



Annual Report

2021 – 2022

Office of the Public Guardian
GPO Box 825
HOBART TAS 7001



30 September 2022

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 2022

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 2021 to 30 June 2022. 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 "J Harbottle".

Jeremy Harbottle
Public Guardian

Contents

Introduction	5
The role of the Public Guardian	7
Our Values	8
Our guardianship work	9
Performance Data.....	11
When we are appointed	11
Powers Granted under Orders.....	12
Emergency appointments.....	13
After-Hours Emergency Work	13
Who we are appointed for	15
Age and Gender Demographics.....	15
Diagnostic Profile	16
Regional Profile	17
Guardianship Activity.....	18
Active Cases	18
Cases Closed.....	18
Decisions made by OPG.....	19
Guardianship and the NDIS	20
Advocacy and Promotion.....	21
Providing information and education to the community and public.....	21
Complaints	22
FTE / Financial Summary	23

Introduction

I am pleased to present the 2021-22 annual report for the Office of the Public Guardian (OPG).

The role of a guardian is a variable one and one that is often misunderstood amongst members of the community. Recent media coverage has focused on the role of a guardian as a substitute decision maker, to the exclusion of the key elements of the role, such as advocacy, that can support people to continue to live their best lives in their own home and participating in the community to the fullest extent possible.

One example of this was recently published by the Tasmanian Civil and Administrative Tribunal (TASCAT)¹. This de-identified case study provides a good example of the role a guardian can play in helping a represented person to continue to live their lives at home, consistent with their wishes. In this case, the guardian reported to the Tribunal as part of a review of the order that was in place:

'I met with KHB's niece/administrator, LS, at KHB's home the morning after the hearing. LS and I discussed that it was KHB's clear wish to remain in his home and he should be given an opportunity to do so - even if it meant that his well-being and safety were compromised. LS was successful in finding a [location in northern Tasmania] service, [name of domestic service] Services, who were able to complete a schedule of works which was essential for KHB and sense of well-being and it restored KHB's home to a level of cleanliness and safety which enabled services to visit KHB. This was a major step forward in allowing KHB to remain at home with support. LS was also successful in securing a care service, [name of the care service] to provide a support worker each Wednesday to visit KHB for domestic cleaning and social support.'

In this example, the guardian exercised a role as both an advocate and a decision maker for the represented person. Advocacy from the guardian allowed for the represented person's property to be improved from a state where it was not fit for habitation, to a state enabling the represented person to move back in.

This involved the guardian advocating, consistent with the represented person's wish, for him to return home from aged care and was able to gain the support of the private administrator to have improvements and cleaning to his property completed and have ongoing bi-weekly support services put in place. Over the duration of the Order, the guardian was also been called upon regularly to advocate for and adjudicate disputes between the administrator and family members and between the administrator and support services workers, revisiting and confirming the guardian's decision that the represented person remain living at home and receive support services. This is a great outcome for the represented person and a testament to the role a guardian can play to give effect to a person's wishes.

Also during this reporting period Mr Damien Bugg OAM QC provided the government with the final report of his independent review into the administrative and operational practices of the Public Trustee. The independent review, which commenced in June 2021, was commissioned by government in response to community concerns raised and to ensure that appropriate responses and improvements are made to service delivery. While the review was focused on the Public Trustee, the recommendations, particularly those related to the progressing of legislative reform related to supported decision making, have the potential to

¹ KHB (Guardianship) [2022] TASCAT 62 (17 June 2022)



greatly improve the guardianship system in Tasmania more broadly. I was pleased to see that the government supported, or supported in principle, all of the recommendations and I look forward to the implementation of the recommended systemic changes.

This year, the OPG also completed a significant update to its website, including additional and updated information related to guardianship, enduring guardianship and the role of the OPG. Many staff within the OPG contributed ideas and material, and one senior guardian was required to work offline for a short period to review and update the relevant content. Updating the design and content of the OPG website not only increases accessibility, it also represents an opportunity to support members of the community to readily access easy to read information or advice regarding topics such as enduring guardianship and pathways for lodging a complaint or seeking a review of a guardianship decision.

Finally, I want to thank the staff of the OPG for their ongoing commitment to the protection of the rights, interests, safety and well-being of some of the Tasmanian community's most vulnerable people.



