

Annual Report

2020-21

Acknowledgement of Country

The Public Advocate and staff acknowledge the Traditional Custodians of the lands across the State of Queensland and pay our respects to the Elders past, present, and emerging. We value the culture, traditions and contributions that Aboriginal and Torres Strait Islander people have made to our communities, and recognise our collective responsibility as government, communities, and individuals to ensure equality, recognition, and advancement of Aboriginal and Torres Strait Islander Queenslanders in every aspect of our society.

Public availability

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

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Feedback on this report

Feedback on this report is welcomed. A feedback survey is available at <https://www.getinvolved.qld.gov.au/gi/consultation/8451/view.html>. Alternatively, a hard copy of the survey may be requested from our office.

Disclaimer

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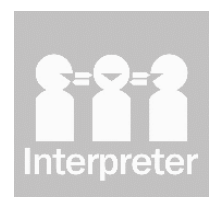
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Interpreter service

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



The Honourable Shannon Fentiman MP
Attorney-General and Minister for Justice
Minister for Women and Minister for the Prevention of
Domestic and Family Violence
1 William Street
BRISBANE QLD 4000

29 October 2021

Dear Attorney-General,

I am pleased to present the Public Advocate's Annual Report for the financial year ended 30 June 2021.

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

The Annual Report provides information on the key activities of the Public Advocate and staff of the office for 2020-21 and a statement of the office's financial and operational functions for the year.

The Public Advocate is not considered to be a statutory body for the purposes of the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Accountability Act 2009*. The Public Advocate is therefore not required to comply with the annual report requirements for Queensland Government agencies. The annual report requirements were, however, used to guide the creation of this annual report.

Yours sincerely,



John Chesterman
Public Advocate



Message from the Public Advocate

I began my term as Public Advocate on 13 August 2021, so this year's Annual Report details work undertaken by the Office of the Public Advocate in the period under the leadership of the previous Public Advocate, Mary Burgess. I do wish to record here, at the outset, my thanks to Ms Burgess for her warm handover to me, and to the staff at the office for their warm welcome.

As with everyone else in Australia this past year, the COVID-19 pandemic, and our efforts to curtail its spread, have been the backdrop to the work of the office. The pandemic has, of course, affected the everyday workings of the office, for instance by restricting face-to-face meetings during times of lockdown and limiting the ability to hold regional forums.

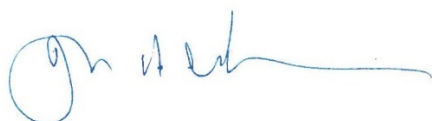
But more importantly, given the legislative responsibilities of this office, the pandemic has posed a significant threat to the wellbeing of adults with impaired decision-making ability, including people who are residents of aged care facilities and those who reside in disability accommodation settings. The impressive public health response to the pandemic has also, of course, resulted in a greater degree of social isolation for those people in at-risk groups (who already had high degrees of isolation), by further limiting their opportunities for social engagement and interaction.

With increasing numbers of Queenslanders now being vaccinated against COVID-19, including members of at-risk groups, we hope that the coming year will see improvements to the health, freedoms, and social connectedness of all Queenslanders, including adult Queenslanders with impaired decision-making ability.

As can be seen in these pages, the key area of systemic reform undertaken by this office during the past year has concerned the report into the Public Trustee's fees, charges, and practices. That report culminated in 32 recommendations for reform, the large majority of which have been accepted in principle either by the government and/or by the Public Trustee, and reform developments from here will continue to be monitored by my office.

Other significant work undertaken by the office this past year has concerned improved regulation of restrictive practices in residential aged care facilities, the operation of the NDIS in Queensland, and a range of other advocacy interventions in the health, mental health, guardianship, aged care, disability, and justice fields.

I record here my thanks to the small and dedicated team at the office whose members have contributed much to the work detailed in these pages, and I also acknowledge the centrality of the experiences of adult Queenslanders with impaired decision-making ability, whose lives this office is committed to improving.



John Chesterman
Public Advocate



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The Public Advocate

Legislative functions

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

The Public Advocate has the following functions:

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

In exercising these functions,¹ the Public Advocate is required to apply the general principles outlined in Schedule 1 of the *Guardianship and Administration Act*.

The Public Advocate has the power to:

- do all things necessary or convenient to perform the Public Advocate's functions; and
- intervene in a proceeding before a court or tribunal, or in an official inquiry, involving the protection of the rights or interests of adults with impaired decision-making capacity.²

The Public Advocate has 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.³

The Public Advocate may prepare a report about an issue arising from the performance of the Public Advocate's functions and provide a copy of the report to the Attorney-General, who must table the report in the Queensland Parliament.⁴

'Having capacity' means a person can understand the nature and effect of decisions about a matter, can freely and voluntarily make decisions about it, and can communicate their decisions in some way. If a person is unable to do one or more of these things, they may have impaired decision-making capacity.

There are many conditions that may affect a person's decision-making capacity. These include, intellectual disability, acquired brain injury, mental illness, neurological disorders (such as dementia) or alcohol and drug misuse. While not all people with these conditions will experience impaired decision-making capacity, many of them will at some point in their lives. For some, impaired decision-making capacity may be episodic or temporary, requiring intensive supports at specific times in their lives, while others may require lifelong support with decision-making and communicating their choices and decisions.

¹ *Guardianship and Administration Act 2000* (Qld) s209.

² *Guardianship and Administration Act 2000* (Qld) s210, intervention in cases is granted with leave of the court, tribunal, or person in charge of the inquiry and is subject to any terms imposed.

³ *Guardianship and Administration Act 2000* (Qld) s210A.

⁴ *Guardianship and Administration Act 2000* (Qld) s209A.



Office of the Public Advocate

Vision

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

Purpose

To undertake systemic advocacy to promote the rights and interests of people with impaired decision-making ability and their protection from neglect, exploitation, and abuse.

Values

Relationships and influence

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

Knowledge and leadership

We are committed to research and analysis that contributes to informed legal and social policy debate to progress the rights of people with impaired decision-making ability, and their access to responsive supports and services.

Courage and integrity

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

Operating environment

The Public Advocate thanks the Attorney-General, the Department of Justice and Attorney-General (DJAG) and the Queensland Government for their continued support of the role and functions of the Public Advocate. The Public Advocate often raises issues that can be challenging for Queensland Government agencies. However, this work is always undertaken with the objective of protecting the rights and interests of people with impaired decision-making ability. The Public Advocate seeks to approach issues in an open and transparent way with a clear purpose, and respectfully challenge systems while advocating to advance the opportunities and interests of people with impaired decision-making ability.

COVID-19

The COVID-19 pandemic continued to provide challenges for Queenslanders during the 2020-21 financial year. This has included a series of 'snap' lockdowns to control small outbreaks of the disease across the state, as well as active restrictions on the movement of people around the state, interstate and overseas.

The Queensland Government's health response to the pandemic has continued to see success. It includes, in addition to a frontline health response, targeted responses for key cohorts. These include people living with disability, mental health conditions, and older Queenslanders, particularly those living in residential aged care facilities.

The Public Advocate has continued to monitor and contribute to the responses of government agencies and non-government organisations to the pandemic to ensure that the rights of people with impaired decision-making ability are upheld to the greatest extent possible and their specific needs are considered.

This work includes participation in COVID-19 working groups convened by Queensland Health and engaging with stakeholders about regulations, health directions, policies, practices and other responses and actions.



The Public Advocate will undertake this work for the duration of the pandemic so that the rights and interests of people with impaired decision-making ability are considered and upheld in all COVID-19 responses.

Human rights

Queensland government agencies and statutory positions, including the Public Advocate, have continued to embed the principles and provisions of the *Human Rights Act 2019* into workplace operations and culture throughout 2020-21.

Our office has continued to maintain staff training associated with human rights, along with ensuring that all policies and processes are compliant with the Act.

As the work of the Public Advocate is fundamentally associated with the protection of the human rights of adults with impaired decision-making ability, the *Human Rights Act* has triggered additional monitoring and engagement activities, which is continuing.

Royal Commissions

During 2020-21 the Royal Commission into Aged Care Quality and Safety concluded, with a report tabled in the Australian Parliament on 1 March 2021. The report included 148 wide-ranging recommendations for the fundamental reform of the aged care system.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability also continued, holding hearings throughout the year on a range of key issues. The Commission will deliver a final report to the Australian Government by 29 September 2023. In this report, the Commission will recommend how to improve laws, policies, structures, and practices to ensure a more inclusive and just society.

Many of the people whose interests are the subject of these Royal Commissions experience impaired decision-making ability. Consequently, the Public Advocate has closely monitored Royal Commission hearings, findings, and recommendations, including the exploration of systemic issues affecting people with impaired decision-making ability. The specific activities undertaken by the Public Advocate in relation to the Royal Commissions are outlined later in this report.

The National Disability Insurance Scheme (NDIS)

The roll out of the NDIS in Queensland officially concluded in June 2020. However, specific projects are still underway, like the Disability Connect and Outreach Program's Assessment and Referral team (an initiative led by the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP)) which encourages people living with disability across rural, regional, and remote parts of the state to access the Scheme.

The size and scope of the National Scheme, and the significant change in social policy direction that it represents, means that it is being regularly evaluated and reviewed with consultation papers issued by the National Disability Insurance Agency (NDIA) and Senate Inquiries initiated by the Joint Standing Committee on the NDIS.

Information regarding submissions made by the Public Advocate to the NDIA and the Joint Standing Committee are included on page 11 of this report.



Guardianship and administration system reforms

The operation of Queensland's guardianship system changed in November 2020 when the *Guardianship and Administration and Other Legislation Amendment Act 2019* (Qld) came into force.

Changes to the system include;

- improved alignment of the general principles with the *Convention on the Rights of Persons with Disabilities*;
- greater recognition of informal decision-making support;
- the introduction of the *Guidelines for the Assessment of Capacity*;
- strengthening the eligibility requirements for an attorney under an enduring power of attorney;
- clarifying the level of capacity that is needed for a person to execute an enduring power of attorney and/or advanced health directive;
- strengthening the restrictions associated with attorneys and administrators entering conflict transactions;
- greater power for the Queensland Civil and Administrative Tribunal (QCAT) to order an attorney to pay compensation when they fail to comply with their obligations;
- broadening whistle-blower protections for people who disclose confidential information about the potential abuse, neglect, or exploitation of an adult with impaired decision-making capacity; and the
- development of new Enduring Power of Attorney and Advance Health Directive forms.

