



ANNUAL REPORT

2021–22



**Public Guardian and Trustee
Annual Report 2021–22**

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Background image for Acknowledgement of Country, 'Kata Tjuta Dawn', courtesy of Robert King, Magpie Goose Publishing, September 2017.

The term 'Aboriginal' is used respectfully in this Annual Report to refer to all people of Aboriginal and Torres Strait Islander descent who are living in the Northern Territory.

You can download this annual report free from our website.

Public Guardian and Trustee Annual Report 2021–22



Acknowledgement of Country

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

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The Honourable Chanston Paech MLA
Attorney-General and Minister for Justice
Parliament House
DARWIN NT 0800

Dear Minister

Re: Public Guardian and Trustee Annual Report 2021–22

I am pleased to submit the Annual Report of the Public Guardian and Trustee for the year ended 30 June 2022. The Public Guardian and Trustee is a newly established entity responsible for providing guardianship, financial management and estate administration to the Northern Territory community.

This report provides an account of the operational undertakings and achievements of the Public Guardian and Trustee in addition to satisfying the Public Guardian's legislative requirements under section 74 of the *Guardianship of Adults Act 2016*. A separate annual report will be prepared in accordance with section 18 of the *Public Trustee Act 1979* to satisfy the legislative reporting requirements of the Public Trustee.

Yours sincerely



BETH WALKER
Public Guardian and Public Trustee

30 September 2022

The Public Guardian and Trustee
is **committed** to ensuring the
human rights of Territorians are
promoted and **protected**.



Contents

Message from the Public Guardian and Public Trustee	1
---	---

2021–22 at a glance	4
---------------------	---

About the Public Guardian and Trustee	5
---------------------------------------	---

Advocacy	14
Northern Territory Disability Strategy	15
National Disability Insurance Scheme	16
Response to national inquiries	18
Embedding supported decision-making	21
Restrictive practices	22
Interface with the justice system	23
COVID-19 impacts	23
Aged care	24
Housing	25
Northern Territory Guardianship Review Project	26

Guardianship trends	27
Applications for guardianship orders	27
New and existing guardianship orders	30
Advance guardianship orders for young people	32
Guardianship by location	33
Guardianship by gender	34
Guardianship by age and primary impairment	34
Guardianship by Aboriginal and non-Indigenous identity	35
Represented persons and the criminal justice system	36
Represented persons and NDIS plans	37

2022–23 priorities	38
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List of figures

Figure 1	Organisational structure	9
Figure 2	Number of guardianship applications: trends over five years	27
Figure 3	Number of guardianship applications, by application type: 2020–21 and 2021–22	28
Figure 4	Number of new and urgent guardianship applications: trends over five years	29
Figure 5	Primary impairment stated on new and urgent applications: trends over five years	29
Figure 6	Applications for guardianship orders in 2021–22, by Aboriginal and non-Indigenous identity (%)	30
Figure 7	Number of new guardianship orders in 2021–22, by appointment type	30
Figure 8	New guardianship orders involving private guardians: trends over five years	31
Figure 9	Number of persons with guardianship orders, by guardianship type: trends over five years	31
Figure 10	Number of orders appointing private guardians: trends over five years	32
Figure 11	Number of young people transitioning from out-of-home care to adult guardianship: trends over five years	32
Figure 12	Primary location of persons with guardianship orders in 2021–22, by guardianship type	33
Figure 13	Number of persons with guardianship orders involving the Public Guardian, by gender: trends over five years	34
Figure 14	Number of persons with guardianship orders involving the Public Guardian in 2021–22, by age	34
Figure 15	Number of persons with guardianship orders involving the Public Guardian in 2021–22, by primary impairment	35
Figure 16	Proportion of represented persons who identify as Aboriginal	35
Figure 17	Guardianship type for personal matters in 2021–22, by Aboriginal and non-Indigenous identity	35
Figure 18	Prisoners and Part IIA: number of represented persons in 2021–22	36
Figure 19	Prisoners and Part IIA: number of represented persons in 2021–22, by gender	36
Figure 20	Prisoners and Part IIA: number of represented persons in 2021–22, by primary impairment	36
Figure 21	Number of represented persons with Public Guardian involvement and NDIS plans in place: trends over five years	37

List of tables

Table 1	Functions and responsibilities	10
Table 2	Key Performance Indicators against forecast estimates, Budget Paper No. 3	13

Message from the Public Guardian and Public Trustee



I am excited to present to you the inaugural Annual Report for the Public Guardian and Trustee. This report details the first year of operations since the amalgamation of the Office of the Public Guardian and the Public Trustee for the Northern Territory and my appointment as Public Trustee.

On 29 June 2021, in addition to my role as Public Guardian, I was appointed as Public Trustee for the Northern Territory and tasked with the merger and co-location of the offices of the Public Guardian and Public Trustee. The intent is to create a centralised agency with stronger organisational connections and business efficiencies that promotes and protects the personal, legal and financial interests of Territorians.

It has been a busy but rewarding year with the addition of the Public Trustee responsibilities. The first phase of the amalgamation project is well under way, with a dedicated project manager overseeing the project. A number of key strategic processes and operational functions have been successfully implemented with the most highly anticipated operational phase, the

co-location of our Darwin based staff to a centralised office, set to occur within the next 12 months.

Our core combined business of guardianship, advocacy and financial management has otherwise continued as usual. Our continued advocacy efforts to support Territorians with impaired decision-making capacity provided various opportunities throughout the year to engage with government and non-government agencies to ensure that appropriate supports, services and funding are available to represented persons.

At a national level we continued to provide submissions and responses to a range of inquiries, primarily in areas concerned with the NDIS including NDIS scheme implementation, NDIS plan funding, support for participant decision-making and supports for at risk participants. We were particularly pleased to be invited to participate in the working group associated with the development of the Northern Territory Disability Strategy 2022–2032 and Disability Strategy Action Plan 2022–2025, which are anticipated for release in the coming year.

Moving forward, I am pleased to have the opportunity to give evidence at the upcoming 25th public hearing of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability in July 2022. This hearing specifically concerns the operation of the NDIS for First Nations people with disability in remote and very remote communities, and will therefore be of great interest and relevance to our situation in the Northern Territory.

My attendance at Australian Guardianship & Administration Council conferences and the World Congress on Adult Capacity provided opportunities for me to connect with counterparts in other jurisdictions and observe national and international legislative and policy responses to supporting persons with impaired decision-making. This includes, importantly, transitioning from a substitute decision-making model to a supported decision-making model.

The shift to a supported decision-making model increases autonomy and respects the human rights and dignity of risk for represented persons. The movement away from a substitute decision-making framework is becoming more prominent internationally and throughout Australia and was the focus of a recent Disability Royal Commission roundtable, which I also attended.

Effective supported decision-making requires significant knowledge of the represented person, their views and wishes, and the ability to actively advocate for the person and be guided by their expressed and known preferences. To that end, in 2020 we implemented a decision-making framework to guide our Adult Guardianship Officers in enacting their responsibilities to represented persons under the *Guardianship of Adults Act 2016*, specifically in relation to the guardianship principles.

We now have an opportunity to benchmark ourselves against this internal practice change by interrogating the data from our decision-making tool. I am pleased to report that of the 570 complex and non-complex decisions made on behalf of represented persons in the reporting period, less than 4 per cent were not consistent with the known wishes of the represented

person. Most of these decisions were health care related and critical to the represented person's wellbeing.

In December 2021 we commenced the implementation of a new case monitoring model for our Guardianship team to more efficiently direct resources towards those represented persons actively requiring decisions and advocacy, while ensuring that represented persons who do not have current decisions to be made continue to receive regular oversight. A review of files was undertaken to ensure that represented persons identified as potentially eligible for inclusion in the case monitoring model met the relevant criteria and that there were no pending decisions.

The implementation of the initial phase of the model was successful with 39 represented persons transferred from active status to monitoring status. The success of this first phase has resulted in the appointment of a dedicated part-time monitoring officer, allowing for an expansion of the eligibility criteria and an increase in the number of cases allocated to monitoring status. As at 30 June 2022, 80 represented persons had transferred from active to monitoring status. It is hoped that over the coming months the model can continue to evolve and reduce the number of cases allocated to each Adult Guardianship Officer.

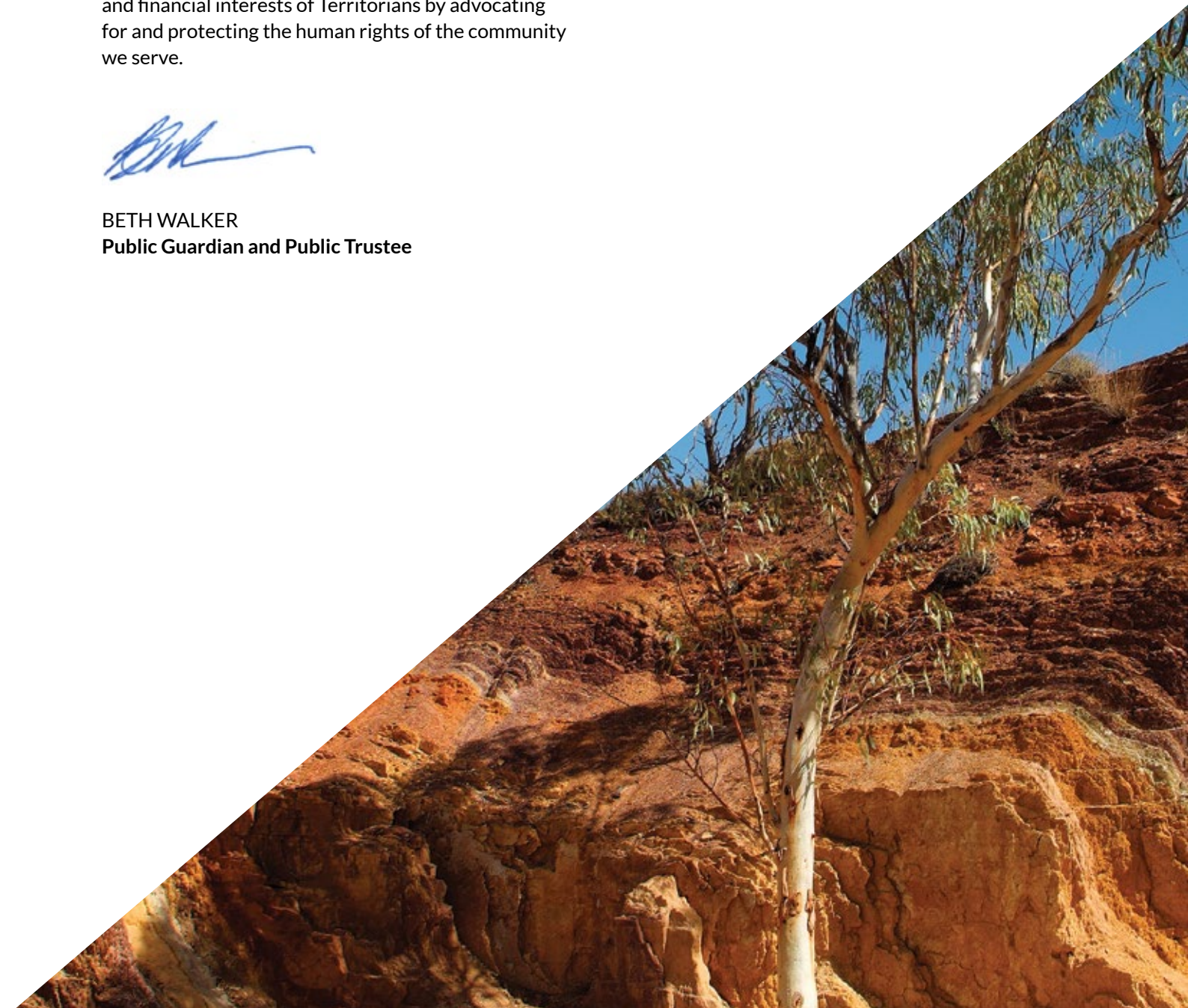
The National Disability Insurance Scheme (NDIS) continues to provide benefits to participants. However, access to services for those living in remote and very remote communities remains an issue along with the more recently observed trend in reduction of funding in NDIS participant plans. We continue to work with the National Disability Insurance Agency through plan review requests and advocacy to ensure that represented persons receive sufficient funding in their NDIS plan to enable them to live successful lives. Where the outcome of such reviews proves to be unsatisfactory, we will make an application for an independent review of the decision to the Administrative Appeals Tribunal. However, this process is often long and complex and does not guarantee a more positive outcome for participants.

