



PERFORMANCE AUDIT

18 MAY 2023

Managing the affairs of people under financial management and/or guardianship orders

NEW SOUTH WALES AUDITOR-GENERAL'S REPORT

THE ROLE OF THE AUDITOR-GENERAL

The roles and responsibilities of the Auditor-General, and hence the Audit Office, are set out in the *Government Sector Audit Act 1983* and the *Local Government Act 1993*.

We conduct financial or 'attest' audits of state public sector and local government entities' financial statements. We also audit the Consolidated State Financial Statements, a consolidation of all state public sector agencies' financial statements.

Financial audits are designed to give reasonable assurance that financial statements are true and fair, enhancing their value to end users. Also, the existence of such audits provides a constant stimulus to entities to ensure sound financial management.

Following a financial audit the Audit Office issues a variety of reports to entities and reports periodically to Parliament. In combination, these reports give opinions on the truth and fairness of financial statements, and comment on entity internal controls and governance, and compliance with certain laws, regulations and government directives. They may comment on financial prudence, probity and waste, and recommend operational improvements.

We also conduct performance audits. These assess whether the activities of government entities are being carried out effectively, economically, efficiently and in compliance with relevant laws. Audits may cover all or parts of an entity's operations, or consider particular issues across a number of entities. Our performance audits may also extend to activities of non-government entities that receive money or resources, whether directly or indirectly, from or on behalf of government entities for a particular purpose.

As well as financial and performance audits, the Auditor-General carries out special reviews, compliance engagements and audits requested under section 27B(3) of the *Government Sector Audit Act 1983*, and section 421E of the *Local Government Act 1993*.

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GPO Box 12
Sydney NSW 2001

The Legislative Assembly
Parliament House
Sydney NSW 2000

The Legislative Council
Parliament House
Sydney NSW 2000

In accordance with section 38EC of the *Government Sector Audit Act 1983*, I present a report titled '**Managing the affairs of people under financial management and/or guardianship orders**'.

A handwritten signature in black ink, appearing to read 'Margaret Crawford PSM'.

Margaret Crawford PSM
Auditor-General for New South Wales
18 May 2023



RECONCILIATION COMMITMENT STATEMENT

The Audit Office of New South Wales pay our respect and recognise Aboriginal people as the traditional custodians of the land in NSW.

We recognise that Aboriginal people, as custodians, have a spiritual, social and cultural connection with their lands and waters, and have made and continue to make a rich, unique and lasting contribution to the State. We are committed to continue learning about Aboriginal and Torres Strait Islander peoples' history and culture.

We honour and thank the traditional owners of the land on which our office is located, the Gadigal people of the Eora nation, and the traditional owners of the lands on which our staff live and work. We pay our respects to their Elders past and present, and to the next generation of leaders.

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Section one

Managing the affairs of
people under financial
management and/or
guardianship orders

Executive summary

NSW Trustee and Guardian is a NSW Government agency in the Stronger Communities cluster. It supports the NSW Trustee and the Public Guardian in the exercise of their statutory functions. It is accountable to the relevant Minister, the Attorney General.

The legislative responsibilities for the Public Guardian and the NSW Trustee are provided in separate statutes (*NSW Trustee and Guardian Act 2009* and *Guardianship Act 1987*). Together, these establish a number of functions and services that NSW Trustee and Guardian as an agency is expected to deliver, including:

- acting as executor and administrator of deceased estates
- acting as a trustee responsible for managing trust property on behalf of another person or organisation in line with the trust terms
- drafting Will, Power of Attorney and Enduring Guardianship instruments, and educating the community about the importance of having these documents in place
- making decisions on behalf of people under guardianship or financial management orders as a guardian or a financial manager 'of last resort', or overseeing and assisting private financial managers.

This audit focuses on the last of these - NSW Trustee and Guardian's financial management and guardianship services.

The NSW Trustee and the Public Guardian are appointed to provide direct financial management and/or guardianship services (respectively) to over 13,300 people (as at 30 June 2022) who are deemed by a court or tribunal unable to manage their own affairs. This involves making decisions for people under a relevant court or tribunal order, within the terms of the order. The court or tribunal order enables the appointed guardian or financial manager to make decisions on behalf of the person for whom the order is made. The legislation allows the financial manager or guardian to exercise all the functions of the person under management has or would have were they not incapable of managing for themselves. From a legal perspective, these 'substitute decisions' have the same effect as if the person had made the decision themselves. While the legal presumption is that a person has capacity to care for themselves and manage their own affairs, a financial manager or guardian can be appointed without the person's consent if the court or tribunal finds the person does not have relevant decision-making capacity.

There can be a range of factors that impact on a person's decision-making capacity, including cognitive impairment, intellectual disability, dementia, mental illness and addiction. Guardianship (of both the person and their estate) developed as a response, through European and English law over hundreds of years. In Australia, it was a function of the Supreme Court of NSW before the establishment of government agencies. What is now known as substitute decision-making can sometimes be referred to as a 'protective' function because:

- it relates to decisions or actions that need to be taken, which the person under an order cannot take because they are incapable of managing their own affairs
- due to this lack of competence, the person may be disadvantaged in the conduct of their affairs (for example, their money or property may be dissipated or lost, they may enter agreements unwisely or they may be at risk of abuse or exploitation)
- substitute decisions must be made in the best interests of the person on whose behalf they are made.

An alternative model is 'supported decision-making'. This refers to processes and approaches that assist people with impaired decision-making capacity to exercise their autonomy and legal capacity by supporting them to make decisions. This approach seeks to give effect to the will and preferences of the person requiring decision-making support wherever possible, including decisions involving risk. There has been a longstanding legal and community push for Australian guardianship and administration systems to move from substituted to supported decision-making. However, the legislation in New South Wales provides for 'best interests' substitute decision-making and this is the framework against which we have audited NSW Trustee and Guardian.

The Public Guardian and the NSW Trustee may be appointed as substitute decision makers by the NSW Civil and Administrative Tribunal (NCAT) and the Supreme Court. The NSW Trustee may also be appointed by the Mental Health Review Tribunal for financial management orders only.¹ They are intended to be appointed as a 'last resort' when there is no one willing or suitable to fill the role, or there is significant family conflict regarding decision-making for the person. The Public Guardian and the NSW Trustee cannot refuse to accept a court or tribunal appointment to administer an order for guardianship or financial management.

Public Guardian decisions cover healthcare, lifestyle, accommodation and/or medical decisions such as where a person should live (for example: at home, in an aged care facility or disability group home), what disability or other support services they receive, who can have access to them (for example: through establishing visiting schedules between conflicting family members) and consent to the use of restrictive practices on the advice of independent experts (for example: seclusion, chemical restraint such as anti-psychotic medication, environmental restraints such as limiting access to knives).

Under a financial management order where the NSW Trustee is appointed as financial manager, the NSW Trustee carries out such functions as securing and collecting assets, income and entitlements, paying expenses, debts and designing budgets, investing financial assets, lodging tax returns and paying maintenance for dependents, taking or defending legal proceedings and managing other financial and legal affairs for the person. This is referred to as direct financial management.

A court or tribunal may appoint a private financial manager, such as a family member, friend, private trustee company or other commercial provider. Where a private manager is appointed, the NSW Trustee provides authorisation and directions to the private manager and oversees their performance. As at 30 June 2022, over 6,200 people had private managers.

As an agency, the majority of NSW Trustee and Guardian's overall revenue is from fees (including for services outside the scope of the audit, such as will preparation) and investments. The remainder is from the NSW Government as funding for non-commercial services including guardianship services and subsidised financial management services for low-wealth clients. Public guardian clients do not pay fees. Financial management clients pay fees, but these are subsidised where the client does not have capacity to pay full fees. NSW Trustee and Guardian is considered a self-funded agency by NSW Treasury definitions.

¹ Some direct financial management clients are not subject to court or tribunal order, but are voluntary patients admitted to a mental health facility in accordance with the *Mental Health Act 2007*. NSW Trustee and Guardian may assume a financial management role if requested by the patient or, if the patient is under 18 years, a person with parental responsibility: *NSW Trustee and Guardian Act 2009*, s 53.

Demand for financial management and guardianship services, and the complexity of clients' circumstances for these services, has grown over the last decade. In November 2020, NSW Trustee and Guardian advised the Attorney General that it had run an operating deficit in 2019–20 driven by an increase in non/low fee paying customers and an increase in the complexity of matters. NSW Trustee and Guardian advised the Attorney General that government funding was no longer meeting the full cost of guardianship services, and of direct financial management services for people with low balances. NSW Trustee and Guardian's analysis had identified a shortfall in government funding of \$8.4 million in 2019–20 that was expected to increase over the forward estimates. A working group was established with officers from NSW Trustee and Guardian, NSW Treasury and the Department of Communities and Justice to advise the government on options for improving the financial sustainability of NSW Trustee and Guardian overall.

NSW Trustee and Guardian subsequently received a funding boost of \$41.5 million across four years in the 2021–22 State Budget. NSW Trustee and Guardian applied the majority of the budget enhancement to recruit approximately 120 new roles mostly in financial management and guardianship services.

The objective of this audit was to assess whether NSW Trustee and Guardian is effectively delivering guardianship and financial management services in line with legislative requirements and relevant non-legislative standards. These include a legislative duty to observe certain principles when exercising the relevant legislative functions, including to: give primary consideration to clients' welfare and interests, restrict their freedom of decision and action as little as possible, take account of their views, and encourage their self-reliance.

The audit was guided by three questions:

- Does NSW Trustee and Guardian align its service delivery with its legislative functions and principles, and relevant standards?
- Does NSW Trustee and Guardian drive and monitor performance to give effect to its legislative functions and principles, and relevant standards?
- Has NSW Trustee and Guardian effectively planned the use of additional funding to improve service delivery and adherence to its legislative functions and principles, and relevant standards?

The audit review period was the five years between 1 July 2017 - 30 June 2022.

Throughout this report:

- 'client' refers to a person who is under a guardianship order and/or whose estate is under financial management, for whom the Public Guardian and/or the NSW Trustee is appointed to act or responsible to oversee their private financial manager
- 'financial management' refers to clients under financial management orders (direct and private financial management) and/or the services provided by NSW Trustee and Guardian to these clients or their private managers
- 'guardianship' refers to clients under guardianship orders where the Public Guardian is appointed, and/or the services provided by the Public Guardian to these clients
- 'frontline staff' refers to the staff responsible for engagement with, and decision-making for, clients and private managers (titled client service officers, senior client service officers and principal client service officers in NSW Trustee and Guardian)
- Aboriginal refers to the First Nations peoples of the land and waters now called Australia and includes Aboriginal and Torres Strait Islander peoples.

Conclusion

NSW Trustee and Guardian is delivering guardianship and financial management services in line with its legal authority. However, it does not have sufficient oversight to ensure that its services are consistent with legislative principles which aim to promote positive client outcomes

NSW Trustee and Guardian's guardianship and direct financial management services rightly emphasise the legal requirement to give paramount consideration to the welfare and interests of its clients when making decisions for them. However, NSW Trustee and Guardian does not consistently obtain and record relevant client information to determine which of the other legislative principles should be applied to individual decisions. It also does not test that staff decision-making aligns with the legislative principles in practice.

Staff caseloads for financial management and guardianship services have limited the amount of time that staff can spend in building a relationship with each client or working on each client matter. This constrains the extent to which they can get to know a client and understand their circumstances - both of which are central to applying the legislative principles. Poor client information sharing in legacy IT systems, insufficient quality monitoring, and limited staff training and staff supports exacerbate this further.

NSW Trustee and Guardian governance and practices for financial management and guardianship do not reflect the nature and diversity of its client base

Despite direct financial management and public guardian clients having, by definition, impaired decision-making capacity often related to traumatic brain injury, dementia, intellectual disability and mental illness, an understanding of the sometimes-complex conditions that affect its clients has only been expected of all frontline staff since late 2021, and relevant training has been insufficient.

NSW Trustee and Guardian also does not have a consumer advisory entity to provide it with advice on financial management and guardianship services from the perspective of clients with lived experience.

Despite a significant over-representation amongst its client group, NSW Trustee and Guardian does not have specific governance, consultation, staff roles or practice guidance for its engagement with Aboriginal clients and their representatives.

NSW Trustee and Guardian does not know how well it delivers financial management and guardianship services

NSW Trustee and Guardian does not routinely track its performance with respect to service quality or how well it gives effect to the legislative functions, principles and standards for direct financial management and guardianship services. It has not been effectively monitoring whether these services are improving over time. Nor does it measure its performance with respect to the experiences and outcomes of clients of these services.

Key findings and recommendations from previous reviews remain unresolved. This includes a repeated finding by the Independent Pricing and Regulatory Tribunal (IPART) that direct financial management services should be subject to transparent fee-for-service charges rather than fees calculated as a proportion of client estate value.

NSW Trustee and Guardian does not have effective monitoring in place to know the actual costs of service delivery

Direct financial management services are resourced predominantly by client fees, comprising 81% of revenue between FY2018-FY2022. Government funding makes up the balance and is directed to fee subsidies and waivers for low-wealth clients (those with assets apart from their principal place of residence, motor vehicle and furniture valued under \$75,000). Sixty-eight per cent of direct financial management clients at 30 June 2022 were low-wealth and eligible for fee subsidies. Private financial management services are resourced predominantly by client fees; government funding is not provided. Fees for both direct financial management and private management are capped by regulation.

On the other hand, guardianship services are funded entirely by government funding as an annual grant, with the objective of providing these services for free to the client.

NSW Trustee and Guardian has taken steps to try to capture data on the actual cost of providing guardianship and subsidised financial management services, and to estimate these costs in the absence of such data collection. However, system limitations have frustrated attempts to fully identify and quantify the costs of service provision, including the varying complexity of client needs and related staff effort. Without data on actual costs to serve, NSW Trustee and Guardian cannot confidently demonstrate that its guardianship and financial management expenses are efficient, or determine whether revenue - either from government funding or client fees - is sufficient to meet these costs. This is hampering its efforts to address a

gap between the rate of growth in client numbers and complexity, and government funding for guardianship and subsidised direct financial management services.

Government funding for guardianship services and direct financial management services for low-wealth clients has not kept pace with the growth in clients. There is a risk that some fee-paying clients are unknowingly subsidising others

Under its enabling legislation, NSW Trustee and Guardian cannot decline to receive a guardianship or direct financial management client once the court or tribunal make relevant orders. It is intended to be a provider of 'last resort' where no other suitable person is willing or able to be the guardian or financial manager for a client. It also cannot decline to oversee a private financial manager.

Demand for guardianship and direct financial management services is growing. Over the five-year audit review period (FY2018-FY2022), there has been an eight per cent increase in the number of people who have the NSW Trustee as their financial manager, a 32% increase in the number of people who have private managers and a 46% increase in the number of people who have the Public Guardian as their guardian. NSW Trustee and Guardian data suggests the complexity of client circumstances has also grown over time, increasing the staff effort required on client matters.

The risk of cross-subsidisation arises when the revenue or income for a service (whether from fees, government funding or other sources) is less than the cost to provide the service. IPART found in a 2014 review that NSW Trustee and Guardian's fee structure across all its charged services at that time was resulting in significant cross-subsidies between services and between clients within each service. Such a gap remains evident with respect to NSW Trustee and Guardian's private management, direct financial management and guardianship services.

However, NSW Trustee and Guardian cannot determine whether high-wealth direct financial management clients are subsidising services for guardianship and low-wealth direct financial management clients or private management clients without data on the actual costs to serve each client. There is a risk that some clients of these or other NSW Trustee and Guardian services are unknowingly subsidising financial management or guardianship clients.

Cross-subsidisation is inequitable, inefficient and not aligned with NSW Treasury policy on government funding for non-commercial activities. NSW Trustee and Guardian has recognised this and repeatedly sought increased government funding for guardianship services, and subsidised direct financial management services, over the five-year audit review period.

NSW Trustee and Guardian has applied additional funding received in the 2021–22 Budget to increase frontline service delivery staff, but gaps in monitoring and continuing IT system constraints create a risk that it will not address service quality issues, nor be able to demonstrate the impact of this new funding

NSW Trustee and Guardian received a funding boost of \$41.5 million across four years in the 2021–22 State Budget. The budget enhancement represented a significant increase in government funding for NSW Trustee and Guardian to provide free guardianship services and subsidised direct financial management services. Nevertheless, NSW Trustee and Guardian expects the budget enhancement will address immediate funding shortfalls for these services, but not those forecast to occur in the future on existing client growth and fee revenue trends.

NSW Trustee and Guardian has targeted the additional funding received in 2021–22 to improve adherence to its legislation through new operating models and a significant uplift in frontline staff numbers for guardianship and financial management services. Capital funding for IT system enhancements was not included in the additional funding allocated.

However, there is a risk that existing gaps in monitoring service quality, performance and consumer experiences - and continuing IT system constraints - could lead to increasing frontline staff numbers without also addressing key issues in service quality, or in being able to demonstrate impact from the budget enhancement in seeking future funding.

1. Key findings

NSW Trustee and Guardian is delivering financial management and guardianship services in line with its legal authority

NSW Trustee and Guardian has broad powers and functions when acting as financial manager or guardian after appointment by a court or tribunal.

These include all the functions the person under a financial management or guardianship order has and can exercise, or would have and could exercise if under no incapacity, including: custody of the person to the exclusion of others (for guardianship orders), and the power to make decisions, take actions and give consents.

NSW Trustee and Guardian is delivering its direct financial management and guardianship services in line with this broad legal authority.

High caseloads for frontline staff and inadequate IT systems have reduced the extent to which NSW Trustee and Guardian gives effect to the legislative principles

The legislation specifies principles that must be observed when financial management and guardianship powers are exercised, but the extent to which NSW Trustee and Guardian gives effect to the principles is hampered by high frontline staff caseloads and inadequate IT systems.

Under the enabling legislation, NSW Trustee and Guardian has a positive duty to observe certain principles when exercising functions with respect to guardianship and direct financial management clients. These principles include to: give paramount consideration to clients' welfare and interests, restrict their freedom of decision and action as little as possible, take account of their views, preserve their family relationships and cultural and linguistic environments, encourage their self-reliance and protect them from neglect, abuse and exploitation.

The first principle, to give primary consideration to clients' welfare and interests (known as the 'best interests' principle) is emphasised in NSW Trustee and Guardian's policies, procedures and staff training. We observed staff practice aligned with this principle.

To consider the 'best interests' of the client and determine which of the other six principles should apply to individual decisions, financial management and guardianship staff must assess information about the client. For example, staff need information about the client's situation and context to know what 'freedom', 'self-reliance', 'normal' and 'preserving relationships' might look like for the client in practice. Information about the client's situation and context also assists staff in assessing the risk of a client experiencing neglect, abuse and exploitation.

The process of collecting and considering information about an individual client to consider the application of the legislative principles can take time that is not often available to frontline staff due to their high caseloads.

In 2021–22, NSW Trustee and Guardian reviewed the average time spent by frontline staff with clients or on client matters per week, based on ratios of staff numbers to caseloads over time. This modelling estimated that frontline staff were spending less time each week on average in 2020 compared to 2011. NSW Trustee and Guardian argued that without additional investment, this would drop to an average of 14 minutes per week per client for guardianship and 11 minutes per week per client for direct financial management in 2026.

In addition to high frontline staff caseloads, inadequate IT systems have made it difficult for frontline direct financial management and guardianship staff to record and readily obtain information about individual clients for whom they need to make informed decisions. Given that NSW Trustee and Guardian does not provide one-to-one frontline staff-to-client ratios for its direct financial management and guardianship services, all frontline staff require access to appropriate record systems that provide them with the client information they need to apply the legislative principles to their decisions.

But NSW Trustee and Guardian's current IT systems do not automatically flag or prompt frontline staff and their supervisors to check that client records are complete and accurate, and that decisions made by frontline staff are in line with relevant client information and the legislative principles.

A lack of data on referrals to NSW Police Force and other state and federal agencies also makes it difficult for NSW Trustee and Guardian and the audit to assess how effectively it observes the legislative principle to protect clients from neglect, abuse, and exploitation in its practice.

Private managers must also observe the same legislative principles, and NSW Trustee and Guardian has a statutory oversight role with respect to private managers. However, the agency does not provide guidance to private managers on how to apply the principles, and does not scrutinise whether the principles are observed by private managers in exercising their powers.

NSW Trustee and Guardian has planned and attempted a variety of initiatives to reorganise team responsibilities and lower frontline staff caseloads, and to address technology and systems issues, over the audit review period. With additional funding received in 2021–22, 120 new roles were recruited to mostly financial management and guardianship frontline functions, and new operating models for these services were developed for implementation from 2022. Related IT system upgrades will follow if a separate business case for additional capital funding is successful.

There is little evidence that NSW Trustee and Guardian considers and applies the legislative principles to encourage client self-reliance and restrict clients' freedom of decision and action as little as possible

Under section 71 of the *NSW Trustee and Guardian Act 2009*, financial managers have specific legislative discretion to authorise a client to manage part of their own estate as a means of encouraging their self-reliance and developing their decision-making capacity. However, this authority has not been exercised often: only 610 clients out of 12,556 direct financial management clients (five per cent) had section 71 authorities as at 30 June 2022.

As part of the new operating models being implemented from 2022, NSW Trustee and Guardian established a dedicated team to focus on growing the number of people given section 71 authorities. But it is a small team (of four people) for the large consumer base of direct financial management clients (at least 12,400 per annum).

NSW Trustee and Guardian is not legislatively authorised to provide, nor funded to resource, related services such as financial counselling or coaching to assist clients to develop their financial literacy and skills. NSW Trustee and Guardian reports that there are limited numbers of external service providers in the market to which it could refer clients, and that there are a large proportion of clients who will never be suitable for section 71 authorities because they have conditions which make it unlikely that they will regain relevant decision-making capacity over time.

NSW Trustee and Guardian does not provide direct financial management clients with the ability to independently access real-time information about their available funds, expenditure, and budget. This makes it difficult for clients to be self-reliant and independently track their spending and savings. It also restricts clients' ability to make day to day or immediate decisions allowed under the order, and to take actions based on real-time information about their finances. NSW Trustee and Guardian advises that self-service options on online platforms such as a client portal on Service NSW are being investigated.

The Public Guardian does not have legislative discretion to delegate decision-making authority to people under guardianship orders. However, the new operating model for guardianship services aims to measure the proportion of early discharge orders that the Public Guardian seeks at the NSW Civil and Administrative Tribunal (NCAT). The rationale for this measure is to discharge people from guardianship at the right moment, to empower them to continue making decisions for themselves. This has not been previously tracked. While guardians can advocate for decision-building supports for clients as part of their general client advocacy functions, they are limited by community resources available where the client resides, and their own significant workloads.

NSW Trustee and Guardian governance and practices for financial management and guardianship are not informed by clients' lived experiences and do not reflect the nature and diversity of its client base

Financial management and public guardian clients have, by definition, impaired decision-making capacity that may be influenced by a range of different conditions such as traumatic brain injury, dementia, intellectual disability, and mental illness.

However, NSW Trustee and Guardian does not analyse its client data based on different types of disability or conditions to assess staff understanding and competencies, target appropriate staff training and tailor its services to groups of clients with particular needs. It also does not have a consumer advisory entity to provide it with advice on financial management and guardianship services from the perspective of clients with lived experience. This is in contrast to other government agencies that have specific disability advisory committees in place, such as Transport for NSW.

There is also room to increase the alignment of NSW Trustee and Guardian's governance and practices with the legislative principle in its enabling statutes that recognises the importance of cultural and linguistic environments of clients, and with provisions of the *Disability Inclusion Act 2014*.

The principles in the Disability Inclusion Act express key commitments of the NSW Government to recognise and respect the cultural and linguistic and other domains of diversity of people with disabilities. These provide that supports and services should be accessible and meet the needs of diverse groups of people with disability, and be informed by consultations or partnerships with their communities. This includes Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse (CALD) backgrounds and people who identify as lesbian, gay, bisexual, transgender, intersex, queer/questioning and other sexualities and genders (LGBTIQ+).

The data NSW Trustee and Guardian provided to us during the audit had significant gaps in the fields that capture the diverse status of its clients. For example, in 2022, for 2,568 guardianship and 281 direct financial management clients, files had blank 'main language' fields. Noting this constraint, the available data suggests the following diversity in 2022:

- The proportion of clients that speak a main language other than English:
 - under guardianship orders was 4.7%
 - under financial management orders was 3.4%
- The proportion of clients who are Aboriginal:
 - under guardianship orders was 9%
 - under financial management orders 7.1%
- This was at least double the proportion of the general population in NSW who are Aboriginal.
- NSW Trustee and Guardian do not know what proportion of its direct financial management and guardianship clients identify as LGBTIQ+. However, it advises that this information is collected for individual clients if it is relevant to the decisions and actions being made for them.

Despite the diversity in its client base, NSW Trustee and Guardian does not specifically seek feedback on its services from Aboriginal, CALD, LGBTIQ+ or other diverse clients or stakeholders to ensure that they are meeting their particular needs. It also does not have governance arrangements, specific staff training, consultation or staff arrangements to guide its engagement with these diverse client groups or their representatives.

This is a particular gap for Aboriginal clients and stakeholders since they are over-represented among NSW Trustee and Guardian's clients compared to the general population.

NSW Trustee and Guardian needs to improve the accessibility of the information it provides to direct financial management and guardianship clients

Most of NSW Trustee and Guardian's contact with direct financial management and guardianship clients is via phone calls or written material (letters and emails). Some written material is in an 'Easy Read' format using visuals and simple text, but most is not accessible for people with visual impairments, limited literacy and/or lacking English language skills. This restricts clients from being able to independently access information about decisions made on their behalf by NSW Trustee and Guardian.

People with lived experience and other external stakeholders we heard from through this audit have consistently advised that face-to-face meetings (held either virtually or in person) are more accessible than phone calls or written communication, because they enable body language to be read along with verbal messages. However, NSW Trustee and Guardian staff rarely engage with clients face-to-face either virtually using audio visual technology or in person through its shopfronts.

NSW Trustee and Guardian has only recently identified measures to track the performance of its financial management and guardianship services, and cannot demonstrate whether its performance has improved over time

In 2021–22 NSW Trustee and Guardian developed new divisional key performance indicators which aim to track the quality of services delivered to people under financial management and guardianship orders. It has also established a benefits realisation framework to monitor the expected benefits from the additional funding received in 2021–22. Some of these new performance indicators and benefits realisation indicators are currently being measured, but many will require changes to IT systems, as well as new client and stakeholder engagement processes, to collect additional data.

Prior to 2021–22, NSW Trustee and Guardian measured the performance of some of its financial management and guardianship operational processes. While these operational measures demonstrated whether it was fulfilling some of its legislative functions, they were predominantly activity measures and did not inform on the quality of decision-making undertaken for people under financial management and guardianship orders, or their experiences and outcomes.

NSW Trustee and Guardian needs to improve how it monitors and reviews decisions made by financial management and guardianship staff to ensure they are in line with policies, procedures, and the legislative principles. Beyond monthly reviews of one file per staff member, there is no process to consistently check the quality and accuracy of staff decisions and of staff reviews of their own files and client records. There is also no process to regularly monitor and review staff calls and e-mails to ensure good customer service practices are adhered to, and that policies and procedures are followed in line with the legislation.

NSW Trustee and Guardian monitors the financial performance of the common fund, in which some direct financial management client funds are invested, including through measuring against relevant financial market benchmarks. For other aspects of direct financial management, there is limited tracking to understand whether NSW Trustee and Guardian decisions and actions are financially sound and/or improving client outcomes. It does not routinely monitor low account balances to understand whether budgets are unrealistic or overly restrictive for clients.

Customer service principles are in place but implementation is not tracked, and financial management and public guardian clients are not asked to provide relevant feedback

The legislation and standards do not specify a benchmark for service quality. To provide consumers with information about what they can expect from NSW Trustee and Guardian's services, organisation-wide 'customer excellence principles' were introduced in September 2018. However, NSW Trustee and Guardian does not ask financial management and/or guardianship clients or their stakeholders for feedback on these services considered against the customer excellence principles.

An annual survey is conducted of fee-paying clients across NSW Trustee and Guardian's services. Only a very small proportion of financial management clients are surveyed, and respondents are not stratified by their type of disability or reason for decision-making incapacity, cultural identity, accommodation type, location, or other characteristics. The survey is conducted over the phone in English, excluding financial management clients and stakeholders who are: non-verbal, do not speak English, do not have access to a phone and/or have low digital literacy. The firm conducting the surveys are not trained in engaging with people with disability.

This may mean there is under-representation from some cohorts of clients who cannot engage with the survey in the way it is offered.

The only other source of client feedback on financial management and guardianship services is therefore complaints. NSW Trustee and Guardian has consistently tracked the number and themes of formal complaints about financial management and guardianship services, which provide some insight into service quality and experiences. However, this is an incomplete measure as people under financial management and guardianship orders are a more vulnerable cohort than other NSW Trustee and Guardian customers and may require support to make a complaint. It is unclear whether the numbers and themes in complaints received are representative of broader experiences.

Complaints received and resolved by frontline staff are considered informal and are not counted, monitored and analysed by NSW Trustee and Guardian. Feedback on how complaints are handled by staff is also not sought from consumers. This raises a risk that NSW Trustee and Guardian may miss important information about systemic and recurring causes of complaints, and the needs and experiences of people under financial management and guardianship orders.

Government funding for guardianship services and financial management services has not kept pace with the growth in clients for these services. There is a risk that some clients are unknowingly subsidising others

Under its enabling legislation, NSW Trustee and Guardian cannot decline to receive a guardianship or direct financial management client once the court or tribunal make relevant orders. It is intended to be a provider of 'last resort' where no other suitable person is willing or able to be the guardian or financial manager for a client. Demand for guardianship and direct financial management services has been growing over time. Between FY2018 and FY2022, there was an eight per cent increase in the number of people who have the NSW Trustee as their financial manager and a 46% increase in the number of people who have the Public Guardian as their guardian.

NSW Trustee and Guardian also cannot decline to provide orders, authorise and direct private managers once one is appointed by a court or tribunal. It is responsible for overseeing private managers through reviewing their plans for managing the affairs of the client, scrutinising annual accounts, and considering proposals for significant expenditure. Between FY2018 and FY2022 there was a 32% increase in the number of people who have private managers.

The complexity of client circumstances has also grown over time, including multiple diagnoses and disabilities, the involvement of multiple service providers, the nature of the estates under financial management and the extent of decision-making authority under guardianship orders. NSW Trustee and Guardian's data analysis suggests the higher the level of complexity of a client's circumstances, the greater the number of activities, tasks and decisions need to be made by more senior staff on their behalf, increasing the costs of providing the service.

Direct financial management services are resourced predominantly by client fees, comprising 81% of revenue between FY2018-FY2022. Government funding makes up the balance and is directed to fee subsidies and waivers for low-wealth clients (those with assets apart from their principal place of residence, motor vehicle and furniture valued under \$75,000). Sixty-eight per cent of direct financial management clients at 30 June 2022 were low-wealth and eligible for fee subsidies. The majority of revenue from the management fee charged for direct financial management services (almost 75%) comes from a minority of clients (around 18%).

Guardianship services are funded entirely by government funding as an annual grant, with the objective of providing these services at no cost to the client. Government funding is not provided for private financial management services; revenue is generated from fees. Fees for both direct financial management and private management are capped by regulation.

Until 2021–22, the amount of government funding for subsidised direct financial management services had been unchanged since 2009, and the Public Guardian grant was indexed to inflation and not to growth in client numbers which was greater than inflation. Revenue generated from private management fees has not been sufficient to cover NSW Trustee and Guardian's cost to deliver private management services.

NSW Trustee and Guardian has taken steps to try to capture data on the actual cost of providing guardianship and subsidised financial management services, and to estimate these costs in the absence of such data collection. However, IT system limitations have frustrated attempts to fully identify and quantify the true costs of service provision, including the varying complexity of client needs and related staff effort. Without data on actual costs to serve, NSW Trustee and Guardian cannot confidently demonstrate that its guardianship and financial management expenses are efficient or determine whether revenue - either from government funding or client fees - is sufficient to meet these costs.

New operating models being implemented from 2022 include roles and teams focused on identifying opportunities for early discharges from orders and providing advice to NCAT on the 'last resort' functions of NSW Trustee and Guardian which may assist in diverting some people from orders where there are other appropriate alternatives available. This may help to give effect to the legislative principles and reduce the numbers of direct financial management and guardianship clients.

NSW Trustee and Guardian has also used revenue from fees from its commercial offerings (such as estate administration) to fund services to guardianship clients, low-wealth direct financial management clients and private management. However, NSW Trustee and Guardian cannot determine whether high-wealth direct financial management clients are subsidising services for guardianship and low-wealth direct financial management clients without data on the actual costs to serve each client. There is a risk that some clients of these or other NSW Trustee and Guardian services are unknowingly subsidising financial management or guardianship clients.

Cross-subsidisation is a longstanding issue at NSW Trustee and Guardian. It is inequitable, inefficient and not aligned with NSW Treasury policy on government funding for non-commercial activities. NSW Trustee and Guardian recognises this and has undertaken a number of analyses over the audit review period to try to understand the need for - and costs of - its public guardian and financial management services. It has also attempted to improve internal process efficiencies, increase fees after stakeholder consultation, and repeatedly sought increased government funding for guardianship and subsidised financial management services over these five years.

To support the long term financial sustainability of the agency, NSW Trustee and Guardian has recommended to government that a demand-based funding arrangement be considered that aligns future funding with validated customer numbers and revenue. It suggested a demand-based funding arrangement could provide for minimum service levels and related key performance indicators.

