



ANNUAL REPORT

2020-21



**Office of the Public Guardian
Annual Report 2020–21**

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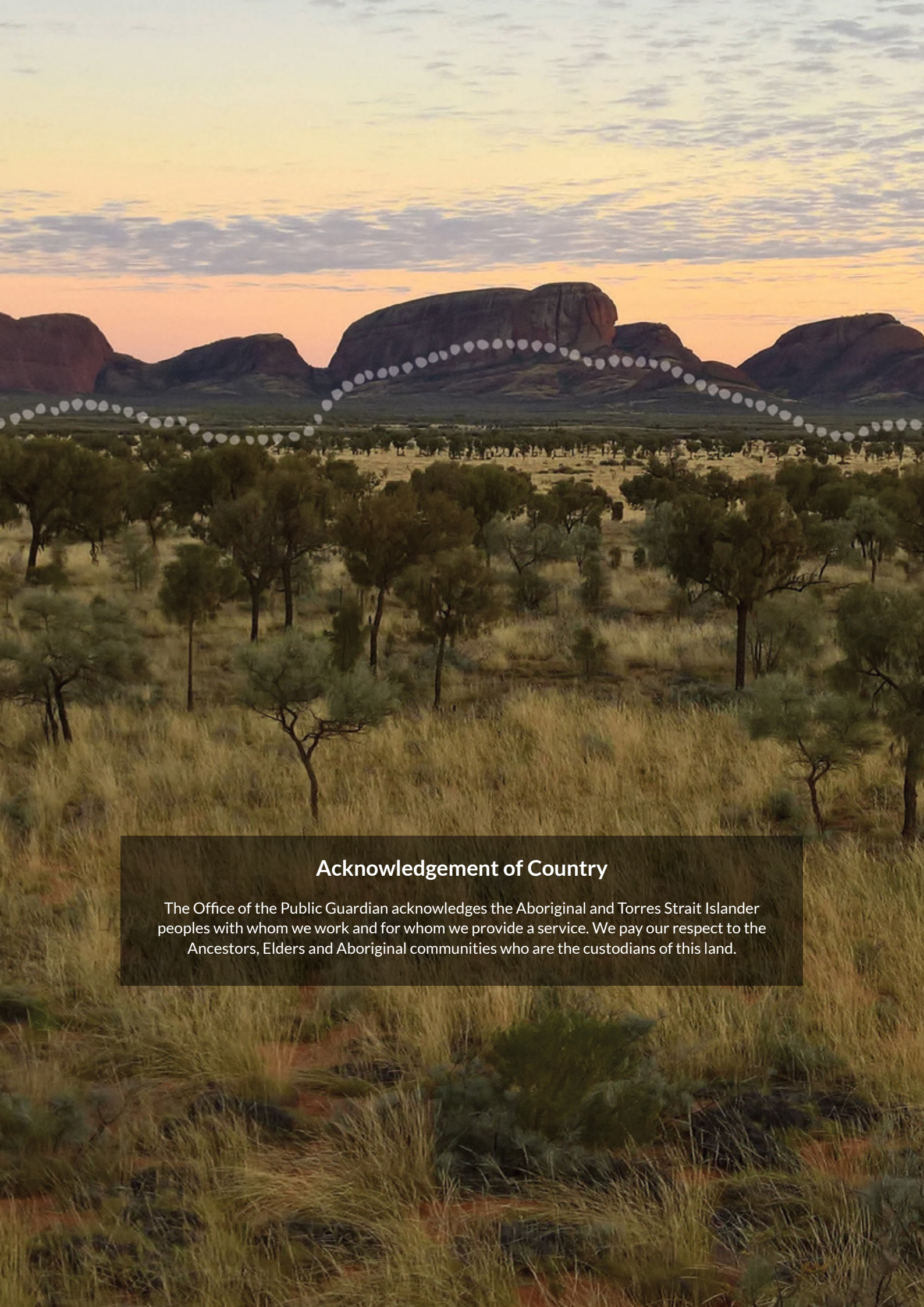
Background image for Acknowledgement of Country, 'Kata Tjuta Dawn',
courtesy of Robert King, Magpie Goose Publishing, September 2017.

*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.

Office of the Public Guardian Annual Report 2020–21





Acknowledgement of Country

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



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

Dear Minister

Re: Office of the Public Guardian Annual Report 2020–21

In accordance with section 74 of the *Guardianship of Adults Act 2016* of the Northern Territory, I am pleased to submit the Annual Report of the Office of the Public Guardian for the year ending 30 June 2021.

The Northern Territory Office of the Public Guardian is responsible for providing guardianship and advocacy on behalf of adults with impaired decision-making capacity. The following report details the performance and achievements of the Office of the Public Guardian for the 2020–21 reporting period.

Yours sincerely

A handwritten signature in blue ink, appearing to read "BW", with a long horizontal flourish extending to the right.

BETH WALKER
Public Guardian

30 September 2021

The Office of the Public Guardian
is **committed** to ensuring the
rights of Territorians with
impaired decision-making
capacity are **protected**.



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Message from the Public Guardian



“5 years on – look how far we’ve come!”

I am thrilled to present the fifth annual report of the Office of the Public Guardian. This report marks five years of achievement since the establishment of our independent office under the *Guardianship of Adults Act 2016* and my position as Public Guardian. Our office has been privileged to oversee the implementation of a new contemporary guardianship framework in the Northern Territory and associated increased understanding and acceptance of adult guardianship within our community. Our journey has been significant and made possible through the continued commitment of those in the disability, aged care and health sectors and government to the wellbeing of people with impaired decision-making capacity.

The broadening of eligibility criteria for guardianship to include impaired decision-making capacity from any cause has seen a progressive increase in applications for guardianship and resulted in persons with guardianship orders in place receiving improved and much needed supports. It has necessarily resulted also in an ever-increasing workload for a truly dedicated staff whose

mandate is to protect and advocate for the interests of some of the most vulnerable in our community.

Key operational challenges over the past five years have included the transfer of responsibility for financial matters from the Office of the Public Guardian to the Public Trustee, the administrative transfer of our operations from the Department of Health to the Department of the Attorney-General and Justice and the rollout of the National Disability Insurance Scheme (NDIS) in the Northern Territory. I invite you to join us in celebrating our journey as we review key achievements and challenges over the first five years of our operations.

In our inaugural annual report of 2016–17 I was privileged to report on the first 11 months of operations of the Office of the Public Guardian. I noted the successful transition of our office from a service within the Department of Health to an independent statutory office and associated impacts on guardianship operations in the Northern Territory. Primary among these impacts was an increase in

guardianship applications associated with a broadening of the eligibility criteria to include persons with impaired decision-making capacity from any cause, and increasing community awareness both of our office and role. The full rollout of the NDIS in the Barkly and East Arnhem regions and in Darwin supported accommodation also commenced in this period.

The 2017–18 year saw the conclusion of our first full year of operations as an independent office and internal adjustments to reflect the expansion of our structure and functions. This included the relocation of our Darwin staff and office to Berrimah to consolidate our Top End operations. We were pleased to report in this period our transition to fully electronic client information and business systems, the development of our website and production of our inaugural series of fact sheets and guardian guide.

The rollout of the NDIS in the Northern Territory continued to occupy significant staff resources in 2017–18 with represented persons in Darwin remote and Katherine regions transitioning into the scheme progressively from 1 July 2017, along with represented persons in Alice Springs supported accommodation. This period was one of increased community understanding of our operations and the strengthening of our relationships with the disability community.

A significant change impacting our operations in 2017–18 lay in the expansion of our role in Northern Territory Civil and Administrative Tribunal (NTCAT) guardianship processes. This led to the requirement for the Public Guardian to be represented at all hearings for orders with Public Guardian involvement, and for our office to provide all parties involved in the reassessment of orders with a copy of the NTCAT Standard Order. This had increasing resource implications for our staff and operations. A project to mitigate risks identified in relation to the administration of financial matters for represented persons also commenced in this period.

The 2018–19 year saw the administrative transfer of our operations from the Department of Health to the Department of the Attorney-General and Justice on 4 March 2019. Approval by the Northern Territory Government was granted also to transfer responsibility for the management of financial matters and estates for represented persons to the Public Trustee (commenced and concluded in the 2019–20 reporting year). The NDIS also continued its rollout with the

transitioning into the scheme of represented persons in Darwin urban and Central Australia regions from 1 July 2018.

The 2018–19 year was remarkable additionally for the realisation of calls for one or more federal inquiries into reported abuses against older people and people living with disability. These led to the establishment of the Royal Commission into Aged Care Quality and Safety in October 2018 and Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability in April 2019. Our advocacy alongside the Australian Guardianship and Administration Council and disability organisations gained increased impetus and focus in this period.

In our 2019–20 report we recorded our rising presence in policy and advocacy arenas with our increased contribution to national inquiries and commissions in disability and aged care quality and safety domains. We noted our immense concern in regard to the matters raised in the Disability and Aged Care Royal Commissions and joined the collective call for increased accountability by service providers and operators to safeguard the rights of people with impaired decision-making capacity in order to prevent neglect and abuse. We consolidated our position with a continued commitment to refocus guardianship in the Northern Territory to position human rights and supported decision-making front-of-centre in policy and practice.

A further key policy position in 2019–20 was our support and advocacy for proposed statutory health care decision-makers legislation in the Northern Territory. This would remove the requirement for a guardianship order to be sought in circumstances where the matters were limited to health care, and provide for certainty in relation to health care decision-making authority for persons who lack the legal capacity to make these decisions themselves.

The year was notable also for the commencement of NDIS Quality and Safeguards Commission operations in the Northern Territory and the *National Disability Insurance Scheme (Authorisations Act) 2019*, both on 1 July 2019. The NDIS Authorisations Act provides an authorisation and oversight framework for the use of restrictive practices by NDIS service providers and is strongly supported by the Office of the Public Guardian and disability sector.

We welcomed additionally in 2019–20 the amendment of the federal *Quality of Care Principles 2014*, which aim to minimise the use of chemical and physical restraints in aged care. We support concerns, however, raised by the Office of the Public Advocate (Victoria) and others in regard to the partial and ambiguous regulation of practices associated with the amendment, and were pleased to be invited to provide verbal evidence in August 2019 to the Parliamentary Joint Committee on Human Rights inquiry into the *Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019*.

The 2020–21 reporting year marks the end of our first five-year term as a statutory office and the opportunity to reflect both on achievements and challenges. The NDIS has been described as the biggest social reform agenda in Australia since the introduction of Medicare and has been a constant presence since the establishment of the Office of the Public Guardian in July 2016. The rollout of the NDIS has changed the face of disability support and guardianship for the present and foreseeable future. The commencement of NDIS Quality and Safeguards Commission operations in the Northern Territory in July 2019 was a significant milestone marking the full implementation of the NDIS in the Northern Territory and completion of the phased transition to NDIS plans and supports for most eligible represented persons.

While the transition of represented persons to NDIS plans has been welcome, it has also been a resource-intensive exercise for our staff and continues to have a significant impact on our operations. The administrative burden associated with the management of participant plans, in particular, has posed challenges for our staff. Consequently, we introduced during the year targeted strategies to assist the mental wellbeing of our valued workforce and to build resilience.

The current reporting period has provided unique challenges and responses related to COVID-19. Through continued appropriate responses by the Northern Territory Government our community remains relatively safe and unscathed compared to other jurisdictions. However, the COVID-19 response in the Northern Territory has highlighted a range of challenges. The pandemic has underlined

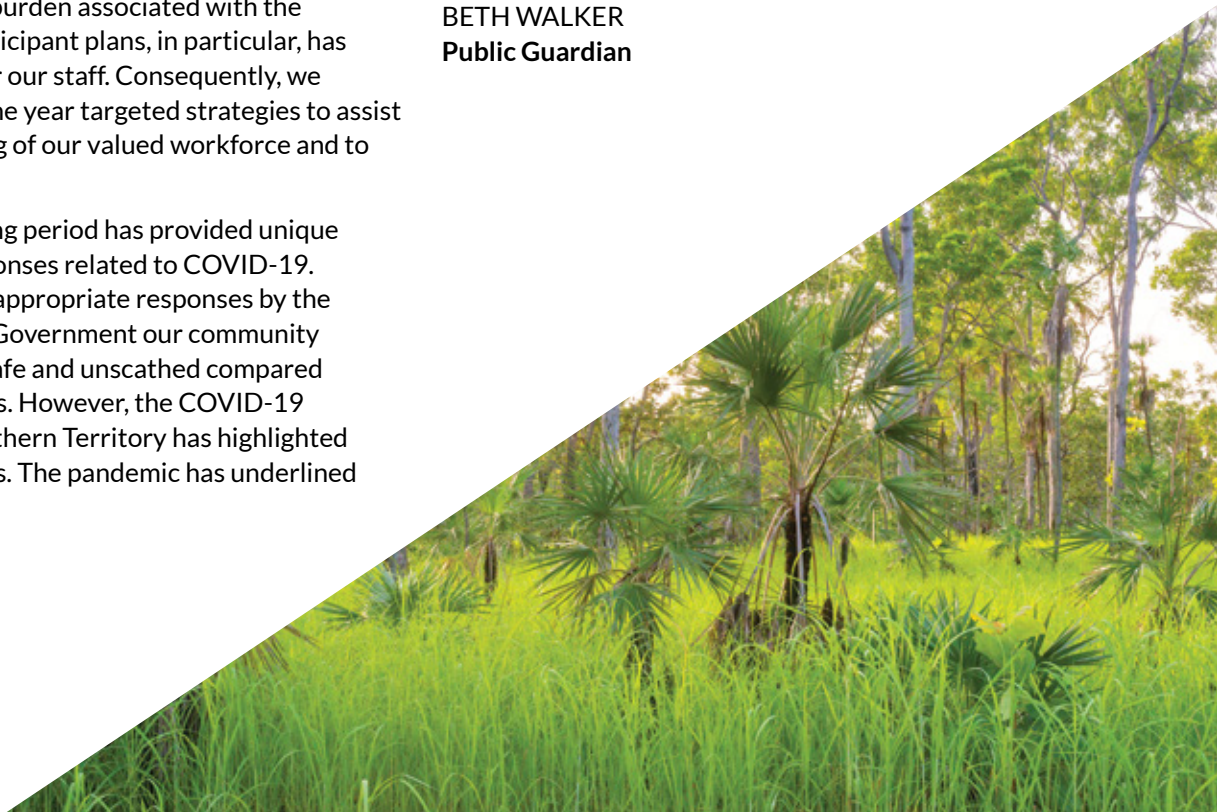
vulnerabilities which expose older Territorians in residential care to potential abuse and neglect and leave others unsupported and alone in the community. Emergency planning must consider the needs of the most vulnerable in our community and ensure that the right to adequate shelter, food and human supports is not neglected through policy oversight or a failure to plan.

