



Annual Report

2019 – 2020

Office of the Public Guardian
GPO Box 825
HOBART TAS 7001



30 September 2020

The Hon Elise Archer
Attorney-General, Minister for Justice
10th 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 2020

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 2019 to 30 June 2020. This report records the operations and performance of the Office of the Public Guardian including statistical data on direct guardianship work, as well as a summary of activities in relation to other functions.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Kim Barker".

Kim Barker
Public Guardian

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Overview of 2019 / 2020



This year, it is with some sadness that I write my annual report, knowing it will be my last. After five years as Tasmania's Public Guardian I have resigned my position, and will finish in the role in November 2020. I find myself unable to avoid reflecting on the past five years as well as providing an overview of 2019/2020.

The Office of the Public Guardian (OPG) is quite a different organisation to the one I stepped into in September 2015. At that time, it was a precariously small team of 3.75 FTE guardians who, aside from the Public Guardian, all worked solely from home. We now number 8.9 FTE, and all work from offices in Hobart or Launceston. When I commenced, the OPG managed a total guardianship case-load of approximately 165. By 30 June 2020 our active caseload had nearly doubled, to 318.

A number of key administrative and operational changes have been made, as well as a minor re-structuring of guardian and senior guardian roles. In January this year, the OPG employed its first (part time) dedicated administrative officer. Importantly, a custom built integrated electronic case and data management system – "OPGuard" – was developed and commenced operation in July 2017, and a suite of practice guidelines produced. It is fair to say that, whilst the OPG continues to operate with very limited resources, we now have a contemporary office environment with robust and efficient systems.

There have been a number of highlights over the past five years. We have seen the full roll-out and bedding down of one of the most significant policy reforms in the provision of services to people with disability - the NDIS has brought enormous benefits, but of course it has not been without challenges, and the OPG has been pleased to work collaboratively with key services to transition to this new model of funding and its human rights approach. The Royal Commission into Aged Care Quality and Safety and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability are both important inquiries that will, it is hoped, contribute enormously to policy reform and provision of services, and ultimately to the lives and wellbeing of many Australians – the OPG has been pleased to contribute to those enquiries. Finally, the Tasmanian Law Reform Institute completed its review of the *Guardianship and Administration Act 1995* in December 2018. The OPG welcomed the raft of recommendations made by the TLRI and has provided a more detailed response to those recommendations that it is hoped will be of value to the government in progressing those important reforms.

It is impossible to review the last 12 months without commenting on the impact of Covid-19. My office adjusted quickly to the associated restrictions and all staff were equipped to work from home within a very short timeframe. Due to the nature of our work, all staff opted to work partly from home and partly from the office, achieving an appropriate balance between minimising time spent circulating in the community and providing important contact with and support of colleagues. Face-to-face visits and

meetings were kept to a minimum in the early days, but resumed as soon as it was apparent that widespread community transmission in Tasmania had been avoided.

The impact of Covid-19 on people with disabilities is of great concern. Elderly people and adults with disabilities are both at high risk of poor outcomes if they were to contract COVID-19. Service providers in both sectors therefore acted swiftly to minimise the risk of their clients becoming infected with the virus – with great success. Issues have arisen, however, with providers going above and beyond the *Public Health Act 1997*'s 16 Directions, particularly in relation to stay at home requirements and residential aged care facilities. The OPG has real concerns that the vulnerability and risks of abuse, neglect and exploitation for people with disabilities have increased as a direct result of Covid-19 restrictions.

Many adults with disabilities are living in increased isolation as a result of the closure of day services, and some independent living support services have withdrawn or scaled back their in-home services. Together with restrictions on family visits this has resulted in significantly less checking and oversight, and limited opportunity for the detection of abuse, neglect and exploitation. In addition, some people with cognitive impairments have difficulties in understanding and complying with the need for isolation and physical distancing, placing real stress on many families and households. We fear this may be leading to an increase in family and domestic violence and abuse.

Some residential facilities in the aged care, disability and mental health sectors have prioritised limiting contact (and the risk of spread of the virus) beyond the directions issued under s16 of the Public Health Act 1997, at the expense of the mental health and well-being of residents with dementia, mental illness and other cognitive impairments. The OPG is aware of some facilities refusing or limiting visits by family members to residents in a clear breach of the rights of those residents to have such contact, and in situations where these visits are important for quality of life and management of residents' distress and confusion. Other providers have prevented residents from leaving the residential facility in order to access the community, even for the permitted reasons during the stay at home restrictions. These actions may amount to unlawful imprisonment, and the OPG has been active in advocating against such practices.

As services return to normal operation and restrictions on visits and movement in the community are lifted, a return to pre-COVID-19 informal checking and monitoring will resume. However increased isolation, reduced service provision and therefore reduced oversight are likely to continue for some time. This is particularly concerning in Tasmania due to gaps in adult safeguarding: Tasmania does not have a community/official visiting scheme; we do not have a safeguarding commission in either the disability or age care sectors; and the Public Guardian has a very limited investigation function, both in terms of scope and powers to compel the provision of information. These gaps will continue to limit options and pathways for preventing and responding to abuse, neglect and exploitation of persons with disabilities.

The OPG has stepped up its role in accepting and dealing with public enquiries in relation to concerns or allegations of abuse (all types, including financial), neglect and exploitation. A "soft promotion"

approach has been taken to raise awareness of OPG's role, and we have instigated a (long over-due) toll-free phone number for use by members of the public: 1800 955 772.

Whilst Tasmania has fared relatively well so far in terms of minimising COVID-19 infection rates, we know from the experience of other states that an outbreak of community transmission can occur with little warning, and with catastrophic results for vulnerable sectors of the community. The OPG continues to hold serious concerns for the safety and well-being of older Tasmanians and people with disabilities.

The OPG has a well-established culture of continuously seeking to improve our procedures and practices, and we pride ourselves on our creative problem-solving and innovation in the face of limited resources. The OPG participated in a review of our processes conducted by an external consultant on behalf of the Department during 2019/2020, and were pleased to receive excellent feedback with no recommendations for improved efficiencies in our practices and procedures. The consultant recommended funding to properly maintain OPGuard, our case and data management system and we are grateful the Department has made funding available until June 2021.

The consultant also recommended a thorough review and rewrite of OPG's website – something that has been on my agenda since I commenced in this role. Unfortunately we do not have any additional resources to undertake this significant work, however have now almost completed re-writing the content of the most essential elements. The Department will provide assistance to upgrade the framework of the website, improving its accessibility and presentation. It is anticipated this basic upgrade will be complete by the end of 2020.

The consultant's third recommendation was for the provision of professional support and supervision for guardianship staff. This has also been of concern to me, particularly over the last three years of exponential growth in case-loads. Guardianship practice is at the most complex end of the social and statutory service spectrum and deals with not only the most vulnerable Tasmanians but the most complex social issues including acute mental illness, behavioural disturbance, and responding to situations of significant abuse, neglect and exploitation. In the course of this work, guardianship staff are also regularly exposed to abuse from represented persons and family members due to the contentious nature of the work. It is accepted best-practice in social and human services work that regular clinical/professional supervision is necessary to support staff, manage the risks of vicarious trauma and psychological injury and to support and increase capabilities in practice. It is also an important accountability measure and is reflected in other comparable areas of practice such as mental health services, child safety services and social work services. The Australian Guardianship and Administration Council (AGAC) recognises this, and has included in the National Standards of Public Guardianship that *"All staff have access to individual supervision, support and guidance in the performance of their guardianship role"* and *"The case of each represented person is reviewed periodically through individual supervision, file reviews or in professional team meetings"*.

The OPG in Tasmania does not properly meet those two standards.

Earlier this year, the OPG was fortunate to secure the services of a specialist training officer from NSW's OPG to conduct training in supported decision-making. All guardianship staff attended, along with a



small number of selected external service providers. Excellent feedback was provided by participants. Supported decision-making principles are key to contemporary thinking and policy, globally, in the provision of support and services to adults with disabilities. The opportunity to learn about putting supported decision-making into practice was much appreciated.

