

ACT AUDITOR-GENERAL'S
PERFORMANCE AUDIT REPORT
**FINANCIAL MANAGEMENT SERVICES
FOR PROTECTED PERSONS**

REPORT NO. 3 / 2023

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PA 21/03

The Speaker
ACT Legislative Assembly
Civic Square, London Circuit
CANBERRA ACT 2601

Dear Madam Speaker

I am pleased to forward to you a Performance Audit Report titled 'Financial Management Services for Protected Persons' for tabling in the Legislative Assembly pursuant to Subsection 17(4) of the *Auditor-General Act 1996*.

The audit has been conducted in accordance with the requirements of the *Auditor-General Act 1996* and relevant professional standards including *ASAE 3500 – Performance Engagements*.

Yours sincerely



Michael Harris
Auditor-General
28 June 2023

The ACT Audit Office acknowledges the Ngunnawal people as traditional custodians of the ACT and recognises any other people or families with connection to the lands of the ACT and region. The Office acknowledges and respects their continuing culture and the contribution they make to the life of this city and this region.

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SUMMARY

The Public Trustee and Guardian (PTG) is a territory authority established under the *Public Trustee and Guardian Act 1985* (PTG Act). The PTG supports some of the most vulnerable members of the Canberra community who require assistance in managing their lives.

If a person is unable to manage their affairs due to accident, illness, age or disability and has not prepared an enduring power of attorney, the ACT Civil and Administrative Tribunal (ACAT) may appoint a manager to manage all or part of that person's finances on their behalf. A person for whom a financial manager is appointed is referred to as a *protected person*.

The role of a financial manager is specified in the *Guardianship and Management of Property Act 1991* (GMP Act). The powers that may be given to a protected person's financial manager are the powers that the person would have if they were legally competent to exercise powers in relation to their own property.

The PTG or another person (a private manager) may be appointed as a protected person's financial manager. The PTG is responsible for the examination of financial accounts submitted by private managers and reporting the outcomes of these examinations to ACAT.

The audit considered the PTG's delivery of financial management services to protected persons as well as its role in examining financial accounts submitted by private managers.

Overall conclusion

The processes used by the Public Trustee and Guardian (PTG) to deliver financial management services to protected persons and examine accounts submitted by private managers have been poor. Shortcomings have been identified across a range of governance, administrative and service delivery arrangements. Ongoing and sustained effort is required to make sure that the PTG is best-placed to meet its responsibilities to protected persons.

Conclusions

GOVERNANCE AND ADMINISTRATIVE ARRANGEMENTS

The Public Trustee and Guardian (PTG) has developed a range of governance arrangements for the delivery of financial management services for protected persons. The governance arrangements require considerable effort and attention to make them more robust and effective.

A key issue for consideration is the management information systems in place to support the delivery of services. The key system for the delivery of financial management services, TACT, is very dated and represents a significant business continuity risk to the PTG. The deployment of Microsoft

Dynamics to support some of its functions, which has been variously described as a Customer Relationship Management system, has been underway since 2017, but its development has since been ceased, pending a review of the project. The PTG needs to develop a strategy for the management of its information systems as a priority.

The PTG's fraud control and fraud risk management arrangements are poor. The PTG's *Fraud, Corruption and Risk Mitigation Strategy* is ineffective in providing a framework for the management of fraud risks in the organisation. The Strategy contains old and incorrect references and does not represent contemporary ACT Public Sector practices. The PTG's risk register, which identifies 11 fraud-related risks, is similarly ineffective in providing a framework for the management of fraud risks.

There is also an opportunity to improve the PTG's program of case file reviews. Case file reviews seek to provide assurance with respect to the management of protected persons' finances. The case file review process should be managed to ensure that clients assessed as having high complexity (who inherently carry a higher risk) are selected for review more regularly.

DELIVERY OF FINANCIAL MANAGEMENT SERVICES

The PTG has adopted a supported decision-making approach. To do this effectively, it is critical that protected persons, or their support persons, are consulted to understand their financial position, as well as their wishes. This consultation is not routinely undertaken, undermining the efforts of the PTG to provide supported decision-making.

The PTG has effective processes for the identification of a protected person's income, expenses, assets and liabilities as well as any ongoing management issues, when it is first appointed as a financial manager. However, in a number of instances in the case files reviewed there was no evidence of the protected person being consulted during this process. Similarly, in a number of instances in the case files reviewed, there was no evidence of a protected person being consulted in the development of an annual budget.

A key mechanism that provides assurance with respect to the PTG's management of a protected person's finances is the provision of an annual itemised statement to a protected person or their guardian at the end of each financial year. This is required by virtue of subsection 27AA(2) of the GMP Act. The statements provide an opportunity for the protected person or their guardian to identify and question any potential irregular transactions associated with their account. In a number of instances in the case files reviewed no statement was provided. For some of these cases the reasons as to why a statement was not provided was not documented.

CLIENT COMPLAINTS AND FEEDBACK

The complaints and feedback processes of the Public Trustee and Guardian (PTG) are not effective. While the PTG collects information from complaints, it does not do so in a manner that enables an analysis of systemic service delivery issues. The PTG does not record complaints in a single register

that records the nature of the complaint, the service to which it relates and the outcome of the complaint.

The PTG does not seek or meaningful client feedback on its financial management services. While collecting this information presents challenges, there is a need for PTG to obtain improved client feedback on the effectiveness of its role as a financial manager for protected persons.

EXAMINATION OF PRIVATE MANAGER ACCOUNTS

The Public Trustee and Guardian (PTG) is ineffective in its examination of private managers' accounts.

The number of protected persons with private managers has steadily increased, while the number of accounts submitted by private managers for review by the PTG has decreased. The data suggests that there is an increasing lack of compliance by private managers with their reporting obligations.

In three of the five years to 2021-22, the PTG has not met expectations (set out in its annual Accountability Indicators) for the number of examinations of accounts to be conducted. In the years that it has not met expectations for the number of examinations undertaken it has fallen short by a significant amount of between 17 percent (2018-19) to 40 percent (2021-22).

In 2020-21 the PTG adopted a 'light touch' approach to the examination of accounts of privately managed protected persons. The PTG has not specifically articulated the purpose or objective of the 'light touch' review. In practice, the purpose of the review is to identify whether the financial position of a protected person, namely their assets or liabilities, has changed by a predetermined level of materiality. Such an approach provides limited assurance with respect to the appropriateness or otherwise of a protected person's expenditure.

Key findings

GOVERNANCE AND ADMINISTRATIVE ARRANGEMENTS

Paragraph

Systems and processes for the delivery of financial management services

A guide to practice for the FMSU of the Public Trustee and Guardian (the FMSU Manual) guides the activities of FMSU staff providing financial management services to protected persons. The Manual is comprehensive, at over 200 pages long, and usefully outlines legislative requirements and processes to be followed in the delivery of financial management services. It includes a mixture of policy and procedural guidance. A review of the FMSU Manual for the purpose of the audit identified several outdated references to legislation and strategies. The version of the FMSU Manual reviewed was Version 3.1, which was last reviewed and updated in October 2021. In May 2023, the PTG advised that the FMSU Manual was again updated in March 2023.

2.9

The PTG has several ICT systems that support the delivery of financial management services to protected persons. The primary system is the PTG's trust accounting system: TACT. TACT is a specialist industry trustee system that allows for the recording of data about protected persons including their income, expenses, assets and liabilities. TACT is a very dated system. It has become expensive to maintain and support and is a significant business continuity risk for the PTG. 2.26

Since 2017, the PTG has been in the process of implementing various workflow improvement modules through the Microsoft Dynamics platform. The work has been described in a series of documents as a Customer Relationship Management (CRM) system. In the first phase of the project, the PTG developed a *will drafting* application and *enduring power of attorney* module followed by a *guardianship* module at a cost of \$935,479. The PTG subsequently decided to develop additional modules through alternative project management arrangements. A business case was developed for Stage 2 of the project, which identified the development of a *private manager* module, *financial management* module and an *estates/trusts* module, at a cost of \$157,440 (GST inc). As at March 2023 the private manager module of Stage 2 has been implemented (as well as the unplanned implementation of an *unclaimed monies* module) at a cost of \$207,360 (GST inc). The *financial management* module (and *estates/trusts* module) have not been delivered. Further work on the modules has ceased, pending a review of the project. 2.27

The PTG has not determined what the relationship will be between the CRM modules and TACT (the PTG's trust accounting system). The PTG advised that the integration of the CRM modules with TACT was not part of the current project, but that 'this was the intention in the longer term and would be considered and decided upon in due course'. The PTG will need to decide as a matter of priority the relationship between the CRM modules and TACT and how data in the modules and TACT will be integrated. 2.28

Staff training and support

The FMSU Manual outlines a four-day program for the induction of new staff members on financial management services policies and procedures. This is essentially a checklist of matters on which the new staff member will receive training. This specific FMSU training for new starters was developed in-house and is tailored to the work in FMSU. Three new staff members were inducted during the 12-month period preceding the audit and they were provided with the relevant training. PTG staff are also encouraged to complete a variety of Justice and Community Services Directorate (JACS) online training modules. 2.41

Fraud prevention and control

The PTG has a *Fraud, Corruption and Risk Mitigation Strategy*. The most recent strategy is for 2022-23. It was signed and endorsed by the Public Trustee and Guardian on 1 July 2022. The Strategy identifies an Executive within the Justice and Community Safety Directorate SERBIR as having responsibility for the PTG. A review of the PTG's strategies for the past three years (2020-21 to 2022-23) shows very little 2.53

difference; in practice it is apparent that the PTG has taken and re-dated the previous year's document. This means that the document contains old and incorrect references and does not represent contemporary ACT Public Sector practices.

The PTG maintains a risk register, which identifies eleven fraud risks. After the application of controls there are three High risks, seven Medium risks and one Low risk. For two risks with an inherent risk rating of High, the risk register notes there is 'room for improvement' in the effectiveness of the controls but 'further mitigation strategies are not identified'. The risk register is silent on what additional monitoring or assurance strategies are intended to be applied to these risks. The register is stated to be updated annually. However, the date identified in the risk register is 30 October 2019, which is the same date identified in an earlier version of the risk register obtained for the purpose of the audit. There was no difference in the fraud risks, their rating controls and responsibilities, across the two risk registers. This suggests that the register is rolled over on an annual basis and is not routinely reviewed. 2.61

The PTG has a *Conflict of Interests* policy. The policy was developed in July 2017 and was due for review in July 2020. The policy was not reviewed as planned and has otherwise not been updated since 2017. The policy requires the PTG to establish a Register of Conflicts of Interest. The PTG has developed and implemented a register, which records information around the person disclosing the conflict, nature of the conflict and action taken to address the conflict. A review of the register shows that there are declarations dating back to 2017. The register is not updated on an annual basis and the dates of declarations of possible conflicts have not been shown for recent declarations. 2.70

In late October 2021 the Public Trustee and Guardian became aware of potential misconduct on the part of a PTG Financial Manager. For the purpose of considering options for the handling of the potential misconduct, the PTG sought advice and assistance from the JACS Strategic HR unit. A Preliminary Assessment was conducted in relation to the alleged misconduct, in accordance with the *ACT Public Sector Administrative and Related Classification Enterprise Agreement 2018-21*. The Preliminary Assessment took approximately two and a half months to complete. The report (dated 18 January 2022, but signed on 25 January 2022) identified 'systemic failures' on the part of a number of participants in the process, including the PTG Financial Manager. The report recommended that a formal misconduct investigation be undertaken. On 2 February 2022 the PTG Financial Manager resigned (with a notified last day of 15 February 2022). 2.100

Because of the PTG's failure to commence a misconduct investigation in a timely manner the PTG Financial Manager was able to resign and effectively prevent any further investigation from occurring. As a result, the PTG has not fully ascertained the facts and circumstances of the alleged misconduct or the sale of the property, including: 2.101

- the motivations of the different participants in the sale of the property; and
- any potential corruption or criminal activity on the part of participants in the process.

The Preliminary Assessment took too long to complete and was conducted with a view to trying to establish the facts and circumstances of the matter. This is not the purpose of a Preliminary Assessment, which is intended to be a short and focused assessment as a means by which to determine an appropriate course of action, including whether a misconduct investigation is required. 2.102

Quality assurance

Guidance on the assessment of client risk and complexity, and the allocation of client case files, is embodied in the FMSU Manual and two annexures supporting the Manual: *Annexure D – Client File Ratings*; and *Annexure E – Client Complexity Matrix*. The guidance was overly complex and, in parts, contradictory: both of the annexures required assessments to be made of a client and their circumstances, with a view to identifying the relative risk and complexity of the client. The annexures require an assessment of similar considerations. Guidance for the allocation of case files to staff, as per the FMSU Manual and *Annexure D – Client File Ratings* was misaligned, particularly with respect to the responsibilities of ASO 5 and ASO 6 staff. 2.119

A review of the allocation of staffing for 34 protected persons for whom the PTG was providing financial management services, against the requirements of the FMSU Manual, showed the level of the officer that was allocated was appropriate in 26 cases. In six cases the level of the officer was not appropriate; in three cases the case could have been allocated to a more junior officer and in three cases the case could have been allocated to a more senior officer. In two cases there was insufficient information on the file to ascertain the risk and complexity of the client's case file was not documented. In May 2023 the PTG advised that the annexures to the FMSU Manual had been reviewed and revised to ensure consistency. The PTG also provided evidence that the revised *Client Complexity Matrix* had been applied to all clients and that the clients had subsequently been allocated to appropriately classified staff. 2.120

The PTG has identified TACTICS as a key fraud detection mechanism. The TACTICS software analytical tool allows programs, such as Microsoft Word and Excel, to connect directly to the underlying tables of the TACT database and interrogate the data. The use of TACTICS in 2014 identified irregular transactions which subsequently identified a fraud. The PTG runs a suite of TACTICS reports that provide PTG staff with an opportunity to identify irregular transactions. 2.125

The PTG has developed a program of case file reviews through which it seeks to undertake reviews: approximately two to three months after the PTG has been appointed as a financial manager; in the month prior to an ACAT review hearing; and on an ad hoc basis. In 2021-22, 36 initial case file reviews were conducted, 87 were conducted for the purpose of an ACAT review hearing and 25 were conducted on an ad hoc basis. The FMSU Manual does not specify criteria by which the files should be selected on an ad hoc basis and the planning and conduct of case file reviews is not undertaken through a risk-based approach. There is an opportunity to manage the case file review process to ensure that clients assessed as having high complexity (who inherently carry a higher risk) are selected for review more regularly. 2.143

A review of 14 case file reviews conducted by the PTG in 2021-22 shows that five files were reported as being in good order, or not requiring updates, amendments or follow-up. However, it is apparent that the case file reviews did, in fact, identify matters for follow-up. Reporting the case files as being in good order, but otherwise identifying follow-up action that is required, misrepresents the outcomes of the case file review. 2.144

DELIVERY OF FINANCIAL MANAGEMENT SERVICES

Paragraph

Decision-making principles

The FMSU Manual outlines a *Structured Decision-Making Framework Workflow* that provides guidance for staff when making decisions for financially managed persons under the GMP Act. The *Structured Decision-Making Framework Workflow* aids in determining whether a protected person's views, wishes and preferences can be ascertained. In the 34 case files reviewed by the Audit Office, there was no evidence of the PTG's consideration of the Workflow. By not documenting the recognition and application of the *Structured Decision-Making Framework Workflow* the PTG cannot demonstrate that it is actively promoting and pursuing the ideal of supported decision-making for protected persons. 3.20

Financial management services

When the PTG is first appointed as financial manager for a protected person, the Transition Team is responsible for identifying the protected person's income, expenses, assets and liabilities as well as any ongoing management issues. To assist with this process, the PTG has developed and included as annexures to the FMSU Manual: *Guidelines – Client Intake Process*; and *New Client Information Checklist*. A review of 12 case files where the PTG was newly appointed as a financial manager in 2021–22 found: 3.39

- for all 12 cases a *New Client Information Checklist* was completed; and
- for three cases there was no record on file of initial meetings with the protected person and/or a support person initial meeting, nor was there a record of why a meeting was not held. For one of these cases there was, however, correspondence with a support organisation about the person's finances.

The FMSU Manual requires financial managers to develop either a simple or complex budget depending on a protected person's circumstances. In the 34 case files reviewed by the Audit Office a budget had been prepared for each of the protected persons. The budget was located on the protected person's file. Of the 34 case files selected for review, it was apparent that nine required complex budgets; these were supported by a financial plan for the protected person's investments. Simple budgets were prepared for the remaining 25 case files, which were basic in format but otherwise reflected the relatively fixed income and expenses of the protected persons. There was limited evidence that the PTG regularly consulted protected persons or their guardians around their financial needs prior to the preparation of their annual budget. For 22 of the 34 case files reviewed (64 percent) there was no 3.52

evidence that the protected person and/or their support was consulted in the preparation of the budget.

Subsection 27AA(2) of the GMP Act requires the PTG to provide an annual itemised statement to a protected person or their guardian at the end of each financial year. The statements provide an opportunity for the protected person or their guardian to identify and question any potential irregular transactions associated with their account. In the 24 case files reviewed by the Audit Office (where an annual statement should have been provided) it was apparent for 11 cases that no statement was provided and for four of these cases the reasons as to why a statement was not provided was not documented. 3.61

Fees for financial management services

The *Public Trustee and Guardian Act 1985* allows for the PTG to charge fees for its services. *Public Trustee and Guardian (Fees) Determination 2022 (No 2)* (Disallowable instrument DI2022-199) was made on 29 August 2022; it sets out the basis on which the PTG charges fees for its services. A business case developed by the PTG in 2020 noted that ‘the nature of its funding arrangements pre-supposes that PTG must cross-subsidise its services to ensure accessibility by the community, particularly those experiencing hardship’ and that ‘subsidisation is vital to PTG’s service model in that, if cross-subsidies were removed, it is likely that some people in the community would have a lower expectation of services, or that Government would be required to fund the provision of such services directly’. It is not clear whether the PTG’s fees cover the actual cost of delivering financial management services because the PTG has not undertaken work to establish the cost of delivering its services. 3.72

CLIENT COMPLAINTS AND FEEDBACK

Paragraph

Client complaints

The PTG has a *Complaints Policy*, which is published as a fact sheet on its website. The *Complaints Policy* refers to the role of a Complaints Co-ordinator in managing, and responding to, complaints. Such a role does not exist within the PTG; in practice the Public Trustee and Guardian has personally coordinated and responded to complaints that have not been resolved immediately. A 2021 Justice and Community Safety Directorate review into the rights protection services provided through the PTG highlighted the risks of such an approach. Appropriately designating a Complaints Co-ordinator would provide the PTG with a stronger and more effective basis managing complaints and feedback. 4.9

Complaints that the PTG receives direct, and which require a formal response, are recorded in a spreadsheet; the ‘complaints register’. Complaints that are received through third parties, e.g. a Minister or a Member of the Legislative Assembly, a Legislative Assembly committee, or a body such as the ACT Ombudsman or the ACT Human Rights Commission, are recorded in the bespoke systems for managing correspondence from those sources. Maintaining information on complaints across 4.12

multiple systems increases risks associated with data accuracy and impairs the ability of the PTG to analyse, review and report on its complaints management processes.

The complaints register contains information on: the date of the complaint; from whom it was received; a brief description of the complaint; and when it was resolved. The complaints register does not record the outcome of a complaint or categorise the nature of the complaint. Not including this information impairs the ability of the PTG to analyse, review and report on its complaints management processes. 4.17

With the exception of complaints received from the ACT Ombudsman, the PTG does not report complaints information in its annual report. Including information on the number of complaints it receives, the timeliness of resolution and the broad actions taken to resolve the complaints would provide greater transparency and accountability to the ACT Legislative Assembly and broader community on the activities of the PTG. 4.24

Client feedback

The PTG does not undertake client satisfaction surveys, but does make client feedback forms available. In 2021–22, 23 clients submitted client feedback forms, compared to 27 in 2020–21. The overall satisfaction ratings from the client feedback forms are published as ‘client survey’ results in the PTG’s annual reports. It is misrepresentative of the PTG to report the results of client feedback forms as ‘client survey’ results because they do not represent a thorough, targeted and systematic collection of information on client satisfaction. 4.30

The PTG should seek better, more-informed feedback from protected persons on its financial management services. This could be received through a properly conducted survey of protected persons or through the invitation of targeted feedback from protected persons or their representatives. Such an approach would accord with the February 2021 *Protection of Rights Services Review* report, which identified a need for the PTG to develop a strategic approach to evaluating the quality of its service delivery, practice, and governance, particularly for protected persons. 4.39

EXAMINATION OF PRIVATE MANAGER ACCOUNTS

Paragraph

Examination of private manager accounts

Private managers are required to lodge annual accounts with the PTG 28 days after the annual anniversary of their appointment. In practice a private manager is requested to provide: a *Statement of Property – Statutory Declaration* (with information relation to income, assets and liabilities); and a range of supporting documentation and schedules. The *Statement of Property – Statutory Declaration* directs the financial manager to provide further information in support of the declaration. It consistently asks for further detailed information to be provided as an attached schedule, but only in relation to income, assets and liabilities. Information with respect to a protected person’s expenditure is not specifically required. A measure of control is provided by the PTG’s requirement that a private manager provide copies of ‘bank statements for all bank accounts held in the protected 5.24

person’s name covering the 12-month examination period (including liabilities)’. To the extent that this includes credit card accounts and otherwise shows outgoings from a protected person’s bank account, there is a level of visibility for the PTG over a protected person’s expenditure. However, there is a lack of clarity and specificity with respect to information to be provided in relation to a protected person’s expenditure.

The number of protected persons with private managers has steadily increased, from 448 as at 30 June 2018 to 713 as at 30 June 2022, while the number of accounts submitted by private managers has decreased, from 696 in 2017-18 to 471 in 2021-22. While the timing of the submission of accounts may account for some differences, the data suggests that there is an increasing lack of compliance by private managers with their reporting obligations. 5.30

A review of the PTG’s examination of private manager accounts, as reported as an Accountability Indicator in its annual Statement of Performance shows: in three out of the five years to 2021-22, the PTG has not met expectations for the number of examinations to be conducted; and in the years that it has not met expectations for the number of reviews undertaken it has fallen short by a significant amount of between 17 percent (2018-19) to 40 percent (2021-22). 5.40

In 2020-21 the PTG significantly exceeded expectations for the number of examinations undertaken, undertaking 688 examinations against a target of 570. This was due to a change in process for conducting the examination, whereby a ‘light touch’ review was now being performed, meaning the PTG had more capacity to undertake reviews. Notwithstanding the change in process, in 2021-22 the PTG reported that it had undertaken 362 examinations against a target of 600. This followed a change of practice, which was agreed to by the PTG and ACAT in April 2021, by which the PTG was to take over responsibility for sending letters to private managers to remind them to lodge their accounts. 5.41

The PTG has developed an *External Accounts Submission – Task Guide* to assist PTG officers in their examination of the financial accounts of privately managed protected persons. The Task Guide provides detailed procedural guidance to PTG officers on administrative processes for the examination of external accounts. Neither the *External Accounts Submission – Task Guide* or any other documentation specifically articulates the purpose or objective of the review. In practice, the purpose of the review is to identify whether the financial position of a protected person, namely their assets or liabilities, has changed by a predetermined level of materiality. The PTG described this as a ‘light touch’ examination of accounts. Such an approach provides limited assurance with respect to the appropriateness or otherwise of a protected person’s expenditure. 5.57

Reporting of private managers to ACAT

Few issues are identified by the PTG through its examination of private manager accounts. In 2020-21 and 2021-22, since the commencement of its ‘light touch’ approach to the examination of financial accounts, the PTG has identified and reported two matters to ACAT. In 2019-20 17 matters were reported to ACAT, the 5.64

majority of which related to the non-lodgement of accounts. Two matters were reported as misuse of the protected person's finances.

Where concerns are identified with respect to a private manager's actions, there is a difference in expectation between the PTG and ACAT as to their respective roles. The difference in expectation relates to whether there should be a recommendation or advice from the PTG with respect to the potential course of action to be undertaken by ACAT. The PTG does not provide advice to ACAT on the action that it could take with respect to any shortcomings it has identified in a private manager's activities. The PTG sees this as the responsibility of ACAT. ACAT advised that it sees value in the PTG advising ACAT of the action it believes should be taken, should an irregularity be identified in the financial statements submitted by the private managers. The difference in expectation may be a moot point, however, because the PTG has only referred two matters to ACAT in the two years to July 2022.

5.73

Recommendations

RECOMMENDATION 1 FMSU MANUAL REVIEW

The Public Trustee and Guardian should review and update the FMSU Manual on, at least, an annual basis.

RECOMMENDATION 2 ICT SYSTEMS TO SUPPORT FINANCIAL MANAGEMENT

The Public Trustee and Guardian should undertake a strategic review of its information management system needs. As part of this review the PTG should consider:

- a) the need for, and future uses of, the CRM modules and TACT; and
- b) the extent to which they need to be integrated.

RECOMMENDATION 3 RISK REGISTER

The Public Trustee and Guardian should:

- a) actively review and update its risk registers on a regular basis; and
- b) for those risks identified as High risks for which existing controls are inadequate, identify what additional monitoring or assurance strategies are intended to be applied to these risks.

