Office of the Public Advocate

Annual Report
2015-16

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Interpreter service

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

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

21 October 2016

Dear Attorney,

I am pleased to present the Office of the Public Advocate's Annual Report for the financial year ended 30 June 2016.

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 Office of the Public Advocate for 2015-2016 and a statement of our financial and operational functions for the year.

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

Yours sincerely,

Mary Burgess
Acting Public Advocate

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The year in review

This past year has been a time of great productivity and change in the Office of the Public Advocate.

The office produced two significant systemic advocacy reports, *Upholding the right to life and health: A review of the deaths in care of people with disability in Queensland*, tabled in the Queensland Parliament in March 2016 and *Decision-making support and Queensland's guardianship system*, tabled in June 2016.

Both of these projects involved a substantial resource commitment from this office and resulted in authoritative reports that identified significant issues that are operating as barriers to the realisation of the rights of people with impaired decision-making capacity in Queensland while making practical recommendations to overcome these obstacles.

Articles 10 and 25 of the United Nations *Convention on the Rights of Persons with Disabilities* (UNCRPD) outline obligations to uphold a person's right to life and right to the highest attainable standard of health without discrimination on the basis of disability. Our report – *Upholding the right to life and health: A review of the deaths in care of people with disability in Queensland* – reviewed the deaths of 73 people with disability who died in care in Queensland between 2009 and 2014. The review was undertaken by the Public Advocate with assistance from an expert advisory panel. The review found that 59% of the deaths reviewed were 'unexpected' with over half (53%) considered to be potentially 'avoidable'. The report was the first of its kind in Queensland and provided evidence that there is still a lot to be done to ensure that we are effectively upholding our obligations to people with disability.

The *Decision-making support and Queensland's guardianship system* report was another noteworthy achievement for the office. The report drew together a large body of information and research on decision-making support in Australia and internationally. The quality of the work invested in this report has been recognised by both Australian and international experts in this developing area of law and practice. The report also identified the unique combination of pressures currently impacting the guardianship and administration system in Queensland, including significant system reforms such as the National Disability Insurance Scheme (NDIS), the aged care reforms and the review of Queensland's mental health system. Other pressures impacting the system include the trend by service providers in the aged and health sectors to manage risk by seeking to move people into the formal guardianship system and Queensland's ageing population. The report advocated for decision-making and other less restrictive supports to be considered ahead of guardianship and administration and the importance of moving to an approach that better reflects the 'will and preference' of the person.

At the time of writing this foreword, we are waiting on the outcome of the Commonwealth Government's review of the National Disability Advocacy Framework and Program. The outcome of these reviews could significantly change the disability advocacy landscape in Australia and potentially the life outcomes of many people with disability. The importance of these government reviews and subsequent decisions cannot be underestimated for people with disability.

A major occasion for the Office of the Public Advocate this past year was the resignation of Jodie Griffiths-Cook, who had been the Public Advocate for over four years up to April 2016. Jodie has taken up an appointment as the Australian Capital Territory Public Advocate and Children and Young People Commissioner. I would like to acknowledge Jodie’s remarkable passion and commitment to her role as the Public Advocate for Queensland. She has been a fearless advocate and courageous campaigner for the rights and interests of people with impaired decision-making capacity.

Jodie successfully re-established the role of the Public Advocate during her time in office as a respected and valued contributor to positive change for the human services sector and people with impaired decision-making capacity. She established effective partnerships with a wide range of Queensland and national stakeholders.

During her tenure as Public Advocate, Jodie had a prolific output of systemic advocacy reports, delivering four reports that were tabled in the Queensland Parliament from her commencement in the role in August 2012, with her last report being tabled in June 2016, after she had vacated the position. I thank Jodie for her tireless dedication to her responsibilities and her leadership in the Queensland and Australian guardianship and administration sectors. With Jodie’s departure, I have ‘large shoes to fill’, but she has left me with a good team of people who are also dedicated to supporting the office to fulfil its statutory responsibilities to people with impaired decision-making capacity.

I would also like to acknowledge the work of the staff of the Office of the Public Advocate all of whom have played an important part in the development and completion of the projects, reports, submissions and other policy contributions of the office over the past year. I also would like to personally thank the staff for welcoming me into the role of Acting Public Advocate and assisting helping me to quickly become familiar with the office’s projects and activities.

From the outset, I have found the role of Acting Public Advocate stimulating and rewarding. I want to express my appreciation to the senior officers of the other agencies in the guardianship and administration system as well as representatives of other agencies in the disability, aged care and mental health sectors who have made me feel welcome. I trust that I will be able to play my part in continuing the very successful and important work of the Office of the Public Advocate during my time in the role.

MA Burgess

Mary Burgess

Acting Public Advocate

Office of the Public Advocate

Our vision

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

Our mission

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

Our approach

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

At the forefront of our approach is a commitment to working collaboratively with government, non-government and community stakeholders to highlight key issues impacting people with impaired decision-making capacity and to generate effective strategies and solutions. We build relationships with individuals and advocacy organisations in the aged and disability sectors to ensure that people with impaired capacity can express their views and have their voices heard.

Our values

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

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

Accountability and integrity: We work with clear purpose and commitment to giving voice to the views of people with impaired decision-making capacity through our systems advocacy, and encourage a culture where accountability and respect is paramount.

Our legislative authority

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

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

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

The *Guardianship and Administration Act* provides that a person or other entity who performs a function or exercises a power under that Act for a matter in relation to an adult with impaired decision-making capacity must apply the general principles contained in Schedule 1 of the Act. These principles are fundamental to the approach of the Office of the Public Advocate to fulfilling our statutory functions.

Under s210 of the *Guardianship and Administration Act*, the Public Advocate is granted the power to:

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

Further powers are invested in the Public Advocate under s210A of the Act, which provides the right of the Public Advocate to all information:

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

Under s209A of the Act, the Public Advocate may prepare a report to the Minister about a matter arising from performance of the Public Advocate's functions and have the report tabled in Parliament.

Who we advocate for

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

People with impaired decision-making capacity are a broad and diverse group. They can be found in all age groups, cultures and demographics, and participate socially and economically in society to varying degrees. While some people with impaired capacity receive services that are provided or funded by government, or are involved in the guardianship system, many have little involvement with formal systems. Some receive lifestyle and decision-making support that helps them to live ordinary, autonomous and safe lives – others do not. Unknown numbers of people with impaired capacity experience abuse, neglect and exploitation in both institutional and community settings and may not have the ability or resources to prevent harm being done to them. Given the potential risks to those who cannot make, convey or enact their decisions, it is critical that the rights and interests of people with impaired decision-making capacity, particularly those who are socially isolated, are promoted and protected.

We do not know the exact number of Queenslanders who may have impaired decision-making capacity. However, we estimate that in 2016, around 118,700 Queensland adults may experience impaired decision-making capacity. This estimate is calculated using information from the Australian Bureau of Statistics' *Survey of Disability Ageing and Carers* and general population projection data, and is based on the number of people who have conditions that may impact upon their decision-making capacity. These conditions include, but are not limited to, intellectual disability, acquired brain injuries, mental illness, neurological disorders (such as dementia) or problematic alcohol and drug use.

Not all people with these conditions will experience impaired decision-making capacity. However, it is likely that many people with these conditions may, at some point in their lives, if not on a regular and ongoing basis, experience difficulties with making decisions. For some, impaired decision-making capacity may be episodic and/or temporary, and may be managed via concentrated supports at specific times in their lives, while others may require lifelong support with decision-making and communicating choices and decisions.

Experiencing impaired decision-making capacity is not limited to the unlucky few. It may become part of a person's life or that of a loved one at any time:

> *"Decision-making disability is not just something that happens to other people. It has the potential to seriously disrupt the lives of members of all Queensland families. Anyone's partner can be involved in an accident; anyone's parent can develop dementia or have a stroke; anyone's young adult son or daughter can be injured."*[1]

People's ability to make decisions may also vary in response to external factors. These factors include the type and complexity of the decision to be made; the context in which the decision is to be made (e.g. the degree of urgency, availability of alternatives); and the level of assistance available from support networks. The impact of external factors may, however, be lessened and decision-making capacity enhanced when adjustments are offered and people are provided with support. Over time, some people can develop their ability to make decisions with support and through experience.

How we do systemic advocacy

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

The focus of our systemic advocacy is on broad issues affecting the lives of people with impaired decision-making capacity. Our priorities are:

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

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

The challenge for our office in fulfilling our statutory role is how we can most effectively give people with impaired decision-making capacity a voice in the development of legislation, government policy and services that impact them. Wherever possible, our systemic advocacy activities are underpinned by knowledge gained through research and consultation that includes learning about the lived experience of people with impaired decision-making capacity.