Jeremy Harbottle
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 Tasmanian Civil and Administrative Tribunal (the Tribunal) and to represent people before the Tribunal
- 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 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; and (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: the OPG does not have dedicated staff for systemic advocacy, policy or education.

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.

Our values

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.

Respect, 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 and Accountability– 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.

Our guardianship work

The Public Guardian is appointed by the Guardianship stream of the Tasmanian Civil and Administrative Tribunal (the Tribunal) as effectively a ‘guardian of last resort’. Whenever possible, the Tribunal 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 Tribunal has the option of appointing the Public Guardian.

Where appointed, the Public Guardian is able 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”.

The guardianship order will specify the specific powers given to the guardian and the legislation requires the Tribunal to adopt the least restrictive option, for both appointment and granting of powers.

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.

Guardians must exercise their duties in accordance with the principles set out in Section 6 of the Act. 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.

Summary of guardianship activity 2021-22

Total Active OPG
Appointments
(30 June 2021)

305

Total Hearings
Attended

416

Emergency
Appointments

63

Public Enquiries

202

Tasmanians that
received OPG
guardianship
services in 2021/22

523

New
OPG Appointments

99

Emergency Orders
extended (≤ 28
days)

13

Formal
Education
Sessions

15*

(*220 participants)

OPG Appointments
Closed

240

Continued OPG
Appointments

86

Investigations

13

Performance data

When we are appointed

The OPG was requested to attend 416 hearings across the state, in Hobart, Launceston, Devonport and Burnie, approximately 2 per cent more than 2020/2021.

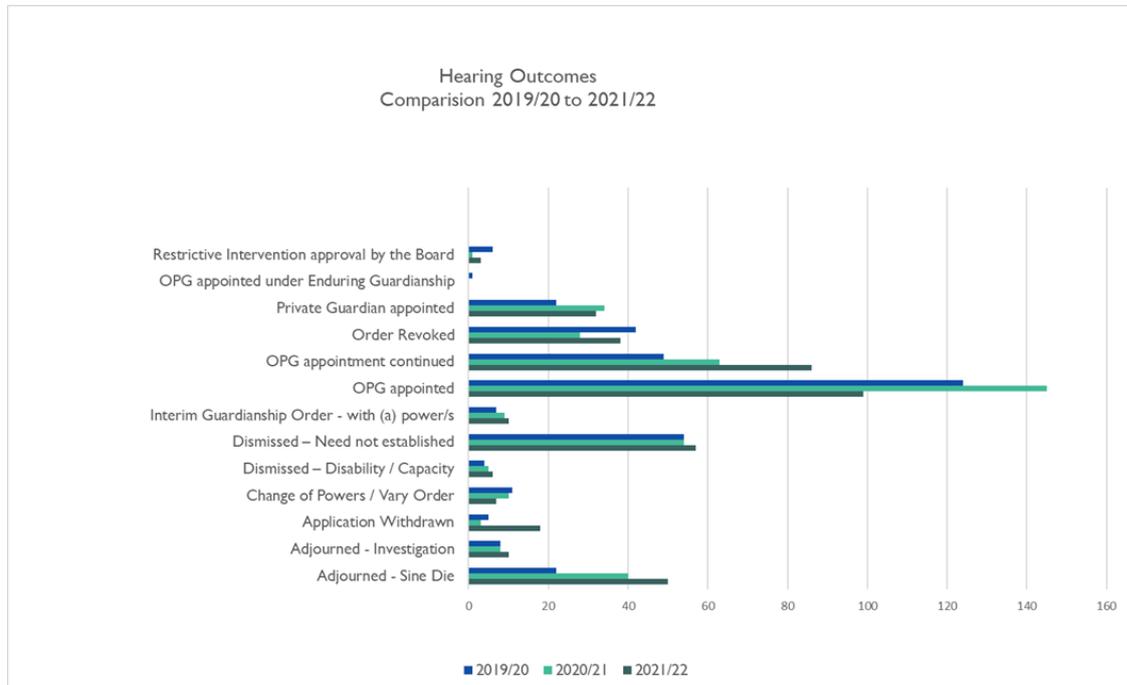


Figure 1: Hearings Attended by OPG – 2019/20 to 2021/22

The number of new appointments of the OPG have declined by 32 per cent compared to 2020/21. Conversely, the number of matters where the appointment of the OPG has been continued by the Tribunal has increased by 37 per cent compared to 2020/21. The former decrease could be reflective of a number of factors, including submissions from the OPG in hearings regarding the principle of the public guardian being a guardian of last resort. There has been an increase in matters dismissed due to need and/or disability or capacity criteria not being satisfied. The latter increase is possibly reflective of a cohort of represented persons for whom there is no other option (particularly with regard to ongoing decision making for lifestyle related matters such as the NDIS).