Our team

Our team is committed to supporting the Public Advocate to improve the lives of people who experience impaired decision-making ability through systemic advocacy.

The Public Advocate is an independent statutory position under the *Guardianship and Administration Act* and appointed by the Governor in Council on the recommendation of the Attorney-General. Mary Burgess was the Public Advocate during the 2020-21 financial year, with John Chesterman appointed to the role in August 2021.

Staff who support the Public Advocate are employed by DJAG and appointed under the *Public Service Act 2008* (Qld). The office relies on DJAG for core business supports, such as information technology and human resource services.

Code of Conduct and public sector values

The following public sector values guide the way we work:

1. Customers first
2. Ideas into action
3. Unleash potential
4. Be courageous
5. Empower people

Our staff abide by the *Code of Conduct for the Queensland Public Service* (The Code) and DJAG's *Workplace Policy*. The Code reflects ethical values contained in the *Public Sector Ethics Act 1994* (Qld) and is based on the following principles and values:

- integrity and impartiality;
- promoting the public good;
- commitment to the system of government; and
- accountability and transparency.

All staff are introduced to the Code and related departmental policy and expectations upon commencement with the office. Staff can readily access the Code and supporting resources through DJAG's intranet. Staff are periodically reminded about the Code and complete workplace ethics training. Any breaches of the Code are managed in line with the Public Service Commission's *Discipline Guideline* (Guideline 01/17).



We ensure the administrative procedures and management practices of our office are ethical, consistent with Public Service values and the Code.

Workforce planning and performance

Five full-time officers support the Public Advocate. The permanent separation rate of the office in 2020-21 was zero percent, as no permanent employees resigned during this period.

Our workforce planning processes aim to align the business needs of the office with the skills and abilities of staff. The Public Advocate is committed to providing staff with professional development opportunities to improve their knowledge and skills so that they can help to protect and advance the interests of people with impaired decision-making ability. Staff attended a range of learning and development opportunities including conferences, events, and training sessions during 2020-21.

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

Our office supports staff to achieve an appropriate work-life balance and effectively manage their wellbeing and mental health. We provide flexible working options to staff, which include accessing accrued time, working part time, and telecommuting. Where appropriate, staff are provided with information about self-care strategies and access to the confidential employee assistance service offered to DJAG employees.

Business planning and performance

Given the diversity of people who experience impaired decision-making ability, the scope of work undertaken by the Public Advocate is necessarily broad. While some people with impaired decision-making ability have limited involvement with service systems, others interact with multiple systems, such as disability, aged care, health, mental health, and justice.

Fulfilling the statutory functions of the Public Advocate therefore requires wide-ranging knowledge and understanding of these service systems and how people with impaired decision-making ability interact with them. Achieving positive systemic change requires a range of approaches to our work and our engagement with stakeholders. This includes building positive and collegiate relationships with key stakeholders, staying abreast of systemic issues, and creating and capitalising on opportunities for change.

The Public Advocate has a business plan that helps guide the work of the office. The business plan is reviewed annually to define and prioritise our work. The *Public Advocate's 2020-21 business plan* outlined the actions and activities that would be undertaken by our office in identifying and responding to systemic issues across multiple sectors.



Key areas of focus in the 2020-21 Business Plan

Disability

- review of implementation issues associated with the NDIS, including the activities and responsiveness of the NDIS Quality and Safeguards Commission;
- improving the health care provided to people with disability, particularly those with cognitive impairment and complex health conditions;
- the Forensic Disability Service;
- the need for adequate and recurrent funding for advocacy support; and
- the Disability Royal Commission.

Older people

- aged care system reforms;
- improving the restrictive practices legislative framework for residential aged care; and
- abuse and institutionalisation of older persons.

Health

- unregulated use of restrictive practices in hospitals;
- assessment of hospital patients who may be eligible for NDIS supports; and
- ongoing provision of disability supports for people while in hospital.

Mental Health

- Chief Psychiatrist policies, guidelines and other oversight and monitoring mechanisms;
- state-wide plan for appropriate housing and accommodation for people experiencing mental health issues;
- appropriate models of care for people with a dual diagnosis of disability and mental illness and people with disability detained in an Authorised Mental Health Service; and
- electronic recording of Mental Health Review Tribunal (MHRT) proceedings.

Law and justice

- implementation of the *Human Rights Act*; and
- rights of people with impaired decision-making capacity to relationships and sexuality.

Guardianship and administration

- delivery of public guardianship and administration services; and
- systemic review of the Public Trustee's fees, charges, and practices.

There are inherent challenges in measuring the performance of the Public Advocate's systemic advocacy. This is partly due to the nature of 'advocacy' and because the Public Advocate is not a decision-maker in any of the systems delivering services to people with impaired decision-making ability.

There can also be a significant time lag between undertaking systemic advocacy activities and seeing an observable impact. Progress can be incremental, requiring a long-term strategy that considers factors including; political receptivity, community and media interest or concern, competition for government resources, and stakeholder relationships. Systemic changes are often driven by a combination of factors, with advocacy being just one.

Some aspects of the Public Advocate's performance can be easily measured, for example, the number of systemic advocacy submissions or reports completed in a year, or when a government report or a report from another authority directly quotes or references the Public Advocate's submission or other publication.

Other performance questions are more difficult to answer, for example, how many lives have benefited from a systemic improvement driven by the advocacy or work of the Public Advocate? Or, to what extent did the systemic advocacy of the Public Advocate influence or contribute to a positive change?

This annual report provides an overview of the activities undertaken by the Public Advocate in 2020-21 that demonstrate progress towards achieving positive changes to protect the rights and interests, and improve the lives, of people with impaired decision-making ability.

Over the past year, the Public Advocate continued to work collaboratively with stakeholders on specific systemic issues to advance the interests of people with impaired decision-making ability. The Public Advocate participated in several working and advisory groups (see page 9) and made 21 submissions on a wide range of issues to various government and parliamentary reviews and inquiries. Many of those submissions are discussed under the specific sector subject areas in this report. Appendix 1 lists all submissions that are publicly available.

Community Enquiries

The Public Advocate is committed to responding to all community enquiries received by the office, providing people with an appropriate referral to an agency or organisation that may be able to assist with their individual circumstances. Community enquiries also provide another avenue for our office to connect with the lived experience of people with impaired decision-making ability and to identify systemic issues that need to be addressed.

The Public Advocate responds to a substantial number of community enquiries each year, received by phone, email or letter. Responding to community enquiries is considered an important role of the office, and we maintain a strong commitment to assisting all contacts, either directly or with a referral to another agency or organisation. The nature of community enquiries also contributes to our understanding of the lived experience of people with impaired decision-making ability and the identification of relevant systemic issues.

During 2020-21, the Office received 255 community enquiries, 187 of which were unique contacts. Our office referred most enquiries (more than 2 in 3) to a variety of agencies and organisations, including members of the guardianship and administration system (QCAT, the Offices of the Public Guardian and the Public Trustee), Legal Aid, Community Legal Centres, the Queensland Ombudsman, the NDIS Quality and Safeguards Commission, and various health related agencies. A total of 42 individual enquiries were referred to agencies providing individual advocacy services. Other enquirers were assisted with things like the distribution of paper copies of enduring power of attorney documents, or the participation by the Public Advocate in research related activities or interviews.

Operations during the COVID-19 pandemic

As the COVID-19 pandemic remained active during 2020-21, our office continued to work in an adjusted environment, with operations, processes and working arrangements changed to ensure work continuity.

As a small non-service delivery agency, our office continued to operate well, largely due to the commitment of staff to the work of the office, the technology available to support working remotely, and the willingness of staff to adapt to a changing environment.

Following the successful transition of staff back into the workplace from July 2020, the office benefited from a series of planning activities undertaken to help ensure a COVID-safe workplace.

The combined experience of working remotely and in a COVID-safe workplace assisted staff in adapting to the snap lockdowns implemented in South-East Queensland during the second half of 2020-21.

To help ensure the ongoing health and wellbeing of staff, our office will stay informed about the prevalence of COVID-19, changing community restrictions, and the official advice from the Queensland Government in relation to the pandemic.



Governance

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

The Public Advocate is a member of the Justice Services Executive, participating in monthly meetings and quarterly Justice Services leadership meetings. The Justice Services Executive is a key leadership, decision-making, and accountability mechanism for the Justice Services Division of DJAG.

The Public Advocate's office fulfilled DJAG's corporate governance and accountability requirements in 2020-21. This included additional workforce planning and risk management because of the COVID-19 pandemic.

Our office was not subject to any departmental or external reviews during 2020-21.

Information systems and recordkeeping

Our office uses DJAG's record management system to manage electronic and physical documents and follows DJAG policies and processes for record keeping. During 2020-21 the office continued to improve record keeping processes to enhance compliance with the *Public Records Act 2002* and Queensland State Archives Records Governance Policy. Our office abides by the general retention and disposal schedule developed by Queensland State Archives.

Staff are introduced to our record keeping systems, their record keeping responsibilities, and related departmental policy and expectations upon commencement with the office.

Engagement and consultation

Our office continually seeks to understand the lived experience of people with impaired decision-making ability and ensures that issues impacting them underpin the systemic advocacy of the Public Advocate.

Stakeholder engagement and consultation is critical to performing the functions of the Public Advocate. It helps our office gain additional knowledge and understanding of the lived experience of people with impaired decision-making ability and is also a means by which we influence and effect positive systemic changes.

Our office continually works to build and maintain collaborative relationships with government, non-government, and community stakeholders, particularly those in the disability, seniors, health, mental health, and justice sectors. These relationships allow us to engage with key issues and generate discussion, cultivate effective collaborations, and develop strategies and solutions that reflect the views and needs of people with impaired decision-making ability and that can change their lives for the better.

Throughout 2020-21, the Public Advocate participated in regular meetings with a range of stakeholders including: the Public Guardian and Deputy Public Guardian, the Public Trustee, the President and representatives of QCAT, the Chief Psychiatrist, the Director of the Forensic Disability Service (FDS), the Human Rights Commissioner, Disability Connect Queensland, and the Community Visitor Program (Office of the Public Guardian). These meetings were in addition to working/advisory group meetings.

The Public Advocate also participated in meetings and other forums on issues impacting people with impaired decision-making ability. This year the COVID-19 pandemic continued to have an impact on speaking engagements and events, with many being cancelled due to snap lockdowns or increased restrictions. Appendix 2 lists engagements and other consultations, workshops, and events in which the Public Advocate and staff of the office participated during 2020-21.



