



# **Annual Report 2022 – 2023**



## Acknowledgement of Country

In recognition of the deep history and culture of this island, the Office of the Public Guardian (OPG) acknowledges Tasmanian Aboriginal people, the original and continuing Custodians of the Land, Sea, Waterways, Sky and Culture. We acknowledge and pay our respects to all Tasmanian Aboriginal Communities, who have survived invasion and dispossession, and continue to maintain their identity, culture and Aboriginal rights. As we share our knowledge, experiences and work practices within the OPG, we also pay respect to the knowledge and cultural practices embedded for all time within Tasmanian Aboriginal ownership of Country.




*Untitled by 'Adam'*

## Terminology

This report uses the terminology 'people with disability' to refer to the disability community and 'represented person' to refer to people for whom substitute decisions are made. The Office of the Public Guardian acknowledges the range of views about this language and how it can impact identity. We celebrate the diversity of our community and the right of all people to identify as they choose.

This report also uses 'impaired decision-making ability' to refer to capacity for decision-making, which reflects the broader reform occurring in the legal context. We acknowledge that language referring to a 'deficit' can be negative or demeaning. The OPG wishes to affirm our commitment to a future where all people with disability enjoy genuine inclusion, equality, autonomy, and the same opportunities to contribute to their communities.

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Office of the Public Guardian  
GPO Box 825  
HOBART TAS 7001



30 September 2023

The Hon Elise Archer  
Attorney-General, Minister for Justice  
10<sup>th</sup> Floor Executive Building  
15 Murray Street  
HOBART TAS 7000

Dear Minister,

**Annual Report of the Office of the Public Guardian for the year ended 30 June 2023**

In accordance with the requirements of Section 84 of the *Guardianship and Administration Act 1995*, I am pleased to submit this report on the administration of the Act and the financial statements for the office of the Public Guardian for the year 1 July 2022 to 30 June 2023. This report records the operations and performance of the Office of the Public Guardian including statistical data on direct guardianship and dispute resolution work, as well as a summary of activities in relation to other functions.

Yours sincerely,

Angela McCrossen  
**A/Public Guardian**



## Table of Contents

Acknowledgement of Country .....	2
Terminology.....	2
A message from the Acting Public Guardian .....	6
Service development.....	6
Advocacy .....	7
Guardianship.....	7
About the Public Guardian .....	9
Our Values .....	11
Vision:.....	11
Our Purpose:.....	11
Our Practice: .....	11
Our Values: .....	11
Who are we? .....	12
Organisational Structure.....	12
Our guardianship work .....	13
Embedding supported decision-making practice .....	14
Decision-making framework.....	15
Reform agenda .....	15
What people say about having a guardian.....	18
Sam.....	18
Annabelle.....	19
Jude .....	20
Adam .....	21
Bernard and Sebastian .....	22
Dispute Resolution Service .....	24
Dispute Resolution Model.....	24
Preliminary assistance/Pre-mediation.....	25
Mediation.....	25
Education and Awareness Raising.....	26
Referrals.....	26
Operation of the Act.....	26
Performance Data.....	29



When we are appointed .....	29
Powers Granted under Orders.....	30
Emergency appointments.....	32
After-Hours Emergency Work .....	33
Who are we appointed for? .....	34
Age and gender demographics .....	34
Diagnostic profile.....	35
Regional profile .....	36
Guardianship Activity.....	37
Active cases .....	37
Caseload activity .....	37
OPG decision-making.....	38
Guardianship and the NDIS .....	40
Advocacy and Promotion.....	41
Systemic advocacy - reform, policy and program development.....	41
Systemic advocacy - national inquiries and commissions .....	43
Improvements to the NDIS system .....	43
Royal Commission into violence, abuse, neglect and exploitation of people with a disability .....	43
Community Education .....	44
Complaints .....	45
FTE / Financial Summary .....	46
Appendix 1 – Relevant Sections of the Act.....	47
Appendix 2 – Who are we? .....	50





## A message from the Acting Public Guardian



I am pleased to present the 2022-23 Annual Report for the Office of the Public Guardian (OPG).

On 12 September 2022 I was appointed as Acting Public Guardian whilst Jeremy Harbottle, who holds the substantive position, undertakes alternative duties within the Department of Justice.

It has been an incredible privilege and honour to be afforded the opportunity to promote the rights of Tasmanians with disability and impaired decision-making ability over the past year.

I have been motivated by the opportunity to work alongside local and national bodies to influence legislative and practice reforms to promote a more inclusive community that supports the independence and autonomy of people with disability. It has also been inspiring to work alongside staff of the OPG who are aligned in their values, passion and commitment to place the people that we represent at the centre of our practice, and to identify ways we, as an office and society as a whole, can continuously improve and strengthen our support for people with impaired decision-making ability.

Prior to joining the OPG in February 2022, I had over 20 years' experience working for the Tasmanian Government in Children, Youth and Families within the high profile and complex statutory

environment of child protection. Although my prior experience, skills and knowledge has assisted me in the role of Public Guardian, it has been a steep and thought-provoking learning curve for me. I have enjoyed growing my understanding of the complexities of decision-making in this jurisdiction and the crucial role of the Public Guardian, and other substitute decision-makers, in making and supporting principled and just decisions for the people we are appointed to represent.


I would like to thank Jeremy Harbottle for the ongoing support and guidance he has offered me during my tenure; to key stakeholders in the sector who have provided me with great opportunities to collaborate to achieve collective outcomes that benefit people with disability; and to the broader OPG team for their patience and expertise that they have imparted to me while I have been learning the ropes.

I believe that guardians are the key agents in ensuring those represented by our office are treated with dignity and respect. As such, during the past 12 months, I have prioritised the provision of support and leadership to guardians in the sensitive role they play in building decision-making capacity and advocating for the people they represent.

### Service development

The OPG has had a busy yet rewarding year. We have successfully implemented a new operational service arm, developed, and embedded new practice and policy frameworks and participated in a number of national and local inquiries and initiatives.

Of significance is the design and implementation of a new service function



following amendments to the Act. The Public Guardian now has functions under the Act to mediate and resolve disputes in relation to advance care directives.

The dispute resolution service prioritises the views, preferences and rights of the person at the centre of the dispute, consistent with the principles of the Act. Our office looks forward to the further expansion of this dispute resolution service, following upcoming legislative reform.

The OPG has developed and implemented a contemporary Complaints and Feedback Framework which is now available to the public on our website. Additionally, we have developed a Decision-Making Framework which outlines our commitment to supported decision making and defines the principles and objectives that underpin our practice.

We have also implemented a Professional Supervision Framework which supports the Public Guardian's obligations to ensure staff access consistent, appropriate, and effective professional supervision so that represented persons receive safe, competent, and evidence-based services.

We have continued to update and improve our website, including additional information and resources for professionals, carers, supporters and represented persons.

## Advocacy

At a national level we have continued to provide submissions and responses to a range of inquiries. I was pleased to have the opportunity to provide a written submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. We have also been actively involved in providing submissions and joining the steering

committee to support the implementation of the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and the Tasmanian National Preventative Mechanism.


Two guardianship staff and I were grateful to attend the Australian Guardianship and Administration Council conference, which provided opportunities to connect with our counterparts and observe national and international legislative and policy responses to supporting people with impaired decision-making. This included, most critically, the supported decision-making reform agenda.

At a local level, we have provided submissions into the establishment of a Tasmanian Adult Safeguarding Framework, participated in a Steering Committee to assist Tasmanian Health Services to support survivors of sexual abuse who have a disability, and have been involved in the Tasmanian State-wide Elder Abuse Prevention Advisory Committee where I have provided feedback to inform the National Elder Abuse Action Plan and Strategy.

## Guardianship

The role of guardians, along with other components of the guardianship and administration system, have been subject to increased media coverage and scrutiny in recent times. Building on the OPG's previous reports, this year I wanted to help tell the story of the impact of our practice and services from the most important perspective – the people we represent.

I believe in and do my utmost to facilitate transparency and accountability, and public scrutiny is a critical part of maintaining public trust in bodies such as



the OPG. However, the narrative has included calls for the guardianship and administration systems, and substitute decision-making more specifically, to be removed altogether. My intention in facilitating the story telling in this report, is to help contribute to a balanced discussion of the role of substitute decision-making and its associated impacts.

I was interested in hearing from people who have or have had a guardian appointed. I wanted to learn about their experiences of having a guardian, specifically exploring with them the ways a guardian has or is impacting their lives. Therefore, this annual report will include direct feedback from people with a lived experience of having a guardian.

I would like to thank all the people who so honestly and openly shared their experiences with me, I have learnt a lot from my engagements with each person I met over the past few months. A very special thankyou to 'Adam' for sharing his incredible artwork and giving me permission to showcase his talents within this report.

For guardians within my office, the feedback given is a testament to the respectful, accessible and skilled support you provide to the people you represent. Given that guardians and other substitute decision-makers often face public criticism and negativity, I hope this provides you with encouragement and recognition of the critical difference you can, and do, make in the lives of the people we represent.

The achievements detailed in this report would not have been possible without the hard work and dedication of all staff within the OPG. Their perseverance and commitment to the provision of high quality, compassionate and person-

centred services in a complex and changing environment constantly impresses me. I am proud to work in an office that has such a positive and cohesive workplace culture that prioritises sound decision-making and the rights of the people they represent.



Angela McCrossen  
**A/Public Guardian**





## About the Public Guardian

The Public Guardian is an independent statutory officer established under the *Guardianship and Administration Act 1995* (the Act). The Act sets out the legal framework for advance care directives, consent to medical and dental treatment (and other substitute decision-making) for adults who have impaired decision-making ability, arising from a disability.

The Office of the Public Guardian (OPG) is Tasmania's primary statutory body charged with promoting the rights and interests of adults with impaired decision-making abilities and their protection from abuse, neglect and exploitation.

The functions of the Public Guardian are set out in Section 15 of the Act. The key responsibilities of the Public Guardian are to:

- act as a guardian when appointed by the Tasmanian Civil and Administrative Tribunal (the Tribunal) and to represent people before the Tribunal;
- foster, encourage and support the establishment and provision of programs, services, facilities and organisations which support people with disabilities;
- promote, speak for, protect the rights and interests, and advocate on behalf of any people with disabilities;
- investigate, report and make recommendations to the Minister on any matter relating to the operation of this Act; and
- provide information to the community and the public regarding the OPG, the Tribunal (Guardianship stream) and the Act.

In addition, section 17 of the Act sets out the Public Guardian's role in investigating:


- (1) complaints and allegations concerning guardians (enduring or Tribunal appointed) and administrators or people acting under an enduring power of attorney.
- (1A) of its own motion or following a complaint, any matter relating to action taken or proposed to be taken in relation to an advance care directive.
- (2) at the request of the Tribunal, any other matter before the Tribunal.

The vast majority of the OPG's time and resources continue to be spent fulfilling the function of acting as people's guardian when so appointed by the Tribunal. This has always been the case and is also the case for most of the interstate Offices of Public Guardians and Public Advocates. However, in Tasmania, this function operates almost at the exclusion of the other functions as the OPG does not have dedicated staff for systemic advocacy, policy and program development or education.

Amendments to the Public Guardian's functions in relation to advance care directives and dispute resolution came into effect on 21 November 2022.

Section 35ZI (1) of the Act provides that the Public Guardian may provide preliminary assistance in resolving a matter relating to an advance care directive by:

- (a) ensuring that the parties to the matter are fully aware of their rights and obligations; and
- (b) identifying any issues that are in dispute between parties to the matter; and
- (c) canvassing options that may obviate the need for further proceedings; and

- 
- (d) where appropriate, facilitating full and open communication between the parties to a dispute; and
  - (e) seeking to resolve differences between eligible persons in relation to any other matter prescribed by the regulations for the purposes of this section.

In providing preliminary assistance, the Public Guardian may also facilitate mediation between parties to a dispute.

Further information in relation to the legislative responsibilities of the Public Guardian is outlined in Appendix I.



## Our Values

**Vision:** The OPG's vision is for a safe, fair and just Tasmania in which the rights and dignity of all people are respected and upheld.

**Our Purpose:** The OPG works for the rights of people with disability to live their lives autonomously, according to their will and preferences. We work against abuse, neglect and exploitation.

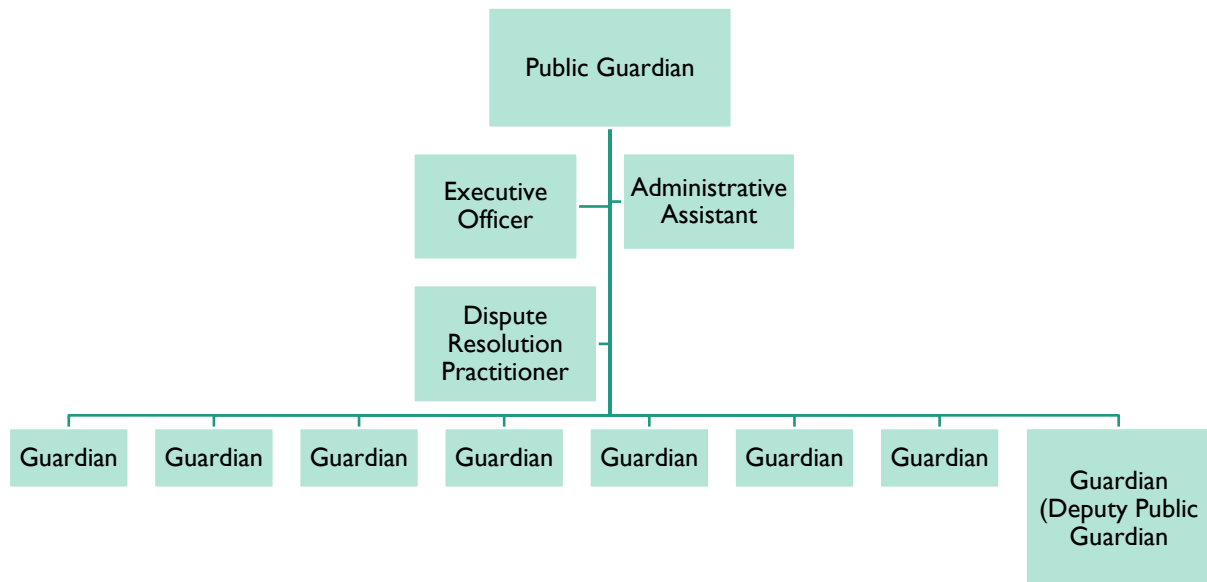
**Our Practice:** The OPG makes decisions in accordance with the legislative principles of the *Guardianship & Administration Act 1995*, *United Nations Convention on the Rights of Persons with Disabilities: Declarations and Reservations (Australia) 2008*, and the *Australian National Standards of Public Guardianship 2016*, and works to protect Represented Persons' rights and interests.

