



Annual Report

2016-17

This report is available online at <http://www.justice.qld.gov.au/public-advocate/about-us/performance> or you may contact our office to access a hard copy.

ISSN: 1838-5095 (Print)
ISSN: 1838-5109 (Online)

Contact details

Mail: GPO Box 149, Brisbane QLD 4001
Telephone: + (61 7) 3224 7424
Facsimile: + (61 7) 3224 7364
Website: www.publicadvocate.qld.gov.au
Email: public.advocate@justice.qld.gov.au

Feedback on this report

Feedback on this report is welcomed. A publication survey is available on our website at <https://www.justice.qld.gov.au/public-advocate/feedback/website>. Alternatively, a hard copy of the survey may be requested from our office.

Disclaimer

The views or opinions in this report do not necessarily reflect the views of the Department of Justice and Attorney-General or the Queensland Government.

Every effort has been made to ensure this document is accurate, reliable and up-to-date at the time of being published. The Public Advocate will not accept any responsibility for loss caused by reliance on this information and makes no representation or warranty regarding the quality or appropriateness of the data or information.

Copyright and licence

© The Public Advocate 2017

This annual report is licensed by the State of Queensland (the Public Advocate) under a Creative Commons Attribution (CC BY) 4.0 International licence.

In essence, you are free to copy, communicate and adapt this annual report, as long as you attribute the work to the State of Queensland (the Public Advocate).



To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>

Content from this report should be attributed as: The State of Queensland (The Public Advocate) Annual Report 2016-17.

Interpreter service

The Queensland Government is committed to providing accessible services to Queenslanders from all culturally and linguistically diverse backgrounds. If you have difficulty in understanding this report, you can contact our office and we will arrange an interpreter to effectively communicate the report to you.



The Honourable Yvette D'Ath MP
Attorney-General and Minister for Justice and Minister for Training and Skills
Member for Redcliffe
1 William Street
BRISBANE QLD 4000

31 October 2017

Dear Attorney,

I am pleased to present the Public Advocate's Annual Report for the financial year ended 30 June 2017.

The report is made in accordance with the requirements of section 220 of the *Guardianship and Administration Act 2000*.

The annual report provides information on the key activities of the Public Advocate and staff of the office for 2016-17 and a statement of our financial and operational functions for the year.

I certify that this Annual Report complies with the detailed requirements set out in the *Annual report requirements for Queensland Government agencies*. The Public Advocate is not considered a statutory body for the purposes of the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*.

Yours sincerely,



Mary Burgess
Public Advocate



The year in review

This past year has been my first full year in the role of Public Advocate. My appointment as Public Advocate was approved by the Governor in Council for a term of four years from 28 October 2016.

After several years of the Public Advocate undertaking projects culminating in significant reports to Parliament, this year the office focused on three key service areas:

- disability, including the implementation of the National Disability Insurance Scheme (NDIS) and disability advocacy and employment issues
- the aged care sector (with a particular focus on elder abuse) and
- the Queensland mental health system.

Over the past year the office made over 35 submissions (see a list of our submissions and significant correspondence contained in Appendix 1) in response to various inquiries, reviews and reforms across a range of sectors impacting people with impaired decision-making capacity.

In the area of disability, the rollout and implementation of the NDIS dominated the sector. The focus of my submissions has been to ensure that the rights and interests of people with impaired decision-making capacity are recognised and accommodated in this once-in-a-generation social reform. The preparation of these submissions required a significant investment of resources and personal effort and commitment from the members of my small team.

The challenge for me as Public Advocate has been to weigh the benefits or outcomes we have achieved for people with impaired decision-making capacity against the resources committed to preparing these submissions and other communications about the NDIS, taking into account the opportunity cost to other work and projects of the office that were not able to be progressed. I have struggled at times to feel that the efforts invested in these submissions to the Commonwealth Government and the National Disability Insurance Agency (NDIA) have been worthwhile, in terms of having a measurable impact that would justify the resources invested in their preparation. However, these concerns have been countered to some degree by the responsiveness of the Joint Standing Committee on the NDIS that has been especially receptive to my concerns about aspects of the rollout and implementation of the NDIS, especially as it impacts people with impaired decision-making capacity. The Committee members were particularly interested in my written submission and oral submissions on their *Inquiry into the provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition*. Their interest in my position on some significant issues was reflected in the recommendations in their report on this reference.

Ultimately, I have come to the conclusion that while the impact of my submissions on the direction of the NDIS may seem uncertain, I must continue our efforts to seek to shape and influence this large social reform if I am to support people with impaired decision-making capacity to achieve greater autonomy and better lives.

My office also invested significant effort into two submissions in response to the Australian Law Reform Commission's (ALRC's) inquiry into elder abuse and reforms in the aged care sector.

The submissions focused strongly on what has become a common practice in Australian society of moving older people against their will from their homes and into residential aged care. These decisions are often made on behalf of the older person without giving serious consideration to the possibility of the person remaining in their own home with appropriate support and services, even when the older person has indicated that is their preference. While family members may have genuine concerns for the health and safety of their aged relatives, some of these decisions appear to be driven by a sense of wanting to do 'what's best' for their aged family member. Often family members or hospital staff apply to the Queensland Civil and Administrative Tribunal for guardianship over their family member.



I have also raised concerns about a practice in the aged care sector where residential aged care providers require that a person has either a valid enduring power of attorney or a guardianship order before accepting the person into the facility. It seems that providers have adopted this practice to ensure that all people seeking placement in their facility have a mechanism in place to ensure continuity of decision-making in respect of the person's placement should they cease to have capacity sometime in the future. Essentially, they are seeking a legal and financial safeguard for the costs of the person's care. Decisions about the living arrangements for older people that are made without taking the older persons' views and wishes into account and seeking to implement their desires, even when the person has been found to have impaired decision-making capacity, breach their human rights under the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD).

The *Guardianship and Administration Act 2000* (Qld) contains numerous provisions supporting the rights of people with impaired capacity to make, and be supported to make, decisions. This includes their right to make decisions with which others may not agree (section 5(b)) and the General Principles that recognise the importance of empowering adults to exercise their basic human rights and make their own decisions (General Principles 2(2) and 7(2)).

The ALRC considers that appointing a representative decision-maker should not be required as a condition of receipt of residential aged care¹ and recommended that aged care legislation should provide that agreements cannot require that the care recipient has appointed a decision-maker for lifestyle, personal or financial matters.²

The ALRC has also recommended that the Commonwealth Government consider Recommendation 6-2 of the ALRC Report No 124 *Equality, Capacity and Disability in Commonwealth Laws*, which recommended that aged care laws and legal frameworks be amended consistently with the National Decision-Making Principles set out in that Report.³

In the Report, *Equality, Capacity and Disability in Commonwealth Laws*, the ALRC recommended a set of four National Decision-Making Principles and accompanying guidelines to guide the reform of Commonwealth laws and review of State and Territory laws. These principles emphasise the autonomy and independence of people with disability who may require decision-making support in making decisions. The ALRC advocated that a person's will and preferences must drive decisions that they are supported in making, and that others may make on their behalf. The National Decision-Making Principles are consistent with the CRPD and provide the conceptual framework for a Commonwealth decision-making model that encourages supported decision-making.⁴

I was also particularly pleased to see the ALRC take a strong stand on the regulation of the use of restrictive practices in residential aged care (see Recommendations 4-10 and 4-11). This has been a long-standing issue of concern and I am pleased to see that the Commission did not shy away from using frank language about the effects of these unregulated practices. The ALRC noted that:

[R]estrictive practices can deprive people of their liberty and dignity—basic legal and human rights. The practices might also sometimes amount to assault, false imprisonment and other civil and criminal wrongs.⁵

I support many of the recommendations of the ALRC elder abuse inquiry report and am committed to contributing to policy and law reform opportunities to support their implementation. I look forward to opportunities to assist government to advance these recommendations, where appropriate.

A major system change impacting the lives of people with impaired decision-making capacity was the commencement of the new *Mental Health Act 2016* (Qld) in March 2017. The Act's strong focus

¹ Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report*, Report No 131 (2017) 152.

² Australian Law Reform Commission, *Elder Abuse-A National Legal Response Final Report*, Report No 131 (2017) 151.

³ Australian Law Reform Commission, *Elder Abuse-A National Legal Response Final Report*, Report No 131 (2017) 147.

⁴ Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, Report No 124 (2014) 64.

⁵ Australian Law Reform Commission, *Elder Abuse – A National Legal Response Final Report*, Report No 131 (2017) 142-143. Also, see later sections of this report dealing with restrictive practices in residential aged care.



on adopting the way that is 'least restrictive' of the rights and liberties of persons with mental illness and the clear statement of principles at the front of the Act are very positive changes that I hear are already positively impacting patients' access to information and their inclusion in discussions about their treatment.

The second very significant and positive impact of the new Mental Health Act has been the funding of legal representation in the Mental Health Review Tribunal (MHRT). In the more than 16 years that the MHRT has been operating, until the commencement of the new Mental Health Act, there was no funding for any representation for patients appearing in this jurisdiction until this year. Despite there being around 20,000 hearings per year, only a very small proportion of people appearing in this jurisdiction have had the benefit of legal representation, mostly courtesy of a couple of community legal centres, including Queensland Advocacy Inc. and LawRight that are overstretched and underfunded, the Aboriginal and Torres Strait Islander Legal Service, and very occasionally private lawyers.

In my view, our legal systems and processes operate at their best when all of the stakeholders and relevant parties are present and supported to have their views heard and taken into account.

I congratulate the Queensland Government on its commitment to fund legal representation for some patients appearing in the MHRT. At this point, the funding is primarily for legal representation for reviews of forensic orders and applications for electroconvulsive therapy and psychosurgery. So there remains a large number of patients appearing in this jurisdiction without legal representation or advocacy. However, the commencement of funding of even limited legal representation in this forum is an important first step. I hope to see funding extended to other patients appearing in the tribunal and to funding cases on an ongoing basis so that the patients have the benefit of being able to have the same lawyer for their reviews and develop a relationship with their legal representatives, which should improve the quality of legal representation over time.

A particular aspect of the operation of the Mental Health Act that has been a focus of my work during the past year has been the way the mental health system deals with involuntary patients. In particular, I have taken an interest in the treatment of people with psychiatric illness who are on forensic orders and who are being subjected to involuntary treatments, such as electroconvulsive therapy. Under the Mental Health Act (which commenced operation in March 2017) and its predecessor Act, the *Mental Health Act 2000* (Qld), people can be detained in a mental health service. Their detention and their status as involuntary patients is subject to review by the MHRT. The Tribunal also has power to approve electroconvulsive therapy and other neurosurgical procedures.

My office has identified some cases involving involuntary treatments being applied for and approved for patients on forensic orders that have raised concerns for me about treatment decisions being made by psychiatrists and the role of the MHRT as the 'gatekeeper' and review body for involuntary treatment in the mental health system. I have intervened, or sought to intervene, in a small number of matters that have involved issues that I have identified as raising systemic concerns involving the rights and interests of persons with impaired decision-making capacity. At this time, my concerns about the involuntary treatment being administered to these patients and whether that treatment is supported by medical research and literature, have not been resolved.

At the time of writing last year's annual report, I was waiting on the government response to my predecessor, Jodie Griffiths-Cook's report – *Upholding the right to life and health: A review of the deaths in care of people with disability in Queensland*.⁶ This report reviewed the deaths of 73 people with disability who died in care in Queensland between 2009 and 2014. The review was undertaken by the Public Advocate with assistance from an expert advisory panel. The review found that 59 per cent of the deaths reviewed were 'unexpected' with over half (53 per cent) considered to be potentially 'avoidable'. The report was the first of its kind in Queensland and provided evidence that there is still a lot to be done to ensure that we are effectively upholding our obligations to people with disability.

⁶ Tabled in the Queensland Parliament in March 2016.



In response to the report, the Premier has committed her department to engage with my office to develop an implementation plan identifying specific actions and responsibilities to respond to the report. She has committed to 'genuine action' to improve the care and treatment of people with disability in care. I thank the Premier and her department for their commitment to achieve genuine change for this particularly vulnerable group.

Finally, I want to acknowledge the tireless work and commitment of the staff of my office over the past year. They have each played an important role in the completion of the papers, submissions and other policy contributions of the office. Despite being such a small team, they have all made significant contributions to the prolific and high quality output of this office. I am indebted to them for their personal commitment and dedication to the work of the office.

A handwritten signature in cursive script, reading "Mary Burgess".

Mary Burgess
Public Advocate



Contents

The work of the Public Advocate	1
Major systems	4
Disability	4
The NDIS	4
People with psychosocial disabilities related to a mental health condition	6
Deinstitutionalisation of people with intellectual disability or cognitive impairment	7
Forensic Disability Service	8
Upholding the right to life and health: The Queensland Government's response	9
Disability Employment Services	10
All Abilities Queensland	11
Aged care and elder abuse issues	11
Legal frameworks for the use of restrictive practices in aged care	12
Australian Law Reform Commission Elder Abuse Inquiry	13
Single aged care quality framework	19
Health	20
Review of the deaths in care of people with disability in Queensland	21
Mental health	27
Mental Health Act 2016	27
Mental Health Review Tribunal	27
Mental Health Act Consumer Guide	28
Chief Psychiatrist policies	29
Social services	29
Budget Savings (Omnibus) Bill 2016	29
Centrelink debt recovery	30
Law and justice	30
Queensland Integrated Court Referrals	30
Domestic violence	31
Interpreters in courts and tribunals	31
State Penalties and Enforcement Registry	31
Guardianship and administration	32
Limitation orders	32
Research into effective decision-making support for people with cognitive impairment	33
Key systems impacting people with impaired capacity monitoring project	34
Legal interventions	35
Engagement and consultation	37
Public Advocate speaking engagements	37
Contribution to special interest groups	38
Public Advocate's office	42
Financial statement	49
Appendix 1	50



The work of the Public Advocate

The Public Advocate, and the staff that support the Public Advocate, share the following vision, purpose and values.

Vision

To realise a just and inclusive society where the rights of all Queenslanders are upheld and their autonomy is respected.

Purpose

To undertake systemic advocacy to promote the rights and interests of people with impaired decision-making capacity and protect them from neglect, exploitation and abuse.

Values

Relationships and influence: We engage collaboratively with our stakeholders by building goodwill, sharing knowledge and expertise, and fostering confidence in our work.

Knowledge and leadership: We are committed to research and analysis that contributes to informed legal and social policy debate to progress sustainable supports and services for Queenslanders with impaired decision-making capacity.

Courage and integrity: We champion the rights and views of people with impaired decision-making capacity through our systemic advocacy. We work with clear purpose and commitment, and encourage a culture where accountability and respect are paramount.

Legislative functions

The Public Advocate is established under chapter 9 of the *Guardianship and Administration Act 2000* (Qld) to promote and protect the rights and interests of Queensland adults with impaired decision-making capacity through systemic advocacy.

Under section 209 of the *Guardianship and Administration Act*, the functions of the Public Advocate are:

- Promoting and protecting the rights of adults with impaired capacity (the adults) for a matter;
- Promoting the protection of the adults from neglect, exploitation or abuse;
- Encouraging the development of programs to help the adults to reach the greatest practicable degree of autonomy;
- Promoting the provision of services and facilities for the adults; and
- Monitoring and reviewing the delivery of services and facilities to the adults.

The *Guardianship and Administration Act* provides that a person or other entity who performs a function or exercises a power under that Act for a matter in relation to an adult with impaired decision-making capacity must apply the General Principles, and for a health matter or a special



health matter, the health care principle, contained in Schedule 1 of the Act. These principles guide the approach of the Public Advocate to fulfilling our statutory functions.

Under section 210 of the Guardianship and Administration Act, the Public Advocate is granted the power to:

- do all things necessary or convenient to be done to perform the Public Advocate's functions; and
- intervene in a proceeding before a court or tribunal, or in an official inquiry, involving protection of the rights or interests of adults with impaired decision-making capacity for a matter.

Further powers are invested in the Public Advocate under section 210A of the Act, which provides the right of the Public Advocate to all information:

- necessary to monitor and review the delivery of services and facilities to adults with impaired capacity for a matter;
- about the arrangements for the provision of services and facilities to a class of the adults; and
- about the policies and procedures of a service or facility that relate to the provision of services and facilities to the adults.

Under section 209A of the Act, the Public Advocate may prepare a report about a matter arising from performance of the Public Advocate's functions and provide a copy of the report to the Attorney-General, who must table the report in the Queensland Parliament.

People with impaired decision-making capacity

The Public Advocate undertakes systemic advocacy to benefit all Queensland adults who may experience impaired decision-making capacity. Having capacity for a matter means a person is capable of understanding the nature and effect of decisions about a matter, can freely and voluntarily make decisions about the matter and can communicate their decisions in some way.

