



Office of the Public Advocate (Qld)

Systems Advocacy



Annual Report
2014 - 2015

Artistic Contributions

This year's Annual Report showcases artwork created by people with disability.

The interpretation of art is often different for each person who views a piece, however we gain greater depth by seeking to understand the message being conveyed by its creator.

Metaphorically, the same could be said about the way in which many people interpret the communication methods used by people with disability.

With contemporary movements that support increased decision-making and choice by people with disability, we must be mindful about the ways in which people communicate and ensure that we listen not only with our ears, but also with our eyes.

The artists featured in our Annual Report are present and/or past members of the Brisbane Outsider Artists Studio. Our thanks go to Access Arts Inc. for making this possible.

'Labyrinth' Lisa Blake

'Over that hill' Stephen Corti-Griffiths

'Somewhere peaceful' Lisa Blake

'Somewhere in Victoria' Andrew Pemberton

'Sun Flowers' Mandy Johnstone

'Owl screenprint' Mandy Johnstone

'Misty moon at night' Dion Halse

'Sculptured stained glass' Dion Halse

'Black' Karla Duvey

'Gridlock 2' Lisa Blake

The report is available online 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 for an interpreter to effectively communicate the report to you.



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The Honourable Yvette D'Ath MP
Attorney-General and Minister for Justice and Minister for Training and Skills
Member for Redcliffe
State Law Building
50 Ann Street
BRISBANE QLD 4000

7 October 2015

Dear Attorney,

I am pleased to present the Office of the Public Advocate's Annual Report for the financial year ended 30 June 2015.

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 2014-2015 and a statement of our financial and operational functions for the year.

Under section 221 of the *Guardianship and Administration Act 2000*, the Office of 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 Griffiths-Cook
Public Advocate



'Misty moon at night' *Dion Halse*

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The Public Advocate's year in review

This past year signals the end of my first three-year term as Public Advocate, and I feel honoured to have been given the opportunity to remain in the role for a further three years.

Effecting positive systemic change for Queenslanders with impaired capacity is something that I am both passionate about and remain strongly committed to. The opportunity to influence and contribute to sustainable improvements that more effectively protect and uphold the rights of people with impaired capacity drew me to this position three years ago and continues to drive me, particularly in light of the transformational change currently occurring as a result of national reforms in both the aged care and disability sectors.

When I stepped into the role of Public Advocate in August 2012, the Office's 'footprint' within the sector was almost negligible due to the uncertainty that had surrounded the Office's future in the preceding years. The already small establishment of the Office had also been significantly depleted leaving very few staff to support the responsibilities accorded to the Public Advocate.

Over the course of my appointment, I have re-established the Public Advocate as a respected and valued contributor to effecting change in the human services sector. This was achieved by bringing the Office back to full establishment, initiating and pursuing an ambitious strategic research and advocacy agenda, and establishing and strengthening partnerships with a diverse group of stakeholders both within Queensland and nationally.

Despite the Office's previous work being weighted toward issues impacting people with intellectual disability, the focus of the Office has been extended to consider and address issues across the broader range of conditions that can impact decision-making capacity, notably people with mental health issues and those whose capacity is impaired by ageing conditions such as dementia.

I have also stretched the influence of the Office beyond those systems traditionally associated with providing supports and services for people with impaired capacity by promoting consideration for human rights and the importance of making 'reasonable accommodation' across the wider landscape within which people with impaired capacity live their lives.

To achieve this, the focus of our work includes consideration for those systems that are complementary to specialist service delivery and that are essential to pursuing a

cohesive, integrated and holistic approach to the needs of people with impaired capacity.

In the course of my appointment as Public Advocate, I have made over 35 submissions addressing key systemic issues across a myriad of sectors and inclusive of the broad spectrum of conditions that impact decision-making capacity.



Some of these submissions have been initiated in response to issues that I have proactively identified in the performance of my role while others have been developed in response to inquiries initiated by government and quasi-government agencies at both the state and federal levels. I have also had the opportunity to discuss the points raised in a number of my submissions by appearing before both Senate and Parliamentary Committees.

The quality of and regard accorded to submissions from my Office is reflected in the references that have been made to our work in the reports that have culminated from these inquiries, the commentary within Parliament in the course of second reading processes, and in subsequent references to my Office's submissions in academic literature and other publications. More importantly, the validity of the points raised in my submissions has been evidenced by the influence they have had in the design and implementation of legislative, policy and practice frameworks.

While the nature of systemic advocacy has the potential to lead to adversarial interactions, the way in which I have approached the role of Public Advocate has enabled me to establish a more effective collaboration with Government and the sector alike, and has generated a greater appreciation of human rights and the importance of upholding same in both word and practice.

Since commencing as Public Advocate, I have tabled two systemic advocacy reports in Parliament. My inaugural report generated a renewed focus on continuing deinstitutionalisation in Queensland while my second report changed the policy and practice landscape in disability services in respect of the use of electronic monitoring.

The focus of much of my Office's work over the past year has been on concerns and issues emerging from our analysis of activities associated with the trials and readiness activities that are occurring pursuant to full scheme implementation of the National Disability Insurance Scheme. In particular, we have targeted issues relevant to promoting the rights and protection of people with disability, with a particular focus on how best to ensure appropriate safeguards for people with impaired capacity.

This work will culminate in a further three systemic advocacy reports that will be tabled in Parliament over the course of the next six months, and that will offer recommendations for systemic enhancements that I trust will merit consideration by Government. It is likely that many of the recommendations made in these reports will also have broader relevance and perhaps see systemic enhancements in other jurisdictions and/or in the iterative design process in respect of national reforms.

As always, I would like to acknowledge and commend my team for their commitment to the work of the Office and, more importantly, to effecting positive systemic change for people with impaired decision-making capacity. Despite the team being small in number, these dedicated individuals produce a significant volume of work that is consistently of high quality and that gets to the heart of issues impacting the vulnerable Queenslanders whose rights and interests we seek to uphold.

Before I finish, it would remiss of me not to acknowledge the artwork that has been included in this year's Annual Report. I would like to personally thank the artists as well as Access Arts Inc. for the life that these pieces have brought to this year's report.

I remain proud of all that we are achieving through the work of the Office. I greatly appreciate the opportunity to continue leading this work in the interests of promoting and pursuing effective and sustainable outcomes that improve the lives of Queenslanders with impaired capacity.



Jodie Griffiths-Cook
Public Advocate

Our work

The way in which my Office approaches systems advocacy centres on ensuring that our research and advocacy activities can be mapped to the functions of the Public Advocate role as per the *Guardianship and Administration Act 2000*.

The first part of this report presents a summary of contemporary issues relevant to people with impaired decision-making capacity in Queensland that are being addressed and/or monitored through the work of my Office.

This is followed by more specific information about the activities that we have undertaken in 2014-15. We have presented this information by mapping it against the key result areas around which we centre our business activity.

These key result areas are as follows:

- 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



'Sculptured stained glass' Dion Halse

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'Gridlock 2' Lisa Blake

The Office of the Public Advocate

Our vision

Our vision is to realise a just and inclusive society that promotes and enables equal opportunity for all citizens.

Our mission

The Office of the Public Advocate protects the rights, interests and autonomy of Queensland adults with impaired decision-making capacity through advocating at a systems level. We promote equity by pursuing inclusive communities and integrated systems that provide reasonable accommodation, and effective and responsive supports. In doing so, we seek to empower and strengthen the collective voice of those we represent.

Our approach

By engaging in systems advocacy, we promote improved life opportunities and outcomes for people with impaired decision-making capacity by influencing the design, development, implementation and reform of legislation, policy, programs and practices to ensure greater inclusiveness and maximum participation.

At the forefront of our approach is a commitment to working collaboratively with government, non-government and community stakeholders to highlight key issues impacting people with impaired capacity and to generate effective strategies and sustainable solutions that attend to these issues.

In doing so, we draw upon contemporary understandings and existing evidence while also undertaking research that extends the current evidence base. We are committed to robust research and analysis, sharing knowledge and expertise, effective communication, innovative solutions and monitoring outcomes.

We operate in an open and transparent way with a clear purpose. We respect the integrity of the systems that serve to uphold rights even while, in remaining accountable to our vision and values, we respectfully challenge their effectiveness where necessary.

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 legal and 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.

Legislative authority

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

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 decision-making capacity must apply the General Principles.¹

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

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

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 are 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; and
- Monitoring and reviewing the delivery of services and facilities to the adults.

The Public Advocate may, utilising the powers provided under section 210 of the *Guardianship and Administration Act 2000*:

- do all things necessary or convenient to be done to perform the 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 S210A of the *Guardianship and Administration Act 2000*, which provides the right 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.

Further, under s209A *Guardianship and Administration Act 2000*, the Public Advocate may prepare a report to the Minister about a matter arising from performance of the Public Advocate's functions and have this tabled in Parliament.

The amendments introducing s209A and s210A (assented to on 22 November 2012) represent an important step toward improving our evidence base, highlighting priority areas for systems advocacy work, and ensuring awareness of issues by Government, service organisations and the community more broadly.

Further amendments introduced at that time also provide protection from liability for the giving of information to the Public Advocate.



'Over that hill' Stephen Corti-Griffiths

¹ *Guardianship and Administration Act 2000* (Qld) s11(1); General principles located in schedule 1.

Applying our statutory systems advocacy

Significant reforms have been, and are, occurring at both the national and state level across numerous sectors relevant to people with impaired decision-making capacity. This shifting service delivery landscape represents the beginning of a period of transformational change that provides a unique opportunity for systems advocacy.

The strategic direction for the Office of the Public Advocate is underpinned by priority focus areas that guide our work, and is operationalised within the context of local, national and international drivers.

Systems advocacy provides an opportunity to exert influence on the way that Government shapes its strategic agenda by promoting recognition for human rights and ensuring that this is translated into action.

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 Convention). The Office is firmly committed to ensuring that Australia's responsibility under the Convention is upheld in Queensland. Furthermore, the Office actively promotes the Convention as being the foundation upon which all agencies both within and outside of Government should premise their legislative, strategic and operational frameworks.

Our work also seeks to support and influence federal priorities in an effort to increase the focus on human rights. There are a number of strategic directions at the national level that underpin our work, in particular:

- The Australian Government's *National Disability Strategy 2010-20*;
- The Council of Australian Governments' *Roadmap for National Mental Health Reform 2012-2022*;
- The Australian Government's *Living Longer Living Better* aged care reforms; and
- The *National Framework for Reducing and Eliminating the use of Restrictive Practices*.

The work of the Office also contributes to the agenda of the Queensland Government and supports the Department of Justice and Attorney-General Strategic Plan 2015-19, particularly in respect of the following objectives:

- Protect adults with impaired decision-making capacity;
- Improve access to justice; and
- Protect the rights and interests of vulnerable Queenslanders.

Potential population for statutory systems advocacy

In 2015, it is estimated that there are approximately 115,745 adults (1 in 42 people) with impaired decision-making capacity in Queensland. By 2025, the 'potential population' is estimated to increase to approximately 148,000 adults (1 in 40 people).

The 'potential population' concept utilises the latest data from the national Survey of Disability, Ageing and Carers conducted by the Australian Bureau of Statistics to identify and profile the potential population.

Notwithstanding the paradigm shift heralded by the Convention, we have defined the potential population as:

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

The analysis of the potential population is reviewed annually, taking account of new data as it becomes available.

The potential population for statutory systems advocacy includes all Queensland adults who have 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.

The primary factors that can impact decision-making capacity include intellectual disability, acquired brain injuries arising from catastrophic accidents, mental illness, ageing conditions such as dementia, and conditions associated with problematic alcohol and drug use.

It is important to note that not all people with these conditions will have impaired decision-making capacity, and that impaired decision-making capacity does not necessarily impact all areas of a person's life, and may fluctuate in response to situational issues.

The Office of the Public Advocate is committed to increasing autonomy for people with impaired decision-making capacity, noting that our work also contributes to improved outcomes for other vulnerable groups.

The shifting landscape for systems advocacy

The past few years have seen significant reforms progressively shape the policy and service delivery landscape for people with impaired capacity, particularly in the disability and aged care sectors.

In seeking to ensure appropriate protections for the rights and interests of Queensland adults with impaired capacity, the Public Advocate continues to engage closely with these reform processes.

Further, the focus areas against which the work of the Office over the past year has been mapped is linked to potential risks associated with these reforms.

Access to justice

People with impaired capacity are over-represented, as both victims and defendants, in all aspects of the criminal justice system. They also experience heightened degrees of difficulty in navigating the system.

As part of our core business, the Office conducts research into issues impacting the extent to which Queenslanders with impaired capacity are able to access appropriate and equitable justice, and/or reasonable accommodation within justice systems, while also exploring good practice initiatives in other jurisdictions, both nationally and internationally.

Mental health reform in Queensland

A significant piece of work underway in Queensland in relation to justice issues is the review of the *Mental Health Act 2000*. The Public Advocate has been closely engaged in the review process since it commenced in 2013.