In 2020-21, the Public Advocate was part of the following working and advisory groups. Appendix 3 provides an overview of the purpose of each of the groups.

Lead agency	Working/advisory group
Commonwealth Department of Health	Aged Care Restraint Advisory Group
New South Wales Civil and Administrative Tribunal (Chair)	Australian Guardianship and Administration Council
Public Advocate (Coordinator)	Queensland Guardianship and Administration Council
Queensland Health	COVID-19 Working Groups – disability, aged care and vaccination consumer engagement
Metro North Hospital and Health Service	Halwyn Centre Multi-Agency Working group
Legal Aid Queensland	Mental Health Service Planning Working Group
Elder Abuse Prevention Unit	Elder Abuse Prevention Unit Reference Group
Council on the Ageing	Seniors Interest Group
Public Trustee	Customers First Government Reference Group Trust and Transparency Working Group
Queensland Law Society	Health and Disability Law Committee Elder Law Committee
DJAG	Guardianship Implementation Reference Group Human Rights Implementation Working Group
Queensland Ombudsman	Public Interest Disclosures Agency Network

Disability

COVID-19 pandemic

During 2020-21 the COVID-19 pandemic has continued to restrict the freedom and movement of people with disability in the community, and particularly those who reside in specific disability accommodation services.

The Public Advocate has continued to advocate for an appropriate balance between the protection of the health of people with disability and their other fundamental human rights. This has included work associated with the introduction of emergency COVID-19 legislation in May 2020, which included provisions related to the locking of doors and windows in disability accommodation services that restricted the freedom of movement of people with disability within the community.

The Public Advocate, along with the Queensland Human Rights Commissioner, raised significant objections to the introduction of this legislation, noting that it had the potential to stigmatise people with disability, suggesting that there is a need to lock them in because they are uncooperative or unreliable, and likely to spread COVID-19 in the community unless their movement is restricted.

Despite these objections, the legislation was passed by the Queensland Parliament and was in effect until December 2020, when the provision relating to disability accommodation services was extinguished.

The Public Advocate also advocated for the Queensland Check-In App not to become mandatory for disability accommodation services where people reside (their home). In addition, the Public Advocate has



continued to monitor the restrictions placed on disability accommodation services in relation to visitors, to ensure that advocates are still able to visit and consult with residents if requested, and that visitors are able to attend at certain critical times, such as at the end of a person's life.

At the start of 2021, the focus of pandemic operations moved to vaccination, with people with disability a critical target group associated with the initial vaccination roll out. The roll out program did not, however, meet the vaccination targets set by government, resulting in very low rates of vaccination amongst people with disability, which have continued. The Public Advocate has actively contributed to initiatives led by Queensland Health to build awareness, improve access, and encourage people with disability to participate in the vaccination program.

Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability

During this year, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Commission) continued to conduct public hearings on a broad range of issues including: the COVID-19 pandemic, restrictive practices, education, the criminal justice system, employment, health care, the experiences of First Nations people with disability, the child protection system, and people residing in disability accommodation services.

Many of these hearings were preliminary, with key themes and issues identified to be revisited by the Commission as it continues over the next two years.

Public Advocate submissions

Following the Commission's hearing regarding the experiences of people with disability during the ongoing COVID-19 pandemic, the Public Advocate wrote to the Commission to comment upon broader systemic issues that arose during the hearing.

Specifically, this was about the provision of appropriate oversight and safeguards for people with disability, and whether the NDIS includes sufficient safeguards to ensure the safety and quality of service provision.

The Public Advocate suggested several oversight mechanisms that could be used by the NDIA to improve the safeguarding of vulnerable individuals. This included changes to the NDIS Incident Management System, highlighting the need for auditing and monitoring the system to identify indicators of high risk.

The Public Advocate also emphasised the need for NDIS participants to be supported and monitored to ensure that they have access to health systems and services, especially when complex medical conditions are involved. In addition, the importance of advocacy supports was stressed, with individual advocates able to provide a valuable link into the community and a level of independent oversight of the person's wellbeing.

National Disability Insurance Scheme

Inquiry into the NDIS market in Queensland – Submissions to the Queensland Productivity Commission

In June 2020, the Queensland Productivity Commission (QPC) released an issues paper related to the operation of the NDIS in the Queensland market. Specifically, the QPC was to undertake an inquiry into the NDIS transition and market development in Queensland, which included reviewing and investigating the performance of the NDIS market, as well as what actions need to be taken by the Queensland government.

The Public Advocate provided a submission to the QPC that made several suggestions about areas of potential inquiry. These included; barriers in accessing the NDIS, especially for people with impaired decision-making ability, disability services workforce shortages, and the need to improve the interface between the NDIS and other state-based services such as health, housing, and forensic services. The Public Advocate also commented on the effectiveness of inter-agency working groups as a strategy when faced with a crisis such as the COVID-19 pandemic.



The submission also highlighted the need for reform in the use of restrictive practices for NDIS participants. It was noted that the restrictive practices framework in Queensland, although providing a robust set of safeguards, can be overly complex. It was suggested that a simplification of the framework be investigated to allow service providers to efficiently receive approval to conduct these practices while maintaining the proper safeguards.

In November 2020 the QPC released a draft report into this inquiry. It made 39 draft recommendations across five key areas of the NDIS. The Public Advocate provided a further submission in response to the draft report, supporting all the draft recommendations, but again reiterating the need for improved interfacing with mainstream services and reform of the disability services restrictive practices regime in Queensland.

NDIS Support Coordination – Submission to the National Disability Insurance Agency (NDIA)

In August 2020 the NDIA released a discussion paper regarding support coordination in the NDIS. The discussion paper noted the need for support coordination to assist NDIS participants to understand and navigate the market-based system of disability related supports and interactions with other services systems.

The Public Advocate provided a submission to this consultation, suggesting the expansion of the role of support coordinators within the NDIS to coordinate disability-related and other health supports for NDIS participants, especially those with complex health conditions.

NDIS Consultation Paper: Planning Policy for Personalised Budgets and Plan Flexibility; Access and Eligibility Policy with independent assessments

In November 2020 the NDIA released discussion papers regarding a plan to introduce independent assessments for existing and potential NDIS participants. The plan involved the introduction of assessments of functional capacity, including environmental and individual circumstances, undertaken by qualified health care professionals (independent of the person) for the purposes of NDIS decision making. The NDIA was also seeking submissions in relation to how to improve the initial access and eligibility process for NDIS participants.

Regarding access and eligibility, the Public Advocate suggested changes to improve this process, including the development of a training and education program for general practitioners to assist them in the medical assessment process for NDIS eligibility, as well as the creation of a Medicare item number for such assessments.

For independent assessments, it was noted that such assessments must be truly independent and consistent, including adequate levels of oversight and an appeal or review mechanism.

The Public Advocate also registered concerns regarding how flexible budgets may function with the Scheme and suggested each be addressed prior to more detailed consideration of their introduction.

Joint Standing Committee Inquiry into independent assessments under the NDIS

In April 2021 the Public Advocate made a submission to the Joint Standing Committee Inquiry into independent assessments, the same issue initially explored by the NDIA in November 2020.

In the period from November 2020 to April 2021 significant concerns were raised by peak bodies representing people with disability, and other organisations and advocates, regarding the introduction of NDIS independent assessments, including the results from a pilot program conducted amongst participants, which were not positive.

The Public Advocate's submission to this Inquiry reflected these concerns, providing support for the Queensland Government's submission to the Inquiry, which had been prepared incorporating feedback from key disability agencies and advocates. The Public Advocate also noted that there were key aspects of the Tune Review conducted into the NDIS in 2019, which recommended the introduction of independent assessments, that were not included in the proposed program, including adequate review and appeal

processes. She also questioned the efficacy and accuracy of independent assessments, the lack of safeguards within the NDIS, and the need for advocacy support for people with disability.

NDIS Quality and Safeguards Commission

During 2020-21 the Public Advocate continued to work collaboratively with the NDIS Quality and Safeguards Commission, at both the state and national level.

Death of NDIS participant Ms Ann-Marie Smith

As detailed in the Public Advocate's 2019-20 Annual Report, Ms Ann-Marie Smith was a 54-year-old woman living in Adelaide who received NDIS supports. She died in April 2020 because of long-term neglect by her disability support worker and service provider.

In May 2020 the NDIS Quality and Safeguards Commissioner appointed the Hon Alan Robertson SC to conduct an independent review into the circumstances of Ms Smith's death and the Commission's regulation of her disability support provider (the Robertson Report).

The Public Advocate provided a submission to the independent review, and was quoted by the Hon Alan Robertson as getting to the heart of the issue;

While it is important to avoid being overprotective of vulnerable individuals, and recognise that not all people with disability are vulnerable and in need of protection, it is critically important that the NDIS has systems of monitoring and oversight that will identify risks to vulnerable participants, and act on them before the person suffers harm.⁵

Mr Robertson made a series of recommendations to the NDIS Quality and Safeguards Commission, designed to provide improved safeguarding measures for people with disability who are vulnerable to harm and neglect.

Following this review, the NDIS Quality and Safeguards Commission released a statement noting that 'the Robertson Report did not identify significant failings in the way the NDIS Commission performed its functions, however, it recognised the harm that has occurred and the importance of taking action, not just against those responsible, but to ensure that it cannot happen again'.⁶

The *National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Bill 2021* was introduced into the Australian parliament on 3 June 2021. It includes provisions to; expand the compliance and enforcement powers of the NDIS Quality and Safeguards Commissioner, clarify provider registration provisions; and enable information sharing between the NDIA and the Commission and the disclosure of information to relevant state and territory bodies. A second reading of the Bill was moved on 26 August 2021.

While the Bill will significantly increase the compliance and enforcement avenues available to the Commission, the Public Advocate remains concerned that other recommendations of the Robertson Report will not be implemented. These include: the identification of those people with disability who are vulnerable, the development of a nationally consistent safeguarding framework, incorporating community visitors and individual advocacy services, and the coordination of vital health supports, including regular visits (at least annually) to a GP.

The Public Advocate will continue to monitor this issue and collaborate with the NDIS Quality and Safeguards Commission over the coming year.

