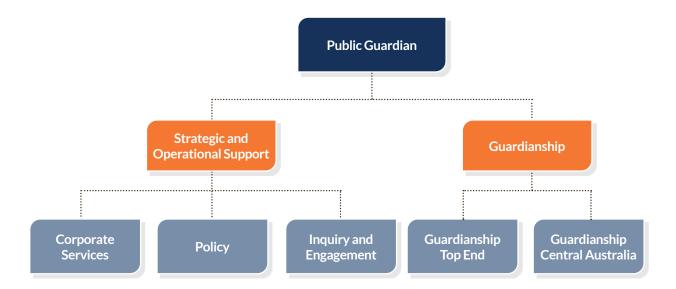
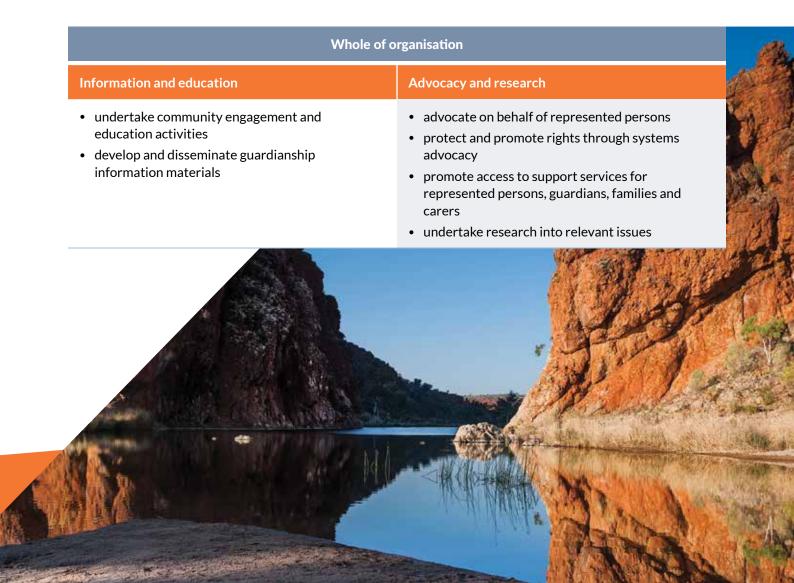


Figure 1: Organisational structure

Table 1: Functions and responsibilities

Strategic and Operational Support			Guardianship
Corporate Services	Policy	Inquiry and Engagement	Guardianship Top End & Central Australia
 provide leadership and support first point of contact for inquiries business and administration processes provide ICT assistance and systems management 	 manage internal policies undertake stakeholder engagement prepare submissions and briefs 	 inform NTCAT decisions provide guidance and information to private guardians and interested parties conduct guardianship investigations 	 act as a decision-maker for represented persons when appointed by the NTCAT provide an after-hours service for represented persons, guardians and caregivers



Our team

The Public Guardian leads a dedicated team of 28 staff with offices in Darwin and Alice Springs. The number of designated positions has remained stable since the recruitment of staff to permanent positions in 2018–19 following the review of supernumerary positions in 2017–18.

Table 2: Current staffing

Functional responsibility	Current staff
Public Guardian	1
Guardianship	15
Top End	9
Central Australia	6
Strategic and Operational Support	13
Corporate Services	6
Policy	3
Inquiry and Engagement	4





Current challenges

The year has again seen an increased demand for our services without a commensurate increase in resources. This demand has been fuelled in large part by the success of our public information campaigns and advocacy efforts over the years which, in turn, has led to an increase in enquiries and applications for guardianship and associated supports. This necessarily impacts our operational capacity and staff workloads.

High and complex needs

A compounding factor in respect of our operational capacity and the services we currently provide is the significant number of represented persons with high and complex needs who communicate in language and live in remote or very remote locations. Aboriginal Territorians are among the most disadvantaged of Australia's peoples and are disproportionately represented in the population under guardianship. Our inaugural annual report published in 2017 noted:

... 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.

Aboriginal people now represent around 30 per cent of the Northern Territory population and still comprise the majority of represented persons with Public Guardian involvement.

The Public Guardian is committed to direct contact and face-to-face visits with all represented persons at least once a year to ensure that their interests are upheld

and their rights protected. This is a national standard agreed by members of the Australian Guardianship and Administration Council. In the Northern Territory this exercise is complex and resource intensive.

Providing guardianship for represented persons in remote and very remote locations has significant challenges. They include: the transient nature of communities and associated mobility of family and interested parties; seasonal factors impacting access to some locations; the lack of services on the ground; the prevalence of health and psycho-social comorbidities including mental health, diabetes, renal disease and homelessness; and the necessity of negotiating justice, health and housing interfaces.

We are seeing also an increase in complexity of behaviours among represented persons associated with acquired brain injury, foetal alcohol spectrum disorder and other mental health disorders. This is evident not only among represented persons but also young people in the care of Territory Families who will transition to adult guardianship in the future. Many of these young people present with unique and complex needs creating challenges in sourcing appropriate accommodation and supports in the community.

Rights and accountability

The Office of the Public Guardian is concerned that the rights of individuals are paramount in institutional responses to identified needs. We are therefore refocusing guardianship to position human rights and supported decision-making front-of-centre in practice. This renewed focus places increased emphasis on accountability and responds to matters raised in the Aged Care and Disability Royal Commissions in

relation to reports of abuse and neglect of vulnerable people in institutional and supported care settings. Our collaboration with the North Australian Aboriginal Justice Agency will investigate also the lower representation of Aboriginal persons as private guardians to ensure that our systems and processes are culturally responsive and accessible to all.

Resource-intensive practice

While our staffing has been relatively stable over the past 12 months, we are not immune from the impacts of remote workforce challenges, including high population mobility and 'churn', and the difficulty of recruiting to positions from within a small and competitive pool. In the Northern Territory it can be especially challenging to recruit into areas such as guardianship requiring specialist expertise, particularly in remote centres where there are a limited number of people with appropriate skills and experience. The rollout of the National Disability Insurance Scheme (NDIS) in the Northern Territory appears to have exacerbated the skills shortage.

While the rollout of the NDIS has been a welcome event, the associated advocacy required of our Adult Guardianship Officers to ensure that NDIS plans are appropriate to the needs of represented persons and are understood has been resource intensive and impacted our resources. This issue is unlikely to resolve in the foreseeable future with demand for and on our services increasing annually.

Our staff are committed to excellence in the guardianship services we provide to the Northern Territory community and to advocating for the rights of represented persons. The proportion of represented persons with Public Guardian involvement, however, is not diminishing, while the demands on our services are increasing. If this trend continues without an equivalent increase in resources, the operationalisation of our mandate under the Act may be compromised.



Advocacy

Advocacy is central to the work undertaken by the Office of the Public Guardian. We are committed to improving guardianship outcomes for people with cognitive and other disabilities and ensuring that the rights of represented persons are promoted, respected and protected.

Rights and representation

The Northern Territory's *Guardianship of Adults Act 2016* (the Act) recognises the overall wellbeing, human rights and fundamental freedoms of persons under guardianship and is consistent with Australia's obligations under the United Nations Convention on the Rights of Persons with Disabilities. Our strategic objectives reflect our mandate under the Act and recognise human rights, supported decision-making, cultural competency and collaboration as implicit undertakings in our advocacy for persons with impaired decision-making capacity and inclusive guardianship practice.

Our advocacy initiatives include Territory-wide consultations, forums and information campaigns designed to promote understanding of rights among practitioners and policy-makers in the ageing, health, justice and disability sectors. At the national level they include submissions by the Office of the Public Guardian to government inquiries and joint advocacy with Australian Guardianship and Administration Council member organisations.

Our advocacy efforts ultimately are directed towards achieving systemic change and better outcomes for represented persons. Our goal is to strengthen understanding of guardianship in the Northern Territory, to promote the rights of all persons with

impaired decision-making capacity and to effect change where it is needed.

Separate representation of persons under guardianship

All people with disability, irrespective of the form that disability takes, have a right to equal recognition before the law and for freedom and choice over decisions that impact their lives. Guardianship is an interference with this right. It is therefore imperative that the person who is the subject of the guardianship proceedings has the opportunity to be involved in the proceedings and for their views and wishes to be heard and inform the proceedings to the greatest extent possible. The Office of the Public Guardian is committed to ensuring this occurs.

There are a number of ways this is achieved. The person for whom the application for an order, or variation of an order, is made may be supported to attend the guardianship proceedings in person or by telephone or video conference. Alternatively, an Adult Guardianship Officer (AGO) may present the person's views and wishes to the Northern Territory Civil and Administrative Tribunal (NTCAT). On other occasions the person's views and wishes may be heard and rights upheld through separate representation by a legal practitioner or advocate.

The Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities is the first international instrument to explicitly set out the fundamental human rights of people with disability.

Australia signed the Convention on 30 March 2007. It ratified the Convention in July 2008 and the Optional Protocol in 2009.

Separate representation may be necessary in matters where the person's circumstances are factually or legally complex, if there is dispute as to whether the person is in need of a guardian, or if there is dispute between interested parties regarding who should be appointed as guardian. In these proceedings a separate representative can provide an additional safeguard to ensure the views of the person for whom an application for an order is made are presented to the NTCAT and not overshadowed by complexities or conflict in the proceedings.

In the absence of legislative authority, there is some uncertainty regarding the ability of legal practitioners to represent a person with impaired decision-making capacity in guardianship proceedings. Despite this uncertainty, the Office of the Public Guardian has worked with community legal providers to establish processes for the engagement of separate representation for persons under guardianship.

In circumstances where the represented person does not have capacity to provide instructions to their legal representative, the NTCAT has granted leave for the legal representative to appear as *amicus curiae* in the proceedings. In this capacity the legal representative can assist the NTCAT by ensuring all relevant information is presented, including the views and wishes of the person, to enable the NTCAT to determine the proceedings.

The separate representation of persons under guardianship is an important area that will need to be given full consideration in any review of the *Guardianship of Adults Act 2016* in the future.

Aboriginal Territorians and guardianship

Aboriginal Territorians are overrepresented in the population of people under guardianship in the Northern Territory. Despite representing just over 30 per cent of the total Northern Territory population, Aboriginal Territorians comprised 57 per cent of persons under guardianship in 2019–20 (Figure 2).

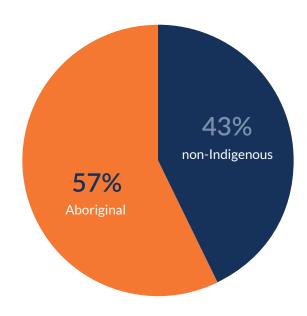


Figure 2: Proportion of represented persons who identify as Aboriginal

Note: 'Aboriginal' here includes people who identify as Aboriginal or Torres Strait Islander

The Office of the Public Guardian is committed to understanding why Aboriginal people are overrepresented in the population of persons with guardianship orders in the Northern Territory. Potential areas for consideration include the interaction of social determinants such as health, housing and income with guardianship, the role of government agencies in guardianship for vulnerable populations, and mechanisms for embedding cultural safety for Aboriginal persons in guardianship systems and processes.

Of further concern is the high proportion of represented persons with Public Guardian involvement who identify as Aboriginal (77%), compared to the proportion of those with private guardians who identify as Aboriginal (30%) (see Figure 3).

The Office of the Public Guardian continues to work with community organisations to develop strategies to promote the increased involvement of Aboriginal Territorians, in particular, in guardianship processes and support family and community members in undertaking the guardian role.



Figure 3: Number of Aboriginal people with guardianship orders in the Northern Territory, by guardianship type, 2019–20*

Notes: 'Aboriginal' here includes people who identify as Aboriginal or Torres Strait Islander. *Public Guardian includes sole or joint orders (excludes Public Trustee)

Consequently, in early 2020 the Office of the Public Guardian met with the North Australian Aboriginal Justice Agency to establish a project to investigate barriers to participation by Aboriginal people in

formal guardianship systems and processes. The aim of this project is to ensure that Aboriginal people are empowered to act as private guardians and that guardianship systems are culturally safe, appropriate and inclusive.

Abuse and neglect of older, vulnerable people

Australia has an ageing population with increased life expectancy at birth reflecting declining death rates at most ages.¹ Perceptions of ageing vary in the community but can result in negative stereotypes of older people as an impost on society. This stereotype is validated in some quarters by commentary and public policy around employment opportunities, housing, pensions and benefits and, more recently, the right of equal access to tertiary health interventions in a COVID-19 emergency environment.

A 2018 survey by Darwin Community Legal Service on the prevalence of elder abuse in the community found that negative stereotyping leads to discrimination and the minimising of older people's 'wants, needs and priorities'. Their data support national and international evidence on the characteristics of abuse with abusers in the main being 'trusted family members, friends or neighbours', and the fear and shame being borne by 'the abused, rather than the perpetrator'.²

During the reporting period the Public Guardian was appointed decision-maker in either a sole or joint guardianship arrangement for 229 individuals with impaired decision-making capacity aged 65 or over. This represents around 36 per cent of all persons with impaired decision-making capacity in the Northern Territory with Public Guardian involvement at 30 June 2020. The 65 years plus age cohort of persons under guardianship has seen a 4 per cent increase since 2018–19 and represents around 2 per cent of the total estimated resident population aged 65 and over in the Northern Territory.³

¹ Australian Bureau of Statistics 2019, 3302.0.55.001 - Life Tables, States, Territories and Australia, 2016–2018, viewed 5 June 2020, https://www.abs.gov.au/ausstats/abs@.nsf/mf/3302.0.55.001.

² Darwin Community Legal Service 2018, *Elder Abuse Prevention Project Northern Territory: survey report*, Darwin Community Legal Service, Elder Abuse Prevention Project, June, p. 4.

³ Australian Bureau of Statistics 2019, 3101.0 – *Australian Demographic Statistics, Jun 2019*, 'Population by Age and Sex Tables', Table 8, data cube, issue released 19 December 2019, viewed 16 August 2020, https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3101.0Jun%202019?OpenDocument.

A key consideration in analyses of persons under guardianship in the Northern Territory by age are life course and mortality differences between Aboriginal and non-Indigenous Australians. A consequence of this gap is that Aboriginal Territorians typically experience morbidity characteristics associated with older non-Indigenous Australians (e.g. 65 years and over) 10–15 years earlier (typically from age 50). This has implications for the extent and type of services required for Aboriginal people in earlier years.

The Australian Bureau of Statistics (ABS) estimates that around 11,230 people identifying as Aboriginal and/or Torres Strait Islander in the Northern Territory were aged 50 or over at 30 June 2016.⁴ This equates to around 15 per cent of the total Northern Territory Aboriginal and/or Torres Strait Islander estimated resident population at 30 June 2016.⁵

National Plan to combat elder abuse

A study on elder abuse undertaken by the World Health Organization (WHO) noted:

Based on available evidence, WHO estimates that 15.7% of people 60 years and older are subjected to abuse. These prevalence rates are likely to be underestimates as many cases of elder abuse are not reported.⁶

In 2017 the Australian Law Reform Commission (ALRC) published *Elder abuse—a national legal response*. A primary recommendation and outcome of this report was the development of a National Plan to combat elder abuse, published in 2019. The *National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019–2023* identifies five priority areas with associated initiatives. These relate to: enhancing our understanding of elder abuse; improving community awareness; strengthening service responses; planning for future decision-making; and strengthening safeguards for vulnerable older Australians.⁷ The Office of the Public Guardian applauds the development of the National Plan and supports its five key priority areas.

Elder Abuse Service Trials

In November 2018 the Australian Government invited applications for the delivery of Elder Abuse Service Trials for the period 2018–19 to 2021–22. The trials sit under the federal Attorney-General's Justice Services Program: Protecting the Rights of Older Australians. This program is part of the More Choices for a Longer Life package announced in the 2018 Federal Budget. The intent of the initiative is to reduce the incidence and severity of elder abuse through increased access to service and support options (e.g. social, legal and financial counselling). Relationships Australia (NT) was successful in its application under the scheme for a grant to conduct an elder abuse case management and mediation service trial in the Northern Territory. The Office of the Public Guardian welcomes this initiative.