While supportive of the improved focus on recovery-oriented principles and the emphasis on 'less restrictive' approaches, the limited analysis of the interface between mental health and guardianship legislation is an ongoing concern for the Public Advocate. Further information on the Public Advocate's submissions to the review of the *Mental Health Act 2000* is provided later in the report against 'Key Result Area 3 – Advocacy and Inclusion'.

Improved safeguards

People with impaired capacity are exposed to significant risk of neglect, exploitation and abuse despite the attempts of legislative and other systems that seek to ensure that the necessary safeguards are in place. Further, many people with impaired capacity have limited natural supports, which increases their vulnerability.

Safeguarding against neglect, exploitation and abuse is the responsibility of multiple systems and agencies. The Public Advocate remains concerned that people with impaired capacity are at risk of their human rights being compromised even by those purporting to be acting in their best interests. Identifying and raising the profile of this risk remains a priority for the Office, as does emphasising the important role that individual advocacy plays in supporting those who may need assistance to safely navigate the complex array of systems through which supports and services are accessed.

NDIS Quality and Safeguarding Framework

The release of the NDIS Consultation paper on the Quality and Safeguarding Framework for the NDIS was of great interest to the Public Advocate.

Central to the Public Advocate's submission was an emphasis on ensuring sufficient opportunities to enable people with disability to develop the necessary skills and capability to exercise 'choice and control' while acknowledging the need for support and assistance (where required). Further, these principles must be juxtaposed against sufficient infrastructure to enable appropriate recourse when undesirable or adverse outcomes transpire.

The Public Advocate also emphasised that there should be no diminution of the safeguards that currently exist within Queensland for people with disability.

Further information on the two submissions made by the Public Advocate in respect of the quality and safeguarding proposals is provided in 'Key Result Area 3 – Advocacy and Inclusion'.

Appropriate decision-making mechanisms

The United Nations *Convention on the Rights of Persons with Disabilities* recognises that the extent to which a person's impairment may become 'disabling' is dependent on the interaction between the person and their environment. To mitigate this, there is increasing emphasis on the need to provide reasonable accommodation across all aspects of community, particular in respect of the way that supports and services are delivered. It is also becoming a focal point of environmental design both for private and public spaces.

Upholding a person's right to legal capacity has been a particular field of enquiry over recent years with a particular focus on supported decision-making. Understanding the nuances associated with ensuring that people are able to access the right decision-making support at the right time and in the right way is an evolving field of research both in Australia and internationally. The theoretical underpinnings and practical aspects of providing decision-making support to assist people to build their capability to make decisions are central to the lens applied by the Office in analysing the accessibility of those systems that exist to respond to the needs of people with impaired decision-making capacity.

The issues of reasonable accommodation, accessibility and appropriate support for decision-making underpin two of the projects being pursued by the Office. The Office's work on decision-making in guardianship and best practice in complaints management both aim to offer a range of suggestions to further enhance and improve supports and services for people with impaired capacity. Further information on these two projects can be found in 'Key Result Area 1 – Knowledge and Evidence'.



'Black' Karla Duvey

Sustainable outcomes

An ongoing area of concern for the Public Advocate is the lack of cohesion and integration across the various different systems accessed by people with impaired capacity in seeking to pursue effective and sustainable outcomes.

While the Public Advocate strongly supports an ongoing focus on reforming the various primary sectors that serve to address the needs of people with impaired capacity, these reforms have largely occurred in a manner that neglects to attend to the 'silos' that have been a feature of service responses for people with impaired capacity for far too long. Ensuring that systems work together in a cohesive and integrated way is integral to the provision of effective support that ensures that people with impaired capacity are able to contribute equally as valued members of society.

The impact of reform on complementary service systems is often difficult to analyse and may not be sufficiently understood nor addressed in initial design processes. This is particularly relevant to reforms that transfer from the state to the federal jurisdiction. As implementation progresses, the issues and risks become progressively more apparent. Unfortunately, the impact of this is most strongly felt by people with impaired capacity themselves, and/or by their families/carers. Further, the agencies that provide support to people with impaired capacity often have to bear a significant resourcing burden in seeking to 'fill the gaps' that arise, particularly where these gaps have the potential to impact the well-being of people with impaired capacity.

Aged care reform: Emerging issues and risks

In 2014-15, the Public Advocate engaged fellow members of the Australian Guardianship and Administration Council (AGAC) to advocate on behalf of people with impaired capacity in respect of the issues emerging from the aged care reforms. The following overview articulates the concerns conveyed by AGAC to the Department of Social Services in relation to these reforms.

Background

On 20 April 2012, the Federal Government released the *Living Longer Living Better* aged care reform package, a comprehensive ten-year plan to reshape aged care and build a better, fairer and more nationally consistent aged care system. While the first tranche of reforms commenced in 2013, the changes that commenced on 1 July 2014 brought with them a range of concerns. Notably these concerns relate to the increased complexity of decision-making (particularly with respect to financial aspects of aged care placements), and uncertainty and inconsistencies within the sector in operationalising the reforms.

Decision-making complexity

For people with impaired capacity requiring an aged care placement, the decision regarding accommodation involves both personal and financial considerations. Statutory trustee agencies in state and territory jurisdictions are the appointed administrators for many people with impaired decision-making capacity across Australia. Since the commencement of the aged care reforms, these agencies have undertaken significant work to ensure appropriate procedures are in place to support their decision-making in respect of such placements. This work sought to ensure understanding of the reforms themselves, and the potential implications for individual decision-making. This has also been an issue for statutory guardians whereby the financial implications associated with making accommodation decisions have limited their ability to make timely decisions.

The issue of potential legal liability for decision-makers is also a concern. All forms of decision-makers (e.g. those appointed via a tribunal, court or enduring instrument, or who are otherwise acting for a person) are arguably subject to a fiduciary duty to make decisions that a reasonable person would make in the circumstances of the matter. However, despite the complexities associated with making decisions in respect of aged care placement, it is highly unlikely that decision-makers, particularly private guardians/administrators and informal decision-makers, are aware of the legal risks to which they may be subject.

The need to understand the options available to a person and to weigh up the appropriateness of options and resultant financial impact that may arise from each option means that even statutory guardians/administrators often have to obtain financial advice prior to making decisions. Some of the key issues that need to be understood include choosing between making Daily Accommodation Payments (DAPs) versus Refundable Accommodation Deposits (RADs) versus a combination of these; the ways in which asset structuring can be used to enable a more viable assessable financial position for the individual; ensuring today's financial decisions provide sufficiently for the person's likely lifespan; and other such considerations.

Further, the binding and specific nature of residential aged care agreements means that if a person's care needs change, or if a person wishes to move facilities, a new contract is required and possibly a new raft of contract negotiations. If not undertaken in a timely manner or if there is no support to do so, it is possible that this may result in people becoming trapped in overly restrictive arrangements. Conversely, insufficient funds may preclude a person from accessing a 'high care' arrangement.

In light of this, the issues that are likely to arise for those with insufficient understanding about these reforms are concerning. While statutory agencies can obtain financial advice to understand the viability of the different options

that may be available to a person, this is not likely to be possible for everyone. The average person who has to make a decision regarding an aged care placement (whether that be the individual, an attorney, or a private guardian or administrator) may not realise that they lack the requisite knowledge and skill to make appropriate decisions in respect of committing to a placement (i.e. they don't know what they don't know).

The cost of accessing financial advice may also be prohibitive for some people. Equally, while the expense of doing so may be a worthwhile investment, such advice may not be easily accessible (e.g. for those living in rural and remote areas) and there are few financial advisors with sufficient knowledge and expertise to adequately assist clients in making such decisions.

At an individual level, this lack of understanding brings with it the risk of significant financial impact. These impacts may result in an individual being financially disadvantaged not just at the point of entry to an aged care placement but also on an ongoing basis. A potential outcome is that the individual may have insufficient funds to cover the cost of care over their remaining years.

While extreme, a potential risk that may arise over time is an increasing number of individuals on the verge of, or entering, a state of poverty. Such circumstances will inevitably lead to reduced levels of service provision and resultant declines in health that will increase pressure on other systems.

Operationalising the reforms

There is little support available to guide individuals and service providers in relation to reasonable policy and practice approaches in operationalising these reforms. It has been noted that the Government website is not kept up-to-date and that the information exchange mediums that are being used (i.e. internet, smartphone apps, etc.) are often difficult for people to access due to either physical limitations, lack of familiarity and confidence in using such mediums, and/or people not having access to them. This, unfortunately, lends itself to many people having insufficient information when needing to make an urgent decision in respect of aged care placement.

A particular trend that is emerging relates to people who have been admitted to hospital due to age-related medical issues, and for whom an aged care placement is considered an appropriate transition plan to support their move out of hospital. In many such circumstances, it would appear that hospital staff seek the appointment of a guardian and/or administrator to make a decision in respect of the proposed aged care placement and thus facilitate the person's discharge from hospital. It has been suggested that this

often occurs without consulting the person in the course of submitting the application for appointment.

There is also an emerging policy position whereby aged care providers are requiring, as a condition of entry, that people have a valid Enduring Power of Attorney (EPOA). Ostensibly the reasoning behind this position relates to providing a safeguard for the facility 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 (especially for financial matters) at a future point. While the making of an EPOA is arguably a positive obligation, the process of drawing up an enduring document can take some time, which may impact their ability to secure the placement. Further, once an EPOA is in place, many services and facilities assume its immediate authority as opposed to recognising that it may not take effect until the person lacks decision-making capacity.

Of significant concern in respect of the above scenarios is that the concept of supported or informal decision-making appears to be completely absent from the way in which aged care providers are operationalising the aged care reforms. In many circumstances, there are family members who are available and willing to assist their ageing family member to make decisions in respect of aged care placements, and/or to make decisions on their behalf, however this no longer appears to be sufficient.

This is further complicated by the reticence of many aged care providers to offer interim placements. This often means that, due to concern that a placement offer may be withdrawn, individuals (and/or family members) feel pressured to make immediate decisions without having sufficient time to adequately consider the options and associated financial implications, and/or find themselves pushed into seeking formal guardianship and/or administration appointments to satisfy the requirements of the aged care provider.

The financial implications for spouses and/or other family members associated with securing an aged care placement for their ageing family member may give rise to concern, particularly where financial assurance is required to enable the placement. This may arise, for example, in situations where there is a perceived (or actual) need to sell the family

home to provide the finances to support the aged care placement.

Similarly, concerns have also been raised about situations in which aged care providers seek to ensure that the financial commitments associated with aged care placement are met by requesting that family members enter contracts as a guarantor for the aged care placement, or where 'caveat clauses' against the resident's property are inserted into aged care agreements. These caveat clauses usually refer to all real estate that the person has an interest in, which may have significant implications in cases where the required fees are not paid and a partner or other family member is a joint owner or continues to remain in the property. Additionally, and despite there being no provision within legislation to enable it, some aged care providers are also requiring a 'security deposit' paid in advance (upon entry) and separate to the RAD.



'Somewhere in Victoria' Andrew Pemberton

For some people, the above scenarios may be a disincentive to engaging with the scheme and may therefore lend themselves to increased situations of neglect due to individuals/families opting out of the aged care system but without making adequate provisions for the needs of their ageing family member. Alternatively, there is potential for an increase in financial abuse (which may be assisted by the victim) as a means by which to ensure that the family, rather than the government, receives the person's inheritance following their death.

The next tranche of reforms will be progressively operationalised throughout 2015-16. The Public Advocate will continue to monitor and respond to risks emerging for people with impaired decision-making capacity accessing aged care services.

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 2014-15, the Office dedicated a significant component of its resources to continuing to build the evidence base to inform future planning and systems improvement. The initiatives included both in-house research activities and leveraging partnerships with external parties.

