

Office of the Public Advocate

Systems Advocacy

Annual Report

2011–2012

The report is available online (including a plain text version) at www.publicadvocate.qld.gov.au or you may contact our Office for access to a hard copy. Full contact details are provided on the inside back cover.

Feedback on this report is welcomed. A publication survey is available online and may be submitted electronically. Alternatively, a hard copy may be requested from our Office.

The Queensland Government is committed to providing accessible services to Queenslanders from all culturally and linguistically diverse backgrounds. If you have difficulty in understanding the annual report, you can contact us on telephone (07) 3224 7424 or by emailing public.advocate@justice.qld.gov.au and we will arrange an interpreter to effectively communicate the report to you.



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The Honourable Jarrod Bleijie MP

Attorney-General and Minister for Justice
State Law Building
50 Ann Street
BRISBANE QLD 4000

19 October 2012

Dear Attorney

I am pleased to present the Public Advocate's Annual Report for the financial year ended 30 June 2012.

This 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 Office of the Public Advocate for 2011-12 and a statement of our financial and operational functions for the year.

Under section 221 of the *Guardianship and Administration Act 2000*, the Public Advocate is not a statutory body for the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*.

Yours sincerely

Jodie Cook
Public Advocate Queensland

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The Office of the Public Advocate

Our year in review

The Office of the Public Advocate is a small entity with a significant agenda, which is given authority by the *Guardianship and Administration Act 2000*.

Our primary role is to promote and protect the rights, autonomy and participation of Queenslanders with impaired decision-making capacity in all aspects of community life.

The staffing establishment for the Office provides for six officers to support the Public Advocate in performing the statutory functions for which the position has responsibility. However, the Office has been operating below establishment for some time. For the year 2011-12, in particular, there has been a significant staffing shortage, arising from a range of factors.

Adding to these resource limitations was a period of vacancy in the Public Advocate position itself and an uncertain environment about the existence and location of the Office. These operational issues are outlined in more detail in the report, and inevitably have impacted on performance.

This year was a challenging time for the Office of the Public Advocate and I acknowledge the diligence, commitment and good work of the team under these pressures.

I also thank my predecessors in this role and the way in which their work continues to shape progressive change for people with impaired decision-making capacity.

In particular, the significant contribution made by Dr Susan Brady is commended. Dr Brady was instrumental in the agency's new strategic direction and evidence-based approach to systems advocacy.

Ms Neroli Holmes also steered the agency through a critical period in early 2012, at a time when the future and potential powers of the role were under debate.

The Office of the Public Advocate is committed to maximising the opportunities to advance positive change for people with impaired decision-making capacity through systems advocacy.

The core aim of our work is to advocate for systemic change that enables improvements in the lives of people living with impaired decision-making capacity, and to create better outcomes, more opportunities and a just and inclusive community for all.

Having recently commenced in the role of Public Advocate, I look forward to leading the team and continuing its unique and important agenda.

Jodie Cook
Public Advocate Queensland

About the Office of the Public Advocate

The Office of the Public Advocate was established under Chapter 9 of the *Guardianship and Administration Act 2000* to undertake systems advocacy on behalf of adults with impaired decision-making capacity.

The Public Advocate is an independent statutory position appointed by Governor in Council in accordance with the requirements of the *Guardianship and Administration Act 2000*. Staff may be appointed under the *Public Service Act 2008* to assist the Public Advocate to perform the functions under the *Guardianship and Administration Act 2000*.

Under section 209 of the *Guardianship and Administration Act 2000*, the functions of the Public Advocate are:

- promoting and protecting the rights of adults with impaired capacity for a matter
- promoting the protection of 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
- monitoring and reviewing the delivery of services and facilities to the adults.

The Public Advocate is provided with the following powers under section 210 of the *Guardianship and Administration Act 2000*:

- may do all things necessary or convenient to be done to perform the functions
- may 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.

The *Guardianship and Administration and Other Legislation Amendment Bill 2012* was introduced to the Queensland Parliament on 11 September 2012 by the Attorney-General and Minister for Justice. The Bill includes amendments to the powers of the Public Advocate to access information and report to the Minister on systemic issues. The Bill was referred to the Legal Affairs and Community Safety Committee.

The proposal by the Queensland Government to enhance the right to information powers of the Office of the Public Advocate will be an important step toward helping improve the evidence base and, in turn, highlighting priority areas for our systems advocacy work.

Our vision

Our vision is to realise a just and inclusive society for all citizens.

Our role

We promote and protect the rights, autonomy and participation of Queenslanders with impaired decision-making capacity in our community.

Our approach

We are committed to evidence-based systems advocacy that explores and extends our knowledge and influence on inclusive policy, programs and practices to promote improved life opportunities and outcomes for Queenslanders with impaired decision-making capacity.

Our values

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

Knowledge leadership: We are committed to research and analysis that informs social policy debate to progress inclusive and sustainable responses for Queenslanders with impaired decision-making capacity.

Professionalism and integrity: We work with clear purpose and commitment to systems advocacy, within a culture where accountability and respect is paramount.

Machinery of government changes

The Office of the Public Advocate was not subject to any machinery of government changes as a result of the 2012 Queensland State election.

General principles

The *Guardianship and Administration Act 2000* 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 capacity must apply these principles¹.

Presumption of capacity

An adult is presumed to have capacity for a matter.

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.

Individual value

An adult's right to respect for his or her human worth and dignity as an individual must be recognised and taken into account.

Valued role as member of society

1. An adult's right to be a valued member of society must be recognised and taken into account.
2. Accordingly, the importance of encouraging and supporting an adult to perform social roles valued in society must be taken into account.

Participation in community life

The importance of encouraging and supporting an adult to live a life in the general community, and to take part in activities enjoyed by the general community, must be taken into account.

