

THE PUBLIC GUARDIAN
Annual Report 2017-2018



Office of the Public Guardian
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September 2018

The Hon. Elise Archer
Attorney-General, Minister for Justice

Annual Report of the Office of the Public Guardian for the year ended 30 June 2018

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 2016 to 30 June 2017. This report records the operations and performance of the Office of the Public Guardian including statistical data on our direct guardianship work, as well as a summary of activities in relation to our other functions.

Yours sincerely,

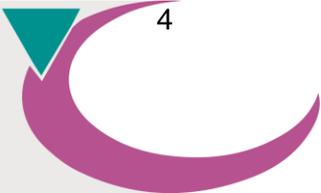
A handwritten signature in black ink, appearing to read "K Barker".

Kim Barker

Public Guardian

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Overview

Message from the Public Guardian

The Office of the Public Guardian has again had an extremely busy and demanding year, with huge pressures and challenges in managing our principle function: acting as the guardian of Tasmanians with disabilities who are unable to make important life decisions for themselves. Our caseload increased by 21% over the course of the 2017/2018 financial year. This came on top of a 27% increase in the previous year, giving in excess of an unprecedented 50% increase

over the last two years. On 30 June 2016 there were 169 Tasmanians with disabilities under the guardianship of the Public Guardian; at 30 June 2018 that figure was 259.

Human resource increases have not kept up, meaning that the case-loads of guardianship staff have increased substantially, to the point they are not sustainable. I am grateful to the Department of Justice for committing to recruit another full-time guardian - this will take the pressure off in the short term, however more thorough consideration of the OPG's structure and resourcing needs will need to be made to ensure longer term viability.

My office has had the benefit of "OPGuard", our new case and data management system, since the beginning of the 2017/2018 financial year. It has brought enormous gains in terms of efficiencies and risk management. As to be expected with any new technology, the system has some glitches and issues. I appreciate the Department providing assistance to remedy some of these. I am pleased to be able to present more comprehensive information in this annual report, which better illustrates the important work we do.

The OPG has commenced a long-overdue review of our website. This is a substantial piece of work within our limited resources, but we are determined to give it priority. We do not underestimate the importance of providing clear information, accessible to all members of our community – not least people with cognitive impairments and limited literacy skills. We hope the renewed website will be launched within the first half of this year.

The NDIS roll-out in Tasmania has continued on an age basis, with adults from age 18 to 35 included in the scheme as at 30 June 2018. The NDIS is now resulting in significant increases in the appointment of the Public Guardian specifically for the purpose of acting on behalf of the participant in relation to the NDIS. We have also seen the guardianship orders of significant numbers of our existing clients extended, specifically to include powers to deal with the NDIS. The NDIS is, then, resulting in a significant increase to both the number of clients we have, and to the work-load associated with those clients.

The NDIS is one of the most important social reforms in Australia's history, shifting from a welfare approach to the provision of services, to one that empowers people with disabilities, giving choice and control about the services they want to meet their needs and fulfil their goals and aspirations. This model has some particular challenges for people with disabilities which affect their capacity to express their wishes and make reasonable decisions. The OPG

continues to work collaboratively with the NDIA and service providers to develop effective protocols and processes; to clarify, negotiate and manage expectations about the respective roles of key players in the sector; to provide education about the proper role of guardians and other substitute decision-makers; and, importantly, to encourage supported decision-making and other alternatives to the formal provisions available under our Act. We look forward to Tasmania transitioning to the NDIS Quality and Safeguards Commission in July 2019 and to contributing to work towards that transition in the coming year.

The OPG was pleased to contribute to the important review of the *Guardianship and Administration Act 1995*, commenced last year by the Tasmanian Law Reform Institute. We commend the TLRI's work in preparing a comprehensive "Issues Paper". The terms of reference were broad and the Issues Paper considered and raised options in relation to: contemporary human rights approaches and guiding principles; how decision-making capacity is assessed and dealt with; the roles, duties and powers of guardians, administrators and the person responsible; monitoring and safeguarding mechanisms; the roles and functions of the Guardianship and Administration Board and the Public Guardian; the framework for substitute medical consent; formal and informal supported decision-making; advance care directives; and provisions for the appointment of enduring guardians. A copy of the OPG's submission to the review is available to the public on request.

The OPG eagerly awaits the TLRI's final report in due course. We look forward to working with Government and other key parties to consider and review the TLRI's recommendations and to implement any reforms decided on by Government.

Elder abuse prevention is firmly on the agendas of Commonwealth and state governments, with increasing community awareness of this devastating social and public health problem across the country. Tasmania's rapidly aging population elevates this to a critical problem requiring urgent attention to better understand prevalence and risk factors, to develop strategies for the prevention of abuse, and to establish clear and effective responses to elder abuse when it does occur. The OPG will continue to contribute to policy reform and awareness raising, as well as encouraging the use of enduring powers of attorney and enduring guardianship appointments.

The guardians in my office serve the Tasmanian community and some of its most vulnerable and disadvantaged member tirelessly and admirably. The work they undertake in protecting and safeguarding the rights and interests of our clients is complex and demanding, and they approach the challenges with intelligence and compassion, always mindful of the dignity of their clients. The guardians in my office are fierce advocates for the people with whom we work. They manage the sometimes conflicting tasks of protecting people from abuse, exploitation and other risks, and encouraging independence and participation in community life, with professionalism and kindness. I am indebted to my small and committed team.

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.

Acting as guardian

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: our counterparts in other states are all able to devote at least some resources specifically to systemic advocacy and broader policy work.

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.

Guardians are appointed by 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 in areas 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 when The Public Trustee has a conflict of interest – this has not occurred at all during the current reporting 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 are bound to 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 ensuring as far as possible that the person's wishes are respected.

The OPG guardians will make decisions in consultation with the represented person, family members and key service providers. The OPG guardians' approach is broadly consistent with the principles of 'supported decision-making'. Decision-making takes place along a continuum, with completely autonomous decision-making at one end and substitute decision-making at the other end. In the middle, are various forms of supported decision-making. For most represented persons, the capacity to make decisions is not black and white. A person may have capacity for 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 support and assist the represented person to make their own decisions wherever possible, and to build and develop the skills and confidence for independent decision making.

A number of case scenarios are included in this report. We hope they will help to illustrate the nature of our guardianship work.

Our Guardianship Work in 2017 – 2018

Our clients

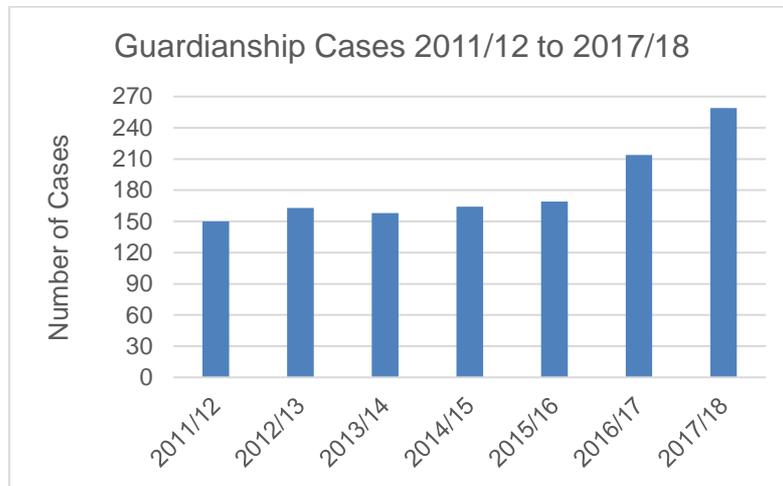
As noted in the “overview”, the OPG again had a very large increase in the number of people under guardianship in this financial year.

