



# Annual Report

## 2018 – 2019



Office of the Public Guardian  
GPO Box 825  
HOBART TAS 7001



30 September 2019

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

Dear Minister,

**Annual Report of the Office of the Public Guardian for the year ended 30 June 2019**

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 2018 to 30 June 2019. 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 of 2018 / 2019



My staff and I had another very busy and challenging year in 2018-2019. However our important work advocating for and protecting the rights and interests of adults with disabilities is, above all, rewarding. There are many positive reforms afoot in the disability and aged care sectors, and it is gratifying to contribute to advancements that have the potential to make a real difference to the lives of the people with whom we work.

In December 2018 the Office of the Public Guardian (OPG) welcomed the publication of the Tasmanian Law Reform Institute's (TLRI) final report into the review of the *Guardianship and Administration Act, 1995* (the Act). The TLRI is to be congratulated on its extensive review and thorough consideration of issues concerning Tasmania's guardianship law and practices. The OPG agrees with the vast majority of the raft of recommendations made by the TLRI. We are particularly supportive of those recommendations that would see a better alignment with the human rights set forth in the United Nations *Convention on the Rights of Persons with Disabilities*, and the Australian Law Reform Commission's National Decision-Making Principles. Consistent with trends internationally and in other Australian jurisdictions, the TLRI's proposals include:

- a shift away from a paternalistic "best interests" approach to one that focuses squarely on the person's will and preferences
- better recognition of informal supports, and improved access to supports that will foster the person's autonomy
- a legislated framework for supported decision-making
- the retention of rights-based substitute or "represented" decision-making as a last resort
- improved safeguarding for supported and represented decision-making to promote the rights and interests of people with disabilities and prevent abuse and exploitation.

The TLRI made a number of recommendations about the role of the Public Guardian. Of note, it proposed a wider investigation function with a strengthening of powers to compel the provision of information, and a formal dispute resolution role in relation to advance care directives, enduring instruments, and between persons responsible and/or other representatives. The OPG strongly supports those recommendations. We look forward to working with the government and all our partners to further consider reform of guardianship law, policies and practices, and to implement those recommendations ultimately adopted. The OPG's response to the TLRI's final report is published on our website, together with our original submission.

Elder abuse, in all its forms, remains a prominent issue for the community at large, and on the agendas of all levels of government and policy makers. The OPG welcomes the work of the Royal Commission into Aged Care Quality and Safety. The Commission was established in October 2018 to look into reforms required in the aged care system. It came about, in part, following media exposure and scrutiny of sub-standard and in some cases

horrendous failures of care, mainly in the residential sector. Serious allegations of abuse and neglect occurring within residential aged care facilities (previously often referred to as “nursing homes”) have been made, and alarming concerns raised about a range of issues including the use/abuse of physical and chemical restraints; insufficient and poor quality food and nutrition; and inadequate clinical care such as medication, infection and wound management. The Commission aims to establish the prevalence and extent of such problems, and will examine the effectiveness of regulatory arrangements and the need for further reform. The OPG provided the Commission data it required about people under our guardianship living in residential aged care facilities and/or receiving other (in-home) services, and a submission regarding issues impacting safety and quality of care.

Elder abuse is not, of course, limited to the aged care sector. Too often, neglect, exploitation and abuse – financial, emotional, social, physical and sexual – of vulnerable older people is perpetrated by the very family members who the elderly person trusts and relies on for their care. In July 2018 the Coroners Court handed down its findings following an inquest into the death of a 77 year-old woman with advanced dementia who died from hypothermia while lying in her bed, frail and underweight, in an uninsulated shipping container on the property owned by her daughter and son-in-law. My staff and I, like all in our community who read the report, were shocked to learn about the circumstances of this case. The Coroner is to be commended for her thorough investigation into the broad circumstances leading to the death, and the identification of points in time where alarm bells would have been sounding for those service providers who had contact with the family and had some awareness of the risks she faced in remaining in the care of her family. The Coroner concluded her report with some specific recommendations for the prevention of and response to elder abuse at a systemic level, including that Tasmania has a properly empowered and resourced independent body to receive, investigate and deal with complaints/allegations about elder abuse and to oversee the safety of vulnerable older people. Those recommendations are not dissimilar to recommendations proposed in other recent reviews, including the Australian Law Reform Institute's *Elder Abuse – a National Legal Response* report and the aforementioned TLRI report. The OPG agrees Tasmania's adult safeguarding regime needs strengthening in this way.

The OPG's essential role of acting as guardian has continued to expand at a fast pace. The first six months of the financial year saw our caseload increase by over 14% from 259 as at 30 June 2018 to 296 as at 30 December 2018. This came on top of the 21% increase in the 2017/2018 financial year and 27% in 2016/2017. We are happy – and relieved – that the second half of this year saw a reduction in the rate of increase, with our caseload sitting at 303 as at 30 June 2019. This represents a slightly more moderate (although still very significant) 17% increase over the course of the year.

We have attributed the slow-down in growth in numbers of people under our guardianship over the last 6 months to two key factors. Firstly, in February 2019 we successfully appealed a decision of the Guardianship and Administration Board to the Supreme Court<sup>1</sup>. The matter was representative of a number of emergency orders made specifically for the purpose of appointing a guardian to consent to a patient's admission to the Roy Fagan Centre. As I have stated in previous annual reports, my view has been that a family member or close friend should provide this consent as they do for other hospital admissions, when the purpose of the admission is for treatment and the patient is not objecting. The Supreme Court's ruling has confirmed that the consent of the person responsible in such cases is lawful. Importantly, this has put an end to the unwarranted intrusion of the Public Guardian into the lives of many elderly persons with dementia and their family members, at an already distressing time.

Secondly, the appointment of the Public Guardian for NDIS participants entering the scheme has slowed somewhat, with the last age-group transitioning into the scheme from 1 January 2019 now complete. 132 (or 44%) of our represented persons as at 30 June 2019 were NDIS participants, compared to 71 (27%) as at 30 June 2018. We were appointed for 44 new NDIS participants in the first half of the financial year, compared to 24 in

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<sup>1</sup> *Barker v Guardianship and Administration Board* [2019] TASSC 8



the second half. The workload associated with NDIS participants has not decreased and this remains a significant encumbrance on our stretched resources.