Encouragement of self-reliance

The importance of encouraging and supporting an adult to achieve the adult's maximum physical, social, emotional and intellectual potential, and to become as self-reliant as practicable, must be taken into account.

Maximum participation, minimal limitations and substituted judgment

1. An adult's right to participate, to the greatest extent practicable, in decisions affecting the adult's life, including the development of policies, programs and services for people with impaired capacity for a matter, must be recognised and taken into account.
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.
3. So, for example—
 - 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
 - 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
 - a person or other entity in performing a function or exercising a power under this Act must do so in the way least restrictive of the adult's rights.
4. Also, the principle of substituted judgment must be used so that if, from the adult's previous actions, it is reasonably practicable to work out what the adult's views and wishes would be, a person or other entity in performing a function or exercising a power under this Act must take into account what the person or other entity considers would be the adult's views and wishes.
5. However, a person or other entity in performing a function or exercising a power under this Act must do so in a way consistent with the adult's proper care and protection.
6. Views and wishes may be expressed orally, in writing or in another way, including, for example, by conduct.

Maintenance of existing supportive relationships

The importance of maintaining an adult's existing supportive relationships must be taken into account.

¹ *Guardianship and Administration Act 2000* (Qld) s11(1)

Maintenance of environment and values

1. The importance of maintaining an adult's cultural and linguistic environment, and set of values (including any religious beliefs), must be taken into account.
2. For an adult who is a member of an Aboriginal community or a Torres Strait Islander, this means the importance of maintaining the adult's Aboriginal or Torres Strait Islander cultural and linguistic environment, and set of values (including Aboriginal tradition or Island custom), must be taken into account.

Editor's notes—

1 Aboriginal tradition has the meaning given by the Acts Interpretation Act 1954, section 36.

2 Island custom has the meaning given by the Acts Interpretation Act 1954, section 36.

Appropriate to circumstances

Power for a matter should be exercised by a guardian or administrator for an adult in a way that is appropriate to the adult's characteristics and needs.

Confidentiality

An adult's right to confidentiality of information about the adult must be recognised and taken into account.

Health care principle

1. The health care principle means power for a health matter, or special health matter, for an adult should be exercised by a guardian, the adult guardian, the tribunal, or for a matter relating to prescribed special health care, another entity—
 - in the way least restrictive of the adult's rights; and
 - only if the exercise of power—
 - is necessary and appropriate to maintain or promote the adult's health or wellbeing; or
 - is, in all the circumstances, in the adult's best interests.

Example of exercising power in the way least restrictive of the adult's rights—

If there is a choice between a more or less intrusive way of meeting an identified need, the less intrusive way should be adopted.

2. In deciding whether the exercise of a power is appropriate, the guardian, the adult guardian, tribunal or other entity must, to the greatest extent practicable—
 - seek the adult's views and wishes and take them into account; and
 - take the information given by the adult's health provider into account.
3. The adult's views and wishes may be expressed—
 - orally; or
 - in writing, for example, in an advance health directive; or
 - in another way, including, for example, by conduct.
4. The health care principle does not affect any right an adult has to refuse health care.
5. In deciding whether to consent to special health care for an adult, the tribunal or other entity must, to the greatest extent practicable, seek the views of the following person and take them into account—
 - a guardian appointed by the tribunal for the adult;
 - if there is no guardian, an attorney for a health matter appointed by the adult;
 - if there is no guardian or attorney, the statutory health attorney for the adult.

These principles are firmly embedded in the approach that the Office of the Public Advocate takes to fulfilling its responsibilities.

Systems Advocacy Framework 2010-12

The *Systems Advocacy Framework 2010-12* is a key strategic document setting the direction for our Office. This year we continued to embed and apply this contemporary approach to systems advocacy.

The drivers informing our strategic direction include local, national and international developments:

- The work of the Office contributed to the Strategic Plan of the Department of Justice and Attorney-General 2011-15. In particular, the Office of the Public Advocate plays an important role in the objective to better protect the rights and interests of Queenslanders with impaired decision-making capacity.
- Our work also contributes to the Queensland Government community as outlined in *Getting Queensland Back on Track* (May 2012), particularly with respect to the focus on revitalising 'front line services for families'.
- Our work is further influenced by the Australian Government's social inclusion agenda and efforts to embed the focus on equal human rights. The rights of people with disability are articulated in the Australian Government's *National Disability Strategy 2010-20*. This is a 10-year national plan to improve the lives of people with disability, promote participation, and create a more inclusive society.
- In Queensland, this national strategy has been operationalised and adopted locally through the 10-year plan for people with disability. *Absolutely everybody: enabling Queenslanders with a disability* aims to ensure that Queenslanders living with a disability are included and have opportunities to participate in all aspects of community life.
- At the international level, our work reflects Australia's commitment as a signatory to the United Nations Convention on the Rights of Persons with Disabilities. The purpose of this significant Convention is to:

'promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity'
(Article 1).

The Office is firmly committed to ensuring that Australia's responsibility under the United Nations Convention on the Rights of Persons with Disabilities is upheld in Queensland. Some of the particular focus areas for the Office are:

- equality and non-discrimination (Article 5)
- awareness-raising (Article 8)
- equal recognition before the law (Article 12)
- freedom from exploitation, violence and abuse (Article 16)
- living independently and being included in the community (Article 19)
- freedom of expression and opinion and access to information (Article 21)
- respect for privacy (Article 22)
- respect for home and family (Article 23)
- education (Article 24)
- health (Article 25)
- habilitation and rehabilitation (Article 26)
- work and employment (Article 27)

The *Systems Advocacy Framework 2010-12* provides a high level strategic summary of our approach to statutory systems advocacy and identifies four key result areas for our business activity:

- Key Result Area 1 – Knowledge and Evidence
- Key Result Area 2 – Communication and Influence
- Key Result Area 3 – Advocacy and Inclusion
- Key Result Area 4 – Business Processes

The body of this report details our activities against each of these key result areas.