Finally, my gratitude to my hard-working staff. The work of the OPG is *critical* for the protection of the rights, interests, safety and well-being of some of the Tasmanian community's most vulnerable people. The work my staff undertake on a daily basis is rewarding, but it is also complex, demanding and, at times, it can be confronting and distressing. The staff of the OPG are professional, compassionate, diligent, and resilient. They support each other to manage high workloads, within the OPG's limited resources. I am grateful for their unwavering dedication - to me, to each other and to their clients. The Tasmanian community has every reason to be grateful too.

I also express my appreciation of the backing of the Department of Justice, with the provision of additional crucial resources and support in human resources, information technology and legal advice, as well as to the sound counsel and assistance of Deputy Secretary, Kristy Bourne, and the rest of the executive leadership team.

Kim Barker

Public Guardian

The role of the Public Guardian

The Public Guardian is an independent statutory officer established by the Tasmanian Government under the *Guardianship and Administration Act 1995*. This Act sets out the legal framework for consent to medical and dental treatment and other substitute decision making, for adults who have disabilities resulting in impaired capacity to make their own decisions. The Public Guardian is a key player in this regime.

The functions of the Public Guardian are set out in Section 15 of the Act (see Appendix 2). In essence, the key tasks of the Public Guardian are:

- to act as a guardian when appointed by the Guardianship and Administration Board (the Board) and to represent people before the Board
- to foster, encourage and support the establishment and provision of programs, services, facilities and organisations which support people with disabilities
- to promote, speak for, protect the rights and interests, and advocate on behalf of any people with disabilities
- to investigate, report and make recommendations to the Minister on any matter relating to the operation of this Act, and
- to provide information to the community and the public regarding the OPG, the Guardianship and Administration Board 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 Board appointed) and administrators or people acting under an enduring power of attorney; and (2) at the request of the Board, any other matter before the Board.

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 Board. 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: the OPG does not have dedicated staff for systemic advocacy, policy or education, and only a single .7 FTE administration officer.

The OPG's primary responsibility of acting as guardian is not negotiable: the Public Guardian has no discretion to accept or refuse appointments, and the Act requires that appointments of guardians are only made when there is a real and current need for a formal substitute decision-maker. This function, then, by necessity takes priority over any other role conferred on the Public Guardian by the Act.

Mission Statement

Vision: The Office of the Public Guardian's (OPG) 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 values: guide us in all our endeavours:-

Compassion – we are sensitive, kind and empathetic to all people in their circumstances.

Acceptance and Tolerance: we acknowledge and respect individual differences; we seek to understand and accommodate different cultures, backgrounds and life experiences.

Fair and Ethical – we are balanced, independent and unbiased; we are open-minded and communicate openly.

Integrity – we act with integrity and honesty; we are accountable for our decisions and actions.

Professionalism - we keep people with disabilities as the focus of the work we do; we maintain current and progressive standards of practice; we work collaboratively and supportively within and outside of our team.

Acting as Guardian

Guardians are appointed by the Guardianship and Administration Board (the Board) to make decisions on behalf of a person with a disability who is unable, by reason of that disability, to make reasonable decisions themselves. The person is known as “the represented person”. A guardian can make health, personal and lifestyle decisions for specific matters such as where and with whom the person is to live; the provision of health care and medical treatment; what services the person is to receive; and who can visit the represented person. The guardianship order will specify the specific powers given to the guardian. A guardian cannot make decisions about financial matters - if a person needs assistance to manage their finances or property, the Board will appoint an administrator. In very rare circumstances the Board can appoint the Public Guardian as administrator, usually only if The Public Trustee has a conflict of interest – no such appointments were made during this period.

Whenever possible, the Board will appoint a private person, typically a close family member or friend, as the person’s guardian. However if there is no such person willing, able or suitable to take on the role, or if there are highly complex circumstances or significant family conflict, the Board has the option of appointing the Public Guardian. Although the legislation does not specifically make reference to it, the Public Guardian is seen as “the guardian of last resort”.

Guardians must exercise their duties in accordance with the principles set out in Section 6 of the Act (see Appendix 2). This means that guardians must make decisions that are the least restrictive of the person’s freedom of action and decision; are in the best interests of the person; and, as far as possible, carry into effect the wishes of the person. These principles can often be in conflict with each other, and the challenge for a guardian is finding the right balance: ensuring the care and protection of the person as well as promoting independence and autonomy, and enabling as far as possible that the person’s wishes are respected.

Wherever possible, the OPG guardians will support the person to make decisions themselves - the guardian will only step in to make a decision *on behalf of* the person if that is really needed. For most represented persons, the capacity to make decisions is not black and white. A person may have capacity to make some decisions and not others, depending on the type and/or the complexity of the decision. Capacity for decision-making can also fluctuate, depending on the person’s physical and mental health, their environment at the time, the support available, and even the time of the day. The OPG guardians aim to assist the represented person to build and develop the skills and confidence for independent decision making.

When the OPG guardian does need to make a decision on behalf of a represented person then she or he will make the decision in consultation with the represented person, family members and key service providers. However, the guardian is responsible for the final decision, and that can mean that not everyone agrees with the decision the guardian makes. The guardian’s decision will be made as far as possible taking into account the wishes and views of the represented person, and the guardian’s judgement about the best interests of the person.

Our Guardianship Work in 2019-2020

Snapshot

- The OPG's caseload increased marginally during the 2019-2020 period: at the end of this financial year it was approximately 3% higher than it was at the end of the June 2019. This is still disproportionately higher than Tasmania's population growth of approximately 1% over this period.
- During the course of 2019/20 the OPG dealt with 509 individual cases, a slight increase from the previous year.
- The Public Guardian was appointed under 126 new ongoing guardianship orders, slightly less compared to 159 in the previous year.
- The Board advised the number of private individuals who were appointed as a guardian was 66. This means the Public Guardian was appointed for approximately 66% of guardianship orders made by the Board – a slight decrease from 69% last year.
- The number of emergency orders for which the Public Guardian was appointed decreased again this year – 113 compared to 134 in 2018/19. This is a continued effect from the Supreme Court of Tasmania decision in February 2019 affirming that the appointment of a guardian (under an emergency order) is not automatically required for consent to the admission of a patient to the Roy Fagan Centre.
- 44% of emergency orders were renewed for a second period of 28 days – slightly less than for 2018/19 but significantly less than the 64% in the previous year. Again, the plateauing of the number of renewed emergency orders probably reflects the decreased orders made specifically for the purpose of consent to admission to the Roy Fagan Centre.
- On reviewing ongoing (non-emergency) orders, the Board continued the Public Guardian's appointment (with or without a variation in powers) on 72 occasions, an increase from 57 in the previous year. The Board revoked the order or substituted a private guardian in place of the Public Guardian on 42 occasions, compared to an estimated 56 occasions in the previous year.
- The OPG requested advice or directions by the Board under section 31 of the Act, on 21 occasions (29 for the previous year). Commonly, advice or directions are sought in relation to the scope of powers, with the Board varying the order if necessary and appropriate.
- The OPG undertook 12 formal investigations during the year (compared to 11 last year), either on referral of the Board under section 17(2) of the Act, as a specific direction in conjunction with a guardianship order, and one in relation to the actions of an enduring guardian under s 17(1) of the Act.

Active Cases

On 30 June 2020 the OPG had 310 active cases, compared to 303 as at June 2019. This minor increase is most welcome, after increases of 17%, 20% and 30% in the previous three financial years. This is attributed to fewer emergency orders and a plateauing of new appointments resulting from people transitioning to the NDIS, now that the scheme has entered full maturity.