In February 2021 I was privileged to be reappointed as Public Guardian for the Northern Territory for a second five-year term. My reappointment would not have been possible without the dedication and commitment of the Office of the Public Guardian team. I would like to recognise here also the Northern Territory community and our stakeholders for their engagement over the past five years with new guardianship systems and processes. I acknowledge that guardianship is not without its complexities – but our achievements are many. More vulnerable Territorians with impaired decision-making capacity are now better supported, and increasing numbers of Territorians are taking on the challenge – and rewards – of private guardianship.

As Public Guardian, I remain committed to smoothing the transition for those new to guardianship, and ensuring that human rights and supported decision-making remain front-of-centre. I thank my team for their continued efforts and support as we embrace the next five years of guardianship policy, practice and advocacy.



BETH WALKER
Public Guardian



2020–21 at a glance

428 guardianship applications lodged

215 new guardianship orders made

446 COVID-19 vaccination consents processed

1152 Territorians had a guardianship order in place

56% of orders involve Public Guardian as sole or joint guardian

44% of orders involve private guardians only

77% of persons with Public Guardian involvement identify as Aboriginal or Torres Strait Islander

413 visits made with represented persons

1115 decisions made for represented persons



Office of the Public Guardian

Our mission

Our mission is to safeguard and promote the human rights of people with impaired decision-making capacity by providing adult guardianship services, information and advocacy that is responsive to the needs of the Northern Territory community and reflects contemporary, best practice guardianship principles within a human rights framework.

Our vision

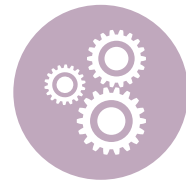
Our vision is for a safe, just and inclusive Northern Territory which respects and promotes the dignity and human rights of people with impaired decision-making capacity.

Our values



Commitment to service

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



Collaboration

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



Ethical practice

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



Respect

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



Diversity

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



Accountability

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

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

Our strategic objectives

- * provide an effective, contemporary guardianship service to the Northern Territory community
- * collaborate with stakeholders to achieve the best outcomes for people with impaired decision-making capacity
- * advocate for the human rights of people with impaired decision-making capacity
- * design and implement systems improvements
- * develop flexible, tailored approaches that meet the needs of our diverse community
- * develop and maintain a capable workforce



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 *Guardianship of Adults Act 2016* transferred jurisdiction for administrative matters from the Local Court to the Northern Territory Civil and Administrative Tribunal (NTCAT), introduced comprehensive guardianship principles and established the independent Office of the Public Guardian and statutory officer position of Public Guardian. The establishment of an independent office and statutory officer was crucial in addressing potential conflicts of interest which existed for the Minister for Health in the operationalisation of their role and duty as Public Guardian under the earlier *Adult Guardianship Act 1988*.

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

At the end of this reporting period the *Guardianship of Adults Act 2016* will have been in operation for nearly five years. It is anticipated that this milestone will invoke a review to evaluate the impact of this legislation and to consider amendments which reflect recent developments in substitute decision-making frameworks in the Northern Territory, including a legislative basis for supported decision-making. Such developments are consistent with guardianship policy and practice in other Australian jurisdictions. The Office of the Public Guardian continues to monitor relevant policy and legislative developments in other jurisdictions to consider how these may be reflected in Northern Territory legislation to improve the rights and lives of people with impaired decision-making capacity.

¹ United Nations Convention on the Rights of Persons with Disabilities and Optional Protocol, Article 1, ‘Purpose’, p. 4.



Our structure and people

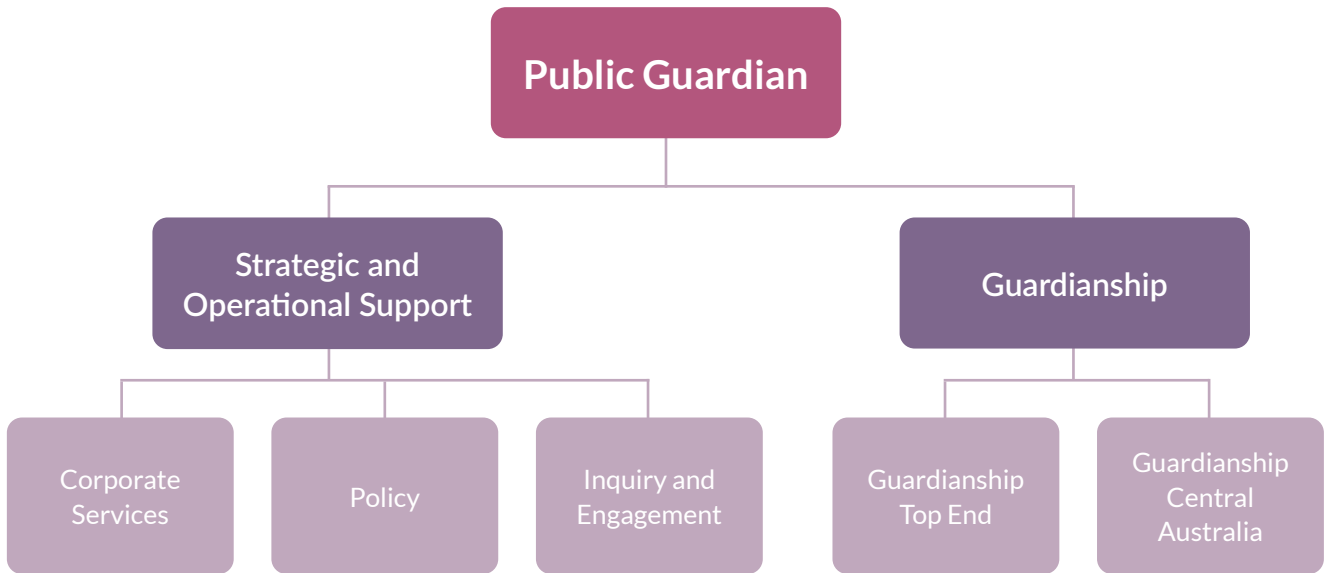


Figure 1: Organisational structure



Executive

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

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

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

Table 1: Functions and responsibilities

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 first point of contact for guardianship 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
Whole of organisation			
Information and education		Advocacy and research	
<ul style="list-style-type: none"> * promote guardianship knowledge and best practice through targeted resources and information campaigns * undertake community engagement and education activities * develop and disseminate guardianship 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 	

Our team

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

Office of the Public Guardian team



Operational challenges

COVID-19 considerations and National Disability Insurance Scheme (NDIS) administration had a significant impact during the year on our resources. COVID-19 presented particular complexities around support and service provision needs both for represented persons and NDIS service providers, and necessitated an adjustment of participant plans to reflect the change in circumstances. This resulted in an increased administrative burden associated with the review of plans, consultations with service providers and the renegotiation of NDIS service agreements. Delays in NDIS responses to requests for plan reviews, and the publishing of plans, was noted as a stressor by service providers, represented persons and Adult Guardianship Officers (AGOs).

The rollout of the COVID-19 vaccination program in the Northern Territory from February 2021, while welcome, created an immediate influx of vaccination consent requests for represented persons. To assist this process a 'Consent with Conditions' letter was developed for provision to health professionals, which set out essential conditions to be met by the treating medical officer and party administering the vaccine. A short-term allocation of officers from other teams assisted with the influx of requests. As at 30 June 2021, 446 COVID-19 vaccination consents had been processed by our staff with a small number of represented persons and/or joint guardians declining the vaccination invitation.

NDIS administration is presenting as a significant and increasing challenge for our office due to the large proportion of represented persons under the authority of the Public Guardian who are NDIS participants. The increased engagement of AGOs with service providers and representation of persons within the NDIS framework is occurring without a corresponding increase in AGO or administration officer staffing. AGO staffing has also been impacted by the retirement of one long-standing team member, the extended long service leave of another and the need to recruit to these positions. In the context of a small Northern

Territory wide AGO team, staff changes necessarily result in a loss of knowledge capital and expertise, redirect limited resources to recruitment and training and impact supports available to existing staff.

Over the past 12 months, the Office of the Public Guardian has continued to effect changes in technical supports to assist AGOs with their role. These changes include: enhancements to existing technical infrastructure; improvements to 'remote working' rosters; implementation of the 1800 guardianship help line after hours service review recommendations; development of a centralised information hub; and development of quality assurance reports to assist AGOs to manage their day-to-day tasks. Whilst these changes have occurred in consultation with our AGOs, the learning and adjustment required has placed additional demands on AGO workforce capacity.

Complaints and review

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

A fact sheet on 'Resolving complaints and concerns' and 'Reviewing a Public Guardian decision' is available in hard copy and via our website. Our website also provides consumers with the opportunity to make suggestions via an online 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 2020–21. Three formal investigations into the conduct of private guardians were undertaken during the year. All investigations were concluded and all matters resolved in the reporting period.

446

COVID-19 vaccination
consents processed

Advocacy

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

The Office of the Public Guardian works collaboratively with stakeholders in the Northern Territory and nationally to advocate for the rights and wellbeing of people with cognitive and other disability. Our relationships are valued, broad and enduring, and encompass organisations in the community, not-for-profit and government sectors.

Our essential relationships with Northern Territory Government agencies include the Northern Territory Civil and Administrative Tribunal, Public Trustee, Northern Territory Correctional Services, Territory Families, the Department of Health inclusive of tertiary health providers and the Department of the Attorney-General and Justice. We additionally value our relationships with federal entities including the National Disability Insurance Agency (NDIA) and National Disability Insurance Scheme (NDIS). We respect the often challenging environment in which NDIS Support Coordinators and service providers, in particular, work.

The number of community sector organisations, peak bodies and professional associations with whom we collectively advocate for the rights and needs of represented persons is large and the engagement invaluable. Our collective advocacy effort incorporates mental health, aged care and disability services, Aboriginal organisations including the North Australian Aboriginal Justice Agency and our longstanding membership of and commitment to Australian Guardianship and Administration Council auspiced campaigns. The importance of our joint advocacy with these organisations and representation to key disability and aged care Royal Commissions and inquiries cannot be overstated.

Violence, neglect and abuse

The violence against and neglect, abuse and exploitation of people with impaired decision-making capacity is widespread. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) and the Royal Commission into Aged Care Quality and Safety (Aged Care Royal Commission) have drawn much needed attention to the rights of people with impaired decision-making capacity and the responsibility of governments, service providers and the community in upholding these rights and responding to and preventing abuses against people with disability and older persons.

The Office of the Public Guardian made submissions during the year to the Disability Royal Commission in response to its issues papers: *Emergency planning and response*; *Rights and attitudes*; *Restrictive practices*; *The experience of First Nations people with disability in Australia*; *Violence and abuse of people with disability at home*; and *Safeguards and quality*. A submission was made also to the Aged Care Royal Commission inquiry into the impact of COVID-19 on aged care. Each of these submissions detail individual and collective experiences of violence, abuse, neglect and exploitation of represented persons involved with the Office of the Public Guardian.

Our key recommendations to address abuses against people with impaired decision-making capacity call for:

- * person-centred services and supports for people with disability and older persons
- * increased advocacy services and self-advocacy skills development for people with disability and older persons
- * community visitor services across all disability service providers
- * legislated supported decision-making frameworks.

In our submission in response to the Disability Royal Commission *Violence and abuse of people with disability at home* issues paper, we specifically detailed how violence and abuse of people with disability may occur within supported accommodation, often by paid support staff or by co-residents who are not sufficiently supported to prevent the occurrence of violence or abuse.

A contributing factor to this violence and abuse is limited understanding within the disability workforce of the rights of people with disability and, additionally, what may amount to violence and abuse. Other factors contributing to violence and abuse include: insufficient and inappropriate housing options; the need for Aboriginal people to move away from Country to access health and disability supports; poor regulation of restrictive practices; no or limited community visitor services; and insufficiently trained or unskilled workers.

The Disability Royal Commission has been granted an extension to 29 September 2023 to deliver its final report. The Office of the Public Guardian will continue to monitor its progress and provide submissions in response to its inquiries.

The Aged Care Royal Commission delivered its final report titled *Care, dignity and respect* on 1 March 2021. The report made 148 wide-ranging recommendations calling for fundamental reform of the aged care system and recommended a new aged care system with a clear purpose:

*To deliver an entitlement to high quality care and support for older people, and to ensure that they receive it. The care and support must be safe and timely and must assist older people to live an active, self-determined and meaningful life in a safe and caring environment that allows for dignified living in old age.*²

The Office of the Public Guardian will observe with interest recommended reforms to the aged care system and continue to advocate for the needs of older persons with impaired decision-making capacity.

Safeguarding and quality

Safeguarding for people with impaired decision-making capacity means upholding their human rights of choice and control and dignity of risk. Safeguarding is multifaceted and includes promoting human rights and associated education and skills development, maintaining quality services and strengthening laws, policies and procedures to guarantee quality disability, aged care and mainstream services.

A person's vulnerability and risk of being subjected to violence, abuse, neglect and exploitation is not static and may vary according to their life stage and the formal and informal supports they have around them. In our submission in response to the Disability Royal Commission *Safeguards and quality* issues paper, the Office of the Public Guardian detailed ways to safeguard people with impaired decision-making capacity. We advocated for further safeguarding in the Northern Territory in the form of human rights legislation, community visitor services for all disability service providers (including NDIS providers), increased advocacy services and workforce skills development.

The NDIS Quality and Safeguarding Framework, which took effect in the Northern Territory with the introduction of the NDIS Quality and Safeguards Commission, provides a quality and safeguarding framework for disability services which had not existed previously. In 2020, the Joint Standing Committee on the National Disability Insurance Scheme commenced an inquiry into the NDIS Quality and Safeguards Commission to examine systemic and ongoing issues related to its operation and framework.

In our submission to this inquiry we highlighted experiences and key improvements for consideration. Of most concern is the need for the NDIS Quality and Safeguards Commission to ensure that immediate assessment and action occurs to protect NDIS participants following the making of a complaint or a reportable incident. This assessment and action must be communicated to the participant, their family and any guardians or decision-makers.

It is imperative that the work of the NDIS Quality and Safeguards Commission is reviewed continuously and strengthened.

² Royal Commission into Aged Care Quality and Safety 2021, *Final report: Care, dignity and respect*, Volume 1: Summary and recommendations, p. 32, viewed 10 July 2021, <https://agedcare.royalcommission.gov.au/publications/final-report>.

Aboriginal Territorians

The Office of the Public Guardian cannot provide comment on the lived experiences of Aboriginal people with impaired decision-making capacity or other forms of disability. Rather, our submissions to relevant inquiries aim to share our observations and experiences regarding the Aboriginal people who we have involvement with through guardianship.

In our response to the Disability Royal Commission's *The experience of First Nations people with disability in Australia* issues paper, we shared the consistent messages received by our office:

- * Aboriginal people want to receive supports and services on Country, so that they can stay connected to Country, culture and family.
- * Aboriginal people want to lead and be involved in all planning, design and implementation of the delivery of services and supports to Aboriginal people to ensure that the services and supports are culturally appropriate and meet the needs of their specific community.
- * Aboriginal people want to access services and supports provided by Aboriginal Controlled Community Organisations.