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)).

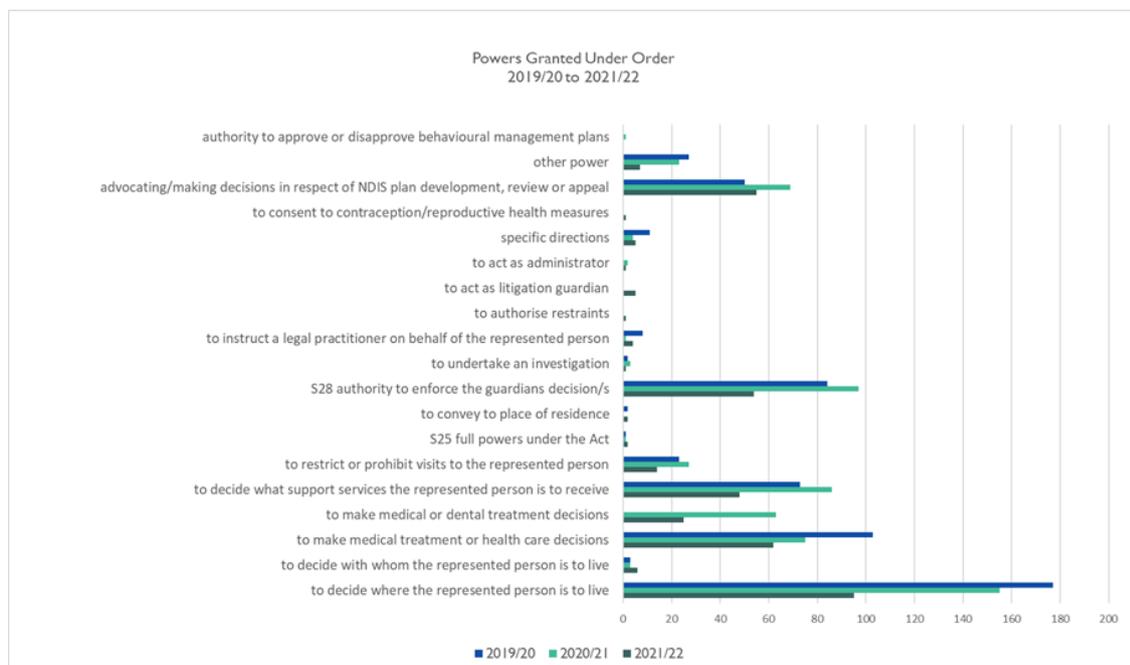


Figure 2: Powers granted under orders – 2019/20 to 2021/22²

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.

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.

² 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 is welcomed by the OPG.

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.