RECOMMENDATION 4 CONFLICT OF INTEREST REGISTER

The Public Trustee and Guardian should:

- a) review its *Conflict of Interests* policy and update it as necessary; and
- b) in doing so, determine a practice for the management and updating of the Register of Conflicts of Interest.

RECOMMENDATION 5 MANAGEMENT OF POTENTIAL MISCONDUCT ALLEGATIONS

The Public Trustee and Guardian should ensure that Preliminary Assessments are conducted in accordance with the relevant *ACT Public Sector Administrative and Related Classification Enterprise Agreement* and the ACT Public Sector Standards Commissioner's *Guidelines to the Misconduct Process*, particularly in relation to timeliness.

RECOMMENDATION 6 CASE FILE REVIEWS

The Public Trustee and Guardian should review its processes for the conduct of case files reviews and in doing so establish and document processes for:

- a) regular review of case files identified as being high risk and complex; and
- b) random, unscheduled reviews of cases distributed across all Financial Managers.

RECOMMENDATION 7 ASSESSMENT OF DECISION-MAKING CAPABILITY

The Public Trustee and Guardian should assess, and document, whether a protected person's views, wishes and preferences can be ascertained.

RECOMMENDATION 8 CONSULTATION DURING THE PREPARATION OF BUDGETS

The Public Trustee and Guardian should update the FMSU Manual to specifically require documentation of consultation (or the reasons why consultation did not take place) with a protected person and/or their support persons during the development of their annual budget.

RECOMMENDATION 9 ANNUAL STATEMENTS

The Public Trustee and Guardian should provide an annual statement to a protected person or their guardian, unless there is a justified reason not to do so, which is documented on the protected person's client file.

RECOMMENDATION 10 COST REVIEW

The Public Trustee and Guardian should undertake an assessment of the costs associated with providing financial management services to protected persons. The cost review could then be used as a basis for determining its funding base and fees for services.

RECOMMENDATION 11 ESTABLISHMENT OF A COMPLAINTS CO-ORDINATOR

The Public Trustee and Guardian should designate a Complaints Co-ordinator to manage, and respond to, complaints in accordance with its *Complaints Policy*.

RECOMMENDATION 12 RECORDING COMPLAINTS

The Public Trustee and Guardian should record in its complaints register information on the category and nature of a complaint, the outcome of the complaint, the name of the client (as well as the complainant) and whether the client is a protected person.

RECOMMENDATION 13 REPORTING COMPLAINTS

The Public Trustee and Guardian should include in its annual report information on all complaints it receives, including information on the timeliness of complaints resolution and the broad actions taken to resolve the complaints.

RECOMMENDATION 14 EVALUATING THE QUALITY OF SERVICE DELIVERY

The Public Trustee and Guardian should develop and implement a strategic approach to evaluating the quality of its financial management services for protected persons. This could be received through a properly conducted survey of protected persons or through the invitation of targeted feedback from protected persons or their representatives.

RECOMMENDATION 15 REQUIREMENT FOR INFORMATION ON EXPENDITURE

The Public Trustee and Guardian should seek an addition to section 6 of the *Guardianship and Management of Property Regulation 1991* to explicitly require a private manager to lodge information with respect to a protected person's expenditure.

RECOMMENDATION 16 REVIEW OF FINANCIAL STATEMENTS

The Public Trustee and Guardian should review its processes for the examination of accounts submitted by private managers. This could involve:

- a) establishing an annual process that allows for the random selection of a predetermined number of accounts to examine in detail; or
- b) undertaking a risk assessment to identify high risk accounts that should undergo additional scrutiny.

RECOMMENDATION 17 CLARIFICATION OF ROLES

The Public Trustee and Guardian should, with the assistance of the Justice and Community Safety Directorate and in consultation with ACAT, decide whether the PTG have a role in recommending potential courses of action to be undertaken by ACAT in the event of non-compliance by a private manager.

Entities' responses

In accordance with subsection 18(2) of the *Auditor-General Act 1996*, the Public Trustee and Guardian was provided with the draft proposed report for comment. All comments were considered and required changes were reflected in the final proposed report.

In accordance with subsection 18(2) of the *Auditor-General Act 1996*, the Public Trustee and Guardian was provided with the final proposed report for comment. All comments were considered and required changes were reflected in the final report.

In accordance with subsection 18(3) of the *Auditor-General Act 1996*, other entities considered to have a direct interest in the report were also provided with extracts of the draft proposed and final proposed reports for comment. All comments were considered and required changes made.

1 INTRODUCTION

Public Trustee and Guardian

- 1.1 The Public Trustee and Guardian (PTG) is a territory authority established under the *Public Trustee and Guardian Act 1985* (PTG Act). The PTG supports some of the most vulnerable members of the Canberra community who require assistance in managing their lives.
- 1.2 The PTG provides a wide range of services that includes, but is not limited to:
- acting as attorney under an enduring power of attorney;
 - undertaking the role of trustee for trusts created in wills, deeds and court orders for families, infants and people with disabilities;
 - acting for people with disabilities where ordered by a Court;
 - acting as financial manager and/or guardian of last resort under appointment by the ACT Civil and Administrative Tribunal (ACAT); and
 - undertaking an annual examination of the accounts maintained by private managers on behalf of people with impaired decision-making ability.

Financial management for protected persons

- 1.3 If a person is unable to manage their affairs due to accident, illness, age or disability and has not prepared an enduring power of attorney, the ACT Civil and Administrative Tribunal (ACAT) may appoint a manager to manage all or part of that person's finances on their behalf.
- 1.4 ACAT typically seeks to appoint a family member or a close friend, who lives in the ACT, to be the manager where possible; a *private manager*. If this is not practicable or possible, ACAT may appoint the PTG to act as manager.
- 1.5 The role of a financial manager is specified in the *Guardianship and Management of Property Act 1991* (GMP Act). The powers that may be given to a person's financial manager are the powers that the person would have if they were legally competent to exercise powers in relation to their own property.

Role of financial manager

- 1.6 The role of financial manager includes:
- collection of money:

- collecting and accounting for the protected person's income, including pension entitlements, superannuation, rents, investments, dividends from shares and interest.
- budgeting and payment of expenses:
 - preparing budgets and prioritising payment of the protected person's expenses, which typically include accommodation, personal expenses, rent, rates, property repairs, utilities, medical, hospital or nursing home charges.
- property management:
 - managing the protected person's property including monitoring their share portfolio, supervising rental properties and maintaining other investments.
- preparation and lodgement of tax returns:
 - preparing and lodging, or arranging the preparation and lodgement of, a protected person's income tax returns.
- maintenance of financial records:
 - maintaining detailed and accurate accounts for the protected person.

1.7 Financial managers owe a fiduciary responsibility to the protected person. Financial managers must ensure that funds held on behalf of a protected person are managed and invested prudently.

PTG examination of private manager accounts

1.8 As well as undertaking the role of financial manager for a protected person, the PTG also examines accounts submitted by private financial managers (private managers). When ACAT has appointed a person other than the PTG to be the financial manager, that person must lodge financial accounts for examination by the PTG each year. A fee is payable for this service, which can be reimbursed from the account being managed.

1.9 Private managers have a similar responsibility to that of the PTG as a financial manager. They also have a statutory obligation to:

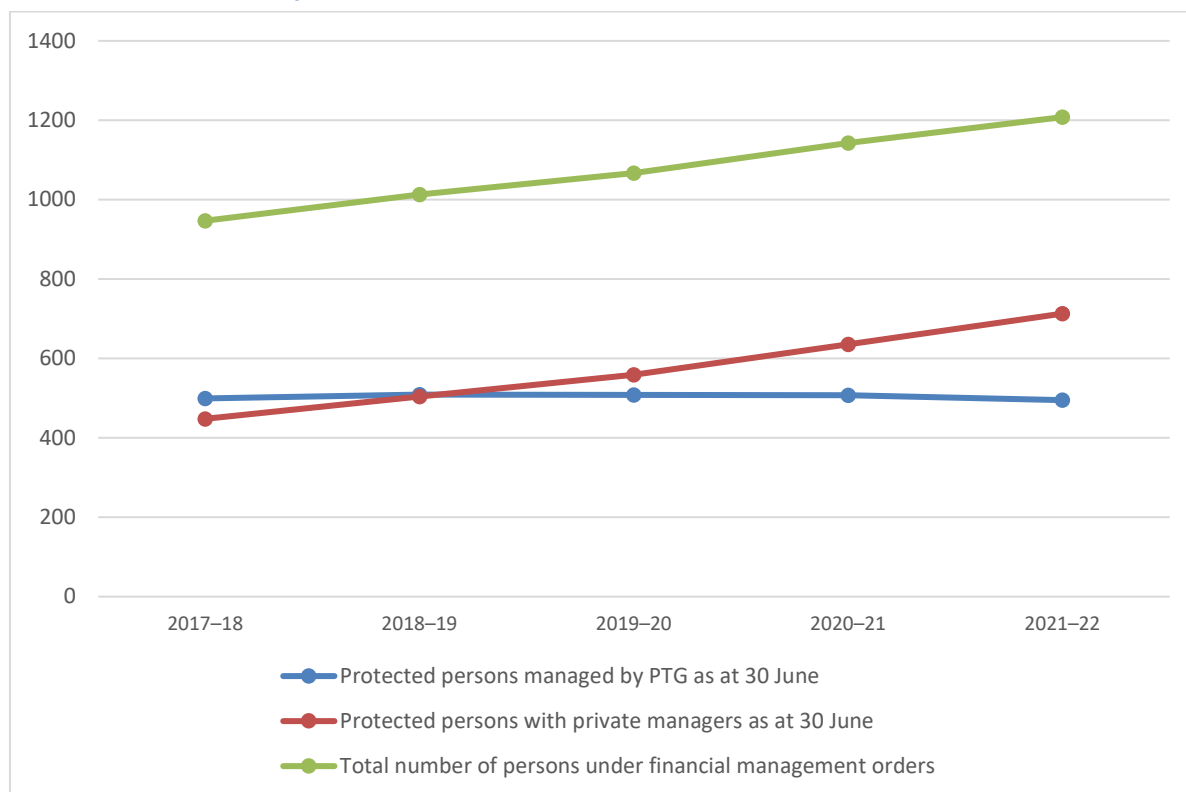
- exercise power in the best interests of the person;
- ensure that in the exercise of the power their own interests do not conflict with those of the protected person; and
- ensure that their own property is kept separately from that of the protected person.

1.10 Where the PTG believes that the private manager is acting without reasonable care, or not in the best interests of the protected person, the PTG is expected to advise ACAT.

Numbers of protected persons under financial management

1.11 The numbers of protected persons under PTG financial management and the numbers of protected persons under private financial management are shown at Figure 1-1.

Figure 1-1 Number of protected persons under financial management (2017-18 to 2021-22)



Source: Audit Office, based on PTG data.

1.12 A review of information on the number of protected persons under financial management between 2017-18 and 2021-22 shows:

- the total number of protected persons under financial management has steadily increased from 947 as at 30 June 2018 to 1208 as at 30 June 2022;
- the number of protected persons managed by the PTG remained relatively stable, from 499 as at 30 June 2018 to 495 as at 30 June 2022; and
- the number of protected persons managed by private managers has increased significantly, from 448 as at 30 June 2018 to 713 as at 30 June 2022.

Responsibilities for protected persons

1.13 The GMP Act governs the activities of anyone acting as a guardian or financial manager of a protected person. The GMP ACT applies equally to the PTG and private managers.

1.14 Under the GMP Act, a person is identified as having impaired decision-making ability if the person's decision-making ability is impaired because of a physical, mental, psychological or intellectual condition or state (whether or not the condition or state is a diagnosable illness).

1.15 Under the GMP Act, decision makers must observe the following principles:

- the protected person’s wishes, as far as they can be worked out, must be given effect to, unless making the decision in accordance with the wishes is likely to significantly adversely affect the protected person’s interests;
- if giving effect to the protected person’s wishes is likely to significantly adversely affect the person’s interests, the decision-maker must give effect to the protected person’s wishes as far as possible without significantly adversely affecting the protected person’s interests;
- if the protected person’s wishes cannot be given effect to at all, the interests of the protected person must be promoted;
- the protected person’s life (including the person’s lifestyle) must be interfered with to the smallest extent necessary;
- the protected person must be encouraged to look after themselves as far as possible; and
- the protected person must be encouraged to live in the general community, and take part in community activities, as far as possible.

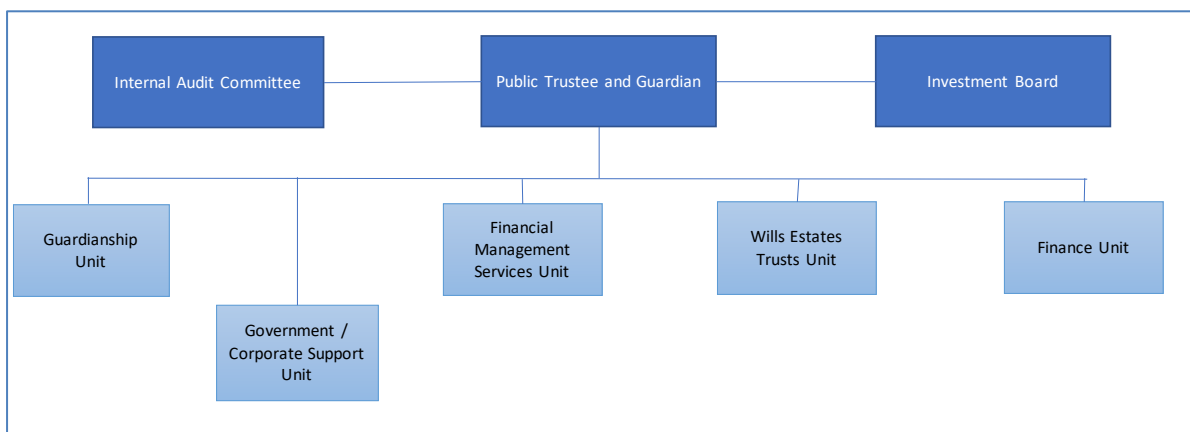
1.16 Before making a decision, decision makers must consult with the person’s carer/s unless the consultation would adversely affect the protected person’s interests. A decision maker is not limited in who they may consult in making a decision.

1.17 The powers given to a person’s guardian, or a manager of a person’s property, are to be no more restrictive of the person’s freedom of decision and action than is necessary to achieve the purpose of the order.

PTG administrative arrangements

1.18 The PTG’s organisational chart is shown at Figure 1-2.

Figure 1-2 PTG organisational chart



Source: Adapted by ACT Audit Office from organisational chart at page 9 of PTG’s 2020–21 annual report.

1.19 The following business units have a role in the provision of financial management services for protected persons:

PTG as financial manager

- Financial Management Services Unit: Manages finances for protected persons.
- Finance Unit: Provides advice and support on property management and undertakes investment reviews for protected persons.

PTG examination of private manager accounts

- Finance Unit: Reviews financial statements submitted by private managers and provides advice to ACAT on any issues that arise.

Audit objective and scope

Audit objective

1.20 The objective of the audit was to assess the effectiveness of the PTG's delivery and oversight of financial management services to protected persons.

Audit scope

1.21 The audit considered the activities of the PTG to:

- provide services to protected persons as a financial manager; and
- examine the accounts submitted by other persons appointed as a financial manager, i.e. private managers.

PTG provision of financial management services

1.22 The audit considered the PTG's governance and administrative arrangements, and systems and processes, for the provision of financial management services. This included consideration of:

- training provided to PTG staff;
- quality assurance arrangements;
- fraud prevention and control arrangements; and
- processes for the collection, management and use of information gathered from complaints to improve service delivery.

1.23 The audit also considered:

- how the PTG identifies and responds to the needs of protected persons;

- how the PTG communicates with protected persons or their guardians or care givers; and
- fees charged for services.

PTG examination of private manager accounts

- 1.24 With respect to the activities of the PTG in relation to other persons appointed as a financial manager, the audit considered the:
- systems and processes that have been established for the examination of private manager accounts; and
 - fees charges charged for the role.
- 1.25 The audit considered the effectiveness of the delivery of financial management services to protected persons with reference to the *Guardianship and Management of Property Act 1991* and relevant standards and principles.

Out of scope

- 1.26 The audit did not consider the activities of the PTG (or any other person) in relation to guardianship services.
- 1.27 The audit did not consider the PTG's financial management services for persons whose finances were being managed under enduring powers of attorney; these persons are not protected persons.
- 1.28 The audit did not seek to assess the appropriateness of financial management decisions made by the PTG or private managers. The audit focused on governance and administrative arrangements to support appropriate decision-making.

Audit criteria, approach and method

Audit criteria

- 1.29 To form a conclusion against the objective, the following criteria were used:
- Has the PTG established effective governance and administrative arrangements for the delivery of financial management services to protected persons?
 - Does the PTG have effective systems and processes that support the effective delivery of financial management services for protected persons, including identifying their income, expenses, assets and liabilities?
 - Do PTG financial managers receive appropriate training that supports the effective delivery of financial management services?
 - Has the PTG established adequate processes to prevent and detect fraud by financial managers?

- Has the PTG established a suitable quality assurance program for its financial management services?
- Are there effective arrangements with ACAT for the sharing of information regarding protected persons?
- Does the PTG provide financial management services effectively and in accordance with relevant standards, principles and legislation?
 - Does PTG have adequate processes to ensure the financial management needs of protected persons are effectively identified?
 - Are fees for financial management services appropriate?
- Does the PTG collect, manage and use information gathered from complaints to improve service delivery?
 - Has the PTG established an adequate complaints management framework?
 - Are complaints data effectively collated and analysed and used to improve service delivery?
- Does the PTG effectively examine the accounts provided by private financial managers?
 - Has the PTG established effective systems and processes for the identification and examination of accounts of private financial managers appointed by ACAT?

Audit approach and method

1.30 In conducting the audit, the audit team:

- interviewed and had discussions with key PTG staff;
- identified and reviewed relevant information and documentation, including the PTG’s governance and accountability framework and related policies and procedures for the delivery of PTG’s financial management services and the PTG’s examination of private manager accounts, having regard to the national standards for financial managers;
- reviewed a selection of protected persons’ case files;
- reviewed the findings of reports on the provision of financial management services in both the ACT and other jurisdictions; and
- consulted ACAT, the ACT Ombudsman’s Office, the ACT Human Rights Commission and the ACT Disability, Aged and Carer Advocacy Service.

Case file review

PTG role as financial manager

1.31 For the purpose of considering the PTG’s role as a financial manager, the Audit Office reviewed 34 cases where the PTG was providing financial management services to a protected person.

- 1.32 This review sought to establish whether protected persons were managed by a PTG staff member at an appropriate level and that the protected person's;
- ability to make decisions was assessed under the PTG's structured decision-making framework; and
 - financial position was determined in accordance with policies and procedures.
- 1.33 The review also sought to establish whether an appropriate annual budget was prepared by the PTG for protected persons and that they were appropriately consulted with in determining their annual budget.
- 1.34 The review sought to establish whether expenses charged to protected persons' accounts were supported by invoices.
- 1.35 In addition, 14 case file reviews were examined. Case file reviews are undertaken by the PTG as part of its ongoing quality assurance program. They involve a check of:
- client details;
 - data completeness around income, assets, debts etc; and
 - compliance with FMSU manual requirements such as creation of draft budgets and documentation of client visits.
- 1.36 The review of the case file reviews sought to establish whether the reviews effectively identified quality issues.

PTG role in examining accounts provided by private managers

- 1.37 For the purpose of considering the PTG's role in examining accounts provided by private managers five cases were examined. The review did not seek to assess the performance of private managers themselves.
- 1.38 The review included an assessment of:
- the quality of the PTG's review of private manager accounts; and
 - whether issues with the performance of private managers were effectively identified and handled.
- 1.39 The audit was performed in accordance with *ASAE 3500 – Performance Engagements*. The audit adopted the policy and practice statements outlined in the Audit Office's *Performance Audit Methods and Practices (PAMPr)* which is designed to comply with the requirements of the *Auditor-General Act 1996* and *ASAE 3500 – Performance Engagements*
- 1.40 In the conduct of this performance audit the ACT Audit Office complied with the independence and other relevant ethical requirements related to assurance engagements.

2 GOVERNANCE AND ADMINISTRATIVE ARRANGEMENTS

- 2.1 This chapter considers the Public Trustee and Guardian's governance and administrative arrangements for the delivery of financial management services to protected persons. It discusses the PTG's systems and processes for the delivery of financial management services, including policy and procedural guidance, management information systems and fraud prevention arrangements.

Summary

Conclusions

The Public Trustee and Guardian (PTG) has developed a range of governance arrangements for the delivery of financial management services for protected persons. The governance arrangements require considerable effort and attention to make them more robust and effective.

A key issue for consideration is the management information systems in place to support the delivery of services. The key system for the delivery of financial management services, TACT, is very dated and represents a significant business continuity risk to the PTG. The deployment of Microsoft Dynamics to support some of its functions, which has been variously described as a Customer Relationship Management system, has been underway since 2017, but its development has since been ceased, pending a review of the project. The PTG needs to develop a strategy for the management of its information systems as a priority.

The PTG's fraud control and fraud risk management arrangements are poor. The PTG's *Fraud, Corruption and Risk Mitigation Strategy* is ineffective in providing a framework for the management of fraud risks in the organisation. The Strategy contains old and incorrect references and does not represent contemporary ACT Public Sector practices. The PTG's risk register, which identifies 11 fraud-related risks, is similarly ineffective in providing a framework for the management of fraud risks.

There is also an opportunity to improve the PTG's program of case file reviews. Case file reviews seek to provide assurance with respect to the management of protected persons' finances. The case file review process should be managed to ensure that clients assessed as having high complexity (who inherently carry a higher risk) are selected for review more regularly.

Key findings

	Paragraph
<h3>Systems and processes for the delivery of financial management services</h3>	
<p>A <i>guide to practice for the FMSU of the Public Trustee and Guardian</i> (the FMSU Manual) guides the activities of FMSU staff providing financial management services to protected persons. The Manual is comprehensive, at over 200 pages long, and usefully outlines legislative requirements and processes to be followed in the delivery of financial management services. It includes a mixture of policy and procedural guidance. A review of the FMSU Manual for the purpose of the audit identified several outdated references to legislation and strategies. The version of the FMSU Manual reviewed was Version 3.1, which was last reviewed and updated in October 2021. In May 2023, the PTG advised that the FMSU Manual was again updated in March 2023.</p>	2.9
<p>The PTG has several ICT systems that support the delivery of financial management services to protected persons. The primary system is the PTG’s trust accounting system: TACT. TACT is a specialist industry trustee system that allows for the recording of data about protected persons including their income, expenses, assets and liabilities. TACT is a very dated system. It has become expensive to maintain and support and is a significant business continuity risk for the PTG.</p>	2.26
<p>Since 2017, the PTG has been in the process of implementing various workflow improvement modules through the Microsoft Dynamics platform. The work has been described in a series of documents as a Customer Relationship Management (CRM) system. In the first phase of the project, the PTG developed a <i>will drafting</i> application and <i>enduring power of attorney</i> module followed by a <i>guardianship</i> module at a cost of \$935,479. The PTG subsequently decided to develop additional modules through alternative project management arrangements. A business case was developed for Stage 2 of the project, which identified the development of a <i>private manager</i> module, <i>financial management</i> module and an <i>estates/trusts</i> module, at a cost of \$157,440 (GST inc). As at March 2023 the private manager module of Stage 2 has been implemented (as well as the unplanned implementation of an <i>unclaimed monies</i> module) at a cost of \$207,360 (GST inc). The <i>financial management</i> module (and <i>estates/trusts</i> module) have not been delivered. Further work on the modules has ceased, pending a review of the project.</p>	2.27
<p>The PTG has not determined what the relationship will be between the CRM modules and TACT (the PTG’s trust accounting system). The PTG advised that the integration of the CRM modules with TACT was not part of the current project, but that ‘this was the intention in the longer term and would be considered and decided upon in due course’. The PTG will need to decide as a matter of priority the relationship between the CRM modules and TACT and how data in the modules and TACT will be integrated.</p>	2.28

Staff training and support

The FMSU Manual outlines a four-day program for the induction of new staff members on financial management services policies and procedures. This is essentially a checklist of matters on which the new staff member will receive training. This specific FMSU training for new starters was developed in-house and is tailored to the work in FMSU. Three new staff members were inducted during the 12-month period preceding the audit and they were provided with the relevant training. PTG staff are also encouraged to complete a variety of Justice and Community Services Directorate (JACS) online training modules. 2.41

Fraud prevention and control

The PTG has a *Fraud, Corruption and Risk Mitigation Strategy*. The most recent strategy is for 2022-23. It was signed and endorsed by the Public Trustee and Guardian on 1 July 2022. The Strategy identifies an Executive within the Justice and Community Safety Directorate SERBIR as having responsibility for the PTG. A review of the PTG's strategies for the past three years (2020-21 to 2022-23) shows very little difference; in practice it is apparent that the PTG has taken and re-dated the previous year's document. This means that the document contains old and incorrect references and does not represent contemporary ACT Public Sector practices. 2.53

The PTG maintains a risk register, which identifies eleven fraud risks. After the application of controls there are three High risks, seven Medium risks and one Low risk. For two risks with an inherent risk rating of High, the risk register notes there is 'room for improvement' in the effectiveness of the controls but 'further mitigation strategies are not identified'. The risk register is silent on what additional monitoring or assurance strategies are intended to be applied to these risks. The register is stated to be updated annually. However, the date identified in the risk register is 30 October 2019, which is the same date identified in an earlier version of the risk register obtained for the purpose of the audit. There was no difference in the fraud risks, their rating controls and responsibilities, across the two risk registers. This suggests that the register is rolled over on an annual basis and is not routinely reviewed. 2.61

The PTG has a *Conflict of Interests* policy. The policy was developed in July 2017 and was due for review in July 2020. The policy was not reviewed as planned and has otherwise not been updated since 2017. The policy requires the PTG to establish a Register of Conflicts of Interest. The PTG has developed and implemented a register, which records information around the person disclosing the conflict, nature of the conflict and action taken to address the conflict. A review of the register shows that there are declarations dating back to 2017. The register is not updated on an annual basis and the dates of declarations of possible conflicts have not been shown for recent declarations. 2.70

In late October 2021 the Public Trustee and Guardian became aware of potential misconduct on the part of a PTG Financial Manager. For the purpose of considering options for the handling of the potential misconduct, the PTG sought advice and 2.100

assistance from the JACS Strategic HR unit. A Preliminary Assessment was conducted in relation to the alleged misconduct, in accordance with the *ACT Public Sector Administrative and Related Classification Enterprise Agreement 2018-21*. The Preliminary Assessment took approximately two and a half months to complete. The report (dated 18 January 2022, but signed on 25 January 2022) identified ‘systemic failures’ on the part of a number of participants in the process, including the PTG Financial Manager. The report recommended that a formal misconduct investigation be undertaken. On 2 February 2022 the PTG Financial Manager resigned (with a notified last day of 15 February 2022).