Royal Commission into Aged Care Quality and Safety

On 8 October 2018, the Australian Government established the Royal Commission into Aged Care Quality and Safety. The Royal Commission's mandate is to conduct an inquiry into services provided within the aged care sector and identify necessary changes. The scope of the inquiry includes people with disability and 'younger' people (less than 65 years) living in residential aged care.

The Office of the Public Guardian fully supports the Royal Commission's objectives. We provided two submissions to the Royal Commission in the reporting period:

- Younger People in Residential Aged Care
- Aged Care Program Redesign: Services for the Future: Consultation Paper 1.

On 31 October 2019 the Royal Commission delivered its Interim Report, *Neglect*. The Interim Report covers much of the Royal Commission's work to September 2019, including an overview of public hearings and community forums. Describing the existing aged care system as 'unkind and uncaring', the Royal Commission found that the 'system fails to meet the needs of

⁴ Australian Bureau of Statistics 2020, 3238.0.55.001 – *Estimates of Aboriginal and Torres Strait Islander Australians, June 2016*, 'Estimated resident Aboriginal and Torres Strait Islander and non-Indigenous populations, States and Territories, single year of age – 30 June 2016', Table 7, data cube, issue released 1 April 2020, viewed 5 June 2020, https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3238.0.55.001June%20 2016?OpenDocument.

⁵ Northern Territory Department of Treasury and Finance 2020, Northern Territory Economy: Aboriginal population, Table 1, viewed 8 June 2020, https://nteconomy.nt.gov.au/population.

⁶ World Health Organization 2020, Ageing and the life-course: elder abuse, viewed 5 June 2020, https://www.who.int/ageing/projects/elder_abuse/en/.

⁷ Council of Attorneys-General 2019, National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019–2023, p. 10.



our older, often very vulnerable, citizens' and in 'too many instances, it simply neglects them'. The 'voices of people receiving care and their loved ones' were minimised in a system 'designed around transactions, not relationships or care'.

In respect of systemic structural issues the Royal Commission reported that the aged care system was 'hard to navigate', 'does not provide the information people need to make informed choices about their care' and 'relies on a regulatory model that does not provide transparency or an incentive to improve'. The Royal Commission concluded: 'Australia's aged care system has not kept pace with the expectations of care that can be provided in a modern, wealthy and compassionate society.' In short, the 'Australian aged care system is failing and needs fundamental reform'.

The Royal Commission will recommend steps to achieve key reforms to the aged care system in its final report, scheduled for November 2020. However, the Interim Report identified a number of critical areas of shared concern to the Office of the Public Guardian which require urgent and immediate action. These relate to the provision of more Home Care Packages for higher level care to reduce waiting times and provide urgent in-home supports (e.g. level 3 and 4 packages); a reduction in the use of chemical restraints; the cessation of intake into aged care of younger people with disability; and the expediting of transfer of

younger people in aged care facilities to age-appropriate living environments.¹⁰

The high proportion of people aged 65 and over with guardianship orders to the Public Guardian is indicative of the vulnerability of this population and the need for policy and systems which provide for effective protections and oversight. The Royal Commission has found systemic failures with aged care provision in all jurisdictions surveyed. In what is likely to be the vast majority of cases presented to the Royal Commission, these failures represent an abuse of rights of Australia's 'elders', and a failure to exercise responsibility by those charged with their care. This failure is not attributable or limited to any one entity and is a national shame that must be acknowledged by all Australians.

Issues raised by the Royal Commission are not new to those who interact with the aged care sector and it is hoped that its recommendations will lead to substantial and enduring change. This will need to include significant attitudinal change.

The Office of the Public Guardian is committed to protecting and promoting the rights of vulnerable people in aged care. While we recognise the complexity of challenges facing the Australian aged care system, we will maintain our advocacy for those we represent and provide them with a voice.

⁸ Royal Commission into Aged Care Quality and Safety 2019, *Interim report: neglect*, vol. 1, 31 October, p. 1.

⁹ ibid., p. 255.

¹⁰ ibid., p. 10.

Aged care and NDIS interface

People aged 65 and over who are NDIS participants may choose to receive supports from the NDIS or aged care system. People aged less than 65 years living in residential aged care are eligible also to receive NDIS supports (we note the inappropriateness of residential aged care for younger people with disability and advocate for age-appropriate supported independent living arrangements). However, at age 65 people who are not existing NDIS participants are eligible only for aged care supports.

There is significant disparity in the level and type of supports available under Australia's aged care system and those supports available to people who are eligible NDIS participants due to impaired cognitive capacity. In effect this is an interface gap that fails to respond adequately to the needs of people who have not sought supports previously under the NDIS, or who have an acquired disability later in life (i.e. at age 65 or later).

People with impaired capacity aged 65 years and over who do not require residential aged care and are not existing NDIS participants can struggle to find appropriate accommodation and supports. In the Northern Territory there is a deficit of community-based services for this group. There are reports of people waiting 6–12 months for community aged care packages which do not fully respond to or meet their disability needs. This leads to people being pushed prematurely into residential aged care at increased human and government cost due to their inability to access supports that would enable them to age in place with dignity.

The Office of the Public Guardian is of the view that current wait times for aged care packages are excessive and do not serve the needs of the community adequately. More aged care packages at levels 3 and 4, in particular, are warranted along with reduced wait times to meet demand. Consideration needs also to be given to a mechanism for responding to the needs of people with disability aged 65 and over who require community supports but are not existing NDIS participants.

Aged care packages, particularly at levels 1 and 2, do not provide for adequate specialist disability supports. This can mean that people with disability without NDIS supports can struggle to age in place safely. That people in this situation may be prematurely forced into residential aged care is an access and equity issue requiring the urgent attention of government. For younger people with disability who are living in residential aged care, however, the shift from block funding to the NDIS for the purchase of appropriate supports is a welcome change.

A related concern for the Office of the Public Guardian were reports of a tender process suggesting an intention by the Australian Government to outsource and privatise the Aged Care Assessment Team (ACAT) and amalgamate it with the Regional Assessment Service. While the amalgamation is likely to proceed and may lead to some efficiencies, the privatisation of ACAT functions would have significant implications for the Northern Territory if such assessments were to be managed centrally at the expense of established local teams, accumulated knowledge and relationships.

On this matter, we were relieved to note the Council of Australian Governments Health Council Communiqué in February 2020 advising that the tender process has been ceased pending consultation with the states and territories and findings of the Aged Care Royal Commission. We look forward to the opportunity for formal Ministerial consultation in regards to considerations for any changes to existing Aged Care Assessment service models in the future.

Health care for people with cognitive disability

The majority of people under guardianship in the Northern Territory identify as Aboriginal or Torres Strait Islander. Issues impacting health outcomes for this population include the prevalence of complex disabilities and comorbidities, high levels of homelessness, poor access to health services, a lack of continuity of care and poor communication.

We have seen in our representation of persons with cognitive disability a lack of direct discussion with the individual about their health care matters, inadequate use of qualified interpreters and communication tools, lengthy and inappropriate wait times for service access and interventions limited by values and assumptions. There is a disconnect also in information sharing and supports for National Disability Insurance Scheme (NDIS) participants interacting with health care systems. The net result is health needs not being met adequately and subsequently escalating, resulting in increased and sustained hospital admissions. This has resource implications both for health services and government.

The Office of the Public Guardian does not support the use of restrictive practices in health care settings and advocates for improved awareness and understanding of cognitive disability through education and training. We support a person-centred approach which takes into account cultural and emotional needs and is responsive to the person's views, circumstance and wishes. It is our position that a holistic approach which recognises the overall wellbeing of persons with impaired decision-making capacity will provide for better health outcomes and experiences.

As such, consideration needs to be given to the clinical environment for persons with sensory or other disabilities and a multi-agency approach for persons with complex needs. The use of accredited interpreters and communication tools is fundamental to informed consent and ensures that persons with impaired decision-making capacity have an understanding, to the greatest extent possible, of their options and rights.

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability was established in April 2019. It responds to community concern about historic and current reports of people with disability being subject to violence, abuse, neglect and exploitation. In December 2019 the Disability Royal Commission published an issues paper titled *Health care for people with cognitive disability*. The Office of the Public Guardian welcomed the opportunity to make a public submission with regard to the situation for people with cognitive disability in the Northern Territory.

Housing and support options for people with complex needs

The Office of the Public Guardian continued to advocate during the year for improved housing and support options for people under guardianship. The 2019–20 year saw an increase in the use of private rental due to a lack of community housing stock and public housing supply. The use of private rental, however, is not without its complexities. The availability of housing that meets disability access requirements is limited and home modifications must be negotiated with landlords and, where agreed, take time.

The Australian Housing and Urban Research Institute (AHURI) has identified a number of factors that contribute to failed tenancies and cycles of homelessness for vulnerable populations including Aboriginal people. These include family violence, crowding, damage to properties by domestic partners or co-tenants resulting in inherited fines or debt, and a lack of day-to-day life supports, such as assistance with managing a tenancy and paying rent and bills on time. Property damage and conflict with neighbours may be an issue where challenging behaviours are prevalent, as can informal sharing arrangements with extended family or friends. 11

The provision of accommodation in areas poorly serviced by shops or accessible public transport can also be problematic where it limits access to formal and informal social supports and opportunities for employment, education and training. In the Northern Territory, geographic isolation and the lack of appropriate infrastructure and services in communities to support people living with cognitive impairment and other disability is prevalent and has been identified previously by the Public Guardian as a key issue associated with the rollout of the NDIS in remote and very remote regions. It is a human rights issue where it impacts the ability of vulnerable populations to receive fundamental supports including access to health services and appropriate housing.

The lack of flexible and affordable housing options and appropriate support services may result in represented persons remaining in hospital for longer than medically required or being discharged to living situations not best suited to their needs. At 30 June 2020, four represented persons in Northern Territory hospitals under the guardianship of the Public Guardian had been deemed medically fit for discharge but were awaiting accommodation placements: three in Darwin, and one in Palmerston. The majority of these were on waiting lists for aged care placements and ranged in age from 55 to 73 years. Others were awaiting NDIS supported independent living availability and Territory Housing allocation. The duration of these delays ranged from one week to two months.

The Office of the Public Guardian is pleased to note both the reduction in the number of represented persons medically fit for discharge who are remaining in hospital awaiting accommodation placements, and the reduction in wait times for suitable accommodation. This reduction in number and wait times is a significant improvement on 2018–19, where 10 represented persons were in Northern Territory hospitals awaiting accommodation placements (Figure 4).

This improvement is considered to result from the positive impact of the NDIS and the gradual increase in housing and service options available to younger people with disabilities. However, while the reduction in wait times for persons fit for discharge is welcome, there is limited data on the situation for represented persons with private guardianship awaiting discharge and the number may well be higher.

¹¹ See, for example, Grant, E., Zillante, G., Tually, S., Chong, A., Srivastava, A., Lester, L., Beilby, J. and Beer, A. 2016, Housing and Indigenous people living with a disability: lived experiences of housing and community infrastructure, AHURI Positioning Paper no. 168, Australian Housing and Urban Research Institute, Melbourne.



Figure 4: Number of represented persons in Northern Territory hospitals awaiting accommodation for discharge: 2017–18, 2018–19 and 2019–20

Service delivery and workforce challenges

The Northern Territory is Australia's most sparsely populated jurisdiction with just 0.2 persons per square kilometre. Most Territorians (nearly 60%) live in Greater Darwin with the remainder dispersed across remote and very remote areas. Around 30 per cent of the Northern Territory's population is Aboriginal with the majority (80%) living in remote or very remote communities. ¹²

Remoteness has particular issues for service delivery and remote workforces. Staff 'churn' associated with high workforce and population mobility presents an ongoing challenge for organisations operating in the Northern Territory.

It impacts the ability of organisations to build trusting and effective relationships with clients, and can result in the diversion of limited resources to staff recruitment and induction activities.

The importance of workforce stability to service delivery and outcomes for individuals cannot be underestimated. In the Northern Territory there are challenges in recruiting and retaining staff in geographically remote areas. The service baseline is relatively low with rudimentary services, such as health and housing, frequently limited or unavailable locally. Where service delivery or workforce demands change, the local market is often slow or unable to respond. This has been an issue identified previously by the Office of the Public Guardian in the rollout of the NDIS and actioning of NDIS participant plans.

The limited provision of services in remote communities frequently means that people needing higher-level supports such as aged care or palliative care must relocate to major centres on a temporary or permanent basis. This creates issues of dislocation from family, culture and country. However, on a positive note, we are starting to see a scattering of innovative programs and services in a number of remote areas and consideration of programs in others. Nonetheless, it is difficult to support people effectively in all communities and in situations where needs are high or complex. Hence, while there is positive movement in this area the situation is far from satisfactory.

¹² Northern Territory Department of Treasury and Finance 2020, *Northern Territory economy: population*, viewed 11 June 2020, https://nteconomy.nt.gov.au/population.

NDIS Medium Term Accommodation

A welcome announcement by the Minister for the National Disability Insurance Scheme in December 2019 was the introduction of mediumterm transitional accommodation options for NDIS participants on waiting lists for permanent housing. Medium Term Accommodation (MTA) is available for up to 90 days and can be used for:

- bridging accommodation for younger people at risk of admission to or currently resident in aged care facilities
- persons seeking to exit aged care awaiting home modifications or Specialist Disability Accommodation
- patients eligible for hospital discharge awaiting disability-related home modifications
- participants found eligible for Specialist Disability Accommodation awaiting a vacancy or build completion.¹³

The Office of the Public Guardian anticipates that the introduction of MTA may assist in alleviating part of the current burden on public hospitals by providing for medium-term flexible housing options for represented persons whose discharge is subject to being housed. However, the success of the MTA initiative necessarily will be contingent on the availability and suitability of housing stock.

Specialist Disability Accommodation

Specialist Disability Accommodation (SDA) provides for specialist housing for people with high support needs or extreme functional impairment who meet specific eligibility criteria. The program is intended to act as an incentive to investment in housing appropriate to the needs of people with disability.

A 2019 review by AHURI of the program's operation and industry attitudes to participation identified a

range of barriers. These included 'uncertainty around the eligibility of individuals to secure SDA support', 'a perceived fluidity in the administrative policy settings applied by the National Disability Insurance Agency (NDIA)' and the program's limited scale.¹⁴

The report found that 'the process of defining SDA eligibility in participants' plans is a critical area of delay and inconsistency', 15 with informants arguing 'consistently' that 'the NDIA lacks the necessary knowledge or understanding of housing-specific issues'. 16 A need for 'simple and clear documentation' was also identified. 17 The report authors concluded:

Providing choice and control requires creativity and innovation, and these qualities are not yet evident within the implementation of SDA. The philosophy underpinning the NDIS and SDA is one of choice and control for people with disability. This research clearly indicates access to both of these has been critically compromised in the SDA program.¹⁸

The substance of the AHURI report findings is consistent with reports by service providers interacting with the NDIS in the Northern Territory. Service providers supporting represented persons have indicated that the difficulty of obtaining housing and linked supports remains a barrier to persons eligible for early prison release under parole or Part IIA orders. In the Northern Territory the latter is important because of the high levels of incarceration of Aboriginal people. This remains an area of concern and advocacy for the Public Guardian.

SDA is a crucial component of the NDIS and maximising the independence of people with impaired cognitive capacity through purpose-built accommodation. The development of accommodation that meets the needs of people with complex disability also presents a potential source of revenue for housing providers who may be eligible to receive a component of the SDA allocation in participant plans to offset housing-related

¹³ National Disability Insurance Scheme 2019, *Delivering the NDIS plan: new medium-term accommodation for NDIS participants*, media release from the Minister, 2 December, viewed 8 June 2020, https://www.ndis.gov.au/news/4069-delivering-ndis-plan-new-medium-term-accommodation-ndis-participants.