⁵ The Hon Alan Robertson SC for the NDIS Quality and Safeguards Commission, *Independent Review of the adequacy of the regulation of the supports and services provided to Ms Ann-Marie Smith, an NDIS participant, who died on 6 April 2020*, p 68, 31 August 2020, < <https://www.ndiscommission.gov.au/sites/default/files/documents/2020-09/independent-review-report-commissioner-public-310820.pdf>>

⁶ NDIS Quality and Safeguards Commission, Media release: Robertson Report released: Independent review into NDIS Commission oversight and the death of Ann-Marie Smith, 4 September 2020, < <https://www.ndiscommission.gov.au/media-release/2256>>.

Transitioning people with disability living long-term in public health facilities to the community

A long-standing issue for the Public Advocate has been the need to transition people with impaired decision-making ability, who are medically ready for discharge, into appropriate community-based living arrangements. The Public Advocate has been reporting for several years on the number of people with disability living long-term in public health facilities and those discharged to the community.

During the first half of 2020-21, significant work was undertaken by Queensland Health, supported by the Australian government with increased policy flexibility in critical areas (like the NDIS), to reduce the number of long-stay patients residing in health facilities. These concerted efforts saw the number of long-stay patients reduced from 476 in May 2020 to 442 in November 2020.⁷

Since that time, the number of long stay patients residing in Queensland Health facilities has fluctuated, with the latest figures available (26 May 2021) totalling 549, consisting of:

- 237 long-stay younger patients, mostly awaiting NDIS supports; and
- 312 long-stay older patients, mostly awaiting aged care supports.⁸

While welcoming the efforts by state government agencies and the NDIS over 2020-21, the Public Advocate continues to have concerns regarding the number of patients remaining in health facilities (who are essentially institutionalised), as well as the facilitation of appropriate and sustainable discharge solutions.

Queensland Health has recently advised that rates of re-admission of long-stay patients living in the community are unknown and require the recruitment of a 'dedicated analyst to interpret data and identify improvements in long-stay data collection processes and the investigation of automated solutions to make long-stay data more accessible'.⁹

In line with the recommendations of the *Upholding the Right to Life and Health* report released by the Public Advocate in 2016, the Public Advocate will continue to advocate for a coordinated approach between Queensland Health, Hospital and Health Services (HHSs), general practitioners, Primary Health Networks and the NDIS to ensure that people with disability and complex health conditions can be safely discharged from hospitals and other health care facilities and maintain their health and wellbeing while living in the community.

Comprehensive Health Assessment Program (CHAP)

The completion of a comprehensive health assessment is vital to people with intellectual disability and related complex health conditions. It assists in maintaining a person's health and wellbeing with the conduct of a thorough assessment by a medical professional, designed to document health needs as well as identify and monitor specific health conditions that may be commonly missed or poorly managed. Once a comprehensive health assessment is completed, it should form the basis of a health action plan, agreed by a medical professional in conjunction with those involved in providing support or services to the person, or the person themselves.

DSDSATSIP has maintained a commitment to CHAP as a support for frontline service delivery to people with intellectual disability. This commitment covers the fees associated with the download of CHAP documentation, via a licencing agreement with Uniquet, the proprietor of CHAP.¹⁰

In January 2021 DSDSATSIP committed to the extension of this licencing agreement for a period of 18 months, during which time it is expected that an online version of the documentation will also be available.¹¹

⁷ Letter from Mr David Harmer, Senior Director, Social Policy and Legislation Branch, Queensland Health, to Dr John Chesterman, Public Advocate, 13 August 2021

⁸ Letter from Mr David Harmer, Senior Director, Social Policy and Legislation Branch, Queensland Health, to Dr John Chesterman, Public Advocate, 13 August 2021

⁹ Letter from Mr David Harmer, Senior Director, Social Policy and Legislation Branch, Queensland Health, to Dr John Chesterman, Public Advocate, 13 August 2021, p 2.

¹⁰ Letter from Dr Chris Sara, Director-General, Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, to Dr John Chesterman, Public Advocate, 12 August 2021

¹¹ Letter from Dr Chris Sara, Director-General, Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, to Dr John Chesterman, Public Advocate, 12 August 2021



The Public Advocate welcomes the continuation of funding for this service, which plays a vital role in monitoring the health and wellbeing of people with impaired decision-making ability.

Halwyn Centre

The Halwyn Centre is a residential facility housing people with disability and complex health conditions, operated by Queensland Health and located in Red Hill. In early 2019, the Metro North Hospital and Health Service (MNHHS) announced that the centre would be closing and provided residents with an extremely short time frame to find appropriate community-based accommodation to which to transition.

The Public Advocate supports deinstitutionalisation and the provision of more community inclusive accommodation options for people with disability. The risks associated with an accelerated deinstitutionalisation process for Halwyn residents were, however, perceived to be too great to support the closure of the facility within the timeframe proposed. The Public Advocate consequently advocated for more appropriate arrangements to be put in place.

A targeted campaign led by parents of Halwyn residents secured a commitment from the Queensland Government in mid-2019 to keep the Centre open, with residents able to choose to move to community-based accommodation or remain living at the facility.

Since 2019 ten residents have transitioned from the Halwyn Centre to community living. The Halwyn Centre is now also registered as a provider of Supported Independent Living (SIL) accommodation and therapeutic supports and is subject to reviews and audits under the NDIS Quality and Safeguards Commission's practice standards.¹²

The Public Advocate is continuing to work alongside the residents, families and management of the Halwyn Centre, the Public Guardian and the MNHHS to address issues associated with the ongoing operation of the centre and to support the safe transition to community living of individual residents if they make the decision to move. More information regarding the multi-agency working group established to facilitate this work can be found in Appendix 3 of this report.

Disability advocacy funding

Disability advocacy seeks to ensure that all people with disability can be included in the social, civic, and economic life of their community.¹³ Advocacy support helps people to understand that they have rights, helps to realise these rights, and promotes positive societal change.

Early in 2021 the Queensland government indicated that funding for Queensland's disability advocacy services would cease from 30 June 2021. This included funding for the Queenslanders with Disability Network (QDN), the peak body for disability advocacy organisations, as well as funding for independent and citizen advocacy organisations across Queensland – from Cairns to the Gold Coast.

The Public Advocate joined the QDN-led 'Stand with us' disability advocacy campaign, writing a letter to the Minister for Seniors and Disability Services and Minister for Aboriginal and Torres Strait Islander Partnerships (the Hon Craig Crawford MP) seeking intervention for funding maintenance, issuing a media release, and joining the rally for disability advocacy outside the Queensland parliament on 24 March 2021.

As a result of this campaign, on 5 July 2021, the Minister announced that the Queensland government would commit \$5.9 million to organisations to deliver disability advocacy support services across the State from 1 January 2022 to 30 June 2023.¹⁴

Under the Queensland Disability Advocacy Program (as it will be known) grants are available for organisations to deliver:

¹² Letter from Adjunct Professor Jackie Hanson, Acting Chief Executive, Metro North Health, to Mary Burgess, Public Advocate, 29 July 2021

¹³ Department of Health and Human Services (Vic), *Victorian disability advocacy futures plan 2018-2020*, Victorian Government, Melbourne 2018 <<http://www.statedisabilityplan.vic.gov.au/advocacy-futures>>.

¹⁴ Letter from Dr Chris Sara, Director-General, Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, to Dr John Chesterman, Public Advocate, 12 August 2021

- a centralised Queensland Disability Advocacy Hub, which will be responsible for leading advocacy activities Statewide, including the establishment of a Queensland Advocacy Network to identify and escalate systemic issues;
- specialist services providing individual advocacy support for Aboriginal and Torres Strait Islander people with disability, people with disability from culturally and linguistically diverse backgrounds, and children and young people with disability aged up to 18 years; and
- regional individual advocacy support to people with disability throughout Queensland.¹⁵

The Public Advocate welcomes the new funding program, as well as the extension of funding for existing services until 31 December 2021 to accommodate the transfer of funding programs.

Related to the funding of disability advocacy throughout Queensland is the development of a strategy to guide the future of advocacy services in the State. DSDSATSIP has advised the Public Advocate that the Queensland government will be progressing strategic work on the future of advocacy funding in line with the development of the new State Disability Plan, which is expected to commence following the release of the National Disability Strategy, towards the end of 2021.¹⁶

Forensic Disability Service (FDS)

The FDS is a purpose-built, medium security residential and treatment facility that can accommodate and provide care for up to 10 people who are subject to a Forensic Order (Disability) under the *Mental Health Act 2016* (Qld). The service was established and operates under the *Forensic Disability Act 2011* and is managed by DSDSATSIP. The FDS was established following concerns raised in two separate reviews, which identified the need for a more appropriate model of care for people with intellectual disability or cognitive impairment who are charged with criminal offences and found to be of unsound mind or unfit for trial. The FDS was intended to provide a specialised model of care for this cohort of people, including programs to assist FDS clients with their habilitation and rehabilitation.

Successive Public Advocates have taken an interest in the operation of the FDS, particularly the protection of clients' human rights, their access to appropriate programs, and plans to transition clients out of the service. Every year, the Public Advocate seeks data on the number of clients entering and transitioning from the FDS, the profile of clients, and the programs in place for clients.

As of 30 June 2021, there were six clients detained in the FDS. All six were in the service the previous year (as at 30 June 2020). One client was transferred out of the facility during the 2020-2021 period.¹⁷

Two of the remaining clients have been detained for over five years, while the remaining four clients began their detention in 2018-2019. The more recent clients continue to participate in a variety of programs, with work progressing to transition those clients back into the community. The progress of many of the clients demonstrate the continuing efforts made by the FDS to focus on supporting clients to return to living in the community.

The Public Advocate continues to have concerns about the over-representation of Aboriginal and Torres Strait Islander people in the FDS, with half of the clients in the FDS being of Aboriginal or Torres Strait Islander descent.

National Disability Strategy consultation

In October 2020 the Public Advocate responded to the National Disability Strategy Consultation Stage 2, which requested feedback from organisations and individuals regarding a Strategy Position paper released by Commonwealth, state, and territory disability ministers in July 2020.

In this submission, the Public Advocate argued that the National Disability Strategy should include the following components:

¹⁵ Letter from Dr Chris Sarra, Director-General, Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, to Dr John Chesterman, Public Advocate, 12 August 2021, p 2.

¹⁶ Letter from Dr Chris Sarra, Director-General, Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, to Dr John Chesterman, Public Advocate, 12 August 2021.

¹⁷ Letter from Dr Chris Sarra, Director-General, Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, to Dr John Chesterman, Public Advocate, 10 August 2021.