My dual role as Public Guardian and Public Trustee uniquely places me to ensure that high-level guardianship, financial management and advocacy services are available to the Northern Territory community. The achievements detailed in this report would not be possible without the hard work of my staff. Their dedication and commitment to the provision of high quality, customer focused services in a fluid and changing environment constantly impresses me.

It continues to be my honour to lead this team and I would like to take this opportunity to thank my staff for their ongoing support and commitment. Our strength and determination will continue to grow as we consolidate our combined knowledge, expertise and resources as a cohesive team focused on safeguarding and promoting the personal, legal and financial interests of Territorians by advocating for and protecting the human rights of the community we serve.



BETH WALKER
Public Guardian and Public Trustee



2021–22 at a glance

1261 Territorians had a guardianship order in place

328 guardianship applications lodged

189 new guardianship orders made

53% of orders involve Public Guardian as sole or joint guardian

47% of orders involve private guardians only

76% of persons with Public Guardian involvement identify as Aboriginal or Torres Strait Islander

428 annual reviews completed

2273 decisions made for represented persons

894 COVID-19 vaccination consents processed



About the Public Guardian and Trustee

With the appointment of Ms Beth Walker as Public Trustee for the Northern Territory in addition to her role as the Northern Territory Public Guardian, the decision was made to unite the offices of the Public Guardian and Public Trustee under the banner of the Public Guardian and Trustee.

This administrative change creates a centralised organisation for the provision of impartial information and services to the Northern Territory community in the areas of guardianship, Advance Personal Plans, wills and estates, financial management and related matters. We also undertake advocacy and research in relevant areas.

This report provides an account of the operational undertakings and achievements of the Public Guardian and Trustee in addition to satisfying the Public Guardian's legislative requirements under section 74 of the *Guardianship of Adults Act 2016*. A separate annual report will be prepared in accordance with section 18 of the *Public Trustee Act 1979* to satisfy the legislative reporting requirements of the Public Trustee.

Our mission

Our mission is to safeguard and promote the personal, legal and financial interests for Territorians by providing best practice adult guardianship, trust, estate and will services within a human rights framework.

Our vision

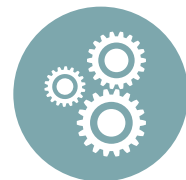
Our vision is for a safe, just and inclusive Northern Territory which promotes human rights and protects the choices and wishes of all Territorians.

Our values



Commitment to service

The Public Guardian and Trustee is professional, hardworking, effective, innovative and efficient.



Collaboration

The Public Guardian and Trustee works collaboratively with stakeholders to achieve the best outcomes for Territorians.



Ethical practice

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



Respect

The Public Guardian and Trustee respects all people and their rights as individuals.



Diversity

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



Accountability

The Public Guardian and Trustee is transparent and accountable in providing a contemporary, best practice service.

Key functions

- * to be a guardian for an adult when appointed by a guardianship order
- * to obtain and provide to the Northern Territory Civil and Administrative Tribunal information relevant to guardianship applications
- * to promote access to support services for adults with impaired decision-making capacity and the guardians, families and carers of those adults
- * to provide advice and support to persons who are making, or proposing to make, applications for guardianship orders and to guardians
- * to monitor and investigate complaints about the conduct of guardians
- * to advocate for adults with impaired decision-making capacity, including by promoting understanding and awareness of relevant issues
- * to provide, or encourage the provision of, education about relevant issues
- * to administer estates when appointed as executor or when no one else is willing or able
- * to manage trusts for minors and represented persons
- * to provide a will making, registration and storage service

Strategic objectives

- * provide an effective, contemporary guardianship service to the Northern Territory community
- * collaborate with stakeholders to ensure positive working relationships
- * design and implement systems improvements
- * develop flexible, tailored approaches that meet the needs of our diverse community
- * develop and maintain a capable workforce
- * undertake systemic advocacy at a local, territory and national level
- * develop streamlined services to provide best outcomes for Territorians with impaired decision-making capacity



Our legislation

The Office of the Public Guardian was established under the *Guardianship of Adults Act 2016* on 28 July 2016. This legislation 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’.¹

The Public Trustee for the Northern Territory is a corporation established by section 9 of the *Public Trustee Act 1979*. The office is funded as an output within the Northern Territory Department of the Attorney-General and Justice budget.

The Public Trustee has functions and responsibilities under many acts, including the *Public Trustee Act 1979*, the *Trustee Act 1893*, the *Administration and Probate Act 1969*, the *Wills Act 2000*, the *Guardianship of Adults Act 2016* and the *Criminal Property Forfeiture Act 2002*, in addition to duties as a trustee and executor that arise under the general law.

The Public Guardian and the Public Trustee may be appointed as a person’s decision-maker under the *Advance Personal Planning Act 2013*. This legislation allows a person to plan for future health, financial and lifestyle decisions to ensure their wishes and preferences are known and respected. An Advance Personal Plan is the legal document that records a person’s decision-makers and their personal, health, financial and lifestyle preferences in case they lose decision-making capacity in the future.

¹ Persons with Disabilities and Optional Protocol, Article 1, ‘Purpose’, p. 4.



Public guardianship

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

The Public Guardian and Trustee receives a copy of all guardianship applications and supporting evidence, and written notification of hearing dates for matters before the Northern Territory Civil and Administrative Tribunal (NTCAT). The Public Guardian or a delegated officer must be present at all application hearings and may be directed by the NTCAT to make inquiries in regard to the background and circumstance of an application for an order. Such inquiries typically concern the views of the person who is the subject of the application and the suitability and eligibility of proposed guardians.

The *Guardianship of Adults Act 2016* provides for three key circumstances under which the Public Guardian can be appointed as guardian for a person:

- * 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.

Additionally the *Guardianship of Adults Act 2016* outlines the specific criteria that must be met to enable the appointment of the Public Trustee, including limiting decision-making authority to financial matters.

The appointment of either the Public Guardian for personal matters or the Public Trustee for financial matters requires the NTCAT to be satisfied that no alternative guardian exists and that the interests of the person are best served by public guardianship. Matters for which the Public Guardian may be appointed under a guardianship order include decisions relating to health care, housing, lifestyle, support services and other personal matters.

Decisions made on behalf of or in conjunction with a represented person must be consistent with the authority outlined in the guardianship order and with the guardianship principles, take into account the represented person's current and previously stated views and wishes and support the individual to make

their own decisions. The Public Guardian and Trustee has an emphasis on supported decision-making, which is embedded in practice with training in place for staff.

Public Guardian and Trustee staff assist applicants and existing guardians to navigate guardianship proceedings, including reassessment processes, and to understand the extent of their responsibilities in accordance with a guardianship order and the guardianship principles as set out in section 4 of the *Guardianship of Adults Act 2016*. All new private guardians are provided with a copy of our *Understanding guardianship* handbook, which includes reporting examples and external contacts. In 2021–22, 155 handbooks were provided to new private guardians.

Where the conduct of a guardian or welfare of the represented person is at question, an application for reassessment or variation of the guardianship order can be made to the NTCAT. As a result of this application the NTCAT may direct the Public Guardian to conduct a formal investigation and provide a report to the NTCAT addressing the concerns. An application for a reassessment or variation of an order can be made by any individual with a genuine concern for the health and wellbeing of a represented person.

Complaints and review

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 enquiry form, which provides a valuable source of feedback and informs our quality improvement processes.

There were no formal requests to review decisions made on behalf of the Public Guardian in 2021–22. One formal investigation into the conduct of a private guardian was undertaken and completed during the year.

Organisational structure

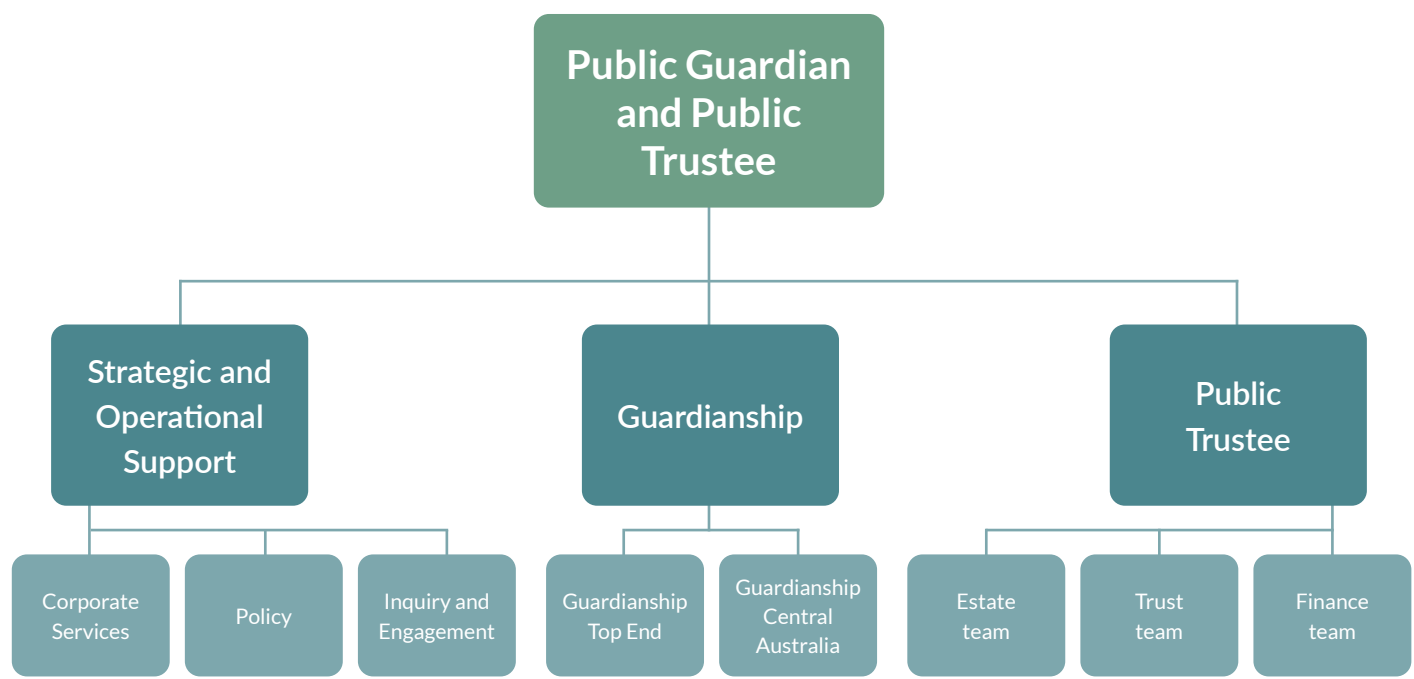


Figure 1: Organisational structure

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. Public Trustee services are provided by our Estate, Trust and Finance teams, located centrally in Darwin. All business streams engage with information, education, advocacy and research initiatives under the leadership of the executive management team.

Table 1: Functions and responsibilities

Whole of organisation			
Information and education		Advocacy and research	
<ul style="list-style-type: none"> * promote guardianship, trust and estate knowledge and best practice through targeted resources and information campaigns * undertake community engagement and education activities * develop and disseminate guardianship, trust and estate information materials 		<ul style="list-style-type: none"> * advocate on behalf of represented persons * protect and promote rights through systems advocacy * promote access to support services for represented persons, guardians, families and carers * undertake research into relevant issues 	
Strategic and Operational Support			Guardianship
Corporate Services	Policy	Inquiry and Engagement	Guardianship Top End & Central Australia
<ul style="list-style-type: none"> * provide corporate leadership and support * be the first point of contact for enquiries * manage business administration and ICT systems and processes 	<ul style="list-style-type: none"> * develop policies and procedures and position statements * undertake stakeholder engagement * prepare submissions and briefs 	<ul style="list-style-type: none"> * inform NTCAT decisions * provide guidance and information to private guardians and interested parties * conduct guardianship investigations 	<ul style="list-style-type: none"> * act as a decision-maker for represented persons when appointed by the NTCAT * provide an after-hours service for represented persons, guardians and caregivers
Public Trustee			
Trust team	Estate team	Finance team	
<ul style="list-style-type: none"> * manage trusts for minors and represented persons * manage restrained and forfeited property * act as attorney or agent when appointed by the person 	<ul style="list-style-type: none"> * administer estates when appointed as executor * administer estates when no one else is willing or able * provide a will making and storage service 	<ul style="list-style-type: none"> * daily processing of asset and payment transactions * financial, investment and taxation management and reporting * maintain a register of wills and Advance Personal Plans 	

Our teams

Strategic and Operational Support

Corporate Services

The Corporate Services team supports Public Guardian and Trustee reporting and business administration functions and provides the first point of contact for telephone and face-to-face enquiries. Its responsibilities include client systems development and management, corporate and client communications and people and organisational development.