¹⁴ Beer, A., Flanagan, K., Verdouw, J., Lowies, B., Hemphill, L. and Zappia, G. 2019, *Understanding Specialist Disability Accommodation funding*, AHURI Final Report no. 310, Australian Housing and Urban Research Institute Limited, Melbourne, p. 1.

¹⁵ ibid., p. 2.

¹⁶ ibid., p. 3.

¹⁷ ibid., p. 4.

¹⁸ ibid., p. 3.



costs including maintenance and modifications. The ongoing development of SDA options in the Northern Territory is vital. It is concerning that in the course of the 2019–20 financial year the number of NDIS participants with SDA incorporated in their NDIS plans decreased.

During the year, the Public Guardian worked with Somerville Community Services to implement a training program with 11 local occupational therapists charged with assessing housing requirements and modifications for represented persons with complex needs that could be addressed fully or partly through SDA. A visiting interstate occupational therapist provided support and supervision to the participants, guiding them through the SDA assessment and

report writing process to ensure compliance with SDA accommodation rules. The aim of the endeavour was to develop the capacity and confidence of local occupational therapists and provide for a larger skills base in the Northern Territory for SDA assessments.

The Office of the Public Guardian recognises the strong correlation between stable purpose-built accommodation and effective engagement with support services. This correlation has been demonstrated in studies of vulnerable populations generally and is not limited to persons with disability. We remain committed to advocating for a broader continuum of accommodation options, including SDA, such that the needs of represented persons may be appropriately met.

Mary – gentle steps forward*

Mary has been 'long grassing' in Darwin for many years. She is known to have experienced family violence and successfully completed a rehabilitation program for alcohol use after a period in hospital. The Public Guardian was appointed as guardian for personal matters. Mary chose to return to the 'long grass' with periods in women's shelters. Over time, the Office of the Public Guardian worked with Mary and relevant service providers to establish an NDIS plan. Stable accommodation was sought for Mary, and she was accepted into a share house with one other person.

While Mary returns periodically to the 'long grass', she is spending increasing nights at home. Mary has also been made welcome at a day program where she can have a meal and engage in painting and cooking activities. Mary was very happy to talk about a recent fishing trip with her guardian and share a photo of herself taken when she caught a squid during an outing with support staff.

*This scenario has been created from a series of life stories and does not represent an individual person.

Improving transition of young people from care

The association between effective supports and outcomes for individuals is well established. People are more likely to gain stability and improved wellbeing when needs and supports are considered holistically. This is especially true for young people transitioning from out-of-home care to adult guardianship.

In 2019–20 seven young persons transitioned from out-of-home care to adult guardianship with the Public Guardian appointed for four of these young persons (Figure 5). This number is fewer than the 12 projected in the 2018–19 annual report, and may reflect increased understanding by staff employed by Territory Families of eligibility criteria for guardianship. This understanding has increased in recent years with the provision of information and resources on guardianship by staff of the Office of the Public Guardian as part of our ongoing commitment to the Territory Families induction program for frontline staff.

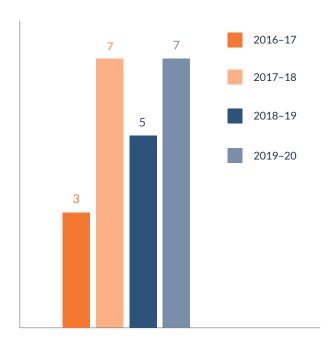


Figure 5: Number of young people transitioning from out-of-home care to adult guardianship: trends over four years

Tahlia – finally achieves her own home*

Tahlia is a 27-year-old Aboriginal woman with chronic mental health and intellectual disability. She first became involved with guardianship in late 2016 while in prison. She had been assessed as not having mental capacity in relation to her offending, but there was no safe option for her in the community. Tahlia transitioned from prison to a secure care facility catering for persons with mental health issues and providing 24-hour supported independent living. Throughout this time Tahlia continued to request that she be given her own house where she could live with and be supported by her family.

Strong advocacy by the Office of the Public Guardian and a collaborative approach with key stakeholders, including police and health services, secured Tahlia a Territory Housing property. The property was large enough to accommodate her NDIS-funded supported independent living service and a family member. It was really satisfying to see the expression on her face when she saw her house for the first time and realised that her goal had finally come to fruition. Tahlia spoke about her family being able to spend time with her in the future at her home.

*This scenario has been created from a series of life stories and does not represent an individual person.

Our collaboration and relationship with Territory Families is crucial to smoothing the transition to adult guardianship for young people with impaired decision-making under their care. A key focus of our contribution to the Territory Families induction program has been to ensure understanding, in particular, of section 12 of the *Guardianship of Adults Act 2016*. Section 12 provides for advance adult guardianship orders to be made, where needed, for young persons aged 17 which take effect on their 18th birthday. Its intent is to provide for continuity and consistency of care and support for young people with impaired decision-making capacity as they exit out-of-home care to guardianship, and to have in place a substitute decision-maker framework.

Quarterly meetings continued as in previous years between our staff and Territory Families key representatives, providing an opportunity to strengthen the interagency relationship and manage emerging issues. These meetings considered upcoming applications, documentation requirements and ways to improve practice at the agency interface to streamline relevant processes. A key positive change during the year was the agreement that all Aboriginal young people transitioning to adult guardianship will transition with a kinship plan in place.

Carly and Jake - a family bond*

As children, Carly and Jake shared a house with their younger brother Elias, while in the care of Territory Families. While their early childhood was difficult, they managed to remain together as a family unit until Carly turned 18. Carly was then required to move into independent accommodation. Carly was happy with this arrangement, but made sure she stayed in contact with her brothers and maintained their close bond.

When Jake turned 18 he too had to move into adult accommodation and entered into a share house arrangement with two older men. These men required a significantly higher level of care associated with their disability. This made it difficult for Jake to receive the attention, social interaction and skills development he needed.

Jake's assessments indicated that he was not reaching his full potential. This was attributed to environmental factors – his shared living arrangement. Maintaining the connection with his sister was also difficult because of the living arrangement and support by a different organisation. Both Carly and Jake were adamant that they wished to live together in a home suitable also for their younger brother when he too reached 18.

With advocacy from the Office of the Public Guardian, goodwill from the disability sector and a well-thoughtout NDIS plan – along with excellent individual assessments and well-defined goals – Carly and Jake finally achieved their wish. The siblings now occupy a house with room for their younger brother, enabling the trio to maintain their family bond. This was a terrific outcome for all involved and a testament to interagency cooperation.

*This scenario has been created from a series of life stories and does not represent an individual person.

Overall, we have seen an increase in applications to the NTCAT for advance guardianship orders for young persons with impaired decision-making capacity who had recently turned 17. This is a positive step. Initiating applications earlier provides all parties to applications increased time to respond to NTCAT requests for further documentation and reduces the associated stress for individuals, administrative systems and staff. It also provides for any matters regarding proposed guardians or other matters to be heard and resolved in advance of the young person turning 18.

Our broader advocacy efforts during the year included a public submission to the Royal Commission on Younger People in Residential Aged Care and associated advocacy for age-appropriate, and disability appropriate, living arrangements. We applaud the broadening of NDIS criteria to cater for younger people with significant disability (cognitive or other disability) currently in aged care and can report that this initiative has led to measurable improvements in arrangements for younger people placed prematurely into aged care facilities. The commitment to finding more age-appropriate placements in the community, in particular, is essential.

Supported decision-making

Supported decision-making is a practice that enables people to make decisions about their own life and enables the person to be involved in decisions that affect their care.¹⁹

The Office of the Public Guardian is refocusing guardianship practice with a strong emphasis on supported decision-making. This refocus is consistent with the guardianship principles at section 4 of the *Guardianship of Adults Act 2016*. The guardianship principles emphasise that priority be given to the views and wishes of the represented person, the least interference with the person's autonomy of decision and action, and supporting the individual to make their own decisions. This means that

supported decision-making occurs in the context of having significant knowledge of the represented person, an understanding of the person's views and wishes and being guided by the individual's known or stated preferences.

The Office of the Public Guardian has developed a comprehensive policy to guide Adult Guardianship Officers (AGOs) in their decision-making processes to ensure that:

- the AGO knows and understands the views and wishes of the represented person
- the represented person is provided with the required support to make their own decisions where reasonable and able to do so
- wherever possible, decisions made are consistent with the current views and wishes of the represented person or with their previously stated views and wishes.

An informative in-service training workshop on guardianship and supported decision-making was conducted by ACT Deputy Public Guardian Christina Thompson in September 2019. Further training will be undertaken with staff of the Office of the Public Guardian in the forthcoming year to embed the supported decision-making principles into current practice.

In addition to practice changes, the Office of the Public Guardian is exploring options for a controlled trial of a non-statutory supported decision-making project in the Northern Territory. One model being considered involves the provision of a supported decision-making service by NDIS service providers to NDIS participants. For the purposes of the trial, this service ideally would be implemented for a defined period without the requirement to appoint a guardian. NDIS service providers have indicated a willingness to participate in such a project. However, the ability to develop the project has been impacted by service provider capacity and the limited human services workforce in the Northern Territory.

¹⁹ The University of Sydney, Cognitive Decline Partnership Centre 2020, *Supported decision-making*, viewed 18 September 2020, https://cdpc.sydney.edu.au/research/planning-decision-making-and-risk/supported-decision-making/.

Interface with the justice system

The Office of the Public Guardian shares nationwide concerns expressed in respect of the overrepresentation of people with cognitive disability charged with or accused of criminal offences, and the disproportionate representation of people with cognitive disability who are victims of abusive or violent criminal conduct.

A function of the Public Guardian is to advocate for persons with impaired decision-making capacity by promoting understanding and awareness of issues impacting their lives. Such issues include the increased likelihood in the Northern Territory and elsewhere of persons with cognitive disability having interaction with the criminal justice system. The Office of the Public Guardian is committed to strategies which prevent or limit interactions between persons with cognitive disability and the criminal justice system and cease the indefinite detention of such persons in institutions such as prisons.

In 2019–20, 22 represented persons under guardianship of the Public Guardian were involved with the criminal justice system either as prisoners or subject to Part IIA of the *Criminal Code Act 1983* (Figure 6). Twenty-one of these were male, and one female (Figure 7).

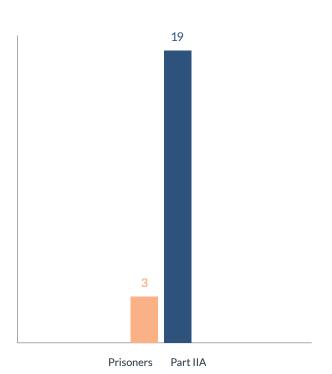


Figure 6: Prisoners and Part IIA: number of represented persons in 2019–20

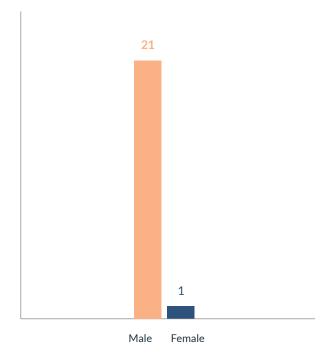


Figure 7: Prisoners and Part IIA: number of represented persons in 2019–20, by gender

Of the 22 represented persons, 19 were found unfit to stand trial subject to Part IIA of the *Criminal Code Act 1983*, which provides that alleged offenders with mental impairment are deemed not guilty or unfit to stand trial.

People who are found unfit to stand trial may have significant, multiple and complex needs arising from combinations of cognitive impairment, mental health issues, acquired brain injury, serious health issues, drug and alcohol problems, behavioural issues and frequent interaction with the criminal justice system.

Figure 8 shows the primary impairment of the 22 represented persons who were prisoners or subject to Part IIA of the *Criminal Code Act 1983* in 2019–20. Seventy-three per cent of these represented persons identified as having either a mental illness or intellectual disability as the primary impairment.

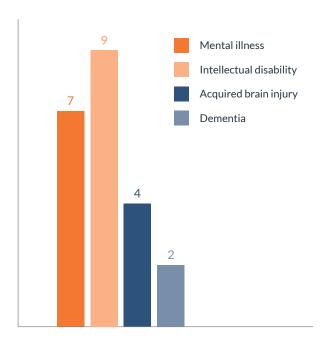


Figure 8: Prisoners and Part IIA: number of represented persons in 2019–20, by primary impairment

Of these 22 represented persons, all identified as Aboriginal or Torres Strait Islander. The disproportionate representation of Aboriginal people in the justice system is reflected in ABS data on prisoners in Australia: at 30 June 2019, Aboriginal and Torres Strait Islander people accounted for 83 per cent of the total adult prison population in the Northern Territory. This represents a marginal decrease on 2019 figures.²⁰

Many of the causal factors relevant to the increased interaction of Aboriginal peoples with the criminal justice system are relevant also to people with cognitive impairment. They include poverty, violence, discrimination, inadequate or inappropriate accommodation and poor English language literacy skills. These factors increase the likelihood that a person might be detained and questioned by police. They also increase the risk of recidivism. Where behaviour management issues are evident, they contribute to the possibility that an individual will remain in custody indefinitely due to the lack of suitable community-based accommodation and support options.

The Public Guardian acknowledges the evidence and rationale for non-custodial and community-based sentences for persons with impaired decision-making capacity. Persons with cognitive disability are immediately vulnerable to abuse by other prisoners by virtue of their disability and to systems failures associated with an absence of supports appropriate to their needs. This can manifest as behaviours which necessitate their isolation from other prisoners with the underlying cause remaining unresolved. The vulnerability of persons with cognitive disability is amplified by their removal from support networks, culture and daily routine.

As at 30 June 2020, 17 represented persons subject to Part IIA of the *Criminal Code Act 1983* were being supported in the community while two represented persons with cognitive disability remained in prison. The former demonstrates the effectiveness of the advocacy and transition planning undertaken by the Office of the Public Guardian and other stakeholders; the latter, the challenge of finding appropriate community-based solutions. The Office of the Public Guardian anticipates increased multiagency collaboration in this area in the future.

²⁰ Australian Bureau of Statistics 2019, 4517.0 *Prisoners in Australia*, 2019, viewed 11 June 2020, https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2019~Main%20Features~Northern%20Territory~27.

Housing people with cognitive disability and/or complex needs who have involvement with the criminal justice system is a significant issue in the Northern Territory. Although it is widely acknowledged that prisons are not appropriate for persons with cognitive disability and determinations under Part IIA of the *Criminal Code Act 1983*, there is often no immediate accommodation in the community to address their needs. Consequently, individuals eligible for release or community-based sentences may be confined to prisons, hospitals and mental health facilities for periods that significantly impact their health and emotional needs.

The Office of the Public Guardian will work collaboratively with stakeholders to address relevant concerns. Key to addressing the experience of people with cognitive disability at the justice interface will be targeted training and education to strengthen understanding of cognitive disability and complex needs among personnel working in the police, court and prison systems. We recognise that the justice system currently has limited capability to assess a person's capacity as an accused person, victim or witness. At the core of our advocacy is our concern to ensure that people with cognitive disability are supported and experience equal access to justice.

Collaboration and support: moving forward

It is broadly recognised that prisons are not designed to meet the support needs of people with disability. The vulnerability of people with cognitive disability is intensified with their removal from their community and support networks, including family and carers, routines, culture and home. The criminal justice system must recognise this vulnerability and its impacts on behaviour and wellbeing.

The Public Guardian welcomes and continues to work collaboratively with initiatives to prevent and reduce the rate of involvement of represented persons with the criminal justice system. To that end, the Public Guardian met with Correctional Services Commissioner Scott McNairn in March 2020 to discuss ways of identifying and supporting persons with disability both within the prison system and on release, and to formalise a collaboration going forward between the Office of the Public Guardian and Corrections.