Because of the PTG’s failure to commence a misconduct investigation in a timely manner the PTG Financial Manager was able to resign and effectively prevent any further investigation from occurring. As a result, the PTG has not fully ascertained the facts and circumstances of the alleged misconduct or the sale of the property, including:

- the motivations of the different participants in the sale of the property; and
- any potential corruption or criminal activity on the part of participants in the process.

The Preliminary Assessment took too long to complete and was conducted with a view to trying to establish the facts and circumstances of the matter. This is not the purpose of a Preliminary Assessment, which is intended to be a short and focused assessment as a means by which to determine an appropriate course of action, including whether a misconduct investigation is required.

Quality assurance

Guidance on the assessment of client risk and complexity, and the allocation of client case files, is embodied in the FMSU Manual and two annexures supporting the Manual: *Annexure D – Client File Ratings*; and *Annexure E – Client Complexity Matrix*. The guidance was overly complex and, in parts, contradictory: both of the annexures required assessments to be made of a client and their circumstances, with a view to identifying the relative risk and complexity of the client. The annexures require an assessment of similar considerations. Guidance for the allocation of case files to staff, as per the FMSU Manual and *Annexure D – Client File Ratings* was misaligned, particularly with respect to the responsibilities of ASO 5 and ASO 6 staff.

A review of the allocation of staffing for 34 protected persons for whom the PTG was providing financial management services, against the requirements of the FMSU Manual, showed the level of the officer that was allocated was appropriate in 26 cases. In six cases the level of the officer was not appropriate; in three cases the case could have been allocated to a more junior officer and in three cases the case could have been allocated to a more senior officer. In two cases there was insufficient information on the file to ascertain the risk and complexity of the client’s case file was not documented. In May 2023 the PTG advised that the annexures to the FMSU Manual had been reviewed and revised to ensure consistency. The PTG also provided

evidence that the revised *Client Complexity Matrix* had been applied to all clients and that the clients had subsequently been allocated to appropriately classified staff.

The PTG has identified TACTICS as a key fraud detection mechanism. The TACTICS software analytical tool allows programs, such as Microsoft Word and Excel, to connect directly to the underlying tables of the TACT database and interrogate the data. The use of TACTICS in 2014 identified irregular transactions which subsequently identified a fraud. The PTG runs a suite of TACTICS reports that provide PTG staff with an opportunity to identify irregular transactions. 2.125

The PTG has developed a program of case file reviews through which it seeks to undertake reviews: approximately two to three months after the PTG has been appointed as a financial manager; in the month prior to an ACAT review hearing; and on an ad hoc basis. In 2021-22, 36 initial case file reviews were conducted, 87 were conducted for the purpose of an ACAT review hearing and 25 were conducted on an ad hoc basis. The FMSU Manual does not specify criteria by which the files should be selected on an ad hoc basis and the planning and conduct of case file reviews is not undertaken through a risk-based approach. There is an opportunity to manage the case file review process to ensure that clients assessed as having high complexity (who inherently carry a higher risk) are selected for review more regularly. 2.143

A review of 14 case file reviews conducted by the PTG in 2021-22 shows that five files were reported as being in good order, or not requiring updates, amendments or follow-up. However, it is apparent that the case file reviews did, in fact, identify matters for follow-up. Reporting the case files as being in good order, but otherwise identifying follow-up action that is required, misrepresents the outcomes of the case file review. 2.144

Systems and processes for the delivery of financial management services

Policy and procedural guidance

The FMSU Manual

2.2 The PTG has produced a manual to guide the activities of FMSU staff providing financial management services to protected persons: *A guide to practice for the FMSU of the Public Trustee and Guardian* (the FMSU Manual).

2.3 The FMSU Manual was first developed in 2015. The Foreword to the Manual states:

This manual is part of a series of Public Trustee and Guardian (PTG) manuals that integrate practice and procedure developed over many years by PTG staff.

... The manual should be the first point of reference by staff.

This particular manual documents the guidelines and processes that apply to management by PTG under authority of an order of ACT Civil & Administrative Tribunal or under an Enduring

Power of Attorney and serves to train and assist staff in the management of client financial matters.

- 2.4 The Manual is over 200 pages long and outlines legislative requirements and processes to be followed in the delivery of financial management services. It includes a mixture of policy and procedural guidance. A series of annexures are identified for the FMSU Manual, which are available on the PTG's shared drive. The annexures provide additional procedures or checklists for particular administrative processes. The FMSU manual notes that additional guidance may be sought from team leaders or supervisors:

Although the manual is comprehensive, it is not possible to cover all activities and complexities that may arise. Staff should consult their team leader or supervisor for clarification.

- 2.5 In many instances the FMSU Manual is detailed with respect to specific tasks and activities that need to be undertaken, including templates for specific tasks (e.g. for letters or reports). To this end the Manual states:

It is preferable that the manual be utilised by staff in electronic format, to facilitate the usage of hyperlinks to relevant documents, legislation and web references. Staff should avoid downloading the manual as it will change with amendments made to update processes.

Review and update of the FMSU Manual

- 2.6 The FMSU Manual provides for revision and updates, as necessary, and the recording of change control and version control practices in the manual itself:

Every effort is made to ensure that the manual is correct and up to date reflecting changes to legislation, policy and practice.

...

Any changes to the content of the manual should be submitted by the staff member assigned as the manual owner, to the Director, FMSU. The FMSU Director is responsible for reviewing any changes in process, or amendments and additions to this manual which will then be submitted to PTG's Senior Leadership Group for endorsement. The manual owner must note all revisions and additions to this manual in a Schedule of Amendment which is to be produced relevant and specific to each version. The appropriate entry into the 'Revision History' log is then to be documented.

- 2.7 A review of the FMSU Manual shows that it contains outdated references to legislation and strategies. Additionally, the Annexures to the Manual are frequently mislabelled, thereby making it confusing to locate and access correct documents.

- 2.8 The version of the FMSU Manual reviewed during this audit was Version 3.1, which was last reviewed and updated in October 2021. In May 2023, the PTG advised that the FMSU Manual was again updated in March 2023.

- 2.9 *A guide to practice for the FMSU of the Public Trustee and Guardian (the FMSU Manual) guides the activities of FMSU staff providing financial management services to protected persons. The Manual is comprehensive, at over 200 pages long, and usefully outlines legislative requirements and processes to be followed in the delivery of financial management services. It includes a mixture of policy and procedural guidance. A review of*

the FMSU Manual for the purpose of the audit identified several outdated references to legislation and strategies. The version of the FMSU Manual reviewed was Version 3.1, which was last reviewed and updated in October 2021. In May 2023, the PTG advised that the FMSU Manual was again updated in March 2023.

RECOMMENDATION 1 FMSU MANUAL REVIEW

The Public Trustee and Guardian should review and update the FMSU Manual on, at least, an annual basis.

Information systems

- 2.10 The PTG has several ICT systems that support the delivery of financial management services to protected persons.

TACT system

- 2.11 The primary system is the PTG's trust accounting system: TACT. TACT is a specialist industry trustee system. It allows for the recording of data about protected persons including their income, expenses, assets and liabilities.
- 2.12 TACT is a dated system. The PTG advised that there are few remaining users of the system and, by way of example, the South Australian public trustee replaced TACT in the early 2000s. The PTG advised that TACT has become expensive to maintain and support. It is a significant business continuity risk for the PTG.

Microsoft Dynamics (Customer Relationship Management system)

- 2.13 Since 2017 the PTG has been planning for, and implementing, various workflow improvement modules through the Microsoft Dynamics platform. Various PTG documents have referred to the modules being developed as a Customer Relationship Management (CRM) system. The CRM evolved from an initial project to replace Chameleon (will drafting software that the PTG had acquired on licence jointly with other public trustees).

CRM Stage 1

- 2.14 The PTG initially sought assistance from the NSW Trustee and Guardian for the replacement of Chameleon. The NSW Trustee and Guardian had engaged a service provider to develop a bespoke *will drafting* application and *enduring power of attorney* module.
- 2.15 The PTG subsequently engaged the same service provider that the NSW Trustee and Guardian had initially engaged. The PTG sought to access, and adapt as necessary for the Territory, the applications/modules that had been developed for the NSW Trustee and Guardian. The PTG also arranged for the development of a *guardianship* module through these arrangements.

2.16 The PTG advised that the first three modules were delivered at a cost of \$935,479.

CRM Stage 2

2.17 The PTG subsequently decided to develop additional modules through alternative project management arrangements and without the assistance of the service provider it had initially engaged.

2.18 A business case was developed for Stage 2 of the project, which was approved in early 2022. The primary purpose of the business case was to seek approval for the engagement of a supplier for the development of three modules:

- a *private manager* module;
- a *financial management* module; and
- an *estates/trusts* module.

2.19 The business case stated:

This Business Case proposes commencement of Stage 2 of the CRM and has identified an appropriate supplier, a project management methodology and project funding.

Conduct of the project

2.20 The PTG engaged a supplier for the purpose of the project.

2.21 The initial cost for the supply of services for Stage 2 was \$157,440 (GST inc) and 123 days of effort. The business case identified a timeframe of December 2022 for the completion of the project.

2.22 As at March 2023 the *private manager* module of Stage 2 has been implemented along with an *unclaimed monies* module. The PTG stated that, during 2022, it identified an urgent need to address its management of unclaimed monies, which were being administered through the use of a Microsoft Access database, which was no longer going to be supported.

2.23 The *financial management* module (and *estates/trusts* module) have not been delivered. Further work has ceased, pending a review of the project. As at March 2023 a total of \$207,360 (GST inc) has been spent on the development of the modules.

Integration with TACT

2.24 There are several key matters relating to the development of the CRM modules, and specifically the financial management module, that are yet to be determined. A key issue is the future of TACT and what the relationship will be between the CRM modules and TACT. The PTG advised that the integration of the CRM modules with TACT was not part of the current project, but that 'this was the intention in the longer term and would be considered and decided upon in due course'.

- 2.25 As long as TACT continues to be used and maintained, the lack of integration of the CRM modules with TACT is likely to be a significant issue that the PTG will need to address. Having concurrent systems raises issues around data accuracy; there is no single source of truth and the risk of poor data quality is increased if each system requires manual updates to ensure both include up to date information. The PTG will need to decide as a matter of priority the relationship between the CRM modules and TACT and how data in the modules and TACT will be integrated.
- 2.26 The PTG has several ICT systems that support the delivery of financial management services to protected persons. The primary system is the PTG's trust accounting system: TACT. TACT is a specialist industry trustee system that allows for the recording of data about protected persons including their income, expenses, assets and liabilities. TACT is a very dated system. It has become expensive to maintain and support and is a significant business continuity risk for the PTG.
- 2.27 Since 2017, the PTG has been in the process of implementing various workflow improvement modules through the Microsoft Dynamics platform. The work has been described in a series of documents as a Customer Relationship Management (CRM) system. In the first phase of the project, the PTG developed a *will drafting* application and *enduring power of attorney* module followed by a *guardianship* module at a cost of \$935,479. The PTG subsequently decided to develop additional modules through alternative project management arrangements. A business case was developed for Stage 2 of the project, which identified the development of a *private manager* module, *financial management* module and an *estates/trusts* module, at a cost of \$157,440 (GST inc). As at March 2023 the private manager module of Stage 2 has been implemented (as well as the unplanned implementation of an *unclaimed monies* module) at a cost of \$207,360 (GST inc). The *financial management* module (and *estates/trusts* module) have not been delivered. Further work on the modules has ceased, pending a review of the project.
- 2.28 The PTG has not determined what the relationship will be between the CRM modules and TACT (the PTG's trust accounting system). The PTG advised that the integration of the CRM modules with TACT was not part of the current project, but that 'this was the intention in the longer term and would be considered and decided upon in due course'. The PTG will need to decide as a matter of priority the relationship between the CRM modules and TACT and how data in the modules and TACT will be integrated.

RECOMMENDATION 2 ICT SYSTEMS TO SUPPORT FINANCIAL MANAGEMENT

The Public Trustee and Guardian should undertake a strategic review of its information management system needs. As part of this review the PTG should consider:

- a) the need for, and future uses of, the CRM modules and TACT; and
- b) the extent to which they need to be integrated.

Electronic Document Records Management System

- 2.29 The PTG is also in the process of implementing an Electronic Document Records Management System (EDRMS). Since 1 July 2021, in order to enable staff to work remotely during the COVID-19 pandemic, the FMSU has stored records in electronic form on its shared drive. The shared drive is not a suitable long-term storage location for client records and does not meet *Territory Records Act 2002* record-keeping requirements.
- 2.30 The PTG advised of an expectation to migrate these records to the EDRMS by October 2022 and an intention for all records to be stored electronically rather than in paper form within three years. Originals of key paper-based documents will continue to be stored on clients' paper-based files. As at March 2023 this process was still underway.

Staff training and support

- 2.31 To ensure the effective delivery of financial management services, it is important that all staff receive training that is appropriate for their levels of responsibility.

FMSU specific training

- 2.32 One of the aims of the FMSU Manual is to 'train and assist Trust Officers¹ (TOs) in the management of client financial matters'. Section 2.8 of the FMSU Manual states:

When a new staff member joins the unit, in consideration of operational requirements, intensive one on one training ideally, is provided by the Team Leader of the Transition (Intake) Team. This usually occurs over a week with a specific agenda of items covered. The new staff member then joins a team for an allocation of clients and on-going training with the team leader, and supervision from the team ASO5.

It must be appreciated that this initial training cannot cover the entire scope of the role of a financial manager, as this is something that is learned through exposure, experience and time within the role. This develops over years, not months.

It is usual for someone to join the team as a trust officer ASO4, and, as skills are developed and complexities experienced, opportunities for acting in higher duties are encouraged.

- 2.33 Annexure L to the FMSU Manual outlines a four-day program for the induction of new staff members on financial management services policies and procedures. This is essentially a checklist of matters on which the new staff member will receive training. This specific FMSU training for new starters was developed in-house and is tailored to the work in FMSU.
- 2.34 The training focuses on procedures (such as developing budgets and managing accounts payable) and tools (such as TACT and the Centrelink portal) specific to the FMSU unit.
- 2.35 Only one new staff member was inducted during the 12-month period preceding this audit. This staff member was provided with the relevant training. No feedback is sought by PTG

¹ From March 2023 the FSMU Manual refers to Trust Officers as Financial Managers.

from participants on their in-house training, and no evaluation is conducted on the quality of the training provided.

- 2.36 Annexure L also has suggestions on other, non-mandatory, activities, such as conflict resolution skills and disability awareness training, that the new staff member could undertake.

Directorate training

- 2.37 The PTG requires all staff to complete the following Justice and Community Services Directorate (JACS) online training modules:

- Respect, Equity and Diversity Framework;
- Fraud and Ethics Awareness;
- JACS Induction; and
- Aboriginal and Torres Strait Islander Cultural Awareness.

- 2.38 The PTG advised that these modules may not always be available when a person commences work at the PTG, but staff members are asked to complete them when they are available. The PTG also advised that undertaking the training modules has been problematic during the COVID-19 pandemic for staff working from home with at times uncertain and unreliable internet.

Staff development

- 2.39 In relation to other professional development activities, the PTG:

- provides financial assistance for staff to undertake external university and TAFE courses (with reimbursement of part of the costs on successful completion of the course); and
- meets the costs of membership of professional organisations (e.g. one FMSU staff member is a professional financial planner and the PTG meets the cost of membership of their professional organisation so that they can keep their skills up-to-date).

- 2.40 The PTG also works collaboratively through forums with public trustee organisations in other jurisdictions to share information about best practice.

- 2.41 The FMSU Manual outlines a four-day program for the induction of new staff members on financial management services policies and procedures. This is essentially a checklist of matters on which the new staff member will receive training. This specific FMSU training for new starters was developed in-house and is tailored to the work in FMSU. Three new staff members were inducted during the 12-month period preceding the audit and they were provided with the relevant training. PTG staff are also encouraged to complete a variety of Justice and Community Services Directorate (JACS) online training modules.

Fraud prevention and control

2.42 The provision of financial management services to protected persons, who may lack the capacity to understand their circumstances or may not have other support arrangements in place, gives rise to significant fraud risk. Without suitable fraud prevention and detection measures there is a risk that protected persons may be taken advantage of. It is therefore important that the PTG has robust arrangements to prevent and detect any potentially fraudulent activity.

Fraud, Corruption and Risk Mitigation Strategy

2.43 The PTG has a *Fraud, Corruption and Risk Mitigation Strategy*. The most recent strategy is for 2022-23. It was signed and endorsed by the Public Trustee and Guardian on 1 July 2022.

2.44 The *Fraud, Corruption and Risk Mitigation Strategy (2022-23)* states:

The Public Trustee and Guardian’s (PTG) branding and business is essentially built upon trust. PTG is keenly aware of the need to mitigate fraud and corruption and to manage risk as an integral part of governance and good business practice. An effective risk mitigation strategy for PTG is a “must have”, not a “nice to have”. PTG systems and procedures have been designed to minimise fraud and corruption, and to manage risk, as are its policies and practices relating to the recruitment, training and retention of staff, and its promotion of public service ethics and values.

PTG’s fraud, corruption and risk mitigation strategy involves management in building organisational resilience and flexibility in an environment of uncertainty. This plan reflects a balanced approach to improving business and compliance leading to the achievement of sustainable value and greater business confidence.

SERBIR

2.45 The *Fraud, Corruption and Risk Mitigation Strategy (2022-23)* identifies the Justice and Community Safety Directorate Senior Executive Responsible for Business Integrity Risk (SERBIR) as having responsibility for the PTG.

Features of the Strategy

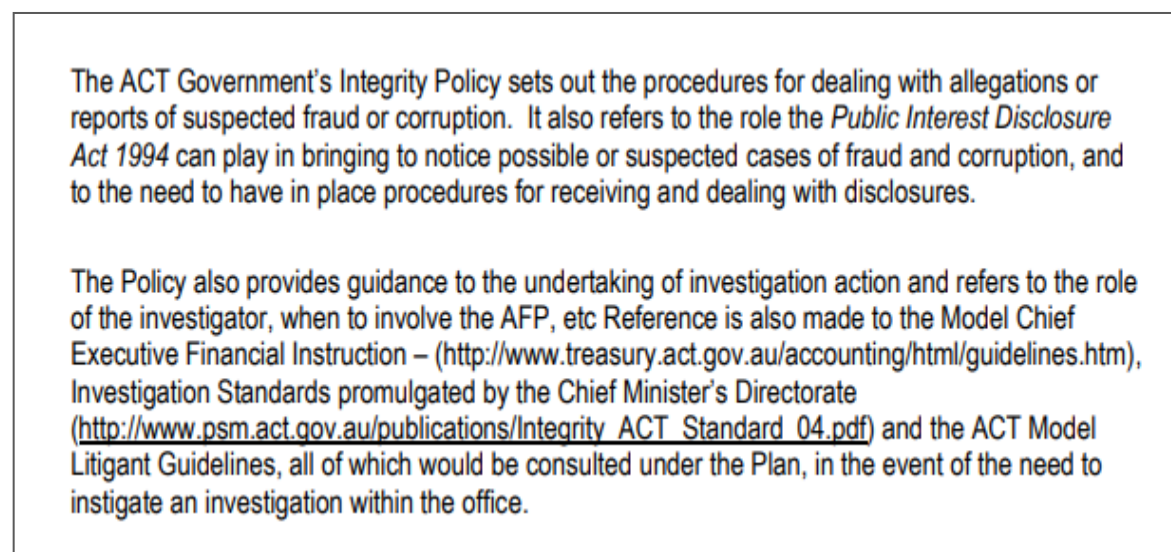
2.46 The *Fraud, Corruption and Risk Mitigation Strategy (2022-23)*:

- outlines the ‘Public Trustee and Guardian’s fraud, corruption and risk mitigation strategy’;
- identifies ‘case handling’ processes for potentially fraudulent or corrupt activities; and
- identifies various management and governance arrangements that are in place.

2.47 The *Fraud, Corruption and Risk Mitigation Strategy (2022-23)* also refers to the PTG’s *Fraud, Corruption and Risk Mitigation Strategy – Risk Assessment and Controls* document, which is attached as an annexure to the Strategy.

- 2.48 A review of the PTG's strategies for the past three years (2020-21 to 2022-23) shows very little difference; in practice it is apparent that the PTG has taken and re-dated the previous year's document. This means that the document contains old and incorrect references and does not represent contemporary ACT Public Sector practices.
- 2.49 By way of example, the *Fraud, Corruption and Risk Mitigation Strategy (2022-23)* refers to:
- the ACT Government's *Integrity Policy (2010)* – this was replaced by the *ACTPS Integrity Governance Policy* in May 2022; and
 - the *Public Interest Disclosure Act 1994* – this was replaced by the *Public Interest Disclosure Act 2012*.
- 2.50 The *Fraud, Corruption and Risk Mitigation Strategy (2022-23)* makes no reference to the ACT Integrity Commission, notwithstanding its commencement in 2018.
- 2.51 Under the heading 'Methodologies for handling cases if and when they occur' the *Fraud, Corruption and Risk Mitigation Strategy (2022-23)* provides the following guidance:

Figure 2-1 *Fraud, Corruption and Risk Mitigation Strategy (2022-23) extract*



Source: *Fraud, Corruption and Risk Mitigation Strategy (2022-23)*.

- 2.52 This extract is problematic because of its:
- incorrect references to policy and legislation (the *Integrity Policy (2010)* and *Public Interest Disclosure Act 1994*);
 - outdated references to guidance documents (Treasury ACT's Model Chief Executive Financial Instruction and the Chief Minister Directorate's Investigation Standards); and
 - lack of acknowledgement of the ACT Integrity Commission and its role and responsibilities.

2.53 The PTG has a *Fraud, Corruption and Risk Mitigation Strategy*. The most recent strategy is for 2022-23. It was signed and endorsed by the Public Trustee and Guardian on 1 July 2022. The Strategy identifies an Executive within the Justice and Community Safety Directorate SERBIR as having responsibility for the PTG. A review of the PTG's strategies for the past three years (2020-21 to 2022-23) shows very little difference; in practice it is apparent that the PTG has taken and re-dated the previous year's document. This means that the document contains old and incorrect references and does not represent contemporary ACT Public Sector practices.

Risk management

Fraud, Corruption and Risk Mitigation Strategy (2022-23)

2.54 The *Fraud, Corruption and Risk Mitigation Strategy (2022-23)* outlines the following risks associated with undertaking the role of financial manager for protected persons:

- liability in the event of client loss through PTG error or negligence;
- qualified audit;
- moneys paid to or deducted from wrong account;
- overpayment of moneys;
- moneys paid to wrong person; and
- PTG staff misappropriating client funds.

2.55 To mitigate these risks the Strategy outlines the following safeguards:

- PTG Manager undertakes random reviews;
- payments are made through the payments module in TACT and approved by a person with the relevant delegations, this module also stops the overpayment of moneys;
- cheques prepared by Finance Unit;
- action is taken to recover moneys immediately overpayment is identified;
- no cash dealings;
- incoming money usually paid to clients; and,
- minimise need for PTG staff to attend bank with cheques.