There are a number of conditions that may impact a person's decision-making capacity. These include, but are not limited to, intellectual disability, acquired brain injuries, mental illness, neurological disorders (such as dementia) or problematic alcohol and drug use. Not all people with these conditions will experience impaired decision-making capacity. However, it is likely that many may, at some point in their lives, if not on a regular and ongoing basis, experience difficulties with making decisions. For some, impaired decision-making capacity may be episodic or temporary, requiring intensive supports at specific times in their lives, while others may require lifelong support with decision-making and communicating choices and decisions.

A person's ability to make decisions may also vary in response to external factors. These factors include the type and complexity of the decision to be made, the context in which the decision is to be made (e.g. the degree of urgency, availability of alternatives), and the level of assistance available from the person's support networks. Over time, some people with impaired decision-making capacity can develop their ability to make decisions with support and through experience.

Experiencing impaired decision-making capacity can happen to any one of us at any time. In the space of a moment our lives can be transformed, through accident or a health event, from ones where we are capable people, employed in responsible jobs with others who depend upon us, to lives where we may need help and support ourselves.



Decision-making disability is not just something that happens to other people. It has the potential to seriously disrupt the lives of members of all Queensland families. Anyone's partner can be involved in an accident; anyone's parent can develop dementia or have a stroke; anyone's young adult son or daughter can be injured.⁷

People with impaired decision-making capacity are a broad and diverse group. They can be found in all age groups, cultures and demographics, and participate socially and economically in society to varying degrees. While some people with impaired capacity receive services that are provided or funded by government, or are involved in the guardianship and administration system, many have little involvement with formal systems. Some receive lifestyle and decision-making support that helps them to live ordinary, autonomous and safe lives – others do not.

Unknown numbers of people with impaired decision-making capacity experience abuse, neglect and exploitation in both institutional and community settings. Many may not have the ability or resources to protect themselves from harm. Given the potential risks to those who cannot make, convey or act on their decisions, it is critical that the rights and interests of people with impaired decision-making capacity, are promoted and protected.

Approach to systemic advocacy

The systemic advocacy undertaken by the Public Advocate is focussed on influencing and changing systems, including the legislative, policy and practice aspects of systems to promote and improve opportunities and outcomes for people with impaired decision-making capacity.

The focus of the Public Advocate's systemic advocacy is on broad issues affecting the lives of people with impaired decision-making capacity. The Public Advocate's priorities are:

- the promotion and protection of rights and interests;
- inclusion and participation of all people in society;
- equal access to the goods and services available to all citizens;
- sustainable service systems that improve outcomes for individuals; and
- strengthening the 'voice' of people with impaired decision-making capacity.

A key challenge for the Public Advocate is how to most effectively give people with impaired decision-making capacity a voice in the development of legislation, government policy and services that impact them. Wherever possible, our activities are underpinned by knowledge gained through research and consultation that includes understanding the lived experience of people with impaired decision-making capacity.

Systemic advocacy is different from individual advocacy. Individual advocacy is about supporting people to exercise their rights by providing personal support to voice their concerns, access information, solve issues of concern and identify and access available options.

Often people contact the Public Advocate for help, but their problem really amounts to an individual complaint or need for assistance rather than disclosing a systemic issue. In those cases, people are referred to other more appropriate agencies for direct assistance with their individual matter. While the Public Advocate carries out systemic advocacy, not advocacy for individuals, the issues and experiences of individuals can inform the work of the Public Advocate. Individual matters provide case studies that can help identify areas of concern in the community and serious problems with Queensland systems that could be addressed through systemic advocacy.

⁷ Queensland Law Reform Commission, *Assisted and substituted decisions: Decision-making by and for people with a decision-making disability*, Report No 49 (1996) vol 1, Preface.



Major systems

The scope of work undertaken by the Public Advocate is broad. This is because people with impaired decision-making capacity are a diverse group. Some people with impaired decision-making capacity have limited involvement with service systems while others interact with a variety of service systems, such as justice, disability, aged care, health and mental health.

Fulfilling the statutory functions of the Public Advocate therefore requires a wide-ranging understanding of these service systems and how they interact with people with impaired decision-making capacity. Achieving positive change for people with impaired decision-making capacity requires the use of a range of approaches to our work and our engagement with government, including, building positive and collegiate relationships with key stakeholders, staying abreast of systems issues, and creating and seizing opportunities for change.

Disability

The disability sector is undergoing an unprecedented transformational change. The shift from a charity model of service delivery (government funding based on need) to a consumer-oriented marketplace (the National Disability Insurance Scheme (NDIS)) represents a profound step forward for Queenslanders with disability. The NDIS offers them greater decision-making power and increased control over the supports and services they receive, effectively positioning them as a powerful consumer group within Australian society.

The NDIS does not, however, promise to address every issue for people with disability and not all Queenslanders with disability will benefit from NDIS funding. Many people with disability, including NDIS participants, will continue to need to engage with state-based mainstream and disability service systems. The Public Advocate's systemic advocacy activities during 2016-17 were therefore focused on reforms affecting people with impaired decision-making capacity who were or will be eligible for the NDIS, as well as those who, while not eligible for the NDIS, will still have the need for on-going support from other non-NDIS disability and mainstream systems.

The NDIS

The Public Advocate welcomes the many positive and life-changing experiences of people with disability who have become participants in the NDIS, and congratulates the National Disability Insurance Agency (NDIA) and its partners for making such positive outcomes possible. The Public Advocate is particularly supportive of the aspects of the scheme that are well aligned with its fundamental ethos of 'choice and control' for people with disability.

Given that approximately 60-70 per cent of current NDIS participants have an impairment that may impact upon their decision-making capacity,⁸ the Public Advocate is closely monitoring the rollout across Queensland, which is expected to be finalised by July 2019. The Public Advocate's work in this space has drawn attention to a number of concerning issues for participants of the scheme with decision-making impairment. People with impaired decision-making capacity often experience additional disadvantage arising from the challenge of accessing and engaging with services. There is a risk that the NDIS will become another scheme where people with impaired decision-making capacity are likely to encounter barriers, unless significant efforts are made to ensure pathways and services are responsive to their particular needs.

⁸ According to the 3rd quarterly report to the Disability Reform Council (subsequent reports do not specify this data), most participants in the scheme have an impairment that affects mental functioning. See: National Disability Insurance Agency, 31 March 2016, *Quarterly Report to COAG Disability Reform Council*, viewed 10 August 2017, <<https://www.ndis.gov.au/html/sites/default/files/documents/Quarterly-Reports/11-report-coag.pdf>> 32.



During the year, the Public Advocate made numerous submissions in relation to the development, implementation and rollout of the NDIS. Some of them are outlined below. A full list of submissions made by the office during the year is in Appendix 1.

People from culturally and linguistically diverse backgrounds

The National Ethnic Disability Alliance estimated that 21.9 per cent of NDIS participants should be from culturally and linguistically diverse (CALD) backgrounds, while in Queensland that figure should be 13.7 per cent.⁹ As at October 2016, however, less than 4 per cent of NDIS participants were reported by the NDIA as being from CALD backgrounds.¹⁰ The low participation rates indicated that the NDIS was not, at that time, effectively addressing the longstanding disadvantage and additional barriers faced by people from CALD backgrounds with disability as they attempt to access and participate in specialist disability service systems.

In April 2017, the Public Advocate wrote to the Chief Executive Officer of the NDIA about some of the critical concerns facing people with disability from CALD backgrounds. These issues were brought to the attention of the Public Advocate by a coalition of agencies coordinated by AMPARO Advocacy Inc. The Public Advocate sought a strong commitment from the NDIA to resolve a number of issues for this group. The Public Advocate requested that the NDIS be made fully accessible to all people with disability, and that urgent action be taken to improve rates of participation in the NDIS for people with disability from CALD backgrounds. The Public Advocate also requested that the long-awaited NDIS CALD Engagement Strategy be released as a matter of priority, and that the strategy provide mechanisms for interpreter services to support people from CALD backgrounds to access the NDIS and participate in discussions with both the NDIA and service providers about the development and enactment of their NDIS plans.

With respect to the paucity of policies supporting the provision of interpreter services and other mechanisms for people from CALD backgrounds to access and participate fully in the NDIS, the Public Advocate argued that the NDIA, along with its disability provider partners, was leaving itself vulnerable to complaints of racial discrimination. These concerns were raised by the Public Advocate with the NDIA and the Commonwealth Ombudsman.

In May 2017, the Chief Executive Officer of the NDIA responded to the Public Advocate's letter, advising that the CALD Strategy would be released mid-to-late 2017 and that the NDIA was working to ensure that participants and family members/carers had access to interpreters through updated interpreter access guidelines for NDIA staff.

The Public Advocate has since learned that the NDIA has signed a memorandum of understanding with the Translating and Interpreting Service (TIS), Commonwealth Department of Immigration and Border Protection, with the aim of connecting participants with appropriate interpreting supports to assist them to implement their plans. The Queensland Government has also provided a commitment to people with disability from CALD backgrounds who have transitioned to the NDIS to continue providing interpreter services through SWITC (Support with Interpreting, Translating and Communication) until 30 June 2019. SWITC is a free interpreting and translation service available to consumers of non-government organisations that is funded by the Queensland Department of Communities, Child Safety and Disability Services (DCCSDS).

The Public Advocate considers these measures to be positive steps forward and congratulates the consortium of agencies involved in advocating for interpreter supports for people with disability from CALD backgrounds, along with the Commonwealth and Queensland Governments for their responses to this issue. However, it is essential that these initiatives are well communicated to NDIA

⁹ National Ethnic Disability Alliance, unpublished data, March 2016, cited in Amparo Advocacy Inc., October 2016, *The NDIS and Culturally and Linguistically Diverse Communities: Aiming high for equitable access in Queensland*, 17.

¹⁰ National Disability Insurance Agency October 2016, *National Disability Insurance Scheme: COAG Disability Reform Council quarterly actuarial report*, ver. 1, viewed 8 March 2017, <<https://www.ndis.gov.au/about-us/information-publications-and-reports/quarterly-reports>> 44. Our Office notes, however, that the NDIA advises that limitations exist in relation to data provided on NDIA participants from CALD backgrounds.



staff, particularly planners and Local Area Coordinators, so that participants from CALD backgrounds are informed about their rights to access interpreter services to engage with the NDIS and their service providers.

At the time of writing this Annual Report, the NDIS CALD Engagement Strategy was yet to be released.

People with psychosocial disabilities related to a mental health condition

In February 2017, the Joint Standing Committee on the NDIS – Mental Health undertook an inquiry into the “Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition”. The inquiry explored a number of issues impacting upon people with psychosocial disability and their access to, and eligibility for, the NDIS. The terms of reference specifically focused on eligibility requirements; transitioning of Commonwealth and state/territory mental health services to the NDIS; funding issues related to the Information, Linkages and Capacity Building (ILC) services; NDIA planning; outreach to identify eligible people with psychosocial disability; and the operation of forensic disability services in the NDIS.

The Public Advocate made a submission to the inquiry, raising a number of concerns about how the NDIS was responding to people with psychosocial disability who were seeking entry to, or had already accessed, the scheme. The submission noted the considerable barriers to accessing NDIS supports, particularly in relation to determinations of eligibility by NDIA assessors, the considerable tensions that exist when needing to establish a functional disability while undertaking treatment within a recovery framework, and linking people experiencing significant additional disadvantage and mental health issues with the NDIS. The submission also raised concerns about the absence of processes to transition people currently receiving services into the NDIS, as well as the proposed defunding/closure of highly successful government-funded mental health services and the potential loss of all service support for some people with psychosocial disabilities who were considered ineligible for the NDIS.

Another key focus of the submission was the lack of specialist and systems knowledge with respect to psychosocial disability, among NDIS planners, particularly with respect to recognising a prospective participant's eligibility, and sourcing of supports and ILC services. The submission also highlighted the urgent need to address transitioning issues for people with disability under forensic orders and treatment authorities.

The submission included a range of recommendations to address these concerns:

- Due to their special support needs and the unresponsiveness of NDIS processes, many people with psychosocial disability will require a network of appropriate supports to be established and funded to provide them with the extensive support they will need to assist them to apply for entry to the NDIS or to review decisions denying them access.
- Eligibility decisions are often heavily determined by clinical diagnosis rather than functionality and the need for support, which is not aligned with the original Productivity Commission recommendations. The NDIA must develop policy that clarifies the criteria for eligibility, aligns these criteria with the concept of functionality, and clarifies the degree to which diagnosis may influence eligibility decisions.
- Given the primacy of the recovery framework in Australian mental health policy, key personnel in the NDIA must recognise the centrality of the recovery framework when interacting with applicants and participants with psychosocial disability.
- Long and short term mental health services funded by the Commonwealth Government must continue for those people with psychosocial disability who are not initially considered eligible for the NDIS. Their regular supports should be continued as a safeguard against a decline in mental health wellbeing.



- The NDIA and state and territory governments should establish protocols for responding to people with lifelong psychosocial conditions who cycle in and out of inpatient mental health services, to ensure seamless transition from inpatient, state-based services to community-based, NDIS services and supports.
- A proportion of ILC funding should be quarantined specifically for the provision of mental health ILC services. Further, the ILC should not be considered an adequate alternative to direct support services for people with psychosocial disability who are unsuccessful in securing NDIS funding.
- Planners and other key NDIA staff, such as Local Area Coordinators, must be knowledgeable about, and skilled in, identifying and addressing issues associated with psychosocial disability.
- The NDIA needs to review its current protocols regarding planning to ensure that participants are offered the opportunity to undertake planning in person and to have a support person, advocate or other person who is knowledgeable about their goals, aspirations, and needs present during planning discussions.
- The NDIA should conduct a review into the allocation of NDIS packages for people with psychosocial disability to determine whether participation in the NDIS, and expenditure on this group, is lower than expected and, if this is the case, take steps to identify barriers to accessing the NDIS and address them as a priority.
- Commonwealth, state and territory governments need to undertake outreach projects to identify people in hard-to-reach groups, including those in institutional care (such as prisons, hospitals and residential aged care facilities) and assist them to access the NDIS.
- The NDIA needs to develop and proactively market resources and training for general practitioners to: inform general practitioners about the NDIS, including resources to assist general practitioners to identify potential NDIS participants; inform them about the types of evidence required to support applications to the NDIS; and to make appropriate referrals to the NDIS or organisations that can assist patients with psychosocial disability to access the NDIS.
- The NDIA and state and territory governments must develop joint action plans to facilitate the transition of people currently in forensic disability services into the NDIS. These action plans must address the assessment and transitioning of eligible people under forensic orders or treatment authorities into the NDIS.

As a result of the submission, the Public Advocate was invited by the Committee to give evidence (via telephone) at a public hearing on 12 May 2017. At the hearing, the Public Advocate reiterated key issues in the submission and subsequently provided an additional written submission focusing on the importance of functional disability rather than excluding people with psychosocial disability on the basis of diagnosis or the fluctuating nature of their condition.

In August 2017, the Joint Standing Committee reported on its reference. Many of the recommendations of the Committee supported the issues and concerns raised in the Public Advocate's submission, although many of the issues we raised were also key concerns for many other stakeholders.

Deinstitutionalisation of people with intellectual disability or cognitive impairment

In November 2013, the Public Advocate's report, *People with intellectual disability or cognitive impairment residing long-term in health care facilities: Addressing the barriers to deinstitutionalisation*, was tabled in the Queensland Parliament. In this report, the Public Advocate recommended the need to develop and implement an Action Plan to transition people with intellectual disability or cognitive impairment living in health facilities to appropriate and inclusive community-based accommodation and support services. The report also highlighted the need to plan and support the transition of these individuals into the NDIS.



In 2013-14, the Queensland Government launched the *Joint Action Plan – Transition of long-stay younger people with disability from Queensland public health facilities*. The Joint Action Plan is a partnership between DCCSDS, the Department of Health, and the Department of Housing and Public Works. These departments work together to support younger people with disability who are long-stay patients living in Queensland public health facilities to move to supported accommodation in the community. The Joint Action Plan expires in mid-2019, coinciding with the full rollout of the NDIS in Queensland.

Previous reporting about the Joint Action Plan achievements indicated that 242 younger people were still residing long-term in health facilities as at August 2014. This figure jumped to 516 younger people in August 2015. This significant increase in the number of people identified for transition raised questions about the accuracy of the information provided to the Public Advocate in previous years, the consistency of the assessments used to determine 'disability' for the purposes of the Joint Action Plan, and how congruent these processes are with assessments used for the NDIS.

In 2016-17, 40 younger people with disability were supported to transition from living long-term in public health facilities to community living. During this period a total of \$11.1M was invested in capital and operational funding.

Since the commencement of the Joint Action Plan in 2013, a total of 138 younger people with disability have been supported to transition to community living. The Public Advocate acknowledges the considerable commitment involved in these successful transitions, particularly given the associated capital and recurrent costs and the challenges of multi-agency collaboration.

DCCSDS reported that as at October 2016 there were 499 younger people with disability still residing long-term in public health facilities. The substantial number of young people identified as residing long-term in public health facilities also has implications for the transitioning of this group to community living prior to the full implementation of the NDIS in Queensland. The Joint Action Plan is due to conclude in 2019, however there remain a further 499 individuals to transition out of long-stay health facilities into community-based settings.