- Our caseload of guardianship clients was 20% higher at the end of the 2017/2018 financial year compared to the year before.
- In 2017/2018 the OPG dealt with a total of over 500 individual cases compared with approximately 380 during the 2016/17 reporting period, representing a 33% increase in the number of individuals under a guardianship order or investigation in the course of the year.
- The Public Guardian was appointed under 168¹ new ongoing guardianship orders, compared to 135 last year, an increase of 24%.
- The number of emergency orders for which the Public Guardian was appointed decreased slightly this year (from 174 last year, down to 162¹ this year), but the number extended for a second period of 28 days increased slightly (56% last year; 64% this year).
- The Public Guardian’s appointment was continued following a review by the Board on 59¹ occasions, compared to 35 (estimated) in the previous year.
- The Public Guardian applied for advice and directions by the Board, under section 31 of the Act, on 31 occasions. Commonly, the advice and direction sought was in relation to the scope of powers, with the Board extending the powers if necessary.
- The OPG closed a total of 275 cases in the course of the year; of these, 35 were re-opened.

¹ Please note, the absolute accuracy of these figures cannot be guaranteed due to some data extraction issues in our case and data management system, however any error would be minor and immaterial.

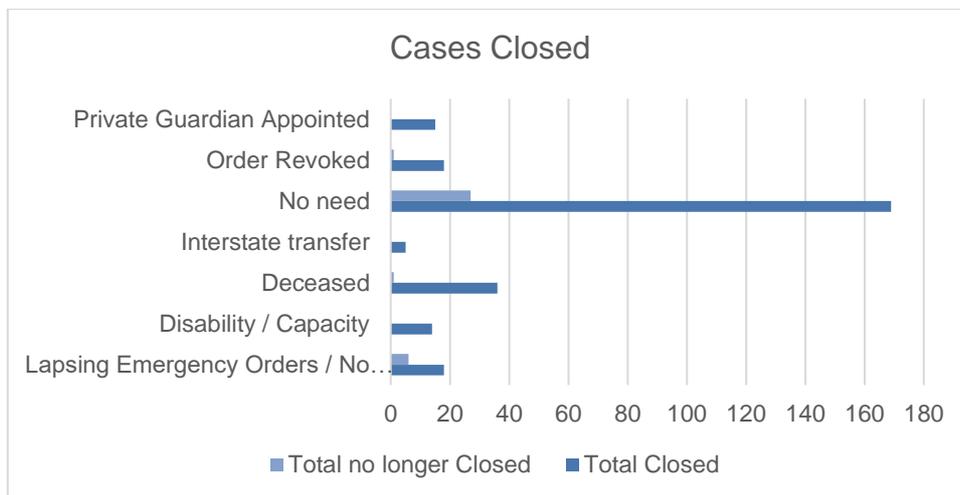
Active Cases

On 30 June 2018, the OPG had 259 active cases, a 21% increase from last financial year.



Cases closed

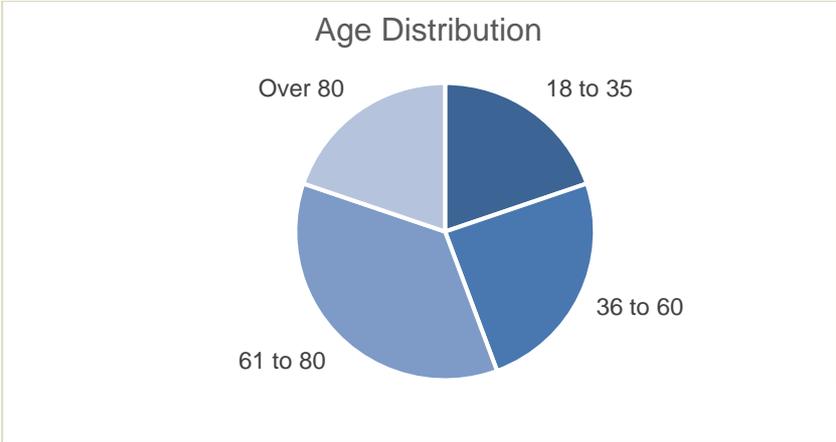
275 cases were closed during the course of the year. By far the most common reason for closure was that there was no longer a need for a guardian. Cases close when they lapse on expiry of the order, when the Board revokes the order, or when the Board appoints a private guardian in place of the Public Guardian. 35 cases that had been closed were re-opened upon the reappointment of the Public Guardian.



Age and gender demographics

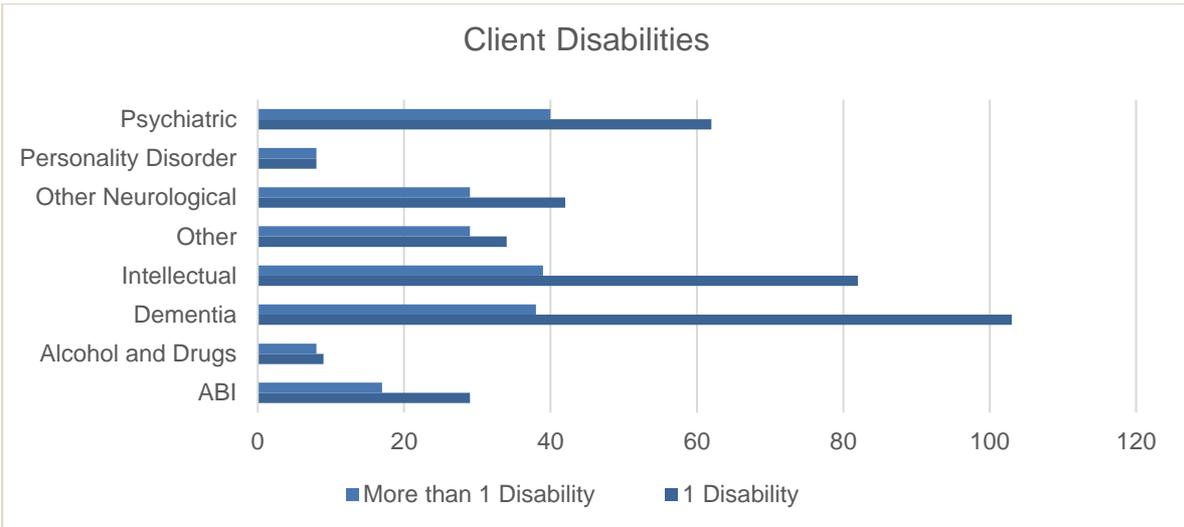
As at 30 June 2018 the Public Guardian was appointed for slightly more men (51%) than women (49%).

Over 55% of people under guardianship were aged over 60. The 61 to 85 year old age group saw the biggest increase in the number of appointments of the Public Guardian from the previous year, with a rise of 23% (from 66 as at 1 July 2017 to 89 as at 30 June 2018).