Risk register

2.56 The PTG also maintains a risk register. The audit reviewed the risk register named 'PTG COMBINED RISK REGISTER – 2022-23'. The risk register identifies 38 risks under the following themes:

- Strategic – identified as 'matters which have a longer term significance';

- Tactical – identified as ‘[relating] to programs or systems designed to achieve a desired outcome’; and
 - Operational – identified as ‘[relating] to risks that can arise in the normal course of everyday business’.
- 2.57 Across these themes, risks are further categorised. One of the categories of risk is ‘fraud’ of which there are eleven risks.
- 2.58 The risk register identifies risks and the person(s) responsible for managing the risks. The register also identifies the inherent rating of the risk, potential action to be taken to mitigate the risk and the residual risk rating following the identification of additional controls. The risk register identifies:
- five risks with a High inherent risk rating;
 - three of the risks remain as High risks with the identified controls;
 - two of the risks are reduced to Medium risks with the identified controls;
 - four risks with a Medium inherent risk rating;
 - all risks remain as Medium risks with the identified controls; and
 - two risks with a Low inherent risk rating;
 - one risk is subsequently identified as a Medium risk with the identified controls;
 - one risk remains as a Low risk with the identified controls.
- 2.59 For two of the High risks it is noted that there is ‘room for improvement’ in the effectiveness of the controls but ‘further mitigation strategies are not identified’. The risk register is silent on what additional monitoring or assurance strategies are intended to be applied to these risks.
- 2.60 The register is stated to be updated annually. However, the date identified in the risk register is 30 October 2019. The same date is identified in an earlier version of the risk register obtained for the purpose of the audit ‘PTG Combined register – Sept20-v.02’. There was no difference in the fraud risks, their rating controls and responsibilities, across the two risk registers. This suggests that the register is rolled over on an annual basis and is not routinely reviewed.
- 2.61 The PTG maintains a risk register, which identifies eleven fraud risks. After the application of controls there are three High risks, seven Medium risks and one Low risk. For two risks with an inherent risk rating of High, the risk register notes there is ‘room for improvement’ in the effectiveness of the controls but ‘further mitigation strategies are not identified’. The risk register is silent on what additional monitoring or assurance strategies are intended to be applied to these risks. The register is stated to be updated annually. However, the date identified in the risk register is 30 October 2019, which is the same date identified in an earlier version of the risk register obtained for the purpose of the audit. There was no difference in the fraud risks, their rating controls and responsibilities, across the two risk registers. This suggests that the register is rolled over on an annual basis and is not routinely reviewed.

RECOMMENDATION 3 RISK REGISTER

The Public Trustee and Guardian should:

- a) actively review and update its risk registers on a regular basis; and
- b) for those risks identified as High risks for which existing controls are inadequate, identify what additional monitoring or assurance strategies are intended to be applied to these risks.

Conflict of interest management

2.62 The PTG has a *Conflict of Interests* policy. The policy was developed in July 2017 and was due for review in July 2020. The policy was not reviewed as planned and has otherwise not been updated since 2017.

2.63 The purpose of the *Conflict of Interests* policy is to:

... help board members, official visitors, service providers to PTG and PTG staff to effectively identify, disclose and manage any actual, potential or perceived conflicts of interest in order to protect the integrity of the Public Trustee and Guardian (PTG) and manage risk.

2.64 The *Conflict of Interests* policy applies to members of the Investment Board, official visitors, service providers and staff. The policy requires:

- the PTG to establish a Register of Conflicts of Interest; and
- staff, Board members and service providers to declare conflicts of interest.

2.65 In relation to the establishment of the Register of Conflicts of Interests the *Conflict of Interests* policy states it is the responsibility of the PTG to:

Establish a Register of Conflicts of Interests, record disclosures of conflicts, take appropriate action and, where appropriate, advise the responsible Minister. The register includes a copy of the Conflict of Interest Form and a summary of all forms completed. The register also records any steps taken to address the conflict.

2.66 In relation to the declaration of conflicts of interest the *Conflict of Interests* policy states:

At the commencement of any meeting, a participant at the meeting must declare any actual, potential or perceived conflict of interest.

At any other time, any Board member, Service Provider or PTG staff member who becomes aware of any actual, potential or perceived conflict of interest must disclose that conflict by completing and providing a Conflict of Interest Form to the Public Trustee and Guardian.

2.67 The *Conflict of Interests* policy provides further guidance on the handling of potential conflicts of interest that have been declared.

2.68 The PTG has developed and implemented a Register of Conflicts of Interests as required by the *Conflict of Interests* policy. It records information about the person disclosing the conflict, nature of the conflict and action taken to address the conflict. As at June 2022 the

register recorded 12 conflicts ranging in nature from personal relationships to prior employment.

- 2.69 The *Conflict of Interests* policy does not indicate the frequency with which the Register of Conflicts of Interests needs to be reviewed and updated. A review of the register shows that there are declarations dating back to 2017 (from the commencement of the policy). The register is not updated on an annual basis and the dates of declarations of possible conflicts have not been shown for recent declarations.
- 2.70 The PTG has a *Conflict of Interests* policy. The policy was developed in July 2017 and was due for review in July 2020. The policy was not reviewed as planned and has otherwise not been updated since 2017. The policy requires the PTG to establish a Register of Conflicts of Interest. The PTG has developed and implemented a register, which records information around the person disclosing the conflict, nature of the conflict and action taken to address the conflict. A review of the register shows that there are declarations dating back to 2017. The register is not updated on an annual basis and the dates of declarations of possible conflicts have not been shown for recent declarations.

RECOMMENDATION 4 CONFLICT OF INTEREST REGISTER

The Public Trustee and Guardian should:

- a) review its *Conflict of Interests* policy and update it as necessary; and
- b) in doing so, determine a practice for the management and updating of the Register of Conflicts of Interest.

Response to potential misconduct

- 2.71 In late October 2021 the Public Trustee and Guardian became aware of potential misconduct on the part of a PTG Financial Manager. The Audit Office considered the PTG's handling of the potential misconduct.
- 2.72 For the purpose of considering options for the handling of the potential misconduct, the PTG sought advice and assistance from the JACS Strategic HR unit, within its Corporate Services Division. Neither the PTG, nor the JACS Strategic HR unit, informed or sought advice from the Professional Standards Unit within CMTEDD or the ACT Integrity Commission. In its response to the draft proposed report the PTG advised it would not refer a matter to the PSU or ACT Integrity Commission without first undertaking a Preliminary Assessment, unless the relevant mandatory reporting threshold was met in relation to the referral of potentially corrupt conduct to the ACT Integrity Commission.

Preliminary Assessment

- 2.73 On 2 November 2021 the Public Trustee and Guardian formally advised the PTG Financial Manager that the PTG was undertaking a Preliminary Assessment, in accordance with the *ACT Public Sector Administrative and Related Classification Enterprise Agreement 2018-21*.

Enterprise Agreement requirements

- 2.74 The *ACT Public Sector Administrative and Related Classification Enterprise Agreement 2018-21* states:

In cases where an allegation of inappropriate behaviour or alleged misconduct is made or an incident occurs which may be deemed to be inappropriate behaviour or alleged misconduct, the appropriate manager/supervisor will undertake an assessment to determine whether the matter can be resolved or whether further action is required or not.

- 2.75 The *ACT Public Sector Administrative and Related Classification Enterprise Agreement 2018-21* further states:

The assessment will be done in an expedient manner and generally be limited to having discussions (either verbal or written) about the allegation or incident, with relevant employees, and, if requested, their representatives.

- 2.76 The *ACT Public Sector Administrative and Related Classification Enterprise Agreement 2018-21* further states:

Although the principles of procedural fairness apply, this assessment is not a formal investigation (as this may occur after the assessment is undertaken) and is designed to enable a manager/supervisor to quickly determine whether formal investigation or other action is needed or not to resolve the issues. The manager/supervisor will communicate the outcomes to relevant employees and their representatives if any.

CMTEDD guidance

- 2.77 Further guidance on the conduct of Preliminary Assessments is outlined in the ACT Public Sector Standards Commissioner's *Guidelines to the Misconduct Process* (October 2019). The Guidelines state:

Preliminary assessments vary in their scale depending on the circumstances and the complexity of the issues raised. It may be as simple as considering the workplace issue and appropriate options for resolution, or it may extend to a more detailed approach including obtaining documents and speaking to relevant staff about what happened.

Importantly, a preliminary assessment is not an investigation. It is a means of determining if, and how to proceed with the matter to resolve the issues raised. The assessment should be conducted as soon as possible and be as short as practicable.

- 2.78 The Enterprise Agreement and the ACT Public Sector Standards Commissioner's *Guidelines to the Misconduct Process* (October 2019) stress the importance of conducting the Preliminary Assessment as quickly as practicable, as a means by which to determine an appropriate course of action, including whether a misconduct investigation is required.

Nature of allegation

2.79 The allegation of inappropriate behaviour was outlined in a letter to the PTG Financial Manager on 2 November 2021. The nature of the allegation was that the Financial Manager:

... knowingly provided false and misleading information and failed to do your job with reasonable care and diligence regarding the sale of [a protected person's residential property].

2.80 Further information and specifics were provided, the substance of which is that:

- the Financial Manager was aware of the sale and transfer of the protected person's property, but that 'there is no reference in TACT to the sale occurring, or reference to any mentioned sale in the client file and it still remains loaded in TACT as an asset to [the protected person];
- on 30 June 2021 the Financial Manager updated the value of the property in TACT to an amount of \$560,000, notwithstanding that a transfer of the property was submitted on 11 June 2021 for an amount of \$505,000; and
- on 17 October 2021 the Financial Manager provided information on the protected person's assets and liabilities to their supervisor, and in doing so continued to identify the property as being owned by the protected person.

2.81 The PTG Financial Manager was invited to provide a response by 8 November 2021.

2.82 In a detailed response dated 7 November 2021 the PTG Financial Manager:

- advised that they did not deliberately or knowingly provide false and misleading information;
- acknowledged that they made a mistake in the management of the protected person's financial affairs; and
- asserted that they were in the process of approaching their manager with a view to rectifying the issue. In doing so, and as part of their response, they suggested a detailed set of actions to address the issue.

2.83 In a letter dated 19 November 2021, the Public Trustee and Guardian advised:

I do not consider your response to be fulsome and I have insufficient information to decide what has occurred in relation to the sale of the property. To gather more information, I have asked [a former senior member of the PTG] to conduct a review of the sale of the property.

2.84 The letter dated 19 November 2021 states:

[The former senior member of the PTG] will provide me with a report which may include recommendations to improve processes, procedures, or training. Please note that it is open to [the former senior member of the PTG] to advise if he believes that your or other employees may have acted inappropriately or not performed their duties as expected. If this occurs, I will make a determination of the matter requires a misconduct investigation or formal underperformance process or if other action is needed to resolve the issue(s).

- 2.85 The letter dated 19 November 2021 explicitly acknowledges that the Public Trustee and Guardian had not yet made a decision in respect of whether further, more formal action (such as a misconduct investigation) is to take place. This is despite the Public Trustee and Guardian clearly identifying concerns with respect to the actions of the Financial Manager and receiving a detailed response from the Financial Manager (which the Public Trustee and Guardian identified as not being fulsome).
- 2.86 The Public Trustee and Guardian asserted that they '[had] insufficient information to decide what has occurred in relation to the sale of the property'. This is a problematic position, because the purpose of a Preliminary Assessment is not to establish the facts and circumstances of the alleged misconduct, but 'to enable a manager/supervisor to quickly determine whether formal investigation or other action is needed or not to resolve the issues'.

Conduct of review

- 2.87 A former senior member of the PTG was engaged to conduct a review, the terms of reference for which were identified as:

[A] review [of] the:

- circumstances of the sale of the property;
 - policies and procedures which should have protected the client's assets;
 - records maintained on the client's file at PTG, including any records held by third parties;
 - interview with any parties concerned;
 - Registrar-General's Caveat on the client's property; and
 - Materials provided by third parties related to the client, or the sale of the property.
- 2.88 As part of the review the former senior member of the PTG reviewed documentation and other information maintained on the PTG's information systems (namely TACT) and conducted a series of interviews including with: the PTG Financial Manager, the protected person and their family, a solicitor that facilitated the transfer and representatives of the Registrar-General's Office. The Public Trustee and Guardian, for whom the report was being prepared in order to inform their decision-making, appeared to attend at least one interview conducted for the purpose of the review (an interview with the protected person).

Report of the Preliminary Assessment

- 2.89 The former senior member of the PTG provided a report to the Public Trustee and Guardian. The report was dated 18 January 2022, but signed on 25 January 2022.
- 2.90 The report identified 'systemic failures' on the part of:
- the PTG Financial Manager;
 - a solicitor who was engaged by the family of the protected person to facilitate the sale of the property; and

- the Registrar-General's Office.

2.91 The report concluded:

It is evident that a number of irregularities occurred to bring about the current situation:

- [The PTG Financial Manager] failed to follow written process and procedure of PTG, specifically in [their] complete departure of adhering to established PTG practice around the sale of client assets.
- [The PTG Financial Manager] breached the Territory Records Act, with no record of this matter made or held on file. Furthermore, the permanent deletion of emails relating to this matter is also a breach of this law.
- [The PTG Financial Manager] did not explain the sale process properly to [the protected person's mother] in the email of 4 March 2021;
- [The PTG Financial Manager] did not comply with any of the procedures detailed in the FMSU Manual, specifically the FMSU Practice Manual s.9.18.
- [The PTG Financial Manager] knowingly updated PTG Trust Accounting software, prepared and provided fraudulent information to a third party via [their] direct manager in October 2021.
- [The solicitor] did not appear to understand the practice around the entry or meaning of a Registrar-General's Caveat or take any action after conducting an ACT Land Titles search of the property title.
- [The solicitor] took instructions from [the protected person], a represented person, in the knowledge that [they] had impaired decision-making capacity when a legal personal representative had been appointed.
- The proceeds of the sale were incorrectly paid into [the protected person's] personal bank account and not to PTG to hold on his behalf. The money was later transferred out of that account by [the protected person's mother] to an account in her and her husband's name.
- The Deputy Registrar-General failed to require PTG's written authorisation to the Transfer, contrary to established practice.

2.92 The report further concluded:

[The PTG Financial Manager's] actions resulted in an asset of significant value to a vulnerable client whose affairs were entrusted to PTG, being inappropriately manipulated out of PTG's control.

2.93 The report made a recommendation:

Given the seriousness of the matter, [the Financial Manager's] apparent intentional departure from PTG Practice, [their] failure to provide information to me on interview, I recommend that a formal and independent investigation be undertaken into [their] activities in respect to this matter.

Reconciliation of funds

2.94 The report identified that the property was sold for \$505,000 but that the net proceeds of the sale was \$490,472.57. Following the sale of the property some of the funds were used for the purchase of a car for the protected person at a cost of \$33,100. The report noted

that the PTG was seeking reimbursement from the family of the protected person of an amount of \$457,282.57. (There appears to be a discrepancy of \$90 in the calculation).

CMTEDD guidance

2.95 Guidance on the conduct of misconduct investigations is outlined in the ACT Public Sector Standards Commissioner's *Guidelines to the Misconduct Process* (October 2019). The Guidelines state:

Situations where investigations are appropriate include (but are not limited to):

- the alleged behaviour, if substantiated, would be sufficiently serious to justify a sanction as outlined in the ACTPS Enterprise Agreements;
- the allegations are serious and/or there is disagreement about what happened and little prospect of remedial action being agreed to or being practicable;
- the alleged behaviour may constitute a criminal act; or
- the allegation is indicative of a pattern of behaviour by the employee, especially where the employee has been subject to other disciplinary or remedial action for similar conduct in the past.

2.96 The Guidelines also outline circumstances where it is not possible to conduct an investigation, primarily where the person is no longer an employee of the ACT Public Service:

Where the person who is the subject of allegations of potential misconduct is no longer an employee of the ACTPS, and a misconduct process has not been commenced, there is no jurisdiction to pursue a misconduct process unless it relates to other legal obligations.

Further action

2.97 On 2 February 2022 the PTG Financial Manager emailed the Public Trustee and Guardian to advise that they were resigning and that, by virtue of the relevant Enterprise Agreement, their last day of employment would be 15 February 2022.

2.98 Later that same day the Public Trustee and Guardian notified the JACS Strategic HR unit:

Under the circumstances, I do not intend to take any further action and there will be no need to investigate further...

2.99 No further investigation was undertaken in relation to the matter. The PTG has not fully ascertained the facts and circumstances of the alleged misconduct or the sale of the property, including:

- the motivations of the different participants in the sale of the property; and
- any potential corruption or criminal activity on the part of participants in the process.

2.100 In late October 2021 the Public Trustee and Guardian became aware of potential misconduct on the part of a PTG Financial Manager. For the purpose of considering options for the handling of the potential misconduct, the PTG sought advice and assistance from the JACS Strategic HR unit. A Preliminary Assessment was conducted in relation to the alleged misconduct, in accordance with the *ACT Public Sector Administrative and Related*

Classification Enterprise Agreement 2018-21. The Preliminary Assessment took approximately two and a half months to complete. The report (dated 18 January 2022, but signed on 25 January 2022) identified ‘systemic failures’ on the part of a number of participants in the process, including the PTG Financial Manager. The report recommended that a formal misconduct investigation be undertaken. On 2 February 2022 the PTG Financial Manager resigned (with a notified last day of 15 February 2022).

- 2.101 Because of the PTG’s failure to commence a misconduct investigation in a timely manner the PTG Financial Manager was able to resign and effectively prevent any further investigation from occurring. As a result, the PTG has not fully ascertained the facts and circumstances of the alleged misconduct or the sale of the property, including:
- the motivations of the different participants in the sale of the property; and
 - any potential corruption or criminal activity on the part of participants in the process.
- 2.102 The Preliminary Assessment took too long to complete and was conducted with a view to trying to establish the facts and circumstances of the matter. This is not the purpose of a Preliminary Assessment, which is intended to be a short and focused assessment as a means by which to determine an appropriate course of action, including whether a misconduct investigation is required.

RECOMMENDATION 5 MANAGEMENT OF POTENTIAL MISCONDUCT ALLEGATIONS

The Public Trustee and Guardian should ensure that Preliminary Assessments are conducted in accordance with the relevant *ACT Public Sector Administrative and Related Classification Enterprise Agreement* and the ACT Public Sector Standards Commissioner’s *Guidelines to the Misconduct Process*, particularly in relation to timeliness.

Quality assurance

Allocation of cases

- 2.103 The FMSU Manual includes a section titled ‘FMSU roles, responsibilities and client complexity types’. This part of the Manual seeks to provide a basis for the allocation of client case files to staff. This section of the Manual refers to:
- *Annexure D – Client File Ratings*; and
 - *Annexure E – Client Complexity Matrix*.

Client File Ratings

- 2.104 *Annexure D – Client File Ratings* is an Excel spreadsheet that seeks to assign a Client File Rating to a client, based on consideration of a series of factors:
- decision making;

- behavioural considerations;
- family relationship conflict;
- debts, liabilities;
- personal effects, bank accounts;
- PTACT Investment Funds;
- vehicles;
- shares and non-PTACT Investments;
- superannuation;
- overseas assets;
- property;
- client contact; and
- legal issues.

2.105 For some of these descriptors a binary 'yes/no' assessment is required, while for others an escalating judgment is required, e.g. 'low/medium/high'. Following an assessment of each of these descriptors a Client File Rating can be assigned. Table 2-1 shows the Client File Ratings and their descriptors.

Table 2-1 Client File Rating descriptors

Description of client circumstances	Rating
<ul style="list-style-type: none"> * Income limited to pension * Management of simple budget * Lives in a stable environment, requiring minimal support & in frequent contact * No assets or property 	1
<ul style="list-style-type: none"> * May have dual income * Management of stable budget with expenditure maintained within budget parameters. * Minimal assets and liabilities/debts * Requires minimal support and infrequent contact * Stable financial affairs, stable supportive environment * No property 	2
<ul style="list-style-type: none"> * Generally stable situation with ad-hoc decision-making required * Owns real property, which may or may not need to be sold or rented (either privately or through an agent) * Likely to have multiple assets, possible debts and liabilities, although of a stable controlled nature and complexity. * No overseas assets, but may have overseas pension. * Stable relationships with family and supports 	3
<ul style="list-style-type: none"> * Likely to have multiple assets, large accumulated debts, liabilities and multiple income streams. Assets may include: PTG Investment, external managed funds, superannuation, shares, trusts or business. 	4

Description of client circumstances	Rating
* Sale of real property or business, including those interstate or overseas. * Difficult or dysfunctional personal and family relationships, or client behaviours result in periodic increases to decision- making complexity and activity.	
* Existing or potential litigation or property settlement * High level of escalated activity and complex decision-making due to family conflict or dysfunctional relationships with the potential to result in risk to PTG reputation or finances	5

Source: Audit Office, based on analysis of Annexure D – Client File Ratings.

Client Complexity Matrix

2.106 *Annexure E – Client Complexity Matrix* is an Excel spreadsheet that seeks to identify:

- client risks; and
- client complexity.

2.107 The following client risk factors are identified:

- decision making;
- behavioural considerations;
- accommodation;
- income;
- assets;
- liabilities;
- legal;
- taxation;
- family support;
- risk to PTG reputation;
- NDIS transport funds;
- Client administration; and
- ACAT.

2.108 For each of these risk factors a descriptor for low, medium and high risk is provided.

2.109 *Annexure E – Client Complexity Matrix* also includes eleven considerations related to the client and the complexity of their circumstances, for which a binary ‘yes/no’ assessment is required, for example:

- ‘escalated or excessive client contact’; and
- ‘change in circumstances – transitioning to accommodation facility’.

Assessment of client complexity

- 2.110 The risk and complexity of cases is initially assessed by the Transition Team. The FMSU Manual requires it to be done on an annual basis thereafter.
- 2.111 There was no evidence of the assessment of client complexity, through the completion of *Annexure E – Client Complexity Matrix*, in five of the 34 case files reviewed.
- 2.112 There was evidence of inconsistency in its use and application. In this respect there were:
- instances where the matrix provided a low risk and complexity rating when these should have been medium to high; and
 - instances where a complexity rating had been determined, despite the matrix containing incomplete sections.

Allocation of case files

- 2.113 There are two sources of information for the allocation of case files to FMSU staff; the FMSU Manual and *Annexure D – Client File Ratings*. Table 2-2 shows the FMSU Manual's description of files to be allocated to FMSU staff (including the Client File Rating) as well as *Annexure D – Client File Ratings* guidance on the allocation of cases to staff.

Table 2-2 Allocation of case files to staff

	FMSU Manual allocation	Client File Rating allocation
ASO 3	A client lives in stable accommodation, requiring minimal support for a minimum of six months (e.g. ACT Government Housing, Brian Hennessy Rehabilitation Centre (BHRC), Residential Aged Care Facility) Management of routine and stable client budgets Infrequent client contact – no more than one contact per fortnight No legal matters, no conflict File rating category 1.	1
ASO 4	Low to medium level of conflict with the client Low to medium level of conflict involving other stakeholders Low to medium level of complexity and activity in the decision-making and management of client assets/liabilities involving routine management of major assets and/or active management of other assets/liabilities, such as the purchase/sale/repair of motor vehicles, furniture, white goods and routine legal matters requiring the active involvement of the ASO4. Management of complex client budgets where the expenditure is maintained within budget parameters File rating categories 2 and 3	2, 3
ASO 5	Medium level of conflict involving the client and other stakeholders Medium level of complexity and activity in the decision-making and management of client assets/liabilities involving the purchase, sale,	3,4

	FMSU Manual allocation	Client File Rating allocation
	<p>management of major assets requiring the active involvement of the financial manager</p> <p>Management of unstable or moderately complex client budgets where the expenditure is difficult to control within identified budget parameters</p> <p>Some involvement in the management of the client assets where the client resides in a jurisdiction other than the ACT</p> <p>File rating categories 3.</p>	
ASO 6	<p>Medium to high level of conflict involving the client and other stakeholders</p> <p>Medium to high level of complexity and activity in the decision-making and management of client assets/liabilities involving the purchase, sale, management of major assets and/or complex legal matters requiring the active involvement of the financial manager</p> <p>Management of complex client budgets where the expenditure is difficult to control within identified budget parameters</p> <p>Active frequent involvement in the management of the client assets where the client resides in a jurisdiction other than the ACT</p> <p>File rating categories 3 and 4.</p>	4,5
SOG C	<p>High level of conflict involving multiple stakeholders and multiple issues</p> <p>High level of complexity and activity in the decision-making and management of client assets/liabilities involving the management of a major business, industrial/commercial assets/liabilities and/or complex legal matters requiring the active involvement of the FMSU Director in conjunction with PTG's Finance Unit (FU)</p> <p>File rating category 5.</p>	5

Source: Audit Office, based on analysis of FMSU Manual and *Annexure D – Client File Ratings*.

2.114 A review of the PTG's guidance for the allocation of case files to staff showed the guidance in the FMSU Manual and the *Annexure D – Client File Ratings* were misaligned:

- the allocation of cases with a Client File Rating of 5 are contemplated for ASO 6 staff in the *Annexure D – Client File Ratings*, but not the FMSU Manual; and
- the allocation of cases with a Client File Rating of 4 are contemplated for ASO 5 staff in the *Annexure D – Client File Ratings*, but not the FMSU Manual.