DCCSDS has advised that 16 younger people with disability who reside long-term in public health facilities are expected to transition into the community in early 2017-18, and a further \$1M in funding will be allocated to support the transition of a further 12 people with disability. While this progress is certainly welcomed, there is still much to do in order to transition all of the younger people with disability who reside long-term in health facilities before the conclusion of the Joint Action Plan in 2019.

While the commitment of the Joint Action Plan partners to transitioning young people living long-term in health facilities to community living is welcomed, the Public Advocate has concerns about the many other people with impaired decision-making capacity living long-term in other state institutions for whom there are no transition plans in place. These individuals include people with mental illness and cognitive and intellectual disability living in Queensland Health authorised mental health services, as well as people with cognitive and intellectual disability in the Forensic Disability Service. The Public Advocate has encouraged the Joint Action Plan partners to make an on-going commitment to identify and transition other people with decision-making disability who have resided long-term in non-Queensland Health state institutions to live independently in the community.

Forensic Disability Service

As noted in previous Annual Reports, there are long held concerns about future directions for the care, support and accommodation of people with intellectual or cognitive impairment who come into contact with the criminal justice system. This issue is of particular interest given the Public



Advocate's focus on the NDIS as a potential mechanism for transitioning marginalised people with decision-making disability to appropriate supported living arrangements in the community.

This office has repeatedly raised concerns about the Forensic Disability Service and its highly restrictive and segregated approach to the support and care of people with disability under a Forensic Order (Disability). The *Forensic Disability Act 2011* (Qld) establishes the legislative framework for this service, located at Wacol in south-east Queensland. The service was designed to accommodate up to 10 adults with an intellectual disability detained on forensic orders under provisions of the Mental Health Act.¹¹

While one of the purposes of the Forensic Disability Act is to maximise opportunities for the reintegration of clients into society,¹² the Act does not specifically include provisions requiring clients to be transitioned to community living in less restrictive environments. Last year, the Public Advocate noted that eight of the 10 clients resident in the service, appeared to have been detained in the service for significantly longer periods of time than they may have spent in custody had they been found guilty of the crimes they were alleged to have committed in the mainstream criminal justice system. Some clients, for instance, were charged with property damage offences and/or minor to moderate assaults that may not have resulted in custodial sentences at all had these clients pleaded guilty in a standard criminal justice prosecution.

Last year the Public Advocate reported that nine out of the 10 original clients admitted to the Forensic Disability Service continued to be detained in that service. The remaining original client died in early 2016.

DCCSDS has advised that there were eight people on a Forensic Order (Disability) as at 30 June 2017. Seven of these people resided in the Forensic Disability Service while one resided outside of the service in a nearby location. These 8 people have been on a Forensic Order (Disability) since 2011 and 2013 with 7 of them residing at the Forensic Disability Service since that time. During 2016-17, one person transitioned from the service into the community.

The Public Advocate is strongly committed to advocating for the eventual release and reintegration of clients of the Forensic Disability Service into the community. The Public Advocate will continue to engage with DCCSDS to seek to improve the operation of the Forensic Disability Service and the programs and services provided to the residents of the service.

Upholding the right to life and health: The Queensland Government's response

In 2016, the Public Advocate published a report, *Upholding the right to life and health: A review of the deaths in care of people with disability in Queensland*, that reviewed 73 cases involving the deaths in care of people with disability. This report presented disturbing facts about the health and mortality of Queenslanders living with cognitive and intellectual disability. For example, more than half (53 per cent) of deaths reviewed in the report were determined by an expert panel to be potentially avoidable. Most deaths (59 per cent) were unexpected 24 hours earlier and involved relatively young men and women: nearly half (47 per cent) were in their 40s or younger. The report also provided numerous examples where adverse health outcomes were experienced by people with disability due to such factors as inadequate support for health-related matters, poor access to adequate medical assessment and health care, and lack of training for disability support staff and medical/health care professionals.

¹¹ Formerly the *Mental Health Act 2000* (Qld); currently the *Mental Health Act 2016* (Qld).

¹² *Forensic Disability Act 2011* (Qld) s 3(d).



Findings from the report have since been supported by other authoritative and anecdotal sources including researchers at the University of New South Wales,¹³ the New South Wales Ombudsman,¹⁴ and mainstream media sources.¹⁵

The Public Advocate considers that improving health outcomes and reducing mortality rates for people with decision-making disability requires urgent attention and focused effort by all governments because of the substantial risk to people with cognitive and intellectual disability and the enormity of reforms currently occurring in federal and state/territory health and disability systems.

The Premier has committed her department to engage with the Public Advocate's office to examine what further action the government can take, and to develop an implementation plan identifying specific actions and responsibilities to respond to the report. She has committed her department to working with other Queensland government agencies and my office to ensure genuine action to improve the care of people with disability in care.

The Public Advocate thanks the Premier and her department for this commitment to achieve genuine change for this particularly vulnerable group. At the time of writing this report, the Public Advocate was preparing to meet with government representatives on an implementation working group to progress these issues.

The Public Advocate also acknowledges the efforts by the Minister for Health and Minister for Ambulance Services, who wrote to Hospital and Health Services Board Chairs and drew attention to the report, as well as the Minister for Disability Services, Minister for Seniors and Minister Assisting the Premier on North Queensland, who wrote to the NDIA requesting consideration of the report during its implementation of the NDIS. The State Coroner's commitment to report annually on deaths in care and to commence this in 2016-17 is also acknowledged.

In May 2017, the Public Advocate also wrote to the Chief Executive Officer of the NDIA, outlining the findings of the *Upholding the right to life and health: A review of the deaths in care of people with disability in Queensland* report expressing concerns that the issues identified in the report may be exacerbated under the transition to the NDIS for this group. The Public Advocate made very practical suggestions about how the NDIS might respond to the report and take steps to minimise the risk of avoidable deaths of people with disabilities through the development of appropriate NDIS plans. A response from the NDIA is yet to be received.

Disability Employment Services

In December 2016, the Public Advocate made a submission to the Department of Social Services in response to the *New Disability Employment Services from 2017 Discussion Paper*. The Public Advocate supported the strong orientation towards affording jobseekers increased choice and control in various aspects of the employment process, such as choosing their Disability Employment Service provider and the services they receive, as well as directing their participation in job readiness activities.

However, the submission conveyed concerns about several aspects of the discussion paper. For example, the degree to which jobseekers with impaired decision-making capacity would be provided with opportunities and support to exercise their autonomy during the job seeking process. The Public Advocate suggested that the Department of Social Services introduce mechanisms to promote supported decision-making for people with impaired capacity where they are at risk of having decisions made for them inappropriately during the job seeking process.

¹³ J Trollor, P Srasuebkul, H Xu & S Howlett, 'Cause of death and potentially avoidable deaths in Australian adults with intellectual disability using retrospective linked data', *BMJ Open*, vol 7, iss 2, 2017.

¹⁴ J McMillan & S Kinmond, 'The needless deaths of people with intellectual disability must be urgently addressed', *ABC News*, 9 Feb, 2017, viewed 3 April 2017, <<http://www.abc.net.au/news/2017-02-09/analysis-ombudsman-on-healthcare-for-intellectually-disabled/8255738>>.

¹⁵ See, for example, L Besser, K Toft & J McGregor, 'Fighting the system', *Four Corners (ABC)*, 27 March 2017, viewed 2 May 2017, <<http://www.abc.net.au/4corners/stories/2017/03/27/4641276.htm>>.



The Public Advocate also recommended in the submission that, in addition to promoting to employers the benefits of hiring people with disability, government should take a strong and proactive approach to addressing stereotypes and misconceptions about employees with disability, provide an evidence-based business case for hiring people with disability, and develop creative and courageous strategies for growing leadership in the disability employment market. The Public Advocate cautioned the department against encouraging strong market competition between Disability Employment Services providers on the basis that they run the risk of undermining one of the great strengths of the Australian human services sector – collaboration.

The Department of Social Services has since released an industry information paper in relation to the reforms that will commence in 2018. The Department purports that under the new scheme:

- there will be more flexible servicing arrangements;
- Employment Services Area restrictions will be relaxed;
- it will be easier for participants to change providers;
- there will be greater availability of information for participants.

All Abilities Queensland

In December 2016, the Queensland Government launched the *Towards an all Abilities Queensland Consultation Paper* seeking Queenslanders' input into the Queensland Government's Disability Plan for 2017-20.

The Public Advocate made a submission to the consultation, which focussed on the areas of employment, health care, transport, and facilitating leadership and contribution by people with disability. The submission specifically discussed the need for:

- the Queensland Government to take a lead in reducing the barriers to employment for people with disability;
- a whole-of-government strategy and action plan to improve the substantially poorer health and mortality outcomes for people with cognitive and intellectual disability living in supported accommodation services;
- a Queensland Government commitment to remove barriers to accessing public transport;
- improving the accessibility of online information and resources to ensure people of all abilities have the opportunity to genuinely participate in government processes; and
- strengthening decision-making support and advocacy for people with impaired decision-making capacity via funding a volunteer decision-making support program.

In July 2017, the Queensland Government published the state disability plan – *All abilities Queensland: Opportunities for all* – which focuses on five key priorities: communities for all; lifelong learning; employment; everyday services; and leadership and participation. The Public Advocate looks forward to further contributing to the plan and will follow its implementation in coming years.

Aged care and elder abuse issues

The year 2017 marks an approximate half way point in the Commonwealth Government's 10 year reform program for the aged care system. The reforms were introduced to ensure Australia's aged care system is affordable, sustainable and the best possible system that can be delivered by the Commonwealth Government.¹⁶

¹⁶ Australian Government Department of Health, *Aged care reform* (4 September 2017) <<https://agedcare.health.gov.au/aged-care-reform>>.



As part of the reforms, the Commonwealth Government introduced the *Aged Care (Living Longer Living Better) Act 2013* (Cth). The Commonwealth Department of Health has made changes to the Commonwealth Home Support Programme, consumer directed Home Care Packages, National Care Advocacy Program, Community Visitor Scheme, dementia and Veterans' supplements and homelessness supplement. The Commonwealth Government also established the Aged Care Pricing Commissioner and strengthened the powers of the Age Care Commissioner.¹⁷

In relation to residential aged care, the Commonwealth Government has undertaken work to improve the transparency of residential aged care accommodation prices and services, introduced a new means test (which also applies to home care), introduced price capping arrangements, removed the distinction between low and high levels of care, and provided greater flexibility in payment options.¹⁸

The Public Advocate has participated in a number of consultation processes in relation to these reforms over the past few years and will continue to do so as the remaining reforms are advanced.

Many users of aged care services have, or will develop, impaired decision-making capacity as a result of a range of circumstances and conditions, including Alzheimer's disease and dementia. The number of people with dementia is expected to increase substantially from around 413,106 in 2017 to 1,100,890 by 2056,¹⁹ many of whom will eventually experience the behavioural and psychological symptoms associated with dementia. In 2015, the Australian Institute of Health and Welfare reported that more than half of people in residential aged care in Australia had a diagnosis of dementia.²⁰ This means that a significant proportion of aged care recipients will have or will experience impaired decision-making capacity at some point during their engagement with the aged care system.

Legal frameworks for the use of restrictive practices in aged care

The use of unregulated restrictive practices in the aged care and disability sectors is a key human rights issue. Restrictive practices can include detention, seclusion, physical, chemical and mechanical restraint and electronic forms of restraint and monitoring such as tracking bracelets, camera surveillance or restrictions on use of media devices. These practices are being used despite research indicating that their use may result in negative physical and psychological effects on the person being restrained and may also constitute a breach of law and human rights.

The Public Advocate released a paper, *Legal frameworks for the use of restrictive practices in residential aged care: An analysis of Australian and international jurisdictions*, on World Elder Abuse Day in June 2017. The Public Advocate also issued a media release calling on the Commonwealth Government to commit to introducing the necessary legislation to regulate restrictive practices in aged care, as a matter of urgency. The paper was also sent to the Commonwealth Minister for Aged Care requesting urgent legislative reform.

The purpose of the paper was to inform discussion about the regulation of restrictive practices in residential aged care in Australia. The paper explored the existing laws, policies and practices in Australia and overseas.

¹⁷ Australian Government Department of Health, *What has been achieved so far* (27 February 2017) <<https://agedcare.health.gov.au/reform/what-has-been-achieved-so-far>>.

¹⁸ Australian Government Department of Health, *What has been achieved so far* (27 February 2017) <<https://agedcare.health.gov.au/reform/what-has-been-achieved-so-far>>.

¹⁹ Alzheimer's Australia, *Economic Cost of Dementia in Australia 2016-2056* (February 2017) 6.

²⁰ Australian Institute of Health and Welfare, *Half of Australians in Permanent Residential Aged Care Suffer From Dementia* (4 September 2015) <<http://www.aihw.gov.au/media-release-detail/?id=60129552716>>.



While some jurisdictions in Australia regulate the use of restrictive practices in the disability and/or mental health sectors,²¹ the law governing these practices in residential aged care is unclear and, for the most part, non-existent.²² At present, the *Aged Care Act 1997* (Cth) does not regulate the use of restrictive practices such as chemical, physical and mechanical restraint.

Every person who is supported by the residential aged care system or has a loved one who may require residential aged care in the future should be concerned about the absence of regulation for the use of restrictive practices in aged care. Some aged care residents are being locked in their rooms, tied up, strapped to beds, drugged with powerful sedatives and monitored by cameras on a daily basis, sometimes with little regard for their personal welfare or human rights. While restrictive practices are sometimes needed to manage challenging behaviours in older people with dementia and mental health issues, they can also be used as a means of coercion, punishment, reprisal, or for staff convenience.

As noted above, the number of Australians with dementia is expected to increase substantially. Many dementia sufferers will eventually experience the behavioural and psychological symptoms (such as challenging behaviours) associated with dementia. There is a growing body of research indicating that dementia-related behaviours are often being managed by unregulated restrictive practices, and that restrictive interventions are in widespread use in both formal and informal aged care settings. This is particularly problematic given that more than half of people in residential aged care in Australia have a diagnosis of dementia.²³

Residential aged care workers are also at serious risk as they are working in a professional minefield without any clear statutory basis or legal protections when using restraints. Evidence suggests that some residential aged care staff do not have the knowledge and skills to manage behaviours appropriately, and that the wellbeing of the person being restrained may be negatively affected as a result. It is concerning that the inappropriate use of restraints in aged care facilities in Australia has been a factor in the deaths of some people upon whom the restraints were used.

The increasing number of people with dementia and the potential harm that may occur as a result of ad hoc or poorly applied restrictive practices suggest an urgent need to clarify the legality of restrictive practices in the Australian aged care system. Further, restrictive practices should be regulated to achieve a more consistent, professional, evidence- and rights-based approach to responding to dementia-related behaviours.

Australian Law Reform Commission Elder Abuse Inquiry

In February 2016, an Australian Law Reform Commission (ALRC) Inquiry into elder abuse was announced. The Commission was tasked with considering the Commonwealth laws and frameworks that aim to safeguard older Australians from abuse. The frameworks included those relating to financial institutions, superannuation, social security, living and care arrangements, and health. The Commission was also tasked with exploring the interaction and relationship of the relevant Commonwealth laws with state and territory laws.

The Public Advocate invested significant effort in making submissions in response to the Issues Paper and Discussion paper released in the course of the Inquiry.

²¹ See, for example, *Disability Services Act 2006* (Qld) pt 6; *Mental Health Act 2016* (Qld) ch 8.

²² Michael Williams, John Chesterman and Richard Laufer, 'Consent versus scrutiny: Restricting liberties in post-Bournewood Victoria' (2014) 21(3) *Journal of Law and Medicine* 641, 644; Judy Allen and Tamara Tulich, 'I want to go home now': Restraint decisions for dementia patients in Western Australia' (2015) 33(2) *Law in Context* 1, 4.

²³ Australian Institute of Health and Welfare, *Half of Australians in Permanent Residential Aged Care Suffer From Dementia* (4 September 2015) <<http://www.aihw.gov.au/media-release-detail/?id=60129552716>>.



Elder Abuse Issues Paper

In August 2016, the Public Advocate made a submission to the Elder Abuse Issues Paper, which focussed on issues as they relate to older people with impaired decision-making capacity.

In the Issues Paper submission, the Public Advocate explained that specific legal responses to elder abuse on their own will not achieve the social change that is urgently needed. Elder abuse is a significant social problem that is a consequence of ageism. Research commissioned by the Age Discrimination Commissioner found that ageism and age discrimination were widespread and commonly experienced by older Australians. It also found that ageist attitudes were deeply ingrained and evident in all aspects of Australian society. Ageism has been described as a key underlying cause of elder abuse. Older people with a cognitive impairment or impaired decision-making capacity are among the most vulnerable to elder abuse.