Applying our statutory systems advocacy

Our commitment is toward an evidence-based approach in our work by recognising and operationalising an approach to systems advocacy that is informed by robust data and information.

A range of issues experienced in 2011-12 impacted on the operational performance of the Office. The application of our statutory systems advocacy work must be considered against the impact of these issues.

Central to the issues was continued uncertainty about the platform for the Office. The expectation that the culmination of the Queensland Law Reform Commission's (QLRC) review of guardianship would be the final catalyst to initiate long announced reforms did not eventuate. The debate over the Office's future directions has been long-standing and only recently resolved.

In 2009, following the Weller Review of government boards, committees and statutory committees, the Bligh Government decided to amalgamate the Public Advocate role with that of the Adult Guardian.

The QLRC, as part of its review into guardianship laws, subsequently considered how 'an independent systemic advocacy role [would] be maintained' should the Adult Guardian take on the combined roles.

In September 2010, the QLRC released comprehensive recommendations on the guardianship laws, including seven recommendations on the proposed systemic advocacy function, within the context of it being undertaken by the Adult Guardian.

In September 2011, the Bligh Government submitted its initial response to the recommendations, which largely supported the systems advocacy recommendations.

The sector and community continued to lobby the government about its decision to amalgamate the two roles.

In February 2012, the Bligh Government announced the original decision would not be progressed and the Public Advocate role would be maintained as a separate entity. Relocation with other independent bodies such as the Anti-Discrimination Commission and Queensland Ombudsman was subsequently proposed by the government.

The calling of the State Government election and the ensuing caretaker period placed matters on hold. As part of its election commitments, the LNP party announced it would retain the Public Advocate position and increase the power and independence of the role. The Liberal National Party (LNP) did not support a physical relocation of the office.

Following the election of the LNP Government, the decision to maintain the Public Advocate as an independent statutory officer was progressed. The Public Advocate position was advertised in April 2012 to be filled on a permanent basis. Prior to this, the position had been filled in an acting capacity since 2010, due to the expectation of the eventual abolition of the role.

The Newman Government also moved to draft amendments to the *Guardianship and Administration Act 2000* (Qld) in its first 100 days, which would increase the powers of the Public Advocate.

The proposed amendments are consistent with the initial findings and recommendations of the 2010 QLRC review:

- the ability, at any time, to provide a report on a systemic issue to the Attorney-General, which must be tabled in Parliament
- access to information or documents that are in the control or custody of another agency to inform systems advocacy (with a penalty for non-compliance).

In addition to the above issues encountered by the Office in 2011-12, there were also operational factors such as staff resources that the Public Advocate took into account in determining and advancing systems advocacy priorities.

The Systems Advocacy Framework will be reviewed in 2012-13 to take into account organisational changes, the legislative landscape, the strategic framework of the Queensland Government and the directions of the Department of Justice and Attorney-General.

Key Result Area 1 - Knowledge and Evidence

- Use an evidence-based approach to all research and information gathering activity
- Produce, integrate and translate knowledge for key audiences/stakeholders

Our credibility and ability to influence decision-makers to promote positive change relies on a robust approach to knowledge and evidence.

In 2011-12, the Office dedicated a significant component of its resources to building the evidence base to inform future planning and systems improvement. The initiatives included both in-house research activities and also leveraging partnerships with external parties who share a mutual interest in this area.

Our research projects

To assist in building the evidence base, the Office has led the development of some unique concepts and innovative projects:

Potential population for statutory systems advocacy

We developed the concept of a 'potential population' for statutory systems advocacy to provide a more contemporary understanding of the scope, demand and focus for our work. The 'potential population' concept developed by the Office utilises Australian Bureau of Statistics data on all adults (18+ years) living in either a household or cared accommodation setting who need assistance to make decisions or think through problems due to a disability. This analysis will be reviewed annually, taking into account new data as it becomes available.

The potential population for statutory systems advocacy includes all vulnerable Queensland adults living with impaired decision-making capacity. Our cohort is therefore broad and inclusive and is not restricted to people who access a government-funded or government-provided service, or people in the guardianship system.

Our Office uses the latest national Survey of Disability, Ageing and Carers conducted by the Australian Bureau of Statistics to identify and profile the potential population. We have defined the potential population for the Office of the Public Advocate as:

Adults living in either private households or cared accommodation (e.g. a group home, health establishment of institutional setting) who need assistance to make decisions or think through problems due to a disability.

In 2011, it is estimated that there were approximately 126,000 adults (1 in 35 people) with impaired decision-making capacity in Queensland. By 2020, our analysis indicates the potential population is estimated to increase to approximately 164,000 adults (1 in 33 people).

Our research shows that the vast majority of Queenslanders living with impaired decision-making capacity are not linked to either the specialist disability or guardianship systems.

Adult Guardian Client Profile Project

The Adult Guardian Client Profile Project is an innovative project that was co-sponsored by the Office of the Adult Guardian. It is the first intensive analysis of people subject to guardianship orders made to the Adult Guardian. The project utilises client information over a 10-year span (2000-10) and also further investigates clients' needs and disadvantages through data matching with the Disability Services National Minimum Data set for 2008-09.

Last year's annual report featured some of the significant preliminary findings. A summary was also released in our Research News in November 2011. This information was disseminated to key stakeholders in the guardianship system.

The Office of the Public Advocate has also engaged with the Office of the Adult Guardian on the preliminary project findings throughout the year. The Acting Adult Guardian utilised the early findings to inform the Office's policy and strategic review in early 2012.