The OPG has reluctantly had to defer work on the much-needed overhaul of our website. It is with a great deal of regret that this has again been re-prioritised, however our eagerness to attend to this important task remains undaunted.

As always, I am indebted to my small team of hard-working guardians. The matters they deal with on a daily basis are complex, with high-risk stakes for the vulnerable people we are charged with protecting, sometimes amounting to “life or death” situations. The guardians in my office are highly skilled and professional in their approach. They are compassionate and caring, and treat our represented persons with dignity and respect. I feel privileged to work with such a capable and talented group.

I am also grateful to the various branches of the Department of Justice for their specialist support over the year, in areas such as human resources, information technology and legal advice, as well as to the executive leadership team for their invaluable support and assistance.

Kim Barker

**Public Guardian**



## The role of the Public Guardian

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

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

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

In addition, section 17 of the Act sets out the Public Guardian's role in investigating (1) complaints and allegations concerning guardians (enduring or Board appointed) and administrators or people acting under an enduring power of attorney; and (2) at the request of the Board, any other matter before the Board.

The vast majority of the OPG's time and resources continue to be spent fulfilling the function of acting as people's guardian when so appointed by the Board. This has always been the case, and is also the case for most of the interstate Offices of Public Guardians and Public Advocates. However, in Tasmania, this function operates almost at the exclusion of the other functions: aside from the Public Guardian the OPG employs only guardians and senior guardians, that is, there are no dedicated staff for administration, 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.

# Mission Statement

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

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

**Our values:** guide us in all our endeavours:-

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

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

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

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

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

## Acting as Guardian

Guardians are appointed by the Guardianship and Administration Board (the Board) to make decisions on behalf of a person with a disability who is unable, by reason of that disability, to make reasonable decisions themselves. The person is known as “the represented person”. A guardian can make health, personal and lifestyle decisions for specific matters such as where and with whom the person is to live; the provision of health care and medical treatment; what services the person is to receive; and who can visit the represented person. The guardianship order will specify the specific powers given to the guardian. A guardian cannot make decisions about financial matters - if a person needs assistance to manage their finances or property, the Board will appoint an administrator. In very rare circumstances the Board can appoint the Public Guardian as administrator, usually only 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 must exercise their duties in accordance with the principles set out in Section 6 of the Act (see Appendix 2). This means that guardians must make decisions that are the least restrictive of the person's freedom of action and decision; are in the best interests of the person; and, as far as possible, carry into effect the wishes of the person. These principles can often be in conflict with each other, and the challenge for a guardian is finding the right balance: ensuring the care and protection of the person as well as promoting independence and autonomy, and enabling as far as possible that the person's wishes are respected.

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

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

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

## A Day in the Life of an OPG Guardian...

*8.30am*

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

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

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

*10.00am*

It's time to head to the Board for a hearing. The hearing relates to an application for guardianship for Mr. Simons, a gentleman who is currently an inpatient at the Royal Hobart Hospital (RHH). Due to Mr. Simon's Parkinson's Disease-related cognitive impairment, he no longer has the capacity to make reasonable decisions regarding his accommodation or support needs.

Prior to admission, Mr. Simons was living alone in his own home and he was having repeated falls. Unfortunately, he does not have family support and thus far has refused to accept formal assistance at home. It is his wish to return home upon discharge from hospital.

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

I submit that as Mr. Simons now appears willing to accept the advice of health professionals about his care needs, the least restrictive alternative at this point may be to allow him to continue to make his own decisions, with the support of the social and his GP. An order is not made and the application is dismissed.

*11.15am*

Back at the office, and armed with a coffee, I attend to some emails. This includes three from NDIS service providers asking me to sign service agreements on behalf of the participants. The service agreements include agreements as to costs and how the participant should treat staff and other residents. I don't have any authority for those things, so I send a letter instead, confirming that I consent to the provision of the services.

One of my colleagues grabs me in the corridor to discuss a particularly complex case about a young woman whose doctor wants her to have some sort of contraception. We have a brief discussion about options and agree that it is extremely difficult to enforce a decision about contraception for someone who is adamant they don't want it. She heads off to meet with the client and her doctor, feeling a bit more prepared for the difficult discussion ahead. I am glad to have been of help. This kind of support and collaboration between the guardians is of enormous importance in problem-solving the many varied and complex issues we encounter.

12.15pm

A case conference has been scheduled at a local residential aged care facility regarding a resident, Mrs. Clarke. The Public Guardian was appointed a few months ago to make decisions regarding where Mrs. Clarke is to live and her health care – the guardian accepted a permanent care vacancy at this facility on her behalf. Whilst Mrs. Clarke appeared happy in her new home, she has recently begun experiencing behavioural and psychological symptoms of dementia, including aggressive outbursts that have been directed at other residents and staff.

*“...support and collaboration between the guardians is of enormous importance in problem-solving the many varied and complex issues we encounter.”*

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

2.00pm

I head to the National Disability Insurance Scheme (NDIS) office where there is a plan review meeting scheduled for Brian. Brian is a young man who has an intellectual disability. His impairment directly impacts his ability to manage his diabetes and he has been experiencing side-effects, such as a pressure sore that will not heal. We have been appointed to make decisions on Brian's behalf in relation to his NDIS supports and his health care.

Brian has decided not to attend the meeting. On Brian's behalf, I advocate for the urgent addition of funding to ensure he is able to receive essential support each morning to monitor his blood sugar levels and administer his Insulin. Once this funding is approved, Brian's support coordinator will work with Brian and his guardian to select an appropriate community support service that will be best placed to provide this care.

4.00pm

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

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

10.00pm

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

I call the after-hours Board member and discuss the potential need for an Emergency Guardianship Order. The Board member agrees that an order is urgently required. I request and receive a completed Request for Emergency Guardianship from the hospital and forward this to the Board. The member promptly emails the Board's order to me, and I then re-contact the RHH doctor to provide consent for Mr. Geeves' continued admission, as well as for surgical repair of his fracture.