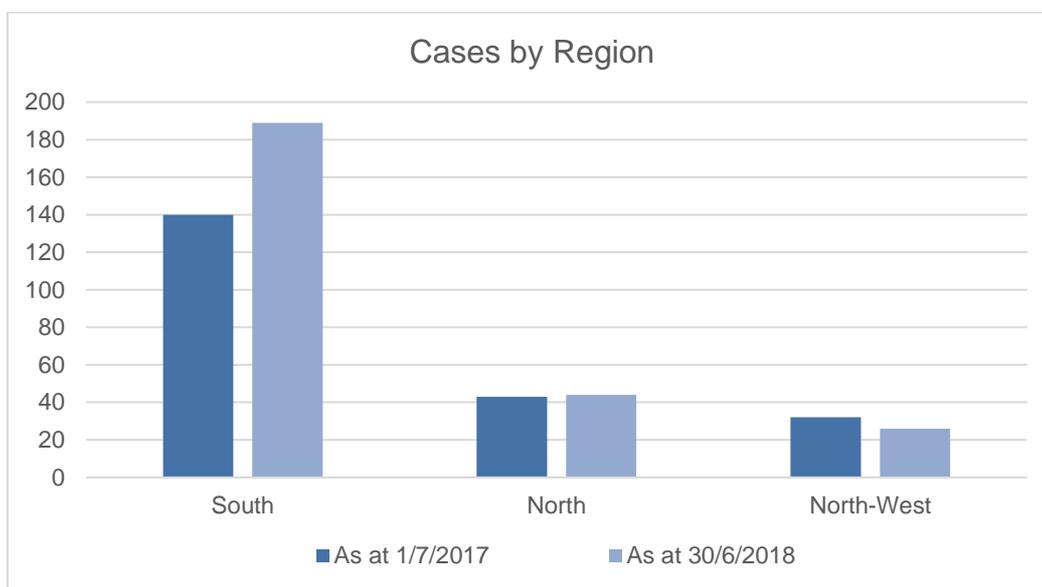
Diagnostic profile

41% of our clients had a diagnosis of dementia, unsurprisingly the largest category given the age demographic. This was followed by intellectual disability (33%), and psychiatric disability (25%). 35% of our clients have a diagnosis of two or more disabilities.



Regional profile

This year has seen a disproportionate increase in the number of people under guardianship in the south of the state compared to the north and northwest regions. In 2017/2018 approximately 73% of our clients lived in the south, compared to 65% in the previous two years. Client numbers in the north and northwest remained relatively stable, with a very slight increase in the north and a slight decrease in the northwest.

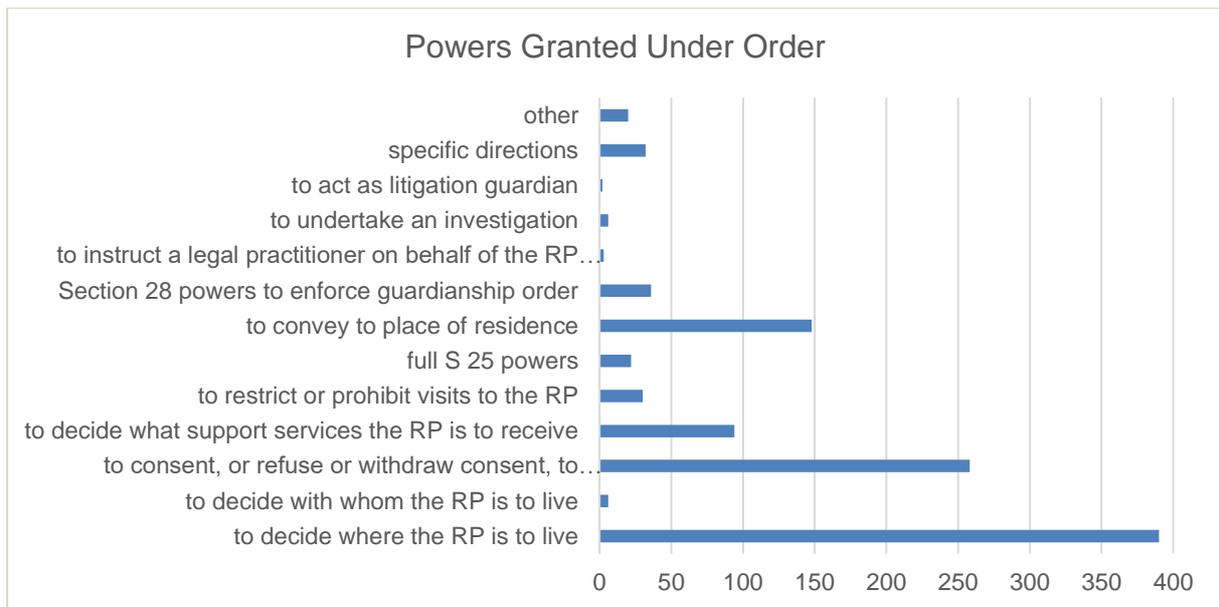


Powers granted under orders

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 decisions which need to be made, and give the guardian powers under the order that reflect those domains.

This year, it is encouraging to find a significant decrease in the number of appointments of the Public Guardian for which full powers were conferred. The total number of such ‘plenary’ orders in the 2017/2018 year was 22 – a significant reduction from the 32 as at 30 June 2017.

The number of orders limited to a single power during the reporting period was 111, or 23% of orders made (482) appointing the Public Guardian. This means the vast majority of orders conferred two or more powers.

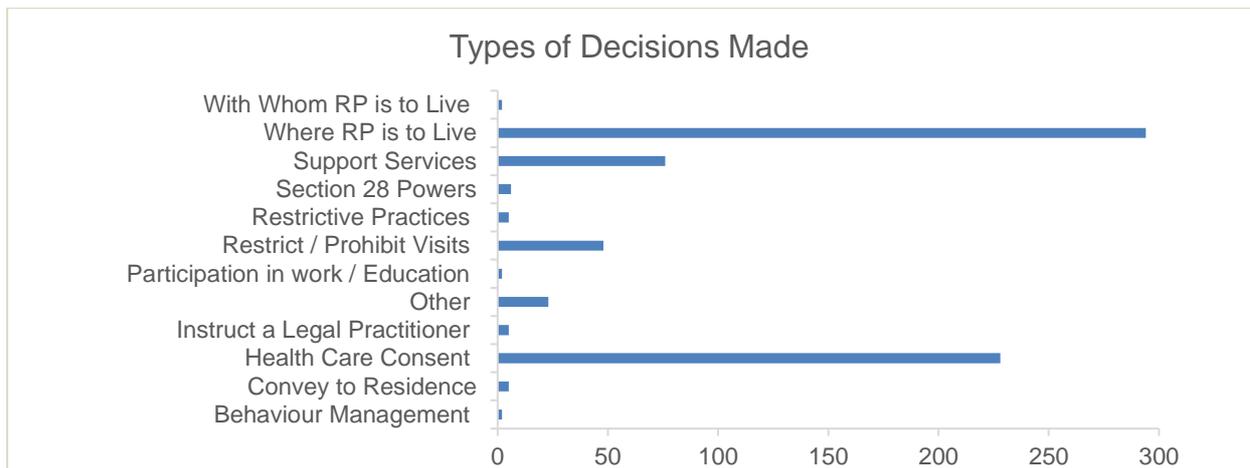


The most common power granted to the OPG’s guardians was to decide where the represented person was to live, either temporarily or permanently. This was followed by powers to consent or refuse consent to health care.

The third most commonly conferred power by the Board when appointing the Public Guardian was the power to convey the represented to their place of residence, as decided by the guardian. This is typically granted to facilitate the transport of a person to a hospital or other facility, when, due to their cognitive impairment the person is unable to appreciate the need for such action and is objecting. This power was included in 148 orders. “Section 28” powers – under which the guardian is typically empowered to enlist the assistance of the police, ambulance or other health services to enforce the guardian’s decision - were made in 36 orders with only six instances where such power was used. This data suggests that reassurance, encouragement and gentle coercive approaches work well in most cases.