Case file review

2.115 The Audit Office reviewed the allocation of staffing for 34 protected persons for whom the PTG was providing financial management services:

- in 26 cases the level of the officer was appropriate (i.e. in accordance with the FMSU Manual);
- in six cases the level of the officer was not appropriate:
 - in three cases, the case could have been allocated to a more junior officer; and

- in three cases the complexities of the cases were such that they should more appropriately have been handled by more senior officers); and
 - in two cases the appropriateness of the level of the officer could not be determined because the risk and complexity of the case could not be determined due to a lack of information on the file.
- 2.116 In October 2022, the PTG advised the Audit Office that it had completed a review of *Annexure E – Client Complexity Matrix* noting that:
- ... we have separated the “complexity” questions from the “risk to PTG” component. This ensures that the complexity is a standalone outcome and the client can be allocated to the appropriate financial manager level for ongoing management on this basis.
- We have also reviewed our EO sheets (essentially the summary data for each client base) to ensure that the complexity rating is accurate and have scheduled workshops for the teams to review each of their clients and record the complexity of each at present. TACT will also be updated with the outcomes once the workshops are held.
- 2.117 In May 2023, the PTG further advised:
- [*Annexure E – Client Complexity Matrix*] and Annexure D have all been reviewed in March 2023 to ensure consistency.
- 2.118 In May 2023, the PTG also provided evidence that:
- the revised Client Complexity Matrix had been applied to all clients;
 - clients had subsequently been allocated to appropriately classified staff; and
 - the outcomes were appropriately recorded on the client’s file.
- 2.119 Guidance on the assessment of client risk and complexity, and the allocation of client case files, is embodied in the FMSU Manual and two annexures supporting the Manual: *Annexure D – Client File Ratings*; and *Annexure E – Client Complexity Matrix*. The guidance was overly complex and, in parts, contradictory: both of the annexures required assessments to be made of a client and their circumstances, with a view to identifying the relative risk and complexity of the client. The annexures require an assessment of similar considerations. Guidance for the allocation of case files to staff, as per the FMSU Manual and *Annexure D – Client File Ratings* was misaligned, particularly with respect to the responsibilities of ASO 5 and ASO 6 staff.
- 2.120 A review of the allocation of staffing for 34 protected persons for whom the PTG was providing financial management services, against the requirements of the FMSU Manual, showed the level of the officer that was allocated was appropriate in 26 cases. In six cases the level of the officer was not appropriate; in three cases the case could have been allocated to a more junior officer and in three cases the case could have been allocated to a more senior officer. In two cases there was insufficient information on the file to ascertain the risk and complexity of the client’s case file was not documented. In May 2023 the PTG advised that the annexures to the FMSU Manual had been reviewed and revised to ensure consistency. The PTG also provided evidence that the revised *Client Complexity Matrix* had

been applied to all clients and that the clients had subsequently been allocated to appropriately classified staff.

TACTICS software analytical tool

2.121 The PTG has identified TACTICS as a key fraud detection mechanism. The PTG's *Annual Report 2021-22* states:

PTG utilises TACTICS software which has the capability to analysing <sic> data in its TACT Trust Accounting System and to aid in detecting irregularities in transactions with client financial records.

2.122 The TACTICS software analytical tool allows programs, such as Microsoft Word and Excel, to connect directly to the underlying tables of the TACT database and interrogate the data. The use of TACTICS in 2014 identified irregular transactions which subsequently identified a fraud. It has a capability to provide assurance that irregular transactions are not occurring.

TACTICS reports

2.123 The PTG runs the following TACTICS reports on a regular basis:

- Budget Analysis - this is used to analyse a client's actual expenditure over a period of time e.g. 12 months, update a client's budget and identify any irregularities in spending that may need to be addressed.
- Debit Cash Balances - this report is run twice weekly to ensure that any negative cash balances are addressed promptly.
- Client Transaction Search - this searches TACT for a particular transaction type e.g. chemist expenses and aids the financial manager in reconciling invoices and analysing expenditure of a specific type.
- Asset and Liability - this is used to report assets and liabilities and is enhanced with additional data specific to a client.
- FMSU Properties - this report identifies property data related to FMSU clients. This is used to ensure values are updated correctly, assists in reviewing actions that need to be undertaken for specific properties and ensure properties that are sold are updated accordingly.
- EOFY Checklist - this is used to review each client's position at EOFY to ensure TACT data is up to date.

2.124 If run routinely, these reports provide PTG staff with an opportunity to identify irregular transactions.

2.125 The PTG has identified TACTICS as a key fraud detection mechanism. The TACTICS software analytical tool allows programs, such as Microsoft Word and Excel, to connect directly to the underlying tables of the TACT database and interrogate the data. The use of TACTICS in 2014 identified irregular transactions which subsequently identified a fraud. The PTG runs

a suite of TACTICS reports that provide PTG staff with an opportunity to identify irregular transactions.

Case file reviews

2.126 The FMSU Manual states:

All client files are to be reviewed within three years of the date of appointment, either at random as part of supervision and/or a complaint, or when key milestones are reached.

2.127 The FMSU Manual goes on to state that case file reviews are conducted in order to ensure that:

- all actions have been addressed as far as possible per policy and procedure;
- identified client needs are addressed satisfactorily;
- there is a consistent approach to the management of such clients and proper consideration of the principles of the GMP Act;
- managed persons are being treated with respect and dignity as evidenced (in part) by the communication in place;
- clients are being administered in an efficient and timely manner;
- systemic issues can be highlighted by the reviewer to their manager/supervisor for resolution in conjunction with other senior managers and/or executive staff; and
- individual training needs can be identified and addressed.

Conduct of case file reviews

2.128 The PTG has developed a program of case file reviews through which it seeks to undertake reviews:

- approximately two to three months after the PTG has been appointed as a financial manager; and
- in the month prior to an ACAT review hearing (ACAT reviews occur every three years or when requested).

2.129 The PTG may also review files on an ad hoc basis. The FMSU Manual does not specify criteria by which the files should be selected on an ad hoc basis.

2.130 In its response to the draft proposed report the PTG advised that, in practice, ad hoc reviews had been undertaken with reference to higher risk, more complex files, but that this was not documented in the FMSU Manual.

Conduct of case file reviews

2.131 A case file review involves a check of:

- client details;

- data completeness around income, assets, debts etc; and
 - compliance with FMSU Manual requirements such as creation of draft budgets and documentation of client visits.
- 2.132 Files are reviewed by the Team Leader for staff in their team, or the Principal Financial Manager (SOG C) or the Senior Director for any clients managed by the Team Leader. There was evidence that the Principal Financial Manager completed all ad hoc and ACAT case reviews.
- 2.133 The PTG has developed a checklist template for ACAT and ad hoc file reviews. The template guides the reviewer to consider:
- the completeness and accuracy of:
 - client information and details;
 - information on the budget, including income and expenditure;
 - information on assets;
 - information associated with external services, such as Centrelink and the ATO; and
 - whether the client has been engaged in decision making and/or communicated with appropriately.
- 2.134 The checklist template does not provide for a review of reimbursements to third parties. Reimbursements are a high-risk transaction, which warrant consideration as part of a case file review.

Reporting of case file reviews

- 2.135 The PTG prepares a list of reviews it plans to complete for each quarter and reports the outcomes of these reviews as they are completed. Since 2018 the number and outcomes of reviews have been reported to the PTG's audit committee every quarter and at the end of each financial year.
- 2.136 The planning and conduct of case file reviews is not undertaken through a risk-based approach. It is primarily driven by the scheduling of ACAT reviews. The PTG advised that the clients selected for ad hoc reviews have also usually had a change in circumstances since their last review. While the latter involves an element of a risk-based approach, there is an opportunity to manage the case file review process to ensure that clients assessed as having high complexity (who inherently carry a higher risk) are selected for review more regularly.

Number of case file reviews

- 2.137 The numbers of case file reviews (excluding complaints reviews) that the PTG undertook between 2018–19 and 2021–22, and the percentage of files that PTG found to be in order, are shown in Table 2-3.

Table 2-3 PTG reviews of financial management files for protected persons (2018–19 to 2021–22)

Review type	2018–19	2019–20	2020–21	2021–22
For ACAT	57	81	125	87
Ad hoc	21	4	17	25
Initial	43	37	45	36
Total	121	122	187	148
Files in order	94	98	151	122
Files not in order	27	24	36	26
Percentage of files in order	78%	80%	81%	82%

Source: Audit Office analysis of PTG review data.

2.138 Of the 26 files that were found not to be in order in 2021–22, the PTG classed one review error as significant and the remaining as administrative errors (such as not saving the appropriate document to the file, or errors in client details).

Case file review

2.139 The audit reviewed the conduct of 14 case file reviews (12 ad hoc and two for ACAT) that the PTG completed for the files of protected persons under financial management in 2021–22.

2.140 The review found that five files (36 percent) were reported as being in good order, or not requiring updates, amendments or follow-up. However, it is apparent that the case file reviews did, in fact, identify matters for follow-up, such as:

- missing bank statements;
- incomplete property information; and
- a suggestion that the client be reassigned to a higher officer due to complexity.

2.141 Reporting the case files as being in good order, but otherwise identifying follow-up action that is required, misrepresents the outcomes of the case file review. The PTG should change how it classifies the outcomes of reviews to identify where follow-up action is required. The PTG could then check on what follow-up action has been taken on these matters.

Results of case file reviews

2.142 The PTG advised that the results of case file reviews are discussed at team meetings and are used as a training tool. The Audit Office examined the minutes of FMSU meetings for 2021 and 2022. These minutes indicate that issues requiring action are routinely addressed, although there is no specific item on the meeting agenda relating to the issues arising from the file reviews. The Audit Office suggests that the FMSU includes such an item on its meeting agenda.

- 2.143 The PTG has developed a program of case file reviews through which it seeks to undertake reviews: approximately two to three months after the PTG has been appointed as a financial manager; in the month prior to an ACAT review hearing; and on an ad hoc basis. In 2021-22, 36 initial case file reviews were conducted, 87 were conducted for the purpose of an ACAT review hearing and 25 were conducted on an ad hoc basis. The FMSU Manual does not specify criteria by which the files should be selected on an ad hoc basis and the planning and conduct of case file reviews is not undertaken through a risk-based approach. There is an opportunity to manage the case file review process to ensure that clients assessed as having high complexity (who inherently carry a higher risk) are selected for review more regularly.
- 2.144 A review of 14 case file reviews conducted by the PTG in 2021-22 shows that five files were reported as being in good order, or not requiring updates, amendments or follow-up. However, it is apparent that the case file reviews did, in fact, identify matters for follow-up. Reporting the case files as being in good order, but otherwise identifying follow-up action that is required, misrepresents the outcomes of the case file review.

RECOMMENDATION 6 CASE FILE REVIEWS

The Public Trustee and Guardian should review its processes for the conduct of case files reviews and in doing so establish and document processes for:

- a) regular review of case files identified as being high risk and complex; and
- b) random, unscheduled reviews of cases distributed across all Financial Managers.

3 DELIVERY OF FINANCIAL MANAGEMENT SERVICES

- 3.1 This chapter considers the activities of the Public Trustee and Guardian in providing financial management services to protected persons. It considers the activities of the PTG against relevant standards, principles and legislation.

Summary

Conclusion

The PTG has adopted a supported decision-making approach. To do this effectively, it is critical that protected persons, or their support persons, are consulted to understand their financial position, as well as their wishes. This consultation is not routinely undertaken, undermining the efforts of the PTG to provide supported decision-making.

The PTG has effective processes for the identification of a protected person's income, expenses, assets and liabilities as well as any ongoing management issues, when it is first appointed as a financial manager. However, in a number of instances in the case files reviewed there was no evidence of the protected person being consulted during this process. Similarly, in a number of instances in the case files reviewed, there was no evidence of a protected person being consulted in the development of an annual budget.

A key mechanism that provides assurance with respect to the PTG's management of a protected person's finances is the provision of an annual itemised statement to a protected person or their guardian at the end of each financial year. This is required by virtue of subsection 27AA(2) of the GMP Act. The statements provide an opportunity for the protected person or their guardian to identify and question any potential irregular transactions associated with their account. In a number of instances in the case files reviewed no statement was provided. For some of these cases the reasons as to why a statement was not provided was not documented.

Key findings

Paragraph

Decision-making principles

The FMSU Manual outlines a *Structured Decision-Making Framework Workflow* that provides guidance for staff when making decisions for financially managed persons under the GMP Act. The *Structured Decision-Making Framework Workflow* aids in determining whether a protected person's views, wishes and preferences can be ascertained. In the 34 case files reviewed by the Audit Office, there was no evidence of the PTG's consideration of the Workflow. By not documenting the recognition and

3.20

application of the *Structured Decision-Making Framework Workflow* the PTG cannot demonstrate that it is actively promoting and pursuing the ideal of supported decision-making for protected persons.

Financial management services

When the PTG is first appointed as financial manager for a protected person, the Transition Team is responsible for identifying the protected person's income, expenses, assets and liabilities as well as any ongoing management issues. To assist with this process, the PTG has developed and included as annexures to the FMSU Manual: *Guidelines – Client Intake Process*; and *New Client Information Checklist*. A review of 12 case files where the PTG was newly appointed as a financial manager in 2021–22 found:

- for all 12 cases a *New Client Information Checklist* was completed; and
- for three cases there was no record on file of initial meetings with the protected person and/or a support person initial meeting, nor was there a record of why a meeting was not held. For one of these cases there was, however, correspondence with a support organisation about the person's finances.

The FMSU Manual requires financial managers to develop either a simple or complex budget depending on a protected person's circumstances. In the 34 case files reviewed by the Audit Office a budget had been prepared for each of the protected persons. The budget was located on the protected person's file. Of the 34 case files selected for review, it was apparent that nine required complex budgets; these were supported by a financial plan for the protected person's investments. Simple budgets were prepared for the remaining 25 case files, which were basic in format but otherwise reflected the relatively fixed income and expenses of the protected persons. There was limited evidence that the PTG regularly consulted protected persons or their guardians around their financial needs prior to the preparation of their annual budget. For 22 of the 34 case files reviewed (64 percent) there was no evidence that the protected person and/or their support was consulted in the preparation of the budget.

Subsection 27AA(2) of the GMP Act requires the PTG to provide an annual itemised statement to a protected person or their guardian at the end of each financial year. The statements provide an opportunity for the protected person or their guardian to identify and question any potential irregular transactions associated with their account. In the 24 case files reviewed by the Audit Office (where an annual statement should have been provided) it was apparent for 11 cases that no statement was provided and for four of these cases the reasons as to why a statement was not provided was not documented.

Fees for financial management services

The *Public Trustee and Guardian Act 1985* allows for the PTG to charge fees for its services. *Public Trustee and Guardian (Fees) Determination 2022 (No 2)* (Disallowable instrument DI2022-199) was made on 29 August 2022; it sets out the basis on which

the PTG charges fees for its services. A business case developed by the PTG in 2020 noted that ‘the nature of its funding arrangements pre-supposes that PTG must cross-subsidise its services to ensure accessibility by the community, particularly those experiencing hardship’ and that ‘subsidisation is vital to PTG’s service model in that, if cross-subsidies were removed, it is likely that some people in the community would have a lower expectation of services, or that Government would be required to fund the provision of such services directly’. It is not clear whether the PTG’s fees cover the actual cost of delivering financial management services because the PTG has not undertaken work to establish the cost of delivering its services.

Decision-making principles

- 3.2 Financial managers are needed because a protected person has a cognitive impairment that impacts their capacity to make financial decisions. Each client’s capacity to make decisions varies and may change over time.
- 3.3 Financial decisions that reflect the best interests of a protected person cannot be made without a good understanding of their individual needs. For some protected persons, their capacity to communicate their needs may be limited. It is important that, in these instances, communication extends beyond protected persons and to their support persons.

Legislative requirements

- 3.4 Subsection 4(2) of the GMP Act requires that, when making decisions, consideration is given to the following principles:
- a) the protected person's wishes, as far as they can be worked out, must be given effect to, unless making the decision in accordance with the wishes is likely to significantly adversely affect the protected person's interests;
 - b) if giving effect to the protected person's wishes is likely to significantly adversely affect the person's interests – the decision-maker must give effect to the protected person's wishes as far as possible without significantly adversely affecting the protected person's interests;
 - c) if the protected person's wishes cannot be given effect to at all – the interests of the protected person must be promoted;
 - d) the protected person's life (including the person's lifestyle) must be interfered with to the smallest extent necessary;
 - e) the protected person must be encouraged to look after himself or herself as far as possible;
 - f) the protected person must be encouraged to live in the general community, and take part in community activities, as far as possible.

National Standards for Financial Managers

- 3.5 The Australian Guardianship and Administration Council has developed the *National Standards for Financial Managers* (the Standards), which set out the minimum levels of service that persons who are unable to manage part, or all, of their financial affairs can expect to receive from their financial manager. The standards apply to financial managers appointed by an Order of an Australian Court or Tribunal.
- 3.6 There are 12 standards that apply in respect of a protected person:
- providing information (discussed below)
 - advocating as necessary
 - seeking their views and involvement (discussed below)
 - protecting their assets
 - making financial decisions with them
 - investing money appropriately
 - making appropriate payments to and on their behalf
 - keeping appropriate records
 - respecting their privacy and confidentiality
 - protecting and respecting their legal rights
 - acting professionally towards them

Providing information

- 3.7 Under the Standards, financial managers have a duty to keep protected persons informed about all aspects of the management of their financial affairs.

Seeking their views and involvement

- 3.8 The Standards also require, whenever possible, that the financial manager ask for the protected person's views on all major decisions that need to be made and fully consider their views before making any such decisions. Where possible the financial manager should work with the protected person to create opportunities for them to manage part, or all, of their financial affairs themselves.

3.9 The financial manager is expected to:

- consult with protected persons if at all possible about ‘major’ decisions concerning their financial affairs and also consult with their immediate family members or ‘key’ people involved with them if appropriate; and
- advise protected persons of their right, and that of others, to request that ‘major’ decisions by the financial manager that they disagree with be independently reviewed.

3.10 The financial manager is expected to ensure that protected persons are:

- provided with every opportunity, appropriate and possible, to take back control of the management of some or all of their financial affairs; and
- assisted, wherever possible, to understand decisions that need to be made, and to make decisions themselves with the financial manager’s help.

FMSU Manual requirements

3.11 Section 3.2 of the FMSU outlines the decision-making principles that need to be considered in the provision of financial management services to protected persons (as per subsection 4(2) of the GMP Act). The FMSU Manual also identifies a range of other issues that also need to be considered:

- the terms of the order appointing the PTG;
- the protected person’s views;
- arrangements put in place by the protected person when they had the capacity to manage their own affairs;
- the protected person’s immediate and long-term needs;
- the financial resources available;
- requests, plans and objectives of any guardian appointed for the protected person;
- the protected person’s current, previous and ‘hoped-for’ lifestyle;
- the protected person’s commitments or obligations to their family; and
- any other relevant factors.

Assessing protected persons’ capacity to make decisions

3.12 The FMSU Manual requires an assessment to be made about whether a protected person requires *supported* or *substituted* decision making.

3.13 *Supported decision making* is where someone assists a person with reduced capacity to make decisions. *Substitute decision making* is where a person makes decisions for someone who has no decision-making capacity.

3.14 The FMSU Manual includes a *Decision-making Framework*, which:

... provides guidance for staff when making decisions for financially managed persons under the GMP Act.

3.15 The FMSU Manual states:

PTG has a client-specific framework that is client-centred, flexible and creates a consultative process that takes into account a person's unique life experiences, circumstances and views.

The needs and wellbeing of the individual will be considered in the context of the many factors that affect them, including family, culture, employment, support structures, health and medical, and legal considerations.

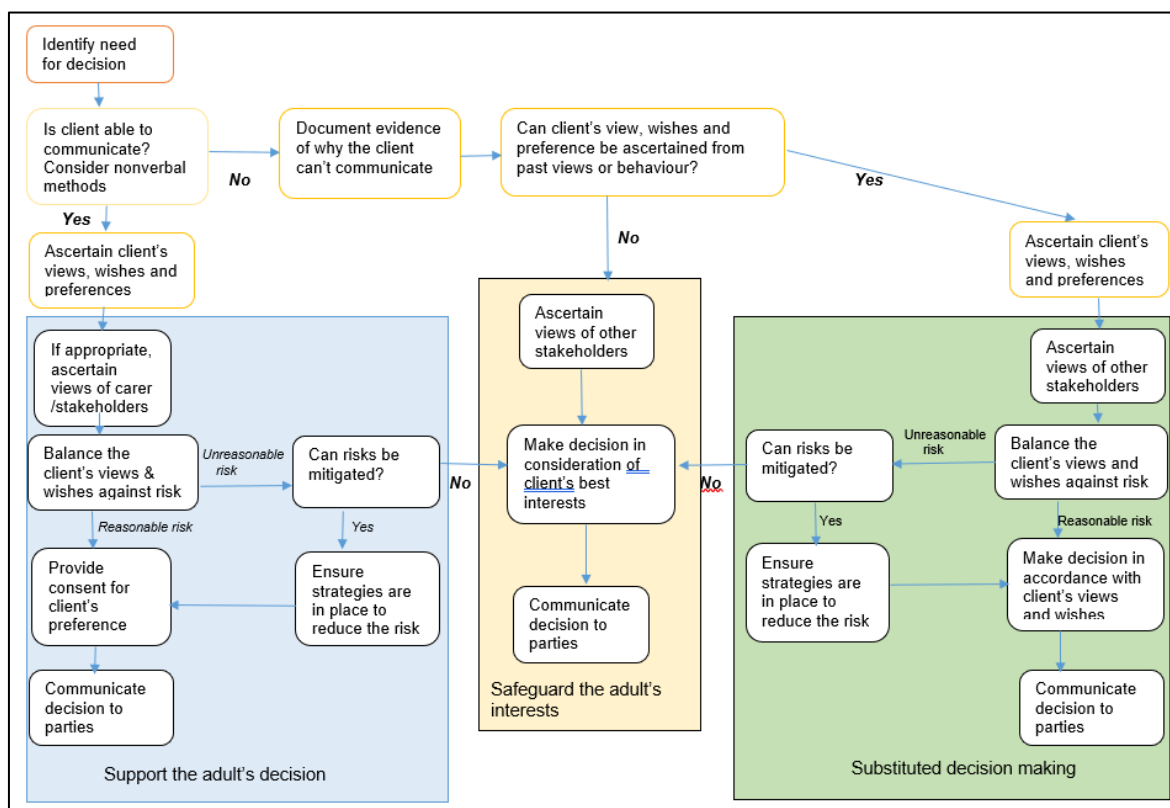
3.16 The FMSU Manual also states:

PTG reinforces the general principles of the Act:

- decisions should be made considering the client's whole of life context rather than consideration of any single decision in isolation
- managed persons will be treated with respect and dignity and encouraged as much as possible towards self-determination, with PTG providing a supportive and assistive role.

3.17 The FMSU Manual includes a *Structured Decision-Making Framework Workflow*, which provides guidance for staff when making decisions for financially managed persons under the GMP Act. The *Structured Decision-Making Framework Workflow* is intended to be used to determine whether a protected person's views, wishes and preferences can be ascertained. Figure 3-1 shows the *Structured Decision-Making Framework Workflow*.

Figure 3-1 Public Trustee and Guardian Structured Decision-Making Framework Workflow



Source: FMSU Manual

3.18 The *Structured Decision-Making Framework Workflow* is a useful tool in assessing a protected person's ability to contribute to the decision-making process.

Case file review

3.19 In the 34 case files reviewed by the Audit Office, there was no evidence of the PTG's consideration of the *Structured Decision-Making Framework* and whether the protected persons views, wishes and preferences could be ascertained. There was no documentation of the recognition and application of the Framework in any aspect of the management of the protected person's financial affairs.

3.20 The FMSU Manual outlines a *Structured Decision-Making Framework Workflow* that provides guidance for staff when making decisions for financially managed persons under the GMP Act. The *Structured Decision-Making Framework Workflow* aids in determining whether a protected person's views, wishes and preferences can be ascertained. In the 34 case files reviewed by the Audit Office, there was no evidence of the PTG's consideration of the Workflow. By not documenting the recognition and application of the *Structured Decision-Making Framework Workflow* the PTG cannot demonstrate that it is actively promoting and pursuing the ideal of supported decision-making for protected persons.

RECOMMENDATION 7 ASSESSMENT OF DECISION-MAKING CAPABILITY

The Public Trustee and Guardian should assess, and document, whether a protected person's views, wishes and preferences can be ascertained.

Financial management services

Identification of financial needs

3.21 Appropriately identifying and understanding a protected person's personal circumstances and needs is important to providing effective financial management services. Once the PTG is appointed as a protected person's financial manager, this is primarily the responsibility of the PTG's Transition Team.

Transition Team

3.22 When the PTG is first appointed as financial manager for a protected person, the Transition Team is responsible for identifying the protected person's income, expenses, assets and liabilities as well as any ongoing management issues.

3.23 The Transition Team consists of three staff, who manage approximately 100 new orders per financial year. The Transition Team also manages work associated with persons whose orders have been revoked or where the person has died. Due to its small size the Transition Team requires additional resources from other areas of the PTG during staff absences to manage its workload.

3.24 The numbers of new appointments, revocations of orders and deaths of protected persons from 2018–19 to 2021–22 are shown in Table 3-1.

Table 3-1 Appointments, revocations and deaths of protected persons managed by the PTG (2018–19 to 2021–22)

	2018–19	2019–20	2020–21	2021–22	Total
Appointments	56	49	46	46	197
Revocations	22	19	19	19	79
Deaths	22	33	26	37	118
Total	100	101	91	102	394

Source: Audit Office analysis of PTG Transition Team data.