The Public Advocate encouraged the development and implementation of social programs and strategies to reduce or prevent elder abuse that will achieve long-term change. Strategies to keep older people more engaged in their communities and avoid social isolation should be a high government priority, as should community education campaigns about elder abuse. The Australian community also needs well-resourced vehicles for delivering evidence-based responses that are effective at preventing and remedying elder abuse, such as family care conferences and interdisciplinary abuse teams. Once elder abuse occurs there should be appropriate legal responses such as criminal prosecutions and appropriate regulatory responses for service providers and care-givers to ensure that standards of quality and care are maintained.

In the Issues Paper submission, the Public Advocate drew attention to two examples of systemic elder abuse. The first is the practice of moving older people against their will from their homes and into residential aged care. This enforced relocation to institutional care often occurs at points in older people's lives when they are considered to be failing in health and/or experiencing impaired decision-making capacity. These decisions are often made by family members and supported by medical professionals. The Public Advocate is aware of the many guardianship applications made by family members of older people or staff in Queensland Health to the Queensland Civil and Administrative Tribunal (QCAT) for the purpose of making a decision to move the subject person from hospital into aged care.

These decisions are often made on behalf of the older person without giving serious consideration to the possibility of the person remaining in their own home with appropriate support and services, even when the older person has indicated that is their preference. While family members may have genuine concerns for the health and safety of their aged relatives, some applications also appear to be driven by convenience, with family members wanting 'things sorted out' so that they can be relieved of the responsibility of their older relatives' day-to-day care.

The Public Advocate is not certain of the policy basis for Queensland Health becoming involved in these matters, however it may be that its involvement may be driven by risk and/or cost. The release of a patient into aged care transfers care and cost risks from Queensland Health to an aged care provider whereas allowing the person to return home does not. Further, if the older person has medical issues while in residential aged care, they can receive treatment in the place they reside, reducing the likelihood of the person returning to hospital and the subsequent cost to the health system. These considerations, while legitimate, should not take precedence over the rights of older people to autonomy and, to the greatest extent possible, to make decisions for themselves.

Decisions about the living arrangements for older people that are made without taking the older persons' views and wishes into account and seeking to implement their desires, breach their human rights.



The General Principles in the Guardianship and Administration Act include strong statements of human rights and respect for dignity and self-determination that are consistent with the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD). While providing a statement of rights, the General Principles also provide guidance in relation to how to carry out decision-making on behalf of an individual, such as taking into consideration the views and wishes of the person, as well as highlighting the importance of maintaining the person's autonomy and lifestyle.

Principle 5 of the General Principles emphasises the importance of supporting a person to live life in the general community and to take part in activities, while principle 7 expresses the right of a person to participate as much as practicable in decisions affecting the adult's life and the right to make their own decisions. When the rights of older people to make decisions or participate in decisions affecting their lives are disregarded, their human rights are breached. It is the view of the Public Advocate that people and agencies who fail to take account of their views and wishes are breaching the law.

The second example of systemic elder abuse is the emerging practice in the residential aged care sector, whereby providers require that people have a valid enduring power of attorney or a guardianship/administration order before being granted acceptance into a service. The rationale for this policy is likely to be a financial and legal safeguard for the service provider by ensuring that all people seeking placement have a mechanism in place to ensure continuity of decision-making in respect of the person's placement should they cease to have capacity (particularly for financial matters) sometime in the future.

The failure of residential aged care providers and other organisations to accept informal decision-making is a long-standing issue.

Further, the Public Advocate is aware that many aged care providers insist on only dealing with the person holding the enduring power of attorney, even when the aged family member still has legal capacity and the attorney's powers have not been enlivened. These practices breach the human rights of older people, are unlawful and constitute a form of elder abuse.

The policy of some residential aged care providers to require a person has a guardianship and/or administration order prior to securing a placement contravenes Queensland's guardianship legislation, the principles that underpin Queensland's guardianship legislation and the CRPD. Guardianship and/or administration is a last resort decision-making mechanism that should only be resorted to when all other less restrictive alternatives are exhausted. In essence, residential aged care providers, in adopting such policies, are requiring that the older person be stripped of their legal capacity.

The Public Advocate sought a statement from the ALRC that such practices were unlawful, were breaches of the human rights of older people and constituted a form of elder abuse.

The Public Advocate's submission also called for the regulation of restrictive practices in residential aged care settings and pointed to initiatives of the Queensland Government to regulate the use of restrictive practices in the disability sector as a good practice example. The Queensland Government introduced restrictive practices regulation and required evidence-based approaches to support people with disability with behaviours that cause harm to themselves or others.

The Public Advocate's submission highlighted the importance of systemic advocacy and expressed concern that, with the Commonwealth Government assuming responsibility for aged care service delivery, there appeared to be no proposal to establish a Public Advocate, or equivalent office, at the federal level that can undertake systemic monitoring and advocacy to protect the rights and interests of older people with impaired decision-making capacity. State- and territory-based Public Advocates and their equivalents do not have the legal authority to access information and data beyond our jurisdictions. This limitation, significantly diminishes the ability of



Public Advocates to perform their important function to advocate to protect older people with impaired decision-making capacity.

In the absence of a federal systemic advocacy office, the Public Advocate campaigned for the formal recognition of the role of state and territory Public Advocates and their authority to access information and undertake systemic advocacy in the interests of people with impaired decision-making capacity who are receiving services within the federal aged care system.

The Public Advocate's submission also contributed to the discussions about aged care complaints, social security, elder abuse prevalence research, the aged care community visitor scheme, the National Aged Care Advocacy Program, abuse committed by appointed decision-makers and a register for enduring documents.

Elder Abuse Discussion Paper

In March 2017, the Public Advocate made a submission in response to the Elder Abuse Discussion Paper. The Public Advocate commended the initiatives proposed by the ALRC, however respectfully suggested that some of the proposals may have extended beyond the purview of the Commission.

A number of proposals involved areas where states and territories have exclusive jurisdiction, especially regarding the way state agencies conduct law enforcement and investigations. The Commission's proposals in relation to state and territory matters extended beyond the usual recommendations made by the Commission for uniform state and territory laws. The Public Advocate suggested that they should be subject to a more comprehensive review process, and that some of the proposals that directly impact the operations and functions of state- and territory-based agencies to the Council of Australian Governments or its ministerial councils such as the Law Crime and Community Safety Council or Australian Guardianship and Administration Council for consideration of their jurisdictional and resourcing impacts.

The Public Advocate conveyed support for the proposal to develop a national plan to guide reform and facilitate long-term elder abuse strategies. The inclusion of elder abuse on the national agenda through a well-developed national plan should lead to the formulation of a nationally-consistent framework for the reform of policies, initiatives and programs. In turn, this should result in greater public debate, improved safeguards for the rights of older Australians and more integrated and available services and supports.

The Public Advocate highlighted the importance of a national plan engaging with elder abuse in a holistic and multi-faceted manner. A national plan provides an opportunity to address and improve culture and community attitudes, federal and state government policy, and on-the-ground supports and responses. The plan should also encompass subsets of the Australian population such as people with disability or mental health issues, people with impaired decision-making capacity, Indigenous Australians and people with different cultural backgrounds.

The submission conveyed the Public Advocate's concerns about the Commission's proposals for the expansion of the powers of investigation for public advocates/guardians to investigate elder abuse. A key concern related to the investigative functions proposed for public advocates/guardians. The proposed powers were similar to the powers of Queensland's Public Guardian, whereby the Public Guardian is required to investigate complaints and allegations about the actions of attorneys, guardians, administrators or people acting under an advance health directive.

The Commission's proposal to expand the powers of Public Guardians/Advocates to require that a person, other than the older person furnish information, produce documents or participate in an interview relating to an investigation of the abuse or neglect of an older person. This would



significantly broaden these powers to investigating elder abuse generally, not just misbehaviour against people with impaired decision-making capacity. This would amount to a considerable increase in the investigation responsibilities of all jurisdictions' relevant guardianship agencies.

The Commission's proposals in relation to the expansion of Public Guardian/Advocate powers would require significant legislative reform by state and territory governments and, if adopted, would result in a dramatic increase in the workload of guardianship agencies, with no commensurate funding being proposed.

The jurisdiction of guardianship agencies is limited to dealing with children and adults with impaired decision-making capacity (generally as guardians of last resort). Their expertise is in dealing with this cohort. Although their responsibilities often involve them dealing with people with age-related illnesses such as dementia, there is no reasonable basis to assume that public guardians/advocates necessarily have the expertise or the skills to deal with, or investigate, elder abuse generally. Expanding these agencies' authority would require significantly more resources in terms of staff, equipment and skills, including in dealing with a wide variety of witnesses and complainants, new situations and scenarios, as well as being aware of various rules and regulations around evidence and investigation.

The benefits from investing what are essentially significant police investigative powers in guardianship agencies are unclear. Such a proposal requires wider consultation to determine whether public advocates/guardians are the most appropriate agencies to be undertaking this role. At minimum, law enforcement agencies around the country should be consulted to determine whether such a proposal would be practical and appropriate. Police services across the country already undertake these investigations, and have the requisite training and knowledge in investigations and evidence to deal with cases of elder abuse and see them through to a successful prosecution.

The Public Advocate suggested that a better approach might be to encourage better training of police in the investigation of offences against older people (which is currently occurring in Queensland), the establishment of specialist elder abuse policing units and the development of closer working relationships between police and local public guardians/advocates to improve referrals and information sharing between these agencies.

Alternatively, consideration could be given to whether a Commonwealth agency may be better placed to undertake investigations of certain forms of elder abuse, such as abuse occurring in residential aged care services or abuse involving Centrelink payments. Since both of these service areas are within the responsibility of the Commonwealth Government, it may be more appropriate for a federal agency such as the Australian Federal Police, Department of Social Services or Department of Human Services to investigate these forms of elder abuse.

In relation to the establishment of a national register of enduring documents and court/tribunal orders to help combat elder abuse, the Public Advocate encouraged the Commission to exercise caution. Such a proposal may have a significant negative impact on the rate of uptake and finalisation of valid enduring documents within the community because of the likely additional costs of registration and additional effort to apply for registration.

Tasmania has a scheme of compulsory registration of enduring documents, which provides an opportunity to examine the impact of a mandatory register on the misuse and abuse of enduring documents by attorneys. The Discussion Paper did not provide information about the effectiveness of this system in reducing abuse of these documents by the attorney. The Public Advocate suggested that a thorough analysis of the impact of compulsory registration of enduring documents in Tasmania is undertaken before serious consideration is given to adopting a national register for enduring documents.



The proposal to better inform and educate guardians and administrators on the scope of their roles was supported by the Public Advocate. The Public Advocate's 2016 report – *Decision-making support and Queensland's guardianship system* – highlighted a low level of awareness of the obligations under guardianship legislation among substitute decision-makers, which was unsurprising given that there is scant practical guidance, education or training provided to guardians, attorneys and administrators about their roles and obligations, nor about how to apply the General Principles in the Guardianship and Administration Act.

The Public Advocate supported the ALRC's proposals to expand and enhance reporting and protections to older persons in aged care. While the establishment of a reportable incidents scheme was supported, the Public Advocate strongly suggested that such reports should also be mandatorily made to state police agencies where there is a suspicion of criminal offending.

The reporting of incidents to police will need careful management to ensure that all reportable incidents are properly responded to, especially when police are unable to bring a prosecution. There is a risk that aged care providers may misinterpret police taking no action on a reportable incident as meaning they have no further responsibilities in responding to the incident. Police taking no further action in relation to an incident may, however, simply mean that the evidence gathered does not meet the threshold for a criminal prosecution. It may be that, while not strictly criminal in nature, these incidents reflect more subtle forms of elder abuse that are caused by mistakes and poor staffing practice, poorly designed organisational systems and/or insufficient resourcing. Additionally, to prevent police being inundated by unsubstantiated allegations of abuse, it will be necessary to adequately resource state police agencies to incur the additional workload involved with assessing, investigating or referring allegations of elder abuse that amount to a criminal offence.

As the prosecuting authority in the first instance, police should determine whether a matter should be pursued criminally. Therefore, all potential criminal offences should be reported to police. Those working in the aged care sector and their supervisors do not have the expertise or qualifications to make determinations as to whether a matter should be investigated by police and prosecuted.

The expansion of reportable incidents was supported by the Public Advocate, who also questioned whether there should be two separate definitions for reportable incidents occurring in residential or home/flexible care. Abuse, neglect, exploitation and inappropriate or harmful worker practice, should not be accepted in either of these service environments. If a potential crime has occurred, then all such incidents should be referred to police and other relevant regulatory bodies, irrespective of the context in which care is being provided. To do any less would be to treat older people as having less value and deserving of less protection than the general public.

The Public Advocate supported the proposal for enhanced screening for aged care employees and suggested that there should be a scheme for recording reportable incidents and relevant disciplinary proceedings or complaints. A national database could be established to record the outcome and status of employment clearances. Complaints management data could also be used to screen out workers whose conduct and treatment of older people fall below acceptable standards. The complaints data will also ensure that workers with histories of poor performance cannot simply move between employers to avoid scrutiny.

The proposal whereby unregistered aged care workers who provide direct care are subject to the planned National Code of Conduct for Health Care Workers was supported, however, many staff in the aged care sector have limited education and many are from culturally and linguistically diverse backgrounds. Requiring these workers to acquire this level of knowledge will require significant investment in education and training from the aged care sector. If such a proposal were to be adopted it will need to be accompanied by a clear and accessible education and communication campaign for workers to ensure they understand the Code of Conduct and their



obligations and duties under it. Alternatively, there may be benefits in developing a specific code of conduct for aged care workers.

The Public Advocate's submission strongly advocated for the regulation of the use of restrictive practices in residential aged care. While New Zealand, the United Kingdom and most Canadian provinces have enacted laws that regulate restrictive practices, Australia has yet to introduce restrictive practices legislation in aged care. Australia is falling behind in regulating these practices, many of which technically constitute criminal acts against older persons in aged care. As discussed in the Public Advocate's response to the ALRC's Issues Paper, detailed consideration should be given to developing a legal framework that includes the features outlined in the Discussion Paper in addition to:

- an appropriate evidence-based behaviour support framework for use with people with dementia in receipt of aged care services;
- the development of behaviour support plans by appropriately qualified professionals for those individuals subject to restrictive practices;
- a legislated, decision-making framework for the approval and review of restrictive practices for older people;
- a regime of recording and reporting instances of the use of restrictive practices;
- the establishment of a best-practice agency to guide plan development, workforce development, and the application of restrictive practices for older people; and
- the establishment of a visitor program to provide independent on-site scrutiny of the use of restrictive practices.

Any framework must also ensure that restrictive practices are only ever used in residential aged care as a last resort, that they are complemented by appropriate safeguards, and that there is appropriate monitoring and oversight of their use.

The Public Advocate supported the ALRC's proposal for aged care legislation to provide that agreements entered into between an approved provider and a care recipient cannot require that the care recipient has appointed a decision maker for lifestyle, personal or financial matters. As highlighted by the ALRC, this is an encroachment on the rights of older people.

The Public Advocate's submission also made comments in relation to the proposals made by the ALRC about banks and superannuation, and social security.

Elder Abuse Inquiry final report

The ALRC published the final report for the Elder Abuse Inquiry – *Elder Abuse: A National Legal Response* – in May 2017. A number of the ALRC's final recommendations were consistent with the Public Advocate's position on issues including the regulation of restrictive practices in residential aged care, the creation of a national plan to combat elder abuse, a scheme to report serious incidents in residential aged care, the enactment of an employee screening process for aged care workers and the advancement of the National Decision-Making Principles previously recommended by the ALRC in the Equality, Capacity and Disability in Commonwealth Laws Inquiry.

Single aged care quality framework

In April 2017, the Public Advocate made a submission on the single aged care quality framework to the Australian Department of Health. The submission responded to the *Draft Aged Care Quality Standards* consultation paper and the *Options for assessing performance against the Aged Care Quality Standards* paper.



The Public Advocate supported the Commonwealth Government's approach to developing a single set of standards that are sufficiently broad for use within all aged care services. A single set of standards should, in theory, reduce the administrative burden on aged care providers and deliver a more consistent and streamlined approach to quality within the sector.

The submission advocated for the draft standards to be strengthened in a number of ways, including the inclusion of a requirement that aged care providers have an access policy that outlines any service specialties (such as service delivery to older people with intellectual disability) or limitations as appropriate, and require them – where relevant – to refer older people to providers or systems better able to meet their needs, goals and preferences.

In the submission, the Public Advocate called for a freeze on the use of restrictive practices by aged care providers, except in accordance with a formal, legal regime similar to that used in Queensland for dealing with challenging behaviours of people with disability under the *Disability Services Act 2006* (Qld). The Public Advocate called on the Commonwealth Government to urgently establish an appropriate restrictive practice regime to provide for the appropriate regulation of these practices in the aged care sector. A quality framework should reflect these arrangements and establish appropriate standards to support the operation of the restrictive practices regime.

The Commonwealth Government was also urged to maintain the focus on quality systems as a means to improve older people's experiences of aged care services and to safeguard vulnerable consumers. Reducing the administrative burden on aged care providers is an important consideration but should not become the driving force behind quality reform. Essentially in any human service enterprise the primary consideration should be to provide for a quality experience for consumers that respects their rights and interests.