However, NSW Treasury has advised that a demand-based funding arrangement requires validated data on the costs to serve as well as on client demand, and careful consideration. Without the ability to capture the actual costs of its guardianship and financial management service delivery, it will be difficult for NSW Trustee and Guardian to make the case for a demand-based funding model.

2. Recommendations

By May 2024, NSW Trustee and Guardian should:

1. Broaden governance arrangements to enable input to key decisions on financial management and guardianship services from:
 - a) people with lived experience
 - b) relevant peak bodies including the disability, aged care, and mental health sectors
 - c) representatives of diverse communities including Aboriginal peoples; culturally and linguistically diverse groups; LGBTQI+ people.
2. Implement mechanisms to seek feedback on the effectiveness and quality of its financial management and guardianship services from clients under orders.
3. Implement a framework to:
 - a) deliver competency-based training for staff in relevant roles to develop awareness and applied understanding of good quality service delivery for clients with disability, dementia, mental illness, cognitive impairments and other factors relevant to decision-making incapacity, in partnership with people with lived experience, relevant peak bodies and representatives of diverse groups
 - b) monitor and assess staff competency in understanding and effectively serving clients with disability, dementia, mental illness, cognitive impairments and other factors relevant to decision-making incapacity
 - c) identify intervals for and conduct refresher training and seek staff feedback.
4. Implement a risk-based quality framework to assess whether public guardian and financial management decisions are in line with policy and the legislative principles.

By November 2024, NSW Trustee and Guardian should:

5. Establish mechanisms to track and report publicly on its financial management and guardianship services including:
 - a) all actions taken by NSW Trustee and Guardian to:
 - provide advice to the relevant court or tribunal to encourage the appointment of NSW Trustee and Guardian to be truly 'last resort'
 - identify opportunities for, and issue, financial management clients with section 71 authorities
 - encourage and support appropriate early discharges of guardianship clients
 - apply for the review and/or revocation of orders at the relevant court or tribunal
 - b) the application of the legislative principles and national standards
 - c) service quality
 - d) performance of services over time
 - e) outcomes for clients
6. Implement sufficient data collection, processes and/or IT systems to:
 - a) inform on actual costs of service delivery including by complexity of client matters
 - b) identify and address cross-subsidisation
 - c) improve data quality and the sharing of relevant client information to support the application of the legislative principles.

1. Introduction

1.1 Background

NSW Trustee and Guardian is a NSW Government agency in the Stronger Communities cluster. It is constituted under the *NSW Trustee and Guardian Act 2009* which merged the former Public Trustee's Office and the Office of the Protective Commissioner. Those agencies were created in 1914 and 1983 respectively, to administer functions that were previously those of the Supreme Court of NSW. NSW Trustee and Guardian provides the same services to clients as its predecessor organisations and includes the Public Guardian established under the *Guardianship Act 1987*. NSW Trustee and Guardian is accountable to the relevant Minister, the Attorney General.

NSW Trustee and Guardian supports the Public Guardian and the NSW Trustee, which have separate statutory functions. The legislative responsibilities for the Public Guardian and the NSW Trustee are provided in the *NSW Trustee and Guardian Act 2009* and *Guardianship Act 1987*. These statutes enable the Public Guardian and the NSW Trustee to delegate their functions to a member of staff. As at 30 June 2022 approximately 600 full time equivalent staff were employed by NSW Trustee and Guardian as a whole (across all its service lines and functions), under the *Government Sector Employment Act 2013*.

Across the agency, NSW Trustee and Guardian functions include:

- acting as executor and administrator of deceased estates
- acting as a trustee responsible for managing trust property on behalf of another person or organisation in line with the trust terms
- drafting Will, Power of Attorney and Enduring Guardianship instruments, and educating the community about the importance of having these documents in place
- making decisions on behalf of people under guardianship or financial management orders as a guardian or a financial manager 'of last resort', and overseeing and assisting private financial managers.

NSW Trustee and Guardian's financial management and public guardian services are the focus of this audit.

NSW Trustee and Guardian received a funding boost of \$41.5 million across four years in the 2021–22 State Budget to address the financial sustainability of the organisation as a whole. This included recognition of the increased demand for and complexity in the circumstances of people under financial management and guardianship orders.

Protective functions of the NSW Trustee and Guardian

If appointed to act for a person who is deemed by a court or tribunal as being unable to manage their own affairs, the NSW Trustee makes financial management decisions relating to the property and financial affairs of the person, and the Public Guardian makes guardianship decisions relating to the personal affairs of the person (see Exhibit 1).

Over time society has come to refer to the activities involved in management of the person and their estate as substitute decision-making. The legislation provides that the manager or guardian may exercise all the functions of the person under management were they not incapable of managing for themselves. From a legal perspective, these substitute decisions have the same effect as if the person had made the decision themselves. While the legal presumption is that a person has capacity to care for themselves and manage their own affairs, a financial manager or guardian can be appointed without the person's consent if the court or tribunal finds the person does not have relevant decision-making capacity.

The Public Guardian and the NSW Trustee may be appointed as substitute decision makers by the NSW Civil and Administrative Tribunal (NCAT) and the Supreme Court. The NSW Trustee may also be appointed by the Mental Health Review Tribunal. In practice, most decisions for the appointment of a guardian or financial manager are made by NCAT. The court and tribunal aim to appoint the Public Guardian and NSW Trustee as a 'last resort' - that is, when there is no one willing or suitable to fill the role, or there is significant family conflict regarding decision-making for the person. Neither the NSW Trustee nor the Public Guardian can refuse to accept an order for financial management or guardianship.

In relation to management of the estate of the person, the legislation uses the term 'protected person'. This is due to the history of the origins of the jurisdiction of the Supreme Court, and because:

- they relate to decisions or actions that need to be taken, which the person under an order cannot take because they are incapable of managing their own affairs
- due to this lack of competence, the person may be disadvantaged in the conduct of their affairs (for example, their money or property may be dissipated or lost, or they may be at risk of abuse or exploitation)
- decisions must be made in the best interests of the person on whose behalf they are made.

The Public Guardian makes decisions about healthcare, lifestyle, accommodation and/or medical and dental consents for a person under a guardianship order. This includes decisions such as where a person should live (for example - at home, in an aged care facility), what disability or other support services they receive, who can have access to them (for example - visiting schedules between conflicting family members) and consent to the use of restrictive practices on the advice of independent experts (for example - seclusion, chemical restraint such as anti-psychotic medication, environmental restraints such as limiting access to knives).

The NSW Trustee, when appointed to act as estate manager, undertakes tasks such as securing and collecting assets, income and entitlements; paying expenses, debts and designing budgets; investing financial assets; lodging tax returns; taking or defending legal proceedings and determining other arrangements. This is referred to as direct financial management.

When the court or tribunal appoint a private financial manager, the NSW Trustee may by order authorise and direct the functions of the private manager. Private managers may be family members, friends or commercial providers. The NSW Trustee also approves the release of funds to meet the client's needs, authorises the sale or purchase of major assets by the private manager, reviews annual accounts for compliance, and takes action on non-compliance.

The Public Guardian does not have the same statutory provisions in respect of private guardians as the NSW Trustee has in relation to private managers, but under the legislation must provide private guardians with information. NSW Trustee and Guardian's private guardianship functions are outside the scope of this audit.

Exhibit 1: Decision-making capacity

'Capacity' is a legal term that refers to the ability of a person to make decisions for themselves. Generally, as the term is currently interpreted, when a person has capacity to make a specific decision they can:

- understand the situation, facts, and information about the decision
- understand the choices available to them
- weigh up the consequences and benefits of making the decision
- communicate the decision.

A person's capacity can change or fluctuate in different circumstances, at different times, about different types of decisions and with different types of support. For example, someone might be able to make personal decisions about where they want to live, but not financial decisions such as whether they want to sell their house.

Every person over the age of 18 is presumed to have the ability to make their own decisions regardless of whether they have a disability, mental illness, or cognitive impairment. Only a court or tribunal can legally determine that a person lacks decision-making capacity and then appoint a guardian and/or financial manager to make decisions for them.

Under the *Guardianship Act 1987* the NSW Civil and Administrative Tribunal (NCAT) may make a guardianship order if the Tribunal is satisfied that the person is in need of a guardian. In considering this, the Tribunal must have regard to:

- the views of the person, their spouse or carer
- the importance of preserving the person's existing family relationships and their particular cultural and linguistic environments, and
- the practicability of services being provided to the person without a guardianship order being made.

With respect to financial management orders, NCAT may only make a financial management order in respect of a person if the Tribunal is satisfied that:

- the person is not capable of managing those affairs, and
- there is a need for another person to manage those affairs on the person's behalf, and
- it is in the person's best interests that the order be made.

Initially, Supreme Court and NCAT cases deciding whether a person was capable of managing their affairs compared the person's ability to ideas about what was involved in conducting the 'everyday affairs of ordinary people'. However, judicial officers and tribunal members now focus on assessing the person's own capacity to do what the person themselves is proposing to do. This includes looking at:

- the actual assets of the person concerned and their own 'ordinary affairs of living'
- the way the person is able to look after these, considering their present and prospective wants and needs, and those of family and friends
- the risk of neglect, abuse or exploitation.

In making such an assessment, the court or tribunal may reflect on the person's past and present experiences, the support systems available to the person, and the extent to which the person can be relied on to make sound judgements about their own welfare and interests.

Source: Audit Office research based on the *Guardianship Act 1987* and *NSW Trustee and Guardian Act 2009*, and material published by NSW Trustee and Guardian, the NSW Civil and Administrative Tribunal, and the Department of Communities and Justice.

Relevant legal powers and obligations

Under the law, the NSW Trustee has broad powers and functions in relation to financial management and the Public Guardian in relation to guardianship once appointed under an order by a court or tribunal to act for a person. These include:

- all the functions the person under a financial management order has and can exercise, or would have and could exercise if under no incapacity
- responsibility for managing the financial affairs of a person under an order, including:
 - collecting income and benefits
 - making payments to and from client accounts
 - managing real property and leases
 - managing financial planning and tax matters
 - taking or defending legal proceedings

- subject to any conditions specified in a guardianship order:
 - custody of the person to the exclusion of any other person
 - all the functions of a guardian of that person that a guardian has at law or in equity
 - the power to make the decisions, take the actions and give the consents (in relation to the functions specified in the order) that could be made, taken or given by the person under guardianship if he or she had the requisite legal capacity.
- the power to sign and do all such things as are necessary to give effect to any function of the guardian
- the power to take such measures or actions as are specified in the order to ensure the person under guardianship complies with any decision of the guardian in the exercise of the guardian's functions.

In all of its specific functions, NSW Trustee and Guardian is in a fiduciary relationship with the people it serves. The term 'fiduciary' means trust, and a fiduciary relationship may be formed in law when there is a relationship of trust and power imbalance between parties - such as between a solicitor and client, doctor and patient, teacher and student. This creates legal duties for the person in whom the trust has been placed. In relation to financial management and guardianship services, this includes an obligation to act in the best interests of the client, to avoid conflicts with clients' interests, and to not profit from the relationship. These obligations exist in common law, in addition to the legislative principles (see Exhibit 2 below).

The legislation provides clients of financial management and guardianship services with the right to seek internal reviews of significant decisions NSW Trustee and Guardian makes for them, and an independent external review of these decisions through the NSW Civil and Administrative Tribunal. Unlike other Australian jurisdictions, there is no Public Advocate or equivalent in NSW with legal responsibility to safeguard the rights of; monitor the impact of legislation, policies, programs and services on; and undertake systemic advocacy on behalf of adults with impaired decision-making.

Legislative principles and substitute decision-making

Exhibit 2: The legislative principles

The *NSW Trustee and Guardian Act 2009* and the *NSW Guardianship Act 1987* establish legislated principles that apply to the exercise of guardianship and financial management functions (whether exercised by NSW Trustee and Guardian or private guardians or managers). In summary, these are that:

- the welfare and interests of clients should be given paramount consideration
- the freedom of decision and freedom of action of clients should be restricted as little as possible
- clients should be encouraged, as far as possible, to live a normal life in the community
- the views of clients on financial management and guardianship functions should be taken into consideration
- the importance of preserving the family relationships and the cultural and linguistic environments of clients should be recognised
- clients should be encouraged, as far as possible, to be self-reliant in matters relating to personal, domestic and financial affairs
- clients should be protected from neglect, abuse and exploitation.

Source: Audit Office summary of the legislative principles in the *NSW Trustee and Guardian Act 2009* and the *NSW Guardianship Act 1987*.

In New South Wales, the legislative framework is one of a 'best interests' substitute decision-making model. A substitute decision-making model is one where the decision maker steps into the shoes of the person and makes decisions on their behalf. In the substitute decision-making model, decisions are based on the best interests of the person concerned, in consultation with the person where possible, rather than solely on their will and preferences.

Legal decisions interpreting these legislative principles have held that the first - often short-handed as the 'best interests' principle - should be given the greatest importance in every case, and that the other principles cannot be elevated above it. Judicial and tribunal members have observed that, while each of the principles are to be considered when a substitute decision is made, the extent to which they are applied will depend on the particular circumstances of individual client matters. The best interests principle compels the decision maker to give regard to the welfare and interests of the person but the other principles do not fetter or limit a substitute decision maker's discretion, or otherwise mean that the decision maker must come to a particular decision if they have discretion. Legal decisions on the concept of best interests have held that this means for the benefit of the individual and not for the benefit of the state or others, nor for the convenience of carers. It also requires taking the person's views into account, and including non-financial aspects such as emotional and physical wellbeing in considering what is in their best interests.

An alternative model is 'supported decision-making'. This refers to processes and approaches that assist people to exercise their autonomy and legal capacity by supporting them to make decisions. This approach seeks to give effect to the will and preferences of the person requiring decision-making support wherever possible. For example, in its 2018 inquiry into the Guardianship Act, the NSW Law Reform Commission recommended alternative principles be adopted to those outlined in Exhibit 2. These included that people under guardianship orders 'have the right to make decisions that affect their lives (including decisions involving risk) to the full extent of their ability to do so and to be assisted in making those decisions if they want or require assistance.'

There has been a longstanding legal and community push for Australian guardianship and administration systems to move from substituted to supported decision-making, accelerated by the United Nations Convention on the Rights of Persons with Disabilities which Australia ratified (with exceptions for guardianship and financial management functions) in 2008. The Australian Law Reform Commission in 2014, and the NSW Law Reform Commission in 2018, each recommended that a formal framework for supported decision-making and (as a last resort) substituted decision-making be adopted, but relevant governments have not accepted or acted on these recommendations

The current Disability Royal Commission is again exploring the potential for related reform across Australia. The UN Convention, law reform commission inquiries and advocates' calls for supported decision-making models are at odds with the existing legal decision-making framework in the *Guardianship Act 1987* and *NSW Trustee and Guardian Act 2009*.

NSW Trustee and Guardian has observed that this means the financial management and guardianship services it provides under the legislative framework of substitute decision-making can be out of step with community expectations for these services.

National standards

In addition to the legislative principles, there are voluntary national standards for guardianship and direct financial management services that have been agreed to by every Australian jurisdiction. These were negotiated through the Australian Guardianship and Administration Council (AGAC) in 2016 and 2018. The principles are set out in Exhibit 3 below.

Exhibit 3: Summary of the national standards for guardianship and direct financial management services

National standards for guardianship	National standards for financial managers
1. Provide information	1. Provide information
2. Support decision-making capacity	2. Advocate for the person with respect to financial and property matters
3. Ascertain will and preference	3. Seek the person's views on decisions and provide opportunities for them to build capacity
4. Advocate for the person's rights to access housing, health care, support services and to participate in the community	4. Protect the person's money and assets
5. Protect the person from abuse, exploitation and neglect	5. Make financial decisions
6. Make decisions and review decision-making on a regular basis	6. Invest money
7. Record information	7. Make payments
8. Participate in guardianship reviews by the relevant board, tribunal or court	8. Record information
9. Promote professional development	9. Respect privacy and confidentiality
10. Observe privacy and confidentiality	10. Protect and respect the person's legal rights involving their money and assets
	11. Be professional
	12. Support the review of orders

Source: Audit Office summary of the national standards for guardianship and financial management.

Parties to the national standards are expected to adhere to them to the extent possible within their existing legislative framework for guardianship and financial management. The standards do not have the force of law, are not enforceable, and compliance with the national standards is not monitored by AGAC. If there is conflict between parties' legislative requirements and the national standards, the former prevail.

Key client characteristics

Over the five-year audit review period (FY2018-FY2022), there has been an eight per cent increase in people who have the NSW Trustee as their financial manager, a 32% increase in the number of people who have private managers and a 46% increase in people who have the Public Guardian as their guardian. Demand factors include a growing and ageing population, increasing incidence of dementia, and increasing complexity in both clients' needs and the service landscape over time, particularly since the introduction of consumer-directed supports under the National Disability Insurance Scheme (see Exhibit 16).

As at 30 June 2022:

NSW Trustee and Guardian had:

- 12,566 clients under direct financial management orders
- 6,284 clients under private financial management orders
- 3,533 clients under guardianship orders.

Direct financial management and guardianship clients were most commonly:

- between the age of 51 and 70 years old
- living with psychiatric illnesses or intellectual disabilities
- living in disability group homes or aged care facilities.

Most direct financial management and guardianship clients resided in Greater Sydney local government areas (LGAs). Regional LGAs with the highest numbers of clients were: Cabonne, Newcastle, Central Coast and Lake Macquarie.

NSW Trustee and Guardian also had two to three times the proportion of Aboriginal clients than the proportion of Aboriginal people in the New South Wales population, with approximately nine per cent of guardianship clients and seven per cent of direct financial management clients identifying as Aboriginal.

Graphs and maps of key client characteristics are included in Appendix two.

1.2 About the audit

The objective of this audit was to assess whether NSW Trustee and Guardian is effectively delivering guardianship and financial management services aligned to its legislative functions and principles, and relevant non-legislative standards. It was guided by three audit questions:

- Does NSW Trustee and Guardian align its service delivery with its legislative functions and principles, and relevant standards?
- Does NSW Trustee and Guardian drive and monitor performance to give effect to its legislative functions and principles, and relevant standards?
- Has NSW Trustee and Guardian effectively planned the use of additional funding to improve service delivery and adherence to its legislative functions and principles, and relevant standards?

The audit review period was 1 July 2017 to 30 June 2022.

For most of this five-year period, NSW Trustee and Guardian did not have enhanced funding, new operating models and increased numbers of staff in place.

2. Delivering public guardian and financial management services

2.1 Giving effect to the legislation and standards

Existing governance arrangements are in line with enabling legislation and standards

The legislative functions and responsibilities of the NSW Trustee, and of the Public Guardian, are provided in both the *NSW Trustee and Guardian Act 2009* and the *Guardianship Act 1987*. These functions and responsibilities are accurately reflected in different delegations instruments, policies and procedures for financial management and guardianship staff in relevant organisational divisions of NSW Trustee and Guardian. This was also evident in staff practice we observed.

Financial management and guardianship duties are separated between different organisational divisions within the agency. For each of these functions – where appropriate – information is collected, and major decisions are made independently of each other. For example, public guardian staff make accommodation decisions for relevant clients separately from financial managers' decisions about financial affairs.

Although the national standards are not often referenced by NSW Trustee and Guardian, its practice also reflects the second standard which provides that 'the financial manager cannot make decisions about where the person lives or what they do other than in respect to the management of their money and any property or investments that they may have. Any such decisions however need to be affordable to the person, and where feasible the financial manager must endeavour to speak to the person about this.'

NSW Trustee and Guardian also segregates duties between different teams within divisions, to avoid one staff member being responsible for making decisions about all aspects of a client's life. For example, responsibility for the decision to sell a client's property is made by their financial manager while a separate property team is responsible for managing the sale process. Similarly, a decision to pursue a legal matter on behalf of a client is made by their financial manager who then refers the matter to the NSW Trustee and Guardian legal team to handle.

NSW Trustee and Guardian's delegation instruments are clear, but policies and procedures are not regularly updated

NSW Trustee and Guardian staff are clearly delegated tasks and authorities based on their level of seniority. All of the legislative powers and requirements are articulated in NSW Trustee and Guardian's policies and procedures. However, many policies and procedures that provide more specific guidance on practice for staff have not been recently reviewed and updated.

Most of the current public guardian and direct financial management policies and procedures that detail how staff are expected to perform specific functions have not been updated since 2019–2020 and have lapsed review dates. Outdated policies and procedures were identified as an issue in internal reviews in 2019 and 2021.

Staff feedback in internal reviews, and our observations of financial management and guardianship practice indicate that many staff rely on their team members for assistance when interpreting the policies and procedures. While this is to be expected to some extent, it raises the risk of inconsistent practice between teams and challenges when staff work remotely or do not have experienced team members to consult.

In the 2022 annual NSW Public Sector 'People Matter Employee Survey':

- 60% of guardianship staff said they receive the support they need to do their job well. This is three percentage points lower than that for the Sector average.
- 39% of financial management staff said they feel they get the support they need to do their job well. This is 24 percentage points lower than the average for the Sector.

Over the audit period, significant changes have been made to individual roles, financial management and guardianship teams, systems, and operating structures. It is important that policies and procedures are updated to reflect these changes, and shared in a way that provides current, consistent guidance to staff.

There is limited guidance on how guardianship and financial management staff should apply the legislative principles in practice

The primary legislative principle that applies to guardianship and financial management decision-making - to give paramount consideration to the welfare and interests of clients – is rightly emphasised in NSW Trustee and Guardian's relevant policies and procedures. This is known as the 'best interests' principle.

In addition to giving paramount consideration to the welfare and interests of clients, the decision-making procedures state that NSW Trustee and Guardian staff should also consider the six other legislative principles when making decisions for people under financial and guardianship orders (see Exhibit 2).

Given that the legislative principles are broad and open to interpretation, effectively applying the relevant legislative principles in practice can be complex. However, there is limited guidance on how financial management and guardianship staff should consider each of the legislative principles in practice. Although the national standards for financial managers and guardians provide a framework of service standards that complement the legislative principles, they are not often referred to in NSW Trustee and Guardian's policies and procedures or by staff.

As a result, staff may rely on their expertise and experience to interpret and apply the legislative principles to their decisions rather than on documented practice frameworks and guidelines. This could particularly impact the new staff recruited to financial management and guardianship services in 2022. It also increases the risks of inconsistent practice of applying the legislative principles to decisions and actions between staff and teams.

While individual decisions for each client under an order may be diverse, and specific documented procedures may not always be possible, it is essential that all staff have access to guidance and support to apply the legislative principles in practice.

Revised operating models for financial management and guardianship services that NSW Trustee and Guardian developed when it received additional organisational funding in the 2021–22 State Budget includes one new legal officer for each division. Part of the role of these new officers is to provide guidance and support to all staff on fulfilling their legislative obligations and applying the legislative principles to their decisions. The audit cannot assess the impact of these new roles as they had only recently been recruited at the time of writing.

NSW Trustee and Guardian's staff induction programs have recently improved but mandatory and refresher training is limited

NSW Trustee and Guardian developed a new staff induction program for the financial management and public guardian staff recruited in 2022. Our observations of these sessions found that they provided new starters with a comprehensive understanding of how to follow operational procedures to perform guardianship and financial management functions. However, there are limited opportunities for staff to formally develop and update their specialist skill sets to provide financial management and guardianship services to clients in line with relevant legislative requirements, policies and procedures.

Prior to 2022, induction sessions focused on the role and objectives of the organisation with respect to financial management and guardianship services. They provided limited guidance to staff on understanding operational requirements and how to adhere to the enabling legislation, including the legislative principles, in practice.

New and existing financial management and guardianship staff receive ongoing 'on-the-job' training through supervision, buddy systems and team meetings. 'Complex case review' internal team meetings can also be used to support staff to resolve complex cases such as clients with significant conflict between their stakeholders (such as family members or different service providers) and/or conflict with NSW Trustee and Guardian about specific decisions. External stakeholders are not involved in these complex case reviews and it is unclear how often they occur.

There is limited formal staff training to refresh and develop professional skills. In 2022, NSW Trustee and Guardian conducted a training needs analysis of direct and private financial management staff. Guardianship staff were not included in this analysis. NSW Trustee and Guardian advised that it was undertaking analysis of the training needs of all staff across the organisation at the time of writing.

Some of the high priority training gaps identified for direct and private financial management staff are relevant to NSW Trustee and Guardian's legislative obligations including:

- understanding fiduciary responsibilities and legal terms
- delegations and decision-making
- customer service
- effective record keeping
- cultural awareness and trauma informed practice.

NSW Trustee and Guardian advises that it is in the process of developing additional training materials in response to the training needs gaps identified. Training content is usually developed and delivered internally, rather than being co-designed with non-government sector representatives, clients, or other people with relevant lived experience of disability and NSW Trustee and Guardian services.

More attention needs to be placed on disability awareness training

Clients under guardianship and financial management orders are often living with a range of conditions including intellectual and other disabilities, dementia, mental illnesses, brain injuries, neurodivergence and age-related physical and cognitive impairments.

However, for most of the audit review period, there was no specific training for staff to develop their understanding of the different and sometimes complex conditions that may affect their clients' decision-making capacities.

'On the job' training assumes that existing experienced staff have sufficient understanding of, and experience in, serving people with impaired decision-making capacity. It is not clear that NSW Trustee and Guardian has tested this assumption, such as through assessing relevant competencies and training needs, and consulting with clients and advocates on their experiences.

To address this gap, a general disability training course was delivered for the first time to staff in 2021. New and existing staff are expected to complete this course face-to-face or online through an e-learning module. NSW Trustee and Guardian advises that the course was informed by consultations with People With Disability Australia, allied health professionals, and people with lived experience. Nevertheless, the training course is brief and does not cover the full range of conditions that may impact decision-making capacity in the NSW Trustee and Guardian financial management and guardianship client population. There is also no dedicated staff training on engaging with people with mental illness, dementia, acquired brain injury or other relevant conditions.

NSW Trustee and Guardian's executive leadership team informed us that they recruit guardianship staff from the disability and other relevant sectors, and have recently increased their focus on recruiting financial management staff with experience in these sectors as well. NSW Trustee and Guardian also employs people with disability, and reports that 6.3% of its staff identified as having a disability in an employee survey in 2022. This exceeds the New South Wales whole-of-government benchmark of 5.6% of employees with disability across the NSW Public Sector.

While this is essential, it is important that all staff receive ongoing training to help them continue to develop their skills and deliver their services in line with regular feedback from clients, the legislative principles and the changing environment.

High caseloads of financial management and guardianship staff limit the time available to consider and apply the legislative principles to individual decisions

Over the audit period, frontline staff have had consistently high caseloads and workloads. This has limited the time available to them to collect sufficient information about clients and consider how each of the legislative principles may apply to individual decisions for clients.

Direct financial management and guardianship staff must collect and assess information about the client to consider their 'best interests' and determine which of the other six legislative principles should apply to individual decisions. For example, staff need information about the client's view, situation, and context to know what 'freedom', 'self-reliance', 'normal' and 'preserving relationships' might look like for the client in practice (see Exhibit 2). Information about the client's situation and context also assists staff in assessing the client's risk of experiencing neglect, abuse, and exploitation.

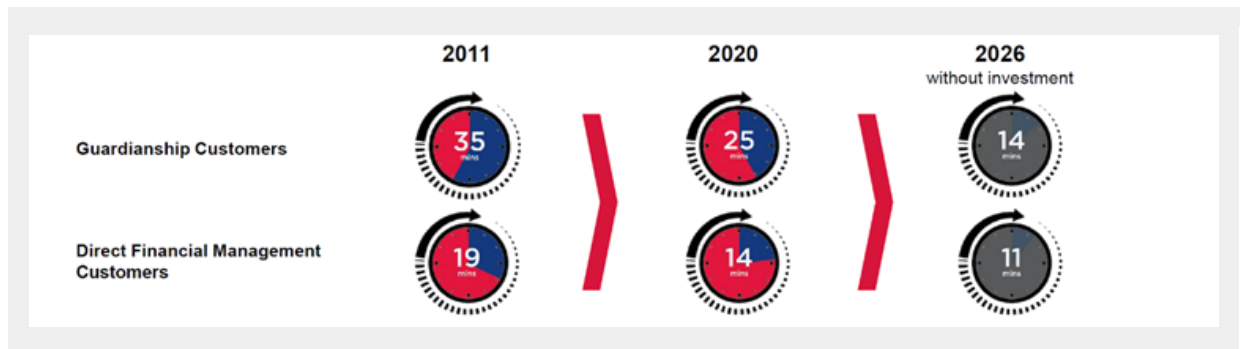
Information to support staff decision-making is expected to be sought from clients, their family members and a range of relevant client stakeholders such as: NDIS support coordinators, disability support workers, hospital social workers, medical practitioners, aged care facility staff, disability group home and boarding house managers.

However, in 2019, an internal review of guardianship services found that evidence required to make decisions was not consistently gathered by guardianship staff. Notably, the client's view on certain decisions was not recorded in 36% of the files reviewed. A later review in 2021 found that guardians were stretched to capacity, and that tasks were not sufficiently allocated to staff based on their role description, skill sets and delegation.

Internal reviews of financial management services in 2021 similarly identified that frontline staff found it difficult to access the information they needed to make decisions for direct financial management clients, and that high caseloads and inefficient allocation of tasks to staff prevented them from proactively delivering services that promote good client outcomes.

In 2021–22, NSW Trustee and Guardian estimated the average time spent by frontline staff with direct financial management and/or guardianship clients or on client matters per week, based on ratios of staff numbers to caseloads over time. This modelling estimated that frontline staff were spending less time each week on average in 2020 compared to 2011. NSW Trustee and Guardian argued that without additional investment, this would drop to an average of 14 minutes per week per client for guardianship and 11 minutes per week per client for direct financial management services in 2026, as outlined in Exhibit 4.

Exhibit 4: NSW Trustee and Guardian estimates of average time per client matter per week for frontline staff, 2011, 2020 and 2026



Source: NSW Trustee and Guardian (unaudited).

In the NSW Public Service Commission's 2022 People Matter Employee Survey, only 25% of financial management staff and 44% of guardianship staff said they had time to do their job well. These scores are respectively 28 percentage points and nine percentage points lower than the NSW Public Sector overall.

Additional roles aim to reduce frontline staff caseloads but it is unclear how NSW Trustee and Guardian will measure their impact on service delivery

NSW Trustee and Guardian used most of the additional funding it received in the 2021–22 budget enhancement to increase the number of frontline staff roles in its direct financial management and guardianship services. These additional roles were expected to improve service delivery and client experiences by reducing the average caseload of each frontline staff officer to allow them to spend more time understanding and meeting clients' needs.

However, it is unclear how NSW Trustee and Guardian will track whether reduced caseloads are meeting the objectives, and if they assist frontline staff to consider clients' needs and apply the legislative principles to individual decisions.

Before NSW Trustee and Guardian received additional funding in 2021–22, guardianship and financial management services had a steady number of frontline staff. For each year of the audit review period between FY2018 to FY2022 there was approximately:

- 54 frontline guardianship staff
- 119 frontline private and direct financial frontline staff.

In terms of key outputs, NSW Trustee and Guardian reported that in 2020–21, on average, there were:

- approximately 50 clients per guardian; and 10,435 major decisions made for clients under guardianship orders
- approximately 125 clients per financial manager; and 145,980 phone calls and 1,086 meetings conducted for clients under direct financial management
- approximately 384 clients per private management frontline staff; and 2,312 decisions on significant expenses made.

New operating models for financial management and guardianship services were implemented in 2022 after the 2021–22 budget enhancement. NSW Trustee and Guardian applied the additional funding predominantly to around 90 new roles in divisions responsible for delivering financial management and guardianship services. Approximately 30 new roles were also added in support functions in other divisions. These new roles enable NSW Trustee and Guardian to reduce the average caseload of each frontline staff officer.

The 2022 operating model for direct financial management services also includes a pilot to improve the way clients are categorised and allocated to frontline staff. This 'cohorting' pilot began in late 2022 and assumes that direct financial management clients that live in similar accommodation settings, such as an aged care facility, have predictable needs from NSW Trustee and Guardian's perspective because these are mostly met by the facility. Under the pilot, these clients are allocated to a new team of frontline staff who each manage a high caseload. This means that staff that manage clients with more complex and/or unpredictable needs are allocated lower caseloads, as outlined in the table in Exhibit 5 below.

Grouping some clients together for direct financial management by the same team of staff also aims to build relationships, improve decision-making and resolve process issues between relevant staff at NSW Trustee and Guardian and staff at stakeholder organisations serving the same clients, such as aged care providers.

Exhibit 5: NSW Trustee and Guardian estimates of caseloads for direct financial management staff before and after the 2022 operating model

Caseload type	Maximum number of clients per financial manager in 2022 (new model)	Average number of clients per financial manager in 2021 (previous model)
Standard	100 - 150	125
Low complexity (clients with predictable needs)	up to 300	N/A

Source: Audit Office summary of information provided by NSW Trustee and Guardian (unaudited).

The 2022 operating model for guardianship services does not aim to group and allocate clients to frontline staff teams in the same way as the financial management 'cohorting' pilot outlined above. NSW Trustee and Guardian advises that grouping guardianship clients based on their accommodation settings would be inappropriate because it does not reflect the clients' complexity of disability or circumstance which impacts how guardians make decisions for them.