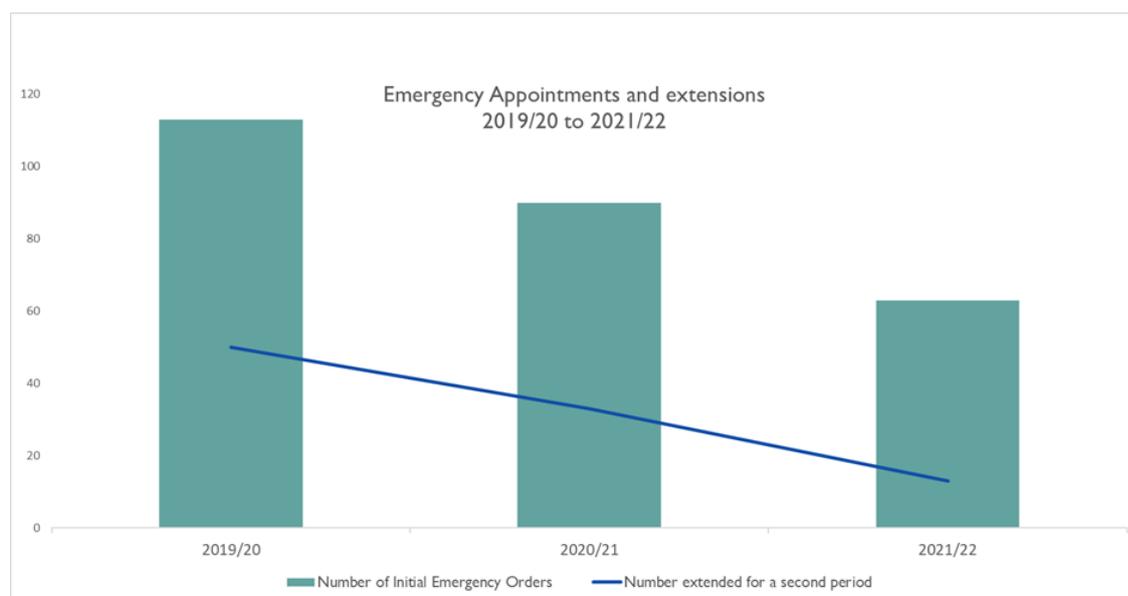


Figure 3: Emergency Appointments and extensions 2019/20 to 2021/22

Emergency guardianship orders again decreased during this reporting period – 63 this year compared to 90 in 2020/21. Pleasingly, the percentage of emergency orders requiring extension for a second period of 28 days (21 per cent) has also fallen in comparison to 37 percent in 2020/21.

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 Tribunal, and to undertake emergency substitute 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 2021/2022, 157 enquiries/requests were forwarded to the on-call guardian for immediate urgent action after-hours. This compares to 141 in the previous year – an increase of approximately 11%.

The majority – approximately 74% - 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 person

The number of new emergency orders made after-hours was 12 – a decrease on the 18 recorded last year. 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).

Case study – risk and supporting the wishes of a represented person

MMG (mid 70's) was an inpatient in a Tasmanian Hospital, taken there by Tasmanian Ambulance Services, after falling at home and being found by a friend.

MMG was diagnosed with dementia in hospital, and further deemed by the multidisciplinary team unable to make decisions about accommodation and care needs. Following a hearing, TASCAT appointed the Public Guardian as guardian for MMG to make a decision about where they lived.

The recommendation provided to the guardian was that MMG required 24/7 care in a residential aged care facility. Consultation with family members showed that all of MMG's children agreed they needed 24/7 care. While taking into consideration the professional and familial assessments and views, the role of the guardian focused on the wishes of MMG to return home.

The guardian had many discussions with MMG's children, acknowledging that they were concerned about the safety of their parent. Over a period of time all of MMG's children became more supportive of MMG returning home. Through many discussions they were able to understand that while MMG living at home with risk made them feel uncomfortable, the alternative was MMG living in residential care against their will.

This example illustrates that a guardian can, at times, spend a considerable amount of time convincing other parties that the wishes of the represented person should be considered, even if the choices that the represented person is making puts them at risk or significant risk and makes other parties feel uncomfortable.

Who we are appointed for

Age and gender demographics

The age profile of the OPG case-load has changed compared to last year, with an increase in the 36 – 60 age bracket and a decrease compared to the previous year in the 61 – 80 age bracket.