The Office of the Public Guardian advocates for Aboriginal people and their representative organisations to be involved in the development and implementation of any strategy, policy or system that impacts them or their community. Many experiences of violence, abuse, neglect and exploitation of Aboriginal people with disability, or older Aboriginal people, are related to the limited supports and services available on Country or to the person's relocation from Country to a regional centre to receive health care or disability supports.

Disability, aged care and mainstream services, along with safeguarding frameworks and support coordination, must be enhanced through the provision of culturally safe services and supports on Country and elsewhere to meet the needs of Aboriginal people with disability and older Aboriginal people.

*The importance of connection to Country and family – Toby**

Toby is an Aboriginal man who spent his life growing up in remote communities surrounded by family. When Toby was in his mid-twenties he suffered a head injury through a car accident resulting in impaired decision-making capacity requiring a guardian for decision-making, in this case the Public Guardian. As a result of his injuries and care needs, Toby was no longer able to leave his community to visit family in neighbouring communities.

Toby's NDIS Support Coordinator initially struggled to find a service that was able to support Toby to undertake visits to see family on Country. The Support Coordinator continued to explore options and look at various ways that Toby could be supported to undertake day trips. She eventually found a service that was able to cater to Toby's needs and assist him to return to Country to spend time with his family. Toby continues to enjoy these trips and appreciates being able to connect with his Country, family and culture.

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

COVID-19

The COVID-19 pandemic continues to disproportionately impact people with disability and people in aged care settings. Both the Disability Royal Commission and the Aged Care Royal Commission explored this impact and invited submissions about peoples' experiences of the pandemic.

The Office of the Public Guardian's experience was that the pandemic drew attention to the reliance of people with disability and people in aged care settings on service providers and institutions to properly respond to their needs, and an inflexibility or omission of governments and service providers to respond to individual support and behaviour needs. The reduction in oversight by external agencies, family members, informal carers and advocates, along with limited or

reduced formal resources to support the emotional, intellectual and physical needs of individuals, has increased the vulnerability of people with impaired decision-making capacity throughout the pandemic.

The Office of the Public Guardian's submissions to the Disability and Aged Care Royal Commissions made recommendations in relation to the need for people with disability and older persons to have individualised person-centred emergency plans in place which detail their support needs in a crisis. There must also be commitments from the Australian Government and Northern Territory Government to include people with disability and older persons in emergency response planning, and to embed the rights of people with disability and older persons in planning policy. Accessible information, independent oversight of services and staff training were the focus of further recommendations.



National Disability Insurance Scheme

The NDIS has changed the landscape of disability supports and services in the Northern Territory significantly with many positive outcomes for represented persons. However, these supports and services demand continuous review to ensure that the NDIS continues to meet the evolving needs of participants. While NDIS viability is an important issue, a concern in 2021 both for our office and the disability sector is proposed cost cutting by the NDIA to reel in expenditure. This would have negative impacts for the funding available to participants and lead to reduced supports in participant plans. The Office of the Public Guardian has seen instances where this appears to be the driver of decisions and would be extremely concerned if this is the basis of decisions and the trend continues.

During the reporting period the Office of the Public Guardian made three NDIS specific submissions: one in relation to the NDIS Quality and Safeguards Commission inquiry; a second in relation to support coordination; and a third in relation to the proposal for NDIS independent assessments. An independent assessment is an assessment of a person's functional capacity. At the time of writing, the NDIA had in place a proposal to introduce independent assessments in 2021. This proposal has received considerable objection from the disability sector. The Office of the Public Guardian endorses the concerns of the disability sector detailed in the *Disability sector statement on the Australian Government's planned reforms to the National Disability Insurance Scheme (NDIS)*.³

In our submission in response to the August 2020 NDIA *Support coordination* discussion paper, we recommended an initial presumption of support coordination in all new participant plans. We further proposed that the funded level in the participant's

initial plan, and ongoing level of funding in subsequent plans, should be determined in accordance with factors including: the complexity of the participant's disability; the range of supports to be managed; the participant's intersection with other service systems; if the participant has a substitute decision-maker appointed; the participant's living situation; and cultural considerations (particularly for Aboriginal NDIS participants). It is hoped that the NDIA's review will lead to a strengthening of support coordination services and a more consistent, positive, culturally appropriate and engaging experience for all participants.

The NDIS continues to experience workforce challenges. These relate in the main to the attraction and retention of skilled workers, ongoing training and upskilling and the development of a culturally aligned and responsive workforce. In its *NDIS workforce interim report*, released December 2020, the Joint Standing Committee on the National Disability Insurance Scheme made 14 recommendations to address key issues facing the NDIS workforce. In June 2021 the Australian Government released the *NDIS National Workforce Plan: 2021–2025*. The plan responds to a range of issues noted in previous reports and outlines:

*... the Australian Government's commitment to work with NDIS participants, industry and other stakeholders to grow a responsive and capable care and support workforce, and to strengthen the sector to meet the needs and aspirations of Australians with disability, now and in the years ahead.*⁴

As part of its continuing NDIS Workforce inquiry, the Joint Standing Committee on the National Disability Insurance Scheme has invited submissions on the *NDIS National Workforce Plan: 2021–2025*. The Office of the Public Guardian looks forward to providing comment on the NDIS Workforce Plan in the next reporting period.

³ Every Australian Counts 2021, Disability sector joint statement, viewed 10 July 2021, <https://everyaustraliancounts.com.au/ndis-sector-statement/>.

⁴ Australian Government 2021, *NDIS National Workforce Plan: 2021–2025*, p. 4, viewed 10 July 2021, <https://www.dss.gov.au/disability-and-carers-publications-articles/ndis-national-workforce-plan-2021-2025>.

Rights and attitudes

In its April 2020 issues paper *Rights and attitudes*, the Disability Royal Commission observed:

A lack of rights awareness among people, organisations and governments and negative attitudes can shape laws, policies and practices that stigmatise and discriminate against people with disability.⁵

It is the experience of the Office of the Public Guardian that attitudinal change and rights awareness for people with impaired decision-making capacity are best supported by the:

- * participation of people with disability and older persons across all aspects of their own decision-making
- * social inclusion of people with disability and older persons in all aspects of community life
- * recognition of the contribution that people with disability and older persons make to our society through community lived experiences of people with disability and older persons.

Entrenching supported decision-making and community visitor services and advocating for the human rights of represented persons in institutional and community settings is critical to effecting attitudinal change and increasing rights awareness.

The Office of the Public Guardian was pleased to have the opportunity to comment on the Australian Government's new draft National Disability Strategy, which builds on the *National Disability Strategy 2010–2020* and will act to reaffirm Australia's commitment to the United Nations Convention on the Rights of Persons with Disabilities. The new strategy will provide a framework for the next 10 years:

Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination.⁶

The Office of the Public Guardian welcomes the continued commitment of all federal and state and territory government disability ministers to its development, vision and implementation.

“nothing about us, without us”⁷

⁵ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability 2020, *Rights and attitudes*, Issues paper, p. 2, viewed 10 July 2021, <https://disability.royalcommission.gov.au/publications/rights-and-attitudes>.

⁶ United Nations Convention on the Rights of Persons with Disabilities, Preamble (c), p. 1.

⁷ Australian Government 2020, *Statement of continued commitment: National Disability Strategy 2010–2020*, viewed 10 July 2021, <https://www.dss.gov.au/disability-and-carers-supporting-people-with-disability-resources-supporting-people-with-disability/statement-of-continued-commitment-national-disability-strategy-2010-2020>.



Excellence in Advocacy and Promotion of Human Rights Award

proudly sponsored by the Office of the Public Guardian

The Office of the Public Guardian was thrilled to be a category sponsor for the 2020 Northern Territory Disability Services & Inclusion Awards. The awards celebrate outstanding commitment and achievement in assisting people with disability to achieve their goals. The awards are open to individuals, businesses, organisations and government departments.

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

We congratulate **Disability Advocacy Service** as the 2020 winner of this award!

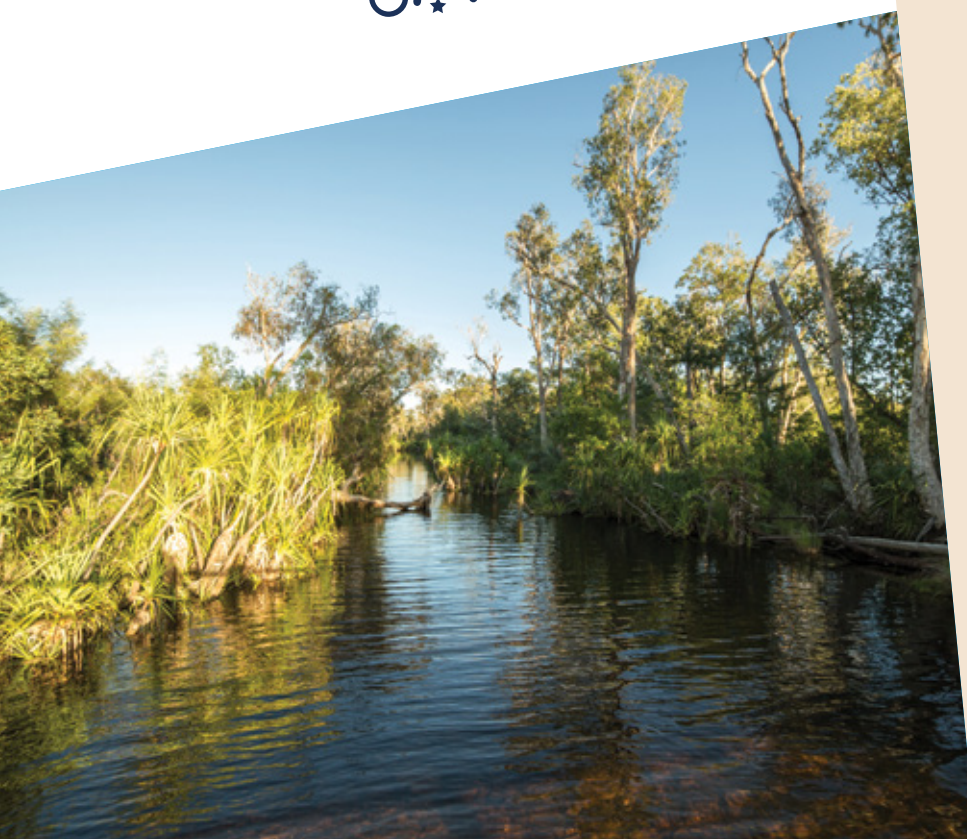


Effective communication and culturally appropriate services – Tabitha*

Tabitha is a young Aboriginal woman born with profound hearing loss and an intellectual disability who finds it difficult to engage with supports put in place to assist her with day-to-day living. A recent admission to hospital resulted in an application for guardianship where the Public Guardian and a family member were appointed as joint guardians.

Tabitha's Adult Guardianship Officer and family collaborated to understand the barriers faced by Tabitha, with the Office of the Public Guardian engaging the services of an interpreter who specialised in working with hearing impaired Aboriginal people. This collaborative problem-solving approach has resulted in positive steps being taken to increase Tabitha's engagement with services and empower her to communicate her needs.

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



Housing

Appropriate and affordable housing for represented persons is a key area of concern for the Office of the Public Guardian with community and public housing stock remaining in short supply. Since June 2020 the median rental price for houses in Greater Darwin, in particular, has increased steadily, with vacancy rates for houses and units falling in Greater Darwin, Katherine and Alice Springs.⁸

The lack of flexible and affordable housing options for represented persons interacting with justice and health systems, in particular, has consequences. Inappropriate or poorly supervised accommodation options for persons with challenging behaviours can result in a cycle of offending and incarceration and/or longer or indefinite detention. Likewise, delays in sourcing disability ready or age-appropriate accommodation can result in represented persons remaining in hospital for longer than medically necessary at significant public expense.

At 30 June 2021, 11 represented persons in Northern Territory hospitals under the guardianship of the Public Guardian had been deemed medically fit for discharge but were awaiting accommodation placements: five in Darwin and six in Palmerston. All of these were on waiting lists for aged care placements and were aged over 65. The increase in older persons in this situation (Figure 2) since the last reporting period reflects the need for formal supports for this age group and shortage of community and residential aged care accommodation in Greater Darwin. The number of persons aged 65 or over with Public Guardian involvement has itself remained stable over the past two years.

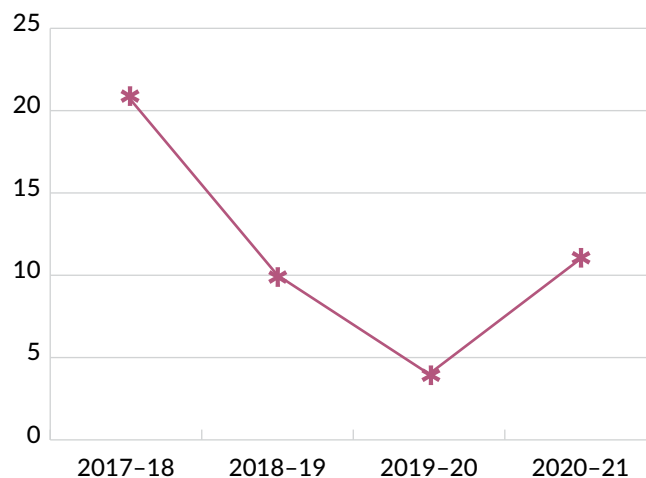


Figure 2: Number of represented persons in Northern Territory hospitals awaiting accommodation for discharge: trends over four years

Specialist Disability Accommodation

Specialist Disability Accommodation (SDA) provides for specialist housing for people with high support needs or extreme functional impairment who meet specific eligibility criteria. The program is intended to act as an incentive to investment in housing appropriate to the needs of people with disability. Service providers supporting represented persons have indicated that the difficulty of obtaining housing and linked supports remains a barrier to obtaining reasonable and necessary supports.

SDA is a crucial component of the NDIS and maximises the independence of people with impaired cognitive capacity through purpose-built accommodation. It is concerning that in the course of the 2020–21 financial year the number of NDIS participants with SDA incorporated in their NDIS plans decreased. The ongoing development of SDA options in the Northern Territory is vital. The Office of the Public Guardian would like to see better coordination and promotion of SDA across the Northern Territory.

⁸ Northern Territory Department of Treasury and Finance, *Northern Territory economy: housing*, viewed 13 July 2021, <https://nteconomy.nt.gov.au/housing>.

Interface with the justice system

People with cognitive impairment are disproportionately represented in interactions with the criminal justice system in the Northern Territory. These interactions may result from offences against or by the person which result in harm and legal proceedings. Some represented persons will be found fit to stand trial in a criminal proceeding, whereas others may be found unfit for trial under Part IIA of the *Criminal Code Act 1983*.