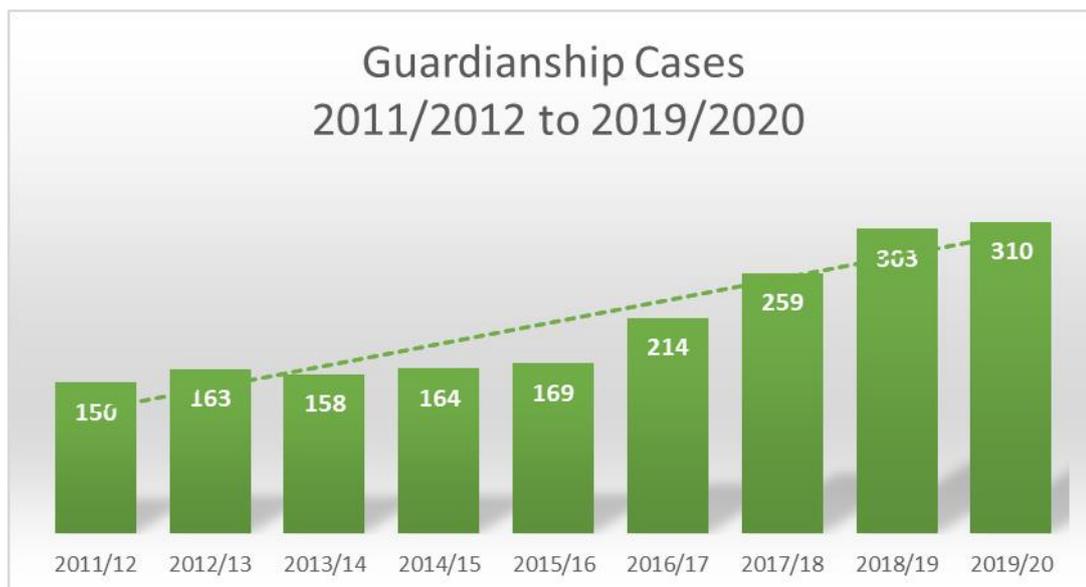


Figure 1 Guardianship Cases 2011/2012 to 2019/2020

Cases Closed

The OPG guardians actively work towards building the autonomy of the people for whom we are appointed, and seeking to have orders revoked when the criteria for the appointment of a guardian are no longer met. Approximately 223 cases were closed during the course of the year (including 41 where the represented person died), slightly less than the 230 closed in the previous year. By far the most common reason for closure was that there was no longer a need for a guardian. Cases close when the order lapses on expiry, when the Board revokes the order upon review, or when the Board appoints a private guardian in place of the Public Guardian.

Age and Gender Demographics

As at 30 June 2020 the proportion of men on the OPG's total case-load had increased slightly to 52%, from 50.5% as at 30 June 2019.

The age profile of the OPG case-load continues to shift, with those in the 36 to 60 bracket again showing the greatest increase, and slight decreases in both the 61 to 80 and over 80 age brackets. We attribute the increase in these numbers to the appointment of the Public Guardian for NDIS participants.

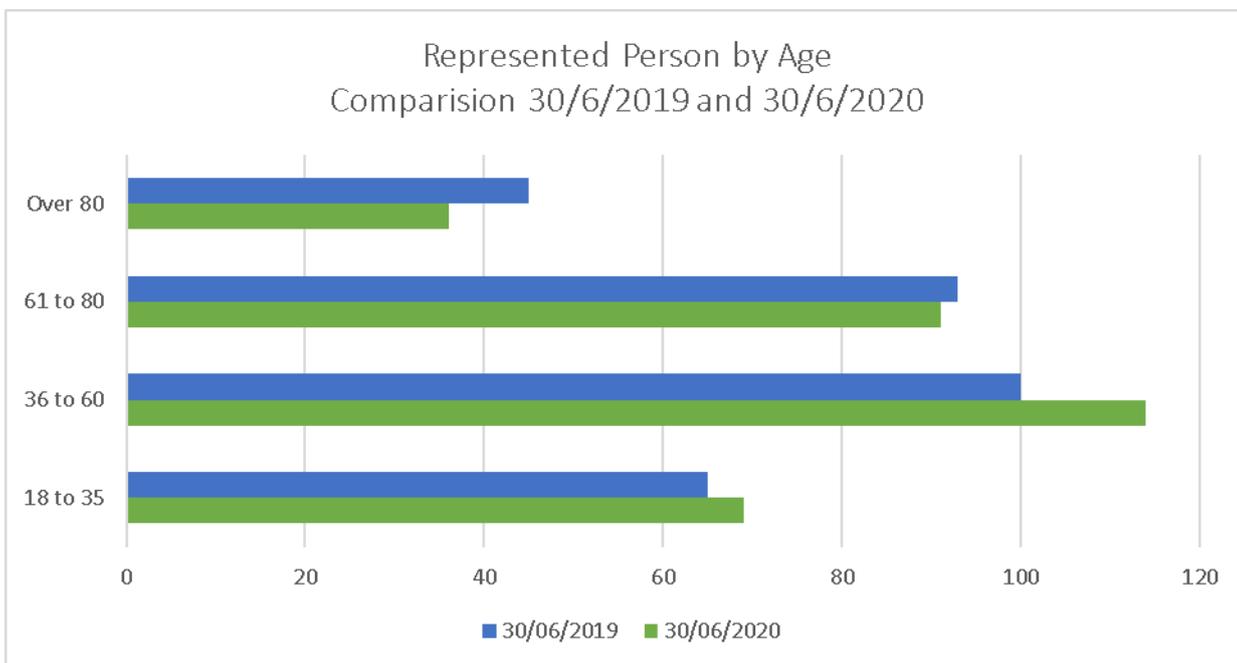
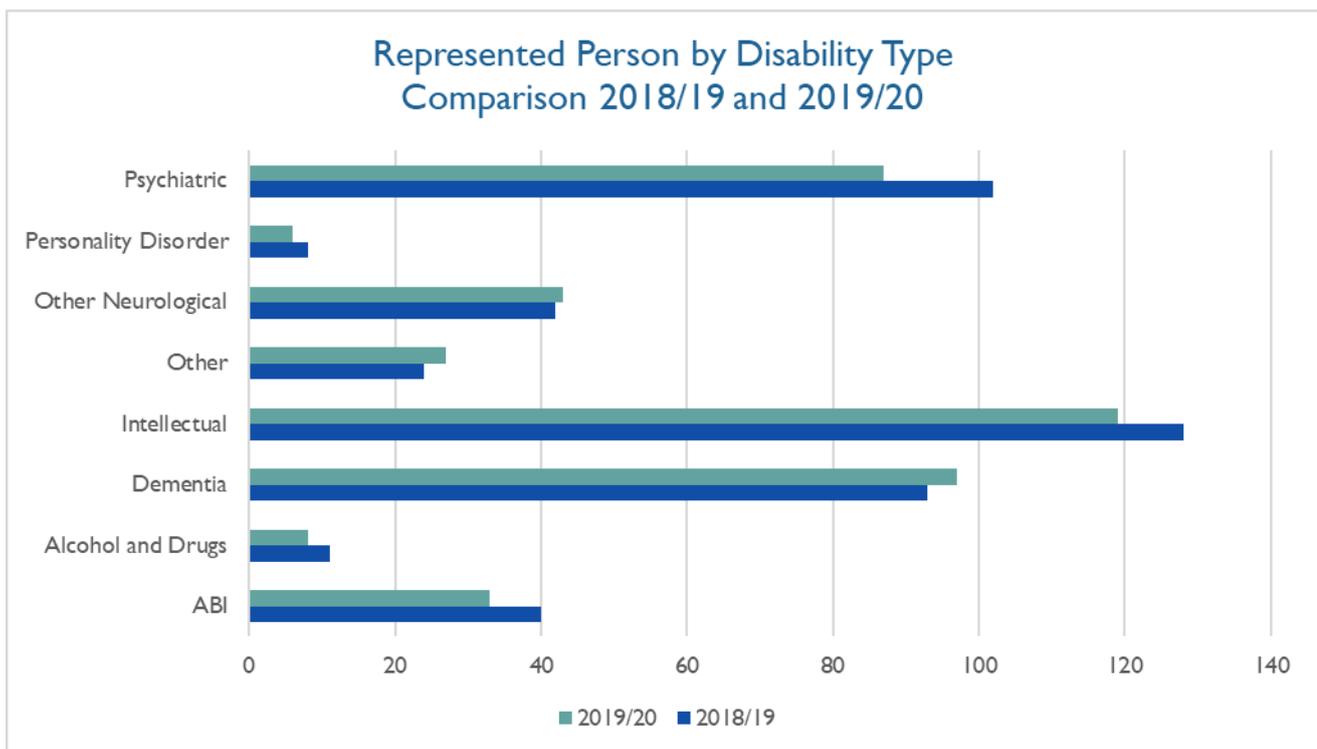


Figure 2 Represented Person by Age Comparison 30/6/2019 and 30/6/2020

Diagnostic Profile

Consistent with the change in age profile, dementia is no longer the most commonly presenting disability, as it was in 2017/2018. This year, 42% of our clients had an intellectual disability – a sharp increase from 28% the previous year. 33% had a psychiatric disability (up from 21% last year), and 30% had dementia up from 23% last year.