A representative from the Office of the Public Advocate also presented the key findings from the project to the Adult Guardian conference held in March 2012.

The completion of this project has been delayed and the final report is expected to be released in the second half of 2012-13. This research offers an insight into the guardianship client base of the Adult Guardian and will provide valuable evidence to assist in the management of guardianship services.

Through the development of a comprehensive, reliable and relevant evidence base, the project will contribute to more effective and targeted delivery of services. The outcomes will also contribute to the monitoring of trends, rates and projections in Queensland and enable comparison to interstate jurisdictions.

The need for an evidence-based approach

The Adult Guardian Client Profile Project has highlighted the importance of dependable data for human service delivery and policy development. A well designed and maintained database can provide valuable client information and assist with strategic planning. It can also assist with meeting organisational requirements of transparency and accountability.

The Office of the Adult Guardian has recognised the limitations of its client information management system and has undertaken to implement a more suitable and reliable database. This will facilitate an improvement around the quality and accessibility of client information, leading to a stronger evidence base. It will also provide an opportunity for more clear identification of needs and circumstances, and the development of more appropriate responses for clients and service delivery.

The lack of quality data is not unique to Queensland (nor the guardianship system). In 2012, the Victorian Law Reform Commission (VLRC) undertook an extensive review of its guardianship system and raised concerns about the approach to data collection:

"The Commission has found it difficult to locate reliable data about the operations of many aspects of Victoria's guardianship laws. This lack of data impedes the development of evidence-based law proposals and makes it difficult for the major public agencies...to evaluate their performance and to benchmark with relevant interstate agencies"².

These findings resulted in the VLRC recommending a coordinated approach to data collection and presentation, with a minimum set of standard variables identified in the report, including: orders (numbers, duration, types), clients (types of disability, living arrangements, CALD background), matters of appointment, and outcomes of reassessments and reviews of orders.³

The Office of the Public Advocate strongly supports data sharing between agencies to promote evidence-based policy and service delivery improvements. In particular this has benefits for mutual clients and may assist in the development of person-centred approaches. Notwithstanding its limitations, the Adult Guardian Client Profile Project has delivered important, reliable and useful evidence to improve service delivery and assist in the identification of potential issues for systems advocacy.

The Adult Guardian Client Profile Project also highlighted data collection improvements that could be made and these findings have been shared with the Office of the Adult Guardian. Our Office has also provided some input into the development of the new client information management system being implemented by the Office of the Adult Guardian.

² Victorian Law Reform Commission (VLRC) 2012, Guardianship, VLRC, Melbourne, p. 74.

³ Victorian Law Reform Commission (VLRC) 2012, Guardianship, VLRC, Melbourne, p. 75.

Advocacy and inclusion fact sheets

In the 2010-11 annual report, our Office released its concept for 'Advocacy and inclusion' fact sheets. These fact sheets provide information on the life experience of Queenslanders living with impaired decision-making capacity, across the following indicators:

- Education
- Employment
- Health
- Housing and accommodation
- Meaningful day activity
- Social participation
- Support needs

In May 2012, the Office released the Advocacy and inclusion fact sheets as a regular series. The release in 2012 provided updated information based on current available data.

The research on exclusion and disadvantage shows very poor outcomes for Queenslanders with impaired decision-making capacity across the indicators. Improvements in the life experience of Queenslanders living with impaired decision-making capacity will require long-term investment and a consolidated approach across sectors.

Research partnerships

Given that the Office comprises only a small team, we value partnering with other research agents to further develop the evidence base in relation to people with impaired decision-making capacity. The relationship may entail grant funding and/or in-kind support.

The Office has also, at times, taken the initiative to commission research where this is assessed as appropriate and necessary.

In 2011-12, the Office was engaged in the following research partnerships:

Indigenous Queenslanders and the guardianship system research

The Office of the Public Advocate commissioned research with Griffith University, Central Queensland University and James Cook University to explore the understanding and experiences by Indigenous people and communities with the guardianship system.

Key research findings

The vulnerability of Indigenous Queenslanders and their over-representation in government systems is a priority area for systems advocacy and requires further investigation.

The research involved a collaborative partnership with Griffith University, Central Queensland University and James Cook University. The research has been finalised and the final product, *Impaired Decision-Making Capacity and Indigenous Queenslanders*, Final Report was submitted to the Office of the Public Advocate in December 2011.

An overview of the key research findings are summarised below. These reinforce findings from previous studies, and highlight cultural considerations, policy issues and inadequacies in Queensland's guardianship system as it relates to Indigenous Queenslanders:⁴

- there is a knowledge and evidence gap
- appropriate support is needed
- the current guardianship system is culturally inappropriate
- the term 'impaired capacity' is poorly understood and has little relevance
- capacity assessment tools and process for determining impaired capacity are inadequate
- family and community decision-making is undertaken in Aboriginal and Torres Strait Islander cultures

⁴ The analysis is subjective and the findings do not necessarily represent those of the wider Indigenous community in Queensland, nor do they provide definitive conclusions.

- a dynamic culture and other factors challenge traditional decision-making processes
- Aboriginal and Torres Strait Islander people can be suspicious of authorities
- Aboriginal and Torres Strait Islander people are confused by the guardianship system
- Aboriginal and Torres Strait Islander Queenslanders typically have negative experiences with the guardianship system
- improved education will help engage Aboriginal and Torres Strait Islander Queenslanders
- improved consultation with Aboriginal and Torres Strait Islander Queenslanders is needed

Key issues

The key research findings highlight a number of important issues relating to the application of the Queensland guardianship system among Indigenous people and communities:

- incompatibility between the policies and practices of the guardianship system (based on western, individualistic practices) and Indigenous values and culture (founded on collective customs)
- there is a need for a broader and more culturally-appropriate range of decision-making alternatives for Indigenous people.
- supported decision-making is an approach that may be more compatible with Indigenous culture
- early interventions could provide more autonomy for Indigenous people and communities, reduce government intervention and lead to better outcomes
- steps to improve case management and mediation at the local level should be undertaken
- there is a need for meaningful consultation and engagement with Indigenous people about 'what works' in their communities.