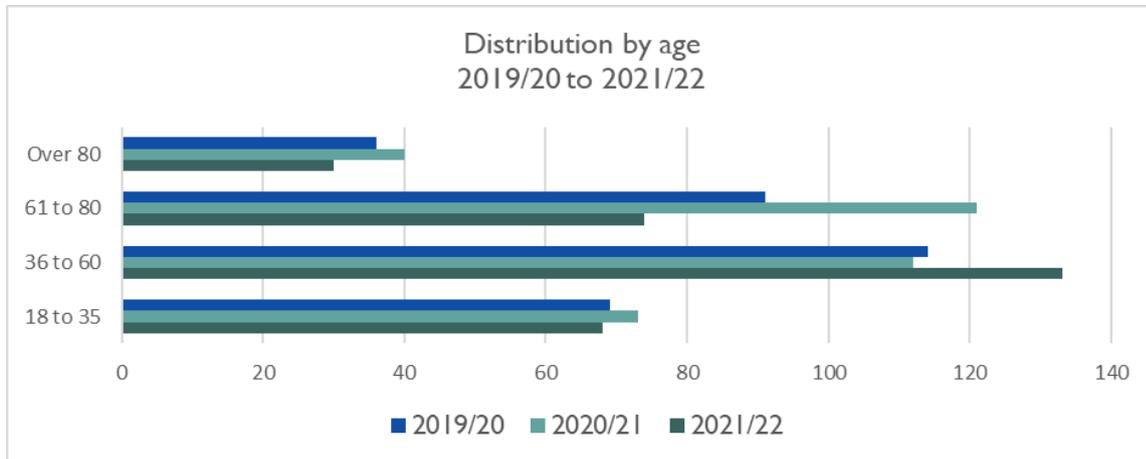


Figure 4: Represented person: Distribution by age – 2019/20 to 2021/22

As at 30 June 2022 the proportion of men on the OPG's total case-load had decreased slightly to 52%, from 53% as at 30 June 2021.



Figure 5: Represented person by gender – 2019/20 to 2021/22

Diagnostic profile

This year, 51% of our clients had an intellectual disability – an increase from 45% in 2020/21. 37% had a psychiatric disability (up from 34% in 2020/21), and 28% had dementia, down from 34% the previous year).

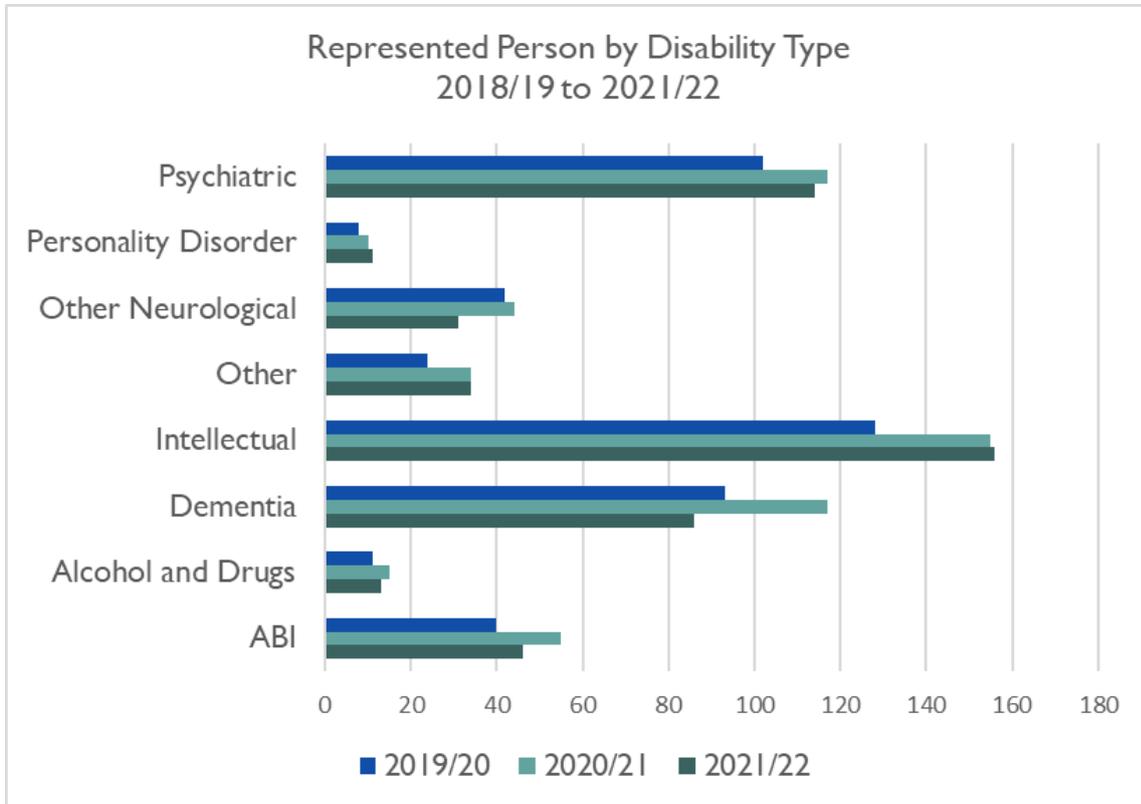


Figure 6: Represented person by disability type – 2019/20 to 2021/22

A large portion of our clients – approximately 46% - 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

