

# The responsiveness of Queensland's guardianship system to complaints and investigations

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## Introduction

The position of Public Advocate is established under the *Guardianship and Administration Act 2000* (Qld). The primary role of the Public Advocate is to promote and protect the rights, interests and autonomy of Queensland adults with impaired decision-making capacity.

More specifically, 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 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.<sup>1</sup>

There are a range of conditions that may impact a person's decision-making capacity. These include intellectual disability, acquired brain injury, mental illness, neurological disorders (such as dementia) or problematic alcohol and drug use. While not all people with these conditions will experience impaired decision-making capacity, it is likely that many may, 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 choices and decisions.

People with impaired decision-making capacity are a broad and diverse group. They can be all ages, cultures, and demographics.

Broadly speaking, Queensland's guardianship and administration system facilitates the making of decisions for adults who are found to have impaired decision-making capacity for personal (including health) or financial decisions. The system therefore plays a vital role in the lives of many vulnerable Queenslanders experiencing impaired decision-making capacity.

To work effectively, complaint management policies and procedures within the guardianship and administration system need to be appropriate for people with impaired decision-making capacity. They need to be easy to understand and access, and provide mechanisms for appeal and review in the event that 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, re-dress or other remedies in relation to their complaint.

As a member of the Queensland guardianship and administration system, I welcome the opportunity to contribute to this audit.

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<sup>1</sup> *Guardianship and Administration Act 2000* (Qld) s 209.



## Principles and frameworks

Under the *Convention on the Rights of Persons with Disabilities* Australia has committed to take appropriate measures to ensure the accessibility of services and systems to all people and provide appropriate assistance and support.<sup>2</sup> The Convention requires that States ensure that people receive the support that they need to exercise their legal capacity and make decisions for themselves.<sup>3</sup>

The general principles of the Convention also include freedom of choice, and full and effective participation in society.<sup>4</sup> It is reasonable to assume that this extends to people with disability exercising their rights as consumers and to exercise their choice to complain and/or change service providers when they are dissatisfied with their care and/or treatment. Accordingly, all complaints and consumer protection mechanisms in the guardianship and administration system should uphold the principles of the Convention and, to the greatest extent possible, support people to exercise their autonomy.

The United Nations' *Principles for the protection of persons with mental illness and the improvement of mental health care* articulates that people with mental illness have the right to make complaints<sup>5</sup> and that they should not be discriminated against on the basis of their mental illness.<sup>6</sup> The complaints systems connected to the provision of services and supports to people with mental illness must therefore be accessible and easy to navigate to ensure that people with mental health issues can exercise their rights on an equal basis to others.

At a local level, all guardianship and administration system agencies are bound by the provisions of the *Guardianship and Administration Act 2000* (Qld) and must uphold the General Principles of the Act when exercising power or performing a function. It is suggested that the principles also extend to the policies, procedures and practices relating to complaints and investigations.

General Principle 7 - *Maximum participation, minimal limitations, and substituted judgment* – has direct relevance to complaints and investigation processes. It states:

- (1) An adult's right to participate, to the greatest extent practicable, in decisions affecting the adult's life, including the development of policies, programs and services for people with impaired capacity for a matter, must be recognised and taken into account.
- ...
- (2) So, for example—
  - (a) The adult must be given any necessary support, and access to information, to enable the adult to participate in decisions affecting the adult's life ...<sup>7</sup>

In my view, General Principle 7 requires that a person with impaired decision-making capacity must be provided with the necessary support to enable them to participate in decisions being taken by guardianship and administration system agencies. This should include support to access and use services, and appropriate avenues to make complaints about the services and supports received.

Queensland's guardianship and administration system can be particularly complex and challenging to navigate, not just for people with impaired decision-making capacity, but for their families, carers and supporters. Therefore, there is a critical need and a legal obligation for guardianship and administration system agencies to have accessible, transparent, and accountable complaints mechanisms.