People who are found unfit to stand trial will likely have one or more of the following: cognitive impairment, mental health issues, acquired brain injury, health comorbidities, drug and alcohol problems and behavioural issues which lead to reoffending. This has implications for the supports required both in prison and on release. At 30 June 2021, 17 represented persons subject to Part IIA of the *Criminal Code Act 1983* were being supported in the community, while two represented persons with cognitive disability remained in prison.

In the last 12 months we have seen a hardening of the NDIA position in respect of the NDIS supports which might be viewed as reasonable and necessary to meet the needs of a person with disability in the community on release from prison. This can be at odds with the level of supports required to help keep an individual with complex behaviours and the community safe. Also, some parole conditions, such as line-of-sight supervision, cannot reasonably be funded or met in a community setting.

The Office of the Public Guardian is caught between the conflicting policy positions of Correctional Services and the NDIS in advocating successfully for the interests of represented persons in such matters. At issue is agreement as to the responsible authority for funding interventions which provide for the disability needs of the person while satisfying the judicial conditions of release.

There are complexities also in the timing and provision of draft participant plans by the NDIS for presentation to hearings of the Parole Board of the Northern Territory which may impact an offender's early release. The NDIS will not provide a draft participant plan until a release date has been set by the Parole Board. This means that a plan which might influence the outcome of a Parole Board hearing is unavailable to the represented person and Parole Board. In some instances this will result in a represented person who might otherwise meet the conditions for early release being forced to serve out their sentence in full. A level of foresight is required also in respect of NDIS participant plans developed in a prison rather than community setting, which may not meet the individual's ongoing needs.

While the NDIS provides supports to people with disability its role is not to resolve quandaries associated with judicial processes that impact outcomes for people with cognitive impairment. Nor do NDIS staff have the expertise or training to identify or incorporate in participant plans interventions and supports that respond to offending or complex behaviours. Currently, the Office of the Public Guardian is advocating on a case-by-case basis for the needs of represented persons eligible for early release, and for adequate funding to support their transition into the community. Going forward, NDIS policy and/or legislative changes are urgently required to provide for participant plans to be built prior to the release date being set for people who are eligible for parole.

Seeking adequate supports for people eligible for parole – Sammy*

Sammy is a young man who has been incarcerated since age 15. Due to his impaired decision-making capacity the Public Guardian was appointed as decision-maker for personal matters when Sammy turned 18. Sammy's sentence is almost complete and as a result of good behaviour he is eligible for parole. However, due to the disability supports required to enable him to live in the community, Sammy's case cannot be heard by the Parole Board until he has an NDIS plan and appropriate services in place. Unfortunately, the current NDIS policy position means that this is not possible until Sammy has a release date.

Issues around obtaining an NDIS plan while incarcerated and obtaining a parole release date without supports in place are common. The Office of the Public Guardian, NDIS and Northern Territory Correctional Services are working together to ensure that Sammy can attend the Parole Board hearing and be released from prison with the necessary supports.

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



Restrictive practices

Reducing and eliminating the use of restrictive practices is consistent with the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its intent to protect the rights, freedoms and inherent dignity of people with disability.⁹

‘Restrictive practice’ is a term used ‘to refer to any action, approach or intervention that has the effect of limiting the rights or freedom of movement of a person’.¹⁰ It includes physical, chemical, mechanical, psychosocial and environmental restraints and seclusion.¹¹ The United Nations Committee on the Rights of Persons with Disabilities has called on Australia to establish a nationally consistent legal framework for the elimination of restrictive practices, in all settings including the home.¹²

The *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector* (the National Framework) established a national approach to addressing the use and reduction of restrictive practices by disability service providers across a range of disability service sector settings. It outlined high-level principles to guide work in this area and core strategies to reduce the use of restrictive practices in the disability service sector.¹³ A nationally consistent legal framework has been established for National Disability Insurance Scheme (NDIS) service providers and NDIS participants. However, there is no similar framework for services or settings not within the NDIS.

The reduction and elimination of restrictive practices must be underpinned by quality positive behaviour support that focuses on person-centred interventions which address the underlying causes of behaviours of concern. This support must occur within a robust

authorisation and monitoring framework across all service sectors that is informed by data and committed to the reduction and elimination of restrictive practices for people with disability. The tension that exists in any position which both commits to the reduction and elimination of restrictive practices while also endorsing an authorisation and monitoring framework for these same practices is acknowledged.

Strategies to reduce and eliminate the use of restrictive practices for people with disability must be considered in the context of interrelated factors affecting the lives of people with disability including supported decision-making, advocacy, community attitudes, access to mainstream services and workforce issues in the human services sector.

Restrictive practices in the Northern Territory

Prior to the commencement of the *NDIS Authorisations Act 2019* on 1 July 2019, there was very limited authorisation and oversight of restrictive practices for people with disability in the Northern Territory.¹⁴ The commencement of the *NDIS Authorisations Act 2019* met the Northern Territory’s obligation under the NDIS Quality and Safeguarding Framework to establish a Restrictive Practices Authorisation Framework for NDIS service providers and NDIS participants (the Authorisation Framework). The Authorisation Framework and the establishment of a Senior Practitioner (with their associated expertise and support) in the Northern Territory was welcomed by the Office of the Public Guardian.

⁹ Australian Government 2013, *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*, p. 1. Endorsed by Commonwealth and State and Territory Disability Ministers on 21 March 2014.

¹⁰ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability 2020, *Restrictive practices*, Issues paper, p. 1, viewed 11 August 2021, <https://disability.royalcommission.gov.au/publications/restrictive-practices>.

¹¹ *ibid.*, pp. 1–2.

¹² United Nations 2019, Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of Australia*, 15 October. UN Doc CRPD/C/AUS/CO/2-3, III. Principal areas of concern and recommendations [30(a)].

¹³ Australian Government 2013, *op. cit.*, p. 2.

¹⁴ The only authorisation and monitoring was under the *Disability Services Act 1993*, which provides for the use of restrictive practices applied within government run residential facilities, and the *Mental Health and Related Services Act 1998*, which provides for the use of restrictive practices within approved treatment facilities.

However, the limited scope of the legislation to only NDIS service providers and NDIS participants has meant that many Territorians with disability who receive services and supports from other service sectors, including aged care, education, justice and health, fall outside the Authorisation Framework. Many of these individuals continue to be subject to restrictive practices in the absence of positive behaviour support and a legislated authorisation and monitoring framework for the use of those practices. This is deeply concerning for people with disability, the Office of the Public Guardian and many other advocacy and representative organisations.

Legislative requirements regarding the use of physical and chemical restraints in residential aged care commenced on 1 July 2019 by amendment to the federal *Quality of Care Principles 2014*. These requirements do not provide an equivalent authorisation and monitoring framework to that within the NDIS. Following an inquiry by the Parliamentary Joint Committee on Human Rights into the legislative requirements they were strengthened slightly in November 2019 to place explicit obligations on providers to minimise chemical and physical restraints in residential care settings.

Despite the legislative requirements introduced on 1 July 2019 and their slight strengthening in November 2019, the Royal Commission into Aged Care Quality and Safety has recommended amendments to the *Quality of Care Principles 2014* which will result in them being more closely aligned with the Authorisation Framework. The Office of the Public Guardian strongly supports this recommendation.

The *National Safety and Quality Health Service Standards* (second edition)¹⁵ include requirements in relation to minimising restraint and seclusion in all public and private hospitals. This includes the requirement that the health service must have systems which minimise and, where possible, eliminate the use of these practices, and systems which govern the use and reporting of these practices.

This is a welcome development in the acute care setting. However, there is further work to occur as the inclusion of these requirements in the *National Safety and Quality Health Service Standards* does not provide an authorisation and monitoring framework that is underpinned by positive behaviour support or is equivalent to that within the NDIS.

In the absence of an authorisation and monitoring framework for the use of restrictive practices across all service sectors, 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 regarding restrictive practices.

In two matters heard by the Northern Territory Civil and Administrative Tribunal (NTCAT) in 2019¹⁶ and 2020¹⁷ the NTCAT determined a guardian's decision-making authority does not extend to the authorisation of restrictive practices or coercive measures, and the way to authorise these practices or measures under the *Guardianship of Adults Act 2016* is by virtue of an order of NTCAT under section 35 of this Act. The NTCAT decision of 2020 is currently the subject of an appeal to the Supreme Court of the Northern Territory.

While an order of NTCAT under section 35 of the *Guardianship of Adults Act 2016* provides a level of oversight and monitoring of the use of restrictive practices or coercive measures for persons under guardianship, it does not provide the same level of oversight and monitoring that is provided by the Authorisation Framework. Further, it is the position of the Office of the Public Guardian that the broader guardianship system is an inappropriate vehicle for the balancing of individual human rights with the rights of others, as it lacks the robust oversight, transparency and monitoring framework demanded for the use of restrictive practices. These safeguards are essential to ensure high quality decision-making and improvement in individual cases and independent review to ensure systemic improvement in practice, rather than risking

¹⁵ Australian Commission on Safety and Quality in Health Care (ACSQHC) 2017, *National Safety and Quality Health Service Standards*, 2nd edition, ACSQHC.

¹⁶ *Re CC* [2019] NTCAT 13 (22 May 2019).

¹⁷ *Re EH* [2020] NTCAT 17 (11 June 2020).

reliance on restrictive practices at the expense of an individual's rights.¹⁸ Any review of the *Guardianship of Adults Act 2016* will provide an opportunity to confirm a guardian's authority for restrictive practices under this Act.

In 2020–21 the Office of the Public Guardian was involved in 106 applications for section 35 orders under the *Guardianship of Adults Act 2016*. These applications related to the use of restrictive practices for represented persons in regard to health (N=65) and aged care (N=41). The increase in the number of section 35 applications in the reporting period is reflective of the increased awareness of restrictive practices and the need to obtain appropriate authority before they may be used for a person with impaired decision-making capacity.

The Office of the Public Guardian is encouraged by this increased awareness and the reforms to reduce and eliminate restrictive practices that are being developed and implemented within the NDIS, aged care and health settings. However, further reform must occur to introduce a nationally consistent framework for the authorisation and monitoring of restrictive practices across all service settings, with the ultimate aim to eliminate the use of restrictive practices for people with disability and people with impaired decision-making capacity. The Office of the Public Guardian will continue to advocate for this reform.

¹⁸ Chandler, K., White, B., & Willmott, L. 2017, 'What role for adult guardianship in authorising restrictive practices?', *Monash University Law Review*, vol. 43, no. 2, p. 528.



Inquiry and Engagement

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

The Public Guardian is considered 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 Northern Territory Civil and Administrative Tribunal (NTCAT). The team's functions are distinct from the functions of the Guardianship team and Adult Guardianship Officers, who act on behalf of represented persons when appointed by the NTCAT.

Inquiry and Engagement team functions are managed centrally through the Office of the Public Guardian's Darwin office. The team provides guidance and support to current and prospective private guardians, persons who are the subject of a guardianship order or proceeding and other relevant parties. The team also conducts investigations when directed by the NTCAT.

Interface with Northern Territory Civil and Administrative Tribunal

The Office of the Public Guardian receives a copy of all guardianship applications and notification of hearing dates for matters before the NTCAT. The Public Guardian or her delegate must be present at these hearings and may be directed by the NTCAT to prepare reports in advance of hearings to inform NTCAT decisions.

The Inquiry and Engagement team is responsible also for notifying guardians, represented persons and the NTCAT of orders approaching reassessment where the Public Guardian is sole or joint guardian. The team additionally may be directed by the NTCAT to assist in matters for the reassessment of orders where private guardians only have been appointed. This is to ensure that private guardians have adequate support and understanding of the process. All parties with an interest in the reassessment of an order with Public Guardian involvement are sent a copy of the Standard Order in advance of the hearing, and details of these parties are provided to the NTCAT.

Increasingly, the NTCAT has requested that the Office of the Public Guardian provide additional guidance to private guardians with regard to the documents required for reassessment hearings. It has also requested that the views and preferences of persons who are the subject of guardianship proceedings are actively sought in respect of proposed guardians and the scope of the orders detailed in the application.



Inquiry and Engagement team

Information and assistance

The Inquiry and Engagement team engages with community members and professionals across the Northern Territory. Enquiries may be multifaceted and initiated through referrals or contact via our 1800 guardianship help line, email, our website feedback and enquiry form or 'walk-in' requests for support or information. The team is proactive also in communicating guardianship information through an email newsletter for private guardians, information forums and community events.

Procedural guidance and support is provided to prospective and existing guardians, service providers, concerned family, community members and people who are the subject of guardianship applications or orders. In 2020–21 the Inquiry and Engagement team addressed 193 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.

Our information forums were impacted by COVID-19 considerations and restrictions in 2020 and 2021. The Office of the Public Guardian was able, however, to provide an expert briefing in February 2021 to National Disability Services members on the COVID-19 vaccine rollout in the Northern Territory, and information on guardianship in relation to dementia and decision-making to members of the Association of Independent Retirees in April 2021. The team also participated in a World Elder Abuse Awareness Day community barbecue and information event held in June 2021 in Darwin in conjunction with the Northern Territory Council on the Ageing (COTA).

Support for applicants and new guardians

The Inquiry and Engagement team assists applicants to navigate guardianship proceedings and new guardians to understand their role as a guardian. Particular attention is paid to ensuring that guardians understand the extent of their responsibilities in accordance with the NTCAT order and the guardianship principles as set out in section 4 of the *Guardianship of Adults Act 2016*.

Communication with applicants increased during the year to further clarify their role in guardianship proceedings. This communication included information about the gathering of evidence, attendance at hearings and notifying interested parties and proposed represented persons of the guardianship application. Information on processes for engaging an interpreter and obtaining legal assistance if and when required was also provided where applicable.

While jurisdiction for financial matters now sits with the Public Trustee, the Inquiry and Engagement team continue to offer general guidance and assist private guardians to navigate their financial administrative and reporting responsibilities. All new guardians are provided with a copy of our *Understanding guardianship* handbook, which includes reporting examples and external contacts. In 2020–21, 156 handbooks were provided to new private guardians.

The Office of the Public Guardian recognises the commitment of Territorians who take on a guardian role and acknowledges the complexity of their journey. To better understand their initial experience, we developed in 2020 an online survey to inform the adequacy of information and support provided by the Inquiry and Engagement team to prospective guardians during the application process. The survey sought also to ascertain what ongoing information and assistance might be warranted to help private guardians to more confidently undertake their role. A comprehensive education package and program to assist people to understand guardianship proceedings and their role and responsibilities as a private guardian more fully is being developed. We anticipate that the program will be launched in the latter part of 2021.

Supporting new guardians and represented persons – Carmelita*

Carmelita is an elderly woman of Filipino heritage who speaks limited English and had a history of refusing to engage with community supports being provided to her. A decline in her health and decision-making capacity resulted in the appointment of a relative as guardian for personal matters, including day-to-day supports, with the Public Trustee appointed for financial matters.