# Our Guardianship Work in 2018-2019

## Snapshot

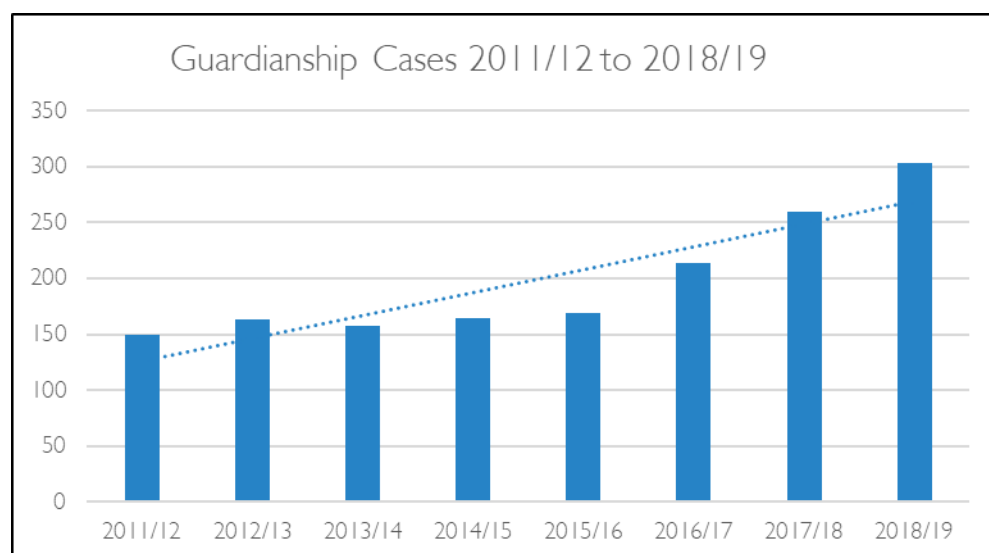
- Our caseload has continued to increase: at the end of this financial year it was 17% higher than it was at the end of the June 2018.
- During the course of 2018/19 the OPG dealt with 500 individual cases, approximately the same as for the previous year.
- The Public Guardian was appointed under 159 new ongoing guardianship orders, slightly less compared to 168 the previous year.
- The Board advised the number of private individuals who were appointed as a guardian was 73. This means the Public Guardian was appointed for approximately 69% of guardianship orders made by the Board. The Board did not provide the OPG with the number of private guardians for the 2017/18 year, but in years prior to that the percentage of orders made appointing the Public Guardian versus a private guardian was significantly less, at around 57%.
- The number of emergency orders for which the Public Guardian was appointed decreased significantly this year - 134 compared to 162 in 2017/18. This is largely due to the previously discussed Supreme Court of Tasmania decision affirming that, in many circumstances, consent for admission to the Roy Fagan Centre may be provided by a person responsible, obviating the need for the appointment of the Public Guardian under an emergency order.
- Pleasingly, only 46% of emergency orders were extended for a second period of 28 days, compared to 64% in the previous year. Again, this may reflect the decreased number of emergency orders made specifically for the purpose of consent to admission to the Roy Fagan Centre.
- On reviewing an ongoing order, the Board continued the Public Guardian's appointment on 57 occasions, approximately the same as for the previous year. The Board revoked or substituted a private guardian in place of the Public Guardian on 56<sup>2</sup> occasions.
- The OPG requested advice and directions by the Board, under section 31 of the Act, on 29 occasions (approximately the same as for the previous year). Commonly, the advice and directions is sought in relation to the scope of powers, with the Board varying the order if necessary and appropriate.
- The OPG undertook 11 investigations during the year (the same number as last year), either on referral of the Board under section 17(2) of the Act or as a specific direction in conjunction with a guardianship order.

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<sup>2</sup> The precise number cannot be ascertained due to contamination of data associated with new reporting capability installed to extract data required by the Royal Commission.

## Active Cases

On 30 June 2019, the OPG had 303 active cases, an increase of 44 cases (17%) from last year. Whilst this increase is substantial, the rate of increase has slowed in the second half of this reporting period. Most of this year's increase in case-load occurred in the first 6 months: our case-load was 296 as at 30 December 2018 and increased further by only 7 cases as at 30 June 2019. Happily, early indications are that this slower growth rate is continuing. We attribute this to significantly fewer emergency orders associated with the Roy Fagan Centre accepting the consent of the person responsible, and a plateauing of new appointments resulting from people transitioning to the NDIS.



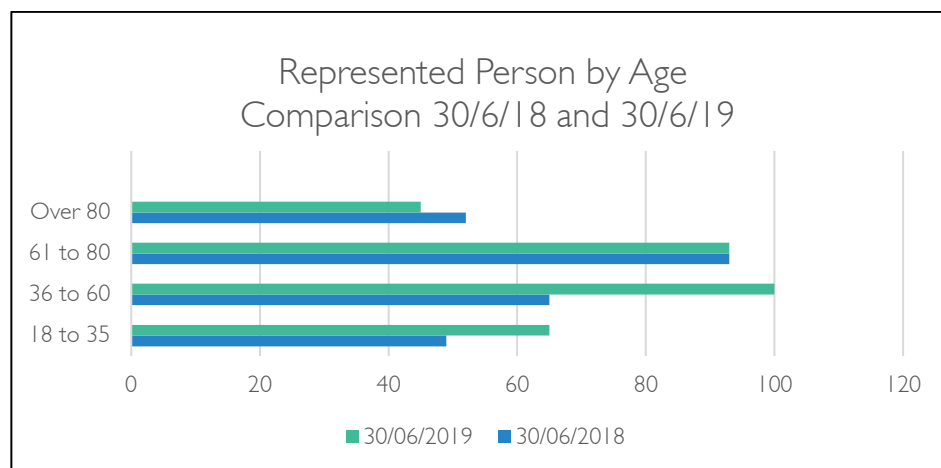
## Cases Closed

The OPG guardians actively work towards building the autonomy of the people for whom we are appointed, and seeking to have orders revoked when the criteria for the appointment of a guardian are no longer met. Approximately 230 cases were closed during the course of the year (including 40 where the represented person died). By far the most common reason for closure was that there was no longer a need for a guardian. Cases close when the order lapses on expiry, when the Board revokes the order upon review, or when the Board appoints a private guardian in place of the Public Guardian.

## Age and Gender Demographics

As at 30 June 2019 the Public Guardian was appointed for slightly more men (50.5%) than women (49.5%).