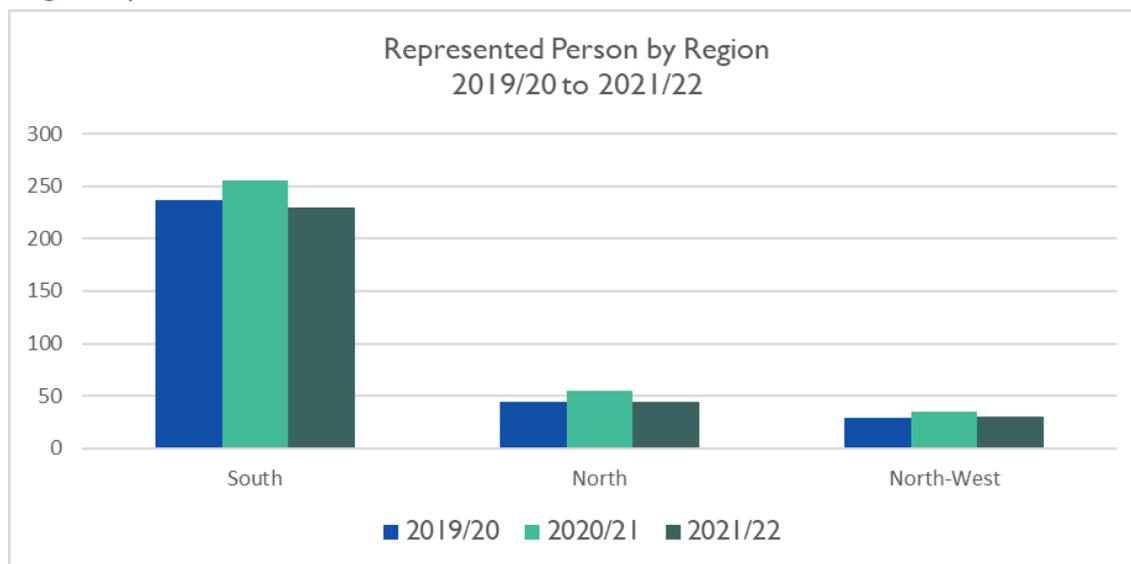


Figure 7: Represented person by region – 2019/20 to 2021/22

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 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.

The OPG is working to develop further reporting options, including the throughput of matters (length of time between appointment and the cessation of an order) to assess whether this is also a factor in the regional differences.

Guardianship activity

Active cases

On 30 June 2022 the OPG had 305 active cases, compared to 346 as at June 2021. This decrease represents a 12 per cent reduction, following a number years of steady increases. The reason for this reduction is unclear, but may be attributable to a 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.