**Our Values:** guide us in all our endeavours:



## Who are we?

### Organisational Structure



The Office of the Public Guardian has a current staffing level of 10.68 full time employees, with 7.43 staff focussed on guardianship work across the state. This year, has seen the employment of several new staff to the office, namely:

- Two new Guardians.
- One of our existing positions has been redesigned and re-purposed into an Executive Officer position which is in place to provide much needed administrative support to guardians in their roles and is responsible for responding to and coordinating general inquiries and developing or updating resources for our public website.
- A new Dispute Resolution Practitioner.

Further details are outlined in Appendix 2.



## Our guardianship work

When a person lacks the ability to make decisions, sometimes there is a need for a person with formal authority to make decisions on their behalf. A guardian is someone with legal authority to make important health and lifestyle decisions on behalf of a person with a decision-making impairment. Health and lifestyle decisions may include:

- where a person lives.
- with whom a person lives.
- consent or refusal of consent for healthcare and medical treatment.
- support services they receive.
- who they have contact with.
- instructing a legal practitioner.

Currently, the legal criterion that must be satisfied to appoint a guardian (whether private or the Public Guardian) are that:

- the person has a disability, and
- they are unable by reason of that disability to make decisions about lifestyle matters, and
- there is a current need for a guardian to make a decision/s.

When deciding who to appoint as guardian, the guardianship stream of the Tasmanian Civil and Administrative Tribunal (the Tribunal) will consider who is most suitable to carry out the role. Where appropriate a private guardian will be appointed. The appointment of the Public Guardian is considered a last resort.

A person who is subject to a guardianship order (or other types of substitute decision-making arrangements under the Act) is known as the represented person.

The guardianship order sets out the powers the Tribunal has given to the guardian, and guardians can only make decisions in accordance with the powers contained within the order. Importantly, the appointment of a substitute decision-maker does not preclude efforts to support a represented person to make their own decisions.

Sections 6 and 27 of the Act provide important safeguards for the rights of people who are represented, and for whom a substitute decision is required.


Section 6 Principles require that a guardian makes decisions and acts in a way that:

- Is the least restrictive of the person's freedom of action and decision.
- Is in the best interests of the person; and
- As far as possible, carries into effect the wishes of the person.

Section 27 provides further safeguards around the substitute decision-making role by outlining that a guardian is acting in the 'best interests' of the represented person if they act as far as possible:

- In consultation with the person, promoting their directions, preferences and values.
- As an advocate for the person.
- In a way that promotes the person's autonomy and participation in the community.



- 
- In a way that encourages and assists the person to become capable of caring for themselves and making their own decisions.
  - In a way that protects the person from abuse, neglect and exploitation.

The challenge for a guardian is balancing these principles, ensuring the care and protection of the represented person as well as promoting independence, autonomy and enabling, as far as possible, that their directions, values and preferences are carried into effect.

Substitute decision-making is restrictive as it limits a person's right to make decisions for themselves. A substitute decision will only be made when there is no less restrictive alternative (such as supporting the person to make their own decision, or where a person can be informally supported to fulfil their wishes). When an OPG guardian does need to make a substitute decision, they do so in consultation with the represented person and, if appropriate their family members and/or other interested parties.

A substitute decision may be necessary when the represented person lacks decision-making ability, and:

- Is unable to make a decision themselves, even with support.
- There are significant decisions to be made and a need for legal authority to give effect to a decision.
- There is significant risk to the well-being and safety of the represented person, or others, if a particular course of action is not taken.


A significant proportion of our work involves advocacy on behalf of represented persons. The guardians in my office work hard to promote and facilitate the wishes and rights of represented persons and to achieve outcomes that result in there no longer being a need for the appointment of a substitute decision maker.

## Embedding supported decision-making practice

It is widely recognised that people with disability face significant barriers to exercising and accessing their human rights. The United Nations Convention on the Rights of Persons with Disability (UNCRPD) intends to promote, protect, and ensure the full and equal enjoyment of all human rights and freedoms by people living with disability. Australia has been a signatory to the UNCRPD since 2007, with continued work required to fulfil our obligations as a Nation State.

Central to the landscape of substitute decision-making, supported decision-making and guardianship is Article 12 of the UNCRPD, or equal recognition before the law. One of the most fundamental legal principles is that adults are presumed to have the capacity to make their own decisions, unless it can be proven otherwise. Historically, people with disability, and particularly those who have decision-making support needs, have not been afforded this right. Article 12 intends to promote the right of people with disability to make decisions and enjoy equal legal capacity in all aspects of life. It promotes supported decision-making as a way to put these rights into action, while also recognising the need for substitute decision-making as a safeguard against abuse, exploitation and infringement on other human rights, with necessary checks and balances on the exercise of authority in people's lives.

The OPG does not believe that a declaration of impaired decision-making ability by a Tribunal means that an adult cannot make any decisions or meaningfully contribute to the



decisions made about them. That is why we advocate for, and practice, supported decision-making where possible and have a robust framework for making substitute decisions when these are necessary. Our approach is both enabled by and consistent with our obligations under the principles contained in Section 6 of the Act, Article 12 of the UNCRPD and the National Standards of Public Guardianship. The core principles are that:

- Every person can express their will and preference.
- A person with disability has the right to make decisions.
- A person with disability can expect to have access to appropriate support to make a decision.

Supported decision-making means a person has the ability or capacity to make a specific decision when provided with effective support in their area/s of need. Supported decision-making is not the same as making a substitute decision that promotes or carries into effect a person's will and preference. Supported decision-making is a fundamental strategy for putting rights into practice and to empower and further the wellbeing of people with a decision-making impairment.

#### Decision-making framework

As stated in the Disability Royal Commission's Diversity, Dignity, Equity and Best Practice Framework for Supported Decision-Making<sup>1</sup>, *'the practice of supported decision-making is not necessarily incompatible with relationships where a substitute decision may be made.'*

To fully embed the principles of supported decision-making and safeguards on substitute decision-making, my office has developed a contemporary Decision-Making Framework which translates our obligations under the Act, the UNCRPD and the National Standards for Public Guardianship into a process that enables represented persons to exercise their decision-making abilities when under an order, wherever possible. This work consolidates our approach to supported and substitute decision-making that was already in practice and ensures my office will be well placed to respond to any future legislative amendments that formalise the principles and approaches to supported decision-making.

Our approach considers that decision-making can occur on a continuum which may include autonomous, supported or substitute decisions being made throughout the period of an order. The decision-making framework provides flexibility in our approach and recognises that during a period of appointment, there may be a combination of different types of decisions made, and that decision-making ability is time and decision specific. A represented person's decision-making ability may fluctuate depending on the complexity of the decision, their physical and emotional wellbeing, or the support available to make the decision.

#### Reform agenda

Anticipated reform via the *Guardianship and Administration Amendment Bill 2023*, will provide a legislative basis for a definitive shift to a 'rights, will and preference' approach to substitute decision-making. The objects of the Bill, as introduced, in s7 (1) are *'..to protect and promote*

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<sup>1</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. Research Report – Diversity, dignity, equity and best practice: a framework for supported decision-making. The Living with Disability Research Centre, La Trobe University. Page 23



*the rights and dignity of persons who have impaired decision-making ability by applying the principles of the Convention on the Rights of Persons with Disabilities, including recognising the need to support persons with impaired decision-making ability to make, participate in and implement decisions that affect their lives.’<sup>2</sup>*

The proposal to remove the ‘best interests’ test for determining how substitute decisions should be made and replacing it with a ‘will and preference’ test further assists with a shift toward a legal framework that is more consistent with our responsibilities under Article 12. This will mean that substitute decision-makers should only override the wishes and preferences of persons in narrow circumstances, including the prevention of serious harm. The draft Bill also proposes to remove the criteria of disability as a stand-alone test for the appointment of a substitute decision-maker, instead focussing on an assessment of decision-making ability. We believe this will assist over time to change the views and attitudes in the broader community.

Although the OPG has been practicing and advocating for supported decision-making under the current legislative framework, it is anticipated that the transition from the historical and entrenched ‘best interests’ approach of the guardianship and administration system to a will, rights and preference approach will require a major change in the mindset and values of professional groups, families and the broader community. We have observed that many professional groups and/or informal supporters expect a substitute decision-maker to maintain control of decision-making, regardless of the represented person’s abilities. At times, when advice and education is provided in relation to our obligation to support a person to make their own decisions and only utilising substitute decision-making as a last resort, this is challenged.

This is due, in part, to the challenges and barriers faced by people with disabilities who are on orders because their decision-making ability is deemed to be impaired, and the subsequent assumption that they cannot make any decisions simply because they have a disability and are on an order. This includes people with intellectual disability, acquired brain injury, cognitive impairment, dementia, and mental illness: many of whom are involuntary clients, and some non-verbal. The challenge for our community will be to move away from a paternalistic approach, and toward accepting that every person has the right to self-determination. This includes the right for a person with disability to make their own choices, including taking risks, and providing support to understand, weigh and retain information relevant to the decision and communicate the decision.

The guardians in my office will continue to assist represented persons to build and develop the skills and confidence to make their own decisions. However, resourcing is required to effectively implement supported decision-making to its fullest extent. Where a person has an existing support network, guardians will advocate for those supporters to provide appropriate decision-making support in the person’s area of need. Where a person does not have existing supports, it is challenging for guardians to step in as both a decision-maker and supporter, due to our high and complex workload.

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<sup>2</sup> *Guardianship and Administration Amendment Bill 2023* – can be located [Guardianship and Administration Amendment Bill 2023 \(5 of 2023\) | Parliament of Tasmania](#)



It is widely acknowledged that to truly adopt a supported decision-making approach in guardianship work, more time spent with the represented person is necessary to get to know them, understand their will and preference, engage other decision-making supporters to help build capacity, and to explore and refine decisions whilst considering any constraints or barriers. This work is difficult to implement within the current context of high and complex workloads and broad responsibilities being managed within the OPG. This is particularly so for the significant proportion of people without resourceful family or other supporters to assist with building their decision-making abilities.



## What people say about having a guardian

This year, I wanted to reflect and report on the performance of this office, from the perspective of people who have a lived experience of the guardianship system. I wanted to meet with people for whom the Public Guardian has been or is currently appointed as their guardian. I wanted to understand what it is like to have a guardian; how having a guardian has helped them in their life; and what difference having a guardian has made.

I sought assistance from guardians within my office to invite represented persons to meet with me to discuss their experiences of guardianship. I met with 6 individuals, three from Launceston and three from Hobart. Each person has given me permission to share their experiences. Details have been changed to protect their privacy. I would like to thank everyone who has generously shared their experiences with me. Here are their stories and experiences of having a guardian.

### Sam

The Office of the Public Guardian was invited by the Tribunal to attend a hearing for Sam, a 19-year-old young man, following an application proposing that the Public Guardian be appointed as his guardian.

The applicant had concerns about the care Sam was receiving and his safety at home. At the time, Sam was living with a relative, who was also his carer.

When the guardian read the guardianship application, she was quite concerned for Sam as the hearing date was nine days away and the application identified significant concerns that Sam was

experiencing abuse and neglect and his living arrangement was not safe.

The guardian contacted the applicant to enquire whether an emergency application was needed, given the apparent risk posed to Sam.

After some discussion it became apparent that, after receiving the Tribunal papers and information about the guardianship application, the carer had cancelled all supports to isolate him further.


The guardian encouraged the applicant to request an emergency guardianship order from the Tribunal due to the increasing risk to Sam, to which they agreed.

The Tribunal held an emergency hearing that afternoon and the Public Guardian was subsequently appointed to make decisions about where Sam lived. Additional powers were granted in the order under section 28 of the Act which meant assistance could be sought to ensure Sam complied with the guardian's decisions. There were grave concerns that Sam was subject to coercive control.

The guardian worked with Sam's supports, Tasmania Police, the Tasmanian Ambulance Service, and the Department of Health to get him to the hospital as an immediate place of safety. Using these types of measures are rare and a last resort when there is a need to safeguard a represented person and ensure their safety in high-risk situations. Sam was discharged to a safe house the next day.

From there, funding through the National Disability Insurance Scheme (NDIS) has helped Sam to live independently in the community with support. Over time, Sam chose not to have contact with his former carer, and he eventually regained contact with close family members who he had been deliberately isolated from in the past.





While the guardian made the initial decision for Sam to leave his home and live in safer alternative accommodation, Sam was supported and empowered to make all other decisions about his life while under the guardianship order. The guardian advocated for Sam and ensured he had the support to develop his decision-making abilities. The order has now been revoked as there is no further need.

Sam is now 22 years old and had this to say about his experiences of having a guardian:

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*‘Doctors told me that I wouldn’t survive past 21, I wanted to prove them wrong. Once my guardian helped me move into a safer environment, it gave me fight! I am now 22 and feeling great’*

*‘I wanted to die at the time. My guardian let me have that choice. She opened my eyes up a bit.*

*‘When I was sick, I was dying. She made me want to get better. It was like an adult switch turned on and I wanted to get better.’*

*‘My guardian let me do what I wanted to do. She let me decide my own fate, be in control of what I wanted.’*

*‘Having a guardian made me realise that the people I lived with before didn’t really care about me and were only in it for the money. When I had a guardian appointed, they made it all about me. It was my turn to take control of my life and make my own decisions.’*

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## Annabelle


Four years ago, Annabelle had a guardian appointed. Annabelle has an intellectual disability and autism, and at the time had left home and was living in short-term accommodation. Annabelle had disengaged from all activities, programs and work – which she had previously

enjoyed. Her informal and formal supports were concerned that Annabelle was in an abusive relationship and that she did not have the skills to protect herself.

Annabelle was reluctant for any changes to be made to her accommodation and support services. Annabelle was accepting of having some decisions made which would facilitate visitation and overnight stays with her partner. This involved establishing some clear communication guidelines and timeframes with all parties and allowed Annabelle the freedom to engage in her relationship with increased safety measures.

The guardian identified the need for a new support co-ordinator and a new support service for Annabelle. Annabelle was opposed to these changes. She appointed an advocate to help her voice her wishes about maintaining her support service. The guardian decided to respect her wishes about the support service but made a decision to appoint a new support co-ordinator. The new support co-ordinator formed an immediate relationship with Annabelle. The support co-ordinator involved Annabelle in exploring options for permanent accommodation which would allow her to maintain the support service of her choice and the freedom to have a pet, which was very important to her. The support co-ordinator negotiated a private rental agreement in a small cluster of units for Annabelle.