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

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

The year ahead

The year ahead promises to be a time of great change and challenges in the guardianship and administration system with some of the most significant social policy reforms of our lifetime being introduced, from the rollout of the NDIS across Queensland, to the continuation of the aged care reforms and the commencement of the *Mental Health Act 2016.* It is likely that these reforms will combine with other factors to bring unprecedented pressure on the Queensland guardianship and administration system and the agencies that support that system.

With these challenges front of mind, this year the Office of the Public Advocate will take a particularly strategic approach to our business planning. While we will be continuing projects that are currently on foot, the office's new systemic advocacy projects will focus primarily on the impacts of some of these major reforms on the rights and interests of people with impaired decision-making capacity.

A key activity for the office in 2016-17 will be monitoring the implementation of the NDIS and its impact on people with impaired decision-making capacity. The scheme will potentially bring significant benefit to the lives of people with disability. However, considering that a large proportion of NDIS participants are expected to have some form of cognitive impairment, it is likely that it will also bring more people with impaired decision-making capacity into the formal guardianship system. Despite the NDIS mantra of 'choice and control', there is anecdotal evidence of people experiencing difficulties navigating the NDIS planning process, resulting in greater reliance on the guardianship system in some jurisdictions. Our office will continue to monitor developments in Queensland. It would be a great disappointment if the NDIS, which offered such potential as a social reform to positively impact the lives of people with disability, became the catalyst for significantly more people being subject to guardianship with the attendant loss of autonomy and ability to make their own decisions and exercise their 'will and preference'.

One of the systemic functions of the Public Advocate is to monitor and review the delivery of services and facilities to people with impaired decision-making capacity. To most effectively perform this function the office requires an evidence base.

The Office of the Public Advocate is proposing to collect and report on data from key systems impacting people with impaired capacity. It is proposed that the project will be a partnership between this office and the other guardianship and administration agencies, namely the Queensland Civil and Administrative Tribunal (QCAT), the Office of the Public Guardian (OPG) and the Public Trustee. Key agencies providing services, programs, facilities and other interventions for adults with impaired decision-making capacity will be approached to provide data for the project. The data will be used in a systems monitoring report that will enable the identification and monitoring of emerging trends and issues in the guardianship and administration and other systems impacting people with impaired decision-making capacity.

In addition to assisting this office to fulfil its systemic advocacy functions, it is anticipated the monitoring of this data will have a range of benefits for partner agencies, including the identification of emerging issues, evidence of guardianship and administration demand and trends, as well as providing an important data baseline from which the impact of reforms in the disability (e.g. the NDIS), aged care and mental health services sectors on the guardianship and administration system may be measured.

Another strategic project proposed for the forthcoming year is a joint project between the key guardianship agencies, namely the OPG, QCAT, Public Trustee and the Office of the Public Advocate to develop and implement a Guardianship and Administration System Demand Management Strategy.

The initial concept for the strategy is that it will incorporate a number of complementary strategies to help understand and respond to increasing demand in the formal guardianship and administration system.

As we are proposing that this project operate as a joint project with other guardianship and administration agencies, the detail of the project has not been finalised, however possible strategies could include:

- identifying test cases to challenge unnecessary or inappropriate applications for guardianship orders;
- a pilot project for volunteers to provide decision-making support for people with impaired capacity (based on the concept of the OVAL project in Victoria) – this could be run with support from community and disability advocacy organisations; and
- a community education and communication campaign encouraging people to make enduring powers of attorney.

The new *Mental Health Act 2016* is due to commence on 5 March 2017. The new Act introduces the concept of the ‘less restrictive way’ into mental health treatment. The approach to be used under the new legislation is that if a less restrictive way exists it should be taken rather than resorting to an order for involuntary treatment.

The approach of the less restrictive way involves doctors seeking the consent of the guardian of a person with mental illness to that person receiving treatment and care for their mental illness. It is anticipated that these new arrangements will rely heavily upon the guardianship system and are likely to have a corresponding impact on agency resources, particularly on the OPG and potentially QCAT.

This approach represents a significant change in the use of the guardianship system, which was designed as a protective jurisdiction, not to restrict the rights and liberties of people with mental illness who may be objecting to treatment and require treatment or detention against their will to protect them and/or the community.

The new Act has the potential to radically expand the decision-making role of guardians and attorneys in the mental health system. Other provisions in the Act will also encourage the Mental Health Review Tribunal to refer people subject to involuntary treatment to QCAT to consider whether the appointment of a personal guardian would result in treatment in a less restrictive way. Whether the new approach taken under the *Mental Health Act* has the effect of advancing the rights and interests of people with impaired decision-making capacity, or has unintended consequences that result in more restrictive outcomes for them, will be the subject of a project to be commenced during 2016-17.

The full *Business Plan 2016-17* of the Office of the Public Advocate can be viewed on our website at: www.public.advocate@justice.qld.gov.au

Our systemic advocacy

Our systemic advocacy functions include:

- promoting and protecting the rights of people with impaired capacity;
- protecting people with impaired capacity from neglect, exploitation and abuse;
- encouraging the development of programs to help people with impaired capacity to reach the greatest degree of autonomy;
- promoting services and facilities for people with impaired capacity; and
- monitoring and reviewing the delivery of services and facilities to people with impaired capacity.

This section of our Annual Report outlines the systemic advocacy activities we have undertaken in 2015-16. We have categorised these activities as systemic advocacy projects, monitoring the provision of services and advocacy and influence.

Systemic advocacy projects

Upholding the right to life and health: A review of the deaths in care of people with disability in Queensland

The Public Advocate's report – *Upholding the right to life and health: A review of the deaths in care of people with disability in Queensland* – was tabled in the Queensland Parliament on 16 March 2016. The Public Advocate's review about the number and nature of deaths in care of people with disability in Queensland was the first of its kind in Queensland.

The review aimed to increase our knowledge and understanding of the causes of death of people with disability who were residing in a Queensland Government funded or provided accommodation support service or level 3 residential facility at the time of their death. The project also sought to:

- assess and analyse the current reporting, recording and investigative processes in relation to the deaths of people with disability in care;
- highlight key health issues and risk factors associated with the deaths of people with disability in care, particularly in relation to deaths that may have been avoidable had the individuals had access to better supports, services and health care; and
- identify the systems, practice and process issues associated with avoidable deaths in care of people with disability.

The review involved the systematic analysis of data from a range of public and public-funded agencies. Information was reviewed by a specialist advisory panel that included relevant statutory office holders and senior medical practitioners with expertise in the health care of people with disability, particularly people with intellectual disability.

The panel reviewed 73 cases where a person with disability had died in care and which met the criteria for inclusion in the project. A person was included in the review if:

- they identified as having an intellectual impairment (intellectual disability or cognitive impairment) or as having a disability that may result in a severe to profound impact on their intellectual or cognitive functioning (e.g. cerebral palsy);
- they were aged 18 years or over at time of death;
- their death was a death in care as defined in the *Coroners Act 2003* (Qld) and they resided in an accommodation support service funded or provided by the Department of Communities, Child Safety and Disability Services or in a level 3 residential service;
- their death occurred between 2009 and 2014; and
- their death was reported to the State Coroner with at least a Police Report, or Medical Practitioner's Report and Coroner's Findings, or Cause of Death certificate available.

The findings of the report included:

- Of the 73 cases, mortality rates were substantially higher than for the general population.
- 59% of the deaths reviewed were determined by the specialist advisory panel to be unexpected. Of the deaths deemed to be unexpected, 67% were also considered to be potentially avoidable.
- The most common underlying causes of death were respiratory diseases; circulatory system diseases; diseases of the nervous system; neoplasms/cancer; and external causes/accidental threats to breathing. Many of these causes of death reflected conditions that have evidence-based prevention and/or treatment options.
- 49% of people in the sample were being administered psychotropic medication in cases where, based on available information, few seemed to have a diagnosis of mental illness. Many of the people were taking multiple medications for a variety of conditions.
- The concerning need for enhanced education, information and training for health professionals and support staff in responding to the health needs of people with disability, particularly in respect of risk factors and vulnerabilities.
- A high prevalence of undetected ill health. Many of the people were not diagnosed with the condition that led to their death until either just before their death or at autopsy.
- The limited integration in health care support between the health and disability service systems. Greater priority needs to be given to primary health care for people with disability, including preventative care such as regular check-ups and annual comprehensive medical reviews.
- The complex medical, ethical and legal issues underpinning end-of-life care and decision-making, particularly with respect to withholding or withdrawing treatment for people with disability, are not well understood.