A key focus in 2021–22 in conjunction with the amalgamation of the offices of the Public Trustee and Public Guardian was the initiation of detailed mapping of Public Trustee business systems and processes to assess current practices and understand system development needs. A number of broader systems modifications were implemented during the reporting period to increase and streamline existing reporting capabilities.

The Corporate Services team also manages our 1800 telephone help line during business hours, with 28,450 calls received in 2021–22.

Policy

The Policy team supports the work of the Public Guardian and Trustee through the development of policy and practice directions, tools and information to guide internal operations; informational materials to support community education and awareness; and submissions and representations to commissions, committees and inquiries.

Our key information products include fact sheets, a guide for private guardians and our annual report. These information products are available in print formats and via our website, which provides guardianship information in accessible formats and links to additional resources.

During the year the Policy team provided written responses to calls for submissions related to the following:

- * National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Bill 2021, Senate Standing Committee on Community Affairs Legislation Committee (July 2021)
- * NDIS National Workforce Plan: 2021–2025, Joint Standing Committee on the National Disability Insurance Scheme (August 2021)

- * Support for Decision Making consultation, National Disability Insurance Agency (August 2021)
- * Inquiry into Current Scheme Implementation and Forecasting for the NDIS – Interim Report, Joint Standing Committee on the National Disability Insurance Scheme (October 2021)
- * Inquiry into Current Scheme Implementation and Forecasting for the NDIS – Final Report, Joint Standing Committee on the National Disability Insurance Scheme (February 2022).

Policy and practice directions finalised during the year addressed: death of a represented person; recognising and responding to allegations of violence, abuse, neglect and exploitation of represented persons; work health and safety; decision-making when the Public Guardian is appointed in a joint and several capacity; signing waiver and indemnity clauses; and consenting to COVID-19 testing. A number of policy and practice directions were commenced in the reporting period and are ongoing. The Policy team additionally compiled ministerial documents, contributed to the preparation of estimate briefs and produced the *Office of the Public Guardian Annual Report 2020–21*.

Inquiry and Engagement

The Public Guardian is a party to all guardianship matters in the Northern Territory. Inquiry and Engagement team members are authorised delegates of the Public Guardian and act in relevant matters before the NTCAT. The team's functions are distinct from the functions of the Guardianship team and Adult Guardianship Officers (AGOs), who act on behalf of represented persons when appointed by the NTCAT.

Inquiry and Engagement team functions are managed centrally through the Public Guardian and Trustee's Darwin office. The team provides guidance and support to all parties in relation to the guardianship application, including current and prospective private guardians, the person who is the subject of the guardianship application or order and other parties with an interest in the matter.

In 2021–22 the Inquiry and Engagement team addressed 185 public enquiries with the majority of these relating to guardianship applications and the remainder seeking information in respect of Advance Personal Plans, the registration of interstate orders or other matters. The team also conducts investigations when directed by the NTCAT.

Guardianship

As delegates of the Public Guardian, AGOs act as advocates and decision-makers for represented persons in areas as specified in a guardianship order. Their role is limited to advocacy and decision-making and excludes whole-of-life case management and day-to-day care.

AGO decisions are guided by our Decision Making and Recording Policy and Procedure. In 2021–22 AGOs made in the order of 2273 decisions on behalf of represented persons with the majority of these decisions being for health care matters (N=1847). COVID-19 vaccination consents (N=894) featured prominently in health care decisions.

Consistent with National Standards of Public Guardianship, AGOs endeavour to meet with represented persons and those providing formal and informal supports either face-to-face or via video conferencing annually to discuss the person's current views and wishes and assess their circumstances.

The Guardianship team also manages our 1800 telephone help line out of business hours, which is staffed by an on-call AGO team member. The after-hours service responds in the main to urgent requests for immediate information or urgent decisions requiring input or actioning by AGOs. In 2021–22, our after-hours team responded to 2259 calls.

Public Trustee

Trust team

The Trust team manages minor beneficiary trusts in accordance with the *Trustee Act 1893* and provides financial management services to eligible members of the Northern Territory community and persons where the Public Trustee has been appointed as financial manager under a guardianship order or Advance Personal Plan. In 2021–22, 1178 trusts were under Public Trustee administration. The team also manages and, where required, disposes of property and monies that are seized in accordance with the *Criminal Property Forfeiture Act 2002*.

Estate team

The Estate team provides a will-making and storage service for eligible members of the Northern Territory community, and administers the deceased estates both of persons who have appointed the Public Trustee as executor in their will in accordance with the *Administration and Probate Act 1969* and persons who

die intestate if there is no next of kin willing or able to do so. The Public Trustee will also administer an estate when ordered by the Supreme Court.

In the 2021–22 reporting period, the Estate team prepared 183 wills and finalised 74 deceased estates. As at 30 June 2022, 177 active deceased estate files were being managed by the Estate team.

Finance team

The Finance team supports Public Trustee financial, administration and reporting functions. The team manages Public Trustee Common Funds to maximise investments according to need and circumstance on behalf of clients, provides advice, information and secretariat support to the Public Trustee Investment Board and ensures financial reporting and client Australian taxation obligations are met.

The team processes financial transactions payable to trust clients, beneficiaries of deceased estates and vendors, and works closely with the Trust team to ensure that the administration of client trusts and accounts responds appropriately to their situation. The team additionally is responsible for maintaining the registers of wills and Advance Personal Plans lodged with the Public Trustee.

Recognising organisational capability

The Public Guardian and Trustee 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, staff were provided with a range of training and professional development opportunities to expand their learning and support emotional and mental wellbeing. These included workshops on challenging unconscious bias, working with interpreters and communicating across languages and disabilities, sessions on information and privacy and the continuation of the previous year's Mindarma training.

Relevant staff were assisted also to attend workshops and training in specific areas including the Aboriginal Employee Mentoring Program, financial management systems and first aid. Four staff were supported to undertake accredited education and training in accordance with our study assistance policy and by-law 41 under the Northern Territory *Public Sector Employment and Management Act 1993*.

Looking ahead

There has been significant focus on the amalgamation of the offices of the Public Guardian and Public Trustee during the reporting period, with a number of key strategic management objectives determined. Initial milestones have seen the approval and enactment of our new organisational structure, operational changes in our front-of-house reception and phone services and the formation of project consultation groups at all levels of staffing to ensure transparency throughout the change management process. In addition to these operational changes, our new identity has necessitated a new look along with a revised mission and organisational values.

The next 12 months will continue to see resources directed towards the amalgamation project to ensure the successful merger of the two offices with minimal disruption to client services. In addition to this substantial body of work, we remain focused on our core business of guardianship, financial management and advocacy to ensure that the rights of persons with impaired decision-making capacity are upheld, promoted and protected.

Key Performance Indicators, budget and resourcing

The 2021–22 year saw the amalgamation of the offices of the Public Guardian and Public Trustee for the Northern Territory to form the administrative entity Public Guardian and Trustee. Public Guardian and Trustee responsibilities are governed by separate but intersecting legislative instruments including but not limited to the *Guardianship of Adults Act 2016* and *Public Trustee Act 1979*.

The Department of the Attorney-General and Justice provides funding and corporate support to the Public Guardian and Trustee. In 2021–22, \$4,162,000 was allocated to Office of the Public Guardian operations and \$1,884,000 to Office of the Public Trustee operations for administrative functions and personnel.

At 30 June 2022 the Public Guardian and Trustee had 43.07 full-time equivalent (FTE) funded positions.

Key Performance Indicators

The Public Guardian and Trustee's performance in 2021–22 has been placed against the forecast estimates published in Budget Paper No. 3.

Outcomes for 2021–22 exceeded budget estimates for the number of individuals under adult guardianship throughout the reporting period, representing a 9.5 per cent increase on the 2021–22 reporting year (Table 2).

Table 2: Key Performance Indicators against forecast estimates, Budget Paper No. 3

	2020–21 Budget	2020–21 Actual	2021–22 Budget	2021–22 Actual
Number of individuals under adult guardianship	1172	1152	1232	1261
Percentage of represented adults with face-to-face contact	60%	64%	65%	64%
Estates and trusts under management	1100	1216	1100	1253

Advocacy

The Public Guardian and Trustee is committed to improving guardianship outcomes for people with impaired decision-making capacity. Our advocacy is targeted to ensure that represented persons have access to appropriate services, housing, justice and health care, and are afforded effective representation within the criminal justice system to ensure that their human rights are upheld.

A critical element of our advocacy endeavours is our collaboration with key stakeholders in the Northern Territory and nationally. The Public Guardian and Trustee values the ever-increasing and solid relationships we have formed with organisations in the community, not-for-profit and government sectors. Our collaboration with peak bodies, government and professional associations, in particular, strengthens our work in the mental health, aged care and disability services spaces. The importance of this joint advocacy, and our representation to key national commissions and inquiries, cannot be overstated.

Our 2020–21 annual report documented our submissions to major government commissions and inquiries. These included submissions to Disability Royal Commission inquiries concerned with emergency planning, restrictive practices, the rights of First Nations people with disability, violence and abuse of people with disability at home and the safeguards and quality framework. Our experience in the Northern

Territory of COVID-19 impacts on represented persons living in residential aged care was detailed in a submission to the Aged Care Royal Commission. All of our submissions noted the individual and collective experiences of represented persons involved with the Public Guardian and Trustee and their seemingly pervasive and entrenched experiences of exploitation, neglect and abuse.

We were able also to acknowledge some positive steps for people living with disability associated with the implementation of the *NDIS Authorisations Act 2019* and the establishment of a Senior Practitioner role in the Northern Territory. We are pleased to be in a position to note here that the National Disability Insurance Agency (NDIA) backed down from its proposal to introduce independent assessments. This was due in no mean part to the collaborative efforts of a large body of organisations in the disability and guardianship space.

Our work in the current reporting period continued our advocacy efforts in these areas with a focus on human rights, mental health, justice and health care. There are a number of issues impacting Territorians that have previously been highlighted as areas of concern by the Public Guardian, not least elder abuse, adult safeguarding and increasing the scope of the community visitor program. These areas will have a strengthened focus in the coming year.

Northern Territory Disability Strategy

In October 2021 the Northern Territory Government released a draft Northern Territory Disability Strategy 2022–2032 (draft Strategy) together with a discussion paper calling for submissions in response to the draft Strategy from people with lived experience of disability, service providers and the broader community.

The draft Strategy is the first disability strategy for the Northern Territory and is being developed under the guidance of the Northern Territory Disability Advisory Committee. The draft Strategy aims to provide a shared vision for an inclusive society for people with disability and:

- * demonstrate how the Northern Territory is meeting its obligations under the United Nations Convention on the Rights of Persons with Disability
- * demonstrate the Northern Territory's commitment to Australia's Disability Strategy 2021–2031
- * identify principles, goals and priorities of importance to people with disability in the Northern Territory.

The Public Guardian and Trustee was pleased to participate in a working group of Northern Territory Government representatives to share feedback on the draft Strategy and provide input into the first of three action plans intended to lay the foundation for the implementation of the 10-year Strategy. As part of this undertaking we committed to the following actions:

- * review all guardianship orders involving the Public Guardian to ensure the human rights of represented persons are being upheld
- * review existing practices to ensure culturally safe services for Aboriginal Territorians and undertake a pilot guardianship project with the North Australian Aboriginal Justice Agency.

The Northern Territory Disability Strategy 2022–2032 and Disability Strategy Action Plan 2022–2025 are expected to be released in the next reporting period.



Rory*

Rory receives funding under the NDIS for Supported Independent Living (SIL) accommodation and supports to provide him with community access. In a scheduled review of his NDIS plan, Rory's funding was reduced dramatically, resulting in the loss of his SIL accommodation and requirement to move to a public hostel in a very short period of time. His access to community supports was also greatly reduced.