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<sup>2</sup> Convention on the Rights of Persons with Disabilities opened for signature 30 March 2007 [2008] ATS 12 (entered into force 3 May 2008) ('Convention on the Rights of Persons with Disabilities') art 9.

<sup>3</sup> Ibid, Art.12.

<sup>4</sup> Ibid, Art.3.

<sup>5</sup> United Nations General Assembly, Principles for the Protection of Persons With Mental Illness and the Improvement of Mental Health Care, 17 December 1991, A/RES/46/119, available at: <https://www.refworld.org/docid/3ae6b3920.html> [accessed 3 July 2020] Principle 21.

<sup>6</sup> Ibid, Principle 1.

<sup>7</sup> *Guardianship and Administration Act 2000* Sch 1.



## Best practice complaint management systems

In 2015, the Public Advocate released a Scoping Paper examining complaints management processes for adults with impaired decision-making capacity, titled, *Strengthening Voice: A Scoping Paper About Complaints Management Systems for Adults with Impaired Capacity*.<sup>8</sup>

The paper presented the findings from a review of literature published between 1990 and 2015 in relation to the efficacy of complaints mechanisms for adults with impaired decision-making capacity. Due to the relatively small number of academic studies about the experience of making complaints and the efficacy of complaints mechanisms for people with impaired capacity, the paper also considered a broader range of research (including non-peer-reviewed studies and studies involving people with disabilities other than impaired decision-making capacity).

The paper identified the core elements or best practice principles within strong complaint management systems across the country. The principles were drawn from the frameworks developed by three key statutory bodies including:

- the Commonwealth Ombudsman;<sup>9</sup>
- the Queensland Ombudsman;<sup>10</sup> and,
- the Disability Services Commissioner.<sup>11</sup>

Each of these agencies has developed a good-practice framework that promotes key complaints management principles outlined in the international standard for complaints management<sup>12</sup>. The language of each framework varies slightly, however they all broadly encapsulate the following key features:

- accessibility;
- fairness;
- customer focus;
- efficiency; and,
- systems improvement.

People with impaired decision-making capacity experience issues and barriers in each of these areas.

### Accessibility

A complaints process is not accessible if service consumers do not know or understand that a complaints management system exists, how to recognise it, what its purpose is, how to use it or that they even have a right to complain. Some access mechanisms (such as brochures and online feedback) are often unsuitable for people with a pronounced cognitive or communication disability and can add to the complexity and confusing nature of formal complaints systems. Further, the fear of retribution or the withdrawal of a service because of the making of a complaint was identified in the paper as a key barrier to making complaints by adults with impaired decision-making capacity and people with disability more broadly.

### Fairness

Adults with impaired decision-making capacity are not always treated fairly. Their issues may be poorly handled or dismissed because of:

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<sup>8</sup> Office of the Public Advocate, *Strengthening Voice: A Scoping Paper About Complaints Management Systems for Adults with Impaired Capacity* (February 2015) <[https://www.justice.qld.gov.au/data/assets/pdf\\_file/0020/362342/strengthening-voice-scoping.PDF](https://www.justice.qld.gov.au/data/assets/pdf_file/0020/362342/strengthening-voice-scoping.PDF)>

<sup>9</sup>See, for example, Commonwealth Ombudsman, *Better Practice Guide to Complaint Handling* (2009) <[https://www.ombudsman.gov.au/\\_\\_data/assets/pdf\\_file/0020/35615/Better-practice-guide-to-complaint-handling.pdf](https://www.ombudsman.gov.au/__data/assets/pdf_file/0020/35615/Better-practice-guide-to-complaint-handling.pdf)>.

<sup>10</sup>Refer to the Queensland Ombudsman website (Queensland Ombudsman (2013) <<https://www.ombudsman.qld.gov.au/improve-public-administration/public-administration-resources/complaints-management/policy-and-procedure-guide>>.