This provided Annabelle with a new sense of independence and well-being and Annabelle resumed community activities. However, Annabelle’s partner began to exercise control over Annabelle and her apartment. He threatened and abused support staff, Annabelle and Annabelle’s pet. His threats and abuse put each of these parties at high risk. Annabelle began to suffer high anxiety as a result. She made



the decision that she didn't wish to see her partner anymore, but she felt powerless to stop him. Decisions were made to prevent Annabelle's partner from visiting her. Over time, Annabelle said that it gave her courage to tell her partner he could not visit because the guardian had made this decision. Annabelle has continued to use this approach with other relationships. She has also developed the confidence to implement her own strategies for restricting unwanted visitors to her home.

Here is what Annabelle had to say:

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*'The first thing my guardian did was help me to find a place to live and help me maintain safe contact with my boyfriend.'*

*'My guardian is friendly, supportive and always available to talk to me. I have felt listened to and understood.'*

*'My guardian helped me make my own choices.....me and my guardian worked together to manage visits between me and my boyfriend so I could see him but only when I felt safe.'*

*'My guardian worked with me to put boundaries in place for when I did not feel safe or did not want contact with my boyfriend. This has helped me build confidence to now manage my relationships without support.'*

*'I now know I can contact an advocate if I need help with other things.'*

*'I didn't like it when my guardian wanted to make a decision that I did not want.. I engaged an advocate to help my guardian understand what I wanted, and my guardian listened and made a different decision that upheld my wishes.'*

*'My guardian shared information with me about consequences of my decisions, so I was aware of the risks and willing to take those risks.'*

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## Jude

Jude had an accident as a child, which left them with a significant head injury. While Jude would prefer not to have 24/7 support, without it, they are extremely vulnerable. Jude was one of the first people to have the Public Guardian appointed as their guardian, soon after the Guardianship and Administration legislation was enacted.

Today, while it is more common for the Tribunal to make guardianship orders for 12 months or less, Jude has been a represented person for nearly thirty years. Their guardianship order is reviewed at least every three years. At the review hearing, the Tribunal require updated evidence of disability and decision-making impairment, and evidence that there is still a current need for a guardian.

While Jude continues to express, from time to time, that they would prefer not to have full time support staff, the Public Guardian is required as a substitute decision maker, to ensure staff are available to assist Jude in every-day life tasks.

Jude is supported to make daily decisions, working directly with their NDIS support coordinator and house staff about what activities and outings they choose to engage in. Restrictive practices are approved through the Senior Practitioner, and with a behaviour support practitioner working with staff, these restrictions are kept to a minimum with a goal of eventually eliminating them. While Jude understandably would prefer not to have full time support staff as they have since childhood, observations by the guardian, and feedback from Jude themselves, show that they have very good day to day rapport with staff.



The guardian has ensured that Jude is able to interview and, as much as possible, choose their own support staff, allowing them more choice and control of the process. When the Public Guardian was first appointed Jude was living in an institution. Jude has been living in the wider community for many years, having been able to choose the region of their preference.

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*'I had a choice in which staff worked with me, and which staff didn't.'*

*'When I am having trouble with something, I can call my guardian and they will help me.'*

*'They helped me to be more independent and involved in the things I enjoy doing in my life.'*

*'Having a guardian has made me feel happy and proud.'*

*'If I didn't have a guardian in my life, I would have killed myself as I had a life with no freedom.'*

---

## Adam

After his father died, Adam's ability to manage in the community deteriorated. He was living in a squalid home environment and was experiencing increasingly impulsive behaviour, such as running out in front of traffic, which was putting him at high risk of injury or death. Adam was subsequently assessed and diagnosed with an intellectual disability and severe depression.

Soon after, the Public Guardian was appointed by the tribunal to make decisions about Adam's medical treatment, his accommodation and support services.

In 2016, Adam spent time within a mental health unit, subject to a mental health treatment order. It was believed this environment would provide enough daily structure and care to support Adam's

safety, whilst allowing him to focus upon the things that contributed to his enjoyment of life.

Adam needed help to decide where to live when he was ready to be discharged from the mental health unit. Adam was very fearful about leaving the unit, he felt safe there and had established a good rapport with staff, who knew him well. There were limited options available at the time Adam was ready for discharge. After discussions with his guardian and other supports, he agreed to trial living in a residential aged care facility, although it quickly became clear that this accommodation option was not optimal in the longer term.

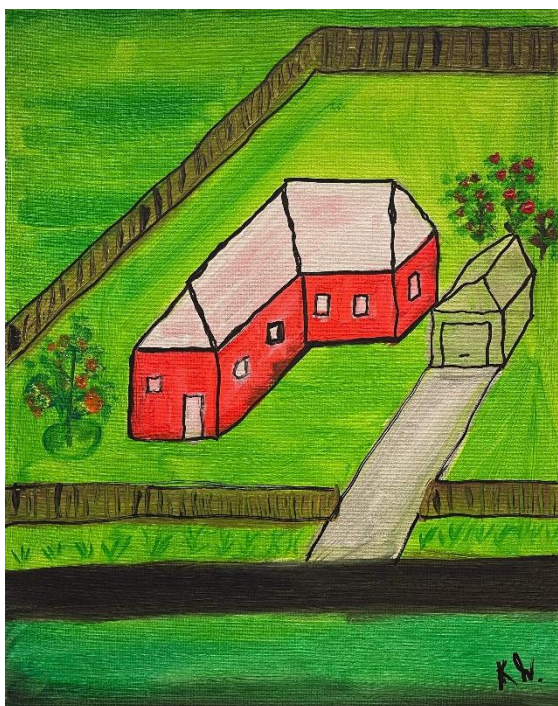
The 2019 roll out of the NDIS in Tasmania gave Adam the opportunity to live in more appropriate accommodation in the community again with the support he needed to succeed. His guardian advocated for sufficient support to be funded through the NDIS and this advocacy eventually proved successful in 2020. Since that time, Adam has been living in supported accommodation in the community and is cared for by an exceptional team of support workers who assist him to maintain his safety in the community and to work towards reaching his personal goals.

Adam now makes his own decisions regarding his support services. He recognises that he continues to need a high level of assistance to live in the community. He travels interstate frequently to visit family and is considering purchasing his own home. The Public Guardian remains appointed to make medical treatment decisions for Adam.

When I met with Adam, he shared that he has enjoyed painting in the past and proudly shared a number of paintings he completed of his 'dream house' and



current house. Adam provided permission for me to share his artwork within this annual report.



*My Dream House by 'Adam'*

This is what Adam had to say about having a guardian:

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*'I am so thankful to have X as my guardian.'*

*'My guardian helped me go to Queensland to see my family as she knew how much my family meant to me.'*

*'I look forward to meeting with my guardian every three months and talking on the phone every two weeks.'*

*'My guardian helps me to do what I want to do, or to help me engage with others when I am having trouble.'*

---



*Current House by 'Adam'*

## Bernard and Sebastian

Bernard and Sebastian are brothers. They have both had the need for the appointment of a guardian to make specific lifestyle decisions when their lives have been at their most tumultuous.

Bernard and Sebastian both have an intellectual disability. They are very independent in their day-to-day lives, successfully holding down jobs and requiring a minimum level of support for daily living tasks. Both have some difficulty with problem-solving and decision-making when conflict is present, or when they are moving through stressful periods in their lives.

The short-term appointment of the Public Guardian has assisted Bernard and Sebastian during such times, by ensuring they maintain safe, secure accommodation and support. They both experience great satisfaction when their Guardianship Orders are subsequently revoked, and they regain their decision-making autonomy. Bernard and Sebastian value the rapport they have built with their previously appointed guardians, continuing to call the office regularly to share updates about important milestones or to ask for advice.



This is what Bernard and Sebastian had to say about having a guardian:

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*'My guardian and I had the same goal of working toward me not having a guardian'.*

*'My guardian helped me with my living arrangements and helped me to change my case worker – I can call her if I need to talk and she will help me'.*

*'My guardian let me make the decision but spent time with me to think through my options and what might happen if I made a decision like living with someone else, this helped me realise that it wasn't the best decision for me, and I made a different one that I am happy with'.*

*'My guardian came into me life when I needed help and left when I was able to make my own decisions'.*

*'They helped me to stop people staying over at my house as I couldn't do that myself at the time'.*

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## Dispute Resolution Service

The OPG's Dispute Resolution Service has been established to fulfil the Public Guardian's new responsibilities under S35ZI of the Act, which came into effect in November 2022. Under this section of the Act, the Public Guardian may assist in resolving matters relating to an advance care directive (ACD), including conflicts over proposed healthcare decisions for the person or in relation to the ACD itself. Our Dispute Resolution Practitioner commenced part-time in the position at the end of January 2023.

The aim of the Dispute Resolution Service is to enable participants who disagree about an issue regarding an advance care directive to come together in a safe way to find solutions. The value of dispute resolution is well established in many other areas of practice, and it can also be a timely and cost-effective way to resolve matters outside of formal proceedings. Most importantly, from a human rights perspective, dispute resolution is a less restrictive alternative to the Tribunal process for people with impaired decision-making abilities in certain circumstances.

While the Tribunal continues to play a crucial role in the protection of the rights of people with impaired decision-making ability, dispute resolution can, where appropriate, provide an alternative to help resolve conflicts that may otherwise result in the making of a guardianship or other order. This includes the appointment of the Public Guardian as guardian. We continue to advocate for the appointment of the Public Guardian as a last resort and it is a privilege to be able to provide this alternative service to the Tasmanian community.

## Dispute Resolution Model

The Dispute Resolution Service has been established as a separate and independent service within the OPG to maintain confidentiality and manage potential conflicts of interest.


The two service arms are unique in their functions. Their differences are outlined below.

Dispute Resolution	Guardianship
Voluntary	Legal appointment/order
Alternative to formal proceedings/orders (where appropriate)	Requires a hearing with the Tribunal
Facilitative	Consultative
Facilitates decision-making (by decision-makers)	Involves making and supporting decisions
Preserves relationships by resolving conflict	Preserves relationships by minimising conflict

*Figure 1: Differences between OPG Guardianship Service and Dispute Resolution Service*

Considering the short lead-in time to operationalise the service, the focus of the first six months has been to develop a model that meets the needs of those who use it, namely people with disabilities and reduced decision-making ability.

Consistent with the principles of the Act, the aim of dispute resolution is to facilitate a process that promotes the will and preference of the person who has given an ACD and focuses on their rights and interests.



The OPG's preferred method for dispute resolution is facilitative mediation. The OPG dispute resolution model is designed to:

- Bring the appropriate parties together.
- Ensure that the voice of the person at the centre of the dispute is brought into the mediation.
- Ensure that the necessary adjustments are made to enable the person's participation as far as possible.
- Help facilitate a mediation process that supports parties to reach agreements or make decisions that are consistent with the Act.

Dispute Resolution can be separated into two main components: preliminary assistance (or pre-mediation) and mediation. The service is designed to be flexible to accommodate the varying needs of parties including vulnerable Tasmanians with impaired decision-making abilities.

#### Preliminary assistance/Pre-mediation

It is not always necessary to facilitate mediation to resolve an issue. In the pre-mediation stage, parties may find they can resolve a matter without the need for a formal meeting.

Preliminary assistance may include:

- helping parties to understand their roles and responsibilities surrounding ACDs and under the *Guardianship and Administration Act 1995*.
- identifying the issues that are in dispute.
- helping to explore all the options that may resolve the dispute.
- where appropriate, facilitating open communication between the parties.

#### Mediation

Mediation is a voluntary, cooperative process where an independent mediator (the dispute resolution practitioner) helps people in conflict to come together to talk about the issues that are in dispute and to reach solutions that are agreeable to all people involved. The mediator does not have any authority to make decisions but can provide an environment and facilitate discussions where all the participants can:

- be listened to.
- hear and understand the views of others.
- develop and consider options to resolve the dispute.
- reach an appropriate agreement.

In accordance with the Act, any agreements reached through mediation are considered 'good faith' and are non-binding. It is important to note that mediation will not always bring a resolution to the dispute and matters may have to be referred to the Tribunal. Mediation will not always be appropriate due to several factors, including the timeframe that the potential decision must be made within. We may also bring mediation to a close if we feel the matter is best dealt with by the Tribunal or if a party to a mediation requests it.

South Australia is the only other jurisdiction in Australia where the Public Advocate has similar functions for dispute resolution. I would like to express my sincerest thanks to the Office of the Public Advocate (SA) who have provided my office with significant assistance in the development of our dispute resolution service model and ongoing practice support.



## Education and Awareness Raising

Community education is key to building awareness of the dispute resolution service, as well as the different rights and responsibilities under the Act surrounding ACDs.

Initial community education has been undertaken which has been targeted at professionals who are likely to refer to the dispute resolution service in the first months of operation and on an on-going basis. Awareness raising and education sessions have occurred across health and allied health services with the Department of Health state-wide. Offers of community education around ACDs and dispute resolution have been made to residential aged care facilities state-wide, for which we have disappointingly had no uptake to date.

Moving forward, the OPG is looking forward to opportunities to collaborate with our stakeholders in the delivery of education, such as Palliative Care Tasmania and the Public Trustee, and to continue this important work to build the capacity of the service.

## Referrals

In the first six months of operation, the Dispute Resolution Service received one referral for dispute resolution. This reflects the anticipated gradual uptake in ACDs, and the current level of community awareness about ACDs and the dispute resolution service. Eligibility for dispute resolution relies on there being a current ACD, which also limits the types of issues the Public Guardian may assist to resolve.

Anecdotal feedback from health and other service providers is that they support (and await) the possibility of an expanded dispute resolution role (namely to include disputes over the decisions or actions of guardians and administrators) based on the nature of the disputes they observe or are involved in.

## Operation of the Act


My office supports the staged implementation of legislative reforms and would welcome an expanded dispute resolution role in future. I do wish to comment broadly on the accessibility of dispute resolution for people with impaired decision-making ability. People with disabilities and impaired decision-making ability are often excluded from exercising certain legal powers and making certain decisions, such as giving ACDs and executing enduring instruments of appointment. The current and proposed dispute resolution functions rely on there being some sort of legal instrument or order in place to allow the Public Guardian to assist. In future, the ability for the Public Guardian to assist with disputes over the decisions or actions of persons responsible would enable greater equity and access to dispute resolution for the most vulnerable members of our community.

While we will continue to play a role in providing community education about ACDs and the use of enduring instruments in future planning generally, there will always be a cohort within the community for whom these are inaccessible either because they have never had the ability to make such decisions due to lifelong disability, or, due to other social factors.