Decisions made by OPG’s guardians

The vast majority of the OPG guardians’ decisions are about where the person is to reside and consent for health care. Decisions about service provision is the third highest category. With the increase in appointments, for both new and existing orders, specifically for the purpose of acting on behalf of the person in relation to the NDIS, we expect to see an increase in both powers conferred and decisions made about support services.



Actions taken by the Guardians

With the implementation of our new case management system, data is now able to be extracted revealing the number and types of actions performed by guardians. In total, there were 11,125 *recorded* actions performed. This is an underrepresentation of the actual numbers, as guardians may record a series of related events or interventions (such as email correspondence and phone calls) on a single record.

The activities and interventions recorded by guardians include:

- 5164 instances of communication by way of letters and emails to various interested parties and stakeholders.
- 3459 recorded contacts with the represented person or other key parties, including phone calls, case conferences and meetings.
- 1687 actions involved transactions with the Board, including receiving and dealing with orders, applications, and hearing papers; applying for reviews or advice and direction; and providing written reports to the Board.
- 768 formal documents received and dealt with, including such items as medical reports, allied health assessment and service agreements.

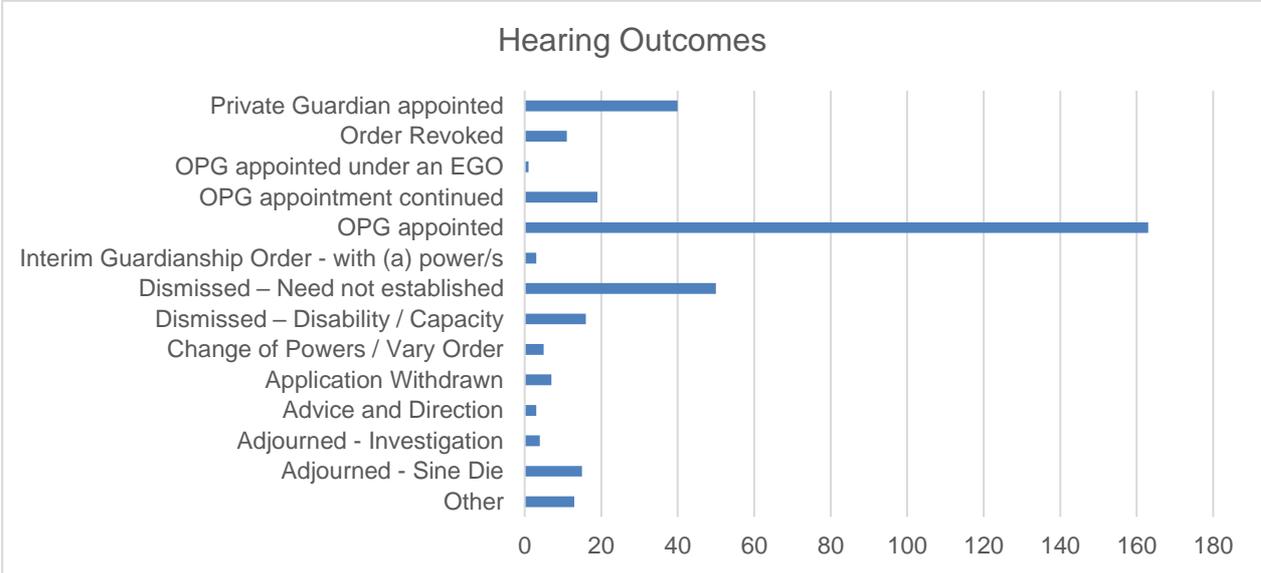
Hearings attended by the OPG

The OPG was requested to attend 347 hearings around the state, in Hobart, Launceston, Burnie and Devonport. OPG guardians attend the vast majority of hearings in person, and a smaller number by phone. Hearings are conducted by the Board to determine new applications for the appointment of a guardian or administrator; an application for the order to be amended or revoked; on expiry of an existing order where a continuation of the order is sought; and to review instruments of enduring powers of attorney and enduring guardianship.

242 of the hearings attended by the OPG were for new applications, of which the Public Guardian was appointed for 139 and a private guardian for 33².

² Please note, this figure includes only private guardian appointments made at hearings attended by the Public Guardian; the total number of private guardian appointments made by the Board would be significantly greater than this figure. Regrettably the Board was unable to provide the total number of private guardian appointments made for this financial year as it has previously

Seven were dismissed as the Board was not satisfied the person had a disability or a resulting lack of capacity. 40 applications were dismissed as there was no demonstrated need for a guardian. Of the remaining, they were mainly withdrawn (and not determined by the Board) or adjourned, with or without an interim order appointing the Public Guardian or referral for investigation.



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 extended 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.

The Board made 162 emergency orders appointing the Public Guardian in the 2017-2018 financial year and 103 of these orders were extended for a second period of 28 days. This represents a slight decrease in the number of initial emergency orders from the previous year (174) but an increase in both the number and percentage of emergency orders that were extended for a second period – from 56% in 2016-2017 to 64% in 2017/2018.

New and extended emergency orders

Year	Number of initial emergency orders	Number extended for a 2 nd period	Percentage
2014-2015	149	69	46%
2015-2016	153	47	31%
2016-2017	174	97	56%
2017-2018	162	103	64%



As detailed in previous Annual Reports, one of the reasons for the high rate of emergency orders in Tasmania compared to other states is the ongoing routine practice for applications to be made for the appointment of a guardian to consent to the admission of patients to the Roy Fagan Centre, when they do not have an enduring guardian and their admission is not authorised under the Mental health Act.

The Roy Fagan Centre is a specialised hospital which provides assessment and treatment of older persons with psychiatric illness and/or cognitive impairment. As most admissions to the Roy Fagan Centre are made in urgent situations following a sudden decline in the person's mental state, cognition or behaviour associated with dementia, an emergency application to the Board is made. As only the Public Guardian can be appointed under an emergency order, the patient's family member is removed as the substitute decision-maker and replaced with an OPG guardian.

It is the view of the Public Guardian that when the admission to the Roy Fagan Centre is for the purpose of providing medical assessment and treatment, and when the person is not objecting to or resisting the admission, the consent of a 'person responsible' for that medical treatment – including the admission - can and should be relied upon.

The Act allows a person responsible – typically a spouse, close family member or friend – to consent to medical treatment, but does not confer on the person responsible powers to make other personal decisions, such as where the person is to live (although this does commonly occur on an informal basis). Medical treatment includes treatment that is provided by, or under the supervision of a medical practitioner – the definition does not differentiate between inpatient and outpatient medical treatment. Generally, when a person who lacks the capacity to consent to medical treatment needs a hospital admission as part of the required medical treatment, the treating doctors and hospital will rely on the consent of a person responsible to authorise both the treatment (for example surgery) and the associated stay in hospital.

In the case of Roy Fagan Centre admissions, the admitting medical practitioners have taken the view that, because the facility is a secure or 'locked' facility, a person responsible cannot consent to the 'detention' of the patient, and this consent must be made by a formally appointed guardian.

The Public Guardian agrees with the need for fair, reasonable and efficient safeguards to be in place in any situation in which an adult is deprived of their liberty. A distinction needs to be drawn, however, between patients who are cooperating or acquiescing to treatment involving admission to a locked environment, and those who are actively objecting, resisting or refusing to go to or stay in a locked facility. In the former case, the consent of a person responsible, coupled with the assessment and oversight of the facility's medical and allied health treatment team, provides a legal source of consent and appropriate safeguards for temporary stays. In the latter case – where the patient is actively objecting to the admission, cannot be persuaded to stay, and requires action to enforce them to be conveyed to or remain there – then an application ought to be made for the appointment of a guardian.