<sup>11</sup>See Disability Services Commissioner Victoria (DSCV), *Good Practice Guide and Self Audit Tool: Developing an Effective Person Centred Complaints Resolution Culture and Process* (2nd ed, 2013) <[http://www.odsc.vic.gov.au/public/editor\\_images/GoodPracticeG\\_10FINALWeb\\_02.pdf](http://www.odsc.vic.gov.au/public/editor_images/GoodPracticeG_10FINALWeb_02.pdf)>.

<sup>12</sup> See Standards Australia, *Australian Standard: Customer Satisfaction - Guidelines for complaints Handling in Organisations* (ISO 10002:2004, MOD, 2006).



- negative stereotypes about people with cognitive disabilities;
- scepticism about the credibility of their claims;
- perceptions about how well the complainant's evidence will stand up under rigorous scrutiny (for instance, within the legal system); and
- failure to undertake thorough, objective and independent investigations about the issues raised.

### **Customer Focus**

A responsive complaints system includes features such as:

- complainants being able use their preferred means of contact or communication;
- being treated like a person not a number;
- dealing with someone who takes the complainants' expressions of dissatisfaction seriously and who shows understanding of the issue;
- being dealt with honestly; and
- receiving an apology if the organisation is at fault.

The responsiveness of complaints management processes towards adults with impaired capacity can be compromised if complaints-handling and frontline service staff fail to adapt to the communication needs of complainants with disability and communicate with them in accordance with those needs. It also requires recognition of complainants' decision-making limitations and their need for decision-making support.

### **Efficiency**

Efficiency means having a complaints management system that operates in ways that promote proficient and accountable handling of complaints. This includes the consistent implementation of a documented complaints policy and procedure and the allocation of adequate resources. In the case of people with impaired decision-making capacity, the paper noted that there may be a tendency to prioritise efficient complaints management processes over outcomes for complainants.

### **Systems improvement**

Factors related to the accessibility barriers noted for people with impaired decision-making capacity mean that rates of complaints by this cohort can often be very low. Given that systems improvements are generated by the analysis of complaint data and its use to drive change, not having sufficient data available to interrogate does limit the capability of a complaints management system to drive systems improvement.

The identification of these barriers and issues when examining the principles of best practice for complaint management systems suggests that people with impaired decision-making capacity are likely to require significantly more responsive and supportive complaints systems than are currently available.

To this end, the paper identified strategies to strengthen the voice of people with impaired decision-making capacity in complaint processes. These strategies included:

- Prioritising user satisfaction over the current process orientation of complaints management systems.
- Aligning complaints processes with consumer-based philosophies of customer satisfaction rather than traditional government models of service provision. This means that people with impaired decision-making capacity can no longer be seen as service recipients but instead should be actively assisted to become consumers of the systems that support them. To achieve this, many will require education and, where necessary, appropriate supports to assist them to understand and navigate their rights and responsibilities within the feedback/complaint process.
- Proactively identifying dissatisfaction and complaints with the adoption of outreach mechanisms (like Community Visitor Programs) that have the potential to seek out issues, rather than 'waiting' for people with impaired decision-making capacity to approach an agency to make a complaint.
- Recognising the value of informal complaint-making processes and ensuring this avenue is available via multiple modes.



- Ensuring the availability of independent advocacy, so that adults with impaired decision-making capacity have guaranteed access to independent support when making a complaint and moving through the complaint process.
- Adopting facilitative and inquisitorial approaches, which promote positive consumer-provider relationships, strengthen the investigatory process, and generate satisfactory outcomes for complainants.
- Guaranteeing safety and freedom from reprisal, by requiring agencies to ensure complainant wellbeing during and after the making of a complaint and implementing legislation (and associated mechanisms) that support these protections.

## Complaint management systems in the guardianship and administration system

The complaint management policies and procedures used by Queensland's guardianship and administration system agencies included in this audit are detailed in the table below.