The guardian was able to identify the reasons behind Carmelita's reluctance to engage with services, with language and cultural differences being the primary barriers. The Inquiry and Engagement team worked with the guardian to support them in advocating for changes to Carmelita's service providers so that culturally and linguistically appropriate supports were being provided. Carmelita is now attending regular community activities and there has been a marked improvement in her quality of life and health.

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

Advance Personal Plans

The Office of the Public Guardian is fielding an increasing number of enquiries related to applications for guardianship for persons with Advance Personal Plans in place. An Advance Personal Plan provides for substitute decision-makers in areas stipulated in the plan, and negates the requirement for guardianship in those areas. Communications strategies are being developed to help Territorians to understand the legal status and relative authority of guardianship orders and Advance Personal Plans.

We have also seen on occasion applications for guardianship in matters where the substitute decision-maker appointed under an Advance Personal Plan is not able or willing to act for the person or cannot be found. In such circumstances an application under the *Advance Personal Planning Act 2013* must be made to the NTCAT to review and, where indicated, revoke the Advance Personal Plan to provide for an application for guardianship and appointment of alternative decision-maker(s).

There have been instances too where elements of Advance Personal Plans have been queried by concerned parties on the grounds of the decision-making capacity of the person making the plan. The Office of the Public Guardian is in the process of developing a policy and practice guideline to ensure consistency in relation to enquiries and decision-making in matters where the Public Guardian is appointed.



Inquiries and investigations

The Inquiry and Engagement team may make inquiries in regard to the background and circumstance of an application for an order where directed by the NTCAT. Such inquiries typically concern the views of interested parties, including the person who is the subject of the application, and the suitability of proposed 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 Office of 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 regarding the health and wellbeing of a represented person.

On occasions the Inquiry and Engagement Team may be advised of concerns and will follow up and endeavour to address these concerns. Under the *Guardianship of Adults Act 2016*, the Public Guardian can initiate an investigation, if required, which may result in an application to the NTCAT. A new practice direction is currently being developed to manage complaints received by the Office of the Public Guardian about the conduct of private guardians to clarify triggers for referral for review by the NTCAT.

Applications for guardianship orders

Reporting for 2020–21 shows a significant increase in guardianship applications relative to the previous year (Figure 3) with the Public Guardian participating in 428 applications (an increase of 48%). This can be explained primarily by a substantial rise in applications for compliance orders related to health and aged care (N=106) and slight increases in applications for urgent orders (N=18), new orders (N=7) and variations to existing orders (N=23) (Figure 4). The rapid growth in applications for compliance orders likely reflects greater awareness among professionals of the requirement for authority to implement a restrictive practice and aligns with the promotion of human rights seen nationally.

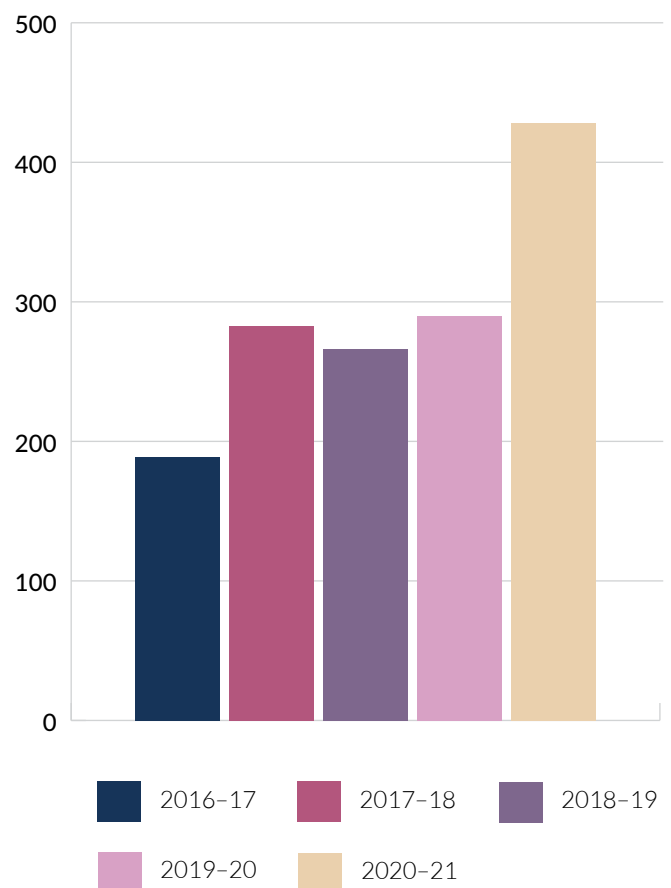
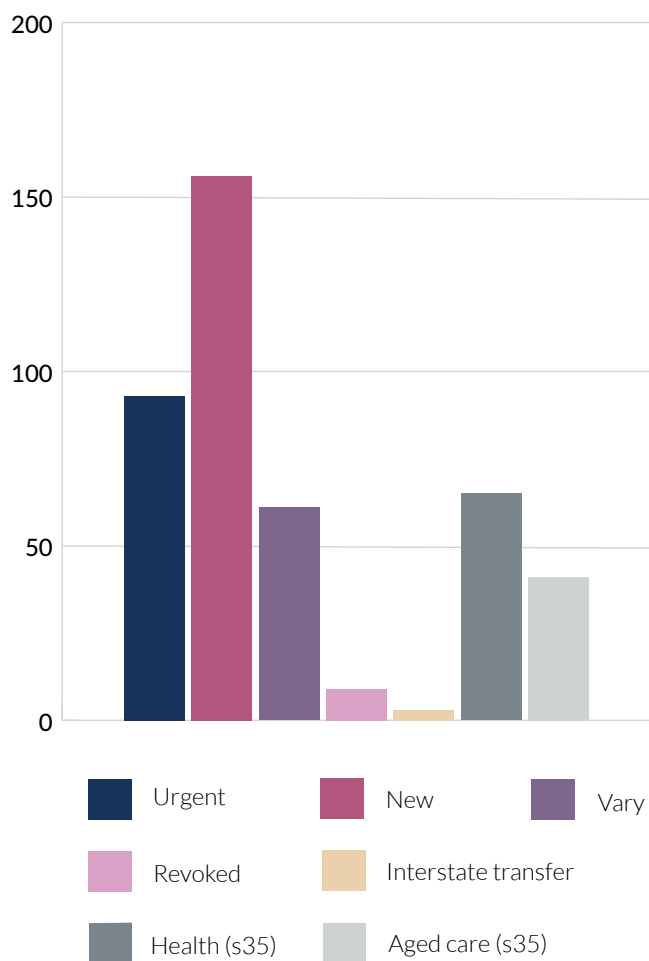


Figure 3: Number of guardianship applications: trends over five years

48%
increase in applications



Applications for new and urgent orders increased in 2020–21 and accounted for 249 applications for guardianship (58% of all applications). The growth in new and urgent orders suggests increased understanding in the community of guardianship orders as a mechanism for protecting the interests and wellbeing of vulnerable Territorians (Figure 4).

Dementia continues to be identified as the primary impairment for the majority of new and urgent applications for guardianship orders (34%), with a further 20 per cent identifying the primary impairment as intellectual disability (Figure 5). Mental illness followed by acquired brain injury and neurological disorders were the next most reported primary impairments stated and collectively accounted for 33 per cent of applications.

Figure 4: Number of guardianship applications in 2020–21, by application type

Note: s35 applications for Health and Aged care were to authorise use of a restrictive practice in these settings

58%

of all applications new and urgent orders



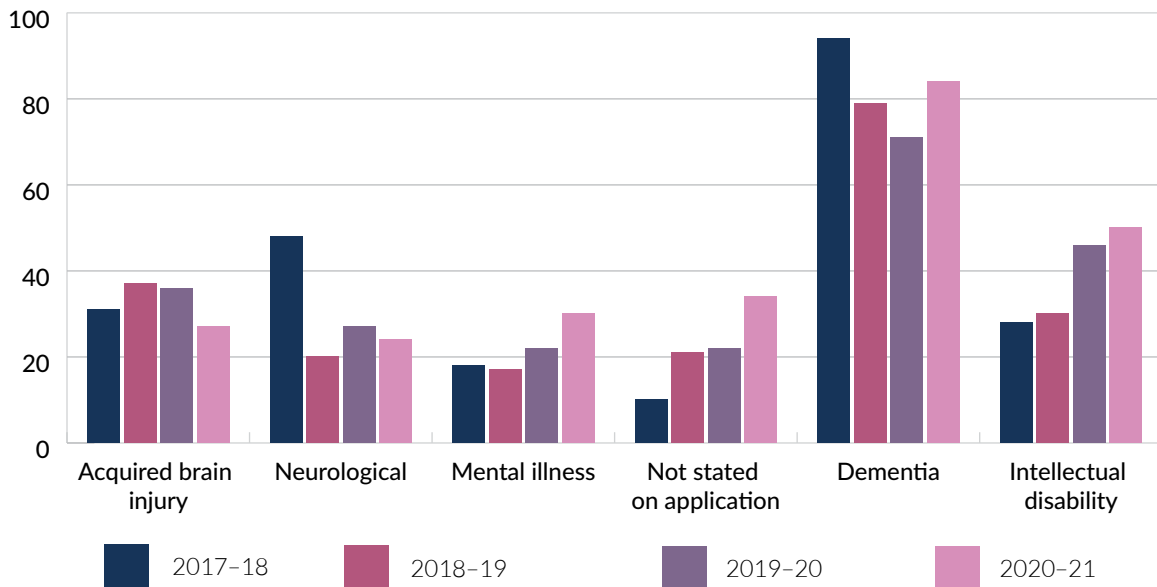


Figure 5: Primary impairment stated on new and urgent applications: trends over four years

Of the 249 new and urgent applications received in 2020–21, 53 per cent identified the subject of the application as Aboriginal or Torres Strait Islander (Figure 6). This represents a 4 per cent increase on the number of applications for Aboriginal persons in 2019–20. Aboriginal people represent just over 30 per cent of the Northern Territory population but are three times more likely than non-Indigenous people to have a guardianship order in place.

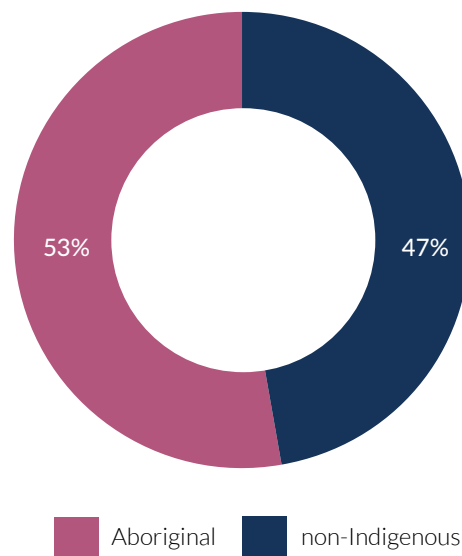
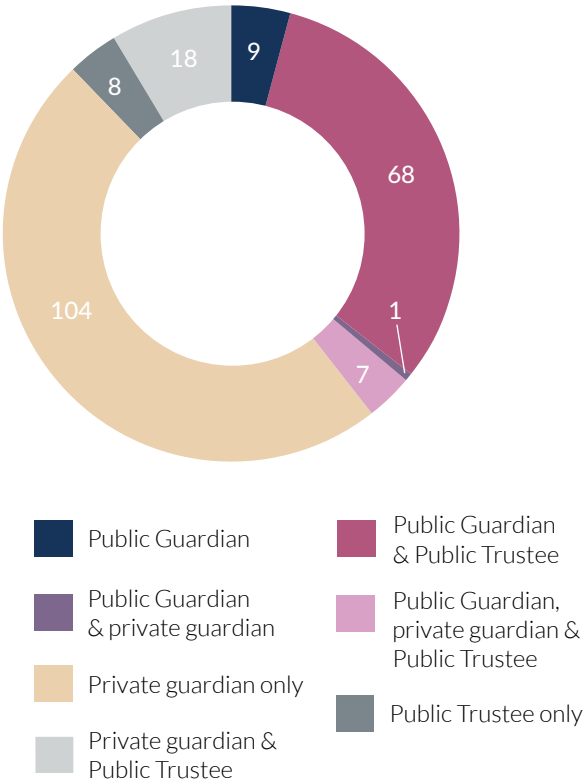


Figure 6: Applications for guardianship orders in 2020–21, by Aboriginal and non-Indigenous identity (%)

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



The number of new guardianship orders has increased in successive years with 215 new and urgent orders made in 2020–21. Of these 215 new and urgent guardianship orders, 85 appointed the Public Guardian as sole or joint guardian (Figure 7). This represents a marginal increase in new orders involving the Public Guardian. Of the 85 orders appointing the Public Guardian, 75 also appointed the Public Trustee for financial management.

Figure 7: Number of new guardianship orders in 2020–21, by appointment type

22%
increase in new orders
appointing private guardians

Figure 8 shows the number of new orders appointing private guardians to act solely or jointly with the Public Guardian. The progressive increase since 2018–19 in the number of new orders appointing private guardians is notable with 122 represented persons supported by private guardians in 2020–21. This represents an increase of 22 per cent since 2019–20 and 69 per cent since 2018–19. The increase in people taking on a guardian role reflects our efforts to increase understanding of guardianship systems and processes and extended supports for new and prospective guardians.

It is anticipated that the number of new applications for guardianship will reduce with the proposed introduction of health care decision-makers legislation. If enacted, this legislation will remove the need for Northern Territory citizens to apply for guardianship for the sole purpose of effecting decision-making authority in health care matters.

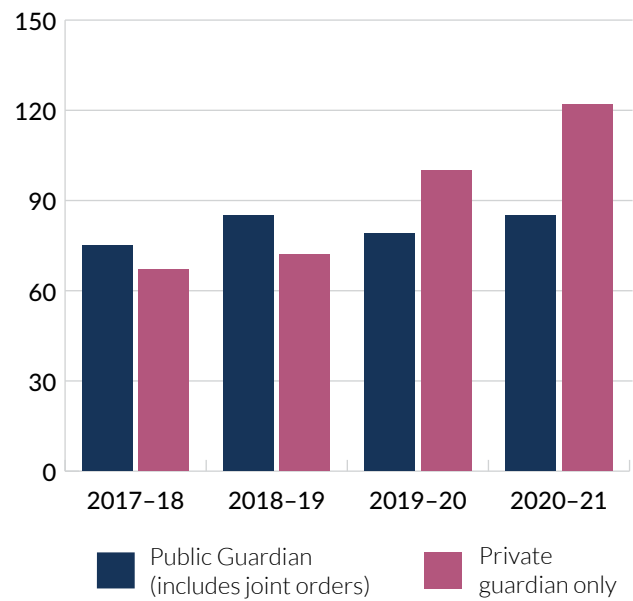


Figure 8: New guardianship orders involving private guardians: trends over four years



Guardianship

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

Public guardianship

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

The *Guardianship of Adults Act 2016* provides for the appointment of the Public Guardian as guardian for a person in three key circumstances:

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

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

While responsibility for financial matters now sits with the Public Trustee, there remains an intersection between personal and financial matters in respect of the costs associated with personal decision-making. The Office of the Public Guardian thus continues to work closely with the Public Trustee and provide guidance on relevant matters to private guardians.