Understanding a protected person's financial circumstances

Policy and procedural guidance

- 3.25 The FMSU Manual allocates responsibility for establishing a protected person's financial profile to the Transition Team. This includes identifying and recording income, assets and liabilities. To assist with this process, the PTG has developed and included as annexures to the FMSU Manual:
- *Guidelines – Client Intake Process*; and
 - *New Client Information Checklist*.
- 3.26 The *Guidelines – Client Intake Process* provide a detailed description of the administrative processes required to establish a protected person's file. The Guidelines identify activities, responsibilities and timeframes. The timeframes are established with reference to the ACAT decision to appoint the PTG, e.g. the relevant activity must be done within three days, two weeks etc.
- 3.27 The *Guidelines – Client Intake Process* require a *New Client Information Checklist* 'to be completed, with areas of further investigation identified' within one week of the ACAT decision.
- 3.28 The *New Client Information Checklist* is a comprehensive document that facilitates the collection and recording of information relevant to the protected person. It provides for the recording of information on:
- personal and family details;
 - medical details; and
 - financial information, including income, expenditure, assets and liabilities.
- 3.29 The *New Client Information Checklist* prompts recording of a range of considerations across all categories. Information should be recorded where relevant or otherwise noted as not applicable.

Obtaining information from relevant sources

- 3.30 The PTG advised that identifying a protected person's financial affairs, including income, expenditure, assets and liabilities, usually takes 6 to 12 weeks.
- 3.31 The PTG advised that, when an order is made appointing the PTG as a person's financial manager, information on the financial position of the person is usually not available. Orders for financial management of a protected person may arise from:
- an application to ACAT from a third party (e.g. family member, social worker etc); or
 - the revocation of a private manager's appointment.

- 3.32 In relation to an application to ACAT from a third party, the PTG advised that it will first contact the person who applied for the order and ask for any information they may have. A family member who has applied for an order can usually provide information, but hospital and social workers are often not in a position to do so.
- 3.33 Where the protected person does not have family members or supports/advocates who can assist, the PTG sources information on the protected person's financial position by contacting relevant agencies (e.g. Centrelink and/or Comsuper and the Australian Taxation Office) and financial institutions.
- 3.34 Some protected persons have significant assets (e.g. property, businesses or shares) or complex liabilities (e.g. loans), which can be difficult to identify accurately and may require very careful ongoing management.

Communicating with a protected person

- 3.35 The *Guidelines – Client Intake Process* require the following action within two weeks of the ACAT decision:
- Either by phone, in writing or attendance with client/key contacts (including guardian) establish/confirm immediate needs and encourage a client visit to discuss PTG management.
- 3.36 The PTG advised that the Transition Team seeks to meet and speak with the protected person during this initial period. In doing so the Transition Team seeks to:
- introduce their role;
 - explain the appointment of the PTG;
 - seek specific information on their financial circumstances; and
 - seek their views about their expenditure.
- 3.37 It is often the case that the protected person does not have the capacity to be involved in these initial meetings, and as an alternative the PTG tries to organise for family or support workers or the applicant for the management order to accompany them at this time.

Case file review

- 3.38 As part of the case file review, the Audit Office reviewed 12 case files where the PTG was newly appointed as a financial manager in 2021–22. The review found:
- for all 12 cases a *New Client Information Checklist* was completed;
 - for nine cases there was evidence on file of initial meetings with the protected person and/or a support person; and
 - for three cases there was no record of an initial meeting, nor was there a record of why a meeting was not held. For one of these cases there was, however, correspondence with a support organisation about the person's finances.

3.39 When the PTG is first appointed as financial manager for a protected person, the Transition Team is responsible for identifying the protected person's income, expenses, assets and liabilities as well as any ongoing management issues. To assist with this process, the PTG has developed and included as annexures to the FMSU Manual: *Guidelines – Client Intake Process*; and *New Client Information Checklist*. A review of 12 case files where the PTG was newly appointed as a financial manager in 2021–22 found:

- for all 12 cases a *New Client Information Checklist* was completed; and
- for three cases there was no record on file of initial meetings with the protected person and/or a support person initial meeting, nor was there a record of why a meeting was not held. For one of these cases there was, however, correspondence with a support organisation about the person's finances.

Development of an annual budget

3.40 A key aspect of the delivery of financial management services to a protected person is the development of an annual budget. The budget provides the basis for the majority of expenditure relating to a protected person.

3.41 The FMSU Manual states:

It is important that every client has a workable budget to ensure the effective and accountable management of each client's property. Draft budgets are to be established as soon as information is obtained reflecting the income and expenses specific to the client. As a more accurate profile is developed, the budget will evolve ...

The [Financial Manager] will initially create a draft budget for all clients, which will be updated as the client's needs are determined. A budget must be reviewed if circumstances alter, when income entitlements increase, and as part of the overall client file review.

The budget is developed in consultation with the client, their guardian, key contacts and service providers (as appropriate). A copy of the final budget is to be provided to the client and guardian/key contact (as appropriate) for future reference.

Preparation of annual budgets

Case file review

3.42 In the 34 case files reviewed by the Audit Office a budget had been prepared for each of the clients. The budget was located on the protected person's file.

Consultation on budgets

Simple budgets and complex budgets

3.43 The FMSU Manual requires financial managers to develop either a simple or complex budget depending on a protected person's circumstances.

3.44 Simple budgets are prepared by the assigned Financial Manager for clients:

- whose only income is derived from pensions;

- who have limited savings; and/or
- who may be asset rich but cash poor.

3.45 Complex budgets are prepared by the assigned Financial Manager with supervision/input from a Team Leader or FMSU manager. The FMSU Manual states:

These clients will have investments in growth assets, such as Australian or international shares, listed property, or directly owned investment (rental) property.

These investments may be held in managed funds, superannuation, allocated pensions, account-based pensions, and annuities with a residual capital value.

3.46 Whether simple or complex, the FMSU Manual provides for the development of a budget using the following same steps:

- knowing the client (i.e. understanding their situation and needs and identifying income and expenses);
- consultation with clients or others as necessary;
- confirmation and approval of budget, including documenting it on the client's file; and
- ongoing review.

3.47 Consultation is considered to be a critical component of supported decision making. The FMSU Manual states:

Consultation is paramount for budget preparation as areas that need financial attention can be identified, ensuring a viable budget is produced.

Case file review

3.48 In the 34 case files reviewed by the Audit Office it was apparent that nine required complex budgets. These were supported by a financial plan for the protected person's investments.

3.49 For five of the nine cases there was no evidence that the client had been consulted as required under the FMSU Manual. As noted at paragraph 3.47, consultation is considered important for the development of a viable budget.

3.50 While the simple budgets prepared for the remaining 25 case files reviewed appeared basic in format, this reflected the relatively fixed income and expenses of the protected persons. A review of the budgets shows items that were specific to the protected person, e.g. pet expenses and entertainment costs, as well as ad hoc expenditure requested by the protected person, e.g. new furniture.

3.51 For 17 of these 25 cases there was no evidence that the client had been consulted as required under the FMSU Manual.

3.52 The FMSU Manual requires financial managers to develop either a simple or complex budget depending on a protected person's circumstances. In the 34 case files reviewed by the Audit Office a budget had been prepared for each of the protected persons. The budget

was located on the protected person's file. Of the 34 case files selected for review, it was apparent that nine required complex budgets; these were supported by a financial plan for the protected person's investments. Simple budgets were prepared for the remaining 25 case files, which were basic in format but otherwise reflected the relatively fixed income and expenses of the protected persons. There was limited evidence that the PTG regularly consulted protected persons or their guardians around their financial needs prior to the preparation of their annual budget. For 22 of the 34 case files reviewed (64 percent) there was no evidence that the protected person and/or their support was consulted in the preparation of the budget.

RECOMMENDATION 8 CONSULTATION DURING THE PREPARATION OF BUDGETS

The Public Trustee and Guardian should update the FMSU Manual to specifically require documentation of consultation (or the reasons why consultation did not take place) with a protected person and/or their support persons during the development of their annual budget.

Expenditure controls

Documentation support

Case file review

- 3.53 All 34 case files reviewed by the Audit Office included information on expenditure, including invoices and income and expenditure sheets.
- 3.54 The majority of expenditure incurred on behalf of the protected person was based on expenses identified, and planned for, in the annual budget.

Reports to protected persons

- 3.55 Subsection 27AA(2) of the GMP Act requires the PTG to provide an annual itemised statement to a protected person or their guardian at the end of each financial year:
- The public trustee and guardian must, as soon as practicable after the end of each financial year, provide a statement to—
- (a) the person; or
- (b) if a guardian has been appointed for the person—the person's guardian.
- 3.56 A protected person or their guardian may request more regular statements or ad hoc statements.

3.57 These statements provide an opportunity for the protected person or their guardian to identify and question any potential irregular transactions associated with their account. Where a statement is not provided, the PTG is expected to:

- document the reasons why a statement is not being provided; and
- save this documentation on the protected person's file.

Case file review

3.58 In the 24 case files reviewed by the Audit Office (where an annual statement should have been provided) it was apparent that:

- for 11 out of 24 cases, no statement was provided to the protected person or their guardian in 2020-21; and
- for four of these cases the reasons as to why a statement was not provided was not documented on file.

3.59 For the remaining seven cases, the reason for not providing the annual statement was identified as:

- the protected person's lack of capacity to review the statement (five of the seven);
- privacy concerns due to shared living arrangements (one of the seven); and
- the type of account (one of the seven).

3.60 These reasons were accepted as reasonable by the Audit Office.

3.61 Subsection 27AA(2) of the GMP Act requires the PTG to provide an annual itemised statement to a protected person or their guardian at the end of each financial year. The statements provide an opportunity for the protected person or their guardian to identify and question any potential irregular transactions associated with their account. In the 24 case files reviewed by the Audit Office (where an annual statement should have been provided) it was apparent for 11 cases that no statement was provided and for four of these cases the reasons as to why a statement was not provided was not documented.

RECOMMENDATION 9 ANNUAL STATEMENTS

The Public Trustee and Guardian should provide an annual statement to a protected person or their guardian, unless there is a justified reason not to do so, which is documented on the protected person's client file.

Fees for financial management services

Determination of fees

3.62 Subsection 28(1) of the *Public Trustee and Guardian Act 1985* (PTG Act) allows for the PTG to charge fees for its services:

The public trustee and guardian—

(a) may, in respect of a service rendered by the public trustee and guardian for which no other provision for the payment of a fee is made under this Act, charge such fee, whether by way of commission or otherwise, as is determined under section 75 for this section; and

(b) is entitled to the reasonable expenses incurred by the public trustee and guardian in rendering a service.

3.63 Section 75 of the PTG Act allows for the Minister to ‘determine fees and charges for this Act’ and provides for this to be a disallowable instrument.

3.64 The *Public Trustee and Guardian (Fees) Determination 2022 (No 2)* (Disallowable instrument DI2022-199) was made on 29 August 2022. By virtue of the Determination, fees for administering assets are as follows:

- Cash assets (collection of) - 1.1 percent of gross amount;
- Non-cash assets (dealing with) - 4.4 percent of gross amount;
- Personal dwelling – purchase or sale of (on value of property) - 1.1 percent.

3.65 By virtue of the Determination, fees for the collection of income are as follows:

- commission on income in the form of Centrelink and Veterans Affairs pensions - 3.5 percent; and
- commission on all other income received - 6.6 percent.

3.66 The Determination also allows for the PTG to charge \$298 per hour for investment advice.

3.67 While the maximum commission on income is 6.6 percent, the PTG’s fees have been structured so that a discounted commission of 3.5 percent is applied to income from Commonwealth Social Security sources, i.e. Centrelink and Department of Veterans Affairs .

Appropriateness of fees

3.68 In order to deliver services, the PTG generates revenue from a number of sources including:

- own source revenue from fees and charges;
- appropriation for Guardianship and Unclaimed Bodies Scheme Administration;
- interest; and
- Community Service Obligation Funding.

3.69 A Business Case developed by the PTG in 2020 noted that:

The nature of its funding arrangements pre-supposes that PTG must cross-subsidise its services to ensure accessibility by the community, particularly those experiencing hardship. Subsidisation is vital to PTG's service model in that, if cross-subsidies were removed, it is likely that some people in the community would have a lower expectation of services, or that Government would be required to fund the provision of such services directly. This model allows PTG to generate modest profits on some services so that it can cross-subsidise the cost of providing non-viable services.

3.70 It is not clear to what extent these fees cover the actual cost of delivering financial management services. The PTG has not undertaken work to establish the cost of delivering its services.

3.71 It is important for the PTG to understand the cost the cost of providing financial management services so that it can determine both the appropriate fee to charge for this service, and the amount of Community Service Obligations payment required from Government to support the delivery of this service.

3.72 The *Public Trustee and Guardian Act 1985* allows for the PTG to charge fees for its services. *Public Trustee and Guardian (Fees) Determination 2022 (No 2)* (Disallowable instrument DI2022-199) was made on 29 August 2022; it sets out the basis on which the PTG charges fees for its services. A business case developed by the PTG in 2020 noted that 'the nature of its funding arrangements pre-supposes that PTG must cross-subsidise its services to ensure accessibility by the community, particularly those experiencing hardship' and that 'subsidisation is vital to PTG's service model in that, if cross-subsidies were removed, it is likely that some people in the community would have a lower expectation of services, or that Government would be required to fund the provision of such services directly'. It is not clear whether the PTG's fees cover the actual cost of delivering financial management services because the PTG has not undertaken work to establish the cost of delivering its services.

RECOMMENDATION 10 COST REVIEW

The Public Trustee and Guardian should undertake an assessment of the costs associated with providing financial management services to protected persons. The cost review could then be used as a basis for determining its funding base and fees for services.

4 CLIENT COMPLAINTS AND FEEDBACK

- 4.1 This chapter considers the Public Trustee and Guardian’s use of complaints and feedback to improve performance. The chapter considers whether the PTG has effectively collected, managed and used information gathered from complaints and other sources of feedback to improve the delivery of financial management services to protected persons.

Summary

Conclusion

The complaints and feedback processes of the Public Trustee and Guardian (PTG) are not effective. While the PTG collects information from complaints, it does not do so in a manner that enables an analysis of systemic service delivery issues. The PTG does not record complaints in a single register that records the nature of the complaint, the service to which it relates and the outcome of the complaint.

The PTG does not seek or meaningful client feedback on its financial management services. While collecting this information presents challenges, there is a need for PTG to obtain improved client feedback on the effectiveness of its role as a financial manager for protected persons.

Key findings

	Paragraph
Client complaints	
The PTG has a <i>Complaints Policy</i> , which is published as a fact sheet on its website. The <i>Complaints Policy</i> refers to the role of a Complaints Co-ordinator in managing, and responding to, complaints. Such a role does not exist within the PTG; in practice the Public Trustee and Guardian has personally coordinated and responded to complaints that have not been resolved immediately. A 2021 Justice and Community Safety Directorate review into the rights protection services provided through the PTG highlighted the risks of such an approach. Appropriately designating a Complaints Co-ordinator would provide the PTG with a stronger and more effective basis managing complaints and feedback.	4.9
Complaints that the PTG receives direct, and which require a formal response, are recorded in a spreadsheet; the ‘complaints register’. Complaints that are received through third parties, e.g. a Minister or a Member of the Legislative Assembly, a Legislative Assembly committee, or a body such as the ACT Ombudsman or the ACT Human Rights Commission, are recorded in the bespoke systems for managing correspondence from those sources. Maintaining information on complaints across	4.12

multiple systems increases risks associated with data accuracy and impairs the ability of the PTG to analyse, review and report on its complaints management processes.

The complaints register contains information on: the date of the complaint; from whom it was received; a brief description of the complaint; and when it was resolved. The complaints register does not record the outcome of a complaint or categorise the nature of the complaint. Not including this information impairs the ability of the PTG to analyse, review and report on its complaints management processes. 4.17

With the exception of complaints received from the ACT Ombudsman, the PTG does not report complaints information in its annual report. Including information on the number of complaints it receives, the timeliness of resolution and the broad actions taken to resolve the complaints would provide greater transparency and accountability to the ACT Legislative Assembly and broader community on the activities of the PTG. 4.24

Client feedback

The PTG does not undertake client satisfaction surveys, but does make client feedback forms available. In 2021–22, 23 clients submitted client feedback forms, compared to 27 in 2020–21. The overall satisfaction ratings from the client feedback forms are published as ‘client survey’ results in the PTG’s annual reports. It is misrepresentative of the PTG to report the results of client feedback forms as ‘client survey’ results because they do not represent a thorough, targeted and systematic collection of information on client satisfaction. 4.30

The PTG should seek better, more-informed feedback from protected persons on its financial management services. This could be received through a properly conducted survey of protected persons or through the invitation of targeted feedback from protected persons or their representatives. Such an approach would accord with the February 2021 *Protection of Rights Services Review* report, which identified a need for the PTG to develop a strategic approach to evaluating the quality of its service delivery, practice, and governance, particularly for protected persons. 4.39

Client complaints

- 4.2 Every organisation can expect to receive complaints and other feedback about the services it provides. How well an organisation responds to complaints can affect how satisfied a complainant may be with the resolution or otherwise of their matter. Complaints are also a valuable source of information that can assist in improving service delivery. It is therefore important that an organisation has suitable systems and processes in place to:
- deal with complaints quickly and thoroughly; and
 - use information gathered from complaints to review and improve its services.

Complaints policy

- 4.3 The PTG has a *Complaints Policy*, which is published as a fact sheet on its website.² The Policy notes complaints ‘may be made orally, in writing (preferable) or electronically’. The Policy notes;
- the PTG will seek to resolve the complaint immediately, but if this is not possible, it will be acknowledged within 14 days and appropriate action will be taken; and
 - except where the complaint is of a complex nature, every effort will be made to respond to complaints within 14 days.
- 4.4 The *Complaints Policy* states ‘where a complaint is made in writing, electronically or cannot be resolved immediately, our Complaints Co-ordinator will manage the complaint and ensure that appropriate action is taken’.

Complaints management

- 4.5 The *Complaints Policy* refers to the role of a Complaints Co-ordinator in managing, and responding to, complaints. Such a role does not exist within the PTG. In practice, the Public Trustee and Guardian has personally coordinated and responded to complaints that have not been resolved immediately.
- 4.6 In 2021 the Justice and Community Safety Directorate (JACS) commissioned a review into the rights protection services provided through the ACT Human Rights Commission and Public Trustee and Guardian. With respect to the Public Trustee and Guardian and their role in personally coordinating and responding to complaints the February 2021 *ACT Protection of Rights Services Review* report noted:
- While this approach has been useful during consolidation following the reforms, it would be timely to design and implement a policy that more strongly aligns with best practice and reserves the role of the office holder to providing oversight and as an option for escalation.³
- 4.7 The PTG asserts that most complaints are resolved immediately and to the satisfaction of complainants. However, no information is collected and retained on these complaints and they are not recorded in the PTG’s complaints statistics. The PTG advised that it may be able to retain data on these complaints once it has implemented the FMSU CRM module.
- 4.8 Complaints that are not resolved immediately are typically received through a variety of sources, including:
- the protected person or their representatives; and
 - other third parties, such as a Minister or a Member of the Legislative Assembly, a Legislative Assembly committee, or a body such as the ACT Ombudsman or the ACT Human Rights Commission.

² [ptg-fs-complaints.pdf \(act.gov.au\)](#) [accessed on 17 June 2022].

³ *ACT Protection of Rights Services Review* (February 2021), p.15.

- 4.9 The PTG has a *Complaints Policy*, which is published as a fact sheet on its website. The *Complaints Policy* refers to the role of a Complaints Co-ordinator in managing, and responding to, complaints. Such a role does not exist within the PTG; in practice the Public Trustee and Guardian has personally coordinated and responded to complaints that have not been resolved immediately. A 2021 Justice and Community Safety Directorate review into the rights protection services provided through the PTG highlighted the risks of such an approach. Appropriately designating a Complaints Co-ordinator would provide the PTG with a stronger and more effective basis managing complaints and feedback.

RECOMMENDATION 11 ESTABLISHMENT OF A COMPLAINTS CO-ORDINATOR

The Public Trustee and Guardian should designate a Complaints Co-ordinator to manage, and respond to, complaints in accordance with its *Complaints Policy*.

Complaints data

Complaints register

- 4.10 Complaints that the PTG receives direct, and which require a formal response, are recorded in a spreadsheet; the 'complaints register'. Complaints that are received through third parties, e.g. a Minister or a Member of the Legislative Assembly, a Legislative Assembly committee, or a body such as the ACT Ombudsman or the ACT Human Rights Commission, are recorded in the bespoke systems for managing correspondence from those sources. For the purpose of the audit the PTG compiled:
- complaints recorded on the complaints register; and
 - third-party complaints.
- 4.11 This is not done as a matter of course and this means that complaints information relating to the operation of the PTG is maintained across different systems. This raises issues around data accuracy, as there is no single source of truth. Recording and maintaining complaints information in a single system could also assist in analysis and review as it could provide a more complete picture of complaints by activity and source and may indicate systemic issues that might not otherwise be apparent.
- 4.12 Complaints that the PTG receives direct, and which require a formal response, are recorded in a spreadsheet; the 'complaints register'. Complaints that are received through third parties, e.g. a Minister or a Member of the Legislative Assembly, a Legislative Assembly committee, or a body such as the ACT Ombudsman or the ACT Human Rights Commission, are recorded in the bespoke systems for managing correspondence from those sources. Maintaining information on complaints across multiple systems increases risks associated with data accuracy and impairs the ability of the PTG to analyse, review and report on its complaints management processes.

Complaints information

- 4.13 Complaints received by the PTG relate to the full range of services it provides. In addition to financial management for protected persons, and examination of private manager accounts, this includes the guardianship of protected persons, financial management under enduring powers of attorney and administration of trusts, wills, and estates.
- 4.14 The complaints register contains information on:
- the date of the complaint;
 - from whom it was received;
 - a brief description of the complaint; and
 - when it was resolved.
- 4.15 The complaints register does not record the outcome of a complaint or categorise the nature of the complaint. This is a major omission that impairs the potential reporting and analysis of complaints management processes.
- 4.16 The complaints register does not specifically indicate whether a complaint relates to a person under a financial management order. There would be merit in the PTG ensuring that this information is recorded in the register. Doing so could assist the Financial Management Unit in monitoring activity for the highly vulnerable group of protected persons by identifying whether there is a pattern of complaints relating to:
- persons under financial management orders; or
 - clients of particular PTG officers.
- 4.17 The complaints register contains information on: the date of the complaint; from whom it was received; a brief description of the complaint; and when it was resolved. The complaints register does not record the outcome of a complaint or categorise the nature of the complaint. Not including this information impairs the ability of the PTG to analyse, review and report on its complaints management processes.

Complaints requiring formal responses

- 4.18 Table 4-1 shows the total number of complaints received by the PTG that it has identified as requiring a formal response between 2017-18 and 2021-22. The table also shows the number of complaints related to the PTG's financial management services for protected persons or its role in the examination of private manager accounts.

Table 4-1 Complaints received by the PTG relating to financial management (2017–18 to 2021–22)

	2017–18	2018–19	2019–20	2020–21	2021–22	Total
Total number of complaints made to the PTG	17	21	47	30	32	147
Complaints relating to the PTG's financial management for protected persons	5	6	8	3	3	24
Complaints relating to the PTG's examination of private manager accounts	-	-	1	1	-	2
Total PTG complaints relating to protected persons' financial management	5	6	9	4	3	26
Percentage answered in 14 days	100%	67%	100%	100%	100%	92%

Source: Audit Office analysis of PTG's combined complaints register.

4.19 A review of complaints received by the PTG that it has identified as requiring a formal response between 2017-18 and 2021-22 shows:

- the PTG received a small number of formal complaints relating to financial management for protected persons. Over the five years between 2017-18 and 2021-22, 26 of a total of 147 complaints (17.7 percent) related to financial management services to protected persons; and
- the majority of complaints related to financial management services to protected persons related to the PTG's own services (24 of a total of 26) as opposed to its role in examining the accounts of private managers.

4.20 Except in a small number of cases, the date the complaint was referred to the action area and the date of the response was recorded in the complaints register. Based on this information the PTG has, in most years, met its required timeframe of 14 days in which to provide responses.

Reporting of complaints data

4.21 With the exception of complaints received from the ACT Ombudsman, the PTG does not report complaints information in its annual report. The PTG does not report information on:

- the number of complaints it receives;
- how many of these complaints were responded to within its target timeframe of 14 days;
- the broad categories of complaints it receives and the services to which they relate; or
- the broad actions taken to resolve the complaints.

- 4.22 Including this information in its annual report would provide greater transparency and accountability to the ACT Legislative Assembly and broader community.
- 4.23 Because the Public Trustee and Guardian has personally responded to complaints that were not resolved immediately, they advised that they have been able to take corrective action, if needed. Because the complaints register does not record the outcome of a complaint or categorise the nature of the complaint this could not be systematically demonstrated by the PTG.
- 4.24 With the exception of complaints received from the ACT Ombudsman, the PTG does not report complaints information in its annual report. Including information on the number of complaints it receives, the timeliness of resolution and the broad actions taken to resolve the complaints would provide greater transparency and accountability to the ACT Legislative Assembly and broader community on the activities of the PTG.

RECOMMENDATION 12 RECORDING COMPLAINTS

The Public Trustee and Guardian should record in its complaints register information on the category and nature of a complaint, the outcome of the complaint, the name of the client (as well as the complainant) and whether the client is a protected person.

RECOMMENDATION 13 REPORTING COMPLAINTS

The Public Trustee and Guardian should include in its annual report information on all complaints it receives, including information on the timeliness of complaints resolution and the broad actions taken to resolve the complaints.