Key content areas in this section:

Our research projects

Continuing projects

- Decision-making support for Queenslanders with impaired capacity
- Deaths of people with disability in care
- Upholding the rights of people with impaired capacity to relationships and sexuality
- Effective complaints management systems for people with impaired capacity

New projects

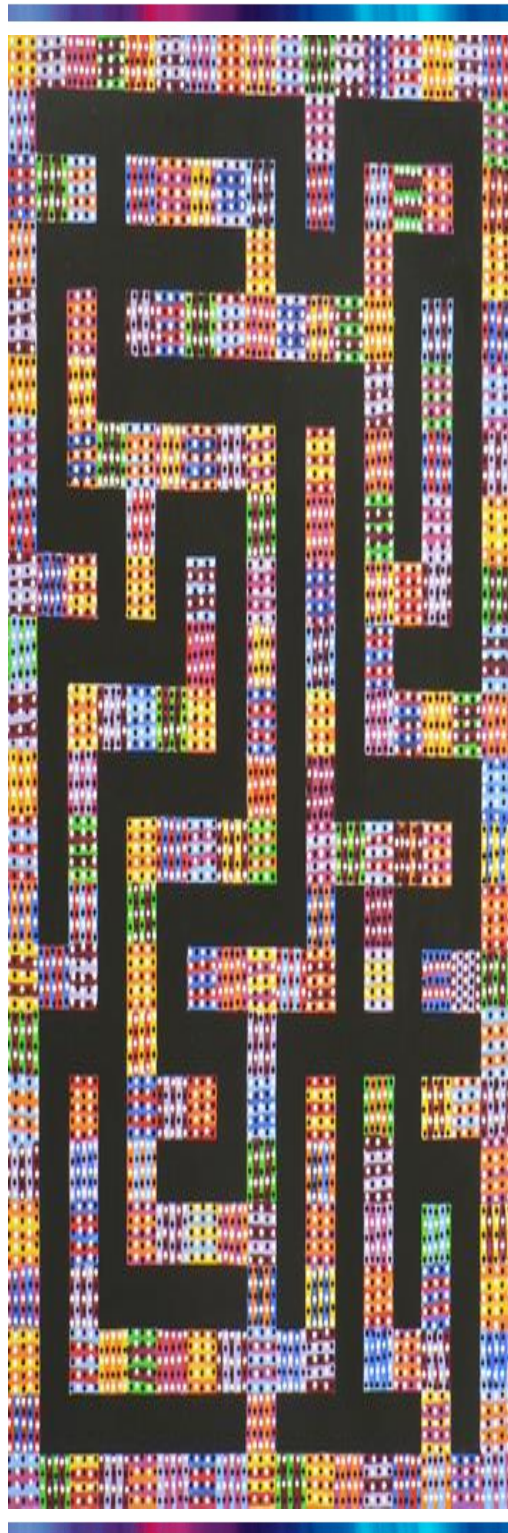
- Analysis of limitation orders

Monitoring and review activities

- Continuing deinstitutionalisation of people with intellectual disability or cognitive impairment in health facilities
- Response to people with intellectual impairment who exhibit behaviours that put themselves or others at risk
- Inclusion of level three residential services clients in planning for the NDIS

Research partnerships

- Queensland University of Technology – Chemical restraint of adults with intellectual disability
- La Trobe University – Decision-making support



'Labyrinth' Lisa Blake

Our research projects

Continuing projects

Decision-making support for Queenslanders with impaired capacity

In 2013, the Office initiated a research project examining decision-making support for Queenslanders with impaired capacity. The focus is on the extent to which relevant provisions of Queensland's guardianship legislation (the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*) that support decision-making autonomy are translated into practice.

The aim of the research is to identify the systemic enablers and barriers to protecting and supporting the right of the person to make their own decisions. The research has explored this within the context of Queensland's public guardianship system.

The Office is working with a range of expert stakeholders engaged in the guardianship system including the Public Guardian; the Queensland Civil and Administrative Tribunal (QCAT); and the Public Trustee to identify opportunities for systemic enhancements that reflect contemporary developments in decision-making support for people with impaired capacity.

The Office has also established an external Advisory Group to provide expert knowledge and strategic advice throughout the project.

Building the knowledge and evidence base

During 2014-15, the Office of the Public Advocate undertook primary and secondary research to build the evidence base, which will inform a systemic advocacy report on decision-making support. The primary research undertaken by the Office included a series of interviews and surveys with the Queensland Civil and Administrative Tribunal, the Office of the Public Guardian and the Public Trustee.

In November 2014, an Issues Paper was publicly released with an invitation to interested people and organisations to make a submission on the issues canvassed in the Paper. The paper presented a brief discussion about some of the issues that emerged during the conduct of the research, including, but not limited to, advance planning, informal decision-making, capacity determinations, the appointment of guardians and administrators and decision-making by public guardians and administrators.

The Public Advocate thanks the agencies that assisted with the data collection process, and the individuals and organisations who made a submission in response to the Issues Paper.

Formulating the systemic advocacy report

The Office commenced work on drafting a systemic advocacy report based on the analysis of the information gathered through the data collection process and undertaken other secondary research.

The first part of the report will address systemic issues, including enablers and barriers in Queensland's current system. It will include evidence-based recommendations to enhance the current system and better uphold the right of a person to make their own decisions.

The second part of the report will describe opportunities for modernising Queensland's guardianship system to better reflect contemporary developments in decision-making support and mitigate the ever-increasing demand for guardianship and administration.

Work to be completed

The Advisory Group will be consulted on the draft systemic advocacy report in late 2015. The final report is expected to be publically released in early 2016.

Deaths of people with disability in care

In early 2015, the Office of the Public Advocate commenced a project to identify systemic issues related to access to, and provision of, appropriate support and health care that have a serious effect on people with disability, including the risk of premature death. The project seeks to understand the legislative, policy and service landscape within which the deaths of people with disability occur, with a view to offering systemic recommendations that may reduce the number of preventable deaths.

In Queensland, apart from the coronial process for deaths in care, there is no specific process for systemic reviews of deaths of people with disability. Further, the number of deaths of people with disability in Queensland is not published.

Key objectives

The purpose of this project is to address the gap in information about the deaths of people with disability in Queensland. The key specific objectives are to:

- Increase the transparency of the current system in relation to the reporting and recording of deaths; and
- Highlight the key health and risk factors associated with deaths for people with disability in residential care services, particularly in relation to deaths that may have been prevented by enhanced supports, services and health care.

Advisory Panel

In 2014-15, the Public Advocate convened a specialist Advisory Panel to begin reviewing the data and information obtained from relevant Queensland government agencies about the deaths of people with disability in residential care in Queensland.

The Advisory Panel comprised both statutory office-holders whose functions were relevant to monitoring the provision of supports and services to adults with disability, and medical practitioners with specific expertise in the health care of people with disability, in particular people with intellectual impairment. The membership included:

- The Public Advocate, Ms Jodie Griffiths-Cook;
- The Public Guardian, Mr Kevin Martin;
- The Anti-Discrimination Commissioner, Mr Kevin Cocks;
- The Health Ombudsman, Mr Leon-Atkinson-MacEwan;
- Professor Nick Lennox, Director Queensland Centre for Intellectual and Developmental Disability;
- Professor Harry McConnell, Clinical Sub-Dean, School of Medicine, Griffith University; and
- Dr Paul White, Consultant Psychiatrist.

The role of the panel was to assist in the systemic analysis of data and information received from the State Coroner and other relevant agencies about the deaths of people with disability in care. More specifically the panel sought to:

- Identify the most common leading underlying causes of death;
- Identify demographic trends and patterns associated with these deaths in care;
- Undertake an assessment of the sequence of events leading up to the death to identify any related procedural, practice or systems issues associated with the death;
- Identify any issues related to the provision of health care and support associated with the death; and
- Identify risk factors for people with disability in relation to premature or preventable deaths.

Work to be completed

The final report detailing the findings from this project is under development. It is expected that the final report will be published either late in 2015 or early 2016.



'Somewhere peaceful' Lisa Blake

Upholding the rights of people with impaired capacity to relationships and sexuality

The issue of sexuality remains a highly sensitive and frequently neglected issue when considering how best to support adults with impaired capacity.

In Queensland, section 216 of the *Criminal Code Act 1899* arguably limits the extent to which 'a person with an impairment of the mind' is able to engage in relationships of their choosing, where such relationships involve certain sexual acts. Further, there is limited education and other supports available to strengthen a person's capacity to make decisions in respect of such matters and to engage safely in sexual activities where they choose to do so.

The definition of 'person with an impairment of the mind' is sufficiently broad to potentially encompass many people with impaired capacity who may in fact have the capacity to choose to engage in a consensual sexual relationship.

In some ways, the defence that an act did not constitute sexual exploitation recognises that a person with impairment may engage in a consensual sexual relationship. However, this is arguably insufficient. In making a lack of sexual exploitation operate as a defence, rather than as an element of the offence, the Criminal Code effectively creates a situation whereby all relationships involving a person with impaired capacity are illegal; although some can later be proven legal by way of the existence of a defence.

At its essence, this means that 'by law', a consensual relationship involving a person with impaired capacity could arguably be made the subject of criminal charges and court proceedings regardless that the outcome may well prove the consensual nature of the act. This would potentially necessitate the person with impaired capacity being brought into the criminal justice system as a victim and witness, which brings with it many other issues in relation to justice equity and reasonable accommodation in respect of the justice system's response to people with impaired capacity.

Inherent tension exists between how best to provide adequate and appropriate support to uphold the right of a person with impaired capacity to pursue a sexual relationship while ensuring appropriate protections and safeguards to prevent abuse and/or exploitation.

While, in theory, supporting a person to engage in a sexual relationship should be guided by the person's capacity to provide informed consent, the process by which a person's capacity to do so might be assessed is not well developed. Further, the social and environmental context surrounding many people with impaired capacity often sees them miss experiences such as the 'natural' processes typically undertaken by young people in exploring their sexuality. Differences are also evident in caregiver expectations with the common perception that sees many people with

impaired decision-making capacity as the 'perpetual child', someone for whom relationships, particularly sexual relationships, are not even considered an option.

In 2014-15, the Public Advocate has continued to explore this issue by engaging with like-minded individuals and agencies inclusive of people with disability, family members, carers, as well as those representing health services, academia, and service organisations to discuss opportunities for systemic change. Over the coming year, the Office will engage with industry partners to undertake further research into the limitations and potential incongruence between the Queensland Criminal Code and legislative and human rights obligations at the international, federal and state levels.

Effective complaints management systems for people with impaired capacity

The Office of the Public Advocate has continued to investigate effective complaints management systems for people with disability, with a focus on people with impaired decision-making capacity.

Complaints management systems are the mechanisms employed by government and non-government agencies that enable people to provide feedback and make complaints about the services delivered by the agency.

With the significant changes in the delivery of support and services to people with disability in Queensland heralded by the move to self-directed funding and the anticipated commencement of the NDIS in Queensland from 2016, complaints management systems that are inclusive of people with impaired decision-making capacity and that facilitate the resolution of their concerns will be imperative.

Phase one

Phase one of this project was completed in 2014-15. This involved a scoping exercise that included a literature review, structured conversations with key service providers and advocates who work with people with impaired decision-making capacity from metropolitan and regional areas of Queensland, and an examination of the various complaints management systems that a person with disability may access to express dissatisfaction about the supports or services they receive.

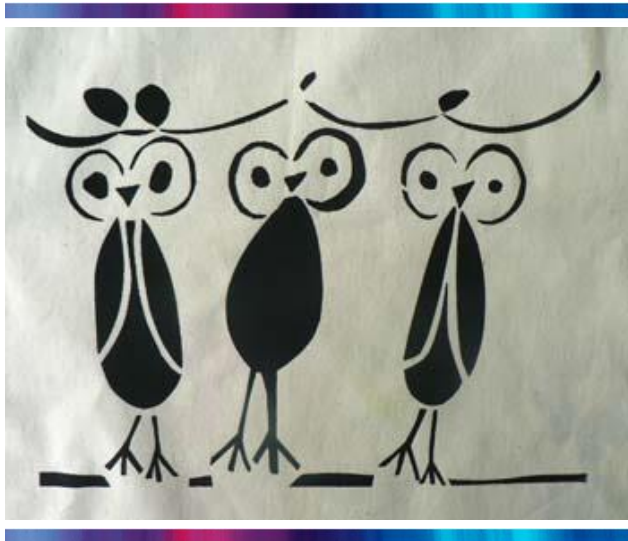
In March 2015, the Office of the Public Advocate published the results of phase one of the project, a scoping paper titled 'Strengthening Voice'. This scoping paper identified a number of principles that are broadly recognised to represent good practice in complaints management while also discussing the barriers to achieving good practice in complaints management for people with impaired capacity. The paper also explored strategies for strengthening complaints management systems for people with impaired decision-making capacity.

Phase two

Phase two of the project (to be completed in 2015-16) will involve the development of a report that will:

- Describe the current complaints management systems that are available to Queenslanders with disability in relation to the supports and services they receive. Both State and Commonwealth agencies will be examined according to their purpose, jurisdiction and process, powers, and ability to effect change; and
- Describe good practice in complaints management systems including barriers to achieving good practice for people with impaired capacity and strategies for strengthening complaints management systems accordingly.

The Office of the Public Advocate will consult with key stakeholders in the development of the report, and in particular, the key strategies for strengthening the responsiveness of key complaints agencies to people with impaired capacity.



'Owl screen-print' Mandy Johnstone

New Projects

Analysis of limitation orders

In 2014-15 the Office of the Public Advocate commenced a new project aimed at providing a greater focus on systemic reviews of limitation orders made by QCAT.

Under the *Guardianship and Administration Act 2000*, whenever a limitation order is made by QCAT, a copy of the decision and the information on which the Tribunal based its decision must be sent to the Public Advocate.² This enables reporting on any systemic issues, should they arise, as per the systemic advocacy functions of the Public Advocate.³

This provision was implemented at the same time as limitation orders into the Act as a result of the Queensland Law Reform Commission's report of the guardianship system *Public Justice, Private Lives: A New Approach to Confidentiality in the Guardianship System*.⁴

Limitation orders are an important and necessary part of the Tribunal's hearing process. QCAT can make a limitation order to restrict how certain evidence is disclosed during a hearing. The Tribunal must balance the disclosure of confidential and personal information in hearings with the need to have an open and transparent hearing process.

The project involved the analysis of the hearing material provided to the Public Advocate by the Tribunal in relation to the limitation orders made between January 2010 and March 2015. Hearing materials included the recordings of proceedings and documents relied on during the hearing such as the application made to the Tribunal and supporting documentation.