- a comprehensive advocacy strategy – that empowers people with disability and gives them a voice in all aspects of their lives;
- a safeguarding environment – to protect people with disability who are particularly vulnerable to violence, abuse, neglect, and exploitation;
- coordination and collaboration between key government service systems – to ensure customer-centred, integrated services, including when responding to national emergencies; and
- strong governance – that requires government to act, charts responsibilities, collects data and measures and reports on performance under the strategy.

The Public Advocate also suggested that the new strategy include an additional focus area, accommodation, given the importance of safe, accessible, stable, and affordable accommodation for people with disability to live safe and healthy lives and be productive members of the community.

A need for acknowledgement of the diversity of Australians with disability in the strategy was also included in the submission, in terms of recognising and addressing the numerous additional challenges faced by people with disability who also identify as Aboriginal or Torres Strait Islander, are from a culturally or linguistically diverse background (CaLD), or who are lesbian, gay, bisexual, transgender, queer or questioning, intersex or asexual or allied (LGBTQIA).

It is anticipated that the new National Disability Strategy will be released prior to the end of 2021.

Contribution to whole-of-government initiatives

All Abilities Queensland

The *All-Abilities Queensland: Opportunities for All – State Disability Plan* is a State-wide plan and the mechanism by which the Queensland government prioritises and coordinates actions under the National Disability Strategy.

The COVID-19 related delay to the development of the new National Disability Strategy (now expected towards the end of 2021) has meant that the development of a new state plan has also been delayed.

The Director-General of DSDSATSIP has indicated that the Queensland government remains committed to upholding the rights of people with disability. Preliminary work on the new state plan is underway, in collaboration with the All-Abilities Queensland Working Party. This working party is comprised mainly of people with disability and key disability sector representatives. It is currently preparing a report to government that includes;

- Advice on priorities for the next State Disability Plan in alignment with the key outcome areas and priorities of the National Disability Strategy.
- Proposed actions for agencies to consider adopting through their next disability service plans.¹⁸

Older people

COVID-19 pandemic

The continuing COVID-19 pandemic has also had significant implications for older Queenslanders, particularly those living in residential aged care. Restrictions on movement and visitors, as well as caring staff being required to wear personal protective equipment, are now features of everyday life for those living in residential aged care.

As for younger people with disability, the Public Advocate has continued to advocate for older people with impaired decision-making ability, with the objective of achieving an appropriate balance between the protection of their health and enjoyment of their other fundamental human rights.

¹⁸ Letter from Dr Chris Sarra, Director-General, Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, to Dr John Chesterman, Public Advocate, 12 August 2021



This work has principally been undertaken in the COVID-19 Aged Care Services working group led by Queensland Health. As a member of this group, the Public Advocate has actively contributed to the development of policies and practices associated with matters including: the entry of people into residential aged care facilities, particularly advocates and those visiting relatives at the end of their lives; and clinical decision making during the pandemic, including how decisions are made in relation to the movement and/or treatment of aged care residents who contract COVID-19.

In a positive development, all aged care residents in Queensland have now been offered a COVID-19 vaccine, and work is continuing to meet the Commonwealth mandatory requirement for all aged care staff to be vaccinated by September 2021.

Royal Commission into Aged Care Quality and Safety – Final Report and Recommendations

The final report of the Royal Commission into Aged Care Quality and Safety was tabled in the Australian parliament on 1 March 2021.

The report includes 148 wide-ranging recommendations, aimed at re-building and re-focusing the aged care system in Australia, based on key principles including an entitlement to safe and high-quality care, choice and control in the delivery of that care, and equity of access.

At the centre of the reform process is the development of a new Aged Care Act. It has been recommended by the Commission that this Act defines aged care as 'support and care for people to maintain their independence as they age, including support and care to ameliorate age-related deterioration in their social, mental and physical capacities to function independently'.¹⁹

The Public Advocate welcomes the report and its recommendations, particularly in areas including the use of restrictive practices in residential aged care and changes associated with the provision of health and palliative care in aged care. Our office will continue to monitor the Australian government's progress implementing the recommendations of the report.

Use of restrictive practices in residential aged care

In November 2019 new requirements came into force concerning the use of restrictive practices in residential aged care. The new regulations provided that:

- physical and chemical restraint can only be used as a last resort; and
- when chemical restraints are used, prescribing practitioners are bound by appropriate professional practice codes of conduct which require them to obtain informed consent for the administration of medication.²⁰

In addition, the new regulations were required to be reviewed, and a report delivered to the Australian Parliament. In March 2020 the Public Advocate was invited to participate on the National Aged Care Restraint Advisory Group convened to provide expert advice and guidance on the review, which was conducted by an independent consultant.

During 2020-21 the Public Advocate continued to be an active participant of this Advisory Group, monitoring the completion of the review. The final report from the Group, tabled in the Australian Parliament in early 2021, recommended the introduction of new legislation, which commenced on 1 July 2021. The legislation provides for improved protections and safeguards of the human rights of aged care residents. Its provisions include; restrictive practices being used as a last resort and in the least restrictive form, a requirement for informed consent to be provided by the person or their substitute decision-maker before restrictive practices are used, and, from 1 September 2021, a requirement for the development of a Behaviour Support Plan for people who are subject to restrictive practices.

The Public Advocate is continuing to participate in the National Advisory Group, which is now focussing on the implementation of the legislation across state and territory jurisdictions.

¹⁹ Royal Commission into Aged Care Quality and Safety, Aged Care Royal Commission Final Report: Summary, 1 March 2021, p 79 <<https://agedcare.royalcommission.gov.au/publications/final-report-executive-summary>>

²⁰ *Quality of Care Principles 2014* (Cth).



Serious Incident Response Scheme

The Serious Incident Response Scheme was introduced into the *Aged Care Act 1997* and commenced on 1 April 2021.²¹ The scheme requires that reportable incidents, such as abuse of aged-care recipients including the use of unauthorised restrictive practices, be reported to the Aged Care Quality and Safety Commission and/or the police.

The scheme was introduced after extensive consultation with various stakeholders, including the Public Advocate.

Inquiry into aged care, end-of-life and palliative care and voluntary assisted dying

On 1 July 2020 the Queensland Law Reform Commission (QLRC) commenced its review into the development of an appropriate legislative scheme for voluntary assisted dying in Queensland and the preparation of draft legislation to give effect to its recommendations.

During the initial consultation stage, the Public Advocate provided the QLRC with submissions regarding various aspects of potential legislation for voluntary assisted dying. These submissions commented on the principles to be contained in such legislation, the definition of capacity, how it would affect people with mental illness and disability, and the potential involvement of QCAT regarding certain decisions that are to be made.

In May 2021 the QLRC completed its report, developing a legal framework for voluntary assisted dying, which included a draft *Voluntary Assisted Dying Bill*. This Bill was tabled in the Queensland Parliament on 25 May 2021.

Following referral of the Bill, the Queensland Parliament's Health and Environment Committee sought further submissions via a public consultation process. The Public Advocate provided further submissions to the Committee, supporting the Bill's requirement that a person who lacks capacity cannot access voluntary assisted dying. She also noted the need for any voluntary assisted dying legislation to be accompanied by adequate, accessible palliative care for all Queenslanders.

During this process, the Public Advocate was part of a Queensland Law Society working group, where various issues regarding voluntary assisted dying were discussed.

It is anticipated that the Voluntary Assisted Dying Bill will be debated in Parliament, and subject to a conscience vote, during September 2021.

Contribution to whole-of-government initiatives

National Plan to respond to the abuse of older Australians

During 2020-21 the Public Advocate's systemic advocacy activities contributed to the following actions under the National Plan to respond to the Abuse of Older Australians (Elder Abuse) 2019-2023:²²

- Advocating on behalf of older persons with decision-making ability through consultation with key stakeholders; this involved participation in various committees, reference groups, forums and conferences aimed at addressing elder abuse.
- Advocating for improved policies, service standards and care of older Australians with impaired decision-making ability.
- Advocating for adequate long-term funding and advocacy supports for older people, particularly those who experience impaired decision-making ability.

²¹ *Aged Care Legislation Amendment (Serious Incident Response Scheme and Other Measures) Bill 2021* (Cth)

²² Council of Attorneys-General, *National Plan to respond to the Abuse of Older Australians (Elder Abuse) 2019-2023*, Attorney-General's Department, Australian Government <<https://www.ag.gov.au/RightsAndProtections/protecting-the-rights-of-older-australians/Pages/default.aspx>>.



- Continuing to monitor the legislative, policy and practice aspects of Queensland's guardianship and administration system.
- Contributing to the consideration of national harmonisation of enduring powers arrangements through the Enduring Power of Attorney (EPOA) Working Group.

Queensland: An Age-Friendly Community

The *Queensland: An Age-Friendly Community* strategy aims to create a community where older people are valued, respected, and actively engaged in their community. Age-friendly communities are more livable for everyone. During 2020-21 the Public Advocate continued to contribute to the Respect and Social Inclusion component of the plan. Under this component, the Public Advocate has committed to advocating for the implementation of Australian Law Reform Commission Elder Abuse Inquiry recommendations, and for the national regulation of the use of restrictive practices in residential aged care. Further information regarding changes to restrictive practices that occurred this year can be found on page 17 of this report.

Health

COVID-19 pandemic

The COVID-19 pandemic has continued to require actions and decisions that involve and impact on Queensland's health system and the broader community.

Notable amongst the changes is the extended powers of Queensland's Chief Health Officer (CHO) granted by the Queensland government, which include: placing areas of Queensland into lockdown; directing people to quarantine; restricting gatherings; enforcing border closures; and collecting confidential information for contact tracing.

As noted throughout this report, the Public Advocate has been working over the last 12 months to uphold the rights of people with impaired decision-making ability during the pandemic. This has included participating in working groups, making submissions, and writing to various Ministers and Directors-General in relation to key issues where the balance between protection from disease and other fundamental human rights needs to be considered.

Ethical framework for clinical decision making

In July 2020 Queensland Health sought feedback on the second version of the '*Queensland ethical framework to guide clinical decision-making in the COVID-19 pandemic*'. The framework sought to provide medical practitioners with a broad framework for considering how to ethically allocate resources during times of high demand during the COVID-19 pandemic.

The Public Advocate provided feedback to Queensland Health regarding certain legal aspects of the framework, to better reflect substitute decision-making laws as well as taking into consideration the views and preferences of patients when possible.

The Public Advocate also wrote to the Attorney-General regarding this framework, given its population-wide implications. She suggested that the QLRC consider the framework and any new legislation that is required to support it, along with broader community consultation to consider the views of Queenslanders. This approach was suggested to allow for a more transparent and accountable process in both the development and implementation of any ethical framework for decisions of this magnitude in the future.