The sudden change in living situation and reduced supports resulted in an escalation of behaviours that increased Rory's vulnerability and risk of abuse and exploitation. His allied health providers and behaviour clinician expressed their concern for Rory's wellbeing and future. The matter was escalated quickly to the Public Guardian, who met with senior National Disability Insurance Agency (NDIA) staff to advocate on Rory's behalf, noting the increased risk of harm and inadequacy of his remaining supports. The meeting resulted in an internal review by the NDIA and a reinstatement of previous supports, enabling Rory to return to his SIL accommodation and engage once more in supported community access activities. Rory's behaviours have since stabilised but the anxiety associated with his dislocation from his housing and supports remains.

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

National Disability Insurance Scheme

The implementation of the National Disability Insurance Scheme (NDIS) in the Northern Territory has seen improvements in quality of life for many participants living in proximity to major centres. Outcomes for primarily Aboriginal NDIS participants living on Country in remote and very remote regions, however, are characterised in the main by a lack of appropriate housing, health care and day-to-day living supports necessitating relocation away from Country and displacement from culture, kin and family – fundamental to Aboriginal identity, existence and spiritual wellbeing.

The Public Guardian and Trustee remains concerned about the quality and consistency of services provided by NDIS Support Coordinators across the Northern Territory. Individuals appointed to NDIS Support Coordinator roles have varying degrees of training and experience both in the role and remote environment. The associated high turnover of NDIS staff places further administrative strain on our Adult Guardianship Officers (AGOs), who invariably must fill the gaps and undertake additional work when supports need to be sourced.

Further exacerbating these issues is an observed trend in NDIS plan funding reduction with Supported Independent Living arrangements and community access increasingly impacted. There have additionally been notable decreases in funding for allied health professionals, support coordination and return to Country. Reducing the existing funding in an NDIS participant's plan arguably undermines the purpose of the NDIS by removing choice and control and creating disruption and uncertainty in the lives of highly vulnerable people dependent on established services and supports for their day-to-day existence.

Consequently, over the past year the Public Guardian and Trustee has initiated an increased number of Requests for a Review of a Decision made by the NDIA. Additionally, four applications were made by the Public Guardian on behalf of represented persons to the Administrative Appeals Tribunal to appeal unsatisfactory review decisions. In the previous reporting period, the Public Guardian and Trustee made no applications to the Administrative Appeals Tribunal.

The process of having an application heard by the Administrative Appeals Tribunal is long and complex with many applicants needing an advocate or lawyer to assist them through the process. Such assistance is available generally through the Northern Territory Legal Aid Commission (the Commission), which receives limited federal funding to represent NDIS participants through the appeals process. However, funding for such appeals in the reporting period was exhausted by January 2022 through the sheer number of participants seeking support.

A request by the Commission for additional funding to support NDIS participants with appeals processes was declined by the previous federal government. This has meant that no Northern Territory NDIS participant was able to access legal assistance or advocacy through the Commission for appealing funding reductions in NDIS plans at the time of writing post January 2022. The Public Guardian and Trustee is hopeful that funding to the Commission will increase to ensure that the right to appeal a decision is adequately supported.



Response to national inquiries

Written submissions to national inquiries and commissions enable the Public Guardian and Trustee to undertake systemic advocacy and provide a voice for the most vulnerable in our community. Our recent efforts at the national level have focused on inquiries and consultations relating to the NDIS and its particular challenges within the Northern Territory landscape.

During the reporting period five written submissions were provided in response to NDIS inquiries. These inquiries concern the NDIS national workforce plan, improving supports for at risk participants, support for decision-making and NDIS current scheme implementation and forecasting. The submissions draw upon the significant experience of the Public Guardian and Trustee in supporting represented persons to access and navigate the NDIS.

Our submissions highlight key themes specific to Northern Territory NDIS participants. These relate to the specific geocultural landscape in which participants live, their status and associated vulnerabilities as represented persons, cultural considerations, transience and the tyranny of distance between regional centres and remote communities leading to thin markets on the ground.

These factors may result in NDIS participants being forced to relocate to major regional centres to access essential services and supports. The requirement to relocate often removes participants from informal supports and, for Aboriginal people, results in a loss of connection to culture, kin, family and Country.

NDIS National Workforce Plan: 2021–2025

The Northern Territory has continued to experience challenges in recruiting and retaining sufficient and suitably skilled staff to provide services which meet the demands of Territorians receiving NDIS supports. The Public Guardian and Trustee welcomes the continued efforts of the Joint Standing Committee on the National Disability Insurance Scheme (the Committee) in its inquiries into the NDIS workforce to ensure quality services are provided to all NDIS participants.

In mid-2021 the Committee invited submissions in response to the *NDIS National Workforce Plan: 2021–2025* (NDIS Workforce Plan) as part of its role to inquire into aspects of NDIS implementation, performance and governance. The NDIS Workforce Plan, released in June 2021, focuses on three key priority areas:

- * promote the benefits of working in the care and support sector and improve entry pathways for workers 'with the right skills, values, attributes and diversity of experience to match the diverse range of participants'²
- * train and support the development of a capable and responsive disability workforce to support retention and meet the needs and expectations of NDIS participants
- * support sector efficiency and innovation through reducing the administrative burden ('red tape') both for providers and workers and encouraging new or adapted service models and improved market information.

² Australian Government 2021, *NDIS National Workforce Plan: 2021–2025*, Commonwealth of Australia, Department of Social Services, p. 11.

While the Public Guardian and Trustee supports these priority areas and the associated initiatives, there is still some concern that the NDIS Workforce Plan does not sufficiently address pricing structures and rates of pay for disability support workers; contains only a minimal commitment to Aboriginal people with disability and growing the Aboriginal workforce; and includes minimal initiatives to promote and develop opportunities for people with disability to access employment in the NDIS workforce.

The Public Guardian and Trustee would like to see the expansion of the NDIS Workforce Plan to address these issues, and continuous consultation with participants, their supporters and the service sector in the development and implementation process.

Improving support for at risk participants

Persons supported by the Public Guardian are at increased risk of harm and neglect as a result of their impaired decision-making capacity and often limited informal support networks. With this in mind, the Public Guardian is supportive of improvements to the NDIS scheme to monitor and protect at risk participants.

On 3 June 2021 the Minister for the National Disability Insurance Scheme introduced the National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Bill 2021 (the Bill) to strengthen the powers of the NDIS Quality and Safeguards Commissioner and improve supports for NDIS participants. The legislation responds to a review by the Hon. Alan Robertson SC (Robertson Review)³ into 'the adequacy of the regulation of NDIS services provided to Ms Ann-Marie Smith, an NDIS participant, who died tragically and needless in April 2020'.⁴

On 17 June 2021, the Senate referred the Bill to the Senate Community Affairs Legislation Committee for inquiry and report. The Bill, which has subsequently received assent, amends the *National Disability Insurance Scheme Act 2013* to:

- expand the compliance and enforcement powers of the Commissioner of the NDIS Quality and Safeguards Commission;
- clarify provider registration provisions;
- and enable information sharing between the National Disability Insurance Agency and the commission and the disclosure of information to relevant state and territory bodies.⁵

The amendments implement five of the 10 recommendations outlined in the Robertson Review.

The Public Guardian and Trustee's submission to the Senate Community Affairs Legislation Committee was supportive of the Bill and the strengthened supports and protections for NDIS participants. However, our position is that the NDIS requires further legislative and policy reform to complete the suite of improvements identified in the Robertson Review and other reports (see, for example, the final report of the Government of South Australia Safeguarding Task Force⁶).

Such reforms relate to the definitions of reportable incidents and complaints, the identification and clarification of a participant's vulnerability, funded support coordination and community visitor services. These additional measures will provide increased safeguards for at risk participants, and consequently all NDIS participants.

³ Robertson, A. SC 2020, *Independent review of the adequacy of the regulation of the supports and services provided to Ms Ann-Marie Smith, an NDIS participant, who died on 6 April 2020*, Report to the Commissioner of the NDIS Quality and Safeguards Commission.

⁴ Australian Government 2021, *Improving support for NDIS participants at risk of harm*, Media release by Senator the Hon. Linda Reynolds CSC, 3 June 2021, viewed 22 August 2022, <https://formerministers.dss.gov.au/19532/improving-support-for-ndis-participants-at-risk-of-harm/>.

⁵ Parliament of Australia 2021, National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Bill 2021, *Summary*, viewed 22 August 2022, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6725.

⁶ Government of South Australia 2020, *Safeguarding Task Force: Report*, 31 July 2020, viewed 22 August 2022, https://dhs.sa.gov.au/__data/assets/pdf_file/0004/90832/Safeguarding-Task-Force-Report-31-July-2020.pdf.

Support for decision-making

Although there is no requirement for a person participating in the NDIS to have a substitute decision-maker appointed, the Public Guardian and Trustee has observed a growing trend for persons with impaired decision-making to have a formal guardian appointed to enable them to navigate the NDIS.

Support for decision-making and participant skills development has significant potential to address this trend and reduce the need for the appointment of a guardian for participants who may have the capacity to make supported decisions. This potential was addressed in our submission to the NDIA Support for Decision Making consultation, which sought responses to a proposed new Support for Decision Making policy outlined in their *Consultation paper: Supporting you to make your own decisions*.

The Public Guardian and Trustee advocates for the inclusion of specific statements relating to a person's capacity and presumptions around any need for the appointment of substitute decision-makers, in addition to a participant's ability to determine who will support them and appropriate safeguards. It is recommended that further consultation with Aboriginal people and their representative organisations occurs prior to finalising the policy to ensure that cultural considerations are taken into account, and that NDIA staff undergo appropriate training to model support for decision-making when interacting with participants.

We suggest also that the policy should be accompanied by the following measures to facilitate meaningful participant engagement with NDIS processes:

- * simplified and standardised service agreements which participants and their support networks can understand
- * a single point of contact, such as a Support Coordinator, for participants and their support networks
- * streamlined application processes and reduced red-tape to lessen the administrative burden and quantity of transactions for participants, their support networks and the NDIS.

The Public Guardian and Trustee strongly advocates for participants, their supporters and representative organisations to be encouraged to review and provide final comment on the draft policy prior to approval and implementation.

NDIS scheme implementation

The roll out of the NDIS across the Northern Territory has seen many positive outcomes for participants. However, the scheme's forecasting and modelling have proven to be unproductive and their design limited and urban centric. The forecast competition, innovation, consumer choice and flexibility associated with a market-driven approach to service development and delivery has not been realised in the Northern Territory. Rather, the system has resulted in fragmentation and market failure in remote and very remote settings. Location-specific strategies and funding models must be developed to address NDIS service implementation failures in these areas.

In our submissions to the NDIS inquiry into Current Scheme Implementation and Forecasting (NDIS Inquiry), the Public Guardian and Trustee highlighted a number of key concerns including the: ongoing reductions in NDIS plan funding; poor interface between NDIS and non-NDIS services; inability of all participants to access legal support at Administrative Appeals Tribunal hearings where support and advocacy is required; and limited accessibility to mainstream services for NDIS participants. A number of these concerns have been raised previously in our submissions to the NDIS and relevant Royal Commissions.

The Public Guardian and Trustee continues to witness reductions in participant plan funding, particularly in regard to Supported Independent Living and the provision of support services. Reductions in plan funding exacerbate existing issues in the Northern Territory including limited access to supports and services outside of major regional centres, thin markets, poor or non-existent service options (especially in specialist areas), lengthy wait times for service access and a lack of culturally appropriate services for Aboriginal Territorians, in particular. All of these factors impact the ability of plans to support participants to live successfully.

We have also seen variations in plan funding for participants with similar diagnoses, inconsistencies in NDIA review decisions and services and supports being withdrawn prematurely by mainstream providers in the belief that they will be covered in NDIS plans and provided by NDIS service providers.

In our submission to the NDIS Inquiry we made a number of recommendations in relation to: the funding of legal representation for Administrative Appeals Tribunal matters; the continuation of initiatives to support people with disability to access mainstream services and have increased community engagement; the improvement of the interface of NDIS service provision with non-NDIS services provided by the states, territories and the Commonwealth; strategies and initiatives to address NDIS plan inequities; and the development of location-specific strategies and funding models to address market failures.

Embedding supported decision-making

Our decision-making tool, implemented in 2020, captures decisions made by our office in relation to personal guardianship. As part of this recording process, our Adult Guardianship Officers document whether or not the decision aligns with the known, or previously expressed, views and wishes of the represented person.

An analysis of our data shows that of 570 complex and non-complex decisions made in the reporting period, only 21 of the decisions were recorded as not aligning with the represented person's known views and wishes. The majority of these decisions not aligning with the views and wishes of the represented person were health care related and critical to the health and wellbeing of the represented person.