However, the 2022 operating model for guardianship services aims to identify and allocate client files that are largely inactive and predominantly administrative to one team of guardianship staff (see monitoring files in 'Review and Response' team in the table in Exhibit 6 below). This is intended to reduce the number of administrative tasks allocated to senior frontline guardianship staff and give them more time to focus on clients with complex and intensive needs.

Exhibit 6: NSW Trustee and Guardian estimates of caseloads for guardianship staff before and after the 2022 operating model

Caseload type	Average number of clients per guardian in 2022 (new model)	Average number of clients per guardian in 2021 (previous model)
Standard	29	41
Review and response team 'monitoring' files	68	113

Source: Audit Office summary of information provided by NSW Trustee and Guardian (unaudited).

NSW Trustee and Guardian estimates that the 2022 operating model for guardianship services should reduce the average standard caseload of each frontline guardianship staff by around 12 clients (29%). Guardianship staff in the 'Review and Response' team manage higher than standard caseloads of 'monitoring' clients with largely inactive files.

There are currently no plans to track the actual time that frontline officers spend on each client matter under the 2022 operating structure, nor to seek feedback from clients under financial management and guardianship orders on the quality of their services. This limits the ability of NSW Trustee and Guardian to understand whether reducing caseloads allows frontline staff to give increased time and attention to client matters, and to consider how to apply the legislative principles to individual decisions.

IT systems to provide financial management and guardianship services are inadequate

Over the audit period, inadequate IT systems have reduced the quality of financial management and guardianship services and made it difficult for frontline staff to record and readily obtain the client data they need to make informed decisions from record systems.

Direct financial management and guardianship frontline staff manage high caseloads and cannot regularly provide a one-on-one service to clients. It is therefore essential that all staff have access to adequate record systems that allow them to share client information as appropriate, to discharge their legislative functions and apply the legislative principles.

However, we found a number of data quality issues with direct financial management and guardianship client data, such as: missing information about clients' accommodation, main language, interpreter needs and Aboriginal and Torres Strait Islander status. For example, the accommodation type was unknown for 26% and the disability or other condition was recorded as unknown for 13% of guardianship clients as at 30 June 2022. The disability or other condition of two percent of direct financial management clients as at 30 June 2022 was also unknown (see Appendix two),

Internal reviews in 2020 and 2021 also found the following issues with NSW Trustee and Guardian's client management systems:

- inaccurate, incomplete, and inconsistent client records and files to support decisions made by staff
- ineffective monitoring and approval routines to identify instances where client records have not been appropriately captured in systems
- non-compliance of the IT system used for guardianship and private management services (CRM) with government requirements for storing sensitive personal information securely
- insecure management of digital records and transmittal of sensitive client information between staff
- difficulties identifying clients who have NSW Trustee and Guardian for both direct financial management and guardianship, and sharing information between teams where appropriate
- legacy IT systems with decreasing market options for enhancements and technical support from third parties (e.g., the direct financial management Client Information System (CIS) is over 20 years old).

In response to these findings, NSW Trustee and Guardian has increased some of its client data security measures and controls. NSW Trustee and Guardian has plans to integrate an appropriate records or information management system into its public guardian and private management client management IT system to comply with government record-keeping requirements by 2023–24, but at the time of the audit this was not yet in place.

Without adequate client information and record-keeping practices, it is unclear how direct financial management and guardianship staff could ensure they make appropriate decisions in line with the legislative principles for clients based on information about their individual needs, situations and views.

NSW Trustee and Guardian has explored a variety of initiatives to address technology and systems issues such as automating routine functions, deploying artificial intelligence, developing a single view and index of clients, and decommissioning legacy IT systems. These are in different stages of proposal, design and implementation. NSW Trustee and Guardian advises that it is seeking additional capital funding for IT system upgrades and replacement systems will follow if its business case is successful.

Data on how NSW Trustee and Guardian responds to allegations of abuse, neglect, and exploitation of clients is not consistently captured and monitored

NSW Trustee and Guardian does not capture or track data on referrals to the NSW Police Force or other state and federal agencies. This makes it difficult for NSW Trustee and Guardian and the audit to assess how effectively it observes the legislative principle to protect clients from neglect, abuse, and exploitation in its decision-making in practice.

The NSW Ageing and Disability Commissioner was established in 2019, in part response to the NSW Law Reform Commission's 2018 inquiry into the Guardianship Act. Under relevant legislation, reports may be made to the Commissioner about:

- an adult with disability or an older adult if the person reporting has reasonable grounds to believe the adult is subject to, or at risk of, abuse, neglect or exploitation
- circumstances that the person reporting has reasonable grounds to believe will result in the abuse, neglect or exploitation of an adult with disability or older adult.

In response to reports, the Ageing and Disability Commissioner may conduct an investigation, make a referral to another person or body, or decline to take action. The Commissioner can make applications to NCAT for the NSW Trustee and/or Public Guardian to be appointed to manage the affairs of people who have been subject to, or at risk of, abuse, neglect or exploitation.

NSW Trustee and Guardian staff are expected to make reports to the Ageing and Disability Commissioner in response to allegations of abuse, neglect and exploitation of its financial management and guardianship clients. A Memorandum of Understanding (MOU) in place between NSW Trustee and Guardian and the Commission from 2019 also allows for the informal discussion of potential reports between the agencies.

In July 2021, NSW Trustee and Guardian introduced a new policy, procedure and action plan on recognising and responding to allegations of violence, abuse, neglect and exploitation of clients. A related 'train the trainer' course was delivered to frontline staff by managers in mid-2022. This course included pre training modules developed by the Ageing and Disability Commission as well as presentations from the Commission, NSW Police Force and NSW Trustee and Guardian's Workforce Support Team. Prior to this training, staff identified that they wanted more support on how they should respond to allegations of neglect, abuse and exploitation in practice.

NSW Trustee and Guardian advised it had made eight reports relating to its clients to the Ageing and Disability Commissioner in the three years between the commencement of the MOU and 30 June 2022. NSW Trustee and Guardian observed that, although this may appear to be a relatively low number compared to the 3,975 reports and 1,314 enquiries received overall by the NSW Ageing and Disability Commissioner in 2021–22 alone, relevant factors include that:

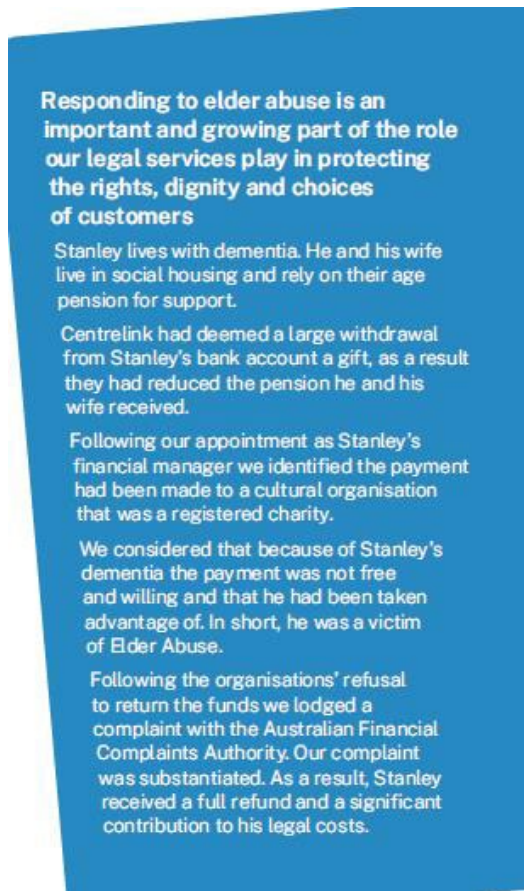
- NSW Trustee and Guardian approaches to the Ageing and Disability Commission to discuss potential reports are not captured as referrals.
- It is not uncommon for the NSW Trustee and/or the Public Guardian to be appointed by the tribunal on the advice of the Ageing and Disability Commissioner, following an investigation conducted by the Commissioner (i.e. to address the risk of abuse, neglect or exploitation).
- NSW Trustee and Guardian seeks to use its relevant powers and functions as financial manager and/or guardian first, in response to suspected abuse, neglect or exploitation of clients.

NSW Trustee and Guardian staff can also directly refer cases for investigation to the NSW Police Force and/or other state and federal agencies or bodies such as:

- NDIS Quality and Safeguards Commission
- NDIS Scheme Integrity Branch (fraud reporting)
- Aged Care and Quality Safeguards Commission
- Health Care Complaints Commission
- Australian Health Practitioner Regulation agency
- Australian Financial Complaints Authority (see Exhibit 7).

NSW Trustee and Guardian does not track or monitor data on its referrals to these agencies or to the NSW Police Force. Without this monitoring, it does not know whether rates of referrals and reports made by its staff reflect the likely or actual incidence of elder abuse amongst its client population, nor whether staff efforts to identify and address the reality or risk of abuse, neglect or exploitation and appropriately apply policies and procedures are effective.

Exhibit 7: Example of how NSW Trustee and Guardian staff can respond to signs of elder abuse



Source: NSW Trustee and Guardian Annual Report (2021–22), p.41 (unaudited).

NSW Trustee and Guardian does not provide direct financial management clients with independent access to real-time information about their own financial affairs

NSW Trustee and Guardian does not provide direct financial management clients with the ability to independently access real-time information about their available funds, expenditure, and budget. Written statements of expenditure against the annual budget are provided to clients every six months or more often if they request it. However, to access real-time information about their budget, available funds, and expenses, clients must contact their financial manager.

In our observations of direct financial management staff practice, and consultation with people with lived experience, this increases call volumes, and makes it difficult for clients to be self-reliant and independently track their spending, savings, and budget. It also restricts clients' ability to make decisions and take actions based on real-time information about their finances and live a normal life in the community. Encouraging clients to be self-reliant in matters relating to their personal, domestic, and financial affairs - and to live a normal life in the community - as far as possible, are two of the seven legislative principles that apply to financial management functions (see Exhibit 2).

Direct financial management clients must also request approval for ad-hoc payments for expenses in addition to their regular allowance set by their annual budget. For example, clients may request additional payments for new clothes, furniture, holidays, gifts, or other unplanned expenses. From our observations and consultations with frontline staff, this sometimes included small-value expenses that were affordable in relation to clients' available funds but not planned for in their annual budgets, such as \$30 for the repair of a garden tool or \$50 for new shoes. In these cases, we observed frontline officers approving payments and transferring funds to the clients' bank account from unrelated areas of their annual budgets such as 'recreation and gifts.' For larger unplanned expense requests such as for furniture, holidays and gifts, frontline officers asked clients for quotes from providers before approving the expenses.

This consumes a significant amount of time for both parties as:

- frontline staff are expected to spend approximately 50% of their time on 'phone duty' handling calls and managing transactional interactions with clients from across their team's caseload
- clients and key contacts spend time in phone queues waiting to speak with various financial managers. They can only call during work hours (between 9am and 5pm) on weekdays and therefore, have limited access to funds in emergencies or for unexpected events that may occur outside these times.

To provide clients and their key contacts with more transparent information about their financial position, the NSW Trustee reviewed and redesigned its budget and customer statement template letters in 2021. This work was completed by an internal staff working group and involved adding graphics, removing technical language, and highlighting options for discussion and review in the letter templates. Clients and key stakeholders were not consulted or asked for feedback on whether the redesigned templates were accessible to them. At the time of writing the redesigned templates had not been implemented because it was unclear whether the client management IT system could support them.

NSW Trustee and Guardian advised it also intended to include strategies to empower clients in file review processes, such as linking direct financial management clients to advocacy groups or services for financial literacy education. However, we have not seen evidence of this improvement in our file reviews and observations. NSW Trustee and Guardian advises that it is investigating self-service options on online platforms such as a client portal on Service NSW but these are not yet available.

Information for guardianship and direct financial management clients is not as accessible as it could be

Although not a legislative requirement, the national standards state that people under guardianship and financial management orders should be provided with information in accessible ways and formats when requested.

However, written material provided to clients is not translated into languages other than English. Instead, staff may call the national Translating and Interpreting Service and ask them to translate key correspondence as it is read out over the phone to the person by a stakeholder. NSW Trustee and Guardian advises that it would not be practicable to translate written communications into the number of different languages spoken across its client population.

NSW Trustee and Guardian has 'Easy Read' documents for guardianship clients (see Appendix three) that explains how guardians make decisions, and how clients can make a complaint and request a review of a decision. These documents are publicly available on the agency's website, but they are not readily available; users must scroll through plain text and follow links to find them. Written material sent to clients about specific decisions is only provided in Plain English text. The Public Guardian advises that staff rely on phone calls to ensure clients and relevant stakeholders understand and are engaged in specific decisions made for them.

There are no equivalent Easy Read resources for direct financial management clients. Information is only available in Plain English text and is not supported by audio or visual formats such as videos or graphics. People with visual impairments, limited literacy and/or English language skills are unlikely to be able to access this information independently.

In 2021, an internal review found that written communications to direct financial management clients referenced the legislation in a way that was hard to understand and did not demonstrate empathy for the reader. An internal staff team redesigned the financial management letter templates to improve their readability and comprehension but did not consult or test accessibility of the templates with consumers or key stakeholders.

It is unclear how NSW Trustee and Guardian knows whether its written communications are received and understood by direct financial management or guardianship clients. Accessible and comprehensible information is key to giving effect to each of the legislative principles that apply to financial management and guardianship services.

More attention needs to be placed on increasing NSW Trustee and Guardian's face-to-face interactions with clients

NSW Trustee and Guardian staff predominantly use phone calls and written communication methods such as letters and emails to engage with guardianship and direct financial management clients. Under existing operating models, face-to-face communication with clients - either virtually or in-person - is rare.

People with lived experience and their stakeholders we have heard from through this audit have consistently advised that face-to-face meetings (held virtually through video calls or in person) are more accessible than phone calls or written communication, because they enable body language to be read along with verbal messages (see Exhibit 8).

Exhibit 8: Feedback to the audit from people with lived experience and stakeholders

Between November and December 2022, we held five focus groups with 24 people with lived experiences of NSW Trustee and Guardian's direct financial management and/or guardianship services. Participants were invited by the Council for Intellectual Disability (CID), Dementia Australia and Mental Health Carers Network (MHCN). The Audit Office paid a nominal sum to focus group participants to assist them to overcome any potential barriers to participation.

The focus groups were not designed to be, and did not constitute, a representative sample of NSW Trustee and Guardian's clients. Rather, the experiences and perspectives illustrate the individual impact on clients and family members that these services can have.

Although each focus group participant had their own story, there were some common themes that were shared:

- **Inaccessible written communication** – Due to inaccessible language and presentation, many participants found NSW Trustee and Guardian's letters and other documentation difficult to understand.
- **Lack of face-to-face communication** – Many participants expressed a preference for in-person meetings to be able to see non-verbal cues and body language, but their contact with NSW Trustee and Guardian staff was typically over the phone, by email or by post.
- **Difficulties contacting NSW Trustee and Guardian** - Participants shared that they were unable to contact the staff member they needed by phone, that they found response times too long and/or that they had not received a response at all when they have contacted NSW Trustee and Guardian. Difficulties in contacting the appointed guardian was particularly distressing when urgent health care decisions needed to be made or when there was a legal requirement under section 78 of the *Mental Health Act 2007* for the guardian to be notified of an 'event'.
- **Lack of understanding of people with disabilities** – Many participants considered that NSW Trustee and Guardian staff do not have an adequate understanding of people with a disability or other decision-making impairment, or the appropriate training to communicate with them effectively and respectfully. Participants commented that staff can seem insensitive, inexperienced, unempathetic, condescending, or paternalistic. Others felt that the quality of services and treatment they receive from NSW Trustee and Guardian varied between different staff members, with some experiencing very helpful and understanding customer service.
- **Examples of how NSW Trustee and Guardian manages finances well** – Some participants said that they trust and are satisfied with NSW Trustee and Guardian's ability to save their money well and pay their bills for them. However, this was not the experience of all participants - others felt that that NSW Trustee and Guardian staff were too focused on saving their money rather than on allowing them to enjoy spending their money as they choose.
- **A desire to participate more in decision-making** – Some participants said that they were not consulted by NSW Trustee and Guardian staff about decisions concerning their finances and/or care. Participants expressed a strong desire for staff to include people with disabilities, mental illness, dementia, and other cognitive impairments in conversations about their affairs rather than asking a carer or family member to speak on their behalf. Many participants expressed that they would like more transparency and opportunities to be involved in the decision-making process, and to be supported and encouraged to learn how to manage their affairs independently.

We also received 46 contributions from members of the public and organisations between April 2022 and March 2023 to an online mailbox set up for the audit. The same themes were evident in these

contributions as those that came through the focus groups. Some mailbox contributions also expressed dissatisfaction with fees charged for financial management services, and wanted more clarity about how fee amounts were calculated and how these related to work done by NSW Trustee and Guardian.

Source: Audit Office summary of information shared by stakeholders through mailbox contributions and focus group consultations.

Guardianship staff are required to visit people under orders allocated to them least once a year, as outlined in the national standards. In 2018–19, approximately 70% of clients received an annual face-to-face visit. Face-to-face visits were impacted by COVID safety measures in 2021–22, with only 6.5% of clients receiving either a virtual or face-to-face annual visit. The Public Guardian advised that 35% of clients were visited between July 2022 and April 2023. NSW Trustee and Guardian advised that implementation of the 2022 operating model, which involved changes to individual roles and guardianship teams, affected the face-to-face visit rate in recent years.

NSW Trustee and Guardian advises that financial management services used to be provided from 13 locations across the state, including in-person meetings. In 2017, NSW Trustee and Guardian undertook organisational reforms known as 'Transformation' to address recommendations on fees that had been made by the Independent Pricing and Regulatory Tribunal (IPART). Approximately 100 roles were rationalised through this process. Subsequently, financial management services were centralised in two service centres located in Sydney and Newcastle, and email and phone were adopted as the main methods of communication with clients.

Under the operating models in place since 'Transformation', direct financial management staff are not required to consult clients or their key contacts about their budgets if their client does not respond to one letter followed by one phone call within 14 days. If this occurs, financial managers can update the budget using information on file regarding the client's finances and expenditure before they came under an order or, for ongoing clients, the last 12 months of expenditure. This may be appropriate in cases where the client does not want to be consulted or involved in the development of their budget. However, for other clients who want to be consulted, responding to one letter and phone call within 14 days may be challenging, particularly if they have low literacy and/or language skills or limited access to a phone.

There is also no requirement that financial managers consult with clients or their key contact face-to-face either in person or virtually. In 2020–21, consultations conducted by financial managers comprised: 145,980 phone conversations, 996 meetings at NSW Trustee and Guardian Offices and 90 meetings at other locations.

A program to train and support frontline staff to communicate with direct financial management clients about their budgets and important decisions via video calls was developed by NSW Trustee and Guardian in 2021. This program also suggested surveying clients and staff after the call to provide feedback on the virtual interaction and to check that best practice customer service practices were followed. We have not seen evidence that this program has been implemented.

Under the 2022 operating models, a target of 100% of guardianship clients are expected to receive a virtual or in person face-to-face visit; and increased face-to-face consultations with direct financial management clients are encouraged for financial managers (although no specific target is set for the latter). Both targets will be tracked and reported to the NSW Trustee and Guardian executive leadership team.

The 2022 operating model for financial management services also includes an enhanced 'customer foundation' team that aims to improve the information about clients gathered when they first come under the administration of NSW Trustee and Guardian, and made available to frontline staff in providing ongoing direct financial management services. This includes information about individual clients' needs, their preferred modes of communication and the impacts of their disability or other conditions in communicating their needs.

This work to build the 'client story' and provide a more personalised approach to communicating with clients is still being implemented, and the audit cannot provide assurance on its effectiveness.

The Client Specialist Centre (CSC) in central Sydney is the only predominately face-to-face service NSW Trustee and Guardian provides to direct financial management clients (approximately three per cent of the total number of clients) as outlined in Exhibit 9.

Exhibit 9: NSW Trustee and Guardian's Client Specialist Centre (CSC)

NSW Trustee and Guardian's Client Specialist Centre (CSC) in central Sydney provides services to direct financial management clients who require intensive, face-to-face support due to the complexity of issues involved in managing their finances. NSW Trustee and Guardian reports that clients at the centre may be experiencing homelessness and/or have mental health issues that are often compounded by substance abuse disorders. Clients may also have or have had contact with the criminal justice system.

The centre has 11 staff who offer face-to-face services such as paying client bills, managing client budgets and dispensing small amounts of cash to clients (usually around \$100 per client)

The centre is the only Public Trustee cash dispensing service in Australia.

Between January and March 2022, the centre made 3,489 cash payments to clients. These cash payments are essential as many clients who are serviced by this centre do not have access to bank accounts through financial institutions.

In addition to managing clients' finances, the CSC has a strong association with St Vincent's Mental Health Unit, Partners in Recovery, the Crime Prevention Committee, and emergency accommodation providers. As staff often have daily interactions with clients at the CSC, they get to know regular clients well, are aware of changes to their living situation and health, and can facilitate client referrals to relevant support services.

Community Mental Health and Homeless Health service teams also provide regular onsite support to clients at the centre. In 2021–2022, the National Disability Insurance Agency provided fortnightly face-to-face support to clients to help them access the National Disability Insurance Scheme, funded supports, transport allowances and out of pocket payments.

Some individual examples of the services and supports the centre can provide to their clients include:

- One to one financial management and understanding of a client's LGBTIQ+ status and specific needs, wishes and financial priorities by CSC staff.
- Protecting a client from financial exploitation by friends and oppositional family.
- Providing AUSLAN interpreting services to clients who are deaf or hard of hearing by a trained staff member.
- Celebrating cultural events and multicultural food days.
- Developing personal relationships between CSC staff and clients by regular face-to-face contact, celebrating client birthdays at the centre, accompanying, and liaising with local support agencies that their clients visit to ensure their wellbeing.

The audit team visited the centre in August 2022. We observed that clients felt comfortable at the centre, and trusting relationships had been established between NSW Trustee and Guardian staff and clients.

Source: Audit Office summary of observations at the CSC and information provided by NSW Trustee and Guardian.

The legislative principle to encourage clients' self-reliance has not been applied often in practice

There is limited evidence that NSW Trustee and Guardian staff encourage clients to be self-reliant in matters relating to their personal, domestic and financial affairs, as outlined in the legislative principles and national standards.

Financial managers have specific legislative discretion to authorise a client to manage part of their own estate as a means of developing their decision-making capacity (known as a 'section 71 authority', see Exhibit 10). However, this has not been exercised often: only 610 clients out of 12,556 direct financial management clients (five per cent) had section 71 authorities at 30 June 2022. NSW Trustee and Guardian was not able to advise whether this list was historical or included all clients currently authorised under section 71. It also advised that there are a number of direct financial management clients who will never be suitable for section 71 authorities, such as the 1,502 clients as at 30 June 2022 who had age-related cognitive impairments and are unlikely to regain relevant decision-making capacity over time.

Exhibit 10: Self-management for direct financial management clients under section 71 of the NSW Trustee and Guardian Act 2009

Section 71(2) of the *NSW Trustee and Guardian Act 2009* anticipates that some people under financial management orders may have or regain capacity to manage part or parts of their estate.

This provides that NSW Trustee and Guardian may 'by instrument in writing, authorise the managed person to deal with so much of the estate as the manager considers appropriate and specifies in the instrument.'

The 'managed person' includes clients under direct financial management by NSW Trustee and Guardian, and clients with private financial managers. The legislation also enables NSW Trustee and Guardian to withdraw the authorisation, wholly or in part, at any time.

In practice, NSW Trustee and Guardian can, for example, give its direct financial management clients the authority to exercise their autonomy by managing aspects of their financial affairs such as:

- Centrelink and other benefits
- wages or other income
- motor vehicles
- financial investments
- rental payments from investment properties
- specific expenditure (bills)
- credit cards
- other as requested.

Granting section 71 authorities to financial management clients can allow them to demonstrate to the relevant court or tribunal that made their order that they have the skills and ability to independently manage their financial affairs. This may result in the court or tribunal revoking the financial management order.

Source: Audit Office research and summary of information provided by NSW Trustee and Guardian.

While this may explain why some direct financial management clients have not been considered for section 71 authorities, an internal review completed in January 2022 found that section 71 authorities were not well applied by NSW Trustee and Guardian staff due to inadequate data capturing in the client management system, and a lack of accessible information sources for clients applying for section 71 authorities. For example, NSW Trustee and Guardian does not provide clients and/or their key contacts with guidance about how to gather the information required to submit a written proposal to request a section 71 authority which must include:

- an asset management plan that details how the asset/s will be self-managed by the client and any client support arrangements
- views of stakeholders such as case managers, support workers and health care professionals.

Section 71 authorities granted to direct financial management clients are expected to be reviewed by NSW Trustee and Guardian staff every 12 months, or if there is evidence that the client is being exploited. Beyond these reviews, NSW Trustee and Guardian staff do not provide oversight or offer any additional supports to clients with section 71 authorities. It also does not provide information about where clients can seek assistance if they encounter difficulties when managing their own finances and/or assets. If the client has difficulty managing their financial affairs, NSW Trustee and Guardian can revoke the client's section 71 authority.

In the second half of 2022, NSW Trustee and Guardian established a dedicated team to focus on growing the number of direct financial management clients given section 71 authorities. However, it is a small team (of four people) for a large consumer base (more than 12,000 people under direct financial management). It is also not legislatively empowered to provide, and has not been resourced to deliver, related services such as financial counselling or coaching to assist clients to develop their financial literacy and skills. NSW Trustee and Guardian reports that there are limited external providers available in the market to which it could refer clients for these services.

The Public Guardian does not have legislative discretion to delegate decision-making authority to people under guardianship orders in the way that the NSW Trustee can with section 71 authorities.

However, the Public Guardian's decision-making procedures outline how guardians can support clients to build their decision-making capacity by including them, to the extent possible, in the decision-making process (although decision-making authority remains with the individual guardian).

Guardians can also advocate for service providers to actively support clients to participate in their day-to-day choices, although this is not formal substitute decision-making but rather part of a general advocacy role guardian staff hold under the legislation and delegations. Guardians provided us with some individual examples of how this occurs in practice.

The 2022 operating model for guardianship services aims to measure the proportion of early discharge orders that the Public Guardian seeks at NCAT. The rationale for this measure is to discharge people from guardianship at the right moment, to empower them to continue making decisions for themselves. This has not been previously tracked. While guardians can advocate for decision-building supports for clients, they are limited by community resources available where the client resides, and their own significant workloads.

There is little evidence that staff preserve the cultural and linguistic environments of clients

NSW Trustee and Guardian has a culturally and linguistically diverse client base (see Exhibit 11). However, there is limited evidence that NSW Trustee and Guardian's policies, procedures, and practice align with the legislative principle that recognises the importance of cultural and linguistic environments of clients, and the *Disability Inclusion Act 2014*.

The principles in the Disability Inclusion Act express key commitments of the NSW Government to give effect to the United Nations Convention on the Rights of Persons with Disability (ratified by Australia in 2008) in New South Wales. These include a focus on supports and services for diverse groups of people with disability including Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse (CALD) backgrounds and people who identify as lesbian, gay, bisexual, transgender, intersex, queer/questioning and other sexualities and genders (LGBTIQ+). The Disability Inclusion Act principles require that supports and services for diverse groups recognise their particular needs, their potential barriers to accessing supports and services, and are informed by consultation or partnership with their communities.

Exhibit 11: Diversity in NSW Trustee and Guardian financial management and guardianship client population

The data NSW Trustee and Guardian provided to us during the audit had significant gaps in the fields that capture the diverse status of its clients. For example, in 2022, for 2,568 guardianship and 281 direct financial management clients, their records had blank 'main language' fields. Noting this constraint, the available data suggests the following diversity in 2022:

- 9% of guardianship clients and 7.1% of direct financial management clients identified as Aboriginal and/or Torres Strait Islander (this is two to three times the proportion of Aboriginal people in the New South Wales population)
- 4.7% of guardianship clients and 3.4% of direct financial management clients spoke languages other than English
- NSW Trustee and Guardian advise that the LGBTIQ+ identity of direct financial management and/or guardianship clients is noted in the client record management system if it is relevant to the decisions and actions being made for the client, but it does not collect relevant data as a matter of course.

Source: Audit Office summary of information provided by NSW Trustee and Guardian.

However, at the time of writing, NSW Trustee and Guardian did not have:

- a consumer advisory group of people with lived experience of financial management and/or guardianship services
- Aboriginal, CALD or LGBTIQ+ 'identified' or specific liaison positions for financial management and/or guardianship services
- related staff training on cultural competency and diversity
- specific decision-making guidelines for diverse clients
- evidence that Aboriginal, CALD, LGBTIQ+ or other diverse managed/clients or stakeholders are engaged by NSW Trustee and Guardian for feedback and insights on guardianship and financial management services.

NSW Trustee and Guardian has two Aboriginal 'targeted' roles: an Administration Support Assistant and Senior Client Service Officer, in the two divisions responsible for guardianship and financial management services. Targeted roles are defined by the NSW Public Service Commission guidelines and allow for the recruitment of non-targeted candidates if target Aboriginal candidates are not found. We have not seen evidence of what actions NSW Trustee and Guardian has taken to promote these roles to potential Aboriginal candidates and encourage them to apply for these positions.

In 2021, NSW Trustee and Guardian developed a diversity inclusion action plan, which included a 0% target for Aboriginal senior leaders. NSW Trustee and Guardian advise that this is due to the small size of its executive leadership team which consists of eight roles. The plan states that at 30 June 2020, 1.2% of employees in non-executive leadership salary classes were Aboriginal. This is below the three per cent target set by the NSW Public Service Commission sector-wide 2019–2025 Aboriginal Employment Strategy.

The need to develop staff cultural capability and awareness, and their understanding of Aboriginal people under financial management and/or guardianship orders was highlighted in NSW Trustee and Guardian consultations with staff and key stakeholders in 2022. NSW Trustee and Guardian is arranging delivery of the NSW Public Service Commission's 'Everyone's Business' cultural capability training package, developed with Stolen Generations survivors and organisations, in 2023.

Exhibit 12: First Peoples' perspectives

We consulted with the First Peoples Disability Network during the audit, a national organisation of Aboriginal and Torres Strait Islander people with disability, their families and communities. First Peoples Disability Network originated from advocates working to bring attention to the specific needs of Indigenous Australians with disability. It is governed by First Peoples with lived experience of disability.

First Peoples Disability Network told us that currently, NSW Trustee and Guardian does not engage with them for advice and feedback on policies, services or individual cases, which they would welcome and support in future.

The organisation shared observations from their members' experiences with the guardianship and financial management systems. These included that:

- Aboriginal people often don't recognise or disclose a disability because they fear unsupportive intervention from, and discrimination by, the government.
- Guardianship and direct financial management – which involves a government agency taking control of a person's affairs and preferencing 'best interests' over their will and choice – is particularly disempowering for Aboriginal peoples in the historical context of colonial dispossession, discrimination and mistreatment by the state.
- NSW Trustee and Guardian's limited contact with clients in general, including face-to-face engagement, makes it hard for:
 - Aboriginal clients to develop trusting relationships with their guardian or financial manager
 - guardians or financial managers to understand and adopt a holistic view of the person which includes their Kinship systems, Community, Culture, best interests and any actual, potential and/or perceived risks of abuse, neglect or exploitation.

- An understanding of disability in a historical context, with a specific comprehension of the contemporary experiences and needs of Aboriginal peoples with disability is generally not apparent in the conduct of frontline staff.
- Aboriginal client feedback on customer service is not sought, with a view to making services more culturally safe and appropriate. This is particularly the case for 'invisible' disabilities such as acquired brain injury, neurodivergence and foetal alcohol syndrome disorder.
- Developing partnerships with Aboriginal Community Controlled Organisations 'on the ground' would be welcome. This could improve the accessibility of financial management and guardianship services for Aboriginal clients, and assist NSW Trustee and Guardian to develop broader strategic and meaningful relationships with Aboriginal leaders and communities.

Source: Audit Office summary of information shared during consultation with the First Peoples Disability Network.

NSW Trustee and Guardian does not regularly monitor decisions made by financial management and guardianship staff

Decisions made by frontline staff on behalf of a client are not consistently and regularly reviewed to ensure that they comply with NSW Trustee and Guardian policies, procedures, and the legislative principles.

If a client and/or their key contact disagrees with a decision made by NSW Trustee and Guardian, they can request 'an internal review of a decision' (see Exhibit 13). These internal reviews check that the staff member made an appropriate decision for the client, in line with policies, procedures and the relevant legislative principles.

However, for many NSW Trustee and Guardian clients, the process of questioning and requesting a review of a decision depends on having appropriate cognitive supports, which may not always be available to them. It is therefore important that NSW Trustee and Guardian has effective processes to: assess and build staff competency in understanding and effectively serving financial management and guardianship clients; review staff decisions as standard practice (and not only when complaints or reviews of decisions are received); identify and correct errors or poor service; and use stakeholder feedback to improve practice.

The need to improve the file review system to ensure guardianship and financial management staff effectively make decisions in line with the legislation, and identify files that require remediation, was highlighted by internal reviews in 2019 and 2021. In response to these reviews:

- The Public Guardian made changes to IT systems to encourage independence between the decision approver and the decision maker.
- A new file review checklist for financial management staff was created to assist staff to identify and reduce errors such as missed payments of regular bills, claiming all available income sources, and ensuring assets are insured.

However, there is limited evidence of regular or random file reviews to check that direct financial management and guardianship staff approach decision-making consistently, and appropriately consider which of the legislative principles should be applied to their decisions, and how.