A large portion of our clients – approximately 36% - 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.

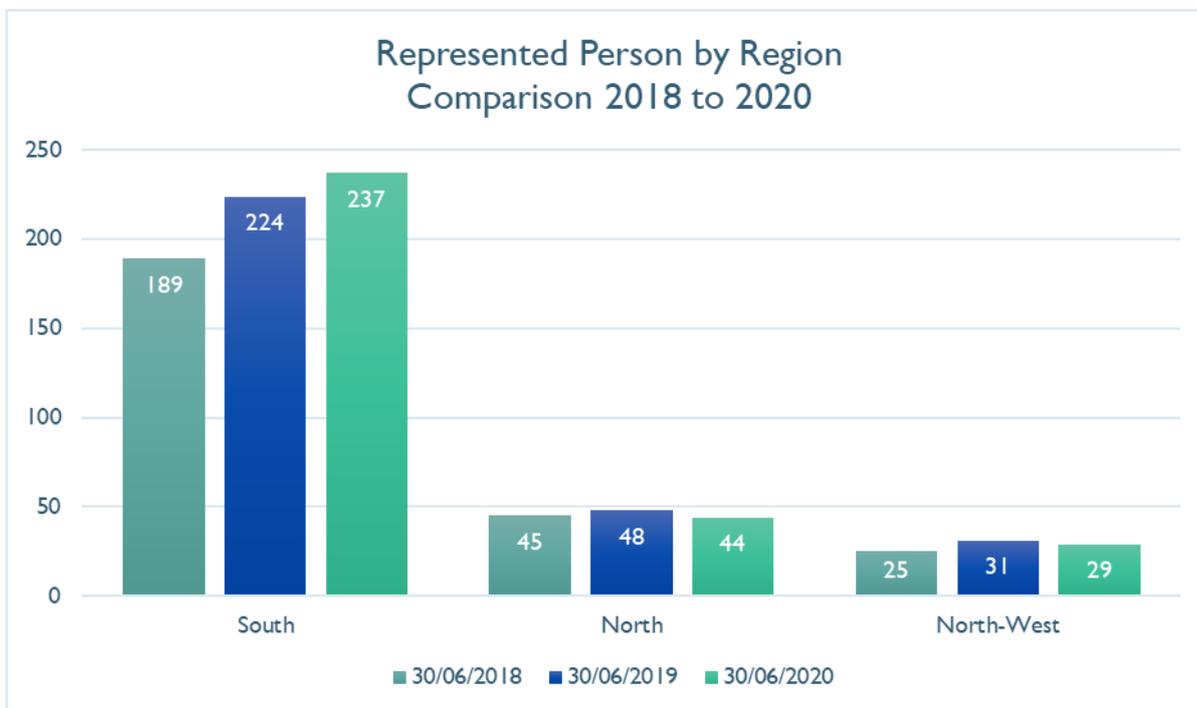


Regional Profile

76% of people under guardianship reside in the south of the state with 14% in the north and less than 10% in the north-west. 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, but one contributing factor may be that the long-term Launceston-based Deputy Public Guardian conducts significant levels of community and service provider education in the north and north-west, where she has a prominent profile in the community. Other factors might include regional differences in family support; 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.

Clearly the enormous increases in guardianship appointments over the last few years have occurred predominantly in the south of the state. This continuing trend warrants further research, however this is unfortunately beyond the current capacity of the OPG. None-the-less, a more strategic approach to increasing community/service provider in the south of the state seems warranted.

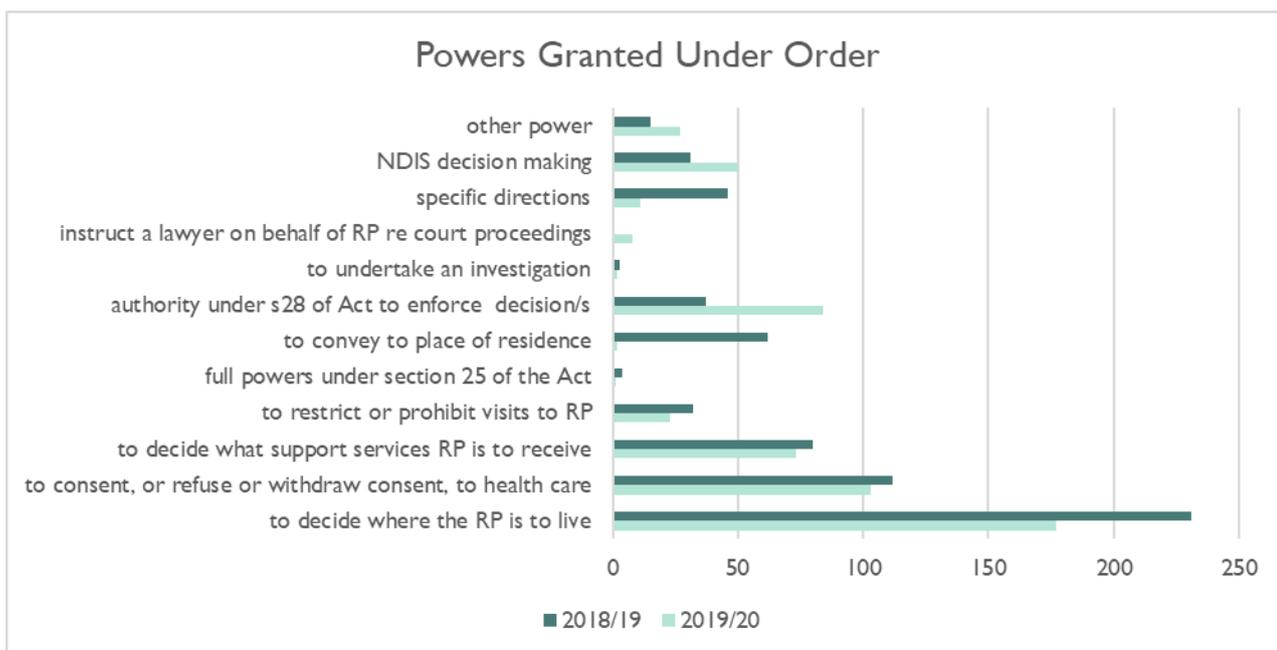


Powers Granted Under Orders

The Board 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 Board “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)). The Board will consider the circumstances of the represented person and the types of decision which need to be made, and give the guardian powers under the order that reflect those domains.