Work to be completed

The Office of the Public Advocate is in the process of drafting a report based on the analysis of limitation orders. It is anticipated that the report will soon be available on the Office of the Public Advocate website.

The Public Advocate will continue to monitor limitation orders to ensure that the outcomes are in the best interests of the people for whom the limitation orders are made.

² Ibid ss 112(2)(d) & (5).

³ Explanatory Notes, *Guardianship and Administration and Other Acts Amendment Bill 2008* (Qld) p 4.

⁴ Queensland Law Reform Commission, *Public Justice, Private Lives: A New Approach to Confidentiality in the Guardianship System*, Report No 62 (2007).

Monitoring and review activities

In accordance with the Public Advocate's function of monitoring and reviewing the delivery of services and facilities to adults with impaired decision-making capacity, the Public Advocate is maintaining a focus on progress and activities associated with the following:

- The continuing deinstitutionalisation of people with intellectual disability or cognitive impairment residing long-term in health facilities;
- The legislative, policy and program response to people with intellectual disability or cognitive impairment who exhibit behaviours that put themselves or others at risk of harm, including those who come into contact with, or who are at risk of coming into contact with the criminal justice system; and
- The inclusion of level three residential services clients in planning for the NDIS.

Continuing deinstitutionalisation of people with intellectual disability or cognitive impairment in health facilities

Queensland's history

The history of institutionalising people with intellectual disability in Queensland is similar to the history of institutionalisation in many other western and developing countries, including the United States and United Kingdom.

Up until the 1980s in Australia, it was common practice for people with disability to reside in large institutions on the outskirts of cities. These institutions housed both children and adults with disability in congregate living environments, with all day-to-day decisions made on their behalf by staff.

Originally, people with intellectual disability in Queensland were placed in asylums and described as 'lunatics' or 'insane'. Early 'reforms' in the 1960s saw the separation of many people with intellectual disability from people with mental illness and the development of training centres and other facilities for people with intellectual disability.

Queensland, like other Australian states, progressed closures of large institutions and the relocation of people with disability to community-based living in the 1980s and 1990s. This movement was also given impetus by investigations into cultures of abuse and neglect of people with disability in some of these facilities.

At some point however these 'reforms' stalled and a significant number of people with intellectual disability or cognitive impairment remain living in long-stay health care facilities in Queensland.

Towards further deinstitutionalisation

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 Parliament on 7 November 2013.

The Public Advocate made a number of recommendations in Part 7 of the report including, amongst others, that there should be:

- an Action Plan developed to support people with intellectual disability or cognitive impairment who remain living in health facilities to access more appropriate and inclusive supports and services and to enable them to transition out of long-stay health care settings and into appropriate community-based accommodation where appropriate and desired; and
- consideration for the needs of these individuals in planning for the transition to the NDIS.

Progress since the Public Advocate's report was tabled

The Queensland Government

The Queensland Government commenced the development and implementation of a Joint Action Plan – *Transition of long-stay younger people with disability from Queensland public health facilities* (the Joint Action Plan) in 2013-14.

The Joint Action Plan was developed in partnership between the Department of Communities, Child Safety and Disability Services (DCCSDS), Queensland Health and the Department of Housing and Public Works (DHPW). A Steering Committee monitors progress on the plan, and considers strategic and systemic issues arising in its implementation. A Cross Government Operational Working Group supports the Steering Committee by ensuring that operational issues are undertaken in a collaborative and integrated manner.

Outcomes for individuals from the Joint Action Plan

In addition to the 25 young people reported to have moved out of long-stay facilities in 2013-14, recent advice from DCCSDS and Queensland Health confirms that in 2014-15, a further 35 people with disability transitioned from public health facilities to more appropriate living arrangements in the community. Of these 35 people, 26 had an intellectual disability or cognitive impairment.

All of the people who received funding in 2013-14 and 2014-15 have transitioned successfully to community living arrangements. Nearly three-quarters of the people assisted through the Joint Action Plan have moved to live either independently or with family members, while the remainder have moved into shared accommodation and support

arrangements. Cross-agency collaboration has ensured that all possible accommodation and support options are explored such that four out of five people have moved into housing and accommodation other than social housing.

Department of Communities, Child Safety and Disability Services (DCCSDS)

To achieve these outcomes, the Queensland Government (through DCCSDS) provided \$2 million in funding in 2013-14 and a further \$3 million in funding in 2014-15. The 2014-15 allocation includes an additional \$1 million above that originally committed to implementing the Joint Action Plan.

DCCSDS advises that while the priority for these funds continues to be on assisting people to move from acute hospital and sub-acute settings such as rehabilitation centres, 20 per cent of people have transitioned from extended care facilities or aged care.

Queensland Health

Surveys coordinated by the Department of Health in recent years to assist with the implementation of the Joint Action Plan indicate that the numbers of people remaining in Hospital and Health Service facilities who did not have sufficient access to appropriate support to enable them to reside in the community following completion of their health care were as follows:

- 283 people as at 30 March 2012;
- 230 people as at 2 August 2013; and
- 242 people as at 20 August 2014.

The report on the most recent survey as at 20 August 2014, compiled from data provided by the Hospital and Health Services, identified 120 people with intellectual disability and 86 people with cognitive impairment; that is, a combined total of 206 people out of a total of 242 people. Of the remaining 36 people, 21 did not have an intellectual disability or a cognitive impairment, with there being insufficient data to determine whether the remaining 15 had an intellectual disability or cognitive impairment.

The next survey report will be compiled on the basis of data current as at 20 August 2015.

Queensland Health, in collaboration with DCCSDS, will continue to facilitate person-centred assessment and planning for people in long-stay public health facilities. This process was trialled in 2014-15 with approximately 50 people with disability and their families in two public health facilities in Brisbane.

Public Advocate's comments on progress to date

"I am incredibly pleased by the progress being made in supporting people with intellectual disability or cognitive impairment to transition to more appropriate community arrangements.

Colleagues in the sector have advised me of their successes in supporting people through this initiative, and have commented on the difference that this work is making to the lives of those who are benefitting from the Queensland Government's response to my report.

I commend the Queensland Government on their commitment to continuing deinstitutionalisation, and to having developed what has clearly become a well-coordinated response to addressing the needs of people with intellectual disability or cognitive impairment residing long term in public health facilities."

Pursuing outcomes – the years ahead

The Public Advocate is advised that from 2015-16, interagency groups will be established in areas of the state where there are high numbers of people with disability in public health facilities. These groups will support local collaboration and assist people in these facilities to prepare for transition to the NDIS. Partner agencies have developed a protocol to support inter-agency collaboration and person-centred planning processes.

DCCSDS has advised that the Queensland Government has allocated funds to begin addressing the shortage of accessible and appropriate housing for people with high physical support needs. \$6.6 million has been allocated to develop accessible housing for people with high physical support needs who are currently inappropriately accommodated in residential aged care centres or public health facilities. In 2015-16, DCCSDS will also contribute \$700,000 toward the construction of accommodation at Wynnum for people with disability who have complex care needs. People residing in Casuarina Lodge and other extended public health care facilities will be prioritised for this accommodation.

The Public Advocate is committed to working alongside Government to continue to progress the Joint Action Plan. The Public Advocate has also expressed a willingness to support Government in identifying and addressing issues that emerge in implementing the plan.

Response to people with intellectual impairment who exhibit behaviours that put themselves or others at risk

As Queensland prepares for the implementation of the NDIS, the Public Advocate is concerned about a particular group of people who run the risk of falling between the gaps of the NDIS and state-based systems. This group will form a key focus for the Office's systemic advocacy work in 2016.

There are a number of people with intellectual disability or cognitive impairment who exhibit behaviours that put themselves or others at risk. These individuals are also at risk of coming into contact with the criminal justice system – notably in circumstances such as forensic disability and the use of restrictive practices.

The *Principles to Determine the Responsibilities of the NDIS and Other Service Systems* (the NDIS Interface principles), agreed to by the Council of Australian Governments, clearly articulate that forensic disability services will remain the responsibility of the respective states. Yet the Public Advocate remains concerned that the current review of the *Mental Health Act 2000* has engaged very little with this issue. This is despite the response to date being recognised as inadequate since the review of the *Mental Health Act 2000* conducted by Brendan Butler AM SC and the report by the Honourable WJ Carter QC *Challenging Behaviour and Disability: A Targeted Response*, both released in 2006.

The *Forensic Disability Act 2011* has been in force for four years with July 2016 marking the fifth anniversary of its enactment. The five-year mark brings with it a requirement for the Director Forensic Disability to review whether those clients who entered at the commencement of the Forensic Disability Service are continuing to benefit from the care and support provided by the service.

The Act also provided for a review of the Act to commence three years post implementation. This has not yet occurred although the Public Advocate has recently been advised that planning for the review of the Act is now underway.

Given the imperatives discussed above, the Public Advocate believes it is timely to more intensely consider the response to this cohort of people in Queensland, including the current clients of the Forensic Disability Service.

Forensic disability

The lack of an appropriate response to people with intellectual disability or cognitive impairment who come into contact with the criminal justice system has long been recognised in Queensland.



'Over that hill' Stephen Corti-Griffiths

In the previous review of the *Mental Health Act 2000* conducted by Brendan Butler AM SC in 2006,⁵ it was recognised that despite the purpose, principles and schema of the Act only applying to people with mental illness, people with intellectual disability were also being captured by the provisions of the Act. This was primarily because of those provisions of the Act dealing with criminal charges and forensic orders.

In addition to highlighting the inappropriateness of detaining people with intellectual disability and no mental illness in authorised mental health services, Butler AM SC noted the lack of appropriate facilities for

people with an intellectual disability when provisions for secure care were made under the Act, unlike those that exist for people with a mental illness.⁶

The final report, *Forensic Mental Health System: Final Report Review of the Queensland Mental Health Act 2000* (the Butler Report), recommended that a review of the Act properly address the need for secure care for people with intellectual disability.⁷

⁵ Brendan Butler AM SC, *Promoting Balance in the Forensic Mental Health System: Final Report Review of the Queensland Mental Health Act 2000* (2006)

⁶ Ibid 101.

⁷ Ibid 102.

In 2006, the late Honourable William Carter QC commenced a review in relation to the “existing provisions for the care, support and accommodation of people with intellectual/ cognitive disability who represent a significant risk of harm to themselves or the community”.⁸

His final report, *Challenging Behaviour and Disability: A Targeted Response* (the Carter Report), identified the inappropriateness of placing people with intellectual disability in Authorised Mental Health Services, as well as the fragmented response to people with intellectual disability who exhibit challenging behaviours generally, regardless of whether they are subject to a forensic order.⁹

The Carter Report¹⁰ recommended a legislative framework for restrictive practices inclusive of provisions for detention (where a person was not subject to a forensic order or another order of a court). However, this was only one of many recommendations aimed at:

*“a fundamental process of reform, renewal and regeneration of DSQ and the disability sector’s response [to] provide an efficient, cost effective and financially sustainable outcome for the proper care and support of persons with intellectual disability and challenging behaviour across Queensland”.*¹¹

The establishment of the Forensic Disability Service and the commencement of the *Forensic Disability Act 2011* went some way towards addressing the concerns raised in the Butler and Carter Reports. This response provided a more appropriate model of care for people with intellectual disability or cognitive impairment who are found to be unsound of mind or unfit for trial by the Mental Health Court. However, the response is not sufficient.

The *Forensic Disability Act 2011* only provides the legislative framework for the ten-bed Forensic Disability Service (that quickly reached its full capacity); it does not provide a holistic systems response to enable coherent, consistent and integrated care and support options for this cohort. Neither is it inclusive of ‘step-down’ or ‘transitional’ services to assist people to make the transition back to community living in less restrictive environments.

The current clients of the Forensic Disability Service

In 2013 and in June 2015, the Public Advocate requested and received certain de-identified data on the status of clients in the Forensic Disability Service.

The focus of the information request was on the habilitation and rehabilitation activities undertaken by clients (including limited community treatment). The information request also sought information about the numbers of clients who have transitioned out of the service and/or the status of transition plans for these clients.

The information obtained in 2013 and 2015 was analysed and indicated that nine out of ten clients entered the service in 2011, with one client entering the service in late 2013.

In 2015, all ten of these same clients continue to be detained in the service.

In 2013, no formal transition planning for the clients had commenced. In 2015, the information received noted that eight of the ten clients are still waiting to commence transition planning. The two other clients are expected to transition to community arrangements in early 2016.

Nine out of ten clients have been participating in habilitation/rehabilitation activities since at least 2013. The information received indicates that one client has been refusing to participate during this time. The habilitation/rehabilitation activities included programs such as art, cooking, literacy and numeracy, as well as emotional/social/sexual education.

The information received in response to the Public Advocate’s request included the types of offences that each client had been charged with and that had resulted in the client being placed into the service.

Although no details were requested about the facts of the offences or each client’s criminal history, a concerning observation in respect of comparative sentencing arrangements when compared to the general population.