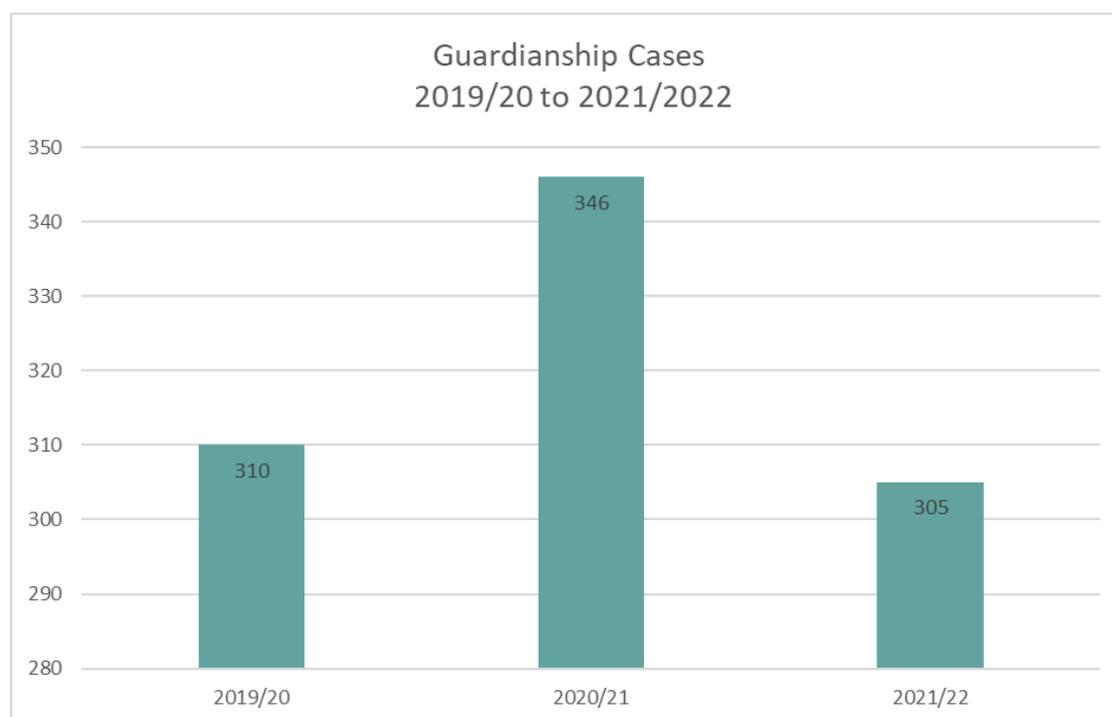


Figure 8: Active guardianship cases – 2019/20 to 2021-22

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. 240 cases were closed during the course of the year, slightly more than the 212 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 Tribunal revokes the order upon review, or when the Tribunal appoints a private guardian in place of the Public Guardian.

Decisions made by OPG

The number of decisions relating to NDIS service provision continues to form the majority of decisions made by the OPG. 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.

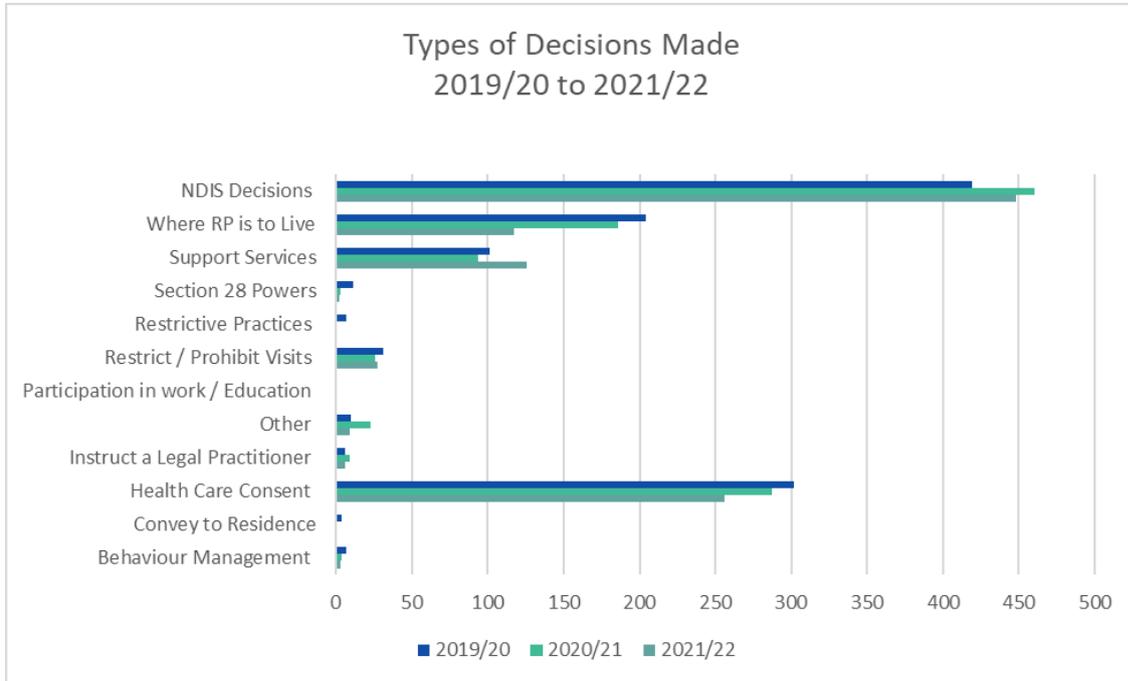


Figure 9: Decisions made by type – 2019-20 to 2021-22

Guardianship and the NDIS

The number of NDIS participants for whom the OPG acts as guardian remains just over half of the number of active cases (59 per cent).