In our file reviews and practice observations, we observed that decisions that require a higher level of delegation are sent to senior staff members by both direct financial management and guardianship frontline staff for their review and approval. However, frontline staff can still make, review, and approve a decision without senior oversight or 'challenge' if it is within their delegation.

Direct financial management frontline staff are expected to review client's budgets and files at least once a year. These reviews require financial managers to complete a checklist that includes ensuring the client's budget is consistent with their income and expenditure, their accommodation needs are being met, and their bills are being paid. However, they do not require staff to consider if a client's needs are being met against the legislative principles or to evaluate whether a client's budget and financial plan is contributing to their future financial goals and objectives.

There is no equivalent file review checklist for frontline guardians. It is not clear how often guardianship frontline staff are expected to review their own decisions and check their client records for accuracy or appropriateness.

Random file reviews are conducted by senior financial managers and guardians as part of their supervision of frontline staff during monthly performance meetings. However, these tend to be monthly reviews of one file per staff member. There is no regular independent file review process, or an automatic prompt from the client file management systems, to check the quality, appropriateness and accuracy of frontline staff's decisions or reviews of their own files and client records. This increases the risk that decisions made by frontline staff are not supported by accurate client information and are not in line with applicable legislative principles.

Exhibit 13: Reviews of decisions made by NSW Trustee and Guardian's financial management and guardianship staff

If a person and/or their key contact disagrees with a decision made by NSW Trustee and Guardian, they can request 'an internal review of decision' (IROD) under the *Administrative Decisions Review Act 1997*.

In compliance with this Act, requests for an internal review of decision must be submitted in writing to NSW Trustee and Guardian within 28 days of the client being informed of the decision. NSW Trustee and Guardian can refuse to review a decision if the request is made outside of this timeframe or if the decision has already been reviewed.

Internal reviews of decisions must be conducted by a senior staff member at NSW Trustee and Guardian who was not involved in the decision-making process. The independent reviewer can decide to:

- uphold the original decision - the decision stays the same
- vary the decision
- overturn the original decision and make a new decision instead.

NSW Trustee and Guardian aims to provide the outcome of the internal review of the decision to the person who requested the review within 21 days of their request.

If the person requesting the internal review is not satisfied with the outcome, they can ask the Administrative and Equal Opportunity division of the NSW Civil and Administrative Tribunal (NCAT) to review the decision. This request must be submitted to NCAT within 28 days of the person receiving the outcome of NSW Trustee and Guardian's internal review.

Source: Audit Office summary of information provided by NSW Trustee and Guardian.

NSW Trustee and Guardian does not have formal processes to check its appointment is last resort, and to seek order amendments if it is not

Financial management and guardianship orders inherently restrict the freedom of decision and action of clients under orders. While not a legislative obligation, NSW Trustee and Guardian can advise courts and tribunals on whether their appointment as financial manager or public guardian is appropriate and 'last resort', where no other suitable person is willing or able to perform the role of financial manager or guardian. However, there are currently no formal processes in place to check that their appointment is appropriate and truly 'last resort.'

NSW Trustee and Guardian is not responsible for assessing a person's capacity nor deciding whether the person should be placed under an order. This function is the responsibility of relevant New South Wales courts and tribunals. If the NSW Trustee or the Public Guardian is appointed as financial manager or guardian by the relevant court or tribunal, neither can refuse the order. However, they can lodge applications for review of an order with the court and tribunals if it believes the order warrants review (for example, where an appointment is inappropriate).

Another approach is illustrated by a Public Guardian 'Initial Hearings Team' piloted from March 2014. The role of this team was to attend guardianship hearings of NCAT and advise on whether the appointment of the Public Guardian was appropriate to achieve the intended outcomes for prospective clients. They also provided guidance to the Tribunal members on possible alternatives to this that may be more suitable, such as informal supports or private guardianship.

In its first two years of operation, NSW Trustee and Guardian advises that the Initial Hearing Team had dealt with almost 4,500 applications and diverted around 430 of these from becoming public guardianship matters. A consultant engaged by NSW Trustee and Guardian estimated that the team had reduced the Public Guardian division's workload by the equivalent of seven full time equivalent staff by decreasing the proportion of orders appointed to the Public Guardian by NCAT by five per cent.

A 2017–18 budget bid by NSW Trustee and Guardian to provide recurrent funding for the Initial Hearing Team was not successful and it is no longer in place. Instead, a dedicated NCAT liaison officer was established in the Public Guardian division under the 2022 operating models. The purpose of this position is again to try to improve the understanding of NSW Trustee and Guardian amongst NCAT members and identify possible alternatives to guardianship where relevant. The impact of this role is not yet clear.

The 2022 operating model for the Public Guardian division also includes a new 'Review and Response Team'. This team is responsible for taking 1,000+ 'monitoring' level files previously managed by regional teams, and systematically working through them to ensure that guardianship services are undertaken in line with key performance indicators and standards, including identifying files that can be taken to NCAT for early discharge.

In contrast to guardianship, financial management orders do not have regular court or tribunal reviews built into the order terms. Instead, the onus is on the client under the financial management order (or another interested party) to lodge an application with the court or tribunal to seek a review and revocation of the order by demonstrating the person is capable of managing their own affairs. NCAT makes most financial management and guardianship orders and conducts most reviews. It is intended to be a low-cost jurisdiction and parties are not required to appear with legal representation. However, if the revocation is sought in the Supreme Court, it would be prudent for the client to have legal representation.

Some stakeholders we heard from through the audit suggested that financial management clients should have access to their managed funds for the purpose of meeting their own costs associated with seeking a review of their order (like legal costs for independent advice, and expenses such as fees for medical reports). NSW Trustee and Guardian was unable to provide us with data relating to, or examples of, such client requests.

For most of the audit review period, until the implementation of the 2022 operating models, NSW Trustee and Guardian did not regularly review direct financial management files to identify whether clients may be able to manage part or all of their affairs. It does not track client requests for funds to seek a review of an order, nor staff responses to ensure that frontline staff decisions are made appropriately. This limits its understanding of trends and opportunities for appropriate 'early discharge' of people from direct financial management orders where relevant decision-making capacity has been or may be regained.

Although NSW Trustee and Guardian advise that it has independently sought reviews of guardianship and financial management orders by NCAT from time to time, where it views such orders are not, or no longer, appropriate, it did not provide evidence of this occurring in practice.

2.2 Agency resourcing

Guardianship services are funded by government grant, financial management services by fee revenue with government funding for direct financial management fee subsidies and waivers

Across the agency as a whole, more than three-quarters of the NSW Trustee and Guardian's overall revenue is from fees (including for services outside the scope of the audit, such as will preparation) and investments. The balance is funded by the NSW Government. For this reason, it is considered a self-funded agency by NSW Treasury definitions.

Direct financial management services are resourced predominantly by client fees, comprising 81% of revenue between FY2018-FY2022. Government funding makes up the balance and is directed to fee subsidies and waivers for low-wealth direct financial management clients (those with assets apart from their principal place of residence, motor vehicle and furniture valued under \$75,000). Guardianship services are funded entirely by government funding as an annual grant, with the objective of providing these services for free to the client. Government funding is not provided for NSW Trustee and Guardian's private financial management services.

Government funding for NSW Trustee and Guardian's subsidised direct financial management services (and other services such as free will-making for pensioners) is known as 'Community Service Obligation' (CSO) payments. NSW Treasury defines CSOs as activities expected to be undertaken by public non-financial corporations and public financial corporations for specific policy objectives, that do not achieve a commercial return, and would not be undertaken by comparable private sector businesses.

For the five-year audit review period (FY2018-FY2022) NSW Trustee and Guardian as an agency received total government funding of \$95.6 million. This included \$50.6 million for the Public Guardian grant, \$30.8 million in CSO payments for direct financial management and other services and \$14.2 million in other funding including to support guardianship and financial management services. Over the same period, NSW Trustee and Guardian received \$128 million in fee revenue for direct financial management services. Financial management fees are further discussed in section 2.3 below.

A gap between costs and revenue was independently identified in 2014, along with opportunities for improving processes and efficiencies

In 2014, at the request of the NSW Government, the Independent Pricing and Regulatory Tribunal (IPART) reviewed the fee structure for all of NSW Trustee and Guardian's charged services (i.e. excluding guardianship services).

IPART found that NSW Trustee and Guardian's expenses as an organisation had steadily increased since it was established in 2009 through the merger of the Office of the Public Trustee and Office of the Protective Commissioner (which administratively supported the Public Guardian), growing at an average annual rate of 6.7% while total revenue had remained relatively flat. NSW Trustee and Guardian advised us that, at the time of the 2009 merger, the Office of the Protective Commissioner carried a deficit of \$11 million and the expectation was for the Public Trustee reserves to clear the debt and fees from estate administration to cross-subsidise other areas of work.

IPART's position was that vulnerable and disadvantaged clients should only pay fees to fund NSW Trustee and Guardian's efficient costs, and any costs above the efficient costs should be borne by the agency, with subsidy (CSO payments) for clients who cannot afford to pay the full efficient fees. Based on a confidential report provided by NSW Trustee and Guardian, IPART considered that there was scope for efficiency savings of at least 20% across NSW Trustee and Guardian's operations, such as through removing duplicated systems and unnecessary processes.

The fees IPART recommended sought to recover the costs of efficient operating expenditure, depreciation and a return on capital invested in the business, with depreciation and return on capital recovering the cost of capital expenditure over time. Overall, IPART expected its recommendations would lead to a 12% fall in regulated fee revenue, a 20% reduction in operating expenses and an overall shift from a \$7 million deficit to a \$1 million surplus for NSW Trustee and Guardian as an organisation.

NSW Trustee and Guardian did not disagree with the 20% efficiency savings target proposed and reported to IPART in the course of the 2014 review that it had identified a range of initiatives to reduce operating costs, including staff redundancies and new unified client management IT system.

However, NSW Trustee and Guardian advised us that the 'Transformation' project commenced after the IPART review did not achieve the efficiency savings expected. NSW Trustee and Guardian considers that 'Transformation' resulted in the rationalisation of over 100 frontline roles which lost corporate knowledge and 'decimated' its services; and the implementation of a new IT system was only partially successful.

Following the commencement of a new CEO and changes to the agency's executive from January 2018, NSW Trustee and Guardian also began implementing a new five-year program of business improvements in 2019, such as automating some tasks. It estimated that a savings of 4.5 full time equivalent staff had been made in the first year. But NSW Trustee and Guardian considered, and advised the Attorney General, that ongoing business improvements would not be able to close the gap on the funding required to provide free guardianship and subsidised direct financial management services.

NSW Trustee and Guardian does not have data on its actual costs to serve to demonstrate if costs are efficient or revenue is sufficient

NSW Trustee and Guardian has taken steps to try to capture data on the actual cost of providing guardianship and subsidised financial management services, and to estimate these costs in the absence of such data collection. However, system limitations have frustrated attempts to fully identify and quantify the costs of service provision, including the varying complexity of client needs and related staff effort. Without data on actual costs to serve, NSW Trustee and Guardian cannot confidently demonstrate that its guardianship and financial management expenses are efficient, or determine whether revenue - either from government funding or client fees - is sufficient to meet these costs.

To establish actual and efficient costs in providing services requires activity-based costing data including:

- the overall cost of each service
- how many transactions were delivered
- how much time went into each transaction
- which client benefited from each transaction.

NSW Trustee and Guardian does not have such a costing system in place. While the quantity of client transactions are being captured in NSW Trustee and Guardian's data, these do not indicate their complexity or the time taken by staff to attend to them.

In 2016, NSW Trustee and Guardian began implementing a new client relationship management IT system with activity-based costing capability, known as the 'Trustee and Guardian System' (TAGS). This aimed to replace a range of legacy client management and accounting systems used by different divisions of the organisation. The system was designed to be a 'single-source-of-truth' for all client information in a scalable cloud-hosted platform accessible to staff on-site and working in mobile outreach teams.

In 2017–18 NSW Trustee and Guardian commissioned a review of work on the TAGS project, to inform a new digital strategy to be developed during 2018–19. The total project cost was \$15 million and TAGS was terminated following technical issues with full implementation. Subsidiary cloud-based systems were implemented for Public Guardian and private management, however no new direct financial management systems were implemented.

Without the capability to collect data on the actual costs to provide its services, NSW Trustee and Guardian has commissioned five separate consultant analyses, and undertaken one of its own, to try to estimate costs for guardianship and subsidised direct financial management services. The most recent effort was in September 2020 after NSW Trustee and Guardian, as a whole, ran an operating deficit that it expected to increase over the forward estimates.

In this latest analysis, consultants engaged by NSW Trustee and Guardian:

- identified the activities that NSW Trustee and Guardian provide across its commercial and non-commercial services
- undertook an activity-based cost allocation exercise to distribute all NSW Trustee and Guardian expenses and revenue to services
- estimate the actual value of CSO activities delivered by NSW Trustee and Guardian and compare this to the government funding received.

The consultants estimated that the full cost of NSW Trustee and Guardian's CSO activities amounted to \$24.7 million for 2019–20 while government funding totalled \$16.3 million, a shortfall of \$8.4 million. For 2020–21 this shortfall was expected to increase to \$12.8 million, in the absence of additional government funding or fee amount increases.

This gap between government funding and the services funded by it was attributed to:

- an increase in demand from non-fee paying or low fee-paying clients
- an increase in the complexity of decision-making (time per client matter), while
- the amount of the CSO payment for subsidised financial management services had been unchanged since 2009
- the Public Guardian grant was indexed to inflation and not to growth in client numbers which was greater than inflation.

The consultants also considered the NSW Trustee and Guardian fee structure for its services across the organisation. It found that fee revenue had been negatively impacted by fluctuating asset prices, low interest rates, equity markets and a long term decline in commercial service customer numbers such as will making and estate administration. The consultants concluded that fee adjustments, in isolation, would:

- spread the funding burden evenly over most fee-paying products, but
- not eliminate cross-subsidies between different services
- not cover operating deficits in the medium term when CSO activities like guardianship services and subsidised direct financial management services for low-wealth clients continued to escalate.

Government funding does not reflect the number of guardianship or direct financial management clients

Under its enabling legislation, NSW Trustee and Guardian cannot decline to receive a guardianship or direct financial management client once the court or tribunal make relevant orders appointing the Public Guardian or NSW Trustee. It is intended to be a provider of 'last resort' where no other person can be the guardian or financial manager for a client.

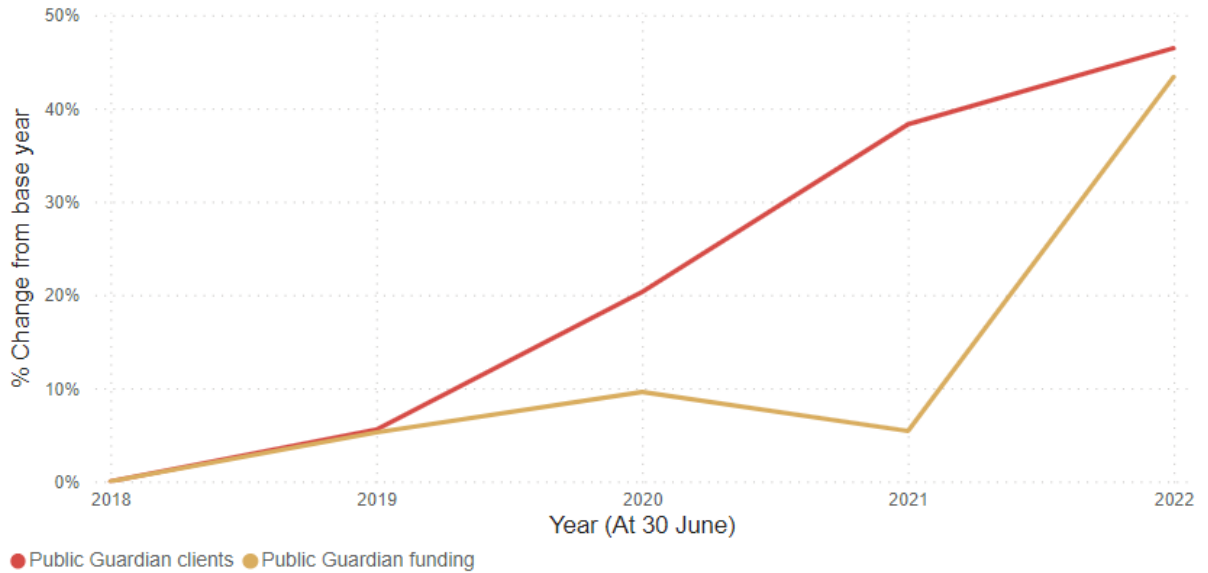
Government funding for guardianship services and subsidised direct financial management services is not determined by a demand-based funding model (as it is for courts or public education). It is not linked to the number of clients NSW Trustee and Guardian has for these services each year, the rate of growth in client numbers over time, or the volume or type of activities delivered.

In 2020 NSW Trustee and Guardian briefed the Attorney General that government funding was no longer meeting the full estimated cost of delivering free guardianship services and subsidised direct financial management services for low-wealth clients. NSW Trustee and Guardian advised that CSO funding had increased 12.6% since 2010–11 while the demand for the services funded had increased by approximately 40% in the same ten-year period.

The higher rates of appointments of the Public Guardian and the NSW Trustee by the courts and tribunals have not been offset by the rate of exits (where a person is no longer under guardianship or direct financial management because they have been discharged by NSW Trustee and Guardian, the order has been finalised by the relevant court or tribunal, or the person has died).

Our analysis of data provided by NSW Trustee and Guardian also found that the growth in client numbers was greater than the growth in government funding for guardianship services over the five-year audit review period, as illustrated in Exhibit 14. Taking 2017–18 as the base year, client numbers increased by up to 46% in this time. Over the same period, until additional funding was received in the 2021–22 State Budget (discussed below), funding for guardianship services grew by ten per cent or less after adjusting for the impacts of inflation.

Exhibit 14: Change in growth of Public Guardian clients compared to change in growth of Public Guardian grant funding from base year (2017–18), FY2018–FY2022



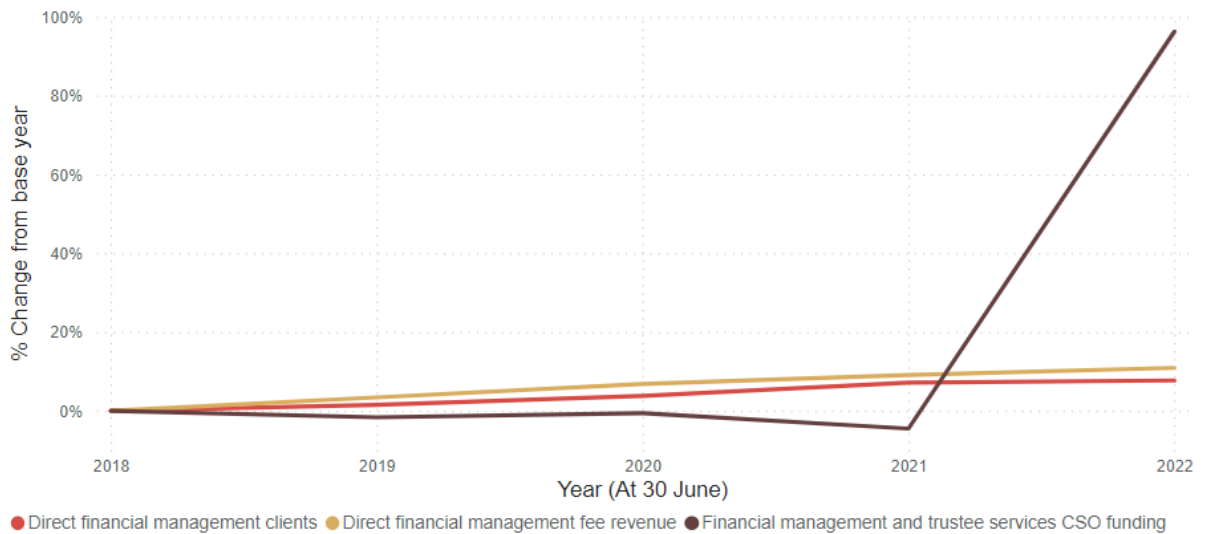
Note: Funding provided for Public Guardian activities is reported in real terms. It has been adjusted for the impact of inflation using the 'All groups CPI Sydney Quarterly data'.

Source: Public guardian client data provided by NSW Trustee and Guardian (unaudited) and Public Guardian funding (audited financial statements).

Our analysis of NSW Trustee and Guardian data on the growth in client numbers compared to revenue for financial management services - client fees and government funding in the form of CSO payments for fee subsidies and waivers - finds a different trend (Exhibit 15).

Again, taking 2017–18 as the base year, the number of direct financial management service clients has increased by up to seven per cent over the audit review period. Growth in government funding was below the growth in client numbers, while growth in fee revenue was above that of client numbers (on an inflation adjusted basis).

Exhibit 15: Change in growth of direct financial management clients compared to change in growth of direct financial management fee revenue and in relevant government funding from base year (2017–18), FY2018-FY2022



Note: Fee revenue and CSO funding provided for financial management and trustee services activities is reported in real terms. It has been adjusted for the impact of inflation using the 'All groups CPI Sydney Quarterly data'.

Source: Direct financial management client data provided by NSW Trustee and Guardian (unaudited) and budget breakdown of CSO funding provided by NSW Trustee and Guardian (unaudited).

It is important to note that our analysis does not identify whether fee revenue for financial management services and government funding for guardianship services and direct financial management fee subsidies are sufficient to cover NSW Trustee and Guardian's efficient costs of delivering these services. Nor does it inform on whether there are differences in the costs to serve varying cohorts of clients (e.g. high wealth compared to low-wealth direct financial management clients; high complexity compared to low complexity guardianship client matters).

Rather, it compares the rates of change for revenue and client numbers to understand whether revenue as it was in the baseline year (2017–18) has kept pace with growth in service demand. Data on the actual costs to serve is necessary to determine whether there is a gap between costs to deliver direct financial management services and revenue from client fees and government funding.

Greater complexity of client matters, particularly for guardianship services, has increased service costs that aren't covered by government funding or fee revenue

IPART found in its 2014 review that NSW Trustee and Guardian data at the time suggested the intensity of work involved in managing the estates of direct financial management clients (measured by file notes recorded in a year) varied by client asset values. Intensity appeared to:

- be relatively low for clients with chargeable assets valued at \$0
- increase for clients with very low value chargeable assets (approximately \$1,000 - \$5,000)
- be moderate for clients with medium value assets (approximately \$20,000 – \$80,000)
- increase again for clients with large assets (approximately \$300,000 – \$16 million).

IPART observed that while staff file notes provide an indication of workload, they did not provide data on the impact of client matter complexity because the client management IT systems did not distinguish between simple/routine file notes and more complex/time consuming file notes.

Subsequent analysis by NSW Trustee and Guardian in 2021 found the higher the level of complexity of a client matter for either guardianship or direct financial management services, the greater the number of activities, tasks and decisions that had been made by NSW Trustee and Guardian staff on behalf of the client. In most cases, the level of complexity impacts the salary grade and qualifications required of staff, with more complex matters requiring more experienced staff members under organisational delegations. As a result, NSW Trustee and Guardian estimates that its cost to serve each high complexity client is greater than its costs to serve each low complexity client.

However, these costs have not been recovered through government funding or fees because:

- government funding does not reflect the complexity of client needs (such as by being linked to the amount of time a frontline officer spends on a client matter)
- under its legal authority, NSW Trustee and Guardian can only charge fees for financial management services, not guardianship services
- data limitations have frustrated attempts to identify the actual costs of service delivery or move to a fee-for-service structure (where fees vary according to the complexity of client matters and the cost to serve).

Analysis undertaken by NSW Trustee and Guardian in February 2021 on the drivers of complexity for guardianship and direct financial management clients used a combination of criteria to rate the complexity of client matters, and the related staff effort, in a sample of files. These included the following factors:

- client profile including the extent to which the following are present: multiple diagnoses or disabilities, cultural and linguistic diversity, family conflict concerning the client
- extent of communication/interaction sought by or required with clients and stakeholders
- whether multiple providers/supports are required, and intersection with multiple service systems such as housing, health, disability, aged care
- broader systemic matters such as lack of support options available in the market (for example, suitable accommodation for people with cognitive impairment); and changes to processes in disability services, financial institutions and aged care facilities prompted by the National Disability Insurance Scheme, and the Banking, the Aged Care and the Disability Royal Commissions
- the nature and number of the authorities or functions the Public Guardian has under a guardianship order, e.g. authority to make decisions regarding accommodation, the frequency of contact the client has with other people in their life, medical/dental consents, support services, restrictive practices
- the nature of the client's estate subject to a financial management order, e.g. whether commercial interests, legal issues, type of accommodation, size of the client's budget, their assets and liabilities.

NSW Trustee and Guardian examined its data on the tasks and activities performed by financial management and public guardian staff, and decisions made by public guardian staff, over time. It found there had been a 111% increase in the number of tasks performed by financial management staff, and a 212% increase in the number of decisions made by public guardian staff, between 30 June 2011 and 30 June 2020.

The demand for public guardian and financial management services, and the complexity of client needs and circumstances are likely to continue growing. Driving factors include:

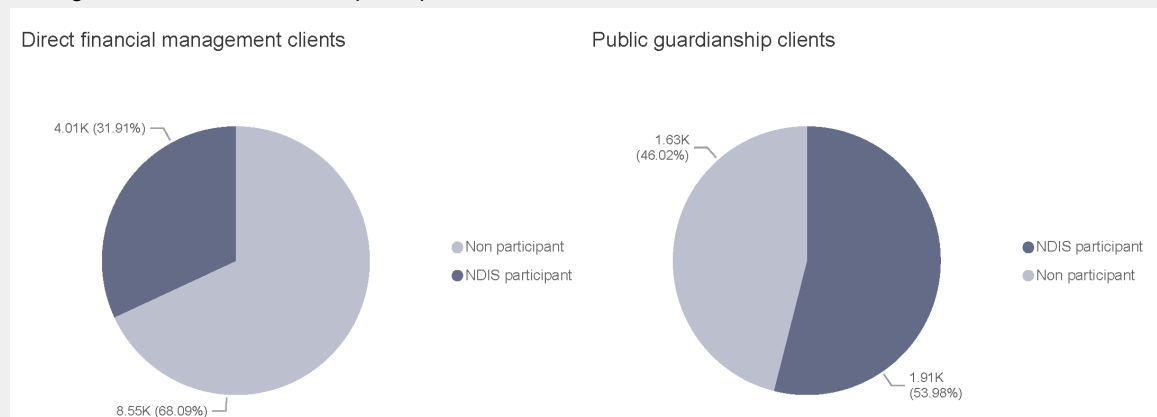
- the ageing population and age-related illnesses and disabilities that affect people's decision-making capacities, such as dementia
- more complex disability presentation including an increase in clients with multiple disabilities and psychosocial disabilities
- the impacts of the National Disability Insurance Scheme due to reasons outlined in Exhibit box 16 below
- increasing awareness of elder abuse, and of the risks of violence, neglect and exploitation of people with disability, highlighted by the Aged Care and Disability Royal Commissions, prompting more applications and appointments of guardians and financial managers for vulnerable people.

Exhibit 16: Impact of the National Disability Insurance Scheme (NDIS) on NSW Trustee and Guardian guardianship and financial management services

The National Disability Insurance Scheme (NDIS) is an Australian Government program that provides funding to eligible people with a disability. NDIS support can be accessed through a personal plan that is prepared by the eligible participant and a National Disability Insurance Agency (NDIA) planner. Funding from the NDIS can be spent on supports and services such as:

- support for daily activities
- transportation
- workplace help
- therapeutic supports.

As represented in the pie charts below, as at 30 June 2022 more than half (54%) of NSW Trustee and Guardian's public guardian clients participated in the NDIS while around one-third (32%) of its direct financial management clients were NDIS participants.



Sources: (Left) direct financial management client data as at 30 June 2022, (right) public guardian client data as at 30 June 2022, provided by NSW Trustee and Guardian (unaudited).

NSW Trustee and Guardian considers that although the appointment of the Public Guardian is intended to be used as a last resort, it is increasingly being used to secure disability supports for people unable to exercise the consumer choice and control assumed by the NDIS model. The agency advised that the block funding model for disability service providers in place prior to the NDIS gave less choice to customers placed under guardianship orders, but meant NSW Trustee and Guardian spent less time on administrative tasks and dealt with a smaller number of providers who each supplied a range of services e.g. therapies, supported accommodation, supported employment.

On average, NSW Trustee and Guardian estimates that NDIS matters require 70% more decisions to be made by public guardian staff compared with non-NDIS matters. Additional tasks required of guardians include:

- liaising with the client, their support network, health professionals and service providers to arrange the necessary assessments for NDIS funding, and collating information to ensure the client's needs are clearly understood by the NDIA in the planning or review process
- participating in the NDIS planning process (meetings, review information and reports)
- subsequently working with the client and their disability services, supports and other mainstream agencies to help them to utilise their NDIS plans and choose service providers.

NSW Trustee and Guardian advises that clients who are supported by the NDIS also typically have more complex circumstances and/or needs.

Source: Audit Office research based on information provided by NSW Trustee and Guardian and material published by the Australian Government.

There is a risk that some fee-paying clients are unknowingly subsidising financial management and guardianship clients

A cross-subsidy occurs when the fees collected from customers of one service are greater than the costs of providing that service and the surplus revenue is used to meet the costs of providing a different service to different customers. The customers of the first service are subsidising the customers of the second service.

Issues with cross-subsidies include that they:

- can remove the incentive for the subsidising service to lower its prices when its able, or for the subsidised service to improve efficiency or demand full funding
- lack transparency for clients - those generating a surplus are not told that their fees will be subsidising other clients who cannot afford to pay full fees
- may distort demand, with a subsidising service potentially being under-used because its price is above-cost, while the subsidised service potentially is over-used because its price is below-cost.

The risk of cross-subsidisation arises when the revenue or income for a service (whether from fees, government funding or other sources) is less than the cost to provide the service. IPART found in a 2014 review that NSW Trustee and Guardian's fee structure across all its charged services at that time was resulting in significant cross-subsidies between services and between clients within each service. Such a gap remains evident with respect to NSW Trustee and Guardian's private management, direct financial management and guardianship services.

The fees NSW Trustee and Guardian charges for private management services are capped by regulation. Although not specified in the legislation or regulation, NSW Trustee and Guardian elects to provide fee subsidies for low-wealth private management clients. NSW Trustee and Guardian does not receive government funding to provide its private management service or its private management fee subsidies for low-wealth clients.

According to the latest NSW Trustee and Guardian data available, the gap between the revenue from private management fees and the cost to deliver this service was up to \$2.9 million for the eight months between 1 July 2022 and 28 February 2023. This indicates that private management service fees do not cover the agency's cost to deliver the service, requiring cross-subsidisation by other NSW Trustee and Guardian service lines that generate an operating surplus (through fees and/or government funding) or from the agency's investment income.

At the time of the 2014 IPART review, NSW Trustee and Guardian estimated that the actual costs of delivering direct financial management services totalled approximately \$28 million in 2012–13, while revenue for these services was approximately \$21 million. Six years later, consultants engaged by NSW Trustee and Guardian estimated that the full cost of the agency's CSO activities amounted to \$24.7 million for 2019–20 while government funding totalled \$16.3 million, a shortfall of \$8.4 million. NSW Trustee and Guardian advised that cross-subsidisation resourced an additional 14 full time equivalent (FTE) roles in the Public Guardian over multiple years, prior to 2021–22.

We analysed NSW Trustee and Guardian data on the chargeable assets of and fees paid by direct financial management clients as at 30 June 2022. Our data analysis shows the majority of revenue from the management fee charged for direct financial management services (almost 75%) comes from a minority of clients (around 18%).

The consultants engaged by NSW Trustee and Guardian in 2020 found the agency was using revenue from fee-paying customers for its commercial services (such as estate administration) to fund services delivered to its non-commercial clients (such as guardianship clients and low-wealth financial management clients receiving fee subsidies or waivers).

However, without data on the actual costs to serve each client, NSW Trustee and Guardian cannot determine whether high-wealth direct financial management clients are subsidising services for private management, guardianship and/or low-wealth direct financial management clients.

IPART's position was that fees should be set to minimise cross-subsidies between low and high wealth clients, and that if there were concerns about a client's ability to pay for services, this should be funded transparently through a CSO payment and not borne by other clients.

NSW Treasury issued new guidelines for CSO payments in January 2019. This encouraged NSW Government agencies to ensure CSO activities are effectively carried out without the need for any cross-subsidisation. Agencies were expected to align CSO arrangements with the guidelines by 2020–21. NSW Trustee and Guardian engaged consultants to review its CSO arrangements and its costs to serve in 2020, to improve its alignment with the new guidelines. This informed a budget bid to increase government funding for guardianship and subsidised fees for low-wealth direct financial management clients.

Cross-subsidies are a longstanding issue at NSW Trustee and Guardian. They will persist regardless of the agency's overall operating balance unless the gap between revenue and the costs to serve is reduced such as through efficiencies, increased government funding, revised fee structures and/or investment income.

NSW Trustee and Guardian has estimated service demand and costs, and sought increased funding from the NSW Government

NSW Trustee and Guardian used analyses it had commissioned to argue the need for increased funding for guardianship services in a 2017–18 budget submission to NSW Treasury, on the basis of the growth in the number and complexity of client matters (and therefore, guardians' workloads) observed with the introduction of the NDIS. NSW Trustee and Guardian also sought additional government funding in a cluster budget submission in 2019–20. Outside of these formal bids, it made representations to the Cluster Secretary about the impacts of the growing gap between funding and demand for guardianship and subsidised financial management services. However, these efforts were not successful in securing additional funding in competition against other Justice Cluster priorities.