As evidenced, the vast majority of decisions were demonstrably aligned with the views and wishes of the represented person, which is testimony to the work of our office in embedding supported decision-making while meeting our obligations under the guardianship principles. This is consistent with the shift to supported decision-making that is occurring nationally and internationally.

Rosemary*

Rosemary is proudly independent and struggles to accept her dementia diagnosis and declining health. After a series of falls resulting in repeat hospital admissions, the hospital's treating medical team recommended that she be discharged to a nursing home due to her high falls risk. The treating clinician also believed that Rosemary would benefit from the appointment of a guardian due to her decline in decision-making capacity. An application for a guardianship order was subsequently made to the Northern Territory Civil and Administrative Tribunal (NTCAT).

Rosemary strenuously rejected the proposed course of action and opposed the medical team's guardianship application. The NTCAT accepted her wish for independence and the 'dignity of risk', but recognised also the limitations associated with dementia. A limited guardianship order was therefore made giving the Public Guardian decision-making authority for accommodation and day-to-day services only. Rosemary retains autonomy for her health care and finances.

Rosemary has very strong views against living in residential aged care. Consequently, and with her agreement, her Adult Guardianship Officer arranged for the maximum possible in-home supports under her aged care Home Care Package and a monitored personal alarm system to support her return home. Recognising the risks and challenges but also autonomy of supported decision-making, Rosemary has remained in her own home in accordance with her wishes.

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

Restrictive practices

The use of restrictive practices for people with disability continues to receive national attention. There remain continued calls through submissions to the Disability Royal Commission and the Joint Standing Committee on the National Disability Insurance Scheme by people with disability, their representative organisations and advocates for an authorisation and monitoring framework across all service sectors.

During the reporting period changes to the *Commonwealth Aged Care Act 1997* and *Quality of Care Principles 2014* commenced with the aim of clarifying and strengthening requirements in relation to the use of restrictive practices in aged care. These changes include a stronger emphasis on person-centred care by ensuring restrictive practices are used as a last resort, the use of behaviour support plans and the introduction of mandatory consent, documentation and monitoring requirements for the use of restrictive practices.

The NDIS continues to promote the reduction and elimination of restrictive practices for NDIS participants with the embedding of state and territory authorisation and monitoring frameworks. These frameworks are challenged with limited behaviour support practitioners, difficulties obtaining behaviour support plans and limited coordination across jurisdictions and service systems in relation to the regulation of restrictive practices.

In the last reporting period the Public Guardian and Trustee detailed how, in the absence of an authorisation and monitoring framework across all service systems, guardianship has become a means of seeking authorisation for the use of restrictive practices for people with impaired decision-making capacity in the Northern Territory.

This has been problematic as the *Guardianship of Adults Act 2016* is silent in regard to restrictive practices. In 2020 the Northern Territory Civil and Administrative Tribunal (NTCAT) determined that a guardian's authority for health care did not extend to the authorisation of a restrictive practice or coercive

measure and the only mechanism for authorisation of these measures under the *Guardianship of Adults Act 2016* was by order of the NTCAT under section 35.

This decision was the subject of an appeal to the Supreme Court of the Northern Territory. In August 2021 the Full Court of the Supreme Court allowed the Northern Territory's appeal and concluded that with consideration to the carefully calibrated decision-making process prescribed by the legislation, a guardian's authority will in certain circumstances include restrictive practices.⁷

In that matter the Full Court declared that the Public Guardian's authority included the power to consent to a number of measures which may be considered restrictive practices. These included physical contact in the form of handholding and gentle pressure of limbs during a medical procedure, the administration of medication for agitation and disinhibition and treatment in a secure area of the health care facility. The Full Court also provided some consideration as to what measures may still require the authorisation of the NTCAT under section 35 of the *Guardianship of Adults Act 2016*.

In October 2021 the NTCAT provided further clarification regarding a guardian's authority for restrictive practice decisions when it confirmed the principles in the Full Court decision extended to areas of a guardian's decision-making apart from health care.⁸

Following the Full Court and NTCAT decisions the Public Guardian and Trustee has been developing an appropriate framework for consideration of requests for consent for restrictive practices associated with the Public Guardian's decision-making authority. In the meantime, individual requests for consent for restrictive practices are being assessed on a case-by-case basis by the Director Guardianship and Legal Policy Officer to ensure the requests fall within the authority of the Public Guardian.

Between July and August 2021 the Public Guardian and Trustee was involved in 15 applications for section 35 orders under the *Guardianship of Adults Act 2016*.

⁷ *Northern Territory of Australia v EH & Anor* [2021] NTSCFC 5.

⁸ *Re KI* [2021] NTCAT 35.

Interface with the justice system

Persons with cognitive impairment and disability are overrepresented in their interactions with the adult justice system either through having charges laid against them or as a result of being the victim of a crime.

In the Northern Territory a represented person who commits a crime may be found fit to plead or, if it is deemed that they meet the criteria under Part IIA of the *Criminal Code 1983*, found unfit to plead. The majority of persons found unfit to plead will live with mental illness, acquired brain injury or intellectual disability along with other comorbidities which necessitate increased supports while in prison and upon release to ensure a streamlined transition to community life.

The Public Guardian and Trustee continues to advocate to ensure that represented persons receive the necessary supports while incarcerated and that appropriate supports are in place prior to their release to safeguard their interests and reduce the rates of recidivism amongst this cohort. The Public Guardian and Trustee works closely with Northern Territory Correctional Services, the NDIS and other disability support agencies to ensure that a holistic approach to care and support is provided.

During the reporting period 17 represented persons were serving a prison sentence and 18 represented persons were under a Part IIA order. Of those under a Part IIA order, 14 were being supported in the community and the remainder were in prison.

COVID-19 impacts

The effect of COVID-19 health directions and restrictions continued to impact our operations during the reporting period. With border restrictions easing in January 2022, the Northern Territory experienced an increase in COVID-19 cases which saw the implementation of additional restrictions in relation to accessing aged care facilities and remote communities. These restrictions necessitated the increased use of telecommunications to ensure that connections between our AGOs and represented persons were maintained, and that represented persons with Public Guardian involvement continued to be actively involved in decisions relevant to their lives.

During the reporting period, our AGOs provided 894 consent decisions for COVID-19 vaccinations on behalf of represented persons.



Agnes and Edith*

Agnes and Edith are elderly sisters living with dementia who have never lived apart. Agnes' declining health and progressive dementia was resulting in extended periods in hospital and led her treating medical team to raise concerns with our office about the suitability of her living situation and existing supports. Different options were explored including residential aged care; however, Edith repeatedly stated that the sisters wished to remain supported together in the family home. Agnes' Adult Guardianship Officer subsequently successfully sourced a service able to provide assistance with daily living activities from early morning to late evening. This has enabled Agnes to avoid further hospital admissions and the sisters to continue to age in place together in their family home with appropriate, progressive supports.

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

Aged care

The Public Guardian and Trustee maintains a strong interest in the aged care sector and the provision of services for older Territorians, with over a third of represented persons involved with the Public Guardian eligible for aged care services.

AGOs have noted increased waiting times in the reporting period for residential aged care placements in some regional areas, with waiting list times impacted by COVID-19 restrictions in other regional centres. This has increased the number of persons residing in hospital who are medically fit for discharge but awaiting an aged care placement or implementation of appropriate in-home care services prior to discharge.



Housing

Access to housing continues to be an issue for represented persons with Public Guardian and Trustee involvement. A lack of public housing and purpose-built disability accommodation, along with the ever-increasing cost of private rentals in regional areas, reduces freedom of choice for persons with disability and limits their access to independent living options.

For represented persons living in remote and very remote communities, these issues are exacerbated by existing issues such as housing overcrowding, poorly maintained infrastructure and a lack of new housing stock. In addition to this, the provision of Supported Independent Living accommodation is unavailable in the majority of communities. These impacting social determinates often result in the relocation of represented persons requiring relevant housing supports to regional centres, placing further strain on an already stretched disability friendly housing market.

The lack of suitable accommodation is also placing added strain on the Territory's hospitals. We are seeing represented persons who are admitted to hospital due to injury or illness remaining in hospital once

medically fit for discharge due to a lack of appropriate housing options or supports. We are also seeing the admission of people with disability who are otherwise medically fit to hospital because they are unable to access appropriate housing and can no longer be safely supported in their community. While we have seen reductions over recent years in the number of people remaining in or being admitted to hospital due to a lack of appropriate housing options, the issue remains of concern.

At 30 June 2022, three represented persons in Northern Territory hospitals under the guardianship of the Public Guardian were awaiting accommodation placements: one in Tennant Creek, one in Darwin and one in Palmerston. Two of these were on waiting lists for aged care placements with the third awaiting an outcome from the NDIS in relation to eligibility for a Supported Independent Living placement or additional in-home supports.

Our continued advocacy in conjunction with housing and specialist disability accommodation providers is seeing some results; however, there remains a gap in the housing market for adequate housing stock that is safe, functional and accessible to people with disability.



Northern Territory Guardianship Review Project

The Public Guardian and Trustee seeks to support Territorians to undertake the role of guardian for family members. Throughout the year we continued our initiatives focused on understanding the barriers to becoming a guardian and empowering people to confidently take on the role of private guardian. It is acknowledged that the involvement of family and kin in supporting Aboriginal Territorians in the guardianship space is invaluable.

In the Northern Territory a high number of represented persons with Public Guardian involvement for personal matters identify as Aboriginal. In early 2020 we partnered with the North Australian Aboriginal Justice Agency on a guardianship review project that seeks to understand barriers which may prevent family and kin from undertaking the guardian role.

The project design aims to capture information relating to barriers to guardianship, understand mechanisms to support change and promote self-determination for Aboriginal people within the guardianship sphere, and support kinship and cultural connection for represented persons, their families and communities.

The initial stage of the project was centred in a regional location and focused on a small cohort of represented persons. With the impact of COVID-19 being felt by mid-2020 the project was temporarily placed on hold until late 2021 when it recommenced and expanded into other regions.

While there have been no changes to date in respect of the appointment of private guardians for the represented persons involved, some promising discussions have been held with joint guardians and family of current participants and it is hoped that with adequate support the role of guardian may be assumed by eligible family members or kin in time.

A separate internal project is being run concurrently to support joint guardians to assume the role of sole guardian with the assistance and guidance of the Public Guardian and Trustee.

Excellence in Advocacy and Promotion of Human Rights Award



proudly sponsored by the Public Guardian and Trustee

The Public Guardian and Trustee was thrilled to be a category sponsor for the 2021 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 award 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 2021 winner of this award was Kelly Dennis, Mental Health Association of Central Australia (MHACA). Highly Commended in this category in 2021 was MJD Foundation.

We congratulate all award winners for their significant contribution over the year!



Guardianship trends

Applications for guardianship orders

There was a substantial decrease in the number of guardianship applications submitted during the reporting period (N=328) compared to the previous year (N=428) (Figure 2).

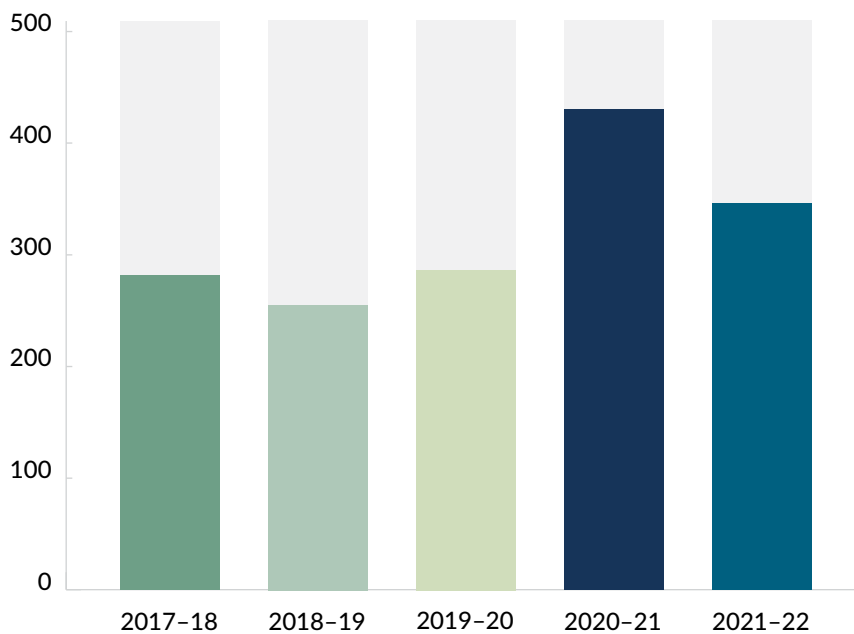


Figure 2: Number of guardianship applications: trends over five years



The lower number of applications can be attributed predominantly to the reduction in compliance orders sought,⁹ with only 15 applications made under section 35 of the *Guardianship of Adults Act 2016* compared to

106 in the previous reporting period. There were also notable reductions in the number of applications for new orders (N=135) and urgent orders (N=83) during this period (Figure 3).