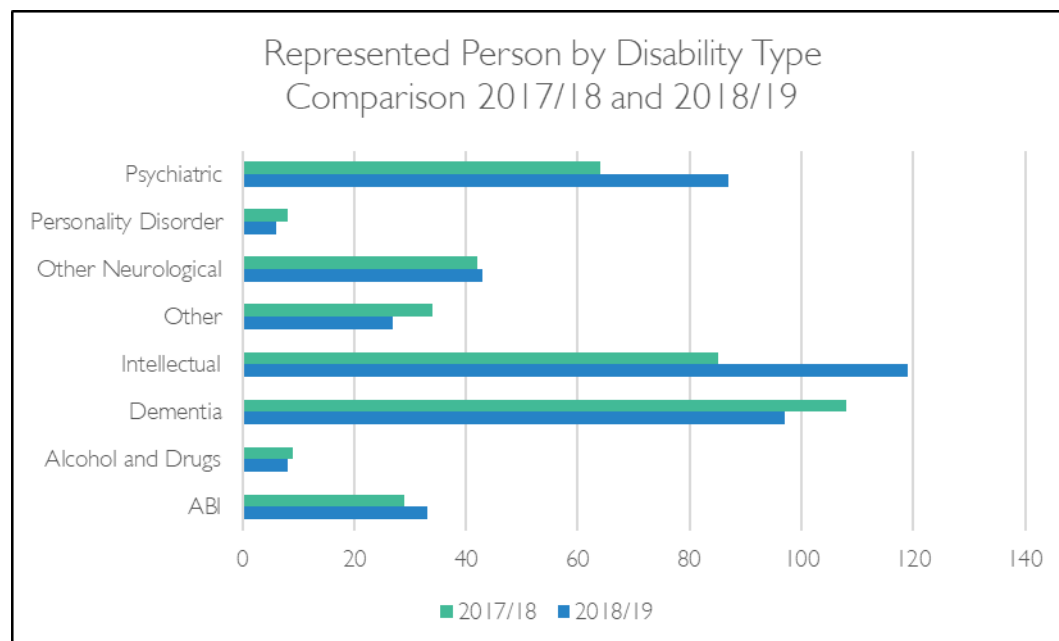
The age profile of our cases has changed significantly this year compared to last year. Last year, more than 55% of our case-load was aged over 61; this year the percentage is 46% (although the actual number of people in that age group reduced by only 7). By contrast, the percentage of our case-load in the 36 to 60 aged bracket has increased from 25% as at June 2018 to 33% as at 30 June 2019. We attribute the increase in these numbers to the appointment of the Public Guardian for NDIS participants.



## Diagnostic Profile

Consistent with the change in age profile, dementia is no longer the most commonly presenting disability. This year, 28% of our clients had an intellectual disability, 23% had dementia, and 21% a psychiatric disability.

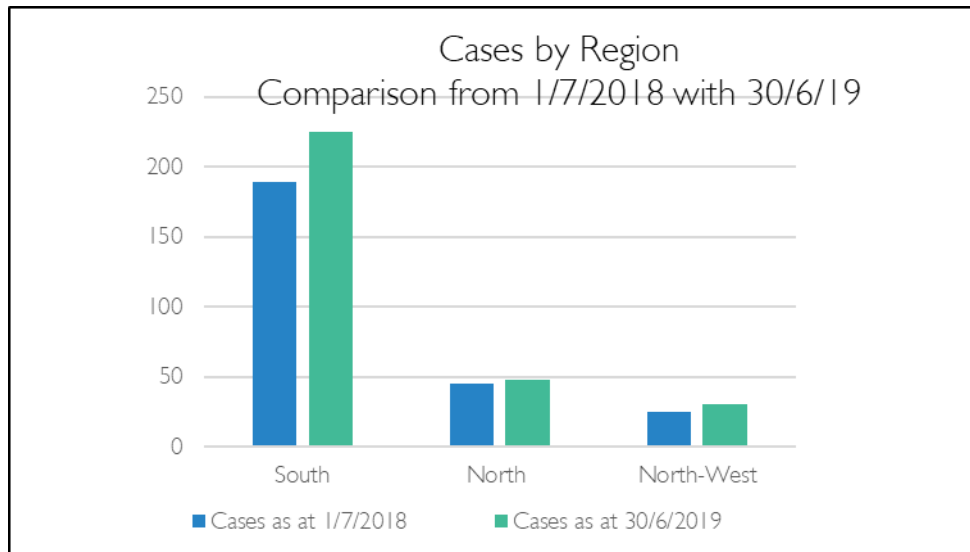
A large portion of our clients – approximately one third - have dual or multiple diagnosis. This means they are likely to have complex presentations, with the intersection of multiple disabilities compounding the effects of their impairment and support needs.





## Regional Profile

74% of people under guardianship reside in the south of the state with 16% in the north and 10% in the north-west. 2017/2018 saw a disproportionate increase in the number of cases in the south of the state compared to the north and north-west. This appears to have stabilised.