Agency/Office	Complaint management policy
Office of the Public Guardian (OPG)	<i>Complaints Management Policy and Procedure (external complaints)</i> <sup>13</sup>
Public Trustee Queensland (PTQ)	<i>Complaints Management Policy</i> <sup>14</sup>
Office of the Public Advocate (OPA)	Department of Justice and Attorney General – <i>Complaints Management Policy</i> <sup>15</sup>

Assessing these policies and procedures against the features of best practice complaint systems and the strategies to strengthen them for people with impaired decision-making capacity, the following issues emerge:

- accessibility;
- the absence of outreach mechanisms and informal complaint making processes;
- the absence of independent advocacy or other services to support the making of complaints;
- guarantees of safety and freedom from reprisal.

### Accessibility

In relation to accessibility, the guardianship and administration system agencies listed above provide a link on their websites to their complaint management policy and procedure. The policy document is available primarily in pdf format and is written and displayed in a government policy template. This type of format is generally not considered to be accessible unless it is specifically edited for accessibility, and consequently may not be accessible for people using assistive technologies, including text-to-speech capability.<sup>16</sup> While most agencies also provide a step-by-step procedure for the lodgement and review of complaints, information in relation to making complaints is not provided in an Easy-English<sup>17</sup> format which is easier to understand and comprehend. The online forms available on some websites may also be difficult and confusing for people with impaired decision-making capacity to complete.

<sup>13</sup> Office of the Public Guardian (Qld), *Complaints Management Policy and Procedure (external complaints)*, accessed online 3 July 2020, <[https://www.publicguardian.qld.gov.au/\\_\\_data/assets/pdf\\_file/0020/645014/complaints-management-policy.pdf](https://www.publicguardian.qld.gov.au/__data/assets/pdf_file/0020/645014/complaints-management-policy.pdf)>.

<sup>14</sup> Office of the Public Trustee (Qld), *Complaints Management Policy*, accessed online 3 July 2020, <<https://www.pt.qld.gov.au/media/1472/complaint-management-policy.pdf>>.

<sup>15</sup> Office of the Public Advocate (Qld), Department of Justice and Attorney General – *Complaints Management Policy*, accessed online 3 July 2020, <[https://www.justice.qld.gov.au/\\_\\_data/assets/pdf\\_file/0004/26266/client-complaints-management-policy.pdf](https://www.justice.qld.gov.au/__data/assets/pdf_file/0004/26266/client-complaints-management-policy.pdf)>.

<sup>16</sup> Queensland Government websites must have AA level conformance with the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines 2.0. See <https://www.qgcio.qld.gov.au/documents/websites-policy-is26>.

<sup>17</sup> Easy English is a style of writing and formatting that makes information more accessible to readers. While primarily designed to support people with an intellectual disability, Easy English materials can also be helpful for people with low literacy and people who use English as a second language. Easy English is different to plain English, or plain language



## Outreach mechanisms

The OPG's Community Visitor Program provides a valuable outreach mechanism that potentially improves the responsiveness of the guardianship and administration system to complaints from vulnerable people. The Community Visitor Program promotes and protects the rights and interests of adults residing or being detained in 'visitable sites', which are defined in the *Disability Services Act 2006*. Community visiting is also undertaken for children however this role falls outside the scope of the Public Advocate's functions.

As noted in the OPG's *2018-19 Annual Report*,<sup>18</sup> community visitors are responsible for making announced and unannounced visits to ensure residents are cared for, make inquiries and lodge complaints for, or on behalf of, residents. They have the power to refer complaints to external agencies including the NDIS Quality and Safeguards Commission, the Department of Communities, Disability Services and Seniors, Queensland Health, the Department of Child Safety, Youth and Women, or the Residential Services Accreditation Unit in the Department of Housing and Public Works. As such, the program is well-placed to perform a complaints outreach role, facilitating the making of complaints about services provided by the OPG or PTQ, in addition to complaints that might be referred to those agencies listed above.