Guardianship orders should only be made when necessary. The concern of the Public Guardian is that the current practice is: (i) inconsistent with the explicit principle of the 'least restrictive alternative' underpinning guardianship law; (ii) contrary to the Board's policies and the principles of supported decision making, that wherever possible informal processes should be used; (iii) inconsistent with a broad, fair and liberal interpretation of the law as required for beneficial or remedial legislation; and (iv) inconsistent with the best interests of the person by unnecessarily adding to the distress of the represented person and their family members who, for all other medical treatment decisions, are able to provide substitute consent.

The Public Guardian continues to advocate for the adoption of more sensible and sensitive practices that allow for family members to provide consent for stays in the Roy Fagan Centre, as they do for other hospital admissions.

NDIS

The NDIS rollout continues. Following the initial trial in Tasmania encompassing 15 to 24 year olds, 25 to 28 year olds were included from 1 January 2017 and 29 to 34 year olds became eligible from January 2018. NDIS eligibility is also extended to adults outside of those age groups, if they are living in group homes with another resident or residents who are already NDIS eligible. From 1 January 2019 the scheme will be fully operational in Tasmania, catering from 0 to 64 year olds.

The number of represented persons under guardianship has, unsurprisingly, increased over the last 12 months. This increase has come about both as a result of new appointments, where the Public Guardian is appointed specifically to make decisions about service provision under the NDIS, and in relation to existing clients, where the order has been reviewed and our powers extended to include NDIS-related decisions.

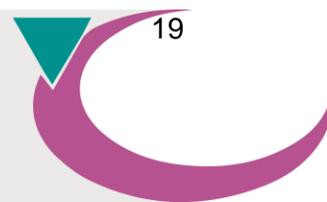
The number of NDIS participants under the guardianship of the Public Guardian as at 30 June 2018 was 71, or 27% of our total caseload. At the end of the previous year, 18% of our total case load were NDIS participants.

The workload associated with our NDIS participant clients also increases. Our analysis mirrors the work conducted in other states: we estimate there is on average an additional 25 hours of work per year for each client who is an NDIS participants. This work is largely associated with extensive liaison with multiple parties; attending planning meetings; exploring goals and wishes of the participant; perusing and reviewing plans; selecting service providers; consenting to service agreements; and implementing and seeking reviews of plans.

Our experience is that participants in the older age groups often do not have family members involved in their support, which can result in a more intensive role for the guardian. It is therefore with some concern that we anticipate the final two intake tranches in the 2018/2019 financial year: initial estimates from the Department of Health and Community Services (now Department of Communities) were for 3,891 clients to transition from the 35 to 64 age group. It is fair to say that, at this stage, the expected numbers have not transpired. However, we know the NDIS scheme will continue to grow and our caseload and workload will continue to expand.

The OPG eagerly awaits the experience of South Australia and New South Wales as the first states in which the new NDIS Quality and Safeguards Commission will operate, before Tasmania will be included from 1 July 2019. Along with our interstate counterparts, the OPG is keeping a close watch on the potential risks of a market-based approach to funding, including issues around service provider readiness, potential gaps in service provision and any issues around the loss of service providers of last resort, as currently provided for in state funded disability services. We have particular concerns about arrangements for crisis services.

The NDIS is very much a new and dramatically different scheme, both as a funding model and in the principles underpinning it. Processes, protocols, policies and guidelines are still being established and developed. The roles of key players are still being clarified. The intersection and interaction between all the parties remain in the process of negotiation. The OPG is working hard to ensure our role – as a formal substitute decision-maker – is well understood, and to limit any duplication with other roles, such as that of the local area coordinator, the support coordinator and advocates. We also advocate for practices that support the choice and control of participants, with substitute decision-making being a last resort.



People's stories

Edward

... encouraging independence and autonomy

Edward is approaching 90 years of age. Twelve months ago Edward, who experiences paranoia associated with dementia, was hospitalised for a period of three months. He had suffered a dramatic decline in his mental health following the death of his wife, for whom he had been the primary carer. Hospital staff had conflicting ideas about Edward's future accommodation needs. It was suggested by one that Edward required admission to a secure aged care facility, due to his tendency to 'wander'. Other staff felt that accommodation in a secure aged care facility would be detrimental to Edward's mental health and too restrictive for him, physically and socially. Edward was adamant about his wishes – he did not wish to go into a nursing home. Edward wanted to buy a unit and live independently again.

The Public Guardian was appointed to make decisions about where Edward should live and the support services he might need.

The guardian supported Edward in the decision to be discharged to an 'assisted living' community where he could live semi-independently. Edward did not want to receive any services, however, he was able to understand and accept that daily visits from the community dementia nurses and support from Older Person's Mental Health Services would be a preventative against a hospital readmission.

Edward 'set up house' beautifully and maintains his 'bed-sit' unit meticulously. He implemented his own steps toward maintaining his physical and mental health by undertaking an hour's walk after his shower and breakfast each day. Within a couple of months Edward complained that he felt too restricted in the small unit and too limited in not being able to cook his own meals.

Now, almost a year on, Edward has inspected and signed a leasehold agreement for an independent living unit in a retirement village with a large kitchen and dining area. He will move in and enjoy living in his own home again with services to provide the support he needs to live the life he wants.

Sarah

... difficult decisions contrary to the person's wishes

Sarah is 26 years old and has an intellectual disability. She has two children who are in the care of Child Safety Services (in foster care) under interim protection orders. An application was made by Child Safety Services to seek 18 year care and protection orders. If granted by the court, this would mean the children would remain in the care of Child Safety Services (most likely in foster care) until the children are

18 years old. Due to the impact of her disability, Sarah had difficulty understanding the complex legal proceedings and weighing expert legal advice from her lawyer to provide informed instructions. The Public Guardian was appointed to instruct her legal practitioner in relation to child protection proceedings in the Magistrates Court.

Guardians act as strong advocates for represented persons' views and wishes however, where a represented person's circumstances are challenging, complex and contentious, guardians can be tasked with making difficult decisions that may be in conflict with their wishes.

Sarah's guardian met with her and her lawyer to discuss the application for care and protection orders. Sarah's lawyer gave the strong advice that based on the evidence, it was very likely that the court would make the orders and her children would remain under the care of Child Safety Services. Sarah's wish (understandably) was for the children to be returned to her care. Due to the impact of her disability, Sarah's capacity to develop her parenting skills and address the concerns of Child Safety was very limited and this was well evidenced in various professional assessments and reports over an extended period of time. There was strong evidence that remaining in foster care was also in the best interests of the children. Sarah's guardian and lawyer worked with her to explain the advice and the legal process and supported her to participate in the proceedings, however she had persistent difficulties understanding the implications of each option as well as the nature of the evidence.

Sarah's guardian had the difficult task of deciding how best to balance her wishes (to oppose the application and have the children returned to her care) with the legal advice that had been given. The guardian and Sarah agreed to participate in a conference process where all parties come together to discuss the issues and try to resolve things before the matter goes before a magistrate. Her lawyer helped prepare an affidavit before the conference to help with communicating Sarah's views about the application and the concerns Child Safety had for the children. This also helped Sarah communicate her wishes in relation to her children's future care. The conference process also helped gather more information about how to support Sarah to maintain contact with her children and to try to address some barriers to this.