Robert - transition to community*

Robert has complex behaviours and a history of interaction with the criminal justice system. Due to his disabilities Robert was found not guilty due to mental impairment. He was placed under a custodial supervision order and held in prison. His stay in prison was long term as suitable supported accommodation was not identified in the community.

After many months of extensive collaboration between the Office of the Public Guardian, Top End Mental Health Services, the Specialist Support and Forensic Disability Unit, behavioural specialists and a specialist accommodation service, a comprehensive plan was developed for Robert's release.

Robert has since transitioned to supported accommodation in the community and is engaging with specialist support services. Robert has expressed satisfaction with his current living arrangement, which has seen a reduction in antisocial and offending behaviours.

*This scenario has been created from a series of life stories and does not represent an individual person.

Financial management transfer

The 2018–19 reporting period saw the achievement of government approval to transfer financial administration and estates for all represented persons from the Office of the Public Guardian to the Public Trustee. This action responded to concerns raised in the 2016 Ernst and Young Financial Controls Review commissioned by the Office of the Public Guardian, which identified a number of risks associated with existing controls and processes in the administration of financial matters by the Public Guardian.

The transfer of financial management from the Public Guardian to the Public Trustee was scheduled to commence on 1 July 2019 with the process to be concluded for the majority of orders by 31 December 2019. The Public Trustee agreed to assume responsibility for financial matters associated with all new orders from 1 March 2019 in anticipation of this change.

At the start of this endeavour, the Public Guardian was administrator for the finances and estates of 425 represented persons. In practice this meant that the majority of guardianship orders with involvement of the Public Guardian for financial matters would be subject to an application for variation to the Northern Territory Civil and Administrative Tribunal (NTCAT),

the remainder being transferred through already scheduled reassessment hearings. This had significant implications for the Office of the Public Guardian, the Public Trustee and NTCAT resources in the lead-up to and during the period of transition.

The transition had significant short-term and ongoing resource implications for the Public Trustee, which needed to recruit to new positions ahead of the transfer to manage the increased caseload. Consequently, it was agreed between the three agencies that the transfers would occur at six-weekly intervals across the six-month period.

It was acknowledged by all parties that the transfer of financial responsibility to the Public Trustee would have particular impacts for stakeholders. Represented persons, private guardians who acted as joint guardian for financial and/or personal matters with the Public Guardian, service providers and financial institutions were key among those most affected. Extensive forward planning and collaboration between relevant agencies and teams within the Office of the Public Guardian was critical in managing an operation of such magnitude.

Significant attention was paid to logistics and communications to ensure that stakeholders were kept informed of all developments. Letters and fact sheets were produced at each stage of the process with 47 letter templates and nine fact sheets developed for communicating processes to represented persons, private guardians, family members, service providers and financial institutions.

All stakeholders received an initial notification that the transfer was about to commence. Communication was then made with parties relevant to each six-week transfer interval which included: advice that the transfer was imminent; letters accompanying the Standard Orders advising of the NTCAT hearing date; and letters accompanying the new and revised orders. In all a total of 4219 letters were sent out.

Adult Guardianship Officers contacted represented persons directly to explain how the transfer would affect them and what they would need to do once their order was changed. Business cards and fridge

magnets with contact information for the Office of the Public Guardian and Public Trustee were provided to represented persons and to private guardians with joint orders with the Public Guardian.

The transfer of financial matters from the Public Guardian to the Public Trustee was concluded in June 2020. The operation once again demonstrates the power of effective agency collaboration in the achievement of a highly complex operation and the professionalism and dedication of our staff.

The transfer of financial management to the Public Trustee means that the Public Guardian will only be appointed for personal decision-making and conclusively resolves concerns noted in the 2016 Ernst and Young review. Moving forward, it enables the Office of the Public Guardian to direct its efforts and resources to managing our increasing caseload of persons with Public Guardian involvement and to advance our advocacy, support and education mandates.



Inquiry and Engagement

The Inquiry and Engagement team provides guidance and support to all parties in relation to guardianship applications and represents the Public Guardian in Northern Territory Civil and Administrative Tribunal guardianship proceedings and investigations.

Inquiry and Engagement team responsibilities are consistent with defined functions under the *Guardianship of Adults Act 2016*. They include acting as a delegate of the Public Guardian in matters of guardianship before the Northern Territory Civil and Administrative Tribunal (NTCAT) and conducting investigations as directed by the NTCAT to inform NTCAT decisions.

The Inquiry and Engagement team participates in all guardianship application matters and provides information, guidance and support to all parties. They assist private guardians to navigate NTCAT processes for applications for new orders and the reassessment of orders, and support new guardians to understand the limitations and responsibilities of their role.



Inquiry and Engagement team functions are managed centrally through the Office of the Public Guardian Darwin office. They are distinct from the functions of our Guardianship team and Adult Guardianship Officers, who act on behalf of represented persons when appointed by the NTCAT.

Interface with Northern Territory Civil and Administrative Tribunal

The Public Guardian is considered a party to all guardianship matters in the Northern Territory and receives a copy of all applications for guardianship orders before the NTCAT. Members of the Inquiry and Engagement team act for the Public Guardian at these hearings and prepare reports in accordance with the principles underpinning the legislation to inform decisions at the direction of the NTCAT.

The Inquiry and Engagement team notifies the NTCAT of expected attendance at hearings of delegates of the Public Guardian and represented persons. It provides information to the NTCAT about orders approaching reassessment dates, including contact details for represented persons and private guardians.

Key achievements

- ✓ Attended in excess of 330 Northern Territory Civil and Administrative Tribunal hearings
- Supported administrative processes for the transfer of financial management to the Public Trustee

The team is responsible also for ensuring that all parties to a reassessment of an order receive a copy of the Standard Order where the Public Guardian is sole or joint guardian. In 2019–20 the team distributed 966 Standard Orders: 604 related to the transfer of financial administration to the Public Trustee; 362 related to other matters for orders with Public Guardian involvement.

While the team assists in all matters where the Public Guardian is party to an order, it may be directed by the NTCAT to assist in matters for the reassessment of orders where private guardians have been appointed. This is to ensure that private guardians are not disadvantaged through language or culture and have adequate guidance, support and understanding of relevant processes.

Information and assistance

The Inquiry and Engagement team is integral to the streamlined delivery of guardianship information and services in the Northern Territory. The team provides a central point of connection for internal and external stakeholders, enabling all parties to the guardianship process to prepare for applications and hearings effectively.

The Inquiry and Engagement team responds to specific enquiries for existing matters and more general information requests concerning guardianship applications, processes and orders. Enquiries are received directly from agencies and via our 1800 guardianship help line, email, our website feedback and enquiry form and 'walk-in' requests for support or information. Team members proactively provide information and assistance to colleagues across our core business areas and to stakeholders in health and key government agencies including Territory Families and the Public Trustee.

In 2019–20 the Inquiry and Engagement team responded to 109 enquiries from prospective and existing guardians, represented persons, service providers, family and community members and others. Of these, 59 related to guardianship applications and 28 concerned other guardianship matters. The remaining 22 enquiries included information about Advance Personal Plans, registering interstate orders and other matters. Existing private guardians accounted for a quarter of all requests for information or support in this period.

Support for new guardians and applicants

The Office of the Public Guardian recognises the challenges faced by new guardians and applicants navigating an unfamiliar environment. These challenges reflect the responsibility to advocate for the interests of a person with impaired decision-making capacity, deal with service providers and institutions, attend guardianship hearings and, where appointed as guardian, fulfil formal administrative responsibilities including recordkeeping and reporting.

Inquiry and Engagement team members thus work closely with applicants for guardianship orders to ensure that key terms and concepts which inform NTCAT processes, expectations and decisions are understood. They also assist applicants to identify the types and extent of documentation that may be required by the NTCAT for the determination of orders.

Once an order is made, Inquiry and Engagement team members assist new guardians, in particular, to understand the guardian role. This includes understanding of the guardianship principles, as set out in the *Guardianship of Adults Act 2016*, and what the guardian can and should do under the NTCAT order.

We provide all new guardians with a copy of our *Understanding guardianship* handbook, which outlines key guardian responsibilities, along with reporting examples and information on external supports. In 2019–20 we distributed 104 handbooks to new private guardians. Team members are available to provide additional supports as needed.

While responsibility for financial matters now sits with the Public Trustee, the Office of the Public Guardian continues to offer general guidance in this area and assist private guardians to navigate associated administrative and reporting requirements.

Communicating guardianship

Work towards four new fact sheets was initiated during the year by the Inquiry and Engagement team in collaboration with our Policy team. The fact sheets respond to information gaps identified in feedback from staff engaging with private guardians, as well as to email, telephone or online information requests.

These fact sheets will clarify:

- what people applying for guardianship orders must do and consider
- the difference between a guardian and a carer
- how young people aged 17 transition to adult guardianship
- the respective roles and responsibilities of the Office of the Public Guardian, NTCAT and Public Trustee in guardianship application and administration processes.

It is anticipated that these fact sheets will be published in the forthcoming year.

Ruby - a young private guardian for her father*

Ruby was only 20 when her father had a major medical event that led to significant cognitive disability. The hospital refused to discharge him home as they considered his house was not suited to his needs and he needed supports.

Ruby's father was clearly not in a position to manage his finances and the bank threatened to foreclose on his mortgage. A guardianship order was necessary to secure his financial and personal future.

Ruby was supported by the Office of the Public Guardian and our Inquiry and Engagement team to apply for guardianship to manage her father's affairs. In spite of her relatively young age, she was appointed sole guardian for her father with responsibility for personal and financial matters.

The guardianship order gave Ruby authority to access her father's superannuation funds to pay off his debts, including all outstanding mortgage repayments. It also provided for home modifications to cater for his disability.

Again with our support, Ruby applied for an NDIS package, which enabled her father to return home safely.

Ruby had been uncertain about taking on the role of guardian because of her age. However, with our information and guidance she gained the skills and knowledge to undertake the role with confidence.

Ruby returned to our office after several months to share her achievements with the Inquiry and Engagement team and to seek feedback on how she was doing. Our team was able to confirm that she was doing a great job and to validate her efforts.

Ruby reported that her father was happy that she had been appointed as his guardian. He was grateful that he was able to return home with the assistance of NDIS support services and the knowledge that his daughter would be supported to look after his personal and financial affairs.

*This scenario has been created from a series of life stories and does not represent an individual person.

The production of quarterly newsletters for private guardians continued during the year. These newsletters address an identified need for targeted information for private guardians and include items such as National Disability Insurance Scheme (NDIS) updates, advice re guardianship administration changes and, in 2019–20, operational arrangements in a COVID-19 environment. Tips for new guardians are also provided.

Information forums for practitioners, administrators, policy makers and the general public were also supported by the Inquiry and Engagement team throughout the year. These forums provided an opportunity for our plain language guardianship fact sheets to be disseminated, and for the team to address common queries or concerns shared by individuals and organisations. Fridge magnets and branded products were distributed for easy direction to our website and contact details.

Inquiries and investigations

The Inquiry and Engagement team conducts inquiries and investigations where directed by the NTCAT. These relate in the main to inquiries about applications for orders, the views of interested parties and the suitability of proposed guardians.

The team also receives concerns raised about the conduct of a guardian or welfare of persons subject to orders and provides guidance and information about how these concerns can be addressed. Such concerns may come to the attention of the Office of the Public Guardian through reports by concerned citizens, service providers, family members or the represented person themselves.

Formal review proceedings including an application for the reassessment and variation of an order to the NTCAT are commenced where a preliminary investigation of matters brought to our attention raises issues in respect of the appropriateness of a guardian and/or the welfare of the represented person. Where the matters raised relate to the

conduct of a private guardian, then the person with concerns can lodge an application to the NTCAT for a reassessment of the order. They do not need to be an existing party to the proceedings to lodge such an application.

Applications for guardianship orders

Relative to other jurisdictions nationally, rates of guardianship in the Northern Territory as a proportion of the population are high.

The expansion of eligibility criteria for guardianship in July 2016 to include people with impaired decision-making capacity from any cause and including episodic impairment initially led to an increased number of guardianship applications in successive years. Since 2017–18 the number appears to have stabilised (Figure 9).

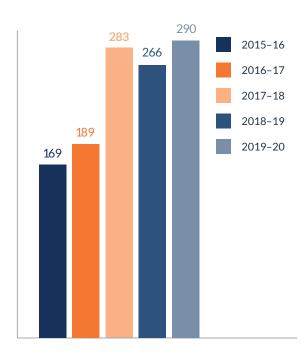


Figure 9: Number of guardianship applications: trends over five years

However, reporting for 2019–20 again shows a slight increase with the Office of the Public Guardian participating in 290 guardianship applications during the year. This represents an increase of 9 per cent compared with 2018–19.

We anticipate a reduction in the number of new applications in coming years with the proposed introduction of health care decision-makers legislation. These changes, if implemented, will remove the need for persons in the Northern Territory to apply for guardianship in order to have decision-making authority in health care matters and should see a reduction in the number of overall guardianship applications.

The transfer of financial matters from the Office of the Public Guardian to the Public Trustee, which concluded in June 2020, has had no impact on the number of new applications requiring the participation of the Office of the Public Guardian. All applications for guardianship, including those for financial management only, still require Office of the Public Guardian involvement.

Of the 290 applications in 2019–20, 224 were for new or urgent new orders (Figure 10). The majority of applications for new or urgent orders (N=155) were submitted by persons employed in professional roles such as doctors and social workers. The remainder (N=69) were submitted by family members and other interested persons in the community.

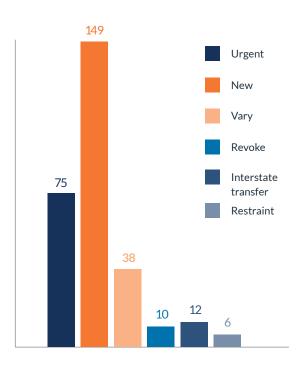


Figure 10: Number of guardianship applications in 2019–20, by application type

Dementia continues to be identified as the primary impairment for the majority of new applications for guardianship (32%) (Figure 11). Overall, 60 per cent of applications in 2019–20 for persons with impaired decision-making capacity related to acquired brain injury, neurological disorders and dementia. Intellectual disability accounted for only 20 per cent

of applications and mental illness for 10 per cent. Primary impairment for a further 10 per cent of applications was yet to be determined. It is important to recognise that until accident, age, illness or other disability impacted their decision-making capacity these people did not require guardianship.

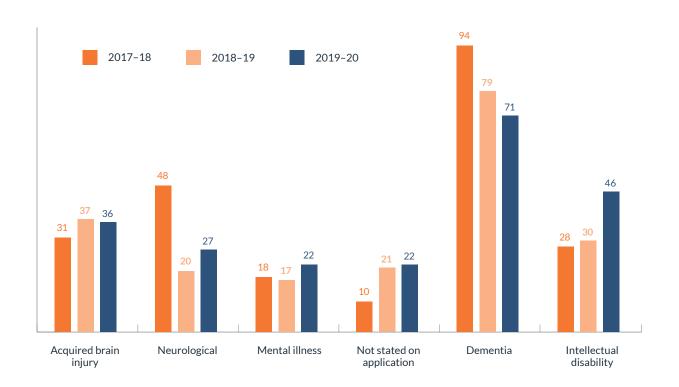


Figure 11: Primary impairment stated on new and urgent applications: 2017–18, 2018–19 and 2019–20

Of the 224 new and urgent applications received in 2019–20, 49 per cent identified the subject of the application as Aboriginal or Torres Strait Islander (Figure 12). This represents an 11 per cent decrease on 2018–19. The proportion of Aboriginal and Torres Strait Islander people under guardianship, however, continues to be disproportionately high relative to the total Aboriginal and Torres Strait Islander population in the Northern Territory.