It is anticipated that community visitors probably fulfil this function when complaints are made about OPG services, with the community visitor able to follow the OPG's complaints management and policy procedure to assist clients to make a complaint, including linking them with an advocate if required or, potentially, lodging a complaint on their behalf.

The exact procedures and policies that are followed by community visitors in relation to complaints about OPG services are, however, not clear. This may be an area where further investigation is required as a component of this audit.

It seems that community visitors are also not authorised to refer complaints to the PTQ, although many of the people visited by Community Visitors also receive services from the PTQ. The Community Visitor Program may offer a valuable opportunity for the PTQ to increase the outreach capability of its current complaints management policy, which currently does not include any such initiatives. Given that the PTQ has consistently been the subject of the most complaints to the Queensland Ombudsman about statutory authorities over the past 10 years,<sup>19</sup> the adoption of a more responsive approach to complaints, may assist to address the level of complaints and improve perceptions of its commitment to customer service.

## Access to independent advocacy or support to make a complaint

The availability of independent advocacy services or other forms of support for people with impaired decision-making capacity to make a complaint and move through the process is critical to ensuring that people are provided with the necessary support to exercise their rights. This is particularly important if the person experiences difficulty communicating, or does not have many community supports who might otherwise assist the person to make a complaint.

With the exception of the OPG's policy, which informs prospective complainants of the availability of advocacy assistance to people making complaints about its services, none of the complaints policies and procedures of agencies within the guardianship and administration system that were assessed specifically note in their policies and procedures the availability of advocacy services to assist people to make complaints regarding the services they have received.

The OPG policy and procedure document includes a series of principles guiding the complaint process, which include the following in relation to the provision of support:

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<sup>18</sup> Office of the Public Guardian Queensland, *2018-19 Annual Report*, accessed online 27 May 2020, [https://www.publicguardian.qld.gov.au/data/assets/pdf\\_file/0011/638084/opg-annual-report-2018-19-final-online.pdf](https://www.publicguardian.qld.gov.au/data/assets/pdf_file/0011/638084/opg-annual-report-2018-19-final-online.pdf).

<sup>19</sup> Queensland Ombudsman, *Annual Reports, 2009-10 to 2018-19*, accessed online 27 May 2020, <https://www.ombudsman.qld.gov.au/about-us/corporate-documents/annual-report>.



OPG is committed to supporting people to navigate our complaints system; and where OPG believes that a person needs a support person to assist them in the process, will endeavour to arrange a support person to assist in that process (article 12(3) CRPD – UN Convention on the Rights of Persons with Disabilities).<sup>20</sup>

The PTQ complaints management policy notes that:

We provide all reasonable and practical help and support to make it easy for people to complain by recognising particular needs including: people with a disability, people living in regional and remote areas, the aged, and people from culturally and linguistically diverse backgrounds.<sup>21</sup>

A similar clause is included in the Department of Justice and Attorney General's (DJAG) Policy, which is used by the Public Advocate.

However, no specific details are provided in either policy regarding what this practical help and support might be, and whether and what resources will be made available to facilitate this support and assistance.

With this in mind, it is suggested that this audit could examine a range of complaints made under these policies to assess whether, and how, these commitments are being implemented.

### Guarantee of safety and freedom from reprisal

A guarantee of safety and freedom from reprisal should also be an important feature of the complaints policies and processes of guardianship and administration system agencies.

Most of the complaints policies of the guardianship and administration agencies assessed provide a guarantee of at least some type of protection being provided to complainants. For example:

- OPG explains that it is committed to ensuring that no individual is penalised or suffers adverse consequences for making a complaint;
- DJAG and PTQ say that complainants will not adversely affected because of a complaint made by them or on their behalf.

As noted above, however, the location of this guarantee (within a government policy style document accessed as a pdf on a website) and the language used in relation to the guarantee is potentially inaccessible to people with impaired decision-making capacity. This lack of accessibility can contribute to a lack of knowledge and understanding that these protections are available, again acting as a barrier to the lodgement of a complaint. This is particularly critical in a guardianship and administration environment, as both guardians and trust officers, as official decision-makers for people with impaired capacity, have significant power over a person and their life.