In November 2020, NSW Trustee and Guardian advised the Attorney General that the gap between government funding and service demand meant it could not meet the existing and future needs of guardianship and low-wealth financial management clients at the standard the community expects with the resources it had available. It warned that service reductions (such as waitlisting clients) may be necessary.

A working group of senior officials from NSW Trustee and Guardian, the Department of Communities and Justice and NSW Treasury was formed to review the overall financial situation of the agency in 2020 and make recommendations to the NSW Government. It examined the estimated cost to serve for the Public Guardian and the NSW Trustee's financial management functions, as well as funding arrangements, savings and efficiency gain options, and changes to relevant fees. The working group's recommendations proposed a three-pronged approach to improving NSW Trustee and Guardian's financial sustainability across the organisation:

- **increased government funding** (Public Guardian grant and CSO payments)
- **efficiencies in service provision:** including document automation, a new phone system and rationalising the number of investment 'common funds' (see Appendix five)
- **increased fees** for higher wealth direct financial management clients and for supervising private financial managers.

NSW Trustee and Guardian received a funding boost of \$41.5 million across four years in the 2021–22 State Budget to address the financial sustainability of the organisation as a whole. This reflected the option endorsed by the working group as a whole. NSW Trustee and Guardian advised the Attorney General that it preferred a different option with a larger quantum of funding that would reflect the full cost of providing CSO activities and minimise cross-subsidisation, but it accepted the working group's position.

Although the budget enhancement represented the first real government funding increase in more than 15 years it was less than NSW Trustee and Guardian estimates would be required to reflect the full cost of providing CSO activities (including guardianship services, and financial management services for low-wealth clients). The agency advised the Attorney General that the lower the government funding increase, the higher the required fee increase, and the longer that cross-subsidisation would continue.

The additional funding was directed at significantly increasing staff numbers in direct financial management and guardianship services, and has been included in the ten-year forward estimates with NSW Treasury.

Recent additional funding is targeted to improving delivery of direct financial management and guardianship services

NSW Trustee and Guardian's governance to guide the investment of the 2021-22 budget enhancement used the existing executive leadership team of CEO and Directors, a new executive steering committee and an implementation team based in the office of the CEO. NSW Trustee and Guardian applied this additional funding to developing new operating models and recruiting significant numbers of new staff for guardianship and financial management services in 2022. However, the governance arrangements are undermined by the lack of effective performance monitoring and data that would allow senior decision makers to adjust resourcing or modify approaches to meet the intent of the new investment.

NSW Trustee and Guardian considered operational performance and service demand information in relation to direct financial management and guardianship services, from over a number of years, in planning the use of the additional funding. The agency identified the key areas for improvement to these services including through internal reviews, modelling demand and the costs to serve, analysing drivers of file complexity, identifying complaints trends, mapping consumer journeys and staff feedback.

NSW Trustee and Guardian considered the complexity of activity, caseload and staff grade when determining the budget allocation need for guardianship and financial management services. This established the budgeted headcount for each area to deliver expected services.

Feedback from external stakeholders (such as representatives from the disability or mental health sectors, clients and their stakeholders) was not specifically sought on areas for improvement to be targeted through the additional funding. A few of these parties had provided some relevant feedback in dedicated consultation that NSW Trustee and Guardian conducted in September 2021 on proposed fee changes.

The enhanced funding is directed to:

- significantly increase public guardian and direct financial management staff numbers via recruitment. NSW Trustee and Guardian applied the majority of the funding to recruit approximately 120 new roles, with around 90 of these in frontline service delivery divisions.
- developing new operating models for the public guardian and direct financial management functions, aimed at improving customer service. This includes through:
 - better matching staff capabilities to the client population (e.g. targeting experience and knowledge of disability, mental health, aged care in recruiting to new roles)
 - improving the initial ‘establishment’ or ‘foundation’ process of gathering information about clients early on, and better sharing this information between relevant teams
 - lowering caseloads to enable frontline staff to spend more time with clients and to conduct work on their matters
 - changing the allocation of files based on matter complexity and creating related triaging processes
 - encouraging a more proactive and customer-focused practice, focusing on medium to longer term strategies for managed/clients through proactive engagement
 - forming specialist teams including some with an explicit focus on identifying clients for whom an early discharge from guardianship orders, or authority to manage part of their financial affairs under financial management orders, may be possible.

The designs of the 2022 operating models for financial management and guardianship are aligned to the areas of improvement identified. However, the models were not fully established at the time of the audit, and as such, we cannot provide assurance on the effectiveness or impact of their implementation.

The additional funding also did not include capital expenditure. NSW Trustee and Guardian is separately seeking funding approval from NSW Treasury for an IT system architecture review for major system replacements.

To support the long term financial sustainability of the agency, NSW Trustee and Guardian recommended to government that a demand-based funding arrangement be considered that aligned future funding with validated customer numbers and revenue. It also suggested that a demand-based funding arrangement could provide for minimum service levels and key performance indicators.

However, NSW Treasury has advised that this would require validated data on the costs to serve as well as on client demand, and careful consideration. Without the ability to capture the actual costs of its guardianship and financial management service delivery, it will be difficult for NSW Trustee and Guardian to make the case for a demand-based funding model.

2.3 Direct and private financial management

NSW Trustee and Guardian provides two types of financial management services: direct and private. Direct financial management services involve making financial decisions for people under financial management orders where the NSW Trustee has been appointed by a court or tribunal as the financial manager.

Private financial management services involve the NSW Trustee overseeing the performance of a private financial manager appointed by a court or tribunal. Often referred to as ‘private managers’, they may be family members, friends or commercial providers like private trustee companies, solicitors or accountants.

NSW Trustee and Guardian observes that in its role with respect to private management, it has two 'customers' - the private manager, and the person whose finances have been placed under management. In looking after the interests of both, NSW Trustee and Guardian's relevant responsibilities include:

- issuing Directions and Authorities that give the private manager authority to manage the client's estate
- authorising implementation of the private manager's plan
- checking annual accounts submitted by the private manager
- seeking reports from an authorised visitor or other professionals about the client's needs
- authorising the sale or purchase of major assets by the private manager
- seeking a review of the private manager's appointment by the relevant court or tribunal if they do not comply with their obligations.

Relevant legal cases have observed there are different advantages to appointing the NSW Trustee and a family member or friend as a private manager:

- Advantages to appointing the NSW Trustee as financial manager include:
 - the independence of the statutory office
 - a dispassionate and neutral approach in situations of family conflict and divided views as to the best interests of the client
 - expertise and experience in managing estates
 - the security provided to an estate against loss and damage.
- Advantages to appointing a family member as a private manager include:
 - more economic management of smaller estates
 - a greater familiarity with the assets and liabilities concerned
 - greater capacity of the client to interact with the manager, and to exercise a greater influence over the broad directions of the management of the estate
 - love and affection for, and knowledge of, the client and concern for their quality of life.

The preference of the court or tribunal is to appoint a family member or friend as a private manager before considering the appointment of the NSW Trustee – where that is appropriate and it is in the best interests of the client for that to happen.

NSW Trustee and Guardian has the power to charge fees for both its direct and private financial management services. NSW Trustee and Guardian offers fee subsidies for low-wealth clients of both services, but does not receive funding from government for private financial management subsidies.

Financial management fees reflect legislative authority

The NSW Trustee has legislative authority to charge fees for financial management services but the Public Guardian does not have legislative authority to charge fees for guardianship services. Public Guardian services, and financial management services for low-wealth clients, are resourced by NSW Government funding and provided free or at a subsidised rate. NSW Trustee and Guardian fees can be determined in whatever way the organisation considers appropriate, but must be framed in regulation and therefore first approved by the Attorney General and not disallowed by Parliament.

The *NSW Trustee and Guardian Regulation 2017* sets out the fees that apply. For financial management services, some are specific (e.g. up to \$10 per month for account administration and audit), others are open to discretion (e.g. fees that NSW Trustee determines to be appropriate for taxation investigation or lodgement). Some are capped (such as a maximum hourly rate or a maximum amount charged per year). Fees specifically applicable to financial management are exempt from the goods and services tax (GST).

The NSW Trustee and Guardian fees for financial management services published on its website reflect the provisions of the Regulation, except:

- The Regulation calculates fees for direct financial management clients by reference to the gross amount of the value of the client's real and/or personal assets without deduction of their secured or unsecured debts or liabilities, not including the value of the client's principal place of residence. NSW Trustee and Guardian uses a similar basis for calculating fees but also excludes assets such as accommodation bonds or items for personal use (e.g. motor vehicles and furniture). It refers to the assets not excluded as 'chargeable assets'.
- The Regulation does not specify if or when fee reductions should apply, while NSW Trustee and Guardian provides these to clients with chargeable assets below a certain value. An internal audit has estimated that the discount applied by NSW Trustee and Guardian for the direct financial management establishment fee meant the organisation did not receive approximately \$72,000 in revenue in 2021.

All but one of the financial management fees have remained the same since 2016

Amendments to the Regulation proposed by NSW Trustee and Guardian to increase and index some fees have been publicly consulted on, but not yet approved by the Attorney General.

NSW Trustee and Guardian's current regulated fees were set on 1 July 2016 at the levels recommended by the Independent Pricing and Regulatory Tribunal (IPART) in a 2014 review, and were not indexed to inflation or any other factor. IPART used a set of principles to guide its recommendations:

- **Efficiency:** fees should reflect the efficient cost of providing the service. Clients should pay for the services they use.
- **Fairness:** clients' individual ability to pay (indicated by client wealth) should be considered when determining how much each client should contribute to the efficient cost of the service.
- **Simplicity:** fees should be simple, straightforward and able to be easily interpreted by clients.
- **Transparency:** fees should be publicly available and there should be no hidden fees or unexpected expenses for clients.

In 2019, NSW Trustee and Guardian was given permission by government to increase a number of fees and charges within the discretion of the CEO, in the context of a review of its regulated fees. In 2021, it consulted with external stakeholders on increasing the fee caps set in the Regulation.

NSW Trustee and Guardian worked with the Department of Communities and Justice to propose amendments to the Regulation for the Attorney General's approval. When this was received, the first tranche of changes were made and became effective from 1 January 2022. In relation to financial management services, this increased the fee cap for services related to the common funds (see Appendix four and Appendix five). The Regulation amendment lifted the fee cap from 0.1% to 0.35% per annum calculated on:

- the value of the investment, when relating to the management of client estates
- the capital sums invested in the common fund, in any other case.

The common fund management fee had previously been capped at one per cent, but was reduced in the Regulation following the 2014 IPART review.

Other changes to the regulated fees for financial management services that NSW Trustee and Guardian proposes have been publicly consulted on, but not yet approved by the Attorney General. These include to:

- increase the maximum fee cap for the ongoing management of a direct financial management client's estate (calculated at 1.4% of the value of the estate) from \$15,000 to \$20,000 per annum
- allow NSW Trustee and Guardian to set an hourly fee of up to maximum \$275/hr for providing financial planning advice services, to reflect the variety of work involved (clients eligible to receive financial advice must have assets valued over \$250,000 excluding their ownership of their place of residence and living expenses)
- remove other charges including estate fees related to an asset of the estate that is real estate
- introduce Consumer Price Indexation on all non-percentage-based fees and caps.

We identified one instance where the fees charged did not comply with the Regulation

As part of the annual financial audit of NSW Trustee and Guardian, which assesses whether the agency's financial statements are a true and fair representation of its financial state, the Audit Office examines a sample of fees charged and considers these against the rates in the Regulation. If an error or exception is identified, this is discussed with agency officers in order to be addressed and, if significant, reported to agency management and to Parliament. The Audit Office financial audit team has not identified any material exceptions in the fee samples examined over the past five financial years.

Separate analysis of NSW Trustee and Guardian fees data over the last three financial years that this audit conducted tested whether any regulated fee caps had been exceeded in practice. This found that just one direct financial management client, out of approximately 12,400 in each of the three financial years examined, had been charged over the fee cap for the management fee.

NSW Trustee fees are not comparable to commercial operators because services are not equivalent

A concern expressed to the audit by consumers and external stakeholders was that direct financial management fees charged by the NSW Trustee were too high, and that clients could obtain cheaper services in the market if they had the choice. Some stakeholders suggested that NSW Trustee and Guardian should benchmark its fees to commercial providers. However, this is not possible as services are not sufficiently comparable.

Our data analysis of fees charged by the NSW Trustee in each of the past three financial years found that, on average, direct financial management clients paid approximately \$1,900 per annum in total fees charged. Apart from the investment fee for the common fund, there are not equivalent services in the market against which to benchmark NSW Trustee fees.

Direct financial management clients do not have a choice in provider if there is no one other than the NSW Trustee willing or able to perform the financial management function when the court or tribunal is making an order, and if they cannot afford a private trustee company.

The NSW Civil and Administrative Tribunal has considered the higher fees charged for financial management services by private trustee companies compared to those charged by the NSW Trustee and Guardian. It has heard evidence that the higher fees enable private trustee companies to provide a more personalised service, including - in one example - a dedicated financial manager with whom clients can develop a one-on-one relationship and contact readily, and who conducts twice-annual visits to clients' homes.

IPART has also observed that 'private trustee companies are also available to carry out comparable services on behalf of clients, but they generally only agree to act on behalf of higher net worth individuals.'

Key sector organisations argue that open market comparisons should be avoided because:

People under financial management do not choose to invest with (NSW Trustee and Guardian). They cannot choose other providers or walk away from their relationship with NSW Trustee and Guardian. Due to cognitive support needs, they are unlikely to be in a position to question or negotiate fees and investments. People under the Trustee's financial management are essential captive 'customers'...NSW Trustee and Guardian fees should always reflect the involuntary nature of the relationship...and the community service NSW Trustee and Guardian is intended to deliver. Low fees and strong returns should be the baseline of acceptable service delivery.

NSW Trustee and Guardian does not benchmark its direct financial management services fees against commercial providers. For the reasons set out above, the audit has not sought to do so either.

NSW Trustee financial management fees are comparable to those of public trustees in other Australian jurisdictions

NSW Trustee management fee amounts for direct financial management services are in line with the same type of fee charged by other public trustee offices around Australia. However, the basis for this fee type differs between jurisdictions.

The most significant fee for most NSW Trustee direct financial management clients is the annual management fee, set by the Regulation at 1.4% of the value of the estate, to a maximum of \$15,000 per annum. This maximum fee amount is similar to the management fee caps applied in Queensland and Western Australia. As a proportion of the estate value, it is less than the equivalent fee in Victoria (3.3% for estates valued up to \$500,000), South Australia (4.4%), Northern Territory (4.4% for estates valued between \$0 and \$200,000), the Australian Capital Territory (4.4% on the first \$300,000 of the total) and Tasmania (4.5% on the first \$200,000 of the total).

However, NSW Trustee is the only Australian public trustee to not charge this management fee on a sliding scale of different asset values. Further, most other Australian jurisdictions do not charge a one-off establishment fee for setting up the financial management account, nor an account keeping fee.

In our data analysis of the fees charged on 'chargeable assets' (i.e. not including the client's principal place of residence and assets for personal use such as a motor vehicle and furniture), we found that the:

- average estate value for direct financial management clients over the past three financial years was approximately \$192,500
- average management fee charged per direct financial management client per annum was around \$1,624.

NSW Trustee and Guardian has a published policy on waiving or reducing fees but does not monitor its application

Although NSW Trustee and Guardian has a policy on when client fees should be waived or reduced, it does not capture or review relevant data to understand how the policy is being applied in practice and what trends or common needs may be evident.

In IPART's 2008 review of the fees charged for financial management services by the agency that preceded the NSW Trustee - the Office of the Protective Commissioner (OPC) - IPART stated that financial management clients are, by their very nature, vulnerable members of society and that it was appropriate that serving them be supported by subsidy from the NSW Government.

IPART considered this view was reinforced by the fact that many clients had a limited capacity to pay for the financial management services they received. At that time, around 80-90% of the agency's direct financial management clients were eligible for Centrelink payments (based on income and assets tests). Of those that were not, a number had received compensation payouts (as a result of injuries from serious accidents) that were meant to cover their living expenses over their lifetime. One of IPART's key findings was that a client's capacity to pay should continue to be a key factor in determining the OPC's fees.

In our analysis of NSW Trustee and Guardian data, we found that in each year of the audit review period, overall, on average:

- 69% of NSW Trustee and Guardian's direct financial management clients were low-wealth clients and eligible for fee subsidies, with chargeable assets valued at \$75,000 or under.
- a further 18% had chargeable assets valued at between \$75,001 and \$250,000, making them ineligible for NSW Trustee and Guardian fee subsidies or financial planning services for investments.
- 13% were 'high wealth' clients with chargeable assets valued at \$250,001 or more.

The *NSW Trustee and Guardian Act 2009* gives the NSW Trustee discretion to waive, remit or reduce fees payable under the legislation or regulations. As outlined in Appendix four, the NSW Trustee policies reduce the following fees for customers with assets valued at \$75,000 and under:

- account keeping fee.
- investment planning fees.
- establishment fee for direct financial management clients.

The NSW Trustee also has a policy for waiving fees in cases of extreme hardship or inequity, and this is published on its website. The policy states that the correct fee should be charged as provided for in the Regulation and relevant NSW Trustee and Guardian policies, unless levying the fees would cause 'extreme hardship or would be inequitable'. Only delegated officers (at Director level) can decide to waive, remit or reduce fees and in doing so, they must consider the following factors:

- the size of the estate
- the client's needs
- the estate's commitments and liabilities
- whether payment of the fees can be deferred
- whether the estate could pay for the fees over time
- whether the estate can make a part payment
- whether the client would suffer any financial or other hardship in paying the fees
- the impact of any decision on NSW Trustee and Guardian's funding should it be applied to similar estates.

The NSW Trustee and Guardian policy states that fees should not be waived if there is any possibility of collecting them in part, in instalments or at a later date - for example, following the sale of a property - because 'to do otherwise would be to require unreasonable cross-subsidisation by other clients.'

A 2021 NSW Trustee and Guardian internal audit examined client fee waivers and reductions across all of the organisation's services for which a fee is charged. This identified the total value of fee waivers and reductions for direct and private financial management clients between FY2018 and FY2020 did not exceed \$50,000 total in a year.

The internal audit did not find issues with the application of NSW Trustee and Guardian policy on fee waivers and reductions, and it considered that only moderate improvements were required. However, it also found that there was insufficient record keeping and monitoring of data to identify exceptions and trends in fee waivers and reductions across the organisation. This was similar to findings by IPART in its 2014 review of NSW Trustee and Guardian fees.

In 2022, NSW Trustee and Guardian commenced a project to better understand when it applies fee waivers to any of its services. It was not completed in time to be assessed through this audit.

Fees are waived in response to the limited ability of some clients to pay fees

We analysed NSW Trustee and Guardian's data on annual fees charged for direct financial management services over the period FY2020-FY2022, together with data on the value of the estates held by clients of these services for this time.

Our analysis found that in each of these financial years, of the approximately 12,400 direct financial management clients, between 1.3% (totalling around 160 people) and 2.7% (totalling around 330 people) were charged no fees.

NSW Trustee and Guardian reports on the total value of subsidies and fee reductions it provides to people with limited income and assets in its annual report. In 2021–22, these totalled more than \$3 million for direct financial management services and approximately \$125,000 for private financial management services.

We could not assess the number or proportion of direct financial management clients that have been charged a reduced or subsidised fee, and whether this is in line with NSW Trustee and Guardian policy. NSW Trustee and Guardian was unable to provide us with data relating to direct financial management clients who were charged a subsidised fee, or who had had a portion or all of their fee waived. This is because the relevant NSW Trustee and Guardian system did not distinguish between fee refunds and waivers until May 2022.

The direct financial management service fee is charged on the basis of estate value, not services rendered and a conflict of interest exists for uncapped fees

As detailed in Appendix four, the key fees charged for direct financial management services are based on a proportion of asset or investment value rather than on the work done to render the services, i.e.:

- a one-off fee charged when a person first becomes a client to identify and secure their assets (establishment fee): 1.0% of the value of the estate, subject to a minimum fee of \$500, up to a maximum of \$3,000, payable only once, with reductions for clients with chargeable assets valued \$75,000 or less
- an annual fee charged for managing the estate (management fee): 1.4% of the value of the estate up to a maximum of \$15,000 per year with no reductions for low-wealth clients
- a fee for managing an investment in a common fund, calculated at no more than 0.35% per annum of the value of the investment.

Other fees reflect specific services rendered where these are necessary for the management of the estate, and are charged on an estimate of time worked to complete the relevant output (e.g. a financial plan) in hourly rates:

- a fee for preparing, managing and reviewing an investment plan
- fees for tax investigation and/or lodgement of tax return
- fees for inspection, valuation, or report on real estate; and/or for preparing specifications for repairs or renovations to real estate
- fees for conveyancing services relating to the sale or purchase of a property
- fees for legal advice provided or legal proceedings conducted in connection with an estate.

The Regulation caps some of these fees at certain amounts (see Appendix four). But the fees charged: for tax investigation or lodgement; for legal advice provided, or legal proceedings conducted, by the NSW Trustee in connection with the estate; and for any service or matter not specified in the Regulation (e.g., conveyancing services), are not capped by the Regulation. Instead, the NSW Trustee may determine what are 'appropriate', or 'just and reasonable' fee amounts. The Regulation specifically allows legal services to be charged on a for-profit basis, like commercial lawyers.

Although standard practice in many industries, including for accounting and legal services, we have not seen evidence that NSW Trustee and Guardian makes or obtains an estimate of the time involved, and other options considered in fee-for-service items before undertaking the work required where this is provided 'in-house' by NSW Trustee and Guardian staff.

For example, separate legislation governing the conduct of legal professionals in New South Wales requires a law practice to provide clients with:

- information disclosing the basis on which legal costs will be calculated in their matter, and an estimate of the total legal costs, and
- any significant changes to these as the matter proceeds.

This includes taking all reasonable steps to be satisfied that the client has understood and given consent to the proposed course of action for the conduct of the matter and the proposed costs before the work is undertaken.

Although the legal unit within NSW Trustee and Guardian may charge costs on a 'for-profit' basis, it is not a law practice and is not captured under these legislative provisions. The Law Society of New South Wales considers that the client for this legal unit's lawyers is NSW Trustee and Guardian as an agency, not the person whose affairs are being managed. This means any cost agreement is between NSW Trustee and Guardian and its own legal unit, although legal costs are paid from the estate of the person under management for whom the legal services relate.

Given NSW Trustee and Guardian is both the vendor of the services (where provided in-house, e.g. legal services, financial planning, tax services) and the purchaser of those services (on behalf of the person whose affairs are being managed, as the financial manager) along with the agency resourcing challenges discussed in section 2.2, this creates a conflict of interest. This conflict is between NSW Trustee and Guardian's interest as a self-funded agency in generating fee revenue to help cover service costs, and its legal obligation to act in the best interests of financial management clients including through effectively managing their budgets and protecting the value of their estate.

In practice, NSW Trustee and Guardian manages this conflict of interest through segregating duties between different teams and staff delegations to require senior staff to make key decisions. Frontline staff are also expected to consult the client on significant decisions, and provide reasons for decision to them, which include decisions relating to legal affairs. However guidance for frontline staff on referring client matters to other teams within NSW Trustee and Guardian that charge uncapped fees for services (such as the legal team and taxation services) does not specify whether, before the services are committed:

- an estimate of the likely time and costs involved should be obtained and compared to other providers
- the advice of an independent and/or expert party should be sought on, for example, the prospects of success (in legal action) or likely financial benefits
- information on likely costs and benefits should be included in the consideration of whether the services are in the client's best interests.

In our analysis of NSW Trustee and Guardian data on direct financial management client assets and fees charged over the last three financial years, we found small numbers of clients each year who had been charged high legal fees (over \$10,000) but had low chargeable asset balances.

NSW Trustee and Guardian does not regularly monitor its own performance in managing estates, outside of investments in the common fund

NSW Trustee and Guardian monitors the financial performance of the common fund, in which some direct financial management client funds are invested, including through measuring against relevant financial market benchmarks (see Appendix five). However, for other aspects of financial management, there is limited tracking to understand whether NSW Trustee and Guardian decisions and actions are financially sound and/or improving client outcomes.

Direct financial management services involves the NSW Trustee taking on responsibility for all aspects of a client's financial affairs that are covered by the relevant court or tribunal order, including:

- collecting income and benefits
- making payments to and from client accounts
- managing real property and leases including sale or purchase of a residence
- taking or defending legal proceedings
- managing financial planning and tax matters.

NSW Trustee and Guardian's relevant policies and procedures state that its fundamental responsibility is to ensure a client's affairs are managed in their best interests, including that funds are available to meet planned and unplanned expenses as they arise during the period of financial management. It defines sound management practice as ensuring that a financially responsible budget is prepared which '...provides sufficient cashflow that meets a [client's] expected annual expenses (plus contingencies) which are met from an income source such as a Centrelink pension, rental income or from realisation of financial assets or a combination [of these].'

NSW Trustee and Guardian currently undertakes an exception-based approach to monitoring whether staff actions and decisions in relation to managing estates (outside of the common fund) are sound. Where the client records system flags that an estate is possibly at risk of depletion because the rate of expenditure is over a threshold amount (five per cent per annum over the budget), the file may be referred to the financial planning unit and relevant actions to address the risk of depletion will be developed.

In 2021, an internal audit found that NSW Trustee's depletion procedures did not provide guidance on how staff should identify or address depletion or how to escalate delayed actions. The internal audit suggested NSW Trustee and Guardian update relevant procedures to require depletion action plans be incorporated into annual client financial plan reviews so that the impact of depletion on the financial outlook of the estate is clearly documented. The 2021 internal audit also identified that some key aspects of good financial management were not covered by existing policies, procedures and guidelines for staff - namely: obtaining specialist support during decision-making; and identifying and addressing client/stakeholder conflicts of interest.

Current guidance on how staff should identify depletion is brief, and staff do not receive specific training on how to identify and manage depletion. Given there are many factors that can contribute to depletion, and budgets and files are only reviewed once a year or if the client notifies their financial manager of a significant change in their circumstances or expenditure, there is a risk that this exception-based approach to monitoring depletion may not be effective.

NSW Trustee and Guardian also does not routinely monitor changes in direct financial management client estate values that fall under the threshold that flags a risk of depletion. We analysed the data relating to chargeable asset values of clients who were not low-wealth (i.e. clients with initial chargeable asset values of over \$75,000) as at 30 June 2022. This identified hundreds of clients whose chargeable asset values declined over the past five financial years, comprising:

- 314 clients with reductions in value of between 25% and 75%
- 113 clients with reductions in value of between 75% and 100%.

NSW Trustee and Guardian examined a sample of these at our request and advised the reductions were due to factors including changes in asset valuations and data on external balances (i.e. where assets are no longer under the control of NSW Trustee and Guardian) being retained in NSW Trustee and Guardian systems. While NSW Trustee and Guardian could investigate individual cases when raised with them, changes in estate values outside of the depletion risk threshold are not monitored at a systems level.

NSW Trustee and Guardian does not routinely monitor low account balances to understand whether budgets are unrealistic or overly restrictive

Most NSW Trustee and Guardian direct financial management clients have low-value assets, including cash in their trust accounts. For such clients, the primary role of the NSW Trustee is to manage their assets in a way that covers their accommodation and other living expenses over the term of the financial management order, taking account of their likely life expectancy.

Our analysis of NSW Trustee and Guardian data shows that 68% of direct financial management clients as at 30 June 2022 were low-wealth clients (i.e. with assets excluding the principal place of residence, motor vehicle, furniture and other assets for personal use valued less than \$75,000). Such clients would typically have 'simple budgets' classified by NSW Trustee and Guardian as follows:

- **'Pension in, Pension out'** - where clients receive pension income only but may have available or accumulate some funds in their NSW Trustee and Guardian trust account through saving for holidays or other one-off expenses. Ongoing and expected one-off expenses are met from the pension income. Accumulated funds in the trust account may be used to meet unexpected one-off necessary expenses, if not deliberately saved by the client for specific one-off expenses.
- **'Some savings'** - where clients receive pension income only and may have funds in term deposits or NSW Trustee and Guardian common funds (cash and fixed interest funds). Annual ongoing expenses are met from the pension income with funds available in cash and fixed interest funds to meet unexpected one-off expense needs.

Budgets developed by NSW Trustee and Guardian in consultation with the client estimate the expenditure and income over a set budget period (12/24/36 months), with any deficit met from the client's trust account balance or from the redemption of financial assets. If expenses cannot be met by income, NSW Trustee and Guardian staff will discuss potential options with clients in developing the annual budget, such as:

- reducing discretionary expenses
- reviewing any unnecessary ongoing expenses
- current care arrangements
- accommodation options
- prioritising expenses to meet available cash flow
- liquidating assets i.e. property.

A number of stakeholders we heard from through the audit (see Exhibit 8) relayed experiences of NSW Trustee and Guardian seeming to prioritise savings over covering all basic living expenses in budgets for low-income clients. This was perceived as 'starving' clients of their own funds in order to preserve some savings and maintain a financially sound budget.

There is no explicit requirement for financial management staff to achieve savings in client budgets. However, policies on addressing the risk of client estate depletion may have this effect in practice. Under the relevant policy and procedures, depletion is not considered to occur for simple budgets when expenses are met from Centrelink pension income; but if budget expenses exceed pension income, and investment earnings do not meet the budget deficit, the client's estate is deemed at risk of depletion.

NSW Trustee and Guardian guidance to staff on avoiding depletion risk for simple budgets is to limit the maximum annual expenditure to the value of the client's financial assets divided by their remaining life expectancy plus the annual Centrelink pension. For example, annual expenditure for a male client aged 60 years with cash and fixed interest investments of \$80,000 would be calculated at $\$80,000/23.8 \text{ years} = \$3,361 \text{ per annum}$, plus pension.

Our analysis of NSW Trustee and Guardian data identified that 1,696 or 13% of the 12,556 direct financial management clients as at 30 June 2022 had a trust account balance of \$5,000 or less at 3 August 2022. For these clients, the most typical characteristics were: aged between 51 and 70 years; living with psychiatric conditions; residing in a nursing home; NDIS eligible but not participating; and with NSW Trustee and Guardian for around six years on average.

The same data indicated that 96 or 0.8% of all direct financial management clients had estates that were deemed at risk of depletion or serious depletion at 3 August 2022. For these clients, the most typical characteristics were: aged between 36 and 50 years; living with brain injury; residing at home with family or by themselves; and with NSW Trustee and Guardian for almost 20 years on average.

This lack of monitoring raises the risk that NSW Trustee and Guardian may not identify and address direct financial management practices such as: creating budgets that do not meet basic living expenses; not identifying or managing risks of depletion; or failing to maintain client estate values.

Systems continue to prevent the adoption of fee-for-service charges for direct financial management, 15 years after this was first identified as a key issue

Another common concern expressed to the audit by consumers and external stakeholders was that financial management fees charged by the NSW Trustee did not seem to be connected to the services provided. This has been a longstanding concern of stakeholders relayed over many years, and IPART strongly agrees that a fee-for-service structure is preferable for direct financial management services. However, the client and accounting systems in place at NSW Trustee and Guardian do not capture the data required to enable such a fee structure, despite 15 years elapsing since this was first recommended.

In IPART's 2008 review of the agency that preceded the NSW Trustee in providing financial management services - the Office of the Protective Commissioner (OPC) - IPART found that the fees paid by clients were 'fundamentally disconnected' from the services they received, and from the cost of providing those services.

IPART's view was that a fee-for-service structure - with appropriate subsidies or rebates for those with diminished capacity to pay - would be fairer and promote greater efficiency in service provision by making costs transparent to OPC and clients.

But data limitations at that time frustrated attempts to fully identify and quantify the costs of the OPC's direct financial management services, among other things. The OPC client data did not sufficiently capture variability in client needs, and its workload data did not adequately capture the costs of providing financial management services. IPART recommended in 2008 that the relevant systems be upgraded as a matter of urgency.

NSW Trustee and Guardian was established in July 2009 through the merger of OPC and the Public Trustee NSW, when it also became administratively responsible for the Public Guardian. The NSW Government asked IPART to review NSW Trustee and Guardian's fees across all its services, including financial management, in 2014.

IPART advised in its 2014 report that stakeholders had again suggested a fee-for-service approach should be adopted, whereby fees reflect the actual services provided in an efficient and timely manner (for example, based on the frequency and complexity of services provided) rather than asset-based criteria (such as a fixed proportion of the chargeable asset value, as in the existing direct financial management fee). Stakeholders also suggested that the NSW Government should provide for those that cannot afford the necessary services.

In its 2014 review report, IPART stated that 'in an ideal situation', it would recommend fees that vary according to complexity/cost to serve, but could not do so as - like in relation to OPC in 2008 - the NSW Trustee and Guardian systems did not provide the data required to develop a fee structure on that basis.

NSW Trustee and Guardian had proposals to upgrade relevant systems but the relevant work had not been completed and while the quantity of transactions were being captured in the data, these did not indicate their complexity or the time taken by NSW Trustee and Guardian to attend to them. IPART recommended NSW Trustee and Guardian implement a planned revised costing system which would allow it to move to a more efficient and fair pricing structure in the future.