Arguably, the length of time that eight of the ten clients of the Forensic Disability Service have already spent detained in this facility would appear to be significantly longer than that which they might have spent in custodial imprisonment had they been found guilty of the crime, rather than made subject to a forensic order by the Mental Health Court. This group included those who had been charged with minor to moderate assaults and property damage offences, which on its face may have been unlikely to result in custodial sentences at all had these clients pleaded guilty in the standard criminal justice system.

⁸ William Carter QC, *Challenging Behaviour and Disability: A Targeted Response*, (Report to Warren Pitt MP, Minister for Communities, 2006, 4).

⁹ Ibid 87.

¹⁰ Ibid 87.

¹¹ Ibid 9.

The Office of the Public Advocate was represented at a Forum: “dis-Abled Justice: Reforms to justice for persons with disability in Queensland” hosted by Queensland Advocacy Incorporated on 28 May 2015. At this forum Queensland Advocacy Incorporated launched their new report *dis-Abled Justice: Reforms to justice for persons with disability in Queensland*. Many speakers raised concerns about the policy, service and legislative responses for people with intellectual disability or cognitive impairment who come in contact with the criminal justice system. A number of speakers drew attention to particular concerns held in respect of forensic disability.

Ms Benita Bierzynsk, an individual advocate from Speaking up for You (SUFY), spoke about her experience providing advocacy for a client of the Forensic Disability Service. This client will soon have been in the service for five years, and while identified as ‘no longer able to benefit from the forensic disability service’, there is currently no funding available to transition him to an appropriate residential placement with the support that he requires.

Mr Simon Wardale from the Endeavour Foundation presented on the support that is currently offered to offenders with an intellectual disability. In particular Mr Wardale raised concerns about the demarcation that the NDIS proposes, as reflected in the NDIS Interface Principles, between behaviours related to a person’s disability and those related to offending, with the former being the province of the NDIS and the latter set to remain the responsibility of the States.

The Public Advocate shares these concerns and is additionally concerned that the fragmented nature of responses to people with intellectual disability or cognitive impairment who exhibit behaviours that put themselves or others at risk, including those who are at risk of coming into contact with the criminal justice system, presents a challenge in respect of Queensland’s transition to the NDIS.



‘Sun Flowers’ Mandy Johnstone

In particular, there is a clear need to develop a coordinated systemic response that links ‘at risk’ individuals to appropriate and timely intervention under the NDIS. The focus should shift to one of early (or at minimum timely and responsive) intervention that puts in place supports that respond to individual needs such that behaviours of concern are reduced or eliminated as a result of the individual being supported to access the environmental or other changes that they need in their lives.

Should an individual have already been ‘caught’ within the forensic or criminal justice systems then as the time approaches for them to exit these systems, they should be assisted to access those supports that they need to establish sustainable arrangements within the community.

The fragmented nature of the system and the long overdue need for review and reform

The current scheme for involuntary treatment of people with intellectual disability or cognitive impairment is fragmented across the:

- *Mental Health Act 2000* (forensic orders for people found unfit to plead or unsound of mind);
- *Disability Services Act 2006* and the *Guardianship and Administration Act 2000* (in approving the use of restrictive practices);
- *Forensic Disability Act 2011* (detention in the Forensic Disability Service, including provisions for behaviour control medication); and
- Health care provisions of the *Guardianship and Administration Act 2000*.

This fragmentation creates confusion, leaves gaps, and often results in less than optimal responses for people with intellectual disability or cognitive impairment who come into contact with the criminal justice system, or who exhibit behaviours that put themselves or others at risk.

Despite the Carter and Butler Reports being released over seven years ago, there continues to be people with intellectual disability and ‘no mental illness requiring involuntary treatment’ residing in mental health facilities. Some of these people are subject to a forensic order, and some are not.

Further, some people with intellectual disability are subject to approval for containment and seclusion by QCAT, whereby they are held in detention-like conditions in the ‘community’ or at the Wacol precinct. Some of these people are also subject to forensic orders, and are receiving limited community treatment whilst subject to containment.

There are also people who, while the nature of their criminal offences does not bring them before the Mental Health Court, display patterns of escalating behaviours that clearly indicate a need for support. People who commit summary offences, particularly multiple summary offences, may never come before the Mental Health Court but may still be in need of support to mitigate against recurrent contact with the criminal justice system or escalating harmful behaviours.

In view of the NDIS commencing in Queensland in July 2016, with the likelihood that many state governments will withdraw from the provision of disability services and the expressed intention by the Commonwealth Government that the NDIS will not bear responsibility for forensic services for people with disability, there is an urgent need for a review.

The Public Advocate has called for the commencement of a full review of the legislative framework for this group; inclusive of the clinical, accommodation and support services available throughout Queensland. The review of the *Forensic Disability Act 2011* (now due) could provide the opportunity for this.

Review of the *Forensic Disability Act 2011* – Expressed intention of DCCSDS

The Public Advocate sought information from DCCSDS on the timing, scope and nature of the review of the *Forensic Disability Act 2011*.

DCCSDS reported to the Public Advocate that the initial stage of the review of the *Forensic Disability Act 2011* will be completed by the end of 2015. The Department informed the Public Advocate that the review would initially involve looking at options for future service delivery arrangements and models of care for people with intellectual disability or cognitive disability on a forensic order. Depending on the outcome on the preferred service delivery option and model of care, legislative amendments to the Act would then be progressed to give effect to the preferred option.

Restrictive Practices – Reporting in Queensland

The regulation outlining the requirements for service providers to report on the approval and use of restrictive practices in Queensland commenced on 1 July 2015. Section 200 of the *Disability Services Act 2006* provides that the chief executive may give information provided by service providers to the Public Advocate.

The Public Advocate has requested quarterly reports on this data from DCCSDS, and plans to begin collating, analysing and reporting on this data from 1 July 2015. The information generated from these activities will be included in future Annual Reports.

Restrictive Practices under the NDIS

The final Quality and Safeguards Framework, as agreed to by the Council of Australian Governments, will determine the legislative and policy response to restrictive practices under the NDIS. The Public Advocate will engage in the public consultation planned for the Quality and Safeguards Framework.

In particular, the Public Advocate has advocated at state and federal levels for no diminution of safeguards for Queensland. The Public Advocate hopes that the Queensland Government will not accept anything less when considering the decision Regulatory Impact Statement at the end of the year.

The Public Advocate further espouses the position that it is not sufficient to provide a regulatory framework to make lawful the use of such practices without also committing to individualised positive behaviour support approaches and the habilitation of people who exhibiting behaviours that put themselves and others at risk. The Public Advocate remains concerned about who will mandate and lead the programmatic response for these matters under the NDIS.

The Public Advocate sought assurances on these issues from DCCSDS. In response to the Public Advocate request for information in respect of these issues, the Department advised that:

“In relation to adults with a cognitive or intellectual disability subject to the use of restrictive practices, Queensland has a strong legislatively-based quality and safeguards framework regulating the use of restrictive practices and it is important that the level of protections that vulnerable Queenslanders receive under the current system is maintained under the NDIS, with a balance between safeguards and the opportunity for people to have increased choice and control.

In addition, safeguards must be considered at the individual, system and community level. The department is committed to ensuring there is no diminution of the existing safeguards in Queensland.”

The Public Advocate will continue to engage with the Commonwealth and with the State Government on this important issue.

Inclusion of level three residential services clients in planning for the NDIS

Level three residential services describe a range of community accommodation options such as boarding houses that provide accommodation, food and personal care services, and which are regulated under the *Residential Tenancies and Rooming Accommodation Act 2008*. Personal care services include access to external support services, the management of medication and health care, assistance with daily living, accessing social and leisure activities and participating in decision-making.

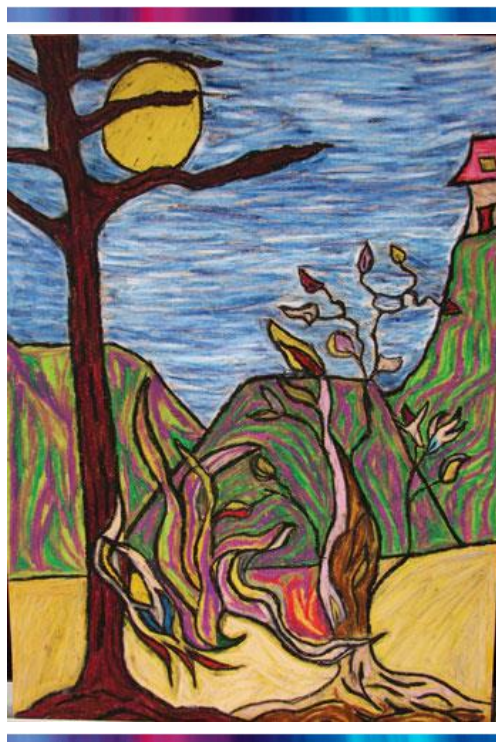
Anecdotally it is known that many people with disability reside in level three residential services, yet there is a general lack of data and information about the profile of these residents. The Public Advocate is concerned to ensure that those residents in level three residential care services who have a disability, particularly those with impaired capacity, are taken into account during the planning for and implementation of the NDIS in Queensland.

To generate an understanding of this sector, the Office of the Public Advocate has undertaken an initial scan of literature and sought the views of targeted stakeholders. This process highlighted a range of work occurring or proposed in relation to residential services in Queensland.

The Residential Services Unit in the Department of Housing and Public Works advised its intention to undertake an analysis of the residential services sector. This work, proposed to be undertaken in collaboration with the Australian Housing and Urban Research Institute, examine the regulatory, demographic and economic environment of the residential services sector including all levels of accredited services with a view to informing future discussions on regulation for the sector.

Further the Public Advocate was advised by DCCSDS that, as part of the 'readiness' activities proposed to support Queensland's transition to the NDIS, Local Area Coordinators will facilitate assessments and eligibility determination for supports and services by making contact with all level three residential service facilities.

Micah's 500 Lives 500 Homes campaign included a survey of residents of level three residential services, which collected and analysed demographics, vulnerability and various self-reported health issues. In March and April 2014, 221 people were surveyed using the Vulnerability Index – Service Prioritisation Decision Assistance Tool (VI-SPDAT). The VI-SPDAT is an evidence-informed tool used to assess acuity of need and prioritise appropriate intervention through questions about wellness, risks, socialisation, and their history of housing. The survey results showed that 49% of residents required minimal support to maintain their tenancy while a further 43% required no further support



'Misty moon at night' Dion Halse

beyond that which is provided by the level three supported accommodation providers. The findings in relation to residents' health concluded that 64% of residents had a mental health concern, 35% were affected by substance abuse and 26% had a dual diagnosis. The disability profile of residents indicated that 29% had an intellectual or developmental disability and 24% had an acquired brain injury or head trauma.

Given that this tool is focussed more on the stability of residential tenancy than on disability need, the Public Advocate remains concerned that further information about the residents of level three residential services is required to inform NDIS planning and implementation processes. As such Queensland Government agencies and community organisations must work together to ensure that:

- The profile of people residing in level three residential services and their potential eligibility for the NDIS is well understood;
- Any unmet needs of people with disability residing in level three residential services with respect to health care and support are assessed and attended to; and
- There is greater transparency around the provision of health care and support to people with disability living in level three accredited services in Queensland.

The Public Advocate will continue to monitor readiness activities for people who access level three residential services for the NDIS, particularly those with impaired capacity.

Research partnerships

The Office of the Public Advocate values partnering with other research agencies to further develop the evidence base in relation to issues impacting adults with impaired decision-making capacity.

Queensland University of Technology – Chemical restraint of adults with intellectual disability

In 2014-15, the Office of the Public Advocate provided a grant to the Queensland University of Technology to support a research project focussed on better understanding the reasoning and practice behind the use of chemical restraint for adults with intellectual disability.

This research is partially funded by the Queensland University of Technology, the Office of the Public Advocate and the Office of the Public Guardian, and is being led by the Queensland University of Technology. The research includes a range of key stakeholders, such as family members of Queensland adults with intellectual disability, Office of the Public Guardian staff members, Office of the Public Advocate staff members, psychiatrists and psychiatric registrars in Queensland.

This research investigates the understanding and views of key stakeholders concerning the efficacy of chemical restraint for people with intellectual disability. It also explores the impact of chemical restraint on the health, mental health and well-being of people with intellectual disability. While psychotropic medication is appropriately used to treat mental illness in both the general and intellectual disability population, there is no reliable evidence of its efficacy to control behaviours of concern.

The chemical restraint of people with intellectual disability exhibiting challenging behaviour is under-researched within Australia. This study will contribute to a limited international knowledge base, and may lead to improved clinical services, policy development and better quality of life for people with intellectual disability.

La Trobe University – Decision-making support

In 2014-15, the Office of the Public Advocate was involved in strategic discussions with potential intrastate and interstate partners regarding the development and submission of an Australian Research Council (ARC) Linkage Grant application.

The application sought ARC funding for the conduct of a four-year research project into effective decision-making support for people with cognitive impairment. The aim of the project was to develop and evaluate the effectiveness of an education program that trains people who provide decision-making support so that the quality of their support improves and results in better outcomes for the person who requires decision-making assistance. While the application sought to explore this for people with intellectual disability or acquired brain injury who require decision-making assistance, the findings are expected to have applicability to a broader range of people with cognitive impairment.