Client feedback

Client feedback forms

- 4.25 The PTG does not undertake client satisfaction surveys. Nevertheless, the PTG makes client feedback forms available:
- at its reception area and will interview rooms;
 - at seminars and presentations; and
 - on its website.⁴

⁴ The form is available on the Feedback page of PTG's website ([Feedback \(act.gov.au\)](https://act.gov.au/feedback)), using the 'Electronic' link. [Accessed 21 June 2022]

4.26 The feedback form is very basic and simply collects information around the type of service accessed and whether the service provided by the PTG exceeded, met or did not meet, expectations. It also allows for further comments to be provided if required.

4.27 In 2021–22, 23 clients submitted client feedback forms, compared to 27 in 2020–21.

Reporting client satisfaction

4.28 The overall satisfaction ratings from the client feedback forms are published as ‘client survey’ results in the PTG’s annual reports. It is misrepresentative of the PTG to report the results of client feedback forms as ‘client survey’ results. The use of the term ‘survey’ implies a more thorough, targeted and systematic collection of information on client satisfaction.

4.29 The information received through client feedback forms is not reported by the service to which it relates (e.g. wills, guardianship, financial management services). Nevertheless, in 2020–21 and 2021–22 no feedback was in relation to the PTG’s financial management services.

4.30 The PTG does not undertake client satisfaction surveys, but does make client feedback forms available. In 2021–22, 23 clients submitted client feedback forms, compared to 27 in 2020–21. The overall satisfaction ratings from the client feedback forms are published as ‘client survey’ results in the PTG’s annual reports. It is misrepresentative of the PTG to report the results of client feedback forms as ‘client survey’ results because they do not represent a thorough, targeted and systematic collection of information on client satisfaction.

Other sources of feedback

4.31 The Audit Office recognises that it may be difficult to obtain meaningful data on client satisfaction with financial management services because for some protected persons the PTG is an unwelcome participant in their lives. Its involvement is the result of an order from ACAT and is not a decision that is voluntarily made by the protected person. The reason for the PTG’s involvement also reflects an assessment by ACAT that the person is unable to manage their own finances because of such things as mental impairment or another event.

4.32 A properly conducted survey of protected persons may elicit complaints about the requirement for the PTG to be involved in the life of a protected person. It is acknowledged that this is a decision about which the PTG has little, if any, control over as it is ACAT that decides on the appointment of the PTG as the person’s financial manager.

4.33 The February 2021 *Protection of Rights Services Review* report for the Justice and Community Safety Directorate recognised this difficulty and noted:

The PTG would benefit from effective formal and informal channels for feedback from external stakeholders whose engagement with the PTG’s clients enable them provide (sic) useful perspectives. The PTG would also benefit from a strategic approach to evaluating the quality of its service delivery, practice, and governance.

- 4.34 A possible source of other feedback from external stakeholders would be the number and percentage of ACAT reviews of protected persons' orders where the protected person or their advocate (e.g. their family) supports the PTG's continuation as financial manager. From a review of client files it is apparent that ACAT is frequently advised whether the PTG's continued role is supported. This advice may be used as a proxy demonstration of client satisfaction.
- 4.35 The Audit Office noted that feedback from family members to ACAT can be strongly supportive of continued PTG involvement. For example, a family member of one client commented:
- The Public Trustee has been administering [X's] money since he was 18 and in that time [X] has had the security of knowing that the Public Trustee has made all payments required for accommodation, utilities and medicinal costs. They also at times have been keeping creditors at bay with making payment plans to repay his debts.
- The Public Trustee has achieved something for[X] that his family are unable to achieve for him and [X] certainly does not have the capabilities to handle for himself. If this was (*sic*) to stop [X] would be homeless, sleeping on a park bench, or worse still, dead.
- I am convinced that due to securities the Public Trustee has been providing for [X], overseeing his financial arrangements, to cease that arrangement would result in severe negative outcomes for [X].
- 4.36 Another potential source of feedback for the PTG on its performance may be through the invitation of targeted feedback from protected persons or their representatives. Options may include:
- inviting protected persons (or their representatives) to provide feedback once it has relinquished control of their finances or after working with them or their representatives to support a greater level of independence in decision making; and/or
 - arranging for a suitably qualified consultant to hold focus groups of selected protected persons or their representatives to provide feedback on what works well and what could be improved.
- 4.37 In May 2023, the PTG advised that:
- PTG has also established a "compliments register" in financial management services.... and has been recording compliments and positive feedback since 1 July 2022.
- 4.38 Without being prescriptive about the approach that should be taken, the Audit Office agrees with the 2021 *Protection of Rights Services Review* report that there is a need for the PTG to develop a strategic approach to evaluating the quality of its service delivery, practice, and governance, particularly with respect to protected persons. This should include more suitable client feedback mechanisms on the effectiveness of its role as a financial manager for protected persons.
- 4.39 The PTG should seek better, more-informed feedback from protected persons on its financial management services. This could be received through a properly conducted survey of protected persons or through the invitation of targeted feedback from protected persons or their representatives. Such an approach would accord with the February 2021 *Protection*

of Rights Services Review report, which identified a need for the PTG to develop a strategic approach to evaluating the quality of its service delivery, practice, and governance, particularly for protected persons.

RECOMMENDATION 14 EVALUATING THE QUALITY OF SERVICE DELIVERY

The Public Trustee and Guardian should develop and implement a strategic approach to evaluating the quality of its financial management services for protected persons. This could be received through a properly conducted survey of protected persons or through the invitation of targeted feedback from protected persons or their representatives.

5 EXAMINATION OF PRIVATE MANAGER ACCOUNTS

5.1 This chapter discusses the Public Trustee and Guardian’s activities to oversee financial management services provided by private managers.

Summary

Conclusion

The Public Trustee and Guardian (PTG) is ineffective in its examination of private managers’ accounts.

The number of protected persons with private managers has steadily increased, while the number of accounts submitted by private managers for review by the PTG has decreased. The data suggests that there is an increasing lack of compliance by private managers with their reporting obligations.

In three of the five years to 2021-22, the PTG has not met expectations (set out in its annual Accountability Indicators) for the number of examinations of accounts to be conducted. In the years that it has not met expectations for the number of examinations undertaken it has fallen short by a significant amount of between 17 percent (2018-19) to 40 percent (2021-22).

In 2020-21 the PTG adopted a ‘light touch’ approach to the examination of accounts of privately managed protected persons. The PTG has not specifically articulated the purpose or objective of the ‘light touch’ review. In practice, the purpose of the review is to identify whether the financial position of a protected person, namely their assets or liabilities, has changed by a predetermined level of materiality. Such an approach provides limited assurance with respect to the appropriateness or otherwise of a protected person’s expenditure.

Key findings

Paragraph

Examination of private manager accounts

Private managers are required to lodge annual accounts with the PTG 28 days after the annual anniversary of their appointment. In practice a private manager is requested to provide: a *Statement of Property – Statutory Declaration* (with information relation to income, assets and liabilities); and a range of supporting documentation and schedules. The *Statement of Property – Statutory Declaration* directs the financial manager to provide further information in support of the declaration. It consistently asks for further detailed information to be provided as an attached schedule, but only in relation to income, assets and liabilities. Information

5.24

with respect to a protected person's expenditure is not specifically required. A measure of control is provided by the PTG's requirement that a private manager provide copies of 'bank statements for all bank accounts held in the protected person's name covering the 12-month examination period (including liabilities)'. To the extent that this includes credit card accounts and otherwise shows outgoings from a protected person's bank account, there is a level of visibility for the PTG over a protected person's expenditure. However, there is a lack of clarity and specificity with respect to information to be provided in relation to a protected person's expenditure.

The number of protected persons with private managers has steadily increased, from 448 as at 30 June 2018 to 713 as at 30 June 2022, while the number of accounts submitted by private managers has decreased, from 696 in 2017-18 to 471 in 2021-22. While the timing of the submission of accounts may account for some differences, the data suggests that there is an increasing lack of compliance by private managers with their reporting obligations. 5.30

A review of the PTG's examination of private manager accounts, as reported as an Accountability Indicator in its annual Statement of Performance shows: in three out of the five years to 2021-22, the PTG has not met expectations for the number of examinations to be conducted; and in the years that it has not met expectations for the number of reviews undertaken it has fallen short by a significant amount of between 17 percent (2018-19) to 40 percent (2021-22). 5.40

In 2020-21 the PTG significantly exceeded expectations for the number of examinations undertaken, undertaking 688 examinations against a target of 570. This was due to a change in process for conducting the examination, whereby a 'light touch' review was now being performed, meaning the PTG had more capacity to undertake reviews. Notwithstanding the change in process, in 2021-22 the PTG reported that it had undertaken 362 examinations against a target of 600. This followed a change of practice, which was agreed to by the PTG and ACAT in April 2021, by which the PTG was to take over responsibility for sending letters to private managers to remind them to lodge their accounts. 5.41

The PTG has developed an *External Accounts Submission – Task Guide* to assist PTG officers in their examination of the financial accounts of privately managed protected persons. The Task Guide provides detailed procedural guidance to PTG officers on administrative processes for the examination of external accounts. Neither the *External Accounts Submission – Task Guide* or any other documentation specifically articulates the purpose or objective of the review. In practice, the purpose of the review is to identify whether the financial position of a protected person, namely their assets or liabilities, has changed by a predetermined level of materiality. The PTG described this as a 'light touch' examination of accounts. Such an approach provides limited assurance with respect to the appropriateness or otherwise of a protected person's expenditure. 5.57

Reporting of private managers to ACAT

Few issues are identified by the PTG through its examination of private manager accounts. In 2020-21 and 2021-22, since the commencement of its 'light touch' approach to the examination of financial accounts, the PTG has identified and reported two matters to ACAT. In 2019-20 17 matters were reported to ACAT, the majority of which related to the non-lodgement of accounts. Two matters were reported as misuse of the protected person's finances. 5.64

Where concerns are identified with respect to a private manager's actions, there is a difference in expectation between the PTG and ACAT as to their respective roles. The difference in expectation relates to whether there should be a recommendation or advice from the PTG with respect to the potential course of action to be undertaken by ACAT. The PTG does not provide advice to ACAT on the action that it could take with respect to any shortcomings it has identified in a private manager's activities. The PTG sees this as the responsibility of ACAT. ACAT advised that it sees value in the PTG advising ACAT of the action it believes should be taken, should an irregularity be identified in the financial statements submitted by the private managers. The difference in expectation may be a moot point, however, because the PTG has only referred two matters to ACAT in the two years to July 2022. 5.73

Appointment of private managers

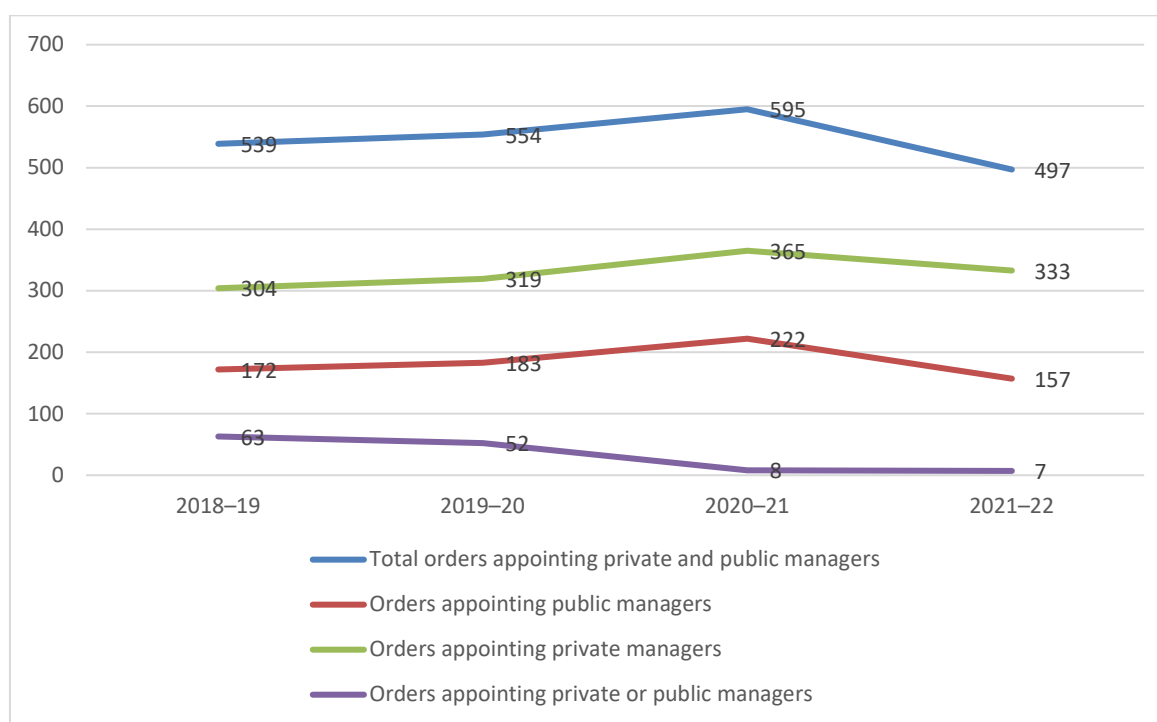
5.2 Subsection 9(2) of the *Guardianship and Management of Property Act 1991* (GMP Act) allows for the PTG, a trustee company or an individual to be appointed as a financial manager. However, subsection 9(5) of the GMP Act provides:

The public trustee and guardian or a trustee company must not be appointed as a manager of a person's property if an individual who is otherwise suitable has consented to be appointed.

5.3 Section 10 of the GMP Act provides further guidance on the appointment of private managers. Subsection 10(3) states:

Someone (other than the public trustee and guardian) may be appointed as a guardian or manager only if the ACAT is satisfied that the person will follow the decision-making principles and is otherwise suitable for appointment.

5.4 Figure 5-1 shows the number of ACAT orders for the appointment of financial managers from 2018–19 to 2021–22. It shows the number of appointment orders for the PTG and private managers.

Figure 5-1 ACAT financial management orders (2018-19 to 2021-22)

Source: Audit Office, based on ACAT data.

Note: Figures for 2021-22 are as at 4 July 2022.

5.5 A review of ACAT orders for the appointment of financial managers between 2018-19 and 2021-22 shows the majority of appointments have been for private managers. In the four years to 2021-22:

- 1321 orders have been made for the appointment of private managers; and
- 732 orders have been made to appoint the PTG as a financial manager.

Guidance and assistance for private managers

ACAT guidance for private managers

5.6 To assist private managers in understanding their obligations, ACAT has developed the *Guardianship & Management of Property in the ACT: Information for Managers* booklet.

5.7 The booklet includes a range of information on the rights and responsibilities of private managers. Specifically, it includes information on:

- the principles by which managers should operate. The booklet outlines the 'decision-making principles' set out in section 4 of the GMP Act (refer to paragraph 1.5);
- the duties of private managers;
- the powers of private managers;
- the opportunity for private managers to make an application to ACAT for directions or advice;

- loans, gifts and other benefits from the protected person to the private manager; and
- fees and charges that may be charged by the private manager.

Duties of a private manager

5.8 In relation to the duties of a private manager, the *Guardianship & Management of Property in the ACT: Information for Managers* booklet notes the private manager has a statutory obligation to:

- act, as far as possible, as the person would have acted in the circumstances if he or she had not been affected by the condition concerned;
- take into account the need to ensure that the person does not become destitute;
- take into account the desirability of maintaining, as nearly as possible, the lifestyle of the person as if the person had not been affected by the condition;
- exercise power in the best interests of the person;
- ensure that in the exercise of the power their own interests do not conflict with those of the protected person; and
- ensure that their own property is kept separately from that of the protected person.

5.9 The *Guardianship & Management of Property in the ACT: Information for Managers* booklet also provides for the provision of information for the purpose of an annual examination of accounts:

On the anniversary of the appointment of a manager, the manager must file accounts and other documents relating to the management of the protected person's property with the Public Trustee for examination. The accounts must clearly indicate the financial position of the protected person. The Public Trustee will audit the accounts. Some cost may be incurred in the audit.

The Tribunal may direct a manager to produce accounts and documents. If it is considered necessary, the Tribunal may order that the manager have the accounts and documents audited by a person or organisation specified.

Powers of a private manager

5.10 In relation to the powers of a private manager, the *Guardianship & Management of Property in the ACT: Information for Managers* booklet notes:

The authority conferred on the manager relates generally or specifically to the types of transactions that the person would have been entitled to exercise had they been legally competent to do so. The authority conferred extends only to the financial affairs of the person.

A manager (other than the PTG) cannot invest the money of a protected person other than in authorised trustee investments, without the permission of the Tribunal.

Applications to ACAT for directions and advice

5.11 The *Guardianship & Management of Property in the ACT: Information for Managers* booklet notes that private managers may apply to ACAT 'for a formal direction, opinion or advice from the Tribunal'. The booklet states:

A formal opinion or advice may be obtained upon a written application to the Tribunal. Examples of cases in which an opinion may be sought include:

- decisions to make major purchases from a protected persons funds;
- consenting to a major or controversial health treatment;
- where a protected person is strongly opposed to a decision to be made.

Loans, gifts and other benefits

5.12 The *Guardianship & Management of Property in the ACT: Information for Managers* booklet provides specific guidance in relation to loans, gifts and other benefits from protected persons to their private manager. The booklet states:

If it is proposed that a manager receive gifts, loans or other benefits from the protected person, the Tribunal must be formally advised in writing beforehand. The Tribunal may authorise or disallow any gifts, loans or other benefits to the manager.

Fees and expenses

5.13 The *Guardianship & Management of Property in the ACT: Information for Managers* booklet notes that a private manager may be paid fees and expenses. The booklet states:

A manager may be paid a determined fee or be reimbursed for expenses reasonably incurred in the performance of his or her duties. Such monies are payable out of, and are a charge on, the protected person's property. If the manager only manages part of the protected person's property, the amount will be paid from that part.

The level of fees and expenses that can be paid are determined by the Minister. Upon application to the Tribunal by the Public Trustee, some fees and expenses may be disallowed.

Examination of private manager accounts

GMP Act requirements

5.14 The GMP Act requires a private manager to lodge accounts with the PTG. Subsection 26(1) states:

A manager other than the public trustee and guardian must, in accordance with the regulations, file with the public trustee and guardian the accounts and other documents relating to the management of the relevant property that are prescribed.

Timing of lodgement

5.15 By virtue of subsection 6(3) of the *Guardianship and Management of Property Regulation 1991* (GMP Act Regulation) accounts must be lodged within 28 days of each anniversary of the private manager's appointment.

Documents to be lodged

5.16 The GMP Regulation prescribes the documents to be lodged by private managers under section 26 of the GMP Act. Section 6 of the GMP Regulation requires the lodgement of:

- a statement of the income of the represented person on the relevant day, including income from the following:
 - pensions;
 - employment;
 - superannuation;
 - investments;
 - rent;
- a statement of the estimated value of the assets of the represented person on the relevant day, including:
 - amounts standing to the credit of an account with a bank or other financial institution; and
 - real property; and
 - personal property; and
 - investments;
- a statement of the liabilities of the represented person on the relevant day, including details of the creditors, the types of liabilities and the value of the liabilities.

PTG requirements

5.17 In practice a private manager is required to provide:

- a *Statement of Property – Statutory Declaration*; and
- a range of supporting documentation and schedules.

5.18 The *Statement of Property – Statutory Declaration* is a proforma document produced by ACAT. It provides for the reporting of:

- the yearly income of the protected person, with reference to the sources of income (e.g. pension, employment, superannuation, investment income and rent received);
- the protected person's assets, with reference to the nature and type of assets (e.g. real estate, bank accounts, shares and investments, motor vehicles, furniture and personal effects as well as debts owed to the person; and
- the protected person's liabilities, with reference to the nature and type of liabilities (e.g. credit cards and other debts).

5.19 The *Statement of Property – Statutory Declaration* directs the financial manager to provide further information in support of the declaration, e.g. it consistently asks for further detailed information to be provided as an attached schedule. The *Statement of Property – Statutory Declaration* also makes it clear that the provision of false information in a statutory declaration is a criminal offence.

5.20 The purpose of the *Statement of Property – Statutory Declaration* is to facilitate ACAT decision-making on whether a proposed private manager is a ‘suitable person’ for appointment as a manager. It is required to be submitted in support of an application for appointment. In practice, the PTG has adopted the proforma document to facilitate annual reporting by private managers. ACAT noted that the use of an ACAT-branded document by the PTG has tended to cause confusion for private managers with respect to ongoing responsibilities and accountabilities.

PTG guidance

5.21 The PTG has prepared a *Frequently Asked Questions* document for private managers. The document states:

The documents you need to provide each year include:

- Statement of Property – Statutory Declaration (available from the ACAT website, can be posted by request)

Photocopies of:

- Bank statements for all bank accounts held in the protected person’s name covering the 12 month examination period (including liabilities)
- Statements of any shares or investments in the protected person’s name
- Superannuation statements
- Receipts for larger items of expenditure
- An expense summary or budget (optional, but recommended, particularly if the protected person resides with and pays rent/board to the Manager)
- Payment of the Territory’s fee for examination – payable by cheque made out to Public Trustee and Guardian, by EFT or Eftpos onsite.

5.22 The GMP Regulation does not specifically require information with respect to a protected person’s expenditure. However, the PTG’s *Frequently Asked Questions* document for private managers requires private managers to provide copies of ‘bank statements for all bank accounts held in the protected person’s name covering the 12-month examination period (including liabilities)’. To the extent that this includes credit card accounts and otherwise shows outgoings from a protected person’s bank account, there is a level of visibility for the PTG over a protected person’s expenditure. However, the acknowledgement that ‘an expense statement or budget’ is not specifically required and is only ‘optional, but recommended’ means that there is a lack of clarity and specificity with respect to information to be provided in relation to a protected person’s expenditure.

5.23 In its response to the draft proposed report the PTG noted that the GMP Act does not require an analysis of the expenditure of a protected person and that the PTG is not resourced to do so.

5.24 Private managers are required to lodge annual accounts with the PTG 28 days after the annual anniversary of their appointment. In practice a private manager is requested to provide: a *Statement of Property – Statutory Declaration* (with information relation to

income, assets and liabilities); and a range of supporting documentation and schedules. The *Statement of Property – Statutory Declaration* directs the financial manager to provide further information in support of the declaration. It consistently asks for further detailed information to be provided as an attached schedule, but only in relation to income, assets and liabilities. Information with respect to a protected person’s expenditure is not specifically required. A measure of control is provided by the PTG’s requirement that a private manager provide copies of ‘bank statements for all bank accounts held in the protected person’s name covering the 12-month examination period (including liabilities)’. To the extent that this includes credit card accounts and otherwise shows outgoings from a protected person’s bank account, there is a level of visibility for the PTG over a protected person’s expenditure. However, there is a lack of clarity and specificity with respect to information to be provided in relation to a protected person’s expenditure.

RECOMMENDATION 15 REQUIREMENT FOR INFORMATION ON EXPENDITURE

The Public Trustee and Guardian should seek an addition to section 6 of the *Guardianship and Management of Property Regulation 1991* to explicitly require a private manager to lodge information with respect to a protected person’s expenditure.

PTG examination of financial accounts

PTG responsibility

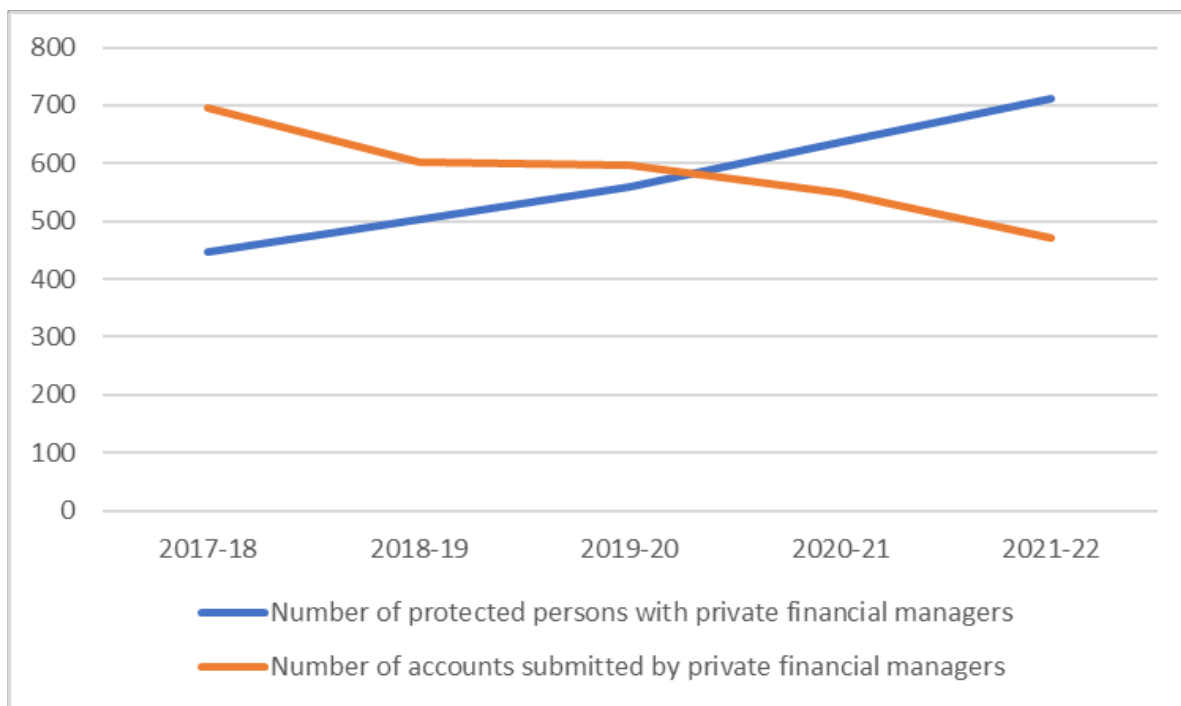
- 5.25 Section 27 of the GMP Act provides for the examination of a privately managed protected person’s accounts by the PTG. Subsection 27(1) states:

The public trustee and guardian must examine the accounts and documents mentioned in section 26 (1) and may apply to the ACAT for the disallowance of any item in the accounts.