At this early stage in the operation of the ACD amendments, there also appears to be an emerging systemic issue in the disability sector. Concerns have arisen from some NDIS supported independent living providers that the Act does not afford them legal protection when following someone's ACD, as they do not meet the definition of a healthcare provider. Specifically, the concerns surround the withholding of life sustaining measures such



as CPR if this has been refused in an ACD. This is a complex area, and we continue to work with the sector to identify ways in which people living in supported independent living can have their expressed wishes and decisions about healthcare and end of life care upheld and given effect to by those who are caring for them.



## Summary of guardianship activity 2022-23

Total Active OPG  
Appointments  
(30 June 2023)

**288**

Total Hearings  
Attended

**517**

Emergency  
Appointments

**71**

Public Enquiries

**233**

Tasmanians that  
received OPG  
guardianship  
services in  
2022/23

**1348**

New  
OPG Appointments

**120**

Emergency  
Orders  
extended ( $\leq 28$   
days)

**16**

Formal  
Education  
Sessions

**14\***  
(\*360  
participants)

OPG  
Appointments  
Closed

**247**

Continued OPG  
Appointments

**66**

Referrals for  
Dispute  
Resolution

**1**

Investigations

**10**



## Performance Data

### When we are appointed

During this reporting period, the OPG attended 517 hearings across the state, in Hobart, Launceston, Devonport and Burnie, approximately 24 per cent more than 2021/2022.

As a statutory party to proceedings under the *Tasmanian Civil and Administration Rules, 2021*, the Public Guardian is issued notices of hearing for various proceedings related to guardianship and administration. It is not always necessary for OPG to attend every hearing, only those where it is determined to be beneficial for the Public Guardian to participate or where the Tribunal is specifically requesting the Public Guardian attends. The comparison of guardianship hearings attended and where the Public Guardian has been appointed for this reporting period is outlined in Figure 1.

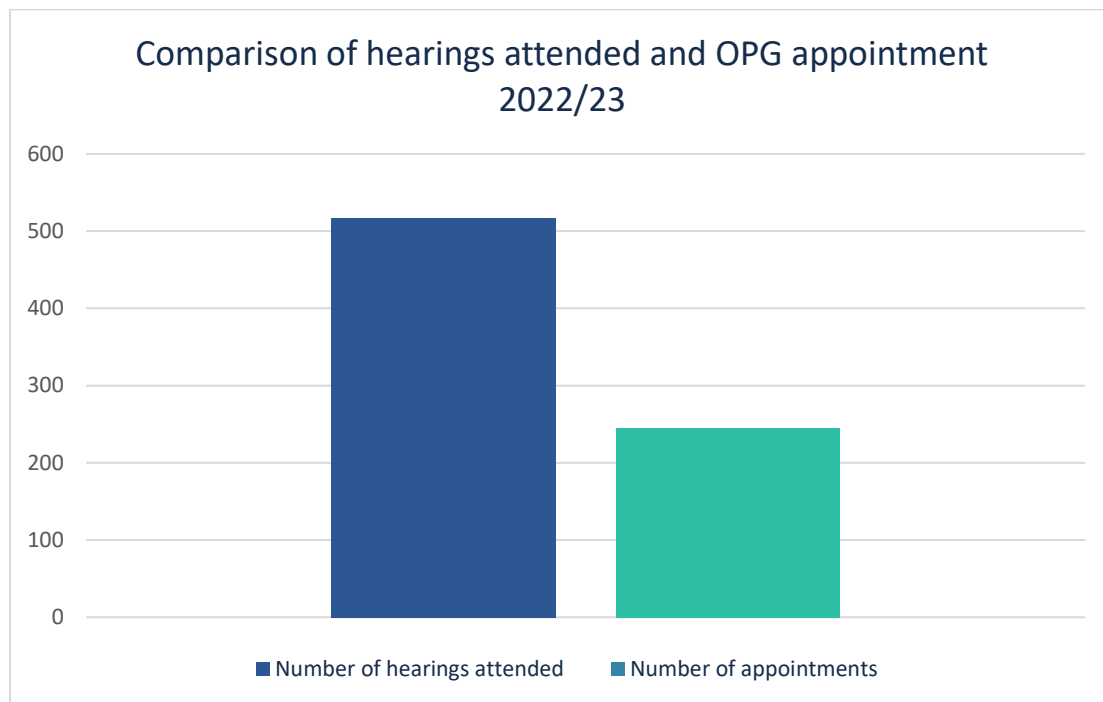


Figure 2: Hearings attended and OPG appointments -2022/23.

The number of new appointments of the Public Guardian have increased by 21 per cent in 2022/23 compared to 2021/22. Conversely, the number of matters where the appointment of the Public Guardian has been continued by the Tribunal has decreased by 23 per cent compared to 2021/22.

The increase in new appointments could possibly be reflective of a cohort of represented persons for whom there is no other option (particularly regarding decision-making for lifestyle related matters such as the NDIS). It may also be related to Tasmania's ageing population, increased awareness of elder abuse and the introduction of improved safeguards for residential aged care residents via the *Aged Care Act 1997, Quality of Care Amendment (Restrictive Practices) Principles 2022* (the principles). The principles aim to regulate the use of restrictive practices in aged care by requiring that informed consent be given for the use of

restrictive interventions by the care recipient, or if the care recipient lacks capacity to give that consent, by a ‘restrictive practices substitute decision-maker.’

The decrease in continued appointments likely relate to the Tribunal appointing the Public Guardian for shorter periods of time and with limited powers, in line with legislative requirements. It may also reflect submissions from the OPG in hearings regarding the principle of the public guardian being a guardian of last resort, and the active work of guardians during the period of their appointment to extend represented persons networks of support to build their autonomy and decision-making ability, and seeking to have orders revoked or lapsed when the criteria for the appointment of a guardian are no longer met.

Of note is the number of applications dismissed on the grounds there was no need, or the criteria of disability/impaired decision-making ability has not been met. This indicates the application and hearing process is appropriately complying with the legal requirements for the appointment of a guardian.

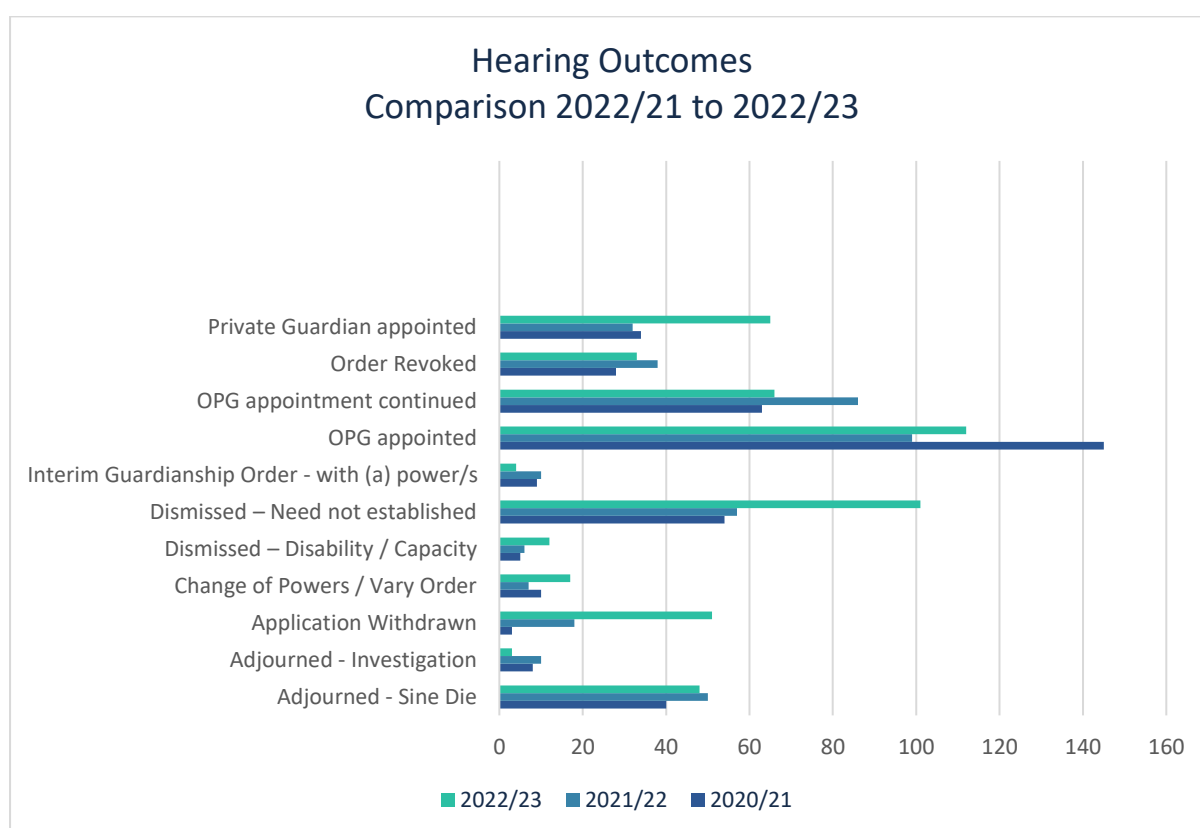


Figure 3: Hearing Outcomes, comparison 2020/21 to 2022/23.

## Powers Granted under Orders

The Tribunal is required to make orders consistent with the principles set out in section 6 of the Act, including ‘the means which is the least restrictive of a person’s freedom of decision and action as is possible in the circumstances is adopted.’ Further, the Tribunal ‘must not make an order appointing a full guardian unless it is satisfied that an order for limited guardianship would be insufficient to meet the needs of the proposed represented person’ (s20(4)).

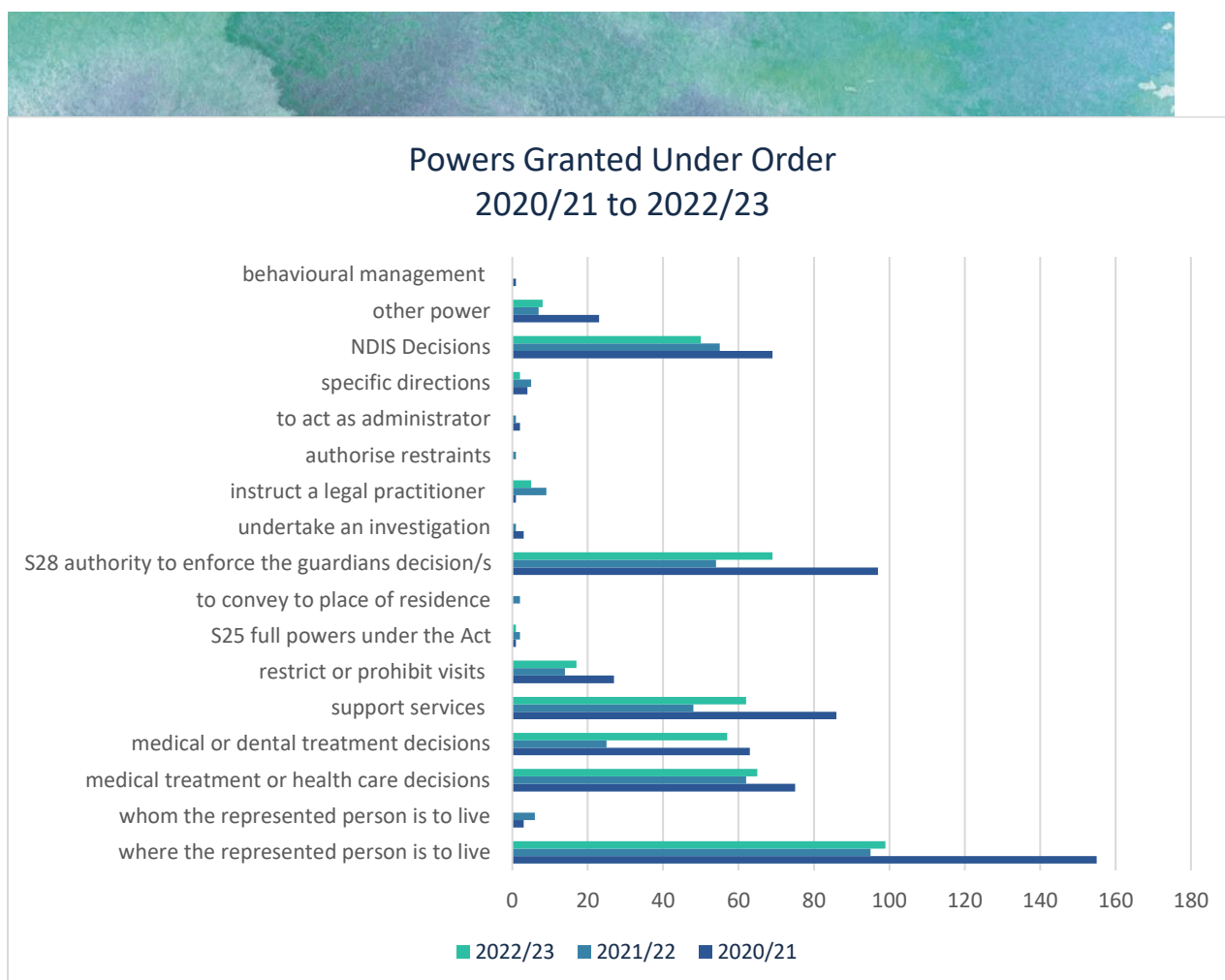


Figure 4: Powers Granted under Orders – 2020/21 to 2022/23.<sup>3</sup>

As in previous years, the most common power granted to the Public Guardian was the power to decide where the represented person is to live, followed by the power to consent or refuse consent to medical treatment.

This year saw a 27% increase from 2021/22 in the authority provided by the Tribunal under section 28 of the Act to use reasonable force or restraint to enforce a guardian’s decision. This could be reflective of other powers such as the power to ‘convey a person to a place of residence’ being made obsolete and more appropriately having s28 powers attached to powers to decide where the person is to live, when there is a need to use reasonable force or restraint to enforce a guardian’s decision. It may also be the result of increased education to health providers, specifically hospital-based health services, which has raised awareness regarding the need for a legal authority to be in place to prevent a person under a guardianship order from leaving a hospital setting against medical advice.

As with previous years, the number of plenary orders – under which the guardian has ‘full’ powers – continue to be low. This reflects the Tribunal’s endeavour to make orders consistent with the principle of the least restrictive alternative.

<sup>3</sup> Not all powers are represented for each year.

## Emergency appointments

Section 65 of the Act allows the Tribunal to make ‘emergency orders’ for which it is not required to give notice or to hold a hearing, when it considers it proper to do so by reason of urgency. In November 2021, the Tribunal introduced the requirement for hearings to be held for emergency orders, a change which has been welcomed by the OPG. The OPG prioritises their attendance at emergency guardianship order hearings and has attended most hearings held throughout the year.