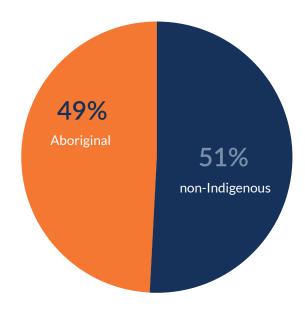


Figure 12: Applications for guardianship orders in 2019–20, by Aboriginal and non-Indigenous status (%)

The slight increase in the total number of guardianship applications (N=24) (Figure 9) is reflected in the number of new guardianship orders made in 2019–20 (N=182), which increased by 16 per cent (relative to 2018–19). The overall increase in guardianship orders can be attributed in large part to the success of our information and education campaigns and increased understanding of guardianship among service providers and communities in the Northern Territory.

Of the 182 new guardianship orders made in 2019–20, 79 appointed the Public Guardian as sole or joint guardian (Figure 13). This represents a decrease in orders involving the Public Guardian of 7 per cent since 2018–19. Of these 79 orders appointing the Public Guardian, 66 also appointed the Public Trustee for financial management. A further 10 orders were for joint guardianship with private guardians with three orders appointing the Public Guardian only.

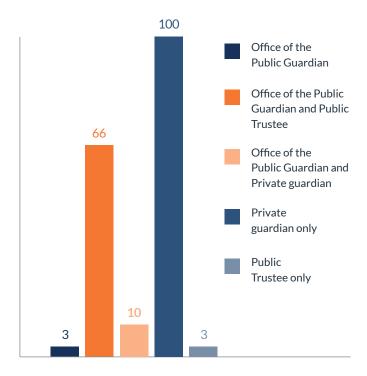
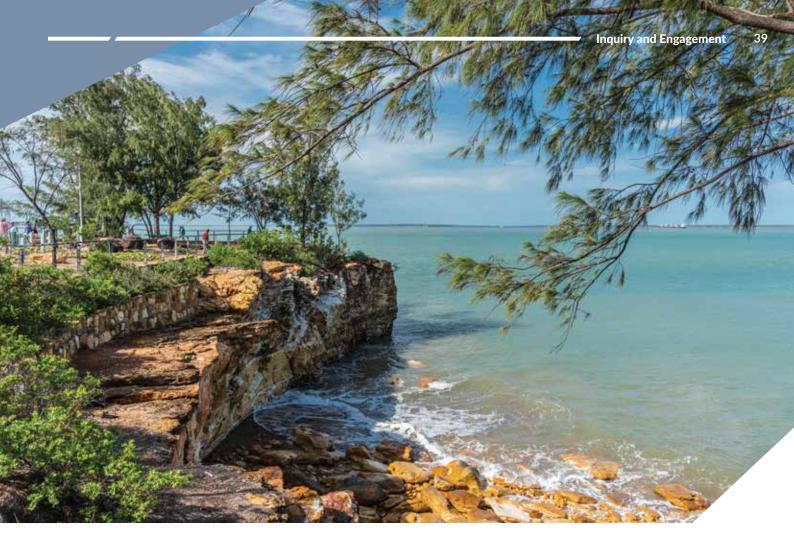


Figure 13: Number of new guardianship orders in 2019–20, by appointment type



The increased number of private guardians is notable (N=100) and reflects our targeted information and education strategy to support family members and interested parties to assume the role of guardian.

Figure 14 shows the number of private guardians acting solely or jointly with the Public Guardian as a comparison over three years.

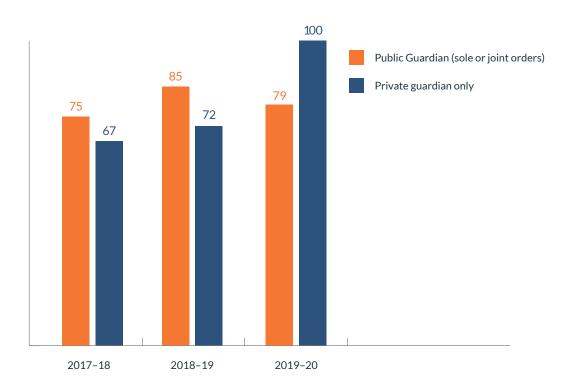


Figure 14: Representation of private guardians in guardianship: 2017–18, 2018–19 and 2019–20

Guardianship

The Office of the Public Guardian provides guardianship for persons with impaired-decision making capacity aged 18 and over who cannot make informed decisions on their own.

Public guardianship

The Public Guardian acts as a guardian of last resort. The Public Guardian may be appointed by the Northern Territory Civil and Administrative Tribunal (NTCAT) as a guardian for a person with impaired decision-making capacity where no other suitable guardian exists. Personal matters for which the Public Guardian may be appointed under a guardianship order include decisions relating to health care and accommodation.

The Guardianship of Adults Act 2016 provides for the appointment of the Public Guardian as guardian for an adult in three key circumstances:

- when appointed by a guardianship order
- when the appointment of a private guardian for an order ceases
- where a private guardian temporarily is unable to act.

The appointment of the Public Guardian requires the NTCAT to be satisfied that no alternative guardian exists and that the interests of the person are best served by public guardianship.

The NTCAT ceased appointing the Public Guardian for financial matters from March 2019 in anticipation of the transfer of responsibility for financial management from the Public Guardian to the Public Trustee. The transfer of existing orders from the Public Guardian to the Public Trustee commenced on 1 July 2019 and was completed by 30 June 2020.

There remains an intersection, however, between personal and financial matters in respect of the administration of costs associated with personal decision-making. The Office of the Public Guardian will therefore continue to work closely with the Public Trustee and provide guidance to private guardians to ensure that all parties fulfil their responsibilities for the persons they represent. A document reflecting the interface of the Office of the Public Guardian and Public Trustee has been developed.



Key achievements

- ✓ 640 orders appointing the Public Guardian in the reporting period
- ✓ Advocacy at National Disability Insurance Scheme planning and plan review meetings

Adult Guardianship Officers

The Office of the Public Guardian has a team of delegated Adult Guardianship Officers (AGOs) who work with represented persons. The role of AGOs is limited to making decisions and advocacy around the circumstance of those decisions.

AGOs do not carry out whole-of-life case management or attend to the day-to-day care needs of represented persons. The key distinction between the role of an AGO and a carer is that an AGO has legal authority to act as decision-maker on behalf of the represented person in the types of matters stipulated in the guardianship order. Carers may provide day-to-day supports but have no legal authority to act for the person as a substitute decision-maker.

The Public Guardian may be appointed to act for a represented person solely or jointly with a private guardian. All guardians can only make the types of decisions set out in the guardianship order. Where a private guardian is appointed in a joint capacity with the Public Guardian, the private guardian(s) and Public Guardian must be in agreement for all decisions. In accordance with the guardianship principles, the interests and wishes of the represented person must be respected by all parties in decision-making processes.

In 2019–20 each AGO had responsibility for decision-making for an average of 50–65 represented persons. Collectively, our AGOs made approximately 830 decisions on behalf of represented persons in the course of the year. The majority of these decisions in 2019–20 were for health care matters (N=541).

AGO community visits

The Northern Territory geographic and demographic context presents unique challenges for the Office of the Public Guardian with a number of represented persons and their families residing in remote and very remote areas. Telecommunications can be unreliable and guardians and family members difficult to reach due to seasonal factors, mobility and location. Our goal, however, is to visit all represented persons with orders involving the Public Guardian at least once a year with additional visits scheduled where required. This strategy is consistent with National Standards of Public Guardianship endorsed by the Australian Guardianship and Administration Council.

Face-to-face visits with represented persons help us to review their circumstances and ensure that decisions we are party to are effected in practice. The visits also provide us with an opportunity to meet with private guardians, family members, carers and service providers, who may see the person on a more frequent basis, and offer guardianship information and advice. An interpreter generally is requested where available to ensure that our interaction with communities is appropriate and language barriers at our end managed.

In 2019–20 our AGOs visited 338 represented persons in nursing homes, hospitals, prisons, supported independent living situations and other community-based accommodation across the Northern Territory. However, restrictions due to COVID-19 limited our ability to visit represented persons in the latter part of the reporting period.



Guardianship trends in the Northern Territory

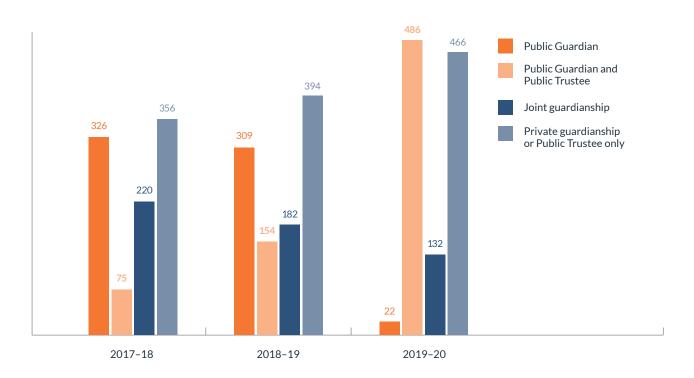


Figure 15: Number of persons with guardianship orders, by guardianship type: 2017–18, 2018–19 and 2019–20

Note: 'Joint guardianship' is Public Guardian and private guardian

The Northern Territory has the highest proportion of its population under guardianship compared to all other Australian states and territories.

In 2019–20, a total of 1106 persons were subject to guardianship orders in the Northern Territory. This represents an increase of 6 per cent on the previous year. The Public Guardian was appointed sole or joint guardian for the majority of these orders (N=640) with the remainder of orders appointing private guardians and/or the Public Trustee for financial management (N=466) (Figure 15). The majority of represented persons with Public Guardian involvement identify as Aboriginal or Torres Strait Islander (77%).

The Office of the Public Guardian views the continued increase in private guardianship (Figure 16) as a positive reflection of our efforts to support and encourage family members to assume a private guardianship role. We continue to work closely with and support private guardians who have joint guardianship arrangements with the Public Guardian to gain the confidence and knowledge that will empower them to transition to a sole private guardianship arrangement and exercise their responsibilities without our direct involvement.



Figure 16: Number of orders appointing private guardians: trends over four years

Guardianship by location

In 2019–20 the highest number of represented persons and the vast majority of persons with private guardianship orders were resident in Greater Darwin (Figure 17). The majority of persons with guardianship orders in Alice Springs had orders managed by the Public Guardian, with 186 orders appointing the Public Guardian as sole or joint guardian.

The high number of represented persons in the Greater Darwin region compared with other Northern Territory jurisdictions reflects the proportion of people living with disability who require access to services. It is hoped that as National Disability Insurance Scheme (NDIS) services in regional and remote areas expand, this trend may reduce or cease.

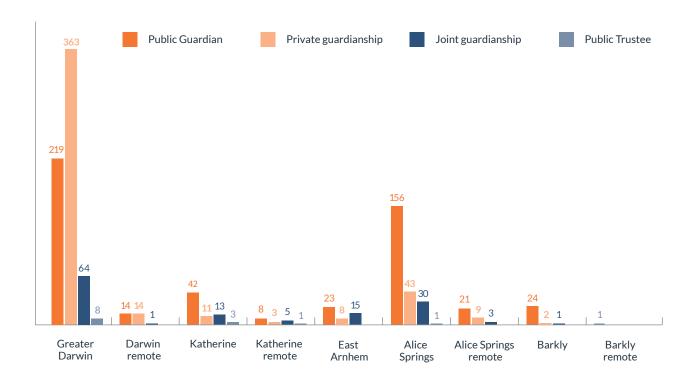


Figure 17: Primary location of persons with guardianship orders in 2019-20, by guardianship type

Note: 'Joint guardianship' is Public Guardian and private guardian

Guardianship by gender

In 2019–20, 59 per cent of persons with guardianship orders appointing the Public Guardian for personal or financial matters were male (Figure 18). This reflects the Northern Territory's demographic: at 30 June 2019, the Northern Territory had the highest sex ratio of all the Australian states and territories with around 107 males per 100 females.²¹

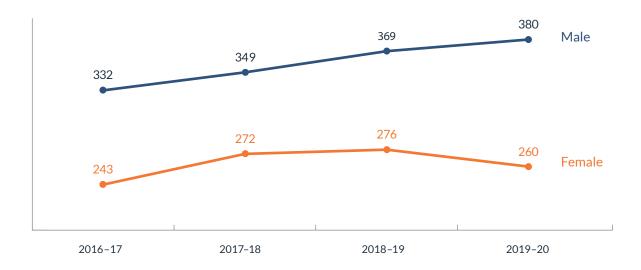


Figure 18: Number of persons with guardianship orders involving the Public Guardian, by gender: trends over four years*

Note: *Includes sole and joint guardianship

Guardianship by age and primary impairment

Represented persons with a sole or joint guardianship order appointing the Public Guardian were most strongly represented in the older age groups (Figure 19). Representation was stronger from around age 45 with more people aged 75 years or over under guardianship than those in other age groups.

For represented persons aged 65 years and over dementia was the most frequently reported primary impairment. The most frequent primary impairment was intellectual disability for those aged 18–44, and acquired brain injury for those aged 45–64 (Figure 20).

²¹ Australian Bureau of Statistics 2019, 3101.0 – *Australian Demographic Statistics, Jun 2019*, 'Population by Age and Sex Tables', Table 5, data cube, issue released 19 December 2019, viewed 15 August 2020, https://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/4B29953E6CCF6F25CA25852F001DE516?opendocument.

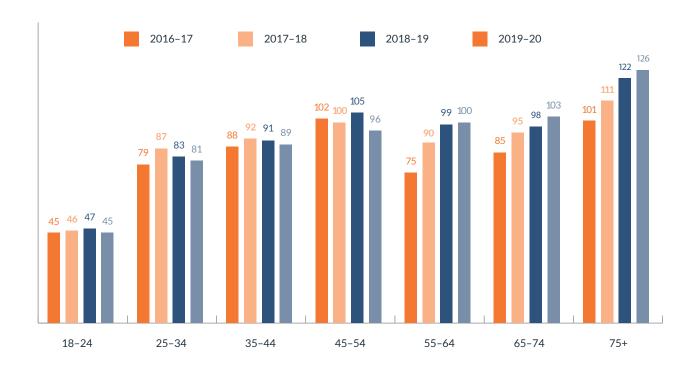


Figure 19: Number of persons with guardianship orders involving the Public Guardian, by age: trends over four years*

Note: *Includes sole and joint guardianship

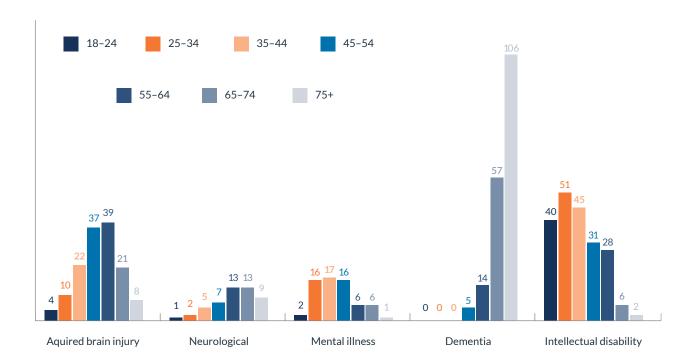


Figure 20: Number of persons with guardianship orders involving the Public Guardian, by age and primary impairment

Note: *Includes sole and joint guardianship

The life expectancy at birth of Aboriginal and Torres Strait Islander peoples is less than that for non-Indigenous Australians, with the lowest life expectancy experienced by those living in remote and very remote areas. The Australian Bureau of Statistics reports that the difference in life expectancy at birth for Aboriginal and Torres Strait Islander peoples and non-Indigenous peoples in the Northern Territory is 11.5 years for males and 12.8 years for females. This equates to 66.6 years of age for Aboriginal and Torres Strait Islander men (78.1 years for non-Indigenous males) and 69.9 years of age for Aboriginal and Torres Strait Islander women (82.7 years for non-Indigenous women). Hence, an Aboriginal Territorian typically will experience life course events associated with 'older' predominantly non-Indigenous age groups when aged 45 to 50 years and above.²²

Mental health

The Mental Health and Related Services Act 1998 provides for the care, treatment and protection of people with a mental illness and intersects at different levels with the Guardianship of Adults Act 2016.