As delegates of the Public Guardian, Adult Guardianship Officers (AGOs) act as advocates and decision-makers for represented persons in areas as specified in the 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 the Office of the Public Guardian Decision Making and Recording Policy and Procedure. In 2020–21 AGOs made 1115 decisions on behalf of represented persons with the majority of these decisions being for health care matters (N=749). COVID-19 vaccination consents (N=446) featured prominently in health care decisions.



1115

decisions made on behalf of
represented persons

Guardianship team

Decision-making framework

The *Guardianship of Adults Act 2016* provides for the appointment of persons to act as decision-makers for people with impaired decision-making capacity in areas as stipulated in a guardianship order. These decisions must be consistent with the guardianship principles and take into account the represented person's current and previously stated views and wishes where it is reasonable to do so and support the individual to make their own decisions. Section 4(4) of the *Guardianship of Adults Act 2016* (the guardianship principles) states that:

In determining what is appropriate in the circumstances, the decision maker must ensure that the decision maker's authority is exercised in a way that:

- (a) is the least restrictive of the adult's freedom of decision and action as is practicable; and
- (b) provides the adult with as much support as is practicable to make the adult's own decisions.

This means that supported decision-making occurs in the context of having significant knowledge of the represented person, an understanding of the person's views and wishes and a commitment to be guided by the individual's known or stated preferences and act as an advocate on their behalf.

Supported decision-making hence shifts the focus from substitute decision-making to enabling 'people with cognitive disabilities to exercise their legal decision-making rights (also called legal capacity)'.¹⁹ The Office of the Public Advocate (Victoria) describes it thus:

*Supported decision-making is different to other decision-making practices such as traditional guardianship, where a person with a disability is represented by another in their decision-making. As its name suggests, supported decision-making provides support for the person to make their own decisions.*²⁰

The Office of the Public Guardian has refocused guardianship practice with a strong emphasis on supported decision-making. This refocus is being embedded in practice with continuous training in place for staff to ensure that the principles and practice are fully recognised and understood. A comprehensive policy to guide our AGOs in decision-making processes has also been implemented. Its intent is to ensure that:

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

During the reporting period the Office of the Public Guardian was pleased to contribute to consultations for the development of evidence-based principles and guidelines for supported decision-making by the Social Policy Research Centre (SPRC), University of New South Wales, on behalf of the Australian Government Department of Social Services. The final report of the SPRC research project, *Good practice in supported decision-making for people with disability*, was published in June 2021.²¹

The 'Principles and Guide' developed as part of the project respond to the United Nations Convention on the Rights of Persons with Disabilities and national principles established by the Australian Law Reform Commission in its final report for the Inquiry into Equality, Capacity and Disability in Commonwealth Laws.²² Consideration of a controlled trial of a non-statutory supported decision-making service in the Northern Territory was noted in last year's annual report. This project has been put on hold due to COVID-19 restrictions and limitations.

¹⁹ Office of the Public Advocate Victoria (OPAV) 2020, *Supported decision-making in Victoria*, OPAV, p. 6.

²⁰ *ibid.*, p. 4.

²¹ Social Policy Research Centre, UNSW Sydney 2021, *Good practice in supported decision-making for people with disability: final report*, prepared by J. Laurens, S. Bates, R. Kayess & K. Fisher for the Australian Government, Department of Social Services.

²² *ibid.*, p. 29.

Supporting older people in remote places – Nancy*

Nancy is an elderly Aboriginal woman living in a remote community with the support of her daughter and an aged care package. For a number of years Nancy maintained the same daily routine of visiting the local aged care facility to have breakfast, shower and, when needed, do her laundry. Nancy would often stay till after lunch and then return home. There had been a longstanding arrangement with her financial managers that as she left the aged care facility each day, Nancy would be provided with \$20.

Nancy and her daughter's accommodation arrangements became unstable at the start of the year, which led to them becoming homeless and sleeping on a mattress in the local park. A meeting was held between Nancy's guardians and the aged care facility to develop a plan to obtain stable accommodation for Nancy and her daughter and to ensure that appropriate in-home supports were provided. Nancy indicated that she wished to continue her normal daily routine of attending the aged care facility as it provided her with social interaction.

In early 2021 suitable accommodation was organised within the community and Nancy and her daughter moved into a unit close to the aged care facility so that Nancy could visit and continue her daily routine.

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

AGO community visits

Meeting with represented persons and those providing formal and informal supports either face-to-face or via video conferencing provides an opportunity for AGOs to discuss the person's current views and wishes and assess their circumstances. This strategy is consistent with National Standards of Public Guardianship endorsed by the Australian Guardianship and Administration Council.

While our AGOs endeavour to meet with represented persons in person at least once a year, seasonal and geographic factors including distance from major centres can impede access to those living in remote and very remote areas. In 2020–21, COVID-19 response measures additionally restricted travel to regions and sites classified as high-risk. These response measures limited the extent of in-person visits to represented persons in community-based and remote settings across the Northern Territory.

Despite these limitations, our AGOs managed to conduct visits with 413 represented persons in nursing homes, hospitals, prisons, Supported Independent Living situations and other community-based accommodation. Visits were conducted also with service providers in Katherine and Tennant Creek. We are currently developing practice guidelines for resource sharing with other government agencies for visits to remote regions, in particular. These arrangements provide for efficiencies such as carpooling and shared charter flights.

Video conferencing between the Office of the Public Guardian and service providers locally, regionally and remotely increased significantly during the year with COVID-19 considerations pushing this increase. Video conferencing assisted by local health clinics and aged care providers enabled our AGOs to meet virtually with a number of represented persons, joint guardians and primary carers in remote communities, and was found to be an effective and efficient use of limited resources. Our office will continue to explore this communication option where appropriate.

Guardianship trends in the Northern Territory

In 2020–21, a total of 1152 persons were subject to guardianship orders in the Northern Territory. This represents an increase of 4 per cent on the previous year. The Public Guardian was appointed sole or joint

guardian for the majority of these orders (N=649) with the remainder of orders appointing private guardians and/or the Public Trustee (for financial management) (N=503) (Figure 9). The majority of represented persons with Public Guardian involvement identify as Aboriginal or Torres Strait Islander (77%).

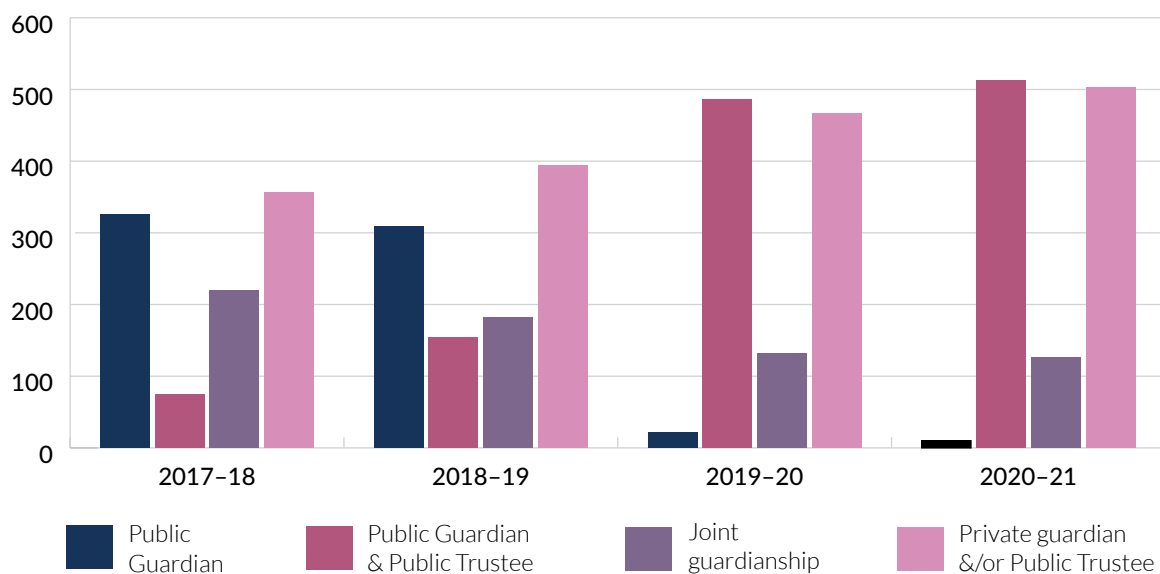
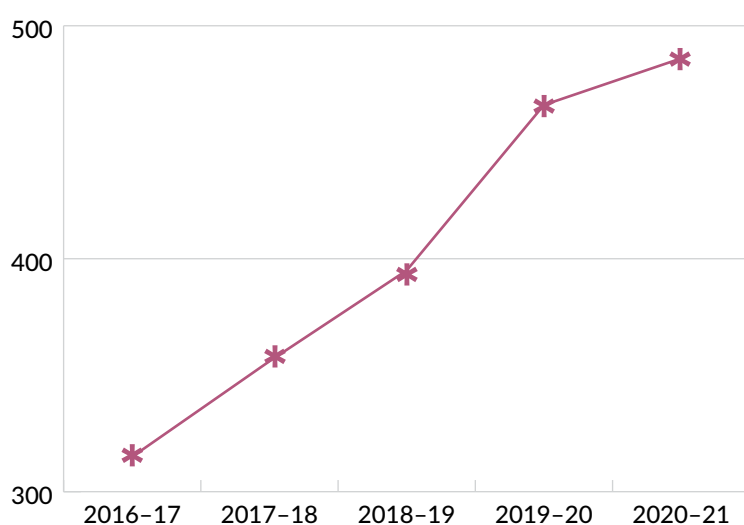


Figure 9: Number of persons with guardianship orders, by guardianship type: trends over four years



The number of private guardians appointed has increased in successive years (Figure 10). The Office of the Public Guardian views the continued 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

Guardianship by location

In 2020–21 the majority of represented persons with Public Guardian involvement lived in Darwin and Alice Springs (N=365), with the remainder residing in remote and very remote locations (Figure 11).

The high number of represented persons in Darwin and Alice Springs compared with other Northern Territory jurisdictions can be explained by the number living with disability who require access to formal services and supports that are not available elsewhere. It is hoped that as National Disability Insurance Scheme (NDIS) services in regional and remote areas expand, this trend may reduce or cease.

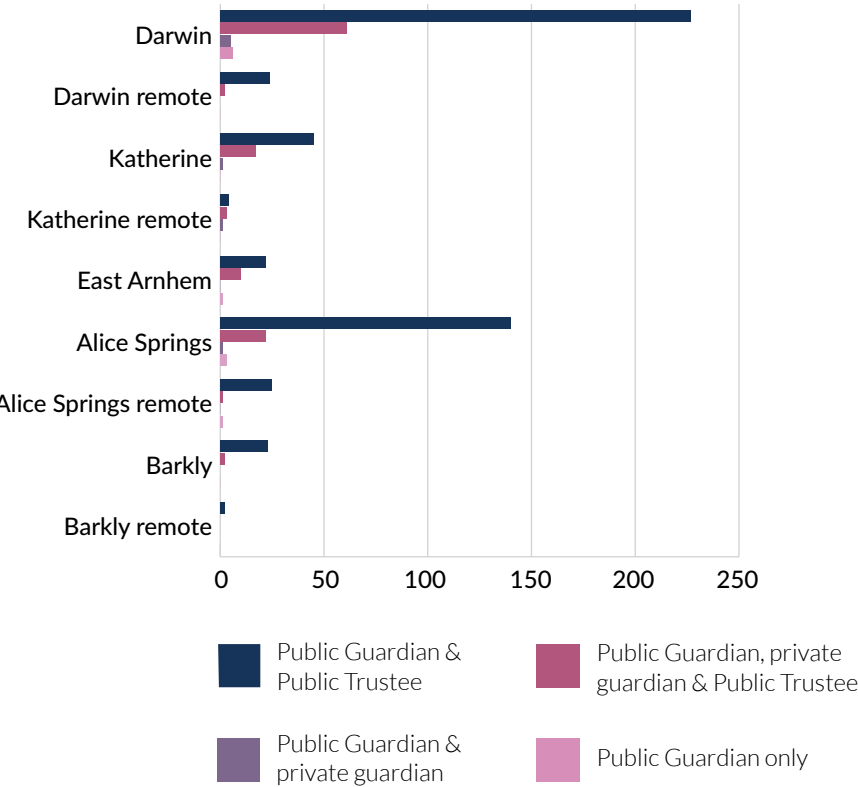


Figure 11: Primary location of persons with guardianship orders in 2020–21, by guardianship type





Guardianship by gender

In 2020–21, 59 per cent of persons with guardianship orders appointing the Public Guardian were male (Figure 12). This reflects the Northern Territory's demographic: at 30 June 2020, the Northern Territory had the highest sex ratio of all the Australian states and territories with just over 105 males per 100 females.²³

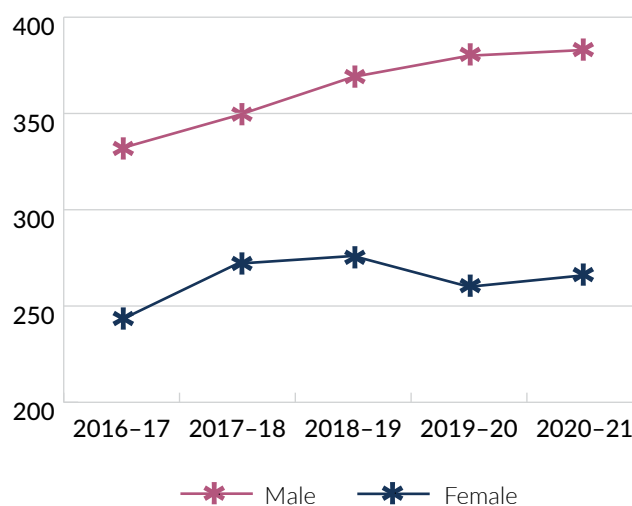


Figure 12: Number of persons with guardianship orders involving the Public Guardian, by gender: trends over five years*

Note: *Includes sole and joint guardianship

²³ Australian Bureau of Statistics 2020, *National, state and territory population*, December 2020, data cube, 'Population by age and sex – national', Table 5: Sex ratio—at 30 June, released 17 June 2021, viewed 17 June 2021, <https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/latest-release>.

Guardianship by age and primary impairment

The Public Guardian was guardian to 649 represented persons in 2020–21 with representation increasing with age and highest for those aged 75 years and above (Figure 13).