Health

Access to appropriate and responsive health care is essential for physical wellbeing and is widely considered a universal human right. Article 25 of the CRPD states:

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;
- b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;
- c) Provide these health services as close as possible to people's own communities, including in rural areas;
- d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;



e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

The Public Advocate has a long history of advocating for the health needs of people with impaired decision-making capacity. In the 2008-09 Annual Report, the then Public Advocate, identified 'the unmet physical health care needs of adults with impaired decision-making capacity' as a 'major systemic issue'.²⁴ While the strong commitment among health care professionals to providing the best care for their patients is acknowledged, instances of systemic failures of policy or practice that negatively impact the services, health outcomes and rights of people with impaired decision-making capacity are still being observed.

Review of the deaths in care of people with disability in Queensland

The Public Advocate's report – *Upholding the right to life and health: A review of the deaths in care of people with disability in Queensland* – released in March 2016, recognised the complex health needs and higher mortality rates of many people with intellectual or cognitive disability (see general discussion about the report in the 'Disability' section of this report). The report identified significant barriers for people with disability accessing appropriate health care, including a lack of appropriate support to access health care, lack of education and responsiveness of health care providers in treating people with cognitive disabilities and ineffective coordination between disability and health services, all of which could have a serious impact on the health and health outcomes of people with disability.

As noted in 'The Year in Review', in response to the report, the Premier has committed her department to engage with my office to develop an implementation plan identifying specific actions and responsibilities to respond to the report. She has committed to 'genuine action' to improve the care of people with disability in care. At the time of writing this report, the Public Advocate was preparing for the initial meeting of the implementation group.

The Public Advocate acknowledges the efforts of many of the Hospital and Health Services (HHSs) across Queensland to address the issues identified in the *Upholding the right to life and health* report, and to improve the quality and responsiveness of their health services to people with disabilities. Many HHSs acknowledged the importance of the report and its findings to the communities they serve and reviewed the recommendations to identify areas where they were already compliant, were able to implement change or to redirect funding and/or resources to implement the changes. Some HHSs, particularly the Metro South HHS identified a range of points of contact between the Queensland public health and other health and disability systems where steps could be taken to develop or improve pathways to service access, communication and handover between services.

In May 2017, Queensland Health chaired a meeting with various stakeholders, including the Public Advocate, to discuss the barriers associated with the provision of health care services to people with intellectual disability and cognitive impairment. The meeting participants shared strategies that were already in place to address the identified barriers and discussed potential strategies that could be achievable and effective. The Public Advocate was pleased to be invited to participate in this process and noted the positive work that is occurring and the genuine commitment by staff to improve the health outcomes for people with disabilities.

²⁴ Office of the Public Advocate, *Annual Report 2008-2009*, 101.



Death of a young man with disability in a public hospital

During the year, the Public Advocate was approached by the family of a young man with severe disability who died unexpectedly from influenza in a large public hospital. While the man experienced significant on-going health issues arising from his disability, he lived a full and active life with the support of his family. The family expressed a range of concerns about the care their son received in hospital and were seeking support for a coronial inquest into the circumstances of his treatment and subsequent death. On the basis of the information provided, the Public Advocate took the view that this was a matter that should be investigated through a coronial process. The Public Advocate wrote to the State Coroner advocating for the Coroner to consider that the case was one where it is in the public interest for him to investigate and hold an inquest. The State Coroner is currently undertaking preliminary inquiries into the matter.

Statement of Choices document

During the year, the Public Advocate was approached by a community agency raising concerns about a document called a Statement of Choices. The Statement of Choices document can be found on the Metro South Hospital and Health Service section of the Queensland Government website on the 'My Care, My Choices: Advance Care Planning' webpage.

The webpage states that the Statement of Choices form focuses on a person's wishes and choices for health care into the future. The page says the document 'will only be used if a person is unable to make or communicate their decisions'.²⁵ The community organisation that drew the Public Advocate's attention to this document raised concerns that the legal status and effect of the Statement of Choices document was unclear. They were concerned that members of the public would be confused by the plethora of documents that were being promoted by government agencies — apparently in competition with each other — to assist with their future care and decision-making. The range of documents now available for Queenslanders to undertake future planning include:

- **General Power of Attorney** – Form 1 under the *Powers of Attorney Act 1998* (Qld) — to appoint someone to have as your attorney for financial matters while you have capacity;
- **Enduring Power of Attorney** – Form 2 Short Form and Form 3 Long Form under the *Powers of Attorney Act* — these documents are for when you wish to appoint attorneys for financial or health matters to make decisions for you when you have lost capacity;
- **Advance Health Directive** – Form 4 under the *Powers of Attorney Act* — deals with future health care; and
- **Statement of Choices** — the document does not appear to be an official Queensland government form²⁶ and is not developed under any legislation — information on the My Care, My Choices pages states that the document 'does not replace other existing advance care planning documents'.

In September 2016, the Queensland Law Society also raised concerns about the Statement of Choices document with the Department of Justice and Attorney-General and their response to the review of enduring power of attorney and advance health directive forms. The concerns raised by the Queensland Law Society were as follows:

²⁵ Metro South Hospital Health Service, *Statement of Choices form* (22 May 2017) <<https://metrosouth.health.qld.gov.au/acp/statement-of-choices-form>>.

²⁶ It is worth noting that the Statement of Choices document — while appearing to be an officially endorsed government publication with the State government coat of arms — is not listed on the Queensland Government publications website, although the power of attorney and advance health directive forms are listed on this site.



A number of our practitioners have raised concerns with respect to the "Statement of Choices" form which is presently available on the Metro South website.

The concerns raised relate to whether patients understand the status of this document as opposed to the legal status of an EPA or an AHD. It was also queried how these documents would interact if the wishes outlined in the Statement of Choices form are inconsistent with the wishes outlined in the AHD.

A further concern is that the "Statement of Choices - Form B" can be completed by a "substitute decision maker" on behalf of another person. However, the Form B does not include any prompts for the medical practitioner to require the alleged substitute decision maker to produce evidence of his or her appointment under an appropriate authorisation.

The Society recommends that the Statement of Choices form be reviewed as part of the review of the EPA and AHD forms. The Society would be pleased to work with the Department of Justice and Attorney-General and Queensland Health in this regard.

The review should focus on harmonising the Statement of Choices forms with AHDs and EPAs and also consider including further information for medical practitioners when assisting with these forms, particularly about asking for evidence of the appointment of a substitute decision maker when completing Form B.²⁷

The Queensland Law Society's Health and Disability Law Committee has been meeting with senior Queensland Health clinicians in palliative, emergency and intensive care medicine to examine ways the Statement of Choices document may be amended to address some of the issues of concern. In particular, discussions have focused on ways to clarify how the Statement of Choices document would interact with an enduring power of attorney or a health care directive if the wishes outlined in the form are inconsistent with wishes outlined in these other legal forms.

This process has helped to open lines of communication between lawyers and medical practitioners and has facilitated discussions that have helped both lawyers and doctors to gain a better understanding of the practical and professional challenges and issues both face on a day-to-day basis supporting clients and patients to record their wishes around their future health care and end of life decisions. It is hoped that this process might help to harmonise the operation of these forms and lead to greater education for doctors and other health practitioners around end of life decision-making.

Queensland Health applications to QCAT for guardianship to move older people into residential aged care

The Public Advocate is aware of a Queensland Health practice of making guardianship applications to QCAT to have decisions made about the care and accommodation needs of elderly patients in public hospitals. While there is a need to make timely and appropriate decisions about the care and accommodation of elderly patients, the law must, in the first instance, assume capacity and should respect the rights of older people to make their own decisions in respect of their aged care and where they live, or be supported to make or participate in those decisions to the greatest extent possible.

During the year, the Public Advocate became aware of one of QCAT's key initiatives — hospital hearings. The Hospital Hearings project was initiated as a process improvement project following a meeting between Justice Thomas, representatives from QCAT, and representatives from the Metro North HHS who were concerned about timeframes for substituted decision-maker appointments for adults in hospitals.

²⁷ Letter from Bill Potts, President, Queensland Law Society, dated 21 September 2016 and addressed to Ms Glenda Newick, Director, Strategic Policy and Legal Services, Department of Justice and Attorney-General, regarding the review of enduring power of attorney and advance health directive forms.



The intention of the Hospital Hearings project is to expedite the guardianship and/or administration application process for elderly patients, who occupy acute care beds, so they can be transferred from the Queensland Health system to appropriate aged care facilities. These expedited hearings have great potential to reduce costs to the Queensland hospital system. However, the Public Advocate has some significant reservations about the project.

The Public Advocate has also raised concerns about a practice in the aged care sector where residential aged care providers require that a person has either a valid enduring power of attorney or a guardianship/administration order before accepting the person into the facility. It seems that providers undertake this practice to ensure that all people seeking placement have a mechanism in place to ensure continuity of decision-making in respect of the person's placement (particularly for financial matters) should they cease to have capacity sometime in the future. Essentially, service providers are seeking a legal and financial safeguard for the costs of the person's care.

In the Public Advocate's view, these practices of hospitals and residential aged care providers contravene the Guardianship and Administration Act, the principles that underpin it and the CRPD. Guardianship and/or administration is a last resort decision-making mechanism that should only be used when all other less restrictive alternatives are exhausted. In adopting such practices, it appears that hospitals and residential aged care providers are using the legal intervention of guardianship and administration to fast-track patients from hospital into residential aged care to save costs to the Queensland health system and to meet the administrative and financial risk management needs of aged care providers. This can occur at the expense of the rights of the older person, who is stripped of their legal capacity.

The Public Advocate, and other advocacy agencies, raised concerns about this practice with the ALRC during its inquiry into elder abuse. In the final report for the elder abuse inquiry in June 2017, the ALRC stated:

4.219 ... [T]he ALRC considers that appointing a representative decision maker should not be required as a condition of receipt of aged care. Advance planning for decision-making support in aged care should, however, be encouraged.²⁸

In that report, the ALRC recommended:

Recommendation 4-13 Aged care legislation should provide that agreements entered into between an approved provider and a care recipient cannot require that the care recipient has appointed a decision maker for lifestyle, personal or financial matters.²⁹

Further to this, the ALRC also recommended in the final report:

Recommendation 4-12 The Australian Government should further consider Recommendation 6-2 of ALRC Report No 124 Equality, Capacity and Disability in Commonwealth Laws, that aged care laws and legal frameworks should be amended consistently with the National Decision-Making Principles set out in that Report.³⁰

In the Report *Equality, Capacity and Disability in Commonwealth Laws*, the ALRC recommended a set of four National Decision-Making Principles and accompanying guidelines to guide the reform of Commonwealth laws and review of State and Territory laws:

²⁸ Australian Law Reform Commission, *Elder Abuse-A National Legal Response Final Report*, Report No 131 (2017) 152.

²⁹ Australian Law Reform Commission, *Elder Abuse-A National Legal Response Final Report*, Report No 131 (2017) 151.

³⁰ Australian Law Reform Commission, *Elder Abuse-A National Legal Response Final Report*, Report No 131 (2017) 147.



3.4 The emphasis is on the autonomy and independence of persons with disability who may require support in making decisions—their will and preferences must drive decisions that they are supported in making, and that others may make on their behalf. The National Decision-Making Principles provide a conceptual overlay, consistent with the CRPD, for a Commonwealth decision-making model that encourages supported decision-making.³¹

The National Decision-Making Principles are that:

- Everyone has an equal rights to make decisions and to have their decisions respected;
- Persons who need support should be given access to the support they need in decision-making;
- A person's will and preferences must direct decisions that affect their lives; and
- There must be appropriate and effective safeguards in relation to interventions for persons who may require decision-making support.³²

While the ALRC's recommendations were made in the contexts of disability and aged care, they also apply to other services such as health. The ALRC's recommendations reflect increasing national and international recognition for people with impaired decision-making capacity to be treated equally under the law and exercise their right to make decisions for themselves. For the most part, this paradigm shift originates from the CRPD.³³

In light of this, the Public Advocate is concerned that these practices by residential aged care providers are driving some of the applications being made to QCAT by hospitals generally, and those made under the Hospitals Hearings project.

While the importance of Queensland's health system operating as efficiently as possible is recognised, efficiency must not take precedence over the human rights of older people in our community.

Another concerning aspect of the Hospital Hearings project is that it does not appear to make provision for legal advice, representation or advocacy for the patients who are the subject of QCAT applications. All government agencies, especially those exercising functions under the Guardianship and Administration Act, are required to comply with the General Principles under that Act.

Those General Principles include:

2 Same human rights

- (1) The right of all adults to the same basic human rights regardless of a particular adult's capacity must be recognised and taken into account.
- (2) The importance of empowering an adult to exercise the adult's basic human rights must also be recognised and taken into account.

...

7 Maximum participation, minimal limitations and substituted judgment

...

- (2) Also, the importance of preserving, to the greatest extent practicable, an adult's right to make his or her own decisions must be taken into account.

³¹ Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, Report No 124 (2014) 64.

³² Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, Report No 124 (2014) 64.

³³ United Nations, *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007 [2008] ATS 12 (entered into force 3 May 2008), art 12.



- (3) So, for example—
- (a) The adult must be given any necessary support, and access to information, to enable the adult to participate in decisions affecting the adult's life; and
 - (b) To the greatest extent practicable, for exercising power for a matter for the adult, the adult's views and wishes are to be sought and taken into account; and
 - (c) A person or entity in performing a function of exercising a power under this Act must do so in the way least restrictive of the adult's rights.³⁴

When people experience some limitation in terms of their capacity, they should be provided with support to express their views and wishes and, where possible, to make and implement decisions that affect them without resorting to the guardianship system.

The Public Advocate has been informed by advocacy agencies, and has personally observed cases, where Queensland hospitals have applied for guardianship for a patient who resisted efforts to place them in residential aged care and instead expressing a strong desire to return to their home. The Commonwealth Government's aged care reforms encourage people to remain in their own homes, and such an approach has great potential to reduce costs to the community. However, many of the guardianship applications made by some hospitals appear to disregard any accommodation and support options other than placement in a residential aged care facility.

The Public Advocate personally observed a case where a clearly competent elderly man, who was in hospital as a result of a fall in his home, was reported by doctors as "lacking insight" because he wanted to return to his home with support and did not want to discuss moving to an aged care facility. This "lack of insight" was interpreted by the doctors as an early sign of dementia and indicative of a loss of capacity and formed the basis of the guardianship application. Ultimately, QCAT did not make a guardianship order for the man, but that outcome may not have been achieved without strong advocacy and representation from an advocacy and legal service.

In that case, neither the social workers at the hospital nor the man's family were prepared to explore how he might be able to live in his home with support, even though this was the outcome he clearly wanted. This approach to the "care" of older people is often dictated by what is considered convenient for family and health services and involves the least risk for the older person. It fails to recognise the rights of older people to make decisions with which others may not agree³⁵ and the rights of all people, especially older people, to the dignity of risk and self-determination.

It is not clear from the QCAT Annual Report whether it has received specific funding to conduct these special hospital hearings. If QCAT has received funding from either the Metro North HHS or Queensland Health to expedite the application process for patients through conducting special hospital hearings, it raises the risk of a perception of bias on the part of the tribunal. If funding is being provided, it creates an inherent conflict in QCAT accepting funding to conduct priority hearings for applications for guardianship by the agency funding the tribunal for the hearings. At the same time the patients, the subject of the applications, are without funded legal advice, advocacy or other decision-making support to express their views and wishes or propose any alternative accommodation and support options.

The Public Advocate raised these concerns with the interim President of QCAT in June 2017 and met with her and the Acting Senior QCAT member and other senior staff to discuss my concerns. A formal response from QCAT addressing these concerns has not yet been received. The Public Advocate understands that the Hospital Hearings project is to be expanded across Queensland.

³⁴ *Guardianship and Administration Act 2000* (Qld) sch 1 pt 1.

³⁵ *Guardianship and Administration Act 2000* (Qld) s 5(b).



Mental health

Mental Health Act 2016

The new Mental Health Act commenced on 5 March 2017, replacing the *Mental Health Act 2000* (Qld).

Since the commencement of the review of the *Mental Health Act 2000* in 2013, the Public Advocate has been closely engaged in this process. This engagement has included working with the Australian Centre for Health Law Research and the Queensland Mental Health Commission to explore a human rights approach to mental health legislation³⁶ as well as holding a Roundtable with legal professionals and statutory officers who work with the Act to discuss the new legislation.³⁷

The Public Advocate has made submissions throughout the process of the development and implementation of the new Mental Health Act. This included a submission in relation to a number of technical amendments to the new Mental Health Act that were made before it commenced through the *Mental Health Amendment Bill 2016* (Qld). The submission emphasised the rights of patients, and opposed an amendment that removed the requirement that doctors record the details of a patient's treatment and care on a treatment authority. This information should be on a treatment authority for easier access for patients and their support groups. The Public Advocate's submission was unsuccessful and the amendments were passed.