The Office of the Public Guardian continues to face challenges arising from the complexities of maintaining their responsibility for represented persons who find themselves subject to multiple legislative instruments. AGOs must take into account individual rights under the Mental Health and Related Services Act 1998 while adhering to the underpinning guardianship principles of the Guardianship of Adults Act 2016. The Office of the Public Guardian engaged an experienced practitioner during the year to provide educational sessions to assist staff to increase their expertise around mental health and related issues for represented persons.

National Disability Insurance Scheme

The NDIS provides government-funded individualised support packages to eligible people with disability and assists NDIS recipients to access mainstream, community and informal supports. The full implementation of the NDIS in the Northern Territory commenced on 1 July 2019. At 30 June 2020, 379 of 411 represented persons with Public Guardian involvement eligible for participation in the NDIS had NDIS plans in place.

The Office of the Public Guardian acknowledges the National Disability Insurance Agency's (NDIA) efforts to develop an approach that takes into account the Northern Territory's demographic characteristics and circumstance. These characteristics relate in the main to remoteness, including seasonal factors impacting access to communities, and high general workforce and population mobility.

The NDIS continues to have a significant impact on our guardianship operations. AGOs must now liaise with a large number of service providers, support coordinators and specialist support coordinators on top of their existing responsibilities, and the number of decisions to be made has increased substantially. The administration burden for AGOs as decision-makers and signatories for NDIS participant service agreements is momentous and increasing.

NDIS planning and service provision

The NDIS is enabling more people with disability to transition from institutional settings such as hospitals and prisons to community-based care. While this provides for greater choice and control over aspects of their lives, there continue to be issues with support coordination, resourcing of plans and requests for reviews not being dealt with in a timely manner. Such issues disproportionately affect Aboriginal people who comprise the majority of persons incarcerated in the Northern Territory and the majority of persons with guardianship orders.

In remote and very remote regions services on the ground are limited. NDIS-funded services are often not yet established or in the very early stages of planning. Conversely, aged care services are likely to exist to

²² Australian Bureau of Statistics 2018, 3302.0.55.003 – *Life Tables for Aboriginal and Torres Strait Islander Australians, 2015–2017*, viewed 19 June 2020, https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/3302.0.55.003~2015-2017~Media%20 Release~Life%20expectancy%20lowest%20in%20remote%20and%20very%20remote%20areas%20(Media%20Release)~15.

some degree and be known as Aboriginal people are eligible for these services from age 50. This situation has resulted historically in many Aboriginal people who are eligible for NDIS supports engaging with aged care services, in the first instance, with reduced options and supports.

The Office of the Public Guardian has noted the emergence in the past year, however, of a number of creative and flexible NDIS-funded services in remote locations: for example, smaller agencies seeking to set up disability support services or expand service provision beyond aged care. While this increase in service provision is welcomed by the Office of the Public Guardian, we remain concerned about the limited number of services and opportunities available to eligible NDIS participants in remote locations who may wish to transition from aged care to disability services and supports.

We reported also last year a number of challenges impacting the range and extent of supports included in NDIS plans. These challenges lead to poorer outcomes for represented persons within the NDIS framework and relate in large part to the reliance of the NDIS funding model on existing service availability and perceptions of service delivery barriers in remote regions. They predominantly affect Aboriginal people who exercise their cultural and human right to remain in place on country. Unfortunately, such issues persist:

- services are thin on the ground in remote and very remote regions
- inadequate service inclusions and supports are provided for complex NDIS participants
- poor cultural awareness and assumptions impact NDIS/participant interactions and outcomes
- NDIS workforce retention issues lead to inconsistent supports and fractured participant and stakeholder relationships
- the NDIS funding model fails to incentivise the entry of new operators and reduces options and outcomes for remote-area participants.

The Office of the Public Guardian remains concerned also about significant delays reported in the processing of participant plan reviews. These delays are causing disadvantage and hardship to people living with disability in the Northern Territory. On a more positive note, however, we are pleased to report that participant plans have continued to improve over the past year. This is largely due to the funding of additional disability-related health supports in response to feedback and advocacy by the disability, health and service sectors.

The introduction in the Northern Territory of the NDIS Complex Support Needs Pathway, which includes experienced planners, has also been well received. We welcome, in particular, the inclusion of support worker, nurse or allied health worker assistance, diabetic management clinical supports, nutrition supports, respiratory supports and wound and pressure care supports. The involvement of the specialised planning team with our AGOs to date has generally been very positive. It is rewarding for the Office of the Public Guardian to have contributed to this result in our role as advocate for represented persons and, more broadly, all people living with disability in the Northern Territory.

NDIS Complex Support Needs Pathway

The NDIS Complex Support Needs Pathway provides for specialised supports for participants with multiple challenges impacting their lives. It responds to feedback from NDIS participants, advocates and service providers that the NDIS was not meeting the needs of participants with complex support needs adequately. For persons under guardianship in the Northern Territory, this typically relates to people with psycho-social disabilities who are at risk of or experiencing homelessness through failed tenancies or their inability to secure appropriate accommodation. The cohort includes persons under guardianship whose discharge from institutions such as hospitals or prisons is contingent on being housed.

Features of the Pathway model more broadly include strengthened local engagement and liaison with government services and community supports; detailed handovers and streamlined access decisions; specialised planners and Complex Support Practice Lead Planning conversations with participants and stakeholders; Skilled Support Coordinators; ongoing monitoring and evaluation; and a participant review process.²³

The Pathway rollout commenced in select local government areas in Victoria and NSW in November 2018 with a progressive expansion into all states and territories including the Northern Territory from March 2019. We can report that the initiative has seen positive outcomes to date, with represented persons, service providers and AGOs all reporting improvements in participant satisfaction and outcomes.

Specialist Disability Accommodation

Specialist Disability Accommodation (SDA) provides purpose-built or modified housing for people with high support needs or extreme functional impairment who meet specific eligibility criteria.

During the year, the Office of the Public Guardian collaborated with Somerville Disability Service by ensuring adequate funding in individual NDIS participant plans to allow for an innovative SDA interstate assessor to train local occupational therapists to carry out SDA housing assessments. The aim of the endeavour was to provide for a larger skill base of professionals in the Northern Territory with the requisite knowledge and skills to identify SDA housing requirements and modifications for represented persons with complex needs.

NDIS support coordination

NDIS Support Coordinators assist NDIS participants to link into services and understand their plan entitlements. Their role is critical to achieving positive outcomes for represented persons.

A concern in past years for the Office of the Public Guardian has been the level of support coordination in NDIS plans for persons under guardianship, which in our view is frequently inadequate. This concern remains. We are also particularly concerned that the role of an AGO and the different role of Support Coordinators is not fully understood administratively and in practice by stakeholders including the NDIA, and may result in the reduction of support coordination in NDIS plans. Notwithstanding these concerns, we acknowledge the complexity of the Northern Territory environment and recognise relevant efforts within the NDIA and by NDIS providers to take on board our feedback and that of other relevant stakeholders.

During the year, the Office of the Public Guardian continued to facilitate Territory-wide Support Coordinator meetings with executive staff scheduling meetings with service agencies in Darwin, Katherine, Nhulunbuy, Tennant Creek and Alice Springs. The aim of these meetings was to provide a forum for sharing respective challenges and perspectives experienced by the Office of the Public Guardian and contracted NDIS Support Coordinators across the Northern Territory.

Two newsletters were distributed via email to Support Coordination agencies in 2019 and 2020. The newsletters follow on from face-to-face and telephone conference meetings held by the Office of the Public Guardian with Support Coordination agencies. The Public Trustee was a guest presenter at the most recent round of meetings in Darwin, Nhulunbuy, Katherine, Tennant Creek and Alice Springs in May 2020. Recent feedback from the Support Coordination agencies was that the meetings and newsletters were helpful and should continue. Three rounds of meetings with Support Coordination agencies are scheduled for 2020–21.

²³ National Disability Insurance Agency 2018, *Improved NDIS planning for people with complex support needs*, Pathway reform, Media release from the Assistant Minister, News, 16 November 2018, viewed 15 August 2020, https://www.ndis.gov.au/news/1002-improved-ndis-planning-people-complex-support-needs.

NDIS and COVID-19

The Office of the Public Guardian welcomed the introduction of a range of NDIA measures to support NDIS participants and providers through the COVID-19 pandemic. We can report positive feedback from service providers, guardians and represented persons in respect of the following: the broadening of some conditions to facilitate the purchase of assistive technology items; introduction of priority home delivery service and associated access codes; extension of Supported Independent Living (SIL) plans by 365 days where reviews are pending; and extension of NDIS plans by up to 24 months, ensuring continuity of supports where the full impact of COVID-19 is yet to be determined.

We express caution, however, in respect to the effects for vulnerable persons, carers and service providers of the planned removal of some temporary measures from 1 July 2020 (announced 12 June 2020). In particular, we have concerns about the planned removal of the 10 per cent price loading on some core and capacity building supports, given the unknown duration of the pandemic, and the roll back of the Medium Term Accommodation period to 90 days (from 180 days).

Submissions to NDIS inquiries

The Office of the Public Guardian provided submissions to three NDIS inquiries during the year:

- Joint Standing Committee on the National Disability Insurance Scheme (NDIS) Inquiry into NDIS Planning - September 2019
- Joint Standing Committee on the National Disability Insurance Scheme (NDIS) Inquiry into Supported Independent Living – September 2019
- Joint Standing Committee on the National Disability Insurance Scheme (NDIS) Inquiry into NDIS Workforce – April 2020.

An interim report for the Inquiry into NDIS Planning was released in December 2019. It noted key points raised by the Office of the Public Guardian in respect to support for the provision of draft participant plans to address errors, discrepancies and oversights and ensure they reflect the real needs of participants. Associated risks identified included increased delays in finalising the plans.²⁴

The Joint Standing Committee on the National Disability Insurance Scheme (NDIS) Report into Supported Independent Living was published in May 2020. It too referenced important points raised by the Office of the Public Guardian regarding resource and funding wastage associated with Short Term Accommodation approval processes for participants awaiting approval for Supported Independent Living (SIL).²⁵ Issues related to SIL funding inclusions were also noted.

At the close of the financial year the NDIS Workforce Inquiry was yet to release their report.

Broader concerns raised by the Office of the Public Guardian in submissions to these inquiries relate to the reliance of NDIS participant outcomes on the knowledge and expertise of individual NDIA planners, a lack of understanding of cultural context and environment, inadequate support coordination and an apparent view that if services or supports are not immediately available in the Northern Territory, then funding for the relevant items should be withdrawn.

From an organisational perspective it is satisfying that we have had the privilege of contributing positively to the national dialogue and voicing common concerns in the disability space. We acknowledge the time and effort of NDIS Committee Members and Inquiry staff in this process.

The following outlines a number of key recommendations by the Office of the Public Guardian in relation to our submissions to the relevant inquiries.

²⁴ Parliament of Australia, Joint Standing Committee on the National Disability Insurance Scheme 2019, NDIS Planning interim report, Chapter 3: Key areas of concern, viewed 27 June 2020, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/ National_Disability_Insurance_Scheme/NDISPlanning/Interim_Report/section?id=committees%2freportjnt%2f024350%2f72385.

²⁵ Parliament of Australia, Joint Standing Committee on the National Disability Insurance Scheme, *Report into Supported Independent Living 2020*, Recommendation 10, Commonwealth of Australia, Canberra, p. 48.

Inquiry into NDIS Planning

Key recommendations:

- Increased knowledge, expertise and formal skills certification/accreditation is required for the NDIA planning workforce to assist understanding of complex needs and supported decision-making, and ensure adequate levels of support coordination in participant plans.
- NDIA processes need to be streamlined to remove the requirement to deal with Local Area Coordinators in addition to NDIA planners and reduce planning complexity.
- Increased core support funding is required to reduce gaps in NDIS participant plans and ensure that the participant supports provided are appropriate to their needs and adequate.

Inquiry into Supported Independent Living

Key recommendations:

- The current lengthy and cumbersome approval process for access to Supported Independent Living (SIL) needs to be reviewed to provide for a simplified approval process for NDIS participants and reduce current harms to participants associated with protracted wait times for supports.
- The SIL model needs to provide for and consider the needs of people with high and complex needs holistically to ensure that outcomes for represented persons, including housing, are fully funded, appropriate and sustainable.

- Funding for home modifications and basic services needs to be incorporated into the SIL funding model with consideration of subsidies for private rentals where sourced for participants on a Disability Support Pension.
- SIL services need to be available to represented persons living 'on country' outside of remote centres to provide for increased community supports and avoid dislocation from family and culture.

Inquiry into NDIS Workforce

Key recommendations:

- Increased representation of Aboriginal people in the NDIS workforce, and consideration of the cultural and linguistic diversity of the current NDIS workforce, is required to improve communication and outcomes for represented persons.
- Improved rates of remuneration, benefits and training opportunities are required for NDIS staff working in remote and very remote areas to attract a higher skills base, increase job satisfaction and mediate staff 'churn' impacting continuity of services and relationships.

Restrictive practices legislation

The National Disability Insurance Scheme (Authorisations) Act 2019 (NDIS Authorisations Act) took effect on 1 July 2019. The intent of the NDIS Authorisations Act is to limit the use of restrictive practices and to ensure that the best interests and rights of individuals are paramount. The NDIS Authorisations Act has implications for represented persons who are NDIS participants.



The position of the Office of the Public Guardian is that the use of restrictive practices for persons with disability should be considered as a last resort only where no reasonable alternative exists. We argue for the introduction of a robust authorisation and monitoring framework across all service sectors to ensure that the practice, wherever possible, is reduced with a view to being eliminated.

NDIS Quality and Safeguards Commission

Significant change within the NDIS landscape this year included the creation of a Senior Practitioner role under the *National Disability Insurance Scheme* (Authorisations) Act 2019 and transfer of NDIA service provider complaints (reportable incidents) to the NDIS Quality and Safeguards Commission.

The NDIS Quality and Safeguards Commission commenced operating in the Northern Territory on 1 July 2019. As an independent regulatory agency, its mission is to 'regulate NDIS providers, provide national consistency, promote safety and quality services, resolve problems and identify areas for improvement'.²⁶

The Commission oversees code of conduct and practice standards for workers and service providers and has the power to take regulatory action in respect of reportable incidents including death, serious injury, abuse or neglect, unlawful sexual or physical contact or assault including grooming of a person for sexual activity and unauthorised use of restrictive practices in relation to a person with disability.²⁷

Pansy - engaging with community through the NDIS*

Pansy is an Aboriginal woman in her late fifties who lives in a nursing home. An application to the NDIS was submitted and approved to fund community access to enhance her quality of life.

Prior to being accepted into the NDIS, Pansy was required to self-fund any outings. This severely restricted her ability to engage with external activities and community.

Pansy's NDIS engagement has given rise to a better quality of life and more opportunities to explore new activities and cultural connections in the community.

*This scenario has been created from a series of life stories and does not represent an individual person.

NDIS Quality and Safeguards Commission 2020, NDIS Quality and Safeguards Commission, viewed 28 June 2020, https://www.ndiscommission.gov.au/.

NDIS Quality and Safeguards Commission 2020, Incident management and reportable incidents (NDIS Providers), viewed 28 June 2020, https://www.ndiscommission.gov.au/providers/incident-management-and-reportable-incidents.

Corporate Services and Policy

Our Corporate Services and Policy teams assist the Office of the Public Guardian to meet its formal reporting and administrative functions under the *Guardianship of Adults Act 2016*. Their functions and responsibilities include business administration, stakeholder engagement and policy development.