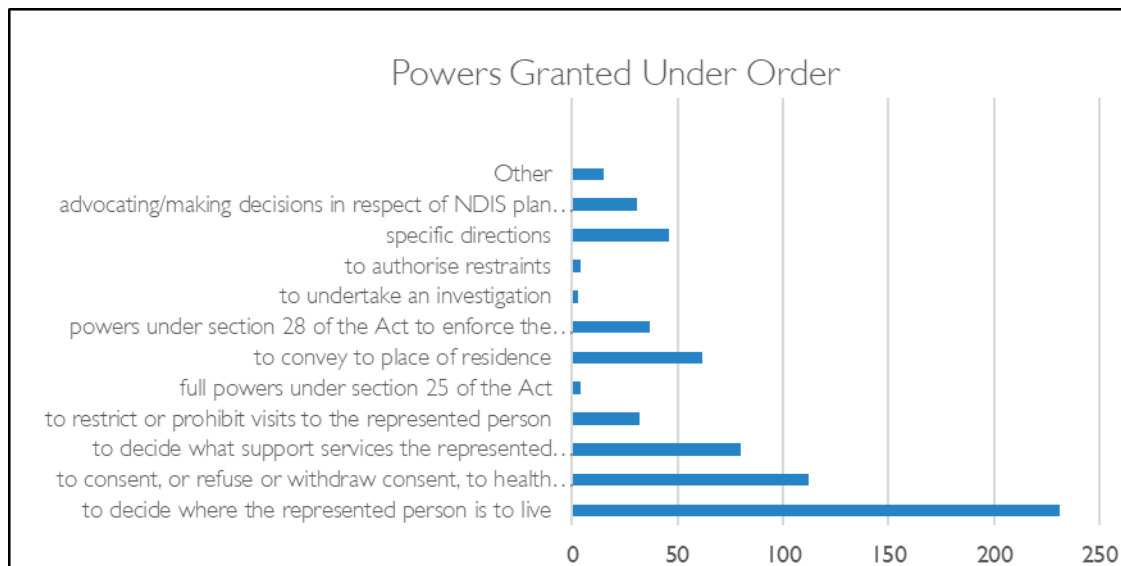
## Powers Granted Under Orders

The Board is required to make orders consistent with the principles set out in section 6 of the Act, including “the means which is the least restrictive of a person’s freedom of decision and action as is possible in the circumstances is adopted”. Further, the Board “must not make an order appointing a full guardian unless it is satisfied that an order for limited guardianship would be insufficient to meet the needs of the proposed represented person” (s20(4)). The Board will consider the circumstances of the represented person and the types of decision which need to be made, and give the guardian powers under the order that reflect those domains.

As in previous years, the most common power granted to the OPG guardians was the power to decide where the person is to live, followed by the power to consent or refuse consent to medical treatment. The number of plenary orders – under which the guardian has full powers – continues to decline. This reflects the Board’s endeavour to make orders consistent with the principle of the least restrictive alternative.

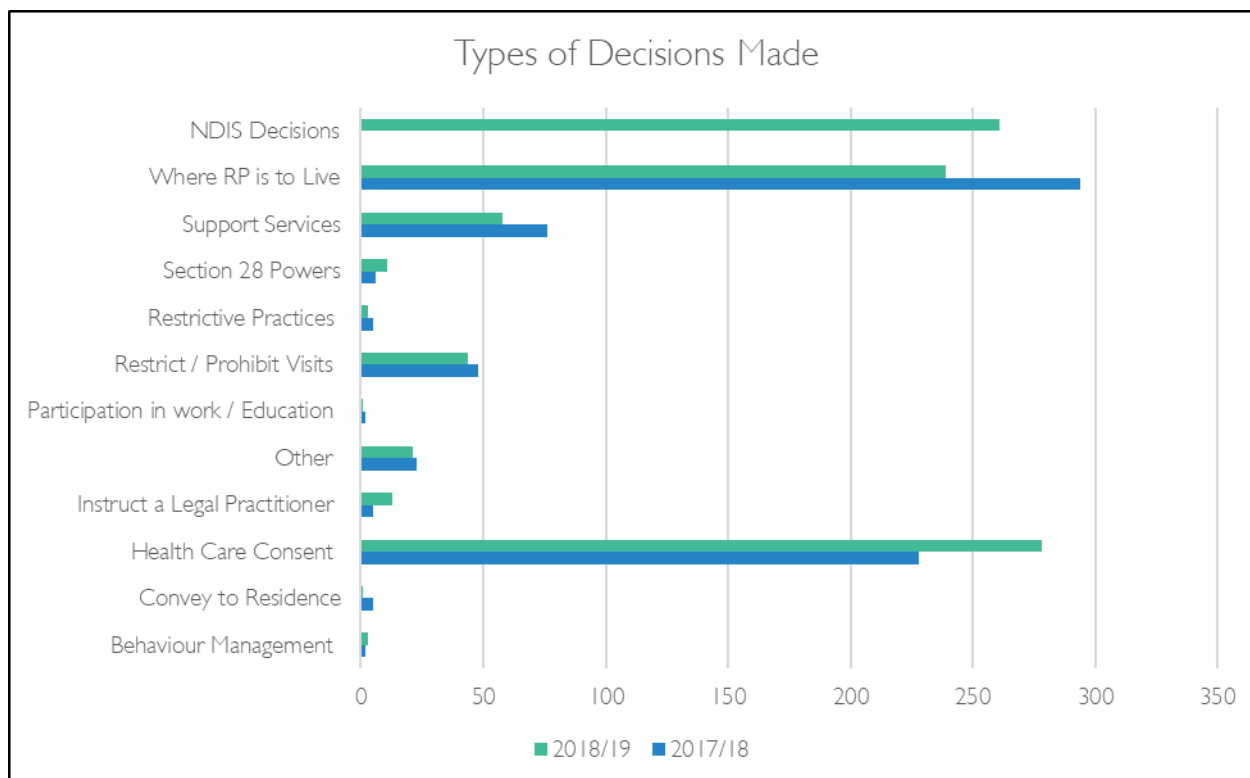
This year saw a decline in the granting of the power to convey the represented person to the place of residence decided on by the guardian, and an increase in authority to use reasonable force or restraint granted under section 28 of the Act. This is consistent with the observations made in the Supreme Court decision in the matter appealed in February 2019, that orders of the Board made under s 28 must specify the actions authorised to be taken and by whom.

*“...the most common power granted to the OPG guardians was the power to decide where the person is to live”*



## Decisions Made by Guardians

The most salient change in the types of decisions made by guardians this year compared to last year is the number of decisions relating to NDIS service provision. This category of decision was added during this reporting period to differentiate NDIS-specific decisions from “general” service provision decisions. General support services decisions dropped marginally this year, as some of them would now be recorded under NDIS decisions. The very high number of NDIS decisions compared to last year’s support services decisions is illustrative of the huge increase in workload associated with this client group.



## Actions Undertaken

Data extracted from our case-management system reveals a significant increase in the number of actions taken by guardians, across all major types or categories of actions. With our increase in caseload, an increase in recorded actions is to be expected. In total, there were 14,909 individual actions recorded as performed, up from 11,125 in the previous year. This represents a 34% increase in actions for a 17% higher caseload – we believe NDIS work would contribute to this disproportionate increase in actions undertaken. Guardians will often record a series of related events or interventions (such as a meeting with follow up email and telephone contact) on a single record, so the total number of “actions” is an under-representation of the actual work undertaken and performed by the guardians.