A matter relevant to the issue of reprisal is the structure of the personal financial administration fee charged to people subject to PTQ administration. Clients who live more autonomous lives in the community and more actively exercise their personal agency potentially pay a higher personal financial administration fee.<sup>22</sup> The level of fees are determined by whether the person lives in the community and the amount of contact the person has with the PTQ.

Paying a higher fee for contacting the PTQ more frequently may be perceived by PTQ administration clients as being a subtle form of reprisal for contacting the PTQ, particularly if the contact is to query a financial decision or action of the PTQ, or to express dissatisfaction with the service they receive. It is unclear whether a contact for the purposes described is considered for

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<sup>20</sup> Office of the Public Guardian Queensland, *Complaints Management Policy and Procedure (External Complaints)* 1 January 2020, Brisbane, accessed online 28 May 2020, 2

[https://www.publicguardian.qld.gov.au/\\_data/assets/pdf\\_file/0020/645014/complaints-management-policy.pdf](https://www.publicguardian.qld.gov.au/_data/assets/pdf_file/0020/645014/complaints-management-policy.pdf)

<sup>21</sup> The Public Trustee Queensland, *Complaints Management Policy*, December 2019, Brisbane, accessed online 28 May 2020, 4 <<https://www.pt.qld.gov.au/media/1472/complaint-management-policy.pdf>>.

<sup>22</sup> See the Service Level descriptions and associated fees in the Schedule 4 Personal Financial Administration Fee, Public Trustee (Fees and Charges Notice) (No. 1) 2019.



the purposes of assessing the level of fee a client pays. The structure of the fee is also arguably inconsistent with a number of general principles in the *Guardianship and Administration Act*.<sup>23</sup>

In light of this, I respectfully suggest that this audit consider the PTQ's personal financial management fee and whether the structure of this fee (particularly the aspects relating to the level of contact with the PTQ) could be a barrier to administration clients making complaints.

For many people with impaired capacity, the fear of reprisal may be impossible to overcome and is likely to result in them not expressing their dissatisfaction to the agency that has direct control over their lives. These concerns commonly arise among people with disability and residents of aged care facilities who will not make complaints about their service providers because of their vulnerability and dependence on those providers for their continuing care.

Clients of the PTQ and the OPG have a unique relationship with these agencies that is quite different from the usual engagement that members of the public have with government agencies. Rather than merely receiving a one-off service, such as a person engaging with the Department of Transport and Main Roads to renew a driver's licence, or a person obtaining a birth certificate from the Births, Deaths and Marriages registry, people under administration and guardianship have an on-going relationship with the PTQ and OPG. They are dependent on those agencies to make key decisions in their lives, from where they live and what they can buy, to decisions about their healthcare and what medications they take. These relationships are recognised at law as fiduciary relationships. The law recognises that a fiduciary relationship usually involves one party being vulnerable and having a level of dependence on the other. The fiduciary in the relationship, has significant obligations of trust, to act with care and diligence. These obligations are also recognised under the *Guardianship and Administration Act 2000*.

During my current review of PTQ fees and charges, I have become aware that PTQ clients who disagree with actions of the PTQ or the fees they are charged have little opportunity for recourse because there is no appropriate process for reviewing the actions of a state-operated trustee or guardian, except through their own complaint mechanisms. Often the issues raised by clients involve complex questions of law and equity that would ordinarily be resolved in the Supreme Court, not through a simple complaints process.

Considering the vulnerabilities of people with impaired decision-making capacity who have decision-makers appointed for them and the special and complex nature of these fiduciary relationships, there may be some merit in considering an alternative, independent complaint mechanism for this group. Such a process should, in appropriate circumstances, provide for the person to be supported to obtain independent advocacy and legal or financial advice to adequately explore their concerns and to present them for consideration, and where appropriate, to have them addressed.