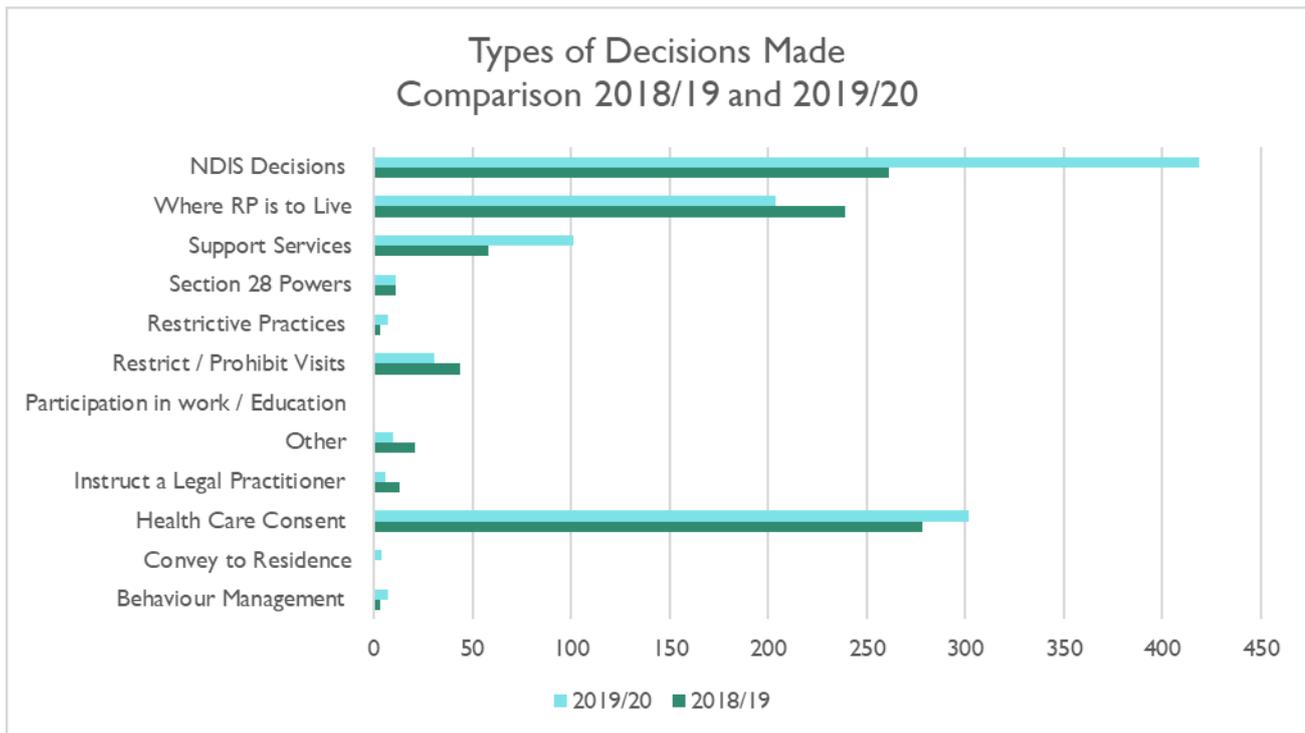
As in previous years, the most common power granted to the OPG guardians was the power to decide where the person is to live, followed by the power to consent or refuse consent to medical treatment. The Board did not make any plenary orders – under which the guardian has “full” powers – appointing the Public Guardian this year, other than one order which substituted the Public Guardian as a person’s enduring guardian. This reflects the Board’s endeavour to make orders consistent with the principle of the least restrictive alternative.

This year saw a substantial increase in authority provided by the Board under section 28 of the Act for the use of reasonable force or restraint. This is consistent with the observations made in the Supreme Court decision in the matter appealed in February 2019, that orders of the Board made under s 28 must specify the actions authorised to be taken and by whom, and the finding the previously used power to consent to measures to “convey” the represented person to the place of residence determined by the guardian is not invalid.



Decisions Made by Guardians

The number of decisions relating to NDIS service provision continues to increase dramatically. This category of decision was added during the previous reporting period 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.



Actions Undertaken

Data extracted from our case-management system reveals a significant increase in the number of actions taken by guardians, across all major types or categories of actions. In total, there were 17,221 individual actions recorded as performed, up from 14,909 in the previous year. This represents a 15.5% increase in actions for only a 3% higher caseload. The OPG believes this disproportionate increase in actions undertaken is largely attributable to the increased work associated with NDIS participants. The largest increases in activity types were those associated with written correspondence and dealing with formal documents such as medical reports, allied health assessments and service agreements.

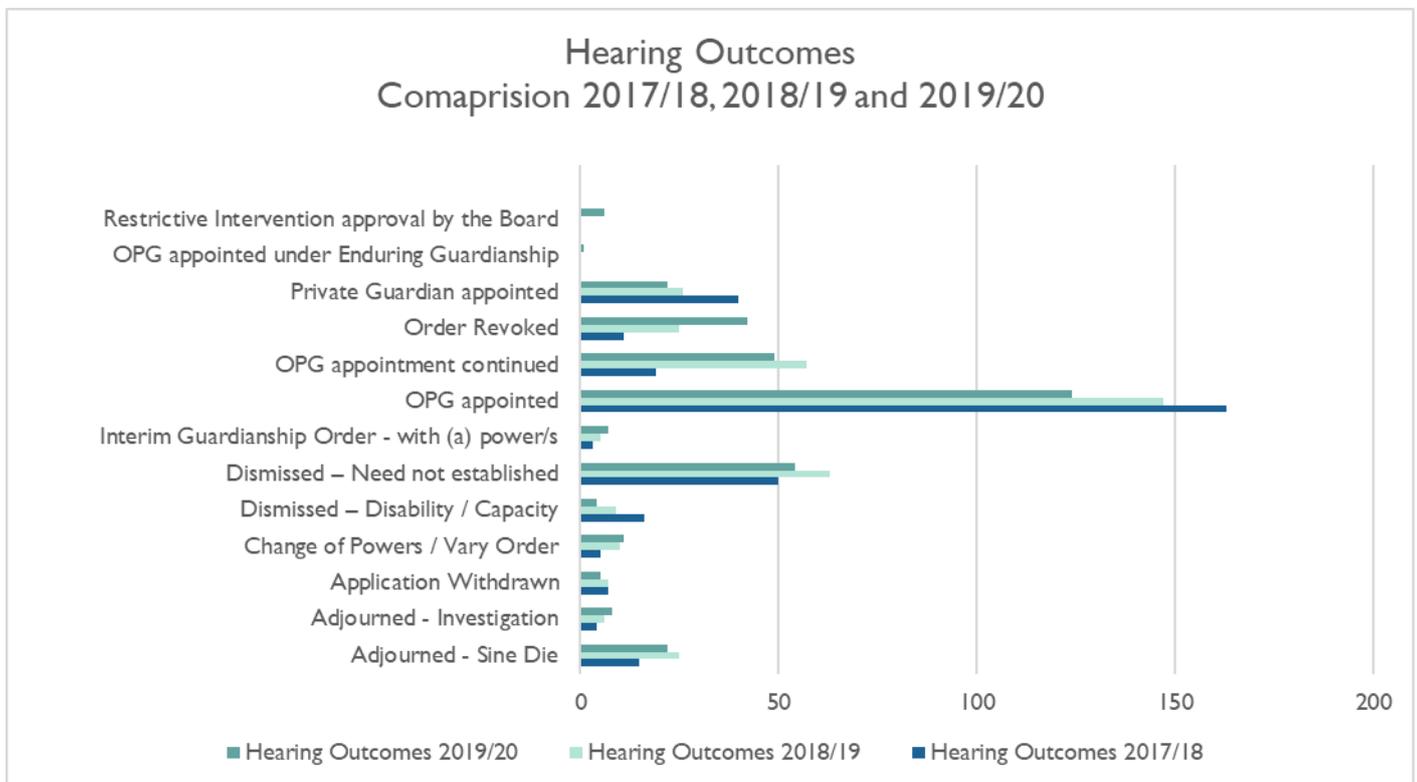
Hearings Attended by OPG

The OPG was requested to attend 359 hearings across the state, in Hobart, Launceston, Devonport and Burnie, approximately 8% less than the 390 in 2018/2019. Normally the OPG guardians attend the vast majority of hearings to which we are invited in person, and a smaller number by phone. Initial COVID-19 restrictions required all hearings to be conducted by telephone.

Hearings are conducted by the Board to determine: new applications for the appointment of a guardian or administrator; applications for an order to be reviewed for amendment or revocation; applications to review orders on expiry where a continuation of the order is sought; applications for the Board to consent to restrictive practices; and applications to review instruments of enduring powers of attorney and enduring guardianship.

The table below only includes the outcomes for the hearings to which the Public Guardian was invited and attended. Data is only held for the last two financial years, so it is difficult to be certain of any particular trends. Of note is the number of applications dismissed on the ground there was no need for a guardian and the number of adjournments. The OPG is of the view that some of these hearings could be averted by early referral to the OPG for investigation, which would allow the opportunity to explore options for alternatives to guardianship and informal resolution of disputes, or by more timely provision of hearing papers which would allow the OPG to undertake some pre-hearing enquiries.