Over the five years in the audit review period (FY2018-FY2022), NSW Trustee and Guardian has undertaken or commissioned a number of analyses of the demand and costs associated with its financial management and guardianship services. However, as discussed in section 2.2 above, these have used estimates rather than data on actual costs incurred. Existing NSW Trustee and Guardian systems and data continue to inhibit the adoption of fees-for-service charges for financial management.

In contrast, private managers are generally not paid for providing private management services. Under an order of the Supreme Court of NSW, the NSW Trustee is able to allow private financial managers to be remunerated to a 'just and reasonable' amount from the client's estate if the NSW Trustee is satisfied that:

- the private manager has duly performed the functions of a manager
- it is in the best interests, and for the benefit, of the client to do so.

What constitutes a 'just and reasonable' amount for remuneration is informed by reference to:

- market conditions such as competitive rates or fee scales published by independent, professional associations, moderated as necessary to be just and reasonable
- demonstration that fees actually charged are just and reasonable when measured against work actually done.

NSW Trustee and Guardian has statutory oversight of private financial managers

NSW Trustee and Guardian has statutory oversight of private financial managers and decides what powers they may exercise under the financial management order made by the court or tribunal, by issuing them with authorities and directions.

NCAT or the Supreme Court of NSW can make a financial management order that appoints either a private manager or the NSW Trustee to manage a person's finances. Relevant legal cases have established that:

- Before appointing a private person as a financial manager, the court or tribunal needs to be satisfied that the person is willing to act and that they are suitable to be appointed.
- While the relevant legislation does not specify the criteria for suitability to be appointed as private manager, NCAT will normally consider the following elements in respect of someone nominated:
 - their character, honesty and ability to manage the estate in the client's best interests
 - that they are of sufficient age and have sufficient experience in business, or in record-keeping and decision-making to be suitable
 - that they have no conflict of interest in acting as financial manager
 - there is no impediment to the nominated person being appointed, such as by reason of a criminal record or bankruptcy.

A private manager cannot interfere with a person's estate unless Supreme Court directions have been obtained, or the NSW Trustee has authorised them to exercise financial management functions in respect of the estate.

NSW Trustee and Guardian issues a Directions and Authorities document to a private manager at the commencement of the financial management order. This document gives a private manager legal authority to act on behalf of the client, outlines the powers of the private manager appointed, details specific financial actions they will manage and the reporting to NSW Trustee and Guardian required each year. The issuing of the Directions and Authorities document is a reviewable decision, and a private manager can lodge an appeal for a review of this decision by NCAT.

Under the Directions and Authorities document, private managers can manage a range of day-to-day expenses such as:

- general living costs such as accommodation, care, and medical expenses
- costs associated with the client's property such as taxes, insurance, gas, electricity, and repairs
- any items that will improve the client's life (e.g., a new wheelchair) if these items cost a reasonable amount in relation to the client's finances
- fees for lawyers, accountants and other professionals, but not ongoing costs for legal proceedings
- maintenance and security of property and assets.

Private managers then have specific obligations to NSW Trustee and Guardian including:

- submitting a financial management plan to NSW Trustee and Guardian for authorisation at the beginning of the order which details all the client's expected expenses, both ongoing and one-off ('private manager's plan')
- lodging annual accounts of administration of the client's financial affairs
- seeking approval from NSW Trustee and Guardian for expenditure other than day-to-day expenses.

NSW Trustee and Guardian reviews the private manager's plan, annual accounts and proposed expenditure outside of the private manager's plan. It also conducts random file reviews identified through exception reports in the relevant client management IT system and concerns raised about the conduct of a private manager.

NSW Trustee and Guardian will step in if a private manager acts outside the powers outlined in the Directions and Authorities. Possible actions NSW Trustee and Guardian may take include:

- seeking a review of the private manager's appointment at NCAT
- referring suspected or alleged elder abuse to the NSW Ageing and Disability Commission, or other relevant bodies
- referring suspected or alleged fraud to the NSW Police Force.

Private management is available in other states and territories by order of the relevant civil and administrative tribunal or the Supreme Court in the jurisdiction.

However, at the time of writing, New South Wales was the only Australian jurisdiction in which the public trustee authorises the person appointed by the court or tribunal to exercise their powers under the order. In every other state and territory, the civil and administrative tribunal usually does this.

In some jurisdictions, it is also the civil and administrative tribunal to which the private manager submits annual accounts. Accounts may then be checked by the tribunal, public trustee or other approved examiner, depending on the value of the person's assets and the jurisdiction. In New South Wales, the Australian Capital Territory, South Australia and Western Australia, the public trustee receives and checks these accounts.

NSW Trustee and Guardian is still the de facto decision maker for significant expenses proposed by private managers

Although the purpose of private management is for family members, friends or commercial operators to perform the role of financial manager, and NSW Trustee and Guardian policies require private managers to seek the approval of the agency before incurring certain costs. In effect, this means NSW Trustee and Guardian is the de facto decision maker for these expenses, including large expenses such as buying a motor vehicle or property.

Such expenses are those outside the private manager's plan, such as:

- spending on relatives – including financial support to dependents
- donations to charity – if the client had regularly made donations, it may be reasonable to continue doing so
- reimbursement of reasonable private manager out-of-pocket expenses – if all family members agree and adequate records are kept
- any expenditure not included in NSW Trustee and Guardian's 'Directions and Authorities' document such as buying a car or property.

To seek approval for these types of expenses, a private manager must submit a 'change in estate' form to NSW Trustee and Guardian that includes the client's view (if possible), their family's view and their available financial resources to support the request.

NSW Trustee and Guardian data we analysed showed that between February 2018 and September 2022, staff made a total of 10,541 'change in estate' decisions about private managers' requests to use client funds outside of day-to-day expenses. Almost all these requests (97%) were approved, approved in principle, or retrospectively approved.

Exhibit 18 below provides more detail on the top seven categories which accounted for most of the decisions made by NSW Trustee and Guardian in response to private manager requests over this period.

Exhibit 18: Top seven categories of NSW Trustee and Guardian decisions about private managers' requests to use client funds, by number, proportion of total and average days taken to make the decision, Feb 2018 – Sept 2022

Expense type	Number of NSWTG decisions made	% of total NSWTG decisions made	Average number of days taken for NSWTG decision
Investment changes	1574	14.9%	2.12
Real estate – sale of the client's property	1435	13.6%	8.61
Residential accommodation bond	1213	11.5%	3.67
Miscellaneous request	1163	11.0%	1.65
Reimbursement of expenses	928	8.8%	3.89
Real estate – modifications / renovations up to \$100,000	780	7.4%	2.87
Gifts	591	5.6%	6.6

Source: Audit Office analysis of NSW Trustee and Guardian data (unaudited).

Other expense categories of these 'change in estate' decisions included: holidays, legal costs, motor vehicle purchases, past gratuitous care, other real estate activities such as leasing, and remuneration for the private manager.

In terms of the dollar values that these request decisions related to, the largest category concerned expenses valued between \$0 - \$1000 (comprising 18% of the 10,541 decisions made), followed by expenses valued between \$300,000 - \$500,000 (representing ten per cent of the 10,541 decisions made).

Although the legislative principles apply to private managers, these are not overseen by NSW Trustee and Guardian

Private managers are appointed as substitute decision-makers for the person under the financial management order. They must observe the same legislative principles in this role as NSW Trustee and Guardian must when it is appointed to make decisions for a person under a financial management order (see Exhibit 2). However, NSW Trustee and Guardian does not provide guidance to private managers, or its staff who work in the private financial management team, on how to apply the principles; and does not scrutinise whether the principles are observed by private managers in practice.

Although NSW Trustee and Guardian approval is required for a private manager's plan for day-to-day expenses at the commencement of the order, for expenses outside of the plan, and on the annual statements of accounts, the agency does not assess, nor condition its approval on, evidence that the legislative principles have been considered and observed by the private manager.

The public handbook on private management that NSW Trustee and Guardian publishes and provides to private managers notes the obligation for private managers to act in the best interests of clients. This states that:

'Any decisions about spending and investing the managed person's money should be carefully considered. Decisions should be made with the aim of maximising the managed person's quality of life within their financial constraints. The interests and views of the managed person come first. It is not the private manager's role to preserve assets for the people who may eventually inherit their estate but to balance expenditure within the financial capacity of the estate...

[R]egularly consult with the managed person about financial matters, if possible. It is also important to obtain and consider the views of the managed person's immediate family, friends and other people closely involved in [their] life.'

There is no further guidance on applying the concept of best interests in practice – such as how to handle conflict between the client's views and those of others in their life, or examples of what best interests or quality of life mean in practice. There is also no mention of the other six legislative principles.

Although the legislative principles are also reproduced in NSW Trustee and Guardian forms that private managers must complete, there is scant information about applying them in practice beyond statements that private managers should consult with the client and their stakeholders, and ensure that expenses benefit the client. While private managers must make a declaration with the annual accounts submitted to NSW Trustee and Guardian, this does not include reference to the legislative principles.

Nor do NSW Trustee and Guardian internal policies and procedures refer to the legislative principles in guidance for staff on how to review submitted forms or exercise NSW Trustee and Guardian's authority with respect to private management more broadly.

Private manager's plans are expected to be assessed for completeness; there is no reference to any other factors that NSW Trustee and Guardian staff are expected to look for in considering whether or not to approve such plans.

Change in estate forms (seeking approval for expenses outside of the private manager's plan) are expected to be assessed by NSW Trustee and Guardian staff considering:

- risks to the assets of the estate
- whether the private manager has sought appropriate family and other interested parties' views, and that there is no conflict of interest in the proposal
- whether the private manager has satisfied themselves that the proposal meets the continuing needs of the client
- whether the private manager can demonstrate the proposal is affordable and does not put to risk the client's lifestyle and welfare.

While these factors may yield relevant information, they do not emphasise the client's best interests nor prioritise the views of the client; and do not provide advice or direction on how staff or private managers should consider and weigh each of the legislative principles in practice.

Annual accounts submitted by private managers to NSW Trustee and Guardian for review are classified as 'first account' and 'subsequent account' in following years. This determines the level of review NSW Trustee and Guardian staff are expected to apply (see Exhibit 19 below). Depending on the level of estimated risk, such reviews assess actual expenditure against the private manager's plan (which, as noted, NSW Trustee and Guardian does not assess against the legislative principles). They do not add a check for adherence to the legislative principles.

NSW Trustee and Guardian reports that 90% of the accounts it reviewed during 2021–22 were passed on the basis they showed the person's financial affairs were being managed appropriately.

Exhibit 19: NSW Trustee and Guardian's risk-based monitoring of annual accounts submitted by private managers

Risk level	Eligible accounts	Checked for	Passed if
Low risk	Subsequent accounts where: <ul style="list-style-type: none"> • value of liquid assets is less than or equal to \$200,000 • the previous year's accounts were passed. 	Mandatory documents. Assets and liabilities are verified with provided documents Income and expenses are recorded as declared by the private manager, including any remuneration.	Automatically passed by auto-review in IT system if: <ul style="list-style-type: none"> • variance in liquid assets for estates over \$10,000 is less than 10% • previous year's accounts were passed • otherwise passed if reviewer satisfied with supporting documentation provided • no unauthorised transaction (e.g. sale or purchase of an asset without authority) • no unexplained depletion of estate.
Medium risk	First accounts. Subsequent accounts where: <ul style="list-style-type: none"> • value of liquid assets is more than \$200,000, and • the previous year's accounts were passed. 	As above, and income and expenses checked to determine if they are reasonable.	Otherwise passed if reviewer satisfied with supporting documentation provided and: <ul style="list-style-type: none"> • income and expenses are reasonable • no unauthorised transaction (e.g. sale or purchase of an asset without authority) • no unexplained depletion of estate.

Risk level	Eligible accounts	Checked for	Passed if
High risk	<p>Subsequent accounts where previous year's accounts were not passed.</p> <p>Any accounts 'flagged for review' by NSW Trustee and Guardian staff.</p> <p>Any accounts requested for review as part of NCAT hearings or as determined by the NSW Trustee and Guardian staff.</p>	<p>As above, in more detail e.g. That all remuneration, major expenses and changes in estate were approved by NSW Trustee and Guardian.</p> <p>Income and expenditure checked against bank statements.</p>	<p>Otherwise passed if reviewer satisfied with supporting documentation provided and:</p> <ul style="list-style-type: none"> income and expenditure reconciled against bank statements no unauthorised transaction (e.g. sale or purchase of an asset without authority) no unexplained depletion of estate.

Source: information provided by NSW Trustee and Guardian (unaudited).

For NSW Trustee and Guardian to assess whether a private manager's plan, proposed expense outside of the plan, and annual accounts are in the best interests of a client, and to determine which of the other six principles should apply to individual decisions, staff need information about the client. For example, staff need information about the client's situation and context to know what 'freedom', 'self-reliance', 'normal' and 'preserving relationships' might look like for the client in practice. Critically, such information would also assist staff in assessing the risk of a client experiencing neglect, abuse and exploitation.

However, key information about the client is not usually available to staff overseeing private managers. For example, we found in our analysis of NSW Trustee and Guardian data relating to private management services that many fields were blank or unknown, including the client's age, gender, address, language spoken, Aboriginal and Torres Strait Islander status, disability and NDIS status.

NSW Trustee and Guardian rarely interacts with the client whose financial affairs are being managed by a private manager and does not consult with the client or their family members directly to verify the information on their views provided by the private manager.

NSW Trustee and Guardian may arrange for an independent 'authorised visitor' – such as a social worker, doctor or occupational therapist – to visit the client and report to NSW Trustee and Guardian on the person's needs. The authorised visitor may also provide the private manager with recommendations on how the client's money should be spent to address any unmet needs and to enhance the person's quality of life. However, NSW Trustee and Guardian's use of authorised visitors is very low: just 29 visits were arranged in 2020, and seven in 2021 (it is not clear how many were for private management clients as compared to direct financial management clients). The use of authorised visitors also imposes a cost on the client as fees for authorised visitor's travel and report are paid by their estate.

Private managers must seek approval from NSW Trustee and Guardian to give the client the authority to independently manage part of their estate if it is not allowed by the financial management order. Being granted 'section 71 authority' (see Exhibit 10) may assist the client to develop their own decision-making capacity and demonstrate to the relevant court or tribunal that the financial management order ought to be revoked. It is a key mechanism by which the legislative principle to encourage client self-reliance may be given some effect.

NSW Trustee and Guardian's file review checklist for private management oversight staff seeks to capture whether a section 71 authority has been granted, but it is not clear that NSW Trustee and Guardian has monitored this at a central level to understand the extent to which private managers are aware of this opportunity, and whether they are willing and able to give it effect in practice. The new Independence and Support Team established under the 2022 operating models will seek to increase section 71 authorities granted for both direct financial management and private management clients in the future.

The latest performance measures NSW Trustee and Guardian has adopted for its private management function track frontline staff caseloads, the timeliness of private manager plans submitted for review, timeframes for its staff reviewing expense requests, and whether clients, family and carers report an improved experience. They do not monitor adherence to the legislative principles.

NSW Trustee and Guardian has reviewed its private management services for efficiency and customer service, but has not yet implemented all recommendations

Although private financial management services have not been internally reviewed as often and as extensively as direct financial management services, NSW Trustee and Guardian has looked at the private management operating model and customer experiences for improvement opportunities. The agency's implementation of accepted recommendations from these reviews has not been timely and a number remain outstanding.

An internal review of the private management function that NSW Trustee and Guardian conducted in 2016–17 sought to implement a new operating model that would reduce the costs to serve, eliminate a backlog of matters and increase client satisfaction.

The internal review mapped the work procedures and suggested that a significant amount of total staff time was spent in reviewing, querying and approving significant transactions or investments and annual accounts submitted by private managers. This time was exacerbated by IT system limitations and manual entries. The review recommended NSW Trustee and Guardian adopt process improvements including:

- issuing standard initial Directions and Authorities documents
- creating a self-service portal for private managers with supporting online resources like 'how to' videos
- standardising the private manager's plan
- enabling automatic approval for specific one-off expenditures in the NSW Trustee and Guardian IT system
- removing the (then) requirement for private managers to lodge investment proposals for NSW Trustee and Guardian approval
- streamlining the proposals still to be submitted online (for expenditures that cannot be automatically approved)
- taking a risk-based approach for annual account reviews based on variance reporting
- streamlining non-compliance procedures e.g. through automated reminder notices for private managers and system flags for staff.

A 2017 initiative aimed at improving the private manager experience identified common issues then including:

- insufficient information about private manager's responsibilities and NSW Trustee and Guardian's role
- issues with communication – a preference for face-to-face engagement and information in diverse community languages
- cumbersome processes
- delays in responses from NSW Trustee and Guardian staff
- inconsistency of advice provided by NSW Trustee and Guardian.

In response, NSW Trustee and Guardian developed factsheets for people applying to NCAT to appoint a private financial manager, and planned for improvements to the 'customer journey' for private managers through the 2022 operating models. The implementation status of other recommendations is not clear.

A 2020 internal audit on record keeping also identified that NSW Trustee and Guardian's private management files, along with direct financial management files, had not been accurately, completely and consistently kept. It also found the IT system used for private management was not compliant with government requirements for official records management systems. NSW Trustee and Guardian has plans to integrate an appropriate records or information management system into its public guardian and private management client management IT system to comply with government record-keeping requirements by 2023–24, but at the time of the audit this was not yet in place.

3. Monitoring performance and service quality

NSW Trustee and Guardian has only recently identified measures to track the performance of its financial management and guardianship services

Between 2021 and 2022, NSW Trustee and Guardian developed new divisional key performance indicators which aim to track the quality of services delivered to people under financial management and guardianship orders. These measures are reported quarterly to the organisation's executive leadership team. The divisions have started measuring some of these new performance indicators, but many will require changes to consumer engagement processes and IT legacy systems to collect additional data. At this stage it is unclear when these necessary changes will occur, and when relevant data will begin to be collected and analysed.

Before 2021, NSW Trustee and Guardian measured the performance of some of its financial management and guardianship operational processes. While these operational measures identify whether it is fulfilling some of its legislative functions, they are predominantly activity measures and do not inform on the quality of decision-making for direct financial management or guardianship clients, or on client experiences and outcomes.

Operational performance targets and measures have only recently been developed and used to centrally track the time elapsed between requests for certain decisions and the decisions made or relevant actions taken by relevant frontline staff. Baseline data for these measures show that target timeframes are not close to being met for minor medical decisions for people under guardianship orders, or for first customer payment, and redirection of income for people who are directly financially managed.

NSW Trustee and Guardian has proactively developed a benefits realisation framework to monitor the expected benefits from the additional funding received in 2021–22

NSW Trustee and Guardian has developed a benefits realisation framework to monitor the expected benefits from the additional funding (and other elements of the budget bid including increased fees and business improvements for efficiencies). This is not a requirement imposed by NSW Treasury, but a proactive step taken by NSW Trustee and Guardian to account for the use of the additional funding and to attempt to identify its impacts.

The benefits realisation framework includes interim and preferred measures, which reflect the things that can be tracked with existing data, and those that require new data collection, respectively. The measures are underpinned by separate program logics for direct and private financial management, and guardianship, and an overall investment logic. 'Logics' articulate the inputs, outputs and short/medium/long term outcomes expected from a project, program or investment, as well as the underpinning assumptions about how desired changes will occur (the 'mechanism' or 'theory' of change).

The targets and measures for NSW Trustee and Guardian's benefits realisation framework are the responsibility of the organisational divisions delivering guardianship and financial management services. The baseline data against which change will be measured is 30 June 2021, as the budget enhancement funds were allocated from 1 July 2021. The audit has been provided with baseline data, but not first year results (covering 2021–22) and as such, cannot assess whether any progress has been made towards the targets.

The benefits realisation framework may not provide the information needed to demonstrate the effectiveness of the budget enhancement

A lack of available data and limited measures in the benefits realisation framework may mean NSW Trustee and Guardian will not be able to meaningfully assess the impact of the additional funding.

The 22 measures in the benefits realisation framework across guardianship and financial management functions are predominantly monitoring activity and outputs which seek to track staff caseloads, the number of decisions made, the timeliness of key actions/tasks, and annual consumer engagements.

There is one service quality outcome measure: that customers, family and carers report an improved experience. The metrics for this measure will initially be monitored using the whole-of-government customer satisfaction measurement survey administered by the Department of Customer Service, until such time as other additional sources are developed. The whole-of-government survey is built around six core customer commitments relating to respondents' experiences with government services and staff - that they are: 'easy to access, act with empathy, respect my time, explain what to expect, resolve the situation and engage the community'. It is not clear whether or how the whole-of-government survey targets and engages people with impaired decision-making capacity or accessible communication needs.

Some measures in the NSW Trustee and Guardian benefits realisation framework do not yet have targets set, such as the ratio of the number of clients to the number of guardians or financial managers. Many relate to compliance with internal operational policies.

One interim measure for a direct financial management service indicator is 'increased personalised face-to-face consultations by phone or virtually'. It is intended to be replaced with the preferred measure 'ensure the client's story is understood by staff and systems by consulting stakeholders and adding to the client's story in the IT system'. However, the interim measure would better align with the national standards regarding regular and accessible engagement (discussed above).

A lack of availability of key data to track the preferred measures was identified by NSW Trustee and Guardian as an enterprise risk, and issues with existing data collected were identified early on, including that:

- data can be entered into systems inconsistently by staff
- current systems mask some issues – for example, a task can be completed within internal timeframes but not reflect the actual waiting time of consumers
- current systems cater to measuring outputs rather than service quality.

IT system improvements are slated in order to allow data to be collected to inform on preferred measures, but these depend on capital funding that has not yet been secured. At the time of writing, data sources were yet to be identified for three of the 22 measures, and NSW Trustee and Guardian did not have staff trained and available to run and analyse data for the benefits realisation framework.

The mechanisms of change and the underlying assumptions in the program and investment logics are also not clearly articulated in the benefits realisation framework, and nor is the underpinning evidence (such as from earlier reviews, research or pilots, or experiences elsewhere). Identifying and evidencing these would give some confidence that the assumptions are sound and that the mechanisms of change will operate as expected (for example, that a decline in frontline staff caseloads will translate into more time spent on individual matters, and improved service quality).

Given these limitations in measures, data collection and logics, there is a risk that the benefits realisation framework may not provide the performance and impact evidence necessary to assess the effectiveness of the budget enhancement, or to justify further additional funding in the future.

NSW Trustee and Guardian cannot track its financial management and guardianship service performance over time

NSW Trustee and Guardian's operational performance activity measures have changed over the audit review period, which limits NSW Trustee and Guardian's ability to identify whether it has sustained or improved performance in its guardianship and financial management services over time.

NSW Trustee and Guardian has consistently tracked the number and themes of complaints about financial management and guardianship services, which do provide some insight into service quality and experiences. However, this is an incomplete measure as people under financial management and guardianship orders are a more vulnerable cohort than other NSW Trustee and Guardian customers and may require support to make a complaint. There is also a structural power imbalance between clients and their guardian or financial manager which may dissuade clients and their stakeholders from raising concerns. Therefore, it is not clear whether the numbers and themes in complaints received are representative of broader experiences.

3.1 Seeking feedback on service quality

Customer service principles are in place, but consumers are not asked to provide feedback on whether they are being met

The legislation and standards do not specify a benchmark for service quality. To provide consumers with information about what they can expect from NSW Trustee and Guardian's services, organisation-wide 'customer excellence principles' were introduced in September 2018. Before these principles were introduced, NSW Trustee and Guardian did not have clear service quality objectives for financial management or guardianship services.

The customer excellence principles state that consumers should:

- receive expert, clear, and helpful advice informed by best practice
- be treated with respect and courtesy. Their feelings are acknowledged and considered
- receive individualised service tailored to their needs
- receive efficient advice and service at a place and time convenient for them
- be confident that they receive good value – service is effective, efficient, and appropriate for their needs
- be highly satisfied with the service they receive.

Although feedback from clients is fundamental to understanding whether staff are implementing the customer excellence principles in practice, and delivering direct financial management and guardianship services effectively, NSW Trustee and Guardian does not ask direct financial management and/or guardianship clients or their stakeholders for such feedback.

Customer satisfaction surveys are not offered to most financial management and guardianship service clients and stakeholders

NSW Trustee and Guardian commissions an external party to annually survey its clients and stakeholders across the services for which fees are charged, including direct and private financial management services. People under guardianship orders and their stakeholders are not surveyed. The reason for excluding guardianship clients from these surveys is unclear. NSW Trustee and Guardian advises that work commenced in 2022 to try to include people under guardianship orders and their stakeholders in these surveys.

The annual survey on financial management services is administered to around 200 direct financial management clients and their stakeholders, and 200 private managers. This comprises about one per cent of the total number of direct financial management clients and three per cent of the total number of people with private managers, as at 30 June 2022.

Survey respondents are not stratified by their type of disability or reason for decision-making incapacity, cultural identity, accommodation type, location, or other characteristics. The survey is conducted over the phone in English, excluding people who are: non-verbal, do not speak English, do not have access to a phone and/or have low digital literacy. The firm conducting the surveys are not trained in engaging with people with disability.

This may mean there is under-representation from some cohorts of clients who cannot engage with the survey in the way it is offered.

Survey results indicate increased satisfaction over time, as well as areas for improvement

Noting these limitations, survey results indicate that, overall, direct financial management clients and stakeholder satisfaction scores increased from 61% in 2017 to 76% in 2022. Private manager overall satisfaction scores increased from 67% in 2017 to 80% in 2022.

Respondents have also consistently identified the following areas of customer service as needing improvement:

- the understanding of my situation shown by staff
- ease in contacting the right team when I need them
- the knowledge staff have about my inquiry when I contact them
- the opportunity for consultation where a major decision has to be made.

A 2021 review of NSW Trustee and Guardian's customer research found that the way survey results are shared internally does not encourage staff engagement with the results, and that client feedback has not been used to develop action plans to improve practice and services for many years.

Interactions with customers are not regularly monitored to ensure good customer service practices

Aside from the annual survey discussed in the previous subsections, and ad hoc consultations on key matters – such as proposed changes to NSW Trustee and Guardian fees held in 2021 – there is little proactive engagement with financial management and/or guardianship clients or their stakeholders to seek feedback on service delivery.

Direct financial management and guardianship services are mostly provided to clients over the phone or by emails and letters. Incoming calls to financial management staff are recorded, but they are not regularly reviewed to ensure that good customer service practices are being applied by staff to their interactions with consumers.

During our consultations with managers, we were told that they randomly select one call a month to provide feedback to frontline staff in their team during monthly performance reviews. Outgoing calls made by direct financial management frontline staff to clients are not recorded or monitored, and the Public Guardian does not record or monitor any calls made to or by frontline staff. There is also no evidence that emails are regularly monitored or reviewed by direct financial management or guardianship senior managers.

In 2021, direct financial management call monitoring processes were reviewed, and a new program was developed in response to track the quality of staff engagement with consumers. This program also intended to provide feedback to staff to drive service quality improvement. However, an internal review of the program found that:

- it did not lead to any measurable improvement in the quality of interactions between staff and clients
- it was not aligned with the NSW Trustee and Guardian customer excellence principles or general best practice
- there was no quality management software, specialist staff or call handling training in place.

Staff feedback on the program indicated that they felt demotivated by it. Many frontline staff do not have previous experience in managing high call volumes, in using call de-escalation techniques when interactions become challenging, or in building relationships over the phone. Staff also indicated they were concerned that they did not have the skills to effectively engage with people with brain injuries, intellectual disabilities, and mental ill health.

Call monitoring was suspended in 2022 to allow staff to focus on implementing the new operating model, and to account for higher levels of unplanned leave due to COVID, colds and flus. NSW Trustee and Guardian advises that it is reviewing its processes to re-commence call monitoring in mid-2023, and is exploring other types of monitoring systems.

3.2 Complaint handling

Given the limited avenues and efforts to seek feedback from guardianship and financial management clients discussed in section 3.1, complaints provide NSW Trustee and Guardian with its main source of information about consumer experiences of these services.

Over the five-year audit review period (FY2018-FY2022), NSW Trustee and Guardian received the following number of complaints about its financial management and guardianship services:

- direct financial management services received 1,007 complaints in total, with complaints increasing from 177 in FY2018 to 237 in FY2022
- private financial management services received 71 in total, with complaints slightly decreasing from 18 complaints in FY2018 to 15 in FY2022
- Guardianship services received 402 in total, with complaints slightly increasing from 76 complaints in FY2018 to 78 in FY2022.

Most of these complaints were classified as 'unsubstantiated' by NSW Trustee and Guardian. NSW Trustee and Guardian considers complaints to be 'substantiated' when there is evidence that staff have made an error and/or taken actions that are not in line with policies, procedures, and its customer excellence principles.

For each of NSW Trustee and Guardian's services, the number of substantiated complaints in 2021–22 were as follows:

- 86 of the 237 complaints (approximately 36%) about direct financial management services were substantiated
- 2 of the 15 complaints (approximately 13%) about private financial management services were substantiated
- 10 of the 78 complaints (approximately 13%) about guardianship services were substantiated

NSW Trustee and Guardian could capture more types of complaints to increase the amount of feedback it receives on its financial management and guardianship services

Complaints received and resolved directly by frontline staff are considered informal and are not counted, monitored, and analysed by NSW Trustee and Guardian. As a result, NSW Trustee and Guardian may miss important information about systemic and recurring causes of complaints, and the needs and experiences of clients under financial management and guardianship orders.

Feedback on how complaints are handled by staff is also not sought from complainants. Such feedback would increase NSW Trustee and Guardian's ability to check that frontline staff respond to and resolve complaints appropriately, and help to identify any issues with how staff handle complaints.

Complaints handling processes are mostly in line with the NSW Ombudsman guidelines, but processes and training to ensure complaints are appropriately escalated by frontline staff could be improved

NSW Trustee and Guardian's approach to handling complaints is in line with the NSW Ombudsman's relevant guidance for government agencies.

Frontline staff are expected to attempt to resolve any complaints (which includes any expression of dissatisfaction) that they receive, as soon as possible. Unresolved complaints are formally escalated to senior managers for investigation and can then be further escalated for internal review by NSW Trustee and Guardian's complaints handling teams, or external review (e.g., by the NSW Ombudsman). Complaints can be escalated for internal or external review at the request of complainants or NSW Trustee and Guardian staff.

NSW Trustee and Guardian's complaints handling teams are independent of the frontline staff teams. Their responsibility is to ensure complaints are appropriately investigated and that there is evidence to support the outcome of the complaint (i.e., whether it is substantiated or not).

While NSW Trustee and Guardian's complaints handling teams are appropriately independent and escalation processes are clear, there is no review process to ensure that complaints that are directly resolved by frontline staff have been effectively handled in line with NSW Trustee and Guardian's policies, procedures, and customer excellence principles. Without information on how frontline staff resolve complaints (and decide that escalation is not necessary), NSW Trustee and Guardian cannot assess how often, consistently and appropriately complaints are addressed by frontline staff. This lack of information and oversight also does not allow for good customer service practices to be identified and shared between staff.

More attention needs to be placed on making complaints processes accessible to all clients and stakeholders

NSW Trustee and Guardian does not review or ask for feedback on its complaints processes to ensure that they are accessible to all clients and stakeholders. It also does not provide specific training to frontline staff to help them identify and assist clients with disabilities and/or cognitive support needs to make a complaint.

NSW Trustee and Guardian requires formal complaints to be submitted in writing – either by email, letter, or the online form on its public website. Frontline staff are expected to write down complaints for people when they request support either over the phone or in person. The National Relay Service can be used to communicate complaints from people who have a hearing impairment, and the Translating and Interpreting Service can be used to translate complaints from people whose first language is not English.

NSW Trustee and Guardian advises that one-to-one support is informally provided to staff to help them understand complaints handling processes and to appropriately respond to complaints. However, there is no specific training or guidance for staff on how they should identify when a client may require assistance to make a complaint. Staff are not trained to identify an issue or situation that might constitute a complaint in substance even if the word 'complaint' is not used. They are also not trained or provided with procedures on supporting people with intellectual disabilities, brain injuries, mental ill health, and other conditions that may affect decision-making or other cognitive capacities to make a complaint. Without this specific training, staff may lack the appropriate skills to identify and record complaints from clients under financial management and guardianship orders.

Over the five-year audit review period, most of complaints about financial management and guardianship services came from stakeholders such as family members and advocates rather than from clients under orders. Our analysis of NSW Trustee and Guardian's data found that over the five-year audit review period approximately:

- 26% of complaints came from direct financial management clients
- 3% of complaints came from clients under private management orders, with 55% from private managers
- 6% of complaints came from guardianship clients.

NSW Trustee and Guardian advises that this is probably because, by definition, people under orders have limited decision-making capacity. While most clients under financial management and guardianship orders may require assistance to make a complaint, NSW Trustee and Guardian does not regularly monitor or analyse its complaints data to determine if complaints come from people with different cultural identities, locations, or disabilities.

This type of analysis would help NSW Trustee and Guardian determine if there are any barriers that may prevent particular groups of clients and stakeholders from making complaints. It would also help staff to identify and assist any clients who may need additional support to access NSW Trustee and Guardian's complaints processes or otherwise provide feedback.

External stakeholders we spoke with emphasised the importance of inviting and encouraging feedback from people under financial and guardianship orders in multiple ways that are accessible to them. We have not seen evidence that NSW Trustee and Guardian consults external stakeholders or clients to understand how to improve the accessibility of its feedback and complaint processes.