The Public Advocate was pleased to secure the partnership of the Office of the Public Guardian, the Public Trustee and the Queensland Mental Health Commission. Other partners to the ARC Linkage application included the Endeavour Foundation, Summer Foundation Ltd, Melbourne City Mission, Inclusion Melbourne, the New South Wales Public Guardian and the New South Wales Department of Family and Community Services.

The Chief Investigators for the proposed project were Professors Christine Bigby and Jacinta Douglas (La Trobe University), Emeritus Professor Terry Carney (University of Sydney), Dr Ilan Wiesel (University of New South Wales) and Dr Shih-Ning Then (Queensland University of Technology). The proposed Partner Investigators were Ms Jodie Griffiths-Cook (Office of the Public Advocate Queensland), Dr John Chesterman (Office of the Public Advocate Victoria) and Ms Imelda Dodds (New South Wales Trustee and Guardian).

As at 30 June 2015, the Office of the Public Advocate was awaiting the ARC announcement regarding the success of Linkage grant applications. On 7 July 2015, the Office of the Public Advocate received advice that the ARC Linkage grant application was successful.

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 involves multiple communication channels and a mixture of products for disseminating information.

The effective translation of evidence helps reinforce our role to promote and protect the rights of people with impaired decision-making capacity.

In 2014-15, the Office produced a number of publications and engaged in a variety of forums to inform, influence and support key stakeholders.

Key content areas in this section:

Publications

- 'Potential Population' factsheet
- Decision-making support in Queensland's guardianship system: An Issues Paper
- 'Strengthening Voice' Scoping Paper
- 'Strengthening Voice' Summary Paper

Presentations

Conferences, forums and events

Communications strategy



'Sculptured stained glass' Dion Halse

Publications

The majority of submissions tabled by the Public Advocate in response to inquiries and other calls for submissions are now available on the Office of the Public Advocate website.

The following publications were also released in 2014-15, all of which are publically available on the Office of the Public Advocate's website:

- **Potential Population Factsheet** – This publication was updated to reflect the most recent estimates of the number of adults with impaired decision-making capacity in Queensland. The estimates draw on population projections published by the Australian Bureau of Statistics and data from the 2009 Survey of Disability, Ageing and Carers. The factsheet presents a range of demographic information relevant to the potential population.
- **Decision-making support in Queensland's guardianship system: An Issues Paper** – As part of the research into decision-making support, the Public Advocate released an Issues Paper to gather the views of interested individuals and organisations on the current guardianship system in Queensland. The paper presented a brief discussion about some of the issues that emerged during the conduct of the research, including, but not limited to advance planning, informal decision-making, capacity determinations and the appointment of guardians and administrators.
- **Strengthening Voice Scoping Paper** – This publication explores the benefits and challenges associated with current complaints management processes for people with impaired capacity. The scoping paper reviews the literature about the efficacy of complaints mechanisms for people with impaired capacity and more broadly people with disability and other vulnerable groups. The scoping paper identifies good practice principles in complaints management for people with impaired capacity and highlights some of the barriers that exist and limit a person's ability to pursue a complaint. The paper also provides strategies by which to strengthen complaints processes to better support people with impaired capacity.
- **Strengthening Voice Summary Paper** – This publication presents a summary of the more comprehensive Scoping Paper described above.

Presentations

Queensland University of Technology – Crimes of Violence lecture

The Public Advocate was a guest lecturer for the QUT Crimes of Violence course on 19 September 2014. The Public Advocate's lecture sought to engage students in discourse about issues such as elder abuse, restrictive practice use, etc. The Public Advocate also used the presentation as an opportunity to extend the students' knowledge about people with impaired decision-making capacity and the role of Queensland's guardianship system.

Presentation to Darling Downs Hospital and Health Services Board

On 28 January 2015, the Public Advocate attended a Darling Downs Hospital and Health Services Board meeting to discuss the report on continuing deinstitutionalisation, with a particular focus on opportunities and options for clients of the Baillie Henderson Hospital. The discussions that ensued considered possible short-term opportunities as well as how best to ensure that clients eligible for assistance through the NDIS access support to move to more appropriate community arrangements.

Community Visitor Program forum

The Office of the Public Advocate participated in the Community Visitor Program forum on 3 September 2014. At this event, the Public Advocate provided an overview of the current priorities for the Office, and engaged the Community Visitors in a discussion on systemic issues that they had identified in their work.

Queensland Advocacy Incorporated's Disability Law Clinic

As part of the educational component of QAI's Disability Law Clinic, the Public Advocate presented and facilitated discussion about issues impacting people with impaired capacity. These discussions took place on 19 August 2014 and 5 May 2015.

Health Advocacy Legal Clinic

On 4 May 2015, the Public Advocate met with students involved in the Health Advocacy Legal Clinic to present an overview of the Office of the Public Advocate, its role within Queensland's guardianship system, and issues affecting people with impaired capacity.

QADA Guardianship Framework Training

Queensland Aged and Disability Advocacy (QADA) runs regular workshops on Queensland's guardianship system for interested members of the community and/or those who work in relevant sectors. The Public Advocate attends these workshops where possible to deliver an overview of the role of the Public Advocate and to outline the priority research and advocacy focus areas for the Office.

In 2014-15, the Public Advocate presented at the following sessions:

- Brisbane – 22 August 2014;
- Caloundra – 24 September 2014;
- Caboolture – 21 May 2015; and
- Geebung – 28 May 2015.



'Somewhere in Victoria' Andrew Pemberton

She Leads Diploma of Management Course

The Public Advocate was a guest panellist alongside other industry leaders and senior professionals for the 'She Leads' Diploma of Management Course on 3 February 2015. The course was specifically designed for young female graduates to accelerate their pathway into leadership roles.

Y Bloom Panel

On 4 September 2014, the Public Advocate delivered a speech on leadership and career pathways as part of a flagship program for YWCA Queensland designed to fill a gap in youth development. The program is based on extensive research, which indicates that targeted programs such as these are critical in shaping positive identity and creating positive 'social capital' for young people.

Conferences, forums & events

Attendance at conferences and other events provides an opportunity for engagement and evidence building. The events attended by staff in 2014-15 are presented below.

Queensland Mental Health Commission Forum with Dr Penny Weller (Queensland Mental Health Commission)

Trader's Hotel, Brisbane
2 July 2014

QPILCH Public Interest Address (Queensland Public Interest Law Clearing House)

Customs House, Brisbane
7 August 2014

Deinstitutionalisation of People with Disabilities Forum (Queensland Advocacy Incorporated)

ADCQ Training Rooms, Brisbane
8 August 2014

International Conference on End of Life: Law, Ethics, Policy and Practice (Queensland University of Technology)

Gardens Point Campus, Brisbane
13-15 August 2014

Youth Justice: Some radical surgery required or just some nip and tuck? (Queensland University of Technology)

Gardens Point Campus, Brisbane
3 September 2014

Data with a difference (Department of Communities, Child Safety and Disability Services)

Auditorium, 111 George Street, Brisbane
5 September 2014

Workplace Ethics Training (Department of Justice and Attorney-General)

State Law Building, Brisbane
16 September 2014

Right to Information lunchbox session (Department of Justice and Attorney-General)

State Law Building, Brisbane
26 September 2014

QMHC Strategic Plan launch (Queensland Mental Health Commission)

Mental Illness Fellowship Queensland, Herston
9 October 2014

QCOSS State Conference (Queensland Council of Social Service)

Brisbane Convention and Exhibition Centre, Brisbane
17 October 2014

Australian Supported Decision-Making Network meeting (ADACAS Advocacy)

Deloitte, Canberra
3 November 2014

Is it just behavioural? People with Intellectual Disability and Effective Mental Health Management (WWILD-SVP Association & Community Living Association)

Trinity Place, Woolloongabba
7 November 2014

Inclusive Community Champions State Awards Ceremony

Government House, Brisbane
13 November 2014

NDIS Qld Business Leaders Breakfast (ICMS Australasia)

Pullman Hotel, Brisbane
26 November 2014

NDIS Participant Readiness Initiative Workshop (Queenslanders with Disability Network)

Merthyr Road Uniting Church, New Farm
1 December 2014

8th La Trobe Annual Roundtable on Intellectual Disability Policy: Supporting people with cognitive disability with decision making (La Trobe University)

La Trobe University, Melbourne
10 December 2014

Mental Health Strategies for the Justice System – Presentation by the Victorian Auditor General’s Office (Queensland Mental Health Commission)

Hotel Jen, Brisbane
2 February 2015

CID National Roundtable of Quality and Safeguarding in the NDIS (Council for Intellectual Disability)

Council for Intellectual Disability, Sydney
27 March 2015

NDS Queensland State Conference 2015 (National Disability Services)

Brisbane Convention & Exhibition Centre, Brisbane
30-31 March 2015

Brisbane Public Consultation Forum regarding the Quality and Safeguarding System under the National Disability and Insurance Scheme (Department of Social Services)

Rydges Hotel, South Bank
1 April 2015

National Social Inclusion and Complex Needs Conference (Public Health Association of Australia)

Hotel Realm, Canberra
15-16 April 2015

Queensland Handbook on Legal Capacity launch (Queensland Advocacy Incorporated and Allens Linklaters)

Allens Linklaters, Brisbane
19 May 2015

Mental Health Bill 2015 Legal Workshop (Queensland Mental Health Commission)

State Law Building, Brisbane
26 May 2015

Dis-abled Justice II (Queensland Advocacy Incorporated)

80 George Street, Brisbane
28 May 2015

2015 Roundtable on Issues for People with Intellectual Disability (WWILD)

ADCQ Training Rooms, Brisbane
29 May 2015

Statutory Interpretation Training (DJAG, Crown Law)

State Law Building, Brisbane
1 June 2015

Seniors Legal and Support Service State Conference

Queensland Law Society, Brisbane
9-10 June 2015

Options for the establishment of Disability Support Organisations (Queenslanders with Disability Network)

National Disability Services
26 June 2015

Communication strategy

The Office’s communication strategy seeks to promote increased understanding of the Public Advocate’s role, and recognise the contribution that the Public Advocate can make to exploring and addressing issues relevant to people with impaired decision-making capacity.

Where possible and appropriate, the Office is simplifying the language used in its publications and generating reports that take readers ‘on a journey’ thereby enabling them to better understand and engage with the issue at hand. In doing so, it is hoped to:

1. encourage government agencies to engage with the Public Advocate in the policy formation process across all areas of public policy that impact on people with impaired capacity; and
2. encourage government agencies and other relevant stakeholders to consider and incorporate the research findings and expertise of the Office in their work.

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

The Office of the Public Advocate’s advocacy and inclusion work is both proactive and responsive and is informed by available information and evidence. The factors that shape the Office’s agenda include:

- priorities set through our business planning;
- ongoing critique of the knowledge and evidence base;
- emerging reforms, including policy and legislative reviews, that are relevant to our potential population; and
- contemporaneous issues raised with the Office.

In 2014-15, 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 participated in a range of key meetings on priority matters. The information presented in this section demonstrates the breadth of issues canvassed over the course of the year.

Key content areas in this section:

Submissions

Consultations

Meetings and membership



'Gridlock 2' Lisa Blake

Submissions

During 2014-15, the Public Advocate made a number of submissions to various policy and law reform agendas and inquiries. Outlines of the Public Advocate's submissions are listed below with most of these submissions available on the Public Advocate website (www.publicadvocate.qld.gov.au).

July 2014 – Submission to the Inquiry on Strategies to Prevent and Reduce Criminal Activity in Queensland

The Public Advocate and the Queensland Anti-Discrimination Commissioner made a joint submission to the Legislative Affairs and Community Safety Committee regarding the need for a Disability Justice Plan in Queensland.

The submission was founded on a rights-based framework and explained that the failure to recognise the rights of people with disability has led to wide-spread discrimination. In the context of the criminal justice system it has led to the increased victimisation of people with disability, particularly women with disability; detention and incarceration of people with disability who have not committed crimes; and the failure to provide adequate support, including specialist clinical support services to people with disability to stop their offending behaviours.

The submission highlighted that people with intellectual and mental health impairment are over-represented in all aspects of the criminal justice system as both victims and defendants. People with intellectual and mental health impairments are vulnerable to experiencing other risk factors that may bring them into contact with the criminal justice system as a defendant. Many experience other disadvantages that increase their likelihood of contact with the criminal justice system such as difficulties with education, abuse, family violence, disrupted family backgrounds, difficulty obtaining or maintaining employment and a lack of permanent accommodation. Many of the social and economic disadvantages relevant to having contact with the system as a defendant may also contribute to the risk of being a victim of crime.

The submission suggested that there are a number of areas within the Queensland criminal justice system that present opportunities to make reasonable accommodation for people with disability; these include prevention, police interactions, court processes and imprisonment. Doing so would enable a more holistic approach to addressing offending behaviours to further prevent crime and improve the experience of victims of crime.

The submission outlined a series of priority actions that could be adopted as part of a Disability Justice Plan in the areas of crime prevention, interactions with police, the court process, and imprisonment and post release.