The Office of the Public Advocate has distributed the research findings to key stakeholders and plans to conduct a workshop in 2012-13 to explore the findings further. A key aim of the workshop will be to identify strategies to help progress some of the recommendations in the report.

The research findings were also summarised by our Office as a research news edition *Aboriginal and Torres Strait Islander Queenslanders' with Impaired Decision-Making-Capacity*.

The Final Report and Research News were published on our website in May 2012. The Research News version provides an accessible format that will help promote the research and disseminate the research findings to a broader audience.

Withholding and withdrawing life-sustaining treatment

This three year research project into withholding and withdrawing life-sustaining treatment from adults lacking capacity is partially funded by an Australian Research Council Grant. The research is being led by the Queensland University of Technology in partnership with a range of guardianship agencies from New South Wales, Victoria and Queensland. The Office of the Adult Guardian in Queensland and the Queensland Civil and Administrative Tribunal (QCAT) are also partners in this research.

The research investigates doctors' understanding of the law and decisions to withhold and withdraw life-sustaining treatment for people with impaired decision-making capacity in Queensland, New South Wales and Victoria. It is estimated that there are over 30,000 deaths following decisions not to provide medical treatment in these jurisdictions. Yet the extent to which these decisions are lawful is unknown.

The project will identify training and educational needs, and find ways to improve the law by suggesting reforms. In doing so, the project aims to produce better outcomes for patients and their family and friends, to enhance clinical practice through promoting lawful decision-making, and to reduce health expenditure incurred because of defensive medicine and legal compliance costs.

The major component of the research is a survey of medical specialists who frequently deal with decisions made at the end of life. The survey has been distributed and the completed surveys are currently being returned. The data will be analysed over coming months, and the findings will be publicly available in 2013.

For further information about this project, please visit:

<http://www.qut.edu.au/research/research-projects/withholding-and-withdrawing-life-sustaining-medical-treatment>

Key Result Area 2 - Communication and Influence

- Provide accurate, reliable and timely information to stakeholders on priority systems advocacy matters
- Develop effective communication strategies to promote and protect rights and interests

Our strategic approach to communication and influence is outlined in the Systems Advocacy Communication Plan 2010-2012. In order to reach a wide audience, we have adopted multiple communication channels and a mixture of products for disseminating information.

The effective translation of evidence will help reinforce our role to promote and protect the rights of persons with impaired decision-making capacity. In 2011-12, the Office produced a number of publications and engaged in a variety of forums to influence our stakeholders.

Publications

The 2010-11 Annual Report was a significant product that detailed preliminary findings for the Adult Guardian Client Profile Project and also released the concept for our Advocacy and inclusion fact sheets.

A second edition of Research News was released in November 2011 providing more detailed findings from the Adult Guardian Client Profile Project.

The series of seven Advocacy and inclusion fact sheets was released in May 2012.

The Elder Abuse Resource Directory was updated in June 2012 and promoted at the Elder Abuse National Conference 2012. The Office received a substantial level of interest in the publication and will continue to provide this service.

Publications survey results

The take up of our publication survey has been slow. Results that were submitted through the publication survey, which is available online or in hardcopy, have been positive.

Specifically, the 2010-11 Annual Report received favourable comments from a number of senior officers who commended the new approach and strategic direction of the Office. At least two agencies also wrote to the Acting Public Advocate indicating a willingness to partner with the Office in further research exercises on the basis of the quality of the annual report.

The Elder Abuse Resource Directory has also received positive comments and has been requested by a wide range of agencies. Feedback indicates that the resource directory has helped to increase awareness and provide important information and assistance in a complex area.

Presentations

In 2011, the Acting Public Advocate was invited to deliver a presentation to a 'Client Council' forum hosted by the Endeavour Foundation. The Client Council is for people with intellectual disability that Endeavour supports through its business and disability services. Approximately 60 people attended the September 2011 event.

The Acting Public Advocate and Principal Research Officer presented the findings from the Adult Guardian Client Profile Project to the Office of the Adult Guardian staff conference in March 2012.

Conferences and events

Attendance at topical conferences is another opportunity for learning, engagement and evidence building. The following conferences/events were attended by staff in 2011-12:

Queensland Council of Social Services (QCOSS) Conference 2011

Resilient Communities Fairer Queensland
Brisbane Convention and Exhibition Centre
8-9 August 2011

2012 Queensland Roundtable on Intellectual Disability

Breaking Ground: The NDIS and Intellectual Disability
Toowong Rowing Club
23 April 2012

Elder Abuse National Conference 2012

New Directions in Elder Abuse Prevention
Brisbane Convention and Exhibition Centre
7-8 June 2012

Communication strategy

A communication strategy is important to ensure that the work undertaken by the Office is communicated in a way that supports the functions of the Public Advocate and achieves outcomes for people with impaired decision-making capacity.

It also enables opportunities that promote an understanding of the Public Advocate role, and supports recognition for the contribution that the Public Advocate makes to exploring issues that are relevant to people with impaired decision-making capacity.

Systems Advocacy Communication Plan 2010-12

The Communication Plan was designed to support the transition of the Office of the Public Advocate to the Office of the Adult Guardian and the formalisation of an evidence-based approach to our work.