The report recommendations included:

- Improving the reporting, investigation and systemic analysis of information in respect of deaths-in-care. For example, annual reporting on the numbers of deaths-in-care and biennial systemic reviews of deaths-in-care.
- Making structural changes to current health policy, programs and practices to recognise and realise the health rights of people with disability, including the development of a framework to improve health care for people with intellectual or cognitive disability.
- Establishing local, regional and state-wide networks of health practitioners with disability-specific knowledge and expertise to provide clinical leadership, education and support to enhance the provision and coordination of health services to people with disability.
- Developing a multi-faceted education and information strategy through collaboration with the Queensland Centre for Intellectual and Developmental Disability, Health and Hospital Services and practitioners who have expertise in the provision of health care for people with disability.
- Improving the education and training of health professionals, including reviewing university curriculums, health practitioner accreditation, ongoing competencies and on-the-job mentoring to support improved health outcomes for people with disability.

- Ensuring the minimum standards for disability service provision under the NDIS address known risk factors and vulnerabilities for people with disability.
- Developing a clearly articulated and targeted knowledge transfer and skills retention strategy to ensure that the Government's significant investment in developing and maintaining resources in support of improved outcomes in the lives of people with disability is not lost in the transition to the NDIS.

The recommendations relevant to the Department of Justice and Attorney-General called for:

- annual reporting of deaths of people with disability in care;
- developing a communication strategy to improve reporting of deaths in care to the Coroner; and
- biennial systemic reviews and reports to Parliament.

We understand that the State Coroner will now report annually on instances of these deaths in care.

At the time of writing this report, the Queensland government was preparing its response to the Public Advocate’s report.

Given the ongoing relevance of health and mortality issues for people with impaired decision-making capacity, and the significant changes to service provision that will occur as a result of the introduction of the NDIS, our office will continue its advocacy on these issues as the NDIS is rolled out across Queensland.

Decision-making support and Queensland’s guardianship system

The Public Advocate’s report – *Decision-making support and Queensland’s guardianship system* – was tabled in the Queensland Parliament on 16 June 2016. The report presented the findings from an investigation into the extent to which relevant provisions of Queensland’s guardianship legislation (i.e. the *Guardianship and Administration Act* and the *Powers of Attorney Act 1998*) which recognise people’s rights to support to make their own decisions, were translated into practice. The project also sought to identify systemic barriers and enablers to protecting and supporting the right of a person to make their own decisions.

The scope of the project was limited to examination of legislation, policy and practice for Queensland’s statutory agencies involved in the delivery of guardianship and administration services to Queenslanders, namely QCAT, the OPG and the Public Trustee. Our work was underpinned by a conceptual framework, a literature review and a comparative analysis of guardianship legislation in Queensland and other Australian jurisdictions.

The project involved the collection of primary evidence via interviews and surveys and submissions in response to an issues paper produced by our office. Sources of secondary evidence included organisational data from public guardianship and administration agencies, published decisions and transcripts relating to guardianship and administration matters heard by QCAT and relevant publications and reports. The Public Advocate also established an external advisory group to provide expert knowledge and strategic advice throughout the project.

The investigation found that aspects of Queensland's guardianship legislation uphold and support a person's decision-making autonomy, however legislation also imposes some limits to supported decision-making.

The report highlighted that the focus of State-provided decision-making supports needs to shift from what a person cannot do, to identifying the supports that should be provided to enable people to make decisions and exercise their legal capacity. This paradigm shift has been driven primarily by the UNCRPD and the Australian Law Reform Commission's report *Equality, Capacity and Disability in Commonwealth Laws*.

The report concluded that a move away from formal substitute decision-making appointments is unlikely in the foreseeable future. There was, however, general agreement among the stakeholders who contributed to the project that the pressures on state-based guardianship systems need to be addressed.

The report found that considerable work is required to reduce reliance on state-based guardianship systems and encourage the use of supportive mechanisms to enhance the ability of people with decision-making limitations to make their own decisions. This should be premised upon giving effect to the intention that the formal appointment of substitute decision-makers should be a 'last resort' option for people requiring decision-making support.

The report suggested that there is a need to consider the sustainability of the guardianship system in relation to the ongoing appropriateness and application of guardianship and administration. This is particularly the case in the context of the Queensland system having the highest number of people subject to guardianship in Australia. The increasing pressure on QCAT to manage growing demand and achieve cost efficiencies may, over time, impact the time Tribunal members are able to spend on these often complex matters and, ultimately, the quality of decisions in such a specialist jurisdiction dealing with some of Queensland's most vulnerable people.

The report raised the issue of the appropriateness of the guardianship system bearing the cost for shortcomings in other human service systems. It also identified opportunities to enhance Queensland's legislative framework for guardianship and its implementation, which may help reduce demand and better align Queensland's guardianship framework with Australia's current human rights and policy context.

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

In 2014-15, our office was involved in the development of an Australian Research Council Linkage Grant application to undertake research into effective decision-making support for people with cognitive impairment. In July 2015, we received advice that the Linkage Grant application was successful.

In addition to the Australian Research Council Linkage Grant, the four year project is supported by a number of industry partners who are contributing funding and in-kind support. The Queensland industry partners are the OPG, the Public Trustee, the Queensland Mental Health Commission and our office. The other project partners are Endeavour Foundation, Summer Foundation Ltd., Melbourne City Mission, Inclusion Melbourne, the New South Wales Public Guardian, and the New South Wales Department of Family and Community Services.

The research, which is led by La Trobe University, focuses on people with intellectual disability or acquired brain injury who require decision-making assistance, but the research findings are expected to apply to a broader range of people with cognitive impairment.

The chief investigators are Professors Christine Bigby and Jacinta Douglas from La Trobe University, Emeritus Professor Terry Carney from the University of Sydney, Dr Ilan Wiesel from the University of New South Wales and Dr Shih-Ning Then from the Queensland University of Technology. Their work is supported by three partner investigators: Ms Mary Burgess (Acting Public Advocate-Queensland); Dr John Chesterman (Office of the Public Advocate-Victoria); and Ms Imelda Dodds (New South Wales Trustee and Guardian).

This unique research project aims to address the gaps in knowledge, expertise and resources that exist in respect of providing support for decision-making. An educational program that trains people to provide decision-making support will be developed and evaluated. The educational program aims to improve the quality of the decision-making support provided to people with cognitive impairment and assess whether it results in better outcomes for the person requiring decision-making assistance.

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

Two groups of participants will be recruited from Victoria, New South Wales, and Queensland. One group will participate in the education program and the other group will attend the program after the benefits have been established. These two groups will be randomly divided into two further groups in order to receive the impairment-specific education program (acquired brain injury and intellectual disability).

Our office acknowledges the contributions of Jodie Griffiths-Cook, Queensland's previous Public Advocate, who played a key role in the development of the Linkage Grant application and securing the participation of the Queensland project partners.

In 2015-16, the research team secured the ethics approvals to conduct the research and focussed on developing the educational resources that will be used to train people who provide decision-making support. The researchers have also commenced preparations for recruiting people to participate in the research and conducting a pilot in Melbourne.

Effective complaints management systems for people with impaired decision-making capacity

Complaints management systems are the mechanisms used by government and non-government agencies that enable people to provide feedback about the products they sell and services they deliver. With the widespread shift from service-oriented systems to consumer-directed and person-centered service provision in the Australian human services sector, complaints systems are also likely to play an increasingly important role in shaping the kinds of services required by people with impaired decision-making capacity. Complaints management systems, along with other mechanisms that encourage the expression of customer feedback, will also need to be designed and delivered to be accessible and inclusive of service consumers with impaired capacity.

The Office of the Public Advocate's project is aimed at promoting inclusive complaints management systems for people with impaired capacity. Specific objectives of the project include:

- broadly mapping the nature of complaints management systems for people with disability in Queensland;
- identifying characteristics of best practice within complaints management systems that enable people with impaired decision-making capacity to effectively pursue complaints to satisfactory resolution; and
- advocating for change within complaints management systems in Queensland, and for the NDIS more broadly, to provide adequate safeguards for people with disability, particularly those who may have impaired decision-making capacity.

Since 2014, we have been exploring the effectiveness of complaints management systems for people with disability and, more specifically, adults with impaired decision-making capacity. Phase 1 of the project was completed in 2015. The resulting scoping paper, *Strengthening Voice*,[2] identified key principles that underpin good complaints management systems and practice, highlighted barriers that prevent the realisation of these principles in the delivery of these systems for people with impaired capacity, and explored broad strategies for improving complaints management systems responses to this group.