The Public Advocate and the Queensland Anti-Discrimination Commissioner suggested that people with intellectual and mental health impairments can be better accommodated in the criminal justice system by both: enhancing the response to victims of crime; and delivering effective responses to offenders that reduce the risk of re-offending and help to prevent crime. To give effect to these noble ambitions, Queensland must develop a Disability Justice Plan.

In March 2015, the Public Advocate and the Queensland Anti-Discrimination Commissioner also wrote to the Attorney-General and Minister for Justice and Minister for Training and Skills requesting that the state government adopt a recommendation made by the Legal Affairs and Community Safety Committee in its final report for the Inquiry. The Committee recommended that the government consider implementing a Queensland Disability Justice Plan to provide greater recognition to the challenges faced by people with disability when accessing the justice system.

January 2015 – Submission on the *Mental Health Bill 2014*

The Public Advocate has been an active contributor to the review of the *Mental Health Act 2000* since it commenced in mid-2013. Despite this Bill lapsing upon the election process being called in early 2015, the points that would have been made in this submission were used to inform the Public Advocate's ongoing engagement with the review process. They will similarly underpin the Public Advocate's future submission to the Health and Ambulance Services Committee as part of the consultation process on the new Government's revised Bill.

February 2015 – Submission on the adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities in Australia

The Public Advocate's submission to the Senate Standing Committee on Community Affairs clearly conveyed that it is unacceptable that significant numbers of people with severe physical, mental and intellectual disabilities continue to reside in psychiatric hospitals, other long-stay health care facilities and aged care facilities. It is also inconsistent with contemporary standards in respect of the provision of supports and services to people with disability.

The submission presented key findings from the Office of the Public Advocate's systemic advocacy report, *People with intellectual disability or cognitive impairment residing long-term in health care facilities: Addressing the barriers to deinstitutionalisation*.

The submission also emphasised multiple concerns relating to the particular vulnerability of people with severe physical, mental or intellectual disabilities during the transition to the NDIS. The Public Advocate received anecdotal advice from non-government agencies, who are facilitating NDIS readiness activities with people with disability and their families, which suggested that these agencies have been directed to not to engage people with disability living in certain health care facilities.

The submission explained that many of the people in Queensland health care facilities do not have current or up-to-date assessments. Many of these people would not be on the Register of Need for disability services. This may be due to the mistaken belief/assumption that their needs are being met, or that they would not be suitable candidates for transition out of health facilities or aged care facilities due to their high needs.

The Public Advocate highlighted that ensuring appropriate residential care and support arrangements for young people was an issue requiring immediate attention, particularly due to the implementation of the NDIS. It was further highlighted that the issue extends across multiple human service systems, and requires a cohesive, integrated and outcomes-focussed approach to ensure meaningful and sustainable change.

This would not only further Australia's ability to meet its obligations under the *Convention on the Rights of Persons with Disabilities* but would also accord young people the respect and dignity of living a life in which they are supported to access opportunities akin to those of their peers without disability.



'Somewhere peaceful' Lisa Blake

March 2015 – Feedback on the National Disability Insurance Scheme Framework for Information, Linkages and Capacity Building

The Public Advocate tendered a response to the NDIS consultation on the proposed Information, Linkages and Capacity Building (ILC) Framework articulating support for the principles underpinning this strategy while stating concerns regarding the limitations that may compromise its effective implementation.

In particular, the Public Advocate was concerned that the success of the ILC Framework may be jeopardised by poorly developed local infrastructure and the lack of cohesion across service systems, inclusive of the private and not-for-profit sectors, as well as local, state and federal Government departments and agencies.

The Public Advocate noted that the success of the ILC framework would be reliant upon attitudinal acceptance and the willingness of communities to be responsive to the needs of people with disability. Similarly, it was noted that there is a clear need for increased resources to respond to issues impacting people with disability and support the activities that may need to be pursued, for example the growth of local infrastructure and/or improved accessibility. While it is this issue that the ILC Framework is intended to remedy, the resourcing required to attend to these limitations, particularly in regional, rural and remote locations, may be a barrier to the effective implementation of the strategy.

The Public Advocate raised concerns about the insufficient attention given to reviewing and strengthening the regulatory environment in the States/Territories in support of the transition to the NDIS. It was argued that ensuring an appropriate and more contemporary head of power to mandate responsiveness to issues impacting people with disability is required. Such a mandate will provide for ongoing accountability; promote an ongoing focus on making reasonable accommodation; and ensure that commitments aligning to the National Disability Strategy are upheld post the full implementation of the NDIS.

The ILC Framework suggests that implementation of this strategy will assist to identify and inform areas where governments, in implementing the National Disability Strategy, should focus effort to ensure accessible mainstream supports, programmes and community infrastructure. However, without a guiding legislative mandate at the State/Territory level to ensure that the resourcing of such recommendations is appropriately prioritised, they may not be attended to in a timely manner, which could undermine the success of local initiatives in achieving much needed change outcomes at both individual and systemic levels.

For example, the NDIS might recommend improvements to transport and travel in a local community to enable wheelchair users to safely navigate without the need for additional support (e.g. pavement upgrades, accessible buses/taxis, building ramps, etc.). If such improvements are not attended to, then people with disability may still require access to individual funding (i.e. will need to become a NDIS participant) to assist them with accessing the community.

There is also a clear need to ensure that any legislative, policy, programmatic and other infrastructure appropriately considers the needs of people with impaired decision-making capacity, particularly with respect to any additional supports that may be required to enable the accessibility and responsiveness of local initiatives and ensure benefit for people with impaired decision-making capacity.

April 2015 – Submissions in response to the proposal for a National Disability Insurance Scheme Quality and Safeguarding Framework

The Public Advocate made two submissions to the NDIS in response to the Consultation Paper that outlined a proposal for a NDIS Quality and Safeguarding Framework.

Submission one – Core framework

The Public Advocate submitted that there should be no diminution of safeguards for people with disability under the proposed framework. It was further submitted that any proposed quality and safeguarding framework should be assessed against the threshold of compliance with the objectives and principles of the *Convention on the Rights of Persons with Disabilities*.

The Public Advocate campaigned for a heavy emphasis on both the developmental and corrective domains of the framework. It was argued that placing a heavy emphasis on the developmental domain of the framework would help to build a person's capacity to exercise choice and control and ultimately allow people to become 'savvy consumers' under a NDIS. It was also argued that independent oversight and monitoring (including proactive monitoring through existing schemes like the community visitor program) are integral components of a quality and safeguarding framework.

The Public Advocate expressed support for a framework that adopted a balanced approach to the differing levels of risk faced by people with disability while enabling the highest possible safeguards where needed. The Public Advocate reiterated that while the framework must act as a cohesive infrastructure that offers appropriate protections for people with disability, especially when responding to instances of abuse, neglect and exploitation, it must also reduce the burden of overly bureaucratic processes and enable easy navigation and access to the system.

Submission two – Restrictive practices

This submission, responded specifically to the options for regulating restrictive practices under a Quality and Safeguards framework for an NDIS. The Public Advocate articulated a number of principles that should underpin any regulatory scheme for restrictive practices. The Scheme should:

- First and foremost be lawful;
- Be established within a framework that recognises the importance of premising any proposal for restrictive practice use upon a foundation of professional clinical input and assessment, and the development and implementation of a positive behaviour support plan;
- Require consultation with and input from the person, as well as from their guardians, family, friends and supporters in any proposal to use restrictive practices;
- Involve the application of appropriate criteria in providing approval for its use;
- Ensure that the granting of authority to use restrictive practices is situated independently from service providers proposing to use them;
- Incorporate appropriate safeguards;
- Involve independent oversight and monitoring; and
- Involve reporting, data collection and evaluation.

Based on these principles, the Public Advocate asserted that regulating restrictive practices based on a voluntary Code of Practice is unacceptable. Most importantly, it does not provide for the lawful use of restrictive practices, nor any of the other safeguards outlined above. Under this option, the Public Advocate argued, there is a real danger of seeing Australia's disability services environment return to past institutional practices where the most vulnerable people with disability were subject to abuse, neglect and exploitation behind closed doors.

The Public Advocate rejected the proposal of service provider approval of restrictive practice use as it does not provide for decision-making that is independent of the persons/service providers seeking to impose the restrictive practices on their clients.

The Public Advocate favoured independent authorisation by either a tribunal or a senior practitioner as long as certain criteria were met such as:

- Professional clinical input, assessment and the development of a positive behaviour support plan;
- The involvement of guardians, family and friends of the person as well as independent advocates;
- Appropriate decision-making criteria;

- Appropriate safeguards including regular reviews of the senior practitioner’s decision to authorise restrictive practices and opportunities for the person and other interested parties to seek a review of the decision to approve restrictive practices;
- Independent monitoring and oversight; and
- Reporting, data collection and evaluation.

Overall the Public Advocate argued that there should be no diminution of safeguards for Queenslanders.

May 2015 – Submission on the *Social Services Legislation Amendment Bill 2015*

The Senate Community Affairs Legislation Committee invited submissions in relation to the *Social Services Legislation Amendment Bill 2015*. The 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’, they 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 undergoing psychiatric treatment the same as the people undergoing remand under the criminal system.

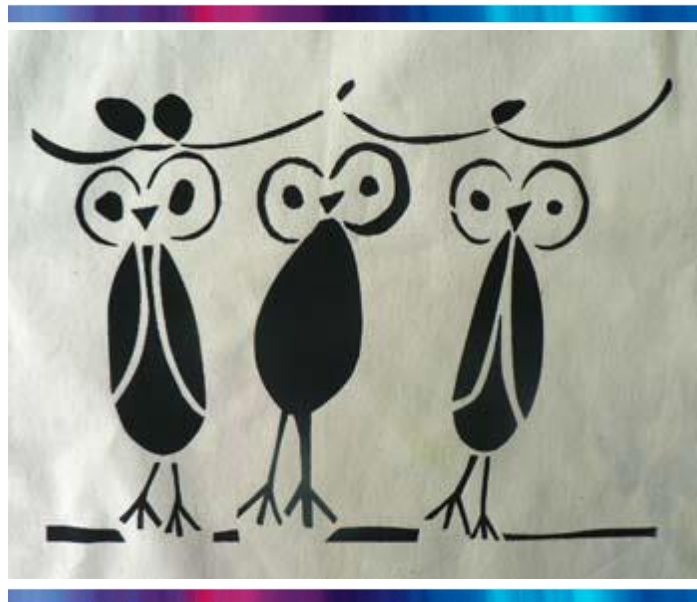
The Public Advocate expressed concern that the Bill sought to implement an arbitrary and discriminatory approach to social security entitlements, targeting certain people with mental illness. This policy position was inconsistent with a rights-based and recovery-oriented approach.

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 proposing 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.

Further, the position espoused by the Bill suggested that psychiatric confinement was a form of punishment. The Public Advocate expressed significant 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 1991* (Cth). 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 uncertainty behind what constitutes a ‘serious offence’ (and how it is determined) and the lack of clarity behind how the days of ineligibility for social security payments would be calculated.



‘Owl screenprint’ Mandy Johnstone

June 2015 – Submission regarding the *Mental Health Bill 2015*

Regulation of mental health treatment is of particular relevance to the Public Advocate’s responsibility to promote and protect the rights of people with impaired decision-making capacity, and to monitor and review services for adults with impaired capacity.

In July 2014, the Public Advocate lodged a submission in response to the *Review of the Mental Health Act 2000 Discussion Paper* released by Queensland Health. This submission formed the basis of the submission made by the Public Advocate in in April 2015, in response to the release an exposure draft of the *Mental Health Bill 2015* for public consultation. This was predicated on a review of the *Mental Health Act 2000* undertaken by Queensland Health.

The Mental Health Act, both currently and in respect of its future directions, is a significant piece of legislation. It affects the rights of people with mental illness and sets the tone and aspirations for the future care and treatment of people with mental illness in Queensland.

There were aspects of the Bill that the Public Advocate considered to be consistent with a rights-based and recovery-oriented approach to the treatment of mental illness. These included: a capacity-based approach to the involuntary treatment of mental illness; the explicit recognition of advanced health directives (with some reservations noted below); and a focus on the reduction and elimination of restraint and seclusion. However, the Public Advocate retained significant concerns about various aspects of the Bill. Of particular concern was the absence of a stronger recovery-orientation in respect of the treatment of mental illness, which would align the Bill with more contemporary legislative approaches.

The Public Advocate was also concerned that the proposed new approach relied on guardians and attorneys to consent to mental health treatment for patients. This would occur without the appropriate safeguards in place. This new approach would represent a radical policy shift in relation to Queensland's guardianship system.

The submission similarly conveyed concern regarding the lack of an appropriate legislative or systemic response to people with intellectual disability who, by virtue of their contact with the criminal justice system, would come under the ambit of the forensic provisions of the Bill.

The Public Advocate also highlighted the need to clarify certain aspects of the new jurisdiction of the Magistrates Court and the supporting systems that would be in place, and opposed the introduction of non-revokable forensic orders that, for the first time, would introduce a 'punitive' approach to the mental health legislative framework.