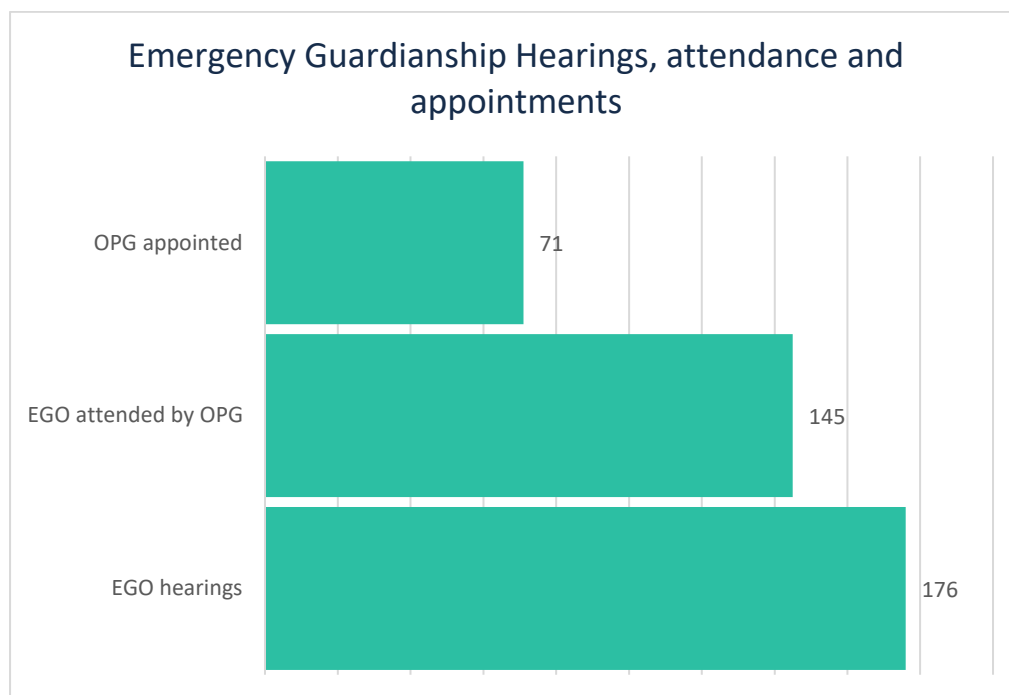


Figure 5: Emergency Guardianship hearings, OPG attendance and appointments.

Emergency orders can be made for a maximum of 28 days, and can be extended once, again for a maximum period of 28 days. The Tribunal can only appoint the Public Guardian as guardian or the Public Trustee as administrator under an emergency order, for a person who is not already a represented person.

The appointment of the Public Guardian via an emergency order increased slightly during this reporting period, 71 appointments in 2022/23 compared to 63 in 2021/22. The percentage of emergency orders requiring an extension was 24% in 2022/23 and 21% in 2021/22.

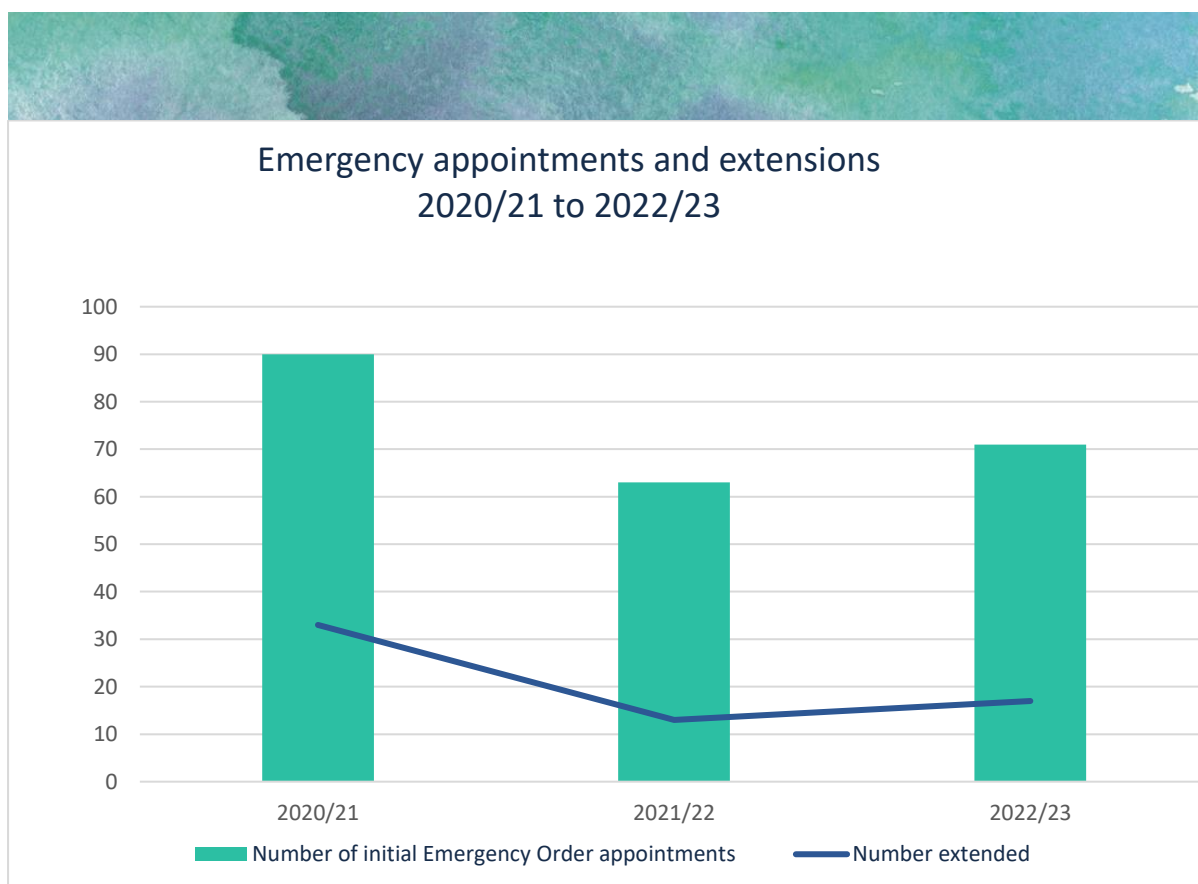


Figure 6: Emergency Appointments and extensions 2020/21 to 2022/23

## After-Hours Emergency Work

The OPG operates an after-hours service. As well as providing guidance, or making decisions in relation to existing represented persons, our office also fields enquiries regarding emergency provisions under the Act for people with decision-making impairment and who are not already subject to guardianship orders. This can result in staff from the OPG advising on how to make an emergency application, triaging and referring emergency applications to an on-call Tribunal member, and attending an out of hours emergency hearing. The after-hours calls are taken by an external call centre, who screen for urgency and refer any non-urgent matters to the OPG for follow up during business hours.

In 2022/23, 140 after-hours enquiries/requests were forwarded to the on-call guardian for immediate urgent action. This compares to 157 in the previous year, a decrease of approximately 10%.

Approximately 55% of calls requiring urgent action after-hours were in relation to represented persons. Typically, these calls relate to medical treatment.

The number of after-hours emergency hearings attended for this reporting period was 9, a decrease on the 12 recorded last reporting period. The remaining enquiries saw potential new guardianship orders averted, with the guardian providing information on alternatives to pursuing an emergency order, typically in relation to the provision of medical treatment without consent, as provided for under section 40 of the Act (in relation to urgent medical treatment) or section 41 (in relation to circumstances where the person is not objecting and there is no person responsible).





## Who are we appointed for?

### Age and gender demographics

The age profile of the OPG caseload has changed compared to last reporting period, with a decrease in most age brackets. The 80 and over age bracket has increased by approximately 27% compared to the previous reporting period. This is most likely reflective of Australia's ageing population.

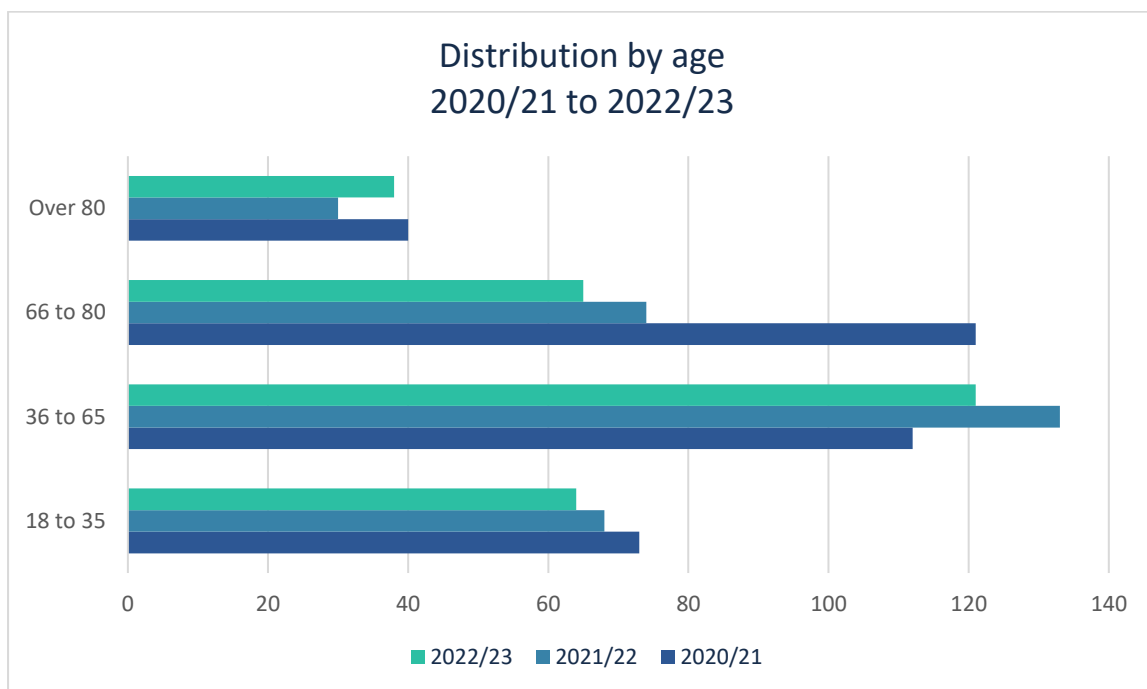


Figure 7: Represented person: Distribution by age – 2020/21 to 2022/23.

There have been only slight variances in the age demographic of represented persons appointed a Public Guardian. The proportion of female represented persons on the OPG caseload has decreased from 47% in 2021/22 to 46% as of 30 June 2023. Conversely the proportion of males has increased from 52% in 2021/22 to approximately 54%.

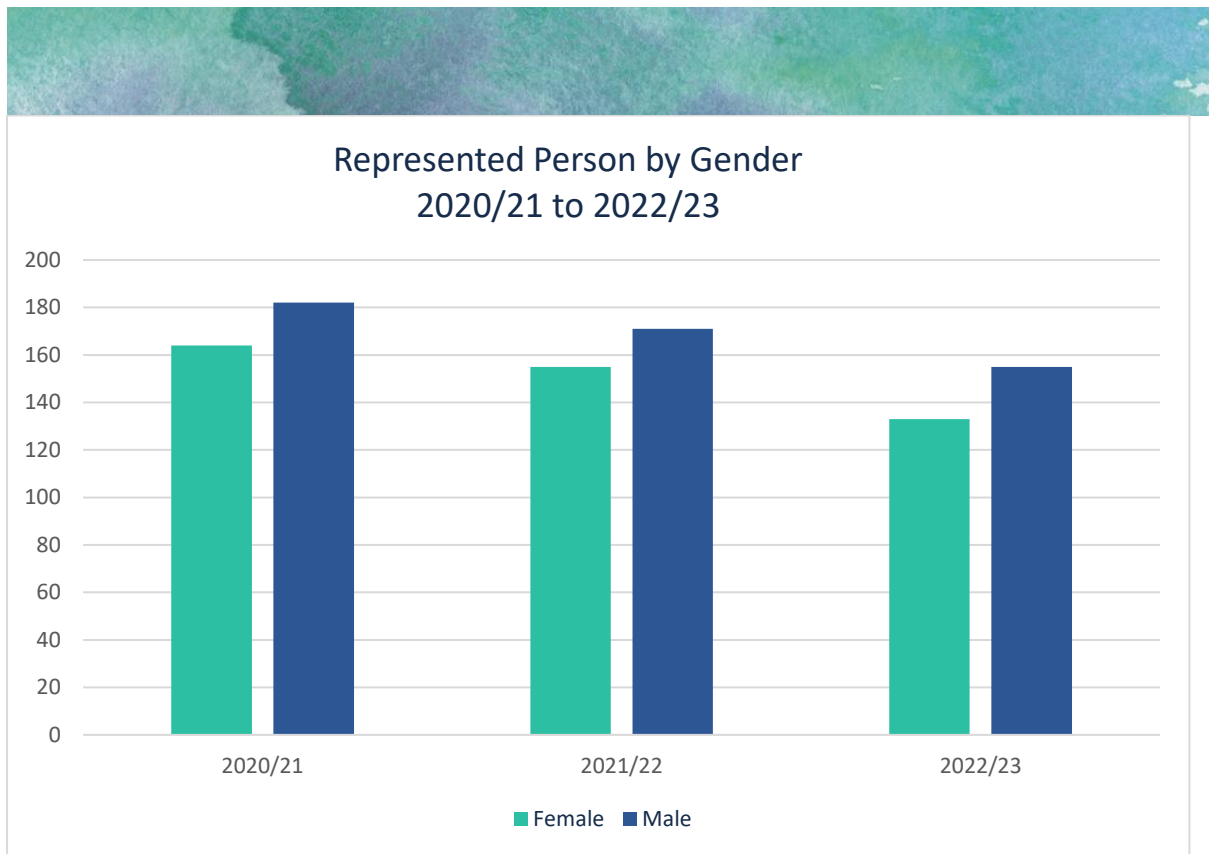


Figure 8: Represented person by gender – 2020/21 to 2022/23.

### Diagnostic profile

This year, 54% of our clients had an intellectual disability – an increase from 51% in 2021/22. 37% had a psychiatric disability (the same percentage as 2021/22), and 30% had dementia, up from 28% during the previous year).