## Complaints against statutory office holders

The Public Guardian, the Public Trustee and the Public Advocate are all independent statutory appointments. While each of these positions is responsible for an agency or office that has a complaints policy and procedure, there does not appear to be any mechanism for the investigation and review of complaints made about the statutory office holders themselves. None of these independent office holders directly report to a Queensland Government department.

If a complaint is made about the actions of the Public Trustee, Public Guardian, or Public Advocate (as opposed to their offices) there is no established process for addressing the complaint. It is difficult and potentially inappropriate for the position holder to respond to the complaint themselves. The only exception to this is the case of an allegation of corrupt or criminal conduct, where referrals to the Crime and Corruption Commission can be made in relation to the behaviour of person occupying a statutory office. The OPG, OPA and PTQ all have a policy and procedure for dealing with complaints about this type of conduct (which are available on their websites).

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<sup>23</sup> See general principles 5-7 in *Guardianship and Administration Act 2000* Sch 1.



## Investigations conducted by guardianship and administration agencies

The Public Guardian has the power to investigate allegations of abuse, neglect, exploitation and inadequate or inappropriate decision-making arrangements related to adults with impaired decision-making capacity.<sup>24</sup> In 2018-19, OPG's investigations team opened 210 investigations, of which, as at 30 June 2019, 181 remained active<sup>25</sup>. During the same period, the OPG closed 190 investigations.<sup>26</sup>

The work of the OPG's investigation team is an important safeguard provided by Queensland's guardianship and administration system. Many agencies, including the OPA, refer cases involving the suspected abuse, exploitation, or neglect of adults with impaired decision-making capacity to the OPG investigations team.

However, based on anecdotal information, the investigations team is experiencing high rates of demand, leading to significant wait times. Considering the types of allegations often referred to the team, any delays pose serious risks for the safety of the people experiencing the alleged treatment. All indications are that demand for the team's intervention is increasing due to the prevalence of elder abuse within our community.

A number of service providers and advocates have indicated to the Public Advocate that they no longer refer complaints or concerns to the OPG's investigations team, due to the long delays before a response can be provided. The Public Advocate cannot speak to the accuracy of this anecdotal information. However, it suggests a loss of confidence in the capacity of a key safeguard in the guardianship and administration team to respond to a complaint. In the circumstances, I would suggest the resourcing of the OPG's investigations team and its ability to respond in a timely way to complaints is a matter that the Queensland Audit Office should consider as part of this audit.

The Public Advocate has a statutory function to monitor and review the delivery of services and facilities to adults with impaired decision-making capacity and prepare reports about matters that may arise from the performance of its functions.<sup>27</sup> The small size of the Office of the Public Advocate limits the number of systemic investigations that can be undertaken, particularly concurrently. Consequently, the ability of the office to respond in a timely way to issues affecting people with impaired capacity is limited. The office works collaboratively with other guardianship and administration agencies, human rights defender agencies and advocacy and legal services to maximise its ability to influence and respond to the greatest number of issues affecting people with impaired capacity. While this approach is effective and delivers value for money, there remain many outstanding issues that cannot be prioritised due to limited resources.

## Taking complaints to external bodies for resolution

It is understood that all of the complaints policies and procedures of the guardianship and administration system agencies make provision for complainants who are not satisfied with the agency's response to their complaint, or any internal review, can take their complaint to the Queensland Ombudsman. The Queensland Ombudsman is charged with investigating the administrative actions and decisions of the agency and making recommendations about ways of improving the quality of its decision-making, administrative practices and procedures.<sup>28</sup>

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<sup>24</sup> Office of the Public Guardian (Qld), *Annual Report 2018-19*, 52.

<sup>25</sup> *Ibid*, 52.

<sup>26</sup> *Ibid*, 109.

<sup>27</sup> *Guardianship and Administration Act 2000* (Qld) s 209A.