Number of financial accounts submitted

- 5.26 Figure 5-2 compares the number of protected persons under a private financial management order with the number of financial accounts submitted to the PTG between 2017-18 and 2021-22.

Figure 5-2 Comparison of protected persons with financial managers and number of accounts submitted (2017-18 to 2021-22)



Source: Audit Office, based on PTG data.

5.27 A review of the number of protected persons with private managers and the number of accounts submitted between 2017-18 and 2021-22 shows:

- the number of protected persons with private managers has steadily increased, from 448 as at 30 June 2018 to 713 as at 30 June 2022; and
- the number of accounts submitted by private managers has decreased, from 696 in 2017-18 to 471 in 2021-22.

5.28 The variance between the number of accounts submitted, against the number of protected persons under a private financial management order, was explained by the PTG as follows:

It comes down to timing, in some cases managers are submitting accounts for multiple periods at once and this is why the accounts submitted is higher than the number of orders.

5.29 While the timing of the submission of accounts may account for some differences, the overall trend in the data over a five-year period is that the number of persons who are under a private financial management order is increasing each year but the number of accounts submitted by financial managers is decreasing. This suggests that there is an increasing lack of compliance by private managers. The reporting of non-compliant private managers to ACAT is discussed further from paragraph 5.61.

5.30 The number of protected persons with private managers has steadily increased, from 448 as at 30 June 2018 to 713 as at 30 June 2022, while the number of accounts submitted by private managers has decreased, from 696 in 2017-18 to 471 in 2021-22. While the timing of the submission of accounts may account for some differences, the data suggests that

there is an increasing lack of compliance by private managers with their reporting obligations.

Number of financial accounts examined

5.31 The PTG reports the number of examinations it conducts of private manager accounts as an Accountability Indicator in its annual Statement of Performance. Table 5-1 shows the number of examinations it has undertaken for the five years to 2021-22 against the Accountability Indicator target.

Table 5-1 Examination of accounts submitted by private managers (2017-18 to 2021-22)

	Target	Actual	Variance	Variance explanation provided in annual report
2017-18	500	506	6	-
2018-19	550	454	(96)	Variance was due to the increased time taken to perform examinations (due to increased communications with managers and higher complexity of accounts).
2019-20	570	453	(117)	Variance was due to the increased time taken to perform examinations (due to increased complexity of accounts and restraints of the COVID-19 pandemic).
2020-21	570	688	118	Variance was due to a process change that meant only accounts that had a material change in a protected persons financial assets would undergo a full examination. This resulted in the number of examinations by PTG being higher than expected.
2021-22	600	362	(238)	Variance was due to Managers not receiving a request letter to submit accounts after the ACT Civil and Administrative Tribunal decided it was not a requirement to send. PTG has now undertaken the role of onboarding new Managers and has developed and implemented a software system which will send the letters.

Source: Audit Office, based on PTG annual reports (2017-18 to 2021-22)

5.32 A review of the PTG's examination of private manager accounts, as reported as an Accountability Indicator in its annual Statement of Performance shows:

- in three out of the five years the PTG has not met expectations for the number of examinations to be conducted;
- in the years that it has not met expectations for the number of reviews undertaken it has fallen short by a significant amount of between 17 percent (2018-19) to 40 percent (2021-22); and
- in 2020-21, the PTG significantly exceeded expectations for the number of reviews undertaken, undertaking 688 reviews against a target of 570.

5.33 In its response to the draft proposed report the PTG noted that, notwithstanding the requirement for a private manager to submit accounts no later than 28 days after their

anniversary of appointment, there is no timeframe identified in the GMP Act or GMP Regulation for the PTG to have completed its examination.

Revised process for examination

5.34 In 2020-21 the PTG reported undertaking 688 examinations against a target of 570. The PTG reported that the reason for the increased number was because it had changed its process for conducting the examination:

In 2020-21, PTG changed the process undertaken for the Examination of Private Managers' Accounts as a result of a risk assessment. PTG considered that any movements considered immaterial in the assessment of movement in represented persons' financial assets are acceptable. Otherwise, a full examination would be completed. This resulted in the number of examinations by PTG being higher than expected.

5.35 In practice, this is referred to as a 'light touch' examination. This is discussed further from paragraph 5.45.

5.36 Notwithstanding the commencement of the 'light touch' examination from 2020-21, in 2021-22 the PTG reported that it had undertaken 362 examinations against a target of 600.

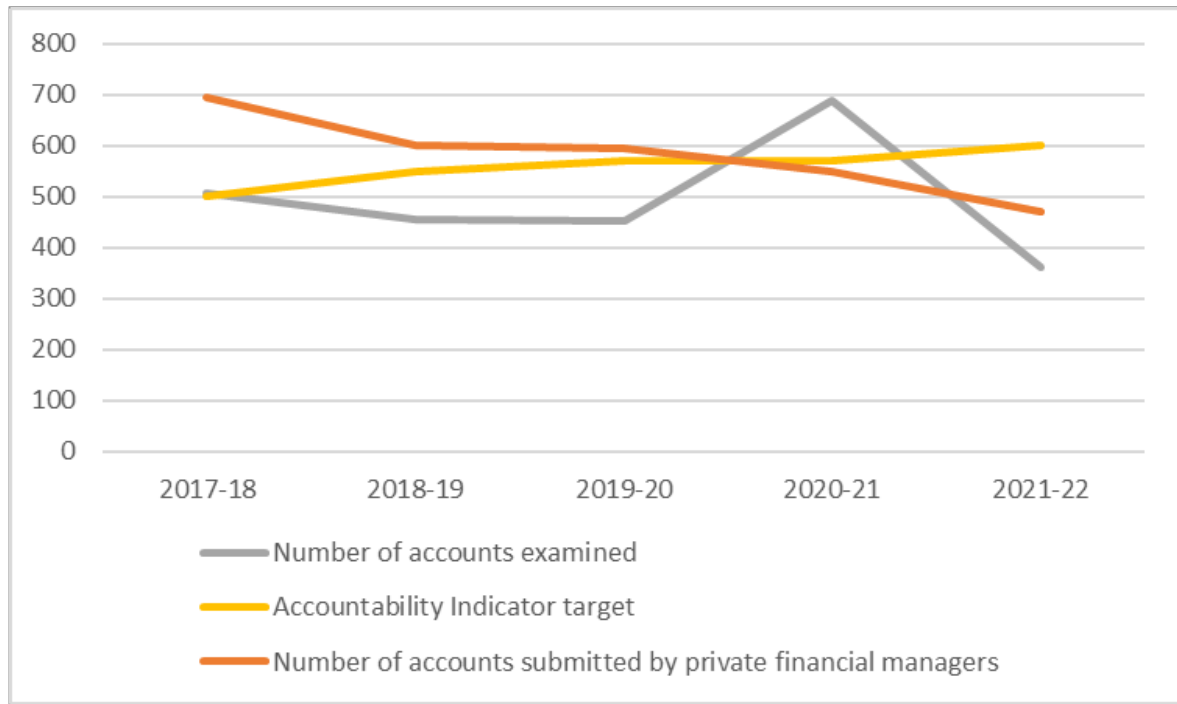
5.37 This followed a change of practice, which was agreed to by the PTG and ACAT in April 2021, by which the PTG was to take over responsibility for sending letters to private managers to remind them to lodge their accounts. Prior to this, ACAT had sent reminder letters to private managers. ACAT advised this caused confusion for private managers, some of whom provided their accounts to ACAT and not the PTG. Private managers were then asked to resubmit their accounts to the PTG, and this caused 'annoyance, inconvenience and delay to the private managers'.

5.38 The PTG reported that it had assumed responsibility for sending reminder letters to private managers and increased compliance was expected from 2023-24:

PTG has now undertaken the role of onboarding new Managers and has developed and implemented a software system which will now send letters, which will result in increased lodgement in the 2022-23 year.

5.39 Figure 5-3 shows the number of number of accounts submitted by private managers that were examined between 2017-18 and 2021-22 against the number of accounts actually submitted and the relevant Statement of Performance Accountability Indicator.

Figure 5-3 Examination of accounts submitted by private managers (2017-18 to 2021-22)



Source: ACT Audit Office, based on PTG data.

5.40 A review of the PTG's examination of private manager accounts, as reported as an Accountability Indicator in its annual Statement of Performance shows: in three out of the five years to 2021-22, the PTG has not met expectations for the number of examinations to be conducted; and in the years that it has not met expectations for the number of reviews undertaken it has fallen short by a significant amount of between 17 percent (2018-19) to 40 percent (2021-22).

5.41 In 2020-21 the PTG significantly exceeded expectations for the number of examinations undertaken, undertaking 688 examinations against a target of 570. This was due to a change in process for conducting the examination, whereby a 'light touch' review was now being performed, meaning the PTG had more capacity to undertake reviews. Notwithstanding the change in process, in 2021-22 the PTG reported that it had undertaken 362 examinations against a target of 600. This followed a change of practice, which was agreed to by the PTG and ACAT in April 2021, by which the PTG was to take over responsibility for sending letters to private managers to remind them to lodge their accounts.

Policy and procedural guidance

5.42 The PTG has developed an *External Accounts Submission – Task Guide* to assist PTG officers in their examination of the financial accounts of privately managed protected persons. The Task Guide provides detailed procedural guidance to PTG officers on administrative processes for the examination of external accounts.

- 5.43 The *External Accounts Submission – Task Guide* identifies:
- the type of information that should be examined as part of the review;
 - the processes to be undertaken when anomalies are identified; and
 - how anomalies should be reported to ACAT.
- 5.44 Neither the *External Accounts Submission – Task Guide* or any other documentation specifically articulates the purpose or objective of the review.
- 5.45 The PTG advised that, in practice, the purpose of the review is to identify whether the financial position of a protected person, namely their assets or liabilities, has changed by a predetermined level of materiality. The PTG described this as a ‘light touch’ examination of accounts. Under the heading ‘Annual examination of accounts’ the ACAT *Guardianship & Management of Property in the ACT: Information for Managers* booklet also used the term ‘audit’ to describe the examination.
- 5.46 In its response to the final proposed report ACAT advised it:
- ... has now removed the references to ‘audit’ in its Guardianship & Management of Property in the ACT: Information for Managers booklet.
- 5.47 The only other guidance or advice that is provided in this regard is the *External Accounts Submission – Task Guide* which envisages the potential identification of transactions that may be inappropriate:
- If during the course of the examination you identify transactions that require explanation or further documentation, contact the manager via email requesting this.

Excel spreadsheet (for internal purposes)

- 5.48 At the conclusion of the initial ‘light touch’ review the PTG prepares an Excel spreadsheet for internal purposes which shows:
- the primary assets of the protected person. The spreadsheet shows changes in the value of the primary assets in the twelve-month period since the last review; and
 - the liabilities of the protected person. The spreadsheet shows changes in the value of the liabilities in the twelve-month period since the last review.
- 5.49 The Excel spreadsheet includes a summary statement from the person conducting the review, based on changes to the private person’s net financial position.

No concerns identified

- 5.50 If the PTG does not identify any concerns in its examination it writes to the private manager of the protected person and states:
- As required under Section 27(1) of the Act, the Public Trustee and Guardian has examined the accounts and documents filed and have made no application to the ACT Civil and Administrative Tribunal (ACAT) for the disallowance of any item in the accounts.

5.51 The PTG also states:

It should be noted that, in examining the accounts, the Public Trustee and Guardian is not required to undertake an audit and, accordingly we do not express an audit opinion.

*Concerns identified*5.52 If, during its examination, the PTG identifies transactions that require explanation or further documentation, additional information may be requested from the private manager. The *External Accounts Submission – Task Guide* states:

If during the course of the examination you identify transactions that require explanation or further documentation, contact the manager via email requesting this. If the additional information addresses all issues, proceed to complete the report. If it raises questions about inappropriate transactions and possible disallowance of transactions, document this within your report, including the managers response to your queries, then provide your report to the Director for her consideration of whether application is to be made to ACAT for disallowance.

5.53 By way of example, an Excel spreadsheet summary statement identified in the course of the audit was as follows:

We have examined the assets and liabilities of the protected person and based on the above calculations, it appears that there might be a possible risk of mismanagement by the Manager as the primary assets has been decreased and out of a **REDACTED** variance to last years examination balances. It appears to be occurred <sic> due to pp's excessive spending as well as a large bills of chemist expenses and property maintenance <sic> expenses.

5.54 In this instance no further action was taken, as the additional expenditure was subsequently considered appropriate.

5.55 One PTG staff member has been assigned responsibility for reviewing the statements submitted by private managers. The PTG advised that it only has the capacity to provide a 'light touch' examination for the vast majority of privately managed protected persons. Such an approach provides limited assurance with respect to the appropriateness or otherwise of a protected person's expenditure. For example, inappropriate use of a protected person's money, through inappropriate expenditure, would not necessarily be identified through a 'light touch' examination provided it is adequately covered by income.

5.56 While acknowledging that resources to undertake these reviews are limited, the PTG could consider approaches such as:

- establishing an annual process that allows for the random selection of a predetermined number of accounts to examine in detail; or
- undertaking a risk assessment to identify high risk accounts that should undergo additional scrutiny.

5.57 The PTG has developed an *External Accounts Submission – Task Guide* to assist PTG officers in their examination of the financial accounts of privately managed protected persons. The Task Guide provides detailed procedural guidance to PTG officers on administrative processes for the examination of external accounts. Neither the *External Accounts Submission – Task Guide* or any other documentation specifically articulates the purpose or

objective of the review. In practice, the purpose of the review is to identify whether the financial position of a protected person, namely their assets or liabilities, has changed by a predetermined level of materiality. The PTG described this as a 'light touch' examination of accounts. Such an approach provides limited assurance with respect to the appropriateness or otherwise of a protected person's expenditure.

RECOMMENDATION 16 REVIEW OF FINANCIAL STATEMENTS

The Public Trustee and Guardian should review its processes for the examination of accounts submitted by private managers. This could involve:

- a) establishing an annual process that allows for the random selection of a predetermined number of accounts to examine in detail; or
- b) undertaking a risk assessment to identify high risk accounts that should undergo additional scrutiny.

PTG fees for examination of accounts

5.58 By virtue of the *Guardianship and Management of Property (Fees) Determination 2022*, the PTG charges the private managers of protected persons' accounts.

5.59 In 2022-23, the PTG's fees are:

- examination of accounts - \$208.00 per hour; and
- for requesting endorsement of dealings with the person's real property - \$307.00 per hour.

5.60 The PTG asserts that the hourly rate for the examination of accounts is \$277.00 per hour, but that it applies a subsidy to the rate in accordance with the fee reductions and waivers provision in the *Public Trustee and Guardian Act 1985*. The PTG's fees are GST free.

Reporting of private managers to ACAT

Number of matters reported to ACAT

5.61 In practice, few issues are identified by the PTG through its examination of private manager accounts. The PTG reported:

- in 2021-22 two matters were reported to ACAT. For one matter the authority of the manager was revoked and the PTG was appointed. At the time of audit fieldwork an outcome had not been determined for the second matter;
- in 2020-21 no matters reported as non-compliant; and
- in 2019-20 17 matters were reported to ACAT. The majority of matters that were reported related to the non-lodgement of accounts. Two matters were reported as

misuse of the protected person's finances. No further action was undertaken by ACAT.

5.62 From ACAT's perspective, issues with the performance of private managers are infrequent and relate mainly to:

- a failure to submit required financial statements;
- the financial manager's misapplication or misuse of the protected person's money and/or property; and
- disagreements between family members about a manager's decisions or intended decisions on behalf of the protected person, such as the sale of the protected person's house to finance their move into aged care supported accommodation.

5.63 As discussed from paragraph 5.28, a significant number of private managers are failing to submit accounts as required. In its response to the draft proposed report the PTG advised:

Since 1 July 2022, in all instances where private managers had not lodged accounts with PTG for examination or where PTG had identified suspicious transactions or patterns, reports to this effect have been sent to ACAT.

5.64 Few issues are identified by the PTG through its examination of private manager accounts. In 2020-21 and 2021-22, since the commencement of its 'light touch' approach to the examination of financial accounts, the PTG has identified and reported two matters to ACAT. In 2019-20 17 matters were reported to ACAT, the majority of which related to the non-lodgement of accounts. Two matters were reported as misuse of the protected person's finances.

Clarification of roles in the examination of private manager accounts

5.65 Where concerns are identified with respect to a private manager's actions, there has been a difference in expectation between the PTG and ACAT and their respective roles.

Respective roles discussion (February 2019)

5.66 In February 2019 ACAT and the PTG sought to discuss and resolve a course of action with respect to respective roles of the PTG and ACAT in overseeing private managers. Notes from the meeting state:

PTG commented on a 'disconnect' between the respective roles of the PTG and the ACAT when the PTG informs ACAT that accounts lodged by a manager under section 26 of the Guardianship and Management of Property Act 1991 (the GMP Act) are not in order, or informs ACAT that accounts have not been lodged. PTG contends that it is not a regulator, and that it is for ACAT to decide what further action, if any, should be taken arising from the correspondence. Another view is that ACAT cannot initiate or contend for what action should occur and also decide what action should occur. In short, ACAT cannot 'wear both hats'.

PTG advised that, as a matter of practice and procedure, it communicates with the manager (to the extent possible) about the relevant non-compliance in an endeavour to resolve the issue by agreement and writes to ACAT informing it of a manager's non-compliance only when its own resources to achieve compliance have been unsuccessfully exhausted.

5.67 Notes from the meeting acknowledge that the issue was resolved with the following course of action agreed between ACAT and the PTG.

Whenever ACAT receives a letter from the PTG advising that, for whatever reason, a manager has not complied with their statutory obligations ACAT will take the following steps:

- ACAT will write to the manager, annexing a copy of the correspondence it has received from the PTG regarding non-compliance, informing the manager that if they/he/she does not comply with their statutory obligations by a stated date (being 4 weeks after the date of ACAT's correspondence), ACAT will list the matter for hearing for the purpose of determining what action should be taken in response to the non-compliance which may include revocation of the manager's appointment. ACAT's letter will also note the statutory penalties for which the manager is liable consequent upon non-compliance. ACAT's letter will be copied to the PTG.
- ACAT will expect a letter or email from the PTG within 14 days after the date stated in the ACAT's letter (i.e. the date by which the manager is asked to comply) as to whether the manager has complied.
- If the PTG advises that the manager has still not complied, ACAT will list the matter for hearing for the purpose of determining what action should be taken.
- At the hearing, ACAT will expect the PTG to be in a position to detail the non-compliance and provide evidence in support, for example (i) insufficient accounts lodged by the manager, (ii) evidence regarding questionable withdrawals or payments or (iii) correspondence advising of non-lodgement of accounts or lodgement of accounts with insufficient information to which the PTG has received no reply or an insufficient explanation for the non-lodgement or insufficient lodgement.
- At the hearing, ACAT will respect the PTG's position that it is not a regulator. ACAT will not expect a submission as to what action the ACAT should take. The PTG's role will be limited to providing evidence regarding the non-compliance, and it will be for the ACAT to determine what action should be taken.

5.68 In June 2023, ACAT advised that its current approach is that:

... these reviews largely occur 'on the papers' or without holding a hearing. In relation to a review the following process regularly occurs:

- A matter is listed for a 'review on the papers.'
- ACAT is notified by the PTG as to whether the examination of accounts has occurred and whether the accounts are satisfactory or not.
- On a regular basis, the PTG has requested that ACAT make a 3-month adjournment in relation to the review, to allow the PTG to examine the accounts...
- If the PTG raises issues in relation to non-compliance of the accounts, the ACAT lists the review for a hearing.

Information to be provided by the PTG

5.69 Notwithstanding the apparent resolution of the matter in February 2019, there remains a difference in expectation between the PTG and ACAT with respect to the information that is to be provided by the PTG to ACAT. The difference in expectation relates to whether there should be a recommendation or advice from the PTG with respect to the potential course of action to be undertaken by ACAT.

- 5.70 The PTG does not provide advice to ACAT on the action that it could take with respect to any shortcomings it has identified in a private manager's activities. The PTG sees this as the responsibility of ACAT. ACAT advised that it sees value in the PTG advising ACAT of the action it believes should be taken.
- 5.71 ACAT acknowledged that it is responsible for decisions relating to private managers and on any irregularities in fulfilment of their role. However, it asserts that, from a procedural fairness point of view, it would be preferable for the PTG to make recommendations or submissions on what it thinks ACAT should do where it identifies irregularities. Without such input, ACAT is obliged to be both prosecutor and decision maker.
- 5.72 The difference in expectation may be a moot point, however, because the PTG has only referred two matters to ACAT in the two years to July 2022.
- 5.73 Where concerns are identified with respect to a private manager's actions, there is a difference in expectation between the PTG and ACAT as to their respective roles. The difference in expectation relates to whether there should be a recommendation or advice from the PTG with respect to the potential course of action to be undertaken by ACAT. The PTG does not provide advice to ACAT on the action that it could take with respect to any shortcomings it has identified in a private manager's activities. The PTG sees this as the responsibility of ACAT. ACAT advised that it sees value in the PTG advising ACAT of the action it believes should be taken, should an irregularity be identified in the financial statements submitted by the private managers. The difference in expectation may be a moot point, however, because the PTG has only referred two matters to ACAT in the two years to July 2022.

RECOMMENDATION 17 CLARIFICATION OF ROLES

The Public Trustee and Guardian should, with the assistance of the Justice and Community Safety Directorate and in consultation with ACAT, decide whether the PTG have a role in recommending potential courses of action to be undertaken by ACAT in the event of non-compliance by a private manager.

ACAT action

- 5.74 ACAT advised that, where there are problems with the way a private manager has been performing their role, it will provide the opportunity for the manager to become compliant (unless the matter involves the deliberate misuse of property or funds). Its primary concern is to bring things into conformity. Where a manager continues to be non-compliant, and there is no other manager who can be appointed, it will revoke their appointment and appoint the PTG to take on this role.
- 5.75 The PTG advised that the revocation of private manager orders usually occurs because a private manager is unaware of their responsibilities. The PTG provides private managers with information on their role and responsibilities in addition to the information provided

by ACAT. Nevertheless, private managers often do not understand, or appreciate the importance, of the requirements. For example, the PTG advised that:

- managers often do not appreciate the need for a clear separation between the protected person's finances and their own. They may therefore not have a separate bank account for the person or may pay joint household expenses from the protected person's funds, rather than calculating the correct share; and
- if there is a property being managed, under section 25 of the GMP Act, the manager must lodge a copy of the order with the Registrar General so that a caveat can be placed on the title of the property. This provides a protection on any dealings with the property. A private manager is often unaware of this obligation.

5.76 The PTG advised that, following the revocation of an order, it has often sought to engage with the former private manager to restore them to a position to resume financial manager responsibilities. In doing so it has sought to educate them on their obligations and the need to suitably structure their own and the protected person's finances. This includes developing a budget for the protected person and arranging for payments (direct debits) to be made in accordance with that budget. The aim is to get things back on track so that the former private manager can apply to ACAT for reinstatement of the revoked orders. In the 19 orders that were revoked in 2021–22, six resulted in the appointment of private managers and five of these involved the reappointment of previous private managers.

Audit reports

Reports Published in 2022-23	
Report No. 02 – 2023	Management of Operation Reboot (Outpatients)
Report No. 01 – 2023	Construction Occupations Licensing
Report No. 10 – 2022	2021-22 Financial Audits Financial Results and Audit Findings
Report No. 09 – 2022	ACT Emergency Services Agency cleaning services arrangement
Report No. 08 – 2022	2021-22 Financial Audits – Overview
Report No. 07 – 2022	ACT Childhood Healthy Eating and Active Living Programs
Report No. 06 – 2022	Annual Report 2021-22
Report No. 05 – 2022	Procurement and contracting activities for the Acton Waterfront Project
Reports Published in 2021-22	
Report No. 04 – 2022	Governance arrangements for the planning of services for Parkwood, Ginninderry
Report No. 03 – 2022	Taxi Subsidy Scheme
Report No. 02 – 2022	Fraud Prevention
Report No. 01 – 2022	Management of Detainee mental health services in the AMC
Report No. 13 – 2021	Campbell Primary School Modernisation Project Procurement
Report No. 12 – 2021	2020-21 Financial Audits – Financial Results and Audit Findings
Report No. 11 – 2021	Digital Records Management
Report No. 10 – 2021	2020-21 Financial Audits Overview
Report No. 09 – 2021	Annual Report 2020-21
Report No. 08 – 2021	Canberra Light Rail Stage 2a: Economic Analysis

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