The 65 plus years age cohort of persons with Public Guardian involvement (N=222) represents around 2 per cent of the total estimated resident population aged 65 and over in the Northern Territory at 30 June 2020.²⁴

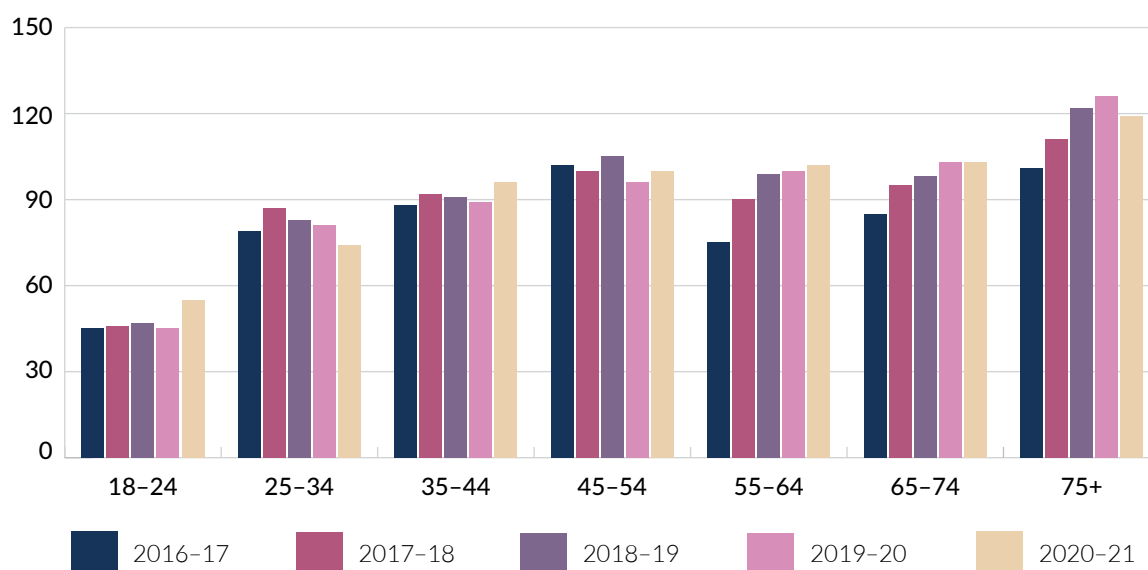


Figure 13: Number of persons with guardianship orders involving the Public Guardian, by age: trends over five years*

Note: *Includes sole and joint guardianship

²⁴ *ibid.*, Table 8: Estimated resident population, by age and sex—at 30 June 2020.

Figure 14 shows that the most frequently reported primary impairment for persons with Public Guardian involvement in 2020–21 was intellectual disability (N=220) followed by dementia (N=167) and acquired

brain injury (N=142). This is consistent with previous years. Reports of dementia increase significantly with age and are the primary diagnosis for the majority of represented adults in the 75 plus years age group.

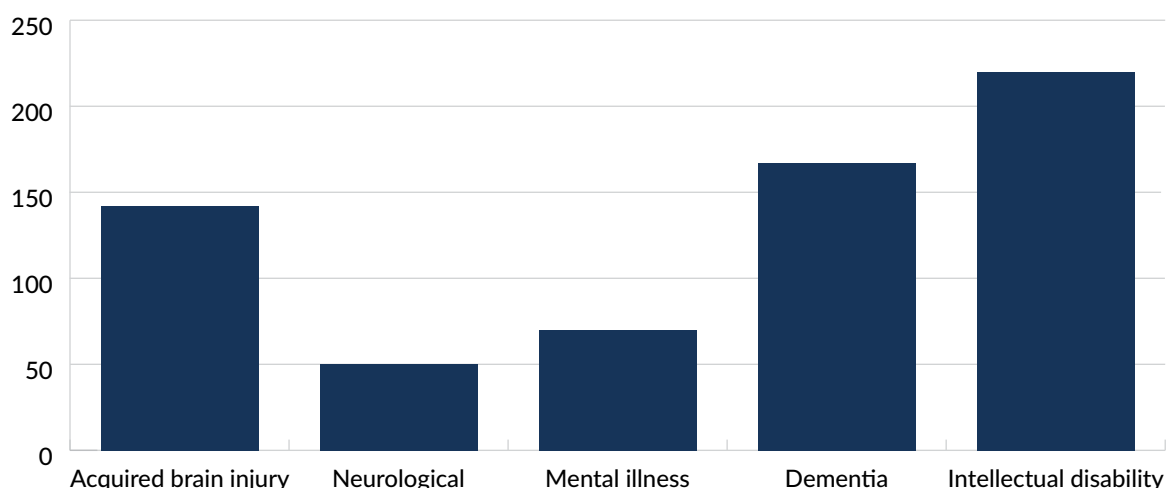


Figure 14: Number of persons with guardianship orders involving the Public Guardian in 2020–21, by primary impairment*

Note: *Includes sole and joint guardianship



Guardianship by Aboriginal and non-Indigenous identity

The majority of people involved with guardianship in the Northern Territory identify as Aboriginal. Figure 15 shows that 57 per cent of represented persons identified as Aboriginal in 2020–21.

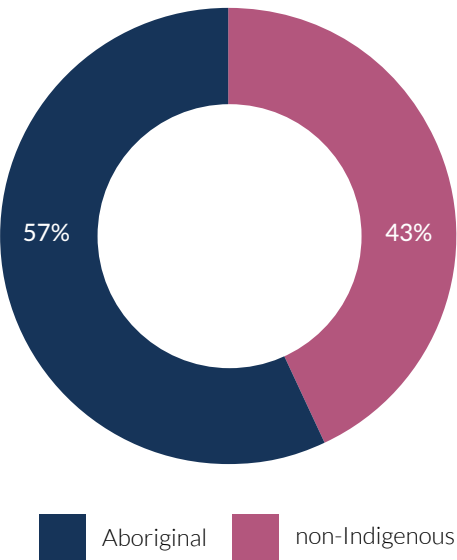


Figure 15: Proportion of represented persons who identify as Aboriginal

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

Most represented persons who identify as Aboriginal have Public Guardian involvement. Conversely, the majority of represented persons who identify as non-Indigenous have private guardians appointed (Figure 16).

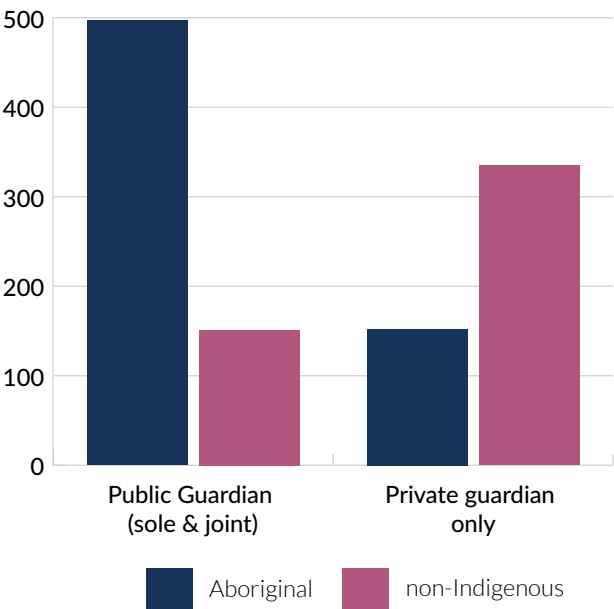


Figure 16: Guardianship type for personal matters, by Aboriginal and non-Indigenous identity, 2020–21

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

The Office of the Public Guardian is seeking to increase the representation of Aboriginal people in private guardian roles. We are working with the North Australian Aboriginal Justice Agency to develop strategies to empower Aboriginal people to act as private guardians, and to ensure that guardianship systems are culturally safe, appropriate and inclusive.



Represented persons and the criminal justice system

In 2020–21, 28 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 17). Twenty-five of these were male and three were female (Figure 18).

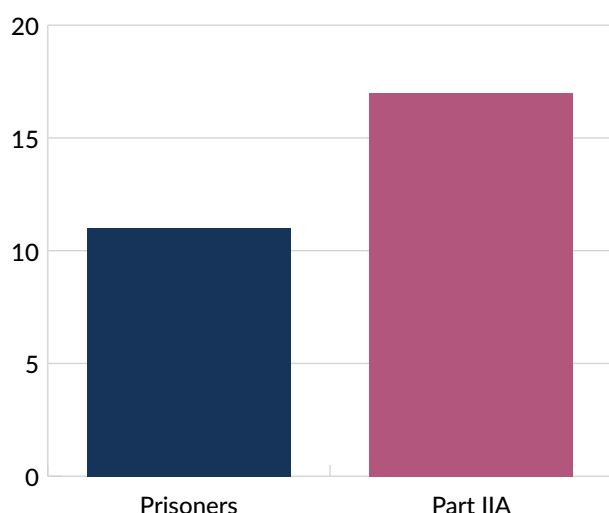


Figure 17: Prisoners and Part IIA: number of represented persons in 2020–21

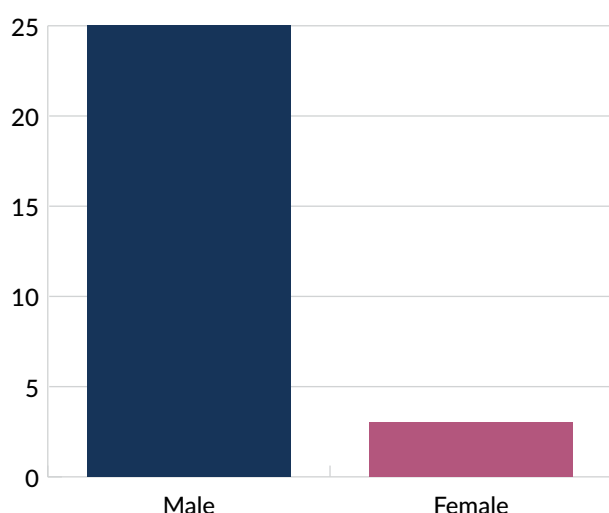


Figure 18: Prisoners and Part IIA: number of represented persons in 2020–21, by gender

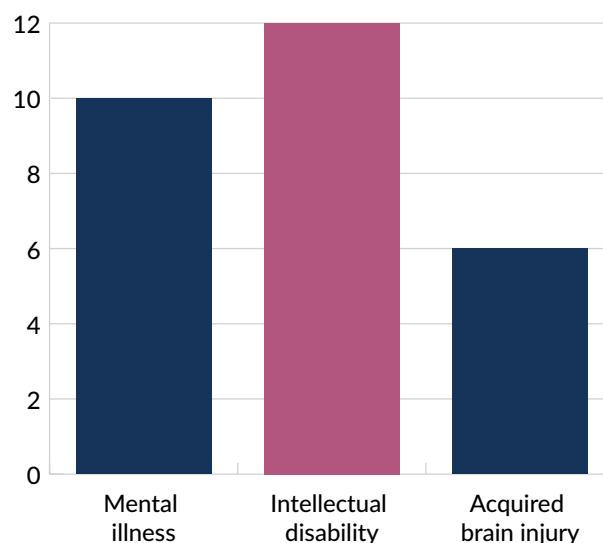


Figure 19: Prisoners and Part IIA: number of represented persons in 2020–21, by primary impairment

Of these 28 represented persons, 17 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 19 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 2020–21 identified as Aboriginal. The disproportionate representation of Aboriginal people in the justice system is reflected in data on prisoners in Australia: at 30 June 2020, Aboriginal and Torres Strait Islander people accounted for 84 per cent of the total Northern Territory prisoner population. It is not pleasing to note that this represents a marginal increase on 2019 figures (83%) and is consistent with trends in previous years.²⁵ The total number of Aboriginal persons in Northern Territory prisons, however, decreased a little in 2020 (N=1371) relative to 2019 (N=1443) (by around 5%).

²⁵ Australian Bureau of Statistics 2021, 4517.0 *Prisoners in Australia, 2020*, Table 40: Prisoners, Indigenous status and sex by state/territory, 2006–2020, viewed 18 June 2021, <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release#aboriginal-and-torres-strait-islander-prisoners>.

Transition from out-of-home care to adult guardianship – Nathaniel*

Nathaniel is a young man with foetal alcohol spectrum disorder (FASD), who has recently turned 18 and transitioned from out-of-home care to adult guardianship. Through careful planning and engagement between the Office of the Public Guardian and Territory Families six months before he turned 18, Nathaniel was transitioned into his own accommodation with a Supported Independent Living provider.

Nathaniel recently graduated from school and is currently employed three days a week with a specialist disability employment provider. The strong support framework in place through his NDIS plan means that Nathaniel is regularly engaged in sporting activities and able to visit family members living nearby. He has also been assisted to increase his independence through living skills development to manage his income support payments. Nathaniel was particularly excited when this meant that he was recently able to purchase a mobile phone. Targeted supports in his NDIS plan also provide for social skills development, enabling Nathaniel to manage and build better peer relationships.

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

Transition of young people from care

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

In 2020–21, 10 young persons transitioned from out-of-home care to adult guardianship with the Public Guardian appointed for nine of these young persons (Figure 20).

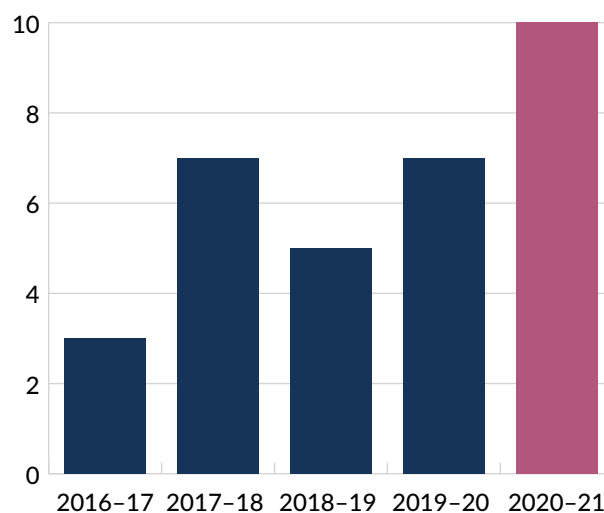


Figure 20: Number of young people transitioning from out-of-home care to adult guardianship: trends over five years

NDIS participant 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, health or other disabilities. As such, most represented persons under the age of 65 who have Public Guardian involvement will be eligible for formal NDIS supports.

We were pleased to report in our 2019–20 annual report that the vast majority (92%) of represented persons with Public Guardian involvement had an NDIS plan in place. In the 2020–21 reporting period, this figure increased to 94 per cent (N=390) (Figure 21).