The key objectives of the communication plan are to:

1. Increase public awareness of the contemporary systems advocacy approach adopted by the Office
2. Encourage government agencies to engage with our Office as a key partner in the policy formation process in all areas of public policy which impact on adults with impaired decision-making capacity
3. Encourage government agencies to access and incorporate our research findings and expertise in their work.

The Communication Plan will be reviewed to reflect latest developments for the agency arising from the Queensland Government's decision to maintain the Public Advocate as an independent statutory authority and to increase its powers.

Recent community and sector debate that has been generated as a result of these changes has also raised expectations about the agency's ambit. Our Communication Plan review will consider the key messages and information that need to be provided to the community and sector to ensure there is clear understanding about the parameters of our role.

Website

The Office redesigned its website and content in 2011-12 to accommodate the pending transition of 'systems advocacy' to the Office of the Adult Guardian.

Work will be undertaken in 2012-13 to modify the website presence and re-create an independent online identity for the Office.

Key Result Area 3 - Advocacy and Inclusion

- Promote and protect rights, interests and well-being
- Promote inclusive policy, programs and practice to improve social and economic participation
- Ensure government reform, policy and legislation considers and addresses rights and interests

Our advocacy and inclusion focus is shaped by a number of factors, both proactive and reactive: the setting of priorities through our business planning; a critique of the evidence base; emerging reforms, including policy and legislative reviews that are relevant to the potential population; and contemporaneous issues raised with the Office through a variety of channels, including stakeholder forums and directly from enquirers who may be persons with impaired decision-making capacity, family members or other people in their support networks.

In 2011-12, the Office was involved in a broad range of systems advocacy matters relating to the rights, interests and well-being of people with impaired decision-making capacity. A number of consultations and submissions were also made on topical issues.

The Office also held membership in a range of key meeting forums on priority matters. The following selection provides an example of the breadth of issues canvassed over the course of the year.

Systems advocacy matters

Reportable deaths in care issue

A concern was raised with the Office about deaths not being reported to the Queensland Coroner as required under the *Coroners Act 2003*, specifically deaths in care for persons with impaired decision-making capacity. The Office initiated action to ensure that service providers are made aware of their obligations to report deaths in care. Both the Department of Communities, Child Safety and Disability Services and the Office of the State Coroner were contacted about the matter. Agreement was reached by the agencies to increase awareness and understanding of the death in care reporting requirements to disability sector stakeholders.

State Trustee accountability and remuneration of private trustee companies

Matters relating to the administration of the financial affairs of persons with impaired decision-making either through the state or through private trustee companies were raised on a number of occasions this year, an issue that has also been prominent in previous years. One theme of enquiry relates to a potential conflict or perceptions of conflict of interest in relation to the administrator function.

The Office has utilised its power to intervene in a financial administration matter in the past and at this stage is considering the best approach for current remuneration issues.

Proposed Queensland Mental Health Commission

The Office supports an independent Mental Health Commission in Queensland. The Australian Mental Health Commission was established in January 2012 and Western Australian implemented a Mental Health Commission in 2010.

The Newman Government has indicated it will progress the Commission and is currently reviewing the proposed model and structure. This is a matter of interest to our Office and a watching brief is maintained.

Inquiry into severe substance dependence: a model for involuntary detoxification and rehabilitation

In December 2011, the Health and Disabilities Parliamentary Committee released an information paper on severe substance dependence and sought submissions on a proposed model.

The Parliamentary Committee and inquiry lapsed following the dissolution of Parliament ahead of the state government election in March 2012. This is a matter of concern to our Office and a watching brief is maintained on the issue.

Submissions

Queensland Law Reform Commission (QLRC) review of the guardianship laws

In late 2010, the QLRC released findings on its extensive five-year review of the guardianship laws in Queensland.

These findings included recommendations that focussed on maintaining an independent systems advocacy function though it was proposed that these functions be performed by the Adult Guardian (as per a decision made by the Queensland Government in 2009 to amalgamate the Public Advocate functions with the Adult Guardian).

The Queensland Government released its initial response to the recommendations in October 2011. The Government largely supported the recommendations concerning systems advocacy.

The Office was involved in a number of consultations led by the Department of Justice and Attorney-General relating to the QLRC recommendations, both broadly and also in relation to systems advocacy.

Submission to the Health and Disabilities Parliamentary Committee

The Queensland Government referred a number of QLRC recommendations to the Health and Disabilities Parliamentary Committee.

In December 2011, the Office of the Public Advocate made a submission to the Parliamentary Committee on its inquiry in relation to advanced health care directives; registration of enduring powers of attorney; objecting to health care; and withholding or withdrawing life sustaining measures. The Office supports simplifying the processes and ensuring appropriate education and awareness-raising across all sectors of the community and also health professionals.

Representatives from the Office of the Public Advocate also attended a public forum facilitated by the Parliamentary Committee to further debate the issues.

The Parliamentary Committee and inquiry lapsed following the dissolution of Parliament ahead of the state government election in March 2012. This is a matter of concern to our Office and a watching brief is maintained on the issue.

The ambit of guardianship law is complex and sensitive. The Victorian Law Reform Commission has also undertaken an extensive review of its guardianship legislation. There are significant reforms recommended by the QLRC review and it is important that the debate continues in Queensland.

Consultations

The Office contributed to the following consultations:

- Draft Health and Hospitals Network Bill 2011 (Health Consumers Queensland Focus Group)
- Draft Department of Justice and Attorney-General Disability Service Plan 2011
- Draft Department of Communities' 10-year plan, Absolutely Everybody: enabling Queenslanders with a disability
- Draft Domestic Violence and Family Protection Bill 2011
- Draft Fair Queensland Q2 Ambition Statement
- Queensland Health e-health records consultation on terms and conditions for the Personally Controlled Electronic Health Record (PCEHR) System; and Concept of Operations
- Review of the Department of Communities' Communication Support for People with Complex Communication Needs Policy.