<sup>28</sup> Queensland Ombudsman, *Annual Report 2018-19*, Brisbane 2019, accessed online 2 June 2020,

<<https://www.ombudsman.qld.gov.au/ArticleDocuments/262/5619T1720-Queensland-Ombudsman-annual-report-2018-19.pdf.aspx>>.



During 2018-19, the Queensland Ombudsman received 7,817 complaints, of which 1068 or 14 percent were about statutory authorities, including guardianship and administration system agencies. Of the complaints made against statutory authorities, the PTQ was reported as receiving 183 complaints, the second most complaints of any statutory agency.<sup>29</sup> The Ombudsman received no complaints about the OPG, or the OPA, during that period.<sup>30</sup>

The Queensland Ombudsman does not currently categorise complaints made about agencies into key issues or themes. If the data were recorded and able to be analysed in this way it would be easier to identify recurring or systemic issues across all government agencies, including guardianship and administration agencies. Being able to interrogate data in this way would assist with these types of audits, as well as assisting agencies to identify particular areas creating challenges for people dealing with them

Another means by which people engaged with the guardianship and administration system express dissatisfaction with their treatment is through applications and appeals in the Queensland Civil and Administrative Tribunal (QCAT). Based on my knowledge of the outcomes of some people's complaints to the PTQ, it is not unusual for a client complaint to be referred to QCAT for ultimate resolution. Sometimes, these cases will result from clients applying to QCAT for a change of administrator or to dispute PTQ fees or charges. At other times the application could be made by the PTQ to get a 'ruling' or approval by QCAT of a decision or action of the PTQ.

Invariably, the clients are not actively supported through this process and are at a distinct disadvantage when trying to argue their case in a legal forum that is unfamiliar. Invariably they do not have the assistance of a lawyer or advocate, because the Public Trustee has to approve the person engaging a lawyer and the expenditure of their funds for this purpose. In many cases, the PTQ will refuse to provide information to third parties seeking to support the client to make the complaint, or bring a case in QCAT, on the basis of protecting the clients' confidentiality. Obviously, these circumstances give rise to conflicts of interest for the PTQ and other challenges for QCAT in adjudicating a matter in these circumstances. Currently, the Public Advocate is unaware that either body has established a clear and defensible process that supports and protects the rights and interests of a person with impaired capacity to express their views and wishes and to present their case.

Further to this, a person under administration with the PTQ may be charged legal fees if the PTQ determines that its Official Solicitor is required to be involved in the matter. Incurring fees in these circumstances may also be perceived as a financial reprisal by the person under administration for complaining or expressing dissatisfaction about the PTQ.

Considering these concerns, I would appreciate this audit considering how applications to QCAT might be appropriately identified and 'counted' as complaints. It is concerning that vulnerable people such as those engaged with the guardianship and administration system need to commence a legal process, or have one imposed on them (when it is initiated by the PTQ), to have their complaints properly addressed. As part of this process, consideration could also be given to the point at which the number of complaints being the subject of tribunal hearings is considered too high, or suggests a 'red flag' regarding the operation of complaints processes at an agency level.

## Conclusion

I fully support this audit into the responsiveness of Queensland's guardianship and administration system to complaints and investigations. As the guardianship and administration system agency responsible for systems advocacy to promote and protect the rights and interests of people with impaired decision-making capacity, I am committed to the continuous improvement of government services for this cohort, including appropriate, accessible, and responsive complaint management systems.

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<sup>29</sup> Queensland Ombudsman, *Annual Report 2018-19*, p 13.

<sup>30</sup> *Ibid.* p 63.



I look forward to the final audit report and recommendations, which I trust will improve the effectiveness of the guardianship and administration system in protecting and promoting the interests of people with impaired decision-making capacity.

Yours sincerely

A handwritten signature in cursive script, reading "Mary Burgess". The signature is written in a dark grey or black ink on a white background.

Mary Burgess

**Public Advocate**