By way of illustration, the activities and interventions recorded for 2018/19 include:

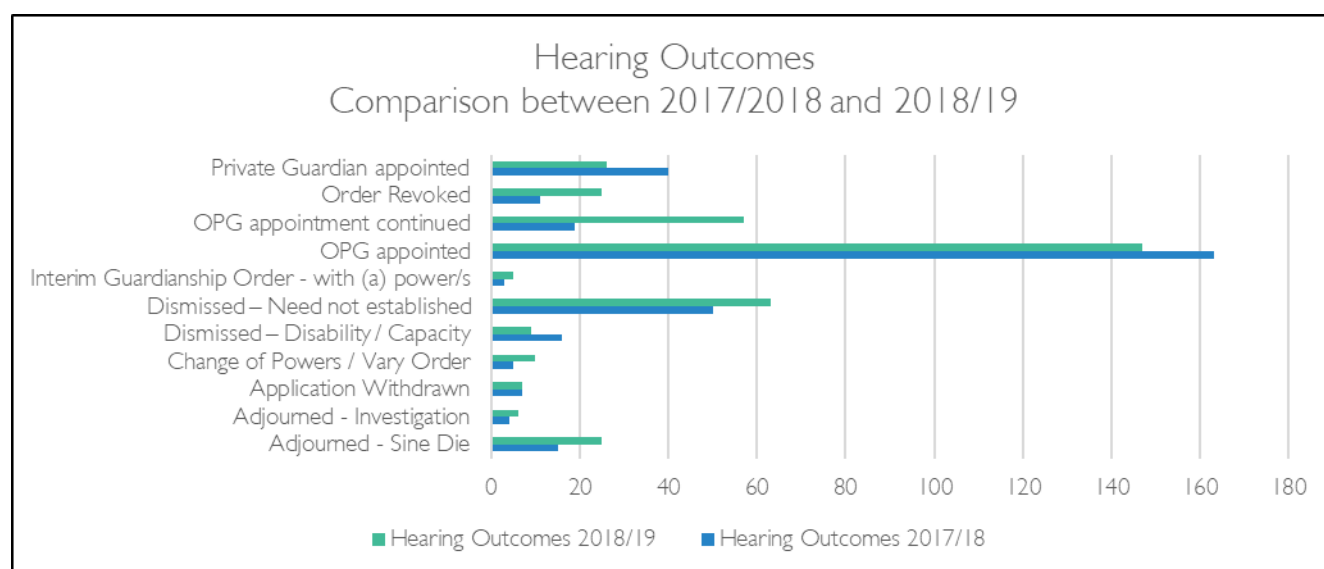
- 1861 transactions involving the Board, including receiving and filing orders, applications, and hearing papers; applying for reviews or advice and direction; and providing written reports to the Board – up from 1687 last year
- 7574 instances of communication by way of letters and emails to various interested parties and stakeholders – up from 5164 last year
- 4192 recorded contacts with the represented person or other key parties, including phone calls, case conferences and meetings – up from 3459 last year
- 1209 formal documents received and dealt with, including such items as medical reports, allied health assessments and service agreements – up from 768 last year.

*“In total, there were 14,909 individual actions recorded as performed, up from 11,125 in the previous year.”*

## Hearings Attended by OPG

The OPG was requested to attend 390 hearings across the state, in Hobart, Launceston, Devonport and Burnie. This is approximately 12% more than last year. 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; applications for an 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.

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



## Emergency Guardianship Appointments

Section 65 of the Act allows the Board to make 'emergency orders' for which it is not required to give notice or to hold a hearing, when it considers it proper to do so by reason of urgency. Emergency orders can be made for a maximum of 28 days, and can be renewed once, again for a maximum period of 28 days. The Board can only appoint the Public Guardian as guardian or the Public Trustee as administrator under an emergency order, for a person who is not already a represented person.

As noted in the Snapshot, emergency guardianship orders significantly decreased during this reporting period – 134 this year compared to 162 in 2017/18. A more detailed analysis reveals that prior to the previously-mentioned Supreme Court appeal, the Board was making emergency orders appointing the Public Guardian at the rate of approximately 13 per month; after the decision was handed down, the rate of emergency orders dropped to less than an average of 6 per month.

Pleasingly, the percentage of emergency orders requiring renewal for a second period of 28 days (46%) has also dropped to the lowest level since 2015/16.

*“...emergency guardianship orders significantly decreased during this reporting period”*

34 emergency orders were continued following an application for on-going guardianship, with the appointment of the Public Guardian. The number continuing to an ongoing order appointing a private guardian is unknown.

Year	umber of initial emergency orders	Number extended for a 2 <sup>nd</sup> period	Percentage
2014-15	149	69	46%
2015-16	153	47	31%
2016-17	174	97	56%
2017-18	162	103	64%
2018-19	134	61	46%

## After-Hours Emergency Work

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, who screen for urgency and refer any non-urgent matters to the OPG for follow up during business hours.

In this reporting period 86 enquiries/requests were forwarded to the on-call guardian for immediate urgent action after hours in the evenings or on the weekend. This compares to approximately 60 in the previous year – a significant increase of approximately 43%.

The majority – approximately 75% - of calls requiring urgent 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 visiting arrangements or refusing consent for visits; and advising or authorising action to be taken for missing or absconding persons. The significant increase in after-hours emergency work for existing clients is reflective of the increasing complexity of the cases we deal with.

*“...86 enquiries/requests were forwarded to the on-call guardian for immediate urgent action after hours...”*

This year saw a 22% increase in after-hours calls in relation to new urgent matters – 22 this year compared to 18 last year. Of these, eight required the making of an out-of-hours emergency order. This is the same number as in the previous year; only one was required in the 2016-2017 year. Of the remainder “new matters”, 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.

## People's Stories

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

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

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

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

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

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

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

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

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

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

Based on Sheree's wishes, the guardian declined consent for either naso-gastric tube or PEG feeding. Instead, the guardian supported the remaining option of "risk feeding" - the introduction of food and liquid with a thickened



texture. Whilst this comes with an on-going chance of further aspiration, the guardian weighed up that risk with Sheree's wishes and determined this to be the most appropriate option in the circumstances.

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

*"Sheree had been able to indicate that she did not want invasive or life-prolonging treatment in the event of a critical health episode."*

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

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

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


To complicate matters, Emily's special care package provider declined to continue providing support when transitioning from state funding to becoming an NDIS participant. Further intensive advocacy resulted in a Supported Independent Living (SIL) provider being engaged by Emily's NDIS support coordinator. A planned transition process eventually occurred, with regular care team meetings, guided by allied health input from an NDIS registered psychologist and occupational therapist.