Meetings membership

The Public Advocate is represented on a range of significant stakeholder meetings. Due to the instability in 2011-12 with staffing and resources, attendance at meetings was inconsistent however this does not reflect the Office's commitment to these forums.

Australian Guardianship and Administration Council (AGAC)

AGAC is the national forum of:

- Public Advocates
- Public and Adult Guardians
- Boards and Tribunals
- Public and State Trustees or their equivalents throughout Australia.

This is the only national forum and meetings are held biannually over two days. Each jurisdiction shares the hosting functions.

The Queensland officials who are members of AGAC are: the Adult Guardian, the Public Trustee, the Senior Member of the Queensland Civil and Administrative Tribunal, and the Public Advocate.

The Acting Public Advocate was not able to attend the meeting held in November 2011.

The Acting Public Advocate was not able to attend the March 2012 meeting. Approval was gained for the Manager (Strategic Projects) to represent the Office of the Public Advocate. The March 2012 meeting was held in Hobart.

Elder Abuse Prevention Unit – Reference Group

These meetings are held quarterly and are attended by a broad range of stakeholder representatives including the Office of the Adult Guardian, the Public Trust Office, Australian Pensioners and Superannuants League, the then Department of Communities, and the Office of the Public Advocate.

The Office of the Public Advocate was unable to be represented at several meetings in 2011-12. The Office was represented by the Senior Research Officer at the February 2012 meeting.

Centre of Excellence for Behaviour Support Advisory Committee Meeting

The Office was unable to attend these meetings in 2011-12.

Positively Ageless Interdepartmental Strategy Group (Office for Seniors, Department of Communities)

The Office was unable to attend these meeting in 2011-12 however contributed to the development of the next Action Plan 2012-14 for the Positively Ageless Queensland Seniors Strategy 2010-20.

The Office will continue to update the Elder Abuse Resource Directory and will share evidence gathered from its data analysis in relation to elders with impaired decision-making capacity data analysis.

It is yet to be confirmed whether these meetings will continue following the recent changes to the Queensland Government.

Positive Futures Steering Committee Meeting

The Office has been represented at several of these meetings, which were chaired by the then Department of Communities.

With the recent changes to the Queensland Government, it is understood that this forum will not continue.

Enquiries – information and referral

Enquiries made to our Office are an important source of information for identifying potential systems issues. This conduit of information is integral to maintaining a current understanding of the range of issues that may be impacting the lives of people with impaired decision-making capacity, their families, and carers.

In 2011-12, our Office experienced a marked decline in enquiries. This may be attributed to a range of factors, most significantly it would appear that the increased uncertainty about the future of the Office and its functions was a key factor.

Proportionately only about half of the enquiries made to our Office fell within the scope of the Office's role. Of those enquiries that were in scope, about a third related to potential systems advocacy issues for people with impaired decision-making capacity.

Our Office must balance the enquiries received and the expectations people may have in relation to our role. The Office of the Public Advocate works to influence policy, programs and services at a systems level. It does not have a direct role in individual advocacy; is not a complaints agency; and is not authorised to impart legal advice.

Also adding to some confusion is the fact that Queensland is the only jurisdiction where the Public Advocate and Adult Guardian are separate bodies, separating the roles of individual and systems advocacy. There is also a lack of knowledge about the cohort of the Public Advocate being restricted to 'adults'.

All enquiries are noted to assist and inform the identification of systems issues however not all systems issues raised with the Office of the Public Advocate can be addressed by the Office.

The most common type of enquiry we received was a request for assistance (47%), followed by people seeking information (35%).

As our Office is not authorised to be involved in individual advocacy matters, it is a common outcome to refer enquiries to other agencies for direct assistance. The guardianship agencies such as the Office of the Adult Guardian, the Queensland Civil and Administrative Tribunal and the Public Trustee were the main referral points for the Office. Enquirers were also referred to a broad range of agencies in the community, including Queensland Advocacy Incorporated, the Aged Care Commission, the Ombudsman, and Legal Aid.

Another area of referral was the interstate Public Advocate/Guardian jurisdictions. Some enquirers indicated confusion about which Office it required given the duplication of titles across Australia. The mobility of families is also becoming more evident and raising potential systems issues. Several enquiries stemmed from family members who lived interstate however had a parent or other close relative in the Queensland guardianship system. The portability of orders across jurisdictions is a topical issue. Some work is being done to recognise enduring powers of attorney across jurisdictions.

The range of enquiries, their referrals and the number of enquiries that fell outside of the scope of our work highlight the complexity of the systems serving people with impaired decision-making capacity, their carers and families. Individuals often contacted the Office because they felt that multiple other organisations had failed to address their enquiries satisfactorily or because the role of the Office had been misrepresented to them.

Many people making enquiries expressed confusion and frustration, despite some effort by government agencies (including the Queensland Civil and Administrative Tribunal, the Public Trustee and the Office of the Adult Guardian) to provide comprehensive descriptions of their roles and processes through publications such as annual reports, factsheets and application guides. Often this confusion and frustration was related to the complexity of the systems affecting people with impaired decision-making capacity and their perceived lack of transparency.

Access to timely and appropriate information was an issue that was raised consistently by individuals and their families as they attempted to navigate the complex landscape of service systems and legislative mechanisms.

Key Result Area 4 - Business Processes

- Operate transparently and with accountability
- Ensure effective business and risk processes

Transparent and accountable business processes are important for sound corporate governance. As a small entity, our Office operates mainly within the broader strategic and business planning processes implemented by the Department of Justice and Attorney-General. It is important that our resources are primarily invested in our systems advocacy work.