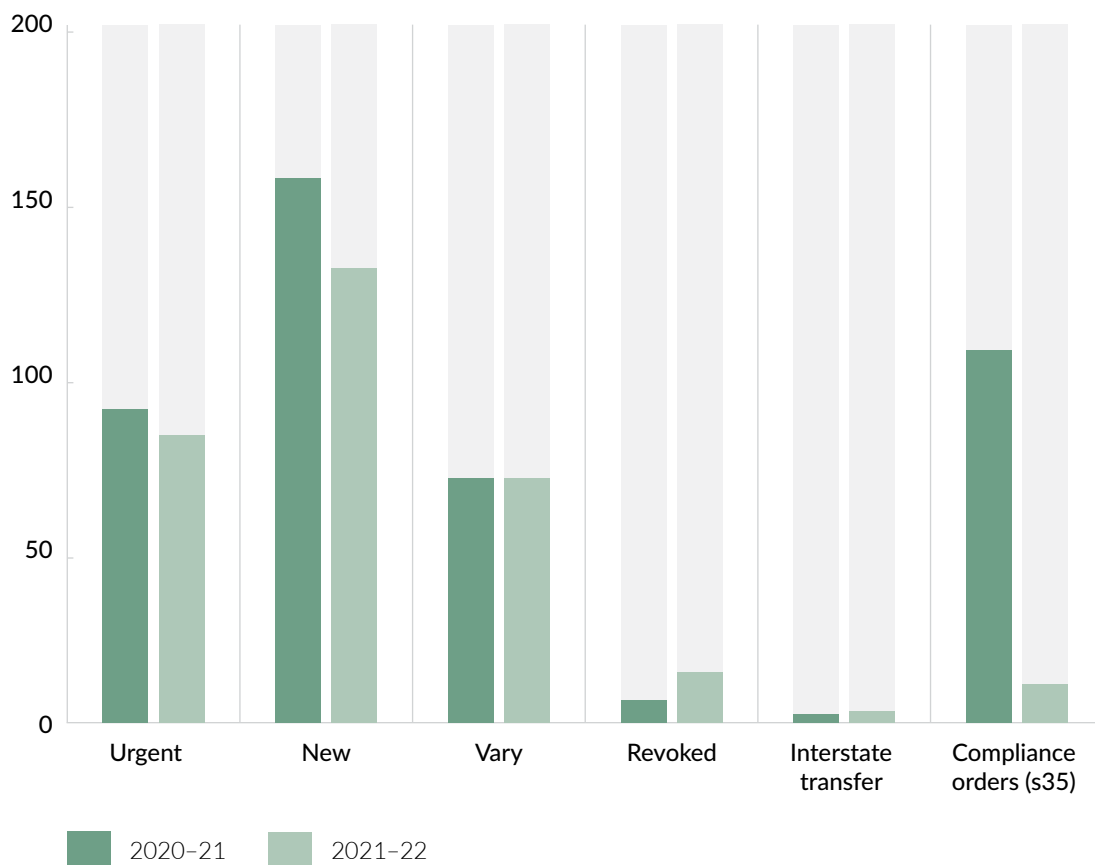


Figure 3: Number of guardianship applications, by application type: 2020–21 and 2021–22*

Note: s35 applications were to authorise use of a restrictive practice. *Miscellaneous applications and impairment declarations not included

⁹ The number of compliance orders sought reduced following the decision in August 2021 of the Full Court of the Supreme Court of the Northern Territory in *Northern Territory of Australia v EH & Anor*, which concluded that with consideration to the carefully calibrated decision-making process prescribed by the legislation, a guardian's authority will in certain circumstances include restrictive practices. See Advocacy for further discussion of this matter.

The reporting period saw a slight reduction in the number of applications for new and urgent guardianship orders with a total of 218 received, accounting for 67 per cent of all applications (Figure 4). Dementia was recorded as the primary

impairment (34%), which is consistent with previous years. Neurological disorders, mental illness and intellectual disability collectively accounted for the primary impairment in 45 per cent of applications (Figure 5).

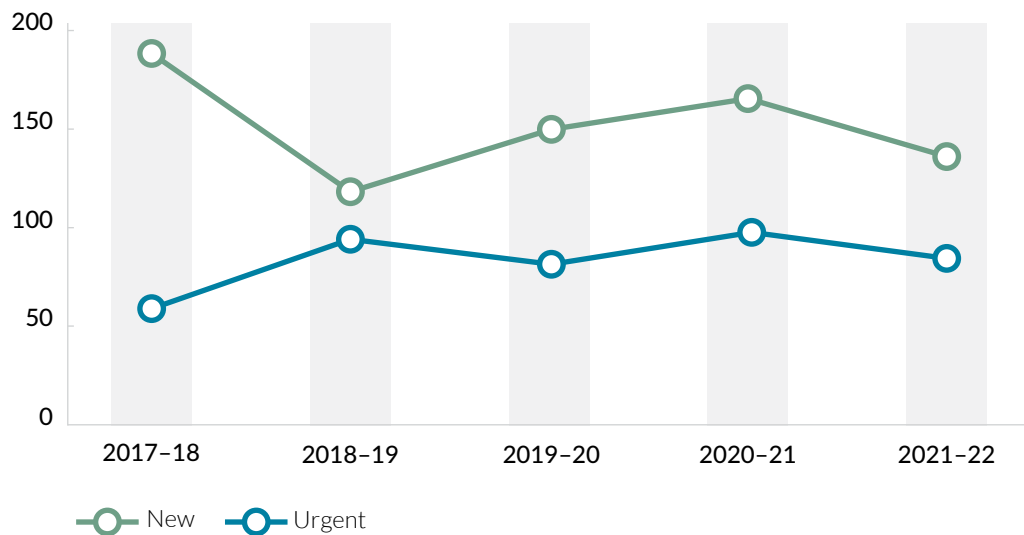


Figure 4: Number of new and urgent guardianship applications: trends over five years

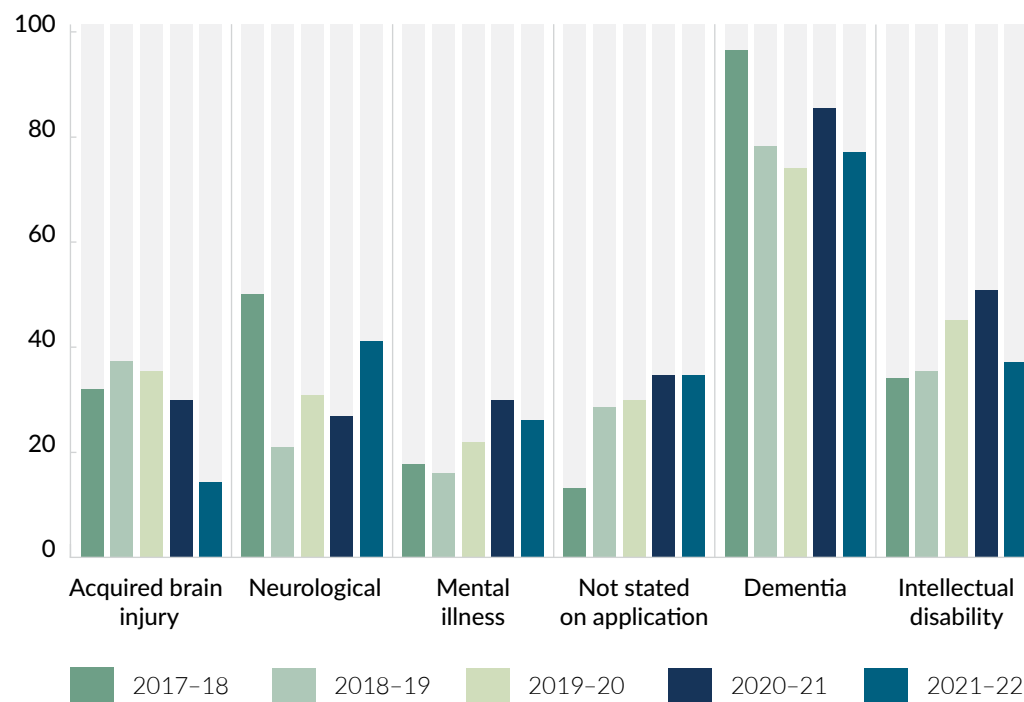


Figure 5: Primary impairment stated on new and urgent applications: trends over five years

Aboriginal and/or Torres Strait Islander persons were identified as the subject in 41 per cent of applications received during the reporting period (Figure 6). This represents a 12 per cent decrease relative to the previous reporting period. Conversely, applications for persons not identifying as Aboriginal and/or Torres Strait Islander (59%) increased relative to the previous reporting period (47%).

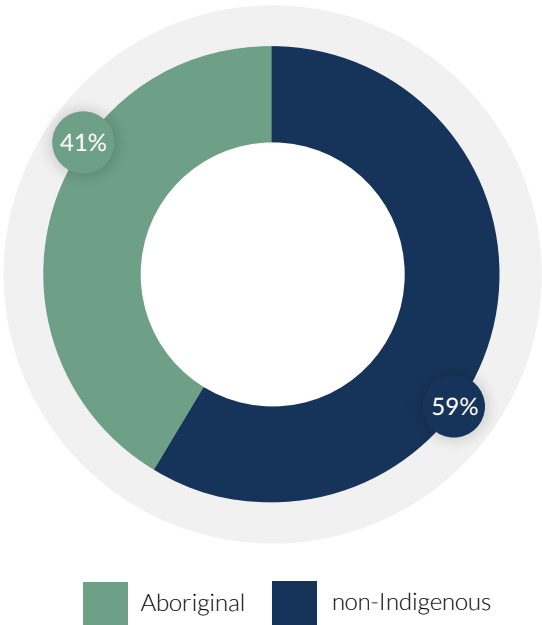


Figure 6: Applications for guardianship orders in 2021–22, by Aboriginal and non-Indigenous identity (%)

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

New and existing guardianship orders

The reporting period saw a decrease (12%) in the number of new guardianship orders relative to the previous year, with 189 new and urgent orders made in 2021–22. Of these 189 new and urgent guardianship orders, 85 appointed the Public Guardian as sole or joint guardian (Figure 7). Of the 85 orders appointing the Public Guardian, 71 also appointed the Public Trustee for financial management.