Complaints data is not consistently used to drive service quality improvements

The NSW Ombudsman's whole-of-government 'Complaints Handling Improvement Program' (CHIP) recommends that NSW Government agencies regularly review their complaints data to understand consumer experiences and improve systemic issues with agency service delivery.

NSW Trustee and Guardian's dedicated complaints handling teams' count and categorise formal complaints into the following key themes: communication, timeliness, decisions made, costs, policy and procedure, and other. During the audit review period, most complaints received by NSW Trustee and Guardian's financial management and guardianship services were about communication, timeliness and decisions made. The number of complaints in each key category, division, and outcome is reported quarterly to the executive leadership team.

However, in 2021, an internal review of NSW Trustee and Guardian's direct financial management services found that:

- complaints about direct financial management services are analysed to understand why individual incidents occurred, but lessons are not identified and applied to other complaint situations in a consistent, client-focused way
- complaints are not effectively monitored to ensure relevant recommendations are implemented and that relationships between staff and complainants are repaired
- complaints are not analysed to determine why a significantly lower number of complaints from clients are upheld (i.e. substantiated) compared to those made by family members and others.

Complaints received in relation to NSW Trustee and Guardian guardianship services were not included in this review.

In 2022, NSW Trustee and Guardian began trialling a new complaints feedback mechanism which included improving data collection on complaint themes and identifying their root causes to allow complaints data to inform on executive level strategic and operational decisions for its direct financial management services. This process also aimed to increase consistency between teams, and support frontline staff to learn from any issues with their practice that individual complaints may highlight. The audit could not assess the impact of this feedback mechanism on complaints data analysis as it had only recently been implemented at the time of writing. NSW Trustee and Guardian advises that a similar complaints feedback process is also being used to analyse and learn from complaints about guardianship services.

Complaints performance measures do not provide sufficient information about service quality

In 2021, NSW Trustee and Guardian introduced a customer-centric key performance indicator that aims to use complaints data to inform on service quality, but the measures identified to track progress are limited by the complaints data that existing systems can capture.

Prior to 2021, reports to the executive leadership team included complaint numbers and themes, and performance measures that focused on reducing complaint numbers. Performance measures that focus on reducing complaints may indicate that some people are unable to make a complaint due to barriers or other factors, rather than that services have improved.

To focus on improved service quality rather than on reducing overall complaint numbers, NSW Trustee and Guardian introduced a new key performance indicator in 2021. This indicator is focused on delivering good outcomes to clients by responding to complaints in a timely manner, and following through on staff commitments to resolve issues. The performance measures identified to track progress against this indicator include responding to complaints within target timeframes and maintaining the average number of substantiated complaints over a 3-month period. While these are relevant measures, they do not provide information on common issues and causes of complaints. They also do not rely on feedback from complainants to measure whether staff commitments to resolve issues were met.

NSW Trustee and Guardian advised that its performance measures have recently been updated to identify any increases in substantiated complaints caused by communication issues. If an increase is detected, it is expected to be further investigated to determine if there are any systemic issues. These systemic issues should then be communicated to relevant senior staff members (but are not consistently included in the reports to the executive leadership team).

It is important that NSW Trustee and Guardian tracks and formally reports on any systemic issues identified from analysing complaints data to ensure that they are used to drive service quality improvements. NSW Trustee and Guardian advised that existing key performance measures will be further updated as insights and data from implementing improved complaints feedback processes are gained.

Monitoring of unacceptable behaviour management needs to be improved

NSW Trustee and Guardian has unreasonable complainant policies and procedures that are in line with the NSW Ombudsman's guidelines for managing unreasonable conduct from complainants. Unreasonable conduct is defined by the NSW Ombudsman as 'any behaviour by a person which, because of its nature and frequency, raises substantial health, safety, resource and equity issues for the people involved in the complaint process.' In 2020-2021, the NSW Ombudsman delivered training on how to identify and appropriately manage unreasonable complainant conduct to NSW Trustee and Guardian staff.

NSW Trustee and Guardian introduced a register in 2021 to record and monitor restrictions it had put in place for people classified as unreasonable complainants. Unreasonable complainants may, for example, be restricted to contacting NSW Trustee and Guardian staff once a week by email only. Currently, there are less than five people on the register. This is in line with NSW Trustee and Guardian's procedures that state that these restrictions should only be used as a last resort, after warnings and other strategies have been tried by staff.

There is no equivalent register that monitors the actions implemented in response to people who have not made a formal complaint, but whose behaviour is being managed by NSW Trustee and Guardian staff according to a separate 'Unacceptable Client Behaviour Policy.' Staff are expected to record and document unacceptable client behaviour and restrictions in the client management systems, but NSW Trustee and Guardian could not provide the audit with data on how many people have unreasonable behaviour restrictions placed on them across the organisation.

3.3 Responding to the environment

NSW Trustee and Guardian monitors impacts of the changing environment and advocates for systemic change on behalf of people under financial management and guardianship orders

NSW Trustee and Guardian commits resourcing to monitoring the environment and conducting systemic advocacy. It has external relations, customer advocacy and stakeholder engagement teams that are responsible for:

- providing information and educating the public about guardianship
- supporting frontline staff to manage issues that affect direct financial management and guardianship clients such as problems with assisted boarding houses, closures or sanctions placed on aged care and disability facilities, and the NDIS
- engaging with external stakeholders – such as the NSW Ageing and Disability Commissioner, NSW Health and the National Disability Insurance Agency – on disability and age-related issues to inform decision-making for direct financial management and guardianship clients
- coordinating involvement in policy reform initiatives where these are relevant to NSW Trustee and Guardian functions (such as the 2018 NSW Law Reform Commission inquiry into the Guardianship Act).

We have seen recent evidence of NSW Trustee and Guardian leading or being a key contributor to systemic advocacy efforts, such as:

- liaising with Services Australia on behalf of public trustee offices around Australia regarding inefficient processes, unclear escalation avenues, and declining responsiveness from Centrelink on matters concerning people under financial management and guardianship orders
- collaborating with the Australian Government agency AUSTRAC to see legal and process amendments to 'know your customer' rules that financial institutions must adhere to, which currently do not accept public trustee identification on behalf of financial clients
- contributing to national policy reform roundtables on supported decision-making for people under guardianship orders convened by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

The 2022 operating models also include a dedicated role in the divisions delivering financial management and guardianship services with responsibility to build awareness of these functions amongst NCAT members and the public, and to improve relevant processes between NCAT and NSW Trustee and Guardian.

The Department of Communities and Justice holds policy and advisory responsibility with respect to NSW Trustee and Guardian's enabling legislation, and receives the latter's advice about how the legislation is operating in practice. The Department considers that NSW Trustee and Guardian appropriately identifies and escalates issues for it to address through policy development or legislative amendment.

NSW Trustee and Guardian adjusts its service delivery in response to performance information and the external environment, but this tends to be a reactive process

We have seen evidence that NSW Trustee and Guardian responds to changes in the external environment by reviewing and adjusting the way it delivers its financial management and guardianship services. For example:

- In 2020, gaps in and quality issues with direct financial management services were internally reviewed following critical media and discussions with the Attorney General. This informed the development of a new operating model as part of a subsequent budget bid for additional funding in 2020–21.
- A significant complaint made to the NSW Ombudsman led to a 2021 internal review of NSW Trustee and Guardian’s policy and practice response to the risk of depleted estates for direct financial management clients.
- To develop budget bids and new operating models for financial management and guardianship services, NSW Trustee and Guardian evaluated external changes impacting its service delivery, such as: demand, clients’ needs, increasing matter complexity, available support services, community expectations and other environmental changes.

However, this tends to be a reactive process in response to pressures in the external environment. We have not seen evidence of NSW Trustee and Guardian reviewing its performance information in an ongoing way to understand whether changes made are effectively addressing the issues it was targeting.

NSW Trustee and Guardian has explored what supported decision-making might look like in practice

Although the existing legislation in New South Wales makes it a substitute decision-making jurisdiction, NSW Trustee and Guardian has explored what supported decision-making (see Exhibit 20) might look like in practice if it was pursued by the NSW Government in response to changing community expectations.

Exhibit 20: Supported decision-making

Supported decision-making refers to processes and approaches that assist a person to make their own decisions. This approach to decision-making seeks to allow a person to exercise their autonomy by giving effect to their will and preferences.

Putting supported decision-making into practice includes observing certain principles and taking certain steps:

- Principles:
 - the right to make decisions
 - support to make decisions
 - giving effect to will, preferences, and rights
 - ensuring safeguard mechanisms
- Steps:
 - knowing the person
 - identifying and describing the decision
 - understanding the person’s will and preference for the decision
 - refining the decision and taking account of constraints
 - considering if a formal process is needed
 - reaching the decision and associated decisions
 - implementing the decision and seeking advocates if necessary.

There has been a longstanding legal and community push for Australian guardianship and administration systems to move from substitute to supported decision-making, accelerated by the United Nations Convention on the Rights of Persons with Disabilities which Australia ratified (with exceptions for guardianship and financial management functions) in 2008. The Australian Law Reform Commission in 2014, and the NSW Law Reform Commission in 2018, each recommended that a formal framework for supported decision-making and (as a last resort) substituted decision-making be adopted, but relevant governments have not accepted or acted on these recommendations.

The current Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) is again exploring the potential for related reform across Australia. It has heard evidence, and observed, that a shift to greater opportunities for supported decision-making is a critical step towards giving effect to the human rights of people with disabilities. A Research Report prepared by La Trobe University for the Disability Royal Commission has noted that adequate resources are required to implement all elements of an assisted decision-making framework. Similarly, the evidence of the Victorian Public Advocate noted that increased resources are required to make decisions that give effect to a person's will and preferences and to implement a supported decision-making model in practice.

Source: Audit Office research based on Disability Royal Commission and academic sources.

Between January 2016 and June 2017, NSW Trustee and Guardian conducted a supported decision-making project with 33 direct financial management clients and their chosen supporters to help them make decisions about their financial affairs. This project was funded by the then Department of Family and Community Services. NSW Trustee and Guardian subsequently commissioned the University of NSW to evaluate the project. Although the project was not progressed past the pilot phase, the evaluation of the project found that:

- financially managed participants required ongoing support, facilitation, and advocacy to help them make decisions. This support could be provided as part of NDIS packages or advocacy services
- readily available financial literacy training delivered in accessible formats to people with disability was possible and important. Training for support persons to assist participants to make their own decisions is also necessary for managing conflicts of interest and effectively implementing supported decision-making processes
- NSW Trustee and Guardian's existing processes could incorporate more supported decision-making principles into its substitute decision-making framework, and provide more opportunities for clients to build their financial skills to manage parts of their estate.

Supported decision-making was further explored by NSW Trustee and Guardian in November 2019 in response to the May 2018 NSW Law Reform Commission inquiry into the *Guardianship Act 1987*. The NSW Law Reform Commission found that the focus on substitute decision-making in the Guardianship Act was outdated in the current social, legal and policy environments and "no longer fit for purpose." It recommended significant reforms to the Act including:

- new principles for substitute decision-making, including that a person's 'will and preferences' should be given effect wherever possible
- formal recognition of supported decision-making, including support agreements and the power for NCAT to make a Support Order
- periodic reviews of financial management orders by NCAT.

NSW Trustee and Guardian estimated the effort and costs involved in implementing the recommended reforms to the Guardianship Act. It considered that the proposed principles to give effect to the person's will and preferences wherever possible would significantly increase the amount of time staff would need to spend obtaining and understanding the client and client views. For example, under the proposed principles and legislative framework, NSW Trustee and Guardian estimated that on average, for each client:

- developing an annual budget would increase from 0.8 to 8 hours
- making significant financial decisions would increase from 1.5 to 5.5 hours
- completing annual guardianship visits would increase from 1 to 3 hours
- making significant guardianship decisions would increase from 4 to 12 hours.

The NSW Government has not yet responded to the recommendations of the NSW Law Reform Commission's Guardianship Review.

Section two

Appendices

Appendix one – Response



1300109290
tagenquiries@tag.nsw.gov.au
19 O'Connell Street Sydney NSW 2000
Locked Bag 5115 Parramatta NSW 2124
www.tag.nsw.gov.au

Ms Margaret Crawford
Auditor-General for NSW
Audit Office of NSW
GPO Box 12
Sydney NSW 2001

16 May 2023

Your Ref: D2307410/PA6688

Dear Ms Crawford

Thank you for the opportunity to respond to the Performance Audit Report: Managing the affairs of people under financial management and/or guardianship orders.

As you are aware these represented people are appointed under orders of the Supreme Court, the Guardianship Division of NSW Civil and Administrative Tribunal or the Mental Health Review Tribunal as per the relevant legislation and are a group of currently approximately 20,000 people in NSW. These represented persons are some of the most vulnerable people in the community, so it is critical that we continually look for and implement ways to improve and provide support for them.

I would like to acknowledge the efforts, hard work, and professionalism of the audit team, who worked closely with our people since March 2022 and throughout the comprehensive audit process. As the relatively new Chief Executive Officer of NSW Trustee & Guardian, I appreciate the assurance provided by the performance audit and the opportunities that it provides to improve our services to the community.

NSW Trustee and Guardian accepts in principle the recommendations in this report. We will work closely with our people and stakeholders to address these recommendations over the stated implementation period. The organisation's Audit and Risk Committee will monitor implementation of the recommendations. I enclose our response to the Audit's recommendations and the actions we will be taking to implement them.

NSW Trustee and Guardian has a long history of serving the community of NSW and we welcome feedback that enables us to improve how we continue to engage with, learn from, and improve services to individually support these represented persons.

It is important to acknowledge that we have and continue to experience a significant increase in the number of people who are appointed to us under various court or tribunal orders and with increasing complexity of support needs. Whilst the organisation receives Community Service Obligation grant funding for some of its work, it is not indexed and/or commensurate with the growing number and support needs of represented persons placed by court or tribunal orders. We will continue to work with Treasury to examine ways that funds can be allocated equitably, for the purpose of improving NSW TG community service activities.

If you would like more information about our response to the report, please contact Louise Bochniak, Chief Audit Executive email at Louise.Bochniak@tag.nsw.gov.au.

Yours sincerely

Caroline Cuddihy
Chief Executive Officer
NSW Trustee and Guardian

Encl. NSW TG Performance Audit Agreed Action Plan

By May 2024 NSW Trustee and Guardian through the Executive Leadership Team will:

1. Broaden governance arrangements to enable input to key decisions on financial management and public guardianship services from: a) people with lived experience b) relevant peak bodies including the disability, aged care, and mental health sectors c) representatives of diverse communities including Aboriginal peoples; culturally and linguistically diverse groups; LGBTQI+ people																		
Agency Response	<p>Accepted. We will establish a Public Guardian and Financial Management Advisory Committee. Specifically including represented persons under orders with lived experience, representatives from diverse community groups, relevant peak bodies and quality and safeguarding authorities.</p> <p>Actions to date Between March and May 2023, NSWTG has engaged with the NSW Ageing and Disability Commissioner, NSW Mental Health Commissioner, NDIS Quality and Safeguards Commissioner and the NSW Council for Intellectual Disability and had preliminary discussion on approaches to the establishment of stakeholder advisory functions.</p>																	
	<table border="1"> <thead> <tr> <th colspan="2">Agreed Actions</th> <th>Date to be Actioned By</th> <th>Due Date</th> </tr> </thead> <tbody> <tr> <td>1.1</td> <td>Develop consultation framework and draft terms of reference for an Advisory Committee.</td> <td>In progress</td> <td>Q1 FY 2023-24</td> </tr> <tr> <td>1.2</td> <td>Undertake consultation with relevant stakeholders.</td> <td>Commence Q2 FY 2023-24</td> <td>Q3 FY 2023-24</td> </tr> <tr> <td>1.3</td> <td>Finalise terms of reference and establish an Advisory Committee.</td> <td>Commence May 2024</td> <td>May 2024</td> </tr> </tbody> </table>			Agreed Actions		Date to be Actioned By	Due Date	1.1	Develop consultation framework and draft terms of reference for an Advisory Committee.	In progress	Q1 FY 2023-24	1.2	Undertake consultation with relevant stakeholders.	Commence Q2 FY 2023-24	Q3 FY 2023-24	1.3	Finalise terms of reference and establish an Advisory Committee.	Commence May 2024
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1.3	Finalise terms of reference and establish an Advisory Committee.	Commence May 2024	May 2024															

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NSWTG Performance Audit
Agreed Action Plan

2. Implement mechanisms to seek feedback on the effectiveness and quality of its financial management and public guardianship services from clients under orders														
Agency Response	<p>Accepted in principle¹. NSWTG agrees with the recommendation to implement mechanisms to seek feedback on the effectiveness and quality of its financial management and public guardianship services with clients under orders. We will develop improved customer feedback mechanisms, including surveys and focus groups to inform service improvement opportunities.</p> <p>Actions to date To date the Customer Experience Team has prepared a research paper on measuring customer outcomes. The team has also undertaken an initial desktop review of Customer Feedback Platforms. In addition, the team has consulted with other State Public Trustees about their feedback mechanisms.</p>													
	<table border="1"> <thead> <tr> <th colspan="2">Agreed Actions</th> <th>Date to be Actioned By</th> <th>Due Date</th> </tr> </thead> <tbody> <tr> <td>2.1</td> <td>Develop an improved approach to seeking and collecting Public Guardian and Financially Managed client's feedback and ensure representation from diverse client groups.</td> <td>Commence Q4 FY 2022-23</td> <td>Q2 FY 2023-24</td> </tr> <tr> <td>2.2</td> <td>Establish processes for feedback management that supports implementation of service improvement initiatives.</td> <td>May 2024</td> <td>May 2024</td> </tr> </tbody> </table>			Agreed Actions		Date to be Actioned By	Due Date	2.1	Develop an improved approach to seeking and collecting Public Guardian and Financially Managed client's feedback and ensure representation from diverse client groups.	Commence Q4 FY 2022-23	Q2 FY 2023-24	2.2	Establish processes for feedback management that supports implementation of service improvement initiatives.	May 2024
Agreed Actions		Date to be Actioned By	Due Date											
2.1	Develop an improved approach to seeking and collecting Public Guardian and Financially Managed client's feedback and ensure representation from diverse client groups.	Commence Q4 FY 2022-23	Q2 FY 2023-24											
2.2	Establish processes for feedback management that supports implementation of service improvement initiatives.	May 2024	May 2024											

¹ Implementing action items dependent on budgeted funding from Government.

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NSWTG Performance Audit Agreed Action Plan

3.	Implement a framework to: a) deliver competency-based training for staff in relevant roles to develop awareness and understanding of clients with disability, dementia, mental illness, cognitive impairments, and other reasons for decision-making incapacity, when providing services, in partnership with people with lived experience, relevant peak bodies and representatives of diverse groups. b) monitor and assess staff competency in understanding and serving clients with disability, dementia, mental illness, cognitive impairments, and other reasons for decision-making incapacity. c) identify intervals for and conduct refresher training, and seeking staff feedback		
Agency Response	<p>Accepted in principle². NSWTG agrees with the recommendation to develop a framework to deliver competency-based training for staff, identify and address competency gaps and conduct refresher training, seeking staff feedback. We will examine external specialised training options, assess training gaps, and deliver appropriate training for relevant staff.</p> <p>Actions to date Research into potential, relevant competency-based training has commenced. Disability Awareness training will continue to be offered and staff feedback will be used to review and improve this training.</p>		
Agreed Actions		Date to be Actioned By	Due Date
3.1	Research and identify relevant competency-based training options available in partnership with people with lived experience, relevant peak bodies, and representatives of diverse groups.	In progress	Q2 FY 2023-24
3.2	Develop a training plan and schedule, including frequency for refresher training for relevant roles. Deliver competency-based training, as per schedule.	Commence Q3 FY 2023-24	Q4 FY 2023- 24
3.3	Develop monitoring mechanisms for effective competency-based training implementation.	April/May 2024	May 2024

² Implementing action items dependent on budgeted funding from Government.

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NSWTG Performance Audit Agreed Action Plan

4.	Implement a risk-based quality framework to assess whether public guardian and financial management decisions are in line with policy and the legislative principles.		
Agency Response	<p>Accepted in principle³. NSWTG agrees with the recommendation to implement a risk-based, quality framework for decision-making in line with policy and the legislative principles. We will develop a risk-based methodology to inform a quality framework for decision-making.</p> <p>Actions to date The Public Guardian has commenced research on how current software systems could be utilised for the risk methodology.</p>		
Agreed Actions		Date to be Actioned By	Due Date
4.1	Use the organisation's risk management framework to identify client cohorts to inform the testing of controls related to quality of decision-making.	Commence Q4 FY 2022-23	Q2 FY2023-24
4.2	Develop and implement a plan to assess and record the team's management of risk and control effectiveness regarding decision-making being in alignment with policy and the legislation.	April/May 2024	May 2024

³ Implementing action items dependent on budgeted funding from Government.

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NSWTG Performance Audit Agreed Action Plan

By November 2024, NSW Trustee and Guardian through the Executive Leadership Team will:

5.	Establish mechanisms to track and report publicly on its financial management and guardianship services including: <ul style="list-style-type: none"> a) all actions taken by NSW Trustee and Guardian to: <ul style="list-style-type: none"> • provide advice to the relevant court or tribunal to encourage the appointment of NSW Trustee and Guardian to be truly 'last resort' • identify opportunities for, and issue, financial management clients with section 71 authorities • encourage and support appropriate early discharges of guardianship clients • apply for the review and/or revocation of orders at the relevant court or tribunal. b) the application of the legislative principles and national standards c) service quality d) performance of services over time, and e) outcomes for clients. 		
Agency Response	Accepted in principle ⁴ . NSWTG agrees with the recommendation to monitor and report publicly appropriate information on its financial management and public guardianship services.		
Agreed Actions		Date to be Actioned By	Due Date
5.1	Improve reporting frameworks by developing and implementing quality, risk, and compliance reporting, which includes output metrics, outcomes, and quality measures as recommended.	In progress	Q1 FY 2023-24
5.2	Monitor performance measures to identify opportunities for improvement.	Q1 FY 2023-24	Q3 FY 2023-24
5.3	Determine appropriate mechanisms for public reporting.	In progress	November 2024

⁴ Implementing action items dependent on budgeted funding from Government.

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NSWTG Performance Audit Agreed Action Plan

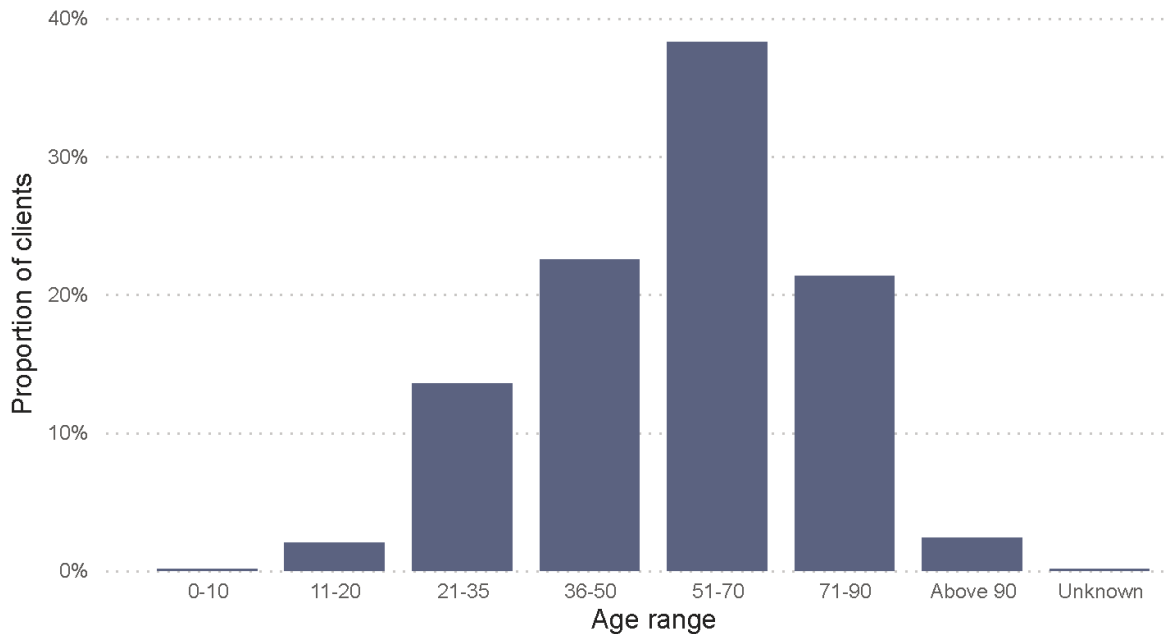
6.	Implement sufficient data collection, processes and/or IT systems to: <ul style="list-style-type: none"> a) inform on actual costs of service delivery including by complexity of client matters b) identify and address cross-subsidisation, and c) improve data quality and the sharing of relevant client information to support the application of the legislative principles 		
Agency Response	Accepted in principle ⁵ . NSWTG agrees with the recommendation to implement sufficient data collection, processes and/or IT systems. We will implement an activity-based costing model. Actions to date To date an external consultant created a financial model in 2020 as an interim one-off solution to understand costs of service. NSWTG has had further discussions to develop activity-based costing by client cohort and address cross subsidisation.		
Agreed Actions		Date to be Actioned By	Due Date
6.1	Commission the enhancement of an activity-based costing model by client cohort (number and complexity of client matters) to regularly report and to inform about the actual cost of service delivery.	Commence Q1 FY 2023-24	Q2 FY 2023-24
6.2	Utilise the activity-based costing model by client cohort results reports to inform on the levels of cross-subsidisation of services and develop recommendations to seek appropriate approvals to address, including meeting NSW Treasury Guidelines for Community Service Obligations (TPP19-02).	Commence Q2 FY 2023-24	November 2024
6.3	Undertake a business case to develop a financial management client portal to enable online customer access to their financial records.	In progress	Q3 FY 2023-24
6.4	Undertake a business case to replace legacy IT systems.	In progress	November 2024

⁵ Implementing action items dependent on budgeted funding from Government.

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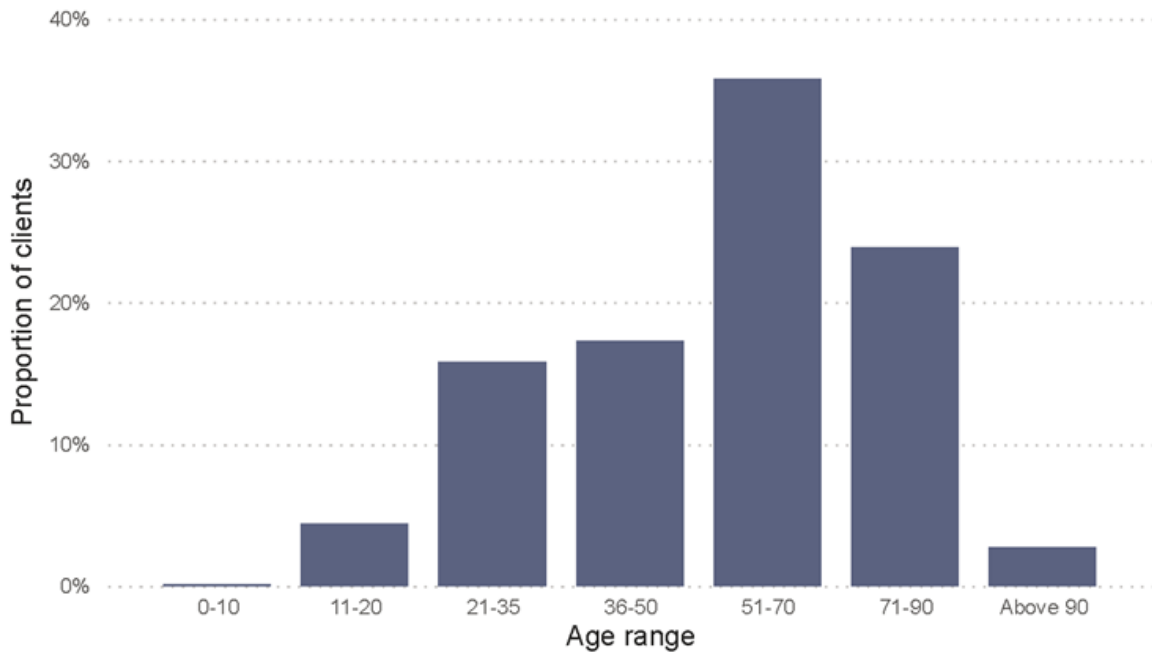
Appendix two – Client characteristics

Age distribution of NSW Trustee and Guardian direct financial management clients, 30 June 2022



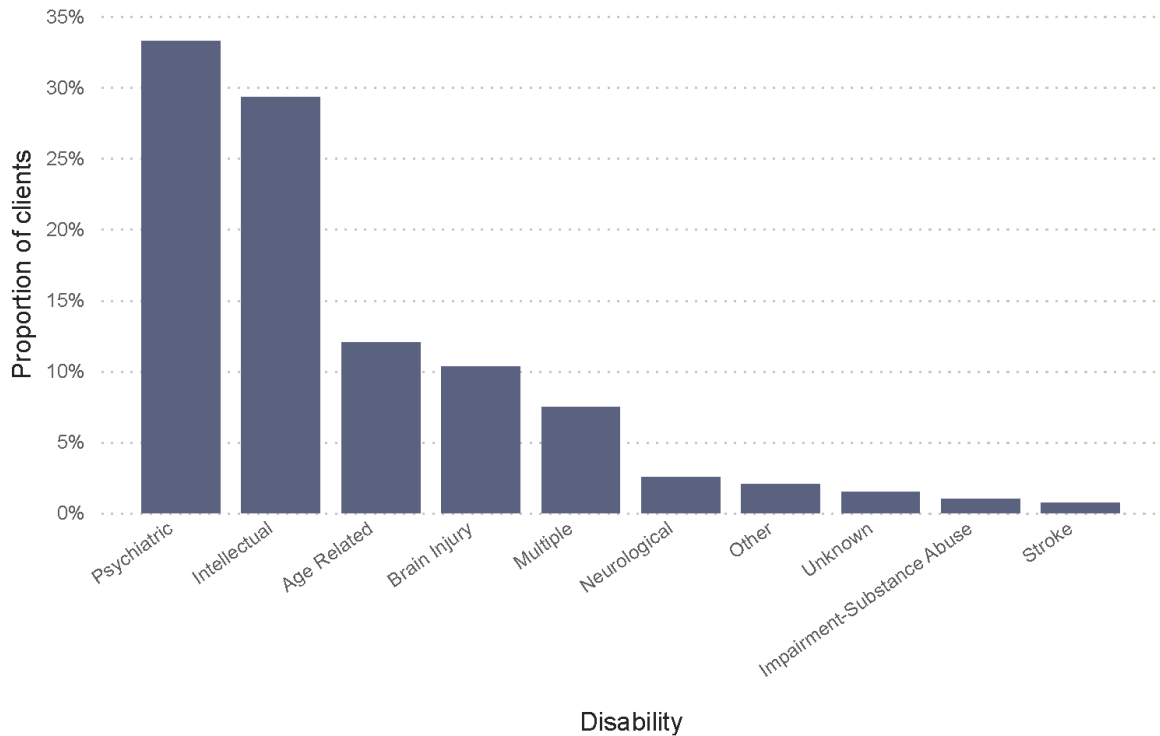
Source: Audit Office analysis of client data provided by NSW Trustee and Guardian.

Age distribution of NSW Trustee and Guardian guardianship clients, 30 June 2022



Source: Audit Office analysis of client data provided by NSW Trustee and Guardian.