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

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

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

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



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

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

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

*“When making decisions, guardians must consider the views and wishes of the person as well as the least restrictive option available to them. This can be very challenging where a person could potentially be supported to live in the community but available services are insufficient or unsuitable to meet the person's needs.”*



The NDIS rollout in Tasmania was undertaken by age-groups and was completed in January 2019 when the final 50 to 60 age cohort became eligible. The number of NDIS participants for whom the OPG acts as guardian has increased markedly over the 2018/19 financial year, from 71 as at 30 June 2018 to 132 as at 30 June 2019. A very substantial portion of our case load – approximately 44% - are now NDIS participants. The OPG was specifically appointed as guardian to make decisions in relation to NDIS service provision for some of these, and for others we had already been acting as their guardian for other decisions and had our powers expanded to include NDIS decisions.

The OPG is concerned about the “over use” of guardianship as a response to NDIS participants who have cognitive disabilities – we are aware of very simplistic thinking on the part of a number of NDIS personnel and other service providers that amounts to “cognitive impairment = lack of decision making capacity = needs a guardian”. This crude formulation is inconsistent with the principles that underpin both the NDIS and Tasmania’s guardianship legislation, which require the least restrictive alternative including *supports* for decision-making. We are particularly concerned that advocacy is not being considered and tried before an application is made for guardianship.

The NDIS has brought about some enormous benefits to the lives of many people who live with a disability. The scheme has helped facilitate people moving from facilities based on outdated medical-models where they have lived for many years, into supported accommodation in the general community with prospects to learn new skills and build independence. Others have been able to leave the family home where they had been living isolated lives with aging parents, to semi-independent living with opportunities to pursue social activities, education and work.

In spite of these over-arching benefits, there are a number of concerns the OPG holds about the operation of the scheme. In brief, these include:

- Unacceptable delays in the planning process – in scheduling both initial and review plan meetings, having plans approved, sourcing services for plan implementation, and securing urgent reviews
- Inadequately skilled/experienced planners, including some who appear to have a very limited understanding of support needs arising from a disability, and/or a lack of understanding of cognitive impairments and associated communication issues
- An apparent high turnover of planners, contributing to a lack of continuity for participants (other than those in the Complex Planning Pathway) and other inefficiencies
- The NDIS is “not a crisis service” (as it correctly proclaims), but nor are the services it funds as components of a participant’s supports – arrangements for a system and funding to respond to crises outside of the current planning processes urgently need to be established
- Better coordination between NDIS and state health services is needed to ensure safe and timely discharge from hospital – the delineation between health-related and disability-related supports can become blurred, for example where a person is admitted to hospital for social reasons (such as a deterioration in functional ability at home or breakdown in care arrangements) rather than acute medical reasons, and prolonged hospitalisation while sorting out funding for post-discharge supports is not in anyone’s best interests.

## Our other functions

### Supporting and encouraging programs and services for people with a disability

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

In 2018/2019 our activities and involvement in policy/program development and reviews with organisations and groups from the government and non-government sectors have included:

- ongoing membership of the State-wide Elder Abuse Prevention Advisory Committee (SEAPAC)
- member of the THS-auspiced Advance Care Directive Working Group
- provision of a submission to the Royal Commission into Aged Care Quality and Safety
- participation in the National Review of Community Visitor Schemes
- participation in the NDIS Quality and Safety Transition workshop
- ongoing membership of a National NDIS Guardianship working group
- contribution to the Department of Justice's submissions to various State and National law reform projects.

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

The OPG's advocacy role occurs largely in the context of our guardianship work. The OPG in Tasmania does not have additional advocacy programs, either at systemic or individual levels, as do some of our interstate counterparts. The principles underlying advocacy inform our approach to guardianship and decision-making, albeit that ultimately as guardians we may need to make decisions in the represented person's best interests, contrary to their wishes. The OPG guardians make referrals to community based advocacy services as appropriate when 'pure' advocacy is required.

Guardians will commonly advocate on behalf of the people with whom we work for the provision of appropriate services, such as the allocation of a case-manager, for housing, for increased opportunity for social and community participation for those in residential care, and for appropriate discharge planning from hospitals. The transition to the NDIS is requiring an increased role for guardians to advocate on behalf of NDIS participants for appropriate funding for services, and for early and urgent reviews of plans. Guardians will always advocate for the least restrictive alternative and for the wishes of the represented person to be put into effect as far as possible.

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

*"The transition to the NDIS is requiring an increased role for guardians to advocate on behalf of NDIS participants for appropriate funding for services, and for early and urgent reviews of plans."*

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

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

## Providing information and education to the community and public

The OPG dealt with approximately 180 formal 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 appears to be a significant decrease from the previous year, however the change reflects a change in practices for the recording of enquiries: minor matters not requiring formal advice or guidance from a guardian, and not requiring any further action were not recorded. This number refers only to enquiries during business hours: after hours enquiries are discussed above in the After-Hours Emergency section.

Information booklets for the represented person and for family members, service providers and other interested parties have been published by the OPG and are available online or by contacting the office. 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, particularly while conducting home visits in residential and health facilities, and attending case conferences. In addition, this year the OPG conducted 15 formal education sessions, reaching approximately 290 people. This is a slight increase from last year (approximately 250 reached), however we hope to be more proactive and strategic in our approach in the future. In the meantime,

*“...the OPG welcomes any request for education and information sessions.”*

## Themes, issues and challenges

In spite of lack of resources dedicated to systemic advocacy the OPG has identified a number of issues of concern regarding policies, practices and services effecting the lives, interests and well-being of adults with disabilities, in the course of our guardianship work. We have previously reported on some of these, but they remain unresolved and we continue to monitor them.

- Significant delays in the allocation of packages of care are having a huge impact on many older persons. Long waits see elderly people struggling to maintain their independence and safety, living at home with no or inadequate services – services that they have been assessed as needing and for which they are eligible. There have been several cases where guardians have been forced to make the decision that the person needs to be hospitalised and/or must reside in a residential aged care facility, contrary to their wishes and beyond their support and care needs. These outcomes can be devastating for a person eager to maintain their autonomy and independence, but are also an unjustifiable drain on public resources: the costs of caring for a person in a hospital or residential aged care facility are far in excess of the costs of in-home support. Unfortunately, for many elderly people, their independent living skills will deteriorate quickly once they are being cared for fulltime in an institution, and the prospects of exiting a residential aged care facility and returning home to live independently, once a package of care finally becomes available, are slight.