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[2] Office of the Public Advocate Queensland, *Strengthening Voice: A Scoping Paper About Complaints Management Systems for Adults with Impaired Capacity* (February 2015) <http://www.justice.qld.gov.au/public-advocate/activities/current/complaints-management>.

Phase 2 was undertaken in 2015-16 and involved an extensive exploration of key state and Commonwealth complaints management systems used by Queensland adults with impaired decision-making capacity. Phase 2 identified that the existing complaints management systems are, overall, likely to be confusing and difficult to navigate for people with impaired capacity, with multiple overlapping pathways to making complaints and progressing them to satisfactory conclusion. This complexity is expected to intensify with the implementation of market-based and consumer-directed approaches to social care and the shift from a state-based disability system to a federally-based NDIS. As such, it will become even more important that complaints management systems in those schemes provide service consumers with reasonable adjustments to raise concerns and complaints, and progress them to satisfactory resolution.

Phase 3 of the project is currently underway and will be completed in the second half of 2016. This phase includes finalisation, publication and promotion of two documents: 1) the Public Advocate's *Position statement on complaints management systems for adults with impaired decision-making capacity* and 2) a framework for good practice in complaints management systems for use by people with impaired capacity. This paper will align the principles of good complaints management practice (as derived from several recognised complaints management agencies, including the Commonwealth Ombudsman and Queensland Ombudsman) with findings from Phases 1 and 2 of our work identifying issues of particular relevance to people with impaired capacity.

Once complete, we will promote these materials for use within the broader community and disability sectors during 2017.

Limitation orders

The *Guardianship and Administration Act* provides that whenever a limitation order is made by QCAT, a copy of the decision and the information on which the Tribunal based its decision must be provided to the Public Advocate. This enables our office to report on systemic issues, should any arise, which is important given the potential for injustice when evidence is made confidential to the parties or the public.

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

In 2015-16, our office has continued to review the limitation orders and related material provided to the Public Advocate. Hearing materials included the recordings of proceedings and documents relied on during the hearing such as the application made to the Tribunal and supporting documentation. To date, we have not identified any issues of concern with the cases reviewed.

Our office will continue to monitor limitation orders to ensure that the outcomes are in the best interests of the people whose cases are the subject of the applications.

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

Under s216 of the *Criminal Code Act 1899*, it is a crime to engage in sexual activity with a person who has an ‘impairment of the mind’. This section of the Act effectively criminalises any sexual contact with a person with impaired decision-making capacity, even if that person has capacity to consent to and understand the nature of such activities.

This is because the definition of ‘person with impairment of the mind’ is broad and potentially includes people with impaired decision-making capacity, many of whom have the ability to act autonomously and to choose to engage in a consensual sexual relationship. The law therefore impinges on the right of people with impaired decision-making capacity to freely engage in sexual relationships.

There is an inherent tension between ensuring appropriate protections against abuse and/or exploitation of a person with impaired decision-making capacity, and how best to provide adequate and appropriate supports to uphold their right to participate in a sexual relationship. Any legislative changes may have wide-reaching consequences for the rights of individuals and the protections afforded to safeguard those who are vulnerable.

In 2015-16, our office has continued to explore this issue and better understand the law’s limitations on people with impaired decision-making capacity to have relationships, and its incongruence with other rights-based frameworks in our law. Our office has also worked with the University of Queensland to undertake further research on this issue.

Our office will continue to explore potential alternatives to the current laws that will assist people with impaired decision-making capacity to achieve individual autonomy including the freedom to make their own choices, full participation in society and equal recognition before the law (as declared in the UNCRPD).

Use of medication to manage concerning behaviours of adults with intellectual disability

Psychotropic medication is used to treat mental illness in the general population and people with intellectual disability. This research project aims to better understand the use of medication for the purpose of behaviour management from the perspectives of family members of adults with intellectual disability, staff of the OPG, human service staff members, psychiatrists and psychiatric registrars who work with adults with intellectual disability.

The research explores the understanding and views of these stakeholder groups concerning the effectiveness of medication to manage the behaviours of some people with intellectual disability. It also looks at the impact of the use of such medication on the health, mental health and wellbeing of people with intellectual disability. The research findings hope to inform improved clinical services, policy development and better quality of life for people with intellectual disability.

The research is led by the Queensland University of Technology and is jointly funded by the University, OPG and our office. It has been approved by the Queensland University of Technology's Human Research Ethics Committee.

The data collection component of the research has continued in 2015-16. To date, the research team has undertaken interviews with the family members of people who have been provided medication to primarily control their behaviour, and interviews and focus groups with public guardians. The interviews with disability service providers have commenced.

The research team intend to publish journal articles discussing the initial research findings in late 2016.

Monitoring the provision of services

In 2015-16, the Office of the Public Advocate maintained a focus on monitoring and reviewing the provision of services to people with impaired decision-making capacity.

Deinstitutionalisation of people with intellectual disability or cognitive impairment

The Public Advocate's report – *People with intellectual disability or cognitive impairment residing long-term in health care facilities: Addressing the barriers to deinstitutionalisation* – was tabled in the Queensland Parliament in November 2013. The Public Advocate made a number of recommendations in the report including that there should be:

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

In 2013-14, the Queensland Government launched the *Joint Action Plan – Transition of long-stay younger people with disability from Queensland public health facilities*. The Joint Action Plan was developed in partnership between the Department of Communities, Child Safety and Disability Services (DCCSDS), the Department of Health and the Department of Housing and Public Works. A Steering Committee monitors progress on the plan, and considers strategic and systemic issues arising in its implementation. A Cross Government Operational Working Group supports the Steering Committee by ensuring that operational issues are undertaken in a collaborative and integrated way.

Since 2013-14, the Queensland Government has been actively seeking to transition people residing long-term in public health facilities to other appropriate accommodation. In 2013-14, prior to the commencement of the Joint Action Plan, 14 people were transitioned from public health facilities. During that year an additional 25 people were transitioned under the first year of the Joint Action Plan. In 2014-15, 35 people were transitioned (as reported in our 2014-15 Annual Report). DCCSDS has advised that the continued implementation of the Joint Action Plan resulted in 29 young people transitioning out of long-stay health facilities in 2015-16. This brings the total number of young people transitioned from public health facilities to more appropriate living arrangements since 2013-14 to 103, with 89 transitioned since the commencement of the Joint Action Plan.

According to DCCSDS, approximately half of the people who have been assisted to transition from public health facilities had an intellectual or cognitive impairment, while the remaining people had other disabilities (such as psychiatric, physical and neurological).

The Department of Housing and Public Works has advised that in 2015-16, six people returned to their existing social housing tenancy or were allocated social housing to meet their support needs, two people were provided with Transitional Housing or Community Housing and one person was supported via a Housing with Shared Support arrangement.

A total of $2.2 million was provided by the Queensland Government to achieve the reported outcomes in 2015-16. A further $4.1 million in capital funding was allocated to commence the construction of accessible and sustainable accommodation for 40 people with disability who currently reside long-term in public health facilities.

As part of the reporting under the Joint Action Plan, the Department of Health has identified the number of young people with disability residing in public health facilities who no longer require acute or sub-acute care, but who did not have sufficient access to appropriate support to enable them to reside in the community. The number of young people in this situation has fluctuated over recent years, as in the following figures demonstrate:

- 283 people as at March 2012;
- 230 people as at 2 August 2013;
- 242 people as at 20 August 2014; and
- 516 people as at August 2015.

Of the 516 people identified in August 2015, 150 were identified to primarily have an intellectual disability and 116 people were identified to primarily have a cognitive impairment.

The Department of Health advised that the increase between August 2014 and August 2015 has resulted from a greater awareness and understanding of the eligibility criteria for the NDIS (particularly in relation to mental health) and focus on the activities being undertaken as part of the Joint Action Plan.

The departments responsible for the Joint Action Plan have expressed their commitment to further progressing the Joint Action Plan in 2016-17. The acting Public Advocate has committed to working with Government to progress the plan. We will report on what has been achieved under the plan in 2016-17 in our next Annual Report.

Forensic disability

As noted in our 2014-15 Annual Report, as Queensland prepares for the implementation of the NDIS, we continue to be concerned about the future care for people with intellectual disability or cognitive impairment who come into contact with the criminal justice system.