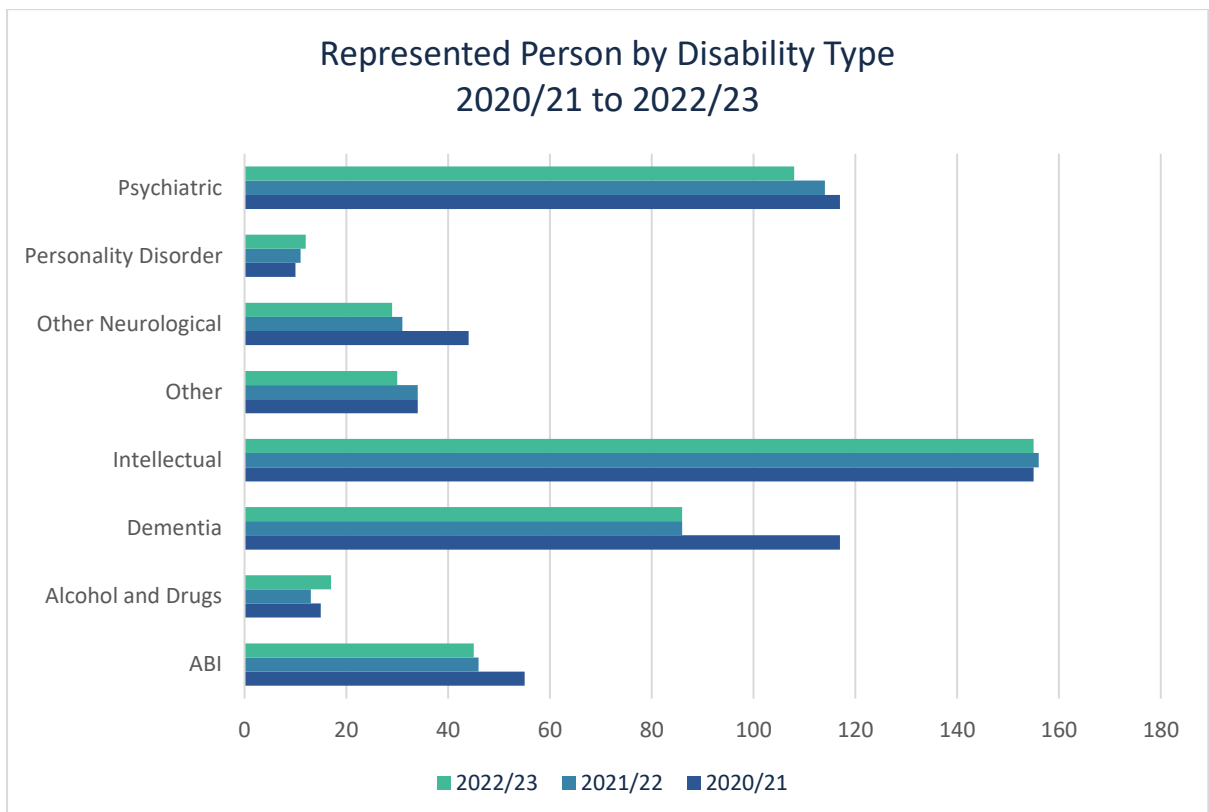


Figure 9: Represented person by disability type – 2020/21 to 2022/23.



A large proportion of our clients – approximately 47% - have dual or multiple diagnoses. This means they are likely to have complex presentations, with the intersection of multiple disabilities compounding the effects of their impairment and support needs.

## Regional profile

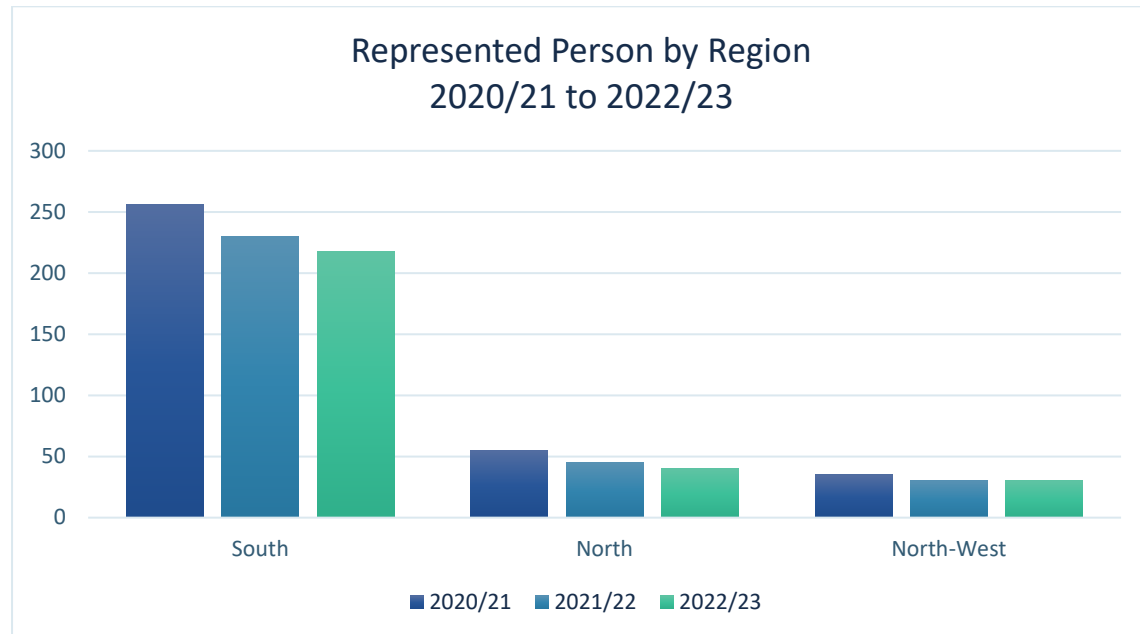


Figure 10: Represented person by region – 2020/21 to 2022/23.

These figures are significantly disproportionate to Tasmania's regional populations: approximately 52% live in the south; 27% in the north; and 21% in the north-west.

The OPG is unable to fully account for such dramatic regional differences in the rate of guardianship appointments, however, there are variations in population ageing at a Local Government Area (LGA) level, and this may be a contributing factor.

Other factors might include regional differences in family and/or informal support options; different community structures in remote and less populated areas; the fact that many large service providers (common applicants for guardianship) have headquarters in Hobart; and some specialist age, disability and forensic services are only available in Hobart, often leading to represented persons from the north and north-west regions re-locating to Hobart to enable access to specialist aged care, disability and forensic services and accommodation.

The OPG continues to work on developing further reporting options, including the throughput of matters, to assess whether internal practices and processes are a factor in the regional differences.

## Guardianship Activity

### Active cases

On 30 June 2023 the OPG had 288 active cases, compared to 305 on 30 June 2022. This represents a 6 per cent reduction, following a 12 per cent decrease in 2020/21, after several years of steady increases. The reason for this reduction is unclear but may be attributable to the growing public awareness of the need to plan for future decision making (through enduring guardianship arrangements or similar). It is also reflective of a reduced number of applications to the Tribunal.

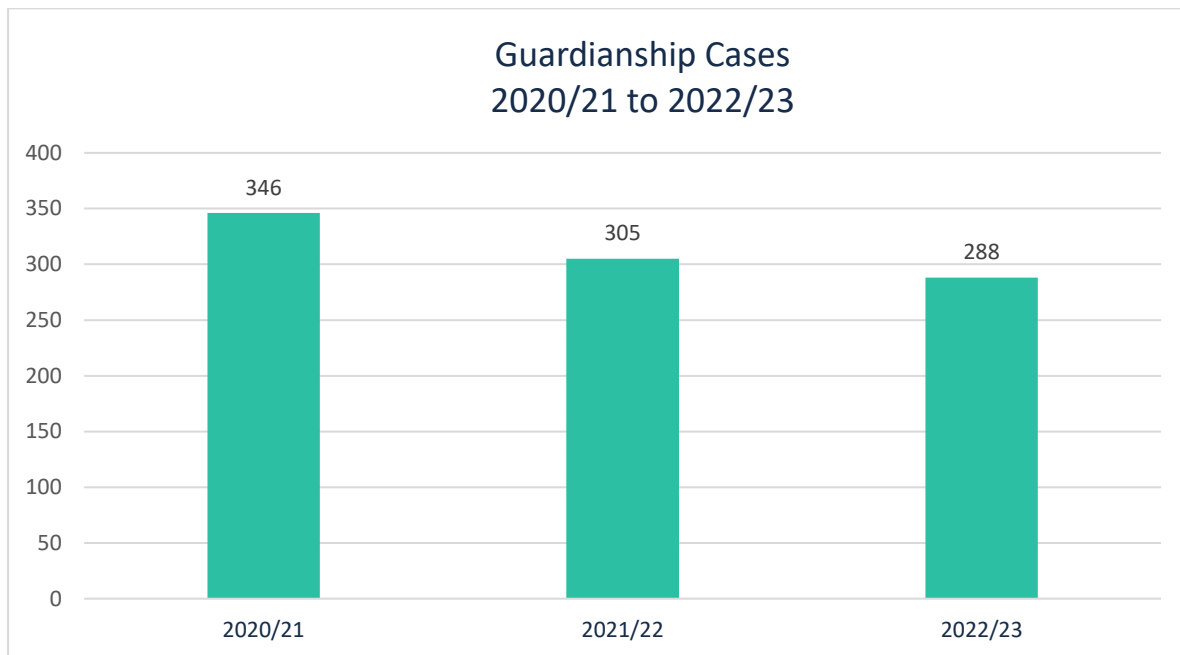


Figure 11: Active guardianship cases – 2020/21 to 2023-23.

### Caseload activity

During the 2022/23 reporting period, the OPG managed a total of 485 cases. The OPG guardians actively work towards building represented persons' networks of support to increase the autonomy and decision-making capability of the people for whom we are appointed. We seek to have orders revoked when the criteria for the appointment of a guardian are no longer met.

During 2022/23, 247 cases were closed, slightly more than the 240 closed in the previous year. By far the most common reason for closure was that there was no longer a need for a guardian. OPG staff can recommend to the Tribunal that a case close on its expiry date; request a review of the order and recommend that it be revoked; or request a review when a private guardian has been identified. While the Public Guardian can recommend an order expires or could be revoked, the final determination is made by the Tribunal.

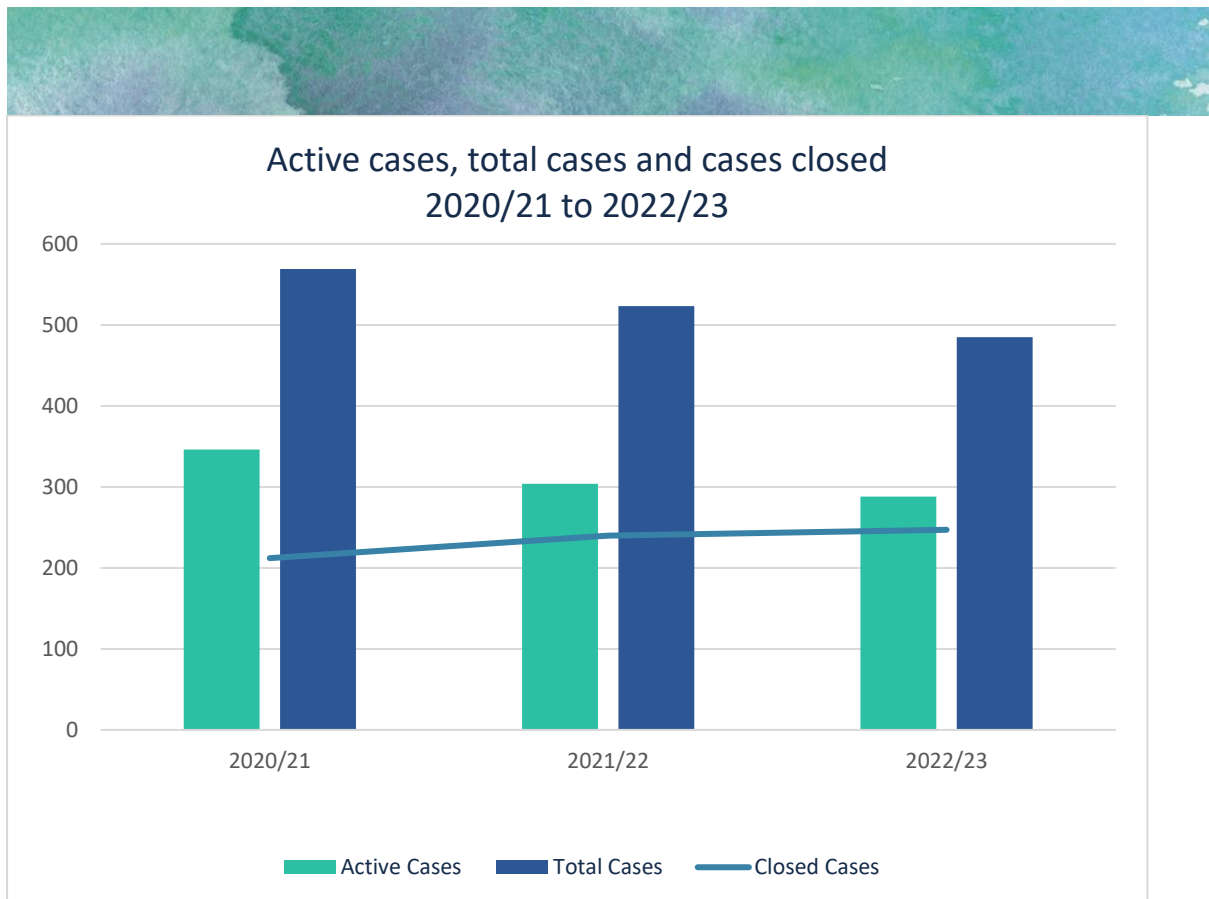


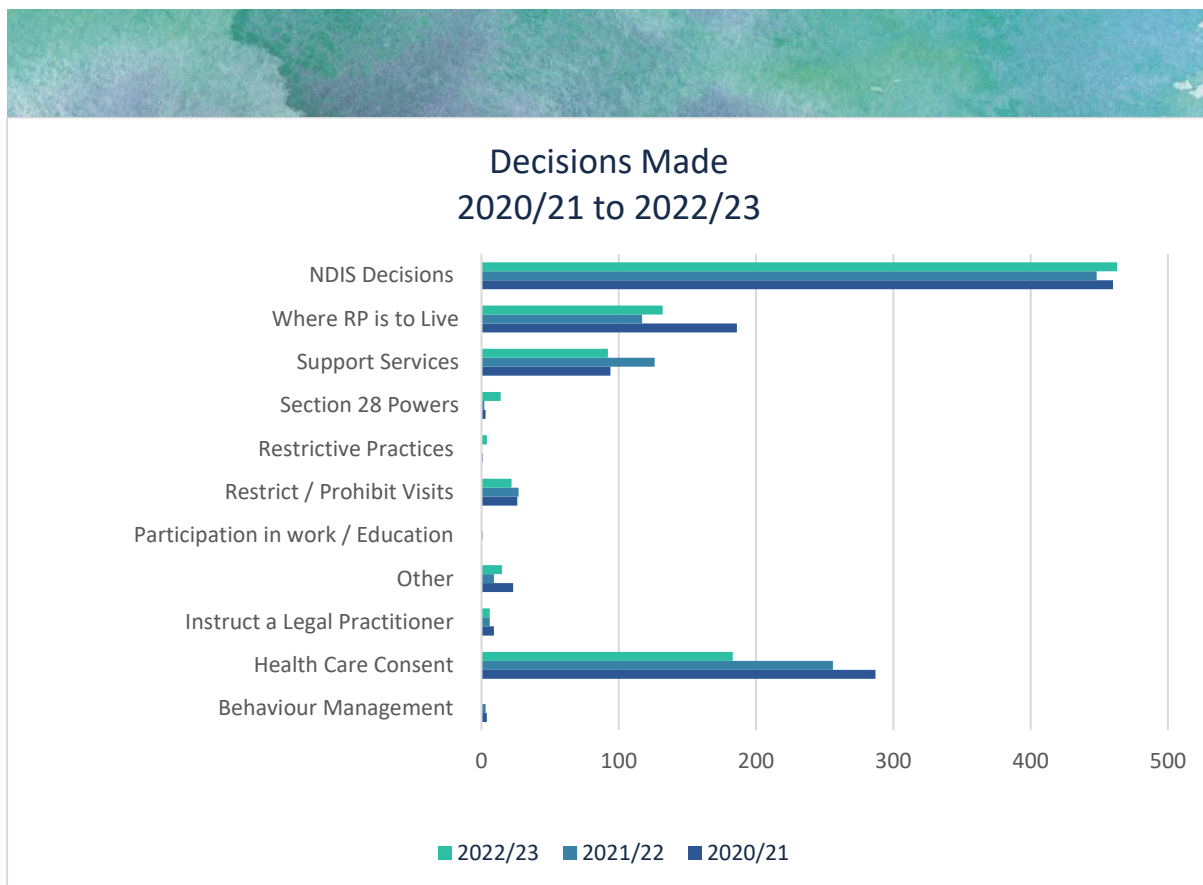
Figure 12: Total cases, active cases as of 30 June and closed guardianship cases – 2020/21 to 2023-23.