In 2011-12, our Office initiated the following business-related initiatives:

Internal protocol for attending QCAT hearings

The Office is entitled under the *Guardianship and Administration Act 2000* to attend all tribunal hearings as an interested party. This provides an opportunity to gauge current issues, observe systems and processes in action, and enhance understanding of guardianship and administration matters.

To support staff in undertaking this task, an internal protocol has been developed to ensure that all parties are aware of the role of the Office and to differentiate an observation task from legal interventions.

Enquiry referrals process refined

While the Office of the Public Advocate cannot manage individual advocacy issues, it does rely on information about individual matters to inform its systems advocacy work. It is important that the enquirer understands this delineation and the purpose of systems advocacy.

Often personal enquirers who contact the Office are facing difficult and complex situations and are looking for immediate help. The Office continues to refine its processes and interactions with these types of enquiries to ensure a sensitive and helpful approach.

Business planning day

In March 2012, the Acting Public Advocate convened a business planning day with staff to outline a work program for the next six months. At this stage, the future of the agency was under debate and the Public Advocate position was filled through a temporary arrangement.

Office of the Public Advocate – Operations

Organisational structure

The Public Advocate is an independent statutory position appointed by Governor in Council in accordance with the *Guardianship and Administration Act 2000*. The Act permits an acting Public Advocate to be appointed when the office is vacant or the Public Advocate is absent from duty or unable to perform the duties.

Since January 2010, the Public Advocate position has been filled on an acting basis, pending the proposed amalgamation of the role with the Office of the Adult Guardian.

In 2011-12, the Acting Public Advocate position was held by Dr Susan Brady for the period July 2011 until February 2012. In February 2012, Ms Neroli Holmes was appointed Acting Public Advocate until May 2012.

In April 2012, the incoming government acted on its election commitment to 'retain an independent Public Advocate as a statutory authority'. This development provided authority for the Public Advocate position to be filled on a permanent basis.

The Queensland Government initiated a recruitment exercise, which closed in early May 2012. The Governor in Council appointed Ms Jodie Cook as Public Advocate for a three year term, commencing 13 August 2012.

The *Guardianship and Administration Act 2000* provides that staff may be appointed to assist the Public Advocate to perform the functions under the legislation. It is a requirement that staff be appointed under the *Public Service Act 2008*.

Over the course of 2011-12, the Public Advocate position was supported by a small contingent of staff. There is an allocation of six full-time equivalent positions for the Office. It is important to note that not all positions were filled across the full financial year and some vacancies were carried.

In keeping with a commitment to work-life balance, some officers are also engaged on a part-time basis.

Permanent positions:

1 x AO8 Executive Manager (Advocacy, Policy and Evidence)

1 x AO7 Principal Research Officer

2 x AO6 Senior Research Officers

1 x PO4 Senior Legal Officer

1 x AO3 Administration Officer

Temporary positions:

1 x AO8 Research Manager (Client Profile - this position was finalised during the reporting period in August 2011)

1 x AO8 Manager (Strategic Projects) (part-time role)

1 x AO2 Administration Support Officer (this officer works 4 hours per fortnight)

Financial summary

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

Funding for the office is appropriated from the Queensland Government as part of the appropriation for the Department of Justice and Attorney-General. The Director-General of the Department of Justice and Attorney-General is the accountable officer pursuant to the *Financial Accountability Act 2009*.

Comprehensive financial details 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 of the Public Advocate for the financial year 2011-12 is provided below:

Table 1 Office of the Public Advocate Financial Summary 2011-12

Expenditure items	
Employee related expenses	\$601,700
Supplies and Services	\$95,400
Grants	\$nil
Depreciation*	\$19,800
Total	\$716,900

*The Office of the Public Advocate did not incur any amortisation and deferred maintenance expenditure.

Note: expenditure figures have been rounded to nearest 100.

Travel expenditure

There was no overseas travel undertaken by the Acting Public Advocate or Office of the Public Advocate staff during the year.

Interstate travel is planned regularly to attend the bi-annual Australian Guardianship and Administration Council meetings. This is the only national forum for state and territory agencies to promote the interests of people with impaired decision-making capacity. All key leaders in the guardianship jurisdictions across Australia, including Public Trustees and heads of tribunals, are members of this forum. The forum is conducted over a two-day format, with both full group and specialised group meetings.

The Office was not able to be represented at the October 2011 meeting held in Sydney.

A representative from the Office attended the March 2012 meeting held in Hobart, Tasmania.

Interstate travel may also be undertaken for significant stakeholder meetings. In October 2011, the Acting Public Advocate met with guardianship stakeholders in Melbourne.

Grants expenditure

In 2011-12, there were no new additional grants incurred.

However, there were a range of research projects that the Office contributed to via grants, which were ongoing.

Further details about our research partnerships are reported in Key Result Area 1.

Staff Development

The development of staff is an important way to ensure that the Office achieves outcomes.

Over the year, staff were able to attend a range of internal and external training opportunities. External training included:

- editing and writing skills
- mediation
- project management
- strategic thinking and influence
- statistical analysis using SPSS

Work-life balance

The Office of the Public Advocate supports each staff member to achieve a mutually convenient work-life balance. The importance of maintaining an optimum balance in relation to work and other facets of personal lives is acknowledged.

The Office follows the Department of Justice and Attorney-General part-time employment policy and procedures. Some members of staff are engaged under formalised part-time working arrangements.

Notes

Office of the Public Advocate

Website www.publicadvocate.qld.gov.au

Email public.advocate@justice.qld.gov.au

Write to Office of the Public Advocate
GPO Box 149
BRISBANE QLD 4001

Telephone (07) 3224 7424

Fax (07) 3224 7364