The *Forensic Disability Act 2011* has been in operation for almost five years, with July 2016 marking the fifth anniversary of its commencement. The *Forensic Disability Act* and the Forensic Disability Service were established in response to concerns raised in separate reviews undertaken by Brendan Butler AM SC and the late Honourable William Carter QC identifying the need for a more appropriate model of care for people with intellectual disability or cognitive impairment who were found to be unsound of mind or unfit for trial.

The *Forensic Disability Act* provides the legislative framework for the Forensic Disability Service, a medium secured facility located at Wacol in South East Queensland. The service is designed for up to 10 adults with an intellectual disability who are detained on a forensic order under the provisions of the *Mental Health Act 2000* and require secure care under the *Forensic Disability Act.* However it does not provide for a holistic systems response to enable consistent and integrated care and support for clients of the service. Further, the Act does not specifically include provisions requiring the detailing of supports to transition people back to community living in less restrictive environments.

In 2015-16, the Office of the Public Advocate continued to monitor the implementation of the *Forensic Disability Act 2011*. As in previous years, the Public Advocate sought de-identified data on the status of clients in the Forensic Disability Service. The request for data focussed on the habilitation and rehabilitation activities undertaken by clients and plans to transition clients out of the service.

Information obtained from DCCSDS in 2016 indicated that all clients have been offered habilitation and/or rehabilitation activities or programs including cooking, gardening, employment and other skill-building activities, as well as social/sex education programs. Two of the ten clients refused or were unable to participate in the activities offered and another four who did participate achieved only limited success or engagement with the activities. These outcomes may be due to the particular circumstances of the individual residents and the severity of their disability or the effectiveness of the programs. This office will continue to engage with DCCSDS to gain a better understanding of the circumstances of the individual clients of the service and to ensure their rights and interests are being protected and that they are accessing programs and services to help them to reach the greatest degree of autonomy.

No clients have been transitioned out of the service since they entered in 2011 and 2013 (nine clients entered in 2011 and one client entered in 2013). Nine out of the 10 original clients of the Forensic Disability Service continued to be detained in the service. The remaining original client died in early 2016.

In April 2016, the Public Advocate made a submission to the Senate Community Affairs References Committee's inquiry into the indefinite detention of people with cognitive and psychiatric impairment in Australia who are subject to legal or administrative orders. It contrasted the approximate length of time spent in detention by each of the Forensic Disability Service clients with the probable length of sentence they might have received had their offences been dealt with as part of the ordinary criminal justice process.

Our office has concerns about the length of time that Forensic Disability Service clients are being detained in the service. The length of time that eight of the ten clients have been detained in the service (as a result of forensic orders made by the Mental Health Court) appears to be significantly longer than that which they might have spent in custody had they been found guilty of the crimes they were alleged to have committed. Some clients, for instance, were charged with minor to moderate assaults and property damage offences that may not have resulted in custodial sentences at all had these clients pleaded guilty in a standard criminal justice prosecution.

In 2015-16, the Public Advocate continued to advocate for the legislated review of the *Forensic Disability Act*. In addition to a review of the Act, there is a requirement for the Director Forensic Disability to review whether the clients who entered the Forensic Disability Service when it commenced are continuing to benefit from the care and support provided by the service. This review is due to be conducted five years after the commencement of the service, which is due in July 2016.

Advocacy and influence

In 2015-16, our office was involved in a broad range of systemic advocacy issues relating to the rights, interests and wellbeing of people with impaired decision-making capacity. The breadth of these matters is demonstrated by the Public Advocate's submissions to formal reviews and inquiries. All of the submissions made by the Public Advocate can be accessed via the Office of the Public Advocate website at http://www.justice.qld.gov.au/public-advocate/submissions.

Submissions

Review of the National Disability Advocacy Framework (August 2015)

The Public Advocate made a submission to the *Review of the National Disability Advocacy Framework* (the framework), which was undertaken by the Commonwealth Department of Social Services in response to the significant reforms being rolled out in the disability environment.

The Public Advocate strongly supports advocacy as an essential mechanism for promoting and protecting the rights of people with disability in line with the UNCRPD. The recommendations submitted by the Public Advocate for the review are summarised below.

- The framework must reflect a strong focus on human rights, and include clear and explicit references to the guiding principles of the UNCRPD.
- The independence of advocacy, along with the appearance of independence, must be prioritised and protected in all instances to mitigate against conflicts of interest and the minimisation of customer matters requiring advocacy, and to facilitate transparency and accountability of service providers.
- Advocacy for people with disability must be contemporary and progressive. For instance, the framework must recognise and reflect the fundamental shifts that are occurring in the area of supported decision-making for people with disability who may have impaired decision-making capacity.
- Access to advocacy for people with disability living with compounding disadvantage must be strengthened, as must the overall responsiveness of the advocacy system.
- The framework must have broad scope (that is, it must apply to all people with disability, not just participants of the NDIS) and accommodate all types of advocacy required by people with disability.
- The framework must facilitate transition to the new service environment. A comprehensive advocacy system that effectively and equitably responds to people with disability is the shared responsibility of multiple government agencies and will require a co-ordinated and integrated strategy.

- The definition of disability advocacy must be simultaneously broad and sufficiently detailed to address the gamut of issues that people with disability may encounter, including abuse, discrimination and exploitation.
- The framework must be based on evidence and allow for the systematic collection, management and analysis of data to inform and evaluate the quality and effectiveness of the National Disability Advocacy Program.

The submission emphasised the importance of ensuring a contemporary, forward-thinking framework that retains its focus on human rights, includes clear and explicit references to the guiding principles of the UNCRPD, and recognises and reflects the pivotal shifts that are occurring in supporting the legal capacity of people with impaired decision-making capacity.

Independent Review of the *National Disability Insurance Scheme Act 2013* (October 2015)

The Commonwealth Government was required by law to review the *National Disability Insurance Scheme Act 2013* (the NDIS Act), assess the operation of the legal framework and develop recommendations as to whether any amendments to the Act could help further the objects and principles of the Act. Ernst & Young was commissioned to undertake the review and released a Discussion Paper as part of their consultation with stakeholders.

Given that the NDIS was still being rolled-out at the time of the review, and implementation had not yet commenced in Queensland, there were many unknown issues regarding the implementation of the Act.

The Public Advocate’s submission concentrated on the need for the NDIS Act to better reflect Australia’s obligations under the UNCRPD, and the need to provide appropriate supports to enable people with disability to properly participate in the scheme. Of particular concern was the lack of legal frameworks for providing reasonable accommodation and support for decision-making.

The submission noted the current shortcomings in the federal social security nominee system upon which the NDIS’ current regime is based. For example, the nominee system appears to establish a substituted decision-making process that does not provide for support for people to make decisions or express their wishes. It therefore does not provide reasonable accommodation for those people to participate in the scheme.

While upholding the common law presumption of capacity, the NDIS must be designed so that people who experience difficulties in making decisions due to an intellectual, neurological, psychosocial or other cognitive disability are provided with the support and assistance they need to navigate the NDIS and exercise choice and control.

We also raised concerns regarding potential conflicts between the NDIS and state-based laws and systems of guardianship and administration. The submission sought clarification regarding the interaction of the NDIS, the NDIS Rules and state-based guardianship and administration legislation.

Another issue the submission highlighted was about whether the current nominee regime under the NDIS Act was inconsistent with article 12 of the UNCRPD. The Public Advocate recommended that the nominee system be reviewed and take into account the Australian Law Reform Commission's recommendations for a Commonwealth Decision-Making model.[3]

Review of the *Mental Health Act 2000* (October 2015)

This office has been closely engaged in the review of the *Mental Health Act 2000* (the Act) since it commenced in 2013.

While supportive of the improved focus on recovery-oriented principles and the emphasis on 'less restrictive' approaches, the limited analysis of the interface between the mental health system and the guardianship system is an ongoing concern for our office.

The Public Advocate expressed concern about the lack of detail in relation to how the new Act will interact with other systems, notably the guardianship system, the criminal justice system, and the fragmented system for the support and involuntary treatment of people with intellectual disability.

Some specific concerns highlighted by the Public Advocate included:

- the missed opportunity to embrace a stronger recovery-orientation in respect of the treatment of mental illness, which would bring the Act into line with other contemporary legislative approaches;
- the implementation of the proposed new approach in terms of its reliance on guardians and attorneys to consent to mental health treatment for patients in the absence of safeguards and specific legislative authority to consent to such treatment;
- the need for clarification of certain aspects of the new jurisdiction of the Magistrates Court and what supporting systems will be in place; and
- the introduction of non-revocable forensic orders that, for the first time, introduce what this office viewed as a 'punitive' approach to the mental health legislative framework.