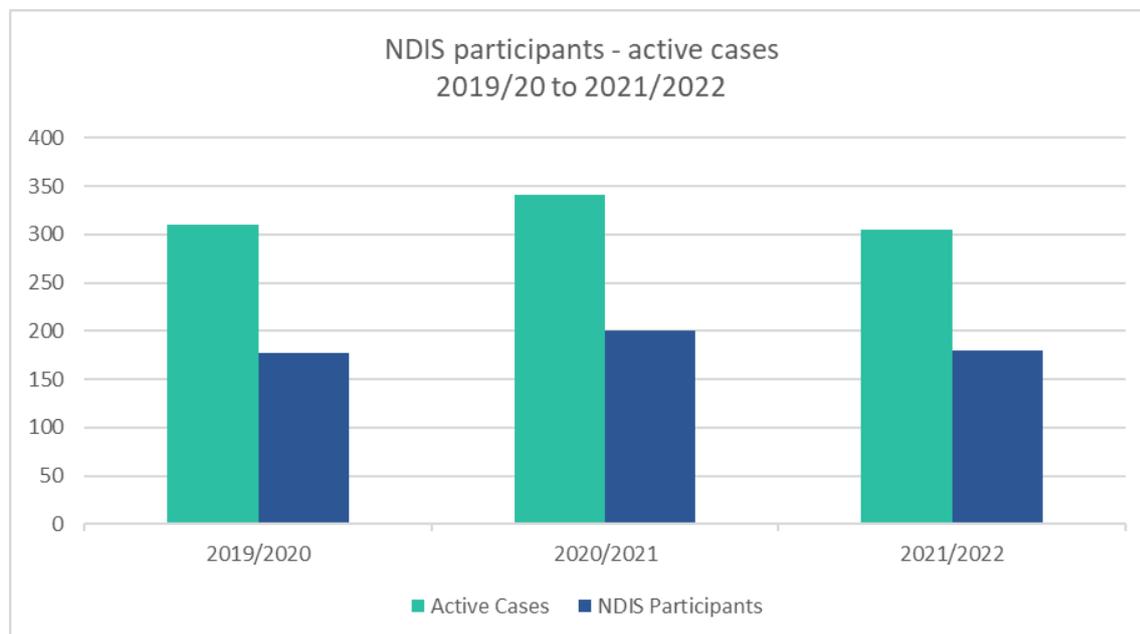


Figure 10: NDIS participants compared to active cases - 2019-20 to 2021-22

In these cases the majority of the role of the guardian is effectively one of advocacy - often supporting the represented person to make decisions themselves in terms of services under their NDIS plan. The OPG is of the view that the need for guardianship appointments in these instances requires further consideration. The focus of the scheme should be on providing supports to enable participants to be supported to make their own decisions in a way that reduces the need for substitute appointments for NDIS purposes.

Advocacy and Promotion

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.

In 2021/22 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)
- contribution to national Public Guardians and Public Advocates' work to address various systemic issues at a National level.
- Making a submission and engagement with the reviewers as part of the independent review of the Public Trustee
- Consultation as part of the development of training resources to support the implementation of voluntary assisted dying legislation in Tasmania.

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 of 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.

Providing information and education to the community and public

The OPG recorded approximately 202 formal enquiries from the public during office hours, largely in relation to matters pertaining to potential applications for guardianship or administration, enduring guardianship, enduring powers of attorney, and advance care directives or other end-of-life decision-making³. 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, the OPG website has also been updated this year, providing improved access to a broader range of information related to guardianship and decision making, as well as information related to the complaint process for the office. This content is expected to grow over time.

³ 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.

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, reaching approximately 220 people.

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 disagreements 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, building capacity and ensuring OPG practices and processes are transparent and accountable.

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 and raising feedback directly with their guardian to ensure the best possible outcomes.

In this reporting period the Public Guardian received ten complaints about the actions of a delegated guardian, including the guardian's decision-making (again, with some repeat complaints). In addition, the OPG was subject to six enquiries/complaints to the Attorney-General and/or to a Member of Parliament.

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

	2019/20 Actual	2020/21 Actual	2021/22 Actual
Salary related expenditure	885,330	1,037,214	1,151,381
Non salary expenditure (includes IT, materials, travel, office rental, worker's comp and other)	187,976	236,478	249,755
Total operating expenditure	1,073,306	1,273,692	1,401,136