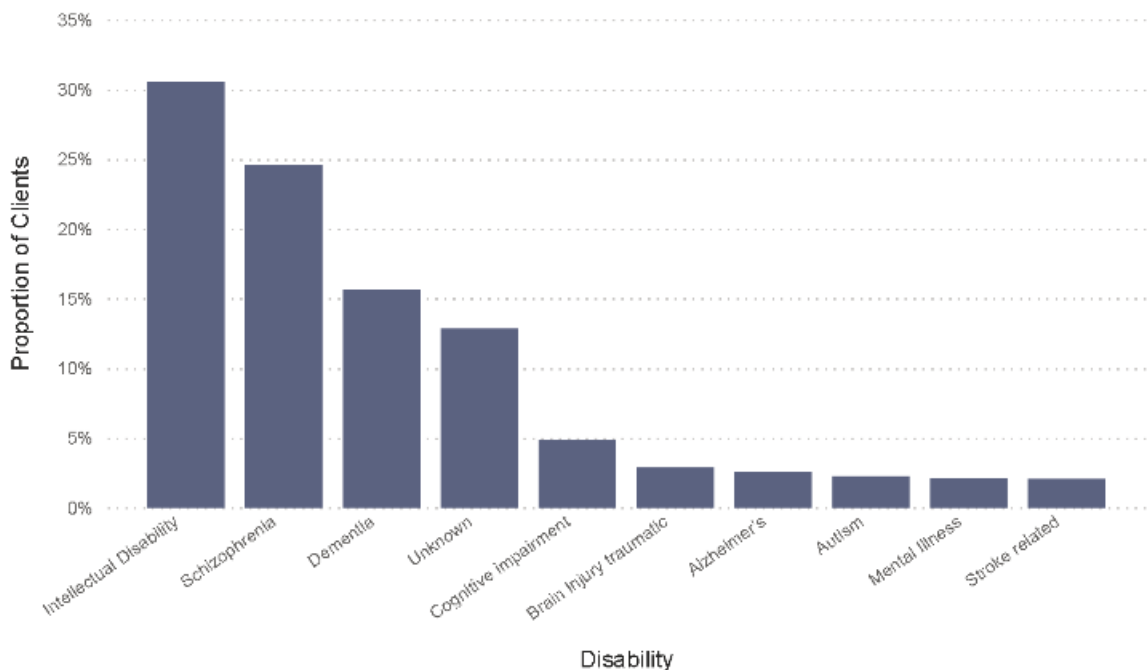
Different types of disabilities and conditions that NSW Trustee and Guardian direct financial management clients live with, 30 June 2022



Note: NSW Trustee and Guardian uses different categories to record data on the different types of disabilities and conditions of direct financial management and guardianship clients

Source: Audit Office analysis of client data provided by NSW Trustee and Guardian

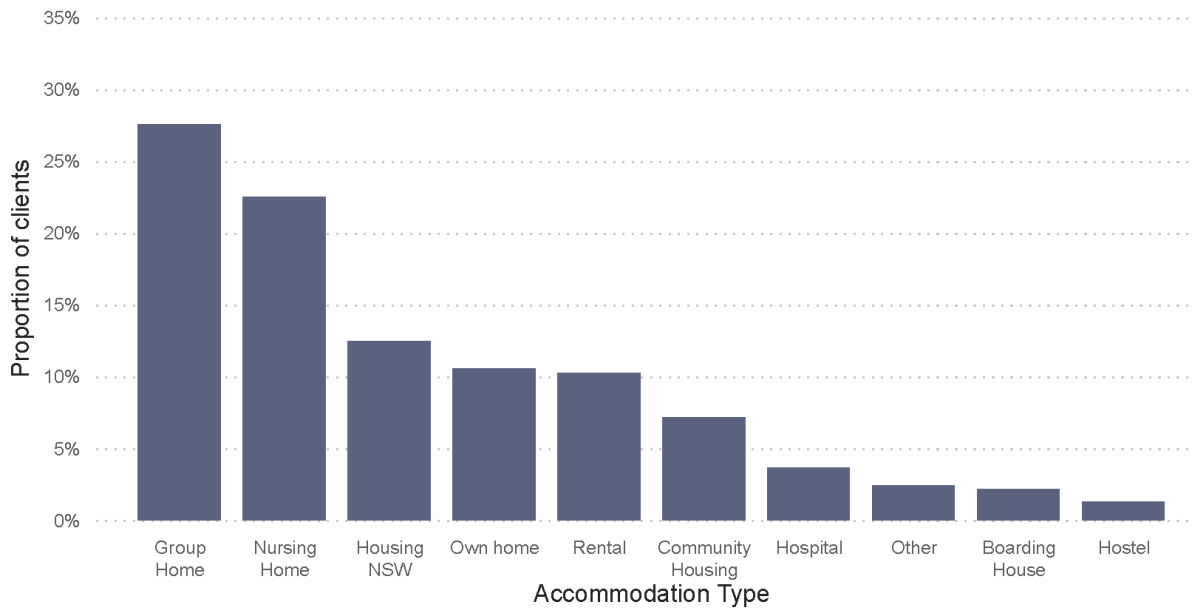
Different types of disabilities of NSW Trustee and Guardian guardianship clients live with, 30 June 2022



Note: NSW Trustee and Guardian uses different categories to record data on the different types of disabilities and conditions of direct financial management and guardianship clients

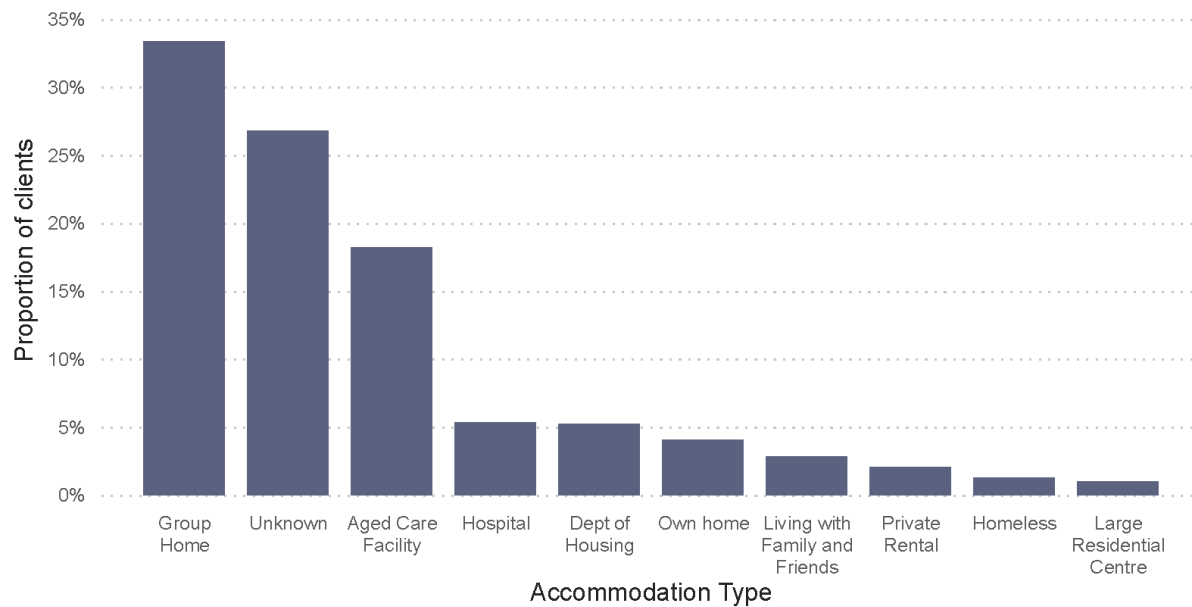
Source: Audit Office analysis of client data provided by NSW Trustee and Guardian.

Different accommodation types of NSW Trustee and Guardian direct financial management clients, 30 June 2022



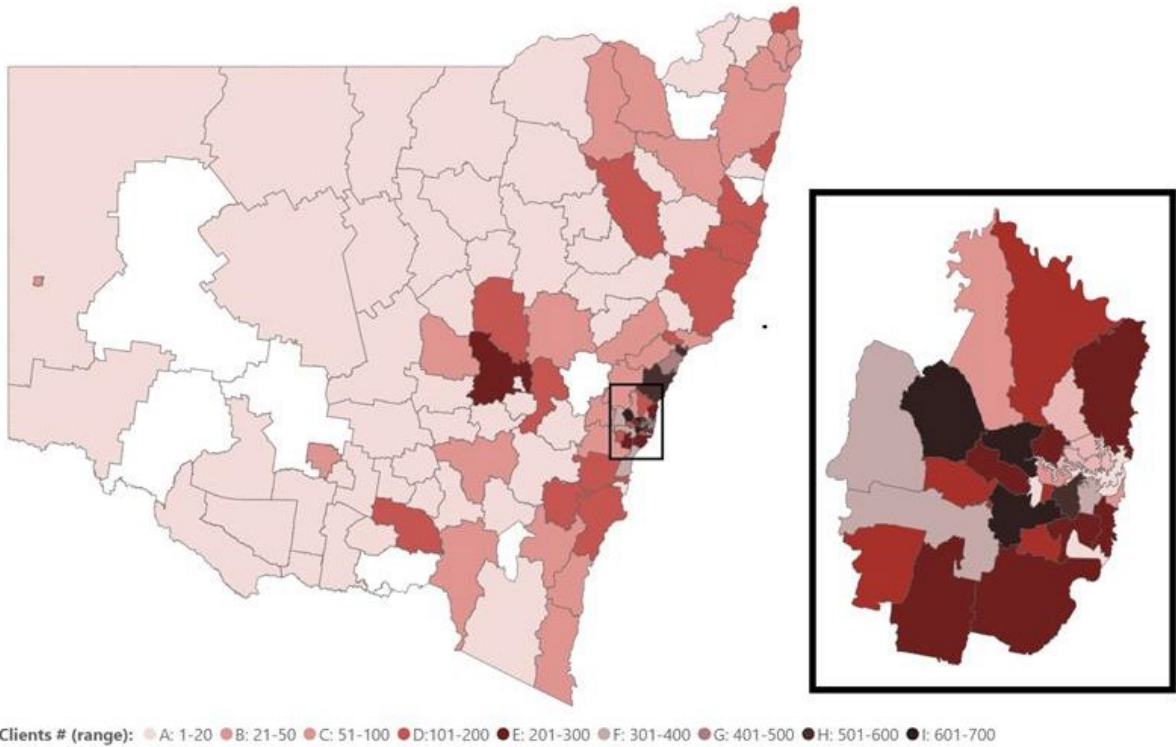
Source: Audit Office analysis of client data provided by NSW Trustee and Guardian

Different accommodation types of NSW Trustee and Guardian's guardianship clients, 30 June 2022



Source: Audit Office analysis of client data provided by NSW Trustee and Guardian

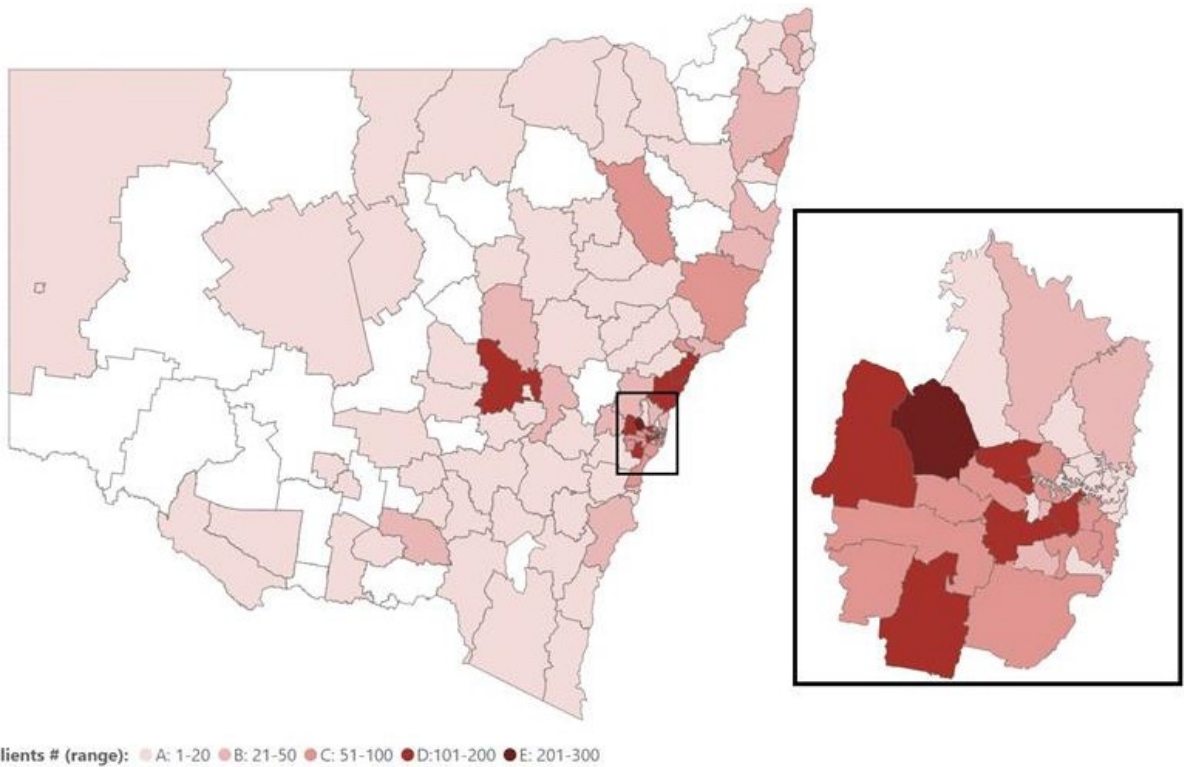
NSW Trustee and Guardian direct financial management client distribution across NSW, 30 June 2022



Note: White areas indicate LGAs with zero clients.

Source: Audit analysis of direct financial management client data provided by NSW Trustee and Guardian.

NSW Trustee and Guardian guardianship client distribution across NSW, 30 June 2022



Note: White areas indicate LGAs with zero clients.

Source: Audit analysis of Public Guardian client data provided by NSW Trustee and Guardian).

Appendix three – Easy English, Easy Read and Plain English formats

Easy English

Easy English is an accessible and alternative form of communication which assumes almost no literacy skills. It is particularly targeted at people with intellectual disabilities, psychiatric or mental illnesses, dyslexia, poor educational outcomes, older people, and those who speak English as a second language. Some features of Easy English include the use of simple/everyday words, simple sentence structure, meaningful and clear images to support text and topic, no text within images, plenty of white space around text (to assist thinking and processing), double line spacing throughout and minimal content on each page. Easy English assumes literacy skills are at a school year two reading level.

An example of an Easy English fact sheet is pictured below.



The fact sheet is presented as a series of three house-shaped frames. The first frame contains the Audit Office logo and the text: 'We are the Audit Office of New South Wales.' and 'We are **not** the NSW government.' The second frame contains the NSW Government logo and the text: 'We check government services.', 'It is only in New South Wales.', and 'We write NSW.' The third frame contains the Audit Office logo, a list of three checkboxes with corresponding smiley faces (green, yellow, red), and the text: 'We look at how the services work. We check' followed by a bulleted list: 'do they help you?', 'are there problems?', and 'what can be better?'.

We are the Audit Office of New South Wales.

We are **not** the NSW government.

We check government services.

It is only in New South Wales.

We write NSW.

We look at how the services work. We check

- do they help you?
- are there problems?
- what can be better?

Source: 'About the NSW Trustee and Guardian Audit - Easy English', Audit Office of NSW.

Easy Read

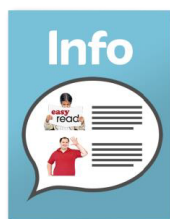
'Easy Read' is a term often used interchangeably with 'Easy English'. However, there are differences between the two formats. Whilst Easy Read is still an accessible form of communication, the format does include more complex words and sentences which require definitions throughout. It is also more text- and image-dense and uses less direct language, such as sentences beginning with 'if' which requires a higher level of cognitive skills to process and use meaningfully. The format also has less white space around text, less line space between paragraphs, and can incorporate text within images. Easy Read assumes literacy skills are between a school year four to six reading level.

An example of an Easy Read fact sheet is pictured below.



How your guardian makes decisions

Public Guardian Easy Read fact sheet



This fact sheet is about:

- The Office of the Public Guardian
- What a guardian does
- How decisions are made



This information is in easy read.

There are some hard words in **blue**.

The hard words are explained.



Source: 'How your guardian makes decisions' fact sheet, NSW Trustee and Guardian website.

Plain English

Plain English is a direct style of writing which assumes a school year seven to nine reading level. It appears like standard forms of writing but assists people to process information quickly by using short sentences, short paragraphs, simple/everyday words (avoiding jargon), clear sections of text, easy-to-understand headings and adequate white space around text. The objective of this format is to enable the reader to find what they need, understand information the first time they read or hear it, and use what they find to meet their needs.

An example of a Plain English fact sheet is pictured below.

Customer Budgets

What is a budget?

A key part of the role of NSW Trustee & Guardian as financial manager is to ensure that a customer's financial affairs are managed in their best interests. This includes ensuring that funds are available to meet planned and unplanned expenses as they arise. A budget helps NSW Trustee & Guardian provide customers with effective financial management services.

A budget is a yearly plan put together by NSW Trustee & Guardian to manage your money. Fixed expenses such as rent, electricity and telephone are paid first. After all fixed expenses are paid the money remaining can be used to meet your other expenses such as personal allowances, clothing and entertainment expenses for the next year. If possible, your expenses must be met from the yearly income, and not rely on any savings or assets.

Every person's financial circumstances are different. Some customers have limited savings, while others have substantial savings and assets.

Developing and reviewing a budget

A budget is prepared for all NSW Trustee & Guardian customers. The budget coincides with the anniversary date of when the order was made. When preparing a budget, consideration needs to be given to provide for any expected and unexpected expenses during the period. Expenses can include money for outings, holidays or other activities and interests, subject to affordability. If your circumstances change unexpectedly, the budget can be reviewed.

Who is involved in preparing a budget?

When preparing a budget, NSW Trustee & Guardian will make contact with you, your family or guardian as appropriate, seeking their views. If there is no response, NSW Trustee & Guardian will rely on expenditure of the last 12 months to plan the budget for the next year. We will then prepare the budget for approval. Once the budget is approved a letter will be sent to you explaining your planned income and expenses for the year. NSW Trustee & Guardian encourages customers to be involved in preparing their budget for the year.



What happens if I want to spend some of my savings or capital?

When NSW Trustee & Guardian is appointed as a financial manager, the financial assets of the person are secured and protected on their behalf. Any request to access or spend savings or capital is carefully considered. NSW Trustee & Guardian has specialist staff and financial planners who review expenditure requests to establish if the request is affordable. Every customer's circumstances are different and requests are considered based on the overall financial position of a customer's estate.

11

Source: Extract from Financial Management Information Handbook (p.11), NSW Trustee and Guardian.

Appendix four – Financial management fees

Fee type	Relevant service and amount prescribed by the Regulation	Section of Regulation	Relevant NSW Trustee and Guardian fees
Administration account and audit fee	Up to \$10 monthly on each account kept by NSW Trustee in respect of the estate*	6	As per the Regulation, plus the following reductions if a client's assets are below \$75,000: <ul style="list-style-type: none"> clients with \$25,000 or less pay no account keeping fee clients with \$25,001 - 75,000 pay \$5 per month
Fee for investment planning	A 'reasonable fee' not exceeding \$150 per hour for preparing, managing and reviewing an investment plan	7	Fees vary depending on the client asset value. For creating a financial plan, financial management clients with asset values: <ul style="list-style-type: none"> between \$0 - \$50,000 are charged \$75. over \$50,000 are charged \$150 per hour For an annual review of a financial plan, financial management clients with asset values: <ul style="list-style-type: none"> \$0 - \$5,000 are not charged \$5,001 - \$50,000 are charged \$37.50 \$50,001 - \$100,000 are charged \$75 Over \$100,000 are charged \$150 per hour
Taxation returns	Fees that NSW Trustee determines to be appropriate for taxation return investigation or lodgement	8	Lodgement of tax return: <ul style="list-style-type: none"> \$270 first hour \$230 additional hourly rate (charged in 15-minute blocks) Tax investigation without lodgement: <ul style="list-style-type: none"> \$135 first hour \$230 additional hourly rate (charged in 15-minute blocks)

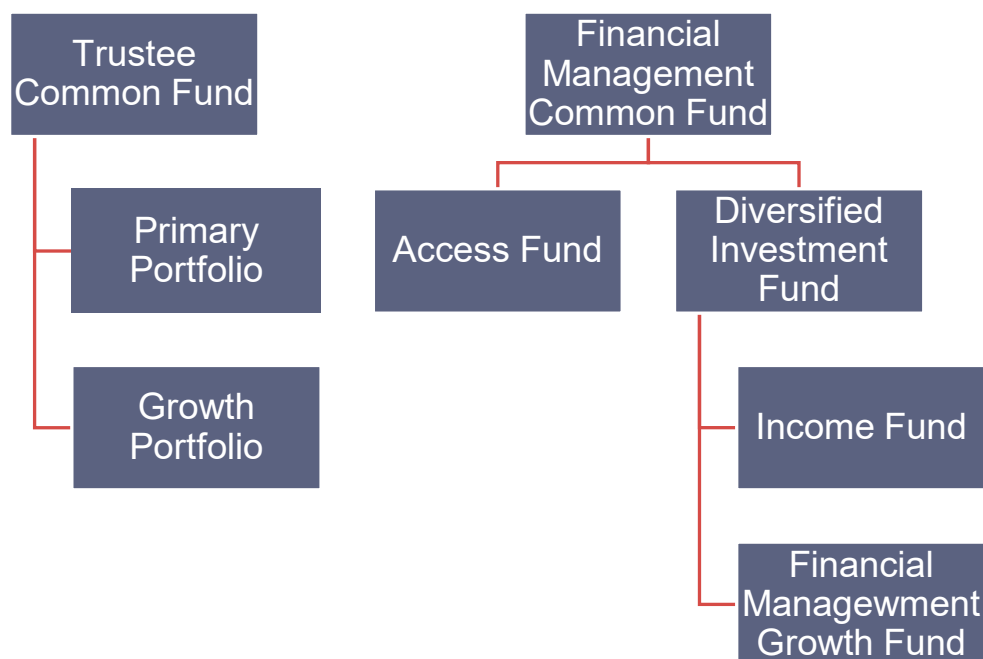
Fee type	Relevant service and amount prescribed by the Regulation	Section of Regulation	Relevant NSW Trustee and Guardian fees
Real estate inspections and valuations	<p>A reasonable fee (not exceeding \$150 per hour) for:</p> <ul style="list-style-type: none"> any inspection, valuation or report preparation of specifications for repairs or renovations to any building work <p>A reasonable fee (not exceeding \$116 per hour) for:</p> <ul style="list-style-type: none"> a second or subsequent inspection on the progress of repairs/renovations 	9	<p>A third party service provider may be engaged by NSW Trustee and Guardian to do property inspections, including securing a property or taking inventory. Costs include:</p> <ul style="list-style-type: none"> Minimum hourly rate: \$220 including GST, up to 4 hours maximum Minimum hourly rate if additional person is required for the work: \$80 including GST, up to 4 hours maximum
Costs for legal advice and proceedings	<p>A fee (or any other cost) for legal advice provided, or legal proceedings conducted, by NSW Trustee in connection with the estate*</p> <p>The costs may be charged on a for-profit basis.</p>	10	<p>Hourly rate for NSW Trustee and Guardian in-house solicitors varies between \$418 incl GST for Solicitor Grade I - III, to \$561 incl GST for Director</p>
Fees for management of common fund	<p>A fee for managing an investment for a client in a common fund</p> <p>Calculated at a rate not exceeding 0.35% per annum of the value of the investment.</p>	11	<p>As per the Regulation cap, the investment fee per year is:</p> <ul style="list-style-type: none"> 0.15% of the value of the trust account 0.25% for Income Fund 0.35% for Financial Management Growth Fund
General power to charge for services	<p>A fee (or any other cost) for any service or matter not otherwise mentioned, to an amount:</p> <ul style="list-style-type: none"> agreed on, or as NSW Trustee determines to be just and reasonable. 	12	<p>Fees for conveyancing services (sale or purchase of a property) include:</p> <ul style="list-style-type: none"> For standards sale/purchase for properties valued \$700,000 or under: \$1,650 incl GST For standards sale/purchase for properties valued \$700,001 or over: \$1,980 incl GST Sale/purchase of retirement village property: \$1,870 incl GST Sale/purchase of commercial property: \$2,200 incl GST Contentious matters: Solicitor's hourly rate <p>Genealogy services: where NSW Trustee and Guardian make enquiries to locate and identify persons to share in an estate, a fee not exceeding five per cent (ex GST) of the net value of the estate will be charged to the estate.</p>

Fee type	Relevant service and amount prescribed by the Regulation	Section of Regulation	Relevant NSW Trustee and Guardian fees
Direct financial management – fee for establishment of the account	One per cent of the value of the estate*, subject to a minimum fee of \$500 being payable, up to a maximum of \$3,000 (payable once only)	26	As per the Regulation, plus the following reductions if a client's assets are below \$75,000: <ul style="list-style-type: none"> clients with \$25,000 or less pay no establishment fee clients with \$25,001 - 75,000 have their establishment fees reduced by \$250
Direct financial management – for management of the estate	1.4% of the value of the estate*, up to a maximum of \$15,000, per annum	26	As per the Regulation, with the management fee calculated daily on the total value, charged at the end of each month.
Private financial management – establishment of the account of the managed person	\$500 (payable once only)	27	As per the Regulation, with the following adjustments depending on client chargeable asset values: <ul style="list-style-type: none"> clients with chargeable assets valued at \$25,000 or less pay no establishment fee clients with chargeable assets valued between \$25,001 - \$75,000 will pay \$250 clients with chargeable assets valued \$75,001 or more will pay \$500
Private financial management – for filing, examination and passing of accounts	Such fee (not exceeding \$300) as NSW Trustee may fix	27	Yearly fee based on complexity: <ul style="list-style-type: none"> \$100 (low) \$200 (medium) \$300 (high)

Source: Audit Office summary of information provided by NSW Trustee and Guardian.

Appendix five – NSW Trustee and Guardian Common Funds

NSW Trustee and Guardian operates a common fund to invest the funds of its customers across its different services. The common fund is broken up into the Trustee Common Fund and the Financial Management Common Fund. From July 2021, NSW Trustee and Guardian merged six of the existing investments options within the Financial Management Common Fund into two.



Trustee Common Fund

The Trustee Common Fund is where customers' estate, trust or power of attorney money is invested by the NSW Trustee and Guardian. The Trustee Common Fund is split into two separate funds. These funds are:

- Primary Portfolio – This portfolio earns a competitive interest rate from term deposits and money market instruments. This portfolio is managed by NSW Trustee and Guardian.
- Growth Portfolio – This portfolio invests in a diverse set of Australian and international companies that have shared listed on major stock exchanges. This fund is managed by the commercial fund manager BlackRock.

Any income earned from the portfolios is credited back to the customers' accounts near 30 June and 31 December each year.

Financial Management Common Fund

The Financial Management Common fund is made up of two types of funds. These funds are:

- funds owned by customers whose financial affairs are directly managed by NSW Trustee and Guardian
- funds of customers whose affairs are managed by a private manager.

The Financial Management Common Fund is split into the Access Fund and two diversified investment funds, the income fund and the financial management growth fund:

- Access fund – This fund invests money into cash and short-term money market securities. The accounts of customers that make up this fund are similar to standard everyday bank accounts.
- Income fund – This fund generates income while maintaining low level investment risks.
- Financial management growth fund – This fund generates a higher return of funds through higher risk investments.

NSW Trustee and Guardian is responsible for the management of the Financial Management Common Fund. Elements of the fund's investment management are outsourced to Black Investment Management Australia. The custody, compliance, transfer and accounting functions of these funds are outsourced to CitiGroup Pty Ltd.

Oversight of the common fund

NSW Trustee and Guardian has an Independent Advisory Committee that provides additional oversight of the common fund. The Committee monitors, reviews and advises the CEO on any issues that may impact customer investments and the overall investing portfolio. The Committee reviews policies, provides oversights and makes recommendations of strategies for the management of the Trustee and Guardians investments.

Financial audits of the common funds are conducted each year by the Audit Office of NSW.

Appendix six – About the audit

Audit objective

To assess whether NSW Trustee and Guardian is effectively delivering guardianship and financial management services aligned to its legislative functions and principles, and relevant standards.

Audit scope and focus

We addressed the audit objective by assessing:

1. Does NSW Trustee and Guardian align its service delivery with its legislative functions and principles, and relevant standards?
 - a) NSW Trustee and Guardian administers financial management and guardianship orders in line with its legislative functions and principles, and relevant standards
 - b) NSW Trustee and Guardian staff are equipped to understand legislative functions and principles, and relevant standards, and apply these in practice
 - c) NSW Trustee and Guardian operating models, systems and processes support delivery of services that give effect to the legislative functions and principles, and relevant standards
2. Does NSW Trustee and Guardian drive and monitor performance to give effect to its legislative functions and principles, and relevant standards?
 - a) NSW Trustee and Guardian has identified measures to track its performance in giving effect to its legislative functions and principles, and relevant standards
 - b) NSW Trustee and Guardian seeks feedback on its service delivery from clients and other relevant stakeholders
 - c) NSW Trustee and Guardian monitors impacts of the changing environment and advocates for systemic change on behalf of clients
 - d) NSW Trustee and Guardian adjusts service delivery in response to performance information and the changing environment
 - e) NSW Trustee and Guardian has sustained or improved its performance over time
3. Has NSW Trustee and Guardian effectively planned the use of additional funding to improve service delivery and adherence to its legislative functions and principles, and relevant standards?
 - a) NSW Trustee and Guardian set up appropriate governance to guide investment of additional funding
 - b) NSW Trustee and Guardian have prioritised additional funding to improve adherence to the legislative functions and principles, and relevant standards including quality of service and client experience
 - c) NSW Trustee and Guardian has set up benefits management to drive the achievement of expected outcomes and assess the effectiveness of additional funding

Audit inclusions and exclusions

Included in this scope are:

- NSW Trustee financial management functions including direct financial management and private financial management
- NSW Public Guardian guardianship functions

The audit did not seek to:

- review other NSW Trustee and Guardian functions such as will making
- question the merits of Government policy objectives.

However, we comment on these issues where they affect our findings or to provide context.

Audit approach

The audit team conducted the audit in accordance with ASAE 3500 'Performance Engagements' and ASAE 3000 'Assurance Engagements Other than Audits or Reviews of Historical Financial Information'. The standards require the audit team to comply with relevant ethical requirements; plan and perform the audit to obtain reasonable assurance about an activity's performance against identified criteria; and express a reasonable assurance conclusion against the audit objective.

In summary, our procedures included:

1. interviewing relevant NSW Trustee and Guardian staff and undertaking observations as relevant
2. examining relevant documents including process manuals, policies, briefs and business cases
3. analysing data including data on fees charged, client files, staffing and performance information.

We also considered:

- documentation from other stakeholders obtained during the audit such as research and studies
- information from other jurisdictions
- information from consultations with other stakeholders including:
 - Other government agencies
 - Community stakeholders
 - Academics and experts

Audit methodology

Our performance audit methodology is designed to satisfy Australian Audit Standard ASAE 3500 Performance Engagements and other professional standards. The standards require the audit team to comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance and draw a conclusion on the audit objective. Our processes have also been designed to comply with requirements specified in the *Government Sector Audit Act 1983* and the *Local Government Act 1993*.

Acknowledgements

We gratefully acknowledge the cooperation and assistance provided by NSW Trustee and Guardian. In particular, we would like to thank our liaison officers and staff who participated in interviews and provided audit evidence.

We are also grateful to the people with lived experience and stakeholders who participated in our focus groups, interviews and provided important feedback to the audit.

Audit cost

The estimated cost of this audit is \$650,000.

Appendix seven – Performance auditing

What are performance audits?

Performance audits determine whether State or local government entities carry out their activities effectively and do so economically and efficiently and in compliance with all relevant laws.

The activities examined by a performance audit may include a government program, all or part of an audited entity, or more than one entity. They can also consider particular issues which affect the whole public sector and/or the whole local government sector. They cannot question the merits of government policy objectives.

The Auditor-General's mandate to undertake performance audits is set out in section 38EA of the *Government Sector Audit Act 1983* for State government entities, and in section 421BD of the *Local Government Act 1993* for local government entities.

Why do we conduct performance audits?

Performance audits provide independent assurance to the NSW Parliament and the public.

Through their recommendations, performance audits seek to improve the value for money the community receives from government services.

Performance audits are selected at the discretion of the Auditor-General who seeks input from parliamentarians, State and local government entities, other interested stakeholders and Audit Office research.

How are performance audits selected?

When selecting and scoping topics, we aim to choose topics that reflect the interests of parliament in holding the government to account. Performance audits are selected at the discretion of the Auditor-General based on our own research, suggestions from the public, and consultation with parliamentarians, agency heads and key government stakeholders. Our three-year performance audit program is published on the website and is reviewed annually to ensure it continues to address significant issues of interest to parliament, aligns with government priorities, and reflects contemporary thinking on public sector management. Our program is sufficiently flexible to allow us to respond readily to any emerging issues.

What happens during the phases of a performance audit?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team develops an understanding of the audit topic and responsible entities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the audited entity, program or activities are assessed. Criteria may be based on relevant legislation, internal policies and procedures, industry standards, best practice, government targets, benchmarks or published guidelines.

At the completion of fieldwork, the audit team meets with management representatives to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with management representatives to check that facts presented in the draft report are accurate and to seek input in developing practical recommendations on areas of improvement.

A final report is then provided to the head of the audited entity who is invited to formally respond to the report. The report presented to the NSW Parliament includes any response from the head of the audited entity. The relevant minister and the Treasurer are also provided with a copy of the final report. In performance audits that involve multiple entities, there may be responses from more than one audited entity or from a nominated coordinating entity.

Who checks to see if recommendations have been implemented?

After the report is presented to the NSW Parliament, it is usual for the entity's Audit and Risk Committee / Audit Risk and Improvement Committee to monitor progress with the implementation of recommendations.

In addition, it is the practice of NSW Parliament's Public Accounts Committee to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report received by the NSW Parliament. These reports are available on the NSW Parliament website.

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian standards.

The Public Accounts Committee appoints an independent reviewer to report on compliance with auditing practices and standards every four years. The reviewer's report is presented to the NSW Parliament and available on its website.

Periodic peer reviews by other Audit Offices test our activities against relevant standards and better practice.

Each audit is subject to internal review prior to its release.

Who pays for performance audits?

No fee is charged to entities for performance audits. Our performance audit services are funded by the NSW Parliament.

Further information and copies of reports

For further information, including copies of performance audit reports and a list of audits currently in-progress, please see our website or contact us on 02 9275 7100.

OUR VISION

Our insights inform and challenge government to improve outcomes for citizens.

OUR PURPOSE

To help Parliament hold government accountable for its use of public resources.

OUR VALUES

Pride in purpose
Curious and open-minded
Valuing people
Contagious integrity
Courage (even when it's uncomfortable)

Level 19, Darling Park Tower 2
201 Sussex Street
Sydney NSW 2000 Australia

PHONE +61 2 9275 7100

mail@audit.nsw.gov.au

Office hours: 8.30am-5.00pm
Monday to Friday.