Ultimately, the guardian decided that a prolonged and emotionally difficult trial was not in Sarah's best interests given the inevitable outcome that the children would remain under the protection of Child Safety Services. The guardian instructed the lawyer not to oppose this application but to advocate for access arrangements to be formalised in the orders to protect Sarah's continued contact with her children.

Charlie

... no need for a guardian with good supports for decision-making

Charlie is 40 years old and has an intellectual disability. After her parents died, Charlie was struggling to live independently. She was now living in a different town to where she had lived with her parents, and she missed her friends and doing various activities that weren't available where she now lived. She didn't have a close relationship with her siblings or other family members. She became increasingly unhappy and agitated with her accommodation situation, where she felt isolated and felt she was not listened to.

The Public Guardian was appointed under a full guardianship order to make all personal and lifestyle decisions for Charlie, including where she should live. The ideal accommodation model isn't always available and even less so for people living outside metropolitan areas with fewer services and resources. The guardian was informed that there was no alternative accommodation available for Charlie, but that her Local Area Coordinator was looking for other options.

Some months after the guardianship order was made, the guardian was approached by Charlie's advocate with an accommodation option Charlie herself had found. She had approached a service provider who she knew in the town where she previously resided and asked them if they could support her if she moved back to that town. The service provider agreed and Charlie asked an advocate to support her through the process.

The guardian discussed the proposal with everyone involved and no-one was against the move. Everyone agreed it was in Charlie's best interests, and it was certainly what she wanted. The guardian did not need to make a decision about Charlie's move: she was doing a great job herself exploring options, involving the support of an advocate, driving the move herself, and making her own very reasonable decisions.

Charlie moved into her new home. The guardian remained involved to be sure the transition went smoothly and there were no unforeseen problems, but it was clear that Charlie felt much happier there and her frustration and agitation decreased. Twelve months after the initial guardianship order was made the guardian requested a review of the order on the ground that there was no longer a need. The Guardianship and Administration Board agreed, and the order was revoked, leaving Charlie in control of her own decisions.

Max

... advocating for the least restrictive options

Max is an 80 year old gentleman who, in 2013 was living independently when he sustained an acquired brain injury. The cognitive impairment that resulted from this

injury was exacerbated by his abuse of alcohol. At the time, Max was in receipt of a support package but it was no longer able to meet his care needs; he was living in undignified conditions and it became clear he no longer had the capacity to live independently. He moved into a residential aged care facility, where he continues to reside today.

In 2017, Max's daughter became aware that he had contacted real estate agents in order to arrange rental accommodation for himself. She was concerned about her father's ability to look after himself. The Public Guardian was appointed with the authority to make decisions about where Max lives and the support services he should receive. The Public Trustee was also appointed as Max's administrator to manage his finances, including restricting the funds that Max has access to for alcohol.

With his supportive living environment and reduced alcohol intake, Max's cognitive function has gradually improved. Max is largely able to complete all of his own personal care tasks, he can utilise public transport and he accesses the community independently.

Max has become increasingly dissatisfied with his living arrangements at the care facility, and he now wants to move into his own unit. The guardian met with Max and his family to discuss his wishes further. The guardian agreed that Max ought to be able to trial independent living, in spite of concerns remaining about Max's history with alcohol and how a return to excessive intake would impact upon his ability to live safely on his own. Max agreed to the suggestion of his guardian, and completed a 12 week course of alcohol counselling with a specialist provider.

It was evident that for an independent living situation to have the best chance of success, Max would need to access adequate in-home and community assistance. He was assessed by an Occupational Therapist as requiring approximately fourteen hours of support per week to meet his needs. After considerable advocacy by the guardian, the Aged Care Assessment Team has approved Max for a community package of care. Unfortunately, it is expected that Max will need to wait 18 months before a package of care becomes available.

Once Max has access to the care he requires, the guardian will support his wish to rent a unit in his local community. The guardian will remain involved to monitor the success of the trial, ensure Max is accepting of the supports he needs, and weigh up any risks against the benefits, dignity and improved quality of life Max will gain by living his life independently.

Danny

... supported decision-making whenever possible

Danny (45) was in hospital with an acquired brain injury, resulting from drinking and substance abuse. After a long admission the treatment team assessed that he required 24/7 care and was now medically fit for discharge from hospital. Danny had dysphasia, which made it very difficult to know what information he comprehended and to understand what his views were, as his answers were often not related to the question. The hospital staff applied for a guardianship order and the Public Guardian was appointed for a 12 month period to make a decision about where Danny should live.

The delegated guardian subsequently decided that Danny needed to live in a residential aged care facility (RACF). This is not the preferred living model for a younger person, but with no other accommodation options available, this was a better option than remaining in hospital for a prolonged time.

Danny moved into the RACF and with good care, nutrition and support his health improved and he was able to acquire skills and become more independent. There was a notable improvement in Danny's ability to communicate when the guardian visited him a few months after his hospital discharge. The dysphasia was still a challenge, especially to Danny who was now frustrated by it rather than oblivious to it as he had seemed before. However, with time and patience people were able to better understand what Danny wanted and was expressing.

The guardian organised for a representative for the NDIS to contact Danny about accessing the scheme and to explore supports and accommodation that might be available to him. Danny subsequently met with a planner and a Local Area Coordinator. He was able to indicate to them that he wanted to become a participant, and he consented for the sharing of information between service providers. He also indicated he wanted to explore the option of living in a group home ran by an NDIS service provider. Danny agreed to assessments by an occupational therapist and a speech pathologist. His plan was approved by the NDIS and he had a support coordinator assigned to him. Danny demonstrated that, with this support, he could make his own decisions about where he lives, what services he needs and wants, and other personal matters. There is a risk that Danny might need a guardian again in the future, however for now he is settled and accepting the supports he needs for decision-making and to live as independently as he can. Everyone agrees he no longer needs a guardian and the guardianship order was allowed to lapse at the end of the 12 months.

Investigations

The Public Guardian has investigation powers, set out in section 17 of the Act, as follows:

- (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 of an inquiry before the Board.*

Until very recently (approximately April 2017), the Board itself employed investigators and would conduct its own investigations into applications for the appointment or review of guardians and administrators, and reviews of instruments appointing enduring guardians and attorneys. As the Board no longer employs investigators, this function now (correctly) falls to the Public Guardian. However, the OPG does not have a high profile for this work and is yet to receive a request from an outside source (other than interstate Public Guardians or Public Advocates, as noted below) to investigate the actions of a guardian, administrator or person acting under an enduring attorney. We are keen to change this situation and take on this function as the Act requires. We see this as particularly important in light of the growing focus on elder abuse. With increased resources we will actively promote our role in this critical area.

The Board has the option of referring matters to the OPG for investigation at any point, i.e., on receipt of an application or even an enquiry about an application, pre-hearing, or as a determination at a hearing.

During the 2017/2018 year, the Public Guardian undertook 11 investigations on referral by the Board. Some of those investigation referrals were made under section 17 of the Act, and some were made under a guardianship order (on-going or interim) with a direction to investigate (with or without other decision-making powers). The nature of the investigations have been diverse, ranging from more straightforward investigations into the views and wishes of a proposed represented person, or to establish whether there is a need for a guardian, to more complex matters such as applications for special medical treatment and sterilisation.

The OPG undertook three enquiries on behalf of our interstate counterparts, to look into the circumstances, wishes and well-being of represented persons in those jurisdictions who had moved to Tasmania without the consent of the interstate guardian.