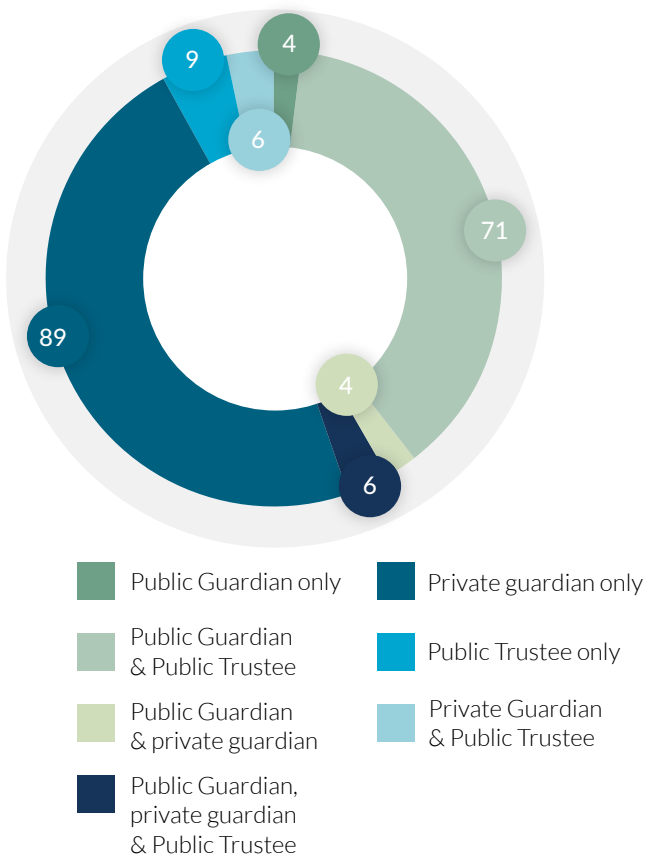


Figure 7: Number of new guardianship orders in 2021–22, by appointment type

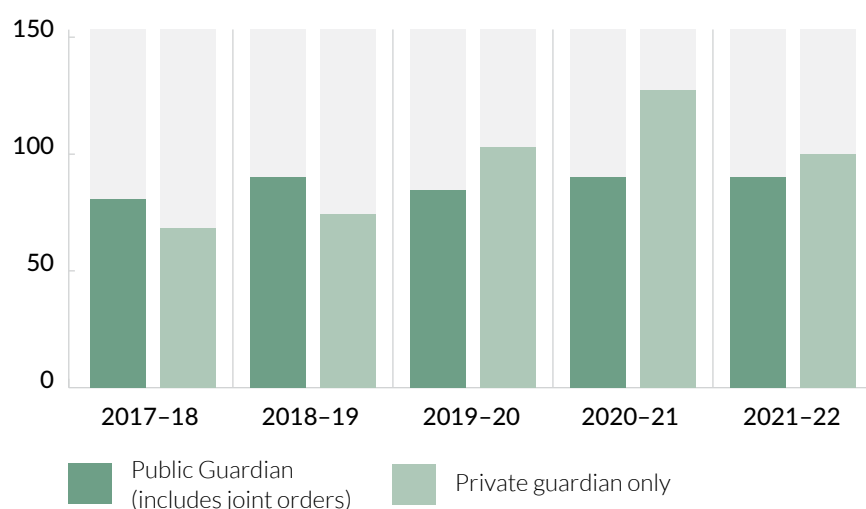


Figure 8: New guardianship orders involving private guardians: trends over five years

Figure 8 shows the number of new orders appointing private guardians to act solely or jointly with the Public Guardian. There has been a marked decrease in the number of private guardians appointed solely relative to the previous reporting period, while the number of orders appointing the Public Guardian has remained steady.

While the number of private guardians appointed solely has decreased, new orders appointing private guardians continue to outnumber those made to the Public Guardian.

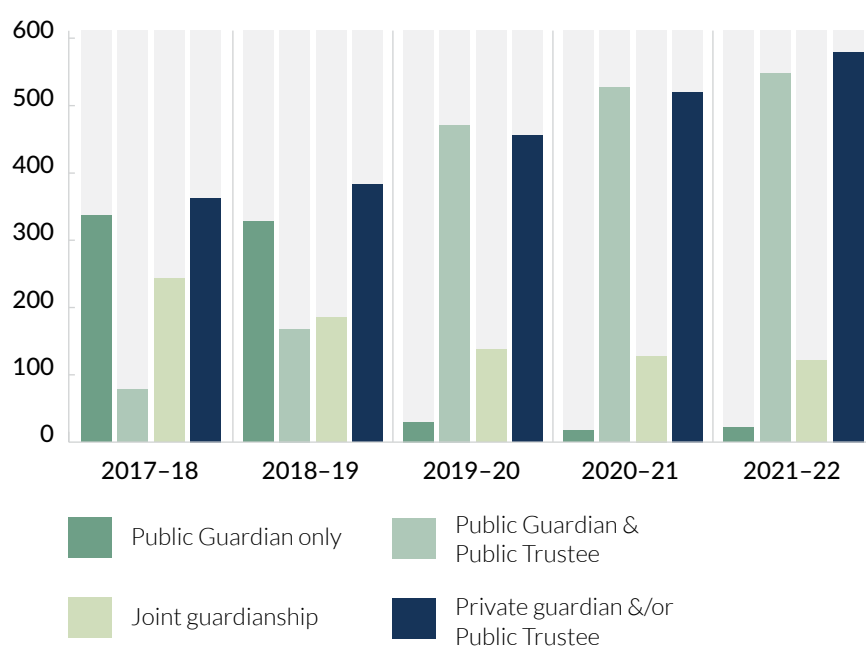


Figure 9: Number of persons with guardianship orders, by guardianship type: trends over five years

Note: 'Joint guardianship' includes Public Guardian with private guardians. May include Public Trustee for financial management

In 2021-22, a total of 1261 persons were subject to guardianship orders in the Northern Territory. This represents an increase of 9.5 per cent on the previous year. The Public Guardian was appointed sole or joint guardian for the majority of these orders (N=670) with the remainder of orders appointing private guardians and/or the Public Trustee (for financial management) (N=591) (Figure 9).

There has been a marked progressive increase over the past five years in orders appointing private guardians and/or the Public Trustee (N=88).

The number of private guardians appointed has continued to grow over successive years, with an increase of 16 per cent since the last reporting period (Figure 10). The Public Guardian and Trustee views the

increase in private guardianship as a positive reflection of our efforts to support and encourage family members to assume a private guardianship role.

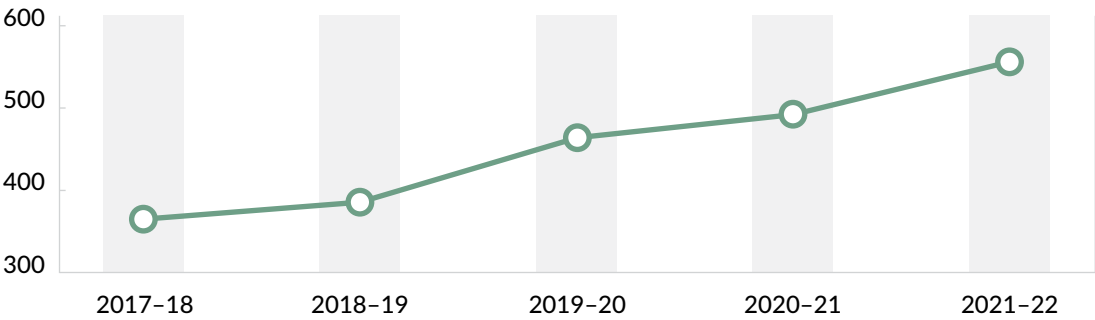


Figure 10: Number of orders appointing private guardians: trends over five years

Advance guardianship orders for young people

The number of applications for advance guardianship orders for young persons with impaired decision-making capacity who had recently turned 17 has stabilised this year, with 10 applications submitted to the Northern Territory Civil and Administrative Tribunal (NTCAT). This continues the positive trend of providing for continuity of services and supports through the smooth transfer of decision-making authority for young people as they transition from out-of-home care to adult guardianship.

Initiating applications earlier provides all parties 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 considerations to be heard and resolved in advance of the young person turning 18.

In 2021–22, six guardianship orders for young persons were enacted and the transition from out-of-home care to adult guardianship undertaken. The Public Guardian was appointed as guardian for all of these young people (Figure 11).

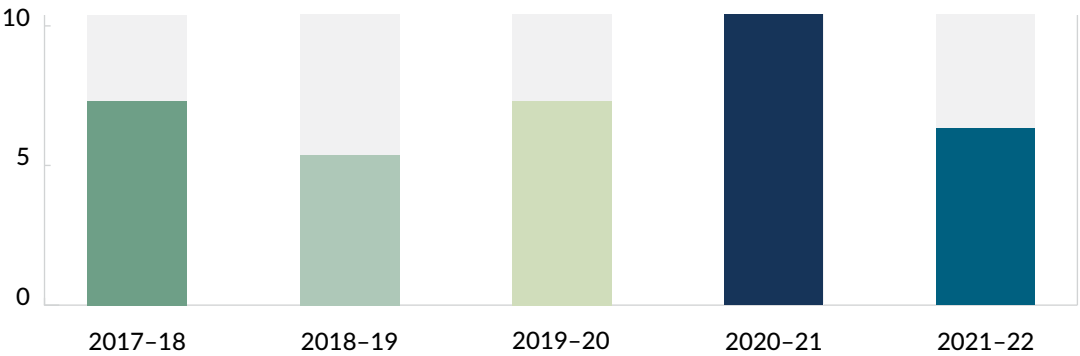


Figure 11: Number of young people transitioning from out-of-home care to adult guardianship: trends over five years

Guardianship by location

The current reporting period has seen a change in the boundaries for administrative regions referenced by the Public Guardian and Trustee for reporting purposes to ensure consistency with those used in Northern Territory Government reporting.

The majority of persons where the Public Guardian has been appointed for personal decisions reside in the Central Australia (N=195) and Top End regions (N=153) and Darwin (N=187) (Figure 12). The location of represented persons in proximity to major regional centres can be attributed to the need for people living with disability to access services and health care that would not otherwise be available to them in more remote settings.

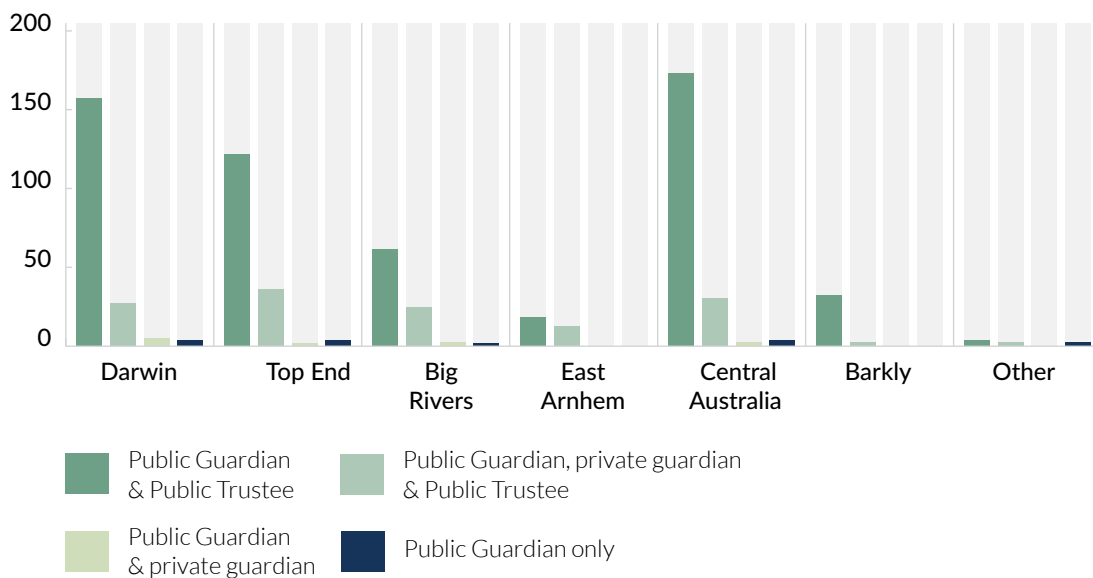


Figure 12: Primary location of persons with guardianship orders in 2021–22, by guardianship type

Guardianship by gender

In 2021–22, just over 60 per cent of persons with guardianship orders appointing the Public Guardian were male (Figure 13). This reflects the Northern Territory's demographic: at 30 June 2021, the Northern Territory had the highest sex ratio of all the Australian states and territories with 104 males per 100 females.¹⁰

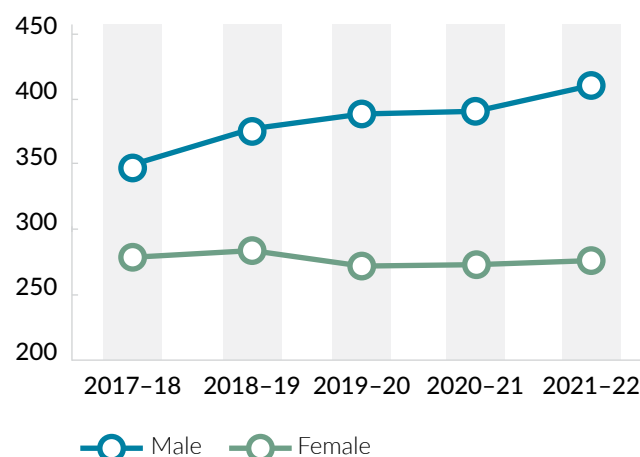


Figure 13: Number of persons with guardianship orders involving the Public Guardian, by gender: trends over five years*