Two new hearing outcome types have been added this year: restrictive intervention approval by the Board; and the appointment of the OPG as enduring guardian in the place of the original enduring guardian.



Emergency Guardianship Appointments

Section 65 of the Act allows the Board 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. Emergency orders can be made for a maximum of 28 days, and can be renewed once, again for a maximum period of 28 days. The Board 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.

As noted in the Snapshot, emergency guardianship orders decreased again during this reporting period – 113 this year compared to 134 in 2018/19. Pleasingly, the percentage of emergency orders requiring renewal for a second period of 28 days (44%) has also dropped marginally.

Year	Number of initial emergency orders	Number extended for a 2 nd period	Percentage
2014-15	149	69	46%
2015-16	153	47	31%
2016-17	174	97	56%
2017-18	162	103	64%
2018-19	134	61	46%
2019-20	113	50	44%

After-Hours Emergency Work

The OPG operates an after-hours service to provide advice and guidance in relation to urgent matters, to screen and refer requests for new emergency orders to the Board, and to undertake emergency decisions and other urgent action in relation to our existing represented persons. 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 2019/2020, 135 enquiries/requests were forwarded to the on-call guardian for immediate urgent action after-hours. This compares to 86 in the previous year – a significant increase of approximately 57%. This comes on top of a 43% increase during the previous financial year.

The majority – approximately 80% - of calls requiring urgent action after-hours were in relation to our existing clients. Typically, the guardian is required to attend to matters including: consent to medical treatment; authorising visiting arrangements or refusing consent for visits; and advising or authorising action to be taken for missing or absconding persons.

The significant increase in after-hours emergency work for existing clients is reflective of the increasing complexity of the cases we deal with. It may also reflect increased awareness of requirements for



substitute decision-making and possibly a reluctance on the part of service providers to pursue other emergency services (by the police, ambulance or hospitals) without the authority of the guardian.

Co-incidentally, the number of new emergency orders made after-hours was eight – exactly the same as for the last two years. 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).

The OPG has made two significant changes to the scope of the after-hours service, following an audit of the calls received and action required over the last five year. Firstly, the service was restricted for use by health and other service providers, with represented persons and family members referred to other emergency (police, ambulance, hospital) and crisis services. Secondly, the hours of operation have been reduced and the service is no longer offered between 11.00pm and 8.00am. Ceasing of the “overnight” on-call service was undertaken in consultation with the three clinical directors of Tasmania’s public hospitals. Public hospital medical staff had been the only users of this service during overnight hours, and in no case had the call resulted in the need for a new emergency order or a decision required in relation to an existing represented person. The ceasing of this service is being monitored but has not resulted in any issues.

NDIS

The number of NDIS participants for whom the OPG acts as guardian has again increased markedly over the course of the year. As at 30 June 2020 the total number of NDIS participants under the guardianship of the Public Guardian was 177, a significant increase from 132 as at 30 June 2019, and 71 as at 30 June 2018. This amounts to 57% of the OPG's total caseload. As discussed above, NDIS processes create high levels of decisions and other associated activity, resulting in an enormous impact on the OPG's workload.

The OPG continues to be concerned about the "over use" of guardianship for NDIS participants who have cognitive disabilities. There continues to be a perception by some NDIS personnel and other service providers that formal substitute decision-making arrangements need to be in place for participants who have a cognitive impairment. This, however, is inconsistent with a human rights approach, the common law assumption that adults have capacity, and the principles that underpin both the NDIS and Tasmania's guardianship legislation. A participant's ability to make decisions about the NDIS-funded services she or he is to receive needs to be considered in a more nuanced way, taking into account the specific decision/s at hand and, importantly, the *supports* available to assist the person to explore their wishes, preferences and options and to communicate their decision/s. The OPG remains concerned that advocacy is still not being considered and tried before an application is made for guardianship.

The OPG has developed a guide to supported and substitute decision-making for NDIS participants, aimed at helping service providers to determine the type of support that might be needed for a participant to manage NDIS processes and when guardianship should be considered.

In February 2020 the OPG guardians completed training in supported decision-making, with the senior guardians also undertaking a "train the trainer" session. Unfortunately COVID-19 restrictions have precluded the senior guardians from delivering supported decision-making training to service providers.

The OPG continues to monitor some concerns with the operation of the scheme associated with the planning processes and service gaps or "thin markets".

The OPG welcomed the NDIS Quality and Safeguards Commission's operation in Tasmania, from July 2019. We have worked collaboratively with the Commission at both individual and systemic levels.

The OPG also welcomed the introduction of the NDIS-funded Exceptionally Complex Support Needs after-hours referral service, operated in Tasmania by Richmond Futures. This will be an important tool in managing and responding to crises after-hours.

Our other functions

Supporting and encouraging programs and services for people with a disability

The OPG has limited resources to take a pro-active role in this area as we do not have any project or policy officers on our team. None-the-less, the Public Guardian or a delegate will contribute to policy and program development, in collaboration with other government and non-government agencies as we are able to. We accept invitations to participate in forums and committees, and provide both formal and informal contributions to relevant policy and legislative reviews. The OPG is keen to broaden and increase its activity in this domain in the future, but resources are likely to continue to be the limiting factor.

In 2019/2020 our activities and involvement in policy/program development and reviews with organisations and groups from the government and non-government sectors have included:

- ongoing membership of the State-wide Elder Abuse Prevention Advisory Committee (SEAPAC)
- member of the THS-lead Advance Care Directive Working Group
- participation in Elder Abuse and Ageism Awareness/Communication National Strategy workshop
- member of the Statutory Reference Group for the review of the Mental Health Act
- contribution to national Public Guardians and Public Advocates' work to address various systemic issues at a National level, including lead-advocacy for a review of Disability Support Pension youth rate
- submission to the Joint Standing Committee on the National Disability Insurance Scheme Inquiry into Supported Independent Living
- submission to the Parliamentary Joint Standing Committee on the National Disability Insurance Scheme (NDIS) in relation to its inquiries on NDIS Planning
- appearance at the Joint Standing Committee hearing into NDIS Planning and Supported Independent Living inquiries
- ongoing membership of a National NDIS Guardianship working group
- contribution to the Department of Justice's submissions to various State and National law reform projects
- submission to the national Covid-19 Residential Care Visitor Code

Advocacy, promoting and protecting the rights and interests of people with a disability

The OPG's advocacy role occurs largely in the context of our guardianship work. The OPG in Tasmania does not have additional advocacy programs, either at systemic or individual levels, as do some of our interstate counterparts. The principles underlying advocacy inform our approach to guardianship and

decision-making, albeit that ultimately as guardians we may need to make decisions in the represented person's best interests, contrary to their wishes. 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. The NDIS is requiring an increased role for guardians to advocate on behalf of participants for appropriate funding for services, and for early and urgent reviews of plans. 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.

One of the specific functions set out in section 25 of the Act is for the Public Guardian to represent people subject to an application before the Board. The Public Guardian has an almost 100% attendance rate at Board hearings to which we are invited to attend. This is much higher than other states, where anecdotally, attendance at hearings amounts to 40-60%. The OPG's guardians advocate for the limitation of powers to the specific domains of need, and for the least possible time period. For existing orders, guardians will advocate for the revoking of a guardianship order if the criteria are no longer met and for a reduction in powers, where appropriate.

Investigating and making recommendations on the operation of the Act to the Minister

Meetings are held with the Minister on an "as needs" or issues basis, to update the Minister on the jurisdiction, raise concerns or alert the Minister to emerging trends. One formal report was made to the Minister under s 15(g) of the Act in this reporting period.

Providing information and education to the community and public

The OPG recorded approximately 160 formal enquiries from the public during office hours, largely in relation to matters pertaining to potential applications for guardianship or administration, enduring guardianships, enduring powers of attorney, and advance care directives or other end-of-life decision-making. Many enquiries are not consistently recorded - minor matters not requiring formal advice or guidance from a guardian, those not requiring any further action, and those attended to "on the run". This figure is likely to be significantly less than actual enquiries made and responded to. This figure also refers only to enquiries during business hours: after hours enquiries are discussed above in the After-Hours Emergency section.