## OPG decision-making

When appointed by the Tribunal, the guardianship order sets out the type and scope of decisions the guardian is authorised to make. Guardians can only make decisions in accordance with the powers set out within the order. The appointment of a substitute decision-maker does not preclude efforts to support a represented person to make their own decisions. Sometimes when a person can be supported to make their own decisions, a guardian's involvement in the process decreases. The decisions outlined in figure 12 therefore relate to decisions where the guardian has remained active in the decision-making process.

The OPG will be developing different data recording and reporting capabilities to better report on decisions that are autonomous, supported or substitute, for reference in next year's annual report.





*Figure 13: Decisions made by type – 2020/21 to 2022/23.*

Decisions relating to NDIS service provision continue to form most decisions made by the OPG. This is despite this cohort of represented persons being best placed to be supported to make their own decisions. The number of NDIS related decisions has increased by three per cent compared to 2021/22. This category of decision was added to differentiate NDIS-specific decisions from ‘general’ service provision decisions. The very high number of NDIS related decisions is illustrative of the huge increase in workload of OPG’s guardians associated with this client group.

Decisions related to the consent or refusal of medical and healthcare treatment have decreased by 28% compared to 2021/22. This is likely related to the shift in practice and approach of the Public Guardian. When a guardian is asked to consent to medical treatment, they explore and often identify that the medical practitioner believes the person has capacity to consent to the proposed treatment, or the treatment is minor, including non-intrusive examinations, first aid and non-prescription medications and therefore substitute consent is not required under the Act. We advocate for medical practitioners to engage directly with the represented person to discuss their health and treatment options, and for them to only seek substitute consent when it is assessed that the person cannot give informed consent themselves.

Decisions relating to where a represented person is to live have increased by approximately 12% compared to last financial year.

## Guardianship and the NDIS

The number of NDIS participants for whom the Public Guardian acts as guardian continues to be a significant proportion of our active cases (64.5%) compared to 59% last reporting period.

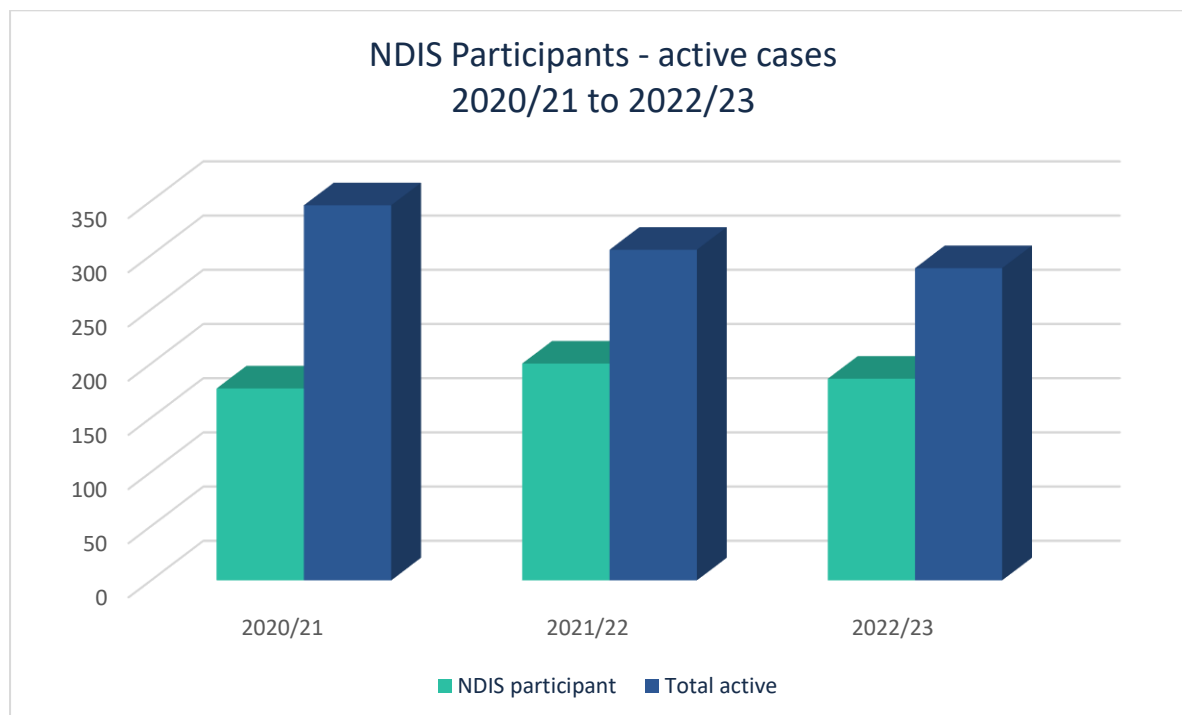


Figure 14: NDIS participants compared to active cases – 2020/21 to 2022-23.

As noted within previous annual reports, NDIS processes necessitate a high demand for substitute decisions and other associated activity, resulting in an immense impact on the OPG's workload.

When appointed by the Tribunal to make NDIS-related decisions, guardians will advocate for a supported decision-making approach where possible. A guardian will make a substitute decision about support services, only in circumstances where the person cannot be supported to make decisions and participate in their support planning themselves.

Where a substitute decision is required, the guardian provides written consent to confirm the decision made.

Where supported decision-making is possible, it can often result in the guardian not needing to make any decisions for the person, as the guardian advocates for others to step in to support the represented person in maintaining choice and control over the services they receive.

When a guardian is appointed, the NDIS routinely expects the guardian to be actively involved in NDIS planning and review processes, regardless of whether there is sufficient alternative support to assist a person to participate, express their views and make their own decisions. There appears to be an ongoing perception within the NDIS that when a guardian is appointed, they must be actively involved to represent the participant, even when the participant can fully participate themselves, with or without support.

We have ongoing concerns about the level and breadth of systemic barriers to the participation of people with impaired decision-making abilities in NDIS processes. My office



continues to advocate that the threshold for capacity to understand and make decisions regarding NDIS matters is held unnecessarily (and unfairly) high and is driven by the needs of service providers to manage their organisational risks and the complexity of the system itself. Thereby, the scheme that aims to provide the opportunity for people with disability to live with more choice and control, has become so complex and risk averse that it necessitates the appointment of a substitute decision-maker.

The OPG has continued to advocate for further education and development across the NDIS to ensure that supported decision-making can be facilitated, even when a substitute decision-maker is appointed. Submissions have also been made in relation to the need for guardianship appointments to assist a participant to understand and participate in the complex administrative processes of the NDIS, stating that the focus of the scheme should be on enabling participants to be supported to make their own decisions, via the inclusion of funding in NDIS plans for decision-making support, which could lead to a reduction in the need for substitute appointments for NDIS purposes.

The OPG acknowledges that there may always be people in need of a guardian to help with making decisions to access the NDIS and to advocate for appropriate services that uphold their rights and meet their needs. Our concern is that the current operation of the NDIS is requiring that people who would otherwise not be subject to a guardianship order or who may not be subject to longer orders, except for the need for decisions arising in relation to NDIS complexities, are being subject to such orders for longer and longer periods. We see this as fundamentally incompatible with the obligations under Article 12.

## Advocacy and Promotion


The Public Guardian is committed to improving outcomes for people with impaired decision-making ability.

The OPG has limited resources to take a proactive role in this area as we do not have focussed resources for project, policy or programme development. Regardless, this year has presented several valuable opportunities to collaborate with government and non-government agencies to advocate and promote the rights and interests of people with impaired decision-making ability to ensure they have access to appropriate services, housing, legal support and health care.

### Systemic advocacy - reform, policy and program development

In 2022/23 our activities and involvement in legislative reform, policy/program development and reviews with organisations and groups have included:

Involvement in the drafting, review, refinement and implementation of reforms to the <i>Guardianship and Administration Act 1995</i>
Involvement in the Australian Guardianship and Administration Council (AGAC), including attendance at the national AGAC conference and the development of submissions to address various systemic issues at a national level
Provision of submissions into the Tasmanian Adult Safeguarding Framework



Submissions to support the implementation of the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or degrading Treatment or Punishment (OPCAT) and the Tasmanian National Preventative Mechanism (NPM)

Submissions to the Royal Commission into violence, abuse, neglect and exploitation of people with a disability

Provision of evidence and submissions for the NDIS Review

Establishment of a project to better support the transition of young people with a disability from the statutory Child Safety guardianship system to the adult guardianship system.

Involvement in a Project Steering Committee to assist Tasmanian Health Services to support survivors of sexual abuse who have a disability.

Feedback into issues impacting on people with poor mental health or suicidality.

Development of a high-level collaborative approach between OPG and the Tasmanian Health Service to better respond to the needs of people with dual diagnosis of disability and mental health.

Participation in the development of a guideline relating to decision-making where persons with dual disabilities of intellectual disability and mental health do not have capacity – the interface between the *Mental Health Act 2013* and the *Guardianship and Administration Act 1995*. The purpose of this guideline is to ensure that people with a dual disability are receiving the least restrictive pathway for consent to mental health treatment.

Ongoing membership and involvement in the State-wide Elder Abuse Prevention Advisory Committee (SEAPAC) and provision of feedback into the Elder Abuse Action Plan and Strategy.

Bi-monthly engagement with NDIS Commission to review systems and processes to better respond to the needs of people with disability who are a participant in the NDIS.

Partnering with NDIS Service Providers to streamline NDIS Service decision-making and consent processes to give effect to supported decision-making.

Development of consent requirements for the use of restrictive practices in residential aged care, in line with the changes to the Commonwealth *Quality of Care Principles* (made under the *Aged Care Act 1997*).

Ongoing membership and participation in the Public Trustee's Stakeholder reference group to build client-focussed practice into all Public Trustee service delivery, policy and program design in response to the *Independent Review of the Public Trustee*.

Co-facilitation of workshops to the Public Trustee Stakeholder Reference Group as part of the Supported Decision-Making project whose purpose is to develop a Supported Decision-Making Framework to be used by the Public Trustee and more broadly across the guardianship and administration system.

The Public Guardian's advocacy role occurs largely in the context of our guardianship and dispute resolution work. The OPG in Tasmania does not have additional advocacy



programs, either at systemic or individual level, as do some of our interstate counterparts. Advocacy principles inform our approach to guardianship and decision-making. Guardians strive to advocate for a person's views, values and preferences being upheld. Where this is not possible then often advocacy and decision-making occur to uphold other human rights such as protection from serious abuse, neglect and exploitation.

The OPG guardians make referrals to community-based advocacy services as appropriate when 'pure' advocacy is required. Guardians will commonly advocate on behalf of the people with whom we work for the provision of appropriate services, such as the allocation of a case-manager, for housing, for increased opportunity for social and community participation for those in residential care, and for appropriate discharge planning from hospitals. Guardians will always advocate for the least restrictive alternative and for the wishes of the represented person to be put into effect as far as possible.

## Systemic advocacy - national inquiries and commissions

Written submissions and giving evidence to national inquiries and commissions, enable the Public Guardian to undertake systemic advocacy and provide a voice for the most vulnerable in our community. Our recent efforts at the national level have focused on inquiries and consultations relating to the NDIS and the Royal Commission into violence, abuse, neglect and exploitation of people with a disability. A summary of submissions made throughout the year are outlined below.

### Improvements to the NDIS system

In response to the NDIS Review, Australia's Public Advocates and Guardian's developed a joint submission identifying key NDIS improvements. It was observed within this submission that the development of the NDIS had resulted in a concerning, yet predicted, effect on the adult guardianship system, by way of the significant increase in the use of the adult guardianship system. This is despite participant 'choice and control' being a bedrock principle of the scheme.


The suggestions provided within the joint submission covered the following six potential reform areas:

- better support for individuals to make their own access and service decisions.
- better recognition of informal caring and support relationships (where these do not give rise to genuine concerns about the well-being of the participant or prospective participant).
- simplifying and streamlining administrative technicalities that can result in unnecessary guardianship applications.
- improved escalation pathways for people with complex support needs.
- improved NDIS safeguarding mechanisms; and
- improved interfaces with other systems.

### Royal Commission into violence, abuse, neglect and exploitation of people with a disability

The Public Guardian was requested by the Royal Commission into violence, abuse, neglect and exploitation of people with a disability to provide a statement addressing a number of specific matters including:



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- An overview of the Public Guardian, its history, organisation, structure and functions.
  - Data relating to the number of persons under guardianship, average duration of guardianship orders, investigations, types of disability, demographic information including cultural backgrounds and ethnicity.
  - Exploration of how the Public Guardian and her delegates facilitate culturally safe communication and support to guardianship clients.
  - Support, education and training provided to OPG staff.
  - Practices and procedures that underpin guardianship practice and decision-making.
  - Complaints procedures, internal to OPG and in relation to the conduct and/or decisions of a private guardian.
  - Provision of education resources to the public.
  - Programs, resources and other supports that the Public Guardians offers to people under guardianship orders.
  - Trends and observations in Tasmania.