As discussed more fully in the OPG's submission to the TLRI's review of the Act, our view is that our investigation powers should be broadened in scope - to include the ability to investigate allegations of abuse, neglect and exploitation of adults with a disability who are not represented persons - and strengthened to enable the Public Guardian to compel the

provision of information. In addition to filling some of the current gaps in adult safeguarding in Tasmania, such additional powers would provide opportunities for dispute resolution, advocacy, early referrals to services, and the provision of support and education to other support/substitute decision-makers – all of which can obviate the need for the appointment of guardians and administrators.

The OPG was fortunate to have two staff members attend a two-day intensive course in advanced investigations training run by Ontario's Ombudsman, in March this year, hosted by Tasmania's Ombudsman. In addition to skills development in the areas of planning and conducting investigations, interviewing witnesses, assessing evidence and writing reports for the two senior guardians who participated, the training has guided the development of OPG's investigation procedures and assisted with a framework for systemic investigations.

Grace

...An example of a referral to investigate.

Grace is a very private and dignified woman in her mid-nineties, who lives with dementia. Due to multiple physical health difficulties and decreasing mobility she opted to move to permanent residential care in a local aged care facility.

Grace appointed her son as her enduring guardian after moving into the aged care facility. As her enduring guardian, he had broad powers to make decisions on her behalf about her health care, where she lives (permanently or temporarily) and who should visit her. These decision-making powers would commence in the event that she lost the capacity to make those decisions herself.

When Grace's health declined at the facility, her son used his powers under the enduring guardianship to exclude her daughter from visiting or having information about Grace's health status. There had been a long-term history of intense rivalry and animosity between the siblings.

Grace's daughter did not think the decisions being made were fair or what her mother would have wanted, and she wondered whether her mother had the capacity to understand the nature and effect of the document she was signing at the time she appointed her son. She applied to the Guardianship and Administration Board to review the enduring guardianship. The Board can determine an enduring guardianship to be invalid if the person did not have the mental capacity to make it, or if they were coerced into making it. The Board can also revoke or amend the instrument of enduring guardianship if it believes the guardian is acting improperly or not in the best interests of the person.

The Guardianship and Administration Board requested that the Office of the Public Guardian undertake an investigation into the matter, under s17 of the Act. The Board specifically wanted to ascertain Grace's circumstances and her wishes in

relation to contact with her children. Grace was able to express to the investigator that she felt distressed and conflicted by the animosity between her children. She loved and wanted contact with them both.

The findings of the investigation were provided in a written report to the Board. The evidence was taken in confidence and was not disclosed to the other parties. After holding a hearing at which the Board considered the investigation report as well as hearing the views of Grace's son and daughter, the Board decided to vary the enduring guardianship. The Public Guardian was substituted as the enduring guardian for Grace.

Grace now has contact with both her children and they share a role in her life and ongoing welfare.

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; we do not have any project or policy positions on our team. None-the-less, invitations to participate in forums and committees and the like are taken on by the Public Guardian or a delegate. With a growing team of guardians who hold specific skills and depth of experience in a variety of areas within the mental health, disability and aged care sectors, the OPG is keen to broaden its focus in this domain in the future. Resources are likely to continue to be the limiting factor.

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

The Public Guardian'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 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. 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 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 revoking of guardianship orders and for a reduction in powers, wherever possible.

The Public Guardian promotes the adoption of practices by the Board that facilitate the full participation of the represented person in hearings. There is, inherently, a significant power imbalance in hearings conducted by the Board and hearings can be distressing for the person and for family members. The represented (or proposed represented) person often faces a room full of people who might be very well-meaning with the best interests of the person at heart, but who air detailed information about the person's disability and lack of capacity – often with undignified descriptions and examples of the person's "failings" to demonstrate reasonableness in decision-making and action. The OPG urges the Board to

approach hearings in as informal manner as reasonably possible, without recourse to overly legalistic processes and language.

We have also urged the Board to limit the use of unnecessary oral hearings wherever possible, when the purpose of the hearing is not to determine whether to appoint a guardian or administrator, but rather to avert an application, revoke an order or otherwise reduce restrictions on the represented person. Obviously hearings are a central component of natural justice and a proposed represented person has every right to hear and respond to the case “against” them before the Board proceeds to appoint or re-appoint a guardian or administrator, whose powers will reduce the autonomy and rights of the individual to make their own decisions. However procedural fairness obligations in matters before the Board that do *not* negatively affect the individual’s interests should be approached with greater flexibility.

The Board has instituted procedures that allow for the review (and continuation) of a settled administration order, for which The Public Trustee is appointed, to be conducted “on the papers” after giving the represented person the opportunity to request the matter is listed for an oral hearing. The OPG has advocated for the Board to implement similar procedures for other uncontentious matters in relation to guardianship where the outcome of the hearing is likely to be positive, rather than adverse, such as: a reduction of the powers under the order; revoking an emergency order when the person has regained capacity; and revoking an ongoing order when the person has become subject to a guardianship order in another jurisdiction after moving interstate. Hearings can not only be distressing and demeaning for the person, they are also an impost on the resources of family members (who might be travelling significant distances to attend), service and health care providers, the Board itself and the OPG.

The Public Guardian continues to contribute as a member of the Elder Abuse Advisory Committee and to work both formally and informally with other services and bodies on issues of joint concern. A senior OPG guardian is representative on a national NDIS working group and participated on behalf of the OPG at a national NDIS forum. We have contributed to the Department of Justice’s submissions to a number of State and National law reform projects.

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 raise concerns or alert the Minister to emerging trends. There have been no formal investigations or reports made to the Minister in this reporting period.

Providing information and education to the community and public

The OPG fielded an estimated 300 telephone and email enquiries from the public, 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. This was an increase from the previous year of approximately 50% - similar data was not collected prior to that and data collection methods have changed in the last two years, so it is difficult to make any definitive conclusions about trends.

The OPG operates an after-hours service to field enquiries, provide advice and guidance in relation to new urgent matters and undertake emergency decisions and other action in relation to our existing represented persons. The after-hours calls are taken by an external call centre: they field approximately 20 calls per month, and of these approximately 60 for the year required forwarding to the on-call guardian for follow-up action.

The majority (a little more than half) of calls requiring further action by the on-call guardian were in relation to our existing clients. Typically, the guardian is required to attend to matters including: consent to medical treatment; authorising or refusing consent for visits or visiting arrangements; and advising or authorising action to be taken for missing or absconding persons.

This year saw a significant increase in after-hours calls in relation to new urgent matters – 18 this year compared to six last year. Of these, eight required the making of an out-of-hours emergency order. This compares to only one in the previous year. Of the remainder, the OPG guardian was able to provide information on alternatives to seeking an emergency order. In most cases, this related to advice about the provision of medical treatment without the consent of a guardian, 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). Emergency orders were also averted with the guardian giving advice to hospitals and residential facilities about taking protective measures under their duty of care to protect residents and patients from harm.

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. A review of our website and information publications has commenced but is progressing more slowly than we would have liked due to resourcing pressures. The OPG is keen to ensure easier readability, appropriate to our range of audiences.

The OPG's guardians undertake a lot of informal education with community groups, medical and allied health practitioners and service providers in the course of their work as guardians. In addition, this year the OPG has conducted 16 formal sessions, reaching approximately 250 people. This is a disappointing decrease in the number of people reached in our community education sessions from the previous financial year. The OPG never declines an invitation to provide education and information sessions, however we hope to be more proactive in the future.