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

Disability Services and Other Legislation Amendment Bill 2015 (March 2016)

The Office of the Public Advocate was invited by the Chair of the Communities, Disability Services and Domestic and Family Violence Prevention Committee to make a submission in relation to the *Disability Services and Other Legislation Amendment Bill 2015* (the Bill).

The Bill proposed a number of changes to various legislation regulating the delivery of disability services in readiness for the transition to the NDIS. The Public Advocate supported the Bill in principle and reiterated the importance of ensuring that there are adequate safeguards for people with impaired capacity.

The Public Advocate's submission highlighted many of the shortcomings of current quality and safeguarding mechanisms for people with impaired decision-making capacity and expressed concerns about adopting the current system, with those shortcomings, into the NDIS. Our concerns included the absence of a proper complaints mechanism that is accessible to people with impaired decision-making capacity, the absence of a system of reporting and analysis of deaths of people with disability in care, a lack of training and support for substitute decision-makers who interact with the National Disability Insurance Agency, and the necessity to increase funding of the Queensland Community Visitor Program due to its extension into NDIS-funded services.

Human Rights Inquiry (April 2016)

The Office of the Public Advocate made a submission to the Legal Affairs and Community Safety Committee in relation to the Human Rights Inquiry. The Committee was charged with determining whether it was appropriate and desirable to legislate for a Human Rights Act in Queensland, other than through a constitutionally entrenched model.

The Office of the Public Advocate was supportive of a Human Rights Act for Queensland. Our submission outlined a number of potential improvements that could be made upon the models already existing in Australia, including to include 'reasonable accommodation', a fundamental concept from the UNCRPD, as a foundational element of the Human Rights Act and a human rights framework. We also suggested a systemic review of existing Queensland legislation to ensure it was consistent with the principles of the Human Rights Act.

We suggested ways to build upon the learnings that have emerged from similar frameworks in other Australian jurisdictions. Given that Queensland has the benefit of being able to consider not only similar human rights legislation of the Australian Capital Territory and Victoria but also the thorough reviews that those jurisdictions have undertaken, it is hoped that the issues encountered in the implementation of the human rights regimes in those jurisdictions, such as inadequate resourcing, will not be repeated in Queensland.

Indefinite detention of people with cognitive or psychiatric impairment in Australia (April 2016)

The Public Advocate made a submission to the Senate Community Affairs References Committee's inquiry into the indefinite detention of people with cognitive and psychiatric impairment in Australia.

The Public Advocate's submission argued that the indefinite detention of this group violated core human rights principles, including those articulated in several articles in the UNCRPD. The Public Advocate commented that the legislative and administrative processes dealing with people with impaired decision-making capacity subject to indefinite detention are of considerable concern from a rights-based perspective. They may also contribute to discrimination on the basis of impairment, act as a barrier to exercising the full right to justice, and may result in people being detained for much longer than their offences would warrant in the mainstream criminal justice system.

The Public Advocate highlighted that while the new *Mental Health Act 2016* (not yet commenced) effects the indefinite detention of people with impaired decision-making capacity and contains a number of safeguards, it also provides for non-revocable forensic orders of up to 10 years, thus replacing the historical justification of indefinite detention of people with psychiatric impairment on the basis of 'treatment' with that of 'punishment'.

The submission identified the principles, safeguards and practice strategies that could be adopted to regulate and/or minimise the use of indefinite detention and restrictive practices for people with impaired decision-making capacity. It also made recommendations aimed at informing an integrated and rights-based regime for responding to the treatment and support needs of people with impaired decision-making capacity as they interact with the criminal justice system or exhibit behaviours that cause harm.

The Public Advocate concluded that, while government's ultimate aim should be to eliminate indefinite detention for people with impaired capacity, existing systems that facilitate indefinite detention should be founded on a coherent legislative framework, along with sound principles that prioritise human rights, and view detention for this group as a last-resort response.

Review of the National Disability Advocacy Program (June 2016)

The Public Advocate made a submission in response to the Discussion Paper released by the Commonwealth Department of Social Services regarding the review of the National Disability Advocacy Program (NDAP). The submission reinforced the recommendations made by the Public Advocate in August 2015 in response to the department's Review of the National Disability Advocacy Framework.

The Public Advocate raised two key threshold issues for consideration. The first was the need for a comprehensive mapping and evidence-based review of disability advocacy provision across Australia in order to accurately identify what types of advocacy are available where, understand the nature of the gaps that currently exist, develop a targeted evidence-based strategy for addressing those gaps, and make informed decisions about where to invest limited funding. We also highlighted the need to review resourcing of the disability advocacy sector and its ability to meet demand in the context of the NDIS.

The submission raised concerns about the models of advocacy proposed for the NDAP. Given the considerable vulnerability of some people with impaired decision-making capacity, the framework and NDAP should acknowledge the limitations of self-advocacy and ensure that alternative forms of advocacy are readily available to people with profound cognitive and communication disability. The Australian Law Reform Commission's national decision-making principles should also be incorporated into the framework and the NDAP to better support autonomy and individual decision-making.

In order to strengthen systemic advocacy for adults with impaired decision-making capacity within the NDIS, the Public Advocate identified the need for the Australian Government to either formally recognise the role of state-based Public Advocates to undertake systems advocacy for this group, or establish a Public Advocate (or equivalent independent statutory office) with jurisdiction to undertake systemic advocacy at the federal level. State- and territory-based Public Advocates and their equivalents do not have the legal authority to access information and data beyond their jurisdictions. This limitation significantly diminishes the ability of Public Advocates to perform their important function to advocate to protect the rights and interests of people with disability who also experience impaired decision-making capacity.

The importance of systemic advocacy should not be underestimated within consumer directed service systems such as the NDIS and the aged care system. The Public Advocate focuses on influencing the legislative, policy and practice aspects of legal and service systems and provides a cost-effective way of addressing issues affecting large numbers of people with impaired decision-making capacity in contrast to responding to individual complaints or advocating in individual cases. Systemic advocacy provides an important additional layer of protection for the rights of people with impaired decision-making capacity, with the Public Advocate being uniquely positioned to influence government and non-government agencies.

Along with recommendations made in an earlier submission to the Commonwealth Department of Social Services, the Public Advocate proposed a number of additional strategies for strengthening the effectiveness of the NDAP. For example, the responsiveness of advocacy services could be improved through knowledge- and capability-building strategies and activities that are supported by contemporary communication technologies (such as the development of a collaborative consortium of disability advocacy services that shares advocates' expertise, fosters partnerships and referral networks). The NDAP should similarly consider instigating funding for a 'community advocacy education' program that is operated by advocacy services for the purpose of increasing public awareness about advocacy and its functions.

The Public Advocate also recommended that the department respond to the increasing need for legal advocacy in a consumer-driven, contract-based disability market place. The submission reiterated the need to strengthen the advocacy evidence-base; ensure that advocacy remains independent and not part of the NDIS service provision landscape; and for disability advocacy services to continue to be provided free-of-charge.

In general, the Public Advocate supported the development of a responsive, well-resourced, accessible, independent and evidence-based disability advocacy system that operates as a potent safeguard for people with impaired capacity and, more generally, for people with disability.

Stakeholder engagement and other policy contributions

Australian Guardianship and Administration Council

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

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

The Public Advocate actively participated in the two meetings held in 2015-16 and contributed to the work of the AGAC outside of these meetings.

Elder Abuse Prevention Unit Reference Group

The quarterly meetings of the Elder Abuse Prevention Unit Reference Group are attended by a broad range of stakeholder representatives, including from the Office of the Public Advocate, OPG, QCAT, Australian Pensioners and Superannuants League, Department of Communities, Child Safety and Disability Services, Queensland universities and non-government organisations.

The Elder Abuse Prevention Unit chairs the Reference Group meetings, at which discussions are held in relation to emerging and current issues, current work and initiatives, and strategies and actions that may be required to address issues.

The Office of the Public Advocate has been a long-term member of the Reference Group and participated in all meetings held during 2015-16.

Queensland Age-Friendly Community Strategy Senior Officers Group

The Office of the Public Advocate is part of the Senior Officers Group for the *Queensland: an age friendly community* strategy. The group is convened by the Office for Seniors within the Department of Communities, Child Safety and Disability Services.

In 2015-16, the Office of the Public Advocate participated in the *Seniors Summit to create an age friendly Queensland* and contributed to the development of the *Queensland: an age-friendly community* strategy, action plan and implementation schedule via the Senior Officers Group.