Mental Health Review Tribunal

As the body responsible for the administration of many aspects of the Mental Health Act (and its predecessor), the Mental Health Review Tribunal (MHRT) acts as a gatekeeper for the continuation of involuntary treatment of mental health patients in Queensland.

There were some concerning developments regarding the tribunal in the last year. Issues relating to the management of the tribunal became public in January 2017, when the *Courier-Mail* reported that parts of the MHRT's 2015-16 Annual Report was largely copied word-for-word from the tribunal's previous Annual Report, including figures reporting on the number and outcomes of hearings regarding involuntary treatment orders. The then-President of the MHRT reportedly responded to the claim, stating that as the processes of the MHRT remain unchanged, there was 'no impediment' to using the previous year's text.

In late February and early March 2017 the *Courier-Mail* reported that one of the legal members of the MHRT, who had been part of the tribunal for 15 years, was not admitted to practice as a lawyer, raising issues about the validity of that member's decisions over that time. This required the Queensland Government to pass legislation to validate some 11,000 decisions made by that member, affecting approximately 5,600 patients. It was further reported that the President had been aware of the problem for 'some time'. The matter was referred to the Crime and Corruption Commission for investigation.

A further report emerged within days that the MHRT had hired a person as a legal officer who allegedly did not have a law degree. This same person was later appointed as a MHRT tribunal member as a community member. In the same report, it was revealed that the wives of both the

³⁶ The Public Advocate joined with the Australian Centre for Health Law Research and the Queensland Mental Health Commission to invite Dr Freckleton QC to give a public lecture on a human rights approach to mental health regulation in May 2014. Dr Freckleton is a Queen's Counsel and member of both the Victorian and Tasmanian Bars. He is also a Professorial Fellow of Law & Psychiatry at the University of Melbourne, an Adjunct Professor of Law at Monash University, and a member of both the Mental Health Review Board of Victoria and the Psychosurgery Review Board of Victoria. He is an elected Fellow of the Australian Academy of Law, the Australian Academy of Social Sciences and the Australasian College of Legal Medicine, the editor of the *Journal of Law and Medicine*, and the Editor-in-Chief of *Psychiatry, Psychology and Law*.

³⁷ This Roundtable included representation from the Office of the Adult Guardian; the Director of Mental Health; the Office of the Director Forensic Disability; the Office of the Director of Public Prosecutions; Legal Aid Queensland; Crown Law; the Anti-Discrimination Commission; Department of Health; Queensland Advocacy Incorporated and Queensland Public Interest Law Clearing House Incorporated (QPILCH).



President and the executive officer of the MHRT had also been appointed as MHRT tribunal members. These appointments have now become the subject of a Corruption and Crime Commission investigation.

The Health Minister of Queensland asked the then-President to show cause as to why he should not be dismissed from the tribunal. The President was subsequently dismissed by an executive council order in April 2017, and an interim President was appointed.

This office had held a number of concerns about the processes and procedures of the MHRT for some time before these issues came to light in the media. Prior to the commencement of the current Mental Health Act, there had never been funding for legal representation for people appearing before the tribunal. Patients with serious mental health issues have routinely had no representation or support when appearing in this jurisdiction.

As noted in 'The Year in Review', the Public Advocate has also identified some cases involving involuntary treatment applications and approvals by the MHRT that have raised concerns about the treatment decisions being made by psychiatrists and the role of the MHRT as the 'gate keeper' and review body for involuntary treatment in the mental health system. The Public Advocate will continue to seek to intervene in matters and seek avenues of appeal to ensure that the rights and interests of people with impaired decision-making capacity are protected.

Mental Health Act Consumer Guide

As part of the implementation of the new Mental Health Act, Queensland Health developed the *Mental Health Act 2016 Consumer Guide* that explained the new Act including certain rights and choices that the patient may make. Although this office is supportive of any efforts to inform people of their rights and giving people a choice in their treatment, there were a number of concerns with the consumer guide that we raised with Queensland Health in the course of the document being finalised.

These concerns included the lack of information regarding independent patient rights advisers, with no explanation about their role or how to contact one. There was also no information in the guide about how to make complaints to Queensland Health about treatment or conduct by medical and/or hospital staff.

Further concerns included that the consumer guide included an Advance Health Directive form that was not in the form of the current Advance Health Directive (Form 4) approved under the Powers of Attorney Act and available on the Department of Justice and Attorney-General and government websites. The Public Advocate expressed concerns that having different versions of an Advance Health Directive promoted by different government agencies could create confusion for the general public.

Large parts of the Department of Justice and Attorney-General version of the advance health directive form were also not included, including important sections that clarify people's rights and powers under the directive. The Queensland Health document also pared down the form to only concern matters covered under the Mental Health Act, leaving out vital information such as a section on end-of-life directions for the person.

Another major concern with the advice given in the consumer guide was regarding who the person should consult with when making an Advance Health Directive.

This office has significant concerns about the suggestion that a patient's treating psychiatrist should be the patient's primary advisor on the completion of an advance health directive. In our view, there is a potential conflict of interest in this relationship. The law has long recognised the extraordinary position of influence held by doctors over their patients. This power imbalance is even



more pronounced in the relationship between psychiatrists and their patients. While it is important to have input from the treating doctor, the types of intrusive and restrictive medical treatments that it is being envisaged consumer/principals can consent to under the consumer guide Advance Health Directive, including physical restraint, detention in an inpatient unit, electroconvulsive therapy and potentially other psychosurgery, are very different from the life-sustaining treatments usually considered in an Advance Health Directive. These types of medical interventions should be subject to independent oversight as an additional measure to protect the rights and interests of particularly vulnerable people.

Chief Psychiatrist policies

The Chief Psychiatrist has a number of policies and guidelines that assist treating teams and patients in understanding how certain aspects of the new Mental Health Act should be administered. These documents play a significant role in the approach taken to treating people in the mental health system.

Since these policies were first proposed, this office has made a number of submissions and representations to the Chief Psychiatrist to clarify certain aspects of the policies. The Public Advocate continues to monitor these guidelines and their operation.

The Public Advocate will continue to undertake systemic advocacy in the mental health system through submissions as well as through advocacy and intervention in individual cases when appropriate.

Social services

Budget Savings (Omnibus) Bill 2016

In September 2016, the Senate Economics Legislation Committee invited submissions in relation to the *Budget Savings (Omnibus) Bill 2016 (Cth)*. The measures in this Bill included provisions from previous Bills the Commonwealth Government had unsuccessfully sought to pass to reduce certain costs to government.³⁸ In response to the 2016 Bill, the Public Advocate made a similar submission to the one it made in relation to the failed 2015 Bill.

The 2016 Bill proposed to amend the *Social Security Act 1991 (Cth)* so that a person undergoing psychiatric confinement because they had been charged with a 'serious offence', would no longer be eligible for social security payments. The Bill sought to achieve this through the removal of the exception that currently allows such a person undertaking a course of rehabilitation to be eligible for social security payments. Moreover, the purpose of the Bill was to treat those in the forensic mental health system as though they were on remand in the criminal justice system.

The Public Advocate expressed concern that the Bill sought to implement an arbitrary and discriminatory approach to social security entitlements, targeting certain people with mental illness on the basis of behaviours for which they could not be held legal responsible. This policy position was inconsistent with a rights-based and recovery-oriented approach to mental health treatment.

Another concern noted by the Public Advocate was that the underlying principles of the Bill represented a fundamental misunderstanding of the principles of criminal law and criminal justice. This was evidenced by the proposal that a person lacking capacity due to mental illness be treated similarly to a person incarcerated following a criminal conviction, or someone remanded in custody awaiting trial. A person lacking capacity due to mental illness should not be considered guilty of allegations made against them.

³⁸ These measures included those included in the *Social Services Legislation Amendment Bill 2015 (Cth)* that failed to pass through Parliament in 2015.



Further, the position espoused by the Bill suggested that psychiatric confinement was a form of punishment. The Public Advocate expressed strong concern in relation to this, advocating that psychiatric confinement is not a form of punishment and should not be treated as such.

The Public Advocate drew the Committee's attention to the original policy intent of *the Social Security Act*. The legislation did not intend to deprive people of social security payments, but to continue with payments when undergoing a course of rehabilitation. This view was supported by the Federal Court's interpretation of the legislative provisions.

The Public Advocate drew further attention to other issues with the Bill such as the lack of clarity about what constitutes a 'serious offence' (and how it is determined) and how the period of ineligibility for social security payments would be calculated.

Ultimately, these provisions were not passed.

Centrelink debt recovery

The automated debt recovery system that was introduced by Centrelink in 2016 caused much controversy and distress to many people who incorrectly (or otherwise) received a notice from Centrelink advising that they had been overpaid, demanding repayment of the debt and threatening referral to debt collectors. Of particular concern was that the large number of Centrelink clients who may have cognitive and capacity issues, and whose ability to read and understand the implications of the Centrelink communications and respond appropriately, was likely to be compromised.

In early 2017, the Public Advocate joined the Queensland Council of Social Services in expressing deep concerns with the debt recovery system. The Public Advocate wrote to all federal members of Parliament who were based in Queensland and to various senior members of cabinet, including the Prime Minister, requesting these processes be suspended immediately pending an extensive independent review. The Public Advocate also recommended that any revised debt recovery process be appropriately resourced, developed, piloted and reviewed before being implemented. Such a process should include appropriate mechanisms and support for people with cognitive and capacity issues who are in receipt of Centrelink benefits to effectively navigate, and participate in, any debt recovery processes.

Law and justice

Queensland Integrated Court Referrals

In 2016-17, the Public Advocate was a member of the local stakeholders group for the development and implementation of the Queensland Integrated Court Referrals project. The Queensland Integrated Court Referrals program operates within the Magistrates Court criminal justice process where it provides opportunities for people charged with offences to access treatment services and other support. This could include support for people with mental illnesses and drug addiction to access treatment and rehabilitation services that address the underlying causes of their offending.

The Public Advocate attended regular meetings with Queensland Integrated Court Referrals stakeholders, offered input into the program and observed its development. Stakeholders, including service providers (e.g. drug rehabilitation providers, accommodation support providers), noted steadily increasing participation in the program following greater awareness among legal practitioners that represent people in the criminal justice system.



Domestic violence

As part of the Queensland Government's election commitment to improve access to domestic violence order applications and improve court processes, the Domestic and Family Violence Taskforce recommended that the DV1 application form be reviewed. The Public Advocate made submissions to the Domestic and Family Violence Court Reform team regarding this form, specifically in relation to adults with impaired decision-making capacity. The Public Advocate made suggestions to improve the usability and accessibility of the document, and provided general feedback to better clarify and explain some parts of the form to make it simpler and more accessible.

As part of the overall initiative regarding domestic and family violence, DCCSDS engaged People with Disability Australia Incorporated to conduct a review and report on how best to address the impact of domestic and family violence on people with disability. The review considered issues including access to, and the availability, effectiveness and the integration of services, to address the impact of domestic and family violence on people with disability within Queensland's broader service system. The Public Advocate was a member of the advisory group for the review.

Interpreters in courts and tribunals

The Judicial Council on Cultural Diversity developed the *Australian National Standards for Working with Interpreters in Court and Tribunals*, which is intended to be a guide for courts, judicial officers, interpreters and members of the legal profession.

In July 2016, the Public Advocate made a submission on the draft national standards to the Judicial Council on Cultural Diversity. The Public Advocate noted that interpreters should be informed of potential issues when interpreting on behalf of a person with impaired decision-making capacity. It may be the case that if such a person requires an interpreter, the interpreter themselves may be the first one able to identify that there may be questions in relation to the person's decision-making capacity.

Although it is not necessarily the interpreter's field of expertise in diagnosing or identifying issues of capacity, the Public Advocate submitted that the national standards should include some guidance about how interpreters can appropriately raise concerns about a person's capacity should that issue arise. If there are concerns regarding whether a person who is party to a proceeding does not understand the proceedings or is experiencing other comprehension or cognitive difficulties, it is imperative that such issues be raised with the court or tribunal so that further steps be taken to reasonably accommodate any impairments that could result in an unjust outcome.

State Penalties and Enforcement Registry

In 2016-17, the Queensland Government made significant changes to the State Penalties and Enforcement Registry (SPER) system to modernise the administration of fines through the introduction of a new model to improve debt management by way of non-monetary options. The Work and Development Order (WDO) was designed to allow debtors to satisfy enforceable debts through undertaking a range of activities with an approved sponsor. These activities could include unpaid work, medical or mental health treatment, education programs, vocational and life skills courses, financial and other counselling, as well as drug or alcohol treatment.

For some years, the Public Advocate has proposed the introduction of new SPER programs that take into consideration the circumstances of people with impaired decision-making capacity, including the adoption of a WDO program based upon the New South Wales model.



The Public Advocate made a submission regarding the proposed WDO program to the SPER WDO Project Team in July 2016. This submission was made in response to the Work and Development Order Consultation Paper released by Queensland Treasury in June 2016.

In March 2017, the Public Advocate also made a submission to the Queensland Parliament's Finance and Administration Committee's Inquiry into the *State Penalties Enforcement Amendment Bill 2017* (Qld).

In general, the Public Advocate supported the Bill, however, it left a number of unanswered questions in relation to its implementation, consideration of the circumstances of people who cannot participate in such a program, and the need for a specific and appropriate response to the needs of people with impaired decision-making capacity who become part of the SPER system.

The proposed WDO program was based on the equivalent program from New South Wales. The Public Advocate highlighted that while the technical aspects of the program were replicated, the New South Wales program included increased funding to Legal Aid and other organisations that assist participants and sponsors. No additional funding was proposed for the Queensland WDO program, which would mean service providers were expected to take on additional participants with no additional resources.

The Public Advocate's support for the implementation of a WDO has always been subject to it being implemented in conjunction with a proper write-off system for debts for people who should not have been liable for fines and cannot pay their debt. Specifically, this would include people with impaired decision-making capacity who cannot be held criminally liable for their actions. The current system of writing-off such debt is not transparent and is largely unknown to the Queensland public.

Other strategies to prevent the issuing of fines to people with impaired decision-making capacity should have been explored during the development phase of the WDO. Such measures should form part of a strategy to reduce the level of unpaid and unpayable SPER debts and to assist in the creation of a system that reflects the proper rules of law and criminal responsibility.

In April 2017, staff from the Public Advocate appeared before Queensland's Finance and Administration Committee's public hearing to advocate this position. The Bill was subsequently passed without amendments addressing our issues.

Guardianship and administration

Limitation orders

The Public Advocate receives material regarding the limitation orders made by QCAT as required by the Guardianship and Administration Act.

Limitation orders allow QCAT to restrict how certain pieces of evidence are disclosed during a hearing. QCAT must balance the disclosure of confidential and personal information with the need to have an open and transparent process.

In 2016-17, the Public Advocate undertook an audit of the limitation orders received and liaised with QCAT to ensure all historical material has been received. The Tribunal committed to ensuring that its processes would ensure that all future limitation orders would be provided in a timely and complete manner.

The Public Advocate will continue to monitor limitation orders to ensure that the outcomes are in the best interests of people who are the subject of QCAT applications. Limitation orders will



become part of the larger data-monitoring project to be undertaken by the Public Advocate to identify trends and systemic issues in the guardianship system.

Research into effective decision-making support for people with cognitive impairment

The Public Advocate is a partner investigator in an Australian Research Council Linkage research into effective decision-making support for people with cognitive impairment. The four year project focuses on people with intellectual disability or acquired brain injury who require decision-making assistance.

The research aims to address the gaps in knowledge, expertise and resources that exist in respect of providing support for decision-making. An educational program that trains people to provide decision-making support has been developed and will be evaluated. The educational program aims to improve the quality of the decision-making support provided to people with cognitive impairment and assess whether it results in better outcomes for the person requiring decision-making assistance. The learnings from the research are expected to apply to a broader range of people with cognitive impairment.

The hypothesis underpinning the research is that supporters who undertake this education program will provide better support for decision-making than supporters who do not receive the training. Likewise, people with cognitive disabilities whose decision supporters attend the education program are expected to be more satisfied with the process and have a greater sense of control within the decision-making process, than those whose supporters do not attend the program.

A key focus of the project in 2016-17 was on the recruitment of participants. Two groups of participants are being recruited from Victoria, New South Wales, and Queensland. One group participates in the education program and the other group attends the program after the benefits have been established. These two groups will be randomly divided into two further groups in order to receive the impairment-specific education program (acquired brain injury and intellectual disability).

The research is led by La Trobe University and funded by an Australian Research Council Linkage Grant and industry partners from Queensland, New South Wales and Victoria. The Queensland industry partners are the Office of the Public Guardian, the Public Trustee, the Queensland Mental Health Commission and the Public Advocate.

The chief investigators are Professors Christine Bigby and Jacinta Douglas from La Trobe University, Emeritus Professor Terry Carney from the University of Sydney, Dr Ilan Wiesel from the University of New South Wales and Dr Shih-Ning Then from the Queensland University of Technology.