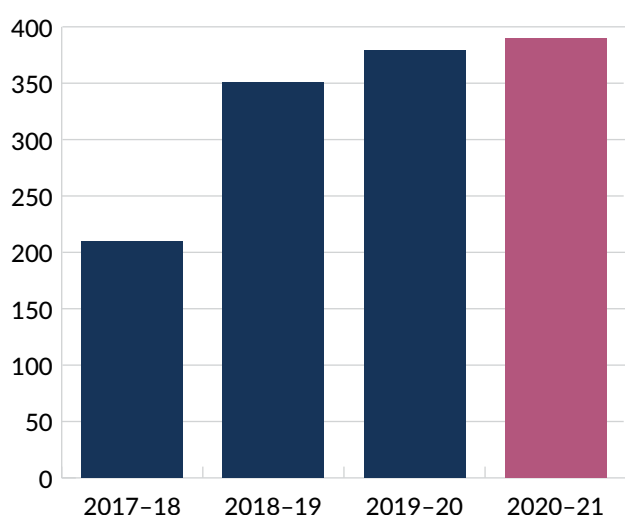


Figure 21: Number of represented persons with Public Guardian involvement and NDIS plans in place: trends over four years

94%
*of eligible represented
persons had an NDIS
plan in place*



Mental health interface

The interface between the Office of the Public Guardian and Top End and Central Australia mental health services is complex and evolving with the authority of the Public Guardian not well understood by services. While our AGOs attend Mental Health Review Tribunal hearings as advocates for represented persons, there is currently no requirement for mental health services to advise the Office of the Public Guardian when a represented person comes before the Tribunal. This can result in persons with impaired decision-making capacity being discharged from a mental health service or hospital into the community without adequate supports or the knowledge of the Public Guardian.

In an attempt to assist understanding of the intersection between mental health and guardianship, twice yearly meetings with Top End community mental health services have now been implemented. A framework for meetings with Central Australia Mental Health services is also being considered. We continue our liaison with peak Top End and Central Australian non-government mental health services and welcome this important engagement.

Review of Mental Health and Related Services Act

The Northern Territory *Mental Health and Related Services Act 1998* provides for the care, treatment and protection of people with a mental illness and intersects at different levels with the *Guardianship of Adults Act 2016*. In December 2020 the Northern Territory Department of Health invited submissions in response to its *Discussion paper for the Mental Health and Related Services Act 1998 review*. The discussion paper seeks to raise questions on general and specific matters for consideration in the review of the existing mental health legislation and generate discussion of concepts introduced in other Australian jurisdictions. The review provides an opportunity to develop a strong legislative framework for the delivery of mental health services in the Northern Territory and to embed important concepts including:

- * supported decision making
- * the protection and promotion of human rights
- * person-centred and directed practice
- * recovery oriented practice
- * any compulsory interference with a person's autonomy of decision and action as a last resort.

The Office of the Public Guardian contributed to the review of the *Mental Health and Related Services Act 1998* with a written submission in May 2021 drawing attention to the complexities of maintaining responsibility for represented persons who find themselves subject to multiple legislative instruments. Our submission highlighted inconsistencies in the scope of decision-making authority for guardians under the *Mental Health and Related Services Act 1998* and *Guardianship of Adults Act 2016*. Inconsistencies were noted also in respect of key terms and definitions referenced in both acts, including decision-making capacity and impaired decision-making capacity. Ensuring consistency in the key terms used and equivalent provisions will provide for greater certainty of rights and responsibilities for all parties across both pieces of legislation.

Guardianship and the NDIS

The NDIS is continuing to have positive impacts overall for represented persons in the Northern Territory. However, NDIS planning and service provision remains a concern for the Office of the Public Guardian with service availability uneven or non-existent in some regions. This has led to non-NDIS service providers being utilised in some instances to mitigate perceived risks. Additionally, a full range of visiting allied health services is not regularly available in all communities, which reduces the ability for specialised assessments to be undertaken and limits continuity of service provision in remote and regional areas. The lack of specialised NDIS supports in remote areas, in particular, restricts return to Country options and impacts options and outcomes for represented persons seeking to remain in place.

On a positive note, the NDIS Complex Support Needs Pathway model is working well for represented persons with complex needs. AGOs have reported that represented persons are receiving improved supports, attributed in large part to the increased interaction with the NDIS, the higher level skills sets and the expertise of NDIS staff. Our monthly meetings with Northern Territory regional NDIS representatives are also working well and proving effective when establishing relationships and responding to critical situations.

While the existence of the NDIS is very welcome and has radically changed the face of disability supports both in the Northern Territory and Australia, it continues to occupy significant staff resources.

The requirement for our AGOs to liaise with a large number of service providers, Support Coordinators and Specialist Support Coordinators, along with the administrative burden of service agreements and reviews, is increasing pressure on our staff. The Office of the Public Guardian is therefore exploring ways to address this. A standardised service agreement between our office and NDIS providers is being developed to streamline processes and assist in reducing the impact of NDIS administration on AGOs.

Support coordination continues to be a significant issue for the Office of the Public Guardian with participants, disability advocates and AGOs reporting that the support coordination experience and quality of services provided is highly variable across the Northern Territory. The increased reliance on Support Coordinators but reduced funding in NDIS plans is a substantial issue. Staff attrition, inadequate training and, on occasions, a lack of understanding by new Support Coordinators of their role also remain pressing concerns. However, we have been advised that Support Coordinators are developing constructive relationships with Northern Territory National Disability Insurance Agency planners, which greatly assists understanding of local considerations and challenges.

The Office of the Public Guardian is developing an information sheet to provide for improved understanding by Support Coordinators of the role of our office and our requirements.

*A positive move – Julie**

Julie has complex health and disability needs and grew up in a loving and supportive family. Her parents were appointed jointly as her guardians when she reached adulthood and continued to provide for her daily care. When her parents reached an age where this care was no longer possible, Julie moved into a supported living arrangement with the help of her NDIS funding. Her parents continued to visit and support Julie in her new living arrangement, while over time her siblings moved interstate.

Late last year Julie's parents passed away, leaving her without close family living nearby. Julie's brother lived in Western Australia but was appointed as guardian with the Public Guardian. He did his best to stay in contact and support Julie from his home in Western Australia but over time Julie's health and mental wellbeing declined, in part due to her dislocation from family. This resulted in her progressively withdrawing from medical treatment for a range of complex chronic health conditions.

Acknowledging the need for Julie to connect more closely with family, her brother and Adult Guardianship Officer worked with the NDIS to obtain funding for her to visit her brother in Western Australia. This visit was supported and Julie flew to Western Australia. Her health and wellbeing increased dramatically during her stay with her brother, including her willingness to continue medical treatment. Upon her return to the Northern Territory Julie indicated to support persons and her guardians that she had really enjoyed her time with her family and would like to move closer to her brother. This request was supported by her guardians, Julie's support persons, the NDIS and her siblings.

With the assistance of her NDIS package and Support Coordinator, Julie was able to relocate to the same town as her brother and receive full-time care from a local provider. Julie has settled in well with her health and wellbeing greatly improved.

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

Corporate Services and Policy

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

Corporate Services

The Corporate Services team manages our business administration systems and is the first point of contact for telephone and face-to-face enquiries.

Systems management

Modifications were made during the year to our client information system to provide for increased utilisation of aggregate data, enhanced streamlining of workflows and improved auditing and reporting functions. A key adaptation was the development of a Decision Making Process data tool that directly associates items in the Adult Guardianship Officer (AGO) Decision Making and Recording Policy and Procedure with actions and outcomes for represented persons. Other enhancements provide for the data capture of orders relating to mental health and civil and criminal proceedings and improved capture of National Disability Insurance Scheme support coordination provider data.

Modifications were made also to guardianship order reassessment workflow functions to streamline processes and to further develop our client information system's Power BI dashboards to provide for increased reporting options. Anticipated modifications in the forthcoming year will assist the scheduling and tracking of structured visits with represented persons to ensure that this data is more readily accessible to the Public Guardian, AGOs and relevant stakeholders.

1800 guardianship help line

The Corporate Services team manages our 1800 guardianship help line during business hours. The 1800 telephone help line diverts out of business hours to an after-hours service 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 2020–21, 8 per cent of calls to the 1800 guardianship help line were after hours (1585 calls). A total of 19,248 calls to the help line and after-hours service were received during the reporting period.

19,248

calls to guardianship help line and
after-hours service

People and organisational capability

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

As with previous years, staff were encouraged to attend workshops and training applicable to their teams and program area. All staff were invited to participate in Mindarma, an evidence-based eLearning program which assists employees to build resilience and protect their mental health. Staff also had the opportunity to undertake mindfulness training and participate in a managing stress program and emotional intelligence webinar. The emphasis on mental health was to ensure that staff were assisted to manage the types of stressors encountered in guardianship, recognising also additional significant stressors associated with COVID-19. Two staff attended COVID-19 safety supervisor training.

Members of the AGO, Policy and Inquiry and Engagement teams commenced an online training program in supported decision-making conducted by La Trobe University. Relevant staff also attended workshops in areas including strategic planning, website content design and Microsoft Office tools and systems. Two 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*. All staff were required to attend privacy training offered by the Office of the Information Commissioner Northern Territory.

Policy

The Policy team provides support to the Office of the Public Guardian staff through the development of policy documents and tools to guide internal practice. The Policy team also provides support and assistance to represented persons and key stakeholders through the provision of information and systemic advocacy.

Communications

The Policy team develops informational materials for community consumption, and guardianship policy, practice protocols, tools and information to guide our internal operations. 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. Our Facebook page also attracts a broad range of users. Our online guardianship information platforms were invaluable in a year where our public engagement activities were necessarily limited by COVID-19 considerations.

Throughout the reporting period work was undertaken to develop a number of our existing guardianship fact sheets into Easy English and to interpret and audio record key guardianship information in four Aboriginal languages: Anindilyakwa, Yolngu Matha, Eastside Kriol and Warlpiri. The Easy English fact sheets and Aboriginal language audio files will be available on our website in the near future. Several new fact sheets designed to assist people to navigate guardianship proceedings and processes more easily were also developed, and our *Understanding guardianship* guide updated.

Policy review and development

The Office of the Public Guardian exercises its duty to advocate for the interests of represented persons and vulnerable client groups through submissions and representations to commissions, committees and inquiries. The Policy team made written submissions in response to the following in the 2020–21 reporting period:

- * Joint Standing Committee on the National Disability Insurance Scheme, Independent Assessments inquiry (March 2021)
- * Joint Standing Committee on the National Disability Insurance Scheme, NDIS Quality and Safeguards Commission inquiry (July 2020)
- * Review of the *Mental Health and Related Services Act 1998* (May 2021)
- * National Disability Insurance Agency, *Support coordination* discussion paper (September 2020)
- * Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Emergency planning and response* issues paper (July 2020)
- * Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *The experience of First Nations people with disability in Australia* issues paper (October 2020)
- * Royal Commission into Aged Care Quality and Safety, *Impact of COVID-19 on Aged Care* inquiry (July 2020)
- * Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Restrictive practices* issues paper (September 2020)
- * Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Rights and attitudes* issues paper (August 2020)
- * Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Safeguards and quality* issues paper (February 2021)
- * Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Violence and abuse of people with disability at home* issues paper (February 2021).

Policy and practice directions finalised during the year addressed: provision of submissions to the Minister; notifications to the Public Guardian; information sharing with Correctional Services and prison health; interim practice direction when a represented person has an Advance Personal Plan; complaints management; and emergency evacuation. 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 2019–20*.

Health care decision-makers legislation

The Office of the Public Guardian strongly supports the implementation of statutory health care decision-maker legislation in the Northern Territory. A statutory health care decision-maker is someone with automatic authority to make health care decisions for a person who lacks the legal capacity to do so themselves. Legislating for statutory health care decision-makers will remove the need for guardianship in circumstances where the only decisions to be made for the person are health care decisions. This will provide for certainty in respect of the authority of the decision-maker(s) and timeliness in respect of the decisions to be made.

The Office of the Public Guardian has continued to work with the Department of the Attorney-General and Justice to progress the development of legislation providing for statutory health care decision-makers in the Northern Territory. This has involved consolidating stakeholder submissions and input from consultations held in 2019 and 2020 for a report to the Northern Territory Government regarding the identified need for and desired scope of the proposed legislation.

Key Performance Indicators, budget and resourcing

The Department of the Attorney-General and Justice provides funding and corporate support to the Office of the Public Guardian. In 2020–21, \$4,087,000 was allocated to the Office of the Public Guardian for administrative functions and personnel.

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

Demands on our organisation continue to grow with all applications for guardianship requiring Office of the Public Guardian involvement and National Disability Insurance Scheme requirements impacting our operations and team. Our supports to guardians, represented persons and other relevant parties in association with hearings have also increased.

It is anticipated that the 2021–22 budget will see a reduction in funding allocation associated with

Northern Territory Government efficiency measures. There is a risk going forward that any further impost on our budget and resources may impact our operations and capacity to fulfil our role.

At 30 June 2021 the Office of the Public Guardian had 29 full-time equivalent (FTE) positions.

Key Performance Indicators

The Office of the Public Guardian's performance in 2020–21 has been placed against the forecast estimates published in Budget Paper No. 3.

Outcomes for 2020–21 exceeded budget estimates for the percentage of represented persons with face-to-face contact in spite of COVID-19 pandemic impacts. The number of individuals under adult guardianship throughout the reporting period, though less than forecast, represents a 4 per cent increase on the 2019–20 reporting year (Table 2).

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

	2019–20 Budget	2019–20 Actual	2020–21 Budget	2020–21 Actual
Number of individuals under adult guardianship	1011	1106	1172	1152
Percentage of represented adults with face-to-face contact	60%	52%	60%	64%

Looking ahead

During the coming year there will be significant collaboration with the Office of the Public Trustee to achieve the creation of a centralised agency providing decision-making and support for represented persons in personal and financial matters.

Our strategies moving forward reflect our highest commitment of service to the Northern Territory community, our focus on human rights for individuals with impaired decision-making capacity and the detailed work required to bring our two agencies together.



Provide an effective, contemporary guardianship service to the Northern Territory community

- * Be a guardian of last resort for an adult when appointed by a guardianship order
- * Obtain and provide to the NTCAT information relevant to guardianship applications
- * Provide advice and support to persons who are making, or proposing to make, applications for guardianship orders
- * Monitor and investigate complaints about the conduct of guardians
- * Provide, or encourage the provision of, education about relevant issues
- * Review, develop and refine internal systems to ensure consistent standards of performance



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

- * Improved systems for working with stakeholders
- * Develop and undertake partnership activities



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

- * Ensure all guardianship orders promote the human rights of people with impaired decision-making capacity in accordance with the AGAC National Standards
- * Undertake systemic advocacy at local, Territory and national level



Design and implement systems improvement

- * Improved systems to support guardianship practice
- * Provide best practice personal and financial guardianship services to Territorians



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

- * Make guardianship information accessible to all Territorians
- * Ensure guardianship services are culturally safe for Aboriginal Territorians
- * Enhanced support for private guardians



Develop and maintain a capable workforce

- * Develop a targeted professional development program for teams and individuals



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