Information and education sessions have mainly been provided to service provider organisations, and can include family and community members as well as staff. The OPG

has also provided sessions to TAFE students undertaking qualifications in community and disability work and enrolled nursing. The OPG partners with other bodies, such as the Senior Practitioner and Palliative Care Tasmania to further our reach to service organisations and allied health practitioners from the government and non-government sectors.

Themes, issues and challenges

It is an exciting time to be able to contribute to the reform around safeguarding our most vulnerable community members. The development of policy and legislation in this area appears to be gaining momentum nationally and it is pleasing to see this lens being applied across different service sectors including disability and aged care. We look forward to seeing the recommendations put forth in the TLRI review of the Guardianship and Administration Act 1995 and would welcome an enhanced role for the Public Guardian in investigating and protecting adults with decision-making disabilities from abuse and neglect. We welcome the Federal Government's initiation of a national plan to tackle elder abuse, as well as its very recent announcement of a Royal Commission into aged care.

There are a number of systemic issues the OPG has identified in the course of its guardianship work. We have previously reported on some of these, and continue to monitor them.

- People with dual diagnoses (especially cognitive disabilities combined with substance abuse, personality disorders, and mental illnesses) continue to be at risk of “falling between the cracks” in terms of service provision, both in the government and non-government sectors. Meeting the needs and complexities associated with multiple diagnoses can be challenging, with some of these people experiencing difficulties regulating their emotions and behaviour. It is easy to see the temptation of service providers to assess these clients as being ineligible for their service on the basis that another provider may be a better “fit”, particularly for accommodation and for case management.
- The NDIS's market driven model for service provision risks exacerbating this issue. The OPG would like to see a model of “provider of last resort” implemented to fill gaps, where it is not viable for the competitive market to offer, in particular, accommodation services. There continues to be a problem of young people living in aged care facilities purely due to a lack of appropriate alternatives. Some of these people have difficulties in accessing additional services to maximise age-appropriate activities, in spite of NDIS funding arrangements.
- We continue to see a lack of crisis services for people with intellectual disabilities, personality disorders, drug and alcohol issues (i.e. those not covered under the Mental Health Act). People with these disabilities will often be hospitalised in a crisis but cannot be held or treated involuntarily, and not enough is done in terms of discharge planning, with few resources existing to facilitate timely, successful and safe discharge back into

the community with support to attempt to break a cycle of disadvantage. The NDIS is yet to establish arrangements for the funding of urgent crisis accommodation to enable the prompt removal of people at risk to safe alternative accommodation.

- Feedback received as to the significant delays being experienced by NDIS participants who seek internal reviews and/or appeal the Agency's decisions to the Administrative Appeals Tribunal is highly concerning. Delays of six months are apparently not uncommon, during which time the participant may be deprived of reasonable and necessary supports, and delays can extend virtually to the time the participant's plan is to be reviewed anyway.
- Treatment continues to be carried out without lawful consent in the aged care sector. The OPG guardians will often become aware by chance that elderly people under guardianship are being administered medication (including anti-psychotic and sedating medications) without the consent of the guardian. Anecdotally, we hear that the consent of a person responsible is even less likely to be sought. Our internal processes are currently being refined to address this for older people under the guardianship of the OPG, however more robust oversight and safeguarding mechanisms need to be established for the aged care sector generally.
- There is a lack of suitable supported accommodation options for men who require a high level of psychological support and monitoring, due to behavioural issues such as disinhibition and impulsivity resulting from cognitive impairments. This level of supervision is no longer available to people living in residential aged care or other community facilities and as a result a number of men have been moved into the Roy Fagan Centre. However as the Roy Fagan Centre is funded to provide a medical model of care, these residents do not have access to community aged care or disability services - intervention and activities which would provide the opportunity for an improved quality of life and the possibility of discharge. A lack of discharge opportunity has led to depression, an increase in behavioural issues, attempts at suicide and a sense of hopelessness for these residents.

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. In this reporting period the Public Guardian has received two formal requests for a review of a guardian’s decision and three complaints about the process of the guardian’s decision-making. In addition, the OPG was subject to one complaint to an external body (the Health Complaints Commissioner) and prepared three briefings to the Minister in relation to enquiries or complaints (two from the same person in relation to the same matter). 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. In addition, guardians will occasionally 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.

Financial summary

	2016/17 Actual	2017/18 Actual
Salary related expenditure	541,687	629,251
Non salary expenditure (includes IT, materials, travel, office rental, worker’s comp and other)	161,395	153,483
Total operating expenditure	703,082	782,734

Appendix 1 - Office of the Public Guardian staff

Kim Barker, Public Guardian

Kim obtained a Bachelor of Arts with majors in psychology and political science at the University of Tasmania in 1981, and later gained qualifications in education, counselling and mediation. Kim's earlier career was spent as a rehabilitation counsellor and consultant, working with people with a range of disabilities – physical, cognitive and psychiatric. A mid-life career change saw her transition to work on a number of tribunals and boards, including the Mental Health Tribunal, Social Security Appeals Tribunal, Guardianship and Administration Board, the Parole Board and the Medical Board of Australia. Kim was also a Director of the Motor Accident Insurance Board from 2003 until her current appointment as Public Guardian. She continues as a member of the Parole Board and as a Director with the Relationships Australia Board, on a voluntary basis.

Deputy Public Guardian & Guardian (north/northwest)

Kylie Hillier commenced working with the Office of the Public Guardian in May 2005. Kylie has a Bachelor Degree in business, majoring in international business, human resources and marketing. Kylie has worked in the private business sector in London, in which her experiences include project management with a business simulation company and a pan European dot-com auction house. Her commitment to social justice led to several years of experience working in disability support in Ireland and in advocacy in both the disability and aged care sectors across the State. Kylie has acted in the Public Guardian role on a number of occasions.

Guardian (south)

Elizabeth (Liz) Love holds a degree in Social Work, and joined the OPG in March 2016. Liz has practised as a social worker for over 30 years in a variety of government agencies and in the non-government sector, in both service delivery and policy development. Prior to joining the OPG Liz operated a private practice offering Mental Health counselling. Liz was a member of the Guardianship and Administration Board GAB for 12 years until 2014, and also worked with the Board as an investigator for two years.

Assistant guardian (north/ northwest)

Di Shephard commenced work with the OPG as an Assistant Guardian in February 2016, initially on secondment from the Launceston General Hospital (LGH) where she had been employed for 15 years, most recently in Patient Advice and Liaison and as the Executive Officer to the Director of Clinical Services. Di holds a Diploma in Project Management and is currently undertaking a Bachelor of Dementia Care.

Guardian (south)

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

Guardian (south)

Maddy Russell commenced with the OPG as a guardian in September 2017. Maddy holds a degree in Social Work and has been practicing for seven years in a range of non-government services in Hobart including refugee settlement services, homelessness and mental health programmes. Maddy also worked in the UK for two years as a community based social worker for adults with intellectual disability and as a hospital social worker.

Assistant Guardian (south)

Valerie Hannon commenced her employment with the OPG in December 2017 after being employed at the Public Trustee as a Client Account Manager for represented people appointed an administrator. Valerie previously worked as an Investigator with the Guardianship and Administration Board for six years before relocating overseas for six years. Prior to this Valerie was employed as a personal assistant in the area of estate planning and probate in a Hobart law firm. She has also worked in a volunteer capacity with Lifeline, Camp Quality and Devonfield. She is currently studying towards a degree in a Bachelor of Psychological Sciences.

Appendix 2 - 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.
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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.
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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.
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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 of an inquiry before the Board.