Systems management

The Office of the Public Guardian is committed to ensuring that our business and technological foundations are adaptive, productive and supportive of our staff and the people and communities we serve.

Business continuity planning and COVID-19

The COVID-19 pandemic, an unprecedented event in recent world history, imposed fundamental changes to existing mechanisms for social interaction, business transactions and service provision. In the Northern Territory, this included the reduction of face-to-face government services at business premises and a shift to home-based work for a limited period early in 2020.

Territory, this included the reduction of face-to-face government services at business premises and a shift to home-based work for a limited period early in 2020.

Civil intro in the

The Office of the Public Guardian recognised growing concern in our community about the rapid spread of COVID-19 and adopted a planned approach to adapting our business practice to the new environment in which we found ourselves. Critical to our work in this environment was our ability to maintain guardianship services while ensuring the safety and wellbeing of vulnerable Territorians, our stakeholders and staff.

A Business Continuity Plan and comprehensive operational strategy were developed to minimise disruption to our core business activities. These provided for the delivery of guardianship services remotely from home-based locations in the Greater Darwin area and Alice Springs. A mechanism for managing our interface with the Northern Territory Civil and Administrative Tribunal (NTCAT) was introduced to ensure that matters could be progressed in the absence of face-to-face hearings.



Key achievements

- ✓ Developed and implemented Office of the Public Guardian Business Continuity Plan in response to the COVID-19 pandemic
- ✓ Provided corporate leadership for transfer of financial matters to Public Trustee
- Contributed eight written submissions to key government inquiries

The operational strategy responded to our need to maintain effective communication between our staff and stakeholders and ensure that persons in need of or currently interacting with guardianship services and systems could access them when required and were adequately supported.

Technological solutions were employed across our organisation to ensure that teams were able to operate cohesively and could monitor and meet the needs of represented persons. These solutions included enabling remote computer and network access and implementing video conferencing and telephone diversion systems. Training was provided in relevant areas for all staff. A procedure and roster for team members managing our 1800 guardianship help line and generic email account was also developed.

Strategies were developed to maintain internal communications between management and teams throughout this period and to ensure ongoing support to staff in this extremely challenging time. Guidelines documenting expectations around home-based work behaviours and workload requirements were developed and implemented by team managers.

The Office of the Public Guardian maintained alternative working arrangements from 26 March 2020 to 25 May 2020 when it was considered safe to return to office-based work in the Northern Territory. Staff and stakeholders reported in the main positive experiences and minimal disruption to service provision.

Office of the Public Guardian information system

The Office of the Public Guardian utilises a purpose-built whole-of-organisation client information system to manage its core business and administration functions. This user-friendly platform meets government audit, reporting and data capture requirements for the secure collection, storage and disposal of sensitive client information.

Modifications continued during the year to respond to changes in internal and external business practices and to streamline data gathering and reporting. Consideration will continue to be given to enhancements that provide for increased utilisation of aggregate data and an ability to map trends and outcomes for represented persons across the Northern Territory.

1800 guardianship help line

The Corporate Services team manages our 1800 free-call guardianship help line during business hours. A total of 25,354 calls to the guardianship help line were received in the reporting period. Most of these calls concerned general requests for guardianship information with calls specific to existing caseloads escalated to Adult Guardianship Officers (AGOs), and calls specific to applications for orders before the NTCAT escalated to the Inquiry and Engagement Team.

The 1800 telephone help line diverts after hours to a recorded message with three options: leave a message to receive a call back for further assistance; send an email (email address provided); transfer through to an on-call AGO if an urgent decision is to be made. The after-hours service responds in the main to urgent requests for immediate information or urgent decisions requiring input or actioning by AGOs. In 2019–20, 8 per cent of calls to the guardianship help line were after hours (1981 calls). Of these after-hours calls, 986 were directed either to 'send an email' or 'leave a message to receive a call back for further assistance'.

Policy review and development

Our Policy team continued its work in key areas during the year. Significant effort was directed towards the review of internal business policies and practice guidelines.

The Office of the Public Guardian exercises its duty to advocate for the interests of represented persons and vulnerable client groups through submissions and representations to commissions and committees. The Policy team prepared written submissions to the following commissions and committees in the 2019–20 reporting period:

- Joint Standing Committee on the National Disability Insurance Scheme (NDIS) Inquiry into NDIS Planning
- Joint Standing Committee on the National Disability Insurance Scheme Inquiry into Supported Independent Living
- Joint Standing Committee on the National Disability Insurance Scheme Inquiry into NDIS Workforce
- Royal Commission into Aged Care Quality and Safety, Consultation Paper 1 – Aged care program redesign: services for the future
- Royal Commission into Aged Care Quality and Safety, Younger people in residential aged care
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability Issues Paper: Health care for people with cognitive disability
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability Issues Paper: Criminal justice system
- Senate Select Committee on Autism.

The Policy team additionally compiled ministerial documents, contributed to the preparation of estimate briefs and produced the Office of the Public Guardian *Annual Report 2018–19*.

The team was instrumental also in developing informational and educational materials for distribution to represented persons, guardians, service providers and other interested parties. A review of our current fact sheets was undertaken to identify gaps in information provision resulting in the scoping of a number of new fact sheets for consideration in the forthcoming year.

A key contribution during the year was the Policy team's development of a communications plan and oversight of stakeholder communications for the transfer of financial management from the Public Guardian to the Public Trustee. Fact sheets, letters and ancillary information products such as business cards and fridge magnets were produced and provided to key stakeholders, including represented persons, private guardians and financial institutions.

Restrictive practices

The use of restrictive practices for people with disability continues to be an area of focus for the Office of the Public Guardian. Three key developments occurred during the reporting period:

- the commencement of the Northern Territory National Disability Insurance Scheme (Authorisations) Act 2019
- amendments to the federal Quality of Care Principles 2014
- written decisions by the NTCAT clarifying a guardian's authority to make restrictive practice decisions relating to health care.

While the National Disability Insurance Scheme (Authorisations) Act 2019 provides certainty in relation to the use of restrictive practices by NDIS service providers for NDIS participants, there continues to be great uncertainty regarding the use and authorisation of restrictive practices for people with disability in other settings.

For represented persons under the *Guardianship of Adults Act 2016*, this uncertainty has seen a hearing before the NTCAT to determine if a guardian's decision-making authority for health care action includes authority to make decisions in relation to specified matters that are in essence restrictive practices.

The Office of the Public Guardian strongly advocates for the Australian Government and Northern Territory Government and service sectors to commit to the reduction and, where possible, elimination of the use of restrictive practices in relation to persons with disability. We recommend the introduction of a robust authorisation and monitoring framework for the use of restrictive practices across all service settings and environments to protect the rights of people with impaired decision-making capacity.

NDIS Authorisations Act 2019

The Office of the Public Guardian welcomed the implementation of the *National Disability Insurance Scheme* (*Authorisations*) *Act 2019* (NDIS Authorisations Act) on 1 July 2019. The NDIS Authorisations Act provides an authorisation and oversight framework for the use of restrictive practices by NDIS service providers for NDIS participants and establishes a Senior Practitioner in the Northern Territory. The Senior Practitioner provides much needed expertise and support to NDIS service providers in this area.

The Office of the Public Guardian remains committed to the reduction and elimination of the use of restrictive practices in the disability services sector. To that end, our AGOs have been working with NDIS service providers to ensure that any restrictive practices being used for represented persons have been authorised in accordance with the NDIS Authorisations Act.

In May 2020, the NDIS Quality and Safeguards Commission and Senior Practitioner presented information sessions to assist AGOs to understand NDIS disability service provider compliance requirements in regard to restrictive practice regulations and the human rights of NDIS participants. The sessions covered the role of the Commission, interface with the Office of the Public Guardian, complaints mechanisms and the new authorisation framework for restrictive practices in the Northern Territory.

Quality of Care Principles 2014

On 1 July 2019 amendments to the federal Quality of Care Principles 2014 that aim to minimise the use of chemical and physical restraints in residential aged care took effect. These amendments legislate the circumstances under which such restraints may be used.

However, the Office of the Public Guardian, together with all Public Guardians and Public Advocates of Australia and many stakeholders, is concerned that the form and scope of the amendments will impact the lives of people with disability in aged care facilities negatively by introducing partial and ambiguous regulation of practices that significantly impact a person's human rights. Such practices warrant a robust authorisation and monitoring framework.

As a result of shared concerns raised by Human Rights Watch and the Office of the Public Advocate (Victoria), the Parliamentary Joint Committee on Human Rights resolved on 29 July 2019 to conduct an inquiry into the Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019.²⁸

The Office of the Public Guardian contributed to this inquiry by co-signing a written submission reiterating and supporting the concerns raised by the Office of the Public Advocate (Victoria). The Public Guardian also attended and provided evidence at the public hearing of the inquiry, taking the opportunity to draw the Committee's attention to the specific impacts of the amendments for the Northern Territory and particularly Aboriginal Territorians.

²⁸ Parliamentary Joint Committee on Human Rights 2019, *Quality of Care Amendment (Minimising the Use of Restraints) Principles* 2019, viewed 16 June 2020, https://www.aph.gov.au/Parliamentary Business/Committees/Joint/Human Rights/QualityCareAmendment.

Authorisation of restrictive practices under Guardianship of Adults Act

In February 2020 a three-member panel of the NTCAT heard a guardianship proceeding to determine if certain specified measures, which in essence are restrictive practices (and amount to the administration of health care by force), fall within the scope of a guardian's decision-making authority for health care action under the *Guardianship of Adults Act 2016*.

The NTCAT decision²⁹ was published in June 2020 and determined that a guardian's decision-making authority for health care action does not include authority to permit a represented person to be coerced. The Northern Territory of Australia has commenced appeal proceedings in the Supreme Court in relation to the NTCAT decision.

The NTCAT decision means that section 35 of the *Guardianship of Adults Act 2016*, which provides for the NTCAT to authorise the use of specified measures to ensure that a represented person complies with a guardian's decision, is the only way to authorise the use of restrictive practices under the the Act.

In 2019–20 the Office of the Public Guardian participated in 16 hearings for section 35 orders under the *Guardianship of Adults Act 2016*. These applications related to the use of restrictive practices for represented persons by the disability sector, Northern Territory hospitals and health services. No applications for orders under section 35 were received from the aged care sector.

The low number of section 35 applications made and heard during the reporting period may be attributed to:

- the introduction of the NDIS Authorisations Act
- no applications being received from the aged care sector
- the Northern Territory's position prior to the NTCAT decision in June 2020 that the scope of a guardian's authority for health care action included the use of measures which may be considered restrictive practices.

As a consequence of the NTCAT decision in June 2020 the Office of the Public Guardian expects there will be an increase in the number of section 35 orders made during the next reporting period.

Health care decision-makers legislation

In a joint initiative with the Department of the Attorney-General and Justice, the Office of the Public Guardian released a health care decision-makers discussion paper in October 2019. The discussion paper detailed a proposal to amend relevant legislation to introduce statutory health care decision-makers in the Northern Territory. A health care decision-maker is someone with authority to make health care decisions for a person who lacks legal capacity to do so themselves.

We contend that legislating for statutory health care decision-makers will improve health care decision-making processes for people with impaired decision-making capacity. It will provide a less restrictive alternative to appointing a guardian for health care decisions and a legislative pathway to enable timely and appropriately authorised health care to be provided by removing the need for guardianship in circumstances where the only decisions to be made for the person with impaired decision-making capacity are health care decisions.

Key elements of health care decision-maker legislation in other jurisdictions include:

- a person's health care decision-maker is determined according to a hierarchy that includes a decision-maker appointed in an advance care document, a guardian appointed in a guardianship order and family or other persons who have a relationship with the person
- principles to guide health care decision-makers in the exercise of their decision-making authority
- provisions to authorise the administration of health care without consent in a medical emergency or for health care defined as minor or routine
- a pathway to obtain consent to significant or major health care when there is no available health care decision-maker
- specific provisions in relation to participation in medical research
- appropriate safeguards to protect the rights and interests of persons with impaired decision-making capacity.

The discussion paper invited submissions and feedback on 31 discussion points intended to ascertain stakeholder support for the proposal and inform the content of any proposed legislation. It is hoped that any legislation will clarify the scope of decision-making authority for all substitute decision-makers concerning health care decisions, and therefore address some of the uncertainty that currently surrounds this issue.

Submissions to the discussion paper closed at the end of January 2020. The Department of the Attorney-General and Justice and the Office of the Public Guardian are considering all submissions, including views and ideas raised during the consultations, to inform the Northern Territory Government regarding the need for and desired scope of legislation providing for statutory health care decision-makers in the Northern Territory.

People and organisational capability

The Office of the Public Guardian is committed to life-long learning. We recognise the importance of professional development opportunities to progressing individual and corporate goals and value staff achievements.

During the year our staff were provided with a number of internal and external professional development opportunities. Two staff were supported to continue accredited training courses, including a Graduate Certificate in Leadership and Management, under the Leading the Way Leadership Development Program, and a Certificate IV in Government Investigations. All external accredited training was undertaken in accordance with our study assistance policy and by-law 41 under the Northern Territory *Public Sector Employment and Management Act 1993*.

Staff were encouraged to attend workshops and training applicable to their program area and teams. This included in 2019–20 a workshop attended by our AGOs and Inquiry and Engagement team members on the interaction between the Northern Territory Mental Health and Related Services Act 1998 and Guardianship of Adults Act 2016, with regard to represented persons under voluntary or involuntary admission in mental health facilities, and a workshop to scope arrangements for the transfer of financial matters from the Public Guardian to the Public Trustee.

Relevant staff additionally attended an information session on the NDIS Quality and Safeguards Commission and workshops on restrictive practices legislation and practice, deafness awareness, Easy English writing for people who lack functional literacy, supported decision-making and managing challenging behaviours.

Complaints and review

The Office of the Public Guardian has the power under section 61 of the *Guardianship of Adults*Act 2016 to investigate formal complaints against private guardians. It has a separate formal process in place to review decisions made by delegates of the Public Guardian.

A fact sheet on 'Resolving complaints and concerns' and 'Reviewing a Public Guardian decision' is available in hard copy and via our website. Our website also provides consumers with the opportunity to make suggestions via an online form, which provides a valuable source of feedback and informs our quality improvement processes.

No decisions were reviewed by the Office of the Public Guardian in 2019–20. Three formal complaints into the conduct of private guardians were investigated during the year. The investigations were concluded and all matters resolved.



Stakeholder collaboration

The Office of the Public Guardian welcomes and values its collaboration with community and government stakeholders.

During the year we maintained our strong commitment to formalising and strengthening consultative and collaborative relationships with stakeholders in the disability services, aged care, justice and health sectors. Significant attention was paid also to fostering new relationships and understandings with individuals and organisations working directly with people with impaired decision-making capacity.

Our active participation in Australian Guardianship and Administration Council meetings and initiatives demonstrated our commitment to advocacy and systemic change nationally in areas of guardianship. Similarly, our very strong commitment to Aboriginal Territorians was progressed through our ongoing stakeholder engagement, communications initiatives and guardianship practice. We were particularly excited to commence a collaboration and partnership with the North Australian Aboriginal Justice Agency.

The following details our achievements in these areas for the 2019–20 year.

Community and stakeholder engagement

Community and stakeholder engagement is integral to the work of the Public Guardian and multifaceted. It includes community outreach and support, information sharing, the distribution of our information products, relationship building and networking. It is evidenced in our community consultations, guardianship information sessions and guardianship help line, in addition to our active participation at the state and territory and federal levels in guardianship forums and events.

A key and ongoing priority for the Office of the Public Guardian is that the principles and application of the Northern Territory *Guardianship of Adults Act 2016* and associated regulations are understood by all relevant parties. Recognising human rights in the interchange between persons with guardianship orders, their guardians, service providers and policy makers is integral to this endeavour.