A copy of this submission and other submissions made to the Royal Commission can be located via <https://disability.royalcommission.gov.au>.

## Community Education

The OPG does not have dedicated resources for the provision of education and community awareness activities regarding the guardianship system. This role is shared amongst the 7.43 guardians within the office.

The OPG recorded approximately 233 formal enquiries from the public during office hours, largely pertaining to potential applications for guardianship or administration, enduring guardianship, enduring powers of attorney, and advance care directives or other end-of-life decision-making<sup>4</sup>. This figure also refers only to enquiries during business hours. After hours enquiries are discussed elsewhere in this report in the After-hours Emergency section.

As noted elsewhere in this Report, the OPG website has been further updated and improved this year, providing improved access to a broader range of information related to guardianship and decision making. This content is expected to continuously grow over time.

In addition to the informal education with community groups, medical and allied health practitioners and service providers undertaken by guardians in the course of their day-to-day work, this year the OPG conducted 14 formal education sessions, reaching approximately 360 people.

Feedback provided to OPG on the value of these education sessions has included that the education sessions have increased and/or reinforced professionals' knowledge and skills in the areas of guardianship, medical consent, substitute and supported decision-making processes and legal pathways outlined within the Act.

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<sup>4</sup> Some enquiries are not recorded – for example: minor matters not requiring formal advice or guidance from a guardian, those not requiring any further action, and those attended to in the course of other duties.



## Complaints

This year the OPG has developed and made publicly available a Complaints and Feedback Policy, which is a demonstration of the Public Guardian's commitment to providing fair, equitable and effective support to the Tasmanian community. A fact sheet on 'Feedback and Complaints to the Office of the Public Guardian' is available via our website. Our website also provides consumers with the opportunity to make suggestions via an online feedback form, which provides a valuable source of feedback and informs our quality improvement processes.

The OPG welcomes feedback and complaints to ensure we are accountable for providing the best possible service, as well as providing opportunities to review organisational performance and the conduct of people that work within and for it. Our Complaints and Feedback Policy intends to:

- Assist us to learn from practices and processes that have worked well for clients and stakeholders.
- Identify issues (individual and systemic) and use this to inform the continuous improvement of our service.
- Enable us to respond to complaints in a timely and effective way.
- Ensure accountability and confidence in our processes as a public body.

The nature of our guardianship work means we are often required to make decisions that are contentious and contrary to other people's views. Despite this, the OPG receives very few formal complaints about processes, conduct or decisions.

Whilst the Act does not require the Public Guardian to provide written reasons for its decisions, our policy is to do so whenever requested by the represented person. In addition, guardians will from time to time prepare a written statement explaining the reasons for a decision if it is particularly controversial or if the guardian considers it would assist with comprehension and acceptance of the decision. Formal reasons for decision may be provided to family members, but only within the confidentiality requirements of s.86 of the Act.

Over this year, the public campaign seeking guardianship legislative reform has further raised public awareness of guardianship and administration and the roles of the Public Guardian and the Public Trustee. This has led to represented persons and their families being more engaged in their guardianship processes and raising any feedback directly with their guardian to ensure the best possible outcomes. It is hoped that this direct engagement will continue.

In this reporting period the Public Guardian received one formal request for an internal review of a guardian's decision and seven complaints about the process of the guardian's decision-making. In addition, the OPG was subject to eleven enquiries/complaints to the Attorney-General and/or another Member of Parliament.



## FTE / Financial Summary

	2020/21 Actual	2021/22 Actual	2022/23 Actual
<b>Salary related expenditure</b>	1,037,214	1,151,381	1,255,352
<b>Non salary expenditure<sup>5</sup></b>	236,478	249,755	335,059
<b>Total operating expenditure</b>	<b>1,273,692</b>	<b>1,401,136</b>	<b>1,590,411</b>

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<sup>5</sup> includes IT, materials, travel, office rental, worker's comp and other.



## Appendix I – Relevant Sections of the Act

### **Section 6 – Principles to be observed**

A function or power conferred, or duty imposed, by this Act is to be performed so that –

- (a) the means which is the least restrictive of a person's freedom of decision and action as is possible in the circumstances is adopted; and
- (b) the best interests of a person with a disability or impaired decision-making ability, or in respect of whom an application is made under this Act are promoted; and
- (c) the wishes of a person with a disability or impaired decision-making ability, or in respect of whom an application is made under this Act are, if possible, carried into effect.

### **Section 27 - Exercise of authority by guardian**

(1) A guardian must act at all times in the best interests of the person under guardianship.

(2) Without limiting subsection (1), a guardian acts in the best interests of a person under guardianship if the guardian acts as far as possible –

- a) in consultation with that person, taking into account, as far as possible, his or her wishes, directions, preferences and values (including those expressed in an advance care directive); and
- b) as an advocate for that person; and
- c) in such a way as to encourage that person to participate as much as possible in the life of the community; and
- d) in such a way as to encourage and assist that person to become capable of caring for himself or herself and of making reasonable judgements relating to his or her person; and
- e) in such a way as to protect that person from neglect, abuse or exploitation.

(3) A guardian must take reasonable steps to ascertain whether the person under guardianship has given an advance care directive.



## **Section 15 - Functions and powers of Public Guardian**

(1) The Public Guardian has the following functions:

- a) to foster the provision of services and facilities for persons with a disability;
- b) to support the establishment of organizations which support any such persons;
- c) to encourage the development of programmes that support any such persons (including advocacy programmes, educational programmes and programmes to encourage persons to act as guardians and administrators);
- d) to promote, speak for and protect the rights and interests of any such persons;
- e) to deal, on behalf of any such persons, with persons or bodies providing services;
- f) to represent any such persons before the Tribunal in relation to Guardianship stream proceedings;
- g) to investigate, report and make recommendations to the Minister on any matter relating to the operation of this Act;
- h) to act as a guardian or administrator when so appointed by the Tribunal;
- i) to disseminate information concerning: –
  - i. the functions of the Public Guardian; and
  - ii. the operation of this Act.
- j) to give advice on the powers that may be exercised under this Act relating to persons with a disability or impaired decision-making ability as to the operation of this Act generally and on appropriate alternatives to taking action under this Act;
- k) to perform such other function assigned to the Public Guardian by any other Act or law.

## **Section 17 - Investigations**

- 1) The Public Guardian may investigate complaints and allegations concerning the actions of a guardian or administrator or a person acting or purporting to act under an enduring power of attorney.
- 2) The Public Guardian may, of its own motion or following a complaint or allegation, investigate any matter relating to action taken or proposed to be taken in relation to an advance care directive.
- 3) (If requested to do so by the Tribunal in Guardianship stream proceedings, the Public Guardian must investigate and report to the Tribunal in relation to a matter to which those proceedings relate.





## Section 35Z1 – Resolution of matters by Public Guardian

- 1) The Public Guardian may, on application by an eligible person in respect of an advance care directive or on the Public Guardian's own initiative, provide preliminary assistance in resolving a matter relating to an advance care directive, including by –
  - a) ensuring that the parties to the matter are fully aware of their rights and obligations; and
  - b) identifying any issues that are in dispute between parties to the matter; and
  - c) canvassing options that may obviate the need for further proceedings; and
  - d) where appropriate, facilitating full and open communication between the parties to a dispute; and
  - e) seeking to resolve differences between eligible persons in relation to any other matter prescribed by the regulations for the purposes of this section.
- 2) The Public Guardian may, in providing preliminary assistance under [subsection \(1\)](#), arrange a mediation between parties to a dispute if all parties to the dispute agree to such a mediation.
- 3) The Public Guardian must put procedures in place to allow a person who has given an advance care directive to attend any mediation relating to that advance care directive under this section unless the Public Guardian is satisfied that –
  - a) the person does not wish to attend the mediation in person; or
  - b) the personal attendance of the person at the mediation is impracticable or unreasonable, despite any arrangement that the Public Guardian may make.
- 4) If a matter under this section is resolved by mediation-
  - a) the parties must sign an agreement setting out the terms of the settlement; and
  - b) the Public Guardian must cause a copy of the signed agreement to be provided to each of the parties; and
  - c) the Public Guardian must cause a copy of the signed agreement to be provided to the Tribunal; and
  - d) if the advance care directive has been registered by the Tribunal, the Tribunal may cause a copy of the signed agreement to be attached to the copy of the advance care directive in the register kept under section 35X
- 5) The Public Guardian may bring a mediation to an end at any time –
  - a) if, in the opinion of the Public Guardian, it is more appropriate that the matter be dealt with by the Tribunal; or
  - b) at the request of a party to the mediation.
- 6) Evidence of anything said or done in the course of a mediation under this section is not admissible in subsequent proceedings except by consent of all parties to the proceedings.
- 7) An application under this section –
  - (a) must be made in a manner and form determined by the Public Guardian; and
  - (b) must be accompanied by such information as the Public Guardian may reasonably require.
- 8) The Public Guardian may refuse to provide preliminary assistance in resolving a matter under this section if, in the opinion of the Public Guardian, it is more appropriate that the matter be dealt with by the Tribunal.



## Appendix 2 – Who are we?

### **Angela McCrossen – Acting Public Guardian (State-wide)**

Ange was seconded to the OPG in February 2022 from the Department for Education, Children and Young People. During her secondment she led the development of the OPG's Professional Supervision Framework, Decision-Making Framework and Complaints and Feedback Framework. In September 2022 she was appointed as Acting Public Guardian. Prior to joining the team, she had 20 years' experience working for Children and Youth Services where she played a critical role in major reform initiatives and oversight of legislative change, clinical governance, quality improvement and strategic management activities. She is passionate about making a difference and leading with integrity and authenticity. She is committed to working in an area that prioritises working in partnership with people and growing individual and community capacity to meet the needs of diverse groups.

### **Kylie Hillier – Senior Guardian (North) and Deputy Public Guardian**

Kylie commenced working with the OPG in May 2005. Kylie has a bachelor's degree in business, majoring in international business, human resources and marketing. Kylie has worked in the private sector in London, where her experiences include project management with a business simulation company and a pan European dot-com auction house. Her commitment to social justice led to several years working in the Disability Independent Living Sector in Ireland. Prior to completing her degree, Kylie worked as an advocate in both the disability and aged care sectors across the State. Kylie has acted in the Public Guardian role on many occasions.

### **Maddy Russell – Dispute Resolution Practitioner (South)**

Maddy commenced with the OPG as a senior guardian in 2017. Maddy holds a degree in social work and a qualification in mediation. She has been practicing social work for 12 years in a range of government and non-government services in Hobart and the UK. Maddy has recently been appointed as the OPG's new Dispute Resolution Practitioner.

### **Nicky Targett – Senior Guardian (South)**

Nicky joined the team in July 2016, initially on secondment from THS's Assessment and Case Management Services. Prior to joining the OPG, Nicky was employed for eight years as a case manager for complex clients. She holds a diploma in case management. Nicky has a long history of employment in the disability and aged care fields, with experience across community, hospital, and residential aged care sectors.

### **Tegan Edwards – Senior Guardian (South)**

Tegan joined the OPG team in 2020 with more than ten years of experience in the disability sector. She has worked in disability service delivery in the community, shared home and respite environments, and within Disability Employment Support programs. A continuous learner, Tegan's recent qualifications include an associate degree in Applied Health and Community Support and Certificate IV in Government Investigations. She also has formal qualifications in Case Management.



### **Alena Furdan - Senior Guardian (South)**

Alena joined the OPG in September 2022 after relocating to Tasmania from South Australia. Alena holds a postgraduate degree in Social Work from Flinders University. She has worked in government agencies, predominately within the Aged Care sector as a case manager/case coordinator, and as a clinical social worker for over 20 years. Alena has also worked for the Aged Care Assessment Team and as a guardian with the Office of the Public Advocate in Adelaide. Originally from Czechoslovakia, Alena completed a law degree and worked in the business and industrial law section of a large company for ten years. In 1987 she defected Czechoslovakia and spent 19 months in a refugee camp in Italy before arriving in Australia in 1989.

### **Clair Shepherd – Executive Officer (South)**

Clair joined the OPG in February 2023 in the new role of Executive Officer. Prior to this, Clair spent eight years working in politics for various State and Federal parliamentarians, mostly as an Electorate Officer before finishing her time in politics as an Office Manager to a Tasmanian Senator. Post-politics, Clair spent three years working for Libraries Tasmania in several roles where she enjoyed developing community-based programs for library clients of all ages. In 2022 she was seconded to the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings as Executive Officer, assisting with the Commission's important work to improve child safety in Tasmania. Clair holds an Arts Degree with majors in English literature and journalism, and an Honours degree in Journalism from the University of Tasmania.

### **Valerie Hannon (South)**

Valerie commenced her employment with the OPG in December 2017 after six months as an account manager at the Public Trustee. She has worked in the Guardianship and Administration jurisdiction for almost 13 years. Valerie was previously employed as an Investigator at the Guardianship and Administration Board before moving abroad for six years. Valerie also has experience working in a legal firm in the specialised area of estate planning and probate.

### **Di Shephard – Senior Guardian (North and North-West)**

Di commenced work at the OPG in 2016 with a background of 15 years in the Tasmanian Health Sector where she worked in various patient liaison and project roles. Di is a senior guardian enjoying her eighth year in our office.

### **Darlene Hammond – Senior Guardian (North and North-West)**

Darlene joined the OPG in April 2022 initially on a secondment from THS. She is now permanently based with the OPG. Prior to the OPG, she spent 4 and a half years working as a social worker at the Launceston General Hospital with a diverse client group, predominately on medical and surgical wards. Darlene has previously worked for Child Safety Services, Integrated Family Support Service with a non-government agency. In 2005 Darlene acquired a Bachelor of Social Work.



### **Daniel Peacock – Senior Guardian (South)**

Daniel commenced with the OPG in September 2022. He has experience working within the Disability and Mental Health Sectors of Southern Tasmania. Daniel has experience leading and educating teams and has had considerable involvement within a broad scope of NDIS Service Provision and Client Services.

### **Tamara Kerstan – Administration Assistant (South)**

Tamara joined OPG in February 2020 and specialises in office administration, customer service and senior management support. Tamara studied business and secretarial services at Tas TAFE and has gained extensive and varied experience holding positions in private enterprise and the Tasmanian government. After hours, Tamara and her family are busy renovating and enjoying their new escape to the country home.