Ethics framework for pandemics

In October 2020 the Australian Government's National Health and Medical Research Council released the consultation draft for an ethics framework for pandemics. The purpose of this framework is to guide ethically informed decision-making and policy development on health issues during the COVID-19, and future pandemics.

The Public Advocate also provided feedback in relation to the framework, noting again that broader consultation with the community should be undertaken for such broad-reaching policies. Much like the

Queensland framework, questions were raised regarding the legal status of such frameworks and policies, as well as the need for improved transparency and accountability.

Use of restrictive practices in health care settings

The use of restrictive practices in health care settings was initially raised with Queensland Health in 2020 by the Public Advocate and Public Guardian.

The catalyst for this contact was the release of the new National Safety and Quality Health Service Standards that require hospitals to have policies and procedures dealing with restraint and seclusion, and that require their use be minimised and eliminated where possible.

Currently there is no legal framework in Queensland to authorise the use of restrictive practices in Queensland public hospitals or other Queensland Health-operated facilities. In the absence of a legal framework, the use of restrictive practices in health settings is potentially unlawful.

Queensland's *Guardianship and Administration Act* and the *Disability Services Act 2006* regulate the use of restrictive practices in relation to people with disability. The *Mental Health Act* also includes limited restrictive practice provisions which apply to people detained under that Act. There is no such regulation or legal framework that applies to the broader health system.

The Public Advocate recognises that some people experiencing physical or mental illness or cognitive disability may, on occasion, need to be restrained to protect themselves or others from harm. However, an appropriate legal framework is required for such practices to be legally undertaken (except in limited emergency circumstances).

The Public Advocate is continuing to work with Queensland Health regarding potential legislative and policy responses to meet the National Standards and uphold the rights of people with impaired decision-making ability in these settings across Queensland.

Statement of Choices consultation

In May 2021 the Public Advocate responded to a review of the Statement of Choices²³ document undertaken by Queensland Health.

The Public Advocate expressed concerns regarding aspects of the Statement of Choices documentation, in particular Form B, and how it fits with the provisions of the *Guardianship and Administration Act*. She also noted that, although encouraging advance care planning was beneficial, it may work better if GPs were to talk to their patients regarding such issues, as opposed to such choices being made hurriedly in the context of a hospital admission or discharge.

The Public Advocate notes that the Office of Advance Care Planning has established a working group to review the Statement of Choices document. Although the Public Advocate has not been invited to be a member of this group, it is hoped that there will be an opportunity to provide further feedback as the review progresses.

Health care for people with disability

The 'Disability' section of this report provides detail about the Public Advocate's systemic advocacy in relation to the accessibility and provision of health care for people with disability, particularly for people with intellectual disability and/or cognitive impairment (see page 13).

²³ Statement of Choices has been developed by Queensland Health and is not a legally binding document like an Enduring Power of Attorney or Advance Health Directive. Instead, it has been developed by Queensland Health for people (mainly in or recently discharged from the health care system or residing in aged care facilities) to record their personal values and preferences to be considered when nearing death. It is not a legal document, it is only a guide, and can be completed by a person themselves or a substitute decision-maker if a person has lost decision-making capacity.

Mental health

COVID-19 pandemic

The continuation of the COVID-19 pandemic during 2020-21 saw the extension of changes to the operation of the mental health system and the Mental Health Review Tribunal (MHRT).

The MHRT continued to operate adapted hearing processes to comply with public health directions, including the conduct of remote hearings. Given the serious nature of these hearings, and the impact of decisions on the rehabilitation and recovery of the individuals involved, remote hearings included specific measures to facilitate the involvement of the patient, legal representatives, and treatment teams, as well as adjournment provisions where a patient wished to, but was unable, to attend.

The Chief Psychiatrist has also retained several COVID-19 powers in relation to the absence of inpatients from authorised mental health facilities. The continuation of these amendments means that inpatients under the *Mental Health Act 2016* can be approved by the Chief Psychiatrist to be absent from facilities should the Chief Psychiatrist believe it is necessary for the purposes of the *Public Health Act 2005*, and where the patient's treatment needs can be reasonably met outside of the facility.

National Mental Health and Suicide Prevention Plan

In January 2020 the Public Advocate provided a submission to the Australian Productivity Commission in response to the draft mental health inquiry report that was released in October 2019. This submission advocated for the inclusion of two critical issues impacting on the mental health and wellbeing of adults with impaired decision-making ability;

- the need for the mental health system to be responsive to the needs of people with intellectual and other cognitive disabilities who experience mental health issues; and
- the quality of inpatient services for people with acute illnesses to deliver health outcomes that are expected by the community and deliver value for money.

The Public Advocate also made several suggestions for the Commission to consider, including;

- a review of the National Standards for Mental Health Services to improve alignment with the National Safety and Quality Health Service Standards, which would demonstrate a greater commitment to the involvement of patients with impaired decision-making ability in the care and treatment they receive; and
- recognising and including people with intellectual disability in the plan as a group at high-risk of experiencing mental ill-health.

The National Mental Health and Suicide Prevention Plan was released in 2021, outlining five pillars that underpin actions to which the Australian Government is committed. Pillar four specifically recognises support for vulnerable Australians, including funding to improve the experience and outcomes for people with cognitive disabilities.

Mental Health Act

During 2020-21 the Public Advocate continued to engage with Queensland Health about the operation of the *Mental Health Act* and its effectiveness in ensuring the proper care of people detained or subject to treatment under this legislation. The Public Advocate's focus was to ensure that the rights of people with impaired decision-making ability are properly considered and protected.

The Chief Psychiatrist

Under the *Mental Health Act*, the Chief Psychiatrist's functions are to protect the rights of patients and make policy and practice guidelines for authorised mental health facilities. The Chief Psychiatrist also investigates, when required, matters or incidents involving involuntary mental health patients.



The Public Advocate meets with the Chief Psychiatrist regularly, to discuss concerns relating to the operation of the involuntary mental health system. Topics addressed include: processes for the approval for treatments like electroconvulsive therapy (ECT); the treatment of involuntary patients and upholding their rights; and the conditions experienced in mental health units in Queensland hospitals.

The Public Advocate and the Chief Psychiatrist enjoy a positive dialogue and will continue to work through issues relating to the rights and interests of patients in authorised mental health services in the coming year.

Queensland Mental Health Commission

The Public Advocate is currently working with the Queensland Mental Health Commission to progress several issues, including the use of restrictive practices in authorised mental health facilities.

Mental Health Review Tribunal (MHRT)

Recording of proceedings

The absence of formal recording of MHRT proceedings has been a concern of the Public Advocate for some time, and a focus of ongoing systemic advocacy.

During 2019-20, the MHRT announced that it was initiating an Audio Recording Project and would be conducting a trial of electronic audio recording of proceedings. The MHRT undertook consultation about the project and conducted the trial of recording early in the 2020-21 financial year, including sourcing appropriate software and equipment to conduct the recording, and identifying file storage solutions.²⁴ The MHRT also developed policies and procedures to support implementation of electronic audio recordings, and commenced discussions with DJAG for an arrangement for recording under the *Recording of Evidence Act 1962*.²⁵

The MHRT recently advised the Public Advocate that there remain some outstanding issues to be resolved, including: who will be lawfully permitted to receive a record of proceedings; when typed transcripts of proceedings may be required; the fees for obtaining recordings and transcripts; and whether and how those fees may be waived. Further, the MHRT advised that, once these matters are resolved, it is committed to a timely execution of the arrangement for recording under the Act.²⁶

The Public Advocate welcomes these developments. The recording of proceedings is a fundamental requirement of justice. In a jurisdiction which has the power to detain people indefinitely in a mental health facility or authorise involuntary treatment including the administration of powerful medications and ECT it is critical that all proceedings are recorded to ensure fairness of process and accountability. It is hoped that proceedings in the tribunal will be fully recorded by the time of next year's Annual Report.

Law and justice

Human Rights Act

The Public Advocate strongly supports the objects and purpose of the *Human Rights Act 2019*, which protects and promotes human rights, aims to build a culture in the Queensland public sector that respects and promotes human rights, and encourages a dialogue about the nature, meaning and scope of human rights.

The Public Advocate continues to work closely with the Human Rights Commissioner on several issues affecting the rights of people with impaired decision-making ability. During 2020-21 this work has included providing feedback on the emergency COVID-19 legislation passed by the Queensland Parliament, referred to in this report on page 9.

²⁴ Correspondence from the President of the Mental Health Review Tribunal to the Public Advocate, dated 15 July 2021.

²⁵ Correspondence from the President of the Mental Health Review Tribunal to the Public Advocate, dated 15 July 2021.

²⁶ Correspondence from the President of the Mental Health Review Tribunal to the Public Advocate, dated 15 July 2021.



The Public Advocate also continued to participate in the DJAG Human Rights Implementation Working Group during 2020-21. The purpose of this working group is to:

- oversee the implementation of the *Human Rights Act* within DJAG;
- facilitate the distribution of information and resources about the *Human Rights Act* across the department;
- identify and respond to the implementation support needs of DJAG business units; and
- coordinate a cohesive and consistent approach to implementation activities, including training, and capacity building and embedding the principles of the Act into 'business as usual' operations.

During 2020-21 the Public Advocate has carried on with work to align its policies and procedures with the *Human Rights Act*. Changes have also been made to staff position descriptions and recruitment procedures, in line with policy changes implemented by DJAG. All staff who support the Public Advocate have undertaken the 'Human Rights Act 101' training provided by DJAG's Human Rights Unit. This training is now an on-boarding requirement for all new staff joining our office.

Section 216 of the *Criminal Code*

Section 216 of the *Criminal Code 1899* (Qld) criminalises sexual activity with a person who has an 'impairment of the mind'. This provision effectively prohibits any sexual contact with a person who has a condition that falls within the definition of impairment of the mind, regardless of whether the person has the capacity to consent to and understand the nature of those activities. This law constitutes a restriction on the rights of people with impaired decision-making ability to exercise autonomy and choose to engage in sexual relationships.

During 2020-21, the Public Advocate continued to work on a paper for publication exploring the human rights issues associated with section 216. Due to the demands of other projects and staffing issues, there have been delays in progressing this paper. The work does remain a priority for the Public Advocate and it is anticipated that a finalised paper will be released in 2021-22.

Legal interventions

Although the main function of the Public Advocate is to undertake systemic advocacy, the Public Advocate may also intervene in legal proceedings involving the protection of the rights or interests of adults with impaired decision-making ability.