To this end, in 2019–20 our staff provided face-to-face information sessions to key community, government and not-for-profit organisations across the Top End and Central Australia. Organisations approached in our engagement included disability support services, mental health services, hospitals, Correctional Services and Territory Families.

These sessions included information on impaired decision-making capacity and the role of guardians; guardianship application processes, including orders for young people aged 17 transitioning to adult guardianship; the importance and role of Advance Personal Planning; and individual and organisational decision-making frameworks, including the rights of persons with guardianship orders and responsibilities of guardians. Participant feedback was positive with the allocation of our staff resources to in-person regional visits strongly appreciated.



Public Trustee

The Office of the Public Guardian values its close working relationship with the Public Trustee.

Since 1 July 2019 the Public Trustee has assumed responsibility for financial matters under guardianship orders, with no new orders appointing the Public Guardian for financial matters, by agreement, as of 1 March 2019. A document reflecting the interface of our agencies and mutual commitment to ensuring contemporary decision-making for persons involved with guardianship has been developed.

Territory Families

Territory Families has jurisdiction of young people in out-of-home care till age 18. At that time, young people with impaired decision-making capacity in need of a substitute decision-maker transition to adult guardianship. A letter of agreement between the Office of the Public Guardian and Territory Families to streamline and facilitate this transition was signed in 2018.

The Office of the Public Guardian and Territory
Families continued to meet quarterly during the
year. The intent of these meetings was to ensure that
communication and other processes agreed between
our organisations were working effectively and that
any relevant issues were addressed. The meetings
provided an opportunity for Territory Families to
discuss forthcoming applications for guardianship with
the Public Guardian and to provide the Office of the
Public Guardian with a list of young people likely to
transition to adult guardianship in successive months.

Australian Guardianship and Administration Council

The Australian Guardianship and Administration Council (AGAC) provides a national forum for state and territory agencies whose mandate is to provide adult guardianship and administration for persons with impaired decision-making capacity. Member organisations work collaboratively to present a

consistent voice on key issues and advance mutual goals through information sharing and advocacy. The Office of the Public Guardian, Northern Territory Civil and Administrative Tribunal and Public Trustee are the Northern Territory members of the AGAC.

The Public Guardian attended two national meetings convened by the AGAC in 2019–20: the first in Sydney in October 2019; the second in Brisbane in March 2020. Major jurisdictional developments were shared and discussed by all AGAC attendees. These meetings enabled collaboration with the NSW Trustee and Guardian and the Queensland Office of the Public Guardian, with each organisation generously providing information about their guardianship policy and processes, current projects and initiatives.

The meetings provided an opportunity for AGAC members to work collaboratively to develop formal positions in respect to key policy areas impacting vulnerable persons living with disability. Subsequent to this collaboration public guardians and public advocates wrote jointly to the Australian Government and federal agencies:

- about the inequity of the very low Youth Rate of Disability Support Pension paid to young people aged less than 21 years living away from home, compared to those aged 21 years and over living away from home
- in support of legislative change to enhance confidentiality provisions for people living with disability who make written submissions to Royal Commissions, in response to privacy and confidentiality concerns raised by many in the disability sector about cases presented in evidence to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability
- requesting that the National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission Activity Reports be made publicly available and include jurisdictional data at the state and territory levels inclusive of complaints, engagement, reportable incidents and behaviour support planning.

Consultations

Formal consultations with stakeholders across the community and government sectors is integral to the advocacy work undertaken by the Office of the Public Guardian and to instituting change where needed at the local and systemic levels. Our key commitment is to ensuring that persons with impaired decision-making capacity are recognised as individuals with rights, and that guardianship practice in the Northern Territory operates in accordance with the guardianship principles as set out in the Guardianship of Adults Act 2016.

Health care decision-maker legislation

The Northern Territory Government is considering the introduction of legislation to provide for statutory health care decision-makers and to clarify the requirements for substitute decision-makers in health care matters. Currently family members and next-of-kin in the Northern Territory have no assumed legal authority in health care decisions for people with impaired decision-making capacity.

The Office of the Public Guardian strongly supports the proposal for statutory health care decision-makers and collaborated with the Department of the Attorney-General and Justice to develop a discussion paper on the matter. This paper was released for public review and comment in October 2019.

The proposed legislative change has implications for represented persons, their guardians and service providers. To that end, the Public Guardian and a representative of the Department of the Attorney-General and Justice conducted 23 public and stakeholder consultations across the Northern Territory in the latter part of 2019.

The intent of these consultations was to raise awareness of the discussion paper and associated issues, and to seek initial feedback on the proposal for statutory health care decision-makers.

Consultations occurred during and outside of business hours at sites in Darwin and Palmerston, Alice Springs, Tennant Creek, Katherine, Nhulunbuy and at all regional hospitals.

The consultations provided the Public Guardian with an opportunity to discuss a range of matters relevant to the work of the Office of the Public Guardian with different stakeholder groups. Matters discussed included guardianship processes, services and supports for people with impaired decision-making capacity, the 2019 restrictive practices legislation and the experience and challenge of guardianship in regional and remote areas.

Guardianship Review Project

The Pathways to the Northern Territory Aboriginal Justice Agreement and Northern Territory Aboriginal Justice Agreement 2019–2025 draft consultation documents prepared by the Aboriginal Justice Unit of the Department of the Attorney-General and Justice respond to views on justice issues facing Aboriginal Territorians. The intention of these draft agreements is to provide a framework for how these issues might be addressed.

The Office of the Public Guardian has identified guardianship services for Aboriginal Territorians as a key strategic priority. We are committed to working collaboratively with Aboriginal organisations to ensure that guardianship services in the Northern Territory are responsive to the needs of Aboriginal people, engage Aboriginal people effectively in guardianship and achieve the best possible outcomes for represented persons.

In January and February 2020 the Office of the Public Guardian and North Australian Aboriginal Justice Agency (NAAJA) met to consider mechanisms for ensuring that guardianship processes and arrangements were best practice and inclusive of Aboriginal people both in their capacity as represented persons and as private guardians.

A related concern shared by both organisations was that Aboriginal people have access to NAAJA representation when required.

Consideration was given to a process for documenting barriers and learnings. This resulted in the conceptualisation of an action research project with involvement of represented persons, cultural brokers and interpreters, among others. Each organisation will use existing internal resources to undertake their respective elements. Scoping work towards the implementation of an action research pilot project has commenced.

It is anticipated that the collaboration will facilitate a process for identifying language, communication and information strategies to better engage Aboriginal people in guardianship processes; document barriers and challenges to Aboriginal people embracing possibilities as private guardians; document the types of supports required by Aboriginal people as private guardians, including the role of interpreters and cultural brokers; and address misconceptions about the interaction of guardianship with justice and other systems.

The evidence arising from these learnings will inform service modelling and best practice for the engagement of Aboriginal persons in guardianship systems and processes. We are particularly grateful for the goodwill expressed by NAAJA in their willingness to partner with the Office of the Public Guardian in this important collaboration.



Communications

The Office of the Public Guardian's communications strategy provides timely and accurate information on Northern Territory guardianship systems and processes to individuals and organisations. It is responsive to the information and education needs of prospective and existing guardians, as well as to people working in a support capacity with vulnerable persons. Our website increasingly is central to this endeavour, providing access to a range of English and other multicultural language print and electronic guardianship resources.

Website and Facebook

The Office of the Public Guardian website was developed as a user-friendly interface for people with a range of abilities and is the key source of guardianship information for the Northern Territory community. It serves as the primary information portal for prospective and existing guardians, represented persons, service providers, government agencies and others.

Our guardianship fact sheets, guardian guide, annual reports and other information products are available free for download and further distribution with a number of information products now translated into language or audio. This latter initiative recognises our commitment and responsibility to ensure that our

information products are appropriate and accessible to a broad audience.

In 2019–20 our website proved particularly popular with increasing page views. Not surprisingly, perhaps, our 'Contact us' information page dominated session page views with 2057 unique page views. Information on guardianship processes and procedures, such as 'applying for guardianship,' about guardianship' and about the 'Guardianship of Adults Act', were especially popular along with our resources page and fact sheets. Our Facebook page provides an alternative entry point into guardianship and continues to attract a broad range of users.

Since June 2018 the Office of the Public Guardian has produced quarterly newsletters for private guardians in response to an identified gap in communications and service provision. The newsletters provide information of immediate relevance to guardians, such as changes to guardianship administration processes, National Disability Insurance Scheme (NDIS) updates, who to notify when you are appointed as a guardian, tips for effective management of financial matters, what to expect at a hearing for a reassessment of a guardianship order and, in the 2020 context, operational arrangements in a COVID-19 environment.



The newsletter initiative has received overwhelmingly positive feedback with private guardians noting that the newsletters have been invaluable in reducing their sense of isolation in a sometimes challenging role. The newsletters are distributed in the main via email.

1800 guardianship help line

Community members, guardians, service providers and others have access to guardianship information, support and advice during business hours via our 1800 guardianship help line. This information resource is managed during business hours by our Corporate Services team and links, where required, to an emergency after-hours call service managed by our Adult Guardianship Officers.

Staff are available to respond to general requests for information about guardianship and the respective roles of the Office of the Public Guardian, Northern Territory Civil and Administrative Tribunal and Public Trustee, and to provide printed information products or direct people to resources available via our website.

New fact sheets

A key mandate of the Office of the Public Guardian is to be responsive to feedback from people interacting with the guardianship system and to support guardians effectively in their role. To that end, the 2019–20 year saw the finalisation of two new fact sheets, forecast in last year's Annual Report:

- What is the role of an Adult Guardianship Officer?
- Office of the Public Guardian after-hours service Contact guide

Easy English guardianship fact sheet

Ensuring that represented persons understand who can make decisions for them and why is important. Consequently, in 2020 the Office of the Public Guardian allocated resources to printing the Easy English *Things your guardian should do* fact sheet developed by the Australian Guardianship and Administration Council (AGAC) for distribution to all represented persons in the Northern Territory.

This fact sheet uses picture communication symbols and simple text to help people with impaired decision-making capacity who have a guardianship order to understand what having a guardian means. This includes who decides if they need a guardian, who can be a guardian, what their guardian should and can do and their own rights as someone with a guardian.

The fact sheet is based on the National Standards of Public Guardianship introduced by the AGAC in 2001 and updated in 2016 to reflect provisions in Article 16 of the United Nations Convention on the Rights of Persons with Disabilities to uphold the right of people living with disability to freedom from all forms of exploitation, violence and abuse.

Upcoming fact sheets

A number of additional fact sheets were identified for development during the year. These fact sheet working titles respond to common public enquiries received by our office and to concerns raised by authorities interacting with young people approaching adulthood.

- Your role as an applicant provides considerations for people applying for guardianship.
- Guardian or Carer? clarifies the different roles of guardians and carers.
- Impaired decision-making capacity and turning 18 explains how caregivers of young people aged 17 with impaired decision-making capacity apply for adult guardianship.
- Guardianship decision-making authorities clarifies the respective roles and responsibilities in guardianship matters of the Northern Territory Civil and Administrative Tribunal, Office of the Public Guardian and Public Trustee.

Excellence in Advocacy and Promotion of Human Rights Award

proudly sponsored by the Office of the Public Guardian

The Office of the Public Guardian was thrilled to be a category sponsor for the 2019 Northern Territory Disability Services & Inclusion Awards. The Awards celebrate outstanding commitment and achievement in assisting people with disability to achieve their goals. The Awards are open to individuals, businesses, organisations and government departments.

The Excellence in Advocacy and Promotion of Human Rights category recognises an individual, business or organisation that makes a significant contribution in support of people with disability, including assisting people to speak up for themselves and promoting their rights.

The 2019 winner of this award was Cathryn McAdie, Eunoia Lane (NDIS Support Coordination).

Highly Commended: Ngaanyatjarra Pitjantatjara Yankunytjatjara Women's Council.





Key Performance Indicators, budget and resourcing

The Department of the Attorney-General and Justice provides funding and corporate support to the Office of the Public Guardian. In 2019–20, \$4,065,000 was allocated to the Office of the Public Guardian for administrative functions and personnel. This represents a reduction on the previous year's budget.

The Office of the Public Guardian has a responsibility under the *Guardianship of Adults Act 2016* (the Act) to provide guardianship and support guardians in their role. Implicit in this undertaking is our responsibility to uphold the rights of some of the Northern Territory's most vulnerable citizens and to advocate on their behalf.

It is anticipated that the 2020–21 budget will see a further reduction in funding allocation associated with Northern Territory Government efficiency measures. There is a risk going forward that any further impost on our budget and resources in a period of heightened and increasing demand for our services will impact our operations and capacity to fulfil our role.

At 30 June 2020 the Office of the Public Guardian had 29 full-time equivalent (FTE) positions. While responsibility for financial administration now sits with the Public Trustee, all applications for guardianship require Public Guardian involvement. The demands on our organisation are not decreasing.

Key Performance Indicators

The Office of the Public Guardian's performance in 2019–20 has been placed against the forecast estimates published in Budget Paper No. 3.

Outcomes for 2019–20 exceeded budget estimates for the number of individuals under adult guardianship and the number of Aboriginal people under adult guardianship (Table 3). The Key Performance Indicator (KPI) for the percentage of represented persons with face-to-face contact was not met due to COVID-19 impacts and restrictions. The KPI relating to financial management orders is an anomaly in that the target for the end of the reporting period was to be zero, reflecting the successful transfer of all financial management orders to the Public Trustee.

The increase in the number of individuals under guardianship can be attributed to the increase in guardianship awareness and expanded eligibility criteria under the Act. Aboriginal and Torres Strait Islander people continue to be disproportionately represented in the overall number of persons under guardianship.

Table 3: Key Performance Indicators against forecast estimates, Budget Paper No. 3

	2018–19 Budget	2018–19 Actual	2019–20 Budget	2019–20 Actual
Number of individuals under adult guardianship	1084	1039	1011	1106
Number of Aboriginal people under adult guardianship*	543	598	556	632
Number of financial management orders to the Public Guardian**	555	426	0	0
Percentage of represented adults with face-to-face contact	N/A	N/A	60%	52%

Notes: *'Aboriginal' here includes people who identify as Aboriginal or Torres Strait Islander.

 $[\]ensuremath{^{**}}$ Includes sole and joint guardianship orders to the Public Guardian

Looking ahead

In early 2019, Office of the Public Guardian administration functions and personnel transferred to the Northern Territory Department of the Attorney-General and Justice. The following strategies reflect our mission and commitment to Territorians over the coming year. Our strategies and response align with our responsibilities under the *Guardianship of Adults Act 2016* and with strategies outlined in the Department of the Attorney-General and Justice *Strategic Plan 2017–2020*.

Strategies and response

Advocate for the human rights of people with impaired decision-making capacity

 Undertake systemic advocacy at Northern Territory and national levels

Collaborate with stakeholders to achieve best outcomes for people with impaired decision-making capacity

- Maintain effective relationships with relevant external stakeholders
- Develop and undertake partnership activities

Develop flexible, tailored approaches that meet the needs of our diverse community

- Make guardianship information accessible to all Territorians
- Enhance support for private guardians
- Ensure guardianship services are culturally safe for Aboriginal Territorians
- Ensure the Office of the Public Guardian has accurate cultural information for Aboriginal represented persons



Provide an effective, contemporary service that is informed and responsive

- Ensure all guardianship orders promote the human rights of people with impaired decisionmaking capacity
- Ensure compliance with Australian Guardianship and Administration Council National Standards of Public Guardianship
- Ensure existing services comply with the statutory environment for restrictive practices
- Ensure supported decision-making is embedded in guardianship practice
- Review, develop and refine internal systems to ensure consistent standards of performance

Develop and maintain a capable workforce

- Develop a targeted professional development program for teams and staff
- Develop and maintain a workplace culture that recognises and supports high-performance teams