Note: *Includes sole and joint guardianship

Guardianship by age and primary impairment

The Public Guardian was guardian to 670 represented persons in 2021–22. A third of represented persons with Public Guardian involvement are aged 65 and above (Figure 14). The 65 years plus age cohort of persons with Public Guardian involvement (N=221) represents around 1 per cent of the total estimated resident population aged 65 and over in the Northern Territory.¹¹

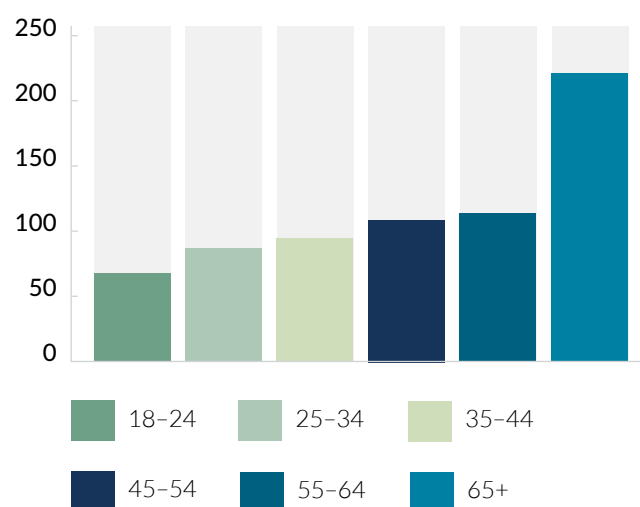
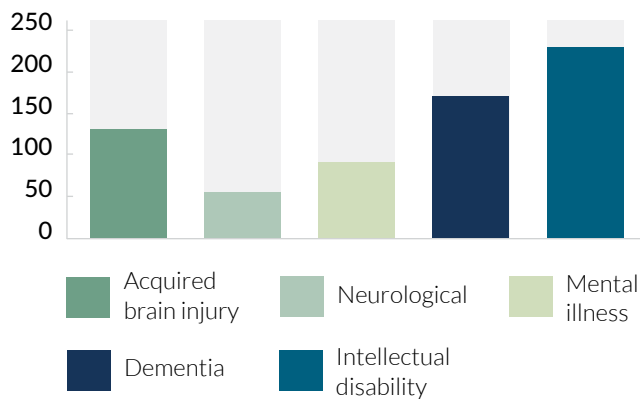


Figure 14: Number of persons with guardianship orders involving the Public Guardian in 2021–22, by age*

Note: *Includes sole and joint guardianship

¹⁰ Australian Bureau of Statistics 2021, *National, state and territory population*, December 2021, data cube, 'Population by age and sex – national', Table 5: Sex ratio—at 30 June, released 28 June 2022, viewed 12 July 2022, <https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/dec-2021>.

¹¹ *ibid.*, Table 8: Estimated resident population, by age and sex—at 30 June 2021.



Intellectual disability continues to be the most frequently reported primary diagnosis (N=229) for persons with Public Guardian involvement, followed by dementia (N=166) and acquired brain injury (N=137) (Figure 15).

Figure 15: Number of persons with guardianship orders involving the Public Guardian in 2021-22, by primary impairment*

Note: *Includes sole and joint guardianship

Guardianship by Aboriginal and non-Indigenous identity

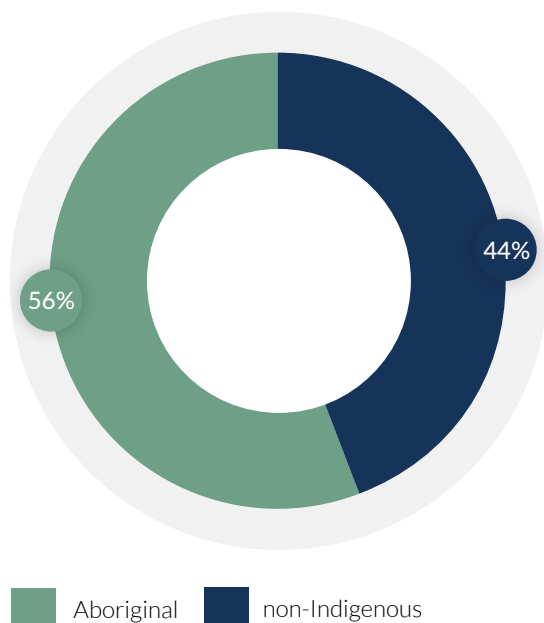


Figure 16: Proportion of represented persons who identify as Aboriginal

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

The majority of people involved with guardianship in the Northern Territory identify as Aboriginal (56%) (Figure 16) and have Public Guardian involvement (76%). Conversely, the majority of represented persons who identify as non-Indigenous have private guardians solely appointed (71%) (Figure 17).

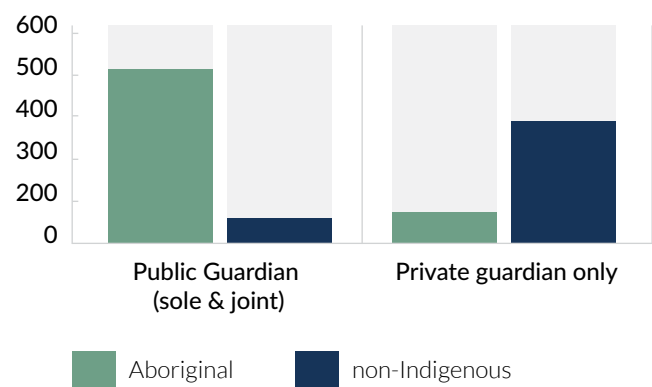


Figure 17: Guardianship type for personal matters in 2021-22, by Aboriginal and non-Indigenous identity

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

Represented persons and the criminal justice system

In 2021–22, 35 represented persons with Public Guardian involvement were interacting with the criminal justice system either as prisoners or persons subject to Part IIA of the *Criminal Code Act 1983* (Figure 18). Thirty-three of these represented persons were male and two were female (Figure 19).

Of these 35 represented persons, 18 were found unfit to stand trial subject to Part IIA of the *Criminal Code Act 1983*, which provides that alleged offenders with a cognitive impairment are deemed not guilty or unfit to stand trial.

Figure 20 shows that intellectual disability and mental illness feature strongly for represented persons who are prisoners or subject to Part IIA of the *Criminal Code Act 1983*. Acquired brain injury is also prevalent.

All represented persons who were prisoners or subject to Part IIA of the *Criminal Code Act 1983* in 2021–22 identified as Aboriginal. The disproportionate representation of Aboriginal people in the justice system is reflected in data on prisoners in Australia: in the March 2022 quarter, Aboriginal and Torres Strait Islander people accounted for 86 per cent of the total Northern Territory prisoner population.¹² This figure represents a marginal increase on 2020–21.

¹² Australian Bureau of Statistics 2022, 45120 *Corrective Services, Australia, March Quarter 2022*, Table 1: Persons in corrective services, summary, viewed 12 August 2022, <https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/latest-release>.

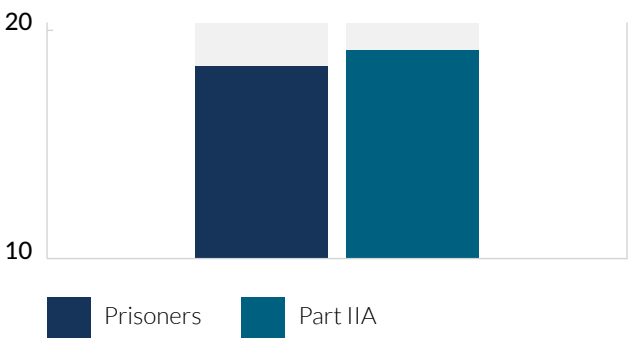


Figure 18: Prisoners and Part IIA: number of represented persons in 2021–22

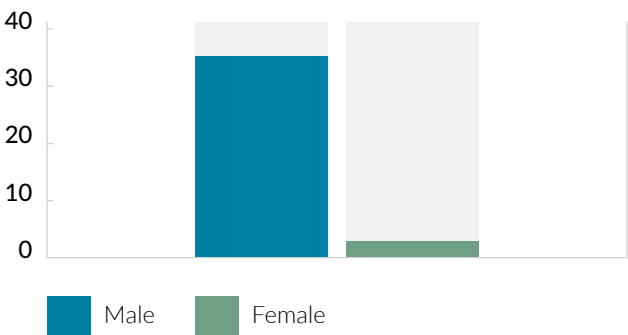


Figure 19: Prisoners and Part IIA: number of represented persons in 2021–22, by gender

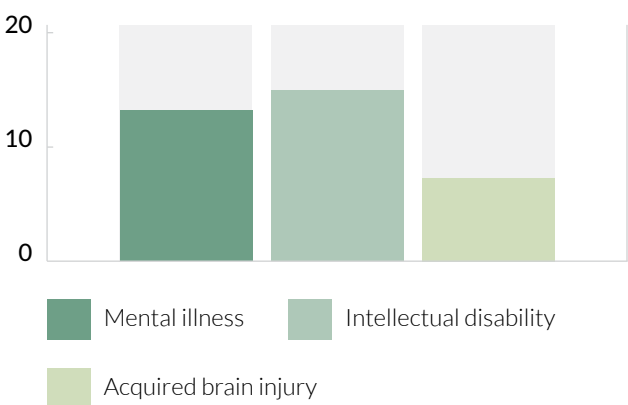


Figure 20: Prisoners and Part IIA: number of represented persons in 2021–22, by primary impairment

Represented persons and NDIS plans

All persons with guardianship orders in place in the Northern Territory have impaired decision-making capacity. Many will be living with additional physical, intellectual or other disabilities. As such, the majority of represented persons under the age of 65 who have Public Guardian involvement will be eligible for formal National Disability Insurance Scheme (NDIS) supports.

As of 30 June 2022, 95 per cent (N=406) of eligible represented persons with Public Guardian involvement had an NDIS plan in place. This represents an increase of 4 per cent relative to the previous reporting period. This is an excellent result reflecting the efforts of our Adult Guardianship Officers to ensure that represented persons who are eligible for NDIS supports are assisted to have plans in place (Figure 21).

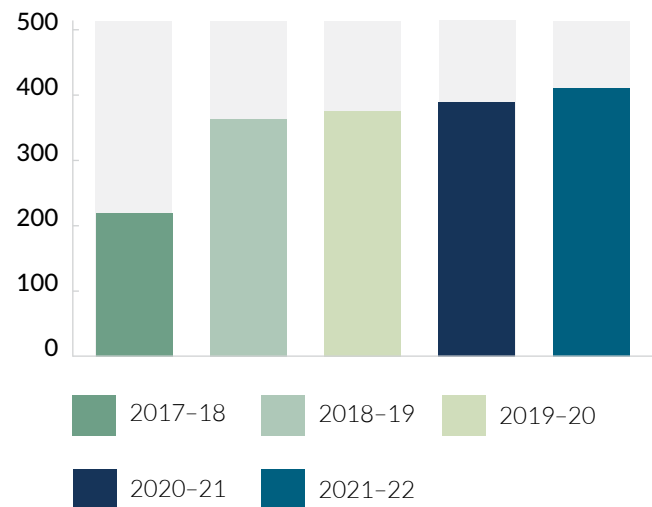


Figure 21: Number of represented persons with Public Guardian involvement and NDIS plans in place: trends over five years

2022–23 priorities



Workforce

- * Champion the development of a healthy, diverse and capable workforce
- * Ensure compliance with work, health and safety obligations and apply controls to minimise risks
- * Ensure induction and orientation programs are organisation wide, embedded and implemented
- * Encourage and support continuing professional development for all staff



Systems management

- * Review current systems and practices to ensure they remain fit-for-purpose
- * Develop and implement an electronic records management system for Public Trustee files
- * Review client management systems and explore options for consolidation and information transfer for Public Guardian and Trustee files
- * Respond to statutory requests for data and information



Stakeholder relationships

- * Build and support new and existing stakeholder relationships at local and national levels
- * Develop a comprehensive stakeholder communications plan which responds to organisational structure, functions and branding



Advocacy

- * Provide submissions and presentations to inform inquiries and outcomes in relevant areas at the local and national level
- * Provide input into proposed guardianship and related legislative amendments and associated policy and practice guidelines



Guardianship

- * Develop a framework for the systematic review of guardianship orders to ensure that the human rights of represented persons are upheld
- * Develop a mentoring framework to enable joint private guardians to assume a sole guardian role
- * Provide education and support to existing and emerging private guardians
- * Ensure community education and information strategies are culturally relevant and appropriate
- * Progress the Northern Territory Guardianship Review Project





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