The Public Advocate did not intervene in any legal proceedings during 2020-21.

Limitation orders

Under the *Guardianship and Administration Act*, QCAT may make what is called a limitation order. A limitation order can take the form of:

- an adult evidence order — which allows the tribunal in certain circumstances to obtain evidence from a person in the absence of anyone else;
- a closure order — which allows the tribunal in certain circumstances to close a hearing to the public or exclude a person from the hearing;
- a non-publication order — which allows the tribunal to prohibit the publication of information about a tribunal proceeding; or
- a confidentiality order — which allows the tribunal to withhold a document or information before the tribunal from a party to the hearing or another person.

When QCAT makes a limitation order, it is required, in accordance with *the Guardianship and Administration Act*, to provide the Public Advocate with a copy of its reasons for making the order. In making a limitation order QCAT must balance the protection of people and information from disclosure with the fundamental principle that a legal process should be open and transparent.

During 2020-21 the Public Advocate continued to review limitation order material received from QCAT and consider how these orders are impacting on the rights of people with impaired decision-making ability.



Guardianship and administration

In 2020-21, the Public Advocate continued to monitor the operation of legislation, policy and practice aspects of Queensland's guardianship and administration system and contributed to systemic improvements through working with DJAG, the Public Guardian, the Public Trustee and QCAT.

Enduring documents

National register for enduring powers of attorney

In April 2021 the Australian Government released a public consultation paper regarding the establishment of a National Register of Enduring Powers of Attorney. Submissions were sought in relation to how such a register may be created, the arrangements around the register, as well as what safeguards would be required.

The Public Advocate provided a submission that endorsed the position that was taken by the Queensland Law Society (QLS) regarding the national register. The submission noted the potential issues that such a register may create, including the potential negative impact of the introduction of mandatory registration. The QLS's alternate position was that a 'notice board' style register would be more appropriate, which had the potential to mitigate many of the issues that could arise, operating in a similar manner to a more conventional register.

Enduring power of attorney and advance health directive forms

In November 2020 changes were made to guardianship laws and new forms were introduced for advance care planning. New enduring powers of attorney and advance health directive forms were introduced, which provided additional options for people when planning for the future. The Public Advocate was involved in providing feedback to DJAG as the forms were developed, including having the forms user-tested before being finalised.

One of the changes included in the forms introduced the concept of a nominated person for enduring powers of attorney. A nominated person can be notified of certain actions that take place when an enduring power of attorney is activated. Under this provision, the Public Trustee can be made a nominated person under an enduring power of attorney. The Public Advocate made submissions to the Public Trustee when their policy was being developed in this area.

Preserving the financial futures of vulnerable Queenslanders; A review of Public Trustee fees, charges, and practices

In 2020-21 the Public Advocate finalised a project examining the Public Trustee's fees and charges levied on its financial administration clients.

The systemic report resulting from this project, *Preserving the financial futures of vulnerable Queenslanders: A review of Public Trustee fees, charges and practices*, was tabled in the Queensland Parliament by Attorney-General and Minister for Justice, Minister for Woman and Minister for the Prevention of Domestic and Family Violence, the Honourable Shannon Fentiman MP on 10 March 2021.

The Public Advocate undertook the review in response to concerns expressed by people with impaired decision-making ability and their supporters, about the negative impact of the Public Trustee's fees and charges on their financial outcomes.

The review reported on a range of concerning Public Trustee policies and practices. These include:

- the level and complexity of the Public Trustee's system of fees and charges, including charging multiple fees to manage the same funds;
- a lack of transparency about the Public Trustee's fees, charges, and investment practices;
- a lack of clarity about what services administration clients receive for their fees;



- whether the fees reflect the cost of providing the services to administration clients or whether they are paying a premium on their fees to subsidise other Public Trustee services and activities, such as free wills;
- the practice of routinely obtaining and charging clients for financial advice that invariably recommends investing client funds in Public Trustee products in accordance with its standard investment approach;
- the Public Trustee retaining a significant proportion of the revenue earned on clients' funds; and,
- the way the Public Trustee uses the Official Solicitor, often against the expressed views of its clients, and charges them legal fees that are not subject to the scrutiny of the Legal Services Commissioner.

The report concluded that some of the Public Trustee's practices and policies constitute a breach of legal and fiduciary duties.

It also raised significant and complex issues that require careful consideration by government to ensure that the rights and interests of people under administration with the Public Trustee are upheld.

At the time of tabling, the Attorney-General announced that the government accepted in principle the majority of the 32 recommendations in the report and would undertake further consultation with stakeholders. As a first step, the Attorney-General announced that the government will establish a Public Trustee board to provide oversight and direction to the Public Trustee and increase its transparency and accountability.

The Attorney-General subsequently referred 23 of the 32 report recommendations to the Public Trustee to implement. While the Public Trustee has welcomed many aspects of the report, the Public Trustee's formal response rejected some key elements, particularly those relating to the report's findings concerning breaches of fiduciary duties.

The Public Advocate wrote to both the Public Trustee and the Attorney-General in May and June 2021 respectively, outlining her concerns that the report's recommendations needed to be fully adopted.

The Public Trustee has commenced a review of its fees and charges. The new Public Advocate will continue to monitor developments on the report's 32 recommendations.

Guardianship and administration system responsiveness to complaints and investigations

During 2020-21 the Public Advocate responded to a call for submissions from the Queensland Audit Office (QAO). The QAO was seeking feedback regarding the responsiveness of members of the guardianship and administration system (the Public Guardian and the Public Trustee) to complaints and investigations.

The Public Advocate's submission to this audit noted that complaint management policies and procedures within the guardianship and administration system need to be appropriate for people with impaired decision-making ability. They need to be easy to understand and access and provide mechanisms for appeal and review if complaints are not resolved at an agency level.

People wanting to make a complaint need to know:

- they can complain if they are not satisfied with the services they receive or decisions that are made;
- how the complaints process works; and
- what avenues they have for review, appeal, redress, or other remedies in relation to their complaint.

The Public Advocate noted that Queensland's guardianship and administration system can be particularly complex and challenging to navigate, not just for people with impaired decision-making ability, but for their families, carers, and supporters. This creates a critical need and legal obligation for guardianship and administration system agencies to have accessible, transparent, and accountable complaints mechanisms.

Suggested changes to the complaint management systems of the Public Guardian and Public Trustee included:

- Improvements to the accessibility of complaint management policies and procedures, including the availability of material and step-by-step guides in Easy-English.



- Clarification of the procedures for community visitors to assist people to make a complaint about the Office of the Public Guardian, and consideration of the complaints procedure to allow community visitors to assist people to make complaints to the Public Trustee.
- A test of the complaint procedures to determine if individual advocacy support is, in fact, available when requested by complainants.
- A change to the wording of procedures so that a guarantee of safety and freedom from reprisal is clearly stated and able to be sufficiently understood by a person with impaired decision-making ability should they make a complaint.

The investigative function of the Office of the Public Guardian provides the agency with the power to investigate allegations of abuse, neglect, exploitation and inadequate or inappropriate decision-making arrangements related to adults with impaired decision-making ability.

The Public Advocate noted in this submission that the Public Guardian's investigations team is currently experiencing high rates of demand, leading to significant waiting times. Considering the types of allegations referred to the team, any delays may pose serious risks for the safety of the people experiencing the alleged treatment. Indications are that demand for the team's intervention is increasing, due to the prevalence of elder abuse within our community. It was consequently suggested by the Public Advocate that the QAO consider the resourcing of the Public Guardian's investigations team as a component of the audit.

Following the audit, the QAO submitted a report for tabling in the Queensland Parliament in two parts, the first for the Public Trustee and the second for the Office of the Public Guardian.

The audit for the Public Trustee found that the agency's complaints management system is not properly designed for people with impaired decision-making ability, with its limitations effectively presenting barriers which could prevent people from making a complaint. The QAO recommended that the Public Trustee make it easier for people with impaired decision-making ability to make a complaint and understand the system, with initiatives including; monitoring complaint response times, making information clearer and available in a variety of formats (alternative language, video, audio, or graphics), improving complaints management training for staff, and seeking and reporting on customer feedback.

The audit for the Public Guardian made similar recommendations to that for the Public Trustee, noting the benefits of improving accessibility, transparency and reporting for people with impaired decision-making ability.

The Public Advocate will monitor the implementation of these recommendations by the respective agencies over the next financial year.



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 provided by the Queensland Government as part of the appropriation for DJAG, with the Director-General of the department being the accountable officer pursuant to the *Financial Accountability Act*. Detailed financial information relating to the operations of the department are reported in the annual report for DJAG.

In 2020-21, our office did not incur any consultancy or overseas travel costs.

A summary of our office expenditure in 2020-21 is presented below.

Expenditure item	Amount
Employee related expenses	\$647,797
Supplies and Services	\$105,916
Depreciation	\$1,547
Total	\$755,260



Appendix 1: List of submissions

The following table presents a list of publicly available submissions made by the Public Advocate in 2020-21.