The research investigators and project partners met in October 2016 in Sydney, which aligned with attendance at the Australian Guardianship and Administration Council National Conference on *Reflecting Will and Preference in Decision Making*. At the meeting, the investigators provided a project update and presented aspects of the educational program. There was an important discussion about the next stage of the research and participant recruitment strategies.

The Queensland project partners met with Dr Shih-Ning Then from the Queensland University of Technology in November 2016 to discuss strategies to aid the recruitment of participants from Queensland.



Key systems impacting people with impaired capacity monitoring project

The Public Advocate has undertaken preliminary work on a project to gather and report on data from key agencies that provide support and/or services to people with impaired decision-making capacity. It is proposed that the project will be a partnership between QCAT, Office of the Public Guardian, Public Trustee and Public Advocate. Other agencies that provide services, programs, facilities and other interventions to Queensland adults with impaired decision-making capacity will also be approached to participate in the project.

The project will involve the compilation and analysis of data provided by participating agencies in order to identify and monitor system demand, trends and issues. This analysis will be released in an annual public report.

The Public Advocate's involvement in other systemic advocacy activities in 2016-17, particularly those relating to the NDIS, aged care reforms and the ALRC's elder abuse inquiry, hindered progress with this project.



Legal interventions

The primary function of the Public Advocate is to undertake systemic advocacy, and it is generally not part of the function to investigate any individual complaint or allegation that concerns any particular person. However, the Guardianship and Administration Act allows the Public Advocate to intervene in any proceeding that involves the protection of the rights or interests of adults with impaired capacity for a matter.

Balancing these two factors, the Public Advocate will on occasion intervene in individual matters when they represent serious and complex systemic issues. Such intervention needs to be an appropriate advocacy strategy in relation to the issues and systems concerned, and the involvement of the Public Advocate will assist in issues being resolved or further scrutinised.

During the year, the Public Advocate intervened in 10 matters in QCAT and two matters in the MHRT. This work took a significant investment of effort and resources for such a small office. Consequently, the Public Advocate only seeks to intervene in matters where we consider there are significant issues of a systemic nature involved in the case and the circumstances of the case involve serious issues impacting the rights and interests of the individual which, if resolved, will potentially have a wider benefit for other people with impaired decision-making capacity.

The Public Advocate has a strong history of intervening in cases to protect the rights and interests of people with impaired decision-making capacity. This report does not include details about individual legal interventions, either because this office does not have the authority of the person in whose matter we intervened to write publicly about their case, or because the matters, the subject of the intervention, remain unresolved and further litigation is anticipated.

Bulk QCAT applications lodged by the Public Trustee

Following the commencement of the NDIS rollout in North Queensland, the Public Trustee was concerned that some of their administration clients may not have appropriate decision-making supports in place to assist their clients to register and take advantage of the scheme. The Public Trustee subsequently lodged over 30 applications for the appointment of the Public Guardian as guardian for these clients.

On review of these cases, the Public Advocate was concerned about the processes undertaken by the Public Trustee prior to making the guardianship applications. There was little or no record of the Public Trustee speaking with the people who were the subject of the applications (or their families or supporters) to determine their ability to make decisions about their engagement with the NDIS or to determine their views and wishes in this regard. In addition, the information lodged with the applications regarding the person's capacity for decision-making was very outdated.

The Public Advocate's view is that it is important that an exploration of less restrictive decision-making supports be undertaken prior to a public agency making a guardianship or administration application to QCAT. Public agencies in the guardianship and administration system should lead by example and demonstrate to QCAT that they have taken all reasonable steps to ensure that an application is being lodged as a last resort. This due diligence aligns with the philosophy and General Principles of the Guardianship and Administration Act. It is important that public agencies avoid actions that could generate unnecessary demand for QCAT hearings, which should be avoided in light of the expected increase in demand for QCAT services due to the NDIS.

The Public Advocate intervened in the first 8 of the applications to be heard by QCAT to ensure that the need for guardianship was fully explored in each case.



North Queensland was the first Queensland region in which the NDIS was rolled out. It was therefore important for the Public Advocate to intervene in these matters to seek to establish an appropriate approach to applications for guardianship triggered by the NDIS rollout and to ensure that guardianship appointments were made only as a last resort and when people did not have other informal supports available.



Engagement and consultation

To empower and strengthen the collective voice of those represented by this office, we listen, reach out, speak up and participate in discussions to promote and protect the rights and interests of Queensland adults with impaired decision-making capacity. Stakeholder engagement is therefore one vehicle for effecting change. This office is committed to building relationships and working collaboratively with government, non-government and community stakeholders in the health, aged and disability sectors. These relationships allow us to highlight key issues impacting people with impaired decision-making capacity and to generate effective strategies and solutions that respond to the views and voices of people with impaired decision-making capacity.

Public Advocate speaking engagements

In 2016-17, the Public Advocate gave presentations, interviews and engaged in panel discussions about issues impacting on people with impaired decision-making capacity. These speaking engagements included:

Guardianship, Supported Decision Making and Human Rights: Perspectives from Canada and Australia Forum (Aged and Disability Advocacy Australia and Griffith University)
Griffith University Southbank Campus, South Brisbane
11 August 2016

Seniors Legal and Support Service Conference
Common Ground Queensland, 15 Hope Street, South Brisbane
12-13 September 2016

A Voice for Queenslanders with Intellectual Disabilities roundtable (WWILD-SVP Association Inc., Community Living Association Inc., Queenslanders with Disability Network,, ADA Australia and Australasian Society for Intellectual Disability)
Queensland Parliament House, 2A George Street, Brisbane
4 October 2016

United Nations special rapporteur on human rights defenders forum
Executive Building, 100 George Street, Brisbane
13 October 2016

Radio interview with RadioCota Queensland – Podcast on issues of the ageing
State Law Building, 50 Ann Street, Brisbane
24 November 2016

Human Rights and Social Justice: Shifting Client Control national conference
Crown Plaza Hotel, 2907 Gold Coast Highway, Gold Coast
23-24 March 2017

People, Community and Disability lecture
Queensland University of Technology, Victoria Park Drive, Kelvin Grove
28 March 2017



The National Roundtable Public Hearing "Inquiry into the provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition"

Australian Capital Territory, Canberra (teleconference attendance)

12 May 2017

Supported Decision-Making presentation at the Queensland Civil and Administrative Tribunal conference

Queensland Civil and Administrative Tribunal, 259 Queen Street, Brisbane

22 June 2017

Contribution to special interest groups

Australian Guardianship and Administration Council

The Australian Guardianship and Administration Council (AGAC) is the national forum of Public Advocates, Public Guardians, Guardianship Boards and Tribunals, and Public Trustees or their equivalents across Australia. The Queensland members of AGAC are the Public Advocate, Public Guardian, Public Trustee and the Senior Member of the Human Rights Division of QCAT.

AGAC members meet biannually over two days, except in years when the AGAC Conference is held, when the conference substitutes for one of the meetings. The AGAC meetings provide an opportunity for members to discuss matters of mutual concern and/or national significance, and to formulate an Australia-wide approach to issues relating to guardianship, administration and associated systems.

In 2016-17, the Public Advocate attended the AGAC Conference in Sydney in October 2016, was represented at a national meeting in Hobart in March 2017, and contributed to the work of the AGAC outside of these meetings.

Elder Abuse Prevention Unit Reference Group

The quarterly meetings of the Elder Abuse Prevention Unit Reference Group are attended by a broad range of stakeholder representatives, including the Public Advocate, Office of the Public Guardian, QCAT, Australian Pensioners and Superannuants League, DCCSDS, Queensland universities and non-government organisations.

The Elder Abuse Prevention Unit chairs the Reference Group meetings which discuss emerging and current issues around elder abuse, the current work and initiatives of member agencies, and strategies and actions that may be required to address issues.

The Public Advocate has been a long-term member of the Reference Group and participated in all meetings held during 2016-17.

In September 2016, the Public Advocate was interviewed as a member of the Elder Abuse Prevention Unit Reference Group for research into the prevalence and characteristics of elder abuse conducted by Curtin and Murdoch Universities.

Advance Care Planning Working Group

The Advance Care Planning Working Group was established to review and amend the Queensland Department of Health's advance care planning document, the Statement of Choices. The Public Advocate is an active member of the Advance Care Planning Working Group and participated in meetings organised by Queensland Health and the Queensland Law Society throughout 2016-17. Other members of the group comprise representatives from the Department of Health, Office of the Public Guardian and DCCSDS.



Not Now Not Ever Disability Working Group

The Brisbane Region's Child and Family Domestic and Family Violence Sub-Committee is the governance group for the Brisbane region's implementation of recommendations from the *Not Now Not Ever: Putting an end to domestic and family violence in Queensland* report.

The Sub-Committee consists of approximately 50 government and non-government members that form six working groups to cover each of the themes of the *Not Now Not Ever* report recommendations – health, legal, Aboriginal and Torres Strait Islander, high risk, crisis accommodation response, people from culturally and linguistically diverse backgrounds and disability.

The Public Advocate actively participates in the disability working group where members with collective expertise in disability focussed on issues impacting people with a disability experiencing domestic and family violence that could impede the government's response to the *Not Now Not Ever* report's recommendations.

Queensland: An Age-Friendly Community Strategy Senior Officers Group

The Queensland Age-Friendly Community Strategy Senior Officers Group is convened by the Office for Seniors within DCCSDS. The group was developed for members to discuss, develop and advance the delivery of age friendly communities in Queensland. In 2016-17, the Public Advocate participated in meetings and continued to contribute to the *Queensland: An age-friendly community strategy*, action plan and implementation schedule via the Senior Officers Group.

EPOA Reference Group

The Enduring Powers Of Attorney Reference Group was established in response to the Communities, Disability Services and Domestic and Family Violence Prevention Committee 2015 report on the *Inquiry into the adequacy of existing financial protections for Queensland's seniors*.

ADA Australia (previously Queensland Aged and Disability Advocacy) was provided with funding from the Department of Justice and Attorney-General to research and formulate an early intervention response for enduring power of attorney enquiries to improve access to justice for vulnerable people and their attorneys, and the efficiency and effectiveness of the existing funded service system. ADA Australia established a reference group to inform the design and implementation of the project. The Public Advocate contributed to the project through participation in the reference group meetings held in 2016-17.

The reference group contributed to the development of a range of resources to inform people about their rights and responsibilities when making an enduring power of attorney. The Public Advocate spoke at an event in the Supreme Court in August 2017 where the Attorney-General launched the new resources.

The Office of the Public Guardian has now assumed responsibility for the continuation of the Reference Group.

Observer status on Queensland Law Society Committees

The Public Advocate has been granted permission to observe the Health and Disability Law and Elder Law Committees of the Queensland Law Society. The Health and Disability Law Committee was established to monitor, improve, and develop legal services, legislation and practice which affect individuals with disabilities or who are mentally vulnerable including those who are detained or held under the Mental Health Act.



The Elder Law Committee was established to develop policies and review proposed legislative amendments in the area of elder law, focusing on the rights and responsibilities of aged persons, including in relation to aged care facilities, retirement, estate planning and pensions.

The Public Advocate wants to express appreciation to the Queensland Law Society for allowing attendance at these meetings. This has provided invaluable opportunities to learn more about the intersection of law and medicine and better understand issues of concern.

National Disability Insurance Scheme Interest Group

Regular meetings between the Public Trustee, Office of the Public Guardian, QCAT and Public Advocate continued throughout 2016-17 to discuss the progress of the NDIS rollout in Queensland and its impacts on the guardianship and administration system in Queensland. The participant agencies shared information about the rollout of the scheme, discussed areas of mutual interest and considered the potential needs of people eligible to access the scheme at the launch sites in Queensland.

Queensland Government consultation on the National Disability Insurance Scheme

The Public Advocate has participated in government consultations in relation to the implementation of the NDIS in Queensland. More specifically, the Public Advocate provided comment on the terms of reference for the Whole of Queensland Government legislative review and associated working group, Progress Reports to the Council of Australian Governments, NDIS Agency Highlight Reports and the *National Disability Insurance Scheme Amendment (Quality and Safeguarding Commission) Bill 2017* (Cth).

OPCAT Queensland Working Group

The optional protocol to the United Nations *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (OPCAT) exists to protect people, who are detained against their will, from torture and other cruel, inhuman or degrading treatment or punishment. The whole-of-government OPCAT working group was established to provide advice to the Queensland Government about how it might approach reporting to the Commonwealth Government under the OPCAT. The Public Advocate actively participated in the working group of government employees since its inception.

Department of Justice and Attorney-General Justice Services Division Board of Management

The Board of Management is a key leadership, decision-making and accountability mechanism for the Justice Services Division of the Department of Justice and Attorney-General. The Public Advocate is a member of the Justice Services Division Board of Management and participates in the monthly Board of Management meetings.

Department of Justice and Attorney-General Research and Engagement Framework Working Group

The Public Advocate has a representative on the Department of Justice and Attorney-General Research and Engagement Framework Working Group. The purpose of the Working Group is to develop a framework that ensures research and consultation commissioned and undertaken by the department is consistent with best-practice research and ethical principles. The group comprises representatives from business units within the department. This office maintained involvement in the Working Group during 2016-17 and contributed to development of the research and engagement framework.



Department of Justice and Attorney-General Health and Safety Committee

The Public Advocate is represented on the Department of Justice and Attorney-General Health and Safety Committee which meets every three months to share information, raise relevant workplace issues, participate in decision-making and support the continual development of workplace health and safety performance.



Public Advocate's office

People and processes

The Public Advocate is an independent statutory position appointed by Governor in Council on the recommendation of the Attorney-General under the Guardianship and Administration Act. In October 2016, Mary Burgess was appointed as the Public Advocate for four years.

The Guardianship and Administration Act provides that staff may be appointed to assist the Public Advocate in performing her statutory functions, although it does not establish an independent Office of the Public Advocate. Staff of the office of the Public Advocate are appointed under the *Public Service Act 2008 (Qld)*, and the office relies on the Department of Justice and Attorney-General for core business supports, such as information technology and human resources.

Our team

The staffing establishment provides for six officers (6.0 FTE) to support the Public Advocate. Our office includes:

- 1 x Manager;
- 1 x Principal Research Officer;
- 2 x Senior Research Officers;
- 1 x Senior Legal Officer; and
- 1 x Administration Officer.

The permanent separation rate of the office remained at zero per cent, with no permanent employees departing. The 2017-18 financial year will include efforts to permanently fill the three positions to which staff were temporarily appointed in 2016-17.

Our workforce planning processes aim to continually align the needs of the office with those of our staff. Our office supports staff to achieve an appropriate work-life balance and effectively manage their emotional and physical wellbeing and mental health. We continued to provide flexible working options which included accessing accrued time, working part time and telecommuting. When appropriate, staff are provided with information about self-help strategies and access to confidential counselling services.

Performance management is integrated into the day-to-day running of the office where all staff are provided with regular feedback and recognition and participate in performance and career development planning. As part of this planning, discussions focus on expectations, performance, behaviour, work direction and professional development.

Code of Conduct and public sector values

Our office abides by the Code of Conduct for the Queensland Public Service and the Department of Justice and Attorney-General's Workplace Policy. Staff are introduced to the Code of Conduct and related department policy and expectations on commencement with the department and complete Code of Conduct training annually.

The Code of Conduct reflects ethical values contained in the *Public Sector Ethics Act 1994 (Qld)* and is based on principles and values including integrity and impartiality, promoting the public good, commitment to the system of government, and accountability and transparency. We manage Code of Conduct breaches in line with the Public Service Commission's Discipline Guide.



Planning and governance

The Public Advocate is required to fulfil the statutory functions under Chapter 9 the Guardianship and Administration Act. The Public Advocate is appointed for a fixed term, but for no longer than five years. Under section 215(3) of the Act, the Public Advocate may be removed from office by the Governor in Council for physical or mental incapacity, neglect of duty, dishonourable conduct or being found guilty of an offence the Attorney-General considers makes the person inappropriate to perform official duties.

The Public Advocate held business and strategic planning days with staff in 2016-17 to identify, define and prioritise our work program. These discussions provided opportunities to discuss priority issues and how our office might prioritise and advance them within our limited resources. The process also enabled the identification of strategic and operational risks, for which we formulated strategies to address and/or minimise their impact.

Our Business Plans can be viewed on our website at: <http://www.justice.qld.gov.au/public-advocate/about-us/performance>

Our office continued to fulfil the corporate governance requirements of Department of Justice and Attorney-General.

Information systems and recordkeeping

Under the *Public Records Act 2002* (Qld), the office is required to make and keep full and accurate records of our activities, and to comply with the recordkeeping policies, standards and guidelines issued by the State Archivist.

In 2016-17, our office focused on improving our internal file management processes. This included implementing and documenting new internal procedures. We applied the Queensland Government General Retention and Disposal Schedule to our office records to ensure full and accurate records were retained and disposed of appropriately, with all records being properly documented to guarantee adherence to file retention and disposal periods. The improvement and enhancement of our office record keeping aligns with, and contributes to, the Department of Justice and Attorney-General's eDocs Upgrade Project.