June 2015 – Submission on violence, abuse and neglect against people with disability in institutional and residential settings

The Public Advocate made a submission to the Senate Standing Committee on Community Affairs based on the key findings from the Office of the Public Advocate's systemic advocacy report, *People with intellectual disability or cognitive impairment residing long-term in health care facilities: Addressing the barriers to deinstitutionalisation*.

The submission articulated the Public Advocate's ongoing concerns in relation to the many people with disability who still live in institutional type settings segregated from the community. Many of these individuals have limited opportunities to increase their autonomy, capability, participation and inclusion. The submission proposed a multi-level strategy to strengthen safeguards to prevent violence, abuse and neglect. The strategy's focus was on strong independent monitoring and oversight, quality service provisions, and the provision of strong support and advocacy for people with impaired capacity.

The Public Advocate suggested that mitigating the risk of abuse, assault, neglect and exploitation of people with disability requires a systemic solution targeted to those providing supports and services to people with disability, and a level of general community responsibility that says 'this is not right; we need to make sure that this doesn't happen'.

The importance of creating a culture of openness and transparency in institutional and residential settings was emphasised. In accordance with this, it was submitted that there is a need to ensure that anyone who reports a concern in respect of the treatment of people with disability in these settings is taken seriously, and that appropriate and responsive mechanisms for doing so exist both within service organisations and also independent of such organisations.

Consultations

To complement the Office's submissions, the Public Advocate provided verbal 'evidence' in response to the following inquiry:

- A Queensland Government's Legal Affairs and Community Safety Committee – Inquiry on Strategies to Prevent and Reduce Criminal Activity in Queensland.

The Public Advocate participated in the following consultative discussions over the course of 2014-15:

- Queensland Mental Health Commission – Mental Health Bill 2015 Legal Workshop;
- Queensland Mental Health Commission – Forum with Dr Penny Weller;
- Department of Social Services – Brisbane Public Consultation Forum regarding the NDIS Quality and Safeguarding System;
- Department of Justice and Attorney-General, Communications Services Branch – NDIS Communication working group;
- Department of Communities, Child Safety and Disability Services – Whole-of-Government approach for quality client information and NDIA transition workshop; and
- Department of Communities, Child Safety and Disability Services – Workshop with the National Disability Insurance Agency.

The Public Advocate has also participated in and hosted a significant number of meetings in seeking to influence legislation reform, policy direction and practice improvement.

Meetings and membership

The Public Advocate participates in a range of significant stakeholder meetings. In doing so, the Office seeks to ensure that the needs and perspectives of people with impaired decision-making capacity are considered and addressed appropriately.

Australian Guardianship and Administration Council (AGAC)

AGAC is the national forum of Public Advocates, Public Guardians, Guardianship Boards and Tribunals, and Public/State Trustees or their equivalents throughout Australia.

Meetings are held biannually over two days. AGAC provides the opportunity for members to discuss matters of mutual concern and/or national significance, and to formulate an Australia-wide approach to issues of guardianship and associated systems.

The Queensland AGAC members are the Public Guardian, the Public Trustee, a Senior Member of the Queensland Civil and Administrative Tribunal, and the Public Advocate.

Elder Abuse Prevention Unit (EAPU) – Reference Group

EAPU Reference Group meetings are held quarterly and are attended by a broad range of stakeholder representatives including the Office of the Public Guardian, the Public Trustee, the Australian Pensioners and Superannuants League, the Department of Communities, Child Safety and Disability Services, the Office of the Public Advocate, tertiary institutions and non-government organisations.

The EAPU chairs these meetings, which offer the opportunity to raise emerging issues and identify action that may be required.

National Disability Services (NDS) – Zero Tolerance Project Reference Group

In 2013-14, National Disability Services initiated a national project focussed on generating a practical framework for disability service providers based on prevention, early intervention and remediation of the abuse and neglect of people with disability.

The Project Reference Group met monthly until the end of 2014 to provide disability sector knowledge and expertise with respect to preventing and responding to abuse and neglect experienced by people with a range of different disability support needs across all Australian jurisdictions.

Restrictive Practices Implementation Working Group

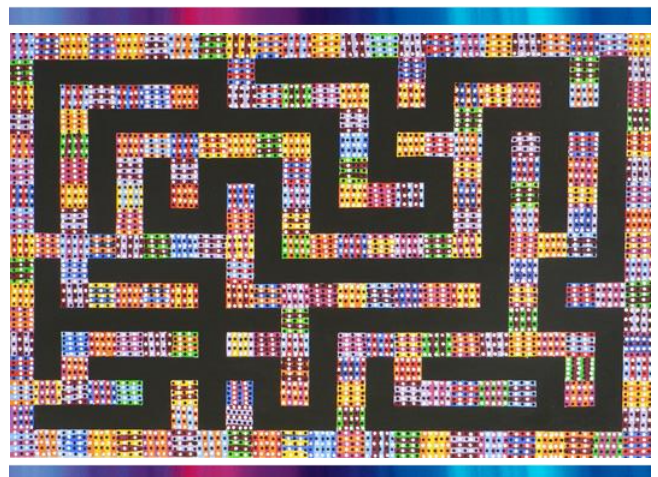
In 2014-15, the Public Advocate maintained a role in providing information and advice to inform the implementation of the legislative changes to the regulatory framework for restrictive practice use in Queensland. In particular, the Public Advocate supported the development of the new reporting system with a view to ensuring that the system captured appropriate data to enable robust monitoring of the effectiveness of the regime in reducing and eliminating restrictive practice use in Queensland.

Quality and Safeguards Interest Group

The Public Advocate convened a number of meetings with interested stakeholders in anticipation of the release of the NDIS Quality and Safeguarding Framework. These meetings enabled stakeholders to consider the risks likely to arise with the implementation of the NDIS, and provided an opportunity to discuss what the key features of a robust system might look like.

Relationships and Sexuality Interest Group

Together with the Queensland Centre for Intellectual and Developmental Disability, and True Relationships and Reproductive Health (previously Family Planning Queensland), the Public Advocate facilitated a number of meetings throughout 2014-15 to explore options for legislative change to better uphold the right of adults with impaired capacity to engage in consensual sexual relationships, should they choose to do so. Meeting participants included people with disability, family members, carers, as well as those representing health services, academia, service organisations, etc.



'Labyrinth' Lisa Blake

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 within the broader strategic and business planning processes implemented by the Department of Justice and Attorney-General. It is important, however, to ensure that our resources are primarily invested in our systems advocacy work.

Key content areas in this section:

Internal protocol for attending QCAT hearings

Internal protocol for reviewing QCAT limitation orders

Information and referral process

Business planning

Attending QCAT hearings

The Public Advocate is entitled under the *Guardianship and Administration Act 2000* to attend tribunal hearings as an interested party. Doing so provides an opportunity to gauge current issues, observe systems and processes in action, and enhance understanding of guardianship and administration matters. Office of the Public Advocate staff have attended numerous hearings in 2014-15, many of these attendances being related to projects being undertaken by the Office.

Internal protocol for reviewing limitation orders made by QCAT

The *Guardianship and Administration Act 2000* requires that the Public Advocate be notified of limitation orders made by QCAT. Limitation orders include adult evidence orders, closure orders, non-publication orders and confidentiality orders. When a limitation order is made, the Public Advocate must be provided with a copy of the decision, the information before the Tribunal in making the limitation order, and any written reasons for the decision.

The Office has an established procedure to document and analyse the limitation orders received from QCAT. This primarily involves an analysis of the relevant procedural requirements and the considerations relevant to the making of an order. This analysis provides an opportunity to enhance the Office's understanding of limitation orders and ensures that the Office maintains current knowledge regarding the use of limitation orders; observes QCAT systems and processes in action; and monitors these orders for any systemic issues that may exist or arise.

The Office of the Public Advocate staff has continued to systematically review limitation orders throughout 2014-15. This task has now been incorporated into the core business of the Office.

Information and referral process

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.

All enquiries received by the Office are noted to assist and inform the identification of systems issues. Of those enquiries that are within the scope of the Public Advocate's functions, a minority represent potential systems advocacy issues for people with impaired decision-making capacity. However, given the limited resourcing of the Office and the number of issues that are raised with the Office, not all of these potential systems advocacy issues can be addressed.

Many issues raised with the Office fall outside the scope of the Office's functions. The range and number of enquiries that fall outside of the scope of our work highlight the complexity of the systems serving people with impaired decision-making capacity, their families and carers. As our Office is not authorised to be involved in individual advocacy matters, it is common to refer enquiries to other agencies for direct assistance.

Business planning

The Public Advocate convened a number of business planning days and other strategic planning discussions with staff in 2014-15. These activities assisted in defining and prioritising our work program for the next 12 months. They have also provided the opportunity to discuss priority issues and how our office might advance them.

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*.

Ms Jodie Griffiths-Cook was originally appointed as Public Advocate for a three-year term commencing 13 August 2012. In August 2015, Ms Jodie Griffiths-Cook was re-appointed as Public Advocate for a further three-year term, commencing 13 August 2015 through until 12 August 2018.

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 of the role. This provision was called upon to enable Ms Griffiths-Cook to take six weeks leave in June/July 2014. Ms Kim Chandler was the acting Public Advocate for this period.

The *Guardianship and Administration Act 2000* also 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*.

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.

In the 2014-15 financial year, the Office has continued its focus on maintaining its establishment as fully as possible.

For the majority of 2014-15, the Office hosted three staff in permanent positions, with the remaining positions temporarily filled at 30 June 2014 to enable those staff permanently appointed to these positions to be seconded to other agencies.

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

Staff development

The development of staff is an important way to ensure that the Office achieves outcomes. Over the year, staff attended a range of learning and development opportunities focussed on skills such as communication modalities; strategic thinking and influence; information technology and software application; legal practice and research strategies; and management and leadership.

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.



'Sun Flowers' Mandy Johnstone

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 (DJAG), with the Director-General of DJAG being 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 DJAG.

A summary of the expenditure for the Office of the Public Advocate for the financial year 2014-15 is provided below:

Table 1 Office of the Public Advocate Financial Summary 2014-15

Expenditure items	
Employee related expenses*	\$716,500
Supplies and Services	\$78,900
Grants	\$2,500
Depreciation**	\$600
Total	\$798,500

* The Office of the Public Advocate held intermittent vacancies throughout the year; the expenditure figure for employee related expenses reflects this.

** 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 Public Advocate or the Office’s staff during the year.

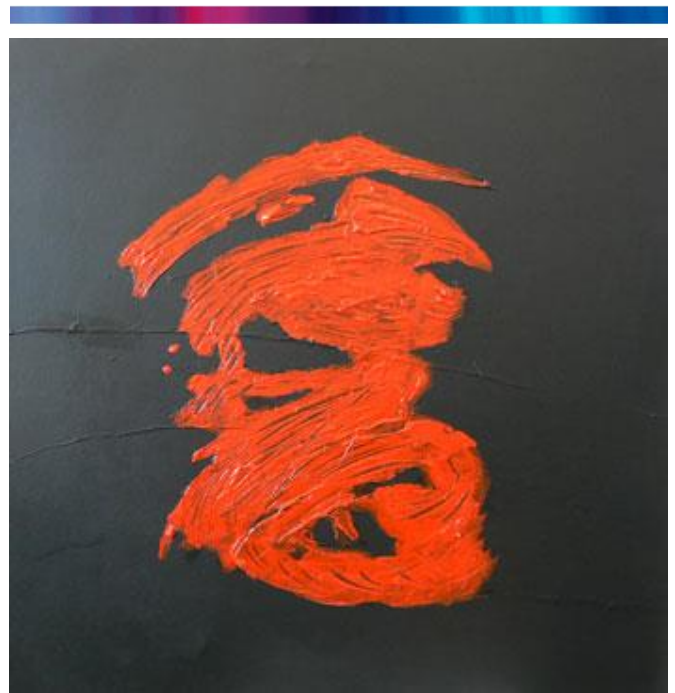
Interstate travel is sometimes undertaken for significant stakeholder forums. In particular, interstate travel is factored into the budget to attend the bi-annual Australian Guardianship and Administration Council meetings. This is the only national forum for state and territory agencies to promote the 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 total expenditure incurred by the Office for interstate travel in 2014-15 was \$4,020.

The Public Advocate attended the following interstate forums in 2014-15:

- Australian Guardianship and Administration Council meeting in Adelaide on 29-31 October 2014;
- Supported Decision-Making network meeting in Canberra on 3 November 2014;
- Australian Guardianship and Administration Council meeting in Canberra on 18-20 March 2015; and
- Council for Intellectual Disability Roundtable on the NDIS Quality and Safeguarding Framework in Sydney on 27 March 2015.

Further to the above, the Principal Research Officer from the Office of the Public Advocate attended a Supported Decision-Making forum hosted by La Trobe University in Melbourne on 9-10 December 2014.



‘Black’ Karla Duvey

Grants expenditure

In 2014-15, a grant of \$2,500 was provided to the School of Public Health and Social Work, Faculty of Health at the Queensland University of Technology to support research into the use of chemical restraint on people with intellectual disability.

Notes:

Office of the Public Advocate

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Queensland Government