Queensland Youth Strategy Senior Officers Whole-of-Government Reference Group

The Queensland Youth Strategy is a whole-of-government approach to shaping government policies and improving outcomes for youth living in Queensland. Our Office participated in the Queensland Youth Strategy Senior Officers Whole-of-Government Reference Group during 2015-16, encouraging the inclusion of people with disability in the Queensland Youth Strategy Future Building Forums (held throughout Queensland during March and April 2016) and providing feedback on findings from the forums.

The forums engaged Queensland youth who might not ordinarily express their views about key priorities (such as employment, education and training, health and wellbeing, inclusive communities, and the environment), including those youth from Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse backgrounds, rural or remote locations, as well as those experiencing mental health issues or disability.

EPOA Reference Group

Queensland Aged and Disability Advocacy (QADA) was provided with funding from the Department of Justice and Attorney-General to research and formulate an early intervention response for enduring power of attorney enquiries to ensure access to justice for vulnerable people and their attorneys, and the efficiency and effectiveness of the existing funded service system. QADA established a reference group to inform the design and implementation of the project.

In June 2016, the Office of the Public Advocate was invited to become part of the EPOA (Enduring Power of Attorney) Reference Group.

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

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

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

During the first half of 2016, our office participated in the Department of Justice and Attorney-General Research and Evaluation Framework Working Group. The group comprises representatives from business units within the department and meets regularly, usually on a monthly basis, and in response to departmental Board of Management deadlines.

The purpose of the working group is to develop a framework that ensures research and consultation commissioned and undertaken by the Department of Justice and Attorney-General is consistent with best-practice ethical research principles. In addition to contributing to the development of the framework, the office has been identifying ethical issues that could impact upon research participants who may have impaired capacity.

The project is ongoing into 2016-2017 and we anticipate maintaining our involvement with the working group at least until the framework is finalised.

Department of Justice and Attorney-General Health and Safety Committee

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

National Disability Insurance Scheme

The Office of the Public Advocate has participated in government consultations in relation to the implementation of the NDIS in Queensland. More specifically, our office has provided comment on the Operational Plan to support the Bilateral Agreement, National Working Agreement, Progress Reports to the Council of Australian Governments, NDIS Agency Highlight Reports, Quality and Safeguarding Framework, Regulatory Impact Statement, NDIS Working Arrangements and Management Plan for continuity of support, and amendments to the *National Disability Insurance Scheme (Supports for Participants) Rules 2013*.

National Disability Insurance Scheme Interest Group

Regular meetings between the Public Trustee Queensland, OPG, QCAT and our office were held throughout 2015-16 to prepare for the rollout of the NDIS in Queensland. The participant agencies shared information about the rollout of the scheme, discussed areas of mutual interest and considered the potential needs of people eligible to access the scheme at the launch sites in Queensland.

Mental Health Act 2016

The Office of the Public Advocate has participated in consultation processes in relation to updating the Chief Psychiatrist’s Policies for the upcoming implementation of the *Mental Health Act 2016*.

Domestic Violence Application Form

During the year, the office provided detailed feedback on the review of the application form for a protection order under the *Domestic and Family Violence Protection Act 2012*. We recognise that women with disabilities, especially intellectual and cognitive disabilities, are particularly vulnerable to domestic and family violence, so the forms need to be accessible and simple to complete to ensure women with impaired capacity who are experiencing domestic and family violence are able to get the protection they need to live in safety.

Speaking engagements

In 2015-16, the Public Advocate gave presentations about specific issues and the work of the Public Advocate. These speaking engagements included:

Presentation to the QCAT Management Team
Queensland Civil and Administrative Tribunal, Queen Street, Brisbane
16 July 2015

Presentation to the Queensland Law Society Health and Disability Committee
Queensland Law Society
Law Society House, 179 Ann Street, Brisbane
5 August 2015

Presentation to Queensland Advocacy Incorporated Disability Law Students - QAI Law Clinic
Queensland Advocacy Incorporated
Peel Street, South Brisbane
8 September 2015

Presentation to Health Advocacy and Legal Clinic students
Health Advocacy and Legal Clinic
St Vincent's Hospital, Kangaroo Point
14 September 2015

Panel member at the Health Matters Symposium (National Disability Services Queensland)
Kedron-Wavell Services Club, Chermside
15 September 2015

Presentation to Office for Seniors Carers & Volunteering
75 William Street, Brisbane
17 September 2015

Presentation to Meet the Justice Profession (School of Justice, Queensland University of Technology)
Queensland University of Technology, Gardens Point
22 September 2015

Presentation at the Forensic Disability Service Induction (Department of Communities, Child Safety and Disability Services)
Wacol Disability Training Centre, Wacol
25 November 2015

Presentation to the South West Regional Office of the Department of Communities, Child Safety and Disability Services
Department of Communities, Child Safety and Disability Services
Icon Building, 117 Brisbane Street, Ipswich
10 March 2016

Participation in filming on the issue of consent for the ABLE X series (University of Queensland)
University of Queensland, St Lucia
10 March 2016

Speaker at Health Complaints Commissioner Meeting (Office of the Health Ombudsman)
George Williams Hotel, 317-325 George Street, Brisbane
17 March 2016.

Our communications

Effective communication is critical to promoting and protecting the rights and interests of people with impaired decision-making capacity. Our communication strategy seeks to promote an increased understanding of the Public Advocate’s role, and recognise the contribution that the Public Advocate can make to examining and addressing issues relevant to people with impaired decision-making capacity.

In 2015-16, our website was upgraded to better reflect the independence of the Public Advocate and improve the accessibility of our work. Our new website is more informative, easier to navigate and has a more contemporary design. The design and content of the website was informed by the research and design principles that underpin the Queensland Government website.

In 2016-17, we will continue to develop our website and its content to improve its accessibility for people with impaired capacity and its potential to inform people about our work and current issues impacting the rights and interests of people with impaired capacity.

We have also enhanced our email communications by developing branded online messages. The improvements to our email and website communication are the first steps to improving our online communication. Further enhancements are planned for 2016-17.

Our people and processes

The staff of the Office of the Public Advocate are key to our performance and our ability to fulfil our statutory functions. To perform effectively we need to attract and retain quality staff. We value our staff and the contribution they make to the work of our office and support them with appropriate policies, training and development opportunities.

Our team

The Public Advocate is an independent statutory position appointed by Governor in Council on the recommendation of the Attorney-General under the *Guardianship and Administration Act*.

The Act permits an acting Public Advocate to be appointed when the office is vacant or the Public Advocate is absent from duty or unable to perform the duties of the role. This provision was called upon twice in 2015-16. In the first instance, Ms Kim Chandler was the acting Public Advocate for approximately six weeks in October/November 2015 while the Public Advocate was on leave.

Ms Jodie Griffiths-Cook resigned from the position of Public Advocate and concluded her term in April 2016. Ms Mary Burgess was subsequently appointed to act in the Public Advocate role from May 2016, and remains in the position until a recruitment process is completed to fill the Public Advocate role on a permanent basis.

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

The staffing establishment for our office provides for six officers to support the Public Advocate in performing the statutory functions for which the position has responsibility. Our office includes:

- 1 x Executive Manager-Advocacy, Policy and Evidence;
- 1 x Principal Research Officer;
- 2 x Senior Research Officers;
- 1 x Senior Legal Officer; and
- 1 x Administration Officer.

In the 2015-16 financial year, our office maintained its focus on maintaining its establishment as fully as possible. A number of positions were temporarily filled in 2015-16 while staff who were permanently appointed to those positions were seconded to other agencies. The secondment of one staff member provided an opportunity for another staff member to act in a higher level position within the office.

Workforce planning

Our workforce planning processes aim to continually align the needs of our office with those of our staff. Our office supports staff to achieve an appropriate work-life balance and effectively manage their emotional and physical wellbeing and mental health. In 2015-16, we continued to provide flexible working options, which included accessing accrued time, working part time, telecommuting and purchased leave arrangements. When appropriate, staff have been provided with information about self-help strategies and access to confidential counselling services.

Code of Conduct

Promoting and building integrity is critical to the effective functioning of our office. It promotes stakeholder confidence in our work and underpins our systemic advocacy activities. Our office abides by the *Code of Conduct for the Queensland Public Service*. The Code of Conduct reflects ethical values contained in the *Public Sector Ethics Act 1994* and is based on principles including integrity and impartiality, promoting the public good, commitment to the system of government, and accountability and transparency.

Our staff are expected to uphold the code by committing to and demonstrating the intent and spirit of the ethics principles and values. Our office manages any Code of Conduct breaches in line with the Public Service Commission's *Managing workplace behaviour – a guide for agencies*.