Date	Submitted to	Subject
July 2020	NDIS Quality and Safeguards Commission	Independent review into the death of Ann-Marie Smith
July 2020	Queensland Audit Office	The responsiveness of Queensland's guardianship system to complaints and investigations
August 2020	Queensland Productivity Commission	Inquiry into the NDIS market in Queensland
August 2020	Joint Standing Committee on the National Disability Insurance Scheme (NDIS) Inquiry	Inquiry into the NDIS Quality and Safeguards Commission
August 2020	Queensland Health	Queensland ethical framework for clinical decision making
September 2020	Queensland Health	Clinical governance frameworks for rapid response to COVID-19 outbreaks in residential aged care facilities
September 2020	The National Disability Insurance Agency	NDIS Support Coordination – External Consultation September 2020
September 2020	NDIS Quality and Safeguards Commission	Reducing the risks to the lives of people with disability in the NDIS
October 2020	National Health Medical and Research Council	Draft Ethical Framework for Pandemics
October 2020	Department of Social Services	National Disability Strategy - Stage 2 Consultation
November 2020	Queensland Law Reform Commission	Response to the Queensland Law Reform Commission's A legal framework for voluntary assisted dying Consultation Paper
February 2021	Official Solicitor to the Public Trustee of Queensland	Nominated Person Policy
February 2021	The National Disability Insurance Agency	NDIS Consultation Papers – Access and Eligibility Policy with independent assessments and Planning Policy for Personalised Budgets and Plan Flexibility
February 2021	Queensland Productivity Commission	Draft Report on the NDIS market in Queensland



Date	Submitted to	Subject
February 2021	Attorney-General	Queensland ethical framework for clinical decision-making
April 2021	Department of the Senate	Joint Standing Committee Inquiry into independent assessments under the NDIS
May 2021	Office of Advance Care Planning	Statement of Choices Form Review
June 2021	Cth Attorney-General's Department	National Register of Enduring Powers of Attorney



Appendix 2: Speaking engagements, events, and media

HSCE Forum – Restrictive Practices (Online forum)

Queensland Health

4 August 2020

Preventing Financial Elder Abuse (Webinar)

Compass

21 August 2020

Enabling hospitals to be more responsive and inclusive to people with intellectual disabilities (Webinar)

Australasian Society for Intellectual Disability

8 September 2020

Human Rights at the Mental Health Review Tribunal: advising and assisting people under involuntary orders (Webinar)

Community Legal Centres Queensland

16 September 2020

Taking the temperature of Forensic Disability across Australia (Webinar)

Australian Federation of Disability Organisations (AFDO)

21 September 2020

National Disability Strategy: Beyond 2020 (Webinar)

The Australian Human Rights Commission and the Centre of Research Excellence in Disability and health

24 September 2020

Human Rights Policy and Legislation Network Forum (Online Forum)

Human Rights Unit, DJAG

8 October 2020

Wills and Estate Planning: Questions and Issues Confronting Parents with Children with Intellectual Disabilities (Webinar)

Australian Society for Intellectual Disability (ASID)

12 October 2020

Commissions of Inquiry: an In-House Counsel Perspective (Webinar)

Level Twenty-Seven Chambers

13 October 2020

Human Rights at the MHRT: advising and assisting people under involuntary orders (Webinar)

LawRight

28 October 2020

Mean As!: People with a learning disability connecting the strands of Inclusive Research and Sexual Citizenship

(Webinar)

ASID

29 October 2020

The Human Rights Act for Legal Advocates (Conference)

Queensland Human Rights Commission

Brisbane

3 November 2020

Building Human Rights into Aged Care – Virtual Symposium (Webinar)

Older Person Advocacy Network

6 November 2020

NAIDOC Week flag raising event

Queensland Courts

QEII Lawn, Brisbane

9 November 2020



Preliminary findings from evaluations of the La Trobe Practice Framework to guide Decision Making Support for people with cognitive disability (Webinar)

La Trobe University, Melbourne
11 November 2020

Queensland Disability Royal Commission (DRC) Stakeholder Meeting (Guest)

Your Story Disability Legal Support Queensland
18 November 2020

Interpreting the Counsel Assisting's Final Submission to The Royal Commission (Webinar)

Health Metrics
25 November 2020

Human Rights Act: the right to health in light of COVID-19 (Webinar)

Community Legal Centres Queensland
26 November 2020

Productivity Commission inquiry into mental health: Queensland Panel (Webinar)

Queensland Mental Health Commission
27 November 2020

JIFS webinar – Restrictive practices and human rights (Webinar)

Caxton Legal Centre, Queensland
3 December 2020

Human Rights are essential – a World Human Rights Day event

Caxton Legal Centre
Queensland Law Society, Brisbane
9 December 2020

Queensland Council of Social Services (QCOSS) in Conversation- Queensland State Budget (Webinar)

QCOSS, Queensland
10 December 2020

Julian's Key Health Passport Launch

Queensland Health
Ipswich
22 February 2021

Deciding Fair NDIS Rights – ARC Discovery Project Launch

The Hopkins Centre and Griffith University
South Bank
10 March 2021

Rally for disability advocacy – Stand with Us! (Rally)

Queenslanders with Disability Network (QDN)
Parliament House, Brisbane
24 March 2021

Good Practice in Supported Decision Making for People with Disability (Online study participant)

University of New South Wales, Sydney
15 April 2021

Public Interest Disclosures: Managing Organisational Risk (Webinar)

Office of the Queensland Ombudsman
20 April 2021

RCIADIC Report 30th Anniversary Panel Discussion (Webinar)

Queensland Law Society
4 May 2021

The 'Value of Trust': Advocacy implications from the report into the Public Trustee's fees, charges, and practices (Webinar)

Community Legal Centres Queensland
6 May 2021



DJAG Justice Services Division (JSD) Divisional Excellence Awards (Presenter)

DJAG Offices, Brisbane

6 May 2021

Changes to Queensland Guardianship laws and forms (Webinar)

Community Legal Centres Queensland

18 May 2021

NDIS Reforms – Pause, Reset, Co-Design (Webinar)

QDN, Brisbane

19 May 2021

Human Rights and the Criminal Justice System (Webinar)

Prisoners Legal Service Queensland

18 June 2021



Appendix 3: Working and advisory groups

Aged Care Restraint Advisory Group (National)

Since March 2020, the Public Advocate has participated in the Commonwealth Department of Health's Aged Care Restraint Advisory Group for the Review of Restraint Principles. The Advisory Group provides expert advice and guidance on the review and is comprised of representatives from consumer and provider peak bodies, aged care providers, experts in dementia, and representatives of the Australian Guardianship and Administration Council.

Following the operation of new Commonwealth restrictive practices legislation from 1 July 2021, the Advisory Group now has an implementation focus, and will be considering the changes required to fully implement the legislation across different jurisdictions across Australia.

Australian Guardianship and Administration Council (National)

The Australian Guardianship and Administration Council (AGAC) is the national forum of Public Advocates, Public Guardians, Guardianship Boards and Tribunals, and Public Trustees or their equivalents across Australia. AGAC's biannual meetings focus on matters of mutual concern or national significance. During 2020-21 the Public Advocate attended (virtually) the AGAC meetings held in Hobart from 10-12 March 2021.

Queensland Guardianship and Administration Council

The Public Advocate coordinates meetings of this Council, which provide an important opportunity for the Queensland AGAC members to come together informally to discuss current and emerging issues relating to the guardianship and administration system. The Queensland Guardianship and Administration Council is comprised of the Senior Member of QCAT's Human Rights Division, the Public Guardian, Public Trustee and Public Advocate.

Queensland Health COVID-19 Disability, Aged Care and Vaccination Consumer Engagement Working Groups

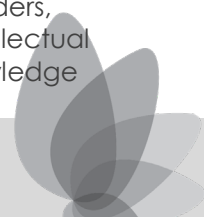
The Public Advocate is a member of three COVID-19 Working Groups convened by Queensland Health. One group focuses on ensuring the government's COVID actions are responsive to people with disability, another is focussed on responses for people in residential aged care, and the third on engaging the community with the rollout of the COVID-19 vaccination program.

Halwyn Centre Multi-Agency Working group

The Public Advocate played an active role on the Halwyn Centre Multi-Agency Working Group in 2020-21. This group is chaired by the MNHHS and is responsible for identifying and progressing opportunities that focus on improving the quality of life of Halwyn Centre residents and respite clients. The Public Advocate's other activities in support of the Halwyn Centre and its residents are reported in the Disability section of this report (see page 14).

Mental Health Service Planning Working Group

The Mental Health Service Planning Working Group is convened by Legal Aid Queensland. The purpose of the group is to promote cooperation and collaboration between legal and non-legal service providers, including social, community and health services working with people with mental health issues, intellectual disability, or cognitive impairment. Participating in this group enhances the Public Advocate's knowledge



and understanding of the needs of this cohort, and the current and emerging systemic issues that affect this vulnerable cohort.

Elder Abuse Prevention Unit Reference Group

The quarterly meetings of the Elder Abuse Prevention Unit Reference Group are attended by a broad range of government and community stakeholder representatives, including the Public Advocate. The Uniting Care Elder Abuse Prevention Unit chairs the meetings, which provide a forum for agencies to highlight emerging and current elder abuse issues, relevant work and initiatives of represented agencies, and joint strategies and actions.

Seniors Interest Group

The Public Advocate attends the quarterly Seniors Interest Group meetings, which are facilitated by the Council on the Ageing (Queensland). The meetings include discussions about emerging and current issues relating to older Queenslanders. In 2020-21 these issues included the Royal Commission into Aged Care Quality and Safety, the COVID-19 pandemic, and the Inquiry into aged care, end of life, palliative care and voluntary assisted dying conducted by the Queensland government.

Public Trustee reference groups

During 2020-21, the Public Advocate participated in the Public Trustee's Customers First Government Reference Group and the Trust and Transparency Working Group. These groups were established by the Public Trustee as part of its organisational reform and continuous improvement activities.

Queensland Law Society Committees

The Public Advocate has been a regular observer at the Health and Disability Law, and Elder Law Committees of the Queensland Law Society. This engagement with members of the legal profession has provided invaluable opportunities to learn more about the intersection of law, medicine, disability, and social policy and to gain a better understanding of emerging issues for vulnerable members of the Queensland community.

DJAG Human Rights Implementation Working Group

The DJAG Human Rights Implementation Working Group assists the department and its portfolio agencies to comply with the *Human Rights Act*. The Working Group consists of representatives from each business unit within DJAG. The group is responsible for contributing to and approving plans for human rights implementation in DJAG which align with government priorities, identifying and managing any implementation risks, promoting a positive approach to human rights implementation, sharing information, learnings, challenges, and successes, and assisting to resolve identified issues.

Public Interest Disclosures Agency Network

The Public Advocate is represented at Public Interest Disclosures Agency Network meetings, which are convened by the Queensland Ombudsman. The network is comprised of Public Interest Disclosure Coordinators and practitioners in human resources, corporate governance, ethical standards, and complaints who may be required to assess and manage public interest disclosures. The network meetings provide an opportunity to discuss current issues, developments in case law, and improve understanding of the application of the *Public Interest Disclosure Act 2010* (Qld).



Appendix 4: Glossary of acronyms

AGAC	Australian Guardianship and Administration Council
CHAP	Comprehensive Health Assessment Program
CHO	Chief Health Officer
DSDSATSIP	Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
DJAG	Department of Justice and Attorney-General
FDS	Forensic Disability Service
HHS	Hospital and Health Service
MHRT	Mental Health Review Tribunal
MNHHS	Metro North Hospital and Health Service
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
QAO	Queensland Audit Office
QCAT	Queensland Civil and Administrative Tribunal
QDN	Queenslanders with Disability Network
QLRC	Queensland Law Reform Commission
QLS	Queensland Law Society
QPC	Queensland Productivity Commission