Our office remained abreast of right to information and information privacy issues and participated in the Department of Justice and Attorney-General Privacy Contact Officer Network.

Communications

Effective communication is critical to promoting the rights and interests of people with impaired decision-making capacity and protecting them from neglect and abuse. A specific focus of our communications is to increase understanding of the Public Advocate's role and promote the contribution that the Public Advocate can make in examining and addressing issues impacting people with impaired decision-making capacity.

Our stakeholder engagement strategy identifies our key stakeholders and aims to ensure engagement across all sectors dealing with people with impaired decision-making capacity. The strategy outlines our principles, a methodology and engagement activities with specific stakeholders to develop and foster the relationships we need to inform our work and achieve our strategic goals and purpose.

In 2016-17, we continued to enhance our website content and use email communications to inform people about our work and current issues impacting the rights and interests of people with impaired decision-making capacity. In the coming year, we will continue to work to develop our



website content and improve the accessibility of information for people with impaired decision-making capacity.

We also continued our broader focus on increasing the accessibility of information and publications for people with impaired decision-making capacity. We actively contributed to the development of the AGAC's National Standards for Public Guardianship. These standards aligned with the CRPD and included the production of the Guardianship standards in an easy English version for consumers.

As part of our commitment to accessibility, staff received training from the WWILD Victims of Crime Disability Training Program to improve the accessibility of our communications and publications. The training involved transforming current pieces of work into easy-English and discussing ways to involve people with impaired decision-making capacity in the development of our publications.

Learning and development

The Public Advocate is committed to providing staff with professional development opportunities to help advance their knowledge and skills and to help the office protect and advance the interests of people with impaired decision-making capacity. Staff attended a range of learning and development opportunities including conferences, events and training opportunities in 2016-17.

Each year, staff observe QCAT hearings for guardianship and administration matters. The hearings provide invaluable experiences for staff to gain first-hand knowledge and understanding of guardianship and administration matters which helps staff bring an informed perspective to our systemic advocacy work.

Our staff also participated in the following learning activities and opportunities in 2016-17:

Justice Services Division Digital Strategy – Strategic Foresight Workshop (Department of Justice and Attorney-General)

QEII Courts of Law, 415 George Street, Brisbane
20 July 2016

Office 365 Overview (Department of Justice and Attorney-General)

State Law Building, 50 Ann Street, Brisbane
1 August 2016

Office 365 Collaboration Session (Department of Justice and Attorney-General)

State Law Building, 50 Ann Street, Brisbane
15 August 2016

Practical HR for Managers Workshop (Department of Justice and Attorney-General)

Primary Industries Building, 80 Ann Street, Brisbane
24-25 August 2016

Writing Easy English workshop (WWILD Sexual Violence Prevention Association)

State Law Building, 50 Ann Street, Brisbane
10 November 2016

Sexuality issues for people with intellectual disability (Consentability)

State Law Building, 50 Ann Street, Brisbane
17 November 2016



Administrative Law: Critical Issues (Legalwise)

Mercure Hotel Brisbane, Brisbane

22 March 2017

Online course: Anti-Bullying Online training (interMEDIATE Dispute Management)

Staff participated at various times in May-June 2017

Online course: Queensland Government Corporate Purchasing Card Awareness Training (Department of Justice and Attorney-General)

15 May 2017

Restrictive practices training (Office of the Public Guardian)

Brisbane Magistrates Court, 363 George Street, Brisbane

22 May 2017

Communication dynamics and breakdowns (OD Consulting)

Saxons Conference Centre, 300 Adelaide Street, Brisbane

8 June 2017

Being the best leader you can be (Department of Justice and Attorney-General)

53 Albert Street, Brisbane

8 June 2017

Growing our People Program: emotional intelligence training session (Department of Justice and Attorney-General)

Saxons Conference Centre, 300 Adelaide Street, Brisbane

22 June 2017

DV: Recognise, Respond, Refer training for Managers/Supervisors and HR Practitioners (Department of Justice and Attorney-General)

State Law Building, 50 Ann Street, Brisbane

26 June 2017

Growing our People Program: Trim and tone your writing in 7 easy steps (Department of Justice and Attorney-General)

Brisbane Square Library, 266 George Street, Brisbane

29 June 2017

Cultural Awareness Training (Legal Aid Queensland)

Legal Aid Queensland head office, 44 Herschel Street, Brisbane

30 June 2017

Online course: Recognise, Respond, Refer: Domestic violence and the workplace (Department of Justice and Attorney-General)

Staff participated at various times during the year

Online course: Fraudulent Behaviour (Department of Justice and Attorney-General)

Staff participated at various times during the year

Online course: Right to Information Act (Department of Justice and Attorney-General)

Staff participated at various times during the year

Online course: Information Privacy Act (Department of Justice and Attorney-General)

Staff participated at various times during the year

Online course: Confirmation of DJAG General Evacuation Instructions e-briefing (Department of Justice and Attorney-General)

Staff participated at various times during the year



Online course: Managing client complaints: Managing Complaints (Department of Justice and Attorney-General)

Staff participated at various times during the year

Conferences and events

During 2016-17, the Public Advocate and/or staff of the office attended conferences and events (listed below). At many of these events, we were active participants in workshops and other sessions. These events are opportunities to advance our systemic advocacy for people with impaired decision-making capacity, contribute to broader community and policy debates, and develop and maintain relationships with our network of stakeholders.

Law Year Church Service opening (Supreme Court of Queensland)

St John's Cathedral, 373 Ann Street, Brisbane

11 July 2016

NDIS update to Queensland agencies forum (Department of Communities, Child Safety and Disability Services)

80 George Street, Brisbane

11 July 2016

Butterfly Household Care Model: Launch of new model of care for residents living with dementia (Aged Care Plus)

The Cairns Aged Care Plus Centre, 730 Moggill Road, Chapel Hill

12 July 2016

Evaluation and Social Research Symposium (Queensland University of Technology)

Queensland University of Technology, Victoria Park Road, Kelvin Grove

13 July 2016

NDIS Essential Briefing 2016 (National Disability Services)

Brisbane Convention and Exhibition Centre, Corner Merivale and Glenelg Streets, South Brisbane

26 July 2016

Stories and Numbers: Using Research for Advocacy and Lobbying community seminar (Southern Cross University)

Tweed Civic Centre, Tweed Heads

28 July 2016

NDIS Symposium: Housing for people with disability: Let's take action (Griffith University, Queenslanders with disability Network, National Shelter and Community Resource Unit)

Brisbane Convention and Exhibition Centre, Corner Merivale and Glenelg Streets, South Brisbane

8 August 2016

Qld v Hayes and Palmer (impacts on Directors and managers in workplace investigations) (Minter Ellison)

Supreme Court Library, 415 George Street, Brisbane

13 September 2016

Rights Denied Forum (121 Care)

Riverside Hotel Southbank, 20 Montague Road, South Brisbane

14 September 2016



Launch of ADA Australia celebration (Aged and Disability Advocacy Australia)

Garden Marquee Victoria Park, Herston

26 September 2016

Annual General Meeting (Speaking Up For You)

68 Hawthorne Street, Woolloongabba

28 September 2016

Domestic Violence – Unheard voices Panel Discussion (Caxton Legal Centre and Queensland and University of Technology-Law Faculty)

QEII Courts of Law, 415 George Street, Brisbane

29 September 2016

Community Advocacy: Stories and numbers – using research to advocate for social change workshop (Sothorn Cross University)

Tweed Civic Centre, Tweed Heads

29 September 2016

The role of research and design in customer experience (Australian Market and Social Research Society)

QSuper, 70 Eagle Street, Brisbane

6 October 2016

NDIS and CALD communities symposium: Aiming high for equitable access (Griffith University, AMPARO Advocacy Inc, Community Resource Unit Inc, and Queenslanders with Disability Network)

Griffith University, South Brisbane

11 October 2016

Australian Guardianship and Administration Council National Conference

Menzies Hotel, Sydney

17-19 October 2016

Annual General Meeting (Queensland Advocacy Incorporated)

68 Hawthorne Road, Woolloongabba

21 October 2016

Understanding Guardianship Framework Workshop (Aged and Disability Advocacy Australia)

Watermark Hotel Brisbane, 551 Wickham Terrace, Spring Hill

27 October 2016

Walk the Talk: Realising the National Disability Strategy and our human rights promises roundtable (Griffith University and Queensland Advocacy Incorporated)

Griffith University, Nathan Campus

14 November 2016

NDIS Symposia Series: Children with Complex Health Needs and Disability Getting NDIS ready (Griffith University, Community Resource Unit Inc., Queenslanders with Disability Network, Children's Health Queensland)

Lady Cilento Children's Hospital, 501 Stanley Street, South Brisbane

23 November 2016

Unconscious bias and reasonable adjustment training (Anti-discrimination Commission and Mental Illness Fellowship Queensland)

Anti-Discrimination Commission Queensland, 20/53 Albert Street, Brisbane

29 November 2016

Annual General Meeting (Queensland Council of Social Services)

12 Creek Street, Brisbane

30 November 2016



Roundtable on prison violence (Queensland Corrective Services)

Primary Industries Building, 80 Ann Street, Brisbane
30 November 2016

Increasing choice across human services – current and future impacts for consumers, workforces and organisations (Queensland Council of Social Service)

Mercure Hotel Brisbane, Brisbane
30 November 2016

International Women's Day breakfast (Department of Justice and Attorney-General)

Registry for Births Deaths and Marriages, 180 Ann Street, Brisbane
8 March 2017

Relationships and Sexuality and People with Intellectual Disability Workshop (Australasian Society for Intellectual Disability)

Merthyr Road Uniting Church, 52 Merthyr Road, New Farm
9 March 2017

Griffith University Law Futures Centre Launch (Griffith University)

Griffith University, South Bank
22 March 2017

Administrative Law Critical Issues Seminar (Legalwise)

Mercure Hotel Brisbane, Brisbane
22 March 2017

Australian Guardianship and Administration Council National Meeting

180 Macquarie Street, Hobart, Tasmania
23-24 March 2017

Queensland: an age-friendly community (Senior Officers Group)

111 George Street, Brisbane
10 May 2017

Sentencing Seminar Series 2017 – Shaping the sentencing agenda: The role of sentencing councils in policy debate and development (Queensland Sentencing Advisory Council)

QEII Courts of Law, 415 George Street, Brisbane
17 May 2017

Judge for yourself community session (Queensland Sentencing Advisory Council)

Queen Street Mall, Brisbane
18 May 2017

Responding Well to People with 'Challenging Behaviours' workshop (Community Resource Unit)

Queensland Baptist Centre, Gaythorne
26 May 2017

2017 World elder abuse awareness day event: Hip Operation's Billie Jordan (Caxton Legal Service)

Brisbane City Hall, Brisbane
15 June 2017

QCOSS State Budget Breakfast 2017 (Queensland Council of Social Service)

Rydges South Bank, 9 Glenelg Street, Brisbane
16 June 2017



Financial statement

The Public Advocate is not a statutory body for the *Statutory Bodies Financial Arrangements Act 1982 (Qld)* or the *Financial Accountability Act 2009 (Qld)*.

Funding for the office is appropriated from the Queensland Government as part of the appropriation for the Department of Justice and Attorney-General, with the Director-General of the department being the accountable officer pursuant to the Financial Accountability Act. Detailed financial information relating to the operations of the department are reported in the annual report for the Department of Justice and Attorney-General.

A summary of the expenditure for the Office for the financial year 2016-17 is presented below.

Office of the Public Advocate Financial Summary 2016-17

Expenditure item	Amount
Employee related expenses*	\$666,000
Supplies and Services	\$113,000
Grants	\$5,000
Total	\$784,000

* The employee expenditure figure reflects intermittent staff vacancies throughout 2016-17.

Note: Expenditure figures have been rounded to nearest \$1,000.

Grants

In 2016-17, our office contributed a \$5,000 grant to the Australian Research Council Linkage research project into 'Effective decision-making support for people with cognitive impairment' led by La Trobe University. This project is funded by an Australian Research Council Linkage Grant and other project partners. Refer to page 33 for more information about this project.

Overseas travel

There was no overseas travel undertaken by the Public Advocate or office staff in 2016-17.



Appendix 1

The following table presents a list of submissions made by the Public Advocate in 2016-17.³⁹

Date	Submitted to	Subject
1 July 2016	Department of Health	Chief Psychiatrist Policies: Advance Health Directives and Less Restrictive Way of treatment
15 July 2016	State Penalties Enforcement Registry	Proposed Work and Development Order (WDO) program
19 July 2016	Judicial Council on Cultural Diversity	Feedback on the draft <i>Australian National Standards for Working with Interpreters in Courts and Tribunals (the national standards)</i>
5 August 2016	Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee	Inquiry into the performance of the Health Ombudsman's functions
18 August 2016	Australian Law Reform Commission (Elder Abuse Inquiry)	Elder Abuse Issues Paper (IP47)
30 August 2016	National Disability Insurance Scheme Leaders Reform Group	Feedback on the Risk Framework review
8 September 2016	Standing Committee on Economics	<i>Budget Savings (Omnibus) Bill 2016</i> (Focus on schedule 20 psychiatric confinement)
25 November 2016	Department of Health Mental Health Act Review and Implementation Team	Feedback on the <i>Mental Health Act 2016</i> consumer guides: Advance health directive for mental health and appointing a nominated support person
28 November 2016	People with Disabilities Australia Incorporated	Feedback to Review to Address the Impacts of Domestic and Family Violence on People with Disability
16 December 2016	Department of Social Services	<i>New Disability Employment Services from 2018 discussion paper</i>
16 January 2017	Health, Communities, Disability Services, and Domestic and Family Violence Prevention Committee	<i>Mental Health Amendment Bill 2016</i>
21 February 2017	Department of Communities, Child Safety and Disability Services	<i>Towards an All Abilities Queensland</i> consultation paper

³⁹ The list of submissions does not include our confidential submissions to government in relation to Bills and other policy reforms.



February 2017	Australian Government Joint Standing Committee on the NDIS	Inquiry into the provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition
6 March 2017	Australian Law Reform Commission (Elder Abuse Inquiry)	Elder Abuse Discussion Paper (DP 83)
24 March 2017	Finance and Administration Committee	<i>State Penalties Enforcement Amendment Bill 2017</i>
21 April 2017	Commonwealth Department of Health	Single Aged Care Quality Framework: Draft Aged Care Quality Standards and options for assessing performance against Aged Care Quality Standards
19 May 2017	Disability Law Queensland	Feedback on draft resource to assist people who have intellectual impairments to have an enduring power of attorney and/or will prepared
21 June 2017	Department of Social Services	National Disability Insurance Scheme (NDIS) Code of Conduct discussion paper



The following table presents a list of key advocacy letters sent by the Public Advocate in 2016-17.

Date	Sent to	Subject
31 August 2016	Mr Peter Carne, Queensland Public Trustee	Regarding Public Trustee applications to QCAT for guardianship for clients who may be eligible for the NDIS.
8 September 2016	Ms Natalie Siegel-Brown, Public Guardian	Delegate guardian approval of the use of restrictive practices for clients.
21 December 2016	The Honourable Stirling Hinchliffe, Minister for Transport and the Commonwealth Games	Queensland Taxi subsidy Scheme and National Disability Insurance Scheme (NDIS) interface issues.
24 February 2017	Vanda Wieczorkowski, Director of the Forensic Disability Service	Regarding client review reports and recommendations for service operation monitoring
3 April 2017	Mr David Bowen, Chief Executive Officer, NDIS	Needs of people with disability from CALD backgrounds not appropriately responded to in the NDIS.
8 March 2017	The Honourable Malcolm Turnbull MP, Prime Minister of Australia	Concerns around the Centrelink debt collection process.
8 March 2017	Individual letters to the 44 Queensland members of the Commonwealth Parliament, the Prime Minister and senators	Concerns around the Centrelink debt collection process.
15 June 2017	The Honourable Mr Ken Wyatt AM, MP, Minister for Aged Care, Minister for Indigenous Health	Advocating for the Commonwealth Government to legislate the use of restrictive practices in residential aged care facilities.
29 June 2017	The Honourable Judge Suzanne Sheridan, Interim President of QCAT	Concerns about the Hospital Hearings Project.
30 May 2017	Mr David Bowen, Chief Executive Officer, National Disability Insurance Scheme	Referring to the Public Advocate's report, <i>Upholding the right to life and health: a review of the deaths in care of people with disability in Queensland</i> , and the need for provision for reasonable and necessary supports for healthcare in NDIS plans.



30 May 2017	The Honourable Coralee O'Rourke MP, Minister for Disability Services, Minister for Seniors and Minister Assisting the Premier on North Queensland	The Public Advocate's report, <i>Upholding the right to life and health: a review of the deaths in care of people with disability in Queensland</i> .
31 May 2017	Graeme Kirkup, Department of Communities, Child Safety and Disability Services	Transition of people currently detained to Forensic Disability Service to other support arrangements