Staff are informed about the Code of Conduct and related expectations when they commence work with our office, and then annually complete online Code of Conduct training.

Learning and development

The Public Advocate is committed to providing staff with professional development opportunities. The development of staff is an important way to ensure that the office achieves outcomes to protect and advance the interests of people with impaired decision-making capacity.

All staff participate in performance and career development planning. Discussions undertaken as part of this process include conversations about career objectives, performance and behaviour, work direction and professional development.

Over the year, staff attended a range of learning and development opportunities focussed on developing skills such as website content management, use of information technology, human resource management and leadership.

Observing QCAT hearings

Each year, our office seeks approval from QCAT for staff to attend Tribunal hearings. The hearings provide an invaluable opportunity for staff to gain knowledge of current issues, observe the systems and processes of the Tribunal, and enhance their understanding of guardianship and administration matters. Office of the Public Advocate staff attended numerous hearings throughout 2015-16; the knowledge gained from this experience helps to inform the project and systemic advocacy activities of the office.

Conferences and other events

Staff also attended numerous conferences and events throughout 2015-16, which provided learning and engagement opportunities. The events attended by staff in 2015-16 included:

National Injury Insurance Scheme (Insurance Commission and Queensland Treasury)
Public Trustee Office, 444 Queen Street, Brisbane
1 July 2015

Crime, Justice and Social Democracy Conference 2015 (Queensland University of Technology)
Queensland University of Technology Crime Justice Research Centre, Gardens Point
9-11 July 2015

University of Queensland Symposium: Having the Last Word Research 2015 (University of Queensland)
Customs House, Brisbane
7 August 2015

Marginalised Queenslanders influencing public policy workshop forum (Office of the Public Advocate, Anti-Discrimination Commission Queensland, Queensland Council Of Social Services & Queenslanders Disability Network)
Albert Street, Brisbane
17 August 2015

The Robert Jones Memorial Oration 2015 (Anti-Discrimination Commission Queensland)
Parliamentary Annexe, Brisbane
13 August 2015

Seniors Summit to create an Age Friendly Queensland (Department of Communities, Child Safety and Disability Services)
State Library of Queensland, Brisbane
27 August 2015

The Essential NDIS Briefing (National Disability Services)
Brisbane Exhibition and Convention Centre, Brisbane
28 August 2015

Launch of 2016 Legal Topics for Older People Diary (Queensland Aged and Disability Advocacy Inc.)
Pullman Hotel, Brisbane
8 September 2015

Dilemmas in Supporting Choice (Community Resource Unit)
Jindalee Hotel, Jindalee
14 September 2015

2015 Positive Practices Symposium (Centre of Excellence for Clinical Innovation and Behaviour Support, Department of Communities, Child Safety and Disability Services)
80 George Street, Brisbane
16 September 2015

Rights Denied forum (Anti-Discrimination Commission Queensland)
53 Albert Street, Brisbane
17 September 2015

QCOSS State Conference (Queensland Council of Social Service)
Brisbane Convention & Exhibition Centre, Brisbane
13 October 2015

NDIS New World: Disability in the 21st Century Conference and Trade Show (National Disability Insurance Scheme)
Brisbane Exhibition & Convention Centre, Brisbane
27-29 October 2015

People with Intellectual Disability and their Experience of the Criminal Justice System Forum (Australasian Society for Intellectual Disability)
Trinity Place, 68 Hawthorne Street, Woolloongabba
30 October 2015

The State of Advocacy for People with Intellectual Disability: Advocacy Practice and Policy in a Changing Environment (WWILD)
68 Hawthorne Street, Woolloongabba
6 November 2015

National Supported Decision Making Conference (Capacity Australia)
Lane Cove Library, Sydney
13 November 2015

Off the Grid Forum (Micah Projects)
Albert Street, Brisbane
27 November 2015

Queensland – An Age-Friendly Community – Senior Officers Group (Department of Child Safety and Disability Services)
75 William Street, Brisbane
30 November 2015

Queensland Mental Health Commission Morning Tea (Queensland Mental Health Commission)
Queensland Museum, Brisbane
7 December 2015

Networking session: How the National Disability Insurance Scheme (NDIS) and Health Systems fit together (Health Consumers Queensland)
George Street, Brisbane
23 February 2016

NDIS Symposium "Housing for people with disability: A place to call home" (Griffith University)
Brisbane Convention and Exhibition Centre, Brisbane
15 February 2016

Human Rights Act Information Session (Anti-Discrimination Commission Queensland)
Brisbane Square Library, 266 George Street, Brisbane
29 February 2016

Official Launch of the Massive Open Online Course (MOOC) for the ABLE X series-Intellectual Disability Healthcare around the world (University of Queensland)
University of Queensland, St Lucia
24 March 2016

Leading Change Forum By and For People with Disability (Queensland Disability Network)
Parliamentary Annexe, Brisbane
19 May 2016

2016 Community Seminar Series – Hosted by School of Arts and Social Sciences (Southern Cross University) and SCU Community Reference Group Recharging your advocacy battery workshop 1: Making use of the media in advocacy and lobbying
Southern Cross University, Gold Coast
26 May 2016

Women with Cognitive Disability and Domestic Violence Forum (Community Living)
Queensland Multicultural Centre, Brisbane
26 May 2016

A case hypothetical and panel discussion: Adult guardianship and capacity for decision-making: Understanding the law to enhance your practice and ensure better patient outcomes (Queensland Health)
Princess Alexandra Hospital, Brisbane
31 May 2016

QPILCH Public Interest Address 2016 (Queensland Public Hearing Interest Law Clearing House)
Customs House, Brisbane
8 June 2016

Elder Abuse Forum (Queensland Police Service)
Police Headquarters, 200 Roma Street, Brisbane
13 June 2016

QCOSS State Budget Breakfast 2016 (Queensland Council of Social Service)
Brisbane Convention and Exhibition Centre, Brisbane
17 June 2016

Planning and processes

The Public Advocate convened a number of business planning days and other strategic planning discussions with staff in 2015-16. These activities assisted in defining and prioritising our work program and provided opportunities to discuss priority issues and how our office might advance them. They also allow us to identify strategic and operational risks to our office, for which we can formulate specific strategies to address and/or minimise their impact.

Our office complies with the *Public Records Act 2002*, which requires that we keep full and accurate records of our activities, and the recordkeeping policies, standards and guidelines issued by the State Archivist. Our office also fulfils the corporate governance requirements of Department of Justice and Attorney-General.

Financial reporting

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

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

A summary of the expenditure for the Office of the Public Advocate for the financial year 2015-16 is contained in Table 1.

Table 1 Office of the Public Advocate Financial Summary 2015-16

Expenditure item	Amount
Employee related expenses*	$685,000
Supplies and Services	$92,000
Grants	$7,000
Total	**$784,000**

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

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

Travel expenditure

There was no overseas travel undertaken by the Public Advocate or the office's staff during the year.

Interstate travel is sometimes undertaken for significant stakeholder meetings or events. In particular, interstate travel is factored into the budget to attend AGAC meetings.

The total expenditure incurred by our office for interstate travel in 2015-16 was $2,600.

The Public Advocate attended a Partners Meeting for the Australian Research Council Linkage Grant research project into effective decision-making support for people with cognitive impairment in Sydney on 16 November 2015.

When acting in the role of Public Advocate, Ms Kim Chandler, attended the AGAC meeting in Melbourne on 21-22 October 2015 and the National Supported Decision-Making conference in Sydney on 13 November 2015.

Grants

In 2015-16, our office contributed a $5,000 grant to the Australian Research Council Linkage Grant research project into Effective decision-making support for people with cognitive impairment led by La Trobe University. This project is funded by an Australian Research Council Linkage Grant and other project partners. Refer to page 16 for more information about this project.

A payment of $1,400 was provided to the School of Public Health and Social Work, Faculty of Health at the Queensland University of Technology in 2015-16 for research regarding the use of medication to manage concerning behaviours of adults with intellectual disability. Refer to page 20 for more information about this project.

A grant of $800 was paid to Ms Tamara Rader from the Faculty of Medicine, Centre for Global Health, University of Ottawa to conduct a search for government documents across various international jurisdictions in relation to the prevention of death in residential settings for people with intellectual disability. Ms Rader specialises in the design and conduct of systematic literature searches in rheumatology and health equity topics. The articles and documents provided by Ms Rader informed the *Upholding the right to life and health: A review of the deaths in care of people with disability in Queensland* report.

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