Information booklets for the represented person and for family members, service providers and other interested parties have been published by the OPG and are available online or by contacting the office. The OPG has developed two new information sheets this year, one outlining substitute consent for medical and dental treatment aimed at health professionals, and another providing guidance to NDIS

supported and substitute decision-making, aimed at service providers. The OPG provides links to the Board's published Fact Sheets and handbooks for private guardians and administrators.

A review of our website has advanced slowly. The OPG has not had any dedicated resource to commit to this important task, and resourcing pressures on guardianship staff has meant progress to develop or re-write content has been slow. The OPG has long been troubled and somewhat discomfited that our website is outdated and lacking in terms of both content and readability, appropriate to our range of audiences. We are therefore pleased to expect a basic update, with essential elements, to be implemented by the end of 2020. We hope that further development and expansion can then be undertaken on a gradual basis, as resources allow.

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 15 formal education sessions – the same as for the last year - reaching approximately 460 people. This is a significant increase from last year (approximately 290 reached), and a good outcome given that face-to-face education and information sessions ceased for the last quarter of the financial year due to Covid-19 restrictions. We hope that the provision of a dedicated resource will enable the OPG to take a more proactive and strategic in the future, particularly in the south of the state (see comments above in relation to the Regional Profile).

Complaints

The Public Guardian receives very few formal complaints about processes, conduct or even our decisions, in spite of the fact that the nature of our guardianship works means we frequently make decisions that the represented person or a family member considers adverse to their interests. The infrequency of complaints received is testament to the professionalism of the guardianship staff, their efforts to consult and bring parties along with them, and to explain their reasons for decision in a meaningful manner. None-the-less, disputes and disagreement are inevitable and represented persons are always encouraged to use our complaints resolution processes. We see this as an important means of empowering our clients and building capacity.

In this reporting period the Public Guardian received six formal requests for an internal review of a guardian's decision (four related to the same represented person) and nine complaints about the process of the guardian's decision-making (again, with some repeat complaints). In addition, the OPG was subject to four enquiries/complaints (two from the same person in relation to the same matter) to a Member of Parliament which were referred to the Minister. In all cases no further action has been required following the OPG's response.

The Public Guardian's complaints procedure is advised in information booklets provided to the represented person and family members, and is advertised on our website.

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 or cooperation with the decision. Formal reasons for decision may be provided to family members, but only within the confidentiality requirements of s 86 of the Act.

Financial Summary

	2017/18 Actual	2018/19 Actual	2019/20 Actual
Salary related expenditure	629,251	771,501	885,330
Non salary expenditure (includes IT, materials, travel, office rental, worker's comp and other)	153,483	147,648	187,976
Total operating expenditure	782,734	919,149	1,073,306

Appendix 1 - A Day in the Life of an OPG Guardian...

8.30am

I start the day finalising an Investigation Report that is due to be submitted to the Guardianship and Administration Board (the Board). The investigation relates to Mrs. Booth, an elderly lady with dementia, who is suspected to be suffering financial abuse by her daughter, with whom she lives.

I had already met separately to interview Mrs Booth, her daughter, the manager of the home support agency (who reported her concerns) and have had several discussions with Mrs. Booth's banks.

My report outlines substantial evidence of financial abuse. My recommendations include the appointment of The Public Trustee as Mrs Booth's administrator, in order to protect her from further financial abuse, seek restitution of her lost money, and manage her financial affairs.

10.00am

It's time to head to the Board for a hearing. The hearing relates to an application for guardianship for Mr. Simons, a gentleman who is currently an inpatient at the Royal Hobart Hospital (RHH). Prior to admission, Mr. Simons was living alone in his own home and he was having repeated falls. He does not have family support and thus far has refused to accept formal assistance at home. It is his wish to return home upon discharge from hospital, but it seems he lacks the ability to weigh up the risks and make a reasonable decision

Mr. Simons attends the hearing. He still appears to be lacking insight into the level of care he may require to reduce his risk of falls and further injury, however after some discussion, he agrees to allow the RHH occupational therapist to assess his home environment. He also agrees for the social worker to look into a personal alarm and home supports that will assist him to live safely at home.

I submit that as Mr. Simons now appears willing to accept the advice of health professionals about his care needs, the least restrictive alternative at this point may be to allow him to continue to make his own decisions, with the support of the social and his GP. The application is dismissed.

11.15am

Back at the office, and armed with a coffee, I attend to numerous emails, including three from NDIS service providers asking me to sign service agreements on behalf of the participants. One of my colleagues grabs me in the corridor to discuss a particularly complex case about a young woman whose doctor wants her to have some sort of contraception. We discuss how extremely difficult it is to enforce a decision about contraception for someone who is adamant they don't want it. She heads off to meet with the client and her doctor, feeling more prepared for the difficult discussion ahead. I am

glad to have been of help. This kind of support and collaboration between the guardians is of enormous importance in problem-solving the many varied and complex issues we encounter.

12.15pm

I attend a case conference at a local residential aged care facility regarding a resident, Mrs. Clarke. The Public Guardian was appointed a few months ago to make decisions about health care and where Mrs. Clarke is to live. I have already accepted a permanent care vacancy at this facility on her behalf, and whilst she appears happy, she has recently begun experiencing behavioural and psychological symptoms of dementia, including aggressive outbursts towards other residents and staff.

I am asked to consent to some medication as an initial strategy to manage Mrs. Clarke's agitation and distress, however I decline consent at this point in time. Instead, Mrs. Clarke is referred for review by a geriatrician, to investigate if there is a medical cause for her distress, and to Dementia Support Australia, an organisation which focuses on non-pharmacological strategies (such as orientation tools, music and other activities) to improve quality of life of people with dementia and reduce agitation.

2.00pm

I head to the NDIS for a plan review meeting for Brian, a young man who has an intellectual disability. His struggles to manage his diabetes and he has been experiencing side-effects, such as a pressure sore that will not heal. Brian has decided not to attend the meeting. On his behalf, I advocate for the urgent addition of funding for essential support each morning to monitor his blood sugar levels and administer his Insulin. Once this funding is approved, Brian's support coordinator will work with him and I to select an appropriate community support service that will be best placed to provide this care.

4.00pm

Back at the office I take a call from psychiatrist, Dr Martin, in relation to Mr. Barnes. Mr. Barnes is a gentleman who was admitted for assessment and treatment of psychosis, on a background of long-term schizophrenia. Mr. Barnes has gradually deteriorated medically, due to a long term illness. We discuss Mr. Barnes' trajectory and symptoms and agree that he appears to be dying.

I call Mr. Barnes' family members -all are in agreement with the plan to provide Mr. Barnes with comfort care measures that will alleviate any distressing symptoms at the end of his life. His family plan to visit this evening. I call Dr Martin to confirm that I am in agreement with his proposed medical goals of care, sign and return the Medical Consent Form before heading home for the day.

10.00pm

As the on-call guardian for the week, I receive a call from the RHH regarding a Mr. Geeves. Mr Geeves has an intellectual disability and has sustained a fractured jaw after falling out of bed. He is refusing surgery for repair of the fracture and is attempting to leave the hospital against medical advice. Mr. Geeves does not have a person responsible who can make medical treatment decisions on his behalf.

I call the after-hours Board member and discuss the potential need for an Emergency Guardianship Order. The Board member agrees that an order is urgently required, and proceeds to make an order. I forward the order to the hospital and re-contact the RHH doctor to provide consent for Mr. Geeves' continued admission, as well as for surgical repair of his fracture.

Appendix 2 – People's stories

A long road finding and securing supports for an elderly couple...

Beatrice and her husband, Barry, had lived in the same home in a small town for more than 60 years. Beatrice developed some short term memory problems, but they were both proud people and neither dementia nor support were words they were willing to embrace. Beatrice would accept her daughter's help to go shopping and to do errands, but she and Barry were unwilling to accept community services. Her daughter lived a distance away and it became increasingly difficult for her to keep travelling. Beatrice and Barry (both in their 80's) decided to move to be nearer their daughter and to avoid people 'interfering' in their lives – a sensible decision, it seemed, at that time.