*“Long waits [for home care packages] see elderly people struggling to maintain their independence and safety, living at home with no or inadequate services...”*

- The Public Guardian continues to promote the adoption of practices by the Board that facilitate the full participation of the represented person in hearings, and minimise the associated anxiety and distress. To this end the OPG urges the Board to approach hearings in as informal manner as reasonably possible, without recourse to overly legalistic processes and language.
- Like others who regularly attend hearings (including Board members responsible for conducting hearings), the OPG is very concerned that the Macquarie Street Hobart hearing room is not fit for purpose. Both the hearing room and the waiting area are small and cramped and at times simply cannot reasonably accommodate the numbers of interested parties who may attend. Conflicting family members, alleged perpetrators of abuse and vulnerable persons with a disability are forced into close, uncomfortable proximity, with increased distress and the risk that conflict may escalate. The Board's attempts to manage the inadequate hearing facilities has included creating a bench with a physical barrier behind which the members now sit. This creates the illusion of physically elevating Board members above parties to the hearing, similar to a court layout. All other parties to the hearing must share an even smaller table, resulting in less personal space. The OPG guardians are concerned that this layout has changed the dynamics of the hearing process, and contributes to represented persons feeling like they have done something wrong or illegal. The inadequate hearing facilities also constitute a work health and safety issue, however the OPG's main concern is for the people subject to an application.
- The OPG has also continued to urge 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. 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. Legal reform to remedy this issue will be considered.

- We remain concerned that medical treatment for people who the lack capacity to consent due to a disability, is often administered without any lawful consent. We see this occurring in relation to represented persons for whom we act as guardian, across the board: in hospitals, residential aged care facilities, supported accommodation in the disability sector and by medical practitioners in the community. We have become aware of complaints made by enduring guardians that their consent is not sought and we presume the same would apply to private individuals who ought to be consenting as person responsible. This issue is of real concern. The Act sets out clear provisions for substitute consent for medical treatment for people who are unable to consent themselves – those provisions act as important safeguarding mechanisms. The Act makes clear that anyone providing medical treatment without proper consent is liable of an offence punishable by imprisonment (see s 38).
- There continues to be a lack of suitable supported accommodation options for elderly people who require a high level of psychological support and monitoring, due to behavioural issues such as aggression, disinhibition and impulsivity resulting from cognitive impairments. Options are particularly limited for men who require a male-only facility: there are no longer any residential aged care facilities in Tasmania providing such an environment. As reported last year, there are consequently a number of elderly people residing long-term at 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. This issue was raised with the Royal Commission into Aged Care Quality and Safety and the OPG submitted that a review of the funding arrangements needs to be undertaken.

*“The Act makes clear that anyone providing medical treatment without proper consent is liable of an offence punishable by imprisonment.”*



## Complaints

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

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

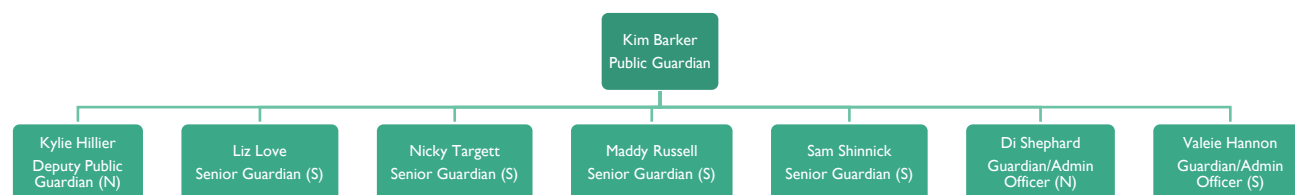
The Public Guardian's complaints procedure is advised in information booklets provided to the represented person and family members, and is advertised on our website.

Whilst the Act does not require the Public Guardian to provide written reasons for its decisions, our policy is to do so whenever requested. 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.

## Financial Summary

	2016/17 Actual	2017/18 Actual	2018/19 Actual
<b>Salary related expenditure</b>	541,687	629,251	771,501
<b>Non salary expenditure</b> (includes IT, materials, travel, office rental, worker's comp and other)	161,395	153,483	147,648
<b>Total operating expenditure</b>	<b>703,082</b>	<b>782,734</b>	<b>919,149</b>

## Appendix I - Office of the Public Guardian staff



### Public Guardian

**Kim Barker** 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 is a Director of the Relationships Australia (Tasmania) Board, on a voluntary basis.

### Deputy Public Guardian & Senior 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.

### Senior Guardians (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.

**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.

**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.



**Sam Shinnick** joined the OPG in November 2018. He holds qualifications in community welfare and over the last decade has worked for a variety of government and non-government agencies in Tasmania and New South Wales providing residential out of home care, early intervention programs for families, drug and alcohol case management as well as child protection. Sam was also fortunate enough to spend two years with the Royal Australian Corps of Military Police (Reserve) at Bullecourt Barracks, to which he attributes his 'great' sense of humour.

#### **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.

#### **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.



## 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.

### 27. Exercise of authority by guardian

- (1) A guardian must act at all times in the best interests of the person under guardianship.
- (2) Without limiting subsection (1), a guardian acts in the best interests of a person under guardianship if the guardian acts as far as possible –
  - (a) in consultation with that person, taking into account, as far as possible, his or her wishes; and
  - (b) as an advocate for that person; and
  - (c) in such a way as to encourage that person to participate as much as possible in the life of the community; and
  - (d) in such a way as to encourage and assist that person to become capable of caring for himself or herself and of making reasonable judgements relating to his or her person; and
  - (e) in such a way as to protect that person from neglect, abuse or exploitation.

### 15. Functions and powers of Public Guardian

(1) The Public Guardian has the following functions:

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



(k) any other function assigned to the Public Guardian by any other Act or law.

## 17. Investigations

- (1) The Public Guardian may investigate complaints and allegations concerning the actions of a guardian or administrator or a person acting or purporting to act under an enduring power of attorney.
- (2) If requested to do so by the Board, the Public Guardian must investigate and report to the Board in relation to a matter the subject to a matter the subject of an inquiry before the Board.