Beatrice has serious and complex health issues as well as dementia. After nearly 12 months in their new town, her medical care needs increased and her daughter attempted to organise it. However Barry became concerned that she was 'meddling' and he felt their privacy was being threatened. He put a stop to their daughter acting on Beatrice's behalf, and communication lapsed. A break-down in medication management saw Beatrice admitted to hospital, seriously ill. Barry was so anxious he was also admitted to hospital. Having ceased communicating with their daughter, Barry called on their son to assist them. Their son advised them to return to their home town – into nursing home care – and because they were both unwell and vulnerable, they did.

After a month or so Barry moved out and bought another home close to the GP, pharmacy and shops. A few months later he removed Beatrice out of the nursing home and into his new home. An application for guardianship was made at that time because Beatrice's family were concerned she was unsafe to remain at home with Barry. The Public Guardian was appointed to make decisions about where Beatrice should live.

Beatrice's clear wishes were to remain living with Barry. In spite of the several moves seeking to secure appropriate care and support, they were back (almost) where they had started. However, Beatrice now had immediate and good access to medical care; she was doing well; and she was happy to be back living with her husband. The delegated guardian decided that Beatrice should remain at home with Barry.

Beatrice's husband died suddenly from his own ill health. Their daughter, who had originally attempted to care for Beatrice, immediately moved to her mother's town and recommenced caring for her. She organises regular respite care for Beatrice; takes her to the GP; organises allied health assessments when needed; and ensures her medication is taken. Beatrice continues to enjoy seeing people in the shops and cafes in town who know her so well. The guardian agrees with Beatrice that living in her own home with the necessary supports in place is the best place for her.

Consent for medical treatment: weighing up best interests, risks and a person's wishes...

Sheree is in her mid-forties. She lives with cerebral palsy, intellectual disability and a long term diagnosis of depression. Sheree is fully dependent on others for all her care and requires a wheelchair for mobility. She is non-verbal, but able to express her wishes by blinking and through some gestures.

A guardian was appointed under an Emergency Guardianship Order after Sheree had aspirated (choked) and was receiving critical care due to aspiration pneumonia. The aspiration had occurred as a result of decreased swallowing capacity (dysphagia) due to an increased need for anti-spasmodic medication.

With support, Sheree was able to express clearly that she did not want the permanent interventions of either a naso-gastric tube, or a PEG (Percutaneous Endoscopic Gastronomy) insertion. Also, during previous hospital admissions Sheree had been able to indicate that she did not want invasive or life-prolonging treatment in the event of a critical health episode. Her wishes remained the same during this hospital admission. Her treating doctor recorded this on her Goals of Care form.

Based on Sheree's wishes, the guardian declined consent for either naso-gastric tube or PEG feeding. Instead, the guardian supported the remaining option of "risk feeding"- the introduction of food and liquid with a thickened texture. Whilst this comes with an on-going chance of further aspiration, the guardian weighed up that risk with Sheree's wishes and determined this to be the most appropriate option in the circumstances.

The Palliative Care team worked with Sheree's residential and day support workers and provided written protocols to manage risk feeding. Sheree returned to her home and progressed well with the modification to her diet. With no further decisions to be made, the emergency guardianship order ended after 28 days.

Transitioning from State care, with the help of a guardian...

Emily had struggled to form any strong attachment in her early life, had been in and out of state care, exposed to traumatic events, diagnosed with an Intellectual Disability and presented with a range of challenging behaviours. Uncertainty around Emily's accommodation and supports upon her exit from state care upon turning 18, as well as her reduced capacity to make medical decisions, led to an application for guardianship. There was a real prospect of Emily becoming homeless or, more likely, detained against her wishes in hospital.

The Public Guardian was appointed for Emily in 2018 when she was residing in a private rental property with one-on-one support, 24 hours per day, under state 'special care package' funding. Shortly after turning 18, special care package funding ceased and Emily was unable to afford her rent. After being appointed, the delegated guardian advocated on Emily's behalf and was successful in securing a Housing Tasmania property in southern Tasmania.

To complicate matters, Emily's special care package provider declined to continue providing support when transitioning from state funding to becoming an NDIS participant. Further intensive advocacy

resulted in a Supported Independent Living (SIL) provider being engaged by Emily's NDIS support coordinator. A planned transition process eventually occurred, with regular care team meetings, guided by allied health input from an NDIS registered psychologist and occupational therapist.

Over the last year Emily has settled remarkably well into her new home, and there have been notable improvements in her behaviours and presentation. Support workers describe Emily as warm, friendly and funny. With targeted support from Emily's SIL provider and continued allied health input, there have been no incidents requiring PRN medication for agitation in the last six months. Making such significant progress, Emily will be transitioning to a new community access provider to increase her social contact, and medication will be further reviewed for reduction. Now she is also having increased contact with both her natural and foster families, and is working towards securing casual employment.

Much improved and less restrictive options to meet specific support needs, courtesy of the NDIS...

Ian is a 47 year old man with a diagnosis of Huntington's disease. The Public Guardian was appointed to make decisions about where Ian should live and the support services he should receive. Due to the impact of Huntington's, Ian had experienced a significant deterioration in his cognition and ability to care for himself and was unable to recognise his increasing need for support. Ian also developed behaviours of concern that were placing himself and others at risk. Ian needed 24 hour support to meet his needs and it was not possible to facilitate this in his home environment due to limited services and community resources. Due to the level of risk and inability to support Ian at home, he was admitted to a specialist Tasmanian Health Services facility for management of his condition.

After a prolonged admission to the health facility (with his guardian's consent) and receiving appropriate care and treatment, Ian's behavioural and cognitive symptoms of Huntington's began to stabilise and were easier for him to manage. Ian's treating team felt that they could start working with him on options for discharge accommodation. Ian still needed 24 hour support to meet his care needs.

When making decisions, guardians must consider the views and wishes of the person as well as the least restrictive option available to them. This can be very challenging where a person could potentially be supported to live in the community but available services are insufficient or unsuitable to meet the person's needs. The rollout of the NDIS has enabled many adults with lifelong and permanent disabilities under 65 to access support that meets their individual needs, with greater opportunities to access less restrictive support and accommodation options. Prior to the NDIS, adults with advanced Huntington's who require high levels of support have often needed to access aged care services or services that are geared towards support for adults with intellectual disability (such as group homes) due to a lack of more suitable alternatives.

This was initially the case for Ian, and he expressed clearly to his guardian that living in a residential aged care facility or sharing with adults with different communication or disability related needs would have made him feel out of place. Feeling included and being part of his community were very important to him - Ian's wish was to live in a unit in the community and to have a 'normal' life.

With the full roll out of the NDIS, Ian became eligible for and was accepted into the scheme. The NDIS will fund reasonable and necessary supports to meet a person's disability-related support needs, which can include supported accommodation where appropriate. As Ian had difficulty understanding and making decisions about his support services due to the impact of his disability, his guardian advocated on his behalf to ensure he received the necessary supports in his NDIS plan and also helped him to choose a support coordinator once his NDIS plan was approved. Ian's support coordinator is now assisting to explore options for shared supported accommodation in the community with a service provider willing to develop a model of support to assist someone with Huntington's. There are now realistic prospects for Ian to discharge from the current hospital-like facility in which he is living, to find a less restrictive (but still well-supported) accommodation option than residential aged care – and, importantly, to maintain his dignity and participation in his community.

Appendix 3 - Relevant sections of the Act

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 in respect of whom an application is made under this Act are promoted; and
- (c) the wishes of a person with a disability or in respect of whom an application is made under this Act are, if possible, carried into effect.

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; 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.

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 Board;
- (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 Board;
- (i) to disseminate information concerning:–
 - (i) the functions of the Public Guardian; and
 - (ii) the functions of the Board; and
 - (iii) 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 as to the operation of this Act generally and on appropriate alternatives to taking action under this Act;
- (k) any other function assigned to the Public Guardian by any other Act or law.

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) If requested to do so by the Board, the Public Guardian must investigate and report to the Board in relation to a matter the subject to a matter the subject of an inquiry before the Board.